1/26/09 OVERVIEW: DEPT. OF PUBLIC SAFETY

Department of Public Safety

Department Overview

presented to

House and Senate Judiciary Committees

January 26, 2009

Department of Public Safety

"The mission of DPS is to ensure public safety and enforce fish and wildlife laws"

DIVISIONS

- Administrative Services
- Statewide Services
- Fire & Life Safety
- Alaska State Troopers (AST)
- Alaska Wildlife Troopers (AWT)

BOARDS & COUNCILS

- Alcoholic Beverage Control Board (ABC)
- Council on Domestic Violence and Sexual Assault (CDVSA)
- Alaska Police Standards Council (APSC)
- Alaska Fire Standards Council (AFSC)

Alaska State Troopers

"preserve public peace, protect life, property, and resources"

Detachments

Bureau of Alcohol and Drug Enforcement

Bureau of Investigations

Bureau of Judicial Services

Bureau of Highway Patrol

Village Public Safety Officer Program

DPS Training Academy

- 119,217 calls for service
- About 10% result in criminal cases
- 13 Homicides in 2008, 100% solved
- 72 open cold cases, 4 investigators 29 closed, continued progress
- Marijuana grow operations and meth labs continue to decline, but Heroin, Oxycontin and drug importation cases are filling the void. Street value 19m
- Alcohol importation arrests increased by over 30%. 291 arrests made
- 337 Sexual Assaults and 375 Sexual Abuse of Minor cases
- 67,750 Prisoner transports, 7 CSOs added to rural areas
- 740 SARs, 289 Saves
- BHP Creation - 62 highway fatalities,19 alcohol related
- 22 Trooper vacancies (of 301 PCN's); Next academy starts 2/26/09
- Recruitment is a top priority. Current pool likely to fill all commissioned positions going into FY2010

VPSO Program

"preserve public peace and protect life and property in rural villages"

VPSO Contracts

- Aleutian Pribilof Island Association
- Bristol Bay Native Association
- Chugachmiut
- Tlingit-Haida Central Council
- Kawerak
- Tanana Chiefs Council
- Association of Village Council Presidents
- Kodiak Area Native Association
- Manilaq
- Copper River Native Association

- Current number filled = 51
- Funding will allow 60 VPSOs
- Pay raises $17.00 to $21.00
- More applications recently received, especially from rural Alaska
- Turnover rate appears to be improving
- 19 started recent academy, 12 remain
- Rural Grants – equipment, supplies and training
- Trooper Support - Village oversight visits 2340
- 238 DV and Assault arrests - up 51%
- 57 DUI arrests - up 63%
- Probation and Parole
- D.A.R.E, 20 VPSOs Trained

Alaska Wildlife Troopers

"enforce fish and game laws; preserve public peace; protect life, property, and resources"

Detachments

Wildlife Investigations Unit

Marine Enforcement

Aircraft Section

- 58,584 Resource user contacts
- 8.5% Violation to contact rate
- Boating Safety - 8,195 contacts
  Deaths; 2007=17 2008=12
- 5 AWT Vacancies (of 96 PCN's)
- Cooperative USFWS, NMFS, JEA, Public Safety Techs
- Focus on wildstock protection
- Computer Forensics growing
- Training efforts
- Challenge - Relative inexperience level

Fire & Life Safety

"prevent the loss of life and property from fire and explosion"

Life Safety Inspections Bureau

Plan Review Bureau

Training & Education Bureau

Office of Rural Fire Protection

Joint Pipeline Office

- Fire Deaths - 24 in 2007, 19 in 2008
- 1543 Inspections (143% increase over 2007) with compliance at 35%.
- 1024 Plan reviews (20% Increase over 2007)
- 11 deferred jurisdictions, audited every 2 years
- Online plan review process
- Fire and Building Officials Forum - 2nd annual to be in April
- "Raven Island" interactive computerized fire safety game for kids
- Office of Oil & Gas Systems and Facilities

Statewide Services

"preserve public peace, protect life, property, and resources"

Criminal Records and Identification Bureau

Automated Fingerprint Identification System (AFIS)

Alaska Public Safety Information Network (APSIN)

Permits and Licensing

-Security Guard Licensing

-Civilian Process Server

-Concealed Handgun Permits

Sex Offender Registration

Statewide Information Services

Network Support Group

- APSIN re-design into final development stage
- Information Technology Development
- Mobile Data Terminals (MDT)
- In car video (iCOP)
- Records Management System
- Information Sharing through "Alaska Law Enforcement Information Sharing System" (ALEISS)
- Traffic and Criminal Software (TraCS)
- 2458 Registered Sex Offenders, 107 non-compliant
- 7802 Active Concealed Handgun Permits
- 60,443 Fingerprint cards - 26,877 are criminal cards
- Challenge; Digital Network Storage and migration to new technologies

Office of the Commissioner

"provide support and policy direction to divisions and agencies within the department"

Office of Professional Standards

Alaska Police Standards Council

Alaska Fire Standards Council

Council on Domestic Violence and Sexual Assault

Alcoholic Beverage Control Board

Crime Detection Laboratory

- New unit to conduct internal investigations, complaint follow-up and tracking
- APSC expanded by two members to incorporate line officer
- APSC has accepted VPSO training to be applied toward basic certification
- Training & Certification is offered to 6100 career firefighters and volunteers
- CDVSA funding to 24 Victim Service Programs across Alaska; 8000 victims served
- Funded 77 DV/SA Training sessions for Law Enforcement, Advocates, Prosecutors, First Responders, Court Personnel
- Focusing on strategic planning to boost DV/SA prevention activities at local and state levels
- New ABC Board Director
- Short term-non perm Investigator PCN upgraded to a PFT at ABC

Crime Detection Laboratory

"provide forensic services to the Alaskan community"

SECTIONS

Breath Alcohol
Blood Alcohol
Biological Screening
DNA
Controlled Substances
Fire Debris (Arson)
Firearm/Toolmarks
Latent Prints
Shoe/Tire Impressions
Evidence

- 4500 cases submitted -78% turned in 30 days or less.
- Case backlog reduced 24% currently 600
- Fire Debris analysis (Arson) restored as an available service
- Filled 10 lab vacancies, becoming fully staffed for the first time since 2002
- CODIS samples backlog: 6000, to be caught up by July 09
- Lab accreditation successfully renewed
- Challenge - Lab space. Built in 1988 to accommodate 23; currently have 40

More On The LAB

Emerging/Immediate Trends

Property Crimes

y-STR

Low Copy DNA

Mitochondrial DNA

Cold Cases

Post Conviction

- DNA is the fastest advancing forensic science
- 30% increase in solved property crimes with DNA
- New DNA techniques help solve cold cases
- New DNA techniques help exonerate the innocent
- Lab is currently developing the needed science to perform y-STR, Mitochondrial DNA and Low Copy DNA
- Existing lab facility incapable of supporting Mitochondrial and Low Copy DNA
- New Lab update - Land lease with MOA near agreement. Design complete, under validation review for scope and design

QUESTIONS ?

1/28/09

INQUIRY RE: ISSUANCE OF LEGIS. SUBPOENAS

Dana Strommen

From: Tillery, Craig J (LAW) [craig.tillery@alaska.gov]

Sent: Tuesday, February 03, 2009 9:09 AM

To: Rep. Kurt Olson

Cc: Rep. Jay Ramras

Subject: House Judiciary Committee information request

Dear Representative Olson,

At the House Judiciary Committee overview for the Department of Law, you asked how much time and money was spent by the attorney general's office fighting the legislative subpoenas. Our records indicate that the Department of Law spent 101.6 hours, at a cost of $13,784, on litigation and other activities related to the legislative subpoenas.

Craig J. Tillery
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Alaska Department of Law
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craig.tillery@alaska.gov

Sec. 24.25.010. Issuance and form of subpoena.

(a) A subpoena requiring the attendance of a witness before either house of the legislature may be issued by the president or the speaker.

(b) A subpoena requiring the attendance of a witness before a standing or special committee of the legislature may be issued by the chairman of a committee when authorized to do so by a majority of the membership of the committee and with the concurrence of the president or the speaker, or with the concurrence of the house or the senate.

(c) A subpoena requiring the attendance of a witness before an interim committee established by either house of the legislature, or by both, may be issued by the chairman of a committee when authorized to do so by a majority of the membership of the committee and with the concurrence of the president or the speaker.

(d) The subpoena is sufficient if

(1) it states before whom the proceeding is held;

(2) it is addressed to the witness;

(3) it requires the attendance of the witness at a time and place certain;

(4) it is signed

(A) by the president or the speaker under (a) of this section, or

(B) by the committee chairman with the concurrence of the president or the speaker under (b) and (c) of this section.

(e) This section does not apply to the legislative council or to the Legislative Budget and Audit Committee.

Sec. 24.25.020. Service of subpoena.

A person over the age of 19 years who is competent as a witness in the state courts may serve the subpoena. The person's affidavit that the person delivered a copy to the witness is evidence of service.

AS
Sec. 24.25.030. Disobeying subpoena or refusing to testify.

If a witness neglects or refuses to obey a subpoena, or neglects or refuses to testify or to produce upon reasonable notice any material and proper books, papers, or documents in the possession or under the control of the witness, the senate or house of representatives may by resolution entered on its journal commit the witness for contempt. If contempt is

committed before a committee, the committee shall report the contempt to the senate or house of representatives, as the case may be, for such action as may be considered necessary.

Sec. 24.25.040. Arrest for disobedience to subpoena.

A witness who neglects or refuses to attend in obedience to subpoena may be arrested by the sergeant-at-arms and brought before the senate or house of representatives, as the case may be. The only warrant or authority necessary authorizing arrest is a copy of a resolution of the senate or house of representatives signed by the president of the senate or speaker of the house of representatives, as the case may be, and countersigned by the secretary of the senate or the clerk of the house of representatives, as the case may be.

Sec. 24.25.050. Witness fees and mileage.

A person appearing before either house, or both, or a legislative committee in response to a subpoena is entitled to $20 for each day's attendance, and for the time necessary in coming and returning to the person's place of residence and mileage at the rate of 15 cents a mile for the distance traveled in going to and returning from the place of attendance. The witness fee and mileage fee shall be paid out of the state treasury upon presentation of a certificate of attendance and mileage due, signed by the presiding officer of the house that authorized issuance of subpoena.

Sec. 24.25.060. Oath and penalty for violation of oath.

The president of the senate and speaker of the house of representatives and the chairman of every committee of either body may administer an oath to a witness appearing before the respective bodies. A person who wilfully swears or affirms falsely concerning any matter material to the subject under investigation or inquiry is guilty of perjury and upon conviction is punishable by imprisonment for not less than one year nor more than five years.

Sec. 24.25.070. Grant of immunity on claim of privilege of self-incrimination.

(a) A person called as a witness before the senate, house of representatives, or a committee of either or both, who refuses to answer any question or to produce any book, paper, or document relating to the matter under inquiry, on the ground that the answer or the production may tend to incriminate the person, may be granted immunity from punishment for the offense to which the question or evidence relates by resolution of the house that is conducting the inquiry. The resolution shall be entered upon its journal, and the witness may then be compelled to answer the question or produce the evidence.

(b) If a witness is granted immunity and compelled to testify or produce evidence after claiming the privilege of self-incrimination, the witness may not thereafter be prosecuted in any court for the offense to which the question or evidence relates.

Sec. 24.25.080. Punishment for disobedience to subpoena or refusal to testify.

A person subpoenaed as provided in this chapter who fails, neglects, or refuses to attend at the time and place where the person's presence is required, or fails, neglects, or refuses to produce the books, papers, or instruments or other evidence designated in the subpoena, or who having attended in response to the subpoena, or having appeared voluntarily, refuses to testify as to any material and proper matter within the power of the senate, house of representatives, or a committee to investigate, upon conviction, is punishable by a fine of not less than $100 nor more than $500, or by imprisonment for not less than 30 days nor more than six months.

Chapter 24.30. ENACTMENT OF STATUTES

Sec. 24.30.010. - 24.30.100l [Renumbered as AS 24.08.010 - 24.08.100].

Repealed or Renumbered

Westlaw.

AS § 44.23.010

C

West's Alaska Statutes Annotated Currentness
Title 44. State Government
Chapter 23. Department of Law
→ § 44.23.010. Attorney general

The principal executive officer of the Department of Law is the attorney general.

CREDIT(S)

SLA 1959, ch. 64, § 9.

LIBRARY REFERENCES

Attorney General ⇨ 6.
Westlaw Key Number Search: 46k6.
C.J.S. Attorney General §§ 26 to 78.
C.J.S. Parent and Child § 251.

AS § 44.23.010, AK ST § 44.23.010
Current through the 2008 Second Regular and Fourth Special Session of the 25th Legislature

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C
West's Alaska Statutes Annotated Currentness
Title 44. State Government
Chapter 23. Department of Law
→ § 44.23.020. Duties; and powers; waiver of immunity

(a) The attorney general is the legal advisor of the governor and other state officers.

(b) The attorney general shall

(1) defend the Constitution of the State of Alaska and the Constitution of the United States of America;

(2) bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection of revenue;

(3) represent the state in all civil actions in which the state is a party;

(4) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(5) administer state legal services, including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs; and give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature;

(6) draft legal instruments for the state;

(7) make available a report to the legislature, through the governor, at each regular legislative session

(A) of the work and expenditures of the office; and

(B) on needed legislation or amendments to existing law;

(8) perform all other duties required by law or which usually pertain to the office of attorney general in a state; and

(9) prepare, publish, and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning landlord and tenant rights; the contents of the pamphlet and any revision shall be approved by the Department of Law before publication.

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(c) Before January 1, 1999, the attorney general may, in a case that involves the state's title to submerged lands, or in any case in which the state seeks to allocate fault to the federal government or a federal employee under AS 09.17.080, waive the state's immunity from suit in federal court provided under the Eleventh Amendment to the Constitution of the United States. The expiration on January 1, 1999, of the attorney general's authority to waive the state's Eleventh Amendment immunity does not affect existing waivers in ongoing cases.

(d) The attorney general may, subject to the power of the legislature to enact laws and make appropriations, settle actions, cases, and offenses under (b) of this section.

(e) There is established within the Department of Law the function of public advocacy for regulatory affairs. The attorney general shall participate as a party in a matter that comes before the Regulatory Commission of Alaska when the attorney general determines that participation is in the public interest.

(f) The attorney general shall designate not less than one-half attorney position in the Department of Law for the purpose of prosecuting actions for fraudulent acts related to workers' compensation under AS 23.30.

(g) The attorney general may, in cases that involve compliance, discharge, or enforcement of responsibilities assumed by the Department of Transportation and Public Facilities under AS 44.42.300, waive the state's immunity from suit in federal court provided under the Eleventh Amendment to the Constitution of the United States.

CREDIT(S)

SLA 1959, ch. 128, § 1; SLA 1959, ch. 64, § 9; SLA 1976, ch. 8, § 1; SLA 1995, ch. 21, § 89; SLA 1997, ch. 3, § 1; SLA 2000, ch. 112, §§ 1, 2; SLA 2003, ch. 35, § 60; 2003 E.O. No. 111, § 3; 1st Sp. Sess. 2005, ch. 10, § 72; SLA 2006, ch. 50, § 1, eff. June 2, 2006.

Prior Codifications: ACLA 1949, § 9-1-5.

HISTORICAL AND STATUTORY NOTES

For transitional provisions relating to the 2003 transfer of the functions and responsibilities of the former public advocacy section from the Regulatory Commission of Alaska to the Department of Law, see § 5, E.O. 111.

LIBRARY REFERENCES

Attorney General ⇨ 5.
Westlaw Key Number Search: 46k5.
C.J.S. Aliens §§ 409 to 411.
C.J.S. Attorney General §§ 26 to 78.

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C.J.S. Parent and Child § 251.

NOTES OF DECISIONS

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1. Distribution of governmental powers

Under the separation of powers doctrine, court does not have power to control the exercise of the Attorney General's discretion as to whether he will take any action in any particular cases of contempt for nonsupport of child. AS 44.23.020. Public Defender Agency v. Superior Court, Third Judicial Dist., 1975, 534 P.2d 947. Constitutional Law ⚿ 2543

2. Powers and duties, generally

Attorney general had standing to sue corporations from which Multiple-Beneficiary-Permittees (MBPs) purchased gaming supplies and leased facilities, alleging that corporations violated state's gaming laws by charging member charities of MBPs unreasonably high expenses; although Department of Revenue had statutory authority to administer state's gaming law, and to issue orders prohibiting acts in violation of those provisions, Department of Revenue lacked statutory power to prosecute offenses against gaming laws. AS 05.15.010, 05.15.060, 44.23.020(b)(4). Botelho v. Griffin (2001) Alaska, 25 P.3d 689. Attorney General ⚿ 7

Reading of statutory authorization for Department of Law operations suggests intent to leave offices and their functions broad, general and flexible, even when circumstances do not involve disqualification of Attorney General, and demonstrate that the legislature contemplated retention of services of counsel outside the Department of Law. AS 36.30.015, 36.30.850(b)(32), 44.23.050. State v. Breeze, 1994, 873 P.2d 627. Attorney General ⚿ 6

In light of the substantial state interest in the enforcement of child support orders, contempt of such an order is a violation of state law within meaning of statute providing that the Attorney General shall prosecute all cases involving violation of state law. AS 09.55.210, 11.35.010, 11.35.090, 25.25.010 et seq., 44.23.020, 47.25.310 et seq. Public Defender Agency v. Superior Court, Third Judicial Dist., 1975, 534 P.2d 947. Attorney General ⚿ 7

Attorney General's discretionary control over the legal business of the state, both civil and criminal, includes the initiation, prosecution and disposition of cases. AS 44.23.020. Public Defender Agency v. Superior Court, Third Judicial Dist., 1975, 534 P.2d 947. Attorney General ⚿ 7

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United States Attorney General and district attorneys have authority to prosecute all suits in which United States are concerned. U.S. v. Lynch, 1927, 7 Alaska 568, Unreported. Attorney General ⚿ 7; Descent And Distribution ⚿ 9

3. Common law powers

Department of Revenue's authority to proceed administratively against gaming law offenses does not limit the attorney general's statutory and common law authority to bring suit to uphold the state's gaming laws. AS 05.15.010, 05.15.060, 44.23.020(b)(4). Botelho v. Griffin (2001) Alaska, 25 P.3d 689. Attorney General ⚿ 7

Under the common law, the attorney general has the power to bring any action which he thinks necessary to protect the public interest, a broad grant of authority which includes the power to act to enforce Alaska's statutes. Botelho v. Griffin (2001) Alaska, 25 P.3d 689. Attorney General ⚿ 7

Generally, an attorney general has those powers which existed at common law except where they are limited by statute or conferred upon some other state official. AS 44.23.020(b)(8). Botelho v. Griffin (2001) Alaska, 25 P.3d 689. Attorney General ⚿ 6

Attorney General has common-law power to bring any action which he thinks necessary to protect public interest. Berger v. State, Dept. of Revenue, 1996, 910 P.2d 581. Attorney General ⚿ 7

Record did not show that Attorney General lacked consent of the principal so as to bar appointment of special prosecutor by Attorney General under common-law doctrine of delegatus non potest delegare. State v. Breeze, 1994, 873 P.2d 627. Attorney General ⚿ 6

Under the common law, an Attorney General is empowered to bring any action which he thinks necessary to protect the public interest and possesses the corollary power to make any disposition of the state's litigation which he thinks best. AS 44.23.020. Public Defender Agency v. Superior Court, Third Judicial Dist., 1975, 534 P.2d 947. Attorney General ⚿ 7

Generally, an Attorney General has those powers which existed at common law except where they are limited by statute or conferred upon some other state official. AS 44.23.020. Public Defender Agency v. Superior Court, Third Judicial Dist., 1975, 534 P.2d 947. Attorney General ⚿ 6

4. Defense duties

The Attorney General is authorized to appear either individually or through United States Attorneys and their assistants and defend civil and criminal actions against government officials, employees and military personnel for acts done in performance of their official duties. 5 U.S.C.A. §§ 309, 316. Swanson v. Willis, 1953, 14 Alaska 399, 114 F.Supp. 434, affirmed 15 Alaska 501, 220 F.2d 440. Attorney General ⚿ 6

Governor has a duty to defend a law that was enacted through the people's initiative powers and that duty is executed by the Attorney General. Alaskans for a Common Language, Inc. v.

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Kritz (2000) Alaska, 3 P.3d 906, on remand 2002 WL 34220502. Attorney General ⚿ 6; States ⚿ 41

Department of Law has responsibility of defending laws passed by the legislature against constitutional attack. Gray v. State, 1974, 525 P.2d 524. Attorney General ⚿ 6

5. Special prosecutors

Special prosecutor hired by Attorney General did not exceed the scope of his authority in securing indictments of target of investigation; appointment letter authorized special prosecutor to investigate other related matters and to serve as special counsel in "other matters that may arise in the course of the investigation," and Attorney General made it clear that special prosecutor had acted within the scope of authority intended. AS 44.23.020(b)(3). State v. Breeze, 1994, 873 P.2d 627. Attorney General ⚿ 6

Even if special prosecutor appointed by Attorney General were found to have technically exceeded the scope of his appointment, special prosecutor was a de facto officer and indictments obtained by him remained valid pursuant to that authority, absent showing of prejudice by the person indicted; special prosecutor had at least a fair color or right of title and acted for such length of time as to afford presumption of appointment, appointment process was reported publicly, target of investigation himself urged state to get on with the investigation, and questions regarding special prosecutor's authority had no demonstrated bearing on grand jury's determination to return indictments. AS 44.23.020. State v. Breeze, 1994, 873 P.2d 627. Attorney General ⚿ 6

Person who was investigated by special prosecutor and against whom indictments returned did not have the same standing as the Attorney General to challenge whether special prosecutor exceeded the scope of his appointment by the Attorney General. State v. Breeze, 1994, 873 P.2d 627. Attorney General ⚿ 6

State Constitution and applicable statutes did not express or imply restriction on Attorney General's authority to properly delegate certain duties of the office, by appointing special prosecutor, where Attorney General maintained appropriate supervision, direction and control over special prosecutor, who was required to submit claims for services to the Department of Law and who was subject to termination by the Attorney General at any time. Const. Art. 3, § 22; AS 44.17.010, 44.17.040, 44.23.020(b)(3, 7). State v. Breeze, 1994, 873 P.2d 627. Attorney General ⚿ 6

Appointment of special prosecutor by Attorney General as remedy to Attorney General's perceived conflict of interest was both appropriate and authorized pursuant to statute; Attorney General is obligated under statute to investigate and prosecute law violations, and if Attorney General and Department of Law are disqualified, Attorney General is nevertheless "required by law" to ensure that investigation and prosecution are conducted by someone who is qualified, whether that person is denominated special counsel, special prosecutor, or some other title. AS 44.23.020, 44.23.020(b)(3, 7). State v. Breeze, 1994, 873 P.2d 627. Attorney General ⚿ 6

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6. Negligence of subordinates

Governor and attorney general could not be held liable for negligence of their subordinates unless they had actually cooperated in alleged acts. Bujaki v. Egan, 1965, 237 F.Supp. 822. Attorney General ⚿ 6; States ⚿ 79

7. Actions for administration or enforcement of charitable trusts

Even if charities that were members of Multiple-Beneficiary-Permittees (MBPs) did not consent to attorney general acting on their behalf in asserting claim against corporations from which MBPs purchased gaming supplies and leased facilities, alleging that corporations violated state's gaming laws by charging member charities of MBPs unreasonably high expenses, attorney general's authority to enforce charitable trusts gave him power to bring such action if charities' trustees dismissed or compromised charities' claims for less than charities were due under state's gaming laws. AS 05.15.160(a, c, d), 44.23.020(b)(4); Restatement (Second) of Trusts § 391. Botelho v. Griffin (2001) Alaska, 25 P.3d 689. Charities ⚿ 50

AS § 44.23.020, AK ST § 44.23.020
Current through the 2008 Second Regular and Fourth Special Session of the 25th Legislature

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LEGAL OPINIONS

LEGAL SERVICES

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MEMORANDUM January 23, 2009

SUBJECT: Legislative investigations and power of subpoena
(Work Order No. 26-LS0418)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane W. Pierson

FROM: Tamara Brandt Cook
Director TBC

(1) What is a scope of the power of the legislature to issue subpoenas?

The legislature enjoys broad investigative power, but it is limited to obtaining information on matters that fall within its field of legislative action. (Mason's Manual, Secs. 795(6) and 797(7)) Lawmaking is the central legislative activity, but there are others that may justify investigatory pursuits. It is stated in Mason's Manual, Sec. 795(10): "An investigation into the management of the various institutions of the state and the departments of the state government is at all times a legitimate function of the legislature." The Supreme Court of Alaska has specifically acknowledged that the legislature has broad powers of investigation relating to its lawmaking activities and also has specifically identified the confirmation power as carrying with it an implied power and duty to investigate both the status of the relevant appointed offices and the qualification of individuals appointed to fill them. (Cook v. Botelho, 921 P.2d 1126 (Alaska 1996)) In addition to the two legislative activities recognized by the court, based on the reasoning of the case, it is expected that other legislative activities also carry with them the implied power to investigate. (See for example, art. X, sec. 12 (power of the legislature to disapprove certain local boundary changes); art. II, sec. 20 (power of the legislature to impeach civil officers of the State))

The power of the legislature to issue subpoenas coincides with the power of the legislature to investigate. Mason's Manual points out in Sec. 795(5):

> The inherent and auxiliary power reposed in legislative bodies to conduct investigations in aid of prospective legislation carries with it the power in proper cases to compel the attendance of witnesses and the production of books and papers by means of legal process. Also, the legislature has the power to institute and carry to the extent of punishment, contempt proceedings in order to compel the attendance of such witnesses and the production of such documentary evidence as may be legally called for in

> the course of such proceedings, whether conducted by the legislative body or a branch thereof, directly or through its properly constituted committees.

The power of the legislature to investigate was recently recognized again in Alaska. Certain legislative plaintiffs sought a temporary injunction and to restrain the Legislative Council and other named defendants from conducting an investigation into Governor Sarah Palin's removal of Walter Monegan from his position as Commissioner of the Alaska Department of Public Safety on the grounds that the investigation exceeded the Legislative Council's statutory authority and violated principles of separation of powers and due process. Executive branch plaintiffs challenged the validity of subpoenas issued pursuant to the investigation. The two cases were consolidated and the Superior Court denied the motions and dismissed the action, concluding that many of the issues raised by the plaintiffs involved procedures of the legislative branch and were, thus, nonjusticiable. The court further found no constitutional due process or fair and just treatment violation. (Keller v. French, Case No. 3AN-08-10489CI; Kiesel v. Seven Subpoenas, Case No. 3AN-08-10780CI; Consolidated, Superior Court, Third Judicial District, Order dated October 2, 2008) The order of dismissal by the Superior Court was affirmed by the Supreme Court. (Keller v. French, Supreme Court No. S-13296, Order dated October 9, 2008) The Supreme Court has not yet issued an opinion in that case.

(2) May an attorney advise a client not to respond to a legislative subpoena?

It strikes me that an attorney might do so under certain circumstances, such as when the attorney has a good faith belief there is a legitimate question regarding the validity of the subpoena, especially if the attorney is making an effort to quash the subpoena. The attorney also has a responsibility to explain to the client the risk entailed in failing to respond to a legislative subpoena. (See AS 24.25.030 and AS 24.25.080) Probably the attorney has a duty to explain all options to the client, so that the client may participate in the final decision.

Ms. Jane Pierson has asked me to consider Rule 503(d)(1) of the Rules of Evidence, Alaska Court Rules. It states that there is no attorney/client privilege: "If the services of the lawyer were sought, obtained or used to enable or aid anyone to commit or plan to commit what the client knew or reasonably should have known to be a crime or fraud." However, failure to abide by an invalid subpoena is not a crime nor is it fraud. Consequently, it is possible that this Rule will not apply when the validity of a subpoena is in question. Note that the Evidence Rules Commentary to Rule 503(d)(1) observes: "The provision that the client knew or reasonably should have known of the criminal or fraudulent nature of the act is designed to protect the client who is erroneously advised that a proposed action is within the law." Determining the exact scope of the advice given is, itself, a sensitive task. The Commentary goes on to explain:

> While any general exploration of what transpired between attorney and client would, of course, be inappropriate, it is sometimes feasible, either at the discovery stage or during trial, so to focus the inquiry by specific

> questions as to avoid any broad inquiry into attorney-client communications. In some cases it will not be possible to probe without substantially invading the privileged area. When these cases arise, the court may require that a prima facie case of wrongdoing be established by independent evidence before the privilege is denied. Even where the perimeter of the privileged relationship can be analyzed without probing too deeply into confidential communications, such analysis will not be necessary if independent evidence of wrongdoing is available.

(3) *What amendments would strengthen AS 24.25.010?*

AS 24.25.010, setting out the process for issuing subpoenas, could be clarified with respect to the treatment of the subpoena power of the permanent interim committees, which is dealt with in other statutes. However, the public policy issue presented by this statute is whether and to what extent the power of committees to investigate should be clarified. A committee of the legislature exercises only those powers conferred upon it by the legislature. The power of committees to investigate is implied from the grant of the subpoena power to committees. Ought the power to investigate be made specific and, if so, to what extent should committees be granted the power to investigate by statute? To what extent should investigatory procedures by committees be addressed in statute? An example of a specific grant of the authority to investigate, along with specific procedures to be used, can be found in AS 24.60.170 - 24.60.178, involving proceedings before the Select Committee on Legislative Ethics. (See Mason's Manual, Sec. 799, legislative investigating committees)

TBC:ljw
09-042.ljw

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
DIMOND COURT HOUSE, 6TH FLOOR
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September 9, 2008

The Honorable Kim Elton
State Senate
State Capitol, Room 506
Juneau, AK 99801-1182

Re: Legislative Investigation re Office of the Governor

Dear Senator Elton:

The purpose of this letter is twofold: First, to explain why the Department of Law decided not to proceed with the depositions of Department of Administration employees last week and why, unless the current manner of pursuing the investigation changes, the Department of Law may find it necessary to move to quash subpoenas issued to compel the testimony of those witnesses and seek other relief from the courts. And second, to express our concerns with the conduct of this investigation.

First, with respect to our decision to not proceed with the depositions. Within the past week the project director appears to have adopted an incorrect interpretation of law regarding access to state employees' personnel files under the State Personnel Act. This incorrect interpretation could lead the witnesses to believe that they could face criminal prosecution for what is actually legal conduct. An improper threat of potential prosecution is totally inconsistent with the constitutional requirement that the "right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed." Alaska Const. art. I, sec. 7.[1]

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[1] The framers explained the reason for this provision as follows:

> The McCarthy hearings brought out the great issue that existed here a couple years ago. McCarthy was making charges against people under the exercise of the powers of a congressional legislative committee. The people, individuals were sorely abused under the guise of the exercise of the power of the legislature to investigate. The only subject that a legislature is supposed to investigate upon is something that will bear upon the state code or prospective legislation that might be under consideration. But under the guise of looking into legislative matters they call hearings and then maybe subject people to very bad treatment and ruin their reputations and assassinate them from a character standpoint....

Proceedings of the Alaska Constitutional Convention at 1448-49.

On September 2, 2008, Senator French apparently publicly expressed his view that if the Governor's Office obtained confidential information from Trooper Wooten's personnel file, "it would be a violation of state law." "October Surprise Over Palin Investigation?" ABC News, Sept. 2, 2008. On September 3, 2008, Senator French also apparently disclosed that the scope of the investigation has now expanded to include whether other persons within the Palin administration have abused power. "Palin Seeks Review of Monegan Firing Case," Anchorage Daily News, Sept. 3, 2008.

If, as Senator French's comments indicate, he believes that the governor and her staff members may not review executive branch employees' personnel files, the Department of Law disagrees. It does not violate the State Personnel Act for Department of Administration staff to provide confidential personnel information to the governor or her staff – or for the governor or her staff to receive that information – in the course and scope of their official duties.

The governor has supervisory authority over all executive branch employees. The Alaska Constitution provides that "[t]he executive power of the State is vested in the governor," that all executive and administrative offices must be allocated by law within principal departments, that the governor is "responsible for the faithful execution of the laws," and that "[e]ach principal department shall be under the supervision of the governor." Alaska Const. art. III, secs. 1, 16, 22, 24. Likewise, Alaska's statutes provide that "the governor is the appointing authority for all officers and employees of the executive branch," and she may delegate that authority. AS 39.25.020(a)(2).

As the supervisory chief of the executive branch, the governor has a right of access to information in the personnel files of employees in the branch she supervises. Her right of access extends also to the staff members who assist and advise her, including heads of the principal departments. AS 44.17.040.

The governor or her staff may, in the course and scope of their official duties, review a confidential personnel file to ensure, for example, that an employee is adequately supervised, appropriately evaluated, and appropriately disciplined. In appropriate cases, the governor may also direct the termination of a state employee. These powers are inherent in the governor's constitutional authority – and duty – to supervise the executive branch.

The framers of our constitution gave these broad powers to the governor because they intended to have a strong governor. Delegate Lundborg explained that intent as follows:

> We in our Committee felt that it would be the wishes of the majority of the Convention to have a strong executive. By that we did not mean a dictator, one who would get into power and be the absolute power in the state, but one who through appointive powers would be able to select his

> co-workers down through the various offices so that when the state's functions would be successful we could say that we had a good governor, and when they would not be successful we would know who to blame and could vote accordingly at the next election.

Proceedings of the Alaska Constitutional Convention at 2222. *See also Bradner v. Hammond*, 553 P.2d 1, 3 n.3 (Alaska 1975).

The Department of Law agrees that state employees' personnel records are confidential. The State Personnel Act provides that such records "are confidential and are not open to public inspection." AS 39.25.080(a). But that does not mean that the governor or her staff cannot review those records or receive information contained in them. Review by the governor or her staff of a confidential personnel file in the course and scope of their official duties is neither a violation of employee confidentiality nor a public inspection.

To the extent that, in the course and scope of their official duties, any employees of the Department of Administration disclosed Trooper Wooten's personnel file or any information contained in the file to the governor or her staff, that disclosure was both lawful and consistent with the Department of Administration's regulations. *See* 2 AAC 07.910(c)(5).

All that being said, the Department of Law recognizes the possibility that a confidential personnel file could be handled inappropriately. If the contents of a confidential personnel file were disclosed inconsistently with the applicable statutes and regulation, including 2 AAC 07.910, the Department of Law agrees that it would violate the State Personnel Act. At this point, the Department of Law knows of no evidence that suggests that any Department of Administration employees violated the State Personnel Act in handling Trooper Wooten's personnel file.

Generally speaking, the Department of Law has no objection to the legislature seeking to ascertain the facts with respect to how Trooper Wooten's personnel file was handled. The Department of Law does object, however, to the project manager's current implication that appropriate disclosures of an employee's confidential personnel information to the Office of the Governor violate the law.

That implication concerns us because the stakes for these Department of Administration employees are high. If Senator French's apparent legal view is correct, it is theoretically possible that these employees could be subjected to criminal prosecution and forfeiture of their jobs if they are determined to have committed a willful violation of the State Personnel Act. AS 39.25.900. It also raises serious questions about the Department of Law's ability to continue to provide them with legal representation.

If Senator French's reading of the law is incorrect, then conducting these depositions under an improper threat of potential prosecution is unfair. It fails to accord these persons the fair and just treatment that the Alaska Constitution guarantees them.

To represent the Department of Administration employees adequately, the Department of Law wishes to confirm that the Legislative Council agrees with the department's reading of the law. If we cannot reach agreement on the proper interpretation of the State Personnel Act, the Department of Law is prepared to seek declaratory judgment in court on this issue. But if the Legislative Council will acknowledge in writing its agreement with the Department of Law's interpretation, the Department of Law will drop its objections and the depositions may proceed without subpoenas.

We shall now turn to our concerns regarding the manner in which this investigation is being conducted. The Department of Law has endeavored, consistent with its legal obligations, to cooperate with the legislature's investigation. But at this point, we think the Legislative Council may wish to review this investigative process and consider the following seven concerns.

1. **Selection of the Investigator:** On July 30, 2008, at the outset of this investigation, we expressed a concern to the project manager and the Chair of Legislative Council that an investigative process that did not use established procedures could run the risk of violating due process. Moreover, we recommended that consideration be given to selecting an investigator with an unquestioned reputation for objectivity and political neutrality, such as a retired judge. Our suggestion was dismissed, and the response we received was that a prosecutor would be selected and that a prosecutor's primary duty is to seek justice.

2. **Investigative Tactics:** Unfortunately, as we have watched this process unfold, it appears our fears have been realized. At present the investigation is using such tactics as a tipline and secret depositions in which witnesses are asked under oath to testify to rumor and gossip. Those tactics raise questions about the scope and true purpose of the investigation. These tactics also appear to violate legislative procedures established by statute which require the Legislative Council to conduct depositions in the same manner as required by court rules. *See* AS 24.20.060(2).

3. **Investigative Targets:** The investigation now apparently has new and unidentified targets. We have two concerns in this regard. First, from a basic due process perspective, the persons who are the new targets of this investigation have a right to know whether they are targets. Second, the process used by legislative committees is not well suited to protecting the rights of persons suspected of committing a crime. This is recognized in Mason's Manual of Legislative Procedure, where a rule of procedure is established that "[t]he legislature has no right to conduct an investigation for the purpose of laying a foundation for the institution of criminal proceedings." Mason's Manual of

Legislative Procedure, sec.797(2) (2000). We urge caution in these matters and counsel you to consider deferring to ongoing means of investigation that provide adequate due process.[2]

4. Threats of Criminal Prosecution: Even if the purpose of the investigation is not to lay the foundation for criminal proceedings, as noted above, the project director has apparently made comments that mistakenly characterize legal conduct as potentially criminal conduct. An improper threat of potential prosecution is inconsistent with the due process requirement that legislative investigations accord fair and just treatment to all persons. Alaska Const. art. I, sec. 7.

5. Prejudgment of the Matters Being Investigated: We are also concerned about indications that the project director may have prejudged the outcome of this investigation. Before this investigation began, Senator French stated publicly that this was a personnel matter that "just went way out of bounds" and characterized the conduct at issue as a "huge mistake." KUDO interview, July 21, 2008. More recently, Senator French apparently stated publicly that the investigation report will be damaging to the governor. "October Surprise Over Palin Investigation?" ABC News, Sept. 2, 2008. Can such statements possibly reflect a process that accords "fair and just" treatment to the governor? We are highly concerned with the prejudicial nature of such statements, particularly given the fact that the project director is the direct supervisor of the investigator and this investigation. We doubt that it is possible to retract these statements in a manner that will alleviate their prejudicial impact on the conduct and outcome of this investigation.

6. Delegation of Authority to Investigator: We believe that there are serious legal defects in the manner in which the Legislative Council has purported to delegate its investigative authority to a private investigator. Alaska Statute 24.25.060(2) only permits the Legislative Council to issue subpoenas to compel attendance at a public hearing before the Legislative Council. We understand that under this delegation the standing Judiciary Committees of the legislature will meet to consider issuing subpoenas to compel the attendance of witnesses. We ask you to carefully consider whether there is authority in the state constitution, state statutes or the Uniform Rules for these committees to validly issue subpoenas at this time. We also question the basic premise whether the Legislative Council may delegate its investigative powers to a single legislator acting through a private investigator. After detailing these issues for your consideration we continue to recommend that our clients cooperate with the investigation in the belief that the Legislative Council will not completely abrogate its responsibilities.

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[2] We note that on July 21, 2008, prior to the Legislative Council's authorization of this investigation, Senator French stated publicly that the investigation would be conducted in the same manner as the investigation of a "complex crime." KUDO interview, July 21, 2008.

But we reserve the right to revisit whether the public interest is truly being served by the manner in which this investigation is currently being conducted.

7. Timing of the Investigation: The timing of this investigation has been suspect. The original due date of October 31 for the investigation report was highly suspect because it comes so close to the November election date. The new due date of October 10 is really no less suspect. It only heightens the original perception that this process is a rush to judgment for ends that may have little to do with justice. Our concern regarding timing has been heightened even further with the recent news that there are approximately 1.3 million e-mails that the executive branch has preserved for purposes of this investigation. It will take time, potentially a significant amount of time, to search through these to find the e-mails that are pertinent to this investigation, and ensure that appropriate security and confidentiality are preserved, that privileges are maintained, and, if such privileges are to be waived, that they be waived in a knowing and informed manner.

Unchecked investigative enthusiasm is not consistent with our foundational principle of due process and the Alaska Legislature's consistent practice of providing fair treatment of persons appearing before legislative committees. Bluntly and to the point, we think there is a legitimate concern that this investigation is no longer being conducted in a fair manner—and therefore is potentially violative of Alaska's constitutional due process safeguards.

The eyes of the nation have now turned upon us. If this investigation is to continue, the governor, the people of Alaska, and the people of this country deserve a process that is entirely consistent with the foundational principle of due process.

We request that you carefully consider our concerns.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: Michael A. Barnhill
Michael Barnhill
Senior Assistant Attorney General

MAB/krk

cc: Hon. Nancy Dahlstrom
Hon. John Coghill
Hon. John Harris

Hon. Ralph Samuels
Hon. Bill Stoltze
Hon. Peggy Wilson
Hon. David Guttenberg
Hon. Bettye Davis
Hon. Lyda Green
Hon. Lyman Hoffman
Hon. Gary Stevens
Hon. Gary Wilken

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MEMORANDUM January 25, 2005

SUBJECT: Civil Process Immunity (Work Order No. 24-LS0439)

TO: Representative Max Gruenberg

FROM: James P. Crawford
Assistant Revisor

I am responding to the immunity-based question you posed to Ms. Tam Cook at the end of last week. As an initial matter, the question was phrased in terms of "legislative immunity from civil process," and you should be aware that these are, strictly speaking, two separate immunities. One is "legislative immunity," and the other is "civil process immunity."[1] Both immunities protect legislators and the legislative process, but there are distinctions between the two immunities, and each has its own jurisprudence. The gist of your question suggests that "civil process immunity" is the immunity at issue.

Civil process immunity arises from Art. II, sec. 6, among other places. Section 6 provides that "[m]embers attending, going to, or returning from legislative sessions are not subject to civil process and are privileged from arrest except for felony or breach of the peace."[2] You ask whether there are any circumstances under which a legislator may participate in proceedings from which the legislator would normally be protected by civil process immunity.[3] The answer is "yes," but several notes of caution are in order.

First, although they usually fly under everyone's radar, proceedings against legislators, legislative committees, or the legislature do arise. Early on, such proceedings may initially appear innocuous or, at worst, faintly irritating, only to mutate later into something far more serious in terms of reputation, political, economic, or criminal considerations. The course a given proceeding may ultimately take is not predictable, which should be taken into account in deciding to forgo immunity's protections.

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[1] There is also a "privilege" from arrest, which does not appear to be relevant presently.

[2] In Alaska, there are actually three sources of immunities: (1) the common law, originally handed down from England where immunity was developed before and especially during the reign of Queen Elizabeth I; (2) AS 24.40.010; and (3) the constitution, as noted above.

[3] Although you did not specifically ask, the ultimate conclusion of the AG Opinion cited in your request is sound: civil process immunity is absolute and may not be waived -- while it lasts. Its absolute nature makes it similar to the *other* immunity -- legislative immunity.

Second, if a legislator is observed to be embroiled in *one* otherwise avoidable (but voluntarily submitted to) proceeding, enterprising litigants-at-large may assume that the "brakes are off" as a general matter and thus become emboldened to pursue *additional* proceedings against the legislator. The sources of suits against legislators are legion and include other legislators and various entities in the executive branch or municipal government. Even if such suits are disposed of quickly through a motion to dismiss under Civil Rule 12, the resources and expense consumed in producing a stream of such motions could quickly mount.

Admittedly, the scenario presented here would probably most likely arise in the context of proceedings implicating legislative immunity (the *other* immunity), but this office nonetheless counsels taking advantage of all immunities. It is true that civil process immunity only delays proceedings until a time following legislative sessions, but it could well be the case in a given situation that a delay would be critically important.

Third, though other courts have ruled on the non-waivability of legislative and civil process immunity, the Alaska Supreme Court has not yet done so.[4] From a legislative perspective, no impediments to the court reaching that non-waivability conclusion should be erected. The issue of waiver in the immunities context is very important and is intertwined with the issue of the personal and subject matter jurisdiction of the courts, or more particularly, the limits of jurisdiction.

In the immunity context, these jurisdictional limit issues relate to checks on the power of courts being raised against the legislative branch, whether in criminal or civil proceedings, and whether raised against a legislator directly (e.g., a proceeding against a legislator, including suits for damages, injunctions, or declaratory judgments) or indirectly (e.g., subpoenaing a legislator to be a witness in a case against someone else). Historically, immunity arose when judges were merely appointed lackeys of the Tudor and Stuart monarchs engaged in a struggle against parliament; today, it is a separation of powers boundary across which the power of the judicial branch may not be extended to disrupt the legislative branch.

That immunity is not waivable means, among other things, that separation of powers protections cannot be mistakenly or improvidently surrendered. It also means that if an attorney not familiar with immunity fails to assert it at trial, it may still be raised for the first time on appeal. This happens frequently; non-waivability has saved many legislators. It also means that immunity may, in a second, separate case, provide the basis for a collateral attack on a first case decided against a legislator, even if the first case proceeded all the way through the appellate process to a final decision without

[4] As you are aware, the Department of Law views the immunity as not being subject to waiver. Additionally, the argument that immunity cannot be waived has been worked into briefing filed by attorneys in the Office of Legal Services in at least five different lawsuits. Each time, however, the argument was essentially a subsidiary one to a separate, main argument, and each time, the case in question was resolved without mentioning, much less reaching and resolving, the non-waiver issue.

immunity ever being mentioned (because the first attorney(s) were soundly asleep at the switch).

If legislators begin to make a habit of waiving, trying to waive, or engaging in conduct that is analogous to waiving immunity, the Alaska Supreme Court might be persuaded not to follow the lead of other states when the issue reaches the court and instead hold that immunity can actually be waived. A great deal would be lost by such a ruling. Legislator-driven encouragement of it should be avoided if at all possible.[5] Again, much of this reasoning applies mainly to legislative immunity, but a ruling by our court that civil process immunity may be waived makes a ruling that the arguably more important legislative immunity may be waived all the easier to reach, and vice versa.

Turning now to the answer to the question asked, after careful consideration by a legislator and discussion with the legislator's lawyer, a legislator could indeed attempt to participate in a proceeding against which immunity would normally provide a shield. Participation could occur simply by the legislator not asserting the immunity to which the legislator is entitled. If no one else raised the immunity issue, it would likely be a non-factor. However, the legislator should not mention -- in court or out -- the term "waiver" in conjunction with or in explanation of the legislator's considered and always-discussed-with-an-attorney-before-hand decision to appear in a proceeding normally subject to immunity.[6]

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05-015.lmb

[5] The list of reasons set out in this memo for not waiving immunity is not intended to be exhaustive.

[6] Civil process and legislative immunities protect legislators, legislative committees, and the legislature. All of these players have an interest in immunity issues and in the course of the development of immunity jurisprudence. All of them could be affected to some degree by a precedent restricting the scope of immunity or allowing waiver of immunity. This gives any one of the players a general interest in any case in which a legislator is choosing to not assert an available immunity, whether through an affirmative attempt to waive it or through silence coupled with actual attendance. In addition, the specifics of a given "non-assertion" case may give any of the players a second, more particularized interest in the case. Either type of interest may lead any of the legislative players to attempt to intervene in the case as a party or to participate as an *amicus* and raise the non-waiver issue. If so, it is likely that the courts would consider any immunity-related arguments presented by a player wishing to be heard. Because immunity protects the legislative process generally, even a constituent wishing to be heard might get the courts to listen.

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MEMORANDUM July 20, 2006

SUBJECT: Oath and subpoena of witness before a standing committee

TO: Representative Max Gruenberg

FROM: Tamara Brandt Cook
Director

May an oath be administered to a person testifying before a standing committee of the legislature?

The matter is addressed in AS 24.25.060 which states in full (emphasis added):

> Sec. 24.25.060. Oath and penalty for violation of oath. The president of the senate and speaker of the house of representatives and **the chairman of every committee of either body may administer an oath to a witness appearing before the respective bodies**. A person who wilfully swears or affirms falsely concerning any matter material to the subject under investigation or inquiry is guilty of perjury and upon conviction is punishable by imprisonment for not less than one year nor more than five years.

It is my impression that when a standing committee chair has administered an oath the form that has been used is that used in court: "Do you solemnly swear (or affirm) that the testimony you are about to give in this matter will be the truth, the whole truth, and nothing but the truth so help you God?"

May a standing committee or the chair of a standing committee issue a subpoena?

Again the matter is addressed by statute. Provisions dealing with the subpoena process are found at AS 24.25.010 - 24.25.080. With respect to your precise question, AS 24.25.010(b) states in full:

> (b) A subpoena requiring the attendance of a witness before a standing or special committee of the legislature may be issued by the chairman of a committee when authorized to do so by a majority of the membership of the committee and with the concurrence of the president or the speaker, or with the concurrence of the house or the senate.

Attached is a copy of a proposed committee subpoena form.

TBC:med
06-436.med

Enclosure

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MEMORANDUM October 17, 2006

SUBJECT: Meetings of standing committees during the interim (Work No. 25-LS0128)

TO: Representative Max Gruenberg

FROM: Tamara Brandt Cook
Director

(1) May a standing committee subpoena the governor to appear at a meeting to be held after the legislature has adjourned sine die?

Mason's Manual states in sec. 445(5): "Committees, specially authorized, may sit after adjournment sine die." (See also, sec. 622) Uniform Rule 21(c) grants to standing committees the power to meet between sessions. A committee that meets between sessions may consider "any legislative matter which is consistent with the jurisdiction of the committee."

It is my understanding that you are interested in the possibility of the House Judiciary Committee conducting an investigative meeting to determine whether the Governor intends to execute a contract dealing with construction of a natural gas pipeline without submitting the contract to the legislature for its approval. It is clear that the legislature has broad authority to investigate and that the investigation may be conducted through a committee. (Mason's Manual, sec. 795) However, I must caution that Uniform Rule 20(a) does not specifically grant jurisdiction to the Judiciary Committee to conduct investigations, nor has the House referred the pipeline contract matter to the Judiciary Committee. Indeed, it appears that under Uniform Rule 20(a) the State Affairs Committee may have a claim to jurisdiction over the pipeline contract since it is charged with "programs and activities of the Office of the Governor" and that the Resources Committee might also have a claim to jurisdiction. Nonetheless, it is consistent with the past practice of the legislature for legal issues, such as those involving separation of powers, to be considered by the Judiciary Committee. Consequently, it is unlikely that the Judiciary Committee would be deemed to be acting outside of its authority to meet between sessions under Uniform Rule 21(c) if it conducting a hearing to ascertain the status of the pipeline contract.

A standing committee has broad statutory power to subpoena a witness under AS 24.25.010(b). Note that the subpoena must be authorized "by a majority of the membership of the committee and with the concurrence of . . . the speaker . . ."

(2) May a standing committee place a person under oath at a meeting held during the interim?

The chair of a standing committee has broad authority to administer an oath at any meeting of the committee. AS 24.25.060 states in part: "the chairman of every committee of either body may administer an oath to a witness appearing before the respective bodies. A person who willfully swears or affirms falsely concerning any matter material to the subject under investigation or inquiry is guilty of perjury and upon conviction is punishable by imprisonment for not less than one year nor more than five years."

TBC:ljw
06-344.ljw

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MEMORANDUM September 9, 2008

SUBJECT: Inquiry regarding issuance of subpoenas in legislative investigations

TO: Representative Max F. Gruenberg, Jr.

FROM: Jack Chenoweth
Assistant Revisor

In conjunction with the current legislative investigation initiated by the Legislative Council, I looked back to January 1975 for examples of use of subpoenas issued in conjunction with legislative inquiries or investigations.

The Sheffield impeachment provides the chief example of authorization of subpoenas. Enclosed are the minutes, from the Senate Journal of the Special Session, setting out the authorization for subpoenas by the Senate Rules Committee in July 1985 in conjunction with that effort. As you can see, the authorization is "generic" in that it does not specifically name a witness or witnesses to whom the subpoenas are to be addressed.

There is, in the public record, a 1980 Opinion or memo of the Attorney General to former Representative Alvin Osterback concerning issuance of legislative subpoenas that also provides guidance. A copy of the memo is provided.

If I am able to find any other examples in the days to come, I will make copies and send them along. However, this office would not be involved in or necessarily be aware of a committee action to issue a subpoena. Nor is that fact likely to find its way into House or Senate Journals.

JBC:med
08-384.med

Enclosure

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MEMORANDUM September 10, 2008

SUBJECT: Legislative Council Investigation (Work Order No. 26-LS0098)

TO: Representative Max Gruenberg

FROM: Tamara Brandt Cook
Director

(1) Does the Legislative Council have the authority to initiate and maintain the investigation under the contract authorized during the last special session?

A committee generally may perform those functions that have been delegated to it or referred to it by the full legislative body. No statute or Uniform Rule grants specific authority to a committee to conduct investigations, nor does a statute or rule restrict the power of investigation. The legislative council has been assigned certain powers and duties by law and, arguably, those grants of authority carry with them the implied power to conduct investigations necessary to carry out those functions. Indeed, the grant of the power to depose witnesses and to issue subpoenas under AS 24.20.060 is evidence of a direct rather than implied grant of investigatory power to the legislative council. Probably the legislative council can investigate any matter that falls within its duty to provide administrative services to the legislature (AS 24.20.061) as well as its power to participate in the lawmaking function through the introduction of legislation (AS 24.08.060(b)).

The legislative council does not have explicit authority to investigate activities of executive branch agencies or officers. However, lawmaking is a central legislative activity that justifies broad investigatory pursuits. It is stated in Mason's Manual, sec. 795(10): "An investigation into the management of the various institutions of the state and the departments of the state government is at all times a legitimate function of the legislature." The legislative council contract directs the consultant to "investigate the circumstances and events surrounding the termination of former Public Safety Commissioner Walt Monegan and potential abuses of power and/or improper actions by members of the executive branch" and to prepare a report that includes "any recommendations for action by the Legislature . . . ." (Clause I, Statement of Work) It is possible, for example, that the recommendations contained in the report prepared under the investigation contract will consist of proposed legislation and fall squarely within the lawmaking function exercised by the legislative council when it considers the introduction of legislation or that the recommendations contained in the report will fall under the council's administrative duties which could include bringing matters involving

public policy and the administration of state government to the attention of the legislature for what actions it chooses to take if any.

(2) Is this, in fact, an investigation being conducted by the Senate or House Judiciary Committees that is supported by Legislative Council funding, the Legislative Council being the entity that has general responsibility for legislative matters generally when the legislature is not in session?

The Legislative Council has entered into a contract for the investigation. It is the Council that can terminate the contract. The final report by the consultant is to be submitted to the Council, not to another committee, and it is the Council that must determine whether to release the report or portions of it to the public. It must be concluded that this is an investigation by the Legislative Council.

(3) Does the use of one or more Judiciary Committees to issue subpoenas in connection with the investigation amount to an internal decision within the legislative branch as to how best to initiate and maintain the investigation which is nonjusticiable?

The method whereby the activities of the consultant are to be supported through the issuance of subpoenas appears to be a nonjusticiable question based on principles of separation of powers. The court has shown a willingness to examine legislative procedures in some detail and to invalidate a legislative action when the court finds that the legislature fails to comply with constitutionally mandated procedure or requirements. (Plumley v. Hale, 594 P.2d 497 (Alaska 1979); State v. A.L.I.V.E. Voluntary, 606 P.2d 769 (Alaska 1980)) However, the court will not consider questions regarding the procedure of the legislature itself because of separation of powers considerations. (Malone v. Meekins, 650 P.2d 351 (Alaska 1982)) This is true even when the legislature does not follow procedures for the legislature that are set out in statute. (Abood v. League of Women Voters of Alaska, 743 P.2d 333 (Alaska 1987))

(4) Does the Speech and Debate provision, the first sentence of Art. II, sec. 6 of the state constitution, provide a basis to contend that no other forum may inquire as to the legislature's decision regarding the methods used to conduct this investigation, particularly given that the decision to initiate the investigation was taken by the legislative council during a special session?

Yes. Article II, sec. 6 states in part: "Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session."

However, legislative immunity applies when legislators are acting in the scope of legislative duties. Unconstitutional acts may not be protected because they are not in the scope of legislative duties. (But, for the breadth of legislative immunity see State v. Dankworth, 672 P.2d 148 (Alaska App. 1983).

Note in this regard that in addition to the constitutional provision, legislative immunity is a matter of statute. AS 24.40.010 provides somewhat broader protection than the constitutional provision in that it extends immunity to a "legislator attending, going to, or returning from a meeting of an interim standing or special committee of the legislature of which the legislator is a member." Furthermore, legislative immunity has been recognized to be part of the common law. (Tenny v. Brandhove, 341 U.S. 367, 71 S. Ct. 783, 91 L.Ed. 1019 (1951)) The common law is made part of state law under AS 01.10.010. Accordingly, in Alaska immunity is also part of Alaska's common law. Common law immunity is broader than the constitutional immunity. (In re the Subpoena Issued to Kevin Jardell, S-10457, Dec. 20, 2001, Order on Original Application for Relief; wherein the court unanimously extended legislative immunity to state legislative employees involved in the performance of legislative duties during the interim)

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MEMORANDUM September 11, 2008

SUBJECT: Legislative investigation: claims of executive privilege; disposition and enforcement of subpoenas

TO: Representative Max F. Gruenberg, Jr.

FROM: Jack Chenoweth
Assistant Revisor

These are responses to the several questions set out below.

1. THE ADMINISTRATION'S PRIVATE COUNSEL HAVE INDICATED THAT THEY MAY INTERPOSE AN "EXECUTIVE PRIVILEGE" OBJECTION TO SUBPOENAS ISSUED THAT ARE ADDRESSED TO EXECUTIVE BRANCH EMPLOYEES REQUIRING THEM TO TESTIFY BEFORE THE LEGISLATIVE COUNCIL'S INVESTIGATOR.

CONSIDERING COURT DECISIONS IN THIS JURISDICTION AND OPINIONS OF THE ATTORNEY GENERAL, WHAT IS THE EXTENT OF "EXECUTIVE PRIVILEGE" DOCTRINE UNDER THE LAW OF THIS STATE?

The genesis of contemporary executive privilege analysis as a qualified executive privilege is *United States v. Nixon*, 418 U.S. 683, 705 - 713 (1974).

State judicial recognition of the executive privilege doctrine first appears in *Doe v. Alaska Superior Court, Third Judicial Dist.*, 721 P.2d 617 (Alaska 1986), a defamation action brought by a medical doctor who had been unsuccessful in gaining appointment to the State Medical Board; the doctor sought production of the governor's file compiled when the doctor's nomination was under consideration by the executive. Having already noted the existence of the separation of powers principle, the court concluded that the public policy rationale that applies to give recognition to the privilege in the federal and certain other state courts was equally valid in this state. The privilege, the court said, as applied in other courts:

> . . . is only a qualified one, is applicable to internal advice, opinions and recommendations, and is intended to protect the deliberative and mental processes of decision-makers.

721 P.2d at 623. Moreover, the court was prepared to apply the doctrine only as to "internal communications," that is, communications involving or initiated by persons engaged within the executive branch:

> In cases such as [those in other jurisdictions that the court cited in its analysis], the requested disclosure involved either internal communications stating the opinions and recommendations of state employees, or information directly solicited by government officials. In such cases the rationale underlying the executive privilege doctrine -- the need to encourage candid opinions and debate among government officials during the decision-making process -- is directly applicable. Furthermore, there often is an express or at least an implied understanding of confidentiality attached to such communications.

721 P.2d at 625. Letters from the public were therefore necessarily excluded from the doctrine's coverage.

Thereafter, the court summarized its understanding of the doctrine:

> The doctrine of executive privilege recognizes that chief executives sometimes have a qualified power to keep confidential certain internal governmental communications "so as to protect the deliberative and mental processes of decision-makers." *Doe*, 721 P.2d at 622-23 (footnote omitted). The doctrine is designed to ensure the availability to executive decision-makers of candid advice.

Anchorage v. Anchorage Daily News, 794 P.2d 584, 593 (Alaska 1990) (citing *United States v. Nixon*, 418 U.S. 683, 708, 94 S. Ct. 3090, 3107-08, 41 L. Ed. 2d 1039, 1064 (1974)) and the statement in that opinion that "the primary impetus for the qualified privilege is the need to protect '. . . [t]he public interest in candid, objective, and even blunt or harsh opinions in presidential decision making. A president and those who assist him must be free to explore alternatives . . . and to do so in a way many would be unwilling to express except privately.'"

Two other court decisions warrant mention. *Capital Information Group v. Office of the Governor*, 923 P.2d 29 (Alaska 1996), examined the distinction between the separation of powers-based doctrine of executive privilege and the common law-grounded deliberative process privilege in the context of public access to budget impact statements and legislative proposals forwarded for the governor's consideration. This distinction was amplified in *Gwich'in Steering Committee v. Office of the Governor*, 10 P.3d 572, 578 - 579 (Alaska 2000):

> We stated in *Capital Information Group v. State, Office of the Governor* that we considered the terms "executive privilege" and "deliberative process privilege" to be synonymous for purposes of that

> discussion. But the two terms are not identical. Instead, the deliberative process privilege is a "branch" of a broader group of governmental privileges. The roots of the deliberative process privilege lie in the common law; it protects the mental processes of government decision makers from interference, not constitutional notions of separation of powers. Therefore, the question is not whether the communication relates to a duty mandated in article III of the Alaska Constitution, but whether disclosure of the communication sought would affect the quality of governmental decisionmaking.

The Department of Law identified "executive privilege" as a device by which to protect assertedly confidential information against public disclosure about two years in advance of the *Doe* decision, but did so in the context of protection for executive branch decision making:

> [A] privilege that has been recognized by courts is the "executive privilege," which protects from public disclosure those predecisional documents prepared by governmental agencies that reflect the "decisionmaking" or "deliberative process" of the agency. This privilege has received most attention from the federal courts, in cases addressing the issue of whether documents are exempt from disclosure under the Freedom of Information Act, 5 U.S.C. § 552 (1966). The privilege has yet to be recognized by the Alaska Supreme Court, but there is little reason to believe that the court will not do so, at least to some extent, when presented with the issue.

1984-1 Op. A.G. (Inf.), June 25, 1984, at 5. With respect to the more recent opinions of the attorney general treating with executive privilege, the distinction first drawn by the court between "executive privilege" and "deliberative process privilege" breaks down. The analysis offered in two opinions, Op. A.G. 1993 (January 1, 1993), No. 221-92-0553, and 1994 Op. A.G. No. 1 (November 24, 1994), seems almost to eliminate the distinction between the two. Both opinions were prepared and issued before the decisions in *Capital Information Group* and *Gwich'in Steering Committee*, so their value may be considered questionable.[1]

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[1] For the record, a recent (2007) "Comment" in Capital University Law Review, "Stifling Gubernatorial Secrecy: Application of Executive Privilege to State Executive Officials," 35 Cap. U. L. Rev. 983, notes that the doctrine applies in these jurisdictions: Alaska (*Doe v. Alaska Super. Ct.*, 721 P.2d 617, 623 (Alaska 1986)); California (*Times Mirror Co. v. Super. Ct.*, 813 P.2d 240, 250-52 (Cal. 1991)); Delaware (*Guy v. Jud. Nominating Comm'n*, 659 A.2d 777, 785 (Del. Super. Ct. 1995)); Kentucky (*Courier-Journal v. Jones*, 895 S.W.2d 6, 8-9 (Ky. Ct. App. 1995)); Maryland (*Hamilton v. Verdow*, 414 A.2d 914, 924 (Md. 1980)); New Jersey (*Nero v. Hyland*, 386 A.2d 846, 853 (N.J. 1978)); New Mexico (*N.M. ex rel. Attorney General v. First Jud. Dist. Ct. of N.M.*, 629 P.2d 330, 333 (N.M. 1981)); Vermont (*Killington, Ltd. v. Lash*, 572 A.2d

The author of the Capital University Law Review cited in this memo suggests that the court's analysis in *Capital Information Group* modifies the qualified executive privilege into something approximating a deliberative process privilege examination, at least in the first instance:

> At first glance, the Alaska Supreme Court appears to have adopted the chief executive communications privilege recognized in *Nixon*. Using the separation-of-powers rationale in *Nixon*, the court explained: "While we have not had occasion to address the executive privilege doctrine in the context of Alaska's Constitution, the doctrine has been widely recognized by both federal and state courts based on their respective constitutions." The *Doe* Court, citing *Nixon*, found that executive privilege presumptively attached upon a formal and particularized claim.
>
> A detailed analysis of the court's decision in *Doe*, however, reveals the implementation of a series of strict procedural requirements analogous to those required by the deliberative process privilege. First, the burden of proof lies with the government to "specifically identify and describe the documents sought to be protected and explain why they fall within the scope of the executive privilege." To meet this burden, the government must introduce affidavits based on a "personal examination of the documents by the affiant official." Once these procedural requirements are satisfied, the court must engage in the balancing test elucidated in *Nixon*. Finally, upon a sufficient showing of need, the trial court must engage in an in camera review of the documents to determine whether disclosure is appropriate.
>
> Nearly a decade later, the Alaska Supreme Court clarified its holding regarding executive privilege in *Capital Information Group v. State*. Initially, the court acknowledged its prior acceptance of the constitutionally based executive privilege articulated in *Nixon*. Then, it stated: "[T]he term 'executive privilege' in *Doe* encompasses what other commentators have called the deliberative process privilege." In doing so, the court adopted the substantive requirements underlying the deliberative process privilege--namely, that the materials be both deliberative and predecisional. Accordingly, purely factual material falls outside the scope of the privilege unless disclosure "'would reveal the deliberative process,

---

1368, 1375 (Vt. 1990)); and Virginia (*Taylor v. Worrell Enters., Inc.*, 409 S.E.2d 136, 139 (Va. 1991)). The same source also relates that the Commonwealth of Massachusetts has refused to recognize any form of executive privilege. *Babets v. Sec'y of Exec. Office of Human Servs.*, 526 N.E.2d 1261, 1266 (Mass. 1988). 35 Cap. U.L. Rev. at 985, note 7.

> or if the facts are "inextricably intertwined" with the policymaking process.'"
>
> At this point, the strict procedural requirements imposed by *Doe* apply. If a formal and particularized privilege claim is asserted, "there is a presumption in favor of nondisclosure and the party seeking access to the document must overcome that presumption." In essence, the Alaska Supreme Court [has] adopted a skeleton of the deliberative process privilege . . . .

35 Cap. U. L. Rev. at 999 - 1001 (notes omitted).

Alaska's recognition of the privilege, as in the other jurisdictions, does not treat it as one that is absolute. The procedural requirements that attach to claim of the privilege direct that the privilege be asserted with specificity. Once requisite specificity has been demonstrated, the presumption of the privilege applies and the court will look at the executive's asserted need for confidentiality against the opposing party's claim for production.

WOULD THE CLAIM OF "EXECUTIVE PRIVILEGE" PROVIDE A VALID DEFENSE OR SHIELD THAT WOULD PERMIT AN EXECUTIVE BRANCH EMPLOYEE FROM ANSWERING QUESTIONS PUT TO HIM OR HER IN A LEGISLATIVE INVESTIGATION OR FROM PROVIDING COPIES OF RECORDS UNDER A SUBPOENA DUCES TECUM IN A LEGISLATIVE INVESTIGATION?

If the claim is to operate at all, it probably would operate only in a narrowly limited sphere.

First, while the judicial decisions of the courts in this state speak in terms of "communications," leaving open the possibility that a claim of executive privilege might be asserted as to verbal communications, the *Doe* decision, by its terms, describes the privilege as applicable only to "internal governmental communications" and discusses the privilege in terms of the considerations bearing on the eventual examination and production of physical evidence:

> . . . we find the state's claim of privilege ***potentially valid with respect to the internal memoranda and "miscellaneous papers"*** in the appointment file. We do not know their exact content. However, at least some of the documents clearly are internal communications, and they may contain advisory opinions and recommendations. If so, they would constitute the type of internal deliberative communication the privilege is designed to protect.

721 P.2d at 625 (emphasis added). If the purpose of the subpoena is to elicit testimony (as distinct from a document or record), the claim of executive privilege is probably not available.

Second, at least in the context of its operation in the federal courts, the executive privilege applies only as to communications running between the president and his or her principal subordinates:

> . . . the public interest is best served by holding that communications made by presidential advisers in the course of preparing advice for the President come under the presidential communications privilege, even when these communications are not made directly to the President. Given the need to provide sufficient elbow room for advisers to obtain information from all knowledgeable sources, the privilege must apply both to communications which these advisers solicited and received from others as well as those they authored themselves. The privilege must also extend to communications authored or received in response to a solicitation by members of a presidential adviser's staff, since in many instances advisers must rely on their staff to investigate an issue and formulate the advice to be given to the President. We are aware that such an extension, unless carefully circumscribed to accomplish the purposes of the privilege, could pose a significant risk of expanding to a large swath of the executive branch a privilege that is bottomed on a recognition of the unique role of the President. In order to limit this risk, the presidential communications privilege should be construed as narrowly as is consistent with ensuring that the confidentiality of the President's decisionmaking process is adequately protected. Not every person who plays a role in the development of presidential advice, no matter how remote and removed from the President, can qualify for the privilege. In particular, the privilege should not extend to staff outside the White House in executive branch agencies. Instead, the privilege should apply only to communications authored or solicited and received by those members of an immediate White House adviser's staff who have broad and significant responsibility for investigating and formulating the advice to be given the President on the particular matter to which the communications relate. Only communications at that level are close enough to the President to be revelatory of his deliberations or to pose a risk to the candor of his advisers.

In re Sealed Case, 121 F.3d 729, 751 - 75 (D.C. Cir. 1997). Again, based on federal court precedents, the claim of executive privilege does not apply to "communications of staff outside the White House in executive branch agencies that were not solicited and received by such White House advisers." *Judicial Watch v. Department of Justice*, 365 F.3d 1108 (D.C.Cir. 2004), at 1116 (citing *In re Sealed Case*, 121 F.3d at 752) (emphasis added); see *In re Sealed Case*, 121 F.3d at 752 ("[T]he privilege should not extend to

staff outside the White House in executive branch agencies."). Thus, "the privilege become[s] more attenuated the further away the advisers are from the President operationally," *Judicial Watch*, 365 F.3d at 1114-15, and, in the event of a challenge, determining how far down the line of advisors constitutional protection provided by the executive privilege doctrine should extend in the context of balancing the needs of the executive and the Congress will be a fact-intensive inquiry. If the same test were to be applied in the application of executive privilege under the doctrine as identified by the state court, the test could eliminate assertions of executive privilege by commissioners and subordinates in the 14 principal executive departments.

Finally, at least under my review of the line of federal decisions, the executive privilege, whether applied to a conversation with the president or to fact gathering in preparation for that sort of conversation, is intended to promote candid communications by and with the president concerning the execution of his Article II duties--and nothing more:

> See *Nixon*, 418 U.S. at 705 (referring to "the nature of the privilege of confidentiality of Presidential communications in the exercise of Art. II powers"); *Id.* at 708 (President and advisers "must be free to explore alternatives in the process of shaping policies and making decisions"); *Id.* at 711 (privilege covers communications "in performance of the President's responsibilities"); *In re Sealed Case*, 326 U.S. App. D.C. 276, 121 F.3d 729, 744 (D.C. Cir. 1997) (privilege can be invoked when subpoenaed documents "reflect presidential decisionmaking and deliberations"); 121 F.3d at 742 (privilege protects "the confidentiality of conversations that take place in the President's performance of his official duties") (quoting *Nixon v. Sirica*, 159 U.S. App. D.C. 58, 487 F.2d 700, 717 (D.C. Cir. 1973) (en banc)); see also *Clinton v. Jones*, 520 U.S. 681, 137 L. Ed. 2d 945, 117 S. Ct. 1636, 1649 n.39 (1997) ("special caution is appropriate if the materials or testimony sought by the court relate to a President's official activities"). Like a President's immunity from particular civil damage suits, executive privilege is "grounded in 'the nature of the function performed, not the identity of the actor who performed it.'" *Jones*, 117 S. Ct. at 1644 (quoting *Forrester v. White*, 484 U.S. 219, 229, 98 L. Ed. 2d 555, 108 S. Ct. 538 (1988)); . . . . Executive privilege applies to executive acts -- not to private acts undertaken by the individual who is (in the words of the Supreme Court) "the current occupant of that office." *Jones*, 117 S. Ct. at 1639.

In re Grand Jury Proceedings, 1998 U.S. Dist. LEXIS 7735 (D.D.C. May 26, 1998). See also *Nixon v. Administrator of General Services*, 433 U.S. 425, 449, 53 L. Ed. 2d 867, 97 S. Ct. 2777 (1977) (noting that the privilege is "limited to communications 'in performance of [a President's] responsibilities,' 'of his office,' and made 'in the process of shaping policies and making decisions'".

The comparable application to the state's chief executive under the Alaska constitution is,

of course, the performance of article III duties, and it is possible that the court might provide the parameters of the privilege a measure of greater latitude if the governor should assert that the communications involved action identified under article III, section 16:

> **Governor's Authority.** The governor shall be responsible for the faithful execution of the laws. [The governor] may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. . . . .

IS THE "EXECUTIVE PRIVILEGE" DOCTRINE AVAILABLE AS A DEFENSE OR SHIELD IN AN IMPEACHMENT PROCEEDING? IF IT IS NOT, IS THERE THE BASIS FOR AN ARGUMENT THAT, BECAUSE THE DOCTRINE IS NOT AVAILABLE AS A DEFENSE IN AN IMPEACHMENT PROCEEDING, IT OUGHT NOT ALSO BE AVAILABLE IN A PRELIMINARY LEGISLATIVE INQUIRY SEEKING TO DETERMINE WHETHER THERE MAY BE A REASONABLE BASIS TO UNDERTAKE A FORMAL IMPEACHMENT PROCEEDING?

Judicial decisions suggest that a claim of executive privilege is weakest in conjunction with an actual impeachment and that executive privilege may be attenuated or eliminated when an impeachment proceeding has been initiated. So, for example, in *Office of the Governor v. Select Comm. of Inquiry*, 271 Conn. 540, 583 (Conn. 2004), the Connecticut Supreme Court wrote regarding a separation of power-based challenge brought by the governor to a subpoena issued in conjunction with the impeachment of the state's chief executive:

> . . . precisely because the present case is related to the impeachment process, the legislature is acting at the height of its powers and the plaintiff's [governor's] claim to categorical immunity is at its nadir. Thus, we believe that alleged misconduct of a chief executive that is sufficient to warrant an impeachment inquiry should not, as the plaintiff's contention suggests, present a reason for exempting him from accountability; rather, it should have the opposite effect. "The impeachment power necessarily implies a congressional power to inquire about presidential wrongdoing, as well as a corresponding obligation on the part of the president to respond to such inquiries." F. Bowman III & S. Sepinuck, "'High Crimes & Misdemeanors': Defining the Constitutional Limits on Presidential Impeachment," 72 S. Cal. L. Rev. 1517, 1539 (1999); see M. Gerhardt, "The Constitutional Limits to Impeachment and its Alternatives," 68 Tex. L. Rev. 1, 93 (1989) ("the president is not above the . . . law, there is no sound reason for exempting him from accountability, especially in the impeachment process"); A. Cox, "Executive Privilege," 122 Penn. L. Rev. 1383, 1435 (1974) ("history gives no affirmative support to presidential

> claims of privilege to withhold information from the House of Representatives while it is considering impeachment").

Office of the Governor v. Select Comm. of Inquiry, 858 A.2d 709 (Conn. 2004), at 738 - 739. Since separation of powers principles underpin the claim of executive privilege, *Doe*, 721 P.2d at 623, we may hope that an Alaska court would follow the reasoning of the Connecticut decision and reach the same result.

DOES GOVERNOR PALIN'S ASSERTED EXPRESSION OF WILLINGNESS TO COOPERATE VOLUNTARILY EFFECTIVELY WAIVE ANY LATER CLAIM THAT SHE MAY HAVE REGARDING "EXECUTIVE PRIVILEGE"?

Very unlikely. A general expression, even from the chief executive, would likely be treated as insufficient to constitute a general waiver. Courts have been hesitant to impute a waiver of executive privilege and have generally applied a case- or document-specific standard:

> The President's privilege cannot, therefore, be deemed absolute. . . . [A]pplication of executive privilege depends on a weighing of the public interest protected by the privilege against the public interests that would be served by disclosure in a particular case. . . . [T]he President asserts that the tapes should be deemed privileged because of the great public interest in maintaining the confidentiality of conversations that take place in the President's performance of his official duties. This privilege [is] intended to protect the effectiveness of the executive decision-making process . . . .
>
> We recognize this great public interest, and agree with the District Court that such conversations are presumptively privileged. . . .
>
> In his public statement of May 22, 1973, the President said: "Executive privilege will not be invoked as to any testimony concerning possible criminal conduct or discussions of possible criminal conduct, in the matters presently under investigation, including the Watergate affair and the alleged cover-up." We think that this statement and its consequences may properly be considered as at least one factor in striking the balance in this case. Indeed, it affects the weight we give to factors on both sides of the scale. On the one hand, the President's action presumably reflects a judgment by him that the interest in the confidentiality of White House discussions in general is outweighed by such matters as the public interest . . . . ***Although this judgment in no way controls our decision***, we think it supports our estimation of the great public interest that attaches to the effective functioning of the present grand jury. . . .

Nixon v. Sirica, 487 F.2d 700, 716 - 718 (D.C. Circ. 1973) (notes and citations omitted) (emphasis added).

2. IN A LEGISLATIVE INVESTIGATION, HOW DOES THE LEGISLATURE OR A LEGISLATIVE COMMITTEE SECURE ENFORCEMENT OF ITS SUBPOENAS? IS IT AN AUTHORITY THAT IS SELF-EXECUTING (I.E. ENFORCEMENT WITHIN THE LEGISLATIVE BRANCH) OR MUST THE LEGISLATURE REFER THE RECALCITRANT WITNESS TO THE GRAND JURY OR THE PROSECUTOR TO INITIATE JUDICIAL ENFORCEMENT OF THE CONTEMPT AUTHORITY?

Because the state statutes on this matter, AS 24.25, roughly parallel federal enactments, let me start by examining the federal law.

As recently as 1971, the United States Supreme Court acknowledged an inherent legislative right to protect the legislature's own process and existence by punishing contemptuous conduct:

> The past decisions of this Court expressly recognizing the power of the Houses of the Congress to punish contemptuous conduct leave little question that the Constitution imposes no general barriers to the legislative exercise of such power. E.g., *Jurney v. MacCracken*, 294 U.S. 125 (1935); *Anderson v. Dunn*, 6 Wheat. 204 (1821). There is nothing in the Constitution that would place greater restrictions on the States than on the Federal Government in this regard. See *Kilbourn v. Thompson*, 103 U.S. 168, 199 (1881).

Groppi v. Leslie, 404 U.S. 496, 499 - 500 (U.S. 1972). The *Groppi* decision went on to note that:

> Legislatures are not constituted to conduct full-scale trials or quasi-judicial proceedings and we should not demand that they do so although they possess inherent power to protect their own processes and existence by way of contempt proceedings. For this reason, the Congress of the United States, for example, no longer undertakes to exercise its contempt powers in all cases but elects to delegate that function to federal courts.

Id. Consequently, currently, at the Congressional level, for the House of Representatives,[2] the remedy is entirely statutory. Under 2 U.S.C. 192:

> **Refusal of witness to testify or produce papers.** Every person who having been summoned as a witness by the authority of either House of Congress to give testimony or to produce papers upon any matter under inquiry before either House, or any joint committee established by a joint

[2] The Senate has authority to seek civil enforcement of its subpoenas. 2 U.S.C. 288d.

> or concurrent resolution of the two Houses of Congress, or any committee of either House of Congress, willfully makes default, or who, having appeared, refuses to answer any question pertinent to the question under inquiry, shall be deemed guilty of a misdemeanor, punishable by a fine of not more than $1,000 nor less than $100 and imprisonment in a common jail for not less than one month nor more than twelve months.

A federal appellate court decision, *Fields v. United States*, 164 F.2d 97 (D.C. App. 1947), cert den (1948) 332 U.S. 851, 92 L.Ed. 421, 68 S.Ct. 355, reh den (1948) 333 U.S. 839, 92 L.Ed. 1123, 68 S.Ct. 607, relates that the Congress was only implementing conceded power when it enacted this section, that the section serves to supplement contempt power implied to the two houses of Congress, enforcement of which, prior to enactment of § 192, involved a procedure that apparently was cumbersome and troublesome; and that the section's objective was to facilitate gathering of information deemed pertinent to purpose of an investigating committee. 164 F.2d at 100.

Enforcement of the federal statute contemplates a criminal prosecution. In *Quinn v. United States*, 349 U.S. 155, 166 (1955), the United States Supreme Court determined as follows:

> Section 192, like the ordinary federal criminal statute, requires a criminal intent -- in this instance, a deliberate, intentional refusal to answer. This element of the offense, like any other, must be proved beyond a reasonable doubt. Petitioner contends that such proof was not, and cannot be, made in this case.
>
> Clearly not every refusal to answer a question propounded by a congressional committee subjects a witness to prosecution under § 192. Thus if [a witness] raises an objection to a certain question -- for example, lack of pertinency or the privilege against self-incrimination -- the committee may sustain the objection and abandon the question, even though the objection might actually be without merit. In such an instance, the witness' refusal to answer is not contumacious, for there is lacking the requisite criminal intent. Or the committee may disallow the objection and thus give the witness the choice of answering or not. Given such a choice, the witness may recede from his position and answer the question. And if he does not then answer, it may fairly be said that the foundation has been laid for a finding of criminal intent to violate § 192. In short, unless the witness is clearly apprised that the committee demands his answer notwithstanding his objections, there can be no conviction under § 192 for refusal to answer that question.

Quinn, noting *In re Chapman*, 166 U.S. 661 (1897), directed attention to an earlier Congressional initiative to lend support for enforcement of the contempt authority:

> The history of Congressional investigations demonstrates the difficulties under which the two Houses have labored, respectively, in compelling unwilling witnesses to disclose facts deemed essential to taking definitive action, and we quite agree with Chief Justice Alvey, delivering the opinion of the Court of Appeals, "that Congress possessed the constitutional power to enact a statute to enforce the attendance of witnesses and to compel them to make disclosure of evidence to enable the respective bodies to discharge their legitimate functions"; and that it was to effect this that the act of 1857 was passed. It was an act necessary and proper for carrying into execution the powers vested in Congress and in each House thereof. We grant that Congress could not divest itself, or either of its Houses, of the essential and inherent power to punish for contempt, in cases to which the power of either House properly extended; but, because Congress, by the act of 1857, sought to aid each of the Houses in the discharge of its constitutional functions, it does not follow that any delegation of the power in each to punish for contempt was involved; and the statute is not open to objection on that account.

166 U.S. 671 - 672.[3]

Finally, under 2 U.S.C. 194, Congress determined that prosecutions under 2 U.S.C. 192, above, were to be initiated by grand jury indictment:

> **Certification of failure to testify or produce; grand jury action.** Whenever a witness summoned as mentioned in section 102 [2 USCS § 192] fails to appear to testify or fails to produce any books, papers, records, or documents, as required, or whenever any witness so summoned refuses to answer any question pertinent to the subject under inquiry before either House, or any joint committee established by a joint or concurrent resolution of the two Houses of Congress, or any committee or subcommittee of either House of Congress, and the fact of such failure or failures is reported to either House while Congress is in session, or when Congress is not in session, a statement of fact constituting such failure is reported to and filed with the President of the Senate or the Speaker of the House, it shall be the duty of the said President of the Senate or Speaker of the House, as the case may be, to certify, and he shall so certify, the statement of facts aforesaid under the seal of the Senate or House, as the

[3] Before 1857, Congress had relied on its inherent powers of civil contempt to compel information. Under the procedure in use until that date, the witness who refused to testify was committed to the sergeant-at-arms of the respective house until the witness was willing to "purge" himself of his contempt by supplying the requested information, but confinement could not extend beyond the term of the session and could be challenged by habeas corpus. *United States v. Fort*, 443 F.2d 670 (D.C. Cir. 1970), at 676.

> case may be, to the appropriate United States attorney, whose duty it shall be to bring the matter before the grand jury for its action.

The federal scheme contemplates certification of the circumstances giving rise to the contempt as a prerequisite to possible prosecution.

The comparable state statutes are not dissimilar to these federal models. Conceding under the *Groppi* analysis that the state has inherent authority to punish, the punishment provision appears in AS 24.25.080 which, because of similarity of language to the federal Act, I assume our courts would also treat as a criminal statute:

> **Punishment for disobedience to subpoena or refusal to testify.** A person subpoenaed as provided in this chapter who fails, neglects, or refuses to attend at the time and place where the person's presence is required, or fails, neglects, or refuses to produce the books, papers, or instruments or other evidence designated in the subpoena, or who having attended in response to the subpoena, or having appeared voluntarily, refuses to testify as to any material and proper matter within the power of the senate, house of representatives, or a committee to investigate, upon conviction, is punishable by a fine of not less than $100 nor more than $500, or by imprisonment for not less than 30 days nor more than six months.

The certification requirement appears in AS 24.25.030:

> **Disobeying subpoena or refusing to testify.** If a witness neglects or refuses to obey a subpoena, or neglects or refuses to testify or to produce upon reasonable notice any material and proper books, papers, or documents in the possession or under the control of the witness, the senate or house of representatives may by resolution entered on its journal commit the witness for contempt. If contempt is committed before a committee, the committee shall report the contempt to the senate or house of representatives, as the case may be, for such action as may be considered necessary.

Note that the section's concluding language ("for such action as may be considered necessary") suggests that the outcome shall be determined or directed collectively by the body, typically by adoption of a resolution.

There are no reported cases construing or applying the two state statutes. The federal experience would probably provide useful guidance to a state court.

Possible legislative remedies for contempt may include referral for criminal prosecution under AS 24.25.080, censure, or impeachment if the witness is a civil officer of the state. The practicality of these remedies aside, there is also authority for the proposition that a

house of a legislature may imprison, for the duration of the legislature, a witness who refuses to testify. *Anderson v. Dunn*, 6 Wheat. 204 (1821). For discussions of this and related issues, see *McGrain v. Daugherty*, 273 U.S. 135 (1927) and *Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491 (1975).

3. IN A LEGISLATIVE INVESTIGATION, MAY A WITNESS PROCEED TO TRY TO QUASH A SUBPOENA AND, IF SO, HOW MAY HE OR SHE DO SO?

In other jurisdictions, the process typically is initiated by or involves a motion submitted to the appropriate trial court or, in some instances, a separate action initiated to enjoin implementation of the subpoena. A court may refuse to grant the motion to quash based on speech and debate clause, *Eastland v. United States Servicemen's Fund*, 421 U.S. 491 (U.S. 1975), or other separation of powers considerations.

*

I trust this is useful for your purposes.

JBC:med
08-389.med

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MEMORANDUM September 29, 2008

SUBJECT: Power of a committee to investigate after adjournment sine die (Work Order No. 26-LS0098)

TO: Representative Max Gruenberg

FROM: Tamara Brandt Cook
Director

(1) To what extent is the holding in Dickinson v. Johnson, 117 Ark. 587, 176 S.W. 116 (Ark. 1915) likely to be followed in Alaska?

The Dickinson case involved concurrent resolutions passed, before the Legislature adjourned sine die, that authorized the presiding officers to appoint two joint committees for the purpose of investigating certain state activities. The committees were to make their final report to the Governor. The court recognized that an investigation into the management of state agencies is "at all times" a legitimate function of the Legislature. However, the court noted that a committee dies when the body creating it dies, unless the committee is continued by law. Therefore, the court concluded that a committee could not be empowered by resolution to conduct an investigation after adjournment sine die, although the legislature could authorize a committee to do so by enacting law.

This case has been followed in several other states. The Supreme Court of California held that a House resolution could not lawfully create a legislative investigating committee with power to sit after the legislature adjourned sine die. (The Special Assembly Interim Committee on Public Morals of the California Legislature v. Southard, 90 P.2d 304 (Cal. 1939); see also Petition of Special Assembly Interim Committee on Public Morals of California Legislature, 83 P.2d 932 (Cal. 1938))

The Supreme Court of Montana also agreed with the holding in the Dickinson case and went further, holding that the Legislature could not create by statute a committee with authority to act after adjournment of the body. (State ex rel. Mitchell v. Holmes, 274 P.2d 611 (Montana 1954)) Significantly, three years later, portions of the holding in that case was specifically overruled. In upholding a statute establishing an interim committee, the court noted ". . . investigative power exists in the legislative branch which may be exercised after final adjournment as well as during the session." (State ex rel. James v. Aronson, 324 P.2d 847 (Mont. 1958))

When confronted with the argument that the Legislature is without authority to establish by resolution any committee to function after adjournment sine die, the Supreme Court of Washington decided that the Legislature has inherent power to investigate and that, in the absence of a constitutional restriction, the Legislature has the power to establish an investigatory committee by resolution to act after adjournment of the Legislature. (State ex rel. Robinson v. Fluent, 191 P.2d 241 (Wash. 1948); see also State v. James, 221 P.2d 482 (Wash. 1950), cert denied 341 U.S. 911, 95 L.Ed 1348, 71 S.Ct. 615 (1951), rehearing denied 341 U.S. 937, 95 L.Ed 1365, 71 S.Ct. 851 (1951))

While it is yet to be determined how a court in this state will respond to the holding in the Dickinson case, it is safe to say that the case has not been uniformly followed on other states. In addition there are several factors that distinguish the situation in this state from that in Arkansas. Article II, sec. 11, Constitution of the State of Alaska provides in part: "There shall be a legislative council, and the legislature may establish other interim committees. The council and other interim committees may meet between legislative sessions." In addition to establishing several interim committees by statute, apart from the Legislative Council, arguably the Legislature has conferred interim powers on standing, special and joint committees under Uniform Rule 21(c) which states in part:

> A standing committee may meet between sessions. A special or joint committee may meet during the session or between sessions, or both, as authorized by the resolution which establishes the committee. A standing, special, or joint committee which acts between legislative sessions may consider any legislative matter which is consistent with the jurisdiction of the committee. A standing, special, or joint committee which acts between legislative sessions constitutes a subcommittee of the Legislative Council for administrative purposes. A special or joint committee may expend money only in accordance with an appropriation made for the work of the committee.

Also, it should be noted that the Legislature in Alaska may call itself into special session even after it adjourns from regular session sine die. (Art. II, sec. 9) This is not true in Arkansas. While it is usual in state constitutions for the Governor to have the power to call a special session, at the time the Alaska Constitution was under consideration, the Legislature had the power to call itself into special session in only ten states: Arizona, Connecticut, Georgia, Louisiana, Massachusetts, Nebraska, New Hampshire, New Jersey, Virginia, and West Virginia. (Constitutional Studies 1955, prepared on behalf of the Alaska Statehood Committee for the Alaska Constitutional Convention, Volume 2, page 23) The proposition that the Legislature is terminated after adjournment sine die and, therefore, cannot authorize a committee to work after that point seems less powerful when the Legislature retains the power to reconstitute itself by calling itself into special session.

Finally, I note that the court in the Dickinson case, while holding that an interim investigatory committee could not be established by resolution, also agreed that the

committee could be established by statute. The Legislative Council is constitutionally mandated and is established by statute. Under Uniform Rule 21(c) the Judiciary Committees are subcommittees of the Legislative Council for administrative purposes when they meet during the interim. Therefore, a reasonable argument can be made that the Legislative Council may investigate a matter during the interim and that it may rely on the Senate Judiciary Committee, in its capacity as a subcommittee for administrative purposes and which has the statutory power to issue subpoenas, to issue subpoenas that may be needed to further the investigation. In any case, in view of the power of the legislature to adopt its own rules and in view of separation of powers considerations, it may be that it is up to the Legislature rather than the courts to restrain a committee that exceeds the investigatory authority granted to it by the Legislature. (Art. II, sec. 12; Malone v. Meekins, 650 P.2d 351 (Alaska 1982); Abood v. League of Woman Voters, 743 P.2d 333 (Alaska 1987))

(2) Is there any discussion in the Constitutional Proceedings of the meaning of "between sessions" as used in Art. II, sec. 11 which authorizes the Legislature to establish interim committees that "may meet between legislative sessions"?

That section is discussed in the Alaska Constitutional Convention Proceedings, part 3, at pages 1698 - 1701, attached. I found in the historical records only one thing pertinent to your question. The Alaska Constitutional Convention Commentary on the Legislative Article states:

> (Sec. 10. Legislative Council and Interim Committees)
> Provision for these is also now almost standard. Their authorization is desirable lest a question be raised about the legislature's constitutional ability to designate committees to act when the legislature is no longer in session.

TBC:lmb
08-246.lmb

Enclosure

LEGISLATIVE COUNCIL MEETING TRANSCRIPT

July 28, 2008 Legislative Council Meeting Transcript

Time indicators correspond to the Gavel to Gavel archive file available at www.ktoo.org

3:45

Senator Elton: We are now under other business.

Represnative Dahlstrom: Mr. Chair, I move the Legislative Council delegate their authority to the council chairman to solicit, award and expend Legislative Council funds in an amount not to exceed $100,000 for the purpose of contracting for legal services to investigate the circumstances and events surrounding the termination of former Public Safety Commissioner Monegan and potential abuses of power and/or improper actions by members of the executive branch and prepare a report. Senator Hollis French will serve as the project director for the contract. It is the intent of the Legislative Council that the investigation be professional, unbiased, independent, objective and conducted at arms length from the political process. The report shall be submitted to the Legislative Council, Senate Judiciary committee and the House Judiciary committee in a timely manner.

Speaker Harris: I'm going to object for the purpose of discussion anyway.

4:45

Senator Elton: Speaker Harris.

Speaker Harris: Are we going to, under this motion, are we going to allow subpoena powers or any other kind of powers necessary to get the information needed?

Senator Elton: To the speaker, it is going to be an initial decision that will be made by the project director if subpoenas are issued it would have to be through either one of the judiciary committees.

Speaker Harris: Ok, thank you. I remove my objection to the (inaudible).

Senator Elton: Senator Wilken.

5:20

Senator Wilken: Thank you Mr. Chair, just a couple of questions. This is something that this committee doesn't do very often, certainly not since I've been on the committee, I wonder just for all of our comfort that if I could ask someone with a legal background the authority under which this council can undertake this type of an action, just put that on the record. Then my second question is what do we expect as a deliverable, what is the end of this, what will we get, what is going to come back to us, what do we think that is going to be? So those are two questions if I could.

Senator Elton: Thank you Senator Wilken. Tam, could you sit at the end of the table for us at the mic, then introduce yourself for the record.

Tam Cook: Mr. Chair and members of the committee, I'm Tamara Cook and I'm the director of the Legislative Affairs Agency Legal Services division.

Senator Elton: And Tam, did you hear the first component of the question, under what legal authorities are we stepping forward?

Tam Cook: Right. The first part goes to the issue of whether Leg. Council has the power to, I believe the motion will be to prepare a report. Leg. Council has the power to conduct investigations, including to issue subpoenas itself, and to compel the testimony of witnesses, and administer an oath, but if you look at the statement of the powers and duties of Leg. Council, those powers are limited to carrying out actions that the Leg. Council has to undertake under its own statutory references which have to do with providing bill drafting services, administrative services, etc. So Leg. Council does not have broad, open ended investigatory powers, it has the ability to investigate with respect

to administrative duties. However, in this case, apparently we are going to be considering entering into a contract for the purpose of hiring someone to look into a situation and to prepare a report , as such the council will not be conducting an investigation. The report could include items that the council can participate in, such as a recommendation for amendments to legislation. Leg. Council has the authority to introduce legislation to the Rules committee. I think there is a good question about whether Leg. Council could itself conduct an investigation into a matter that is outside of its jurisdiction entirely, I believe that this would not be an administrative matter of the legislature.

8:15

Senator Elton: Thank you. Before we proceed, and it looks like the Senator has a follow up question. I'd like to welcome a member, Representative Stoltze, should also note in the audience and I hope I don't miss anybody, Senators French, Senator Ellis, Senator Therriault, Representative Ramras, Representative Wilson, Senator Stedman, Representative Mike Kelly... I hope I haven't missed anybody. Was I correct in assuming that you have a follow-up question, Senator Wilken?

Senator Wilken: Yes, thank you Mr. Chair. So Tam, what I am hearing you say is that the motion that we are voting on is within the purview of the Legislative Council to move ahead to hire someone to conduct this investigation?

Tam Cook: Senator, through the chair, yes, I think that the council can conduct some, can hire someone to look into the matter and to prepare a report. If as a result of the report, for example, the council was faced with a recommendation that the legislature conduct an actual investigation into one or more issues that are uncovered as a result of the report, I doubt that Leg. Council would be the body that could conduct the investigation. At that point, it strikes me, the report would need to be turned over by Leg. Council to the house and the Senate to take appropriate action... Either the House or the full Senate has the power to investigate, and fundamentally the standing committees of

each body have constitutionally based powers of investigation, but the Leg. Council's power to investigate is a limited one.

9:50

Senator Wilken: Thank you Tam. The next question was, and I'm not sure it was for Ms. Cook, but it is certainly for all of us. What is the deliverable, what are we going to get back in the process, and when do we expect that to happen?

Senator Elton: To Senator Wilken, the motion itself reads in a timely manner. I think we've struggled with what would be an appropriate amount of time, and that gets to the first part of your question, what the deliverable will be. The first paragraph of the motion speaks to what the investigator will be doing. I think it is difficult to presuppose what the report will be, and quite frankly, I think that the intent here is to make sure that, as much as possible, that that direction comes from the person who is doing the review rather than from the legislature itself.

Senator Wilken: Will the report come back to all of us, just to the chairs, and will it be confidential?

10:55

Senator Elton: And I'm kind of looking at Tam Cook in response to the question, this is Kim Elton again, the motion provides that the report will be made to the Legislative Council, made available to the Legislative Council, will be made available to both the House and the Senate Judiciary committees, and so it will have a broad distribution and I don't think, and I'm... this may be an opportunity for further discussion. I don't think it should be a confidential report.

Senator Wilken: I don't know one way or another, other than we probably want to talk about that before we get a report back, about how broadly it is spread. It is obviously a

personnel issue in some respects, and we always guard those quite closely, so, I just throw it on the table so we go through it before we start.

11:48

Senator Elton: I think that is a good point, I mean I guess it'd probably be something that, if in fact there were personnel issues, we'd have to sit down with the project director and with Legislative Council.

Tam Cook: If I may, through the chair, to the extent that the report identifies specific information such as personnel information that is confidential by law, it would be necessary for that portion of the report not to be included in whatever the public portion might be, and it would probably be necessary for Leg. Council to receive that portion of the report in executive session.

Senator Elton: Representative Coghill

Representative Coghill: Actually, the second question was my question. Thank you.

Senator Elton: Further discussion?

Senator Wilken: Should we put in the motion, then, something about that fact? So that two months, or four months from now, there isn't any discussion of whether or not parts of it are kept confidential? That will put us in a very difficult spot if we make that decision later rather than now.

13:04

Senator Green: What was the question? I'm sorry.

Senator Wilken: What part of the report, all or, what part of the report will be confidential, or will any of it be confidential, or will all of it be confidential.

Senator Elton: Senator Green.

Senator Green: My understanding about the initial report will just come in with, you know, findings, and then if there is anyone being questioned that will not cooperate with the investigator, we might have to go under, you know, be sworn in, and that of course is public. And so the initial report, I don't think, is the critical piece of having it public, it's the follow-up that will be the thing, and then there will be a final action or report, and uh...

Senator Elton: I guess my initial response is this report will not be contrary to any law, and if in fact there is a personnel issue that would otherwise be confidential, in working with Legislative Council I think we can ensure that the call is correct and the report will not be contrary to law.

14:20

Senator Wilken: And that is good, and should there be an amendment to this motion that says that, so we don't have to wrestle with that months from now?

Senator Elton: To Senator Wilken, I don't know that there needs to be, I think that if we have it on the record here, and if there is no objection, I'm not sure that we need to figure out the wordsmithing. Representative Coghill?

Representative Coghill: So that brings to mind one of the questions of the deliverable, then. Are we looking for information that says there should be further action, or is this the further action contemplated that it would be a report that would automatically go to the Judiciary committees that would require action. So, when I first heard the motion, I was thinking, ok, this would come back to advise us if there was further action needed, but it

would be automatic: There would be no Council action necessary or would it go directly to the Judiciary committees for their consideration?

15:27

Senator Elton: I'm going to respond, and if other people want to jump into the discussion, I mean there is nothing that precludes one avenue over another. It could be a two step process, it could be a three step process, it could be a one step process, and to some extent it may be difficult to codify in the motion, what that process is not knowing at this point in time where we are going. I think that everybody has noticed that, in the motion, it designates a project director, somebody who has been a prosecutor, and somebody that I think will be working closely with the contractor, and I guess I'm comfortable that if in fact there are significant decisions that seem to vary from this, that they are going to be coming back to me, and I will bring it to the Council. But right now it is relatively difficult, I guess, Representative Coghill, to answer your question not knowing, before we take the first step, not knowing what the second, third or fourth step is.

16:42

Representative Coghill: Then I may object to the motion, because it seems to me that I would rather have us come before the committee a report that said there is reason to proceed, than to give the Judiciary committee an expectation that they must proceed, based on a preliminary report. So, that is kind of how, when I first saw the motion, I just thought it was going to be a preliminary look to see if there is anything, and then my next question is going to be why do we need $100,000 to do that, or up to $100,000? But just to make sure that it is a clean process where, if there is something that is worthy of further investigation, then those committees that do have subpoena power would get clear direction from the Council. Absent that, I don't know if this language helps me in that, because what we are saying is that we are going to turn that over to the Judiciary committee of each body before we even know what the report is, and there is the expectation then that the Judiciary committees will probably have to proceed before we

really understand that report as brought before the Council. So, maybe some further discussion on that aspect of it.

17:59

Senator Elton: So, just two responses, and I'm going to speak to the second one first, and that it is the $100,000 dollars. I certainly hope that this can be accomplished for a lot less than that, and that is my expectation. One of the things, and this gets to both points, one of the things that I think is of concern is, you'll notice in the motion that we have, we will be doing this in a timely manner. I don't think anybody wants to create a recipe for the review that could push us, for example, into the holiday season, and certainly I don't think that it would be wise, certainly, to get this done well before the seating of the next legislature. So I guess some of the thought behind this is, on both the amount of money, which I expect is more than enough, and a two step process is the timeliness issue.

[Brief at ease - 19:20 of recording to 19:26 of recording]

Senator Elton: We are coming back to order. There were a couple of side bar conversations going on at the time. At some point here, the next person on the list is Representative Wilson and then we will ask the named project director to take a seat next to [inaudible]. And it was mentioned during one of the side bar conversation that it is probably important that we know that the project director will not be paid for his additional duties [laughter]... that question came up, and so sorry Senator French! Representative Wilson?

20:04

Representative Wilson: Well, I kind of have a little bit of concern that Representative Coghill does. If this turns out to be a personnel issue that that is totally confidential, and it automatically goes to both Judiciary committees without us designated, at least going

over it and deciding whether we should proceed or not, I have a concern that how many people this is going out to, so, uh, anyway, I just do have a concern about it.

Unidentified: You need to move closer to your mic, they are having trouble hearing you.

Senator Elton: I'm looking towards the end of the table, to the point that Representative Wilson has made, and I'm looking at Ms. Cook. I am assuming that any report that is given to Leg. Council and to the Judiciary Committees will have, if there are questions of law about what can be revealed, that those parts of the report will be redacted. If any of the committees wish to know what was in the redacted component, that it would require the meeting of one of the committees, and they would then go into executive session for the purpose of discussing matters which are otherwise prohibited by law from being done in a public meeting. Is that correct?

21:24

Tam Cook: I think, Mr. Chairman, that that is essentially what would have to occur is that if the report actually does contain information that is confidential by law, and certain personnel information is made confidential by law, that information cannot be included in the body of a report that is going to be made public. It would have to be in a separate, confidential addendium. The confidential material, when it involves a consideration of a matter that has been made confidential by law, requires... A committee is authorized at that point if it wishes to consider it, to go into executive session for that purpose. And that would be, I would think, the way that both the Leg. Council would consider it in the first instance, and any other committee that was interested in the subject would need to consider the confidential part by going into executive session.

22:23

Senator Elton: Thank you. During one of the sidebar questions we were asked to bring the named project director to the table in case there were questions that people had of the project director. Representative Stoltze.

Representative Stoltze: Thank you Mr. Chairman. I just had to grab a copy of the uniform rules to refresh myself, and just which committee if the presiding officers were making a jurisdictional referral of an issue, and State Affairs has the activities of the office of the Governor, as well as public safety. Did, uh, was State Affairs considered as an appropriate referral in both bodies? Just following our Uniform Rules... Rule 20.

Senator Elton: To my knowledge, no. Senator Green.

Senator Green: It is not unprecedented for items of this type to be sent to the Judiciary, in the past.

Speaker Harris: Thank you. Just on a point surrounding the issue. I think it should be made very clear that, because there have been conversations about personnel matters, that the issues really that we are dealing here is not the termination of the Public Safety commissioner. I think every one of us understand all those commissioners serve at the pleasure of the governor, and they can be terminated for just about any reason they want to be terminated for. I think what it really gets down to is, after the comma ends, potential abuses of power and improper actions is really, I think, what we are looking at, not, or, at least, proposing to look at, not the termination of the commissioner. Certainly in my view that is what we are looking at because I'd be the first one to say that the governor has every authority to terminate their commissioners for whatever reason they want to, and wouldn't look at that at all, its just, are there abuses of power that may have occurred above and beyond that termination.

24:31

Senator Elton: Senator Wilken.

Senator Wilken: Thank you Mr. Chair. I guess I'd ask Senator French, and throw onto the table for discussion, would it be more manageable and more precise if we, in the motion, eliminated the Judiciary committees from the motion. So what would happen is this report would be done, channeled through Senator French, to us, and we would get the first look at it, the report, and if any, the redacted information. We would then be able to send that out to the appropriate bodies if there was some action that we thought should be taken, so I guess I'd ask Senator French if it helps us to broadcast this out to three different groups, or if it is better to just bring it back to where it started for a first review.

25:25

Senator French: Through the chair, Senator Wilken, and for the record my name is Hollis French, I represent Senate District M in the State Senate, I think it depends on how complete you want the report to be and how many phases you see it being conducted in. The way it is structured now, I think you have the flexibility to do this in one sort of process if you will. Delegate, you know, the power of the chair to hire someone, hire that individual, send that person out to conduct interviews, and what is likely to happen in the process of conducting those interviews is that some people will not be willing to speak without having them subpoenaed. And so at that point you are going to need a proper venue, if you will, for the taking of that testimony under subpoena. And what that venue is is suggested in the motion as being the Judiciary committees, because, as Ms. Cook made clear, those standing committees have the authority to conduct investigations which may be outside the purview of this committee.

Senator Wilken: So would it be more helpful to just bring the report, whatever form it is in, just back to this table, before sending it out to other committees, so that we got first look at it?

Senator French: Through the chair, it is possible that I misunderstood your question, and I think that is a question for the committee. You know, where the report goes once it is completed, that is a question for the committee.

27:01

Senator Elton: I will attempt a short, brief answer to Senator Wilken's question also. I mean, it certainly is one way of doing things. I mean, it would require an action by the committee, and because we are trying to do this in a relatively timely way, I guess the concern would be that trying... given what is happening the rest of the year, and given the political nature of what is happening the rest of the year, as well as all of the other things that are happening, including family vacations that have been postponed because of this special session, I'm worried about timeliness, I'm worried about the ability of getting a quorum for the Legislative Council, so that we could then take the necessary action to further distribute the report. Representative Stoltze?

27:53

Representative Stoltze: Thank you Mr. Chairman. Have there been any official complaints filed against the Governor under the executive ethics act and taken up by the personnel board yet?

Senator Elton: Representative Stoltze I'm going to attempt to answer and somebody may have better knowledge than I. It is my understanding that if in fact those kind of actions have been filed they are confidential, and so we wouldn't have access to that kind of information. I'm looking to see if I getting a nod of agreement from our Legislative Counsel at the end of the table, she is nodding in the affirmative.

Representative Stoltze: Mr. Chairman, affirmative that something has been filed or that we wouldn't know. When we are nodding I get confused.

Senator Elton: Representative Stoltze, I think what I was saying is that if an action has been filed or a complaint has been filed we would have no way of knowing that because that action is confidential within the executive branch. Representative Stoltze?

28:53

Representative Stoltze: Normally, the experiences similar to previous complaints against the executive branch and legislative branch there is usually a press release that goes along with that... that... so, I'll nod on that one I guess... I'm just, wondering if... I want to get to the bottom of anything that is inappropriate but sometimes, I just want to make sure that we take the right route and definitely, when we ever get to the motion I'd sure like to maybe start this and then find out what it is actually going to cost and prepare a budget. I remember back in the Sheffield impeachment there was a lot of, I mean, we had one senator that wanted to hire the top, you know, was trying to hire one of the Watergate prosecutors and we found he was a great guy but only dead, you know... I mean, you know, sometimes these get on a life and I just don't want our branch... I have a lot of confidence in Senator French's expertise and knowing what this is going to take to pursue something, I don't know if it is in the scope of $100,000 or $20,000 or $200,000... I'd be very comfortable if we start him off with authority and then him come back with a budget.

Senator Elton: Just in, Representative Stoltze, I think your concern is a very valid concern, and I don't know if this helps or not...

Representative Stoltze: Which one?

Senator Elton: Your concern about kind of an open ended amount of money, and I don't know if this allays your concern at all, but the first act of my serving as chairmanship is to prove that I am fiscally prudent, and it is also my understanding that the contract is a public document that people can review. Is that correct Ms. Cook?

30:38

Unidentified Voice: mhmm.

Representative Stoltze: And Mr. Chairman, just, I think I have just about a perfect attendance record, I'm just probably the biggest nitpicker on every issue, I'm not picking this one, I've probably voted against more issues...

Senator Elton: We appreciate your work Representative Stoltze. Tam, is my representation about the public nature of the contract correct?

Tam Cook: Mr. Chair, all contacts essentially that are by Leg. Council are public and the billings are normally made public. There has been one or two exceptions where we have entered into contracts, this is not of that type, but where we have had to enter into a contract where the person that was providing this service... this occurred in a publication contract. One of their clauses required us to keep some portions of the contract confidential as a trade secret or proprietary evidence. And in that case we actually have a contract with an addendum that we collected all the confidential parts that were covered by the trade proprietary evidence issue, and put it into a separate document. So even as to that contract, the contract itself, except for the addendum and the billings is made public on request.

32:00

Senator Elton: Further discussion? Representative Guttenberg?

Representative Guttenberg: Thank you Mr. Chairman. Talking about the fiscal conservative nature of the contract and trying to keep the parameters, I'm also concerned about where this investigation issue can go in the event that there are other things that can be discovered that are not on this point. Is it your intent that, if we get a report back that

deals with this situation that is solely on this issue or if there are other potential abuses or things that are noted can that be an addendum to this?

Senator Elton: Representative Guttenberg, that is a good question, and I am going to attempt to answer, I mean I think that what Alaskans want to know is what the purview of this review is going to be. The purview is in paragraph 1. It is my anticipation that if in fact there is something that requires a secondary decision, that it is going to have to, it should come back to me as the contract administrator, and it would come back to me if the project director, and I've worked with the project director on many different issues and I'm sure he would come back to me if he had any questions. And this is not a review that is being conducted by Senator Hollis French or Senator Kim Elton this is an authorization from Legislative Council to work on the issues as outlined here. If there is a broader issue that is of significant import, absolutely I think it needs to come back here. Speaker Harris?

33:52

Speaker Harris: Just for clarificiation, at least so I am clear and I understand. Earlier in the conversation we talked about there being an effort then to go out and find information and to come back to the Legislative Council with a statement I guess from whomever French or whoever else is involved saying whether or not there is actually if they find any reason they find then to move forward. In other words, if they look at what they have seen to that point and say it doesn't look like there is anything out there that is worth spending any more money investigating they are going to come forward and say that, and at that point in time, if that is what comes forward we are dropping this... is that right?

34:38

Senator Elton: Speaker Harris, if I understood your question, if the report comes back that there is no need for further action absolutely. At that point I would view the contract as having been terminated.

Speaker Harris: That, but what I am saying is is there not two parts to this, Mr. Chairman? In other words, we have said an amount not to exceed $100,000, but we also have said that we want this investigator, under the direction of Senator French and the Judiciary committee I assume, to notify us whether they think there is something that is serious and probably something that would need to be dealt with in executive session, or we then say, yeah go ahead and keep going and, you know, spend the whole $100,000 if that is what it takes to do your job.

35:35

Senator Elton: Yes, Speaker Harris, if I am missing the essence of the question I apologize. Under the situation that you are describing, it would seem to me there are a couple decisions that need to be made. The first by the project director and the second by me, and potentially a third by Leg. Council. And not knowing kind of what the fact situation is, that is kind of the progression that I see on the issue. The challenge or the mandate that we are giving to the investigator is encompassed in paragraph 1 of the motion, and so I view that as kind of the mandate that is being given to the director and to the investigator, but I guess I am stopping short of trying to identify a point at which things get kicked back to the Council, not knowing where that point would be or what the fact situation might be. Senator French, do you to...

36:50

Senator French: If I could, thank you Mr. Chairman... Let's just play it out a little bit. We are going to hire an investigator, we're going to turn that person loose, that person is going to have the ability to gather evidence, and if necessary, come back to a joint House and Senate Judiciary committee for the issuance of subpoenas. Some people just won't talk without a subpoena. At the end of that process, that person is going to write a report, and I think the report is going to take, you know, one of three forms: No evidence of wrongdoing, some evidence of wrongdoing, clear evidence of wrongdoing. That will

come back to us, to your committee, and at that point the body has to make a decision, much like a district attorney makes a decision: Is this evidence strong enough to proceed on or not? But it is going to come back to us for our ultimate action, right? The investigator doesn't have that authority, I don't have the authority, and I don't think the committee does.

37:40

Senator Elton: Speaker Harris.

Speaker Harris: Can I cross examine the witness here for just a second? [laughter] So what you are saying is that the $100,000 dollars in this motion is the maximum amount that could be gotten under that, under that scenario that you have put forward.

Senator French: Through the chair, that is correct.

Senator Elton: Senator Davis.

Senator Davis: Back to the motion then, would it be appropriate to make an amendment at this time? And if it is I'd like to amend the motion to say that we delete Senate Judiciary committee and House Judiciary committee and you would end with the report shall be submitted to the Leg. Council in a timely manner.

Senator Elton: And, a question of the maker of the motion... That would not preclude me as chair of Legislative Council from providing the report to either committee? Or is the intent of your motion, ah...

38:35

Senator Davis: Through the director he would, uh, the project director would let you know if they need to subpoena, they'd have the authority to do that. You don't have to

give them the report to do that. The final report is all we address in there... will come strictly to Leg. Council and no one else. Because the way you have it here it is going to three different bodies.

Senator Elton: I will respond just briefly under discussion on the motion that I think that kind of the thought of including the Judiciary committees, this council is a bipartisan committee, a bipartisan council, um, part of the discussion was where is an appropriate committee for subpoenas to be issued since as, I hope I'm not misrepresenting this, Ms. Cook has indicated that the subpoena power for this council is relatively limited to administrative matters. So at that point it was decided that the Judiciary committees in both bodies, maintaining the bicameral authorities of each body, would have the ability to do that, and so I think that is how the Judiciary committees got involved, and at this point I think I should also point out that it didn't make sense and we have talked to the member of the Judiciary committee in the other body, it did not make sense to have two project directors, and I think there was a comfort level that both of them had that this would work having just one member from one body being the project manager. I'm not sure that I answered everything, but that is how the Judiciary committees got included in the distribution of the report.

40:37

Senator Davis: I understand that, I know that is how they got included, and taking them out of the receiving the report will not keep them from issuing subpoenas if we should decide it has to be done. It doesn't have to be with here in the report will go to them. The report will go to us and then we will decide at that point if it should be turned over to them.

Senator Elton: Ok, under debate on the motion, Representative Stoltze.

Representative Stoltze: Yes, thank you, on Senator Davis motion to delete those committees from this motion, my question is, are we precluded from... I think we are, if

we get an investigation product, I mean, it could have a lot of places to go, it might be the Attorney General's office, it might be Senate, the Personnel Board, I think we preclude ourselves by setting that, and I think it interjects what some see as a political process, and its, uh, lets find the facts and then, before the conclusion, and I think it could head in a lot of different directions, even a dead end to serious issues, and I think by naming that committee jointly to start talking about subpoenas, as much as we all want to get the answers, lets let the investigation, I think that is more in the purview of this committee to delegate, and find out what that yields before we see what step B is, and so that would lead me to support Senator Davis's motion.

42:05

Senator Elton: Representative Wilson, then Representative Samuels.

Representative Wilson: Thank you Mr. Chairman. My question – can I ask Ms. Cook a question?

Senator Elton: Uh, yeah, right now were under debate on the motion.

Representative Wilson: Yes, uh, this will make a difference how I vote on the motion.

Senator Elton: Please.

Representative Wilson: Tam, can we right now, if those words are taken out, so that the report only goes to Leg. Council, do they still have the authority if they can't, if they need to subpoena somebody, that they can go and get that done?

Tam Cook: Under the form of the motion, through the chair, there is nothing that prohibits the investigator that I'm aware of, unless the contract is written in some restrictive fashion, from requesting the aid of, say, the Senate Judicary committee or some other standing committee in issuing the subpoenas pursuant to preparing that report.

43:10

Representative Wilson: Then, uh, having that information I agree that we probably do not need to have that wording in there, and that [static] we then decide whether we are going to go forward or not, and then where its going to go.

Senator Elton: I would just repeat, I would like as people consider the motion, to think about the timeline, because I think that one of the things that we don't want to get into is we don't want to get into a situation in which the recipe itself pushes the timeline for a couple of reasons: one is we're coming up on the holiday season and we're coming up on a new legislature, and I think that in fairness to all of the parties, working on this in a timely manner. So, just a quick response. Can we have a brief at ease for a moment, and then we will come back to Representative Samuels and Senator Hoffman.

[At ease 44:12 of recording, back on record at 44:21 of recording]

Senator Elton: The council will come back to order. During the at ease a question came up, Ms. Cook, that you can help us. If we were going to the last sentence in the motion... If we put a period after council and say the final report shall be submitted to the Legislative Council, does that in any way inhibit the ability of either of the Judiciary Chairs from issuing a subpoena?

Tam Cook: I'm sorry I missed the last bit of your sentence.

Senator Elton: If in fact we strike the language, we put a period after council and we say the final report shall be submitted to the Legislative Council, does that in any way inhibit the ability of the Judiciary Chairs from issuing subpoenas to compel testimony from those who may prefer to give testimony under a subpoena?

45:20

Tam Cook: No. If I may, through the chair, if you are talking about subpoenas that might be issued in the course of preparing the report, versus any following up on any recommendation that results from the report, I don't see anything in the motion that prevents the investigator from requesting the assistance of a standing committee in issuing subpoenas if the investigator chooses to do so, and if the project director is in agreement. Once the report, if you were to put a period there, then the report would only go to Leg. Council. That would not prevent any member of the public or legislator or legislative chair of any committee from obtaining a copy of the report with respect to the public portion. With respect to the confidential portion, I don't believe that that would prevent a legislative committee from, if there is a confidential portion, I don't believe that a legislative committee would be prevented from getting a copy of the confidential portion also at its own request if it chose to do so, as long as it took the matter up under executive session. Now, the third possibility is that if you have a period at the end of Leg. Council and you get a recommendation that seems to be directed to further action on the part of the legislature, the council itself as a formal matter, could elect to take no action, or could formally, with a cover letter, submit the report to either the two presiding officers for whatever interest each of the bodies may have in the recommendation, or to the appropriate committees that Leg. Council finds might have an interest in the contents of the report. Leg. Council could, in fact, I suppose, include its own recommendation as to whether or not whatever this recommendation is in the report ought to be followed or ought not to be followed as far as that goes. So it is a question possibly of just the formality of whether Leg. Council wishes to reserve to itself the opportunity to comment on the report, if it elects to send it to another legislative entity.

47;37

Senator Elton: And, Ms. Cook, if I could ask a follow-up question. Are we better off, then, in the last sentence modifying the report by saying the final report? Does that make the latitudes that you just described easier to apply?

Tam Cook: I don't think that it is significant – I presume the report refers to the report that is being contracted for which would be the final report. The only issue that I see is whether or not there is a question in someone's mind about the role of one of the standing committees in issuing a subpoena in conjunction with the preparation of the report, and at this point, unless that is somehow other restricted, I think that the investigator could make that request.

48:28

Senator Elton: I would just note that, in response to Ms. Cook's final comment, I mean I think because it is the intent of the Legislative Council that the investigaton be professional, unbiased and independent, objective, I think that the thought behind that was that the Judiciary committees would not be involved in helping to draft the report... Is that the understanding that the other members of the council have? [Silence] OK. So, I'm speaking now to the maker of the motion, Senator Davis do you have a problem with the form of your motion being that in the final sentence it reads the final report submitted to the Legislative Council period?

49:27

Senator Davis: Your question was? That was what I meant.

Senator Elton: So that conforms to the intent of your motion?

Senator Davis: Yes.

Unknown: Mr. Chairman, was it our intent to delete in a timely manner as well?

Senator Elton: In that motion, in a timely manner is deleted. It would be simple to just say the final report shall be submitted to the Legislative Council in a timely manner.

Unknown: That was your motion right?

Senator Davis: That was my motion. [Laughter]

Senator Elton: We'll consider that, then, a friendly amendment. Is there further discussion? Representative Samuels, I'm sorry, we never did get to you.

Representative Samuels: Thank you Mr. Chairman, my point was going to be in a far less articulate manner the same as Ms. Cook's thing: Once it goes public it is public, and if any elected official wants to see the redacted portions, if any, then they are going to do that. So it all becomes a bit of a moot point to me. I believe that the best way to keep politics out of it as best you can, is to set up the process going as far down the road as you can. If we think that if the report comes out and says, you know, this is, there is nothing here, don't worry about it, then it dies. And if it says you might want to investigate a couple of other things the further we go down with saying here is our process, from day one here is our process, we're not going to get to day twenty and say, well now, because the report said this it is going to go here go there. I think we are better off as a legislature setting up the process now. We know where this report is going to go, and as far down the road as it goes, it could stop here, it could stop after the next thing if something happens we don't know what is going to be said, but I think that we are better off keeping politics out of it as best we can, I mean it is a political arena we are in, but we're better off having the language as is, saying here is what our process is going to be, and come back and change it, but don't be accused of playing politics with that thirty days from now saying well I did this because the report said that. Doesn't matter what the report says, here is our process. So I'm going to maintain an objection to the motion.

51:47

Senator Elton: I'm going to use the prerogative of the chair here and speak to a member not of the council. There is a meeting scheduled for two o'clock in this room, I'm going to give my best guestimate that it is not necessary to delay that meeting for a long period

of time, I sense that we are getting close to a vote on the motion, and then close to a vote on the final motion. With that sense, and since I see nobody shaking their head vigorously back and forth, I'm just going to suggest that it is not going to be much longer for the next committee. Does everybody understand the motion? Further discussion on the motion?

[The Council then voted on the amendment proposed by Senator Davis, as modified by Senator Elton in the friendly amendment, to the motion. Amendment adopted 11-1. Elton read the final paragraph, and the final vote was taken – 12-0.]

56:05

Senator Elton: And before I call for adjournment, I just want to put in the minutes something that is not included in the motion, and that is that there is a request that the Governor instruct her employees to cooperate as fully as possible with the investigator.

[Meeting adjourned.

COURT CASES

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

REPRESENTATIVE WES KELLER,
REPRESENTATIVE MIKE KELLY,
SENATOR FRED DYSON,
SENATOR TOM WAGONER, and
REPRESENTATIVE BOB LYNN,

Plaintiffs,

vs.

SENATOR HOLLIS FRENCH,
SENATOR KIM ELTON,
STEPHEN E. BRANCHFLOWER, and
THE ALASKA LEGISLATIVE COUNCIL,

Defendants.

DIANNE KIESEL, ANNETTE KREITZER, JANICE MASON, NICKI NEAL, MICHAEL NIZICH, KRISTINA PERRY, and BRAD THOMPSON

Plaintiffs,

vs.

SEVEN SUBPOENAS,
SENATOR HOLLIS FRENCH,
SENATOR LYDA GREEN, and the
SENATE JUDICIARY COMMITTEE,

Defendants.

RECEIVED
Ingaldson, Maassen & Fitzgerald, P.C.
OCT 2 2008
File No. _____ Call: _____
Approved for Filing: _____

Case No. 3AN-08-10489CI
Case No. 3AN-08-10780CI
(Consol.)

Order on Motion to Dismiss and Temporary and Preliminary Injunction

Two now consolidated cases seek to stop a legislative investigation.

The court finds that Malone v. Meekins, 650 P.2d 351 (Alaska 1982), is dispositive. Much of what the plaintiffs raise is not justiciable, that is, it is business to be left to the legislative branch. The issues of constitutional merit which the court may review are that of due process and construction of the Alaska Constitution's fair and just treatment clause. The court finds no due process or fair and just treatment violation.

The motion to dismiss the action for declaratory judgment is granted. The motions for a temporary restraining order and the application for a permanent injunction are denied and the case is dismissed.

I. Facts

This case concerns the investigation of the Alaska Legislature into Governor Sarah Palin's discharge of Public Safety Commissioner Walter Monegan. On July 28, 2008, the Legislative Council passed a motion approving "an amount not to exceed $100,000 for the purpose of contracting for legal services to investigate the circumstances and events surrounding the termination of former Public Safety Commissioner Monegan, and potential abuses of power and/or improper actions by members of the executive branch." Senator Hollis French, Chairman of the Senate Judiciary Committee, was chosen by the Legislative Council to act as Project Manager. French selected former state prosecutor,

Stephen Branchflower, as Special Counsel. Branchflower was asked to produce a report by October 31, 2008. The date was later moved to October 10, 2008.

Two cases have been consolidated on this motion for a temporary restraining order, preliminary injunction, and motion to dismiss. In the first case, Alaska State Senators and Representatives are asserting claims against the Alaska Legislative Council, Senator Hollis French, Senator Kim Elton, and investigator Stephen Branchflower. In the second case, employees of the state of Alaska who have been subpoenaed to appear before the Senate Judiciary Committee are asserting claims against Senator Hollis French, Senator Lyda Green, and the Senate Judiciary Committee.

II. Analysis

A. Can the Legislature Engage in This Investigation?

Plaintiffs claim the legislature does not have investigative power over the conduct of the governor in the management and operation of the executive branch and its departments. Monegan, as the head of the Department of Public Safety, serves "at the pleasure of the governor." Alaska Const. Art. III, § 25. However, Monegan, as Commissioner of Public Safety, is subject to confirmation by the Alaska Legislature. Alaska Const. Art III, § 25. It is legitimately within the scope of the legislature's investigatory power to inquire into the circumstances surrounding the termination a public officer the legislature had previously confirmed. This investigation may lead to

changes in the confirmation process or other actions within the legislature's power such as proposing constitutional amendments.

B. Did the Legislative Council Have the Authority to Investigate?

Article II, section 11 of the Alaska Constitution expressly creates "a legislative council" and authorizes it to "perform duties and employ personnel as provided by the legislature."

The Alaska Legislative Council is a permanent interim committee of the legislature. AS 24.20.010. The Alaska Statutes govern the affairs of the Legislative Council. See AS 24.20.010-140. The Plaintiffs assert that these statutes do not grant the Legislative Council power to initiate an investigation over this matter. The statutes, however, grant the Legislative Council broad powers. See, e.g., AS 24.20.060(1) ("organize and adopt rules for the conduct of its business"); AS 24.20.060(2) ("to hold public hearings, administer oaths, issue subpoenas, compel the attendance of witnesses and production of papers, books, accounts, documents, and testimony, and to have the deposition of witnesses taken"); AS 24.20.060(4)(C) ("to execute a program for the oversight of the administration and construction of laws by state agencies and the courts through regulations, opinions, and rulings"); AS 24.20.060(4)(E) ("to do all things necessary to carry out legislative directives and law, and the duties set out in the uniform rules of the legislature"); AS 24.20.120 ("submit memorandum reports to the legislature on matters referred to it or coming before it").

These statutes relate to the internal organization of the legislature. In Malone v. Meekins, the Supreme Court of Alaska was asked to determine whether members of the Alaska House of Representatives violated several Alaska Statutes and Uniform Rules. 650 P.2d 351, 353 (Alaska 1982). The court found the statutes at issue related "solely to the internal organization of the legislature, a subject which has been committed by our constitution to each house." Id. at 356; see also id. at 359. The Alaska Supreme Court did not mean the court was powerless to consider constitutional violations. The court noted, "the judicial branch of government has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution, including compliance by the legislature." Id. at 356.

Thus, under the Malone rationale, the court can only evaluate whether the Legislative Council is complying with the Alaska Constitution. The constitution authorizes the Legislative Council to "perform duties and employ personnel as provided by the legislature." Alaska Const. Art II, § 11. It is clear that the constitution intended the Legislative Council to be governed internally by the legislature. Under Malone, this is a matter for the legislative branch, not the judicial branch.

C. Is It Improper for Senator French to Manage the Investigation Created by the July 28, 2008 Motion?

Consistent with the Malone decision, this issue is not justiciable. As noted in Part II.A, the investigation is a proper function of the legislative branch. Because the

constitution does not speak to this issue, if there are any violations of the internal rules, that is a matter for the legislative branch, not the judicial branch.

D. Did the Legislative Council Authorize the Senate Judiciary Committee to Investigate?

Consistent with the Malone decision, this issue is not justiciable. As noted in Part II.A, the investigation is a proper function of the legislative branch. Because the constitution does not speak to this issue, if there are any violations of the internal rules, that is a matter for the legislative branch, not the judicial branch.

E. Does the Legislative Council Have the Authority to Delegate the Investigation to the Senate Judiciary Committee?

Consistent with the Malone decision, this issue is not justiciable. As noted in Part II.A, the investigation is a proper function of the legislative branch. Because the constitution does not speak to this issue, if there are any violations of the internal rules, that is a matter for the legislative branch, not the judicial branch.

F. Does the Senate Judiciary Committee Have the Authority to Meet in an Interim Session?

Consistent with the Malone decision, this issue is not justiciable. As noted in Part II.A, the investigation is a proper function of the legislative branch. The constitution governs when the legislature can meet in regular session. Alaska Const. Art. II, § 8. However, the constitution gives the legislature the power to establish interim committees which may meet between legislative sessions to perform duties provided by the

legislature. Alaska Const. Art. II, § 11. It is clear that the constitution intended to give the legislature discretion in this matter. If the Senate Judiciary Committee is violating the boundaries the legislature has given it, that is a matter for the legislative branch, not the judicial branch.

G. Did the Senate Judiciary Committee Authorize Senator French to Issue Subpoenas to the Plaintiffs Requiring Them to Bring All Relevant Material?

AS 24.25.010(b) gives the Senate Judiciary Committee subpoena power: "A subpoena requiring the attendance of a witness before a standing or special committee of the legislature may be issued by the chairman of a committee when authorized to do so by a majority of the membership of the committee and with the concurrence of the president or the speaker, or with the concurrence of the house or the senate." Two sections, AS 24.25.010-020, govern the form and service of subpoenas. The plaintiffs do not assert the subpoenas were deficient on their face or that service was improper. If they were, the Malone decision would not apply to this argument. Malone provided some applicable limiting language: "However, except in extraordinary circumstances, as where the rights of persons who are not members of the legislature are involved, it is not the function of the judiciary to require the legislature follow its own rules." Malone, 650 P.2d at 359 (emphasis added).

Instead, the issue before the court is that the process within the legislature was deficient. Because the committee has subpoena power and the legislature is operating

within the constraints of the constitution, Malone applies for the reasons stated in Part II.B. Thus, this issue is also not justiciable.

Plaintiffs have pointed to this limiting language to assert that Malone also would not apply to any violation of the legislature's internal rules because these violations ultimately affected the subpoenaed individuals. This rationale ignores the purpose of the rules in question. Any internal rules, such as those involving delegation or scope of authority within the legislature, that may have been violated exist primarily to structure the internal operations of the legislature. This is not true of AS 24.25.010 governing legislative subpoenas. This rule governs both the internal operations of the legislature and provides notice to parties outside the legislature. When a legislative rule creates no right for an outside party, its violation does not fall within the Malone limitations.

H. Are the Subjects of the Subpoenas Outside the Jurisdiction of the Senate Judiciary Committee?

AS 24.25.010 gives the legislature and the Senate Judiciary Committee's subpoena power. Because the investigation is a proper subject for the legislature, any allegation that the Senate Judiciary Committee has stepped outside its boundaries is, under Malone, an issue for the legislative branch, not the judicial branch.

I. Does the Investigation Violate the Constitutional Prohibition Found in Article I, Section 7?

The plaintiffs allege that the Legislative Council's investigation is being managed by Senator French and conducted by Branchflower in violation of the due process clause

of the constitution, specifically the "[t]he right of all persons to fair and just treatment in the course of legislative ... investigations." Alaska Const. Art. I, § 7. Defendants argue that the power to interpret this provision is solely within the province of the legislature. This position is incorrect. "It is emphatically the province and duty of the judicial department to say what the law is." Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177 (1803).

Plaintiffs allege that the investigation is being handled in violation of the constitutional right to fairness of those actually being investigated. It is not claimed that the subpoenas issued to the plaintiffs do not comply with AS 24.25.010. It appears that the due process claim is that the wrong committee was assigned to the task. But even if the process leading up to the issuance of the subpoenas, such as the delegation of the authority within the legislature or the boundaries within which certain committees can act, were in fact violated, it is still within the constitutional bounds of the legislature to subpoena these witnesses.

The constitution guarantees the right to "fair and just treatment" in legislative investigations. The idea of fairness is an ambiguous and subjective concept. Fairness must be evaluated in the context of the investigation taking place. Because the legislature is a political branch, the expectations of fairness are not the same as the expectations of fairness when dealing with the judicial branch. In evaluating claims of unfair treatment by the legislature, the court must carefully balance the rights of the individuals being investigated while still respecting the province of the legislature. Where reasonable

minds may differ as to whether individuals are being treated fairly, the court should defer to the legislature. The violation must also be of a sufficient magnitude to warrant judicial intervention. Surely the constitution would not authorize the judicial branch to enjoin a legislative investigation because, e.g., an investigator treated them rudely.

The appearance of impropriety is what plaintiffs argued was the violation of the right to fairness of those actually being investigated. Assuming that the plaintiffs have standing to assert such claims, the court finds the conduct of Senator French, Senator Elton, and investigator Branchflower do not rise to the level of a violation of the any individuals' right to fairness. Fairness within a legislative context is different than fairness within a judicial context. It is expected that legislators will belong to some party and will support the positions of their party, often publicly. The legislature is, by its nature, a political branch. It would be assumed that review, e.g., of Wall Street's financiers might be founded on a strongly held and expressed belief that somebody did something wrong. In this case, the allegations of the appearance of partiality among the individuals involved in the investigation do not rise to the level of a constitutional violation.

J. Does the Appointment of Certain Individuals Violate the Prohibitions on Conflicts of Interest and Unethical Conduct?

Plaintiffs have alleged that the individuals associated with the investigation are engaging in unethical conduct. More specifically, plaintiffs have alleged violations of AS 24.60.030 which states:

> (a) A legislator or legislative employee may not ...
> (2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person....

Even if there had been a violation under this statute, this is not an issue for the court. AS 24.60.030 belongs to a chapter entitled Standards of Conduct. See 24.60.010-995. AS 24.60.010(8) notes "the purpose of this chapter is to establish standards of conduct for state legislators and legislative employees and to establish the Select Committee on Legislative Ethics to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter." Thus, any remedy for such violations is within the province of the legislature, not the courts.

III. Conclusion

The motions for a temporary restraining order and the action for a preliminary injunction are denied. The case is dismissed.

IT IS SO ORDERED.

DATED at Anchorage, Alaska this 2nd day of October 2008.

PETER A. MICHALSKI
Superior Court Judge

In the Supreme Court of the State of Alaska

Representative Wes Keller;	)	
Representative Mike Kelly;	)	
Senator Fred Dyson;	)	
Senator Tom Wagoner;	)	
Representative Carl Gatto; and	)	
Representative Bob Lynn,	)	Supreme Court No. **S-13296**
	)	
	)	
Appellants,	)	
v.	)	**Order**
	)	
Senator Hollis French;	)	
Senator Kim Elton; Stephen E.	)	
Branchflower; Alaska Legislative	)	
Council; Senator Lyda Green;	)	
Senate Judiciary Committee;	)	
Dianne Kiesel; Annette Kreitzer;	)	
Janice Mason; Nicki Neal;	)	
Michael Nizich; Kristina Perry;	)	
and Brad Thompson,	)	**Order No. 64 – October 9, 2008**
	)	
Appellees.	)	
	)	

Trial Court Case # **3AN-08-10489CI**

Before: Matthews, Eastaugh, Carpeneti, and Winfree, Justices. [Fabe, Chief Justice, not participating.]

Appellants are six legislators who claim that the Alaska Legislative Council's investigation into the dismissal of Public Safety Commissioner Walter Monegan is unlawful and should be enjoined. The superior court denied the appellants' Motion for Temporary Restraining Order and granted the Motion to Dismiss submitted by the Alaska Legislative Council and the other defendants.

At the request of the appellants for a decision no later than today, October 9, 2008, we heard the appeal on an expedited basis. On consideration of the October 6, 2008 appellants' brief, the October 6, 2008 amicus curiae brief, the October 7, 2008 appellees' brief, and the oral argument held on October 8, 2008,

IT IS ORDERED: The order of the superior court issued on October 2, 2008 granting the Motion to Dismiss is **AFFIRMED**. An opinion will follow.

Entered at the direction of the full court.

Clerk of the Appellate Courts

for Marilyn May

cc: Supreme Court Justices
Judge Peter Michalski
Anchorage Appeals Division
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LEGISLATIVE COUNCIL, Appellant and Cross-Appellee, v. TONY KNOWLES, Governor for the STATE OF ALASKA, Appellee and Cross-Appellant.

Supreme Court Nos. S-8143, S-8144, No. 5185

SUPREME COURT OF ALASKA

988 P.2d 604; 1999 Alas. LEXIS 132

October 1, 1999, Decided

PRIOR HISTORY: [**1] Appeal from the Superior Court of the State of Alaska, First Judicial District, Juneau, Larry R. Weeks, Judge. Superior Court No. 1JU-96-1276 CI.

DISPOSITION: VACATED the superior court's order declaring C.S.S.B. 162 invalid and REMANDED for entry of an order of dismissal.

COUNSEL: Pamela Finley and James P. Crawford, Legislative Affairs Agency, Division of Legal and Research Services, Juneau, for Appellant and Cross-Appellee.

James L. Baldwin, Assistant Attorney General, and Bruce M. Botelho, Attorney General, Juneau, for Appellee and Cross-Appellant.

JUDGES: Before: Matthews, Chief Justice, Eastaugh, Fabe, Bryner, and Carpeneti, Justices.

OPINION BY: BRYNER

OPINION

[*605] *OPINION*

BRYNER, Justice.

During a special session, the Alaska legislature overrode Governor Tony Knowles's veto of a bill that it had passed in regular session. The governor sued the Legislative Council, claiming that the legislature's override [**2] vote was untimely and did not affect his veto. The superior court agreed, declaring the override vote invalid and the veto effective. The Council argues that the Alaska Constitution barred the governor from filing this suit and that the superior court thus erred in deciding the governor's claim on its merits. We conclude that the Council's argument has merit. Though formally filed in the governor's name against the Council, this suit is in substance an action brought in the name of the state against the legislature. Because *article III, section 16 of the Alaska Constitution* expressly forbids such actions, we vacate the judgment and direct the superior court to dismiss the action.

I. *FACTS AND PROCEEDINGS*

On April 26, 1996, during its second regular session, the Nineteenth Alaska Legislature passed Committee Substitute for Senate Bill (C.S.S.B.) 162, an act relating to land used for agricultural purposes. [1] On May 7, after the regular session expired, the governor called a special session, which convened the next day. On May 14 the legislature recessed its special session until June 3. Before recessing, it delivered C.S.S.B. 162 to Governor Knowles for his consideration. [**3] Governor Knowles vetoed the bill on May 30, transmitting his veto message to the legislature a day later. On June 6 the legislature, having resumed its special session, voted to override the governor's veto.

1 C.S.S.B. 162(FIN), 19th Leg. 2d Sess. (1996). The act was printed as Ch. 1, FSSLA 1996.

These events set the stage for the present controversy. The day after the legislature voted to override his veto, Governor Knowles, acting in his own name as governor of Alaska, filed a complaint in superior court alleging that the legislature's vote to override his veto of C.S.S.B. 162 had been untimely under *article II, section 16 of the Alaska Constitution.* [2] The complaint requested a judgment declaring that the governor's veto of the bill remained in effect and named as defendants the Legislative Council and fourteen individual legislators who compose it. [3] The Council counterclaimed against the

governor, seeking a declaration that the override vote was valid.

2 *Article II, section 16 of the Alaska Constitution*, provides:

> Upon receipt of a veto message during a regular session of the legislature, the legislature shall meet immediately in joint session and reconsider passage of the vetoed bill or item. Bills to raise revenue and appropriation bills or items, although vetoed, become law by affirmative vote of three-fourths of the membership of the legislature. Other vetoed bills become law by affirmative vote of two-thirds of the membership of the legislature. Bills vetoed after adjournment of the first regular session of the legislature shall be reconsidered by the legislature sitting as one body no later than the fifth day of the next regular or special session of that legislature. Bills vetoed after adjournment of the second regular session shall be reconsidered by the legislature sitting as one body no later than the fifth day of a special session of that legislature, if one is called. The vote on reconsideration of a vetoed bill shall be entered on the journals of both houses.

[**4]

3 The Legislative Council is a permanent interim committee of the Alaska Legislature created under *article II, section 11 of the Alaska Constitution* and comprises fourteen legislators. *See Alaska Const. art. II, § 11*; *AS 24.20.020*.

All parties eventually filed dispositive motions: The governor moved for summary judgment, the Council cross-moved for summary judgment, and all of the defendants -- the individually named legislators and the Council -- moved for dismissal.

The superior court granted the individual legislators' dismissal motions, concluding that the legislators were entitled to legislative [*606] immunity under *article II, section 6 of the Alaska Constitution.* [4] But because the court believed that neither this constitutional grant of legislative immunity nor article III, section 16 -- which prohibits the governor from suing the legislature -- barred a suit against the Council, the court denied the Council's motion to dismiss.

4 *Article II, section 6 of the Alaska Constitution* provides:

> Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session. Members attending to, going to, or returning from legislative sessions are not subject to civil process and are privileged from arrest except for felony or breach of the peace.

[**5] Moving to the merits raised in the competing motions for summary judgment, the court ruled in favor of the governor, declaring that the legislature's override vote was untimely, that the governor's veto remained in effect, and thus that C.S.S.B. 162 had not been enacted into law. [5]

5 Specifically, the court, construing the "fifth day" clause of *article II, section 16 of the Alaska Constitution* (set out above in footnote 2), ruled that when the governor delivers a vetoed bill to the legislature after a first special session convenes, the legislature can override the veto within five days of delivery -- even if the deadline falls after the fifth day of the first special session. But the court also ruled that the five-day deadline is not tolled by a recess or adjournment that does not terminate the special session. Because the legislature had not voted by the fifth day after delivery of the vetoed bill -- June 5, 1996 -- the court concluded that its override vote was untimely and that C.S.S.B. 162 had not been enacted into law. Our disposition of this appeal makes it unnecessary to consider the superior court's analysis or the parties' arguments concerning the proper interpretation of article II, section 16.

[**6] The Council appeals these rulings; the governor cross-appeals.

II. *DISCUSSION*

A. *The "Public Interest" Exception to the Mootness Doctrine Applies to the Issue of Whether Article III, Section 16 of the Alaska Constitution Bars the Governor's Suit against the Council.*

At the outset, we confront the issue of mootness. In 1997, the year after this controversy arose, the legislature enacted and the governor signed into law a bill covering essentially the same subject matter as C.S.S.B. 162. [6] Thus the question of whether C.S.S.B. 162 was validly enacted is technically moot.

6 *See* Ch. 20, SLA 1997.

But this court has long recognized a "public interest" exception to the mootness doctrine. [7] In determining whether to apply the public interest exception, we consider three factors designed to identify issues whose importance and ability to evade review justify an immediate decision, despite technical mootness:

7 *See Department of Health & Soc. Servs. v. Alaska State Hosp. & Nursing Home Ass'n, 856 P.2d 755, 766 (Alaska 1993); Doe v. State, 487 P.2d 47, 53 (Alaska 1971).*

[**7] 1) whether the disputed issues are capable of repetition, 2) whether the mootness doctrine, if applied, may repeatedly circumvent review of the issues and, 3) whether the issues presented are so important to the public interest as to justify overriding the mootness doctrine.[8]

8 *Department of Health & Soc. Servs., 856 P.2d at 766.*

The primary constitutional issue presented here -- whether article III, section 16 forbids the governor's suit against the Council -- easily meets the first and third criteria for an exception. This issue is certainly capable of repetition. And it is also unquestionably an issue of great public importance, for it goes to the heart of the delicate constitutional balance between the powers of two coordinate branches of government. [9]

9 *See Thomas v. Rosen, 569 P.2d 793, 795 (Alaska 1977)* (granting review under the public interest exception of whether the governor's exercise of a line-item veto was constitutional, commenting that it "pits the political branches of our state government in a fundamental separation of powers confrontation").

[**8] The second factor's presence is not as obvious. It is of course conceivable that the question of whether article III, section 16 bars the governor from suing the Council [*607] over the timeliness of a veto could arise again and be decided before being mooted by new legislation. But the express harm that the constitution protects against in barring the governor from bringing actions "in the name of the State . . . against the legislature" [10] occurs when the action is brought, not when it is concluded.

10 *Alaska Const. art. III, § 16.*

Considering the importance and unique nature of the protection embodied in article III, section 16, we conclude that the question of whether this section applies in the circumstances presented here merits an exception to the mootness doctrine.

B. *Article III, Section 16 Bars This Suit by the Governor against the Council.* [11]

11 *We review constitutional issues independently, giving no deference to the trial court's decision. See Hickel v. Cowper, 874 P.2d 922, 926 (Alaska 1994).* In construing a constitutional provision, we must give it a "reasonable and practical interpretation in accordance with common sense" and consonant with "the plain meaning and purpose of the provision and the intent of the framers." *ARCO Alaska, Inc. v. State, 824 P.2d 708, 710 (Alaska 1992).*

[**9] Section 1 of article III of the Alaska Constitution vests the executive power of the state in the governor. [12] Article III, section 16 gives the governor broad power to sue in the name of the state but at the same time bars the governor from turning this power against the legislature:

12 *Article III, section 1 of the Alaska Constitution* provides: "The executive power of the State is vested in the governor."

> The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. This authority shall not be construed to authorize any action or proceeding against the legislature.

In concluding that this provision did not forbid the governor to sue the Council, the superior [**10] court reasoned that "plaintiff brought this lawsuit in the name of the Governor as head of the executive branch of state government and not in the name of the State of Alaska" and that "[a] suit against the Legislative Council, a permanent interim committee with separate legal existence under *Article II, § 11 of the Alaska Constitution*, is not a suit against the Legislature."

The Council disputes both bases of the superior court's ruling, arguing that the governor should not be allowed to evade article III, section 16's restrictions by simply altering the form of his complaint. The Council asserts that although the governor has sued in his own name as governor of Alaska, this is in substance an action brought in the name of the state. Similarly, it asserts that by opting to proceed against a functional equivalent of the legislature -- the Council -- the governor has effectively sued the legislature itself.

The governor responds that article III, section 16 "was not intended to prevent the governor from protecting his power from usurpation by the legislature." In the governor's view, "the Court must have jurisdiction to determine the rights of the coordinate branches of state [**11] government." Insisting that the Council reads section 16's language barring actions against the legislature too broadly, the governor urges us to hold the constitutional bar inapplicable here because this suit "was

brought in the Governor's capacity as head of the executive branch of state government," "did not request [that] the legislature . . . be enjoined or compelled to do anything," and "was brought not against the legislature but its agent the Council."

We find the Council's arguments persuasive.

1. *Although filed by Tony Knowles, as "Governor for the State of Alaska," this suit is an action brought in the name of the state.*

This suit does not confine itself to internal matters concerning only the governor, the governor's office, or the executive [*608] branch of government. Rather, as we have indicated above in Part II.A., it raises important constitutional questions of the allocation of powers among coordinate branches of government. Because the suit tests the basic constitutional structure of Alaska's tripartite system of government, it necessarily involves a matter of general public importance -- one that transcends the executive branch's parochial interests and implicates [**12] interests common to all Alaska citizens. And although article III, section 16 authorizes the governor to sue in the name of the state, it confers no express power to sue in any narrower capacity. No other provision in article III expressly empowers the governor to raise issues of general public importance by suing in the name of the governor's office or of the executive branch. By any realistic measure, this suit involves the interests of the state as a whole.

Moreover, the governor asks for a ruling "that the Nineteenth Alaska Legislature . . . did not have authority under *art. II, sec. 16 of the Alaska Constitution* to consider a vote to override CSSB 162(FIN)," "that CSSB 162(FIN) cannot become law until the legislature properly exercises the veto override provisions of *art. II, sec. 16 of the Alaska Constitution*," and "that Governor Knowles'[s] veto of CSSB 162(FIN) remains in effect." By making these requests, the governor plainly seeks to enforce compliance with a constitutional mandate and to restrain violation of a constitutional power.

By so concluding, we necessarily reject the governor's suggestion that declaratory judgment actions are categorically exempt from the strictures [**13] of article III, section 16 because such actions merely seek judgments declaring the law without directly enforcing compliance or enjoining or compelling conduct. To determine whether an action or proceeding is brought to enforce compliance with a constitutional provision or restrain violation of a constitutional power in violation of article III, section 16, we must consider the practical goal of the action rather than the procedural path it employs to attain that goal.

Using substance rather than form as a measure of constitutional compliance, we hold this suit to be an "action or proceeding brought in the name of the State [to] enforce compliance with . . . [a] constitutional . . . mandate, or restrain violation of [a] constitutional . . . power." [13]

13 *Alaska Const. art. III, § 16.*

2. *Although filed against the Council, this suit is an action against the legislature.*

The remaining question is whether by naming the Council and its individual legislator-members as defendants, the [**14] governor evades section 16's third sentence, which prohibits him from bringing actions in the name of the state "against the legislature." Again, the question pits form against substance, and again, we conclude that substance must prevail.

The Alaska Constitution establishes the Council to "meet between sessions" and "perform duties . . . as provided by the legislature." [14] Under law, the Council comprises legislators from both houses, [15] who exercise a broad range of legislative powers and serve as the legislature's embodiment between sessions. [16] The Council's members also supervise a permanent staff, headed by an executive director, [17] that performs an array of administrative services for the legislative branch and the general public. [18]

14 *Alaska Const. art. II, § 11.*
15 *See AS 24.20.020.*
16 *See AS 24.20.060.*
17 *See AS 24.20.050.*
18 *See AS 24.20.060(4).*

The governor asserts that this [**15] suit escapes section 16's prohibition because it names the Council not in its interim legislative capacity but only in its service-agency capacity. [19] But the governor's pleadings belie this assertion. Neither the original nor the amended complaint gives any indication that the governor [*609] named the Council as a defendant in its limited capacity as a service agency. Both complaints name the Council as a defendant only in its capacity as "a permanent interim committee of the legislature." And both also name individual legislators only in their general capacity as legislators and Council members.

19 *See AS 24.20.010* ("The Alaska Legislative Council is established as a permanent interim committee and service agency of the legislature.").

More significant is that the complaints assert no particular service-related acts or functions as a basis for proceeding against the Council or its individual legisla-

tor-members. By asserting that "the legislature's vote to override the governor's veto of CSSB [**16] 162(FIN) is in violation of *art. II, sec. 16 of the Alaska Constitution*," the complaints aim beyond the Council, targeting an act of the legislature that is purely and quintessentially legislative.

An action of this kind falls squarely within the originally intended scope of section 16's prohibition. Delegate Victor Rivers, Chairman of the Constitutional Convention's Committee on the Executive Branch, described the relationship between the broad grant of authority given to the governor under the second sentence of section 16 and the restriction of that authority set out in the section's third sentence. He explained that despite the governor's power by appropriate actions or proceedings in the court, brought in the name of the state[] to enforce compliance with any constitutional or legislative mandate[,] . . . [the governor] has no authority . . . to act in that manner in any proceeding against the legislature. The legislature is the supreme elected body and as such [the governor] is answerable to [it] and to [its] interpretations and handling of matters of law.[20]

20 3 Proceedings of the Alaska Constitutional Convention 1986 (January 13, 1956).

[**17] By directing against the legislature's interim alter ego an action questioning the propriety of a purely legislative act, the governor effectively seeks to hold the legislature itself "answerable" to him for its "interpretations and handling of matters of law." [21] The substance of this suit thus infringes upon the legislature's constitutional domain in precisely the manner that the Constitution's drafters intended to prohibit.

21 *Id.*

We readily acknowledge the legitimacy of the governor's expressed interest in preserving the broad powers of litigation "that, in essence, makes him the strong executive that the framers intended." But in our view, the governor could have asserted these powers readily and effectively without directing a suit across the clear constitutional line that separates legislative and executive powers. [22] We would ignore the constitution's intended meaning if we held, in circumstances like these, that the governor could successfully evade section 16's restrictions [**18] by suing the Council instead of the legislature.

22 For example, as the Council observes in its briefs, "The Governor could have sued the commissioner responsible for enforcing the law, as was done in *State ex rel Hammond v. Allen, 625 P.2d 844 (Alaska 1981)* . . . ."

III. *CONCLUSION*

We therefore hold that this suit is an action brought "in the name of the State" and "against the legislature." Because article III, section 16 forbids such actions, we VACATE the superior court's order declaring C.S.S.B. 162 invalid and REMAND for entry of an order of dismissal. [23]

23 Our conclusion that under the circumstances presented in this case a suit against the Council is equivalent to a suit against the legislature also compels dismissal of the suit as to individual legislators named in their capacity as Council members. We do not understand the suit to name these Council members as parties solely in their capacity as legislators. Accordingly, we need not consider whether dismissal of Council members would independently be required under article II, section 6, which provides legislators with immunity in performing their legislative duties: "Legislators may not be held to answer before any other tribunal for any statement made in the exercise of their legislative duties while the legislature is in session."

Our disposition also makes it unnecessary to address the timing issues raised by the governor under *article II, section 16 of the Alaska Constitution.* Although the timing issues that the Council affirmatively raised before the superior court in its counterclaim and that it now asserts before this court on cross-appeal might not be barred by article III, section 16, the governor's declaratory judgment action obviously prompted the Council's assertion of these issues; at oral argument, the Council consented to our treatment of its affirmatively raised timing arguments as a contingent cross-appeal.

[**19]

ETHICS

LAW

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please see items noted on Pages:
A-2: Sec. 24.60.010 (z)
A-28: Sec. 24.60.170 (b)
31: Sec. 24.60.170 (p)

APPENDIX A

Legislative Ethics Law, AS 24.60 as amended 2007 by HB 109 Chapter 47

2008 sections amended by
HB 281, HB 305, HB 317 & HB 368
(new or changed language in "bold", an explanation in "italics", and or language being removed in "brackets")

Chapter 60. Standards of Conduct.

Article

1. Purpose and Applicability (§§ 24.60.010 - 24.60.020)
2. Standards of Conduct (§§ 24.60.030 - 24.60.105)
3. Legislative Ethics Committee (§§ 24.60.130 - 24.60.178)
4. Required Annual Financial Disclosure (§§ 24.60.200 - 24.60.260)
5. Miscellaneous and General Provisions (§§ 24.60.970 - 24.60.990)

Cross references. — For limitation of applicability of this chapter to acts committed after July 18, 1984, see § 4, ch. 36, SLA 1984 in the Temporary and Special Acts.

Administrative Code. — For legislative financial disclosure, see 2 AAC 50, art. 5.

Article 1. Purpose and Applicability.

Section

10. Legislative findings and purpose
20. Applicability; relationship to common law and other laws

Sec. 24.60.010. Legislative findings and purpose. The legislature finds that

(1) high moral and ethical standards among public servants in the legislative branch of government are essential to assure the trust, respect, and confidence of the people of this state;

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(2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;

(3) the public's commitment to a part-time citizen legislature requires legislators be drawn from all parts of society and the best way to attract competent people is to acknowledge that they provide their time and energy to the state, often at substantial personal and financial sacrifice;

(4) a part-time citizen legislature implies that legislators are expected and permitted to earn outside income and that the rules governing legislators' conduct during and after leaving public service must be clear, fair, and as complete as possible; the rules, however, should not impose unreasonable or unnecessary burdens that will discourage citizens from entering or staying in government service;

(5) in order for the rules governing conduct to be respected both during and after leaving public service, the code must be administered fairly without bias or favoritism;

(6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment;

(7) compliance with a code of ethics is an individual responsibility; thus all who serve the legislature have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates;

(8) the purpose of this chapter is to establish standards of conduct for state legislators and legislative employees and to establish the Select Committee on Legislative Ethics to consider alleged violations of this chapter and to render advisory opinions to persons affected by this chapter. (§ 1 ch 36 SLA 1984; am § 1 ch 127 SLA 1992)

Sec. 24.60.020. Applicability; relationship to common law and other laws.

(a) Except as otherwise provided in this subsection, this chapter applies to a member of the legislature, to a legislative employee, and to public members of the committee. This chapter does not apply to

(1) a former member of the legislature or to a person formerly employed by the legislative branch of government unless a provision of this chapter specifically states that it applies;

(2) a person elected to the legislature who at the time of election is not a member of the legislature.

(b) The provisions of this chapter specifically supersede the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature or a legislative employee. This chapter does not supersede or repeal provisions of the criminal laws of the state. This chapter does not exempt a person from applicable provisions of another law unless the law is expressly superseded or incompatibly inconsistent with the specific provisions of this chapter.

(§ 1 ch 36 SLA 1984; § § 2, 3 ch 113 SLA 1986; am § 1 ch 167 SLA 1988; am § 2 ch 127 SLA 1992); am § 18 ch 47 SLA 2007)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, rewrote this section.

The 2007 amendment, effective July 10, 2007, inserted "the committee, the Alaska Public Offices Commission" and made stylistic changes in the first sentence of subsection (a), substituted the last three sentences of subsection (b) for the last sentence, which provided for the confidentiality of advisory opinions.

Related Advisory Opinions: 84-02, 84-03, 84-04

Sec. 24.60.165. Use of information submitted with request for advice.

The committee may not bring a complaint against a person based upon information voluntarily given to the committee by the person in connection with a good faith request for advice under AS 24.60.158 or 24.60.160, and may not use that information against the person in a proceeding under AS 24.60.170. This section does not preclude the committee from acting on a complaint concerning the subject of a person's request for advice if the complaint is brought by another person, or if the complaint arises out of conduct taking place after the advice is requested, and does not preclude the committee from using information or evidence obtained from an independent source, even if that information or evidence was also submitted with a request for advice.
(§ 28 ch 127 SLA 1992)

Sec. 24.60.170. Proceedings before the committee; limitations.

(a) The committee shall consider a complaint alleging a violation of this chapter if the alleged violation occurred within **five** [TWO]years before the date that the complaint is filed with the committee[AND, WHEN THE SUBJECT OF THE COMPLAINT IS A FORMER MEMBER OF THE LEGISLATURE, THE COMPLAINT IS FILED WITHIN ONE YEAR AFTER THE SUBJECT'S DEPARTURE FROM THE LEGISLATURE]. The committee may not consider a complaint filed against all members of the legislature, against all members of one house of the legislature, or against a person employed by the legislative branch of government after the person has terminated legislative service. However, the committee may reinstitute proceedings concerning a complaint that was closed because a former employee terminated legislative service [OR BECAUSE A LEGISLATOR LEFT THE LEGISLATURE] if the former employee[OR LEGISLATOR] resumes legislative service, whether as an employee or a legislator, within **five** [TWO] years after the alleged violation. [THE TIME LIMITATIONS OF THIS SUBSECTION DO NOT BAR PROCEEDINGS AGAINST A PERSON WHO INTENTIONALLY PREVENTS DISCOVERY OF A VIOLATION OF THIS CHAPTER.] **changed language*: **effective January 1, 2009**

(b) A complaint may be initiated by any person. The complaint must be in writing and signed under oath by the person making the complaint and must contain a statement that the complainant has reason to believe that a violation of this chapter has occurred and describe any facts known to the complainant to support that belief. The committee shall upon request provide a form for a complaint to a person wishing to file a complaint. Upon receiving a complaint, the committee shall advise the complainant that the committee or the subject of the complaint may ask the complainant to testify at any stage of the proceeding as to the complainant's belief that the subject of the complaint has violated this chapter. The committee shall respond to a complaint concerning the conduct of a candidate for election to state office received during the campaign period in accordance with (o) of this section. The committee shall treat a complaint concerning the conduct

of a candidate for election to state office that is pending at the beginning of a campaign period in accordance with (p) of this section. The committee shall immediately provide a copy of the complaint to the person who is the subject of the complaint.

(c) When the committee receives a complaint under (a) of this section, it may assign the complaint to a staff person. The staff person shall conduct a preliminary examination of the complaint and advise the committee whether the allegations of the complaint, if true, constitute a violation of this chapter and whether there is credible information to indicate that a further investigation and proceeding is warranted. The staff recommendation shall be based on the information and evidence contained in the complaint as supplemented by the complainant and by the subject of the complaint, if requested to do so by the staff member. The committee shall consider the recommendation of the staff member, if any, and shall determine whether the allegations of the complaint, if true, constitute a violation of this chapter. If the committee determines that the allegations, if proven, would not give rise to a violation, that the complaint is frivolous on its face, that there is insufficient credible information that can be uncovered to warrant further investigation by the committee, or that the committee's lack of jurisdiction is apparent on the face of the complaint, the committee shall dismiss the complaint and shall notify the complainant and the subject of the complaint of the dismissal. The committee may ask the complainant to provide clarification or additional information before it makes a decision under this subsection and may request information concerning the matter from the subject of the complaint. Neither the complainant nor the subject of a complaint is obligated to provide the information. A proceeding conducted under this subsection, documents that are part of a proceeding, and a dismissal under this subsection are confidential as provided in (l) of this section unless the subject of the complaint waives confidentiality as provided in that subsection.

(d) If the committee determines that some or all of the allegations of a complaint, if proven, would constitute a violation of this chapter, or if the committee has initiated a complaint, the committee shall investigate the complaint, on a confidential basis. Before beginning an investigation of a complaint, the committee shall adopt a resolution defining the scope of the investigation. A copy of this resolution shall be provided to the complainant and to the subject of the complaint. As part of its investigation, the committee shall afford the subject of the complaint an opportunity to explain the conduct alleged to be a violation of this chapter.

(e) If during the investigation under (d) of this section, the committee discovers facts that justify an expansion of the investigation and the possibility of additional charges beyond those contained in the complaint, the resolution described in (d) of this section shall be amended accordingly and a copy of the amended resolution shall be provided to the subject of the complaint.

(f) If the committee determines after investigation that there is not probable cause to believe that the subject of the complaint has violated this chapter, the committee shall dismiss the complaint. The committee may also dismiss portions of a complaint if it finds no probable cause to believe that the subject of the complaint has violated this chapter as alleged in those portions. The committee shall issue a decision explaining its dismissal. Committee deliberations and vote on the dismissal order and decision are not open to the public or to the subject of the complaint. A copy of the dismissal order and decision shall be sent to the complainant and to the subject of the complaint. Notwithstanding (l) of this section, a dismissal order and decision is open to inspection and copying by the public.

(g) If the committee investigation determines that a probable violation of this chapter exists that may be corrected by action of the subject of the complaint and that does not warrant sanctions other than correction, the committee may issue an opinion recommending corrective action. This

(o) The committee shall return a complaint concerning the conduct of a candidate for state office received during a campaign period to the complainant unless the subject of the complaint permits the committee to assume jurisdiction under this subsection. If the committee receives a complaint concerning the conduct of a candidate during the campaign period, the committee shall immediately notify the subject of the complaint of the receipt of the complaint, of the suspension of the committee's jurisdiction during the campaign period, and of the candidate's right to waive the suspension of jurisdiction under this subsection. The candidate may, within 11 days after the committee mails or otherwise sends notice of the complaint to the candidate, notify the committee that the candidate chooses to have the committee proceed with the complaint under this section. If the candidate does not act within that time or if the candidate notifies the committee that the candidate is not waiving the suspension of committee jurisdiction, the committee shall return the complaint to the complainant with notice of the suspension of jurisdiction under this subsection and of the right of the complainant to file the complaint after the end of the campaign period.

(p) When the committee has a complaint concerning the conduct of a candidate for state office pending before it at the beginning of a campaign period that has not resulted in the issuance of formal charges under (h) of this section, the committee may proceed with its consideration of the complaint only to the extent that the committee's actions are confidential under this section. The committee may not, during a campaign period, issue a dismissal order or decision under (f) of this section, issue an opinion under (g) of this section, or formally charge a person under (h) of this section. If the committee has formally charged a person under (h) of this section and the charge is still pending when a campaign period begins, the committee shall suspend any public hearings on the matter until after the campaign period ends. The parties to the hearing may continue with discovery during the campaign period. If a hearing has been completed before the beginning of a campaign period but the committee has not yet issued its decision, the committee may not issue the decision until after the end of the campaign period. Notwithstanding the suspension of public proceedings provided for in this subsection, a candidate who is the subject of a complaint may notify the committee in writing that the candidate chooses to have the committee proceed with the complaint under this section.

(q) A campaign period under this section begins on the later of 45 days before a primary election in which the legislator or legislative employee is a candidate for state office or the day on which the individual files as a candidate for state office and ends at the close of election day for the general or special election in which the individual is a candidate or on the day that the candidate withdraws from the election, if earlier. For a candidate who loses in the primary election, the campaign period ends on the day that results of the primary election showing that another individual won the election are certified.

(r) At any point in the proceedings when the subject of a complaint appears before the committee, the subject of a complaint may choose to be accompanied by legal counsel or another person who may also present arguments before the committee. The choice of counsel or another person is not subject to review and approval or disapproval by the committee. The choice by the subject of a complaint to be accompanied under this subsection does not constitute a waiver of any confidentiality provision of this chapter.

(§ 1 ch 36 SLA 1984; am § 13 ch 113 SLA 1986; am § 7 ch 167 SLA 1988; am § 29 ch 127 SLA 1992; am §§ 44 — 52 ch 74 SLA 1998; am §§ 2 — 4 ch 135 SLA 2004; am § 41 ch 47 SLA 2007)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, rewrote subsections (a)-(c)

The 2004 amendment, effective July 1, 2004, in subsection (j), inserted the second sentence, inserted

PT. Sec 39.52.310 (j)

Chapter 39.52. **ALASKA EXECUTIVE BRANCH ETHICS ACT**

Article 01. DECLARATIONS

Sec. 39.52.010. **Declaration of policy.**

(a) It is declared that

(1) high moral and ethical standards among public officers in the executive branch are essential to assure the trust, respect, and confidence of the people of this state;

(2) a code of ethics for the guidance of public officers will

(A) discourage those officers from acting upon personal or financial interests in the performance of their public responsibilities;

(B) improve standards of public service; and

(C) promote and strengthen the faith and confidence of the people of this state in their public officers;

(3) holding public office or employment is a public trust and that as one safeguard of that trust, the people require public officers to adhere to a code of ethics;

(4) a fair and open government requires that executive branch public officers conduct the public's business in a manner that preserves the integrity of the governmental process and avoids conflicts of interest;

(5) in order for the rules governing conduct to be respected both during and after leaving public service, the code of ethics must be administered fairly without bias or favoritism;

(6) no code of conduct, however comprehensive, can anticipate all situations in which violations may occur nor can it prescribe behaviors that are appropriate to every situation; in addition, laws and regulations regarding ethical responsibilities cannot legislate morality, eradicate corruption, or eliminate bad judgment; and

(7) compliance with a code of ethics is an individual responsibility; thus all who serve the state have a solemn responsibility to avoid improper conduct and prevent improper behavior by colleagues and subordinates.

(b) The legislature declares that it is the policy of the state, when a public employee is appointed to serve on a state board or commission, that the holding of such offices does not constitute the holding of incompatible offices unless expressly prohibited by the Alaska Constitution, this chapter and any opinions or decisions rendered under it, or another statute.

Article 02. CODE OF ETHICS

Sec. 39.52.110. **Scope of code.**

(a) The legislature reaffirms that each public officer holds office as a public trust, and any effort to benefit a personal or financial interest through official action is a violation of that trust. In addition, the legislature finds that, so long as it does not interfere with the full and faithful discharge of an officer's public duties and responsibilities, this chapter does not prevent an officer from following other independent pursuits. The legislature further recognizes that

(1) in a representative democracy, the representatives are drawn from society and, therefore, cannot and should not be without personal and financial interests in the decisions and policies of government;

(2) people who serve as public officers retain their rights to interests of a personal or financial nature; and

Sec. 39.52.250. Advice to former public officers.

(a) A former public officer may request, in writing, an opinion from the attorney general interpreting this chapter. The attorney general shall give advice in accordance with AS 39.52.240(a) or (b) and publish opinions in accordance with AS 39.52.240(h).

(b) A former public officer is not liable under this chapter for any action carried out in accordance with the advice of the attorney general issued under this section, if the public officer fully disclosed all relevant facts reasonably necessary to the issuance of the advice.

Sec. 39.52.260. **Designated supervisor's report and attorney general review.**

(a) A designated supervisor shall quarterly submit a report to the attorney general which states the facts, circumstances, and disposition of any disclosure made under AS 39.52.210 - 39.52.240.

(b) The attorney general shall review determinations reported under this section. The attorney general may request additional information from a supervisor concerning a specific disclosure and its disposition.

(c) The report prepared under this section is confidential and not available for public inspection unless formal proceedings under AS 39.52.350 are initiated based.on the report. If formal proceedings are initiated, the relevant portions of the report are public documents open to inspection. The attorney general shall, however, make available to the public a summary of the reports received under this section, with sufficient deletions to prevent disclosure of a person's identity.

(d) The attorney general shall submit to the personnel board a copy of the quarterly reports received from designated supervisors under (a) of this section together with a report on the attorney general's review conducted under (b) of this section.

Sec. 39.52.270. **Disclosure statements.**

(a) A public officer required to file a disclosure statement under this chapter shall meet the requirements of this subsection in making the disclosure. When the public officer files a disclosure statement under this chapter, the public officer signing the disclosure shall certify that, to the best of the public officer's knowledge, the statement is true, correct, and complete. The disclosure must state that, in addition to any other penalty or punishment that may apply, a person who submits a false statement that the person does not believe to be true is punishable under AS 11.56.200 - 11.56.240.

(b) A designated supervisor who receives a disclosure statement under AS 39.52.110 - 39.52.220 shall review it. If the designated supervisor believes that there is a possibility that the activity or situation reported in a disclosure statement filed under AS 39.52.110 - 39.52.190 may result in a violation of this chapter, the designated supervisor shall take appropriate steps under AS 39.52.210 - 39.52.240. Failure of the designated supervisor to proceed under AS 39.52.210 - 39.52.240 does not relieve the public officer of the public officer's obligations under those statutes.

(c) In this section, "disclosure statement" means a report or written notice filed under AS 39.52.110 - 39.52.220.

Article 04. COMPLAINTS; HEARING PROCEDURES

Sec. 39.52.310. **Complaints.**

(a) The attorney general may initiate a complaint, or elect to treat as a complaint, any matter disclosed under AS 39.52.210, 39.52.220, 39.52.250, or 39.52.260. The attorney general

may not, during a campaign period, initiate a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office.

(b) A person may file a complaint with the attorney general regarding the conduct of a current or former public officer. A complaint must be in writing, be signed under oath, and contain a clear statement of the details of the alleged violation.

(c) If a complaint alleges a violation of AS 39.52.110 - 39.52.190 by the governor, lieutenant governor, or the attorney general, the matter shall be referred to the personnel board. The personnel board shall return a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office as provided in (j) of this section if the complaint is initiated during a campaign period. The personnel board shall retain independent counsel who shall act in the place of the attorney general under (d) - (i) of this section, AS 39.52.320 - 39.52.350, and 39.52.360(c) and (d). Notwithstanding AS 36.30.015(d), the personnel board may contract for or hire independent counsel under this subsection without notifying or securing the approval of the Department of Law.

(d) The attorney general shall review each complaint filed, to determine whether it is properly completed and contains allegations which, if true, would constitute conduct in violation of this chapter. The attorney general may require the complainant to provide additional information before accepting the complaint. If the attorney general determines that the allegations in the complaint do not warrant an investigation, the attorney general shall dismiss the complaint with notice to the complainant and the subject of the complaint.

(e) The attorney general may refer a complaint to the subject's designated supervisor for resolution under AS 39.52.210 or 39.52.220.

(f) If the attorney general accepts a complaint for investigation, the attorney general shall serve a copy of the complaint upon the subject of the complaint, for a response. The attorney general may require the subject to provide, within 20 days after service, full and fair disclosure in writing of all facts and circumstances pertaining to the alleged violation. Misrepresentation of a material fact in a response to the attorney general is a violation of this chapter. Failure to answer within the prescribed time, or within any additional time period that may be granted in writing by the attorney general, may be considered an admission of the allegations in the complaint.

(g) If a complaint is accepted under (f) of this section, the attorney general shall investigate to determine whether a violation of this chapter has occurred. At any stage of an investigation or review, the attorney general may issue a subpoena under AS 39.52.380.

(h) A violation of this chapter may be investigated within two years after discovery of the alleged violation.

(i) The unwillingness of a complainant to assist in an investigation, the withdrawal of a complaint, or restitution by the subject of the complaint may, but need not in and of itself, justify termination of an investigation or proceeding.

(j) The personnel board shall return a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for state office received during a campaign period to the complainant unless the governor or lieutenant governor, as appropriate, permits the personnel board to assume jurisdiction under this subsection. If the personnel board receives a complaint concerning the conduct of the governor or lieutenant governor who is a candidate during the campaign period, the personnel board shall immediately notify the subject of the complaint of the receipt of the complaint, of the suspension of the personnel board's jurisdiction during the campaign period, and of the candidate's right to waive the suspension of jurisdiction under this subsection. The candidate may, within 11 days after the personnel board mails or otherwise sends notice of the complaint to the candidate, notify the personnel board that the candidate chooses to have the personnel board proceed with the complaint under this section. If the

candidate does not act within that time or if the candidate notifies the personnel board that the candidate is not waiving the suspension of jurisdiction, the personnel board shall return the complaint to the complainant with notice of the suspension of jurisdiction under this subsection and of the right of the complainant to file the complaint after the end of the campaign period.

(k) A campaign period under this section begins on the later of 45 days before a primary election in which the governor or lieutenant governor is a candidate for state office or the day on which the individual files as a candidate for state office and ends at the close of election day for the general or special election in which the individual is a candidate or on the day that the candidate withdraws from the election, if earlier. For a candidate who loses in the primary election, the campaign period ends on the day that results of the primary election showing that another individual won the election are certified.

Sec. 39.52.320. **Dismissal before formal proceedings.**

If, after investigation, it appears that there is no probable cause to believe that a violation of this chapter has occurred, the attorney general shall dismiss the complaint. The attorney general shall communicate disposition of the matter promptly to the complainant under AS 39.52.335(c) and to the subject of the complaint.

Sec. 39.52.330. **Corrective or preventive action.**

After determining that the conduct of the subject of a complaint does not warrant a hearing under AS 39.52.360, the attorney general shall recommend action to correct or prevent a violation of this chapter. The attorney general shall communicate the recommended action to the complainant and the subject of the complaint. The subject of the complaint shall comply with the attorney general's recommendation.

Sec. 39.52.335. **Summary of disposition of complaints and review by personnel board.**

(a) When the attorney general initiates or receives a complaint under AS 39.52.310, the attorney general shall immediately forward a copy of the complaint to the personnel board.

(b) Each month, the attorney general shall file a report with the personnel board concerning the status of each pending complaint and the resolution of complaints that have been closed since the previous report.

(c) If a complaint is dismissed under AS 39.52.320 or resolved under AS 39.52.330, the attorney general shall promptly prepare a summary of the matter and provide a copy of the summary to the personnel board and the complainant. The summary is confidential unless the

(1) dismissal or resolution agreed to under AS 39.52.320 or 39.52.330 is public; or

(2) superior court makes the matter public under (h) of this section.

(d) Within 15 days after receipt of a summary under this section, a complainant may file comments with the personnel board regarding the disposition of the complaint.

(e) At its next regular meeting that begins more than 15 days after receipt of a summary under this section, the personnel board shall review the summary and comments, if any, filed by the complainant. The personnel board may compel the attendance of the subject of the complaint or the complainant at the meeting and may compel the production of documents. Attendance may be by teleconference. The attorney general or the attorney general's designee shall be available to respond to questions from the personnel board concerning the disposition of the complaint.

(f) After review of the summary, the personnel board may issue a report on the disposition of the complaint. If the matter is confidential and the board determines that

HOUSE & SENATE JOURNALS

STATE OF ALASKA

FOURTEENTH LEGISLATURE

First Special Session

July 15, 1985 - August 5, 1985

M55

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LEGISLATIVE AFFAIRS AGENCY
Juneau, Alaska

Senator Halford moved and asked unanimous consent that the journals for the first through the twenty-first legislative days of the First Special Session of the Fourteenth Alaska Legislature and Senate Supplement No. 41 be approved as certified by the Secretary. Without objection, it was so ordered.

MESSAGES FROM THE GOVERNOR

HCR 39

Message of July 17 was read, stating the Governor read the following resolution and transmitted the engrossed and enrolled copies to the Lieutenant Governor's Office for permanent filing:

HOUSE CONCURRENT RESOLUTION NO. 39
(Authorizing a recess by the Senate or the House of Representatives for a period of more than three days)

Legislative Resolve No. 26

STANDING COMMITTEE REPORTS

Received July 22, 1985:

AUTHORIZATION FOR ISSUANCE OF SUBPOENAS

The undersigned members of the Rules Committee hereby authorize the committee chair to issue subpoenas requiring the attendance of witnesses before the Rules Committee to testify in connection with the Rules Committee's inquiry into the report of the Grand Jury concerning the Governor's involvement in the State's award of the lease to the Fifth Avenue Center in Fairbanks. This authorization is given in accordance with Alaska Statute 24.25.010(b).

/s/ Tim Kelly
Senator Tim Kelly, Chairman
Date: 7/18/85

Senator Jack Coghill
Date

/s/Don Bennett
Senator Don Bennett
Date: 7/18/85

/s/ Jan Faiks
Senator Jan Faiks
Date: 7/18/85

/s/ Joe Josephson
Senator Joe Josephson
Date: 7/18/85

I hereby concur.

/s/ Don Bennett
Don Bennett, President
Alaska State Senate
Date: 7/18/85

"August 5, 1985

SENATE RULES COMMITTEE

INQUIRY INTO THE JULY 1, 1985 GRAND JURY REPORT

Dear Mr. President:

Pursuant to your instruction of July 15, 1985, the Senate Rules Committee has inquired into the July 1, 1985 Grand Jury Report and reports back as follows:

1. On July 2, 1985, the Superior Court, First Judicial District released a Grand Jury Report regarding the circumstances surrounding a state lease of the Fifth Avenue Center in Fairbanks. That Grand Jury had been investigating the lease since April 24, 1985.

2. The Grand Jury Report stated that the evidence disclosed 'serious abuse of office by Governor William Sheffield and his Chief of Staff'. The Grand Jury made eight specific recommendations. The first of these recommendations was that the Alaska Legislature be called into Special Session to consider the evidence for the express purpose of initiating impeachment procedures against the governor.

3. In response to this clear call by the Grand Jury, the Alaska Legislature convened in special session on July 15, 1985. Alaska's Constitution charges the State Senate with the responsibility of originating a motion for impeachment and the House of Representatives with the responsibility of trial on impeachment. The Constitution provides that 'the motion for impeachment shall list fully the basis for the proceeding' and requires a two-thirds vote for passage. The impeachment process is difficult as it rightfully should be difficult.

4. Impeachment is unprecedented in our state and rare in the history of our nation. It is a matter of utmost importance and the Senate approached this matter with the gravity that it deserved. Acting on the limited precedent provided by the expulsion of a former state senator from the legislature, the Senate President referred the matter to the Senate Rules Committee. The Senate retained the services of Samuel Dash, one of the most knowledgeable attorneys it could find in this rare area of legal expertise, to act as Chief Counsel.

5. As a first order of business, the Rules Committee adopted rules of procedure. It was determined that all twenty senators would be invited to attend and participate in all meetings. Although the Constitution does not expressly require that a Governor be allowed to participate in Senate impeachment hearings, the committee voted to allow the Governor and his counsel full participation, in order to assure due process in every stage of the hearing.

6. The Committee then adopted a burden of proof of 'clear and convincing evidence' and narrowed the scope of the inquiry to matters referred to the Senate by the Grand Jury. The chairman made plain that a wide latitude of debate and questioning concerning areas mentioned in the Grand Jury Report would be allowed. The last major item of procedural business by the committee was to adopt a definition of impeachable offenses. The Committee defined impeachable offenses as 'serious misconduct in office, such as treason, malfeasance, misfeasance, corruption or perjury'.

7. In their search to determine the truth in this matter, members of the Senate have reviewed twelve volumes of Grand Jury transcripts, which include almost 3,000 pages and the testimony of forty-four witnesses. We have reviewed the transcripts of statements by witnesses obtained during the investigation and considered numerous legal briefs and oral arguments by counsel to the Senate, counsel to the Governor and the Legislative Affairs Agency. We have heard testimony by nine witnesses, including Governor Sheffield, and developed our own printed record of more than 3,000 pages over twelve days of hearings.

8. Although the financial and civic costs of this special session have been high we believe that in the long run it will serve Alaska's public well. Some costs were inevitable due to the timing of the Grand Jury's action, such as the need for convening a special session of the Legislature rather than taking up the matter during a regular Legislative session. We also believe that the national attention given Alaska's impeachment proceedings and the importance of our inquiry as a legal precedent required the retention of expert legal advice. The benefits of this experience may not be seen immediately but will be felt in years to come in the form of solving existing problems brought to light through this process and avoidance of future public expenses.

9. Probably every one of the twenty senators has his or her own opinion of exactly what happened to cause us to have to sit together in this unhappy judgment. None of us can look inside another's heart or mind, however, and Governor Sheffield says he cannot remember a number of the events, the recollection of which would have clarified his personal involvement in this matter and made our judgment easier.

10. It is the opinion of a majority of the Rules Committee that the evidence that an impeachable offense occurred, though substantial, does not rise to the level of 'clear and convincing evidence'. The Rules Committee also believes that sufficient support to approve one or more articles of impeachment is not available in the full Senate.

11. We therefore offer this report as an affirmation to the members of the public and those state employees who came forward and put their careers in jeopardy and as a condemnation of those within the state system who have, according to the record we ourselves have developed, abused the public trust and brought discredit upon themselves and this administration.

12. A lack of a recommendation to impeach the governor should not be interpreted, however, as in any way condoning the standard of behavior that has brought us here. The Governor's Chief of Staff has admitted to lying to prosecutors and destroying evidence. There is also testimony that other evidence was directed to be destroyed. There is a clear pattern of persons in the Governor's Office being more concerned with deniability than accountability. We find that there was clear failure on the part of the Governor to set the tone for his administration: a failure to declare standards of appropriate conduct for his appointees in achieving the Governor's goals.

13. This report should not be viewed in any way as critical of Governor Sheffield's expressed goal of state office consolidation in our major urban areas. We believe these goals are in the broadest public interest, and we feel this affair should not stop or delay future consolidation. However, the manner in which the Fairbanks office consolidation lease contract was awarded is absolutely unacceptable and we urge that all future efforts in this direction be above reproach.

14. There is direct evidence that at the Governor's request, a request for proposals was sent to a member of a partnership which was a potential bidder on the Fairbanks Office Consolidation lease, giving that bidder a definite competitive advantage over other potential bidders. While release of the R.F.P. is not in itself a criminal offense it is clearly contrary to the standards and practices for contracting of the Division of General Services & Supply, Department of Administration. Political or personal relationships are not a justification for the advanced release of any information in state government. We recommend that the regulations of the Governor's office in this area be promptly modified to include this common-sense principle with specific exceptions left to the individual departments.

15. There is further evidence that at a later date the competitive bid process was changed to a sole source contract. This change to a sole source contract could well have been rationalized with public policy goals, but the Governor's total lack of memory of a key meeting precipitating this change, even after hearing detailed accounts of it by the other participants, raises serious doubts to his credibility.

16. In fact the whole pattern of the Governor's memory lapses is disturbing. During his testimony, the Governor exhibited almost verbatim recall of conversations and events that were favorable to him and a substantial lack of recall of events that might reflect upon him unfavorably.

17. The Grand Jury Report states: 'The evidence from a substantial number of witnesses also indicates that employees in the Department of Administration and the Department of Law may have eventually acquiesced in the intervention by the Governor's Office in part because they perceived that this was not an isolated instance but one that followed a series of other such episodes'. In the process of the Senate hearings on impeachment, a number of other issues of concern were touched on but it was not appropriate to follow up these issues because of the established scope of the hearings, the resources of the committee and the time available. It is recommended that the Department of Law review the transcripts of the Senate Rules hearings to determine whether other items, such as the Anchorage Office Lease and the Frontier Office Building lease might be appropriate subjects for separate review or investigation.

18. In this connection, we believe that the Attorney General was remiss in failing to insist upon direct access to the Governor, when the subject matter directly or potentially involved members of the Governor's Office staff.

19. In addition to its first recommendation regarding impeachment, the Grand Jury made seven additional recommendations. The Grand Jury's eighth recommendation was that the state lease of the Fifth Avenue Center be voided. On July 2, 1985, the Attorney General issued an opinion stating the lease should be voided.

20. The remaining six recommendations of the Grand Jury are: an executive branch code of ethics, adoption of revised procurement procedures, state employee awareness of ethical obligations, legislative review of problems presented by access to government officials to promote private pecuniary interests, implementation of procedures to promote the competitive bidding process, and adoption of standards pertaining to bid waivers. We strongly endorse these recommendations and believe that the legislative and executive branches must work together to achieve them. The impeachment hearings have emphasized the need for an executive branch code of ethics. They have also made evident the need for improved campaign financing laws, a subject currently under intensive study by the Senate State Affairs Committee.

21. The Constitution of Alaska provides: 'The power of grand juries to investigate and make recommendations concerning the public welfare or safety shall never be suspended'. The committee believes that this power has served the public and State well and will continue to do so in the future. However, it is also believed that the Senate Rules Hearings have made evident that a better understanding about the limits of the powers of a Grand Jury would have made it easier to devote our attention to the relevant issues during the hearings. In particular, the Grand Jury should have been instructed that impeachment is a political process and not a substitute for judicial remedies.

22. It is our hope that these matters will be taken up as a matter of highest priority, at the beginning of the Second Session of the Fourteenth Alaska Legislature. To help facilitate this we urge the full Senate to pass the attached resolution calling for the President of the Senate to appoint a select interim committee on procurement practices and procedures. We also recommend that a resolution requesting Judicial Council recommendations on grand jury investigative procedures be approved.

23. The committee agrees with the Grand Jury that, '...government officials must always aim for what is best for the public, not merely for what might be 'okay'. Every public official has a duty of loyal, faithful and honest service which is clearly inherent in the responsibilities of public office at all levels'.

24. The 15 citizens sitting on the Grand Jury have expressed goals that everyone in public service must aspire to but were plainly lacking in the conduct of some of the Administration officials involved here. Alaskans will not tolerate those who violate this duty.

CONCURRED IN BY:

/s/ Tim Kelly
Senator Tim Kelly, Chairman
Chairman

/s/ J B Jack Coghill
Senator Jack Coghill,
Vice Chairman

/s/ Jan Faiks
Senator Jan Faiks

/s/ Don Bennett
Senator Don Bennett

/s/ Joe Josephson: I concur in paragraphs 1-9 and 17-24 but do not concur in significant portions of paragraphs 10-16. A supplemental report is attached. JPJ
Senator Joe Josephson"

"Supplemental Report of Senator Josephson

I have concurred in the majority report because I agree with the operative result of the report, and especially the recommendations for the adoption of the two resolutions to which the report referred.

I am noting, however, my specific nonconcurrence with significant proportions of numbered paragraphs 10-16 of the majority report, and accordingly, I submit herewith my separate or supplemental views.

Governor Sheffield should not be impeached.

It has been said that any impeachment hearing has about it an aura of sadness. But I also see reasons to be hopeful about Alaska's future as a result of these proceedings.

First, Alaskans have seen State government in close-up. Interest in government is increased, and the constituency for statutory reforms is enlarged.

Second, our legal system, displayed in these proceedings through good research, cross-examination and advocacy, has proved again its great value for truth-finding.

Third, the Legislature has received information and gained insights that will help in assessing legislation relating to ethics, procurement practices, and grand jury procedures.

Fourth, an undercurrent of gossip, rumors, and innuendo has been replaced by truth.

A. The Grand Jury Report.

The Grand Jury report called on the Senate to consider impeachment. The Senate has responded, and considered the report and other materials and testimony. To conclude that impeachment is not appropriate, and that Governor Bill Sheffield committed no impeachable offense, is not to reflect adversely upon the grand jurors or their work.

The grand jurors, the record shows, were serious, diligent, and thoughtful. But they did not know the whole story. It is no criticism of the prosecutors to note that grand juries are not, and never were, created for the purpose of providing full and fair hearings that go to the merits of a charge. That is why a Grand Jury indictment, even when rendered -- and there was no indictment here -- is nothing more than an accusation, and why a person indicted is presumed to be innocent of the accusation unless convicted after trial.

The grand jurors were told to consider impeachment, but they were never told what constitutes an impeachable offense, under the historical precedents or the debates in the Alaska Constitutional Convention.

The grand jurors heard arguments of lawyers, but they never heard the arguments of Governor Sheffield's attorneys or the mature reflections of Senate Chief Counsel Sam Dash.

The grand jurors saw documents, but they did not see all the documents that the Rules Committee saw.

And at least some of the witnesses before the Grand Jury, including Anselm Staack and Bill Sheffield, were directed to answer the questions that would satisfy the prosecutors' notions of relevancy and materiality rather than the witnesses' desire to give a full and balanced account of the surrounding circumstances and the context in which events or conversations took place.

Apart from the question of impeachment, the Grand Jury made legislative recommendations, pointing out the need to reassess the existing statutes involving conflict-of-interest, ethics, procurement practices (including bid waivers and sole source procurement), and employee awareness of ethical obligations.

The record of these proceedings confirms the urgency of these recommendations. They reflect that existing laws and regulations are confusing, inconsistent, insufficient, and obscure. The Senate should establish a Select Interim Committee to address these problems forthwith.

B. The Fifth Avenue Center Procurement.

Since the Rules Committee has voted to narrow the scope of the inquiry to the question of perjury, little comment is necessary about the procurement process which led to the State's lease of office space at the Fifth Avenue Center in Fairbanks.

However, a brief commentary is in order. I find no impeachable conduct. I do not find by clear and convincing evidence that the conduct of Chief of Staff, John Shively, prior to the commencement of the criminal investigation by Prosecutor Hickey, was improper.

Mr. Shively was confronted with a bureaucratic element well practiced in what Mr. Staack called 'end run', 'slow roll', and 'creeping commitment' techniques for thwarting administrative policy. Mr. Shively, and Governor Sheffield, came to government as doers and movers and as action-oriented leaders. Mr. Shively conveyed strong views to the Department of Administration, but that is the job of the Chief of Staff.

Mr. Shively knew that Governor Sheffield favored the consolidation of office space for certain state agencies in Fairbanks, in the downtown area. He never interfered in the negotiation of the lease, either by dictating or pressuring for prices favorable to the owners or for the owners' desire for a lease of more square footage. He acquiesced in recommendations by the Department of Law and the Department of Administration for a bid waiver procedure, and was personally involved in the decision to reject the 'footprint' for the

smallest qualifying zone for lease space which Mr. Arsenault presented on October 2. Finally, it appears that the ultimate result, the lease itself, gave the State high-quality space at a fair price in the area of town where local civic groups and community leaders had recommended the consolidation to be.

Assuming, for purposes of discussion only, that John Shively acted improperly in his contacts with the Department of Administration with regard to the Fairbanks consolidation project, the evidence did not show that his improper actions came at the direction of Governor Sheffield. On the contrary, the evidence is clear that Mr. Shively himself never considered that he was acting upon the Governor's instructions or directions -- except for the appropriate general direction to keep forward progress on the consolidation project and to secure consultation and reaction to the 'footprint' or development zone presented by Mr. Arsenault on behalf of the owners.

It is true, of course, that any elected official must be answerable to the electorate for the actions of his or her subordinates. That is only fair; since politicians take credit for the good that subordinates do, they must also be prepared to take the blame for subordinates' mistakes.

But that is a political consideration, and is fittingly raised in traditional give and take of free, robust debate of the political process.

For impeachment purposes, an official is not responsible for the actions of subordinates unless those actions came about through the active participation of the official, or at the official's instructions or directions.

'Serious misconduct', as defined, includes 'misfeasance' and 'malfeasance', not nonfeasance or a failure of supervision.

In summary, I find that the Chief of Staff did not intervene improperly with respect to the Fifth Avenue Center, and that even if he did, his conduct is not imputable to Governor Sheffield for purposes of impeachment without a showing of 'serious misconduct', 'misfeasance', or 'malfeasance' on the part of Governor Sheffield, established by clear and convincing evidence. Accordingly, there was no impeachable conduct.

C. Perjury

From the outset, I determined that perjury constitutes an impeachable offense. A democratic society cannot operate effectively if its chief executive were to knowingly lie to a grand jury under oath. If clear and convincing evidence established that Governor Sheffield committed perjury before the Grand Jury, I would have voted to impeach Governor Sheffield without hesitation.

But there is no such clear and convincing evidence. Reviewing the Governor's testimony, former Attorney General Gorsuch found 'confusion' and possible 'inconsistency' with Mr. Gorsuch's own recollections; those findings, if believed, do not establish perjury.

I will not debate here at length all of the reasons for my conclusion that clear and convincing evidence was not presented to establish perjury. But some of the reasons follow:

1. By the time the Governor testified, he had received a detailed briefing about the investigation by Prosecutor Hickey. Therefore, the Governor must have had great difficulty in sorting out, as he testified, those matters that he knew from his own memory and those matters that he knew from the briefing only. Obviously, it would have been improper and inappropriate for the Governor to tell the Grand Jury propositions of fact which had been recited to him in the briefing, unless he had personal knowledge of the same matters. (Criminal Rule of Procedure 6(r); see 'Memorandum Concerning Norman Gorsuch's Testimony And the Questioning of the Governor Before the Grand Jury' by Messrs. Conway and Lacovara.)

2. It is clear from the testimony of Mr. Shively and Mr. Arsenault that nothing occurred at the October 2, 1984, meeting they attended with Governor Sheffield which was improper, or which involved a direction or instruction from Governor Sheffield to 'rig' the Fairbanks lease. Therefore, there is no motive ascribable to the Governor that would explain a deliberate falsehood.

3. Governor Sheffield acknowledged with candor that it was 'highly probable' that the October 2 meeting took place, and he added that he was 'not doubting' that the meeting occurred and that the subject of Mr. Arsenault's requests were discussed. (GJ Tr. 1762).

4. Persuasive extrinsic evidence to corroborate the notion that Governor Sheffield deliberately and knowingly lied with respect to any issue was not presented. In fact, as Professor Dash said in his closing statement, the whole case against the Governor rested on circumstantial evidence only. While evidence of a fact can be circumstantial as well as direct, the record reveals at least as many circumstances to suggest that Governor Sheffield attempted to tell the truth to the Grand Jury as there were to suggest the contrary.

D. Recommendations.

From these hearings, many lessons can be learned. The legislative branch, as noted above, needs to address the public policy issues raised by the Grand Jury, in a thorough review of procurement practices, conflict-of-interest laws, proposals for a code of ethics for the executive branch, and related subjects. In addition, legislation is needed to require that future grand jury reports, when released, meet the tests applied by Judge Sirica when he authorized delivery to

the Judiciary Committee of the House of Representatives in Congress of a Watergate grand jury report, or to assure that any unindicted officer who is the subject of such a report will be given a simultaneous opportunity to comment upon its contents, as required under federal law since 1970.

The executive branch needs to learn lessons, too.

The bureaucracy has an especially difficult task. On the one hand, it must bring to the attention of competent higher authority concerns about possible misunderstandings or violations of applicable laws, regulations and policies. The government of Alaska is still relatively small; it is certainly not a military or paramilitary organization, and even in the armed forces, procedures exist to bring problems to the attention of those at the highest level of the command chain. Accordingly, Governor Sheffield and his immediate advisors must reiterate their willingness to hear and consider the advice of the bureaucracy, and the bureaucracy must be willing to give that advice.

But on the other hand, the bureaucracy must understand the distinction between legal constraints and mere policy difference. It must respect the right of the people, who are sovereign, to impose their will on the bureaucracy through the people's elected officials. When the policies are set, and violate no laws or regulations, the bureaucracy must respond. When laws are enacted, they must be implemented.

Governor Sheffield came to office determined to have an 'open door' operation and an open government. I find from this record that this determination has always existed. For example Governor Sheffield testified that he told John Shively that the files on the Fairbanks office lease case should be given to the News-Miner, whether or not it contained 'politically embarrassing' materials. But around the Governor, there developed an atmosphere of over protectiveness. The trauma of these proceedings give the administration a new opportunity to implement the spirit of the Governor's determination for open government.

The Grand Jury report closed by noting that 'government officials must always aim for what is best for the public, not merely for what might be 'okay'.'

I concur. If we do not aspire to the best, we will not attain the good.

At the same time, let us never be so righteous, or self-righteous, as to think that we will have, or that we are entitled to have, an infallible government. In a free nation, government is people, and people are fallible.

Probably the greatest executive the American nation has seen was Abraham Lincoln. He was also the most villified leader we have ever had.

Abraham Lincoln held no malice towards those who criticized him. He said: 'I shall try to correct errors when shown to be errors; and I shall adopt new views so fast as they shall appear to be true views.'

And I hope it is a comfort to Governor Bill Sheffield to recall Lincoln's peace of mind in the secure knowledge that he was doing the best he could:

> 'If I were to try to read, much less answer, all the attacks made on me, this shop might as well be closed for any other business.'
> 'I do the very best I know how -- the very best I can; and I mean to keep doing so until the end. If the end brings me out all right, what is said against me won't amount to anything. If the end brings me out wrong, ten angels swearing I was right would make no difference.'

In closing, I want to commend Chairman Kelly of the Rules Committee for the manner in which he conducted the proceedings in these difficult days. The people of Alaska can be satisfied, whatever their conclusions or their views, or their political affiliation, that all points of view have been expressed, and that Governor Sheffield received due process of law.

/s/ Joe P. Josephson
Joe P. Josephson
Member, Senate Rules Committee"

Senator Halford moved and asked unanimous that the preceding Rules Committee Report be spread. Without objection, it was so ordered.

Senator Halford stated for the record that the report represents the views of the members of the Rules Committee and not the Senate as a whole.

Senator Ferguson moved and asked unanimous consent that his Senate floor statement of today be spread. Without objection, it was so ordered.

"SENATE FLOOR STATEMENT
DUE PROCESS: RIGHTS OF THE ACCUSED
SENATOR FRANK R. FERGUSON
MONDAY AUGUST 5, 1985

Up until Saturday, August 3, the Senate Rules Committee proceedings were open and fair because the accused had an avenue for presenting facts to challenge the validity of certain documents.

However, during the Saturday hearing, the Rules Committee 'failed' to give the accused the opportunity to challenge the validity of the Draft Rules Committee Reports and/or Resolutions.

Since these proceedings were an investigation, the Senate Rules Committee had a constitutional obligation to allow the accused to have direct access to the Rules Committee meeting to challenge the validity of various accusations which is exactly what the Grand Jury failed to do.

'Two wrongs....don't make a right'

Even a governor is entitled to due process of the law especially under legislative investigations as required by the State Constitution. The fact in point is the 'Declaration of Rights' Article I, Section 7: DUE PROCESS

Quote - 'No person shall be deprived of life, liberty, or property without due process of law. The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed'. End Quote

This clause in the 'Declaration of Rights' has been elevated to a prominent principle of justice and fair play that may never be violated by any branch of government.

The Alaska Constitutional delegates incorporated novel language in this section by explicitly extending the due process principle to both legislative and executive investigations. This was done in reaction to the blusterous 'anti-communist' investigations of Senator Joseph McCarthy in the mid-1950's that offended the public sense of fair treatment by government investigations.

While I find nothing wrong with a grand jury, when authorized, to release a report containing recommendations concerning the public welfare and safety, I find the legal basis of allowing a grand jury to issue a report naming a public official without returning an indictment to be deliberately or unprofessionally negligent.

I cannot support this report in good conscience because we did not give the accused due process in the final segment of the Senate Rules Committee's Legislative Investigation as envisioned by the framers of the Alaska State Constitution."

INTRODUCTION OF SENATE RESOLUTIONS

SR 5

SENATE RESOLUTION NO. 5 by Senator Vic Fischer,

Requesting Judicial Council recommendations on grand jury investigative procedures,

was read the first time.

18 of 20 DOCUMENTS

OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF ALASKA

NO NUMBER IN ORIGINAL

[redacted]. *AG LEXIS 611;* 1980 Op. (Inf) Atty Gen. Alas.

May 5, 1980

TYPE: INFORMAL OPINION

SYLLABUS:
[*1]

Re: Alaska Renewable Resources Corporation Subpoena.

REQUESTBY:

The Honorable Alvin Osterback
Co-chairman
House Resources Committee
Alaska State Legislature
Pouch V
Juneau, Alaska 99811

OPINIONBY:

AVRUM M. GROSS, ATTORNEY GENERAL; Arthur H. Peterson, Assistant Attorney General

OPINION:

As requested by your committee's assistant, Diane Morrison, you will find the following documents attached for your use:

- a subpoena duces tecum for the three trustees of the Alaska Renewable Resources Corporation;

- an affidavit of service.

In order to make this subpoena valid, you must have the authorization of a majority of your committee and get Speaker Gardiner's concurrence, in accordance with *AS 24.25.010(b)*. Also it must be served in accordance with *AS 24.25.020*.

RESOURCES COMMITTEE
HOUSE OF REPRESENTATIVES
ALASKA STATE **LEGISLATURE**

In the Matter of the Investigation)
)
of Certain Matters Concerning the)
)
Alaska Renewable Resources Corporation)
)

SUBPOENA DUCES TECUM

TO: Philip Hubbard, Trustee

Dean Olson, Trustee

William Spear, Trustee

Alaska Renewable Resources Corp.

2nd Floor, Madsen Building

Juneau, Alaska 99801

Under the authority of art. II of the Alaska Constitution, [*2] and in accordance with *AS 24.25.010(b)*, the Resources Committee of the Alaska House of Representatives directs you to appear at Room 116 of the State Capitol Building, Juneau, Alaska, on May 8, 1980, at 10:00 a.m., to give testimony on:

1. The reasons for the resignation of Jack Milnes as a trustee of the Alaska Renewable Resources Corporation (ARRC).

2. The recent financial assistance agreement between ARRC and TEPA, Inc.

3. Major problems currently facing ARRC.

In addition, you are to produce at that time and place all correspondence, applications, and other records pertaining to items 1 and 2 above.

Information made confidential by AS 37.12.120, and which is required by this **subpoena** to be produced, must be identified as such by ARRC. The House Resources Committee and all other **legislators** and staff participating in this investigation will keep that information confidential.

DATED: , 1980

Juneau, Alaska

Alvin Osterback, Co-chairman

Resources Committee

House of Representatives

Alaska State Legislature

Bill Miles, Co-chairman

Resources Committee

House of Representatives

Alaska State Legislature

CONCUR:

Terry Gardiner

Speaker of the House

Alaska State [*3] Legislature

Legal Topics:

For related research and practice materials, see the following legal topics:
Civil ProcedurePretrial MattersSubpoenasGovernmentsState & Territorial GovernmentsLegislatures

Order Code RL31836

Report for Congress

Received through the CRS Web

Congressional Investigations: Subpoenas and Contempt Power

April 2, 2003

Louis Fisher
Senior Specialist in Separation of Powers
Government and Finance Division

Congressional Investigations: Subpoenas and Contempt Power

Summary

When conducting investigations of the executive branch, congressional committees and Members of Congress generally receive the information required for legislative needs. If agencies fail to cooperate or the President invokes executive privilege, Congress can turn to a number of legislative powers that are likely to compel compliance. The two techniques described in this report are the issuance of subpoenas and the holding of executive officials in contempt. These techniques usually lead to an accommodation that meets the needs of both branches. Litigation is used at times, but federal judges generally encourage congressional and executive parties to settle their differences out of court. The specific examples in this report explain how information disputes arise and how they are resolved.

For legal analysis see CRS Report 95-464A, *Investigative Oversight: An Introduction to the Law, Practice, and Procedure of Congressional Inquiry*, by Morton Rosenberg, and CRS Report RS30319, *Presidential Claims of Executive Privilege: History, Law, Practice and Recent Developments*, by Morton Rosenberg. A number of legislative tools, including subpoenas and contempt citations, are covered in CRS Report RL30966, *Congressional Access to Executive Branch Information: Legislative Tools*, by Louis Fisher. For a general report on oversight methods, see CRS Report RL30240, *Congressional Oversight Manual*.

This report will be updated as events warrant.

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Congressional Investigations: Subpoenas and Contempt Citations

When conducting investigations of the executive branch, congressional committees and Members of Congress generally receive the information required for legislative needs. If agencies fail to cooperate or the President invokes executive privilege, Congress can turn to a number of legislative powers that are likely to compel compliance. The two techniques described in this report are the issuance of subpoenas and the holding of executive officials in contempt. These procedures usually lead to an accommodation that meets the needs of both branches. Litigation is used at times, but federal judges generally encourage congressional and executive parties to settle their differences out of court. The specific examples in this report explain how information disputes arise and how they are resolved.

Congressional Investigations

Although the congressional power to investigate is not expressly provided for in the Constitution, the framers understood that legislatures must oversee the executive branch. Under British precedents, lawmakers were expected to hold administrators accountable. James Wilson, one of the framers and later a Justice on the Supreme Court, expected the House of Representatives to "form the grand inquest of the state. They will diligently inquire into grievances, arising both from men and things."[1] In an essay in 1774, he described members of the British House of Commons as "grand inquisitors of the realm. The proudest ministers of the proudest monarchs have trembled at their censures; and have appeared at the bar of the house, to give an account of their conduct, and ask pardon for their faults."[2]

At the Philadelphia Convention, George Mason emphasized that Members of Congress "are not only Legislators but they possess inquisitorial powers. They must meet frequently to inspect the Conduct of the public offices."[3] Charles Pinckney submitted a list of congressional prerogatives, including: "Each House shall be Judge of its own privileges, and shall have authority to punish by imprisonment every person violating the same."[4] The Constitution, however, provided no express powers for Congress to investigate, issue subpoenas, or to punish for contempt. What was

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[1] 1 The Works of James Wilson 415 (1967 ed.).

[2] 2 Id. 731 (essay "Consideration on the Nature and Extent of the Legislative Authority of the British Parliament").

[3] 2 The Records of the Federal Convention of 1787, at 206 (Farrand ed. 1937). See also Mason's comments as reported by Madison, id. at 199.

[4] Id. at 341.

left silent would be filled within a few years by implied powers and legislative practice.

Early Precedents

During the First Congress, the House debated a request from Robert Morris to investigate his conduct as Superintendent of Finance during the period of the Continental Congress. The matter was referred to a select committee consisting of three Members.[5] The Senate adopted a different approach, preferring to authorize President George Washington to appoint three commissioners to look into the matter and report the results to Congress.[6] The House persisted with its committee, which issued a report on February 16, 1791.[7] The House committee investigation did not produce a total collision between the two branches because the area of inquiry concerned activities that occurred during the previous Continental Congress. Nevertheless, the House inquiry is significant because the House decided, as noted by James Madison, that it was necessary for Congress to acquire information in order to "do justice" to the country and to public officers.[8]

A 1790 request from Treasury Secretary Alexander Hamilton to Congress, seeking financial compensation for Baron von Steuben, triggered an early executive-legislative clash over access to documents. Although Hamilton initially withheld some materials from Congress, lawmakers received sufficient access to documents to permit passage of a bill for Steuben.[9] In this confrontation the leverage of Congress was formidable. Without cooperation from the Administration, Congress could refuse to pass the bill.

In 1792, the House conducted a major investigation by appointing a committee to inquire into the heavy military losses suffered by the troops of Maj. Gen. Arthur St. Clair to Indian tribes. The committee was empowered "to call for such persons, papers, and records, as may be necessary to assist their inquiries."[10] According to the account of Thomas Jefferson, President Washington convened his Cabinet to consider the House request. The Cabinet considered and agreed,

> first, that the House was an inquest, and therefore might institute inquiries. Second, that it might call for papers generally. Third, that the Executive ought to communicate such papers as the public good would permit, and ought to refuse those, the disclosure of which would injure the public: consequently were to

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[5] 1 Annals of Cong. 1168, 1204 (February 8, 10, 1790).

[6] Id. at 1233 (February 11, 1790).

[7] 2 Annals of Cong. 2017 (February 16, 1791).

[8] Id. at 1515 (March 19, 1790).

[9] 6 Stat. 2 (1790); 1 Annals of Cong. 972, 978-80; 2 Annals of Cong. 1572, 1584, 1606, 1609-10 (April 6, 19, May 7, 10, 1790); Kenneth R. Bowling and Helen Veit, eds., The Diary of William Maclay 265-74 (1988); 6 The Papers of Alexander Hamilton 221, 326-27 (Syrett ed. 1962).

[10] 3 Annals of Cong. 493 (March 27, 1792).

> exercise a discretion. Fourth, that neither the committee nor the House had a right to call on the Head of a Department, who and whose papers were under the President alone; but that the committee should instruct their chairman to move the House to address the President.[11]

The Cabinet concluded that "there was not a paper which might not be properly produced."[12] The House committee examined papers furnished by the executive branch, listened to explanations from department heads and other witnesses, and received a written statement from General St. Clair.[13] The general principle of executive privilege had been established because the President could refuse papers "the disclosure of which would injure the public." The injury had to be to the *public*, not to the President or his associates.

The first use of the investigative power to protect the dignity of the House occurred in 1795. William Smith, a Representative from South Carolina, announced that a Robert Randall had confided in him a plan to seek a grant of some twenty million acres from Congress, to be divided into forty shares. More than half that amount would be reserved to lawmakers who assisted him. The House passed a resolution directing the Sergeant at Arms to arrest Randall and one of his associates, Charles Whitney.[14] On January 6, 1796, the House concluded that Randall had been guilty of contempt and a breach of House privileges by attempting to corrupt the integrity of its Members. He was brought to the bar of the House, reprimanded, recommitted to custody, and released a week later.[15]

Four years later, the Senate opened an investigation into material published by William Duane, editor of the *Aurora* newspaper.[16] The Federalist Senate, voting 20 to 8 along party lines, regarded language in the newspaper as "false, defamatory, scandalous, and malicious; tending to defame the Senate of the United States, and to bring them into contempt and disrepute, and to excite against them the hatred of the good people of the United States."[17] Duane was ordered to appear at the bar of the Senate to defend his conduct. He appeared and asked for the assistance of counsel, which the Senate granted. He then refused to return, explaining that he was "bound by the most sacred duties to decline any further voluntary attendance upon that body, and leave them to pursue such measures in this case as, in their *wisdom*, they may deem meet."[18]

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[11] 1 The Writings of Thomas Jefferson 304 (Bergh ed. 1903).

[12] Id. at 305.

[13] 3 Annals of Cong. 1106-13 and Appendix (1052-59, 1310-17).

[14] Annals of Cong., 4th Cong., 1st Sess. 155-70 (1795).

[15] Id. at 171-245.

[16] Annals of Cong., 6th Cong., 1st-2d Sess. 63 (February 26, 1800).

[17] Id. at 111-12.

[18] Id. at 122 (emphasis in original).

It was for that action, and not the published material, that the Senate voted 16-12 to hold him in contempt.[19] A warrant was issued for his arrest, but Duane managed to stay a step ahead of the Sergeant at Arms.[20] The Senate adopted a resolution (13 to 4) requesting the President to prosecute Duane in the courts. He was indicted by a federal grand jury, but after several postponements was never convicted.[21]

The first committee witness punished for contempt of the House was Nathaniel Rounsavell, a newspaper editor, charged in 1812 with releasing sensitive information to the press. After being held in custody, he admitted that part of the source of his story was overhearing a conversation between Members of the House, but refused to identify the lawmakers or say where the conversation took place. In a letter he disclaimed any intention of showing disrespect to the House. Rep. John Smilie then identified himself as the Member who Rounsavell overheard, stating that the information that appeared in the newspaper was "of no importance" and that if the House wanted a victim he offered himself as a substitute for Rounsavell. The Speaker asked Rounsavell whether he was willing to answer questions put to him. After he agreed that he was, the House voted that he had purged himself of contempt and he was released.[22]

Judicial Guidelines

The Supreme Court first placed limits on congressional investigations in *Anderson* v. *Dunn* (1821). Rep. Lewis Williams informed the House that a Col. John Anderson had offered him $500 if he would reciprocate with certain favors. The House ordered the Sergeant at Arms to take Anderson into custody. After interrogation by the Speaker, the House voted Anderson in contempt and in violation of the privileges of the House. The Speaker reprimanded him and released him from custody.[23] The Supreme Court upheld the House action as a valid exercise in self-preservation. Without the power to punish for contempt, the House would be left "exposed to every indignity and interruption that rudeness, caprice, or even conspiracy may mediate against it."[24] However, the Court ruled that the power to punish for contempt was not unlimited. The House had to exercise the least possible power adequate to fulfill legislative needs (in this case, the power of imprisonment), and the duration of punishment could not exceed the life of the legislative body. Thus, imprisonment had to cease when the House adjourned at the end of a Congress.[25]

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[19] Id. at 123.

[20] James Morton Smith, Freedom's Fetters: The Alien and Sedition Law and American Civil Liberties 297-98 (1956).

[21] Id. at 306; Annals of Cong., 6th Cong., 1st-2d Sess. at 184.

[22] Annals of Cong., 12th Cong., 1st Sess. 1255-74.

[23] Annals of Cong., 15th Cong., 1st Sess. 580-83, 592-609, 777-90 (1818).

[24] Anderson v. Dunn, 6 Wheat. 204, 228 (1821).

[25] The Senate, a continuing body, is not limited by the expiration of a Congress; McGrain v. Daugherty, 273 U.S. 135, 181-82 (1927).

As a result of this decision, it would be possible for someone to violate the dignity of the House in the closing days of a Congress and be punished only for the remaining period. To handle such situations, Congress passed legislation in 1857 to enforce the attendance of witnesses on the summons of either House. If an individual fails to appear or refuses to answer pertinent questions, that person can be indicted for misdemeanor in the courts.[26] Witnesses can invoke their Fifth Amendment right not to incriminate themselves.

Initially the Court defined the legislative power to investigate somewhat narrowly. In 1881, it spoke of Congress investigating only with "valid legislation" in mind.[27] That particular case concerned the power of Congress to investigate the affairs of private citizens engaged in a real-estate pool. If the individuals committed a crime or offence, the Court said the judiciary would be the proper branch to act. The Court worried about "a fruitless investigation into the personal affairs of individuals."[28]

Later judicial rulings came to recognize a much greater sweep to congressional authority. In 1927, the Court faced a situation where Congress looked not into the activities of people in the private sector but rather the conduct of the executive branch, particularly the administration of the Justice Department. The Court first stated that "the power of inquiry—with process to enforce it—is an essential and appropriate auxiliary of the legislative function."[29] Congress could not legislate "wisely or effectively in the absence of information."[30] Unlike the decision in 1881, the Court in 1927 did not confine congressional investigations to "valid legislation." Congress had a right to seek information "for legislative purposes."[31] The Court recognized that the Senate resolution that launched the investigation of the Justice Department

> does not in terms avow that it is intended to be in aid of legislation; but it does show that the subject to be investigated was the administration of the Department of Justice—whether its functions were being properly discharged or were being neglected or mistreated, and particularly whether the Attorney General and his assistants were performing or neglecting their duties in respect of the institution and prosecution of proceedings to punish crimes and enforce appropriate remedies against the wrongdoers—specific instances of alleged neglect being recited.[32]

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[26] 11 Stat. 155 (1857), amended by 12 Stat. 333 (1862). The 1857 law, as amended, was upheld by the Supreme Court; In re Chapman, 166 U.S. 661 (1897). As amended in 1936 (49 Stat. 2041) and 1938 (52 Stat. 942), this law is codified at 2 U.S.C. § 192-94 (2000).

[27] Kilbourn v. Thompson, 103 U.S. 168, 195 (1881).

[28] Id.

[29] McGrain v. Daugherty, 273 U.S. at 174.

[30] Id. at 175.

[31] Id. at 177.

[32] Id.

It was enough, said the Court, that the subject of investigation "was one on which legislation could be had and would be materially aided by the information which the investigation was calculated to elicit."[33] That is, a *potential* for legislation was sufficient. A congressional investigation could have legislation as a possible, but not a necessary, outcome. Investigation as pure oversight into the operations of the executive branch was adequate justification.

To accomplish the purpose of legislation or oversight, each House is entitled to compel witnesses to provide testimony pertinent to the legislative inquiry.[34] Even the "potential" theory too narrowly circumscribes legislative investigations. Courts recognize that committee investigations may take researchers up "blind alleys" and into nonproductive enterprises: "To be a valid legislative inquiry there need by no predictable end result."[35]

Subpoenas

The Supreme Court has described the congressional power of inquiry as "an essential and appropriate auxiliary to the legislative function."[36] The issuance of a subpoena pursuant to an authorized investigation is "an indispensable ingredient of lawmaking."[37] This section describes how committee subpoenas are used to force testimony and the release of documents, and how Congress can grant immunity to individuals who exercise their Fifth Amendment privilege against self-incrimination. The particular examples of subpoena power selected here include these actions: Rep. John Moss arrayed against the Federal Trade Commission, a House subcommittee requesting documents regarding Justice Department policy on seizing suspects abroad, a conflict between a House committee and the Justice Department involving the Inslaw affair, and a Senate committee seeking documents on Whitewater.

Issuing a Subpoena

Lawmakers and their committees usually obtain the information they need for legislation or oversight without threats of subpoenas. They understand that committee investigations have to satisfy certain standards. Legislative inquiries must be authorized by Congress, pursue a valid legislative purpose, raise questions relevant to the issue being investigated, and inform witnesses why questions put to them are pertinent.[38] Congressional inquiries may not interfere with adjudicatory

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[33] Id.

[34] Id. at 180.

[35] Eastland v. United States Servicemen's Fund, 421 U.S. 491, 509 (1975).

[36] McGrain v. Daugherty, 272 U.S. 135, 174 (1927).

[37] Eastland v. United States Servicemen's Fund, 421 U.S. at 505.

[38] Wilkinson v. United States, 365 U.S. 399, 408-09 (1961); Ashland Oil, Inc. v. FTC, 409 F.Supp. 297, 305 (1976).

proceedings before a department or agency.[39] Other arguments may be offered to resist a subcommittee subpoena, such as the need to protect confidential trade secrets or to protect information within the Justice Department,[40] but those justifications can be overridden by legislative needs.

Federal courts give great deference to congressional subpoenas. If the investigative effort falls within the "legitimate legislative sphere," the congressional activity—including subpoenas—is protected by the absolute prohibition of the Speech or Debate Clause, which prevents Members of Congress from being "questioned in any other place." In a 1975 case, the Supreme Court ruled that such legislative activities are immune from judicial interference.[41] A concurrence by Justices Marshall, Brennan, and Stewart did not agree that "the constitutionality of a congressional subpoena is always shielded from more searching judicial inquiry."[42] In a dissent, Justice Douglas rejected the majority's position regarding broad legislative immunity from judicial review.[43]

As a tool of legislative inquiries, both Houses of Congress authorize their committees and subcommittees to issue subpoenas to require the production of documents and the attendance of witnesses regarding matters within the committee's jurisdiction. Committee subpoenas "have the same authority as if they were issued by the entire House of Congress from which the committee is drawn."[44] If a witness refuses to testify or produce papers in response to a committee subpoena, and the committee votes to report a resolution of contempt to the floor, the full House or Senate may vote in support of the contempt citation.

Committees and subcommittees are authorized to request, by subpoena, "the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents as it considers necessary." For a committee or subcommittee to issue a subpoena, a majority must be present, although the power to authorize and issue subpoenas may be delegated to the committee chairman.[45] Committee rules can vary the procedures for issuing subpoenas.

A congressional subpoena identifies the name of the committee or subcommittee; the date, time, and place of the hearing a witness is to attend; and the

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[39] Pillsbury Co. v. FTC, 354 F.2d 952, 963 (5th Cir. 1966).

[40] See John C. Grabow, Congressional Investigations: Law and Practice 79-85 (1988); James Hamilton & John C. Grabow, "A Legislative Proposal for Resolving Executive Privilege Disputes Precipitated by Congressional Subpoenas," 21 Harv. J. Legis. 145 (1984); James Hamilton, The Power to Probe 57-78 (1977); and Raoul Berger, "Congressional Subpoenas to Executive Officials," 75 Colum. L. Rev. 865 (1975).

[41] Eastland v. United States Servicemen's Fund, 421 U.S. at 501.

[42] Id. at 515.

[43] Id. at 518.

[44] Exxon Corp. v. FTC, 589 F.2d 582, 592 (1978), cert. denied, 441 U.S. 943 (1979).

[45] House Rule XI(2)(m). See also Senate Rule XXVI(1).

particular kind of documents sought. A subpoena may state that if the documents are delivered by a particular date, the person who has custody over the documents need not appear. Congressional subpoenas are typically served by the U.S. Marshal's office or by committee staff. The Senate has statutory authority to seek civil enforcement of its subpoenas over private individuals.[46] The House relies on its rules and criminal contempt statutes.[47]

It is rare for an executive official to wholly sidestep a congressional subpoena. In 1989, a House subcommittee issued a subpoena to former Housing and Urban Development Secretary Samuel Pierce. He appeared, but invoked his constitutional right not to incriminate himself. He became the first former or current Cabinet official to invoke the Fifth Amendment since the Teapot Dome scandal of 1923.[48] In 1991, Secretary of Commerce Robert Mosbacher became the first sitting Cabinet officer to refuse to appear before a congressional committee to explain why he would not comply with a subpoena.[49]

In 1981, Attorney General William French Smith issued an opinion that analyzed how the Administration should respond to a congressional subpoena. He concluded that when Congress issues a subpoena as part of a "legislative oversight inquiry," access by Congress has less justification than when it seeks information for legislative purposes.[50] He acknowledged that Congress "does have a legitimate interest in obtaining information to assist it in enacting, amending, or repealing legislation." Yet "the interest of Congress in obtaining information for oversight purposes is, I believe, considerably weaker than its interest when specific legislative proposals are in question."[51] This distinction between legislation and oversight is not so crisp. It is well established that Congress has as much constitutional right to oversee the execution of a law as to pass it. Moreover, even if such a distinction could be created, Congress could easily erase it by introducing a bill to "justify" every oversight proceeding.

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[46] 2 U.S.C. §§ 288b(b), 288d (2000); 28 U.S.C. § 1365 (2000).

[47] 2 U.S.C. §§ 192-194 (2000).

[48] Valerie Richardson and Jerry Seper, "House Committee Subpoenas Pierce," Washington Times, September 21, 1989, at A5; Gwen Ifill, "Pierce Invokes Fifth Amendment," Washington Post, September 27, 1989, at A1; Haynes Johnson, "Teapot Dome of the '80s," Washington Post, September 29, 1989, at A2.

[49] Susan B. Glasser, "Secretary Spurns Census Subpoena," Roll Call, December 12, 1991, at 1.

[50] 5 O.L.C. 27, 29-30 (1981).

[51] Id. at 30.

CONSTITUTIONAL CONVENTION MINUTES

PRESIDENT EGAN: Would the messenger please bring the proposed amendment to the Secretary's desk? Would the Chief Clerk please read the proposed amendment?

CHIEF CLERK: "Section 6, page 2, line 23, add to the section the following sentence: 'The right of a person to due process of law shall not be infringed by use of the Legislature's investigative power.'"

PRESIDENT EGAN: What is your pleasure, Mr. Rivers?

V. RIVERS: I move for the adoption of the amendment.

PRESIDENT EGAN: Mr. Victor Rivers moves the adoption of the proposed amendment.

McCUTCHEON: I second the motion.

PRESIDENT EGAN: The matter is open for discussion, Mr. Taylor.

TAYLOR: Mr. President, I would just like for the purpose of information, ask Mr. Rivers to explain the reason for the amendment.

V. RIVERS: I would be glad to do that. I was intending to do that, Mr. President. It has been my observation that in the later years there has been a great deal of congressional and legislative investigation throughout the states and some in Alaska in which the right of the individual has been infringed, in that he is publicly brought into a body by accusation of certain things, is indicted, and then by sensationalism in the press is condemned, without any fair previous hearing or consideration as to whether he should be subject to that type of thing or not. It has been particularly noticeable that the investigative power of congressional groups and committees has been extremely abused in the last ten years. It seems to me that I would not want to limit the investigative power of the legislature but would I like to see them do it in an orderly manner. In such a way that individuals are not castigated and character is not assassinated without properly knowing that the individual has some grounds upon which to approach the individual as to his presumed guilt. It seems to me that there is a drastic field for abuse unless it is curbed in some manner by proper legislative procedure established by law, that there can be an abuse again by the right of the individual subject to the legislative investigative power. Does that answer your question?

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: I would like to ask Mr. Rivers a question. "Don't you think, Mr. Rivers, that under the section as it now stands that those guarantees could still be secured? You referred to legislative processes and guaranteeing the rights of people before legislative investigations, and I am wondering if under this provision as it now stands whether that same right is not already given or protected?

V. RIVERS: All I can answer that is by saying is this, that under similar provisions in other constitutions the right of the individual to due process in legislative investigations has not been protected and many of the areas in which investigations have been held have been held under similar clauses and it has not applied.

PRESIDENT EGAN: Mr. Davis.

DAVIS: I am sorry I did not get the proposed amendment.

PRESIDENT EGAN: Would the Chief Clerk please read the amendment. Read it slowly.

CHIEF CLERK: "Section 6, page 2, line 23, add to the section the following sentence: 'The right of a person to due process of law shall not be infringed by use of the Legislature's investigative power.'"

PRESIDENT EGAN: Is there further discussion of the proposed amendment? Mr. Barr.

BARR: I certainly see eye to eye with Mr. Rivers on this. It is true that our rights are protected in the Federal Constitution and other state constitutions in a general way, but I must point out that the trend in recent years has been to give more power to the state on investigations and they seem to abuse that power in certain cases. I believe in spite of any other guarantees in the constitution that we should mention that, only I would go a little further than Mr. Rivers. He said that the people should be protected from the legislative investigative power. I should say from the "investigative power of the state" because we do have certain departments that investigate persons of it.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: I don't want to take up too much time, but I did want to say that I thought the words "legislative investigative power", the investigative power in any event would have to be delegated by the legislature to either a committee or agencies or departments of government and that it would all be inclusive under the term "legislative power". That was my thought in the matter.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, speaking as a lawyer, I don't think that clause means anything. I don't think it is going to reach Mr. Rivers' point, what he is trying to do. Apparently he is trying to require the legislature to set up certain rules of evidence, certain procedures by which a witness could be entitled to counsel, but "due process" does not mean that. I would like to hear from Mr. McLaughlin. That is my opinion.

PRESIDENT EGAN: Mr. McLaughlin.

McLAUGHLIN: I have no ideas. I am frankly puzzled by the amendment. I think this was taken obviously from the 14th Amendment of the Constitution. I believe the wording

is exactly the 14th Amendment. We have a mess of cases, probably more cases decided under the due process clause than under any other clause of the constitution, except possibly the interstate commerce clause, and I am puzzled, frankly, Mr. Rivers, by the amendment.

V. RIVERS: It seems to me that on the basis of past and present you might not have a case that applies in this particular instance. Do you not believe that suitable laws could be established by the legislature to protect the right of the individual in appearing before investigative committees or investigative departments of the legislature or departments to which their power had been delegated so that they were not castigated publicly before they were indicted or before they were convicted. Do you think that is beyond the realm or the power of or scope of our law to do such a thing?

McLAUGHLIN: I do not think it beyond the scope of our law, but my recollection is that there are certain members of this Convention who were obviously desirous of securing an opinion from the Attorney General, in substance, to determine whether or not they could libel in this legislative power. I don't know how we could curb the power of the hearings from blasting any individual or any group of individuals right on the floor of the house. He would be subject to the castigation apparently we are attempting to avoid. I think the intent is good, but I think you could not possibly curb your legislature to such an extent that they could not say anything nasty about anyone until they were present with counsel. That is why I am puzzled.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I can see the problem. Depriving a person of life, liberty or property points squarely to the judiciary process. A man cannot be required to testify against himself where he is charged with a crime and they cannot take his property, say like under an eminent domain proceedings without due process of law. There is a real problem. The McCarthy hearings brought out the great issue that existed here a couple of years ago. McCarthy was making charges against people under the exercise of the powers of a congressional legislative committee. The people, individuals were sorely abused under the guise of the exercise of the power of the legislature to investigate. The only subject that a legislature is supposed to investigate upon is something that will bear upon the state code or prospective legislation that might be under consideration. But under the guise of looking into legislative matters they call hearings and then maybe subject people to very bad treatment and ruin their reputations and assassinate them from a character standpoint, and unless some thought is flagged, even though not too much could be done with this thought, the thought would be there that our constitution is warning the legislature under the guise of its power to investigate; that it shall observe some type of due process and respect for the individual. Now that is the problem. Whether Mr. Rivers' particular brief amendment would clearly pave the way to accomplish that purpose, I don't know, but at least it flags the present abuse.

PRESIDENT EGAN: Miss Awes.

AWES: I am perfectly sympathetic to what Mr. Rivers is trying to achieve, but I am doubtful that this language does it. Frankly, I have read this amendment over several times, and I don't know what the language used does mean.

PRESIDENT EGAN: Mr. Taylor.

TAYLOR: Mr. President, this is a matter I think we should all concern ourselves with because as Mr. Rivers has said, over the past number of years we have seen some very shameful episodes in the national life which was more clearly exemplified by the actions of a man whose name very seldom appears in the newspapers anymore, Senator Joe McCarthy. We feel there was a pattern laid by that, I was going to call him a gentlemen, but I will not do so, which we should not allow to be emulated by any department of the Territory. There was a pattern set by him that under the guise of a legislative procedure, or investigation, he indulged in vilification, character assassination, and an intimation of guilt by association. I understand we had some legislative assistant or head of the legislative investigating committee in Alaska who attempted in his own feeble way to emulate that ignoble example set by McCarthy. I don't know as Mr. Rivers' amendment goes far enough, but if it will go to any extent to curb such activities and prevent such shameful episodes from occurring in the Territory of Alaska, I will go along with it. We can't tell but what we might have some "McCarthy" showing up here sometime that wants to bask in the limelight and he will attempt to follow those methods as set by Mr. McCarthy.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Mr. President, I am still puzzled about my original inquiry. I don't see that the rights Mr. Rivers seeks to protect cannot be obtained under the law as it now stands because certainly there is no prohibition in the Constitution or in Section 6 that would prevent the legislature from setting up a set of rules of procedure for its own investigations and, after all, that is the problem, and I don't see that adding this language will strengthen or detract from that rule.

PRESIDENT EGAN: Mr. Ralph Rivers.

R. RIVERS: I thought I tried to clarify that in response to your inquiry when I said that it is now directed only to depriving a man of his life, liberty or property. We know that the congressional committees don't put a man in jail, and they don't take any property away from him, they just ruin him period. I don't think the present language reaches the problem we are trying to solve.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: I just want to caution the body that there is no point in voting on anything if we don't know what it means. I am going to vote against it. I am opposed to these legislative examining committees and I might add that the latest expression of the people

of Alaska was to abolish the so-called Stringer Committee by an overwhelming vote, so the problem really does not exist in Alaska.

R. RIVERS: There is one other amendment that is being rewritten submitted by Mr. Riley, and I think this could bear a little thought and go over it and be held over. I am not too satisfied with the wording "due process" which has to do with judicial proceedings, although it could be applied in a broad way. I think we have to study that a little bit more. I would ask unanimous consent that this go over until such time as we take up the matter after lunch.

PRESIDENT EGAN: Mr. Ralph Rivers has asked unanimous consent that we hold this particular amendment in abeyance until after the noon recess. Is there objection? If there is no objection, the particular amendment then of Mr. Victor Rivers will be held in abeyance until the afternoon session. Mr. Kilcher.

KILCHER: I have an amendment.

PRESIDENT EGAN: Would the Sergeant at Arms bring Mr. Kilcher's proposed amendment forward. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Section 14, line 8, strike the comma and the words 'invasion or imminent peril' and substitute the words 'or actual and imminent invasion'."

PRESIDENT EGAN: What is your pleasure, Mr. Kilcher?

KILCHER: I move and ask unanimous consent that the amendment be adopted.

McCUTCHEON: I object.

PRESIDENT EGAN: Objection is heard. Is there a second to the motion?

BUCKALEW: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Robertson.

ROBERTSON: May we have it read, Mr. President?

PRESIDENT EGAN: Would the Chief Clerk please read the proposed amendment.

CHIEF CLERK: "Section 14, line 8, strike the comma and the words 'invasion or imminent peril' and substitute the words 'or actual and imminent invasion'."

PRESIDENT EGAN: Is there discussion on this proposed amendment? Mr. Taylor.

TAYLOR: Just for the purpose of clarification, I would like to state that I believe the two words "imminent" and "actual" are inconsistent. A thing cannot be imminent and actual

at the same time. If it is imminent there is a possibility it will occur shortly. If it is actual, it is actually there. It can't be actual and imminent both.

KILCHER: I am afraid that might be the case. I was in doubt myself whether it should be "and actual or imminent", or whether it should be "and imminent or actual". I think that is a matter of Style and Drafting, that is the substance of it, the amendment. I admit that yesterday there was a similar amendment, not quite the same, had been on the floor, and I would like to read Section 14 as it would read as amendment. "The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion, or actual and imminent invasion the public safety requires it." There are several state constitutions who never want their habeas corpus suspended. Several others have a saving clause that only in rebellion and invasion may it be suspended. I am afraid that this here Section 14 as it stands now, with the words "imminent peril" in it as a vague clause, that with many others if we don't think thoroughly we will open the road of invasion not of a foreign enemy but of an internal one. It is to me that the clause "imminent peril" in times of turmoil, political restlessness, and so on, can be abused and can be construed to mean almost anything. I am surprised in thinking over, I have given it quite a bit of thought since yesterday, in going over this in my mind, over Mr. Hellenthal's flowery but not quite logical speech of yesterday, where he worried not enough about the right of the people's habeas corpus, and today he seems to worry very much about people's privacy. Personally, I am worrying about both, but if I had a choice, I would worry more about the habeas corpus than about people's privacy in other matters. This imminent peril clause can be construed, and that is what we have to worry about. It can be construed to be almost everything and in case of rebellion, invasion, actual or imminent, that should be the only exceptions to the right of habeas corpus. We have solid precedent, but with all the other constitutions, the imminent peril clause is dangerous and should be stricken.

PRESIDENT EGAN: Mrs. Sweeney.

SWEENEY: When Mr. Kilcher read Section 14, I am wondering if he put in some language that we did not adopt yesterday. I did not follow him. He was putting in words that he did not include in the amendment he was offering now. At least, I did not get them.

PRESIDENT EGAN: Would the Chief Clerk please read the section as it would appear if Mr. Kilcher's amendment were adopted.

CHIEF CLERK: "The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion, or actual and iminent invasion, the public safety requires it."

AWES: I wonder if Mr. Kilcher would amend his amendment by changing the word "and" to "or".

KILCHER: I think it would make better sense, and I ask unanimous consent.

PRESIDENT EGAN: Mr. Kilcher asks unanimous consent to change the word "and" to "or". If there is no objection, the proposed amendment to the amendment is ordered adopted. Mr. Hurley.

HURLEY: I have a distinct feeling that this section as it stands now is subject to two different interpretations and as it seeks to be amended, and I think with the "or" it definitely sets it up with one interpretation, although as I recall yesterday, we cleared that thing up and then voted down the amendment, but I certainly think something should be done to this to decide whether we want the writ of habeas corpus suspended in the event of imminent peril or only want it in the event of imminent peril of invasion. If I am convinced that this amendment takes care of it, I am in favor of it.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: Mr. President, I can see now where the Committee left it open for some doubt. In Committee, the majority of the Committee understood that the courts in construing invasion and the expression "imminent peril" would have to consider the two together; "imminent peril" and "invasion" go together. Delegate Hellenthal is a lawyer and his interpretation of what this section meant was strange and novel to me, and I can see where the court could have the same interpretation as Mr. Hellenthal, and for that reason I am going to support Delegate Kilcher's amendment. I think it is an excellent amendment because I don't think that the right of habeas corpus should be suspended unless danger of invasion by a foreign enemy.

PRESIDENT EGAN: Miss Awes.

AWES: I would like to say that I agree with Mr. Buckalew, with what he has just said. When the Committee adopted this language it was personally my understanding that it meant just about what Mr. Kilcher's amendment says, but from what was said on the floor yesterday, evidently even the Committee was not in agreement, and I am still inclined to think that Section 14 could be interpreted, but I think Mr. Kilcher's amendment would clarify the matter and I am in favor of it.

PRESIDENT EGAN: The question is, "Shall the proposed amendment as amended and offered by Mr. Kilcher be adopted by the Convention?" All those in favor of the adoption of the proposed

amendment will signify by saying "aye", all opposed by saying "no". The Chief Clerk will call the roll. The shouting confuses the Chair very often.

(The Chief Clerk called the roll with the following result:

Yeas: 30 - Armstrong, Awes, Boswell, Buckalew, Coghill, Collins, H. Fischer, V. Fischer, Gray, Harris, Hermann, Hilscher, Hurley, Kilcher, Knight, Lee, Longborg, McNees, Marston, Nerland, Nolan, Peratrovich, Poulsen, R. Rivers, V. Rivers, Smith, Stewart, Sundborg, VanderLeest, Mr. President.

Nays: 23 - Barr, Cross, Davis, Doogan, Hellenthal, Hinckel, Johnson, King, Laws, McCutcheon, McLaughlin, McNealy, Metcalf, Nordale, Reader, Riley, Robertson, Rosswog, Sweeney, Taylor, Walsh, White, Wien.

Absent: 2 - Cooper, Emberg.)

CHIEF CLERK: 30 yeas, 23 nays, and 2 absent.

PRESIDENT EGAN: The "yeas" have it and the proposed amendment is ordered adopted. Are there other amendments? Mr. Riley, your amendment has not been mimeographed?

RILEY: I prefer to put it off rather than to recess now to consider it again.

PRESIDENT EGAN: Are there other amendments other than to Section 11 at this time? Mr. Victor Rivers.

V. RIVERS: May I ask a question, Mr. President? It seems to me that this is the day in which the body by their rules have foreclosed themselves from introducing individual proposals.

PRESIDENT EGAN: The 8th is Sunday. The understanding of the Chair was that after we discovered that it was a Sunday that it would be held over until Monday. Is the Chair correct in recalling that?

UNIDENTIFIED DELEGATE: Yes.

GRAY: If there are no further amendments, I would like to have about ten minutes privilege of the floor.

PRESIDENT EGAN: If there is no objection you may be granted the floor. The subject is on apportionment.

(Mr. Gray spoke after being granted the privilege of the

floor.)

PRESIDENT EGAN: Mr. Nerland.

NERLAND: Mr. President, in view of the fact that we have quite a long week coming up next week with the evening sessions, etc., in order to give the delegates time to take care of personal affairs in view of the fact they will not have evenings next week available, I will move and ask unanimous consent that we stand adjourned until 9 a.m. Monday.

TAYLOR: I second the motion.

PRESIDENT EGAN: The question is, "Shall the Convention stand adjourned until 9 a.m. Monday?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 17 - Barr, Boswell, Collins, Cross, H. Fischer, Johnson, McLaughlin, McNealy, McNees, Nerland, Nolan, Poulsen, R. Rivers, V. Rivers, Robertson, Taylor, Wien.

Nays: 36 - Armstrong, Awes, Buckalew, Coghill, Davis, Doogan, V. Fischer, Gray, Harris, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, Kilcher, King, Knight, Laws, Lee, Londborg, McCutcheon, Marston, Metcalf, Nordale, Peratrovich, Reader, Riley, Rosswog, Smith, Stewart,.Sundborg, Sweeney, VanderLeest, Walsh, White, Mr. President.

Absent: 2 - Cooper, Emberg.)

LONDBORG: May I change my vote to "no".

PRESIDENT EGAN: Mr. Londborg asks that his vote be changed to "no".

CHIEF CLERK: 17 yeas, 36 nays,and 2 absent.

PRESIDENT EGAN: So the "nays" have it and the Convention has not adjourned. Mr. Sundborg.

SUNDBORG: Mr. President, I move and ask unanimous consent that we recess until 1:30 p.m. today.

PRESIDENT EGAN: Mr. Sundborg moves and asks unanimous consent that the Convention recess until 1:30 p.m. today. Is there objection? If there is no objection, it is so ordered, and the Convention will stand at recess.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mrs. Sweeney.

SWEENEY: Mr. President, in the report of the Juneau hearings in the section concerning apportionment, we heard from Mr. Curtis G. Shattuck and the report states he is submitting a written statement. The written statement just reached me and I am filing this with the Secretary of the Convention and copies have been distributed among the committee members on the Apportionment Committee so anyone who would like to see them can.

PRESIDENT EGAN: Thank you, Mrs. Sweeney. Would the Chief Clerk read the communication. Are there other communications to be read at this time? Would you desire that this be read or filed?

SWEENEY: No, just have it filed for the information of the delegates.

PRESIDENT EGAN: Miss Awes has requested that this information which was in her possession and it relates to this section that we will soon be on, if there is no objection it can be read. It is one page.

(The Chief Clerk read a memorandum from the Alaska

Department of Health regarding Section 1 of Proposal No. 7,

Health, Education and Welfare and Section 19 of Proposal

No. 5 on the Legislative Branch, prohibiting the

expenditure of public funds for the direct aid or benefit

of religious or private institutions.)

CHIEF CLERK: There are three attachments. Do you want those read?

PRESIDENT EGAN: If there is no objection, the communication can be filed.

RILEY: I think it would be of interest to the delegates to know the names of the institutions.

PRESIDENT EGAN: The Chief Clerk may read them.

(The Chief Clerk read the tables showing the hospitals

receiving aid.)

PRESIDENT EGAN: The communication will be filed and it will be available to any delegates who wish to see it. Are there other communications?

ARMSTRONG: Mr. President, I have here a letter from Don Dafoe, Commissioner of Education, relative to the hearings in Juneau, particularly on the section on education, Section 1 on Health, Education, and Welfare, pertinent to public education. I shall file this with the Clerk, and if anyone cares to read it, I think it should be there for the record and then transmission to Miss Awes, Chairman of the Committee on Bill of Rights.

PRESIDENT EGAN: If there is no objection, that is the way it will be handled. Mr. Buckalew.

BUCKALEW: I would like to have it read. We have read the other.

V. FISCHER: I would like to suggest that we defer the reading of this letter until we come to that particular proposal. We will probably get to it later today or Monday.

PRESIDENT EGAN: Would that be in line with what you had in mind, Mr. Buckalew? Perhaps we might bring up both of these communications at that time.

BUCKALEW: I will concede.

PRESIDENT EGAN: We will proceed with Committee Proposal No. 7. The Chief Clerk will read the proposed amendment as offered by Mr. Riley?

RILEY: This is offered by a number of people whose names appear on the amendment. I might add that those of the members who have it before them, should have inserted four additional words to be in the form submitted. That is on the fourth line from the bottom, following the word "searched" there should be inserted "the information sought or".

PRESIDENT EGAN: Mr. Riley, the proposal I have has no name on it.

RILEY: The names are Robertson, Davis, Hellenthal, R. Rivers, Mrs. Nordale and Riley.

PRESIDENT EGAN: What was the wording?

RILEY: Fourth line from the bottom following the word "searched" there should be inserted "the information sought or" and the word "and" is stricken.

PRESIDENT EGAN: If there is no objection that will be included in the proposed amendment, and the Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Section 11. The right of the people to privacy and to be secure in their persons, houses and other property, papers, and effects, against unreasonable searches, seizures, or other invasions of privacy shall not be violated; and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the information sought or the persons or things to be seized. Information secured in violation of this section shall not be admissible evidence in any judicial or other proceeding."

PRESIDENT EGAN: Mr. Robertson, what is your pleasure? Mr. Riley, would you care to move the adoption of the amendment?

RILEY: Mr. President, I move the adoption of the amendment as read.

WHITE: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Riley.

RILEY: Mr. President, I think that this amendment is not so positive in its terms, not so rigid in its terms, and that it is not so short term in its application or its knowledge of the particular problem that confronts us in its knowledge of technological advance that could perhaps put an absurd twist on a recital of various devices that we may be concerned about. I think as such that it meets many of the objections raised this morning in simply adapting Section 11 by extension of the right of privacy of the individual. The underscored matter on the amendment before you is all new matter. Otherwise, the section is as it appeared originally coming from the Committee.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: Mr. President, I don't think that the section has been improved very much. If anything, I think it has been further confused or a veil thrown over some of the facts that I pointed out this morning. In bunching together the invasion of the home for purposes of arrest and search for material things and in bunching together with it the obtaining of other information and not mentioning the devices, it does not simplify the matter which in itself would be commendable but it confuses the matter by putting together incompatibles in my opinion. This morning on the floor and in several recesses we have discussed this matter and not due consideration has been given to those among us delegates who said we would like to see the search warrants as of old applied to things that they have always applied for, but the specific search warrant for obtaining information should not by all means be treated by any other search warrants to be applied by anybody, district judge, inferior judge, etc. That should be treated separately, if permissible at all. Unless such an amendment will be offered, I think I can only vote against it and advise everybody else to do the same because there are hidden dangers in here. It makes it too easy in times of confusion, in times of public panic or mentality to exert pressure upon the lower courts, and it is tantamount to giving up our most precious civil rights.

PRESIDENT EGAN: Mr. Riley, if the Chair might just ask one question, and that would be in considering the wording, "or other invasions of privacy". Do you think that could or ever would be interpreted in the courts as meaning for instance taking a photograph of someone could be considered invading the rights of privacy?

RILEY: I would not think that any responsible court would think that a casual photograph or snapshot such as was suggested this morning would enter the picture here at all.

McCUTCHEON: Mr. President, on the contrary, if such a casual photograph shows a person to their derogation, it is an invasion of their private rights, and the courts have held on many occasions.

WHITE: I think "unreasonable" applies to searches or seizures or invasion of privacy.

BUCKALEW: Mr. President, I have only one thing to say about this amendment, and I am not being funny even though the flower of the Alaska Bar is supporting this proposed amendment. I challenge any lawyer that put his name on this to explain to this

Convention the extent of this amendment. It is dangerous and ought to be voted down now.

GRAY: Mr. Chairman, I kind of feel the same way. I don't know what we have here. I hesitate fully to take 15 minutes and write a bill of rights. The previous established bill of rights we have read and read them. We know what they are, but I am hesitant of all this new material, this projection in the future. I read these things over, I am an ordinary person, we are all ordinary, we don't know what they mean. We are projecting in the future. It might be perfectly all right, but I would like to see more than 15 minutes deliberations on such a subject.

HELLENTHAL: I will try to answer any questions, Mr. Gray.

GRAY: What is the extent of privacy?

HELLENTHAL: The courts during the last 50 years have started a trend of decisions which has reached its culmination in defining the right of privacy. It is a well-defined right. Any unreasonable interference with your personal privacy, if you were, has been held illegal by the courts, and under this constitutional amendment, the practice would be sanctioned in the new State of Alaska. Privacy means precisely what it says, the right to be alone, to be secure in your home, you and your family; the right to be free from interference by unauthorized people, people looking over your transom, those people invade your right of privacy. People who photograph you without authority, they invade your right of privacy, people who break into your yards, climb over your fence, those people invade your right to privacy. Courts have had no difficulty in defining this right. Now it is true, you could ask someone what is an unreasonable seizure and people could spend hours sitting and citing examples of what were unreasonable seizures. I don't think they could tell you all of them. Each one depends on the particular facts of the unreasonable seizure, but courts have had no trouble with that. For 200 years unreasonable seizures have been defined as the need arose by the courts. No one has been concerned about it at all. As the need arises the definitions are amplified and the same thing would happen here. The courts are the protectors of our liberties. We have had faith in our courts for 200 years. They have not let us down and they won't in the future.

BUCKALEW: Question.

PRESIDENT EGAN: Mr. Doogan.

DOOGAN: Mr. Chairman, I hesitate but I feel that I have to make a statement again. I am wondering what this group is thinking of. What do they mean when they mean the invasion of privacy. It appears to me that most of the people that are worried about their invasion of privacy are worried because of some overt act that they may commit. Myself, I have no worry about there being any invasion of my privacy because at the moment I don't intend that I am going to do anything that is going to cause the law to come into my place and make a search or a seizure. However, if something does happen, they are welcome to come in. To me it is just exactly like being caught speeding. There is nothing

wrong with speeding as long as you get away with it, but you are against the marshal that arrests you because he caught you. It seems to me we are beginning to beg the question quite a little on all of this argument that goes on. As long as we provide for the fundamental rights in the constitution, let us leave it at that and let's put some faith in our legislature and in our police officers and any other administrative officials that we might have to see that we are protected.

PRESIDENT EGAN: Mr. Davis.

DAVIS: Mr. President, in answer to what Mr. Doogan has said, I consider the right to privacy a fundamental right. That is one of the fundamental rights, and I intend, so far as I am concerned at least, that if this amendment is adopted, that is going to try to get at the same problem that we tried to reach this morning when we were talking about wire tapping and use of other devices to invade a person's home, I can't agree with Mr. Doogan that I am going to leave everything to the police and I can't agree with him that only people who expect to do something wrong are going to object to having their privacy invaded. The difficulty is that a police officer in a police state figures that he is carrying out the will of the state and the rights of the individual don't matter and that is what I am trying to get away from here. Now it is very true that as of today our police cannot invade our private lives to the extent that they do in a totalitarian state, but that is what we are trying to preserve. It is only a question of time if police officials or government officials can eavesdrop on what is done in a person's home in the privacy of his home. It's only a question of time until we don't have any liberties left, one step after another. Eventually everything will be in the hands of the government and our whole theory of government here is that the people are bigger than the government and the people control the government and the whole tendency of the government is to try to invade those rights little by little and each case the invasion is made for a proper purpose supposedly. We talk about kidnapping. We talk about subversives. We talk about that sort of thing and we are all against it, but what we don't realize is that when we nibble away here and there, after awhile there is no liberty left. I consider that the right to privacy in a person's home, in his papers, in his effects, is just as much a fundamental right as the right to free speech. Now certainly, had this problem been before the framers of the United States Constitution they would have had to deal with it because they were conscious of searches and seizures that had been made by the King's men prior to the Revolution. That is why they were so conscious of the right to assemble, the right to petition, the right not to have their persons or their homes violated. Now, as was pointed out this morning, under the present state, a scientific development, anybody including government officials, can invade my home and your home without even coming near the home. That is something that was not envisioned at the time the Federal Constitution was adopted, and it is something that we should protect against now.

PRESIDENT EGAN: Mr. Buckalew.

BUCKALEW: I want to say one more thing. I feel that I should say it and I don't believe that the proponents of this amendment have answered the question in my opinion. As a lawyer, it completely destroys the protection provided us by the Fourth Amendment of

the Federal Constitution and our Section 11 was extracted almost in toto from the Federal Constitution. This is a novel innovation that allows police officers to get search warrants to secure information, as I read it, and you talk about playing in the hands of a totalitarian state, you are not nibbling at it, you are taking one great big gulp and handing the people's privacy to persons in authority.

MARSTON: May I ask Mr. Davis a question?

PRESIDENT EGAN: You may, Mr. Marston.

MARSTON: Does this Proposal No. 7 protect people as you have talked on here?

DAVIS: Mr. Marston, in my opinion it does.

BUCKALEW: Mr. President, could I ask Mr. Davis a question?

PRESIDENT EGAN: If there is no objection you may rise and ask the question.

BUCKALEW: Mr. Davis, under this article in your opinion does it give police officers permission and authority to tap a wire for example for any type of crime if they make a search showing to the court?

PRESIDENT EGAN: Mr. Davis, do you care to answer that?

DAVIS: Well, I will try to answer it. I think probably it would if they made the proper showing to the court and if they got the proper warrant, the same as the same individual can have his house invaded upon a showing and the issuance of a warrant by the proper court.

PRESIDENT EGAN: Mr. Kilcher.

KILCHER: If this amendment here is defeated, where are we at then? I am getting confused.

PRESIDENT EGAN: We are back to the original Section 11 if this amendment would be defeated. Mr. Harris.

HARRIS: Mr. President, I would like to point out one thing I think we are overlooking here. We keep talking about searches and seizures. I would like to point out that that is one house, when you tap a telephone in one house you have tapped every telephone in any place in the United States that have called that house. You are not tapping one phone but all of them.

PRESIDENT EGAN: Mr. McNees.

McNEES: I find the same fault with this amendment that I have found with most of the others presented on this same section. I had no particular quarrel originally with the section as it came out of Committee. However, I do feel there is a certain amount of legislation written into it. I am wondering what the thinking of the Committee would be, also I am asking the same question of the proposers of this particular amendment now, what would your particular thinking be if we terminated this particular amendment on the 4th line following the word "violated" and inserted a clause "except as provided specifically by law". The same thing could be done to the original article following the word "violated" giving the same effect that is apparent in my thinking. I feel that here we are trying to legislate against the many evils of our private affairs where perhaps we should, if we are going to legislate at all, legislate specifically against particular evils or violations. Therefore, I would say leave it up to the legislature to provide the specific times and means, the particular instance if you please, whereby the search, the seizure, the violation of a private individual's rights might be made.

PRESIDENT EGAN: Miss Awes.

AWES: Mr. McNees asked what the Committee thought of the suggestion which he had to stop after the word "violated" and add "except as provided by law". As I recall, Section 11 was taken word for word from the Federal Constitution. That particular section in the Federal Constitution has stood for quite a number of years, it has been interpreted by the courts. We know what it means and as long as it means what we want it to say, I think it would be just as well to use it and not change it. Also, I think there is objection to Mr. McNees' section because if you say "except as provided by law", I think that phrase is broad enough to give the legislature authority to pass such exceptions that you would practically nullify the section. You might as well not have it.

PRESIDENT EGAN: Mr. Hurley.

HURLEY: Mr. President, how I yearn for the days when I had simple decisions to make, such as if the voters should be 17, 18 or 19. This morning I was against the amendment that was submitted, primarily for the reason that the mentioning of these electronic devices frightened me. In going over this thing as carefully as I have had time to do, I do not share Mr. Buckalew's fears and I think that it is a proper recognition of a privacy which was not recognized in days gone by, and I therefore support the amendment.

BUCKALEW: Question.

PRESIDENT EGAN: If there is no further discussion, the question is, "Shall the proposed amendment as offered by Mr. Riley and other delegates be adopted by the convention?"

JOHNSON: May we have a roll call?

PRESIDENT EGAN: The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 27 - Armstrong, Coghill, Cross, Davis, V. Fischer, Hellenthal, Hermann, Hilscher, Hinckel, Hurley, King, Marston, Nerland, Nordale, Peratrovich, Poulsen, Reader, Riley, R. Rivers, V. Rivers, Robertson, Rosswog, Smith, Stewart, Sundborg, Walsh, White.

Nays: 21 - Awes, Boswell, Buckalew, Collins, Doogan, Gray, Harris, Johnson, Kilcher, Knight, Laws, Lee, Londborg, McCutcheon, McLaughlin, McNees, Metcalf, Nolan, Sweeney, VanderLeest, Mr. President.

Absent: 7 - Barr, Cooper, Emberg, H. Fischer, McNealy, Taylor, Wien).

CHIEF CLERK: 27 yeas, 21 nays, and 7 absent.

PRESIDENT EGAN: So the "yeas" have it and the proposed amendment is ordered adopted. The Chair would like to state at this time that it is not in good courtesy for other delegates, when a delegate's name is called, to attempt to tell him how to vote and the Chair has noted that on several occasions, and undoubtedly it at times confuses delegates to have other delegates do that thing, and the Chair would request that that not happen again, if possible to avoid it. Are there other amendments to Section 11? The Chief Clerk may read the proposed amendment.

V. RIVERS: Mr. Chairman, this is a revision of the amendment submitted before recess.

CHIEF CLERK: "Section 6, page 2, line 23, add to the section the following sentence: 'The right of the people to be protected from unjust abuse in the course of legislative investigations shall not be infringed, to this end the legislature shall prescribe adequate investigative procedures.'"

DOOGAN: Point of order. It seems to me that that is identical to the question we have already acted upon.

PRESIDENT EGAN: We held it over, Mr. Doogan, as the Chair recalls. This was a new amendment, was it not, Mr. Victor Rivers? Would you ask unanimous consent that your original amendment be withdrawn?

V. RIVERS: I will ask unanimous consent to withdraw the original amendment and substitute this in its place in lieu of the other one.

PRESIDENT EGAN: Mr. Victor Rivers asks unanimous consent to withdraw the original amendment and substitute this amendment in its place in lieu thereof. Mr. Boswell.

BOSWELL: Could we have this read more slowly, Mr. President?

PRESIDENT EGAN: Is there objection to withdrawing the original amendment as proposed by Mr. Victor Rivers? If not, that amendment is ordered withdrawn. The Chief Clerk may read the proposed amendment.

CHIEF CLERK: "Section 6, page 2, line 23, add to the section the following sentence: 'The right of the people to be protected from unjust abuse in the course of legislative investigations shall not be infringed, to this end the legislature shall prescribe adequate investigative procedures.'"

PRESIDENT EGAN: What is your pleasure, Mr. Victor Rivers?

V. RIVERS: I will move that the amendment be adopted.

PRESIDENT EGAN: Mr. Victor Rivers moves that the amendment be adopted. Is there a second to the motion?

R. RIVERS: I second the motion.

PRESIDENT EGAN: The question is open for discussion. Mr. Ralph Rivers.

R. RIVERS: The last sentence there is to this end that the legislature shall prescribe adequate procedures. There should be a period ahead of the word "to".

V. RIVERS: I will accede to that.

PRESIDENT EGAN: If there is no objection, that correction is ordered made. Mr. Ralph Rivers.

R. RIVERS: Mr. President, I consulted with some of the members of the bar in regard to the expression "due process" as it would apply to the legislature. We decided that "due process" actually focused squarely upon judicial proceedings, and it would not be applicable to a legislative operation. You would not have a judge sitting there passing upon the admissibility of evidence and making the other determinations that enter into, generally speaking, a type of hearing or proceedings which is characterized by the matters that are brought before a court of law. What we are trying to get at is that the legislature in the exercise of its powers to investigate could very well set up a code of ethics or rules of procedure which would adequately protect principles and witnesses from abusive treatment, such as has occurred in the past. We cannot, outside of leaving it to the legislature to prescribe such adequate proceedings, we cannot spell it our here. We can flag it. We can tell them to treat the citizens properly in a legislative investigating proceedings, so Mr. Rivers gave up the idea of trying to extend the due process to legislative proceedings and endeavored to simply highlight the point by asking that the legislature set up proper and adequate procedures to safeguard witnesses and principals against abusive treatment in legislative procedures. I might say that after the McCarthy hearings last year Congress itself appointed a committee or in some other manner initiated steps to set up some rules and ethics for the conduct of Congressional hearings. I

don't know what happened to that, but I know that was Congress' thought and that is what we are trying to flag for our legislature here.

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: Mr. Rivers, would it perhaps not be better to couch the proposed amendment in affirmative language and recite it as a right that, in other words, the right of a person to fair and just treatment rather than put in the negative provision?

R. RIVERS: I did not help Mr. Victor Rivers draft this. I refer the question to Mr. Victor Rivers.

V. RIVERS: I used the term "unjust abuses" and it would seem to me that perhaps Mr. Hellenthal's suggestion has merit. I used the term, I don't remember exactly the term, "The right of the people to be protected from unjust abuse in the course of legislative investigations shall not be infringed".

PRESIDENT EGAN: Mr. Hellenthal.

HELLENTHAL: One more question. As a directive as to the scope of the amendment, it seems to me, I may be wrong, that there are also executive investigations which likewise, at which the witness should be treated fairly and justly.

V. RIVERS: Mr. President, I will ask for a two-minute recess.

PRESIDENT EGAN: If there is no objection, the Convention will stand at recess for two minutes.

RECESS

PRESIDENT EGAN: The Convention will come to order. Mr. Victor Rivers.

V. RIVERS: Mr. President, I have now placed the matter in the affirmative in a slightly different form. I will ask unanimous consent to substitute this amendment in lieu of the one previously discussed. The substance is the same.

PRESIDENT EGAN: Mr. Victor Rivers asks unanimous consent to substitute a new amendment in place of the original amendment. Is there objection? If there is no objection, it is so ordered.

STEWART: I did not hear what was said.

PRESIDENT EGAN: Mr. Victor Rivers asks unanimous consent that a new amendment be substituted for the original amendment. If there is no objection, it is so ordered and the Chief Clerk will read the proposed amendment.

CHIEF CLERK: "Section 6, page 2, line 23, add to the section the following sentence: 'The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.'"

V. RIVERS: Mr. President, I will move for the adoption of the amendment.

PRESIDENT EGAN: Mr. Victor Rivers moves that the amendment be adopted. Is there a second to the motion?

SMITH: I second the motion.

AWES: May we have that read once more?

PRESIDENT EGAN: The Chief Clerk will please read the proposed amendment.

CHIEF CLERK: "Section 6, page 2, line 23, add to the section the following sentence: 'The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.'"

PRESIDENT EGAN: Is there discussion of the proposed amendment? Mr. Victor Rivers.

V. RIVERS: Mr. President, I am merely trying to effectuate the statement I made this morning in regard to past experiences that we have had in the later years at least in the matter of legislative and governmental investigations. I think this covers it and would flag, as Ralph has said, the legislature to take the necessary action and set up adequate procedures to see that their rights under this clause were protected.

BUCKALEW: Mr. President, I feel sort of constrained to speak on this subject. It seems like when I do, it almost insures its passage. In my opinion this article is completely unenforceable and it has no meaning in law. It can afford no protection to anybody before these legislative and examining committees. What does it mean? Are we going to follow the rules of evidence as we know in our trial courts? It is a matter for the legislature, for the voters, and there is no way I know of in this short article that you can protect a citizen from some fireball, or whatever you want to call him, a legislator that is running one of these examining committees. The damage is going to be done, and then you are going to get a political question more or less before the courts and the courts are going to have to determine whether he had a fair hearing so to speak before this so-called committee and there is no way that anyone can mandamus the legislature to provide certain rules. I think it is just going to clutter up the bill of rights and my opinion is that it is just a lot of gibberish and is completely unenforceable and should be defeated.

PRESIDENT EGAN: Mr. Smith.

SMITH: I think Mr. Buckalew has pointed out very effectively how this very provision can be made effective. The fact that the legislature, as he has put it, once sets up the rules, or even if there should appear to be a violation of this particular provision, then once the

courts have taken the matter in hand and made a ruling of any kind, then they have definitely established something under this provision.

PRESIDENT EGAN: Mr. Johnson.

JOHNSON: Mr. President, well, I am of the same opinion now as I was this morning regarding the first proposal. It seems to me that it is entirely unnecessary. A great deal of question was raised during the argument as to the meaning of the words, "due process of law". Well, many many years ago the Supreme Court of the United States settled it by pointing out that by the Fifth Amendment it was introduced into the Constitution of the United States as a limitation upon the powers of the national government and by the Fourteenth as a guarantee against encroachment upon an acknowledged right of citizenship by the legislatures of the states. Well, under that language certainly "due process of law" not only includes the procedure in our courts but would include any procedure involving the acknowledged right of citizenship, so I don't see but what there is under the proposal as it was originally framed by the Committee and as it is now contained in Section 6, I don't see why the very same protection cannot be afforded without the amendment, and certainly as Mr. Ralph Rivers points out, when there seems to have been an abuse created in a senatorial investigation, Congress immediately took steps to correct it, but it did not take an amendment to the Constitution to do that. The Congress operated under the exact language to correct that abuse by passing suitable legislation, and I think the legislature could certainly do the same thing.

PRESIDENT EGAN: Mr. Stewart.

STEWART: Mr. President, my recollection was that that abuse continued for several years before there was even an attempt to correct it.

PRESIDENT EGAN: Mr. Victor Rivers.

V. RIVERS: Mr. President, in closing this discussion, I just want to say that I have sat in the legislature and on quite a number of investigations. Certain of those groups had fairly orderly procedures that were set up as they went along. Oftentimes it took the form originally of an executive session at which the information was discussed in a preliminary manner. There was no pattern set to follow, but I imagine there was no pattern set to follow when our founding fathers adopted the words "due process". I can look around any lawyer's office and see shelf after shelf of books in which they tried to effectuate, no doubt, the meaning of the term "due process". I can see how in the legislative body after the experiences we have gone through, that there will be revised and improved procedures for protecting the rights of individuals in investigative procedures of this kind, investigations by the legislature and the executive. I don't say you'd have a body of court of law set up, but I imagine that in due time there would be a body of precedence set up by which succeeding legislatures would learn one from the other the best method in which these matters had been handled before and how they could be improved in future handling. It seems to me that we are laying a cornerstone here to flag them and to bring to their attention the fact that we feel there has been an

abuse of this legislative investigative power and asking them in a nice way to be sure that in a fair and just manner the abuses are not continued further. It seems to me the least we can do is to bring this forcibly to their attention and try and start this matter of investigative procedures on a healthy track.

PRESIDENT EGAN: Would the Chief Clerk please read the proposed amendment?

CHIEF CLERK: "Section 6, page 2, line 23, add to the section the following sentence: 'The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.'"

PRESIDENT EGAN: The question is, "Shall the proposed amendment as offered by Mr. Victor Rivers be adopted by the Convention?" All those in favor of the adoption of the proposed amendment will signify by saying "aye", all opposed by saying "no". The "ayes" have it and the proposed amendment is ordered adopted. Are there other amendments to the article? Mr. Harris.

HARRIS: Mr. President, may I have the floor on a matter of personal privilege?

PRESIDENT EGAN: If there is no objection, Mr. Harris, you may have the floor on the matter of personal privilege.

(Mrs. Harris spoke on a matter of personal privilege.)

PRESIDENT EGAN: Are there other amendments to sections of the proposal on the bill of rights? If not, we will proceed to the section of the article that deals with questions of health, education and welfare. Mr. Victor Fischer.

V. FISCHER: I would like to make an inquiry, Mr. President. This is the second instance where the same committee has prepared two separate articles for the constitution. Would it not be a good idea to separate them henceforth both for purposes of engrossment and enrollment as well as for purposes of work by Style and Drafting and by the Convention in third reading, since they are proposed as separate articles of the constitution?

PRESIDENT EGAN: Mr. Fischer, it would take a complete change in the title and it would entail, as it were, a lot of mimeographing, a lot of work, and you would have to waive that in lieu of what we would feel would be the cumbersomeness of the present procedure, so you would run into a lot of work if you did it. Just how it happened in this form, it would entail more and we have it before us in this form. Mr. Doogan.

DOOGAN: I thought it was my understanding that when these matters got to Style and Drafting that it was the prerogative of Style and Drafting to take various sections and move them around in placement in regular order in the constitution. Is that not correct?

PRESIDENT EGAN: Mr. Doogan, in a manner all right is what Style and Drafting will do, whether it applies to this particular thing, of course, the articles will follow each other probably in this case. Mr. Fischer.

V. FISCHER: Mr. President, the only thing I had in mind was possibly simplification so things could move a little faster through the remaining process. If it means the mimeographing of even one extra page, I am not in favor of it.

PRESIDENT EGAN: Mr. Sundborg.

SUNDBORG: Mr. President, do I recall that several days ago when we had a similar double-barreled proposal that by consent, the first part when we had finished with it, went to the Engrossment and Enrollment Committee so they could start work on it?

PRESIDENT EGAN: You are correct, Mr. Sundborg.

SUNDBORG: If there are no more amendments to the preamble and bill of rights, I would ask unanimous consent that that process

be followed with that part of it.

PRESIDENT EGAN: It went with this provision that if after we finish the article that is in the same proposal, if at that time anyone desired to amend the proposed article, that if it was sent to Engrossment and Enrollment before we were through with this, it would still be open for amendment.

SUNDBORG: With that proviso, I would like to make that request.

LONDBORG: Would there be any necessity of it? They can start work on it at their desk any time they want to.

PRESIDENT EGAN: In this manner, Mr. Londborg, the chairman of the committee could then call the committee together. It would be official. Mrs. Sweeney.

SWEENEY: Before we get onto this new section in Committee Proposal No. 7, I would like to move that we adjourn until 9 o'clock Monday morning rather than get started on something else. I so move.

V. FISCHER: I second the motion.

PRESIDENT EGAN: It has been moved and seconded that the Convention stand adjourned until 9 a.m. on Monday. The question is, "Shall the Convention stand adjourned until 9 a.m. on Monday?" The Chief Clerk will call the roll. Mr. Kilcher.

KILCHER: Point of order. There is quite a good possibility that notice might want to be given for reconsideration which had been, discussion leading up to that possibility discussions were expected to be held at the normal recess of 3 o'clock.

PRESIDENT EGAN: Mr. Kilcher, your notice of reconsideration is in order if you so desire to make it, even now after the motion to adjourn has been placed, if the question has not been put. Do you wish to make it?

KILCHER: What I am trying to drive at is this, in a short recess awhile ago the possibility has arisen that further discussion at the normal recess at 3:30 would lead up to a sound solid reconsideration if it is cut off now would be impossible.

PRESIDENT EGAN: Mr. Kilcher, that is up to the delegates. We have the motion to adjourn. However, under our rules, a motion of reconsideration or a reconsideration can be considered even at this time even if it is pending. Now, if the Convention voted to adjourn, it would cut off that reconsideration if you did not make it now.

KILCHER: Would a motion for a short recess be in order now?

PRESIDENT EGAN: No, it would not. Mr. Hurley.

HURLEY: In order to allay the fears, having voted on the prevailing side of the question of amending Section 11 by the adoption of Mr. Riley's amendment, I ask now that I be allowed to reconsider.

PRESIDENT EGAN: Mr. Hurley serves notice of his reconsideration of his vote on the adoption of the amendment to Section 11. The question is, "Shall the Convention stand adjourned until 9 a.m. on Monday?" The Chief Clerk will call the roll.

(The Chief Clerk called the roll with the following result:

Yeas: 21 - Armstrong, Boswell, Coghill, Collins, Cross, Doogan, Harris, Johnson, Londborg, McLaughlin, Metcalf, Nerland, Poulsen, Reader, R. Rivers, V. Rivers, Robertson, Stewart, Sundborg, Sweeney, VanderLeest.

Nays: 26 - Awes, Buckalew, Davis, V. Fischer, Gray, Hellenthal, Hermann, Hinckel, Hurley, Kilcher, King, Knight, Laws, Lee, McCutcheon, McNees, Marston, Nolan, Nordale, Peratrovich, Riley, Rosswog, Smith, Walsh, White, Mr. President.

Absent: 8 - Barr, Cooper, Emberg, H. Fischer, Hilscher, McNealy, Taylor, Wien.)

CHIEF CLERK: 21 yeas, 26 nays, and 8 absent.

PRESIDENT EGAN: The "nays" have it and so the motion has failed of adoption. The Convention will come to order. Mr. Sundborg.

CORRESPONDENCE

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

November 18, 2008

Senate President Lyda Green
600 E. Railroad Avenue, Suite 1
Wasilla, Alaska 99654

Dear Senator Green,

In two letters dated September 19, 2008 and September 26, 2008, you received notification from my office discussing the status of the subpoenas issued by the Senate Judiciary committee. These notifications were required under Alaska Statute 24.25.030 after many of the subpoenaed individuals failed to appear before the committee.

The purpose of this letter is to inform you that some subpoenaed individuals voluntarily provided answers to written interrogatories that related to the Legislative Council investigation. Their answers were received on Wednesday, October 8, 2008, two days before the report was released.

The individuals who submitted written interrogatories are:

1. Todd Palin
2. Randy Ruaro
3. Dianne Kiesel
4. Annette Kreitzer
5. Nicki Neal
6. Brad Thompson
7. Michael Nizich
8. Kris Perry
9. Janice Mason
10. Ivy Frye

This letter is not required by Alaska Statute 24.25.030, but I think it is only appropriate for the record to acknowledge the written responses that were provided during the final days of the investigation.

Sincerely,

Senator Hollis French

Cc: Members of the Senate Judiciary Committee
David Jones, Senior Assistant Attorney General
Thomas V. Van Flein
Michael L. Lessmeier
Wayne Anthony Ross

Senator Hollis French, Chair
State Capitol, Room 417
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Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

The Honorable Lyda Green, Senate President
600 E. Railroad Ave. Suite 1
Wasilla, AK 99654

September 26, 2008

Dear Senator Green,

On September 12, 2008, the Senate Judiciary Committee authorized the issuance of fourteen subpoenas; thirteen were for witnesses and the last was for Mr. Frank Bailey's cell phone records. Senate President Lyda Green concurred in that action, thus satisfying the statutory requirements of Alaska Statute 24.25.010(b). The purpose of the subpoenas was to assist Mr. Stephen Branchflower in his investigation into the events and circumstances surrounding the termination of former Public Safety Commissioner Walt Monegan.

Last week I reported to you on the status of these subpoenas. At that time, six of the witness subpoenas had been served and seven had not been served. Last week's report covered the six witness subpoenas that were served, and the document subpoena for Frank Bailey's cell phone records. Today I am reporting on the seven subpoenas that were not served.

The subpoenas that had not been served as of last Friday, September 19, 2008 were for Ms. Dianne Kiesel, Ms. Annette Kreitzer, Ms. Nicki Neal, Mr. Brad Thompson, Mr. Michael Nizich, Ms. Kris Perry and Ms. Janice Mason. Taking them in the order listed:

Ms. Dianne Keisel, was served with her subpoena on September 23, 2008, in Dutch Harbor, Alaska.

Ms. Annette Kreitzer was served with her subpoena on September 21, 2008, in Juneau, Alaska.

Ms. Nicki Neal was served with her subpoena on September 21, 2008, in Juneau, Alaska.

Mr. Brad Thompson was served with his subpoena on September 21, 2008, in Juneau, Alaska.

Mr. Michael Nizich was served with his subpoena on September 21, 2008, in Juneau, Alaska.

Ms. Kris Perry was served with her subpoena on September 23, 2008, in Wasilla, Alaska.

Ms. Janice Mason was served with her subpoena on September 21, 2008, in Juneau, Alaska.

All of the subpoenas listed above commanded the witness to appear here today, September 26, 2008, at 10:00 a.m., to give testimony to the Judiciary Committee. None of the witnesses have appeared.

Alaska Statute 24.25.030 sets out our procedure in this particular situation. The statute reads as follows: "If a witness neglects or refuses to obey a subpoena ... the senate or the house of representatives may by resolution entered on its journal commit the witness for contempt. If contempt is committed before a committee, the committee shall report the contempt to the senate or house of representatives, as the case may be, for such action as may be considered necessary." Please consider this letter as satisfying the dictates of the statute.

Sincerely,

Senator Hollis French

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

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September 25, 2008

The Honorable Kim Elton
State Senate
State Capitol, Room 506
Juneau, Alaska 99801-1182

Re: Your September 19, 2008 Letter

Dear Senator Elton:

I understand the frustration expressed in your letter of September 19. But your expression of that frustration fails to account for the fact that, while lawyers may advise their clients, those clients must decide whether, for example, to appear and testify voluntarily. The Department of Law represents seven individual state employees, each of whom decided not to testify voluntarily under threat of subpoena. Given the circumstances, their choice is understandable.

I do not, of course, believe that responding to properly issued subpoenas is voluntary. But I do believe that subpoenaed persons have the right to challenge the validity of the subpoenas when that validity is suspect. We have stated our legal concerns about the validity of the Senate Judiciary Committee's subpoenas in other correspondence, most recently in the September 19 letter to Senator Wielechowski that you also received. We have also filed in superior court, on behalf of our seven subpoenaed clients, a complaint for declaratory relief, seeking a declaration on the validity of the subpoenas.

Contrary to the media reports you cited, the Department of Law did not contract with Mr. Van Flein because my contact with former Commissioner Monegan about Trooper Wooten created a conflict of interest. I have confirmed with bar counsel that my contact with former Commissioner Monegan did not create a conflict of interest.

Finally, as you noted in your letter, I did not respond to your questions concerning specific advice and conversations. As I hope you can appreciate, my obligations to my clients prevent me from disclosing such information.

Sincerely,

Talis J. Colberg
Attorney General

cc: Senator Bettye Davis
Senate President Lyda Green
Senator Lyman Hoffman
Senator Gary Stevens
Senator Gary Wilken
Representative Nancy Dahlstrom
Representative John Coghill
Representative David Guttenberg
Speaker of the House John Harris
Representative Ralph Samuels
Representative Bill Stoltze
Representative Peggy Wilson
Senator Hollis French

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

September 19, 2008

Dear Senator Green,

On September 12, 2008, the Senate Judiciary Committee authorized the issuance of fourteen subpoenas; thirteen were for witnesses and the last was for Mr. Frank Bailey's cell phone records. By your signature on those subpoenas, you concurred in that action, thus satisfying the statutory requirements of Alaska Statute 24.25.010(b). The purpose of the subpoenas was to assist Mr. Stephen Branchflower in his investigation into the events and circumstances surrounding the termination of former Public Safety Commissioner Walt Monegan.

Since that time, six of the witness subpoenas were served and seven were not. The subpoenas that were served commanded the witnesses to appear at 10:00 am today, September 19th, 2008, before the Judiciary Committee. Subpoenas were served on attorneys representing Mr. Frank Bailey, Ms. Ivy Frye, Mr. Todd Palin, Mr. Randy Ruaro, and Ms. Murlene Wilkes. By an agreement between Mr. Branchflower and Mr. Bailey's attorney, a copy of the sworn statement that Mr. Bailey gave to Mr. Thomas Van Flein has been given to Mr. Branchflower and will satisfy Mr. Bailey's obligation to comply with his subpoena. Mr. John Bitney was served personally by Mr. Branchflower and Mr. Bitney, accompanied by his attorney, elected to give a statement to Mr. Branchflower in his office, thus satisfying Mr. Bitney's obligation under his subpoena. The subpoena for Mr. Bailey's cell phone records was served on ACS, Inc., and that company has turned the records over to Mr. Branchflower. Finally, Ms. Wilkes, through her attorney, has agreed to give a statement to Mr. Branchflower this afternoon, thus satisfying her obligations under her subpoena.

Ms. Frye, Mr. Palin, and Mr. Ruaro, all having been served with subpoenas through their legal counsel, have neither given statements, nor appeared today in compliance with their subpoenas. Alaska Statute 24.25.030 sets out our procedure in this particular situation. The statute reads as follows: "If a witness neglects or refuses to obey a subpoena ... the senate or the house of representatives may by resolution entered on its journal commit the witness for contempt. If contempt is committed before a committee, the committee shall report the contempt to the senate or house of representatives, as the case may be, for such action as may be considered necessary." Please consider this letter as satisfying the dictates of the statute.

Subpoenas were not served on Ms. Dianne Kiesel, Ms. Annette Kreitzer, Ms. Nicki Neal, Mr. Brad Thompson, Mr. Michael Nizich, Ms. Kris Perry and Ms. Janice Mason. The reason that those seven subpoenas were not served is because Mr. Branchflower relied on the written offer of cooperation that Assistant Attorney General Michael Barnhill issued in a letter to Chairman of the Legislative Council Committee, Senator Kim Elton, dated September 9, 2008. Senator Elton accepted the offer in a letter sent to Mr. Barnhill on Friday, September 12, 2008, which was the same day the Senate Judiciary Committee issued its subpoenas. Mr. Barnhill spoke to Mr. Branchflower late that Friday afternoon, to begin scheduling depositions.

The next day, Saturday, September 13, 2008, Mr. Barnhill sent an e-mail to Mr. Branchflower, confirming the details of their phone conversation. The e-mail in relevant part reads as follows:

> Steve - this shall confirm our phone conversation of late yesterday afternoon.
>
> As a consequence of Sen. Elton's letter to me of 9/12/08, Law agrees that the depositions of the four Department of Administration employees, Annette Kreitzer, Dianne Kiesel, Nicki Neal and Brad Thompson, may proceed. Law appreciates the Legislative Council's willingness to agree with our interpretation of the laws governing confidential state employee personnel files as set forth in our letter of 9/9/08.
>
> Each of these four individuals has confirmed that they wish to proceed with their deposition without service of a subpoena, and that they have elected to have representation from Law at their deposition. Law will provide that representation.
>
> As I explained during our call, Tom van Flein requested on Friday (9/12) that the Department of Law resume representation of these employees in the Office of the Governor who have not sought private counsel. At this point, my understanding is those employees include Mike Nizich, Kris Perry and Janice Mason. When you return on Tuesday, please give me a call and I will report on the status of Law's representation of those employees within the Office of the Governor who have not secured private counsel and their availability for deposition.

That cooperation agreement was abrogated by the Tuesday, September 16, 2008, letter from Attorney General Talis Colberg. The Judiciary Committee's, and Mr. Branchflower's, reliance on the two written promises of the Department of Law is regrettable. Because the subpoenas were not served, there is no legal basis upon which to take any action today regarding them. The original, unserved subpoenas are still in the hands of Mr. Branchflower. He will begin the process of serving them on the seven remaining witnesses, with a return date of Friday, September 26, 2008.

Sincerely,

Senator Hollis French

SENATOR KIM ELTON

September 19, 2008

Talis Colberg, Attorney General
Department of Law
P.O. Box 110300
Juneau, AK 99811-0300

Dear Attorney General:

I'm in receipt of your letter dated today. I expect that continued dialogue can lead to a quick resolution of the impasse.

I want to begin by thanking you for your straight-forward acknowledgement that I met the condition set by you on interpretation of law. I thank you also for your additional acknowledgement that you recognize that my acceptance constituted a deal that allowed state employees to testify.

You then note in today's letter: "However, a new circumstance intervened—supporting the Governor's decision to cooperate only with the Personnel Board investigation." That is a shorter reiteration of your statement in the September 16 letter. On September 16, you wrote:

> "As state employees, our clients have taken an oath to uphold the Alaska Constitution and for that reason they respect the legislature's desire to carry out an investigation in support of its law-making powers. However, our clients are also loyal employees subject to the supervision of the governor. Your subpoena places them in the difficult position of choosing either to support the Governor's decision to cooperate only with the Personnel Board investigation or to voluntarily comply with the subpoenas issued by the committee."

My short response is: 1) I hope you are not asserting that being a loyal employee subject to the supervision of the governor is of equal weight to the constitution or the rule of law; 2) I trust you really don't want to suggest to folks who are subject to the Department of Law's power to subpoena that response to any subpoena is voluntary in nature; and 3) I

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SENATOR_KIM_ELTON@LEGIS.STATE.AK.US

hope you have weighed the consequences of cancelling this written agreement and its potential chilling effect upon the willingness of other parties in the vast array of complex civil and criminal matters you deal with (if you can break this deal, can you break their deals?).

I'm very puzzled also by any argument that suggests you had to break the deal because a "new circumstance intervened." That circumstance, you say in today's letter, is "supporting the Governor's decision to cooperate only with the Personnel Board investigation." A September 2 press release from the law firm Clapp, Peterson, Van Flein, Tiemessen, Thorsness quotes the governor saying: "(L)ast night, I initiated a proceeding before the state personnel board because that is the agency charged by law with addressing the complaints about hiring and firing matters." The complaint filed by the governor the night before, on September 1, says the personnel board "is the only body in Alaska with the legal authority to do so."

So, prior to the consummation of our deal on September 12, you knew she felt the board was the agency she wanted to investigate the circumstances surrounding the dismissal of Commissioner Walt Monegan and you knew she was alleging the board was the only entity with the legal authority.

Your knowing, 11 days prior to consummating the agreement with the Legislative Council, that the governor felt the board was the only entity with legal authority makes it difficult to assert, as you do, that you need to break the deal because after the deal the governor decided to cooperate only with the board's investigation. Let me be absolutely clear—you made the deal 11 days after the governor made the claim that only the board had authority. Why would you argue you had to break a deal because that "new" circumstance intervened?

It's important I note here that I also disagree strongly with any assertion by the executive branch that limits the legislature's power in this instance. Our legal authority is clear.

At this point, I must raise a difficult issue so that I can better understand the nature and scope our correspondence. The *Anchorage Daily News* reported September 2 the Department of Law hired Thomas Van Flein "because Attorney General Talis Colberg has a potential conflict of interest and shouldn't represent the governor, Van Flein said Monday." The national news service *Bloomberg* reported September 11 that "Attorney General Talis Colberg, a Palin appointee, recused himself." And NBC news September 1 reported the "Department of Law had a potential conflict of interest, because Mr. Colberg, Attorney General Colberg, made contact with Mr. Monegan about Trooper Wooten, Van Flein said."

Given the analysis by Mr. Van Flein, an attorney first hired by the Department of Law, and given the reporting by *Bloomberg*—which is unchallenged as far as I know—that you recused yourself, I'm confused when you refer to the state employees in both the September 16 letter and the September 19 letter as "our clients."

I ask for clarification of your status without challenging your ability to fairly represent state employees. I understand that serving at the pleasure of the governor and statements made through the media by others can morph into extremely unfair character challenges. I have a visceral understanding of how difficult that can be given that I'm accused of bias in this matter. In short, I feel your pain but do think it is important to understand what may have changed since the comments about your conflict of interest were made.

Finally, I note that my letter dated September 17 asked for further information on two points: "when and where the governor, as you note in your letter, 'so strongly stated that the subpoenas issued are of questionable validity;'" and for any advice you may have given her that would raise a question of the validity of subpoenas. I trust you have set in motion a review of these two explicit requests and hope you can respond quickly.

Sincerely,

Sen. Kim Elton
Chair, Legislative Council

Cc: Legislative Council
Sen. Hollis French

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-2133
FAX: (907)465-2075

September 19, 2008

The Honorable Kim Elton
State Senate
State Capitol, Room 506
Juneau, Alaska 99801-1182

Re: Your September 17, 2008 Letter

Dear Senator Elton:

We sincerely appreciate your clarification of a very important concern of this office—settling on the meaning and requirements of AS 39.25.080, which was being interpreted (wrongly in our view) to prohibit certain employees in the executive branch from viewing state personnel records. We were troubled by exposing Department of Administration employees to interviews with Mr. Branchflower when we were hearing misrepresentations in the media about the law's requirements with implicit threats that some of these employees may have criminal exposure. We communicated to you that once this point was clarified the four employees we then represented were willing and available to meet with Mr. Branchflower and would do so voluntarily.

However, a new circumstance intervened—supporting the Governor's decision to cooperate only with the Personnel Board investigation. Our September 16 letter to Senator French was an effort to communicate the difficult position this places our clients in—having to choose between supporting the Governor's position and voluntarily complying with the subpoenas. Withdrawing those subpoenas (and the demand for the interviews) would relieve our clients of that difficult choice. However, we made clear in our letter that we continue to have reservations about the validity of the subpoenas. These reservations exist—regardless of the level of cooperation you are provided.

I acknowledge our position has changed—because our clients are no longer willing to participate voluntarily in your process. In light of these circumstances, our clients' decisions should be understandable.

Sincerely,

Talis J. Colberg
Attorney General

cc: Senator Bettye Davis
Senate President Lyda Green
Senator Lyman Hoffman
Senator Gary Stevens
Senator Gary Wilken
Representative Nancy Dahlstrom
Representative John Coghill
Representative David Guttenberg
Speaker John Harris
Representative Ralph Samuels
Representative Bill Stoltze
Representative Peggy Wilson
Senator Hollis French

SENATOR KIM ELTON

September 17, 2008

Talis Colberg, Attorney General
Department of Law
P.O. Box 110300
Juneau, AK 99811-0300

Dear Attorney General:

This is a response to your letter dated yesterday and received by my office via email at 3:27 p.m.

I want to remind you of previous correspondence from your office to me in my capacity as chair of Legislative Council. On September 9, Senior Assistant Attorney General Michael Barnhill signed a letter for you that made a substantive offer. That offer was:

> "(T)he Department of law wishes to confirm that the Legislative Council agrees with the department's reading of the law. If we cannot reach agreement on the proper interpretation of the State Personnel Act, the Department of Law is prepared to seek declaratory judgment in court on this issue. But if the Legislative Council will acknowledge in writing its agreement with the Department of Law's interpretation the Department of Law will drop its objections and the depositions may proceed without subpoenas."

That offer is clear—acknowledge in writing and depositions may proceed without the need for subpoenas. On September 12, as chair of the Legislative Council and on behalf of the Council, I noted in writing that, after consultation with the legal staff at Legislative Affairs, Legislative Council agreed with the legal analysis put forward by you in your capacity as attorney general. My precise response to the offer made by the Department of Law was:

> "I stipulate in my role as chair of the Legislative Council and on behalf of the Council, that your interpretation of the law is correct."

I further noted:

> "Given our agreement on this important point, and given your offer on page 4 of your letter to drop your objections and allow the depositions to

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SENATOR_KIM_ELTON@LEGIS.STATE.AK.US

> proceed 'if the Legislative Council will acknowledge in writing its agreement with the Department of Law's interpretation,' I'd appreciate it if you would contact Mr. Branchflower so that depositions may proceed in a timely manner."

Mr. Barnhill, after receipt of the letter and after the Senate Judiciary Committee issued subpoenas, on the same day contacted Mr. Branchflower so that depositions from the state employees could be scheduled. I was grateful for the breakthrough

Your letter yesterday quite clearly breaks that deal. Bluntly, I feel like Charlie Brown after Lucy moved the football.

Not only was the letter of September 9 explicit in its offer, it had further strength given the public pronouncements by the governor, including:

> "We would never prohibit, or be less than enthusiastic about any kind of investigation. Let's deal with the facts and you do that via an investigation;" and
>
> "I'm happy to comply, to cooperate. I have absolutely nothing to hide. No problem with an independent investigation."

Further, staff and others speaking for the governor said: the governor will fully cooperate and her staff will cooperate also (Leighow, July 29); the governor "has directed all her staff to cooperate fully with Branchflower" (press release, August 13); Frank Bailey will fully cooperate with the investigation (McAllister, August 19); that with Frank Bailey still a state employee the governor "can direct him to assist Mr. Branchflower, thereby fulfilling her pledge to Alaskans to cooperate fully with the investigation" (Leighow, August 20); and the governor's office welcomes the inquiry and will cooperate (the governor's private attorney, September 2).

Despite your previous offer, explicitly stated and accepted, and despite repeated assertions of cooperation, you now are not allowing state employees encouraged to cooperate to do so. In four paragraphs, you've broken a deal that was accepted by your office and received by Mr. Branchflower after the Senate Judiciary Committee issued subpoenas. Further, your brand new position eviscerates weeks of comments on the record by several parties, including the governor.

I'd note, also, that while subpoenas have been requested, the only witnesses served with subpoenas are witnesses not employed by the executive branch. I understood the legislature's investigator did not feel the need to serve them following his conversation with Mr. Barnhill. A decision to not serve the subpoenas made sense given the fact it was: not necessary; and, since it was unnecessary, could give the appearance of confrontation where none was apparent.

Given the statements of cooperation by you on September 9, by the governor, and by spokespeople for the governor, it may help me to understand when and where the governor, as you note in your letter, "so strongly stated that the subpoenas issued by (the Senate Judiciary Committee) are of questionable validity." If you have so advised the governor before she made a statement I don't recall, I'd appreciate it if you could make that advice part of the public record so that we can understand the rationale behind the statement.

Sincerely,

Sen. Kim Elton

cc: Legislative Council members
Sen. Hollis French

STATE OF ALASKA

Sarah Palin, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-2133
FAX: (907)465-2075

September 16, 2008

The Honorable Kim Elton
State Senate
Alaska State Legislature
State Capitol, Room 506
Juneau, AK 99801-1182

Re: Executive Branch Subpoenas

Dear Senator Elton:

Please see the attached letter, which was sent today to the members of the Judiciary Committees.

Sincerely,

Talis J. Colberg
Attorney General

Attachment
cc: Senator Bettye Davis
Senate President Lyda Green
Senator Lyman Hoffman
Senator Gary Stevens
Senator Gary Wilken
Representative Nancy Dahlstrom
Representative John Coghill
Representative David Guttenberg
Speaker of the House John Harris
Representative Ralph Samuels
Representative Bill Stoltze
Representative Peggy Wilson

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
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September 16, 2008

The Honorable Hollis French, Chair
Senate Judiciary Committee
Alaska State Legislature
716 West Fourth Avenue, Suite 420
Anchorage, Alaska 99501-2133

Re: Executive Branch Subpoenas

Dear Senator French:

Your committee has subpoenaed certain employees of the executive branch of state government represented by the Office of the Attorney General. These persons serve within the exempt and partially exempt service at the will of their employer, the State of Alaska. As you know, the State Personnel Board has undertaken a separate ethics investigation into the same matter for which the subpoenas were issued. For this and other reasons, such as separation of powers, the Governor has declined to participate in the investigation initiated by the Legislative Council.

As state employees, our clients have taken an oath to uphold the Alaska Constitution and for that reason they respect the legislature's desire to carry out an investigation in support of its law-making powers. However, our clients are also loyal employees subject to the supervision of the Governor. Your subpoena places them in the difficult position of choosing either to support the Governor's decision to cooperate only with the Personnel Board investigation or to voluntarily comply with the subpoenas issued by the committee.

You can appreciate that this is an untenable position for our clients because the Governor has so strongly stated that the subpoenas issued by your committee are of questionable validity. Moreover, two lawsuits have been filed challenging the legitimacy of the investigation. On behalf of our clients, we respectfully ask that you withdraw the subpoenas directed to our clients and thereby relieve them from the circumstance of having to choose where their loyalties lie.

If the subpoenas are not withdrawn by the Senate Judiciary Committee, our clients will not appear in response to the subpoenas until either the Senate or the full legislature convenes to issue a resolution requiring their presence before the appropriate legislative committee.

Sincerely,

Talis J. Colberg
Attorney General

cc: Senator Kim Elton, Chair, Legislative Council
Senator Charlie Huggins
Senator Lesil McGuire
Senator Gene Therriault
Senator Bill Wielechowski
Senator Bettye Davis
Senate President Lyda Green
Senator Lyman Hoffman
Senator Gary Stevens
Senator Gary Wilken
Representative Nancy Dahlstrom
Representative John Coghill
Representative David Guttenberg
Speaker of the House John Harris
Representative Ralph Samuels
Representative Bill Stoltze
Representative Peggy Wilson
Stephen Branchflower

Alaska State Legislature

Senate

Official Business

September 12, 2008
State Capitol
Juneau, AK. 99801-1182

Michael Barnhill
Senior Assistant Attorney General
Attorney General's Office
123 4th St., 6th Floor
Box 110300
Juneau, AK 99811-0300

Dear Mr. Barnhill:

After receipt of your letter to me dated September 9, I asked the Legislature's Legal staff to review your interpretation with the law regarding the appropriate handling of state employee personnel records. I also shared a copy of your letter with Sen. Hollis French and investigator Stephen Branchflower.

Following this review of your legal analysis of the laws governing personnel records, I stipulate in my role as chair of the Legislative Council and on behalf of the Council, that your interpretation of the law is correct.

Given our agreement on this important point, and given your offer on page 4 of your letter to drop your objections and allow depositions to proceed "if the Legislative Council will acknowledge in writing it's agreement with the Department of Law's interpretation," I'd appreciate it if you would contact Mr. Branchflower so that depositions may proceed in a timely manner.

Sincerely,

Sen. Kim Elton
Chair, Legislative Council

Cc: Members of Legislative Council
Sen. Hollis French

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

P.O. BOX 110300
DIMOND COURT HOUSE, 6TH FLOOR
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-3600
FAX: (907)465-6735

September 4, 2008

Via e-mail: sebranchflower@gmail.com

Stephen E. Branchflower
310 K Street Suite 200
Anchorage, AK 99501

Re: Depositions of Department of Administration Personnel
Our File: 223-09-0013

Dear Mr. Branchflower:

The Department of Law has become increasingly concerned that the legislative investigation is no longer solely concerned with the reasons why Governor Palin terminated Commissioner Monegan, but rather whether the Alaska Personnel Act was violated. As you know, under AS 39.25.900, conviction of a willful violation of the Alaska Personnel Act carries the penalties of a misdemeanor and forfeiture of the employee's position.

In an August 16 phone call with me, you first raised the issue of whether Mr. Bailey had violated the Alaska Personnel Act. More recently, Senator French has apparently publicly expressed his view that if the Governor's Office obtained confidential information from Trooper Wooten's personnel file, "it would be a violation of state law." *"October Surprise Over Palin Investigation?"* ABC News, Sept. 2, 2008. Yesterday, the Anchorage Daily News reported Senator French disclosing that the scope of the investigation has now expanded to include whether other persons within the Palin administration have abused power. *"Palin Seeks Review of Monegan Firing Case,"* Anchorage Daily News, Sept. 3, 2008.

The Alaska Personnel Act provides that personnel records "are confidential and are not open to public inspection." AS 39.25.080(a). The Department of Law believes that it is not a violation of the Alaska Personnel Act for the governor or members of the governor's staff within the course and scope of their official responsibilities to review a confidential personnel file. The governor is the ultimate employer of every employee in the executive branch. Review by the governor or members of the governor's staff within the course and scope of their official responsibilities of a confidential personnel file is not a violation of employee confidentiality nor does it constitute a public inspection.

It appears from Senator French's reported comments in the press that he disagrees with this reading of Alaska law and his legal opinion differs from that of the Department of Law. While we disagree with his legal position, to the extent that Senator French is correct,

it would therefore follow that individuals within the Department of Administration who have disclosed matters related to an employee's personnel file to the Office of the Governor have potentially violated AS 39.25.080, and could theoretically have personal criminal exposure under AS 39.25.900.

Given the fact that the focus of this investigation has now apparently expanded beyond the governor's termination of Commissioner Monegan, the fact that Senator French appears to believe that the Office of the Governor may not review confidential employee files or perhaps even discuss matters pertaining to a state employee's employment, and the fact that this view of the law, if correct, could potentially expose individuals in the Department of Administration to criminal sanctions including forfeiture of their employment, we must inform you of the following:

- The Department of Law must re-assess this matter in order to determine whether Department of Administration employees should be advised to seek private counsel.
- All depositions of Department of Administration employees are cancelled until further notice.
- Unless we notify you otherwise, the Department of Law is, for purposes of your investigation, representing all Department of Administration employees who had involvement with Trooper Wooten's personnel or workers' compensation files.

I regret to inform you of these actions, but we believe we have no choice given the recent evolution of this investigation. The Department of Law will continue to work with you on your requests for records as we have previously discussed.

Sincerely,

TALIS J. COLBERG
ATTORNEY GENERAL

By: Michael A. Barnhill
Michael Barnhill
Senior Assistant Attorney General

MAB/krk

cc: Commissioner Annette Kreitzer
Senator Hollis French
Senator Kim Elton
Representative Nancy Dahlstrom

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM September 3, 2008

SUBJECT: Investigations by the legislature (Work Order No. 26-LS0088)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Tamara Brandt Cook
Director TBC

You have supplied me with a letter from Mr. Thomas V. Van Flein and Mr. John J. Tiemessen, who are representing the Governor and various staff members, and asked me to consider points raised in the letter.

[redacted]

To the extent that the thrust of this comment in the letter goes to the power of the legislature to investigate, I observe that the legislative power of investigation is limited to obtaining information on matters which fall within its field of legislative action. (Mason's Manual, Secs. 795(6) and 797(7)) Lawmaking is a central legislative activity, but there are other legislative activities that may justify investigatory pursuits. It is stated in Mason's Manual, sec. 795(10): [redacted]

The Alaska Supreme Court has acknowledged that the legislature has broad powers of investigation relating to its lawmaking activities and has also specifically identified the confirmation power as carrying with it an implied power and duty to investigate both the status of the relevant appointed offices and the qualification of individuals appointed to fill them. (Cook v. Botelho, 921 P.2d 1126 (Alaska 1996)) [redacted] example, Art X, sec. 12 (power of the legislature to disapprove certain local boundary changes; Art. II, sec. 20 (power of the legislature to impeach civil officers of the State))

If this comment is intended to precisely apply to the power of the legislative council to investigate, [redacted]

as well as its power to participate in the law-making function through the introduction of legislation (AS 24.08.060(b)). The legislative council does not have explicit authority to investigate activities of executive branch agencies or officers. It is not clear to me whether the broad power to provide administrative services would be considered to be sufficient authority for the legislative council to undertake a preliminary investigation that might lead to the need for other actions on the part of the legislature or another legislative committee, but it might. In addition, it is possible that the recommendations contained in the report prepared under the investigation contract will consist of proposed statutory changes and fall squarely within the law-making function exercised by the legislative council when it considers the introduction of legislation.

(2) The legislature may lack jurisdiction to spend public monies to investigate a co-equal branch of government.

Clearly, expenditure of public money appropriated to the legislative branch must be used for a legislative purpose as well as for a public purpose. If the legislature does have the power to conduct the investigation in question, then it has the authority to spend money for that purpose. Mason's Manual notes in sec. 795(13) "In the exercise of its power to make investigations, a legislature may incur reasonable, necessary expenses payable out of the public funds."

(3) The general legislative power to issue subpoenas is clearly prohibited relative to the Legislative Council. (See AS 24.25.010(e))

It is correct that the legislative council is not authorized to issue a subpoena under AS 24.25.010. It has separate subpoena authority under AS 24.25.060(2). That power is granted "when consistent with the powers and duties assigned to the council by AS 24.20.010-24.20.140." As I previously noted, it is not clear whether the investigation at issue is consistent with those powers and duties.

(4) Art. I, sec. 7 entitles the Governor to "fair and just treatment" in the course of legislative investigations.

This is correct. I have attached a discussion of this provision from the Alaska Constitutional Convention Proceedings, Part 4, pages 1446 -1450 and pages 1464 - 1471. As you can see, the delegates did not reach an understanding of what "fair and just treatment" might be with regard to a legislative investigation. It appears that the expectation was that the legislature would adopt specific procedures that apply to ensure that investigations are fair or that, through court challenges based on actual legislative investigations, a body of law would evolve to clarify the matter. However, the legislature has not adopted specific procedures for investigations and the case law dealing with the last sentence of Art. I, sec. 7 that I found in a quick search has involved executive branch investigations (administrative procedures) rather than legislative branch investigations.

(5) A complaint has been filed with the Personnel Board under the executive branch ethics law which gives the Board jurisdiction over this investigation. Will you suspend your investigation pending the outcome of the Personnel Board investigation?

The investigation of an incident by one governmental entity does not normally deprive another governmental entity of authority to look into the matter also, although one of the entities might agree to curtail its activities out of deference to the other. Assuming that a complaint has been filed under the executive branch ethics law, both the complaint and all information regarding an investigation as a result of the complaint are confidential until the initiation of formal proceedings. (AS 39.52.340) An investigation can only involve alleged violations of the ethics law and there is no way to tell what the scope of the investigation in this situation might be. It certainly cannot be determined that the legislature's investigation will be identical with an investigation being conducted under the executive branch ethics law. [redacted] (Cook v. Botelho, 921 P.2d 1126 (Alaska 1996) quoting from Barrett v. Duff, 217 P. 918 (Kan. 1923) pages 925 - 926)

I caution you not to mention any complaint or investigation that may be in progress under the executive branch ethics act in a letter you make public because these complaints are confidential. I have no comment with respect to whether the legislature should suspend its investigation.

(6) The letter calls into question keeping certain aspects of the legislative investigation secret.

It is usual for the investigatory stage to be conducted on a confidential basis before any formal charge is made or formal proceeding initiated. This protects the privacy of individuals who may be under investigation, of witnesses, and of the investigatory process itself. After all, an investigation may not uncover facts that lead to a formal proceeding. (See generally AS 40.25.120(a)(4); AS 45.50.521; AS 45.66.190; AS 47.30.845; AS 47.32.180) Under the public records law, in determining whether a particular record is subject to public disclosure, the court will weigh the public interest in disclosure against the interest in confidentiality. (Gwich'in Steering Comm. v. State Office of the Governor, 10 P.3d 572 (Alaska 2000); Fuller v. City of Homer, 75 P.3d 1059 (Alaska 2003)) A reasonable argument can be made for the proposition that the interest in protecting the legislature's investigatory function and the privacy interest of potentially innocent parties outweighs the public interest in disclosure, particularly when the investigation may not lead to any formal procedure.

(7) There is no reason to conduct ex parte interviews with represented parties.

This seems to be a fair assertion.

(8) Mr. Branchflower attempted to contact Mr. Todd Palin on a secure line which represents a security breach. The letter requests immediate disclosure of the names of persons who provided the secure phone number.

The letter suggests that the security breach may be reported to the Secret Service. I have no knowledge of federal security laws or how they may interface with an ongoing legislative investigation.

(9) If "you agree to submit to proper jurisdictional process, we can check the Governor's schedule to see when she and the First Gentleman are available for an interview."

Does this mean that, despite the objections in the rest of the letter, an interview will be granted in the course of the legislative investigation? I think you will have to consult with Mr. Thomas V. Van Flein on the meaning of his last two paragraphs.

* * * * * * * * * * * * *

With respect to all this, I observe that if a person refuses to provide information to the investigator or to respond to a subpoena by a legislative committee, it may be that the lack of cooperation must simply be noted in the report. Because the power to investigate is a legislative power that has not been clearly delegated in this instance to a committee, ultimately, the House or Senate or legislature as a whole may have to decide whether to formally initiate an investigation through the adoption of a resolution charging a committee to conduct it.

[redacted] It may be that the legislature must use its own disciplinary powers; formal censure through adoption of a resolution or impeachment proceedings. (See AS 24.25.030) [redacted]

TBC:lmb
08-210.lmb

Enclosure

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September 2, 2008

Stephen Branchflower, Esq. EMAIL: sebranchflower@gmail.com

Re: In Re: Investigation Into The Termination Of Walt Monegan

Dear Mr. Branchflower:

As you are no doubt aware, Senator French sent a letter to our office on September 1, 2008. Although Senator French is an attorney, we do not believe a client can waive the prohibition on *ex parte* contact without confirmation from his counsel. Accordingly, please consider this letter a response to your client's September 1, 2008 letter. If you would prefer in the future that we correspond directly with Senator French, please advise in writing and we would be happy to do so. Until you confirm this, our correspondence will be with you.

As attorneys, we feel that it is our job to keep our clients focused on the objective goals of this process, finding out the truth about what happened. While our clients may have political differences, we would like to think that our offices can rise above those differences and remain focused on a fair, deliberate inquiry that is consistent with the laws and constitution of the State of Alaska and the principles of due process. Unfortunately, Senator French's letter seems to be advocating a different direction. We will rely on you to focus him in a more positive direction.

As you are now aware, a complaint has now been filed with the Personnel Board. This would seem to render Senator French's objection moot. Now that the complaint has been filed, it appears that the Board has jurisdiction over this matter. Will you suspend your investigation pending the outcome of the Personnel Board investigation or resolution of the jurisdictional issue? If not, please explain why. If the stated goal of the Legislative Council is a fair and neutral investigation, then we believe it will embrace the process the Legislature itself created.

While the Legislative Council does have some limited investigatory power, those powers seem to be limited to investigations related to proposed or current laws. We are not aware of any such proposed legislation. In fact, we are suggesting that the Legislature may lack jurisdiction to

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spend public monies to investigate a co-equal branch of the government. While Governor Palin does not have anything to hide, you certainly can appreciate why she would insist that the investigation be conducted fairly, consistent with Alaska Statutes, and free from even the suggestion of political influence. Senator French suggests that this position is somehow "at odds with our state's constitution." We are not aware of which provision of the constitution he refers to but would be happy to reconsider this position if you point us to it. In fact, Mr. French may have overlooked this part of the State Constitution:

> The right of all persons to fair and just treatment in the course of legislative and executive investigations shall not be infringed.

Art. I, Sec. 7. The Governor is a "person" and is entitled to "fair and just treatment" as part of this investigation. Following state law, including the personnel board process, would comply with the Constitution. However, even if the Legislative Council has some plenary power to conduct secret investigations—which it does not—due process is still required. The Governor is entitled to notice of the allegation, discovery, and subpoena powers (all set forth in the Legislative Council's statute, which as adopted the civil rules for its process). We remain perplexed why Mr. French would want a secret proceeding, in violation of the Legislative Council's own enacting statute.

As a further example, the general legislative power to issue subpoenas is clearly prohibited relative to the Legislative Council. *See* AS 24.25.010(e) ("This section does not apply to the legislative council or to the Legislative Budget and Audit Committee").

We believe that it would benefit the truth-seeking goal of any investigation if the parties disclosed witness statements and other information they independently gather. There is certainly precedent for this in the Civil Rules which would require such disclosure. However, it is our understanding that you have already agreed to informal sharing of information with the Attorney General's office. Surely you and Mr. French are not the sort of gentlemen where we must confirm agreements in writing. Again, if this understanding is in error, please advise.

We appreciate the scheduling problems that our recent appearance in this case may have caused. However, that is no reason to conduct *ex parte* interviews with represented parties. Simple professional courtesy as well as the prohibition against *ex parte* contact requires that these interviews and depositions be coordinated with all counsel and parties. Many of these staffers have their own counsel as well, and we need to coordinate with them.

Further, we are informed that Mr. Branchflower attempted to directly contact Todd Palin on a secure and confidential line. This represents a serious security breach that we may be obligated to report to the Secret Service. We ask that you immediately disclose the names of any person who provided you with Mr. Palin's secure phone number.

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We ask again that neither you nor any of your staff have *ex parte* contact with any represented parties as this is a significant violation of Alaska Rule of Professional Conduct 4.2. If you desire a formal list of the represented parties, we will provide one. Suffice it to say that we represent the Governor and the Office of the Governor and all persons associated with that office. Many staff members have private counsel with whom we need to coordinate.

Please confirm your willingness to shift this process to the Personnel Board. We can then use it's procedures to coordinate interviews. We understand that you have a self-imposed deadline of the Friday before the general election. In addition to complying with state law, we think that you would agree that the concerns of finding the truth and not violating anyone's right to counsel or due process trump any desire to create a pre-election media event.

Assuming you agree to submit to proper jurisdictional process, we can check the Governor's schedule to see when she and the First Gentleman are available for an interview. Per Senator French's letter, we will check on possible late September dates. In order to avoid some date conflicts, both I and Mr. Tiemessen will be available to attend these interviews. We will need your dates of availability also. We will also check the schedules of Mr. Nizich and Mr. Ruraro. It seems to make little sense to throw dates at you unless we know your schedule. Perhaps a conference call to schedule these would be the best way to coordinate these deposition and other jurisdictional and procedural concerns? We ask for your prompt cooperation.

Please do not hesitate to call if you have any questions or concerns.

Very truly yours,

Thomas V. Van Flein and
John J. Tiemessen, for
Clapp, Peterson, Van Flein
Tiemessen & Thorsness, LLC

Cc: Governor Sarah Palin
Mike Nizech, Chief of Staff
Lisa Hamby, Esq.
Talis Colberg, Attorney General
Michael Barnhill, Assistant Attorney General

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Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Charlie Huggins
Senator Bill Wielechowski
Senator Lesil McGuire
Senator Gene Therriault

Senate Judiciary Committee

September 1, 2008

Mr. Thomas V. Van Flein
Clapp, Peterson, Van Flein, Tiemessen and Thorsness, LLC
711 H Street, Suite 620
Anchorage Alaska 99501

Dear Mr. Van Flein:

I am in receipt of your letter dated August 29, 2008, sent to Stephen Branchflower on August 30, 2008. It's worth pointing out that we have not received any notice from the Department of Law that the Governor was retaining private counsel. Given the nature of your letter, it seemed more appropriate that I reply to it, rather than Mr. Branchflower.

You assert in your letter that you believe that the Personnel Board is "statutorily mandated to oversee these proceedings." I don't see it that way. The Personnel Board oversees complaints brought against the Governor under the state's ethics laws. While the Board may be engaged now in investigating an ethics complaint, that process is held confidential until the Board makes a finding of probable cause. Indeed, the Board would not have jurisdiction unless someone has filed a complaint. I am unaware of one being filed. Perhaps you know differently.

Your letter goes on to request that Mr. Branchflower work with you "in adhering to state law and submitting these issues to the body properly vested with primary jurisdiction." I confess that I may be misunderstanding your point. The Legislature, of course, has its own separate powers of investigation. I hope you are not suggesting that the Legislature does not have the authority to investigate potential violations of law by members of the Executive Branch. Governor Palin has repeatedly stated that she has nothing to hide and that she and her administration will cooperate fully with this investigation. Is your client aware that you seem to be challenging the Legislature's jurisdiction? Such a position is at odds with our state's constitution, and with your client's public statements.

Your letter also requests a copy of all witness statements that Mr. Branchflower has secured. I have instructed him to not comply with that request. I think you will agree that it would be highly unusual for an investigator to share information with one of the targets of the investigation. I am unaware of any precedent for such an arrangement. Furthermore, the Attorney General is conducting his own inquiry into this matter on behalf of the Governor. As the Governor's lawyer, I feel sure that you will have access to information developed through General Colberg's efforts.

Likewise, I have instructed Mr. Branchflower to adhere to the witness interview schedule that he has worked assiduously to set up. It is very important that the interviews take place as previously arranged by Mr. Branchflower. Delays in witness interviews will jeopardize the timely conclusion of this investigation. Indeed, delays would cause me to convene a meeting of the Judiciary Committee and ask that subpoenas be considered.

With regard to the Governor's deposition, Mr. Branchflower made his initial request for an interview with the Governor last Thursday morning. There has not been a response to his request. Clearly the Governor's new political role will make it more challenging for her to make time for this investigation. Nevertheless, her repeated promises to cooperate fully with the investigation, as well as her statements that her new role as the Republican Vice Presidential nominee will not interfere with the day-to-day functioning of state business, should result in a concrete willingness to schedule and conclude her deposition. In sum, I am requesting that you set a September date for the Governor's deposition, as well as the deposition of Mr. Mike Nizich, and Mr. Randy Ruaro, by the close of business this Friday, September 5, 2008.

I appreciate your stated willingness to cooperate with the Legislature's investigation. Please keep in mind that it was the initial cooperation from the Administration with regards to witness depositions that allowed us to avoid the issuance of subpoenas. I have stated publicly that while the Governor's new status raises the profile of this investigation, it does not change the steps we must go through to see to its completion. I trust that the Governor feels the same way.

Sincerely yours,

Hees R

Senator Hollis French

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Marcus R. Clapp, ret.

August 29, 2008

Stephen Branchflower, Esq. VIA EMAIL sebranchflower@gmail.com

Re: *In Re: Investigation Into The Termination of Walt Monegan*

Dear Mr. Branchflower:

We have been retained to represent the Governor and the Governor's Office relative to the Legislative Council's investigation into the termination of Mr. Monegan, the alleged Executive Branch Ethics violation, and the alleged Personnel Act violation.

We fully welcome a fair inquiry into these allegations, and believe that the Personnel Board is statutorily mandated to oversee these proceedings. We trust you have no objection to following state law in that regard and will work with us in adhering to state law and submitting these issues to the body properly vested with primary jurisdiction.

We have considerable information to review to get up to speed. The Attorney General is forwarding to us information it collected and already shared with you. It is my understanding that there is an informal agreement to share information the parties obtain through their own inquiries. Accordingly, I would appreciate a copy of all witness statements you have (if not transcribed, then we can copy the CD), all documentary evidence you have, any witness list you have, and a copy of the complaint or other charging document upon which you are basing your investigation. The obvious exception to this is I do not expect you to exchange your communications with Sen. French, as you no doubt would not expect, nor be entitled to, our communications that are protected by the attorney client privilege.

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Further, please know that we intend to cooperate with this investigation and will reciprocate the exchange of information consistent with our duty to ensure compliance with due process and within constitutional parameters. I would like to review our calendars to schedule depositions of witnesses (and, of course, we need to coordinate with those witnesses as well, particularly as hunting season is here). For those witnesses outside of the Governor's Office, but within the employ of the State, we will have to coordinate with Mr. Barnhill as well, as those State employees are entitled to representation. I will be representing members of the Office of the Governor at any deposition.

If you are in town, I think a sit down meeting with you would be beneficial so we can map out the logistics. In the meantime, I would ask that you have no *ex parte* contact with members of the Governor's Office, and we will not contact Sen. French. If you consider anyone to be your client in addition to Sen. French, please identify them for us so we do not inadvertently have *ex parte* contact as we perform our own due diligence.

We are looking forward to resolving this matter as expeditiously and fairly as possible.

Very truly yours,

Thomas V. Van Flein, for
Clapp, Peterson, Van Flein
Tiemessen & Thorsness, LLC

Cc: Sarah Palin, Governor
Michael Nizich, Chief of Staff
Kris Perry, Governor's Anchorage Office Director
Michael Barnhill, Esq.
John Tiemessen, Esq.
Lisa Hamby, Esq.

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MEMORANDUM August 13, 2008

SUBJECT: Senate Judiciary Committee issuance of subpoenas relevant to the Legislative Council-initiated investigation of alleged improper actions of executive branch officers and employees.

TO: Senator Hollis French
Chair of the Senate Judiciary Committee

FROM: Jack Chenoweth
Assistant Revisor

The Legislative Council has authorized the above-captioned investigation and entered into an agreement with Stephen E. Branchflower to undertake it. The contract with Mr. Branchflower indicates that you are to serve as "project director," "authorized to oversee and direct the activities of [Mr. Branchflower] under [the] contract." I've been told, though it is not reflected in the draft minutes of the Council's July 28th meeting at which that activity was authorized, that the Legislative Council understood that the Senate Judiciary Committee would serve as the entity through which the Council's contractor could expect to secure and enforce the production of documentary evidence and witnesses relevant to the investigation.

Cindy Smith of your office has requested our consideration of each of the following questions in conjunction with the above-captioned matter.

1. May the Senate Judiciary Committee authorize issuance of one or more subpoenas for the production of records, some of which may be held in the custody of a state employee, relevant to the above-captioned investigation?

Yes. The legislature has broad authority to investigate and an investigation may be conducted through a legislative committee. [redacted] Additionally, Uniform Rule 21(c) grants to standing committees the power to meet between sessions. A committee that meets between sessions may consider "any legislative matter which is consistent with the jurisdiction of the committee." Alone among standing committees, Uniform Rule 20 declares that the standing Judiciary Committees have jurisdiction as to "the legal and substantive review of bills referred to it ... for that purpose," suggestive that the Judiciary Committee is the logical body by which to secure completion of a successful investigation.

Under AS 24.25.010(b), a legislative standing committee has broad statutory power to subpoena a witness including, under AS 24.25.030, a witness who can produce "upon reasonable notice any material and proper books, papers, or documents in the possession or under the control of the witness[.]" [redacted] "

2. May the Senate Judiciary Committee meet by teleconference to authorize issuance of the subpoena(s)?

Yes. Action by teleconference is authorized by AS 44.62.310(a), part of the so-called Open Meetings Act (AS 44.62.310 - 44.62.312). This provision is made applicable to standing committees of the legislature by AS 24.60.037's directive that legislative committees abide by open meetings guidelines. This office has consistently taken the position that, absent an explicit prohibition against a standing committee meeting by teleconference, consistent legislative practice has been to allow standing committees to conduct business by teleconference.

3. To avoid public disclosure of the identities of the person or persons to whom subpoenas may issue, may the committee act to authorize the subpoenas in executive session?

No. Certain matters may be considered in executive session:

> (c) The following subjects may be considered in an executive session:
>
> (1) matters, the immediate knowledge of which would clearly have an adverse effect upon the finances of the public entity;
>
> (2) subjects that tend to prejudice the reputation and character of any person, provided the person may request a public discussion;
>
> (3) matters which by law, municipal charter, or ordinance are required to be confidential;
>
> ***(4) matters involving consideration of government records that by law are not subject to public disclosure.***

I'm assuming, for reasons examined and discussed later in this memo, that paragraph (c)(4) would provide the basis for an executive session in which committee members may discuss the propriety of authorizing subpoenas for specific witnesses and records. However, for purposes of legislative business, open meetings principles, applicable to legislative standing committees by AS 24.60.037, fairly require that the committee's decision and vote to approve or withhold issuance of a subpoena be conducted in public. Under AS 24.60.037(b),

> (b) For purposes of the legislative open meetings guidelines, a meeting occurs when a majority of the members of a legislative body is present and ***action, including voting, is taken or could be taken***, or if a primary purpose of the meeting is the discussion of legislation or state policy. . . . .

There must be a formal record that the authority for the committee chair to issue the subpoena was given "by a majority of the membership of the committee." AS 24.25.010(b). For each subpoena to be authorized, if you conduct the committee meeting by teleconference, you must call the roll of the yeas and nays of the committee members attending ["The vote at a meeting held by teleconference shall be taken by roll call." -- AS 44.62.310(a)]; if all committee members participating are physically present in one place, you may ask for and obtain the members' unanimous consent.

4. To avoid public disclosure of the identities of the person or persons to whom subpoenas may issue, may the committee issue the subpoena addressed in a way that does not name the person?

Unless the committee is prepared to act creatively, probably not. The procedural requirement relating to issuance of a subpoena, including a subpoena to a witness who can produce "upon reasonable notice any material and proper books, papers, or documents in the possession or under the control of the witness," is explicit. Under AS 24.25.010(d),

> (d) The subpoena is sufficient if
> (1) it states before whom the proceeding is held;
> (2) ***it is addressed to the witness***;
> (3) it requires the attendance of the witness at a time and place certain;
> (4) it is signed
> (A) . . . , or
> (B) by the committee chairman with the concurrence of the president or the speaker under (b) . . . of this section.

As you well know, common practice is to enter the name of the person to whom the subpoena is addressed at the appropriate place on the face of the subpoena. I am not aware of any authority by which a subpoena may be issued "generically" ("to the person having custody of the following described records: ___") or using an identifier intended to mask the subpoena recipient's actual identity so as to prevent the subpoena recipient's identity from being otherwise disclosed.[1]

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[1] I have had one thought about taking a public vote as to the issuance of the subpoena without identifying the person to whom the subpoena will issue. If each subpoena to be approved for service on a prospective witness were to have, in addition to

*

This conclusion may prompt the question as to whether a subpoena itself is to be considered and treated as a public record, disclosable to the press and public.

Among exceptions to the public records provisions, under AS 40.25.125(a)(6), certain "law enforcement related records or information" are exempt from disclosure:

> (6) records or information compiled for law enforcement purposes [are excepted from disclosure], but only to the extent that the production of the law enforcement records or information
>
> (A) could reasonably be expected to interfere with enforcement proceedings;
>
> (B) would deprive a person of a right to a fair trial or an impartial adjudication;
>
> (C) could reasonably be expected to constitute an unwarranted invasion of the personal privacy of a suspect, defendant, victim, or witness;
>
> (D) could reasonably be expected to disclose the identity of a confidential source;

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the name of the witness, an identifying number unique to that witness subpoena, it might be possible, it seems to me, to have the committee's approval motion expressed in terms of approving subpoena number 1, or subpoena number 2, rather than referring to the name of the individual. In the public session, the motion would be expressed in terms of an approval of subpoena number ___ ("I move that the committee approve the issue of the subpoena identified as 'subpoena no. 1'") rather than by a motion expressing the names of the individual who would be served. This approach would work, however, only if you are able to reasonably ensure that committee members attending by teleconference have the drafted and numbered subpoenas at hand, so that each committee member would readily understand that the subpoena identified as number 1 or number 2, as appropriate, would be issued to a specific witness for production of specific materials ["Agency materials that are to be considered at the meeting shall be made available at teleconference locations if practicable." -- AS 44.62.310(a); "[a]ction taken contrary to this section is voidable." -- AS 44.62.310(f)]. At the conclusion of the meeting, it would be in order to collect from the participants the draft documents for disposal.

I have no idea whether this would be a practical solution, though I think it is legally defensible so long as the subpoena to be served does bear the identity of the witness on whom it is to be served.

You'd be well advised to consider this and any other reasonable alternatives with Mr. Branchflower; he has more experience in securing evidence under subpoena than I.

> (E) would disclose confidential techniques and procedures for law enforcement investigations or prosecutions;
>
> (F) would disclose guidelines for law enforcement investigations or prosecutions if the disclosure could reasonably be expected to risk circumvention of the law; or
>
> (G) could reasonably be expected to endanger the life or physical safety of an individual[.]

While some may argue that subparagraph (6)(A) may provide the committee sufficient authority, none of these, in my judgment, would authorize an exception from disclosure for a document such as a subpoena. Additionally, it is not clear to me that records and information secured in the course of a legislative investigation would qualify as material "compiled for law enforcement purposes" within the meaning of the exception.

If the information compiled in the course of the committee's investigative efforts is to enjoy protection against disclosure as a public record, it appears that the protection would have to be provided under one or more constitutional provisions as suggested by a 1987 Opinion of the Attorney General. That opinion considered whether the file of a then-active Alaska Public Offices Commission investigation would be available for review by the press. The Attorney General's office declined the press request (except as to certain material that were made expressly available for review by statute or commission regulation), relying on state common law precedents. With apologies for its length, set out below is the text of the relevant portion of the opinion:

> As you know, AS 09.25.110 [now AS 40.25.110], commonly known as the "Public Records Act," provides generally that all records of an agency of state government "are public records and are open to inspection by the public under reasonable rules during regular office hours." A second statute, AS 09.25.120 [now AS 40.25.120], sets out limited exceptions to the general rule of disclosure. The only exception relevant here is for "records required to be kept confidential by a federal law or regulation or by state law . . . ." This office has consistently concluded that the phrase "state law" includes state common law. 1985 Inf. Op. Att'y Gen. (Oct. 21; 366-202-84); 1985 Inf. Op. Att'y Gen. (Sept. 24; 366-113-86); see *City of Kenai v. Kenai Peninsula Newspapers*, 642 P.2d 1316, 1319 (Alaska 1982); see also AS 01.10.010.
>
> The Alaska Supreme Court has recognized a common law exemption from disclosure where a demonstrable need for confidentiality outweighs the public's proprietary interest in public records and its interest in knowing what government officials are doing. *Kenai Peninsula Newspapers*, 642 P.2d at 1319. In our view, there are at least three demonstrable public and private interests which, at least in the aggregate, outweigh the public's right to have access to APOC's active investigation files.

First, numerous courts have recognized that the agency and the public have an interest in preserving the integrity and effectiveness of law enforcements investigations, and that that interest may be jeopardized by the release of active investigative files. *State ex rel. City of Bartow v. Public Employees Relations Commission*, 341 So. 2d 1000 (Fla. Ct. App. 1976); *Stone v. Consolidated Publishing Company*, 404 So.2d 678 (Ala. 1981); *Church of Scientology v. City of Phoenix Police Department*, 594 P.2d 1034 (Ariz. 1979); *Grodjesk v. Faghani*, 487 A.2d 759 (N.J. App. Div. 1985). Release of active investigation files creates the possibility that the subject of the investigation will interfere with the investigation by, among other things, destroying documents or discouraging witnesses from cooperating with the agency. *Public Employees Relations Commission*, 341 So. 2d 1000. In the agency's experience, witnesses contacted in the course of an active investigation are often reluctant to provide sworn testimony or agree to "go public" with their information unless they are satisfied that independent investigation by the agency tends to substantiate their testimony. Such witnesses would be more reluctant to provide information to the APOC if their information is immediately subject to public scrutiny. See *People ex rel. Better Broadcasting Council, Inc. v. Keane*, 309 N.E.2d 362, 364 (Ill. 1973); *Lopez v. Fitzgerald*, 390 N.E.2d 835 (Ill. 1979).

Second, the investigatory information you seek has not yet been subject to full administrative evaluation, and no decision has yet been made whether there is substantial evidence indicating that any laws have been violated. Release of such unevaluated information to the public may unfairly impair the reputation of the subjects of the investigation, and may come perilously close to violating their due process rights guaranteed by the state and federal constitutions. *Lopez v. Fitzgerald*, 390 N.E.2d at 840-41. The courts have recognized that "the public good is not served by disclosures which undermine the sense of security for individual rights." *Lopez v. Fitzgerald*, 390 N.E.2d at 840 (citing with approval *Craemer v. Superior Court*, 265 Cal. App. 2d 216, 222, 71 Cal. Rptr. 193, 199 (Cal. 1968)).

Third, we believe that Alaska's constitutional right to privacy requires APOC to use extreme caution in disclosing unverified or unevaluated charges or materials obtained by the agency in the course of an investigation. *Lopez v. Fitzgerald*, 390 N.E.2d at 840; see *Falcon v. Alaska Public Offices Commission*, 570 P.2d 469 (Alaska 1977); *Messerli v. State*, 626 P.2d 81 (Alaska 1980). The persons whose privacy rights are at stake can waive the right. In this case, the subjects of the investigation have declined to do so.

> In reaching the conclusion that the public and private interests in nondisclosure of these investigative files outweigh the public's interest in disclosure, we are influenced by the fact that, under 2 AAC 50.460(d), investigation reports will be prepared by the APOC staff upon conclusion of the investigations. Investigation reports are generally made available to the public, and are always provided to the persons whose complaints triggered an investigation. Because an investigation report will be produced in due course, we believe the public's interest in early disclosure of the information is not great. See *Public Employees Relation Commission*, 341 So. 2d 1000.

1987-1 Op. (Inf.) Atty. Gen. Alas. 291, April 30, 1987, at 2 - 6 (notes omitted). Although the Council-initiated investigation may not properly be characterized as one made for "law enforcement purposes," nonetheless the principles identified and discussed in the preceding opinion as warranting confidential treatment of an active investigation -- most significantly, considerations bearing on the release of "unevaluated information" as bearing on the due process rights of the investigation's subjects -- would appear to apply equally to the matter that the Council has under consideration. Significantly for your purposes, as with the outcome of the APOC investigation noted in the quoted portion of the opinion, the Council's contract with Mr. Branchflower anticipates completion of an investigative report and contemplates eventual release of the report in a form that may be disclosed to the public.

JBC:med
08-370.med

PRESS RELEASES

Daily News editorial distorted Troopergate inquiry's facts - COMPASS: Other points of view

Anchorage Daily News (AK) - Friday, October 24, 2008

Author: *TALIS J. COLBERG; Commentary*

The "Bottom Line" of the October 20 Daily News editorial was that Alaskans do not need an elected attorney general. That conclusion may be correct, but along the way the editorial also found "plenty of reasons to criticize" me. Those reasons are not supported by the facts.

First, the editorial inappropriately suggests that the Department of Law may have tampered with witnesses by conducting an inquiry before Stephen Branchflower began his legislative investigation in the matter known as Troopergate. The facts show otherwise.

When Mr. Branchflower interviewed me as part of the Legislature's investigation, he said that the department's inquiry "resulted in material that (was) very helpful to (him) in doing (his) job," that it was "very much appreciated," and that "without (my) willingness to share that evidence ...the ultimate production of (his) report would have been delayed."

Second, the Department of Law did not hire a private lawyer to represent Governor Palin because of any perceived conflict of interest on my part. We did so because I was concerned that having state attorneys represent Governor Palin in the investigation would hamper the department's ability to effectively perform its other statutory duties.

By statute, the attorney general's duties include serving as legal adviser to state officers, representing the state in litigation, prosecuting violations of state law, and administering state legal services. Normally the attorney general gives legal advice both to the governor and to other state departments, including the Department of Public Safety. But the point of the Legislature's investigation was to consider whether Governor Palin used her public office for a personal purpose. Without separate counsel to represent the governor, the department's effectiveness as legal counsel to both the governor and other state agencies might have been impaired.

To address those concerns, the department hired Mr. Van Flein to represent the governor and other members of her office, expressly limiting the representation to their official actions. The department remained involved in the legislative investigation because its attorneys continued to represent employees of other state agencies.

Mr. Van Flein later expanded his representation to Governor Palin in her personal capacity and to Todd Palin. That work was never covered by his contract with the state. But because Mr. Van Flein assumed these new responsibilities, he decided that he could no longer represent other members of the governor's office, so the department resumed representation of those employees.

The editorial incorrectly asserts that I said at a press conference that Mr. Van Flein was no longer a state contractor. In fact, I confirmed at the press conference that Mr. Van Flein was still under contract to represent Governor Palin in her official capacity. I have never stated otherwise. (Editor's note: A correction on this point appeared Thursday on

page A-3.)

Third, contrary to the editorial's assertion, I did not advise state employees that compliance with subpoenas is voluntary. Subpoenas are never mandatory until they are served. Before the employees were served with the subpoenas, the department asked legislators to consider withdrawing them. Once the subpoenas were served, the department filed a court action seeking a ruling on their validity. Although the editorial suggests that the department delayed in challenging the subpoenas, in fact the department filed the lawsuit just two days after service was completed.

Finally, the court in that case did not, as the editorial suggests, decide that the subpoenaed employees had no grounds for challenging the subpoenas' validity. Instead, the court declined to address that issue, concluding that the challenges must be resolved by the Legislature, not a court.

Bottom Line: The Daily News editorial was based on a distorted view of what actually happened.

Talis J. Colberg is attorney general of the State of Alaska.

Caption: Photo 1: 24edit_Talis J Colberg_102408.jpg

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Anchorage Daily News

Legislative subpoenas go unanswered

CONTROVERSY: Seven Palin aides follow attorney general's advice and refuse to be interviewed.

By SEAN COCKERHAM
scockerham@adn.com

(09/27/08 03:53:07)

With state officials again defying legislative subpoenas in the investigation of whether Gov. Sarah Palin abused her power, the war between state lawmakers and Alaska's attorney general is escalating.

The governor's chief of staff, Mike Nizich, and six other Palin aides didn't show up Friday to honor subpoenas ordering them to testify in front of the Senate Judiciary Committee. The committee chairman, Anchorage Democratic Sen. Hollis French, said they could be found in contempt when the full Legislature convenes in January, a finding that carries potential jail time.

Alaska Attorney General Talis Colberg, a Palin appointee, filed a lawsuit late Thursday asking the courts to declare the subpoenas invalid so the state employees would not be punished for ignoring them.

Colberg said his office has told the employees they had a choice to disobey the legislative subpoenas -- advice that has state legislators furious.

"We have advised people that is an option. And that we think the subpoenas have flaws," he said.

Fairbanks Republican Rep. Jay Ramras, chair of the House Judiciary Committee, charged "there is likely very irresponsible behavior coming from the attorney general."

Anchorage Democratic Sen. Bill Wielechowksi, a lawyer who is on the Judiciary Committee, said he is not impressed, either.

"I just can't imagine any attorney advising a client that a subpoena is voluntary," he said.

Colberg's lawsuit argues that the Judiciary Committee did not have the authority to issue the subpoenas, a claim contested by the legislators. Colberg on Friday asked the lawmakers to suspend their subpoenas until the court makes its ruling -- a process that could run well beyond the Nov. 4 election where Palin is on the Republican ticket for vice president. French refused, saying the attorney general didn't even ask the court for a quick ruling and "has put its lawsuit on a slow track."

Colberg said he didn't ask for a quick ruling on his lawsuit because it's the Legislature that has imposed a deadline for the investigation to be completed. The lawmakers can ask for an expedited ruling if they want, he said.

"If there is urgency, let it be on the other party to explain why this would be on par with, for example a child in need of aid or somebody in danger," he said.

GROWING CRITICISM

Steve Branchflower, the investigator hired by the Legislative council, is supposed to give his report on the investigation Oct. 10. At issue is whether Palin dismissed public safety commissioner Walt Monegan because he wouldn't fire a state trooper who went through an ugly divorce with her sister. The bipartisan Legislative Council passed a resolution that directs Branchflower "to investigate the circumstances and events surrounding the termination of former Public Safety Commissioner Monegan, and potential abuses of power and/or improper actions by members of the executive branch."

Palin initially said she'd cooperate with the investigation -- then changed course after her nomination as vice president, saying the Legislature's investigation was politicized. Palin said the state personnel board, not the Legislature, has jurisdiction and she'd cooperate with its investigation.

That one is out of public view and may not be done before the election.

Colberg is coming under growing fire from legislators and other critics for how he's handled the battle between Alaska's legislative and executive branches. One of the stated aims of a planned "Hold Palin Accountable" protest to be held in Anchorage today is to demand the attorney general's resignation.

"There's talk of the AG, should he be disbarred and could he be disbarred, I just don't know," said Kenai Republican Rep. Mike Chenault.

North Pole Republican Sen. Gene Therriault -- who sides with Palin in the investigation -- told reporters that "it's my understanding somebody has lodged a complaint" against Colberg. Therriault had no confirmation. Such a complaint likely would be filed with the Alaska Bar Association, but those are confidential.

"I haven't been informed on (a complaint) yet," Colberg said. "But given the number of references to that type of thing I guess that's possible."

'GOOD LEGAL GROUND'

Colberg has defenders in the state Legislature, including North Pole Republican Rep. John Coghill, who said he believes the legislative investigation is tainted by politics and should be delayed until after the election.

"I think they have some good legal ground, I think the Legislature dangerously went beyond its authority," he said.

Anchorage talk radio has carped on Colberg for going on vacation last week as the controversy raged. Colberg said September is ordinarily a good time for a cabinet member to travel, and the Legislature is not in session.

Colberg said he obviously had no idea when he planned the trip that there would be an investigation or that Palin would be nominated for vice president.

"So in June, I had made arrangements to go on a personal vacation to the four states that I had never been to, focusing on Kansas. And I had made this arrangement with my college roommate of 30 years ago and we had talked about this for about three decades. ... So my trip for one week did occur and I did see all 50 states and I enjoyed the state of Kansas. It's a very nice place, at this time of year especially so," he said.

Colberg said he actually spent most of the trip on the phone dealing with what's become known as the Troopergate investigation.

Colberg said the Legislature's investigation is politicized. He said he's trying to insert some objectivity into the process by taking the subpoenas to court so a judge can sort it out.

WHO IS PAYING THE BILLS?

Colberg said an example showing how the investigation is flawed was lawmakers choosing not to subpoena former Palin chief of staff Mike Tibbles, now managing U.S. Sen. Ted Stevens' campaign for re-election.

"(Tibbles is) a key witness by any measure, and they said we won't subpoena you and the explanation that is given is -- 'there is no political will.' Now what does that say about the process?"' Colberg said.

The legislators also didn't subpoena Palin, saying they wanted to "de-escalate" the standoff with the governor. They did subpoena Palin's husband, Todd.

Todd Palin and two others refused last week to honor the Legislature's subpoenas.

Sarah and Todd Palin are both represented in the Troopergate investigation by an Anchorage attorney, Thomas Van Flein. There's some dispute over just whom Van Flein is working for. Colberg said Friday that Van Flein is on contract with the state to represent the governor, although the state has nothing to do with his representation of Todd.

But Van Flein, who has been getting advice from a lawyer working on the McCain-Palin campaign, insists he canceled the state contract on Sept. 12.

Colberg said he does not think Van Flein has received any money from the state. Palin's gubernatorial spokesman Bill McAllister said that's his understanding as well. Van Flein said the state is not paying his fees and that the Palins are responsible. But he wouldn't say whether they were paying directly, or if the money is coming from the McCain campaign or some other source.

Find Sean Cockerham online at adn.com/contact/scockerham or call him at 257-4344. Daily News reporter Tom Kizzia contributed to this story.

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Subpoenaed Palin aides could be found in contempt

BY SEAN COCKERHAM
scockerham@adn.com

(09/26/08 21:14:05)

With state officials again defying legislative subpoenas in the investigation of whether Gov. Sarah Palin abused her power, the war between state lawmakers and Alaska's attorney general is escalating.The governor's chief of staff, Mike Nizich, and six other Palin aides didn't show up Friday to honor subpoenas ordering them to testify in front of the Senate Judiciary Committee. The committee chairman, Anchorage Democratic Sen. Hollis French, said they could be found in contempt when the full Legislature convenes in January, a finding that carries potential jail time.

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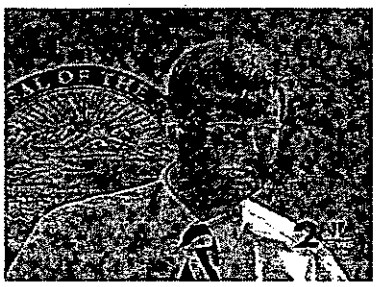
Investigation file

McCain-Palin campaign accused of co-opting department of law



Attorney General Talis Colberg says state workers will not comply with subpoenas in the Legislature's investigation. (Scott Jensen/KTUU-TV)

The attorney general made an offer to Sen. Kim Elton to protect state workers from criminal prosecution. (Scott Jensen/KTUU-TV)

After the hearing with Branchflower, Elton wrote back to the Department of Law agreeing. (Scott Jensen/KTUU-TV)

Elton now accuses Colberg of compromising the investigation of the firing of Walt Monegan. (Scott Jensen/KTUU-TV)

by Jason Moore
Wednesday, Sept. 17, 2008

ANCHORAGE, Alaska-- The battle over subpoenas issued to Palin administration officials raged on Wednesday, with accusations that the John McCain-Sarah Palin campaign has co-opted the state Department of Law.

There was reaction from the head of the Legislative Council, a day after Attorney General Talis Colberg announced state workers will not comply with subpoenas in the Legislature's investigation.

Legislative Council Chair Sen. Kim Elton accused the attorney general of breaking his word on a deal the attorney general proposed. And Colberg's rejection of the subpoenas is prompting allegations that the McCain-Palin campaign has taken over the state's Department of Law.

Days before investigator Steve Branchflower appeared before lawmakers seeking subpoenas in his probe into the governor's firing of Walt Monegan, the attorney general made an offer to Elton to protect state workers from criminal prosecution if they had looked at personnel files.

Senior Assistant Attorney General Mike Barnhill wrote to Elton on Sept. 9, saying, "If the legislative council will acknowledge in writing its agreement with the department of law's interpretation, the department of law will drop its objections and the depositions may proceed without subpoenas."

Then after the hearing with Branchflower, Elton wrote back to the Department of Law agreeing.

I stipulate in my role as a chair of the Legislative Council and on behalf of the council that your interpretation of the law is correct," Elton wrote.

Elton thought he had a deal until Tuesday night when Colberg announced state workers will not testify. Colberg did not cite any legal reason for ignoring the subpoenas.

And after the announcement, officials said Colberg hopped on a plane to Kansas for a vacation.

"It appears that the department is in complete disarray," said Sen. Bill Wielechowski. "It appears that the McCain campaign is co-opting our Department of Law and basically calling the shots and I think that's pretty clear from some of the actions we've seen over the past couple of days."

In a letter to Colberg Wednesday from Elton, Elton accuses Colberg of compromising the investigation.

"In four paragraphs, you've broken a deal that was accepted by your office and received by Mr.Branchflower after the Senate Judiciary Committee issued subpoenas," Elton writes. "Further your brand new position eviscerates weeks of comments on the record by several parties, including the governor."

The governor's office issued an additional statement Wednesday evening that said "the department of law remains separate and will continue to remain separate from the presidential /vice presidential campaign."

The House and Senate Judiciary committees are scheduled to meet Friday to discuss the status of the investigation.

Contact Jason Moore at jmoore@ktuu.com

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Investigation file

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September 17, 2008

Lawsuit Is Filed to Halt Alaska Dismissal Inquiry

By SERGE F. KOVALESKI and JO BECKER

ANCHORAGE — Five Republican state lawmakers on Tuesday filed a lawsuit seeking to halt an inquiry into Gov. Sarah Palin's dismissal of her public safety commissioner, arguing that the Legislature has exceeded its authority by conducting a "McCarthyistic investigation."

The lawsuit, filed in the state's Superior Court, comes as the McCain-Palin campaign has escalated its involvement in the bipartisan inquiry, providing Ms. Palin's lawyer with help and mounting a public relations offensive.

The legal action marks the most aggressive challenge yet to the two-month-old investigation, which Ms. Palin initially said she would cooperate with.

The campaign said Tuesday that it had no involvement in the decision to file the lawsuit.

The lawmakers are being represented by a local lawyer, Kevin G. Clarkson, and the Liberty Legal Institute, which is based in Texas and has a history of taking up conservative causes.

Hiram Sasser, director of litigation for the institute, said he had not spoken with anyone at the McCain campaign, but was contacted by Mr. Clarkson, who sought him out because of his constitutional expertise. Mr. Sasser's co-counsel in the case is Kelly J. Shackelford, who founded the institute. He told reporters at the Republican convention that Mr. McCain's selection of Ms. Palin "resurrected" the party's social conservative base.

The lawsuit, consisting of 26 pages, was filed against two Democrats, State Senator Hollis French, who is overseeing the investigation, and Senator Kim Elton, who is the chairman of the Legislative Council, which voted on July 28 to open the inquiry; and Stephen E. Branchflower, the independent investigator, a former Anchorage prosecutor who now lives in South Carolina.

The plaintiffs said they hoped to persuade the Legislative Council, a bipartisan body of House and Senate members who can convene to make decisions when the Legislature is not in session, to drop the inquiry by naming it in the lawsuit.

At the heart of the lawsuit is the argument that the inquiry exceeds the Legislature's constitutional power and that the process has been handled in a politically biased fashion intended to besmirch Ms. Palin's reputation and affect the outcome of the November elections.

"The defendants are conducting a 'McCarthyistic' investigation in an unlawful" and "partial and partisan political manner," the lawsuit said.

The ethics case has its roots in Ms. Palin's decision this summer to dismiss Alaska's public safety commissioner, Walt Monegan, who contends that he was dismissed for refusing to fire Ms. Palin's former brother-in-law, Mike Wooten, a state trooper.

Ms. Palin has denied that, saying his dismissal stemmed from his "insubordination" over budget matters.

Tuesday's lawsuit contends that the investigators have a "predisposition to make findings against Governor Palin" and are manipulating the timing of the inquiry "so as to affect the outcome of elections" by not agreeing to release the report after Nov. 4. Lawmakers have said the report would be completed by Oct. 10 to give both sides ample time to respond. "There is no nonpartisan reason that" the investigation "needs to be completed prior to the election on Nov. 4, 2008," the lawsuit said.

The lawsuit singles out Mr. French and Mr. Elton, pointing out that Mr. Elton gave $2,000 to the Obama campaign and citing comments in which Mr. French called Mr. McCain's selection of Ms. Palin a "bad choice." It also accuses Mr. Branchflower of having a conflict of interest because his wife once worked under Mr. Monegan. Mr. Elton said in a written statement that while the lawsuit is a distraction, the investigation would continue.

Among the five lawmakers who filed the suit was Representative Wes Keller, an elder in Ms. Palin's church whom she appointed to his seat.

The reaction among their Republican colleagues was mixed. The House Speaker, John Harris, asked the Legislative Council to convene a meeting within the week to discuss the status of the investigation. "What started as a bipartisan and impartial effort is becoming overshadowed by public comments from individuals at both ends of the political spectrum," Mr. Harris said in a letter to Mr. Elton.

State Senate President Lyda Green, a Republican who has frequently clashed with Ms. Palin over policy, said the lawmakers who filed it were all "step-by-step followers" of Ms. Palin.

"The McCain campaign is the one that has made this partisan," Ms. Green said. "This was 100 percent bipartisan effort on the part of the Legislature to ask questions that deserve to be answered."

The attorney general told lawmakers Tuesday that members of Ms. Palin's administration who had been subpoened would not cooperate with the investigation.

Ms. Palin's lawyer has sought to move the investigation to the state Personnel Board, whose members are appointed by the governor for four-year terms. But on Tuesday, Ed O'Callaghan, a former senior Justice Department official advising the campaign and Ms. Palin's lawyer, said that even if Ms. Palin succeeds she had not yet decided if she would testify.

A person briefed on the campaign activities in Anchorage also said outside lawyers in coordination with the campaign had volunteered legal advice to Ms. Palin's lawyer. One volunteer is currently in Anchorage, and one or two others have been here to plot legal strategy over the past few weeks, the source said. Taylor Griffin, a campaign spokesman, declined to identify the lawyers by name.

A handful of Alaskans, several of them prominent Republican donors, sought to have the investigation thrown out.

Michael Powell contributed reporting.

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SENATOR KIM ELTON

Senator Elton Responds to Lawsuit

For Immediate Release: September 16, 2008

(JUNEAU) - The Judiciary, the third branch of government, is now part of the drama surrounding the Legislative Council's investigation into "the circumstances and events surrounding the termination of former Public Safety Commissioner Monegan and potential abuses of power and/or improper actions by members of the executive branch." Five legislators now are asking the courts to stop an investigation unanimously endorsed by the Legislative Council several weeks before Gov. Sarah Palin was elevated to the Republican national ticket as a vice presidential nominee.

The suit filed in the Superior Court of the State of Alaska seeks "declaratory and injunctive relief in the investigation," according to the attorney hired by Reps. Wes Keller, Mike Kelly, and Bob Lynn along with Sens. Tom Wagoner and Fred Dyson.

Named in the suit in addition to the Council were: Sens. Kim Elton, chair of the Council; Hollis French, project director for the investigation; and Steven Branchflower, the investigator hired by the Council.

"While the suit is a distraction," Sen. Elton said today, "I'm comfortable with the notion that the court will review the substance of the suit and find the Council acted properly and that the decisions made during the course of the investigation so far are appropriate and well within the mandate of the Council." He added the investigation will continue pending a ruling from the court.

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SENATOR_KIM_ELTON@LEGIS.STATE.AK.US

"The silver lining in this action initiated by the five lawmakers," Elton said, "is that some of that debate now has been kicked to the judicial branch which, unlike the legislature and the governor's office, is more insulated from the red-hot passion of presidential politics."

Elton noted an attorney will be hired to represent the named parties in the suit though a decision on who that attorney will be has not yet been made.

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Ethics Adviser Warned Palin About Trooper Issue

Letter Described Situation as 'Grave,' Called for Apology

By JIM CARLTON
September 11, 2008; Page A8

ANCHORAGE, Alaska -- An informal adviser who has counseled Gov. Sarah Palin on ethics issues urged her in July to apologize for her handling of the dismissal of the state's public safety commissioner and warned that the matter could snowball into a bigger scandal.

Associated Press

Alaska State Trooper Mike Wooten (right) answers questions about the 'Troopergate' investigation on Tuesday.

He also said, in a letter reviewed by The Wall Street Journal, that she should fire any aides who had raised concerns with the chief over a state trooper who was involved in a bitter divorce with the governor's sister.

In the letter, written before Sen. John McCain picked the Alaska governor as his running mate, former U.S. Attorney Wevley Shea warned Gov. Palin that "the situation is now grave" and recommended that she and her husband, Todd Palin, apologize for "overreaching or perceived overreaching" for using her position to try to get Trooper Mike Wooten fired from the force.

Mr. Shea was acting on his own in writing the letter, with no official capacity. In late 2006, Gov. Palin asked him to co-write an ethics report for Gov. Palin with then-House Democratic leader Ethan Berkowitz that recommended new financial-disclosure rules for elected and appointed officials in the statehouse. That report served as a key document for the ethics bill she later signed into law.

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Read the letters from Wevley Shea to Gov. Palin and her aides.

After his initial letter in July, Mr. Shea followed up with another letter, dated Aug. 4, in which he told Gov. Palin that she probably couldn't legally shun a legislative investigation into the firing of Public Safety Commissioner Walt Monegan.

Gov. Palin has taken the opposite tack, hiring a private attorney to advise in a matter that has become known as "Troopergate." Seven Palin administration employees have refused to meet with the independent investigator. The McCain-Palin campaign has argued that the state legislature has no right to look into the matter. Palin spokesmen say the state personnel board is the appropriate investigative body, setting up a showdown between the state's legislative and executive branches.

The McCain-Palin campaign referred comment on the letters to the governor's office, which confirmed receipt of them. "While we can't always act on every idea, Gov. Palin thanks Mr. Shea for his counsel," Sharon Leighow, the

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governor's deputy press secretary, said in a statement.

Members of the House and Judiciary committees overseeing the probe -- which lawmakers want wrapped up by early October -- meet Friday to consider issuing subpoenas to the governor's staff.

Associated Press

Alaska Gov. Sarah Palin in Juneau, Alaska, on Sept. 5, 2007.

Mr. Shea, in his Aug. 4 letter, warned Gov. Palin against taking her current approach. "My feeling is this is not a personnel matter. It doesn't have anything to do with the governing of the state of Alaska," he said in an interview this week.

The governor has denied any wrongdoing in the matter and said the commissioner was removed over an unrelated budget dispute. After bipartisan committees of the state legislature in late July approved $100,000 to hire an independent investigator to see if any laws were broken, Gov. Palin pledged the full cooperation of herself and her staff.

Write to Jim Carlton at jim.carlton@wsj.com

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Palin May Move to Block Subpoenas in Trooper Case

Bloomberg.com

Timothy J. Burger and Tony Hopfinger
Thu Sep 11, 12:02 PM ET

Sept. 11 (Bloomberg) -- A top law enforcement official in Alaska Governor Sarah Palin's administration is considering steps to block a legislative probe into allegations she improperly fired the state's No. 1 police official.

The legislature's report on the conduct of Republican vice presidential nominee Palin may be released next month, just weeks before the presidential election.

Senior Assistant Attorney General Michael Barnhill, in a letter to Alaska lawmakers, questioned whether the investigation is biased and threatened to try to quash subpoenas for seven Palin administration officials who have refused to be interviewed in the probe. Legislative leaders meet tomorrow to consider issuing the subpoenas.

``The eyes of the nation have now turned upon us," Barnhill said in the letter. ``We think there is a legitimate concern that this investigation is no longer being conducted in a fair manner." The chief investigator ``may have prejudged the outcome," he said.

Barnhill's seven-page letter said Hollis French, a Democratic senator, has publicly commented that Palin or her aides may have broken the law by allegedly obtaining personnel files of the fired state public safety commissioner, Walt Monegan.

Attorney General Talis Colberg, a Palin appointee, recused himself in the case. Barnhill works for Colberg.

Delaying the Probe

The Sept. 9 letter to Alaska State Senator Kim Elton, a Democrat, and other lawmakers suggests Palin's supporters are trying to delay completion of the so-called Troopergate investigation until well past its Oct. 10 target date and the Nov. 4 election that will decide whether Palin becomes vice president under John McCain. French didn't return calls seeking comment.

Lawmakers are reviewing whether Palin dismissed Monegan on July 11 after he resisted pressure to fire a state trooper, Mike Wooten, who was involved in a contentious divorce from the governor's sister.

Monegan told the Anchorage Daily News that the pressure came from Palin, her husband, Todd, and some of her aides. Palin has denied exerting any pressure on Monegan and says she dismissed Monegan to take the department in a new direction.

Barnhill said issuing subpoenas would violate a clause in the state's constitution that protects individual reputations from McCarthy-like smear tactics. Alaska became a state in 1959, a few years after hearings led by Wisconsin Senator Joseph McCarthy ruined the careers of many government employees who were accused of having ties to the Communist Party.

McCarthy Hearings

Barnhill's letter cited a reference to the McCarthy hearings from the state's constitutional convention.

The moves by Palin's attorney general's office could precipitate a ``little mini constitutional crisis," Jay Ramras, a Republican representative who chairs the House Judiciary Committee, said in a phone interview. ``It's a shame because Alaska is going to air its dirty laundry in front of the national public in a politically charged environment."

``We have to prevent this because it is going to diminish the reputation of Alaska," Ramras said.

Since McCain picked Palin, seven of her aides have declined to be interviewed by an investigator hired by the Alaska legislature, according to the House and Senate Judiciary committees. The committees meet tomorrow in Anchorage to decide whether to issue subpoenas.

Reviewing Personnel Files

Barnhill said in the letter that it is legal and part of the governor's job for her and her staff to review personnel files, though such

files could theoretically ``be handled inappropriately." He said, ``At this point, the Department of Law knows of no evidence that suggests that any Department of Administration employees violated the State Personnel Act in handling Trooper Wooten's personnel file."

Barnhill said he may take the matter to court if lawmakers don't give written assurance that they agree with his reading of the law -- and that the Palin administration isn't in danger of prosecution.

``The stakes for these" employees, Barnhill wrote, ``are high," because if French's ``apparent legal view is correct, it is theoretically possible that these employees could be subjected to criminal prosecution and forfeiture of their jobs" if found to have violated the law.

Barnhill also questioned the legislative investigation on an array of other grounds, including the selection of its investigator, its tactics, indications that it is broadening to ``new and unidentified targets," alleged prejudging of the case, and -- with the presidential election drawing near -- its timing.

``We continue to recommend that our clients cooperate with the investigation," assuming the Legislature doesn't ``completely abrogate its responsibilities," Barnhill wrote.

``But we reserve the right to revisit whether the public interest is truly being served by the manner in which this investigation is currently being conducted," he wrote.

To contact the reporter on this story: Timothy J. Burger in Anchorage at tburger2@bloomberg.net ; Tony Hopfinger in Anchorage at thopfinger@gci.net

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Partisan flap

No need to change overseer of Legislature's Troopergate work

Published: September 9th, 2008 10:26 PM
Last Modified: September 9th, 2008 11:00 PM

State Senate Judiciary Chairman Hollis French is still "project manager" for the legislature's investigation into Gov. Palin's Troopergage -- and there's nothing wrong with that.

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A Republican attempt to remove the Anchorage Democrat from overseeing the investigation has fizzled. Led by North Pole Rep. Jack Coghill, a supporter of John McCain, it was a partisan overreaction to comments Sen. French made about where the investigation, now being done independently by a former prosecutor, might lead.

The key word there is "might."

Yes, Sen. French said things that, stripped of context, might sound like he prejudged the outcome. Early on, he mentioned the I-word -- the findings might lead to "impeachment." Recently, he said the final report might produce an "October surprise" in the presidential election.

The key word, again, is "might." He was discussing the full range of possibilities, from no wrongdoing by the governor to the possibility of removal from office.

When he used the I-word -- speaking to the Wall Street Journal -- he was talking about "a worst-case scenario," as the Journal's July 30 story indicated. It was a statement of possible outcomes, not a prediction.

Around the same time in July, Sen. French told the Daily News that accusations of wrongdoing by Gov. Palin are "not a slam-dunk. She's got a defense." (See our July 22 editorial.)

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Sen. French realized from the beginning that politics could interfere with a responsible, objective investigation into the case. "We need to hand this off to someone," Sen. French said at the time -- and that's what the Legislature did. All the investigative work is being done by a respected former prosecutor, Steve Branchflower.

"Steve Branchflower is the one gathering facts and writing the report," Sen. French said Monday. "And facts are facts. I can't create them or destroy them."

One troubling fact is already out on the table -- because Gov. Palin herself put it there. She released the tape on which her aide Frank Bailey is telling a trooper lieutenant that "Sarah and Todd" can't figure out why her ex-brother-in-law is still a trooper. Bailey also refers to information about the brother-in-law that may have come from confidential personnel or workers compensation files.

When French told ABC News the Legislature's report on Troopergate is "likely to be damaging to the governor's administration," he was stating the obvious. It will include Bailey's phone call, which has already been "damaging" to her administration.

Nonetheless, Sen. French could have handled the national media frenzy over Troopergate better --

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as he himself admits.

"I should have had my project director hat screwed on more tightly and kept my mouth shut," he said Monday.

Sen. French and his Republican colleagues running the House Judiciary Committee have tried to de-escalate the politically charged environment surrounding Troopergate.

They have moved up the target date for issuing investigator Branchflower's report, so it will come out several weeks before the November election. They told Gov. Palin the Legislature doesn't plan to subpoena her, in hopes she'll honor her promise to cooperate and agree to be interviewed.

Still, the McCain campaign and its allies at Fox News are on the attack against Sen. French. Tuesday, the campaign sent e-mails about a Fox News broadcast that echoes Republican Rep. John Coghill's partisan charges and fingers Sen. French as a partisan supporter of Barack Obama.

And their point is?

"It's not surprising each side is supporting the nominee of our party," French said Monday. "That's why I'm not doing the investigation. That's why Jack Coghill is not doing the investigation. That's why Steve Branchflower is doing the investigation."

BOTTOM LINE: Democrats and Republicans alike should chill out and let the Legislature's independent investigator do his work on Troopergate.

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Attorney challenges Monegan firing inquiry

By LISA DEMER
ldemer@adn.com
(09/02/08 00:33:41)

The state has hired a private lawyer to represent Gov. Sarah Palin's office in the Legislature's investigation into the firing of former Public Safety Commissioner Walt Monegan. The lawyer already has challenged whether lawmakers even have authority to oversee the inquiry.

The state Department of Law hired Thomas Van Flein, an Anchorage attorney with expertise in employment law and professional liability, because Attorney General Talis Colberg has a potential conflict of interest and shouldn't represent the governor, Van Flein said Monday.

His work started Aug. 21. He's being paid $185 an hour, lower than his usual rate, to represent Palin and others in the governor's office, he said. He is initially authorized to spend up to $95,000.

The state's Legislative Council, a bipartisan panel of senators and representatives, authorized the investigation last month and approved spending of $100,000. They've hired a special counsel, retired state prosecutor Steve Branchflower.

The investigation concerns whether Palin or others in her administration abused their power or improperly pressured Monegan to fire a state trooper who is Palin's ex-brother-in-law. Palin and her father have said Trooper Mike Wooten was a "loose cannon" who made threats against them. The investigation has received national attention since Sen. John McCain, the apparent Republican nominee for president, chose Palin as his running mate Friday.

A four-page backgrounder on the Wooten matter put out Monday by the McCain/Palin campaign says that Palin's husband, Todd, and members of her staff had made inquiries "about the appropriate Department of Public Safety procedures for dealing with someone they considered a dangerous person and rogue trooper."

Palin has denied pressuring Monegan. The campaign says she only recently became aware of efforts by Todd and others.

Because Colberg has acknowledged contacting Monegan about Wooten, he's a potential witness, Van Flein said Monday. So an outside law firm needed to be brought in to represent the governor's office, he said.

He said the governor's office welcomes the inquiry and will cooperate.

WHOSE JURISDICTION?

Van Flein said the investigation should be handled by the state Personnel Board, not the Legislature, because it's "statutorily mandated" to handle ethics cases. The three-member Personnel Board is appointed by the governor.

In a letter to Branchflower, Van Flein also asked for all witness statements, documents and other materials collected in the course of the investigation.

"No" to both requests, said state Sen. Hollis French, an Anchorage Democrat and former state prosecutor who is project director for the legislative investigation.

The Legislature has its own power of investigation, French wrote to Van Flein on Monday.

"Governor Palin has repeatedly stated that she has nothing to hide and that she and her administration will cooperate fully with this investigation. Is your client aware that you seem to be challenging the Legislature's jurisdiction?" French wrote.

As to witness statements, French said he had instructed Branchflower not to provide them. Colberg conducted a separate inquiry for the governor, and the governor can get statements from him, French noted.

"I think you will agree that it would be highly unusual for an investigator to share information with one of the targets of the investigation," French wrote. "I am unaware of any precedent for such an arrangement."

The back-and-forth quickly escalated.

"Our concern is that Hollis French turns into Ken Starr and uses public money to pursue a political vendetta rather than truly pursue an honest inquiry into an alleged ethics issue," Van Flein said in an interview.

"How does he explain the unanimous vote (to pursue the investigation) by the Republican-dominated Legislative Council?" French shot back.

Later in the day, French added, "It's too bad the governor has stooped to hiring a name-calling lawyer. That doesn't seem very open and transparent does it?"

WAITING FOR PALIN

Branchflower hasn't been able to set up an interview with Palin. French said the state will fly Branchflower to wherever Palin is on the campaign trail if needed.

"Clearly the governor's new political role will make it more challenging for her to make time for this investigation," French wrote. But Palin needs to be interviewed sometime in September, he said.

Van Flein said the investigation is "bad timing" in the middle of a presidential campaign. He said he couldn't guarantee her availability this month.

If witnesses aren't available, French wrote, he'll ask the Senate Judiciary Committee, which he chairs, to issue subpoenas.

Van Flein said several people from the McCain campaign contacted him about the Wooten matter as part of the vetting process, before Palin was announced as McCain's pick.

The lawyer said he thinks Palin will be vindicated.

"We have a governor that exercised her constitutional right to terminate a commissioner. We have a family concerned about their safety. We have them asking what do you do with a trooper ... who

might pose a threat.

"We don't have any sex. We don't have any drugs. And there's no blue dress. Nor are there any shady real estate deals here," Van Flein said. "In the big picture, I think people are going to be disappointed that this is not a scandal."

Find Lisa Demer online at adn.com/contact/ldemer or call 257-4390.

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September 2, 2008

GOVERNOR PALIN CALLS FOR FORMAL REVIEW OF REPLACEMENT OF COMMISSIONER MONEGAN

In 2005 and early 2006, State Trooper Mike Wooten was the subject of a court-imposed Domestic Violence Protective Order and, as I learned in 2008, an order suspending him from the Alaska State Troopers for violent behavior. Some of this violent behavior was directed against my family (including my sister, who was divorced from Trooper Wooten in 2006), and included threats against my father. Over the past several weeks, there has been a suggestion that these events are somehow connected to my decision in 2008 to replace Public Safety Commissioner Walt Monegan, whom I appointed to the position after becoming Governor and after the events involving Trooper Wooten had occurred. There is no such connection. To put these matters to rest, on Monday, September 1, 2008, I formally asked the Alaska Personnel Board to investigate the allegations that have been made in the media about my replacement of Walt Monegan.

Concerns about Trooper Wooten's behavior were aired both by members of my family and others before Mr. Monegan ever took office as Public Safety Commissioner. There is absolutely nothing improper about voicing concerns about Trooper Wooten -- including threats to "bring" the governor and family members "down" -- with Mr. Monegan or his predecessor—complaints about State Troopers are supposed to go to the Commissioner.[1] Nor is there anything wrong with Mr. Monegan or his predecessor receiving information about threats specifically directed at me or my family. Threats of violence against a public official, and his or her family, fall within the responsibilities of the Department of Public Safety. In any event, the details about Trooper Wooten's behavior are outlined in my filing, and I will not repeat them here. Suffice it to say that both the Anchorage Superior Court and the Department of Public Safety issued orders and findings concluding that he had engaged in serious, violent misconduct.

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Neither my decision to appoint Walt Monegan as Public Safety Commissioner in 2006 nor my decision to replace him in 2008 had anything to do with Trooper Wooten. Mr. Monegan has publicly stated that "no one ever said fire Wooten. Not the governor. Not Todd. Not any of the other staff." The fact of the matter is that, while I was impressed with Mr. Monegan's abilities in many respects, he and I had differences of opinion on budget matters that have been a priority of my administration since the beginning, and I therefore decided to appoint a replacement commissioner and asked Mr. Monegan to take another leadership position in the government that was better suited to his skills and less prone to friction over budget matters. As Governor, I have the authority to hire and fire Public Safety Commissioners and other cabinet members and agency heads for any reason.[2] Mr. Monegan himself recognized as much in a letter he wrote at the time of his departure.

Last night, I initiated a proceeding before the state personnel board because that is the agency charged by law with addressing complaints about hiring and firing matters, and ethical issues in general, involving the Governor.[3] It is important to note that no one has actually filed a complaint against me, including Mr. Monegan, who would have had an obligation to notify the Personnel Board if he believed there had been misconduct in connection with his replacement.[4] Nonetheless, the people of Alaska—and of the nation—deserve to have a decision from the proper tribunal putting their minds at ease that suggestions of misconduct that have circulated on the Internet and in some media outlets are not true. I therefore am waiving the confidentiality that usually covers personnel board complaints,[5] and look forward to the personnel board's investigation and to moving forward with the people's business.

---

[1] See Department of Law, FAQ: "I want to complain about . . . a state trooper. Who can help me? Complaints against a state trooper must be filed in writing with the Juneau Office of the Commissioner." www.law.state.ak.us./department/faq.

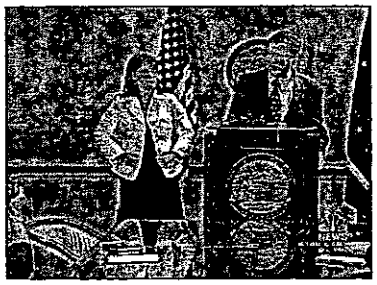
[2] Under our State Constitution, Article III, Sec. 25, the "head of each principal department shall be a single executive . . . appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, **and shall serve at the pleasure of the governor** . . . ." State statutory law is the same: "Each principal executive officer serves at the pleasure of the governor." AS 39.05.030.

[3] AS 39.52.310(c) ("If a complaint alleges a violation of AS 39.52.110--39.52.190 by the governor, lieutenant governor, or the attorney general, the matter **shall** be referred to the personnel board."

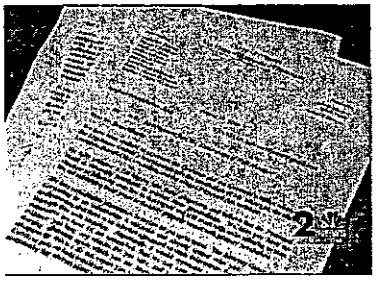
[4] AS 39.52.210(a) ("A public employee who is involved in a matter that may result in a violation of AS 39.52.110--39.52.190 shall (1) refrain from taking any official action relating to the matter until a determination is made under this section; and (2) **immediately disclose the matter in writing** to the designated supervisor and the attorney general").

[5] AS 39.52.340(c).

Palin hires attorney for public safety controversy



Palin will not be represented by Attorney General Talis Colberg. (KTUU-TV)



Palin's new lawyer requested special investigator Steve Branchflower's early findings. (Phil Walczak/KTUU-TV)

Sen. Hollis French, D-Anchorage, is overseeing the investigation. (Phil Walczak/KTUU-TV)

by Rebecca Palsha
Monday, September 1, 2008

Anchorage, Alaska -- While Sarah Palin heads toward her official nomination at the Republican National Convention, she's taking steps here at home to get legal advice on the controversy over her firing of Public Safety Commissioner Walt Monegan.

Palin has hired an attorney, and he has a list of demands.

Her attorney, Thomas Van Flein wants to know what the investigator hired by the Legislature knows.

But Sen. Hollis French, D-Anchorage, who is the project director for the investigation, said that's not going to happen.

It was back in August when the announcement came down.

"As a result of the inquiry by the Department of Law, I do now have to tell Alaskans that such pressure could have been perceived to exist, although I have only now become aware of it," Palin said in an August 13 statement.

Some allege the governor's staff pushed to get the governor's former brother-in-law, Trooper Mike Wooten, fired, and that Palin fired Commissioner Monegan because he wouldn't terminate Wooten.

Those allegations led to an investigation by the Legislature.

And, most recently, the governor hired a private attorney to represent her.

Thomas Van Flein now represents Palin and her office.

"The governor is entitled to representation through council, and her attorney general was unable to provide it in this case," Van Flein said. "There's nothing unusual or surprising about that."

Van Flein said he was hired by the Department of Law because Attorney General Talis Colberg is unable to represent Palin.

"The Department of Law had a potential conflict of interest, because Mr. Colberg, Attorney General Colberg, made contact with Mr. Monegan about Trooper Wooten," Van Flein said. "That would make him a potential witness, and thus there's a potential conflict."

But there are about 200 lawyers currently on the state pay roll that should be able to handle the matter, French said.

Van Flein wrote a letter asking to see what, if anything, the Legislature's investigator, Steve

Branchflower, had uncovered.

But Van Flein was told that Blanchflower wouldn't be sharing anything.

"I've instructed Mr. Branchflower to not comply with that request," French said. "I think it's fairly unusual for the lawyer that's representing one of the targets of the investigation to ask to see the evidence, so we're -- Mr. Branchflower I don't think will be sharing evidence."

Van Flein said he was not surprised by French's response, but he is disappointed.

"It's starting to take on aspects of a secret proceeding, a political proceeding, much in the vein of Ken Star," Van Flein said.

French has other concerns, too, he said.

"The governor said over and over she has nothing to hide, she's open and transparent, she's willing to sit down and talk, but I'm concerned about some of the implications of the letter, about scheduling, working it out with this person or that person, or whether we're going to get some delays out of that," French said.

The investigation is certainly a challenge to a vice presidential contender, with an outcome expected just before the presidential election.

French said he expects Branchflower's findings by Oct. 31but hopes for it to be finished sooner.

Contact Rebecca Palsha at rpalsha@ktuu.com

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Just for the record.....

On Tuesday, Governor Sarah Palin's appointed Attorney General sent a letter to state Sen. Hollis French, the Democrat overseeing the "Troopergate" investigation, and asked that the subpoenas that were issued last week to comple testimony be withdrawn.

Attorney General Talis Colberg also stated the employees would refuse to appear unless either the full state Senate or the entire Legislature votes to compel their testimony.

According to Colberg, the employees are caught between their respect for the Legislature and their loyalty to the governor, who initially agreed to cooperate with the inquiry but has increasingly opposed and has attempted to delay it since beoming John McCain's running mate.

"This is an untenable position for our clients because the governor has so strongly stated that the subpoenas issued by your committee are of questionable validity," Colberg wrote.

Last week, the Senate Judiciary Committee subpoenaed 13 people. They include 10 employees of Palin's administration and three who are not: her husband, Todd Palin; John Bitney, Palin's former legislative liaison who now is chief of staff for Republican House Speaker John Harris; and Murlene Wilkes, a state contractor.

> This is quite a change of tune for Colberg, who just a month ago came under questions for talking to potential witnesses ahead of special investigator Steve Branchflower.
>
> Both Palin and Colberg stated at the time he was gathering evidence to hand over to Branchflower for the investigation.

However today, four weeks later, both Colberg and Palin are questioning the validity of the investigation.

Also on Tuesday, the McCain campaign rolled out what they're calling their "Truth Squad", which consists of former Palin spokesperson Meg Stapleton and a New York lawyer named Ed O'Callahan.

During there initial press conference they claimed that Democratic State Senator Hollis French, manipulated the witness list by leaving off the name of Palin's former Chief of Staff Mike Tibbles.

However they were wrong; Franch had nothing to do with leaving Tibbles name of the list. The move was made by Republican Representative Jay Ramras who felt that Tibbles should be left off because he is now in the private sector and doesn't have the advantage of a state lawyer to defend himself.

So on their first day, the McCain truth squad came up with a false accusation.

> So just for the record, we'll share the actual truth with the Meg and Ed about this investigation so they'll know better next time:

Lawmakers seek outside inquiry of Monegan firing - KTUU-TV - July 18, 2008:

Some lawmakers are asking for more answers to the reasons Palin had for firing Monegan. Palin, in Wasilla for the Governor's Picnic, said she would not fight such an effort to look into this matter by an independent investigator.

"We would never prohibit, or be less than enthusiastic about any kind of investigation. Let's deal in the facts, and you do that via investigation," Palin said.

Senate will look into Monegan firing - KTUU-TV – July 19, 2008:

While the governor said there is no need for an investigation from an outside investigator, she said she will answer any questions from lawmakers, media and the public.

Public Safety already headed in 'new direction,' some say - Anchorage Daily News - July 22, 2008:

The governor denies any wrongdoing, and says she welcomes any questions on the matter.

Palin under fire – Legislature appears poised to appoint investigator - Aftermath of Monegan Dismissal, Anchorage Daily News - July 22, 2008:

"I've said all along, hold me accountable," Palin told reporters in Juneau. "And I'm telling the truth when I say there was never pressure put on Commissioner Monegan."

Lawmakers move to investigate Monegan ouster, KTUU-TV – July 24, 2008:

The governor says she welcomes the investigation. "I have absolutely nothing to hide and am happy to answer any questions," she said. "I'm happy to answer any questions between now and when they do conduct an investigation also."

Gov. Palin said last weekend that she did not think an independent investigator was needed. "That being the route that they choose, then so be it," she said. "I'm happy to comply, to cooperate. I have absolutely nothing to hide. No problem with an independent investigation."

Hired help will probe Monegan dismissal - $100,000: Legislators vote to have independent investigator look into controversial firing - Anchorage Daily News –July 29, 2008:

"The governor has said all along that she will fully cooperate with an investigation and her staff will cooperate as well," Leighow said.

Branchflower to investigate in Monegan firing - KTUU-TV – August 1, 2008:

"I've heard (Branchflower's) name, or course, over the years in Alaska," Palin said. "I know he's a prosecutor, probably a heavy duty prosecutor, and so that kind of puzzles us why we are going down that road when we are very, very open to answering any questions anybody has of me or administrators."

PRESS RELEASE: GOVERNOR TO TURN OVER FINDINGS - Office of the Governor – August 13, 2008:

Governor Palin has directed all her staff to cooperate fully with Branchflower.

Palin administration cooperating with investigator - KTUU-TV – August 15, 2008:

Lawmakers had wanted to know if Steve Branchflower needed them to issues subpoenas to require witnesses to talk to him about Gov. Sarah Palin's decision to fire Monegan and about the actions of her staffers. But State Sen. Hollis French says the meeting was cancelled because there's no need for subpoenas at this point.

Palin aide Frank Bailey placed on administrative leave - KTUU-TV – August 19, 2008:

"We figured, if there is an investigation going on with an unknown outcome – we don't know exactly what (special investigator) Mr. Branchflower is going to conclude – that Mr. Bailey just needed to step away from the situation, although be available to the investigator," [Palin spokesman] McAllister said. The governor's office also says that Bailey will cooperate fully with the investigation.

Palin aide put on leave in firing flap, BAILEY: Official who made all inquiring about trooper taken "out of the mix." - Anchorage Daily News – August 20, 2008:

Spokeswoman Sharon Leighow said that with Bailey still a state employee, Palin "can direct him to assist Mr. Branchflower, thereby fulfilling her pledge to Alaskans to cooperate fully with the investigation."

Re: Governor Palin and Trooper Investigation - McCain Campaign Press Release – August 30, 2008:

Governor Palin is an open book on this – she did nothing wrong and has nothing to hide. As a reformer and a leader on ethics reform, she has been happy to cooperate fully in the inquiry of this matter.

Attorney challenges Monegan firing inquiry – Anchorage Daily News – September 2, 2008:

He [Governor Palin's Lawyer Mr. Van Flein] said the governor's office welcomes the inquiry and will cooperate. Palin has made repeated public statements that she'll cooperate, and that hasn't changed at this point, Van Flein says.

Any questions?

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If...

Submitted by KT (not verified) on Wed, 2008-09-17 08:06.

If there was no crime, why work so hard on the cover up?

» reply

Submitted by JimAK (not verified) on Wed, 2008-09-17 08:00.

http://abcnews.go.com/images/Blotter/Van%20Flein%20final%20reponse%20pdf.pdf *** French says the McCain campaign failed to contact any of the Senators involved in the investigation during the vetting process of Gov. Palin. "If they had done their job they never would have picked her," said French. "Now they may have to deal with an October surprise," he said, referring to the scheduled release Oct. 31 of the committee's final report. The Alaska state senator running an investigation of Gov. Palin says the McCain campaign is using stall tactics to prevent him from releasing his final report by Oct. 31, four days before the November election. "It's likely to be damaging to the Governor's administration," said Senator Hollis French, a Democrat, appointed the project manager for a bi-partisan State Senate Legislative Counsel Committee investigation of claims that Palin abused her office to get the Alaska public safety commissioner, Walt Monegan, fired. ***

» reply

I have 2 serious questions:

Submitted by JJUS (not verified) on Wed, 2008-09-17 07:07.

(1) How can she credibly claim that Monegan was insubordinate when she previously praised his work and offered him another job on the Alcohol Control Board (ABC)? See **KTVA 8-15-08 article, "Governor and staff's latest explanations leave more questions"** (But weeks ago she praised Monegan for his abilities to solve those same issues when offering him a job as the director of the Alcohol Beverage Control Board. "I recognized Frank Bailey, Boards and Commissions Director that Walt's interests and strengths could be put to good use as he could concentrate exclusively on a couple of issues that were his interest, that be bootlegging and alcohol problems in rural Alaska," said Palin on July 17th.); see also Gov. Palin Press RELEASE No. 08-122 (7/17/08). (2) How can she claim she fired him because he wasn't doing enough to combat bootlegging and alcohol abuse problems, yet offer him a new job in precisely that field? See **KTVA 8-15-08 article** ("I was concerned also that we were not doing enough on continuing alcohol abuse issues that I wanted to see tackled, including the bootlegging issues in rural Alaska"); See also **CNBC interview ('What does a VP do?' video)** ("it was the Commissioner that we were seeking more results, more action to fill, uh, vacant trooper positions, to deal with bootlegging and alcohol abuse problems in our rural villages especially. Um, just needed some new direction, a lot of new energy in that position. That is why the replacement took place there of the Commissioner of public safety.") There are only 2 options here: (A) She is lying, and in the process willing to playing politics with state procedure and to smear the reputation of a well-respected police chief (not to mention lying about ever contacting or pressuring Monegan about Wooten); or (B) She is not lying, and she is so irrational that she offered a job to a guy to head up the ABC -- a task force she thinks is important (alcohol abuse/bootlegging, etc.) -- even though she claims she fired that same guy for failing to control alcohol abuse/bootlegging AND who she now accuses of insubordination. Which one is it?

» reply

Sara Leaves a Lot In Her Wake

Submitted by Anonymous (not verified) on Wed, 2008-09-17 06:35.

Another casuality of the Sara-normal behavior we are watching is that where I once enjoyed listening to radio hosts such as Rush, Hanity and Oreily I can now not stand to hear a word that comes out of their mouths. I always knew they each had their own bent and bias but thought they all were pretty intelegent men who did their research. They all sound like total idiots now as they discuss Sara Palin. I am someone who voted for Palin before I knew what a vicious wacko she really is. Just like Murkowski, Stevens, Young and Ruderich these radio hosts will realize they have been duped. Rush, Hanity and Oreily have not yet realized that Sara Palin despises them and every conservative value they hold. They are the "good old boys" she wants to throw under the bus and as others have said "it is getting really crowded under that bus".

» reply

AK Legislature- Property of John McCain

Submitted by Bill R. (not verified) on Wed, 2008-09-17 06:15.

It's Official! The Alaska legislature now belongs to John McCain. They are doing his bidding and shutting down the investigation of Sarah Palin. COVER-UP!, COVER-UP!, COVER-UP!, COVER-UP!!!!!!!!!!!!!!!!!!!!

» reply

adn.com
Anchorage Daily News

Palin staff pushed to have trooper fired

Governor says she's learned calls were made about Wooten's ouster

By SEAN COCKERHAM
cockerham@adn.com

(08/14/08 01:34:27)

Gov. Sarah Palin on Wednesday revealed an audio recording that shows an aide pressuring the Public Safety Department to fire a state trooper embroiled in a custody battle with her sister.

Palin, who has previously said her administration didn't exert pressure to get rid of trooper Mike Wooten, also disclosed that members of her staff had made about two dozen contacts with public safety officials about the trooper.

"I do now have to tell Alaskans that such pressure could have been perceived to exist although I have only now become aware of it," Palin said.

But Palin said her decision to fire Public Safety Commissioner Walt Monegan last month had nothing to do with his refusal to dump trooper Mike Wooten.

The governor said evidence of what she called a "smoking gun" conversation, and other calls made by her aides, only recently surfaced as the attorney general started an inquiry at her request into the circumstances surrounding her firing of Monegan. Palin wanted the review because a special investigator hired by the Legislature is about to investigate the firing and a legislator has been quoted in a newspaper story talking about impeachment.

The majority of the calls came from Palin's chief of staff at the time, Mike Tibbles, according to information gathered by the state attorney general's office. Attorney General Talis Colberg and Palin's husband, Todd, also contacted Monegan about the trooper.

Palin said she'd only known about some of the contacts and never asked anyone on her staff to get in touch with state public safety officials about Wooten.

"Many of these inquiries were completely appropriate. However, the serial nature of the contacts could be perceived as some kind of pressure, presumably at my direction," she said.

Palin said the "most disturbing" was a phone call Frank Bailey, the governor's director of boards and commissions, made to trooper Lt. Rodney Dial in February. The Public Safety Department recorded the call, as it does routinely.

Palin, who said she'd only just learned of the call, released a recorded copy of it to the press on Wednesday. In it, Bailey clearly pressures the lieutenant.

'HORRIBLE RECRUITING TOOL'

Bailey told him during the conversation that Palin and her husband want to know why Wooten still has a job.

"Todd and Sarah are scratching their heads, 'Why on earth hasn't this, why is this guy still representing the department?' He's a horrible recruiting tool, you know," Bailey told the lieutenant.

Bailey made several accusations against Wooten in the call, including that he lied on his application. Dial asked Bailey how he knew about any issue with the application.

"I used to be a recruiter. I know a lot of times that information is extremely confidential," Dial told him.

Bailey replied he was reluctant to say but saw the application as part of Wooten's worker's compensation claim. Bailey, later in the call, then brought up Monegan again.

"I'm telling you honestly, you know, she really likes Walt a lot, but on this issue, she feels like it's, she doesn't know why there is absolutely no action for a year on this issue. It's very, very troubling to her and the family. I could definitely relay that," Bailey said.

Palin said Bailey wasn't speaking on her behalf and his comments were "just wrong."

Bailey said in a Wednesday interview that no one asked him to make the call and he doesn't know why he indicated in the call that he was speaking on behalf of the Palins. He said he was calling lieutenant Dial, who was the state troopers liaison to the Legislature and had volunteered on Palin's campaign, in order to try to get information about the troopers union and then brought up Wooten.

Bailey said he'd heard at a security briefing right after Palin was elected that Wooten had made a threat against Palin's family. He said he also had casual conversations with Todd Palin about the trooper. Bailey said Todd had expressed "general frustration with the situation" but never asked him to do anything about it.

"My fear was (Wooten) could fly off the handle and do something that was irreversible," Bailey said. "That concern, that fear, has always been in the back of my mind."

Palin said it's under discussion whether Bailey is going to keep his job in the administration.

COLBERG'S PHONE CALL

Attorney General Colberg also disclosed Wednesday that he'd made a call about Wooten. Colberg said he called Monegan several months ago after Todd Palin asked him about "the process" for when state troopers make death threats against the first family.

"I made an inquiry and was told by commissioner Monegan that there was a process in place and that it was handled and it was over. And I reported back to the first gentleman that there was nothing more that could be done," Colberg said.

Palin said her husband also contacted Monegan about a threat made by Wooten but backed off when Monegan indicated he couldn't get into the matter.

The family had alleged the threat in 2005, before Palin became governor. They said Wooten had told Palin's sister he would shoot their father if he got the sister a lawyer.

Wooten denied saying anything like that. But a trooper investigation concluded he did, although it wasn't a crime because he didn't threaten the father directly. Wooten's actions did violate trooper policy, the investigator found.

Palin said she was meeting with the investigator hired by the Legislature, Steve Branchflower, on Wednesday and would turn over everything gathered as part of the attorney general's inquiry. The Bailey phone call was the only one that Palin singled out as being wrong. Assistant Attorney General Mike Barnhill said all the calls from then-chief of staff Tibbles, who is now running Sen. Ted Stevens' re-election campaign, regarding Wooten looked to be appropriate.

"It's absolutely appropriate that a chief of staff was checking on staff issues and personnel, policy and procedure," Palin said.

Palin said no one from the Department of Public Safety -- including Monegan before his firing -- had complained they felt pressured regarding Wooten.

KOPP'S SEVERANCE PACKAGE

Colberg also disclosed Wednesday that Chuck Kopp, who Palin had appointed to replace Monegan as public safety commissioner, received a $10,000 state severance package after he resigned following just two weeks on the job.

It was in light of the fact that he left a comfortable 19-year career on the Kenai Peninsula and took a job that lasted less than two weeks," Colberg said.

Kopp, the former Kenai chief of police, resigned July 25 following disclosure of a 2005 sexual harassment complaint and letter of reprimand against him.

Monegan said in a Wednesday interview that he didn't get any severance package from the state.

WHY PALIN FIRED MONEGAN

Monegan was a Palin appointee, and she had a right to fire him for any reason. She's previously refused to say exactly why she got rid of him, but laid out several reasons Wednesday, saying she's decided to talk about it because Monegan is.

Palin said he wasn't doing enough to fill state trooper vacancies and battle alcohol abuse issues. She said he "did not turn out to be a team player on budgeting issues."

Palin said it's fine to have debates during cabinet meetings over the budget but Monegan went further and indicated to legislators she wasn't proposing enough spending. Palin's acting chief of staff, Mike Nizich, said Monegan asked legislators for spending that hadn't been authorized by the governor.

"The response he got was don't come to us and ask for more money when you cannot fill the 56 or 58 trooper positions that were vacant," Nizich said. "So he was making a pitch for additional funding when he couldn't even fill what he currently had available to him."

Monegan questioned that but declined to comment further, saying he's already started talking to the special investigator hired by the Legislature to look into his firing.

Find Sean Cockerham online at adn.com/contact/scockerham or call him at 257-4344.

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Question

Should Wooten be a trooper? Let's have an independent look

Published: July 22nd, 2008 11:10 PM
Last Modified: July 22nd, 2008 02:52 AM

That's a question Alaskans are asking after learning of trooper Mike Wooten's suspension in 2006 for illegally shooting a moose, giving his stepson a jolt with his state-issued Taser and drinking beer during the operation of a marked Alaska State Trooper patrol vehicle. For those offenses, substantiated by a trooper investigation, he received a 10-day suspension, later cut to five days.

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Begich bade Chief Monegan fond farewell from city post

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The disciplinary letter, issued nine months before Gov. Palin took office, painted a harsh picture of trooper Wooten.

It cited "a significant pattern of judgment failures" and "a course of conduct totally at odds with the ethics of our profession."

"Your unacceptable conduct appears to have continued and even escalated."

Gov. Sarah Palin and her family have also accused the trooper of threatening her and her family. He's still in a bitter custody battle with the governor's sister. The troopers found that most of the allegations from Gov. Palin's family and friends -- which included verbal and physical abuse, intimidation, steroid use, irresponsible drinking, threats of physical violence and suggestions that he misused his position as a trooper -- were unfounded or unsustained by the evidence.

Should he have been fired?

The Alaska State Troopers didn't think so. They did their own investigation and concluded suspension sufficed, along with a warning that the suspension was Wooten's "last chance."

That investigation doesn't necessarily inspire total public confidence. The initial work was done by administrative investigator Sgt. Ron Wall. He dismissed two witnesses' report that Wooten was drinking during the operation of a marked trooper car as unfounded, but he didn't tape-record the interviews. Julia Grimes, then director of the troopers, re-interviewed the witnesses, found them credible and included the incident in her disciplinary report.

It's unclear whether troopers investigated a report that Wooten was dismissed from his post as an assistant football coach at Wasilla High School because of a profane outburst, directed at his niece, on school grounds. If he was not fit to coach youths, you'd have to wonder if he's also fit to carry a gun and use deadly force on behalf of the public.

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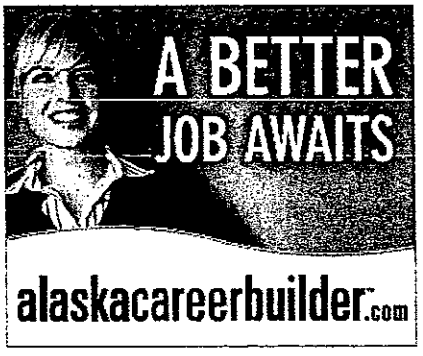

Trooper Wooten has his defenders.

Trooper Rob Cox is a 17-year AST veteran and president of the troopers' union. He's a friend of Wooten and has worked with him in the field, and said he had no question about going into any situation with Wooten. He said he'd count on him to do his job, cover his partner and protect the

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Both Cox and trooper union executive director John Cyr paint a picture of Wooten that contradicts Gov. Palin, her family and others. Where the Palin family sees a dangerous, abusive man in a position of power, Cyr and Cox see what Cox called a trooper who is "gentlemanly, calm, confident." Guilty of some bad judgment, but a good trooper.

One the one side, you have a family rallying around a member in the middle of a messy divorce. On the other side, you have union officials defending one of their ranks.

The only third-party investigation into these conflicting claims was done by fellow troopers. That investigation found enough evidence to impose a stiff sanction, but not enough to fire him.

There's plenty of ground here for an independent investigation. It wouldn't be the first time a law enforcement agency went easy on its own.

Lawmakers appear ready to hire an independent investigator to examine the firing of Public Safety Commissioner Walt Monegan and the actions of Gov. Palin, family members and staffers and whether they pressured Monegan to fire Wooten.

An independent investigator should look at the troopers' review of Wooten as well. Alaskans need to know if an incurable bad apple is still in the ranks -- and if the troopers need more authority to fire those who are unfit.

There's a lot riding on this -- public faith in the integrity of the governor and the Alaska State Troopers. Did the governor abuse her position? Is Wooten fit to be a trooper? Is it too hard for the troopers to dismiss troublesome officers from their ranks?

Public interest trumps confidentiality here. It's time for transparency all the way around -- the kind that independent investigators can demand.

BOTTOM LINE: An independent investigator should look at the Wooten case.

Cowdery

A step in the right direction

Who was head of the council that will be responsible for a possible investigation of the governor's actions?

Oops: Sen. John Cowdery of Anchorage, who was indicted earlier this month on federal corruption charges.

He was chairman of the Senate-House Legislative Council until he resigned from the job Monday.

Cowdery is in poor health besides being under indictment. He cited his health when he relinquished the position.

Whatever the reason, he made the right choice for the state when he decided this week to step down as council chairman.

The council conducts the business of the Legislature between sessions, and the chairman will direct an investigation of the governor's actions regarding the Public Safety Department, if there is such an investigation.

Cowdery is accused of bribery and conspiracy for scheming with Veco Corp. executives to buy the vote of another senator on oil tax legislation.

While he has yet to be tried, it's already clear that his ethical compass is off base.

Cowdery has no business continuing to serve in the Legislature, much less as chairman of a committee with subpoena powers.

BOTTOM LINE: Sen. Cowdery's resignation as chair of the Legislative Council is the right move.

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6 Wednesday, July 23, 2008 - 7:19am | **black33**

Huh?

"It's unclear whether troopers investigated a report that Wooten was dismissed from his post as an assistant football coach at Wasilla High School because of a profane outburst, directed at his niece, on school grounds. If he was not fit to coach youths, you'd have to wonder if he's also fit to carry a gun and use deadly force on behalf of the public."Where did this one come from? What was th ...

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5 Wednesday, July 23, 2008 - 7:10am | **nomekid**

Investigation

Even if their is an investigation, nothing can be done, since Wooten was already punished. You can't punish a person and then 2-3 years down the road say "we relooked at his and you are now fired". He would be able to sue his employers (the State). Maybe we'd better keep the $500 million that they are planning to give Transalaska, just in case.

4 Wednesday, July 23, 2008 - 6:11am | **ArtChance**

And who's doing the investigation?

I can count on my fingers the people in Alaska who could wend their way through the disciplinary processes under the PSEA contract with any confidence, and all of them are present or former employees of either the State or PSEA. Going Outside won't help because each state's laws and bargaining environments are unique, and you'll quickly find that Alaska's police discipline is generally more stric ...

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3 Wednesday, July 23, 2008 - 5:02am | **lstrm**

I agree

Trooper Wooten's behavior should be reviewed independently. The following needs to be determined: Can the Troopers police their own; Can they investigate their own; Do they have the authority to get rid of unworthy candidates; Do they have the resources to retain worthy candidates; and, Does Trooper Wooten behave differently with men vs women.

2 Wednesday, July 23, 2008 - 4:19am | **sissyboy**

Where are the charges?

The Princess knew that a crime had been committed (Illeagal Moose kill), yet she choses not to make law enforcement aware of it until it can help her sisters divorce. Nice set of Ethics you have there Sarah. Since she has admitted to this in writing, why has she and the others involved not been charged?When are people going to wake up?Mat-Maid debacle, the implosion of the DOC, now this me ...

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1 Wednesday, July 23, 2008 - 12:35am | **JULY**

BOTTOM LINE: ABUSE OF POWER!

I have three simple questions:Who signed the moose tag?Who cleaned the moose?Who ate the moose?

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Palin's Ethics Scrapes May Undercut Pledge to End Old Politics

By Timothy J. Burger and Tony Hopfinger

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Sept. 11 (Bloomberg) -- John McCain's choice of Sarah Palin as his running mate sent a signal that he would end business as usual and cronyism in government. Her record shows the Alaska governor engaged in some of the same practices she and McCain now condemn.

Palin's office approved a state job for a friend and campaign aide with whom she shared a land investment, financial records and interviews over the past two weeks show. She hired a former lobbyist for a pipeline company to help oversee a multibillion-dollar deal with that same company.

She named a police chief accused of harassment to head the state police. And she sent campaign e-mails on her city hall account while serving as mayor of Wasilla -- conduct for which she later turned in an oil commissioner on ethics charges.

These incidents raise ``some serious questions about her judgment and serious questions about her standards of ethics in public service," said James Thurber, director of American University's Center for Congressional and Presidential Studies in Washington. Suggesting a real estate investment partner for a job ``may be acceptable in Alaska; it would not be acceptable in Washington, D.C., a place whose norms she wants to change."

Palin defeated an incumbent governor, a fellow Republican, in 2006 charging that her party's old guard had committed ethical lapses and become too cozy with special interests, including oil companies. A central theme in this year's presidential campaign has been that Palin's record demonstrates the change a McCain administration would bring to Washington.

Recent statements by the governor may erode that claim. In her acceptance speech last week, she suggested that she opposed the infamous ``Bridge to Nowhere," a $223 million earmark for a bridge to an island where only 53 people lived.

For It, Against It

When Palin, 44, campaigned for governor, however, she said she was in favor of the bridge. In 2007, she canceled the project in the face of national outrage. The state never returned the money allocated by the federal government, with some of the funds going toward other state and local projects.

And as mayor of Wasilla, a job she held for six years until 2002, Palin hired lobbyists to get federal funding for local projects. Wasilla secured $27 million in earmarks for the town of about 9,000 that included a rail project and a youth center.

Shortly after she was elected governor, Palin's office signed off on hiring Deborah Richter -- who attended college for a year then worked in bookkeeping and finance jobs -- as director of a division that distributes dividends to Alaskans from the state's oil-wealth savings account.

Richter, who said she's known Palin for 13 years, was Palin's gubernatorial campaign treasurer and ran her inaugural committee.

Sharing an Investment

The Richters and Palins also shared an investment: 30 acres of rural property near a lake in Petersville, Alaska, worth $47,300, according to Matanuska-Susitna Borough data.

"It sounds like a patronage deal for someone who ran your campaign; that's pretty normal," said Bill Buzenberg, executive director of the Center for Public Integrity in Washington. "What's not normal is that they have business dealings together."

No evidence has emerged to suggest that laws were broken in the appointment, and Richter said she "didn't go in there with any promises from the governor or the chief of staff or anybody. I turned in my resume" to the governor's transition team "and I didn't know if anyone was going to call me."

"She was qualified," said Pat Galvin, commissioner of the Department of Revenue and Richter's boss. Galvin said he also interviewed other people for the job and that Richter has done well. He said Palin's office approved his selection of Richter.

Not Palin's Decision

Palin's gubernatorial spokesman, William McAllister, said the decision to hire Richter was Galvin's. "I have no knowledge of land ownership or college degrees," he said.

Deborah Richter gave up her share of the property last September in a divorce settlement that followed an affair with Palin's legislative director, John Bitney. Bitney and Richter both acknowledged the affair in interviews. Bitney said Palin fired him over it; Richter is still on the job. They are now married.

Last month, Palin signed a law granting TransCanada Corp., Canada's largest pipeline company, an exclusive state license and up to $500 million in subsidies to proceed with work on a $27 billion pipeline, which would carry natural gas from Alaska to other U.S. markets.

Once a Lobbyist

Marty Rutherford, the chief coordinator behind Palin's pipeline effort, once worked as an Alaska lobbyist for a TransCanada pipeline subsidiary, according to state records. Rutherford, deputy commissioner at the Alaska Department of Natural Resources, earned $40,200 as a lobbyist for 10 months in 2003 working for Foothills, the subsidiary.

Rutherford said in an interview that she only did consulting work for the company, including reviewing natural gas legislation. She said the work had no bearing on her future job as coordinator of Palin's pipeline team.

"I intended to leave state government when I went to Jade North, but as time went on I realized my heart was in government," she said, referring to the firm she briefly worked for.

Palin told the Anchorage Daily News last December that Rutherford's work with Foothills wasn't a conflict because it had been five years earlier.

Trooper Investigation

The governor already has triggered an investigation by the Alaska legislature into whether she fired the state commissioner of public safety, Walt Monegan, for not removing a state trooper involved in a contentious divorce from Palin's sister.

Palin has denied exerting any pressure on Monegan and said she dismissed him because she wanted to take the department in a new direction.

Since McCain picked Palin, seven Palin aides have declined to be interviewed on the matter by an investigator hired by the Alaska legislature, according to the House and Senate Judiciary committees.

Earlier this year, Palin found herself apologizing for her handling of Monegan's replacement. About six weeks before she learned McCain wanted her to be his vice president, she named Kenai, Alaska, police chief Charles Kopp to replace Monegan.

On July 25, two weeks after being appointed, Kopp resigned amid scrutiny

over a 2005 sexual-harassment complaint against him while he was chief in Kenai. The complaint resulted in a letter of reprimand from the city, which Palin told reporters she never knew about and had believed that the allegations were unsubstantiated, according to the Anchorage Daily News.

Not a Harasser

In a July press conference, Kopp denied any harassment. ``I've always done every job I've ever done with honor and integrity,'' he said. ``There is one thing I am not. I am not a sex harasser.'' Attempts to reach him were unsuccessful.

Asked about these episodes in Palin's career, McCain campaign spokesman Tucker Bounds lauded her reform efforts. Bounds said Palin has allowed the public to scrutinize state financial information, ``cut wasteful spending by a quarter of a billion dollars just last year and ushered in landmark ethics legislation.''

The moment that crystallized her image as a reformer came when she turned in state Republican chairman Randy Ruedrich after discovering he was using his state e-mail account to conduct party business.

Palin and Ruedrich were serving together as commissioners on the Alaska Oil and Gas Conservation Commission, a state regulatory agency, at the time. Ruedrich resigned from the commission in November 2003, and was later fined $12,000, according to a 2004 article in the Anchorage Daily News.

In 2006, Palin found herself asking forgiveness for a similar offense from her past, according to a July 28, 2006, article in the Anchorage Daily News. She had sent campaign e- mails from her Wasilla mayor's office in 2002, when she made an unsuccessful run for lieutenant governor.

``For any mistakes like that (were) made, I apologize,'' Palin said of the e-mail controversy in July 2006, according to the Anchorage Daily News.

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ABCNEWS

McCain Ally in Alaska Criticizes Troopergate Investigation

Calls For Removal of Probe's Director

By MEGAN CHUCHMACH

Sept. 6, 2008—

On the same day Alaska state Sen. Hollis French announced he would speed up the investigation into whether Gov. Sarah Palin abused her power by firing a public safety commissioner, a top ally of Sen. John McCain in the Alaskan House called to unseat French as the head of the commission.

Representative John Coghill of North Pole, Alaska, said French, a Democrat, is "steering the direction of the investigation, its conclusion, and its timing in a manner that will have maximum partisan political impact on the national and state elections."

Coghill, a longtime McCain backer, said the McCain camp knew of his letter before it was sent to the legislative council (aides were "generally supportive," he said) and reiterated his support of the McCain-Palin ticket.

"I actually called them when Palin got picked and said, 'Hey, I'm your boy now," said Coghill. "I want to help them as much as I can now, but this is totally different from that."

Reached by phone in the North Pole Friday afternoon, Coghill accused French of stepping out of bounds by making what he said were politically-fueled comments.

Coghill cited French's recent interview with ABCNews.com, in which the senator said the report was going to be an "October surprise" and would "likely be damaging to the administration," as an example of what he considers to be the senator's bias.

"When we decided to look into this issue, everybody on the committee, including the chairman, agreed that we need to be an arms-length away from this," said Coghill, "and it's just ended up in the political arena because of Sen. French."

When asked about his involvement with McCain aides now, Coghill said he isn't working on the presidential campaign but plans on putting out a yard sign and passing out bumper stickers to help, even though, he said, his political support should not be confused with his pushing for French to step down.

"I will do whatever I can to help them, believe me," Coghill said. "I'm trying to separate this issue from that."

His call came the same day French announced that the investigation's findings will be delivered nearly three weeks early to avoid being too close to election day and that the governor will not be subpoenaed,

a move Coghill said was a coordinated effort. He wanted the issues to be presented equally, he said, and had to rush to get his letter ready since he knew French was slated to make his announcement Friday morning.

"I wanted to make sure that I was bringing this issue up," Coghill said, adding that he wanted the messages to be presented together.

Coghill and French spoke Thursday, and French was aware that the letter was to be released, according to both men. But French said he has no plans to step down and said he'll attend a house and senate judiciary meeting Sept. 12 where the council will consider issuing subpoenas to witnesses who have cancelled depositions.

"The thing to keep in mind is that I'm not the investigator, Steve Branchflower is," French said, referring to the retired state prosecutor who is the lead investigator in the case. "He's working independently of me and everybody else. He's going to gather the facts, prepare a report, release the report and, ultimately, it will be him that defends the report."

The investigation began in July, months before it was announced that Palin would be the GOP vice presidential candidate.

Last week, the commissioner whose firing prompted the probe told ABC News that he was dismissed because he refused to fire the governor's former brother-in-law, a state trooper.

"I think that my unwillingness to take special action against her former brother-in-law was not well received," Walt Monegan said. The trooper, Mike Wooten, had gone through a messy custody battle with Palin's sister.

Palin has denied any wrongdoing and has retained private lawyers to represent her in the matter. She has said she dismissed Monegan over an honest disagreement over budget priorities.

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AP (left); ABC

"Disparaging will not be tolerated": The governor; her ex-brother-in-law

'TROOPERGATE'

Warned by the Court

A judge repeatedly told Palin and family not to badmouth her sister's ex

By Mark Hosenball | Newsweek Web Exclusive
Sep 9, 2008 | Updated: 7:36 p.m. ET Sep 9, 2008

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An Anchorage judge three years ago warned Sarah Palin and members of her family to stop "disparaging" the reputation of Alaska State Trooper Michael Wooten, who at the time was undergoing a bitter separation and divorce from Palin's sister Molly.

Allegations that Palin, her husband Todd, and at least one top gubernatorial aide continued to vilify Wooten—after Palin became Alaska's governor and pressured state police officials to take action against him—are at the center of "Troopergate," a political and ethical controversy which has embroiled Palin's administration and is currently the subject of an official inquiry by a special investigator hired by the state legislature.

Court records obtained by NEWSWEEK show that during the course of divorce hearings three years ago, Judge John Suddock heard testimony from an official of the Alaska State Troopers' union about how Sarah Palin—then a private citizen—and members of her family, including her father and daughter, lodged up to a dozen complaints against Wooten with the state police. The union official told the judge that he had never before been asked to appear as a divorce-case witness, that the union believed family complaints against Wooten were "not job-related," and that Wooten was being "harassed" by Palin and other family members.

Court documents show that Judge Suddock was disturbed by the alleged attacks by Palin and her family members on Wooten's behavior and character. "Disparaging will not be tolerated—it is a form of child abuse," the judge told a settlement hearing in October 2005, according to typed notes of the proceedings. The judge added: "Relatives cannot disparage either. If occurs [sic] the parent needs to set boundaries for their relatives."

A spokesperson for the law firm that represented Palin's sister, now known as Molly Hackett, said Hackett's lawyer would have no comment because custody issues are still in litigation. Other lawyers representing Sarah Palin in connection with the state legislative investigation--which is examining

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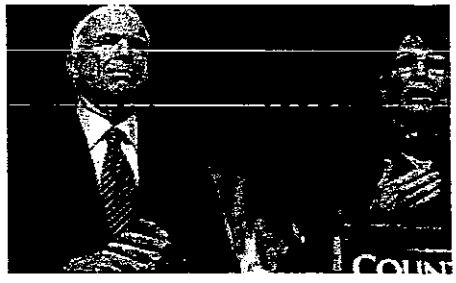

GALLERY
Who is Sarah Palin?
From beauty queen to vice-presidential candidate. A look at the life and career of John McCain's historic choice for a running mate.

whether she abused her powers as governor in trying to have Wooten fired or disciplined—had no immediate comment. Palin's official gubernatorial spokeswoman did not respond to e-mails and a phone message requesting comment.

Wooten's lawyer also did not respond to messages requesting comment. John Cyr, executive director of the State Troopers union, who testified at the divorce hearing and is acting as Wooten's spokesman, said Wooten has avoided giving media interviews because he wants to avoid criticizing his former relatives (to date, Wooten has granted just one interview, to CNN).

As the divorce case dragged on, the judge's concern about family "disparagement" appeared to deepen. In an order signed Jan. 31, 2006, which granted Palin's sister and Wooten a final divorce decree, Judge Suddock continued to express concern about attacks by Palin's family on Wooten. The judge even threatened to curb Palin's sister's child custody rights if family criticism of Wooten continued.

In monitoring how a joint-custody arrangement worked out, the judge said in his order that he would pay particular attention to problems noted by a "custody investigator," specifically "the disparagement of the father [Wooten] by the mother [Molly Hackett, Sarah Palin's sister] and her family members."

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Posted By: Diane12 @ 09/10/2008 11:43:09 AM

Comment: This is very relative to her being the VP of the USA and if you fail to see that then you have issues! This shows abuse of power in office, which has been ongoing for the past 7 years. I guess when you become accustomed to lies and abuse it is hard to stand for the truth. Take off the blinders and actually think for yourself. If you make over $250,000 a year then I guess you will vote to continue receiving your wonderful tax incentives and credits. For those who do not make over $250,000 or have family that is not in that income bracket will listen to true facts,not lies, and vote for true change. You were bamboozled into electing GWB for another 4 years and where did that get the USA???

Posted By: rocnde @ 09/10/2008 11:42:54 AM

Comment: ahhh mrzoid, my favorite poster, please go on your rant again defending obama and bidens support of infanticide and partial birth abortion, that was your best work ever. something about anal as i recall, what a classy post...

Posted By: SavethisCountry @ 09/10/2008 11:42:10 AM

Comment: Bravo. Well said. Unfortunately most of the Palinites are voting from the heart. not the head. Love your dress, so you'd be great in the white house. Our destiny has to come from knowing everything about who we are choosing and weighing it across the board (Hey Palin, why are you so scared to speak alone to the press? A McCain got your tongue, or is it another lobbyist) to getting us out of this mess we are in today. There is a lot to fix.

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EDITORIALS

Alaska's Family Feud

Meddlesome Sarah Palin does not come off well.

Monday, October 13, 2008; Page A20

IN THE scheme of things -- that is to say, in the larger context of a financial meltdown -- the special counsel's report concluding that Sarah Palin engaged in an unethical abuse of power in trying to have her former brother-in-law fired as an Alaska state trooper is a relatively minor event. But the report nonetheless offers a revealing and relevant portrait of the governor. It shows her and her husband pursuing a personal vendetta against the trooper, Mike Wooten, despite repeated warnings that they were impermissibly intruding into internal -- and already concluded -- disciplinary issues. Likewise, Ms. Palin's decision to repudiate her earlier pledge to cooperate fully with the inquiry does not offer assurance about how she would conduct herself as vice president. The McCain-Palin campaign's response to the inquiry has been internally contradictory -- simultaneously assailing the investigation as a partisan witch hunt and mischaracterizing as vindication the report's finding that Ms. Palin was within her rights as governor to remove the commissioner who had refused to act against her former brother-in-law.

THIS STORY
What McCain Hasn't Tried
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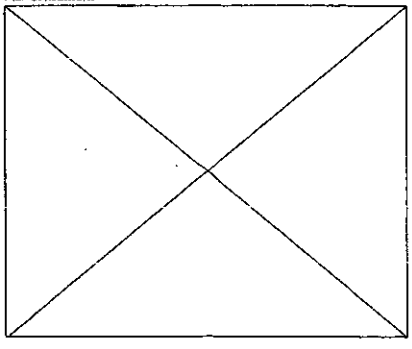
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The amount of attention that the newly elected governor, her husband and her subordinates -- her personnel director, attorney general and chief of staff, among others -- devoted to getting Mr. Wooten fired was extraordinary. Within a few weeks of Ms. Palin's inauguration, her newly installed public safety commissioner, Walter Monegan, was summoned to a meeting with the governor's husband, Todd Palin, at which the "First Gentleman" pressed Mr. Monegan to reexamine the already concluded disciplinary case against Mr. Wooten. The governor herself called Mr. Monegan, e-mailed him and met with him in person to discuss her unhappiness with Mr. Wooten's continuation on the force. Equally extraordinary was the Palins' persistence in the face of warnings that their intervention could run afoul of personnel rules and risked creating precisely the kind of public uproar that ensued.

Ms. Palin's refusal to cooperate with investigator Stephen Branchflower reflects poorly on her. So, too, does Ms. Palin's mischaracterization of the report as finding that there was "no unlawful or unethical activity on my part" and "no abuse of authority at all in trying to get Officer Wooten fired." In fact, Mr. Branchflower concluded that Ms. Palin "knowingly

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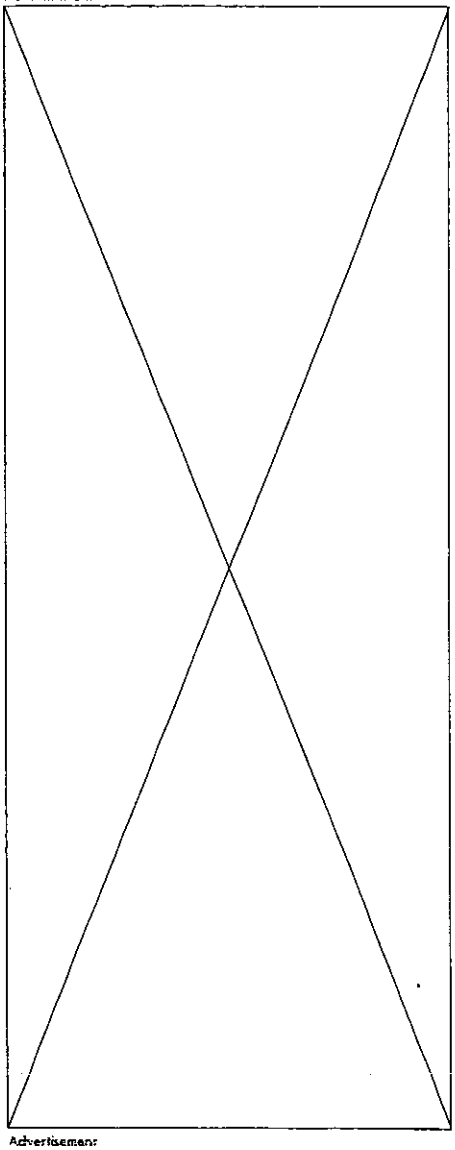
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permitted a situation to continue where impermissible pressure was placed on several subordinates in order to advance a personal agenda, to wit: to get Trooper Michael Wooten fired." It's unfortunate that Ms. Palin does not understand -- or chooses not to acknowledge -- the seriousness of the mess she helped create.

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Monegan lawyer responds to Petumenos report

Posted by Alaska_Politics
Posted: November 11, 2008 - 3:53 pm

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After the Daily News ran **this editorial** on investigator Tim Petumenos' less-than-convincing exoneration of Sarah Palin in Troopergate, we received this further critique of the report from Walt Monegan's lawyer, Jeff Feldman.

-- Matt Zencey, editorial page editor

FROM JEFF FELDMAN:

A close reading of the report issued by the investigator hired by the Alaska Personnel Board reveals a variety of errors and weaknesses. Some examples:

(1) The investigator's report omits discussion of and disregards substantial evidence, including multiple instances in which evidence seriously conflicted with statements made by the Governor (see discussion below)

(2) The investigator's report misapprehends the applicable law, and suggests that the relevant provision in the ethics statutes does not mean what, on its face, it says

(3) The investigator's report addresses only the direct evidence (and, at that, only some of the direct evidence). The report ignores critical circumstantial evidence. The law accords circumstantial evidence the same weight as direct evidence, so the absence of any analysis of the circumstantial evidence reflects a significant omission and weakness in the report. For example, the report ignores the number, sequence, timing, and content of communications by the Governor, her husband, her staff, and her cabinet officers to former Commissioner Monegan and others at the Department of Public Safety. But the fact that:

* Eight different individuals

* All of whom either were, worked for, or were related to the Governor

* Contacted Former Commissioner Monegan or other officials at the Department of Public Safety

* To complain about the fact that Trooper Wooten was still employed as a trooper

* More than three dozen times

* Over an 18 month period

* Frequently using the same words and relating the same stories and events

* And some of whom stated that they were speaking on behalf of the Governor

would reasonably permit an inference that the Governor knew of and/or directed their activities, notwithstanding assertions to the contrary by the Governor and her staff.

It is possible that a neutral fact-finder would find the denials by the Governor and others (the direct evidence) to be the most persuasive evidence on this point. But it's also possible (and some might say, much more likely) that a neutral fact-finder would conclude that the denials are contradicted and outweighed by the inference that reasonably can be drawn from the circumstantial evidence that the Governor knew of

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Sean Cockerham writes about Alaska state politics. He spent three years based in Juneau for the ADN before joining the Tacoma News-Tribune to write about Washington state politics. He went to Iraq twice for the News Tribune, and previously wrote about Alaska government and politics for the Fairbanks Daily News-Miner. E-mail Sean at scockerham@adn.com

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At one point the races with Sen. Ted Stevens and Rep. Don Young promised to be the highest-profile campaigns in Alaska history.

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The nation was captivated by Sarah Palin's run to the White House, and now Alaska awaits the return of their governor.

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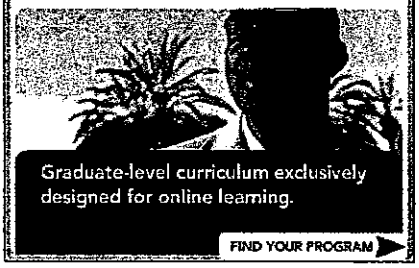
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and /or directed the various communications to Commissioner Monegan by her staff and husband. On that basis alone, there was more than sufficient evidence for a finding of probable cause.

(4) The investigator's report leaves important dots unconnected by failing to consider the evidence as a whole and by misapplying the legal standard of "probable cause" (see above). Consider the following illustration: The fact that an individual has a one-way ticket from Bogata to Miami might not be deemed, in itself, suspicious. Nor the fact that the individual was traveling alone. Nor that he carried no baggage. Nor that he went to the bathroom on the plane every hour. Nor that he was sniffling a lot and had some odd white power on his pants. Nor that he was perspiring and shifting in his seat and looking around a lot. But, taken in the aggregate, a person reasonably could conclude that those circumstances combined to establish probable cause to believe that the individual was engaged in criminal behavior. The report by the Personnel Board's investigator suffers the weakness of looking at the evidence in isolation and, as a result, of failing to see the broader picture.

(5) Consider one example of how the investigator's report misapprehended the evidence and failed to address obvious conflicts between the Governor's testimony and other available and credible evidence:

Former Commissioner Monegan testified that the Governor called him in January 2007 to talk about Trooper Wooten. Governor Palin denied that the conversation occurred. Both individuals testified under oath. The existence of the two conflicting statements, alone, normally would suffice for a finding of probable cause, with the final determination as to which version was most credible to be by a neutral fact-finder made at a formal hearing. But there was additional evidence available on this issue, beyond the two sworn statements by Governor Palin and Commissioner Monegan.

In the last paragraph on page 31 of the report, the investigator for the Personnel Board accepts at face value the Governor's claim that the call to Commissioner Monegan never occurred; the investigator points to Todd Palin's testimony (also taken at face value) as confirming the fact that Mr. Palin had never talked to the Governor about his meeting with Commissioner Monegan. The investigator's report states:
"Governor Palin, in any event, has testified under oath that she was unaware that Todd Palin made these early 2007 inquires to Commissioner Monegan. Todd Palin confirmed that he did not discuss either the Monegan meeting or Commissioner Monegan's follow up call with the Governor at any time until the matter became the subject of scrutiny in 2008."

But in making this finding, the investigator's report ignores an e-mail that the Governor sent to Former Commissioner Monegan on February 7, 2007, shortly after the date of the disputed phone call. In her February 7 e-mail, the Governor expressed her concern about the Wooten situation in terms that unequivocally establish: (1) the Governor's knowledge that Commissioner Monegan already knew of her own concerns, and (2) the Governor's knowledge that Todd Palin had already directly informed Commissioner Monegan of her family's concerns. The Governor's February 7 email states:

"Just my opinion - I know you know I've experienced a lot of frustration with this issue. I know Todd's even expressed to you a lot of concern about our family's safety after this trooper threatened to kill a family member - ..."

If the January phone call never occurred (as the Governor claimed in her deposition testimony), how did the Governor know on February 7 (when she sent her email) that Commissioner Monegan already knew of her frustration? And if the Governor truly was unaware of any contacts between Commissioner Monegan and Todd Palin, how could she claim to know that Mr. Palin had expressed the family's concern to Commissioner Monegan?

Even though the e-mail seriously undermines the Governor's denial of the January phone call and directly refutes her claim that she knew nothing of Todd Palin's communications with Former Commissioner Monegan, the report by the Personnel Board's investigator all but ignores the e-mail's contents. This omission and others like it raise a question whether the report reflects a careful and critical examination of all available evidence designed to discover the truth or merely a hasty review aimed at meeting an election-eve deadline.

(6) An example of another conflict left unaddressed by the investigator's report: The Governor claimed

Reader-submitted Palin photos

SECTION
Alaska political corruption

The FBI raided state legislatures offices in Aug. 2006, and the fallout since has been epic in Alaska's political world.

PHOTOS
The Photo Blog: From the RNC

Photographer Marc Lester is blogging on Sarah Palin and the Republican National Convention in Minneapolis this week.

Archive

About Palin's media blitz - 11/13/2008 7:51 am
Widening the gap - 11/12/2008 10:48 pm
Early votes helped Begich catch up? - 11/12/2008 7:03 pm
Georgia senator says he'd expel Stevens - 11/12/2008 4:54 pm
Palin on CNN - 11/12/2008 2:51 pm
Palin says woman on ticket would be good for GOP - 11/12/2008 1:44 pm
The rest of the Palin interview in Wasilla - 11/12/2008 12:05 am
McCain: Don't blame Palin - 11/11/2008 5:39 pm
GOP senators may boot Stevens from committee posts - 11/11/2008 5:35 pm
Monegan lawyer responds to Petumenos report - 11/11/2008 3:53 pm
Stevens and the Senate GOP conference - 11/11/2008 10:50 am
51,000 votes to be counted Wednesday - 11/10/2008 5:32 pm
Palin with fellow Republican governors this week - 11/10/2008 3:18 pm
Sunday with Palin (UDPATED: Video) - 11/9/2008 5:20 pm
Don Young's tenacity - 11/9/2008 10:11 am
Did Palin help or hurt McCain? - 11/8/2008 8:12 am
U.S. Senate update: More than 81,000 ballots to be counted next week (Updated) - 11/7/2008 8:03 pm
Secretary Knowles? - 11/7/2008 7:34 pm
Palin speaks: 'those guys are jerks...' (UPDATED: Second video) - 11/7/2008 2:31 pm
Spin cycle - 11/7/2008 11:59 am
Republican talking of stripping Stevens of committee assignments during lame duck session (Updated) - 11/7/2008 11:30 am
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at one point that Todd Palin complained to her so frequently about the handling of the Wooten matter that she had to tell him to stop. How does that square with the contention in her deposition testimony that she was completely unaware of Mr. Palin's activities?

(7) An example of another conflict left unaddressed by the investigator's report: At page 13, the report states that the Palins met with representatives of the Alaska State Troopers in November of 2006, shortly after the Governor's election, and expressed their concern that Trooper Wooten presented a "security threat." The Personnel Board's investigator apparently accepted their statements about this discussion as true, without any acknowledgement or consideration of the substantial evidence to the contrary.

At page 44 of his report, Mr. Branchflower (the investigator for the Alaska Legislative Council) described the sworn testimony of Gary Wheeler, a witness who should possess substantial credibility by virtue of his position and longevity as an state trooper since 1981 assigned to protect to Governor of Alaska. No one has suggested that Mr. Wheeler has any motive or bias in connection with this matter. Mr. Wheeler recalled the November 2006 meeting the Palin's described, but he recalled it quite differently. Mr. Wheeler stated that he asked the Palins "whether they perceived any threats from any individual or were afraid of any individual" and that he received a negative response. Oddly, the Personnel Board's investigator did not interview Mr. Wheeler, himself. While the report states that the Personal Board's investigator carefully considered all of the testimony that Mr. Branchflower gathered and made available to the Personnel Board, the omission of this significant conflict in the evidence and the absence of reference to Mr. Wheeler's testimony strongly suggests the contrary.

(8) The Personnel Board's investigator criticized Mr. Branchflower for not interviewing certain witnesses, most notably the Palins. Putting aside for a moment the obvious observation that the only reason Mr. Branchflower did not talk to the Palins is because they refused to make themselves available to him, the criticism is misplaced because the personnel Board's investigator also failed to talk with a number of critical individuals -- including Audie Holloway and John Glass of the Alaska Department of Public Safety, both of whom were critical fact witnesses. Some individuals who were not contacted by the Personnel Board's investigator were direct recipients of communications about Trooper Wooten from the Governor or her husband and would have contradicted testimony provided by the Palins and relied on by the Personnel Board's investigator. John Glass, for example, testified that he told Todd Palin that Trooper Wooten had already been penalized for his actions [Branchflower Report, page 63]. But the Personnel Board's Report states that Todd Palin claimed that "he did not learn from anyone" that there was any consequence of significance imposed on Wooten, and the Report omits entirely that there was credible sworn testimony that directly contradicted that claim.

In light of these and other errors and omissions, there is substantial reason to question the conclusions drawn by the Personnel Board's Report.

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mooseluver
wrote on 11/13/2008 09:09:15 AM:

Palin Offered Cooperation with Investigation – Media/Press Release Quotes

Lawmakers seek outside inquiry of Monegan firing - KTUU-TV – July 18, 2008:

> Some lawmakers are asking for more answers to the reasons Palin had for firing Monegan. Palin, in Wasilla for the Governor's Picnic, said she would not fight such an effort to look into this matter by an independent investigator.
>
> "We would never prohibit, or be less than enthusiastic about any kind of investigation. Let's deal in the facts, and you do that via investigation," Palin said.

Senate will look into Monegan firing - KTUU-TV – July 19, 2008:

> While the governor said there is no need for an investigation from an outside investigator, she said she will answer any questions from lawmakers, media and the public.

Public Safety already headed in 'new direction,' some say - Anchorage Daily News - July 22, 2008:

> The governor denies any wrongdoing, and says she welcomes any questions on the matter.

Palin under fire – Legislature appears poised to appoint investigator -Aftermath of Monegan Dismissal, Anchorage Daily News - July 22, 2008:

> "I've said all along, hold me accountable," Palin told reporters in Juneau. "And I'm telling the truth when I say there was never pressure put on Commissioner Monegan."

Lawmakers move to investigate Monegan ouster, KTUU-TV – July 24, 2008:

> The governor says she welcomes the investigation. "I have absolutely nothing to hide and am happy to answer any questions," she said. "I'm happy to answer any questions between now and when they do conduct an investigation also."
>
> Gov. Palin said last weekend that she did not think an independent investigator was needed. "That being the route that they choose, then so be it," she said. "I'm happy to comply, to cooperate. I have absolutely nothing to hide. No problem with an independent investigation."

Hired help will probe Monegan dismissal - $100,000: Legislators vote to have independent investigator look into controversial firing - Anchorage Daily News – July 29, 2008:

> "The governor has said all along that she will fully cooperate with an investigation and her staff will cooperate as well," Leighow said.

Branchflower to investigate in Monegan firing - KTUU-TV – August 1, 2008:

> "I've heard (Branchflower's) name, or course, over the years in Alaska," Palin said. "I know he's a prosecutor, probably a heavy duty prosecutor, and so that kind of puzzles us why we are going down that road when we are very, very open to answering any questions anybody has of me or administrators."

PRESS RELEASE: GOVERNOR TO TURN OVER FINDINGS - Office of the Governor – August 13, 2008:

> Governor Palin has directed all her staff to cooperate fully with Branchflower.

Palin administration cooperating with investigator - KTUU-TV – August 15, 2008:

> Lawmakers had wanted to know if Steve Branchflower needed them to issues subpoenas to require witnesses to talk to him about Gov. Sarah Palin's decision to fire Monegan and about the actions of her staffers. But State Sen. Hollis French says the meeting was cancelled because there's no need for subpoenas at this point.

Palin aide Frank Bailey placed on administrative leave - KTUU-TV – August 19, 2008:

> "We figured, if there is an investigation going on with an unknown outcome – we don't know exactly what (special investigator) Mr. Branchflower is going to conclude – that Mr. Bailey just needed to step away from the situation, although be available to the investigator," [Palin spokesman] McAllister said.
>
> The governor's office also says that Bailey will cooperate fully with the investigation.

Palin aide put on leave in firing flap, BAILEY: Official who made all inquiring about trooper taken "out of the mix." - Anchorage Daily News – August 20, 2008:

> Spokeswoman Sharon Leighow said that with Bailey still a state employee, Palin "can direct him to assist Mr. Branchflower, thereby fulfilling her pledge to Alaskans to cooperate fully with the investigation."

Re: Governor Palin and Trooper Investigation - McCain Campaign Press Release – August 30, 2008:

> Governor Palin is an open book on this – she did nothing wrong and has nothing to hide. As a reformer and a leader on ethics reform, she has been happy to cooperate fully in the inquiry of this matter.

Attorney challenges Monegan firing inquiry – Anchorage Daily News – September 2, 2008:

> He [Governor Palin's Lawyer Mr. Van Flein] said the governor's office welcomes the inquiry and will cooperate.
>
> Palin has made repeated public statements that she'll cooperate, and that hasn't changed at this point, Van Flein says.

Committee Minutes
House JUDICIARY Minutes

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY STANDING COMMITTEE
March 14, 2007
1:08 p.m.

MEMBERS PRESENT

Representative Jay Ramras, Chair
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Bob Lynn
Representative Ralph Samuels
Representative Max Gruenberg
Representative Lindsey Holmes

MEMBERS ABSENT

All members present

OTHER LEGISLATORS PRESENT

Representative Bill Stoltze

COMMITTEE CALENDAR

CONFIRMATION HEARING(S)

Attorney General [Continued from 3/2/07]

Talis Colberg - Palmer

- CONFIRMATION(S) ADVANCED

HOUSE BILL NO. 175
"An Act relating to the prohibition of the exercise of the power of eminent domain against a recreational structure for the purposes of developing a recreational facility or project."

- HEARD AND HELD

PREVIOUS COMMITTEE ACTION

BILL: HB 175
SHORT TITLE: EMINENT DOMAIN; RECREATIONAL STRUCTURES
SPONSOR(S): REPRESENTATIVE(S) JOHNSON

03/05/07	(H)	READ THE FIRST TIME - REFERRALS
03/05/07	(H)	JUD, FIN
03/14/07	(H)	JUD AT 1:00 PM CAPITOL 120

WITNESS REGISTER

TALIS COLBERG, Appointee
Attorney General
Palmer, Alaska
POSITION STATEMENT: Testified as appointee to the position of Attorney General.

REPRESENTATIVE CRAIG JOHNSON
Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of HB 175.

DAVE FEEKIN
Alaska Association of Realtors (AAR)
Kenai, Alaska
POSITION STATEMENT: During discussion of HB 175, provided comments and asked the committee to support the bill and report it from committee.

DICK MYLIUS, Acting Director
Central Office
Division of Mining, Land and Water
Department of Natural Resources (DNR)
Anchorage, Alaska
POSITION STATEMENT: Responded to questions during discussion of HB 175.

ACTION NARRATIVE

CHAIR JAY RAMRAS called the House Judiciary Standing Committee meeting to order at 1:08:05 PM. Representatives Coghill, Samuels, Lynn, Holmes, Dahlstrom, and Ramras were present at the call to order. Representative Gruenberg arrived as the meeting was in progress. Representative Stoltze was also in attendance.

^CONFIRMATION HEARING(S)
^Attorney General

1:08:29 PM

CHAIR RAMRAS announced that the first order of business would be the consideration of the appointment of Talis Colberg to the position of Attorney General.

REPRESENTATIVE COGHILL asked Mr. Colberg whether he would be willing to draft a letter to the federal government asking it to address the issue of tribal status in Alaska.

1:11:02 PM

TALIS COLBERG, Appointee, Attorney General, indicated that he would draft such a letter but only if the governor asks him to do so, because that is her decision to make, not his.

REPRESENTATIVE SAMUELS asked Mr. Colberg what his legal advice to the governor would be should she decide to pursue that issue.

MR. COLBERG said he would endeavor to provide the governor with the best legal advice available that would support her policy choices to the extent that they are consistent with the law. In response to a comment, he opined that it is not inconsistent to provide legal advice to the governor and to the legislature on individual issues but still give deference to the person who appointed him.

REPRESENTATIVE SAMUELS asked whether he should assume that any legal advice he receives from the Department of Law (DOL) will simply coincide with the governor's policies.

MR. COLBERG opined that it would be wrong to assume that the attorney general will always say only what the governor wants to hear, and suggested that his advice to the governor concerning a university regent demonstrates that point.

1:21:40 PM

REPRESENTATIVE SAMUELS offered his understanding that in that situation, the governor had not publicly expressed a desire one way or the other, and surmised that if the governor does express an opinion publicly about a matter, then legislators would need to get separate counsel on that issue if they don't agree with her, because Mr. Colberg would simply be promoting the governor's viewpoint.

MR. COLBERG clarified that in the aforementioned situation, the governor only asked for his advice after she had already asked for the regent's resignation. In response to a question, he indicated that he still wishes to address the issues that arise between the Native and non-Native populations in Alaska.

CHAIR RAMRAS suggested that Mr. Colberg will bring a fresh perspective to the job. He then asked Mr. Colberg to speak about some of the disharmony that exists in both the Fairbanks and Anchorage district attorney offices - because he has been told that it stems from a morale problem rather than a compensation problem - what Mr. Colberg perceives as being some of the personnel issues, and what Mr. Colberg intends to do to resolve them.

The committee took an at-ease from 1:31 p.m. to 1:33 p.m.

MR. COLBERG said that Richard Svobodny - Chief Assistant Attorney General, Criminal Division - would be looking into those issues for him. Mr. Colberg mentioned that Mr. Svobodny is currently in the Kenai office looking into why there is a disproportionate prosecution failure rate compared to the offices in rest of the state. Mr. Colberg said he is comfortable with Mr. Svobodny's efforts to constructively address members' concerns about the Anchorage and Fairbanks offices.

1:36:22 PM

REPRESENTATIVE SAMUELS pointed out that in addition to having sufficient legal expertise, an attorney general must have the ability to manage the 280 attorneys currently working for the DOL. He said that how the personnel issues pertaining to the two most recent previous directors of the Criminal Division have been handled gives him pause [and raises questions regarding] Mr. Colberg's management skills, particularly given that managing the personnel at the DOL is the bigger part of the job of attorney general. Representative Samuels sought assurance that Mr. Colberg's management skills are up to the task.

REPRESENTATIVE DAHLSTROM suggested that it is unreasonable to expect a candidate for confirmation to not take any action in his/her prospective role before being confirmed. She cautioned that many of the facts regarding the aforementioned situations are not yet known by either legislators or the public, and that for Mr. Colberg to disclose more information about those situations could breach confidentiality and the law.

REPRESENTATIVE COGHILL suggested that the committee merely wants to have a discussion regarding Mr. Colberg's management style.

REPRESENTATIVE SAMUELS concurred, reiterating his view that an attorney general's management skills are more important than his/her legal skills.

MR. COLBERG concurred, recounted his experience while serving on the Matanuska-Susitna (Mat-Su) Borough assembly, acknowledged that most of his management experience relates to offices with a small number of personnel, and assured the committee that he doesn't expect to have to hire a new director of the Criminal Division every few months.

REPRESENTATIVE LYNN observed that without knowing more about the situations that were presented to Mr. Colberg, it will be difficult for the committee to evaluate his actions.

CHAIR RAMRAS offered his understanding that the district attorney office in Fairbanks has lost many high-profile cases, including cases involving rape and murder, and yet the office appears to be pursuing many charges of misconduct involving a controlled substance in the sixth degree. He asked, therefore, whether Mr. Colberg feels that a reallocation of prosecutorial resources at the Fairbanks office would be in order. Chair Ramras also asked Mr. Colberg how he intends to address the issue of low morale in that office.

1:46:15 PM

MR. COLBERG offered his recollection that the district attorney office in Fairbanks has only lost one high-profile sexual assault case - two years ago - and that the aforementioned misconduct charges were not occurring independently but rather in tandem with other charges such as DUI. He suggested, therefore, that any morale problem which exists in that office has no correlation to the allocation of prosecutorial resources. He mentioned that he has been presented with information suggesting that any morale problems that exist in the various district attorney offices existed before the new administration took office, and reiterated that Mr. Svobodny will be addressing those problems. Mr. Colberg, on the question of prosecutorial resource allocation, surmised that the information he has received differs greatly from that which Chair Ramras has received, and offered his belief that resources are not

currently being allocated in favor of the aforementioned misconduct charges.

CHAIR RAMRAS asked Mr. Colberg whether he is satisfied with the prosecutorial resource allocation in the Fairbanks office, and again asked Mr. Colberg what he intends to do about the low-morale situation to ensure that the district attorney offices do a better job of protecting the public.

MR. COLBERG said he will be relying on Mr. Svobodny's recommendations. He offered his understanding that at one office, the actual physical location of the building is contributing to low morale. In response to a question, Mr. Colberg said he has asked Mr. Svobodny to look into all the issues arising at the state's various district attorney offices.

1:52:22 PM

REPRESENTATIVE SAMUELS asked whether there is a specific policy in place at the DOL wherein [legislators'] requests for information must be forwarded up the chain of command before being fulfilled.

MR. COLBERG said he has not established such a policy himself, but acknowledged that perhaps at one point there might have been a policy in place wherein DOL employees were supposed to document legislative contacts. Furthermore, perhaps some people simply feel that they should inform their supervisor when a legislator contacts them.

REPRESENTATIVE HOLMES said she has recently come across individuals at the DOL who believe that there is a policy in place such as Representative Samuels described. She recommended, therefore, that Mr. Colberg make efforts to inform all of his staff that they are free to disseminate information to legislators when they request it.

CHAIR RAMRAS, notwithstanding Mr. Colberg's comments that he intends to rely on Mr. Svobodny's recommendations, opined that there is no substitute for a hands-on approach to managing a department.

MR. COLBERG agreed to issue a statement to his staff regarding how he would like them to deal with legislative requests for information.

CHAIR RAMRAS asked Mr. Colberg to comment on the issues raised as a result of the passage of certain ballot measures.

MR. COLBERG indicated that the DOL is establishing a new position that will deal with the legal issues which could arise from the "cruise ship initiative," and said he expects that [that initiative] will engender litigation. In response to a question, he indicated that he is not sure whether the same legal arguments could be raised regarding Washington's container tax as might be raised regarding the cruise ship initiative, should litigation result from either or both. In response to a further question, he said that the DOL's position would be to defend, to the best of its ability, what the voters passed.

2:07:07 PM

REPRESENTATIVE SAMUELS referred to an upcoming ballot measure pertaining to establishing a gaming commission, and asked Mr. Colberg whether he thinks gambling would be good for Alaska.

MR. COLBERG opined that gambling can be very corrosive to society. In response to further questions, he indicated that [the state] is currently involved in litigation regarding the interpretation of the aforementioned ballot measure, and explained that the National Indian Gaming Commission (NIGC) requires that the federal ordinances allowing for Indian gambling must stipulate that the tribe comply with its state's laws on gambling.

CHAIR RAMRAS, referring to the State v. Amerada Hess, et al. settlement money, asked Mr. Colberg what proactive approach he will take regarding any funds engendered by the "cruise ship head tax" and any ensuing litigation.

MR. COLBERG said he is not aware of any action pending on that particular tax.

CHAIR RAMRAS suggested to Mr. Colberg that he provide counsel to the legislature regarding that issue.

REPRESENTATIVE GRUENBERG asked Mr. Colberg to explain the status of possible litigation against the actuaries responsible for the Public Employees' Retirement System and Teachers' Retirement System (PERS/TRS) funds.

MR. COLBERG said the DOL has made a request for an appropriation of $12 million to pursue that litigation, and that the case is on hold pending funding. He added that the DOL feels that there is a good cause of action and recommends going forward with it. In response to a further question, he said that moneys appropriated thus far for that purpose have already been spent.

REPRESENTATIVE GRUENBERG indicated that he would want the State to not let the statute of limitations run out on that case.

MR. COLBERG, in response to a question regarding the McDowell v. State case, said, "I think the majority was right."

CHAIR RAMRAS asked Mr. Colberg whether he believes that the "advocacy section" that weighs in on the regulatory filing in front of the Regulatory Commission of Alaska (RCA) should [continue to] be located within the Office of the Attorney General.

MR. COLBERG said yes. He opined that from an institutional perspective, it is a bad concept for agencies to develop their own separate legal departments, because doing so could create consistency problems.

2:26:04 PM

CHAIR RAMRAS referred to Mr. Colberg's 3/13/07 letter regarding the Alaska Gasline Inducement Act (AGIA), and asked Mr. Colberg to elaborate.

MR. COLBERG said:

> There's been a lot written on that. You have not only about a 31-page opinion from [former] Attorney General Marquez talking about that that's, in his view, citing many of the same cases, older even, that there are reasons to argue that fiscal certainty could be justified for 30-45 years, you have at the other end Senator French wrote a very long opinion saying that nothing over 2 years, beyond the term of any legislature, could be found legitimate. And then ultimately, almost all of the opinions agree that there's no certainty about the fiscal certainty short of a court decision.
>
> Now, what it gets into is, always, an interpretation of Article IX, Section 1, in tandem with Article IX, Section 4, [of the Alaska State Constitution]. And Alaska, like about almost 30 states, has this "do not surrender your taxing authority" coming out of an old, old, old Georgia case, which is perhaps more than 150 years old, where states anticipating issues arising from a surrender by one legislature of powers creating serious problems down the line.
>
> In the limited case law that's available in Alaska that gives hints about it and from the minutes of the [Alaska] Constitutional Convention, Delegate Nerland specifically talked about inducements, and for industry, and he used the word "inducements" in there, and the concept is that here, this is a 10-year period that is triggered by the initiation of giving something. It's not something that we're promising in advance of any commitment; it's in response to a commitment and investment made - it's for a limited duration.

MR. COLBERG continued:

> And can it be challenged? Of course. And who is going to decide? The precedent is pretty slim all the way around. But we think it's much more defensible to make, under the terms described, in the AGIA, a 10-year concept that's not promised before anything's done, but after there's been a commitment and an investment that can be justified and defensible in court. And ... even [former Attorney General Marquez's] opinion can be defended, we just think it's too much of a stretch.
>
> And so the opposite end is Senator French saying nothing over 2 years will prevail, and he laid out a very thorough set of arguments. But there is a qualifier in Article IX, Section 1, that leaves open the door for some exceptions, and if it had no purpose - and every word has a purpose in that type of thing is the presumption - there'd be no reason for that, and we think this ... fits into the gist of the comments made when it was created as to what's an appropriate use for that terminology.

MR. COLBERG, in response to a question regarding [Indian] gaming, offered his understanding that Kake and Klawock [are only requesting permission from the NIGC to offer] bingo and pull-tabs, both of which are currently allowed under state law.

2:31:16 PM

REPRESENTATIVE DAHLSTROM made a motion to advance from committee the nomination of Talis Colberg to the position of Attorney General. There being no objection, the confirmation was advanced from the House Judiciary Standing Committee.

The committee took an at-ease from 2:32 p.m. to 2:38 p.m.

HB 175 - EMINENT DOMAIN; RECREATIONAL STRUCTURES

2:38:17 PM

CHAIR RAMRAS announced that the final order of business would be HOUSE BILL NO. 175, "An Act relating to the prohibition of the exercise of the power of eminent domain against a recreational structure for the purposes of developing a recreational facility or project."

2:39:05 PM

REPRESENTATIVE CRAIG JOHNSON, Alaska State Legislature, sponsor, relayed that legislation last year set limitations on the exercise of eminent domain and elevated someone's personal residence such that eminent domain could not be exercised for the purpose of developing a recreational facility or project unless the homeowner consented to the taking of his/her residence. House Bill 175 would extend that limitation to a person's recreational structure, and establishes a limit regarding the amount of land that would be protected to a radius 250 linear feet around the recreational structure itself - the same amount of land that would apply in situations involving a residence; HB 175 would not interfere with a government entity's exercise of eminent domain for other legitimate purposes. He relayed that although last year's legislation struck a fine balance between all interested parties, recreational structures were not included, and so he is now bringing this issue forward because he believes that private ownership constitutes the greatest use of Alaska's land. He mentioned that HB 175 would not apply to recreational structures owned by partnerships or businesses.

2:43:12 PM

DAVE FEEKIN, Alaska Association of Realtors (AAR), spoke about last year's legislation, relayed that the property rights of "second home" owners is of key importance, and opined that HB 175 protects the values of those properties. Realtors have heard from many Alaskans about the importance of recognizing and protecting a key element for many families and their Alaskan

lifestyles - the ownership and enjoyment of recreational properties and cabins. He concluded by asking the committee to support HB 175 and move the bill from committee.

CHAIR RAMRAS, after ascertaining that no one else wished to testify, closed public testimony on HB 175.

REPRESENTATIVE JOHNSON, in response to a question, said, "It is standard practice to have access to your land ...; I believe that that right-of-way does exist, and [the government] ... couldn't condemn the area to prohibit you from having access to your property ...."

REPRESENTATIVE GRUENBERG questioned whether the term, "recreational structure" could be construed to mean a structure that was constructed for just one season, and asked whether the bill ought to require some form of permanency with regard to recreational structures.

REPRESENTATIVE JOHNSON said it is not the intention of HB 175 to allow someone with recreational property to merely put up a tent and move it from place to place in order to protect all of the property; HB 175 is intended to protect the owner of a permanent recreational structure. He indicated that he doesn't have an objection to clarifying that point.

REPRESENTATIVE GRUENBERG indicated a willingness to offer a conceptual amendment that would alter Section 3 such that the concept of permanence would be incorporated into the definition of "recreational structure".

2:52:21 PM

DICK MYLIUS, Acting Director, Central Office, Division of Mining, Land and Water, Department of Natural Resources (DNR), in response to a question, said that the department doesn't have any objection to [the bill or the aforementioned proposed change], and that the department has never exercised eminent domain in order to acquire recreational properties or access to recreational opportunities without the consent of the property owner. He opined that it would be good to better define the term, "recreational structure", particularly given that both tent camps and million-dollar structures are all considered to be recreational structures. In response to a further question, Mr. Mylius provided comments regarding a particular university land transfer.

REPRESENTATIVE JOHNSON, in response to a question, reiterated that the bill is intended to only protect the land that is within 250 linear feet of the structure, whether that structure is someone's personal residence or recreational structure. In response to a comment and question, he indicated that he would be amenable to an amendment that would clarify that point. In response to a further question, he said he intends for the protections afforded by the bill to apply only to a landowner who holds legal title to the recreational structure.

REPRESENTATIVE DAHLSTROM surmised that several members believe that the issue of how much land is going to be protected still needs to be clarified in the bill.

REPRESENTATIVE GRUENBERG suggested that the issues raised by the committee be addressed via a committee substitute.

[HB 175 was held over.]

ADJOURNMENT

There being no further business before the committee, the House Judiciary Standing Committee meeting was adjourned at 2:58 p.m.

4/2/09

INQUIRY RE: CONSENT DECREE BETW. STATE & CROWLEY

Consent Decree Questions

Questions to Transport Company

1. What are the differences between surcharges applied with fuel delivered in the Yukon-Kuskokwim and other regions such as Bristol Bay and the Norton Sound?
2. What are the factors involved that make the price differences?
3. How many deep water line haul barges are involved in the transport of fuel to the Yukon-Kuskokwim region, and are these same barges used in others? And what are the costs of these barges and what portion of the price of fuel is applied to the cost of these barges? How many are owned by the transport company and how many are contracted?
4. How many shallow draft barges are involved in the transport of fuel to the Yukon-Kuskokwim region, and are these same barges used in others? And what are the costs of these barges and what portion of the price of fuel is applied to the cost of these barges? How many are owned by the transport company and how many are contracted?
5. How many fuel transfers points are involved in the transport of fuel and what costs or surcharges are involved?
6. What moorage or port charges or fees are involved or added the surcharges?
7. How much is the quantity of fuel factor in the price of fuel charged to customers?
8. How does credit or ability to pay or any financing issues, if any factor in the price of fuel?
9. Do any seasonal conditions such as flooding and icing conditions factor in the price and delivery of fuel?
10. Does the size and availability of a port or moorage and equipment factor in the price of fuel and how much?
11. How much does distance factor in the price of fuel?
12. How much does navigation issues in transporting fuel factor in the price of fuel?
13. How much storage capacity has been made available to another competitor as owner of that storage capacity?
14. Has any land been made available and has there been any interest in land for developing additional storage capacity by a competitor?
15. How much competition is there in the market and how has this affected fuel pricing?

Questions to Representative of Impacted Customers

1. What are the levels of income of the people affected by the consent decree?
2. What is the percentage, or how many are low income?
3. What is the percentage of income dedicated to paying for fuel in villages?
4. What could be the impact on households and entire communities in the region as a result of the consent decree?

5. What has happened over the last year with fuel prices as they relate to households and village economies?
6. For those that are utilizing low income energy assistance is there additional fuel surcharges applied for buying fuel?

Jane Pierson

From: Marianna Carpeneti
Sent: Wednesday, April 01, 2009 6:30 PM
To: Jane Pierson
Subject: update
Follow Up Flag: Follow up
Flag Status: Red

Hi Jane,
Here is a list of the folks I have testifying tomorrow. I'm sorry we have gotten any written points or questions; a few people told me they'd be getting some to me but none have as yet appeared. I'll keep you posted.

Testifying
Myron Naneng, AVCP President
Bob Charles, Nuvista Light and Electric (AVCP)
Elaine Brown, NorthStar Gas
Dan Leinberger, Vice-Mayor
Bev Hoffman, City Council
Thor Williams, City Council
? Meera Kohler, AVEC CEO
? Tiffany Zulkosky, Mayor

Marianna Carpeneti
Legislative Aide
Representative Bob Herron
phone: (907) 465-4942
fax: (907) 465-4589

BETHEL TESTIFIERS
Myron Naneng, AVCP President
Bob Charles, Nuvista Light and Electric
Elaine Brown, North Star Gas
Dan Leinberger, Vice Mayor
Bev Hoffmean, City Council
Thor Williams, City Counsil
Meera Kohler, AVEC CEO
Tiffany Zulkosky, Mayor (probably will not be present due to prior engagement)

- Mike Carpenati

DEPARTMENT OF LAW - Ed Sniffen
Ed Sniffen

CROWLEY MARINE - Ray Gillespi
Craig Tornga
Julia Lee, House Counsel

DELTA WESTERN - Pat Carter
Kirk Payne (listen only)

ebrownensg-llc.com
lfoley@cityofbethel.net

Myron Naneng 952-5021
Meera Kohler 565-5531
Bob Charles 306-2503
Elaine Brown 644-9205

Jane Pierson

From: Craig.Tornga@crowley.com
Sent: Thursday, April 02, 2009 8:29 AM
To: Adam Berg
Cc: Jane Pierson
Subject: RE: Your presentation

Adam,

When I send the presentations, I receive back an undeliverable message.
Is there a limitation on the size of e-mails you can receive?

Craig Tornga

-----Original Message-----
From: Adam Berg [mailto:Adam_Berg@legis.state.ak.us]
Sent: Wednesday, April 01, 2009 9:20 AM
To: Tornga, Craig
Cc: Jane Pierson
Subject: RE: Your presentation

Thanks for the response Craig. Good advice I'm sure on Redoubt.
Hopefully it will settle down soon.

Adam

-----Original Message-----
From: Craig.Tornga@crowley.com [mailto:Craig.Tornga@crowley.com]
Sent: Wednesday, April 01, 2009 9:18 AM
To: Adam Berg
Cc: Jane Pierson
Subject: RE: Your presentation

Adam,

I am currently out of the office, but I think I can access the the file and foward it to you this afternoon.

Redoubt has played havoc with my travel. I don't recommend trying to travel right now.

Regards,
Craig Tornga

Sent from my GoodLink synchronized handheld (www.good.com)

-----Original Message-----
From: Adam Berg [mailto:Adam_Berg@legis.state.ak.us]
Sent: Wednesday, April 01, 2009 12:33 PM Eastern Standard Time
To: Tornga, Craig
Cc: Jane Pierson
Subject: Your presentation

Good morning Craig -

Jane from the Judiciary committee asked me whether I had a digital version of the presentation you gave to the House Energy committee when we had our Rural Fuel Pricing hearing.

Do you have that in a format that is e-mailable?

If so, you can send it to
Jane.Pierson@legis.state.ak.us<mailto:Jane.Pierson@legis.state.ak.us>
please?

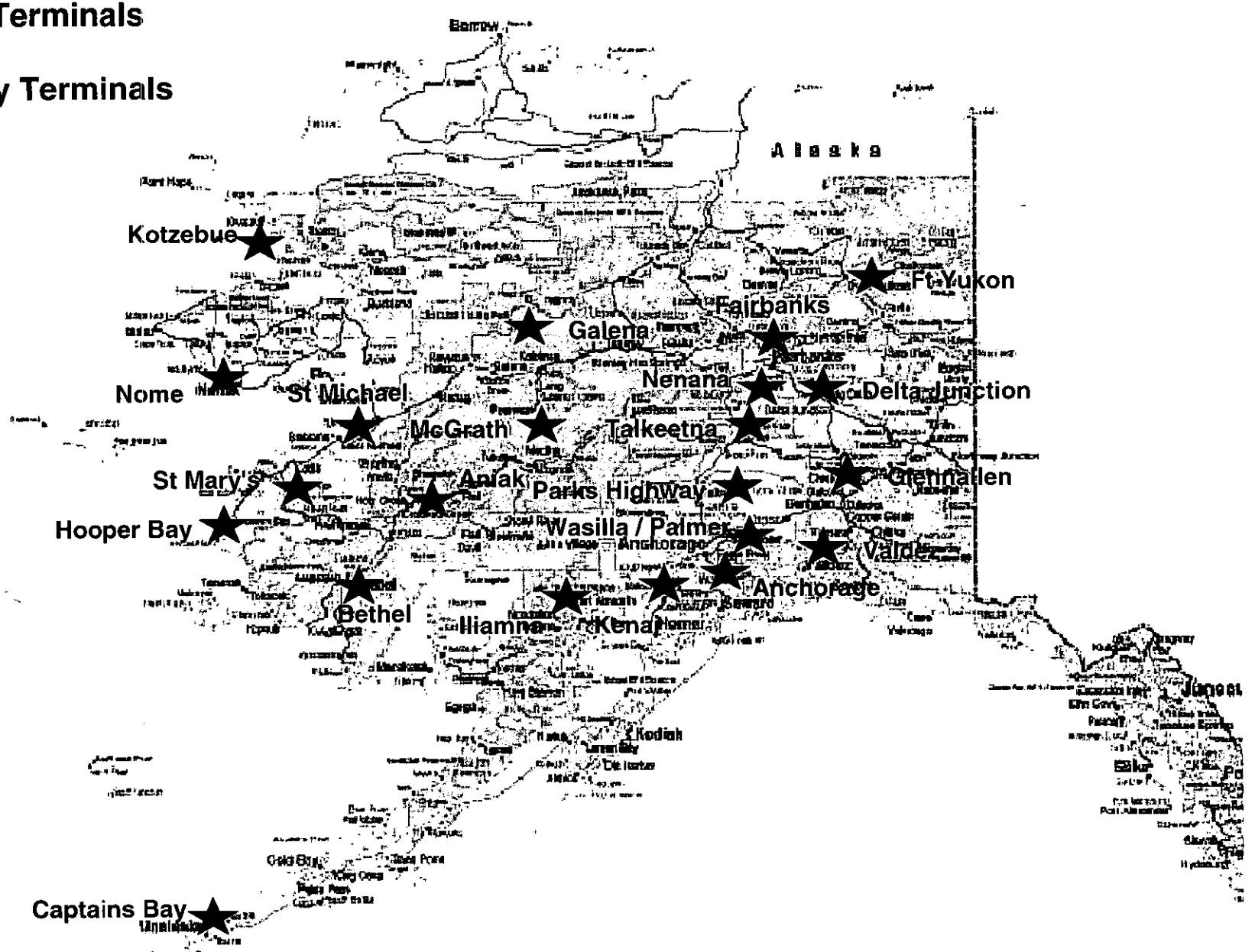
Western Alaska Fuel Distribution

March 12, 2009

Alaska Footprint

★ Marine Terminals

★ Highway Terminals



Alaska Petroleum Distribution

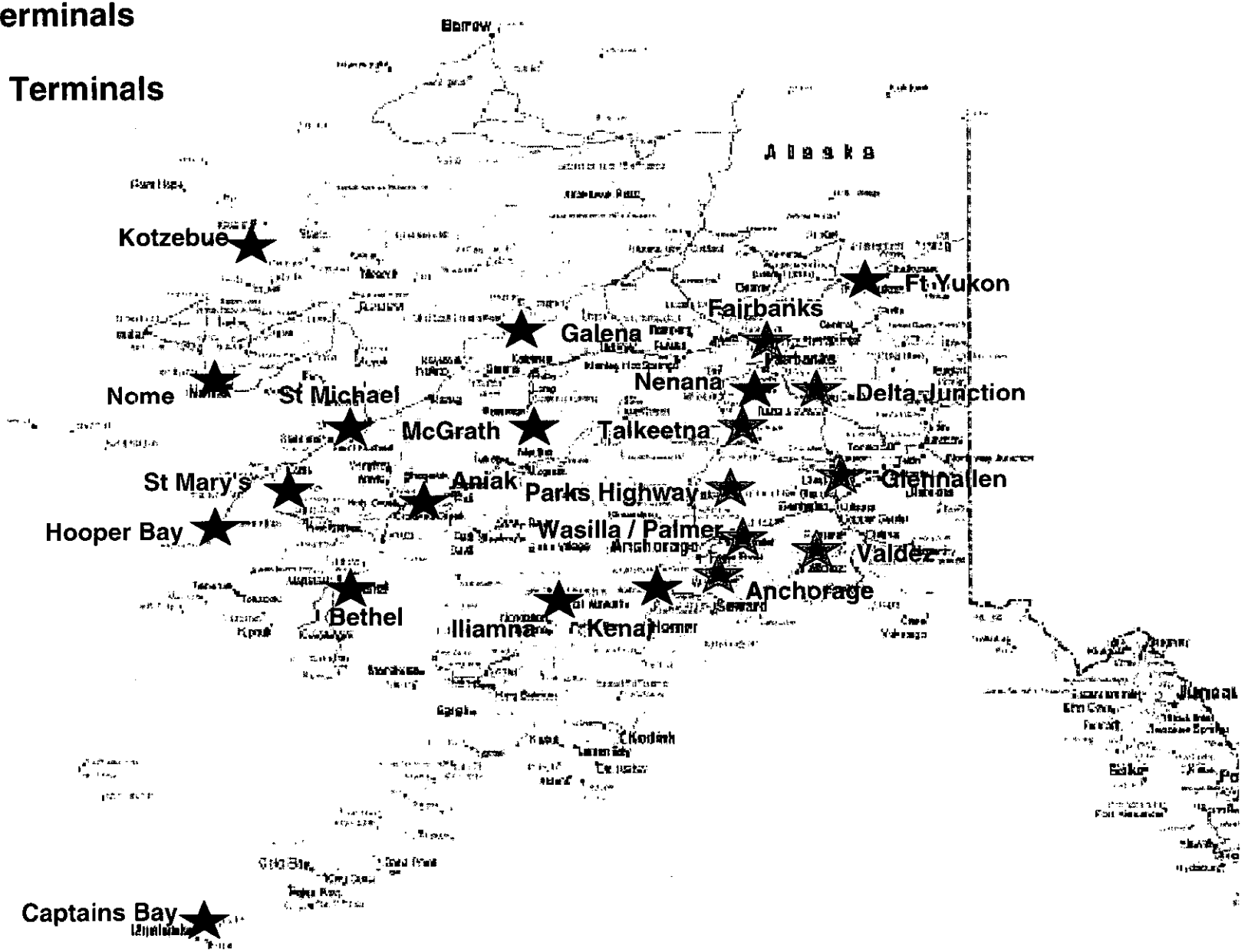
- 21 fuel storage facilities
- Over 30M gallons of fuel storage.
- 100% local hire in all our communities.
- Provide good jobs with long term employment and good benefits in our communities.
- Large fleet of shallow draft vessels to service Western Alaska, both coastal and river.
- Building new equipment specifically to efficiently service the most difficult locations.

Two new AVIK Class tugs under construction.

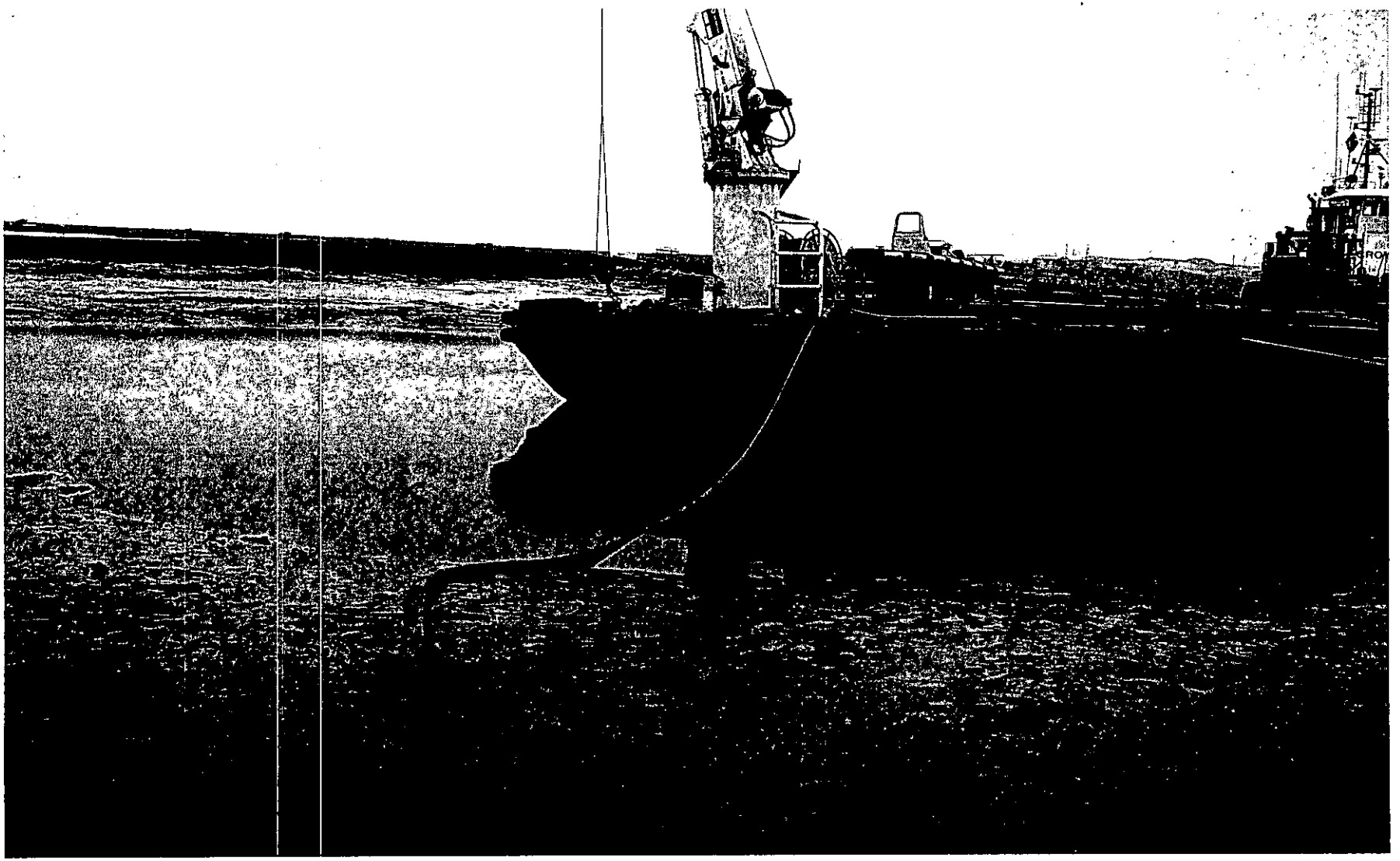
Alaska Footprint

★ Marine Terminals

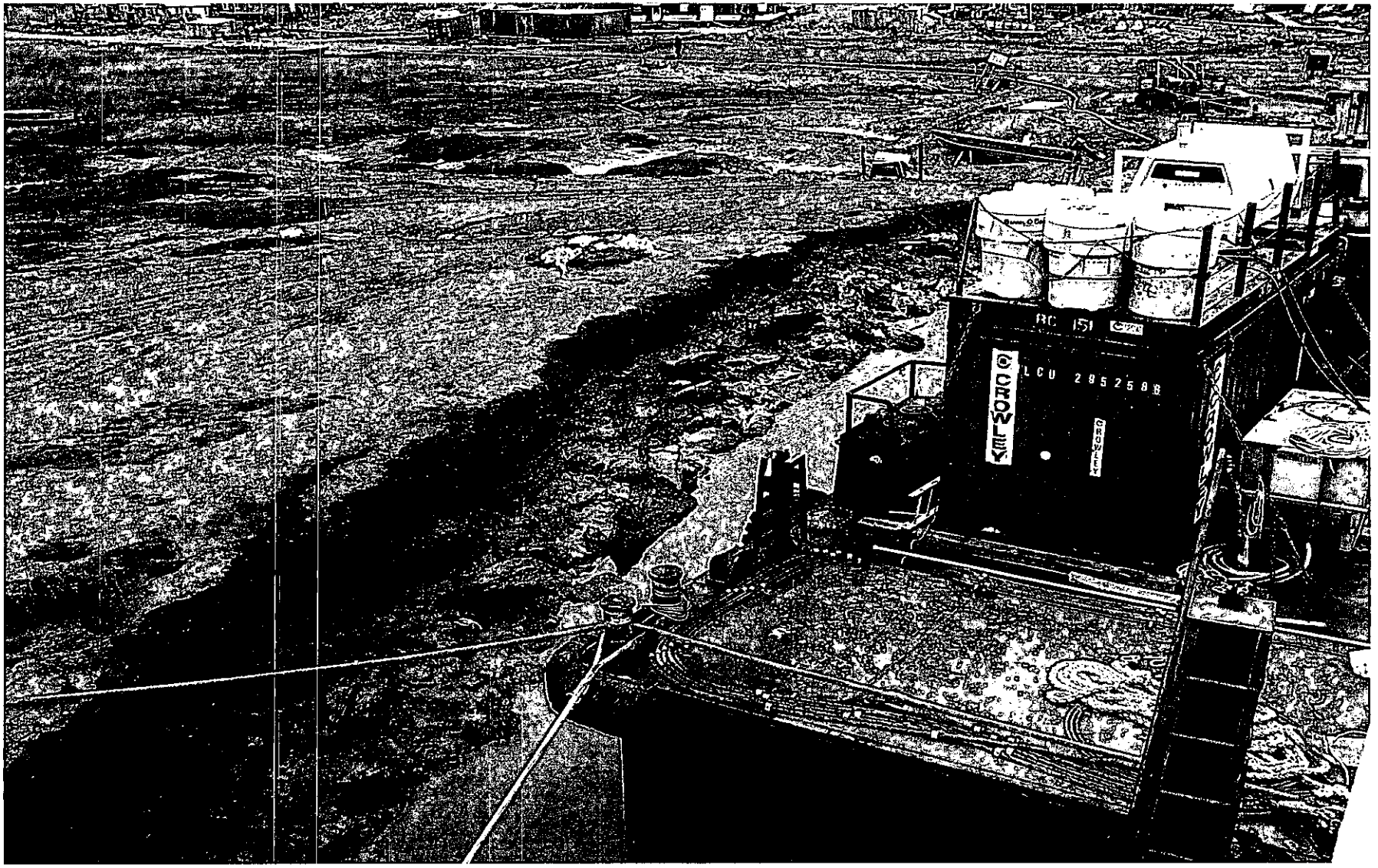
★ Highway Terminals



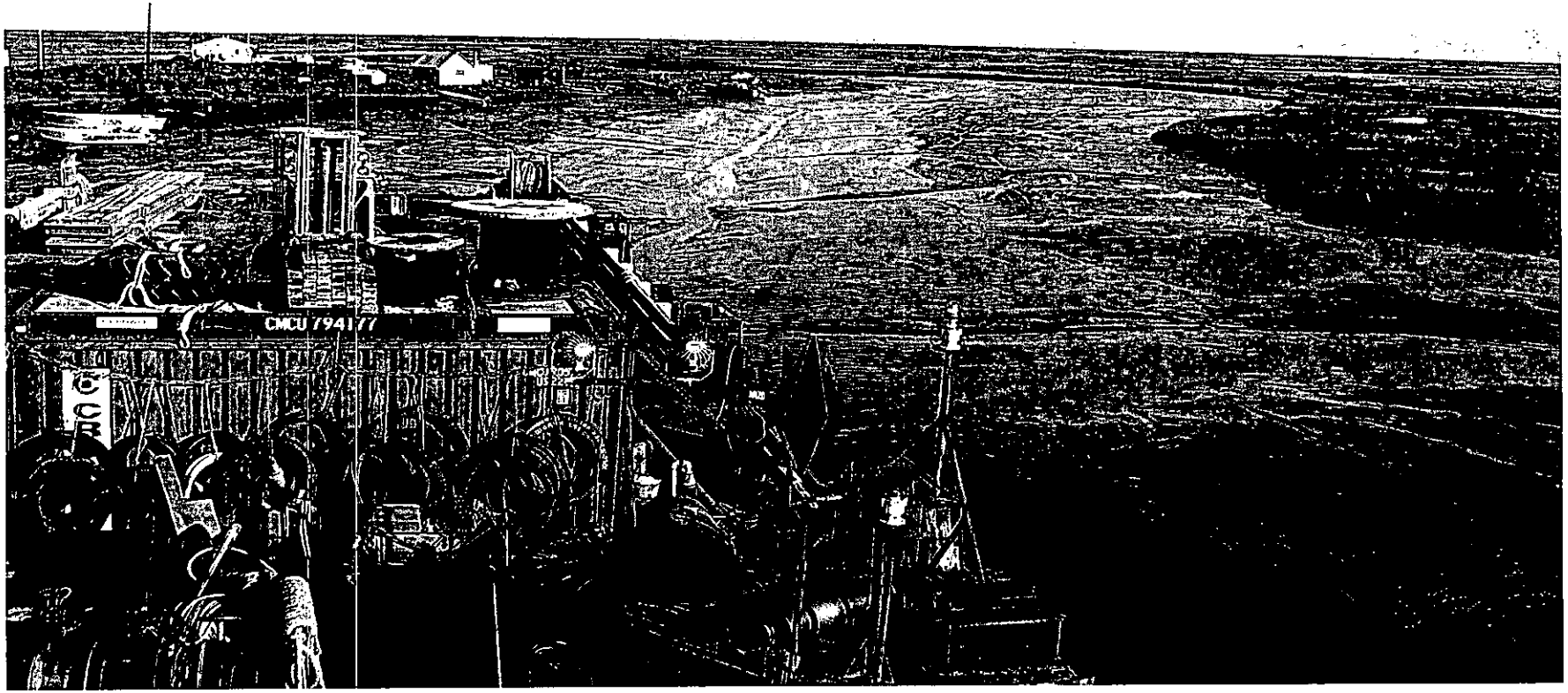
Hose Through the Mud



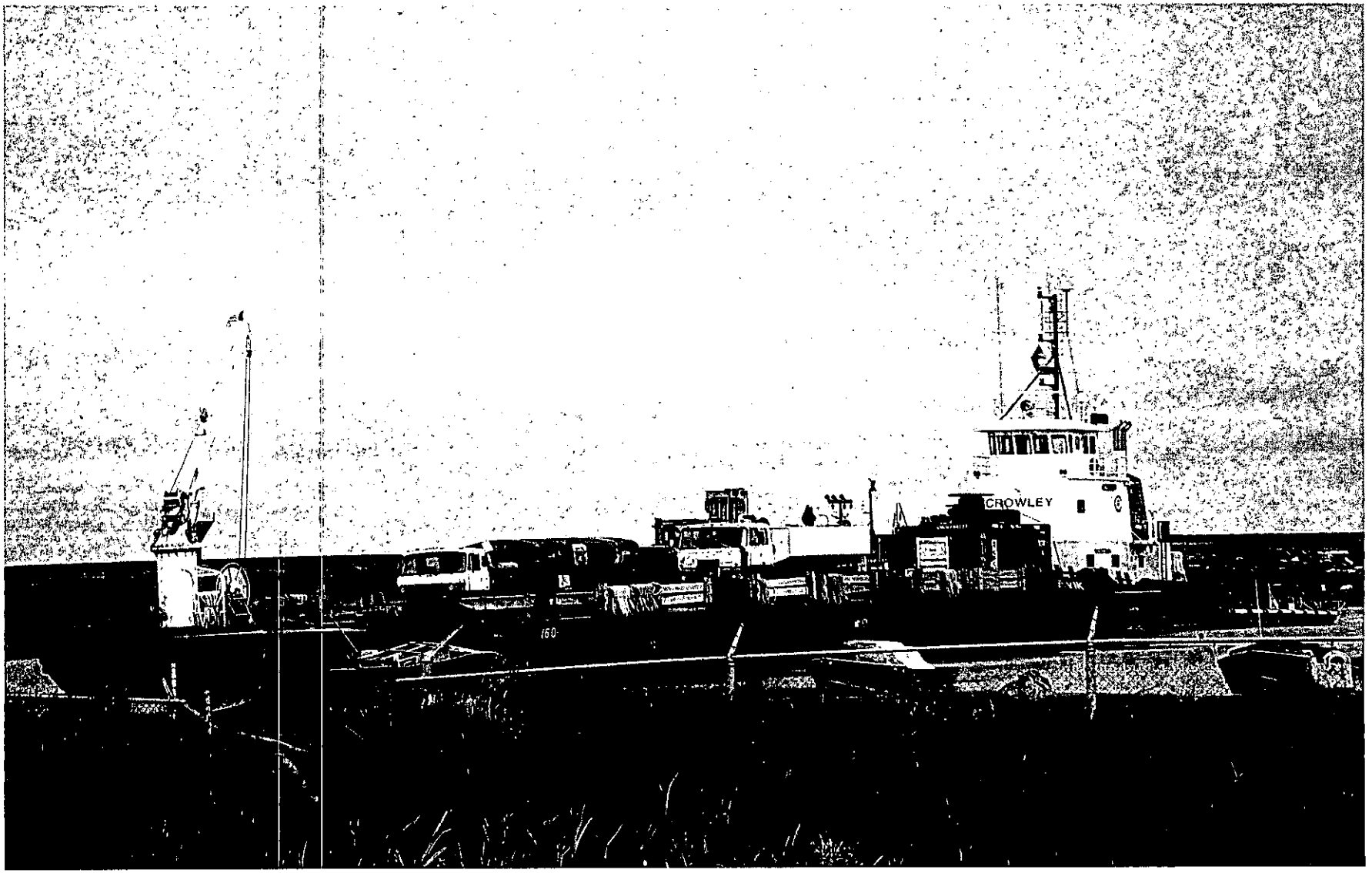
Hooper Bay 2008



Waiting for Water in the Newtok Channel 2007

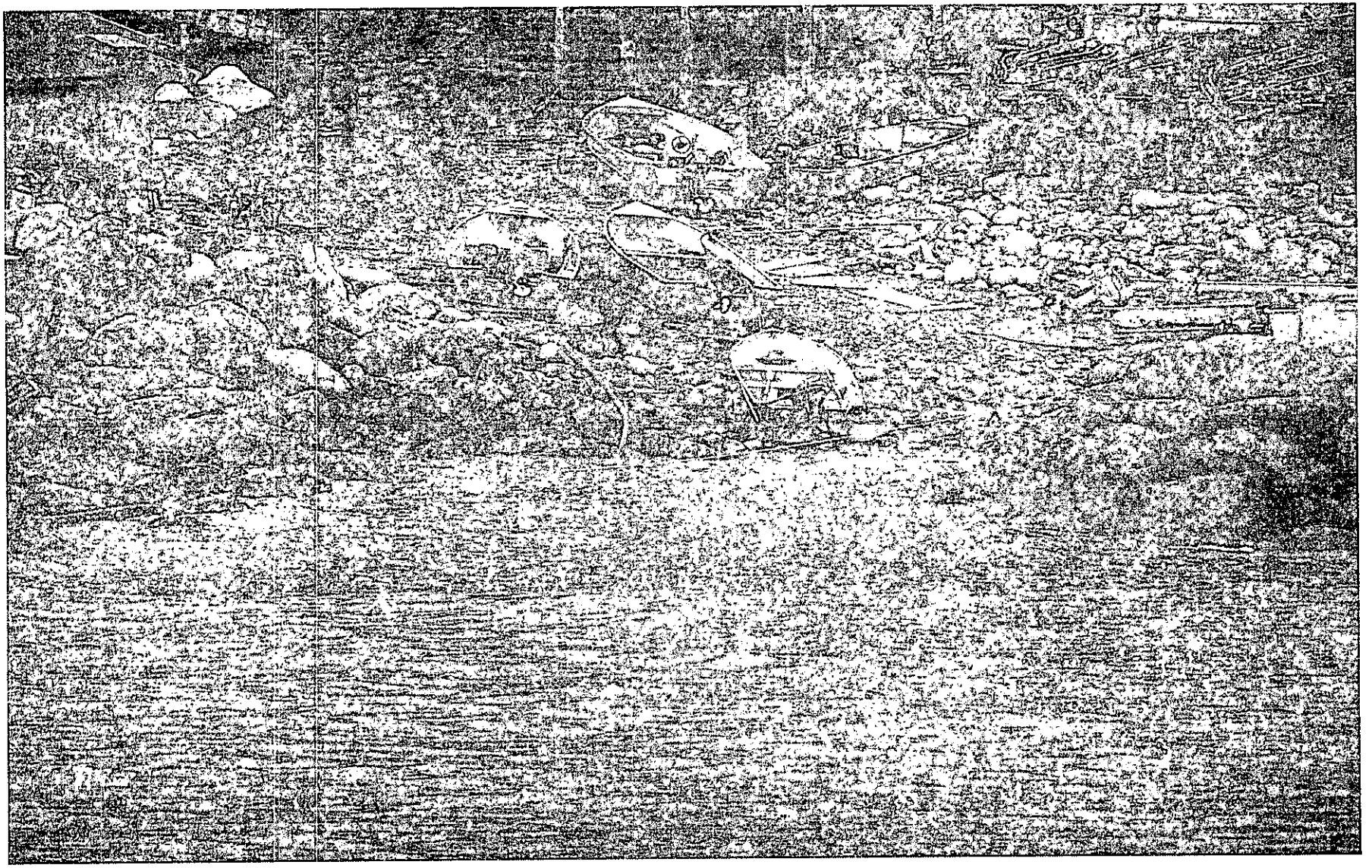


Hose Through the Fence at Newtok

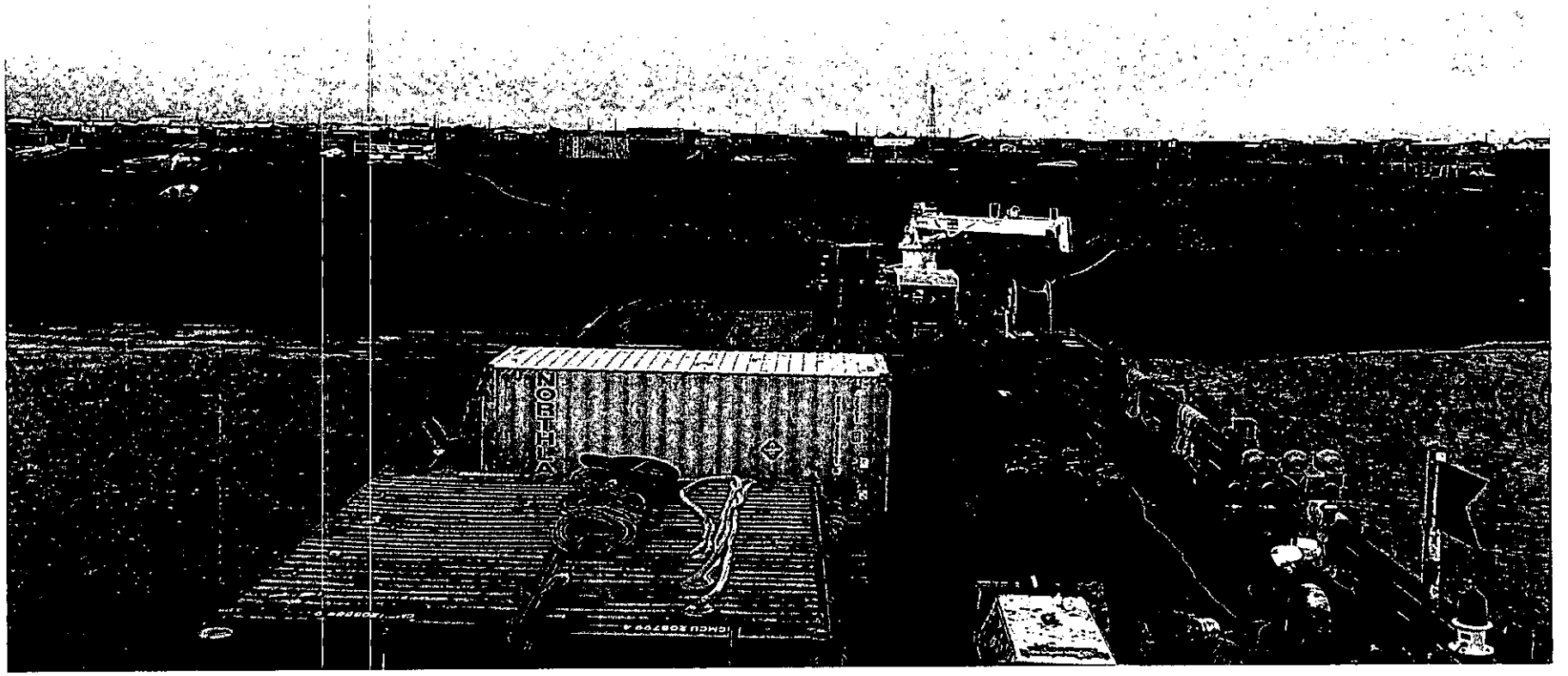


Float Hose Operation at Cape Prince of Wales 2007

Holding the Barge off the Rocks at Little Diomede

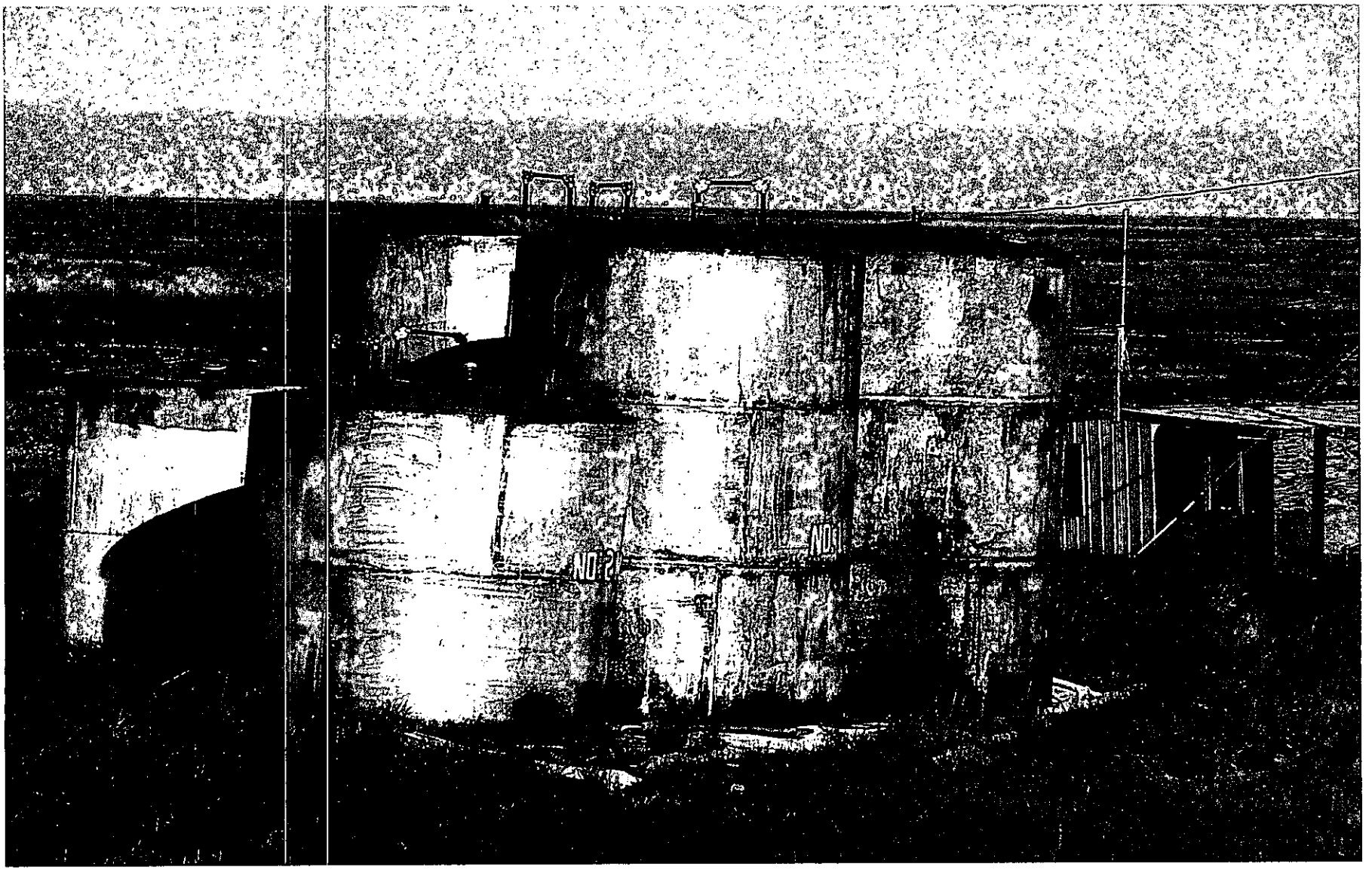


Long Hose Drag at Gamble



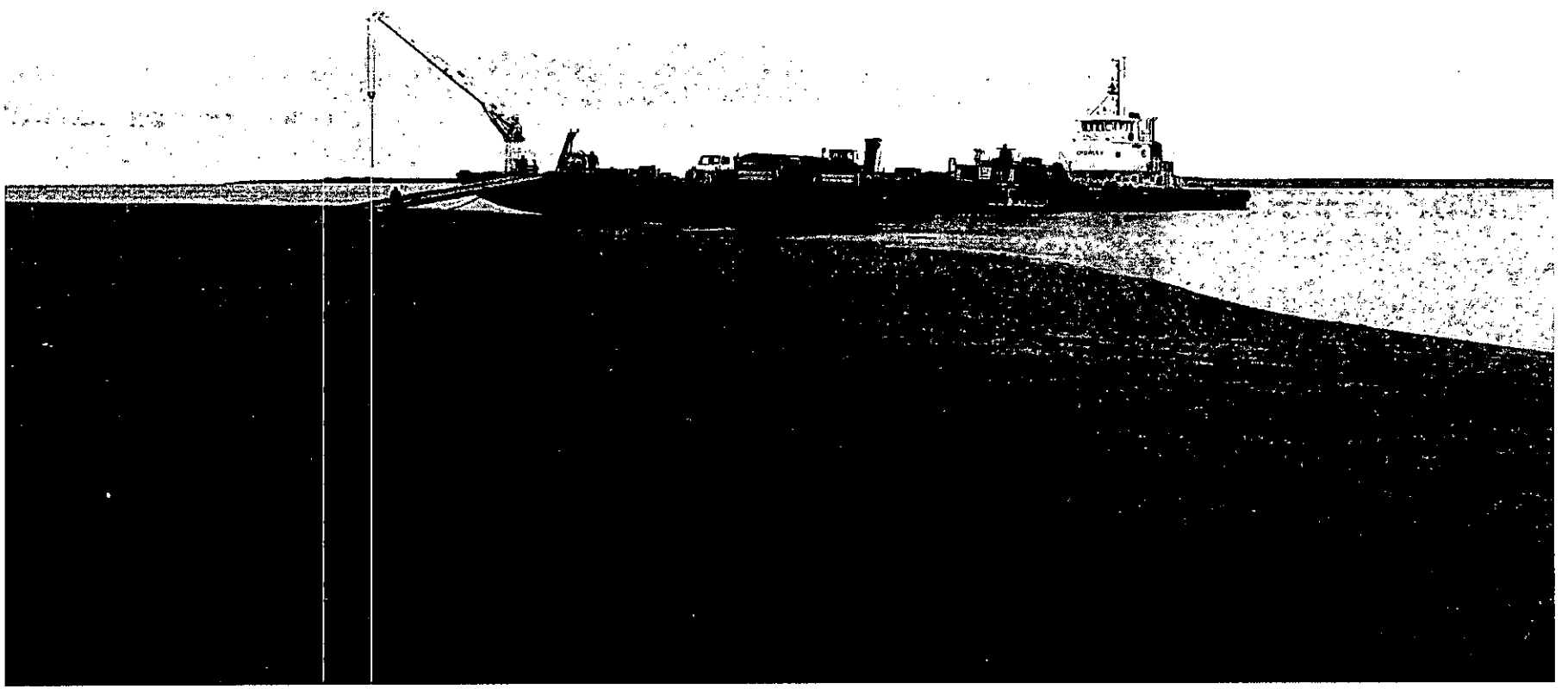
Chevak Lower Tank Farm

Tank Can Only be Filled to the Bullet Hole



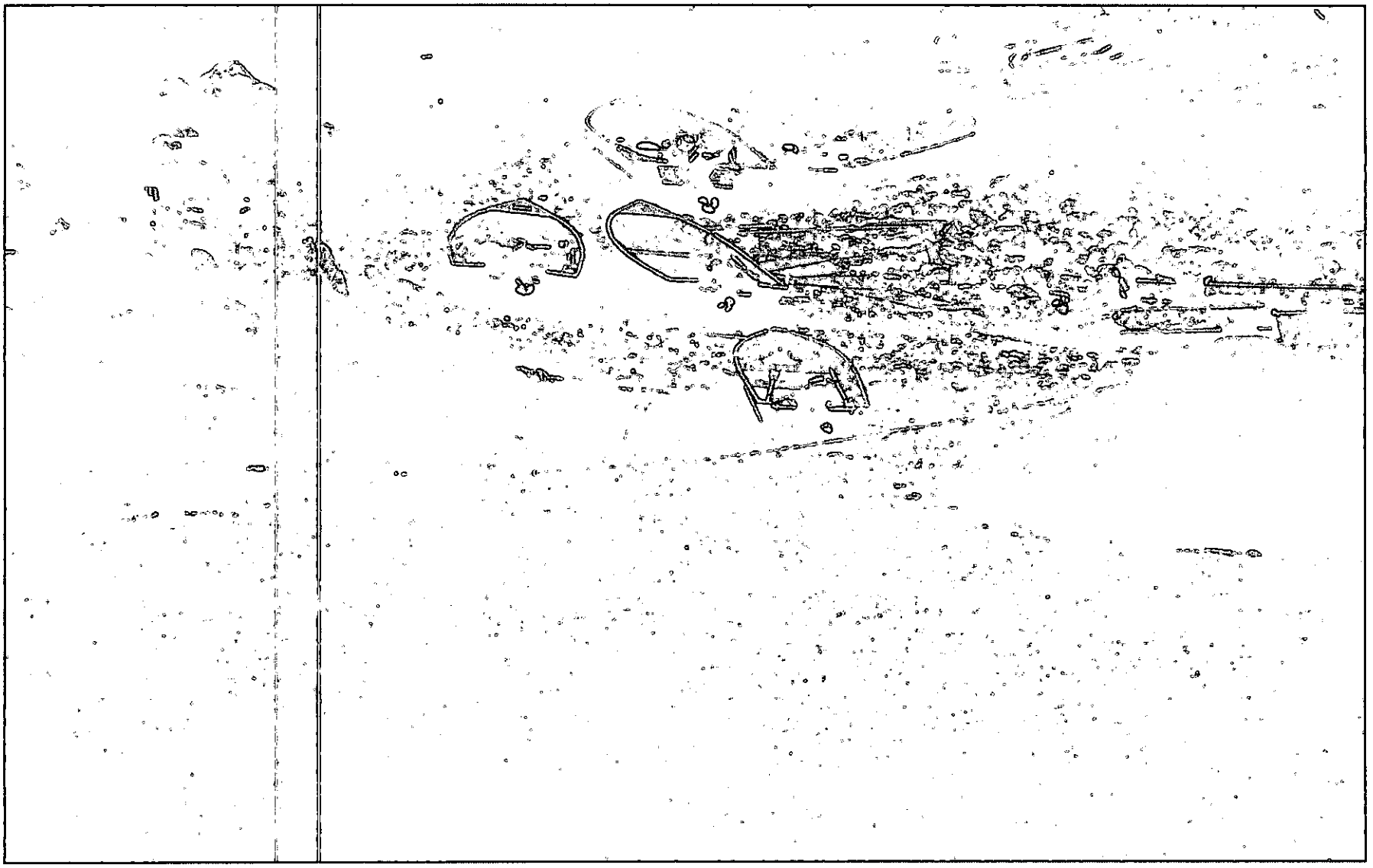
Nightmute Upper and Lower Tank Farm

Beached at Mekoryuk in 2008



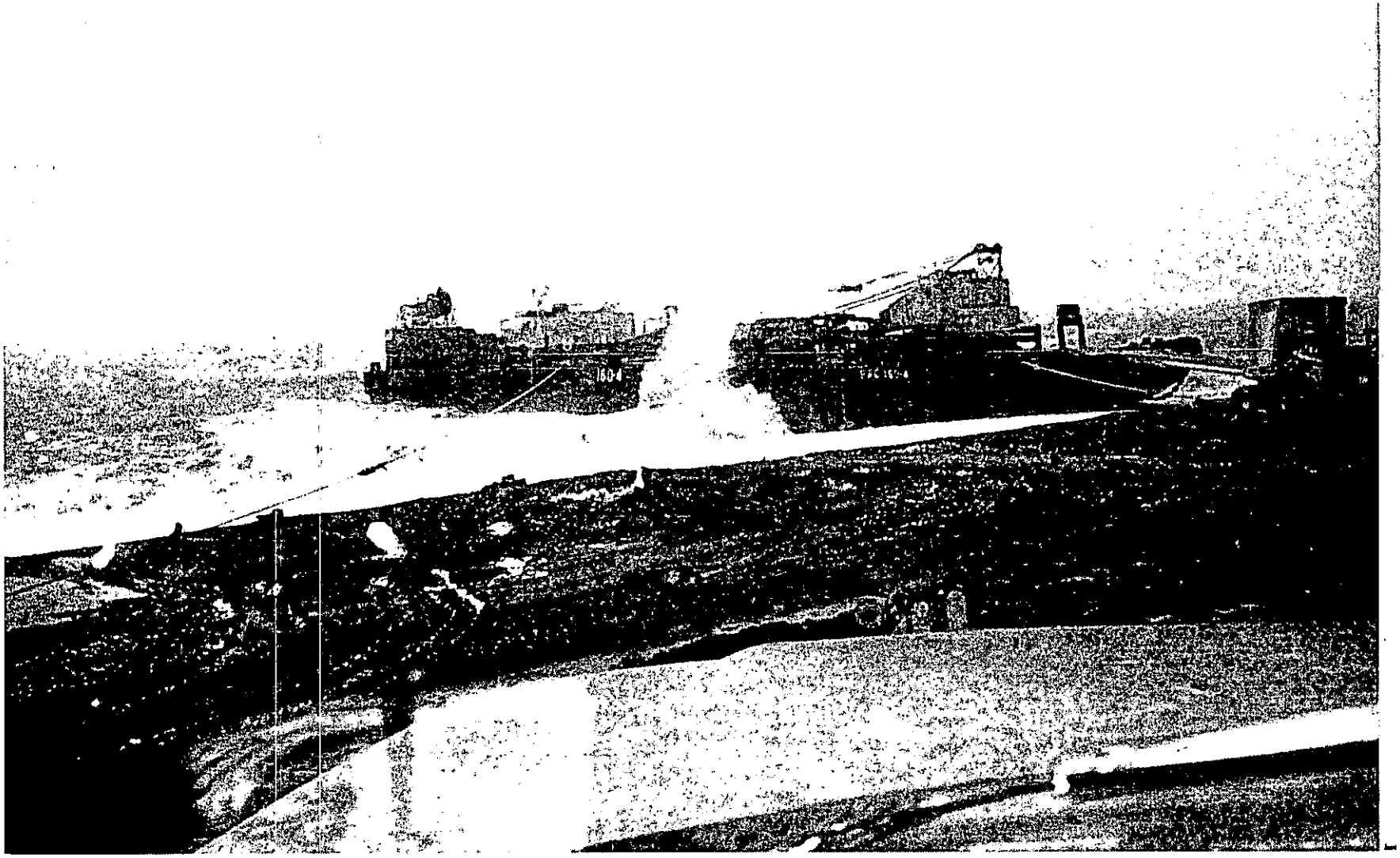
Trucking at Twin Hills

Holding the Barge off the Rocks at Little Diomede

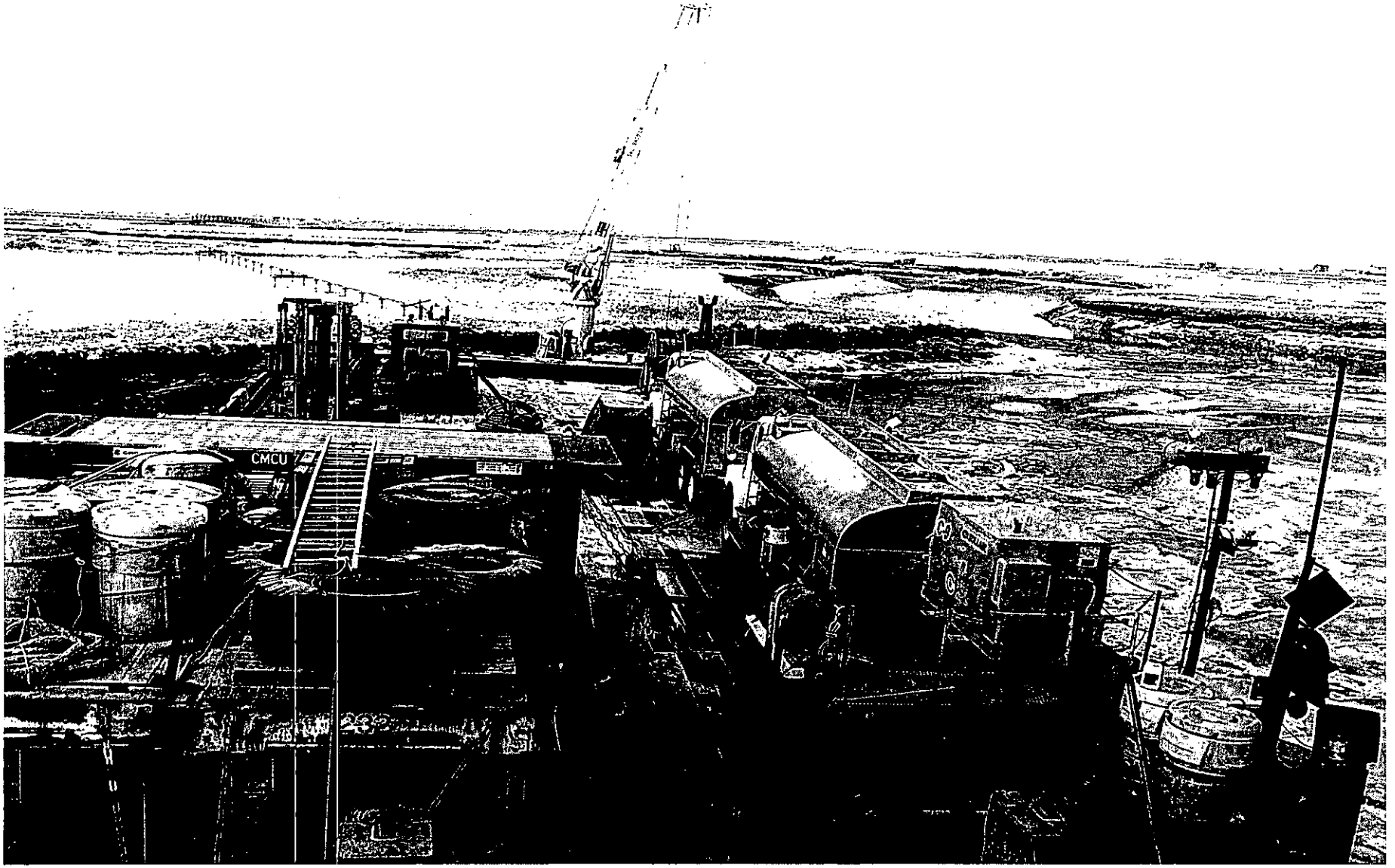


CROWLEY®
People Who Know™

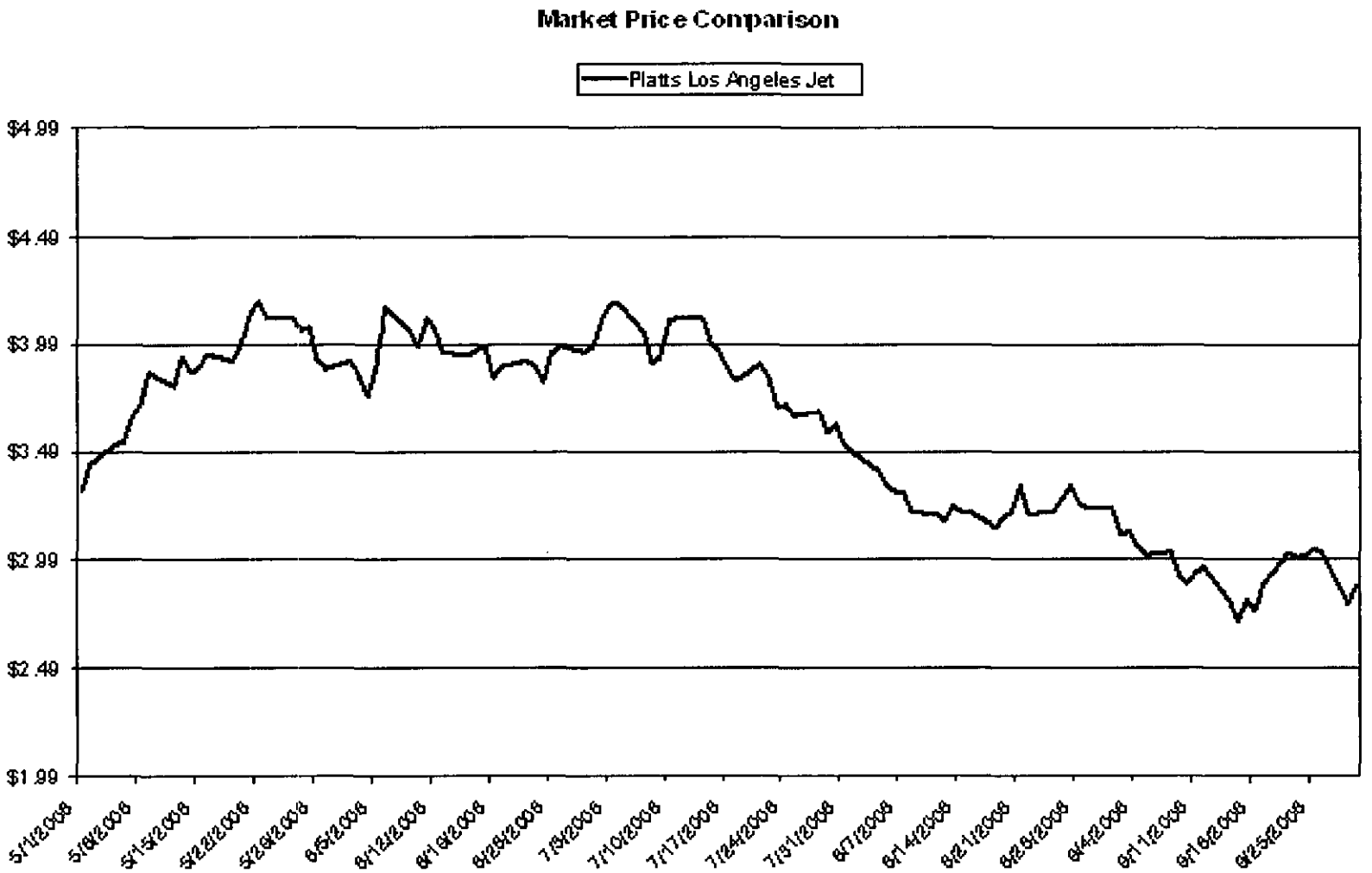
Battered on the Beach at Barter Island



End of Season Ice at Kwigillingok



PLATTS Index Chart for May – September 2008



Introduced by: Mayor Zulkosky
Date: March 24, 2009
Action: Passed
Vote: 6-0

CITY OF BETHEL

Resolution # 09-16

REQUESTING THE STATE OF ALASKA HOUSE JUDICIARY COMMITTEE TO INQUIRE INTO THE EFFECTIVENESS OF THE CONSENT DECREE BETWEEN THE STATE OF ALASKA AND CROWLEY MARINE SERVICES, INC. CROWLEY MARITIME CORPORATION; NORTHLAND FUEL, LLC; YUKON FUEL COMPANY; NORTHLAND VESSEL LEASING COMPANY LLC; AND YUTANA BARGE LINES, LLC., IN ACHIEVING ITS INTENDED GOAL OF PREVENTING A MONOPOLISTIC MARKET AND TO ALLOW FOR FAIR COMPETITION

WHEREAS, communities within Western Alaska like much of the country are facing exorbitant fuel charges, unfortunately the prices paid by communities within Western Alaska are established by a small number of distributers operating within this region;

WHEREAS, to insure a competitive market rate would be maintained and to prevent Crowley Marine Services from establishing market power over the regions fuel sources, a consent decree was produced and ordered;

WHEREAS, without an annual or bi-annual operational review and compliance verification of the consent decree, the communities affected by the transaction of fuel cannot be comfortable in knowing they are being charged fairly for the product;

WHEREAS, reviewing the market rate for storage and use, in conjunction with the consent decree will confirm the business practices between Crowley Marine Services and their only local competitor Delta Western, are in the fair interest of the communities they service;

WHEREAS, because of the market control Crowley Marine Services has on this region and its competitors it is in the best interest of every surrounding community to have a review of continued fulfillment of the consent decree;

NOW, THEREFORE, BE IT RESOLVED that the Bethel City Council hereby requests the State of Alaska House Judiciary Committee to inquire into the effectiveness of the Consent Decree between the State of Alaska and Crowley Marine Services, Inc.; Crowley Maritime Corporation; Northland Fuel, LLC.; Yukon Fuel Company; Northland Vessel Leasing Company LLC.; and

4856

Introduced by: Mayor Zulkosky
Date: March 24, 2009
Action: Passed
Vote: 6-0

Yutana Barge Lines, LLC., in achieving its intended goal of preventing a monopolistic market and to allow for fair competition.

ENACTED THIS 24th DAY OF MARCH 2009 BY A VOTE OF 6 IN FAVOR AND 0 OPPOSED.

Tiffany Zulkosky, Mayor

ATTEST:

for Laurie J. Walters
Lori Strickler, City Clerk

REPORT OF THE ATTORNEY GENERAL REGARDING THE ACQUISITION OF YUKON FUEL COMPANY BY CROWLEY MARINE SERVICES.

I. Introduction.

In the fall of 2003, the Alaska Attorney General's Office became aware that Crowley Marine Services ("Crowley) made an offer to purchase all of the assets of Yukon Fuel Company ("Yukon"). Both Crowley and Yukon compete with each other for the sale, storage, and distribution of petroleum products in parts of Western Alaska. Concerns were raised by several individuals, communities, and businesses about the potential harm this transaction might have on the price of delivered petroleum products in the region. The Attorney General considered these concerns and began an informal review of the proposed transaction and its potential effects on competition for the sale and delivery of fuel in Western Alaska.

In response to this proposed transaction, the Alaska Village Electric Cooperative, Inc., ("AVEC") and members of the Western Alaska Fuel Group ("WAFG")[1] filed a complaint on November 19, 2003 in the Alaska Superior Court in Nome. The primary allegation in the complaint is that the transaction will eliminate the existing competition between Crowley and Yukon for the delivery of fuel, leaving Crowley with monopoly power over fuel prices in Western Alaska.

After filing the complaint, the parties to the lawsuit continued their request that the Attorney General initiate a formal investigation of the transaction to determine

[1] Those six members are: (1) Inn Electric Cooperative, Inc.; (2) Kotzebue Electric Association, Inc.; (3) Naknek Electric Association, Inc.; (4) City of Nome d/b/a Nome Joint Utility System; (5) Nushagak Electric & Telephone Cooperative, Inc.; and (6) Unalakleet Valley Electric Cooperative, Inc.

whether it would violate Alaska's antitrust laws. In February 2004, the Attorney General held a meeting in Anchorage with the parties to discuss these concerns in more detail, and to determine whether the parties could take any action on their own to resolve the pending lawsuit. Following the meeting, the Attorney General decided further review by the state was warranted, and initiated a formal investigation to determine if the transaction would violate Alaska's antitrust laws.

II. Summary.

There are currently very few competing firms engaged in the sale of delivered petroleum products ("fuel") in Western Alaska. Some of the equipment and assets necessary for delivering fuel in this area is specialized. With the exception of small amounts of fuel delivered by air, all fuel is delivered by barge. Purchases by utility companies account for the majority of fuel sales. About 75% of all fuel in this region is purchased through the bidding process. Both AVEC and WAFG select the supplier of their fuel as a result of bidding. Once selected, the successful bidder usually enters a long term (two or three year) contract for supplying fuel.

In order for a competitor to bid on these contracts, it must have access to the necessary equipment and storage facilities to deliver fuel economically and profitably to the prospective customers. There are two primary components involved in the delivery of fuel by barge to a significant number of customers: (1) the barge, and (2) storage facilities. There are also two primary kinds of barges required to serve this market; (1) deep water (or "line haul") barges that can hold several million gallons of fuel, and (2)

smaller barges capable of navigating shallow coastal and up-river locations, called "shallow draft" barges.

Most fuel delivered to Western Alaska locations originates from refiners in Anchorage. Bulk fuel is purchased by the barge company, loaded into line haul barges, then brought to Western Alaska for delivery to the customer. Some customers have storage tanks that can be accessed directly by a line haul barge. Other customers can only be reached by shallow draft barges. To make shallow draft deliveries, fuel must be transferred to a shallow draft barge directly from a line haul barge (called lightering), and it is then delivered directly to the customer, or stored in a storage tank for future delivery.

To maximize the efficiencies of delivering fuel, it is necessary for a competitor to own, or have access to, line haul barges, shallow draft barges, and storage facilities in key locations. Without all these elements, it is difficult to compete in this market. Currently, only Crowley and Yukon operate these kinds of assets in the immediate region. Thus, the proposed transaction creates a significant threat that Crowley would be the owner of all the assets necessary for delivering fuel in this market, and could exercise "market power" to increase prices.

Additionally, Crowley and Yukon each own a fuel storage facility in Bethel. Crowley recently constructed a new 5 million gallon facility in Bethel which became operational in December, 2003. Yukon owns a 10 million gallon facility that has served Bethel and the surrounding area for over 20 years. Allowing Crowley to own both facilities would eliminate this newly created competition for fuel sales in and around Bethel.

The state approached Crowley and Yukon with these issues, and expressed serious reservations about approving the transaction unless Crowley was willing to sell sufficient assets to another competitor to address the state's antitrust concerns. The state expressed to Crowley its goal of maintaining a competitive marketplace for the delivery of fuel that was consistent with Alaska's antitrust laws. After months of review and investigation, the state and Crowley agreed on the terms of a Consent Decree the state believes complies with Alaska law. The main features of the decree are:

1. The buyer of the assets is Delta Western, one of the largest and most experienced barge companies on the West Coast.

2. Crowley will sell Delta Western two sets of tugs and barges that are capable of navigating the shallow coastal and up-river waters in Western Alaska. Coupled with Delta Western's other tugs and barges, this will allow Delta Western to compete effectively in this market.

3. Crowley will divest four million gallons of fuel storage capacity to Delta Western in Bethel. Because Crowley also plans to remove one million gallons of storage capacity from the Yukon facility in Bethel, this amount approximates the current level of competition in Bethel. The term of the divestiture extends to a potential of 30 years, with an initial term of 10 years plus four 5-year options.

4. Crowley must offer Delta Western an option to purchase or lease certain property Crowley owns in Bethel. The location of this property will allow Delta Western the opportunity to construct new fuel storage facilities in the future if competitive forces require expansion.

5. Crowley must offer Delta Western 29% of any additional storage capacity Crowley adds to its existing facilities in Bethel. This will allow Delta Western to grow along with Crowley.

6. Crowley must allow Delta Western and others access to fuel storage facilities in Nome, Kotzebue, and St. Michael. Access to storage at these locations will allow Delta Western to compete more effectively in and around these areas without the need to construct its own storage facilities.

By agreeing to these conditions, the state believes any legitimate concern about a reduction in competition for delivered petroleum products is resolved. The resulting competitive environment will prevent Crowley from charging monopoly prices, or exercising market power.

III. Alaska's Antitrust Laws.

Alaska's antitrust statutes, AS 45.50.562 - .596, are patterned after federal antitrust laws. These laws are aimed at stopping conduct that prevents or inhibits competition in the free marketplace. In the United States, unlike other countries, our policy of encouraging competition among free enterprise is based on the notion that consumers will benefit from lower prices, higher quality, and greater choice than under a system where capital ventures are controlled by the government. This national policy of competition has made the United States economy one of the strongest in the world.

A primary goal of the antitrust laws is to ensure that consumer choice is not unreasonably restricted since consumer choice is a powerful incentive for sellers to keep prices low and quality high. To ensure consumer choice, the antitrust laws set two basic

requirements; (1) companies cannot agree to limit competition in ways that hurt consumers, and (2) a single company cannot monopolize an industry through unfair practices. These principles are set forth in general terms in both state and federal antitrust laws, and courts are left to decide on a case-by-case basis whether any particular conduct is unlawful.

Application of the antitrust laws, however, can be very complicated. It is not always obvious whether conduct is unlawful under these complex standards. For example, monopolies that form as a result of superior marketing efforts or a superior product may be completely lawful. A company that offers a new product in a market where no other comparable products have been sold before will have a monopoly until a competitor decides to enter the market and compete. The antitrust laws do not prevent someone from gaining market power if it is acquired through legitimate business practices.

Another basic principle of antitrust law is to prevent the illegal accumulation of market power in a single entity.[2] If one entity was able to obtain market power, it could control prices. The ability to control prices through illegal conduct is something state and federal governments try very hard to prevent. The role of the Alaska Attorney General in enforcing the state's antitrust laws is to review proposed transactions, like the Crowley/Yukon transaction, to make sure the resulting entity is not left with this kind of market power.

[2] If a business has "market power" it has the ability to restrict competition or control prices. Thus, antitrust law does not distinguish between "how much" market power one business has. Any amount of market power is illegal.

A. Defining Markets.

The start of any antitrust investigation begins with determining what market is potentially affected by the alleged conduct. In this case, the state had to determine what markets would be affected by the sale of Yukon to Crowley. This is called the "relevant market." In general terms, the relevant market consists of two components: (1) a "product market" which consists of all the competing products sold by the merging companies plus any products that can be used as a reasonable substitute; and (2) a "geographic market" which consists of all the areas from which these products can be economically and profitably supplied.

In this case, the product market was determined to be "barge delivered petroleum products." The product market is not simply "petroleum products" because none of the competitors in this area actually own a source of fuel. Both Yukon and Crowley, for example, purchase all their fuel from a third party. The product is also not "barge services" because barge services by themselves are rarely purchased by customers. Fuel is typically purchased on a "delivered" basis.

There are no other reasonable substitutes for barge delivered petroleum products in this area. There are no roads that service Western Alaska, thus land transportation of petroleum is not possible. Some limited amounts of fuel are delivered by air. These deliveries are isolated, and not economical in large volumes. Other sources of energy, such as coal, hydro, and wind power, are also not economic alternatives to petroleum. None of the communities currently using petroleum products could quickly

and economically switch to one of these alternative energy sources. Accordingly, the Attorney General defined the product market as "delivered petroleum products."

The geographic market was more difficult to define. To determine the relevant geographic market, antitrust law requires that you include all places a customer could go to get the relevant product at competitive prices. Courts have frequently, and consistently, defined geographic markets for barge transportation as generally broad, and have found them to include all waterways where there is no physical barrier to barge movement.

The area affected most by the proposed transaction is Western Alaska. Fuel can be economically delivered to Western Alaska by barge, however, from locations outside of Western Alaska. For example, a barge company from as far away as Southern California could bid on contracts to supply AVEC, the WFAG, and other customers. If successful, the bidder could arrange to purchase fuel in Anchorage, lease (or buy) line haul and shallow draft barges, then arrange necessary storage space to deliver the fuel to customers. Economic and profitable deliveries, however, depend on a variety of factors, including the volume of fuel sold, and the cost to position equipment in Western Alaska to make deliveries. Complicating this analysis is the unique geography of Western Alaska. The experience and knowledge required to operate here is unique and challenging.

Antitrust economists hired by Crowley determined that profitable fuel deliveries could be made by using a single set of tugs and barges from Southern California if the seller could obtain at least 2.1 million gallons of delivered fuel sales.

This estimate considered the cost of bringing a shallow draft tug and barge from San Diego to Alaska.

The analysis done by an expert economist hired by the state suggests the minimum volume necessary for deliveries to be made from California is probably higher than the volumes calculated by Crowley's economist. But under either analysis, it was clear that at some volume, fuel could be profitably delivered to Alaska from locations as far away as California, including locations in Oregon and Washington State. There is about 90 million gallons of bulk fuel sales annually in Western Alaska. Considering these volumes, the state concluded the geographic market for supplying barge delivered petroleum products includes all of Western Alaska and the West Coast of the United States.

B. Competitors in the Market.

The next step in analyzing the potential competitive effects of the proposed transaction required the state to identify competitors currently participating in the relevant market, and the amount of "market power" held by each. Knowing the number of competitors and each competitor's share of the market is critical to understanding how the elimination of one competitor may impact competition among the remaining competitors.

For barge delivered petroleum, the Western Alaska market has been recently dominated by three competitors. When a market has few competitors, it is considered "highly concentrated." Crowley and Yukon have been the major competitors in recent years making bids on contracts to supply fuel in shallow-draft markets. Delta

Western and Crowley are the two dominant competitors bidding for contracts to supply fuel by line haul barge. Of all the barge companies actively operating in Western Alaska, Crowley is the only competitor with a mix of assets that allows it to serve both the shallow draft and line haul markets. Delta Western does not own any shallow draft barges in the Western Alaska region, and Yukon does not own any line-haul barges.

To get fuel to its smaller barges, Yukon contracts with other companies for the delivery of fuel by line haul barge. Recently, Yukon has contracted with Sirrius Maritime, Inc., a Seattle-based barge company, to deliver fuel by line haul barge to specific locations in Western Alaska where it is then loaded onto Yukon's storage facilities or barges. Sirrius does not have any other customers in Western Alaska.

There are no other "active" competitors supplying bulk fuel by barge to Western Alaska. Thus, this transaction would eliminate one of the three barge companies operating in Western Alaska, and eliminate the only other current competitor for shallow draft barge deliveries. This reduction in competition raises serious concerns, but is not entirely determinative of the actual competitive impact caused by this transaction. Because the fuel market is a "bidding market" all potential bidders must be considered as potential competitors, regardless of whether they have actually made any historic sales of fuel in the market.

C. Market Power.

Once the competitors in a market are identified, the "market power" of each competitor must be assessed. Market power is defined as the ability to raise prices or exclude competition. The most common basis for predicting a firm's ability to raise

prices in the future is to calculate its historic percentage of sales in the relevant market. There are exceptions to this approach, however, when future sales are not dependent on past percentages, but are determined by independent events. In a bidding market, like the Western Alaska fuel market, past performance is not a good indicator of market power. Future sales depend on future bids, not past sales. Market power also cannot be inferred from high percentages of past sales in markets that are characterized by low entry barriers, as discussed more fully below. A firm with 100% of sales cannot profitably overcharge if doing so would simply attract new competition lured by the higher-than-competitive prices.

Because all competitors in a bidding market have an equal chance of winning future bids, each is assigned the same amount of market share. Even if a company makes no sales in one year, it still has an equal share of the market along with companies that made significant sales. The antitrust law requires consideration of these other "potential" or "uncommitted" competitors. These are competitors who are not currently participating in the market, but would likely enter the market in a timely manner if prices rose above competitive levels. This "threat" of competition is a strong deterrent to active competitors, and acts to keep prices from reaching monopoly levels. Thus, all potential bidders are assigned an equal share of the market.

D. Entry Barriers.

Federal regulators have often approved mergers and acquisitions that have left only one competitor in the market when evidence showed a strong likelihood that other competitors could easily enter the market. A merger or acquisition is not likely to

create or enhance market power if entry into the market is so easy that market participants could not profitably maintain a price increase above pre-merger levels. Entry into a market is considered "likely" if it would be profitable at pre-merger prices, and those prices could be secured by the new entrant. In addition, to be "sufficient" under antitrust guidelines, the assets required for entry must be available so that entrants can respond fully to new sales opportunities.

To determine which potential competitors are likely to enter the market in response to a price increase, the barriers to entering the market must be identified. Entry barriers are defined to include potential obstacles that a new competitor would have to overcome that the current competitors did not have to deal with. Examples of entry barriers include new governmental regulations that impose new requirements (i.e. permits) that current competitors did not have to comply with. Another barrier could be the ownership of a necessary resource by an incumbent firm (such as land or a manufacturing plant) that a new competitor cannot obtain. If access to these necessary components are constrained, or controlled by the existing competitors, new competition is not likely to happen.

Applying these principles to the Crowley/Yukon transaction, the state identified the following as potential entry barriers. There is some reasonable debate about whether any of these items, standing alone, would prevent a potential competitor from entering the market. But taken together, these items present significant obstacles to anyone looking to compete in this market.

1. Shallow draft barges. The state's research showed that shallow draft barges are not readily available. Although there are some used shallow draft barges on the market, most are not suitable for use in Alaska waters without significant retrofitting. One of the largest barge brokerage firms in the world, Markon International, Inc., lists several shallow draft barges for sale on its web page. A competitor could acquire one of these barges and invest in the necessary modifications, but the cost to do so would approach over 50% of the cost of a new barge. New shallow draft barges can be built for as little as $1 million, and Crowley is currently completing construction of a state-of-the art barge for approximately $3 million. The building process takes less than one year to complete.

Regardless of the cost, any investment in a shallow draft barge would not be profitable unless the buyer could obtain sufficient fuel sales to warrant the investment. Shallow draft barges are designed for a specific purpose, and cannot be used for a broad range of tasks. There are a few river systems in the U.S. where these assets can be deployed, including, for example, the Columbia River and the Mississippi River systems. However, the Attorney General remains concerned that these shallow-draft vessels are not as freely available as, for instance, line-haul barges, and the market for shallow draft barges is limited.

The current competitors, furthermore, had to obtain shallow draft barges to participate in this market, so the state's reliance on this obstacle is not fully supported by the antitrust law. Nonetheless, these barges are necessary assets to

competition that only Crowley and Yukon have ready access to.[3] These considerations generate some concern about the willingness of a new competitor to enter this market.

2. Storage facilities. If the proposed transaction were allowed to proceed with no conditions, Crowley would own nearly all of the fuel storage facilities in Western Alaska, including all of the fuel storage facilities inland from the coast used for up-river deliveries. Of significant importance are the two facilities in Bethel. These facilities require heightened attention because there is current competition in the Bethel market for fuel that is directly tied to ownership of these facilities. There is an extremely limited opportunity for new competitors to build a storage facility in Bethel because there is a scarcity of suitable land, and the market simply does not justify adding additional storage capacity for the reasonably foreseeable future.

Storage facilities outside Bethel present less of a concern, but are still important. There appears to be fewer limitations on the ability to construct new facilities in necessary locations along the West Coast of Alaska. Historically, the common practice in the area has been for owners of these facilities to allow access to storage capacity by other competitors at a reasonable rate. Still, if one competitor owned all the necessary storage facilities, it could exercise control over its competitors in a harmful way. This presents some concerns for new competitors looking to compete in this market. It bears note, however, that the storage facilities in these other areas have not historically faced immediate competition, and that Crowley's acquisition will not consolidate competing resources.

[3] The state's research showed there was a readily available supply of tugs and line-haul barges.

3. Knowledgeable barge pilots. State and federal regulations require licensed pilots to have knowledge of the waters to be navigated. The coastal and river waterways in Western Alaska offer some of the most challenging navigation anywhere in the world. The only way to gain the experience required to operate shallow draft equipment in some of these remote waterways is to log hours of time with an experienced pilot. New competitors looking to operate shallow draft barges would need to locate and hire knowledgeable mariners with the requisite experience navigating the shallow waters of Western Alaska.

The current competitors had to face this obstacle as well, so any argument about finding qualified pilots as a "barrier to entry" in antitrust terms is subject to reasonable debate. This is particularly so in view of the ability of any new entrant to hire away pilots from Crowley or other incumbent barge companies operating around the State. Nonetheless, coupled with the other barriers to competition, this presents another potential deterrence to new market entrants.

Courts addressing entry barrier issues consistently agree that barge markets are typically open to new entry. While the State is unwilling to rely on this market mechanism entirely to resolve its concerns in this case, it is equally true that any monopoly "gouging" by Crowley would probably cause other barge companies to enter or consider entering the Western Alaska fuel market.

IV. Analyzing the Crowley/Yukon Acquisition.

Considering the above, the state's analysis of the Crowley/Yukon Acquisition involved a preliminary assessment of market power based on a proper

definition of the relevant market, followed by an analysis of mitigating factors, such as the ease of entry into the market. Applying these principles to Crowley and Yukon, the attorney general concluded that the transaction, if allowed, would violate Alaska's antitrust laws that prohibit mergers or acquisitions if the effect of the merger will "substantially lessen competition." The Attorney General reached this conclusion based on the following three assessments:

1. Crowley could obtain monopoly power over nearly all fuel sales in Bethel. At the very least, there would be a significant lessening of competition in Bethel if Crowley were to own both of the existing fuel storage facilities in Bethel. The total volume market demand for fuel, coupled with the limited availability of land prevents a new competitor form entering this market easily and timely.

2. Crowley would obtain ownership of all other fuel storage facilities required for deliveries to some locations, particularly areas served by shallow draft barges. Obtaining control over these necessary assets for a significant portion of the market presents a dangerous probability that Crowley could exercise market power over fuel prices.

3. Crowley would obtain ownership of all the shallow draft barges currently used and available in Western Alaska for deliveries to shallow coastal and up-river locations. This would eliminate existing competition in areas where Crowley and Yukon currently compete for shallow draft deliveries. Although new competitors could purchase barges for use in these areas, there are significant obstacles to doing so.

The fact that Crowley would be in control of nearly all the assets currently used for barged delivered fuel, and would be the overwhelmingly dominant player, cannot be ignored. This alone presents serious concerns to the Attorney General.

V. The Remedy.

After concluding the transaction would violate Alaska's antitrust laws, the state was faced with only two options: (1) block the transaction, or (2) enter a consent decree that requires the parties to take affirmative steps to eliminate the potential for competitive harm. There are risks associated with each option. If the state filed a lawsuit to stop the transaction, Crowley and Yukon could litigate against the state to get the transaction approved. Crowley and Yukon argued vigorously that the transaction did not violate any state or federal antitrust laws, and the parties are confident they could get the transaction approved, without conditions, by a court.

The risk with a consent decree is that its terms may not adequately prevent the exercise of market power. Even though the Attorney General carefully reviewed the transaction, no one can predict the future. Events may occur that were not contemplated, or market conditions may change in ways not anticipated by a consent decree. Even so, the attorney general always retains the authority to take steps in the future if the intent and goal of a consent decree is not followed.

It is also important to recognize there are benefits that flow to the economy as a whole from mergers and acquisitions, and there are potential benefits to the economy of the state that can result from this merger. Here, Crowley will consolidate resources into a single firm that will be of a scope and scale sufficient to improve fuel delivery

service and reliability, and also at a potentially lower cost due to the resulting efficiencies. Crowley's strong economic commitment to Alaska's maritime markets also ensure that a responsible owner will operate these resources, which is important for environmental and economic reasons. While the Attorney General is deeply committed to preventing anticompetitive conduct in the state's markets, the state is equally committed to promoting the benefits of economic activity.

Given the nature of this transaction and all the information reviewed by the state and its expert, the Attorney General decided to enter a consent decree that required Crowley to take certain steps to alleviate the concerns identified by its investigation. Those include:

1. Divesting significant amounts of storage capacity to a competitor under terms that position the competitor as tantamount to the owner of the capacity of that facility.

2. Selling at least two sets of shallow draft tugs and barges to a buyer willing and able to compete in the shallow draft market.

3. Making space available in key storage facilities on a non-discriminatory basis to any competitor who wants it.

4. Making land available in Bethel to a competitor for the purpose of constructing a new fuel storage facility.

5. Requiring the divestiture to a competitor of 29% of any additional storage capacity added by Crowley to the Bethel facility.

6. Finding a buyer for these assets with the economic ability and required experience to compete effectively in this market.

A consent decree was crafted with these goals in mind. After several weeks of negotiation, Crowley agreed to the terms of the decree. Providing all the terms are complied with, the attorney general believes the transaction will satisfy Alaska's antitrust law, and will encourage continued competition in the market for barge delivered petroleum.

VI. Further Proceedings and Opportunity to Comment.

The consent decree has been filed in the Superior Court in Nome, the same court in which the pending lawsuit is located. The consent decree must be reviewed and approved by the court before it is effective.

In addition to review by the court, Crowley and Yukon must file a notice with the Department of Justice and the Federal Trade Commission that describes the transaction. These federal agencies will have an opportunity to review the transaction for antitrust violations, and may decide to initiate their own investigation.

Finally, any interested person can file an "exception" to the consent decree with the court in Nome. An exception must be filed with the court within 60 days of filing the consent decree. These exceptions can be mailed to the Nome Superior Court, Box 1110, Nome, Alaska, 99762. The court will consider these comments and objections when deciding to approve or disapprove the consent decree.

VII. Conclusion.

The Attorney General believes the proposed transaction, as modified by the conditions set forth in the consent decree, is lawful under applicable Alaska (and federal) law, the federal antitrust merger guidelines, and the judicial decisions that interpret these laws and guidelines. Under the proposed consent decree, the Attorney General believes the transaction will benefit consumers in Western Alaska by maintaining strong competition, and securing reliable sources of barge delivered fuel by reputable competitors.

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

SECOND JUDICIAL DISTRICT AT NOME

STATE OF ALASKA, Plaintiff, v. CROWLEY MARINE SERVICES, INC.; CROWLEY MARITIME CORPORATION; NORTHLAND FUEL, LLC; YUKON FUEL COMPANY; NORTHLAND VESSEL LEASING COMPANY LLC, and YUTANA BARGE LINES, LLC, Defendants.	Case No.: 2NO-04- _____CIV

CONSENT DECREE

Preamble

Plaintiff State of Alaska filed its Complaint herein and defendants, CROWLEY MARINE SERVICES, INC. and CROWLEY MARITIME CORPORATION (collectively, "Crowley"), NORTHLAND FUEL, LLC ("Northland Fuel"); YUKON FUEL COMPANY ("YFC"), YUTANA BARGE LINES, LLC ("Yutana"), and NORTHLAND VESSEL LEASING COMPANY LLC ("NVLC")[1]; were duly served with the Summons and Complaint. Defendants, by and through their undersigned attorneys, have consented to the entry of this Consent Decree without trial or adjudication of any issue of fact or law herein. This Consent Decree does not constitute

[1] YFC, Yutana, and NVLC are referred to collectively as the "Sellers."

any evidence against or admission by any party with respect to any issue of law or fact herein or in the Complaint.

RECITALS

WHEREAS, YFC is a wholly owned subsidiary of Northland Fuel, and owns and operates a business delivering and selling petroleum products to end users and other customers in Western Alaska, employing various barges, tug boats, storage facilities and other assets to this end;

WHEREAS, NVLC is a wholly owned subsidiary of Northland Fuel, and holds title to most of the barges and boats used in YFC's business, which NVLC bareboat charters to Yutana, and which Yutana then time charters to YFC;

WHEREAS, Crowley owns and operates a business similar to YFC's, employing similar assets, delivering and selling petroleum products into some of the same locales in competition with YFC, and bidding for some of the same contracts;

WHEREAS, concurrently with the filing of this Consent Decree, the Defendants have executed agreements (together, the "Crowley/Sellers Purchase Agreement"), a copy of each of which has been provided to the Attorney General, pursuant to which the Sellers have agreed to sell, and Crowley has agreed to purchase, all or substantially all of the assets of Sellers (the "Acquisition"),[2] subject to certain conditions set forth therein, including that the Court enter an order approving this Consent Decree;

WHEREAS, the Acquisition will combine under Crowley's sole ownership all of YFC's assets used for delivery of petroleum products in Western Alaska, and the

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[2] Pursuant to the Crowley/Sellers Purchase Agreement, Crowley has also agreed to acquire from Northland Fuel all of the outstanding capital stock of Service Oil & Gas, Inc. ("SOG"). SOG operates a land-based fuel distribution business, primarily in South Central Alaska.

Attorney General believes that these assets when combined with Crowley's assets will constitute a significant portion of all assets currently located and available in Western Alaska that are necessary to compete in the relevant markets for delivered petroleum products;

WHEREAS, the Defendants claim the Acquisition will eliminate certain inefficiencies that Crowley and Sellers, operating separately, currently experience, including, among other things, (1) combining their diverse fleets to enable more efficient distribution of products during the relatively limited warm-weather periods during which such deliveries must be made in a timely fashion, (2) eliminating redundancies in their operations, and (3) combining the purchasing function and aggregating the quantities to be purchased from refineries;

WHEREAS, the State of Alaska ("State"), through its Attorney General, alleges in its complaint that the Acquisition is unlawful under Alaska and federal antitrust law (the allegations in the State's complaint are re-alleged and incorporated herein);

WHEREAS, the State has brought this action against Defendants on behalf of the people of Alaska, and in the State's capacity in *parens patriae*;

WHEREAS, prompt divestiture of certain assets is an essential element of the agreement among the parties to resolve this matter, and concurrently with the filing of this Consent Decree, Crowley and Delta Western, Inc. ("Delta Western") have executed agreements (collectively the "Crowley/Delta Western Agreement"), a copy of which has been provided to the Sellers and the undersigned Assistant Attorney General, pursuant to which Crowley has agreed to divest to Delta Western, and Delta Western has agreed to purchase from Crowley, assets described herein, subject to the Court's approval of this Consent Decree;

WHEREAS, Crowley and YFC own and operate the only tank farms in or immediately near the City of Bethel;

WHEREAS, Crowley's tank farm facility in the City of Bethel (the "Crowley Tank Farm") was recently put into operation in October of 2003, and has approximately five million gallons of capacity; and YFC's tank farm facility in the City of Bethel (the "YFC Tank Farm" and together with the Crowley Tank Farm the "Bethel Tank Farms") has approximately ten million gallons of capacity, of which approximately one million gallons is likely to be eliminated due to age irrespective of the proposed Acquisition;

WHEREAS, new or expanded competition in the relevant markets for marine-delivered fuel products to Western Alaska could be impeded by the limited availability of tank farm storage capacity in and near the City of Bethel;

WHEREAS, pursuant to the Crowley/Delta Western Agreement, Crowley has agreed to divest storage capacity from the Bethel Tank Farms in accordance with the terms of this Consent Decree in order to facilitate Delta Western's expanded sales in the region, subject to the Court's approval;

WHEREAS, Delta Western is one of the largest tug and barge companies on the West Coast of the United States and one of the most experienced tug and barge operators in the United States, including experience with operating in Western Alaska;

WHEREAS, the State has determined that Delta Western is adequately qualified to purchase and operate the assets described in this Consent Decree, and to provide strong competition in the delivery of petroleum products in the relevant market;

WHEREAS, neither the execution or entry of this Consent Decree nor the terms hereof are intended to alter, modify, supplement, or rescind in any way the respective rights or obligations of the Defendants related to the Acquisition;

WHEREAS, Defendants do not admit, and continue to deny, that such transaction is unlawful;

WHEREAS, the Court has made no determination of any violation of law;

WHEREAS, the State and Defendants wish to avoid litigation and to resolve the controversy on mutually acceptable terms;

WHEREAS, the Defendants have agreed to be bound by the provisions of this Consent Decree;

WHEREAS, the Attorney General believes the terms of this Consent Decree are fair and reasonable and in the public's interest.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

I.

JURISDICTION

This Court has jurisdiction over the subject matter of this action pursuant to AS 45.50.582 and over each of the parties hereto. Venue is proper in this Judicial District pursuant to Alaska Civil Rule 3. The Complaint states a claim upon which relief may be granted against the Defendants under Alaska antitrust law. The Attorney General of the State of Alaska, Gregg D. Renkes, has authority to bring this action pursuant to AS 45.50.580.

II.

DEFINITIONS

As used in this Consent Decree:

A. "Defendants" means the defendants listed in the State's complaint filed in this matter.

B. "Delta Western" means Delta Western, Inc.

C. "Crowley" means Crowley Marine Services, Inc. and Crowley Maritime Corporation, together.

D. "YFC" means Yukon Fuel Company.

E. "Yutana" means Yutana Barge Lines, LLC.

F. "Northland Fuel" means Northland Fuel LLC.

G. "NVLC" means Northland Vessel Leasing Company, LLC.

H. "Attorney General" means the Alaska Attorney General.

I. "Western Alaska" means the coastal regions of Alaska from Bristol Bay north to Point Hope, and inland regions west of Alaska's road system.

J. "Relevant Market" means the market for marine-delivered petroleum products in the relevant geographic area, which includes the State of Alaska or parts thereof.

III.

APPLICABILITY

A. The provisions of this Consent Decree apply to Defendants, their successors and assigns, and all other persons in active concert or participation with any of them who shall have received actual notice of this Consent Decree by personal service or otherwise.

B. Nothing herein shall be deemed to have been created for the benefit of any third party and nothing herein shall be construed to provide any rights to third parties, specifically including, without limitation, plaintiffs Alaska Village Electric Cooperative, Inc.; Inn Electric Cooperative, Inc.; Kotzebue Electric Cooperative, Inc.; Naknek Electric Cooperative, Inc.; City of Nome d/b/a Nome Joint Utility System; Nushagak Electric and Telephone Cooperative, Inc.; and Unalakleet Valley Electric Cooperative,

Inc.; together who have filed a lawsuit titled *Alaska Village Electric Co-op, et al. v. Crowley Marine Services, Inc. et al.,* Case No. 2NO-03-174 Civ., an action pending in Alaska Superior Court, in the Second Judicial District, at Nome.

IV.

DIVESTITURE OF ASSETS

A. Crowley is hereby ordered and directed, following the consummation of the Acquisition, to divest, absolutely and in good faith, two sets of tugs and barges designed and currently able to transport petroleum products in Western Alaska. These assets shall be in good condition, immediately available for use in Western Alaska, and have all applicable Coast Guard approvals and/or certificates necessary for the intended use of serving shallow-draft areas for deliveries of petroleum products in Western Alaska. The barges shall be of sufficient capacity to enable Delta Western to compete effectively for the delivery of fuel to these areas considering the availability of storage facilities, contract volumes necessary for profitable operations, and other factors. These assets shall be divested according to the following schedule:

1. Crowley shall close the aforesaid divestiture transaction and completely divest the assets within 60 days after approval of this Consent Decree.

2. If, notwithstanding the exercise of its good faith best efforts, Crowley is unable to close the transactions and divest the assets described herein within 60 days after approval of this Consent Decree, Crowley may apply to the Attorney General for additional time to close such transactions and divest the assets, as the Attorney General deems appropriate. The decision to grant any such additional extension of time rests within the sound discretion of the Attorney General and his decision upon such request shall be final.

B. The purpose of divesting these assets is to ensure their continued use in Western Alaska for delivered petroleum products and to remedy the lessening of competition that might otherwise result from the proposed Acquisition as alleged in the State's Complaint. This section shall be interpreted and construed to accomplish this intent to the fullest extent possible.

V.

DIVESTITURE OF STORAGE CAPACITY IN BETHEL

A. Crowley is hereby ordered and directed, following the consummation of the Acquisition, to divest four million gallons of fuel storage capacity in Bethel, on fair and reasonable terms, to Delta Western under the following conditions:

1. There shall be no restriction on the amount of fuel Delta Western may run through (or "throughput") the Bethel Tank Farms so long as Delta Western does not exceed four million gallons of capacity at any given time, unless agreed to by the parties;

2. Subject to the provisions hereof, Crowley shall allow Delta Western to store any combination of fuel types and in any amount requested by Delta Western, including but not limited to all grades of gasoline and diesel fuel, heating oil, aviation gas and Jet A; the storage requested by Delta Western shall be reasonably compatible with the overall storage capacity and tank assignments made from time to time by Crowley for annual throughput requirements, and Crowley shall be required to make its tank assignments in good faith taking due account of capacity commitments requested by Delta Western on a timely basis.

3. Subject to any contractual or other arrangements with the City of Bethel, Delta Western and Crowley shall have equitable, nondiscriminatory loading

rights to the Bethel fuel dock so that each will have access to the dock when needed. Neither Delta Western nor Crowley shall interfere with the other's equitable access to the Bethel fuel dock.

4. Crowley shall allow Delta Western full access to the Bethel Tank Farms, including equitable access to all loading racks. Neither Delta Western nor Crowley shall interfere with the other's equitable access to ensure Delta Western has access to its fuel supply as if it were an owner of the Bethel Tank Farms.

5. Upon reasonable advance notice to Crowley, Delta Western may provide unused storage capacity to Crowley on terms and conditions mutually agreed upon by the parties. Nothing in this paragraph shall prevent Delta Western from selling, leasing, or assigning any part of its storage capacity to other third parties.

B. In addition to the initial storage capacity of four million gallons, Crowley shall give Delta Western the option of acquiring additional storage capacity at the Bethel Tank Farms under the following conditions:

1. If Crowley expands its storage capacity in Bethel beyond 14 million gallons, it shall give Delta Western the option of acquiring up to 29% of the additional capacity on substantially the same terms as the initial four million gallon divestiture.

2. Notwithstanding paragraph (B)(1), Crowley is not required to provide Delta Western with additional capacity if Delta Western has constructed its own storage facility in Bethel or has otherwise acquired rights to use any other such storage capacity In Bethel.

C. The storage capacity divestiture (including any such divestiture under paragraph B above) in Bethel shall be for an initial term of 10 years with four five year

renewal options. The terms of the divestiture may include provisions that allow Crowley to adjust the amount charged to Delta Western upon each renewal to reflect additional operational costs incurred by Crowley during this time that are not already included in the original lease amount.

D. The storage capacity divestiture in Bethel shall terminate if Delta Western builds a competing facility in Bethel with at least 4 million gallons of storage capacity, or such other lesser amount of capacity as may be determined by the Attorney General to resolve competitive concerns.

E. It is the intent of this section to allow Crowley to charge an amount for storage capacity that equals its actual cost of providing the storage (including actual cost of construction and operation) plus a reasonable return. It is not the intent of this section to allow a storage charge that is excessive or unreasonable considering the goal of this Consent Decree to foster competition for the delivery of petroleum products.

VI.

DIVESTITURE OF STORAGE CAPACITY AT OTHER FACILITIES

A. Crowley is ordered and directed to make available, on a non-discriminatory basis, seasonal throughput storage capacity at its facilities in Nome, Kotzebue, and St. Michael under the following conditions. For purposes hereof, "seasonal throughput" means barge-in/barge-out temporary storage during open-water shipping season, and shall not include, among other things, storage for rack sale or delivery:

1. Upon reasonable notice, Crowley must allow other competitors to store fuel at these facilities, and may not refuse storage unless there is no space in the facility. Crowley will use its best efforts, consistent with good business practices, to

consolidate its products to maximize the space available for storage by others. Crowley shall not shift its products or use these facilities in any manner that intentionally or unreasonably limits the amount of storage capacity available to others.

2. Crowley shall make its Kotzebue dock facilities available to all shippers of commercial quantities of petroleum products on a non-discriminatory basis. Crowley shall maintain the right to schedule the use of the Kotzebue dock facility, but may not exercise this right so as to make the facilities unavailable to Crowley's competitors under reasonable and normal business practices.

Nome Similarly Situated

3. Crowley may not charge more than the prevailing competitive market rate for seasonal throughput storage at these facilities and other facilities similarly situated, which at the time of the approval of this Consent Decree is approximately 6 cents per gallon. Nothing herein shall prevent Crowley from charging a lesser amount at its discretion, or a greater amount according to market conditions.

4. Crowley shall refrain from selling petroleum products from its storage facilities in Nome, Kotzebue and St. Michael at discriminatory rates. It is the intent of this paragraph that Crowley shall not discriminate against any of its customers because the customer is also a competitor of Crowley.

5. Crowley is not required to offer storage space at these facilities if the entity requesting storage builds a storage facility or otherwise acquires access to storage capacity in the area that can be used for the same purpose. It shall not constitute a violation hereof for Crowley to refuse to do business with any firm or individual that is not credit worthy in Crowley's reasonable judgment, or for legitimate safety concerns.

B. It is the intent of this section to facilitate competition in the delivery, transportation, storage, and sale of petroleum products to coastal and inland areas of Western Alaska. This section shall be interpreted and construed to accomplish this intent to the fullest extent possible. Crowley agrees that it will not use its ownership and control of these facilities in any manner that will restrain competition.

C. The terms of this Consent Decree shall replace and supercede the "*Agreement regarding Crowley Maritime Corporation's Acquisition of Chevron Tank Farms in Nome and Kotzebue*" executed on or about July 26, 1985, between the State and Crowley.

VII.
OPTIONS ON PROPERTY IN BETHEL

A. Crowley is the owner of certain property in Bethel identified as Lot 40 within U.S. Survey No. 4117. Crowley is ordered and directed to make this property available for sale at fair market value to Delta Western as part of this Consent Decree. If Delta Western declines to purchase the property, Crowley may offer the property for sale to third parties. Before completing the sale of the property to a third party, Crowley must provide Delta Western the opportunity to purchase the property on substantially the same terms and conditions offered by the third party. If the offer made by the third party is not a bona fide, good faith offer, Delta Western shall have the option of purchasing the property at the fair market value.

B. YFC is the lessee of a parcel of property located adjacent to the YFC tank farm, consisting of approximately 14.97 acres. YFC leases this property from William Hately under lease No. 01-ONC-01 (the "Hately lease"). The term of the lease is

25 years beginning on April 1, 2001. Subject to the receipt of all required third party consents, this lease will be assigned to Crowley as part of the Acquisition. Crowley is directed and ordered to give Delta Western the option to take an assignment of all of Crowley's rights and duties under this lease at any time in the next five years. If Crowley receives a bona fide, good faith offer from a third party to take an assignment of the lease after this time, Crowley must first give Delta Western the option to take an assignment of the lease, on the same terms and conditions contained in the original lease with YFC.

C. If for any reason Crowley is unable to obtain an assignment of the Hately lease, and therefore unable to offer Delta Western an option on the lease consistent with paragraph B above, the Attorney General retains the authority to consider and implement any appropriate remedy consistent with the intent of this Consent Decree to foster and insure competition.

D. Crowley agrees it will not unreasonably withhold its consent to give Delta Western all necessary easements, or to enter necessary agreements to access or traverse property owned by Crowley for the purpose of connecting new tank farm facilities constructed by Delta Western to the Bethel Dock or other loading/unloading facilities that are required for the operation of the newly constructed tank farm. It is the intent of this paragraph that Crowley will not use its property ownership status as a means to interfere with or impede the construction and practical use of new tank facilities in Bethel.

VIII.

OTHER REMEDIAL PROVISIONS

A. Crowley is ordered and directed, following the consummation of the Acquisition, to provide Delta Western with private office space at the combined facility of YFC and Crowley in Bethel. The office space provided must be of a size and configuration suitable for the daily management and operation of Delta Western's fuel business in Bethel. The space must be located so as to minimize the potential for illegal communications between Crowley and Delta Western concerning the marketing and sales strategy of each company.

Office Space

B. Crowley is ordered and directed, following the consummation of the Acquisition, to provide Delta Western with suitable space at the combined Crowley/YFC facility for the purpose of erecting or placing a sign of the same general size and nature as the largest sign used by Crowley at the combined facility. The location chosen must be at least as visible and noticeable as other prominent signs at the facility.

Signage

C. Crowley is ordered and directed, following the consummation of the Acquisition, to allow Delta Western to use its facilities in Bethel for tug and barge docking and loading/unloading in accordance with other provisions of the Consent Decree.

D. Crowley shall not engage in any conduct that directly or indirectly interferes with Delta Western's ability to operate its fuel business in a competitive manner consistent with the purpose and goals of this Consent Decree.

IX.

PROHIBITION ON ACQUIRING DIVESTED ASSETS

For a period of 20 years from the date this Consent Decree is entered, Crowley, either individually or jointly, shall not acquire any of the assets or the right to utilize fuel storage capacity divested pursuant to this Consent Decree without the prior approval of the Attorney General. The Attorney General shall approve or disapprove a request to acquire divested assets or storage capacity within 60 days of receipt of a written request for approval. Failure to act within this time will be deemed an approval by the Attorney General.

X

SALE OF CROWLEY OR YFC TANK FARM

For the term of this Consent Decree, Crowley shall not dispose of the Bethel Tank Farms except in accordance with all applicable antitrust and other laws of the State of Alaska and the United States. Crowley agrees to provide the Attorney General with 30 days notice before executing a sale of the Bethel Tank Farms.

XI.

COMPLIANCE INSPECTION

A. For the purpose of determining or securing compliance with this Consent Decree, and subject to any legally recognized privilege, authorized representatives of the State, including consultants and other persons, shall, upon the written request of the Attorney General, and on reasonable notice to Crowley, be permitted:

1. Access during office hours to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Crowley, which may have counsel present, relating to this Consent Decree; and

2. Subject to the reasonable convenience of Crowley and without restraint or interference from them, to interview directors, officers, employees, and agents of Crowley, which may have counsel present, regarding any such matters.

B. Upon written request, Crowley shall submit written reports as requested by the State concerning the matters contained in this Consent Decree.

C. No information nor any documents obtained by the means provided in this paragraph nor the Crowley/Sellers Purchase Agreement or the Crowley/Delta Western Purchase Agreement shall be divulged by any representative of the State to any person other than a duly authorized representative of the Alaska Attorney General, except for the purpose of enforcing compliance with this Consent Decree, or as otherwise required by law or directed by the court.

XII.

NOTICES

Any notices required by this Consent Decree shall be delivered to the parties at the following addresses:

A. For the State of Alaska:

Attorney General's Office
Attn: Clyde E. Sniffen, Jr.
Assistant Attorney General
1031 W. 4th Avenue, #200
Anchorage, AK 99501
(907) 269-5200
(907) 276-8554 (fax)

B. For Defendants Crowley:

Jesse W. Markham, Jr.
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105-2482
(415) 268-7448
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and

William P. Verdon,
Senior Vice President & General Counsel
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(510) 251-7574
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C. For Defendant Sellers:

Yukon Fuel Company
Attn: Mark Smith, President
7941 Sandlewood Place, Suite 100
Anchorage, AK 99507
(907) 777-5508
(907) 777-5556 (fax)

with a copy to:

Patton Boggs LLP
Attn: Douglas J. Serdahely, Esq.
601 West Fifth Avenue, Suite 700
Anchorage, AK 99501
(907) 263-6310
(907) 263-6345 (fax)

XIII.

RETENTION OF JURISDICTION

Jurisdiction is retained by this court for the purpose of enabling any of the parties to this Consent Decree to apply to this court at any time for such further orders and directions as may be necessary or appropriate for the construction, implementation, or modification of any of the provisions of this Consent Decree, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

IX.

OTHER RELIEF

A. If Defendants fail to comply with the terms of this Consent Decree, the Court may order appropriate relief pursuant to AS 45.50.580 on motion of the State for cause.

B. The State is awarded its expert fees of $17,500. Defendants shall pay this sum to the State within thirty (30) days of entry of this Consent Decree.

XV.

VOLUNTARY ACT OF THE PARTIES

The parties hereto expressly acknowledge and agree that this Consent Decree is voluntarily entered into as the result of arm's-length negotiation, and all parties hereto were represented by counsel in deciding to enter into this Consent Decree.

XVI.

PUBLIC COMMENT

This Consent Decree is being submitted by the parties to the court for approval pursuant to AS 45.50.584. In accordance with this procedure, the Consent Decree does not become final until 60 days after its filing. During this 60-day period, interested persons may file verified exceptions to the form or substance of the Consent Decree, and after a hearing on such exceptions, the court may approve or refuse to enter the Consent Decree. Copies of all such verified exceptions shall be served by the submitting person on the parties to the Consent Decree for their review, and each party may respond to such exceptions at the hearing as each party deems appropriate or as directed by the court. Defendants agree to publish, at Defendants' expense, notice, the form and contents of which are subject to the State's approval, of the execution and terms of the Consent Decree, the place or places at which members of the public may obtain copies of the Consent Decree and/or any summaries thereof or comments thereon prepared by the parties, and the procedure for submitting verified exceptions thereto. Such notice shall be published in the Anchorage Daily News, Fairbanks Daily News-Miner and the Juneau Empire on two occasions, the first being within ten (10) days after

the lodging of this Consent Decree with the court, and the second between ten (10) and twenty (20) days after the lodging of this Consent Decree with the court. Other notice as necessary to inform residents in Western Alaska may also be required by the court.

XVII.

CONSUMMATION OF MERGER

The Acquisition may not be consummated prior to entry of an order by the court approving this Consent Decree.

XVIII.

TERMINATION

This Consent Decree will expire on the 30th anniversary of the date of its entry, or upon order of this court for good cause. This Consent Decree will automatically terminate upon any termination of the Crowley/Sellers Purchase Agreement without the consummation of the Acquisition.

XIX.

PUBLIC INTEREST

The terms of this Consent Decree are fair and reasonable and the entry thereof is in the public's interest.

STATE OF ALASKA
GREGG D. RENKES
ATTORNEY GENERAL

DATED:_____ By: _____
Clyde E. Sniffen Jr.
Alaska Bar # 8906036
Assistant Attorney General

CROWLEY MARINE SERVICES, INC.

DATED: By:_____
Bruce Love
Corporate Secretary

CROWLEY MARITIME CORPORATION

DATED:_____ By:_____
William P. Verdon
Senior Vice President
General Counsel

YUKON FUEL COMPANY

DATED:_____ By:_____
Herman E. Schliesing
Vice President

NORTHLAND VESSEL LEASING COMPANY LLC

DATED:_____ By:_____
Herman E. Schliesing
Senior Vice President

YUTANA BARGE LINES, LLC

DATED:_____ By:_____
Michael J. Doan
Manager

NORTHLAND FUEL, LLC

DATED:_____ By:_____
Herman E. Schliesing
Vice President

[PROPOSED] ORDER

IT IS SO ORDERED.

Dated: _____

_____
Alaska Superior Court Judge

econ ONE

• STAFF

• CLIENT LIST

• REGULATION PRACTICE-IN-BRIEF

Special session of Alaska State Legislature on natural gas issues
This past summer, the Alaska State Legislature approved a license to TransCanada for the construction of a natural gas pipeline running from the North Slope in Alaska to the Canadian province of Alberta. This license gives TransCanada access to $500 million in Alaska state funds for engineering and pre-construction work. Once completed, the pipeline would be capable of delivering more than 4 billion cubic feet of gas per day to U.S. markets--approximately 6 percent of total U.S. consumption. Econ One was retained several years ago by the Alaska State Legislature to serve as its economic advisor on issues relating to the State's attempts to commercialize North Slope gas resources. Barry Pulliam testified on two separate occasions this summer relating to the legislature's consideration of the TransCanada proposal and license. On the first occasion, Mr. Pulliam, who was the first witness to testify, outlined the TransCanada proposal, discussed the economics of the tariff structures proposed by TransCanada, and highlighted issues for consideration by the legislature. On the second occasion, Mr. Pulliam testified regarding the viability of alternative projects designed to export Alaska gas via LNG to Asian markets.

Gas sales agreements proposed by Enstar Natural Gas Company with ConocoPhillips and Marathon Oil
In this proceeding before the Regulatory Commission of Alaska, Enstar Natural Gas Company, a gas distribution company, proposed two new supply agreements that would set its prices for gas supply in Cook Inlet based on levels in the Lower 48 states. Econ One was retained by Chugach Electric Association, an intervenor in the proceeding, to review and comment on Enstar's economic justifications regarding the reasonableness of its pricing provisions. Jeff Leitzinger offered both prepared and direct testimony before the Commission stating that the pricing provisions in the two agreements (1) would reverse the long-standing price advantage enjoyed by Cook Inlet gas users relative to gas consumers in the Lower 48 states and (2) were not supported with any reasonable economic justifications for doing so.

Econ One has been retained by the Alaska Legislature
to assist in the evaluation of a contract or contracts between the State and potential developers of a large-scale natural gas pipeline designed to move more than 4 billion cubic feet (bcf) per day from the North Slope of Alaska. Once constructed, the pipeline is expected to bring natural gas supplies totaling approximately 5% of U.S. demand and is expected to cost in excess of $13 billion. Econ One was initially retained by the legislature in the Spring of 2005. The Econ One consulting team includes energy economists and experts, including former senior executives with major oil and gas producers. Econ One has advised the legislature on issues including the role of Alaska gas in U.S. gas markets, the potential impact and consequences on the State of various contract provisions and the analysis of alternative projects. In addition to its work on gas line matters, Econ One has advised the Legislature over the course of the spring and summer of 2006 regarding the overhaul of Alaska's petroleum severance tax laws.

Merger review for the State of California

Tesoro acquired Shell Oil's Los Angeles refinery (100,000 barrels per day) and 278 retail gasoline stations in Southern California for $1.8 billion in the spring of 2007. Earlier in 2007, Tesoro also acquired USA Petroleum's 138 gasoline stations in California for $273 million. These two acquisitions resulted in a large increase in Tesoro's refining capacity in California and also dramatically increased its presence in retail gasoline operation within the state. Econ One was retained by the California Attorney General to assist the State in its review of these acquisitions. Barry Pulliam and Tony Finizza analyzed potential competitive issues associated with these transactions.

Barry Pulliam issued a study for the Alaska Department of Natural Resources (DNR)
His report examined valuation and royalty policies related to natural gas production on federal, state and provincial lands in both the U.S. and Canada. Alaska's interest in natural gas royalty policies had increased as the prospect of economically feasible development of its vast gas resources seems brighter. This report follows an earlier study (January 2002) for DNR concerning U.S. natural gas and NGL markets. Both reports are available at www.dnr.state.ak.us/.

Barry Pulliam presented testimony on behalf of the State of Alaska.
He appeared before the Federal Energy Regulatory Commission and Alaska Public Utility Commission at a joint hearing concerning the Quality Bank on the Trans Alaskan Pipeline (TAPS). TAPS utilizes the prices of both intermediate and finished petroleum products (including naphtha) in the operation of the system's Quality Bank. Mr. Pulliam testified as to the market value of naphtha produced on the West Coast of the U.S. and the ability of valuation methodologies proposed by the TAPS shippers to predict naphtha values. As part of his work on this matter, Mr. Pulliam analyzed more than 300 contracts entered into by West Coast refiners, all of which involved naphtha.

Barry Pulliam consulted with the Federal Trade Commission in its investigation of Sunoco, Inc.'s
proposed acquisition of the Coastal Eagle Point refinery from El Paso Corporation. The investigation by the FTC focused on the potential for the acquisition of the New Jersey refinery to cause price increases in reformulated gasoline sold in Philadelphia (where Sunoco owns other refineries) and/or conventional gasoline delivered at points along the Laurel Pipeline, which extends from Philadelphia to Pittsburgh. Upon completion of its investigation, the FTC voted 5 to 0 to allow the acquisition to proceed.

Econ One consulted with the State of Alaska regarding the potential competitive impact of Crowley Marine Services Inc's acquisition of Yukon Fuels
Both firms provided transportation services and sold petroleum products to a number of regional utilities and to cities and communities in Western Alaska, including the City of Bethel. After its investigation, the State of Alaska required the parties to divest some storage and distribution assets as part of a consent decree. The City of Bethel and eight utilities opposed the acquisition in Alaska Superior Court, arguing that the consent decree would not be sufficient to prevent price increases to consumers in Western Alaska. They argued that there were significant entry barriers involved in providing barge-delivered petroleum services to Western Alaskan cities and communities that would allow Crowley to dominate the market and raise prices. Barry Pulliam testified on behalf of the State of Alaska in support of the consent decree during a hearing in Superior Court in Anchorage. His testimony included the conclusion that the consent decree adequately addressed the competitive concerns identified in the investigation, including

the potential entry barrier concerns. The Court ruled in favor of the State. After the hearing, the utilities attempted to obtain a temporary restraining order in Federal Court preventing the acquisition from proceeding. Their request was denied.

We're not obsessed with details
(if we were, we'd tell you this sentence is off-center by .0001%).

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• STAFF

• PRACTICE-IN-BRIEF

• INTELLECTUAL PROPERTY

• ECONOMIC DAMAGES

• EMPLOYMENT ISSUES

• ANTITRUST

Identifying non-competitive activity and quantifying its effects are not exactly simple, straightforward tasks. Each requires rigorous, empirical analysis of real world activity to answer the difficult questions. We have the tools and expertise it takes to accurately reveal the competitive nature of firms within a market, and to measure how it might have operated under competition.

Our antitrust experience includes :

- Market Definition
- Price Fixing
- Vertical/Horizontal Arrangements
- Predatory Conduct
- Price Discrimination
- Unfair Competition
- Market Power
- Damages Analysis/Calculation
- Class Certification
- Bundling/Tying
- Exclusive Contracts
- Market Structure/Conduct/Performance Analysis

Over your head.
Sorry, we don't speak that.

econ ONE

federal antitrust law.[1] Crowley Marine Services, Inc. ("Crowley"), a supplier of bulk fuel to Western Alaska, seeks to purchase Yukon Fuel Company ("Yukon"), a similar company.[2] Plaintiffs argue that the sale violates federal antitrust laws because its effect "may be substantially to lessen competition."[3]

Before the Court reaches the merits of whether a temporary restraining order should be granted, the Court must consider whether it may be involved in this dispute at all.

Plaintiffs' Motion for Temporary Restraining Order is not the first instance where a court has considered the potential antitrust ramifications of this sale. In November of 2003, Plaintiffs filed an antitrust lawsuit in Alaska State Court to stop the sale. In March of 2004, the Alaska Attorney General initiated a formal investigation of the contemplated transaction. The State Court stayed its action until completion of this investigation. The Attorney General's investigation included interviewing people involved in large transportation services, retaining an antitrust economist to review relevant documents, meeting with the City of Bethel, the utility groups, and Plaintiffs, and consulting with

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[1] Clerk's Docket No. 2 at 3.

[2] Id.

[3] Id. (citing 15 U.S.C. § 18).

antitrust attorneys in other states and federal authorities. As a result, the Attorney General determined that modifying the sale was necessary to avoid state anti-trust violations. Thus, at the end of the eight month investigation, a consent decree was reached that allowed the sale of Yukon to go forward as long as Crowley divested certain assets and provided other accommodations to Delta Western, another supplier of bulk fuel in western Alaska. The consent decree was then published and subjected to a public comment period. The State then initiated its own complaint in State Superior Court alleging that the sale would be an antitrust violation, but that its proposed consent decree would remedy the violation.

After the expiration of the comment period, the State Superior Court proceeded to have a hearing[4] where Plaintiffs presented their arguments, the Assistant Attorney General presented

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[4] While the court limited its review to determine whether the settlement was within the reaches of the public interest, it was not a rubber-stamp and the court considered: "(1) the degree to which the decree achieves the relief sought in the complaint; (2) the nature of the case, including the size of the defendant, the scope and complexity of the proposed settlement, and the importance of the case to the economy as a whole; (3) the quantity and quality of information available to the court on which to base an evaluation of the decree, including the competitive impact statement, public comment and government responses, and any pretrial discovery and trial evidence actually presented; (4) any prior or current history of attempts by the same parties to evade public scrutiny of alleged anti-competitive practices." Clerk's Docket No. 12 at Ex. A at 6.

his comments, and expert economists were heard.[5] On August 25, 2005, State Superior Court Judge Ben Esch issued his opinion approving consent decree and allowing the sale to proceed. Judge Esch concluded that the sale was in the public interest. This Court has reviewed Judge Esch's opinion and found it thoughtful, thorough, and well-reasoned.

Plaintiffs now wish this Court to issue a temporary restraining order preventing the sale while it considers whether the sale, as modified by the consent decree, is a violation of federal antitrust law. In so doing, this Court would effectively prevent the judgment of the State Superior Court from taking effect. The Anti-Injunction Act, 28 U.S.C. § 2283, "precludes federal courts from enjoining state court actions unless (1) Congress has expressly authorized such relief by statute, (2) an injunction is necessary in aid of the court's jurisdiction, or (3) an injunction is necessary to protect or effectuate the court's judgments."[6] "In the interest of comity and federalism, these three exceptions must be strictly construed."[7] Therefore, "doubts

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[5] While Plaintiffs were not a party to the lawsuit, they were participants and were parties to a companion lawsuit that raised identical issues. Furthermore, the Attorney General provided them documentary evidence and they submitted formal objections to the court and participated in the hearing.

[6] Alton Box Board Co. v. Esprit de Corp., 682 F.2d 1267, 1270-71 (9th 1982) (quotations omitted).

[7] Id. at 1271.

as to the propriety of a federal injunction against state court proceedings should be resolved in favor of permitting the state courts to proceed in an orderly fashion to finally determine the controversy."[8] The Act applies to any stage of state proceedings, including judgments and appeals.[9] Additionally, "[i]t makes no difference whether the injunction applies to the private litigants or is imposed directly on the State Court itself."[10]

Here, Plaintiffs move for a temporary restraining order that would preclude the State Court's decision approving the sale from taking effect. Thus, the Act applies to prohibit this Court from so acting, unless an exception to the Act applies, which does not appear to be the case here. First, there has been no statutory authorization by Congress for the relief sought by Plaintiffs. Second, such an order is not necessary to aid the Court's jurisdiction. Third, such an order is not necessary to protect or effectuate a judgment of the Federal District Court. Thus, it appears that this Court is likely barred from granting the relief requested by Plaintiffs.

Moreover, after having reviewed the briefs and documentation supplied by the parties, and noting the extensive

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[8] Id. (citation omitted).

[9] Hill v. Martin, 296 U.S. 393, 403 (1935).

[10] Alton Box Board Co. V Esprit de Corp., 682 F.2d 1267, 1271 (9th Cir. 1982).

nature of the investigation and litigation that led to the consent decree and subsequent State Court decision, and without even considering the issue of collateral estoppel, the Court concludes that Plaintiffs have not shown probable success on the merits or that there is a high degree of irreparable harm, which is critical to the issuance of a temporary restraining order.[1]

Therefore, the Court **DENIES** Plaintiffs' Motion for a Temporary Restraining Order.

This is not to say that Plaintiffs' complaint lacks merit or that Plaintiffs will ultimately fail. Indeed, although Defendants are not precluded from proceeding with the sales transaction, they do so with full knowledge of the pending litigation and its potential consequences.

ENTERED at Anchorage, Alaska, this 2nd day of September, 2005.

RALPH R. BEISTLINE
UNITED STATES DISTRICT JUDGE

[1] Earth Island Inst. V. United States Forest Service, 351 F.3d 1291, 1298 (9th Cir. 2003).

Westlaw

West's Alaska Statutes Annotated Currentness
Title 45. Trade and Commerce
Chapter 50. Competitive Practices, Regulation of Competition, Consumer Protection
Article 4. Monopolies; Restraint of Trade
→ **§ 45.50.562. Combinations in restraint of trade unlawful**

Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce is unlawful.

§ 45.50.564. Monopolies and attempted monopolies unlawful

It is unlawful for a person to monopolize, or attempt to monopolize, or combine or conspire with another person to monopolize any part of trade or commerce.

§ 45.50.566. Transactions and agreements not to use or deal in commodities or services unlawful

It is unlawful for a person to lease or make a sale or contract for sale of goods, wares, merchandise, machinery, supplies, or other commodities, or services, whether patented or unpatented, for use, consumption, enjoyment, or resale, or fix a price charged for it, or discount from, or rebate upon, that price, on the condition, agreement, or understanding that the lessee or purchaser will not use or deal in the goods, wares, merchandise, machinery, supplies, or other commodity or service of a competitor or competitors of the lessor or seller, if the effect of the lease, sale, or contract for sale, or of the condition, agreement, or understanding may be substantially to lessen competition or tend to create a monopoly in any line of commerce.

§ 45.50.568. Mergers and acquisitions unlawful when competition lessened

(a) It is unlawful for a person to acquire and hold, directly or indirectly, the whole or a part of the stock, or other share capital, or assets of any corporation after August 5, 1975 if the effect of the acquisition and holding may be substantially to lessen competition or to tend to create a monopoly in any line of commerce in the state or in a section of the state. This subsection does not apply to persons purchasing such stock solely for investment if it is not used by voting or otherwise to bring about, or in attempting to bring about, the substantial lessening of competition. Nothing in this subsection prevents a corporation from causing the formation of subsidiary corporations for the actual carrying on of their immediate lawful business, or the natural and legitimate branches or extensions of it, or from owning and holding all or a part of the stock of the subsidiary corporation, when the effect of the formation is not substantially to lessen competition.

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(b) When the court finds that the effect of the holding of such stock, share capital, or assets is substantially to lessen competition or tends to create a monopoly and no other remedy will eliminate the lessening of competition or the tendency to create a monopoly, the court shall order the divestiture or other disposition of the stock, share capital, or assets and shall prescribe a reasonable time, manner, and degree of the divestiture or other disposition of it.

(c) This section does not apply to mergers, acquisitions, or holding companies permitted by AS 06.05.235 or to a merger carried out in accordance with AS 21.69.590 - 21.69.600, or to mergers, acquisitions, or holding companies permitted and regulated by a regulatory agency of the United States having jurisdiction and control over those mergers and acquisitions.

§ 45.50.570. Interlocking directorates and relationships

(a) It is unlawful for a person to be at the same time a director, officer, partner, or trustee in any two or more firms, partnerships, trusts, associations, or corporations or any combination of them engaged in commerce, if these firms, partnerships, trusts, associations, or corporations or a combination of them, are by virtue of their business and location or operation, competitors and if the effect may be substantially to lessen competition or tend to create a monopoly.

(b) A person may not by the use of a representative accomplish the result prohibited in (a) of this section.

(c) The validity or invalidity of an act of a director, officer, or trustee done by the director, officer, or trustee while occupying the position in violation of this section shall be determined by the statutory and common law of the state relating to corporations, trusts, or associations.

(d) The attorney general may bring an action at any time to cause a director, officer, or trustee who may be occupying such a position in violation of this section to vacate the office or offices to effect the termination of the prohibited interlocking relationship.

(e) A person affected by an act of a director, officer, or trustee may bring an action at any time to cause the director, officer, or trustee who may be occupying the position in violation of this section to terminate the prohibited interlocking relationship.

(f) The court, upon finding that a director, officer, or trustee is holding office in violation of this section, shall order the person to terminate the interlocking relationship, and, in the case of a trustee, the court may, when it considers it appropriate, order the trustee to vacate the office of the trustee. A remedy provided in this section does not limit and is in addition to any other remedy available under another section of this chapter or another law.

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§ 45.50.572. Exemptions

(a) AS 45.50.562 - 45.50.596 do not forbid the existence or operation of labor, agricultural, horticultural, or marine pilot organizations created for the purpose of mutual help, and not conducted for profit, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562 - 45.50.596.

(b) AS 45.50.562 - 45.50.596 do not forbid actions or arrangements authorized or regulated under the laws of the United States that exempt these actions or arrangements from application of the antitrust laws of the United States or under the following statutes of this state:

(1) AS 06.05.235 and 06.05.570;

(2) AS 10.15; and

(3) AS 31.05.110.

(c) AS 45.50.562--45.50.596 do not forbid persons engaged in the fishing industry as fishermen who catch, collect, or cultivate aquatic products from acting together in associations for the purpose of collectively catching, producing, preparing for market, processing, handling, and marketing their product. Associations may have marketing agencies in common and may make contracts and agreements necessary to achieve the purposes of this subsection. In this subsection, "association" means an association, corporate or otherwise, with or without capital stock, that

(1) is operated for the mutual benefit of its members;

(2) does not deal in the aquatic products of nonmembers to an amount greater in value than the association handles for its members; and

(3) either

(A) does not allow a member of the association more than one vote because of the amount of stock or membership capital the member may own in the association; or

(B) does not pay dividends on stock or membership capital in excess of eight percent a year.

(d) AS 45.50.562 - 45.50.596 apply to long distance telecommunications services provided by public utilities. AS 45.50.562 - 45.50.596 do not apply to other services provided by public utilities that have been issued a certificate of public convenience and necessity under AS 42.05.

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(e), (f) Repealed.

(g) AS 45.50.562 - 45.50.596 do not forbid activities expressly required by a regulatory agency of the state. Activities permitted by a regulatory agency of the state are not forbidden by this chapter if the regulatory agency has given due consideration to the possible anticompetitive effects before permitting the activities, and enforcement of the provisions of AS 45.50.562 - 45.50.596 would be disruptive of the regulatory scheme.

(h) AS 45.50.562 - 45.50.596 do not forbid actions or arrangements necessary to carry out the provisions of the Alaska Native Claims Settlement Act. [FN1]

(i) AS 45.50.562 - 45.50.596 do not prohibit activities of the Alaska Housing Finance Corporation to stabilize the market price of and demand for residential housing in the state under AS 18.56.210.

(j) AS 45.50.562--45.50.596 do not forbid persons engaged in the fishing industry as fishermen, including fishermen acting through associations allowed under (c) of this section, from collectively agreeing with fish processors, including fish processors acting through associations of processors, on the (1) price paid to the fishermen for aquatic products; and (2) minimum price that fish processors will accept for the sale of processed aquatic products. Nothing in this subsection allows fish processors to agree among themselves on the price paid to fishermen or the minimum price that fish processors will accept for the sale of processed aquatic products if fishermen did not participate in the making of the agreement and are not a party to the agreement.

(k) AS 45.50.562--45.50.596 do not apply to action taken by a person to comply with AS 45.25 or to action refrained from by a person in order to comply with AS 45.25 (motor vehicle transactions).

(l) AS 45.50.562--45.50.596 do not forbid the existence or operation of organizations of physicians acting in accordance with AS 23.50, or forbid or restrain members of those organizations from lawfully carrying out the legitimate objectives of them; nor are these organizations or members illegal combinations or conspiracies in restraint of trade under the provisions of AS 45.50.562--45.50.596.

[FN1] See 43 U.S.C.A. § 1601 et seq.

§ 45.50.574. Contracts voidable

A contract or agreement in violation of a provision of AS 45.50.562 - 45.50.596 is voidable by either party as to future performance by either party; however, the court may, in its discretion, order payment for goods or services already received to prevent unjust enrichment.

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§ 45.50.576. Suits by persons injured; treble damages; costs

(a) A person who is injured in business or property by a violation of AS 45.50.562--45.50.570, or a person so injured because the person refuses to accede to a proposal for an arrangement that, if consummated, would be a violation of AS 45.50.562--45.50.570, may bring a civil action

(1) for damages sustained by the person, and, if the judgment is for the plaintiff, the plaintiff shall be awarded threefold the amount of damages sustained by the person, plus the costs of the suit, including reasonable attorney fees; and

(2) to enjoin the unlawful practice, and, if the judgment is for the plaintiff, the plaintiff may be awarded costs of the suit, including reasonable attorney fees.

(b) If a home rule or general law city or borough or other governmental entity is injured by reason of a violation of AS 45.50.562--45.50.570, it may maintain an action in the same manner as prescribed in (a) of this section for an injured person, and the city, borough, or other governmental entity is entitled to the same relief as provided in (a) of this section.

(c) In a civil action brought under AS 45.50.562--45.50.570, if judgment is for the defendant, the defendant shall be awarded the defendant's costs of the suit, including reasonable attorney fees in accordance with rules adopted by the supreme court for awarding costs and attorney fees to prevailing parties in civil actions. If the plaintiff in a civil action brought under this section in which judgment is for the defendant is a class certified under Rule 23, Alaska Rules of Civil Procedure, any award of costs and attorney fees to the defendant

(1) may be satisfied only through funds, if any, that the class has collected from settlements with or judgments against other defendants; and

(2) is not a liability of any individual member of the class.

§ 45.50.577. Enforcement by attorney general

(a) The attorney general may bring a civil action in superior court to secure monetary relief as provided in this section on behalf of the state and its agencies injured either directly or indirectly by reason of any violation of AS 45.50.562--45.50.570.

(b) The attorney general may bring a civil action in superior court in the name of the state, as parens patriae on behalf of governmental entities or persons doing business or residing in this state, to secure monetary relief as provided in this section for injuries directly or indirectly sustained by persons by reason of any violation of AS 45.50.562--45.50.570.

(c) The court shall exclude from the amount of monetary relief awarded in an action under

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(a) or (b) of this section any amount of monetary relief that

(1) duplicates amounts that have been awarded for the same injury; or

(2) is properly allocable to persons who have excluded their claims under (e) of this section.

(d) The court shall award the attorney general as monetary relief three times the total damage sustained as described in (a) or (b) of this section and, additionally, the costs of the action, including reasonable attorney fees.

(e) In any action brought under (b) of this section, the attorney general, at the times, in the manner, and with the content the court directs, shall cause notice of the action to be given by publication. Any governmental entity or person on whose behalf an action is brought under (b) of this section may elect to exclude from civil action the portion of the state claim for monetary relief attributable to that governmental entity or person by filing notice of the election with the court within the time specified in the attorney general's notice given in accordance with this subsection.

(f) The final judgment in an action under (a) or (b) of this section is res judicata as to any claim under AS 45.50.576 by any governmental entity or person on whose behalf the action was brought and who fails to give notice of election to exclude under (e) of this section within the period specified in the attorney general's notice given under (e) of this section.

(g) An action under (b) of this section may not be dismissed or compromised without the approval of the court, and notice of any proposed dismissal or compromise shall be given by publication at the times, in the manner, and with the content the court directs in accordance with (e) of this section and AS 45.50.584.

(h) Monetary relief recovered in an action under this section shall be (1) distributed in the manner the court, in its discretion, authorizes; or (2) deemed a civil penalty by the court and deposited in the general fund, and may be appropriated to the Alaska permanent fund (AS 37.13.010(a)) or for any other public purpose. A distribution procedure authorized by the court under this subsection must afford each governmental entity or person participating in the civil action a reasonable opportunity to secure that entity's or person's appropriate portion of the net monetary relief.

(i) Only the attorney general, in a suit brought under this section, may seek monetary relief for injury indirectly sustained for a violation of AS 45.50.562--45.50.570.

§ 45.50.578. Certain violations constitute misdemeanor

A person who violates AS 45.50.562 or 45.50.564 is guilty of a misdemeanor and upon con-

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viction is punishable, if a natural person, by a fine of not more than $20,000, or by imprisonment for not more than one year, or by both; and if not a natural person, by a fine of not more than $50,000.

§ 45.50.579. Proof of aggregate damages

In a civil action brought by the attorney general under AS 45.50.577, the attorney general may recover aggregate damages by using statistical sampling or sampling methods, by the computation of illegal overcharges, or by a similar, reasonable system of estimating aggregate damages that the court, in its discretion, permits, without the necessity of separately proving the individual claim or amount of damage to governmental entities or persons on whose behalf the civil action was brought.

§ 45.50.580. Injunction by attorney general

(a) In addition to any other relief provided by AS 45.50.562 - 45.50.596, the attorney general may bring an action to enjoin a violation of AS 45.50.562 - 45.50.596. This action may be brought as a sole action or in conjunction with another action that the attorney general is authorized to bring.

(b) The court may make additional orders or judgments as may be necessary to restore to a person in interest any money or property, real or personal, that may have been acquired by an act prohibited by AS 45.50.562 - 45.50.596, and as may be necessary to prevent continuing or future violations of AS 45.50.562 - 45.50.596.

§ 45.50.582. Jurisdiction of court

An action arising under AS 45.50.562 - 45.50.596 shall be brought in the superior court.

§ 45.50.584. Consent judgment

(a) In an action maintained under AS 45.50.562 - 45.50.596, the parties to it may file with the court a consent judgment or decree. The consent judgment or decree shall set out the alleged violations, future obligations of the parties, if any, damages, or other relief, the defendant agrees to make, if any, and the reasons for entering into the consent judgment or decree.

(b) A consent judgment or decree does not become final until 60 days from its filing. During the 60-day period an interested party may file verified exceptions to the form or substance of the consent judgment or decree, and the court, upon a full hearing on those exceptions, may approve or refuse to enter the consent judgment or decree.

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§ 45.50.586. Judgment in favor of the state as evidence in another action

A final judgment rendered in a civil or criminal action brought by the state under AS 45.50.562 - 45.50.596 is prima facie evidence against the defendant in any other action under AS 45.50.562 - 45.50.596 brought by another party, or by the state, a city, a borough, or other governmental entity; however, this section does not apply to consent judgments or decrees entered under AS 45.50.584.

§ 45.50.588. Limitation of actions

An action to enforce a claim arising under AS 45.50.562 - 45.50.596 is barred unless commenced within four years after the claim accrues, except that when an action is brought by the attorney general under AS 45.50.562 - 45.50.596, the running of this period of limitation, with respect to every private right of action for damages that is based in whole or in part on a matter complained of in the action by the attorney general, shall be suspended during the pendency of the action brought by the attorney general. For the purpose of this section, a claim for a continuing violation is considered to accrue at any time during the period of the violation.

§ 45.50.590. Powers of the attorney general

If the attorney general determines, upon complaint or otherwise, that a person has engaged in, or engages in, or is about to engage in an act or practice prohibited or declared unlawful by AS 45.50.562 - 45.50.596, or that a person has assisted or participated in a plan, scheme, agreement, or combination of the nature described in AS 45.50.562 - 45.50.596, or when the attorney general believes it to be in the public interest, the attorney general may commence an investigation. The attorney general may compel production of documentary material and take testimony, under oath, before the institution of an action under AS 45.50.562 - 45.50.596.

§ 45.50.592. Investigatory demand for documentary evidence

(a) If the attorney general determines that a person is in possession, custody, or control of a documentary evidence, wherever situated, that the attorney general believes to be relevant to an investigation authorized in AS 45.50.590, the attorney general may execute in writing and cause to be served upon that person an investigative demand requiring the person to produce the documentary material and permit inspection and copying.

(b) Each demand must

(1) state the specific statute the alleged violation of which is under investigation, and the general subject matter of the investigation;

(2) describe, with reasonable specificity so as fairly to indicate the material demanded, the

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documentary material to be produced;

(3) prescribe a return date within which the documentary material is to be produced; and

(4) identify the state employees or representatives to whom the documentary material is to be made available for inspection and copying.

(c) A demand may not

(1) require the production of documentary material that would be privileged from disclosure if demanded by a subpoena duces tecum issued by a court of the state; or

(2) contain a requirement that would be unreasonable or improper if contained in a subpoena duces tecum issued by a court of the state; however, this does not limit the power of the attorney general to require production of documents located outside the state that pertain to matters affecting the state.

(d) The demand may be served by the attorney general or the designee of the attorney general by

(1) delivering a copy of it to the person to be served, or, if the person is not a natural person, to an officer of the person to be served;

(2) delivering a copy of it to a place of business in the state of the person to be served; or

(3) mailing by registered or certified mail a copy of it addressed to the person to be served at a place of business in the state, or, if the person has no place of business in the state, to principal office or place of business of the person.

(e) Documentary material produced pursuant to a demand, or copies of it, unless otherwise ordered by a superior court for good cause shown, may not be produced for inspection or copying by, nor may its contents be disclosed to, anyone other than an authorized employee of the state without the consent of the person who produced the material. However, under those reasonable terms and conditions the attorney general prescribes, copies of the documentary material shall be available for inspection and copying by the person who produced the material or an authorized representative of that person. The attorney general, or a designee, may use copies of the documentary material as the attorney general or designee considers necessary in the enforcement of AS 45.50.562-45.50.598, including presentation before a court; however, material that contains trade secrets may not be presented except with the approval of the court in which the action is pending after adequate notice to the person furnishing the material.

(f) At any time before the return date specified in the demand, or within 20 days after the demand has been served, whichever period is shorter, a petition to extend the return date for, or to modify or set aside a demand issued under (a) of this section, stating good cause, may

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be filed in the superior court for the judicial district where the parties reside. A petition by a person on whom a demand is served, stating good cause, to require the attorney general or another person to act in accordance with the requirements of (e) of this section, and all other petitions in connection with a demand, may be filed in the superior court for the judicial district in which the person on whom the demand is served resides.

(g) A person upon whom a demand is served under this section shall comply with the terms of the demand unless otherwise provided by an order of court issued in response to a petition filed under (f) of this section. A person who, with intent to avoid, prevent, or obstruct compliance, in whole or in part, with an investigative demand under this section, removes from any place, conceals, withholds, or destroys, mutilates, alters, or by any other means falsifies, a documentary material in the possession, custody, or control of a person which is the subject of a demand duly served upon any person, or who otherwise wilfully disobeys any such demand, is guilty of a misdemeanor, and is punishable upon conviction by a fine of not more than $5,000, or by imprisonment for a term of not more than one year, or by both. Failure of the state to serve the demand properly under (d) of this section is a defense to prosecution under this subsection, but invalidity of the demand under (b) or (c) of this section is not a defense, and that invalidity may be tested only in an action under (f) of this section to modify or set aside the demand.

(h) Nothing in this section impairs the authority of the attorney general or a designee to lay before a grand jury of this state evidence concerning a violation of AS 45.50.562 - 45.50.596, to invoke the power of a court to compel the production of evidence before a grand jury, or to file a civil complaint or criminal information alleging a violation of AS 45.50.562 - 45.50.596.

§ 45.50.594. Investigatory demand for attendance of witness

(a) In connection with an investigation authorized by AS 45.50.590, the attorney general may issue an investigative demand compelling the attendance of a person for examination under oath before the attorney general or before a court of record.

(b) Each demand shall

(1) state the specific statute the alleged violation of which is under investigation, and the general subject matter of the investigation;

(2) state the date, time, and place at which the examination is to take place.

(c) A demand may be served by the attorney general, or a designee, in accordance with the procedures prescribed in AS 45.50.592(d).

(d) If a person ordered to attend the inquiry fails to attend without good cause, the person is

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guilty of a misdemeanor and upon conviction is punishable by a fine of not more than $5,000, or by imprisonment for not more than one year, or by both. If a person in attendance at the inquiry refuses to answer a question on the ground that the person may be incriminated by the answer, and if the attorney general, or a designee, in a writing directed to the person being questioned orders the person to answer the question, the person shall comply with the order. After complying, and if but for this section the person would have been privileged to withhold the answer given, the person may not be prosecuted for an offense or subjected to a penalty or forfeiture for or on account of a transaction, matter or thing concerning which the person gave evidence. However, the person may nevertheless be prosecuted or subjected to penalty or forfeiture for a perjury, false swearing, or contempt committed in answering or failing to answer. If a person refuses to testify after being granted immunity from prosecution and after being ordered to testify, the person may be adjudged in contempt and committed to jail until the time the person purges the contempt by testifying. A grant of immunity does not prevent the attorney general from instituting civil contempt proceedings against a person who violates any of the above provisions.

§ 45.50.596. Definitions

In AS 45.50.562 - 45.50.596,

(1) "asset" includes any property, tangible or intangible, real, personal, or mixed and wherever located, and any other thing of value;

(2) "documentary evidence" includes an original or copy of a book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical tabulation, magnetic tape, or other computer data storage system, or other tangible document or recording;

(3) "trade" and "commerce" include but are not limited to, trade in goods, merchandise, natural resources, whether or not severed, extracted, harvested, or produced, agricultural products, produce, choses in action, commodities, and any other article of commerce; they include trade or business in service trades, transportation, banking, lending, advertising, bonding, and any other business whether or not that business furnishes a personal service.

§ 45.50.598. Short title

AS 45.50.562--45.50.598 may be cited as the Alaska Restraint of Trade Act.

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Components of Delivered Fuel Prices in Alaska

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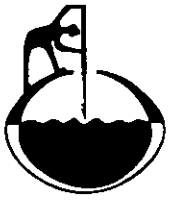

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Final Report June 2008

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Abstract

This is a systematic analysis of components of delivered fuel prices in Alaska. Data for the analysis include limited publicly available Alaska fuel prices (fall 2007 prices), as well as information the authors gathered from extensive interviews with fuel retailers and transporters, communities, and agencies. We identify the individual components of delivered fuel costs—including world price of crude oil, refining costs, transportation costs, storage and distribution costs, taxes and financing costs—and investigate how these factors influence the final retail prices of home heating fuel and gasoline. Transportation, storage, and distribution costs appear to be the most variable factors driving the large retail fuel price differentials among Alaska communities. Therefore, we investigate how factors such as seasonal icing, the number of fuel transfers enroute to specific communities, local storage and delivery infrastructure, marine and river characteristics, and distance from refineries or fuel hubs influence fuel prices. We did an in-depth analysis of how those factors influence prices in ten case study communities around the state—Allakaket/Alatna, Angoon, Bethel, Chitina, False Pass, Fort Yukon, Lime Village, Mountain Village, Unalakleet, and Yakutat. Together, the quantitative data and information on Alaska fuel logistics provide a comprehensive analysis of Alaska's fuel prices.

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Chitina Native Corporation

Crowley Maritime Corporation

Everts Air Alaska

Fisher's Fuel Incorporated

City of Allakaket and Alatna

City of Mountain Village

Delta Western, Inc.

Denali Commission

Gwitchyaa Zhee Utility in Fort Yukon, Alaska

Henry Hill Services

Lime Village Traditional Council

Mark A. Foster and Associates

Norton Sound Economic Development Corporation

Osprey Lodge near Lime Village, Alaska

Peter Pan Seafoods in False Pass, Alaska

Petro Marine Services

Ruby Marine

Rural Alaska Fuel Services

Small Municipality Energy Assistance Program

Unalakleet Native Corporation

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I. Introduction

Purpose

This study is a systematic analysis and comparison of the components of delivered fuel prices in Alaska. The Alaska Energy Authority asked the Institute of Social and Economic Research (ISER), at the University of Alaska Anchorage, to do the study. The more Alaskans know about what drives fuel prices in various communities, the more it may be possible to identify opportunities for reducing or mitigating the high fuel prices many Alaskans face.

The framework underlying the analysis is that the delivered *price* of fuel in Alaska communities equals the sum of the following components:

- World price of crude oil
- Refining cost (Alaska, West Coast, other)
- Transportation cost (truck, railroad, barge, air)
- Storage and distribution costs
- Taxes (federal, state and local)
- Other (including subsidies and abnormal profits)

This framework holds true if the final component, "other," is calculated as the residual between total price and everything else. But the framework also serves as a research hypothesis: that the "other" component is generally small and/or readily identifiable as a bona fide cost. In other words, *delivered prices* ought to reflect *identifiable costs*.

Methods and report organization

We initially gathered information—mostly from existing sources—for 100 communities in Alaska. But we found that information was neither reliable enough nor consistent enough to use for statistical analysis. We therefore focused on comparative case studies of ten communities, reflecting as much as possible all the forces driving fuel prices around Alaska. Figure 1 shows locations of the study communities:

- Angoon
- Allakaket/Alatna
- Bethel
- Chitina
- False Pass
- Fort Yukon
- Lime Village
- Mountain Village
- Unalakleet
- Yakutat

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Figure 1. Map of ten case study communities

Source: Meghan Wilson, ISER, 2007

In the rest of this section we provide some background discussion of fuel pricing and consumption in a national context. Section II covers world oil markets. In Section III we describe the refining process and refinery sources for Alaska fuel; we also present a statistical analysis of the relationship between crude oil prices and refined fuel prices. Section IV addresses product transportation and distribution—how fuel is transported and who stores, owns, and distributes the final products. Section V covers taxes, including federal excise taxes and state and local taxes. Subsidies and assistance programs are discussed in Section VI. Section VII reports the findings from the ten case studies. Section VIII concludes with a summary and discussion of some policy implications.

Background

"Petroleum" refers to crude oil or the refined products obtained by processing crude oil. Those include gasoline, diesel fuel, and heating oil.[1] Petroleum products are used in virtually every aspect of modern human life—heating our homes and offices, generating electricity, providing fuel so we can drive to the grocery store. Petroleum products are also used in plastics, foods, and medicines; they are part of things as diverse as tires, deodorant and ink.

[1] For more information on the physical characteristics of petroleum products, see: U.S. Energy Information Administration, Energy Basics 101, Petroleum Basics 101.
http://www.eia.doe.gov/basics/petroleum_basics.html

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Fuel oil (also often called diesel) is one of several products distilled from crude oil and used for heating fuel or engine fuel. Alaskans use a number of petroleum products, including motor gasoline, diesel fuel #1, diesel fuel #2, aviation gasoline, and jet fuel. Motor gasolines are used in automobiles, small boats, and snowmachines; there are typically three grades of gasoline available (mostly in larger communities in Alaska). Diesel fuel #1 is a kerosene product used for heating fuel. Diesel fuel #2 is a light gas-oil used for home and commercial heating and as a motor fuel. Aviation gasoline and jet fuel are used to fuel aircraft, but a type of jet fuel is also often used for home heating. According to Crowley Marine, one of Alaska's largest fuel distributors, most of the diesel fuel in more populated areas like Southcentral Alaska and Fairbanks is ultra low sulfur diesel. Most villages in Western Alaska still use low sulfur diesel, because they are exempt from the ultra low sulfur diesel requirement until 2011.[2]

Alaska has the nation's highest per capita energy consumption, at 1,186 million Btu—almost four times the U.S. average of 342 million Btu—largely because so much jet fuel is consumed at the Anchorage and Fairbanks international airports.[3] Alaska produces more crude oil than any other state except Texas, but the prices of petroleum products in Alaska are among the highest in the country. According to state surveys, the average annual energy expenditure per household in rural Alaska is more than three times the U.S. average, while per capita income is less than 75% of the U.S. average. The burden of high energy prices falls particularly hard on remote communities, many of which also struggle with high unemployment, limited local economic bases, and local governments that are struggling to provide basic local services to residents and businesses.[4]

Fuel prices and components in the national context

Figure 2 illustrates the flow of energy (both domestic production and imports) through the U.S. economy, including final consumption by sector. Petroleum accounts for about 40% of total energy consumption.

[2] Phone Interview with Craig Tornga, Crowley Marine. October 24, 2007.
[3] Energy Information Administration, Annual Energy Review 2006. State-Level Energy Consumption, Expenditures and Prices, 2004.
[4] State of Alaska, Division of Community Advocacy – Report to the Commissioner. December 2005. Current Community Conditions: Fuel Prices across Alaska.

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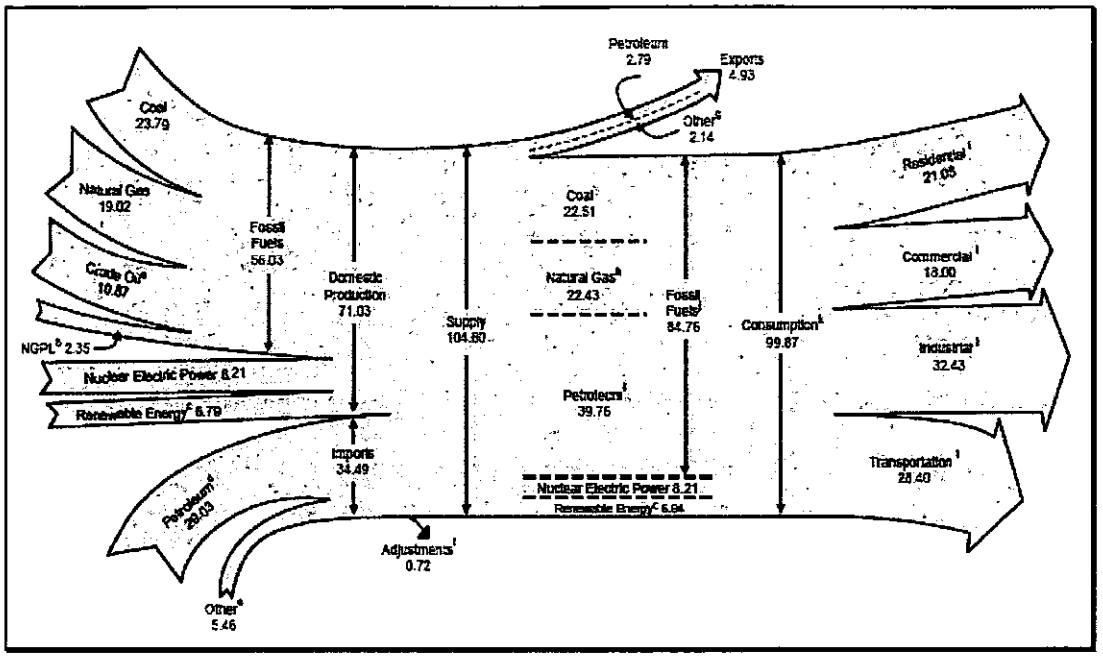
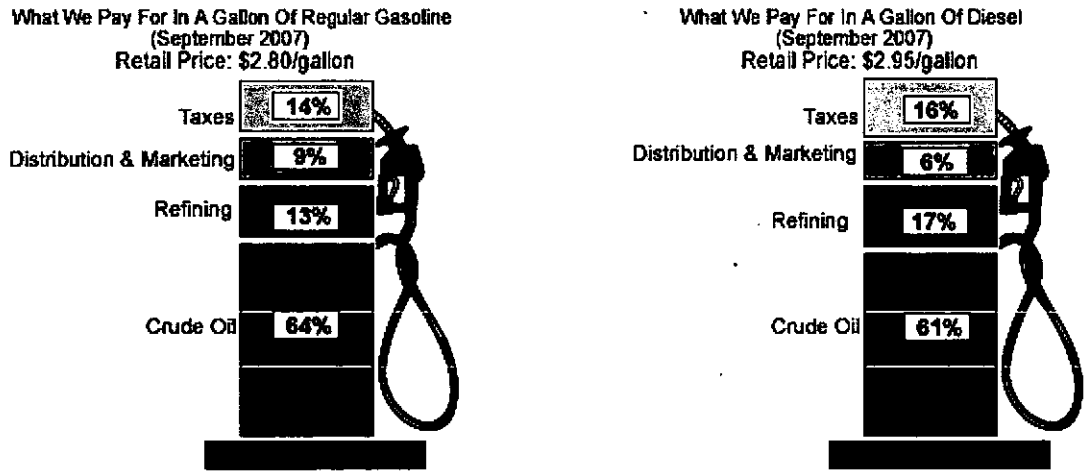
Figure 2. Energy flow through the U.S. in 2006 (Quadrillion Btu)



Source: Energy Information Administration, Annual Energy Review 2006

The Energy Information Administration has conducted research to determine the components of retail fuel prices. It believes the cost to produce and deliver fuel to consumers includes crude oil, refining, distribution and marketing, and taxes.[5] Figure 3 shows these components for gasoline and diesel prices as of September 2007.

Figure 3. Components of U.S. gasoline and diesel fuel prices, September 2007



Source: Energy Information Administration, Gasoline and Diesel Fuel Update.

[5] Energy Information Administration. Gasoline and Diesel Components. Gasoline Components History. 2006.

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Crude oil prices are determined by worldwide supply and demand and are influenced by natural and political events that affect or potentially affect supplies. Consumption of and demand for crude oil products have increased, putting intense pressure on world crude oil supplies.

Refineries in the U.S. have operated at over 90% capacity during the last 10 years. The refining cost component is calculated by EIA as the difference between the monthly average of the spot price of gasoline or diesel fuel at the refinery and the average price of crude oil purchased by refiners.

Distribution and marketing costs include bulk storage, tanker truck transport, and retail sales operations (such as gas stations). In addition to seasonal shifts in demand caused by the winter heating season, retail fuel prices tend to rise with increasing distance between retail locations and distribution terminals and refineries. Areas farthest from the Gulf Coast, which is the source of nearly half the diesel fuel produced in the U.S., tend to have higher prices. Finally, the cost of doing business depends on location—including sources of supply, other competitors, and number of employees.[6] This component is calculated as the difference between the average retail price of gasoline or diesel fuel and the sum of the other three components (taxes, crude oil and refining).

Federal excise taxes were 18.4 cents per gallon on gasoline and 24.4 cents per gallon on diesel for motor fuel as of 2007, while state excise taxes averaged about 21.8 cents per gallon. Some states, counties, and cities levy additional taxes. Fuel oil used for home heating—which is also often called diesel and is virtually identical to diesel used for motor fuel—is exempt from federal and state taxes but is subject to local sales taxes.

The components of the cost of both gasoline and diesel have increased rapidly over the past few years. EIA statistics show that the prices of both diesel and gasoline doubled between 2002 and 2006. The broad pattern of component costs is similar for both fuels and both time periods. But the component breakdowns for these prices (Table 1 and Table 2) reveal some interesting possible trends. Costs of crude oil and refining made up larger percentages of the retail price in 2006 and taxes a smaller percentage. Distribution costs made up less of the retail price of gasoline but more of the price of diesel in 2006.

[6] EIA, 2006.

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Table 1. Components of U.S. retail gasoline prices, 2002 and 2006

Month/Year	Retail Price (per gallon)	Refining (percentage)	Distribution and Marketing (percentage)	Taxes (percentage)	Crude Oil (percentage)
September 2002	$1.40	10.8%	12.6 %	30.0%	46.7%
September 2006	$2.80	12.8%	8.6%	14.2%	64.3%

Source: Energy Information Administration, Gasoline Components History.

Table 2. Components of U.S. retail diesel fuel prices, 2002 and 2006

Month/Year	Retail Price (per gallon)	Refining (percentage)	Distribution and Marketing (percentage)	Taxes (percentage)	Crude Oil (percentage)
September 2002	$1.41	12.0%	7.5 %	34.2%	46.3%
September 2006	$2.78	13.8%	15.2%	19.1%	51.9%

Source: Energy Information Administration, Diesel Components History.

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II. Crude oil prices

World crude oil prices

- Crude oil is a global commodity and crude oil prices are determined by global supply and demand. Apart from an allowance for tanker transportation costs and quality differentials, it makes economic sense to speak of the world price of oil.
- The price of crude oil is one of the most significant factors determining the price of petroleum products. The prices of gasoline and diesel—and especially the *changes* in those prices—are largely determined by the worldwide demand for and supply of crude oil.
- World crude oil prices reflect the interactions of thousands of buyers and sellers, each with their own knowledge and expectations about the demand for and supply of crude oil and petroleum products. These interactions occur in both the physical and the futures markets, with the resulting prices reflecting both current and future expected supply and demand conditions.[7]
- Regional and local markets for refined products are also influenced by the level of competitiveness in these markets and the costs of distribution to end-users.

Petroleum products represent a critical source of fuel for the world's economy, with oil being the largest source of energy for the world economy. The value of crude oil is driven by demand for petroleum products, particularly for use in transportation. Petroleum products power most motor vehicles, aircraft, marine vessels, and trains worldwide. In total, products derived from oil, such as motor gasoline, jet fuel, diesel fuel, and heating oil, supply nearly 40 percent of the energy consumed by households, businesses, and manufacturers. Natural gas and coal, by comparison, each supply less than 25 percent of the world's energy needs.[8]

According to the American Petroleum Institute (API), current high world oil prices result from sustained, strong economic growth, notably including that in China. This economic growth resulted in stronger-than-anticipated global demand for these fuels, which reduced excess production capacity as well as the quality of the crude oil available in the marketplace. These changes in global supply and demand were compounded by unexpected losses in both crude oil production and refining capacity in the United States as a result of damage from hurricanes Katrina and Rita in 2005. Oil prices have risen sharply, particularly for better-quality crude oils. In summary, API attributes changes in world oil prices and subsequent prices of refined products to be driven largely by the forces of supply and demand.[9]

The Energy Information Administration (EIA) also attributes current oil prices and volatility to overall shifts in supply and demand, but to a number of specific international events as well. In 2000, real oil prices fluctuated between $20 and $30 per barrel (year 2006 dollars) and had been relatively stable since 1986 (Figure 4). The recession in the

[7] Grant, Kenneth, 2006, et al., p. 2.
[8] U.S. Energy Information Administration, International Energy Outlook 2005, Table A2.
[9] Grant, 2006.

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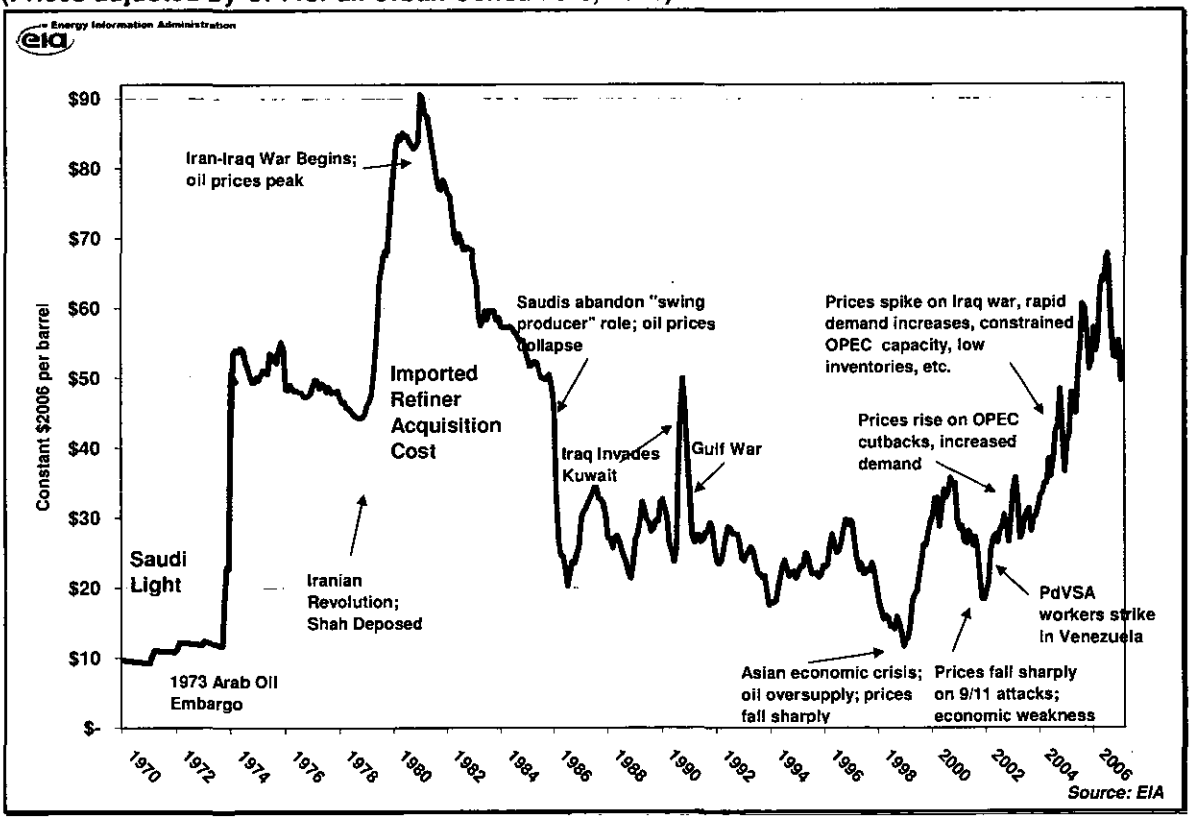
U.S. following the September 11, 2001 attacks reduced demand and caused oil prices to drop below $20 a barrel. In the following two years, however, the U.S. economy began to rebound, increasing energy demand and causing an upward trend in oil prices. The current upward trend of oil prices largely began in late 2003.

After the U.S. invaded Iraq, world oil prices began to escalate sharply. The war in Iraq proved to be more complicated than originally predicted, and energy market uncertainty was further exasperated in August 2003 when Iraqi insurgents began attacking an oil pipeline in northern Iraq.

In 2004, the price of oil reached $50 a barrel. In addition to the deteriorating security situation in Iraq and the regular attacks on pipelines, workers in oil-rich Nigeria launched a general strike to protest rising domestic fuel prices.

Figure 4. Major events and real world oil prices, 1970-2006
(Prices adjusted by CPI for all Urban Consumers, 2006)



By the end of 2005, oil prices hit $70 a barrel and then stabilized between $60 and $70. EIA blamed instability in Iraq, mounting ethnic unrest in Nigeria, concerns about Iran's nuclear program, and growing energy demand in China for the dramatic price increase. Contributing to rising oil prices was also Hurricane Katrina, which devastated the eastern coast of the Gulf of Mexico, damaging offshore oil rigs, disrupting supply, and affecting U.S. refining capacity.

These events were followed in 2006 by a number of other events—growing unrest in Iraq; Russia's temporary reduction of gas supplies to Europe; the threat of sanctions against Iran; an escalating ethnic insurgency in Nigeria's oil-producing region; a low-

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scale war between Israel and Lebanon; an attack on Saudi Arabia's Abqaiq oil facilities; and a temporary shutdown of a section of the trans-Alaska oil pipeline. EIA cites all these events as contributing to 2006 oil prices of over $80 a barrel. During October 2007, oil prices reached record highs—tied to growing fears that Turkey would invade northern Iraq, the weak U.S. dollar, and impending increased winter demand for energy. Prices have continued up throughout the first half of 2008, rising above $130 a barrel.

OPEC (the Organization of Petroleum Exporting Countries) blames the spike on geopolitical developments and speculation and maintains there is no supply shortage and no reason to boost production—but as of fall 2007 it held out the possibility of meeting to discuss additional supply boosts.[10] Table 3 shows the volatility in world oil prices and markets during fall 2007. Monthly Alaska North Slope oil prices from 1988 to 2007 are shown in Table 4.

Despite these higher prices, the world economy grew in 2004 and 2005. A worldwide recession in response to high oil prices would have dampened price increases, but sustained economic growth fueled continued demand. With the current geopolitical outlook, world oil prices are likely to continue to rise.[11]

[10] Power and Interest News Report, 29 October 2007, "Record Oil Prices and Washington's Desire for Energy Independence".
[11] Power and Interest News Report, 09 August 2006, "Economic Brief: Alaska Pipeline Shutdown and the Rise of Oil Prices".

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Table 3. World crude oil prices by location and type

(US dollars per barrel)

Crude Type	9/28/2007	10/5/2007	10/12/2007	10/19/2007	10/26/2007	11/2/2007
Total World	75.91	75.57	75.66	80.12	81.27	86.02
United States	73.50	73.65	73.39	77.84	79.47	83.69
OPEC* Average	76.52	76.18	76.22	80.58	81.62	86.47
Abu Dhabi, Murban 39º	79.40	78.53	78.88	82.17	83.52	87.98
Algeria, Saharan Blend 44º	80.09	79.80	79.65	84.67	85.49	91.12
Angola, Cabinda 32º	76.40	75.69	74.75	79.48	80.44	85.72
Dubai, Fateh 32º	75.61	74.00	73.92	77.23	78.90	83.22
Gabon, Mandji 30º	NA	NA	NA	NA	NA	NA
Indonesia, Minas 34º	79.08	80.95	80.83	84.74	86.98	92.34
Iran, Heavy 30º	75.37	74.68	74.41	78.43	79.40	84.89
Iran, Light 34º	76.91	76.23	76.03	80.13	81.10	86.59
Iraq, Kirkuk 36º	73.94	74.28	74.67	79.25	79.63	85.45
Kuwait, Kuwait 31º	73.97	72.88	72.85	76.19	77.72	82.40
Libya, Es Sider 37º	77.00	77.19	77.56	82.45	83.37	89.13
Neutral Zone, Khafji 28º	75.77	75.56	75.58	80.16	81.43	85.81
Nigeria, Bonny Light 37º	80.96	80.44	80.19	85.15	86.12	91.42
Nigeria, Forcados 31º	80.56	80.04	79.84	84.81	85.76	91.02
Qatar, Dukhan 40º	78.22	78.55	78.98	80.71	81.17	85.72
Saudi Arabia, Arabian Heavy 27º	73.12	72.46	72.48	77.06	78.33	82.41
Saudi Arabia, Arabian Light 34º	75.77	75.56	75.58	80.16	81.43	85.81
Saudi Arabia, Arabian Medium 31º	74.37	73.91	73.93	78.51	79.78	83.86
Venezeula, Bachaquero 17º	NA	NA	NA	NA	NA	NA
Venezeula, Bachaquero 24º	NA	NA	NA	NA	NA	NA
Venezuela, Tia Juana Light 31º	74.77	74.57	75.17	80.29	80.43	84.66
Non-OPEC* Average	75.18	74.85	74.99	79.59	80.85	85.48
Australia, Gippsland 42º	81.50	80.08	79.26	83.35	84.68	90.04
Cameroon, Kole 34º	76.16	76.58	76.55	81.78	81.59	87.30
Canada, Canadian Par 40º	80.89	80.61	77.71	81.99	85.48	88.30
Canada, Heavy Hardisty 22º	60.99	60.13	60.02	61.87	67.94	69.52
China, Daqing 33º	76.47	77.46	77.07	80.93	83.04	88.32
Colombia, Cano Limon 30º	77.51	76.64	77.10	82.38	83.53	87.78
Ecuador, Oriente 30º	67.56	67.18	67.53	72.79	74.02	77.98
Egypt, Suez Blend 33º	72.43	72.82	73.16	77.59	78.17	84.08
Gabon, Mandji 30º	NA	NA	NA	NA	NA	NA
Malaysia, Tapis Blend 44º	84.40	84.04	83.49	87.26	88.81	94.33
Mexico, Isthmus 33º	74.66	74.46	75.06	80.18	80.32	84.55
Mexico, Maya 22º	66.60	66.41	66.98	71.72	72.04	76.43
Norway, Ekofisk Blend 42º	79.20	79.26	79.23	84.32	84.92	90.44
Oman, Oman Blend 34º	75.63	74.45	74.47	77.84	79.23	83.28
Russia, Urals 32º	75.43	74.96	75.88	81.00	81.47	86.72
United Kingdom, Brent Blend 38º	77.96	78.07	78.66	83.61	84.14	89.40

Source: Energy Information Administration, November 2007.

See http://tonto.eia.doe.gov/dnav/pet/pet_pri_wco_k_w.htm for detailed information on price sources and definitions.

Last Updated 11/07/2007 - = No Data Reported; -- = Not Applicable; NA = Not Available; W = Withheld to avoid disclosure of individual company data. Degrees refer to specific weight and quality of crude.

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Alaska crude oil prices

There is no price for Alaska crude oil on the New York Mercantile Exchange (NYMEX) or other commodity exchanges. The spot price of Alaska North Slope (ANS) crude oil is calculated by subtracting a market differential from the price of West Texas Intermediate (WTI) quoted on the NYMEX. Four different assessment services estimate that market differential and report a daily spot price for ANS.[12]

As can be seen in Table 4, month-to-month crude oil prices are volatile—monthly ANS West Coast prices ranged from $17.52 per barrel to $73.10 per barrel between 2002 and 2007 alone. But the trend has been up dramatically since 2002. As recently as December 1998, ANS prices dipped as low as $9.39.The 60-month moving average for the period from 1988 to 2007 was $42.62 per barrel.

Table 4. Alaska monthly crude oil prices, 1988 to 2007
($$ per barrel, nominal dollars)

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
1988	14.23	14.03	13.79	15.29	14.86	14.14	13.70	13.63	12.58	11.34	11.36	13.23
1989	15.11	15.99	17.25	19.37	17.64	17.00	16.78	16.04	16.62	17.27	17.49	19.07
1990	20.00	19.30	17.91	14.82	14.38	13.20	15.55	25.99	32.16	31.53	28.79	24.02
1991	20.57	15.74	17.02	17.56	16.67	16.36	17.25	17.18	17.37	18.47	17.57	14.83
1992	14.92	15.30	15.50	16.96	18.03	20.20	19.40	17.97	18.46	18.71	17.46	16.33
1993	15.62	16.78	17.35	18.17	17.47	16.02	14.84	15.42	14.98	15.39	13.07	10.29
1994	11.66	12.59	12.91	14.96	16.47	16.43	16.52	16.66	16.11	16.02	16.71	15.38
1995	16.16	17.14	17.31	18.36	18.43	17.43	16.23	16.72	16.65	15.96	15.88	16.94
1996	17.23	17.78	20.40	22.04	19.65	18.98	19.79	19.90	21.69	22.60	21.50	23.66
1997	23.57	21.03	20.07	18.54	19.41	17.30	17.48	17.98	18.09	19.59	18.33	16.39
1998	14.79	13.39	12.25	12.41	12.31	11.62	12.92	12.49	14.13	13.38	11.47	9.39
1999	10.69	10.43	13.07	15.64	15.86	15.82	18.16	20.08	22.96	21.83	23.65	24.54
2000	25.74	27.65	28.01	23.83	27.15	29.62	27.63	29.40	32.25	31.56	32.74	23.72
2001	24.37	26.02	24.70	25.55	26.70	25.82	24.60	24.12	23.21	19.45	17.23	16.69
2002	17.52	19.14	22.76	24.99	25.87	24.16	25.82	27.39	28.76	27.53	24.69	28.03
2003	31.91	35.20	32.59	25.59	26.19	29.35	29.17	30.22	27.09	28.55	29.11	30.67
2004	33.10	33.66	35.50	35.43	39.07	36.73	39.44	43.12	42.71	48.56	42.15	36.66
2005	41.12	43.59	50.63	49.75	46.77	53.67	56.67	62.40	63.47	60.37	56.11	57.17
2006	62.85	59.26	60.61	67.74	69.32	69.50	73.10	71.74	62.33	54.27	54.26	58.13
2007	51.52	57.00	59.01	63.92	64.76	69.11	75.93	73.83	79.72			

Source: Alaska Department of Revenue, Tax Division, November 2007,
http://www.tax.state.ak.us/programs/oil/prices/index.asp
Spot prices are unaudited and do not reflect Production Tax Settlement Values
Effective December 2003, the ANS west coast published price is the Department of Revenue's calculated ANS West Coast average spot price.

All of Alaska's oil production is delivered to refineries on the U.S. West Coast, including Alaska and Hawaii. Consequently, Alaska's royalty and production tax revenue depends in large part on the average market price of ANS crude oil at U.S. West Coast refining centers.

[12]Alaska Department of Revenue, Tax Division, Revenue Sources Book, 2007, p. 10.

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III. Refining

Crude oil has to be refined to extract useful products. This section describes the refining process and the types of petroleum products produced; provides a list of the refineries that supply Alaska markets; examines the relationship between crude oil prices and refined product prices, including a comparison of refined product prices from different refineries; and describes some of the sources of refined petroleum product prices.

Refining process

Crude oil is a mixture of hydrocarbons that exists in liquid form in underground reservoirs. It may also include small amounts of gaseous hydrocarbons that are liquefied upon extraction, and some non-hydrocarbons such as sulfur and various metals.

Refining is the process of converting crude oil into various marketable petroleum products by separating component hydrocarbons. It can also involve chemical reactions and the blending of components and additives. The separation of hydrocarbons is most commonly achieved by fractional distillation. Fractional distillation is the process of heating a mixture to separate it into its component parts (fractions), each of which has a different boiling point. The mixture is boiled, transforming its components into vapor. Beyond the chamber in which the mixture is boiled is a distillation column with outlets at different heights, corresponding to where each fraction condenses after it rises and cools. The heavier fractions (those with higher boiling points) condense lower in the column, while the lighter fractions (those with lower boiling points) condense higher in the column. After condensation, the fractions exit the column in liquid form, each through a different outlet.

Types of refined petroleum products

After isolation, the various hydrocarbons may be mixed to produce a number of petroleum products, including motor gasoline, aviation gasoline, jet fuels, #1 distillate, #2 distillate, and asphalt, among many other potential products. Motor and aviation gasoline are difficult to produce and require complex refining equipment. Common petroleum products include:

- **Motor gasoline** is the type of fuel used in most vehicles with internal combustion engines. The production of the various grades of gasoline is complex, compared with other types of fuel, and requires expensive and sophisticated equipment. One 42-gallon barrel of crude oil produces about 20 gallons of gasoline.[13]
- **Aviation gasoline** is used in aircraft with reciprocating engines. It is subject to especially stringent specifications.[14]
- **Jet fuel** is a kerosene-based fuel used in aircraft with turbine engines. The two main types are Jet A and Jet B, which have the corresponding military designations JP-5 and JP-4. Jet-A is often sold in Alaska as fuel oil/heating oil at

[13] U.S. Energy Information Administration

[14] Keiser, Gretchen and Teal, David, House Research Agency, Alaska State Legislature. Fuel Consumption and Pricing in Alaska: A Regional Analysis. January 1984.

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the price of #2 fuel oil. One reason why it is sometimes sold for heating fuel is that it has a low pour point—meaning that it won't gel until it reaches a very low temperature.[15]

- **#1 distillate** can be used as fuel oil/heating oil or as a diesel fuel for high-speed diesel engines that operate at frequently changing speeds, such as city buses.[16] It is available at various sulfur levels: high sulfur, low sulfur, and ultra low sulfur.
- **#2 distillate** can be used as fuel oil/heating oil or as a diesel fuel for high-speed diesel engines operating at relatively constant speeds and loads—like locomotives. It must meet different specifications, depending on how it's used. It's available in various sulfur levels: high sulfur, low sulfur, and ultra low sulfur.

Figure 5 shows, in broad categories, how much of each type of product is extracted from a barrel of crude oil. You may note that while a barrel contains 42 gallons of crude oil, the total output volume of refined product according to this figure is 44.6 gallons. This chart is based on data from the Energy Information Administration. Another source, the California Energy Commission, gives 48.43 gallons as the total output volume, on average, from a barrel of crude. This increase is called *processing gain*, and is due to the addition of various additives, such as alkylates. Also worth noting is that the latter source gives 51.4% as the percentage of output that is gasoline, rather than the 43.9% indicated by the EIA numbers. This is due partly to the addition of ethanol to gasoline at a level of 5.7% by volume, as required in California, which brings the total output volume up to 49.59 gallons for California refineries.

[15] Communications with Craig Torgen at Crowley Maritime Corporation, October 2007. Also, Alaska Department of Environmental Conservation, Division of Air Quality. http://www.dec.state.ak.us/AIR/anpms/as/ulsd/ulsd-bkgrd.htm

[16] EIA, 2007.

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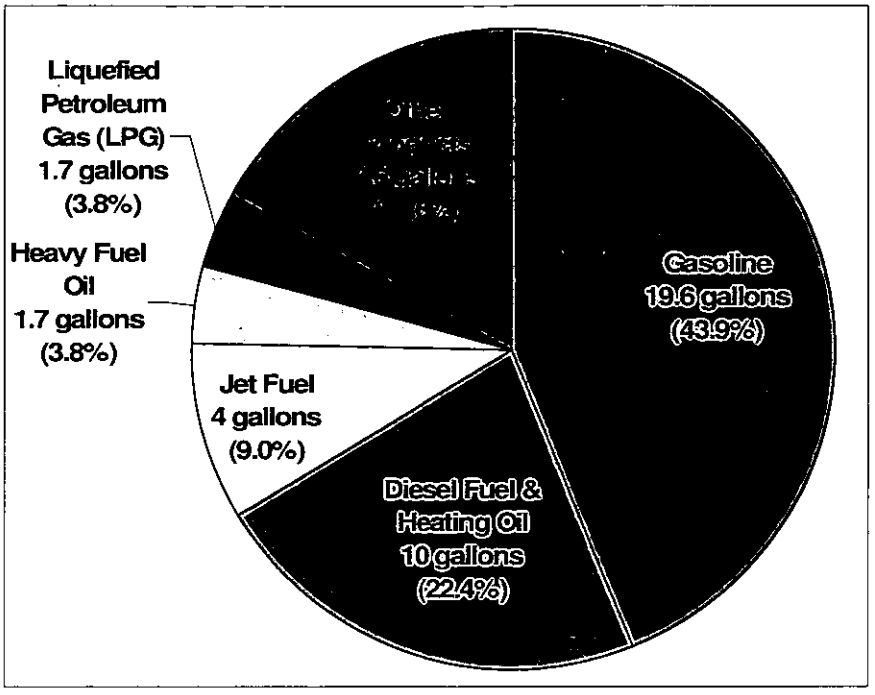
Figure 5. Quantity of refined products yielded from one barrel of crude oil



Source: U.S. Energy Information Administration

Diesel fuel sulfur content regulations

Diesel fuels are subject to new regulations regarding sulfur content. The U.S. Environmental Protection Agency (EPA) finalized the Highway Diesel Rule in January 2001, and the Non-road Diesel Rule in June 2004, mandating the use of cleaner-burning ultra-low-sulfur diesel (ULSD)—diesel with no higher than 15 ppm sulfur content), for road and non-road uses, respectively. This cleaner-burning fuel, along with new equipment on tailpipes and exhaust stacks that require it, will "dramatically reduce particulate matter and nitrogen oxides in diesel exhaust."[17] The Highway Diesel Rule took effect in 2006, and the Non-road Diesel Rule in 2007. However, because of the unique characteristics of rural Alaska, including its geography, economy, air quality, and distribution challenges, the effective dates were extended for rural areas of the state. They will be allowed to use diesel with uncontrolled sulfur content for all uses until 2010 beginning the transition to ultra-low-sulfur diesel on January , and finishing by December 1, 2010. Urban areas of Alaska (those served by the Federal Aid Highway System) were required to adhere to the same implementation schedule as the other states.[18]

The ULSD regulations do not apply directly to fuel used for home heating or jet fuel.[19] However, there will be indirect effects on heating fuel prices, because most fuel used for heating will probably be ULSD. That's because for many communities, it would be impractical to separately store both a less expensive type of fuel to use for heating (higher

[17] Alaska Department of Environmental Conservation (DEC), Division of Air Quality. http://www.dec.state.ak.us/AIR/anpms/as/ulsd/ulsd-bkgrd.htm
[18] EPA. http://www.epa.gov/otaq/regs/fuels/diesel/420f06040.htm
[19] DEC. http://www.dec.state.ak.us/AIR/anpms/as/ulsd/ulsd-bkgrd.htm

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sulfur Jet A, #1 fuel oil, #2 fuel oil) as well as ULSD for other purposes—so they will have to use only ULSD. According to the Alaska Department of Environmental Conservation (DEC), "The fuel storage and distribution infrastructure in rural Alaska is designed to handle a single grade of diesel fuel." In some communities, especially hub communities, there will be enough demand for Jet A for turboprop and turbojet aircraft that it may be purchased in large enough quantities to use for home heating as well.

The transition to ULSD will mean higher diesel and heating fuel prices for Alaska communities. It will also increase the cost of diesel-generated electricity, both because of the more expensive fuel and the more expensive equipment that will also be required by the regulations.

Sources of refined petroleum products sold in Alaska

Petroleum products consumed in Alaska come from refineries in Alaska and, to a smaller extent, out-of-state refineries. Table 5 lists Alaska's six refineries, along with their capacity, measured in barrels of crude oil input per day.

Table 5. Alaska petroleum refineries

	Total input capacity as of Jan. 1, 2007 (barrels/day)
Flint Hills Resources Alaska LLC (North Pole)	210,000
Tesoro Petroleum Corp. (Nikiski/Kenai)	72,000
Petro Star Inc. (Valdez)	48,000
Petro Star Inc. (North Pole)	17,500
ConocoPhillips Alaska Inc. (Kuparuk)	15,000
BP Exploration Alaska Inc. (Prudhoe Bay)	12,500
Total	375,000

Source: U.S. Energy Information Administration

Alaska crude oil production in 2006 was 741,000 barrels per day,[20] about twice the total input capacity of Alaska refineries. Also, Alaska refineries aren't currently producing at full capacity. Estimated total production from the Flint Hills, Tesoro, and Petro Star refineries in early 2008 was roughly 127,000 barrels per day.

The Flint Hills refinery in North Pole was originally built by Mapco in 1977 to coincide with the completion of the trans-Alaska oil pipeline and taps directly into the pipeline.[21] The refinery is the largest in Alaska with a current capacity of 210,000 barrels per day—more than half Alaska's total refinery capacity and more than three times the capacity of Tesoro's refinery in Nikiski. Flint Hills acquired the refinery in 2004. It produces gasoline, jet fuel, heating oil, diesel, gasoil, and asphalt. About 60 percent of its output is sold in the aviation market. It has terminals in Anchorage, to which fuel is transported by rail, and Fairbanks, to which fuel is transported by truck.[22]

[20] EIA. http://tonto.eia.doe.gov/dnav/pet/hist/mcrfpak1A.htm
[21] Keiser & Teal, 1984.
[22] EIA and Flint Hills Resources website, http://www.fhr.com/alaska/

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A second refinery in North Pole along the oil pipeline was built by Petro Star in 1983. This refinery has a capacity of 17,500 barrels per day and produces commercial and military jet fuel, kerosene, diesel, and heating oil. Petro Star is owned by Arctic Slope Regional Corporation. It distributes its products to communities, military bases, and commercial customers in the Interior and the North Slope.[23]

Petro Star built another, larger refinery in Valdez that began operation in 1993. That refinery has a capacity of 48,000 barrels per day and produces commercial jet fuel, military JP-8 and JP-5 jet fuel, marine diesel, heating oil, and turbine fuel. Its primary market is in fuel for military and commercial aviation.

The Tesoro refinery in Nikiski was built in 1969 and was the second refinery built in Alaska, after Chevron's Nikiski refinery was built in 1963.[24] Chevron closed its refinery in 1991 due to "eroding profit margins and increasing liability risks."[25] These refineries were built to process crude oil discovered in Cook Inlet in 1957. The Tesoro refinery currently has a capacity of 72,000 barrels per day, making it the second largest refinery in Alaska.[26] With the completion of a diesel de-sulfurizer unit in May 2007, Tesoro became the first producer of ultra-low-sulfur diesel in Alaska. The unit has a capacity of 10,000 barrels per day.[27]

The ConocoPhillips refinery in Kuparuk and the BP refinery in Prudhoe Bay are topping plants that supply fuel to meet the North Slope oil producers' own needs and do not sell to the general public. ConocoPhillips recently cancelled a $300 million upgrade to its refinery that would enable the production of ultra-low-sulfur diesel, citing a lack of tax breaks under the new Alaska oil tax rules.[28]

Most of the fuel distributed to rural Alaska communities is produced by Alaska refineries, the exception being communities in Southeast Alaska, which receive a significant share of their fuel from refineries in Washington. Fuel distributed to Alaska customers in general also occasionally comes from refineries in Anacortes, Washington, and even places as distant as Korea and Russia. However, the cost of transporting the fuel over such long distances is usually greater than any savings from purchasing it from out-of-state refineries. For example, since 1983, adjusting for inflation, the average Alaska wholesale price for #2 distillate was only 4.4% higher than the average Washington price. Since 2000, the Alaska average was only 0.5% higher.[29] Table 6 ranks average wholesale prices for #2 distillate by region from 2000 to 2007.

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[23] EIA and Petro Star, Inc. website, http://www.petrostar.com/
[24] Keiser & Teal, 1984.
[25] Richardson, Jeffrey. Alaska Business Monthly. *Refining rivalry.* June 1, 1991. http://www.allbusiness.com/north-america/united-states-alaska/165637-1.html
[26] EIA, 2007.
[27] Tesoro Corporation website. http://www.tsocorp.com
[28] Loy, Wesley. Anchorage Daily News. *Conoco cancels refinery upgrade on North Slope.* November 27, 2007.
[29] EIA, 2007.

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Table 6. Average wholesale #2 price from refiners by region, 2000-2007 (in 2007 dollars)

Region	#2 price	% U.S.
Rocky Mountain (PADD 4)	$ 1.454	108.3%
West Coast (PADD 5)	$ 1.425	106.1%
Alaska	$ 1.418	105.6%
Washington	$ 1.412	105.1%
Midwest (PADD 2)	$ 1.361	101.4%
U.S.	$ 1.343	100.0%
East Coast (PADD 1)	$ 1.316	98.0%
Gulf Coast (PADD 3)	$ 1.298	96.7%

Source: U.S. Energy Information Administration

There are two refineries in Anacortes: Shell Oil Products U.S., with a capacity of 145,000 barrels per day of crude oil input, and Tesoro West Coast, with a capacity of 120,000 barrels per day, for a total of 265,000 barrels per day (bpd).[30] South Korea, while it produces no crude oil, has a total refinery capacity of 2,577,000 barrels per day, ranking it fifth in the world. North Korea has a capacity of 71,000 bpd. Russia has a total refinery capacity of 5,339,000 bpd, ranking it second in the world. The U.S. ranks first, with a total capacity of 17,397,000 bpd.[31]

Relationship between crude oil prices and refined product prices

In addition to the Energy Information Administration (EIA), the Oil Price Information Service (OPIS) provides petroleum product price information for various locations around the world. OPIS prices are often used as a benchmark price for fuel suppliers when making price quotes. When a fuel supplier quotes a price to a community, this price is typically based on an OPIS price for the day of the quote, plus an additional amount to cover the service of handling and transporting the fuel, although often only a single quoted amount (the sum) is provided.[32]

The price data from EIA used in the analysis below comes from Form EIA-782A, *Refiners'/Gas Plant Operators' Monthly Petroleum Product Sales Report.* These data differ from the OPIS price data in several ways. The purpose of the EIA-782 survey, according to EIA, is to collect data "to fulfill legislative mandates from Congress and to provide comprehensive information for evaluating market behavior." OPIS is privately owned and is a paid subscription service, with historical data available for a fee, while EIA current and historical data is freely available to the public.

While EIA has broader coverage (the information is collected from a census of refiners, while OPIS data is collected from a sample), OPIS has much more detail and is a "real-time" service that serves a different purpose. OPIS updates prices daily, while EIA updates its data on a monthly basis. OPIS provides data by city, while EIA provides data by region (Petroleum Administration for Defense District, or PADD) and in some cases

[30] EIA, 2007.
[31] EIA. Country Energy Profiles. http://tonto.eia.doe.gov/country/index.cfm
[32] Personal communications with Crowley and Matt Sweetsir at Ruby Marine, October 2007

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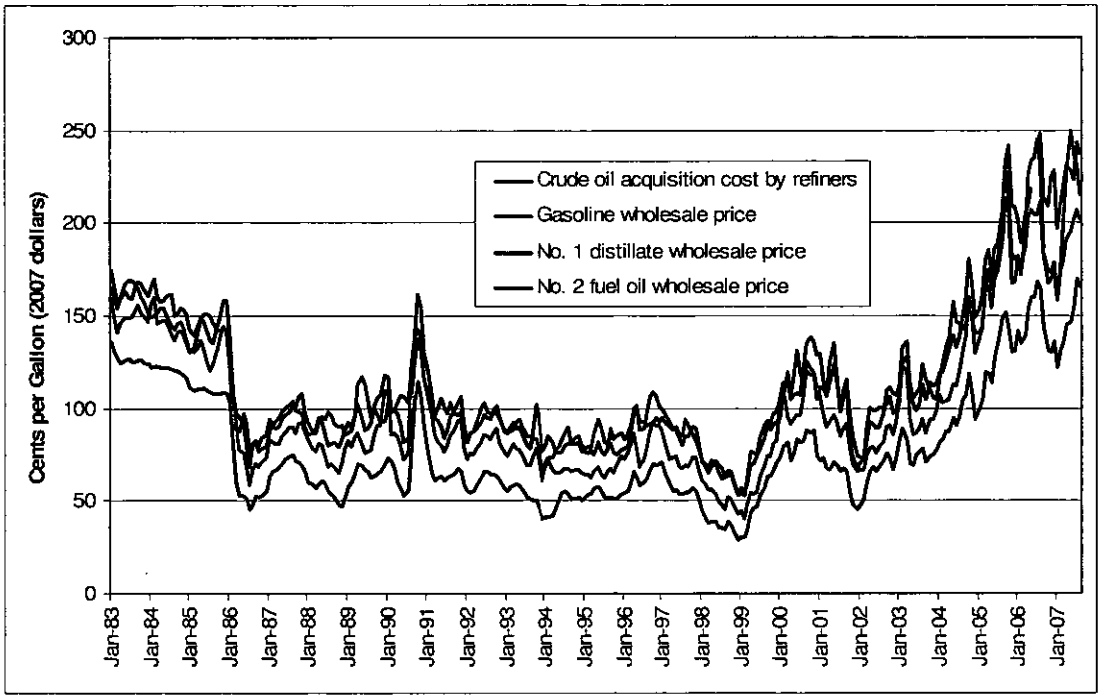
by state. OPIS also takes into account many variables that define specific types of fuel, to break fuel out into more subcategories.

There are a number of other differences between OPIS and the EIA-782 methodologies and purposes, but the prices they report track each other closely.[33] EIA price data are used in this analysis because of the free availability of historical prices, accessible and comprehensive documentation, and less complex categorization of fuel types.

Figure 6 and Figure 7 show the relationship of refiner acquisition cost of crude oil[34] and refinery wholesale prices. Numbers are adjusted for inflation to 2007 dollars. The rapid increase in prices in the past few years is clearly visible, as is the close relationship of crude oil prices to the prices of refined petroleum products. The difference between the cost of crude oil and the wholesale price of the product is mostly constant, rather than a percentage.

Figure 6. U.S. crude oil acquisition cost and wholesale fuel prices



Source: U.S. Energy Information Administration

[33] Bournazian, Jacob. EIA. Comparison *of Selected EIA-782 Data with other Data Sources.* June 23, 2004. http://www.eia.doe.gov/pub/oil_gas/petroleum/feature_articles/2004/comparison782/comparison782.htm

[34] The EIA's definition of "refiner acquisition cost of crude oil" is "The cost of crude oil, including transportation and other fees paid by the refiner. The refiner acquisition cost does not include the cost of crude oil purchased for the Strategic Petroleum Reserve (SPR)." The EIA provides costs for domestic and imported oil, as well as a composite cost. The composite cost is shown here.

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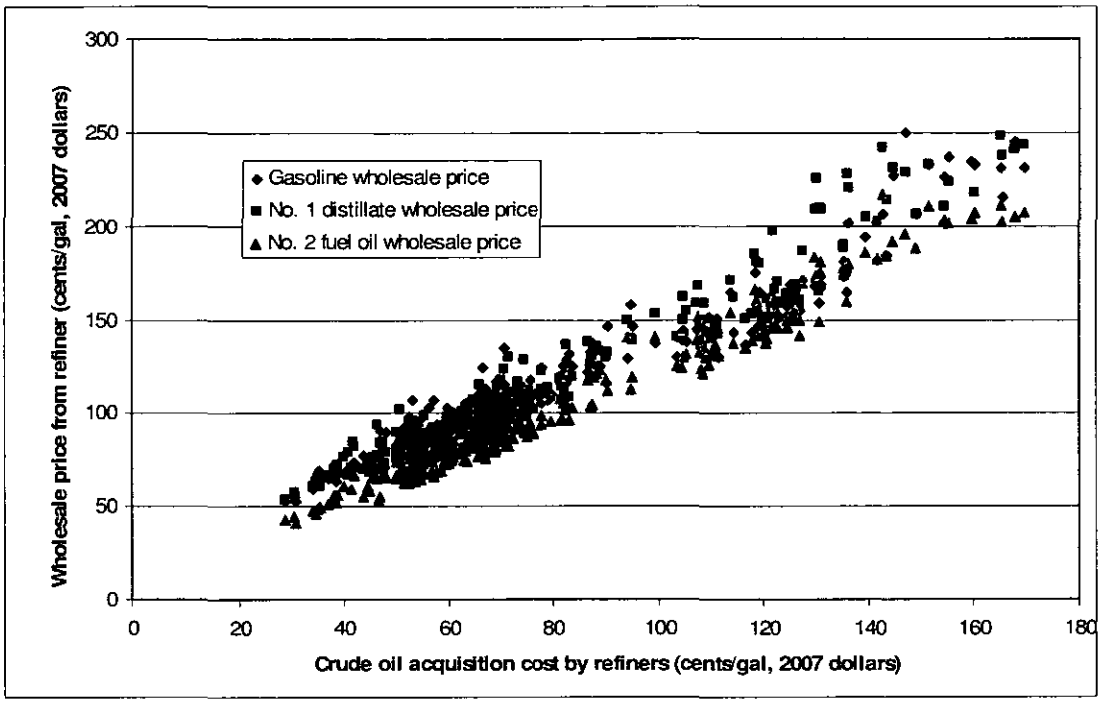
Figure 7. U.S. crude oil acquisition cost vs. wholesale fuel prices



Source: U.S. Energy Information Administration

From these figures, it appears that the primary source of variance in the prices at which refineries sell their products is the cost of their crude oil feedstock. Linear regression results over the monthly data points for gasoline, #1 distillate and #2 fuel oil, shown in Table 7, seem to confirm this tight relationship. The regression uses refiner acquisition cost, in cents per gallon, as the independent variable.

Table 7. Results of regression of wholesale fuel prices on crude oil acquisition cost (U.S. refiners)

Fuel type	Slope	p-value	Intercept	p-value	R-squared
Gasoline	1.190	0.000	20.229	0.000	0.938
No. 1	1.317	0.000	12.855	0.000	0.943
No. 2	1.224	0.000	4.984	0.000	0.965

Figure 8 and Figure 9 show a similar relationship between Alaska North Slope (ANS) crude oil prices and wholesale prices from Alaska refineries. Here, the ANS spot price was used instead of the refiner acquisition cost of crude oil, which was unavailable from EIA for Alaska refineries before 2004.

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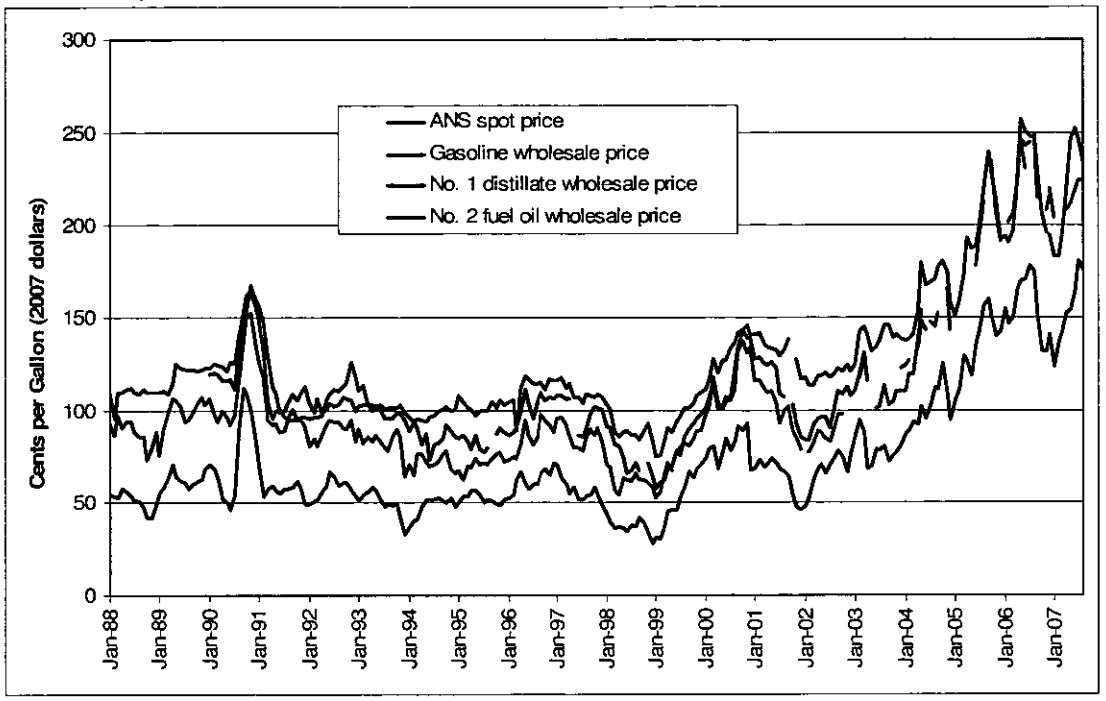
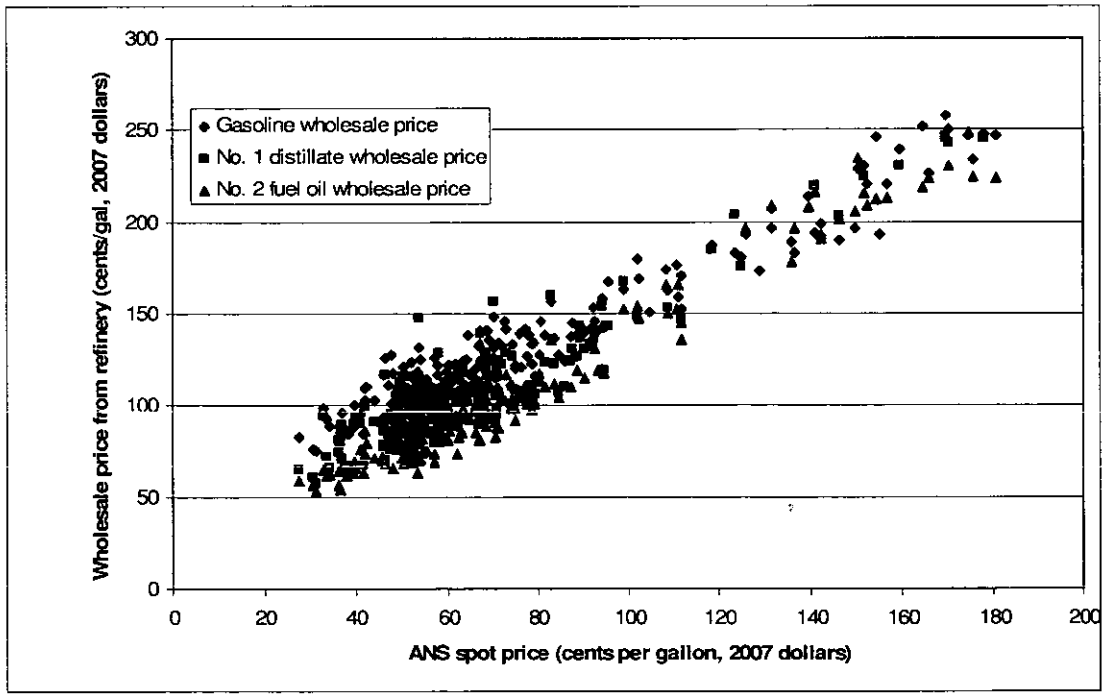
Figure 8. Alaska North Slope crude oil spot price and Alaska wholesale fuel prices



Sources: Alaska Tax Division (ANS spot price), U.S. Energy Information Administration

Figure 9. Alaska North Slope crude oil spot price vs. Alaska wholesale fuel price



Sources: Alaska Tax Division (ANS spot price), U.S. Energy Information Administration

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Table 8 shows the regression results (ANS spot price per gallon is the independent variable). Again, the results show a strong correlation between crude oil prices and refined product prices.

Table 8. Results of regression of wholesale fuel prices on Alaska North Slope spot price (Alaska refiners)

Fuel type	Slope	p-value	Intercept	p-value	R-squared
Gasoline	1.107	0.000	47.143	0.000	0.929
No. 1	1.193	0.000	30.401	0.000	0.849
No. 2	1.269	0.000	14.841	0.000	0.940

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IV. Fuel Product Transportation

Fuel products in Alaska are transported in various ways, both from refineries to fuel terminals and from terminals to communities. Fuel is usually stored in communities before distribution to residents and businesses. This chapter describes fuel transportation (truck, barge, airplane), as well as storage and distribution methods, including how characteristics of each method influence fuel prices.

Refineries in Nikiski, Valdez, and North Pole make petroleum products that supply most of the Alaska market. (As discussed earlier, some products for Alaska also come from out-of-state refineries). Communities that are road accessible or connected via pipelines or railroad to these in-state refineries have lower costs of transportation than more remote locations. Anchorage is connected by pipeline and road to the refineries in Nikiski; Fairbanks is only a short truck trip from the North Pole refineries. In contrast, other Alaska communities are in remote locations, many without highway access and some even lacking navigable waterways. Transporting fuel to such communities is more complex and risky, and thus, more expensive. The widely differing circumstances of Alaska communities create widely varying fuel prices.

Refinery to terminals

The Tesoro refinery in Nikiski is able to ship refined product directly from its fuel terminal in Nikiski. It also transports refined product in a 72-mile long pipeline to Ted Stevens Anchorage International Airport and to its fuel terminal at the Port of Anchorage. From the Anchorage fuel terminal, heating fuel can be trucked to homes or regional fuel hubs. Gasoline is also trucked from the fuel terminal to gas stations.

Fuel from the Flint Hills refinery in North Pole is either trucked to the fuel terminal in Nenana, to be barged to communities on the Yukon River; trucked to Fairbanks and other neighboring communities; or carried on the Alaska Railroad to the fuel terminal at the Port of Anchorage. Most of the refined fuel that comes by rail to Anchorage from North Pole is jet fuel used at Ted Stevens International Airport.

The Valdez Petro Star refinery ships its fuel directly out of the Port of Valdez. Most of the refined fuel produced at the Petro Star refinery in North Pole is directly transported to Eielson Air Force base or nearby communities.

Table 9 summarizes the imports and outputs of refined petroleum products for the region's fuel terminals and fuel hubs. Fuel refined in Tesoro's Nikiski plant is shipped directly from the Nikiski Port, as well as piped to Anchorage where it is shipped from the Port of Anchorage.

Table 9. Shipments received and shipped from major fuel hubs and refineries (in gallons [1])

Community		Received[3]	Shipped[3]
Anchorage	Gasoline	165,901,639	134,426,230
	Distillate[4]	2,816,901	45,633,803
Valdez	Gasoline	327,869	82,950,820
	Distillate[4]	-	14,366,197
Ketchikan	Gasoline	18,032,787	12,459,016
	Distillate[4]	8,450,704	15,492,958
Nikiski[2]	Gasoline	-	213,442,623
	Distillate[4]	-	289,295,775
Dutch Harbor	Gasoline	21,967,213	5,245,902
	Distillate[4]	44,788,732	9,014,085
Juneau	Gasoline	18,360,656	655,738
	Distillate[4]	11,549,296	845,070

(1) Corps of Engineer data is reported in short tons. Gallon conversions assume gasoline weight of 6.1 pounds per gallon and distillate weight of 7.1 pounds per gallon.
(2) Assumes all fuel is shipped out of Nikiski and none is imported.
(3) ISER calculations to summarize in and outbound shipments.
(4) Distillates are primarily diesel #1 and #2.
Sources: U.S. Army Corps of Engineers, Waterborne Commerce Statistics, Pacific Coast, Alaska and Hawaii; ISER calculations. Bethel is also a major western Alaska fuel depot, but it is not shown here because shipments in and out are not segregated in Corps of Engineer data.

Refinery and terminals to communities

Truck

Of the most common methods of transporting fuel in Alaska, trucking is the least expensive and complex. All Alaska communities on the road system have fuel delivered by truck. Gasoline is generally delivered directly to gas stations. Heating fuel is delivered from the refinery to regional fuel hubs for distribution or by distributors directly to homes from refineries.

The transportation cost per gallon of fuel trucked is determined by the distance and the quantity of fuel delivered. Delivery prices vary with the quantity of fuel shipped because most of the delivery costs are fixed, regardless of the amount of fuel carried. So larger communities can order more fuel at a time, reducing delivery charges per gallon.

Having road access also lowers fuel costs, because communities have year-round access to fuel. Even the smallest road communities generally receive at least weekly fuel shipments. This reduces fuel storage and inventory costs.

Barge

Barging fuel to Alaska communities is an expensive, complex, and risky endeavor. Fuel transporters face a different set of delivery challenges and costs for each community. Thee are few fuel transport companies with the experience and capital needed to successfully deliver fuel to remote areas in Alaska. In addition to overcoming the physical challenges of barging fuel to Alaska communities, fuel transporters must correctly price their fuel transportation charges to fully recover the cost of delivery.

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Barge Transportation Regions

For this analysis we divided Alaska into five regions: ice-free southern coast, Kuskokwim River, Yukon River, Northwest and Kobuk River, and Arctic. All these regions have some common factors that influence the cost of fuel delivery.

Ice-Free Southern Coast

This region extends from Southeast Alaska, along the Gulf of Alaska and out the Aleutian Island chain. The defining characteristic of this region is that it is ice-free year round and the communities are coastal. These characteristics allow year-round delivery of fuel. Crowley, Delta Western, and Petro Marine Services deliver fuel in this region.

Fuel for this region may be shipped from refineries in Valdez or Nikiski; from the fuel terminal at the Port of Anchorage; or from refineries in Washington or California. It is either shipped directly to communities or to larger hub communities, where it is reloaded onto smaller barges. Sometimes fuel will be lightered directly off the barge into a smaller barge for delivery to a community, thus bypassing the fuel hub.

Kuskokwim River

The Kuskokwim River Region includes all the communities on the Kuskokwim River and its tributaries, as well as coastal communities near the mouth of the river. Bethel serves as the regional hub, and almost all fuel delivered to the region is at least temporarily stored in Bethel. Fuel from Bethel storage tanks must be loaded into smaller barges to navigate the Kuskokwim River upstream of Bethel. Approximately four million gallons of fuel are shipped out of Bethel each year.

Fuel for this region is transported from Anchorage on large barges and must be lightered before being unloaded at the Bethel fuel depot. Once at the Bethel depot, the fuel is loaded onto barges for delivery upstream or to surrounding coastal communities. Both Crowley and Delta Western have tank farms in Bethel and deliver fuel to the surrounding areas.

Seasonal icing and the need to deliver all fuel into storage tanks in Bethel increases transportation costs for the Kuskokwim River and surrounding area—because the fuel has to be loaded and unloaded more times. Many of the communities that receive fuel from Bethel are located in remote locations on the Bering Sea coast or on tributaries of the Kuskokwim River. Barging fuel to these locations takes longer and includes additional risks. Bethel's distance from its primary fuel supply terminals in Cook Inlet also increases the cost of delivered fuel.

Yukon River

Nenana serves as the fuel hub for the Yukon River. Fuel arrives at the Nenana hub from refineries in North Pole, or is carried from Anchorage on the Alaska Railroad or by truck. From Nenana, fuel is barged both upstream as far as Fort Yukon and downstream to the mouth of the Yukon River. Crowley is the dominant fuel transporter in the region. Recently, Ruby Marine started competing on a small scale with Crowley.

Occasionally fuel is shipped from the mouth of the Yukon from the Bethel or Nome fuel hubs. Generally the more direct route from the Nenana fuel terminal is less costly, even for communities near the mouth of the Yukon.

Many communities served by the fuel terminal in Nenana are on smaller tributaries of the Yukon River that are remote and present navigational hazards. The difficulty of accessing many of these communities, the varying conditions of marine headers and moorage, and seasonal icing all affect the price of delivered fuel to the Yukon River region.

Northwest and Kobuk River

This region is defined as the area served by fuel hubs in Kotzebue and Nome and consists of Norton Sound, Kotzebue Sound and the Kobuk River. Nome's port can accommodate large barges and does not require lighterage, while Kotzebue's port is shallow and does require fuel lightering.

Kotzebue is the fuel hub for communities on the Kobuk River. The cost of barging fuel on the Kobuk is high because of difficult navigation and hazards. Most other communities in the Northwest region are coastal and present less navigational difficulty but have shallow ports. The long distance of this region from its primary fuel terminals in Cook Inlet further increases fuel costs.

Arctic

Fuel delivery in the Arctic region is subsidized by the North Slope Borough and is not investigated in this report.

Factors Contributing to Fuel Barging Costs

Distance from the refinery to the fuel hub. The further the hub is from refineries, the greater the cost. Also, proximity to multiple refineries allows for purchases at the cheapest rack price. For example, transporters delivering to Southeastern hubs such as Ketchikan and Juneau can buy fuel from refineries in Cook Inlet, Valdez, British Columbia, and Washington in order take advantage of the lowest prices.

Storage at fuel hub. A community that does not have its fuel delivered directly from the refinery typically gets fuel through a fuel hub community. When fuel is unloaded at the fuel hub and then later re-loaded, the costs increase. The wharfage fees charged by the hub port and additional transportation from the hub to the community also add to costs.

Small and shallow ports require lighterage. Fuel transported from a refinery or fuel hub in an ocean-going vessel to communities without deep draft ports require lighterage. Lighterage causes a significant increase in costs, because the fuel is handled an extra time and because smaller barges cost more to operate on a per gallon basis.

Quantity of fuel purchased. Communities that purchase more fuel receive a bulk discount, because the fixed costs of delivering fuel are spread over more gallons.

Regulations on fuel and transportation. Under the Oil Pollution Act of 1990 (OPA 90), all single-hulled fuel barges must be replaced with double hulled barges. The act also

made the fuel transporter and storage facility owners liable for any pollution resulting from spills. These regulations are reflected in growing transportation costs. Single-hulled barges are still allowed in Alaska waters west of 155 degrees west latitude (approximately the west side of Kodiak Island).[35]

Shallow drafts are required for river transportation. To transport fuel on Alaska's western rivers, barges cannot draft more than 3.5 feet of water. The barges must be custom built for these rivers, also increasing fuel costs.

Ice can prevent winter deliveries. For communities in northern and northwestern Alaska, fuel cannot be delivered during the winter ice-over months. Barges typically travel to these communities twice a year—in the spring when the ice melts and in the fall before the river freezes. The rivers in northern Alaska are typically frozen from November to April. The barges needed to deliver fuel sit idle through the winter, and the fuel transporters must recover their capital costs during the short shipping season. Icing also creates incentives to invest in more storage and disincentives to upgrade moorage and marine header conditions.

Deficient or missing moorage. Many communities lack proper moorage. To compensate, fuel barges are often forced to execute risky maneuvers to offload fuel. Either the barge is nosed into the bank and propelled forward against the current, or it is held in place in by the fuel hose that is unloading the fuel.

Deficient or missing marine header. A marine header is a series of piping, valves, and pumps that receives fuel from a barge and pumps it into a storage tank. The slower a marine header pumps, the longer the barge takes to unload, increasing costs and risks of spills. If a community is missing a marine header, the fuel must be trucked off the barge.

Tides delay barge movement. Some communities are only barge accessible at high tide. If a barge is forced to sit idle waiting for a tide change, the cost of fuel increases.

Navigational hazards. Many stretches of river are difficult and risky to navigate. Prices increase with the extra risk—because of longer running time per mile, higher insurance costs, and higher crew costs. Stretches difficult to navigate also require extensive local knowledge, making it difficult for new firms to compete.

Air delivery

Flying fuel is the most expensive method for transporting fuel to rural Alaska villages. Communities will generally only fly in fuel if they do not have access to navigable water, or in emergencies when the river is frozen and the barges are unable to deliver. This can happen if a community did not have the cash or credit available to purchase a full winter season of fuel before freeze-up, or when a community sells all its fuel before spring break-up when the barges are able to return.

When fuel is flown in larger planes, the delivery cost is approximately $1.00 per gallon. Smaller planes flying only a few hundred gallons at a time charge closer to $2.00 per gallon. The size of the plane flying fuel largely depends on local runway length and

[35] Crowley Maritime Corp – CWLM Amended Annual Report
http://sec.edgar-online.com/2006/04/14/0000950123-06-004668/Section2.asp

community population. One advantage of flying in fuel is that communities do not need to invest in large storage facilities, because fuel deliveries can usually be made year-round.

There are multiple commercial air services that fly fuel in Alaska. Everts Air Fuel is the largest. It operates four DC-6s and two C-46s equipped to carry 2,000 to 5,000 gallons of fuel per trip.[36]

Fuel delivery contracts

We examined publicly available fuel delivery contracts as one source of information about fuel transportation prices. A fuel delivery contract is an agreement between a fuel purchaser and a fuel supplier. Most fuel purchases involve a fuel contract. Fuel contracts are generally updated on a yearly or multi-yearly basis, in a competitive bidding process, with the contract being awarded to the lowest bidder. As a result of the competitive bid process, these contracts should provide a reasonable proxy for the costs of delivering fuel to specific ports with a reasonable return on investment and profits. The bids are generally broken into two components—the delivery cost and refinery price. The refinery cost component is the price paid at the refinery gate on the day the fuel is purchased at the refinery.

Table 10 shows the delivery cost component of 2003 and 2006 State of Alaska fuel contracts—that is, contracts for fuel for state-owned facilities. We combined the two fuel contract years and averaged costs for communities that received contracts in both years. For most communities with contracts in both years the delivery charge was similar.

It is clear the method of delivery is an important factor in determining transportation costs. Anchorage's delivery costs are negative, because the bidding transporter was expecting to be able to buy fuel at a lower cost than the indexed price.

Table 10. State of Alaska fuel contract delivery charges per gallon

Community	Delivery Charge	Transport Type
Anchorage	$ (0.01)	Truck
Delta Junction	$ 0.01	Truck
Chitina	$ 0.04	Truck
Nenana	$ 0.04	Truck
Circle	$ 0.09	Truck
Ketchikan	$ 0.13	Ice Free Barge
Kodiak	$ 0.16	Ice Free Barge
Homer	$ 0.18	Ice Free Barge
Kiawock	$ 0.20	Ice Free Barge
Dutch Harbor/Unalaska	$ 0.31	Ice Free Barge
Tanana	$ 0.40	Seasonal Barge
Nome	$ 0.63	Seasonal Barge
Ruby	$ 0.70	Seasonal Barge
Koyukuk	$ 0.91	Seasonal Barge
Naknek	$ 0.93	Seasonal Barge

Sources: State of Alaska, Department of Administration State Fuel Contracts for 2003 and 2006 and ISER calculations.

[36] Everts Air Fuel, available from: http://www.evertsair.com/airfuel/default.htm

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Setting Delivery Prices

Fuel transporters face significant risk when determining their delivery price. If they place their price lower than their costs turn out to be, they will lose money when delivering fuel. If they set their price too high, they might be accused of price gouging, or competitors might undercut them and win the delivery bid. The ability to accurately assess the delivery costs to individual communities can be as important and require as much experience as delivering the fuel.

The structure of the fuel delivery prices is the same for most transporters. It includes a delivery charge, in addition to a refined fuel cost that is tied to a fuel price index—such as the OPIS Anacortes price. The refined fuel cost is set at the level of the fuel index on the day the fuel is purchased from the refineries.

Crowley personnel told us that the bid prices are reviewed in relation to cost experience every spring and fall by a team of employees, including those who deliver fuel. Prices are determined for each community based on the time and risks Crowley faces when delivering fuel. Fixed costs are estimated on a per gallon basis and require an estimate of how much fuel will be delivered to a particular community.

The amount of experience and expertise needed to accurately price fuel delivery costs presents two potential problems. The first is that new firms entering the market may lack the knowledge necessary to accurately reflect costs in the delivery charges they bid. It also makes it difficult to evaluate whether the delivery charge component (the price) is reasonable and reflects actual delivery costs.

Storage and distribution

In communities across Alaska, fuels must be stored in holding facilities for distribution to customers. Fuel storage requires a substantial capital infrastructure investment. The cost of the storage facility is sometimes paid for by communities (either city governments or village corporations) or by private companies that either have significant investment in specific communities as major storage or distribution points (e.g., Crowley or Delta Western) or are significant users of fuel, such as Peter Pan Seafoods in False Pass.

The storage capacity of tanks in various communities depends on many factors. These include the location of a community, and whether ports are ice-free in the winter, allowing fuel to be delivered anytime—as compared with communities that can only get fuel deliveries once or twice a year. Also, communities with harsher weather need to have storage facilities that are able to withstand that weather. All storage facilities must meet state and federal environmental regulations pertaining to leak or spill prevention and mitigation—such as having adequate liners.

For publicly owned facilities, communities can obtain assistance from the bulk fuel storage program administered by the Denali Commission. A report prepared for the Denali Commission in 2002 reported the following unit costs per gallon of storage capacity for bulk fuel projects in Alaska (Table 11).

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Table 11. Bulk fuel project costs

Capacity	Benchmark Unit Costs
0 – 50,000 gallons	$18.00 to $14.00 per gallon
50,001 – 100,000 gallons	$14.00 to $12.00 per gallon
100,001 – 200,000 gallons	$12.00 to $9.50 per gallon
200,001 – 300,000 gallons	$9.50 to $8.50 per gallon
300,001 – 400,000 gallons	$8.50 to $7.50 per gallon
400,001 to 500,000 gallons	$7.50 to $6.50 per gallon
Greater than 500,000 gallons	$6.50 to $2.50 per gallon.

Source: Denali Commission. Final Denali Commission Project Cost Containment Assessment Projects in Various Alaska Villages, April 2002.

To determine these values, unit costs were calculated as the total project budget, divided by the total design storage capacity. In essence, a larger capacity project should relate to the lower end of the cost range for each capacity level.

Delivery or the distribution of the product in a community is another important component of total cost. Some communities charge a "delivery fee" if the product is delivered to the home. Some provide discounts if households order fuel to be delivered in bulk. In some communities, customers can pick up their fuel on an as needed basis. In other cases, the fuel is always delivered to the home and the "delivery charge" is included in the final fuel price. In these cases, the distribution charge is unknown.

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V. Alaska Oil Taxes and Royalties

All oil and gas production in Alaska, except the federal and state royalty share and a small amount used for production, is subject to the state's production taxes and hazardous release surcharges that are levied only on crude oil. Alaska receives revenue from oil and gas production from the state's royalty share, production tax, corporate income tax, and property tax. This section provides a brief overview of these taxes.

Crude oil taxes

Petroleum Profits Tax

The Petroleum Profits Tax (PPT) is the production tax that was signed into law in 2006 and was reconsidered by the Alaska legislature during fall 2007. The PPT is a net value tax with tax credits designed to encourage investment in Alaska's petroleum sector, increase production, and increase long-term revenues.[37] The PPT replaced the Economic Limit Factor (ELF) severance tax.

Petroleum Property Tax

An annual tax is levied on the full and true value of property taxable under AS 43.56. The tax on oil and gas property is the only statewide property tax. The valuation procedure is for three distinct classes of property—exploration, production, and pipeline transportation. The pipeline transportation property tax is shared with local communities. The state tax rate is 20 mills, minus the local mill rate.

Petroleum Corporate Income Tax

Alaska levies two types of corporate income tax—one on oil and gas corporations and the other on all other corporations. An oil and gas corporation's Alaska income tax depends on the relative size of its Alaska and worldwide activities and the corporation's total worldwide net earnings. The corporation's taxable Alaska income is derived by apportioning its worldwide taxable income to Alaska, based on the average of three factors as they pertain to the corporation's Alaska operations: (1) tariffs and sales, (2) oil and gas production, and (3) oil and gas property.

Historically, oil and gas corporate income tax revenue has varied with oil prices and oil industry profits. In FY 1982, revenue from this tax was $668.9 million. As recently as FY 1994, the oil and gas corporate income tax generated only $17.8 million. For the past three years, revenues from the oil and gas corporate income tax have risen along with oil prices and oil industry profits, generating $661.1 million in FY 2006. This is the highest level for collections since the early 1980s.[38]

[37] Alaska Department of Revenue, Tax Division, *Revenue Sources Book, Spring 2007*, p.2.
[38] Ibid, p. 38.

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Oil royalties

Almost all Alaska oil and gas production occurs on state lands leased for exploration and development. As the land owner, the state earns revenue from leasing as: (1) upfront bonuses, (2) annual rent charges and (3) a retained royalty interest in oil and gas production.[39]

The State of Alaska receives a royalty of approximately 12.5 percent of the oil and gas produced from leases on state lands. The state may take its share of oil production "in-kind" or "in-value." When the state takes its royalty share in-kind (RIK), it assumes possession of the oil or gas. The commissioner of the Department of Natural Resources may sell the RIK oil or gas in a competitive auction or through a noncompetitive sale negotiated with a single buyer. When the state takes its royalty in-value (RIV), the producers market the state's share along with their own share of production. The lessees remit cash payments on a monthly basis for the state's RIV share.[40]

Over the last 30 years the state has taken about one-half its royalty oil as RIK. The state has sold nearly 800 million barrels of RIK oil during this time, most of it in-state. These in-state sales provide long-term supplies of oil to each of the state's four refineries.

Cook Inlet

In 1969 the commissioner of the Department of Natural Resources negotiated a sale of 100 percent of the state's royalty share from Cook Inlet to the Alaska Oil and Refining Company. Within months after that, Alaska Oil and Refining Company merged with the Tesoro Petroleum Company. Tesoro subsequently built a new refinery in Nikiski on the Kenai Peninsula, next to Chevron's refinery, built in 1964. Between 1969 and 1985 the state sold all its Cook Inlet royalty oil to the Tesoro refinery. By 1980, the production decline in Cook Inlet prompted Tesoro to negotiate the first of several sales contracts with the state for supplies of RIK oil from the North Slope. By the end of 1985 Tesoro had replaced its Cook Inlet RIK volumes with supplies of RIK from the North Slope.

In 1987 the state began to export Cook Inlet RIK oil to the Chinese Petroleum Company. These volumes were produced from fields on the west side of Cook Inlet, after the federal government exempted Cook Inlet production from export administration regulations. The state sold 97 percent of the royalty production from the McArthur River, Trading Bay, North Trading Bay, and Granite Point fields in a series of one-year competitive auctions. In 1991 deliveries under the last Chinese Petroleum contract were halted following the December 1989 eruption of the Mount Redoubt volcano. There have been no Cook Inlet RIK sales since that time.

North Slope

Over the past 25 years, the state has held nine RIK sales involving portions of its Alaska North Slope (ANS) royalty oil production. These sales are summarized in Figure 10. For detailed information on royalty oil sales, see the Division of Oil and Gas Annual Report.

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[39] Ibid, p. 29.

[40] Alaska Department of Natural Resources, Division of Oil and Gas, *2007 Annual Report*, p. 4-1.

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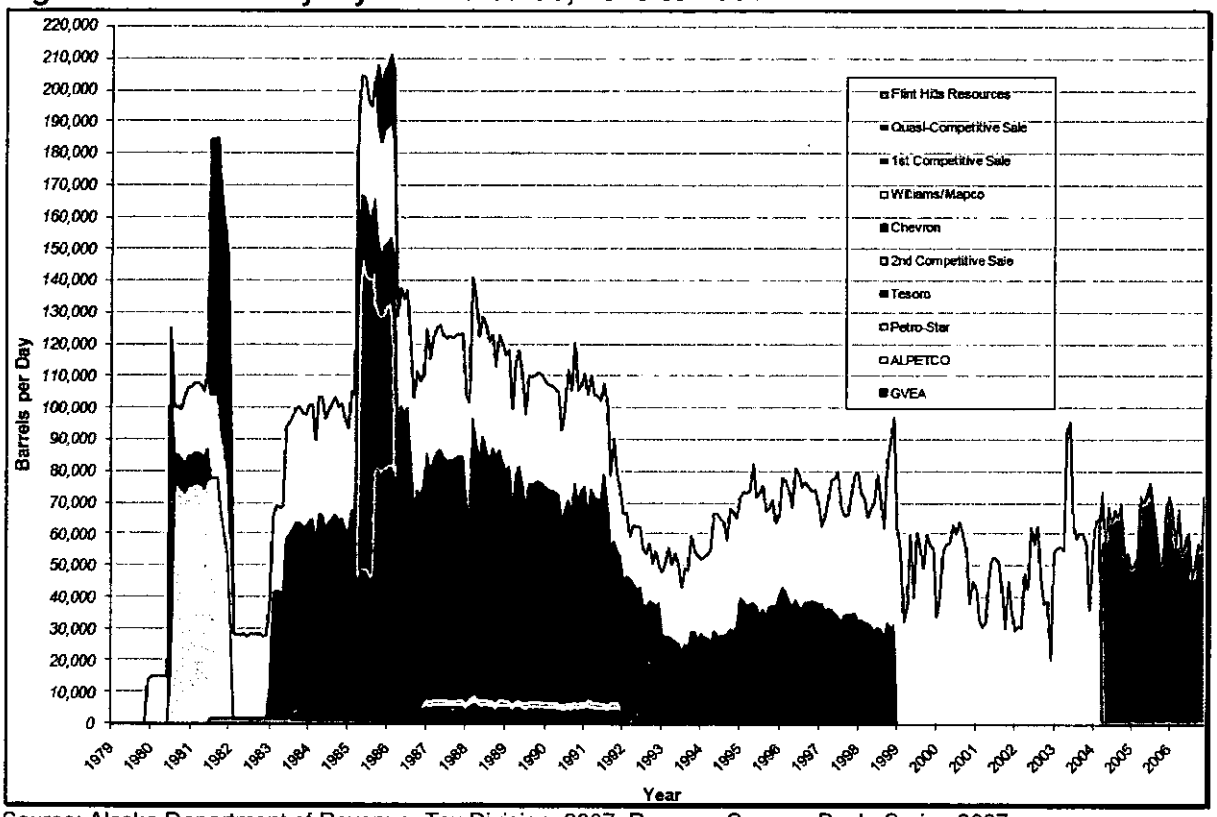
What is significant for this study is that the State of Alaska has negotiated various terms into its royalty in-kind contract sales to Alaska refineries, including use of the Alaska Railroad to transport fuels and requirements to upgrade tank farms.

Figure 10. Alaska royalty In-kind sales, 1979 to 2006



Source: Alaska Department of Revenue, Tax Division, 2007, Revenue Sources Book, Spring 2007.

In addition to taxes collected to compensate the state for development of its publicly-owned oil resources, the state government also collects other oil-related taxes to offset the costs of specific programs. These include the Hazardous Release Surcharge assessed on crude oil production and motor fuel taxes assessed on refined products.

Hazardous release surcharge

The Oil and Hazardous Substance Release Prevention and Response Fund was created by the legislature in 1986 to provide a "readily available funding source to investigate, contain, and clean up oil and hazardous releases." An amendment in 1994 divided the fund into two separate accounts comprised of: (1) the Response Account, which is a surcharge on all oil production, except federal and state royalty barrels, that may be used to finance the state's response to an oil or hazardous substance release declared a disaster by the governor; (2) the Prevention Account, which is an additional surcharge on all oil production, except federal and state royalty barrels, that may be used for cleaning up oil and hazardous substance releases not declared a disaster by the governor; it can also be used to fund oil and hazardous substance release prevention programs in Alaska.

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When the PPT was passed, the Response surcharge (AS 43.55.201) was changed from $.02 to $.01 and the Prevention surcharge (AS 43.55.300) was increased from $.03 to $.04. Both of these changes took effect April 1, 2006. The Response surcharge is suspended when the balance of the Response account is equal to or exceeds $50 million. As of February 28, 2007, the cumulative balance of the account was $42.4 million. The Response Surcharge was re-imposed effective April 1, 2007, by the Department of Revenue.[41]

Motor fuel taxes

For many years, fuel taxes and other revenues from highway users levied by the federal government and states have been a primary source of funds for federal and state highway programs. Nationally, a relatively small number of counties and municipalities also levy fuel taxes to finance road improvements, but these local governments rely primarily on general funds, property taxes, sales taxes, and other revenues unrelated to highway users to finance local road and street construction, maintenance, and operation.[42]

Federal fuel taxes, for the most part, are deposited in the Highway Trust Fund (HTF), which is used to fund highway construction projects. Alaska receives funds annually, and in excess of what Alaskans contribute to the fund, for road projects (Table 12). The Alaska fuel tax primarily pays for road operation and maintenance costs.

Historically, states and the federal government have viewed fuel taxes as an attractive revenue source for highway construction and maintenance programs for several reasons. First, the revenues from fuel taxes are linked, although imperfectly, with road use. In addition, fuel tax revenues historically have been relatively stable and predictable. Legislators or the electorate, in states other than Alaska, have been willing to increase the fuel tax rates when necessary to meet highway improvement needs. Fuel taxes are attractive revenue sources also because costs of administering the programs to collect fuel taxes are relatively low.

The Alaska motor fuel tax dates back to 1945, when the legislature imposed a tax of 1cent per gallon on all motor fuel. Over time, the legislature enacted separate tax rates for each of the fuel categories as they exist today.

Alaska levies the motor fuel tax on motor fuel sold, transferred, or used within Alaska. The Alaska Department of Revenue's Tax Division collects motor fuel taxes primarily from wholesalers and distributors who hold "qualified dealer" licenses. Current per gallon rates are 8 cents for highway use, 5 cents for marine fuel, 4.7 cents for aviation gasoline, 3.2 cents for jet fuel, and a rate of 8 cents or 2 cents for gasohol, depending on the season, location, and EPA mandate.

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[41] Ibid, p. 29.

[42] March, Jim, *The Future of Highway Financing*, Innovative Financing Series: Article 3, Federal Highway Administration, Turner-Fairbank Highway Research Center, Public Roads Magazine, November/December 2005.

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In addition to sales between qualified dealers, the following sales and uses are exempt from motor fuel tax:

- Heating
- Federal, state, and local government agencies
- Foreign flights (jet fuel)
- Exports
- Power plants/utilities
- Charitable institutions
- Gasohol (only fuel containing at least 10% alcohol, derived from wood or seafood waste)
- Bunker fuel (residual fuel oil or #6 fuel oil)

Consumers may claim refunds for the full Alaska tax rate if they used the fuel for exempt purposes; or for the difference between the tax rate and 2 cents per gallon, if they used the fuel off-highway. Resellers, usually retailers, may claim refunds for the full tax if they paid the tax and then sold the fuel for exempt use and did not collect the tax.

Most of the excise taxes credited to the HTF are not collected directly from the consumer by the federal government. They are, instead, paid to the Internal Revenue Service by the producer or importer of the taxable product (except for the tax on trucks and trailers, which is paid by the retailer, and the heavy-vehicle use tax, which is paid by the heavy-vehicle owner). As a result, most of the federal fuel taxes come from a handful of states—those where major oil companies are headquartered—and most tire taxes are paid from Ohio, the home of the U.S. tire industry. These taxes become part of the price of the product and are ultimately paid by the highway user.[43]

Table 12. Federal highway user taxes

Fuel Type	Effective Date	Tax Rate (cents per gallon)	Distribution of Tax		
			Highway Trust Fund		Leaking Underground Storage Tank Trust Fund
			Highway Account	Mass Transit Account	
Gasoline	10/1/1997	18.4	15.44	2.86	0.1
Diesel	10/1/1997	24.4	21.44	2.86	0.1
Gasohol	1/1/2005	18.4	15.44	2.86	0.1

Source: Federal Highway Administration, 2007.

In some cases, the federal motor-fuel tax has already been paid by the producer/ distributor or retailer on motor fuel that will ultimately be used by an exempt user or for an exempt purpose. In such cases, the end user may purchases fuel at a price that includes

[43] Federal Highway Administration, Financing Federal-Aid Highways, The Highway Trust Fund, www.fhwa.dot.gov/reports/fifahiwy/fifahi05.htm

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the tax and must apply for a refund of the tax. For sales of diesel fuel to state and local governments, and for tax exempt purposes such as heating, the wholesaler or retailer (the ultimate vendor) sells the fuel to the end user at a price excluding the tax and applies for the refund. The federal fuel tax refund is primarily done through the federal income tax process.[44]

Although fuel oil is not subject to state or federal taxes, diesel for motor fuel—a virtually identical product—is taxed. In other states, fuel oil is dyed to distinguish it from the taxable motor fuel. But because Alaska markets are so small, Alaska is not required to dye fuel oil, and the two products can be shipped together. Because the taxable and non-taxable fuels are typically mixed for shipment, it is possible that at times households may in fact pay taxes on fuel oil—because the taxes have been levied at some earlier point. In that case, households can apply for refunds on those taxes. But our research indicates that in most cases households do not pay federal and state taxes on fuel oil. Instead, wholesale or retail sellers (depending on the circumstances of the sale) determine which sales are exempt from federal and state taxes, and apply for refunds of any such taxes they paid on fuel ultimately sold for home heating.

Local Taxes

In addition to state and federal fuel taxes, some Alaska communities charge local sales taxes, and fuel taxes on a percentage or cents per gallon basis. Communities with these types of taxes are shown in Table 13 below. Specific sales tax revenues attributable to fuel sales are not reported or broken out.[45] According to Steve Van Sant, Alaska's state assessor, when a city or borough has a general sales tax, it is typically applied to all sales, including fuel, unless specifically exempted. He is not aware of any communities that have exempted fuel from their general sales tax.

Specific fuel taxes (note for example Bettles, Cold Bay, and Sitka in Table 13) are usually a fuel transfer tax that occurs when the fuel is transferred into or out of a city. The fuel transfer tax is not linked to final sales to households. Any new community fuel taxes would most likely be on bulk sales and are unlikely to be added in communities that already have a general sales tax on the books.[46] The places with specific fuel taxes appear to primarily be those that have large commercial users of fuel such as fishing boats or cruise ships . In addition to local sales taxes and fuel taxes, some communities may charge wharfage fees for port deliveries, including fuel deliveries. These charges most likely are included in the final retail prices charged to consumers and are not a tax per se. Fuel transfer taxes would be included in the final sales price charged to consumers by the retailer who paid the fuel transfer tax.

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[44] Generally, diesel fuel and kerosene are taxed in the same manner as gasoline. However, special rules (discussed later) apply to dyed diesel fuel and dyed kerosene, and to undyed diesel fuel and undyed kerosene sold or used in Alaska for certain nontaxable uses and undyed kerosene used for a feedstock purpose.
Internal Revenue Service, Publication 510. http://www.irs.gov/publications/p510/ch01.html#d0e1299

[45] Van Sant, Steve, 2007, Alaska Department of Commerce, Community and Economic Development, Division of Community Advocacy, Alaska Taxable 2006, Table 2.

[46] Van Sant, Steve, State Assessor, personal communication, November 19, 2007.

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Table 13. Local sales and special taxes and tax revenues

Municipality	Sales Tax	Revenues	Special Tax	Revenues
Alakanuk	4%	$92,532	No	
Aleknagik	5%	$80,358	5% Bed Tax	$3,390
Anderson	No		8% Utility Tax	$43,141
Aniak	2%	$47,465	No	
Bettles	No		$.02/gal. Fuel Transfer Tax	$3,416
Brevig Mission	3%	$29,000	No	
Buckland	6%	$71,469	No	
Chefornak	2%	52,788	2% Raw Fish Tax	
Cold Bay	No		10% Bed Tax/$.04/gal. Fuel Tax	$20,150/$46,735
Cordova	6%	$2,469,977	6% Bed Tax/6% Vehicle Rental Tax	$84,091/$17,080
Craig	5%	$1,394,532	6% Liquor Tax	$96,067
Deering	3%	$13,396	No	
Denali Borough	No		Sev.Tax $.05/yd grvl-$.05 ton-coal; Bed Tax 7%	$87,958/$2082882
Dillingham	6%	$2,206,634	10% Bed & Liquor Tax/6% Gaming Tax	$249,839/$111,160
Diomede	3%	$9,015	No	
Eek	2%	$24,000	No	
Elim	2%	$28,738	No	
Emmonak	3%	$148,000	NR	
False Pass	3%	$22,382	6% Bed Tax	
Fort Yukon	3%		No	
Gambell	3%	$68,810	No	
Gustavus	2%	$188,537	4% Bed Tax	$52,091
Haines Borough	5.5%	$1,973,088	4% Bed Tax	$56,650
Homer	4.50%	$5,809,399	No	
Hooper Bay	4%	$200,679	No	
Houston	2%	$172,484	No	
Hydaburg	4%	$25,856	No	
Juneau, City & Borough of	5%	$34,587,598	7% Bed Tax/ 3% Liquor Tax/ $.30/pack Tobacco	$955,000/$715,000/$473,922
Kake	5%	$167,354	No	$5,686
Kenai	3%	$4,404,148	No	
Kenai Peninsula Borough	2%	$16,701,322	No	
Ketchikan	3.5%	$9,101,177	7% Bed Tax	$395,074
Ketchikan Gateway Borough	2.5%	$6,412,198	4% Bed Tax	$42,834
King Cove	4%	$1,636,507	2% Fisheries Tax/Business impact tax-flat rate	Fisheries tax incld in sales tax
Klawock	5.5%	$555,074	6% Bed Tax	$7,690
Kodiak	6%	$7,814,820	5% Bed Tax	$105,992
Kodiak Island Borough	No		10.25 mill Severance Tax/5% Bed Tax	$1,186,908/$47,645
Kotlik	3%	$78,313	No	
Kotzebue	6%	$2,727,047	6% Bed Tax/ 6% Alcohol Tax	$37,514/$43,574
Koyuk	2%	$25,776	NR	
Kwethluk	5%	$111,456	No	
Lake & Peninsula Borough	No		2% Raw Fish Tax/Guide Fees/6% Bed Tax	$943,747/$22,473/$165,883
Larsen Bay	3%	$6,163	No	
Manokotak	2%	$6,938	No	
Marshall	4%	$54,006	No	

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Table 13. Local sales and special taxes and tax revenues, continued

Municipality	Sales Tax	Revenues	Special Tax	Revenues
Mekoryuk	2%	$170,502	No	
Mountain Village	3%	$120,172	No	
Napakiak	3%	$42,147	No	
Nenana	4%	$129,687	Motor Vehicle Tax	$7,225
Newhalen	2%		The City does not collect any sales tax	
Nome	5%	$3,669,606	4% Bed Tax	$83,310
North Pole	4%	$218,282	No	
Nunam Iqua (Sheldon Point)	4%	$1,364	No	
Nunapitchuk	3%	$100,384	No	
Old Harbor	3%	$19,904	5 %Bed Tax	$729
Ouzinkie	3%	$10,108	No	
Palmer	3%	$3,829,234	No	
Pelican	4%	$58,501	10% Bed Tax	$4,537
Petersburg	6%	$2,431,614	4% Bed Tax	$40,489
Pilot Station	4%	$60,420	No	
Point Hope	3%	$104,421	No	
Port Alexander	4%	$24,683	6% Bed Tax	No revenue reported
Quinhagak	3%	$79,618	No	
St. Mary's	3%	$100,997	NR	
Saint Paul	3%	$366,581	Fish Tax 3%	$562,490
Sand Point	3%	$633,862	7% Bed Tax/2% Raw Fish Tax	$17,003/$605,291
Savoonga	3%	$40,925	No	
Saxman	3.50%	$50,914	No	
Scammon Bay	2%	$30,034	No	
Selawik	5%	$114,833	No	
Seldovia	2%/4.5%	$122,090	No	
Seward	4%	$3,413,087	4% Bed Tax	$284,656
Shungnak	2%	$11,522	No	
Sitka, City & Borough of	5%/6%	$9,277,571	6% Bed Tax/ $.02/gal Fuel Tax	$355,870/$5,121
Skagway	4%	$4,866,950	8% Bed Tax	$157,691
Soldotna	3%	$6,348,529	No	
Stebbins	3%	$47,190	No	
Tanana	2%	$21,461	No	
Teller	3%	$15,211	No	
Tenakee Springs	2%	$13,092	Bed Tax 6%	$521
Thorne Bay	5%	$226,917	No	
Togiak	2%	$98,069	2% Raw Fish Tax	$35,396
Toksook Bay	2%	$37,566	No	
Unalakleet	3%	$143,988	5% Bed Tax/5% Alcohol Tax/Baler 2%	$5,106/$5,381/$95,200
Unalaska	3%	$6,049,831	2% Raw Fish Tax/1% Capitol Sales Tax/ 5% Bed	$4,193,082/$3,004,035/$162,072
Wasilla	2.5%	$10,433,805	Alcohol tax, Aviation fuel tax	$100,725/$17,500
White Mountain	1%	$14,176	No	
Whittier	3%	$248,256	3% Passenger Trans. Tax/3% Fuel Tax	$126,181/$17,147
Wrangell	7%	$2,104,741	$4 per night Bed Tax	$24,380
Yakutat, City & Borough of	4%	$748,490	1% Raw Fish Tax/8% Bed & Car Rental Tx	$20,540/$165,477

Source: Van Sant, Steve, 2007, Alaska Department of Commerce, Community and Economic Development, Division of Community Advocacy, *Alaska Taxable 2006*.

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VI. Subsidies and Assistance Programs

The cost of living is higher in Alaska, according to conventional wisdom. In fact, a report in the October 2007 issue of *Alaska Economic Trends* found that energy costs in Alaska posted one of the sharpest increases in 2006, at 13.9 percent. From 2002 to 2006, energy prices rose 51 percent.[47] In response to the increased cost of energy (including fuel prices), the State of Alaska created or increased funding for a number of energy financial assistance programs. These programs were developed to help communities and individuals pay for mounting fuel and energy costs. This includes the following energy assistance programs:

- Municipal Energy Assistance Program
- Bulk Fuel Revolving Loan Fund
- Power Cost Equalization (PCE)
- Low Income Energy Assistance Program
- Bulk Fuel Upgrades
- Rural Alaska Fuel Services (RAFS) program
- Citgo Program

These programs are discussed below.

Municipal Energy Assistance Program

Funding for the Small Municipality Energy Assistance Program[48] is a result of a special appropriation request by then-Governor Murkowski to address historically high fuel costs that created significant financial hardship for small municipalities and their residents. During the fiscal years 2006, 2007, and 2008, the program administered funds to numerous communities across Alaska. Funds are distributed to small villages, municipalities of various sizes, boroughs, and village and tribal councils. The grant funds must be used in the following order:

1. To repay any indebtedness of the city or borough to the Bulk Fuel Revolving Loan Fund, administered by the Alaska Energy Authority
2. To repay any indebtedness of the city or borough to a fuel company or fuel vendor
3. For the purchase of fuel by the city or borough.

Over $6.5 million was distributed among communities in fiscal year 2006, $48 million in 2007, and $48.7 million in 2008. Energy Assistance distributions to the ten case study communities are shown in Table 14.

[47] Fried, Neal and Dan Robinson, "The Cost of Living in Alaska," *Alaska Economic Trends*, October 2007.
[48] For more information about the Small Municipality Energy Assistance Program please see website: http://www.commerce.state.ak.us/dca/energy_assist.htm

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Table 14. Small Municipality Energy Assistance Program Payments, FY 06 to FY08

Community Name	FY 06 Funds	FY 07 Funds	FY 08 Funds
Allakaket/Alatna	$44,791	$36,944	$79,416
Angoon	$44,791	$43,326	$97,644
Bethel	$0	$223,971	$348,039
Chitina	$0	$0	$31,152
False Pass	$22,395	$40,000	$77,537
Fort Yukon	$44,791	$25,309	$102,999
Lime Village	$0	$0	$26,326
Mountain Village	$67,187	$66,053	$112,395
Unalakleet	$67,187	$50,253	$109,153
Yakuat	$67,187	$17,496	$279,784

Source: Bill Rolfzen, Program Administrator, Small Municipality Energy Assistance Program.

Bulk Fuel Revolving Loan Fund

The Bulk Fuel Revolving Loan Program is administered by the Alaska Energy Authority. The fund was created to "assist communities, utilities or fuel retailers in small rural communities in Alaska in purchasing emergency, semi-annual or annual bulk fuel supplies." Loans are for the purchase of new fuel and are not provided for fuel already purchased, in the process of being used, or already consumed. An organized municipality or unincorporated village with a population under 2,000, or private individuals, corporations, or cooperatives, are eligible to apply as long as the applicant does not have any outstanding AEA bulk fuel loans. The bulk fuel loan may be used for:

- Municipal electrical power generators; municipal heavy equipment
- Heating fuel for the municipality, residents, and businesses
- Municipal, business and residential motor vehicles and for subsistence purposes

The fund does not cover the purchase of aviation fuel or other non-fuel related supplies. The loan is expected to be repaid within one year, and the terms of the loan are generally nine equal monthly installments. No interest is charged on the first bulk fuel loan and 5% interest is charged on the second loan. The third or subsequent loans are charged an interest rate equal to the average weekly yield of municipal bonds for the proceeding year.

Bulk fuel loans funded from 2006 to 2007 covered the purchase of diesel #1, diesel #2, and gasoline in various communities. Mountain Village was the only one of the ten case study communities to receive a bulk fuel revolving loan during fiscal year 2006 or 2007.

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Power Cost Equalization (PCE)

The Power Cost Equalization program (PCE) was created to provide economic assistance to customers in rural areas of Alaska where the kilowatt-hour charge for electricity can be three to five times higher than the charge in more urban areas of the state. The program attemptss to equalize the power cost per kilowatt-hour statewide.

The PCE program is administered by the Alaska Energy Authority. Participating utilities must register with the Regulatory Commission of Alaska (RCA). The RCA sets the PCE level for each utility, based on cost of electric generation. An eligible residential customer may receive PCE credit on the first 500 kWh consumed each month. The community also receives credit toward electricity used in community facilities, based on the population of the community.

Low Income Energy Assistance Program

The Low Income Energy Assistance Program was created with funds from the State of Alaska to help low-income households offset the high price of home heating. The grant program is administered by the Division of Public Assistance in the Department of Health and Social Services, and it's known as the Heating Assistance Program (HAP). The funds are available to any residents or households with incomes below the poverty level. The funds may be used to:

- Conduct outreach activities and provide assistance to low income households in meeting their home energy costs—"heating assistance"
- Intervene in energy crises—"crisis assistance"
- Provide low-cost residential weatherization and other cost-effective, energy-related home repair—"weatherization assistance"

The program provides funds on a household basis rather than on a community basis. Households in all ten case study communities received assistance in fiscal year 2007.

Bulk Fuel Upgrades

The Denali Commission and the Alaska Energy Authority (AEA) are working together to reduce the cost of energy by funding bulk fuel upgrades across Alaska. The Denali Commission funds the Bulk Fuel Upgrade while AEA does the planning and construction of the storage facilities. This benefits communities, because they then have more storage capacity and can order more fuel in bulk. And because the facilities are made compliant with environmental standards, they are more reliable and less prone to spills or leaks—which helps reduce the cost of fuel in rural villages.

The bulk fuel program does not provide funds to communities which are part of the Alaska Village Electric Cooperative (AVEC), are within the North Slope Borough, or are connected by roads. Among the ten case study communities, five are currently receiving or have received funds in the past for bulk fuel upgrades. The communities of Yakutat, Chitina, Bethel, Mountain Village, and Fort Yukon did not receive funds for bulk fuel upgrades. Mountain Village is an AVEC community; Chitina is on the road system; and Yakutat, Bethel, and Fort Yukon have bulk fuel facilities provided by large distribution companies such as Crowley or Delta Western. The communities of Allakaket/Alatna,

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Lime Village, False Pass, and Angoon have completed bulk fuel upgrades through this program. Unalakleet is currently in the final construction phase of its bulk fuel facility.

Rural Alaska Fuel Services Program

Rural Alaska Fuel Services (RAFS) was created in 2004 as a non-profit corporation, organized to contract for operating and maintaining rural Alaska bulk fuel storage facilities construct by the Denali Commission and the Alaska Energy Authority. All bulk fuel facilities in Alaska must be maintained and operated in accordance with all applicable state and federal regulations. RAFS also offers the following services to rural communities in Alaska:

- Business planning
- Operations and management services
- Testing and inspections
- Operational training for employees
- Facility oversight
- Record-keeping and reporting
- Sustainability

One of the most important roles RAFS plays is advising communities on developing fuel pricing structures. RAFS helps communities determine the correct price, so they can recover their costs and avoid financial crises. RAFS has found that meeting with community residents to explain the components of fuel costs makes them more understanding about why they need to pay higher prices.

In the three years since RAFS was established, it has helped 30 Alaska communities. Of the ten case study communities, none of them have so far worked with RAFS.

Citgo

A Venezuelan owned oil company, Citgo, donated fuel to many rural Alaska villages during the winters of 2006 and 2007. The company paid for 100 gallons of fuel for every household in 151 villages in Alaska. This fuel was worth roughly $5 million—equating to a savings of more than $700 in fuel costs for each recipient household during the 2006 and 2007 winters.

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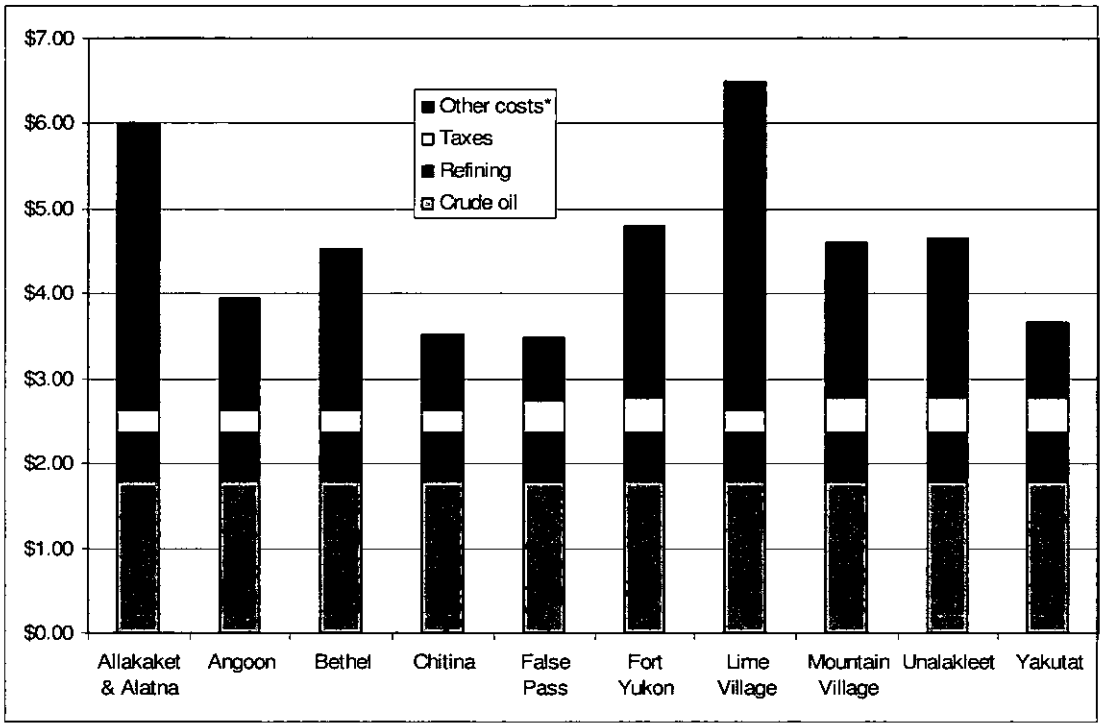
VII. Comparative Case Study Results

Figures 11 and 12 summarize the components of gasoline and heating fuel prices in our ten case study communities. After that we look at the communities individually.

Figure 11. Components of gasoline prices in case study communities



* Other costs include transportation, storage, and retailer markup
Crude oil: EIA's Refiner Acquisition Cost of Crude Oil, PADD 5 (West Coast), Sept. 2007, composite (domestic & international)
Not available for Alaska alone, http://tonto.eia.doe.gov/dnav/pet/pet_pri_rac2_dcu_r50_m.htm
Refined price: EIA's Refiner Petroleum Product Prices by Sales Type, Alaska, Sales for Resale, Sept. 2007
http://tonto.eia.doe.gov/dnav/pet/pet_pri_refoth_dcu_SAK_m.htm

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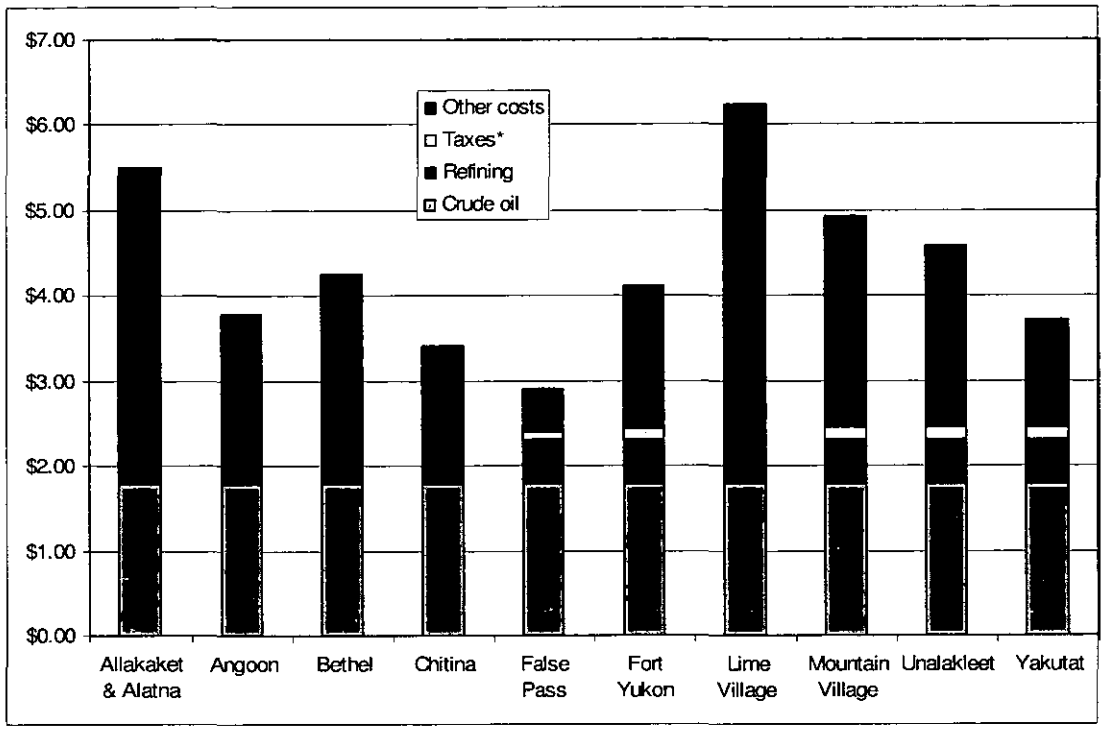
Figure 12. Components of diesel for heating prices in case study communities**



* Taxes include only local sales tax.
** Communities identified their heating fuel as #1, but Alaska refinery prices from EIA were only available for #2.

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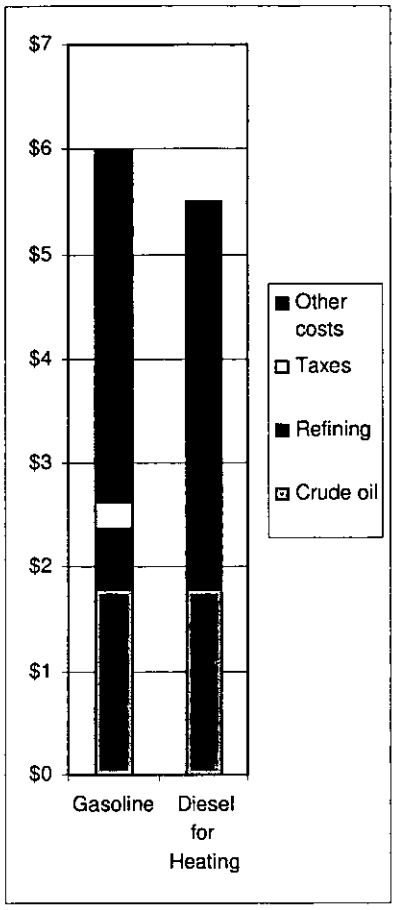
Allakaket/Alatna



Together, the neighbor communities of Allakaket and Alatna (across the Koyukuk River from each other) have a total population of about 125. They are in northern Alaska, above the Arctic Circle. They receive their fuel by airplane, because fuel barges can't navigate the upper Koyukuk River.

In November 2007 gasoline retailed for $6.00 per gallon and diesel for heating was $5.50 per gallon in Allakaket/Alatna. There is no local sales tax in either community. The "other" costs" for fuel in Allakaket/Alatna amounted to roughly $3.37 per gallon for gasoline and $2.95 for fuel oil in late 2007. Several factors tend to increase or ameliorate the "other" fuel prices in these places:

⇧ Only method of transportation is by air.

⇩ Long runway that could support larger airplanes carrying more fuel. However, because of small population, delivered quantities are small and so delivery charge is higher per gallon.

⇧ Storage capacity is only 16,000 gallons, but this does not seem to be a constraint on deliveries, because quantity delivered in 2007 was only 7,500 gallons.

⇔

⇩ There are at least two suppliers to the community, and barriers to entry in air transportation are low compared with those in barging—so there is potential for competition.

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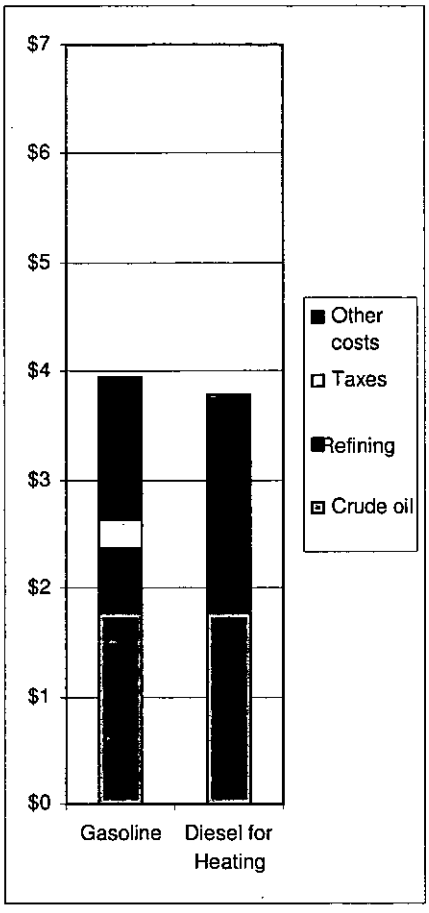
Angoon



Angoon is located on Admiralty Island in Southeast Alaska; south of the capital city of Juneau. Angoon has a current population of 497; the population has decreased over the past few years. All fuel is barged to Angoon by Petro Marine.

In November 2007, gasoline retailed for $3.96 per gallon and fuel oil for $3.79 per gallon. There is no local sales tax in the community. The "other" components of fuel prices in Angoon were roughly $1.33 for gasoline and $1.24 for fuel oil. Factors tending to increase or ameliorate these "other" costs include:

⇧ Only fuel delivery method is by barge.

⇩ Ice-free port in Southeast Alaska, roughly 900 miles from both Anacortes and Anchorage.

⇧ Fuel has to be lightered to community, typically from Ketchikan.

⇩ Fuel can be delivered any time; typically there are eight deliveries per year.

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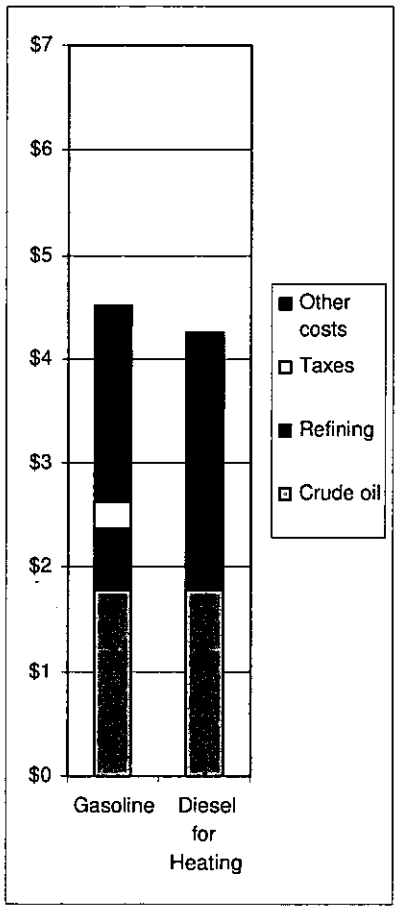
Bethel



Bethel is located at the mouth of the Kuskokwim River and has a population of 5,812. All fuel for Bethel is barged on the Kuskokwim River. It is a regional fuel distribution hub and has a storage capacity of 14 million gallons.

In November 2007 gasoline retailed for $4.52 per gallon and diesel for heating for $4.25 per gallon. There is no local tax on fuel in the community. The "other" costs for fuel in Bethel in late 2007 were roughly $1.89 for gasoline and $1.70 for fuel for heating. Factors affecting those extra costs include:

⇧ Only method of transportation is barge.

⇩ Large fuel hub community.

⇧ Port and river both freeze up in winter.

⇧ Fuel has to be lightered into community.

⇩ Can receive multiple shipments (10+) per year when river is not frozen.

⇧ Large storage facility owned by Crowley Marine. We don't know how much fuel stored in the community is distributed to other regional communities and how much goes to Bethel residents.

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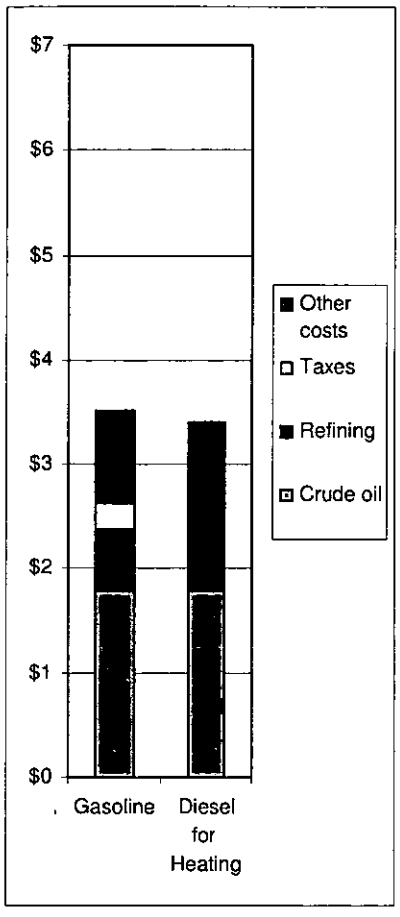
Chitina



Chitina is on the road system in southcentral Alaska. Chitina and has a population of 110. All fuel in Chitina is transported by road from Anchorage.

Gasoline retailed for $3.52 per gallon and diesel for heating is $3.41 per gallon in November 2007. There is no local tax on fuel in the community. The "other" costs contributing to fuel prices in Chitina in late 2007 were roughly $0.89 for gasoline and $0.86 for fuel for heating. Various factors tend to increase or decrease those other costs:

⇩ On the road system only 247 miles from Anchorage.

⇩ Can receive fuel any time; not weather dependent.

⇩ Fuel usually comes by truck.

⇩ Storage facility is publically owned;

⇩ There are many companies that could potentially deliver fuel, with relatively low cost of capital, skill and experience.

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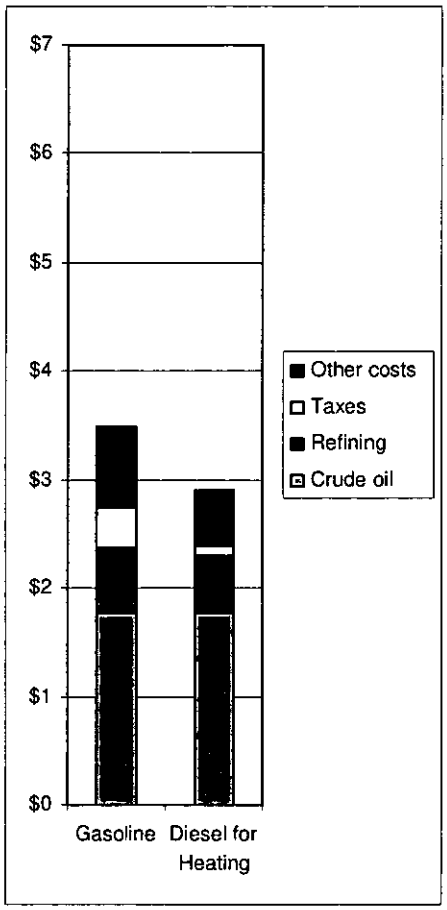
False Pass



False Pass is on Unimak Island in the Aleutian Chain. It has a year-round population of about 54, the population increases when fishermen and fish processors arrive for the fishing season. All fuel for False Pass is barged in.

In November 2007 gasoline retailed for $3.49 per gallon and fuel oil for $2.90 per gallon. The community has a 3% sales tax that applies to fuel sales. The "other" fuel costs in late 2007 were roughly $0.75 for gasoline and $0.26 for fuel oil. Several factors tend to increase or hold down those other costs:

⇧ Can only receive fuel by barge.

⇩ Relatively close to large ports (Dutch Harbor and Anchorage).

⇧ Ice-free port.

⇧ Fuel has to be lightered to community.

⇩ Small marine distance from larger facilities.

⇩ Only receives one delivery per year but has a large storage capacity to serve many commercial fisherman and fish processors in the area.

⇩ Storage Facility is owned by Peter Pan Seafood, a private company. Large throughput due to fishing fleet and location near multiple fishing grounds.

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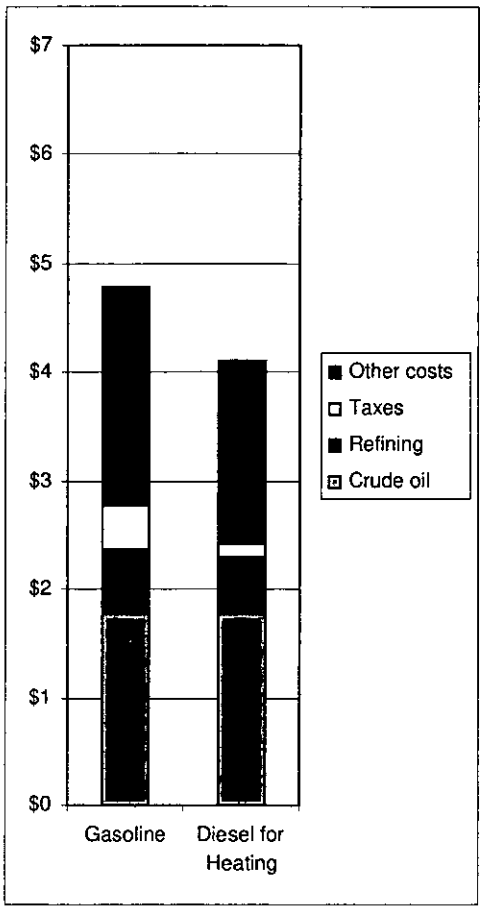
Fort Yukon



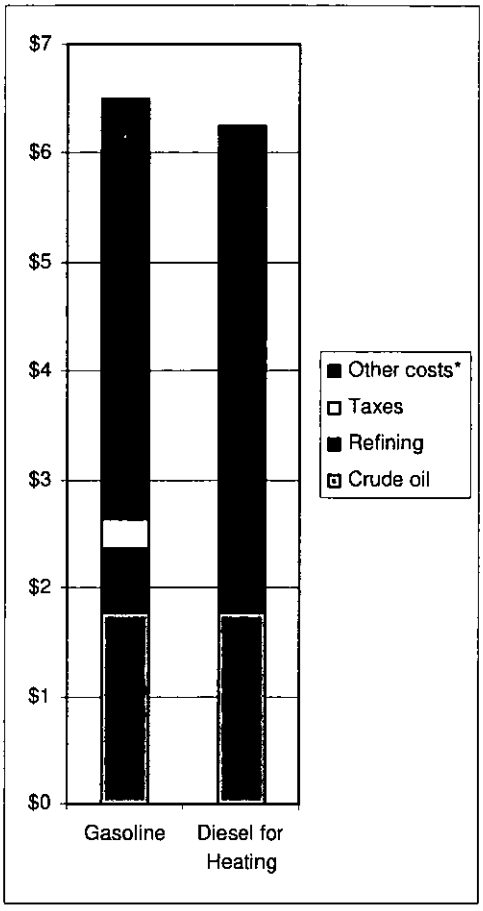
Fort Yukon is on the upper Yukon River northeast of Fairbanks and has a population of about 570. All fuel for Fort Yukon is barged upriver from Nenana by Crowley Marine.

Gasoline retailed for $4.79 per gallon and fuel oil for $4.12 per gallon in November 2007. Ft. Yukon has a 3% local sales tax that applies to fuel sales. Other costs adding to fuel prices, in addition to costs of crude oil and refining, were roughly $2.01 for gasoline and $1.44 for fuel oil in late 2007. Those other costs can largely be attributed to several factors:

- Fuel barged 400 river miles upriver from Nenana.
- River and port freeze up during winter.
- Fuel has to be lightered to community.

4975

Lime Village



Lime Village is on the Stony River in the Kuskokwim Delta of western Alaska. It has a total population of just about 25; the population has declined over the past few years due to lack of jobs and the school closing. All fuel for Lime Village is shipped by air.

In November 2007 gasoline retailed for $6.50 per gallon and fuel oil for $6.25 per gallon. There is no local tax on fuel in the community. The "other" costs adding to the price of fuel in Lime Village in late 2007 were roughly $3.87 per gallon for gasoline and $3.70 for fuel oil. Several things make those other costs high:

⇧ All fuel has to come by air, because barges can't navigate the Stony River to Lime Village

⇧ Very short runway for airplanes; can only handle small shipments per trip.

⇧ Fuel is barged from Bethel to Sleetmute and then transferred to planes for delivery to Lime Village.

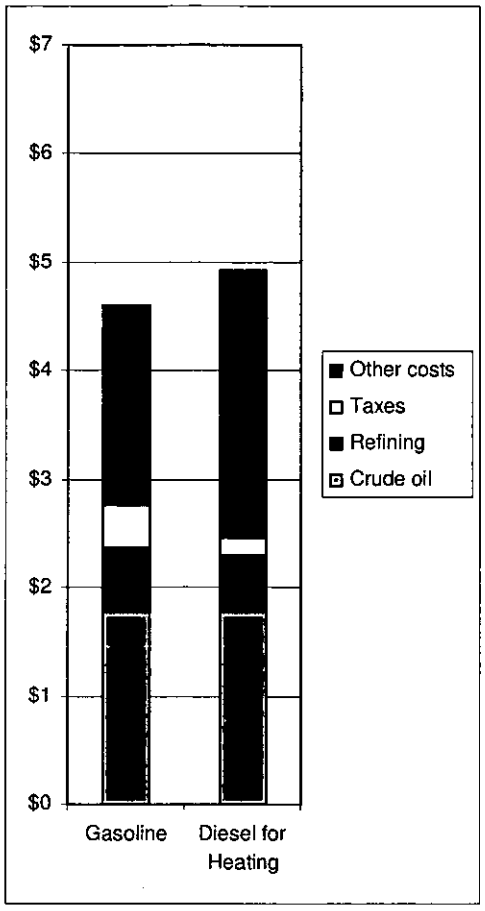
⇧ Can receive fuel shipments any time of the year but is very expensive.

⇧ Storage facility is publicly owned, but is very small (only 1,800 gallon capacity for the community).

⇧ Small population means delivery charges are spread over fewer gallons.

4976

Mountain Village



Mountain Village is on the Yukon River in Northwest Alaska, close to Norton Sound and the Bering Sea. About 786 people live there. Most fuel for Mountain Village is barged down the Yukon River from Nenana, but occasionally deliveries are lightered from ocean-going vessels at the mouth of the Yukon and shipped upstream.

In November 2007 gasoline retailed for $4.60 per gallon and fule oil for $4.92 per gallon. The community has a 3% sales tax. The "other" costs of fuel in Mountain Village in late 2007 were roughly $1.83 for gasoline and $2.22 for fuel oil. Several things tend to increase or hold down those other costs:

⇧ Barging on the lower Yukon River is the only method of transportation.

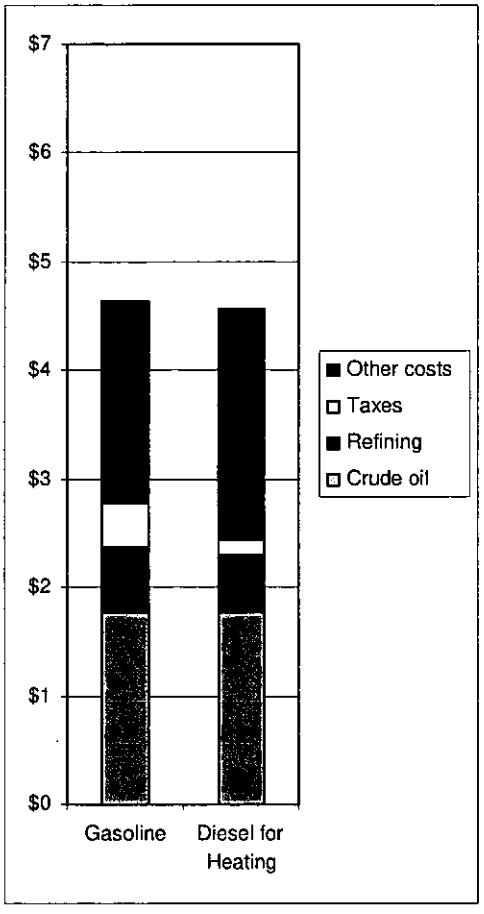
⇧ Can only deliver during times of the year when river is not frozen.

Fuel has to be transported in a shallow draft barge; Nenana is main hub port, roughly 1,200 miles upriver.

⇩ Publicly owned storage facility, with a capacity of 200,000 gallons.

4977

Unalakleet



Unalakleet is in northwestern Alaska, on Norton Sound. Unalakleet has about 710 residents. All fuel is first barged to Nome in a line-haul vessel and then transported to Unalakleet in a shallow draft lighterage vessel.

Gasoline retailed for $4.65 per gallon and fuel oil for $4.58 per gallon in November 2007. There is a 3% local sales tax that applies to fuel. The "other" costs, beyond crude oil and refining costs, for fuel in Unalakleet in late 2007 were roughly $1.88 for gasoline and $1.89 for diesel fuel. Several things tend to add to or hold down those other costs:

⇧ Barge is the only method of fuel delivery.

⇧ Norton Sound freezes in winter; deliveries only during certain months.

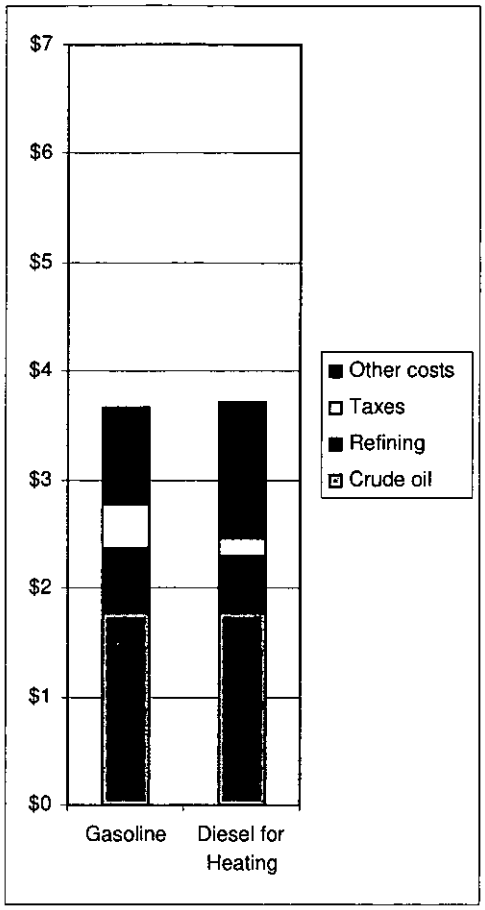
⇧ Fuel is transported from Nome in a lighterage vessel and pumped directly to a storage facility.

⇩ Community receives three or more shipments per year during ice-free months.

⇩ Publicly owned storage facility with a capacity of 420,000 gallons.

4978

Yakutat



Yakutat is in Southeast Alaska, on the Gulf of Alaska north of the capital city of Juneau. Yakutat has about 619 residents. All fuel is barged to Yakutat by Delta Western, which also owns a 6.5 million gallon storage facility in the community.

In November 2007 gasoline retailed for $3.67 per gallon and fuel oil for $3.72 per gallon. There is a 4% local sales tax on fuel. The "other" costs in Yakutat are roughly $0.89 for gasoline and $1.02 for fuel oil. Fuel is less expensive in Yakutat than in many other places in Alaska because:

⇩ Fuel transportation method is by barge, but no river barging is required and Yakutat can receive shipments from Anchorage and Seattle.

⇩ Ice-free port and fuel deliveries can be made year round.

⇩ Deeper harbor accessible by larger shipments.

⇧ Work on the dock limited shipments to only four in 2007. As a result, fuel in late 2007 was priced higher than it would have been otherwise.

⇩ Large storage facility maintained by one transportation company. Large volume of fuel throughput due to Alaska Airlines' twice daily service to the community.

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VIII. Summary and Policy Implications

Table 15 provides a summary matrix of the factors affecting fuel prices in the ten case study communities. The table makes it clear that many factors contribute to widely varying fuel prices.

Table 15. Summary matrix of community case study results

	Community									
	Allakakat & Alatna	Angoon	Bethel	Chitina	False Pass	Fort Yukon	Lime Village	Mountain Village	Unalakleet	Yakutat
Population	87	497	5812	110	54	570	25	786	710	619
Retail Price										
gasoline	6.00	3.96	4.52	3.52	3.49	4.79	6.50	4.60	4.65	3.67
diesel # 1	5.50	3.79	4.25	3.41	2.90	4.12	6.25	4.92	4.58	3.72
Crude price	1.78	1.78	1.78	1.78	1.78	1.78	1.78	1.78	1.78	1.78
Refinery										
gasoline	0.59	0.59	0.59	0.59	0.59	0.59	0.59	0.59	0.59	0.59
#2 diesel	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53	0.53
Taxes										
Federal/gal.										
gasoline	0.184	0.184	0.184	0.184	0.184	0.184	0.184	0.184	0.184	0.184
#2 diesel										
State/gal.										
gasoline	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08	0.08
#2 diesel										
Local (%)	0%	0%	0%	0%	3%	3%	0%	3%	3%	4%
All transportation										
State contract delivery price	0.57	**0.21**		0.04		**0.40**			**0.63**	0.53
Transfer points	4	4	4	2.5	4	4	8	4	5	2.5
Deliveries per year	2	8	10+	52	1	2		2	3	4
Quantity per year	7500	88,000		132,600	300,000		1,800	200,000	270,205	
Number of suppliers	2+	1	2	2	1	1	2	2	2+	1
Market contestability	*y*	*y*	*y*	*y*	*y*	*n*	*y*	*y*	*y*	*y*
Storage										
Capacity	16000	34,000	14,830,000	100,000	330,000	660,000	5,000	200,000	421,200	6,468,000
Owner	public	public	private	public	private	private	public	public	public	private
Financing	y	n	n	n	n	n	y	y	y	n
Annual O&M + R&R costs	*4,150*	*8,820*	*3,846,902*	*25,940*	*85,602*	*171,204*	*1,297*	*51,880*	*109,259*	*1,677,799*
per gallon throughput	*0.55*	*0.10*		*0.20*	*0.29*		*0.72*	*0.26*	*0.40*	
Construction cost	*$326,583*	*$693,989*	*$42,041,925*	*$1,360,764*	*$3,180,785*	*$4,864,730*	*$102,057*	*$2,154,542*	*$3,582,210*	*$18,336,289*
Transportation Method	Air	Barge	Barge	Road	Barge	Barge	Barge/Air	Barge	Barge	Barge
Air										
Runway	Long						Short			
Flight time (hours)	2						2			
Price/gal	1.5						1			
Barge										
Ice-free	n/a	y	n	n/a	y	n	n	n	n	y
Moorage/header	n/a	y	y	n/a	y	y	n/a	y	y	y
Tides	n	n	n	n	n	n	n	n	n	n
Lighterage	n/a	y	y	n/a	y	y	y	n	y	n
Navigational risk	n	n	n	n	n	n	n	n	n	n
Wharfage fee	n	y	y	n	y	n	y	n	y	y
Barge distance		990	1,800		850	440		750	1,880	680
Road distance				247		415		415		
Road+Barge distance		990	1,800	247	850	855		1,165	1,880	680
Reported markup				0.05			0	1.06	0.85	0

Notes: Italic = estimate

Bold = proxy from similar communities with state fuel contracts

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Businesses consider a number of the costs that contribute to the final retail price of fuel proprietary, making it difficult to accurately quantify the components of fuel costs. In addition, there is limited competition is some markets; more competition tends to push prices down. And the number of businesses getting into the market may be limited due to the costs involved and skills required, or because the market size can only support a limited number of suppliers. Despite these limits, our analysis tells us a number of useful things about fuel prices.

- World and Alaska crude oil prices are set in the global market and reflect both crude oil supply and demand and international global events that influence the real and perceived stability of oil supplies.
- Alaska can do little (or nothing) to influence world crude oil prices. Therefore, these are a relative fixed component of overall fuel costs. In late 2007, costs of crude oil made up approximately $1.78 per gallon of final fuel prices.
- A significant portion of fuels used in Alaska are refined by in-state refineries. The balance is refined mostly in Washington.
- While the costs of fuel from Alaska refineries might be somewhat higher than from West Coast refineries, the additional transportation costs from West Coast refineries to Alaska appear to balance out the costs of in-state feedstock. As a result, the combined crude oil and refinery components tend to total the same amount, regardless of fuel refinery source.
- Refinery wholesale prices tend to closely track crude oil prices. The difference tends to be constant rather than a percentage, which suggests it is based on actual costs.
- The average refinery component for gasoline in September 2007 was about $0.59 and for #2 diesel was $0.53.
- State and federal taxes are a relatively constant component of fuel prices. Some communities charge local sales taxes, which increase final consumer prices.
- The mechanisms for charging federal fuel taxes are complex and obtaining refunds for federal taxes on exempt fuels is cumbersome for consumers.
- The "other costs" component of Alaska fuel prices is the most variable and reflects the wide variations among Alaska communities in distance from refineries, delivery methods, and many other factors.
- Communities closer to refineries and with road, pipeline, or railroad access enjoy the lowest fuel prices. Variations in prices in those locations tend to reflect market competition.
- Communities that rely on air delivery of fuel face the highest prices, with fuel delivery charges of $1.00 to $2.00 per gallon of fuel, depending on the community's population and runway length—which determines the gallons flown in per delivery.
- In general, distance and population are major factors in final fuel prices, because a number of the costs of delivering fuel are relatively fixed. Larger deliveries mean that fixed costs can be spread across more gallons.

- Communities that effectively enlarge their populations or increase their market size through fishing fleets or airline traffic offset the higher prices caused by

small market sizes. Case study communities that strongly illustrate that point are False Pass and Yakutat.

- Barge fuel delivery tends to cause the most variability in fuel prices and reflects in part the complexities of delivery, with seasonal ice being a major component.
- Seasonal ice that limits deliveries also increases the need for storage capacity and the costs of maintaining inventories.
- In addition to seasonal ice that limits the number and timing of deliveries, the depth and characteristics of ports dictate the type of barge that can deliver to communities. The need for custom-built barges for deliveries to communities on shallow stretches of river that freeze up in the winter also increases delivery costs. The short season during which transporters need to recover the capital costs of these barges also increases fuel costs.
- It is unclear whether the lack of competition in fuel delivery shows that markets are too limited to support addition suppliers or that the cost of entry—in capital and skills—is too high. The information we would need to distinguish costs from profits is proprietary.
- The wide variation in final prices to communities suggests that prices at least in part reflect the differing costs of delivering and storing fuel.

Policy implications

Policy can't influence many of the components that go into final fuel prices. Butthere are a number of actions that may be able to influence prices. These include:

- The State of Alaska could provide crude oil feedstock to Alaska refineries through royalty oil sales at reduced prices, to lower the crude oil component of fuel prices. But without continued control of "downstream" cost components, it is not clear whether the lower crude oil feedstock prices would be passed on to final consumers or be taken in higher profits by all the "handlers" between the refinery and the end user. It is also unclear whether direct assistance to the communities and households with the highest fuel costs would be a more efficient and fairer practice, since state revenues to fund such programs also increase with the price of crude oil.
- Fuel prices tend to reflect market size, so cooperative buying to increase deliveries should reduce prices. It is unclear the extent to which communities coordinate deliveries, or whether entities within communities—such as electric utilities, schools, and others—coordinate their fuel purchases.
- The availability of cash to purchase fuels tends to be a limiting factor. The ability of a non-profit broker to coordinate and fund collective fuel purchases could further reduce prices.
- The equipment and infrastructure for fuel delivery—such as docks, moorages, and marine headers—influence the costs of delivery. Ownership of these facilities links a responsible party to fuel spills. Facilities tend to be lacking in some communities, in order to limit liability—but that results in higher delivery costs and inceased risks of spills. Addressing this issue could lower both prices and environmental risks.

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Appendix. Community Case Study Summaries

Allakaket/Alatna

Alatna and Allakaket are located directly across from each other on the Koyukuk River. The two have a combined population of about 125. A state-owned 3,500 foot runway is accessible year-round in Allakaket. There is no barge service due to shallow water. The Koyukuk River is ice-free from June through October.

Fuel is delivered only by air to Allakaket. Both communities have fuel storage capabilities. Fuel is pumped directly from the plane into the communities' fuel tanks. Fuel is flown to the communities as needed year-round. Brooks Air is capable of flying 3,000 gallons of heating fuel, or 3,300 gallons of gasoline, at a rate of $2,400 per hour. Both Brooks Fuel and Everts Air compete to deliver fuel to these communities.

Brooks Fuel purchases its fuel from Alaska Aero Fuel in Fairbanks. As of November 2007, the company paid $3.01 per gallon for #1 heating fuel. On November 13, 2007 Brooks Fuel delivered 3,000 gallons of heating fuel at a landed price of $4.51 per gallon. The retail price for this fuel was $5.50, with a reported $40 per barrel, or $0.95 per gallon, charge for fuel delivery. Everts Air delivered 4,462 gallons of gasoline on November 6 at a landed price of $4.52 per gallon. This gasoline retailed at $6.00 per gallon. The price at which Everts Air purchased its gasoline is not known, but Brooks Fuel reports purchasing its gasoline from Alaska Aero fuel at $2.99 per gallon.

Angoon

Petro Marine Fuel Services delivers fuel to Angoon by barge. Angoon receives deliveries about every one and a half months. Angoon is in Southeast Alaska, and its port is ice-free year round. This allows year-round fuel delivery—which can be in smaller quantities, so Angoon requires fuel storage capacity.

Fuel is delivered to Angoon from two sources. Some fuel is loaded on a barge in Vancouver, British Columbia or Anacortes, Washington and transported to Petro Marine's storage tanks in Ketchikan. It is stored there until it is unloaded into smaller barges that take the fuel to Angoon. Petro Marine also purchases and transports fuel out of the Nikiski Tesoro refinery on the Kenai Peninsula. This fuel is generally carried directly to the Ketchikan fuel tanks. Occasionally it is unloaded from the barge out of Nikiski into smaller barges and delivered directly to Angoon. The path of fuel depends on refinery rack prices and the location of barges with the cheapest and easiest supply route being used.

In November 2007, heating fuel retailed for $3.40 per gallon in Ketchikan and $3.79 per gallon in Angoon. The $0.39 difference in price consisted primarily of the cost of transporting fuel from the tank farms in Ketchikan in small barges to Angoon. Lesser but significant costs are attributable to an increased proportion of overhead costs associated with selling smaller amounts of fuel.

Angoon Oil and Gas is the primary distributor of fuel in Angoon. It has capacity to store approximately 15,000 to 20,000 gallons of #1 heating fuel and 12,000 to 14,000 gallons

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of unleaded gasoline. The fuel tanks are owned by Angoon Oil and Gas. The Denali Commission had planned to finance a bulk fuel upgrade in Angoon, but during the initial phases of the project Angoon Oil and Gas decided to independently upgrade.

Gasoline is available for purchase directly at the Angoon Oil and Gas facility, and #1 heating fuel can be delivered by fuel trucks directly to the end users' tanks. Fuel delivery costs $0.10 per gallon. Angoon does not use a significant amount of diesel #2 for heating, because the Tlingit and Haida Central Council upgraded most households to high-efficiency furnaces that burn only #1 fuel oil.

Angoon faces higher delivered fuel prices than neighboring communities because of its small size, which prevents it from purchasing large amounts of fuel at a time. The lack of a "bulk discount" is increasing because Angoon's population has declined in recent years.

Angoon was selected to participate in the Citgo heating fuel program. Each household was given 100 gallons of heating fuel by the state-owned Venezuelan oil company. The fuel was purchased by the household and rebates were distributed by the Tlingit and Haida Central Council.

Bethel

Bethel is at the mouth of the Kuskokwim River, 40 miles inland from the Bering Sea. It has a population of 5,812 and is the regional fuel hub for communities along the Kuskokwim River and coastal communities near the outlet of the Kuskokwim River.

Crowley is the primary fuel supplier in Bethel. Crowley's Bethel tank farm holds a combined 14,830,000 gallons of petroleum products. Bethel serves as Crowley's fuel terminal for the Kuskokwim River region. In 2005 Crowley purchased Yukon Fuel, its major competitor in Bethel. This purchase doubled Crowley's presence in the region and allowed it to take advantage of increased economies of scale, but also raising concerns about potential monopoly market power.[49]

Fuel for the entire region usually goes into Bethel's tanks before being delivered to individual communities. It must be lightered off larger ocean-going barges in order to travel up the Kuskokwim River. Fuel is pumped directly from lighter barges into Bethel's two tank farms. The Port of Bethel levies a $0.04 wharfage fee per gallon on all fuel that enters its port. This wharfage fee increases the cost of fuel in Bethel and surrounding communities.

In November 2007 Crowley sold gasoline from its tanks at $4.52 per gallon and #1 heating fuel at $4.25. There are also multiple fuel truck companies in Bethel that transport fuel from Crowley's tanks for $0.25 to $0.35 per gallon. Crowley both transports the fuel and sells it in the community. It is not possible to break out the transportation and distribution component of fuel to Bethel, because the fuel does not change hands after transportation.

[49] Alaska Journal of Commerce, Alaska Utilities Question Merger Plans. December 7, 2003. http://www.highbeam.com/doc/1G1-119546085.html

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Chitina

Chitina is at the confluence of the Copper and Chitina rivers. Most important for fuel transportation costs, Chitina is located on the Edgerton Highway. Its 2006 population was 106. Chitina is the only one of our ten case study communities that is on the road system. Transporting fuel to Chitina on the highway via fuel truck is inexpensive, when compared with fuel transportation costs to the more remote case study communities.

Chitina 1 Stop is the primary seller of gasoline in Chitina. In the past it purchased fuel from Service Oil and Gas in Glennallen. Service Oil and Gas has since been purchased by Crowley. Most services have remained the same since the purchase. Chitina 1 Stop receives one delivery of gasoline per week and purchases as much as 2,500 gallons a week during the peak of the summer season. As of November 2007, Chitina 1 Stop was selling unleaded gasoline for $3.52 per gallon and reports a $0.05 mark up per gallon of gasoline that remains the same regardless of time of year.

Heating fuel is delivered to Chitina by Crowley and Fisher Fuel. Heating fuel #1 is delivered directly to homes in Chitina from fuel trucks. There is no heating fuel company in Chitina. Fisher Fuel operates out of Big Lake and Crowley out of Glennallen. Both companies deliver fuel to communities throughout the region. As of November 2007 Fisher fuel reported selling #1 heating fuel for $3.41 a gallon. This price includes a $0.25 to $0.30 a gallon delivery charge from the fuel's source in Anchorage. Communication with Crowley indicates it charges similar amounts.

Both companies primarily purchase fuel in Anchorage and truck it throughout the region. Chitina tends to face higher delivered fuel costs than other road-connected communities in the region, because its small size means fuel deliveries are also small, raising the fixed overhead costs per unit of fuel.

False Pass

False Pass is in the Aleutians, on the eastern shore of Unimak Island on the straight connecting the Pacific Ocean to the Bering Sea. It has a population of 54. It gets its name from the shallow waters on the Bering Sea side of the straight that prohibit large ships from passing.

This shallow water means large fuel barges can't deliver directly to False Pass. Instead fuel must be lightered onto smaller barges for delivery. Peter Pan Seafoods has a fish processing plant in False Pass that purchases and distributes fuel directly to local residents. Peter Pan generally sells 20,000 gallons of gasoline, 30,000 gallons of #1 heating fuel, and 200,000 gallons of #2 diesel annually. The #2 diesel is sold primarily to the commercial fishing fleet.

Fuel is pumped directly from the fuel barge into Peter Pan's fuel tanks via marine header. Fuel is delivered once a year, in September. Community residents purchase their fuel directly from the pump at the fuel tanks. There is no fuel delivery service within the community. Our contact with Peter Pan Seafoods was not able to reveal the retail markup on the delivered fuel price, other than to say it was determined by the home office in

Seattle. In November 2007 gasoline was selling for $3.49 in False Pass and #1 heating fuel for $2.90.

Fuel is delivered by Crowley barges once a year to Peter Pan. Crowley also delivers about 30,000 gallons of #2 diesel to the City of False Pass for use in its electric generation plant. The Denali Commission built 60,000 gallons of bulk fuel storage for the electric generation plant. A stipulation of the Denali Commission's project is that the bulk fuel farm cannot be a retailer of fuel as long as private competition exists in the market. This prevents the city from entering the market as a seller of heating fuel or gasoline.

Fort Yukon

Fort Yukon is at the confluence of the Yukon and Porcupine rivers, about 145 air miles northeast of Fairbanks. It has a population of 596, and is accessible by barge during the summer months. There is a barge off-loading area, but no dock. Fort Yukon serves as a fuel terminal for Crowley.

Crowley delivers fuel during the summer months. It is barged from Crowley's fuel terminal in Nenana. Crowley owns 660,000 gallons of fuel storage capacity in Fort Yukon that is used to supply the community of Fort Yukon as well as other upper Yukon communities.

Number 1 heating fuel is delivered via truck to households. During November 2007, heating fuel sold for $4.12 per gallon, including the cost of delivery. Diesel #2 sold to the Gwitchyaa Zhee Utility for $3.65 per gallon. Gasoline is only sold by the barrel; the price was $4.79 per gallon in late 2007. The Gwitchyaa Zhee Utility also sells gasoline, with the November 2007 price at $5.10 per gallon. A local tax of 3% is also added to the price of fuel.

Breaking the cost of fuel into components is difficult for Fort Yukon, because Crowley is the transporter and seller of fuel and does not sell the fuel to itself at a "landed price". This lack of a landed price leaves us with only the retail price.

Lime Village

Lime Village is on the Stony River, 50 miles from its junction with the Kuskokwim River. Lime Village's estimated 2006 population was 25, but local residents indicate the number spending the winter in Lime Village was about 6. The population decline is attributed to the closing of the local school and the increasing cost of living—due primarily to rising energy costs.

Lime Village faces the highest fuel costs of the ten case study communities. As a result, wood has become the primary energy source for home heating. Lime Village has the highest fuel prices because it is not accessible by barge, its airstrip is too short to allow large planes to land, and its small population means it makes small fuel purchases.

Fuel is flown into Lime Village in two ways. In the past, almost all fuel was flown in by Henry Hill, a private fuel transporter in Sleetmute. That community gets fuel by barge

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from Bethel. Henry Hill would then fly fuel from Sleetmute into Lime Village, in a Cessna 206 with the capacity to carry four barrels of fuel (200 gallons) at a time. Henry Hill charges $425 an hour for flying fuel—so there is a $425 charge to transport 200 gallons of fuel, at a cost of $2.125 per gallon.

Last year Henry Hill was unable to deliver fuel to Lime Village because he was out of compliance with environmental fuel transport regulations. Lime Village's alternative was to contract Everts Air to fly fuel in from the Tesoro refinery in Kenai to the nearby Osprey Lodge. The Osprey Lodge airstrip is able to accommodate larger fuel planes. After the fuel was unloaded at the hunting lodge, the lodge owner, Gary Pogany, flew the fuel 200 gallons at a time the 15 miles into Lime Village. Pogany charged $1.00 a gallon and delivered his fuel for $5.90 per gallon during fall 2007.

Lime Village recently received a bulk fuel storage upgrade from the Denali Commission. It received two new fuel tanks and had old fuel tanks refurbished. These tanks had been used by the school, but were moved to the powerhouse after the school closed. Fuel is unloaded at the airfield and pumped into a holding tank. From there it is pumped to the powerhouse.

In November 2007, Lime Village reported gasoline priced at $6.50 per gallon and #1 heating fuel at $6.25 per gallon.

Mountain Village

Mountain Village is on the Yukon River and has a population of 796. In the summer it is connected to St. Mary's, Andreafsky, and Pitka's Point by a road.

Crowley transports fuel in a shallow draft barge down the Yukon River into Mountain Village, from Crowley's tank farm in Nenana. Rarely will fuel be transported up the Yukon River to Mountain Village, despite the fact that Mountain Village is located much nearer the mouth of the Yukon than it is to Nenana. Nenana serves as Crowley's Yukon River hub, because it is close to North Pole refineries.

Mountain Village generally receives a spring and fall fuel shipment. Azachorak Village Corporation owns the fuel tanks and sells fuel to the community. The corporation reports purchasing 80,000 to 100,000 gallons of both #1 heating fuel and gasoline. Mountain Village's electric utility is operated by AVEC and purchases over 180,000 gallons of #1 diesel to power its generators. The #1 diesel used for electric generation is the same product as #1 heating fuel, but is referred to as #1 diesel by electric utilities.

The community has a 90,000 gallon capacity for #1 heating fuel and 100,000 gallon capacity for gasoline. Azachorak holds a moose-hunt fuel sale every August. This sale serves two purposes. It gives discounts for up to 110 gallons of heating fuel and 165 gallons of gasoline to subsidize fall moose hunts, and it frees up storage capacity before the final barge of the season delivers fuel. For the 2007 moose hunt sale, #1 heating fuel prices were dropped by $0.50 per gallon and gasoline prices were dropped by $0.60 per gallon.

Residents of Mountain Village can pay $0.25 per gallon to have fuel trucked to their homes. If they purchase over 100 gallons they receive a $0.05 discount on the delivery

price. In November 2007 Mountain Village reported a #1 heating fuel price of $4.92 and a gasoline price of $4.60. This includes a 30% mark-up on the delivered price.

Unalakleet

Unalakleet is a community of 727 on Norton Sound in Western Alaska. Its waters are generally ice free from May to October.

Unalakleet's fuel is usually delivered from Nome. Nome's deep-water port allows line haul barges to unload directly into the tank farms without lightering. The City of Nome charges $0.04 per gallon for fuel that passes through the Port of Nome. The fuel is pumped from Nome tank farms into lightering barges for delivery to Unalakleet. The fuel on the barge is pumped directly from the marine header into Unalakleet Native Corporation's tank farm.

Unalakleet Native Corporation is the primary fuel seller for the community. Two fuel deliveries were made to Unalakleet in 2007, totaling 155,696 gallons of #1 heating fuel and 104,509 gallons of gasoline. The landed price of #1 heating fuel was $2.83 per gallon and $3.08 for gasoline in November 2007, while the retail price for #1 heating fuel was $4.58 per gallon and $4.65 per gallon for gasoline. Fuel is not available for purchase at the tank farm. Instead it is trucked to households. The delivery charge is included in the retail price.

Fuel was delivered in 2007 by Delta Western and was financed through the Norton Sound Economic Development Corporation (NSEDC) as part of a project to supply fuel for communities in the area. NSEDC acts as an agent on behalf of the participants, to coordinate the order, issue a Request for Proposal (RFP) to fuel suppliers, evaluate the proposals, award a contract, and act as a single point of contact for the supplier and communities. No interest or fees are charged to the participants for administration of the program.

Yakutat

Yakutat is a community of 634 people on the Gulf of Alaska, 225 miles northwest of Juneau and 220 miles southeast of Cordova. It is at the mouth of Yakutat Bay, one of the few refuges for vessels along this stretch of coast. Yakutat is ice-free year round. It gets fuel from Delta Western. Fuel comes either from Tesoro's Nikiski refinery, through the hub community of Anchorage, or from refineries in Anacortes, Washington. Delta Western has 6,480,000 gallons of fuel storage capacity in the community; much of that is used for fueling Yakutat's twice daily jet service. Delta Western delivers fuel four times per year and owns a fuel delivery dock that is currently being rebuilt.

As of November 2007, the price before tax for a gallon of unleaded gasoline was $3.678, #1 heating fuel was $3.729, and #2 diesel was $3.599. If 50 gallons or more are purchased there is a $0.10 per gallon discount. Heating fuel is delivered to homes in trucks and is not available directly from the fuel tank. The delivery charge is included in the price of fuel.

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DIVISION OF COMMUNITY AND REGIONAL AFFAIRS
REPORT TO THE DIRECTOR

CURRENT COMMUNITY CONDITIONS: FUEL PRICES ACROSS ALASKA

NOVEMBER 2007 UPDATE

INTRODUCTION

Retail fuel prices have remained high over the past year across Alaska. Increased energy prices have benefitted the State of Alaska through increased treasury revenues while simultaneously burdening households, small businesses, and communities – especially in remote locations. With harsh winter conditions and associated extreme low temperatures, rural Alaska communities and households reliant on fuel to heat their homes and buildings and to generate electricity are confronted with the challenge of paying high retail fuel prices to meet basic survival needs. The remote nature and limited size of the majority of Alaska's rural communities further compounds the issue due to increased transportation costs, limited storage capacity, and financial management considerations.

As a semi-annual update to the comprehensive fuel survey initiated during 2005 (*Community Conditions: Fuel Prices Across Alaska*), the Division of Community and Regional Affairs (DCRA) repeated a statewide survey of retail heating fuel and gasoline prices in a cross-section of 100 select Alaska communities during November 2007. This report, *Current Community Conditions: Fuel Prices Across Alaska, November 2007 Update* summarizes fuel survey findings, discusses changes in fuel prices during the past six months, and provides a national perspective of fluctuating fuel prices.

METHODOLOGY

The DCRA Research and Analysis Section, in consultation with the Local Government Assistance Section, developed the survey instrument and community sample frame during 2005. Communities were strategically selected to represent differing socioeconomic conditions and all Alaska regions including the Interior, North Slope, South Coastal, Southeast, and Western Regions. Selected communities had also generally been the recipient of an Alaska Energy Authority bulk fuel project

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during the recent past. Since a non-probability sampling method was utilized, this survey is considered a non-scientific study with results not generalizable to the entire population of rural Alaska communities. To accurately and consistently track longitudinal changes in fuel prices, the 2005 survey instrument and community sampling frame was used to collect 2006 and 2007 fuel information – the communities and questionnaire items remained the same from 2005 to 2007.

DCRA Research and Analysis staff implemented the survey instrument during November 26 – 30, 2007. In total, local fuel retailers from 100 communities were contacted (via telephone) and requested to provide current heating fuel (#1) and gasoline per gallon prices. Survey results are one-time measurements and representative of retail fuel prices on the particular day of contact. Heating fuel and gasoline prices may have changed between the time of contact and publishing of this report.

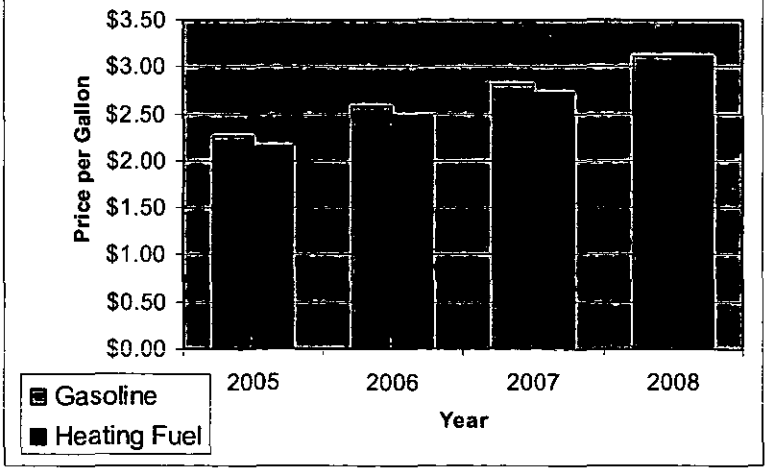
NATIONAL CONTEXT

The West Coast average spot price for a barrel of Alaska North Slope (ANS) crude oil climbed to a new record in November 2007 reaching $92.98, a robust 71% increase over November 2006 average ANS spot prices (Energy Information Administration, 2007). The State of Alaska's recently amended oil taxing structure combined with continuing record high ANS oil prices is projected to add an additional $1.5 billion to the State's General Fund in FY 2008. This estimate is not going unnoticed in struggling rural Alaska communities facing record gasoline and home heating fuel retail prices.

The high average price per barrel of crude oil is expected to result in continuing higher U.S. consumer prices for gasoline and home heating fuel (Figure 1).

During 2007, national gasoline prices averaged $2.81 per gallon compared with $2.58 per gallon in 2006, and reached a weekly peak of $3.11 during mid-November (Energy Information Administration, 2007). Since mid-November, a slight decline in crude oil prices has resulted in a ten cent per gallon decrease in gasoline prices. Nevertheless, energy analysts project by the middle of next spring gasoline prices will increase to over $3.40 per gallon as the driving season begins.

Figure 1. U.S. Energy Price Outlook (2005-2008)
Retail Gasoline and Residential Heating Fuel National Price Summary, Actual and Projected 2005 - 2008

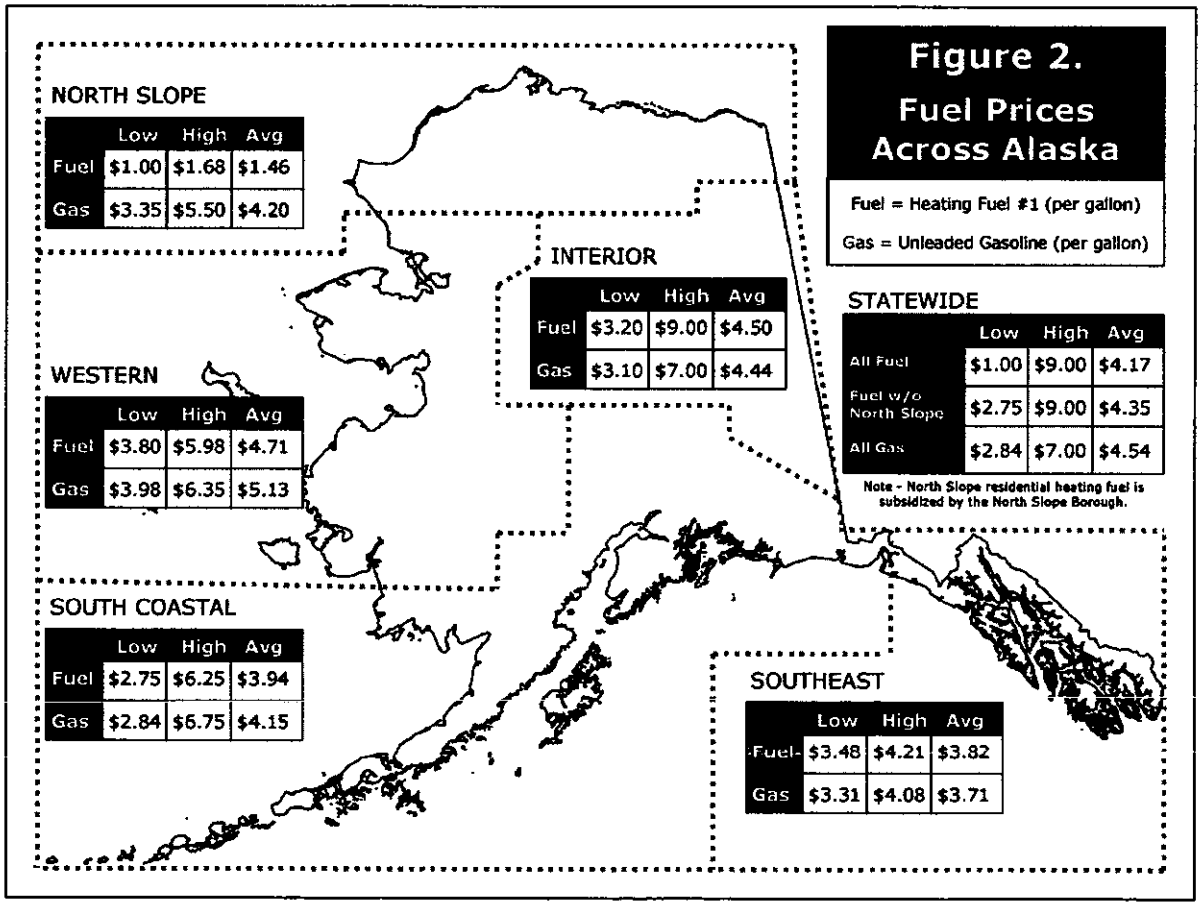


Source: Energy Information Administration, 2007

Residential heating fuel prices are projected to average $3.23 per gallon over the winter of 2007 (Energy Information Administration, 2007). This is approximately 19% above the current 2007 annual average residential heating fuel prices of $2.72 per gallon, and a 30% increase above the 2006 home heating season when prices averaged $2.48 per gallon.

Continuing tight supply and high demand is expected to keep crude oil prices elevated over the foreseeable future. For example, West Texas Intermediate (WTI) monthly crude oil prices averaged over $85 per barrel in October and $95 per barrel in November, reaching a record $98 per barrel before the month ended. These prices are up $27 and $36 per barrel respectively from the same time last year. By way of comparison, WTI prices averaged $66.02 per barrel in 2006, and $72.05 per barrel in 2007. Additionally, WTI monthly average prices are expected to exceed $80 per barrel through 2008 (Energy Information Administration, 2007).

CURRENT FUEL PRICES ACROSS ALASKA



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As Figure 2 illustrates, average heating fuel prices per gallon vary across Alaska by region. Western Alaska communities report the highest average heating fuel retail price at $4.71 per gallon while North Slope communities report the lowest average retail price at $1.46 per gallon. Of noteworthy importance, the North Slope Borough provides free heating fuel for residential use through village corporations who distribute fuel to residents throughout the Borough, charging only a delivery fee on a per gallon basis. The North Slope Borough does not subsidize heating fuel for commercial use. Consequently, heating fuel retail price for commercial entities is significantly higher than residential use heating fuel (see Table 1). Compared to other regions, and excluding the North Slope, Southeast Alaska communities experience relatively lower heating fuel prices indicated by an average of $3.82 per gallon.

Table 1. North Slope Heating Fuel (#1) and Gasoline Retail Prices

Community	Community Retailer	Heating Fuel Retail Price		Gasoline Retail Price
		Residential	Commercial	
Anaktuvuk Pass	Nunamiut Corporation	$1.00	$4.15	$5.50
Atqasuk	Atqasuk Corporation	$1.40	$4.10	$4.10
Barrow	BUEC, Inc.	Natural Gas	$4.90	$4.45
Kaktovik	Kaktovik Inupiat Corporation	$1.55	$4.95	$3.45
Nuiqsut	Kuukpik Corporation	$1.45	$4.90	$3.35
Point Hope	Tigara Corporation	$1.65	$5.05	$4.25
Wainwright	Olgoonik Corporation	$1.68	$5.11	$4.33

To accurately summarize statewide heating fuel prices, it is appropriate to exclude North Slope Borough communities due to the North Slope Borough subsidy for residential use heating fuel. When considering statewide heating fuel prices, the Arctic Village Traditional Council (Interior Region) reports the highest heating fuel retail price at $9.00 per gallon (see Appendix). In contrast, the City of Akutan in Akutan (South Coastal Region) reports the lowest heating fuel retail price at $2.75 per gallon. On average, heating fuel retail price is $4.35 per gallon across Alaska with 93 communities reporting heating fuel prices (excluding North Slope Region communities).

As Figure 2 illustrates, average gasoline prices per gallon also vary across Alaska by region. Western communities report the highest average gasoline retail price at $5.13 per gallon while Southeast communities report the lowest average retail price at $3.71 per gallon. Statewide retail prices indicate significant variation in gasoline retail price. Specifically, the Arctic Village Traditional Council in Arctic Village (Interior Region) reports the highest gasoline price at $7.00 per gallon. In contrast, City of Chignik in Chignik reports the lowest gasoline retail price at $2.84 per gallon. On average, gasoline retail price is $4.54 per gallon across Alaska with 100 communities reporting.

Method of transporting heating fuel and gasoline varies across Alaska with fuel retailers using barge, air, truck, or a combination to transport fuel into the community (Table 2). With 100 communities reporting, the wide majority (83%) report barging fuel into the community. In contrast, nine communities (9%) report trucking fuel into the community, four communities (4%) report air freighting fuel into the community, and four communities (4%) utilize multiple methods of transporting fuel into the community (i.e., barge/truck, barge/air, or truck/air). Fairbanks and Valdez do not transport heating fuel because of a local on-site refinery; gasoline is transported by truck and barge respectively.

Table 2. Fuel Transportation Method

Transportation Method	Statewide	Interior Region	North Slope Region	South Coastal Region	Southeast Region	Western Region
Barge Only	83	4	5	23*	11	40
Truck Only	9	8*	0	1	0	0
Air Only	4	3	0	1	0	0
Barge/Truck	2	0	0	2	0	0
Barge/Air	1	0	1	0	0	0
Truck/Air	1	0	1	0	0	0
Total Communities Reporting	100	15	7	27	11	40

*Heating fuel is refined in Fairbanks and Valdez; gasoline is transported by truck and barge respectively.

CHANGE IN FUEL PRICES ACROSS ALASKA (6/2007 TO 11/2007)

During the past six months, heating fuel and gasoline retail prices have remained relatively stable with both experiencing only minor increases from June 2007 to November 2007. With 93 communities reporting (excluding North Slope Region communities), the statewide average heating fuel price increased from $4.14 to $4.35 per gallon (Table 3). The $0.21 per gallon average price increase represents a 5% increase in statewide average heating fuel per gallon price. With the exception of the Western Region, all Alaska regions experienced price increases ranging from 6% (North Slope Region) to 14% (Interior Region). Although the Western Region has the highest average heating fuel price ($4.71), it has remained stable during the past six months, actually dropping by two cents per gallon. During the June 2007 to November 2007 time period, no other region experienced an overall decrease in heating fuel per gallon average price.

Table 3. Regional Change in Heating Fuel (#1) Price (6/07 to 11/07)

Region	Communities Reporting	11/07 HF Average	Percent +/- 11/07 Statewide Average ($4.35)*	6/07 HF Average	Percent +/- 6/07 - 11/07
Interior	15	$4.50	3%	$3.94	14%
North Slope	6**	$1.46	-66%	$1.38	6%
South Coastal	27	$3.94	-9%	$3.67	7%
Southeast	11	$3.82	-12%	$3.46	10%
Western	40	$4.71	8%	$4.73	0%***
Statewide	**93***	**$4.35***	**n/a**	**$4.14***	**5%**

* Statewide heating fuel average excluding North Slope Region communities.
** Seven North Slope communities surveyed; one (Barrow) does not use heating fuel and is consequently excluded.
*** Western Region heating fuel prices declined by $0.02, which represents a 0% change due to mathematical rounding.

With 100 communities reporting, the statewide average gasoline price increased from $4.49 to $4.54 per gallon from June 2007 to November 2007 (Table 4). The $0.06 per gallon average price increase represents a 1% increase in statewide average gasoline per gallon price. Interior, South Coastal, and Western Regions experienced a price increase of 2%. In contrast, North Slope and Southeast Regions experienced gasoline per gallon price decreases of 6% and 1% respectively.

Table 4. Regional Change in Gasoline Price (6/07 to 11/07)

Region	Communities Reporting	11/07 Gas Average	Percent +/- 11/07 Statewide Average ($4.54)	6/07 Gas Average	Percent +/- 6/07 - 11/07
Interior	15	$4.44	-2%	$4.36	2%
North Slope	7	$4.20	-7%	$4.47	-6%
South Coastal	27	$4.15	-9%	$4.06	2%
Southeast	11	$3.71	-18%	$3.75	-1%
Western	40	$5.13	13%	$5.04	2%
Statewide	**100**	**$4.54**	**n/a**	**$4.49**	**1%**

Retailers were queried regarding whether market demand for heating fuel or gasoline had increased, decreased, or remained the same during the past 12 months. Retailers across the state report the same experience; despite record high prices, change in demand for heating fuel and gasoline has largely not changed during the past 12 months. In particular, demand for heating fuel and gasoline has decreased in

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only 21% and 11% of communities respectively during the past 12 months (Table 5). In contrast, three-quarters or more of communities suggest there has been no change in consumer demand for either heating fuel (71%) or gasoline (82%). Stable market demand for both heating fuel and gasoline despite record high prices is likely indicative of rural communities needing a consistent minimum quantity of both resources simply to meet basic survival needs.

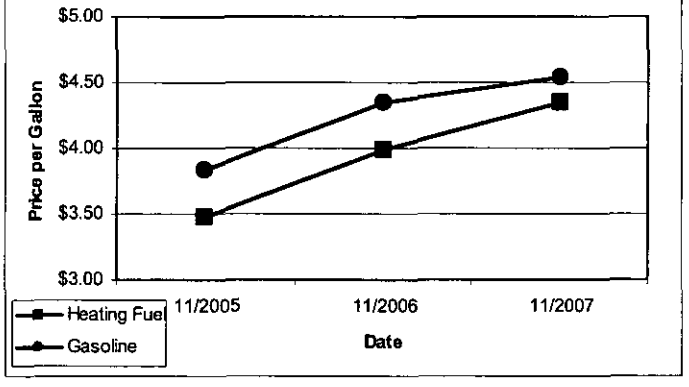
Table 5. Change in Demand for Heating Fuel (#1) and Gasoline (past 12 months)

Region	Heating Fuel			Gasoline		
	Increased	Decreased	No Change	Increased	Decreased	No Change
Interior	13%	40%	47%	13%	27%	60%
North Slope	0%	0%	100%	0%	0%	100%
South Central	4%	15%	81%	4%	7%	89%
Southeast	0%	55%	45%	0%	9%	91%
Western	14%	11%	75%	11%	8%	81%
Statewide*	**8%**	**21%**	**71%**	**7%**	**11%**	**82%**

* Ninety-six communities reporting.

Since November 2005, DCRA has conducted the statewide bulk fuel survey of 100 communities on a bi-annual schedule. Over the past two years, statewide heating fuel and gasoline retail per gallon prices have steadily increased (Figure 3). Specifically, statewide average heating fuel retail price has increased from $3.48 (November 2005) to $4.35 (November 2007). This $0.87 per gallon price increase represents an overall increase of 25%. Statewide average gasoline retail prices have also increased from $3.83 (November 2005) to $4.54 (November 2007), which represents an overall increase of 19% ($0.71).

Figure 3. Change in Heating Fuel and Gasoline Prices (11/2005) to 11/2007)



Regional analysis suggests heating fuel and gasoline prices have increased in every region except the North Slope Region since 2005. In the North Slope Region, heating fuel decreased by 11% ($0.18) from $1.64 per gallon (November 2005) to $1.46 per gallon (November 2007) and gasoline decreased by 1% ($0.06) from $4.26 (November 2005) to $4.20 (November 2007).

Aside from the North Slope Region, from November 2005 to November 2007 the price of heating fuel has increased by at least 18% and the price of gasoline by at least 13% in every region. The Interior Region has experienced the most significant increase in heating fuel where the average price has increased from $3.34 (November 2005) to $4.50 (November 2007), which represents an overall increase of 35% ($1.16). The Western Region experienced the greatest increase in gasoline prices from $4.09 (November 2005) to $5.13 (November 2007), which represents an overall increase of 25% ($1.04).

SUMMARY

During November 2007, current retail heating fuel (#1) and gasoline prices were collected from 100 select communities located across rural Alaska. Heating fuel retail prices per gallon ranged from $2.75 (Akutan) to $9.00 (Arctic Village); statewide average price was $4.35 per gallon. Gasoline retail prices per gallon ranged from $2.84 (Chignik) to $7.00 (Arctic Village); statewide average price was $4.54. In general, heating fuel and gasoline retail prices have remained relatively stable during the past six months with statewide average prices of heating fuel increasing by 5% and gasoline increasing by 1%. Significantly increased fuel and energy costs combined with high unemployment rates, limited local economies, and local governments struggling to provide basic local services continue to present rural Alaska communities and households with challenging circumstances with no long-term solution in sight.

In response to current rural Alaska energy challenges, the State of Alaska has implemented a variety of assistance programs to meet rising fuel costs, provide emergency assistance for municipalities, and provide a state contribution to a federal program that helps low-income households pay for energy. The State of Alaska administers a variety of specific assistance programs focused on alleviating community and household impacts of increased retail fuel prices including: 1) Community Energy Assistance Program; 2) Bulk Fuel Revolving Loan Fund; 3) Fuel Bridge Loan Program; 4) Power Cost Equalization; 5) Low Income Home Energy Assistance Program; 6) Power Project Loan Fund; 7) Power, Fuel, and Hydro Training; and 8) Bulk Fuel Upgrades.

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Appendix: Community Heating Fuel and Gasoline Survey - November 2007 Update

Community	Region	Community Retailer (entity selling fuel)	Heating Fuel #1 11/2007 Retail: (selling price per gallon)	Percent +/- Statewide HF Average ($4.35)*	Percent +/- 8/2007 Retail: (selling price per gallon)	Gasoline 11/2007 Retail Price: (selling price per gallon)	Percent +/- Statewide Gas Average ($4.64)*	Percent +/- 8/2007 Retail: (selling price per gallon)	Transport Method:			Change in HF Demand? (increase, decrease, remain same)	Change in Gas Demand? (increase, decrease, remain same)
Alatna	Interior	Alatna Traditional Council	$6.00	38%	9%	$6.00	32%	0%		Air		Same	Same
Anderson	Interior	Nenana Heating	$3.44	-21%	30%	$3.53	-22%	12%			Truck	Decrease	Same
Arctic Village	Interior	Arctic Village Traditional Council	$9.00	107%	42%	$7.00	54%	0%		Air		Decrease	Decrease
Circle	Interior	(HF#1) Steve's (Gas) HC Company Store	$3.50	-20%	0%	$3.64	-20%	-4%			Truck	Same	Same
Delta Junction	Interior	Delta Fuel Company	$3.29	-24%	28%	$3.24	-29%	8%			Truck	Decrease	Same
Eagle	Interior	Telegraph Hill Services	$3.50	-20%	28%	$3.75	-17%	0%			Truck	Decrease	Decrease
Fairbanks	Interior	Petro Star - Flint Hill	$3.20	-26%	30%	$3.10	-32%	7%			Truck	Increase	Increase
Galena	Interior	Crowley Marine Services	$4.31	-1%	1%	$4.69	3%	-1%	Barge			Decrease	Decrease
Healy	Interior	Keith's Healy Service	$3.49	-20%	9%	$3.57	-21%	6%			Truck	Decrease	Decrease
Hughes	Interior	Hughes City Council	$7.50	72%	25%	$6.00	32%	0%		Air		Increase	Increase
Huslia	Interior	Huslia Gas & Oil	$4.50	3%	-10%	$5.00	10%	0%	Barge			Same	Same
Minto	Interior	North Fork Store	$4.10	-6%	28%	$4.05	-11%	4%			Truck	Same	Same
Nenana	Interior	Nenana Heating	$3.43	-21%	30%	$3.51	-23%	11%			Truck	Same	Same
Ruby	Interior	Dinega Fuel Corporation	$4.30	-1%	-5%	$4.50	-1%	-3%	Barge			Same	Same
Tanana	Interior	Tanacon Fuel	$3.95	-9%	-10%	$4.99	10%	2%	Barge			Same	Same
Anaktuvuk Pass	North Slope	Nunamiut Corporation	$1.00	-77%	-23%	$5.50	21%	-14%	Barge			Same	Same

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Appendix: Community Heating Fuel and Gasoline Survey - November 2007 Update

Community	Region	Community Retailer (utility selling fuel)	Heating Fuel #1 11/2007 Retail (selling price per gallon)	Percent +/- Statewide HF Average ($4.35)	Percent +/- 6/2007 Retail (selling price per gallon)	Gasoline 11/2007 Retail Price (selling price per gallon)	Percent +/- Statewide Gas Average ($4.54)	Percent +/- 6/2007 Retail (selling price per gallon)	Transport Method			Change in HF Demand? (increase, decrease, remain same)	Change in Gas Demand? (increase, decrease, remain same)
Atqasuk	North Slope	Atqasuk Corporation	$1.40	-68%	0%	$4.10	-10%	0%	Barge	Air		Same	Same
Barrow	North Slope	Eskimo Inc.	Nat Gas	n/a	n/a	$4.45	-2%	-2%	Barge			Same	Same
Kaktovik	North Slope	Kaktovik Inupiat Corporation	$1.55	-64%	3%	$3.45	-24%	0%	Barge			Same	Same
Nuiqsut	North Slope	Kuukpik Corporation	$1.45	-67%	16%	$3.35	-26%	-11%		Air	Truck	Same	Same
Point Hope	North Slope	Tigara Corporation	$1.65	-62%	22%	$4.25	-6%	6%	Barge			Same	Same
Wainwright	North Slope	Olgoonik Corporation	$1.68	-61%	16%	$4.33	-5%	-14%	Barge			Same	Same
Akutan	South Coastal	City of Akutan	$2.75	-37%	0%	$3.25	-28%	16%	Barge			Same	Same
Atka	South Coastal	Atka Native Store	$4.99	15%	-2%	$5.09	12%	-6%	Barge			Same	Same
Chenega Bay	South Coastal	Chengega Bay Utility	$3.30	-24%	0%	$3.70	-19%	0%	Barge			Same	Same
Chignik	South Coastal	City of Chignik	$3.36	-23%	15%	$2.84	-37%	-10%	Barge			Same	Same
Chitina	South Coastal	Chitina Services Oil and Gas	$3.44	-21%	21%	$3.45	-24%	10%	Barge		Truck	Decrease	Same
Clark's Point	South Coastal	City of Clark's Point	$4.70	8%	-8%	$5.13	13%	9%	Barge			Decrease	Same
Cordova	South Coastal	Hovers Mover	$4.19	-4%	13%	$4.05	-11%	-6%	Barge			Same	Same
Dillingham	South Coastal	Delta Western	$4.24	-3%	12%	$4.96	9%	0%	Barge			Same	Same
Glennallen	South Coastal	Service Oil and Gas	$3.44	-21%	21%	$3.45	-24%	10%			Truck	Increase	Increase
Goodnews Bay	South Coastal	Mumtram Pikkai Village Corporation	$4.00	-8%	-2%	$5.10	12%	2%	Barge			Same	Same

Appendix: Community Heating Fuel and Gasoline Survey - November 2007 Update

Community	Region	Community Retailer: (entity selling fuel)	Heating Fuel #1 11/2007 Retail: (selling price per gallon)	Percent +/- Statewide HF Average ($4.35+):	Percent +/- 8/2007 Retail: (selling price per gallon)	Gasoline 11/2007 Retail Price: (selling price per gallon)	Percent +/- Statewide Gas Average ($3.64):	Percent +/- 8/2007 Retail: (selling price per gallon)	Transport Method:			Change in HF Demand? (increase, decrease, remain same)	Change in Gas Demand? (increase, decrease, remain same)
Homer	South Coastal	Homer Run Oil	$3.42	-21%	29%	$3.35	-26%	8%	Barge		Truck	Same	Same
King Cove	South Coastal	Peter Pan Seafood	$2.82	-35%	-2%	$3.58	-21%	0%	Barge			Same	Same
Kodiak	South Coastal	Thompson Transfer	$3.28	-25%	12%	$3.49	-23%	-4%	Barge			Same	Same
Kokhanok	South Coastal	Kokhanok Tribal Council	$6.25	44%	2%	$6.75	49%	4%	Barge			Decrease	Decrease
Larsen Bay	South Coastal	City of Larsen Bay	$4.33	0%	31%	$4.10	-10%	22%	Barge			Same	Same
Nelson Lagoon	South Coastal	Crowley	$4.12	-5%	4%	$4.82	6%	13%	Barge			Same	Same
New Stuyahok	South Coastal	New Stuyahok Village Corporation	$4.70	8%	0%	$5.46	20%	0%	Barge			Same	Same
Nondalton	South Coastal	City of Nondalton	$6.15	41%	11%	$6.13	35%	8%		Air		Same	Same
Old Harbor	South Coastal	City of Old Harbor	$4.23	-3%	21%	$4.17	-8%	2%	Barge			Same	Same
Ouzinkie	South Coastal	Ouzinkie Native Corporation	$3.08	-29%	15%	$3.59	-21%	-1%	Barge			Same	Same
Port Lions	South Coastal	Kizhuyak Oil Sales	$3.70	-15%	0%	$4.00	-12%	0%	Barge			Decrease	Decrease
Saint George	South Coastal	Delta Fuel Company	$4.47	3%	0%	$4.08	-10%	0%	Barge			Same	Same
Sand Point	South Coastal	Paul Gundersen	$3.39	-22%	4%	$3.24	-29%	7%	Barge			Same	Same
Seldovia	South Coastal	Seldovia Fuel and Lube	$3.55	-18%	15%	$3.57	-21%	-7%	Barge			Same	Same
Togiak	South Coastal	Togiak Village Corporation	$3.69	-15%	-7%	$4.21	-7%	-9%	Barge			Same	Same
Unalaska	South Coastal	Delta Western	$3.49	-20%	10%	$3.27	-28%	2%	Barge			Same	Same

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Appendix: Community Heating Fuel and Gasoline Survey - November 2007 Update

Community	Region	Community Retailer (entity selling fuel)	Heating Fuel #1 11/2007 Retail: (selling price per gallon)	Percent +/- Statewide HF Average ($4.39*)	Percent +/- 8/2007 Retail: (selling price per gallon)	Gasoline 11/2007 Retail Price: (selling price per gallon)	Percent +/- Statewide Gas Average ($4.54*)	Percent +/- 8/2007 Retail: (selling price per gallon)	Transport Method:			Change in HF Demand? (increase, decrease, remain same)	Change in Gas Demand? (increase, decrease, remain same)
Valdez	South Coastal	North Pacific	$3.25	-25%	21%	$3.33	-27%	4%	Barge (Gas)	Refinery (Oil)		Same	Same
Angoon	Southeast	Angoon Oil and Gas	$3.91	-10%	7%	$4.08	-10%	5%	Barge			Decrease	Decrease
Craig	Southeast	Petro Marine	$3.61	-17%	18%	$3.42	-25%	7%	Barge			Decrease	Same
Gustavus	Southeast	Gustavus Dray - Gustavus Propane	$3.61	-17%	11%	$3.63	-20%	-7%	Barge			Same	Same
Hoonah	Southeast	Hoonah Trading	$4.18	-4%	23%	$3.80	-16%	1%	Barge			Same	Same
Juneau	Southeast	Delta Western - Fred Meyer Gas	$3.48	-20%	6%	$3.31	-27%	1%	Barge			Decrease	Same
Kake	Southeast	Kake Tribal Fuel	$4.09	-6%	4%	$3.90	-14%	-10%	Barge			Same	Same
Pelican	Southeast	Lisianski Oil - Pelican Sea	$4.21	-3%	12%	$4.06	-11%	-3%	Barge			Decrease	Same
Petersburg	Southeast	Petro Marine	$3.67	-16%	20%	$3.41	-25%	10%	Barge			Same	Same
Point Baker	Southeast	Point Baker Trading Post	$4.00	-8%	-4%	$3.90	-14%	-8%	Barge			Decrease	Same
Thorne Bay	Southeast	Petro Alaska	$3.48	-20%	16%	$3.52	-22%	-7%	Barge			Same	Same
Wrangell	Southeast	Wrangell Oil - Fennemore's Service	$3.78	-13%	8%	$3.78	-17%	6%	Barge			Decrease	Same
Akiak	Western	Kokarmiut Corporation	$4.60	6%	0%	$5.00	10%	1%	Barge			Same	Same
Anvik	Western	Deloyges, Inc.	$4.50	3%	13%	$5.00	10%	0%	Barge			Same	Same
Atmautluak	Western	Atmauthluak Limited	$4.81	11%	5%	$4.81	6%	0%	Barge			Don't know	Don't know
Bethel	Western	Crowley	$4.25	-2%	4%	$4.52	0%	-4%	Barge			Same	Same

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Appendix: Community Heating Fuel and Gasoline Survey - November 2007 Update

Community	Region	Community Retailer (entity selling fuel)	Heating Fuel 11/2007 Retail (selling price per gallon)	Percent +/- Statewide HF Average ($4.35)	Percent +/- 8/2007 Retail (selling price per gallon)	Gasoline 11/2007 Retail Price (selling price per gallon)	Percent +/- Statewide Gas Average ($4.54)	Percent +/- 8/2007 Retail (selling price per gallon)	Transport Method			Change in HF Demand? (increase, decrease, remain same)	Change in Gas Demand? (increase, decrease, remain same)
Brevig Mission	Western	Brevig Mission Native Store	$4.45	2%	-7%	$5.10	12%	0%	Barge			Same	Same
Deering	Western	Deering IRA	$3.98	-9%	3%	$4.24	-7%	12%	Barge			Same	Same
Emmonak	Western	Emmonak Corp. Tank Farm	$4.85	11%	3%	$5.91	30%	21%	Barge			Increase	Increase
Gambell	Western	ANICA (Gambell Native Store)	$4.75	9%	2%	$5.85	29%	20%	Barge			Same	Same
Golovin	Western	Golovin Public Utilities	$4.00	-8%	-10%	$4.25	-6%	-13%	Barge			Same	Same
Grayling	Western	AYL Grayling Fuel Company	$4.50	3%	-10%	$5.50	21%	0%	Barge			Same	Same
Holy Cross	Western	Holy Cross O.L. Company	$4.55	5%	-13%	$5.30	17%	-6%	Barge			Same	Same
Hooper Bay	Western	Crowley Marine	$5.05	16%	-2%	$5.32	17%	0%	Barge			Same	Same
Kaltag	Western	Kaltag Cooperative	$4.50	3%	0%	$5.00	10%	0%	Barge			Same	Increase
Kiana	Western	Kiana Traditional Council	$5.15	18%	-14%	$5.92	30%	13%	Barge			Don't know	Don't know
Kotlik	Western	Kotlik Yupik Enterprises	$4.50	3%	-9%	$5.60	23%	9%	Barge			Same	Same
Kotzebue	Western	Crowley	$4.20	-3%	4%	$4.36	-4%	4%	Barge			Same	Same
Koyuk	Western	Koyuk Native Corporation	$3.98	-9%	-8%	$3.98	-12%	-8%	Barge			Same	Same
Kwigillingok	Western	KWIK Marina Inc.	$4.85	11%	3%	$5.35	18%	9%	Barge			Increase	Increase
Marshall	Western	Maserculiq Inc.	$4.88	12%	3%	$4.83	6%	-6%	Barge			Don't know	Don't know
McGrath	Western	Crowley	$4.92	13%	2%	$5.73	26%	8%	Barge			Decrease	Decrease

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Appendix: Community Heating Fuel and Gasoline Survey - November 2007 Update

Community	Region	Community Retailers (entity selling fuel)	Heating Fuel #1 11/2007 Retail: (selling price per gallon)	Percent +/- Statewide HF Average ($4.36):	Percent +/- 8/2007 Retail: (selling price per gallon)	Gasoline 11/2007 Retail Price: (selling price per gallon)	Percent +/- Statewide Gas Average ($4.54):	Percent +/- 8/2007 Retail: (selling price per gallon)	Transport Method:			Change in HF Demand? (increase, decrease, remain same)	Change in Gas Demand? (increase, decrease, remain same)
Mountain Village	Western	Azachorak Fuel	$4.81	11%	3%	$5.01	10%	3%	Barge			Same	Decrease
Noorvik	Western	Morris Trading Post	$4.60	6%	1%	$4.88	7%	0%	Barge			Same	Same
Nulato	Western	City of Nulato	$5.00	15%	0%	$5.00	10%	-9%	Barge			Increase	Same
Nunapitchuk	Western	Nunapitchuk LTD.	$4.75	9%	6%	$5.00	10%	5%	Barge			Same	Same
Pilot Station	Western	Pilot Station Native Corporation	$5.98	37%	26%	$6.08	34%	4%	Barge			Increase	Same
Quinhagak	Western	Qanirtuuq Corporation	$4.73	9%	0%	$5.24	15%	0%	Barge			Same	Same
Russian Mission	Western	Russian Mission Corporation	$4.75	9%	-5%	$5.52	22%	0%	Barge			Same	Same
Saint Michael	Western	Saint Michael Fuel Company	$4.65	7%	0%	$4.98	10%	0%	Barge			Same	Same
Savoonga	Western	ANICA (Savoonga Native Store)	$4.69	8%	0%	$5.59	23%	0%	Barge			Same	Same
Scammon Bay	Western	Askinuk Corporation	$5.00	15%	0%	$4.87	7%	-3%	Barge			Same	Same
Shishmaref	Western	Shishmaref Native Store	$5.09	17%	0%	$5.25	16%	11%	Barge			Same	Same
Sleetmute	Western	Henry Hill Store	$5.65	30%	-4%	$6.35	40%	0%	Barge			Decrease	Decrease
Stebbins	Western	Tapraq Fuel Company	$4.96	14%	2%	$5.41	19%	8%	Barge			Decrease	Same
Teller	Western	City of Teller	$3.80	-13%	-21%	$4.25	-6%	-11%	Barge			Same	Same
Toksook Bay	Western	Nunakaulak Yupik Corporation	$5.24	20%	0%	$5.89	30%	0%	Barge			Decrease	Same
Tuntutuliak	Western	Qinarmiut Corporation	$5.15	18%	6%	$5.00	10%	1%	Barge			Increase	Increase

Appendix: Community Heating Fuel and Gasoline Survey - November 2007 Update

Community	Region	Community Retailer: (entity selling fuel)	Heating Fuel 11/11/2007 Retail: (selling price per gallon)	Percent +/- Statewide HF Average ($4.35):	Percent +/- 8/2007 Retail: (selling price per gallon)	Gasoline 11/2007 Retail Price: (selling price per gallon)	Percent +/- Statewide Gas Average ($3.84):	Percent +/- 8/2007 Retail: (selling price per gallon)	Transport Method:			Change in HF Demand? (increase, decrease, remain same)	Change in Gas Demand? (increase, decrease, remain same)
Unalakleet	Western	Unalakleet Native Corporation	$4.58	5%	-1%	$4.65	2%	-4%	Barge			Same	Same
Upper Kalskag	Western	City of Upper Kalskag	$5.00	15%	0%	$5.15	13%	0%	Barge			Don't know	Don't know
Wales	Western	Wales Native Store	$4.74	9%	25%	$4.94	9%	21%	Barge			Same	Same
White Mountain	Western	White Mountain Native Store	$3.99	-8%	-7%	$4.59	1%	-8%	Barge			Same	Decrease

Note - Statewide heating fuel average price does not include North Slope communities. Heating fuel in these communities is subsidized by the borough and therefore not comparable.

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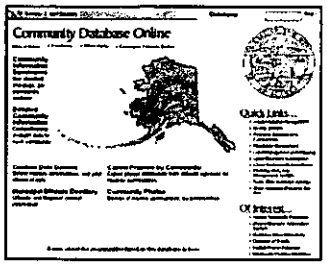
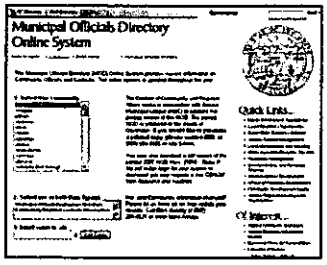
DCRA offers a wide range of online data and information resources to communities, agencies, and the public. The following is a select listing of DCRA's varied information resources.



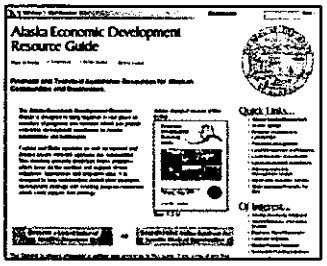
The **Community Profiles Database** contains profiles for more than 390 places in Alaska, the majority of which are communities. Information found in this database includes population, history, culture, facilities, census data, and more. Visit the **Community Profiles Database** at:

http://www.commerce.state.ak.us/dca/commdb/CF_COMDB.htm



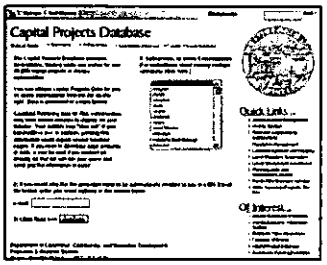
The **Municipal Officials Directory (MOD) Online System** offers dynamic contact information for communities across the state, including local and regional contacts, municipal officials, and employee listings. Visit the **MOD Online System** at:

http://www.commerce.state.ak.us/dca/MOD/MOD.htm



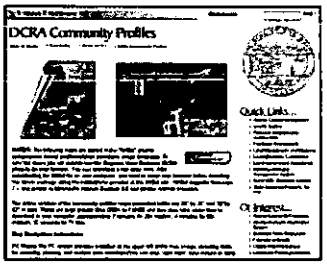
The **Alaska Economic Development Resource Guide (EDRG)** is an inventory of programs and services which can provide economic development assistance to Alaska communities and businesses. Visit the **EDRG** at:

http://www.commerce.state.ak.us/dca/edrg/EDRG.htm



The **Capital Projects Database** contains descriptions, funding levels, and status for over 8,000 capital projects in Alaska communities. The **Capital Projects Database** is designed to quickly deliver requested queries in Excel to your email in-box. Visit the **Capital Projects Database** at:

http://www.commerce.state.ak.us/dca/commdb/CF_RAPIDS.htm



Community Profile Maps display land use, land suitability, land ownership, and ANCSA 14(c) land settlement boundaries. These maps are ideal for use in planning economic developement projects within mapped communities. Visit **Community Profile Maps** at:

http://www.commerce.state.ak.us/dca/profiles/profile-maps.htm

4/10/09 CONFIRM. HEARING WAYNE ANTHONY ROSS

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STATE OF ALASKA
OFFICE OF THE GOVERNOR
JUNEAU

March 27, 2009

The Honorable Mike Chenault
Speaker of the House
Alaska State Legislature
State Capitol, Room 208
Juneau, AK 99801-1182

Dear Speaker Chenault:

In accordance with Alaska Statute 39.05.080, I submit the following name for legislative confirmation of appointment set out below:

State of Alaska Attorney General
Wayne Anthony Ross
Appointed: 3/26/2009

The resume for this appointment has been submitted to the offices of the Senate Secretary and the Chief Clerk.

Sincerely,

Sarah Palin
Governor

cc: Kirsten Waid, Senate Secretary, Alaska State Senate
Suzi Lowell, Chief Clerk, Alaska House of Representatives

WAYNE ANTHONY ROSS
Box 101522
Anchorage, Alaska 99510
907-276-5307 (Office) or 907-346-2697 (Home)
WARALASKA@alaska.com (E-Mail)

Wayne Anthony Ross was born 25 February 1943 in Milwaukee, Wisconsin. He graduated from Marquette University High School in 1960.

EDUCATION: After attending the University of Wisconsin-Milwaukee for two years, Mr. Ross transferred to Marquette University, where he graduated with a Bachelor of Science Degree in Business Administration in 1965, and a Doctor of Law (Juris Doctoris) Degree in 1968.

EMPLOYMENT HISTORY: Mr. Ross first came to Alaska in June 1967 between his junior and senior years of law school. He spent that summer serving as a law clerk for a local Anchorage attorney, and driving a sightseeing bus on weekends for American Sightseeing Company.

From 1968 to 1969, Mr. Ross served as an Assistant Attorney General for the State of Alaska. In 1969 he was appointed by Superior Court Judge Harold J. Butcher to be Court Trustee and Standing Master for the Family Court. During the next four years, sitting as a judicial officer, Mr. Ross heard over 90% of all dependency, child in need of supervision, and delinquency cases arising in the Third Judicial District, and also enforced child support orders entered by the Superior court. During Mr. Ross's tenure, a computerized system of collection was instigated, which has developed into the Child Support Services Division which exists today.

In 1973, Mr. Ross left State service to enter the private practice of law. He was an associate of Edward J. Reasor and Associates in Anchorage, Alaska and a partner in law firms in Cordova, Alaska and Glennallen, Alaska. In 1977, Mr. Ross opened his own office in Anchorage, Ross & Associates, now known as the law office of Ross & Miner, P.C. Mr. Ross's practice emphasizes family law, criminal defense, plaintiff's personal injury and business law. Some years ago, Mr. Ross obtained one of the highest settlements in a wrongful termination of employment case ever obtained in the United States.

BAR ADMISSIONS: Mr. Ross was admitted to the Wisconsin Bar in 1968 and the Alaska Bar in 1969. He is admitted to practice in the state courts of Wisconsin and Alaska and in the federal courts of the Eastern District of Wisconsin, the District of Alaska, the 9th Circuit Court of Appeals, and the United States Supreme Court.

MILITARY SERVICE: Mr. Ross was a Colonel in the Alaska State Defense Force. COL Ross was Commander of the Professional and Technical Detachment of the ASDF from 1986 to June 1987. He was Chief of Civil-Military Operations (G-5) from June 1987 until July 1988, and then took command of the Field Forces Teams. Several months later, he was appointed Judge Advocate General. From April of 1990 until May 1992, COL Ross was Chief of Operations and Training (G-3). In May, 1992, he was appointed Acting Chief of Staff. In March, 1993 he was appointed Chief of Staff. From July, 1994 until June 1996, he held the position of Inspector General. COL Ross was given command of the ASDF Rifle Team in September, 1989. COL Ross also served as Acting Commander, and was on the Officer Promotion and Selection Board. He participated in Mobex 88, Brimfrost 89, and Alcan Convoy 92 operations. Colonel Ross is now Area Defense Counsel for the ASDF. He founded, and was President of the 49th Territorial Guards Regiment, Inc. from 1987-1994, an organization established to support the Alaska State Defense force, its officers and soldiers, and was re-elected to that position in April, 1995, serving until August 1996. In 2007 he was again elected to the Regiment's Board of Directors and later elected to the position of Vice President and presently serves in that position.

COL Ross was awarded the Alaska State Service Medal, the Alaska State Defense Force Achievement Medal, the Alaska State Defense Force State Service Medal twice, the Alaska State Defense Force Drill Attendance Ribbon, the Alaska State Defense Force Training Achievement Ribbon, and the State

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Guard Association of the United States Membership Ribbon. He was named 1988 Good Samaritan Attorney Of The Year by Veterans Living and Health, Inc. In 1990 he was knighted by the Polish Government and awarded the Commander's Cross of the Order of Polonia Restituta for services rendered to the cause of freedom.

CURRENT MEMBERSHIPS:

Mr. Ross is presently a member of the following:

Alaska Bar Association (1968-present) (Family Law Committee, 1973-1978; Vice Chairman, 1973-1974) (Hearing Officer, Fee Arbitration Committee, 1981-1987, 1994-2001), (Discipline Hearing Committee, 1991-1994) Alaska Gun Collectors' Association, Inc. (1972-present) (Charter Member) (Master-at Arms, 1972-1973) (Secretary, 1983-1985) (President Emeritus, 1989-2004) (Director, 1994-1996, 2001) (President, 1973-1977, 1979-1981, 1985-1989, 2005-present) (Life Member, Card Number 1)

Alaska Machine Gun Association (2000-present)

Alaska M.A.U.E.R.S. Society

Alaska Outdoor Council (1985-present)

Alaska Peace Officers' Association (1970-present)

Alaska Professional Hunters' Association, Inc. (1981-present)

Alaska Right to Life, Inc. (1972-present) (Founder Member) (Member, Board of Directors, 1972-1976) (Vice President, 1972-1975)

Alaska Territorial Cavalry, Motorized (Founder member, 1991-present) (Secretary and Newsletter Editor, 1991-1998, 2000-2006) (Life Member #1)

Alaska Veterans Museum (Founder Member, 2003-present) (Director - 2008 to present)

Alaskans Against The Death Penalty (2009)

American Society of Arms Collectors (2003-present)

Anchorage Bar Association (1969-present) (Member, Committee for U.S. Constitutional Bicentennial Celebration, 1987)

Colt Collectors Association (1982-present)

Dallas Arms Collectors (Life Member, 1989-present)

49th Territorial Guard Regiment, Inc. (Member, 1987-1997, 2007-present) (President, 1987-1994, 1995-1996)(Director, 2007; Vice-President, 2007-present)

Fraternal Order of Alaska State Troopers (2005-present)

German Club of Alaska (1981-1994, 2001-present)

Gun Owners Action League (1987-present)

Military Vehicle Preservation Association (1989-present) (Member, Board of Directors, 1994-1996) (Vice President, 1994-1996)(Life Member - 2005-present)

Missouri Valley Arms Collectors (2004-present)(Honorary Life Member, 2008-present)

National Lawyers Association (1995-present)

National Rifle Association of America (1964-present) (Life member since 1975) (Benefactor member since 1984) (Member, Board of Directors, 1980-1992, 1994-present) (Second Vice President, 1988-1990) (First Vice President, 1990-1991) (Member, Executive Committee, 1984-1992, 1998-present) (Member, Freedom Challenge Advisory Team, 2008) (Member, Education and Training Committee, 1980-1982) (Member, NRA Legal Affairs Committee, 1982-1988, 1996-present; Chairman, 1983-1987; Vice Chairman 1996-present) (Member, NRA Gun Collectors Committee, 1980-1992, 1994-96, 1997-present; Vice Chairman, 1982-1987; Chairman, 1987-1992, 1997-present) (Member, Committee on Hearings. 1987-1988) (Vice Chairman, President's Committee on Section 501[c][3] Status, 1986) (Member, Special Committee on Hunters' Funds for the ILA Task Force, 1987-1988) (Member, Ad Hoc Committee on NRA Member Organizations, 1987-1988) (Chairman, President's Task Force on Prayer Breakfasts, 1990) (Member, Ways and Means Committee, 1990-1991) (Member, Officers Compensation Committee, 1990-1991) (Member, Hunting and Wildlife Conservation Committee, 1991-1992) (Member, Legislative Policy Subcommittee on State and Local Guidelines, 1991-1992) (Member, Ethics Committee, 1994-present, Vice Chairman 1995-96, Chairman, 1998-present) (Member, Ad Hoc Committee on the Militia,1995) (Member, President's Ad Hoc Committee to Investigate Violations of Association Policy, 1995) (Member, President's Special Committee to determine the feasibility of providing financial compensation for NRA Presidents, 1995) (Member, Ad Hoc Committee to investigate memberships and upgrades sold at a reduced rate, 1997) (Member, Nominating Committee, 1981-82; Vice-Chairman, 1998-1999)(Member, Special Committee to study the Pros and Cons of

A Regional Quarterly Board Meeting, 2001)(Chairman, Alaska Host Committee, 2005)(Member, Freedom Challenge Advisory Team, 2008).

Ohio Gun Collectors Association (1980-present) (Honorary Life Member, 1990-present)
Pioneers of Alaska, Anchorage Igloo No. 15 (2000-present)
Saint Gabriel Possenti Society, Inc. (1998-present)
Smith and Wesson Collectors Association (1975-present)
Tyone Mountain Syndicate, Inc. (President, 1982-present) which owns and operates Tyone Mountain Lodge in the Nelchina Basin of Alaska.
Washington Arms Collectors (1992-present)
Wisconsin Bar Association (1968-1989, 1991-present) (Alaska Chapter Chairman, 1997-present)
Wisconsin Gun Collectors (1958, 1965-1967, 1988-1994, 2006-present)
Wyoming Weapons Collectors (1990-present)(ID #455)

PRIOR MEMBERSHIPS:

Mr. Ross was a member of the following:
Alaska Cigar & Yacht Club (1998-2001)
Alaska 49-ers (1995-2001)
Alaska Four Wheelers (1981)
Alaska Geographic Society
Alaska Junior Miss Scholarship Pageant, Inc. (Member, Board of Directors, 1973-1980) (Judges' Chairman, 1973-1977) (Vice President, 1977-1980)
Alaska Legal Services Third Judicial District Campaign Leadership Committee (2000)
Alaska Moose Foundation (Director, 1999-2000)
Alaska National Guard Historical Holding (1989-1997)
Alaska National Guard Museum Fund, Inc. (Director, 1991-1999) (Chairman, 1996-1999)
Alaska Professional Sportsmen's Association, Inc. (1990-1991)
Alaska Public Policy Research Institute, Inc. (1997-1998)
Alaskans United Against The Tax Cap (2000)
Alaskans for Recriminalization of Marijuana Advisory Committee (1990)
Alaska Rifle Club (1981-1999) (Legislative Liaison Officer, 1982-1988)
Alaska 2nd Amendment Coalition (ASAC) (1992-2000)
Alaska State Rifle and Pistol Association (1980-1992) (Vice President, 1983-1988) (Secretary and Executive Officer, 1988-1989) (NRA Liaison Officer, 1989-1992)
Alaska Supreme Court Advisory Committee on Children's Rules (1972-1973)
Aleutian Rod and Gun Club (1994-1995)
Alpha Delta Sigma National Professional Advertising Fraternity, C. Brooks Smeeton Chapter (1962-1968)
American Bar Association (1968-1990) (Membership Chairman, Family Law Section, 1975-1976)
American Federation of Police (1972)
American Historical Foundation (1986-1988)
American Judicature Society (1970-1979)
American Legion - Fairview Park Post (Ohio)(1990)
American Sports Car Association (1958-1960) (President, 1958-1960)
Anchorage Clearinghouse Christian Ministries, (Member, Board of Directors, 1992)
Anchorage Committee for the White House Conference on Children (1970)
Anchorage Council on Prevention of Alcohol & Drug Abuse (1984)
Anchorage Crime Commission (Committee on Prosecution, 1981)
Anchorage Interfaith School Foundation (1983)
Anchorage Snowmobile Club (1992-1993)
Anchorage Veterans Monument Committee, (Director,1998-2001)
Antique Automobile Club of America (1991-1998)
Antique Auto Mushers of Alaska (1991-1993)
Armed Services YMCA of Alaska (Advisory Committee Member, 1995) (Director, 1995-2003)(Program Committee Member, 2000-2003)(First Vice Chairman, 2001-2002)(Chairman, 2003)

Associates of Vietnam Veterans of America (2003-2007)
Association of Family Conciliation Courts (1977-1978)
Association of the United State Army (1990-1998, 2001-2002)
Boy Scouts of America (Sustaining Member, 1983-1991)
B.P.O.E., Lodge No. 1351 (1991-2003) (Vice-Chairman, Americanism Committee, 1991-1995)
California State Rifle and Pistol Association, (1988-2003)
Cinema Cynics (1973-1978)
Citizens' Committee to Keep and Bear Arms (1981-1983)
Coalition For The Alaskan Way Of Life (2000-2001)
Coalition of American Veterans (1987-1989)
Commonwealth North (1986-2002)
Congress of Racial Equality (1991-1992)
Copper Basin Shooting Club (2003-2004)
Cystic Fibrosis Foundation (1984-1987) (Member, Board of Directors, 1984-1987)
Delta Theta Phi Law Fraternity, Eschweiler Senate (1966-1968), Alaska Senate (1983-1989) (Tribune, 1983-1985)
Ducks Unlimited (Sponsor, 1985-1986)
Elephant Club of the Republican Party of Alaska (1985-1987)
Gun Owners of America (1988-1994)
Gun Rights Committee (1983-1992) (Legal Action Committee Chairman, 1983-1985)
Holy Family Cathedral Parish Council (1971-1975) (Vice President, 1972-1975)
Indiana Sportsmen's Council (1973-1974)
International Handgun Metallic Silhouette Association (1978)
Izaak Walton League of America (1990-2000)
Kodiak Island Sportsmen's Association (1992-1994)
Kodiak Rod & Gun Club (1984-1986)
Law Enforcement Alliance of America (1992-2002)
Law Enforcement Committee on Alcoholism (1969-1970)
Lincoln Society (1994) (Lincoln Day Gala Committee, 1993-1994)
Marine Corps League (1998-2006)
Matanuska Valley Sportsmen (2000-2002)
McKinley Mountain Men (1980-1986)
Military Transport Association of North Jersey (2002-2008)
National Council of Juvenile Court Judges (1971-1986)
National Federation of Independent Businesses (1976-1986, 1996)
National Firearms Museum Fund (Director, 1982-1994; 1997-1998)
National Mossberg Collectors Association (1989-1991)
National Policy Forum (Member, Policy Council on Free Individuals in a Free Society, 1994)
National Republican Congressional Committee's Gun Owners Task Force (2000-2001)
National Republican Lawyers Association (1985-1994)
National Rifle Association of Great Britain (1989-1991)
Navy League (1988-1998)
Neighbors for Educational Programming (Chairman, 1992)
Outstanding American Handgunner Awards Foundation (1979-1981)
Presidential Inaugural's Professionals Advisory Committee (1988-1989)
Republican National Committee (Member, 1992-1998)
Republican Party Platform Planning Committee (1992)
Republican Roundup Committee (1996-2002) (Chairman, 1996-2002)
Republican Speakers Association (1993-1998)
Ruger Collectors Association (1982-1993)
Safari Club International (2001-2002)
Save Our Constitution Committee (1992)
Second Amendment Foundation (1981-1983)
Sierra Club (1985-1986)
Spanish - American War Historical Association (1993-1994)

Spenard Bar Association (1975-1977) (Vice President, 1976-1977)
State Guard Association of the United States (1987-1997) (Member, Board of Directors, 1992-1994)
Statewide Advisory Committee, Alaskans for Equal Fishing and Hunting Rights (1982-1983)
Tanana Valley Sportsmen's Association (1983-1986)
Theodore Roosevelt Association (1982-1993, 1995)
Toy Gun Collectors Association (1989-1994)
Toy Gun Purveyors Association (1989-1994)
Ugashik Bay Beach Club
Wednesday Night Club (1983-1994)

TEACHING EXPERIENCE: Mr. Ross taught courses entitled "Juveniles and the Law" (1973-74) and "Introduction to Criminal Justice" at the University of Alaska, Anchorage, for several semesters. He has been a guest lecturer at Marquette University Law School, the University of Alaska, Anchorage, and at Wayland Baptist College. Mr. Ross served as a member of the Board of Trustees (Secretary) for Lumen Christi High School from 1999 to 2001.

POLITICAL EXPERIENCE: Mr. Ross first became involved in politics in 1960 when his father, Ray E. Ross, ran for the office of Alderman (City Councilman) of West Allis, Wisconsin's fourth largest city. Ray E. Ross was elected and held the Alderman's position for 3 four year terms. Wayne Ross was Campaign Chairman for two of those campaigns. He also participated in the Nixon campaign of 1960 and the Goldwater campaign of 1964 with less satisfactory results. Upon coming to Alaska, he was an alternate delegate to District 11's convention in 1972 and 1976. Mr. Ross has been involved in the Republican Party from precinct to national levels. Mr. Ross served as Parliamentarian at the 1980, 1982, and 1984 District 8 Republican Conventions and was Parliamentarian Pro Tem for the Republican State Central Committee in 1983. In 1984 he was Parliamentarian for the State Republican Convention and was an alternate delegate to the Republican National Convention in Dallas, Texas, where as a seated alternate, he was able to cast his ballot for Ronald Reagan for the Republican Party nominee for President of the United States. Mr. Ross was elected Vice Chairman of the District 8 Republican Party in 1982 and served as Chairman of that District from 1985 to 1988. As such, he was a member of the Alaska State Republican Party Central Committee. Mr. Ross was a member of that party's Elephant Club and was Chairman of the Rules committee from 1985-1988 and Co-Chairman of the 1988 State Convention's Candidate Recruitment Committee. In 1988, he was Alaska Chairman, Lawyers for Bush/Quayle. Mr. Ross was Republican Party National Committeeman, Alaska from 1992-1998. He attended the Republican National Convention in Houston 1992 as National Committeeman-elect and the 1996 National Convention in San Diego as National Committeeman. From 1995-1996, he served as Co-Chairman, Alaskans For Gramm. In 1997, Mr. Ross was a member of a delegation representing the United States and the Republican National Committee to the Republic of China (Taiwan's) 15th Kuomingtang National Congress in Taipei, Taiwan, China. Mr. Ross sat on the Republican State Central Committee from 2000-2001 as the Bonus Vote for District 18. He served as Secretary for Precinct 357 from 2000-2001. He also served as a member of the Republican Party Special Events Committee from 2000-2002. Mr. Ross was a Republican Candidate for Governor of Alaska in 1998 and 2002. In 2006 he served as Honorary Co-Chairman of the Sarah Palin for Governor campaign.

PUBLIC SERVICE: Mr. Ross was appointed to serve on the Alaska Land Use Council Advisors' Committee by the United States Department of Interior in January, 1984, and was re-appointed each year thereafter. In April, 1987, Mr. Ross was elected Chairman of that Committee. He served as Chairman from 1987-1988. He was elected Vice Chairman in 1988, and from 1989-1990, Mr. Ross held the position of Acting Chairman. Mr. Ross was appointed to the Advisory Council for the Commission On Privatizations and Delivery of Government Services by the Alaska Legislature in 1999, and assigned the Chairmanship of the Advisory Sub-committee to study the Office of the Governor.

Mr. Ross was appointed and served as an Alaskan Marriage Commissioner in 1969, 1970, 1971, 1972, 1973, 1976, 1984, 1985, 1994, 1997, 2003, and 2005.

AWARDS: Mr. Ross and his law firm have received awards from the National Rifle Association of America, the Alaska Outdoor Council, and the Alaska Christian Sportsman's Club for services on behalf of sportsmen. Mr.

Ross has been awarded the NRA Affiliated Gun Collectors Award of Merit for the Promotion of Gun Collecting. Mr. Ross has also received patriotism awards from the Daughters of the American Revolution, the Alaska Sea Cadets, the National Commander of the Veterans of Foreign Wars, and Anchorage VFW Post 9981.

Mr. Ross is listed in Who's Who in American Law, 1st- 9th, 14th, and 20th editions; Who's Who in American Politics, 15th, 16th, 17th and 20th editions; Personalities of the West and Midwest, 8th edition; Who's Who in Society, 1st and 2nd editions; Who's Who in America, 46th-49th and 55th-57th editions; International Who's Who of Contemporary Achievement, 1984/85 edition; Marquis Who's Who in the West (1996-1997); and Who's Who in the World, 12th and 18th and 21st editions.

PUBLICATIONS: Mr. Ross was a biweekly columnist for the *Anchorage Times* (FROM THE ARENA, every second Sunday) from 1986 until 1992. He later wrote for the *Voice Of The Anchorage Times* in the Anchorage Daily News from 1992-1993, and for *The Anchorage Chronicle* in 2003. He served as contributing editor (firearms) for the Alaska Bar Rag, the official newspaper of the Alaska Bar Association for which Mr. Ross received the coveted Stanley Award for Heroic Journalism. Mr. Ross also has had outdoor and firearms articles printed in the Congressional Record, Alaska Outdoors, Supply Line, Soldier of Fortune, Wild Sheep, the Message, the Washington Arms Collectors Gun News, the Missouri Arms Collectors newsletter, the National Firearms Museum Quarterly, and Gun Week magazines. He also has written articles for Army Motors and was book review editor for that magazine.

HOBBIES AND INTERESTS: Mr. Ross was a holder of a Federal Firearms Dealers License for twenty-five years and specializes in collecting large caliber Colt and Smith and Wesson handguns. He has testified before Congressional Committees in Alaska and Washington, D.C. on lands and hunting issues, and has lobbied the Alaskan Legislature for equal access to fish and game for all citizens. He has also appeared on numerous television and radio programs supporting hunting and the Right to Keep and Bear Arms. Mr. Ross has conducted seminars and given speeches on hunting and gun collecting in many parts of the country. He is listed on the NRA Gun Collectors Speakers Bureau.

Mr. Ross's hobbies include hunting (especially with a .45 caliber handgun), fishing, and gun-collecting and he is a licensed assistant guide. He has taken two moose, and three caribou, with a .45 Colt revolver; three Sitka deer and a musk ox with a .45 semi-automatic pistol; and numerous other large game with a rifle including Dall sheep, whitetail deer, moose, caribou, sika deer, black bear, and brown bear. He has been qualified as an expert witness on firearms in both Alaska and Texas State Courts and in the Federal District court for the State of Alaska, both in Anchorage and Fairbanks. He is also a bibliophile, collecting books by Robert Service, Rex Beach, James Oliver Curwood, Don Blanding, and Theodore Roosevelt, as well as possessing the largest library on firearms in the State of Alaska.

RELIGIOUS PREFERENCE: Mr. Ross is a Catholic. He, along with his wife, Barbara, participated in the Anchorage Archdiocese Pre-Cana Program as instructors from approximately 1972 until 1985. In 1988, he was Advanced Gifts Chairman of the St. Elizabeth Ann Seton Church building program. In 1991 he was Building Fund Committee Chairman for that church. In October, 1991, Mr. Ross and his wife were named, by the Vatican, to be a Knight and Lady in the Equestrian Order of the Holy Sepulcher of Jerusalem. In 1998, Mr. Ross was awarded the Saint Gabriel Possenti Medallion by the Saint Gabriel Possenti Society. Mr. Ross served as Secretary on the Board of Trustees of Lumen Christi High School, Inc. from 1999 until 2001 and helped in the transition of that school from a private corporation to a parish school under the auspices of the Catholic Archdiocese of Anchorage.

FAMILY INFORMATION: Mr. Ross was married to Barbara L. Froelich of Elkhart, Indiana in 1968. They reside in Anchorage and have four children: Gregory, age 38, Brian, age 35, Timothy, age 32, and Amy Katherine Ross, age 30 years, and six grandchildren. Gregory graduated from Pre-Law at Marquette University, was a commercial fisherman, obtained his masters degree in education from the University of Alaska, Anchorage, is now a teacher for the Anchorage School District and coaches high school hockey. For several years, he served on the Anchorage Fish and Game Advisory Committee. Greg is married to Shelli, and has one son, Oberon and two step-children, Ryan and Tristen. Brian graduated 13th in his class, the top Marine Corps officer (Class of 1994), from the United States Naval Academy, and is a Major in the U.S.

Marine Corps, having served 3 tours in Iraq. Brian recently obtained his Masters Degree at Marquette in Milwaukee and currently is assigned by the Marine Corps as an Instructor (Naval History) at the Naval Academy. Brian and his wife, Tracy, have two sons, Andrew Charles Ross and Matthew Edward Ross, and a daughter, Emily Louise Ross. Tim graduated with a degree in Mechanical Engineering from Marquette University and is working in Alaska as a project supervisor for ANC. Amy graduated from Gonzaga University in Spokane, Washington with a degree in Criminal Justice. She is police officer with the Spokane Police Department, and is a Spokane Police Department Firearms Training Officer. She was recently commissioned as a Special Deputy U.S. Marshall. Barbara and each of the Ross children and grandchildren are NRA Life Members. Barbara was the librarian at St. Elizabeth Seton Catholic Elementary School, was a member of that school's Service Club Board, and was President of its School Board. She worked for the Anchorage School District as a librarian's assistant, and is now retired. Barbara served for several years as Program Director for the Anchorage Republican Women's Club, was District Chairman for Republican District 32, and as Secretary for Alaska Right To Life, Inc. Currently she is a Director of Alaska Right To Life, Inc. (Eff. 1 Feb 09)

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"Abuse touches all walks of life within our society", The Anchorage Times, 4 November 1990.

"A 'Citizen Of The World' may be an undesirable citizen", The Anchorage Times, 17 January 1988.

"Action of adults toward children hold lasting memories", The Anchorage Times, 19 April 1992.

"A goodbye to my longtime friend", The Anchorage Chronicle, 10 - 17 October 2002.

"A 'good name', an asset beyond value", The Anchorage Times, 28 February 1988.

"Ah, it's the amenities in life", The Anchorage Times, 9 October 1988.

"Alaskans must meet challenge of subsistence regulation", The Anchorage Times, 31 December 1989.

"Amendments unfair to individuals", The Anchorage Times, 6 August 1986.

"America Lost A Good One When We Lost Joe Foss", Soldier of Fortune, April 2003.

"ANCSA amendments Bad For State, And Its Citizens", The Cordova Times, 5 June 1986.

"ANCSA deserves the Golden Fleece award", The Anchorage Times, 26 April 1987.

"An 'early retirement' doesn't offer dragons to slay, battles to fight", The Anchorage Times, 3 June 1990.

"Animal activists real enemy", The Anchorage Times, 2 December 1990.

"Anonymous hate mail should not be permitted", The Bar Rag, October-December 2007.

"Another look toward 1991", The Anchorage Times, 15 May 1986.

"Anti-Gun laws do not aid the law-abiding", The Anchorage Times 5 February 1989.

"Applicant earns an 'A For Effort' on resume", The Anchorage Times, 26 August 1991.

"A promise is to be honored", The Anchorage Times, 16 August 1986.

"A reputation with a shadow, The Anchorage Times, 7 June 1987.

"Arm the pilots and the passengers". The Anchorage Chronicle, Aug. 29 - Sept. 4, 2002.

"Arms misuse threatens rights". The Anchorage Times, 24 February 1991.

"A road to Cordova would give more Alaskans access to the little-known treasure". The Anchorage Times, 20 August 1989.

"Assault weapons are being confused with automatic firearms". The Anchorage Times, 30 April 1989.

"As soon as I head out of town, the snow should start falling". The Anchorage Chronicle, 28 November 2002.

"At Ease - The Flying Jeep". Army Motors, Volume 104, Summer 2003.

"A tribute to Barbara on Mother's Day". The Anchorage Times, 10 May 1987.

"Average citizen finds legal system inaccessible". The Anchorage Times, 16 April 1989.

"Base subsistence priority on need". Voice of the Times, 8 August 2001.

"Battle lines are being drawn for subsistence war". The Anchorage Times, 11 March 1990.

"Bears will be bears - Can we allow it?". The Anchorage Times, 12 August 1990.

"Before you go hunting remember to vote". The Anchorage Times, 26 August 1990.

"Belief in Santa Claus isn't just for little kids". The Anchorage Times, 25 December 1988.

"Best choice to keep young". Anchorage Daily News, 6 August 1992.

"Burgers are best for a 'Trencherman's' lunch. The Anchorage Times, 11 December 1988.

"Bush achievements many". Anchorage Daily News, 29 August 1992.

"Buy American-made products in 1992". The Anchorage Times, 29 December 1991.

"Campaign provides a real education". The Anchorage Chronicle, 5 September 2002.

"Candidates' book is more than Alaska history". The Anchorage Times, 23 October 1988.

"Candidates do not agree on gun control issue". The Anchorage Times, 25 September 1988.

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"Can our best afford public service?". The Anchorage Times. 8 January 1989.

"Change in Show Rules". AGCA News & Views. March/April 2009.

"Chastity. adultery relegated to Dark Ages". The Anchorage Times, 23 February 1992.

"Christmas time sparks thoughts on old friends". The Anchorage Times. 16 December 1990.

"Come Celebrate the Beginning", AGCA News & Views, May-June 2007.

"Commitment is needed before practice". The Anchorage Times. 19 June 1988.

"Community service isn't as recalled". The Anchorage Times, 21 June 1987.

"Defending the guilty: Our judicial system at its very best". The Anchorage Times. 4 January 1987.

"Determining when one man's refuse is another man's refuge". The Anchorage Times. 6 October 1990.

"Do you have the attributes and desire to run for office?". The Anchorage Times. 9 July 1989.

"Duty- a sense of obligation. obedience and respect". The Anchorage Times. 15 March 1987.

"Equality for women still has considerable distance to go". The Anchorage Times. 11 October 1987.

"Elders pass wisdom to young during hunt". The Anchorage Times. 12 January 1992; The Message. March 1992; Gun-News, Volume 9 - Number 1.

"Fall hunting is a family occasion". The Anchorage Times. 14 August 1988.

"False! False! False!". Supplement to The Anchorage Daily News. 6 November 2000.

"False reports of child sexual abuse devastate families and children". The Anchorage Times.28 July 1991: Speak Out For Families. December 1993.

"Family unit suffers from bureaucratic maze". The Anchorage Times. 22 May 1988.

"Family vacations offer fun and frustrations". The Anchorage Times. 24 April 1988.

"Fr. Boyle taught schoolboys lessons on discipline". The Anchorage Times 13 March 1988.

"Father's death helps him understand what a happy death means". The Anchorage Times, 22 September 1990.

"Fighting for Old Glory on battlefield of art". The Anchorage Times, 31 May 1992.

"Friends sometimes have to sit in the front of the canoe". The Anchorage Times, 3 July 1988.

"From Civil War typewriter to the modern computer". The Anchorage Times, 22 April 1990.

"Game permits seem to be for the lucky few". The Anchorage Times, 23 July 1989.

"Getting old is not for me". The Anchorage Chronicle, 27 March 2003.

"Goodbye my friend". The Anchorage Chronicle, 3 October 2002.

"Governor Cowper doesn't understand the issue". The Anchorage Times, 1 July 1990.

"Governor's duties clear on lands issues". The Voice of the Anchorage Times, 2 January 2001.

"Grass roots political meetings: a learning experience". The Anchorage Times, 27 March 1988.

"Gun law goes overboard with restrictions", The Anchorage Times, _____1990.

"Gun shows generate substantial revenue", The Anchorage Times, 14 February 1988.

"Gun 'waiting period' proposals unworkable", The Anchorage Times, 17 July 1988.

"Handling clients charged with drunken driving challenges lawyers". The Anchorage Times, 15 July 1991.

"Happy Birthday, AGCA!", AGCA News & Views, March-April 2007.

"Heading For The Rhine", Army Motors, Volume 63, Spring 1993.

"Helping neighbors in Middle East takes precedence over peace". The Anchorage Times, 13 January 1991.

"Hi Hopes still waiting for nomination". The Anchorage Times, 6 October 1991.

"Hollywood version of cops and robbers may be outcome for Hillside". The Anchorage Times, 17 November 1991.

"Horsepower limits on river unfair to many boat owners". The Anchorage Times, 31 July 1988.

"Housing shortage redefines luxurious", The Anchorage Times, 27 January 1991.

"How long has it been since you had your last physical exam?", The Anchorage Times, 27 January 1991.

"Hunter didn't like look of Simpson Bay 'Welcome Wagon'", The Anchorage Times, 17 December 1989.

"Hunters in danger of losing all hunting rights", The Anchorage Times, 28 January 1990, The Message, January 1992.

"Hunting in Alaska the bureaucratic way means staying home", The Anchorage Times, 2 August 1987.

"Hunting should not involve harassment", The Anchorage Times, 20 October 1991.

"In failing to resist lawlessness, we may lose what we value most", The Anchorage Times, 3 May 1992; Washington Arms Collectors Gun-News, Vol 8, Number 10 (October 1992).

"Is the justice system based on presumption of innocence?", The Anchorage Times, 29 October 1989.

"It is time we quit crying over the oil spill", The Anchorage Times, 17 September 1989.

"It's easier to throw a sacrifice to the wolves than fight the News", The Anchorage Daily News, 22 July 1992.

"It seems it's becoming 'We Vs. They' on Alaska issues", The Anchorage Times, 24 May 1987.

"It's National Convention time once again", The Trunk Line, August 2000.

"I wish Anchorage papers followed Milwaukee", The Anchorage Times, 15 June 1982.

"Joe Foss - America lost a good one", Voice of the Times, 8 January 2003.

"Join A Militia - Break The Law?", Soldier Of Fortune, April 1995.

"Judges leave attorney scratching his head?", The Anchorage Times, 9 February 1992.

"Katie Couric is going to be disappointed", The Anchorage Chronicle, 6 April 2003.

"Katz Decision limits citizens' participation", The Anchorage Times, 12 April 1987.

"Key to finding party candidates lies in understanding political process", The Anchorage Times, 21 October 1990.

"Kids and Guns. A Different Perspective", The Message, February 1994; Anchorage Daily News, 27 March 1994, 1994; The Firing Line, March 1997.

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"Lawyers don't deserve such a bad reputation", The Anchorage Chronicle, 30 January 2003.

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"Legislative leadership", The Anchorage Times, 6 November 1988.

"Lesson In Hunting Concerns Life", The Message, October 1991.

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"Little Will", Alaska Bar Rag, May 1979.

"Looking back, Westchester Lagoon might never have had its park", The Anchorage Times, 30 June 1991.

"Macie's .458 saved him and killed him", The Anchorage Times, 10 December 1989.

"Macie's Gewehr", Reisen Der Wild Nis, (Germany) 1991.

"Macie's Gun, Part One", The AGCA News & Views, November-December 2005.

"Macie's Gun, Part 2", The AGCA News & Views, Jan-Feb 2006.

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"Military Appreciation Day shows off The New Army", The Anchorage Times, 11 June 1989.

"Modern Turkey Hunting", Alaska Bar Rage 1979.

"Muffling doesn't change facts", Anchorage Daily News, 10 October 1992.

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"My 'other woman' will probably outgrow blue jeans and sweatshirts", The Anchorage Times, 20 May 1990.

"New Year's resolutions", The Anchorage Times, 3 January 1988.

"Never give a sucker an even break", The Anchorage Times, 2 June 1991.

"New York City residents and their gun Law", The Anchorage Times, 6 May 1990.

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"'1991' amendments further cause of native sovereignty", The Anchorage Times, 15 February 1987.

"No small world if you're from Munich", The Anchorage Times, 1 December 1991.

"Nothing like a wife to pop the ol' ego", The Anchorage Chronicle, 21 Nov 2002.

"NRA Collectors Committee Rescinds Silver Medal", The American Rifleman, December 2007.

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"On joggers and gerbils' heartbeats and handyman talents". The Anchorage Times, 15 October 1989.

"Opportunity missed?", The Anchorage Times, 20 November 1988.

"Our liberty requires our vigilance", The Anchorage Times, 29 March 1987.

"Our senior citizens' stories should be saved for future", The Anchorage Times, 26 November 1989.

"'Outdoorsmen' and 'naturalists' must begin a dialogue", The Anchorage Times, 12 November 1989.

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"Puck was right! What fools these mortals be!". The Anchorage Chronicle, 13 March 2003.

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Sec. 44.23.010. Attorney general.

The principal executive officer of the Department of Law is the attorney general.

Sec. 44.23.020. Duties; and powers; waiver of immunity.

(a) The attorney general is the legal advisor of the governor and other state officers.

(b) The attorney general shall

(1) defend the Constitution of the State of Alaska and the Constitution of the United States of America;

(2) bring, prosecute, and defend all necessary and proper actions in the name of the state for the collection of revenue;

(3) represent the state in all civil actions in which the state is a party;

(4) prosecute all cases involving violation of state law, and file informations and prosecute all offenses against the revenue laws and other state laws where there is no other provision for their prosecution;

(5) administer state legal services, including the furnishing of written legal opinions to the governor, the legislature, and all state officers and departments as the governor directs; and give legal advice on a law, proposed law, or proposed legislative measure upon request by the legislature or a member of the legislature;

(6) draft legal instruments for the state;

(7) make available a report to the legislature, through the governor, at each regular legislative session

(A) of the work and expenditures of the office; and

(B) on needed legislation or amendments to existing law;

(8) perform all other duties required by law or which usually pertain to the office of attorney general in a state; and

(9) prepare, publish, and revise as it becomes useful or necessary to do so an information pamphlet on landlord and tenant rights and the means of making complaints to appropriate public agencies concerning

landlord and tenant rights; the contents of the pamphlet and any revision shall be approved by the Department of Law before publication.

(c) Before January 1, 1999, the attorney general may, in a case that involves the state's title to submerged lands, or in any case in which the state seeks to allocate fault to the federal government or a federal employee under AS 09.17.080, waive the state's immunity from suit in federal court provided under the Eleventh Amendment to the Constitution of the United States. The expiration on January 1, 1999, of the attorney general's authority to waive the state's Eleventh Amendment immunity does not affect existing waivers in ongoing cases.

(d) The attorney general may, subject to the power of the legislature to enact laws and make appropriations, settle actions, cases, and offenses under (b) of this section.

(e) There is established within the Department of Law the function of public advocacy for regulatory affairs. The attorney general shall participate as a party in a matter that comes before the Regulatory Commission of Alaska when the attorney general determines that participation is in the public interest.

(f) The attorney general shall designate not less than one-half attorney position in the Department of Law for the purpose of prosecuting actions for fraudulent acts related to workers' compensation under AS 23.30.

(g) The attorney general may, in cases that involve compliance, discharge, or enforcement of responsibilities assumed by the Department of Transportation and Public Facilities under AS 44.42.300, waive the state's immunity from suit in federal court provided under the Eleventh Amendment to the Constitution of the United States.

Ross confirmation hearing testy at times

By SEAN COCKERHAM
scockerham@adn.com

Published: April 8th, 2009 09:36 PM
Last Modified: April 8th, 2009 10:10 PM

JUNEAU — State lawmakers on Wednesday grilled Gov. Sarah Palin's appointee for state attorney general, Wayne Anthony Ross, as Ross defended past controversial statements and said he believes that former state legislator Vic Kohring is innocent despite an Anchorage jury convicting him of corruption.

Wednesday was the first day of confirmation hearings for Ross, with the Legislature scheduled to vote April 16 on whether he should be the state's new attorney general.

"Nobody ever accused me of tippy toeing around the issues. Now I'm asking for this job of advocating for Alaska, for the state that I love almost as much as I love my wife," Ross said.

Ross was the original defense lawyer for Kohring, whom federal prosecutors accused of taking bribes when he represented Wasilla in the state Legislature. Ross maintained at the time that Kohring was innocent, and said Wednesday under questioning from Senate judiciary committee members that he still believes that's true, despite a jury in Anchorage federal court finding him guilty. Kohring was sentenced last year to serve three-and-a-half years in prison.

"Vic's main problem was that he was naive," Ross said.

Ross said Kohring didn't follow his legal advice and then hired another lawyer, John Henry Browne of Seattle. Ross, responding to questioning, said **he thought Palin was wrong to call on Kohring to resign from the Legislature following his indictment**.

Ross also said he thought the governor was wrong to call on Alaska Sen. Ted Stevens to step down from office in October after he was convicted — a conviction that a U.S. District Court judge dismissed on Tuesday. "I believe our system of justice should work first before somebody is publicly asked to resign," Ross said.

Anchorage Democratic Sen. Bill Wielechowski brought up previous Ross statements, including saying **the idea of Native sovereignty is a 19th century principle**, and using words like "immoral," and "degenerates" in a letter to the state bar association newsletter during a fight over gay rights in 1993.

"Some of the things that you've said are extremely divisive and I don't think help us as a state move forward. And I don't know that right now, at this time in our state, it's in our best interest to have such a divisive figure," he said.

Ross responded he had a different role in the past as a private attorney representing clients than he would as attorney general. "I want to represent all Alaskans, I'll have a different hat on ... If I have the job of advocate for the state of Alaska then I'm going to advocate for all the people of the state of Alaska," Ross said.

Most of the pointed questioning came from Democrats and **lawmakers generally believe that Ross will end up being confirmed**. Ross, a gun-rights advocate, has a lot of Republican support in the Legislature.

On other issues: **Ross said he opposed the death penalty, which Palin supports,** and believes that state youth workers are often too intent on taking kids from homes in cases of alleged abuse than in keeping families together when appropriate. "I've wondered whether it wasn't a matter of numbers, in other words, the more kids they could get into the system of foster homes, the more money they could come (to the Legislature) and justify getting," Ross said.

But Ross said that, as attorney general, his role wouldn't be to make policy. It's to follow the directions set by the governor and the state Legislature, he said.

"I'm the general, who carries out the campaigns. I'm not the guy who decides when to go to war," he said.

The most heated exchange came between Ross and Nome Democratic Sen. Donny Olson. "I'm concerned that, as the general, the casualties may indeed be those people that are out there in rural Alaska — the people that I represent. I've had torrents of e-mails and torrents of communication (from people), stating that they have difficulty with your appointment," Olson told him.

Olson singled out Ross's statements about the rural preference for subsistence hunting and fishing. Alaskans have been divided for years on whether residents of far-flung rural areas should enjoy more liberal hunting and fishing access than residents from more urban areas. At stake are longer seasons, higher catch limits and first crack at fish and wildlife during times of scarcity.

In 1989, Ross was co-counsel in a lawsuit that led to the Alaska Supreme Court tossing out the state's rural-preference law. Federal law calls for a rural subsistence preference and the state's unwillingness to comply led to a court-ordered federal takeover of subsistence hunting and fishing management across much of the state. **When running for governor in 2002, Ross told a crowd in Kodiak that if elected he would hire a band of "junkyard dog" assistant attorneys general to challenge the federal rules or seek changes in the law through Congress**.

Ross said the state Constitution says Alaska's assets belong to all state residents, and people should talk instead of going to the feds to get "more rights than other people."

"You don't invite the bear into your house and then expect not to get eaten up. We're being eaten up and we need to get together," Ross told the committee.

Olson objected.

"The bear that you call it is the United States government and that's what had to step in here because

state law was starting to run over the rank and file little guy out there that is trying to make a living out in rural Alaska," Olson said.

Ross fired back.

"You're a senator, you represent all Alaskans and you should be working with other Alaskans to develop solutions rather than going out and crying to mama out somewheres else, and saying 'mom, you've got to help me,'" Ross said. "That's not necessarily directed at you. But we should have worked together to solve those problems, rather than get somebody else."

Anchorage Republican Sen. Lesil McGuire said Ross would be a passionate fighter for the state and she is inclined to support a governor's choice unless there is a huge reason not to. But McGuire said that, in response to public testimony, she needs to follow up with Ross about his stance on domestic violence issues.

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Confirmation hearing for Ross as AG gets testy at times

By SEAN COCKERHAM
scockerham@adn.com
(04/08/09 21:09:49)

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Subject: Anne Sutton: Legislative hearings begin on Alaska attorney general confirmation

Legislative hearings begin on Alaska attorney general confirmation

Anne Sutton/The Associated Press

Originally published Wednesday, April 8, 2009 at 6:02 p.m.
Updated Wednesday, April 8, 2009 at 8:07 p.m.

JUNEAU, Alaska - Confirmation hearings got off to **a spirited start** for Gov. Sarah Palin's choice for attorney general as a Senate committee Wednesday grilled Wayne Anthony Ross on his views regarding everything from family law to subsistence.

Unlike his mild-mannered predecessor Talis Colberg, a small town lawyer who'd specialized in worker's compensation claims up until he was appointed the state's top lawyer, **the flamboyant Ross** has generated plenty of controversy, from his newspaper columns to his two runs for governor, during his decades long career as an Anchorage attorney.

"I have got a binder full of things that you've said over the years and articles that you've written over the years," Sen. Bill Wielechowski, D-Anchorage, told Ross at the Senate Judiciary Committee hearing. **"Some of the things you have said are extremely divisive and I don't know that right now, at this time in our state, it's in our best interests to have such a divisive figure."**

Palin's nod to the National Rifle Association director was applauded by gun rights advocates but slammed by Alaska Native groups over his views on subsistence rights.

Ross acknowledged he took many controversial positions as a private attorney but said he would wear a different hat as the attorney general and take his cue from the state's policy makers. But **he said he would welcome direction to resist outside interference in the state's affairs, such as the federal law that guarantees a subsistence hunting and fishing preference for rural residents**.

"I'm just the general who carries out the campaign. My job is to win the war after you decide to carry out the war," Ross said.

Ross said his overarching duty would be to uphold the state constitution, and he said he would not want to see it amended in order for the state to regain management of subsistence on federal lands. He represented sport hunters in a 1989 lawsuit that overturned the rural preference, arguing that the federal law conflicts with that document's equal protection clause.

Donny Olson, D-Nome, said his constituents overwhelmingly oppose Ross' appointment.

"I'm concerned that as the general, the casualties may indeed be those people who are out there in rural Alaska that I represent, that I've had torrents of e-mails and torrents of communication from, stating that they have difficulty with your appointment," Olson said.

But Ross argued the federal law is a bad system, cutting out traditional subsistence users in the Native Village of

Eklutna because they live too close to Anchorage while granting rights to well to do residents who happen to live in designated rural areas.

Committee Chairman Hollis French, D-Anchorage, grilled Ross on an article he wrote 18 years ago in which he criticized attorneys in the Office of Child Services, saying they were intent on destroying family unity.

Ross told the committee he thought they were trying to boost the numbers unnecessarily in order to win more funding from the state Legislature, but he said it appeared the system had improved since then.

Ross was also asked what he thought about former Rep. Vic Kohring, whom he briefly represented. Ross said he believes the Wasilla Republican who is currently serving jail time on corruption charges was "innocent but naive."

Ross also said he disagreed with Palin when she called on Kohring to resign before he had been tried. Ross said he disagreed when she made the same call regarding Sen. Ted Stevens upon his conviction.

"When you have a public official calling on someone to resign, it's like saying that person is guilty," Ross said.

Asked his views on the death penalty, Ross said he was opposed but if a bill passed to reinstate capital punishment in Alaska, "My job is to administer the law, so I would uphold the law."

Asked who would be his clients as attorney general, Ross said he would have quite a few people to advise from the governor to state officials. But **he said his duty to the law would come first and it would be his job to defend the constitution and not the governor.**

A public hearing on the confirmation drew testimony from all sides. Gay rights advocates panned the governor's pick.

In 1993 Ross wrote an article opposing a proposed Anchorage city ordinance barring discrimination on the basis of sexual preference, saying the bill gave "extra rights to those whose lifestyle was a crime only a few years ago, and whose beliefs are certainly immoral in the eyes of anyone with some semblance of intelligence and moral character."

Marcia Buck of Juneau questioned whether Ross would fairly represent all Alaskans.

"We need an attorney who would represent all Alaskans equally, including gay lesbian and transgender Alaskans," Buck said.

But Jake Jacobson of Kodiak praised Ross for his courage in doing the right thing even when it was unpopular and his devotion to the law.

"We need a lawyer, not a politician for attorney general," Jacobson said. "I know he will serve all Alaskans well."

The committee will allow Ross a chance to respond to the public comments on Monday.

He will face the House Judiciary Committee on Friday. The Legislature will decide on his confirmation on April 16.

JUNEAUEMPIRE.COM

Ross runs into resistance

Legislative hearings begin on attorney general confirmation

Thursday, April 09, 2009
By Anne Sutton | **The Associated Press**

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Unlike his mild mannered predecessor Talis Colberg, a small town lawyer who'd specialized in worker's compensation claims up until he was appointed the state's top lawyer, the flamboyant Ross has generated plenty of controversy, from his newspaper columns to his two runs for governor, during his decades long career as an Anchorage attorney.

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JUNEAUEMPIRE.COM

Native groups oppose Ross appointment

Friday, April 03, 2009
Juneau Empire

ANCHORAGE - Gov. Sarah Palin's choice for attorney general has been unanimously rejected by at least two Alaska Native groups.

An Alaska Federation of Natives committee voted Wednesday to oppose Wayne Anthony Ross.

The AFN plans to send Palin a letter formally opposing the appointment of Ross, an outspoken opponent of giving rural residents a preference when it comes to subsistence fishing and hunting.

Also on Wednesday, the Association of Village Council Presidents voted to pass a resolution of its own rejecting Ross.

The group represents Western Alaska villages.

Ross describes himself as "pro-Constitution" rather than "anti-subsistence."

State lawmakers have scheduled an April 16 confirmation vote for Palin's pick.

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JUNEAUEMPIRE.COM

Juneau Native groups oppose confirmation of attorney general

Ross raises ire for views on subsistence

Wednesday, April 08, 2009
By Eric Morrison | **JUNEAU EMPIRE**

Alaska Native groups in Juneau voiced opposition to the nomination of Attorney General Anthony Wayne Ross and called on other Native groups to speak out against Gov. Sarah Palin's selection to head the Department of Law.

In a special session on Saturday, both Alaska Native Brotherhood and Alaska Native Sisterhood Glacier Valley Camp No. 70 passed a resolution asking the Grand Camp executive committee to oppose Ross' nomination, primarily because of his views on subsistence. The move was made after both the Alaska Federation of Natives and the Association of Village Council Presidents came out against Ross last week, ANB Camp No. 70 President Bradley Fluetsch said.

"We've been fighting long and hard for subsistence and this is one of the attorneys of the people that we've been fighting," he said. "So we know him and we don't trust him."

Ross said on Tuesday that none of the groups that have been speaking out against him have bothered to get in touch with him to find out what his positions are. He said he believes they are reaching conclusions that may be erroneous.

"I think subsistence is one of the things that makes Alaska great, makes Alaska interesting and makes Alaska unique," Ross said. "Certainly we have people in outlying areas that don't have access to grocery stores and have to live on the resources of the state to sustain themselves and I'm certainly in favor of that."

Ross said he believes it is the duty of the attorney general to uphold the Alaska Constitution, which stipulates that the state's resources belong to all Alaskans.

"When my mother used to have company for dinner and she had a pie to serve, she didn't say some people can have pie and some people can't, and she didn't say we're going to make the pieces smaller," he said. "She baked another pie."

Ross said he believes wise management of the state's resources can ensure there is sufficient game and fish to take care of all user groups in Alaska.

"But in times of shortage, we may have to have a preference for subsistence to take care of the people in the state of Alaska who rely on that," he said.

Ross did say the groups are correct in that he is against Native sovereignty. He said he believes

Alaskans should be working together and not breaking the state into separate entities.

"However, I do believe that tribal government could be utilized under the auspices of the state of Alaska to provide more local control," he said. "So I think they have a mistaken impression of what my position is."

Fluetsch said the state has a record of litigating against Native Americans' federal rights, not realizing there is a special relationship defined in the U.S. Constitution.

"We need to get the state to be more unified, moving together, and it would be a whole lot simpler if we had an attorney general who understood and respected 150 years of federal law regarding Native Americans and Alaska Natives," he said.

Although Ross was appointed by Palin late last month and is presently on the job, he must still receive a majority vote of the Alaska Legislature to retain the position. The vote is scheduled for April 16. Ross replaced former Attorney General Talis Colberg, who resigned in February.

Fluetsch, who also is president of ANB Grand Camp, said there are enough members of the executive committee against the confirmation of Ross to pass a similar resolution. Fluetsch said he plans to testify as the president of both Grand Camp and Camp 70 against Ross during today's Senate Judiciary Committee confirmation hearing.

"Not only do we want Grand Camp to do it, but we also would like to see all the other camps in Southeast and around the state pass similar resolutions," he said.

"I'm sorry they feel that way," Ross said. "I could give them names of some good friends who are Natives who speak highly of me, I think. And I hope to get the job and prove that they have an erroneous impression of me in some areas."

• Contact reporter Eric Morrison at 523-2269 or eric.morrison@juneauempire.com.

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ALASKA BUDGET REPORT™

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Coverage During the Closing Days of the Legislative Session

As is our custom, during the closing days of the session *ALASKA BUDGET REPORT* departs from our regular weekly schedule, publishing more frequently.

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energy plan." [See **Palin releases 1,000-page report; lawmakers ask, "Where's the plan?"** *ALASKA BUDGET REPORT*, January 22, 2009.]

"This is such a huge, unwieldy project," added Sen. Bill Wielechowski, who co-chairs the Senate Resources Committee with McGuire, at the Legislative Council hearing.

McGuire initially asked that a contract be awarded to the firm Cambridge Energy Research Associates, and later asked that the project go out to bid. But at the hearing, she stopped short of requesting a vote, citing "some dissention" between the House and Senate on the issue.

Legislative Council Chair Rep. John Harris noted the "less than resounding" support for the effort and appointed a subcommittee to consider the need.

On Tuesday, McGuire acknowledged that differing viewpoints between the two energy committees has contributed to their taking independent approaches. But she added that she met with Millett on Monday to discuss how to proceed and said she expects House and Senate members to meet jointly at least part of the time during the interim.

For now, the House committee can claim a stronger working relationship with Palin and her administration. Millett said she met with the governor on Saturday to talk energy policy, and on Monday, Palin quickly offered support—albeit conditional—for the committee's new legislation. "I share the intent of committee members to streamline and consolidate the state's energy programs, but with an expectation that efficiencies must be delivered," Palin said in a news release.

"We have a good working relationship with the Senate [and] a great working relationship with the administration," Millett said at a news conference.

On Monday, House Speaker Mike Chenault included an administration bill expanding ANGDA's mission in a list of bills he expects will pass. But otherwise, the Legislature has almost completely given up on passing any of the many energy-related bills introduced this year.

McGuire said she would have liked to see passage of her bills providing renewable energy tax credits (SB 31) and establishing an emerging energy technology fund (SB 150). But she said the Senate Finance Committee has put energy bills on hold until the state establishes a more comprehensive energy policy, a statement confirmed by staff to Senate Finance Co-chair Bert Stedman.

TRANSITIONS

Ross nomination sparks divergent reactions

Close to 400 Alaska lawyers who have had direct professional contact with Wayne Ross—the man Gov. Sarah Palin has picked to be the state's top lawyer—say his professional standards fall somewhere between deficient and acceptable. The attorneys twice rated him least qualified among those seeking judicial appointments. The polls, one in 2007 and another in 2008, were conducted by the University of Alaska Anchorage on behalf of the Alaska Judicial Council, a unit of the Alaska Court System.

In 2007 Ross was among 13 candidates for a seat on the Alaska Supreme Court, and in 2008 among 14 candidates for a place on the Alaska Court of Appeals. In each competition, and in each of the six characteristic respondents were asked to evaluate, Ross' score was the lowest.

The chart on page 15 summarizes the results of the two polls. Scores for Ross and each of the four other attorneys who applied in both competitions were generally consistent between the two

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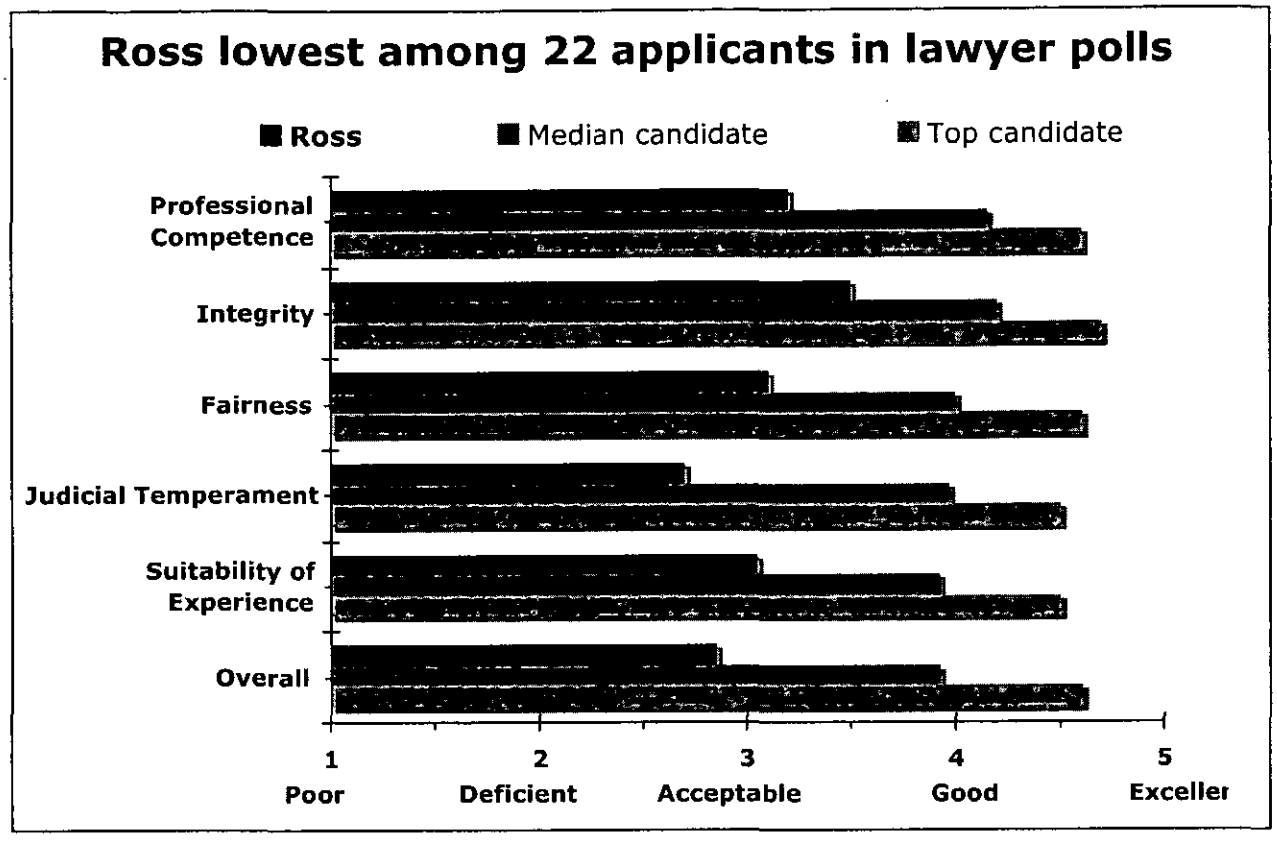
polls. In preparing the chart we averaged their 2007 and 2008 scores [Full sets of names and scores for both years are available by request to rbraun@alaska.com.]



In a 2007 article in the *Bar Rag*, a newsletter published by the Alaska Bar Association, Ross attributed his low scores to a bias against conservatives among members of the bar, and to fallout from his 41 years as an aggressive litigator. "The often harsh realities of litigation are not designed to readily create long-standing friendships between adversaries."

Weren't the other candidates subject to that fallout?

No, Ross said yesterday in an interview. "None of those people have been in private practice as long as I have, and most of them have been state attorneys or public defenders."

"You tell me why I'm down at the bottom," Ross added, throwing up his hands: "I've made a good living practicing law for the past 40 years. ... I have people coming back. They're happy with their representation. That's the mark of a good attorney, I think."

Rep. Max Gruenberg, an Anchorage attorney, suggested another possible reason for Ross' low survey scores: the candidates against whom Ross competed were perhaps unusually well qualified.

Apart from the issue of his professional competence, Ross has alienated some with his outspoken views on social issues. In 1993, in another article published in the *Bar Rag*, he criticized efforts by a group called Lawyers Against Discrimination (LAD) supporting an Anchorage city ordinance barring discrimination on the basis of sexual preference: "This bill seems to give extra rights to those whose lifestyle was a crime only a few years ago, and whose beliefs are certainly

immoral," Ross wrote. "You support degenerates. ... You collectively contribute $5000 to the cause of sexual perversion."

Sen. Hollis French, chair of the Senate Judiciary Committee, said he plans to ask Ross about that article at today's confirmation hearing. "Maybe in the intervening 15 years, as society has become more mainstream on this question, maybe he has as well."

But yesterday Ross said he stands by his 1993 statement: "I wrote it, and I haven't changed my mind."

"I think there is something unnatural about that [act]," Ross adds, "That doesn't mean I wouldn't invite somebody like that to dinner. But I might try to convert 'em."

Ross admits his flamboyant style may sometimes work against him, but says it serves a purpose. "You try to use colorful terms to catch people's eye," he said.

In an e-mail sent last evening, Brittany Goodnight, public affairs manager for the Alaska office of Planned Parenthood of the Great Northwest, urged supporters to testify at the confirmation hearing: "It is incredibly important that pro-choice supporters call and ask the legislature not to confirm Ross. [He] defended protesters who chained themselves to reproductive health clinic check-in counters a decade ago. This was more than an issue of choice, this was an issue of trespassing, privacy, and stopping Alaskan women from getting birth control and STD tests."

Goodnight's claim could not be verified by this newsletter's midnight deadline, but there is little doubt that Ross' long-time support of the right-to-life cause is a lighting rod.

More important from a political perspective is the opposition of Alaska Native organizations. In an April 2 press release the Alaska Federation of Natives (AFN) asked legislators to oppose Ross' confirmation based on what AFN termed his opposition to subsistence and what they say is his disregard for the legal principle of aboriginal land title. Ross represented sport hunters in a 1989 lawsuit that overturned as unconstitutional the state's subsistence preference for rural residents.

"They want to see Alaska balkanized into little fiefdoms where these self-proclaimed Native leaders will reign supreme with help from the Great White Father," Ross said of proponents of a rural subsistence preference in a 1997 interview with reporter Tom Kizzia.

"I don't think he is going to get much support from rural legislators," commented Sen. Lyman Hoffman on Monday. Hoffman, who represents the Bethel area in western Alaska and Rep. Reggie Joule, representing a vast area of Arctic Alaska, say they will oppose the nomination.

But many legislative leaders appear to support the nomination. "He is a man absolutely dedicated to doing the right thing," House Finance Co-chair Mike Hawker said in an interview Wednesday. Hawker, who served as Ross' campaign treasurer during Ross' second campaign for governor, added, "While he is characterized as flamboyant and controversial, I've always found him to be absolutely totally and completely dedicated to the Constitution and the rule of law."

Senate Rules Chair Charlie Huggins reported great enthusiasm about Ross' nomination at a gun show he recently attended in the Matanuska-Susitna area. "It's always been my feeling that unless there's some really big skeletons in the closet, the governor deserves her choice," he said.

Senate President Gary Stevens said he doesn't foresee major problems for Ross' confirmation.

French agrees. "In my belief, the body is going to approve Wayne Anthony Ross," he said in an interview yesterday. "There is nothing I could do or say that would change that, so I don't intend to be hammering on his anvil. I hope we get straight, short answers."

"I would say there is a strong likelihood that he will get [confirmed]," agreed Hoffman, speaking in a separate interview. But it's not a sure thing, suggested Hoffman. "If everybody, all the different factions get together and say, there's enough of us that have problems in different areas, he may have a challenge."

"There is a temptation with governors' appointments to just waive them through; you want to give the governor a certain amount of discretion to have her people in place," observed Anchorage Rep. Les Gara: "As I sit her in my seventh year, I think I've been burned on a few attorney generals, and I'm going to start looking a these things more closely. I think it was a big mistake when I voted for Gregg Renkes," who served as attorney general under former Gov. Frank Murkowski until he resigned amidst conflict-of-interest allegations.

"I have heard that Mr. Ross has said disparaging things about gay people. I don't know if that's true, but I want to find out the answer to that," Gara said. "I've some concerns about his strong stance against the right of Native Alaskans to a subsistence preference when necessary."

"And I'd like to hear answers from him on how he is going to unify the state, as opposed to divide it," Gara concluded.

Interview: Wayne Anthony Ross

Wayne Ross, 66, has been tapped by Gov. Sarah Palin to be her second attorney general, following Talis Colberg, who resigned in February [see **Contempt finding, resignation climax Troopergate imbroglio**, *ALASKA BUDGET REPORT*, February 12, 2009].

Ross faces a confirmation hearing this afternoon in the Senate Judiciary Committee, and on Friday before House Judiciary. *ALASKA BUDGET REPORT*'s Gregg Erickson interviewed Ross yesterday in Juneau. Following is a partial transcript of that interview. An audio file (MP3 format) of the entire 33-minute interview is available to client-subscribers by request to rbraun@alaska.com.

Rep. Mike Hawker supports your confirmation, saying, "Nature abhors a vacuum, and Wayne Ross never met a vacuum he wasn't ready to fill." Do you and Gov. Palin have a common understanding of your role in her administration?

I was honorary co-chairman of Sarah's campaign when she ran for governor, so we see a lot alike. She gave me basically [four] tasks: protect Alaska's sovereignty, represent the people of the state of Alaska, help us develop our resources, and ... protect the right to keep and bear arms. ... She knows I'm not a yes-man; I'm loyal, but if somebody's doing something wrong, I'll tell 'em. So I think we'll work well together.

What about the death penalty?

I'm opposed to it. She's for it. If it gets passed, then I follow the law. But I hope it doesn't get passed because I've been a private attorney, practiced law for 42 years and I've seen how our beloved system of justice works. Sometimes it works well, and sometimes an innocent guy gets convicted. I've seen innocent guys get convicted three or four or five times in my career, and those are the cases that when I wake up in the middle of the night they gnaw at me because I wonder if I could have done something different. ... If the system of justice fails in a capital case and somebody gets executed that shouldn't have been, there's no way that you can make an appropriate apology.

The rate of plea bargains and trials are quite different from one district attorney's office to another. With a new prosecutor in Fairbanks, for example, fewer cases are going to trial. What role do you see for your office in managing criminal prosecutions?

I'm familiar with the Anchorage office, and there the trials are going up. ... Each office seems to be different, just like you say. Each of those offices spends state money, and one of the jobs of the attorney general's office is to get the most efficient work out of the various district attorneys'

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offices. It's my perception as a defense counsel that there are some good cases involving very evil people that haven't gone to trial that should have been taken to trial, and there's some very bad cases involving decent people that are being prosecuted. ... I haven't had much time to get a handle on it, but that's one of the things I'll do after confirmation. ... We're going to see if we can't get an overall policy in effect so we have the limited resources of the department focusing on getting the bad people off the streets. ... If I get confirmed as attorney general, Alaska Airlines stock will go up, because I intend to see to it that the gang members and the druggies and some of the miscreants of the state of Alaska see it in their best interests to head south.

Where will you be based?

My main base of operations is going to be Anchorage. I expect to come down to Juneau probably at least once a month. I hope to visit each of the outlying offices at least once in my tenure.

The department's headquarters is in Juneau. Do you see a problem managing from Anchorage?

So far, I haven't. They've got fabulous communications facilities. I've just got to get a handle on them.

Much of your practice is in the area of family law. Have you had professional contact with the attorneys in the Department of Law that handle child-in-need-of-aid cases?

Very much. I've very much represented parents involved in the system, and in many cases that I've been involved in, the department is overreaching. The Department of Health and Social Services has been doing a lot of overreaching, getting involved in families where they shouldn't, and then not getting involved with families where there is serious abuse. That's one of the areas that I intend to look at. ...

One of the best ways to clean up the problem is a provision that if a parent defends themselves successfully against the state trying to take over their kids, that the parent gets their attorney's fees back. Many parents can't afford to litigate against the full power of the state. There ought to be some kind of even ground there.

In 2003 Attorney General Renkes overturned 27 years of precedent, instructing officials at the Alaska Permanent Fund Corp. to start charging investment losses to the fund principal. I'm not asking you to respond on that particular issue, but as a general matter, what happens if you look at the department's position on an issue and decide you don't agree with it?

Then we'll probably issue a new opinion again. I'm not afraid to do that.

It's important, though, to look at precedent, and understand that people rely on precedent. ... You can't just change the law willy-nilly.

One of your charges from the governor is to protect the state's sovereignty. Does that include further challenges against federal law providing for a rural subsistence preference?

I'm not against subsistence or subsistence preference. I'm against any attempts to modify the Alaska Constitution, which says the resources belong to all the people. Now that doesn't mean you couldn't make a preference for subsistence, even under the Constitution, because subsistence is really something almost unique for Alaska. ...

I'm in favor of managing our resources so there's enough resources for everybody. When my Mom invited people to come for dinner and she made a pie, and we had more people come than we expected, she didn't say, some people get pie and some don't. She didn't say we're going to make everybody have a little piece of pie. She'd make another pie. That's what proper management of fish and game resources are, it's making another pie. ...

The next thing is I'd like to see our resources get back under management of the state of Alaska. We're the only state that the federal government manages our fish and game resources [on federal land]. It's my understanding that there is a bill introduced this year to have us take another look at that. If the Legislature decides that we want to regain, and we can afford to regain management of fish and game on federal lands, it will be the attorney general's job to go after it. ...

If the Legislature and governor direct me to do [that] I'll be happy, ... but Lord knows, there's enough work here on my desk in the first week that I'm not going to be some knight errant, roaming about the countryside looking at windmills to tilt at.

What's the biggest challenge facing you in that pile of work?

Learning how to work the computer. ...

When I started work in Alaska, my first job was with the Department of Law. That was in 1968. We had about 30 attorneys that did all the work for the state of Alaska. Now we have 300. It either means that maybe the new guys aren't doing as good a job as we did 40 years ago, or there's more laws.

What kind of cases did you handle in 1968, working as an assistant AG?

I handled fish and game cases, sunken vessels, setting adoptions aside, I handled just about everything. But the issues we faced then were nowhere near as complex as cases we face now.

What's the biggest organization for which you've had executive responsibility?

I've been a director of the NRA ... Other than that, I've managed a small law firm.

Balash: same job, bigger salary

Joe Balash, former special assistant to Gov. Sarah Palin, transferred on February 17 to the Department of Natural Resources, but in practical terms nothing has changed, Balash said. Asked if his job is any different since he transferred, he said Friday:

"Not that I've been able to tell. My keycards work in all the same places, I go to the same staff meetings, I still have my assistant."

One thing that did change is Balash's pay, which went from $95,640 annually to $125,000, an increase of 31 percent. The new position is a Range 26M with a salary override. Balash explained:

"I had an opportunity to go to the private sector and the governor asked me to stay. I did not require that the state meet the offer dollar-for-dollar, but I needed to see an increase in compensation to stay in state service." Balash confirmed that the offer was with Enstar, an Anchorage-based privately-owned public utility seeking to build an in-state natural gas pipeline.

Revenue Commissioner Pat Galvin attested to Balash's value: "Within the gas line team, Joe's value is recognized, and DNR stepped in to say we'll provide a position and we have the funds to pay Joe's salary. Between what he has done for DNR and the Department of Revenue, we've sort of shared his services."

Asked about his new title, "intergovernmental coordinator," Balash said, "Somebody made it up for me."

"I'm basically detailed to the governor," he added. "My understanding is this has happened before."

Balash has kept a low profile about the transfer. He responded to an e-mail query from a reporter in March asking if he'd transferred to DNR to coordinate in-state gas efforts with three

words: "Just a rumor." As late as last week, Balash introduced himself for the record to the Senate Energy Committee as "a special staff assistant to Governor Palin for energy and resource issues."

Linda Perez, administrative services director for the Governor's Office, said there is no formal agreement between DNR and the governor's office concerning Balash:

"I understand that in his DNR position Joe works on REGA [Railbelt Energy Grid Authority], now known as GRETC [Greater Railbelt Energy and Transmission Corporation], energy issues and in-state gas. He is continuing to assist the Governor's Office on some key energy issues for the rest of the session. There is no agreement or [reimbursable services agreement] between the Governor's Office and DNR for Joe. We formally transferred positions and funding we received for the AGIA bill to DNR and I assume they are using one of the positions and some of the funding for Joe."

It appears somebody created not only a new title but an entire job class for Balash. According to Personnel Director Nicki Neal, there is only one person in Balash's job class, which is called "intergovernmental coordinator."

State personnel laws provide strict hiring rules and salary limitations, but governors past and present have used an obscure provision in the personnel act to bypass such rules. AS 35.25.110(9) allows special *exempt* positions to be created for "persons employed in a professional capacity to make a temporary or special inquiry, study or examination as authorized by the governor." [See **Four years as a temp**, *ALASKA BUDGET REPORT*, March 8, 2007.]

Art Chance, a former personnel director under Gov. Frank Murkowski, questioned whether Balash's duties qualified for the special exemption, but he added that Knowles and Murkowski availed themselves of the loophole as well. "It's the way to free friends of political figures from the surly bonds of the state Personnel Act and the state pay plan."

Correction

On page 13 of last week's issue we reversed the figures in our description of an operating budget amendment correcting an earlier amendment. The Senate floor amendment by Senate Finance Co-chair Lyman Hoffman **increased** from $450,000 to $450 million the amount of money to be transferred from the oil and gas tax credit fund to the general fund.

WAYNE ANTHONY ROSS

Theodore Roosevelt once said 'Aggressive fighting for the right is the noblest sport the world affords' – I subscribe to that philosophy," Ross said. "I sincerely appreciate the confidence placed in me by Governor Sarah Palin in choosing me to be our new Attorney General. I welcome the chance to now represent the best interests of our beloved state and its citizens. I look forward to working with Governor Palin and the Legislature in the good fight to help our state achieve its full potential."

Governor Palin added, "Now more than ever, it is essential that Alaska's sovereignty be protected, that there is unity in Alaska, and that we all stand together to see Alaska's potential fulfilled with energy security contributions to ourselves and the nation, while protecting the Constitution."

Patriotic

"He wants Alaskans to get to be Alaskans again instead of under the thumbs of the feds," retired state trooper Fred Angleton said before heading out for another round of door-to-door campaigning in Soldotna. "He stands up for what it means to be an American. Patriotism and

Wayne Anthony Ross Named Attorney General March 26, 2009, Anchorage, Alaska – Governor Sarah Palin today announced the appointment of Wayne Anthony Ross as Attorney General. Ross, currently in private practice, will fill the vacancy created last month by the resignation of Attorney General Talis Colberg. The governor thanked Acting Attorney General Rick Svobodny for his support and counsel during this transition. Svobodny will resume his position as Deputy Attorney General for the Criminal Division. "Wayne Anthony Ross will be a great defender of Alaska and the people he serves," Governor Palin said. "With his vast legal knowledge, experience and integrity, he will make an exceptional Attorney General. I recognize the sacrifices our public servants make for Alaska and her people, and I am honored that Wayne is willing to make those sacrifices for the greater good." Ross received his Bachelor of Science and Doctor of Law degrees from Marquette University. He has been president of Ross & Miner, P.C. in Anchorage since 1977. "Theodore Roosevelt once said 'Aggressive fighting for the right is the noblest sport the world affords' – I subscribe to that philosophy," Ross said. "I sincerely appreciate the confidence placed in me by Governor Sarah Palin in choosing me to be our new Attorney General. I welcome the chance to now represent the best interests of our beloved state and its citizens. I look forward to working with Governor Palin and the Legislature in the good fight to help our state achieve its full potential." As Attorney General, Ross will work with the governor on issues surrounding development of Alaska's rich natural resources as the state continues its efforts to provide energy security for America and lower energy costs for Alaskans. As Attorney General, Ross also will help the governor protect Alaskans' right to bear arms, and he will work tirelessly to manage Alaska's fish and game resources for abundance through science and not politics. Governor Palin added, "Now more than ever, it is essential that Alaska's sovereignty be protected, that there is unity in Alaska, and that we all stand together to see Alaska's potential fulfilled with energy security contributions to ourselves and the

nation, while protecting the Constitution." Ross is no stranger to public service. More than forty years ago, Ross began his distinguished career as Assistant Attorney General for the State of Alaska, and then as Court Trustee and Standing Master for Family Court. He ran for governor in 2002 in the Republican primary against then-U.S. Senator Frank Murkowski. Ross is also an educator, having taught several semesters at the University of Alaska Anchorage.

"I feel I have a good relationship with the good Lord (but) if I could overturn Roe vs. Wade, I figure I got my ticket, " he said.

HERO OF HIS OWN LIFE Like David Copperfield, Ross is determined to be the hero of his own life, painting his public portrait in extremes and reveling in the reaction. His personalized "WAR" license plate is instantly recognizable; directions to his home include reference to a drawbridge and "the moat, " neither of which is strictly true. (The moat is a slight ground depression encircling the house.) He admires the legend of Teddy Roosevelt and has been accused of cultivating a slight physical resemblance to the dead president.

He plays these games to advance causes he believes in, but also because it's his nature to be a showman. He enjoys confounding people and loves being the center of attention.

Take for example his dealings with attorney Allison Mendel. Ross and Mendel both do a lot of family-squabble law -- divorce, child custody, missed support payments, kids in trouble. She says he represents "the boy's point of view." Ross doesn't agree.

"He's arrogant and opinionated, " Mendel said. "He shows up (in court) with his cowboy boots and cowboy hat and doesn't stand up when the judge comes in. . . . He has a very definite view of the world."

During a fight several years ago over gay rights, Mendel helped organize Anchorage lawyers in support of an anti- discrimination ordinance. Ross wrote a nasty letter to the Bar Association newsletter, using words like "immoral, " "perversion" and "degenerates." The language went way beyond reasonable disagreement, Mendel and others said.

But months later, when Mendel found herself crosswise with a judge and facing a possible jail term for contempt, Ross publicly supported her and even sent a small check for her defense fund.

"He takes principled positions, " Mendel said, somewhat grudgingly. "I'd rather deal with him than someone who views it all as a shell game."

MAN OF 'INTEGRITY' People asked to summarize Ross's character almost always mention "integrity." He puts his time, which for a lawyer is the same as money, where his mouth is, said Pam Sigfried, an anti-abortion activist. He's been a free lawyer for anti-abortion activists for 23 years and, according to Sigfried, once took a trespass case all the way to the U.S. Supreme Court "for the price of the paper."

There's more to it than causes. For 25 years Ross has been the Anchorage version of a small-town family lawyer, banking a lot of goodwill with people who think "the system" is stacked against the little guy. His friend Close is an aircraft maintenance supervisor for the Air Force and a fellow gun collector. Years ago Ross represented Close in a successful battle with the state over whether his rebuilt pickup truck legally qualified for personalized license plates. The case won't make a splash in legal journals, but it mattered a great deal to Close, who remembers it as "Wayne and Rex taking on Goliath."

"I would do anything for that guy and his family, " Close said.

Judicial selection:

Anonymous hate mail should not be permitted

By Wayne Anthony Ross

I recently underwent the experience of applying for the vacant position on the Alaska Supreme Court caused by Justice Bryner's retirement.

The Application for Judicial Appointment consists of a 20-page questionnaire which asks for complete information about the applicant. The only thing I noticed missing was a question about my shoe size. It took several days to get together all the information requested by that questionnaire.

The Alaska Judicial Council is the state board charged with reviewing the applicants for judicial positions, and then recommending and forwarding several names to the Governor who then fills the vacancy from the recommended list. As part of its review, the Judicial Council surveys the members of the Alaska Bar Association.

Once the Bar survey is completed, the applicant receives a copy of the draft results of that survey. Included in those results are comments made about the applicant by members of the Bar, without attribution. I got my copy several weeks ago. I found it very interesting.

Initially, while deciding whether or not to apply, two matters concerned me and caused me to think long and hard before submitting my application: the Bar survey and the Judicial Council itself. Having practiced law in this state in one capacity or another for almost four decades, I anticipated that there would be a number of fellow members of the Alaska Bar who would relish the opportunity to, perhaps, settle old scores by trashing me in the survey. One cannot practice in our system of justice in the private sector without creating hard feelings from time to time because that system is generally geared to someone winning and someone losing.

One cannot practice in our system of justice in the private sector without creating hard feelings from time to time because that system is generally geared to someone winning and someone losing.

Unfortunately, over the years, when I took a position that differed from another attorney's position, sometimes that other attorney took offense. While I try not to make enemies, the often harsh realities of litigation are not designed to readily create long-standing friendships between adversaries.

The positive comments made about my candidacy were gratifying and much appreciated. The negative comments were not.

The negative comments ranged from perceptive through vicious, from fallacious to outrageous.

A sample of these negative comments include the following:

"...(A) likeable man who probably should not be on the Supreme Court."

"...(He has) deluded himself into believing (that he is Teddy Roosevelt)."

"...(M)yopic in his approach to the law... A terrible candidate."

"...(T)akes positions that aren't just unpopular, they are irresponsible."

"...(I)rrational and ...extremely arrogant..."

"...Briefs of his were borderline incompetent... (I have heard he once try {sic} to break up a rowdy party near his house by firing a shotgun in the air...).

"...(U)nreasonable, unnecessarily flamboyant, misrepresents and distorts the law on issues...(Would make the Supreme Court) a laughing stock..."

"...(He) purchased an automatic weapon for his five year old daughter or granddaughter for Christmas..."

"He doesn't understand the rules of evidence."

"Gun nut; loose cannon."

"...(H)e is basically a boor."

"An arrogant, obnoxious, unscrupulous buffoon..."

"A relic with respect to gender..."

All of the people I have spoken to, who have submitted judicial applications in the past, have reported receiving similar anonymous nasty comments...

If it is possible to enjoy negative comments about oneself, the best negative comment was "If there is a God she would not let this happen." Now, at least the person who wrote that comment had a sense of humor that I can understand. Most of the negative comments were, however, simply mean-spirted and scurrilous.

All of the people I have spoken to, who have submitted judicial applications in the past, have reported receiving similar anonymous nasty comments to varying degrees from some fellow members of the Bar. So, as I said, I felt concern about applying and going through a process simply

IT'S TIME TO PLAY THE BAR HISTORIAN'S

HISTORY MYSTERY!

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Correct entries will be entered in a Prize Drawing and the winner will receive coupons
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Got a photo for **HISTORY MYSTERY!**? Call Leroy Barker at 907-345-3329 or Barbara Hood at 907-264-0879.
Special thanks to Jonathan Katcher for contributing this issue's photos.

some fellow members of the Bar. So, as I said, I felt concern about applying and going through a process simply to allow myself to be trashed in a Bar survey.

The second concern that I had was the Judicial Council itself. The Council is currently perceived by a large portion of the public as unwilling to forward to the Governor the name of any conservative candidate for consideration to a judicial appointment.

Having now gone through the process, I can say that, in my opinion, both of my concerns were justified.

The Bar survey proved to me that I have a lot of friends, for which I am grateful. It also proved that there are a number of attorneys with a vicious streak that causes them to attack someone by anonymously striking from the shadows. I won't call these folks enemies because I don't believe in having enemies. I'll just call them people who don't like me as much as I would want them to. But strike they did, and I wanted the *Bar Rag* readers to know how nasty and fallacious some of the comments were.

And as for my concern that the Judicial Council simply does not submit the name of conservatives for appointment to the judiciary, in view of the names submitted to the Governor, that concern continues to be apparently viable.

The best part of the process was the interview I had with members of the Judicial Council. The Council members were charming, the interview was enjoyable and I had fun with the give and take that took place.

All in all, however, the current process we have for picking our judges in Alaska lacks civility, at least from some members of our Bar and such members need to look deep in their heart about whether they are really helping, or actually hurting, our process of judicial selection.

roponents of abortion are doomed to lose

From the arena

By Wayne Ross

Few issues in America have arked as much debate as the ue involving abortion.

In 1973, the United States Su- eme Court, in a well-known de- ion called Roe v. Wade, in ef- ct legalized abortions through- t the United States.

Now 16 years later, that issue once more before the Supreme urt, and speculation is that e v. Wade may be overturned.

Proponents of abortion fear, ey say, "the loss of a woman's ht to control her own body" if ortions are again made illegal.

Opponents of abortion speak out the violation of the rights the unborn child if abortions e allowed to continue. The ue is one devoid of any possi- ity of compromise.

An examination of the issue d its debaters shows, however, at eventually abortions will ce again be declared illegal. his is so because, like the abor- nists of a century ago, the op- nents of abortion will never st until Roe v. Wade is over- rned. They will not rest be- use abortion foes believe that very abortion kills an innocent man life. Thus Right-to-Lifers e the issue as more than a legal ue, and more than a constitu- nal issue. They see it as a life death issue.

Proponents of abortion see the ue as a constitutional one. A nstitutional issue cannot possibly generate the fervor of a life and death issue. The proponents of abortion are therefore eventually doomed to lose, overwhelmed by the fervor of abortion foes.

This gradual turn of the tide against abortion is quite evident in Alaska.

Alaska legalized abortion in 1971 or 1972. Immediately a group called Alaska Right-to-Life was formed. The group has battled against abortion ever since. They are gradually winning.

In the mid-1970s the Catholic church was almost alone in preaching against abortion. Now most major religions publicly oppose abortions also.

In the late '70s, four pro-life activists chained themselves to abortion equipment at Humana Hospital in an effort to stop the abortions being performed there. They were convicted of trespassing, and appealed their case all the way to the U.S. Supreme Court, which declined to hear it. Now, however, almost 10 years later, Humana Hospital has declared it will no longer perform abortions.

Several years ago, after receiving complaints about the graphic depictions of aborted babies on a Right-to-Life booth at the state fair, the fair sued Right-to-Life seeking to have them evicted from the event. The pro-lifers argued freedom of speech and when the dust cleared from the courtroom, the fair paid Alaska Right-to-Life some $15,000 in attorney's fees and guaranteed them a booth at all future fairs.

Several years ago two Alaskan doctdors sued Alaska Right-to-Life over comments made about the doctors by the anti-abortionists to the governor and in their newsletter. After a seven-year legal battle that achieved national attention, all the doctors' complaints were dismissed and they were forced to pay the pro-life forces attorney's fees in excess of $50,000. One of the doctors has given up doing abortions and left the state to teach on the East Coast.

Now, in Alaska, and elsewhere, we are seeing even more zealous anti-abortion protests. In mass demonstrations against what they view as the killing of innocent human life, anti-abortionists are picketing, passing out leaflets, and even blocking doorways of businesses performing abortions. These pro-lifers are often arrested, charged with trespass, and other criminal offenses, and yet they return, time and again, to try to stop abortions from occurring. Some clinics continue to operate but have ceased doing abortions.

Whether one agrees with the protestors or not, one must admire their courage. Certainly it is not pleasant to be arrested, jailed and forced to face criminal charges. A number of those arrested have refused to post bail, and of those convicted, some have refused to pay their fines, choosing jail instead. They have vowed to continue these demonstrations until abortions are no longer legal in the United States.

They may not have to demonstrate much longer. The Supreme Court decision on this controversial topic is expected to be released in July.

On this Mother's Day of 1989, let us hope the Supreme Court decides the issue clearly, once and for all.

Wayne Anthony Ross is an attorney in private practice in Anchorage and second vice president of the National Rifle Association.

egislative session was typical, some good and some bad

It seems it's becoming 'we' vs. 'they' on Alaska issues

From the arena

by Wayne Anthony Ross

When I first came to Alaska that Centennial Purchase Year, 20 years ago, I was impressed by the people I met. They were Alaskans and proud of it.

There didn't seem to be the divisiveness that exists today. Maybe my memory has failed me over these many years, but it seems to me that important decisions were made on the basis of what was best for Alaska. Oh, there were differences of opinion, sure. But any differences of opinion were caused by differing viewpoints on what was best for Alaska. All parties agreed that their goal was what was best for the state. Sometimes, however, we differed on how best to achieve that goal.

A year or two after my arrival a friend, Ken Quade, from Pemberine, Wisconsin came for dinner. Ken had come to Alaska every year since the early 50s. Around 1960 he had walked from Seward to Fairbanks along the Alaska Railroad tracks. He had seen it all. "Alaska is changing," he said.

I disagreed. "You are the one who is changing Ken, not Alaska. You are just getting old."

We spent the evening discussing it. He didn't convince me. I didn't convince him.

Unfortunately, Ken Quade was right. Alaska and Alaskans are changing. Instead of advocating what was best for Alaska, more and more people seemed to be advocating what was best for themselves and the special interest groups they belonged to.

My first realization of this growing divisiveness came during the debate on the building of the Alaska pipeline. No reasonable, rational mind could argue that the discovery of oil on the North Slope wasn't a real break for Alaska. But how to get it to market? The only feasible method was a pipeline which would boost the economy and provide numerous jobs for Alaskans.

Every real Alaskan has a love of the out-of-doors. That love of wilderness (with a small w) is the reason we chose to live here. Instead of working, however, with other Alaskans who loved the land, to get the pipeline built while still ensuring that the environment would be protected, environmental groups did everything they could to prevent this project from being accomplished. As a result of lawsuits, legislative maneuvering and other roadblocks put up by environmentalists, the pipeline was delayed and its costs increased substantially.

There is no doubt that the environmentalists' efforts resulted in a pipeline that was less damaging to the environment itself. Still, one wonders whether the pipeline could not have even been better environmentally, if the environmentalists had worked with other Alaskans, rather than against them, on this project.

Most Alaskans were pleased when Congress passed the Alaska Native Claims Settlement Act. Sure, some grumbled because native peoples got almost a billion dollars and 44 million acres of land, when other Alaskans (non-natives) got nothing, but upon reflection, everyone realized this legislation would, in the long run, be good for Alaska. After all, who could really complain, when other Alaskans, the native peoples of the state, got money and land from the feds. It was about time the feds gave us something!

But then another divisive issue arose. Subsistence.

Under the Constitution of Alaska, fish and wildlife resources belonged to the citizens of the state. All citizens of the state. And almost everyone who lived in Alaska hunted and fished. It was part of the Alaskan lifestyle. It differentiated Alaskans, for example, from citizens from much of the rest of the country. We fed our families from the abundant wildlife resources this state had to offer. We also had fun doing it.

Suddenly, however, we had some Alaskans saying that they had more rights to fish and wildlife than the rest of us. And they succeeded in getting legislation passed that recognized that right. Alaskans became divided into "we," and "they." Instead of uniting to fight the federal bureaucracy that wanted to divide Alaskans on the allocation of their prized wildlife resources, some Alaskans sold out for their own advantage. "I've got mine!" became the phrase of the day.

More and more divisive issues have arisen. Now some Alaskans don't even wish to be Alaskans. Instead, they clamor for native sovereignty claiming that they want to be independent from other Alaskans, and even from other U.S. citizens.

What has happened to the pride that we once felt just by being an Alaskan, united with our fellow Alaskans to enjoy a unique lifestyle and heritage here on the Great Land, on our Last Frontier?

Is it gone forever? I hope not, for my sake. For my children's sake. For the sake of the Alaska I remember from years past.

We need to regain our pride. We need to stop fighting amongst ourselves. We need to remember we are all Alaskans.

Otherwise we might just as well live in Cleveland.

Average citizen finds legal system inaccessible

From the arena

By Wayne Ross

The American legal system is becoming inaccessible to the average citizen.

With minor exceptions, court proceedings consist of two major types, civil cases and criminal cases. In civil cases, one party sues another seeking either a court decision on a disputed matter or money damages for harm caused by the other person. In criminal cases, the government, be it federal, state, or local, files charges against someone, accusing him or her of violating a criminal law. Criminal cases seek to punish the wrongdoer, generally through fines and jail sentences. Unfortunately, they also punish the innocent.

Small cases — cases involving minor disputes — can be brought into small claims court, or in courts of limited jurisdiction such as Alaska's District Courts. Generally, in these courts, the rules and procedures are more relaxed and justice can be obtained at little expense. Indeed, most small claims cases do not even involve attorneys. The litigants square off in court, arguing the cases themselves. Attorney fees and court costs are negligible in such small court cases.

In District Court cases, attorneys are often involved. Still, costs and attorneys' fees are usually small because attorneys in these cases do not have to spend substantial time complying with numerous rules and complicated procedures. Instead, attorneys can get into court quickly, obtain a trial and decision for their clients, and wrap matters up in a relatively short period of time.

More substantial cases must be brought in courts of general jurisdiction; this is, in courts which have authority to act initially in all types of matters. In Alaska, the Superior Courts are the courts of general jurisdiction.

In serious criminal cases, it's sock-it-to-you time for average Americans accused of a crime. Indigents can receive free attorneys provided by the state. Thus, the state pays not only for the prosecution, but also for the defense. The average American, however, is not indigent. Thus, an average American who finds himself in the unfortunate position of being charged with a serious crime has to hire an attorney to defend himself or herself. Rich people can hire whatever attorney they wish. Average Americans cannot afford high-priced attorneys.

Even so, the average American often has to go substantially in debt, mortgage his or her home, and even sell property in order to pay for a proper defense. Even when he or she wins and charges are dropped, or he or she is found not guilty, the average person does not receive reimbursement from the state for the costs incurred in defending themselves. Many people face financial ruin after successfully defending themselves against a criminal case.

In certain civil cases, things are a bit better. Plaintiffs who seek money damages can often convince an attorney to take their cases on a contingent fee basis. That is, the attorney agrees to take a percentage of the money received, if the case is successful, and nothing, or a minimal fee, if the case is not successful.

Such contingent fee agreements provide access to the courts for people who otherwise would not be able to afford to go to the court and seek justice. In civil cases, people who are defendants often do not have to pay for attorneys to defend themselves, either, if they have insurance, and if the insurance covers whatever they are being sued for. In such cases, the insurance company pays for the defense.

In divorce cases, however, and cases where there is no insurance coverages, again it is sock-it-to-you time. In such cases, parties have to pay their attorneys on an hourly basis, and costs and attorneys fees can run into many thousands of dollars. Again, the average Ameican cannot afford these expenses without going substantially in debt.

In many cases, the substantial expense of litigation is not the fault of the attorney. Courts impose more and more procedural rules, ostensibly to guarantee a fair trial, and attorneys find they have to spend several years before they can get their clients into the courtroom. And, if the client then loses and wishes to appeal, the expense increases even more, with transcript costs, brief printing costs, and the additional attorney time need to process the appeal.

What is needed in order to reduce the costs of litigation is not tort reform. What is needed is procedural reform. What is needed are judges with common sense who expedite cases and get them to court quickly. What is needed are judges who do not make litigants and their attorneys jump through numerous and unnecessary procedural hoops which only increase the costs of obtaining justice. What is needed is simplification.

When our system of justice is simplified, then and only then can it really be considered "just" to the avereage American.

is time we quit crying over the oil spill

From the arena

By Wayne Ross

e 40 plus years ago, my ddy was Carl Elbis. Carl year or two older than I nd lived in a two-story across the alley. On rainy we'd play in Carl's attic comprised the entire sec- or of his parents' home. of my earliest memories e coming down the nar- winding, dark stairway Carl's attic and tripping large bowl of jello his had left to cool on the airs. The jello bowl and I the way down the stairs. up on the bottom. The ended up everywhere. d, I began to cry. "No use over spilled milk," said lbis kindly. "The best ve can do is to get it up." And this she started

't think I was much help but I tried. And eventu- got the stairway cleaned rhaps because of my efforts, Mrs. Elbis never ed the jello spill to my know I never told them!

ught of Mrs. Elbis the ay as I was watching, for oteenth time, the national nedia reporting on the oil spill. And I wondered ore people aren't as un- ding as Mrs. Elbis was. dents happen. The Valdez was an accident. A terri- ident, yes, but an acci-

When it happened, the first, and most important problem, was to clean it up.

The response time of Alyeska and Exxon in acting to stop the spread of the oil was less than ideal. It became clear immediately that steps must be taken to ensure a more immediate response should another spill occur in the future.

But once Exxon got moving, it did a helluva job. Exxon rolled up its corporate financial sleeves and went to work. It hired thousands of workers and thousands of boats. It brought in every conceivable type of equipment. It paid hundreds of claims. It spent hundreds of millions of dollars. In short, Exxon did almost everything humanly possible to rectify the problem.

Why is it then, that many people, and major portions of the media, continue to cry over spilled milk?

We Alaskans, and the nation, have enjoyed the benefits of Big Oil for the last 20 years. Most of our state revenue comes from oil. Oil, however, especially the oil found in Alaska, needs to be transported from where it is found to where it can be used. In every type of human activity, there are risks. We knew the risks. Everybody knew the risks. We tried to lessen them, and then we chose to take those risks.

Unlike many other human tragedies, no one died in the Alaskan oil spill. We see almost everyday, however, the same films of what appears to be the same oil-soaked duck pulled out of the water. The state claims to have a number of refrigerated vans filled with about 30,000 carcasses of waterfowl killed by oil. No doubt some of these birds were casulaties of oil. But had several thousand people combed Prince William Sound for dead waterfowl during any prior summer, as they did in the summer of 1988, there is no doubt that an equal number of dead birds could have been accumulated. With the millions of birds that travel through Prince William Sound each year, natural attrition would account for tens of thousands of birds each summer. After all, birds don't live forever.

The loss of eagles, in particular, and sea otters seems to be better documented, and, because of the way we humans view things, more lamentable. But after the accident occurred, everything humanly possible was done to save marine and bird life.

Last week I ran into an attorney from "Outside" who had come to Alaska to represent clients damaged by the oil spill. He had signed up a number of them earlier in the summer, but now was lamenting the loss of many of these clients. "Exxon has paid off so many of my clients' claims," he said, "that most of them aren't interested in suing anymore." Somehow, I couldn't feel sorry for him.

An admiral from the Coast Guard told me that if an oil spill had to occur, it was a good think it happened to Exxon. "They were the best entity around to handle the problem," he said. The state and the Coast Guard had too many bureaucratic procedures that would have had to be followed, to handle the oil spill properly. "The state and the Coast Guard could not have gotten the job done as well as Exxon did. Exxon had the financial resources to handle the job."

We cannot let Exxon off the hook. We cannot stop trying to ensure that another such spill never occurs again. We cannot quit trying to restore Prince William Sound to what it once was. But we can, and should, give Exxon an "A" for its initial effort in cleaning up after its oil spill. And let's quit crying about it!

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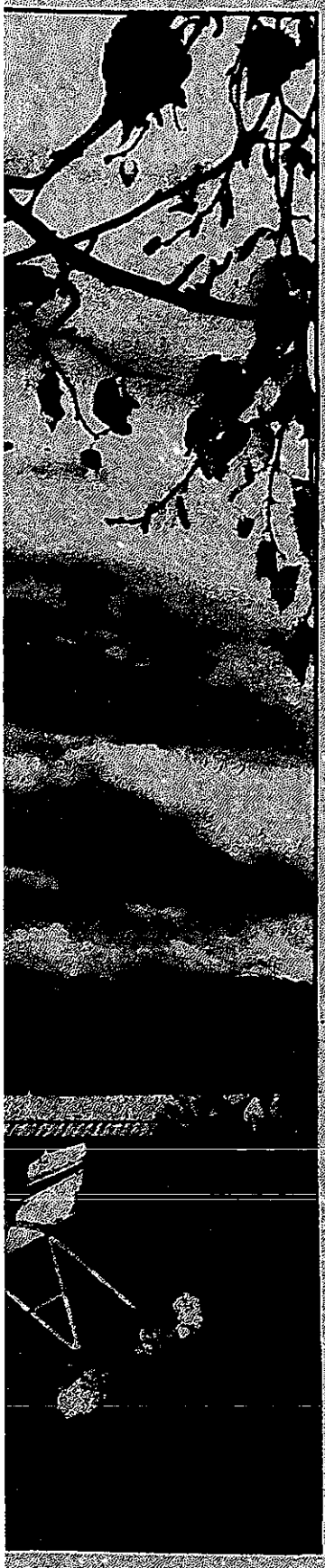

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Equality for women still has considerable distance to go

By Wayne Ross

Recently Sen. Arliss Sturgelewski and I participated in a celebration of the bicentennial of the U.S. Constitution in Homer, Alaska. We both spoke, first at the Homer High School, and later at the Chamber of Commerce luncheon.

Now Arliss and I don't agree on every issue. I tell her that she's right on most issues and that she's only wrong on the ones on which we disagree. But she's a good speaker and displays a warm, good humor that I've always enjoyed.

When she started speaking about womens' rights, I figured I'd be bored. After all, every modern thinking man believes in equal rights for all — men, women, white, black, etc.

But Arliss wasn't boring. In fact, she made me reflect on the history of women during the last two hundred years, and I suddenly realized why many women are concerned with womens' rights.

We speak of the founding fathers. Why no founding mothers? At the time our Constitution was written, women had few rights. Actually, married women were considered the property of their husbands, like land, horses, slaves, and children. They could not own property. They could not vote. Abigail Adams urged her president husband to draft laws ending the absolute power that men had over their wives. Virginia's Hannah Corbin argued that, though as a widow she held title to property subject to taxation, as a woman she could not vote, and therefore she was being taxed without representation.

It was 83 years before the 15th Amendment in 1870 gave black men the right to vote but not until 1920 did the 19th Amendment make it illegal to deny the vote "on account of sex." Indeed, by the end of World War I, only 15 states had given women the right to vote in general elections!

When I was in law school only five women law students in a class of a hundred. When I started practicing law here in 1968, I knew of only three women lawyers, Mahala Dickerson, Helen Simpson and Sheila Gallagher Jones.

Now, of course, many women are studying law. Many others are practicing in this state. A number of them sit as judges here.

What happened in 60 or 70 years? What has happened in only 20 years?

During the early years of this country, women, known as suffragettes, campaigned for the women's right to vote. They were not very well liked by men and were often heckled and ridiculed. Still, they persisted and were ultimately successful.

In the last 20 years, women, referred to, at times, as women's libbers or feminists, have strongly lobbied for more equality for women. Generally, these women also are not very well liked by men. But again, they are being successful because their cause is right. Strident feminists turn me off. Perhaps it is because they act too much like we men — pushy, loud and obnoxious.

But a personable, warm, good humored woman like Arliss reached me, and made me think.

A cigarette ad proclaims: "You've come a long way, Baby," and that statement is correct. But there still is a long way to go. And people like Arliss Sturgelewski will do far more for women's rights than any of her strident sisters.

She's still wrong on a few of the issues but she takes the time

OCT 1

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ather Boyle taught schoolboys lessons in discipline

From the arena

By Wayne Ross

Father Jerome Boyle, S.J., has been gone from this earth for many, many years. I think of him often. He was the assistant principal of Marquette University High School, an all boys Jesuit college prep high school in Milwaukee, Wisconsin. MUHS was my alma mater.

It was hard to get into MUHS. They always had far more applicants than they had classroom space for. The school had been around for over a hundred years, and it was not uncommon for three or four generations of one family to have attended MUHS.

Father Boyle carried a wooden golf club. The club's head was cut off. I think it was a driver. The handle was made of hickory and whistled as it cut through the air. We whistled when I hit it on the poster. Father Boyle's command "Assume the position," generally meant we had somehow transgressed. When commanded to assume the position, we placed our hands on our knees and bent over. Punishment would vary from one to five swats. One was enough. Five swats at a time would not be involved in the type bedsheet, for only the very of shenanigans public school kids was reserved for students involved in. Father Boyle worst behaviors. If a student got, kept us on the straight and nar- was held in row. Our folks liked that at the awe by fellow students for a time. We all appreciated it in least a day, when I attended my high later life.

When I attended my 35th year reunion at my alma mater, Marquette University High School, I was asked to speak briefly about Father Boyle. I told the assembled group that I had always had a special fondness for Father Boyle because he was the only teacher who physically disciplined me. I told them that I had been a student in his homeroom for my freshman year and that I had been a pretty good student. I was not a behavior problem. I was not a discipline problem. I was not a problem. I was a student who was trying to do well in school.

Father Boyle was the most feared teacher in the school. His reputation preceded him. Everyone knew that Father Boyle was the disciplinarian. Everyone knew that Father Boyle would paddle you if you got sent to his office. Everyone knew that Father Boyle would paddle you if you got sent to his office twice.

I got sent to his office twice. The first time was for talking in study hall. The second time was for talking in study hall. I was not a troublemaker. I was not a bad kid. I was not a kid who was looking for trouble. I was a kid who was trying to do well in school

port, or supports leasing of the refuge coastal plain or not, this is yet another example of bad government process that has too often palgued the Interior Department during the Reagan years.

plan for refuge inholdings has been developed and subjected to public review. And just as importantly, comprehensive and factual information has not been provided to congressional decision makers in a timely and for-

bits of profligate American motorists. On the contrary, it is their duty to carry out their sacred trust responsibilities under the law, set the best example possible in the stewardship of limited natural resources like oil,

uge than when government insiders brought the Watergate and Irangate scandals to light.

Dave Cline is a conservationist and official of the National Audubon Society.

Family unit suffers from bureaucratic maze

From the arena

By Wayne Ross

The Alaska Division of Family and Youth Services, also known as the "Welfare" Department has a frightening group of social workers who regularly remove Alaskan children from their homes, over the objections of their parents, and, on many occasions, the children never return home again. They are aided in these endeavors by state assistant attorneys general and by several employees of the Office of Public Advocacy who are "appointed" by the courts as Guardian Ad Litem to "represent" the children.

When these people get together they are all too eager to believe the worst about men and fathers.

The ritual begins generally like this. Someone makes a complaint to the Welfare Department. These reports are privileged under the state law. They can be anonymous. The person making the report is immune from suit for making the report. Sometimes these reports are genuine and abuse has occurred. Other times the reports are made by overly concerned busybodies who wrongfully interpret what they see, or are malicious actions by people who want to break up family relationships.

The child is then contacted at school by the Welfare Department and interrogated without the knowledge or consent of the parents. If the social workers don't like what the child tells them, the child is not allowed to go home but is removed from school and put in a foster home. The parents then receive a call advising that their child has been taken into custody, that there will be a court hearing and that the parents can appear at that time to find out what is going on.

If the child is of less than school age, a social worker appears on the doorstep with several police officers and takes the child from the parents, telling them about the court hearing.

The court hearing is generally held 48 hours later. In the meantime, the social workers file a petition charging that the child needs state help, claiming somehow that the parents are at fault. Meantime, the social workers interview the child further and let others, including the police, interview the child. Many of these interviews are more brainwashing of the child than interviewing, the interviewer doing his/her best to convince the child that something bad has happened to them.

The first hearing is a "probable cause hearing" at which the court must decide whether there is cause to believe that the child needs state assistance. The social worker is allowed to testify as to what the child allegedly told her. Under normal rules of court, testifying what someone else said is hearsay evidence and not allowed. Normal rules of evidence don't apply in these types of cases, however. Generally the parents aren't even allowed to testify. The court then takes the easy way out. It doesn't want to take a chance that the child may really be abused so it places the child in the custody of the state while the state investigates the matter further. It restricts the parents' access to the child to tell the truth. Sometimes the child is ordered into counseling where other "professionals" convince the child that he or she actually is abused. The Welfare Department takes its own sweet time in investigating the matter. Months and months pass without the child returning home. Often the child is put in a foster home where the rules are less strict than in the parents' home. The child grows to like the less strict atmosphere and the power it feels over its parents. In such cases, the child never does return home.

In other cases, this group makes an offer to the child's mother. They will allow the child to return home if the father is not there. This forces the mother to choose between her husband and her child. Often the husband comes out second and is forced to find other lodging.

Although federal law requires the Welfare Department to look for other alternatives before removing a child from his home, and state law requires the department to work towards reuniting familes, this is seldom done. Instead, these people work together to destroy family unity.

It is clear from their actions that this group of people doesn't like the family unit, and likes men even less.

God help you if your child falls into their clutches.

Wayne Anthony Ross is an attorney in private practice in Anchorage and second vice president of the National Rifle Association.

OPINION

Chastity, adultery relegated to Dark Ages

Wayne Anthony Ross

I must have been raised in the Dark Ages.

Neither my father nor my mother ever gave me a talk about the "birds and the bees." Sex was something that wasn't talked about in our home. My parents left it up to the nuns in my grade school and the Jesuit fathers at my high school to educate me in the area of sex. But when I announced that I was intending to ask a girl out for what would be my first real date, my father sat me down and explained the facts of life to me, in his own way.

"The most important possessions that we parents have," my father said, "is our children. To a mother or father, a child is more important than life itself. I want you to realize that. When your date's mother and father let her go out with you, they are entrusting you with their most important possession. You have a duty to live up to their trust, and never make them sorry that they allowed their daughter to go out with you. It is a compliment to you that they would allow their daughter to go out with you on a date. You have to realize that and act accordingly. You must protect that girl from harm. You must see to it that others treat her properly and with respect, and you must see to it that you also treat her properly and with respect. Don't ever let me hear that you have treated any young lady entrusted to your care in an improper manner."

That was Dad's version of the facts of life. I knew what he was saying, and he knew I knew what he was saying.

The Jesuit priests said it in a different way, but they meant the same thing. They gave us guys a book called "Modern Youth and Chastity" to read. They made sure we read the book by having a surprise quiz now and then.

It was quite simple really. God had given us certain Commandments, which we were to abide by. One of these, the Sixth Commandment, "Thou shall not commit adultery," was pretty direct. The Jesuits made sure we knew that the Sixth Commandment also prohibited fornication, and that if we violated any of God's Commandments, He was not going to be very happy with us. Bad things could, and would happen. We could catch VD. We could get someone pregnant. We might even end up in Hell.

When I think of it now, I suppose I behaved myself not only because I didn't want to offend God, but also because I didn't want to offend my father. Dad had laid a heavy responsibility on me, the responsibility for treating someone else's daughter with respect and in a proper manner. And I didn't want to demonstrate, either to my Dad or to myself, that I was not up to the task.

The Jesuit fathers also laid a heavy responsibility on us. We all have a soul, they pointed out. That soul was created for the purpose of eventually enjoying eternal life in Heaven with God. We had a duty to ensure that our soul made it to Heaven by acting properly. We also had to look after our fellow human beings and do nothing to cause their eternal damnation. If we caused another person to lose their place in Heaven, by leading them astray, we could suffer the loss of our soul as well.

The Jesuits made sure we knew that the Sixth Commandment prohibited fornication, and that if we violated any of God's Commandments, He was not going to be very happy with us. Bad things could, and would happen. We could catch VD. We could get someone pregnant.

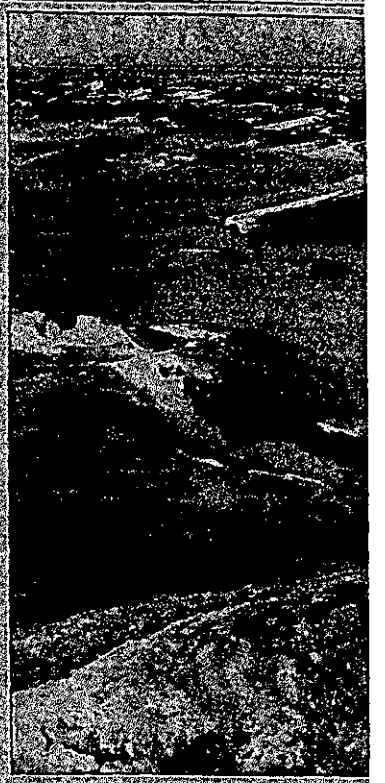
What we were being taught, of course, was responsibility. We were being shown that we were responsible for our own actions, and would face unpleasant consequences if we didn't act properly. But more than that, we were also responsible for the actions of others who might be influenced by us. Our duty was to influence others in a proper manner, and try to avoid causing them to harm themselves by acting improperly.

The Dark Ages are gone. In this Age of Enlightenment, parents now allow their children to go to school wearing condoms on their clothing as some sort of badge promoting "safe sex." The protection of one's soul seems to be of little concern to students, or to their parents, and the protection of another's soul even less so. Chastity is a word seldom heard, and the very mention of God is almost prohibited in our halls of learning.

I'm glad I was raised in the Dark Ages.

Wayne Anthony Ross is an attorney in private practice in Anchorage. His column appears every other Sunday.

ALICE PUSTER'S A



Icing on inlet shores

Retreating tidal waters leave a coating of
of Cook Inlet. Combined with drifted sno
white appearance to the usually muddied b

Bird's eye view of Rainbow

A narrow strip of road works its way from ridge to ridge up the steep confines of Rainbow Can-

yon. Below the sharp peaks, the Seward Highway clings to the brink of ice-choked Tu

resources.

But whatever

beliefs, you have t

cure the nation for very long. It's ... tive for the Si

Defending the guilty: Our judicial system at its very

From the arena

by Wayne Anthony Ross

A question often asked of attorneys is, "How can you represent a person when you know he is guilty?"

To an attorney who believes in the American judicial system, the answer is, of course, "It's easy."

Under our system of laws, the accused is presumed innocent. As English jurist Baron George Bramwell once said: "A man's rights are to be determined by the Court, not by his attorney ..."

The Earl of Birkenhead, Lord Chancellor of Great Britain said: "The bar as a profession offers its services to all litigants. Counsel supports his client's case within the limits prescribed by personal and professional honour. He (the attorney) is not the judge to decide the merits; his function is to present his client's case ...

"If counsel usurps the duties of the judge (or jury), then two results follow. First, men are deprived of that legal assistance to which they are entitled. Secondly, the fact that counsel is known only to accept cases in which he personally believes may work injustice to those to whom he refuses."

Baron Thomas Erskine, another Lord Chancellor of Great Britain, argued: "If the (attorney) refuses to defend, from what he may think of the charge or of the defense, he assumes the character of the judge; nay, he assumes it before the hour of judgment, and in proportion to his rank and reputation, puts the heavy influence of perhaps a mistaken opinion into the scale against the accused."

Thus, in order to protect our system of justice, attorneys must sometimes represent those they know are guilty, simply to ensure that the system works fairly for all. By representing a guilty person, a lawyer insures the health of the judicial system and helps guarantee protection of the rights of all citizens — innocent or guilty — who become involved with that system.

Theoretically, of course, if the prosecutor, the defense attorney, the judge and/or the jury all do their jobs, the result should be truth and justice, i.e., a just decision.

In actuality, on account of the imperfections inherent in human nature, perfect truth and justice are not always attained in our system. Therefore, we read in the papers from time to time about unjust decisions which cause innocent men to be imprisoned for years or criminals to go free.

We must keep in mind, however, that literally thousands of just decisions are rendered by American judges and juries every day. Those few injustices we read about in the papers are written about simply because they are so unusual.

Our system, simply put, dispenses more real justice than any other judicial system in the world — principally because it recognizes and respects the rights of the individual, including the right to have an independent attorney to represent that individual at all stages of the proceeding.

It is easier for an attorney to represent a guilty client than an innocent one. When the guilty client is convicted, the attorney knows the client got a fair trial, his rights were protected and justice was served.

When a guilty client is not convicted, the attorney knows he has still done his job, alone against the full power and personnel of the state, and achieved a victory for his client against all odds.

Even with a "not guilty" verdict, no guilty person brought before the bar of justice ever escapes scot free. Generally, they have been arrested, their case has been publicized, they have had to go through the uncertainties of a trial and

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Give me a guilty clie
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age Assembly and longtime businessman. His column appears every Sunday.

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lse reports of child sexual abuse devastate families and children

Wayne Anthony Ross

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nurses and doctors, to report
suspected child sexual abuse.
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reports are made by people
genuine concern for the chil
other occasions, the reports
for less noble motives.
orce cases as a prime exam
spouse may make a report of
d abuse against the other

spouse, simply to gain an advantage in a custody battle. The consequences to innocent people from such false reports can be devastating.

In Alaska, all reports are required to be investigated by the Department of Health and Social Services. The department is all too willing to believe any and all reports involving suspected sexual abuse that come to its attention.

As a result, the presumption of innocence that an accused enjoys under our criminal law seems to evaporate into thin air in sexual abuse cases. Once an allegation of sexual abuse is directed against a particular person, that person cannot avoid being hurt. Even if they are eventually cleared of such allegations, people still look at them and wonder whether or not they might be guilty of what all of us view as a horrendous crime.

When allegations of sexual abuse of a child are made against a parent, the department often removes the child from the home. This is good when the abuse has actually happened. It is devastating, however, to the parents and to the child, if the abuse hasn't happened.

The department then puts the child into the hands of a sexual abuse investigator whose job it is to try and ascertain whether or not sexual abuse occurred. In some cases, however, the investigator seems more interested in trying to show that the abuse took place than to find out the real truth.

The investigator embarks on a series of interviews with the child. These interviews are often intense and repetitive. A child, even of tender years, is no dummy. The child doesn't really want to be there, and finally realizes just what it is that the investigator wants to hear.

If a child is asked 10 or 15 times whether dad has touched her, there

> It may be years, if ever, before a child is returned home. Hundreds of families are broken up each year by such judicial expediency.

and if each time the child answers "no" the question is repeated, a child eventually realizes that "no" is the "wrong" answer. The child, not realizing the consequences, may then decide to try answering "yes" to such a question, in an attempt to put an end to the interview.

Once a child says "yes" to such a question, the child's chances of returning home any time soon are substantially diminished. The parents then find themselves facing the loss of their child and even criminal charges, as a result of their own child's statements.

Even if a child recants and later says that the event never occurred, many investigators seem unwilling to believe that the incident of abuse did not happen.

Often, too, the interviews with the child are not recorded. A reviewing body, such as a court, thus has no way of telling whether the child's statements were spontaneous, or were the result of conscious or unconscious "coaching" by the investigator.

The department, and the court, often accept the investigator's report of what happened as "gospel" because they have no way to prove otherwise. Well-meaning judges, in an effort to protect a child, are simply unwilling to return the child to a possibly abusive home, and all too prone to put the child in a state foster home placement. It may be years, if ever, before a child is returned home. Hundreds of families are broken up each year by such judicial expediency.

Until methods for ascertaining sexual abuse improve and are implemented, our system may be hurting more children in the long run than it is protecting.

Wayne Anthony Ross is an attorney in private practice in Anchorage. His column appears every other Sunday.

erry's World

Israeli prime minister receives warning from U.S.

Perils of Shamir

WASHINGTON — A powerful warning has been delivered to Israeli Prime Minister Yitzhak Shamir from his major American ally, the American Israel Public Affairs Committee, which sees disaster for Israel if it fails

had been decided but Lubbers, present in his capacity as chairman of the European Commission, said there were some things he wanted to add. As Lubbers went on and on, Kohl got more and more bored, finally removing his ear phones, placing them ignor-

line with rank-and-file African Americans if they oppose Thomas on ideological grounds.

Slick Sullivan

Health and Human Services Secretary Louis Sullivan managed to avoid the White House

Runaway children: Solving the problem before it's too late

From the arena

by Wayne Anthony Ross

Recent reports indicate that Alaska has a substantial problem with children who run away from home. Sources estimate that there are more than 3,500 children in Anchorage alone who are classified as runaways.

Many people believe that children run away from home because they find conditions in their homes so intolerable that they would rather be anywhere else, even in the streets, than at home. These people point to the rise in the number of child abuse cases and argue that runaway children obviously are the result of abusive or neglectful parents.

Certainly some children leave home and refuse to return to their parents because of faults of the parents. Many other children, however, leave home despite the fact that they have good homes and good parents.

Children are subject to substantial peer pressure and other outside influences with which parents cannot always compete. Often a parent sees a child for only a few moments in the morning, before school and then not again until suppertime, and possibly for a few hours at most, in the evening. During the balance of the day, the average child is outside the penumbra of parental influence and subject to the influence of others whose standards of conduct and morality may be substantially different from those of the parents. When a child succumbs to those outside influences and misbehaves, that child may find it easier to remain away from home than to go home and "face the music."

Well meaning but misguided parents of friends of the child may give the child a place to stay, believing the child's "story" that Mom and Dad are abusive parents. Even more dangerous to children are "crash pads" around town that children learn about from others where they can stay for awhile, but where they often become the prey of adults who introduce them to stealing, drugs and sex.

Finally there is the questionable sanctuary provided by the Alaska Department of Health and Social Services (the welfare department) which is charged by law with dealing with runaways. Unfortunately, the welfare department lacks proper resources, funding, personnel and administration to handle the job. All too often the welfare department's appearance and subsequent interference in the family exacerbates the situation.

Some of the blame for the general increase in the numbers of runaway children must be placed on the Alaska Supreme Court and on the Alaska legislature.

Prior to 1971, a runaway could be apprehended by the police and returned home or, if the child was out of control, the child could be detained or even institutionalized in a secure facility. In 1971, the Alaska Supreme Court decided that no legal basis existed for allowing a runaway child to be incarcerated (490 P.2d 658).

Word of this decision circulated rapidly among youngsters and it is even well known today. Children tell their parents, social workers, and foster parents, "I can run away and there is nothing you can do about it." Sadly, the kids are right.

In the early 1970's, the legislature, led by former Rep. Genie Chance, revised Title 47 of the Alaska Statutes, despite testimony from then Family Court Judge Harold Butcher and others that what was proposed was detrimental to the integrity of the family. Judge Butcher was ultimately proven correct. The legislature's revisions, which exist in today's Alaska Statutes, have caused more heartache than any other legislation ever enacted in this state.

When a child is reported by his parents to the police as a runaway, under the present law, the police have no discretion. If they find the child, they must advise the child that he or she has a choice. The child can either return home or be taken to the welfare department rather than home to face an unhappy Mom and Dad. AS 47.10.142 then states

...a tiny spruce tree

...cactus found in the western deserts.

...nus into welfare

...the appropriation. It's why the legislature put the program under the Department of Administration instead of letting the bleeding hearts get it to "do good" with. When I say this, I'm thinking of the old families of Hawaii. The saying goes: "Their ancestors came to 'do good' and they did very well indeed."

The second reason that need was not a requisite part of the first legislation was simple. We wanted to keep as many of life's win-

JAN 18

of conduct and morality may be substantially different from those of the parents. When a child succumbs to those outside influences and misbehaves, that child may find it easier to remain away from home than to go home and "face the music."

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Once a child falls into the clutches of the welfare department, it is almost impossible for the parents to get the child back. The child is often placed in a foster home or shelter with few, if any, restrictions placed on that child. The child learns to enjoy his or her new freedom and continues to refuse to return home. The child learns to manipulate the system, using it to achieve his or her desires, while punishing the parents who find themselves dragged into court by the state.

Many times the parents face allegations that they are abusive because they dared to attempt to discipline their child, or simply because the child lies after learning that the welfare personnel and the attorneys are willing to believe almost anything bad about parents.

What Alaska needs in order to solve its runaway problem is a major revision of its laws involving children. The state should only be allowed to interfere in a family's affairs when an abusive situation clearly exists. At all other times, the state should stand willing and able to back up Mom and Dad in their efforts to instill in their children proper values and behavioral standards. Only in this way can we parents ensure that when our children grow up they will be good citizens and contributing members of society.

Wayne Anthony Ross is an attorney in private practice in Anchorage and director of the Na-

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The second reason that need was not a requisite part of the first legislation was simple. We wanted to keep as many of life's winners as possible here in Alaska.

Fishing is an on and off thing, oil and timber depends on the fluctuations of international politics and world price. Of all incomes, retirement income tends to be more stable than most.

With exceptions, of course, most people over 65 are not into massing great fortunes. They spend their money either on their own comfort or on those around them. They don't cause problems with the police or their neighbors and they often have income retirement from a number of sources, be it teachers' retirement or railroad retirement as well as property amassed long years ago.

Be they rich or poor they are well worth keeping in Alaska.

Halibut Cove charter boat skipper Clem Tillion is a former president of the Alaska Senate.

: Think small

Why, then, should anyone think that last year's frogs will become this year's princes?

Several reasons. First, the normal flow of a bull market is for bonds to move first, followed by the big blue chips, followed by the second tier of large companies, followed by the broader market, followed by the absolute junk. The broader market notably lacked the enthusiasm of the big boys last year, and many think its turn is coming now. Historically, such a move, when it comes, can be enormous.

Lately, though, small growth companies have been beaten down to virtually no price-earnings premium over their larger brethren. Some historians think that alone is a "buy" signal for the little fellows — just as what they would regard as an excessive premium (say, twice as high) would be regarded by them as a "sell" signal.

Not everyone agrees, of course; otherwise, they couldn't open the market in the morning. But there is a growing sense among many top performers that if the stock market does make a sixth straight advance in 1987 it is likely to be — in every sense of the

tor's outlook

by Jenkin Lloyd Jones

e shifting oral sands

rrent drives in America to the advertising of tobacco, ncourage the advertising of ms, would have been met itter disbelief 10 years ago. here is Rep. Mike Synar da.), trying to persuade ress that "cigarette" in and on billboards is a dirty And here are the makers ndoms, a commodity that yesterday was never men- in polite society, seeking ll the media on accepting ads.

nen Cornwallis surrender- rmy paraded before the nentals and French at town, the British band d a piece, "The World ed Upside Down." That to be the theme song of

e irony of a nation still dis- fully addicted to marijuana, suffering so far uncontrolla- mports of cocaine, now con- ng a crusade against "coffin " is remarkable. But emphy- , a word few newsmen spell a decade ago, has be- a real and present danger. e pack-a-day-plus society ?? time bomb that ticks ever r as the 50s approach.

World War I brought the cigarette age. Trench-bound Tommies sang of packing up troubles in the old kit bag, while you've a lucifer to light your fag?" and Americans followed. Diet-conscious women listened to the blandishments of Madison Avenue — "Reach for a Lucky instead of a sweet." By the time World War II ended, nearly all America was puffing, as the old movies will attest.

You don't see many actors and actresses smoking on the screen anymore. Of course, they do use filthy language, divest themselves of their clothing and leap into bed together. You win some. You lose some.

From the arena

by Wayne Anthony Ross

Our liberty requires our vigilance

America has long been called *the* land of the free and the home *of* the brave. If our country is to stay that way, however, we must be constantly vigilant for unwarranted diminishment of our individual rights for the sake of public safety.

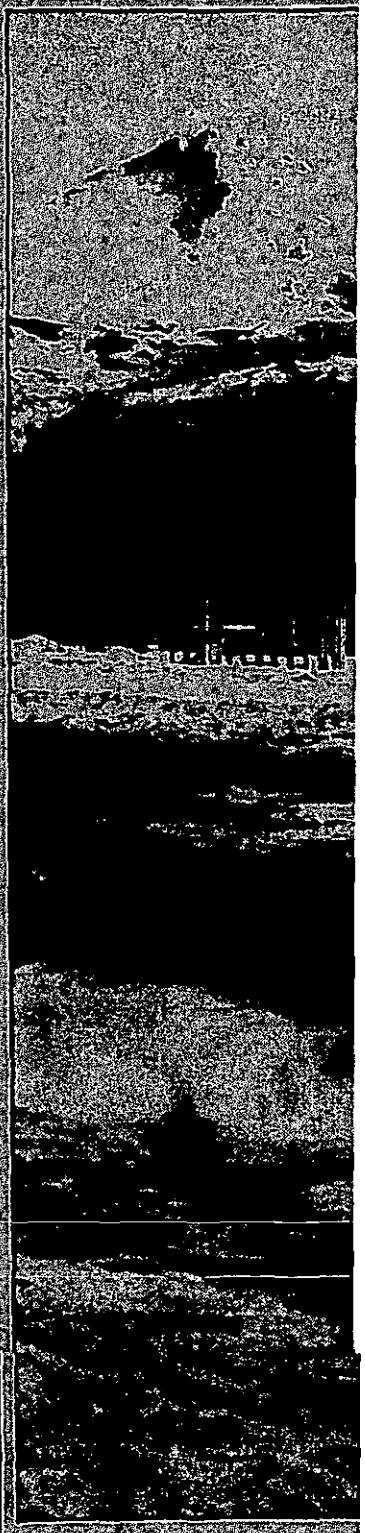
Recently, Attorney General Meese announced plans to require many Federal employees, especially those in "sensitive areas" to undergo drug screening tests. Some government agency would examine the employee's urine. If positive traces of drugs were found, counseling would be given. An employee refusing to undergo such drug screening tests could be fired.

In Anchorage, several FAA personnel are challenging these drug screening tests in court. If America is really the land of the free and the home of the brave, we may see many more people refuse such testing even though they have never used illegal drugs. These people are not sympathetic to drug abusers. Instead, they realize that for freedom to exist and thrive, we must have brave people who are willing to protest rules and regulations which result in diminishment of individual freedom simply for the claimed purpose of enhancing public safety.

In addition to fighting for individual liberty, those persons attacking the drug testing laws are fighting for their own personal integrity. Simply because these employees work in "sensitive areas," the federal government is labeling them as possible drug abusers without any basis for taking such a position.

Any real American would resent being labeled a possible drug abuser. Any real American would resent having to prove their innocence by taking and successfully passing a urine test.

Alice Puster's Alas



It will be a short swim

A pair of mallards are attracted to waters of a puddle in the middle of near downtown Anchorage. Althoug

Subsisten

decade ago, this b
and present danger
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50s approach.

World War I brought in the
garette age. Trench-bound
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hemselves of their clothing and
ap into bed together. You win
ome, you lose some.

So, smokers are on the run
we with the pipes and cigars
were first to feel the lash, gnaw-
ng our fingernails on the inter-
minable ocean flights. Now, res-
taurants have established lepe
colonies, and the drive is on to
chase smokers completely out of
the work places.

On a recent icy morning, I
traversed an alley behind a large
government building and encoun-
tered a young lady in a fur coat
emitting blue clouds. "Office
ban?" I asked. She nodded, smil-
ing wanly. I was too polite to
point out that she was smoking
and doing nothing else on tax-
payer time. But this will cost us.

AIDS, a so-far unrepriev-able
death sentence out of Central
Africa, still chiefly affects homo-
sexuals and users of dirty drug
needles. But it is reported to be
assuming epidemic proportions
among heterosexuals of certain
African tribes and an increasing
percentage of prostitutes in
America and Europe show by
tests that they've been exposed
to the virus. So, the big scare is
on.

You don't see many "gay
pride" parades anymore. The
doctrine that homosexual behav-
ior is as legitimate, if not lauda-
ble, lifestyle is being played *pia-
nissimo* instead of *forte* and the
door to the closet may be once
again opening to receive its prac-
titioners.

But U.S. Surgeon General C.
Everett Koop sees AIDS not as a
moral issue but as a public health
threat. So he has urged that
schools get into the warning busi-
ness. Warning how? By starting
in junior high school with lec-
tures on how to prevent infec-

stead, they realize that for free-
dom to exist and thrive, we must
have brave people who are will-
ing to protest rules and regula-
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Any real American would re-
sent being labeled a possible
drug abuser. Any real American
would resent having to prove
their innocence by taking and
successfully passing a urine test.
Any real American would refuse
to undergo such testing. And any
real American would fight the at-
tempt to make such testing
mandatory on others, unless suf-
ficient grounds exist to believe
the person is a drug abuser.

"A person's body is the most
personal and sacred possession
that person has. If it can be in-
vaded without cause, nothing
else is safe from governmental
prying. If we can be routinely re-
quired to have our bodily fluids
examined, in the interests of pub-
lic safety, to see if we are poison-
ing our bodies with drugs, then
certainly the government can
routinely intrude into our homes
to see if the books we have there
may be poisoning our minds."

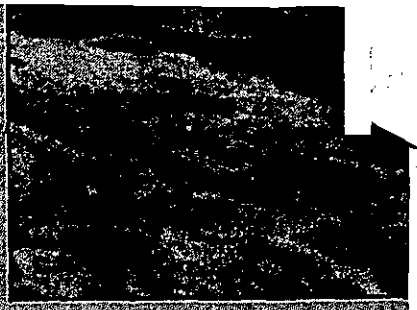
Theodore Roosevelt wrote:

> where possible, the indi-
> vidual must be left free, that he
> must always be left (so) free as to
> have a right to enjoy himself in
> his own way, where he can do it
> without infringing on the rights
> of others, and that the reward
> for his efforts should be made, so
> far as may be, proportional to his
> efforts and abilities, so as to en-
> courage enterprise, thrift, indus-
> try and sobriety, and to discour-
> age their opposites. But where-
> ever it is found by actual prac-
> tice and experiment, or by the
> failure of all other methods, that
> state interference is wise and
> necessary, we should not be de-
> terred from advocating it by any
> considerations of pure theory.

If reasonable grounds exist to
believe that an individual or
group of individuals are using
drugs and thereby endangering
the rest of us, drug testing may
be warranted. It is not warranted
where the government is merely
engaged in a fishing expedition to
see what it might catch.

Freedom is not for the timid.
To be free, we may have to
bravely face more dangers than
the person who opts for safety,
but that is the price of freedom.
I'm willing to pay the price. How
about you?

*Wayne Anthony Ross is an at-
torney in private practice in An-
chorage and director of the Na-
tional Rifle Association.*



It will be a short swim

A pair of mallards are attracted to the sha
waters of a puddle in the middle of 20th Av
near downtown Anchorage. Although a vie

Subsistenc

On March 18 in Bethel, Alaska, native leaders of the As-
sociation of Village Council Pres-
idents' Waterfowl Conservation
Committee voted to support a
government-recommended hunt-
ing closure on Emperor Geese.
This represented yet another
courageous step by native lead-
ers on the Yukon-Kuskokwim
Delta to help to restore seriously
depleted populations of four
goose species to healthy levels.

The Yukon Delta National
Wildlife Refuge of western
Alaska is the greatest goose
breeding area in North America.
People live there too — Yup'ik
speaking Eskimos in 58 scattered
villages, many of which utilize
geese as a subsistence resource.
Because of social, cultural, lan-
guage and geographic variables
in this vast and remote region,
wildlife conservationists have
come to realize that traditional
approaches to game manage-
ment simply won't work. In-
stead, innovative efforts are
needed to inform and involve
local people in the protection and
management of common prop-

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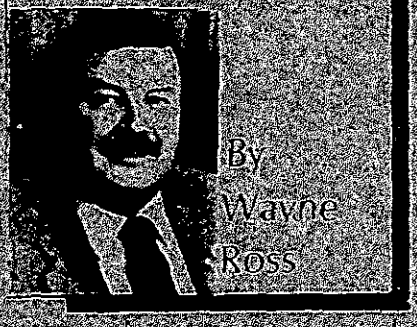
Unveiling th

NEW YORK — In the old days
in Wall Street, brokers used to be
given the "stock of the day."
Now, the report is more likely to
be about the "crook of the day,"
and by and large it couldn't hap-
pen to a nicer bunch of guys.

For evidence is mounting that
the unsavory types involved in
the widening scandals had some-
thing very much in common, and

Is the justice system based on presumption of innocence?

From the arena



By Wayne Ross

Our criminal justice system operates on the principle that a person is presumed innocent of a crime. That presumption remains with a defendant unless, and until, that person is proven to have committed the crime by proof "beyond a reasonable doubt."

Unfortunately, the presumption of innocence and the requirement for proof beyond a reasonable doubt does not apply in other areas of law.

A case in point occurred recently on Elmendorf Air Force Base.

The military, like many other aspects of our society, is plagued by drug abusers. As a result, the military has enacted a program of random drug tests wherein a serviceman's urine is taken and tested for illegal drugs. If test results are positive, the serviceman faces involuntary discharge from the service. Many other government agencies, and private businesses also have such testing programs. Employees face loss of their jobs if their urine tests come out positive for illegal drugs.

image that peeks

The Elmendorf case involved a sergeant with 18 years of service to the U.S. Air Force. The man had an impeccable service record and was a family man with a loving wife and several children.

The sergeant's nightmare began last December, when he was summoned to undergo a urinalysis test. He produced a specimen. His later testimony indicated that Air Force regulations were violated. Air Force regulations require that the specimen remain in sight of the person providing the sample until the sample is properly sealed. The serviceman testified that this did not happen.

Instead, the specimen was removed by an orderly and was out of the sergeant's sight for up to 5 minutes before the sergeant left the bathroom. The sergeant did see a specimen, which he was told was his, sealed for shipment to the testing lab in Texas.

Weeks later, the sergeant was told that the test results were positive and that his urine showed traces of marijuana. The serviceman immediately had another test done at Humana Hospital. The results from this test were negative for illegal drugs.

The serviceman testified under oath that he had never knowingly used marijuana in his entire life. Over 40 people who knew him submitted statements to the effect that they had never seen the sergeant use marijuana, they did not believe he ever used marijuana, and that as long as they had known him, he had always expressed disgust with drug abusers.

The sergeant had undergone many previous drug tests without showing positive. Yet this time, test results showed traces of marijuana.

The sergeant is black. He and several of his co-workers testified that he had been subjected to racial slurs and harassment. His house had been painted with "N-I Go Home!" His tires were flattened. His car was sabotaged. Clearly, someone had been out to get him.

It is possible, of course, that when the sergeant testified he had never used marijuana, he lied. The improbability for this, however, was emphasized by the numerous people who testified

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der the federal

Endangered Species Act. That would bring federal management of wolves to Alaska. This, in fact, is exactly what has already happened in all other states that still have wolves.

So what is the Game Board to do? Perhaps the most rational approach they could take would be to request that the Alaska Department of Fish and Game (ADF&G) develop a statewide management plan for wolves. Such a plan would need to take into consideration the role of the wolf in nature, its many values to society and the need for differing management strategies depending on various land jurisdictions. Meaningful public participation would have to be provided for and as many public interests in the wolf satisfied as possible.

In the final analysis, all those who care about wildlife need to realize that the far most important issue is protection of wildlife populations and their habitats against the onslaught of an expanding civilization. By combining forces on the common ground, they can influence the outcome in a positive way. On the contrary, by remaining divided over such issues as wolf control, both the wildlife and the people who cherish them will be the eventual losers.

Dave Cline is a conservationist and official of the National Audubon Society.

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The sergeant is black. He and several of his co-workers testified that he had been subjected to racial slurs and harassment. His house had been painted with "N- Go Home!" His tires were flattened. His car was sabotaged. Clearly, someone had been out to get him.

It is possible, of course, that when the sergeant testified he had never used marijuana, he lied. The improbability of this, however, was emphasized by the numerous people who testified on his behalf. All indicated he was a very honest man and was known as a very truthful, religious person. It is possible, also, that the tests run in Texas were not done properly. Testimony, however, from the laboratory seemed to indicate the tests had been properly run. Only two other possibilities remain. Either the sergeant's urine sample was tampered with when it was out of his sight, or the sergeant had unknowingly consumed marijuana, perhaps by being given baked goods such as cookies or brownies laced with marijuana. Because of the long passage of time between the date the sample was given and the time the test results were announced, the sergeant could not remember eating anything unusual.

Despite the sergeant's protestations of innocence, and despite the fact that no one could testify that he knowingly used illegal drugs, the sergeant received Article 15 punishment, lost a stripe and faced dismissal from the service with resultant loss of his service pension. There apparently is no presumption of innocence in the U.S. Air Force.

The sergeant appealed, and at a recent discharge hearing, a panel of officers refused to restore his stripe, although they did recommend that he be allowed to stay in the service.

The sergeant is, of course, relieved that his military career did not come to a sudden end. He is, however, quite upset over the finding that he did abuse drugs, when he knows he did not. He intends to appeal further.

Unfortunately, cases like this happen every day, often with even more tragic results.

If you are required to undergo drug tests, have an independent test performed immediately, so you can defend yourself if the first test is performed improperly. Don't let the specimen out of your sight until it is properly sealed and marked. And don't partake of foods from anyone other than those you trust implicitly. The job you save could be your own.

Wayne Anthony Ross is an attorney in private practice in Anchorage and second vice president of the National Rifle Association.

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Ratings of 2008 Applicants for the Court of Appeals

	Professional Competence	Integrity	Fairness	Judicial Temperament	Suitability of Experience	Overall Rating
McCoy	4.6	4.7	4.6	4.5	4.5	4.6
Bolger	4.4	4.6	4.4	4.5	4.4	4.4
Carney	4.4	4.4	4.3	4.2	4.2	4.2
Gullufsen	4.3	4.2	4.0	4.0	4.2	4.1
Terrell	4.2	4.3	4.1	4.1	3.9	4.0
Wood	4.0	4.2	3.9	4.0	4.2	3.9
Diemer	3.9	4.2	4.0	3.8	3.6	3.8
Moody	3.9	4.1	4.0	3.9	3.8	3.8
Smith	3.8	4.2	4.0	4.0	3.8	3.8
Moore	3.9	4.1	3.9	3.9	3.4	3.7
Svobodny	4.1	3.8	3.4	3.4	4.0	3.6
Fayette	3.9	3.8	3.4	3.1	3.6	3.4
Ross	**3.2**	**3.5**	**3.1**	**2.7**	**3.1**	**2.9**

Source: Judicial Council, Alaska Court System

Ratings of 2007 Applicants for the Supreme Court

	Professional Competence	Integrity	Fairness	Judicial Temperament	Suitability of Experience	Overall Rating
Grace	4.6	4.6	4.4	4.3	4.2	4.4
Bolger	4.4	4.6	4.4	4.4	4.2	4.3
Christen	4.4	4.6	4.4	4.4	4.2	4.3
Maassen	4.4	4.4	4.3	4.3	4.1	4.2
Harrington	4.3	4.4	4.2	4.2	3.9	4.1
Rindner	4.3	4.3	4.0	3.8	4.1	4.0
Winfree*	4.3	4.3	4.2	4.1	4.0	4.0
Carney	4.3	4.4	4.3	4.1	3.7	4.0
Smith	4.1	4.2	4.0	4.0	4.0	3.9
Wood	3.9	4.2	3.8	3.9	3.9	3.8
Pfiffner	3.9	4.0	3.7	3.5	3.5	3.6
Lundquist	3.9	4.2	4.0	3.8	3.3	3.6
Mendel	3.7	3.7	3.4	3.0	3.2	3.2
Ross	**3.2**	**3.5**	**3.1**	**2.7**	**3.0**	**2.8**

Source: Judicial Council, Alaska Court System

Scale Used in for Ranking Judicial Candidates

	1 Poor	2 Deficient	3 Acceptable	4 Good	5 Excellent
Professional Competence	Lacking in knowledge and/or effectiveness	Below-average performance occasionally	Possesses sufficient knowledge and required skills	Usually knowledgeable and effective	Meets the highest standards for knowledge and effectiveness
Integrity	Unconcerned with propriety and/or appearance, or acts in violation of codes of professional conduct	Appears lacking in knowledge of professional codes of conduct and/or unconcerned with propriety or appearance at times	Follows codes of professional conduct, respects propriety and appearance of propriety at all times	Above-average awareness of ethics, holds self to higher standard than most	Outstanding integrity and highest standards of conduct
Fairness	Often shows strong bias for or against some person or groups	Displays, verbally or otherwise, some bias for or against groups or persons	Free of substantial bias or prejudice against groups or persons	Above-average ability to treat all persons and groups impartially	Unusually fair and impartial to all groups
Judicial Temperament	Often lacks compassion, humility, or courtesy	Sometimes lacks compassion, humility, or courtesy	Possesses appropriate compassion, humility, and courtesy	Above-average compassion, humility, and courtesy	Outstanding compassion, humility, and courtesy
Suitability of Experience	Has little or no suitable experience	Has less than suitable experience	Has suitable experience	Has highly suitable experience	Has the most suitable experience for this position
Overall Rating	Seldom meets standards of the profession	Occasionally falls short of professional standards	Consistently meets professional standards	often exceeds professional standards	Meets highest standards of the profession

Source: Judicial Council, Alaska Court System

Alaska Governors, Lt. Governors, Presiding Officers, and Attorneys General, by Legislature, 1959 — Present

State Legislature	Years	Governor	Lt. Governors *	Senate President	House Speaker	Attorney General
1	1959 — 1960	William A. Egan	Hugh J. Wade	William Bettz	Warren Taylor	John L. Rader
2	1961 — 1962	William A. Egan	Hugh J. Wade	Frank Peratrovich	Warren Taylor	Ralph E. Moody/George N. Hayes
3	1963 — 1964	William A. Egan	Hugh J. Wade	Frank Peratrovich	Bruce Kendall	George N. Hayes
4	1965 — 1966	William A. Egan	Hugh J. Wade	Robert McNealy	Mike Gravel	Warren C. Colver
5	1967 — 1968	Walter J. Hickel	Keith H. Miller	John Butrovich Jr.	William Boardman	D.A. Burn/Edgar Paul Boyko
6	1969 — 1970	Keith H. Miller	Robert W. Ward	Brad Phillips	Jalmar Kerttula	G. Kent Edwards
7	1971 — 1972	William A. Egan	Henry "Red" Boucher	Jay Hammond	Gene Guess	John E. Havelock
8	1973 — 1974	William A. Egan	Henry "Red" Boucher	Terry Miller	Tom Fink	Norm Gorsuch
9	1975 — 1976	Jay S. Hammond	Lowel Thomas Jr.	Chancy Croft	Mike Bradner	Avrum Gross
10	1977 — 1978	Jay S. Hammond	Lowel Thomas Jr.	John Rader	Hugh Malone	Avrum Gross
11	1979 — 1980	Jay S. Hammond	Terry Miller	Clem Tillion	Terry Gardiner	Avrum Gross/Wilson Condon
12	1981 — 1982	Jay S. Hammond	Terry Miller	Jalmar Kerttula	Jim Duncan, Joe Hayes	Wilson Condon
13	1983 — 1984	Bill Sheffield	Stephen McAlpine	Jalmar Kerttula	Joe Hayes	Norm Gorsuch
14	1985 — 1986	Bill Sheffield	Stephen McAlpine	Don Bennett	Ben Grussendorf	Norm Gorsuch/ Hal M. Brown
15	1987 — 1988	Steve Cowper	Stephen McAlpine	Jan Faiks	Ben Grussendorf	Grace Berg Schaible
16	1989 — 1990	Steve Cowper	Stephen McAlpine	Tim Kelly	Sam Cotten	Doug Baily
17	1991 — 1992	Walter Hickel	John "Jack" Coghill	Dick Eliason	Ben Grussendorf	Charlie Cole
18	1993 — 1994	Walter Hickel	John "Jack" Coghill	Rick Halford	Ramona Barnes	Charlie Cole/Bruce Botelho
19	1995 — 1996	Tony Knowles	Fran Ulmer	Drue Pearce	Gail Phillips	Bruce Botelho
20	1997 — 1998	Tony Knowles	Fran Ulmer	Mike Miller	Gail Phillips	Bruce Botelho
21	1999 — 2000	Tony Knowles	Fran Ulmer	Drue Pearce	Brian Porter	Bruce Botelho
22	2001 — 2002	Tony Knowles	Fran Ulmer	Rick Halford	Brian Porter	Bruce Botelho
23	2003 — 2004	Frank Murkowski	Loren Leman	Gene Therriault	Pete Kott	Gregg Renkes
24	2005 — 2006	Frank Murkowski	Loren Leman	Ben Stevens	John Harris	Gregg Renkes/David Marquez
25	2007 — 2008	Sarah Palin	Sean Parnell	Lyda Green	John Harris	Talis J. Colberg
26	2009 — 2010	Sarah Palin	Sean Parnell	Gary Stevens	Mike Chenault	Talis Colberg/Wayne Anthony Ross

Notes and Sources: * Prior to 1971, this position was known as Secretary of State. Red Boucher was the first Lieutenant Governor.
Gregg Renkes resigned on February 5, 2005.
Talis Colberg resigned on February 10, 2009; Wayne Anthony Ross named March 26, 2009 (subject to legislative confirmation).
Alaska Directory of State Officials, 1959 to present.

Overlaps for Attorneys General may not be exactly on the years.

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

Official Business

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

MEMORANDUM

Date: March 30, 2009

To: Representative Ramras, Chair
Judiciary Committee

From: Suzi Lowell
Chief Clerk

Subject: Governor's Appointment

The Speaker referred the following Governor's appointment to the Judiciary Committee:

State of Alaska Attorney General
Wayne Anthony Ross
Appointed: 3/26/2009

The resume and Confirmation Committee Report are attached for your use.

Attachments as noted

5076

CONFIRMATION COMMITTEE REPORT

Action date: 4/10/09

The **Judiciary Committee** has reviewed the qualifications of the following Governor's appointee(s) as shown on the attached Referral for Confirmation form(s) and recommends that the name(s) be forwarded to a joint session for consideration:

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	LYNN
	Greenberg
	Cook
	Dahlstrom
	Holmes
	Gallo
Chair:	LAMARAS

Please attach appointee Referral for Confirmation form(s) and return to the Chief Clerk's office.

LEAH BURTON
LETTER
AND
RESPONSE

Sarah Palin, Governor

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907)465-2133
FAX: (907)465-2075

April 10, 2009

By Email and Capitol Mailbox

Honorable Member of the Twenty-Sixth Alaska State Legislature
State Capitol
Juneau, Alaska 99801

Re: Letter Dated 7 April 2009 Purportedly From One Leah L. Burton

I am in receipt of a letter which purports to be from one Leah L. Burton. The letter is unsigned and I have been advised that it has been circulated to members of the Legislature. When I left my wife, Barbara, in Anchorage she cautioned me that "they are going to say bad things about you". "They will have to lie!" I responded, in an attempt to allay her fears. We have been happily married for more than forty years and like the tremendous lady she is, Barbara worries about me and doesn't like people criticizing her husband. (I thank the Lord for her every day.)

Apparently Barbara and I were both right. Not content to discuss my record, someone has now chosen to circulate this unsigned memo which is replete with totally false statements. I would call Ms. Burton a liar but, since the letter is unsigned and therefore may not have actually come from her, I will not do so. Instead, I am sending the response to you and referring to the letter, hereafter, as the "Burton" letter.

I believe I have heard of the Dads Against Discrimination and I have heard of a group known as the Alaska Family Support Group. Since I have practiced law in Anchorage in the private sector for over 35 years, I have given talks to many groups. I may have even spoken to this group although I do not recall having done so. If either group is the one I am thinking of, I had an unusual experience with one of its officers. On one occasion I received a call from a video store located on Lake Otis complaining about my "boorish behavior" to one of the store clerks. After ascertaining where and when this boorish behavior occurred, I advised the caller that I had never even been in his store. Intrigued by the caller's story, I asked if he had a videotape of the person who claimed to be Wayne Ross. It turned out that he had. I went to the store, viewed the

video, and recognized the person who had claimed to the clerk that he was me. The imposter was, if I recall, one of the founders of the above referenced group.

I will leave it to your imagination as to what occurred in the "Come To Jesus" meeting I had with this fellow when I was able to track him down. To my recollection, that was the last time I ever heard of either of these groups. They avoided me and I them, thereafter.

If I recall correctly, the only time I ever addressed this group, if indeed I ever did address them, was at a Denny's restaurant on either Benson and Denali or on Dimond and the Seward Highway. To my best recollection the only time I have been in the Denny's on Benson and DeBarr was to attend meetings of the Armed Services YMCA (I served on its Board and later as its Chairman) or to provide legal training for several concealed carry classes given at that location.

I do not believe I know a Steve Strube or a John Grames. I don't recall ever hearing such names before the Burton letter.

I have never ever stated to anyone "If a guy can't rape his wife... who's he gonna rape?"

I don't talk like that!

I don't believe in that!

I totally abhor such a thought and I totally reject it!

Indeed, if I ever heard such a comment from anyone, that person would have faced a serious confrontation with me. Rape is a serious crime; it is not something to joke about; it is not something I joke about; and I have no sympathy with anyone who does. Indeed, as AG I intend to pursue rapists with the full power of my office and put them behind bars for as long a time as possible.

Nor have I ever stated "There wouldn't be an issue with domestic violence if women would learn to keep their mouths shut!"

Such an allegation that I uttered those words is outrageous! Indeed, it is almost as outrageous as the words themselves!

I confess that I am a bit old fashioned when it comes to women. My dad taught me that the greatest honor that a father could show another man was to let that man date his daughter. If a guy was granted that honor, the absolutely worst thing a guy could do

was to breach the trust given to him by that father. I still believe that to this day. My wife and I learned about love-making only after we were married and we have been faithful to one another exclusively. She is my partner and I rely upon her completely.

The idea of "disciplining" a wife is outrageous! Wives are not children; they are partners (or at least should be). Any man who speaks to me about "disciplining his wife" deserves not to have one. And again, if I ever heard such a comment from anyone, that person would have faced a serious confrontation with me.

Both Barbara and I have "disciplined" our children. They have all turned out well. We are proud of them and they (all four of them) love their parents totally. Indeed, our children have turned out so well that I joke that they all take after their mother.

With regard to child support, I served as Court Trustee from 1969 to 1973. During my tenure, we developed the computerized system of collecting child support which has expanded into the Child Support Services Division with exists today. I have no patience or sympathy for any parent who fails to properly support his (or her) child.

In my practice of law when involved in divorce work, more often than not I represented the mother/wife. Ninety-five of my cases settled; only five percent went to trial. Divorces are sad situations for both spouses, and also for the attorneys who handle them. I have often said that the only reason I handled such cases is because I could go home at night to my beloved Barbara and realize how wonderful our life together is. I have always felt bad that many others cannot enjoy a marriage such as ours.

As I said above, I am old-fashioned. I take my hat off inside if a lady is present. I try to rise as often as possible when a lady enters the room. I always try to treat women like I would like my wife to be treated. Call me a dinosaur, if you will, but that is how I was raised.

I have had a good time during these conformation proceedings and I have met many interesting people. It matters not to me whether we agree or disagree on issues; what matters is that we can talk with one another and that we don't become disagreeable with one another.

The Burton letter, however, crosses the line. Now I am a bit angry! Whoever wrote that letter should be thoroughly ashamed of themselves. I do not deserve such treatment no matter how much the writer disagrees with me!

And since I am writing, let's deal with another issue. I am in receipt of a second memo dated 9 April 2009 referencing a lady who testified before the Senate Judiciary Committee on 8 April 2009.

The lady referenced my attendance at a UAA Forum in October 2005. She alleged that she heard me "argue that DV victims are liars".

I do not recall the date of such forum but I do recall attending such a forum. We were shown a movie about domestic violence. When it became my time to speak, I criticized the movie because it gave the misimpression that only men committed domestic violence on women.

I believed that I had been invited because of my years of experience in the field. I simply pointed out that men too could be victims of domestic violence. I also stated that on occasion people who sought domestic violence protective orders did so because they wanted to use the process "as a sword rather than as a shield". I said that in my experience I had seen cases in which people lied to get such protective orders and that our domestic violence system was sometimes abused.

Quite obviously the lady who attended the UAA forum heard only what she wanted to hear.

My remarks that day were accurate and based on almost four decades of experience in the field. The lady's recollection of the event, however, was not accurate.

Please feel free to contact me if you have any questions.

Sincerely,

Wayne Anthony Ross
Attorney General

cc: Sarah Palin, Governor
Mike Nizich, Chief of Staff
Sharon Leighow, Deputy Press Secretary

Jane Pierson

From: Rep. Jay Ramras
Sent: Wednesday, April 15, 2009 2:45 PM
To: Jane Pierson
Subject: FW: My Notes
Signed By: Dana_Strommen@legis.state.ak.us
Attachments: IMG_0001.jpg; IMG_0002.jpg; IMG_0003.jpg

From: Leah Burton [mailto:leahlb@gmail.com]
Sent: Tuesday, April 14, 2009 1:46 PM
To: Rep. Max Gruenberg; Rep. Jay Ramras
Subject: Fwd: My Notes

These are my notes from the DADS meeting in Anchorage in 1991

--
Leah L. Burton

DADS Meeting 3/91

Shuler, Chalmers, Ross

(S) "Judicial terrorism ... only 20 people to walk into a leg. office & throw them into a complete panic."

(R) "RO w/out burden of proof against Dads ... on some more accusations no transcripts, allegation w/o proof."

(R) ... "97% DV Sought out by R. RO handed out love candy"
"Ex parte allegations"

(G) No # muni, state, etc. men's support groups.

(S) "15 yrs ago"
R recognized to each other that they were oppressed - Radical interests forcing over hunting men & da.
Upon havent admitted they're oppressed.
5 more yrs to track to make a Sig. Diff ...

2

(R) The ERA has emasculated us as "men — if we knew their place, DV wouldn't be an issue"

(S) Now they want to control whether & when we can have sex w/ our own wives!

(R) The government is not our friend — lent w/ Don & Jack ... we can stop this corrupt establishment.

"If a guy can't rape his wife — who's he gonna rape?" This is ridiculous!

(S) Sue Wms -- "good" person — support in Judiciary

(S) Support Sue Wms as judge or any position in St govmnt. Atty that helps DASS — kindness of heart. Against DFYS — no charge.

3

(R) You can rely on me for some of that too.

(S) Gov. transition team for DSSH unanimously supp. Work Rice. Grievance panel for family law Task force Comm. – problems w/ DFYS.

– R.O. – family – Hickel Agenda. Unlike CSED – uncooperative.

(S) Hon., Jim Carter, Tracy Driskell met w/ Terry Mahaney Judith Lynch – 30 diff. learning issues – viol. of due process, alleg. using 2 diff DS guidelines, computer phone system.

Ref HSB Gilmer

Blew them away w/ documentation we had.

"Left them in shock!"

(G) Protest against them and don't give up!

Better and bigger than ever!

Jane Pierson

From: joann mcdevitt [joannmcdvtt@yahoo.com]
Sent: Thursday, April 09, 2009 7:23 PM
To: Rep. Jay Ramras
Subject: WAR

I just want to be sure you have seen this

following is a testimonial letter from Leah Burton. Realize as you are reading her words, she is talking about a man who would be, if Sarah Palin has her way, the Attorney General of our state; the highest law officer in the land. A man who condoned rape? WTF?

April 7, 2009

My name is Leah Burton. My father is former Commissioner of Public Safety, Richard L. Burton, who served under both Governor Hammond and Governor Hickel. I grew up in a law enforcement environment. Mr. Ross testimony today in response to Senator Hollis' questions about domestic violence and sexual assault victims enhances my testimony as to his prejudice on this very serious topic, especially given that, "Alaska rates among the top 5 states in the nation for per capita rates of domestic violence." (FBI/UCR 2007)

From 1989 through 1997 I lobbied on behalf of families and children in Alaska with regard to child support, custody, abuse, abandonment and neglect. In the course of that time my efforts put me in conflict with a group known then as the Dads Against Discrimination (DADS), and later renamed the Alaska Family Support Group.

Mr. Ross is one of the most successful attorneys in Alaska in his representation of the members of this organization and others who sought to avoid payment of child support through several means, not the least of which was to fight for custody.

In 1991, the DADS group held an area wide meeting at a Denny's Restaurant in Anchorage near DeBarr & Bragaw. I chose to go and sit in the main area of the restaurant near the opening of the meeting room where they convened so I was able to hear what they had to say and find out what plans they had for the upcoming legislative session.

At that point they still did not know what I looked like so I was able to sit there

unnoticed. The meeting was well attended, Steve Strube was the head of the group at that time and another known member, John Grames (who Strube referred to as his Lt.), was also in attendance along with enough other members to fill the room. They were delighted to have Wayne Anthony Ross in attendance as a guest speaker.

Numerous comments were made that were appalling, not the least of which were remarks by Mr. Ross which included the following; "If a guy can't rape his wife... who's he gonna rape?" and "There wouldn't be an issue with domestic violence if women would learn to keep their mouths shut."

Other members made their own contributions such as, "We have the right to discipline our wives and children without the interference of government in our lives!"

These comments were greeted with laughter and affirmative responses by the group. Given the fact that they had referred to me in recent months as a "femi-nazi", the comments I was witness to at this meeting, while abhorrent, were unfortunately not surprising.

This announcement by Governor Palin is a slap in the face to all single parents who have no choice but to rely upon the State Department of Law to support court orders for child support, as well as those persons who need the Department to enforce criminal laws against sexual assault and domestic violence. Mr. Ross is the antithesis of the type of person that should be the Attorney General. This has been clearly demonstrated by his own words and actions in public.

In closing, I am not alone in my assessment that anyone who condones, and contributes to that type of hateful and harmful discourse clearly does not have the judgment necessary to represent the people of the State of Alaska as their Attorney General.

Given his other special

Jane Pierson

From: Boyer [river@acsalaska.net]
Sent: Thursday, April 09, 2009 11:10 PM
To: Rep. Jay Ramras
Subject: Regarding Wayne Anthony Ross

Hello Rep Ramras,

To date myself a bit I remember you beat as the "wingman" from my undergraduate days at UAF.

Today, I realize your acumen as an entrepreneur and admire your commitment to public service.

Could you please query Mr Ross regarding this information (below) to test its veracity and act accordingly.

Thanks again for your contributions to Alaska.

Best,

Michael L. Boyer
Juneau (also a former Fairbanks Resident)

Leah Burton discusses Wayne Anthony Ross' appointment and her explosive testimony before the Legislature.

Stream it Live !!! RF.

Tomorrow House Judiciary Committee will meet and take citizen testimony on the nomination of Wayne Anthony Ross to be our next Attorney General.

Leah Burton is on with CC, sharing her testimony regarding Wayne Anthony Ross. She is a former citizen lobbyist who worked on behalf of families and children concerning child support, child custody, domestic violence, child abuse and sexual assault.

She discusses a meeting of the group DADS, being run by Wayne Anthony Ross, and what she heard.

Numerous comments were made that were appalling, not the least of which were remarks by Mr. Ross which included the following; **"If a guy can't rape his wife...who's he gonna rape?"** and **"There wouldn't be an issue with domestic violence if women would learn to keep their mouths shut."**

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In closing, I am not alone in my assessment that anyone who condones, and contributes to that type of hateful and harmful discourse clearly does not have the judgment necessary to represent the people of the State of Alaska as their Attorney General.

Jane Pierson

From: James Behlke [jim@behlke.com]
Sent: Friday, April 10, 2009 12:02 PM
To: Jane Pierson
Subject: Ross Hearing

Dear Ms. Pierson:

These comments are for the House Judiciary Committee regarding Mr. Ross's Attorney General confirmation proceedings.

I listened to Leah Burton speaking on the radio about the 1991 meeting where Mr. Ross may have made the statements Ms. Burton claims she witnessed. I see no reason why Ms. Burton would make this up. She sounded very specific and credible to me. Did the meeting occur? Was Mr. Ross there?

I don't know if Ms. Burton is exclusively using her memory (she indicated there are things one never forgets and she will never forget what Mr. Ross said), or if she also took notes at the time. If she took notes and still has possession of the original notes, it may be possible to verify whether the notes are aged or new-- if paper and ink have aged since Ms. Burton wrote them, it would be extremely difficult or impossible to challenge the credibility of Ms. Burton's statements.

I hope your committee will give Ms. Burton ample time to describe the 1991 meeting (and Mr. Ross's remarks), and that Mr. Ross will have ample time to respond. Your committee may have access to experts who could help to advise them of specific questions that would help clarify credibility and who is telling the truth.

Thanks,

Sincerely,

Jim Behlke

5762 Flagstone Cir
Anchorage, AK 99502

April 10, 2009

House Judiciary Committee
Chairman-Representative Jay Ramras

Re: Ms. Leah L. Burton's letter dated April 7, 2009

Dear Committee Members:

For days now I have read numerous accusations against Mr. Wayne Anthony Ross, the governor's appointee for the position of Alaska's Attorney General. These accusations have seemed petty and ridiculous, and I hoped they would be given the attention they deserved. However, Ms. Burton's recent letter regarding Mr. Ross's character and beliefs was in a category of it's own.

It is my hope and belief that you want to hear the truth about Mr. Ross. To that end, I ask you to consider this letter.

For the past three years I have been employed as a paralegal in the office of Ross and Miner. During that time, we have been involved in many cases where domestic violence was an issue. Depending on the situation, I have seen Mr. Ross counsel these women to apply for domestic violence protective orders, advise them on safety measures, and tenaciously represent them in court. I have also observed Mr. Ross's frustration when a woman has chosen to dismiss her case and returned to her abuser.

I have even seen Mr. Ross in confrontations with the abusers. On one occasion office personnel were ready to call the police out of fear for Mr. Ross's safety. But I have never seen him back down when it has come to defending the rights of these women, nor have I heard him make any attempt to offer any excuse for their behavior.

If this is not enough to convince you that Ms. Burton's accusations are less than truthful, please consider my own experience with Mr. Ross. I came to Ross and Miner as a woman who had been out of the work force for many years. Not only did Mr. Ross give me a chance to prove myself, he encouraged me to grow in my profession and consistently pushed me to excel. He has not treated me according to my gender, but according to my ability.

Ms. Burton's accusations are completely contrary to the character of the man with whom I have worked for the past three years. While I am hesitant to call anyone a liar, I have no qualms about doing so in the present instance. Ms. Burton speaks of a group called "Dads Against Discrimination (DADS), and later renamed the Alaska Family Support Group" and claims that "Mr. Ross is one of the most successful attorneys in Alaska in his

representation of the members of this organization and others who sought to avoid payment of child support through several means, not the least of which was to fight for custody." Yet, during the past three years, not one client has come to us claiming to be part of any such group. Indeed, I have never once heard of these organizations, if they do exist.

Nor have I ever seen Mr. Ross make any attempt to help any parent avoid paying child support. Our office holds the belief that the child's best interests are paramount, and I have seen cases turned down when the attorney felt the motivating factor in fighting for custody was to avoid paying child support.

In short, Mr. Ross is an honest, ethical man who is well qualified to fill the seat of Attorney General. Ms. Burton would do well to take a page from his rule book.

Sincerely,

Tamara Huffman

LETTERS OF SUPPORT FOR CONFIRMATION OF ROSS

(ARRANGED ALPHABETICALLY BY CORRESPONDENT'S LAST NAME)

Jane Pierson

From: Eileen Becker [ELBecker@webtv.net]
Sent: Friday, April 10, 2009 9:31 AM
To: Rep. Jay Ramras

Wayne Ross would make a good Attorney General. Please support Gov. Palin's choice. Thank you for the job you are doing. Dave & Eileen Becker, Dist 35, Homer, AK

Jane Pierson

From: Robert Bird [bob.bird@hotmail.com]
Sent: Thursday, April 09, 2009 2:57 PM
To: Rep. Jay Ramras
Subject: Wayne Ross

Thank you for the opportunity to give this testimony, Rep. Ramras.

I am Bob Bird, former president and current board member of Alaska Right to Life. I am a member of the Alaskan Independence Party, a former Republican and have known Mr. Wayne Ross for about 25 years.

I did note that Mr. Ross has been called "controversial" and "divisive" by Democratic and native members of the legislature.

This is utter hypocrisy. The accusations "controversial" and "divisive" are never leveled at liberal Democrats. At a time when our nation and state is being subjected to THE most divisive and controversial policies, many of which are not enacted by the legislative branch but through executive fiat and judicial decree, it is time to put an end to such absurd, whining complaints.

I noticed where a native leader expects Mr. Ross to be the attorney general of all Alaskans, but this native leader is apparently only expected to serve his own constituency, which I might add includes non-natives.

The historic *McDowell* case of 1989, with which Mr. Ross was intimately involved, demonstrates who is truly divisive in the matter of rural and urban subsistence. It is the federal government that has created such division and controversy. Mr. Ross was also acting in the interests of Alaska's urban natives. This has always been conveniently overlooked.

I did note that some Alaskan natives, like Senator Donny Olson, have looked upon the federal government as their protector. I would remind them of the sordid and inhumane history of the federal government towards America's natives. It is filled with broken treaties, manipulation, murder and injustice.

Such native leaders seem to have forgotten that federal interference in the states' social issues have given us *Roe v. Wade*. It is abortion-on-demand, given to us by the federal judiciary in an unconstitutional and illegal way, that has done more to destroy minority cultures and their future. It is this very ruling that Mr. Ross has fought with such courage and gallantry for nearly 40 years. Native leaders might want to explain to their constituencies why they have not opposed the culture of death that the federal government has pushed upon them with the same energy as has Mr. Ross.

I would also remind Alaska's native leadership that Mr. Ross has been a strong advocate for the right to keep and bear arms, a right that is under threat even as we speak from the so-called "protector", the federal government. When animal rights activists come to threaten the native subsistence lifestyle by imposing regulations on our land and seas, it will be Mr. Ross and not the justice department of Barack Obama, that will fly to their defense.

Mr. Ross is an completely transparent and honorable man. Men of his convictions make enemies. In my opinion, he has made all the right ones.

Governor Palin is a conservative, she has the right to place her type of people in office and unless

Mr. Ross were to be guilty of unethical practices of some sort, deserves to be approved.

Rep. Ramras, I thank you for this opportunity.

Bob Bird
50615 Shemya Way
Kenai
907-776-5898

Windows Live™: Keep your life in sync. Check it out.

Dana Strommen

From: housemajority_email@housemajority.org
Sent: Monday, April 06, 2009 1:09 PM
To: Rep. Jay Ramras
Subject: Wayne Ross

+--+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to cage@gci.net If suspected Spam please forward to: support@housemajority.org
+--+

From: cage@gci.net

Mr. Ramras,

I just received an email from my NASW office giving contact info for your office concerning Governor Palin's appointment of Mr. Ross. My guess is that some of my fellow social workers are not pleased with this appointment. However, my conclusion about Mr. Ross, after about 24 years observation, is that he's a fine selection.

~ Lee Cage
Zip Code: 99577

+--+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to cage@gci.net If suspected Spam please forward to: support@housemajority.org
+--+

Dana Strommen

From: Mark Chryson [mark@web-ak.com]
Sent: Wednesday, April 08, 2009 11:32 AM
To: Mark Chryson
Subject: WAYNE ROSS Confirmation hearings

STATE OF ALASKA

Mat Valley Fish & Game
Advisory Committee

Sarah Palin, Governor

Tony Russ, Chair
574 Sarah's Way
Wasilla, AK 99654
907-376-6474
tony@tonyruss.com

4 April,2009

The Honorable Governor Sarah Palin

Dear Governor Palin:

The members of the Matanuska Valley Fish and Game Advisory Committee would like to take this time to show unanimous support for the nomination of Wayne Anthony Ross as Alaska's Attorney General.

We feel that Mr. Ross' past record and support of all Alaskan's right to access state lands and waters for traditional subsistence and personal use are consistent with citizens represented by the Matanuska Valley. We believe Mr. Ross will strongly support and defend the original intent of the Alaska State Constitution.

We highly recommend Wayne Anthony Ross as Alaska's new Attorney General.

Matanuska Valley Advisory Committee

Mark Chryson
MVFGAC secretary
2140 E. Wolverine Circle
Wasilla, AK 99654
907-376-8285
http://www.web-ak.com

LEGAL CONFIDENTIALITY NOTICE:

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Jane Pierson

From: Rosanne Curran [curranbiz04@yahoo.com]
Sent: Friday, April 10, 2009 12:07 PM
To: Rep. Jay Ramras
Subject: Nomination of Wayne Ross

I would like to make my views known concerning the nomination of Wayne Ross as Attorney General. He is well qualified and an excellent choice for this position. His honesty and experience of many years is well known. Please forward this testimony to all on the Senate Judiciary Committee.

sincerely

Rosanne Curran
Cordova

Jane Pierson

From: cderrickak@aim.com

Sent: Friday, April 10, 2009 9:47 AM

To: Sen. Joe Thomas; Sen. Gene Therriault; Rep. Scott Kawasaki; Sen. Joe Paskvan; Rep. Jay Ramras; Rep. John Coghill; Rep. Mike Kelly

Subject: Wayne Ross Confirmation

To all the Interior Delegation Legislators who have espoused that they are pro gun advocates, now is the time to back your words up with actions. Mr. Wayne Ross as Alaska's Attorney General will protect gun rights for Alaskans and will vigorously fend off those who would limit those rights.
Also, as a Board member of the Chitina Dipnetters Assoc. I feel Mr. Ross will take a favorable view towards CDA's and Alaska Outdoor Council's lawsuit to return the Chitina Dipnet Fishery to its rightful classification as a subsistence fishery. Remember, thousands of your constituents participate in this fishery and subsistence status will assure the dipnet fisheries future.

Chuck Derrick
891 Seldom Seen Rd.
Fbks. Ak. 99712

The Average US Credit Score is 692. See Yours in Just 2 Easy Steps!

Jane Pierson

From: John Davis [johndavis@radiokenai.com]
Sent: Wednesday, April 08, 2009 5:44 PM
To: Rep. Jay Ramras
Subject: Please

Hi Jay.... Please support the confirmation of Wayne Ross as our A/G. He is a man with a rock solid, lifetime record of Integrity.
Thanks

John C. Davis
KSRM Radio Group
Kenai

Jane Pierson

From: Larry DiFrancesco [larrylakester@gmail.com]
Sent: Thursday, April 09, 2009 1:41 PM
To: Rep. Jay Ramras
Subject: Wayne Ross

Chairman-Representative Jay Ramras

Excellent choice for Alaska Attorney General!

Larry DiFrancesco
Director Aviation
Anchorage Alaska

Jane Pierson

From: JANET DELFINO [janetdelfino@msn.com]
Sent: Thursday, April 09, 2009 9:45 PM
To: Rep. Jay Ramras
Subject: Wayne Ross

I support him for attorney general and am an active registered voter in Anchorage.

Janet Delfino
2390 Hillbrook Circle
Anchorage, AK 99504-3575

Thank you for listening.

Dana Strommen

From: Phil Evans [philevans@pbevans.com]

Sent: Monday, April 06, 2009 2:53 PM

To: Rep. Mike Kelly; Sen. Joe Thomas; Rep. David Guttenberg; representative_scott_kasasaki@legis.state.ak.us; senator_gene_therriaualt@legis.state.ak.us; Sen. Joe Paskvan; Rep. Jay Ramras; Rep. John Coghill; Rep. John Harris

Subject: Wayne Ross Confirmation as Attorney General

Dear Legislators,

I wholeheartedly support Sarah Palin's nomination of Wayne Ross as Attorney General and want him to be sworn in as scheduled without interference. He is the right person for our State!

Thank you!

Philip B. Evans
P. O. Box 85103
Fairbanks, AK 99708

April 8, 2009

Dear Judiciary Committee,

We are unable to be involved in the public testimony time concerning Wayne Ross as Attorney General. We are in complete support of this appointment by Governor Palin as Mr. Ross has served us well in the interior on many Constitutional matters. It is not hard to realize he is the man for the job and he is not easily intimidated when pressured. He is a 2nd Amendment Rights advocate and is principled in every area of our lives. He works as an attorney for Individual Rights and stands firm on the Rule of Law--the Constitution.

Any of you who may have reservations do not know the backbone it takes to protect our state in matters of law but Mr. Ross will successfully do it where others will cower. You can be assured of security with him as attorney general.

Here in the Interior when our First Amendment Rights of peaceful assembly were going to be trampled, he stepped in and wrote a letter for us and gave us his phone number to let him know if it happened again. When our fair board was not going to let us have a pro-life booth even though there was a pro-abortion booth, he wrote a letter citing precedent and the case down in the Mat-su and the fair board backed off.

Most importantly, all it takes is a few good men to run the state government well and one of those needs to be Mr. Wayne Ross.

Sincerely,

Jon Ruth

Jonathan and Ruth Ewig
2325-30th Avenue
Fairbanks, Alaska 99701

Jane Pierson

From: leslie hallifax [leshallifax@yahoo.com]
Sent: Friday, April 10, 2009 2:30 PM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

Dear Mr. Ramras,

I believe that Wayne Anthony Ross would be an exceptional choice for Attorney General for the State of Alaska. I am confident that his integrity and high moral standards would be a huge asset to our state.

Please share my testimony with everyone on the House Judiciary Committee.

Thank you.

Leslie Hallifax

Jane Pierson

From: Diane Hastings [dianehastings@catholic.org]
Sent: Thursday, April 09, 2009 8:36 PM
To: Rep. Jay Ramras
Subject: Wayne Ross AG nomination

Dear Rep Ramras,

Wayne Ross is a highly qualified and able candidate for the office of Attorney General. To oppose his appointment on the grounds of his pro-life and pro-family convictions is to contravene the will of the
demonstrated majority of Alaskans. We voters will be watching closely to see how his appointment is handled, and will vote accordingly.

Thank you.

Stephen L. Hileman, MD
Soldotna, AK

Sent via Catholic Online Webmail!
Use Catholic Online Webmail to proclaim your faith to the world.
http://webmail.catholic.org/

Jane Pierson

From: Gwendaline Hill [qweebiegirl@yahoo.com]
Sent: Friday, April 10, 2009 11:20 AM
To: Rep. Jay Ramras
Subject: Wayn Ross for Attorney General.

Please give my testimony to everyone in the House Judiciary Committee.

Wayne Ross is an exceptional choice for Attorney General. Wayne is a man of principal and Godly morals. He is a true conservative. He is the right choice for Attorney General. Please consider him.

April 10, 2009

26th Alaska State Legislature

Re: Ms. Leah L. Burton's letter dated April 7, 2009

Dear Legislator:

For days now I have read numerous accusations against Mr. Wayne Anthony Ross, the governor's appointee for the position of Alaska's Attorney General. These accusations have seemed petty and ridiculous, and I hoped they would be given the attention they deserved. However, Ms. Burton's recent letter regarding Mr. Ross's character and beliefs was in a category of its own.

It is my hope and belief that you want to hear the truth about Mr. Ross. To that end, I ask you to consider this letter.

For the past three years I have been employed as a paralegal in the office of Ross and Miner. During that time, we have been involved in many cases where domestic violence was an issue. Depending on the situation, I have seen Mr. Ross counsel these women to apply for domestic violence protective orders, advise them on safety measures, and tenaciously represent them in court. I have also observed Mr. Ross's frustration when a woman has chosen to dismiss her case and returned to her abuser.

I have even seen Mr. Ross in confrontations with the abusers. On one occasion office personnel were ready to call the police out of fear for Mr. Ross's safety. But I have never seen him back down when it has come to defending the rights of these women, nor have I heard him make any attempt to offer any excuse for the abuser's behavior.

If this is not enough to convince you that Ms. Burton's accusations are less than truthful, please consider my own experience with Mr. Ross. I came to Ross and Miner as a woman who had been out of the work force for many years. Not only did Mr. Ross give me a chance to prove myself, he encouraged me to grow in my profession and consistently pushed me to excel. He has not treated me according to my gender, but according to my ability.

Ms. Burton's accusations are completely contrary to the character of the man with whom I have worked for the past three years. While I am hesitant to call anyone a liar, I have no qualms about doing so in the present instance. Ms. Burton speaks of a group called "Dads Against Discrimination (DADS)... later renamed the Alaska Family Support Group" and claims that "Mr. Ross is one of the most

successful attorneys in Alaska in his representation of the members of this organization and others who sought to avoid payment of child support through several means, not the least of which was to fight for custody." Yet, during the past three years, not one client has come to us claiming to be part of any such group. Indeed, I have never once heard of these organizations, if they do exist.

Nor have I ever seen Mr. Ross make any attempt to help any parent avoid paying child support. Our office holds the belief that the child's best interests are paramount, and I have seen cases turned down when the attorney felt the motivating factor in fighting for custody was to avoid paying child support.

In short, Mr. Ross is an honest, ethical man who is well qualified to fill the seat of Attorney General. Ms. Burton would do well to take a page from his rule book.

Sincerely,
Tamara Huffman
(907) 830-3406

Dana Strommen

From: Linda Jo Klapperich [purple2@mtaonline.net]
Sent: Sunday, April 12, 2009 7:35 PM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

Dear sir:

I have known Wayne for 10 years. I really believe he would be a great Attorney General. He is very intelligent, well spoken and has deep personal integrity.

I admire Gov. Palin for selecting him.

Linda Jo Klapperich
Teacher
Palmer Junior Middle School
Palmer, Alaska
907-761-4357

Jane Pierson

From: ak-klump@gci.net on behalf of Phil and Maureen Klump [ak-klump@gci.net]
Sent: Thursday, April 09, 2009 9:42 PM
To: Rep. Jay Ramras
Subject: Wayne Ross Confirmation

Dear Rep. Ramras,

I am writing to encourage you and all other legislators to confirm Wayne Ross as Alaska's next Attorney General. I have known Wayne personally for many years and he is a great person to fight for the Constitutional rights of All Alaskans equally. His tenacity and integrity make him the perfect choice at a time when mistrust and lack of integrity are rampant in government at all levels. I will hold any legislator who votes against Mr. Ross's confirmation accountable at election time and will use my influence to vote those legislators out of office who oppose this confirmation. Sincerely, Dr. Philip J. Klump, D.D.S.

To the House Judiciary Committee 4/10/09

I have been working For Mr. Ross for a year now in his Law Office as Receptionist. I also work with his wife Barb. I would like to state for the record that my experience working for them has been nothing but positive. I see nothing but respect, honor and love in the way he treats his wife. He treats all his employees and fellow Attorneys with respect and truly cares about them. As for his clients they always come out of his office grateful and pleased for what he does for them. Almost every appointment I set for new clients are people who have been referred to Mr. Ross by former or current clients. By what I have observed he and his wife are probably the most honest, ethical people I have worked for. I could NEVER imagine Mr. Ross ever saying the things Ms. Burton accuses him of either in public or private.

Angela Kositz

Angela Kositz

Jane Pierson

From: jlaneanc@ak.net on behalf of John & Myrna Lane [jlaneanc@ak.net]
Sent: Thursday, April 09, 2009 3:16 PM
To: Rep. Jay Ramras
Subject: Confirmation of Wayne Anthony Ross

Dear Rep. Ramras

We would like to urge you and other members of the Judiciary Committee to confirm Wayne Anthony Ross for Attorney General for the State of Alaska. We have been aware of Mr. Ross for many years and know him to be a fair, honest and just man and will serve the State well.
Sincerely,

John & Myrna Lane
Anchorage, AK.

Jane Pierson

From: eleeak@mtaonline.net
Sent: Thursday, April 09, 2009 5:15 PM
To: Rep. Jay Ramras
Subject: Wayne Ross

I wish to add my statement to the others for Wayne Ross. Do not block him as the choice for Attorney General for our state!
He is an exceptional choice for this position. He is a man of principal and has good morals. He says what he means and means what he says, something unusual in today's world. This man is what we need right now to help hold our wonderful state together in this trying time our country and world are facing. He is the Governor's choice and he is an excellent choice. Thank you.

Ellen Lee
Wasilla, AK

Jane Pierson

From: Marie & Sean Mayton [mayton32@yahoo.com]
Sent: Thursday, April 09, 2009 2:41 PM
To: Rep. Jay Ramras
Subject: Wayne Ross

I want my voice heard about representative Wayne Ross. I believe in Sarah Palin's choice. I think she knows who's best for this position and He is relible and has good morals. Please vote him in.

Sincerely
Marie Mayton

Jane Pierson

From: Jan Mccoy [janmccoy@gci.net]
Sent: Friday, April 10, 2009 4:59 PM
To: Rep. Jay Ramras
Subject: Please support Wayne Ross

Wayne Ross is a wonderful choice for Attorney General. He is imminently qualified and he will be a wonderful advocate for the people of Alaska. His integrity and compassion in my view is without question-- although I know that in the poisonous political atmosphere we are in today you can expect almost anything. My husband and I have nothing but the greatest respect for his life's work and for the things he stands for. Please support his confirmation, and if you are able, please share my thoughts with other members of the House Judiciary Committee.

Jan McCoy
Anchorage, Alaska

Jane Pierson

From: Wendy McKinnis [schultzy@mtaonline.net]
Sent: Friday, April 10, 2009 12:16 AM
To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes
Subject: Confirm Wayne Anthony Ross!

Dear Chairman Ramras:

Please ensure my letter is given to each member of the House Judiciary Committee.

Please vote to confirm Wayne Anthony Ross to be Alaska's next Attorney General.

Mr. Ross is an exceptional individual and attorney. He keeps his word, is a man of principal, and will serve to ensure Alaska's best interests are served.

Governor Palin has chosen him to serve and he deserves to be appointed to fill the position.

Thank you for your service and for supporting Mr. Ross.

Sincerely,

Doug and Wendy McKinnis

Jane Pierson

From: John & Candy Miller [3in1oil@gmail.com]
Sent: Thursday, April 09, 2009 1:12 PM
To: Rep. Jay Ramras
Subject: YES CONFIRM WAYNE ANTHONY ROSS

YES CONFIRM WAYNE ANTHONY ROSS!!!

HE WILL UPHOLD THE ALASKA & NATIONAL CONSTITUTION

for LIFE. LIBERTY, JUSTICE, FREEDOM

for ALL

Candus Miller
Palmer, AK

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
555 CAPITOL MALL, SUITE 625
SACRAMENTO, CALIFORNIA 95814
(916)446-2455 voice ■ (916)448-7469 fax

STATE & LOCAL AFFAIRS DIVISION
BRIAN JUDY, ALASKA STATE LIAISON

TO: Members of the Alaska State Legislature
FROM: Brian Judy, NRA-ILA Alaska State Liaison
DATE: April 15, 2009
RE: Wayne Anthony Ross AG Confirmation – **SUPPORT**

On behalf of the tens of thousands of National Rifle Association members who live in the State of Alaska, I would like to register strong support for the confirmation of Wayne Anthony Ross for Attorney General.

The Right to Keep and Bear arms and the natural right of self-defense are fundamental. There are few issues of greater importance to citizens in the State of Alaska. Wayne Anthony Ross is a staunch defender of Constitutional freedom. Based on his proven dedication and passion for the Second Amendment, Alaskans can rest assured their firearm freedoms and hunting heritage will have a consistent defender in the State Attorney General's office.

The National Rifle Association has been quite surprised to hear some of the things alleged by those who have spoken out in their opposition to this confirmation. Particularly shocking are suggestions that the nominee would be weak in going after perpetrators of domestic violence. It is impossible to believe that Wayne Anthony Ross would coddle any criminals, domestic abusers or otherwise.

In closing I would just reiterate, on behalf of its members, the strong support of the National Rifle Association for the confirmation of Wayne Anthony Ross to the office of Attorney General for the State of Alaska.

Jane Pierson

From: John and Gail O'Neill [joneill@ptialaska.net]

Sent: Thursday, April 09, 2009 2:19 PM

To: Rep. Jay Ramras

Subject: re: Wayne Ross for Attourney General

Dear Chairman-Representative Jay Ramaras,

I would like to give testimony to everyone on the House Judiciary Committee in favor of Wayne Ross for Attourney General. I believe he would be an excellent for this job. He represents my choice for this office.

Thank you very much,

Gail O'Neill
P.O. Box 15235 Fritz Creek, AK 99603
38420 Walters Street
907 235-5390

Dana Strommen

From: jpe@gci.net on behalf of James Prashuk [jpe@gci.net]

Sent: Saturday, April 11, 2009 5:14 PM

To: Rep. Jay Ramras

Subject: Attorney General

Hello Mr. Ramras,

I am writing to you to ask that you support and endorse the confirmation of Wayne A. Ross for the next Attorney General for the state of Alaska. I support his nomination by Governor Palin.

I work in and reside in Fairbanks and have done so for 30 years now.

I hope that your values and mine coincide. I do pay attention to the issues facing our state and nation.

Thank you for your interest and time.

Respectfully

James Prashuk
1745 Donald Ave.
Fairbanks, AK 99701
jpe@gci.net

Jane Pierson

From: Mike & Jenni Remillard [mail@mikejen.net]
Sent: Thursday, April 09, 2009 8:43 PM
To: Rep. Jay Ramras
Subject: Wayne Ross

Dear Representative Ramras,

I am writing to encourage you to confirm Wayne Ross as the Attorney General for the State of Alaska. Whenever I have heard him speak in public settings he speaks with common sense, humor, graciousness, and compassion. He is a man with a long history in Alaska public life. I believe he would make an exceptional attorney general for our state.

Thank you for your consideration.

Sincerely,
Jennifer Remillard

Jenni Remillard
907-696-8213
22830 Eagle Glacier Loop
Eagle River, AK 99577
email: mail@mikejen.net

Dana Strommen

From: Chris Rude [crude@rsa-ak.com]
Sent: Thursday, April 16, 2009 9:14 AM
To: Rep. Jay Ramras
Subject: In Regards to Wayne Ross

Greetings Representative:

I appreciate the good work that you are doing on our behalf in Juneau. I'd like to take this opportunity to urge you to vote positively for the confirmation of Wayne Ross. Wayne is a straight shooter and one whom takes our Constitution seriously - an attribute that is, sadly, in short supply these days. I believe that Wayne will do an outstanding job and I hope that you agree.

Thanks again,
Sincerely,

Chris Rude
RSA Engineering, Inc.
Mechanical Designer
907.276.0521 office
907.276.1751 fax

Dana Strommen

From: teresa siple [tesiple@hotmail.com]
Sent: Tuesday, April 14, 2009 3:50 PM
To: Rep. Jay Ramras
Subject: confirm anthony wayne ross as attorney general

teresa siple
p.o. box 73605
fairbanks, AK 99707-3605

April 14, 2009

The Honorable Jay Ramras
Alaska House of Representatives
State Capitol
Juneau, AK 99801-1182

Representative Ramras:

please confirm anthony way ross as attorney general

Sincerely,

teresa e. siple

Jane Pierson

From: Marc & Lucy Viens [mlviens@mtaonline.net]
Sent: Friday, April 10, 2009 9:51 PM
To: Rep. Jay Ramras
Subject: Wayne Ross

Wayne Ross is an exceptional choice for Attorney General. He is an upstanding man of principle.

Sincerely,
Lucy Viens

Jane Pierson

From: David Weisensel [alaskacabins@yahoo.com]
Sent: Thursday, April 09, 2009 7:08 PM
To: Rep. Jay Ramras
Subject: in favor of Wayne Ross confirmation

Dear Mr. Ramras,

I am writing in support of confirming Wayne Anthony Ross for Attorney General of Alaska. Wayne Ross is an exceptional choice for Attorney General. He is a man of principal and has Godly morals. He says what he means, and means what he says. There is no pretense or illusionary aspect to Wayne Ross. He's a true conservative, which is why the liberals are trying to take him out. I liked what I read about him in the paper today. Please help.

David Weisensel
456-1664

Jane Pierson

From: Floyd/Gaye Wright [fwright@ideafamilies.org]

Sent: Wednesday, April 08, 2009 9:18 PM

To: Rep. Jay Ramras; Rep. John Coghill; Rep. John Harris; Rep. Mike Kelly; Rep. Scott Kawasaki; Sen. Gene Therriault; Sen. Joe Thomas

Subject: Wayne Ross

Wayne Anthony Ross is a straight shooter, and he doesn't play games. I believe we would serve the State of Alaska honestly and with zeal. Please vote for his confirmation to the Office of State Attorney General.
Floyd Wright
Gaye Wright
Reuben Wright

LETTERS OF OPPOSITION TO THE CONFIRMATION OF ROSS

(ARRANGED ALPHABETICALLY BY CORRESPONDENT'S LAST NAME)

Jane Pierson

From: Sharon Alden [fwxsca@yahoo.com]
Sent: Thursday, April 09, 2009 10:12 PM
To: Rep. Jay Ramras
Subject: Ross

Dear Rep. Ramras,

Pleas do not vote to confirm Wayne Ross at Alaska's Attorney General. His views on women and domestic violence are from the dark ages and will set our state beck decades. Alaska is number one in assaults against women and domestic violence. There are issues that need to be taken seriously. I doubt that this will be the case with Mr. Ross.

Thank you for your time.

Sharon Alden
Fairbanks, Alaska

[redacted]

Dana Strommen

From: Sandee Anderson [mrsnka@gmail.com]
Sent: Monday, April 13, 2009 4:59 PM
To: Rep. Jay Ramras
Subject: W.A. Ross

Dear Representative Ramras ,

As a lifelong Alaskan voter, I urge you to not confirm Governor Palin's nominee Wayne Anthony Ross as Alaska's Attorney General. As a woman, I am offended by his flippant stance regarding rape and his disrespectful attitude toward women. I am also extremely offended at his sexist sexualization of Governor Palin. Lastly, I am offended by his disrespect for the Native people and their spirit.

Sincerely,
A concerned Alaskan voter

Alison K. Annis
19708 Revilla Circle
Eagle River, AK 99577
April 14, 2009

Jay Ramras
Alaska State Representative
Capitol Room 120
P.O. Box 110001
Juneau, AK 99811-0001 **via FAX:** (907) 465-2070

Dear Representative Ramras:

I am writing to ask you to NOT approve Wayne Anthony Ross for the position of Alaska State Attorney General. By representing one of Sarah Palin's staff members in the "Troopergate" investigation he clearly shows his loyalty to the Governor. This loyalty precludes him from impartially serving the State of Alaska and upholding its constitution.

His declarations regarding his negative opinions of homosexuals (and more recently, his refusal to declare his stance) cause me great concern for his ability (or lack thereof) to sincerely and impartially act on behalf of, and for the benefit of ALL Alaskans, regardless of political party, religion, age, race, gender, or sexual orientation.

Mr. Ross's assertion that he can perform the job of Attorney General while keeping his personal opinions out of it is simply not believable. Our behavior is driven by our personal opinions and values, therefore I don't believe he can separate his from the job of Attorney General. His past behavior should be viewed as a predictor of future performance. As a concerned Alaskan, I feel he lacks the integrity required to do the job fairly and ethically.

Thank you for hearing my concerns.

Sincerely,

Alison K Annis

Copyright © 1998 by Ann Poe

Dana Strommen

From: ashcrafthome@gci.net on behalf of Jeanne Ashcraft [ashcrafthome@gci.net]
Sent: Tuesday, April 14, 2009 6:02 PM
To: Rep. Jay Ramras
Subject: NO on Ross

Rep. Ramras:

After hearing this afternoon about the proof that Wayne Ross lied during his confirmation hearings about ever having said, "If a man can't rape his own wife, who can he rape?", and in fact about being at the meeting where he said it, I believe that if this man is confirmed as the attorney general of this state where my family lives, works, raises its children, and invests it will be just about the last straw for any of us. Alaskans deserve far, far better than we are getting from Juneau during this administration.

Please have the **courage** to deny Wayne Ross the powerful position that he has been nominated to hold.

Thank you,
Jeanne Ashcraft
Anchorage

THIS TESTIMONY WAS DELIVERED April 11, 2009 BY EMAIL OR COURIER

April 10, 2009

Alaska State Legislature
State Capitol
Juneau, AK 99801

Earlier this afternoon, Wayne Ross provided information as to how he evaluates people. For the record, and according to his measure, I am not a *communist*, I am not an *anarchist*, and *I love Alaska*. Again using Mr. Ross' words, I hope all of you will consider me *courageous* when I conclude my testimony before you.

My name is Barbara Bachmeier. As I am an 80% service-disabled veteran and because the VA in Anchorage does not provide the services I need, I'll be leaving soon on an extended trip to California. Today, I believe, will be my last testimony before the Alaska Legislature. I don't want to leave home, but I must. I'd certainly prefer not to give this testimony this afternoon, but I must. I flew in last night arriving at 9:30 p.m. in order to be here today. This matter is that important.

There was a time that I needed to hire an attorney in order to respond to a legal matter involving my expectation that students in Alaska's public high schools should be required to behave honorably and respectfully during the morning ritual recitation of the Pledge of Allegiance. It seems there were administrative personnel, one mother, and one student who disagreed. The mother contacted an attorney and suddenly I was in big legal trouble (civil not criminal).

Somebody suggested that I hire Wayne Ross. "You'll get your money worth from him", this person said. "He'll work hard for you". So, I met with Wayne Ross in his office and told him the facts of the case. My words and his questions took approximately ten minutes. After this, I listened to his response: rehearsed colorful stories and goofy analogies; considerable information about his successful law career; details about the successful career his son had in the US Marine Corps; his wife's excellent baking abilities; and attempted discussions about various souvenir-type items in his office. I discovered later that Mr. Ross charged me for the time he consumed with his unnecessary attempt at entertainment and his "This is my Life" monologue. My financial situation could only have been made worse if he had charged me at the "usual rate"; this experience caused me to realize that I could not afford even Mr. Ross' "military discount rate" given the way his time accounting served only to benefit him.

Either he observed my somatic clues or ran out of colorful expressions, he eventually stopped the "chit-chat", shifted gears, and presented the grand strategy he would employ in response to my legal problem. He told me he would arrange for hundreds of veterans to muster at a particular location as a "show of force" in support of my reasonable expectation for all Alaska public school students during the Pledge of Allegiance to our country.

Behaviorally, Wayne Ross carried himself as if he were a Flag Officer imposter. Perhaps sensing my response to his weird bravado, he assured me he had sufficient military clout to make such a "big deal" military formation take place. Although he did not discuss anything about the Alaska National Guard, he spoke with such effervescence that I fully expected him to propose the activation of the Alaska National Guard for a "Pass and Review" ceremony at someplace like the Anchorage Park Strip.

In Sean Cockerham's Anchorage Daily News article on April 9, 2009, Mr. Ross characterized himself as a " ... general who carries out campaigns." If I were to conduct a functional behavioral analysis of Wayne Ross (calling on my skills as a former SED special education teacher), there would be significant areas involving communications, interpersonal skills (including cheating), time management, and conflict resolution for which one would recommend intervention leading to improvement. I think Mr. Ross is less than he wants to be and makes every effort to overcompensate. During thoughts such as these and *really* wanting to run from his office, I focused on my need for an attorney that another veteran recommended. I stayed and wrote a check, but I should have followed my instincts.

Not long after I hired and paid Mr. Ross to serve as my attorney, perhaps when Vic Kohring realized he needed to get an attorney, Ross sent me a very brief note; I accepted it at face value although there was no signature (only initials). The quick note revealed that Wayne Ross had taken on "two serious criminal cases" and would no longer be available to help me with my case. He offered to return part of my retainer and recommended that I take my (good) case to another attorney. The problem with the alternative plan he crafted was that the returned portion of the hefty retainer caused me to have insufficient funds to hire a new attorney.

As I am a retired lieutenant colonel in military intelligence, I have seen lots of general officers. I served on military assignments from Camp Casey, Korea (within easy artillery range of North Korea) to the Pentagon. There were no officers at any rank that behaved as pompously as Wayne Ross did when we met that first time and seemingly continues to do in the present time. Wayne Ross is not the kind of individual that our state needs and deserves as her next attorney general. We need somebody who will observe his commitments, keep his word, and work for the common person like me. We need an Attorney General who will honor veterans and not take advantage of them for personal and professional glory. Using the words he chooses to connote high praise, Alaska needs an attorney general whose "word [one can take] to the bank".

Wayne Ross is not a role model for professional attorneys and Alaska does not need the "band of junkyard dog assistant attorneys general" that he would hire (according to the ADN article referenced above); he graduated in the bottom segment in his law school class; he was not selected for two judgeships for which he made application; he proudly uses "jury nullification" as a defense strategy when most other courts in the country expressly disallow it; as far as his skills, abilities, and competencies he demonstrated before me, was "smoke and mirrors"; and he does not keep his word.

In considering how Wayne Ross described Governor Palin as *courageous* when she took on her party only to get, initially, an unpleasant letter from the Alaska Department of

Law, I ask this committee to hear my testimony and find it worthy of honest consideration. Please do not send me a "poison" letter like the rambling one sent to Leah Burton after she submitted written testimony; she is a credible journalist.

My being here this afternoon was the honorable thing to do in this matter. I may not be around to give in-person testimony to the legislature again, but I will keep up on what's happening with state government. Perhaps in the future you will hear from me in the form of my writings. I'll stay in touch.

Thank you for your consideration of my testimony. Wayne Ross called Leah Burton a liar and this is not true. It is appropriate for me to tell you that Wayne Ross absolutely lied to me. And to make matters worse, he cheated Alaskans as he cheated me.

Sincerely,

Barbara Bachmeier

Barbara Bachmeier

DELIVERED April 11, 2009 BY COURIER – UPDATE DELIVERED April 13, 2009

Testimony given before the Alaska House Judiciary Committee – April 10, 2009

April 10, 2009

Alaska State Legislature
Alaska State Capitol
Juneau, AK 99801

Re: Hearings on the appointment of Wayne A. Ross as Alaska Attorney General

Earlier this afternoon, Wayne Ross provided information as to how he evaluates people. For the record, and according to his measure, I am not a *communist*, I am not an *anarchist*, and *I love Alaska*. Again using Mr. Ross' words, I hope all of you will consider me *courageous* when I conclude my testimony.

My name is Barbara Bachmeier. As I am an 80% service-disabled veteran and because the VA in Anchorage does not provide the services I need, I'll be leaving soon on an extended trip to California. Today, I believe, will be my last testimony before the Alaska Legislature. I don't want to leave home, but I must. I'd certainly prefer not to give this testimony this afternoon, but I must. I flew in last night arriving at 9:30 p.m. in order to be here today. This matter is that important.

There was a time that I needed to hire an attorney in order to respond to a legal matter involving my expectation that students in Alaska's public high schools should be required to behave honorably and respectfully during the morning ritual recitation of the Pledge of Allegiance. It seems there were administrative personnel, one mother, and one student who disagreed. The mother contacted an attorney and suddenly I was in big legal trouble (civil not criminal).

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to muster at a particular location as a "show of force" in support of my reasonable expectation for all public school students during the Pledge of Allegiance to our country.

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Wayne Ross is not a role model for professional attorneys and Alaska does not need the "band of junkyard dog assistant attorneys general" that he would hire (according to the ADN article referenced above); he graduated in the bottom segment in his law school class; he was not selected for two judgeships for which he made application; he proudly uses "jury nullification" (persuading a jury to return a "Not Guilty" verdict despite its belief that the defendant is "Guilty" of the violation charged) as a defense strategy when courts throughout our country expressly disallow this practice; with regard to his skills,

abilities, and competencies, what he demonstrated to me, was nothing but "smoke and mirrors" and a lot of extraneous joking around; and he is dishonest.

In considering how Wayne Ross described Governor Palin as *courageous* when she took on her party only to get, initially, an unpleasant letter from the Alaska Department of Law, I ask this committee to hear my testimony and find it worthy of honest consideration. Please do not send me a "poison" letter like the rambling one sent to Leah Burton after she submitted written email testimony (therefore explaining perhaps why Wayne Ross was confused by the lack of an official signature on the actual document. Ms. Burton is a professional writer and her work is regarded highly by her peers of all political persuasions.

My being here this afternoon was the honorable thing to do in this matter. I may not be around to give in-person testimony to the legislature again, but I will keep up on what's happening with state government. Perhaps in the future you will hear from me in the form of my writings. I'll stay in touch.

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Sincerely,

Barbara Bachmeier

Barbara Bachmeier

Additional points added April 11, 2009:

a) During the public testimony session on April 10, 2009, House Judiciary Committee Chairperson Ramras announced that he had received complaints of harassment directed at some people who earlier provided testimony by telephone from their home telephone numbers. Apparently, people in disagreement with the opposing testimony, responded by finding the telephone number of the persons offering opposing testimony and placing calls to these people for the sole purpose of engaging in harassing and controversial conversation against them. Ramras did not identify which side of the argument allegedly made the harassing telephone calls or which side received them, but instructed those responsible to stop this behavior forthwith.

b) Today, April 11, 2009, I heard from a legislative staff person that the persons receiving the harassing telephone calls were those who spoke in opposition to the confirmation of Wayne A. Ross. The people allegedly making the harassing telephone calls were supporters of Ross' confirmation.

c) I find this alleged behavior absolutely intolerable and unacceptable. I request an immediate investigation into this matter so as to determine whether egregious partisan harassment actually took place and, if so, valid consequences that would be in order.

Jane Pierson

From: Linda Baker [otis@acsalaska.net]
Sent: Saturday, April 11, 2009 1:34 PM
To: Rep. Jay Ramras
Subject: ross nomination

I am a 32 year resident of Alaska and a registered voter. I urge you NOT to support the nomination of Wayne Anthony Ross for Attorney General in the upcoming voting process.
Thank you for your consideration.
Linda Baker

Dana Strommen

From: dbear [jadebear@alaska.net]
Sent: Saturday, April 11, 2009 1:19 PM
To: Rep. Jay Ramras
Cc: Sen. Hollis French; Sen. Bill Wielechowski
Subject: Attorney General Confirmation:

Dear Representative Ramras,

RE: Wayne A. Ross AG Confirmation Hearings

After watching a couple hours of your and Senator French's questioning of Mr. Ross I am even more convinced that he would not be the best pick for AG. He speaks of "principles" and states that were a situation to come up where he felt "his" principles were at risk he would simply "go back to practicing law". This was in response to your question re: his character overshadowing the position of AG. I have a professional license, land surveying, and the "principles of practice" of my profession are mandated by statute. Certainly, I am expected to exercise my best professional judgment in the performance of my work but my personal "principles" have nothing to do with performing that work and should there be some conflict then my licensure would be at risk, plain and simple. The extent to which personal ethics and integrity influence an individuals work I think would have been a more appropriate line of questioning for Mr. Ross. Here's an example of Mr. Ross's "principles" getting in the way of his professional behavior/ethic; I don't remember the year but it was during the first years of the war in Iraq. There was a protest at the intersection of the Kenai Spur and Sterling Highways in Soldotna. As I recall, a woman's son had been killed in Iraq and she and several supporters were protesting the war. One of our local radicals took it upon himself to drive past a couple of times and shout obscenities at the woman for being "unpatriotic" and etc.. Then he had someone drive his pick-up truck past while he bombarded the woman and her group with water. He was arrested for assault and Mr. Ross defended him with his well known "passion" for such things. When he says that all his clients are innocent he is being disingenuous and devious in his defense of such behavior as just described above. Also, when he states, repeatedly, that he works for the people of the state and will uphold the constitution of the U.S. and Alaska I ask you to very carefully consider this; there is such a thing as **"malicious compliance".** As AG Mr. Ross, as he has so vigorously demonstrated over the years, will be in a position to make decisions based on the absolute letter of the law or, as in the case of the poached caribou for the old Native woman, not!

Obviously, I haven't been privy to all your questioning of Mr. Ross but some questions I haven't heard that would be among the first and very important to me as a legislator are as follows ;

1. What is your position/opinion re: powers of the legislative and executive branches of Alaska state government, specifically, if the legislature issued subpoenas to either an ordinary citizen or a state official, would you expect both/either to honor the summons and why or why not? Do you believe in the premise that all citizens are equal under the law and that the law should be exercised equally over all?

2. As AG would you personally give legal advice to an ordinary citizen or a state employee re:

an action of the legislature or high ranking state official if in so doing you would be acting in conflict with the stated intent of the legislature or official? As between the governor and the legislature who, in a conflict of authority, would you answer to first?.

3. Do you agree that the U.S. constitution provides both the right "to" and "from" religious belief? Given your repeated use of the word God and prayer in many of your answers and your stated position as a pro-life advocate can you envision a circumstance where your oath of office, in your professional opinion, would be in conflict with your personal "principles"? More specifically for example, what is your professional opinion re: the federal ruling that allows workers in the medical profession to deny or refuse "services" to an individual if providing those services would conflict with the providers religious belief? What is your personal opinion or principle re: this ruling?.

4. Chief Justice Warren E. Berger is quoted as having said this; "A lifestyle or behavior that is odd or even bizarre, that interferes with no right or interest of others, is not to be condemned because it is different". What is your opinion, as AG, of the Alaska supreme court ruling that partners of gay and lesbian state employees are entitled to certain benefits typically associated with married, heterosexual couples? What is your personal opinion of this ruling? Do you foresee any problem enforcing and upholding this ruling?.

5. Do you think the AG position should be an elected position or remain an appointment by the governor? Why?

6. You have stated several times that if your "principles" ever get in the way of performing your, presumably unbiased, duties as AG you will just go back to practicing law, which you love doing anyway and that you won't go hungry or need to apply for unemployment. This seems a bit capricious, flippant and speaks to your attitude re: the position of AG. Is there something on your mind that you would like to speak about with regard to this attitude? An example of this was in your response to the statement that governor Palin is "provocative", meaning that she provokes the legislature with her actions and words at times, but you replied that yes, she looked pretty good and then chuckled. This "attitude", if you will, seems inappropriate and contentious, please explain why it is not and should not be perceived as such to the casual observer?.

7. Your publicly stated position re: Native rights, subsistence hunting and fishing, are inconsistent with state and federal law. As AG you will be expected to uphold the "law" as written, do you see any conflicts with existing law and your "principles"?

8. General scientific consensus demonstrates certain irrefutable facts re: fish and game management, global warming and status of certain animal species in Alaska. Do you see yourself as someone in possession of legitimate credentials which qualify you to dispute current scientific findings re: these matters? and do you anticipate becoming involved or participating in official, formal discussion of these matters beyond a direction from the legislature or governor to pursue legal action on behalf of the state re: one or more of these issues?.

9. Going back to "malicious compliance"; you have stated your opinion that the law should be flexible, should not overly penalize someone who has broken the law but with, in your opinion, reasonable justification and that putting the "fear of God" in them would better serve the situation. Reversing the logic of this, would you anticipate exercising "discretionary authority"

that is consistent with your personal principles in certain circumstances but applying the strictest letter of the law in others that don't meet your personal standards and you oppose? Would you extend this "discretionary authority", unconditionally, to everyone under your supervision in the AGs department?. Why/why not?.

I am no fan of governor Palin and I don't believe she is acting in the best interest of Alaska with her national political pursuits. Her recent behavior re: confirmation of Kim Elton's replacement is at once childish and petty in my opinion and should not be tolerated. Her appointment of Mr. Ross as AG is politically astute but hardly the best choice she could have, and should have, made for the state. Mr. Ross's confirmation hearings have convinced me beyond any shadow of a doubt that he is most likely one of the best defense attorneys available in the state but at the same time he is probably the worst choice for AG. We have seen what the "cowboys" are capable of over the past eight years in the national arena. Alaska does not need a cowboy AG working for a "maverick" governor who aspires to be president and has focused all her energy in that pursuit!

I'm not affiliated with any political party and wear no label. I was born in Alaska in 1948 and have seen some amazing things since. I sincerely hope the appointment of Mr. Ross as AG, especially in Sarah Palin's administration, will not be another!

Thank you for your time and consideration.

David M. Bear
P.O. Box 39283
Ninilchik, AK 99639

Ph.: 567-3344

Jane Pierson

From: James Behlke [jim@behlke.com]
Sent: Friday, April 10, 2009 8:30 PM
To: Jane Pierson
Subject: message for House Judiciary Committee

Dear Ms. Pierson:

Please forward this message addressed to Representative Ramras to the House Judiciary Committee:

Dear Mr. Ramras:

I watched today's House Judiciary Committee meeting, and I'm concerned your committee may not intend to adequately review Leah Burton's testimony, or any additional information she may provide, until after the joint legislative session's scheduled confirmation vote of Wayne Anthony Ross-- I'm concerned your committee, which has 5 republicans and only 2 democrats, may be steamrolling Alaska's interests beneath partisan bias.

You yourself seemed to leave open the possibility that Ms. Burton's statements may be true. I'd be even more concerned if Mr. Ross's claims, in his recent response to Governor Palin on this matter, were proven false.

I see no reason why questions raised by Ms. Burton should not be addressed and resolved before Mr. Ross's confirmation vote. Is your committee trying to hide something about Mr. Ross from Alaskans? Do you need to conceal facts from Alaskans in order to get Mr. Ross confirmed as Attorney General?

If your committee can't address the obvious questions raised by Ms. Burton in a timely and useful way, perhaps you should ethically disclose this to the legislature so it may consider alternate, better investigative options which may occur before the confirmation vote.

Sincerely,

Jim Behlke

c.c. Senate Judiciary Committee
House Speaker
Senate President

Dana Strommen

From: James Behlke [jim@behlke.com]
Sent: Wednesday, April 15, 2009 11:02 AM
To: Rep. Jay Ramras
Subject: c.c. AG confirmation vote message to Senate President and House Speaker

Dear Senate President Stevens and House Speaker Chenault:

I'm concerned the Governor may be attempting to manipulate the legislature by holding up Senator Elton's replacement-- she apparently has not submitted any candidates that the democratic party agrees with.

It appears this matter may end up in court.

However, Juneau's senate seat (currently vacant) should have a say in the Attorney General nomination-- I'm concerned the Governor may be holding up the Senate replacement so there would be one less potential "no" vote at the joint session on Thursday.

I think it would only be fair to delay the Attorney General's confirmation vote until the Juneau senate seat has been acceptably filled.

I ask the legislature to delay the Attorney General's confirmation vote until all Alaskans, including Juneau residents, are equally represented-- even if a special session was required for a full confirmation vote to occur.

Apparently the Attorney General nominee has been advising the Governor on the nomination process for the Juneau senate seat-- if so, he may be influencing his own confirmation vote especially if his advice results in a delayed Juneau senate appointment.

Sincerely,

Jim Behlke

c.c. Alaska Legislature

Jane Pierson

From: Bent Alaska [bentalaska@gmail.com]

Sent: Thursday, April 09, 2009 8:03 PM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes

Subject: My testimony against Wayne Anthony Ross as AG

"Does [Wayne Anthony Ross] have the qualifications, ethical standards and temperament to be the state's top law enforcement official and run such an important, politically sensitive department?" asked an ADN editorial.

Qualifications

- **Ross has been up for two separate Judicial advancements in the past two years, for the Alaska Supreme Court in 2007 and the Alaska Court of Appeals in 2008. He was not nominated by the Alaska Judicial Council either time. His mediocre Alaska Bar Association scores were cited as the reason he did not receive a nomination.**
- In response, he wrote a letter to the Bar Association newsletter complaining about the judicial selection process and the negative comments made about him in the anonymous Bar Survey used to rate the applicants.

Ethics and Temperament

There is an extensive written record on Ross from his two unsuccessful runs for governor and his long history of political activism. His zealous support for a host of controversial causes and his insulting public statements about those who believe differently show intolerance, bad judgement and the inability to seek common ground. He has a long list of enemies, and even his attorney peers and NRA buddies don't want him in positions of power.

- He called on the governor to fire an Assistant Attorney General for her participation in a peaceful demonstration. *("Animal Activists Real Enemy")*
- He threatened to sue the Permanent Fund Dividend division because they denied a check to his son Brian, who had not lived in Alaska for 14 years.
- During a talk on domestic violence, he said that the women's movement emasculated men and was the cause of domestic abuse.
- He promised to fight the federal law requiring rural subsistence, and opposes tribal sovereignty saying, "If the state wants to deal with tribes, it should treat them as it treats fraternal organizations rather than as governments."
- He did not support Mayor Wuerch for re-election because Wuerch refused to help Ross' friend get into the Anchorage Fire Department after the friend failed a required psychological test.
- He publicly stated that pro-choice people are "baby killers," and called gays and lesbians "degenerates" in a letter to the state Bar Association.
- He endorsed Rick Mystrom for mayor in 2003 "because he fights the unions."
- He represented without fee, and personally supported, a man who twice poured buckets of water from a passing pickup onto anti-war demonstrators.
- He was a founder of Alaska Right to Life and has provided free legal services to anti-abortion activists since 1972.
- He blamed moderate Republicans for the state's fiscal problems saying, "Moderates are mush."
- He is a former vice president of the National Rifle Association and was in line to

become president, but was voted out of office by his peers.
- He is frequently described as "arrogant," uncompromising and attention-seeking.

Do we trust an arrogant political activist with mediocre professional ratings, zealous positions on sensitive state issues, and openly expressed prejudice against groups of Alaskan citizens to be "the state's top law enforcement official and run such an important, politically sensitive department?"

I know you will listen to the concerns of the citizens and do what is best for the state by denying his appointment. Thank you.

Sincerely,
E. Ross

Bent Alaska - GLBT News and Events with a Local Alaskan Bent.

Dana Strommen

From: ruthlb@gci.net on behalf of Ruth Blackwell [ruth@aukelake.com]

Sent: Wednesday, April 15, 2009 8:21 PM

To: Sen. Charlie Huggins; Sen. Con Bunde; Sen. Fred Dyson; Sen. Gary Stevens; Sen. Gene Therriault; Sen. Kevin Meyer; Sen. Lesil McGuire; Sen. Linda Menard; Sen. Lyman Hoffman; Sen. Tom Wagoner; Sen. Albert Kookesh; Sen. Hollis French; Sen. Bettye Davis; Sen. Bill Wielechowski; Sen. Donny Olson; Sen. Joe Paskvan; Sen. Joe Thomas; Sen. Johnny Ellis

Cc: Rep. Bob Buch; Rep. Alan Austerman; Rep. Anna Fairclough; Rep. Berta Gardner; Rep. Beth Kerttula; Rep. Bill Stoltze; Rep. Bill Thomas; Rep. Bob Herron; Rep. Bob Lynn; Rep. Bryce Edgmon; Rep. Carl Gatto; Rep. Cathy Munoz; Rep. Charisse Millett; Rep. Chris Tuck; Representative Con Bunde; Rep. Craig Johnson; Rep. David Guttenberg; Representative Gary Davis; Rep. Harry Crawford; Rep. Jay Ramras; Representative Jerry Sanders; Rep. John Coghill; Rep. John Harris; Rep. Kurt Olson; Rep. Kyle Johansen; Rep. Les Gara; Rep. Lindsey Holmes; Rep. Mark Neuman; Rep. Max Gruenberg; Rep. Mike Chenault; Rep. Mike Doogan; Rep. Mike Hawker; Rep. Mike Kelly; Rep. Nancy Dahlstrom; Rep. Paul Seaton; Rep. Peggy Wilson; Rep. Pete Petersen; Rep. Reggie Joule; Rep. Richard Foster; Rep. Scott Kawasaki; Rep. Sharon Cissna; Rep. Wes Keller

Subject: Wayne Anthony Ross

Dear Senators and Representatives,

I am writing to ask you to consider voting "no" on the confirmation of Wayne Anthony Ross. I have listened to much of the confirmation hearings and came away thinking that he probably was not the strongest legal mind out available in Alaska, and probably he has strong opinions very "right of center", but was probably confirmable- and we only have a couple more years- what real harm could he do.

I changed my mind after his comments to the Anchorage Daily News reporter- in which he is quoted

""It seems to me the most important thing that can be done by the Senate is not argue with legal or illegal but to appoint somebody to represent Juneau," said Ross, ...

Now, that is an unbelievable statement for the "top legal authority" for the state of Alaska. First, the governor appoints, and then the Senate Democrats confirm. This is not the "wild west" we are in - but "civilized- law abiding" Alaska. Normal citizens want our top governmental officials to think following the law is the most important, not just when it is convenient.

Please consider voting no tomorrow. Thank you for your consideration.

Ruth Blackwell

4240 Lake Shore Drive

Juneau, Alaska 99801

Jane Pierson

From: Kathy Blanc [kathyblanc@gmail.com]
Sent: Friday, April 10, 2009 9:46 AM
To: Jane Pierson
Subject: Comments on Wayne Anthony Ross

I am writing this letter to voice my concerns about the appointment by Governor Palin of Wayne Anthony Ross as Attorney General of Alaska.

His positions on the role of the federal government and subsistence, his comments on homosexuality, and his disregard for the serious issue of domestic violence in this state all speak to an inability to represent the interests of all Alaskans.

The Attorney General is the state's chief legal officer and is responsible for protecting the public interest of the state and its people. The Attorney General needs to be able to represent every one of us, Democrats, Republicans, rich, poor, white, black, no matter who you are. This position should be filed by someone whose focus is on the rights of all Alaskans, not just gun rights.

Please do not confirm Mr. Ross as Attorney General of Alaska.

Sincerely,

Kathy Blanc

3003 Foster Avenue

Juneau, AK 99801

Dana Strommen

From: saywhat@chugach.net on behalf of Caroline Bolar [saywhat?@chugach.net]
Sent: Thursday, April 16, 2009 1:03 AM
To: Rep. Jay Ramras
Subject: Defining moment
Follow Up Flag: Follow up
Flag Status: Blue

Representative Ramras:

First, I wish to thank you for your work to feed the needy, not just in your hometown, but also in Emmonak and the outlying villages during this past winter. I had the pleasure of living a total of 10 years in Fairbanks, from 1967 through Mid-May of 1979. Both of my children, Ginger Miller, nee: Dowling and Paul Dowling, attended University Park Elementary and the junior high (Ginger). I was grateful to attend and graduate from the University in 1977. People in Fairbanks know how to help others. They also know how important our decisions can be; the long lasting impact of both good and bad decisions.

Seldom does someone have a defining decision to make; such as the one, you will be making later today. You, and your colleagues in the Legislature, will be voting on whether or not to confirm Wayne Anthony Ross as Alaska's Attorney General. You will be asked to take a stand and be counted. This vote will be remembered for years to come.

During the hearings from both houses of the legislature, Mr. Ross was evasive, dismissive, and derisive, with a shade of contempt creeping through. Ross equated the legitimate role of the Legislature, in bringing forward questions about the Governor's actions, regarding the dismissal of the Public Safety Commissioner, Walt Monagan, whether or not these actions were ethical, with the persecutions that took place in the 1600's. Was he referring to the Inquisitions? As a devout Catholic, he should know the history of the Inquisitions.

Unfortunately, he was not pressured to answer the questions he was evading or simply blowing-off.

One question I would have liked to ask him:

Mr. Ross, do you believe The Holocaust took place?

Caroline Bolar
907-248-7515 (H)

Jane Pierson

From: mboots@gci.net on behalf of Molly Boots [mboots@gci.net]
Sent: Friday, April 10, 2009 1:06 PM
To: Rep. Jay Ramras
Subject: Please do not accept Mr. Ross for AG

Dear Rep. Ramras--
I am a citizen of the state of Alaska. I urge you to vote against the appointment of Mr. Ross for AG. I think his views on many issues are too far out of the mainstream to be able to serve the people of Alaska well.
Sincerely,
Molly Boots
13137 Gulf Circle
Anchorage, AK 99515

Jane Pierson

From: Chris & Nickie [cnbx3@mtaonline.net]

Sent: Friday, April 10, 2009 11:55 AM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes; Sen. Hollis French; Sen. Bill Wielechowski; Sen. Lesil McGuire; Sen. Gene Therriault

Subject: Ross Confirmation

Dear Representatives and Senators of the State of Alaska Judiciary Committee,

I belong to a very conservative family in the Mat-Su Valley and may be rocking the boat for some; however, in light of the testimony put forth during confirmation hearings for Wayne Ross for Attorney General, I'm compelled to urge you to ask the Governor to provide an alternate candidate that would prove capable of serving all Alaskans.

Some of the testimony given during the hearings is deeply disturbing especially the testimony of Leah Burton, but even if Ms. Burton's allegations turn out to be false other issues have also been brought to attention that cannot be disputed. This is an attorney that has in the past demonstrated a disregard for basic freedoms given to Americans through our constitution such as freedom of speech, and in all honesty his displays of general contempt towards other people, even during these proceedings, leads me to believe that this man is probably not the most stable person the Governor could have chosen for this position. In replacing Talis Colberg, Alaskans deserve better than Wayne Ross.

Thank you,
Nicole Brunnhoelzl

Hm. 746-1153
Nickie's cell 355-0754

Jane Pierson

From: Marsha Buck [mbuck@alaska.net]
Sent: Friday, April 10, 2009 2:42 PM
To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes
Cc: Rep. Cathy Munoz; Rep. Beth Kerttula
Subject: Testimony – Attorney General Hearing

Dear Members of the House Judiciary Committee,

My name is Marsha Buck and I live in Juneau. I am unable to attend the Wayne Anthony Ross Nomination Hearing this afternoon due to a mandatory Juneau Pride Chorus dress rehearsal for our 7:00 p.m. performance at the Alaska Folk Festival this coming Wednesday at Centennial Hall, to which you are warmly invited. I would, however, like to provide testimony and would like my comments to be part of the record.

I am the Board President of Alaskans Together for Equality, Inc. which is a new statewide organization formed to advance the civil equality of all Alaskans with focus on equality for gay, lesbian, bisexual, and transgender Alaskans. I would like to testify briefly in opposition to the appointment of Wayne Anthony Ross as Attorney General for Alaska. Mr. Ross's record of negative comments about gay, lesbian, bisexual, and transgender Alaskans make it difficult for me to imagine how he could uphold their constitutional rights fairly and without discrimination.

We need an Attorney General who respects ALL Alaskans equally – including gay, lesbian, bisexual, transgender and intersex Alaskans as well as women and Native Alaskans. His public comments and legal record appear to indicate bias and a personal agenda rather than an open willingness to uphold the Alaska Constitution. I would, therefore, ask that you oppose Mr. Ross's nomination.

Sincerely,
Marsha Buck
Board President, Alaskans Together for Equality, Inc.
Treasurer, PFLAG Juneau
8445 Kimberly St.
Juneau, AK 99801

Britteny A. Cioni
9093 Fireweed Lane
Juneau, AK 99801

Testimony Against the Nomination of Wayne Allen Ross for Attorney General

I am here to oppose the nomination of Wayne Allen Ross for Attorney General. It has become quite obvious that Mr. Ross is a very divisive person. I do not believe that Mr. Ross will be able to represent ALL citizens of Alaska and therefore in my mind is not qualified to hold this very crucial position.

Mr. Ross obviously has very strong beliefs about the LGBT community and views members of that community as immoral and degenerates.

Mr. Ross will also not represent people that believe in women's rights. Wayne Anthony Ross defended protesters who chained themselves to reproductive health clinic check in counters. Because of the all of the services provided by this clinic this stopped women from also getting birth control and STD testing and is more of an issue with privacy and trespassing than anything else. Mr. Ross has made statements that appear to condone marital rape. Marital rape may be allowed in Afghanistan but not in the United States, it is NOT ACCEPTABLE. I understand that this afternoon this is being denied but I still find it troubling. And I do not consider MR Ross to be a strong advocate of women.
Mr. Ross is hostile to our native population. He is opposed to subsistence priority, tribal sovereignty and ANSCA.

Mr. Ross was among several candidates for the Alaska Supreme Court seat vacated by Justice Bryner in 2007, and for the Court of Appeals seat vacated by Judge Stewart in 2008. He did not make the "short list" of qualified applicants sent to the Governor for either seat. If he is not qualified to hold these seats. how can he possibly be qualified to serve as our next AG?

So, Mr. Ross is unlikely to represent women, natives and LBGT community members. Who will Mr. Ross represent? Apparently, white heterosexual males. This representation is fine if it is in the confines of his private business but not for the entire state of Alaska.

Dana Strommen

From: jacl@gci.net on behalf of James Clark [jacl@gci.net]

Sent: Monday, April 13, 2009 1:37 PM

To: Rep. Les Gara

Cc: Rep. Max Gruenberg; Rep. Chris Tuck; Rep. Sharon Cissna; Rep. Jay Ramras; Rep. Charisse Millett; Rep. Peggy Wilson

Subject: Reject Wayne Ross as AG

Dear Representative,

Please vote to reject Wayne Ross as Attorney General for Alaska. His campaign ties to Sarah Palin are disturbing and sure to facilitate Palins'
efforts to circumvent the laws of Alaska. Say goodbye to any 'ethics investigations into Any Palin matter if he is confirmed. Wayne Ross' actions
and statements have angered: Women, Natives, Gays and the majority of reasonable Alaskan Citizens. Please Reject Wayne Ross as Attorney General.

Dr James A Clark
Anchorage 99508

Jane Pierson

From: jclarke@gci.net on behalf of Jodie Clarke [jclarke@gci.net]
Sent: Friday, April 10, 2009 10:08 AM
To: Rep. Jay Ramras
Subject: WAR

I'm sending you another email because I didn't properly sign the one previously sent regarding Wayne Anthony Ross and my encouraging you to vote 'no' as to him becoming AG for the State of Alaska.

Jodie Clarke
6521 Cutty Sark Street North
Anchorage, AK 99502
email: jclarke@gci.net

P.S. He is an evil man!!! I have a friend who was abused by her husband and called in to give her testimony...and, a man called in directly behind her and discredited her testimony regarding Ross. I was dumfounded. I so hope you all are researching Ross to the 'enth' degree! We don't need Ross and Palin together at the helm of our government. We are in trouble already and it would only be magnified in my opinion! I am a very concerned Alaskan voter - at the tender age of 66!

Jane Pierson

From: jclarke@gci.net on behalf of Jodie Clarke [jclarke@gci.net]
Sent: Saturday, April 11, 2009 12:15 PM
To: Rep. Jay Ramras
Subject: WAR

Sir:

I have watched the entire process as to the name of WAR being forwarded our Legislature as of yesterday. I have contacted all of you before, but feel I need to again.

To my generation, Wayne Anthony Ross, is called nothing more than a 'blow hard'! He talks so much on a personal level, about himself, that it has gotten him into big trouble throughout the years to which I suspect will continue should be be appointed AG.

When he replied to your question about Palin being in Arctic Fox garb, I was appalled at his response as to how good she looked! It was apparent to me that he was thinking of what the visual aspect of Palin brought to him vs her legality in donning the apparel, as Governor, for the occasion of her husband's race! He made me absolutely sick at the way he responded!

As previously mentioned, I have personal experience of this man through a girlfriend of marital abuse. Please, please, please review his stand on things and commentary made during his run for governor and on other many occasions. He is an evil man as I said before and I cannot believe you would find him fascinating and someone you'd like to get to know better because he is such a 'character'!

Sarah Palin is a disgrace as our governor and I feel Ross as AG will only bring more discord to Alaska!

Jodie Clarke
6521 Cutty Sark Street North
Anchorage, AK 99502
Email: jclarke@gci.net

Dana Strommen

From: George & Leslie [georgenleslie@mosquitonet.com]

Sent: Thursday, April 16, 2009 12:43 AM

To: Sen. Joe Thomas; Rep. Mike Kelly

Cc: Rep. David Guttenberg; Rep. Scott Kawasaki; Sen. Joe Paskvan; Rep. Jay Ramras; Sen. Gene Therriault

Subject: Wayne Anthony Ross

I am writing to express my concerns about Wayne Anthony Ross's nomination to the post of Attorney General. Mr. Ross's history of questionable public statements on many important issues has raised significant questions as to his ability to act impartially in upholding the constitutional rights of all Alaskans. But I have become even more concerned after reading his views Wednesday on Governor Palin's recent handling of the replacement for Kim Elton. He seems to be expressing greater commitment to personal alliances before determining the legal status of the actions in question. This does not bode well for demonstrating a fair and balanced legal perspective on issues that may involve personal beliefs or associations.

I respectfully request that you cast a NO vote at his confirmation hearing today. Mr. Ross appears to be too divisive and controversial a figure for such an important post, and I believe the state needs to work towards more unison and unbiased cooperation given all the political division we've been witnessing recently, especially in the important decision for the appointment of our next attorney general.

Sincerely,

Leslie Correll
P.O. Box 61132
Fairbanks, AK 99706
907-488-5254
(House District 7, Senate District D)

Dana Strommen

From: cc@gci.net on behalf of Camille Conte [cc@gci.net]
Sent: Saturday, April 11, 2009 10:51 PM
To: Sen. Johnny Ellis; Sen. Gene Therriault; Sen. Con Bunde; Sen. Bettye Davis; Sen. Fred Dyson; Sen. Hollis French; Sen. Lyman Hoffman; Sen. Charlie Huggins; Sen. Albert Kookesh; Sen. Lesil McGuire; Sen. Donny Olson; Sen. Bert Stedman; Sen. Gary Stevens; Sen. Joe Thomas; Sen. Tom Wagoner; Sen. Bill Wielechowski; Senator_Gary_Wilken@legis.state.ak.us; Rep. Bob Buch; Rep. Mike Chenault; Rep. Sharon Cissna; Rep. John Coghill; Rep. Harry Crawford; Rep. Nancy Dahlstrom; Rep. Mike Doogan; Rep. Bryce Edgmon; Rep. Anna Fairclough; Rep. Richard Foster; Rep. Les Gara; Rep. Berta Gardner; Rep. Carl Gatto; Rep. Max Gruenberg; Rep. David Guttenberg; Rep. John Harris; Rep. Mike Hawker; Rep. Lindsey Holmes; Rep. Kyle Johansen; Rep. Craig Johnson; Rep. Reggie Joule; Rep. Scott Kawasaki; Rep. Wes Keller; Rep. Mike Kelly; Rep. Beth Kerttula; Rep. Bob Lynn; Sen. Kevin Meyer; Rep. Mark Neuman; Rep. Kurt Olson; Rep. Jay Ramras; Rep. Woodie Salmon; Rep. Bill Stoltze; Rep. Bill Thomas; Rep. Peggy Wilson; Rep. Chris Tuck; Rep. Pete Petersen; Rep. Alan Austerman; Sen. Joe Paskvan
Subject: Wayn Athoney Ross

To My Legislative Body,

It is a Saturday night and I have just come across this exchange. I am stunned. Outraged. Deeply offended and speechless.

Here is what Rep. Ramras asked of Mr. Ross on Friday:

Representative Ramras: "We have a Governor who is provocative in a lot of her actions. Recently it comes to mind when she was in Fairbanks for the finish line for the Iron Dog she was wearing Arctic Cat gear...Arctic Cat letters..."

And here is what Mr. Ross said in response:

Wayne Anthony Ross: "It was provocative, she looked very good in them, didn't she?"

If this statement alone does not give you complete justification for turning down this appointment, then each of you are not only condoning a blatant attitude of sexism and objectification but you're encouraging it as an acceptable languauge, dialogue and treatment of women. Where was the outrage at this comment? Do you not have wives, daughters, sisters?

I can't even find the words to espress myself right now. The wires in my mind are frying! How dare this man have the priviledge of serving in the top law enforcement position in this state! You think this is a casual comment:? Look at the PATTERN of testimony coming from those who oppose him!
These people don't know each other and yet their stories have a common thread. Here's one: sexist.

I tell you this, say yes to this man and you have just said so much more to the women, to the YOUNG WOMEN of this state.

What a sad, sad day this is.
Camille Conte
Anchorage

Dana Strommen

From: cmates [cmates@acsalaska.net]

Sent: Thursday, April 16, 2009 6:43 AM

To: Rep. Alan Austerman; Rep. Anna Fairclough; Rep. Berta Gardner; Rep. Beth Kerttula; Rep. Bill Stoltze; Rep. Bill Thomas; Rep. Bob Buch; Rep. Bob Herron; Rep. Bob Lynn; Rep. Bryce Edgmon; Rep. Carl Gatto; Rep. Cathy Munoz; Rep. Charisse Millett; Rep. Chris Tuck; Rep. Craig Johnson; Rep. David Guttenberg; Rep. Harry Crawford; Rep. Jay Ramras; Rep. John Coghill; Rep. John Harris; Rep. Kurt Olson; Rep. Kyle Johansen; Rep. Les Gara; Rep. Lindsey Holmes; Rep. Mark Neuman; Rep. Max Gruenberg; Rep. Mike Chenault; Rep. Mike Doogan; Rep. Mike Hawker; Rep. Mike Kelly; Rep. Nancy Dahlstrom; Rep. Paul Seaton; Rep. Peggy Wilson; Rep. Pete Petersen; Rep. Reggie Joule; Rep. Richard Foster; Rep. Scott Kawasaki; Rep. Sharon Cissna; Rep. Wes Keller; Rep. Woodie Salmon

Subject: Attorney General Confirmation

I may be a day late and a dollar short in terms of confirmation deadlines, but I don't think Mr. Ross is qualified to be attorney general. Everyone is entitled to his or her personal opinions, but we need a person with great law credentials who isn't going to polarize our lives any more than they are now.

Thank you.

Paul Costello, Fairbanks

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on Confirmation: Attorney General, dated 4-10-09
bill # / subject — public hearing date

Please see attached.

Signed: LAURIE G. CRAMER
Testifier

Representing (optional)

PO Box 865, Kasilof, AK 99610
Address

Phone number

5161

APR-14-2009 TUE 01:55 PM KENAI LIO FAX NO. 907 283 3075 P. 01

I am writing this to voice a very strong opinion regarding Governor Palin's appointee for Attorney General of the State of Alaska. I am strongly opposed to this appointment and sincerely hope that you will take my concerns into account.

First: I am a proud resident of the State of Alaska as well as a proud citizen of the United States of America. I have long felt that the state motto should be "Don't tell me what to do" because that seems to be the general feeling of the majority in this state. However, like it or not, we are part of a bigger community (both national and global). Whatever your personal feelings about our present administration of the United States, you should not support anyone who regards Washington DC as "the enemy". Nor should you support anyone who supports the right to form anti-government militias. Particularly for a position as important as Attorney General.

This brings me to my second point: The Attorney General of the State of Alaska should represent the people. He/she should not have any allegiance to the governor or any particular party politics. Mr. Ross's involvement in previous gubernatorial races simply hails back to the old adage "you scratch my back and I will scratch yours" and smacks of conflict of interest. This is exactly the kind of politics that I am sick of. No appointment to a job this important should be made in this way. I do not believe that this man can be objective. I do not believe that he would be any better than our previous AG at addressing ethics issues.

Thirdly: How can you consider someone who refers to the position as "The General"?

Fourth: A few questions:

Does he have any administrative experience?

Does he have any experience in natural resource, land or tax law?

Does he have any experience in commercial matters?

Will he listen to opposing points of view fairly? Even in his own offices?

Will he take into account political and ideological views that don't match his own when appointing career attorneys?

Fifth: His previous writings as well as his responses when questioned about such things as Child Welfare, women's rights, natives' rights, subsistence rights and the rights of those with a different sexual preference did not make me feel confident at all about his ability to put his own opinions aside and represent all of the people. Lima Beans???? What a bizarre analogy. Governor Palin looks "provocative"??? This pretty much says it all.

APR-14-2009 TUE 01:55 PM KENAI LIO FAX NO. 907 283 3075 P. 02

In closing: I do not feel that this man is capable of representing me in the post of Attorney General.

He may be "colorful" or "folksy" or whatever the latest adjective is, but I find him controversial, divisive and downright frightening. Please do not appoint this man simply because he is one of "the good ole boys club". He is not objective and no matter how many things he denies or how many times he says that he can put his very strong personal feelings aside, I do NOT believe him.

Surely there are less controversial, less partisan and more qualified attorneys out there, any of whom would be a better choice.

APR-14-2009 TUE 01:55 PM KENAI LIO FAX NO. 907 283 3075 P. 03

Dana Strommen

From: Judy Crondahl [crondahl@gmail.com]

Sent: Tuesday, April 14, 2009 1:19 PM

To: Rep. Max Gruenberg; Rep. David Guttenberg; Rep. Alan Austerman; Rep. Anna Fairclough; Rep. Berta Gardner; Rep. Beth Kerttula; Rep. Bill Stoltze; Rep. Bob Buch; Rep. Bob Herron; Rep. Bob Lynn; Rep. Bryce Edgmon; Rep. Carl Gatto; Rep. Cathy Munoz; Rep. Charisse Millett; Rep. Chris Tuck; Rep. Craig Johnson; Rep. Harry Crawford; Rep. Jay Ramras; Rep. John Coghill; Rep. John Harris; Rep. Kurt Olson; Rep. Kyle Johansen; Rep. Les Gara; Rep. Lindsey Holmes; Rep. Mark Neuman; Rep. Mike Kelly; Rep. Mike Chenault; Rep. Mike Doogan; Rep. Mike Hawker; Rep. Nancy Dahlstrom; Rep. Paul Seaton; Rep. Peggy Wilson; Rep. Pete Petersen; Rep. Reggie Joule; Rep. Richard Foster; Rep. Scott Kawasaki; Rep. Sharon Cissna; Rep. Wes Keller; Rep. Bill Thomas; Rep. Woodie Salmon

Subject: Hearings on Wayne Anthony Ross for Attorney General

Dear Members of the Alaska State House,

I am writing to urge that you not confirm Wayne Anthony Ross as Attorney General for the State of Alaska. I have watched many hours of the hearings before the Judiciary committees and am afraid.

Mr. Ross has shown disrespect for the rights and traditions of Native Alaskans, a hatred of homosexuals, and a pre-liberation view of women in both current and past statements. When asked about any of these, he has either denied making such statements or said that as the Attorney General he would represent all Alaskans and his feelings would not enter into it. It's nice to say he will represent all Alaskans, but all Alaskans are rarely on one side of a litigation. In a suit of Natives to preserve rural subsistence rights, or in a suit to protect gays or women against employment discrimination, I do not believe he will fairly represent anyone in these subject groups. There is a reason the legislature is required to confirm important appointments and this is it. You will be held responsible if you vote to confirm someone who is clearly unqualified by either temperament or experience to defend the Constitution and all the people of Alaska.

As a Juneau resident currently unrepresented in the Senate because of our Governor's unwillingness to forward the name of anyone on the list provided by our local Democratic party, I suggest that the legislature turn down the appointment of Mr. Ross and begin conducting your own interviews for the position of Attorney General.

Judy Crondahl
Juneau

Jane Pierson

From: Laura D'Amico [crystalwolf@astound.net]

Sent: Thursday, April 09, 2009 7:05 PM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes; Sen. Hollis French; Sen. Bill Wielechowski; Sen. Lesil McGuire; Sen. Gene Therriault

Subject: NO WAR for AG

Dear Legislature and Senators,
Although I am a non-Alaskan, I have heard that Sarah Palin supporters in the lower 48 are weighing in on WAR's appointment tommorrow. I have listened to the interviews yesterday on Gavel to gavel and they are greatly disturbing. First off, I think he's just saying what he needs to, to get appointed. His agenda is to involve himself with all kinds of issues that don't normally involved a AG. Such as Native issues, Predator issues, I'm horrified as I listened to him speak.
I urge you to go back and review his "answers" they are evasive, belligerent, and really he is a male version of Sarah Palin.
Please see Mudflats:
http://www.themudflats.net/2009/04/09/wayne-anthony-ross-in-his-own-words/

What kind of a statement is this?
"***WAR:*** You don't go to Washington D.C. anymore. Washington D.C. is not friends with Alaska. The General's job is not to cause casualties with its own people. The General's job is to win the war against the **enemy**. "

No its not my imagination, I heard him say it with my own ears. In most other states the AG is voted in by the people. The governor is trying to forward her little cabal here. I urge you to be the party of "NO" to sarah Palin.
She is not looking out for the interests of Alaskans only herself. You know this guy will be fighting her Ethics complaints. And by the way, how many governors have racked up as many as her?
Please Do not confirm WAR as AG. I have also sent letters to CREW (Citizens for Ethics in WAshington) and Eric Holder Dept. of Justice.
This man WAR sounds like a sessonist or AIP 'er. And yesterday Meg Stapleton made a odd statement re: sarah palins (repub welfare) legal fund. She thanked the generoisity of Alaskan's and Americans....Ok last time I looked Alaskan's were American's. Do you see where this is headed?
Thank you for your consideration.
Laura D'Amico
So. San Francisco, CA

Jane Pierson

From: Laura D'Amico [crystalwolf@astound.net]

Sent: Monday, April 13, 2009 1:43 PM

To: Jane Pierson

Cc: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes

Subject: RE: WAR * Please do not Appoint*

Dear HOUSE JUDICIARY COMMITTEE

I have been following WAR proceedings very carefully, Leah Burton called in and submitted her letter Re: WAR for your consideration. Well here is a follow up to that letter posted on Shannyn Moores Blog from her (Leah's) Father to WAR and his flippent answer. It is of my opinion if WAR is confirmed you of Alaska will be opening yourselves up to major problems between Palin's Ethics complaints and WAR's arrogance. It is painfully apparant WAR will be following Palin's agenda and not the greater good of all Alaskan's. As you all know People all over are following Palin because of her Failed VP run and Possible 2012 run. So far I don't like what I see.

I also have a woman who is a top notch handwriting analyisis, profilier for the Secret Service, and her premlimary finding is this man has issues. Sexual issues/hang ups. I have told her that any sensitive findings. should be turned over to the FBI, US AG Eric Holder as WAR is possibilly about to be confirmed as Alaska's AG. If you care, to hear more I will give you her name. This is strictly unoffical on her part, but I have told her the importance of what her findings are MUST be turned over to appropriate Agencies.
The Legislature and Senate should enact a emergency bill to elect a Attorney

General and take this out of the hands of a insane Governor.
Sincerely,
Laura D'Amico
SSF, CA

Burton Letter Part Two — W.A.R.'s Response

http://shannynmoore.wordpress.com/2009/04/11/burton-letter-part-two-wars-response/

From Leah Burton's Dad:

Mr. Ross,

You may or may not remember the times when we met but I remember you very vividly. The purpose of this communication is over concern for my daughter first and your attempt to be confirmed as the Attorney General, a job for which I know you had long aspirations, as well as thinking you could be the Commissioner of Health and Social Services or the Commissioner of Public Safety, none of which you are qualified for.

I was told today that you deny knowing or associating with the Mad Dads group in Wasilla. Surely records of filings in the court must still be available so that you can produce proof of who you clients were . This, is the same group that my daughter witnessed you addressing and making sexist and demeaning comments in reference to spousal rape and domestic violence, which as I see it means physical abuse of the spouse by the husband. Considering the group to which you were speaking that is the only logical conclusion one could draw from such remarks. I'm also assuming that you may have made these remarks in order to appear as a macho man in front of such a gathering. First of all, I want to caution you on what you say but can't prove and to advise you that if this kind of slander and attacks on my daughter continue you may well meet a real attorney that knows how to win.

In over 30 years in law enforcement in Alaska, as a police advisor for the U.S State Dept and the Dept of justice, I have met and worked with many quality professionals in the field and let me say that you do not rank among this group. I worked the street as a young patrol officer starting in Ketchikan in 1954, joined the Alaska State Police in 1959 and ended my career by serving two separate terms as Commissioner of Public Safety for the 2 best Governor's in Alaska, Jay Hammond and Wally Hickel. (In the interest of brevity I will attach my resume for you perusal as I want to establish my bona fides for the remarks I am about to make).

You sir, speak and act like the kind of bully I met many times when responding to domestic violence calls, some of the most dangerous situations police officers are often in. Over the years I brought many an abused spouse and/or children to my own home for my wife to care for, because there was no place else to take them. As the state matured such offices came into being on a scale large enough to expand their services ,hich we in law enforcement welcomed. This was especially true in the "bush" rural areas of the state in which I worked as a roving patrol trooper or where I was stationed.

Contrary to what you recently told the Judiciary Committee about the Child Welfare workers being hell bent on taking kids away from their families my personal experience was just the opposite. I had to take many children into protective custody,. and even in the most dangerous of situations the welfare workers attitude was that a child was always better off staying with their natural parents regardless of the circumstances. Not a decision that I could always agree with. Therefore I am totally surprised as your comments and I challenge you to provide actual proof that supports that allegation.

Shortly after retirement in 1995 I served on a committee, hired by the Department of Law, with a former Deputy Attorney General and Commissioner of Corrections. we tasked to perform an investigation into the performance of the child protection unit, following a very unfortunate set of circumstances concerning the killing of an infant who was under the protection of the state at the time of his murder. The child should have been removed from the home but was allowed to stay there under very dangerous circumstances and was killed in a very bazaar and gruesome manner. The bottom line in this case we found that children were being left in home circumstances in many cases when the right thing to do would have been removal. This resulted in changes of the child protection statutes and policies of the agencies concerned which also included the relationship between children and adult probation sharing of information.

The only conclusion I have been able to come to concerning your remarks about the "frightening" case works is that you really don't know what you are talking about and are just talking to try to impress someone that you may have an some knowledge about the subject.

In light of the strong reaction from the native and rural communities of the state and your obvious position and bias relative to domestic and children's issues I find it hard to believe that you could be in charge of the department that is charged with enforcing laws in an impartial or effective manner. I think you should do the state a favor and withdraw your name from confirmation.

Richard L Burton

Commissioner of Public Safety (retired)

RESPONSE BY WAYNE ANTHONY ROSS:

Dick: Thanks for writing. I'll pray for you and for your daughter. Sounds like both of you have problems. My best to you old friend, WAR

Dana Strommen

From: mikon432@gci.net on behalf of salmon tale [mikon432@gci.net]
Sent: Wednesday, April 15, 2009 7:39 AM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross.

----- Original Message -----
From: salmon tale
To: Rep.Ray Ramras.
Sent: Tuesday, April 14, 2009 11:03 PM
Subject: : Wayne Anthony Ross.

----- Original Message -----
From: salmon tale
To Rep.Jay Ramras.
Sent: Tuesday, April 14, 2009 10:52 PM
Subject: Wayne Anthony Ross.

Representative,

I have my concern about Wayne Anthony Ross as General Attorney. After I heard people testifying, he is a divisive person among Alaskans and his comments against Alaskan Natives are abusive and discriminative. He opposes against Alaskan Natives subsistence and has a past record with Sarah Palin and Vick Koring. Please do not confirm this individual as Attorney General.

Teresa Sager-Albaugh, president of Alaska Sportsmen Outdoor Council and appointed by Sarah Palin, voted to kill more than 800 bears, voted in favor to use Carbon Monoxide to kill wolf pups in their dens, and voted in favor to snare brown and black bears including sows and cubs.A practice that has long been prohibited in Alaska. In order for there to be balance on the Board of Game we need to have diversity. Please do not confirm this individual to the BOG.

Thank You
Yolanda de la Cruz

Jane Pierson

From: minus10@aol.com
Sent: Friday, April 10, 2009 11:42 PM
Subject: Please Vote NO on Ross

I read that the legislature received a letter from a former lobbyist informing you of derogatory comments about women made by Wayne Anthony Ross at a dinner she attended.

When I saw your questioning of Mr. Ross about his relationship with Sarah Palin, I was shocked to hear him describe her as "provocative" followed by his statement that "She looked really good didn't she?" (in response to your question about her wearing Arctic Cat clothing while in an official role). I find this *highly* offensive. The fact that he readily said this in a confirmation hearing - at which one would assume he was on his "best" behavior - leads me to believe that Mr. Ross does indeed view women as sexual objects. As an Alaskan woman I do not want him representing me or my state. Please vote NO on his appointment.

Paula DeLaiarro
East Anchorage

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Jane Pierson

From: minus10@aol.com
Sent: Monday, April 13, 2009 11:15 AM
To: Jane Pierson; Cindy Smith
Subject: Wayne Anthony Ross Confirmation vote
Follow Up Flag: Follow up
Flag Status: Red

Attorney General nominee Wayne Anthony Ross has a history - both written and spoken - of making inflammatory and derogatory remarks about women, Natives and gays. When asked during his confirmation hearing about specific statements he made referring to gays as "immoral" and "degenerates", he did not deny making such statements nor did he deny holding those beliefs, instead he responded,"My personal opinions have nothing to do with the job. The attorney general is not going to give his opinion on those sorts of things.." Alaskans should be deeply concerned by this line of reasoning.

Ross said he didn't believe in litmus tests for hiring, and then he went on to say, "Now if a guy was a rabid communist, I probably wouldn't hire him. If a guy hated Alaska I wouldn't hire him..." So Mr. Ross admits he will not hire people whose views diverge from his, even though it isn't illegal to be a communist or to hate Alaska. Would Mr. Ross hire - indeed has Mr. Ross ever hired - someone who is gay? Despite his assurances to the contrary, it is clear that **Mr. Ross does not have a firewall between his personal views and his professional duties.**

Mr. Ross may think what he likes in private but he has a *public* record of bigoted views. One must question Governor Palin's wisdom in even considering him to be the Alaska's Attorney General. I urge you, indeed - I BEG you - to vote no on the confirmation of Wayne Anthony Ross as Alaska Attorney General.

Paula DeLaiarro
Anchorage, AK
333.5391

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Dana Strommen

From: minus10@aol.com

Sent: Monday, April 13, 2009 3:47 PM

To: Sen. Hollis French; Sen. Bill Wielechowski; Sen. Lesil McGuire; Sen. Gene Therriault; Rep. Harry Crawford; Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Max Gruenberg; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Lindsey Holmes

Subject: Wayne Anthony Ross Confirmation Vote

Attorney General nominee Wayne Anthony Ross has a history - both written and spoken - of making inflammatory and derogatory remarks about women, Natives and gays. When asked during his confirmation hearing about specific statements he made referring to gays as "immoral" and "degenerates", he did not deny making such statements nor did he deny holding those beliefs, instead he responded,"My personal opinions have nothing to do with the job. The attorney general is not going to give his opinion on those sorts of things." Alaskans should be deeply concerned by this line of reasoning.

Ross said he didn't believe in litmus tests for hiring, and then he went on to say, "Now if a guy was a rabid communist, I probably wouldn't hire him. If a guy hated Alaska I wouldn't hire him..." So Mr. Ross admits he will not hire people whose views diverge from his, even though it isn't illegal to be a communist or to hate Alaska. Would Mr. Ross hire - indeed has Mr. Ross ever hired - someone who is gay? Despite his assurances to the contrary, it is clear that **Mr. Ross does not have a firewall between his personal views and his professional duties.**

Mr. Ross may think what he likes in private, but he has a *public* record of bigoted views. One must question Governor Palin's wisdom in even considering him to be the Alaska's Attorney General. I urge you, indeed - I BEG you - to vote no on the confirmation of Wayne Anthony Ross as Alaska Attorney General.

Paula DeLaiarro
8401 Pioneer Drive
Anchorage, AK
333.5391

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Tiger and Judy Demers
P O Box 991
26975 Williwa St.
Kasilof AK 99610 - 0991
tigerdemers@att.net
907-283-5133 AK
541-317-8469 OR
907-252-0343 cel
April 15, 2009

I'm writing this letter to the legislature of the State of Alaska to urge you not to confirm Mr. Ross as Attorney General for the state of Alaska. My reasons are many. Listed are a few points that are of utmost importance to me.

1. He is controversial. Reams of paper have been written describing the many divisive issues that are on the coattails of this man.
2. He is not supported by his peer group. Not one legal group has stepped in to defend this man and his sought after position.
3. His views on subsistence for Alaskan Natives are against the people of our state that need it the most.
4. His views on the Federal government are so awful I can't believe an Attorney General nominee with this extreme vision toward our country's government would even be considered for this office.

If this individual is confirmed all I can believe is this legislature thinks what works for the governor works for us. Her type of right wing republicans are the only folks that matter. The rest of you Alaskans should be quiet, don't count, and should go along with the legislative body as we place marginal people in office with marginal performance for the good of the people.....oh yes for Sarah Palin... but not for me.....think of all Alaskans before you cast this important vote.

Thank you for your kind attention. If any additional information is desired, we will make every effort to meet your request.

Au Revoir Mon Ami,

Tiger Demers

Jane Pierson

From: James Denney [alaskakingdad@yahoo.com]
Sent: Thursday, April 09, 2009 10:44 PM
To: Rep. Jay Ramras
Subject: Ross Confirmation

Dear Representative Ramras,

I strongly oppose Governor Palin's nominee for Attorney General. I am a politically active, voting citizen of Alaska. I am many things including a husband, a father of 2 beautiful daughters, a middle school teacher, and a Sunday school teacher. As a husband and a father, I am a staunch supporter of women's rights. As a teacher, one of the lessons that I want all of my students to learn, especially the young boys, is that no means no. In light of Ross's comments as reported by Leah Burton, I feel that it is an embarrassment that this man's candidacy even warrants consideration. How will the young people that are my charges hear my message if the top cop in the state holds this worldview? He is obviously a throwback to that age when women and children were considered to be the property of the husband. This man does not deserve the consideration that he is being given. I am already hyper-alert because of the dubious rape statistics in our state. My wife was raped last summer, and the investigating detectives appeared to be more interested in protecting the perpetrator because he had standing in the community than they were in finding out the truth. Because it was his word against hers, the case was dropped. It became clear to me that part of the reason for the terrible rape statistics in our state is the culture of the very people that are supposed to be serving and protecting we citizens. To put Ross in the position for which he has been nominated would do nothing to shift that culture, it would only entrench in further.

The rape comment is what has moved me to action, but I see parallels with other issues within our state. When I walk down the hallways of my school, I see the face of Alaska. I see a myriad of different peoples: differences in color, nationality, sex, gender, sexual orientation, etc. Mr. Ross would not represent all of these citizens equally. Clearly, he possesses that sense of false entitlement that gave rise to the perception of the Ugly American. He will not serve the people of the state unless they happen to be affluent white males. That's not what I see in the hallways of my school.

I understand that you must give him a hearing because he is what Governor Palin has offered to you; do not support her choice. Don't just vote "no", vote "hell no!"

James Denney

Dana Strommen

From: Paul Eaglin [PEaglin@eaglinlaw.com]
Sent: Saturday, April 11, 2009 9:18 AM
To: Rep. Jay Ramras; Rep Max Gruenberg; Representative Nancy; Representative John; Representative Carl; Representative Bob; Representative Lindsey
Cc: Representative Scott; Representative David
Subject: Atty Gen Wayne A Ross nomination
Attachments: Bar Rag reply to Wayne Ross.doc

Representative Jay Ramras: PLEASE DISTRIBUTE THIS IN RESPONSE TO REP. MAX GRUENBERGY'S REQUEST TO ME DURING YESTERDAY'S PUBLIC TESTIMONY. I TRIED COPYING THE OTHER MEMBERS BUT EACH ONE WAS REJECTED BY THE EMAIL SYSTEM, WHICH REFUSES TO CONFIGURE THEIR EMAIL ADDRESSES CORRECTLY. IT PERMITS ONLY YOURS TO BE CONFIGURED CORRECTLY TO REACH YOU. I APPRECIATE YOUR COOPERATION SINCE I DO NOT UNDERSTAND THE GLITCH THAT PREVENTS ME FROM EMAILING THE OTHERS DIRECTLY.

To House Judiciary Cmte members

Rep. Gruenberg asked me to send again the document that I referenced during my testimony against the confirmation of Wayne A. Ross for Attorney General of Alaska.
I am attaching the Letter to the Editor of the Bar Rag that I wrote in response to Wayne Ross's article in the Oct-Nov 2007 issue of the Bar Rag. It criticized his article as being poorly thought out and poorly articulated in his writing. I pointed out that I do not know Wayne Ross, so my only encounter with him was through responding to his article.
His thought process on critical issues seems to be quite seriously deficient. That is reflected in his 2007 Bar Rag article to which I responded. Moreover, reading news accounts of your confirmation proceeding yesterday leads me to believe that his resort to the "lima beans" analogy is further evidence of his inability to engage in critical thinking. The analogy itself is quite obviously an attempt to deflect from and to avoid the central question that was posed by one of your committee members. The avoidance technique leads plausibly to the inference that he does still adhere to such prejudiced and hate-filled attitudes toward other human beings. Of course, that he would analogize human beings with rights under law to a vegetable that he dislikes is revelatory of his utter failure to appreciate the obligations of the office for which he is nominated.
As I said during my testimony, gays and lesbians are no more degenerates than my wife and I are degenerates. It seems clear that he continues to adhere to his bigoted views of years ago. Wayne Ross continues to manifest the same deficiency in critical thinking skills that he manifested in his poorly articulated 2007 Bar Rag article in which he complained about his failure to obtain nomination for the state supreme court.

I appreciate the opportunity to testify against the nomination of Wayne Ross. Please vote against his confirmation as AG.

Paul B. Eaglin
eaglin@alaska.com

Eaglin Law Office
MAIL TO: PO Box 81910
Fairbanks AK 99708-1910
907 374 4744 fax 374 4766
office location: 250 Cushman St., Suite 3F
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Fairbanks AK 99701

MAIL TO: P. O. Box 81910
Fairbanks AK 99708-1910

December 23, 2007

BAR RAG
Alaska Bar Association

I disagree with Wayne Ross' two major points—anonymous comments and AJC bias against conservatives—in the ***Bar Rag*** [31:4 Oct.-Dec. 2007]. He might have been more persuasive if he had adhered to a more principled critique by refraining from broad-brush criticism of four recent nominees as not conservative enough. After all, he failed to articulate a basis for such a statement by informing us whether he knows each nominee well enough to make such a statement. Even if he does know Justice Winfree, Judge Christen, Judge Bolger, and Andy Harrington, however, Ross failed to articulate any basis why an appellate judicial officer would take account of personal conservative outlook when adjudicating an appeal.

Ross' unexplained description of the four nominees undermines his criticism of anonymous comments on judicial selection surveys. The problem is not the anonymity but the inaccuracy, deliberate falsehood and intentional harm. If he had no basis for his description of the nominees as "not-conservative," then his comment is unjustified and indefensible even though he signed his name to it. Comments that are unjustified and indefensible should fall in the category of those that are inaccurate, false or intentionally harmful. He should practice what he preaches.

In practical terms, how would a conservative Justice Wayne Anthony Ross take account of his conservatism in adjudicating an appeal? Is he suggesting that he would not decide a case in a manner that violates his conservatism, regardless of the law or the facts of an appeal or the requirements of the state and/or federal constitution(s)? Is it correct to infer, therefore, that Ross believes that the sitting justices have violated their oaths of office by engaging in unprincipled decision-making based not on the law and the facts but on personal predilections, political or otherwise? Isn't that a serious charge that should be supported by facts or examples that would illustrate the point he is arguing? How can he justify such personal criticism in light of his dislike of unsubstantiated anonymous comments about himself? His comments are no better even though he signed his name.

Bar Rag Letters to the Editor
December 23, 2007

There may well be a place for anonymity in comments, which is why they should not be disfavored. Depending on what is communicated, an anonymous comment might be the safest means of communicating important, truthful but disturbing information about an applicant for nomination or retention. No doubt like many others, I have little idea how the AJC does what it does since so much of its work is not revealed. But it was embarrassing to Alaska recently that, two years after the AJC nominated someone as well qualified for a judgeship, the successful appointee was removed from the bench for cause. Was there a need for more comments, including even anonymous but truthful comments, that might have provided better insight into character and fitness? What does that failing tell us about the AJC's process and procedures? Has the AJC learned lessons from the experience and, if so, what lessons have been learned? Has it implemented the lessons learned? How would we know, as members of the public, that the AJC properly carries out its function of checking applicants for fitness and checking judges for retention?

Anonymity may be especially important with respect to commenting about the performance of judges. Unlike most applicants for initial appointment, judges are in position to retaliate in a meaningful way. To the extent that an anonymous comment is helpful in pointing to problematic performance by a judicial officer, so much the better. The writer might not have offered such comments without the perceived safety of anonymity. Since the judicial officer is accountable to the public, there is no reason not to take account of comments about performance to the same extent and in the same manner as criticism of performance of any other high ranking, influential state employee who is charged with the public trust.

I sign my name when I comment on bar surveys. So I am not defending anonymity as one who uses that technique. But I do recognize that in our less-than-ideal system in which half a dozen Alaskans get first-cut at judicial applicants, that is the only means of trying to influence the selection process. I should add that I do not know Wayne Ross except through his political advertising. I did not make any comments about him in the survey since I do not know him.

Apart from disagreeing with Ross' major points, I feel that he missed important points as well. His dismissive criticism of the four nominees as not conservative

Bar Rag Letters to the Editor
December 23, 2007

enough to suit his political disposition managed to dishonor their individual abilities and accomplishments. Of the four, the only one I do not know is Judge Morgan Christen. Like me, Justice Winfree and Andy Harrington are from Fairbanks. I litigated against Judge Bolger in Kodiak some years ago not long before his first judicial appointment. If Judge Christen is like the three that I know, it is safe to say that as a group, they can be characterized as exemplars of professionalism instead of being painted by inaccurate tones of political opportunism.

It is worth commenting on another aspect that I feel is worth noting with greater concern than Ross' lament that the recent nominees—and presumably the current justices, too—are not conservative enough. Even though I do not know Judge Christen, I note that she has consistently topped the bar surveys every time she's in the running. She did so in this recent survey for Supreme Court. She did so not long ago in the survey for the federal district court appointment. Despite the obvious extremely high regard by the bar, however, she has not achieved her objective of advancing in the judiciary. For me, Judge Christen's pursuit raises a much more serious, broader concern about the prospects for women to achieve judgeships and to rise in the judiciary once appointed. What does a woman have to do in this state to be as competitive as men are for judicial appointments? I believe more women would apply if prospects of advancing were more promising. But the rate of appointments in recent years, particularly through a number of years under Governor Murkowski, has been dismal. It remains to be seen if matters will improve under Governor Palin. It is notable that, in the recent survey, Judge Christen's bar survey results were matched by another well-known, accomplished woman appellate practitioner who, like Wayne Ross, did not get the nod from the AJC. As for me, therefore, the concern is not whether our process will or will not advance those who are conservative enough to suit Wayne Ross but whether the large number of, and the high percentage of, women in our state bar will enjoy the same prospects for professional success and advancement as men enjoy presently.

EAGLIN LAW OFFICE
/s/ Paul B. Eaglin
Alaska Bar No. 9304010

Dana Strommen

From: Bradley J Fluetsch [brad@fluetschfinancialservices.com]

Sent: Tuesday, April 14, 2009 7:02 AM

To: Rep. Cathy Munoz

Cc: Rep. Kyle Johansen; Rep. John Coghill; Rep. Mike Chenault; Rep. Nancy Dahlstrom; Rep. Anna Fairclough; Rep. Carl Gatto; Rep. John Harris; Rep. Mike Hawker; Rep. Craig Johnson; Rep. Wes Keller; Rep. Mike Kelly; Rep. Bob Lynn; Rep. Charisse Millett; Rep. Mark Neuman; Rep. Kurt Olson; Rep. Jay Ramras; Rep. Paul Seaton; Rep. Bill Stoltze; Rep. Bill Thomas; Rep. Peggy Wilson

Subject: Wayne A. Ross

Dear Representative Munoz,

Mr. Ross has made the argument that his personal views do not matter. He represents the Governor and people of Alaska and his opinion does not matter.

I beg to differ, Mr. Ross's personal views do matter, especially to the people who work for the Department of Law and both the prosecution and defense.

For instance, a young Native Attorney working for DOL, does Ross assign the "big" case that is a career maker to this Native Attorney, or maybe gay attorney?

Another instance in assigning a young eager attorney who wants to "prove" himself to the new AG and chooses to prosecute and therefore targets particular groups Mr. Ross has frequently publically denounced.

While Mr. Ross can argue he represents the people and Governor of Alaska and therefore his opinion does not matter, but in the reality of managing the Department of Law, there are far too many opportunities to skew the largest law enforcer in Alaska based on his own personal views. This is far more destructive to the fabric of our communities, and we have seen what a "rogue" DOJ can do, just ask Senator Ted Stevens.

We do not want any of Mr. Ross's personal or since he has run for Governor twice political influence established in the Department of Law, REJECT THIS NOMINEE!

Gunalchéesh
Bradley J Fluetsch, CFA
Grand President, Alaska Native Brotherhood

Dana Strommen

From: Lake Hood Inn [bill@lakehoodinn.com]
Sent: Wednesday, April 15, 2009 1:03 PM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

William W. Floyd
PO Box 91561
Anchorage, Alaska 99509

April 15, 2009

Re: Wayne Anthony Ross confirmation

Representative Jay Ramras

Please , Please reject Mr. Ross' confirmation as Attorney General.

I base my opinion on Mr. Ross' actions and opinions debasing Women and children's status in Alaska, as well as his disregard for the letter of the law.

Thanks, we are counting on you.

Sincerely'

Bill Floyd

Jane Pierson

From: Carol Ford [whoville@pobox.alaska.net]
Sent: Thursday, April 09, 2009 3:17 PM
To: Jane Pierson; Cindy Smith
Subject: Ross confirmation

Dear Ms. Pierson and Ms. Smith:
I have written to all the Senators and all but one of the Representatives, and am writing to you just in case those emails aren't read in time, somehow.

I am writing to add my voice to those who ask that the legislature NOT confirm Wayne Anthony Ross as Attorney General for Alaska. I have been an Alaskan for almost thirty years. I am appalled by Mr. Ross's rhetoric, outlook, politics and lack of insight or even common decency - not to mention that even his legal credentials are unimpressive.

I have listened to portions of the senate hearings, and am concerned about Mr. Ross' very personal interpretation of the law to use it to condone racism, misogyny, domestic violence, anti-American violence, interpersonal violence, ecological violence, ignorance of all but his own narrow interests, and a disregard for — ironically — the rule of law.

I write to speak out against confirming Mr. Ross to take on this important position in Alaska's government. This is possibly one of the most important decisions the legislature will make this session, in my opinion. It is not a partisan issue, in spite of the current tendency to make everything partisan, and I fear that if it is viewed as such, without serious reflection, the state of Alaska and all of its people will suffer irreparable damage from making this choice by a partisan vote.

Senators, Representatives, please listen to Mr. Ross very carefully - and ask yourself if this man is the best, fairest, most level-headed, intelligent, virtuous and honest legal mind that you would choose to guide and represent the state of Alaska.

Sincerely,
Carol Ford
Kenai, AK

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on Confirmation: Attorney General, dated 4-10-09
bill # / subject public hearing date

I would like to protest the appointment of Mr. Sosa for Attorney General. His history of confrontation and commentaries on subsistence, women's rights and his verbalized right of a person to commit assault in the name of the right to express an opinion as he did in justifying throwing water on a guietly marching lady protesting the war indicates a level of impulsiveness and poor judgment that I would not like to feel is representative of the state in which I am a resident.

Signed: Mary J. Fortunghi
Testifier

self
Representing (optional)

PO Box 2244 Soldotna 99669
Address

907-262-5059
Phone number

5183

Jane Pierson

From: Patricia Gaedeke [windpond@gmail.com]
Sent: Thursday, April 09, 2009 6:12 PM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

This announcement by Governor Palin to appoint Wayne Anthony Ross as Attorney General is a slap in the face to all single parents who have no choice but to rely upon the State Department of Law to support court orders for child support, as well as those persons who need the Department to enforce criminal laws against sexual assault and domestic violence. Mr. Ross is the antithesis of the type of person that should be the Attorney General. This has been clearly demonstrated by his own words and actions in public.

In closing, I am not alone in my assessment that anyone who condones, and contributes to that type of hateful and harmful discourse clearly does not have the judgment necessary to represent the people of the State of Alaska as their Attorney General.

Given his other special interests and his stated opposition to subsistence rights and other Alaska Native issues, I have brought this forth as yet another dimension of Mr. Ross' demonstrated inability to represent all the people of the State of Alaska fairly and impartially.

His clear racial and gender prejudice raise serious concerns with regard to his ability to represent all residents of the State of Alaska fairly and impartially as their Attorney General.

I respectfully request you NOT confirm W.A.R.

Patricia Gaedeke, Owner
Iniakuk Lake Wilderness Lodge, LLC
P.O. Box 80424
Fairbanks, AK 99708
www.gofarnorth.com
info@gofarnorth.com
iniakuk@gmail.com

Jane Pierson

From: Patricia Gaedeke [windpond@gmail.com]
Sent: Thursday, April 09, 2009 10:26 PM
To: Cindy Smith
Cc: Jane Pierson
Subject: Wayne Anthony Ross

In a poll in 2007 containing 13 candidates, and in 2008 with 14 candidates, for a seat for the Alaska Supreme Court, Wayne Anthony Ross scored the lowest overall and in each of the 6 categories (Professional Competence, Integrity, Fairness, Judicial Temperament, Suitability of Experience, Overall).

(information for this post comes from the **Alaska Budget Report** - Volume 19, No. 12)

Please convey my very strong opinion that Wayne Anthony Ross NOT be confirmed as Attorney General. His confirmation would be a disaster for Alaska.

Patricia Gaedeke, Owner
Iniakuk Lake Wilderness Lodge, LLC
Fairbanks, AK
www.gofarnorth.com
info@gofarnorth.com
iniakuk@gmail.com

Jane Pierson

From: Patricia Gaedeke [windpond@gmail.com]
Sent: Saturday, April 11, 2009 8:20 AM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

Rep. Ramras:
Your questioning of Gov. Palin's choice for Attorney General, W.A.R., was impressive yesterday, however I thought Mr. Ross was condescending, flippant, sarcastic and evasive in his response to anything you asked. I feel he will act as a shield for the governor and will thwart all efforts to keep her in line with Alaska ethics. I do not feel he has the best interests of all Alaskans in mind.

My point exactly as to why he should NOT be confirmed. Please do not vote yes for Mr. Ross.

Thank you,

Patricia Gaedeke, Owner
Iniakuk Lake Wilderness Lodge, LLC
P.O. Box 80424
Fairbanks, AK 99708
www.gofarnorth.com
info@gofarnorth.com
iniakuk@gmail.com

Dana Strommen

From: Patricia Gaedeke [windpond@gmail.com]
Sent: Sunday, April 12, 2009 6:14 PM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

I have lived in Fairbanks, Alaska since 1974. I believe we should all be deeply concerned about the appointment of Wayne Anthony Ross for many reasons already presented to both Judiciary Committees. However, no behavior in front of either Judiciary Committee causes more concern and reflects more directly upon how Mr. Ross may perform at his job than the ethics exchange with Representative Ramras. I commended Rep. Ramras on his questioning of Mr. Ross, however, I thought Mr. Ross was condescending, flippant, sarcastic, dismissive and evasive in his response.

Phil Munger echoed my sentiments exactly in his Progressive Alaska post, "He [Ross] has learned, though, over the years to couch his once explicitly anti-Native stance in the false language of "fairness," constitutional dissonances and equal rights." Ethical Government should be a high priority for everyone but especially for the person whose job it is to lead the department of Law.

This is the 21st century and thanks or no thanks to Gov. Palin's failed attempt at being Vice President of the United States, Alaska is in a very bright spotlight. There is no place in contemporary, reasoned conversation for the antiquated, divisive, rude mutterings of Mr. Ross. I urge you to reject the appointment of Wayne Anthony Ross for Attorney General.

Patricia Gaedeke, Owner
Iniakuk Lake Wilderness Lodge, LLC
www.gofarnorth.com
info@gofarnorth.com
iniakuk@gmail.com

Dana Strommen

From: Patricia Gaedeke [windpond@gmail.com]
Sent: Wednesday, April 15, 2009 1:33 PM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

Dear Rep. Ramras,
Regarding the possible confirmation of Wayne Anthony Ross, you were quoted as saying, "But I think this foretells the larger-than-life relationship that he is going to have with the governor and with the state," he said. "We're in for a colorful, bumpy ride. We won't necessarily be coloring within the lines... There will be more of this to come."

I for one, would like the Attorney General to 'color within the lines.' I would like an AG who is not in the Governor's back pocket and the rest of Alaska can just twist in the wind. Please reconsider and vote no tomorrow.

Patricia Gaedeke, Owner
Iniakuk Lake Wilderness Lodge, LLC
www.gofarnorth.com
info@gofarnorth.com
iniakuk@gmail.com

Jane Pierson

From: anji gallanos [anji.gallanos@gmail.com]
Sent: Thursday, April 09, 2009 8:19 PM
To: Rep. Jay Ramras
Subject: Please do not accept appointment of William Ross

My name is Anji Gallanos, I live in Juneau, Alaska. We have lived in Alaska for 11 years. I am asking you as a citizen of Alaska do reject the appointment of William Ross. It is my opinion that William Ross will not fairly and accurately represent Alaska. His past actions show a lack of respect for Alaskans and for the people he would represent.

Thank you
Anji Gallanos
Juneau Alaska

--
Find me at:
http://www.rubyshill.etsy.com
http://www.anjigallanos.blogspot.com

Twitter? http://twitter.com/rubyshill

Jane Pierson

From: kateinak@gci.net on behalf of Kate Graber [kateinak@GCI.net]
Sent: Friday, April 10, 2009 11:59 AM
To: Rep. Jay Ramras
Subject: Do Not Approve WAR for Attorney General

Wayne Anthony Ross is not the man to be our next attorney general. He believes that he is the reincarnation of Theodore Roosevelt. He was quoted in the Daily News years ago in an article about him saying this. He is too radical in his views and will not fairly represent the law for all Alaskans. He is quoted as saying that "men should be allowed to rape their wives...who else would they rape?".

Dana Strommen

From: Melissa S. Green [yksinainen@gmail.com]
Sent: Tuesday, April 14, 2009 8:15 PM
To: Rep. Bob Buch; Rep. Mike Chenault; Rep. Sharon Cissna; Rep. John Coghill; Rep. Harry Crawford; Rep. Nancy Dahlstrom; Rep. Mike Doogan; Rep. Bryce Edgmon; Rep. Anna Fairclough; Rep. Richard Foster; Rep. Berta Gardner; Rep. Carl Gatto; Rep. Max Gruenberg; Rep. David Guttenberg; Rep. John Harris; Rep. Mike Hawker; Rep. Lindsey Holmes; Rep. Kyle Johansen; Rep. Craig Johnson; Rep. Reggie Joule; Rep. Scott Kawasaki; Rep. Wes Keller; Rep. Mike Kelly; Rep. Beth Kerttula; Rep. Bob Lynn; Sen. Kevin Meyer; Rep. Mark Neuman; Rep. Kurt Olson; Rep. Jay Ramras; Rep. Woodie Salmon; Rep. Bill Stoltze; Rep. Bill Thomas; Rep. Peggy Wilson; Rep. Chris Tuck; Rep. Pete Petersen; Rep. Alan Austerman
Subject: Testimony/letter in opposition to Wayne Anthony Ross

Dear Representative:

I am writing on my own behalf to express my opposition to Wayne Anthony Ross as Alaska Attorney General. Amongst other things, this letter provides substantiation for one of the claims made in public testimony by Paige Hodgson during the Senate Judiciary Committee hearing on April 8 about Mr. Ross' opinions about domestic violence.

I oppose Mr. Ross' confirmation on several grounds:

* His biased and even misogynistic attitudes with regard to domestic violence, sexual violence, and violence against women and children, about which I have more to say below.

* His antigay attitudes, as expressed in his calling lesbians and gays "degenerates" in a letter to the Alaska Bar Association in 1992.
In his House Judiciary Committee testimony last week, he compared lesbian, gay, bisexual, and transsexual/transgender Alaskans to "lima beans," a vegetable he "hates" but would still "represent" if he was hired to be the advocate for "United Vegetable Growers." His un-apt and tortured analogy brings no reassurance to those of us who have already suffered the brunt of his antigay slanders.

* His longstanding opposition to Alaska Native sovereignty and subsistence rights, about which representatives of the Alaska Native community have testified.

* His lackadaisical attitude with regard to possible ethical violations by the Governor, as shown in his replies to Rep. Jay Ramras' questions on Friday in the House Judiciary Committee (regarding Gov. Palin's wearing of Arctic Cat gear, regarding her possible book tour, regarding other ethics-related questions). As has been pointed out by others, part of the Attorney General's job is to advise the Governor on questions of executive ethics. Mr. Ross'
answers indicate he will more likely simply turn a blind eye.

* His qualifications as a practitioner of law. His middling scores on the Alaska Bar Association surveys when he applied for seats on the Alaska Supreme Court and Court of Appeals are not simply statistics, but indicative of the opinion those of his colleagues in the bar who have had direct professional experience with him have for his professional competence, integrity, fairness, judicial temperament, suitability for the position, and overall performance. Obviously candidates for Attorney General are not judged according to the same standards as used by the Alaska Judicial Council — but perhaps they should be. In any event, his mediocre scores are instructive.
Further evidence of Mr. Ross' capabilities as an attorney — particularly, I would say, with regard to temperament, and hence his ability to work productively with others — can be found in last Wednesday's public testimony by Vic Vitale, a retired attorney who reported having tried many cases against Mr. Ross. Mr. Vitale described Mr. Ross as "ill prepared in court," "bombastic," and "very rigid," and said that in his experience Mr. Ross "doesn't give credence to contrary arguments." The picture which begins to emerge is that of someone who has closed his mind and does not permit contrary evidence to sway him. Is this the person who should be appointed to direct the state's largest law firm?

I want now to go into further discussion of his views about violence against women and

children.

By way of background, I am an 18-year staff member of the Justice Center at University of Alaska Anchorage, where I am responsible for the preparation and layout of research documents, including our quarterly, the Alaska Justice Forum (http://justice.uaa.alaska.edu/forum/). I'm also responsible for the design and maintenance of the by-now extensive Justice Center website.
As such, I am very familiar with the groundbreaking research conducted in recent years by the Justice Center's Dr. André Rosay and his research partners on sexual violence and violence against women in Alaska (http://justice.uaa.alaska.edu/vaw/index.html), and in fact helped to prepare most of the materials which Dr. Rosay presented to the Senate Judiciary Committee when he testified there on March 25 (http://uaajusticecenter.blogspot.com/2009/03/dr-rosay-presents-violence-against.html).

My familiarity with Dr. Rosay's research findings made me all the more alarmed when I heard the testimony at last week's Senate and House Judiciary Committee hearings on Mr. Ross' appointment. I mean not only the public testimony of Leah Burton to the House Judiciary Committee on the statements about spousal rape and domestic violence which Mr. Ross is alleged to have made at a DADS group meeting in the early 1990s — testimony I personally find credible — but also the public testimony last week to the Senate Judiciary Committee of Paige Hodgson, who discussed comments made by Mr. Ross at a panel discussion a few years ago at University of Alaska Anchorage. According to Ms. Hodgson, Mr. Ross, who was one of the panel presenter, remarked that domestic abuse was on the rise because the equal rights movement "emasculated men" and caused them in turn to beat their wives. He further insinuated that women lied about domestic violence in order to gain advantage in child custody cases. On questioning by the committee, Ms. Hodgson stated that she had asked the university to set up the panel discussion, and that it was organized by Dr. Sharon Araji. Dr. Araji was at that time a sociology professor at UAA but has since joined the faculty of University of Colorado in Denver. In an attempt to verify the testimony, I wrote to Dr. Araji last week, and today received an email in reply, in which Dr. Araji wrote:

Yes, he was on the panel that was a community workshop. Andre [Rosay] and Pam [Kelley] are well aware of this workshop as [the] Justice [Center] also participated in it. I think it was Fall of 2005 — it was in conjunction with the PBS documentary "Breaking the Silence". This was about children's experiences when they were given to abusive parents in contested custody battles. I don't remember what Wayne's words were exactly, but his attitude was quite cavalier and placed the blame anywhere but on the abusive husbands/partners.

Research on the UAA website confirms that the event, cosponsored by the UAA Sociology Department and the Justice Center, was held on the UAA campus on October 14, 2005 in advance of KAKM's broadcast of "Breaking the Silence: Children's Stories" the following week. The event included a showing of the documentary, followed by a panel discussion and discussion with the audience. Justice Center faculty member Pamela Kelley, J.D. was among the panelists, along with Dr. Araji and Mr. Ross. I spoke with Professor Kelley this afternoon about the panel. Like Dr. Araji, she has no recollection of a specific remark by Mr. Ross about the equal rights movement "emasculating men," but she indicated that Mr. Ross' comments on the panel were much as both Paige Hodgson and Dr. Araji characterized them, "hook line and sinker" taking an extremist "dads' rights" position that excused abusive men from any responsibility for domestic violence and abuse, and alleging that accusations of such crimes were generally fabricated in order to gain advantage in divorce or child custody battles — regardless of evidence to the contrary.

This should come as no surprise to members of the Senate Judiciary Committee and others who heard Mr. Ross' testimony last Wednesday, April 8, because many of his statements there echoed such opinions -- for example, Mr. Ross contended that Office of Children's Services workers, who are tasked with protecting children from abuse, are actually trying to remove children from families in order to "get money from the legislature" or that at least some people are accused of child abuse "just because they offended an OCS worker." Of course there are men who prove to be innocent of charges of abuse and domestic and sexual violence brought against them. But Mr. Ross, who claimed in his testimony that "all my clients are innocent" (by implication, even those who were found guilty in court), appears to have a strong bias against even entertaining the possibility of guilt on the part of a husband, boyfriend, or father accused of these serious crimes, regardless of the evidence. Mr. Ross also showed considerable ignorance of the facts regarding sexual

violence in the state -- for example, that Alaska has the dubious distinction of having the highest rates of sexual assault in the nation. "I've heard that," he told the committee, "and I have no way to verify if that's correct." (Committee members, of course, had received ample proof just two weeks before when Dr. Rosay presented UAA research to them.) Asked by Sen. Lesil McGuire "how you intend to tackle and educate yourself" about these issues, Mr. Ross evaded the question, telling the committee how after his few days on the job so far, he now knew "where the men's room was" and was learning how to use the state email system, commenting that "learning new things" was part of the fun of the job. Once again the word "cavalier" comes to mind.

Is someone with such a proven bias qualified to take on the role of Alaska's chief law enforcement officer, and head of the department charged with prosecuting these crimes? Research shows that less than 30 percent of founded cases of sexual violence cases reported to the Alaska State Troopers actually result in a conviction (http://justice.uaa.alaska.edu/forum/25/1-2springsummer2008/b_attrition.html). Might we not expect conviction rates for founded cases to go down even further under an Attorney General who, biased to believe all the accused to be innocent regardless of evidence, might well pressure the district attorneys under his supervision to "pull their punches"?

Mr. Ross claims that he can fairly represent and protect the rights of all Alaskans, including all of those he has shown enmity, disregard, and contempt toward throughout his long career. I am not so confident.

I urge you to vote against Mr. Ross' confirmation as Attorney General.

Sincerely,

Melissa S. Green
2303 D St. #A5
Anchorage, AK 99503
http://www.henkimaa.com/

Dana Strommen

From: Lori Gregory [aleutiangrrl@yahoo.com]

Sent: Tuesday, April 14, 2009 10:39 AM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes

Subject: Attorney General Nomination

Hello!

I am writing regarding the nomination of Wayne Anthony Ross for Alaska Attorney General. I vehemently oppose this person's nomination and confirmation. This person does not represent the views of the average Alaskan, republican or democrat or independent or libertarian. This person cannot carry out the duties of Attorney General. He has shown over the years his true colors. The appointment and confirmation of this person will serve to cement the view of the rest of the USA that Alaska is full of narrow minded individuals such as Mr. Ross and Ms. Palin. It would be a travesty of Justice to have this person serve when he has shown time and again that his opinions and beliefs color all of his statements, including those of his work, and he cannot be nonpartisan, nonjudgemental, unbigoted. He has gone on the public record as against Natives, women's rights, and sexual orientation as a protected status. His ideology is the same as that of the South in the early 20th century - exclusionary, self-rightous, bigoted, narrow minded, and holier-than-thou. Alaska deserves better than that!!

I hope that, as elected officials, you will search your hearts and make the choice that is best for Alaska: W.A. Ross should not be Alaska's Attorney General.

I appreciate you taking the time to read my statements.

Sincerely,

Lori Gregory
PO Box 177
Unalaska, Alaska 99685
907-581-2922

Jane Pierson

From: thammmobile@gmail.com
Sent: Friday, April 10, 2009 3:33 PM
To: Rep. Jay Ramras
Subject: No on Ross

I am writing asking you to not approve the confirmation of W.A. Ross for AG. He is not credible and would further divide the state.

Terry Hamm
Sent from my BlackBerry® smartphone powered by ACS!

Jane Pierson

From: L. Hamner [rainraven44@hotmail.com]
Sent: Thursday, April 09, 2009 10:32 PM
To: Cindy Smith
Cc: Jane Pierson
Subject: Confirmation hearings for Wayne A. Ross

Honorable members of the Alaska State Legislature,

I am writing about the confirmation hearings and proposed appointment of Wayne Anthony Ross for Attorney General of Alaska.

First, let me say that I am a resident of this great state, not someone from outside.

Second, while I am sure that Mr. Ross has some fine qualities, I don't believe that he should be confirmed as OUR Attorney General. I say OUR A.G. because, like all civil servants, we the citizens are his employers. As one of his employers, I think he is fundamentally incapable of equally representing the ALL of the citizens of Alaska, let alone ensuring that every citizens basic constitutional rights are not trampled on. Further, I believe that Mr. Ross is incapable of representing the citizens of this state whenever our rights contradict the chosen path of our Governor.

I find it intolerable that a person who has publically stated "If you can't rape your wife, who can you rape?" would be seriously considered for the position of A.G.

I find it unexplainable that a person who has publically supported a group that advocates committing domestic violence against their wives and children as a means of silencing and forcing familial compliance to avoid "governmental interference" (i.e. being forced to share custody and/or pay child support) would be seriously considered for this position.

I find it inexcusable that someone who has publically made racist comments about minorities would be considered for this position.

I find it unbelievable that a person who believes that the federal government is our enemy would be considered for this position.

I find it laughable that a person who has a long standing membership in a paramilitary group treading the narrow line between "self defense" and being a anti-government militia would be considered for a position within the government.

In short, please do not confirm this individual as OUR A.G. Alaska has no dearth of competent lawyers. Let's all encourage the Governor to choose one who is not a misogynist, domestic violence supporting, racist.

Thank you for your consideration and time,
Sincerely,
Lacy Hamner

905 Richardson Vista Rd. #46
Anchorage, AK 99501

907.929.2683

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Dana Strommen

From: Ed Haney [edhaney2008@yahoo.com]

Sent: Thursday, April 16, 2009 9:38 AM

To: Sen. Con Bunde; Sen. Hollis French; Sen. Bill Wielechowski; Sen. Bert Stedman; Sen. Lesil McGuire; Sen. Tom Wagoner; Sen. Joe Paskvan; Sen. Albert Kookesh; Sen. Johnny Ellis; Sen. Joe Thomas; Sen. Donny Olson; Sen. Charlie Huggins; Sen. Fred Dyson; Sen. Gene Therriault; Sen. Kevin Meyer; Sen. Lyman Hoffman; Sen. Bettye Davis; Sen. Gary Stevens; Sen. Linda Menard; Rep. Alan Austerman; Rep. Harry Crawford; Rep. Richard Foster; Rep. David Guttenberg; Rep. Kyle Johansen; Rep. Mike Kelly; Rep. Mark Neuman; Rep. Paul Seaton; Rep. Bob Buch; Rep. Nancy Dahlstrom; Rep. Les Gara; Rep. John Harris; Rep. Kurt Olson; Rep. Beth Kerttula; Rep. Bill Stoltze; Rep. Mike Chenault; Rep. Mike Doogan; Rep. Berta Gardner; Rep. Mike Hawker; Rep. Reggie Joule; Rep. Bob Lynn; Rep. Pete Petersen; Rep. Bill Thomas; Rep. Sharon Cissna; Rep. Bryce Edgmon; Rep. Carl Gatto; Rep. Bob Herron; Rep. Scott Kawasaki; Rep. Charisse Millett; Rep. Jay Ramras; Rep. Chris Tuck; Rep. John Coghill; Rep. Anna Fairclough; Rep. Max Gruenberg; Rep. Lindsey Holmes; Rep. Wes Keller; Rep. Woodie Salmon; Rep. Peggy Wilson

Subject: Wayne Anthony Ross Confirmation

How can a perspective Attorney General think it would be OK to say "our Legislators should IGNORE the law and do what the Governor wants"? That is not the Attorney General we need, his job is not to be the Governors "Yes Man" but to keep her and the State Out of Trouble. He obviously is not a good choice. Do Not confirm Wayne Anthony Ross, our State has been in the news for the wrong reasons enough.

Ed Haney

907-789-3224

Jane Pierson

From: Barbara Hanson [barbhansonak@yahoo.com]

Sent: Friday, April 10, 2009 12:59 PM

To: Jane Pierson; Cindy Smith; Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Lindsey Holmes; Rep. Max Gruenberg; Sen. Hollis French; Sen. Bill Wielechowski; Sen. Lesil McGuire; Sen. Gene Therriault

Subject: Public Comment Re: Vote NO on Confirmation of Wayne Anthony Ross as Attorney General

Please add my comment below to the public record.

Dear Members of the House and Senate Judiciary Committees,

I am writing to urge you strongly to vote NO on the appointment of Wayne Anthony Ross as Alaska's Attorney General.

I have followed the political aspirations of Mr. Ross throughout the twenty years that I have lived in Alaska. I must say that I have been appalled many times by his divisiveness, his racist and misogynistic overtones, and with the degree of bullying language that he has often used. It is very clear that Mr. Ross has strong and sometimes extreme political beliefs, including those regarding native sovereignty rights, domestic violence issues, and gay rights.

A person who serves as Attorney General must protect the rights of ALL citizens of Alaska, without prejudice. Objectivity and deference to federal and state law are required of anyone serving in that capacity, by definition of the position. It is clear that Mr. Ross' personal beliefs would preclude his ability to be objective in that position. His appointment would disenfranchise a huge proportion of the Alaska population. The potential for the Attorney General to make politically-biased decisions and court appointments could undermine the rights of many citizens of this state.

I also take exception to this appointment based on the fact that Mr. Ross appears to have no previous administrative experience, and the fact that he does not seem to have experience in other areas of law, including tax law and land use law, which are issues primary to this state.

I hope that you will choose to uphold the rights and concerns of ALL the citizens of the state that you represent, and vote "NO" on this appointment.

Sincerely,
Barbara Hanson
Palmer, AK

Dana Strommen

From: Barbara Hanson [barbhansonak@yahoo.com]

Sent: Wednesday, April 15, 2009 11:11 PM

To: Jane Pierson; Cindy Smith; Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Lindsey Holmes; Rep. Max Gruenberg; Sen. Hollis French; Sen. Bill Wielechowski; Sen. Lesil McGuire; Sen. Gene Therriault

Subject: Please vote "NO" on Wayne Anthony Ross Appointment

Please add my comment below to the public record:

Dear Members of the House and Senate Judiaciary Committee,

I am writing to urge you strongly to vote "NO" today on the confirmation of Wayne Anthony Ross as Alaska's Attorney General.
Mr. Ross has alienated huge segments of the Alaska citizenry with his divisive and bombastic statements. It is clear that he would have a great degree of difficulty (at best) separating his political beliefs from the duty of Attorney General, which is to act as the legal representative of ALL Alaskans.

Just this week, Mr. Ross further displayed his appalling lack of fitness for this position by publicly downplaying the importance of Alaska State law as regards legislative appointments. He actually stated that the "legality or illegality" of the appointment was not important, but rather, the important thing was to have an appointment made. Is someone with this type of blatant disregard for the law REALLY going to be seriously considered for the top legal position in this state? In my opinion, this type of statement should get him disbarred from legal practice, much less for consideration as Alaska's Attorney General.

I also urge you to please look at the following weblink. It is a scan of the actual 1993 letter from Mr. Ross to the Bar Association Journal, in which he calls gays "degenerates". The letter actually goes well beyond that, as Mr. Ross states that the Anchorage Homosexual Rights Ordinance "gives extra rights to a group whose lifestyle was a crime only a few years ago". This certainly leads me to believe that he would not support the LEGAL rights of people whose lifestyle he does not personally approve of. He goes on to state that gay people's rights are "certainly immoral in the eyes of anyone with some semblance of intelligence and moral character". This type of language is absolutely obnoxious, and certainly not the type of discourse that I expect to hear from someone of the caliber of an Attorney General. If the Judiciary Committee approves of this appointment, I can only imagine the numerous lawsuits that this type of language and attitude by the Attorney General would provoke.

http://4.bp.blogspot.com/_hWAVXHNngbk/SealZB7bVzI/AAAAAAAAD2o/QfLYh-NeN2Q/s1600-h/Alaska+Bar+Rag+May+June+1993+cropped+jpeg.jpg

Please do the right thing for Alaska and vote "NO" on this appointment.
Thank you,

Barbara Hanson
Palmer

Jane Pierson

From: dpharris@gci.net on behalf of Dennis P. Harris [dpharris@gci.net]
Sent: Thursday, April 09, 2009 11:52 PM
To: Alaska State Representatives
Subject: Vote NO on Wayne Anthony Ross

Dear Representative,

I urge you to vote NO on the confimation of Wayne Anthony Ross as Attorney General. His record and his testimony before the Senate Judiciary Committee both indicate that he is unsuited to be the State of Alaska's chief legal officer.

He is unfit to serve as Attorney General because of

1. His opposition to the subsistence rights given to rural residents by ANILCA;
2. His characterization of the US government as Alaska's "enemy";
3. The racism expressed in his public statements over the past 20 years, including his statements to the Senate Judiciary Committee; and
4. His statements in public meetings that "If a guy can't rape his wife…who's he gonna rape?" and "There wouldn't be an issue with domestic violence if women would learn to keep their mouths shut." that indicate his prejudice against women, as quoted in the testimony of Leah Burton.

As Ms. Burton said, "His clear racial and gender prejudice raise serious concerns with regard to his ability to represent all residents of the State of Alaska fairly and impartially as their Attorney General." I concur with her conclusion, and ask you to vote against his confirmation as Attorney General.

Dennis P. Harris
544 W. 12th St.
Juneau, Alaska 99801-1524

dpharris@gci.net

5200

Jane Pierson

From: Jean Hartman [nowjeanis@gmail.com]
Sent: Thursday, April 09, 2009 9:28 PM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

Representative Jay Ramras:

I am writing to ask you to oppose the nomination of Wayne Anthony Ross for Attorney General.

Mr. Ross has expressed views regarding natives and subsistence rights that are controversial and divisive.
Mr. Ross has expressed views regarding gays that are controversial and divisive.
Mr. Ross has expressed views regarding domestic violence and child abuse which are appalling.

Alaska does not need more controversy and divisiveness!

Jean Hartman
Trapper Creek, AK

Jane Pierson

From: Jim Helm [jim@atmanagers.com]
Sent: Thursday, April 09, 2009 3:28 PM
To: Jane Pierson
Subject: Wayne Anthony Ross appointment

Hello

My name is James Helm. I live in Juneau. I wish to go on record as not supporting the nomination of Mr. Ross to state Attorney General. After having seen his stand on issues like subsistence and reviewing a number of cases that he under took while in private practice I do not think he is an appropriate choice for this important office.

His defense of Rep. Kohring indicates to me that he is not on the right side of the corruption issue. We need an Attorney General that will prosecute not defend government corruption. He may state that he was simply doing his job as a defense attorney but this should still be a red flag to anyone that is concerned with cleaning out governmental corruption.

My next issue is with him comes on his record of respecting personal rights of free speech and demonstration. The specific issue is again his defense of a man in Soldotna that threw water on peaceful anti-war protestors during winter. This man then thought is was so much fun he went back and repeated the action. This time he videoed the incident. This represents an unprovoked assault on people that were peacefully exorcising their constitutionally protected right. Again he may say that he was simply doing his job as a defense attorney, but this once more calls his personal views into question. I do not want an Attorney General that thinks that that kind of behavior in acceptable or defensible. It makes me wonder what he might think was reasonable action to take against people that are protesting actions of the state or it's governor.

I am also concerned about his stance on subsistence. I have not found a single native organization that supports his nomination. His refusal to see the importance and need for a rural priority in the subsistence program makes it seem to me that he does not have a good idea of what it means to live in the bush or to need those subsistence rights to survive. To me this means that he will not be able to truly represent all of the states residents equally. This is a critical issue to many of the villages in western Alaska as it the subsistence fishing and hunting problems as well as the high energy costs that are causing a true crisis in this area.

My final issue with the appointment of Mr. Ross to this post is that he has personally represented Gov. Palin in the past as a personal attorney. Given the number of ethics complaints that have been files against our current Governor and that the Attorney General is directly involved in this process is to me a conflict of interest. The Job of the Attorney General in the ethics process is to help decide if a complaint is valid on its merits, not to simply defend the governor regardless of what is alleged. This post should be totally non partisan and committed to the single purpose of enforcing state law regardless of who is involved. We have all seen what happens when this is not how a governmental legal system is not run this way. The fall out from the Bush justice department should be a clear warning against appointing someone to a post like this if there is any indication that partisan politics will play a part in the way that they run their office or select their staff. The information I have been able to gather on Mr. Ross and public statement that he has made make me worry that he would run his offices in exactly this partisan manner and this in not something that Alaska needs.

Please understand that my objection to Mr. Ross is not based on political party. I am registered as non-aligned / Independent (can't remember exactly how it is on the voter card) and have voted for both Republican and Democratic candidates in elections past. This is strictly about my own personal concerns that Mr. Ross will not be a fair and impartial enforcer of the law, and his possible conflict of interest with Gov. Palin due to prior representation.

Thank you for your time. I may be contacted at (907) 321-4334 if you have questions or would like further comment.

James Helm
6734 A. Marguerite
Juneau Alaska, 99801

Dana Strommen

From: Rep. Bill Thomas
Sent: Wednesday, April 01, 2009 1:16 PM
To: Rep. Jay Ramras
Subject: FW: Wayne Ross

From: Robert Henrichs [mailto:moose@nveyak.org]
Sent: Wednesday, April 01, 2009 7:37 AM
To: Bruce Cain
Cc: Rep. Bill Thomas; Sen. Albert Kookesh; Nancy Barnes
Subject: Fwd: Wayne Ross

----- Original Message -----

Wayne Ross???????
In the mid eighties I needed some legal advice on a boat I had bought. The attorney I had used previously crashed his plane and was killed. In rural Alaska it is easier to use an attorney that regularly visits your community they traveling to Anchorage and hiring one. This being the case I hired Wayne Ross. Shortly after that a friend told me that he had been in a local bar when Wayneís local secretary invited several people in the bar to continue the party at their office trailer. While at the trailer the secretary allowed the partygoers to go through the client files. He mentioned several facts, which he had gleaned from my file. The next day I had a heated exchange with one of Rossís attorneys and the secretary was fired.
A while later I was charged with a DUI. I hired Wayne Ross to defend me. The day of the trial arrived and no Ross. A guy came up to me and introduced himself as Allen Bailey whom Ross had sent down to handle the trial. This was news to me, as I had not been told that Ross was not going to handle the case. I discussed the case with Mr. Bailey and he refused to take any of my advice. He promptly lost the case. I felt he was in a hurry to make the plane back to Anchorage. I was puzzled. A few weeks later I opened the Anchorage paper and saw a photo of Mr. Bailey and he was listed as the Vice-President of the Anchorage Chapter of Mothers Against Drunk Drivers (MADD). I was furious. As a member and officer of MADD it was a conflict of interest for Mr. Bailey to represent me on a DUI charge. Mr. Bailey and Wayne Ross both knew this. I was never told Mr. Bailey was going to be my attorney and certainly not told he was involved in MADD.
I feel Mr. Bailey and Wayne Ross conspired to violate my civil rights, namely my right to a fair trial.

I contacted another attorney on this matter. She felt this was a violation of attorney ethics. Six attorneys signed statements that what Mr. Bailey and Wayne Ross did were beneath the standards that attorneys set for themselves. At this point my father who was ill asked me to not follow through with this. As it turned out this was his dying wish as he passed away a short time later.
I feel Wayne Ross is morally and ethically unfit to be the Attorney General of the State of Alaska.

I have to laugh when Governor Palin claims that where ethics are concerned Wayne Ross is squeaky-clean. She must be talking about Republican ethics where if youíre not in prison youíre squeaky clean.
Bob Henrichs

Dana Strommen

From: Robert Henrichs [moose@nveyak.org]

Sent: Thursday, April 16, 2009 6:55 AM

To: Rep. Carl Gatto; Rep. David Guttenberg; Rep_Charrise_Millett@legis.state.ak.us; Rep. Cathy Munoz; Rep. Jay Ramras

Subject: Fwd: Wayne Ross

----- Original Message -----

Speaker of the House Mike Chenault
I am a former client of Wayne Ross. His firm failed to maintain client confidentality in my case. They also sent an attorney to represent me that had a major conflict of interest, which was not disclosed to me at the time.
I don't feel Mr. Ross had neither the moral fiber or the high standard of ethics required for someone to serve as Attorney General for the State of Alaska.
I am writing this letter as a private citizen allthough I have served as the President of the Native Village of Eyak for the past 16 years and am also serving on the Cordova City Council.
Sincerely yours
Bob Henrichs
P.O. Box 1000
Cordova, Alaska 99574
907-529-5567

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on Confirmation: Attorney General, dated 4-10-09
bill # / subject public hearing date

Please do NOT Confirm Wayne Anthony Ross - I feel this would be a serious blow to our State and everyone living here. Thank You—

Signed: D. R. "Skye" High
Testifier

Representing (optional)

303 Sterling Ct - Kenai AK 99611
Address

907. 395-3960
Phone number

5206

Dana Strommen

From: paigeh@alaska.net
Sent: Tuesday, April 14, 2009 8:26 AM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross' 4/10/09 letter to the legislature

April 14, 2009

Dear Senators and Representatives:

I testified telephonically to the Senate Judiciary Committee last Wednesday during the public testimony period on the confirmation of Wayne Anthony Ross as our state's Attorney General.

I came forward because I felt it was my responsibility as an Alaskan citizen, since the office of the Attorney General within the Department of Law is an extremely important one that will affect the lives of countless Alaskan's.

My main concern was Mr. Ross's attitudes towards women, domestic violence, divorce, child custody, child abuse and child protective services. I reiterated things he had spoken about at a 10/2005 community forum held at UAA on domestic violence and child custody which did not lead me to believe he had a good understanding of these issues, even after his being in family law practice for many years.

Some of Ross's statements indicated to me he had antiquated if not patronizing and sexist views of women, and held on to numerous harmful myths about domestic violence, not the least of which was his claims about rampant abuse of the protective order process and current child custody statutes both newer and older that the legislature intended to protect abuse victims. That claim simply is not borne out in statistics compiled by other citizen lobbyists on past DV bills, nor in the professional literature on the subject.

I did not know at the time of my testimony that a former lobbyist was coming forward recalling some very extreme statements he made about violence against women at a meeting of a father's rights group.
I also did not have time that day to hear the Senate Judiciary Committee's questions of Mr. Ross during the earlier confirmation hearing.

I have since learned that Mr. Ross wrote a letter to you including reference to me in his derision of former lobbyist Leah Burton.
The letter rambles for 4 pages about his intimate relationship with his wife, claims first to have never heard of Dads Against Discrimination (DADS), then admits on page 2 that he does recall addressing the group.
He is dismissive of me, referring to me as "the lady who attended the UAA forum" and claims not to recall the date of the forum.

I was not just "some lady" in attendance. I was instrumental in the concept for and the organization of that forum, obtaining and coordinating a pre-release of a PBS documentary on the issues with the producer and KAKM, coordinating the concept of the forum with UAA and the Domestic Violence Awareness Committee, and serving as a panelist following after Mr. Ross' talk while he listened on.

Some discussion that evening involved the recent passage of 2004 legislation that provided greater protections to domestic violence victims and their children during contested custody proceedings. I co-authored that legislation with a local family law attorney and former Municipal Prosecutor, it was sponsored by Sen. McGuire, and it passed unanimously through every committee hearing in both the House and Senate and passed unanimously in a full vote of both bodies. Believe me, I was listening very closely, not only because I felt responsible for the

success of the event, but because I had to follow Mr. Ross in the panel discussion.

His rebuttal to my testimony in that letter and his answers to numerous questions posed to him by Senate Judiciary members on these issues only further serves to reinforce my recollections as accurate. In fact, his letter does nothing to deny his poor grasp of the issues.

I went back and listened to his own testimony from last Wednesday. Various members of the Senate Judiciary asked him multiple questions about domestic violence, child abuse, child protection workers/agencies, his family law practice, sex offenders and sexual assault. Every opportunity he had to answer their questions, instead of focusing on the needs of abuse victims, he spoke immediately to the needs of the accused with refrains of "false allegations", " vicious allegations", "all my clients are innocent", "litigants abusing the system", "racing to the courthouse", "I didn't have much sympathy for those kinds of cases" and themes of family preservation at the expense of child protection. These refrains are similar to those oft-repeated by father's rights groups, anti-Child Protection Service/Parent's Rights groups and their attorneys who speak out nationally against legislation, court reforms and programs that assist domestic violence victims and their children. I found his testimony very disturbing on these issues.

It has become painfully clear that it is Mr. Ross' own words that continue to cause Alaskans grave concerns about how he will handle and uphold the laws of the state when it comes to our most victimized populations. Given Alaska's horrid statistics on domestic violence, sexual assault and child abuse, we can not afford as a state to go backward in time.

I urge you not to vote for confirmation.

Sincerely,

Paige R. Hodson, SRA

903 W. Northern Lights Blvd., Suite 220 Anchorage, AK 99503
(907) 274-8258 phone; (907) 274-8259 fax
paigeh@alaska.net

Jane Pierson

From: Catherine Howard [howard.catherine25@yahoo.com]

Sent: Thursday, April 16, 2009 9:49 AM

To: Rep. Jay Ramras; Rep. Wes Keller; Rep. Charisse Millett; ReRepresentative_John_Harris@legis.state.ak.us; Rep. Kyle Johansen; Jane Pierson; Cindy Smith; Sen. Lesil McGuire

Subject: WAR Confirmation

Dear Representatives,

Please give Sarah Palin another chance to nominate/appoint another Attorney General. She is being advised by the new Chairman of the Republican Party to do the right thing. If you vote not to confirm Wayne Anthony Ross, she will be forced to appoint another person for this job. His actions and statements yesterday should prove to you that he would not serve the best interests of the State. He will serve the Governor's interests first. Our state has become a laughingstock to the world. Please do not allow your names to be associated with a truly abhorrent choice for our State's head attorney.
With all due respect, I beg you to please reconsider your vote this morning.

I remain your supporter,
Cathy Howard

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on Confirmation: Attorney General, dated 4-10-09
bill # / subject — public hearing date

Members of the Judiciary Committee,

Please do not recommend the confirmation of Wayne Anthony Ross as Alaska's Attorney General.

Did you know that according to **national statistics:**

• Approximately 4 million women are victims of domestic violence each year.

• **Every 12 seconds, a woman is beaten by her husband or boyfriend.**

• **25 percent of American women report being raped or physically assaulted by a husband or boyfriend at some point in their lives.**

• Domestic violence is the leading cause of injuries to women ages 15-44, more common than automobile accidents, mugging, and cancer deaths combined.

• **A boy who witnesses his father's domestic violence is 10 times more likely to engage in domestic violence than a boy from a nonviolent home.**

• Studies show that child abuse occurs in 30-60% of family violence cases.

And.....

ALASKA RANKS NUMBER ONE IN THE NATION FOR RAPE

It has been reported that Mr. Ross made statements which encourage and promote the actions stated in these statistics. You have heard testimony from several individuals who heard Mr. Ross make statements like these:
"If a guy can't rape his wife...who's he gonna rape?" and "There wouldn't be an issue with domestic violence if women would learn to keep their mouths shut."
Appointing Mr. Ross as Alaska's Attorney General undermines Alaskan civil rights for women, Alaska natives, gays and children.
Appointing Mr. Ross as Alaska's Attorney General throws Alaska back into the dark ages.

Please do not confirm Mr. Ross's nomination.

Thank you for your attention to this matter,

Sincerely,

Signed: Joann Jackinsky
Testifier

PO Box 1025 Kasilof, Alaska 99610
Address

907 283-9558
Phone number

5210

Sara Jackinsky
PO Box 1044
Homer, AK 99603
907.235.6417
sarajackinsky@gmail.com

April 9, 2009

To the Senate & House Judiciary Committees of the State of Alaska

cc: Rep Paul Seaton, Sen Gary Stevens

I am writing to express my concerns about the appointment of Wayne A. Ross as Attorney General of Alaska. A confirmation of this appointment will be detrimental to the people of the State of Alaska. Please do not confirm this appointment.

1. Mr. Ross has taken a position that will undermine the subsistence rights of Alaska Natives.
2. Mr. Ross has taken a position that is not respectful of the rights of gay, lesbian and transgender Alaskans.
3. Mr. Ross has taken a position will perpetuate and perhaps increase the incidence of domestic violence in Alaska.

Mr. Ross is not the person that should be in the position of Attorney General of Alaska.

Thank you for your consideration.

Sincerely,

Sara L. Jackinsky

Jane Pierson

From: Steven Jacquier [steven_jacquier@hotmail.com]
Sent: Friday, April 10, 2009 10:37 AM
To: Rep. Jay Ramras
Subject: Please Oppose Wayne Anthony Ross as Attorney General

Dear Rep. Ramras

The people of Alaska --which include many different groups-- deserve better than the likes of Wayne Anthony Ross serving our interests as Attorney General.

Mr. Ross has a record of discrimination against gay, lesbian, bisexual, and transgender Alaskans and the Native community has spoken forcefully against his appointment because of Mr. Ross's poor record on subsistence issues and his divisiveness.

We do not appreciate Mr. Ross' statement in the state Bar Association newsletter referring to GLBT Alaskans as "degenerates" and describing being gay as a "perversion." This from a person being considered for the office of Attorney General? Such baseless and divisive statements are inflammatorily prejudicial and reflect poor reasoning skills as well as bad executive judgment..

Please oppose Wayne Anthony Ross as Attorney General; his presence would be an insult to the office as well as to our family; based on his record and statements to date he would not serve Alaska as whole well at all.

Sincerely,
Steven Jacquier & Doran Vaughan, and our children Kristina and Andrew.

----------Tidbits du Jour----------

Alaska's Mt. Redoubt volcano erupting in striking photos-
http://www.boston.com/bigpicture/2009/04/alaskas_mount_redoubt.htm

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Hello, my name is Steven Jacquier. I am speaking on behalf of myself and my family and we appreciate the committee hearing our comments.

Over the last twenty years I have regularly attended church here in Alaska with my family, and am a parent, a teacher, and a business owner. In other words, I am the average law-abiding Alaskan whom Mr. Ross has described as being an immoral, perverted, degenerate.

(page 2 of 2)

The people of Alaska --a diverse people-- deserve better than the likes of Wayne Anthony Ross serving our interests as Attorney General.

Mr. Ross has a record of discrimination against gay, lesbian, bisexual, and transgender Alaskans and the Native community has spoken forcefully against his appointment because of Mr. Ross's poor record on subsistence issues and his divisiveness.

We do not appreciate Mr. Ross' statement in the state Bar Association newsletter referring to GLBT Alaskans as "degenerates" and describing being gay as a "perversion." This from a person being considered for the office of Attorney General? Such baseless and divisive statements are inflammatorily prejudicial and reflect poor reasoning skills as well as bad executive judgment..

Please oppose Wayne Anthony Ross as Attorney General; his presence would be an insult to the office as well as to our family; based on his record and statements to date he would not serve Alaska as whole well at all.

Sincerely,
Steven Jacquier

Dana Strommen

From: bill johnson [akdoggie99@yahoo.com]
Sent: Sunday, April 12, 2009 12:42 AM
To: Rep. Jay Ramras
Subject: Ross

Please vote against seating Ross Thank You. Bill Johnson, Anchorage, Ak

Dana Strommen

From: Me [glacialblu@gci.net]
Sent: Wednesday, April 15, 2009 7:16 AM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

Dear Representative Ramras,

I have listened with interest to the testimony of Wayne Anthony Ross in addition to those speaking both on his behalf and those with concerns.
During this process one thing has become crystal clear to me:

For the sake of all Alaskans, we do not need someone who creates such controversy as our Attorney General.

Whether you do or do not agree with Mr. Ross, it is apparent that a large number of Alaskans vehemently don't support him. We need a person in that position who has the trust of those he or she represents. All Alaskans must have faith that their Attorney General will make fair and equitable decisions.

Alaskans have to be pulled back together and not have a political wedge driven deeper between them. Please help by selecting a person for Attorney General who will have the confidence and faith of all instead of one as divisive as Wayne Anthony Ross. There is no good reason to appoint a person who raises such strong emotions and concerns. There are plenty of qualified, fair attorneys in our state who would do a fine job in that position.

Thank you for your time.

C. Johnson

Dana Strommen

From: Tom [toxictom@gci.net]
Sent: Monday, April 13, 2009 10:51 PM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

Dear Mr. Ramras,
I strongly believe that confirmation of the appointment of Wayne Anthony Ross will expose the State of Alaska to serious liabilities because of Mr. Ross's outspoken nature and arrogant attitude.
Please reconsider your decision to confirm this man as the Attorney General for the State of Alaska.

Sincerely,

Thomas Johnston
9150 Chipwood Circle
Anchorage, AK 99507

OBJECTION TO: "Appointing Wayne A. Ross State Attorney General."

1. **Mr. Ross has known Governor Palin for some time. How long has he known her? How many times has he helped her, as an Attorney?**
2. **How well does Mr. Ross know Governor Palin? Does he know about her experience in the Alaska Independence Party?**
3. **Does Mr. Ross agree with the Alaska Independence Party issues and goals?**
4. **Much of the Alaska Independence Party is intolerant and extreme, does Mr. Ross agree with them? On secession? On subsistence? On A.N.C.S.A.? On Alaska Statehood? On the Constitution?**
5. **If Mr. Ross became embroiled in a situation such as "Troopergate" would he be loyal to the State of Alaska or to Governor Palin?**

The office of Attorney General has federal and State Laws to contend with, would an intolerant and extreme position on any issues be worth litigating? If litigation is a lose-lose formula, would Mr. Ross still litigate?

(page 1.)

	Wayne Ross	George Wallace
	(1.) both are "populists."	"the people.
	(2.) equalitarian, the constitution, "all Alaskans."	The constitution, yet, opposed de-segregation.
	(3.) extreme: "he would hire a band of "junk yard dog" Assistant Attorney Generals to challenge the federal rules or seek changes in law in congress."	"Of course if I did what I'd like to do I'd pick up some thing & smack one of these federal judges in the head & then burn the court house down. But I'm too genteel."
	(4.) opposes established institutions, "I intend to challenge provisions of ANILCA."	Expressed contempt for establis institutions & procedures.

I've tried to show some similar characteristics of both men. In political science would be "counter-elites." populists, opposed to established order & its values, extremist, impatient with due process, equalitarian, contemptuous of law & authority and in favor of simplistic solutions. These are not qualities that would enhance the State Government of Alaska. I OBJECT TO: "the confirmation of Wayne A. Ross as Alaska's Attorney General."

Signed: Albert Judson

Albert Judson Box 1151 Haines, Ak. 99827

(resident & registered voter.)

(Page 2.)

Jane Pierson

From: ravenstricks@gmail.com on behalf of Gina [gina@ravenstrick.com]
Sent: Saturday, April 11, 2009 7:18 AM
To: Rep. Jay Ramras
Subject: AG Hearings

Thank you Jay for asking the right questions!

This man is not an appropriate choice for AG. And I would like to know why he is *already* using State letterhead and why he is *already* listed on the State's website as AG. Is he *already* working out of the AG's office?? Is he on the payroll without confirmation??

http://www.law.alaska.gov/department/ag.html

Keep up the good work, you're doing a great job!

Gina Kalloch
Fairbanks

KAWERAK , INC. • P.O. Box 948 • Nome, AK 99762

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UNALAKLEET
WALES
WHITE MOUNTAIN

RESOLUTION 2009-03

A RESOLUTION IN OPPOSITION TO THE CONFIRMATION OF WAYNE ANTHONY ROSS AS ATTORNEY GENERAL FOR THE STATE OF ALASKA

WHEREAS, Kawerak, Inc. is a tribally authorized non-profit consortium whose mission is to assist, promote and provide programs and services to improve the social, economic, educational, and cultural well being of the people within the Bering Strait region; and

WHEREAS, the communities within the Bering Strait region include: Brevig Mission, Council, Diomede, Elim, Gambell, Golovin, King Island, Koyuk, Mary's Igloo, Nome, Savoonga, Shaktoolik, Shishmaref, Solomon, Stebbins, St. Michael, Teller, Unalakleet, Wales and White Mountain; and

WHEREAS, Governor Palin appointed Wayne Anthony Ross to serve as Attorney General for the State of Alaska on March 26, 2009 and the legislature will confirm or not confirm the appointment on April 16, 2009; and

WHEREAS, the Governor's news release, dated March 26, 2009 stated, "As Attorney General, Ross will work with the governor on issues surrounding development of Alaska's rich natural resources as the state continues its efforts to provide energy security for America and lower energy costs for Alaskans. As Attorney General, Ross also will help the governor protect Alaskans' right to bear arms, and he will work tirelessly to manage Alaska's fish and game resources for abundance through science and not politics. Governor Palin added, "Now more than ever, it is essential that Alaska's sovereignty be protected, that there is unity in Alaska, and that we all stand together to see Alaska's potential fulfilled with energy security contributions to ourselves and the nation, while protecting the Constitution"; and

WHEREAS, subsistence is central to our regions existence and vital to the health and welfare of regional residents; and

WHEREAS, Kawerak, Inc. supports a rural subsistence preference over sport and commercial interests to insure residents within the Bering Strait region can harvest fish and game for their health and welfare; and

WHEREAS, Subsistence has priority over sport and commercial interests in the State of Alaska; and

WHEREAS, Govenor Palin's Attorney General must insure that subsistence take priority over other interests as prescribed in law and regulation; and

WHEREAS, Wayne Anthony Ross, represented sport hunters in the 1989 lawsuit that overturned as unconstitutional the state's subsistence preference for rural residents; and

WHEREAS, in a Anchorage Daily News, August 13, 1998 article titled "Fed up, Ross stages battle for guns, family and Alaska pride," Wayne Anthony Ross was quoted as saying, "Rural preference is wrong and not necessary to ensure subsistence foods;" and

WHEREAS, tribal governments in Alaska are recognized under federal law: and

WHEREAS, tribal governments provide valuable leadership, resources, processes and tools to address the socio-economic, educational, and cultural needs of the Bering Strait region; and

WHEREAS, Governor Palin, with her authority to appoint key positions such as the Attorney General, has an opportunity to address rural concerns, namely the rural subsistence priority and tribal sovereignty; and

WHEREAS, Wayne Anthony Ross' stance regarding tribal sovereignty is reflected in his comments in the article titled "Indian Country: 2 Destinies, 1 Land" by Tom Kizzia in the Anchorage Daily News, June 29, 1997 in which Mr. Ross was asked to comment on the issue pending in the Venetie Indian Country case. He said "It's a giant leap backward into the 19th century...They want to see Alaska balkanized into little fiefdoms where these self-proclaimed Native leaders will reign supreme with the help from the Great White Father;" and

WHEREAS, Governor Palin's candidate for appointment of Attorney General should be an individual who exemplifies leadership skills that will seek collaboration with all local governments to resolve vital issues which would lead to safe, economically viable AND healthy communities; and

WHEREAS, Wayne Anthony Ross' record and professional stance on rural subsistence priority and tribal sovereignty exemplifies an extreme bias which will further exacerbate the process to resolve vital issues to our regional communities.

NOW THEREFORE BE IT RESOLVED THAT the Kawerak Board of Directors oppose the confirmation and appointment of Wayne Anthony Ross to serve as Attorney General for the State of Alaska.

By: _____
Robert Keith, Chairman

CERTIFICATION

I, the undersigned Secretary of the Kawerak, Inc. Board of Directors, hereby certify that the foregoing resolution was adopted by majority vote of the Board of Directors of Kawerak, Inc. during a duly called meeting on this ____ day of April, 2009.

By: _____
Kawerak Board Secretary

Dana Strommen

From: Jan [janpatches@yahoo.com]
Sent: Thursday, April 16, 2009 9:37 AM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

Dear Representative Ramras:

I respectfully ask you not to confirm Wayne Anthony Ross as Attorney General. It has become painfully clear that his grasp of the law is limited, but his loyalty to Governor Palin is not.

Alaska has become the laughingstock of the United States, starting with the November election, continuing through People Magazine, and today with a major story in the New York Times.

Wayne Anthony Ross presents as a uneducated, bigoted and dangerous man. The Anchorage Daily News online comment sections indicate that others think so as well, with many comments opposing him and Governor Palin having been deleted.

Thank you for your consideration.

Janette Kazar

Jane Pierson

From: danik@gci.net on behalf of Dani [danik@gci.net]
Sent: Thursday, April 09, 2009 5:41 PM
To: Jane Pierson
Subject: House Judiciary Committee Confirmation

To the House Judiciary Committee,
I would like to respectfully request that you do not confirm Wayne Anthony Ross as Attorney General. The problems with Mr. Ross holding that office are many and in my opinion, as a life long Alaskan, he is too divisive to help bring this state together. We are already suffering a complete leadership void with the Administration and I would hate to think what would happen if Mr. Ross were suddenly in that sort of position.

Respectfully submitted,

Danette L. Kebschull
Soldotna

Alaska Legislature

April 12, 2009

Dear Legislators:

Friday, April 10, 2009, I watched the House Judiciary Committee's interview with Wayne Anthony Ross, Governor Palin's appointee for the Alaska Attorney General position. I was surprised when, towards the end, Representative Ramras referenced the ethics complaint I submitted in March. I was then disgusted by Mr. Ross's response:

> *Representative Ramras: "We have a Governor who is provocative in a lot of her actions. Recently it comes to mind when she was in Fairbanks for the finish line for the Iron Dog she was wearing Arctic Cat gear...Arctic Cat letters..."*
>
> *Wayne Anthony Ross: **"It was provocative; she looked very good in them, didn't she?"***

The fact that Mr. Ross thought it appropriate to sexualize the issue on the floor of the House during his confirmation hearing is probably alarming enough by itself. It seemed to add credibility to the Senate and House public testimony from multiple individuals alleging disturbing past negative comments and attitudes from Mr. Ross towards women.

However, the focus of this letter is the cavalier way in which Mr. Ross seems to view charges that the Governor of Alaska has behaved unethically.

While this attitude is clearly obvious in the previous comment, it is also reflected farther into the exchange between Rep. Ramras and Mr. Ross:

> *Representative Ramras: Presently, General, there are some concerns in this building about the focus of our chief executive because she's taken a speaking engagement in Indiana for a 36 hour period with only 72 hours to go in the Legislative Session. Although she's available by phone, there's a reason we have you here in front of us because we're not interested in doing the confirmation hearing telephonically. Nor are we interested in having a Governor available telephonically with only three days to go in the session.*
>
> *So my question for you...as the Governor's attorney as well as the chief attorney for the State of Alaska...how are you going to advise the Governor, with these lucrative offers she has on the table to write a biography and the requirement for anyone who writes a book to take a book tour across the country? Are you going to advise the Governor that this is something that is within her rights and purview or is that something that infringes upon the rights of all Alaskans?*
>
> *W.A. Ross: I don't know how I'm going to advise her because the question hasn't been made and I don't know all the facts.*

Later on, Mr. Ross gives this response:

> *W.A. Ross: ...Whether that's part of her job or not, I'm not making any decisions on that. Whether she should wear Arctic Cat or I should get in trouble for wearing a Steton, I'm not making any decisions on that. If the questions come to us maybe we'll have to make a decision at that time. I'm sure she feels appreciative that you guys are going to miss her for two days while she's outside giving a speech. She's never talked to me about it and I'm sure you'll be in her heart and mind the whole time.*

Again, he is clearly not taking any of this seriously. He also states that he is not making any decisions on advising the Governor whether or not the above behavior is ethical.

Here is the rest of the exchange:

> *Ramras: I would look forward to an opinion from the Department of Law on that point...whether the Dept. of Law will endorse a chief executive writing a book and making a multi-city book tour while she's serving in the capacity of the chief executive. On that point we would like to get an opinion from the Department of Law going forward as we have a new Attorney General.*
>
> *Ross:* ***I think I have a lot more important issues as Attorney General then deciding whether or not the Governor should write a book.***
>
> *Ramras: I didn't ask you if she should write a book. I asked you if she may take prolonged absences from the State of Alaska on a book tour.*
>
> *Ross:* ***I don't have all of the knowledge of the issues facing the Department of Law, but when it comes time that I have plenty of extra time for such things I will certainly devote the time appropriate to such an issue***

I believe that Mr. Ross needs to read the job description for the State Attorney General a little closer. In a 2007 letter and attachments from the former Attorney General (page 6), Talis Colberg explains his role as AG to Governor Sarah Palin as the person who is supposed to assist her in understanding her responsibilities regarding her own ethical behavior:

> ***Since I serve as your designated ethics supervisor****, I want to remind you that the Alaska Executive Branch Ethics Act requires that all state employees report to their designated ethics supervisors any outside employment or services benefiting their personal or financial interests by July 1 of each year.*

So, one of the functions of the Attorney General is to serve as the Governor's designated ethics supervisor, which not only has time-sensitive reporting requirements but would require him to properly advise her if there is a possibility she may be violating the Alaska Executive Ethics Act. I believe that requires Mr. Ross to take action on the issue of ethics whether he has "plenty of extra time for such things" or not. It's an important part of his job.

Further, the letter from the former AG lays out more specific guidelines for chief executives:

> ***However, the Ethics Act also precludes "the head of a principal executive department of the state" from engaging in "outside employment."[2]*** *The Office of the Governor is a principal department of the state. Therefore, as head of that office,* ***you may not be engaged in outside employment. We construe "employment" to have its ordinary meaning.***

These definitions are explained in an attachment to the memo for the Governor (page 8), a list of Frequently Asked Questions that looks like it may be given to all new state employees. What's disturbing is that it very clearly raises questions as to the legality of the chief executive officer (Governor Palin) accepting "a book deal." Mr. Ross seems to be completely unaware of this:

> ***3. What does "outside employment" include?***
> - *Any employment for which you are paid, but not your state employment.*
> - *Examples: a job with another employer,* ***work as an independent contractor, and work in your own business.***

Also, Mr. Ross seems to be unaware that established DOL criteria may already address the issue of leaving the state for extended travel on a book tour:

> *The statute (AS 39.52. 170(a» **restricts public employees from providing services** that benefit a personal interest if those services are incompatible **or in conflict with the proper performance of official duties.***

Mr. Ross discussed **none** of this when asked pointed questions by Representative Ramras. Instead, Mr. Ross gave flippant answers, seemed to dismiss the importance of Executive Ethics Act enforcement and didn't seem to understand the requirements of the Act himself. While I don't expect Mr. Ross to be up to speed on all the requirements of his potential job, I believe he should have at least a passing understanding of some of the more important duties. Keeping the Governor out of trouble is a VERY important duty and not something to be taken lightly.

Wayne Anthony Ross's disrespectful attitude during the ethics questioning concerns me for another reason. The Alaska Executive Ethics Act does require that the Personnel Board hire an independent investigator in place of the Attorney General when ethics complaints involve the Governor, the Lt. Governor or the AG him/herself. However, the AG is the head of the Department of Law which still the "gatekeeper"—Dept. of Law employees make the decision whether or not the ethics complaint meets the criteria and is sent to the Personnel Board at all. I am concerned that Mr. Ross may not take the process seriously enough to become well-informed and base the fate of ethics complaints upon unbiased legal criteria.

I believe we should all be deeply concerned about the appointment of Wayne Anthony Ross for many reasons already presented to both Judiciary Committees. However, no behavior in front of either Judiciary Committee causes more concern and reflects more directly upon how Mr. Ross may perform at his job than the ethics exchange with Representative Ramras. Ethical government should be a high priority for everyone but

especially for the person whose job it is to lead the Department of Law. I urge you to reject the appointment of Wayne Anthony Ross for Attorney General.

Sincerely,

Linda S. Kellen
(aka. Linda Kellen Biegel)
House District 29
Senate District O
celticdivaak@yahoo.com
907-830-9458

Jane Pierson

From: Kim Kloecker [kloecker@acsalaska.net]
Sent: Friday, April 10, 2009 10:19 AM
To: Jane Pierson
Cc: Cindy Smith
Subject: [Fwd: Please, no Wayne Anthony Ross]

Dear Ms. Pierson and Ms. Smith,

I'm hoping that I'm not too late with my comments regarding Mr. Ross. For the record, I am adamantly opposed to his confirmation!

thank you,
Sincerely,

Kim Kloecker

---------- Original Message ----------
Subject: Please, no Wayne Anthony Ross
From: "Kim Kloecker" <kloecker@acsalaska.net>
Date: Fri, April 10, 2009 10:14 am
To: Representative_Lindsey_Holmes@legis.state.ak.us
Cc: Senator_Hollis_French@legis.state.ak.us

Dear Representative Holmes and Senator French,

I am a registered voter in the Spenard/Turnagain area of Anchorage. I'm writing to ask that you take action to ensure that the appointment of Wayne Anthony Ross is not confirmed. I am fully supportive of "big" personalities and of our governor's right to appoint someone who shares her views on many issues, however I feel that Mr. Ross is not an acceptable choice for Alaska. I do not believe, as he claims, that he will be a different person representing the state versus private citizens.
A vote to confirm him would be an insult to women, Native Alaskans, indeed-- to all Alaskans. Please urge the governor to find a more suitable candidate.

Sincerely,

Kim Kloecker
2908 West 34th Ave
Anchorage AK 99517

907-245-4476

Dana Strommen

From: tristan knutson-lombardo [tristan@juneaumedia.com]
Sent: Monday, April 06, 2009 7:18 PM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

Dear Representative Ramras,

I am writing to request you deny Wayne Anthony Ross the confirmation of Alaska's Attorney General. It is my understanding the House Judiciary committee is holding a public hearing on this matter April 10th at 1pm. I am, unfortunately, out of the state and am not able to attend, so I have decided to write to you and voice my disappointment.

Given the outcry from the Native community, and his historical opposition to subsistence preference for Alaska Natives, I see him as a dangerous and disrespectful choice. I think that we should honor and respect the indigenous people of Alaska. To the members of the House Judiciary committee, I am imploring you all to not confirm Ross as AG.

Thank you for your consideration and I look forward to not only see a "no" vote.

Tristan Knutson-Lombardo
Juneau, Alaska

Dana Strommen

From: c.krzanowski@att.net
Sent: Monday, April 13, 2009 8:37 PM
To: Sen. Bill Wielechowski; Sen. Gene Therriault; Rep. Jay Ramras; Sen. Lesil McGuire; Rep. Bob Lynn; Rep. Lindsey Holmes; Rep. Max Gruenberg; Rep. Carl Gatto; Sen. Hollis French; Rep. Nancy Dahlstrom; Rep. John Coghill
Subject: Mr. Wayne Anthony Ross

04/13/09

Dear Honorable Legislators:

I am a registered Independent voter here in Alaska. Over the weekend I read a statement made by Mr. Wayne Anthony Ross during a public hearing. The statement Mr. Ross made about Governor Palin follows:

"She was provocative. She looked very good in it, didn't she?"

As a woman I am insulted and appalled by his continued disrespect to women. He is offensive and chauvinistic and if this is how Mr. Ross treats women in public, I fear for what he is capable of behind closed doors. I would hope that you to not approve his nomination for Attorney General. Surely, we can do so much better then Mr. Ross.

Sincerely,
Criss Krzanowski
Eagle River, AK

Dana Strommen

From: George & Leslie [georgenleslie@mosquitonet.com]
Sent: Wednesday, April 15, 2009 10:44 PM
To: Sen. Joe Thomas
Cc: Rep. Mike Kelly; Rep. David Guttenberg; Rep. Scott Kawasaki; Sen. Joe Paskvan; Rep. Jay Ramras; Sen. Gene Therriault
Subject: Please do not confirm Wayne Anthony Ross

I am writing to express my concern over Wayne Anthony Ross's nomination to the post of Attorney General and to request that you cast a NO vote on April 16th during his confirmation hearing.

Rarely have I felt strongly enough to express my opinion in this manner, but Mr. Ross's history of very questionable public statements on many important issues make him too polarizing and divisive a figure. I do not believe he could be reasonably counted upon to uphold the constitutional rights of all Alaskans, without discrimination, when his personal statements and positions over many years show his personal agendas and entrenched beliefs so clearly. After reading his comments yesterday on the potential legal standing of Governor Palin's handling of the replacement for Kim Elton in Juneau, I have become even more unsettled, as he seemed to show more commitment to personal alliances than to the letter, or spirit, of the law.

Please do not confirm Wayne Anthony Ross as our next attorney general.
Sincerely,

George LaBar
P.O. Box 61132
Fairbanks, AK 99706
907-488-5254
(House District 7, Senate District D)

Jane Pierson

From: Dick LaFever [dicklafever@ak.net]
Sent: Friday, April 10, 2009 12:09 PM
To: Rep. Jay Ramras
Subject: Ross/Attorney General Hearing

Representative Ramras:

As a 30+ year Alaskan, a registered nonpartisan, and a concerned citizen, I am convinced that Mr. Ross's
appointment as Attorney General would have a detrimental and divisive impact on our state. His philosophy, personal behavior, and record has been one that demonstrates his narrow mindedness, disrespectful and chauvinistic views.

I ask that you not approve Mr. Ross as Attorney General. Out state deserves better!

Sincerely,

Kenneth R. (Dick) LaFever
815 W 19th Avenue
Anchorage, Alaska
258.7002
dicklafever@ak. net

Jane Pierson

From: maryla@alaska.com on behalf of Mary La Fever [maryla@alaska.com]
Sent: Friday, April 10, 2009 9:55 AM
To: Jane Pierson
Subject: About the Ross appointment

Hello Jane:
I am not certain how to do this, but want my vote/desire to be considered and counted: that these representatives would get my recommendation NOT to approve the appointment of mr. Ross. I am totally against his being in public office at all.
Is it possible for you to forward this to these folks at this late date?
Thank you.

Mary La Fever
Anchorage resident 41 years.

Reps Ramras, Dahlstrom, Coghill, Gatto, Lynn, Gruenberg, and Holmes

Jane Pierson

From: maryla@alaska.com on behalf of Mary La Fever [maryla@alaska.com]
Sent: Friday, April 10, 2009 3:46 PM
To: Rep. Jay Ramras
Subject: Ross

Hello, Rep. Ramras:

I want my vote/desire to be considered and counted: my recommendation DO NOT approve the appointment of mr. Ross. I am totally against his being in public office at all.

Thank you.

Mary La Fever
Anchorage resident 41 years.
815 West 19th Ave
Anchorage, AK 99503

April 8, 2009

Honorable HJUD Chair Ramras and Committee Members,

I am writing to express my concern over the Governor's nomination of Wayne Anthony Ross for Alaska Attorney General. In my view, Mr. Ross is eminently unqualified for this important position.

Mr. Ross has gone to some lengths, over the years, to portray himself as outside the mainstream in his personal views and actions. Former legislators, Alaska news media and even the nominee himself have painted him with this brush. Mr. Ross gives the appearance in his word and deed of being out of step with much of the American public, even advocating discrimination and promoting ownership of concealed weapons. One has good cause to wonder if he will focus on these issues to the detriment of other aspects of the role of Attorney General.

Mr. Ross has served as counsel to the Governor in the past. I have concerns that the Governor may seek to use this to invoke attorney-client privilege to avoid or obstruct prosecution in her multiple ethics-related charges.

Mr. Ross has had some ethics quandaries of his own. As a director for the NRA, he was charged with ethics violations in using his role to promote Republican candidates who had not been endorsed by the NRA leadership. Though the charges were dismissed, certainly there are other, equally capable attorneys in Alaska without the taint of impropriety.

Do we need an Attorney General who has been variously termed by the media and legislators as "the hero of his own life", a "goober candidate" and "someone who hates to be wrong"? With all the scandal and mockery of Alaskan politics nationally and internationally, don't the people of Alaska deserve an Attorney General who remains above the fray, rather than being the source of it?

There have been hints that Mr. Ross has been less-than-favorably rated by the Alaska Bar. In trying to research more on this, I noted that although Mr. Ross touts his pro-bono work (much around gun ownership and advancing his own views) he has never been recognized for this by the bar. That seems interesting, considering Mr. Ross's claims.

Do we need an Attorney General who finds it seemly to debate constitutional issues in "Soldier of Fortune" magazine (and apparently, not entirely on the money when it comes to his interpretation).

I am concerned for the potential conflict-of-interest between Mr. Ross's duties as an Attorney General and that of an attorney for Governor Palin's personal matters. Mr. Ross's first duty is to the State, but he doesn't give reason for much confidence that he will exercise his responsibilities with the proper emphasis.

Mr. Ross's nomination has met with consternation by the Alaska Federation of Natives and the Council of Village Presidents, largely over his very public and long-standing opposition to subsistence. He has only recently said he would not make this a central issue if he was appointed to the Attorney General role. How convenient. I believe his appointment is an affront to Alaska Natives, and would oppose his appointment on this issue alone.

Mr. Ross should have reminded the Governor that he is not yet the Attorney General and the announcement on the State web pages are inappropriate at best.

We don't need an Attorney General who is "good enough". We need an Attorney General who is good, and who can help steer Alaska through the various challenges facing us in the upcoming years.

Respectfully,

Cynthia Lagoudakis
P.O. Box 662
Petersburg, AK 99833

4/10/09

Members of the Committee

My name is Joseph Lapp, I live in Homer, and am here representing the organization Alaskans Together For Equality, Inc. Alaskans Together is a new, statewide group which promotes civil equality for all Alaskans, with a special emphasis on gay, lesbian, bisexual, and transgender equality.

I am requesting that this committee not recommend Wayne Anthony Ross for confirmation as State Attorney General. Mr. Ross' history of very negative public statements on the gay, lesbian, bisexual, and transgender community, his stance on native rights, and his views on women and domestic violence make him an incredibly polarizing and divisive figure, and one who we at Alaskans Together for Equality do not think could be reasonably counted upon to uphold our constituency's constitutional rights without discrimination.

Can someone who thinks of you in terms like "degenerate," "immoral," or "perverse," and feels comfortable enough to use those horrible terms in a public venue possibly put that loathing aside as easily as changing a hat between public and private life? I don't have confidence that Mr. Ross will be able to do that, and it's not a risk that I believe our state can take.

In his public comments Mr. Ross has said that this is a time in our state's history where we need to be getting together, and we agree, which is why we hope that this committee will reject Mr. Ross' confirmation because he can only possibly tear us further apart

Thank you,

Joseph Lapp II
Board Member, Alaskans Together for Equality, Inc.
PO Box 2895
Homer, AK 99603

Dana Strommen

From: Robert Lee [relee42@hotmail.com]
Sent: Thursday, April 16, 2009 7:21 AM
To: Rep. Jay Ramras
Subject: Please vote no on WAR

Ross is unqualified to be AG. Please vote no on Ross.

Jane Pierson

From: Nancy Lethcoe [pwsbooks@cvinternet.net]
Sent: Friday, April 10, 2009 2:00 PM
To: Rep. Jay Ramras
Subject: No to W. A. Ross's confirmation

Alaska ranks among the highest states in the nation in the number of cases of domestic violence and child abuse. We need an attorney general who will enforce laws and be proactive to protect the weakest among us. Mr. Ross is not the man for the job.

Please vote against him.

Respectfully,
Nancy R. Lethcoe

5240

Dana Strommen

From: Dennis Loux [akdennis2003@yahoo.com]

Sent: Sunday, April 12, 2009 3:26 PM

To: Rep. Bob Buch; Sen. Con Bunde; Rep. Paul Seaton; Rep. John Coghill; Rep. Harry Crawford; Rep. Nancy Dahlstrom; Sen. Bettye Davis; Rep. Mike Doogan; Sen. Fred Dyson; Sen. Johnny Ellis; Sen. Kim Elton; Rep. Anna Fairclough; Sen. Hollis French; Rep. Les Gara; Rep. Berta Gardner; Rep. Carl Gatto; Rep. Max Gruenberg; Rep. David Guttenberg; Rep. John Harris; Sen. Lyman Hoffman; Rep. Lindsey Holmes; Rep. Kyle Johansen; Rep. Craig Johnson; Rep. Scott Kawasaki; Rep. Wes Keller; Rep. Beth Kerttula; Sen. Albert Kookesh; Rep. Bob Lynn; Sen. Lesil McGuire; Rep. Mark Neuman; Rep. Kurt Olson; Sen. Donny Olson; Rep. Jay Ramras; Rep. Woodie Salmon; Rep. Sharon Cissna; Sen. Bert Stedman; Sen. Gary Stevens; Rep. Bill Stoltze; Sen. Gene Therriault; Rep. Bill Thomas; Sen. Joe Thomas; Sen. Tom Wagoner; Sen. Bill Wielechowski; Rep. Peggy Wilson

Subject: Confirmation of prospective AG Wayne Ross

Legislators,

First, allow me thank all of you for your hard work this session. I know this has been a very frustrating and at times divisive legislative session. I appreciate your patience.

I am contacting you because I have serious concerns regarding Governor Palin's selection of Wayne Ross as the replacement for Talis Colberg as Alaska Attorney General. After conducting my own independent research into Mr. Ross's career and personal positions and history I have come to the conclusion that confirming Mr. Ross will not be in the best interests of our state.

Mr. Ross has shown time and again that he has very strong negative feelings toward certain groups who may not be in accord with his personal world view. In light of this I am concerned that Mr Ross's legal decisions will be shaped, at least in part, by his biases. Given his vociferousness in the past I think he will have difficulty administering justice in a fair and impartial manner.

Mr. Ross has stated that he will behave impartially as AG because he will be "wearing his AG hat" during his tenure. He has stated that he will not allow personal feelings and prejudices to effect his ability to equitably administer the law. I truly would like to believe Mr. Ross but he has shown throughout his career that his personal feelings and biases are strongly held indeed and, to a large extent, shape his actions. I honestly do not believe that Mr. Ross will be able determine where Wayne Ross the person with strong beliefs ends and Wayne Ross the AG begins. I fear that Mr. Ross will allow his personal prejudices to effect his office and the fair administration of the law.

Watching Mr. Ross undergo questioning by legislators during the confirmation hearing has only solidified my misgivings about his appointment. Mr. Ross's flippant responses to certain probing questions during his confirmation hearing gives me pause to wonder how seriously he takes the confirmation process and hence the office of the AG itself. And while I appreciate a well developed sense of humor Mr. Ross's repeated flippancy and cavalier attitude during the hearing and in recent correspondence are not in keeping with the gravity of the confirmation process nor indicative of the requisite seriousness necessary in one seeking to be Alaska's top cop.

I do not know Mr. Ross personally and certainly hold no ill will toward the man. I believe that Mr. Ross is absolutely entitled to hold his opinions and world view even though they are not congruent with my own. But the AG does not have the luxury of having a personal opinion. The law is the law. It is not to be shaped to conform to one's personal system of values.

Is Wayne Ross really the best person for the job that the Governor can come up with? I think not. I understand that the Governor is going to select someone sympathetic to her views. But I really believe that she can find someone who fits that bill but who is also more a more impartial attitude toward our diverse cultures and subcultures.

I do not support the confirmation of Wayne A. Ross as Alaska Attorney General and ask that you do NOT confirm him. The Governor surely can find someone else who takes a more balanced approach to Alaska's diverse population and at the same time is able to support the Governor's political positions (not that I'm at all sure that the Governor has a position on *anything* at this point).

Again, thank all for your hard work on behalf of the people of Alaska this session. I appreciate it very much.

Sincerely,

Dennis Loux
HC 34 Box 2136
Wasilla, AK 99654

Dana Strommen

From: Dennis Loux [akdennis2003@yahoo.com]
Sent: Wednesday, April 15, 2009 2:40 PM
To: Rep. Jay Ramras
Subject: Wayne Ross confirmation

Rep. Ramras,

I contacted you a few days ago regarding my position on the confirmation of Wayne A. Ross as Alaska Attorney General and wish to add something further to support my opposition to his confirmation.

First let me say that if you do not support the confirmation of Mr. Ross I wish to express my heartfelt thanks for putting the welfare of Alaska above political expdiency. If you have not yet taken a position regarding Mr. Ross's confirmation I ask that you do not confirm. If you favor the confirmation of Mr. Ross I ask that your reconsider your position for the following reason, if nothing else:

Below is a quote from Mr. Ross that states his position regarding Governor Palin's latest actions in the process to fill the Juneau district Senate seat recently vacated by Kim Elton.

"It seems to me the most important thing that can be done by the Senate is not argue with legal or illegal but to appoint somebody to represent Juneau."

If all that has gone before during Mr. Ross's confirmation hearing (i.e. his history of divisiveness and bias, flippant and cavalier attitude toward legislator's questions and flat out non-responsiveness to questions) has not convinced you of Mr. Ross's unfitness to serve as Alaska Attorney General then the quote cited above should remove any doubt you may have.

Mr Ross is telling the legislative body, in effect, that our ***LAW***makers needn't trouble their little minds with minor details like what is ***legal*** or ***illegal***. He and Sarah have determined it's OK so just do what Sarah wants and we will all be happy. I think we need look no farther to see that Mr. Ross possesses the same elastic approach to the law, accepted legislative proceedures and ethics that the Governor does.

If you do not feel the same sense of outrage over this latest slap in the face from the Governor's office that I do then you are not fit to serve in the office to which you have been elected by your constituents.

Sarah Palin has caused Alaska to become a laughingstock to the rest of the world. How long will you allow this farce to continue? We will be watching with interest.

Again I ask, no I beg, that you do not confirm Wayne A. Ross as Alaska Attorney General.

Thank you for hearing me on this matter.

Sincerely,

Dennis Loux

HC 34 Box 2136

Wasilla, AK 99654

Dana Strommen

From: nlovering@gci.net on behalf of Nancy Lovering [nlovering@gci.net]
Sent: Wednesday, April 15, 2009 3:59 PM
To: Rep. Jay Ramras
Subject: Attorney General Nomination
Importance: High

Representative Ramras,
I am writing to voice my overwhelming concern regarding the potential of the confirmation of Wayne Anthony Ross as our Attorney General. In particular his attitudes and opinions regarding women, Alaska Natives and The Office of Children's Services are of significant concern.
As an Alaskan I am requesting that you do NOT confirm Mr. Ross as Attorney General!
Thank you,
Nancy Lovering

Nancy C. Lovering M.S., CCC-SLP
Nancy C. Lovering M.S., CCC-SLP
Speech-Language Therapy Services
4325 Laurel Street, Suite 100
Anchorage, AK 99508
907-562-8262
nlovering@gci.net

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Jane Pierson

From: iceworms@gci.net on behalf of Richard Lynch [iceworms@gci.net]
Sent: Thursday, April 09, 2009 7:51 PM
To: Rep. Jay Ramras
Subject: ATTORNEY GENERAL

Dear Mr. Ramras,

Please DO NOT confirm Wayne Anthony Ross for Attorney General, he appears to be an extremist, i worry he will not represent all Alaskans. His appointment would be a step backwards.

Patricia Lynch
13300 McCabe Circle
Anchorage, Alaska
99516

Dana Strommen

From: Russ Maddox [russmaddox@yahoo.com]
Sent: Tuesday, April 14, 2009 11:51 AM
To: Sen. Gary Stevens; Rep. Paul Seaton
Cc: Sen. Bert Stedman; Sen. Kim Elton; Sen. Albert Kookesh; Sen. Joe Thomas; Sen. Joe Paskvan; Sen. Gene Therriault; Sen. Linda Menard; Sen. Charlie Huggins; Sen. Fred Dyson; Sen. Bill Wielechowski; Sen. Bettye Davis; Sen. Johnny Ellis; Sen. Hollis French; Sen. Lesil McGuire; Sen. Kevin Meyer; Sen. Con Bunde; Sen. Tom Wagoner; Sen. Gary Stevens; Sen. Lyman Hoffman; Sen. Donny Olson; Rep. Kyle Johansen; Rep. Peggy Wilson; Rep. Beth Kerttula; Rep. Cathy Munoz; Rep. Bill Thomas; Rep. Woodie Salmon; Rep. Mike Kelly; Rep. David Guttenberg; Rep. Scott Kawasaki; Rep. Jay Ramras; Rep. John Coghill; Rep. John Harris; Rep. Carl Gatto; Rep. Wes Keller; Rep. Mark Neuman; Rep. Bill Stoltze; Rep. Anna Fairclough; Rep. Nancy Dahlstrom; Rep. Pete Petersen; Rep. Max Gruenberg; Rep. Harry Crawford; Rep. Sharon Cissna; Rep. Les Gara; Rep. Berta Gardner; Rep. Mike Doogan; Rep. Lindsey Holmes; Rep. Bob Buch; Rep. Craig Johnson; Rep. Chris Tuck; Rep. Charisse Millett; Rep. Bob Lynn; Rep. Mike Hawker; Rep. Kurt Olson; Rep. Mike Chenault; Rep. Paul Seaton; Rep. Alan Austerman; Rep. Bryce Edgmon; Rep. Bob Herron; Rep. Richard Foster; Rep. Reggie Joule
Subject: WAR confirmation

In September 2006 there was an event in Seward that featured WAR and his machine-gun club on private property in a residential area in Seward. There were machine guns aimed on exploding targets with shipyard toxic waste as a backstop very close to families and pets with no forewarning. There were many neighbors enraged by the risks of machine guns and explosives posed in our neighborhood for hours and hours. They were asked to stop by neighbors, but did not. They cited their second amendment rights. However by Alaska statute it became an illegal nuisance as soon as they were asked and declined to stop. In 2008 the neighbor again hosted a machine gun turkey shoot but this time instead of featuring Wayne Ross, Don Young was the guest of honor. WAR (and DY)exhibited a severe lack of judgement and by claiming their rights usurped ours certainly does not offer any confidence that he would properly interpret the law as AG. Please deny his confirmation.

http://dorenelorenz.blogspot.com/search?q=turkey+shoot

Dorene Lorenz removed WAR's photos from her website, but the public comments are still there and there are witnesses that WAR was indeed present and the guest of honor.

Neighbors besides myself:

Paperman Dave
work 224-8297
mobile 362-1282

Max and Mary Fackler 224 7423

Chris Bailey 224 3793

Mark and Sharon Ganser 224 5482

Regards, Russ Maddox
491-0353

From Seward Phoenix LOG September 2006,

Turkey shoot misses mark

Explosives shake Nash Road

Jane Pierson

From: Pat Malone [packy@ptialaska.net]
Sent: Thursday, April 09, 2009 7:42 PM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

Dear Representative Ramras,

Wayne Anthony Ross is the wrong person for Alaska's Attorney General.
We do NOT need a divisive figure in theis role.
Please reject him, and ask Governor Palin to submit the name of someone who will help bring Alaskans together, not rend us asunder.

Thank you.

Pat Malone
Kenai

Dana Strommen

From: jentoby@ak.net
Sent: Thursday, April 16, 2009 8:12 AM
To: Rep. Jay Ramras; Rep. Lindsey Holmes; Rep. Max Gruenberg; Rep. Bob Lynn; Rep. Carl Gatto; Rep. John Coghill; Rep. Nancy Dahlstrom
Subject: Wayne Anthony Ross- opposed to his confirmation

Dear Members of the House Judiciary Committee:

I am writing you today to ask that you consider voting NO on confirming Wayne Anthony Ross as Alaska's Attorney General. I have read and listened to testimony, and I am appalled at his views regarding gay people, women, and Alaska Natives subsistence rights. Alaska deserves someone who will look after the rights of ALL Alaskans, not just those he agrees with. I recognize that confirmation hearings for appointments by a governor can become partisan in nature (whether the governor is Republican or Democrat). I also recognize that it is the governor's right to appoint someone who shares her political views and vision for the future of our state. I just don't see that someone who has the published attitudes about people he has will be good for Alaska.

Furthermore, Mr. Ross's response to the current situation going on between the governor and the Juneau Democrats trying to fill the seat vacated by Kim Elton is alarming in someone who is a lawyer and is being considered for the position of the ranking law enforcement individual in our state. His opinion based on the Legislature's lawyer that the governor is violated the law in her responses and picks to fill the vacant senate seat was: "It seems to me the most important thing that can be done by the Senate is not argue with legal or illegal but to appoint somebody to represent Juneau," - Ross. Based on this response alone, I would hope all partisan politics, all differences of opinion on ideology, would be irrelevant to you. The man who wants to be attorney general DOESN'T THINK THE SENATE SHOULD BOTHER WITH ISSUES OF LEGAL OR ILLEGAL. The same man who says he believes first and foremost in the Alaska Constitution is asking you, the Legislature, to ignore the law.

Alaskans deserves better than this. We are relying on you today to make sure we do not have an attorney general who believes the law is irrelevant when it doesn't suit his or the governor's agenda. We deserves someone who will support the Alaska Constitution for ALL Alaskans, regardless of whether or not he likes them or what they stand for.

Please vote NO on appointing Wayne Anthony Ross as Alaska's Attorney General.

Thank you
Jennifer Mason
Anchorage, Alaska

Jane Pierson

From: Megan McCarthy [meganpearl@hotmail.com]
Sent: Thursday, April 09, 2009 6:38 PM
To: Cindy Smith; Jane Pierson
Subject: NO to Mr W.A.R.

My name is Megan McCarthy and I am a resident of Sitka Alaska.
Thank you for allowing me the opportunity to register my complete opposition to the confirmation of Wayne Anthony Ross as Alaska's Attorney General. His beliefs regarding subsistence rights and his speech regarding women and gay rights are just a few concerns that make him a bad choice to represent "all Alaskans." We deserve better and I hope that your committees see that Mr. Ross is a divisive choice. Thank you for the work that you all do on our behalf.

Rediscover Hotmail®: Get e-mail storage that grows with you. Check it out.

5250

Jane Pierson

From: Rod McCoy [rodmccoy123@gmail.com]
Sent: Friday, April 10, 2009 2:29 PM
To: Rep. Jay Ramras
Subject: Please vote no on Ross

I am writing to ask you to please vote NO to Wayne Anthony Ross' confirmation as State Attorney General.

I opposed his nomination for many reasons:

1) He is a divisive character, to say the least. That is the LAST thing Alaska needs, further division.

2) He is a zealous conservative judicial activist and I do NOT believe he is capable of even-handed, ethical behavior that we need in the state's top attorney. I do not believe he has the heart of a public servant--and apparently the Alaska Judicial Council concurs since they have not once sent his name forward as a potential bench appointee.

3) I am strongly opposed to Mr. Ross' opposition to native subsistence rights. While I am wholeheartedly of the belief in equality. I believe that we have a MORAL obligation to ensure the ability of native Alaskans to pursue their subsistence hunting and fishing traditions. (We brought them alcoholism, drug abuse, sexually transmitted diseases and capitalism in exchange for fur, gold and oil--I feel it is the least we can do to give them first access to game/fish in the event of a shortage of said resources).

4) I am absolutely disgusted and mortified by his reported comments concerning women and domestic violence ("If a guy can't rape his wife...who's he gonna rape?" and "There wouldn't be an issue with domestic violence if women would learn to keep their mouths shut.") There is NO excuse for such foul, inappropriate, misogynistic comments. NO man--NO husband should need to "discipline" his wife. Women not children and not chattle!

5) I am outraged by his attacks on freedom of speech (defending the guy who poured water on the war protesters). As offensive and emotionally hurtful as his client may have perceived the protesters actions, they still have the right to free speech and peaceful assembly. One of my favorite quotes I discovered in my studies at UAF regarding freedom of speech:

"It is of no moment, in the First Amendment jurisprudence, that some ideas advocated by an association may to some, or to most of us be abhorrent, even sickening. The stifling of advocacy is even more abhorrent, even more sickening. It rings the death knell of a free society. Once used to stifle the thought that we hate.... it can stifle the ideas we love. It signals a lack of faith in people, in its supposition that they are unable to choose in a marketplace of ideas." - David Stivison

Please, PLEASE do NOT confirm Wayne Anthony Ross as Attorney General. He is NOT the right person for the job and I believe this appointment reflects poorly on Governor Palin.

Jane Pierson

From: Barbara McDaniel [barbara1@mtaonline.net]

Sent: Friday, April 10, 2009 5:59 PM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes; Rep. Carl Gatto

Subject: Confirmation of Wayne Anthony Ross

Mr. Ross' record demonstrates he holds a self-serving belief that men and women do not have equal rights. In addition, his testimony today demonstrates that Mr. Ross would not be the alert, energetic, and up-to-date Attorney General that Alaskans deserve.

Barbara McDaniel
1040 N Craig Stadler Loop
Wasilla, AK 99654
907.373.6977

Dana Strommen

From: housemajority_email@housemajority.org
Sent: Monday, April 13, 2009 9:44 AM
To: Rep. Jay Ramras
Subject: Email to Rep. Ramras

+--+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to redsquirrelangst@yahoo.com If suspected Spam please forward to: support@housemajority.org
+--+

From: redsquirrelangst@yahoo.com

We live in Virginia but keep our home and voting rights in Alaska--Fairbanks!

Please do not vote for WAR. People are laughing at us--Palin is truly a boastful ignoramous (per C. Hitchins). Please give Alaskans some dignity and nut up to this behavior. And, why dont you run for governor yourself? (Watch-out for the governor's anti-Semitism.)

We miss Pikes!

~ A McIntyre
Zip Code: 22151

+--+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to redsquirrelangst@yahoo.com If suspected Spam please forward to: support@housemajority.org
+--+

Jane Pierson

From: jwmelliott@att.blackberry.net
Sent: Saturday, April 11, 2009 1:05 PM
To: Rep. Jay Ramras
Subject: Attorney General Nominee

I know, as member of the House Judiciary Committee, you often have to determine the veracity of a witness, examining, among other things, the motive behind the person's testimony. In your evaluation of Ms. Leah Burton's written statement to legislators and her subsequent telephone testimony to the House Judiciary Committee regarding the shocking statements she says she personally heard Mr. Ross make about spousal rape and domestic violence and, not surprisingly, his denial of same, I trust you and your legislative colleagues will ask yourselves whom to believe, the daughter of Alaska's former Commissioner of Public Safety, Richard L. Burton, or Mr. Ross? I would submit that it is Mr. Ross, as the nominee for Attorney General, not Ms. Burton, who has the greater motive for being less than truthful.

Additionally, I was appalled to learn today from listening to the archived audio testimony of Mr. Ross to the House Judiciary that I and many other Alaskans who do not support the Alaska Department of Fish & Game's disreputable and scientifically dubious predator control program are, in Mr. Ross's words, "enemies" of Alaska. This is my forty-fifth year living in Alaska, a state I love wholeheartedly. It is my home.

Like Governor Palin, Mr. Ross forgets conveniently that not all Alaskans share his views and hers regarding predator control. Yet, in his view and apparently the Governor's, that makes me and many thousands of Alaskans "enemies" of our beloved state. How patently absurd is that? And this man thinks he is fit to be Attorney General? In my view he clearly is not.
Sent via BlackBerry by AT&T

Dana Strommen

From: Beth Mobley [bambamobley@hotmail.com]
Sent: Wednesday, April 15, 2009 4:28 PM
To: Rep. Jay Ramras
Subject: ross appointment

No doubt your mind is most likely made up--however i feel it is necessary to send this just the same.As a Christian white woman with 4 children and someone who has lived here almost 20 years, i am appealing to your sense of ethics and good conscience.
I am asking that you DO NOT appoint Mr.Ross as OUR attorney general.
This man has a questionable appreciation of civil rights and worse yet does not tell the truth.This is a person who will serve simply to assist the governor in furthering her own personal agenda.
My husband is a WHITE hunter, so are my sons, and Mr Ross DOES NOT represent them.
Mr Ross is a bombastic , chauvanistic theocrat who disgustingly uses religion to justify his actions.He is as corrupt as his appointer.Someone so concerned with "protecting" families maybe should think twice before he and his buddies spend 4 hours detonating explosives and shooting off machine guns in a residential neighborhood where children live.

The state of Alaska is number one in Sexual abuse- we need better and i sincerely hope that all of you STRONGLY reconsider this man's appointment.He truly is disgraceful and we CAN do better.

Thank you -Beth Mobley

Rediscover Hotmail®: Now available on your iPhone or BlackBerry Check it out.

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on Confirmation: Attorney General, dated 4-10-09
bill # / subject public hearing date

Please do not support the appointment of W. A Ross for attorney general. He has not proven his support of human right for all people

Signed: Betty L Obendorf
Testifier

Representing (optional)

PO Box 2335 Soldotna, Ak 99669
Address

907 - 262 - 9898
Phone number

Jane Pierson

From: Wallace Olson [wmolson@ptialaska.net]
Sent: Friday, April 10, 2009 2:08 PM
To: Rep. Beth Kerttula; Rep. Mike Doogan; Rep. Anna Fairclough; Rep. Cathy Munoz; Rep. Jay Ramras
Subject: One vote

After forty seven years in Alaska, seeing some of the finest and best political appointees, as well as some complete losers. In watching the Gavel to Gavel House questioning of Wayne Ross as nominee for Attorney General, please write down one vote from one individual as a "No Vote."

This man should never be the Attorney General of Alaska. Please ask the Governor to submit the name of a truly qualified person. Alaskans would appreciate your efforts to do so.
Wallace M. Olson, Auke Bay, Alaska

Jane Pierson

From: jana@iialaska.com on behalf of Jana Peirce [janapeirce@gmail.com]

Sent: Friday, April 10, 2009 12:14 PM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes

Subject: Vote No on Wayne Anthony Ross...please

Palin's pick is unacceptable. An AG needs to uphold the law and protect the rights of all Alaskans. Ross' remarks reveal him to be prejudiced to women, Natives, and those less fortunate than he is. He shows disdain for whole swaths of the electorate. Please uphold your own oath of office by voting no. His confirmation is not in the best interest of Alaskans or Alaska. Is it too much to ask for someone who is professional, competent, reasonably unbiased and uncontroversial?

Jana Peirce
1820 Lilac Ave.
Fairbanks, Alaska 99712

Jane Pierson

From: christel@gci.net on behalf of Christel [christel@gci.net]
Sent: Saturday, April 11, 2009 10:07 AM
To: Rep. Jay Ramras
Subject: WAR Confirmation

Representative Ramras and other members of the Judiciary Committee:

I am very much opposed to the confirmation of Wayne A. Ross as AG after hearing some of his testimony and some of his comments. I urge you to cast a "NO" vote and have the Governor nominate someone qualified; someone less bias, less hateful, less egregious, someone who will work for the people of this state not only the Governor.

Thank you,

Christel Petty

Jane Pierson

From: Miles Pruner [akpruner@mtaonline.net]
Sent: Friday, April 10, 2009 7:58 AM
To: Rep. Jay Ramras
Subject: Say NO to WAR

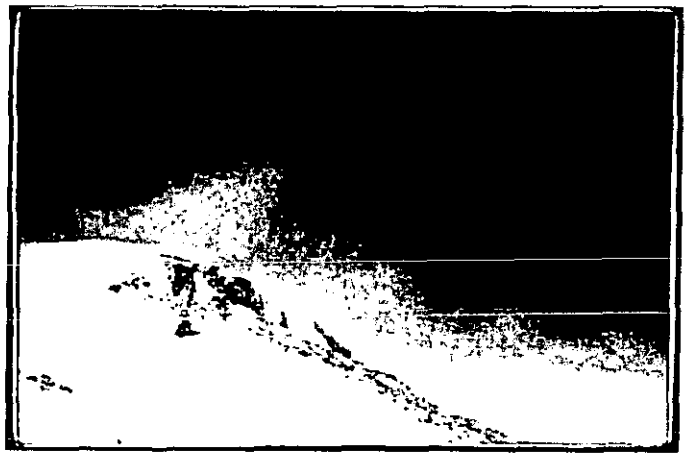
Give ~~peace~~ Alaska a chance!

Dear Mr. Ramras

My name is Dana Pruner and I am a resident of Eagle River, Alaska. I am *appalled* and deeply *offended* by Governor Sarah Palin's choice of Wayne Anthony" "If a guy can't rape his wife... who's he gonna rape?" Ross for our new Attorney General. My first memory of the man called "WAR" was his defense of Soldotna cold water abuser, Jeff Webster. With each passing day more and more information is released exposing the true nature of this man. I shudder to think of the physical and spiritual destruction this man could cause to our State of Alaska. I'm not as concerned with a person's qualifications as I am their proven CHARACTER. From reading or listening to the confirmation hearings, one can easily ascertain how crude, cold, and divisive Ross is.
I sincerely hope that you will protect our great state, it's resources and it's people, help put and end to the partisan shenanigans of our governor, and *NOT accept Wayne Anthony Ross as the new Attorney General.*

Thank you for your attention in this matter.
Godspeed,

~Dana Pruner



Jane Pierson

From: annelj0206@gci.net
Sent: Friday, April 10, 2009 9:05 AM
To: Jane Pierson
Subject: Question for Attorney Ross

Ms. Pierson:

I am requesting that one of the house judiciary committee members ask this question of Mr. Ross today:

"You have referred to gays and lesbians as 'degenerates'. Do you think you can treat fairly state employees, including Assistant Attorney Generals, who are homosexual?"

Thank you,
Anne Quistgaard

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on Confirmation: Attorney General, dated 4-10-09
bill # / subject public hearing date

Re: The Appointment of Mr. Ross to the position of Attorney General.

I don't believe Mr. Ross has the temperament to carry out the important decisions associated with the position. He is impulsive and offensive when expressing his opinions in connection with substance, women's rights, and the rights of protestors. His public commentaries while expressing his own personal beliefs lead me to believe that he is not capable of being impartial and supportive of human rights for all people. I do not support his appointment.

Signed: Donna Rea
Testifier

Representing (optional)

Address

2626037
Phone number

5262

Jane Pierson

From: Ashley Reed [ashley_reed@hotmail.com]
Sent: Tuesday, April 14, 2009 11:24 PM
To: Jane Pierson
Subject: Oppose Ross's confirmation

To the House and Senate Judiciary Committees:
I am writing this to say that I oppose the confirmation of Wayne Anthony Ross. I expect our attorney general to be someone who has a logical approach to the law, and who keeps in mind the best interests of the state and its citizens. Mr. Ross's past actions have shown him to be someone who will bend the law to his advantage to advance his own personal opinions, which are extreme compared to the majority of Alaskans. He appears to have a very low regard for a significant portion of the state's citizens, based on his comments about Natives and homosexuals, among others. He also seems to have little respect for peoples' protection under the law from the "freedom of expression" of other citizens, even when those expressions come in the form of harassment or physical aggression. He does not appear to have much respect for the federal government, which would make it difficult for him to deal with many
of the state's legal opportunities and challenges. His seems to have experience with sensationalist cases that support his narrow sociopolitical agenda, but does not seem to have experience with big picture cases important to the functioning of our government and economy. I hope that you will not confirm Mr. Ross, but instead support someone who is more qualified as an objective interpreter of the law.
Thank you,
Ashley Reed Kalli

Rediscover Hotmail®: Get quick friend updates right in your inbox. Check it out.

Windows Live™: Keep your life in sync. Check it out.

Jane Pierson

From: Sheila Reynolds [ukreynolds@yahoo.com]
Sent: Thursday, April 09, 2009 2:52 PM
To: Jane Pierson
Subject: Re: The Confirmation Hearings for Wayne Anthony Ross

Ms. Pierson,

It would be much appreciated if you could forward this to those of the House Judiciary Committee so that my concerns can be related and entered as public record. I will phone you to ensure that this email has been received by your office.

Thank you,
Sheila Reynolds
Eagle River, AK
(907) 622-8222

To the Senate & House Judiciary Committees of the State of Alaska,

I am writing this letter to voice my concerns about the appointment by Governor Palin of Wayne Anthony Ross as Attorney General of Alaska. I sincerely hope that this appointment will not be confirmed.

I am certain that you have already heard many constituents voice their quite justified concerns about the position that Mr. Ross has taken in regard to the subsistence rights of Alaska Natives.

I am certain that you have already heard many constituents voice their quite justified concerns about the position that Mr. Ross has taken in regard to homosexuals.

I am certain that you have already heard many constituents voice their quite justified concerns about the position that Mr. Ross has taken in regard to the issue of domestic violence.

I am a born and raised Alaskan who does not believe that the subsistence rights of Alaska Natives in any way infringe on my rights as an Alaskan or citizen of the United States of America. I do not believe that one person's choice of life partner infringes on my personal freedoms or ability to lead an honest, productive and happy life, nor does it infringe on that of my children.

However, words cannot express the concern that I have in regard to Mr. Ross' stated position in regard to domestic violence. Alaska leads the nation in domestic violence and rape statistics. How, in good conscience, can our leadership possibly justify having an Attorney General that holds the beliefs of Mr. Ross? How can our state expect to address and ameliorate these problems with Mr. Ross as our Attorney General?

Domestic violence is a generational problem; I speak as the granddaughter of a woman beaten and eventually killed by her husband. My mother, my aunts and uncles, my cousins and I have grown up without the love of my grandmother. Children are shaped by exposure to domestic violence. Families are changed forever. What is the cost to individuals and society when the cycle of domestic violence is not addressed and treated?

Should Mr. Ross be confirmed as Attorney General, Alaskans will get an Attorney General more concerned with undermining the rural subsistence rights of Alaskan Natives than with addressing the prejudices and challenges that they face daily. Should Mr. Ross be confirmed, Alaskans will get an Attorney General committed to abolishing the rights of gay, lesbian and transgendered Alaskans, rather than supporting the rights of each and every Alaskan regardless of their sexual orientation or religious beliefs. Finally, if Mr. Ross is confirmed as Attorney General, Alaskans will continue to reap the sorrows perpetrated and perpetuated by domestic violence and rape as he fights for gun rights instead of human rights.

Please do not confirm Mr. Ross as Attorney General of Alaska.

Sincerely,

Sheila Reynolds

Dana Strommen

From: Sheila Reynolds [ukreynolds@yahoo.com]

Sent: Monday, April 13, 2009 2:51 PM

To: Sen. Con Bunde; Sen. Bettye Davis; Sen. Fred Dyson; Sen. Johnny Ellis; Sen. Kim Elton; Sen. Hollis French; Sen. Lyman Hoffman; Sen. Charlie Huggins; Sen. Albert Kookesh; Sen. Lesil McGuire; Sen. Donny Olson; Sen. Bert Stedman; Sen. Gary Stevens; Sen. Gene Therriault; Sen. Joe Thomas; Sen. Tom Wagoner; Sen. Bill Wielechowski; Rep. Mike Chenault; Rep. Sharon Cissna; Rep. John Coghill; Rep. Harry Crawford; Rep. Nancy Dahlstrom; Rep. Mike Doogan; Rep. Bryce Edgmon; Rep. Anna Fairclough; Rep. Richard Foster; Rep. Les Gara; Rep. Berta Gardner; Rep. Carl Gatto; Rep. Max Gruenberg; Rep David Guttenberg; Rep. John Harris; Rep. Mike Hawker; Rep. Lindsey Holmes; Rep. Kyle Johansen; Rep. Craig Johnson; Rep. Reggie Joule; Rep. Scott Kawasaki; Rep Wes Keller; Rep. Mike Kelly; Rep. Beth Kerttula; Rep. Bob Lynn; Sen. Kevin Meyer; Rep. Mark Neuman; Rep. Kurt Olson; Rep. Jay Ramras; Rep. Woodie Salmon; Rep. Bill Stoltze; Rep. Bill Thomas; Rep. Peggy Wilson

Subject: Please Do Not Confirm Mr. Ross as Attorney General -- From an Eagle River resident

Dear Senators and Representatives of the State of Alaska,

I write, again, to ask that you not confirm Wayne Anthony Ross as the Attorney General of the State of Alaska.

His well-known and publicized marginalization of the concerns and lifestyles of Alaska Natives must be of critical concern to all Alaskans.

I am a born and raised Alaskan, and have been a registered Republican for most of my adult life. I am not an Alaskan Native. However, I care about all Alaskans, particularly those who are most at-risk due to the actions, or lack thereof, of our government, State, and Federal. The government of the State of Alaska must be part of the solution, not the problem. As such, it is imperative that we establish a course of action that ensures that the needs of all Alaskans are best served, a course of action that will lay a foundation for the best possible outcome for all Alaskans. There is absolutely no doubt in my mind that Mr. Ross' narrow views and stated priorities will not serve the best interests of Alaska or Alaskans, but rather himself, the Governor who has chosen him, and their narrow-minded supporters.

I have already written to express my concerns about his views on domestic violence. I have met Mr. Ross, I have worked with Mr. Ross, and I can tell you that given my experiences with Mr. Ross, I find it quite credible that he would have made statements undermining women. Regardless of the comments that have made the rounds regarding his comments, some of which could be dismissed as heresay (though I am not saying that they should be dismissed as heresay), my own experience leads me to believe that interpersonal communication skills are not his forte, and that is putting it mildly. Is it in the best interest of Alaska and Alaskans to have a bombastic, dismissive, divisive Attorney General? I have worked with many attorneys in Alaska, and I have met very few who I would consider more potentially damaging to the short- and long-term interests of Alaska.

I am hopeful that the legislators of the State of Alaska will not only deny the confirmation of Mr. Ross as Attorney General of the State of Alaska, but will also ensure that the Governor understands that nominating an attorney for that position that meets her own personal & ideological criteria while undermining those of the best interests of the State is unacceptable.

Regards,
Sheila Reynolds
16132 Stineburg Drive
Eagle River, Alaska
(907)622-8222

Jane Pierson

From: Mark Richards [kandik@starband.net]
Sent: Friday, April 10, 2009 6:55 PM
To: Rep. Jay Ramras
Subject: Ross confirmation hearings

Hi Jay,

I know you're busy, just a short note on the Ross confirmation hearings.
I am co-chair of a hunting and fishing organization that disagrees with some of Governor Palin's and Ross' opinions on wildlife management, but I'm writing now just speaking for myself.

I just wanted to get across, respectfully (I really respect he way you come across as a Representative, and we agree on much), that I think you really did a disservice to all Alaskans by saying today *prior *to public testimony that you looked forward to nominating Ross for AG. I have seen where the public process of input and testimony on various issues has been watered down. People don't feel their voice is really heard. And often it is because of statements like you made earlier today alluding that the public wouldn't have any influence inre your vote on confirmation.

I should say that I really respect Ross for speaking his mind. For being the type of man who doesn't ride the fence, even if I disagree with him on some issues. And even though I personally oppose him as AG. For me it is never personal.

This note isn't about whether or not I support or oppose Ross as AG; rather it is directed to you as a man I very much respect, as a legislator, to say that when you state you will vote for something before hearing the input of those you represent...you have taken our voice away, and I really have a hard time with that.

Hope to get with you sometime in Fbks. I'm up north, remote, in the bush, writing via satellite internet. I do appreciate your service to Alaska, really have a lot of respect for you. I hope you would in turn respect those you represent.
Sincerely,
Mark Richards

Dana Strommen

From: ccr349@aol.com

Sent: Sunday, April 12, 2009 4:39 PM

To: Sen. Johnny Ellis; Sen. Gene Therriault; Sen. Con Bunde; Sen. Bettye Davis; Sen. Fred Dyson; Sen. Hollis French; Sen. Lyman Hoffman; Sen. Charlie Huggins; Sen. Albert Kookesh; Sen. Lesil McGuire; Sen. Donny Olson; Sen. Bert Stedman; Sen. Gary Stevens; Sen. Joe Thomas; Sen. Tom Wagoner; Sen. Bill Wielechowski; Rep. Bob Buch; Rep. Mike Chenault; Rep. Sharon Cissna; Rep. John Coghill; Rep. Harry Crawford; Rep. Nancy Dahlstrom; Rep. Mike Doogan; Rep. Bryce Edgmon; Rep. Anna Fairclough; Rep. Richard Foster; Rep. Les Gara; Rep. Berta Gardner; Rep. Carl Gatto; Rep. Max Gruenberg; Rep. David Guttenberg; Rep. John Harris; Rep. Mike Hawker; Rep. Lindsey Holmes; Rep. Kyle Johansen; Rep. Craig Johnson; Rep. Reggie Joule; Rep. Scott Kawasaki; Rep. Wes Keller; Rep. Mike Kelly; Rep. Beth Kerttula; Rep. Bob Lynn; Sen. Kevin Meyer; Rep. Mark Neuman; Rep. Kurt Olson; Rep. Jay Ramras; Rep. Woodie Salmon; Rep. Bill Stoltze; Rep. Bill Thomas; Rep. Peggy Wilson; Rep. Chris Tuck; Rep. Pete Petersen; Rep. Alan Austerman; Sen. Joe Paskvan

Subject: Attorney General Confirmation

Dear Alaska Legislators,

I am writing to you as an Alaskan resident since 1956, as a woman, and as a Native American. I am a registered voter in Seward, and have voted faithfully in all local, state and national elections.

I urge all of you, in the strongest terms possible, to vote "NO" in the matter of the confirmation of Wayne Anthony Ross for Attorney General for the State of Alaska. I make this request in light of his testimony before the House Judiciary Committee, as well has his published statements and opinions. It is my opinion that Mr. Ross has clearly demonstrated his preference for flamboyancy over substantive, thoughtful, legal procedings. I am deeply concerned that his prediliction for divisiveness could have a negative impact on the well-being of the majority of Alaska citizens for years to come.

Please consider this carefully and vote "No".

Thank you,
Catherine Richardson
Seward, AK

The Average US Credit Score is 692. See Yours in Just 2 Easy Steps!

Jane Pierson

From: Gayle Roth [rothgrk@alaska.net]
Sent: Thursday, April 09, 2009 4:42 PM
To: Rep. Jay Ramras
Subject: W.A. Ross

Please vote NO! for Ross
Thank you,
Gayle Roth

Jane Pierson

From: housemajority_email@housemajority.org
Sent: Saturday, April 11, 2009 8:51 AM
To: Rep. Jay Ramras
Subject: Email to Rep. Ramras

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to naomi@17th.com If suspected Spam please forward to: support@housemajority.org
+----------+

From: naomi@17th.com

Dear Representative,

This proposed AG candidate Mr. Ross will prove a terrible embarrassment to your state and your party. I urge you to reject the appointment and request that the governor pick someone fair and competent. If you alienate the women and the native people of the state, you may find the party majority endangered. This person does not appear qualified nor wise. Why accentuate the impression of Alaska as a political joke?

Regards,

Naomi Schiff

~ Naomi Schiff
Zip Code: 94611

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to naomi@17th.com If suspected Spam please forward to: support@housemajority.org
+----------+

Jane Pierson

From: Jamie [nuggets@alaska.net]
Sent: Friday, April 10, 2009 9:33 AM
To: Rep. Jay Ramras
Subject: re: Ross nomination hearing

Dear Representative Ramras and members of the Alaska House Judiciary Committee;

I am a twenty-five year resident of Fairbanks, and a registered voter in the state of Alaska. I am writing to you regarding the nomination of one Wayne Ross to the position of Attorney General.

Given this candidate's own personality, history and documented positions on a wide range of issues, and considering the transparent agenda Governor Palin seeks to advance for her own interests, it would be irresponsible, ignorant and insulting to the residents of Alaska to allow this divisive and polarizing nominee to be confirmed.

On the other hand, given the political history of our elected officials, "Corrupt Bastards" behind closed doors etc. I, along virtually everyone else in my community, don't have much faith in the legislative process.

Please prove us wrong.

Sincerely,

Jamie Smith
PO Box 453, Ester, AK 99725
(907) 457-4330
nuggets@alaska.net

Jane Pierson

From: Michael Sobocinski [msobocin@yahoo.com]
Sent: Friday, April 10, 2009 7:52 AM
To: Jane Pierson
Subject: Attorney General Nomination

April 10, 2009

House Judiciary Committee
Jane Pierson, Committee Aide
jane_pierson AT legis.state.ak.us
907-465-4990

To Representatives Ramras, Dahlstrom, Coghill, Gatto, Lynn, Gruenberg, and Holmes:

I am writing to express my deep concern over the appointment of Wayne Anthony Ross to the position of Attorney General.

Mr. Ross's behaviors over time seem to demonstrate a lack of professionalism coupled with at least an insensitivity to the needs of many people in our state whose values and views differ from his own. Unfortunately his actions may well represent intolerance and lack of respect for others. In many instances these are people who are relatively disempowered (e.g., victims of domestic violence) in the political system, and who require an advocate in the person of the Attorney General. Mr. Ross has given us serious reason to doubt his ability to represent the best interests of all Alaskans.

In addition, his antagonistic stance regarding the relationship between the United States Government and the State of Alaska indicates either an unwillingness or an inability to enter into productive, solution-focused dialogue on complex issues that impact the well-being of Alaskans.

I urge you to reject Mr. Ross's appointment to the position of Attorney General.

Thank you for your consideration of these concerns.

Michael Sobocinski
20021 New England Drive
Eagle River, AK 99577
907-622-5759

Jane Pierson

From: Tim Stallard [tim@outinalaska.com]
Sent: Friday, April 10, 2009 11:21 AM
To: Rep. Jay Ramras
Subject: Please oppose WAR for our AG

Dear Representative Ramras,

I am emailing today to ask you to oppose Governor Palin's Attorney General nominee Wayne Anthony Ross. While in general, I believe the Governor should get her pick for appointed positions, I am concerned that W.A.R. is far too radical and ideological to effectively or fairly work for the people of Alaska.

As a gay Alaskan and respected member of the Fairbanks community, I am deeply offended that W.A.R. referred to gay Alaskans in a letter to the Alaska Bar Association as 'degenerates' and 'immoral.' I was born the way that God and nature made me – being gay is not a 'perversion' as W.A.R. stated in his letter. As a (fairly young) 34 year old Alaskan, Ross sounds like such a "wacko extremist" that it makes me laugh, but clearly such hateful speech is dangerous and even promotes discrimination and violence. To me and other reasonable Alaskans it would be a travesty to see such an extremist appointed to this important position. We need an Attorney General who will represent all Alaskans and our interests, not his own well documented extreme agenda.

Clearly Alaska Natives do not feel that WAR could fairly represent their interests and such a divisive figure would be very unhealthy to Native/non-Native relations in our state. Lets not go there.

W.A.R. has come up for two recent judicial advancements, but was not recommended by the Alaska Bar Association, who gave him only mediocre ratings.

Alaska deserves better! I urge you to oppose Wayne Anthony Ross for our Attorney General.

Thank you,

Tim Stallard
P.O. Box 82096
Fairbanks, AK 99708

Dana Strommen

From: Ron [wildwingr@gmail.com]
Sent: Sunday, April 12, 2009 1:05 PM
To: Rep. Charisse Millett; Rep. Jay Ramras; Rep. Chris Tuck; Rep. John Coghill; Rep. Anna Fairclough
Subject: 6 Please Vote No on Ross as AG

Dear Representatives:
My name is Ronald T. Stanek, and I strongly oppose the nomination of Wayne Anthony Ross as Alaska Attorney General!! Please Do Not Confirm His Appointment.
He does not represent me or my interests.
I have lived in Anchorage for over 30 years. I moved to Alaska for jobs related to my university degrees in wildlife and parks management.
I worked in those fields in the State and Federal governments for 29 years.
I am an avid outdoorsman, actively participating in hunting, sport and commercial fishing, shotgunning, hiking, birding, boating, and many other outdoor activities.
I am also knowledgeable in the human cultural characteristics of Alaska having been an applied anthropologist for almost all of my working career in Alaska, and additional time in Africa.

Mr. Ross' past actions and current views toward natural resource management have resulted in very damaging natural resource management practices and relationships among several public interest groups and Government agencies.
His (and his associates') actions in removing the Rural Subsistence Preference only in times of resource shortages have confounded both Federal and State management of sport and subsistence hunting and fishing activities .
Repealing the Rural Preference took away much of the State's right to manage its resources.
Doing so robbed the State of Alaska of Tens of Millions of dollars in Federal funding for wildlife management.
It created a cumbersome, and often confusing dual management system.
It drove a wedge between rural and urban residents akin to the discriminatory, racist practices that persisted in Alaska during the early part of the 1900s.
Other of Mr. Ross' and his associates' actions influenced the State Legislature to deprive the residents of Alaska the opportunity to their constitutional right to a free and fair VOTE on an issue- (amending the state constitution).
If you attribute these problems to provisions in ANILCA, that is wrong, the people passed the Subsistence Law and this reflects Alaskans' recognition of the importance of natural resources as FOOD and CULTURAL IDENTITY to rural and urban residents.
Mr. Ross and his associates (Mr.Rod Arno and others) claim to represent Alaska Sports Hunters and Fishermen. NOTHING COULD BE FARTHER FROM THE TRUTH. They certainly do not represent me and my hunting and fishing partners and my family. In this regard, by appointing Mr. Ross to the AGs office, you will be laying a red carpet for rabid anti-subsistence sorts to influence that office. As you know, or at least you should know or learn, the aforementioned people, and a few others like-minded sorts, have caused untold damage to resource management in Alaska through their positions and influence of committees and the Boards of Game and Fish and the legislature.
Lastly, Mr. Ross can not, as a result of his prejudices, be a fair and unbiased representative the interests of the people of Alaska. He does not currently, nor will he be, representative of even a significant fraction of Alaska residents, but rather of a small, very narrow-minded minority. A number of pending lawsuits challenge decisions made by the Boards of Game and Fish. I fear that

Mr. Ross will not adequately defend the Boards' decisions in these matters. Furthermore, it is likely that Mr. Ross will use the AGs office to advance an effort to remove subsistence provisions in ANILCA, this is wrong and not respectful of the needs of rural and urban residents.
Please vote against Mr. Ross's confirmation as AG. Strive to put forth someone who will fairly and equitably represent and defend the people and laws of Alaska.
Thank You!

Jane Pierson

From: Eva Stassen [evastassen@hotmail.com]
Sent: Thursday, April 09, 2009 5:39 PM
To: Jane Pierson
Subject: Attorney General Nomination

House Judiciary Committee
Ms. Pierson,

I am appalled by the nomination of Wayne Anthony Ross to be our next Attorney General. Public statements he has made in the past (and during his confirmation hearings) make it plain that he will not follow our laws any more than the previous Attorney General did. Apparently, he and Governor Palin are not clear about what the job of Attorney General actually entails. The appointment of Mr. Ross is an affront to all Alaskans, especially natives and women. I strongly urge the judiciary committee to vote "No" on this nominee.

Eva Stassen
11521 Discovery View Dr., Anchorage, AK 99515
907-830-6590

Jane Pierson

From: LIO Cordova
Sent: Friday, April 10, 2009 11:26 AM
To: Rep. Jay Ramras
Subject: FW: House Judiciary Committee

Michelle Hahn O'Leary
Cordova Legislative Information Officer
907-424-5461 Fax 907-424-5462
Cordova_LIO@legis.state.ak.us

From: Mark Steen [mailto:alaskan@alaska.com]
Sent: Friday, April 10, 2009 10:26 AM
To: LIO Cordova
Subject: House Judiciary Committee

RE: Wayne Anthony Ross

Written testimony to be entered into the record:

I oppose the appointment of Wayne Anthony Ross as Attorney General of Alaska. His extreme social positions and biases are well-known and documented. His appointment as AG would be divisive and troubling at a time when Alaskans need to be united for the common good. Surely there are better qualified candidates for this important position.

Mark Steen
Box 1310
Cordova, Alaska
99574

alaskan@alaska.com
907-424-5445

Jane Pierson

From: Constance Steeples [c.steeples@comcast.net]
Sent: Thursday, April 09, 2009 8:51 PM
To: Rep. Jay Ramras
Subject: Ross appointment

Representative Ramras:

Although I am not a resident of Alaska, I have followed your state's politics closely, due to Governor Palin's candidacy for Vice President. I am alarmed and deeply concerned about Ross' proposed appointment as Alaska's Attorney General.

For what I have read in many sources, as well as his own comments, I feel Ross is not only divisive, but discriminatory. He has made derogatory comments not only about gays/lesbians, but also about Native Alaskans and subsistence rights. Even more alarming are his views about men's rights in marriage; they seem to condone marital abuse. This is a person who would not uphold the laws that guarantee equal rights to all Alaskans; although Ross has said he would act differently if approved as Attorney General, I seriously doubt he would change such deeply held views.

I know there are other honorable, experienced Alaskan lawyers who would be fine candidates for Attorney General; I hope you and the other legislatures will insist on selecting one of them.

Thank you for listening to my opinion.

Sincerely,

Constance Steeples
Littleton, Colorado

Jane Pierson

From: Sarah Stern [allenestern@yahoo.com]
Sent: Thursday, April 09, 2009 2:18 PM
To: Jane Pierson; Cindy Smith
Cc: Rep. Les Gara
Subject: say NO to W.A.R. (updated)

I read the testimony of Leah Burton since sending an email to my legislator and now have new reasons that I oppose Ross as AG. As a woman, Ross cannot represent me, because he condones rape and violence towards women. Also appointing a sexist and potentially misogynistic man to a position in Alaska's state government does nothing for women's progress in Alaska.

There is a culture of sexism and racism on our north slope oil fields that is not only fostered but *encouraged.* I don't know how many times I heard the joke "what do you tell a woman w/ 2 black eyes?" "nothing, you already told her twice." There are still contractors that hire out of The Bush Company. If you're an educated woman who's skilled in a trade? Forget it, if you survive the months or years of hazing they'll eventually find a way to lay you off. This culture will never change if men like Ross are appointed to positions of power in Alaska.

Please represent the hard working women of Alaska and reject this appointment.

--- On **Thu, 4/9/09, Sarah Stern** ***<allenestern@yahoo.com>*** wrote:

> From: Sarah Stern <allenestern@yahoo.com>
> Subject: say NO to W.A.R.
> To: Representative_Les_Gara@legis.state.ak.us
> Date: Thursday, April 9, 2009, 12:42 PM
>
> Sir,
>
> I know I don't have to tell you, but I am writing to voice my opposition to the appointment of Ross to AG.
>
> Of particular concern to me is his very intense form of the bourgeois mentality so many 'real' Alaskans have for 'outsiders'. I get it, Alaska is beautiful, you don't want to share it. Alaskans have a deep emotional sense of propriety towards their land. I'm a land surveyor by trade, I understand property rights and boundary law and how emotional those issues are. But that nonsense has no place in the grown up business of running government.
>
> It's not that I feel bad about being and 'outsider'. Because I am a will always be a Minnesota girl. It's just that, in Minnesota, we protect our wolves. And we have a healthy and bountiful deer hunting season. I'm not an expert so I don't know exactly how officials in MN manage our wildlife, I just know that it can be done w/ out killing wolves. Outside of the horrifying way it's carried out (aerial hunting and denning) I am opposed to it. W.A.R. makes it clear he views caribou and moose as 'resources' to be 'developed'. I disagree w/ that philosophy whole

heartedly.

Finally, I'd like to see a gas pipeline built in my lifetime, as a surveyor I stand to make some bank from that work, I might even be able to afford to build a home and have kids because of it. I'm not getting any younger. WHY are we wasting SO much precious time on Sarah Palin and her appointment dramas? If there was a way that she could become irrelevant Alaska would be so much better off. Also, the construction of the Colville River Road to Nuiqsut (and potentially to Barrow) and the Bullen Point Road to Pt. Thompson, good projects - look into it please. Palin killed both. Let's get those going and stop the obsession w/ ANWR - a road to Barrow and better access to NPRA = **responsible resource development**. Palin and Ross don't have a clue what they're talking about.

Sincerely,

Sarah Stern
Condo Owner
525 W. 3rd Ave. Unit 111
Anchorage Alaska 99501

Jane Pierson

From: Ann Strongheart [nunamiquayouth@yahoo.com]

Sent: Thursday, April 09, 2009 6:37 PM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes; Sen. Hollis French; Sen. Bill Wielechowski; Sen. Lesil McGuire; Sen. Gene Therriault

Subject: OBJECTION TO: Appointment of New Attorney General

To the Senate & House Judiciary Committees of the State of Alaska,

I am writing this letter to voice my concerns about the appointment by Governor Palin of Wayne Anthony Ross as Attorney General of Alaska. I sincerely hope that this appointment will not be confirmed.

I am certain that you have already heard many constituents voice their quite justified concerns about the position that Mr. Ross has taken in regard to the subsistence rights of Alaska Natives.

I am certain that you have already heard many constituents voice their quite justified concerns about the position that Mr. Ross has taken in regard to homosexuals.

I am certain that you have already heard many constituents voice their quite justified concerns about the position that Mr. Ross has taken in regard to the issue of domestic violence.

I am a native alaskan who does not believe that the subsistence rights of Alaska Natives in any way infringe on any rights of Alaskan or citizen of the United States of America. I do not believe that one person's choice of life partner infringes on my personal freedoms or ability to lead an honest, productive and happy life, nor does it infringe on that of my children.

However, words cannot express the concern that I have in regard to Mr. Ross' stated position in regard to domestic violence. Alaska leads the nation in domestic violence and rape statistics. How, in good conscience, can our leadership possibly justify having an Attorney General that holds the beliefs of Mr. Ross? How can our state expect to address and ameliorate these problems with Mr. Ross as our Attorney General?

Domestic violence is a generational problem; What is the cost to individuals and society when the cycle of domestic violence is not addressed and treated?

Should Mr. Ross be confirmed as Attorney General, Alaskans will get an Attorney General more concerned with undermining the rural subsistence rights of Alaskan Natives than with addressing the prejudices and challenges that they face daily.

Should Mr. Ross be confirmed, Alaskans will get an Attorney General committed to abolishing the rights of gay, lesbian and transgendered Alaskans, rather than supporting the rights of each and every Alaskan regardless of their sexual orientation or religious beliefs. Finally, if Mr. Ross is confirmed as Attorney General, Alaskans will continue to reap the sorrows perpetrated and perpetuated by domestic violence and rape as he fights for gun rights instead of human rights.

Please do not confirm Mr. Ross as Attorney General of Alaska.

Sincerely,

Ann Strongheart ☺
Nunam Iqua Food Drive
c/o Ann Strongheart
P.O. Box 7
Nunam Iqua, AK 99666

ALASKA WOMEN'S LOBBY

AWL Mission: To defend and advance the rights and needs of Women, Children and Families in Alaska

P.O. Box 20891
Juneau, Alaska 99802-0891
www.akwomenslobby.org

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Taber Rehbaum

Nancy Scheetz-
Freymiller

Libby Silberling

Rose Wysocki

Dear Representative Ramras,
I am writing this letter on behalf of the Alaska Women's Lobby to express our concern with the appointment of Wayne Anthony Ross to the position of Alaska's Attorney General and to urge you to vote against his confirmation. There are many reasons to object to this appointment.

Following his appointment, it was brought to our attention that at a panel discussion cosponsored by Alaska Moms for Custodial Justice and UAA, Mr. Ross' comments regarding domestic violence were anti-victim and lacked any compassion for the difficult situation many women in Alaska face. During this panel, held a few years ago, Mr. Ross made comments alluding to domestic violence being the fault of the women's movement and that many domestic violence victims were liars. We hope that you will ask Mr. Ross about this panel and specifically question his views on domestic violence. We also encourage you to have a conversation with the organizers to learn more about his comments. As you know, Alaska has alarmingly high rates of domestic violence and to have an Attorney General that does not fully understand the gravity of this situation would be a disservice to the citizens of our state.

In addition to this, it was recently reported in the Anchorage Daily News that "during a fight several years ago over gay rights, [Allison] Mendel helped organize Anchorage lawyers in support of an anti-discrimination ordinance. Ross wrote a nasty letter to the Bar Association newsletter, using words like 'immoral', 'perversion' and 'degenerates'. The language went way beyond reasonable disagreement, Mendel and others said." This public display of disrespect for members of our community is of great concern to the Women's Lobby and again, we ask that you question Mr. Ross regarding his feelings about gay rights and equal rights as protected by the constitution of our great state.

The Lobby is also concerned with Mr. Ross' pro-gun, anti-choice and anti-subsistence rights views. Throughout the confirmation process, we hope that you will take a close look at Mr. Ross' expressed views as they are divisive for the Office of Attorney General and may be harmful to our state.

We hope that you will be probing and methodical in your confirmation hearings for Wayne Anthony Ross. We feel strongly that voting to confirm Mr. Ross as Alaska's Attorney General would be a step backward. We believe his views are out of line with a majority of Alaskans and he is therefore not qualified to serve in this position. An appointment of someone with such extreme views is not appropriate for a position of such authority. We thank you for taking the time to look into this matter further and for thinking of the best interest of the state and all its' citizens while going through the confirmation process of Mr. Ross.

Sincerely,

Geran Tarr
Chair

Cc: Representatives Dahlstrom, Coghill, Gatto, Lynn, Gruenberg, Holmes

5283

Dana Strommen

From: TB Who [tbnak54@hotmail.com]

Sent: Monday, April 13, 2009 10:08 PM

To: Rep. Alan Austerman; Rep. Bob Buch; Rep. Mike Chenault; Rep. Sharon Cissna; Rep. John Coghill; Rep. Harry Crawford; Rep. Nancy Dahlstrom; Rep. Mike Doogan; Rep. Bryce Edgmon; Rep. Anna Fairclough; Rep. Richard Foster; Rep. Les Gara; Rep. Berta Gardner; Rep. Carl Gatto; Rep. Max Gruenberg; Rep. John Harris; Rep. Mike Hawker; Rep. Bob Herron; Rep. Lindsey Holmes; Rep. Kyle Johansen; Rep. Reggie Joule; Rep. Scott Kawasaki; Rep. Wes Keller; Rep. Mike Kelly; Rep. Bob Lynn; Rep. Charisse Millett; Rep. Cathy Munoz; Rep. Mark Neuman; Rep. Kurt Olson; Rep. Pete Petersen; Rep. Jay Ramras; Rep. Woodie Salmon; Rep. Paul Seaton; Rep. Bill Stoltze; Rep. Bill Thomas; Rep. Chris Tuck; Rep. Peggy Wilson

Subject: Statement Re: AG Nominee Wayne Anthony Ross

Honorable Representatives of the Alaska Legislature:

Prior to the announcement of Gov. Palin's nomination of Wayne Anthony Ross as the Attorney General designee the major joke circulating around local work places & social gatherings was "Oh, she'll probably pick Wayne Anthony Ross", ... and then everybody would erupt in laughter knowing how ridiculous that had to be. Imagine the astonishment in those work places & social gatherings the day it was in fact a reality. Still stunned, I watched the confirmation hearing s of Mr. Ross in both the Senate and House Judiciary committees in an effort to dispel the "wild west" reputation he has proudly cultivated and to hopefully see someone who exhibited, at the very least, basic standards that reasonable minds would expect to see in a choice for such a consequential position. . . A person who is circumspect and judicious in their approach to legal issues. . . A person who has compassion for & is accepting of people of ALL types. . . A person who does not see an enemy behind every rock and every problem as a battle or a "war".

Instead I was troubled that the Governor has put forth a person who comes across more like a cartoon character, shooting from the hip and unable (or unwilling) to offer a clear, articulate response to pointed questions (of which there were too few) without digression into folksy yarns about the past. I was highly disturbed that he sees the US Government (among others) as "the enemy". As this legislature is poised on the brink of voting on whether to confirm this nominee I come away from these hearings with a heavy sense of disillusionment. Especially in light of Rep. Ramras' multiple comments indicating that it was pretty much a done deal that he would be confirmed. Has some deal been cut that we the people are unaware of? I had hopes for some semblance of intelligence & convention to begin to take place after this last year of bizarre politics & divisiveness. I had hopes for the legislature to expect & demand if necessary, that our Governor put forth nominees, not driven by personal ideology, but with the best interest of the state in mind. It is apparent to me after listening to Mr. Ross that he is there first & foremost to protect & promote Governor Palin personally as well as her agendas, with the state's interests coming in second. In the days since the hearings his public writings have also demonstrated an amazing lack of decorum, professionalism & sensitivity required in a high ranking government position. Frankly, they are an embarrassment.

One thing I did hear that I DO agree with Mr. Ross on is that the whole nation is very interested & paying attention to Alaska more than ever. It is imperative that Alaska and its government be taken seriously on a national level in this current economic situation. No good can come from becoming the laughingstock of the nation by elevating this person to a position of such importance & so far out of their league. I don't believe that Mr. Ross is the right person to represent Alaska in this role. We have some brilliant legal minds in this state. Please do not make us settle for less than we as a great state deserve.

I am a 20+ year voter in Alaska . Thank you for your consideration.

Terri

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Dana Strommen

From: JoMarie Thomson [jomarie@akalt.net]

Sent: Monday, April 13, 2009 2:39 PM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Max Gruenberg; Rep. Lindsey Holmes

Subject: Wayne Anthony Ross

I am asking you to vote no to Wayne Anthony Ross' confirmation as State Attorney General.

I was shocked to learn about many of his positions especially when it comes to the abused children and women of our community. Moreover, the disdain in which he holds OCS case workers is appalling. One of my best friends worked for DFYS as a case worker and then supervisor. I know how desperately they need the full support of the State to do an impossible job.

His statements *"If a guy can't rape his wife...who's he gonna rape?"* and "*There wouldn't be an issue with domestic violence if women would learn to keep their mouths shut."* should disqualify him without any further examination.

Even if he has experienced a "Road to Damascus" conversion, his history is one of divisive politics. This will mean that he starts out without the confidence of the public. After the last 12 months, Alaska needs public servants who can do their job without the cloud of partisan fanaticism. We need to be able to trust that his priority is Alaska/ns and not an agenda. Mr. Ross has abrogated that trust..

Please vote "NO" on the Wayne Anthony Ross confirmation.

Thank you.

JoMarie Thomson
http://www.crucibledesigns.com
http://www.akalt.net

907-349-3984

Dana Strommen

From: Lane Thompson [lane@acsalaska.net]
Sent: Monday, April 13, 2009 11:32 AM
To: Rep. Jay Ramras
Subject: Wayne Anthony Ross

Dear Jay,

If this Thursday, April 16, the Alaska Legislature confirms Wayne Anthony Ross as Attorney General, his bluster, intemperate speech and embrace of extreme ideology will ensure that Governor Palin remains in the national spotlight.

His confirmation will also divide Alaskans and divert them from working together to solve our real, non-ideological problems.

On the plus side, if Wayne Anthony Ross is confirmed, his foolishness would provide months of amusement for Alaska and the nation and could help to elect a Democratic governor in the next election.

I remind you that the Legislature is not a mere rubber stamp for the Governor. When the Governor makes a serious mistake in an appointment the Legislature can come to her aid by rejecting the appointee.

Every Legislator who votes to confirm Mr. Ross carries the same responsibility as does the Governor for the future excesses of this man who has a long history of excesses.

Please keep me informed on this vote.

Lane Thompson

P.O. Box 80368
Fairbanks, Alaska 99708

907 479 6712

Jane Pierson

From: Turner, Michelle [Michelle.Turner@asrcenergy.com]
Sent: Thursday, April 09, 2009 6:39 PM
To: Sen. Lesil McGuire; Rep. Craig Johnson
Cc: Jane Pierson; Cindy Smith
Subject: Attorney General Confirmation

Dear Ms. McGuire & Representative Johnson:

I am writing you to request that you do not confirm Mr. Wayne Anthony Ross for the position of State Attorney General.

I believe that Mr. Ross does not have the disposition to be able to carry out the duties of the State Attorney General in a fair and impartial manner and for the benefit of ALL Alaskans. The obvious disdain with which Mr. Ross' holds people who disagree or who live lives unlike his own make it impossible to for me to think that he will carry out the responsibilities of the Attorney General.

Mr. Ross' opinion that there should be no subsistence preference bizarre and offensive, since there is literally no other way for people in rural Alaska to subsist. The opinions he has stated are one straw short of outright bigotry. His statements (for example testimony at yesterdays hearing) betray his view of the world: WAR. He likens the Federal government to a bear or giant out to devour Alaskans, and likens himself to a general at war (with the Feds?). He finds gays "degenerate," dismisses tribal sovereignty, and opposes the women's rights movement. If these are the people he does not represent, who are left? Is this really the best person Alaska can find to stand up and fight for our rights when we have been victims of violence or a miscarriage of justice?

Thank you for considering this opinion,
Michelle Turner

Michelle T. Turner
Senior Scientist
ASRC Energy Services Regulatory & Technical Services 2700 Gambell Street, Suite 201Anchorage, AK 99503
Ph: 907.339.5460 I Fax: 907.339.5475 I Cell: 907.351.6342

Michelle.Turner@asrcenergy.com www.asrcenergy.com Effective and dynamic solutions for our clients and their projects form the cornerstone of our operations.

Dana Strommen

From: pturner@gci.net on behalf of Mike and Patsy Turner [pturner@gci.net]
Sent: Sunday, April 12, 2009 8:53 PM
To: Rep. Jay Ramras
Subject: NO on Ross for AG

As a citizen of the Palmer, Alaska and a lifelong (61 yrs) Alaskan I am writing to urge you to vote AGAINST Wayne Anthony Ross for Alaska State Attorney General. I don't believe it is in the best interest of Alaska to have him as State Attorney General.

Mr. Ross is an EXTREMELY controversial and divisive individual. But not only that, he appears to be someone who scoffs at the law if it doesn't meet his opinion of what it sh ould be. I listened to some of the hearings and I was appalled at some of his responses. I have also re-read some of his editorial comments in the newspapers. His comments about the federal government being 'the enemy' shows that he has a definite hostility towards the federal government. He also seems hostile towards many members of the Alaskan citizenry as you should be aware of the many citations by people regarding what he has written or said. I am beyond calling Gov. Palin reasonable at this point, but I expect that reasonable law makers would rather the State's interests be represented by a more balanced, fair and articulate individual. I am afraid this is not the image Mr. Ross has cultivated his entire career. He has a long and very public record of making inflammatory statements regarding some very extreme political and social positions he holds. Most disturbingly to me, are his expressed views (in the past AND present) about child welfare, domestic violence and sexual assault. We have some of the highest rates for these crimes against women, and children in the nation. I for one, don't really care to be the laughing stock of the US, but not to address this urgent problem because you don't agree it is one, cannot be tolerated. We need a person who's first love is the law, and not some radical conservative ideologies. AND, since Gov. Palin has some kind of mental block about what is truth and what is ethical behavior and what isn't, although some may say have been small issues, like conflict of interest, whether she said Begich should resign, etc, treating her husband like a State official, Mr. Ross will be her main ethics advisor and he stated in the hearings that he had bigger things to worry about as a response to a question about the Governor's activities. We are a nation of laws, our rights and responsibilities are based upon the law. We cannot have the head of the 'law' in Alaska be someone who scoffs at the laws and wants to spend all of his energy challenging State and Federal law based upon what his extremist views of what he thinks it should be...

PS, Rep. Gatto, was quoted in the Anchorage Daily News as saying he gave the "Burton" letter no credibility. I guess he also gave Ms. Burton no credibility in her testimony as well. I suggest you read the highly circulated letter former Commissioner of Public Safety, Richard L. Burton's wrote to Mr. Ross regarding his daughter, Ms. Burton and his experience as a law enforcement officer and commissioner on issues that Mr. Ross has spoken openly about.

You were quoted as saying: "let's hope he grown since then"' Well, I for one don't believe he can grow out of his extremist views. I am not 'hoping' for anything in forming my opinion and I don't expect you to use your legislative position to make decisions based upon your 'hopes'.

Not a good man for top law man. He will be Palin's own Gonzales and tell her she can do anything she wants, just like he told you he wouldn't look into your question about writing a book, or like wearing husband's sponsor's clothing to public events as Governor.

It doesn't sound like someone who has grown to me. Sounds like a bully.

Sincerely,

Patricia Turner
460 N Wilderness Drive
Palmer, AK 99645 907 376 5171

Dana Strommen

From: pturner@gci.net on behalf of Mike and Patsy Turner [pturner@gci.net]
Sent: Wednesday, April 15, 2009 11:18 AM
To: Rep. Jay Ramras
Subject: More reasons to vote against Mr. Ross

I am a life long Alaskan (61 years) and I am again urging you to vote AGAINST confirmation of Wayne Ross for AG.

TODAY, according to the adn.com Mr. Ross. said the Democrats should "not argue with legal or illegal but appoint somebody to represent Juneau" ...

The first thing that Mr. Ross needs to learn is he has been nominated to a job that is to uphold the law as the Attorney General of this state and EXPLICITLY NOT offer his opinions on what politicians should or shouldn't do.

This is ANOTHER REASON he is an inappropriate choice for AG. I trust that you and the rest of the lawmakers in Juneau can see the truth of this.

Sincerely,

Patricia Turner

460 N Wilderness Drive

Palmer, AK 99645 907 376 5171

Jane Pierson

From: Muktukmary@aol.com
Sent: Thursday, April 09, 2009 5:39 PM
To: Rep. Jay Ramras
Subject: (no subject)

Hi Jay,

I have been reading all I can about Wayne Ross and frankly he scares the heck out of me. Surely there has to be someone better than this. The talk all over town is that no one can believe the Legislature would approve of this horrible person.

Hope you are doing OK.

Mary VanTreeck

New Deals on Dell Netbooks - Now starting at $299

Jane Pierson

From: Sharon Waisanen [janibear@acsalaska.net]
Sent: Friday, April 10, 2009 2:31 PM
To: Rep. Jay Ramras
Subject: Please vote no on W.A.R.

Having lived in Alaska since 1969, I can say with confidence that Mr. Ross would be the least effective Attorney General in our history. His long standing attitude of right wing representation bodes poorly for anticipating fairness and freedom for Alaskans from all walks of life.

He has been a strong advocate for very narrow interest groups through the years.

As a legislator, you have the opportunity to oppose this confirmation. As a legislator, you have the opportunity to ensure that all Alaskans have confidence they will be represented fairly and adequately in one of the highest offices in our state.

There are many attorneys in this state who would be heads above Mr. Ross as Attorney General. Please seek them out and encourage an appointment of someone who can be respected and can adequately lead the judicial branch of government.

Personally, I feel that this appointment was more of a revenge against legislators by the Governor. A "disagree with me, and I'll show you," type of response. It is a blatant power move on her part and also part of her "planned performance" as she seeks candidacy for a national office.

Please, do Alaskans a favor, and vote "NO!"

Thank you.

Sharon Waisanen
44932 Eddy Hill Dr.
Soldotna, AK 99669
262.6298

Dana Strommen

From: Bob Weinstein [bobalaska@kpu.net]
Sent: Wednesday, April 15, 2009 7:35 AM
To: Rep. Jay Ramras
Cc: Rep. Max Gruenberg; Rep. Lindsey Holmes
Subject: Wayne Anthony Ross Nomination

Dear Jay:

I am writing to urge you not to support the nomination of Wayne Anthony Ross as Alaska's next attorney general. For your information, this is the first nomination by any governor which has caused me to write to state legislators.

I am concerned about:

1. His position that some people are subhuman: Of great concern to me is his statement of a number of years ago that gays are ³degenerates² and ³immoral² As you know, he recently refused to answer questions at a Senate hearing as to whether that still represented his personal opinion.

The only reasonable conclusion one can draw from his refusal is that it does in fact represent his current thinking. That in and of itself should be enough to disqualify him to be the state's chief law enforcement officer and legal advisor to the governor.

Let's say for a moment that instead of gays he had been referring to Jews.
Would you be supporting him, especially under circumstances where he refused to tell you if a previous statement that Jews are "degenerates" represented his current thinking. I don't think you would.

2. Domestic Violence: Ross's record is replete with statements that indicate that he thinks the problem of domestic violence is overblown. The fact that, if confirmed, he will be in charge of rigorously enforcing domestic violence laws in a state with one of the highest rates of crimes against women and sexual abuse of minors frankly makes me nervous.

3. Ethics: I know that you are very concerned about executive branch ethics, and have been outspoken in this regard. Given Ross's statements, do you think he will enforce the spirit and letter of the law? I do not.

Do you think he would insist that legislative subpoenas be honored? I do not.

Jay, in conclusion, I think Alaska deserves better.

Bob Weinstein

Jane Pierson

From: lwhiting@arctic.net
Sent: Thursday, April 09, 2009 10:49 PM
To: Jane Pierson
Subject: NO WAR

Greetings,

Please vote Against confirmation of Wayne A Ross for attorney general.

We need to work with the federal government on many issues, including the sensible management of all our natural resources. I see Mr Ross as a very divisive person not only among Alaskans but in his remarks about the federal government.

Charlene Whiting
Big Lake

If you think you are too small to be effective, you have never been in the dark wi

Dana Strommen

From: P Wingo [pwingo@mtaonline.net]

Sent: Saturday, April 11, 2009 8:07 PM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes; Rep. Carl Gatto

Subject: Wayne Anthony Ross

Dear Legislator,

I am writing to say I oppose W.A. Ross' appointment to Attorney General due to his past actions of sexist behaviors and bizarre actions in divorce court.

Thanks,
Penny Wingo

Jane Pierson

From: housemajority_email@housemajority.org
Sent: Thursday, April 09, 2009 11:02 PM
To: Rep. Jay Ramras
Subject: Email to Rep. Ramras

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to candacewinkler@hotmail.com If suspected Spam please forward to: support@housemajority.org
+----------+

From: candacewinkler@hotmail.com

Dear Rep. Ramras:

I am not a constituent but I am a concerned Alaskan and did recently stay at Pikes, and had a wonderful stay...I am writing to express my concern about Governor Palin's pick for Attorney General of Alaska. I believe he is an extremely controversial choice at a time when Alaska needs to pull together to address many challenging issues. I am particularly concerned about his comments regarding domestic violence, child protection, and rape. Your work with the Alaska Children's Trust and on the Fairbanks Mush for Kids demonstrates your personal concern regarding child abuse and neglect prevention. Ross's comments are diametrically opposed to those efforts. I also believe he will only exacerbate the urban-rural challenges. I hope you will NOT confirm Ross for AG. I appreciate your consideration of my thoughts. Thank you. Candace Winkler

~ Candace Winkler
Zip Code: 99516

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to candacewinkler@hotmail.com If suspected Spam please forward to: support@housemajority.org
+----------+

5296

441 W. Lone Cub Dr.
Wasilla, AK 99654
April 13, 2009

Honorable Members of the
Alaska House of Representatives
Juneau, Alaska

Dear Representatives:

I am writing in opposition to the confirmation of Wayne Anthony Ross as Alaska Attorney General.

At this time when we most need to be working together on the issues that face our state, Mr. Ross is a very divisive figure. He clearly has strong opinions on a number of issues, and from what I have heard from him during the course of the proceedings before the Judiciary Committee and from what is already in the public record, I am in agreement with the Alaska Natives, advocates for the abused, those in the gay community and others whose public testimony indicates their very reasonable fear he will not be able to set aside his personal bias sufficiently to represent the interests of all Alaskans fairly. As you know, perception is key in any public office, and it would be unwise to select a nominee who is already perceived by so many to be strongly against them and their interests.

In addition, it concerns me that when he has applied for judicial vacancies his peers have so poorly rated him. Our new attorney general should be someone highly respected by the members of his own profession. It does not appear Mr. Ross meets that criterion.

His reply to Leah Burton's letter and his response to the letter her father wrote afterwards were very unprofessional at best. If this is how he handles concerns from members of the public while he is on his best behavior hoping to be confirmed, I hate to think how he will handle citizen concerns and criticism later.

Alaska is fortunate to have many great legal minds whose fairness is not in question. It is my hope that you will reject Mr. Ross and insist on a better candidate.

It should be noted that I am a member of the Wasilla city council, but that the opinions expressed in this letter are solely my own as a private citizen and in no way reflective of the opinions of other council members or the City of Wasilla.

On that note, however, as a person who has been in public service I was appalled by the treatment of the members of the public who called in to testify before the House Judiciary Committee on Friday evening, April 10.

It has been my experience as a former member of the Mat-Su Borough planning commission, a current member of the Wasilla city council, and frequent attendee of the meetings of other local government bodies, that the fastest way to let the public know you don't care what they think is to announce you have already made up your mind before hearing all the testimony and to be disrespectful while they are testifying.

The chair of this meeting apparently forgot that during public testimony it is the chair's job to listen attentively, make sure time limits are observed, and ask clarifying questions of speakers if need be. It is not to tell speakers that he has already made up his mind, he believes the legislature has already made up their minds, or to be condescending, rude or argumentative with speakers who do not share his previously expressed views.

The other members of the committee had a duty to listen attentively, ask clarifying questions, and remind the chair that his opinions should be reserved for committee debate after the public testimony had all been heard. Instead, members were observed fiddling with papers and Blackberries, wandering around with a book, and even wandering in and out of the room, thus giving the impression that members of the public who took time out of their schedules to testify were simply wasting their time.

The next time this group holds a public hearing, I hope they remember that they are being televised and their constituents are watching and listening.

Sincerely,

Dianne Woodruff
By e-mail

Dana Strommen

From: Caty Zeitler [catyzeitler@gmail.com]
Sent: Monday, April 13, 2009 11:47 AM
To: Rep. Jay Ramras
Subject: Attorney General

Dear Representative Ramras,

I am an Alaskan resident and registered voter. I feel that Wayne Anthony Ross is a very poor choice for the position of Attorney General of Alaska. He has shown himself to be a very divisive person that has little or no respect for women or children. That is just a small reason this person is not a good choice for Alaska.
Please take my opinion into consideration.
Thank You for your interest in this matter.
Yours Truly
Cathy Zeitler
PO Box 81
Manley Hot Springs, Alaska
99756
907-672-3853

Dana Strommen

From: zeller@acsalaska.net
Sent: Tuesday, April 14, 2009 3:20 PM
To: Rep. Max Gruenberg; Rep. Lindsey Holmes; Sen. Bill Wielechowski; Sen. Hollis French; Sen. Lesil McGuire; Rep. John Coghill; Rep. Jay Ramras
Subject: WAR

Senators and Representatives:
As a life-long Alaskan, I encourage you to vote NO on the appointment of Wayne A Ross as our Attorney General. His divisiveness is not what our state needs. And while I am an advocate of free speech, sometimes you need to know when to shut up.
Especially when in public office. His antagonistic attitude toward the Legislature and minorities and women and homosexuals and ANYONE who disagrees with him is not the way to move our state forward.
PLEASE VOTE NO ON THE APPOINTMENT OF WAYNE A ROSS.
Thank you
Lyndsey Zeller
Juneau

7/20/09

CONFIRM.

CRAIG E.

CAMPBELL

LT.

GOVERNOR

STATE OF ALASKA

DEPARTMENT OF CORRECTIONS
OFFICE OF THE COMMISSIONER

SARAH PALIN,
GOVERNOR

550 West 7th Avenue, Ste. 601
Anchorage, AK 99501
PHONE: (907) 269-7397
FAX: (907) 269-7390

July 6, 2009

The Honorable Sarah Palin
Governor of Alaska
P.O. Box 110001
Juneau, Alaska 99811-0001

Dear Governor Palin:

Thank you for your confidence in selecting me to succeed the Lieutenant Governor, it is truly an honor. At this time, however, I believe it is in the best interests of the Department of Corrections and subsequently the State of Alaska that I remain Commissioner of Corrections.

Thank you again for your support. I will continue to lead the Department of Corrections and fulfill the mission set forth by your Administration.

Sincerely,

Joseph D. Schmidt
Commissioner

5302

State Capitol
Juneau, Alaska 99801
907.465.3520 465.5400 FAX
www.LtGov.alaska.gov

550 West 7th Ave, Suite 1700
Anchorage, Alaska 99501
907.269.7460 269.0263 FAX
Lt.Governor@alaska.gov

Lieutenant Governor Sean Parnell

July 13, 2009

The Honorable Craig E. Campbell
Commissioner
Department of Military & Veterans Affairs
Post Office Box 5800
Fort Richardson, Alaska 99505

Dear Commissioner Campbell:

Pursuant to AS 44.19.026, I, Sean Parnell, Lieutenant Governor of the State of Alaska, designate you, Craig E. Campbell, as temporary substitute for lieutenant governor of the State of Alaska.

This designation will be effective at the time when I succeed to the Office of Governor.

Sincerely,

Sean Parnell
Lieutenant Governor

Jane Pierson

From: RICHARD M BETTY WILLIAMS [williamsexp@msn.com]
Sent: Friday, July 24, 2009 4:55 AM
To: Rep. Jay Ramras
Subject: Fw: the truth about General Campbell

----- Original Message -----
From: RICHARD M BETTY WILLIAMS
To: Representative Jay Ramras
Sent: Friday, July 24, 2009
Subject: Fw: the truth about General Campbell

----- Original Message -----
From: RICHARD M BETTY WILLIAMS
To: Representative Jay Ramras
Sent: Friday, July 24, 2009
Subject: the truth about General Campbell

Dear Senator Ellis, We are parents of an outstanding Alaska Guardsman and we are sick of the Alaska Guard politics and the lack of integrity by both General Campbell and Katkus. We have sent numerous e-mails exposing the corrupt leadership of their "good old boy club" and cronyism. There are many experienced professional NG members who have left or retired from the AKNG due to the conduct and lack of leadership by these two Generals.

These two Generals have been allowed to get away with doing unethical activities because of Campbell's close ties with Sarah Palin. She has ignored all negative correspondence about Campbell and Katkus's retaliations against Guard members who have filed complaints. Complaints by many have been filed by AKNG. EXAMPLES:

1. "Yes" men being promoted while experienced Officers and NCO's retire due to unprofessional conduct of others and the Generals.

2. Guardsmen are afraid to speak out for fear of retaliation.

3. Generals Campbell and Katkus's supported officers who have allegedly done the following: One was caught sleeping with a deployed enlisted soldier's wife resulting in her pregnancy. No investigation ever occurred and it was covered up by both Generals. A crony was promoted even though he had a history of DUI's. Two very competent officers got out so this crony could be promoted since he and Katkus are best friends. Another (married) officer, while deployed was caught sleeping with another married officer. This officer has been promoted since he is the hunting buddy of General Katkus and one of his cronies. Two officers were caught by the Generals falsifying their personnel records and were PROMOTED by these 2 Generals.

4. Other complaints filed about their unprofessional promotion boards where the most qualified are not promoted but those that either political assist them or are friends with the 2 Generals.

5. Air Guard and Army Guard morale is at its lowest. This reflects the poor standard of what the Alaska Guard was in the early 1990's when they did the High Tower report. So people are promoted who run an organization into the worst condition it has been historically. Sarah Palin has close ties with Campbell, but should he become your Lt. Gov. and should Katkus become your TAG? There certainly is no pride there. Alaska representatives need to have an in depth outside investigation on your National Guard and these Generals. I am a senior AF officer retired, Viet Nam Vet and have NEVER seen such a blatant abuse of inept leadership. Do you have pride? Your Guardsmen, at least most of them, are hard working men and deserve better.

Please think twice about promoting this tin star hypocrite to Lt. Gov.

Sincerely, Richard M. Williams Retired Viet Nam Vet

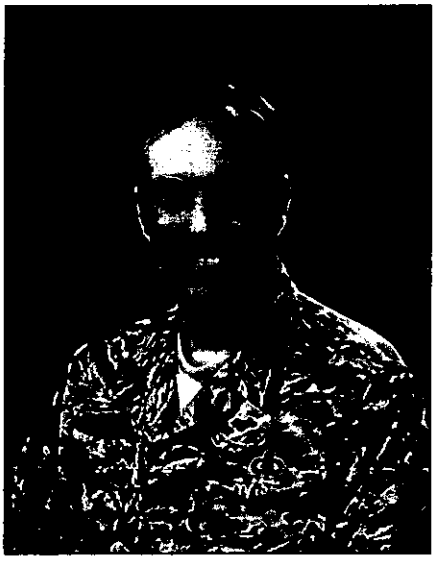
5305

Sarah Palin,
Governor

"Securing the State, Defending the Nation"

Lt. Gen. Craig E. Campbell,
Commissioner

Commissioner Campbell Biography



Lieutenant General Craig E. Campbell
craig.campbell2@us.army.mil

Background:

Lieutenant General Craig E. Campbell is the Adjutant General for the State of Alaska, Commander of the Alaska National Guard and the Commissioner of the Department of Military and Veterans Affairs. He is responsible to provide Army and Air National Guard military forces, a State Defense Force, and a Navy Militia that are fully prepared to protect Alaska from any threat, disaster, or emergency. He is also responsible to ensure that Alaska's National Guard forces are ready to deploy worldwide and accomplish military missions in support of the national defense strategy. As Adjutant General and Commissioner for the State of Alaska, he is responsible for emergency services, homeland security, veteran affairs, a Counter-Drug Support Team, a Civil Support Team, and a Youth Challenge Program.

Lieutenant General Campbell received his commission in 1974 after graduating from the Reserve Officer Training Program at the University of Tulsa, where he earned a Bachelor of Arts in Political Science degree. Upon completion of the basic Air Traffic Control Officer Program, he was assigned to Travis AFB, where he received certifications in both the air traffic control tower and radar approach control operations. His subsequent assignments included numerous operational and staff positions in air traffic control at K. I. Sawyer AFB, Vandenberg AFB and Elmendorf AFB. He joined the California Air National Guard in 1981 as the Chief Air Traffic Control Operations Officer, 234th Combat Communications Squadron, Hayward ANGB. In 1990, he was selected as Commander, 168th Resource Management Squadron, Alaska Air National Guard, Eielson AFB. His career with the Alaska Air National Guard includes extensive accomplishments, including development of the Alaska Air National Guard 1998 Long Range Plan which was used as the basis for the 2004 Alaska Air National Guard Transformation Plan. Following graduation from Naval War College in 1999, he served as the Executive Support Staff Officer, Alaska Air National Guard until being selected in 2000 as the Vice Commander, 168th Air Refueling Wing, a position he held until 2003. On 3 January 2003, he was selected to serve as the Adjutant General of Alaska and Commissioner of the Department of Military & Veterans Affairs. On 1 December 2006, he was selected by Governor Sarah Palin to retain these duties and be her trusted advisor.

Lieutenant General Campbell resides in Eagle River with his wife Anne Marie. They have two daughters, Amanda and Melanie and four grandchildren, Faith, Ellie, Kimberly and Emma.

Education:

1974 Bachelor of Science in Political Science, University of Tulsa, Oklahoma
1979 Squadron Officer School, Maxwell AFB, Alabama
1981 Master of Public Administration, Golden Gate University, San Francisco, California
1985 Federal Aviation Administration Land Use Compatibility Course, Georgia Tech University, Atlanta, Georgia
1995 Air Command and Staff College by seminar
1997 Air War College by seminar

1999 Master of Arts in National Security and Strategic Studies, Naval War College, Newport, Rhode Island

Assignments:

- April 1975 - September 1975, student, Air Traffic Control Officers Training Course, Keesler Air Force Base, Mississippi
- September 1975 - September 1976, Air Traffic Control Operations, 1901st Communications Squadron, Travis Air Force Base, California
- September 1976 - September 1979, chief, Radar Approach Control, 2001st Communications Squadron, K.I. Sawyer Air Force Base, Michigan
- September 1979 - May 1981, chief, ATC Operations, 391st Communications Group, Vandenberg Air Force Base, California
- May 1981 - November 1984, chief, Air Traffic Operations, 1931st Communications Group, Elmendorf Air Force Base, Alaska
- November 1984 - November 1991, chief, ATC Operations, 234th Combat Communications Squadron, Hayward Air National Guard Base, California

- November 1991 - October 1992, commander, 168th Resource Management Squadron, Eielson Air Force Base, Alaska
- October 1992 - March 1997, commander, 168th Logistics Squadron, Eielson Air Force Base, Alaska
- March 1997 - August 1999, chief, Long Range Planning, Alaska Air National Guard, Anchorage, Alaska
- August 1999 - September 2000, executive support staff officer, Alaska Air National Guard, Anchorage, Alaska
- September 2000 - January 2003, vice commander, 168th Air Refueling Wing, Eielson Air Force Base, Alaska
- January 2003 - Present, Adjutant General of Alaska, Fort Richardson, Alaska

MAJOR AWARDS AND DECORATIONS:

Legion of Merit
Air Force Meritorious Service Medal with two devices
Air Force Commendation Medal with one device
Air Force Outstanding Unit Award
Air Force Organizational Excellence Award
National Defense Service Medal
Air Force Longevity Service Medal with five devices
Air Reserve Forces Service Medal
Alaska Distinguished Service Medal
Alaska Commendation Medal
California Medal of Merit

EFFECTIVE DATES OF PROMOTION:

Second Lieutenant June 4, 1974
First Lieutenant December 5, 1976
Captain January 1, 1979
Major June 2, 1988
Lieutenant Colonel June 5, 1995
Colonel March 30, 2000
Brigadier General February 6, 2004
Major General November 18, 2005 (federal duties)
Lieutenant General September 8, 2008 (state duties)

(Current as of March 2009)

Alaska Department of Military and Veterans Affairs
PO Box 5800 Camp Denali
Fort Richardson, AK 99505-5800
Send questions or comments to dmvawebmaster@ak-prepared.com regarding this site.
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LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM July 14, 2009

SUBJECT: Committee hearing during the interim on confirmation

TO: Representative Max F. Gruenberg, Jr.

FROM: Tamara Brandt Cook
Director

(1) May a standing committee hold a hearing during the interim on Governor Sarah Palin's designation of Lieutenant General Craig E. Campbell as successor to the office of lieutenant governor? If so, may the committee take any action?

Under Uniform Rule 21(c), standing committees have been given broad authority to meet between sessions. A standing committee could hold a hearing to consider the designation for the purpose of providing information to the committee members and others who may be in attendance.

Any question may be referred by a house of the legislature to one or more of its committees. As noted in Mason's Manual, sec. 378(2): "In legislative bodies it is good practice to refer every main question to a committee for its consideration unless immediate action is required." Referral of a question before a house is made while the legislature is in session, by the presiding officer or by motion of a member of the house. Since the legislature is not in session, the question of confirming a new designee to succeed to the office of lieutenant governor has not been referred to any committee. Therefore, there is no question before a standing committee upon which the committee may act by reporting the question back with its recommendations.

(2) Does the Judiciary Committee have jurisdiction over the question of confirming the governor's new designee?

Under Uniform Rule 20, the Judiciary Committee has jurisdiction over "the programs and activities of the Alaska Court System and the Department of Law, and the legal and substantive review of bills referred to it for that purpose". Along with the Court System and the Department of Law, the jurisdiction of the Judiciary Committee extends to bills on any subject that are referred to it. However, the confirmation issue is not a bill. The Judiciary Committee could be deemed to have jurisdiction over the confirmation of the Attorney General because of its responsibility for activities of the Department of Law, but it has no jurisdiction over the governor's appointment generally or over the Office of the Lieutenant Governor specifically. Indeed, no standing committee has specific

jurisdiction over the Office of the Lieutenant Governor. Note that, under AS 44.19.010, the Office of the Governor includes the lieutenant governor.

On the other hand, the State Affairs Committee has, among other things, jurisdiction over "programs and activities of the Office of the Governor." Since confirmations generally involve consideration of an activity of the governor, exercise of the executive power of appointment, and this confirmation involves appointment of a designee to the lieutenant governor who is in the Office of the Governor rather than a commissioner or a board within a department that has been assigned to the jurisdiction of another committee, it would appear that the State Affairs Committee has jurisdiction under the rule over a confirmation involving a successor to the office of lieutenant governor.

In the House, Governor Palin's previous designee appointment of Talis Colberg was referred to the House State Affairs Committee. 2007 House Journal page 174 (February 7, 2007). Her designation of Joe Schmidt was handled by the House Judiciary Committee. 2009 House Journal page 300 (February 23, 2009).

Note that Uniform Rule 21(c) provides: "A standing, special, or joint committee which acts between legislative sessions may consider any legislative matter which is consistent with the jurisdiction of the committee." The rule provides broad authority for a standing committee to meet during the interim and, specifically, authority to consider matters consistent with its jurisdiction, but there is no specific authority for a standing committee to consider a matter that is not within its jurisdiction. The jurisdiction of a committee may be broadly considered to consist of those matters that fall within its jurisdiction under Uniform Rule 20, bills and other matters that have been referred to the committee, and matters that that been assigned to a committee by statute, such as AS 24.05.182 (review of administrative regulations) or AS 24.08.060(a) (measures under consideration for introduction by the committee). However, as a matter of practice, a standing committee has rather freely considered matters of legislative concern that are not specifically within its jurisdiction and that practice has not often been objected to or curtailed.

TBC:ljw
09-301.ljw

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
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STATE OF ALASKA

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Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM July 7, 2009

SUBJECT: Filling a vacancy in the office of Lieutenant Governor

TO: Representative Jay Ramras
Chairman of the House Judiciary Committee

FROM: Tamara Brandt Cook
Director

(1) How does the governor's designee for Lieutenant Governor vacate the office?

AS 44.19.040 deals with appointment of a successor to the Lieutenant Governor and states: "If the person designated and confirmed is removed from or vacates the appointment, the governor shall appoint a successor subject to confirmation in the same manner as the person initially appointed." The statute does not set out a method whereby the designee vacates the position, so any method that clearly indicates the intent of the designee to vacate the position as successor to the Lieutenant Governor is acceptable. However, it would be prudent for the designee to notify the Governor of his intention to vacate the office in writing so that there is no question that the designee has made that election.

On July 4, 2009, the current designee, Joe Schmidt, Commissioner of the Department of Corrections, is quoted at KTUU.com as saying, with respect to assuming the office of Lieutenant Governor: "I didn't officially decline, I just relayed some concerns that I had and I'm assuming that those concerns were shared." If Commissioner Schmidt has not and does not vacate the appointment, Governor Sarah Palin has clear authority to remove the designee. AS 44.19.040 provides that a designee who has been confirmed is in line for succession to the office of Lieutenant Governor "subject to the pleasure of the governor." Governor Palin has indicated that she has chosen Lieutenant General Craig Campbell, Commissioner of Military and Veterans' Affairs. Again it would be prudent that the removal of Commissioner Joe Schmidt, if that occurs, be in writing to avoid any question regarding the status of both commissioners. Under the statute, a new designee will ultimately have to be formally presented in writing by the seated Governor to the legislature for confirmation.

(2) What issues are raised if the Governor names a new designee for Lieutenant Governor?

Under art. III, sec. 11 of the state constitution, when there is a vacancy in the office of Governor the Lieutenant Governor becomes Governor and serves for the remainder of the term. As a result of this succession, the office of Lieutenant Governor, in turn, becomes vacant. The state constitution does not directly provide for succession to the office of Lieutenant Governor. Instead art. III, sec. 13 states:

> **SECTION 13. Further Succession.** Provision shall be made by law for succession to the office of governor and for an acting governor in the event that the lieutenant governor is unable to succeed to the office or act as governor. No election of a lieutenant governor shall be held except at the time of electing a governor.

The statutes provide for succession to the office of Lieutenant Governor as the method for addressing the question of further succession under AS 44.19.040 - 44.19.046. AS 44.19.040 provides in full:

> **Sec. 44.19.040. Appointment of successor to lieutenant governor.** After taking an initial term of office, the governor shall appoint, from among the officers who head the principal departments of the state government or otherwise, a person to succeed to the office of lieutenant governor if the office of lieutenant governor becomes vacant. The appointment is subject to confirmation by a majority of the members of the legislature meeting in joint session. The person designated and confirmed is next in line for succession to the office of lieutenant governor, subject to the pleasure of the governor. If the person designated and confirmed is removed from or vacates the appointment, the governor shall appoint a successor subject to confirmation in the same manner as the person initially appointed.

Governor Sarah Palin has designated Joe Schmidt, Commissioner of the Department of Corrections as the successor to the office of Lieutenant Governor and Commissioner Schmidt has been confirmed. Consequently, when Sean Parnell is sworn in as Governor and the office of Lieutenant Governor becomes vacant, it is Commissioner Schmidt who would automatically assume that office under AS 44.19.042. However, Governor Palin has also indicated that she has chosen Lieutenant General Craig Campbell, Commissioner of Military and Veterans' Affairs, as the designated successor to the office of Lieutenant Governor. Note that, under AS 44.19.040, the designee serves in that capacity "at the pleasure of the governor," so Governor Palin may change her designee if she chooses to do so, but the successor designee is also subject to confirmation.

This brings up the question of whether a new designee may assume the office of Lieutenant Governor before being confirmed. If not, of course, the successor Governor,

Sean Parnell, might elect to name a different person as designee. Based upon the evolution of the bill that ultimately resulted in the enactment of AS 44.19.040 - 44.19.046, it appears that the legislature considered the alternative and decided not to authorize recess appointments to fill the office of Lieutenant Governor before the designee is confirmed. In contrast, AS 39.05.080(3) and (4) provide that a person who is appointed to an office that is subject to confirmation exercises the duties of that office until the legislature declines to confirm or until the last day of the session if the legislature does not take the confirmation up. Note that AS 39.05.080 does not apply if a law relating to a particular position contains different provisions, so, as a matter of statutory construction, provisions in AS 44.19.040 prevail over contrary provisions in AS 39.05.080 and the designee may not assume the office of Lieutenant Governor until after confirmation.

Alas, the situation is somewhat muddied by the question of whether art. III, sec. 27 of the state constitution might apply because of the statutory requirement for confirmation of the Lieutenant Governor designee. It provides:

> **SECTION 27. Recess Appointments.** The governor may make appointments to fill vacancies occurring during a recess of the legislature, in offices requiring confirmation by the legislature. The duration of such appointments shall be prescribed by law.

Does the fact that the legislature by statute elected to require confirmation of a Lieutenant Governor designee mean that the governor has the power to make a recess appointment under the constitution, even though the legislature intended to preclude recess appointments to the office of Lieutenant Governor, or, in context, is section 27 confined to confirmations made under the preceding two constitutional sections: section 25, department heads, and section 26, certain boards and commissions? Is the requirement of confirmation applicable to a designee to fill a vacancy in the office of Lieutenant Governor enacted under the authority of article III, sec. 13, invalid under the reasoning of Bradner v. Hammond, 553 P.2d 1 (Alaska 1985), holding that the power of confirmation is limited to the offices covered by article III, secs. 25 and 26? Given the broad authority granted under sec. 13 to provide for succession, it seems unlikely that art. III, sec. 27 or the Bradner v. Hammond decision applies, but these are unresolved questions.

TBC:med
09-054.mcd

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

Sarah Palin, Governor

1031 WEST 4TH AVENUE, SUITE 200
ANCHORAGE, ALASKA 99501-5903
PHONE: (907)269-5100
FAX: (907)279-8644

July 10, 2009

Michael Nizich
Chief of Staff, Office of the Governor
550 West 7th Avenue, Suite 1700
Anchorage, AK 99501

Re: Succession to the Office of Lieutenant Governor

Dear Mr. Nizich:

We are providing this legal analysis in response to questions about proper constitutional and statutory procedures when the successor to the lieutenant governor is appointed during a legislative recess and the position of lieutenant governor subsequently becomes vacant.

I. Introduction/Background

Commissioner Joe Schmidt previously was appointed and confirmed as successor to the lieutenant governor under AS 44.19.040 (hereinafter "the second-in-line" position or appointee), and therefore was in line to assume the lieutenant governor's office if and when it was vacated. He resigned from the second-in-line position on July 6, 2009. Governor Palin then appointed General Craig Campbell to the second-in-line position – as she is clearly authorized to do under AS 44.19.040.[1] This statute states that the second-in-line appointee is subject to legislative confirmation.[2] However, the legislature is not in session to confirm this appointment, and with the recent announcement of Governor Palin's resignation, Lieutenant Governor Sean Parnell is scheduled to assume the governorship on July 26, 2009, leaving a vacancy in the position of lieutenant governor.

---

[1] AS 44.19.040 provides that if the second-in-line appointee is removed from or vacates the appointment, "the governor shall appoint a successor subject to confirmation . . . ."

[2] *Id.*

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This situation – a second-in-line appointment during a legislative recess and a subsequent lieutenant governor vacancy – raises questions about proper constitutional and statutory succession procedures. These are important issues for the State of Alaska, requiring consideration of executive and legislative responsibilities, including the powers of appointment and confirmation, and the implementation of constitutional and statutory procedures intended to ensure that there is no gap in the line of succession for the office of governor. Moreover, while the facts giving rise to these questions are unique and of first impression for the state, it is conceivable that the issues addressed below could arise in a number of similar situations.[3] Because the issues are challenging, capable of recurring, and of significant import to the lawful and smooth transition of Alaska's state government, I am issuing this advice as an Attorney General's Opinion.

II. Summary

As noted above, the issues addressed in this opinion are important for the State of Alaska, requiring consideration of executive and legislative responsibilities, including the powers of appointment and confirmation, and the implementation of constitutional and statutory procedures intended to ensure that there is no gap in the line of succession for the office of governor. In rare cases, it is conceivable that the critical public interest of ensuring continuity and a clear line of succession in the office of governor might not be aligned with the legislature's responsibilities and powers to confirm senior executive branch officials. We examine this important issue, on which there is no controlling case law, at length in this opinion. It is a close call on whether a recess appointee to the second-in-line position can assume the office of lieutenant governor when it becomes vacant without first being confirmed by the legislature. Nevertheless, we conclude in the affirmative.

Despite this conclusion, this opinion also distinguishes between what the executive branch has the legal authority to do, and what we recommend it should do. These are not always the same. In this case, it is important to seek consensus among different branches of government with regard to succession issues. Thus, the opinion examines and recommends other approaches. Specifically, it suggests that if there is no special session of the legislature to confirm General Campbell as the second-in-line appointee prior to the transition between the Palin and Parnell administrations, then he should be designated as temporary/acting lieutenant governor pursuant to Alaska statutes. We believe that this approach is consistent with Alaska's constitutional and statutory designs that clearly underscore the critical public interest of continuity in the principal executive offices of the state. It also preserves the legislature's interest and responsibilities in confirming General Campbell to the second-in-line position, at a later date.

---

[3] A similar situation would occur any time a governor vacates the office without a legislatively confirmed second-in-line appointee.

III. Legal Analysis of the Governor's Recess Appointment Power and the Legislature's Confirmation Responsibilities

A. Alaska Law Gives the Governor Significant Authority to Make Recess Appointments

The Alaska Constitution and statutes generally provide the Governor with broad powers to fill vacancies in senior executive branch positions during a legislative recess. Article III, § 27 of the Alaska Constitution states that "[t]he governor may make appointments to fill vacancies occurring during a recess of the legislature, in offices requiring confirmation by the legislature." Alaska Statute 39.05.080 reinforces this authority by providing that such recess appointees hold their offices with full authority pending confirmation: "[p]ending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, have the powers, and be charged with the duties prescribed by law for the appointive positions."[4] These constitutional and statutory provisions give the governor the authority necessary to keep the executive branch functioning fully when critical vacancies occur and the legislature is not in session.

B. AS 44.19.040 Seems to Require Confirmation in All Cases for the Second-in-Line Position

The governor's ability to make recess appointments is more complicated, however, when the second-in-line position becomes vacant. Under Alaska Constitution Article III, § 13, the legislature is specifically charged with enacting laws "for the succession to the office of governor and for an acting governor in the event the lieutenant governor is unable to succeed to the office or act as governor."

Alaska Statute 44.19.040 was one of the key laws enacted to effectuate this constitutional provision. It requires the governor to appoint a person to the second-in-line position as part of a two-step process. The governor first appoints a person to the second-in-line position. The statute then refers to the second step, confirmation:

> The appointment is subject to confirmation by a majority of the members of the legislature meeting in joint session. The person designated and confirmed is next in line for succession to the office of lieutenant governor, subject to the pleasure of the governor. If the person designated and confirmed is removed from or vacates the appointment, the governor shall appoint a successor subject to confirmation in the same manner as the person initially appointed.[5]

---

4 AS 39.05.080(4).

5 AS 44.19.040 (emphasis added).

The language of this provision suggests that the appointee becomes second in line only after being "designated and confirmed."[6]

Yet such a reading and interpretation of AS 44.19.040 raises an important policy concern. If the second-in-line position is not "in line for succession to the office" of lieutenant governor until such time as confirmed, then the lieutenant governor's seat could lie vacant until the legislature convenes, meets in full session, and confirms an appointed successor. In certain circumstances, this could mean the lieutenant governor's office would be left unoccupied for months. Such a result appears to contradict the intent of the constitutional delegates and the legislature that Alaska's government have two principal executive officers and that vacancies be filled as quickly as possible.[7]

C. AS 44.19.040 Read in Conjunction with Its Companion Statutes Suggests that Confirmation Is Not Always Mandated If a Vacancy Occurs First and a Succession Gap is Imminent

Alaska Statute AS 44.19.040 makes clear that the legislature has important statutory responsibilities and powers in confirming the second-in-line position. The critical question, however, is whether such powers and responsibilities override the constitutional and legislative imperative to avoid gaps in the line of succession to the office of governor.

Although AS 44.19.040 seems at first blush to require that a second-in-line appointee be confirmed before he or she can become lieutenant governor, when read in conjunction with other statutes, passed contemporaneously, that interpretation does not appear to be required in every situation. Indeed, AS 44.19.040 was enacted with

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[6] It should be noted that Alaska case law calls into question whether the legislature has the authority to require confirmation for the second-in-line position. *See Bradner v. Hammond*, 553 P.2d 1 (Alaska 1976) (holding that the legislature's authority to require confirmation of executive branch officials is limited to department heads subject to Alaska Const. art. III, §§ 25-26). However, we need not address this issue in this opinion.

[7] Alaska Const. art. III, §§ 9-13 and AS 44.19.040 - 44.19.046 demonstrate that the legislature intended that a plan of succession be in place at all times to minimize interruption in the continuity of the highest executive branch offices. Legislative history to AS 44.19.046 confirms that the intent of the legislation was to prevent succession gaps. "Succession of the executive should not be delayed until the legislature can act." *See* H. Judiciary Comm., Report on HB 5, 1st Sess., at 1 (Alaska 1959). Likewise, sec.1 of SCS CSHB 5 (STA) am (Alaska 1959) demonstrates that the legislative intent was to minimize unnecessary interruptions to the activities of the state.

AS 44.19.042 and AS 44.19.046 in 1959, in the same legislative bill.[8] Under these statutes, the ability of the second-in-line appointee to assume the lieutenant governor position differs depending upon the situation.

For example, AS 44.19.042 suggests that a second-in-line appointee need not have been previously confirmed in every instance to succeed to a vacant lieutenant governor position. This statute states that when a vacancy arises, the person "designated as next successor to the office of lieutenant governor as provided in AS 44.19.040" succeeds to office for the remainder of the term.[9] On its face, AS 44.19.042 appears to require less than AS 44.19.040 because the statutory language only mentions that the person must be "designated as next successor," without expressly requiring legislative confirmation as AS 44.19.040 seems to do. And while the reference in AS 44.19.042 to AS 44.19.040 could be interpreted to require compliance with all aspects of .040, including legislative confirmation, that would mean that "designated" has a different meaning in AS 44.19.042 than it does in AS 44.19.040. As a general rule, Alaska law does not support such a statutory interpretation. "It is a general principle of statutory construction that 'the same words used twice in the same act have the same meaning.'"[10]

Additionally, the omission of an express confirmation requirement in AS 44.19.042 reflects the different purposes of the two provisions. Read in context, the textual

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[8] Secs. 2, 3, and 5, ch. 174, SLA 1959.

[9] AS 44.19.042 (emphasis added).

[10] *See, e.g., Benner v. Wichman*, 874 P.2d 949, 957 (Alaska 1994) (quoting 2A Norman J. Singer, *Sutherland Statutes and Statutory Construction* § 46.06 (5th ed. 1992)); *see also* 2A Singer, *Sutherland Statutory Construction* § 47.16 (7th ed. 2008 rev) ("Where the meaning of a word is unclear in one part of a statute but clear in another part, the clear meaning can be imparted to the unclear usage on the assumption that it means the same thing throughout the statute.").

Moreover, in AS 44.19.040, "designated" clearly refers solely to the act of appointment by the governor, as it is distinguished from the act of confirmation: "the person designated and confirmed is next in line for succession to the office of lieutenant governor...." Interpreting "designated" in AS 44.19.042 to mean both "designated and confirmed" would be inconsistent with the language of AS 44.19.040. *See* 2B Singer, *Sutherland Statutory Construction* § 51.2 (7th ed. 2008 rev) (stating that where a statute with reference to one subject contains a given provision, the omission of such provision from a similar statute concerning a related subject is significant to show that a different intention existed).

discrepancy between the statutory sections is reconcilable.[11] Alaska Statute 44.19.040 applies when the lieutenant governor's office is not vacant and no exigent circumstances exist that would compel expediting a second in line to the lieutenant governor's office. In this situation, confirmation by the legislature provides a legislative check without leaving one of the highest state offices vacant for an open-ended period of time. Alaska Statute 44.19.042, on the other hand, describes what occurs when a vacancy arises and the need to fill the position of lieutenant governor is more compelling. In this situation, the person designated by the governor succeeds to the office without delay, whether or not confirmed.

The third of the three 1959 provisions, AS 44.19.046, further supports this interpretation. The statute mandates that "the person appointed under AS 44.19.040 succeeds directly to the office of acting governor until successors to the respective offices are elected in a special election."[12] Like AS 44.19.042, this provision refers to AS 44.19.040 and identifies an appointed successor without specifying that the successor must also be confirmed. This statute applies when vacancies occur simultaneously in the offices of governor and lieutenant governor – a situation that requires immediate action if the designated second-in-line official is unconfirmed. The legislature intended this succession to occur immediately in order to fill the leadership vacuum that would occur while the legislature convenes and confirms the second-in-line appointee. From a broad public interest standpoint, this appears to be the appropriate result. When the offices of both governor and lieutenant governor are vacant, circumstances are most compelling to expedite obtaining a successor to immediately fill the leadership void regardless of whether the successor previously has been confirmed.

Admittedly, the 1959 statutes at issue here could be more clearly drafted. But our interpretation best protects what are among the most important interests of the state. When the lieutenant governor's seat becomes vacant, the second-in-line appointee will nearly always have been previously confirmed, consistent with Alaskans' interest in governmental checks and balances and the legislature's responsibility and power to confirm senior executive branch officers. However, in the rare instance where the legislature's confirmation responsibility could result in a succession gap or a vacancy in the executive branch's highest offices, the legislative intent of AS 44.19.040-.046 appears to be for a succession to be made quickly even if legislative confirmation cannot take place.

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[11] To determine whether two statutory provisions stand in conflict, the court interprets them together, in context with other pertinent provisions, rather than in isolation, with a view toward reconciling conflict to produce "a harmonious whole." *Progressive Ins. Co. v. Simmons*, 953 P.2d 510, 516 (Alaska 1988) (quoting 2 J. Sutherland, *Statutes and Statutory Construction*, § 4703 at 336-37 (Horrack ed., 3d ed.1943)).

[12] AS 44.19.046 (emphasis added).

IV. Alternative Statutory and Constitutional Approaches Should Be Considered

The foregoing interpretation emphasizes the critical public interest of ensuring that there will always be a clear and rapid line of succession to the office of governor. Yet it is an imperfect solution to a difficult problem because the legislature has no role confirming the second-in-line successor in exigent circumstances. Moreover, while we believe our interpretation to be the correct one, there is no controlling case law to provide guidance on interpreting these statutes. For institutional and other reasons, Alaska's current legislature may disagree with this analysis and conclusion. In the present case, disagreement with the legislature on these important issues, in which it traditionally has a well-defined and important role, should attempt to be avoided because any prolonged disagreement between the executive and legislative branches has the potential to create the succession gap problem that it is in Alaska's interest to avoid.

Accordingly, alternative statutory and constitutional approaches should be considered and implemented. Alaska Statute 44.19.026 expressly authorizes the designation of a temporary/acting lieutenant governor in the event the official lieutenant governor succeeds to the office of governor. Moreover, a special session of the legislature can be convened to confirm a governor's second-in-line appointment. We discuss these options below.

A. General Campbell Can Be Appointed Temporary/Acting Lieutenant Governor Under AS 44.19.026

Pursuant to 44.19.026, General Campbell can be appointed temporary/acting lieutenant governor. This statute authorizes the lieutenant governor to designate a head of a principal executive department to assume many of the duties of the office of lieutenant governor "during such time as the lieutenant governor succeeds to the office of governor."[13] If this appointment under AS 44.19.026 is made prior to the date when Governor Palin leaves office, General Campbell will immediately become temporary/acting Lieutenant Governor when Lieutenant Governor Parnell assumes the governorship. Consequently, Governor Palin's intention to have General Campbell serve

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[13] AS 44.19.026 provides: "The lieutenant governor may designate a head of a principal executive department, or more than one such officer in the alternative, who shall temporarily be custodian of the state seal and perform the authenticating functions of the lieutenant governor during such time as the lieutenant governor succeeds to the office of governor, acts as governor, is absent from the state, or otherwise is not available at the state capital to perform the above authenticating functions. The designation shall be in writing, signed by the lieutenant governor, and filed in the office of the lieutenant governor. The designation is effective until revoked by a later designation executed and filed in the same manner." (emphasis added).

in the office of lieutenant governor will be fulfilled – albeit in an acting and temporary capacity.[14] This approach, as set out in AS 44.19.026, does not require legislative confirmation, but preserves the legislature's interests and responsibilities in confirming General Campbell to the second-in-line position at a later date. It also safeguards against a potential succession gap in the office of governor. [15]

B. The Legislature Can Confirm General Campbell Under AS 44.19.040

As a second alternative approach, General Campbell can be legislatively confirmed to the second-in-line position in a special session before Lieutenant Governor Parnell assumes the office of governor. This approach would obviously moot any issues about whether General Campbell must be legislatively confirmed before he succeeds to the office of lieutenant governor under AS 44.19.042.

Although it might be preferable for such a confirmation to occur before the transition of power between Governor Palin and Lieutenant Governor Parnell, AS 44.19.026 – the temporary/acting lieutenant governor statute – does provide some degree of flexibility in the timing of such a session. That is, if a special session cannot be held before Lieutenant Governor Parnell becomes governor, General Campbell can be appointed as temporary/acting lieutenant governor under AS 44.19.026 and can serve in that capacity until the legislature convenes a special session to take up his confirmation.[16]

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[14] General Campbell would retain his current position as Commissioner of Military and Veterans Affairs, pending his confirmation by the legislature as the second-in-line appointee. A temporary appointment under AS 44.19.026 avoids the prohibition against duel office holding. *See* Alaska Const. art. III, § 6.

[15] While by design the designation is temporary, many of the duties of the office of lieutenant governor would be covered by the designation without interruption. The statute states that the designee will temporarily be custodian of the state seal and "perform the authenticating functions of the lieutenant governor...." AS 44.19.026. This opinion does not analyze precisely what functions of the lieutenant governor might be characterized as "authenticating," but we believe the intent of this statute was to ensure that many of the significant duties of the office will be covered. In the event that certain duties are not covered, those can be delegated or assumed by the Governor. The Department of Law is continuing a detailed analysis of this issue.

[16] See Attachment 1 for procedural details of how such a process would work in a hypothetical case.

C. The Foregoing Ensures No Succession Gap

The benefit of these approaches is that succession is safeguarded, and the legislature's confirmation responsibilities can still be exercised. More broadly, it is important to note that Alaska statutes cover any future succession contingency regardless of whether General Campbell is: (a) designated as the second-in-line appointee, but not confirmed by the legislature (not the recommended approach of this opinion); (b) designated as the second-in-line appointee and is confirmed by the legislature; or (c) designated as temporary/acting lieutenant governor and is confirmed at a later date.[17]

Please contact me if we can be of further assistance with this matter.

Sincerely,

Daniel S. Sullivan
Attorney General

Enclosure: Attachment 1

[17] Under any of these circumstances, if the office of governor would somehow become vacant during the Parnell Administration, Alaska statutes would mandate that General Campbell would succeed to "the office of acting governor" but only until a special election is held to fill the offices of governor and lieutenant governor. See AS 44.19.044 and AS 44.19.046.

Hypothetical Timeline

1. Commissioner Joe Schmidt is appointed and confirmed to the second-in-line position during the previous regular legislative session pursuant to AS 44.19.040.

2. Commissioner Schmidt resigns from the second-in-line position on July 6, 2009, pursuant to AS 44.19.040.

3. Governor Palin appoints General Campbell to the second-in-line position on July 7, 2009, pursuant to AS 44.19.040.

4. Governor Palin notifies legislative leadership of her appointment of General Campbell to the second-in-line position on July 7, 2009.

5. General Campbell is designated to fill the temporary/acting Lieutenant Governor position pursuant to AS 44.19.026. This designation, which is administratively performed by Lieutenant Governor Parnell, should occur prior to the Palin/Parnell administration transition. This designation only becomes effective when Lieutenant Governor Parnell succeeds to the office of governor.

6. Lieutenant Governor Parnell succeeds to the office of governor on July 26, 2009, pursuant to Alaska Constitution Article III, § 11. At that time, General Campbell immediately becomes temporary/acting Lieutenant Governor pursuant to AS 44.19.026.

7. A special session is called and convenes to confirm temporary/acting Lieutenant Governor Campbell to the second-in-line position pursuant to AS 44.19.040.

8. Temporary/acting Lieutenant Governor Campbell is confirmed by the legislature to the second-in-line position pursuant to AS 44.19.040.

9. Temporary/acting Lieutenant Governor Campbell immediately succeeds by operation of law to the lieutenant governor position pursuant to AS 44.19.040.

10. Lieutenant Governor Campbell simultaneously revokes the previous designation as temporary/acting Lieutenant Governor pursuant to AS 44.19.026.

11. Governor Parnell then appoints a new second-in-line appointee pursuant to AS 44.19.040.

Attachment 1

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West's Alaska Statutes Annotated Currentness
The Constitution of the State of Alaska (Refs & Annos)
➞ Article III. The Executive
➞ **§ 1. Executive Power**

The executive power of the State is vested in the governor.

§ 2. Governor: Qualifications

The governor shall be at least thirty years of age and a qualified voter of the State. He shall have been a resident of Alaska at least seven years immediately preceding his filing for office, and he shall have been a citizen of the United States for at least seven years.

§ 3. Election

The governor shall be chosen by the qualified voters of the State at a general election. The candidate receiving the greatest number of votes shall be governor.

§ 4. Term of Office

The term of office of the governor is four years, beginning at noon on the first Monday in December following his election and ending at noon on the first Monday in December four years later.

§ 5. Limit on Tenure

No person who has been elected governor for two full successive terms shall be again eligible to hold that office until one full term has intervened.

§ 6. Dual Office Holding

The governor shall not hold any other office or position of profit under the United States, the State, or its political subdivisions.

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§ 7. Lieutenant Governor--Duties

There shall be a lieutenant governor. He shall have the same qualifications as the governor and serve for the same term. He shall perform such duties as may be prescribed by law and as may be delegated to him by the governor.

§ 8. Election

The lieutenant governor shall be nominated in the manner provided by law for nominating candidates for other elective offices. In the general election the votes cast for a candidate for governor shall be considered as cast also for the candidate for lieutenant governor running jointly with him. The candidate whose name appears on the ballot jointly with that of the successful candidate for governor shall be elected lieutenant governor.

§ 9. Acting Governor

In case of the temporary absence of the governor from office, the lieutenant governor shall serve as acting governor.

§ 10. Succession: Failure to Qualify

If the governor-elect dies, resigns, or is disqualified, the lieutenant governor elected with him shall succeed to the office of governor for the full term. If the governor-elect fails to assume office for any other reason, the lieutenant governor elected with him shall serve as acting governor, and shall succeed to the office if the governor-elect does not assume his office within six months of the beginning of the term.

§ 11. Vacancy

In case of a vacancy in the office of governor for any reason, the lieutenant governor shall succeed to the office for the remainder of the term.

§ 12. Absence

Whenever for a period of six months, a governor has been continuously absent from office or has been unable to discharge the duties of his office by reason of mental or physical disability, the office shall be deemed vacant. The procedure for determining absence and disability shall be prescribed by law.

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§ 13. Further Succession

Provision shall be made by law for succession to the office of governor and for an acting governor in the event that the lieutenant governor is unable to succeed to the office or act as governor. No election of a lieutenant governor shall be held except at the time of electing a governor.

§ 14. Title and Authority

When the lieutenant governor succeeds to the office of governor, he shall have the title, powers, duties and emoluments of that office.

§ 15. Compensation

The compensation of the governor and the lieutenant governor shall be prescribed by law and shall not be diminished during their term of office, unless by general law applying to all salaried officers of the State.

§ 16. Governor's Authority

The governor shall be responsible for the faithful execution of the laws. He may, by appropriate court action or proceeding brought in the name of the State, enforce compliance with any constitutional or legislative mandate, or restrain violation of any constitutional or legislative power, duty, or right by any officer, department, or agency of the State or any of its political subdivisions. This authority shall not be construed to authorize any action or proceeding against the legislature.

§ 17. Convening Legislature

Whenever the governor considers it in the public interest, he may convene the legislature, either house, or the two houses in joint session.

§ 18. Messages to Legislature

The governor shall, at the beginning of each session, and may at other times, give the legislature information concerning the affairs of the State and recommend the measures he considers necessary.

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§ 19. Military Authority

The governor is commander-in-chief of the armed forces of the State. He may call out these forces to execute the laws, suppress or prevent insurrection or lawless violence, or repel invasion. The governor, as provided by law, shall appoint all general and flag officers of the armed forces of the State, subject to confirmation by a majority of the members of the legislature in joint session. He shall appoint and commission all other officers.

§ 20. Martial Law

The governor may proclaim martial law when the public safety requires it in case of rebellion or actual or imminent invasion. Martial law shall not continue for longer than twenty days without the approval of a majority of the members of the legislature in joint session.

§ 21. Executive Clemency

Subject to procedure prescribed by law, the governor may grant pardons, commutations, and reprieves, and may suspend and remit fines and forfeitures. This power shall not extend to impeachment. A parole system shall be provided by law.

§ 22. Executive Branch

All executive and administrative offices, departments, and agencies of the state government and their respective functions, powers, and duties shall be allocated by law among and within not more than twenty principal departments, so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may be established by law and need not be allocated within a principal department.

§ 23. Reorganization

The governor may make changes in the organization of the executive branch or in the assignment of functions among its units which he considers necessary for efficient administration. Where these changes require the force of law, they shall be set forth in executive orders. The legislature shall have sixty days of a regular session, or a full session if of shorter duration, to disapprove these executive orders. Unless disapproved by resolution concurred in by a majority of the members in joint session, these orders become effective at a date thereafter to be designated by the governor.

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§ 24. Supervision

Each principal department shall be under the supervision of the governor.

§ 25. Department Heads

The head of each principal department shall be a single executive unless otherwise provided by law. He shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and shall serve at the pleasure of the governor, except as otherwise provided in this article with respect to the secretary of state. The heads of all principal departments shall be citizens of the United States.

§ 26. Boards and Commissions

When a board or commission is at the head of a principal department or a regulatory or quasi-judicial agency, its members shall be appointed by the governor, subject to confirmation by a majority of the members of the legislature in joint session, and may be removed as provided by law. They shall be citizens of the United States. The board or commission may appoint a principal executive officer when authorized by law, but the appointment shall be subject to the approval of the governor.

§ 27. Recess Appointments

The governor may make appointments to fill vacancies occurring during a recess of the legislature, in offices requiring confirmation by the legislature. The duration of such appointments shall be prescribed by law.

END OF DOCUMENT

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AS § 39.05.080 Page 1

C

West's Alaska Statutes Annotated Currentness
Title 39. Public Officers and Employees
Chapter 05. Qualifications, Appointment, and Tenure
§ 39.05.080. Procedure for all appointments

Except as otherwise provided in a law relating to the positions or memberships on a specific board or commission, appointment to a position or membership shall be made in the following manner:

(1) Each governor shall present to the legislature the names of the persons appointed by that governor; each governor may present the name of a person appointed by a previous governor; only presentment that occurs during the time that the legislature is in regular session constitutes presentment under this section. The governor shall, within the first 15 days after the legislature convenes in regular session, present to the legislature for confirmation the names of the following persons: (A) persons appointed to a position or membership who have not previously been confirmed by the legislature, and (B) persons to be appointed to fill a position or membership the term of which will expire on or before March 1 during that session of the legislature. If an appointment is made after the first 15 days after the convening of the regular session but while the legislature is in regular session, the governor shall immediately present to the legislature for confirmation the name of the person appointed.

(2) When appointments are presented to the legislature for confirmation,

(A) the presiding officer of each house shall assign the name of each appointee to a standing committee of that house for a hearing, report, and recommendation; standing committees of the two houses assigned the same person's name for consideration may meet jointly to consider the qualifications of the person appointed and may issue either a separate or a joint report and recommendation concerning that person; then

(B) the legislature shall, before the end of the regular session in which the appointments are presented, in joint session assembled, act on the appointments by confirming or declining to confirm by a majority vote of all of the members the appointments presented.

(3) When the legislature declines to confirm an appointment, the legislature shall notify the governor of its action and a vacancy in the position or membership exists which the governor shall fill by making a new appointment. The governor may not appoint again the same

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person whose confirmation was refused for the same position or membership during the regular session of the legislature at which confirmation was refused. The person whose name is refused for appointment by the legislature may not thereafter be appointed to the same position or membership during the interim between regular legislative sessions. Failure of the legislature to act to confirm or decline to confirm an appointment during the regular session in which the appointment was presented is tantamount to a declination of confirmation on the day the regular session adjourns.

(4) Pending confirmation or rejection of appointment by the legislature, persons appointed shall exercise the functions, have the powers, and be charged with the duties prescribed by law for the appointive positions or membership. However, the duration of an appointment made during the time period between regular sessions of the legislature by a person who is not still the governor on the first day of the next regular session ends on the date during the next regular session that the sitting governor presents for confirmation an appointment to the office. For the purpose of applying laws that limit the number of terms or parts of terms that may be served by a member of a board or commission, the part of the term of office that is served under an interim appointment immediately before the member is reappointed under this paragraph is considered to be merged with the part of the term of office that is served immediately after reappointment so that the two periods of service constitute only one part of a term. The duration of an appointment made during a regular session of the legislature and not presented to the legislature by the governor during that session ends no later than the last day of that session. The duration of an appointment made during an interim by a governor who is not in office at the beginning of the next regular session of the legislature ends no later than the last day of that regular session unless the governor who is in office during that session presents the person's name for confirmation. The same governor may not appoint the same person to the same position or membership if the person's appointment ends because of the governor's failure to present the person's name for confirmation.

CREDIT(S)

SLA 1955, ch. 64, § 4; SLA 1964, ch. 1, §§ 1--3; SLA 1967, ch. 2, § 1; SLA 1974, ch. 65, § 1; SLA 1975, ch. 82, § 2; SLA 1996, ch. 80, § 14; SLA 2002, ch. 45, § 1. Amended by SLA 2007, ch. 34, § 16, eff. Jan. 1, 2008.

CROSS REFERENCES

Boards of fisheries and game, see § 16.05.221.

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C.J.S. States §§ 88, 158 to 161, 163 to 165, 195.

NOTES OF DECISIONS

Appointments by prior governor 1
Appointments during legislative recess 2
Confirmation of appointment 3
Public record disclosure 4

1. Appointments by prior governor

Governor's power to reconsider prior governor's appointment of defendant to vacant position on Alaska Public Utilities Commission (APUC) ended when defendant assumed powers of office, even though defendant's right to office was contingent upon confirmation by legislature; thus, governor could not remove defendant from office without complying with statutes governing removal from APUC. Const. Art. 3, § 26; AS 39.05.080(1), 42.05.035. Cook v. Botelho, 1996, 921 P.2d 1126. Public Utilities ⚿ 142

2. Appointments during legislative recess

Neither Alaska Constitution nor appointment statutes prevented governor from appointing Alaska Public Utilities Commission (APUC) member to full term while legislature was in recess, nor did they prevent legislature from confirming such appointee. Const. Art. 3, § 27; AS 39.05.080(1). Cook v. Botelho, 1996, 921 P.2d 1126. Public Utilities ⚿ 142

Once governor named appointee to vacant position in Alaska Public Utilities Commission (APUC) during recess of legislature, legislature, upon reconvening, could confirm appointee without awaiting presentment of appointee by governor's successor. AS 39.05.080(1). Cook v. Botelho, 1996, 921 P.2d 1126. Public Utilities ⚿ 142

3. Confirmation of appointment

Legislature may confirm appointee, once governor's appointment is complete, without awaiting communication of appointment from executive. AS 39.05.080(1). Cook v. Botelho, 1996, 921 P.2d 1126. States ⚿ 46

Appointment of executive officers of state government is an "executive function" rather than a legislative one. Const. art. 3, §§ 1, 16. Bradner v. Hammond, 1976, 553 P.2d 1. States ⚿ 46

Confirmation of appointment of executive officers of state government is an attribute of appointive power of Governor rather than a distinct legislative power. Const. art. 2, § 1; art. 3, §§ 1 et seq., 16. Bradner v. Hammond, 1976, 553 P.2d 1. States ⚿ 46

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4. Public record disclosure

Time sheets that indicate hours work for public employer are properly included in definition of "public records" under Public Records Act and are not subject to confidentiality provisions for "state personnel records." AS 39.05.080. Alaska Wildlife Alliance v. Rue (1997) Alaska, 948 P.2d 976. Records ⚿ 58

AS § 39.05.080, AK ST § 39.05.080
Current through legislation effective June 26, 2009 passed during the 1st Reg. Sess. of the 26th Legislature (2009).

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AS § 44.19.026

C
West's Alaska Statutes Annotated Currentness
Title 44. State Government
Chapter 19. Office of the Governor
Article 1. Powers and Duties
→ **§ 44.19.026. Designation of temporary substitute for lieutenant governor**

The lieutenant governor may designate a head of a principal executive department, or more than one such officer in the alternative, who shall temporarily be custodian of the state seal and perform the authenticating functions of the lieutenant governor during such time as the lieutenant governor succeeds to the office of governor, acts as governor, is absent from the state, or otherwise is not available at the state capital to perform the above authenticating functions. The designation shall be in writing, signed by the lieutenant governor, and filed in the office of the lieutenant governor. The designation is effective until revoked by a later designation executed and filed in the same manner.

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AS § 44.19.040

C

West's Alaska Statutes Annotated Currentness
Title 44. State Government
Chapter 19. Office of the Governor
Article 2. Succession
→ § 44.19.040. Appointment of successor to lieutenant governor

After taking an initial term of office, the governor shall appoint, from among the officers who head the principal departments of the state government or otherwise, a person to succeed to the office of lieutenant governor if the office of lieutenant governor becomes vacant. The appointment is subject to confirmation by a majority of the members of the legislature meeting in joint session. The person designated and confirmed is next in line for succession to the office of lieutenant governor, subject to the pleasure of the governor. If the person designated and confirmed is removed from or vacates the appointment, the governor shall appoint a successor subject to confirmation in the same manner as the person initially appointed.

CREDIT(S)

SLA 1959, ch. 174, § 2.

LIBRARY REFERENCES

States ⚷ 42.
Westlaw Key Number Search: 360k42.
C.J.S. States §§ 174, 243.

NOTES OF DECISIONS

Disaster emergencies 1

1. Disaster emergencies

Under the Alaska Disaster Act (AS 26.23 et seq.) the power to declare a condition of disaster emergency rests with the Governor; and, in the event the elected Governor is unable to hold the office, the authority of the office may be assumed by the Lieutenant Governor or the person appointed under AS 44.19.040, as appropriate. The person with the authority of the Governor would have the power to declare a disaster emergency under AS 26.23.020(c). Alaska Op.Atty.Gen. 663-97-0323, (July 17, 1997) 1997 WL 1089539.

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AS § 44.19.040, AK ST § 44.19.040
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AS § 44.19.042

C

West's Alaska Statutes Annotated Currentness
Title 44. State Government
Chapter 19. Office of the Governor
Article 2. Succession
§ 44.19.042. Succession to office

If a vacancy occurs in the office of governor and the regularly elected lieutenant governor succeeds to the office of governor as provided by art. III, § 11, of the constitution, or if the office of lieutenant governor otherwise becomes vacant, the person designated as next successor to the office of lieutenant governor as provided in AS 44.19.040 succeeds to the office of lieutenant governor for the remainder of the term vacated, or until a special election is held. When the person appointed under AS 44.19.040 succeeds to the office of lieutenant governor, the governor shall appoint a person to succeed to the office of lieutenant governor in case of a subsequent vacancy.

CREDIT(S)

SLA 1959, ch. 174, § 3.

LIBRARY REFERENCES

States 41.
Westlaw Key Number Search: 360k41.
C.J.S. States §§ 171 to 174, 240 to 242.

AS § 44.19.042, AK ST § 44.19.042
Current through legislation effective June 26, 2009 passed during the 1st Reg. Sess. of the 26th Legislature (2009).

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Westlaw.

AS § 44.19.044

C
West's Alaska Statutes Annotated Currentness
Title 44. State Government
Chapter 19. Office of the Governor
Article 2. Succession
§ 44.19.044. Special election in case of second vacancy in office of governor

If the regularly elected lieutenant governor succeeds to the office of governor as provided in the constitution and thereafter, during the same regular gubernatorial term, the office of governor again becomes vacant, the appointed lieutenant governor succeeds to the office of acting governor until a special election to elect a governor and lieutenant governor is held.

CREDIT(S)

SLA 1959, ch. 174, § 4.

CROSS REFERENCES

Special elections, generally, see § 14.40.230 et seq.

LIBRARY REFERENCES

States 41.
Westlaw Key Number Search: 360k41.
C.J.S. States §§ 171 to 174, 240 to 242.

AS § 44.19.044, AK ST § 44.19.044
Current through legislation effective June 26, 2009 passed during the 1st Reg. Sess. of the 26th Legislature (2009).

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Westlaw.

AS § 44.19.046

C

West's Alaska Statutes Annotated Currentness
Title 44. State Government
Chapter 19. Office of the Governor
Article 2. Succession
→ **§ 44.19.046. Simultaneous vacancies**

If vacancies in the office of governor and the office of lieutenant governor occur simultaneously, the person appointed under AS 44.19.040 succeeds directly to the office of acting governor until successors to the respective offices are elected in a special election.

CREDIT(S)

SLA 1959, ch. 174, § 5.

CROSS REFERENCES

Per diem and travel expenses, see § 39.20.180.
Special elections, generally, see § 14.40.230 et seq.

LIBRARY REFERENCES

States ⚷ 41.
Westlaw Key Number Search: 360k41.
C.J.S. States §§ 171 to 174, 240 to 242.

AS § 44.19.046, AK ST § 44.19.046
Current through legislation effective June 26, 2009 passed during the 1st Reg. Sess. of the 26th Legislature (2009).

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Westlaw.

C
West's Alaska Statutes Annotated Currentness
The Constitution of the State of Alaska (Refs & Annos)
Article III. The Executive
§ 11. Vacancy

In case of a vacancy in the office of governor for any reason, the lieutenant governor shall succeed to the office for the remainder of the term.

CREDIT(S)

1970 SJR 2, approved August 25, 1970, October 10, 1970.

CROSS REFERENCES

Governor's office, succession, see § 44.19.040 et seq.

LIBRARY REFERENCES

States 51.
Westlaw Key Number Search: 360k51.
C.J.S. States §§ 88, 151, 153, 169 to 170.

AK Const. Art. 3, § 11, AK CONST Art. 3, § 11
Current through the 2008 Second Regular and Fourth Special Session of the 25th Legislature.

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Lt. Col. Troy Dunn

I appear today because as a citizen of this great state I have become increasingly concerned about the ethical climate in state government. Ethical issues have and continue to plague our state government brought on by a lack of character and integrity of both elected and appointed officials. I feel I would be remiss in my duty to the people of this state if I failed to highlight serious ethical concerns about the newly proposed administration. I report on events of this past few years that call into question the ethical record of the man who has been appointed to serve as the next Lieutenant Governor of the State of Alaska – the current Adjutant General of the State of Alaska, Craig Campbell.

In June of 2005 I contacted the Secretary of the Air Force Inspector General office regarding the illegal use of government aircraft at the 168 Air Refueling Wing, Eielson AFB, Alaska. The commander of the Alaska Air National Guard, then Brig Gen Tim Scott was scheduling and utilizing USAF aircraft for personal convenience. This action was allowed and continued under the direction of the 168th Operations Group Commander, Colonel Donald Scott Wenke. I, along with the Squadron Commander briefed Col Wenke that his and Brig Gen Scott's actions were in violation of USAF and DOD regulations. Col Wenke ignored our concerns and even flew one of Brig Gen Scott's sorties himself when no other pilots in the unit would fly a mission to pick up Brig Gen Scott because it violated both USAF and DOD regulation.

In July of 2006 the Secretary of the Air Force Inspector General Office concluded its investigation into the fraud waste and abuse activities of Brig Gen Scott and Col Wenke. I quote from the Report of Investigation titled Case S6646P Brig Gen Timothy W. Scott and Col Donald S. Wenke dated April 2006; "that Brig Gen Scott committed fraud waste and abuse as defined by AFI 90-301, Inspector General Complaints Resolution, 8 Feb 05, by wrongfully directing and /or allowing KC-135 missions be flown primarily for his personal convenience was SUBSTANTIATED" "that Col Wenke committed fraud waste and abuse as defined by AFI 90-301, Inspector General Complaints Resolution, 8 Feb 05, by wrongfully directing and /or allowing KC-135 missions be flown primarily for the personal convenience of Brig Gen Scott was SUBSTANTIATED"

The Inspector General of the Air Force is responsible to find the facts and either dispel or substantiate a case brought forward. They are not responsible for solving the wrongdoings in substantiated cases or in other words, providing punitive action. The facts and findings are forwarded to the command structure of the offending individual and left to the commander of how to handle the offense.

In the case of Col Wenke, his immediate commander was Colonel John Griffin, 168th Air Refueling Wing Commander. It is important to note that Col Wenke and Col Griffin were long friends and previously assigned together with the Idaho Air National Guard. Both recruited and hired by Brig Gen Tim Scott. Brig Gen Tim Scott's commander was the Adjutant General of the Alaska Guard, Maj Gen Craig Campbell.

As the members of the 168th Operation Group waited for some sign of action as to the substantiated fraud waste and abuse activities of Brig Gen Scott and Col Wenke, it

became apparent that no action was to be taken by either Col Griffin or Maj Gen Craig Campbell.

I contacted the Investigating officer at the pentagon and was told that the report and its results were forwarded to the Alaska AG, Maj Gen Craig Campbell for action and they have received no reply as to what action he would take.

In October 2006 I sent the attached letter and supporting documents to candidates for Governor, Sarah Palin and Tony Knowles return receipt and confirmed verbally with their staff it's receipt.

In November 2006 I sent another letter to Governor Elect Palin explaining the lack of reply to the IG office by Maj Gen Campbell. After several documented phone calls through December 2007 with Governor Palin's Chief of Staff, Mr. Tibbles, I was told the matter was turned over to the head of the DMVA. When I told Mr. Tibbles that Maj Gen Campbell already had the complete report as provided by the SAF IG office and he has ignored the SAF IG office, Mr. Tibbles claimed that was all he could do. I then asked Mr. Tibbles if he agreed that I had done everything I could to inform Governor Palin of Maj Gen Campbell's inaction reference the substantiated abuses of Brig Gen Scott and Col Wenke. He agreed I did and I politely told Mr. Tibbles that I would take this problem further up the chain.

On Jan 8, 2008 I contacted Senator Stevens' office and forwarded my documentation. On 12 Jan I received the following e-mail: "Troy – I got word today from the Governor's office that action is being taken on this. Can't say more at this time, but I think it will be obvious when it occurs."

Within weeks, Brig Gen Scott announced his retirement. However, Col Wenke is not only still employed by the Alaska Air Guard, but has been promoted to the 168th Air Refueling Wing Commander under the watch of Lt Gen Craig Campbell.

I have over 50 pages of documentation substantiating the facts of this testimony that is available to anyone who requests it. In my opinion, Lt Gen Campbell not only violated the trust of the members of the Alaska Guard, but also the ethics of the office of which he currently holds. His lack of action regarding the substantiated fraudulent activities of two senior commanders in the Alaska Guard and furthermore, promoting Col Wenke to wing commander, is an affront to the men and women of the Alaska National Guard and demonstrates a complete disregard to the ethics and accountability that define our core values. This lack of character would not be tolerated in the active duty military, should not be tolerated in the Alaska Guard or any public office.

The citizens of Alaska require leaders that have demonstrated an ability to do the right thing; the facts do not support that trait in the Governors selection of her proposed Lt Governor. Thank you.

November 30, 2006

Palin Transition Team
550 W. 7th Ave Suite 601
Anchorage, Alaska 99505

Governor-Elect Palin,

Prior to the election we sent your office information regarding substantiated complaints involving fraudulent activities by senior officials in the Alaska Air Guard. Perhaps with the events leading to the election you did not receive the information from campaign staff; therefore I am enclosing it here once again. Additionally, I have included the latest copy of Air Force Times highlighting another state's Air Guard, an issue you have the capability to prevent here in Alaska.

As of 13 November there has still been no reply by the current Adjutant General of the Alaska National Guard (Maj Gen Craig E. Campbell) to the IG as required by regulation.

The full details of the original complaint are available to you or your representative upon request.

Respectfully,

Troy R. Dunn, Lt Col, AKANG
168 ARS/DO

Lt Col Troy R. Dunn
3046 Taxilane B
North Pole AK 99706
(907) 488-0682

[redacted]

Fax

To:	Honorable Sarah Palin	**From:**	Lt Col Troy R. Dunn
Fax:	(907) 339-7935	**Pages:**	6
Phone:	(907) 322-1605	**Date:**	10/10/2006
Re:	Alaska Air National Guard Leadership	**CC:**	

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

● **Comments:**

Attached are letters from the Secretary of Defense Inspector General's Office in regards to Senior Leaders of the Alaska Air National Guard.

Thank you,

Lt Col Troy R. Dunn

October 10, 2006

Honorable Sarah Palin
245 W. 5th Avenue
Anchorage, AK 99501
Anchorage: Fax (907) 339-7935
Fairbanks: (907) 322-1605

Mrs. Palin,

Attached is a copy of a letter sent from the Inspector General (IG) of the Secretary of the Air Force. This letter validates a complaint made to the IG in regards to the fraudulent activities of Senior Leaders of the Alaska Air National Guard during the Summer of 2005.

The attached letter was sent on July 19, 2006. As stated in the letter, the Adjutant General of the Alaska National Guard (Maj Gen Craig E. Campbell) was informed of the results of this investigation at that time. According to the representative from the IG Office, the Adjutant General is required to report what action has been taken in response to this investigation. As of Oct 3, 2006, no action had been reported to the IG.

In the interest of the Alaska Air National Guard, the results of this investigation have been withheld from the public in the hopes that the situation could be handled discreetly. However, it has become apparent that no action will be taken. It is an affront to the men and women of the Alaska Air National Guard that the Senior Leadership have demonstrated complete disregard to the ethics and accountability that define our Core Values.

As a candidate for Governor, you may have the opportunity to influence the selection of those who will lead the Alaska National Guard through this very important period of Transformation. The members of the Alaska National Guard anticipate that those leaders will be worthy of their loyalty.

The full details of the original complaint will be made available upon request (approximately 50 pages).

Respectfully,

Troy R. Dunn, Lt Col, AKANG
168 ARS/DO

Benjamin K. Baker, Lt Col, AKANG
168 AMXS/CC

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

Office of the Secretary

DEC 20 2005

SAF/IGS
1140 Air Force Pentagon
Washington DC 20330-1140

Lieutenant Colonel Troy R. Dunn
3046 Taxilane B
North Pole, AK 99705

Dear Colonel Dunn

This is in response to your October 2005 complaint transmitted through the Air Force Legal Services Agency at Eielson Air Force Base concerning various allegations against the Commander, Alaska Air National Guard, the Commander, 168th Air Refueling Wing, and the Commander, 168th Operations Group. Since your allegations involved an Air Force Senior Official, they were referred to the Senior Official Inquiries Directorate (SAF/IGS) within the Air Force Inspector General's Office.

Our first step was to conduct a complaint analysis into your allegations. As a result of that analysis, The Inspector General has directed a formal investigation into your case concerning these allegations:

1. That the Commander of the Alaska Air National Guard committed fraud, waste and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution,* by wrongfully directing and/or allowing KC-135 missions be flown primarily for his personal convenience.

2. That the Commander of the 168th Air Refueling Wing committed fraud, waste and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution,* by wrongfully approving and/or allowing KC-135 missions be flown primarily for the personal convenience of the Commander of the Alaska Air National Guard and himself.

3. That the Commander of the 168th Operations Group committed fraud, waste and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution,* by wrongfully approving and/or allowing KC-135 missions be flown primarily for the personal convenience of the Commander of the Alaska Air National Guard and the Commander of the 168th Air Refueling Wing.

4. That the Commander of the 168 Operations Group made a false official statement on an aircrew Mission Activity Report by documenting that he had completed a pilot proficiency sortie when in fact he had not, in violation of Article 107 of the Uniform Code of Military Justice.

An officer from the Senior Official Inquiries Directorate has been assigned as the investigating officer. You can expect that he will contact you within the next three weeks. If you have any questions in the meantime, please contact me at DSN 223-5032 or commercial 703-693-5032.

I hope this information is helpful.

Sincerely,

DONALD P. HIGGINS, JR., Colonel, USAF
Director, Senior Official Inquiries

DEPARTMENT OF THE AIR FORCE
WASHINGTON DC

Office of the Secretary

JUL 19 2006

SAF/IGS
1140 Air Force Pentagon
Washington DC 20330-1140

Lieutenant Colonel Troy R. Dunn
3046 Taxilane B
North Pole, AK 99705

Dear Colonel Dunn

We have completed our investigation into the matters addressed in your 27 Jun 05, 12 Aug 05, and 3 Nov 05 memorandums to the Inspector General, Department of Defense (DoD-IG) regarding fraud, waste, and abuse and falsification of official documents. As you are aware, DoD-IG referred these matters to SAF/IGS for investigation.

The Inspector General investigation confirmed certain aspects of the charges of fraud, waste, and abuse against the 168th Operations Group Commander (168 OG/CC) and the Alaska Air National Guard Commander (AKANG/CC) regarding use of government aircraft for personal convenience. Specifically, the investigation concluded that on at least two occasions training flights were conducted to McChord AFB primarily to facilitate travel requirements of the AKANG/CC.

Regarding the charge of falsification of official documents, the investigation found the available evidence insufficient to establish that the 168 OG/CC violated Article 107 of the Uniform Code of Military Justice.

Please note that our office, like other Department of Defense organizations, must comply with the Privacy Act and the Freedom of Information Act. For this reason, further documentation, including any disciplinary actions that may have been taken, is not releasable in order to protect the privacy rights of subjects and witnesses.

The Inspector General has approved the investigation and considers the matter closed. In addition, the Secretary of the Air Force and the Chief of Staff of the Air Force have been provided the results of this case for their review. We will maintain the Report of Investigation in our files for future reference.

Sincerely

Theodore T. LaPlante

THEODORE T. LAPLANTE, Colonel, USAF
Director, Senior Official Inquiries

DEPARTMENT OF THE AIR FORCE
168TH OPERATIONS SUPPORT FLIGHT (PACAF)
EIELSON AIR FORCE BASE ALASKA

27 June 2005

MEMORANDUM FOR RECORD

FROM: 168 OSF/CC

SUBJECT: Fraud Waste and Abuse Combined with Dereliction of Duty

1. The 168th OG/CC, Lt Col Donald S. Wenke, authorized a KC135 mission to McChord AFB on Saturday, 25 Jun 2005, to retrieve Brig Gen Timothy W. Scott and return him to Eielson AFB. The 168th ARS/CC, Lt Col Todd M. Mackinaw and myself engaged Lt Col Wenke numerous times showing him the directives that would be violated should this mission occur. Lt Col Wenke's only reply was that he knew the mission was illegal and that he had talked with Brig Gen Scott advising him against it. Lt Col Wenke stated that he had been directed by Brig Gen Scott to come get him anyway.

2. The background on the mission flown on 25 Jun begins with a request for night fighter air refueling at Luke AFB. The true objective of this off station training mission was to "legitimize" a request by Brig Gen Scott for travel to McChord AFB to participate in an AMC Rodeo event. This is in direct violation of DODD 4500.43 section 4.3, and ANGI 10-201 sections 1.8 and 1.10.

3. The return request for Brig Gen Scott was coordinated directly by him through the Chief of 168 ARS scheduling (See attached e-mail trail). The original plan was to justify the true purpose of the trip with an air refueling sortie. This request is also in violation of ANGI 10-201 section 1.10. Coordination was accomplished to refuel one C-17 on Thursday night, 23 Jun, flying out of McChord AFB. The legitimacy of this "training" sortie is further compromised by the fact that a week long TDY to Charleston AFB supporting C-17 night air refueling had been scheduled to depart on Sunday, 26 Jun. It would not be cost effective to spend unit funds for a three day TDY to McChord AFB for one C-17 night air refueling when the same training could be accomplished with multiple missions at Charleston AFB funded by AMC. This plan was scrapped later in the week due to a lack of aircraft at the 168th to support a Large Force Employment (LFE) Exercise at the 3rd Wing (Elmendorf AFB).

4. After the loss of the C-17 mission, a request was sent to National Guard Bureau (NGB) for a mission number to support an off station training flight (See attached e-mail trail). Incredibly, this request was approved by Maj Kevin P. Prom (ANG/XOXP). On 27 Jun, I asked Maj Prom what he was thinking when he approved this mission. He stated that as long as the Wing Commander approved a mission he would give the mission number. In essence, he stated he was absolved of any responsibility.

5. With a mission number from NGB, the last vestiges of integrity were tested when none of the 168th OG pilots would volunteer to fly the mission. Finally, with the mission in jeopardy, Lt

Col Wenke volunteered to fly the mission himself. In addition, he was able to convince Lt Col Tracy Saltmarsh, an instructor pilot, to fly the mission with him under the guise of accomplishing a Pilot Proficiency Sortie (identified as M010 in AFI 11-2KC135 Vol. 1).

6. According to the regulation (pp 96, 7.7.5.1), a minimum of 1.5 flying hours should be scheduled for an M010. The M010 will consist of the following: "...three instrument approaches, missed approach, and VFR traffic pattern (weather permitting). In addition, the following events should be accomplished when available: Holding pattern or procedure turn, circling approach, simulated engine-out landing (if applicable to aircraft type and weather permitting,...), simulated engine-out go-around or missed approach (if applicable to aircraft type and weather permitting,...), partial flap landing (if applicable), and engine failure take-off continued." There is also a note which states, "if circumstances prevent completion on one sortie, credit may be taken after a second IP-supervised sortie, provided the combined activity fulfills the intent of this event... Particular emphasis should be placed on simulated systems malfunctions, simulated engine-out operations and instrument procedures."

7. On the day of the mission to McChord AFB, the weather at Eielson AFB and McChord AFB was VFR with no restrictions. All of the instrument procedures were in place and functional to accomplish the events required to complete the M010. While reviewing the post-mission paperwork, I noticed that Lt Col Wenke had logged a pilot proficiency sortie (M010). However, he did not accomplish nor log all of the events required to credit the M010. Combining the events from two sorties, Lt Col Wenke logged three instrument approaches, one missed approach, two landings (one was simulated engine-out), and two takeoffs. There was no attempt to accomplish a VFR traffic pattern (even though weather was not a factor), nor were any of the additional items attempted (i.e. holding, circling approach, etc...). The events accomplished satisfy neither the definition nor the intent of the regulation.

8. After completing the mission review, I asked Msg Tina Wylie to remove the M010 from the Mission Accomplishment Report (MAR). I informed Lt Col Wenke that the events accomplished on the mission in question did not conform to the requirements to log an M010. I also informed him that I had removed the event from his MAR for the mission flown on 25 Jun. I was later informed by Msg Wylie that Lt Col Wenke had directed her to change the MAR to again credit the M010 on 25 Jun (see attached copies of MAR).

9. In the final analysis, the accomplishment of a pilot proficiency sortie (M010) became the justification for scheduling 6.5 hours of flying time to fly to McChord AFB to bring Brig Gen Scott back to Eielson AFB. The same event could have been accomplished at Eielson AFB on a normal duty day in 1.5 hours (see above). Ironically, even though the mission was scheduled to use over four times that recommended by regulation, the events to minimally complete the M010 were not accomplished.

10. The mission that flew to McChord AFB on 25 Jun 2005 and returned to Eielson AFB with Brig Gen Timothy W. Scott was planned and executed in direct violation of ANGI 10-201 section 1.8, 1.9.3, 1.10, AFI 11-401 section 1.9, DODD 4500.43 section 4.3, DOD 4515.13-R section C1.3 and DODD 4500.56 section E2.1. Additionally, unit flying hours had been cut to support the Global War on Terrorism (reference letter from NGB/CF). The 168th OG/CC and AKANG/CC inappropriately utilized 6.7 hours to pick up one individual. The mission

used approximately 12,500 gallons of fuel. The overall cost to the taxpayer of this mission was approximately $76,842 (Based on the 2004 KC135R fleet wide hourly operating cost of 11,469 dollars/hour). A one-way ticket from Seattle (adjacent to McChord AFB) to Fairbanks was readily available all day Saturday, 25 June at a cost of approximately $700. A super-saver ticket (two week advance reservation) could have been purchased for less than $300.

11. Brig Gen Timothy W. Scott (AKANG/CC) and Lt Col Donald S. Wenke (168 OG/CC) knowingly and flagrantly violated the law and these actions warrant a full investigation into the fraudulent use of government aircraft and allocated flying hours.

TROY R. DUNN, Lt Col, AKANG
Commander

DEPARTMENT OF THE AIR FORCE
168TH OPERATIONS SUPPORT FLIGHT (PACAF)
EIELSON AIR FORCE BASE ALASKA

12 Aug 2005

MEMORANDUM FOR RECORD

FROM: LT COL TROY DUNN

SUBJECT: Conduct Unbecoming of an Officer and Falsification of Official Documents

1. It was brought to my attention by 168th OSF Aviation Resource Management personnel that Col Wenke had changed an input to his Mission Activity Report (MAR) for a flight accomplished on 25 Jun 2005. The background of this flight is well documented in the MFR dated 27 Jun 2005.

2. Col Wenke falsified an official document (Aircrew MAR) by logging the accomplishment of an event (M010) that was not completed in compliance with AFI 11-2KC135, Vol 1. This conduct is not acceptable and unbecoming of an Officer.

TROY R. DUNN, Lt Col, AKANG

5350

MEMORANDUM FOR RECORD 29 Nov 2005

TO: Mr. Timothy T. Timmons

SUBJECT: Fraud Waste and Abuse/ Continuing occurrence Case ID # 97567

1. The following individuals are knowledgeable of the fraudulent activities reference case ID #97567.

Major Ben Baker, 168 AMXS/CC DSN 377-8601
Capt Elisabeth King, 168 OSF, Chief of Current Operations, DSN 377-8810
SMSgt Paul Nunemann, 168 OSF/DOS, DSN 377-8812
SMSgt Pamela Cox, 168 OSF/DOS, DSN 377-8812
MSgt Brett Ayres, 168 ARS/DOT, DSN 377-8852
MSgt Tina Wylie, 168 ARMS (Flight Records) 377-8724
TSgt John LaQua, 168 ARMS (Flight Records) 377-8724

2. All members can be reached via 168 operations control center (open 24 hours/day) at DSN 377-8815/8811.

3. Unit deploys for the month of January.

TROY R. DUNN, Lt Col, AKANG

DEPARTMENT OF THE AIR FORCE
OFFICE OF THE INSPECTOR GENERAL
WASHINGTON DC

Office of the Secretary

DEC 9 2013

MEMORANDUM FOR COLONEL ALEXANDER M. MCDOWELL

FROM: SAF/IG

SUBJECT: Appointment of Investigation Officer

In your capacity as an Investigative Officer assigned to the Secretary of the Air Force, Office of the Inspector General, Senior Official Inquiries Directorate (SAF/IGS), you are authorized to conduct investigations into all aspects of the facts and circumstances concerning allegations approved for investigation by this office. You may also investigate any other allegations that are raised during the approved investigation.

During this investigation, you should determine the facts and circumstances by reviewing records and correspondence; reviewing applicable laws, directives, and instructions; examining material evidence; and interviewing persons with relevant information. All records, files, and correspondence relative to the matter under investigation and controlled by the Air Force will be made available to you.

You are authorized to interview witnesses under oath, secure documents, and obtain the cooperation of appropriate commanders. Although you have no authority to summon witnesses, you may request that commanders do so on your behalf.

You should conduct a thorough investigation and prepare a report of investigation (ROI) in accordance with AFI 90-301, *Inspector General Complaints*. Submit to me the ROI and any other documents required by AFI 90-301.

STEVEN R. POLK
Lieutenant General, USAF
The Inspector General

5352

Hilgenbrink John G LtCol 168 ARW/OSF

From: Scott Timothy BrigGen AKANG/CC
Sent: Friday, June 17, 2005 15:38
To: Hilgenbrink John G LtCol 168 ARW/OSF
Cc: Wenke Wendy B LtCol AKANG/ESSO; Mackinaw Todd M LtCol 168 ARS/CC; Cox Pamela G MSgt 168 OG/OSF; Nunemann Paul E SMSgt 168 ARS/DOT; Fitts James A LtCol 168 ARS/DO
Subject: RE: Freedom Flight

I need a Saturday pick up with a noon-ish departure. Let me know who is working this and I'll put them in contact with the Rodeo schedulers. t

-----Original Message-----
From: Hilgenbrink John G LtCol 168 ARW/OSF
To: Scott Timothy BrigGen AKANG/CC
Cc: Wenke Wendy B LtCol AKANG/ESSO; Mackinaw Todd M LtCol 168 ARS/CC; Cox Pamela G MSgt 168 OG/OSF; Nunemann Paul E SMSgt 168 ARS/DOT; Fitts James A LtCol 168 ARS/DO
Sent: 6/17/2005 12:47 PM
Subject: RE: Freedom Flight

BG Scott,
Our plan was to arrive for an Ops Stop on Saturday and depart shortly thereafter for Eielson. Is there any time on Saturday you would prefer to be picked up?

Hilge

-----Original Message-----
From: Mackinaw Todd M LtCol 168 ARS/CC
Sent: Thursday, June 16, 2005 15:10
To: Hilgenbrink John G LtCol 168 ARW/OSF
Cc: Wenke Wendy B LtCol AKANG/ESSO
Subject: FW: Freedom Flight
Importance: High

Hilge,
Please reply with the best times you have to BG Scott.
Thanks.
Mac
-----Original Message-----
From: Wenke Wendy B LtCol AKANG/ESSO
Sent: Thursday, June 16, 2005 1:52 PM
To: Mackinaw Todd M LtCol 168 ARS/CC
Subject: FW: Freedom Flight
Importance: High

Todd,

Can you work this? WW

-----Original Message-----
From: timothy.scott@akeiel.ang.af.mil
[mailto:timothy.scott@akeiel.ang.af.mil]
Sent: Thursday, June 16, 2005 1:46 PM
To: wendy.wenke@AKANCH.ANG.AF.MIL
Subject: Freedom Flight

Does scheduling have some arrival and departure times for MCChord? The ramp is filling up and the majority of competitors are departing Saturday. Please have them work it and let me know. t

5353

-----Original Message-----
From: timothy.scott@akeiel.ang.af.mil
[mailto:timothy.scott@akeiel.ang.af.mil]
Sent: Thursday, June 16, 2005 1:46 PM
To: wendy.wenke@AKANCH.ANG.AF.MIL
Subject: Freedom Flight

Does scheduling have some arrival and departure times for MCChord? The ramp is filling up and the majority of competitors are departing Saturday. Please have them work it and let me know. t

Cox Pamela G MSgt 168 OG/OSF

From: Wenke Wendy B LtCol AKANG/ESSO
Sent: Monday, June 20, 2005 7:35 AM
To: Scott Timothy BrigGen AKANG/CC; Hilgenbrink John G LtCol 168 ARW/OSF
Cc: Mackinaw Todd M LtCol 168 ARS/CC; Cox Pamela G MSgt 168 OG/OSF; Nunemann Paul E SMSgt 168 ARS/DOT; Fitts James A LtCol 168 ARS/DO
Subject: RE: Freedom Flight

Nunemann has this. WW

-----Original Message-----
From: Scott Timothy BrigGen AKANG/CC
Sent: Friday, June 17, 2005 3:38 PM
To: Hilgenbrink John G LtCol 168 ARW/OSF
Cc: Wenke Wendy B LtCol AKANG/ESSO; Mackinaw Todd M LtCol 168 ARS/CC; Cox Pamela G MSgt 168 OG/OSF; Nunemann Paul E SMSgt 168 ARS/DOT; Fitts James A LtCol 168 ARS/DO
Subject: RE: Freedom Flight

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To: Scott Timothy BrigGen AKANG/CC
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Subject: RE: Freedom Flight

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-----Original Message-----
From: Mackinaw Todd M LtCol 168 ARS/CC
Sent: Thursday, June 16, 2005 15:10
To: Hilgenbrink John G LtCol 168 ARW/OSF
Cc: Wenke Wendy B LtCol AKANG/ESSO
Subject: FW: Freedom Flight
Importance: High

Hilge,
Please reply with the best times you have to BG Scott.
Thanks.
Mac
-----Original Message-----
From: Wenke Wendy B LtCol AKANG/ESSO
Sent: Thursday, June 16, 2005 1:52 PM
To: Mackinaw Todd M LtCol 168 ARS/CC
Subject: FW: Freedom Flight
Importance: High

Todd,

Can you work this? WW

Dunn Troy R LtCol 168 OSF/CC

From: Hilgenbrink John G LtCol 168 ARW/OSF
Sent: Thursday, June 23, 2005 9:28 AM
To: Cox Pamela G MSgt 168 OG/OSF; Dunn Troy R LtCol 168 OSF/CC
Subject: FW: PPR // Rodeo Central - Approved // CHENA 88.

Waiting on the ANG Mission Number.

From: Hilgenbrink John G LtCol 168 ARW/OSF
Sent: Thursday, June 23, 2005 09:16
To: Ang. Xoxp. Tankers (ang.xoxp.tankers@ang.af.mil)
Cc: Prom Kevin P Maj ANG/XOXP
Subject: FW: PPR // Rodeo Central - Approved // CHENA 88.

Kevin, We need an ANG Mission Number to land at McChord AFB and pickup BG Tim Scott. He's been heading up the RODEO Exercise there at McChord. Depart Saturday, 25 June, return Saturday, 25 June 2005.

Hilge

From: Williams Michael J Col 168 ARW/CV
Sent: Thursday, June 23, 2005 08:58
To: Hilgenbrink John G LtCol 168 ARW/OSF
Subject: RE: PPR // Rodeo Central - Approved // CHENA 88.

Hilge,

The plan is still approved to fly down and return on Saturday.

Col Williams

> -----Original Message-----
> **From:** Hilgenbrink John G LtCol 168 ARW/OSF
> **Sent:** Thursday, June 23, 2005 8:23 AM
> **To:** Hilgenbrink John G LtCol 168 ARW/OSF; Williams Michael J Col 168 ARW/CV
> **Subject:** RE: PPR // Rodeo Central - Approved // CHENA 88.
>
> Still Approved?
>
> ---
>
> **From:** Hilgenbrink John G LtCol 168 ARW/OSF
> **Sent:** Wednesday, June 22, 2005 14:22
> **To:** Williams Michael J Col 168 ARW/CV
> **Subject:** RE: PPR // Rodeo Central - Approved // CHENA 88.
>
> Col Williams,
> The new plan is to fly down on Saturday for some unfamiliar field pattern work prior to returning to Eielson the same day. We lost a jet due to Maintenance on Thursday. Seeking your re-approval for the new plan.
>
> Hilge
>
> ---
>
> **From:** Williams Michael J Col 168 ARW/CV

Sent: Tuesday, June 21, 2005 14:19
To: Hilgenbrink John G LtCol 168 ARW/OSF; Moe Arne E Col 168 ARW/CC
Cc: Renson Teresa M MSgt 168 ARW/CCA
Subject: RE: PPR // Rodeo Central - Approved // CHENA 88.

Hilge,

Col Moe is on leave and unavailable right now. I approve this off station training flight to McChord AFB.

Col Mike Williams
Vice Wing Commander

-----Original Message-----
From: Hilgenbrink John G LtCol 168 ARW/OSF
Sent: Tuesday, June 21, 2005 12:36 PM
To: Moe Arne E Col 168 ARW/CC
Cc: Williams Michael J Col 168 ARW/CV; Renson Teresa M MSgt 168 ARW/CCA
Subject: FW: PPR // Rodeo Central - Approved // CHENA 88.

Col Moe,

Looking for your approval for an off station training flight to McChord AFB on Thursday, 23 June @ 1735L. Purpose of training will be night C17 heavy refueling prior to arrival into McChord. The mission has been coordinated with McChord Rodeo Exercise Ops and Base Ops. Return will be on Saturday, 25 June @ 1430L. BG Scott will board the aircraft @ McChord for the flight back to Eielson on Saturday.

Request approval so we can get ANG/XOXP to issue an ANG Mission Number.

Hilge

From: Sitton Scott S Lt Col TACC/XOC [mailto:Scott.Sitton-02@scott.af.mil]
Sent: Tuesday, June 21, 2005 10:22
To: Rodriguez Eileen M MSgt 62 OSS/OSAA; Rodriguez Windy M GS-09 62 OSS/OSAA; Reid Ronald Civ 62 OSS/OSAA
Cc: Hilgenbrink John G LtCol 168 ARW/OSF; Scott Timothy BGen Rodeo/CV
Subject: PPR // Rodeo Central - Approved // CHENA 88

McChord Base Operations,

CHENA 88 has been deconflicted with Rodeo sorties and approved for arrival/departure.

CHENA 88 Aircraft Commander... please call BOPS (DSN: 382-5611) for actual receipt of PPR number.

Details are:

CHENA 88
KC-135
ARR 23/0645 Z // 23/2345 L
DEP 25/1900 Z // 25/1200 L
Delay on ground +24 hrs
POC: Lt Col John Hilgenbrink
Ph#: DSN/ 317-377-8812/3/47

v/r

Rodeo Central

Hilgenbrink John G LtCol 168 ARW/OSF

From: ANG/XOXP TANKERS [ANG.XOXP.TANKERS@ang.af.mil]
Sent: Thursday, June 23, 2005 12:25
To: Hilgenbrink John G LtCol ANG-AKEIEL; OSO, 168ARW
Cc: ANG/XOXP TANKERS
Subject: Mission Summary - (2005) DZ1636891176

Listed below is the mission information you requested from the Air National Guard Deployments Team.

Mission ID: (2005) DZ1636891176

Mission Status: Filled
Mission Date: 06/25/2005
EAD/LAD: 06/25/2005 / 06/25/2005
Purpose: OSI for strange field training
Support For: 168ARW (AK)
Unit/Aircraft: 168ARW / KC135
PAX/Cargo: 0 / 0
Locations/Contacts:
(PAEI) EIELSON AFB
(KTCM) MCCHORD AFB
(PAEI) EIELSON AFB

NOT REQUIRED !

ON A NON-UTA SATURDAY?

Why send a Pilot that has no Training Squares Remaining? SAFMAMS.

Crew only Flew 2 Approaches at McChord.
Did not Accomplish M-10 TRAINING

Per telecon w/ MAJ Plum AT XOXP, LG/CC is Authorization For MSN #. (27 Jun 05)

5358

5359

(THIS FORM IS SUBJECT TO THE PRIVACY ACT OF 1974 - SEE REVERSE) Chena 88 / XC File 11/pm

I MISSION DATA

1. DATE (YYYYMMDD)	2. MDS	3. SERIAL NUMBER	4. UNIT CHARGED FOR FLY HOURS/HARM-CODE	5. LOCATION
20050625	KC135R	63-8876	168 ARW (ANG) - FTQA	EIELSON AFB, ALASKA

FLT NO	MISSION NUMBER 6	MISSION SYMBOL 7	FROM (ICAO) 8	TO (ICAO) 9	TAKE OFF TIME (Z) 10	LAND TIME (Z) 11	FLIGHT TIME 12	13. LANDINGS TOUCH AND GO	LANDINGS FULL STOP	LANDINGS TOTAL	SORTIES 14	SPECIAL USE 15
1	505-05	T3UD	PAEI	KTCM	1548	1901	3.2	0	1	1	1	
2	505-05A		KTCM	PAEI	2037	2005	3.5	0	1	1	1	
3												
4												
5												
6												
7												
8												
17. OPERATING UNIT						GRAND TOTALS						
168ARS							6.7	0	2	2	2	

II AIRCREW DATA

FLYING ORGN 17	SSN 18	LAST NAME 19	FLT AUTH DUTY CODE 20	FLIGHT TIME PRIM 21	SEC 22	INSTR 23	EVAL 24	OTHER 25	TOTAL 26	SORTIES 27	FLT CONDITIONS PRIMARY NIGHT 28	PRIMARY INST 29	SIM INST 30	NVG 31	RESERVE STATUS 32	COMBAT TIME 33	COMBAT SORTIES 34	COMBAT SPT TIME 35	COMBAT SPT SORTIES 36
168	[redacted]	WENKE, DONALD S.	MP	6.7					6.7	1				1					
168	[redacted]6	SALTMARSH, TRACY K	IP			6.7			6.7	1				2,2					
168	[redacted]	HALBERT, KENDRA J.	MB	6.7					6.7	1				3,3					

37. MAINT REVIEW	38. PILOT REVIEW	39. OPS REVIEW	40. ARMS PROCESSING COMPLETED			
			INPUT		AUDIT	
			DATE	INITIALS	DATE	INITIALS
	DSW		27 June 2005	BSM		

AFTO Form 781, 20020617 (IMT-V1) Computer Generated PREVIOUS EDITION IS OBSOLETE ARMS AIRCREW/MISSION FLIGHT DATA DOCUMENT

Mission Number: 505-05

Date of Flight: 25 Jun 05

Crew Member			EVENT DESCRIPTION		AS OF 23 June 2005					Currency	
Name	SSAN	POS	Task ID	Task	Completed	ANNUAL REQ	SEMI REQ	1st semi acc	Remng	Last Date	Due Date
Wenke, D.	[redacted]	MP	B001	BOLDFACE	1	0	0	8	0	21-Jun-05	31-Jul-05
Pilot Level 1C			F020	FORMATION		0	2	5	0	21-Jun-05	
			F030	LG FORM		1	0	3	0	29-Apr-05	
			F060	AR FORM		0	2	3	0	31-May-05	
			M010	PROF SORTIE		0	2	1	1	23-Mar-05	
			M020	UNIT SPEC SORTI	1	0	4	8	0	21-Jun-05	
			M050	TACTICAL SORTIE		0	2	1	1	21-Jun-05	
			N010	TANKER RDZ		0	6	22	0	31-May-05	30-Sep-05
			N020	TANKER ENR RDZ		0	2	3	0	29-Apr-05	
			N030	TANKER PP RDZ		0	2	7	0	31-May-05	
			N040	T ANCH RDZ & AR		0	1	13	0	31-May-05	
			N100	INS AIR ALIGN		0	1	2	0	24-Feb-05	
			P010	TAKEOFF-INITIAL	1	0	6	7	0	21-Jun-05	30-Sep-05
			P020	TAKEOFF	1	0	12	10	2	21-Jun-05	31-Jul-05
			P030	MAX T/O 30 FLAP		0	1	3	0	29-Apr-05	
			P040	ENG FAIL T/O CT		0	2	2	0	31-May-05	
			P061	VFR OVERHEAD		0	1	1	0	21-Jun-05	
			P062	TACTICAL DEPART		0	1	2	0	21-Jun-05	
			P063	TACTICAL ARRIV		0	1	2	0	21-Jun-05	
			P064	SLIDE EXERICSE		0	1	4	0	21-Jun-05	
			P065	SING SHIP SCRAM		0	1	4	0	21-Jun-05	
			P066	MANU STEEP TURN		0	2	4	0	21-Jun-05	
			P067	ANCH A/R JOINUP		0	2	2	0	21-Jun-05	
			P068	TURN COMBAT DES		0	2	2	0	21-Jun-05	
			P070	INST APPR	2	0	16	16	0	31-May-05	30-Jun-05
			P100	PREC APPR	2	0	3	9	0	31-May-05	
			P110	NON-PREC APPR		0	3	8	0	6-Apr-05	
			P130	CIRCLING APPR		0	2	2	0	6-Apr-05	
			P140	VISUAL TRAF PAT		0	2	4	0	13-Apr-05	
			P160	MISSED APPR	1	0	3	6	0	6-Apr-05	
			P170	3E APPR & G/A		0	3	3	0	6-Apr-05	
			P180	APP & LND 3 ENG	1	0	2	2	0	23-Mar-05	
			P190	LANDING		0	12	13	0	21-Jun-05	31-Jul-05
			P192	NIGHT LANDING		0	2	2	0	13-Apr-05	30-Sep-05
			P198	LANDING R SEAT		0	2	2	0	6-Apr-05	
			P199	LANDING L SEAT	1	0	2	10	0	21-Jun-05	
			P200	TOUCH&GO		0	0	8	0	13-Apr-05	31-May-05
			P240	LD GEAR ALT EXT		0	1	1	0	31-May-05	
			P250	FLAP MANUAL OP		0	1	1	0	13-Apr-05	
			P260	HAVE QUICK		0	1	1	0	6-Apr-05	
			P270	SECURE RADIO		0	1	2	0	13-Apr-05	
			P271	AUTHEN PROC		0	1	3	0	21-Jun-05	
			R060	TANKER AR		0	6	14	0	31-May-05	30-Sep-05
			R070	TANKER AR BKWY		0	2	2	0	13-Apr-05	
			R080	TANKER AR AP OF		0	3	8	0	31-May-05	
			R100	TANKER AR HEAVY		0	2	2	0	31-May-05	

PERSONAL DATA - PRIVACY ACT OF 1974

Member Signature: DSW

MISSION REVIEW _____

Initial/Date Input: em/27Jun05

Mission Number: 505-05A

Date of Flight: 25 Jun 05

Crew Member			EVENT DESCRIPTION		AS OF 23 June 2005				Currency	
Name	SSAN	POS	Task ID	Task	Completed	ANNUAL REQ	SEMI REQ	1st semi acc	Remngs	Last Date	Due Date
Wenke, D.	[redacted]	MP	B001	BOLDFACE	✓	0	0	8	0	21-Jun-05	31-Jul-05
Pilot Level 1C			F020	FORMATION		0	2	5	0	21-Jun-05	
			F030	LG FORM		1	0	3	0	29-Apr-05	
			F060	AR FORM		0	2	3	0	31-May-05	
			M010	PROF SORTIE	✓	0	2	1	1	23-Mar-05	
			M020	UNIT SPEC SORTI	✓	0	4	8	0	21-Jun-05	
			M050	TACTICAL SORTIE		0	2	1	1	21-Jun-05	
			N010	TANKER RDZ		0	6	22	0	31-May-05	30-Sep-05
			N020	TANKER ENR RDZ		0	2	3	0	29-Apr-05	
			N030	TANKER PP RDZ		0	2	7	0	31-May-05	
			N040	T ANCH RDZ & AR		0	1	13	0	31-May-05	
			N100	INS AIR ALIGN		0	1	2	0	24-Feb-05	
			P010	TAKEOFF-INITIAL	✓	0	6	7	0	21-Jun-05	30-Sep-05
			P020	TAKEOFF	✓	0	12	10	2	21-Jun-05	31-Jul-05
			P030	MAX T/O 30 FLAP		0	1	3	0	29-Apr-05	
			P040	ENG FAIL T/O CT		0	2	2	0	31-May-05	
			P061	VFR OVERHEAD		0	1	1	0	21-Jun-05	
			P062	TACTICAL DEPART		0	1	2	0	21-Jun-05	
			P063	TACTICAL ARRIV		0	1	2	0	21-Jun-05	
			P064	SLIDE EXERICSE		0	1	4	0	21-Jun-05	
			P065	SING SHIP SCRAM		0	1	4	0	21-Jun-05	
			P066	MANU STEEP TURN		0	2	4	0	21-Jun-05	
			P067	ANCH A/R JOINUP		0	2	2	0	21-Jun-05	
			P068	TURN COMBAT DES		0	2	2	0	21-Jun-05	
			P070	INST APPR	✓	0	16	16	0	31-May-05	30-Jun-05
			P100	PREC APPR		0	3	9	0	31-May-05	
			P110	NON-PREC APPR	✓	0	3	8	0	6-Apr-05	
			P130	CIRCLING APPR		0	2	2	0	6-Apr-05	
			P140	VISUAL TRAF PAT		0	2	4	0	13-Apr-05	
			P160	MISSED APPR		0	3	6	0	6-Apr-05	
			P170	3E APPR & G/A		0	3	3	0	6-Apr-05	
			P180	APP & LND 3 ENG		0	2	2	0	23-Mar-05	
			P190	LANDING	✓	0	12	13	0	21-Jun-05	31-Jul-05
			P192	NIGHT LANDING		0	2	2	0	13-Apr-05	30-Sep-05
			P198	LANDING R SEAT		0	2	2	0	6-Apr-05	
			P199	LANDING L SEAT	✓	0	2	10	0	21-Jun-05	
			P200	TOUCH&GO		0	0	8	0	13-Apr-05	31-May-05
			P240	LD GEAR ALT EXT		0	1	1	0	31-May-05	
			P250	FLAP MANUAL OP		0	1	1	0	13-Apr-05	
			P260	HAVE QUICK		0	1	1	0	6-Apr-05	
			P270	SECURE RADIO		0	1	2	0	13-Apr-05	
			P271	AUTHEN PROC		0	1	3	0	21-Jun-05	
			R060	TANKER AR		0	6	14	0	31-May-05	30-Sep-05
			R070	TANKER AR BKWY		0	2	2	0	13-Apr-05	
			R080	TANKER AR AP OF		0	3	8	0	31-May-05	
			R100	TANKER AR HEAVY		0	2	2	0	31-May-05	

2nd of 2 sorties
M010
Logged over
2 Sorties!

PERSONAL DATA - PRIVACY ACT OF 1974

Member Signature: DSW

MISSION REVIEW _____

Initial/Date Input: sm/27 Jun 05

Mission Number: 505-05A

Date of Flight: 25 Jun05

Crew Member | | | EVENT DESCRIPTION | | AS OF 23 June 2005 | | | | | Currency | |

Name	SSAN	POS	Task ID	Task	Completed	ANNUAL REQ	SEMI REQ	1st semi acc	Remng	Last Date	Due Date
Wenke, D.	[redacted]	MP	B001	BOLDFACE	1	0	0	8	0	21-Jun-05	31-Jul-05
Pilot Level 1C			F020	FORMATION		0	2	5	0	21-Jun-05	
			F030	LG FORM		1	0	3	0	29-Apr-05	
			F060	AR FORM		0	2	3	0	31-May-05	
			M010	PROF SORTIE	X OK LT Wenke	2	1	1	23-Mar-05		
			M020	UNIT SPEC SORTI		0	4	8	0	21-Jun-05	
			M050	TACTICAL SORTIE		0	2	1	1	21-Jun-05	
			N010	TANKER RDZ		0	6	22	0	31-May-05	30-Sep-05
			N020	TANKER ENR RDZ		0	2	3	0	29-Apr-05	
			N030	TANKER PP RDZ		0	2	7	0	31-May-05	
			N040	T ANCH RDZ & AR		0	1	13	0	31-May-05	
			N100	INS AIR ALIGN		0	1	2	0	24-Feb-05	
			P010	TAKEOFF-INITIAL	1	0	6	7	0	21-Jun-05	30-Sep-05
			P020	TAKEOFF	1	0	12	10	2	21-Jun-05	31-Jul-05
			P030	MAX T/O 30 FLAP		0	1	3	0	29-Apr-05	
			P040	ENG FAIL T/O CT		0	2	2	0	31-May-05	
			P061	VFR OVERHEAD		0	1	1	0	21-Jun-05	
			P062	TACTICAL DEPART		0	1	2	0	21-Jun-05	
			P063	TACTICAL ARRIV		0	1	2	0	21-Jun-05	
			P064	SLIDE EXERICSE		0	1	4	0	21-Jun-05	
			P065	SING SHIP SCRAM		0	1	4	0	21-Jun-05	
			P066	MANU STEEP TURN		0	2	4	0	21-Jun-05	
			P067	ANCH A/R JOINUP		0	2	2	0	21-Jun-05	
			P068	TURN COMBAT DES		0	2	2	0	21-Jun-05	
			P070	INST APPR	1	0	16	16	0	31-May-05	30-Jun-05
			P100	PREC APPR		0	3	9	0	31-May-05	
			P110	NON-PREC APPR	1	0	3	8	0	6-Apr-05	
			P130	CIRCLING APPR		0	2	2	0	6-Apr-05	
			P140	VISUAL TRAF PAT		0	2	4	0	13-Apr-05	
			P160	MISSED APPR		0	3	6	0	6-Apr-05	
			P170	3E APPR & G/A		0	3	3	0	6-Apr-05	
			P180	APP & LND 3 ENG		0	2	2	0	23-Mar-05	
			P190	LANDING	1	0	12	13	0	21-Jun-05	31-Jul-05
			P192	NIGHT LANDING		0	2	2	0	13-Apr-05	30-Sep-05
			P198	LANDING R SEAT		0	2	2	0	6-Apr-05	
			P199	LANDING L SEAT	1	0	2	10	0	21-Jun-05	
			P200	TOUCH&GO		0	0	8	0	13-Apr-05	31-May-05
			P240	LD GEAR ALT EXT		0	1	1	0	31-May-05	
			P250	FLAP MANUAL OP		0	1	1	0	13-Apr-05	
			P260	HAVE QUICK		0	1	1	0	6-Apr-05	
			P270	SECURE RADIO		0	1	2	0	13-Apr-05	
			P271	AUTHEN PROC		0	1	3	0	21-Jun-05	
			R060	TANKER AR		0	6	14	0	31-May-05	30-Sep-05
			R070	TANKER AR BKWY		0	2	2	0	13-Apr-05	
			R080	TANKER AR AP OF		0	3	8	0	31-May-05	
			R100	TANKER AR HEAVY		0	2	2	0	31-May-05	

Mon 27 June 2005 bm
2nd of 2 sorties
M010
Logged over 2 Sorties!

THE MAN THAT WENKE CHANGED AFTER M010 = SORTIE WAS REMOVED DURING MISSION REVIEW. WENKE FALSIFIED THIS DOCUMENT

PERSONAL DATA - PRIVACY ACT OF 1974

Member Signature: DSW

MISSION REVIEW _____

Initial/Date Input: bm/27 June 05

53

Mission Number: 505 -05A

Date of Flight: 25 Jun 05

Crew Member			EVENT DESCRIPTION		AS OF 23 June 2005					Currency	
Name	SSAN	POS	Task ID	Task	Completed	ANNUAL REQ	SEMI REQ	1st semi acc	Remng	Last Date	Due Date
Halbert, K.	[redacted]	MB	M010	PROF SORTIE		0	3	17	0	23-May-05	
Boom Level 3C			M020	UNIT SPEC SORTI		0	0	17	0	4-May-05	
			M050	TACTICAL SORTIE		0	2	0	2		
			P240	LD GEAR ALT EXT		0	1	1	0	25-Feb-05	
			P250	FLAP MANUAL OP		0	1	1	0	25-Feb-05	
			P270	SECURE RADIO		0	2	2	0	6-Apr-05	
			P271	AUTHEN PROC		0	1	2	0	16-Mar-05	
			P300	CARGO LOADING		1	0	0	1	13-Jul-04	
			R070	TANKER AR BKWY		0	2	3	0	13-Apr-05	
			R100	TANKER AR HEAVY		0	2	2	0	13-Apr-05	
			R120	CONTACTS		0	24	80	0	4-May-05	3-Jul-05
			R130	NIGHT CONTACTS		0	8	8	0	13-Apr-05	10-Oct-05
			R140	TKR MAN CONTACT		0	4	7	0	13-Apr-05	
			R150	FIGHTER CONTACT		0	2	75	0	4-May-05	31-Oct-05
			R160	RAD SILENT BKWY		0	1	1	0	13-Apr-05	

PERSONAL DATA - PRIVACY ACT OF 1974

Member Signature: [signature]

MISSION REVIEW _____

Initial/Date Input: BM/27 Jun 05

Mission Number: 505-05

Date of Flight: 25 Jun05

Crew Member			EVENT DESCRIPTION		AS OF 23 June 2005					Currency	
Name	SSAN	POS	Task ID	Task	Completed	ANNUAL REQ	SEMI REQ	1st semi acc	Remng	Last Date	Due Date
Halbert, K.	[redacted]	MB	M010	PROF SORTIE		0	3	17	0	23-May-05	
Boom Level 3C			M020	UNIT SPEC SORTI		0	0	17	0	4-May-05	
			M050	TACTICAL SORTIE		0	2	0	2		
			P240	LD GEAR ALT EXT		0	1	1	0	25-Feb-05	
			P250	FLAP MANUAL OP		0	1	1	0	25-Feb-05	
			P270	SECURE RADIO		0	2	2	0	6-Apr-05	
			P271	AUTHEN PROC		0	1	2	0	16-Mar-05	
			P300	CARGO LOADING		1	0	0	1	13-Jul-04	
			R070	TANKER AR BKWY		0	2	3	0	13-Apr-05	
			R100	TANKER AR HEAVY		0	2	2	0	13-Apr-05	
			R120	CONTACTS		0	24	80	0	4-May-05	3-Jul-05
			R130	NIGHT CONTACTS		0	8	8	0	13-Apr-05	10-Oct-05
			R140	TKR MAN CONTACT		0	4	7	0	13-Apr-05	
			R150	FIGHTER CONTACT		0	2	75	0	4-May-05	31-Oct-05
			R160	RAD SILENT BKWY		0	1	1	0	13-Apr-05	

PERSONAL DATA - PRIVACY ACT OF 1974

Member Signature: [signature]

MISSION REVIEW _____

Initial/Date Input: Bm/27June05

Mission Number: 505-05

Date of Flight: 25 Jun 05

Crew Member			EVENT DESCRIPTION			AS OF 23 June 2005				Currency	
Name	SSAN	POS	Task ID	Task	Completed	ANNUAL REQ	SEMI REQ	1st semi acc	Remng	Last Date	Due Date
Saltmarsh, T.	[redacted]6	EP	B001	BOLDFACE		0	0	29	0	22-Jun-05	31-Jul-05
Pilot Level 1A			F020	FORMATION		0	1	2	0	31-May-05	
			F030	LG FORM		1	0	1	0	5-May-05	
			F060	AR FORM		0	1	2	0	31-May-05	
			M010	PROF SORTIE		0	2	3	0	22-Jun-05	
			M020	UNIT SPEC SORTI		0	4	17	0	22-Jun-05	
			M050	TACTICAL SORTIE		0	2	0	2		
			N010	TANKER RDZ		0	4	30	0	22-Jun-05	22-Sep-05
			N020	TANKER ENR RDZ		0	1	10	0	22-Jun-05	
			N030	TANKER PP RDZ		0	2	7	0	22-Jun-05	
			N040	T ANCH RDZ & AR		0	1	19	0	22-Jun-05	
			N100	INS AIR ALIGN		1	0	4	0	15-May-05	
			P010	TAKEOFF-INITIAL		0	2	13	0	22-Jun-05	30-Sep-05
			P020	TAKEOFF		0	8	15	0	22-Jun-05	31-Jul-05
			P030	MAX T/O 30 FLAP		0	1	1	0	23-Mar-05	
			P040	ENG FAIL T/O CT		0	2	5	0	22-Jun-05	
			P061	VFR OVERHEAD		0	1	0	1		
			P062	TACTICAL DEPART		0	1	0	1		
			P063	TACTICAL ARRIV		0	1	0	1		
			P064	SLIDE EXERICSE		0	1	0	1		
			P065	SING SHIP SCRAM		0	1	0	1		
			P066	MANU STEEP TURN		0	2	0	2		
			P067	ANCH A/R JOINUP		0	2	1	1	31-May-05	
			P068	TURN COMBAT DES		0	2	0	2		
			P070	INST APPR		0	6	19	0	22-Jun-05	31-Jul-05
			P100	PREC APPR		0	3	13	0	22-Jun-05	
			P110	NON-PREC APPR		0	3	6	0	22-Jun-05	
			P130	CIRCLING APPR		0	2	3	0	3-Jun-05	
			P140	VISUAL TRAF PAT		0	2	13	0	22-Jun-05	
			P160	MISSED APPR		0	2	9	0	22-Jun-05	
			P170	3E APPR & G/A		0	2	5	0	22-Jun-05	
			P180	APP & LND 3 ENG		0	2	5	0	22-Jun-05	
			P190	LANDING		0	8	24	0	22-Jun-05	31-Jul-05
			P192	NIGHT LANDING		0	2	4	0	18-May-05	30-Sep-05
			P198	LANDING R SEAT		0	2	6	0	30-Mar-05	
			P199	LANDING L SEAT		0	2	15	0	22-Jun-05	
			P200	TOUCH&GO		0	0	2	0	22-Jun-05	31-Jul-05
			P240	LD GEAR ALT EXT		1	0	1	0	5-May-05	
			P250	FLAP MANUAL OP		1	0	1	0	8-Jun-05	
			P260	HAVE QUICK		1	0	1	0	15-May-05	
			P270	SECURE RADIO		1	0	2	0	15-May-05	
			P271	AUTHEN PROC		0	1	2	0	15-May-05	
			P310	INSTR/EVAL	/	0	2	27	0	22-Jun-05	
			R060	TANKER AR		0	4	28	0	22-Jun-05	30-Sep-05
			R070	TANKER AR BKWY		0	2	7	0	22-Jun-05	
			R080	TANKER AR AP OF		0	2	8	0	31-May-05	
			R100	TANKER AR HEAVY		0	2	11	0	8-Jun-05	

PERSONAL DATA - PRIVACY ACT OF 1974

Member Signature: [signature]

MISSION REVIEW _____

Initial/Date Input: jm/27 June 05

53

Mission Number: 505-05A

Date of Flight: 25Jun05

Crew Member			EVENT DESCRIPTION		AS OF 23 June 2005					Currency	
Name	SSAN	POS	Task ID	Task	Completed	ANNUAL REQ	SEMI REQ	1st semi acc	Remng	Last Date	Due Date
Saltmarsh, T.	[redacted]	EP	B001	BOLDFACE		0	0	29	0	22-Jun-05	31-Jul-05
Pilot Level 1A			F020	FORMATION		0	1	2	0	31-May-05	
			F030	LG FORM		1	0	1	0	5-May-05	
			F060	AR FORM		0	1	2	0	31-May-05	
			M010	PROF SORTIE		0	2	3	0	22-Jun-05	
			M020	UNIT SPEC SORTI		0	4	17	0	22-Jun-05	
			M050	TACTICAL SORTIE		0	2	0	2		
			N010	TANKER RDZ		0	4	30	0	22-Jun-05	22-Sep-05
			N020	TANKER ENR RDZ		0	1	10	0	22-Jun-05	
			N030	TANKER PP RDZ		0	2	7	0	22-Jun-05	
			N040	T ANCH RDZ & AR		0	1	19	0	22-Jun-05	
			N100	INS AIR ALIGN		1	0	4	0	15-May-05	
			P010	TAKEOFF-INITIAL		0	2	13	0	22-Jun-05	30-Sep-05
			P020	TAKEOFF		0	8	15	0	22-Jun-05	31-Jul-05
			P030	MAX T/O 30 FLAP		0	1	1	0	23-Mar-05	
			P040	ENG FAIL T/O CT		0	2	5	0	22-Jun-05	
			P061	VFR OVERHEAD		0	1	0	1		
			P062	TACTICAL DEPART		0	1	0	1		
			P063	TACTICAL ARRIV		0	1	0	1		
			P064	SLIDE EXERICSE		0	1	0	1		
			P065	SING SHIP SCRAM		0	1	0	1		
			P066	MANU STEEP TURN		0	2	0	2		
			P067	ANCH A/R JOINUP		0	2	1	1	31-May-05	
			P068	TURN COMBAT DES		0	2	0	2		
			P070	INST APPR		0	6	19	0	22-Jun-05	31-Jul-05
			P100	PREC APPR		0	3	13	0	22-Jun-05	
			P110	NON-PREC APPR		0	3	6	0	22-Jun-05	
			P130	CIRCLING APPR		0	2	3	0	3-Jun-05	
			P140	VISUAL TRAF PAT		0	2	13	0	22-Jun-05	
			P160	MISSED APPR		0	2	9	0	22-Jun-05	
			P170	3E APPR & G/A		0	2	5	0	22-Jun-05	
			P180	APP & LND 3 ENG		0	2	5	0	22-Jun-05	
			P190	LANDING		0	8	24	0	22-Jun-05	31-Jul-05
			P192	NIGHT LANDING		0	2	4	0	18-May-05	30-Sep-05
			P198	LANDING R SEAT		0	2	6	0	30-Mar-05	
			P199	LANDING L SEAT		0	2	15	0	22-Jun-05	
			P200	TOUCH&GO		0	0	2	0	22-Jun-05	31-Jul-05
			P240	LD GEAR ALT EXT		1	0	1	0	5-May-05	
			P250	FLAP MANUAL OP		1	0	1	0	8-Jun-05	
			P260	HAVE QUICK		1	0	1	0	15-May-05	
			P270	SECURE RADIO		1	0	2	0	15-May-05	
			P271	AUTHEN PROC		0	1	2	0	15-May-05	
			P310	INSTR/EVAL	/	0	2	27	0	22-Jun-05	
			R060	TANKER AR		0	4	28	0	22-Jun-05	30-Sep-05
			R070	TANKER AR BKWY		0	2	7	0	22-Jun-05	
			R080	TANKER AR AP OF		0	2	8	0	31-May-05	
			R100	TANKER AR HEAVY		0	2	11	0	8-Jun-05	

PERSONAL DATA - PRIVACY ACT OF 1974

Member Signature: [signature]

MISSION REVIEW _____

Initial/Date Input: BM/27 JUN05

FLYING SCHEDULE

Saturday, 25 Jun 2005 (Julian Day 176)

ALERT: P/MATRAY C/POTTS B/DUHAIME

OPS SUP: MRZENA

	Alias	Mission #	Call Sign	Acft Typ	Tail #	Sqd	Fuel	Pri	ConfOn	MsnType	Takeoff ICAO	Takeoff T&G	Takeoff T/O	Tm@Fix	Landing ICAO	Landing T&G	Landing LDG	Dur
1	MCCHORD OST	DZ1 636891 176	CHENA 88	KC135R	38876	168	85	4B1		TRAINING	PAEI	0	1530Z 25/0730L	L	KTCM		1830Z 25/1130L	3.0
	Bus Time:																	
	Crew: MP WENKE MC SALTMARSH MB HALBERT																	
	BRIEF:0500L MODE IV CK REQ MCCHORD PPR:211205BF PICK UP BG SCOTT																	
2	MCCHORD OST	DZ1 636891 176	CHENA 88	KC135R	38876	168		4B1		TRAINING	KTCM		1900Z 25/1200L		PAEI	0	2230Z 25/1430L	3.5
	Bus Time:																	
	Crew: MP WENKE MC SALTMARSH MB HALBERT																	
	BRIEF:0500L MODE IV CK REQ MCCHORD PPR:211205BF PICK UP BG SCOTT																	

| Query | Summary | New Trip | Login | Profile | Help |

After Action Detail for Trip 2005 - 53 - 168ARW (KC135)

Requested						
Special Training		Annual Training		Tech/AGR/IDT		Request Flags
Ofc	Enl	Ofc	Enl	Ofc	Enl	Per Diem/Ofc Days/Enl Days
0	0	0	0	2	1	No No No

OUT AND BACK THE SAME DAY TO PICK UP GENERAL SCOTT

Remarks:

Authorized				
O&M (409)	MP (542)	STO Days	STE Days	Date

Authorization Data Unavailable

Mission History Information for Mission DZ1636891176

Mission ID	Start Date	End Date	Flying Hours	Sorties Msn	Sorties Pre/Dep
DZ1636891176	6/25/2005	6/25/2005	6.7	2	0

PAX				Cargo (Tons)			
MRA	AMC	AMC Opp	Air Drop	MRA	AMC	AMC Opp	Air Drop
1	0	0	0	0	0	0	0

To modify an after action report you must Login

| Query | Summary | New Trip | Login | Profile | Help |

Date: 8/18/2005
Contact: IDPAfterAction@ang.af.mil

ANG/XOXE Mission Readiness Airlift (MRA) Contact: ANG.XOXE.MRA@ang.af.mil
Phone: (DSN) 278-7162, (DSN) 278-7158, (DSN) 278-7148

Technical Support Contact: XOXTech@ang.af.mil
Phone: (DSN) 278-7144, (DSN) 278-7160, (DSN) 278-7157

MEMORANDUM FOR RECORD 3 Nov 2005

SUBJECT: Fraud Waste and Abuse/ Continuing occurrence Case ID # 97567

1. On 17 October 2005 one KC-135 was sent from Eielson AFB to Elmendorf AFB to pickup passengers for a conference at Hickam AFB. The crew was comprised of one technician pilot, one traditional pilot and 2 traditional boom operators. 168th ARW/CC Col Moe was placed on the flight orders, however he was not placed on the AFTO Form 781 nor did he fill out a Mission Activity Report (MAR). The aircraft and crew remained overnight at Elmendorf AFB and departed for Hickam AFB, HI on 18 Oct. According to records, 4 passengers were on board on the leg from Elmendorf AFB to Hickam AFB. The aircraft and crew flew a local air refueling sortie out of Hickam on 19 Oct. On 20 Oct the aircraft and crew departed Hickam AFB and returned to Eielson AFB with no passengers. A total of 13.7 flight hours were spent to get four people from Alaska to Hawaii to attend a conference. Space A passengers were not allowed on the Alaska to Hawaii legs by direction of the 168th ARW/CC. There were passengers requesting space A to Hawaii on this date.

2. On Sunday, 23 Oct 2005, one KC-135 was sent again from Eielson AFB direct to Hickam AFB to pick up the conference attendees. This crew was comprised of two traditional pilots and two traditional boom operators. The aircraft and crew did not fly on 24 Oct in Hawaii. On 25 Oct the aircraft and crew returned with 3 passengers from Hickam AFB to Elmendorf AFB. One passenger disembarked at Elmendorf AFB and the aircraft continued on to Eielson AFB with the remaining two passengers. This out and back spent 12.2 flight hours. There was no training accomplished on these two trips that could not be accomplished on any sortie on any day here at Eielson AFB. The sole purpose of the trip was to take PACAF War fighter conference attendees from Alaska to Hawaii. The 168th flying schedule stated the purpose of these flights was formation training with the HANG however that "training" was never accomplished nor was it ever required.

3. The 168th ARW leadership continues to use unit aircraft in direct and willful violation of ANGI 10-201, DODD 4500.43 and DOD 4515.13-R . Furthermore, the arrogance of not allowing space A passengers on the aircraft is indicative of the current leadership mentality that these aircraft are their personal assets. The decision to inappropriately use 25.9 flight hours to take 4 people from Alaska to Hawaii cost the taxpayers $297,049.17 based on the 2004 hourly operating cost of 11,469.08 for the KC-135R. This does not include the cost of paying the traditional (part time) crewmembers, per-diem and lodging. Commercial air was readily available on these dates. The activity on the above dates was conducted willfully with intent to deceive therefore it is criminal as well as fraudulent.

TROY R. DUNN, Lt Col, AKANG

MEMORANDUM FOR RECORD 28 Nov 2005

SUBJECT: Fraud Waste and Abuse/ Continuing occurrence Case ID # 97567

1. On 5 November 2005 a KC-135 assigned to the 168th ARW departed Eielson AFB and landed at Elmendorf AFB with approximately 6 duty passengers on board. The purpose of the stop at Elmendorf was to pick up additional duty passengers from the Alaska Air Guard and transport them to Andrews AFB the following day. This trip was scheduled and planned under the guise of an AMC funded Charleston Business Effort (night C-17 air refueling). The business effort was obtained and tailored to match the travel directive of Brig Gen Timothy W. Scott. The flight from Eielson AFB to Elmendorf AFB utilized a local 168th ARW mission number; however the crew per diem, travel and lodging was paid for by AMC. (Ref. TDY trip worksheet Charleston BE)

2. On 6 November the aircraft departed Elmendorf AFB enroute to Andrews AFB. The duty passengers were dropped at Andrews AFB and the aircraft and flight crew continued to Charleston AFB. The flight from Elmendorf AFB to Andrews AFB utilized an NGB mission number, however, the crew per diem and travel was paid by AMC. The flight from Andrews AFB to Charleston AFB utilized an AMC mission number.

3. On the nights of 7 and 8 November the crew and aircraft accomplished night C-17 air refueling departing and returning to Charleston AFB. On the night of 9 November the crew departed Charleston AFB and air refueled a C-17 then landed at Andrews AFB at 0049 local time 10 November. These missions were accomplished on an AMC mission number. This departure from the normal business effort contract (Monday through Friday) was to facilitate the travel desires of Brig Gen Timothy W. Scott. On 10 November at 1940L the aircraft departed Andrews AFB with the Alaska Air Guard duty passengers on board. The crew stated that they were late departing Andrews AFB due to the passengers arriving late to the aircraft. The aircraft arrived at Elmendorf AFB at 2315L 10 November dropping off duty passengers and departing Elmendorf AFB at 0000L 11 Nov. The aircraft landed at Eielson AFB at 0045L 11 Nov. The leg from Andrews AFB to Elmendorf AFB was flown on an NGB mission number, once again, the crew travel, per diem and lodging was paid for by AMC. The leg from Elmendorf to Eielson AFB was flown utilizing a local 168th ARW mission number.

4. It appears the intent of the 168th leadership was to utilize AMC dollars to transport members of the Alaska Air Guard from Alaska to Andrews AFB and return. The documentation problem arose when the aircraft landed at Eielson AFB at 0045L 11 Nov, now warranting an additional pay day for the part time (traditional) crewmembers. Maj Bradbury was paid by AMC for the entire trip. TSgt Richard Smith and MSgt Curt Gipson were paid by AMC for 5-10 Nov and given an Annual Training (AT) day for 11 Nov.

5. I do not have the resources to ascertain the legalities of traveling under an NGB and locally generated mission number and paying the crew with an AMC fund cite.

Regardless of legalities, it is wrong for AMC to pay for travel, per diem and lodging that is not related to their business effort. Three nights of Air Refueling in return for 6 days per diem and double lodging costs, due to late check outs from both Charleston and Andrews, is a fraudulent use of resources.

6. Brig Gen Timothy W. Scott and Col Donald S. Wenke did intentionally schedule this trip in willful violation of ANGI 10-201, DODD 4500.43 and DOD 4515.13-R.

TROY R. DUNN, Lt Col, AKANG

168th Current Ops

TDY Trip Worksheet

Charleston BE

Call Sign	Chena 81/01	**A/C**	Bradbury	**Billeting**	ON/OFF BASE
Tail #	59-1461	**Co-pilot**	Loomis	**Meals**	Not Available
Purpose	BE/PAX			**Trans**	Rental
AMC Msn #	7PH007842312	**Boom**	Gibson		
NGB Msn #	DT8404321310	**Boom**	Smith	**Drouge Req**	NO
Msn Type	XXX			**B Kit Req**	NO
Msn Priority	XXXXX				
Conf	XXXX	**C/C**	Schmelik		
		C/C	Russell		

Zulu Date / AMC MSN number	Fuel Load	PAX # / Cargo (K)	Dept Base / ICAO	Dept Time Z / Z Conversion	FL / Mach	AR Track / Altitude	Call Sign / ARCT (Z)	Type / RCVR #	Off load / Total	Arr Base / ICAO	Zulu Date	Arr Time Z / Z Conversion	PPR # / Dip #	ETE
5-Nov-05	70		Eielson	1900						Elmendorf	5-Nov-05	2100	110501MW	2.0
			PAEI	Z-9	Pattern work @ PAED after DV drop					PAED		Z-9		
6-Nov-05	100		Elmendorf	1700	350					Andrews	6-Nov-05	2340	1106R03	6.6
DT8404321310			PAED	Z-9	80					KADW		Z-5		
7-Nov-05	40		Andrews	0100	240					Charleston	7-Nov-05	0200	N/A	1.0
7PH007842312			KADW	Z-5	360T					KCHS		Z-5		
7-Nov-05	75		Charleston	2330		207SW/NE	Lifter 22	C-17	-10	Charleston	8-Nov-05	0230		3.5
			KCHS	Z-5		270	0015	1	ENRT	KCHS		Z-5		
9-Nov-05	70		Charleston	0150		207NE/SW	Lifter 22	C-17	-10	Charleston	9-Nov-05	0340		3.0
			KCHS	Z-5		270	0215	1	PP	KCHS		Z-5		
10-Nov-05	90		Charleston	0305		202S/N	Lifter 22	C-17	-20	Andrews	10-Nov-05	0630	1110R02	3.5
7PH007842314			KCHS	Z-5		270	0330	1	ENRT	KADW		Z-5		
10-Nov-05	105		Andrews	2330	340					Elmendorf	11-Nov-05	0610	111001MW	6.6
DT8404321310			KADW	Z-5	82					PAED		Z-9		
11-Nov-05			Elmendorf	0710						Eielson	11-Nov-05	0810		1.0
			PAED	Z-9						PAEI		Z-9		
													Total Hours	32.2

For more than a single ship TDY, create a separate workbook for each aircraft. Label each title with appropriate additional information (1 of 3, 2 of 3, etc.)

Late Dept
Andrews weights change

CAM Arrive ~~1250L~~ 0100L on 10 NOV

T/O ~ 1800L 10 NOV Arr.

Current as of: 11/28/2005 2:14 PM

Charleston BE

Call Sign	Chena 81/01	**A/C**	Bradbury	**Billeting**	ON/OFF BASE
Tail #	60-0334	**Co-pilot**	Loomis	**Meals**	Not Available
Purpose	BE/PAX			**Trans**	Rental
AMC Msn #	7PH007842312	**Boom**	Gibson		
NGB Msn #	DT8404321310	**Boom**	Smith	**Drouge Req**	NO
Msn Type	XXX			**B Kit Req**	NO
Msn Priority	XXXXX				
Conf	XXXX	**C/C**	Schmelik		
		C/C	Russell		

Loc Wenke

873-UG.

Zulu Date / AMC MSN number	Fuel Load	PAX # / Cargo (K)	Dept Base / ICAO	Dept Time Z / Z Conversion	FL / Mach	AR Track / Altitude	Call Sign / ARCT (Z)	Type / RCVR #	Off load / Total	Arr Base / ICAO	Zulu Date	Arr Time Z / Z Conversion	PPR # / Dip #	ETE
5-Nov-05	70		Eielson	1900						Elmendorf	5-Nov-05	2100	110501MW	2.0
			PAEI	Z-9	Pattern work @ PAED after DV drop					PAED		Z-9		
6-Nov-05	100		Elmendorf	1700	350					Andrews	6-Nov-05	2340		6.6
DT8404321310			PAED	Z-9	80					KADW		Z-5		
6-Nov-05	40		Andrews	0100	240					Charleston	7-Nov-05	0200	N/A	1.0
7PH007842312			KADW	Z-5	360T					KCHS		Z-5		
8-Nov-05			Charleston			216SW/NE				Charleston	8-Nov-05			3.5
			KCHS	Z-5			0200			KCHS		Z-5		
9-Nov-05			Charleston			202S/N				Charleston	9-Nov-05			3.0
			KCHS	Z-5			0215			KCHS		Z-5		
9 ~~10~~-Nov-05			Charleston	0140		202S/N				Andrews	~~10~~-Nov-05	0500		3.5
7PH007842312			KCHS	Z-5			0215			KADW	9	Z-5		
10-Nov-05	105		Andrews	2200	340					Elmendorf	~~11~~-Nov-05	0440	111001MW	6.6
DT8404321310			KADW	Z-5	82					PAED	10	Z-9		
~~11~~-Nov-05			Elmendorf	0540						Eielson	~~11~~-Nov-05	0640		1.0
10			PAED	Z-9						PAEI	10	Z-9		
													Total Hours	28.2

For more than a single ship TDY, create a separate workbook for each aircraft. Label each title with appropriate additional information (1 of 3, 2 of 3, etc.)

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS 168TH AIR REFUELING WING
EIELSON AIR FORCE BASE, ALASKA

MEMORANDUM FOR 168 ARW/FMF
168 ARW/DPMAE

21 Nov 05
FINAL

FROM: 168 OSF/DOF

SUBJECT: TDY MESSAGE

The 168 ARW is sending personnel TDY. The following information applies.

PURPOSE: Charleston Business Effort

Workdays and Per Diem

AMC WUC: 1L ESP: 8K

ITINERARY (Days: 7)
05 NOV 05 - EIELSON AFB AK – ELMENDORF AFB, AK
06 NOV 05 - ELMENDORF AFB,- ANDREWS AFB
06 NOV 05 - ANDREWS AFB- CHARLESTON AFB
09 NOV 05 – CHARLESTON AFB – ANDREWS AFB
10 NOV 05 – ANDREWS AFB – ELMENDORF AFB AK
11 NOV 05 – ELMENDORF AFB AK – EIELSON AFB, AK

MISSION NUMBER
AMC: 7PH007842312
ANG: DT8404321310

Est Travel: 0 Est Per Diem: $136 per person per day.

CREW LIST (Reimbursable: 2 Officers, 2 Boom, 3 Crew Chiefs)(1 Aircraft)

After action Report: Pay Code--, Per Diem req N, Ofc Wrkday Req N, Enl Wrkday Req N,
Off – Sp xx. An xx, AGR/TEC xx; ENL – Sp xx, AN xx, AGR/TEC xx

O&M Operations
LOOMIS, A-OFF AGR/8K

O&M Maintenance

Mil Pers Operations
BRADBURY, D-OFF 1L/8K
SMITH, R-ENL 1L/8K
GIPSON, K-ENL 1L/8K

Traditional Maintenance

53/5

(THIS FORM IS SUBJECT TO THE PRIVACY ACT OF 1974 - SEE REVERSE)

I MISSION DATA

1. DATE (YYYYMMDD)	2. MDS	3. SERIAL NUMBER	4. UNIT CHARGED FOR FLY HOURS/HARM-CODE	5. LOCATION
20051105	KC135R	59001461	168 ARW (ANG) - FTQA	EIELSON AFB, ALASKA

FLT NO	MISSION NUMBER 6	MISSION SYMBOL 7	FROM (ICAO) 8	TO (ICAO) 9	TAKE OFF TIME (Z) 10	LAND TIME (Z) 11	FLIGHT TIME 12	13. LANDINGS TOUCH AND GO	LANDINGS FULL STOP	LANDINGS TOTAL	SORTIES 14	SPECIAL USE 15
1	073-06	T3BE	PAEI	PAED	1955	1940	.7	0	1	1	1	
2												
3												
4												
5												
6												
7												
8												
17. OPERATING UNIT 168ARS						GRAND TOTALS	.7	0	1	1	1	

II AIRCREW DATA

FLYING ORGN 17	SSN 18	LAST NAME 19	FLT AUTH DUTY CODE 20	FLIGHT TIME PRIM 21	FLIGHT TIME SEC 22	FLIGHT TIME INSTR 23	FLIGHT TIME EVAL 24	FLIGHT TIME OTHER 25	FLIGHT TIME TOTAL 26	SORTIES 27	FLT CONDITIONS PRIMARY NIGHT 28	FLT CONDITIONS PRIMARY INST 29	FLT CONDITIONS SIM INST 30	FLT CONDITIONS NVG 31	RESERVE STATUS 32	COMBAT TIME 33	COMBAT SORTIES 34	COMBAT SPT TIME 35	COMBAT SPT SORTIES 36
168	[redacted]	Bradbury, D	IP			0.7			.7	1					1				
168	[redacted]	Loomis, A	FP					0.7	.7	1					1				
168	[redacted]	GIPSON, C	MB	.7					.7	1					1				
168	[redacted]	Smith, R	MB		.7				.7	1					1				
168	[redacted]	Wenke, D	MP	0.7					.7	1					1				

37. MAINT REVIEW	38. PILOT REVIEW	39. OPS REVIEW	40. ARMS PROCESSING COMPLETED INPUT DATE	INPUT INITIALS	AUDIT DATE	AUDIT INITIALS
			15 NOV 05		16 NOV 05	

AFTO Form 781, 20020617 (IMT-V1) Computer Generated — PREVIOUS EDITION IS OBSOLETE — ARMS AIRCREW/MISSION FLIGHT DATA DOCUMENT

EIELSON AFB to ELMENDORF AFB

5376

(THIS FORM IS SUBJECT TO THE PRIVACY ACT OF 1974 - SEE REVERSE)

I MISSION DATA

1. DATE (YYYYMMDD)	2. MDS	3. SERIAL NUMBER	4. UNIT CHARGED FOR FLY HOURS/HARM-CODE	5. LOCATION
20051106	KC135R	59001461	168 ARW (ANG) - FTQA	EIELSON AFB, ALASKA

FLT NO	MISSION NUMBER 6	MISSION SYMBOL 7	FROM (ICAO) 8	TO (ICAO) 9	TAKE OFF TIME (Z) 10	LAND TIME (Z) 11	FLIGHT TIME 12	13. LANDINGS TOUCH AND GO	LANDINGS FULL STOP	LANDINGS TOTAL	SORTIES 14	SPECIAL USE 15
1	073-064	T38E	PAED	KADW	1700	2310	6.2	0	1	1	1	
2												
3												
4												
5												
6												
7												
8												
17. OPERATING UNIT 168ARS						GRAND TOTALS	6.2	0	1	1	1	

II AIRCREW DATA

FLYING ORGN 17	SSN 18	LAST NAME 19	FLT AUTH DUTY CODE 20	FLIGHT TIME PRIM 21	SEC 22	INSTR 23	EVAL 24	OTHER 25	TOTAL 26	SORTIES 27	FLT CONDITIONS PRIMARY NIGHT 28	PRIMARY INST 29	SIM INST 30	NVG 31	RESERVE STATUS 32	COMBAT TIME 33	COMBAT SORTIES 34	COMBAT SPT TIME 35	COMBAT SPT SORTIES 36
168	[redacted]	Bradbury, D	IP			6.2			6.2	1					1				
168	[redacted]	Loomis, A	FP	6.0	0.2				6.2	1	1.0	1.0			1				
168	[redacted]	GIPSON, C	MB	6.2					6.2	1					1				
168	[redacted]	Smith, R	MB		6.2				6.2	1					1				
168	[redacted]	Wenke, D	MP					6.2	6.2	1					1				

37. MAINT REVIEW	38. PILOT REVIEW	39. OPS REVIEW	40. ARMS PROCESSING COMPLETED INPUT DATE	INPUT INITIALS	AUDIT DATE	AUDIT INITIALS
			15NOV05		16 NOV 05	

AFTO Form 781, 20020617 (IMT-V1) Computer Generated — PREVIOUS EDITION IS OBSOLETE — ARMS AIRCREW/MISSION FLIGHT DATA DOCUMENT

ELMENDORF AFB to ANDREWS AFB

5377

(THIS FORM IS SUBJECT TO THE PRIVACY ACT OF 1974 - SEE REVERSE)

I MISSION DATA

1. DATE (YYYYMMDD)	2. MDS	3. SERIAL NUMBER	4. UNIT CHARGED FOR FLY HOURS/HARM-CODE	5. LOCATION
20051107	KC135R	59001461	168 ARW (ANG) - FTQA	EIELSON AFB, ALASKA

FLT NO	MISSION NUMBER 6	MISSION SYMBOL 7	FROM (ICAO) 8	TO (ICAO) 9	TAKE OFF TIME (Z) 10	LAND TIME (Z) 11	FLIGHT TIME 12	13. LANDINGS TOUCH AND GO	LANDINGS FULL STOP	LANDINGS TOTAL	SORTIES 14	SPECIAL USE 15
1	073-06B	T3BE	KADW	KCHS	0200	0310	1.2	Ø	1	1	1	
2												
3												
4												
5												
6												
7												
8												
17. OPERATING UNIT 168ARS						GRAND TOTALS	1.2	Ø	1	1	1	

II AIRCREW DATA

FLYING ORGN 17	SSN 18	LAST NAME 19	FLT AUTH DUTY CODE 20	FLIGHT TIME PRIM 21	SEC 22	INSTR 23	EVAL 24	OTHER 25	TOTAL 26	SORTIES 27	FLT CONDITIONS PRIMARY NIGHT 28	PRIMARY INST 29	SIM INST 30	NVG 31	RESERVE STATUS 32	COMBAT TIME 33	COMBAT SORTIES 34	COMBAT SPT TIME 35	COMBAT SPT SORTIES 36
168	[redacted]	Bradbury, D	IP			1.2			1.2	1	1.2				1				
168	[redacted]	Loomis, A	FP	1.2					1.2	1	1.2				1				
168	[redacted]	GIPSON, C	MB	1.2					1.2	1					1				
168	[redacted]	Smith, R	MB					1.2	1.2	1					1				

37. MAINT REVIEW	38. PILOT REVIEW	39. OPS REVIEW	40. ARMS PROCESSING COMPLETED			
			INPUT DATE	INPUT INITIALS	AUDIT DATE	AUDIT INITIALS
			15NOV05		16NOV05	

AFTO Form 781, 20020617 (IMT-V1) Computer Generated — PREVIOUS EDITION IS OBSOLETE — ARMS AIRCREW/MISSION FLIGHT DATA DOCUMENT

ANDREWS AFB to CHARLESTON AFB

5378

(THIS FORM IS SUBJECT TO THE PRIVACY ACT OF 1974 - SEE REVERSE)

I MISSION DATA

1. DATE (YYYYMMDD)	2. MDS	3. SERIAL NUMBER	4. UNIT CHARGED FOR FLY HOURS/HARM-CODE	5. LOCATION
20051110	KC135R	59001461	168 ARW (ANG) - FTQA	EIELSON AFB, ALASKA

FLT NO	MISSION NUMBER 6	MISSION SYMBOL 7	FROM (ICAO) 8	TO (ICAO) 9	TAKE OFF TIME (Z) 10	LAND TIME (Z) 11	FLIGHT TIME 12	13. LANDINGS TOUCH AND GO	LANDINGS FULL STOP	LANDINGS TOTAL	SORTIES 14	SPECIAL USE 15
1	073-06E	T3BE	KCHS	KADW	0301	0549	2.8	0	1	1	1	
2												
3												
4												
5												
6												
7												
8												
17. OPERATING UNIT 168ARS						GRAND TOTALS	2.8	0	1	1	1	

II AIRCREW DATA

FLYING ORGN 17	SSN 18	LAST NAME 19	FLT AUTH DUTY CODE 20	FLIGHT TIME PRIM 21	SEC 22	INSTR 23	EVAL 24	OTHER 25	TOTAL 26	SORTIES 27	FLT CONDITIONS PRIMARY NIGHT 28	PRIMARY INST 29	SIM INST 30	NVG 31	RESERVE STATUS 32	COMBAT TIME 33	COMBAT SORTIES 34	COMBAT SPT TIME 35	COMBAT SPT SORTIES 36
168	[redacted]0	Bradbury, D	IP			2.8			2.8	1	.5	.5			1				
168	[redacted]1	Loomis, A	FP	2.3	.5				2.8	1	2.3	2.3			1				
168	[redacted]5	GIPSON, C	MB	.3				2.5	2.8	1					1				
168	[redacted]9	Smith, R	MB	2.5				.3	2.8	1					1				

37. MAINT REVIEW	38. PILOT REVIEW	39. OPS REVIEW	40. ARMS PROCESSING COMPLETED			
			INPUT DATE	INPUT INITIALS	AUDIT DATE	AUDIT INITIALS
TL			15NOV05		16NOV05	

AFTO Form 781, 20020617 (IMT-V1) Computer Generated — PREVIOUS EDITION IS OBSOLETE — ARMS AIRCREW/MISSION FLIGHT DATA DOCUMENT

CHARLESTON AFB to ANDREWS AFB

5379

(THIS FORM IS SUBJECT TO THE PRIVACY ACT OF 1974 - SEE REVERSE)

I MISSION DATA

1. DATE (YYYYMMDD)	2. MDS	3. SERIAL NUMBER	4. UNIT CHARGED FOR FLY HOURS/HARM-CODE	5. LOCATION
20051111	KC135R	59001461	168 ARW (ANG) - FTQA	EIELSON AFB, ALASKA

FLT NO	MISSION NUMBER 6	MISSION SYMBOL 7	FROM (ICAO) 8	TO (ICAO) 9	TAKE OFF TIME (Z) 10	LAND TIME (Z) 11	FLIGHT TIME 12	13. LANDINGS TOUCH AND GO	LANDINGS FULL STOP	LANDINGS TOTAL	SORTIES 14	SPECIAL USE 15
1	073-06F	T3BE	KADW	PAED	0040	0815	7.6	0	1	1	1	
2												
3												
4												
5												
6												
7												
8												
17. OPERATING UNIT 168ARS						GRAND TOTALS	7.6	0	1	1	1	

II AIRCREW DATA

FLYING ORGN 17	SSN 18	LAST NAME 19	FLT AUTH DUTY CODE 20	FLIGHT TIME PRIM 21	FLIGHT TIME SEC 22	FLIGHT TIME INSTR 23	FLIGHT TIME EVAL 24	FLIGHT TIME OTHER 25	FLIGHT TIME TOTAL 26	SORTIES 27	FLT CONDITIONS PRIMARY NIGHT 28	FLT CONDITIONS PRIMARY INST 29	FLT CONDITIONS SIM INST 30	FLT CONDITIONS NVG 31	RESERVE STATUS 32	COMBAT TIME 33	COMBAT SORTIES 34	COMBAT SPT TIME 35	COMBAT SPT SORTIES 36
168	[redacted]0	Bradbury, D	IP			7.6			7.6	1	3.8	3.8			1				
168	[redacted]	Loomis, A	FP	3.8	3.8				7.6	1	3.8	3.8			1				
168	[redacted]	GIPSON, C	MB		7.6				7.6	1					1				
168	[redacted]	Smith, R	MB	7.6					7.6	1					1				
168	[redacted]	Wenke, D	MP					7.6	7.6	1					1				

37. MAINT REVIEW	38. PILOT REVIEW	39. OPS REVIEW	40. ARMS PROCESSING COMPLETED			
	DB CM		INPUT DATE	INPUT INITIALS	AUDIT DATE	AUDIT INITIALS
			15NOV05		16NOV05	

AFTO Form 781, 20020617 (IMT-V1) Computer Generated — PREVIOUS EDITION IS OBSOLETE — ARMS AIRCREW/MISSION FLIGHT DATA DOCUMENT

ANDREWS AFB to ELMENDORF AFB

5380

(THIS FORM IS SUBJECT TO THE PRIVACY ACT OF 1974 - SEE REVERSE)

I MISSION DATA

1. DATE (YYYYMMDD)	2. MDS	3. SERIAL NUMBER	4. UNIT CHARGED FOR FLY HOURS/HARM-CODE	5. LOCATION
20051111	KC135R	59001461	168 ARW (ANG) - FTQA	EIELSON AFB, ALASKA

FLT NO	MISSION NUMBER 6	MISSION SYMBOL 7	FROM (ICAO) 8	TO (ICAO) 9	TAKE OFF TIME (Z) 10	LAND TIME (Z) 11	FLIGHT TIME 12	13. LANDINGS TOUCH AND GO	LANDINGS FULL STOP	LANDINGS TOTAL	SORTIES 14	SPECIAL USE 15
1	073-06G	T3BE	PAED	PAEI	0900	0945	.7	0	1	1	1	
2												
3												
4												
5												
6												
7												
8												
17. OPERATING UNIT 168ARS						GRAND TOTALS	.7	0	1	1	1	

II AIRCREW DATA

FLYING ORGN 17	SSN 18	LAST NAME 19	FLT AUTH DUTY CODE 20	FLIGHT TIME PRIM 21	SEC 22	INSTR 23	EVAL 24	OTHER 25	TOTAL 26	SORTIES 27	FLT CONDITIONS PRIMARY NIGHT 28	PRIMARY INST 29	SIM INST 30	NVG 31	RESERVE STATUS 32	COMBAT TIME 33	COMBAT SORTIES 34	COMBAT SPT TIME 35	COMBAT SPT SORTIES 36
168	[redacted]	Bradbury, D	IP			.7			.7	1					1				
168	[redacted]	Loomis, A	FP	.7					.7	1	.7	.7			1				
168	[redacted]	GIPSON, C	MB		.7				.7	1					1				
168	[redacted]	Smith, R	MB	.7					.7	1					1				
168	[redacted]	Wenke, D	MP					.7	.7	1					1				

DNB

37. MAINT REVIEW

38. PILOT REVIEW DNB

39. OPS REVIEW

40. ARMS PROCESSING COMPLETED

INPUT DATE	INPUT INITIALS	AUDIT DATE	AUDIT INITIALS
15NOV05		[illegible]	

AFTO Form 781, 20020617 (IMT-V1) Computer Generated — PREVIOUS EDITION IS OBSOLETE — ARMS AIRCREW/MISSION FLIGHT DATA DOCUMENT

Elmendorf AFB to Eielson AFB

ALASKA NATIONAL GUARD
168TH OPERATION GROUP (PACAF)
EIELSON AFB, ALASKA 99702-1730

Personnel Data-Privacy Act of 1974 (5 USC 552a)

SPECIAL ORDER
TB - 18

03 NOV 05

1. TYPE OF DUTY: AGR - Travel on Active Duty

2. PURPOSE: Charleston B.E.

3. ADDRESSING:

[redacted] A90RFKQ3, SECRET

4. AUTHORITY/TITLE: (JFTR, VOL I, U7150)

5. ITINERARY: 05 NOV 05 THRU 10 NOV 05
Transportation: AUTH Dir Mil Air
From: Eielson AFB, AK
To: Elemendorf AFB, AK
To: Charleston AFB, SC
To: Andrews AFB, MD
Rtn: Eielson AFB, AK

6. REMARKS:
Submit travel voucher within 5 working days after completion of travel. Turn in all promotional items, for example gifts, bonus tickets, etc., to the AFO. Lodging receipts required with travel voucher for per diem entitlements. Personnel will use Mil/Govt aircraft when available. Mbr(s) are on AGR status. Mbr(s) are required to have in their possession at all times a copy of the Special Order for their current AGR tour. Medical treatment is authorized IAW AFR 168-6. Since your per diem is based on availability of billeting and mess, contact the Base Billeting Office to see if they are available. Personnel will utilize govt quarters when available (Federal or State). If quarters are not available, the travel order or voucher must document the non-availability (by confirmation number, if provided by the service in its registration process; otherwise, the member will note the date the attempt to acquire reservation was made and the phone number and point of contact the billeting office contacted). The authorizing official then will authorize or approve commercial lodging. Documentation of non-availability on the order or voucher is required to support reimbursement of a commercial lodging expense. No government meals are

available/directed. Use of Government Charge Card-Mandatory: In accordance with Public Law 105-264, Government Charge Card is mandatory for all authorized expenses unless otherwise exempted under the specific provisions detailed in paragraph E of the TTRA. Variations in itinerary authorized. Member will use a IBA for transportation costs. Travel Advance: Traveler has a government travel card and will use it for major purchases. A travel advance is not authorized. ESP: 8K

7. CERTIFICATION: TEMPO: D
Fund Cite: 5763840 586 41M3 991020 01 409 668300 ESP:8K
F000478 P028988 IBA

ESTIMATES: TVL: $0.00 PER DIEM: $800.00 ADVANCE: $0.00
HOUSEHOLD GOODS: $0.00

OFFICIAL Certifying Official: /S/SMSGT STEVEN J. SCHMITZ/S/

8. AUTHENTICATION:

FOR THE COMMANDER

/S/OFFICIAL/S/

KENT S. COKER, Col, AKANG
Mission Support Group Commander

DISTRIBUTION : C

DEPARTMENT OF THE AIR FORCE
NATIONAL GUARD BUREAU
168TH OPERATION GROUP (PACAF)
EIELSON AFB, ALASKA 99702-1730

Personnel Data-Privacy Act of 1974 (5 USC 552a)

SPECIAL ORDER 15 NOV 05
RB- 99

1. Relating to Special Order RB-75 (MPA-DEPLOYED) OF 03 NOV 05

2. Addressing:

MAJ BRADBURY DOUGLAS W, [redacted], A90RFKQ3, 168 OG

3. MAJ BRADBURY, DOUGLAS W.
DUTY PERIOD AS READS: 05 NOV 05 THRU 10 NOV 05
IS AMENDED TO READ: 05 NOV 05 THRU 11 NOV 05

4. FUND CITES: WUC 1L OA: ARS- 6-MT-534 [1/0]
P&A: 5763500 326 510 530 525725
P/D: 5763840 586 41M3 991020 01 409 668300 ESP:8K
F000478 P028988 IBA

OFFICIAL - Certifying Official: /S/SMSGT STEVEN J. SCHMITZ/S/

AUTHENTICATION:

BY ORDER OF THE SECRETARY OF THE AIR FORCE

/S/OFFICIAL/S/

KENT S. COKER, Col, AKANG DISTRIBUTION : B
Mission Support Group Commander

SO RB- 99

MEMORANDUM FOR RECORD 28 Nov 2005

SUBJECT: Fraud Waste and Abuse/ Continuing occurrence Case ID # 97567

1. It has been brought to my attention today that Brig. Gen Timothy W. Scott utilized an Alaska Air National Guard KC-135 from the 168th ARW on 6 April 2005 to take him to a Luncheon at McChord AFB and return to Eielson AFB. This sortie was scheduled as dedicated for the purpose of the Generals travel. This is in direct violation of ANGI 10-201, DODD 4500.43 and DOD 4515.13-R.

2. Copies of Crew Flight Authorization's, AFTO Form 781's and Mission Accomplishment Reports (MAR) attached. Note that no training was accomplished for the boom operator and the pilots only logged one takeoff, instrument approach and landing each. The travel of Brig Gen Scott was not incidental to an already scheduled training event as it was scheduled to transport him from Eielson AFB to McChord and return. 6.8 flying hours were spent supporting this illegal activity.

TROY R. DUNN, Lt Col, AKANG

Original 26105 I

CREW FLIGHT (*FA*) AUTHORIZATION

1. PREPARED DATE:	2. MISSION NUMBER	3. DEPARTURE LOCATION	4. DESTINATION
06 Apr 05	349-05	PAEI	PAEI-KTCM-PAEI

5. MISSION SYMBOL AND PURPOSE	6. SCHEDULED DEP DATE/TIME:	7. SCHEDULED RET DATE/TIME:	
T3UD	7-Apr-05	7-Apr-05	
	8. AERO VEHICLE:	9. ACFT TAIL #:	10. CALL SIGN:
	KC135R	63-8015	CHENA 41

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 8013; 44 U.S.C. 3101; AND EO 9397
PRINCIPAL PURPOSE: Source document used to authorize aircrew members to preform in-flight duties for this aircraft and provide accountability for aircrew personnel on mission. Additionally used to validate aircrew duties for entitlement to flight time, operational flying duty credit, and flight pay entitlements.
DISCLOSURE IS VOLUNTARY: SSAN is needed to meet qualification for accountability, flight documentation, and flight pay entitlements. Failure to provide may prevent authorization to fly and result in a loss of records, qualification, and incentive pay entitlements.

11. CREW INFORMATION

A. NAME	B. GRADE MIL/GS	C. SSAN	D. SEC CLR	E. CREW POS	F. DUTY POS	G. REMARKS/ RES CODE	H. UNIT	I. CREW #	J. INITIALS FOR CHG
BRADBURY, DOUGLAS W	MAJ	[redacted]	TOPSEC	EP	IP		168	A	
KING, RYAN	2LT	[redacted]	TOPSEC	MC	MC		168		
AYRES, BRETT S.	MSG	[redacted]	TOPSEC	IB	MB		168		

12. Remarks:
Variations in Itinerary Authorized
A - Aircraft Commander
All aircrew members are authorized to carry concealed weapons, IAW AFI 31-207, para 2.9

MEGP: BGEN TIM SCOTT
MOGP: MSGT WILLIAM RUSSOL 3416 InB
MOGP: MSG KIM TUCKNOTH 3912 DnB

13. AUTHORIZATION DATE	14. FA NUMBER:	15. DISTRIBUTION		
6-Apr-05	349-05	1 - FILE	1 - OPS	1 - MBR

16. GO/NO-GO VERIFICATION:
I certify go/no-go checks were accomplished for aircrew members below. As a minimum, flight physical, physical availability, physiological training, emergency egress, local area survival. Current ASC, (AO Effective date/term date), ACFT AO's, FCIF card and any other grounding events were checked. Individuals non-current for aircrew training or aircrew qualification have appropriate remarks codes assigned and an instructor is on-board for their specialty.

1COX2 Initials: _____ Aircraft Commander Review: _____

IF CHANGES TO ORIGINAL CREW MEMBERS: I certify the above go/no-go checks were performed for aircrew member(s)added:

Aircraft Commander Signature: _____

17. UNIT DESIGNATION AND LOCATION OF AUTHORIZING AGENCY	18. SIGNATURE ELEMENT OF AUTHENTICATING OFFICIAL
ALASKA AIR NATIONAL GUARD 168 AIR REFUELING WING EIELSON AFB, AK 99702-5000	JOHN G. HILGENBRINK, Lt Col, AKANG Chief, 168 Scheduling

19. ACCOUNTING CITATION:
N/A

AF IMT 4327a, 20031201 *(V1) (Computer Generated)*

5386

(THIS FORM IS SUBJECT TO THE PRIVACY ACT OF 1974 - SEE REVERSE)

I MISSION DATA

1. DATE (YYYYMMDD)	2. MDS	3. SERIAL NUMBER	4. UNIT CHARGED FOR FLY HOURS/HARM-CODE	5. LOCATION
20050407	KC135R	63-8015	168 ARW (ANG) - FTQA	EIELSON AFB, ALASKA

FLT NO	MISSION NUMBER 6	MISSION SYMBOL 7	FROM (ICAO) 8	TO (ICAO) 9	TAKE OFF TIME (Z) 10	LAND TIME (Z) 11	FLIGHT TIME 12	13. LANDINGS TOUCH AND GO	LANDINGS FULL STOP	LANDINGS TOTAL	SORTIES 14	SPECIAL USE 15
1	349-05	T3UD	PAEI	KTCM	1650	2025	3.8	Ø	1	1	1	
2												
3												
4												
5												
6												
7												
8												
17. OPERATING UNIT 168ARS						GRAND TOTALS	3.8	Ø	1	1	1	

II AIRCREW DATA

FLYING ORGN 17	SSN 18	LAST NAME 19	FLT AUTH DUTY CODE 20	FLIGHT TIME PRIM 21	FLIGHT TIME SEC 22	FLIGHT TIME INSTR 23	FLIGHT TIME EVAL 24	FLIGHT TIME OTHER 25	FLIGHT TIME TOTAL 26	SORTIES 27	FLT CONDITIONS PRIMARY NIGHT 28	FLT CONDITIONS PRIMARY INST 29	FLT CONDITIONS SIM INST 30	FLT CONDITIONS NVG 31	RESERVE STATUS 32	COMBAT TIME 33	COMBAT SORTIES 34	COMBAT SPT TIME 35	COMBAT SPT SORTIES 36
168	[redacted]	BRADBURY, DOUGLAS W	IP			3.6			3.6	1					3				
168	[redacted]	KING, RYAN	MC	3.6					3.6	1		1.0			3				
168	[redacted]	AYRES, BRETT S.	MB	3.6					3.6	1					1				

37. MAINT REVIEW	38. PILOT REVIEW	39. OPS REVIEW	40. ARMS PROCESSING COMPLETED			
			INPUT		AUDIT	
			DATE	INITIALS	DATE	INITIALS
WBR		KF	8 Apr 05		8 Apr 05	

AFTO Form 781, 20020617 (IMT-V1) Computer Generated — PREVIOUS EDITION IS OBSOLETE — ARMS AIRCREW/MISSION FLIGHT DATA DOCUMENT

Enclosure 4 McClain

Mission Number: 349-05

Date of Flight: 3/4/5

7 NPROS

Crew Member			EVENT DESCRIPTION		AS OF 5 APRIL 2005				Currency	
Name	SSAN	POS	Task ID	Task	Completed	ANNUAL REQ	SEMI REQ	1st semi acc	Remng	Last Date	Due Date
Bradbury, D.	~~470882180~~	EP	B001	BOLDFACE	1	0	0	16	0	4-Apr-05	31-May-05
Pilot Level 1A			F020	FORMATION		0	1	2	0	1-Apr-05	
			F030	LG FORM		1	0	0	1	5-Dec-04	
			F060	AR FORM		0	1	2	0	1-Apr-05	
			M010	PROF SORTIE		0	2	2	0	24-Feb-05	
			M020	UNIT SPEC SORTI	1	0	4	11	0	4-Apr-05	
			M050	TACTICAL SORTIE		0	2	2	0	1-Apr-05	
			N010	TANKER RDZ		0	4	14	0	1-Apr-05	1-Sep-05
			N020	TANKER ENR RDZ		0	1	9	0	13-Mar-05	
			N030	TANKER PP RDZ		0	2	9	0	1-Apr-05	
			N040	T ANCH RDZ & AR		0	1	1	0	1-Apr-05	
			N100	INS AIR ALIGN		1	0	1	0	25-Jan-05	
			P010	TAKEOFF-INITIAL		0	2	7	0	1-Apr-05	30-Sep-05
			P020	TAKEOFF		0	8	12	0	1-Apr-05	31-May-05
			P030	MAX T/O 30 FLAP		0	1	2	0	13-Mar-05	
			P040	ENG FAIL T/O CT		0	2	4	0	24-Feb-05	
			P061	VFR OVERHEAD		0	1	3	0	1-Apr-05	
			P062	TACTICAL DEPART		0	1	1	0	17-Mar-05	
			P063	TACTICAL ARRIV		0	1	1	0	17-Mar-05	
			P064	SLIDE EXERICSE		0	1	1	0	17-Mar-05	
			P065	SING SHIP SCRAM		0	1	1	0	17-Mar-05	
			P066	MANU STEEP TURN		0	2	4	0	17-Mar-05	
			P067	ANCH A/R JOINUP		0	2	2	0	1-Apr-05	
			P068	TURN COMBAT DES		0	2	2	0	17-Mar-05	
			P070	INST APPR		0	6	16	0	4-Apr-05	31-May-05
			P100	PREC APPR		0	3	10	0	4-Apr-05	
			P110	NON-PREC APPR		0	3	6	0	24-Feb-05	
			P130	CIRCLING APPR		0	2	4	0	24-Feb-05	
			P140	VISUAL TRAF PAT		0	2	7	0	1-Apr-05	
			P160	MISSED APPR		0	2	6	0	17-Mar-05	
			P170	3E APPR & G/A		0	2	4	0	24-Feb-05	
			P180	APP & LND 3 ENG		0	2	4	0	24-Feb-05	
			P190	LANDING		0	8	19	0	4-Apr-05	31-May-05
			P192	NIGHT LANDING		0	2	8	0	17-Mar-05	30-Jun-05
			P198	LANDING R SEAT		0	2	12	0	1-Apr-05	
			P199	LANDING L SEAT		0	2	7	0	4-Apr-05	31-May-05
			P200	TOUCH&GO		0	0	11	0	1-Apr-05	31-May-05
			P240	LD GEAR ALT EXT		1	0	0	1	31-Mar-04	
			P250	FLAP MANUAL OP		1	0	0	1	31-Mar-04	
			P260	HAVE QUICK		1	0	2	0	1-Apr-05	
			P270	SECURE RADIO		1	0	2	0	1-Apr-05	
			P271	AUTHEN PROC		0	1	4	0	1-Apr-05	
			P310	INSTR/EVAL	1	0	2	16	0	4-Apr-05	
			R060	TANKER AR		0	4	15	0	1-Apr-05	30-Sep-05
			R070	TANKER AR BKWY		0	2	3	0	24-Feb-05	
			R080	TANKER AR AP OF		0	2	2	0	9-Feb-05	
			R100	TANKER AR HEAVY		0	2	3	0	22-Feb-05	

PERSONAL DATA - PRIVACY ACT OF 1974

Member Signature: [signature]

MISSION REVIEW [signature]

Initial/Date Input: [signature] 3/4/05

Mission Number: 349-05

Date of Flight: 14 Apr 05

7APROS

Crew Member			EVENT DESCRIPTION		AS OF 5 APRIL 2005				Currency	
Name	SSAN	ROS	Task ID	Task	Completed	ANNUAL REQ	SEMI REQ	1st semi acc	Remng	Last Date	Due Date
King, R.	[redacted]	MC	B001	BOLDFACE	/	0	0	9	0	21-Mar-05	30-Apr-05
Co-pilot level 2C			F020	FORMATION		0	1	3	0	28-Mar-05	
			F030	LG FORM		1	0	1	0	16-Mar-05	
			F060	AR FORM		0	2	3	0	28-Mar-05	
			M010	PROF SORTIE		0	2	0	2	18-Oct-04	
			M020	UNIT SPEC SORTI	/	0	4	17	0	29-Mar-05	
			M050	TACTICAL SORTIE		0	2	0	2		
			N010	TANKER RDZ		0	6	8	0	28-Mar-05	28-Jun-05
			N020	TANKER ENR RDZ		0	2	5	0	28-Mar-05	
			N030	TANKER PP RDZ		0	2	4	0	16-Mar-05	
			N040	T ANCH RDZ & AR		0	1	3	0	1-Mar-05	
			N100	INS AIR ALIGN		0	1	3	0	23-Mar-05	
			P010	TAKEOFF-INITIAL	/	0	6	12	0	29-Mar-05	30-Jun-05
			P020	TAKEOFF	/	0	24	17	7	29-Mar-05	30-Apr-05
			P064	SLIDE EXERICSE		0	1	0	1		
			P065	SING SHIP SCRAM		0	1	0	1		
			P066	MANU STEEP TURN		0	2	0	2		
			P067	ANCH A/R JOINUP		0	2	0	2		
			P068	TURN COMBAT DES		0	2	0	2		
			P070	INST APPR	/	0	26	17	9	29-Mar-05	30-Apr-05
			P100	PREC APPR		0	8	14	0	28-Mar-05	
			P110	NON-PREC APPR	/	0	8	3	5	29-Mar-05	
			P130	CIRCLING APPR		0	2	0	2	16-Sep-04	
			P140	VISUAL TRAF PAT		0	2	2	0	16-Feb-05	
			P160	MISSED APPR		0	3	4	0	3-Mar-05	
			P190	LANDING	/	0	24	13	11	29-Mar-05	30-Apr-05
			P192	NIGHT LANDING		0	2	2	0	25-Feb-05	30-Jun-05
			P198	LANDING R SEAT	/	0	2	13	0	29-Mar-05	
			P240	LD GEAR ALT EXT		0	1	1	0	16-Mar-05	
			P250	FLAP MANUAL OP		0	1	0	1	24-Nov-04	
			P260	HAVE QUICK		0	1	1	0	16-Mar-05	
			P270	SECURE RADIO		0	1	0	1	22-Oct-04	
			P271	AUTHEN PROC		0	1	1	0	4-Feb-05	
			R070	TANKER AR BKWY		0	2	4	0	16-Mar-05	

Member Signature: [signature]

PERSONAL DATA - PRIVACY ACT OF 1974

MISSION REVIEW 15

Initial/Date Input: 9 Apr 05

Mission Number: 349-05

Date of Flight: 7 APR 05

Crew Member			EVENT DESCRIPTION		AS OF 5 APRIL 2005					Currency	
Name	SSAN	POS	Task ID	Task	Completed	ANNUAL REQ	SEMI REQ	1st semi acc	Remng	Last Date	Due Date
Ayres, B.	[redacted]	IB	M010	PROF SORTIE		0	3	9	0	18-Mar-05	
Boom Level 3B			M020	UNIT SPEC SORTI	/	0	0	11	0	15-Mar-05	
			M050	TACTICAL SORTIE		0	2	0	2		
			P240	LD GEAR ALT EXT		0	1	2	0	25-Feb-05	
			P250	FLAP MANUAL OP		0	1	1	0	16-Feb-05	
			P270	SECURE RADIO		0	1	3	0	3-Mar-05	
			P271	AUTHEN PROC		0	1	2	0	3-Mar-05	
			P300	CARGO LOADING		1	0	0	1	17-Sep-04	
			P310	INSTR/EVAL		0	2	2	0	25-Feb-05	
			R070	TANKER AR BKWY		0	1	2	0	10-Mar-05	
			R100	TANKER AR HEAVY		0	2	3	0	14-Mar-05	
			R120	CONTACTS		0	18	57	0	14-Mar-05	13-May-05
			R130	NIGHT CONTACTS		0	6	6	0	25-Feb-05	24-Aug-05
			R140	TKR MAN CONTACT		0	3	42	0	14-Mar-05	
			R150	FIGHTER CONTACT		0	2	46	0	14-Mar-05	10-Sep-05
			R160	RAD SILENT BKWY		0	1	2	0	10-Mar-05	

Member Signature: [signature]

PERSONAL DATA - PRIVACY ACT OF 1974

MISSION REVIEW SF

Initial/Date Input: [signature] 7 APR 05

SQ 10
Original 2

CREW FLIGHT (*FA*) AUTHORIZATION

1. PREPARED DATE:	2. MISSION NUMBER	3. DEPARTURE LOCATION	4. DESTINATION
06 Apr 05	349-05	PAEI	PAEI-KTCM-PAEI

5. MISSION SYMBOL AND PURPOSE	6. SCHEDULED DEP DATE/TIME:	7. SCHEDULED RET DATE/TIME:	
T3UD	7-Apr-05	7-Apr-05	
	8. AERO VEHICLE:	9. ACFT TAIL #:	10. CALL SIGN:
	KC135R	63-8015	CHENA 41

PRIVACY ACT STATEMENT

AUTHORITY: 10 U.S.C. 8013; 44 U.S.C. 3101; AND EO 9397
PRINCIPAL PURPOSE: Source document used to authorize aircrew members to preform in-flight duties for this aircraft and provide accountability for aircrew personnel on mission. Additionally used to validate aircrew duties for entitlement to flight time, operational flying duty credit, and flight pay entitlements.
DISCLOSURE IS VOLUNTARY: SSAN is needed to meet qualification for accountability, flight documentation, and flight pay entitlements. Failure to provide may prevent authorization to fly and result in a loss of records, qualification, and incentive pay entitlements.

11. CREW INFORMATION

A. NAME	B. GRADE MIL/GS	C. SSAN	D. SEC CLR	E. CREW POS	F. DUTY POS	G. REMARKS/ RES CODE	H. UNIT	I. CREW #	J. INITIALS FOR CHG
BRADBURY, DOUGLAS W	MAJ	[redacted]	TOPSEC	EP	IP		168	A	
KING, RYAN	2LT	[redacted]	TOPSEC	MC	MC		168		
AYRES, BRETT S.	MSG	[redacted]	TOPSEC	IB	MB		168		

12. Remarks:
Variations in Itinerary Authorized
A - Aircraft Commander
All aircrew members are authorized to carry concealed weapons, IAW AFI 31-207, para 2.9

MEGP: BGEN TIM SCOTT
MEGP: MSGT William Russell 3416
MEGP: MSGT Kim Jacknath 3912

13. AUTHORIZATION DATE	14. FA NUMBER:	15. DISTRIBUTION		
6-Apr-05	349-05	1 - FILE	1 - OPS	1 - MBR

16. GO/NO-GO VERIFICATION:
I certify go/no-go checks were accomplished for aircrew members below. As a minimum, flight physical, physical availability, physiological training, emergency egress, local area survival. Current ASC, (AO Effective date/term date), ACFT AO's, FCIF card and any other grounding events were checked. Individuals non-current for aircrew training or aircrew qualification have appropriate remarks codes assigned and an instructor is on-board for their specialty.

1COX2 Initials: _____ Aircraft Commander Review: _____

IF CHANGES TO ORIGINAL CREW MEMBERS: I certify the above go/no-go checks were performed for aircrew member(s) added:

Aircraft Commander Signature: _____

17. UNIT DESIGNATION AND LOCATION OF AUTHORIZING AGENCY	18. SIGNATURE ELEMENT OF AUTHENTICATING OFFICIAL
ALASKA AIR NATIONAL GUARD 168 AIR REFUELING WING EIELSON AFB, AK 99702-5000	JOHN G. HILGENBRINK, Lt Col, AKANG Chief, 168 Scheduling

19. ACCOUNTING CITATION:
N/A

AF IMT 4327a, 20031201 *(V1) (Computer Generated)*

5390

5391

(THIS FORM IS SUBJECT TO THE PRIVACY ACT OF 1974 - SEE REVERSE)

I MISSION DATA

1. DATE (YYYYMMDD)	2. MDS	3. SERIAL NUMBER	4. UNIT CHARGED FOR FLY HOURS/HARM-CODE	5. LOCATION
20050407	KC135R	63-8015	168 ARW (ANG) - FTQA	EIELSON AFB, ALASKA

FLT NO	MISSION NUMBER 6	MISSION SYMBOL 7	FROM (ICAO) 8	TO (ICAO) 9	TAKE OFF TIME (Z) 10	LAND TIME (Z) 11	FLIGHT TIME 12	13. LANDINGS TOUCH AND GO	LANDINGS FULL STOP	LANDINGS TOTAL	SORTIES 14	SPECIAL USE 15
1	349-05 A	T3UD	KTCM	PABI	2345	0245	3.0	0	1	1		
2												
3												
4												
5												
6												
7												
8												
17. OPERATING UNIT 168ARS						GRAND TOTALS	3.0	0	1	1	1	

II AIRCREW DATA

FLYING ORGN 17	SSN 18	LAST NAME 19	FLT AUTH DUTY CODE 20	FLIGHT TIME PRIM 21	FLIGHT TIME SEC 22	FLIGHT TIME INSTR 23	FLIGHT TIME EVAL 24	FLIGHT TIME OTHER 25	FLIGHT TIME TOTAL 26	SORTIES 27	FLT CONDITIONS PRIMARY NIGHT 28	FLT CONDITIONS PRIMARY INST 29	FLT CONDITIONS SIM INST 30	FLT CONDITIONS NVG 31	RESERVE STATUS 32	COMBAT TIME 33	COMBAT SORTIES 34	COMBAT SPT TIME 35	COMBAT SPT SORTIES 36
168	[redacted]	BRADBURY, DOUGLAS W	IP			3.0			3.0	1					3				
168	[redacted]	KING, RYAN	MC	1.5	1.5				3.0	1					3				
168	[redacted]	AYRES, BRETT S.	MB	3.0					3.0	1					1				

37. MAINT REVIEW	38. PILOT REVIEW	39. OPS REVIEW	40. ARMS PROCESSING COMPLETED	INPUT		AUDIT	
				DATE	INITIALS	DATE	INITIALS
WOR	DAB	MS	8 APR 05			8 APR 05	

AFTO Form 781, 20020617 (IMT-V1) Computer Generated — PREVIOUS EDITION IS OBSOLETE — ARMS AIRCREW/MISSION FLIGHT DATA DOCUMENT

M. Pilot + Flight Med

Mission Number: 349-05A

Date of Flight: 7/6/13

7 APROS

Crew Member			EVENT DESCRIPTION			AS OF 6 APRIL 2005				Currency	
Name	SSAN	ROS	Task ID	Task	Completed	ANNUAL REQ	SEMI REQ	1st semi acc	Remngr	Last Date	Due Date
Bradbury, D.	[redacted]	EP	B001	BOLDFACE	1	0	0	16	0	4-Apr-05	31-May-05
Pilot Level 1A			F020	FORMATION		0	1	2	0	1-Apr-05	
			F030	LG FORM		1	0	0	1	5-Dec-04	
			F060	AR FORM		0	1	2	0	1-Apr-05	
			M010	PROF SORTIE		0	2	2	0	24-Feb-05	
			M020	UNIT SPEC SORTI	1	0	4	11	0	4-Apr-05	
			M050	TACTICAL SORTIE		0	2	2	0	1-Apr-05	
			N010	TANKER RDZ		0	4	14	0	1-Apr-05	1-Sep-05
			N020	TANKER ENR RDZ		0	1	9	0	13-Mar-05	
			N030	TANKER PP RDZ		0	2	9	0	1-Apr-05	
			N040	T ANCH RDZ & AR		0	1	1	0	1-Apr-05	
			N100	INS AIR ALIGN		1	0	1	0	25-Jan-05	
			P010	TAKEOFF-INITIAL	1	0	2	7	0	1-Apr-05	30-Sep-05
			P020	TAKEOFF	1	0	8	12	0	1-Apr-05	31-May-05
			P030	MAX T/O 30 FLAP		0	1	2	0	13-Mar-05	
			P040	ENG FAIL T/O CT		0	2	4	0	24-Feb-05	
			P061	VFR OVERHEAD		0	1	3	0	1-Apr-05	
			P062	TACTICAL DEPART		0	1	1	0	17-Mar-05	
			P063	TACTICAL ARRIV		0	1	1	0	17-Mar-05	
			P064	SLIDE EXERICSE		0	1	1	0	17-Mar-05	
			P065	SING SHIP SCRAM		0	1	1	0	17-Mar-05	
			P066	MANU STEEP TURN		0	2	4	0	17-Mar-05	
			P067	ANCH A/R JOINUP		0	2	2	0	1-Apr-05	
			P068	TURN COMBAT DES		0	2	2	0	17-Mar-05	
			P070	INST APPR	1	0	6	16	0	4-Apr-05	31-May-05
			P100	PREC APPR	1	0	3	10	0	4-Apr-05	
			P110	NON-PREC APPR		0	3	6	0	24-Feb-05	
			P130	CIRCLING APPR		0	2	4	0	24-Feb-05	
			P140	VISUAL TRAF PAT		0	2	7	0	1-Apr-05	
			P160	MISSED APPR		0	2	6	0	17-Mar-05	
			P170	3E APPR & G/A		0	2	4	0	24-Feb-05	
			P180	APP & LND 3 ENG		0	2	4	0	24-Feb-05	
			P190	LANDING	1	0	8	19	0	4-Apr-05	31-May-05
			P192	NIGHT LANDING		0	2	8	0	17-Mar-05	30-Jun-05
			P198	LANDING R SEAT		0	2	12	0	1-Apr-05	
			P199	LANDING L SEAT	1	0	2	7	0	4-Apr-05	31-May-05
			P200	TOUCH&GO		0	0	11	0	1-Apr-05	31-May-05
			P240	LD GEAR ALT EXT		1	0	0	1	31-Mar-04	
			P250	FLAP MANUAL OP		1	0	0	1	31-Mar-04	
			P260	HAVE QUICK		1	0	2	0	1-Apr-05	
			P270	SECURE RADIO		1	0	2	0	1-Apr-05	
			P271	AUTHEN PROC		0	1	4	0	1-Apr-05	
			P310	INSTR/EVAL	1	0	2	16	0	4-Apr-05	
			R060	TANKER AR		0	4	15	0	1-Apr-05	30-Sep-05
			R070	TANKER AR BKWY		0	2	3	0	24-Feb-05	
			R080	TANKER AR AP OF		0	2	2	0	9-Feb-05	
			R100	TANKER AR HEAVY		0	2	3	0	22-Feb-05	

PERSONAL DATA - PRIVACY ACT OF 1974

Member Signature: [signature]

MISSION REVIEW [signature]

9 8 APROS

Initial/Date Input: _____

53

Mission Number: 349-05A

Date of Flight: 7 APR 05

Crew Member			EVENT DESCRIPTION			AS OF 6 APR 2005				Currency	
Name	SSAN	POS	Task ID	Task	Completed	ANNUAL REQ	SEMI REQ	1st sem acc	Remng	Last Date	Due Date
King, R.	[redacted]	MC	B001	BOLDFACE	/	0	0	9	0	21-Mar-05	30-Apr-05
Co-pilot level 2C			F020	FORMATION		0	1	3	0	28-Mar-05	
			F030	LG FORM		1	0	1	0	16-Mar-05	
			F060	AR FORM		0	2	3	0	28-Mar-05	
			M010	PROF SORTIE		0	2	0	2	18-Oct-04	
			M020	UNIT SPEC SORTI	/	0	4	17	0	29-Mar-05	
			M050	TACTICAL SORTIE		0	2	0	2		
			N010	TANKER RDZ		0	6	8	0	28-Mar-05	28-Jun-05
			N020	TANKER ENR RDZ		0	2	5	0	28-Mar-05	
			N030	TANKER PP RDZ		0	2	4	0	16-Mar-05	
			N040	T ANCH RDZ & AR		0	1	3	0	1-Mar-05	
			N100	INS AIR ALIGN		0	1	3	0	23-Mar-05	
			P010	TAKEOFF-INITIAL		0	6	12	0	29-Mar-05	30-Jun-05
			P020	TAKEOFF		0	24	17	7	29-Mar-05	30-Apr-05
			P064	SLIDE EXERICSE		0	1	0	1		
			P065	SING SHIP SCRAM		0	1	0	1		
			P066	MANU STEEP TURN		0	2	0	2		
			P067	ANCH A/R JOINUP		0	2	0	2		
			P068	TURN COMBAT DES		0	2	0	2		
			P070	INST APPR		0	26	17	9	29-Mar-05	30-Apr-05
			P100	PREC APPR		0	8	14	0	28-Mar-05	
			P110	NON-PREC APPR		0	8	3	5	29-Mar-05	
			P130	CIRCLING APPR		0	2	0	2	16-Sep-04	
			P140	VISUAL TRAF PAT		0	2	2	0	16-Feb-05	
			P160	MISSED APPR		0	3	4	0	3-Mar-05	
			P190	LANDING		0	24	13	11	29-Mar-05	30-Apr-05
			P192	NIGHT LANDING		0	2	2	0	25-Feb-05	30-Jun-05
			P198	LANDING R SEAT		0	2	13	0	29-Mar-05	
			P240	LD GEAR ALT EXT		0	1	1	0	16-Mar-05	
			P250	FLAP MANUAL OP		0	1	0	1	24-Nov-04	
			P260	HAVE QUICK		0	1	1	0	16-Mar-05	
			P270	SECURE RADIO		0	1	0	1	22-Oct-04	
			P271	AUTHEN PROC		0	1	1	0	4-Feb-05	
			R070	TANKER AR BKWY		0	2	4	0	16-Mar-05	

PERSONAL DATA - PRIVACY ACT OF 1974

Member Signature: [signature]

MISSION REVIEW [initials]

Initial/Date Input: [signature] 7 APR 05

Mission Number: 349-05A

Date of Flight: 2213

7 APROS

Crew Member			EVENT DESCRIPTION		AS OF 5 APR 1, 2005					Currency	
Name	SSAN	ROS	TaskID	Task	Completed	ANNUAL REQ	SEMI REQ	1st sem acc	Remng	Last Date	Due Date
Ayres, B.	[redacted]	IB	M010	PROF SORTIE		0	3	9	0	18-Mar-05	
Boom Level 3B			M020	UNIT SPEC SORTI		0	0	11	0	15-Mar-05	
			M050	TACTICAL SORTIE		0	2	0	2		
			P240	LD GEAR ALT EXT		0	1	2	0	25-Feb-05	
			P250	FLAP MANUAL OP		0	1	1	0	16-Feb-05	
			P270	SECURE RADIO		0	1	3	0	3-Mar-05	
			P271	AUTHEN PROC		0	1	2	0	3-Mar-05	
			P300	CARGO LOADING		1	0	0	1	17-Sep-04	
			P310	INSTR/EVAL		0	2	2	0	25-Feb-05	
			R070	TANKER AR BKWY		0	1	2	0	10-Mar-05	
			R100	TANKER AR HEAVY		0	2	3	0	14-Mar-05	
			R120	CONTACTS		0	18	57	0	14-Mar-05	13-May-05
			R130	NIGHT CONTACTS		0	6	6	0	25-Feb-05	24-Aug-05
			R140	TKR MAN CONTACT		0	3	42	0	14-Mar-05	
			R150	FIGHTER CONTACT		0	2	46	0	14-Mar-05	10-Sep-05
			R160	RAD SILENT BKWY		0	1	2	0	10-Mar-05	

Member Signature:

PERSONAL DATA - PRIVACY ACT OF 1974

MISSION REVIEW SF

Initial/Date Input:

Chapter 1

TRANSPORTATION POLICIES FOR USE OF ANG AIRCRAFT

1.1. Purpose. This section outlines transportation policy and the management of military airlift resources including those possessed by the ANG.

1.2. Joint Doctrine - Transportation. The Chairman Joint Chiefs of Staff (CJCS) outlines transportation doctrine and guidance in Joint Publication 4-01, Joint Doctrine for The Defense Transportation System.

1.2.1. The Defense Transportation System (DTS) is that portion of the nation's transportation infrastructure, which supports the DoD common-user transportation needs across the range of military operations.

1.2.1.1. Transportation procedures and responsibilities should be the same for peacetime and wartime. This standardization allows transportation forces to train during times of peace in the same manner in which they would operate during war or a contingency and provides flexibility to effectively and quickly support any type of military operation.

1.2.2. The foundation for transportation policy is based on two statutes of United States Code (U.S.C) of Law.

1.2.2.1. U.S.C., Title 31, Section 1344, Passenger Carrier Use, states that vehicles and aircraft of any United States (US) Government agency may only be used for official purposes.

1.2.2.2. U.S.C., Title 31, Section 1301, Anti-Deficiency Act, states that appropriated funds may only be used for the purposes intended, i.e., DoD resources specifically may only be used to support DoD mission requirements.

1.2.3. The CJCS assigns movement priorities in support of DoD components based upon capabilities reported by USTRANSCOM and adjudicates competing lift requirements.

1.3. DoD Transportation Policy. The Secretary of Defense (SECDEF) has designated the Commander, US Transportation Command as the DoD single manager for transportation (other than for Service-unique and theater assigned assets) during times of peace and war.

1.3.1. Department of Defense policy concerning the purposes on which DoD-owned or controlled aircraft can be used is set forth in DoD Directive DoDD 4500.56, DoD Policy on the Use of Government Aircraft and Air Travel.

1.3.1.1. DoDD 4500.56 specifies that within the CONUS, commercial transportation services shall be the primary method used for official passenger movement including travel for attending conferences, meetings, ceremonies, giving speeches, site visits, etc. OCONUS, commercial air transportation shall be used in accordance with the Joint Federal Travel Regulation (JFTR), Volume 1, and the Joint Travel Regulation (JTR), Volume 2, and travel is funded by the user's organization.

1.3.2. USTRANSCOM J3/J4 Division manages the Joint Operational Support Airlift Center (JOSAC) who has been designated by the Office of the Secretary of Defense (OSD) as the executive agent for military air (MilAir) travel within the CONUS for official business.

1.3.2.1. National Guard OSA aircraft have agreed to provide availability to JOSAC for scheduling of CONUS missions.

1.3.2.2. Within the National Guard, each state is responsible to train at least one requestor/validator on the Joint Air Logistics Information System (JALIS) computer program.

1.3.2.3. National Guard customers interested in using ANG OSA aircraft for official travel within the CONUS must process their request through their state validator who will interface with JOSAC.

1.3.2.4. National Guard customers interested in using ANG OSA aircraft for official travel OCONUS must process their request through the Chief, NGB, Executive Travel Coordinator (NGB-ZAS). Follow the procedures listed in **Chapter 5**.

1.3.3. The DoD policy for passenger transportation eligibility on DoD owned or controlled aircraft is set forth in DoD 4515.13-R.

1.3.3.1. DoD 4515.13-R delineates who is eligible for DoD transportation and under what circumstance they may travel on DoD assets. If a passenger's eligibility is not specifically addressed, then the passenger must procure an approval through one of two processes. Applicant may seek approval pursuant to the Economy Act or as a waiver by the SECDEF.

1.3.3.2. It is DoD policy that commanders at all levels exercise prudent judgment to ensure that only authorized traffic is transported and that they do not misuse the authority delegated to them. All officials responding to requests for transportation not specifically authorized by DoD 4515.13-R shall make no commitments concerning prospective travelers or cargo until the potential user obtains all required approvals.

1.4. Passenger/Cargo Eligibility Options Outside Standard Channels.

1.4.1. Eligibility Pursuant to the Economy Act (31, U.S.C., 1535/1536). The Economy Act prohibits DoD from providing airlift for any non DoD activity unless it is: (1) of an immediate emergency/life-saving nature, (2) in direct support of the DoD mission, (3) specifically authorized by statute, or (4) it is requested by the head of an executive agency of the federal government pursuant to the Economy Act.

1.4.1.1. The Assistant Deputy Under Secretary of Defense for Transportation Policy (ADUSD/TP) is the approving authority for transportation requests pursuant to the Economy Act.

1.4.1.2. Requests may not come from the user. They must originate with the head of an executive agency of the federal government and the request must contain the following four elements.

1.4.1.2.1. Element One: It must contain the pertinent details of the requested support.

1.4.1.2.2. Element Two: It must articulate how the support requested is in the national interest.

1.4.1.2.3. Element Three: It must certify that commercial transportation (including charter) is not available or is otherwise not satisfactory.

1.4.1.2.4. Element Four: It must include the fund cite or billing information to reimburse the DoD for the service performed.

1.4.1.3. Approved requests will be forward by ADUSD/TP to either USTRANSCOM for processing and scheduling through the DTS or to the NGB Military Support Branch (NGB-ARO-M) who

eling Wing, Eielson AFB, AK; and 176th Wing, Kulis ANGB, AK, are Pacific Command Air Forces (PACAF) gained; and 189th AW, Little Rock AFB, AR, is Air Education Training Command (AETC) gained.

1.5.2. AMC as the air component to USTRANSCOM may authorize ANG units to fly missions under the DTS. AMC provides Military Personnel Appropriation (MPA) days and travel dollars to ANG units when flying AMC missions.

1.5.2.1. AMC will provide the unit with an AMC mission number and mission code for each mission flown. This AMC mission number and code are used for both flight following and funding purposes. ANG units will obtain an ANG mission number and ANG mission symbol to match each AMC mission number and code for administrative purposes within the ANG.

1.5.3. AMC's goal when providing airlift is that all AMC gained assets provide the best service possible to customers traveling by MilAir. AMC Policy Directive (AMCPD) 24-2, Policy for Passengers Aboard AMC Missions, establishes a passenger Bill of Rights with seven goals for every AMC mission.

1.5.3.1. Courteous service.

1.5.3.2. Accurate information.

1.5.3.3. Maximum opportunity to travel, compatible with mission requirements.

1.5.3.4. Safe flight.

1.5.3.5. Clean comfortable facilities during posted operating hours.

1.5.3.6. Transportation to and from aircraft.

1.5.3.7. Your baggage - right place, on-time, undamaged.

1.5.4. The Single Mobility System (SMS). USTRANSCOM in conjunction with AMC, ANG, and Air Force Reserve Command (AFRC), chartered a Tiger Team to develop a plan to use emerging technologies and innovative business protocols to maximize the capabilities of our airlift assets. SMS uses current web technology to provide users access to data from multiple systems through a single screen interface. It is primarily a planning tool designed to maximize the opportunity to match requirements with capabilities and provide visibility of USTRANSCOM, AMC, ANG, and AFRC missions and requirements.

1.5.4.1. The ANG will utilize SMS to assist the planning, allocation and management of mobility requirements, assets, and missions. ANG units may use SMS to volunteer for open airlift missions and access mission information during mission planning.

1.6. National Guard Bureau (NGB) Transportation Policy.

1.6.1. It is NGB policy to comply with DoD policy concerning the use of ANG organic airlift assets for transportation. Organic airlift is defined as military aircraft whose primary mission is other than carrying passengers but has the capability to carry passengers.

1.6.2. Each States Adjutant General (AG) will ensure that aircraft are used for official business only. ANG unit commanders and ultimately the State AGs are responsible for authorizing flights involving ANG aircraft.

1.8. Training Missions. The ANG must use our aircrew training hours in a manner that demonstrates good stewardship of the taxpayers' money. MAJCOMS justify these hours on the basis of maintaining wartime readiness, and Congress and the public expect us to use them accordingly. Each training mission must be structured to achieve maximum training. Any by-product airlift opportunity resulting from a previously scheduled training mission must not degrade the intended training in any way and must comply with applicable DoD directives and regulations. It is essential that all personnel at all levels prevent misuse of air mobility resources as well as the perception of their misuse.

1.9. The Mission Readiness Airlift (MRA) Program. The National Guard has established the MRA program, which utilizes the capacity available on ANG aircraft to support combat readiness training requirements while providing aircrew training.

1.9.1. The MRA program attempts to match aircrew off-station training requirements with National Guard customers seeking point-to-point transportation to meet combat readiness training requirements. The MRA program is not a guaranteed source for point-to-point transportation. National Guard customers planning to use MRA must be fully prepared to fund and source alternate means of transportation to complete their training requirements.

1.9.2. All National Guard units planning to use MRA will comply with this instruction and with any special instructions received from the flying unit or group providing the MRA.

1.9.3. Missions supporting conferences, conventions, staff assistance visits, meetings, and/or Morale, Welfare, and Recreation (MWR) events do not qualify for stand-alone missions under the Mission Readiness Airlift program.

1.10. Travel for Conferences, Conventions, Staff Assistance Visits, Meetings, and/or MWR Events. Travel for conferences, conventions, staff assistance visits, meetings, and/or MWR events by any size of group, whether the event is sponsored by the National Guard or not, does not qualify as combat readiness training under the MRA program. It may qualify as opportune airlift (Priority 6, paragraph 2.5.6.), which means that it may only be supported in conjunction with already validated and scheduled training without adding any additional cost. Personnel seeking transportation for this purpose are advised not to rely on opportune airlift as their primary means of travel because requests may not be filled. Users are encouraged to travel by commercial transportation or apply for OSA transport through JOSAC. (See paragraph 1.3.2.)

1.10.1. It is possible to travel to such events if it takes place in conjunction with already scheduled training missions. Training missions scheduled to transport National Guard members to non-mission readiness training events such as conferences, conventions, meetings, or MWR events are prohibited. Space available or opportune travel on training missions is only permitted if:

1.10.1.1. The aircraft is already scheduled for an official purpose.

1.10.1.2. Travel is on a non-interference basis.

1.10.1.3. The non-interference travel does not require a larger aircraft than needed for the official purpose.

1.10.1.4. Already scheduled official travelers or cargo is not displaced.

1.10.1.5. The travel results in negligible additional cost to the Government. Such travel is funded by the aircraft operator's organization.

1.10.2. It is important the travel is done in conjunction with already scheduled training rather than "training" missions being flown primarily for their transportation by-product. Flying hours flown should not exceed those required to meet legitimate training requirements.

1.11. Travel for Operational Readiness Inspections (ORIs). Units may request transportation to ORIs under the MRA system. Requests must meet the minimum MRA standard described in paragraph 2.4. Personnel groups that do not meet MRA minimum qualifications should make arrangements to travel by commercial transportation or apply for military OSA through the JOSAC system (See paragraph 1.3.2.). Since the MRA program is not a guaranteed point-to-point transportation program, units must be prepared to secure transportation through alternate means.

1.12. Public Affairs Airlift. NGB Public Affairs (NGB-PA) airlift is important to the National Guard although it is outside the MRA system. NGB-PA validates civic leaders and news media representatives requesting opportune airlift on previously scheduled missions.

1.12.1. Transportation for National Guard Bands. When traveling to conduct CONUS or OCONUS performances, National Guard bands are eligible to travel in conjunction with a scheduled military training mission in a manner that does not conflict with operational readiness and is at no additional cost to DoD. National Guard bands may travel as "opportune" passengers utilizing the excess capacity on validated MRA missions. National Guard airlift missions may not be dedicated for band performance travel.

1.12.2. Orientation Flights. ANG participation in orientation flights is governed by Air Force Instruction (AFI) 11-401/ANG Supplement 1, Flight Management. The ANG office of primary responsibility (OPR) for issues regarding orientation flights is the ANG Operations Support Forces Branch (ANG/XOOS).

1.13. Employer Support of the Guard and Reserve (ESGR).

1.13.1. In a negotiated agreement with the MRA program, the National Committee Employer Support of the Guard and Reserve (NCESGR) validates one MRA funded movement per state per year. All NCESGR missions validated for MRA will take place strictly within the CONUS. (Alaska, Hawaii, Guam, Puerto Rico, and the Virgin Islands may also be validated for a mission within their state or territory.) NCESGR movements will be validated in accordance with DoD 4515.13-R, AFI 35-101, Public Affairs Policy and Procedures, and their internal office policy.

1.13.2. Detailed information on ESGR Employer Programs and Support Missions may be obtained at **http://www.esgr.org**.

1.14. State Adjutant Generals and Adjutant Generals Spouse Travel.

1.14.1. The Adjutant Generals (TAGs) may travel in State, space-required status on ANG aircraft only when the requirements outlined in DoD 4515.13-R are met.

1.14.2. Through NGB-PA, the Chief, NGB may approve AG spouse travel on a case-by-case basis.

1.15. Space - Available Passengers (Space - A). Per DoD 4515.13-R, space available passengers may occupy seats on DoD aircraft after all the space required passengers have been accommodated.

1.15.1. DoD aircraft shall not be scheduled to accommodate space available passengers.

1.8.4.1. Personnel who are on the aircraft for point-to-point travel, an orientation/familiarization flight or to only perform a proficiency jump (not performing aircrew duties for that mission) will be listed on the passenger manifest. For fighter-type aircraft, when a passenger manifest is not prepared, list individuals in the Remarks section of the Flight Authorization.

1.8.4.2. If ACMs or MEGPs are transported, IAW MAJCOM supplements, they may be listed on the flight authorization in the Remarks section (only). ACMs or MEGPs will not be listed on the AFTO Form 781, will not log time, and will not accrue OFDA credit.

1.9. Authorization for Using US Air Force Aircraft.

1.9.1. Commanders (including unit commanders) authorize aircraft flights to support command operations.

1.9.2. Commanders (including unit commanders) must ensure each flight is in the direct interest of government business and does not exceed flying hour allocations without specific approval. Commanders (including unit commanders) must ***not*** authorize flights for personal convenience or recreation.

1.9.3. The transportation of passengers and cargo will be in accordance with DoD 4515.13-R, *Air Transportation Eligibility*. The Deputy Chief of Staff/Installations and Logistics, Director of Transportation, Headquarters U.S. Air Force (HQ USAF/ILG), develops and publishes passenger policy to oversee passenger movement. AFI 24-101, *Passenger Movement,* provides guidance and procedures for arranging official transportation of Air Force personnel. Orientation flights may be approved as provided in DoD 4515.13-R and this instruction.

1.9.4. Commanders (including unit commanders) may use Air Force aircraft under their control to:

1.9.4.1. Perform tactical and combat operations.

1.9.4.2. Train aircrew personnel and evaluate aircrew performance.

1.9.4.3. Allow aircrews to meet the flying requirements of this instruction.

1.9.4.4. Further national health or safety interests, to include saving of human life if a medical officer indicates the situation involves possible loss of life, limb, or sight (DoD 4515.13-R).

1.9.4.5. Cooperate with foreign governments as directed by HQ USAF.

1.9.4.6. Perform other official missions as required.

1.9.4.7. Conduct the Air Force Orientation Flight and Public Affairs Travel Programs according to DoD 4515.13-R; AFI 35-101, *Public Affairs Policies and Procedures*; AFI 48-123, *Medical Examinations and Standards*, this instruction, and MAJCOM guidelines. **Table 1.1.** is a matrix of approval authorities for orientation/public affairs flights.

1.9.4.7.1. The USAF conducts orientation flights to reward and motivate individuals (incentive orientation flights only), ensure a better understanding of a particular weapon system and its role, or when the flight is determined to be in the best interest of the USAF.

1.9.4.7.1.1. Incentive Flights. Provide a visible reward to military personnel for outstanding service and motivate others to similar performance levels.

1.9.4.7.1.2. Distinguished Visitor (DV) Flights. Display USAF weapons systems to individuals so they gain a better understanding of the particular aircraft and mission.

E2. ENCLOSURE 2

POLICY GUIDANCE ON THE USE OF GOVERNMENT AIRCRAFT

E2.1. GENERAL POLICY

E2.1.1. Travel on military aircraft (MilAir) is a premium mode of travel involving high costs and limited resources. DoD senior officials and airlift authorizing officials should restrict travel by MilAir based on considerations such as purpose of the trip, method of transportation required, and priority of travel if using MilAir. Every effort should be made to minimize MilAir cost. In that regard, the type of aircraft used shall be based on minimum cost and size necessary to satisfy the mission requirement. Organizations shall not schedule training missions whose principal purpose is to accommodate the travel of senior DoD officials. Additionally, maximum advance planning is emphasized so that scheduling conflicts do not dictate the use of MilAir.

E2.1.2. The purpose of the travel is to be determined by the individual and his or her next level supervisor. DoD airlift authorizing officials shall ensure that an official, rather than personal, purpose is served by the travel. The purpose of travel determines the category, a designation that accords a traveler specific privileges and confers obligations. This enclosure addresses the categories of travel based on OMB Circular A-126 (reference (b)): for "required use," "other official travel," and "unofficial travel." This enclosure does not alter the space available travel policies, special procedures for military assistance advisory groups or military mission chiefs, and defense attaches, as in DoD 4515.13-R (reference (g)).

E2.1.3. The method of travel generally involves a choice between commercial transportation or MilAir. MilAir shall not be used if commercial airline or aircraft (including charter) service is reasonably available; i.e., able to meet the traveler's departure and/or arrival requirements in a 24-hour period, unless highly unusual circumstances present a clear and present danger, an emergency exists, use of MilAir is more cost-effective than commercial air, or other compelling operational considerations make commercial transportation unacceptable. Specific methods of air travel are addressed in enclosure 3.

E2.1.4. The priority of travel on MilAir is to be determined on the basis of this enclosure and on the basis of the traveler's mission. Rank, grade, or position alone is not sufficient to justify support of MilAir requests. Scheduling and approving officials shall follow this enclosure and the Airlift Priority System in DoD Directive 4500.43 (reference (h)).

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2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities (hereafter referred to collectively as "the DoD Components").

3. DEFINITION

DoD Senior Officials . General or flag officers and civilian employees of the Senior Executive Service, or equivalent, and higher level employees.

4. POLICY

It is DoD policy that the use of DoD transportation resources is limited to official DoD requirements. It is essential that managers and commanders at all levels prevent misuse of transportation resources as well as the perception of their misuse. Enclosure 2 provides policy guidance for the use of airlift resources (fixed- and rotary-wing aircraft) by DoD officials and family members, non-DoD officials, and non-Federal travelers, for official and unofficial travel. Enclosure 3 provides a listing of air transportation resources that may be employed to support these travelers. The objective of this Directive is to make more effective use of DoD airlift resources and minimize costs.

5. RESPONSIBILITIES

5.1. The Under Secretary of Defense for Acquisition and Technology shall establish policies and provide guidance to the DoD Components concerning the efficient and effective use of DoD air transportation resources.

5.2. The Heads of the DoD Components shall ensure that regulations and implementing procedures governing the use and management of travel using DoD airlift resources are revised to ensure full compliance with this Directive.

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C1.2.1. For revenue traffic procedures and the method of processing charges when revenue traffic is transported through aircraft missions financed through the DBOF-T, see AFR 76-8/AR 59-30/OPNAVINST 4630.16C/MCO 4630.13 and DoD 4000.25-7-M (references (g) and (h)).

C1.2.2. For policy and procedures concerning the U.S. Government rate tariff and its application, see AFR 76-11 and DoD 7220.9-M (references (e) and (i)).

C1.2.3. For policy and procedures concerning the non-U.S. Government rate tariff and its application, see AFR 76-28 (reference (f)).

C1.2.4. For administrative responsibilities and procedures for aeromedical evacuation, see AFR 164-5/AR 40-535/OPNAVINST 4630.9C/MCO P4630.9A (reference(j)).

C1.2.5. For criteria for assigning air movement priorities, see AFR 76-38/AR 59-8/OPNAVINST 4630.18E/MCO 4630.9D/DLAR4540.9 (reference (k)).

C1.2.6. For administration of Reserve Officer Training Corps (ROTC) activities, see AFR 45-29, AR 145-1, and CNETINST 1533.12D (references (l), (m), and (n)).

C1.2.7. For policy on use of U.S.-owned foreign currencies for travel and transportation, see JTR volume 1, JTR volume 2, and DoD Instruction 7360.9 (references (b),(c), and (o)).

C1.2.8. For policy governing reimbursement for the use of U.S. Air Force aircraft assigned to Air Force sections of MAAGs, JUSMAG, Missions, and the MAP, or for other reimbursable purposes, see AFR 76-22 (reference (p)).

C1.2.9. For policies and procedures for administering the Uniformed Services Health Benefits Program, see AFR 168-6, AR 40-3, and BUMEDINST 6320.3B (references (q) through (s)).

C1.3. USE OF MILITARY AIRCRAFT, INELIGIBLE TRAFFIC, AND RESTRICTIONS

C1.3.1. Commanders' Responsibility. The commanders at all levels shall exercise prudent judgment to ensure that only authorized traffic is transported and that they do not misuse the authority delegated to them by this Regulation. The commanders and other officials responding to requests for transportation not specifically authorized by

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this Regulation shall make no commitments concerning prospective travelers or cargo until they receive all required approvals.

C1.3.2. Ineligible Traffic Procedures

C1.3.2.1. When an order or authorization for movement of traffic (passenger or cargo), which is neither authorized by this Regulation nor approved according to the procedures in this Regulation is presented, transportation shall be denied. The station making the determination shall document the case and forward it through channels to USTRANSCOM TCJ3/J4-LP, 508 SCOTT DRIVE, SCOTT AFB IL 62225-5357 for necessary action.

C1.3.2.2. Any traffic transported by DoD aircraft that is ineligible, even though documentation may have been issued, is liable for reimbursement at the non-U.S. Government rate tariff according to AFR 76-28 (reference (f)) for all transportation furnished. If any passenger or cargo is challenged for eligibility or authority, every effort shall be made to provide assistance short of delaying a scheduled aircraft.

C1.3.3. Restrictions on Use of Unit or Operational Support Aircraft. Unless requested and authorized under DoD Directive 4500.43 (reference (t)), unit aircraft shall not be utilized to transport DoD passengers and cargo. Similarly, the use of unit or operational support airlift aircraft to provide PCS transportation for DoD members or their dependents is not authorized.

C1.3.4. Pregnant and Post-Partum Mothers and Newborn Infants

C1.3.4.1. Pregnant women up to the 34th week of gestation may be accepted for air transportation unless medically inadvisable.

C1.3.4.2. Women who are 6 weeks, or more, post partum and infants at least 6 weeks old may be accepted for air transportation unless medically inadvisable. Infants under 6 weeks old and women who are less than 6 weeks post partum may be accepted if considered medically sound and so certified in writing by a responsible medical officer or civilian physician.

C1.3.5. Unaccompanied Minors. Restrictions on travel by unaccompanied minors vary with types of travel (see Chapters 2, 5, 6, and 7).

C1.3.6. Passengers on "Non-Transport-Type Aircraft." Aircraft not designed or normally configured for passenger (nonaircrew personnel) carrying capability, such as, but not limited to, fighter aircraft, are not to be used for passenger travel. This does

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1.8.4.1. Personnel who are on the aircraft for point-to-point travel, an orientation/familiarization flight or to only perform a proficiency jump (not performing aircrew duties for that mission) will be listed on the passenger manifest. For fighter-type aircraft, when a passenger manifest is not prepared, list individuals in the Remarks section of the Flight Authorization.

1.8.4.2. If ACMs or MEGPs are transported, IAW MAJCOM supplements, they may be listed on the flight authorization in the Remarks section (only). ACMs or MEGPs will not be listed on the AFTO Form 781, will not log time, and will not accrue OFDA credit.

1.9. Authorization for Using US Air Force Aircraft.

1.9.1. Commanders (including unit commanders) authorize aircraft flights to support command operations.

1.9.2. Commanders (including unit commanders) must ensure each flight is in the direct interest of government business and does not exceed flying hour allocations without specific approval. Commanders (including unit commanders) must ***not*** authorize flights for personal convenience or recreation.

1.9.3. The transportation of passengers and cargo will be in accordance with DoD 4515.13-R, *Air Transportation Eligibility*. The Deputy Chief of Staff/Installations and Logistics, Director of Transportation, Headquarters U.S. Air Force (HQ USAF/ILG), develops and publishes passenger policy to oversee passenger movement. AFI 24-101, *Passenger Movement,* provides guidance and procedures for arranging official transportation of Air Force personnel. Orientation flights may be approved as provided in DoD 4515.13-R and this instruction.

1.9.4. Commanders (including unit commanders) may use Air Force aircraft under their control to:

1.9.4.1. Perform tactical and combat operations.

1.9.4.2. Train aircrew personnel and evaluate aircrew performance.

1.9.4.3. Allow aircrews to meet the flying requirements of this instruction.

1.9.4.4. Further national health or safety interests, to include saving of human life if a medical officer indicates the situation involves possible loss of life, limb, or sight (DoD 4515.13-R).

1.9.4.5. Cooperate with foreign governments as directed by HQ USAF.

1.9.4.6. Perform other official missions as required.

1.9.4.7. Conduct the Air Force Orientation Flight and Public Affairs Travel Programs according to DoD 4515.13-R; AFI 35-101, *Public Affairs Policies and Procedures*; AFI 48-123, *Medical Examinations and Standards*, this instruction, and MAJCOM guidelines. **Table 1.1.** is a matrix of approval authorities for orientation/public affairs flights.

1.9.4.7.1. The USAF conducts orientation flights to reward and motivate individuals (incentive orientation flights only), ensure a better understanding of a particular weapon system and its role, or when the flight is determined to be in the best interest of the USAF.

1.9.4.7.1.1. Incentive Flights. Provide a visible reward to military personnel for outstanding service and motivate others to similar performance levels.

1.9.4.7.1.2. Distinguished Visitor (DV) Flights. Display USAF weapons systems to individuals so they gain a better understanding of the particular aircraft and mission.

1.8.3. The flight authorization must include (minimum requirements):

1.8.3.1. A designated pilot-in-command, or formation flight leader of each flight or flight element.

1.8.3.2. Name, grade, and flight authorization duty code (**Table A2.3.**) of each crewmember, operational support flier, or any other official personnel (use the position designation established by the MAJCOM) required for the mission or flight.

1.8.3.3. Type, serial number, and call sign of aircraft or formation and mission symbol.

1.8.3.4. Place from which the flight will depart plus "on-or-about" departure date.

1.8.3.5. An itinerary and the phrase "Variations in itinerary authorized."

1.8.3.6. Provisions of AFI 65-103, *Temporary Duty Orders*, apply to temporary duty performed incidental to authorized flights. Include a statement to this effect on the flight authorization.

1.8.4. Flight authorizations will only include personnel on AOs (or contract aircrew personnel on a memorandum of agreement/contract) authorized to perform in-flight duties for that mission according to paragraphs **1.10.** and **3.3.** of this instruction. Except for non-interference members, individuals on the flight authorization should match those authorized to log time on the AFTO Form 781, **ARMS Aircrew/Mission Flight Data Extract**.

1.8.4.1. Personnel who are on the aircraft for point-to-point travel, an orientation/familiarization flight or to only perform a proficiency jump (not performing aircrew duties for that mission) will be listed on the passenger manifest. For fighter-type aircraft, when a passenger manifest is not prepared, list individuals in the Remarks section of the Flight Authorization.

1.8.4.2. If ACMs or MEGPs are transported, IAW MAJCOM supplements, they may be listed on the flight authorization in the Remarks section (only). ACMs or MEGPs will not be listed on the AFTO Form 781, will not log time, and will not accrue OFDA credit.

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1.9.4. Commanders (including unit commanders) may use Air Force aircraft under their control to:

1.9.4.1. Perform tactical and combat operations.

1.9.4.2. Train aircrew personnel and evaluate aircrew performance.

MEMORANDUM FOR:
All ANG Wing Commanders
All ANG Directors of Operations

From: NGB/CF
1411 Jefferson Davis Hwy
Arlington, VA 22202-3231

Subject: FY05 Mid-Year Flying Hour Allocation Adjustments

The Air Force had their flying hour programs significantly reduced in order to pay for other Air Force bills including GWOT and recent fuel increases. ANG was directed in the POM process by the Air Force Corporate structure to take risk in this years flying hour program. When we completed the latest BER process the funding levels were inadequate to support the program. Currently we are funded at approximately 83% of our programmed requirements. In addition, there is the potential for a further adjustment beginning in June due to another fuel price increase. MAJCOMs are not anticipating being reimbursed for this increase and may have to absorb it out of their existing FH budget. These events have forced all the commands to adopt immediate and in some cases drastic actions to deal with the shortage of flying hour funding. This situation is not smoke and mirrors, it's very real, and it will not go away before the end of the fiscal year. Also, there is a good chance that we will start FY06 with a reduced funding level.

We're asking each unit to manage their reductions in the most efficient manner possible, and then let us know when you can no longer keep your current readiness level. Our highest priority is preparation and spin-up of those units deploying to the AEF, then ORIs, formal training, etc. If it becomes necessary, we will pull hours from those units not participating in these high priority missions and flow them to the wings which are.

Commanders have to determine what they can and can't do, which staff aircrew members really need to fly, and what they need to give up, and then let us know when your drop dead date is, so we can use that information to explain the ANG position to the Air Force.

Here are the basic rules. At mid-year, you were provided funding for hours you projected to fly consisting of O&M training, TWCF airlift, and AEF contingency hours. The adjustments (cuts) were taken from the O&M bucket because that's where we lost our funding. Hours for TWCF airlift and contingencies were provided based on your forecasts and are only reimbursed back to the ANG if flown for those purposes. All hours flown

in support of HHQ missions in support of the GWOT are reimbursable and do not count against your O&M training. You could actually fly as many TWCF airlift and contingency missions as you like, so long as you keep ANG/XOE appraised of your execution. Remember, reimbursable hours must be properly coded with a reimbursable mission symbol. Please be aware that if you fly a mission for another command and it's not tied directly to a contingency, then it will come out of your unit's training allocation, and those are hours you can't get back. The basic rule should be if an O&M flying does not provide your unit with the same training experience as your local training: do not fly it. If you fly them make sure that you benefit with valid training.

There is no need to attempt working requests for additional hours through my office; there is simply no money available to support any request that does not meet the priority missions as stated above. Mission stoppers need to directed to the flying hour program manager, Mr. John Wilmer. He will communicate every request and argument with the Director of Operations and me. Feel free to contact him at, John.Wilmer@ngb.ang.af.mil.

CHARLES V. ICKES II, Brig Gen
Deputy Director, ANG

FLIGHT TRAINING CODE DESCRIPTIONS

F010 Formation Departure and Join-Up: Includes Buddy Departure

F020 Formation: At least 30 minutes of formaiton should be planned and accomplished. Log only one F020 per sortie.

F030 Large Formation Departure and Join-Up: 3 or more large aircraft in formation. Dual log with F010, must be flown through completion of level-off or join-up.

F040 Large Formation: In addition to F020 requirements, accomplish 30 minutes of formation with a flight of three or more large aircraft. Dual log with F020.

F060 AR Formation: 15 minutes of AR formation required. Consists of rendezvous and AR procedures.

M010 Proficiency Sortie: As a minimum, will consist of the following:

- Review of Boldface procedures
- Three instrument approaches
- Missed approach
- VFR traffic pattern (weather permitting)

In addition, the following should be accomplished when available and applicable:

- Holding pattern or procedure turn (to include entry)
- Circling approach
- Simulated engine-out landing (not applicable to co-pilots)
- Simulated engine-out go around or mised approach (not applicable to co-pilots)
- Partial flap landing
- EFTOC

M020 Unit Specific Training Sortie: Will be credited when any of the following events are accomplished:

F020	Formation
N010	Tanker Rendezvous
P020	Takeoff
P070	Instrument Approach
P190	Landing
R060	Tanker AR

N010 Tanker Rendezvous: Any rdzv accomplished using procedures in the AR TO. Pilots may dual log with Navigator.

R060 Tanker AR: Credit only one R060 for each receiver cell/ARCT regardless of number of aircraft. Additional Pilots or Bos may also log provided they actually accomplish a refueling in their primary position.

P020 Initial Takeoff or Takeoff following a touch and go landing

P040 Engine Failure, Takeoff Continued: Not required for co-pilots, reguires direct IP supervision. May dual log with P020, P190, and P192.

DEPARTMENT OF THE AIR FORCE
168TH OPERATIONS SUPPORT FLIGHT (PACAF)
EIELSON AIR FORCE BASE ALASKA

12 Aug 2005

MEMORANDUM FOR 168 ARW/CC

FROM: LT COL TROY DUNN

SUBJECT: Conduct Unbecoming an Officer

1. Lt Col Douglas Kelsch did not attend UTA on 7 Aug 2005. On Tuesday, 9 Aug I asked Col Wenke why Lt Col Kelsch was not in attendance. Col Wenke stated that Lt Col Kelsh had been given a pass for the 7 Aug UTA period. He further stated that the pass had been issued on 6 Aug.

2. When I spoke with Lt Col Kelsch, he stated that Col Wenke was unaware that he had missed the 7 Aug UTA until 8 Aug. According to Lt Col Kelsch, on 8 Aug, he informed Col Wenke that he had not attended UTA on 7 Aug. At that time, Col Wenke directed Lt Col Kelsch to request a pass for 7 Aug. In my conversation with Lt Col Kelsch, he stated that he thought it curious that he should be given a pass for a date that had already expired.

3. I conducted further research to determine when the pass for Lt Col Kelsch had been requested. MSgt John Miller and SSgt Michele Fisher, of the 168th Operations Group Orderly Room, informed me that the pass dated 6 Aug for Lt Col Kelsch had been requested on 8 Aug. I informed Col Wenke what I had discovered and he again stated that he had made the request for a pass 6 Aug. Lt Col Kelsch was present during this conversation on 9 Aug.

4. I spoke with MSgt John Miller one more time, reiterating the importance of this issue. I asked him to confirm that there was no way he or anyone in the orderly room could have missed the pass request on 6 Aug. He stated, "no sir, the pass was requested on 8 August". Today, 12 Aug, Lt Col Kelsch stated to me that the statements made by Col Wenke on 9 Aug regarding the pass request "were a lie".

5. Col Wenke falsified an official document by backdating a pass for the 7 Aug UTA period that was not requested until 8 Aug. (See attached copy). Additionally, Col Wenke lied to fellow officers, myself and Lt Col Kelsch, when questioned about the aforementioned pass. This conduct is not acceptable and unbecoming of an Officer.

TROY R. DUNN, Lt Col, AKANG

5410

DEPARTMENT OF THE AIR FORCE
168TH OPERATIONS GROUP (PACAF)
EIELSON AIR FORCE BASE ALASKA

BACK DATED PASS
WHAT Logic?
WENKE FALSIFIED

6 Aug 2005

MEMORANDUM FOR LT COL DOUGLAS K. KELSCH
SSAN: [redacted]

FROM: 168 OG/CC
3129 Wabash Ave Ste 116
Eielson AFB, Alaska

SUBJECT: Special Pass Authorization

1. You are hereby authorized a special compensatory 1-day pass. Pass period will begin after normal duty hours on 6 Aug 2005 and terminate at the beginning of normal duty hours on 8 Aug 2005. **This pass must originate and terminate in the local area.** Local area is defined as the place from which you regularly commute to work. The following guidelines apply:

a. The authorized absence that exceeds the pass period is chargeable leave should you fail to return to duty within the designated period.

b. You are required to return to duty within a resonable time in the event of an operational mission requirement such as recall, unit alert, or unit emergency.

c. This special pass is not granted in conjunction with leave.

d. AF Form 988 (Leave Authorization) will be processed should you fail to return from pass and require unplanned leave.

e. This special pass is not in conjunction with or to extend any TDY period.

f. **Safe Travel Guidelines:** Members on non-duty status should use Operational Risk Management principles to assess all hazards and control risks prior to excessive or hazardous travel, especially by automobile. Applicable guidelines are stated in AFI 91-213, *Operational Risk Management*.

2. Privacy Act Notice: This document is covered under the Privacy Act of 1974. Information contained is not releasable to the public without consent of the individual concerned. AFI 37-131 and AFI 37-132 apply.

3. In case of emergency, contact the Operations Control Center at DSN: 377-8800.

DONALD S. WENKE, Col, AKANG
Commander

5411

DEPARTMENT OF THE AIR FORCE
168TH AIRCRAFT MAINTENANCE SQUADRON (PACAF)
EIELSON AIR FORCE BASE ALASKA

26 February 2006

MEMORANDUM FOR RECORD

FROM: 168 AMXS/CC

SUBJECT: Perception of Fraud to collect ACIP Entitlement

1. In the Spring of 2000, the 168 ARW completed the conversion from the KC135R to the KC135R Block 30. The most significant impact of this conversion was the incorporation of an avionics suite that eliminated the Navigator position from the cockpit. While the Navigator position was officially retained in the 168 ARW until 1 Oct 2004, the intent was to allow the Wing time to reassign or attrit these individuals after the conversion was accomplished.

2. When the 168 ARW converted to the KC135R Block 30, the 168 ARW/CC (Col Timothy W. Scott) directed that any contingency Sortie would utilize a Navigator as an additional crewmember. In my capacity as 168 ARS/DOT (Chief of Training), it became my responsibility to train the Navigators in the Block 30. Initially, there were no Instructor Navigators in the Block 30, therefore Instructor Pilots were used to train the Navigators.

3. In the Fall of 2001, Ltc Donald S. Wenke and Ltc (Select) Wendy B. Wenke were hired as Aircrew into the 168 ARW from the Idaho Air National Guard. Ltc Donald Wenke had served as an A10 Pilot and was hired into an AGR KC135R Pilot position. Ltc Wendy Wenke had been qualified as a Navigator in the KC135E (168 ARW) in 1990, but had retrained into the C130 in the Idaho Air National Guard. Wendy was hired into a KC135R Block 30 Traditional Navigator position.

4. Col Scott knowingly hired a senior Officer into a Navigator position that was being eliminated from the Unit Manning Document. At the time of this hiring, other Navigators assigned to the 168 ARW were being retrained (two were sent to UPT) or reassigned to non-flying positions throughout the Wing or State.

5. In October of 2001, I was directed by the 168 OG/CC (Col Lawrence N. Appel) to train Ltc Wendy Wenke as a Navigator in the KC135R Block 30. I advised Col Appel that training Ltc Wenke as a Navigator offered very little return on effort and resources to the 168 ARW. Col Appel stated that he had been directed by the 168 ARW/CC (Col Scott) to accomplish the training. In addition, I was directed to request a waiver of the Requalification Academic Course that is normally required for this type of training (see attachment 1). The waiver was approved by the ANG/DO on 19 Nov 2001.

6. I initiated a Training Program for Ltc Wendy Wenke on 27 Nov 2001 (see attachment 2). Maj Jessica L. Stealey was assigned as her Primary Instructor Navigator. Ltc Wenke did not fly her first Sortie until 28 March 2002 (I was her Instructor on that Sortie, see attachment 3).

Because her training was delayed for so long, an additional waiver was required to continue her training program (AFI 11-2KC135 V1 requires that training must be complete within 180 days without an OG/CC waiver). I advised Col Appel that the training should be terminated at the end of the 180 days, but was again directed to accomplish the training. I submitted the waiver on 28 May 2002 to Col Appel to extend the training program for an additional 60 days (see attachment 4). Ltc Wenke completed her training on 26 Jul 2002 and accomplished an Inflight Evaluation on 31 Jul 2002 (see attachment 5).

7. As a fully trained and qualified Navigator in the KC135R Block 30, Ltc Wendy B. Wenke flew exactly 3 Sorties (14.7 hours). Her last flight was accomplished on 18 Sep 2002 (see attachment 6). Ltc Wenke was subsequently hired as an AGR and reassigned as the 168 LRS/CC.

8. Recently, Msg Tina Wylie (Flight Records) was contacted by Col (Select) Wendy Wenke inquiring about her flying gates towards Aviation Career Incentive Pay (ACIP). Col (Select) Wenke asked Msg Wylie when her ACIP would be reinstated. Msg Wylie researched the Flying History Report and discovered that Col (Select) Wenke had indeed met the 18 year requirement by three months. On 15 Dec 2005 her ACIP was reinstated (see attached).

9. According to AFI 11-402 (Section 3.10.3.2, Note): When considering ARC Officers for hire, assignment to a rated position solely for the purpose of initiating AO/Flight Pay and then transferring the member to a nonrated billet is strictly prohibited.

10. The perception that fraudulent activity may have taken place in violation of both the spirit and letter of the AFI warrant further investigation into the actions of Brig Gen Timothy W. Scott and Col (Select) Wendy B. Wenke.

BENJAMIN K. BAKER, Maj, AKANG
Commander

Attachments:
1. Waiver of Requalification Academic Course
2. Navigator Requal/PACER CRAG Training Program
3. 168 Form 4023 28 March 2002
4. Waiver for extension of Training Program
5. 168 Form 4022
6. Flying History Report

MEMORANDUM FOR RECORD 27 Feb 2005

TO: SAF/IGS, Col McDowell

SUBJECT: CASE ID # S6646P

1. The following individuals are knowledgeable of the fraudulent activities reference the aforementioned case.

Major Ben Baker, 168 AMXS/CC DSN 377-8601
Lt Col John Hilgenbrink, 168 OSF/CC DSN 377-8859
Capt Elisabeth King, 168 OSF, Chief of Current Operations, DSN 377-8810
SMSgt Paul Nunemann, 168 OSF/DOS, DSN 377-8812
SMSgt Pamela Cox, 168 OSF/DOS, DSN 377-8812
MSgt Brett Ayres, 168 ARS/DOT, DSN 377-8852
MSgt Tina Wylie, 168 ARMS, (Flight Records) DSN 377-8724
TSgt John LaQua, 168 OSF/DOS (formerly flight records) DSN 377-8812

Above members are available through the operations duty desk at DSN 377-8815/8811 as well.

2. Additionally, Lt Col Mark Bour (Former resource advisor at State Headquarters) is aware of situation reference Col (select) Wendy Wenke's position at Ft Richardson while living in North Pole Alaska over 300 miles North of Ft Richardson. Lt Col Bour is NOT aware of the current investigation as we discussed. I believe his office number at Fort Richardson is DSN 384-4076.

TROY R. DUNN, Lt Col, AKANG
168 ARS/DO

11-421, Chapter 5 and parachutists AFI 11-421, Chapter 6 for flight/jump requirements for entitlement to flight/jump incentive pay.

1.5.2. Accomplish annual flight physical within three months prior to the end of their birth month. For aircrew/parachutists on waivers or subject to frequent TDYs, accomplish within six months prior to end of their birth month. Duty Not Involving Flying (DNIF) aircrew/parachutists must still accomplish a physical, unless medical condition prevents accomplishment (validated by a flight surgeon).

1.5.3. Aircrew, Parachutists, and operational support members must notify the HARM office immediately when flight or jump incentive pay has not been terminated if:

1.5.3.1. Suspended from aviation/parachutist service.

1.5.3.2. Disqualified from aviation/parachutist service.

1.5.3.3. DNIF more than 365 days (rated officers and CEAs).

1.5.3.4. DNIF more than 120 days (Non-rated officers or non-CEA aircrew and parachutists).

1.5.3.5. Member is a rated/CEA aircrew member in conditional status or non-rated or non-CEA aircrew member no longer assigned to an active flying billet or X, K, or Q prefix Duty Air Force Specialty Code (DAFSC) (non-rated or non-CEA).

1.5.3.6. Member is a rated officer in the ARC, not on Extended Active Duty (non-EAD) assigned to an API 0 position for more than 24-months. This does not include Active Guard Reserve (AGR) officers considered a rated asset.

1.5.3.7. Member is a rated officer/CEA in conditional status and assigned to an inactive flying UMD position.

1.5.3.7.1. Member is a conditional flyer, assigned to an active flying position; however, was not performing flights, and continued to receive flight pay without meeting the DoD FMR requirements for entitlement.

1.5.3.8. Member is a parachutist authorized permissive jump status or a parachutist no longer assigned to a 1T2X1, 1C2X1, 13DX or "J" coded UMD DAFSC.

1.5.3.8.1. Member is a parachutist, assigned to a jump billet, however, was not performing jumps, and continued to receive jump pay without meeting the DoD FMR requirements for entitlement.

1.5.3.9. Member is a flight surgeon, non-rated or non-CEA aircrew member, or parachutist member double billeted against a UMD position and other incumbent is on aeronautical orders and receiving incentive pay.

1.5.4. Contact the local finance office for "rate of pay" discrepancies. Aircrew members must validate their years of aviation service match the "rate of pay" they are authorized to receive IAW the DoD Financial Management Regulation (DoD FMR) 7000.14R. The HARM will provide copies of the member's AO and Military Pay Orders (MPOs) to help the aircrew member rectify discrepancies with finance.

1.6. Specific Guidelines:

1.6.1. Air Force personnel are not entitled to flight/jump incentive pay unless they are on competent AOs, physically qualified, and required to perform specific in-flight/jump duties. AOs certify that an

individual fulfills all requirements for aviation/parachutist service and are the official authorization to perform in-flight/jump duties.

1.6.2. Assigning anyone to an active flying/jump position solely for the purpose of accumulating Operational Flying Duty Accumulator (OFDA) credit or qualifying for incentive pay is contrary to public law and USAF policy.

1.7. Training.

1.7.1. Entrance into training for the rated force is voluntary. Once awarded an aeronautical rating, a rated officer must perform all aircrew and rated staff duties assigned. This includes additional flying training related to the officer's rated specialty.

1.7.2. Entrance into training for the CEA force is voluntary. Once awarded an Aircrew Operations AFSC, the CEA must perform all aircrew and staff duties assigned. This includes additional flying training related to the member's specialty.

1.7.3. Training for parachutists is voluntary. Once awarded the 1C2X1, 1T2X1, or 13DX AFSCs, a parachutist must perform all parachutist duties assigned. This includes additional jump training related to the member's specialty.

1.7.4. Non-rated officers, and non-CEA enlisted personnel, must volunteer to enter training that will qualify them to perform in-flight duties in an aircraft(s) as aircrew members or operational support flyers. Unless permanently disqualified, members who complete initial training remain available for flying duties and may be directed to perform such duties at any time.

1.8. Qualification and Disqualification.

1.8.1. Qualification for aviation/parachutist service is not a right; it rests within the sole discretion of the approval authority. Members remain qualified for aviation/parachutist service based on their qualifications and aircrew potential to obtain and maintain qualification in an aircraft (for aircrew).

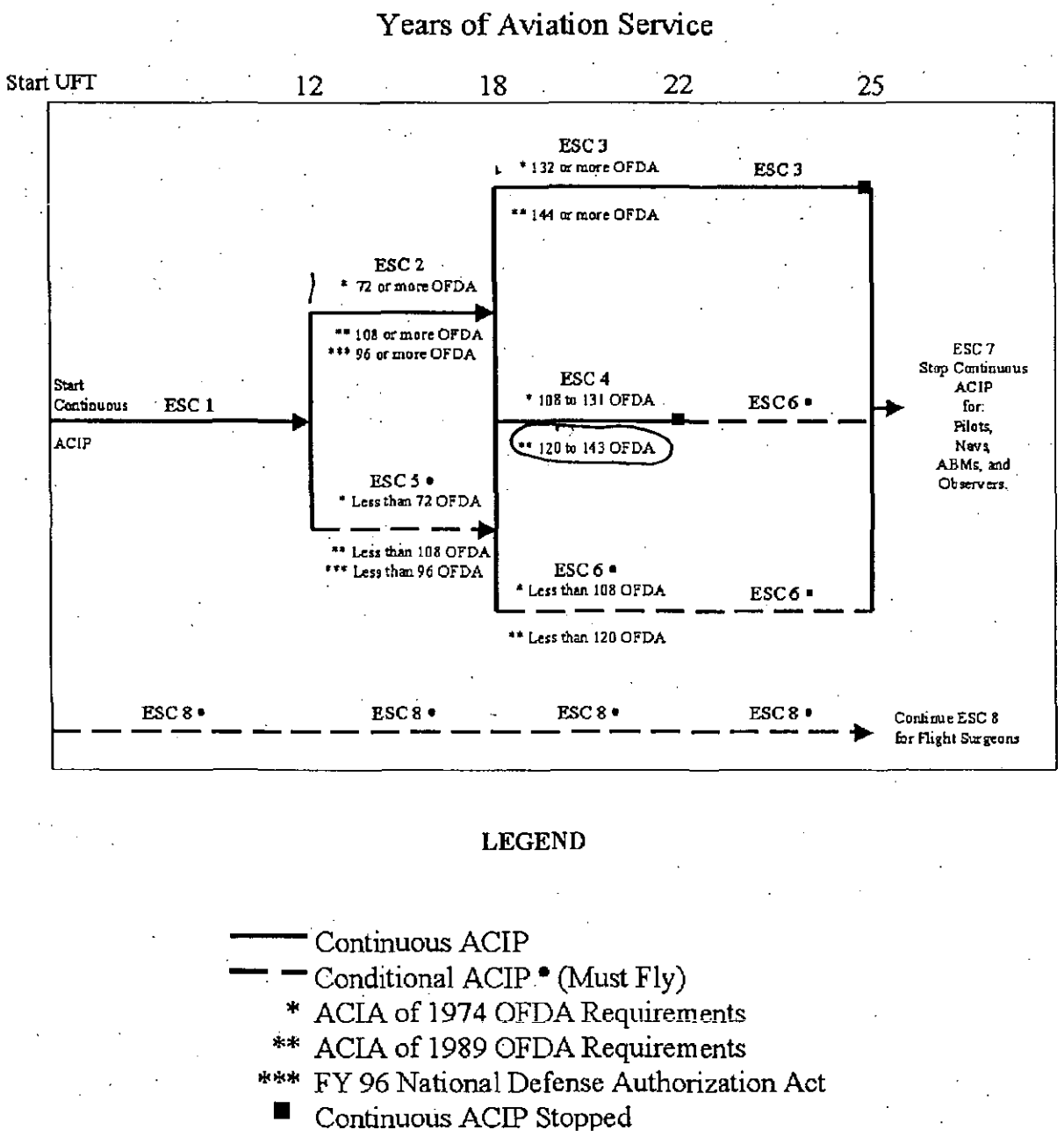
1.8.2. Aircrew and parachutist members must maintain medical and professional qualification to remain qualified for aviation/parachutist service. Members with a substantiated record of drug abuse will not be entered into aviation/parachutist service duties except IAW AFI 36-2205, *Applying for Flying Training, Air Battle Manager, and Astronaut Programs* as it applies to initial Undergraduate Flying Training (UFT) applicants.

1.8.3. Air Force personnel may request voluntary disqualification from aviation/parachutist service. Approval is contingent on the best interests of the USAF. See **Table 3.1.** for approval authority.

1.8.4. Disqualification from aviation/parachutist service is an administrative action designed to remove an individual from aviation/parachutist service for cause. It is not a disciplinary action, nor a substitute for action under the Uniform Code of Military Justice (UCMJ) or any other administrative directive. The USAF disqualifies a member when he or she is found medically or professionally unqualified to perform aviation/parachutist service according to this instruction. Disqualification terminates flight/jump incentive pay.

1.9. Documentation of Case Actions. At the conclusion of an aviation/parachutist service action, all documentation becomes a permanent part of the individual's master personnel record. Prepare all pack-

Figure 2.1. ACIP Entitlement Status, (Rated Officers).



LEGEND

Continuous ACIP
Conditional ACIP • (Must Fly)
* ACIA of 1974 OFDA Requirements
** ACIA of 1989 OFDA Requirements
*** FY 96 National Defense Authorization Act
■ Continuous ACIP Stopped

PERSONAL DATA - PRIVACY ACT OF 1974 (5 USC 552a)

PREPARED 22 DEC 2005 14:46 — INDIVIDUAL DATA SUMMARY (PA) — AS OF 22 DEC 2005 — PCN SA036-A70

PCS

NAME: WENKE, WENDY B SSAN: [redacted] GRADE: LTC CMD: ANG WING: 0168OPSGP UNIT: 0168OSSFT
BASE: ALASKA ANG (EIELSON)

PERSONAL DATA

DUTY PHONE:	377-8662
OFFICE SYMBOL:	DO
MBR SVC CAT:	AIRNG
LAST PHYS DATE:	14 DEC 04
PHYS CODE:	A
PHYS DUE DATE:	31 DEC 05
PHYS AVAIL CODE:	A
PHYS AVAIL DATE:	14 DEC 04
PHYSIOLOGICAL TNG DATE:	01 APR 99
PHYSIOLOGICAL DUE DATE:	30 APR 04
DATE OF BIRTH:	01 DEC 64
DUTY AFSC:	030C0
EFFECTIVE DATE OF DUTY:	06 DEC 04
PAS CODE:	A90RFKQ4
SHORT TOUR INDICATOR:	N
DATE RETURN FROM OVERSEAS:	
DATE OF RANK:	10 JUN 01
DATE OF SEP/OBLIGATION:	
DATE DEP LAST DUTY STA:	03 OCT 01
DATE ARR THIS STATION:	10 OCT 01
PERSONNEL RECORD STATUS:	10
PROJECTED DAFSC:	
PROJECTED PAS CODE:	
PROJECTED DUTY LOCATION:	MLRV
PROJ DEPARTURE DATE:	
PROJ REPORTING DATE:	
FAC 8 EFFECTIVE DATE:	
LOCAL USE CODE:	

SECURITY CLEARANCE:	V
SECURITY CLEARANCE DATE:	12 JAN 04
RESTRICTED AREA BADGE NO:	
PROFESSIONAL QUAL INDEX (PQI):	
PROFESSIONAL QUAL INDEX DATE:	

JUMP STATUS

DATE ASSIGNED JUMP STATUS:

SYSTEM MANAGEMENT

HARM CODE:	FTQA
DEPLOYED HARM CODE:	
DEPLOYED DATE:	
REDEPLOYED DATE:	
SPECIAL CAT ID:	AG
RECORDS REVIEW ACC DATE:	25 OCT 01
RECORDS REVIEW DUE DATE:	31 DEC 02
RECORDS REVIEW STATUS CODE:	N

Member not available

I CERTIFY THAT I HAVE REVIEWED MY FRF AND IT IS COMPLETE AND ACCURATE. SIGNATURE_____ DATE_____

PERSONAL DATA - PRIVACY ACT OF 1974 (5 USC 552a)

5419

PERSONAL DATA - PRIVACY ACT OF 1974 (5 USC 552a)

PREPARED 22 DEC 2005 14:46

INDIVIDUAL DATA SUMMARY (PA) AS OF 22 DEC 2005 PCN SA036-A70

PCS

NAME: WENKE, WENDY B SSAN: [redacted] GRADE: LTC CMD: ANG WING: 0168OPSGP UNIT: 0168OSSFT
BASE: ALASKA ANG (EIELSON)

AIRCRAFT ASSIGNMENT DATA

AIRCRAFT OPLOC:
CMD OF AIRCRAFT:
ACFT SVC CAT:
PRIMARY ACFT:
FLT DUTY CERT CODE:
CATEGORICAL FLYING WAIVER:

INCENTIVE PAY DATA

LAST MPO DATE:	15 DEC 99
LAST MPO REASON:	A
AD/IAD:	NONE
PAY STOP DATE:	14 DEC 09
LAST PRODUCTIVE FLIGHT DATE:	18 SEP 02
PREVIOUS PRODUCTIVE FLIGHT DATE:	22 AUG 02

CEFIP/ACIP DATA

AVIATION SERVICE CODE:	4J
EFFECTIVE DATE:	15 DEC 05
PRIOR ASC:	5J
EFFECTIVE DATE:	21 OCT 02
AERO ORDER TERM DATE:	14 DEC 09
OFFICER SERVICE DATE:	05 NOV 87
AVIATION SERVICE DATE:	15 DEC 87
TRANSITION STATUS CODE:	A
AVIATION POSITION INDICATOR:	0
EFFECTIVE DATE:	06 DEC 04
FLYING ACTIVITY CATEGORY:	0
PRE-ACIA-OFDA:	0
OFDA GATE 10/12:	92
OFDA GATE 15/15:	123
OFDA GATE 20/18:	123
OFDA TO DATE:	123

AERONAUTICAL RATING/AVIATION BADGE

AERONAUTICAL RATING:	SENIOR NAVIGATOR
EFFECTIVE DATE:	01 APR 98
AERONAUTICAL RATING:	NAVIGATOR
EFFECTIVE DATE:	29 SEP 88

OUS MIL RTG DT:
CURR PARA RATING:
CURR PARA RATING DATE:
ORIG PARA RATING:
ORIG PARA RATING DATE:

TRAINING/QUAL STATUS

FORMAL COURSE DATE

You have met OFDA requirements for 18 year gate to receive continuous ACIP through 22 years of aviation service.

I CERTIFY THAT I HAVE REVIEWED MY FRF AND IT IS COMPLETE AND ACCURATE. SIGNATURE_____ DATE_____

PERSONAL DATA - PRIVACY ACT OF 1974 (5 USC 552a)

5420

PERSONAL DATA - PRIVACY ACT OF 1974 (5 USC 552A)

PREPARED 22 DEC 2005 14:49 FLYING HISTORY REPORT (PA) AS OF 22 DEC 2005 PCN SA036-F40

PCS

NAME: WENKE, WENDY B SSAN: [redacted] GRADE: LTC API: 0 FAC: 0 OFDA: 123 ASC: 4J ASC DATE: 15 DEC 05
CMD: ANG WING: 0168OPSGP PRI CRW POS: N PRI ACFT: UNIT: 0168OSSFT0 BASE: ALASKA ANG (EIELSON)

CAREER TOTALS

CREW POSITION	NAVIGATOR
PRIMARY TIME	1425.0
SECONDARY TIME	0.5
INSTRUCTOR TIME	0.0
EVALUATOR TIME	0.0
OTHER TIME	116.4
TOTAL TIME	1541.9
STUDENT TIME	113.9
OTHER US MIL TIME	0.0
FOREIGN MIL TIME	0.0
CIVILIAN TIME	0.0
COMBAT TIME	0.0
COMBAT SUPT TIME	16.1
TOTAL SORTIES	495
COMBAT SORTIES	0
COMBAT SUP SORTIES	10
NVG TIME	0.0
DATE FIRST FLOWN	21 DEC 88
DATE LAST FLOWN	18 SEP 02

GRAND TOTAL 1655.8

PAGE 2

PERSONAL DATA - PRIVACY ACT OF 1974 (5 USC 552a)

5421

PERSONAL DATA - PRIVACY ACT OF 1974 (5 USC 552A)

PREPARED 22 DEC 2005 14:49 FLYING HISTORY REPORT (PA) AS OF 22 DEC 2005 PCN SA036-F40

PCS

NAME: WENKE, WENDY B SSAN: [redacted] GRADE: LTC API: 0 FAC: 0 OFDA: 123 ASC: 4J ASC DATE: 15 DEC 05
CMD: ANG WING: 0168OPSGP PRI CRW POS: N PRI ACFT: UNIT: 0168OSSFT0 BASE: ALASKA ANG (EIELSON)

AIRCRAFT TOTALS

AIRCRAFT MDS	C130E(S)	KC135A(S)	KC135E(S)	KC135R(S)	SKC135A(Q)	SMC130E(Q)	SMT010K(Q)	SNC130E(Q)
FLT DTY CERT CODE	MNB1	UN	UN	FN	UN	MNB1	UN	MN
DATE FIRST FLOWN	30 SEP 96	21 DEC 88	15 MAR 89	28 MAR 02	06 DEC 88	05 NOV 96	17 NOV 88	12 SEP 96
DATE LAST FLOWN	02 OCT 01	13 FEB 89	22 OCT 91	18 SEP 02	25 JAN 89	23 APR 01	13 DEC 88	18 OCT 97
TOTAL TIME	731.1	73.9	676.5	60.4	12.0	49.0	6.5	30.0
PRIMARY TIME	672.2	73.9	622.3	56.6	12.0	49.0	6.5	28.0
SECONDARY TIME	0.5	0.0	0.0	0.0	0.0	0.0	0.0	2.0
INSTRUCTOR TIME	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
EVALUATOR TIME	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
OTHER TIME	58.4	0.0	54.2	3.8	0.0	0.0	0.0	0.0
NIGHT	46.4	0.0	0.0	0.0	0.0	0.0	0.0	0.0
PRIMARY INST	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
PRIMARY SIM INST	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
NVG TIME	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
COMBAT TIME	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
CMBT SUPPORT TIME	16.1	0.0	0.0	0.0	0.0	0.0	0.0	0.0
COMBAT SORTIES	0	0	0	0	0	0	0	0
CMBT SUPPORT SORTIES	10	0	0	0	0	0	0	0
TOTAL SORTIES	285	10	187	13	6	16	3	6

9 - "upgrade"
1 - checkride
3 - Sorties as "NAV" in Block 30

PAGE 1

PERSONAL DATA - PRIVACY ACT OF 1974 (5 USC 552a)

CLASSIFICATION/ON-THE-JOB TRAINING ACTION

PERSONNEL ACTION NO. C-

TO: (Organization) 176 MSF /DPME

FROM: (Organization/Office Symbol) HQ AKANG/CC

I. INDIVIDUAL IDENTIFICATION

NAME (Last, First, MI)	GRADE	SSN	UNIT
WENKE, WENDY B.	LTC	[redacted]	HQ AKANG

II. PERSONNEL DATA CHANGES

AFSC INFORMATION

AWARD AFSC _____ AS _____ AFSC
EFFECTIVE _____
REDESIGNATE _____ AS _____ AFSC
PAFSC FROM _____ TO _____
CAFSC FROM _____ TO _____
EFFECTIVE _____
2 AFSC FROM _____ TO _____
3 AFSC FROM _____ TO _____
4 AFSC FROM _____ TO _____
ADD-AFSC FROM _____ TO _____
WITHDRAW AFSC _____

SPECIAL EXPERIENCE IDENTIFIER(S) (Airman Only)

DESIGNATE CAFSC SEI _____
DESIGNATE GENERAL SEI _____
DESIGNATE SEI _____ WITH ( ) AFSC _____
WITHDRAW SEI _____ FROM ( ) AFSC _____

DUTY INFORMATION

DAFSC 30X0 EFFECTIVE DATE 20051212
OFFICE SYMBOL JFHQ DUTY PH 428-6072
POSITION NO. 0747228 OSC ZSUC1
COMD LVL AG DUTY TITLE *SEE REMARKS
AUTHORITY

OJT INFORMATION

EFFECTIVE _____
ENTER/CONTINUE AFSC _____ TS CODE _____
WITHDRAW AFSC _____ TS CODE _____
COMPLETED AFSC _____ TS CODE _____
DATE INITIALLY ENTERED RETNG _____
DIRECTED DUTY AFSC _____ DDA EXPIRATION DATE _____ REASON _____
OFF-PROJ CLASN UPGRADE DATE _____

ASSIGN PROFICIENCY PAY

SS RATING _____ AMOUNT _____ AFSC _____
EFFECTIVE _____ PRO PAY STATUS REASON _____
WITHDRAW PRO PAY _____ EFFECTIVE _____

MISCELLANEOUS INFORMATION

ADSCD _____ REASON _____
PROMOTION ELIG STATUS _____
PROMOTED TO _____ EFFECTIVE _____
WITH DATE OF RANK _____
ASSIGNMENT AVAIL CODE/DOA _____
DESIGNATE WAFSC _____ EFFECTIVE _____
WITHDRAW WAFSC _____ EFFECTIVE _____
OTHER _____

DATE	NAME, GRADE, TITLE, DUTY PHONE, SUPERVISOR/REQUESTING OFFICIAL	SIGNATURE
20051204	TAMMY E. KIMBALL, CMSGT, AKANG Military Personnel Management Superintendent	Tammy E. Kimball

III. CONCURRENCE OF MEMBER

DATE	☐ DO ☐ DO NOT CONCUR	SIGNATURE OF MEMBER

IV. INTRA-BASE ASSIGNMENT ACTIONS

RNLTD/ EFFECTIVE DATE	ASSIGNMENT ACTION NUMBER	ASSIGNMENT FROM	ASSIGNMENT TO
20051212		168 MSG (A90RFKQ4)	HQ AKANG (A42TFL0B)

V. REMARKS

DUTY TITLE: VICE, JOINT CHIEF OF STAFF
CHANGE OF REPORTING OFFICIAL: BRIG GEN SCOTT, 527-86-4093, EFFECTIVE 12 DEC 05.
LOSING COMMANDER, COL ARNE E. MOE, CONCURS WITH THIS ACTION.

VI. APPROVAL BY COMMANDER OR AUTHORIZED REPRESENTATIVE

DATE 20051204

FOR THE COMMANDER	TYPED NAME, GRADE, AND TITLE	SIGNATURE
	TIMOTHY W. SCOTT, BRIG GEN, AKANG COMMANDER	Timothy Scott

VII. ACTION BY PERSONNEL OFFICIAL

☐ APPROVED ☐ DISAPPROVED DATE

FOR THE COMMANDER	TYPED NAME, GRADE, AND TITLE	HEADQUARTERS / SIGNATURE

This authorization remains in effect after Airman's discharge and immediate reenlistment at the same station provided that he/she has no break in military service.

VIII. UNIT/CBPO COORDINATION RECORD

DMPE	1. DPM	2. DPM	3. DPM	4. DPM	5. DPM	6. DPM	UNIT

5422

PER AL DATA - PRIVACY ACT OF 1974 (5 USC 552a)

AERONAUTICAL ORDER (PA)
AVIATION SERVICE

CHANGE ASC FROM 5J TO 4J

ENTITLEMENT: ACIP IS AUTHORIZED

NAME: WENKE, WENDY B

GRADE: LTC SSAN: [redacted]

CREW POSITION: NAVIGATOR
WING: 168OPSGP ORGANIZATION: 168OSSFT
LOCATION: ALASKA ANG (EIELSON) AK 99702 0000

DAFSC: 030C0
OFFICE SYMBOL: DO

REQUIRED TO PERFORM FREQUENT AND REGULAR FLIGHT: Y
REQUIRED TO PERFORM PARACHUTIST DUTIES: N

ASC: 4J FAC: 0 TSC: A ASD: 15 DEC 87 OSD: 05 NOV 87 OFDA: 123

OFDA WAIVER TYPE	OFDA WAIVER DATE	OFDA WAIVER MONTHS	OFDA WAIVER GATE
N/A	N/A	N/A	N/A

REMARKS: MEMBER HAS COMPLETED 18 YEARS OF AVIATION SERVICE AND ACCUMULATED 123 MONTHS OF OFDA CREDIT. ENTITLED TO CONTINUOUS ACIP TO 22 YEARS OF AVIATION SERVICE.

EFFECTIVE DATE: 15 DEC 05

TERMINATION DATE: 14 DEC 09

AUTHORITY: AFI 11-401, PARA 2.4.1.9.

REQUEST DATE: 15 DEC 05

SIGNATURE ELEMENT OF ORDERS AUTHENTICATION OFFICIAL:
FOR THE COMMANDER

Tina Wylie

TINA WYLIE, MSGT, AIRNG
AVIATION RESOURCE MANAGER

DEPARTMENT OF THE AIR FORCE
168 ARW (ANG)
ALASKA ANG (EIELSON) AK 99702 0000

DISTRIBUTION: C

AERONAUTICAL ORDER NUMBER: 0009

MPO SECTION

ACIP START: 15 Dec 05
STOP:
REPORT:
CHANGE:
CANCEL:

PROCESSING VERIFICATION:
TRANSACTION NO:
ADSN:
CYCLE NO:
PREPARED DATE:

DATE: 15 Dec 05 MPO CERTIFYING SIGNATURE: Tina Wylie

5423

542

PERSONAL DATA-PRIVACY ACT OF 1974 (5 USC 552A)

PREPARED 11 JAN 2006 07:44

PERSONNEL DATA SYSTEM (PDS)
INTERFACE SUMMARY

AS OF 11 JAN 2006 PCN SA002-102

THE FOLLOWING TRANSACTIONS WERE PROCESSED ON 10 JAN 2006

SSAN NAME ----------DATA CHANGES (OLD/NEW)----------

[redacted] WENK **DTY POS:** 714186/747228 **EFF DT DTY:** 06-DEC-2004/12-DEC-2005 **PAS:** A90RFKQ4/A42IFL0B
PRJ ARR DT: 11-MAR-2006/ **PRJ DTY AFSC:** 030C0/ **PRJ PAS:** A42IFL0B/ **RCD STAT:** 11/10
UNT MNG POS: MSG VICE COMMANDER/VICE, JOINT CHIEF OF STAFF

DEPARTMENT OF THE AIR FORCE
168TH Operations Group
Eielson Air Force Base Alaska

October 22, 2001

MEMORANDUM FOR: ANG/XOOM (Major Felix Hooks)
HQ AMC/DOTK (Information Only)

FROM: 168 ARS/DOT (Major Ben Baker)
3129 Wabash Ave
Eielson AFB, Alaska 99702
(DSN 317-377-1262)

SUBJECT: Waiver Request - Lt Col Wendy Wenke, Requalification academic course waiver.

1. *Name, grade, and Social Security number:* Wendy B. Wenke, Lt Col, [redacted]
2. *Flying Organization (assigned):* 168 ARS, Eielson AFB, Alaska
3. *Present crew qualification:* Unqualified Navigator
4. *Total flying time and primary aircraft:* 1595.4 hrs Total, (750.4 hrs as KC135 Navigator)
5. *Specific nature of waiver:* Requesting waiver of requalification academic course as directed by AFI 11-2KC135-V1 and authorization for local requalification and Pacer CRAG Block 30 training.
6. *Reason and valid justification for waiver:* Altus class dates not available in a timely manner.
7. *Crew qualification to which person is qualifying or upgrading:* Mission Navigator
8. *Previous attendance at any formal instructor course:* N/A
9. *Training start date:* ASAP
10. *Mandatory upgrade or qualification date:* ASAP
11. *Date last accomplished and normal eligibility period:* Lt Col Wenke accomplished a her last Flight Evaluation in the KC135E on 11 Jun 90. Her initial qualification date was 14 Feb 89. She accomplished her last MSN/INST/QUAL Evaluation in the C130 on 22 Sep 00.
12. *Remarks:* The 168 OG/CC requests this waiver to allow Lt Col Wenke to attain Mission Navigator status in the most expeditious manner possible. The 168 OG/CC has determined that the Navigator position is still an important Cockpit Resource and will be used on all overseas contingency sorties flown by 168 ARW aircrews.
13. *Requesting unit point of contact:* Benjamin K. Baker, Major, DSN: (317) 377-1262, 168 ARS/DOT

// Signed //
BENJAMIN K. BAKER, Major, AK ANG
168ARS/DOT

1st Ind, ANG/DO 19 Nov 01

MEMORANDUM FOR 168ARS/DOT

Approved as requested IAW AFI 11-2KC-135V1 1.2.1. If formal school is not available or practical as specified in AFI 11-2KC-135V1, 1.7, then in-unit training per AFI 11-2KC-135V1, Table 1.3 is approved. This memo provides for training only and does not validate flying from a non-flying manning document position.

LARRY G. BROOKS
Colonel, USAF
Deputy Director, Operations

DEPARTMENT OF THE AIR FORCE
168TH Operations Group
Eielson Air Force Base Alaska

May 28, 2002

MEMORANDUM FOR 168 ARS/CC
168 OG/CC
ANG/XOT (Information Only)

FROM: 168 ARS/DOT
3129 Wabash St.
Eielson AFB, AK 99702

SUBJECT: Waiver Request – Ltc Wendy B. Wenke, Local KC-135R Requal and PacerCRAG "Extension of Qualification Training" waiver.

1. *Name, grade, and Social Security number*: Wendy B. Wenke, Lieutenant Colonel, [redacted]
2. *Flying Organization (assigned):* 168 ARS, Eielson AFB, Alaska
3. *Present crew qualification:* Unqualified Navigator (UN)
4. *Total flying time and primary aircraft*: 2355.7 hrs Total, (771.7 hrs as KC135 Navigator)
5. *Specific nature of waiver:* Requesting waiver for 60 day "Extension of Qualification Training."
6. *Reason and valid justification for waiver:* Due to availability of airframes equipped with the Navigator Suite, Wendy has had limited opportunities to complete training.
7. *Crew qualification to which person is qualifying or upgrading:* Basic Navigator
8. *Previous attendance at any formal instructor course:* N/A
9. *Training start date:* 27 Nov 01
10. *Mandatory upgrade or qualification date:* N/A
11. *Date last accomplished and normal eligibility period:* N/A
12. *Remarks*: IAW AFI 11-2KC135 V1 the 168 ARS/CC may extend upgrade training time up to 60 days.
13. *Requesting unit point of contact:* Benjamin K. Baker, Major, DSN: (317) 377-1262, 168 ARS/DOT

BENJAMIN K. BAKER, Major, AK ANG
Chief of Training

May 28, 2001

1st Ind, 168 ARS/CC to 168 ARS/DOT, 28 May 2001, MR Waivers for Flying Continuation Training

MEMORANDUM FOR 168 OG/CC

Concur/Nonconcur.

DOUGLAS K. KELSCH, Major, AKANG
Commander

168 ARS Aircrew Training Summary / Close-out Report		Crew Position	Course/Phase
		Navigator	Requal & Pacer CRAG Training

Student Name(Last, First MI)	Instructor	Training Start Date	Training Completion Date
Wenke, Wendy B.	Stealey, Jessica L.	27 Nov 01	26 Jul 02

GT Total (168th Form 4022 P2)	Fly Total (168th Form 4024)	ATD Total (168th Form 4022 P2)	Total Training Time
13.8	43	0	56.8

Overall Performance, Strengths, Weaknesses, etc:

Recommendations: Ltc Wenke has met proficiency in the events required to complete her Requalification and Pacer CRAG Difference training as of 26 Jul 02. There were no weaknesses noted in any of her training.

Check IAW AFI 11-202V2 and AFI11-2KC-135V2.

Instructor (Name, Rank, Crew Qualification & Sign)	168 ARS/CC or Representative (Name, Rank & Sign)	168 OG/CC or Representative (Name, Rank & Sign)
Jessica L. Stealey, Maj, IN	Douglas K. Kelsch, Maj	Lawrence N. Appel, Ltc

168 ARS Flying Training Accomplishment Report

Crew Position	Course/Phase
Navigator	Requal & Pacer CRAG Training

Student Name(Last, First MI)	Instructor	Training Start Date	Training Complete Date
Wenke, Wendy B.	Stealey, Jessica L.	27 Nov 01	26 Jul 02

Date	Sortie	Status	Instructor/Trainer (Qual)	Time	Cum. Time	Date	Sortie	Status	Instructor/Trainer (Qual)	Time	Cum. Time
28 Mar	S-1		Benjamin K. Baker / IP	3.9 / 3.9	3.9 / 3.9						
1 May	S-2		Timothy W. Scott / IN	0.9 / 0.9	4.8 / 4.8						
2 May	S-3		Timothy W. Scott / IN	5.6 / 5.6	10.4 / 10.4						
6 May	S-4		Timothy W. Scott / IN	8.0 / 8.0	18.4 / 18.4						
7 May	S-5		Timothy W. Scott / IN	8.3 / 8.3	26.7 / 26.7						
28 Jun	S-6		Douglas W. Bradbury / IP	5.9 / 5.9	32.6 / 32.6						
1 Jul	S-7		Douglas W. Bradbury / IP	5.7 / 5.7	38.3 / 38.3						
24 Jul	S-8		Jessica L. Stealey / IN	3.3 / 3.3	41.6 / 41.6						
26 Jul	S-9		Benjamin K. Baker / IP	1.4 / 1.4	43.0 / 43.0						

Instructions/Description - Provides a chronological record of flying training sorties. Log all sorties scheduled even if cancelled by external factors such as Weather (WX) or Maintenance (MX).

Date - Self Explanatory.
Sortie - Enter sequentially. e.g. "S-1"
Status - Enter nothing if no lost training. Otherwise, enter Incomplete (INC) if training will be required to accomplish lost training events originally scheduled for that event period. e.g. Weather "INC WX", Maintenance "INC MX, Not Proficient "INC PRO"
Instructor/Trainer (qual) - name and aircrew qualification of the instructor. e.g. "Steve Canyon/IP"
Mission Time - Total mission time / Actual Trainee documented seat-time.
Cumulative Time - Running total of mission time / Running total of actual seat-time

168 ARS Ground Training Summary Report

Crew Position	Course/Phase
Navigator	Requal & Pacer CRAG Training

Student Name(Last, First MI)	Instructor	Training Start Date	Training Complete Date
Wenke, Wendy B.	Stealey, Jessica L.	27 Nov 01	26 Jul 02

Ground Training Events

Training Event	Date	Hours	Instructor/Qual	Notes
Pacer CRAG difference training (A036)				1
CBT's (A036A-E, A036N, A103-30, A201-30, A202-30)	27-Mar-02	8.0	CBT	1
Pacer CRAG Flying Pre-Briefs				
Altitude Alerter (A036K)	28-Mar-02	0.3	Maj Baker 168 ARS/DOT	4
Navigation Techniques (A036L)	28-Mar-02	1.0	Maj Baker 168 ARS/DOT	
TCAS	28-Mar-02	0.5	Maj Baker 168 ARS/DOT	4
Formation	28-Mar-02	0.2	Maj Baker 168 ARS/DOT	5
Radar Operation	28-Mar-02	0.5	Maj Baker 168 ARS/DOT	4
Refueling - General	28-Mar-02	0.5	Maj Baker 168 ARS/DOT	
Enroute Rendezvous	28-Mar-02	0.5	Maj Baker 168 ARS/DOT	
Point Parallel Rendezvous	28-Mar-02	0.5	Maj Baker 168 ARS/DOT	
Anchor Refueling	28-Mar-02	0.5	Maj Baker 168 ARS/DOT	
INU-2 / Carousel IV	28-Mar-02	0.3	Maj Baker 168 ARS/DOT	
G025 - Aircraft Field Trip	28-Mar-02	N/A	Maj Baker 168 ARS/DOT	2
PTT30 - Pacer CRAG Part-Task Trainer (see waiver)		N/A		
Requal training				
C200 - AFMSS Portable Flight Planning Software	28-Mar-02	1.0	Maj Baker 168 ARS/DOT	
G130 - Instrument Refresher Course (IRC) (CBT)				
G230 - Crew Resource Management Refresher				
AA01 - Qualification Check	31-Jul-02	N/A	Maj Mackelprang 168 OG/OGV	
Q001 - Open Book Qualification Examination				
Q002 - Closed Book Examination				

Notes:
1) CBT's must be accomplished before SIM/Flight Training
2) May be accomplished on first sortie
3) Accomplished prior to Pacer CRAG Check Ride
4) Should be accomplished prior to S-1
5) Should be accomplished prior to Formation Flight

Instructor Comments:

GT Total P2A: 13.8

Performance Evaluation Summary

Date Rec	Type Evaluation	Instructor/Qual	Ops Rev	Date Eval	Evaluator	Grade
27-Jul-02	GEN/MSN/REQ	Jessica L. Stealey / IN		31-Jul-02	Robert C. Mackelprang	Q - 1

168 ARS Aircrew Training Folder Review Report		Crew Position	Course/Phase
		Navigator	Requal & Pacer CRAG Training

Student Name(Last, First MI)	Instructor	Training Start Date	Training Completion Date
Wenke, Wendy B.	Stealey, Jessica L.	27 Nov 01	28 May 02

Training Folder Review

Review Date / Type	GT Total (168th Form 4022 P2)	Fly Total (168th Form 4024)	ATD Total (168th Form 4022 P2)	Total Training Time
30 Jun 02 / Monthly	13.8	32.6	0	46.4

Reviewer Comments / Recommendations:

Monthly review is complete.

Discrepancies noted: Missing Signatures - 168th Form 4023 S2, S3, S4, S5, S6, S7, S8, S9, 4023R, 4024, 4025

Instructor (Name, Rank, Crew Qualification & Sign)	168 ARS/DOT or Representative (Name, Rank & Sign)	168 ARS/CC or Representative (Name, Rank & Sign)
Benjamin K. Baker, Maj, IP	Benjamin K. Baker, Maj	Douglas K. Kelsch, Maj

168 ARS Flying Training Progress Report

Crew Position	Course/Phase
Navigator	Requal & Pacer CRAG Training

tudent Name(Last, First MI)	Instructor	Sortie Date	Sortie # / Duration
Wenke, Wendy B.	Baker, Benjamin K.	28 Mar 02	1 / 3.9

Grades
"B" - Briefing Item Only
"F" - Familiarization Item
"P" - Proficient
"S" - Satisfactory
"U" - Unsatisfactory

Training Lost Code
"W" - Weather
"M" - Maintenance
"R" - Receiver
"O" - Ops / Other

Mission Status: **Effective** / Non-Effective Student Progress / Non-Effective Other / Incomplete

Training Event List		Sched	Lost	Accmp	Grade
M001	Sortie			1	P
P272	KY58 Radio Operation				
P360A	PFPS Mission Plan				
P360	Mission Plan & Brief				
P361	Preflight				
P366	Checklist Procedures				
P367	Crew Coordination			1	S
P368	Postflight				
P369	Aircraft equipment ops			1	F
	Air Refueling				
N010	Tanker Rendezvous				
N015	Tanker Alternate RZ				
N016	Tanker RZ Overrun				
N020	Tanker En Route RZ				
N030	Point Parallel RZ				
N040	Anchor AR Proc				
R060	Tanker AR				
R230	Emergency Boom Hoist			1	F
	Cruise				
N060	Mission Navigation Leg				
N090	Control Time Exercise				
N100	INS Airborne Alignment			1	S
N160A	General Navigation (FMS)			1	S
P240	Landing Gear Alt Extend			1	F
P250	Main Flap Manual Ops			1	F

Instructor Comments

Describe mission scenario. Please elaborate on student strengths and weaknesses, identify problem areas, note unusual circumstances, and indicate trends.

Mission Scenario: Two-Ship (Two) Air Refueling Mission on AR 508E with 2XB2A receivers. UN Wenke was on board for S-1 of her Requal/Pacer CRAG training. Transition was accomplished in the local pattern at PAEI.

Mission Plan/Brief: Maj Stealey went through the mission planning process with UN Wenke. They produced the AF 200 flight plan, chart and 168 ARS Briefing Guide on the day prior to the scheduled sortie. In addition, the mission data card was preloaded on the Hot Bench Trainer.

Preflight/Engine Start/Taxi: Maj Stealey demonstrated the FMS preflight duties to LTC Wenke. In addition, she allowed LTC Wenke to complete the steps for Mode IV and Secure Voice while Jessica instructed.

Takeoff/Climb: Ltc Wenke observed while Maj Stealey coordinated the Takeoff/Climbout and join-up.

Cruise: Due to a failure of INU-2, an Airborne Alignment was required. Maj Stealey instructed Ltc Wenke in the procedure to align the INU-2. The system was slow to respond, but eventually the alignment was successful.

Air Refueling: Ltc Wenke observed while Maj Stealey accomplished the Enroute Rendezvous and Air Refueling.

Descent/Pattern: Multiple approaches were accomplished by the Pilot team. Maj Stealey continued to instruct Ltc Wenke throughout.

Recommendations: Ltc Wenke has an eagerness to learn the Pacer CRAG system. She has remarkable ability to grasp new concepts and will adapt quickly to the new systems.

Instructor (Name, Rank, Crew Qualification & Sign)	Student (Name & Sign)	168 ARS/CC (Name, Rank & Sign)
Benjamin K. Baker, Maj, IP	Wendy B. Wenke	Douglas K. Kelsch, Maj

168 ARS Flying Training Progress Report

Crew Position	Course/Phase
Navigator	Requal & Pacer CRAG Training

Student Name(Last, First MI)	Instructor	Sortie Date	Sortie # / Duration
Wenke, Wendy B.	Scott, Timothy W.	1 May 02	2 / 0.9

Grades
"B" - Briefing Item Only
"F" - Familiarization Item
"P" - Proficient
"S" - Satisfactory
"U" - Unsatisfactory

Training Lost Code
"W" - Weather
"M" - Maintenance
"R" - Receiver
"O" - Ops / Other

Mission Status
Effective / Non-Effective Student Progress / Non-Effective Other / Incomplete

Training Event List		Sched	Lost	Accmp	Grade
M001	Sortie	1		1	S
P272	KY58 Radio Operation	1		1	S
P360A	PFPS Mission Plan	1		1	S
P360	Mission Plan & Brief	1		1	S
P361	Preflight	1		1	F
P366	Checklist Procedures	1		1	F
P367	Crew Coordination	1		1	S
P368	Postflight	1		1	F
P369	Aircraft equipment ops	1		1	F
Air Refueling					
N010	Tanker Rendezvous				
N015	Tanker Alternate RZ				
N016	Tanker RZ Overrun				
N020	Tanker En Route RZ				
N030	Point Parallel RZ				
N040	Anchor AR Proc				
R060	Tanker AR				
R230	Emergency Boom Hoist				
Cruise					
N060	Mission Navigation Leg				
N090	Control Time Exercise				
N100	INS Airborne Alignment				
N160A	General Navigation (FMS)	1		1	F
P240	Landing Gear Alt Extend				
P250	Main Flap Manual Ops				

Instructor Comments

Describe mission scenario. Please elaborate on student strengths and weaknesses, identify problem areas, note unusual circumstances, and indicate trends.

Mission Scenario: PAEI - PAED

Mission Plan/Brief: Familiarization

Preflight/Engine Start/Taxi: Familiarization

Takeoff/Climb: Familiarization

Cruise: Familiarization

Air Refueling: N/A

Recommendations: Continue in Training.

Instructor (Name, Rank, Crew Qualification & Sign)	Student (Name & Sign)	168 ARS/CC (Name, Rank & Sign)
Timothy W. Scott, Col, IN	Wendy B. Wenke	Douglas K. Kelsch, Maj

DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office of the Secretary

SEP 17 2007

SAF/IGS
1140 Air Force Pentagon
Washington, DC 20330-1140

Lieutenant Colonel Troy R. Dunn
3046 Taxilane B
North Pole, AK 99705

Dear Colonel Dunn

This is in response to your 4 Jan 07, Freedom of Information Act (FOIA) request received by the Air Force Inspector General Senior Official Inquiries Directorate (SAF/IGS) on 12 January 2007. In your letter, you requested "a copy of the substantiated SAF/IGS investigation case number S6646P involving Brig Gen Timothy W. Scott, Commander of the Alaska Air National Guard (AKANG/CC) and Col Donald S. Wenke.... I have determined to release to you a redacted copy of the report of investigation.

Portions of the information are exempt from disclosure and we have inserted notations in the attached documents to identify the portions deleted and the reasons therefore. The notations are explained as follows:

a. Exemption 6 pertains to information in personnel and medical files, as well as similar personal information in other files, that, if disclosed to the public, would result in a clearly unwarranted invasion of personal privacy. The authority for this exemption may be found in Title 5 U.S.C. Section 552(b)(6) and DoDR 5400.7-R, paragraph C3.2.1.6.

b. Exemption 7(C) pertains to all names and other personal information identifying individuals in Inspector General documents. These were withheld, as release of this information could reasonably be expected to constitute an unwarranted invasion of privacy. The authority for this exemption may be found in Title 5 U.S.C. Section 552(b)(7)(C) and DoDR 5400.7-R, paragraph C3.2.1.7.

You are receiving all responsive records and I am the official responsible for this determination. I have waived all processing fees. The volume of material provided is approximately 33 pages.

Should you decide that an appeal to this decision is necessary, you must appeal within 60 calendar days after the date of this letter. Include in your appeal the reference FOIA Case Number 07-0274, the reasons for reconsideration, and attach a copy of this letter. Please address your letter as follows:

Secretary of the Air Force
THRU: HAF/ICIOD (FOIA)
1000 Air Force Pentagon
Washington DC 20330-1000

Sincerely

Theodore T LaPlante

THEODORE T. LAPLANTE, Colonel, USAF
Director, Senior Official Inquiries

Attachment
Redacted ROI

cc: HAF/ICIOD (FOIA)

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Sensitive Material

The Inspector General of the Air Force

Report of Investigation

Case S6646P

b6
b7c

Brig Gen Timothy W. Scott

Col [redacted]

and

Col Donald S. Wenke

April 2006

DO NOT OPEN COVER WITHOUT A NEED TO KNOW--
PRIVILEGED COMMUNICATION TO IG

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Sensitive Material

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REPORT OF INVESTIGATION (Case S6646P)

CONCERNING

BRIGADIER GENERAL TIMOTHY W. SCOTT
COLONEL [redacted]
AND
COLONEL DONALD S. WENKE

PREPARED BY
COLONEL [redacted]
June 2006

I. INTRODUCTION

On 14 Nov 05, SAF/IGS received a case referral from the Inspector General, Department of Defense (DoD-IG) (#05-L97567) concerning an Air Force senior official, Brig Gen Timothy W. Scott, commander of the Alaska Air National Guard (AKANG). DoD-IG had received a complaint in early Oct 05 from the Area Defense Counsel's office at Eielson AFB, AK. The written complaint itself consisted of three Memos for Record from Lt Col Troy R. Dunn, former commander of the 168th Operations Support Flight (168 OSF) at Eielson. (Ex 1)

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b7c

The first complaint memorandum, dated 27 Jun 05, stated allegations of fraud, waste, and abuse against Brig Gen Scott and Col Donald S. "Scott" Wenke, commander of the 168th Operations Group (168 OG) regarding the tasking of KC-135 aircraft within the 168th Air Refueling Wing (168 ARW). During the complaint analysis phase, the possible involvement of the 168 ARW Commander, Col [redacted], relative to the alleged fraud, waste, and abuse was uncovered and he was added as a subject. The second complaint memorandum, dated 12 Aug 05, further alleged that [redacted] Since the allegations against the three subjects are very closely linked, SAF/IGS elected to work the entire case, including the two colonels. The third complaint memorandum did not involve a senior official and was unrelated to the issues raised in the first two, and the complainant was informed that SAF/IGQ would be the appropriate office to file that specific complaint.

The Investigation Officer (IO) traveled to Eielson AFB, AK, 17-20 May 06. Seven witnesses and the three subjects were interviewed in person during this time. Nine additional witnesses had been interviewed telephonically prior to this travel.

During the conduct of the investigation, an additional complainant (Maj [redacted]) agreed with Lt Col Dunn's original allegations and made an additional allegation of fraud, waste, and abuse against Brig Gen Scott regarding the retraining of an unqualified navigator during the time

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that Brig Gen Scott was commander of the 168 ARW. (Ex 2) The scope of the investigation was expanded to determine the validity of the secondary allegation.

During the course of the investigation, it appeared that none of the subjects were guilty of criminal misconduct. Therefore, this investigator treated them as subjects and not suspects. It was not deemed necessary to read them their Article 31 rights.

II. SCOPE AND AUTHORITY

The Secretary of the Air Force has sole responsibility for the function of The Inspector General of the Air Force.[1] When directed by the Secretary of the Air Force or the Chief of Staff of the Air Force, The Inspector General has the authority to inquire into and report on the discipline, efficiency, and economy of the Air Force and perform any other duties prescribed by the Secretary or the Chief of Staff.[2] The Inspector General must cooperate fully with The Inspector General of the Department of Defense.[3] Pursuant to Air Force Instruction (AFI) 90-301, *Inspector General Complaints Resolution*, (8 February 2005), paragraph 1.11.2, The Inspector General directs and provides oversight for all IG investigations conducted at the level of the Secretary of the Air Force.

Pursuant to AFI 90-301, paragraph 1.11.3.1, the Director, Senior Official Inquiries Directorate (SAF/IGS), is responsible for performing special investigations directed by the Secretary, the Chief of Staff, or The Inspector General and all investigations of senior officials. AFI 90-301 defines senior official as any Air Force active duty, retired, reserve, or Air National Guard military officers in the grades of brigadier general-select and above; current and former civilians above the grade of general schedule- or general manager-15; current and former members of the Senior Executive Service; and current and former Air Force civilian Presidential Appointees.

The mission of The Inspector General of the Air Force is to maintain a credible inspector general system by ensuring the existence of responsive complaint investigations characterized by objectivity, integrity, and impartiality. The Inspector General ensures the concerns of all complainants and the best interests of the Air Force are addressed through objective fact finding.

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b7c

On 14 Dec 05, The Inspector General approved a recommendation that SAF/IGS conduct an investigation into an allegation of misconduct by Brig Gen Timothy W. Scott, AKANG/CC; Col [redacted], 168 ARW/CC; and Col Donald S. Wenke, 168 OG/CC, all located at Eielson AFB, AK. The case was assigned to Col [redacted], who holds SAF/IG appointment letters dated 9 Dec 03 and 2 Mar 06 (Ex 3), and the investigation began on 2 Feb 06.

[1] Title 10, United States Code, Section 8014.
[2] These authorities are outlined in Title 10, United States Code, Section 8020.
[3] Title 10, United States Code, Section 8020(d).

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III. BACKGROUND

The complaint. The original complaint focuses mainly on alleged misuse of KC-135 tanker aircraft and resources. The complainant cites several instances in which he believes KC-135 aircraft were used primarily to transport Brig Gen Scott to/from various TDY locations. The complainant believes that such use of the aircraft constitutes fraud, waste, and abuse of government resources and is expressly prohibited by regulation.

The complainant also alleges that one of the subjects (Col Scott Wenke) falsified an official document dealing with aircrew training events – a document that was related to one of the alleged fraudulent flights in an effort to justify the flight for something other than transporting the general.

The second complaint centers on the KC-135 navigator requalification training of then Lt Col [redacted] in 2002. [redacted] is the wife of Col Scott Wenke.[4] The KC-135 aircraft of the 168 ARW had completed Pacer CRAG modification,[5] removing the requirement for the navigator position. The 168 ARW was actively transitioning existing navigators into other valid billets. The complainant alleges that despite the lack of a navigator requirement, then Col Scott,[6] 168 ARW Commander at the time, directed that a training program be developed to requalify Lt Col [redacted] in the KC-135. According to the complainant, this was done so that Lt Col [redacted] would accrue sufficient flying gate month credit to qualify for continuous Aviator Continuation Incentive Pay (ACIP),[7] in violation of regulations.

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Chain of Command. This case involves the Alaska National Guard, which is led by a major general (currently Air Force) and is sub-divided into the AKANG and the Alaska Army National Guard (AKARNG). The headquarters of the Alaska National Guard and its two components are located at Ft. Richardson near Anchorage.

The AKANG is led by a brigadier general and has two major operating units – the 176th Wing at Kulis ANG Base (Anchorage) and the 168 ARW at Eielson AFB (Fairbanks). The 168 ARW is commanded by a colonel, is responsible mainly for KC-135 operations and consists of four groups – Operations, Maintenance, Mission Support and Medical.

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[4] Although [redacted] has since been promoted to colonel, all events relating to her within this report occurred while she was a lieutenant colonel. To avoid confusion with both her husband Col Scott Wenke (the 168 OG/CC and a subject in this case) and the documentary evidence, she will hereafter be referred to by her previous rank of lieutenant colonel.

[5] Pacer CRAG (Compass, Radar, And Global positioning system) is a flight deck avionics modernization program that, among other things, eliminated the navigator requirement for aircraft so modified. The modification was so extensive as to require "differences training" for remaining current KC-135 crewmembers before they would be qualified to fly the Pacer CRAG, Block 30 modified aircraft. Conversion of all 168 ARW was completed in 2000. (Ex 4:1) The 168 ARW was given until 1 Oct 04 to transition remaining navigators to other valid billets.

[6] Although some events relating to Brig Gen Scott occurred while he was a colonel, he will hereafter be referred to within this report by his current rank of brigadier general to avoid confusion.

[7] Colloquially known as "flight pay."

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The 168 OG currently has one squadron (168 ARS) dedicated to the KC-135 mission. Prior to this past fall, the Operations Support Flight (OSF) reported directly to the Operations Group, but it now falls underneath the 168 ARS.

Key Players. The following individuals play a key role in this case:

- Brig Gen Timothy W. Scott (subject) is the Commander of the Alaska Air National Guard and the Assistant Adjutant General for Air of the Alaska National Guard, positions he has held since Aug 03. (Ex 5) Although the AKANG headquarters is located at Ft. Richardson (Anchorage), Brig Gen Scott maintains his residence in the Fairbanks area and an office in the wing headquarters building on Eielson AFB. Brig Gen Scott is a navigator and not actively flying.

- Col [redacted] is the Commander of the 168 ARW at Eielson. He is a full-time Guard member (Technician), scheduled to retire in Oct 06.

- Col Donald S. Wenke (subject) is the Commander of the 168 OG at Eielson. He is responsible for the ANG KC-135 flying operations there. He has been on station for about three years and was hired by Brig Gen Scott from the ANG unit at Boise, ID. He is a pilot and is actively flying as a mission pilot. Evidence collected during this analysis indicates that Col Wenke often does not see eye-to-eye with Lt Col Dunn, and in fact, Col Wenke removed Lt Col Dunn from being the OSF commander in Aug 05.

- Lt Col Troy Dunn (complainant) is presently the Operations Officer of the 168 ARS and formerly was the Commander of the 168 OSF when that flight reported directly to the group commander. He is a pilot and actively flies. As stated before, he does not agree with Col Wenke on some issues and he firmly believes there has been widespread fraud, waste, and abuse of tanker resources by his wing.

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[redacted]

- Lt Col [redacted] is currently the Executive Staff Support Officer (ESSO) for the Commander, Alaska Air National Guard (currently Brig Gen Scott)

- Lt Col [redacted] replaced Lt Col Dunn as 168 OSF/CC in Aug 05. Prior to that he was Chief of Scheduling within the 168 OSF.

- The 168 OSF Scheduling office is responsible for building and maintaining the flight schedules for the 168 ARS. It is staffed by three officers (Capt [redacted], Capt [redacted], and [redacted]) and two NCOs (SMSgt [redacted] and SMSgt [redacted]) who are subordinate to the 168 OSF/CC.

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Mission Approval. Each 168 ARW tanker flight has a mission number. If the KC-135 stays inside the state of Alaska, the unit itself issues one of its own mission numbers to the flight. 168 ARW flights outside the state of Alaska require a mission number from another agency or headquarters. When flying a "business opportunity" mission with another command, such as flying an aerial refueling mission with a C-17, the unit will get a mission number from Air Mobility Command (AMC). Often, the 168 ARW will get a mission number from the National Guard Bureau, more specifically from the Guard's Readiness Center at Andrews AFB, MD. (Ex 36:3)

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Maj [redacted], ANG/XOXP, explained that his office assigns the mission numbers to the tanker missions and does so based on the request of the wing or operations group commander. He stated that his office does not act "as policemen" and question the commander's request – they assume that a commander's request is a valid use of tanker resources. (Ex 6)

RODEO 2005, Air Mobility Command's international mobility competition, was held at McChord AFB, WA, from 19 – 24 Jun 05. AMC's RODEO competitions are held periodically to develop and improve mobility techniques and procedures and build esprit de corps within the command. Each RODEO has its own leadership in the form of a "commander" and two "vice-commanders," usually one each from the active duty Air Force, the Air Force Reserve, and the Air National Guard. For RODEO 2005, Brig Gen Scott was one of the vice commanders; however, the 168 ARW was not a participant. (Ex 7)

With regard to funding Brig Gen Scott's RODEO participation, AMC had set up a funding code that could be used for RODEO 2005-related travel and expenses. (Ex 8)

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IV. CHRONOLOGY

DATE	EVENT
10 Oct 01	Lt Col [redacted] assigned to flying billet within 168 ARS according to her Flight Evaluation Folder (FEF) (Ex 9:7)
22 Oct 01	168 ARS/DOT (Maj [redacted]) submitted waiver request to ANG/XOOM to locally requalify Lt Col [redacted] in the Block 30 KC-135 (Ex 10)
19 Nov 01	Waiver to locally requalify Lt Col [redacted] approved by ANG/DO (Ex 11)
27 Nov 01	Training folder opened for Lt Col [redacted] for requalification and Pacer CRAG training (Ex 12:1)
Mar – Jul 02	Lt Col [redacted] flew 9 training sorties (Ex 12:2-10)
May 02	168 ARS/DOT requested waiver from 168 OG/CC to extend Lt Col [redacted] training period (Ex 12:14)
31 Jul 02	Lt Col [redacted] apparently received qualification checkride, though no supporting AF Form 8 was filed in her FEF (Ex 9:1)
2 Aug 02	168 ARS/DOT published qualification and certification letter listing Lt Col [redacted] qualification as "FN" (Ex 12:17)
18 & 22 Aug; 18 Sep 02	Lt Col [redacted] flew three sorties as "FN." Flight records indicate 18 Sep 02 was her last flight (Ex 13:2,6)
21 Oct 02	Lt Col [redacted] assigned as 168 LRS/CC (Ex 42:19)
7 Apr 05	Brig Gen Scott participated in a RODEO meeting at McChord AFB, WA. He flew down/back from Eielson on 168 ARW KC-135 (Ex 14; Ex 44:7)
13 Jun 05	Brig Gen Scott traveled to McChord AFB for RODEO on 168 ARW aircraft. Aircraft flew on to Luke AFB for training (Ex 15:1-2)
16 Jun 05	Brig Gen Scott requested 168 ARW to work a Saturday "noonish" pickup for him at McChord (Ex 16)
25 Jun 05	168 ARW flew to McChord and picked up Brig Gen Scott for return to Eielson (Ex 17:1-2)
~ 25 Jun 05	Col Scott Wenke filed Mission Activity Report (MAR) logging credit for M010 sortie for McChord trip (Ex 17:5)
27 Jun 05	Lt Col Dunn reviewed MAR filed by Col Wenke and noted that minimum requirements for M010 sortie not logged, questioned Col Wenke about missing VFR pattern. Lt Col Dunn directed flight records to delete M010 sortie (Ex 35:6-7; Ex 38:16-17)
27 Jun 05	Col Wenke directed flight records to re-enter disputed M010 sortie (Ex 35:6-7; Ex 38:16-17; Ex 17:5)
17-18 Oct 05	168 ARW flew mission to Hickam AFB via Elmendorf AFB. Col [redacted] and a party of 4 attended PACAF regional warfighter conference (Ex 1:4; Ex 35:11)

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19 Oct 05	168 ARW crew flew a local air refueling sortie out of Hickam (Ex 1:4)
20 Oct 05	168 ARW crew flew from Hickam to Eielson (Ex 1:4)
23 Oct 05	168 ARW crew flew from Eielson to Hickam (Ex 1:4)
24 Oct 05	168 ARW crew attempted to fly previously scheduled multi-unit formation tactics mission with Hawaii ANG unit, but were forced to sympathetically cancel when the Hawaii ANG aircraft broke at takeoff time (Ex 36:10)
25 Oct 05	168 ARW crew returned to Eielson from Hickam via Elmendorf with attendees of warfighter conference (Ex 1:4)
5 Nov 05	168 ARW flew from Eielson to Elmendorf with 6 duty passengers (including Brig Gen Scott) and remained overnight (Ex 35:14-15; Ex 18:1).
6 Nov 05	168 ARW crew flew from Elmendorf to Andrews AFB discharging Brig Gen Scott and party, then flew on to Charleston AFB (Ex 35:15; Ex 18:1)
7-8 Nov 05	168 ARW crew accomplished night air refueling training missions with Charleston C-17s (Ex 35:16; Ex 18:1)
9 Nov 05	168 ARW crew accomplished night air refueling training, then recovered to Andrews to remain overnight (Ex 35:16; Ex 18:1)
10-11 Nov 05	168 ARW crew returned to Eielson via Elmendorf returning Brig Gen Scott and party (Ex 35:17; Ex 18:1)

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V. ALLEGATIONS, FINDINGS, ANALYSIS AND CONCLUSIONS

ALLEGATION 1. That Brig Gen Scott committed fraud, waste, and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution*, 8 Feb 05, by wrongfully directing and/or allowing KC-135 missions be flown primarily for his personal convenience.

FINDINGS OF FACT.

- On or about 7 Apr 05, Brig Gen Scott was flown from Eielson AFB, AK, to McChord AFB, WA, aboard a 168 ARW KC-135, attended a RODEO meeting, and returned to Eielson several hours later via the same 168 ARW aircraft. (Ex 14:1-2,6)

- On or about 13 Jun 05, Brig Gen Scott was flown from Eielson AFB to McChord AFB on a 168 ARW KC-135 to participate in RODEO 05. The aircraft flew on to Luke AFB, AZ, for training. (Ex 15:1-2)

- On or about 25 Jun 05, the 168 ARW flew a KC-135 from Eielson AFB to McChord AFB and back. Brig Gen Scott returned to Eielson from the RODEO on this aircraft. (Ex 17:1-3)

- On or about 5 Nov 05, Brig Gen Scott and party were flown from Eielson AFB to Elmendorf AFB, AK, on a 168 ARW KC-135 and remained overnight. On the next day additional passengers joined the party and were flown to Andrews AFB, MD, to facilitate meetings at National Guard Bureau Headquarters. After dropping off Brig Gen Scott and party, the aircraft flew on to Charleston AFB, SC, for several days of refueling training with C-17s out of Charleston. (Ex 35:15; Ex 18:1)

- On or about 9 Nov 05, the same 168 ARW aircraft recovered to Andrews AFB to remain overnight. The following day Brig Gen Scott and party were flown back to Eielson AFB via Elmendorf AFB. (Ex 35:16-17; Ex 18:1)

STANDARDS.

AFI 90-301 defines the terms fraud, waste, and abuse as:

Fraud—Any intentional deception designed to unlawfully deprive the Air Force of something of value or to secure from the Air Force for an individual a benefit, privilege, allowance, or consideration to which he or she is not entitled.

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Waste—The extravagant, careless, or needless expenditure of Air Force funds or the consumption of Air Force property that results from deficient practices, systems controls, or decisions. The term also includes improper practices not involving prosecutable fraud.

Abuse—Intentional wrongful or improper use of Air Force resources. Examples include misuse of rank, position, or authority that causes the loss or misuse of resources such as tools, vehicles, computers, or copy machines. (Ex 19:129, 133, 140)

Several regulations at varying levels address the prudent use of taxpayer resources with regard to transporting government employees and military members on military aircraft. The following directives, regulations and instructions all address the issue and leave no doubt as to their focus.

DODD 4500.43, *Operational Support Airlift* (OSA), 28 Oct 96, states:

4.3. OSA aircraft shall not be used for travel (other than those officials designated as "required use" travelers) if commercial airline or aircraft (including charter) service is reasonably available; i.e., able to meet the traveler's departure and/or arrival requirements in a 24-hour period, unless highly unusual circumstances present a clear and present danger, an emergency exists, use of military aircraft is more cost-effective than commercial air, or other compelling operational considerations make commercial transportation unacceptable. (Ex 20:3)

DODD 4500.56, *DoD Policy on the Use of Government Aircraft and Air Travel,* 2 Mar 97, states:

E2.1. GENERAL POLICY
E2.1.1. Travel on military aircraft (MilAir) is a premium mode of travel involving high costs and limited resources. DoD senior officials and airlift authorizing officials should restrict travel by MilAir based on considerations such as purpose of the trip, method of transportation required, and priority of travel if using MilAir. Every effort should be made to minimize MilAir cost. In that regard, the type of aircraft used shall be based on minimum cost and size necessary to satisfy the mission requirement. Organizations shall not schedule training missions whose principal purpose is to accommodate the travel of senior DoD officials. Additionally, maximum advance planning is emphasized so that scheduling conflicts do not dictate the use of MilAir.
E2.1.2. The purpose of the travel is to be determined by the individual and his or her next level supervisor. DoD airlift authorizing officials shall ensure that an official, rather than personal, purpose is served by the travel. The purpose of travel determines the category, a designation that accords a traveler specific privileges and confers obligations. This enclosure addresses the categories of travel based on OMB CircularA-126 (reference (b)): for "required use," "other official travel," and "unofficial travel." This enclosure does not alter the space available travel policies, special procedures for military assistance advisory groups or military mission chiefs, and defense attaches, as in DoD 4515.13-R (reference (g)).

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E2.1.3. The method of travel generally involves a choice between commercial transportation or MilAir. MilAir shall not be used if commercial airline or aircraft (including charter) service is reasonably available; i.e., able to meet the traveler's departure and/or arrival requirements in a 24-hour period, unless highly unusual circumstances present a clear and present danger, an emergency exists, use of MilAir is more cost-effective than commercial air, or other compelling operational considerations make commercial transportation unacceptable. Specific methods of air travel are addressed in enclosure 3. (Ex 21:5)

DoD 4515.13-R, *Air Transportation Eligibility,* Nov 94, states:

C1.3.1. Commanders' Responsibility. The commanders at all levels shall exercise prudent judgment to ensure that only authorized traffic is transported and that they do not misuse the authority delegated to them by this Regulation. The commanders and other officials responding to requests for transportation not specifically authorized by this Regulation shall make no commitments concerning prospective travelers or cargo until they receive all required approvals. (Ex 22:24-25)

AFI 11-401, *Aviation Management,* 15 Dec 04 states:

1.9. Authorization for Using US Air Force Aircraft.
1.9.1. Commanders (including unit commanders) authorize aircraft flights to support command operations.
1.9.2. Commanders (including unit commanders) must ensure each flight is in the direct interest of government business and does not exceed flying hour allocations without specific approval. Commanders (including unit commanders) must ***not*** authorize flights for personal convenience or recreation. (Ex 23:14)

ANGI 10-201, *Air Transportation,* 29 Nov 04 discusses this subject of good stewardship of taxpayer monies in a couple of locations:

1.8. Training Missions. The ANG must use aircrew training hours in a manner that demonstrates good stewardship of the taxpayers' money. MAJCOMs justify these hours on the basis of maintaining wartime readiness. Congress and the public expect us to use them accordingly. Each training mission must be structured to achieve maximum training. Any by-product airlift opportunity resulting from a previously scheduled training mission must not degrade the intended training in any way and must comply with applicable DoD directives and regulations. It is essential that personnel at all levels prevent misuse of air mobility resources as well as the perception of their misuse.

1.10. Travel for Conferences, Conventions, Staff Assistance Visits, Meetings, and/or MWR events. Travel for conferences, conventions, staff assistance visits, meetings, and/or MWR events by any size of group, whether the event is sponsored by the National Guard or not, does not qualify as combat readiness training under the MRA program. It may qualify as opportune airlift (Priority 6, Paragraph **2.5.6.**), which means that it may

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only be supported in conjunction with already validated and scheduled training without adding negligible additional cost to the government. Personnel seeking transportation for this purpose are advised not to rely on opportune airlift as their primary means of travel because requests may not be filled. Users are encouraged to travel by commercial transportation or apply for OSA transport through JOSAC.
(See Paragraph **1.3.2.**)

1.10.1. It is possible to travel to such events if it takes place in conjunction with already scheduled training missions. Training missions scheduled to transport National Guard members to non-mission readiness training events such as conferences, conventions, meetings, or MWR events are prohibited. Space available or opportune travel on training missions is only permitted if:

1.10.1.1. The aircraft is already scheduled for an official purpose.

1.10.1.2. Travel is on a non-interference basis.

1.10.1.3. The non-interference travel does not require a larger aircraft than needed for the official purpose.

1.10.1.4. Already scheduled official travelers or cargo is not displaced.

1.10.1.5. The travel results in negligible additional cost to the Government. Such travel is funded by the aircraft operator's organization.

1.10.2. It is important the travel is done in conjunction with already scheduled training rather than "training" missions being flown primarily for their transportation by-product. Flying hours flown should not exceed those required to meet legitimate training requirements. (Ex 24:9-10)

ANALYSIS.

Although ANGI 10-201 specifies in reference to opportune airlift that "*it is important the travel is done in conjunction with already scheduled training rather than 'training' missions being flown primarily for their transportation by-product*," the IO found an almost universal belief among witnesses that training missions were routinely scheduled to accommodate travel to specific locations at specific times – at Eielson and any other base for that matter. There was, however, a significantly different perception of abuse between missions that were scheduled well in advance, incorporated robust training opportunities, and transported groups of passengers versus those added on at the last minute, facilitating little or no training, and transporting a single passenger. Indeed, ANGI 10-201 seems to anticipate circumstances of the former. There are four specific flights or sets of flights highlighted by the complainant as being directed by Brig Gen Scott which violate the above regulations. Brig Gen Scott personally flew on three of these and Col [redacted] on the fourth. Two of these were of the type that were scheduled well in advance, and two were arranged on short notice. For purposes of this analysis, the IO has chosen to concentrate on the two "add-on" flights taken by Brig Gen Scott to and/or from McChord AFB for duties relating to the RODEO 05 competition.

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The first of these flights occurred on 7 Apr 05. A 168 ARW crew with Brig Gen Scott aboard flew from Eielson AFB to McChord AFB and back. The aircraft was on the

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ground at McChord for approximately 3.4 hours. (Ex 14:2,6) Brig Gen Scott testified that for a portion of this time he performed duties regarding the upcoming RODEO. (Ex 44:7) Other testimony indicates the crew ate lunch during this interval. (Ex 35:15; Ex 42:11) The IO was unable to accurately discern the specific training goals of the mission. According to Col Wenke's testimony the mission was scheduled for off station traffic pattern training. (Ex 42:11) Brig Gen Scott testified that an aerial refueling had been scheduled for the mission, but was not accomplished. (Ex 44:7,9) In fact, records indicate that each leg was flown to a full stop landing with no other training accomplished. (Ex 14:3-5; 7-9)

The origination of this specific mission was also open for debate. Brig Gen Scott testified that he was called by the scheduling shop and offered the ride to McChord; *"...because scheduling called me and said, 'Hey, we've got a refueling going, do you want to... and you need to go to McChord, do you want to go?'"* (Ex 44:7)

When asked how the scheduling shop would be aware that he had a need to travel to McChord, Brig Gen Scott testified that he had been attempting to get more ANG tanker participation in the RODEO and in prior conversations with the wing commander had asked about the possibility of the 168 ARW participating. Brig Gen Scott's testimony continued...

> ...and he said, "Well I'll check around," and when I get a call from scheduling offering me a ride to McChord and back, I'm not going to sit there and say, "Well now have you looked at the regs, is this legit, can you do this?" When I can go down, when I can take a three hour, a three hour flight to McChord, sit down, sit through a meeting and come back on the same day, and save a fifteen hundred dollar round trip ticket and two days of travel, hell yeah I'll do it, I'll do it in a heartbeat. But did I pick up the phone and talk, call the scheduler and say, "Hey, launch an airplane to McChord and put my happy butt on it"? You're smoking dope if you think I did that. (Ex 44:8)

In a follow-up exchange Brig Gen Scott added the following:

> IO2: ...have you ever or have you not ever called the scheduling shop directly to ask for mil air?
>
> W: I've asked for the availability.
>
> IO2: Okay, but you, and it's your testimony then that you've never said, "I need a plane to go, you know come pick me up down here or go there"?
>
> W: Never. (Ex 44:9)

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This testimony is at variance with that of five members of the scheduling office:

> IO: I don't want to beat a dead horse, but I do need to ask this question again just so that I understand, when you say that it [the request for the 7 April mission to McChord] came in and it came in late, where does that come from in that case?
>
> W2: ...I'm trying to remember a year ago who took that call. It's not out of the ordinary for [Brig Gen Scott] to call straight into the scheduling shop.
>
> W3: Or walk in.
>
> IO2: And, and let me just narrow you in even further now, and I understand that it's not atypical for a General officer to call here and say, "Hey, have you got any opportune airlift?" But we're actually kind of focusing on the opposite. Because we have evidence to suggest, some testimony, that you all here called a particular person and said, "We have a planned mission on the 7th of April, would you like a ride?"
>
> Unison: No, no way.
>
> IO2: That's what I'm trying to focus in on.
>
> W2: No.
>
> Unison: No way.
>
> IO2: Did that happen?
>
> W2: No.
>
> W4: Definitely not. (Ex 41:9-10)

Continuing on later in the testimony regarding whether anyone in the scheduling office called Brig Gen Scott to offer a ride on a previously scheduled training mission on 7 April, the schedulers stated:

> W2: Yeah, I would say the truth is, it's exactly 180 degrees out. That was, "You will take a plane to McChord..."

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W2: The 7th was prior to the RODEO, it was a RODEO meeting I believe.

W4: This was a planning meeting and this was definitely not that we were going to McChord. We had nothing going to McChord.

W2: No, we had no intention of going to McChord.

W4: This was "You will go to McChord and you will..."

W1: ...as I said, our monthly product, which is created the month before, it is not in it and it is handwritten in there that McChord is added. (Ex 41:11:12)

Returning to the same general line of questioning later in the interview, members of the scheduling shop reiterated:

IO2: This goes back to whether Gen Scott has ever called the scheduling shop to ask for airlift to come and pick him up or do other things and you all have already testified that he's stopped in on occasion and looked at the board and utilizes the phone quite a bit to call. Dig back in your memory banks, specifically back to 2005 and give us kind of an indication on an average, how many times you estimate he may have called directly to the scheduling shop and/or stopped in to look at the board and say, you know, "Add me here, I need, you know I have something going on, on such and such a date."

W1: Well around those April, May, June timeframe, it was a couple of times a month, but then you wouldn't see him for like three months...

IO2: Okay so if someone, if, if for example, hypothetically if he were to say, you know, "I've never called the scheduling shop and asked for airlift," would that be something that would be...

W1: Incorrect?

W1: Absolutely incorrect

W2: That would be wrong.

W3: And laughable.

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W1: And our long range planner has talked to him quite often. As a matter of fact when he calls, it's like "[redacted]! Scott's on the phone!"

W1: A lot of times he'll ask for him.

W1: Yeah, he works pretty close with Sgt [redacted]. (Ex 41:22-23)

One of the other points brought out by the scheduling shop involved the timing of the 7 Apr 05 mission. There are two large white boards on the walls of the scheduling office, each depicting planned missions for the calendar year. Photographs are taken of these boards at the end of the year for archival purposes. (Ex 25) Additionally, monthly and weekly schedules are published. The 7 Apr mission was never reflected on the planning board, nor did it originally appear in the monthly schedule. There is a handwritten margin note for that date on the monthly schedule stating, "McChord added." (Ex 26:2; Ex 41:12) The first positive reference to the mission appears in the weekly schedule, distributed on 31 Mar 05, but even in that case it was not listed in the cover letter listing Space Available opportunities. (Ex 27:2) It does, however list "DV PAX: BGen Scott" on the specific mission line. (Ex 27:3) All this, according to the schedulers' testimony, indicates that this mission was never contemplated in the long-range plan; but, rather, was added on by short notice request. Additionally, no evidence was found that there was any coordination accomplished with a potential air-refueling receiver, as would be necessary if the mission had been planned as an aerial refueling training sortie. (Ex 41:14)

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Finally, regarding the lack of apparent aerial refueling coordination, Lt Col [redacted] testified:

W2: Yeah, there was never any plan to have an air refueling on that. We were told "13:00, I want to step on the ramp at McChord. I have a three hour meeting. Three hours later, the plane will depart back here," and I'm like...

IO2: And let's, let's, I guess, cut to the chase on that, who were you told to make that happen? Who told you to make that happen?

W2: Gen Scott. (Ex 41:15)

The second short-notice training flight in question regarding this allegation was in conjunction with Brig Gen Scott's participation in the RODEO competition at McChord in Jun 05. Brig Gen Scott utilized a 168 ARW KC-135 as his transportation from Eielson to McChord, but in that case the crew and aircraft flew on to Luke AFB after dropping Brig Gen Scott off and conducted several nights of joint aerial refueling training with a unit there. (Ex 15:1-2) Testimony indicated that this training was particularly valid due to the limited hours of nightfall available in Alaska during the summer. Additionally, this mission was planned well in advance

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and the senior leader travel did not interfere with the significant training accomplished, therefore it is not a focus of this investigation. Brig Gen Scott's return flight to Eielson on 25 Jun 05 at the conclusion of the RODEO, however, did not meet this same standard.

Testimony indicated that the 168 ARW made several attempts to arrange a suitable training profile that would accommodate Brig Gen Scott's return from McChord, with each ultimately deemed unworkable due to the disruption at McChord caused by RODEO events. One of these involved an attempt to bring in a KC-135 on Thursday, 23 Jun, to conduct aerial refueling training with a McChord-based C-17. The plan was for it to return to Eielson on Saturday, 25 Jun, with Brig Gen Scott. (Ex 41:16; Ex 42:13) All the C-17s not participating in the RODEO, however, had been flown to alternate locations to free up aircraft parking ramp space for RODEO participants. Additionally, all lodging within a reasonable distance was saturated with RODEO competitors. (Ex 44:14) For these reasons, officials at McChord would not permit transient aircraft traffic. Another factor arguing against an Eielson based KC-135 remaining overnight during the week was that the 168 ARW was substantially involved in COPE THUNDER exercises in Alaska, and the wing could not spare the aircraft. (Ex 41:18)

As the departure date approached, several electronic mails (e-mails) were exchanged between Brig Gen Scott, Lt Col [redacted], and officials within the 168 ARW. One sent to Lt Col [redacted] from Brig Gen Scott on Thursday, 16 Jun, stated: *"Does scheduling have some arrival and departure times for McChord? The ramp is filling up and the majority of competitors are departing Saturday. Please have them work it and let me know. t"* Lt Col [redacted] forwarded this to the 168 ARS commander, Lt Col [redacted], asking him *"could you work this?"* Lt Col [redacted] passed the action to Lt Col [redacted], then the [redacted]. (Ex 16) Lt Col [redacted] testified that at that point there still was no suitable mission planned due to the inability to get permission to land at McChord, but if they could obtain landing permission, the wing would plan for an operational stop on Saturday, 25 Jun. He brought this to Lt Col [redacted] attention who relayed it to Brig Gen Scott. According to Lt Col [redacted] testimony, Brig Gen Scott's RODEO staff at McChord then coordinated an exception to the transient prohibition in place at McChord. (Ex 36:17) As he was working this issue, Brig Gen Scott responded to Lt Col [redacted] e-mail requesting the time he should be picked up: *"I need a Saturday pick up with a noon-ish departure. Let me know who is working this and I'll put them in contact with the Rodeo schedulers. t"* (Ex 16)

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The schedulers reported significant difficulty finding an available crew to fly the mission due to the workload created by participation in the COPE THUNDER exercise. (Ex 41:19) The complainant testified that there were no volunteers because it was widely recognized that this was not going to be a legitimate training mission, and crews therefore wanted no part of it; however, the IO was unable to confirm this. Both the complainant and the chief scheduler each testified that they individually protested to Col Wenke that the mission as proposed violated ANGI 10-201. (Ex 35:3; Ex 36:7) Col Wenke's testimony acknowledged this encounter with the complainant, and added that he told the complainant that he disagreed. At that point, Col Wenke

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volunteered to take the mission himself, and an instructor pilot was found so that Col Wenke could accomplish a M010 training sortie during the mission. Col Wenke testified that this would be valid training since he rarely got an opportunity to fly off-station missions to unfamiliar fields. (Ex 42:10-11, 13-14)

It is clear from the evidence that the driving purpose of the mission was to facilitate Brig Gen Scott's return to Eielson. Though Col Wenke's point about unfamiliar pattern work being valuable for him is noted, it is also clear that absent the desire to pick up Brig Gen Scott, McChord was perhaps the least desirable location to attempt pattern work that day due to the difficulty obtaining landing clearance and the high volume of RODEO participant departures planned during that period. Indeed, according to Col Wenke's testimony the reason so few of the desired M010 training events were accomplished was that the McChord air traffic control tower directed his aircraft to land due to pattern congestion. (Ex 42:18) No attempt was made to conduct these events at other nearby airfields that would have been equally unfamiliar. Col Wenke further testified that he was unable to continue the practice emergency procedures upon arrival back at Eielson because these maneuvers are prohibited with a passenger (Brig Gen Scott) aboard. (Ex 42:22)

The preponderance of evidence indicates that both the 7 Apr 05 and 25 Jun 05 training missions to McChord AFB were added on the flying schedule at the last minute, accomplished minimal training, and were designed primarily to accommodate Brig Gen Scott's travel. There is evidence to suggest that Brig Gen Scott requested both flights. In the case of the 25 Jun mission, intervention, potentially on Brig Gen Scott's part, was required to obtain landing clearance from McChord officials.

CONCLUSION.

By a preponderance of evidence, based upon the findings of fact and sworn testimony, the allegation that Brig Gen Scott committed fraud, waste, and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution*, 8 Feb 05, by wrongfully directing and/or allowing KC-135 missions be flown primarily for his personal convenience, was **SUBSTANTIATED**.

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ALLEGATION 2. That Col [redacted] committed fraud, waste, and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution*, 8 Feb 05, by wrongfully directing and/or allowing KC-135 missions be flown primarily for the personal convenience of Brig Gen Scott and/or himself.

FINDINGS OF FACT.

- On or about 17-18 Oct 05, Col [redacted] and party flew from Eielson to Hickam AFB via Elmendorf AFB on a 168 ARW KC-135 to attend the PACAF regional warfighter's conference. (Ex 1:4; Ex 43:12)

- On or about 19 Oct 05, the 168 ARW crew flew a refueling training mission out of Hickam. Crew and aircraft returned to Eielson on 20 Oct 05. (Ex 1:4)

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- On or about 23 Oct 05, another 168 ARW KC-135 flew from Eielson AFB to Hickam AFB. (Ex 1:4)

- On or about 24 Oct 05, the 168 ARW crew attempted to fly previously scheduled multi-unit formation tactics mission with a Hawaii ANG unit, but were forced to sympathetically cancel when the Hawaii ANG aircraft broke at takeoff time. (Ex 36:10)

- On or about 25 Oct 05, Col [redacted] and party returned from Hickam to Eielson via Elmendorf aboard 168 ARW KC-135. (Ex 1:4)

STANDARDS.

See allegation 1 above.

ANALYSIS.

[redacted]

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CONCLUSION.

By a preponderance of evidence, based upon the findings of fact and sworn testimony, the allegation that Col [redacted] committed fraud, waste, and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution*, 8 Feb 05, by wrongfully directing and/or allowing KC-135 missions be flown primarily for the personal convenience of Brig Gen Scott and/or himself, was **NOT SUBSTANTIATED**.

[8] In the case of the KC-135, units requiring refueling as a receiver put in requests that are advertised widely through the AMC refueling "Horse Blanket" scheduling system Refueling units can select from these requests to arrange training events that are mutually beneficial to both provider and receiver.

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ALLEGATION 3. That Col Wenke committed fraud, waste, and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution*, 8 Feb 05, by wrongfully directing and/or allowing KC-135 missions be flown primarily for the personal convenience of Brig Gen Scott and/or Col [redacted].

FINDINGS OF FACT.

- On or about 7 Apr 05, Brig Gen Scott flew from Eielson AFB, AK, to McChord AFB, WA, aboard a 168 ARW KC-135, attended a RODEO meeting, and returned to Eielson several hours later via the same 168 ARW aircraft. (Ex 14:1-2,6)

- During the period of 16-25 Jun 05, 168 ARW schedulers made multiple attempts to arrange a training mission into McChord AFB, but were repeatedly prevented due to congestion created by the ongoing RODEO competition. (Ex 36:17)

- Intervention by Brig Gen Scott's RODEO staff was required to obtain permission for a 25 Jun 05 168 ARW training mission to McChord due to the intense air traffic congestion created by scheduled RODEO participant departures. (Ex 36:17; 28:2)

- At least two members of the 168 ARW protested to Col Wenke that the 25 Jun 05 mission, as proposed, violated several Air Force regulations, including ANGI 10-201. (Ex 36:7; Ex 35:3)

- On or about 25 Jun 05, Col Wenke flew a 168 ARW KC-135 on a training mission from Eielson AFB to McChord AFB, remained on the ground approximately 1.6 hours, then returned to Eielson. Brig Gen Scott returned to Eielson from the RODEO on this aircraft. (Ex 17:1-3)

- Logging a total of 6.7 hours of flight time, Col Wenke accomplished the minimum number of training events possible to credit a M010 sortie. (Ex 17:3, 5)

STANDARDS.

See allegation 1 above.

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ANALYSIS.

This allegation is essentially an extension of allegation 1, insofar as the complainant alleges that Col Wenke directed that certain 168 ARW training missions be flown primarily to facilitate the travel requests of Brig Gen Scott. Again, the IO will focus exclusively on the 7 April and 25 Jun 05 missions for this analysis.

There is little evidence to outline Col Wenke's involvement in the planning of the 7 Apr mission other than his role as Operations Group commander in approving the weekly flying schedule. This is consistent with the analysis in allegation 1 that indicates the mission originated with direct contact between Brig Gen Scott and the 168 ARW scheduling office. Col Wenke testified that the mission, as he approved it, included unfamiliar field transition training for the copilot, and that he was unaware that this had not been accomplished until the day prior to his testimony. (Ex 42:11)

When asked how he handled requests for airlift from senior leaders, Col Wenke described a process utilizing a locally produced request worksheet. (Ex 42:7-8) This form includes review/approval by the AKARNG Plans, Operations and Military Support Officer, the AKANG Director of Operations, the Operations Group Commander and ultimately the Wing Commander. The form is designed so that it may be utilized by either the 168 ARW or its sister wing in the AKANG, the 176 Wing. (Ex 29:1-3) Individuals in the 168 ARW scheduling office, however, testified that this form was utilized primarily by groups and individuals outside the AKANG. That testimony further asserted that senior leaders within the AKANG were never required to utilize this approval process. (Ex 41:4-5,22)

In contrast to the 7 Apr mission, Col Wenke's involvement in the planning, approval, and execution of the 25 Jun mission was indisputably significant. Though it is undetermined how active he was in the initial unsuccessful attempts to arrange a training mission to McChord that could be utilized by Brig Gen Scott for his return to Eielson, it is clear that he became increasingly involved as initial planning efforts failed. Ultimately, he flew the mission himself when schedulers experienced difficulty finding volunteers to take the mission. (Ex 42:13; Ex 36:17; Ex 35:5)

Both Col Wenke and the complainant agreed in individual testimony that the complainant protested to Col Wenke that the mission, as conceived, violated Air Force regulations, including ANGI 10-201. Col Wenke added in his testimony, however, that he disagreed with the complainant's interpretation of the regulations, and that he felt the mission met regulatory guidance. (Ex 42:10; Ex 35:3) Lt Col [redacted], then the [redacted], testified that he also protested to Col Wenke that the mission could not be accommodated within existing regulations. He added that when this protest was unsuccessful, he wasn't *"going to color this any other color"* (Ex 36:16) and used as justification for the off-station trainer when requesting the mission number from NGB headquarters: *"We need an ANG Mission Number to*

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land at McChord AFB and pick up BG Tim Scott. He's been heading up the RODEO Exercise there at McChord. Depart Saturday, 25 Jun, return 25 Jun 2005." (Ex 28:1) Lt Col [redacted] testified that it was his hope in doing this that NGB would refuse the mission number, and expressed dismay when the mission number was provided. (Ex 36:16)

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As discussed in the analysis for allegation 2, the flights involving Col [redacted] do not appear to reach the threshold for FW&A. Therefore, there is insufficient evidence to support a conclusion that Col Wenke committed FW&A in directing flights for Col [redacted] personal convenience. This is not the case, however, regarding flights directed for Brig Gen Scott's benefit. As discussed in the analysis of allegation 1, the preponderance of evidence supports the conclusion that the driving reason for planning the 25 Jun mission to McChord was to accommodate Brig Gen Scott's return to Eielson. This conclusion is bolstered by the choice of McChord as the training location despite the difficulty in obtaining prior landing clearance due to the air traffic congestion anticipated with numerous scheduled RODEO participant departures during the same timeframe. Indeed, Col Wenke cited direction from the McChord air traffic control tower to land as the primary reason he was unable to accomplish more than the minimum training events required for the M010 sortie despite logging 6.7 hours of flying time. Additionally, evidence indicates that at least two senior members of his staff cautioned Col Wenke about the apparent regulatory impropriety of the mission.

CONCLUSION.

By a preponderance of evidence, based upon the findings of fact and sworn testimony, the allegation that Col Wenke committed fraud, waste, and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution*, 8 Feb 05, by wrongfully directing and/or allowing KC-135 missions be flown primarily for the personal convenience of Brig Gen Scott and/or Col [redacted], was **SUBSTANTIATED**.

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ALLEGATION 4. That Col Wenke made a false official statement on an aircrew Mission Activity Report by documenting that he had completed a pilot proficiency sortie when in fact he had not, in violation of Article 107 of the Uniform Code of Military Justice.

FINDINGS OF FACT.

- On 25 Jun 05, Col Scott Wenke flew a KC-135 from Eielson AFB, AK, to McChord AFB, WA, logging 3.2 hours flying time enroute. After approximately 1.6 hours ground time, Col Wenke flew back to Eielson from McChord logging 3.5 hours enroute. Both sorties were conducted under the supervision of an instructor pilot. (Ex 17:3)

- On or about 25 Jun 05, Col Wenke filed a Mission Activity Report (MAR) for each of the sorties he flew to/from McChord on that day. Among the items logged on the first sortie were: B001, Boldface; P100, Precision Instrument Approach (x2); and P160, Missed Approach. Items logged on the second sortie included: B001, Boldface; and P110, Non-precision Instrument Approach. Additionally, Col Wenke credited himself with accomplishment of a M010 Proficiency Sortie on the second MAR. On neither of these MARs was a Visual Flight Rules (VFR) traffic pattern logged. (Ex 17:4-5)

- Observed weather was not suitable for VFR operations upon arrival at McChord. Ceiling and visibility was sufficient for VFR operations upon arrival back at Eielson, but the presence of thunderstorms within 7 miles of the base was noted in the observed weather closest to the actual Eielson arrival time. (Ex 30:1-2)

STANDARDS.

Under the Uniform Code of Military Justice (UCMJ) the Manual for Courts-Martial discusses false official statements in Article 107:

Article 107—False official statements

b. *Elements.*
(1) That the accused signed a certain official document or made a certain official statement;
(2) That the document or statement was false in certain particulars;
(3) That the accused knew it to be false at the time of signing it or making it; and
(4) That the false document or statement was made with the intent to deceive.
c. *Explanation.*
(1) *Official documents and statements.* Official documents and official statements include all documents and statements made in the line of duty.

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(2) *Status of victim of the deception.* The rank of any person intended to be deceived is immaterial if that person was authorized in the execution of a particular duty to require or receive the statement or document from the accused. The government may be the victim of this offense.
(3) *Intent to deceive.* The false representation must be made with the intent to deceive. It is not necessary that the false statement be material to the issue inquiry. If, however, the falsity is in respect to a material matter, it may be considered as some evidence of the intent to deceive, while immateriality may tend to show an absence of this intent.
(4) *Material gain.* The expectation of material gain is not an element of this offense. Such expectation or lack of it, however, is circumstantial evidence bearing on the element of intent to deceive.
(5) *Knowledge that the document or statement was false.* The false representation must be one which the accused actually knew was false. Actual knowledge may be proved by circumstantial evidence. An honest, although erroneous, belief that a statement made is true, is a defense. (Ex 31:1-2)

AFI 11-2KC-135, Volume 1 defines an M010 pilot proficiency sortie as:

7.8.5.1. **Pilots** Must be accomplished with an IP (formal school instructors are exempt from the IP requirement). An IP should accomplish M010 with another IP on board the aircraft. Once the exercise commences, it should not be disrupted for any other type of training. A minimum of 1.5-hours (or as specified in MAJCOM supplement) should be scheduled for this event. As a minimum, a pilot proficiency sortie will consist of: Review of boldface emergency procedures; Three instrument approaches; missed approach; and VFR traffic pattern (weather permitting). In addition, the following events should be accomplished when available: Holding pattern or procedure turn (to include entry); Circling approach; Simulated engine-out landing (if applicable to aircraft type and weather permitting, not applicable to restricted copilots); Simulated engine-out go-around or missed approach (if applicable to aircraft type and weather permitting, not applicable to restricted copilots); Partial flap landing (if applicable); and Engine Failure Take-Off Continued.
NOTE: If circumstances prevent completion on one sortie, credit may be taken after a second IP-supervised sortie, provided the combined activity fulfills the intent of this event. Instructors should tailor each M010 to the individual pilot's needs. Particular emphasis should be placed on simulated systems malfunctions, simulated-engine out operations and instrument procedures. (Ex 32:2-3)

ANALYSIS.

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CONCLUSION.

By a preponderance of evidence, based upon the findings of fact and sworn testimony, the allegation that Col Wenke made a false official statement on an aircrew Mission Activity Report by documenting that he had completed a pilot proficiency sortie when in fact he had not, in violation of Article 107 of the Uniform Code of Military Justice, was **NOT SUBSTANTIATED**.

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ALLEGATION 5. That between on or about Nov 01 and Sep 02, Brig Gen Scott committed fraud, waste, and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution*, 8 Feb 05, when he directed the 168th Operations Group Commander to enter another military member into KC-135 navigator re-qualification training when there was no longer a valid flying navigator requirement within the 168th Air Refueling Wing.

FINDINGS OF FACT.

- Approximately Sept 00, the 168 ARW completed an avionics modernization program on its KC-135 fleet called Pacer CRAG. A major component of this aircraft upgrade is that the navigator position was no longer required on modified aircraft. (Ex 4:1; Ex 44:17)

- The 168 ARW was given a transition period of approximately four years to reassign or otherwise draw down its personnel occupying flying navigator positions. (Ex 33)

- On or about 10 Oct 01, Lt Col [redacted] was assigned to a flying navigator billet within the 168 ARS. At the time, she was a current and qualified navigator in the C-130 flown by her former unit, but not in the KC-135 flown by the 168 ARS. (Ex 9:4,7)

- In the Oct-Nov 01 timeframe the 168 OG requested and received from National Guard Bureau approval to requalify Lt Col [redacted] as a KC-135 navigator through local training. (Ex 11)

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- On 27 Nov 01, a training folder was opened to requalify Lt Col [redacted] as a KC-135 navigator and train her on the Pacer CRAG system. (Ex 12:1)

- Between Mar and Jul 02, Lt Col [redacted] flew a total of nine training sorties. (Ex 12:2-10)

- On or about 31 Jul 02, Lt Col [redacted] apparently received a qualification checkride, though no supporting AF Form 8 was filed in her flight evaluation folder. (Ex 9:1; Ex 12:17)

- On or about 2 Aug 02, 168 ARS/DOT published a qualification and certification letter listing Lt Col [redacted] qualification as "FN." (Ex 12:17)

- Between 18 Aug and 18 Sep 02, Lt Col [redacted] flew three sorties as "FN." Flight records indicate that 18 Sep 02 was her last flight. (Ex 13:2,6)

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- On or about 21 Oct 02, Lt Col [redacted] was assigned as the commander of the 168 LRS, a non-flying position. (Ex 45:19)

- On or about 15 Dec 05, Aeronautical Orders were cut by 168 ARW Flight Records authorizing continuous flight pay for Lt Col [redacted] until she reached 22 years of aviation service. (Ex 13:7, Ex 38:8-9)

STANDARDS.

AFI 90-301 definitions of the terms fraud, waste, and abuse are the same as articulated in allegation 1 above.

AFI 11-401 establishes criteria for aviation management and specifically eligibility requirements for receipt of Aviation Career Incentive Pay (ACIP), commonly referred to as "flight pay." Paragraph 1.10.1.1 states in part, *"...Flying solely for the purpose of qualifying for incentive pay or Operational Flying Duty Accumulator (OFDA) credit is not authorized..."* (Ex 23:21)

Table 2.3 of this regulation outlines flying requirements, or "gates" that must be met in order to be entitled to continuous ACIP. Notably for this case, it states that an aviator who falls under the Aviation Career Improvement Act of 1989, as Lt Col [redacted] does, must perform operational flying duties for 10 of the first 18 years of aviation service (or 120 months of OFDA credit) in order to be entitled to continuous ACIP until the 22nd year of aviation service. This is commonly referred to as the "2nd gate." (Ex 23:30, 42,44-45)

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ANALYSIS.

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CONCLUSION.

By a preponderance of evidence, based upon the findings of fact and sworn testimony, the allegation that between on or about Nov 01 and Sep 02, Brig Gen Scott committed fraud, waste, and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution*, 8 Feb 05, when he directed the 168th Operations Group Commander to enter another military member into KC-135 navigator re-qualification training when there was no longer a valid flying navigator requirement within the 168th Air Refueling Wing, was **NOT SUBSTANTIATED**.

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VI. SUMMARY

ALLEGATION 1, that Brig Gen Scott committed fraud, waste, and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution*, 8 Feb 05, by wrongfully directing and/or allowing KC-135 missions be flown primarily for his personal convenience, was **SUBSTANTIATED.**

- The preponderance of evidence indicates that both the 7 Apr 05 and 25 Jun 05 training missions to McChord AFB were added on the flying schedule at the last minute, accomplished minimal training, and were designed primarily to accommodate Brig Gen Scott's travel. Evidence suggests that Brig Gen Scott requested both flights. In the case of the 25 Jun mission, significant intervention, potentially on Brig Gen Scott's part, was required to obtain landing clearance from McChord officials.

ALLEGATION 2, that Col [redacted] committed fraud, waste, and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution*, 8 Feb 05, by wrongfully directing and/or allowing KC-135 missions be flown primarily for the personal convenience of Brig Gen Scott and/or himself, was **NOT SUBSTANTIATED.**

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[redacted]

ALLEGATION 3, that Col Wenke committed fraud, waste, and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution*, 8 Feb 05, by wrongfully directing and/or allowing KC-135 missions be flown primarily for the personal convenience of Brig Gen Scott and/or Col [redacted], was **SUBSTANTIATED.**

- The preponderance of evidence supports the conclusion that the driving reason for planning the 25 Jun mission to McChord was to accommodate Brig Gen Scott's return to Eielson. This conclusion is bolstered by the choice of McChord as the training location despite the difficulty in obtaining prior landing clearance due to the air traffic congestion anticipated with numerous scheduled RODEO participant departures during the same timeframe.

ALLEGATION 4, that Col Wenke made a false official statement on an aircrew Mission Activity Report by documenting that he had completed a pilot proficiency sortie when in fact he had not, in violation of Article 107 of the Uniform Code of Military Justice, was **NOT SUBSTANTIATED.**

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[redacted]

ALLEGATION 5, that between on or about Nov 01 and Sep 02, Brig Gen Scott committed fraud, waste, and abuse as defined by AFI 90-301, *Inspector General Complaints Resolution*, 8 Feb 05, when he directed the 168th Operations Group Commander to enter another military member into KC-135 navigator requalification training when there was no longer a valid flying navigator requirement within the 168th Air Refueling Wing, was **NOT SUBSTANTIATED**.

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- No evidence supported a connection between Brig Gen Scott and the decision to requalify Lt Col [redacted] in the KC-135; and, likewise, no evidence supported improper motives for the timing of Lt Col [redacted] subsequently ceasing flying.

[redacted] Colonel, USAF
Investigating Officer
Directorate of Senior Official Inquiries

RONALD F. SAMS
Lieutenant General, USAF
The Inspector General

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2/11/10 OVERVIEW: SECURITY BREACH PERSONAL INFO...

SUMMARY OF STATE'S AGREEMENT WITH PRICEWATERHOUSE COOPERS LLP

- PricewaterhouseCoopers (PwC) has accepted responsibility for the loss of data.
- PwC has agreed to provide at least two years of credit monitoring and I.D theft protection OR a security freeze and adjustments to the security freeze (up to a total of $33) for each affected consumer.
- The identity theft protection and credit monitoring service may be extended for one year if there is evidence of identity theft from this loss of confidential data; if there is further evidence in the third year, the State and PwC may decide to extend for an additional period of time.
- PwC will establish a call support center that will enroll affected participants in the service they choose and provide credit counseling
- Consumer reimbursement. PwC will reimburse consumers for losses suffered as a result of identity theft caused by this breach. If an affected participant suffers damages from ID theft, the participant can submit a claim to PwC in arbitration. If the participant has enrolled in one of the options (identity theft protection and credit monitoring service or security freeze), they will get a rebuttable presumption that the ID theft was the result of PwC's loss of the confidential data.
- PwC will pay up to $100,000 to the State for notices to each affected participant.
- PwC will indemnify the State for any claims made against the state related to this incident.
- The settlement does not release any individual consumer claims. Each affected consumer can pursue any claims they may have against PwC.

PRICE WATERHOUSE COOPERS

SECURITY BREACH FACT SHEET

Who is affected by the breach?

Participants in the Public Employees' Retirement System and the Teachers' Retirement System, who were active or inactive employees, including retirees, in 2003 and 2004. If you are affected by this breach, you will be mailed a notice shortly with more detailed information about the breach, and instructions on how to sign up for free services pursuant to the settlement reached with PwC.

What information was lost?

The lost information contains names, social security numbers and dates of birth.

What should I do now?

You will receive a notice in the next few weeks that describes the protections PwC has agreed to provide to affected Alaskans. This will include free credit monitoring and identity theft protection, or placing a security freeze on your credit report. Details about what these protections entail and how you can sign up for them will be explained in the notice. The notice will also explain how you can make a claim for any damages you may incur if you become an identity theft victim.

In the meantime, there are other steps you can take to protect yourself against identity theft:

1. You can place a fraud alert on your credit report, even if you have credit monitoring in place. You can contact the three main credit reporting agencies below to place a fraud alert:

Equifax	1-888-766-0008	www.equifax.com
Experian	1-888-397-3742	www.experian.com
TransUnion	1-800-680-7289	www.transunion.com

A fraud alert will not prevent access to your credit report, but it will alert the reporting agency, and businesses checking on your credit, that your information has been compromised. If you have already placed a security freeze on your credit report, a fraud alert is not necessary.

2. Get a copy of your credit report and review it for suspicious activity. Under federal law, you are entitled to a free copy of your credit report from each of the three credit bureaus every year. To get your free copy, contact each of the credit agencies listed above, or go to www.annualcreditreport.com. Look for any accounts you do not recognize, and cancel them immediately.

3. Account monitoring. Check your monthly account statements carefully for suspicious charges, and notify your financial institution of all charges you do not recognize. Close any accounts that you think have been compromised.

4. Consumer Education. There are several consumer resources available that provide valuable information on identity theft, and how to avoid becoming a victim. The Federal Trade Commission maintains a website that contains a wealth of information on identity theft at www.ftc.gov/idtheft.

To Request your Credit Report by Phone:

Call 1-877-322-8228. You will go through a simple verification process over the phone.

Will credit monitoring or a credit freeze affect my credit score?

No. You have the right to monitor your credit without it affecting your credit score. If you request your own credit report it has no affect on your credit score. Placing a security freeze will also not affect your credit score, but it will prevent any activity -- both good and bad-- on your credit file.

Has my information been misused?

There is no indication that any of the missing information has been misused, and we have not received any reports of identity theft that can be related to this breach. But you should take precautions to guard against the possibility that your personal information may fall into the hands of an identity thief.

What are you doing now to protect my personal information?

This breach resulted from actions by a private company hired by one of the state's contractors. The state is continually upgrading and revising policies to address the ever changing demands on information security. The state implements security protocols aimed at protecting the personal information it receives from Alaska

citizens. These actions include advanced firewalls and computer access restrictions to prevent unauthorized access to the state's electronic data; encryption requirements for data and information transmission; security requirements that restrict access to state offices by unauthorized personnel; and other requirements to ensure the state's confidential data and information is secure.

Does PwC still have my information?

Yes. PwC may still need this information in connection with the litigation we have filed against Mercer. However, PwC is aware that this information must be protected, and has taken every precaution to ensure it is not compromised. As soon as PwC does not need the information for any legitimate purpose, it will be destroyed or returned to the state.

Is my retirement affected?

No.

What are some of the things someone can do with my personal information?

Identity theft occurs in many forms. Here are some of the common ways identity thieves can misuse your information:

New account fraud: This happens when an identity thief uses your personal information to open up new accounts in your name, but will use a different address. Thus, you may not discover the new account for some time.

Existing account fraud: This occurs when an imposter uses your current account information to commit fraud. You can learn of this kind of fraud by reviewing your monthly account statements.

Debit or check card fraud: This occurs when a thief uses your debit or check card to remove money from your bank account. This is sometimes prevented if your accounts can only be accessed with a PIN, but there are ways to avoid this by making "off line" transactions.

Social Security number fraud: This happens when an imposter uses your SSN to gain employment, for tax reporting purposes, or other illegal transactions.

Criminal Identity Theft: This occurs when a criminal gives another person's name and personal information during an arrest. If the imposter then fails to appear in court, an arrest warrant can be issued with your name on it!

You can get information about these kinds of identity theft from several online resources, including the FTC's web site, www.ftc.gov/idtheft.

What's the difference between credit monitoring, identity theft protection, and a security freeze?

There is a significant difference between these:

1. "Credit monitoring" can be done on your own by regularly checking your credit reports for suspicious activity. There are also a number of services that will do this for you on a daily or weekly basis for a fee. If suspicious activity occurs, you are generally notified immediately via email. This will allow you to take action to close accounts that are not yours, and notify creditors that someone is using your name illegally. Credit monitoring will not prevent this kind of "new account" identity theft, but it will alert you promptly to the illegal conduct.

2. "Identity theft protection" is a service offered by several companies that provides insurance in the event you become a victim of identity theft. This is often offered in connection with credit monitoring services. Depending on the type of protection, it can reimburse you for damages you may suffer as a result of identity theft, and assist you in repairing your credit.

3. A "security freeze" locks your credit files at the three credit reporting agencies until you unlock your file with a password or PIN. In Alaska, this freeze can cost you up to $5 for each credit reporting agency. A freeze stops new accounts from being established by imposters. However, a security freeze will not stop misuse of existing bank or credit accounts, or some other kinds of identity theft. A security freeze will also prevent you from engaging in any transactions that require checking your credit report. You can request access to your credit report when a freeze is in place if you provide you PIN, and pay a $2 fee. You should consider the frequency with which you need access to your credit report before you decide to place a security freeze on you accounts.

What happens if I become a victim of identity theft?

The settlement we reached with PwC contains provisions that will likely reimburse you for damages you sustain if you become a victim of identity theft as

a result of this breach. To get this protection, you will need to sign up for credit monitoring and identity theft protection under the terms of the settlement. More details about how to do this, and how to make a claim for damages, will be explained in the notice you will receive in a few weeks.

How was the information lost?

It is still unclear exactly how the information was lost. PwC kept the information in its office in Chicago. PwC discovered the information was missing in December.

Background – how did PwC get this information?

For many years, an actuarial firm was contracted by the state to perform actuarial services for the Department of Administration ("DOA"). The DOA would routinely provide the firm with information on current and former state employees that allowed the firm to predict the state's retirement obligations, and to calculate PERS and TRS pension and health care rates. As part of litigation against the firm, Price Waterhouse-Coopers LLC (PwC) was given information on Alaska retirement plan participants held by the actuary firm, including the confidential personal information that was subject to this breach.

Don Habeger

From: [redacted]
Sent: Wednesday, February 10, 2010 11:39 AM
To: Rep. Jay Ramras
Cc: [redacted]
Subject: Missing Personnel Records

Dear Representative Ramras,

My good friend, Bob Roses, suggested that I contact you and the other members of the Judiciary Committee concerning the State's responsibility for the missing employee and retiree information.

I am Tom E. Main, a 63-year resident of Alaska and a PERS retiree with 32 years State service and am retired under Tier I. I am presently in Southern California because my wife is receiving medical care. My phone number is [redacted]

Bob Roses told me that the Judiciary Committee was holding either a Hearing or a Discussion today (2/10/2010) with the State Department of Administration concerning the lost records.

The State is telling those employees/retirees that it is their responsibility to take whatever action is necessary to protect themselves from Identity Theft. I disagree.

I believe it is the State that erred and it is the State's responsibility to do whatever is necessary to protect the affected personnel. The State could contract with a Credit Monitor and ID Insurance provider much more easily than can 77,000 individual employees. In this case, I recommend that the State contract with a Credit Bureau and not a "sub-contractor".

I have the following questions:

1. Why did the State provide Mercer with Full Name, SSN, and Date of Birth when the actuarial analysis would need only Sex, Age, Years of Service and Tier?

2. The State recommends that the affected personnel invoke a Fraud Alert with the Credit Bureaus. A Fraud Alert is good for 90 days and can be extended for an additional 90 days.

Until the missing information is found and proven not to have been compromised, the personnel are at risk ad infinitum----maybe for the rest of their lives.

If the personnel must provide their own security, a Credit Freeze can be implemented for several years, but this requires validation by a police report. Are the Alaska State Troopers or other law enforcement agency going to provide 77,000 employees/retirees with such reports? A Credit Freeze is extremely inconvenient to the personnel involved. Their whole access to credit is affected.

3. I provided a Survivor's Benefit for my wife. Was her personal information also lost?

4. If the personnel do have to provide their own security, how do they get reimbursement for the cost (maybe forever).

5. The SECURITY BREACH FACT SHEET states, "The settlement we reached with PwC contains provisions that will likely (emphasis added) reimburse you for damages you sustain*****"

Just what is meant by "likely".

What about time and inconvenience experienced by personnel because of the State's mistake?

What if PwC discovers that the cost is so great that they file for bankruptcy?

6. Is this the only information that is lost? E. g. If you have a direct deposit, was the Bank Account Number also lost?

7. With only the name, SSN, and age, a person's bank accounts and other personal accounts, information, etc. could be breached. How are we to protect ourselves from this?

Any assistance that you or the Judiciary Committee can provide will be appreciated.

Sincerely,

Tom E. Main

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

ANNETTE KREITZER, COMMISSIONER

SEAN PARNELL, GOVERNOR

P.O. BOX 110200
JUNEAU, ALASKA 99811-0200
PHONE: (907) 465-2200
FAX: (907) 465-2135

March 11, 2010

The Hon. Jay Ramras, Chairman
House Judiciary Committee
Alaska House of Representatives
State Capitol, Room 120
Juneau, Alaska 99801

Dear Representative Ramras:

The purpose of this letter is to provide an update to the testimony Deputy Commissioner Kevin Brooks offered during the February 11 House Judiciary Committee hearing regarding the security breach by Price Waterhouse Coopers (PwC) and to address the Committee's question about how the Department of Administration (Department), and specifically, the Division of Retirement and Benefits (DRB) plans to keep personally identifiable information secure in the future. The Department remains engaged in remediation of possible effects of the past event, and vigilant to prevent a similar future occurrence.

On February 12, 2010 more than 77,000 PERS and TRS members and former members affected by the PwC security breach were mailed a letter articulating the situation and including information about how to avail themselves of identity theft protections offered through the State's settlement with PwC. To date:

- Affected members have received information through mail notification;
- Over 16,800 members have signed up for an Equifax product;
- Some members (including State employees) have received additional emails and union newsletters;
- DRB answered over 7,000 phone calls regarding the event, to obtain information or to seek assistance in taking advantage of the negotiated settlement protections. Currently, the call volume is much lower – less than 10 per day and declining.
- Retirees will receive a reminder in DRB's quarterly newsletter to verify whether or not their information was affected and to avail themselves of identity theft protections provided by the settlement.

Additional communication tools that will be used to keep PERS and TRS employers and members informed include:

1. Annual PERS and TRS statements from DRB;
2. Quarterly PERS and TRS Newsletters from DRB;
3. Periodic envelope stuffers with benefit checks and advices;
4. Periodic emails to active State employees from DRB;
5. Periodic email newsletter, The Employer's Edge, to all PERS and TRS employers from DRB. Employers often forward pertinent information to their employees;
6. Quarterly account statements, with other investment and retirement information from the State's record keeper Great West Financial Services; and
7. Confirmation of password and investment change from Great West Financial services.

The Department takes very seriously its responsibility to protect individual's personally identifiable information. Currently, DRB protects personally identifiable information by securing the data behind firewalls, in multiple secured locations. Data flowing outside of DRB's system is encrypted using multiple tools designed for specific types of data transfer (file, internet, email, etc.). DRB uses a 'defense in depth' strategy. The State Security Office continuously monitors all DRB systems for network attacks, intrusion detection/prevention, and injection attacks. The DRB Information Systems Section ensures application security is properly implemented by using multi-tiered authentication and access control systems.

DRB is working to add additional "depth" to its security strategy by moving legacy applications under the myAlaska authentication layer by December of 2011. All new applications moved into production will use the myAlaska authentication layer as part of their standard architecture. Additionally, DRB is examining under what circumstances personally identifiable information is released to other agencies or third parties. Data flowing to our business associates, such as our actuary, is being examined to ensure compliance with statutes and to ensure there is a true business need for transferring any sensitive data. The Division recently turned down a request for information that included personally identifiable information from auditors working on behalf of another State department. DRB personnel are becoming very comfortable challenging the business need for this kind of information.

Please contact me if you or the Committee would like additional information.

Sincerely,

Annette Kreitzer

2/25/10
CONFIRM.
HEARING
DANIEL
SULLIVAN
ATTNY
GENERAL

CONFIRMATION COMMITTEE REPORT

Action date: 2/25/10

The Judiciary Committee has reviewed the qualifications of the following Governor's appointee and recommends that this name be forwarded to a joint session for consideration:

Attorney General
Daniel S. Sullivan
Appointed: 6/16/2009

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	LYNN
	Greenberg
	HERRON
	Dahlstrom
	Holmes
Chair:	RAMRAS
Chair:	

Please return to the Chief Clerk's office.

Biography of Alaska Attorney General
Daniel S. Sullivan

Federal Government Service

Prior to becoming Attorney General, Sullivan served as the U.S. Assistant Secretary of State for Economic, Energy, and Business Affairs. His nomination by the President for this position was unanimously confirmed by the United States Senate in May 2006 and he served until January 2009. In this role, he was a senior advisor to the Secretary of State and other top U.S. government officials on the formulation and execution of international economic, energy, trade, finance, transportation, telecommunications and Arctic policies. Sullivan also led and managed the 200-employee State Department Bureau of Economic, Energy, and Business Affairs.

As the Assistant Secretary of State, much of Sullivan's work focused on international energy issues. He served as the U.S. Governing Board member of the Paris-based International Energy Agency – the world's premier energy security organization. He and the State Department bureau he led worked closely with the Office of the Federal Coordinator for Alaska Natural Gas Transportation Projects on Alaska gas pipeline issues. Sullivan also was responsible for overseeing and leading several complex international negotiations of strategic importance to the United States, including serving as the primary negotiator for the President at the Group of Eight (G8) Summits.

Prior to serving as the Assistant Secretary of State, Sullivan was a Director in the International Economics Directorate of the National Security Council and National Economic Council staffs at the White House

Alaska Law Background

Sullivan is one of a select number of Alaska attorneys who has held judicial clerkships on both the highest state and highest federal courts in Alaska. He was a judicial law clerk for Judge Andrew Kleinfeld of the United States Court of Appeals for the Ninth Circuit in Fairbanks from 1997-98, and was a judicial law clerk for Chief Justice Warren Matthews of the Alaska Supreme Court in Anchorage from 1998-99. Following his clerkships, Sullivan joined the Anchorage office of Perkins, Coie, LLP. His practice focused on corporate transactions and commercial litigation, and he represented a variety of clients, including Alaska small businesses and Native corporations.

U.S. Military Service

Sullivan has served in the United States Marine Corps since 1993 on active duty and in the reserves as an infantry and reconnaissance officer, including with Second Battalion, Fifth Marines at Camp Pendleton, California, and for several years with Anchorage-based Echo Company, Fourth Reconnaissance Battalion – the Marine Corps Reserve's premier cold weather reconnaissance unit. In recent years, Sullivan has been recalled to active duty twice: in January 2009 to help draft a regional strategy report for the Commander of U.S. Central Command (CENTCOM) General David Petraeus, and from December 2004 until April 2006 to serve as a strategic advisor to CENTCOM Commander General John Abizaid. During this period, Sullivan spent substantial time deployed in the CENTCOM theater of operations.

Academic Background

Sullivan graduated *magna cum laude* from Harvard University, earning a bachelors degree in Economics, where he was a Harvard College scholar during each of his four years. Sullivan graduated *cum laude* from Georgetown University Law Center, earning a Juris Doctor and Masters of Science in Foreign Service joint degree. He was an articles editor on the *Georgetown Law Journal* and a contributing author to the *Georgetown Criminal Procedure Project*. During his final year at Georgetown, Sullivan worked as a law clerk for Judge James L. Buckley on the U.S. Court of Appeals for the District of Columbia.

Awards, Honors, and Personal Information

Sullivan is the recipient of numerous professional, academic, and military awards, including the White House Fellowship, the National Security Council Outstanding Service Award, and the Defense Meritorious Service Medal. He is a member of the Council on Foreign Relations.

Sullivan was born in Fairview Park, Ohio. He has been married for 15 years to Julie Fate Sullivan of Fairbanks. They moved to Alaska in 1997, after Sullivan completed active duty service with the Marine Corps. They have three daughters, two of whom were born in Anchorage.

ACTUS SUB-CONTRACT. PROGRAM

EXHIBIT L

ACTUS LEND LEASE LLC
DESIGN BUILD CONTRACTOR

SUBCONTRACTING PROGRAM

North Haven Communities LLC

Solicitation No. W912DR-06-R-0069

Fort Wainwright and Fort Greely Alaska

SUBCONTRACTING PROGRAM

FOR

FORT WAINWRIGHT AND FORT GREELY ALASKA

CONTRACTOR NAME: ACTUS LEND LEASE LLC

ADMINISTRATOR: THOM ANTONOVICH, SENIOR CONSTRUCTION MANAGER

TELEPHONE NUMBER: TBD

1. Actus Lend Lease LLC's Subcontracting Program establishes the procedures for award of subcontracts on this project. Subcontracting of all aspects of the Guaranteed Scope of Work, except those specific materials purchased through a strategic supply agreement(s), shall follow the procedures set forth herein. To the greatest extent possible as it is economically feasible to the overall success of the project, Actus Lend Lease LLC will endeavor to award, expressed in percentages of total dollars available for award set forth below, subcontracts to qualified best value large business, small business, veteran-owned small business, HUBZone small business, small disadvantaged business, woman-owned small business and local business concerns throughout Alaska.

	Percentage
Total Subcontracts to be awarded	100%
Total Large Business Award	25%
Total Small & Local Business Awards (SB)	75%
Sub-Categories of Small Local Business Awards	
Small Business (SB) and Local Business	79%
Veteran-Owned Small Business Totals of all Small Business Awards (VOSB)	5%
HUBZone Small Business Totals of all Small Business Awards (HUBZSB)	3%
Small Disadvantaged Business Totals of all Small Business Awards (SDB)	5%
Woman-Owned Small Business Totals of all Small Business Awards (WOSB)	8 %

Note: Actus Lend Lease, LLC anticipates entering into binding strategic agreement(s) with major material supplier(s) and as such, the value of these purchased materials will be deducted from the total dollars available for award.

1. A description of the principal types of supplies and services to be subcontracted/purchased for award to large business, small business, veteran-owned small business, HUBZone small business, small disadvantaged business woman-owned small business and/or local business concerns throughout Alaska are as follows:

Hazardous Material Abatement	Metal Doors
Demolition	Wood Doors
Grading	Finish Hardware
Engineered Staking	Garage Overhead Doors
Paving	Gypsum Drywall System
Site Concrete	Covered Soffit and Fascia
Play Equipment	Gutters and Downspouts
Fences	Floor Covering
Soils Testing	Tub Surrounds
Site Furnishings	Painting
Landscaping	Louvers, Vents and Shutters
Building Concrete	Signs
Rough Carpentry Material	Toilet and Bath Accessories
Rough Carpentry Labor	Residential Appliances
Finish Carpentry Material	Kitchen and Bath Cabinets
Finish Carpentry Labor	Laminated Countertops
Building Trusses	Window Treatments
Siding	Plumbing
Roofing	Heating
Insulation	House Electrical
Windows and Sliding Glass Doors	Final Cleaning

Note: All areas noted above, except materials which may be included in a strategic supply agreement, will be available for subcontract/purchase award. Actus Lend Lease LLC will not disqualify or preclude in any way the participation of a qualified, best value Small Business, Veteran-Owned Small Business, HUBZone Small Business, Small Disadvantaged Business, Woman-Owned Small Business and/or Local Business Concern throughout Alaska in the award process for any product and/or service available under this plan.

2. The following are procedures we will utilize and/or have utilized for award of subcontracts or purchase orders in our endeavor to obtain percentages for small business concerns, veteran-owned small business concerns, HUBZone small business concerns, small disadvantaged business concerns, woman-owned small business concerns and local business concern's throughout Alaska participation in the project.

   Actus Lend Lease maintains a database of small businesses, veteran-owned small businesses, small disadvantaged businesses, woman-owned small businesses, HUBZone small businesses and local businesses throughout Alaska which includes those who have participated on previous solicitations and projects. This database was utilized to develop the initial master bidders list during the CDMP verification stage and has been constantly updated with information obtained through a variety of sources, including summits, conferences, symposiums and forums.

Throughout the duration of the Initial Development Period, we will conduct additional summits, conferences, symposiums or forums to meet directly with local small businesses throughout Alaska to discuss and answer questions about the project. The names we obtain through these efforts will be added to our database, and those firms will be contacted for participation in the bidding/award process.

Each bidder will be requested to verify their business status as a large business concern, small business concern, small disadvantaged business concern, woman-owned small business concern, veteran-owned small business concern, HUBZone small business or local business concerns within Alaska when submitting their bid. This information will be evaluated along with qualifications and best value in our endeavor to achieve the subcontracting percentages for the total project.

Business concerns that express interest and do not submit a bid on the relevant components will be contacted to determine why no bid was submitted. This contact and information received will be documented and a file retained at the project office. Those business concerns, through the contact, who advised us they no longer have an interest in submitting bids will be deleted from the master bid list for the remaining components of the project. Business concerns, through the contact, who advise they were only interested in bidding a particular component, will be added only to such component's master bid list.

3. A description of the method we utilized to identify potential sources for solicitation purposes to assure small, veteran-owned small, HUBZone small, small disadvantaged, woman-owned small business and local business throughout Alaska participation (e.g., existing company source lists, the Procurement Marketing and Access Network (PRO-Net) of the Small Business Administration (SBA), the list of certified small disadvantaged business concerns of the SBA, the National Minority Purchasing Council Vendor Information Service, the Research and Information Division of the Minority Business Development Agency in the Department of Commerce, or small, veteran-owned small, HUBZone small, small disadvantaged, and woman-owned small business trade associations).

   Small Business, Small Disadvantaged Business, Woman-Owned Small Business, Veteran-Owned Small Business, HUBZone Small Business and Local Business Concerns throughout Alaska will be actively recruited through:

   (a) Contact with the U.S. Small Business Administration for updated mailing of qualified Small, Small Disadvantaged, Woman-Owned Small Business, Veteran-Owned Small Business, or HUBZone Small Business Concerns in project vicinity.

   (b) Solicitations in local and construction specialty newspapers with specific reference of interest in qualified Small Business, Small Disadvantaged Business, Woman-Owned Small Business, Veteran-Owned Small Business, HUBZone Small Business and Local Business Concerns throughout Alaska.

   (c) Written solicitation to Small Business, Small Disadvantaged Business, Woman-Owned Small Business, Veteran-Owned Small Business, HUBZone Small Business Local Business Concerns throughout Alaska requesting letters of interest of possible project participation.

(d) Contacts with Small Business, Small Disadvantaged, Woman-Owned Small Business, Veteran-Owned Small Business, HUBZone Small Business and Local Business Concerns' throughout Alaska applicable trade associations.

(e) Small business conferences/symposiums.

(f) Contact and forums with the Chamber of Commerce, Small Business Council, Building Industry Association and others to identify key labor and training concerns.

4. Indirect costs, including design and engineering cost, are included in the subcontracting percentages in this plan.

5. The name of the individual who will monitor our achievements of our subcontracting percentages is

Name: Thom Antonovich

Title: Senior Construction Manager

Telephone No.: TDB

Address: TDB

City, State, Zip TDB

The Senior Construction Manager will monitor performance relative to achievement of the subcontracting percentages contained herein by:

(a) Maintaining master bidders lists of Small Business Concerns, Small Disadvantaged Business Concerns, Woman-Owned Small Business Concerns, Veteran-Owned Small Business, HUBZone Small Business Local Business Concerns throughout Alaska.

(b) Including requests for Small Business Concerns, Small Disadvantaged Business Concerns, Woman-Owned Small Business Concerns, Veteran-Owned Small Business, HUBZone Small Business and Local Business Concerns throughout Alaska in solicitations for products or services they can provide and ensuring that all solicitations are structured to permit their maximum participation.

(c) Assuring inclusion of Small Business Concerns, Small Disadvantaged Business Concerns, Woman-Owned Small Business Concerns, Veteran-Owned Small Business, HUBZone Small Business Local Business Concerns throughout Alaska in all solicitations for products or services, which they are capable of providing.

(d) Reviewing solicitations to remove statements, clauses, etc., which may tend to restrict or prohibit participation by Small Business Concerns, Small Disadvantaged Business Concerns, Woman-Owned Small Business Concerns,

Veteran-Owned Small Business, HUBZone Small Business Local Business Concerns throughout Alaska.

(e) Establishing and maintaining records of all solicitations and subcontract awards to ensure that the firm's members who review bidders' proposals record their reasons for selecting or not selecting a bid submitted by a Small Business, Small Disadvantaged Business, Woman-Owned Small Business, Veteran-Owned Small Business, HUBZone Small Business or Local Business Concerns throughout Alaska.

(f) Ensuring the establishment and maintenance of records of solicitations and subcontract award activity.

(g) Attending or arranging for attendance of company counselors at Business Opportunity Workshops, Minority Business Enterprise Seminars, Trade Fairs, etc.

(h) Monitoring performance achievement of proposed percentages.

(i) Preparing and submitting achievement semi-annual reports.

(j) Coordinating the conduct of contractor's activities involving its bidding and awarding process.

6. The following records will be maintained at the project office:

(a) Source lists (i.g., PRO-Net), guides, and other data that identify small business, veteran-owned small business, HUBZone small business, small disadvantaged business, woman-owned small business and local business concerns throughout Alaska.

(b) Organizations contacted in an attempt to locate sources that are small businesses, veteran-owned small businesses, HUBZone small businesses, small disadvantaged businesses, woman-owned small businesses and local businesses throughout Alaska.

(c) A bidder's list for each component will be maintained and annotated to indicate which business concerns submitted bids and reasons why business concerns did not submit a bid.

(d) Records of any outreach efforts to contact (A) trade associations, (B) business development organizations, and (C) conferences and trade fairs to locate Small Business Concerns, Small Disadvantaged Business Concerns, Woman-Owned Small Business Concerns, Veteran-Owned Small Business, HUBZone Small Business Local Business Concerns throughout Alaska.

(e) Records of internal guidance and encouragement provided to buyers through (A) workshops, seminars, training, etc., and (B) monitoring performance to evaluate compliance with the programs' requirements.

7. Actus Lend Lease is committed to providing the maximum practical opportunity to Small Business Concerns, Small Disadvantaged Business Concerns, Woman-Owned Small Business Concerns, Veteran-Owned Small Business, HUBZone Small Business and Local Business Concerns throughout Alaska.

ATTACHMENT 4b

INCENTIVE PLAN

ARMY ALASKA FAMILY HOUSING LLC

D/B CONTRACTOR INCENTIVE PERFORMANCE MANAGEMENT CRITERIA

E. Subcontracting Goals Achievement – 15 points / 10 points:

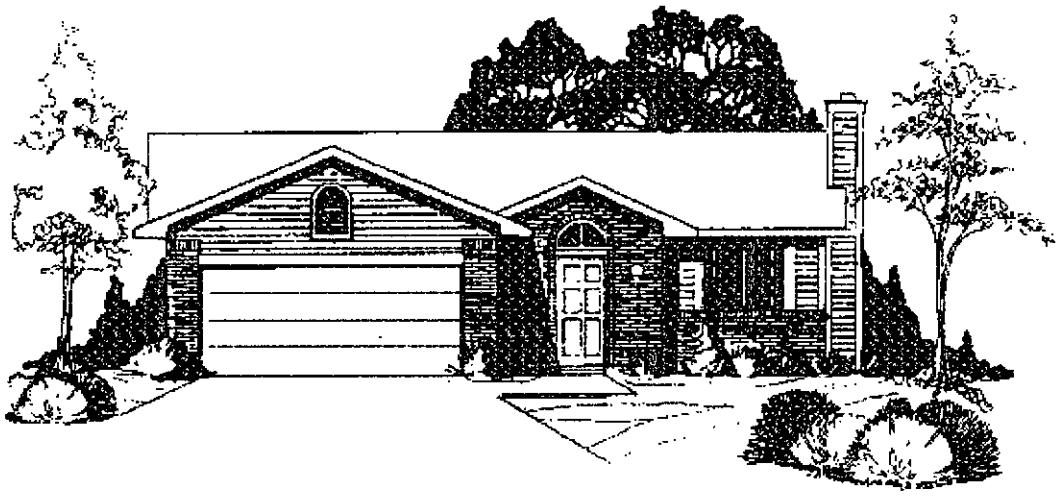
The subcontracting goal is to award 85% of the possible 75% trade values to small businesses as defined within the small & local business contracting goals Criteria. The Incentive Fee for these subcontracting goals shall be awarded based on the following sliding scale:

Small Business Contract Percentage Attained (Overall Small Business Contract Goal is 75% of all Contracts)		15-Point Scale (Criteria A)	10-Point Scale (Criteria B)
85% or greater of available 75% awarded to small businesses		**15**	**10**
75 - 84.99% of available 75% awarded to small businesses		**12**	**8**
65 – 74.99% of available 75% awarded to small businesses		**9**	**6**
55 – 64.99% of available 75% awarded to small businesses		**6**	**4**
45 – 54.99% of available 75% awarded to small businesses		**3**	**2**
<45% of available 75% awarded to small businesses		**0**	**0**
Total Score – Subcontracting Goal Achievement		**15**	**10**

Use or disclosure of data contained on this sheet is subject to the restriction on the title page of this document.

2005 HOUSING REQUIREMENTS ANALYSIS UPDATE

3 JANUARY 2006



FORT WAINWRIGHT
ALASKA

Headquarters, Department of the Army
Assistant Chief of Staff for Installation Management

Prepared by ROBERT D. NIEHAUS, INC.

5494

REQUIREMENTS SUMMARY – FORT WAINWRIGHT

BACKGROUND

This analysis updates the 2005 Housing Market Analysis (HMA) for Fort Wainwright (Robert D. Niehaus, Inc., 2005). This analysis uses current and projected total permanent-party military personnel from ASIP documents for Fort Wainwright (SAMAS of 29 June 2005) adjusted to reflect proposed changes due to realignment of units within the Army as of 17 August 2005 (Headquarters, Department of the Army, 2005). This report is based on criteria and methods approved by Headquarters, Department of the Army (2005), and reflects current guidance by the Office of the Secretary of Defense (OSD) regarding requirements analyses for military housing.

KEY ASSUMPTIONS AND RESULTS

Table 1 summarizes this study's key assumptions and results.

Table 1. Government-Provided Military Housing Required and Key Assumptions, Fort Wainwright, 2010

1. Methodology Consistent with OSD Guidance for All Services
2. Personnel Based on 29 June 05 SAMAS Adjusted for Proposed Realignment of Units as of 17 Aug 05
3. Market Area is Based on a Safe 30-Minute Commute
4. Rental Mobile Homes are Inadequate for Military Members
5. 2005 Basic Allowance for Housing (BAH) and Community Rental Costs
6. One Bedroom Per Family Member for Accompanied, BAH Standard for Unaccompanied
7. Unaccompanied E1-E5 Housed On Post
8. Military Homeowners Estimated from 1997 VHA Survey and Adjusted for Recent Trends in Affordability
9. No Adjustments Made for Arctic Space Requirement for Off-Post Housing
10. Current 801 Units are Assumed to be 70 Percent Occupied by Military Personnel in 2010
11. Total Permanent-Party Military Personnel Number 4,696 in 2005 and 7,358 in 2010

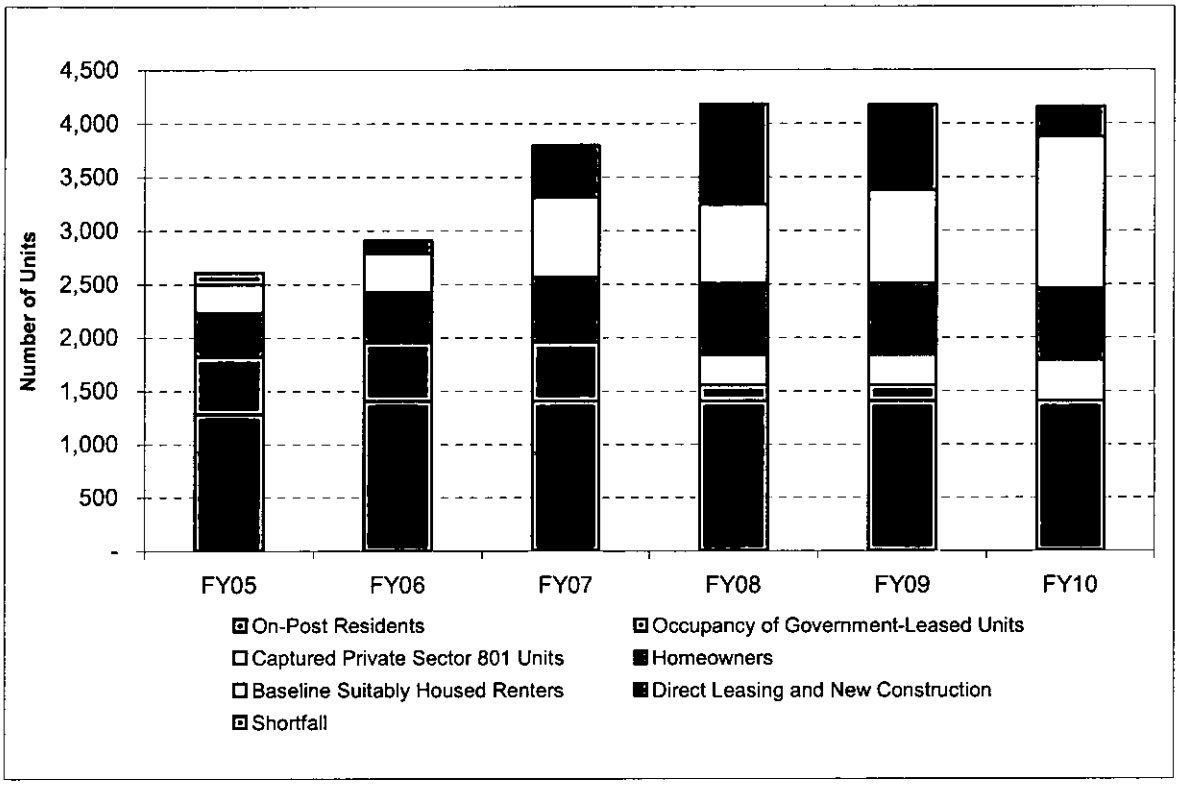
	Accompanied	Unaccompanied
Total Effective Housing Requirement	4,156	2,974
Floor Requirement		
On-Post Military Community (see note)	-	n.a.
Key and Essential Personnel	20	n.a.
Historic Housing	1	n.a.
Quality of Life	13	n.a.
Total Floor Requirement (see note)	33	2,826
Community Housing Shortfall	1,656	18
Initial Housing Requirement	1,689	2,844
On-Post Military Community Adjustment (see note)	-	n.a.
Government-Provided Housing Requirement		
Total Military Housing Requirement	1,689	2,844
Percent of Total Effective Housing Requirement	41%	96%
Projected RCI End-State Inventory	1,409	TBD
Deficit/(Surplus)	280	TBD

Note: The on-post military community component of the accompanied floor requirement was initially assumed to be zero. The floor requirement for accompanied personnel reflects the greatest requirement among the other three categories on an individual grade basis. The on-post military community adjustment reflects any necessary increases when the initial housing requirement is less than 10 percent of the effective families on a grade by grade basis (see text). The floor requirement for unaccompanied personnel comprises all unaccompanied E1-E5 personnel.

Source: Headquarters, Department of the Army, 2005; and estimates prepared for this study.

Figure 1 displays the distribution of suitable current and projected housing units in the Fort Wainwright market area. The graph includes the number of on-post residents, occupancy of government-leased (section 801) units, the number of 801 units assumed to be captured by military families if these units became private-sector rentals, homeowners, those renters who can be suitably housed in the community, and the direct leasing and/or new construction to be provided by the post in order to meet the housing needs of Fort Wainwright families from 2006 to 2010.

Figure 1. Suitable Housing Units, Fort Wainwright, 2005-2010



Source: Estimates prepared for this study

The following points compare the results of this study to those of the 2005 HMA:

- The projected 2010 requirement is 1,689 family housing units, 432 less than the projected 2010 requirement of 2,121 units in the 2005 HMA.

- The projected number of military families in 2010 is 4,156, or 1,112 more than the projected 2010 count of 3,044 families in the 2005 HMA. This increase is due to an increase in projected personnel of 1,943 military members, from the 5,415 military personnel reported in the 2005 HMA to 7,358 military personnel in this Update.

- This Update does not make any adjustments based on an arctic space requirement for off-post housing. This difference in criteria is the primary reason the projected requirement is less in this Update than in the 2005 HMA, despite the increased number of families. Rental units were categorized based on the number of bedrooms alone and no adjustment was made regarding the size (square footage) of the rental units. In the 2005 HMA, rental units were distributed into

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bedroom categories based on the number of bedrooms as well as on the size of the unit. Due to the adjustment in the 2005 HMA, some units having two, three, and four bedrooms were designated as having one, two, and three bedrooms because they did not meet minimum size standards. As a result, there were some two-bedroom units that were in the one-bedroom distribution, some three-bedroom units that were in the two-bedroom distribution, and some four-plus-bedroom units that were considered three-bedroom units. In general, the greater the number of bedrooms, the greater the rent. Therefore, by including in the one-bedroom category those two-bedrooms that did not have enough square feet to meet the arctic space requirement, the price of one-bedroom units increased. By taking out the arctic space adjustment, the median price of one-bedroom, two-bedroom, three-bedroom, and four-plus-bedroom units has decreased relative to the rents presented in the 2005 HMA. At the same time, the number of two-bedroom, three-bedroom, and four-plus-bedroom units increased in this Update compared to the 2005 HMA.

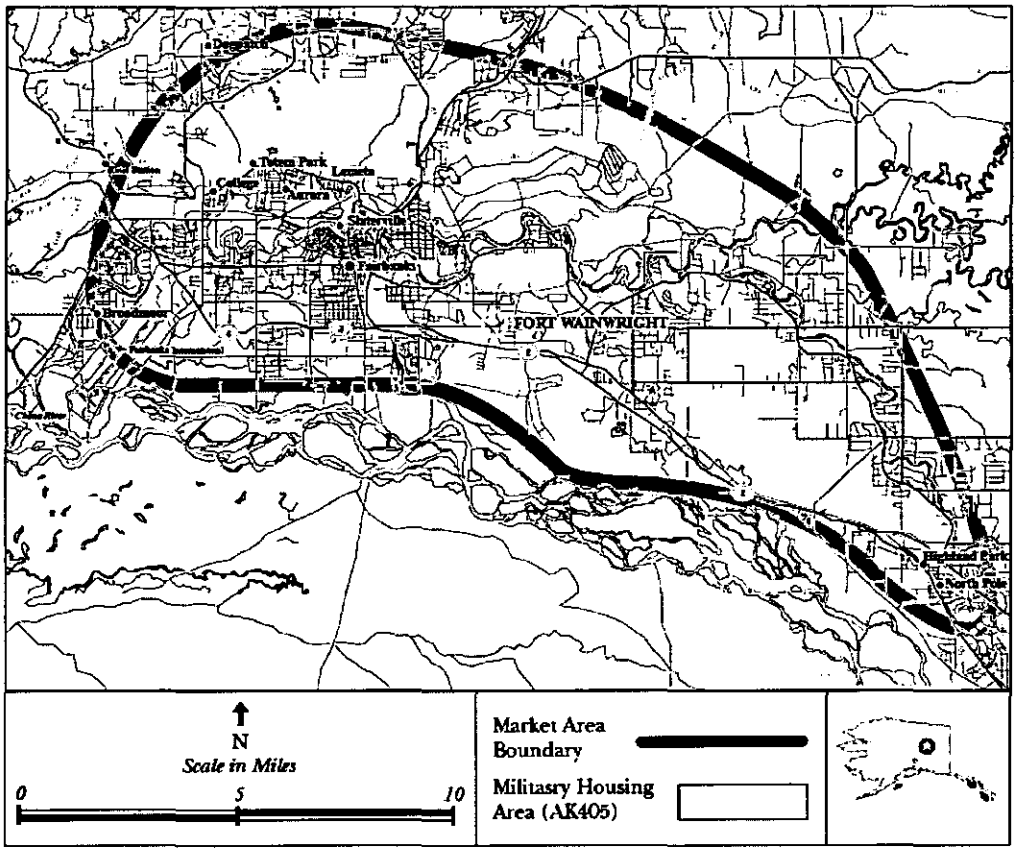
- Currently, Fort Wainwright has 550 leased (section 801) units, comprising 150 units located off post (Walden Estates) and 400 on-post units (the Birchwood complex). Leases for these units are assumed to expire by 2010, as scheduled, at which time these units would convert to market-rate community housing. Because these leased units historically have been occupied by military members, upon conversion from government-controlled units to market-rate units it is expected the capture rate, or the military's market share, for these units would be greater than what would normally occur in the community. This Update assumes the military would capture 70 percent of the units in these complexes, or 385 suitable units in 2010. By comparison, the 2005 HMA projected that the military would capture about 150 suitable units in these complexes.

These results are based on the OSD-approved methodology for conducting housing requirements and market analyses. A principal assumption of the methodology is that military members obtain their proportionate share of rental housing within a market area. This proportionate share, or capture rate, is based on the percentage that military rental housing demand is of total rental housing demand within a market area. The capture rate, however, can be influenced by proactive off-post housing referral programs undertaken by the installation's housing office. These programs could effectively increase market shares in select housing segments, particularly in the two-bedroom apartment market segment in which units are most readily available and affordable to military personnel. Assuming these programs result in increased military market shares in the two-bedroom market segment, the requirement for on-post two-bedroom rental units would be reduced. This would result in a lower total requirement for on-post family housing.

HOUSING MARKET TRENDS

The housing market area for Fort Wainwright includes those communities within a safe 30-minute commute of the installation's principal work areas. Figure 2 shows the housing market area for Fort Wainwright. The market area includes most of Fairbanks proper to the west of the post and the unincorporated areas east of the post. This market area is identical to that reported in the Final 2005 HMA.

Figure 2. Housing Market Area, Fort Wainwright



Key indicators of local housing demand (total population, household population, average household size, and owner- and renter-occupied housing units) are displayed in Table 2. The projections to 2010 are identified as "baseline" projections, and assume on-post housing is used at its recent actual rate. The current total population of the housing market area is estimated to be 51,046 persons, while the household population is estimated to total 49,755 persons. Population grew at an annual average rate of 0.6 percent between 2000 and 2005, and is projected to grow 0.8 percent per year through 2010 (Alaska Department of Labor and Workforce Development, 2004; and Fairbanks North Star Borough Community Research Center, 2004). Average household size has been decreasing since 1990, and this trend is expected to continue through 2010. The occupied housing stock is currently estimated to total 19,601 units, of which 11,044 units (56.3 percent) are estimated to be owner-occupied and 8,557 units (43.7 percent) are estimated to be renter-occupied.

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Table 2. Recent Trends and Baseline Projections of Housing Demand, 1990, 2000, 2005, and 2010

Housing Market Indicator	1990	2000	2005	2010
Total Population	46,971	49,445	51,046	53,136
Average Annual Change (%)	N.A.	0.5%	0.6%	0.8%
Household Population	45,569	48,195	49,755	51,793
Average Annual Change (%)	N.A.	0.6%	0.6%	0.8%
Average Household Size	2.61	2.56	2.54	2.51
Occupied Housing Units	17,460	18,836	19,601	20,607
Average Annual Change (%)	N.A.	0.8%	0.8%	1.0%
Owner-Occupied Units	8,721	10,365	11,044	11,939
Percent of Baseline Total	49.9%	55.0%	56.3%	57.9%
Renter-Occupied Units	8,739	8,472	8,557	8,668
Percent of Baseline Total	50.1%	45.0%	43.7%	42.1%

Source: U.S. Bureau of the Census, 1991, 2002, and 2005; Alaska Department of Labor and Workforce Development, 2004; Fairbanks North Star Borough, Community Research Center, 2004; and estimates prepared for this study.

Market area housing supply indicators (total housing units, single-family units, multiple-family units, and manufactured homes) are displayed in Table 3. The current housing stock is estimated to total 21,657 units, having increased by an average of 166 units (0.8 percent) annually since 2000. Single-family units represent 55.2 percent of the total, while multi-family units constitute 39.7 percent, and manufactured homes 5.1 percent, of the total.

Table 3. Recent Trends and Baseline Projections of Housing Supply, 1990, 2000, 2005, and 2010

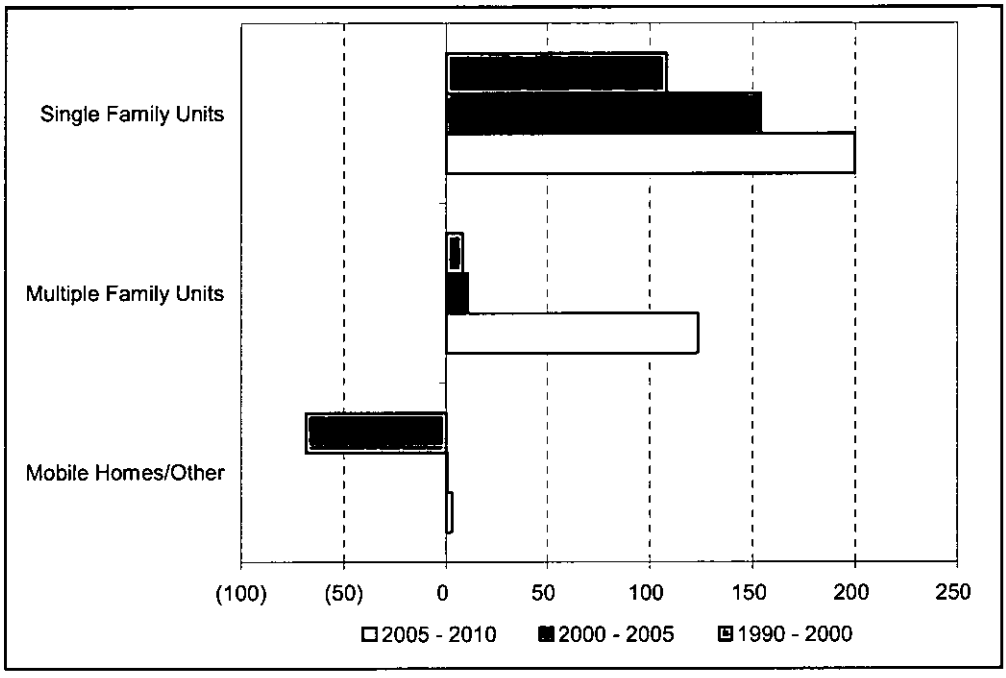
Housing Market Indicator	1990	2000	2005	2010
Total Housing Units	20,348	20,827	21,657	23,289
Average Annual Change (#)	N.A.	48	166	326
Average Annual Change (%)	N.A.	0.2%	0.8%	1.5%
Share of Total Housing (%)	100.0%	100.0%	100.0%	100.0%
Single Family Units	10,098	11,180	11,949	12,947
Average Annual Change (#)	N.A.	108	154	200
Share of Total Housing (%)	49.6%	53.7%	55.2%	55.6%
Multiple Family Units	8,457	8,540	8,594	9,211
Average Annual Change (#)	N.A.	8	11	123
Share of Total Housing (%)	41.6%	41.0%	39.7%	39.6%
Manufactured/Trailers/Other	1,793	1,108	1,114	1,131
Average Annual Change (#)	N.A.	(68)	1	3
Share of Total Housing (%)	8.8%	5.3%	5.1%	4.9%

Source: U.S. Bureau of the Census, 2002; and estimates prepared for this study.

Currently, Fort Wainwright leases 550 section 801 housing units, 400 on post (the Birchwood complex) and 150 off post (Walden Estates), for the exclusive use of military families. For the purposes of this study all leases are assumed to expire by 2010, as scheduled, at which time these leased units would convert from military housing to market-rate community housing. These units are included in the private-sector rental housing stock in 2010.

Housing units are forecast to continue increasing through 2010 at a rate of 1.5 percent per year, including the addition of the 550 units that are currently leased. Figure 3 plots the recent actual and future projected changes in the market area housing stock by type of structure.

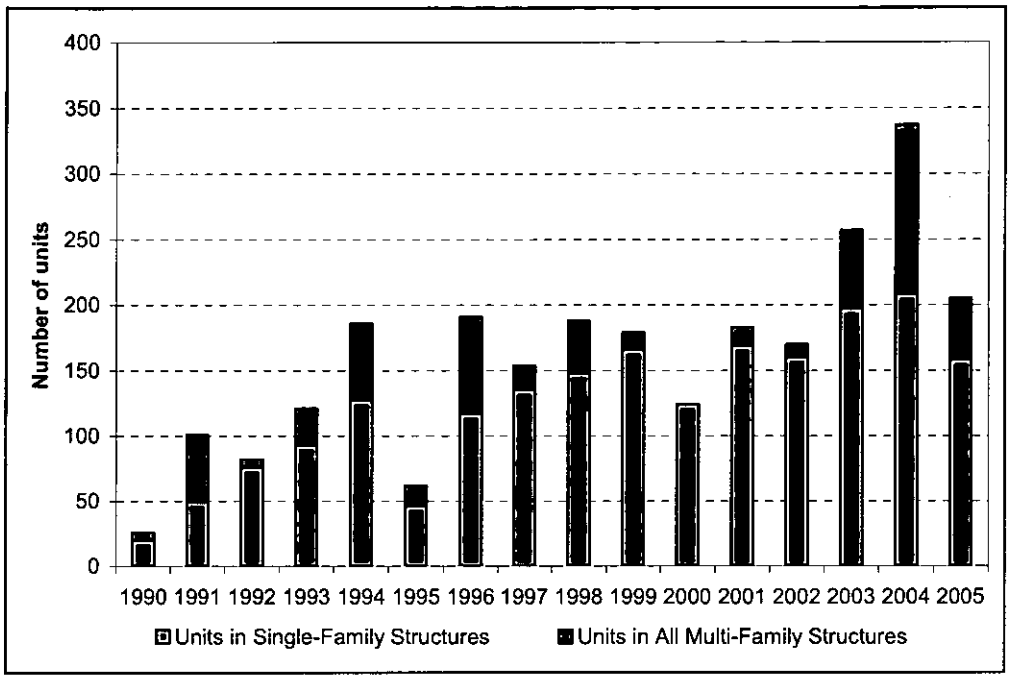
Figure 3. Recent Trends and Baseline Projections of Changes in Housing Supply, 1990, 2000, 2005, and 2010



Source: Estimates prepared for this study.

Figure 4 plots the trend in building permits for the Fairbanks North Star Borough by type of unit from 1990 to 2005. The total number of units permitted increased substantially in 2003 and peaked in 2004.

Figure 4. Annual Residential Building Permits, Fairbanks North Star Borough, 1990-2005



Note: Building permit data for 2005 are estimated based on data through October.
Source: U.S. Bureau of the Census, 2005.

Housing demand and housing supply together determine vacancy rates in the market area. Vacancy rates for key segments of the housing market are presented in Table 4. The total vacancy rate is currently estimated at 9.5 percent. Units for sale are estimated to have a current vacancy rate of 3.8 percent. The current rental vacancy rate is estimated to be 9.0 percent based on data provided by local property managers. The market area rental vacancy rate is lower than it was in 2000. Rental vacancy rates in the Fort Wainwright market area are also lower than the current U.S. average rental vacancy rate of 9.9 percent (U.S. Bureau of the Census, 2005). The vacancy rate for all other vacant units (units rented or sold but not yet occupied; held for seasonal, recreational, or other uses; reserved for migrant workers, or other vacant units) is currently estimated to be 3.6 percent.

Without the simulated military transition from government-provided housing into private-sector units, rental vacancy rates would increase to 13.9 percent in 2010. This increase reflects the addition of the 550 leased units to the market area rental housing stock. The data displayed in the tables are baseline projections which reflect conditions in the absence of the simulated transition of military families into private sector housing. The simulated transition of military families into the community is projected to reduce the 2010 rental vacancy rate to 9.0 percent, which is the estimated market-equilibrium vacancy rate.

Table 4. Recent Trends and Baseline Projections of Housing Vacancies, 1990, 2000, 2005, and 2010

Housing Market Indicator	1990	2000	2005	2010
Total Vacant Units	2,888	1,991	2,056	2,682
Total Vacancy Rate	14.2%	9.6%	9.5%	11.5%
Vacant Units for Sale	520	177	432	461
For Sale Vacancy Rate	5.6%	1.7%	3.8%	3.7%
Vacant Units for Rent	1,046	1,183	846	1,396
Rental Vacancy Rate	10.7%	12.3%	9.0%	13.9%
Other Vacant Units	1,323	631	778	825
Vacancy Rate	6.5%	3.0%	3.6%	3.5%

Note: Other vacant units include units rented or sold but not yet occupied; boarded-up units; units held for seasonal or recreational use; units held for migrant workers; and other units.
Source: U.S. Bureau of the Census, 2002; and estimates prepared for this study.

HOUSING ALLOWANCES AND MAXIMUM ACCEPTABLE HOUSING COSTS

By OSD standards, to be suitably housed military members must pay no more than the Maximum Acceptable Housing Cost (MAHC) for a rental unit. This MAHC amount varies by pay grade and is equal, as of 2005, to the Basic Allowance for Housing (BAH) that military personnel residing in community housing receive in addition to basic pay. Table 5 displays the 2005 BAH (MAHC) amounts by grade and accompaniment status.

Table 5. Basic Allowance for Housing (BAH)/Maximum Acceptable Housing Cost (MAHC), With and Without Dependents, 2005

Pay Grade	With Dependents BAH/MAHC	Without Dependents BAH/MAHC
O7 & Above	$1,951	$1,629
O6	$1,929	$1,613
O5	$1,913	$1,545
O4	$1,788	$1,500
O3	$1,611	$1,328
O2	$1,489	$1,117
O1	$1,433	$947
W5	$1,756	$1,510
W4	$1,679	$1,443
W3	$1,613	$1,300
W2	$1,555	$1,206
W1	$1,491	$1,011
E9	$1,661	$1,292
E8	$1,583	$1,207
E7	$1,535	$1,057
E6	$1,491	$961
E5	$1,426	$881
E4	$1,153	$747
E3	$1,153	$747
E2	$1,153	$747
E1	$1,153	$747

Source: U.S. Department of Defense, 2005.

DISTRIBUTION OF MARKET AREA RENTAL UNITS

Table 6 and Table 7 present the distribution of the current and projected total rental housing supply (occupied and vacant-for-rent units) by monthly rental costs and number of bedrooms. The cost bands were established based on minimum, maximum, and median rental costs in the market area and the upper and lower bounds of BAH (MAHC). The allocation of the market area rental units among the rental cost bands is based on classified listings of apartments and houses for rent from the *Fairbanks Daily News-Miner,* rental lists from area real estate agents and property managers, and the Fort Wainwright housing referral list. Utility costs were estimated from interviews with area property managers and data provided by the Interior Regional Housing Authority of Fairbanks (2004). Renter's insurance costs were estimated from quotes obtained from an area insurance provider, and are the same as those presented in the 2005 HMA.

Table 6. Total Rental Housing Supply (Occupied and Vacant for Rent), 2005

	Number of Bedrooms					
Rental Cost	Studios	One	Two	Three	Four+	Total
Above$1800	-	-	15	43	164	222
$1701 - $1800	-	-	10	70	46	126
$1601 - $1700	-	-	2	87	25	114
$1501 - $1600	-	-	62	86	10	158
$1401 - $1500	-	-	149	160	52	361
$1301 - $1400	-	-	335	135	52	522
$1201 - $1300	8	21	597	312	23	961
$1101 - $1200	33	87	976	160	3	1,259
$1001 - $1100	163	421	553	147	7	1,291
$901 - $1000	314	821	572	16	1	1,724
$900 & Below	655	1,709	290	11	-	2,665
Total	**1,173**	**3,059**	**3,561**	**1,227**	**383**	**9,403**

Source: Estimates prepared for this study.

Table 7. Total Rental Housing Supply (Occupied and Vacant for Rent), With Military Transition, 2010

	Number of Bedrooms					
Rental Cost	Studios	One	Two	Three	Four+	Total
Above$1800	-	-	16	49	163	228
$1701 - $1800	-	-	10	81	50	140
$1601 - $1700	-	-	4	106	32	142
$1501 - $1600	-	-	98	173	55	326
$1401 - $1500	-	-	243	292	148	683
$1301 - $1400	-	-	476	299	152	927
$1201 - $1300	8	21	696	390	60	1,174
$1101 - $1200	34	89	1,106	189	17	1,436
$1001 - $1100	167	436	764	203	34	1,604
$901 - $1000	325	847	637	26	7	1,842
$900 & Below	676	1,763	306	11	-	2,756
Total	**1,210**	**3,156**	**4,357**	**1,817**	**718**	**11,258**

Source: Estimates prepared for this study.

The market area has a wide range of rental opportunities, which can be summarized as follows:

- Based on a sample of 1,203 rental units, with rents ranging from $265 to $1,200 per month, the estimated median rent for one-bedroom units is $776 per month. Utility costs are estimated to average $73 per month. Renter's insurance costs are estimated to be $19 per month. Median rent plus utilities plus renter's insurance is thus estimated to be $868 per month for a one-bedroom rental. In the 2005 HMA, median rent plus utilities plus renter's insurance for one-bedroom units was estimated at $992 based on a sample of 1,204 one bedroom units that met the size requirement as well as two bedroom units that were not large enough to meet the size requirement for two bedroom units as per the arctic space requirement (Robert D. Niehaus, Inc., 2005).

- Based on a sample of 1,322 rental units, with rents ranging from $425 to $1,800 per month, the estimated median rent for two-bedroom units is $922 per month. Utility costs are estimated at

$181 per month. Renter's insurance costs are estimated to be $21 per month. Median rent plus utilities plus renter's insurance is thus estimated to be $1,124 per month for a two-bedroom rental. In the 2005 HMA, median rent plus utilities plus renter's insurance for two-bedroom units was estimated at $1,226 based on a sample of 453 units that met the arctic space requirement (Robert D. Niehaus, Inc., 2005)

- Based on a sample of 394 rental units, with rents ranging from $590 to $2,250 per month, the estimated median rent for three-bedroom units is $1,045 per month. Utility costs are estimated to average $197 per month. Renter's insurance costs are estimated to be $22 per month. Median rent plus utilities plus renter's insurance consequently is estimated to be $1,264 per month for a three-bedroom rental. In the 2005 HMA, median rent plus utilities plus renter's insurance for three-bedroom units was estimated at $1,670 based on a sample of 89 units that met the arctic space requirement (Robert D. Niehaus, Inc., 2005)

- Based on a sample of 55 rental units, with rents ranging from $950 to $1,950 per month, the estimated median rent for units with four or more bedrooms is $1,425 per month. Utility costs are estimated to average $393 per month. Renter's insurance costs were estimated to be $26 per month, so median rent plus utilities plus renter's insurance is estimated to be $1,844 per month for a rental unit with at least four bedrooms. In the 2005 HMA, median rent plus utilities plus renter's insurance for units with four or more bedrooms was estimated at $1,914 based on a sample of 36 units that met the arctic space requirement (Robert D. Niehaus, Inc., 2005)

This analysis uses an estimate of 19.2 percent of the rental inventory as unsuitable by DoD criteria, reflecting an average of the available published and interview data for market area communities compiled for the 2005 HMA (Robert D. Niehaus, Inc., 2005). This percentage was scaled across all market-area units such that the largest shares of poor-quality units were in the lowest cost ranges. Table 8 presents the percentage distribution of unsuitable units across bedroom types and cost band segments for market area rental units.

Table 8. Percentage of Rental Housing Unsuitable, by Rental Cost and Bedrooms, 2005

	Number of Bedrooms				
Rental Cost	**Studios**	**One**	**Two**	**Three**	**Four+**
Above$1800	100.0%	0.0%	0.0%	1.0%	4.0%
$1701 - $1800	100.0%	0.0%	1.0%	2.0%	9.0%
$1601 - $1700	100.0%	0.0%	3.0%	5.0%	13.0%
$1501 - $1600	100.0%	0.0%	5.0%	7.0%	20.0%
$1401 - $1500	100.0%	0.0%	7.0%	11.0%	25.0%
$1301 - $1400	100.0%	0.0%	9.0%	15.0%	35.0%
$1201 - $1300	100.0%	10.0%	11.0%	20.0%	55.0%
$1101 - $1200	100.0%	13.0%	16.0%	28.0%	80.0%
$1001 - $1100	100.0%	16.0%	22.0%	41.0%	90.0%
$901 - $1000	100.0%	18.0%	31.0%	55.0%	100.0%
$900 & Below	100.0%	21.0%	41.0%	80.0%	100.0%

Source: Estimates prepared for this study.

The suitable rental housing supply is the total rental supply (occupied and vacant units for rent) less the unsuitable rental housing supply less the suitable natural vacant units. Under current guidance for preparing housing studies for military installations, vacant units for rent are only included in the suitable

rental housing supply to the extent the number of vacant units exceeds a natural, equilibrium, or "market-clearing" level of vacancies. There is a natural vacancy rate below which there is upward pressure on rental prices at a rate greater than the general rate of price inflation. Natural vacancies are not considered part of the available supply for market area households. In the Fort Wainwright market area, the current actual rental vacancy rate of 9.0 percent is at the equilibrium level.

In 2010, after the 550 units are added to the housing stock, but without the simulated transition of military families into private-sector units, the vacancy rate in the rental housing market is projected to be 13.9 percent. As military families transition, the rental vacancy rate is assumed to fall to the equilibrium level of 9.0 percent.

The distribution of the suitable rental housing supply in the Fort Wainwright market area by cost band and bedrooms is presented in Table 9 for 2005 and in Table 10 for 2010.

Table 9. Suitable Rental Housing Supply, Fort Wainwright Housing Market Area, 2005

	Number of Bedrooms					
Rental Cost	Studios	One	Two	Three	Four+	Total
Above$1800	-	-	14	39	136	189
$1701 - $1800	-	-	9	62	36	107
$1601 - $1700	-	-	2	75	19	96
$1501 - $1600	-	-	53	73	8	134
$1401 - $1500	-	-	129	131	37	297
$1301 - $1400	-	-	281	105	33	419
$1201 - $1300	-	17	483	226	10	736
$1101 - $1200	-	69	742	104	1	916
$1001 - $1100	-	323	393	79	1	796
$901 - $1000	-	613	358	7	-	978
$900 & Below	-	1,228	155	2	-	1,385
Total	**-**	**2,250**	**2,619**	**903**	**281**	**6,053**

Source: Estimates prepared for this study.

Table 10. Suitable Rental Housing Supply, Fort Wainwright Housing Market Area, 2010

	Number of Bedrooms					
Rental Cost	Studios	One	Two	Three	Four+	Total
Above$1800	-	-	15	46	149	210
$1701 - $1800	-	-	9	76	45	129
$1601 - $1700	-	-	4	96	28	128
$1501 - $1600	-	-	88	156	50	294
$1401 - $1500	-	-	218	243	125	586
$1301 - $1400	-	-	414	238	115	767
$1201 - $1300	-	18	582	291	35	925
$1101 - $1200	-	73	867	130	7	1,077
$1001 - $1100	-	341	558	115	7	1,021
$901 - $1000	-	654	404	11	-	1,069
$900 & Below	-	1,296	165	2	-	1,464
Total	**-**	**2,382**	**3,325**	**1,402**	**561**	**7,670**

Source: Estimates prepared for this study.

MILITARY PERSONNEL AND THEIR HOUSING REQUIREMENTS

Tables 11 and 12 display the military personnel data used in this analysis for 2005 and 2010 respectively. These data were derived from ASIP and G3 personnel reports provided by Headquarters, Department of the Army. The data from the ASIP reports (SAMAS as of 29 June 2005) for Fort Wainwright were adjusted for BRAC changes using data from the 17 August 2005 G3 Force File (Headquarters, Department of the Army, 2005). The G3 data added a net total of 949 soldiers to the personnel totals derived from the ASIP reports for the projected year (2010). Personnel counted for this study include those assigned to Fort Wainwright (station code 02955), and Fort Wainwright USARC (station code 0295C).

Table 11. Military Personnel by Accompaniment Status and Bedroom Entitlements, Fort Wainwright, 2005

	Number of Bedrooms			Military	Military	Voluntary		Permanent Party
Pay Grade	Two	Three	Four+	Families	Couples	Separations	Bachelors	Personnel
O7 & Above	-	-	-	-	-	-	-	-
O6	-	-	5	5	1	-	2	8
O5	-	13	8	21	-	-	1	22
O4	-	39	22	61	-	-	4	65
O3	79	54	42	175	-	3	-	178
O2	43	8	14	65	3	-	68	136
O1	14	2	3	19	-	-	7	26
Officers	136	116	94	346	4	3	82	435
W5	-	-	-	-	-	-	-	-
W4	-	6	3	9	-	-	-	9
W3	13	10	11	34	-	-	-	34
W2	12	33	19	64	-	-	-	64
W1	7	2	2	11	-	-	-	11
Warrants	32	51	35	118	-	-	-	118
E9	-	7	7	14	-	-	-	14
E8	-	48	9	57	-	3	-	60
E7	-	141	74	215	7	4	1	227
E6	163	230	185	578	9	15	18	620
E5	256	220	166	642	7	28	203	880
E4	239	103	63	405	14	36	673	1,128
E3	164	32	11	207	5	9	782	1,003
E2	15	5	-	20	-	1	126	147
E1	7	1	1	9	-	3	52	64
Enlisted	844	787	516	2,147	42	99	1,855	4,143
Total	**1,012**	**954**	**645**	**2,611**	**46**	**102**	**1,937**	**4,696**

Source: Estimates prepared for this study using data from Fort Wainwright Housing Office, 2005; and Headquarters, Department of the Army, 2005.

Table 12. Military Personnel by Accompaniment Status and Bedroom Entitlements, Fort Wainwright, 2010

Pay Grade	Number of Bedrooms Two	Three	Four+	Military Families	Military Couples	Voluntary Separations	Bachelors	Permanent Party Personnel
O7 & Above	-	-	-	-	-	-	-	-
O6	-	-	7	7	1	-	3	11
O5	-	19	11	30	-	-	1	31
O4	-	56	31	87	-	-	6	93
O3	115	78	61	254	-	4	-	258
O2	62	12	20	94	4	-	98	196
O1	20	3	4	27	-	-	10	37
Officers	197	168	134	499	5	4	118	626
W5	-	-	-	-	-	-	-	-
W4	-	17	9	26	-	-	-	26
W3	40	31	34	105	-	-	-	105
W2	37	101	57	195	-	-	-	195
W1	20	6	6	32	-	-	-	32
Warrants	97	155	106	358	-	-	-	358
E9	-	11	11	22	-	-	-	22
E8	-	73	14	87	-	5	-	92
E7	-	216	114	330	11	6	2	349
E6	250	353	285	888	14	23	28	953
E5	394	339	255	988	11	43	312	1,354
E4	368	158	97	623	22	55	1,036	1,736
E3	252	49	17	318	8	14	1,203	1,543
E2	22	8	-	30	-	2	195	227
E1	10	1	2	13	-	5	80	98
Enlisted	1,296	1,208	795	3,299	66	153	2,856	6,374
Total	**1,590**	**1,531**	**1,035**	**4,156**	**71**	**157**	**2,974**	**7,358**

Source: Estimates prepared for this study using data from the Fort Wainwright Housing Office, 2005; and Headquarters, Department of the Army, 2005.

FLOOR REQUIREMENTS, ACCOMPANIED PERSONNEL

For accompanied personnel, current OSD guidance allows a projected minimum on-post housing requirement, or the floor requirement, as the greatest of four criteria for each pay grade:

- **Military On-Post Community** – Ten percent of the effective accompanied housing requirement, for each grade, with a minimum of one on-post housing unit for any pay grade for which there is an effective accompanied housing requirement of at least one unit. The floor requirement is initially calculated assuming there is no military community component (a zero percent factor rather than 10 percent). If the total requirement for on-post military family housing for any individual pay grade is less than 10 percent of the effective number of families in that grade, the total requirement in that grade is then increased so the total requirement is 10 percent of the effective number of families.
- **Key and Essential Personnel** – All key and essential, or Priority 1, personnel.
- **Historic Housing** – On-post family housing listed on or eligible for listing on the National Register of Historic Places under the National Historic Preservation Act.

- **Quality of Life** – Members whose Regular Military Compensation (RMC) falls below 50 percent of the median family income in the market area. Annual median family income as published by the U.S. Department of Housing and Urban Development (2005) for the Fairbanks North Star Borough is $69,700 in 2005. One-half of this amount is $34,850. Annual RMC by grade and the factors used to calculate RMC are presented in Table 13. The RMC for E1 personnel is below 50 percent of the estimated median family income in the housing market area and thus E1 families are included in the quality of life requirement.

Table 13. Regular Military Compensation, Fort Wainwright, 2005

Pay Grade	Annual Basic Pay	Annual Local BAH	Annual BAS	Annual Allowances	National Avg. Ann Allow	National Avg. Tax Adv.	National Avg. Tax Adv.%	Local Tax Adv	Annual RMC
O7 & Above	$117,150	$23,412	$2,208	$25,620	$29,041	$10,312	35.5%	$9,097	$151,867
O6	$99,076	$23,148	$2,208	$25,356	$25,859	$8,619	33.3%	$8,451	$132,883
O5	$80,304	$22,956	$2,208	$25,164	$24,444	$7,752	31.7%	$7,981	$113,449
O4	$68,394	$21,456	$2,208	$23,664	$21,945	$5,576	25.4%	$6,013	$98,071
O3	$52,610	$19,332	$2,208	$21,540	$18,963	$3,438	18.1%	$3,906	$78,055
O2	$40,258	$17,868	$2,208	$20,076	$16,664	$2,916	17.5%	$3,513	$63,847
O1	$29,414	$17,196	$2,208	$19,404	$14,785	$2,321	15.7%	$3,046	$51,863
W5	$72,766	$21,072	$2,208	$23,280	$20,345	$5,879	28.9%	$6,727	$102,773
W4	$64,249	$20,148	$2,208	$22,356	$19,080	$4,150	21.8%	$4,863	$91,467
W3	$52,962	$19,356	$2,208	$21,564	$18,643	$3,304	17.7%	$3,822	$78,347
W2	$43,719	$18,660	$2,208	$20,868	$17,518	$3,077	17.6%	$3,666	$68,253
W1	$36,793	$17,892	$2,208	$20,100	$15,250	$2,582	16.9%	$3,404	$60,296
E9	$59,037	$19,932	$3,206	$23,138	$20,744	$4,112	19.8%	$4,587	$86,762
E8	$47,797	$18,996	$3,206	$22,202	$19,356	$3,416	17.6%	$3,918	$73,918
E7	$40,601	$18,420	$3,206	$21,626	$18,456	$3,229	17.5%	$3,783	$66,010
E6	$33,300	$17,892	$3,206	$21,098	$17,839	$2,931	16.4%	$3,466	$57,864
E5	$26,661	$17,112	$3,206	$20,318	$15,899	$2,305	14.5%	$2,946	$49,925
E4	$21,426	$13,836	$3,206	$17,042	$14,703	$1,878	12.8%	$2,177	$40,645
E3	$17,945	$13,836	$3,206	$17,042	$15,199	$1,765	11.6%	$1,979	$36,966
E2	$16,614	$13,836	$3,206	$17,042	$14,854	$1,647	11.1%	$1,889	$35,545
E1	$14,821	$13,836	$3,206	$17,042	$14,929	$1,375	9.2%	$1,569	$33,433

Source: U.S Department of Defense, 2005.

Table 14 displays the floor requirement for accompanied personnel by criterion.

Table 14. Floor Requirements by Criterion, Accompanied Personnel, 2010

Pay Grade	Military Families	Military Community	Key and Essential	Historic Units	Quality of Life	Floor Requirement
O7 & Above	-	-	-	-	-	-
O6	7	-	6	1	-	6
O5	30	-	7	-	-	7
O4	87	-	1	-	-	1
O3	254	-	-	-	-	-
O2	94	-	-	-	-	-
O1	27	-	-	-	-	-
Officers	499	-	14	1	-	14
W5	-	-	-	-	-	-
W4	26	-	-	-	-	-
W3	105	-	-	-	-	-
W2	195	-	-	-	-	-
W1	32	-	-	-	-	-
Warrants	358	-	-	-	-	-
E9	22	-	6	-	-	6
E8	87	-	-	-	-	-
E7	330	-	-	-	-	-
E6	888	-	-	-	-	-
E5	988	-	-	-	-	-
E4	623	-	-	-	-	-
E3	318	-	-	-	-	-
E2	30	-	-	-	-	-
E1	13	-	-	-	13	13
Enlisted	3,299	-	6	-	13	19
Total	**4,156**	**-**	**20**	**1**	**13**	**33**

Source: Estimates prepared for this study using data from Robert D. Niehaus, Inc., 2005.

Table 15 presents the floor requirement by number of bedrooms.

Table 15. Floor Requirements by Bedrooms, Accompanied Personnel, 2010

	Number of Bedrooms			
Pay Grade	**Two**	**Three**	**Four+**	**Total**
O7 & Above	-	-	-	-
O6	-	-	6	6
O5	-	-	7	7
O4	-	1	-	1
O3	-	-	-	-
O2	-	-	-	-
O1	-	-	-	-
Officers	-	1	13	14
W5	-	-	-	-
W4	-	-	-	-
W3	-	-	-	-
W2	-	-	-	-
W1	-	-	-	-
Warrants	-	-	-	-
E9	-	-	6	6
E8	-	-	-	-
E7	-	-	-	-
E6	-	-	-	-
E5	-	-	-	-
E4	-	-	-	-
E3	-	-	-	-
E2	-	-	-	-
E1	10	1	2	13
Enlisted	10	1	8	19
Total	**10**	**2**	**21**	**33**

Source: Estimates prepared for this study using data from Robert D. Niehaus, Inc., 2005.

COMMUNITY HOUSING REQUIREMENTS

Total potential community housing demand is defined for 2005 as those families in excess of the current occupants of government-controlled housing, and for 2010 as those families in excess of the projected floor requirement. An estimated 1,819 military families currently live in government-controlled housing. For 2010, only the 33 families comprising the floor requirement are assumed to reside on post. All families in excess of these on-post occupants are considered to be requirements for community housing (U.S. Department of Defense, 2003). Families seeking housing in the community are estimated to total 792 in 2005 and 4,123 in 2010 (Table 16 and Table 17).

Table 16. Community-First Accompanied Housing Requirements, 2005

2005 Pay Grade	Number of Bedrooms Two	Three	Four+	Total
O7 & Above	-	-	-	-
O6	-	-	-	-
O5	-	2	2	4
O4	-	22	12	34
O3	31	4	10	45
O2	26	4	9	39
O1	1	-	-	1
Officers	58	32	33	123
W5	-	-	-	-
W4	-	2	2	4
W3	8	6	7	21
W2	4	9	6	19
W1	5	2	2	9
Warrants	17	19	17	53
E9	-	-	-	-
E8	-	16	-	16
E7	-	29	12	41
E6	115	90	97	302
E5	118	18	64	200
E4	14	18	12	44
E3	8	2	1	11
E2	1	1	-	2
E1	-	-	-	-
Enlisted	256	174	186	616
Total	**331**	**225**	**236**	**792**

Source: Estimates prepared for this study.

Table 17. Community-First Accompanied Housing Requirements, 2010

2010 Pay Grade	Number of Bedrooms Two	Three	Four+	Total
O7 & Above	-	-	-	-
O6	-	-	1	1
O5	-	19	4	23
O4	-	55	31	86
O3	115	78	61	254
O2	62	12	20	94
O1	20	3	4	27
Officers	197	167	121	485
W5	-	-	-	-
W4	-	17	9	26
W3	40	31	34	105
W2	37	101	57	195
W1	20	6	6	32
Warrants	97	155	106	358
E9	-	11	5	16
E8	-	73	14	87
E7	-	216	114	330
E6	250	353	285	888
E5	394	339	255	988
E4	368	158	97	623
E3	252	49	17	318
E2	22	8	-	30
E1	-	-	-	-
Enlisted	1,286	1,207	787	3,280
Total	**1,580**	**1,529**	**1,014**	**4,123**

Source: Estimates prepared for this study.

The number of homeowners was estimated using data from the 1997 Variable Housing Allowance (VHA) Survey for the area adjusted for changes in housing affordability. Numerous factors determine the extent of homeownership at a military installation. Simple comparisons of housing allowances to home prices are not sufficient to explain changes in homeownership. A more precise measurement of affordability is needed. Table 18 presents a method for calculating changes in affordability of home ownership for Fort Wainwright personnel between 1997 (the data of the most recent VHA survey) and the present time. This method can then be used to adjust the survey data relationships to the present time. If all other factors – availability of jobs for spouses, attractiveness of the area for retirement or multiple tours of duty, expected home price appreciation, extent of favorable tax treatment of homeownership – remained the same between 1997 and the present, the adjustment for the change in affordability could potentially provide an accurate measure of current homeownership.

This adjustment has two components. First, it is necessary to determine how much the affordability of home ownership for military personnel has changed between 1997 and the present. This requires comparison of homeownership costs to housing allowances. Second, it is necessary to estimate how sensitive military homeowners are to any given change in affordability.

Table 18. Military Homeownership Affordability Analysis, Fort Wainwright

Indicator	Comment/description	1997	2005	2010
Purchase Price	Average sales price of single-family home, projection to 2010 assumes 4%/year increase	$ 119,798	$ 197,500	$ 240,289
Down Payment	Assumed to be 10% of Purchase Price; varies with use of VHA financing, other factors	$ 11,980	$ 19,750	$ 24,029
Loan Amount	Purchase Price less Down Payment	$ 107,818	$ 177,750	$ 216,260
Interest Rate	Annual average yield on new home mortgages as compiled by Federal Reserve Board; 2010 projection assumes moderate increase in rates	7.71%	6.01%	7.30%
Monthly Payment	Assumes 30-year fixed rate loan	$ 769	$ 1,067	$ 1,483
Property Taxes	Annual amount assumed to be 1.5% of purchase price; shown as $/month	$ 150	$ 247	$ 300
Insurance	Annual amount assumed to be 0.75% of purchase price; shown as $/month	$ 75	$ 123	$ 150
Utility Costs	2005 cost is for a 3-BR unit as estimated for this analysis; 1997 is indexed from CPI; 2010 projection assumes 2.6%/year increases	$ 146	$ 197	$ 224
Monthly Cost	Loan payment plus property taxes plus insurance plus utilities	$ 1,140	$ 1,634	$ 2,157
Military Allowances	Weighted average housing allowance for military personnel, $/month	$ 889	$ 1,421	$ 1,838
Affordability Gap ($)	Monthly Cost minus military allowance equals cost to be borne from base pay or other income (spouse, second job, etc.)	$ 252	$ 213	$ 320
Affordability Gap (%)	Monthly Cost as a percent of military allowance	128.31%	115.00%	117.39%
Adjustment Factor	Relative Change in Affordabilty Gap (%)	100.00%	89.63%	91.49%

Note: Total settlement/escrow costs are not shown.
Sources: U.S. Bureau of Labor Statistics, 2005; Alaska Housing Finance Corporation, 2004; Greater Fairbanks Board of Realtors, 2005; Council of Economic Advisors, 2005; and estimates prepared for this study.

The pro forma analysis starts with an estimate of the annual change in home prices between 1997 and the present. The calculations shown in Table 18 use the median price of a single-family home in Fairbanks as reported by the Greater Fairbanks Board of Realtors (2005). Home prices have increased at an average rate of 6.4 percent per year from 1997 through 2005. Assuming a 10 percent down payment, it is possible to calculate the amount of the mortgage carried by the purchaser. The trend in home mortgage rates is determined using the annual average yield on new home mortgages as compiled by the Federal Reserve Board (note the reduction of 170 basis points between 1997 and the 2005). This

reduction in borrowing costs makes it possible to afford a larger mortgage with any given budget in 2005 compared to 1997.

Assuming a 30-year fixed rate loan, it is possible to calculate monthly costs of principal and interest on the loan. Allowances are then made for property taxes, insurance, and utility costs to determine the total monthly cost of homeownership. Comparing this cost to the weighted average housing allowance in 1997 and 2005 for personnel with dependents allows calculation of an Affordability Gap in dollar terms. As shown in Table 18, this gap decreased from $252 in 1997 to $213 in 2005.

The Affordability Gap measured as a percent of the weighted average housing allowance is also shown. In 1997 Fort Wainwright personnel had to pay, on average, about 128 percent of the average housing allowance to cover the cost of owning a home. Since then, the weighted average housing allowance has risen faster than the cost of owning a home. As a result, the cost of owning a home in 2005 was about 115 percent of the average housing allowance. This is a decrease of 13 percentage points. The relative change in the Affordability Gap is a 10.4 percent decrease in this gap between 1997 and 2005 (see the Adjustment Factor shown as the last row in Table 18).

These factors are all forecast five years in advance to permit their use in the HMA. This requires assumptions about future interest rates, home prices, utility costs, and housing allowance escalation. Interest rates are assumed to increase moderately to 7.3 percent by 2010 following the interest rate trend forecast by the Congressional Budget Office (2005). Home prices are assumed to increase 4.0 percent per year, consistent with the projected rise in interest rates. Utility costs are assumed to increase 2.6 percent per year, consistent with the recent trend in the household utility component of the Consumer Price Index (CPI) for the Anchorage MSA (U.S Bureau of Labor Statistics, 2005). Weighted average housing allowances for Fort Wainwright military families increased 6.0 percent over the 1997 to 2005 period and are projected to increase at a rate of 5.3 percent over the forecast period.

Note that at Fort Wainwright the Affordability Gap as a percent of the military housing allowance increases by 2 percentage points over the period 2005 to 2010 (from about 115 percent of allowances in 2005 to about 117 percent of allowances in 2010). In other words, military homeownership is projected to be slightly less affordable in relative terms in 2010 than in 2005, due primarily to the projected increase in housing prices and mortgage rates from 2005 to 2010.

The purpose of the analysis shown in Table 18 is to calculate and forecast changes in affordability between 1997, the present, and the projection year. In addition, it is necessary to estimate how sensitive military home purchases are to these changes in cost. There is very little information available on which to base such an analysis. Therefore a formulaic estimate must be used until adequate data can be obtained. It is possible to calculate the change in homeownership propensities for each grade using the relative change in the affordability gap. Specifically, the share of off-post families that are not homeowners (that is, are renters) can be assumed to decline (or increase) proportionately with the relative affordability gap. Symbolically, this can be expressed as:

Current homeownership share = 1 – (1 – homeownership share in 1997) x
Relative affordability gap in the current year

This adjustment factor can then be applied to each grade's homeownership propensity as calculated from the 1997 VHA survey to estimate current homeowners. Applying the adjustment factor to 2010 data provides a projection of future homeowners given the assumed trends in home prices, housing

allowances, and interest rates. Use of this formula is necessarily judgmental, and should be considered a preliminary measure subject to revision based on availability of better data (preferably a local survey of military personnel).

Military homeowners were estimated for Fort Wainwright using this formula. The adjustment factor based on the relative gain in the affordability of homes, applied to the 1997 VHA survey, increases the number of homeowners at Fort Wainwright in 2005. Using the pro forma analysis, in the current year 15.9 percent of all families are estimated to own a home (416 homeowners; Table 19). In contrast, using the unadjusted 1997 VHA survey data to estimate current year (2005) homeowners, there would be 377 homeowners (reflecting 14.4 percent of all families). Using E7 personnel as an example, in the 1997 VHA survey for Fort Wainwright, 60.6 percent of off-post accompanied E7 personnel were homeowners. The adjustment process results in a 2005 homeownership rate for off-post E7 families of 64.7 percent (1-(1-60.6%)*89.63% = 64.7%).

At Fort Wainwright the monthly cost of owning a home is projected to increase at a rate only slightly faster than housing allowances over the 2005 to 2010 period, yielding virtually unchanged military homeownership rates between 2005 and 2010 as a result. In 2010, using the pro forma analysis it is projected that 16.0 percent of all families will be homeowners (666 homeowners; Table 20). In 2010, using the 1997 VHA survey without any adjustments it is projected that 14.9 percent of all families would be homeowners.

Military homeowners projected for 2010 are not affected by the definition of the floor requirement. All military members living on the installation in 2005 are considered renters. Therefore those personnel simulated to be part of the transition from on-post housing into community housing between 2005 and 2010 are treated as renters – they are transitioning from "renting" on-post housing to renting community housing.

Tables 19 and 20 present military family homeowners for 2005 and 2010. All homeowners are considered to be acceptably housed, regardless of the characteristics of the residence.

Table 19. Accompanied Homeowners, 2005

2005	Number of Bedrooms			
Pay Grade	Two	Three	Four+	Total
O7 & Above	-	-	-	-
O6	-	-	-	-
O5	-	2	2	4
O4	-	19	10	29
O3	23	3	7	33
O2	13	2	4	19
O1	-	-	-	-
Officers	36	26	23	85
W5	-	-	-	-
W4	-	2	2	4
W3	6	4	5	15
W2	2	4	3	9
W1	2	1	1	4
Warrants	10	11	11	32
E9	-	-	-	-
E8	-	12	-	12
E7	-	19	8	27
E6	67	52	56	175
E5	44	7	24	75
E4	3	4	2	9
E3	1	-	-	1
E2	-	-	-	-
E1	-	-	-	-
Enlisted	115	94	90	299
Total	**161**	**131**	**124**	**416**

Source: Estimates prepared for this study.

Table 20. Accompanied Homeowners, 2010

2010	Number of Bedrooms			
Pay Grade	Two	Three	Four+	Total
O7 & Above	-	-	-	-
O6	-	-	-	-
O5	-	3	3	6
O4	-	27	14	41
O3	33	4	10	47
O2	18	3	6	27
O1	-	-	-	-
Officers	51	37	33	121
W5	-	-	-	-
W4	-	6	6	12
W3	18	12	15	45
W2	6	12	9	27
W1	6	3	3	12
Warrants	30	33	33	96
E9	-	-	-	-
E8	-	18	-	18
E7	-	29	12	41
E6	101	79	85	265
E5	65	10	36	111
E4	4	6	3	13
E3	1	-	-	1
E2	-	-	-	-
E1	-	-	-	-
Enlisted	171	142	136	449
Total	**252**	**212**	**202**	**666**

Source: Estimates prepared for this study.

Tables 21 and 22 display military family renters for 2005 and 2010. These were computed as total families less those residing on the installation (in 2010, the floor requirement) less homeowners.

Table 21. Accompanied Renters, 2005

2005 Pay Grade	Number of Bedrooms Two	Three	Four+	Total
O7 & Above	-	-	-	-
O6	-	-	-	-
O5	-	-	-	-
O4	-	3	2	5
O3	8	1	3	12
O2	13	2	5	20
O1	1	-	-	1
Officers	22	6	10	38
W5	-	-	-	-
W4	-	-	-	-
W3	2	2	2	6
W2	2	5	3	10
W1	3	1	1	5
Warrants	7	8	6	21
E9	-	-	-	-
E8	-	4	-	4
E7	-	10	4	14
E6	48	38	41	127
E5	74	11	40	125
E4	11	14	10	35
E3	7	2	1	10
E2	1	1	-	2
E1	-	-	-	-
Enlisted	141	80	96	317
Total	**170**	**94**	**112**	**376**

Source: Estimates prepared for this study.

Table 22. Accompanied Renters, 2010

2010 Pay Grade	Number of Bedrooms Two	Three	Four+	Total
O7 & Above	-	-	-	-
O6	-	-	1	1
O5	-	16	1	17
O4	-	28	17	45
O3	82	74	51	207
O2	44	9	14	67
O1	20	3	4	27
Officers	146	130	88	364
W5	-	-	-	-
W4	-	11	3	14
W3	22	19	19	60
W2	31	89	48	168
W1	14	3	3	20
Warrants	67	122	73	262
E9	-	11	5	16
E8	-	55	14	69
E7	-	187	102	289
E6	149	274	200	623
E5	329	329	219	877
E4	364	152	94	610
E3	251	49	17	317
E2	22	8	-	30
E1	-	-	-	-
Enlisted	1,115	1,065	651	2,831
Total	**1,328**	**1,317**	**812**	**3,457**

Source: Estimates prepared for this study.

COMMUNITY HOUSING SHORTFALL

Military renters compete with civilian households for adequate rentals in the community. The military community housing shortfall is determined as the difference between the military's share of adequate quality rental housing in the private sector and the military rental requirement. One of the key factors in the capture of adequate units is the share of poor quality housing in the community rental inventory. As stated previously, an estimated 19.2 percent of the rental stock is unacceptable in quality by Army standards. When there is insufficient private sector rental housing of adequate quality in a cost band/bedroom category, a community shortfall exists in that cost band/bedroom category.

The analysis simulates the ability of the communities near the installation to absorb the potential transition of military families into private-sector housing over the five year study period. For purposes of this analysis it is assumed that the development community would partially respond to the potential increase in off-post renters by building additional units each year over the projected pace of residential

construction. Thus, the annual addition to the local community housing supply is assumed to expand by about 53 units per year over projected baseline growth in response to the transitioning families. Although this expansion creates additional units to absorb some of the families potentially transitioning into the private-sector, not all families are expected to find "suitable" units, since not all units in the market area are acceptable in quality by Army standards.

Another principal assumption of the methodology is that military members obtain their proportionate share of rental housing within a market area. This proportionate share, or capture rate, is based on the percentage that military rental housing demand is of total rental housing demand within a market area. By 2010, the 550 leased (801) units in the market area are assumed to become part of the private rental housing stock. For purposes of this analysis, since military families already occupy these units, it is assumed that 70 percent of the units would be occupied by military renters as soon as the units become part of the private rental housing stock.

Tables 23 and 24 display expected suitable rentals in 2005 and 2010.

Table 23. Expected Suitable Rentals for Accompanied Military Personnel, 2005

2005	Number of Bedrooms			
Pay Grade	Two	Three	Four+	Total
O7 & Above	-	-	-	-
O6	-	-	-	-
O5	-	-	-	-
O4	-	3	2	5
O3	8	1	3	12
O2	12	2	1	15
O1	1	-	-	1
Officers	21	6	6	33
W5	-	-	-	-
W4	-	-	-	-
W3	2	2	2	6
W2	2	5	2	9
W1	3	1	-	4
Warrants	7	8	4	19
E9	-	-	-	-
E8	-	3	-	3
E7	-	8	1	9
E6	43	33	17	93
E5	67	9	7	83
E4	8	8	-	16
E3	5	2	-	7
E2	1	1	-	2
E1	-	-	-	-
Enlisted	124	64	25	213
Total	**152**	**78**	**35**	**265**

Source: Estimates prepared for this study using data from Robert D. Niehaus, Inc., 2005.

Table 24. Expected Suitable Rentals for Accompanied Military Personnel, 2010

2010	Number of Bedrooms			
Pay Grade	Two	Three	Four+	Total
O7 & Above	-	-	-	-
O6	-	-	1	1
O5	-	13	1	14
O4	-	21	9	30
O3	56	51	13	120
O2	29	6	4	39
O1	14	2	1	17
Officers	99	93	29	221
W5	-	-	-	-
W4	-	7	1	8
W3	15	13	4	32
W2	20	60	14	94
W1	10	3	1	14
Warrants	45	83	20	148
E9	-	7	-	7
E8	-	36	4	40
E7	-	125	31	156
E6	98	182	70	350
E5	217	218	85	520
E4	161	57	-	218
E3	112	17	-	129
E2	9	3	-	12
E1	-	-	-	-
Enlisted	597	645	190	1,432
Total	**741**	**821**	**239**	**1,801**

Source: Estimates prepared for this study using data from Robert D. Niehaus, Inc., 2005.

Tables 25 and 26 display the shortfall of community housing for military family renters in 2005 and 2010. These are the renters who would not be successful in finding housing that meets all Army standards for affordability, location, quality, and number of bedrooms. The projected community housing shortfall is a critical component of the projected requirement for housing at the installation.

Table 25. Community Housing Shortfall, Accompanied Personnel, 2005

2005	Number of Bedrooms			
Pay Grade	Two	Three	Four+	Total
O7 & Above	-	-	-	-
O6	-	-	-	-
O5	-	-	-	-
O4	-	-	-	-
O3	-	-	-	-
O2	1	-	4	5
O1	-	-	-	-
Officers	1	-	4	5
W5	-	-	-	-
W4	-	-	-	-
W3	-	-	-	-
W2	-	-	1	1
W1	-	-	1	1
Warrants	-	-	2	2
E9	-	-	-	-
E8	-	1	-	1
E7	-	2	3	5
E6	5	5	24	34
E5	7	2	33	42
E4	3	6	10	19
E3	2	-	1	3
E2	-	-	-	-
E1	-	-	-	-
Enlisted	17	16	71	104
Total	**18**	**16**	**77**	**111**

Source: Estimates prepared for this study using data from Robert D. Niehaus, Inc., 2005.

Table 26. Community Housing Shortfall, Accompanied Personnel, 2010

2010	Number of Bedrooms			
Pay Grade	Two	Three	Four+	Total
O7 & Above	-	-	-	-
O6	-	-	-	-
O5	-	3	-	3
O4	-	7	8	15
O3	26	23	38	87
O2	15	3	10	28
O1	6	1	3	10
Officers	47	37	59	143
W5	-	-	-	-
W4	-	4	2	6
W3	7	6	15	28
W2	11	29	34	74
W1	4	-	2	6
Warrants	22	39	53	114
E9	-	4	5	9
E8	-	19	10	29
E7	-	62	71	133
E6	51	92	130	273
E5	112	111	134	357
E4	203	95	94	392
E3	139	32	17	188
E2	13	5	-	18
E1	-	-	-	-
Enlisted	518	420	461	1,399
Total	**587**	**496**	**573**	**1,656**

Source: Estimates prepared for this study using data from Robert D. Niehaus, Inc., 2005.

TOTAL GOVERNMENT-PROVIDED HOUSING REQUIREMENTS

Tables 27 and 28 display the requirement for government-provided housing in 2005 and 2010, respectively. The projected requirement is calculated as the sum of the floor requirement, the community housing shortfall, and the 10-percent military community factor adjustment (zero in this case).

Table 27. Total Requirement for Government-Provided Housing, Accompanied Personnel, 2005

2005 Pay Grade	Number of Bedrooms Two	Three	Four+	Total
O7 & Above	-	-	-	-
O6	-	-	5	5
O5	-	11	6	17
O4	-	17	10	27
O3	48	50	32	130
O2	18	4	9	31
O1	13	2	3	18
Officers	79	84	65	228
W5	-	-	-	-
W4	-	4	1	5
W3	5	4	4	13
W2	8	24	14	46
W1	2	-	1	3
Warrants	15	32	20	67
E9	-	7	7	14
E8	-	33	9	42
E7	-	114	65	179
E6	53	145	112	310
E5	145	204	135	484
E4	228	91	61	380
E3	158	30	11	199
E2	14	4	-	18
E1	7	1	1	9
Enlisted	605	629	401	1,635
Total	**699**	**745**	**486**	**1,930**

Source: Estimates prepared for this study using data from Robert D. Niehaus, Inc., 2005.

Table 28. Total Requirement for Government-Provided Housing, Accompanied Personnel, 2010

Pay Grade	Number of Bedrooms Two	Three	Four+	Total
O7 & Above	-	-	-	-
O6	-	-	6	6
O5	-	3	7	10
O4	-	8	8	16
O3	26	23	38	87
O2	15	3	10	28
O1	6	1	3	10
Officers	47	38	72	157
W5	-	-	-	-
W4	-	4	2	6
W3	7	6	15	28
W2	11	29	34	74
W1	4	-	2	6
Warrants	22	39	53	114
E9	-	4	11	15
E8	-	19	10	29
E7	-	62	71	133
E6	51	92	130	273
E5	112	111	134	357
E4	203	95	94	392
E3	139	32	17	188
E2	13	5	-	18
E1	10	1	2	13
Enlisted	528	421	469	1,418
Total	**597**	**498**	**594**	**1,689**

Source: Estimates prepared for this study using data from Robert D. Niehaus, Inc., 2005.

Table 29 displays the projected requirement for on-post family housing by criterion. The sum of the floor requirement (33 units) and the private-sector shortfall (1,656 units) yields an initial housing requirement of 1,689 units. This initial requirement was then compared to the 10-percent on-post military community factor on a grade by grade basis. The initial requirement was higher than the 10-percent on-post military community factor for all grades, thus no adjustment was necessary. Based on these calculations, the total military family housing requirement in 2010 is projected to be 1,689 units.

Table 29. Total On-Post Military Family Housing Required, Fort Wainwright, 2010

Pay Grade	Military Families	Military Community	Key and Essential	Historic Units	Quality of Life	Floor Requirement	Private Sector Shortfall	Initial Housing Requirement	10 Percent Military Community	Total Military Housing Requirement
O7 & Above	-	-	-	-	-	-	-	-	-	-
O6	7	-	6	1	-	6	-	6	1	6
O5	30	-	7	-	-	7	3	10	3	10
O4	87	-	1	-	-	1	15	16	9	16
O3	254	-	-	-	-	-	87	87	25	87
O2	94	-	-	-	-	-	28	28	9	28
O1	27	-	-	-	-	-	10	10	3	10
Officers	499	-	14	1	-	14	143	157	50	157
W5	-	-	-	-	-	-	-	-	-	-
W4	26	-	-	-	-	-	6	6	3	6
W3	105	-	-	-	-	-	28	28	11	28
W2	195	-	-	-	-	-	74	74	20	74
W1	32	-	-	-	-	-	6	6	3	6
Warrants	358	-	-	-	-	-	114	114	37	114
E9	22	-	6	-	-	6	9	15	2	15
E8	87	-	-	-	-	-	29	29	9	29
E7	330	-	-	-	-	-	133	133	33	133
E6	888	-	-	-	-	-	273	273	89	273
E5	988	-	-	-	-	-	357	357	99	357
E4	623	-	-	-	-	-	392	392	62	392
E3	318	-	-	-	-	-	188	188	32	188
E2	30	-	-	-	-	-	18	18	3	18
E1	13	-	-	-	13	13	-	13	1	13
Enlisted	3,299	-	6	-	13	19	1,399	1,418	330	1,418
Total	**4,156**	**-**	**20**	**1**	**13**	**33**	**1,656**	**1,689**	**417**	**1,689**

Note: The total military housing requirement is the greater of the initial housing requirement and the 10 percent community factor for each grade.

Source: Estimates prepared for this study.

UNACCOMPANIED PERSONNEL HOUSING REQUIREMENTS

The analysis of the unaccompanied personnel housing requirement follows the same procedures as identified above for accompanied personnel. The total requirement is the sum of the floor requirement (defined for unaccompanied personnel as all E1-E5 personnel) and the community housing shortfall. Table 30 presents the total requirement for government-provided housing for unaccompanied personnel in 2005 and 2010, respectively.

Table 30. Total Requirement for Government-Provided Housing, Unaccompanied Personnel, 2005 and 2010

2005	Number of Bedrooms				2010	Number of Bedrooms			
Pay Grade	One	Two	Three	Total	Pay Grade	One	Two	Three	Total
O7 & Above	-	-	-	-	O7 & Above	-	-	-	-
O6	-	-	-	-	O6	-	-	-	-
O5	-	-	-	-	O5	-	-	-	-
O4	-	-	-	-	O4	-	-	-	-
O3	-	-	-	-	O3	-	-	-	-
O2	-	11	-	11	O2	-	11	-	11
O1	-	3	-	3	O1	-	3	-	3
Officers	-	14	-	14	Officers	-	14	-	14
W5	-	-	-	-	W5	-	-	-	-
W4	-	-	-	-	W4	-	-	-	-
W3	-	-	-	-	W3	-	-	-	-
W2	-	-	-	-	W2	-	-	-	-
W1	-	-	-	-	W1	-	-	-	-
Warrants	-	-	-	-	Warrants	-	-	-	-
E9	-	-	-	-	E9	-	-	-	-
E8	-	-	-	-	E8	-	-	-	-
E7	-	-	-	-	E7	-	-	-	-
E6	-	5	-	5	E6	-	4	-	4
E5	203	-	-	203	E5	312	-	-	312
E4	673	-	-	673	E4	1,036	-	-	1,036
E3	782	-	-	782	E3	1,203	-	-	1,203
E2	126	-	-	126	E2	195	-	-	195
E1	52	-	-	52	E1	80	-	-	80
Enlisted	1,836	5	-	1,841	Enlisted	2,826	4	-	2,830
Total	**1,836**	**19**	**-**	**1,855**	**Total**	**2,826**	**18**	**-**	**2,844**

Source: Estimates prepared for this study using data from Robert D. Niehaus, Inc., 2005.

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DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY
INSTALLATIONS AND ENVIRONMENT
110 ARMY PENTAGON
WASHINGTON, DC 20310-0110

NOV 5 2009

09 NOV 12 PM 2:00

The Honorable Mark Begich
United States Senate
Washington, DC 20515

Dear Senator Begich:

Thank you for your October 4, 2009, letter regarding Actus Lend Lease granting military housing contracts to out-of-state businesses.

To enhance communications with the Fairbanks business community, Actus Lend Lease recently hired Ms. Betsy Woolley, a life-long Fairbanks resident, as the communications coordinator for North Haven Communities. Ms. Woolley has spearheaded familiarization meetings with local organizations, businesses, and individuals including the Fairbanks Economic Development Corporation and the Fairbanks Downtown Association, with more meetings scheduled over the coming weeks. Ms. Woolley has met with most of the Interior Legislative Delegation, and appointments are scheduled with the remaining members.

Actus Lend Lease is also initiating actions to enhance communications during the bid process, which includes increasing the number of pre-bid workshops to educate local contractors and vendors on minimum bid requirements for future work; conducting safety seminars to raise awareness of Actus Lend Lease safety requirements; and providing timely bid advertisement, selection, and award process, including notification to all bidders regarding final decision and award criteria.

Actus Lend Lease will communicate with all stakeholders, including your office, on all future project ratios of Alaska-based expenditures and Alaska-based contractors, to out of state expenditures. The actions described above are designed to help position local construction companies and vendors to be part of all future opportunities.

Actus Lend Lease understands the concerns raised during the hearing of the State of Alaska Joint Services Committee, and with a 10-year track record of positive community engagement and successful local economic development practices, they are committed to ensuring the work in Alaska continues to follow these principles.

We will continue to monitor this situation and look forward to improvements in dealing with all contractors and suppliers.

Sincerely,

Joseph F. Calcara
Deputy Assistant Secretary of the Army
(Installations and Housing)

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MARK BEGICH
ALASKA

COMMITTEE ON ARMED SERVICES
COMMITTEE ON
COMMERCE, SCIENCE, AND TRANSPORTATION
COMMITTEE ON VETERANS' AFFAIRS

United States Senate

WASHINGTON, DC 20510

SUITE SR-144
RUSSELL BUILDING
WASHINGTON, DC 20510
(202) 224-3004

October 4, 2009

The Honorable Joseph F. Calcara
Deputy Assistant Secretary of the Army
Installations and Housing
Office Of The Assistant Secretary Of The Army (Installations & Environment)
110 Army Pentagon Room 3E464
Washington, DC 20310-0001

Dear Secretary Calcara:

I am writing as a follow up to the September 14, 2009 hearing of the Alaska State Legislature's Joint Armed Services Committee held in Fairbanks. During the hearing, Fairbanks contractors raised a number of concerns regarding military housing contracts being granted to out-of-state businesses by Actus Lend Lease.

Actus Lend Lease has a contract with the U.S. Department of the Army to privatize housing at Forts Wainwright and Greely. The 50-year agreement includes construction, renovation and property management for more than 1,800 homes. I hope this effort will not only result in better housing for military families, but will also create good-paying, long-term jobs for local residents.

While I am pleased the Army has committed more than $420 million to Actus to build new homes on these two bases over the next six years, I am concerned by testimony at the hearing that Actus may be creating obstacles for local contractors and businesses seeking to compete for construction contracts at Fort Wainwright. Specifically, witnesses expressed a need for a better understanding of Actus' bidding process and for improved communications with Actus.

During the hearing, Actus pledged to notify bidders about outcomes in a more timely manner, reiterated its public promise to hire locally, and committed to improving communications with Fairbanks businesses. I strongly encourage you to follow up with Actus on this pledge and ensure local contractors and businesses have full, equal access to the bidding process. In addition, I urge you to work with Actus to create a public-private business community advisory board to

facilitate better communication between Actus and the community.

I will forward the full Committee report for your review as soon as it is available. My staff will be reviewing it for additional recommendations to improve this situation. If you have any questions, please do not hesitate to contact me or have your staff contact Tom Moyer in my Fairbanks office at (907) 456-0261.

Sincerely,

Mark Begich
United States Senator

Cc: Colonel Tim Jones, Ft. Wainwright Garrison Commander
Mr. Mark Connor, Associate Deputy General Counsel for Installation, Environment and Civil Works, U.S. Department of the Army
Members, Alaska State Legislature, Joint Armed Services Committee
Mr. Dave Miller, Interior Alaska Builders Association
Mr. Jim Dodson, CEO Fairbanks Economic Development Corporation
Mr. Lake Williams, Chair, Fairbanks Central Labor Council
Mr. Mike Raider, Director of Construction, Actus Lend Lease

MPB/cwr

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Fort Wainwright

Local Business & Personnel Utilization Update

May 2009 Through July 2009

NorthHaven
COMMUNITIES

Actus
Lend Lease

NorthHaven
COMMUNITIES

Project Company Summary - North Haven Communities

From Project Inception Through July 31, 2009

Over $980 K in Contract Awards to Date

- 100% of Maintenance Related Contractors Alaskan Based
- 97% Contractors located in Fairbanks

Over $650 K in Purchases to Date

- 92% of Material Vendors Alaskan Based
- 80% Vendors located in Fairbanks

Actus
Lend Lease

North Haven
COMMUNITIES

North Haven Communities
Pending & Awarded Contracts

Company Name	Location	Amount	Local Business	National Business
A Helping Hand	Fairbanks, AK	$2,140	$2,140	
Alaska Waste	Anchorage, AK	$3,542	$3,542	
American Pest Management	Anchorage, AK	$6,881	$6,881	
A Breath of Freash Air, Inc.	Fairbanks, AK	$47,760	$47,760	
ComputerWerks, Inc.	Fairbanks, AK	$1,180	$1,180	
Fairbanks Roofing	Fairbanks, AK	$7,570	$7,570	
Full Spectrum Painting Inc.	North Pole, AK	$265,878	$265,878	
The Groundskeeper	Fairbanks, AK	$8,670	$8,670	
Lancermane Custodians	Fairbanks, AK	$13,950	$13,950	
Lap of Luxury Cleaning Service	Fairbanks, AK	$21,781	$21,781	
Nenana Lumber Company	Fairbanks, AK	$330,000	$330,000	
Northern Business Systems	Fairbanks, AK	$6,190	$6,190	
Personnel Plus Employment Agency	Anchorage, AK	$17,266	$17,266	
Reuter Enterprises Inc.	Fairbanks, AK	$48,816	$48,816	
R & R Superpaint	North Pole, AK	$1,110	$1,110	
Santa's Vagabond Travel	Fairbanks, AK	$4,417	$4,417	
Sourdough Transfer, Inc.	Fairbanks, AK	$60,906	$60,906	
SparkClean Janitorial	Fairbanks, AK	$43,110	$43,110	
Superior Coffee of Alaska	Fairbanks, AK	$1,050	$1,050	
Wilbur Bros.	Fairbanks, AK	$320	$320	
CONTRACTOR TOTALS		**$892,535**	**$892,535**	
Project Company Local Contractor Utilization as a Percentage			**100%**	**0%**

Actus
Lend Lease

NorthHaven
COMMUNITIES

North Haven Communities Project Company Vendors

Company Name	Location	Amount	Local Business	National Business
Advocate Printing Solutions, Inc.	Nashville, TN	$1,251		$1,251
Advance Printing Co.	Fairbanks, AK	$2,055	$2,055	
Alaska Auto Glass	Libby, MT	$1,410		$1,410
Alaska Communication Systems	Anchorage, AK	$14,324	$14,324	
Alaska Digital Printing, Inc.	Fairbanks, AK	$740	$740	
Alaska Industrial Hardware, Inc.	Anchorage, AK	$9,755	$9,755	
American Red Cross of AK	Fairbanks, AK	$550	$550	
Arctic Controls, Inc.	Anchorage, AK	$9,283	$9,283	
Arctic Fire & Safety Inc.	Fairbanks, AK	$20,791	$20,791	
AT & S, Inc.	Fairbanks, AK	$1,701	$1,701	
A & W Wholesale Co. Inc.	Fairbanks, AK	$2,278	$2,278	
Bailey Furniture Outlet, Inc.	Anchorage, AK	$2,408	$2,408	
Blinds Unlimited, Inc.	Anchorage, AK	$6,116	$6,116	
Bowers Office Products Inc.	Fairbanks, AK	$891	$891	
Brown's Electrical Supply Co., Inc.	Anchorage, AK	$14,535	$14,535	
Communications Equipment & Service	Fairbanks, AK	$2,553	$2,553	
Corporate Express	Chicago, IL	$6,986		$6,986
Date-Line Digital Printing	Fairbanks, AK	$262	$262	
Denali Industrial Supply, Inc.	Fairbanks, AK	$2,108	$2,108	
Fairbanks Aero Services, Inc.	Fairbanks, AK	$1,219	$1,219	
Fairbanks Natural Gas, LLC	Fairbanks, AK	$115,924	$115,924	
Fairbanks North Star Borough	Fairbanks, AK	$61,875	$61,875	
Fairbanks Paint & Glass Co.	Fairbanks, AK	$14,475	$14,475	

Actus Lend Lease

NorthHaven COMMUNITIES

North Haven Communities Project Company Vendors

Company Name	Location	Amount	Local Business	National Business
Ferguson Enterprises 2017 - Anchorage	Dallas, TX	$1,287		$1,287
Florcraft, Inc.	Fairbanks, AK	$344	$344	
Frontier Plumbing Supply Inc.	Fairbanks, AK	$54,485	$54,485	
Golden Heart Utilities, Inc.	Fairbanks, AK	$89,282	$89,282	
Golden Valley Electric Asso.	Fairbanks, AK	$21,352	$21,352	
Greater Fairbanks Chamber of Commerce	Fairbanks, AK	$310	$310	
Great Northwest, Inc.	Fairbanks, AK	$333	$333	
Greer Tank & Welding	Fairbanks, AK	$1,064	$1,064	
Hasco, Inc.	Anchorage, AK	$2,024	$2,024	
Jiffy Lube	Anchorage, AK	$371	$371	
Keller Supply	Seattle, WA	$3,362		$3,362
MacCheyne's Carpets Plus, Inc.	Fairbanks, AK	$101,319	$101,319	
Mastercraft	Fairbanks, AK	$757	$757	
Murr's Printing Beaufort, Inc	Beaufort, SC	$815		$815
Napa Auto Parts	Los Angeles, CA	$407		$407
Northwest Playground Equipment, Inc.	Issaguah, WA	$482		$482
OfficeMax Inc.	Carol Stream, IL	$518		$518
Overhead Door Corporation	Dallas, TX	$11,379		$11,379
Overhead Door Co of Fairbanks	Fairbanks, AK	$5,452	$5,452	
Pacific Plumbing Supply Co., Inc.	Seattle, WA	$1,242		$1,242
Paramount Supply Co.	Tacoma, WA	$11,275		$11,275
Sherwin Williams	Fairbanks, AK	$22,690	$22,690	
Spenards Builders Supply	Anchorage, AK	$23,413	$23,413	

Actus
Lend Lease

NorthHaven
COMMUNITIES

North Haven Communities Project Company Vendors

Company Name	Location	Amount	Local Business	National Business
Stanley Security Solutions, Inc.	Palatine, IL	$7,042		$7,042
Total Electric Supply Co.	Fairbanks, AK	$557	$557	
Trademark	Fairbanks, AK	$182	$182	
W. L. May Co.	Portland, OR	$3,299		$3,299
SUPPLIER TOTALS		**$658,534**	**$607,779**	**$50,755**
Project Company Local Supplier Utilization as a Percentage			**92.29%**	**7.71%**

Actus Lend Lease

NorthHaven COMMUNITIES

Construction Contracts Summary - Actus Lend Lease

From Project Inception Through July 31, 2009

Over $7.255 M in Awarded and Pending Contract Awards to Date

- 77% of Contracts Located in Alaska
- 61% of Contractors located in Fairbanks

Actus
Lend Lease

NorthHaven
COMMUNITIES

Actus Lend Lease

Pending & Awarded Construction Contracts

- DOWL Engineering
- Bighorn Enterprises
- Nenana Lumber
- Worthington
- Western Mechanical
- Spenards
- Shannon & Wilson
- SDI Milcon
- DB Plumbing
- Alaska Quality Insulators
- Diamond Fence
- Land Design North
- Summit Logistics
- Design Alaska
- A-1 Sani-Can
- Cold Climate Housing Research Center
- Overhead Door Co. of Fairbanks

Actus Lend Lease

North Haven COMMUNITIES

People

- 40% of Actus Lend Lease's Design & Construction Management Team are Alaskan hires.
- 85% of North Haven Communities Property and Asset Management Staff are Alaskan hires.

FAIRBANKS
Economic Development
CORPORATION

301 Cushman St., Suite 301, Fairbanks, AK 99701

July 31, 2009

Dave Miller
PO Box 72347
Fairbanks, Alaska 99707-3247

Dave,

It has come to our attention that the Privatization Housing contractor at Fort Wainwright may not be following the practice of using local hire or using local contractors as they promised in their presentation to the Department of the Army when soliciting the contract.

I am interested in hearing from your members about their direct experience in working with Atcus, both good and bad.

Please ask your members to email me any information that is pertinent to the issue.

Thank you for your assistance.

Jim Dodson
President & CEO
Fairbanks Economic Development Corporation

Phone: (907) 452-2185
1-888-476-FEDC
www.investfairbanks.com
Fax (907) 451-9534

From: Dave Miller [davemiller@landmarkalaska.com]

Sent: Friday, August 21, 2009 3:40 PM

To: jdodson@ak.net

Subject:Actus

Hi Jim,

Had lunch today with Jim Schuster.....his company is Alaska Quality Insulators.....he said he had been awarded insulating work with Actus.....said that it was tough coming up to speed with their safety requirements, but otherwise he was fine with working with the. Also said he hasn't done any work yet, but has been told the work was awarded to him.....he said he might put together an email for us if he has time.

Dave

==========

From: Antonovich, Thom [Thom.Antonovich@actuslendlease.com]
Sent: Saturday, August 08, 2009 1:47 PM
To: Dave Miller (davemiller@landmarkalaska.com)
Subject: bidsheet
Attachments: BIDS - 8.6.09-iabablank.xlsx

Dave:

I am attaching a bid spreadsheet that we use to analyze and equalize bids to have an accurate comparison. It also includes areas for comments since we call every bidder that submits a bid and invite them in for an interview to clarify their numbers, make sure they know the scope. Anyway, I can't pass around the numbers but I wanted you to see who actually submitted bids so far.

Thanks,
Thom

==========

From: Brian Barney [mailto:bbarney@acsalaska.net]

Sent: Monday, August 10, 2009 7:16 AM

To: 'Interior Alaska Building Association'

Subject: RE: New Information Regarding Actus Lend Lease

Dave,

My name is Brian Barney and I am Nenana Lumber Companies estimator. And boy, do I have some stories

regarding Actus. I would be writing a book if I started from last January to today. I would rather have a

meeting with you so you can hear some of our great experiences with Actus. I have a 4"

binder full of emails with Actus. It would be my pleasure to sit down with you and "express" my experiences.

thanks,

Brian Barney LEED-AP

Estimator

NLC, Inc.

Office (907) 457-5606

Fax (907) 457-5600

bbarney@acsalaska.net

www.nenanalumbercompany.com

==========

Dave,

We have not had a good experience with Actus. We met with them before the bid and they indicated that

because they would be here for at least 50 years they wanted a proposal based on quality - not low price.

Back in June we gave them a very good proposal to do the ventilation work.

Since that time we have called them several times to meet and discuss our proposal. It's very difficult to get

them to even return a phone call.

They did promise to put out bid results by the first part of July but that didn't happen.

Today we (finally) got a letter saying that we were not selected to do the work. We never did get a chance to

discuss our proposal with them.

Even more disturbing was their apparent willingness to bring in outside contractors for this work.

We're not impressed with Actus.

i would caution people to be careful dealing with them.

Call if you need to discuss.

Thanks

Jerry Mustard, P.E.

Holaday-Parks, Inc.

907-452-7151

907-452-3800 fax

==========

From: Mike Holz [mholz@acsalaska.net]
Sent: Monday, August 10, 2009 7:46 AM
To: davemiller@landmarkalaska.com
Subject: Actus

Dave

We at Nenana Lumber Company have produced more bid to Actus than any other contractor in Alaska. We have yet to receive any award.

It is our opinion that Actus has a poor contract and does not have the funds to do the contract right and insure that they have a profit in the end. It appears that they are looking for any bidder that makes a mistake in the bid so that it falls within their cost level.

The only award that we know of was made to "Big Horn trucking". This was for excavation, building leveling and electrical power hook up. Big Horn has done none of these activities in the past and is clearly un-qualified. For the excavation, M&M was the only bidder on bid day. For the leveling and electrical, we have an e-mail stating that we were low bid on bid day. Yet, the contracts went to a firm that was not present on bid day and is clearly un-qualified per Actus standards.

We have invested about $100K into Actus bid preparations, Actus meetings, special safety consideration and so on. We need to receive several million dollars worth of contracts now just to break even.

We had thought the bid system would be done similar to all other bid opportunities. Actuus operates behind closed doors, with no printed rules and in a way that can easily be labeled " UNFAIR TO BIDDERS".

I do not think what they are doing is illegal but it is not acceptable, not a fair process, not open and public and will certainly lead to unrest in the bidding community. Most companies will stay away from this type process.

Mike Holz

==========

Dave,

I have tried to keep abreast of the Actus projects since they first came to town and started their campaign to solicit builders and subcontractors through the local building association. I have been to at least two meetings with the IABA where Actus representatives spoke of their upcoming work as well as attending I believe three meetings Actus has sponsored at the Westmark hotel. I also have been trying to keep in touch with Thom Antonovich via e-mail regarding their upcoming work proposals and when they get out on the street for contractors to bid on.....and numerous times, we were informed that Actus

wanted small contractors, local contractors, to be part of the Actus program....we'll help you with safety, and insurance and getting hooked up and organized to their systems and programs...we need your talents and skills, so keep up with what will be happening over the next 4-5 years.....so that piqued my interest.... I haven't been bird-dogging them, but I have tried to stay informed.....so, here's what my experience has been.....

- 1st set of plans and info came out in February 09 while I was in the middle of my vacation....all we got was a CD disc, which my staff sent over to me in Maui...I tried to spend a little time getting into their plans, specs, safety requirements, and become familiar with their 1st project.... However, after trying to digest all of their information, it became clear that this was not a BID, but they were after "market pricing"....so, they were after cost information at our expense....I also discovered that any work over $100,000 would require payment and performance bonding.....that was never discussed or brought up before.....and suddenly, that leaves out most, if not but a precious handful, of the local small contractors...and, we were given just a very short time to accumulate numbers from subs....but we also discovered that all they really want is subs....they do not want a general contractor to take on a project....they want to break it down to just pieces of the pie....however, no scheduling, no discussion of who will be the "lead", no discussion of time frame to accomplish the work, none of that was discussed or disclosed.....do we plan on 40 hr work weeks or are you requiring 6/10's, or when are you going to start....is this summer work or winter work.....we got little or no information.....I declined to bid at that time....and I believe we had 65% drawings.....
- In mid May, the word is out that their 1st project now has 95% drawings, you need to be hooked up with their "lsqft" website to get all pertinent info in a timely manner, so we contacted them and requested we be on the "list" and get a password and code to be on "lsqft".....we contacted their office and made the request about the 14th of May.....and we were informed that the bid day was June 1.....we never received the password and hookup until May 25 or 26.....they also put the info on "the plans room" but they never added their addendums on that site (and there were numerous, pertinent addendums) so we finally got all of the info 5 days before bid day.....however, we got a bit of a reprieve when they extended bids till the 8th of June...
- So, we hustled through the process, read their "scope of work" and their specific spec sections for the "finish carpentry" as well as their "bid breakdown" sheet which did not match....and we also read all of the info on what needed to be turned in with the bid....specific required documents, that were not in the bid package for which we needed to call their office AND THEY had to find them , so we could turn in a "qualified bid"...I took it upon myself to develop a receipt from Actus once I hand delivered the bid package so I could prove it had been delivered on time.....that was June 8th at about 3:30 in the afternoon....to this date, they have not contacted me for an "interview" and review of my bid proposal.....I have contacted them every couple of weeks regarding the status of the project and the proposal I gave them.....so far, I do not know much else other than they are busy interviewing contractors and suppliers to" make sure" they understand the strict requirements of Actus....safety, safety, safety,...that's all I've heard about....no schedules, no plan, no logistical info.....two months have gone by and no word from Actus....
- The last item is the "latest" bid proposal on the street....Southern Cross on Wainwright.....the plans were not released from the blueprint shop until 7-28-09....with bids due on the 31st.....then extended till 8-7-09.....these folks have had months to develop these projects and then tell us we have 7-10 days to turn around a bid proposal.....interestingly, Thom Antonovich told me via e-mail that when this came out, I would be informed....unfortunately, the notice did not happen...another contractor called me about this project.....I declined to scramble and work up a price with little time to build a project plan for this 2nd project on the street for Wainwright.....
- I have asked about who has been awarded work on Gertsch Heights for civil, utilities, concrete, framing, etc. and to date, I have no response.....nor a schedule to attempt to plan from.....now Southern Cross is out....but little information of a "plan"...Summer work? Winter work? 40 hrs? 60 hrs? who's leading? This seems to be the status quo.....from Actus....

Needless to say, the information is scattered, delayed, short time frame turn-around on bidding, bonding is/may be required, so far it appears that a lot of people have stepped up to the plate once, maybe twice, but I see little or no activity towards actually getting some real work accomplished.....I believe a lot of contractors may have decided to quit wasting their time and effort if no real jobs are being put out for actual construction.....and it is unfortunate, because there is a lot of good talent in this town to handle the work load if good professional coordination would be in place....so, this is just one man's opinion....feel free to call with any questions or if you need further information.....

Respectfully,

Richard S. Tilly

President

Tilly & Co., Ltd.

456-5565 office

29 years serving the Fairbanks community in professional construction projects

Chairman – City of Fairbanks Code Review and Appeals Commission

Chairman – AGC and Carpenters Local 1243 Fairbanks Carpenter Training Center – Board of Trustees

Past Director – Alaska State Homebuilding Association

Past President - Interior Alaska Building Association

Founding Member- Cold Climate Housing Research Center

Member – Alaska State Homebuilding Association

Member – Interior Alaska Building Association

Member – National Association of Home Builders

Member – Associated General Contractors of Alaska,

Member – Carpenters Local #1243 – 35 years

Jane Pierson

From: Laura Pierre
Sent: Thursday, September 03, 2009 11:44 AM
To: Rep. Charisse Millett; Rep. John Harris; Rep. Jay Ramras; Rep. Pete Petersen; Sen. Bill Wielechowski; Sen. Gene Therriault; Sen. Lesil McGuire; Sen. Joe Paskvan; dean owen; tom.case@akaerospace.com; gcannelos@denali.gov; Chick Wallace; joel.m.casto@uscg.mil; Jake Lestenkof
Cc: Cipriana Williams; John Bitney; Jane Pierson; David Dunsmore; Shelly Morgan; Ernest Prax; Shalon Szymanski; Trevor Fulton; Jake Hamburg; Susan Wallen; Laura Pierre
Subject: JASC- Base Housing Contracts
Attachments: Actus Subcontracting Program - Alaska1.pdf; Alaska RCI - CDMP Doc - Att 04 - b - Fee Inc Plan - DB - 080711r4 RCI FINAL (2).doc; Fort Wainwright 2005 Post-BRAC Requirements Summary Report 12-28-05.pdf; JASC Hearing to Clerks 8 31 09.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Good Morning JASC Members,

In preparation for our meeting in Fairbanks on Monday, September 14th at 1:00 pm, I wanted to share a little background on the purpose of the meeting.

There is great concern among general contractors in the Fairbanks area regarding base housing contracts at Fort Wainwright and Eielson Air Force Base. A large company, Actus Lend Lease LLC, received the base housing contract from the Department of Defense. During the bidding process and even after they were awarded the bid, Actus said on numerous occasions that they would be hiring 90% local hire for the projects through subcontracting. They also stated this in their comments to the Department of the Army. This, however, has not happened.

Our committee has invited the local contractors, as well as Actus, and the Department of Defense to come before our committee and provide us with information and testimony on why this happened and how we can change the hiring for future contracts. This is an issue that we need to be aware of and continue to push for local hire in our state. If changes can be made to the contracting process it will have to be done on the federal level. Senator Murkowski has agreed to take the information we gather at our meeting and have her staff work the issue and possibly propose a change in Congress.

Attached are some documents for your review before the meeting. There will also be copies of them at the meeting as well. If you have any questions before the meeting, please call our office at (907) 622-3783. There are a few members I still have not heard back from. If you could get back to me at your earliest convenience, I would greatly appreciate it. Some of you have RSVPed that you will not be at the meeting; I am sending this e-mail to all members to keep everyone in the loop on this issue. For those members traveling to Fairbanks, you can book your airfare and car rental and get reimbursed after you return or you can contact LAA Accounting and have them make your flight reservation.

Regards,

Laura

Laura Pierre
Legislative Aide
Office of Rep. Nancy Dahlstrom
P. 907.622.3783
F. 907.622.3784
Laura_Pierre@legis.state.ak.us

5544

Jane Pierson

From: Mike Holz [mholz@acsalaska.net]
Sent: Wednesday, October 14, 2009 1:37 PM
To: Rep. Jay Ramras
Subject: RE: Letter

Follow Up Flag: Follow up
Flag Status: Flagged

Jane:

I have found a weak spot in Actus bid processing. In the meeting this morning, and for the tenth time, Actus employees stated that they always award for best value, not low dollar. I asked to see the criteria that was used to determine best value. The COE has to publish that criteria in every bid. So much percent is for past performance, so much for technical approach and so on. Actus said they have no such thing. A group of people go behind closed doors and decide each time what might constitute best value to them at that time. I said this could be big advantage for a relative, someone from Tenn, or simple anyone from outside of Alaska. They had no answer. They will not publish bids because they do not use low dollar. They can not publish bids because the use best value. They do not publish any information that they use to determine best value. The bidders will always doubt the legitimacy of this process. This is not acceptable by any standard. They say they choose this system so that no one could ever find grounds to protest any of their selections. This iliminates a legal right to protest an award made for illegal reasons.

Mike

Call me to discuss my meeting

From: Rep. Jay Ramras [mailto:Representative_Jay_Ramras@legis.state.ak.us]
Sent: Thursday, October 08, 2009 8:51 AM
To: Brian Barney; mholz@acsalaska.net
Subject: FW: Letter

Thought I would share Sen. Begich's letter with you.

Jane W. Pierson, Chief of Staff
Representative Jay Ramras
1292 Sadler Way, Ste. 324
Fairbanks, AK 99701
Phone: (907) 452-1088
Cell: (907) 978-5115
Fax: (907) 456-3346

5546

John McShane

1-3 pm

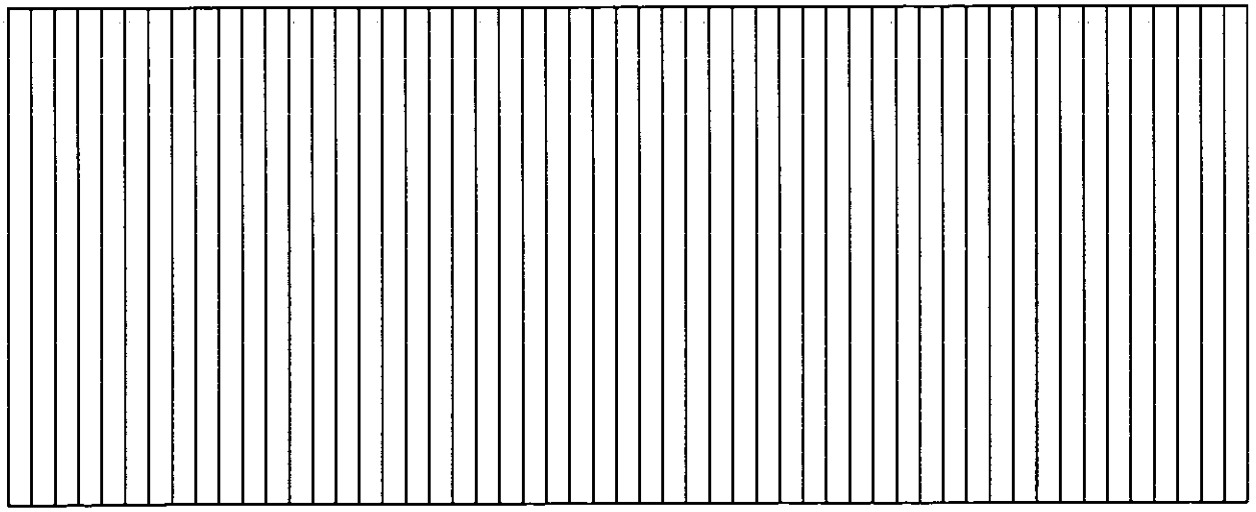
GERTSCH HEIGHTS INFILL		Actus Subcontractor	Appt Complete					
DIVISION	CONTACT	PHONE #	APPOINTMENT	ORIGINAL BID	Includes Heat		Includes Ventilation	REVISED BID
SURVEY/STAKE			Budget =	Reserve				
[redacted]	[redacted]	[redacted]	7/13/09 10:30am					[redacted]
GEOTECHNICAL			Budget =	Reserve				
[redacted]	[redacted]	[redacted]	7/16/09 2:00pm					
CIVIL / UTILITIES			Budget =					
[redacted]	[redacted]							
PLUMBING			Budget =		Includes hvac		Includes Ventilation	ıcludes Ventilatio
D.B Plumbing	Danny Bell	615-394-5333	7/13/09 12:00pm					
B and L Plumbing	Larry Wieker	719-638-7341	7/14/09 2:00pm					
Nenana Lumber Company	Brian Barney	907-457-5606	7/13/09 4:00pm					
Horizon Inc - plumb/hvac	Tim Obrien	843-982-0413	Left mess 7/23					
Western Mechanical, Inc.	James Brown	907-452-1831						
CONCRETE			Budget =					
[redacted]	[redacted]	[redacted]	7/17/09 10:00pm					
DC Concrete	Greg Connor	520-623-1487	7/16/09 10:00am					
Nenana Lumber Company	Brian Barney	907-457-5606	7/16/09 8:00am					
Walltek	Steve Rush	727-376-9908	7/16/09 12:00pm					
ROUGH CARPENTRY			Budget =					
Worthington	Drew Von Wald	615-599-6446	7/20/09 8:00am					
Nenana Lumber Company	Brian Barney	907-457-5606	CANCELLED					
[redacted]	Paul Gitschel	907-458-1087	7/23/09 3:00pm					
[redacted]	Paul Gitschel	907-458-1087	7/23/09 3:00pm					
Marley Framing Co.	Steve Marley	907-456-4559	7/24/09 9:00am					
WINDOWS (National)			Budget =					
Spenards			7/20/09 11:00am					
INTERIOR/EXTERIOR DOORS			Budget =					
Spenards			7/20/09 11:00am					

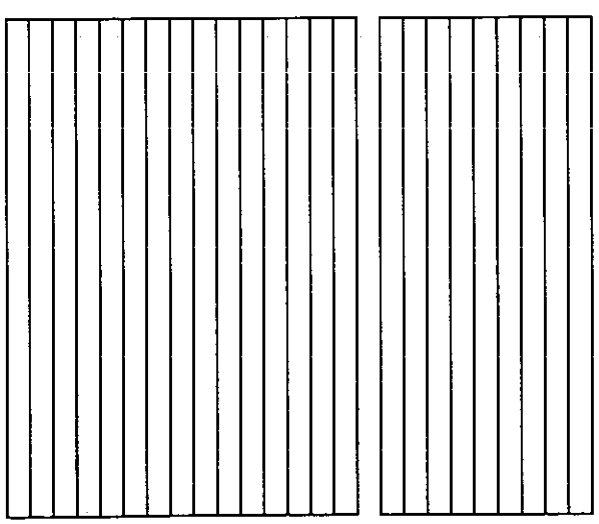
ROOFING			**Budget =**					
Bighorn/ C N A Const.	Aaron Bennett	907-451-7310	7/20/09 1:00pm					
Interior Alaska Roofing	Kelly Frederic	907-456-5545	7/21/09 8:00am					
Nenana Lumber Company	Brian Barney	907-457-5606	CANCELLED					
Spenards			7/20/09 11:00am					
INSULATION			**Budget =**					
Alaska Quality Insulators	Jim Schuster	907-488-3832	7/21/09 1:00pm					
Superior Insulation	Mike Found	907-378-5772	7/24/09 11:00am					
TriMark	Tony Warren	303-638-7291	NA					
Spenards								
DRYWALL AND PAINTING			**Budget =**					
Superior Drywall and Paint	Jared Forbus	907-457-5348						
McPherson Enterprises	Raymond McPherson	907-479-7904						
Gundersen Painting	Gary Gundersen	907-456-8287						
Ruf Drywall	Tim Ruf							
TriMark	Tony Warren	303-638-7291	NA					
HVAC			**Budget =**					
Nenana Lumber Company	Brian Barney	907-457-5606	NA					
Horizon Inc - plumb/hvac	Tim Obrien	843-982-0413						
Romanoff HVAC	Jimmy Brinkley	704-398-3009						
Western Mech, Inc.	James Brown	907-452-1831						
Holaday-parks	Jerry Mustard	907 452-3800	not yet					
HOUSE ELECTRIC			**Budget =**					
Romanoff Electric	Tracy McNaghta	614-755-4500 135						
ECH Corp	John McGill/Casey Wood	808-621-4747						
Redi Electric	Larry Rhymer	907-561-2323						
Nenana Lumber Company	Brian Barney	907-457-5606	NA					
Mammoth Elecric	Coleman Barney	907-978-1471						
FLOORING			**Budget =**					
Arbor	Matt Gilbreth		7/20/09 10:00am					
Northwest Carpet co.	Delano Williams	907-374-5979						
Floorcraft carpet one	Stan Archer	907-374-1415						
MacCheynes carpet plue	John MacCheynes	907-479-9193						
COUNTERTOPS			Budget=					
Spenard Builders	Paul Brouillard	907-563-3141						
CABINETS AND COUNTERTOPS LL	Terry Steele	206-933-9385						
DREAMWORKS CABINETRY, LLC	Rick Larrick	907-459-0311						
COMMERCIAL MANUFACTURING	Bill Sitter	615-793-9020						
NEWPORT PACIFIC CABINETS, INC	Stanley Yuen	808-486-6008						

CABINETS			Budget=					
SPENARD BUILDERS SUPPLY	Paul Brouillard	907-563-3141						
NEWPORT PACIFIC CABINETS, INC	Stanley Yuen	808-486-6008						
DREAMWORKS CABINETRY, LLC	Rick Larrick	907-459-0311						
CABINETS AND COUNTERTOPS LL	Terry Steele	206-933-9385						
FINISH CARPENTRY			Budget=					
CARTE CONSTRUCTION, LLC (FINI	Josh Carte	907-715-7195						
NENANA LUMBER COMPANY GEN	Brian Barney	907-457-5606	[redacted]NA[redacted]					
MITCHELL DOOR & TRIM, INC.	Larry Mitchell	360-874-8901						
MITCHELL DOOR & TRIM, INC.	Larry Mitchell	360-874-8901						
TILLY & COMPANY, LTD. (FINISH	RS Tilly	907-456-5565						
WAIHOPAI VALLEY LLC	Aaron Welterlen	907-451-4355						
PROBUILD SOUTH								

VINYL SIDING - GUTTERS			Budget=					
AMERICAN TRADITION HOMES		509-468-0212						
BERGGREN CONSTRUCTION - GUT	Rance Berggren	907-378-5291						

COMMENTS
[redacted]
[redacted]
n
[redacted]





~~Dave Miller LAND MARK~~

Jim Schuster - ALASKA QUALITY INSULATORS
Awarded

Jerry Mustard, ~~PE~~ - Holaday-Parks
(907) 452-7151

" Facilitating.
Monitoring " Do not know if issue 50 yr K
Best getting off on Rt foot

Damien Thomas - LABORERS.

Richard Tilly - 456-5565

CONFIR-MATIONS 2009

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

Official Business

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

MEMORANDUM

Date: February 4, 2009

To: Representative Ramras, Chair
Judiciary Committee

From: Suzi Lowell
Chief Clerk

Subject: Governor's Appointment(s)

The Speaker referred the following Governor's appointment(s) to the Judiciary Committee:

Board of Governors of the Alaska Bar
Dr. David L. Eichler – North Pole
Appointed: 3/1/2009 Term Expires: 3/1/2012

Commission on Judicial Conduct
Chris Brown – Anchorage
Appointed: 3/1/2009 Term Expires: 3/1/2013

Jan S. Ostrovsky – Anchorage
Appointed: 3/1/2009 Term Expires: 3/1/2013

Alaska Judicial Council
William F. Clarke – Chugiak
Appointed: 10/16/2008 Term Expires: 3/1/2013

Kathleen R. Tompkins-Miller – Fairbanks
Appointed: 3/1/2009 Term Expires: 3/1/2015

Violent Crimes Compensation Board
Dr. Regina C. Chennault – Soldotna
Appointed: 10/18/2005 Reappointed: 3/1/2006
Reappointed: 3/1/2009 Term Expires: 3/1/2012

The Referral for Confirmation page(s), resume(s), and a signature page are attached for your use.

Attachments as noted

Eichler
AK Bar

STATE OF ALASKA
OFFICE OF THE GOVERNOR
P.O. Box 110001
Juneau, AK 99811-0001

BOARDS AND COMMISSIONS APPLICATION/RESUME FORM

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resumé. Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Board or Commission for which I am applying:

Please list any other State Boards or Commissions on which you currently or previously have served:

None

Name: David L. Eichler

Mailing Address: 3375 Badger Rd. #1

Residence Address:

City, State and Zip Code: North Pole

Home Telephone:

Business or Message Telephone: 907.488.0978

Fax Number: 907.488.4421

Cell Phone:

Email address : northpoledentist@gci.net

AS 39.05.100 requires that a person appointed to a state board or commission be a registered voter prior to the last general election:

Are you a registered voter? YES XXX NO

Voter Registration Number (Optional):

Social Security Number (Optional):

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years?

YES NO XXX If "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recentness, and relationship to the board position applied for will be evaluated and a determination will be made after a review of all relevant facts.

CONFLICTS OF INTEREST: Certain boards and commissions require full disclosure of personal financial data under AS 39.50.010. If required for the board or commission for which you are applying, are you willing to do so?
YES NA NO

Could you or any member of your family be affected financially by decisions to be made by the board or commission for which you have applied? YES XXX NO

If "YES", explain: It is in the nature of self-regulation of a professional board that the members' decisions will directly affect their own financial condition

TRAINING AND EXPERIENCE: **(If resumé attached, it is not necessary to complete items A-D)**

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:
Alaska Dental License first issued 10/1993 in good standing continually since then

B. List both formal and informal education and training experiences: (Use additional paper if necessary)
High School Graduate 1971
BS Animal Science OSU Corvallis, OR 1976
Assoc Degree Nursing LCC Eugene, OR 1987
DMD OHSU Portland,OR 1993

C. List any community service, municipal government, and state positions held, and any awards received. Include both compensated and uncompensated positions (such as president of a service organization or a mayor). Include length of time served.
Republican Party of Alaska State Central Committee 1996- 2002
Treasurer, Alaska Dental Society 2001-present

D. Employment work history - paid, unpaid or voluntary: (Use additional paper if necessary)
Self employed dentist1993-present
Registered nurse 1987-1993

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

DATE OF BIRTH:

SEX: Male XXX Female

ETHNICITY: Alaska Native American Indian Asian or Pacific Islander Black Hispanic White XXX

MILITARY SERVICE (if applicable, give dates):

CERTIFICATION: I swear the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates, or I may be removed from the position. I agree that the Office of the Governor may contact present or

former employees or other persons who know me to obtain additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature: _____ Date: 12/03/2002

Ostrovsky
Jud. Conduct

JAN SAMUEL OSTROVSKY

PROFESSIONAL EXPERIENCE

BANKRUPTCY COURT, DISTRICT OF ALASKA — 2007-
CLERK OF COURT — *605 W. Fourth Ave, #138*
Anchorage AK 99501-

- *Collier Bankruptcy Treatise*, contributing author;
- *Collier Compensation, Employment and Appointment of Trustees and Professionals in Bankruptcy Cases*- co-author;
- Selected recent speaking engagements: National Conference of Bankruptcy Judges (ethics) (2008). National Conference of Bankruptcy Judges (ethics) (2006), National Association of Bankruptcy Trustees (2006), and Northwest Bankruptcy Institute (2005);
- AV rated; Super Lawyer

CROCKER KUNO OSTROVSKY LLC — 2002 –2007
PARTNER — *720 Olive Way, Suite 1000*
Seattle WA 98101

- Member of a five lawyer boutique specializing in insolvency, bankruptcy, and commercial matters. All three partners, including myself, selected as Super Lawyers. AVVO rating 10/10, "superb" (not current as of 2008).
- *Enron*- Court appointed Fee Examiner;
- Northwest Bankruptcy Institute- Chair 2002-2003;
- Certified in Business Bankruptcy- American Bankruptcy Board of Certification (as of 2008, not renewed)

U.S. DEPARTMENT OF JUSTICE — 1995 – 2001
UNITED STATES TRUSTEE, Region 18 — *1200 Sixth Avenue, Suite 600*
Seattle WA 98101

- Appointed position within DOJ;
- Oversaw all bankruptcy cases and appointed all bankruptcy trustees in Washington, Oregon, Alaska, Idaho, and Montana;
- Managed fifteen attorneys, eleven accountants, and associated staff in seven offices;
- Acted as trustee in one of the largest fraud cases in history of Northwest;
- Chair of the Director's Advisory Committee;
- Chair of the Program's Chapter 11 Subcommittee;
- Leadership role in national issues such as data privacy, illegal reaffirmation practices, abusive bankruptcy filings, quarterly fees, etc.

UNIVERSITY OF WASHINGTON, SCHOOL OF LAW — 2001 - 2003
ADJUNCT PROFESSOR - BANKRUPTCY

PERKINS-COIE — 1992 - 1995
OF COUNSEL — *1029 West Third Avenue, Anchorage AK 99501*

- Bankruptcy, commercial finance, and commercial litigation;
- Major clients included Alaska Airlines, BP, Beech Aircraft, National Bank of Alaska and other clients in large commercial matters.

BOGLE & GATES — 1986 - 1992
PARTNER — *Anchorage and Seattle*

- Bankruptcy, commercial finance, and commercial litigation.

CAMPBELL, OSTROVSKY & THWAITES — 1979 - 1986
PARTNER — *1031 Fourth Ave. Anchorage AK 99501*

- Bankruptcy, commercial finance, and commercial litigation.

REPRESENTATIVE CASES

- *In re Security Aviation* (2006-2007, Alaska); bankruptcy of air services company. Represented a defendant in a substantial avoidance action;
- *In re ERA Aviation* (2005-2006, Alaska); bankruptcy of regional air carrier. Represented Alaska Airlines;
- *In re Enron* (2002-2005, NY); fee examiner
- *In re Hoyt and Sons Ranches* (1997- 2001, Oregon); Chapter 7 Trustee in complex case involving over two billion dollars in claims, and approximately 100 adversary proceedings;
- *Consumer Reaffirmation Cases* (1997-2000); on behalf of USDOJ, participated in resolution of Federated Department Stores, Sears, and other matters involving national reaffirmation practices;
- *In re MarkAir* (1992-1995, Alaska); Chapter 11, regional jet carrier; at its zenith, MarkAir had more than 61 aircraft, flew to more than 145 cities, had more than 2,000 employees; its annual revenues exceeded $250 million. Represented Alaska Airlines and Beech Aircraft;
- *In re Wagner* (1992-1993, Alaska); special counsel to Chapter 11 trustee regarding recovery of transferred oil and gas leases;
- *In re Chugach Alaska Regional Native Corporation* (1991-1992, Alaska); represented Exxon Shipping regarding oil spill claims;
- *In re Zamarello* (1986-1989, Alaska); counsel to Bank of California in case of shopping center developer;
- *In re Ryan Air* (1986-1989, Alaska); commuter carrier Chapter 11; represented creditors' committee;

Representative Cases Continued

- *In re Liberty Air* (1983-1984, Alaska): commuter carrier Chapter 11; counsel for primary secured creditor;
- *In re Bering Straits Regional Native Corporation* (1985-1988, Alaska); represented the committee in the first Alaska Native Corporation Chapter 11; significant sale of Net Operating Losses;
- *In re Wein Airlines* (1983-1984, Alaska): Chapter 11, regional jet carrier; represented creditors' committee.

Education

Juris Doctor, Cum Laude	1975
Ohio State University, College of Law	*Columbus OH*
A.B.	1971
Kenyon College	*Gambier OH*

Admitted To Practice

Alaska (1977- occasionally inactive, currently active), Washington (1987-inactive), and Ohio (1975-inactive)

Clarke
Jud. Council

Please deliver to Frank

STATE OF ALASKA
OFFICE OF THE GOVERNOR
P.O. Box 110001, Juneau, AK 99811-0001
Phone: (907) 465-3500 Fax: (907) 465-3532

BOARDS AND COMMISSIONS APPLICATION FORM

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your request. Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Board or Commission and seat for which I am applying: Judicial Council
(For example: Board of Agriculture, public seat)

Please list any other State Boards or Commissions on which you currently or previously have served:

Name: William F. Clarke

Mailing Address:

Residence Address:

City, State and Zip Code: Chugiak, AK

Home or Message Telephone: 907 529 6164 Business Telephone: Same

Fax Number: Cell Phone: Same

Email address: clarke.bob@gmail.com

AS 39-05-100 requires that a person appointed to a state board or commission be a registered voter prior to the last general election:

Are you a registered voter: YES X NO Voter Registration Number (Optional):

Social Security Number (Optional, required if appointed for travel reimbursement etc.):

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years?

YES NO X if "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recentness, and relationship to the board position applied for, will be evaluated and a determination will be made after a review of all relevant facts.

CONFLICTS OF INTEREST: Certain boards and commissions require full disclosure of personal financial data under AS 39.50.010. If required for the board or commission for which you are applying, are you willing to do so?
YES X NO

Could you or any member of your family be affected financially by decisions to be made by the board or commission for which you have applied? YES NO X

If "YES", explain:

TRAINING AND EXPERIENCE: (If resume attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria: N/A

B. List both formal and informal education and training experiences: (Use additional paper if necessary).
B.A., English Lit., 1961

C. List any community service, municipal government, and state positions held, and any awards received. Include both compensated and uncompensated positions (such as president of a service organization or a mayor). Include length of time served.
Served on board of directors, Anchorage Rotary Club

D. Employment work history – paid, unpaid or voluntary: (Use additional paper of necessary).
1964 - 1984, Pilot, U.S. Air Force
1989 - ~~1994~~ 2005 Director of Engineering Marketing, E & M Consultants, Inc., Anchorage

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

DATE OF BIRTH: SEX: FEMALE ___ MALE X

ETHNICITY:
Alaska Native ___ American Indian ___ Asian or Pacific Islander ___ Black ___ Hispanic ___ White X

MILITARY SERVICE (if applicable, give dates): USAF, 1964-1984

CERTIFICATION: I swear the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form, my application may be rejected, I may be removed from the list of eligible candidates, or I may be removed from the position. I agree that the Office of the Governor may contact present or former employers or other persons who know me to obtain an additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature (in ink): William E. Clark Date: 2 Oct 2003

Please attach a current resume with your application.

(Tompkins) Miller
Jud. Council

KATHLEEN R. (TOMPKINS) MILLER

P.O. Box 83440
Fairbanks, AK 99708
(907) 451-8559

EXPERIENCE

October 2002-Present

Law Offices of Joseph Miller, LLC, Fairbanks, Alaska
Office Manager/Legal Secretary/Paralegal (part-time)
File court documents, answer phone and client queries, schedule appointments, invoice and bill clients, calendar court deadlines and appearances, and manage all other clerical aspects of law offices. Organize exhibits and evidence for trial, draft pleadings as directed, interview witnesses, screen prospective clients, communicate with adverse counsel, prepare spreadsheets, and provide other paralegal services to law offices.

August 1994-Present

Miller Home-School, Anchorage, Tok, and Fairbanks, Alaska
Teacher
Mother of eight children. Educate up to seven children per school year from grade school through highschool utilizing a variety of curricula. The two graduates to-date from home-school program are both Alaska Merit Scholars. Other children consistently test in above-average percentiles.

August 2007-July 2008

Fairhill Christian School, Fairbanks, Alaska
Teacher
Teach elementary school children, full-time. Teaching duties include preparation of scope and sequence for language, arithmetic, writing, reading, science, health, history, spelling, and art courses. Prepare daily lesson plans. Conduct parent-teacher conferences. Organize and supervise field trips. Assist in organizing fundraisers for nonprofit, private school. Recognized for volunteer work with school's athletic program. Assist with after-school program as needed. School received 2007-2008 Fairbanks Daily News-Miner's Readers' Choice Award.

June 2002-December 2002

United States District Court, District of Alaska, Fairbanks, Alaska
United States Magistrate Judge Clerk (part-time)
Federal court clerk for criminal and civil bench trials, preliminary examinations, removal proceedings, extradition hearings, detention hearings, suppression hearings, sentencing hearings, and probation revocation proceedings. Provide clerical support for naturalization ceremonies, for traveling U.S. District Court Judges, and for other U.S. Magistrate Judges. Accept filings of various legal papers in magistrate judge's court. Prepare, summarize, and report statistical data to the Administrative Office of the U.S. Court System. Answer phone and queries directed to magistrate judge's office.

August 2002-December 2002

Lighthouse School, Fairbanks, Alaska
Substitute Teacher, Home Economics Teacher (part-time)
Substitute teach (as requested) elementary grade classes and high school mathematics. Teach weekly home economics course to elementary school students.

Chennault - Violent Crimes

App/Phy/OccUp/Therapy/07

ENTERED 9.26.05 dc

STATE OF ALASKA
OFFICE OF THE GOVERNOR
P.O. Box 110001, Juneau, AK 99811-0001
Phone: (907) 465-3500 Fax: (907) 465-3532

BOARDS AND COMMISSIONS APPLICATION FORM

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resume. Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Board or Commission and seat for which I am applying: Medical/Other/Occupational Ther.
(For example, Board of Agriculture, public seat)

Please list any other State Boards or Commissions on which you currently or previously have served:

Name: Regina Christine Sutton Chennault, M.D.

Mailing Address: P.O. Box 1129 Soldotna, Alaska 99669

Residence Address: Soldotna, Alaska 99669

City, State and Zip Code: Soldotna, Alaska 99669

Home or Message Telephone: _____ Business Telephone: 907 260 2045

Fax Number: 907 260 2047 Cell Phone: _____

Email address: rchennault@alaska.net

AS 39-05-100 requires that a person appointed to a state board or commission be a registered voter prior to the last general election:

Are you a registered voter: YES (circled) NO _____ Voter Registration Number (Optional): _____

Social Security Number (Optional, required if appointed for travel, reimbursement etc.): _____

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years?

YES _____ NO (circled) if "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is ~~not~~ necessarily grounds for disqualification. The number of convictions, nature, recentness, and relationship to the board position applied for, will be evaluated and a determination will be made after a review of all relevant facts.

CONFLICTS OF INTEREST: Certain boards and commissions require full disclosure of personal financial data under AS 39.50.010. If required for the board or commission for which you are applying, are you willing to do so?
YES _____ NO _____

Could you or any member of your family be affected financially by decisions to be made by the board or commission for which you have applied? YES _____ NO _____

If "YES", explain:

TRAINING AND EXPERIENCE: (If resume attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria: M. D. Degree 1993

B. List both formal and informal education and training experiences: (Use additional paper if necessary).
General Surgery residency 5 years

C. List any community service, municipal government, and state positions held, and any awards received. Include both compensated and uncompensated positions (such as president of a service organization or a mayor). Include length of time serviced.
Vice Chairman, State of Alaska, Federal Comm/Hee on Transm

D. Employment work history - paid, unpaid or voluntary: (Use additional paper of necessary).
Private practice surgeon Soldotna, Alaska

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will no be used to illegally discriminate against you.

DATE OF BIRTH: SEX: (FEMALE ✓) ___ MALE ___

ETHNICITY:
Alaska Native ___ American Indian ___ Asian or Pacific Islander ___ Black Hispanic (White ✓)

MILITARY SERVICE (if applicable, give dates): None

CERTIFICATION: I swear the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates, or I may be removed from the position. I agree that the Office of the Governor may contact present or former employees or other persons who know me to obtain an additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature (in ink): [signature] Date: 9-26-05

Please attach a current resume with your application.

Alaska State Legislature

Official Business

House of Representatives

Office of the Chief Clerk

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

REFERRAL FOR CONFIRMATION

Date Referred: February 4, 2009

Committee: **Judiciary**

Violent Crimes Compensation Board
Dr. Regina C. Chennault – Soldotna
Appointed: 10/18/2005 Reappointed: 3/1/2006
Reappointed: 3/1/2009 Term Expires: 3/1/2012

Action Date: 2/20/09
(Same date as on the accompanying signature page)

Note: Attach to a signature page and return to the Chief Clerk's office.

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

Official Business

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

REFERRAL FOR CONFIRMATION

Date Referred: February 4, 2009

Committee: **Judiciary**

Board of Governors of the Alaska Bar
Dr. David L. Eichler – North Pole
Appointed: 3/1/2009 Term Expires: 3/1/2012

Action Date: 2/20/09
(Same date as on the accompanying signature page)

Note: Attach to a signature page and return to the Chief Clerk's office.

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

Official Business

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

REFERRAL FOR CONFIRMATION

Date Referred: February 4, 2009

Committee: **Judiciary**

Alaska Judicial Council
William F. Clarke – Chugiak
Appointed: 10/16/2008 Term Expires: 3/1/2013

Action Date: 2/20/09
(Same date as on the accompanying signature page)

Note: Attach to a signature page and return to the Chief Clerk's office.

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

Official Business

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

REFERRAL FOR CONFIRMATION

Date Referred: February 4, 2009

Committee: **Judiciary**

Alaska Judicial Council
Kathleen R. Tompkins-Miller – Fairbanks
Appointed: 3/1/2009 Term Expires: 3/1/2015

Action Date: 2/20/09
(Same date as on the accompanying signature page)

Note: Attach to a signature page and return to the Chief Clerk's office.

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

Official Business

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

REFERRAL FOR CONFIRMATION

Date Referred: February 4, 2009

Committee: **Judiciary**

Commission on Judicial Conduct
Jan S. Ostrovsky – Anchorage
Appointed: 3/1/2009 Term Expires: 3/1/2013

Action Date: 2/20/09
(Same date as on the accompanying signature page)

Note: Attach to a signature page and return to the Chief Clerk's office.

CONFIRMATION COMMITTEE REPORT

Action date: 2/20/09

The **Judiciary Committee** has reviewed the qualifications of the following Governor's appointee(s) as shown on the attached Referral for Confirmation form(s) and recommends that the name(s) be forwarded to a joint session for consideration:

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	French
	Coghill
	Gruenberg
	LYNN
	Holmes
	Elton
	Wielechowski
	THERRIAULT
Chair:	

Please attach appointee Referral for Confirmation form(s) and return to the Chief Clerk's office.

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

Official Business

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

MEMORANDUM

Date: February 4, 2009

To: Representative Ramras, Chair
Judiciary Committee

From: Suzi Lowell
Chief Clerk

Subject: Governor's Appointment(s)

The Speaker referred the following Governor's appointment(s) to the Judiciary Committee:

Board of Governors of the Alaska Bar
Dr. David L. Eichler – North Pole
Appointed: 3/1/2009 Term Expires: 3/1/2012

*** Commission on Judicial Conduct**
Chris Brown – Anchorage
Appointed: 3/1/2009 Term Expires: 3/1/2013

Jan S. Ostrovsky – Anchorage
Appointed: 3/1/2009 Term Expires: 3/1/2013

Alaska Judicial Council
William F. Clarke – Chugiak
Appointed: 10/16/2008 Term Expires: 3/1/2013

Kathleen R. Tompkins-Miller – Fairbanks
Appointed: 3/1/2009 Term Expires: 3/1/2015

Violent Crimes Compensation Board
Dr. Regina C. Chennault – Soldotna
Appointed: 10/18/2005 Reappointed: 3/1/2006
Reappointed: 3/1/2009 Term Expires: 3/1/2012

The Referral for Confirmation page(s), resume(s), and a signature page are attached for your use.

Attachments as noted

Brown
Jud. Conduct

STATE OF ALASKA
OFFICE OF THE GOVERNOR
P.O. Box 110001, Juneau, AK 99811-0001
Phone: (907) 465-3500 Fax: (907) 465-3532

BOARDS AND COMMISSIONS APPLICATION FORM

INSTRUCTIONS

A separate application is required for each position for which you apply. Complete and specific answers will aid in rapid and accurate processing of your resume. Please type or print legibly in ink. Forward to the above address. Be sure your answers are true. A willfully false answer may result in your disqualification or removal from office if you are appointed.

Board or Commission and seat for which I am applying: Judicial Conduct, public seat
(For example, Board of Agriculture, public seat)

Please list any other State Boards or Commissions on which you currently or previously have served: N/A

Name: James Christopher (Chris) Brown

Mailing Address: _____

Residence Address: _____

City, State and Zip Code: _____

Home or Message Telephone: _____ Business Telephone: 907/264-7360

Fax Number: 907/777-2589 Cell Phone _____

Email address: chrisbrown@gttglasscom.net

AS 39-05-100 requires that a person appointed to a state board or commission be a registered voter prior to the last general election:

Are you a registered voter: YES ✓ NO _____ Voter Registration Number (Optional): _____

Social Security Number (Optional, required if appointed for travel, reimbursement etc.): _____

Have you ever been convicted of a misdemeanor within the past five years or a felony within the past ten years?

YES _____ NO ✓ if "YES", explain the circumstances on a separate sheet of paper and attach it to this application. A conviction is not necessarily grounds for disqualification. The number of convictions, nature, recentness, and relationship to the board position applied for, will be evaluated and a determination will be made after a review of all relevant facts.

CONFLICTS OF INTEREST: Certain boards and commissions require full disclosure of personal financial data under AS 39.50.010 if required for the board or commission for which you are applying, are you willing to do so?
YES ✓ NO _____

Could you or any member of your family be affected financially by decisions to be made by the board or commission for which you have applied? YES _____ NO ✓

If "YES", explain:

TRAINING AND EXPERIENCE: (If resume attached, it is not necessary to complete items A-D)

A. List any professional licenses, certifications, or registrations and dates obtained that may be used as qualifying criteria:

B. List both formal and informal education and training experiences: (Use additional paper if necessary).

C. List any community-service, municipal-government, and state positions held, and any awards received. Include both compensated and uncompensated positions (such as president of a service organization or a mayor). Include length of time serviced.

D. Employment work history - paid, unpaid or voluntary: (Use additional paper of necessary).

The Office of the Governor and the State of Alaska have an Affirmative Action Equal Employment Opportunity Program. To assist in the program, you are asked to voluntarily answer the following questions to provide the information necessary for reporting purposes. Under State and Federal law, the information you provide will not be used to illegally discriminate against you.

DATE OF BIRTH: ____ SEX: FEMALE ____ MALE ✓

ETHNICITY:
Alaska Native ____ American Indian ____ Asian or Pacific Islander ____ Black ____ Hispanic ____ White ✓

MILITARY SERVICE (if applicable, give dates): N/A

CERTIFICATION: I swear the information I have entered on this form is true to the best of my knowledge. I understand that if I deliberately conceal or enter false information on the form my application may be rejected, I may be removed from the list of eligible candidates, or I may be removed from the position. I agree that the Office of the Governor may contact present or former employees or other persons who know me to obtain an additional information about my skills and abilities. I understand that the information on this application is public information and may be released through a legal request for such information.

Signature (in ink): [signature] Date: 12/24/08

Please attach a current resume with your application.

STATE OF ALASKA
OFFICE OF THE GOVERNOR

BOARDS AND COMMISSIONS

Name: James Christopher (Chris) Brown Date: 12/24/08

(Indicate top three boards/commissions of interest by number with #1 as your preference)

	Accounting Board
	Aerospace Development Corporation
	Aging Commission
	Agriculture & Conservation
	Alaska Juvenile Justice Advisory Committee
	Alaska Retirement Management Board
	Alaska Statehood Celebration Commission
	Alaska-Alberta Bilateral Council
	Alcohol/Drug Abuse
	Alcoholic Beverage Control
	Architects/Engineers/Land Surveyors
	Arts Council
	Assessment Review Board
	Aviation Advisory Board
	Bald Eagle Preserve
	Bar Association
	Barbers & Hairdressers
	Bering Sea Fishery Advisory Board
	Big Game Commercial Services
	Boating Safety Council
	Broadcasting Commission
	Children's Trust Board
	Chiropractic Examiners
	Clemency Advisory Committee
	Commemorative Coin Commission
	Commercial Fisheries Entry
	Commercial Fishing/Agriculture Bank
	Community Service Commission
	Denali Access System Advisory Committee
	Dental Examiners
	Disabilities/Special Education
	Domestic Violence/Sexual Assault
	Education & Early Development
	Education Commission/States
	Emergency Medical Services
	Emergency Response Commission
	Employment of People with Disabilities
	Exxon Valdez Oil Spill Trustee
	Faith-Based & Community Initiatives Council
	Fire Standards Council
	Fisheries

	Fisherman's Fund Advisory & Appeals
	Forestry
	Game
	Health Council
	Historical Commission
	Historical Records Advisory
	Homeless Council
	Housing Finance Corporation
	Human Rights
	Humanities Forum
	Independent Living Council
	Industrial Development/Export Authority
	Interstate Oil & Gas Compact
	Judicial Conduct
	Judicial Council
	Knik Arm Bridge
	Labor Relations Agency
	Libraries Advisory
	Local Boundary Commission
	Marine Pilots
	Marine Transportation Advisory Board
	Marital & Family Therapy
	Medical Board
	Mental Health Board
	Mental Health Trust Authority
	Midwives
	Minerals Commission
	Municipal Bond Bank
	Natural Gas Authority
	Natural Gas Pipeline Corporation
	Natural Resources Conservation Dev
	North Pacific Anadromous Fish
	North Pacific Fisheries Management Council
	North Pacific Research Board
	Nursing
	Occupational Safety
	Oil & Gas Conservation Commission
	Optometry
	Pacific Marine Fisheries Commission
	Pacific Salmon Commission-Commissioners
	Pacific Salmon Commission- Northern Panel

	Pacific Salmon Commission-Transboundary Panel
	Parole Board
	Permanent Fund
	Pharmacy Board
	Physical/Occupational Therapy
	Pioneer's Home Advisory
	Police Standards Council
	Postsecondary Education
	Professional Counselors
	Professional Teaching Practices
	Psychologist/ Psychological assoc.
	Public Offices Commission
	PWS Oil Spill Recovery Institute
	Railroad Corporation
	Real Estate Appraisers
	Real Estate Commission
	Regents
	Regulatory Commission (RCA)
	Royalty Oil & Gas Development
	Safety Advisory Council
	Seafood Marketing Institute
	Seismic Hazards Safety Commission
	Social Work Examiners
	Student Loan Corporation
	Subsistence Resource Commissions
	Suicide Prevention Council
	Telecommunications
	Uniform State Laws
	Veterans Advisory Council
	Veterinary Examiners
	Violent Crimes Compensation
	Water and Wastewater Works
	Western Interstate Comm/Higher Educ
	Wood-Tikchik State Park
	Worker's compensation
	Worker's Compensation Appeals Commission
	Workforce Investment Board
	Yukon River Panel

Press release text:

Chris Brown, 57, of Anchorage, is the Chief Operating Officer for AT&T's Alaska business unit (formerly known as AT&T Alascom.) Mr. Brown holds a BSEE from the University of South Florida in Tampa, Florida and an MBA from Emory University, Atlanta, Georgia.

Curriculum Vitae

James Christopher (Chris) Brown

; (907) 264-7360 (work);
chrisbrown@attalascom.net

Summary

Telecommunications executive with 30 years of telecom and high tech industry experience; engaged citizen with service and not-for-profit involvement.

Education

- BSEE (electrical engineering), University of South Florida, Tampa, FL 1974
  Tau Beta Pi Engineering Honor Society
- MBA, Emory University, Atlanta, GA 1987
  Beta Gamma Sigma Business Honor Society

Professional

Over 30 Years of experience in large, small, emerging and start up companies, including:

- Sprint (United Telecom); 1981-1991
  Director - various Technical and Marketing functions
- British Telecom; 1991-1994
  Director – Market Strategy and Business Development
- Intermedia Communications (competitive local phone company); 1994-1998
  Senior VP Strategic Planning and Marketing
- Shepherd Systems (High tech start up); 1998-2001
  President and COO
- AT&T Alascom; 2004-present
  Chief Operating Officer

Community/Service

- Atlanta Boy Choir Board of Directors; 2002 – 2004
- Anchorage Economic Development Corporation;
  Board of Directors 2008 – present
  elected to Executive Committee 2009
- Advisory Committee to AK Commissioner of Administration
  Alaska Land Mobile Radio System 2007 – present
- Alaska Family Council Board of Directors 2007 – present
  Treasurer 2008 - present
- Church Elder / Adult Teacher 1990 - present

CONFIRMATION COMMITTEE REPORT

Action date: 3/27/09

The **Judiciary Committee** has reviewed the qualifications of the following Governor's appointee(s) as shown on the attached Referral for Confirmation form(s) and recommends that the name(s) be forwarded to a joint session for consideration:

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	LYNN
	Gruenberg
	Coghill
	Olson
Chair:	BANKS

Please attach appointee Referral for Confirmation form(s) and return to the Chief Clerk's office.

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

Official Business

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

REFERRAL FOR CONFIRMATION

Date Referred: February 4, 2009

Committee: **Judiciary**

Commission on Judicial Conduct
Chris Brown – Anchorage
Appointed: 3/1/2009 Term Expires: 3/1/2013

Action Date: 3/27/09
(Same date as on the accompanying signature page)

Note: Attach to a signature page and return to the Chief Clerk's office.

CONFIRMATION COMMITTEE REPORT

Action date: 2/4/09

In accordance with AS 24.60.130, the Judiciary Committee has reviewed the qualifications of the following Chief Justice's appointee and recommends that this name be forwarded to the House for ratification:

Select Committee on Legislative Ethics

Herman G. Walker, Jr.
(Incumbent)

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of ratification.

Signature:	Printed Last Name
	LYNN
	Gruenberg
	Coghill
	Holmes
	Gatto
Chair:	Dahlstrom
Chair:	

Please return to the Chief Clerk's office.

Chambers of
Dana Fabe
Chief Justice

Supreme Court
State of Alaska

303 K Street
Anchorage, Alaska
99501-2013

(907) 264-0622
FAX (907) 264-0554

January 21, 2009

The Honorable Gary Stevens
Senate President
State Capitol, Room 111
Juneau, Alaska 99801-1182

The Honorable Michael Chenault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear President Stevens and Speaker Chenault:

Alaska Statute 24.60.130(b)(3) designates the Chief Justice of the Alaska Supreme Court to nominate the five public members who sit on the Select Committee on Legislative Ethics. The terms of two current public members will expire in 2009.

In my capacity as Chief Justice, and pursuant to AS 24.60.130(b)(3), I am nominating the two incumbents whose terms are expiring for an additional term. The contact information for these nominees is as follows:

(1) Herman G. Walker, Jr. Mr. Walker is an attorney and business owner in Anchorage and can be reached at (907) 279-2889. His mailing address is 606 E Street, Suite 203, Anchorage, Alaska 99501. For purposes of determining compliance with AS 24.60.130(c), Mr. Walker is non-partisan.

(2) Dennis "Skip" Cook. Mr. Cook is an attorney in Fairbanks and can be reached at (907) 452-1855, ext. 111. His mailing address is 714 4th Avenue, Suite 200, Fairbanks, Alaska 99701. For purposes of determining compliance with AS 24.60.130(c), Mr. Cook is non-partisan.

Please let me know if I can provide you with any other information.

Sincerely,

Dana Fabe
Chief Justice

DF:jd
cc: Herman G. Walker, Jr.
Dennis "Skip" Cook
Joyce Anderson, Select Committee on Legislative Ethics

HERMAN GENE WALKER, JR.
606 E Street, Suite 203, Anchorage Alaska 99501
(907) 279-2889 email: hermanjr@limonwalker.com

EDUCATION

- University of Wyoming Laramie, Wyoming. May 1992
  J.D. Degree

- Arizona State University Tempe, Arizona. May 1988
  B.S. Political Science Degree

LAW EXPERIENCE

• Limon & Walker, LLC. Attorney	Anchorage AK	2006 to Present
• Lynda Limon Law Offices Attorney	Anchorage AK	2000 to 2005
• Koval & Featherly Law Offices Attorney	Anchorage AK	1998 to 2000
• Public Defender Agency Attorney	Anchorage AK	1995 to1996
• Rex Lamont Butler & Associates Associate Attorney	Anchorage AK	1993 to 1995
• Law Office of Rex Lamont Butler Law Clerk	Anchorage AK	1993 to 1993
• Office of Public Advocacy Legal Intern	Anchorage AK	1992 to 1993
• Defender Association of Philadelphia Legal Intern	PA	1991
• Maricopa County Superior Court Pre-Trial Services Officer	Phoenix AZ	1989

BUSINESS OWNERSHIP

• The Body Shop, 5th Avenue Mall	Anchorage AK	November 1996

MEMBERSHIPS AND AFFILIATIONS

Alaska Bar Association, United States District Court of Alaska, Anchorage Bar Association, American Bar Association, National Association of Criminal Defense Lawyers, Alaskan Association for Justice , National Board of American Association for Justice, Urban League, Sigma Pi Phi Fraternity,

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

ARRIVED JAN 14 2009 APOC-ANCH PUBLIC FAX FILE

FINANCIAL DISCLOSURE STATEMENT FOR: PUBLIC OFFICIALS, LEGISLATORS & CANDIDATES

EXECUTIVE BRANCH: Governor, Lt. Gov., commissioners, directors, special assistants and legislative liaisons; state boards and commissions; procurement and investment officers; city/borough officials; candidates.

JUDICIAL BRANCH: Justices, judges and magistrates.

LEGISLATIVE BRANCH: Legislators, legislative directors, Select Committee on Legislative Ethics.

FOR MORE INFORMATION, INSTRUCTIONS, BLANK FORMS, SAMPLE FORMS & QUESTIONS:
Visit APOC online at: www.apoc.alaska.gov :

- To find detailed instructions and sample disclosures, under the heading "How do I..." click "Complete my initial, annual or final Public Official Financial Disclosure Statement"
- To find blank Financial Disclosure forms for public officials and legislators as well as a *Guide to Financial Disclosure in Alaska,* under the heading "Quick Links" click "APOC Forms"
- To find the laws and regulations that APOC administers and enforces, there is a link to "Statutes" or "APOC Statutes & Regulations" throughout the APOC Web site.

Contact APOC directly:

- ANCHORAGE: 2221 E. Northern Lights Blvd., Rm 128, Anchorage, AK 99508 / 907-276-4176 / Fax 907-276-7018
- JUNEAU: 240 Main St., Rm 201 / P.O. Box 110222, Juneau, AK 99811 / 907-465-4864 / Fax 907-465-4832
- TOLL-FREE: 800-478-4176 / Online contact info: www.apoc.alaska.gov/staff.shtml

→ THIS IS A PUBLIC DOCUMENT ←

THIS REPORT IS A SWORN STATEMENT. YOUR SIGNATURE ON THE LAST PAGE CERTIFIES THAT THIS DISCLOSURE IS TRUE, CORRECT and COMPLETE.

NAME: Herman G. Walker, Jr.

MAILING ADDRESS: 606 E Street, Suite 203, Anchorage, AK 99501
Street address or P.O. box, city, zip code

CONTACT PHONE(S): WK: (907) 279-2889 HM: (907) 243-3349 Cell: (907) 227-6004 Fax: (907) 258-4428

E-MAIL: hermanjr@limonwalker.com

SPOUSE / DOMESTIC PARTNER: Lynda Ann Limon

DEPENDENT CHILDREN: 2 NON-DEPENDENT CHILDREN LIVING WITH YOU: 0
Report number of children, including stepchildren, adoptive children. Legislative filers: List non-dependent children living with you.

NAME NON-DEPENDENT CHILDREN LIVING with YOU: N/A

WHY ARE YOU FILING? ☐ OFFICE HOLDER or ☐ CANDIDATE

Office held or sought: Public Member of Legislative Ethics Committee

☐ **INITIAL STATEMENT: Due 30 days from appointment – for new public officials.**
☐ **ANNUAL STATEMENT: Due by March 15 – for incumbent officials.**
☐ **FINAL STATEMENT: Due 90 days after leaving office – include 2008 data up until leaving office.**
☐ **CANDIDATE STATEMENT: Due when filing declaration of candidacy**

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE A: SOURCES OF INCOME OVER $1,000

1. SALARIED EMPLOYMENT NONE: check box → ☐

Report each employer who paid you, your spouse, domestic partner or children covered by reporting requirements more than $1,000. Include amount of income, dates of employment, terms of employment, amount of time worked. **Income means anything of value and covers all forms of compensation, including deferred income.** DESCRIBE THE WORK PERFORMED IN SUFFICIENT DETAIL TO MAKE IT CLEAR TO A PERSON OF ORDINARY UNDERSTANDING.

EARNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $ 60,000

☒ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: 2008

If work is not full-time, specify amount of time worked (months/days/hours):

Employer: Limon & Walker LLC

Address: 606 E Street, Suite 203, Anchorage, Alaska 99501

DETAILED DESCRIPTION of SERVICES PROVIDED: Legal Services

EARNED BY: ☐ Filer / ☒ Spouse/domestic partner / ☐ Child / Total income: $ 60,000

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: 2008

If work is not full-time, specify amount of time worked (months/days/hours):

Employer: Limon & Walker LLC

Address: 606 E Street, Suite 203, Anchorage, Alaska 99501

DETAILED DESCRIPTION of SERVICES PROVIDED: Legal Services

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates:

If work is not full-time, specify amount of time worked (months/days/hours):

Employer:

Address:

DETAILED DESCRIPTION of SERVICES PROVIDED:

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE A: SOURCES OF INCOME OVER $1,000

2. SELF-EMPLOYMENT: NON-RETAIL NONE: check box → ☒

Disclose each client, customer or business that paid you, your spouse/domestic partner or child more than $1,000. Self-employment includes sole proprietors, partnerships, limited liability companies, professional corporations. List each source of income over $1,000 by name and amount. Exemptions: if the identity of the source of income is confidential by law, you may be excused from disclosing the source. To obtain an exemption, you must qualify under the law, you must file a written request, and you must ***receive*** an exemption from the commission. Exemption rules: Public officials, candidates: 2 AAC 50.100-102. Legislators: 2 AAC 50.775-780.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income: $**_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / **Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / Customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income: $**_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / **Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income: $**_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / **Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN 14 2009

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE A: SOURCES OF INCOME OVER $1,000

3. SELF-EMPLOYMENT – RETAIL NONE: check box → ☐

List each self-employment retail business that was a source of income of more than $1,000. Individual retail clients/customers do ***not*** need to be disclosed with these ***exceptions.*** You must disclose (1) customers with a line of credit extending through two or more billing cycles, (2) customers with ongoing contracts to purchase goods or services, and (3) customers who are offered discounts not available to the general public.
Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $ Have Not Filed 2008 Taxes
☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: 2008
If work is not full-time, specify amount of time worked (months/days/hours):
Business name: Wyld Group; DBA The Body Shop
Client/customer name/address (if applicable):
DETAILED DESCRIPTION of services provided: Bath & Body Products, Aroma Therapy & Cosmetics

EARNED BY: ☐ Filer / ☒ Spouse/domestic partner / ☐ Child / Total income: $ Have Not Filed 2008 Taxes
☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: 2008
If work is not full-time, specify amount of time worked (months/days/hours):
Business name: Wyld Group; DBA The Body Shop
Client/customer name/address (if applicable):
DETAILED DESCRIPTION of services provided: Bath & Body Products, Aroma Therapy & Cosmetics

4. RENTAL INCOME NONE: check box → ☐

OWNER:	TENANTS WHO PAID > $1,000 (For property outside Alaska managed by agent, list AGENT instead of tenant)	AMOUNT
☒ Filer	Belinda Whitman	10,400
☒ Spouse or domestic partner	Molly Brigman	2,100
☐ Child		
☐ Co-owner with others		

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE A: SOURCES OF INCOME OVER $1,000

5. DIVIDENDS and INTEREST NONE: check box → ☐

Disclose source and amount of income over $1,000 from dividends and interest. Include bank accounts, capital gains, money market accounts, certificates of deposit, Native corporation dividends, Permanent Fund dividends.

RECIPIENT	SOURCE	AMOUNT
☒ Filer ☐ Child ☐ Spouse/ partner	PERMANENT FUND DIVIDENT, HERMAN WALKER, JR	3,269.00
☐ Filer ☐ Child ☒ Spouse/ partner	PERMANENT FUND DIVIDENT, LYNDA A. LIMEN	3,269.00
☐ Filer ☒ Child ☐ Spouse/ partner	PERMANENT FUND DIVIDENT, DUPREE L. WALKER	3,269.00
☐ Filer ☒ Child ☐ Spouse/ partner	PERMANENT FUND DIVIDENT, LUCERO L. WALKER	3,269.00
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		

6. OTHER INCOME NONE: check box → ☒

List source and amount of income over $1,000 not listed elsewhere in this form, including sale of goods or property, pensions, IRA cash-outs, honorariums, alimony, child support, shared living expenses and government entitlements.

RECIPIENT	SOURCE	AMOUNT
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		

7. GIFTS WORTH MORE THAN $250 NONE: check box → ☒

Report gifts worth more than $250 (including gifts from a single source with a cumulative value more than $250) – *except* gifts from spouse, domestic partner, parent, child, sibling, grandparent, aunt, uncle, niece or nephew. Include travel expenses, discounts not available to the public, loans forgiven or loans paid by a third party. Legislators must submit more detailed disclosure reports to the Legislative Ethics Committee.

RECIPIENT	DESCRIPTION	SOURCE	VALUE
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN 14 2009

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE B

BUSINESS INTERESTS

NONE: check box → ☐

Report business interests even if they were **NOT** a source of income, including businesses in which you/family:

- Served as stockholder, owner, officer, director, partner, proprietor, employee or held an interest.
- Had ownership interests of more than $1,000 in a publicly traded corporation.
- Had any other ownership interest in a business, including shares in non-publicly traded corporations, sole proprietorships, limited liability companies. Include options to buy.
- Include non-profit organizations, corporations, businesses, associations, trade groups.

If the business was a source of income over $1,000, it must also be reported in Schedule A.

☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: Bath & Body Retail

Business name: The Wyld Group DBA The Body Shop

Business address: 606 E Street, Suite 203, Anchorage, Alaska 99501

DETAILED DESCRIPTION of business activity: Bath & Body Products, Aroma Therapy & Cosmetics

☐ Filer / ☒ Spouse/domestic partner / ☐ Child / Position/Type of interest: Bath & Body Retail

Business name: The Wyld Group DBA The Body Shop

Business address: 606 E Street, Suite 203, Anchorage, Alaska 99501

DETAILED DESCRIPTION of business activity: Bath & Body Products, Aroma Therapy & Cosmetics

☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED; USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE C

REAL PROPERTY INTERESTS **NONE: check box →** ☐

Include your home, a rent-to-own home, rental property, vacant property, recreational property, options to buy, business property and real estate interests held in a limited liability company, limited partnership or trust. Include property owned or sold during the reporting period. *If property is jointly owned, check all boxes that apply.*

OWNER(S): ☒ **Filer** / ☒ **Spouse/domestic partner** / ☐ **Child** / ☐ **Other co-owner:** _____
Street address or legal description: 2351 Luspredi Point Circle
City or borough / State: Anchorage, Alaska 99515
Ownership interest: Home Owner
(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

OWNER(S): ☒ **Filer** / ☒ **Spouse/domestic partner** / ☐ **Child** / ☐ **Other co-owner:** _____
Street address or legal description: 2440 E. 5th Place
City or borough / State: Tempe, Arizona 85281
Ownership interest: Ownership
(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

OWNER(S): ☒ **Filer** / ☒ **Spouse/domestic partner** / ☐ **Child** / ☐ **Other co-owner:** _____
Street address or legal description: 9314 Strathmore Drive
City or borough / State: Anchorage, Alaska 99515
Ownership interest: Ownership
(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

OWNER(S): ☐ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child** / ☐ **Other co-owner:** _____
Street address or legal description: _____
City or borough / State: _____
Ownership interest: _____

OWNER(S): ☐ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child** / ☐ **Other co-owner:** _____
Street address or legal description: _____
City or borough / State: _____
Ownership interest: _____
(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN 14 2009

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE D

BENEFICIAL INTERESTS: TRUSTS & RETIREMENT ACCOUNTS over $1,000 / NONE: ☐

Report each beneficial interest in a trust or retirement account that exceeded $1,000 during the reporting period. Report stocks, bonds, mutual funds, cash accounts, CDs, deferred compensation plans, profit-sharing accounts, employee benefit accounts, retirement accounts (such as IRA, 401K, SEP or Keogh) trust funds (including blind trusts) and limited partnerships. "Managed by" means the filer, employer, business, investment entity or name of the company that manages the account. Identify individual investments if you or family members manage or personally control the investments. "Identify fund or companies" means the individual companies or accounts where you are the manager and you control the investments; if a mutual fund, investment company or other third party entity manages and controls the investments, list the name or type of fund where the assets are held. You do NOT need to list the dollar value of the assets, but you must identify the assets by owner, manager and name.

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: 20%

ASSETS – MANAGED BY: Herman G. Walker, Sr. Trustor Is Living

ASSETS – IDENTIFY FUND or COMPANIES: Various Properties Around The Country No Property In Alaska

ASSETS – OWNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: 100%

ASSETS – MANAGED BY: State of Alaska

ASSETS – IDENTIFY FUND or COMPANIES: PERS

ASSETS – OWNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: 100%

ASSETS – MANAGED BY: North Western Prudential

ASSETS – IDENTIFY FUND or COMPANIES: Simple IRA

ASSETS – OWNED BY: ☐ Filer / ☒ Spouse/domestic partner / ☐ Child / PERCENT: 100%

ASSETS – MANAGED BY: North Western Prudential

ASSETS – IDENTIFY FUND or COMPANIES: Simple IRA

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: _____

ASSETS – MANAGED BY: _____

ASSETS – IDENTIFY FUND or COMPANIES: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE E

1. LOANS, LOAN GUARANTEES & DEBTS OVER $1,000 NONE: check box → ☐

Report each creditor or lender to whom more than $1,000 was owed during the reporting period. Report guarantor of each loan. List financial obligations, including mortgages on property owned or sold during the reporting period; loans that have been guaranteed; delinquent taxes; alimony; child support payments; medical bills; boat and vehicle loans; business and personal loans; escrows; student loans; signature loans and promissory notes. Loans include secured, unsecured and contingent loans. *Do NOT list credit card obligations or revolving charge accounts.*

DEBTOR: ☒ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: Wells Fargo

DEBTOR: ☒ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: USA Federal Credit Union

DEBTOR: ☒ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: Bank Of America

DEBTOR: ☒ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: Northrim Bank

2. FOR LEGISLATIVE BRANCH FILERS ONLY NONE: check box → ☒

Legislative branch filers must report additional details: original amount of the obligation, the current balance owed, interest rate, length of the loan and whether a written agreement exists for a creditor or lender who:

- Lobbies or hired lobbyists
- Had contracts or sought contracts worth more than $10,000 with any state agency
- Was a municipal or local government entity
- Was affected financially – in an amount exceeding $1,000 – by an act of the legislature or state agency decision, including actions affecting professional or occupational licenses; natural resource permits or quotas; assessments; tax rates; health, safety or environmental standards; insurance or business practices.

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER or ☐ CREDITOR / Name: _____

Address: _____

Original loan: $_____ Balance owed: $_____ Interest rate: _____%

Term: ☐ _____ years ☐ _____ months / WRITTEN LOAN AGREEMENT? ☐ Yes / ☐ No

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE F

1. LEASES: GOVERNMENT CONTRACTS & LEASES

NONE: check box → ☐

List all contracts, bids and offers to contract with the state or any state or municipal agency or entity. Report contract interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company or through a corporation in which filer or family members held a controlling interest.

CONTRACTOR: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / CONTRACT ID (name/number): Dept of Admin Office of Public Advocacy

CONTRACTING AGENCY: Office of Public Advocacy, Anchorage, AK

CONTRACT DESCRIPTION: 07-13

CONTRACTOR: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / CONTRACT ID (name/number): _____

CONTRACTING AGENCY: Alaska Public Defender, Palmer, Alaska

CONTRACT DESCRIPTION: Defend Clients

2. LEASES: NATURAL RESOURCE LEASES

NONE: check box → ☒

List natural resource leases – including mineral, timber, oil and gas leases – held, bid or offered during the reporting period. Report lease interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company; or corporation in which you or family (individually or together) held controlling interest.

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / LEASE ID (name/number): _____

LEASE DESCRIPTION: _____

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / LEASE ID (name/number): _____

LEASE DESCRIPTION: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE G

1. CLOSE ECONOMIC ASSOCIATIONS

NONE: check box → ☒

EXEMPT: Municipal and local officials are exempt from reporting close economic associations. **Members of state boards and commissions are exempt** from reporting close economic associations. **Local officials and state board/commission members do NOT have to complete this section. Check the box for NONE.**

STATE PUBLIC OFFICIALS: Disclose financial relations with legislators, other public officials and lobbyists.

LEGISLATIVE BRANCH: Disclose financial relations with public officials, lobbyists, other legislators, and legislative employees. Report close economic association detailed information to the Legislative Ethics Committee.

CLOSE ECONOMIC ASSOCIATION means a financial relationship between public officials, legislators and lobbyists, including shared interests in a business, property, association, partnership, corporation or LLC.

CHANGES: Report new close economic associations within 60 days.

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

2. FILERS WITH A LOBBYIST SPOUSE or DOMESTIC PARTNER

NONE: ☒

EXEMPT: Local officials and members of state boards and commissions are EXEMPT. Check NONE.

STATE PUBLIC OFFICIALS with a lobbyist spouse or domestic partner: Report names and addresses of each employer of the lobbyist and the total monetary value received from each of the lobbyist's employers.

LEGISLATIVE BRANCH filers with a lobbyist spouse or domestic partner: Disclose employer of lobbyist and compensation, and report details to t he Legislative Ethics Committee.

CHANGES: Report changes in lobbyist's employer within 48 hours of the change.

LOBBYIST'S EMPLOYER: NAME & ADDRESS	COMPENSATION

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and the information in this disclosure statement is, to the best of my knowledge, true, correct and complete. A person who makes a false sworn certification which he or she does not believe to be true is guilty of perjury.

SIGNATURE _____

If you are filing online, you must have an Electronic Filing Agreement with APOC to use an electronic signature.

Herman Walker, JR.
NAME of FILER

1-13-09
DATE &PLACE SIGNED / FILED

All officials and candidates who are required to file disclosure statements are solely responsible for filing complete, accurate and truthful statements by the deadlines.

WHERE TO FILE THIS STATEMENT

STATE OFFICIALS: File initial, annual and final statements with the Alaska Public Offices Commission.

STATE CANDIDATES: File with the Division of Elections along with Declaration of Candidacy.

BOROUGH / MUNICIPAL / CITY OFFICIALS and CANDIDATES: File with city or borough clerk where you hold or seek office.

FILE ELECTRONICALLY to APOC: doa.apoc.reports@alaska.gov

THIS IS A PUBLIC DOCUMENT

NOTE: Public officials who are required to file this disclosure statement may have additional obligations to disclose conflicts of interest or potential conflicts under state executive, legislative or judicial ethics rules or personnel rules. Legislators who are required to file this disclosure statement have additional disclosure and reporting requirements imposed by the Select Committee on Legislative Ethics. Local officials may also be governed by local ethics ordinances or personnel rules.

Disclosure forms, guidelines, laws and regulations are online: www.apoc.alaska.gov or from APOC offices

ALASKA PUBLIC OFFICES COMMISSION

ANCHORAGE OFFICE:
2221 E. Northern Lights Blvd – Rm 128
Anchorage, AK 99508-4149
907-276-4176 / Toll-free 800-478-4176
Fax 907-276-7018

JUNEAU OFFICE:
240 Main St. – Rm 201
Mail: P.O. Box 110222
Juneau, AK 99811-0222
907-465-4864 / Fax 907-465-4832

E-mail APOC: doa.apoc@alaska.gov
File electronic disclosure statements to: doa.apoc.reports@alaska.gov

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

Chambers of
Dana Fabe
Chief Justice

Supreme Court
State of Alaska

303 K Street
Anchorage, Alaska
99501-2013

(907) 264-0622
FAX (907) 264-0554

January 21, 2009

The Honorable Gary Stevens
Senate President
State Capitol, Room 111
Juneau, Alaska 99801-1182

The Honorable Michael Chenault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear President Stevens and Speaker Chenault:

Alaska Statute 24.60.130(b)(3) designates the Chief Justice of the Alaska Supreme Court to nominate the five public members who sit on the Select Committee on Legislative Ethics. The terms of two current public members will expire in 2009.

In my capacity as Chief Justice, and pursuant to AS 24.60.130(b)(3), I am nominating the two incumbents whose terms are expiring for an additional term. The contact information for these nominees is as follows:

(1) Herman G. Walker, Jr. Mr. Walker is an attorney and business owner in Anchorage and can be reached at (907) 279-2889. His mailing address is 606 E Street, Suite 203, Anchorage, Alaska 99501. For purposes of determining compliance with AS 24.60.130(c), Mr. Walker is non-partisan.

(2) Dennis "Skip" Cook. Mr. Cook is an attorney in Fairbanks and can be reached at (907) 452-1855, ext. 111. His mailing address is 714 4th Avenue, Suite 200, Fairbanks, Alaska 99701. For purposes of determining compliance with AS 24.60.130(c), Mr. Cook is non-partisan.

Please let me know if I can provide you with any other information.

Sincerely,

Dana Fabe
Chief Justice

DF:jd
cc: Herman G. Walker, Jr.
Dennis "Skip" Cook
Joyce Anderson, Select Committee on Legislative Ethics

DENNIS E. "SKIP" COOK

Telephones:
Home: 907/457-6994
Work: 907/452-1855
Cell: 907/322-1678

E-Mail:
skip@alaskalaw.com
SSN: 574-12-6319

Home Mailing Address:
431 Birch Hill Road
Fairbanks AK 99721-1621

Business Mailing Address:
P.O. Box 70810
Fairbanks AK 99707-0810

PERSONAL

Born: 2/8/40, Fairbanks, Alaska
Parents: Earl & Pat Cook of Fairbanks
Married: Olga (Blair) Cook, Boise, Idaho, June 22, 1963
Children: Tyler, 41; Bret, 39; Dana, 37; Zachary, 33; Katie, 28; Lizzie, 25; Whitney 21; and 21 grandchildren + 1 great-grandchild

EDUCATION & CREDENTIALS

Admitted to practice law in the State of Alaska since 1970.
J.D., Willamette University College of Law, Salem, OR; 1967-70.
M.A., Political Science, Northwestern University, Evanston, IL; 1962-63.
B.S., Economics, Politics & Engineering, Massachusetts Institute of Technology, Cambridge, MA;, 1958-62.
Diploma, Fairbanks High School, Fairbanks, AK; 1954-58.
Elementary School, Attended Immaculate Conception School, 1946-1949, and Fairbanks Public Schools, 1945 & 1949-1954.

PROFESSIONAL MEMBERSHIPS

Tanana Valley Bar Association (Officer positions: Secretary and Vice-President)
Alaska Bar Association
American Bar Association

EMPLOYMENT CHRONOLOGY

Partner/Shareholder, Cook Schuhmann & Groseclose, Inc., Fairbanks, AK; 1972-present.
Expertise in workers' compensation, commercial law and domestic law.
Started as associate in 1970.

Distribution Representative, Alaskan Adventures, Inc., Fairbanks, AK; 1969-70.
Distributed the hunting/fishing film "This is My Alaska" to movie houses from Colorado to the West Coast.

Registered Representative, Horton, Geib & O'Rourk, Inc., Salem, OR; 1968-69.
Sold mutual funds as a part time job while attending law school.

Clerk, Oregon State Police, Salem, OR; 1967-68.
Performed office clerical functions while attending law school.

General Manager, Alaska 67 Centennial Exposition, Fairbanks, AK; 1965-67.
Started as Assistant General Manager; promoted on the GM's departure.
Planned, developed and directed construction of theme park now known as Alaskaland.
Planned and coordinated exposition activities celebrating Alaska's purchase from Russia in 1867.

Acting Director, Alaska Local Affairs Agency, State of Alaska, Juneau, AK; 1963-65.
Started as Assistant Director; promoted to Acting Director on director's departure.
Assisted local governments in the formation of boroughs.
Initiated revision and consolidation of Alaska Statutes Title 7 and Title 29 into the Alaska Municipal Code.

Election Supervisor, Alaska Division of Elections, Fairbanks, AK; 1963
Conducted the election on the formation of a borough under the Mandatory Borough Act.

Various Employment Prior to 1963: Employed by the Alaska Railroad (freight handler), U.S. Civil Service (clerk-typist), University of Alaska Geophysical Institute (laborer), DEWline in Northern Alaska (warehousman), Foodland Store (cheese-cutter), Ray's Supermarket (boxboy/stocker) and Fairbanks Daily News-Miner (paperboy).

AWARDS & ACHIEVEMENTS

Fairbanks Distinguished Citizen Award (December, 2003).
Vigil Honor, Order of the Arrow, Boy Scouts of America; 2003.
Outstanding Service Award, Alaska Bar Association Pro Bono Program; 1998.
Silver Beaver Award, Midnight Sun Council, Boy Scouts of America; 1997.
Blue Ribbon Volunteer Service Award: Tanana Valley State Fair Association; 1989.
Rotarian of the Year, Fairbanks Rotary Club; 1985.
Distinguished Service Award, Jaycees of Fairbanks; 1967.
Valedictorian, Fairbanks High School; 1958.
Explorer Scout Exchange to Greece, Boy Scouts of America; 1957.
Citizens Now Conference, BSA, Willamette University, delegate; 1956.
Eagle Scout, Boy Scouts of America; 1953.

CIVIC & COMMUNITY ACTIVITIES

Blood Donor, MIT and Fairbanks Memorial Hospital; 1970-2003
10 Gallon Club Member.

Member, Select Committee on Legislative Ethics, State of Alaska; 1998-present.
Chair, 2000-2001, Chair, Senate Subcommittee, 2001-2002.

Fairbanks Chair, Alaska Family Coalition; 1999.
Promoted Constitutional Amendment regarding marriage.

Member, Community Activity Center Site Selection Committee; 1985-86.
Reviewed and selected site for multi-million dollar John Carlson Center in Fairbanks.

Fairbanks Representative, MIT Educational Council; 1971-present.
Interview, advise and recommend prospective applicants to MIT.

AFFILIATIONS

The church of Jesus Christ of Latter-day Saints.
Branch President, Bishop, District President, State President, Regional Representative, Seminary Teacher, Temple Sealer, Family History Center Co-Director.

Boy Scouts of America, Midnight Sun Council.
Scoutmaster, Council Board and Executive Committee Member (President 1998-2000), Merit Badge Counselor.

Rotary Club of Fairbanks, 1977-present.
Director, Secretary, Treasurer, President 1993-94.

Rotary International District 5010.
District Governor, 2005-2006.

Tanana Valley State Fair Association.
Board Member, 1970-1984, President 1974-1984.

Interior Alaska Adoptive Parents, Western Association of Concerned Adoptive Parents
Founding Member.

Beta Chapter, Chi Phi Fraternity, Massachusetts Institute of Technology.
President 1961-62.

Massachusetts Institute of Technology.
Educational councilor – 1970 - present

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

FINANCIAL DISCLOSURE STATEMENT FOR: PUBLIC OFFICIALS, LEGISLATORS & CANDIDATES

EXECUTIVE BRANCH: Governor, Lt. Gov., commissioners, directors, special assistants and legislative liaisons; state boards and commissions; procurement and investment officers; city/borough officials; candidates.

JUDICIAL BRANCH: Justices, judges and magistrates.

LEGISLATIVE BRANCH: Legislators, legislative directors, Select Committee on Legislative Ethics.

FOR MORE INFORMATION, INSTRUCTIONS, BLANK FORMS, SAMPLE FORMS & QUESTIONS:
Visit APOC online at: www.apoc.alaska.gov :

- To find detailed instructions and sample disclosures, under the heading "How do I..." click "Complete my initial, annual or final Public Official Financial Disclosure Statement"
- To find blank Financial Disclosure forms for public officials and legislators as well as a *Guide to Financial Disclosure in Alaska,* under the heading "Quick Links" click "APOC Forms"
- To find the laws and regulations that APOC administers and enforces, there is a link to "Statutes" or "APOC Statutes & Regulations" throughout the APOC Web site.

Contact APOC directly:

- ANCHORAGE: 2221 E. Northern Lights Blvd., Rm 128, Anchorage, AK 99508 / 907-276-4176 / Fax 907-276-7018
- JUNEAU: 240 Main St., Rm 201 / P.O. Box 110222, Juneau, AK 99811 / 907-465-4864 / Fax 907-465-4832
- TOLL-FREE: 800-478-4176 / Online contact info: www.apoc.alaska.gov/staff.shtml

→ THIS IS A PUBLIC DOCUMENT ←

THIS REPORT IS A SWORN STATEMENT. YOUR SIGNATURE ON THE LAST PAGE CERTIFIES THAT THIS DISCLOSURE IS TRUE, CORRECT and COMPLETE.

NAME: Dennis E. "Skip" Cook

MAILING ADDRESS: P.O. Box 70810 Fairbanks AK 99707-0810
Street address or P.O. box, city, zip code

CONTACT PHONE(S): 907-457-6944; 907-452-1855 Fax: 907-452-8154

E-MAIL: skip@alaskalaw.com

SPOUSE / DOMESTIC PARTNER: Olga B. Cook

ARRIVED
JAN - 5 2009
APOC-ANCH
PM HC FAX ELE

DEPENDENT CHILDREN: -0- NON-DEPENDENT CHILDREN LIVING WITH YOU: -0- 12/31/08
Report number of children, including stepchildren, adoptive children. Legislative filers: List non-dependent children living with you.

NAME NON-DEPENDENT CHILDREN LIVING with YOU: _____

WHY ARE YOU FILING? ☒ OFFICE HOLDER or ☐ CANDIDATE

Office held or sought: Select Committee on Legislative Ethics

☐ INITIAL STATEMENT: Due 30 days from appointment – for new public officials.
☒ ANNUAL STATEMENT: Due by March 15 – for incumbent officials.
☐ FINAL STATEMENT: Due 90 days after leaving office – include 2008 data up until leaving office.
☐ CANDIDATE STATEMENT: Due when filing declaration of candidacy

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

Entered By Chris

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE A: SOURCES OF INCOME OVER $1,000

1. SALARIED EMPLOYMENT — NONE: check box → ☐

Report each employer who paid you, your spouse, domestic partner or children covered by reporting requirements more than $1,000. Include amount of income, dates of employment, terms of employment, amount of time worked. **Income means anything of value and covers all forms of compensation, including deferred income.**
DESCRIBE THE WORK PERFORMED IN SUFFICIENT DETAIL
TO MAKE IT CLEAR TO A PERSON OF ORDINARY UNDERSTANDING.

EARNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $ 75,000

☐ Full-time ☒ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: all year

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: Cook Schuhmann & Groseclose, Inc.

Address: P.O. Box 70810 Fairbanks AK 99707-0810

DETAILED DESCRIPTION of SERVICES PROVIDED: staff attorney

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $ _____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: _____

Address: _____

DETAILED DESCRIPTION of SERVICES PROVIDED: _____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $ _____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: _____

Address: _____

DETAILED DESCRIPTION of SERVICES PROVIDED: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE A: SOURCES OF INCOME OVER $1,000

2. SELF-EMPLOYMENT: NON-RETAIL NONE: check box → ☒

Disclose each client, customer or business that paid you, your spouse/domestic partner or child more than $1,000. Self-employment includes sole proprietors, partnerships, limited liability companies, professional corporations. List each source of income over $1,000 by name and amount. Exemptions: if the identity of the source of income is confidential by law, you may be excused from disclosing the source. To obtain an exemption, you must qualify under the law, you must file a written request, and you must *receive* an exemption from the commission. Exemption rules: Public officials, candidates: 2 AAC 50.100-102. Legislators: 2 AAC 50.775-780.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income: $**_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / **Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / Customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income: $**_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / **Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income: $**_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / **Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN - 5 2009

3. SELF-EMPLOYMENT – RETAIL

NONE: check box → ☒

List each self-employment retail business that was a source of income of more than $1,000. Individual retail clients/customers do ***not*** need to be disclosed with these ***exceptions.*** You must disclose (1) customers with a line of credit extending through two or more billing cycles, (2) customers with ongoing contracts to purchase goods or services, and (3) customers who are offered discounts not available to the general public.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: _____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: _____

_____

4. RENTAL INCOME

NONE: check box → ☒

OWNER:	TENANTS WHO PAID > $1,000 (For property outside Alaska managed by agent, list AGENT instead of tenant)	AMOUNT
☐ Filer		
☐ Spouse or domestic partner		
☐ Child		
☐ Co-owner with others		

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
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SCHEDULE A: SOURCES OF INCOME OVER $1,000

5. DIVIDENDS and INTEREST

NONE: check box → ☐

Disclose source and amount of income over $1,000 from dividends and interest. Include bank accounts, capital gains, money market accounts, certificates of deposit, Native corporation dividends, Permanent Fund dividends.

RECIPIENT	SOURCE	AMOUNT
☒ Filer ☐ Child ☒ Spouse/ partner	PFDs	
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		

6. OTHER INCOME

NONE: check box → ☐

List source and amount of income over $1,000 not listed elsewhere in this form, including sale of goods or property, pensions, IRA cash-outs, honorariums, alimony, child support, shared living expenses and government entitlements.

RECIPIENT	SOURCE	AMOUNT
☒ Filer ☐ Child ☐ Spouse/ partner	Cook Schuhmann + Groseclose Retirement Plan	60,000
☐ Filer ☐ Child ☐ Spouse/ partner		
☒ Filer ☐ Child ☐ Spouse/ partner	Social Security	26,000
☐ Filer ☐ Child ☒ Spouse/ partner	Social Security	10,000
☒ Filer ☐ Child ☒ Spouse/ partner	Alascorp - Sale of Subdivision Lots	$50,000

7. GIFTS WORTH MORE THAN $250

NONE: check box → ☒

Report gifts worth more than $250 (including gifts from a single source with a cumulative value more than $250) – *except* gifts from spouse, domestic partner, parent, child, sibling, grandparent, aunt, uncle, niece or nephew. Include travel expenses, discounts not available to the public, loans forgiven or loans paid by a third party. Legislators must submit more detailed disclosure reports to the Legislative Ethics Committee.

RECIPIENT	DESCRIPTION	SOURCE	VALUE
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN - 5 2009

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT

Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008

SCHEDULE B

BUSINESS INTERESTS NONE: check box → ☐

Report business interests even if they were **NOT** a source of income, including businesses in which you/family:

- Served as stockholder, owner, officer, director, partner, proprietor, employee or held an interest.
- Had ownership interests of more than $1,000 in a publicly traded corporation.
- Had any other ownership interest in a business, including shares in non-publicly traded corporations, sole proprietorships, limited liability companies. Include options to buy.
- Include non-profit organizations, corporations, businesses, associations, trade groups.

If the business was a source of income over $1,000, it must also be reported in Schedule A.

☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: 1/6 Shareholder

Business name: Cook Schuhmann & Groseclose, Inc.

Business address: P.O. Box 70810 Fairbanks Ak 99707-0810

DETAILED DESCRIPTION of business activity: Law Firm

☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: 1/6 Shareholder

Business name: Polar Cache Corp.

Business address: P.O. Box 72134 Fairbanks Ak 99707

DETAILED DESCRIPTION of business activity: Family Corp. with siblings - owns real property interests.

☒ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: Board + Ex. Com.

Business name: Midnight Sun Council Boy Scouts of America

Business address: 1400 Gillam Way Fairbanks Ak 99701

DETAILED DESCRIPTION of business activity: Non-profit youth organization

☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

ALASKA PUBLIC OFFICES COMMISSION
2009 FINANCIAL DISCLOSURE STATEMENT
Covering the reporting period Jan. 1, 2008 – Dec. 31, 2008
SCHEDULE D

BENEFICIAL INTERESTS: TRUSTS & RETIREMENT ACCOUNTS over $1,000 / NONE: ☐

Report each beneficial interest in a trust or retirement account that exceeded $1,000 during the reporting period. Report stocks, bonds, mutual funds, cash accounts, CDs, deferred compensation plans, profit-sharing accounts, employee benefit accounts, retirement accounts (such as IRA, 401K, SEP or Keogh) trust funds (including blind trusts) and limited partnerships. "Managed by" means the filer, employer, business, investment entity or name of the company that manages the account. Identify individual investments if you or family members manage or personally control the investments. "Identify fund or companies" means the individual companies or accounts where you are the manager and you control the investments; if a mutual fund, investment company or other third party entity manages and controls the investments, list the name or type of fund where the assets are held. You do NOT need to list the dollar value of the assets, but you must identify the assets by owner, manager and name.

ASSETS – OWNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: 100 %

ASSETS – MANAGED BY: Cook Schuchmann & Groseclose pension & profit sharing

ASSETS – IDENTIFY FUND or COMPANIES: Am. Bar Assn plan assets via State Street Bank of Boston

ASSETS – OWNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: 100 %

ASSETS – MANAGED BY: Dennis E. Cook

ASSETS – IDENTIFY FUND or COMPANIES: Gunn Allen Financial IRA

ASSETS – OWNED BY: ☐ Filer / ☒ Spouse/domestic partner / ☐ Child / PERCENT: 100 %

ASSETS – MANAGED BY: Olga B. Cook

ASSETS – IDENTIFY FUND or COMPANIES: Wells Fargo Investments IRA

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: _____

ASSETS – MANAGED BY: _____

ASSETS – IDENTIFY FUND or COMPANIES: _____

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT: _____

ASSETS – MANAGED BY: _____

ASSETS – IDENTIFY FUND or COMPANIES: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
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SCHEDULE C

REAL PROPERTY INTERESTS

NONE: check box → ☐

Include your home, a rent-to-own home, rental property, vacant property, recreational property, options to buy, business property and real estate interests held in a limited liability company, limited partnership or trust. Include property owned or sold during the reporting period. *If property is jointly owned, check all boxes that apply.*

OWNER(S): ☒ Filer / ☒ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____
Street address or legal description: 431 Birch Hill Road
City or borough / State: Fairbanks AK 99712
Ownership interest: own as JTWROS Home
(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

OWNER(S): ☒ Filer / ☒ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____
Street address or legal description: 9770 Salchaket Drive, Harding lake AK
City or borough / State: Alaska
Ownership interest: own as JTWROS Recreational Cabin
(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

OWNER(S): ☒ Filer / ☒ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____
Street address or legal description: 431 Birch Hill Road
City or borough / State: Fairbanks AK 99712
Ownership interest: owned as JTWROS 3 Subdivision lots — sold during reporting period
(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

OWNER(S): ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / ☒ Other co-owner: siblings in Polar Cache Corp.
Street address or legal description: Polar Cache Corp., P.O. Box 72134
City or borough / State: Fairbanks AK
Ownership interest: 1/6 interest with siblings

OWNER(S): ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____
Street address or legal description: _____
City or borough / State: _____
Ownership interest: _____
(Such as home owner, option to buy, owned through business entuty or trust, leasehold, partnership)

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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SCHEDULE E

1. LOANS, LOAN GUARANTEES & DEBTS OVER $1,000

NONE: check box → ☐

Report each creditor or lender to whom more than $1,000 was owed during the reporting period. Report guarantor of each loan. List financial obligations, including mortgages on property owned or sold during the reporting period; loans that have been guaranteed; delinquent taxes; alimony; child support payments; medical bills; boat and vehicle loans; business and personal loans; escrows; student loans; signature loans and promissory notes. Loans include secured, unsecured and contingent loans. *Do NOT list credit card obligations or revolving charge accounts.*

DEBTOR: ☒ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: Mt. McKinley Bank

DEBTOR: ☒ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: Key Bank

DEBTOR: ☐ Filer / ☒ Spouse/domestic partner / ☐ Child

☒ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: AK USA FCU – Car loan

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER / ☐ CREDITOR / ☐ GUARANTOR / NAME: _____

2. *FOR LEGISLATIVE BRANCH FILERS ONLY*

NONE: check box → ☐

Legislative branch filers must report additional details: original amount of the obligation, the current balance owed, interest rate, length of the loan and whether a written agreement exists for a creditor or lender who:

- Lobbies or hired lobbyists
- Had contracts or sought contracts worth more than $10,000 with any state agency
- Was a municipal or local government entity
- Was affected financially – in an amount exceeding $1,000 – by an act of the legislature or state agency decision, including actions affecting professional or occupational licenses; natural resource permits or quotas; assessments; tax rates; health, safety or environmental standards; insurance or business practices.

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER or ☐ CREDITOR / Name: _____

Address: _____

Original loan: $_____ Balance owed: $_____ Interest rate: _____%

Term: ☐ _____ years ☐ _____ months / WRITTEN LOAN AGREEMENT? ☐ Yes / ☐ No

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

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ALASKA PUBLIC OFFICES COMMISSION
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SCHEDULE F

1. LEASES: GOVERNMENT CONTRACTS & LEASES

NONE: check box → ☒

List all contracts, bids and offers to contract with the state or any state or municipal agency or entity. Report contract interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company or through a corporation in which filer or family members held a controlling interest.

CONTRACTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / CONTRACT ID (name/number): _____

CONTRACTING AGENCY: _____

CONTRACT DESCRIPTION: _____

_____

CONTRACTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / CONTRACT ID (name/number): _____

CONTRACTING AGENCY: _____

CONTRACT DESCRIPTION: _____

_____

2. LEASES: NATURAL RESOURCE LEASES

NONE: check box → ☒

List natural resource leases – including mineral, timber, oil and gas leases – held, bid or offered during the reporting period. Report lease interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company; or corporation in which you or family (individually or together) held controlling interest.

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / LEASE ID (name/number): _____

LEASE DESCRIPTION: _____

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / TYPE of INTEREST: _____

☐ Bid / ☐ Offer / ☐ Held / LEASE ID (name/number): _____

LEASE DESCRIPTION: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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SCHEDULE G

1. CLOSE ECONOMIC ASSOCIATIONS

NONE: check box → ☒

EXEMPT: Municipal and local officials are exempt from reporting close economic associations. **Members of state boards and commissions are exempt** from reporting close economic associations. **Local officials and state board/commission members do NOT have to complete this section. Check the box for NONE.**

STATE PUBLIC OFFICIALS: Disclose financial relations with legislators, other public officials and lobbyists.

LEGISLATIVE BRANCH: Disclose financial relations with public officials, lobbyists, other legislators, and legislative employees. Report close economic association detailed information to the Legislative Ethics Committee.

CLOSE ECONOMIC ASSOCIATION means a financial relationship between public officials, legislators and lobbyists, including shared interests in a business, property, association, partnership, corporation or LLC.

CHANGES: Report new close economic associations within 60 days.

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

2. FILERS WITH A LOBBYIST SPOUSE or DOMESTIC PARTNER

NONE: ☒

EXEMPT: Local officials and members of state boards and commissions are EXEMPT. Check NONE.

STATE PUBLIC OFFICIALS with a lobbyist spouse or domestic partner: Report names and addresses of each employer of the lobbyist and the total monetary value received from each of the lobbyist's employers.

LEGISLATIVE BRANCH filers with a lobbyist spouse or domestic partner: Disclose employer of lobbyist and compensation, and report details to t he Legislative Ethics Committee.

CHANGES: Report changes in lobbyist's employer within 48 hours of the change.

LOBBYIST'S EMPLOYER: NAME & ADDRESS	COMPENSATION

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
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CERTIFICATION

I certify under penalty of perjury that the foregoing is true and the information in this disclosure statement is, to the best of my knowledge, true, correct and complete. A person who makes a false sworn certification which he or she does not believe to be true is guilty of perjury.

SIGNATURE Dennis E. Cook

If you are filing online, you must have an Electronic Filing Agreement with APOC to use an electronic signature.

Dennis E. Cook
NAME of FILER

12/30/08 - Fairbanks
DATE & PLACE SIGNED / FILED

All officials and candidates who are required to file disclosure statements are solely responsible for filing complete, accurate and truthful statements by the deadlines.

WHERE TO FILE THIS STATEMENT

STATE OFFICIALS: File initial, annual and final statements with the Alaska Public Offices Commission.

STATE CANDIDATES: File with the Division of Elections along with Declaration of Candidacy.

BOROUGH / MUNICIPAL / CITY OFFICIALS and CANDIDATES: File with city or borough clerk where you hold or seek office.

FILE ELECTRONICALLY to APOC: doa.apoc.reports@alaska.gov

THIS IS A PUBLIC DOCUMENT

NOTE: Public officials who are required to file this disclosure statement may have additional obligations to disclose conflicts of interest or potential conflicts under state executive, legislative or judicial ethics rules or personnel rules. Legislators who are required to file this disclosure statement have additional disclosure and reporting requirements imposed by the Select Committee on Legislative Ethics. Local officials may also be governed by local ethics ordinances or personnel rules.

Disclosure forms, guidelines, laws and regulations are online: www.apoc.alaska.gov or from APOC offices

ALASKA PUBLIC OFFICES COMMISSION

ANCHORAGE OFFICE:
2221 E. Northern Lights Blvd – Rm 128
Anchorage, AK 99508-4149
907-276-4176 / Toll-free 800-478-4176
Fax 907-276-7018

JUNEAU OFFICE:
240 Main St. – Rm 201
Mail: P.O. Box 110222
Juneau, AK 99811-0222
907-465-4864 / Fax 907-465-4832

E-mail APOC: doa.apoc@alaska.gov
File electronic disclosure statements to: doa.apoc.reports@alaska.gov

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners.	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

WEDBUSH MORGAN SECURITIES

DENNIS E COOK &
OLGA B COOK JTWROS

JAN 5 2009

ACCOUNT SUMMARY

(Unpriced Securities Excluded)	PRIOR PERIOD	03-31-08
MUTUAL FUNDS: OPEN END	2,031.37	1,898.18
ACCOUNT NET WORTH	**2,031.37**	**1,898.18**

INCOME/PRINCIPAL SUMMARY	CURRENT MONTH	YEAR TO DATE
CASH DIVIDEND	5.57	5.57
TOTAL INCOME/PRINCIPAL	**5.57**	**5.57**

ACCOUNT PORTFOLIO

QUANTITY	DESCRIPTION	SYMBOL/ CUSIP	CURRENT PRICE	CURRENT VALUE	COST BASIS	UNREALIZED GAIN OR LOSS	ESTIMATED ANNUAL INCOME	ESTIMATED CURRENT YIELD %	TYPE
MONEY BALANCE: CREDIT									
MUTUAL FUNDS: OPEN END									
111.396	HANCOCK JOHN SOVEREIGN INVESTORS FUND CL A	SOVIX	17.04	1,898	2,333	435-	23	1.2	1
	MUTUAL FUNDS: OPEN END TOTAL			**1,898**	**2,333**		**23**	**1.2**	
	ACCOUNT NET WORTH			**1,898**	**2,333**		**23**	**1.2**	

The cost basis shown on this statement is for informational purposes only. Please refer to actual purchase documentation to confirm its accuracy. You are urged to consult with your own tax advisor regarding the taxable status of any realized gain or loss.

ACCOUNT ACTIVITY

DATE	ACTIVITY	QUANTITY	DESCRIPTION	PRICE	AMOUNT CHARGED	AMOUNT CREDITED	TYPE
			OPENING BALANCE				
03-24-08	DIVIDEND		HANCOCK JOHN SOVEREIGN INVESTORS FUND CL A 032008 111.39600			5.57	1
03-24-08	REINVEST DIV	.331	HANCOCK JOHN SOVEREIGN INVESTORS FUND CL A REINVEST AT 16.840		5.57		1
			CLOSING BALANCE				

WEDBUSH MORGAN SECURITIES
Investment Bankers for Entrepreneurs

1000 WILSHIRE BLVD., SUITE 855
LOS ANGELES, CA 90017
www.wedbush.com
Phone: (213) 688-8000

1099-CONSOLIDATED TAX STATEMENT
Tax Year 2007 Copy B For Recipient

Department of the Treasury - Internal Revenue Service
(Keep for your records)

FEDERAL ID NUMBER: 95-2495390

JAN - 5 2008

TAXPAYER ID NUMBER: [redacted]
ACCOUNT NUMBER: [redacted]

Your Investment Representative: CGMH
MARY ANN HOFFMAN
714 4TH AVE SUITE 305
FAIRBANKS AK 99701-4469
907-452-8101

391533 F001 2829 1OZ 1/2 1—— 1415
DENNIS E COOK &
OLGA B COOK JTWROS
431 BIRCH HILL RD
FAIRBANKS AK 99712

This is important tax information and is being furnished to the Internal Revenue Service. If you are required to file a return, a negligence penalty or other sanction may be imposed on you if this income is taxable and the IRS determines that it has not been reported.

IRS BOX	FORM 1099-DIV - DIVIDENDS AND DISTRIBUTIONS OMB NO. 1545-0110	
1A.	TOTAL ORDINARY DIVIDENDS	$20.86
1B.	QUALIFIED DIVIDENDS	$20.86
2A.	TOTAL CAPITAL GAIN DISTRIBUTIONS	$194.80
2B.	UNRECAP. SEC. 1250 GAIN	$0.00
2C.	SECTION 1202 GAIN	$0.00
2D.	COLLECTIBLES (28%) GAIN	$0.00
3.	NONTAXABLE DISTRIBUTIONS	$0.00
4.	**FEDERAL INCOME TAX WITHHELD**	**$0.00**
5.	INVESTMENT EXPENSES	$0.00
6.	FOREIGN TAX PAID	$0.00
8.	CASH LIQUIDATION DISTRIBUTIONS	$0.00
9.	NON-CASH LIQUIDATION DISTRIBUTIONS	$0.00

IRS BOX	FORM 1099-INT - INTEREST INCOME OMB NO. 1545-0112	
1.	INTEREST INCOME NOT INCLUDED IN IRS BOX 3	$0.00
3.	INTEREST INCOME ON U.S. TREASURY OBLIGATIONS	$0.00
4.	**FEDERAL INCOME TAX WITHHELD**	**$0.00**
5.	INVESTMENT EXPENSES	$0.00
6.	FOREIGN TAX PAID	$0.00
8.	TAX EXEMPT INTEREST	$0.00
9.	SPECIFIED PRIVATE ACTIVITY BOND INTEREST	$0.00

IRS BOX	FORM 1099-MISC - MISCELLANEOUS INCOME OMB NO. 1545-0115	
2.	ROYALTIES	$0.00
3.	OTHER INCOME	$0.00
4.	**FEDERAL INCOME TAX WITHHELD**	**$0.00**
8.	SUBSTITUTE PAYMENTS IN LIEU OF DIVIDENDS OR INTEREST	$0.00

Detail relating to this summary information is contained in the following pages.

Instructions for Recipient

Form 1099-DIV (OMB No. 1545-0110)

Account number. May show an account or other unique number the payer assigned to distinguish your account.

Box 1a. Shows total ordinary (short term) dividends that are taxable. Include this amount on Line 9a of Form 1040 or 1040A. Also, report it on Schedule B (Form 1040) or Schedule 1 (Form 1040A), if required. The amount shown may be a distribution from an employee stock ownership plan (ESOP). Report it as a dividend on your Form 1040/1040A but treat it as a plan distribution, not as investment income, for any other purpose.

Box 1b. Shows the portion of the amount in box 1a that may be eligible for the 15% or 5% capital gains rates. See the Form 1040/1040A instructions for how to determine this amount. Report the eligible amount on line 9b, Form 1040 or 1040A.

Box 2a. Shows total capital gain distributions (long term) from a regulated investment company or real estate investment trust. Report the amounts shown in box 2a on Schedule D (Form 1040), line 13. But, if no amount is shown in boxes 2c-2d and your only capital gains and losses are capital gain distributions, you may be able to report the amounts shown in box 2a on line 13 of Form 1040 (line 10 of Form 1040A) rather than Schedule D. See the Form 1040/1040A instructions.

Box 2b. Shows the portion of the amount in box 2a that is unrecaptured section 1250 gain from certain depreciable real property. Report this amount on the Unrecaptured Section 1250 Gain Worksheet-Line 19 in the Schedule D instructions (Form 1040).

Box 2c. Shows the portion of the amount in box 2a that is section 1202 gain from certain small business stock that may be subject to a 50% exclusion. See the Schedule D (Form 1040) instructions.

Box 2d. Shows 28% rate gain from sales or exchanges of collectibles. If required, use this amount when completing the 28% Rate Gain Worksheet-Line 18 in the instructions for Schedule D (Form 1040).

Box 3. Shows the part of the distribution that is nontaxable because it is a return of your cost (or other basis). You must reduce your cost (or other basis) by this amount for figuring gain or loss when you sell your stock. But if you get back all your cost (or other basis), report future distributions as capital gains. See Pub. 550, Investment Income and Expenses.

Box 4. Shows backup withholding. For example, a payer must backup withhold on certain payments at a 28% rate if you did not give your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5. Shows your share of expenses of a nonpublicly offered regulated investment company, generally a nonpublicly offered mutual fund. If you file Form 1040, you may deduct these expenses on the "Other expenses" line on Schedule A (Form 1040) subject to the 2% limit. This amount is included in box 1a.

Box 6. Shows the foreign tax you may be able to claim as a deduction or a credit on Form 1040. See the Form 1040 instructions.

Boxes 8 and 9. Shows cash and noncash liquidation distributions.

Nominees. If this form includes amounts belonging to another person, you are considered a nominee recipient. You must file Form 1099-DIV with the IRS for each of the other owners to show their share of the income, and you must furnish a Form 1099-DIV to each. A husband or wife is not required to file a nominee return to show amounts owned by the other. See the 2007 General Instructions for Forms 1099, 1098, 5498, and W-2G.

Form 1099-INT (OMB No. 1545-0112)

Account number. May show an account or other unique number the payer assigned to distinguish your account.

Box 1. Shows taxable interest paid to you during the calendar year by the payer. This does not include interest shown in box 3. May also show the partial amount of the credits from clean renewable energy bonds and Gulf tax credit bonds that must be included in your interest income. These amounts are treated as paid to you during 2007 on the credit allowance dates (March 15, June 15, September 15, and December 15). For more information, see Form 8912, Credit for Clean Renewable Energy and Gulf Tax Credit Bonds.

Box 2. Shows interest or principal forfeited because of early withdrawal of time savings. You may deduct this amount to figure your adjusted gross income on your income tax return. See the instructions for Form 1040 to see where to take the deduction.

Box 3. Shows interest on U.S. Savings Bonds, Treasury bills, Treasury bonds and Treasury notes. This may or may not be all taxable. See Pub. 550, Investment Income and Expenses. This interest is exempt from state and local income taxes. This interest is not included in box 1.

Box 4. Shows backup withholding. Generally, a payer must backup withhold at a 28% rate if you did not furnish your taxpayer identification number (TIN) or you did not furnish the correct TIN to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5. Any amount shown is your share of investment expenses of a single-class REMIC. If you file Form 1040, you may deduct these expenses on the "Other expenses" line of Schedule A (Form 1040) subject to the 2% limit. This amount is included in box 1.

deduction or a credit on your Form 1040. See your Form 1040 instructions.

Box 8. Shows tax-exempt interest, including exempt-interest dividends from a mutual fund or other regulated investment company, paid to you during the calendar year by the payer. Report this amount on line 8b of Form 1040 or Form 1040A. This amount may be subject to backup withholding. See box 4.

Box 9. Shows tax-exempt interest subject to the alternative minimum tax. This amount is included in box 8. See the instructions for Form 6251, Alternative Minimum Tax-Individuals.

Nominees. If this form includes amounts belonging to another person(s), you are considered a nominee recipient. Complete a Form 1099-INT for each of the other owners showing the income allocable to each. File Copy A of the form with the IRS. Furnish Copy B to each owner. List yourself as the "payer" and the other owner(s) as the "recipient." File Form(s) 1099-INT with Form 1096, Annual Summary and Transmittal of U.S. Information Returns, with the Internal Revenue Service Center for your area. On Form 1096 list yourself as the "filer." A husband or wife is not required to file a nominee return to show amounts owned by the other.

Form 1099-OID (OMB No. 1545-0117)

Original issue discount (OID) is the excess of an obligation's stated redemption price at maturity over its issue price (acquisition price for a stripped bond or coupon). OID is taxable as interest over the life of the obligation. If you are the holder of an OID obligation, generally you must include an amount of OID in your gross income each year you hold the obligation. Obligations that may have OID include a bond, debenture, note, certificate, or other evidence of indebtedness having a term of more than 1 year. For example, the OID rules may apply to certificates of deposit (CDs), time deposits, bonus savings plans, and other deposit arrangements, especially if the payment of interest is deferred until maturity. In addition, the OID rules apply to Treasury inflation-indexed securities. See Pub. 550, Investment Income and Expenses, for more information.

If, as the record holder, you receive Form 1099-OID showing amounts belonging to another person, you are considered a nominee recipient. Complete a Form 1099-OID for each of the other owners showing the amounts allocable to each. File Copy A of the form with the IRS. Furnish Copy B to each owner. List yourself as the "payer" and the other owner as the "recipient." File Form(s) 1099-OID with Form 1096, Annual Summary and Transmittal of U.S. Information Returns, with the Internal Revenue Service Center for your area. On Form 1096, list yourself as the "filer." A husband or wife is not required to file a nominee return to show amounts owned by the other. If you bought or sold an obligation during the year and you are not a nominee, you are not required to issue or file Form 1099-OID showing the OID or stated interest allocable to the seller/buyer of the obligation.

Account number. May show an account or other unique number the payer assigned to distinguish your account.

Box 1. Shows the OID on the obligation for the part of the year you owned it. Report the amount in box 1 as interest income on your income tax return. However, depending on the type of debt instrument, the issue or acquisition date, and other factors (for example, if you paid acquisition or bond premium, or the obligation is a stripped bond or coupon), you may have to figure the correct amount of OID to report on your return. See Pub. 1212, Guide to Original Issue Discount (OID) Instruments, for details on how to figure the correct OID.

Box 2. Shows other interest on this obligation for the year, which is an amount separate from the OID. If you held the obligation the entire year, report this amount as interest income on your tax return. If you disposed of the obligation or acquired it from another holder during the year, see Pub. 550 for reporting instructions. If there is an amount in both boxes 2 and 6, the amount in box 2 is interest on a U.S. Treasury obligation and is exempt from state and local income taxes.

Box 3. Shows interest or principal forfeited if you withdrew the money before the maturity date of the obligation, such as from a CD. You may deduct this amount to figure your adjusted gross income on your income tax return. See the instructions for Form 1040 to see where to take the deduction.

Box 4. Shows backup withholding. Generally, a payer must backup withhold at a 28% rate if you did not furnish your taxpayer identification number (TIN) or you did not furnish the correct TIN to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5. Shows the identification number (CUSIP number) or description of the obligation. The description may include the stock exchange, issuer, coupon rate, and year of maturity.

Box 6. Shows OID on a U.S. Treasury obligation for the part of the year you owned it. Report this amount as interest income on your federal income tax return, and see Pub. 1212 to figure any appropriate adjustments to this amount. This OID is exempt from state and local income taxes and is not included in box 1.

Box 7. Any amount shown is your share of investment expenses of a single-class REMIC. If you file Form 1040, you may deduct these expenses on the "Other expenses" line of Schedule A (Form 1040) subject to the 2% limit. This amount is included in box 2.

1099-MISC (OMB No. 1545-0115)

Account number. May show an account or other unique number the payer assigned to distinguish your account.

income from self-employment is $400 or more, you must file a return and compute your SE tax on Schedule SE (Form 1040). See Pub. 334, Tax Guide for Small Business, for more information. If no income or social security and Medicare taxes were withheld and you are still receiving these payments, see Form 1040-ES, Estimated Tax for Individuals. Individuals must report as explained for box 7 below. Corporations, fiduciaries, or partnerships report the amounts on the proper line of your tax return.

Boxes 1 and 2. Report rents from real estate on Schedule E (Form 1040). If you provided significant services to the tenant, sold real estate as a business, or rented personal property as a business, report on Schedule C or C-EZ (Form 1040). For royalties on timber, coal, and iron ore, see Pub. 544, Sales and Other Dispositions of Assets.

Box 3. Generally, report this amount on the "Other income" line of Form 1040 and identify the payment. The amount shown may be payments received as the beneficiary of a deceased employee, prizes, awards, taxable damages, Indian gaming profits, payments made by employers to former employees who are serving in the Armed Forces or the National Guard, or other taxable income. See Pub. 525, Taxable and Nontaxable Income. If it is trade or business income, report this amount on Schedule C, C-EZ, or F (Form 1040).

Box 4. Shows backup withholding or withholding on Indian gaming profits. Generally, a payer must backup withhold at a 28% rate if you did not furnish your taxpayer identification number. See Form W-9, Request for Taxpayer Identification Number and Certification, for more information. Report this amount on your income tax return as tax withheld.

Box 5. An amount in this box means the fishing boat operator considers you self-employed. Report this amount on Schedule C or C-EZ (Form 1040). See Pub. 334.

Box 6. For individuals, report on Schedule C or C-EZ (Form 1040).

Box 7. Shows nonemployee compensation. If you are in the trade or business of catching fish, box 7 may show cash you received for the sale of fish. If payments in this box are SE income, report this amount on Schedule C, C-EZ, or F (Form 1040), and complete Schedule SE (Form 1040). You received this form instead of Form W-2 because the payer did not consider you an employee and did not withhold income tax or social security and Medicare taxes. Contact the payer if you believe this form is incorrect or has been issued in error. If you believe you are an employee, call the IRS for information on how to report any social security and Medicare taxes or see Form 8919, Uncollected Social Security and Medicare Taxes on Wages.

Box 8. Shows substitute payments in lieu of dividends or tax-exempt interest received by your broker on your behalf as a result of a loan of your securities. Report on the "Other income" line of Form 1040.

Box 9. If checked, $5,000 or more of sales of consumer products was paid to you on a buy-sell, deposit-commission, or other basis. A dollar amount does not have to be shown. Generally, report any income from your sale of these products on Schedule C or C-EZ (Form 1040).

Box 10. Report this amount on line 8 of Schedule F (Form 1040).

Box 13. Shows your total compensation of excess golden parachute payments subject to a 20% excise tax. See the Form 1040 instructions for where to report.

Box 14. Shows gross proceeds paid to an attorney in connection with legal services. Report only the taxable part as income on your return.

Box 15a. Shows current year deferrals as a nonemployee under a nonqualified deferred compensation (NQDC) plan that is subject to the requirements of section 409A. Any earnings on current and prior year deferrals are also reported.

Box 15b. Shows income as a nonemployee under a NQDC plan that does not meet the requirements of section 409A. This amount is also included in box 7 as nonemployee compensation. Any amount included in box 15a that is currently taxable is also included in this box. This income is also subject to a substantial additional tax to be reported on Form 1040. See "Total Tax" in the Form 1040 instructions.

Boxes 16-18. Shows state or local income tax withheld from the payments.

Form 1099-B (OMB No. 1545-0715)

Brokers and barter exchanges must report proceeds from transactions to you and the IRS on Form 1099-B. Reporting is also required when your broker knows or has reason to know that a corporation in which you own stock has had a change in control or a substantial change in capital structure. You may be required to recognize gain from the receipt of cash, stock, or other property that was exchanged for the corporation's stock. If your broker reported this type of transaction to you, the corporation is identified in the box below your name and address on Form 1099-B.

Account number. May show an account or other unique number the payer assigned to distinguish your account.

Box 1a. Shows the trade date of the transaction. For aggregate reporting, no entry will be present.

Box 1b. For broker transactions, may show the CUSIP (Committee on Uniform Security Identification Procedures) number of the item reported.

Box 2. Shows the aggregate proceeds from transactions involving stocks, bonds, other debt obligations, commodities, or forward contracts. May show the proceeds from the disposition of your interest(s) in a widely held fixed investment trust. Losses on forward contracts and changes in control or substantial change in capital structure are shown in parentheses.

this box does not include proceeds from regulated futures contracts. The broker must indicate whether gross proceeds or gross proceeds less commissions and option premiums were reported to the IRS. Report this amount on Schedule D (Form 1040), Capital Gains and Losses. However, if box 12 is checked, you cannot take a loss on your tax return based on gross proceeds from an acquisition of control or substantial change in capital structure reported in box 2. Do not report this loss on Schedule D (Form 1040). The broker should advise you of any losses on a separate statement.

Box 3. Shows the cash you received, the fair market value of any property or services you received, and/or the fair market value of any trade credits or scrip credited to your account by a barter exchange. See Pub. 525, Taxable and Nontaxable Income, for information on how to report this income.

Box 4. Shows backup withholding. Generally, a payer must backup withhold at a 28% rate if you did not furnish your taxpayer identification number to the payer. See Form W-9, Request for Taxpayer Identification Number and Certification, for information on backup withholding. Include this amount on your income tax return as tax withheld.

Box 5. Shows the number of shares of the corporation's stock that you held which were exchanged in the change in control or substantial change in capital structure.

Box 6. Shows the class or classes of the corporation's stock that were exchanged in the change in control or substantial change in capital structure.

Box 7. Shows a brief description of the item or service for which the proceeds or bartering income is being reported. For regulated futures contracts and forward contracts, "RFC" or other appropriate description may be shown.

Regulated Futures Contracts:

Box 8. Shows the profit or (loss) realized on regulated futures or foreign currency contracts closed during 2007.

Box 9. Shows any year-end adjustment to the profit or (loss) shown in box 8 due to open contracts on December 31, 2006.

Box 10. Shows the unrealized profit or (loss) on open contracts held in your account on December 31, 2007. These are considered sold as of that date. This will become an adjustment reported in box 9 in 2008.

Box 11. Boxes 8, 9, and 10 are all used to figure the aggregate profit or (loss) on regulated futures or foreign currency contracts for the year. Include this amount on your 2007 Form 6781.

Form 1099-C (OMB No. 1545-1424)

If a federal government agency, certain agencies connected with the Federal Government, financial institution, credit union, or an organization having a significant trade or business of lending money (such as a finance or credit card company) cancels or forgives a debt you owe of $600 or more, this form must be provided to you. Generally, if you are an individual, you must include all canceled amounts, even if less than $600, on the "Other income" line of Form 1040. If you are a corporation, partnership, or other entity, report the canceled debt on your tax return. See the instructions for your tax return.

However, some canceled debts are not includible, or fully includible, in your income, such as certain student loans (see Pub. 525), certain debts reduced by the seller after purchase (see Pub. 334), qualified farm debt (see Pub. 225), qualified real property business debt (see Pub. 334), or debts canceled in bankruptcy (see Pub. 908). Do not report a canceled debt as income if you did not deduct it but would have been able to do so on your tax return if you had paid it. Also, do not include canceled debts in your income to the extent you were insolvent. If you exclude a canceled debt from your income because it was canceled in a bankruptcy case or during insolvency, or because the debt is qualified farm debt or qualified real property business debt, file Form 982, Reduction of Tax Attributes Due to Discharge of Indebtedness (and Section 1082 Basis Adjustment).

Account number. May show an account or other unique number the creditor assigned to distinguish your account.

Box 1. Shows the date the debt was canceled.

Box 2. Shows the amount of debt canceled.

Box 3. Shows interest if included in the canceled debt in box 2. See Pub. 525, Taxable and Nontaxable Income, to see if you must include the interest in gross income.

Box 5. Shows a description of the debt. If box 7 is completed, box 5 shows a description of the property.

Box 6. If the box is marked, the creditor has indicated the debt was canceled in a bankruptcy proceeding.

Box 7. If, in the same calendar year, a foreclosure or abandonment of property occurred in connection with the cancellation of the debt, the fair market value (FMV) of the property will be shown, or you will receive a separate Form 1099-A, Acquisition or Abandonment of Secured Property. Generally, the gross foreclosure bid price is considered to be the FMV. For an abandonment or voluntary conveyance in lieu of foreclosure, the FMV is generally the appraised value of the property. You may have income or loss because of the acquisition or abandonment. See Pub. 544, Sales and Other Dispositions of Assets, for information about foreclosures and abandonments.

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WEDBUSH MORGAN SECURITIES
Investment Bankers for Entrepreneurs
1000 WILSHIRE BLVD., SUITE 855
LOS ANGELES, CA 90017
www.wedbush.com
Phone: (213) 688-8000

1099-CONSOLIDATED TAX STATEMENT
Tax Year 2007 Copy B For Recipient

Department of the Treasury - Internal Revenue Service
(Keep for your records)

FEDERAL ID NUMBER: 95-2495390

TAXPAYER ID NUMBER [redacted]
ACCOUNT NUMBER: CGMH 2451-6117

JAN - 5 2009

The following detailed information is NOT provided to the Internal Revenue Service, but is being provided to you as a courtesy. The IRS box numbers referenced for individual items listed below comprise the totals shown on the 1099 forms from the previous pages.

1099-DIV DIVIDENDS AND DISTRIBUTIONS

DESCRIPTION	CUSIP	EX-DIVIDEND DATE	DATE	ACTIVITY	AMOUNT	IRS BOX	COUNTRY	NOTES
HANCOCK SVRGN INVS CL A	47803P302	03/19/07	03/22/07	QUALIFIED DIVIDEND	$4.42	1B		
HANCOCK SVRGN INVS CL A	47803P302	06/18/07	06/21/07	QUALIFIED DIVIDEND	$5.58	1B		
HANCOCK SVRGN INVS CL A	47803P302	09/17/07	09/20/07	QUALIFIED DIVIDEND	$4.48	1B		
HANCOCK SVRGN INVS CL A	47803P302	12/12/07	12/17/07	QUALIFIED DIVIDEND	$6.38	1B		
TOTAL DIVIDENDS					**$20.86**			
HANCOCK SVRGN INVS CL A	47803P302		12/17/07	CAPITAL GAIN	$194.80	2A		
TOTAL CAPITAL GAINS DISTRIBUTIONS					**$194.80**			

WEDBUSH MORGAN SECURITIES
Investment Bankers for Entrepreneurs
1000 WILSHIRE BLVD., SUITE 855
LOS ANGELES, CA 90017
www.wedbush.com
Phone: (213) 688-3000

1099-CONSOLIDATED TAX STATEMENT
Tax Year 2007 Copy B For Recipient

Department of the Treasury - Internal Revenue Service
(Keep for your records)

FEDERAL ID NUMBER: 95-2495390

TAXPAYER ID NUMBER: [redacted]
ACCOUNT NUMBER: CGMH 2451-6117

This section lists non-federally reported activity, which may be useful in helping you prepare your tax return. This activity may or may not be taxable at the state or local level and will NOT be furnished to the Internal Revenue Service. Please review this information with your tax advisor.

BOX	NON-FEDERALLY REPORTED ACTIVITY TOTALS FOR TAX YEAR 2007	
1.	MARGIN INTEREST	$0.00
2.	OID EXEMPT MUNICIPAL INTEREST	$0.00
4.	RETURN OF CAPITAL OR PRINCIPAL	$0.00
5.	OID INCOME SUBJECT TO ALT MIN TAX	$0.00
7.	EXEMPT UIT INVESTMENT EXPENSES	$0.00
8.	PARTNERSHIP (MLP) DISTRIBUTIONS	$0.00
9.	ACCRUED INTEREST ON PURCHASES	$0.00
10.	PURCHASES	$215.66
11.	OPTION TRANSACTIONS	$0.00

PURCHASES

DESCRIPTION	CUSIP	DATE	ACTIVITY	QUANTITY	PRICE	AMOUNT	NOTES
HANCOCK SVRGN INVS CL A	47803P302	03/22/07	PURCHASE	0.23600	$0.0000	$4.42	
HANCOCK SVRGN INVS CL A	47803P302	06/21/07	PURCHASE	0.27400	$0.0000	$5.58	
HANCOCK SVRGN INVS CL A	47803P302	09/20/07	PURCHASE	0.21800	$0.0000	$4.48	
HANCOCK SVRGN INVS CL A	47803P302	12/17/07	PURCHASE	0.34500	$0.0000	$6.38	
COCK SVRGN INVS CL A	47803P302	12/17/07	PURCHASE	10.53000	$0.0000	$194.80	
TOTAL PURCHASES						$215.66	

JAN - 5 2009

Return Mail Processing Only
Not For Client Correspondence
P.O. Box 5275
Sioux Falls, SD 57117-5275

Retirement Account

AT 01 010851 69407H 42 A**3DGT

WELLS FARGO BANK IRA C/F
OLGA B COOK
513 9TH AVE
FAIRBANKS AK 99701-4901

Financial Consultant: GK46

Contact Us At:
ROBERT BELL
301 W. NORTHERN LIGHTS BLVD.,
ANCHORAGE AK 99503
(907) 456-8918
24 Hour Assistance: (866) 281-7436

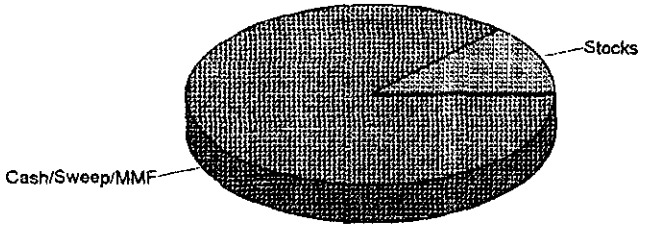
Last Statement Date:
October 31, 2008

Account Number:
W20977829

See Page 2 for important messages about your account. You may also review your account information online at http://www.wellsfargo.com. Ask us for more details.

Portfolio Summary

November 1, 2008 - November 30, 2008		Current Value	Previous Value
87 %	Cash, Cash Sweep & Money Mkt Fds	$16,473.32	$16,428.95
13 %	Stocks	2,436.66	2,408.54
Total Portfolio Value		**$18,909.98**	**$18,837.49**



Year to Date Change in Assets

Total Asset Value as of November 30, 2008	$18,909.98
Total Asset Value as of December 31, 2007	19,463.92
Net Change	**($553.94)**

Income Summary

	November 30, 2008	Year to Date
Wells Fargo Cash Sweep - FDIC	$0.02	$0.17
Taxable Money Market Funds	22.85	341.20
Equity Securities & Mutual Funds	21.50	99.84
Total Income	**$44.37**	**$441.21**

Investment and Insurance Products:
- Are **NOT** insured by the FDIC or any other federal government agency
- Are **NOT** deposits of or guaranteed by the Bank or any Bank Affiliate
- May Lose Value

Wells Fargo Investments, LLC (Member SIPC), a non-bank affiliate of Wells Fargo & Company. Wells Fargo Cash Sweep is held at Wells Fargo Bank, N.A., a bank affiliate of Wells Fargo & Company, and is FDIC-insured up to applicable limits and is Not SIPC covered. Precious metals are not SIPC covered or FDIC insured.

WELLS FARGO

1. This statement is provided to clients of Wells Fargo Investments, LLC ("WFI")(member SIPC). All orders and transactions shall be solely for your account and risk, shall be subject to the constitution, rules, regulations, customs, usages, rulings and interpretations of the exchange or market and the clearing facility, if any, where the transactions are executed and/ or settled and to all applicable laws and regulations.

2. It is your responsibility to review your statement and promptly report any inaccuracy or discrepancy to us. Any oral communication must be confirmed to us in writing at the address on the front of your statement to protect your rights, including rights under the Securities Investor Protection Act. We will consider this account statement correct unless we receive written notice from you of a suspected error within 30 days of receipt.

3. Securities and other assets (except brokered certificates of deposit and Wells Fargo Cash Sweep) are **Not FDIC Insured, May lose value and are Not bank guaranteed, but** are protected against broker-dealer insolvency up to a value of $500,000 (limited to $100,000 for cash claims) by SIPC. Explanatory brochure available by calling 202-371-8300 or at www.sipc.org. Please refer to your Brokerage Account Agreement under the section titled **Not FDIC Insured** or contact us for further information. Please be aware that **SIPC** account protection features **do not** protect against investment losses. The Wells Fargo Cash Sweep is held at Wells Fargo Bank, N.A. and (along with brokered CDs) is FDIC-insured up to applicable limits. Please see the *Disclosure Statement for Sweep Features* for further information. Precious metals are not SIPC covered or FDIC insured.

4. If you maintain a margin account, this is a combined statement of your general account and of a special memorandum account maintained for you under Regulation T of the Board of Governors of the Federal Reserve System. The permanent record of the separate account as required by Regulation T is available for your inspection upon written request.

Free credit balances may be used in the conduct of WFI's business subject to applicable rules and regulations. Any free credit balance in your account is payable immediately on demand.

5. If you trade options in your account, you are responsible to inform WFI of any change in your investment objectives or financial situation. Exercise notices for option contracts are allocated among client's short positions pursuant to a procedure that selects those contracts from among customer short option positions including positions established on the date of assignment. All short options positions are liable for assignment at any time. Commissions and other charges incurred in connection with the execution of option transactions have been included in confirmations of these transactions previously furnished to you. A summary of this information will be furnished upon written request.

6. Taxable dividends and interest reported on this statement for retirement plan accounts are generally exempt from year-end government reporting. If earnings are taxable in the tax year received, you will receive a Form 1099 at year-end. The information is provided as a convenience only, and may vary from the year-end tax report. There is no representation regarding the taxability of earnings at the state or local levels.

7. A copy of the financial statements for WFI is available for personal inspection at its main offices in Minneapolis, Minnesota or a copy will be furnished upon written request.

8. Under the NASD Regulation's Public Disclosure Program, the NASDR provides certain information regarding the disciplinary history of broker/dealers and their associated persons. Such information can be obtained from the NASDR Public Disclosure Program hotline number (1-800-289-9999) or the NASDR web site (www.nasdr.com). An investor brochure that includes information describing the NASDR Public Disclosure Program will be furnished upon written request.

9. Payment for Order Flow: WFI may receive payment for order flow from various market centers, but payment for order flow is not a consideration for any routing decisions. Unless otherwise instructed, WFI routes equity orders taking into consideration, among other factors, the quality and speed of execution, price improvement statistics, liquidity enhancements, NASDAQ report cards, and T+1 reports. WFI uses compensation received from market centers to help offset costs associated with executing orders. Payment information on specific market centers can be found by selecting the Wells Fargo Investments Equity Order Routing Information link on the bottom of the Wells Fargo Brokerage web site at www.wellsfargo.com/investing/styles/ and clicking on the Material Aspects of the Relationship link next to each market center. Information on payments and/ or credits received in connection with a specific transaction will be furnished upon written request.

Notice of Availability of Order Routing Information: WFI prepares quarterly reports describing its order routing practices for non-directed orders routed to a particular venue for execution. These reports are publicly available through a link at the bottom of the Wells Fargo Brokerage web site, www.wellsfargo.com/investing/styles/. WFI will furnish a printed copy of the quarterly report upon written request. In addition, WFI will provide on request more detailed information relating to the routing of any order in the six months prior to the request.

10. Dividend reinvestment transactions were affected by WFI acting as agent. Additional information regarding these transactions will be furnished upon written request.

11. Open orders will remain in effect until executed or canceled by you or until the expiration date on the open order confirmation previously sent to you. Failure to cancel an open order may result in the transaction being executed for your account. WFI has no responsibility to cancel an open order at its own initiative.

12. The prices of securities displayed on your statement are derived from various sources, and in some cases may be higher or lower than the price you would actually receive in the market. For securities listed on an exchange or trading continually in an active marketplace, the price reflects market quotations at the close of your statement period. For certificates of deposit ("CDs"), the value shown reflects the market value of the CDs. The actual value of the CDs may be different from their purchase price. CDs held until maturity are redeemed by the issuer at their face value. If CDs are sold prior to maturity, the result could be a significant loss of principal. The secondary market for CDs may be limited. The maturity value of CDs can be found under the "Quantity" section. If the CD market value listed appears as 'N/A', the market value was not available at the time this statement was prepared. Please note that any unpriced positions are not reflected in the total account value reported on this statement. For bonds trading less frequently, we generally rely on outside pricing services or a computerized pricing model which cannot always give us actual market values. Similarly, some annuity values provided by outside carriers may be estimates.

If we cannot obtain a price or estimate, "N/A" appears. Direct Participation Program (DPP) and Real Estate Investment Trust (REIT) securities are generally illiquid; the value of the security will be different than its purchase price.

13. In the event of a partial CALL of corporate or municipal bonds, or preferred stock held in bulk segregation, the securities to be called will automatically be selected on a random basis, as is customary in the securities industry. The probability that your securities will be selected is proportional to the amount of your holdings relative to the total holdings. A detailed description of the random selection procedure is available upon written request.

14. All information provided with respect to cost basis is derived from transactions in the account or information supplied by you or other sources. There is no guarantee as to the accuracy of cost basis information or the profit and loss information provided. Accordingly cost basis information is not intended for tax reporting purposes. Please inform us in the event that a cost basis is not accurate.

Reported gains and losses are based on a tax lot basis and are not based on an average cost. This information should not be used for tax purposes.

15. The information provided in this statement is for informational purposes only and should not be used for tax preparation. This information is not intended and should not be construed as tax, accounting or legal advice. Please consult your tax advisor regarding the tax consequences of your investment decisions.

When reporting your taxes please rely exclusively on Form 1099 and other tax reporting forms that WFI will provide to you at year-end.

16. Complaints should be directed to the Branch Office Manager. If you are unable to reach the Branch Office Manager, complaints may be directed to Wells Fargo Investments, Attn: Compliance Department, P.O. Box 7898, San Francisco, CA, 94120-9816 or by calling 866-415-6982.

17. For a change of address, please send your request to WFI at the address shown on the front of this statement.

WFI / WT REV. 10/08 v.09

WELLS FARGO

WELLS FARGO BANK IRA C/F
OLGA B COOK

Account number: **W20977829**
Financial Consultant: ROBERT BELL
Phone Number: (907) 456-8918

JAN - 5 2009

Activity Summary

	Amount
Total Asset Value as of October 31, 2008	**$18,837.49**
Cash/Cash Sweep/Money Mkt Fds Activity for November	
Closing Balance as of 10/31/2008	16,428.95
Income	44.37
Closing Balance as of 11/30/2008	**$16,473.32**

Important Information About Your Account

Focus on Year-End Planning Guide
Now is the time to start thinking about your financial strategies for year end and beyond. Our Focus on Year-End Planning: Guide for Investors covers broad investment trends you should be thinking about, as well as some short-term tax-planning steps to take before year-end. Contact a Wells Fargo Investment Professional for your complimentary copy today.

Bring 2009 into Focus
Concerned about recent volatility? Log on to wellsfargo.com/focus2009 to view our exclusive Focus 2009 Economic Outlook webcast with Wells Fargo Bank Chief Investment Officer Dean Junkans. Gain perspective on market volatility and how you should position your portfolio for the year ahead. After watching the webcast, contact your Wells Fargo Investments Professional to review your overall financial situation.

Portfolio Value

CASH, CASH SWEEP & MONEY MKT FDS 87%

Quantity	Description	Market Price	Market Value	Estimated Annual Income
	WELLS FARGO CASH SWEEP FDIC INSURED Average Yield: .17%		$152.32	
16,321.00	WF ADVANTAGE MONEY MARKET FD CL A 30 Day Yield: 1.71%	1.00	16,321.00	279
	Cash, Cash Sweep & Money Mkt Fds Subtotal		**$16,473.32**	**$279**

STOCKS 13%

Quantity	Description	Symbol	Market Price	Long/ Short	Market Value	Estimated Annual Income
200	ASSOCIATES FIRST CAP CORP RESIDUAL VALUE OBLG	ASFZ	$0.0002	Long	$0.04	
11	EDEN BIOSCIENCE CORP	EDEN	0.87	Long	9.57	

WELLS FARGO

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Portfolio Value (continued)

STOCKS (continued) 13%

Quantity	Description	Symbol	Market Price	Long/ Short	Market Value	Estimated Annual Income
200	LTV CORP NEW	LTVCQ	0.001	Long	0.20	
86	PUGET ENERGY INC NEW	PSD	24.48	Long	2,105.28	86
27	SUPERVALU INC	SVU	11.91	Long	321.57	18
	Stocks Subtotal				**$2,436.66**	**$104**

	Total Market Value	Total Estimated Annual Income
TOTAL PORTFOLIO VALUE	**$18,909.98**	**$383**

Activity Details

PURCHASES AND SALES & SWEEPS

SETTLED TRADES & SWEEPS

Trade Date	As Of Date	Description	Symbol/ CUSIP	Settle Date	Activity	Accrued Interest	Quantity	Price	Amount
11/18/08	11/18/08	WELLS FARGO CASH SWEEP FDIC INSURED	09999361	11/18/08	SWEEP				($21.50)
11/28/08	11/28/08	WELLS FARGO CASH SWEEP FDIC INSURED	09999361	11/28/08	REINVEST INT				(0.02)
11/28/08	11/28/08	WF ADVANTAGE MONEY MARKET FD CL A	09999752	11/28/08	REINVEST DIV				(22.85)
	TOTAL								**($44.37)**

INCOME

WELLS FARGO CASH SWEEP & MONEY MARKET FUNDS

Date	Description		Activity	Amount
11/28/08	WELLS FARGO CASH SWEEP .17% 30 DAY AVG. YIELD	FDIC INSURED PERIOD ENDING 11/30/08	INTEREST	$0.02
11/28/08	WF ADVANTAGE MONEY	MARKET FD CL A	DIVIDEND	22.85
	TOTAL			**$22.87**

WELLS FARGO

WELLS FARGO BANK IRA C/F
OLGA B COOK

Account number: **W20977829**
Financial Consultant: ROBERT BELL
Phone Number: (907) 456-8918

JAN - 5 2009

Activity Details (continued)

INCOME (continued)

STOCKS

Date	Description	Activity	Amount
11/17/08	PUGET ENERGY INC NEW	DIVIDEND	$21.50
	TOTAL		**$21.50**

Cash Flow Analysis

CHRONOLOGICAL TRANSACTION SUMMARY

Date	As Of Date	Description	Activity	Quantity	Price	Debit	Credit	Balance
		Beginning Cash Balance						**$0.00**
11/17/08	11/15/08	PUGET ENERGY INC NEW	DIVIDEND				$21.50	$21.50
11/18/08	11/18/08	WELLS FARGO CASH SWEEP	SWEEP			(21.50)		0.00
11/28/08	11/28/08	WELLS FARGO CASH SWEEP	INTEREST				0.02	0.02
11/28/08	11/28/08	WELLS FARGO CASH SWEEP	REINVEST INT			(0.02)		0.00
11/28/08	11/28/08	WF ADVANTAGE MONEY	DIVIDEND				22.85	22.85
11/28/08	11/28/08	WF ADVANTAGE MONEY	REINVEST DIV			(22.85)		0.00
		Ending Cash Balance						**$0.00**

IRA Account Summary & Beneficiary Designation

	Current Tax Year	Previous Tax Year
Contributions	$0.00	N/A
Distributions	$0.00	N/A
Rollovers	$0.00	N/A
Tax Withheld	$0.00	N/A
12/31/07 Fair Market Value:		**N/A**

According to our records, you have designated the following beneficiaries for your retirement account. This section is provided for your informational purposes only, and reflects the latest entry in our system as of the date this statement was produced. At the time of death, assets will be dispersed based upon the latest written designation on file. If this information is incorrect or incomplete please call your financial consultant.

Primary Beneficiary (ies)	Relationship	Percentage
Not available - please provide		

Contingent Beneficiary (ies)	Relationship	Percentage
None		

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GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Individual Retirement Account Statement

JAN - 5 2009

* 00110872 01 AT 0.346 TR 00388 X111PD08 000000

IRA FBO DENNIS E COOK
PERSHING LLC AS CUSTODIAN
431 BIRCH HILL ROAD
FAIRBANKS AK 99712-1621

Account Number: 0CK-908899
Statement Period: 10/01/2008 - 10/31/2008

Valuation at a Glance

	This Period
Beginning Account Value	**$21,237.62**
Dividends/Interest	192.54
Change in Account Value	-5,065.84
Ending Account Value	**$16,364.32**
Estimated Annual Income	**$814.73**

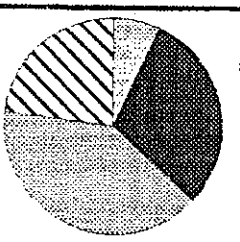
Your Registered Representative:
K. BRISARD / P. BRISARD
(212) 618-1834

FDIC insured bank deposits are not securities, are not held by Pershing LLC, and are not covered by the Securities Investor Protection Corporation. These bank deposits are covered by the Federal Deposit Insurance Corporation.

Asset Allocation

	Value Last Period	Value This Period	Percent Allocation
Cash, Money Funds, and FDIC Deposits[1]	943.04	1,135.58	7%
Equities	4,720.58	4,874.04	30%
Mutual Funds	9,790.00	6,574.70	40%
Exchange-Traded Products	5,784.00	3,780.00	23%
Account Total (Pie Chart)	**$21,237.62**	**$16,364.32**	**100%**

1 Includes FDIC insured bank deposits.



Asset Allocation percentages are rounded to the nearest whole percentage.

Pie Chart allocation excludes all asset classes which net to a liability.

DALBAR RATED FOR COMMUNICATION

Clearing Through Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation
Member FINRA, NYSE, SIPC

Summary of Gains and Losses

	Realized		Unrealized
	This Period	Year-to-Date	This Period
Short-Term Gain/Loss	0.00	-6,731.89	-9,978.31
Net Gain/Loss	**0.00**	**-6,731.89**	**-9,978.31**

This summary excludes transactions where cost basis information is not available.

Customer Service Information

Your Registered Representative: BCB

:RISARD / P. BRISARD
20TH FL
14 WALL ST
NEW YORK NY 10005-2123

Contact Information

Telephone Number: (212) 618-1834

Customer Service Information

Service Hours: Weekdays 08:30 a.m. - 05:30 p.m. EST
Customer Service Telephone Number: (800) 889-2914
Web Site: www.gunnallen.com

Investment Objective: SHORT TERM GROWTH

If you have any questions concerning your investment objective or wish to make a change, please contact Your Registered Representative.

Prior Year-End Fair Market Value: $35,640.15 **will be furnished to the Internal Revenue Service.**

Portfolio Holdings

Quantity	Opening Date	Account Number	Activity Ending	Opening Balance	Closing Balance	Accrued Income	Income This Year	30-Day Yield	Current Yield
Cash, Money Funds, and FDIC Deposits 7.00% of Portfolio									
FDIC Insured Bank Deposits									
SERVE INSURED DEPOSITS									
1,135.580	10/01/08	0CK908899	10/31/08	943.04	1,135.58	0.02	5.35	N/A	0.00%
Total FDIC Insured Bank Deposits				**$943.04**	**$1,135.58**	**$0.02**	**$5.35**		
Total Cash, Money Funds, and FDIC Deposits				**$943.04**	**$1,135.58**	**$0.02**	**$5.35**		

Clearing Through Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation
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Individual Retirement Account Statement

JAN - 5 2009

Statement Period: 10/01/2008 - 10/31/2008

Portfolio Holdings *(continued)*

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Equities 30.00% of Portfolio								
Common Stocks								
)EN BIOSCIENCE CORP COM PAR								
Dividend Option: Cash								
Security Identifier: EDEN								
11.000	Please Provide	N/A	Please Provide	0.8200	9.02	N/A		
SLTV CORP NEW NO STOCKHOLDERS								
EQUITY 12/07/01								
Dividend Option: Cash								
Security Identifier: LTVCQ								
200.000	Please Provide	N/A	Please Provide	0.0001	0.02	N/A		
Total Common Stocks			**$0.00**		**$9.04**	**$0.00**	**$0.00**	
Real Estate Investment Trusts								
ANNALY CAP MANAGEMENT INC								
Dividend Option: Cash								
Security Identifier: NLY								
350.000	02/08/08	20.8070	7,282.49	13.9000	4,865.00	-2,417.49	770.00	15.82%
Total Real Estate Investment Trusts			**$7,282.49**		**$4,865.00**	**-$2,417.49**	**$770.00**	
Total Equities			**$7,282.49**		**$4,874.04**	**-$2,417.49**	**$770.00**	

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Mutual Funds 40.00% of Portfolio								
Mutual Funds								
SLATIN AMERICAN DISCOVERY FUND INC								
Closed End Fund								
Security Identifier: LDF								
Dividend Option: Cash								
400.000	Please Provide	N/A	Please Provide	11.9540	4,781.60	N/A	12.64	0.26%

Portfolio Holdings *(continued)*

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Mutual Funds *(continued)*								
Mutual Funds *(continued)*								
LATIN AMERICAN DISCOVERY FUND INC *(continued)*								
150.000	07/31/08	25.7530	3,863.00	11.9540	1,793.10	-2,069.90	4.74	0.26%
550.000	**Total**		**$3,863.00**		**$6,574.70**	**-$2,069.90**	**$17.38**	
Total Mutual Funds			**$3,863.00**		**$6,574.70**	**-$2,069.90**	**$17.38**	
Total Mutual Funds			**$3,863.00**		**$6,574.70**	**-$2,069.90**	**$17.38**	

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Exchange-Traded Products 23.00% of Portfolio								
Exchange-Traded Products								
MARKET VECTORS RUSSIA ETF TR SHS								
BEN INT								
Security Identifier: RSX								
Dividend Option: Cash								
200.000	01/31/08	46.3550	9,270.92	18.9000	3,780.00	-5,490.92	22.00	0.58%
Total Exchange-Traded Products			**$9,270.92**		**$3,780.00**	**-$5,490.92**	**$22.00**	
Total Exchange-Traded Products			**$9,270.92**		**$3,780.00**	**-$5,490.92**	**$22.00**	

	Cost Basis	Market Value	Unrealized Gain/Loss	Accrued Interest	Estimated Annual Income
Total Portfolio Holdings	**$21,551.99**	**$16,364.32**	**-$9,978.31**	**$0.00**	**$814.73**

[5] Unrealized gains and losses are not reported for securities for which cost basis or market value is not available.

The values, where indicated, of real estate investment trusts (REITs) and direct participation programs (DPPs), including limited partnerships, have been provided by the REITs or DPPs, generally through an intermediary. The values are not guaranteed and are intended to reflect an estimate of the interest in the REIT or DPP represented by the units or shares described above. REIT and DPP securities are generally illiquid, and the value may not be realized when you seek to liquidate the security. Where no value is indicated, please note that:

- REIT or DPP securities are generally illiquid
- The value of the security may be different from its purchase price
- Accurate valuation information is not available.

Please note the values for DPPs and REITs which are provided by the REITs and DPPs may not reflect recent activity and do not reflect an independent evaluation of the REIT or DPP.

Disclosures and Other Information

GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Individual Retirement Account Statement

JAN - 5 2009

Statement Period: 10/01/2008 - 10/31/2008

Portfolio Holdings *(continued)*

Pricing - Securities prices may vary from actual liquidation value. Prices shown should only be used as a general guide to portfolio value. Prices are received from various pricing services. However, pricing services are sometimes unable to provide timely information. Where pricing sources are not readily available, particularly on certain debt securities, estimated prices may be generated by a matrix system taking various factors into consideration. The pricing of listed options takes into account the last closing price, as well as the current bid and offer prices. Where securities have not been priced, such securities have not been included in the Asset Allocation information at the beginning of this statement.

Investment - The dollar amount of Mutual Fund distributions, Money Market Fund dividend income, Bank Deposit interest income, or dividends for other securities shown on your Statement may have been reinvested. You will not receive confirmation of these reinvestments. However, information pertaining to these transactions which would otherwise appear on confirmations, including the time of execution and the name of the person from whom your security was purchased, will be furnished to you upon written request to your introducing firm. In dividend reinvestment transactions, Pershing acts as your agent and receives payment for order flow, the source and nature of which payment will be furnished to you upon written request to your introducing firm.

Option Disclosure - Information with respect to commissions and other charges incurred in connection with the execution of option transactions has been included in confirmations previously furnished to you. A summary of this information is available to you promptly upon your written request directed to your introducing firm. In order to assist your introducing firm in maintaining current background and financial information concerning your option accounts, please promptly advise them in writing of any material change in your investment objectives or financial situation. Expiring options which are valuable are exercised automatically pursuant to the exercise by exception procedure of the Options Clearing Corporation. Additional information regarding this procedure is available upon written request to your introducing firm.

Foreign Currency Transactions - Pershing may execute foreign currency transactions as principal for your account. Pershing may automatically convert foreign currency to or from U.S. dollars for dividends and similar corporate action transactions unless you instruct your financial organization otherwise. Pershing's currency conversion rate will not exceed the highest interbank conversion rate identified from customary banking sources on the conversion date or the prior business day, increased by up to 1%, unless a particular rate is required by applicable law. Your financial organization may also increase the currency conversion rate. This conversion rate may differ from rates in effect on the date you executed a transaction, incurred a charge, or received a credit. Transactions converted by agents (such as depositories) will be billed at the rates such agents use.

Proxy Vote - Securities held by you on margin (securities not fully paid for by you) may be lent by Pershing to itself or others in accordance with the terms outlined in the Margin Agreement. The right to vote your shares held on margin will be reduced by the amount of shares on loan. The Proxy Voting Instruction Form sent to you may reflect a smaller number of shares entitled to vote than the number of shares in your margin account.

Exchange-Traded Products - Exchange-traded products may include any combination of exchange-traded funds, exchange-traded notes, and other exchange-traded products.

Transactions in Date Sequence

Process/ Settlement Date	Trade/ Transaction Date	Activity Type	Description	Quantity	Price	Accrued Interest	Amount
10/17/08	10/16/08	MONEY MARKET INTEREST REINVESTED	RESERVE INS DEPOSITS INTEREST REINVESTED				-0.04
10/17/08	10/16/08	MONEY MARKET FUND INTEREST RECEIVED	RESERVE INS DEPOSITS INTEREST CREDITED				0.04

Transactions in Date Sequence *(continued)*

Process/ Settlement Date	Trade/ Transaction Date	Activity Type	Description	Quantity	Price	Accrued Interest	Amount
10/29/08		CASH DIVIDEND RECEIVED	350 SHRS ANNALY CAP MANAGEMENT INC RD 09/18 PD 10/29/08				192.50
10/30/08		MONEY MARKET DEPOSIT	RESERVE INS DEPOSITS				-192.50

Transactions Summary	Total Amount	Currency
UNITED STATES DOLLAR	0.00	USD

The price and quantity displayed may have been rounded.

FDIC Insured Bank Deposits

Date	Activity Type	Description	Amount	Balance
Sweep FDIC Insured Bank Deposits				
RESERVE INSURED DEPOSITS				
Account Number: 0CK908899	Activity Ending: 10/31/08			
10/01/08	Opening Balance			
10/15/08	Deposit	INTEREST CREDITED	943.04	943.04
10/16/08		YIELD .05%	0.04	943.08
'16/08		STILLWATER NATL BANK		943.08
../16/08		A/O 10/16 $943.08		943.08
10/30/08	Deposit	DEPOSIT	192.50	1,135.58
10/31/08	**Closing Balance**			**$1,135.58**
Total FDIC Insured Bank Deposits				**$1,135.58**

The FDIC Insured Bank Deposits are not securities and are not covered by the Securities Investor Protection Corporation (SIPC). The Bank Deposits at each bank are insured by the Federal Deposit Insurance Corporation (FDIC) up to $100,000 for each category of legal ownership and $250,000 for each individual retirement account and certain other self directed retirement accounts. Please review this in connection with other deposits you may have at each respective bank.

GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Individual Retirement Account Statement

Statement Period: 10/01/2008 - 10/31/2008

Income and Expense Summary

	Current Period Tax Deferred	Year-to-Date Tax Deferred
Dividend Income		
Equities	192.50	755.92
Interest Income		
FDIC Insured Bank Deposits	0.04	5.35
Total Dividends, Interest, Income and Expenses	**$192.54**	**$761.27**
Distributions		
Long - Term Capital Gain Distributions	0.00	2,878.12
Short - Term Capital Gain Distributions	0.00	451.64
Total Distributions	**$0.00**	**$3,329.76**

Messages

Although a money market mutual fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in a money market mutual fund. Please see the money market mutual fund's prospectus or contact your investment professional for additional information.

FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)-INSURED BANK DEPOSITS ARE NOT PROTECTED BY SECURITIES INVESTOR PROTECTION CORPORATION (SIPC).

YOU MAY VIEW CURRENT MONEY MARKET FUND RATES BY VISITING WWW.PERSHING.COM AND SELECTING THE LINK AT THE BOTTOM OF THE PAGE TITLED "MONEY MARKET FUND AND FDIC INSURED BANK RATES AND BANK LISTS." PLEASE NOTE THAT WE MAY NOT OFFER ALL OF THE MONEY MARKET FUNDS LISTED ON THE PERSHING WEBSITE.

Clarity is the cornerstone of trust between investors and their financial representative. Please visit www.gunnallen.com and read our "Investor's Bill of Rights."

A0030322CSE11LDP

DALBAR RATED FOR COMMUNICATION

Account Number: 0CK-908899
IRA FBO DENNIS E COOK

PAR-02-ROLL

Clearing Through Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation
Member FINRA, NYSE, SIPC

JAN - 5 2009

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GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Brokerage
Account Statement

JAN - 5 2009

* 00110685 01 AT 0.346 TR 00388 X111PD08 000000

DENNIS E COOK
714 4TH AVE STE 200
FAIRBANKS AK 99701-4470

Account Number: 0DA-011636
Statement Period: 10/01/2008 - 10/31/2008

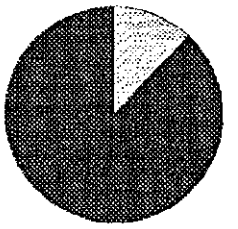
Your Registered Representative:
K. BRISARD / P. BRISARD
(212) 618-1834

Valuation at a Glance

	This Period
Beginning Account Value	**$19,591.48**
Dividends/Interest	330.00
Change in Account Value	-2,454.00
Ending Account Value	**$17,467.48**
Estimated Annual Income	**$1,320.00**

Asset Allocation

	Value Last Period	Value This Period	Percent Allocation
Cash, Money Funds, and FDIC Deposits	1,745.48	2,075.48	12%
Equities	17,846.00	15,392.00	88%
Account Total (Pie Chart)	**$19,591.48**	**$17,467.48**	**100%**



Asset Allocation percentages are rounded to the nearest whole percentage.

Pie Chart allocation excludes all asset classes which net to a liability.

DALBAR RATED FOR COMMUNICATION

Clearing Through Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation
Member FINRA, NYSE, SIPC

Summary of Gains and Losses

	Realized		Unrealized
	This Period	Year-to-Date	This Period
Short-Term Gain/Loss	0.00	0.00	-3,833.98
Long-Term Gain/Loss	0.00	0.00	-3,727.96
Net Gain/Loss	**0.00**	**0.00**	**-7,561.94**

This summary excludes transactions where cost basis information is not available.

Customer Service Information

Your Registered Representative: BCB

K. BRISARD / P. BRISARD
20TH FL
14 WALL ST
NEW YORK NY 10005-2123

Investment Objective: None Specified

Contact Information

Telephone Number: (212) 618-1834

Customer Service Information

Service Hours: Weekdays 08:30 a.m. - 05:30 p.m. EST
Customer Service Telephone Number: (800) 889-2914
Web Site: www.gunnallen.com

Please discuss your investment objective with Your Registered Representative.

Portfolio Holdings

Quantity	Opening Date	Account Number	Activity Ending	Opening Balance	Closing Balance	Accrued Income	Income This Year	30-Day Yield	Current Yield
Cash, Money Funds, and FDIC Deposits 12.00% of Portfolio									
Cash Balance				1,745.48	2,075.48				
Total Cash, Money Funds, and FDIC Deposits				**$1,745.48**	**$2,075.48**	**$0.00**	**$0.00**		

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Equities 88.00% of Portfolio								
Common Stocks								
AECOM TECHNOLOGY CORP COM								
Dividend Option: Cash								
Security Identifier: ACM								
400.000	07/12/07	26.9500	10,779.96	17.6300	7,052.00	-3,727.96		
Total Common Stocks			**$10,779.96**		**$7,052.00**	**-$3,727.96**	**$0.00**	

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5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Brokerage Account Statement

Statement Period: 10/01/2008 - 10/31/2008

JAN - 5 2009

Portfolio Holdings *(continued)*

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Equities *(continued)*								
Real Estate Investment Trusts								
VALY CAP MANAGEMENT INC								
Dividend Option: Cash								
Security Identifier: NLY								
600.000	02/04/08	20.2900	12,173.98	13.9000	8,340.00	-3,833.98	1,320.00	15.82%
Total Real Estate Investment Trusts			**$12,173.98**		**$8,340.00**	**-$3,833.98**	**$1,320.00**	
Total Equities			**$22,953.94**		**$15,392.00**	**-$7,561.94**	**$1,320.00**	

	Cost Basis	Market Value	Unrealized Gain/Loss	Accrued Interest	Estimated Annual Income
Total Portfolio Holdings	**$25,029.42**	**$17,467.48**	**-$7,561.94**	**$0.00**	**$1,320.00**

[3] The cost basis of securities positions acquired prior to the availability of the PORTFOLIO EVALUATION SERVICE for this account, or delivered into this account, has been provided to PERSHING by your financial institution, and we make no representation as to the accuracy of such cost basis.

The values, where indicated, of real estate investment trusts (REITs) and direct participation programs (DPPs), including limited partnerships, have been provided by the REITs or DPPs, generally through an intermediary. The values are not guaranteed and are intended to reflect an estimate of the interest in the REIT or DPP represented by the units or shares described above. REIT and DPP securities are generally illiquid, and the value may not be realized when you seek to liquidate the security. Where no value is indicated, please note that:

- REIT or DPP securities are generally illiquid
- The value of the security may be different from its purchase price
- Accurate valuation information is not available.

Please note the values for DPPs and REITs which are provided by the REITs and DPPs may not reflect recent activity and do not reflect an independent evaluation of the REIT or DPP.

Disclosures and Other Information

Pricing - Securities prices may vary from actual liquidation value. Prices shown should only be used as a general guide to portfolio value. Prices are received from various pricing services. However, pricing services are sometimes unable to provide timely information. Where pricing sources are not readily available, particularly on certain debt securities, estimated prices may be generated by a matrix system taking various factors into consideration. The pricing of listed options takes into account the last closing price, as well as the current bid and offer prices. Where securities have not been priced, such securities have not been included in the Asset Allocation information at the beginning of this statement.

Portfolio Holdings *(continued)*

Reinvestment - The dollar amount of Mutual Fund distributions, Money Market Fund dividend income, Bank Deposit interest income, or dividends for other securities shown on your Statement may have been reinvested. You will not receive confirmation of these reinvestments. However, information pertaining to these transactions which would otherwise appear on confirmations, including the time of execution and the name of the person from whom your security was purchased, will be furnished to you upon written request to your introducing firm. In dividend reinvestment transactions, Pershing acts as your agent and receives payment for order flow, the source and nature of which payment will be furnished to you upon written request to your introducing firm.

Option Disclosure - Information with respect to commissions and other charges incurred in connection with the execution of option transactions has been included in confirmations previously furnished to you. A summary of this information is available to you promptly upon your written request directed to your introducing firm. In order to assist your introducing firm in maintaining current background and financial information concerning your option accounts, please promptly advise them in writing of any material change in your investment objectives or financial situation. Expiring options which are valuable are exercised automatically pursuant to the exercise by exception procedure of the Options Clearing Corporation. Additional information regarding this procedure is available upon written request to your introducing firm.

Foreign Currency Transactions - Pershing may execute foreign currency transactions as principal for your account. Pershing may automatically convert foreign currency to or from U.S. dollars for dividends and similar corporate action transactions unless you instruct your financial organization otherwise. Pershing's currency conversion rate will not exceed the highest interbank conversion rate identified from customary king sources on the conversion date or the prior business day, increased by up to 1%, unless a particular rate is required by applicable law. Your financial organization may also increase the currency conversion rate. This conversion rate may differ from rates in effect on the date you executed a transaction, incurred a charge, or received a credit. Transactions converted by agents (such as depositories) will be billed at the rates such agents use.

Proxy Vote - Securities held by you on margin (securities not fully paid for by you) may be lent by Pershing to itself or others in accordance with the terms outlined in the Margin Agreement. The right to vote your shares held on margin will be reduced by the amount of shares on loan. The Proxy Voting Instruction Form sent to you may reflect a smaller number of shares entitled to vote than the number of shares in your margin account.

Transactions in Date Sequence

Process/ Settlement Date	Activity Type	Description	Quantity	Price	Accrued Interest	Amount
10/29/08	CASH DIVIDEND RECEIVED	600 SHRS ANNALY CAP MANAGEMENT INC RD 09/18 PD 10/29/08				330.00

Transactions Summary	Total Amount	Currency
UNITED STATES DOLLAR	330.00	USD

The price and quantity displayed may have been rounded.

Income and Expense Summary

	Current Period		Year-to-Date	
	Taxable	Non Taxable	Taxable	Non Taxable
Dividend Income				
Equities	330.00	0.00	948.00	0.00

GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Brokerage
Account Statement

JAN - 5 2009

Statement Period: 10/01/2008 - 10/31/2008

Income and Expense Summary *(continued)*

	Current Period		Year-to-Date	
	Taxable	Non Taxable	Taxable	Non Taxable
Interest Income				
Credit Interest	0.00	0.00	7.58	0.00
Total Dividends, Interest, Income and Expenses	**$330.00**	**$0.00**	**$955.58**	**$0.00**

Messages

Although a money market mutual fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in a money market mutual fund. Please see the money market mutual fund's prospectus or contact your investment professional for additional information.

Clarity is the cornerstone of trust between investors and their financial representative. Please visit www.gunnallen.com and read our "Investor's Bill of Rights."

A0030391CSF111DP
DALBAR RATED FOR COMMUNICATION
Account Number: 0DA-011636
DENNIS E COOK
PAR-02-ROLL
Clearing Through Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation
Member FINRA, NYSE, SIPC

GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Brokerage
Account Statement

JAN - 5 2009

* 00041345 02 MB 0.494 TR 00215 X220WD04 100000

Account Number: 0DA-011636
Statement Period: 08/01/2008 - 09/30/2008

DENNIS E COOK
714 4TH AVE STE 200
FAIRBANKS AK 99701-4470

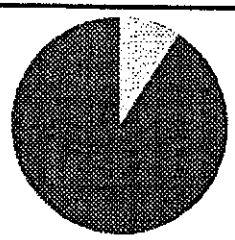
Your Registered Representative:
K. BRISARD / P. BRISARD
(212) 618-1834

Valuation at a Glance

	This Period
Beginning Account Value	**$22,175.48**
Change in Account Value	-2,584.00
Ending Account Value	**$19,591.48**
Estimated Annual Income	**$1,320.00**

Asset Allocation

	Value Last Period	Value This Period	Percent Allocation
Cash, Money Funds, and FDIC Deposits	1,745.48	1,745.48	9%
Equities	20,430.00	17,846.00	91%
Account Total (Pie Chart)	**$22,175.48**	**$19,591.48**	**100%**



Asset Allocation percentages are rounded to the nearest whole percentage.

Pie Chart allocation excludes all asset classes which net to a liability.

DALBAR RATED FOR COMMUNICATION

A01144G9CSF220D2

Clearing Through Pershing LLC, a subsidiary of The Bank of New York Mellon Corporation
Member FINRA, NYSE, SIPC

Summary of Gains and Losses

	Realized		Unrealized
	This Period	Year-to-Date	This Period
Short-Term Gain/Loss	0.00	0.00	-4,103.98
Long-Term Gain/Loss	0.00	0.00	-1,003.96
Net Gain/Loss	**0.00**	**0.00**	**-5,107.94**

This summary excludes transactions where cost basis information is not available.

Customer Service Information

...ar Registered Representative: BCB	Contact Information	Customer Service Information
K. BRISARD / P. BRISARD 20TH FL 14 WALL ST NEW YORK NY 10005-2123	**Telephone Number:** (212) 618-1834	**Service Hours:** Weekdays 08:30 a.m. - 05:30 p.m. EST **Customer Service Telephone Number:** (800) 889-2914 **Web Site:** www.gunnallen.com
Investment Objective: None Specified		Please discuss your investment objective with Your Registered Representative.

Portfolio Holdings

Quantity	Opening Date	Account Number	Activity Ending	Opening Balance	Closing Balance	Accrued Income	Income This Year	30-Day Yield	Current Yield
Cash, Money Funds, and FDIC Deposits 9.00% of Portfolio									
Cash Balance				1,745.48	1,745.48				
Total Cash, Money Funds, and FDIC Deposits				**$1,745.48**	**$1,745.48**	**$0.00**	**$0.00**		

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Equities 91.00% of Portfolio								
Common Stocks								
AECOM TECHNOLOGY CORP COM								
Dividend Option: Cash								
Security Identifier: ACM								
400.000	07/12/07	26.9500	10,779.96	24.4400	9,776.00	-1,003.96		
Total Common Stocks			**$10,779.96**		**$9,776.00**	**-$1,003.96**	**$0.00**	

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GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Brokerage Account Statement

JAN - 5 2009

Statement Period: 08/01/2008 - 09/30/2008

Portfolio Holdings *(continued)*

Quantity	Acquisition Date	Unit Cost	Cost Basis	Market Price	Market Value	Unrealized Gain/Loss	Estimated Annual Income	Estimated Yield
Equities *(continued)*								
Real Estate Investment Trusts								
INALY CAP MANAGEMENT INC								
Dividend Option: Cash								
Security Identifier: NLY								
600.000	02/04/08	20.2900	12,173.98	13.4500	8,070.00	-4,103.98	1,320.00	16.35%
Total Real Estate Investment Trusts			**$12,173.98**		**$8,070.00**	**-$4,103.98**	**$1,320.00**	
Total Equities			**$22,953.94**		**$17,846.00**	**-$5,107.94**	**$1,320.00**	

	Cost Basis	Market Value	Unrealized Gain/Loss	Accrued Interest	Estimated Annual Income
Total Portfolio Holdings	**$24,699.42**	**$19,591.48**	**-$5,107.94**	**$0.00**	**$1,320.00**

3 The cost basis of securities positions acquired prior to the availability of the PORTFOLIO EVALUATION SERVICE for this account, or delivered into this account, has been provided to PERSHING by your financial institution, and we make no representation as to the accuracy of such cost basis.

The values, where indicated, of real estate investment trusts (REITs) and direct participation programs (DPPs), including limited partnerships, have been provided by the REITs or DPPs, generally through an intermediary. The values are not guaranteed and are intended to reflect an estimate of the interest in the REIT or DPP represented by the units or shares described above. REIT and DPP securities are generally illiquid, and the value may not be realized when you seek to liquidate the security. Where no value is indicated, please note that:

- REIT or DPP securities are generally illiquid
- The value of the security may be different from its purchase price
- Accurate valuation information is not available.

Please note the values for DPPs and REITs which are provided by the REITs and DPPs may not reflect recent activity and do not reflect an independent evaluation of the REIT or DPP.

Disclosures and Other Information

Pricing - Securities prices may vary from actual liquidation value. Prices shown should only be used as a general guide to portfolio value. Prices are received from various pricing services. However, pricing services are sometimes unable to provide timely information. Where pricing sources are not readily available, particularly on certain debt securities, estimated prices may be generated by a matrix system taking various factors into consideration. The pricing of listed options takes into account the last closing price, as well as the current bid and offer prices. Where securities have not been priced, such securities have not been included in the Asset Allocation information at the beginning of this statement.

Portfolio Holdings *(continued)*

Reinvestment - The dollar amount of Mutual Fund distributions, Money Market Fund dividend income, Bank Deposit interest income, or dividends for other securities shown on your Statement may have been reinvested. You will not receive confirmation of these reinvestments. However, information pertaining to these transactions which would otherwise appear on confirmations, including the time of execution and the name of the person from whom your security was purchased, will be furnished to you upon written request to your introducing firm. In dividend reinvestment transactions, Pershing acts as your agent and receives payment for order flow, the source and nature of which payment will be furnished to you upon written request to your introducing firm.

Option Disclosure - Information with respect to commissions and other charges incurred in connection with the execution of option transactions has been included in confirmations previously furnished to you. A summary of this information is available to you promptly upon your written request directed to your introducing firm. In order to assist your introducing firm in maintaining current background and financial information concerning your option accounts, please promptly advise them in writing of any material change in your investment objectives or financial situation. Expiring options which are valuable are exercised automatically pursuant to the exercise by exception procedure of the Options Clearing Corporation. Additional information regarding this procedure is available upon written request to your introducing firm.

Foreign Currency Transactions - Pershing may execute foreign currency transactions as principal for your account. Pershing may automatically convert foreign currency to or from U.S. dollars for dividends and similar corporate action transactions unless you instruct your financial organization otherwise. Pershing's currency conversion rate will not exceed the highest interbank conversion rate identified from customary 'king sources on the conversion date or the prior business day, increased by up to 1%, unless a particular rate is required by applicable law. Your financial organization may also increase the currency conversion rate. This conversion rate may differ from rates in effect on the date you executed a transaction, incurred a charge, or received a credit. Transactions converted by agents (such as depositories) will be billed at the rates such agents use.

Proxy Vote - Securities held by you on margin (securities not fully paid for by you) may be lent by Pershing to itself or others in accordance with the terms outlined in the Margin Agreement. The right to vote your shares held on margin will be reduced by the amount of shares on loan. The Proxy Voting Instruction Form sent to you may reflect a smaller number of shares entitled to vote than the number of shares in your margin account.

Income and Expense Summary

	Current Period		Year-to-Date	
	Taxable	Non Taxable	Taxable	Non Taxable
Dividend Income				
Equities	0.00	0.00	618.00	0.00
Interest Income				
Credit Interest	0.00	0.00	7.58	0.00
Total Dividends, Interest, Income and Expenses	**$0.00**	**$0.00**	**$625.58**	**$0.00**

Messages

SEMI-ANNUAL STATEMENT OF FINANCIAL CONDITION

Pursuant to The Securities Exchange Act of 1934, Pershing LLC (Pershing) provides individual investors with certain financial information on a semi-annual basis.

Pershing's June Statement of Financial Condition is now available, and on June 30, 2008, Pershing's net capital of $1.3 billion was 15.54% of aggregate debit balances and exceeded the minimum requirements by $1.1 billion.

Pershing is also required to provide the most recent financial information as of this statement mailing. In accordance with this requirement, on July 31, 2008, Pershing's net capital of $1.3 billion was 16.22% of aggregate debit balances and exceeded the minimum requirement by $1.1 billion.

A copy of the June 30, 2008, Statement of Financial Condition is available at www.pershing.com/footer/sofc.html. You may also request a free, printed copy by calling (888) 860-8510.

GunnAllen Financial
5002 W. Waters Ave.
Tampa, FL 33634-1313
Phone: 800.889.2914

Brokerage Account Statement

Statement Period: 08/01/2008 - 09/30/2008

JAN - 5 2009

Messages *(continued)*

Although a money market mutual fund seeks to preserve the value of your investment at $1.00 per share, it is possible to lose money by investing in a money market mutual fund. Please carefully read the money market mutual fund prospectus for additional information or contact your investment professional.

There are additional risks involved in trading equity securities either before or after regular market sessions. If you are considering participating in extended-hours trading, please be sure to review the Extended-Hours Trading section of Pershing's Disclosure Statement (found under Additional Disclosures). The Disclosure Statement is available at www.pershing.com/disclosurestatement.html or, if you are not able to retrieve the document online, you may call Pershing's Self-Service Hotline at (888) 860-8510. Select option 4, Disclosure Statement, where you will be prompted to either say or enter your account number. The document will then be mailed to the address of record for your account.

Clarity is the cornerstone of trust between investors and their financial representative. Please visit www.gunnallen.com and read our "Investor's Bill of Rights."

FOR ADDITIONAL INFORMATION REGARDING ORDER ROUTING PRACTICES AND THE VENUES TO WHICH YOUR GUNNALLEN FINANCIAL INC ORDERS ARE ROUTED, YOU MAY VISIT WWW.GUNNALLEN.COM AND SELECT THE LINK ENTITLED SEC RULE 606 DISCLOSURE.

UPON WRITTEN REQUEST TO GUNNALLEN FINANCIAL INC, YOU MAY OBTAIN THE IDENTITY OF THE VENUE TO WHICH YOUR ORDERS WERE ROUTED FOR THE SIX MONTHS PRIOR TO YOUR REQUEST AND THE TIME OF THE TRANSACTIONS THAT MAY HAVE RESULTED FROM SUCH ORDERS.

GUNNALLEN FINANCIAL INC SENDS CERTAIN EQUITY ORDERS TO EXCHANGES, ELECTRONIC COMMUNICATION NETWORKS, OR BROKER DEALERS DURING NORMAL BUSINESS HOURS AND DURING EXTENDED TRADING SESSIONS. CERTAIN OF THESE MARKET CENTERS PROVIDE PAYMENTS TO YOUR INTRODUCING BROKER OR CHARGE ACCESS FEES DEPENDING UPON THE CHARACTERISTICS OF THE ORDERS AND ANY SUBSEQUENT EXECUTION. IN ADDITION, YOUR INTRODUCING BROKER DEALER MAY EXECUTE CERTAIN EQUITY ORDERS AS PRINCIPAL. YOUR INTRODUCING BROKER DEALER REALIZED 100% OF ANY TRADING PROFITS GENERATED FROM TRADING WITH CLIENT ORDERS AS PRINCIPAL.

TERMS AND CONDITIONS

GENERAL INFORMATION

1. All orders and transactions shall be solely for your account and risk shall be subject to the constitution, rules, regulations, customs, usages, rulings and interpretations of the exchange or market and the clearing facility, if any, where the transactions are executed and/or settled, or if applicable, of the Financial Industry Regulatory Authority and to all applicable laws and regulations.
2. Whenever you are indebted to Pershing LLC ("Pershing") for any amount, all securities held by it for you in any account in which you have any interest shall secure all your liabilities to Pershing, and Pershing may in its discretion at any time, without tender, demand or notice to you, close or reduce any or all of your accounts by public or private sale or purchase or both of all or any securities carried in such accounts; any balance remaining due Pershing to be promptly paid by you.
3. Whenever you are indebted to Pershing for any amount, all securities carried for your account are or may be, without further notice to you, loaned or pledged by Pershing, either separately or under circumstances which will permit the commingling thereof, with other securities for any amount less than, equal to or greater than your liabilities to Pershing, but not under circumstances for an amount prohibited by law.
4. Title to securities sold to you, where Pershing has acted as principal, shall remain with Pershing until the entire purchase price is received or until the settlement date, whichever is later.
5. Any free credit balance carried for your account represents funds payable upon demand which, although properly accounted for on Pershing's books of record, are not segregated and may be used in the conduct of its business.
6. You may have received confirmations for transactions which do not appear on your statement. If so, the transactions will appear on your next periodic statement. Such transactions must be considered by you when computing the value of your account. This is especially true if you have written options which have been exercised.
7. If you maintain a margin account, this is a combined statement of your general account and a special memorandum account maintained for you under Regulation T of the Board of Governors of the Federal Reserve System. The permanent record of the separate account as required by Regulation T is available for your inspection upon request.
8. Interest charged on debit balances in your account appears on the statement. The rate of interest and period covered are indicated. The rate may change from time to time due to fluctuations in money rates or other reasons. Interest is computed as described in material previously furnished to you. Please contact your financial institution if you desire additional copies.
9. A financial statement of Pershing is available for your personal inspection at Pershing's offices. A copy of it will be mailed upon your written request or you can view it online at Pershing.com.
10. This statement should be retained for your records.
11. Dividends, interest and other distributions shown on this statement were classified as taxable or nontaxable based on certain information known as of the distribution date. This classification is subject to change and is solely intended for use as general information. After year end, Pershing is required to provide tax information to the Internal Revenue Service and other governmental authorities. At that time Pershing will provide that information on the annual tax information statement to you; use that statement to prepare your tax filings. The tax statement also includes other useful information to assist in accumulating the data to prepare your tax returns.
12. **Pershing does not provide tax, investment or legal advisory services and no one associated with Pershing is authorized to render such advice. Do not rely upon any such advice, if given. Investors are encouraged to consult their tax advisors to determine the appropriate tax treatment of their business.**
13. Pershing provides account protection for the net equity of securities positions and cash held in your account. Of this total, the Securities Investor Protection Corporation (SIPC) provides $500,000 of coverage, including $100,000 for claims for cash. Pershing provides additional protection on terms similar to SIPC for account net equity in excess of $500,000 through a commercial insurer. The account protection applies when a SIPC member firm fails financially and is unable to meet obligations to securities clients, but it does not protect against losses from the rise and fall in the market value of investments.
14. Pershing trades for its own account as a market maker, specialist, odd lot dealer, block positioner, arbitrageur and/or investor. Consequently, at the time of any transaction you may make, Pershing may have a position in such securities, which position may be partially or completely hedged.
15. If average price transaction is indicated on the front of this statement your financial institution or Pershing may have acted as principal, agent or both. Details available upon request.
16. This statement will be deemed conclusive and an account stated unless you advise Pershing in writing of any objection to it within ten days after receipt. Any such objection should be sent to Pershing at One Pershing Plaza, Jersey City, NJ 07399, Attn: Compliance.
17. You are advised to report promptly any inaccuracy or discrepancy in your account (including unauthorized trading) to your financial organization and Pershing, the custodian of your account. Please be advised that any oral communication should be re-confirmed in writing to further protect your rights, including your rights under the Securities Investor Protection Act. Your financial organization's contact information can be found on the first page of this statement. Pershing's contact information is as follows: Pershing LLC; Legal Department; One Pershing Plaza; Jersey City, New Jersey 07399; (201) 413-3330.

ERRORS AND OMISSIONS EXCEPTED.

PORTFOLIO HOLDINGS

This section includes the net market value of the securities in your account on a settlement date basis, including short positions, at the close of the statement period. The market prices have been obtained from quotation services, which we believe to be reliable; however, we cannot guarantee their accuracy. Securities for which a price is not available are marked "N/A" and are omitted from the Total.

The Annual Income, which is an estimated figure, is the current interest or most recently declared dividend for each security and is annualized. This figure particularly on equity mutual funds can vary substantially from one year to the next. As a result, actual amounts distributed may be more or less than those estimated on this statement. The Annual Income is then divided by the current Market Value to give the Estimated Yield which too could vary substantially because the income is estimated and it does not take account of your holding period. Annual Income has been obtained from sources believed to be reliable, but no assurance can be made as to accuracy.

Accrued interest represents interest earned but not yet received.

THE ROLE OF PERSHING

Pershing carries your account as clearing broker pursuant to a clearing agreement with your financial institution. Pershing may accept from your financial institution without inquiry or investigation (i) orders for the purchase and sale of securities and other property and (ii) any other instructions concerning your account. Pershing is not responsible or liable for any acts or omissions of your financial institution or its employees and it does not supervise them. Pershing provides no investment advice nor does it assess the suitability of any transaction or order. Pershing acts as the agent of your financial institution and you agree that you will not hold Pershing or any person controlling or under common control with it liable for any investment losses incurred by you.

Pershing performs several key functions at the direction of your financial institution. It acts as custodian for funds and securities you may deposit with it directly or through your financial institution or that it receives as the result of securities transactions it processes. Inquiries concerning the positions and balances in your account may only be directed to the **Pershing Customer Service Department at (201) 413-3333.** All other inquiries regarding your account or activity should be directed to your financial institution. For a description of other functions performed by Pershing please consult the Disclosure Statement provided to you upon the opening of your account.

Your financial institution is responsible for adherence to the securities laws, regulations and rules which apply to it regarding its own operations and the supervision of your account, its sales representatives and other personnel. Your financial institution is also responsible for approving the opening of accounts and obtaining account documents; the acceptance and, in certain instances, execution of securities orders; the assessment of the suitability of those transactions, where applicable; the rendering of investment advice, if any, to you and in general, for the ongoing relationship that it has with you.

Pershing may capture and store data about you such as your financial information and investment objectives. However, Pershing is not reviewing this information and evaluating whether your investments comport with your financial status and objectives and you hereby release Pershing from any liability to do so. Similarly, Pershing may capture and store information about whether a broker or an introducing firm is registered in a given state. You hereby release Pershing from any liability to review this data or to evaluate whether a particular security is registered or exempt from registration in your State.

This notice is not meant as a definitive enumeration of every possible circumstance, but as a general disclosure. If you have any questions regarding this notice or if you would like additional copies of the Disclosure Statement, please contact your financial institution.

PAYMENT FOR ORDER FLOW PRACTICES

The following statement is provided to you as required by Rule 11Ac1-3 of the Securities Exchange Act of 1934.

Pershing sends certain equity orders to exchanges, Electronic Communication Networks, or broker-dealers during normal business hours and during extended trading sessions. Certain of these venues provide payments to Pershing or charge access fees to Pershing depending upon the characteristics of the order and any subsequent execution. In addition, Pershing may execute certain equity orders as principal. The details of these payments and fees are available upon written request. Pershing receives payments for directing listed options order flow to certain option exchanges. Compensation is generally in the form of a per option contract cash payment. Compensation is generally in the form of a per option contract cash payment. For a listing of organizations that pay Pershing for order flow, please refer to www.pershing.com/orderflow.htm.

Best Execution

Notwithstanding the previous paragraph regarding payment for order flow, Pershing selects certain market centers to provide execution of over-the-counter and exchange-listed securities transactions which agree to accept orders, transmitted electronically up to a specified size, and to execute them at or better than the national best bid or offer (NBBO). On certain larger orders, or if the designated market centers do not make a market in the subject security, Pershing directly contacts market centers to obtain an execution. The designated market centers to which orders are automatically routed are selected based on the consistent high quality of their executions in one or more market segments and their ability to provide opportunities for executions at prices superior to the NBBO.

If an order for an exchange-listed security is not immediately executable on the exchange to which it is routed, such order may be represented in the national marketplace using the various means available for price discovery. Pershing also regularly reviews reports for quality of execution purposes.

ARBITRATION

ARBITRATION DISCLOSURES:

- **ALL PARTIES TO THIS AGREEMENT ARE GIVING UP THE RIGHT TO SUE EACH OTHER IN COURT, INCLUDING THE RIGHT TO A TRIAL BY JURY, EXCEPT AS PROVIDED BY THE RULES OF THE ARBITRATION FORUM IN WHICH A CLAIM IS FILED.**
- **ARBITRATION AWARDS ARE GENERALLY FINAL AND BINDING; A PARTY'S ABILITY TO HAVE A COURT REVERSE OR MODIFY AN ARBITRATION AWARD IS VERY LIMITED.**
- **THE ABILITY OF THE PARTIES TO OBTAIN DOCUMENTS, WITNESS STATEMENTS AND OTHER DISCOVERY IS GENERALLY MORE LIMITED IN ARBITRATION THAN IN COURT PROCEEDINGS.**
- **THE ARBITRATORS DO NOT HAVE TO EXPLAIN THE REASON(S) FOR THEIR AWARD.**
- **THE PANEL OF ARBITRATORS WILL TYPICALLY INCLUDE A MINORITY OF ARBITRATORS WHO WERE OR ARE AFFILIATED WITH THE SECURITIES INDUSTRY.**
- **THE RULES OF SOME ARBITRATION FORUMS MAY IMPOSE TIME LIMITS FOR BRINGING A CLAIM IN ARBITRATION. IN SOME CASES, A CLAIM THAT IS INELIGIBLE FOR ARBITRATION MAY BE BROUGHT IN COURT.**
- **THE RULES OF THE ARBITRATION FORUM IN WHICH THE CLAIM IS FILED, AND ANY AMENDMENTS THERETO, SHALL BE INCORPORATED INTO THIS AGREEMENT.**

If any of the above Terms and Conditions are unacceptable to you, please notify Pershing immediately in writing by certified mail to One Pershing Plaza, Jersey City, NJ 07399, Attn: Compliance.

JAN - 5 2009

TERMS AND CONDITIONS

ARBITRATION AGREEMENT

ANY CONTROVERSY BETWEEN YOU AND US SHALL BE SUBMITTED TO ARBITRATION BEFORE THE FINANCIAL INDUSTRY REGULATORY AUTHORITY OR ANY OTHER NATIONAL SECURITIES EXCHANGE ON WHICH A TRANSACTION GIVING RISE TO THE CLAIM TOOK PLACE (AND ONLY BEFORE SUCH EXCHANGE).

NO PERSON SHALL BRING A PUTATIVE OR CERTIFIED CLASS ACTION TO ARBITRATION, NOR SEEK TO ENFORCE ANY PREDISPUTE ARBITRATION AGREEMENT AGAINST ANY PERSON WHO HAS INITIATED IN COURT A PUTATIVE CLASS ACTION; WHO IS A MEMBER OF A PUTATIVE CLASS WHO HAS NOT OPTED OUT OF THE CLASS WITH RESPECT TO ANY CLAIMS ENCOMPASSED BY THE PUTATIVE CLASS ACTION UNTIL: (I) THE CLASS CERTIFICATION IS DENIED; (II) THE CLASS IS DECERTIFIED; OR (III) THE CUSTOMER IS EXCLUDED FROM THE CLASS BY THE COURT. SUCH FORBEARANCE TO ENFORCE AN AGREEMENT TO ARBITRATE SHALL NOT CONSTITUTE A WAIVER OF ANY RIGHTS UNDER THIS AGREEMENT EXCEPT TO THE EXTENT STATED HEREIN.

THE LAWS OF THE STATE OF NEW YORK GOVERN.

WRAP ACCOUNT CUSTOMERS WHO ELECTED NOT TO RECEIVE IMMEDIATE CONFIRMATION OF TRANSACTIONS

The following Terms and Conditions are applicable only if your account is a wrap fee managed account, and the trade confirmations are not sent to you (sent only to your portfolio manager) pursuant to your instruction:

1. The following information will be furnished to you upon request to your financial institution (introducing firm) ("Introducing Firm"), with respect to any transaction for which a trade confirmation was not sent to you:
   - The market upon which any transaction was executed;
   - The time of day that any transaction was executed;
   - The name of the person from whom any security was purchased, or to whom such security was sold;
   - The source and amount of other commissions received in connection with any transaction; and
   - A copy of the trade confirmation.
2. Introducing Firm effected each transaction for which a trade confirmation was not sent to you, as your agent.
3. In connection with each equity security and certain other securities sold, Introducing Firm charges to you, and remits to a regulatory organization or national securities exchange, a "Trans. Fee". Pershing calculates this Fee based on amounts paid by Introducing Firm to the applicable regulatory organization or national securities exchange. This, in turn, is based on the value of the applicable securities sold. To determine the exact amount of this Fee with respect to any transaction, please contact the Introducing Firm.
4. Introducing Firm does not receive any payment for order flow for any transaction for which a trade confirmation was not sent to you.
5. Call features may exist for securities. Call features for fixed income securities may affect yield. Complete information will be provided upon request.
6. If any transaction involves an asset-backed security, including a municipal collateralized mortgage obligation, which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment, then the actual yield of such security may vary according to the rate at which the underlying receivables or other financial assets are prepaid. Information concerning the factors that affect yield (including at a minimum estimated yield, weighted average life, and the prepayment assumptions of underlying yield) will be furnished to you, upon request to Introducing Firm.
7. The ratings that appear in the description of some fixed income securities have been obtained from ratings services which Pershing believes to be reliable; however, Pershing cannot guarantee their accuracy. Securities for which a rating is not available are marked "UNRATED".

If any of the above Terms and Conditions are unacceptable to you, please notify Pershing immediately in writing by certified mail to One Pershing Plaza, Jersey City, NJ 07399, Attn: Compliance.

CONFIRMATION COMMITTEE REPORT

Action date: 2/4/09

In accordance with AS 24.60.130, the Judiciary Committee has reviewed the qualifications of the following Chief Justice's appointee and recommends that this name be forwarded to the House for ratification:

Select Committee on Legislative Ethics

Dennis "Skip" Cook
(Incumbent)

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of ratification.

Signature:	Printed Last Name
	LYNN
	Gruenberg
	Coghill
	Holmes
	GATTO
Chair:	Dahlstrom
Chair:	

Please return to the Chief Clerk's office.

CONFIR-MATIONS 2010

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

Official Business

MEMORANDUM

Date: January 27, 2010

To: Representative Ramras, Chair
Judiciary Committee

From: Suzi Lowell
Chief Clerk

Subject: Chief Justice's Appointments

Speaker Chenault referred the following appointments by Chief Justice Walter L. Carpeneti to the Judiciary Committee:

Select Committee on Legislative Ethics
H. Conner Thomas (incumbent) of Nome
Gary Turner (incumbent) of Soldotna

The committee reports are attached for your use.

Attachments as noted

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

Official Business

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

MEMORANDUM

Date: 2010

To: All Committees

From: Suzi Lowell
Chief Clerk

Subject: Confirmation Committee Report (Signature Page) for Governor's Appointments

The attached Confirmation Committee Report (signature page) should be used in conjunction with the Referral for Confirmation form for the Governor's appointments to boards and commissions requiring legislative confirmation. After a committee has reviewed the qualifications of the appointee(s), the Referral for Confirmation form(s) should be dated and attached to a signature page. Have members sign the signature page and return the confirmation packet to the Chief Clerk's office.

Please use a single signature page for multiple appointees if the names of all members signing the report are the same for each attached referral. This change allows members to sign once for multiple appointments.

Attached are several signature pages for your use. We used colored paper to make them easier to identify. If you anticipate needing more forms or need assistance, please call Nancy McMullen at 6809.

Note: A separate report, including the signatures, will be used for department commissioners.

Attachments

CONFIRMATION COMMITTEE REPORT

Action date: 2/17/10

In accordance with AS 24.60.130, the Judiciary Committee has reviewed the qualifications of the following Chief Justice's appointee and recommends that this name be forwarded to the House for ratification:

Select Committee on Legislative Ethics

H. Conner Thomas
(Incumbent)

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of ratification.

Signature:	Printed Last Name
	LYNN
	[illegible]
	HERRON
	Holmes
	GATTO
Chair:	RAMRAS
Chair:	

Please return to the Chief Clerk's office.

CONFIRMATION COMMITTEE REPORT

Action date: 2/17/10

In accordance with AS 24.60.130, the Judiciary Committee has reviewed the qualifications of the following Chief Justice's appointee and recommends that this name be forwarded to the House for ratification:

Select Committee on Legislative Ethics

Gary Turner
(Incumbent)

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of ratification.

Signature:	Printed Last Name
	LYNN
	Greenberg
	Gatto
	HERRON
	Holmes
Chair:	RAMRAS
Chair:	

Please return to the Chief Clerk's office.

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

Official Business

REFERRAL FOR CONFIRMATION

Date Referred: February 3, 2010

Committee: Judiciary

Board of Governors of the Alaska Bar Association
Donald McLean – Wasilla
Appointed: 3/1/2007
Reappointed: 3/1/2010 Term Expires: 3/1/2013

Action Date: 2/17/10
(Same date as on the accompanying signature page)

Note: Attach to a signature page and return to the Chief Clerk's office.

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

Official Business

REFERRAL FOR CONFIRMATION

Date Referred: February 3, 2010

Committee: Judiciary

Public Defender
Quinlan Steiner – Anchorage
Appointed: 10/14/2005
Reappointed: 10/9/2009 Term Expires: 10/14/2013

Action Date: 2/17/10
(Same date as on the accompanying signature page)

Note: Attach to a signature page and return to the Chief Clerk's office.

Alaska State Legislature

Official Business

House of Representatives

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REFERRAL FOR CONFIRMATION

Date Referred: February 3, 2010

Committee: Judiciary

Violent Crimes Compensation Board
Nora G. Barlow – Anchorage
Appointed: 3/1/2010 Term Expires: 3/1/2011

Action Date: 2/17/10
(Same date as on the accompanying signature page)

Note: Attach to a signature page and return to the Chief Clerk's office.

CONFIRMATION COMMITTEE REPORT

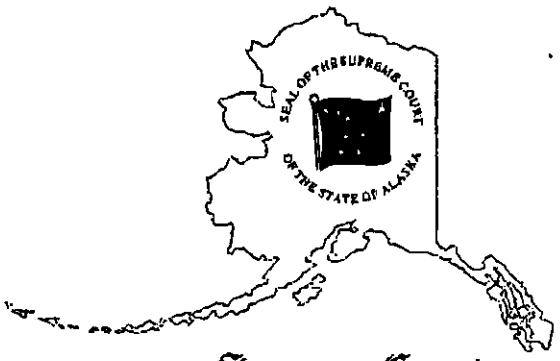
Action date: 2/17/10

The **Judiciary Committee** has reviewed the qualifications of the following Governor's appointee(s) as shown on the attached Referral for Confirmation forms(s) and recommends that the name(s) be forwarded to a joint session for consideration:

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	LYNN
	Gutierrez
	GATTO
	HERRON
	Holmes
Co-Chair:	RAMRAS
Co-Chair:	

Please attach appointee Referral for Confirmation form(s) and return to the Chief Clerk's office.



Chambers of
Walter L. Carpeneti
Chief Justice

Supreme Court
State of Alaska

P.O. Box 114100
Juneau, Alaska
99811-4100

(907) 463-4771
Fax (907) 463-3475

January 22, 2010

The Honorable Gary Stevens
Senate President
State Capitol, Room 111
Juneau, Alaska 99801-1182

The Honorable Mike Chenault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear President Stevens
and Speaker Chenault:

In my capacity as Chief Justice, and pursuant to AS 24.60.130(b)(3), I am re-nominating Gary J. Turner to serve another term as a public member of the Select Committee on Legislative Ethics.

Mr. Turner is the Director of Kenai Peninsula College, a campus of the University of Alaska, and is also a retired Air Force officer. For purposes of determining compliance with AS 24.60.130(c), Mr. Turner is a Republican.

Mr. Turner can be reached at (907) 262-2366 (home) or (907) 262-0315 (work). His mailing address is 215 River Watch Drive, Soldotna, Alaska 99669, and his e-mail address is Gary.Turner@uaa.alaska.edu. Please let me know if I can provide you with any other information on this matter.

Sincerely,

Walter L. Carpeneti

Walter L. Carpeneti

cc: Gary Turner
Joyce Anderson

GARY J. TURNER

215 River Watch Drive
Soldotna AK 99669
(907) 262-0315 (work), 262-0316 (fax)
(907) 262-2366 (home)
Gary.Turner@uaa.alaska.edu

Qualifications Summary

Education and public affairs professional with 30 years experience in communications management in NASA, U.S. Air Force, PR agency, corporate and university environments. Extensive experience in media relations, environmental risk communication, crisis and issues management and community relations.

Professional Experience

College Director/CEO

University of Alaska, Kenai Peninsula College, Soldotna, AK; June 2002-Present

- Serve as chief academic and administrative officer for 3,000 student college system. Lead 242 employees at four locations in Anchorage, Soldotna, Homer and Seward.

Senior Vice President & General Manager

Weber Shandwick Worldwide, Seattle, WA; August 2000 – October 2001

Program Manager, Public Affairs

NASA Marshall Space Flight Center, Ai Signal Research, Inc, Huntsville, AL; June 1996 - August 2000

Coordinator and Instructor, Continuing Education and Program Development

University of Alaska Southeast, Ketchikan AK; August 1995 - June 1996

State Executive Director

Alaskans for Drug-Free Youth, Ketchikan, AK; August 1994 - April 1995

Director, Public Affairs

Eielson Air Force Base, Alaska; April 1992 - August 1994

Director, Visitor Services Division

U.S. Air Force Academy, CO; May 1991 - April 1992

Academic Instructor

U.S. Air Force Academy, CO; May 1990 - May 1991

From 1979-1990, served in variety of public affairs roles at U.S. Air Force bases in Belgium, NORAD and U.S. Space Command in Colorado Springs, and Fairchild Air Force Base, Washington.

Education

- Master of Arts, Mass Communication, University of Denver, 1989.
- Bachelor of Science, Liberal Arts, University of the State of New York, 1983.

Professional Associations

- Member, Kenai River Sportfishing Association Board of Directors; 2003-present
- Member, Kenai River Guide Advisory Board; 2007-present
- Chair, Kenai River Guide Academy; 2005-present
- Retired Air Force Public Affairs officer; Top Secret clearance at retirement.

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT
Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

FINANCIAL DISCLOSURE STATEMENT FOR: PUBLIC OFFICIALS, LEGISLATORS & CANDIDATES

EXECUTIVE BRANCH: Governor, Lt. Gov., commissioners, directors, special assistants and legislative liaisons; state boards and commissions; procurement and investment officers; city/borough officials; candidates.

JUDICIAL BRANCH: Justices, judges and magistrates.

LEGISLATIVE BRANCH: Legislators, legislative directors, Select Committee on Legislative Ethics.

FOR MORE INFORMATION, INSTRUCTIONS, BLANK FORMS, SAMPLE FORMS & QUESTIONS:
Visit APOC online at: doa.alaska.gov/apoc :

- To find detailed instructions and sample disclosures, under the heading "How do I..." click "Complete my initial, annual or final Public Official Financial Disclosure Statement"
- To find blank Financial Disclosure forms for public officials and legislators as well as a *Guide to Financial Disclosure in Alaska,* under the heading "Quick Links" click "APOC Forms"
- To find the laws and regulations that APOC administers and enforces, there is a link to "Statutes" or "APOC Statutes & Regulations" throughout the APOC Web site.

Contact APOC directly:

- ANCHORAGE: 2221 E. Northern Lights Blvd., Rm 128, Anchorage, AK 99508 / 907-276-4176 / Fax 907-276-7018
- JUNEAU: 240 Main St., Rm 500 / P.O. Box 110222, Juneau, AK 99811 / 907-465-4864 / Fax 907-465-4832
- TOLL-FREE: 800-478-4176 / Online contact info: http://doa.alaska.gov/apoc/

→ THIS IS A PUBLIC DOCUMENT ←

THIS REPORT IS A SWORN STATEMENT. YOUR SIGNATURE ON THE LAST PAGE CERTIFIES THAT THIS DISCLOSURE IS TRUE, CORRECT and COMPLETE.

NAME: Gary J. Turner

MAILING ADDRESS: 215 River Watch Dr. Soldotna AK 99669
Street address or P.O. box, city, zip code

CONTACT PHONE(S): 262-2366 (H) 262-0315 (W) Fax: 262-0316

E-MAIL: ingjt@uaa.alaska.edu

SPOUSE / DOMESTIC PARTNER: Marlene M. Turner

DEPENDENT CHILDREN: 0 NON-DEPENDENT CHILDREN LIVING WITH YOU: 0
Report number of children, including stepchildren, adoptive children. Legislative filers: List non-dependent children living with you.

NAME NON-DEPENDENT CHILDREN LIVING with YOU:

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WHY ARE YOU FILING? ☒ OFFICE HOLDER or ☐ CANDIDATE

Office held or sought: Select Committee on Legislative Ethics

☐ INITIAL STATEMENT: Due 30 days from appointment – for new public officials.

☒ ANNUAL STATEMENT: Due by ~~March 15~~ Jan 15 for incumbent officials.

☐ FINAL STATEMENT: Due 90 days after leaving office – include data up until leaving office.

☐ CANDIDATE STATEMENT: Due when filing declaration of candidacy

no date stamp

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE A: SOURCES OF INCOME OVER $1,000

1. SALARIED EMPLOYMENT NONE: check box → ☐

Report each employer who paid you, your spouse, domestic partner or children covered by reporting requirements more than $1,000. Include amount of income, dates of employment, terms of employment, amount of time worked. **Income means anything of value and covers all forms of compensation, including deferred income.** DESCRIBE THE WORK PERFORMED IN SUFFICIENT DETAIL TO MAKE IT CLEAR TO A PERSON OF ORDINARY UNDERSTANDING.

EARNED BY: ☒ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income:** $ 124,000

☒ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / **Dates:** Jan 1, – Dec 31, 200

If work is not full-time, specify amount of time worked (months/days/hours):

Employer: University of Alaska

Address: Po Box 755140 Fairbanks AK 99775

DETAILED DESCRIPTION of SERVICES PROVIDED:

College Director, Kenai Peninsula College

EARNED BY: ☐ Filer / ☒ Spouse/domestic partner / ☐ Child / **Total income:** $ 33,550

☒ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / **Dates:** Jan 1- Dec 31, 2009

If work is not full-time, specify amount of time worked (months/days/hours):

Employer: Kenai Peninsula Borough

Address: 144 N. Binkley St., Soldotna AK 99669

DETAILED DESCRIPTION of SERVICES PROVIDED:

Admin Clerk in Capital Project office

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **Total income:** $

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / **Dates:**

If work is not full-time, specify amount of time worked (months/days/hours):

Employer:

Address:

DETAILED DESCRIPTION of SERVICES PROVIDED:

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE A: SOURCES OF INCOME OVER $1,000

2. SELF-EMPLOYMENT: NON-RETAIL NONE: check box → ☒

Disclose each client, customer or business that paid you, your spouse/domestic partner or child more than $1,000. Self-employment includes sole proprietors, partnerships, limited liability companies, professional corporations. List each source of income over $1,000 by name and amount. Exemptions: if the identity of the source of income is confidential by law, you may be excused from disclosing the source. To obtain an exemption, you must qualify under the law, you must file a written request, and you must ***receive*** an exemption from the commission. Exemption rules: Public officials, candidates: 2 AAC 50.100-102. Legislators: 2 AAC 50.775-780.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / Total income: $**_____

☐ **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / Customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

_____

EARNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / Total income: $**_____

☐ **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

_____

EARNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / Total income: $**_____

☐ **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE A: SOURCES OF INCOME OVER $1,000

3. SELF-EMPLOYMENT – RETAIL NONE: check box → ☒

List each self-employment retail business that was a source of income of more than $1,000. Individual retail clients/customers do ***not*** need to be disclosed with these ***exceptions.*** You must disclose (1) customers with a line of credit extending through two or more billing cycles, (2) customers with ongoing contracts to purchase goods or services, and (3) customers who are offered discounts not available to the general public.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours):_____

Business name: _____

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: _____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours):_____

Business name: _____

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: _____

_____

4. RENTAL INCOME NONE: check box → ☐

OWNER:	TENANTS WHO PAID > $1,000 (For property outside Alaska managed by agent, list AGENT instead of tenant)	AMOUNT
☐ Filer		
☐ Spouse or domestic partner		
☐ Child		
☐ Co-owner with others		

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE A: SOURCES OF INCOME OVER $1,000

5. DIVIDENDS and INTEREST

NONE: check box → ☐

Disclose source and amount of income over $1,000 from dividends and interest. Include bank accounts, capital gains, money market accounts, certificates of deposit, Native corporation dividends, Permanent Fund dividends.

RECIPIENT	SOURCE	AMOUNT
☒ Filer ☐ Child ☒ Spouse/ partner	AK PFD	2610
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		

6. OTHER INCOME

NONE: check box → ☐

List source and amount of income over $1,000 not listed elsewhere in this form, including sale of goods or property, pensions, IRA cash-outs, honorariums, alimony, child support, shared living expenses and government entitlements.

RECIPIENT	SOURCE	AMOUNT
☒ Filer ☐ Child ☐ Spouse/ partner	Air Force retirement	21,000
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		

7. GIFTS WORTH MORE THAN $250

NONE: check box → ☐

Report gifts worth more than $250 (including gifts from a single source with a cumulative value more than $250) – *except* gifts from spouse, domestic partner, parent, child, sibling, grandparent, aunt, uncle, niece or nephew. Include travel expenses, discounts not available to the public, loans forgiven or loans paid by a third party. Legislators must submit more detailed disclosure reports to the Legislative Ethics Committee.

RECIPIENT	DESCRIPTION	SOURCE	VALUE
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE B

BUSINESS INTERESTS NONE: check box → ☐

Report business interests even if they were **NOT** a source of income, including businesses in which you/family:

- Served as stockholder, owner, officer, director, partner, proprietor, employee or held an interest.
- Had ownership interests of more than $1,000 in a publicly traded corporation.
- Had any other ownership interest in a business, including shares in non-publicly traded corporations, sole proprietorships, limited liability companies. Include options to buy.
- Include non-profit organizations, corporations, businesses, associations, trade groups.

If the business was a source of income over $1,000, it must also be reported in Schedule A.

☒ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child** / **Position/Type of interest:** Board of Directors

Business name: Kenai River Sportfishing Association

Business address: Po Box 1228 Soldotna AK 99669

DETAILED DESCRIPTION of business activity: Non profit sportfishing organization

☒ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child** / **Position/Type of interest:** Board member

Business name: Kenai River Guide Advisory Board

Business address: Kenai River Center, Funny River Rd, Soldotna AK 99669

DETAILED DESCRIPTION of business activity: Advise Kenai River Special Management Area on guide industry issues

☐ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child** / **Position/Type of interest:** _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

☐ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child** / **Position/Type of interest:** _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE C

REAL PROPERTY INTERESTS **NONE: check box →** ☐

Include your home, a rent-to-own home, rental property, vacant property, recreational property, options to buy, business property and real estate interests held in a limited liability company, limited partnership or trust. Include property owned or sold during the reporting period. *If property is jointly owned, check all boxes that apply.*

OWNER(S): ☒ **Filer** / ☒ **Spouse/domestic partner** / ☐ **Child** / ☐ **Other co-owner:** _____

Street address or legal description: 215 River Watch Dr

City or borough / State: Soldotna AK 99669

Ownership interest: Home owner

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

OWNER(S): ☒ **Filer** / ☒ **Spouse/domestic partner** / ☐ **Child** / ☐ **Other co-owner:** _____

Street address or legal description: Lot 8, Block 3, Mooring by the River, Plat 84-160

City or borough / State: Soldotna AK 99669

Ownership interest: Vacant lot - own

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

OWNER(S): ☒ **Filer** / ☒ **Spouse/domestic partner** / ☐ **Child** / ☐ **Other co-owner:** _____

Street address or legal description: Lot 13, Block 1, Mooring by the River, Plat 84-160

City or borough / State: Soldotna AK 99669

Ownership interest: Vacant lot - own

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

OWNER(S): ☐ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child** / ☐ **Other co-owner:** _____

Street address or legal description: _____

City or borough / State: _____

Ownership interest: _____

OWNER(S): ☐ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child** / ☐ **Other co-owner:** _____

Street address or legal description: _____

City or borough / State: _____

Ownership interest: _____

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT
Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE D

BENEFICIAL INTERESTS: TRUSTS & RETIREMENT ACCOUNTS over $1,000 / NONE: ☐

Report each beneficial interest in a trust or retirement account that exceeded $1,000 during the reporting period. Report stocks, bonds, mutual funds, cash accounts, CDs, deferred compensation plans, profit-sharing accounts, employee benefit accounts, retirement accounts (such as IRA, 401K, SEP or Keogh) trust funds (including blind trusts) and limited partnerships. "Managed by" means the filer, employer, business, investment entity or name of the company that manages the account. Identify individual investments if you or family members manage or personally control the investments. "Identify fund or companies" means the individual companies or accounts where you are the manager and you control the investments; if a mutual fund, investment company or other third party entity manages and controls the investments, list the name or type of fund where the assets are held. You do NOT need to list the dollar value of the assets, but you must identify the assets by owner, manager and name.

ASSETS – OWNED BY: ☒ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / PERCENT:** 100

ASSETS – MANAGED BY: Fidelity Investments

ASSETS – IDENTIFY FUND or COMPANIES: Fidelity Freedom 2020

ASSETS – OWNED BY: ☒ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / PERCENT:** 100

ASSETS – MANAGED BY: Alaska PERS

ASSETS – IDENTIFY FUND or COMPANIES: Univ. of Alaska retirement

ASSETS – OWNED BY: ☐ **Filer /** ☒ **Spouse/domestic partner /** ☐ **Child / PERCENT:** 100

ASSETS – MANAGED BY: Alaska PERS

ASSETS – IDENTIFY FUND or COMPANIES: Global Balanced, Brandes INVST, T. Rowe Price SmallCap, S+P 500 Stock Index, Sentinel Sustainable, Money Market Fund

ASSETS – OWNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / PERCENT:**

ASSETS – MANAGED BY:

ASSETS – IDENTIFY FUND or COMPANIES:

ASSETS – OWNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / PERCENT:**

ASSETS – MANAGED BY:

ASSETS – IDENTIFY FUND or COMPANIES:

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT
Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE E

1. LOANS, LOAN GUARANTEES & DEBTS OVER $1,000 **NONE: check box →** ☐

Report each creditor or lender to whom more than $1,000 was owed during the reporting period. Report guarantor of each loan. List financial obligations, including mortgages on property owned or sold during the reporting period; loans that have been guaranteed; delinquent taxes; alimony; child support payments; medical bills; boat and vehicle loans; business and personal loans; escrows; student loans; signature loans and promissory notes. Loans include secured, unsecured and contingent loans. *Do NOT list credit card obligations or revolving charge accounts.*

DEBTOR: ☒ **Filer /** ☒ **Spouse/domestic partner /** ☐ **Child**

☒ **LENDER /** ☐ **CREDITOR /** ☐ **GUARANTOR / NAME:** First National Bank of Alaska

DEBTOR: ☒ **Filer /** ☒ **Spouse/domestic partner /** ☐ **Child**

☒ **LENDER /** ☐ **CREDITOR /** ☐ **GUARANTOR / NAME:** USAA

DEBTOR: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child**

☐ **LENDER /** ☐ **CREDITOR /** ☐ **GUARANTOR / NAME:** _____

DEBTOR: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child**

☐ **LENDER /** ☐ **CREDITOR /** ☐ **GUARANTOR / NAME:** _____

2. *FOR LEGISLATIVE BRANCH FILERS ONLY* **NONE: check box →** ☒

Legislative branch filers must report additional details: original amount of the obligation, the current balance owed, interest rate, length of the loan and whether a written agreement exists for a creditor or lender who:

- Lobbies or hired lobbyists
- Had contracts or sought contracts worth more than $10,000 with any state agency
- Was a municipal or local government entity
- Was affected financially – in an amount exceeding $1,000 – by an act of the legislature or state agency decision, including actions affecting professional or occupational licenses; natural resource permits or quotas; assessments; tax rates; health, safety or environmental standards; insurance or business practices.

DEBTOR: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child**

☐ **LENDER or** ☐ **CREDITOR / Name:** _____

Address: _____

Original loan: $_____ **Balance owed:** $_____ **Interest rate:** _____%

Term: ☐ _____ **years** ☐ _____ **months /** **WRITTEN LOAN AGREEMENT?** ☐ **Yes /** ☐ **No**

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT
Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE F

1. LEASES: GOVERNMENT CONTRACTS & LEASES

NONE: check box → ☒

List all contracts, bids and offers to contract with the state or any state or municipal agency or entity. Report contract interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company or through a corporation in which filer or family members held a controlling interest.

CONTRACTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **CONTRACT ID (name/number):** _____

CONTRACTING AGENCY: _____

CONTRACT DESCRIPTION: _____

_____

CONTRACTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **CONTRACT ID (name/number):** _____

CONTRACTING AGENCY: _____

CONTRACT DESCRIPTION: _____

_____

2. LEASES: NATURAL RESOURCE LEASES

NONE: check box → ☒

List natural resource leases – including mineral, timber, oil and gas leases – held, bid or offered during the reporting period. Report lease interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company; or corporation in which you or family (individually or together) held controlling interest.

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **LEASE ID (name/number):** _____

LEASE DESCRIPTION: _____

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **LEASE ID (name/number):** _____

LEASE DESCRIPTION: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

DEC 15 2009

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT
Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE G

1. CLOSE ECONOMIC ASSOCIATIONS

NONE: check box → ☒

EXEMPT: Municipal and local officials are exempt from reporting close economic associations. **Members of state boards and commissions are exempt** from reporting close economic associations. **Local officials and state board/commission members do NOT have to complete this section. Check the box for NONE.**

STATE PUBLIC OFFICIALS: Disclose financial relations with legislators, other public officials and lobbyists.

LEGISLATIVE BRANCH: Disclose financial relations with public officials, lobbyists, other legislators, and legislative employees. Report close economic association detailed information to the Legislative Ethics Committee.

CLOSE ECONOMIC ASSOCIATION means a financial relationship between public officials, legislators and lobbyists, including shared interests in a business, property, association, partnership, corporation or LLC.

CHANGES: Report new close economic associations within 60 days.

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child**

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child**

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

2. FILERS WITH A LOBBYIST SPOUSE or DOMESTIC PARTNER

NONE: ☒

EXEMPT: Local officials and members of state boards and commissions are EXEMPT. Check NONE.

STATE PUBLIC OFFICIALS with a lobbyist spouse or domestic partner: Report names and addresses of each employer of the lobbyist and the total monetary value received from each of the lobbyist's employers.

LEGISLATIVE BRANCH filers with a lobbyist spouse or domestic partner: Disclose employer of lobbyist and compensation, and report details to t he Legislative Ethics Committee.

CHANGES: Report changes in lobbyist's employer within 48 hours of the change.

LOBBYIST'S EMPLOYER: NAME & ADDRESS	COMPENSATION

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

DEC 15 2009

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

CERTIFICATION

I certify under penalty of perjury that the foregoing is true and the information in this disclosure statement is, to the best of my knowledge, true, correct and complete. A person who makes a false sworn certification which he or she does not believe to be true is guilty of perjury.

SIGNATURE Gary J Turner

If you are filing online, you must have an Electronic Filing Agreement with APOC to use an electronic signature.

Gary J. Turner — NAME of FILER

12/12/09 Home — DATE &PLACE SIGNED / FILED

All officials and candidates who are required to file disclosure statements are solely responsible for filing complete, accurate and truthful statements by the deadlines.

WHERE TO FILE THIS STATEMENT

STATE OFFICIALS: File initial, annual and final statements with the Alaska Public Offices Commission.

STATE CANDIDATES: File with the Division of Elections along with Declaration of Candidacy.

BOROUGH / MUNICIPAL / CITY OFFICIALS and CANDIDATES: File with city or borough clerk where you hold or seek office.

FILE ELECTRONICALLY to APOC: doa.apoc.reports@alaska.gov

THIS IS A PUBLIC DOCUMENT

NOTE: Public officials who are required to file this disclosure statement may have additional obligations to disclose conflicts of interest or potential conflicts under state executive, legislative or judicial ethics rules or personnel rules. Legislators who are required to file this disclosure statement have additional disclosure and reporting requirements imposed by the Select Committee on Legislative Ethics. Local officials may also be governed by local ethics ordinances or personnel rules.

Disclosure forms, guidelines, laws and regulations are online: www.apoc.alaska.gov or from APOC offices

ALASKA PUBLIC OFFICES COMMISSION

ANCHORAGE OFFICE:
2221 E. Northern Lights Blvd – Rm 128
Anchorage, AK 99508-4149
907-276-4176 / Toll-free 800-478-4176
Fax 907-276-7018

JUNEAU OFFICE:
240 Main St. – Rm 500
Mail: P.O. Box 110222
Juneau, AK 99811-0222
907-465-4864 / Fax 907-465-4832

E-mail APOC: doa.apoc@alaska.gov
File electronic disclosure statements to: doa.apoc.reports@alaska.gov

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

DEC 1 5 2009

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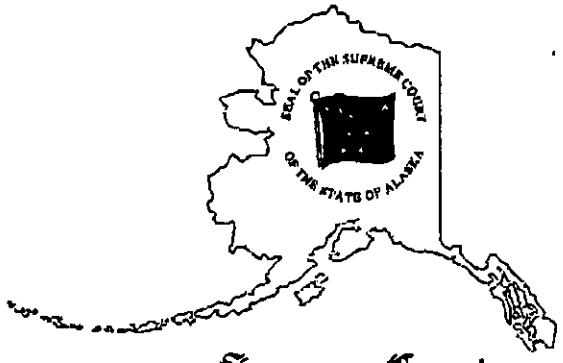

Chambers of
Walter L. Carpeneti
Chief Justice

Supreme Court
State of Alaska

P.O. Box 114100
Juneau, Alaska
99811-4100

(907) 463-4771
Fax (907) 463-3475

January 22, 2010

The Honorable Gary Stevens
Senate President
State Capitol, Room 111
Juneau, Alaska 99801-1182

The Honorable Mike Chenault
Speaker of the House
State Capitol, Room 208
Juneau, Alaska 99801-1182

Dear President Stevens
and Speaker Chenault:

In my capacity as Chief Justice, and pursuant to AS 24.60.130(b)(3), I am re-nominating H. Conner Thomas to serve another term as a public member of the Select Committee on Legislative Ethics.

Mr. Thomas is an associate and partner in a small general practice law firm, Lewis & Thomas, P.C. For purposes of determining compliance with AS 24.60.130(c), Mr. Thomas is a Democrat.

Mr. Thomas can be reached at (907) 443-5226. His mailing address is P.O. Box 865, Nome, Alaska, 99762, and his e-mail address is connernomelaw@gci.net. Please let me know if I can provide you with any other information on this matter.

Sincerely,

Walter L. Carpeneti

Walter L. Carpeneti

cc: H. Conner Thomas
Joyce Anderson

H. Conner Thomas
P.O. Box 865
Nome, Alaska 99762
907-443-5226/fax: 907-443-5098
e-mail: connernomelaw@gci.net

EDUCATION

University of Louisville, School of Law, Louisville, Kentucky, J.D. (1977)

University of Kentucky, Lexington, Kentucky, B.A. Economics (1973)

EMPLOYMENT

Lewis & Thomas, P.C., *August 1986 to present* - Nome, Alaska
Formerly Larson Timbers & Thomas P.C.
Associate and partner in a small general practice law firm

State of Alaska, Public Defender Agency, *May 1983 to August 1986* - Nome, AK
Representing indigent criminal defendants

State of Alaska Court System – Magistrate, *September 1982 to May 1983* - Nome, AK
Arraign criminal defendants, preside over misdemeanor trials, and preside as master in child in need of aid and juvenile delinquency cases

Alaska Legal Services Corporation, *October 1979 to September 1982*- Nome, AK
Staff and supervising attorney for law office representing indigent clients in civil cases

U.S. Department of Interior, *May 1979 to October 1979* – Anchorage, AK
Land adjudicator

VISTA Volunteer, *October 1977 to January 1979* – Fairbanks and Nome, AK
Staff attorney with Protection and Advocacy for developmentally disabled - Fairbanks
Staff attorney with Alaska Legal Services Corporation- Nome

ORGANIZATIONS

Legislative Ethics Committee, Public Member – January 1999 to present

Nome Kennel Club, President, Board of Directors – December 1992 to present

Alaska Civil Liberties Union, Board of Directors – April 1994 to October 1997

Citizen Review Committee, Department of Health & Social Services – October 1985 to January 1987

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

FINANCIAL DISCLOSURE STATEMENT FOR:
PUBLIC OFFICIALS, LEGISLATORS & CANDIDATES

EXECUTIVE BRANCH: Governor, Lt. Gov., commissioners, directors, special assistants and legislative liaisons; state boards and commissions; procurement and investment officers; city/borough officials; candidates.

JUDICIAL BRANCH: Justices, judges and magistrates.

LEGISLATIVE BRANCH: Legislators, legislative directors, Select Committee on Legislative Ethics.

FOR MORE INFORMATION, INSTRUCTIONS, BLANK FORMS, SAMPLE FORMS & QUESTIONS: Visit APOC online at: doa.alaska.gov/apoc:

- To find detailed instructions and sample disclosures, under the heading "How do I..." click "Complete my initial, annual or final Public Official Financial Disclosure Statement"
- To find blank Financial Disclosure forms for public officials and legislators, under the heading "Quick Links" click "APOC Forms"
- To find the laws and regulations that APOC administers and enforces, there is a link to "Statutes" or "APOC Statutes & Regulations" throughout the APOC Web site.

Contact APOC directly:

- ANCHORAGE: 2221 E. Northern Lights Blvd., Rm 128, Anchorage, AK 99508 / 907-276-4176 / Fax 907-276-7018
- JUNEAU: 240 Main St., Rm 500 / P.O. Box 110222, Juneau, AK 99811 / 907-465-4864 / Fax 907-465-4832
- TOLL-FREE: 800-478-4176 / Online contact info: http://doa.alaska.gov/apoc/

THIS IS A PUBLIC DOCUMENT – DO NOT INCLUDE CONFIDENTIAL INFORMATION
(*i.e.*, SOCIAL SECURITY NUMBERS, ACCOUNT NUMBERS)

THIS REPORT IS A SWORN STATEMENT. YOUR SIGNATURE ON THE LAST PAGE CERTIFIES THAT THIS DISCLOSURE IS TRUE, CORRECT and COMPLETE.

NAME: H. Conner Thomas

MAILING ADDRESS: P.O Box 865 Nome, Alaska 99762
Street address or P.O. Box, city, zip code

CONTACT PHONE(S): 907-443-5226 **Fax:** 907-443-5098

RECEIVED JAN 13 2010 APOC-ANCH FAX ELB 1-11-10

E-MAIL: connernomelaw@gci.net

SPOUSE / DOMESTIC PARTNER: Margaret A. Thomas

DEPENDENT CHILDREN: one **NON-DEPENDENT CHILDREN LIVING WITH YOU:** none
Report number of children, including stepchildren, adoptive children. Legislative filers: List non-dependent children living with you.

NAME NON-DEPENDENT CHILDREN LIVING with YOU:

WHY ARE YOU FILING? X☐ **OFFICE HOLDER** or ☐ **CANDIDATE**

Office held or sought: Public Member Select Committee Legislative Ethics

☐ **INITIAL STATEMENT: Due 30 days from appointment for new public officials** (and annually thereafter).

X **ANNUAL STATEMENT: Due by January 11, 2010 – for incumbent officials.**

☐ **FINAL STATEMENT: Due 90 days after leaving office – From_____through _____.**
(Include all information not reported on a previously filed statement through your last day of office.)

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

☐ CANDIDATE STATEMENT: Due when filing declaration of candidacy

SCHEDULE A: SOURCES OF INCOME OVER $1,000

1. SALARIED EMPLOYMENT NONE: check box → ☐

Report each employer who paid you, your spouse, domestic partner or children covered by reporting requirements more than $1,000. Include amount of income, dates of employment, terms of employment, amount of time worked. **Income means anything of value and covers all forms of compensation, including deferred income.**
DESCRIBE THE WORK PERFORMED IN SUFFICIENT DETAIL TO MAKE IT CLEAR TO A PERSON OF ORDINARY UNDERSTANDING.

EARNED BY: ☐X Filer / X Spouse/domestic partner / Child / Total income: $ $33,240.9

☐ Full-time ☐ Part-time X Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: Nome Public Schools

Address: P.O. Box 131, Nome, Alaska 99762

DETAILED DESCRIPTION of SERVICES PROVIDED: Title I paraprofessional

_____

_____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: _____

Address: _____

DETAILED DESCRIPTION of SERVICES PROVIDED: _____

_____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Employer: _____

Address: _____

DETAILED DESCRIPTION of SERVICES PROVIDED: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN 13 2010

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT
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SCHEDULE A: SOURCES OF INCOME OVER $1,000

2. SELF-EMPLOYMENT: NON-RETAIL NONE: check box → ☐

Disclose each client, customer or business that paid you, your spouse/domestic partner or child more than $1,000. Self-employment includes sole proprietors, partnerships, limited liability companies, professional corporations. List each source of income over $1,000 by name and amount. Exemptions: if the identity of the source of income is confidential by law, you may be excused from disclosing the source. To obtain an exemption, you must qualify under the law, you must file a written request, and you must ***receive*** an exemption from the commission. Exemption rules: Public officials, candidates: 2 AAC 50.100-102. Legislators: 2 AAC 50.775-780.
Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY X **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / Total income: $** 108,000.00

X **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: Lewis & Thomas, P.C.

Client / Customer name: Attachment A

Client / customer address: Attachment A

DETAILED DESCRIPTION of services provided: Legal Services

_____

_____

EARNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / Total income: $** _____

☐ **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

_____

EARNED BY: ☐ **Filer /** ☐ **Spouse/domestic partner /** ☐ **Child / Total income: $** _____

☐ **Full-time** ☐ **Part-time** ☐ **Seasonal** ☐ **Commission** ☐ **Project** ☐ **Hourly / Dates:** _____

If work is not full-time, specify amount of time worked (months/days/hours): _____

Business name: _____

Client / customer name: _____

Client / customer address: _____

DETAILED DESCRIPTION of services provided: _____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

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SCHEDULE A: SOURCES OF INCOME OVER $1,000

3. SELF-EMPLOYMENT – RETAIL

NONE: check box → ☐

List each self-employment retail business that was a source of income of more than $1,000. Individual retail clients/customers do ***not*** need to be disclosed with these ***exceptions.*** You must disclose (1) customers with a line of credit extending through two or more billing cycles, (2) customers with ongoing contracts to purchase goods or services, and (3) customers who are offered discounts not available to the general public.

Income means anything of value and covers all forms of compensation, including deferred income.

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours):_____

Business name: _____

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: _____

_____

EARNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Total income: $_____

☐ Full-time ☐ Part-time ☐ Seasonal ☐ Commission ☐ Project ☐ Hourly / Dates: _____

If work is not full-time, specify amount of time worked (months/days/hours):_____

Business name: _____

Client/customer name/address (if applicable): _____

DETAILED DESCRIPTION of services provided: _____

_____

4. RENTAL INCOME

NONE: check box → ☐

OWNER:	TENANTS WHO PAID > $1,000 (For property outside Alaska managed by agent, list AGENT instead of tenant)	AMOUNT
☐ Filer ☐ Spouse or domestic partner ☐ Child ☐ Co-owner with others		

SCHEDULE A: SOURCES OF INCOME OVER $1,000

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
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5. DIVIDENDS and INTEREST

NONE: check box → ☐

Disclose source and amount of income over $1,000 from dividends and interest. Include bank accounts, capital gains, money market accounts, certificates of deposit, Native corporation dividends, Permanent Fund dividends.

RECIPIENT	SOURCE	AMOUNT
x Filer ☐ Child x Spouse/ partner	Wells Fargo Securities Brokerage Account – See Attachments B&D	$7,302.36
☐ Filer ☐ Child ☐ Spouse/ partner	Fidelity Retirement – See Attachment C	$1,414.75
x Filer x Child x☐ Spouse/ partner	Alaska Permanent Fund Dividends	$3,915.00
x Filer xChild xSpouse/ partner	Savings Account Interest	$5.57
X Filer ☐ Child ☐ Spouse/ partner	PERS Account – See Attachment F	$1,162.13
☐ Filer ☐ Child X Spouse/ partner	New York Life – See Attachment G	$1,547.13

6. OTHER INCOME

NONE: check box → ☐

List source and amount of income over $1,000 not listed elsewhere in this form, including sale of goods or property, pensions, IRA cash-outs, honorariums, alimony, child support, shared living expenses and government entitlements.

RECIPIENT	SOURCE	AMOUNT
x Filer ☐ Child x Spouse/ partner	Wells Fargo Securities Account (Stock Sales) – Attachment B	$32,543.91
X Filer ☐ Child ☐ Spouse/ partner	Wells Fargo IRA – Attachment D	$2,124.36
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		
☐ Filer ☐ Child ☐ Spouse/ partner		

7. GIFTS WORTH MORE THAN $250

NONE: check box → ☐

Report gifts worth more than $250 (including gifts from a single source with a cumulative value more than $250) – *except* gifts from spouse, domestic partner, parent, child, sibling, grandparent, aunt, uncle, niece or nephew. Include travel expenses, discounts not available to the public, loans forgiven or loans paid by a third party. Legislators must submit more detailed disclosure reports to the Legislative Ethics Committee.

RECIPIENT	DESCRIPTION	SOURCE	VALUE
☐ Filer ☐ Child x Spouse/ partner	Cash	Henry Landsberger	$5,329.01
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			
☐ Filer ☐ Child ☐ Spouse/ partner			

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
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SCHEDULE B

BUSINESS INTERESTS NONE: check box → ☐

Report business interests even if they were **NOT** a source of income, including businesses in which you/family:
- Served as stockholder, owner, officer, director, partner, proprietor, employee or held an interest.
- Had ownership interests of more than $1,000 in a publicly traded corporation.
- Had any other ownership interest in a business, including shares in non-publicly traded corporations, sole proprietorships, limited liability companies. Include options to buy.
- Include non-profit organizations, corporations, businesses, associations, trade groups.

If the business was a source of income over $1,000, it must also be reported in Schedule A.

x Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: Lewis & Thomas, P.C.

Business address: P.O. Box 61, Nome, Alaska 99762

DETAILED DESCRIPTION of business activity: Law Practice

x Filer /xSpouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: Wells Fargo Investment Account – See Attachment B

Business address: _____

DETAILED DESCRIPTION of business activity: _____

☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

☐ Filer / ☐ Spouse/domestic partner / ☐ Child / Position/Type of interest: _____

Business name: _____

Business address: _____

DETAILED DESCRIPTION of business activity: _____

SCHEDULE C

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

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ALASKA PUBLIC OFFICES COMMISSION
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REAL PROPERTY INTERESTS

NONE: check box → ☐

Include your home, a rent-to-own home, rental property, vacant property, recreational property, options to buy, business property and real estate interests held in a limited liability company, limited partnership or trust. Include property owned or sold during the reporting period. *If property is jointly owned, check all boxes that apply.*

OWNER(S): x Filer / x Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: Lots, 13B, 14B, and 15B, First Addition to Banner Creek Subdivision, Cape Nome, Recording District

City or borough / State: _____

Ownership interest: Owner

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

OWNER(S): xFiler / xSpouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: Lots 5,6 Melsing Creek Subdivision, Second Judicial District, Cape Nome, Recording District

City or borough / State: _____

Ownership interest: _____

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

OWNER(S): ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: _____

City or borough / State: _____

Ownership interest: _____

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

OWNER(S): ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: _____

City or borough / State: _____

Ownership interest: _____

OWNER(S): ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / ☐ Other co-owner: _____

Street address or legal description: _____

City or borough / State: _____

Ownership interest: _____

(Such as home owner, option to buy, owned through business entity or trust, leasehold, partnership)

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN 1 3 2010

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT
Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE D

BENEFICIAL INTERESTS: TRUSTS & RETIREMENT ACCOUNTS over $1,000 / NONE: ☐

Report each beneficial interest in a trust or retirement account that exceeded $1,000 during the reporting period. Report stocks, bonds, mutual funds, cash accounts, CDs, deferred compensation plans, profit-sharing accounts, employee benefit accounts, retirement accounts (such as IRA, 401K, SEP or Keogh) trust funds (including blind trusts) and limited partnerships. "Managed by" means the filer, employer, business, investment entity or name of the company that manages the account. Identify individual investments if you or family members manage or personally control the investments. "Identify fund or companies" means the individual companies or accounts where you are the manager and you control the investments; if a mutual fund, investment company or other third party entity manages and controls the investments, list the name or type of fund where the assets are held. You do NOT need to list the dollar value of the assets, but you must identify the assets by owner, manager and name.

ASSETS – OWNED BY: x Filer / Spouse/domestic partner / ☐ Child / PERCENT:100%

ASSETS – MANAGED BY: Fidelity (401K Plan); Wells Fargo (IRA); State of Alaska SBS & PERS;

ASSETS – IDENTIFY FUND or COMPANIES: See Attachments C, D,E, F

ASSETS – OWNED BY: ☐ Filer / x Spouse/domestic partner / ☐ Child / PERCENT:_____

ASSETS – MANAGED BY: New York Life Annuity; Sunlife Canada Annuity; Wells Fargo (IRA); State of Alaska PERS;

ASSETS – IDENTIFY FUND or COMPANIES: See Attachments G,H, I, J

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / x Child / PERCENT:_____

ASSETS – MANAGED BY: T. Rowe Price (529 College Savings Account)

ASSETS – IDENTIFY FUND or COMPANIES: See Attachment K

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT:_____

ASSETS – MANAGED BY:_____

ASSETS – IDENTIFY FUND or COMPANIES:_____

ASSETS – OWNED BY: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / PERCENT:_____

ASSETS – MANAGED BY:_____

ASSETS – IDENTIFY FUND or COMPANIES:_____

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE".

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

SCHEDULE E

1. LOANS, LOAN GUARANTEES & DEBTS OVER $1,000 **NONE: check box →** x

Report each creditor or lender to whom more than $1,000 was owed during the reporting period. Report guarantor of each loan. List financial obligations, including mortgages on property owned or sold during the reporting period; loans that have been guaranteed; delinquent taxes; alimony; child support payments; medical bills; boat and vehicle loans; business and personal loans; escrows; student loans; signature loans and promissory notes. Loans include secured, unsecured and contingent loans. *Do NOT list credit card obligations or revolving charge accounts.*

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER / ☐ CREDITOR / ☐GUARANTOR / NAME:_____

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER / ☐ CREDITOR / ☐GUARANTOR / NAME:_____

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER / ☐ CREDITOR / ☐GUARANTOR / NAME:_____

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER / ☐ CREDITOR / ☐GUARANTOR / NAME:_____

2. FOR LEGISLATIVE BRANCH FILERS ONLY **NONE: check box →** ☐

Legislative branch filers must report additional details: original amount of the obligation, the current balance owed, interest rate, length of the loan and whether a written agreement exists for a creditor or lender who:

- Lobbies or hired lobbyists
- Had contracts or sought contracts worth more than $10,000 with any state agency
- Was a municipal or local government entity
- Was affected financially – in an amount exceeding $1,000 – by an act of the legislature or state agency decision, including actions affecting professional or occupational licenses; natural resource permits or quotas; assessments; tax rates; health, safety or environmental standards; insurance or business practices.

DEBTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child

☐ LENDER or ☐ CREDITOR / Name: _____

Address: _____

Original loan: $_____ Balance owed: $_____ Interest rate: _____%

Term: ☐ _____ years ☐ _____ months / WRITTEN LOAN AGREEMENT? ☐ Yes / ☐ No

SCHEDULE F

1. LEASES: GOVERNMENT CONTRACTS & LEASES **NONE: check box →** ☐

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN 1 3 2010

List all contracts, bids and offers to contract with the state or any state or municipal agency or entity. Report contract interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company or through a corporation in which filer or family members held a controlling interest.

CONTRACTOR: X Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST: Professional Services Contract**

☐ Bid / ☐ Offer / XHeld / **CONTRACT ID (name/number): 2006-0200-5577 – Legal Services**

CONTRACTING AGENCY: State of Alaska; Department of Administration

CONTRACT DESCRIPTION: Court appointed Legal Services

CONTRACTOR: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **CONTRACT ID (name/number):** _____

CONTRACTING AGENCY: _____

CONTRACT DESCRIPTION: _____

_____

2. LEASES: NATURAL RESOURCE LEASES

NONE: check box → ☐

List natural resource leases – including mineral, timber, oil and gas leases – held, bid or offered during the reporting period. Report lease interests as individual, sole proprietor, family member, partnership, professional corporation, limited liability company; or corporation in which you or family (individually or together) held controlling interest.

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **LEASE ID (name/number):** _____

LEASE DESCRIPTION: _____

LEASEHOLDER: ☐ Filer / ☐ Spouse/domestic partner / ☐ Child / **TYPE of INTEREST:** _____

☐ Bid / ☐ Offer / ☐ Held / **LEASE ID (name/number):** _____

LEASE DESCRIPTION: _____

SCHEDULE G

1. CLOSE ECONOMIC ASSOCIATIONS

NONE: check box → ☐

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN 13 2010

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

EXEMPT: Municipal and local officials are exempt from reporting close economic associations. **Members of state boards and commissions are exempt** from reporting close economic associations. **Local officials and state board/commission members do NOT have to complete this section. Check the box for NONE.**

STATE PUBLIC OFFICIALS: Disclose financial relations with legislators, other public officials and lobbyists.

LEGISLATIVE BRANCH: Disclose financial relations with public officials, lobbyists, other legislators, and legislative employees. Report close economic association detailed information to the Legislative Ethics Committee.

CLOSE ECONOMIC ASSOCIATION means a financial relationship between public officials, legislators and lobbyists, including shared interests in a business, property, association, partnership, corporation or LLC.

CHANGES: Report new close economic associations within 60 days.

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child**

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

PERSON DISCLOSING ECONOMIC ASSOCIATION: ☐ **Filer** / ☐ **Spouse/domestic partner** / ☐ **Child**

PERSON with WHOM ASSOCIATION EXISTS: _____

DESCRIPTION of ECONOMIC ASSOCIATION: _____

_____

2. FILERS WITH A LOBBYIST SPOUSE or DOMESTIC PARTNER NONE: ☐

EXEMPT: Local officials and members of state boards and commissions are EXEMPT. Check NONE.

STATE PUBLIC OFFICIALS with a lobbyist spouse or domestic partner: Report names and addresses of each employer of the lobbyist and the total monetary value received from each of the lobbyist's employers.

LEGISLATIVE BRANCH filers with a lobbyist spouse or domestic partner: Disclose employer of lobbyist and compensation, and report details to t he Legislative Ethics Committee.

CHANGES: Report changes in lobbyist's employer within 48 hours of the change.

LOBBYIST'S EMPLOYER: NAME & ADDRESS	COMPENSATION

CERTIFICATION

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN 1 3 2010

ALASKA PUBLIC OFFICES COMMISSION
2010 FINANCIAL DISCLOSURE STATEMENT

Covers the reporting period Jan. 1, 2009– Dec. 31, 2009

I certify under penalty of perjury that the foregoing is true and the information in this disclosure statement is, to the best of my knowledge, true, correct and complete. A person who makes a false sworn certification which he or she does not believe to be true is guilty of perjury.

SIGNATURE H. Conner Thomas

If you are filing online, you must have an Electronic Filing Agreement with APOC to use an electronic signature.

H. Conner Thomas — NAME of FILER

1/10/10 Nome, Alaska — DATE & PLACE SIGNED / FILED

All officials and candidates who are required to file disclosure statements are solely responsible for filing complete, accurate and truthful statements by the deadlines.

WHERE TO FILE THIS STATEMENT

STATE OFFICIALS: File initial, annual and final statements with the Alaska Public Offices Commission.

STATE CANDIDATES: File with the Division of Elections along with Declaration of Candidacy.

BOROUGH / MUNICIPAL / CITY OFFICIALS and CANDIDATES: File with city or borough clerk where you hold or seek office.

FILE ELECTRONICALLY to APOC: doa.apoc.reports@alaska.gov

THIS IS A PUBLIC DOCUMENT

NOTE: Public officials who are required to file this disclosure statement may have additional obligations to disclose conflicts of interest or potential conflicts under state executive, legislative or judicial ethics rules or personnel rules. Legislators who are required to file this disclosure statement have additional disclosure and reporting requirements imposed by the Select Committee on Legislative Ethics. Local officials may also be governed by local ethics ordinances or personnel rules.

Disclosure forms, guidelines, laws and regulations are online: doa.alaska.gov/apoc or from APOC offices

ALASKA PUBLIC OFFICES COMMISSION

ANCHORAGE OFFICE:
2221 E. Northern Lights Blvd – Rm 128
Anchorage, AK 99508-4149
907-276-4176 / Toll-free 800-478-4176
Fax 907-276-7018

JUNEAU OFFICE:
240 Main St. – Rm 500
Mail: P.O. Box 110222
Juneau, AK 99811-0222
907-465-4864 / Fax 907-465-4832

E-mail APOC: doa.apoc@alaska.gov
File electronic disclosure statements to: doa.apoc.reports@alaska.gov

GIVE DETAILED DESCRIPTIONS WHERE REQUESTED. USE EXTRA PAGES IF NECESSARY.	CHECK ALL BOXES THAT APPLY. For example, check multiple boxes for joint property owners	IF YOU HAVE NOTHING TO REPORT or A SECTION DOES NOT APPLY TO YOU, CHECK "NONE"

JAN 1 8 2010

2009 Disclosures

Conrad Klemzak P.O. Box 1990 Nome, AK 99762	Roy Adams P.O. Box 29 Kivalina, AK 99750	Sitnasuak Native Corp. P.O. Box 905 Nome, AK 99762	Johnnie Carter c/o Alaska Court System P.O. Box 317 Kotzebue, AK 99752
Patricia Beckner P.O. Box 1817 Nome, AK 99762	Leo Douglas P.O. Box 47 Shungnak, AK 99773	Diana Ellanna P.O. Box Nome, AK 99762	Janalee Minnich P.O. Box Kotzebue, AK 99752
Charles Myers P.O. Box 125 Selawik, AK 99770	Lorin Downing P.O. Box 1074 Kotzebue, AK 99752	Barbara Keena 1045 16th Ave. S. St. Cloud, MN 56301	Sean Penetac P.O. Box 337 Nome, AK 99762
Calvin Gooden P.O. Box 2018 Nome, AK 99762	Estate of Xavier Pete c/o Box 61 Nome, AK 99762	Jake Sherman P.O. Box 878 Nome, AK 99762	Cynthia Poeppe P.O. Box 765 Kotzebue, AK 99752
Golovin Native Corporation P.O. Box 62099 Golovin, AK 99762	Ron Hunnicutt P.O. Box 472 Kotzebue, AK 99752	Jerry Austin P.O. Box 110 St. Michael, AK 99659	Elim Native Corporation P.O. Box 390910 Elim, AK 99739
Frank Lane P.O. Box 578 Kotzebue, AK 99752	Jeremiah Pete P.O. Box 1017 Stebbins, AK 99	Jeffrey Avery 189 E. Nelson Wasilla, AK 99654	Jim West, Jr. P.O. Box 967 Nome, AK 99762
Louis Warnke-Green P.O. Box 278 Nome, AK 99762	Duane Sampson P.O. Box 1088 Kotzebue, aK 99752	Bobby Frankson P.O. Box 209 Pt. Hope, AK 99766	Mario Casados P.O. Box 83 Pt. Hope, AK 99766
Mike Owens P.O. Box 1515 Nome, AK 99762	Blanche Cragle 4741 Hwy. 22 South Dickenson, ND 58601	Chester Koonuk P.O. Box 85 Pt. Hope, AK 99766	Lawrence Westlake, Jr. P.O. Box 110 Kiana, AK 99749
Sarah Kristiansen P.O. Box 444 Nome, AK 99762	Danny Aukon, Jr. P.O. Box 1968 Nome, AK 99762	Barbara Earp 21228 Lowland Ave. Eagle River, AK 99577	Brenda Green P.O. Box 1602 Nome, AK 99762
Michael West P.O. Box 751 Nome, AK 99762	Richard Patterson P.O. Box 1362 Barrow, AK 99723	Office of Public Advocacy 900 W. 5th Ave., Suite 525 Anchorage, AK 99501	Axel Odden P.O. Box 1043 Nome, AK 99762

JAN 1 3 2010

EXHIBIT
tabbies
A

Kathleen Haugan c/o Alaska Court System P.O. Box 317 Kotzebue, AK 99752			

JAN 1 3 2010

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WELLS FARGO ADVISORS

010809 02 MAAD 50 AUTO**MIXED AADC 945
H CONNER THOMAS &
MARGARET A THOMAS JTWROS
PO BOX 865
NOME AK 99762-0865

4,585

SNAPSHOT
Current period ending November 30, 2009

ACCOUNT NAME: H CONNER THOMAS &
MARGARET A THOMAS JTWROS

ACCOUNT NUMBER: [redacted]

EXHIBIT B

Your Financial Advisor:
LISA DOCHE & RALPH PAPETTI
Phone: 480-419-9600 / 800-453-6737

20551 NORTH PIMA RD
SUITE 200
SCOTTSDALE AZ 85255

JAN 18 2010

If you have more than one account with us, why not link them and receive summary information for your entire household? Contact Your Financial Advisor for more details.

Message from Wells Fargo Advisors

WELLS FARGO & CO. WAS FOUNDED ON WALL STREET MORE THAN 150 YEARS AGO, AND OPENED ITS FIRST OFFICE IN SAN FRANCISCO IN 1852. TODAY, WELLS FARGO ADVISORS CARRIES ON THE COMPANY'S STORIED TRADITION OF HELPING FAMILIES MANAGE THE IMPORTANT ASPECTS OF THEIR FINANCIAL LIFE.

Wells Fargo Advisors, LLC, member NYSE/SIPC. Brokerage accounts are carried by First Clearing, LLC (FCC), member NYSE/SIPC.

Additional information

Gross proceeds

Portfolio detail

Cash and Sweep Balances

Bank Deposit Sweep - Consists of monies he
deposited at one or more additional banks affili
FDIC rules. For additional information on the B

DESCRIPTION
Cash
BANK DEPOSIT SWEEP Interest Period 11/01/09 - 11/30/09
Total Cash and Sweep Balances

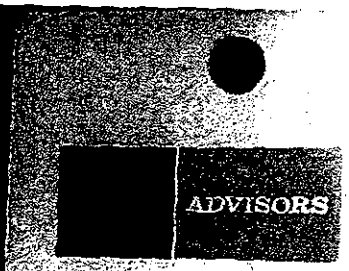
* APY measures the total amount of the interest
yield is expressed as an annualized rate, based

Stocks and Options

Stocks

DESCRIPTION
AMGEN INC AMGN Acquired 09/04/07
FIRST TRUST ETF NYSE ARCA BIOTEC FBT Acquired 07/24/07 Acquired 07/24/07
Total
GARMIN LTD GRMN Acquired 05/03/07

JAN 3 2010



Stocks and Options

Stocks continued

DESCRIPTION	C
I SHARES S&P GLOBAL TECHNOLOGY SECTOR INDEX FD IXN Acquired 01/11/06 Acquired 09/26/07	2
Total	3
INDEX SHS INC MSCI S KOREA WEBS INDEX FUND WEBS INDEX SERIES EWY Acquired 09/26/07	2
ISHARES BARCLAYS TIPS BOND FUND TIP Acquired 07/24/09	1
MARKET VECTORS ET GLOBAL ALTERNATIVE ENERGY GEX Acquired 05/01/09 Acquired 05/13/09	40 20
Total	60
NORTEL NETWORKS CORP NRTLQ Acquired 06/18/08	
RYDEX S&P EQUAL WEIGHT FINANCIAL RYF Acquired 04/11/08 Acquired 06/04/08	37 7
Total	45
SECTOR SPDR TR TECHNOLOGY SELECT SECTOR XLK Acquired 12/19/03	50

JAN 1 3 2010

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Stocks and Options

Stocks continued

DESCRIPTION Acquired 12/21/04
Total
TEVA PHARMACEUTICAL ADR INDS LTD TEVA Acquired 08/17/04
Total Stocks
Total Stocks and Options

Cost information for one or more securities is not available.

Mutual Funds

Mutual fund shares are priced at net asset value.

Open End Mutual Funds

DESCRIPTION
ALLIANCEBERNSTEIN FDS INTERNATIONAL GROWTH FUND CL A AWPAX Acquired 02/19/99 Reinvestments
Total
FIRST EAGLE FDS INC OVERSEAS FD CL A SGOVX Acquired 12/10/02 Reinvestments
Total

JAN 1 3 2010

[redacted]

WELLS FARGO ADVISORS

Mutual Funds

Open End Mutual Funds continue

DESCRIPTION
GOLDMAN SACHS TR FINL SQUARE MONEY MKT FD INSTL CLASS FSMXX
Acquired 07/25/06
Acquired 12/20/07
Reinvestments
Total
HARTFORD FORTIS FUNDS SMALLCAP GRWTH CL A HSLAX
Acquired 09/15/05
Acquired 03/31/06
Reinvestments
Total
HARTFORD MUT FDS INC CAP APPREC FD CL A ITHAX
Acquired 09/15/05
Acquired 04/24/08
Reinvestments
Total
KEELEY FUNDS INC SMALL CAP VALUE FUND CLASS A SHARES KSCVX
Acquired 09/27/07
Acquired 10/15/09
Reinvestments
Total
PIMCO FDS PAC INVT MGMT SER-COMMODITY REAL RETURN STRAT FD INSTL CL PCRIX
Acquired 12/01/03
Acquired 10/15/09
Reinvestments
Total

JAN 13 2010

WSP63

[redacted]

Mutual Funds

Open End Mutual Funds continued

DESCRIPTION

VAN KAMPEN MID CAP GROWTH FUND CLASS A
VGRAX
Acquired 07/14/05
Reinvestments

Total

VAN KAMPEN AMERICAN FRANCHISE FUND CLASS A
Acquired 08/04/09

WT MUT FD CRM MID CAP VALUE FD INSTL CL
Acquired 09/15/05
Reinvestments

Total

Total Open End Mutual Funds

Closed End Mutual Funds

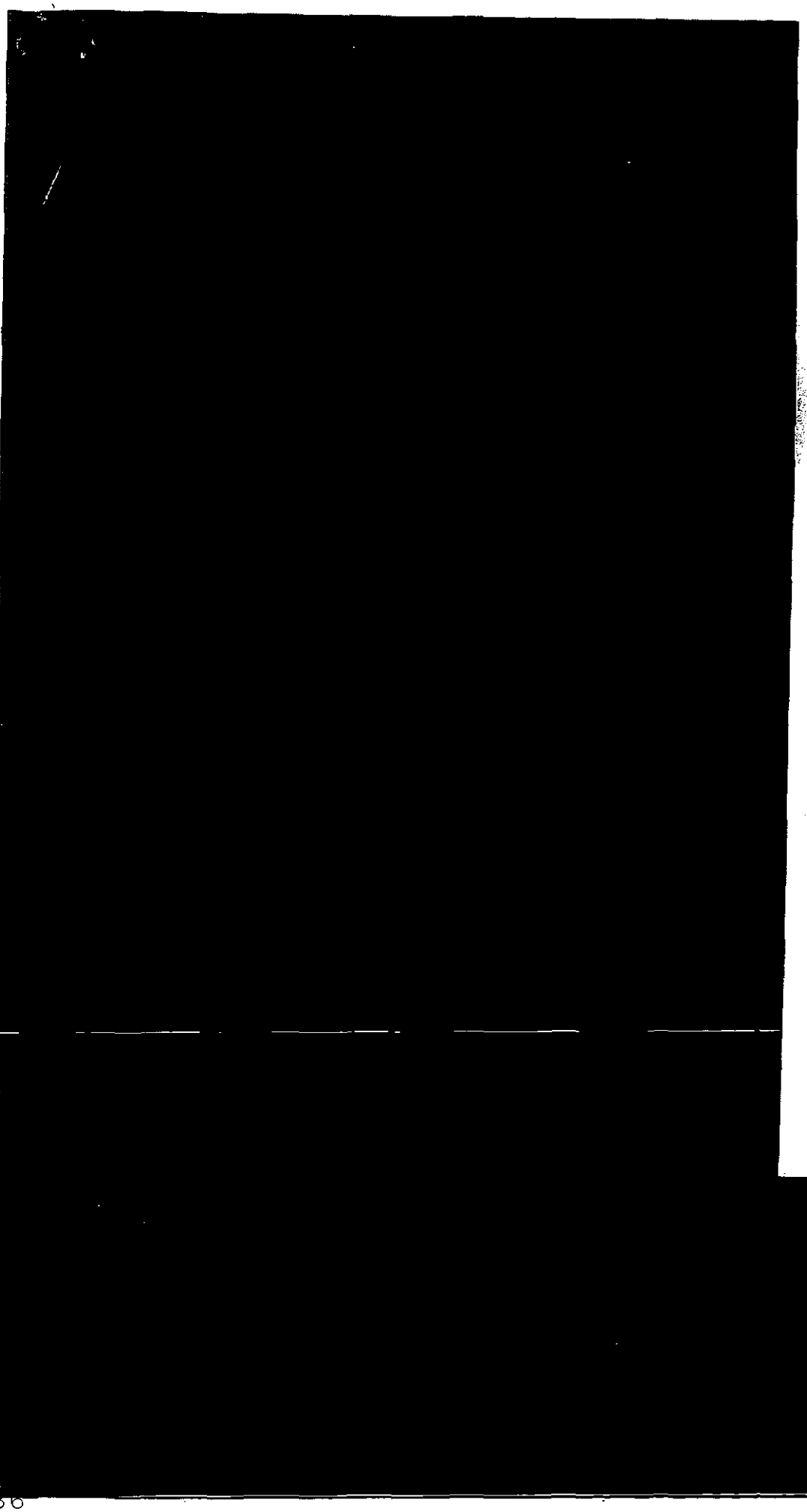
DESCRIPTION

BLACKROCK REAL ASSET EQUITY TR
BCF
Acquired 07/09/07
Acquired 07/09/07
Acquired 07/09/07
Acquired 07/09/07
Acquired 05/13/09

Total

COHEN & STEERS WORLDWID REALTY INCOME FUND INC
RWF
Acquired 06/04/09

JAN 1 3 2010



WELLS FARGO ADVISORS

Mutual Funds

Closed End Mutual Funds continu

DESCRIPTION
ADVENT/CLAYMORE GLOBAL CONVERTIBLE SECURITIES & INCOME FUND AGC Acquired 06/04/08 Acquired 06/04/08 Acquired 10/15/09
Total
NUVEEN INSD MUN OPPTY FD INC NIO Acquired 12/27/94 Acquired 09/26/07 Acquired 02/18/09
Total
Total Closed End Mutual Funds
Total Mutual Funds

Bank Deposit Sweep Allo

Monies on deposit at each bank, together bank in accordance with FDIC rules for a and therefore not covered by SIPC. Settl that occurs after 2 PM ET on the last busir

DESCRIPTION
WELLS FARGO BANK, N.A.
Total Bank Deposits

JAN 1 8 2010

WSP

Lewis & Thomas, P.C. 401(K) Profit Sharing Plan

Fidelity INVESTMENTS

Retirement Savings Statement

March 1, 2009 - May 31, 2009

H CONNER THOMAS
P.O. BOX 865
NOME, AK 99762

For information virtually 24 hours a day call:
1-800-835-5097
Internet Address: http://netbenefits.401k.com
Representatives are available 8:30 AM - 8:00 PM

Your Account Summary

Beginning Balance
Your Contributions
Change in Market Value
Ending Balance

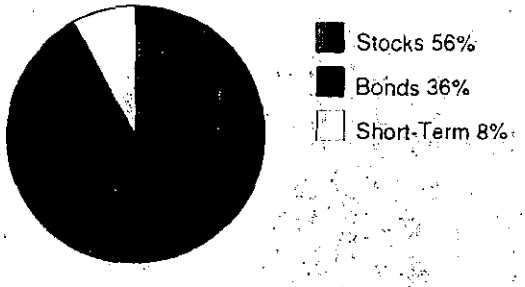
Additional Information
- Vested Balance
- Dividends & Interest

Your Personal Rate of Return

This Period	19.2%
Year to Date	7.5%

Your Personal Rate of Return is calculated with a time-weighted formula, widely used by financial analysts to calculate investment earnings. It reflects the results of your investment selections as well as any activity in the plan account(s) shown. There are other Personal Rate of Return formulas used that may yield different results. Remember that past performance is no guarantee of future results.

Your Asset Allocation



Your account is currently allocated among the asset classes specified above. Percentages and totals may not be exact due to rounding.

The Additional Fund Information section lists the allocation of your blended funds.

Market Value of Your Account

Displayed in this section is the value of your account for the statement period, in both shares and dollars.

Investment	Shares on 02/28/2009	Shares on 05/31/2009	Price on 02/28/2009	Price on 05/31/2009	Market Value on 02/28/2009	Market Value on 05/31/2009
Blended Investment*						
Fid Freedom 2015			$7.72	$9.16		
Account Total						

Remember that a dividend payment to fund shareholders reduces the share price of the fund, so a decrease in the share price for the statement period does not necessarily reflect lower fund performance.

* Some of your investments are classified as a Blended Investment. Blended Investments may include a mixture of stocks, bonds, and/or short term assets. Please refer to the "Additional Investment Information" section to determine the allocation of your blended investments' underlying assets. The asset breakdown of your portfolio is reflected in the pie chart in the "Asset Allocation" section.

Please read this statement carefully. Any error must be reported to Fidelity Inv

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JAN 13 2010

EXHIBIT C

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Market Value of Your Account (continued)

Please refer to NetBenefits and other Plan information, such as your SPD, for a description of your right to direct investments under the Plan. For information on any plan restrictions on those rights, please contact your benefits office.

To help achieve long-term retirement security, you should give careful consideration to the benefits of a well-balanced and diversified investment portfolio. Spreading your assets among different types of investments can help you achieve a favorable rate of return, while minimizing your overall risk of losing money. This is because market or other economic conditions that cause one category of assets, or one particular security, to perform very well often cause another asset category, or another particular security, to perform poorly. If you invest more than 20% of your retirement savings in any one company or industry, your savings may not be properly diversified. Although diversification is not a guarantee against loss, it is an effective strategy to help you manage investment risk.

In deciding how to invest your retirement savings, you should take into account all of your assets, including any retirement savings outside of the Plan. No single approach is right for everyone because, among other factors, individuals have different financial goals, different time horizons for meeting their goals, and different tolerances for risk. It is also important to periodically review your investment portfolio, your investment objectives, and the investment options under the Plan to help ensure that your retirement savings will meet your retirement goals. Visit the Department of Labor website http://www.dol.gov/ebsa/investing.html for information on individual investing and diversification.

Your Contribution Elections as of 06/05/2009

This section displays the funds in which your future contributions will be invested.

Investment	*Percent*
Fid Freedom 2015	100%
Total	**100%**

Contributions	*Employee Deferral*	*Profit Sharing*	*Rollover*
This Period	[redacted]	$0.00	$0.00
Year To Date	[redacted]	$0.00	$0.00
Inception To Date	[redacted]	$0.00	$0.00
Vested Percent	**100.00**	**100.00**	**100.00**
Total Account Balance	[redacted]	[redacted]	[redacted]
Total Vested Balance	[redacted]	[redacted]	[redacted]

Your Account Activity

Use this section as a summary of transactions that occurred in your account during the statement period.

Activity	*Fid Freedom 2015*
Beginning Balance	[redacted]
Your Contributions	
Change in Market Value	
Ending Balance	
Dividends & Interest	

A Message from Fidelity Investments

To access performance information on the investment options available in your Plan - log onto NetBenefits at www.401k.com or call your plan's toll-free number.

Before investing in any mutual fund, please carefully consider the investment objectives, risks, charges and expenses. For this and other information, call or write Fidelity for a free prospectus. Read it carefully before you invest.

Fidelity Brokerage Services LLC, Member NYSE, SIPC, 300 Puritan Way, Marlborough, MA 01752.

JAN 1 8 2010

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WELLS FARGO ADVISORS

009656 02 MAAD 43 AUTO**MIXED AADC 945
H CONNER THOMAS IRA
FCC AS CUSTODIAN
PO BOX 865
NOME AK 99762-0865

WSP63FLD

43,053

JAN 1 2 2010

SNAPSHOT
Current period ending November 30, 2009

ACCOUNT NAME: H CONNER THOMAS IRA
FCC AS CUSTODIAN

ACCOUNT NUMBER: [redacted]

EXHIBIT D

Your Financial Advisor:
LISA DOCHE & RALPH PAPETTI
Phone: 480-419-9600 / 800-453-6737

20551 NORTH PIMA RD
SUITE 200
SCOTTSDALE AZ 85255

If you have more than one account with us, why not link them and receive summary information for your entire household? Contact Your Financial Advisor for more details.

Message from Wells Fargo Advisors

WELLS FARGO & CO., WAS FOUNDED ON WALL STREET MORE THAN 150 YEARS AGO, AND OPENED ITS FIRST OFFICE IN SAN FRANCISCO IN 1852. TODAY, WELLS FARGO ADVISORS CARRIES ON THE COMPANY'S STORIED TRADITION OF HELPING FAMILIES MANAGE THE IMPORTANT ASPECTS OF THEIR FINANCIAL LIFE.

Wells Fargo Advisors, LLC, member NYSE/SIPC. Brokerage accounts are carried by First Clearing, LLC (FCC), member NYSE/SIPC.

[redacted]

WELLS FARGO [redacted]

Additional information

Gross proceeds

Portfolio detail

Cash and Sweep Balances

Bank Deposit Sweep - Consists of monies deposited at one or more additional banks a FDIC rules. For additional information on the

DESCRIPTION
Cash
BANK DEPOSIT SWEEP Interest Period 11/01/09 - 11/30/09
Total Cash and Sweep Balances

* APY measures the total amount of the inter yield is expressed as an annualized rate, bas

Stocks and Options

Stocks

DESCRIPTION
VANGUARD UTILITIES ETF VPU Acquired 08/07/09
Total Stocks
Total Stocks and Options

JAN 13 2010

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[redacted]

Mutual Funds

Mutual fund shares are priced at net asset v

Closed End Mutual Funds

DESCRIPTION
BLACKROCK FLOATING RATE INCOME TRUST FRA Acquired 09/14/06 Acquired 06/27/07
Total
BLUE CHIP VALUE FD INC BLU Acquired 08/07/09
EVERGREEN INCOME ADV FD EAD Acquired 08/17/04 Acquired 06/27/07
Total
Total Closed End Mutual Funds
Total Mutual Funds

Bank Deposit Sweep Allocati

Monies on deposit at each bank, together with a
bank in accordance with FDIC rules for a total o
and therefore not covered by SIPC. Settlement
that occurs after 2 PM ET on the last business d

DESCRIPTION
WELLS FARGO BANK, N.A.
Total Bank Deposits

JAN 1 3 2010

Division of Retirement & Benefits
C/O Great-West Retirement Services
P.O. Box 173764
Denver, CO 80217-3764

STATE OF ALASKA

H C THOMAS
BOX 865
NOME AK 99762

Statement Period: 07/01/2009 - 09/30/2009
Participant ID: [redacted]
Plan: 98214
State of Alaska

98214-01 457 Plan = Alaska Deferred Compensation Plan (DCP) \ 98214-03 401(a) Plan = Alaska Supplemental Benefits-Annuit Plan (SBS-AP)

Account Summary

	98214-03 401(a) Plan
Balance as of June 30, 2009	$[redacted]
Change in Value	[redacted]
Expenses	[redacted]
Balance as of September 30, 2009	$[redacted]

Up to date account information, investment returns, and plan highlights can be obtained 24 hours a day online at **www.alaska.gov/drb**.

GREEN IS TWICE-AS-NICE! You re already saving the green by investing in your retirement plan, but did you know that you can alsc receive your quarterly statements and stuffers electronically? Visit our website today to sign up for Online File Cabinet.

Investment Selection for Future Contributions

All future contributions will be directed as follows:

100% Alaska Balanced Trust

JAN 7 3 2010

Great-West
RETIREMENT SERVICES®
"Securities, when offered, are offered through GWFS Equities, Inc., a wholly owned subsidiary of Great-West Life & Annuity Insurance Company."
Great-West Retirement Services
P.O. Box 173764, Denver, CO 80217-3764

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STATE OF ALASKA

H C THOMAS
[redacted]

Account Summary by Investment Option

	Beginning Balance	Deposits	Change in Value	Transfers	Withdrawals /Expenses	Ending Balance	Endin Unit Share
Alaska Balanced Trust	[redacted]		[redacted]		[redacted]	[redacted]	[redacted]
Totals	[redacted]		[redacted]		[redacted]	[redacted]	

Account Summary by Contribution Source

	Beginning Balance	Deposits	Change in Value	Transfers	Withdrawals /Expenses	Ending Balance
Employee Before Tax	[redacted]		[redacted]		[redacted]	[redacted]
Employer Before Tax	[redacted]		[redacted]		[redacted]	[redacted]
Totals	[redacted]		[redacted]		[redacted]	[redacted]

Beneficiary Information

Great-West Retirement Services does not currently hold a beneficiary designation on your account. You may update this information by visiting your plan s website at www.state.ak.us/drb. Log in to your account and click on the "Change Beneficiary" link under the Change Account menu option.

General Information

	Employee	Employer	Total
2008 Year-End Balance:	[redacted]	[redacted]	[redacted]

JAN 1 3 2010

Alaska Public Employees' Retirement System

2009 Annual Benefit Statement

The account and service information contained in this statement is based on data reported by your employer(s). Please contact your employer(s) about any discrepancies. The benefit information shown is an estimate. While every effort has been made to ensure the accuracy of your statement, please know it does not have the force and effect of the law, rule, or regulations governing the payment of benefits. All benefits will be paid under the provisions of the applicable Alaska Statutes and Federal law.

H CONNOR THOMAS
PO BOX 865
NOME, AK 99762-0865

The Alaska Division of Retirement & Benefits is pleased to provide you with this personalized benefit statement highlighting the financial security you are building for the future. It also summarizes the protection you and your family have against financial losses that may occur because of your disability or death. This statement is produced using data as of 6/30/2009. Please review the statement carefully, verifying total years of service and personal data such as birth date, marital status, etc.

Your benefits are a significant portion of your compensation package. The value of your benefits will continue to increase over time and you will want to compare this statement with those you receive in the future to measure your progress. Most financial planners suggest you need 80% to 85% of your current monthly income to maintain your standard of living at retirement. When you are two years away from retirement, visit our website or contact the Division of Retirement and Benefits to enroll in a retirement planning seminar.

Personal Information

Name: H CONNOR THOMAS
Retirement ID Number: [redacted]
BirthDate: 12/20/1951 Marital Status: M

Account Summary as of 6/30/2009

- Our records indicate you are in Tier 1
- Your total service is 3.12328 years
- You are not vested in PERS
- Your estimated average monthly earnings are $[redacted]
- You currently have no service indebtedness

Annual Contribution Summary

7/1/2008 Account Balance:	$[redacted]
Mandatory Contributions Made:	$0.00
Mandatory Interest Earned:	$[redacted]
6/30/2009 Account Balance:	$[redacted]

Projected Retirement Summary

Your current PERS status means that you must be 55 years old and be vested or have 30 years of service to be eligible for normal retirement.

Monthly plan benefits shown on this statement were estimated under the normal retirement option, which provides you with a monthly income for your lifetime. Surviving beneficiaries are eligible to receive money from the PERS. If a retiree was eligible for health insurance benefits at the time of death, their surviving spouse may continue to be eligible for the same health insurance benefits.

JAN 1 8 2010

EXHIBIT
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New York Life Insurance and Annuity Corporation
(A Delaware Corporation)
PO Box 130539
Dallas, TX 75313
(800) 695-1314

The Company You Keep

NEW YORK LIFE

ANNIVERSARY NOTICE

MRS MARGARET A THOMAS
PO BOX 865
NOME, AK 99762-0865

Agent/Representative
JOHN LUKEHART CLU CHFC
701 W 8TH AVE STE 900
ANCHORAGE, AK 99501-3467
(907) 257-5213

Welcome to your Single Premium Retirement Annuity-2 Update! This notice is designed to keep you in touch with your policy as it continues to grow in value.

CLIENT ID	POLICY NUMBER	POLICY DATE	ANNUITANT
[redacted]	[redacted]	1/13/1992	MRS MARGARET A THOMAS

TOTAL PREMIUM	ANNIVERSARY DATE
$18,388.23	1/13/2009

CASH VALUE AS OF 1/13/2008:	$ [redacted]
INTEREST EARNED FOR POLICY YEAR:	[redacted]
WITHDRAWAL(S) DURING POLICY YEAR:	0.00
SURRENDER CHARGES INCURRED DURING POLICY YEAR:	0.00
CASH VALUE AS OF 1/13/2009:	$ [redacted]

INITIAL PREMIUM EFFECTIVE ANNUAL YIELD GUARANTEED TO 1/13/2010: 4.00%

Your continued satisfaction is important to us. Both your agent and I will be happy to answer any questions you may have. Just give us a call!

Sincerely,

George E. Wilson, FLMI
Service Center Vice President

JAN 13 2010

EXHIBIT
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Sun Life Financial®

Sun Life Assurance Company of Canada
P.O. Box 9133 Wellesley Hills, MA
Tel: (800) 752-
Website: www.sunlife-us

QUARTERLY STATEM

January 1, 2009 to September 30,

PREPARED FOR:

MARGARET A THOMAS 403B PLAN
PO BOX 865
NOME AK 99762-0865

101729-11

BROKER/DEALER:

LISA L DOCHE
WACHOVIA SECURITIES LLC
20551 N PIMA RD
STE 200
SCOTTSDALE AZ 85255

Sun Life Assurance Company of Canada (U.S.) (Sun Life) is a member of the Sun Life Financial group of companies. Sun Life provides this confirmation on behalf of the broker/dealer of record, who is acting as agent of Sun Life.

12/31/2008 Value	09/30/2009 Value
$[redacted]	$[redacted]

CONTRACT INFORMATION

Contract No. [redacted] Compass 3 Fixed/Variable Annuity

Issue Date:	January 07, 1992	**Agent Number:**	3000-235611
Annuitant Name:	MARGARET A THOMAS	**Dealer Number:**	01094-021178
Primary Beneficiary:	H CONNER THOMAS		

CURRENT INVESTMENT PERFORMANCE

Variable Investment Option	Beginning Value 12/31/2008	Current Year Net Activity	Number of Units	Unit Value	Ending Value 09/30/2009	Net Change in Value
Total Return	$[redacted]	$[redacted]	4104.71330	$[redacted]	$[redacted]	$[redacted]
Grand Total	$[redacted]	$[redacted]			$[redacted]	$[redacted]

HISTORICAL TRANSACTION SUMMARY

Investment Option	January 07, 1992 - September 30, 2009 (Issue Date to Present) Investments	Withdrawals	January 01, 2009 - September 30, 2009 (Year to Date) Investments	Withdrawals
Total Return	$[redacted]	$0.00	$0.00	$0.00
Government Securities	$[redacted]	$0.00	$0.00	$0.00
Total	$[redacted]	**$0.00**	**$0.00**	**$0.00**

If you find an error in this statement, you should notify us at the address or telephone number provided on the statement. Unless we receive notice of any such error from you within 60 days of the period ending date of this statement, we may not be responsible for correcting the error.

DEATH BENEFIT INFORMATION

Listed below are the applicable death benefit values for your contract:

- Account Value [redacted]
- Net Purchase Payments [redacted]
- 7th Anniversary Account Value [redacted]

JAN 1 3 2010

Greatest of above amounts is: 7th Anniversary Account Value

Total Death Benefit amount as of statement date [redacted]

ADDITIONAL CONTRACT INFORMATION

EXHIBIT
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No fund transfer(s) processed during this contract year. Please refer to the trans
of your prospectus for more information about the policy.

147

WELLS FARGO ADVISORS

031043 02 MAAD 140 AUTO**MIXED AADC 945
MARGARET A THOMAS IRA R/O
FCC AS CUSTODIAN
PO BOX 865
NOME AK 99762-0865

SNAPSHOT
Current period ending September 30, 2009

ACCOUNT NAME: MARGARET A THOMAS IRA R/O
FCC AS CUSTODIAN

ACCOUNT NUMBER: [redacted]

EXHIBIT
I

Your Financial Advisor:
LISA DOCHE & RALPH PAPETTI
Phone: 480-419-9600 / 800-453-6737

20551 NORTH PIMA RD
SUITE 200
SCOTTSDALE AZ 85255

JAN 13 2010

If you have more than one account with us, why not link them and receive summary information for your entire household? Contact Your Financial Advisor for more details.

Message from Wells Fargo Advisors

THE WACHOVIASEC.COM WEB SITE IS MOVING. BEGINNING OCT. 19, THE WACHOVIASEC.COM WEB ADDRESS WILL TAKE YOU TO WELLSFARGOADVISORS.COM. YOU CAN ACCESS YOUR ACCOUNT(S) AS WELL AS VALUABLE INFORMATION ABOUT THE MARKETS AND OUR PRODUCTS AND SERVICES ON THAT WEB SITE.

[redacted]

Portfolio detail

Cash and Sweep Balances

Bank Deposit Sweep - Consists of monies l
deposited at one or more additional banks af
FDIC rules. For additional information on the

DESCRIPTION	
BANK DEPOSIT SWEEP Interest Period 09/01/09 - 09/30/09	
Total Cash and Sweep Balances	

* APY measures the total amount of the intere
yield is expressed as an annualized rate, bas

Mutual Funds

- Mutual fund shares are priced at net asset val

Open End Mutual Funds

DESCRIPTION	
PRINCIPAL INVESTORS SAM COM GROWTH PORTFOLIO A SAGPX Acquired 11/08/05 Acquired 11/14/05 Reinvestments	
Total	
Total Open End Mutual Funds	
Total Mutual Funds	

JAN 1 2 2010

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[redacted]

Alaska Public Employees' Retirement System

2009 Annual Benefit Statement

The account and service information contained in this statement is based on data reported by your employer(s). Please contact your employer(s) about any discrepancies. The benefit information shown is an estimate. While every effort has been made to ensure the accuracy of your statement, please know it does not have the force and effect of the law, rule, or regulations governing the payment of benefits. All benefits will be paid under the provisions of the applicable Alaska Statutes and Federal law.

MARGARET A THOMAS
PO BOX 865
NOME, AK 99762-0865

The Alaska Division of Retirement & Benefits is pleased to provide you with this personalized benefit statement highlighting the financial security you are building for the future. It also summarizes the protection you and your family have against financial losses that may occur because of your disability or death. This statement is produced using data as of 6/30/2009. Please review the statement carefully, verifying total years of service and personal data such as birth date, marital status, etc.

Your benefits are a significant portion of your compensation package. The value of your benefits will continue to increase over time and you will want to compare this statement with those you receive in the future to measure your progress. Most financial planners suggest you need 80% to 85% of your current monthly income to maintain your standard of living at retirement. When you are two years away from retirement, visit our website or contact the Division of Retirement and Benefits to enroll in a retirement planning seminar.

Personal Information

Name: MARGARET A THOMAS
Retirement ID Number: [redacted]
BirthDate: 5/4/1957 Marital Status: M

Account Summary as of 6/30/2009

- Our records indicate you are in Tier 1
- Your total service is 5.11095 years
- Your service has been calculated using the alternate PERS option for school district employees
- You are vested in PERS
- Your estimated average monthly earnings are $[redacted]
- You currently have no service indebtedness
- Amount previously refunded to you is $[redacted]
- Your 2008 Reported Earnings were $[redacted]

Annual Contribution Summary

7/1/2008 Account Balance:	$[redacted]
Mandatory Contributions Made:	$[redacted]
Mandatory Interest Earned:	$[redacted]
6/30/2009 Account Balance:	$[redacted]

Projected Retirement Summary

Your current PERS status means that you must be 55 years old and be vested or have 30 years of service to be eligible for normal retirement.

Monthly plan benefits shown on this statement were estimated under the normal retirement option, which provides you with a monthly income for your lifetime. Surviving beneficiaries are eligible to receive money from the PERS. If a retiree was eligible for health insurance benefits at the time of death, their surviving spouse may continue to be eligible for the same health insurance benefits.

JAN 1 3 2010

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THE UNIVERSITY OF ALASKA COLLEGE SAVINGS PLAN

THEY DREAM. YOU PLAN. WE HELP.

P.O. Box 17479, Baltimore, MD 21297-1479 • 1-800-478-0003 • uacollegesavings.com

ACCOUNT STATEMENT
January 1, 2009 to December 31, 2009

[redacted]

ACCOUNT HOLDER OR CUSTODIAN

H CONNER THOMAS
PO BOX 865
NOME AK 99762-0865

YEAR-TO-DATE ACCOUNT SUMMARY

2009 Beginning Balance		$[redacted]
+	YTD Contributions	$[redacted]
-	YTD Distributions	$0.00
+/-	Gain/Loss	$[redacted]
Total Ending Balance		$[redacted]

This year when you check "yes" on line 6 of your 2010 PFD application and contribute to the U A College Savings Plan, you'll be entered to win a $25,000 scholarship account or one of four $2,500 scholarship accounts awarded by the Education Trust of Alaska. Certain restrictions apply, visit uacollegesavings.com for more information.

ACCOUNT SUMMARY BY BENEFICIARY

BENEFICIARY NAME	YEAR TO DATE CONTRIBUTIONS	YEAR TO DATE DISTRIBUTIONS	ENDING BALANCE
MALSIE E THOMAS	[redacted]	$0.00	[redacted]
	[redacted]	**$0.00**	[redacted]

JAN 13 2010

EXHIBIT
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Alaska State Legislature

House of Representatives

Office of the Chief Clerk

Official Business

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

MEMORANDUM

Date: February 5, 2010

To: Representative Ramras, Chair
Judiciary Committee

From: Suzi Lowell
Chief Clerk

Subject: Governor's Appointment(s)

The Speaker referred the following Governor's appointment(s) to the Judiciary Committee:

Attorney General
Daniel S. Sullivan
Appointed: 6/16/2009

Board of Governors of the Alaska Bar Association
Donald McLean – Wasilla
Appointed: 3/1/2007
Reappointed: 3/1/2010 Term Expires: 3/1/2013

Public Defender
Quinlan Steiner – Anchorage
Appointed: 10/14/2005
Reappointed: 10/9/2009 Term Expires: 10/14/2013

Violent Crimes Compensation Board
Nora G. Barlow – Anchorage
Appointed: 3/1/2010 Term Expires: 3/1/2011

Gerad G. Godfrey – Eagle River
Appointed: 2/19/2003
Reappointed: 4/6/2004 Reappointed: 3/1/2007
Reappointed: 3/1/2010 Term Expires: 3/1/2013

The Referral for Confirmation page(s), resume(s), and a signature page are attached for your use. In addition, copies of the resume(s) are also being sent electronically.

Attachments as noted

Donald Rae McLean

P.O. Box 873836
Wasilla,Alaska 99687

Education

Bachelor of Science with Distinction Biology 1974
Virginia Polytechnic Institute and State University

Doctor of Dental Surgery 1978
Medical College of Virginia/Virginia Commonwealth University

Executive Juris Doctorate (in progress) expected completion: 2008
Concord School of Law

Professional Employment History

General Dentist (Captain) 1978-82
Elmendorf AFB,Alaska

Private Practice of Dentistry 1982-present
Wasilla,Alaska

Professional Licensure

Alaska State Dental License AK#522
Virginia State Dental License(inactive) #0401006134

Personal History

Born March 9,1952 in Hopewell,Virginia
Parents:Charles L. McLean(deceased) and Katherine J. McLean who presently resides in Lynchburg,Virginia
Married 31 years to Lynne F. McLean and 3 children; Kimberly(29 y.o.), Nicole(26 y.o.), and Christopher(20 y.o.)
Interests include agriculture,sports,education and the news

QUINLAN STEINER

2205 Arlington Drive ♦ Anchorage, AK ♦ 907. 317.4746

Education:

Northwestern School of Law of Lewis & Clark College — Portland, OR
Juris Doctor — 1998

Seattle University — Seattle, WA
B.A. Business Administration — 1989

West Anchorage High School — Anchorage, AK
1984

Work Experience:

Alaska Public Defender Agency — Anchorage, AK
Director – Public Defender — 2005 – Present

Appointed to serve as the Public Defender for the State of Alaska and Director of the Alaska Public Defender Agency. The Public Defender Agency's mission is to provide constitutionally mandated legal representation to indigent individuals appointed by the courts in criminal and other state-initiated litigation.

Primary responsibilities include: directing organizational development in accordance with agency goals; personnel supervision and management; budget management; and testifying before the legislature on proposed legislation and budget proposals. Initiatives implemented: statewide case management system; regional organizational structure; new lawyer trial school; expanded recruiting program; mentoring program; and centralized appellate and post-conviction case processing.

Alaska Public Defender Agency — Anchorage, AK
Assistant Public Defender — 1998 - 2005

Appellate Attorney: drafted appellate briefs and conducted oral argument before the Alaska Court of Appeals and the Alaska Supreme Court; consulted with and advised trial attorneys on trial litigation issues; advised the Public Defender on pending legislation and other legal issues affecting the Agency.

Trial Attorney: managed a District and Superior Court trial caseload in Anchorage and for St. Paul Island; and conducted felony and misdemeanor trials. Other Activities: trained and supervised legal interns and new attorneys; served as a member of the Public Defender Training Conference Committee; personally developed and implemented training sessions on trial advocacy, motion writing, and legal analysis for the Agency's new lawyers; and participated in meetings of the Appellate Rules Committee, Pattern Jury Instruction Committee, and Appellate Delay Committee.

Alaska Public Defender Agency — Anchorage, AK
Investigator Intern / Legal Extern — 1995, 1997

Volunteered as an investigator in 1995 prior to attending law school. As a law student, served as legal extern in criminal law. Duties included conducting bail hearings, drafting appellate briefs, and conducted an oral argument before the Alaska Court of Appeals.

Intec Inc. — Anchorage, AK
Financial Assistant/Lead Backcountry Guide — 1993-1995

Duties as financial assistant included strategic planning, preparing financial statements, and bookkeeping. Duties as backcountry guide included conducting backcountry ski and glacier travel trips, trip planning, meal preparation, and ensuring safety of clients and assistant guides.

National Bank of Alaska — Juneau, AK
Loan Officer — 1990-1992

Completed management training program and worked as a loan officer in Juneau branch office. Commercial lending experience: business acquisition, lines of credit, letters of credit, equipment & inventory, commercial real estate, interim construction, SBA & BIA guaranteed, fishing boats. Consumer lending experience: automobile, boat, home equity, and personal. Participated in local branch board meetings on local and statewide financial outlook.

Northwest Deck Construction — Seattle, WA
Co-Owner — 1987-1989

Established company designing and constructing residential decks; responsible for project schedule management; preparation of financial statements and tax returns.

Activities:

Member Alaska Bar Association (1998 – present)
Criminal Rules Committee (October 2006 – present)
Member of the Criminal Justice Working Group (2008 – present)
Youth Court Bar Class Instructor – Spring 2008
Panel Member for Anchorage Mayor's Anti-Gang and Youth Violence Summit: Law Enforcement and Legal Issues Related to Gangs (November 15, 2006)
Panel Member on Ethics in Criminal Law Practice at University of Southern Maine School of Law (2005)
University of Alaska, Adjunct Professor: Criminal Procedure (2002)
Alaska Youth Court, Mock Trial Judge (2000)
Member of Denali Expedition (1994)
Member University of Colorado Ski Team (1984-1986)
Member Alyeska Ski Club (until 1984; represented Alaska at the Junior Olympics)

NORA G. BARLOW
DeLisio Moran Geraghty & Zobel, P.C.
943 W. 6th Avenue
Anchorage, AK 99501
(907) 279-9574

EDUCATION:

1991	University of the Pacific, McGeorge School of Law with Distinction, Order of the Coif
1989	London Institute of International Business and Commercial Law "Fundamental Rights in Europe and the United States." Hon. Anthony Kennedy, Associate Justice, United States Supreme Court
1986	University of California, Berkeley, Bachelor of Arts, Environmental Science; Emphasis Biology

EMPLOYMENT:

2006-present	DeLisio Moran Geraghty & Zobel, P.C. Associate Attorney; General civil litigation practice with an emphasis in defense of employment law cases and workers' compensation claims.
2004-2006	Russell Wagg Cooper & Gabbert, P.C., Anchorage, AK Associate Attorney; Emphasis in workers' compensation defense.
2003-2004	Attorney General's Office, Anchorage, AK Assistant Attorney General, Office of Special Prosecutions and Appeals; Environmental Prosecutor.
2002-2003	District Attorney's Office, Anchorage, AK Assistant District Attorney; Felony Prosecution of Property Crimes and Sexual Assaults.
1999-2002	Office of the County Counsel, Contra Costa County, Martinez, CA Deputy County Counsel;Assigned to Juvenile Dependency and Conservatorship Unit.
1995-1999	Heller Ehrman White & McAuliffe, San Francisco, CA and Anchorage, AK Associate Attorney; Complex civil litigation practice.
1992-1995	Burr Pease & Kurtz, Anchorage, AK Associate Attorney; General civil litigation practice.
1991-1992	Law Clerk:"Hon. H. Russell Holland, Judge, United States District Court for the District of Alaska and Hon. James M. Fitzgerald, Senior Judge, United States District Court for the District of Alaska
Summer 1990	Pillsbury Madison & Sutro, San Francisco, CA Summer Associate

BAR ADMITTANCE: Admitted in California 1992
Admitted in Alaska 1993

COMMUNITY ACTIVITIES: Committee Member, Annual Jewish Cultural Gala
Volunteer, Bean's Café
Volunteer, Aquarian Charter School
Volunteer, Camp Gan Israel

Antoinette Mallott
102 Cordova Street
Juneau, Alaska 99801
March 10, 2010

Chief Justice Dana Fabe
Alaska Supreme Court
303 K Street
Anchorage, Ak 99501-2084

Dear Chief Justice Fabe,

I am interested in serving on the Legislative Ethics Committee. Please review my resume and this letter of interest.

Currently, I reside in Juneau and Yakutat, Alaska, where we have our second home. I have lived in southeast Alaska for almost forty years. My involvement in the local native community is through my membership in Alaska Native Sisterhood and Alaska Native Brotherhood. My family has been involved in cultural and traditional events for many years. My husband and I have supported strong family values of responsibility, hard work ethics, kindness, ties to our ancestral lands and people and being a good person.

I am a registered Democrat and my voter registration is in Yakutat. I retired from teaching in 2003.

If you have any questions, please call me at the following numbers; Juneau: 586-6937, cell- 321-2022 (does not work in Yakutat) and Yakutat: 784-3074.

Thank you for your consideration.

Sincerely,

Antoinette Mallott
Antoinette Mallott

Resume
Antoinette Mallott

Residence:

102 Cordova Street
Juneau, Alaska 99801

Status:

Married: Byron I. Mallott Children: Anthony, Joseph and Benjamin

Date of Birth: October 27, 1947, Rampart, Alaska

Background:

I am an Alaskan Native and have spent my entire life in Alaska. I have been involved in education for the past thirty years, both as a teacher and parent. I strongly believe that it is imperative to develop and strengthen students' self-esteem and academic skills. It is equally important to establish a positive relationship with parents and support their involvement with their children's academic and social achievements.

My experience in the teaching profession included knowledge about the public laws of inclusion for students with learning, physical and emotional disabilities. I have worked with ESL (English Second Language) students and supported their rights to seek and obtain academic assistance in core subjects, such as reading, math and writing.

During my years of teaching at Gastineau Elementary School, I was on SCOT, a collaboration team composed of teachers, administrators and other support staff members. Our team met weekly to discuss learning and behavioral problems of students that classroom teachers were concerned about. Parents were requested to be present during these meetings. We were responsible for coming up with educational or behavioral plans to assist the students in their classrooms.

I was a Site Council member and facilitator for seven years at Gastineau. My duties included setting the monthly agendas, conducting the meetings, communication with parents, teachers and other members and carrying out the directions on decisions made for improving the school climate, safety of the students and staff and review and approval of curricula.

One of the many duties that a teacher has is writing academic and learning diagnostic reports for parents and administrators. I am confident that I possess the ability to organize, evaluate and present information effectively.

Education:

Bachelor of Elementary Education, University of Alaska, Fairbanks, 5/72
Master's in Elementary Education, University of Alaska, Juneau, 5/87

Professional Experiences:

2006 -2010	Care Coordinator for Catholic Community Services, Yakutat
1998-2003	Librarian and ESL teacher, Juneau
1990-1998	Classroom teacher, Juneau
1986-1990	Substitute teacher, Juneau
1982-1983	Chairperson for the Commissioner's Task Force on Native Achievement, Department of Education
1979-1980	3rd grade teacher, Yakutat
1978-1979	Headstart director and teacher, Yakutat
1977-1978	Resource coordinator, Indian Studies Program, Anchorage
1974-1976	2nd/3rd grade teacher, Yakutat
1972-1974	3rd grade teacher, Juneau
1970-1972	Home-School coordinator, State of Alaska Boarding Home Program, Fairbanks
1970	Summer flight attendant, TransWorld Airlines, Kansas City, Kansas
1968-1970	Travel agent, Roger's Travel Agency, Fairbanks

Alaska State Legislature

Official Business

House of Representatives

Office of the Chief Clerk

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

MEMORANDUM

Date: March 22, 2010

To: Representative Ramras, Chair
Judiciary Committee

From: Suzi Lowell
Chief Clerk

Subject: Chief Justice's Appointment

Speaker Chenault referred the following appointment by Chief Justice Walter L. Carpeneti to the Judiciary Committee:

Select Committee on Legislative Ethics
Antoinette Mallott

The committee report is attached for your use.

Attachment as noted

CONFIRMATION COMMITTEE REPORT

Action date: 3-31-2010

In accordance with AS 24.60.130, the Judiciary Committee has reviewed the qualifications of the following Chief Justice's appointee and recommends that this name be forwarded to the House for ratification:

Select Committee on Legislative Ethics

Antoinette Mallott

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of ratification.

Signature:	Printed Last Name
	HERRON
	LYNN
	Holmes
Chair:	Dahlstrom

Please return to the Chief Clerk's office.

Alaska State Legislature

House of Representatives

Office of the Chief Clerk

Official Business

State Capitol, Room 216
Juneau, AK 99801-1182
Phone: (907) 465-3725
Fax: (907) 465-5334

REFERRAL FOR CONFIRMATION

Date Referred: February 3, 2010

Committee: Judiciary

Violent Crimes Compensation Board
Gerad G. Godfrey – Eagle River
Appointed: 2/19/2003
Reappointed: 4/6/2004 Reappointed: 3/1/2007
Reappointed: 3/1/2010 Term Expires: 3/1/2013

Action Date: 2/25/10
(Same date as on the accompanying signature page)

Note: Attach to a signature page and return to the Chief Clerk's office.

CONFIRMATION COMMITTEE REPORT

Action date: 2/23/10

The **Judiciary Committee** has reviewed the qualifications of the following Governor's appointee(s) as shown on the attached Referral for Confirmation form(s) and recommends that the name(s) be forwarded to a joint session for consideration:

This does not reflect intent by any of the members to vote for or against this individual during any further sessions for the purposes of confirmation.

Signature:	Printed Last Name
	LYNN
	Greenberg
	HERRON
	Holmes
Chair:	KAUFER

Please attach appointee Referral for Confirmation form(s) and return to the Chief Clerk's office.

Gerad Godfrey
P.O. Box 770892
Eagle River, AK 99577

Hm. (907) 694-6154
Cel. (907) 229-8860

Objective:
Reappointment to serving on Alaska's Violent Crimes Compensation Board.

Strengths:
Diverse work experience throughout Alaska from laborer to administrative fields. Perpetually seeking to learn. Exceptional communicator both orally and written. Optimistic yet realistic. Creative while pragmatic. Highly motivated to help reduce the occurrence of violent crimes in Alaska and continue to aid victims through education, prevention and outreach.

Voluntary Civic Activity:
2003-Present – Appointed Chair of Alaska's Violent Crimes Compensation Board by last two Governors. Chairing a quasi-judicial board which adjudicates claims and distributes funds to innocent violent crime victims in Alaska while coordinating with full time staff in Juneau. Cultivating and nourishing fruitful relationships with local and state politicians as well as state commissioners in order to maintain board's statutory and fiscal homeostasis or augment it. Oversee preparation and submission of annual report to Alaska's legislators, select state commissioners and Governor.

2002-Present – Volunteer lobbyist for innocent victims of violent crimes. Annual trips to Juneau to meet with legislators, commissioners and the Governor's office on behalf of crime victims regarding public safety issues, legislation and fund allocation for crime victim services.

2007-Present – Created the Helping Hands Healing Hearts Program. A committee designed to consolidate the numerous victim advocacy groups in order to educate and assist the faith based community in dealing with violent crime victims by bridging the gap between faith based organizations and government/non-faith based organizations.

2002-2003 – Appointed by Mayor of Anchorage to Municipal Emergency 911 Oversight Task Force. Ad Hoc committee which explored and researched existing detriments, then potential remedies, to Anchorage's critically deficient emergency response system. Culminated with proposed upgrades and enhancements submitted to Mayor. Spoke on national television on topic.

Work Experience:
-2009-Present- Afognak Native Corporation, Legal Department, Anchorage, Alaska. Corporate Risk and Compliance. Work in the Corporation's legal department while engaging in all facets of corporate risk and compliance as it applies to all of the corporation's departments, field offices, property, projects, contracts and 6,000+ employees primarily employed in 8(a) fields of work.

Continued:

Work Experience continued:

-2006-2009- Doyon Universal Services, Security Division, Port of Anchorage. Port Security. Uphold and enforce United States Coast Guard Regulations governed by 33 CFR 105 as mandated by the Department of Homeland Security. Control Anchorage Port access points by land and water. Conduct patrols and video surveillance. Conduct vehicle/cargo screens random and for cause. Conduct declarations of security on all moored ships. Oversee security concerns of port expansion.

-2001-2006- Doyon Universal Services, Security Division, Valdez, Alaska. Port Security. Control Alyeska Marine Terminal facility access points. Patrol Alyeska property as well as the pipeline right of way. Run surveillance from land, air and water. Enforce APSC policies and procedures as well as USCG regulations. Function as field training officer. Function as step-up supervisor of 8 employees.

-1998-2001- Regional Environmental Training Center, Fort Richardson, Alaska. Facilitator. Facility oversight regarding security and integrity. Fulfill all requests of facility Executive Director. Accommodate instructors' needs to ensure they are adequately equipped and prepared to conduct their training at all times. Ensure continuity of all scheduled training.

-1997-1998 - Guardsmark Security, Anchorage, Alaska. Assistant Administrator/H.R. Specialist. Recruit and interview applicants. Conduct background checks. Hire and place new personnel at various contracts. Administer payroll and keep contracts fully staffed. Tend to logistical, technical and human resource issues of all account supervisors. Supervise all account supervisors. Deputy Administrator in overall management of all contracts within Alaska. Meet and maintain corporate headquarter goals and expectations.

-1993-1997 - Nana/Marriott Catering Service, Prudhoe Bay, Alaska. (Seasonally/College) Laborer/Prep Cook in industrial kitchens in Arctic Circle oilfield camps.

-1985-1992 - Commercial Fisherman, Kodiak, Alaska. (Seasonally/Jr.High/High School/College) Lived and worked on a 55 foot commercial fishing boat with 4 other crewmen. Skiffman then served as deck boss of crew.

Education:

-B.S. Criminal Justice/Counseling Psychology, University of Great Falls, 1996
Great Falls MT. Honors: Dean's List
-Alaska Department of Public Safety Training Academy, 1998
Sitka, AK.
-ETT Certification, 2001
Anchorage, AK.
-Public Agency Training Council NCJ First Line Supervisor Certificate 2005
Fairbanks, AK.
-2006-Current Final Year Law Student, J.D of Law, Concord Law School of Kaplan University, Los Angeles, CA. Honors: Outstanding Performance Award-Contract Law, Passed California Baby Bar Exam first attempt

References:
Carl Marrs- Phone# 360-0279

Vicki Otte- Phone# 223-3330

Regina Chennault- Phone# 244-1689

Nancy Dahlstrom- Phone# 694-4929

Gerad Godfrey
P.O. Box 770892
Eagle River, AK 99577

Cell 229-8860
Home 694-6154
geradg@gmail.com

HB

2

Alaska State Legislature

Interim:
600 E. Railroad Ave
Wasilla, AK 99654

Phone: (907) 376-3725
Fax: (907) 376-4768

Session:
Alaska State Capitol, Rm 108
Juneau, AK 99801-1182

Phone: (907) 465-3743
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Toll Free: (800) 565-3743
Rep_Carl_Gatto@legis.state.ak.us

Representative Carl Gatto

Chair, House Military and Veteran Affairs Committee
District 13 - Palmer

SPONSOR STATEMENT
CSHB 2 (HHS)

"An Act relating to the issuance of a certificate of birth resulting in stillbirth."

HB 2 brings closure to parents who have suffered the loss of a stillborn child by giving them a Birth Certificate reflecting that they had a child who was stillborn. To paraphrase one parent of a stillborn child: being able to receive a Birth Certificate for my daughter would make me feel complete in that it would acknowledge that my daughter existed, even if it was only for a short while. This is true not only for her but also heard from other parents that have suffered this loss.

Under current law parents of stillborn children receive a fetal death certificate. HB 2 allows parents the option of requesting a certificate of birth for their stillborn child. This birth certificate is optional, and if the parents choose to receive a Birth Certificate they have the option of naming their child.

There are twenty-five states that now offer parents of stillborns the option of obtaining a Birth Certificate for their child. I urge your support for CSHB 2 (HHS).

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM January 22, 2009

SUBJECT: Sectional Summary (HB 2 (Work Order No. 26-LS0003\A)

TO: Representative Carl Gatto
Attn: Sandra Wilson

FROM: Jean M. Mischel
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Establishes a process for the bureau of vital statistics to issue a certificate of birth resulting in a stillbirth at the request of a parent of the stillborn child. Requires the bureau to transmit the certificate to the local registrar for filing with the fetal death certificate.

JMM:lmb
09-002.lmb

Sandra Wilson

From: Hoyt Family [mehoyt@mtaonline.net]
Sent: Tuesday, January 20, 2009 7:30 PM
To: Sandra Wilson
Subject: RE: Hello

Sandra,
HB 2, to create a 'Birth Certificate resulting in a Still Birth' would make me and a lot of people feel complete. My daughter was still born at 36 weeks and we had a large funeral for her. The idea that the state will only accept the fact that she died is so heart breaking. How can a person die with out being born? Having that piece of paper in my hand would bring closure to the entire grieving process. This would validate that my little girl was once here and apart of our lives.

Thanks so much for bringing this bill forward.

Michelle Hoyt
Project Linus - Alaska Chapter
Providing Security thru Blankets

-----Original Message-----
From: Sandra Wilson [mailto:Sandra_Wilson@legis.state.ak.us]
Sent: Tuesday, January 20, 2009 4:44 PM
To: Carletta Gemmell; Chauna Sheppard; Colleen; Dayna Murphy; Dina Banez; Gretchen Mangrobang; Kaylene Johnson; Lynnette Haas; Michelle Hoyt; Rhonda Crawford; Sandy Thomas; WesCin Yuill
Subject: Hello

Hello everyone. Today was the first day of session and I am preparing the packet that will accompany our request for hearing. I need updated letters of support. You can either write new ones or use the same ones as last year but I need them to reflect the new bill number for this bill which is HB 2. The sooner you can get these to me the sooner I will get a request in. Again I thank everyone for being willing to take the time and send me these letters.

Sincerely,

Sandra Wilson
Staff to Rep. Carl Gatto
907-465-3163
Sandra_wilson@legis.state.ak.us

January 20, 2009

To the Alaska Legislature

In Support of HB 2
This is the Story of Daniel Gavin Sheppard,

My name is Chauna and in 2002, I became pregnant for the first time in my life at the age of 32. We were overjoyed and considered this a miracle baby after being diagnosed with Fertility problems.

I walked on air with happiness, eating healthier, drinking extra water and taking every breath with my precious baby in mind. That summer we purchased a larger car, a crib and swing, stocked up on diapers of various sizes, and dozens of outfits, We went to child birth classes and even did relaxation exercises at home to prepare for labor. I never missed a doctor appointment and even switched doctors so I could get higher quality care. We got ultrasound videos and pictures. I really enjoyed feeling his regular kicking, rolling and occasional hic ups.

Daniel was due on November 26th, 2002. It was that morning that after a bit of poking and juice drinking that I couldn't seem to wake my son. My doctor sent me to the maternity ward where using a Doppler speaker they couldn't hear a heartbeat. At that point we had an ultrasound where we could not see any heart movement in those tiny, clearly visible, ribs on the tv screen. It was the most painful reality of my life to know my baby had died.

I was induced at apx 2:30pm that day. We went through 17 hours of labor that including an epidural, pain and nausea medication, IV's and 2 hours of pushing. Daniel Gavin was born weighing 7lb 14oz and 19 inches long at 7:30am on November 27, 2002.
His warm, soft, beautiful body was placed on my chest where my husband and I cuddled and kissed and loved him even more than the day before. The nurse bathed him. We dressed him and friends and family came to hold him as well. I distinctly remember one dear friend rocking him just like he was any other baby. The hospital took foot prints and cut a lock of hair for us to keep. They also gave us two camera's to take pictures of our beautiful boy. We were so lucky to be able to keep him with us for 12 hours. We sang to him and prayed before we had to let him go and begin the long painful journey of grief.

The next day the hospital gave us a generic card with his name and birthday on it written in marker and told us that we won't get a birth certificate because he never took a breath. This was a harsh blow after all we had been through. After all, I had given birth to Daniel and he was certainly born.

We drove home from the hospital on Thanksgiving Day with an empty car seat, empty arms and broken hearts.

As sad as this was, we still love Daniel so much, he will always be a part of our family. We do things on his birthday and other times of the year to show him our love. Though we never saw his eyes or heard him cry, my son Daniel is such a gift and we are so thankful for him. There never has been a day when I thought I wasted 9 months carrying him or a time when I wish he never existed. Never, ever... I wish the State of Alaska would not treat him as such.

In 1892 American Author Mark Twin said, "Favored above Kings and Emporers is the stillborn child." I wish stillbirth and the experience of having to deliver a dead baby was respected in this manner today.

This tragedy strikes everywhere. According to the Center for Positive Outcomes in Pregnancy in Washington DC, there are more than 39,000 stillbirths in the U.S. every year.

Historically, we share this horrific experience with John Quincy Adams, Rutherford Hayes, Ernest and Pauline Hemingway, and John and Jackie Kennedy, whose stillborn daughter is buried with her parents and siblings.

Ask any woman why she would endure the pain and agony of giving birth and she will tell you because of the 'reward' at the end...it is 'all worth it' we frequently hear. But what about the silent births- the women who get no reward for all their hard work...

I am writing this today asking you for your support...Please pass HB 2.

Sincerely,

Chauna Sheppard
4032 Reka Drive #K-1
Anchorage, AK 99508
(907) 333-7650
chauna18@hotmail.com

All of our Family & Friends -

Our son, Declan Murphy Stich, was stillborn Thursday, December 6th at 3:22pm. He was a beautiful 4 pounds 15 ounces and 18.5 inches, just the right size for a baby of 37 weeks.

It was discovered at Dayna's Wednesday morning checkup that Declan's heart had stopped beating. He must have passed away between midnight and nine o'clock, because we both felt his movements the night before. We decided to induce her labor on Wednesday night. Dayna's labor was short and Declan's delivery was without complication. Dayna is healthy and beginning the process of recovery.

We were able to keep Declan with us for several hours after his birth. He was so perfect - absolutely perfect with no sign of distress or problem. We will cherish those precious few moments with our special little boy forever. We took photographs of our own, but we also had a photographer from Now I Lay Me Down To Sleep (a volunteer organization) take images for us so we may share this experience with everyone. We've attached several select pictures from our camera, and we understand if anyone is uncomfortable or uneasy viewing these. The camera does not do Declan justice, he looked very much like a normal sleeping baby.

We are, of course, completely distraught. However, our memories of the time we did have with Declan are raising our spirits. The hospital staff did some wonderful molds of his feet and cut a lock of his hair, so we do have some very physical momentos of him.

Many people have asked about his name. Declan is a VERY Irish name meaning "Full of goodness". The most famous bearer of the name Declan was St. Declan, an early Irish saint who preached in Ireland prior to the arrival of St. Patrick.

I wish I had an explanation as to why Declan has died so unexpectedly, but hopefully a limited autopsy and the results of a large battery of tests will shed some light. However, most fetal deaths like this simply have no explanation. Dayna's pregnancy was completely normal and without complication, and there were no indications that anything like this could happen. We do hope to determine if there may be problems with future pregnancies or if there is a genetic disorder that could have caused a problem.

While we will grieve for Declan and the life we've lost with him, we both feel that life must now move on. We understand that many of you will have questions or want to talk about what has happened, please don't hesitate to speak with us. It has probably been just as hard, or even harder, experience for all of you that don't have the details or latest news. We appreciate your grief for our loss and hope that this email and future conversations with us can assuage the anguish that you may feel.

We would like to thank everyone that has called, emailed, sent flowers, provided a meal, or even just given us space during these past few days. We would particularly like to show our appreciation for the professional services provided by the nursing staff at Providence Hospital (Marcie & Tricia), Dr. Allison Gibbs & Midwife Tonya Kirk from

Anchorage Women's Clinic, photography by Janna Maile (http://www.photoartsak.com) from The Now I Lay Me Down To Sleep Foundation, Evergreen Mortuary (http://www.evergreenfuneral.com), and Dayna's brother Matt for fabricating Declan's urn.

We ask that anyone who feels a need to make a contribution on behalf of our experience please consider a donation to The Now I Lay Me Down to Sleep Foundation. The web page for donations is: http://www.nowilaymedowntosleep.org/pageDisplay.php?page=42

While we've tried to include everyone that we touch in our daily lives as a recipient of this email, we don't have addresses for many friends or acquaintances. Please forward this to anyone that you feel needs to receive it, and we apologize if anyone receives this message more than once.

All our love - Steve & Dayna

--

Steve Stich
Dayna Murphy
8040 Fairwood Cir
Anchorage, AK 99518
907-770-9132

Mayme Ohnemus

P.O. Box 754
Cooper Landing, Alaska 99572
Phone & Fax: (907) 595-1214

February 22, 2009

Representative Carl Gatto
E. Railroad Ave.
Wasilla, Alaska 99654 Phone: 376-3704 Fax: 376-6180

RE: HB 2: Stillbirth Certificate

Dear Representative Gatto:

Thank you for sponsoring HB 159 Stillbirth Certificate last year and for sponsoring HB 2 this year. I sent you some information October 16, 2008 regarding the loss of our granddaughter, Evynn Nicole Ohnemus. My daughter-in-law shared her desire to obtain a Stillbirth Certificate for our granddaughter Evynn Nicole Ohnemus born March 5, 2006. She received a note about HB 2 and asked me to contact you since I am planning to be in Juneau February 26th.

I'm so proud Amber asked me to speak on behalf of our family. She wants me to relay the pain and anguish we have suffered during the time of losing our sweet baby; tell you how the flame went out of our lives upon her death and about the huge void we have had in our lives from that loss three years ago.

Our nineteen month old grandson has rekindled the flame in our lives and continues to give us a lot of joy. We're expecting another grandbaby in July and life feels good again. Evynn's spirit is with us always and we miss her. It's important, especially to her mother and father that Evynn Nicole Ohnemus is treated with the greatest respect. She lived and she died. A Stillbirth Certificate is a small thing to ask for a family that suffered the greatest of losses, their baby.

Thank you reintroducing the bill for parents to be able to obtain a Stillbirth Certificate. This is very important to the healing process for the families of stillborn babies. Thank you for this opportunity to share our story. I urge Representatives and Senators to give 100% support for HB 2.

Sincerely,

Mayme Ohnemus

Mayme

Enclosed: I am enclosing a letter from my daughter-in-law and the information I sent before including letter, picture page and a copy of This N That, written for the Sexy Seniors soon after the loss of our granddaughter - my husband and I couldn't bear to talk about our loss for several weeks but our friends and families deserved to know why we were grieving. They also shared in our loss.

February 21, 2009

Sandra Willson, staff
Carl Gatto
Juneau, Alaska

RE: HB 2 Certificate of Still Birth

To Whom It May Concern:

Thank you for sponsoring HB 2 again this year.

My name is Amber Mullican-Ohnemus. Three years ago my husband and I lost our daughter to stillbirth at 43 wks. There was no apparent cause of death. I was very disappointed the bill failed last year. It is an amazingly hard issue to deal with for me and my whole family. When we found out Evynn would not get a birth certificate it made things even harder to deal with since it seemed she was not considered alive at all. She was a wanted and planned for child. She was alive for 10 months until that gut wrenching day in March 2005. She deserves the dignity of having a birth certificate just as much as children who die of any cause minutes or even days after their births. It would mean a lot to me and my family to have a certificate of still birth to place in her baby book The death certificate we got was so cold and hurtful it felt like she never existed in life only death.

Please, think of all of the lives you can help change for the better by providing this meaningful certificate. You may not be able to bring back our children but you can at least let us have peace with knowing they mattered and were acknowledged.

Thank you for your support on this issue,

Sincerely,

Amber W. Mullican-Ohnemus, B.S.N., R.N., CNOR.

P.O. Box 1442
Soldotna, AK 99669
907-260-4922

Newsweek

A Vast and Sudden Sadness

Each year thousands of families experience stillbirth. As science seeks causes, parents use photography to honor their babies and cope with their grief.

Claudia Kalb
NEWSWEEK
From the magazine issue dated Feb 9, 2009

Marirosa Anderson was still sweating from a workout when her cell phone rang at 8:20 p.m. on Nov. 11, a particularly cold night in northern Virginia. Anderson had planned to spend the evening with her husband and two small children. Then she saw the caller-ID number. She took a deep breath, readied herself and answered the phone. Karen Harvey, a labor-and-delivery nurse at Inova Fairfax Hospital, gave her the rundown. A baby was about to be delivered by C-section and the parents wanted photographs. Could she come right over?

Anderson threw on jeans and a sweatshirt, grabbed her camera bag and ran out the door. At the hospital, Harvey led her to a quiet room where Laurie Jackson and her husband, Michael, were waiting. Laurie's pregnancy had been easy and enjoyable, filled with the happy buzz of baby showers and the lovely air of expectation. But during a routine check that Tuesday afternoon—just three days before her due date—the Jacksons were given the incomprehensible news that their baby no longer had a heartbeat. The night before, Laurie had felt the baby kicking. Now she and Michael were confronting the impossible: saying hello and goodbye to their firstborn child at the very same time.

Anderson introduced herself, then took out her camera, turning her attention to a perfect little girl who lay still in a bassinet, peaceful in a white cotton blanket with pink and blue stripes. "She's precious," Anderson said. Then she started to shoot. The baby's face. Click. Her tiny hands. Click. Her little pink feet. Click. Now it was time for the three of them. Laurie cradled her baby girl in the crook of her elbow, Michael leaned in next to her. Together they studied their daughter's face—her mouth resembled Laurie's family, the rest was pure Michael—they whispered to each other, they came together as a family. Their baby girl weighed six pounds, seven ounces and she was 19 inches long. They named her Brenna Rose.

Pregnancy is supposed to be the most wonderful time, brimming with anticipation, kicking with newness and life. But as novelist Elizabeth McCracken writes in "An Exact Replica of a Figment of My Imagination," a recent memoir about the death of her first baby, "this is the happiest story in the world with the saddest ending." Stillbirth happens more often than we imagine—10 times more often than sudden infant death syndrome, or SIDS, a condition most every parent knows about and dreads. Every year some 26,000 babies die during or after the 20th week in their mothers' womb (a loss before that is considered a miscarriage) or die during birth. In at least half of all cases, doctors have no idea what went wrong. The impact is impossible to measure. Mothers, fathers, brothers, sisters, grandparents, aunts, uncles, cousins and friends—all must figure out how to absorb the vast and sudden sadness, to grieve and, in many instances, to reconcile with a God who has shaken their faith to its core.

Decades ago, stillborn babies were whisked away from their parents to morgues; doctors and nurses pretended nothing happened, mothers were medicated with Valium, parents suffered their sorrow alone. It was in the late 1970s and early 1980s that the medical and psychological thinking about stillbirth began to evolve when researchers started studying the impact of a baby's death and parents began telling their stories. From silence and detachment came acknowledgment and

remembrance. Today nurses encourage parents to hold the babies. Molds of hands and feet are created. Locks of hair are collected. And photographs are taken. Not just the clinical snapshots that nurses have been capturing for years, but striking and sensitive portraits that have burgeoned since the formation of a group called Now I Lay Me Down to Sleep in 2005.

Volunteer photographers who belong to the group, including Anderson, take pictures of stillborn babies—and babies expected to die soon after birth—for their parents at no cost. The idea was born from the life of Maddux Haggard, who was 6 days old and on life support in Colorado when his parents, Cheryl and Mike, decided they wanted pictures of their baby and contacted Sandy Puc', a local photographer well known for her beautiful baby portraits. After that photo session four years ago, Cheryl Haggard and Puc' founded Now I Lay Me Down to Sleep, which has since grown to 7,000 photographers, most of them professionals, across the globe.

Photographing the dead may seem strange, even morbid, especially in our American culture so uncomfortable with death. Those feelings are only intensified when the dead are the newly-born or just hours or days old. "We associate giving birth with life, with the future, with the defiance of death," says Irving Leon, a psychologist at the University of Michigan Medical Center in Ann Arbor who specializes in reproductive loss. "To have that smashed, violated so powerfully, it's something people don't want to look at, both literally and metaphorically."

Postmortem photography, though, has a long and treasured past. In the 19th century, when people died at home, families spent much of their savings on expensive silver daguerreotypes depicting their loved ones after they had passed away. Now I Lay Me Down to Sleep is a modern-day incarnation of this "memento mori" photographic genre (Latin for "remember your death"). Memories facilitate grieving, says Leon, which is critical to long-term healing. Holding a baby, talking to her and photographing her—all create memories that help parents cope with a devastating loss.

Parents who are hesitant about holding their babies often change their minds toward the end of a shoot, realizing that they'll have no other chance to embrace their child. And the sessions bestow a quiet time for mothers and fathers to treasure and honor their babies without any interruption from nurses or doctors. In years past, parents didn't expect all of their children to live. Today babies are dreamed about and dwelt on, and the deep attachment that develops between parents —especially mothers—and their unborn children starts earlier than ever before. At eight weeks, a baby's heartbeat can be seen on ultrasound; parents now find out gender and assign names months before their babies are born. All this has intensified the grief reactions many women feel after they suffer not just a stillbirth, but a miscarriage too, says Leon.

Studies show that mothers benefit from bonding with their stillborn babies. Joanne Cacciatore, a researcher at Arizona State University, studied 3,000 women and found that those who had the chance to see and hold their babies had fewer symptoms of depression and anxiety. This benefit may be temporarily reversed during a subsequent pregnancy. And nobody should be pressured to hold their babies. But more than 80 percent of women who did not regretted the lost opportunity. Cacciatore, whose fourth baby, Cheyenne, died in 1994, calls this a period of "ritualization," a time for parents to honor their child and to feel some semblance of control during an emotionally chaotic time. Holding a stillborn baby allows women to connect and then separate themselves from their babies after months united in the same body. And it gives parents the chance to create positive memories, rather than live with the unknown: What did she feel like? Whose nose did she have? Was she peaceful?

Doctors, nurses and social workers who encounter stillbirth have come to know this, and their thinking about how to care for patients has evolved enormously. Elisabeth Kübler-Ross's seminal 1969 book, "On Death and Dying," exposed the impact of loss and the long and intricate process of grieving. Parents of stillborn babies started talking about what it felt like to lose their children; physicians and psychologists began challenging the hush-hush approach. Michele Schwarzmann, director of maternal child health at Mercy Medical Center in Baltimore, can't forget the first stillbirth she witnessed in the 1970s. " 'Michele, you can't cry, you have to be strong'," she remembers her supervisor telling her. A decade later, Schwarzmann says she was finally allowed to express her sadness: "I sobbed for every baby I never got to cry over."

Stillbirth is in many ways a medical mystery. Despite its gravity, it has been largely overlooked. Even today, researchers don't know the true incidence of stillbirth nor do they fully understand why it happens. In some cases, doctors can identify a cause—a prenatal infection that travels from mother to baby, a genetic anomaly, a placental abruption, an umbilical-cord accident. But in at

least half of all cases—more than 10,000 a year—they can't pinpoint the problem. "Over the last 50 years, we've put a lot of research and clinical energy into preventing sick babies from dying after birth and a lot of energy into premature babies," says Dr. Robert Silver, an Ob-Gyn at the University of Utah School of Medicine. "We haven't put the same energy into stillbirth."

All that became clear at a workshop held by the National Institute of Child Health and Human Development (NICHD) in 2001. "We realized that we needed to do a study that was larger than anything undertaken in this country," says Dr. Catherine Spong, chief of NICHD's Pregnancy & Perinatology Branch. With NICHD funding, Silver and other researchers began collecting data on more than 500 stillbirths at five sites around the country. Now they're analyzing the information. The hope is that the new information will help researchers sort out how to reduce a woman's risk for stillbirth, identify problems in advance so that couples can prepare for a loss and, ultimately, save lives.

No matter how good the science gets, however, some number of babies will continue to die and parents will continue to grapple with the shock. Not long after joining Now I Lay Me Down to Sleep in 2007, photographer Jennifer Clark got a call from a hospital near Salt Lake City. The parents, Melina and Tom Anderson (unrelated to Marirosa Anderson), had three other children—a son, Jack, then 6, and two daughters, Amy, 4, and Mae, 2—and they were excited about welcoming their fourth, another girl, named Ella. At 39 weeks, however, the baby's heartbeat started dropping precipitously and Melina had to have an emergency C-section under general anesthesia. Melina remembers waking up and hearing her doctor say, "I'm so sorry, she didn't make it." The umbilical cord, wrapped tightly four times around the baby's neck and once around her arm, had cut off her blood supply. Melina "made the kind of sound you never want to hear," says Tom. "Not really a scream, but almost. A moan." And then she started to cry.

Clark was nervous. "I remember standing outside the door before I went in and I prayed," she says. "I wanted to make photos they would cherish." She also remembers a sense of peacefulness as she worked. It was a sacred time, and she was buoyed by the gratitude shown by Tom and Melina. But she was also profoundly saddened. At times, she had to put her camera down to wipe the tears from her eyes as she captured the images. Amy touching Ella's fingers. Mae, in her pink-and-yellow kitty-cat pajamas, a pacifier in her mouth, peering at the baby's face. Jack, who had accompanied his mother to every doctor's appointment. Tom and Melina looking at their daughter's face.

The next day Tom carried his daughter to a hospital exit next to the ER, far from the place where new mothers are wheeled out with newborns in their arms and smiles on their faces. A mortuary attendant strapped Ella onto a gurney and drove off in a big white van. In the weeks after Ella's burial, Melina suffered both physical and emotional pain. Her breasts had to be bandaged to stop the milk from coming in—a poignant reminder of what should have been. Pregnant women brought tears to her eyes; new babies made her think about the milestones she was missing with Ella. But tangled up in the sadness was the conviction that Ella needed to be remembered. Clark's images allowed Melina to savor a face that was fading from her memory. And the Andersons' tributes to their daughter now assure her a constant place in the family. On the first anniversary of Ella's birth, the Anderson family held hands at her grave and sang "Happy Birthday." Then they went out for dinner and shared a birthday cake.

When Clark first heard about Now I Lay Me Down to Sleep, she felt a powerful urge to participate, but she never imagined that she'd find herself on the other side of the lens. Last year Clark was overjoyed to discover she was pregnant. Her first three babies were healthy. This time, Clark's fetus was diagnosed with trisomy 18, a genetic disorder so catastrophic that less than 10 percent of babies make it to their first birthday. The Clarks, devout Mormons, never considered terminating the pregnancy. Above all else, they prayed that their little boy would be born alive and that he would live for some time—hours, days, weeks, maybe even long enough to go home.

Connor Clark was born on Dec. 22 at 5:54 p.m. For just over an hour, his parents, his siblings —Ellison, 10, Sydney, 7, and Hayden, 2—his grandparents and some of his many aunts and uncles held him, talked to him, rejoiced in him. Two photographers from Now I Lay Me Down to Sleep shot the sobbing and the smiles, the kisses, the hugs, the gentle cradling and the embrace between Jennifer and her husband, Spencer, when they realized they were losing their son. At 7:20 p.m., Connor took his last breath. At his funeral service two days after Christmas, the Clarks showed a powerful video compilation of black-and-white photographs set to music for their family and friends. A life deeply mourned, a life lovingly celebrated.

To learn more about Now I Lay Me Down to Sleep, visit their website . For additional information on stillbirth and to find support resources for families, visit the M.I.S.S. Foundation and First Candle. LINKwww.firstcandle.org And for more on research conducted by the National Institute of Child Health and Development, you can visit their site .

With Andy Murr

URL: http://www.newsweek.com/id/182572

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Department of Health and Social Services
Alaska Bureau of Vital Statistics

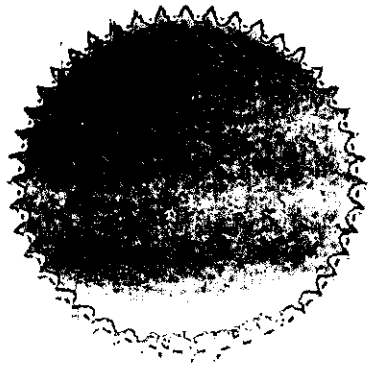
Certificate of Birth Resulting in Stillbirth

According to Alaska State Records

Bump Nevels Was Delivered on August 1, 2002

In Cicely, Alaska

To Carolyn Anne Puckett and John Earl Nevels



Date Issued: 11/29/2005

FD Number: 2002999999

This certificate is not proof of live birth

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 002**
() Publish Date:

Identifier (file name): **HB002-DHSS-BVS-02-18-09**
Dept. Affected: Health & Social Services
Title: Birth Certificate for Stillbirth
RDU: Public Health
Component: Bureau of Vital Statistics
Sponsor: Gatto
Requester: House HSS
Component Number: 961

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

HB002 would require the Bureau of Vital Statistics (BVS) to issue, upon the request of a parent, a "certificate of birth resulting in a stillbirth" for an intrauterine fetal death occuring after 20 complete gestational weeks. These certificates would cost $20 each. Approximately 50 stillbirths are recorded in Alaska annually. Based on response in other states passing similar legislation, it is expected most families would request such a certificate. The division has adequate budget authorization to receive these additional receipts, resulting in a zero fiscal note - even though there will be a cost to the requestor similar to other certificates. (Continued on P. 2)

Prepared by: Beverly Wooley, Director
Phone 269-8126
Division: Public Health
Date/Time 1/23/09 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner
Date 2/18/2009
DHSS Finance & Management Services

FISCAL NOTE

STATE OF ALASKA

2009 LEGISLATIVE SESSION

BILL NO. HB002

ANALYSIS CONTINUATION

Minimal programming and administrative time will be neccessary to issue such certificates - amounting to an estimated $1,000 annually. Assuming 50 certificates are issued each year at $20 each, costs will be covered by the fee. The BVS budget is funded primarily by receipt supported services; all certificates issued - birth, death, fetal death - require a $20 fee.

HB

4

Alaska State Legislature

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State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
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SPONSOR STATEMENT

HB 4

An Act relating to false caller identification

Warning: The name and number you see and trust on your caller ID system may be false. Both private individuals and commercial entities can now cause false caller identification to be displayed on your caller identification screen.

False caller identification is more than pranks, or annoyance. The power to create serious mischief and facilitate fraud with Caller ID spoofing technology is almost unlimited, and it can be potentially dangerous.

For example, some financial institutions use Caller ID to authenticate telephone requests for personal account information. With a few personal tidbits and your spoofed number, an impostor could access your bank or credit card account. Scam artists who appear to be phoning from a reputable agency can defraud their victims with ease. There's also potential for hoaxing emergency calls with false Caller ID to law enforcement or the fire departments. Predators may use Caller ID spoofing to help them commit crimes against women and children.

HB 4 doesn't get into how the spoofing gets to the display on your phone caller ID. Anyone can spoof telephone caller identification systems. In fact an entire telephone spoofing industry has emerged, and is growing daily. For the price of a ten-dollar calling card one can change what someone sees on their Caller ID display and even change their voice.

HB 4 will make it class A misdemeanor for any person, with the intent to defraud, to make a call or engage in other conduct that results in display of false caller information on a recipient's phone or caller ID System.

Alaska should take whatever action possible within its jurisdiction to stem the abuse of "Caller ID Spoofing." I respectfully request your support for HB 4.

Revised January 30, 2009

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB004-LAW-CRIM-1-30-09
() Publish Date:

Identifier (file name):
Title: An Act relating to false caller identification
Sponsor: Representative Gardner
Requester: Judiciary

Dept. Affected: LAW
RDU: CRIMINAL
Component: Criminal Justice Litigation
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	***		***	***	***	***	***
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	***		***	***	***	***	***

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The bill would create a new statute making it a class A misdemeanor for a person to knowingly insert false information into a caller identification system.

The Department of Law does not anticipate a significant fiscal impact from passage of this legislation but acknowledges it is difficult to predict with any certainty the extent to which such violations may occur or the cost of prosecuting them.

Prepared by: Robert Meiners, Deputy Director — Phone 907-465-5427
Division: Administrative Services Division — Date/Time 1/30/09 4:00 PM
Approved by: Talis Colberg, Attorney General — Date 1/30/2009
Department of Law

(Revised 9/10/2008 OMB)

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Technology facilitates Caller ID spoofing

AP Associated Press

Rep. Tim Murphy, R-Penn., picks up his telephone handset in his office in the Cannon House Office building on Capital Hill, Wednesday, March 1, 2006 in Washington. Last fall, Murphy's office started getting phone calls from constituents who complained about receiving recorded phone messages that bad-mouthed Murphy.The constituents were especially upset that the messages appeared to come from the congressman's own office. At least, that's what Caller ID said. In the last few years, Caller ID spoofing has become much easier. Millions of people have Internet telephone equipment that can be set to make any number appear on a Caller ID system. (AP Photo/Pablo Martinez Monsivais)

By Peter Svensson, AP Technology Writer | March 1, 2006

NEW YORK --Last fall, U.S. Rep. Tim Murphy's office started getting phone calls from constituents who complained about receiving recorded phone messages that bad-mouthed Murphy.

The constituents were especially upset that the messages appeared to come from the congressman's own office. At least, that's what Caller ID said.

"People thought we were making the calls," Murphy said.

The calls, which the Pennsylvania Republican estimated in the thousands, were apparently placed with fake Caller ID. That has been possible for a long time, but it generally required special hardware and technical savvy.

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In the last few years, Caller ID spoofing has become much easier. Millions of people have Internet telephone equipment that can be set

to make any number appear on a Caller ID system. And several Web sites have sprung up to provide Caller ID spoofing services, eliminating the need for any special hardware.

For instance, Spoofcard.com sells a virtual "calling card" for $10 that provides 60 minutes of talk time. The user dials a toll-free number, then keys in the destination number and the Caller ID number to display. The service also provides optional voice scrambling, to make the caller sound like someone of the opposite sex.

Caller ID spoofing appears to be legal, though many of its uses are not. The Federal Communications Commission has never investigated the issue, spokeswoman Rosemary Kimball said.

Lance James, chief scientist at security company Secure Science Corp., said Caller ID spoofing Web sites are used by people who buy stolen credit card numbers. They will call a service such as Western Union, setting Caller ID to appear to originate from the card holder's home, and use the credit card number to order cash transfers that they then pick up.

Exposing a similar vulnerability, Caller ID is used by credit-card companies to authenticate newly issued cards. The recipients are generally asked to call from their home phones to activate their cards. Some card companies maintain, however, that they use additional means to confirm new cards. And caller ID spoofing may not work for calls to 1-800 numbers, where the hardware can identify calls using a separate technology.

Two spoofing services contacted by The Associated Press, Spoofcard.com and Telespoof.com, did not return messages seeking comment about their business. However, some of the five or so Web sites in the business don't appear to be completely unscrupulous: James said he had been hired by a few of them, which he would not name, to help stop the Western Union scam.

Also, both Spoofcard.com and SpoofTel.com say they will surrender call logs to authorities in response to subpoenas. Spoofcard.com's site says the service is "intended for entertainment purposes only."

Telephone companies can trace calls to their origin regardless of the Caller ID information they carry, but the process is laborious, especially since a call may be carried by several companies before reaching its destination. The fragmented nature of the telephone network also makes it technically difficult for the carriers to prevent spoofing.

At Verizon Communications Inc., security manager John Lewandowski said the company often gets complaints about fake Caller ID after a telemarketer has spoofed his number to cover his tracks.

In a typical case, someone will be jarred in the middle of the night by repeated telemarketing calls. He checks Caller ID, calls the number -- which is false -- and starts "cussing out" the person at the other end of the line, Lewandowski said.

"And that poor guy was asleep. It wasn't him at all," Lewandowski said. The company investigates and tracks down the callers, he added.

Apart from fraud and telemarketing, Caller ID spoofing can be used

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for pranks and spying.

In one case, SWAT teams surrounded a building in New Brunswick, N.J., last year after police received a call from a woman who said she was being held hostage in an apartment. Caller ID was spoofed to appear to come from the apartment.

It's also easy to break into a cell phone voice mailbox using spoofing, because many systems are set to automatically grant entry to calls from the owner of the account. Stopping that requires setting a PIN code or password for the mailbox.

In a slightly more complicated fashion, spoofing was part of the technique used by a hacker who broke into Paris Hilton's cell-phone voicemail in 2004, according to security consultant Kevin Mitnick, who said he was citing hacking sources. The hacker apparently called the celebrity socialite posing as a technical-support person from the carrier, and lured the password from her.

That is known as a "pretext" call -- someone poses on the phone as a customer, employee or even a regulator to obtain personal information from companies and individuals. And indeed, while Spoofcard.com contends that its service is for "entertainment purposes," it also notes that "Private Investigators will find Caller ID spoofing valuable for pretext calls."

Robert Douglas, a privacy consultant in Colorado, testified before Congress last month that pretexters trade tips on finding the best spoofing services.

Pretexters generally claim their practices are legal, as long as they don't involve financial information. A bill introduced in the Senate would make it illegal to pose as someone else to obtain phone records, or to buy records from phone company insiders.

Douglas would like legislation against Caller ID spoofing as well, but there appears to be little interest in Washington.

"If I'm paying extra for Caller ID, which I do ... there should be some ability on my part to believe what I'm getting," Douglas said.

In Alaska, State Representative Bob Lynn has introduced a bill to make spoofing a misdemeanor. "False caller identification is more serious than pranks, or the annoyance of intrusive telemarketing," Lynn writes. "It facilitates fraud, and can be potentially deadly."

However, it is unclear what effect the bill would have. As Lynn notes, Caller ID is a federal issue. ■

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Prank Calls Spook 'Other' Clintons

NORTH LITTLE ROCK, Ark. - Prank calls are nothing new for the famously named Bill Clinton of North Little Rock, but never as scary - or as high-tech - as this one.

Clinton, who is not related to the former president and Arkansas governor of the same name, was the victim of a dangerous p month when another person used a computer to hack into a caller-ID system and hijack Clinton's home number.

After hacking into a computer system in a process called "caller-ID spoofing," the as-yet unidentified caller made several calls home Jan. 29, telling Clinton's son he was going to disturb all the neighbors with calls that would appear to come from Clinton

The prankster then called police to make it look like it was Clinton calling, said he had a gun to someone's head and hung up. armed officers to besiege Clinton's home.

Clinton had been sleeping, but his son had received the crank calls, including one saying the police were on the way. Clinton went outside to meet the police, who discovered that several calls were recorded on Clinton's own caller-ID system as having come from his own phone. That's when they realized somebody had hacked into the computer system and impersonated Clinton's telephone identification code.

Computer experts say that few people know about "spoofing" programs, which are available on the Internet and were developed so that telemarketers can bypass caller-ID systems. Coskun Bayrak of the computer science department at the University of Arkansas at Little Rock said wider knowledge of "spoofing" could encourage copycats, but could also pressure the software industry to develop improvements to cover the loopholes.

Clinton said he's received bomb threats and harassing telephone calls before, "presumably because his name is William Clinton and he lives in the Little Rock area," the police report said.

Police haven't found the culprit, but reviewed Clinton's phone records and found one suspicious call from Winterville, N.C., before the series of calls disguised as coming from Clinton's phone. The owner of t North Carolina told Winterville police that she too had been victimized by the crank caller.

The spoofer called again later the night of Jan. 29, after the police left, to see if the police had shown up. When Clinton menti an inkling the caller was from Winterville, the line went dead and the person hasn't called back, Clinton said.

Everything Jersey

'Spoofing' lets pranksters dial M for mayhem

Monday, April 11, 2005

BY KEVIN COUGHLIN
Star-Ledger Staff

When a hoax led sharpshooting SWAT teams to shut down a New Brunswick neighborhood last month, the world learned about a dangerous new game called "bombing."

Prank phone calling, once a summer pastime of slap-happy kids, had morphed into a blood sport.

While details still are unfolding on how the New Brunswick emergency call and others like it were faked, experts on privacy and security warn that Internet technology and legal loopholes are handing hoaxsters a powerful weapon to dupe everyone: caller ID "spoofing."

Over the past few months, companies such as Camophone, CovertCall, Telespoof and SpoofTel have sprouted online with offers to place calls that display any callback number you want, for just pennies a minute.

"Be Anyone, Anywhere, Anytime," proclaims the Web site of PI Phone.

PI Phone and rivals Star38 and U.S.Tracers purport to serve only private investigators or law enforcement personnel, who presumably have good reasons for tricking outlaws to answer the phone. But other services welcome all comers; for an extra fee some even will record the results.

"Wanna have some fun? Appear to be someone else, and set up the Ultimate Prank Call," says the Web site for CovertCall, which sponsors a $250 contest for the best prank.

CovertCall suggests fooling debtors into accepting calls, spoofing your business line to keep your personal number private, and exploiting cellular plans that offer free incoming minutes. "Want to chat with sexy singles? Get endless free trials by calling in with random caller IDs!"

On the Web, CovertCall users even debate methods -- and ethics -- of spoofing a spouse's number to access his or her cellular messages.

The Federal Communications Commission and Federal Trade Commission say they have taken no enforcement actions against these services. But others predict it won't be long before an emergency hoax, identity theft or duped domestic violence victim triggers calls for a crackdown.

"The potential for abuse with this technology is huge," says Jordana Beebe of the nonprofit Privacy Rights Clearinghouse, a San Diego group that advocates for consumer privacy protections.

Adds Kevin Mitnick, co-author of "The Art of Intrusion" and a reformed hacker himself: "You can't trust caller ID. There is no assurance that it is coming from the entity that's displaying on the device."

To prove his point, Mitnick used Vonage, the Edison-based Internet phone company, to call a reporter's cell phone. The call appeared to come from the reporter's office number. The ruse took Mitnick only a few seconds.

Many Internet telephone services let users update their accounts with any callback numbers or emergency addresses they choose. This can be a lifesaver. If you're vacationing and making calls over the Internet, you probably want your service provider to direct police to your vacation spot if you punch 911 in an emergency.

(Spoofing 911 calls over conventional phone networks is much harder. They deploy an embedded billing technology, called SS-7, which automatically links a 911 call with the physical address of the telephone. The New Brunswick hoax appears to have been phoned to a regular police line, not to 911.)

Mitnick, who spent almost five years in jail for hacking into companies such as Motorola and Sun Microsystems, says some financial institutions use caller ID to authenticate telephone requests for personal account information. With a few personal tidbits and your spoofed number, he says, an impostor could access your bank or credit card account.

SPOOF WITH EASEActually, spoofing phone calls is nearly as old as caller ID, a service that debuted in New Jersey -- despite protests from privacy advocates -- in the late 1980s. Back then, spoofing required some technical savvy. Now, anyone with a credit card and a phone or online computer can play.

Typically, after setting up an account with a spoofing service, you call its toll-free line or log onto the Web site. Enter a number to call, and the callback number to display, and the service does the rest.

The mere act of faking someone's phone number is not illegal, says Erin McGee of the CTIA, a wireless industry trade association.

Jim Reynolds of Star38 says his company, launched last fall in Delaware by former law enforcement agents for current agents, was the first commercial spoofing service. Other services are copycats and lawbreakers, he says.

"I guarantee those people will be prosecuted. It's only a matter of time," says Reynolds.

Star38 is meant to help the good guys hunt the bad guys; rivals "give people a license to harass people and break the law," he says.

Because Star38's calls are placed entirely over the Internet, they are exempt from FCC regulations, Reynolds contends. Competitors can't make the same claim, he insists.

But most Internet calls hop onto regular phone networks at some point, says Mark Wigfield of the FCC. "We would have to look at the facts" of any case, he says.

Federal Trade Commission rules bar telemarketers from spoofing caller ID to sidestep the national "Do Not Call" registry established in 2003. Some business uses of spoofing also could violate FTC prohibitions against unfair or deceptive trade practices, says spokesman Brad Winter.

Banning all spoofing would be a mistake, says Vonage chief technical officer Louis Mamakos. That might bar legitimate uses for altering callback numbers -- such as directing customers to general help numbers instead of to specific representatives.

In fact, spoofing services actually may help preserve personal privacy, says Jonathan Bick, a

Rutgers University law professor and author of "101 Things You Need to Know About Internet Law." These services restore a right to anonymous speech that caller ID had stripped, Bick says.

"We just have evolving technologies," he says. "And as technologies evolve, so do countermeasures."

THE SPOOFERSThe sudden rise of spoofing services can be tied, variously, to boredom, the National Hockey League, and a struggling college student.

SpoofTel was born in Vancouver two months ago when a computer security specialist named Ryan Purita got bored.

"This is why having no hockey on TV is bad," jokes Purita, referring to the canceled NHL season.

Purita thought the Star38 service sounded cool but was miffed it only served cops. So he cooked up SpoofTel and says it now has about 800 active users who average between 2,000 and 5,000 minutes a day at a dime per minute, Canadian.

He promises to deal swiftly with any reported abuses but defends caller ID spoofing.

"We're offering a service. If someone is using it illegitimately, what can we do? That's the Internet," Purita says.

"They still sell crowbars, don't they? They can be used for many different things. I don't see anybody being stopped from selling guns. I would guess more people are killed by guns than from spoofing caller ID," he says.

Ben Rosenthal also entered the caller ID spoofing business in January, with his PI Phone service for private investigators.

"I saw an opportunity and profit there, and a way to do it honorably and legally, and jumped on it," says Rosenthal, based in Westchester County.

He says it's feasible thanks to free software called Asterisk. It turns a PC with a fast Internet connection into a full-fledged telephone system, with features that once cost thousands of dollars. "The barrier to entry became very low," Rosenthal says.

Asterisk was hatched in 1999 by Mark Spencer, an Auburn University computer engineering student. He also ran a tech support business for people using the free, "open source" Linux computer operating system.

"I needed a phone system. I couldn't afford to buy one, so I decided to make one," recounts Spencer, who now sells Asterisk-based services and hardware at Digium Inc. in Alabama.

Although Spencer's handiwork has spawned outfits that now sell deceptions by the minute, he insists the big phone companies could curb spoofing if they wanted. Not that he's a fan of spoofers, mind you.

"I honestly don't approve of people doing this," says Spencer, 27, who sees the world as divided between those who use technology for good and those who use it for evil. "I would rather be in that first camp, trying to do something to help people."

Kevin Coughlin covers technology. He can be reached at kcoughlin@starledger.com or (973) 392-1763.

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REUTERS
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Scam Artists Dial for Dollars on Internet Phones

Sun Mar 20, 2005 09:40 AM ET

By Andy Sullivan

WASHINGTON (Reuters) - Internet phone services have drawn millions of users looking for rock-bottom rates. Now they're also attracting identity thieves looking to turn stolen credit cards into cash.

Some Internet phone services allow scam artists to make it appear that they are calling from another phone number -- a useful trick that enables them to drain credit accounts and pose as banks or other trusted authorities, online fraud experts say.

"It's like you've handed people an entire phone network," said Lance James, who as chief technology officer of Secure Science Corp. sees such scams on a daily basis.

The emerging scams underline the lower level of security protecting Voice Over Internet Protocol, or VOIP, the Internet-calling standard that has upended the telecommunications industry over the past several years.

Traditional phone networks operate over dedicated equipment that is difficult for outsiders to penetrate. Because VOIP calls travel over the Internet, they cost much less but are vulnerable to the same security problems that plague e-mail and the Web.

Internet worms that snarl online networks can render VOIP lines unusable, and experts at AT&T say VOIP conversations can be monitored or altered by outsiders.

Federal Trade Commission Chairman Deborah Platt Majoras recently warned that unscrupulous telemarketers could use VOIP to blast huge numbers of voice messages to consumers, a technique known as SPIT, for "spam over Internet telephony."

All of these threats remain largely in the realm of theory. Caller ID spoofing, on the other hand, has emerged over the past six months as a useful tool for identity thieves and other scam artists, according to fraud experts.

PRESIDENT BUSH ON THE LINE

Any reporter would scramble for a ringing phone that reads "White House media line" on its caller ID display.

But it's not the Bush administration on the line -- it's security instructor Ralph Echemendia, calling from a mobile phone on a remote Georgia highway.

"You can see how this sort of thing could be used in a very malicious way," said Echemendia, a security instructor at the Intense School, a technology training company.

Caller ID spoofing is not prohibited by law, but the Federal Communications Commission requires telemarketers to identify themselves accurately, a spokeswoman said.

Echemendia built his own system to spoof calls, but several free or low-cost services allow even technical novices to falsify caller ID information as well.

Debt collectors and private investigators use Camophone.com's 5-cents-per-call service to trick people into answering the

phone, according to messages posted on a discussion board.

Traveling salesmen say the service comes in handy when they want clients to return calls to the main office, rather than their motel room.

James said criminal uses of caller-ID spoofing have become common over the last six months.

Wire-transfer services like Western Union (FDC.N: Quote, Profile, Research) require customers to call from their home phone when they want to transfer money in an effort to deter fraud -- a barrier easily sidestepped by any identity thief using a caller-ID spoofing service.

Fraud rings can now transfer money directly out of stolen credit-card accounts, rather than buying merchandise and reselling it, he said.

Western Union spokeswoman Danielle Periera said the company has no other way to verify that transfer requests are valid.

"We try hard to stay one step ahead of them and recognize that scam artists are sophisticated and often change their schemes," she said.

Criminals can use caller-ID spoofing to listen to other people's voice mail, James said, especially when those accounts are not protected by passwords.

They also have begun to use the technology to make it appear that they are calling from a bank or other financial institution, said Dave Jevans, who chairs the Anti-Phishing Working Group, a banking-industry task force.

That helps them convince consumers to divulge account numbers, passwords and other sensitive information in a scam that echoes the "phishing" e-mails that have become common, he said.

VOIP industry pioneer Jeff Pulver, whose Free World Dialup service can be used to spoof calls, said he couldn't prevent abuse of his system.

The problem will likely recede as companies like VeriSign Inc. (VRSN.O: Quote, Profile, Research) and NeuStar Inc. develop ways to verify online identities, he said: "We're not there yet, but we're going to get there."

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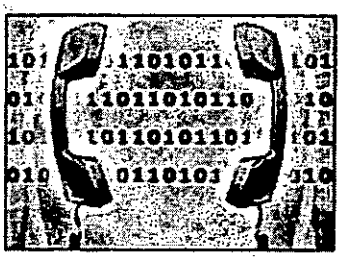
Caller-ID Spoofing: 'Appallingly Bad Idea'



By Erika Morphy
September 2, 2004 1:26PM

A new software system that allows users to fool telephone caller-I opens the door to a variety of abuses. "What an appallingly bad id security firm Sophos.

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Reports tell you what has happened in the past. Forecasts tell you what might happen in you what is happening right now. Learn how to gain insight into your current operations. and Agility: Event Stream Processing for Event-Driven Business"

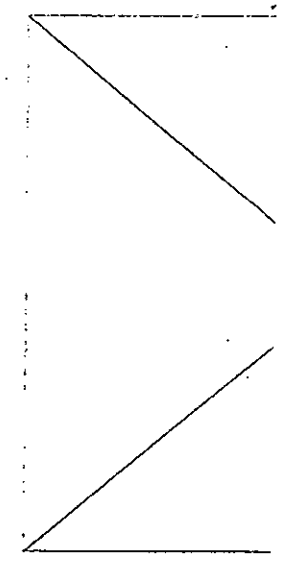
>> A startup company has developed a software system that allows users to spoof a caller-ID number in order to trick the telephone-call recipient into answering the phone.

Developed by Star38, the service will be marketed solely to collection agencies, private investigators and the police, according to statements made by the company.

The system itself is said to be easy to use, with the user typing in the recipient's number and the number he or she would like to appear on the caller ID.

Appallingly Bad

Critics of the system -- and there are many, even outside the usual privacy/consumer-advocacy brigade -- find the technology frightening. "What an appallingly bad idea," says Graham Cluley, managing consultant for security and antivirus firm Sophos. "It reminds me of the hacker-driven spam and phishing scams that have taken over the Internet," he told NewsFactor.



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In fact, it is a much worse form of deception than Internet fraud, says John Morris, staff counsel for the Center for Democracy & Technology, a Washington-based public-policy organization with a focus on technology.

Reasonable Expectation

"On the Internet, most people understand that the identity of someone who is sending an e-mail may easily be spoofed," Morris told NewsFactor. "But the phone, historically, has had a different set of expectations or assumptions. Most people that have Caller ID assume the number listed is accurate."

In news accounts, Star38 has emphasized its intent to limit the technology to the police, collection agencies and private investigators.

However, "there really isn't anything that will prevent this kind of technology from being used by other firms, such as telemarketers, now that it has been developed," Morris says, adding, "in this age of identity theft, we are skeptical that spoofing other phone numbers on Caller ID is a desirable development."

One scenario, Morris suggests, might be someone purporting to call from a distant relative's house, claiming the person had an accident.

Potential for Abuse

But even assuming that Star38 keeps the technology in the hands of collection agencies, private investigators and the police, there still would be cause for worry.

While the police may well have a legitimate need for the technology in criminal investigations, the potential for abuse by collection agencies and PIs is huge.

For example, there have been cases of stalkers retaining private investigators to find victims who went into hiding.

As for collection agencies, the potential for abuse is even wider. "We don't understand what purpose a legitimate collections agency would have in hiding its identity," Morris says.

The typical example, of course, is an agency that uses the system to get a phone-shy debtor to answer the call and coax him or her into paying the debt.

Collection agencies, though, have not entirely shed their less-than-upstanding practices since the passage of the Fair Debt Collection Practices Act. Recently, one firm was fined for continually contacting and harassing a debtor's neighbors -- a

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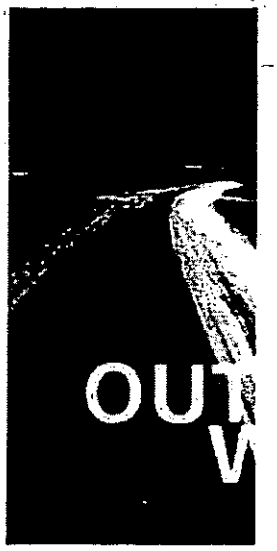

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4. Pac-West, VeriSign Tea
5. Avaya, Juniper Partner

practice clearly illegal under FDCP.

Over the Line

More often, though, when these agencies go over the line, it is a little more discreet.

Recently, a legal journal reported that a court found a collection agency had made false statements as to the time limit of a debt-discount offer; reportedly, the firm told the debtor she had 30 days to make a payment if she wanted to get a percentage taken off her debt. In truth there was no time limit of 30 days -- a deception prohibited by the law.

Which brings us back to Star38's latest contribution to the Internet age. In his first take on the system, Morris says he does not believe the system itself violates the tenets of FDCP. When it gets in the hands of the agencies, though, that may be a different story.

"I do believe we will see some deceptive practices on the part of the agencies that will violate the spirit of FDCP," he says.

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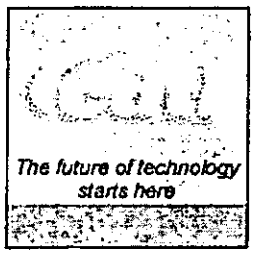

March 2005 Archive

March 08, 2005

"Caller ID spoofing" an emerging VoIP-security threat

Real Audio | How to Listen

If you have caller ID, you might want to think twice about trusting the information displayed on your telephone. As more people place phone calls over the Internet instead of the wired telephone network, identifying the person on the other end of the line is getting more difficult.

Starting late last summer, people all over the U.S. and Canada got phone calls from a Twin Cities phone number -- a recorded voice offering a deal on wireless phone services. When they called the number to complain, they were patched through to a small Minneapolis company that definitely was not selling Nokias or Blackberries. It was a company that provides janitorial services to area businesses.

Building Resources Corporation office manager Rhiannon Fisk fielded the complaints.

"Around Christmastime, the call volume started to pick up, and we got dozens and dozens every day," she said. " It got to the point where we just had to start ignoring them because it was affecting how we did business."

Understandably, the callers complained angrily about the unwanted telemarketing calls.

"I'll pick up the phone, they immediately say you called my house and I want you to stop calling, and take me off the list, and they usually just hang up," Fisk said.

Fisk sought answers from the company's telephone provider, Integra, but received none. She then complained to the Minnesota Attorney General. The AG's office told fisk that, while nothing could be done, it knew the likely source of the problem: caller ID spoofing. The shady telemarketers, wanting to avoid detection, made it look like it was someone else. It's a mystery why they chose the Minneapolis company.

Scammers have long known how to fake the source of e-mail. Since Voice over IP, or VOIP, sends voices as packets of data, it was perhaps predictable that telephone customers would start seeing a

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problem like e-mail spoofing.

"If you pick up you standard phone today, and you have caller ID, you can see which number is actually calling you, and you have a very high level of assurance that it really is that telephone number," said Stuart McIrvine, security researcher at IBM. Now, when you start to get into Voice over IP, it's very easy for someone to fake that number, so you think the call is coming from somewhere else."

Consumer advocacy groups are just beginning to field complaints about the problem. Jordana Beebe with the Privacy Rights Clearinghouse says she's not sure how many people are being burned by caller ID spofing, but calls it a deceptive practice that should be stopped.

"Caller ID is there so that you know who is calling and you can make a determination about whether you want to take that call or not," she said. "And if for instance that technology is being abused so that you are duped into taking a call that otherwise you wouldn't take, we feel that consumers shouldn't be in that type of situation."

You don't have to be a skilled, devious hacker to trick called ID displays. In the past year, about a half dozen services have cropped up that use VoIP technology to sell caller ID spoofing, at five to ten cents a minute, to consumers. They go by names like "Telespoof," and "Camophone." They're marketed to people who want to hide their true identities, like bill collectors and private investigators. Only one caller ID spoofing service, responded to inquiries from MPR, but the owner wouldn't reveal his name, saying only that he believes his service is ethical and lawful.

Beebe of the Privacy Rights Clearinghouse says new regulations and laws are needed to fight caller ID spoofing. But VoIP is largely unregulated. A spokeswoman at the agency that would most likely have jurisdiction, the Federal Communications Commission, did not respond to numerous requests for comment.

In the meantime, caller ID spoofing could get worse as more consumers and businesses switch to Internet telephone calls.

"What we're going to see is more people devote more time and energy into breaking it, because it's going to become more popular," said David Endler of the Voice Over IP Security Alliance.

Back at the janitorial services firm, office manager Rhiannon Fisk says that mercifully, her phone stopped ringing off the hook about a month ago. The calls ended as mysteriously as they appeared.

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LEGISLATIVE RESEARCH REPORT

MARCH 10, 2005

REPORT NUMBER 05.220

LEGISLATION IN OTHER STATES: CALLER ID FALSIFICATION, OR "SPOOFING"

PREPARED FOR REPRESENTATIVE BOB LYNN

BY CHUCK BURNHAM, LEGISLATIVE ANALYST

You asked about caller ID falsification, or "spoofing." Specifically, you asked if any states have considered legislation that would make illegal "spoofing"—that is, using electronic means to cause caller ID systems to display false information. Further, you asked how a law making this practice illegal in Alaska might be crafted.

In mid-2004, a flurry of media interest surrounding caller ID systems was generated when hackers discovered that the systems could be manipulated, through fairly simple means, to display incorrect information on a receiving party's caller ID display. Concern over the systems' vulnerability intensified later in the year when a company announced plans to offer a commercial product that would enable purchasers to spoof caller ID systems at will. Although the vendor eventually opted to offer the product only to law enforcement agencies, which can use the tool as an incognito means to contact and locate wanted individuals, privacy advocates and consumer groups voiced concern that the misuse of such technology could be instrumental in identity theft schemes and other inappropriate or illegal actions.

Our research identified only one state, New York, that has thus far considered legislation specifically related to caller ID spoofing.[1] We include, as Attachment A, copies of two bills currently under consideration in New York.

Although legislation has not yet been widely considered specifically with regard to spoofing Caller ID systems, under certain circumstances such chicanery may be illegal in a number of states under laws intended to address other issues. In 2002-2003, for example, a number of states enacted legislation creating "do not call lists." Generally, these laws require telemarketers to remove from their databases the telephone numbers of people appearing on the list, thereby

[1] Our research included Lexis database searches of the current laws of the fifty states and of all state legislation introduced in the years 2003-2005 using the terms "caller ID" and "caller identification." There may be states with laws of similar practical application, but worded such that our Lexis queries did not identify them.

907-465-3991
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Alaska Legislature
Legislative Research Services

State Capitol
Juneau, AK 99801

allowing consumers to "opt out" of receiving soliciting phone calls. Some such laws included other restrictions on the business practices of telemarketers with regard to caller ID systems. Michigan, for instance, passed Act 612 (2002), which included the following section:

> A telephone solicitor shall not intentionally block or otherwise interfere with the caller ID function on the telephone of a residential telephone subscriber to whom a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone of the residential telephone subscriber.

The Michigan law defines "telephone solicitation" as using "any voice communication over a telephone for the purpose of encouraging the recipient of the call to purchase, rent, or invest in goods or services during that telephone call . . ." It is unclear, therefore, to what degree spoofing caller ID systems for purposes other than solicitation may be covered by this law. We include, as Attachment B, a copy of Michigan Public Act 612 (2002).

We are unable to identify a model law as a basis for drafting such legislation in Alaska perhaps because no direct precedent yet exists for making illegal the falsification of caller ID systems. You may want to contact Legal Services for more information on this matter.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

Attachment A

New York Assembly Bill 1603 (2005)

New York Senate Bill 1075 (2005)

2005 NY A.B. 1603

NEW YORK 228TH ANNUAL LEGISLATIVE SESSION

ASSEMBLY BILL 1603
2005-2006 REGULAR SESSIONS
JANUARY 21, 2005
INTRODUCED BY M. OF A. SWEENEY, WEISENBERG, CLARK, A. COHEN, SEDDIO, BRADLEY, HOOPER, AUBERTINE, PHEFFER -- MULTI-SPONSORED BY -- M. OF A. AUBRY, M. COHEN, COLTON, L. DIAZ, GALEF, GORDON, GRANNIS, HIKIND, JOHN, KOON, LAFAYETTE, MAGEE, MAYERSOHN, PEOPLES, PERRY, P. RIVERA, ROBINSON, SCHIMMINGER, STRINGER, TOWNS -- READ ONCE AND REFERRED TO THE COMMITTEE ON CORPORATIONS, AUTHORITIES AND COMMISSIONS

2005 Bill Text NY A.B. 1603

VERSION-DATE: January 21, 2005

SYNOPSIS: AN ACT to amend the public service law, in relation to defining and prohibiting caller ID scamming

NOTICE: [A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]

TEXT: THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public service law is amended by adding a new section 92-g to read as follows:

[A> SECTION 92-G. CALLER ID SCAMMING. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS: <A]

[A> (A) "CALLER ID EQUIPMENT" SHALL MEAN ANY DEVICE THAT IS PART OF OR ATTACHED TO A TELEPHONE RECEIVER THE PURPOSE OF WHICH IS TO DISPLAY OR OTHERWISE INDICATE THE TELEPHONE NUMBER OR OTHER IDENTIFIER OF THE PERSON OR TELEPHONE INITIATING THE CALL; <A]

[A> (B) "CALLER ID SCAM" SHALL MEAN ANY SCHEME, PLAN, SUBTERFUGE OR DEVICE INTENDED TO CAUSE THE CALLER ID EQUIPMENT USED BY ANY PERSON RECEIVING A TELEPHONE COMMUNICATION TO INDICATE THAT SUCH TELEPHONE COMMUNICATION WAS INITIATED AT A TELEPHONE NUMBER OTHER THAN THE NUMBER OF THE TELEPHONE BEING USED BY THE CALLER; AND <A]

[A> (C) "TELEPHONE COMMUNICATION" SHALL MEAN "TELECOMMUNICATION SERVICES" AS DEFINED IN PARAGRAPH (G) OF SUBDIVISION ONE OF SECTION ONE HUNDRED EIGHTY-SIX-E OF THE TAX LAW. <A]

[A> 2. IT SHALL BE UNLAWFUL FOR A PERSON INITIATING A TELEPHONE COMMUNICATION TO ENGAGE IN OR USE ANY CALLER ID SCAM WITH THE INTENT TO DEFRAUD A PERSON RECEIVING SUCH TELEPHONE COMMUNICATION. <A]

[A> 3. IT SHALL BE UNLAWFUL FOR A TELEPHONE SOLICITOR IN MAKING OR CAUSING TO BE MADE A CONSUMER TELEPHONE CALL TO USE ANY CALLER ID SCAM WITH THE INTENT TO DEFRAUD A CONSUMER RECEIVING SUCH CONSUMER TELEPHONE CALL. FOR THE PURPOSES OF THIS SUBDIVISION THE TERMS "TELEPHONE SOLICITOR" AND "CONSUMER TELEPHONE CALL" SHALL HAVE THE MEANINGS ASSIGNED TO SUCH TERMS IN SUBDIVISION ONE OF SECTION THREE HUNDRED NINETY-NINE-P OF THE GENERAL BUSINESS LAW. <A]

[A> 4. THE COMMISSION UNDER THE DIRECTION OF THE CHAIRMAN IS HEREBY EMPOWERED TO ESTABLISH AND ADOPT RULES AND REGULATIONS TO EFFECTUATE THE PROVISIONS OF THIS SECTION. <A]

[A> 5. ANY VIOLATION OF THIS SECTION IS PUNISHABLE BY A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND FIVE HUNDRED DOLLARS. <A]

Section 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however that effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.

SPONSOR: Sweeney

SUBJECT: TELEMARKETING (90%); RESIDENTIAL TELEPHONE SERVICE (90%); FRAUD & FINANCIAL CRIME (90%); LEGISLATION (78%); LEGISLATORS (78%); TAX LAW (73%); TAXES & TAXATION (73%); FINES & PENALTIES (73%); TELECOMMUNICATIONS (55%);

LOAD-DATE: January 26, 2005

2005 NY S.B. 1075

JANUARY 24, 2005
INTRODUCED BY SENS. ALESI, LITTLE, MALTESE, TRUNZO -- READ TWICE AND ORDERED PRINTED, AND WHEN PRINTED TO BE COMMITTED TO THE COMMITTEE ON CONSUMER PROTECTION

2005 Bill Text NY S.B. 1075

VERSION: Introduced

VERSION-DATE: January 24, 2005

SYNOPSIS: AN ACT to amend the general business law, in relation to preventing certain persons from fraudulently impersonating others on caller ID

NOTICE: [A> UPPERCASE TEXT WITHIN THESE SYMBOLS IS ADDED <A]

TEXT: THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general business law is amended by adding a new section 399-cc to read as follows:

[A> SECTION 399-CC. FRAUDULENT IMPERSONATION BY CALLER ID. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS: <A]

[A> A. "BOARD" SHALL MEAN THE CONSUMER PROTECTION BOARD; AND <A]

[A> B. "PERSON" MEANS ANY NATURAL PERSON, ASSOCIATION, PARTNERSHIP, FIRM, CORPORATION, LIMITED LIABILITY COMPANY AND ITS AFFILIATES OR SUBSIDIARIES OR OTHER BUSINESS ENTITY. <A]

[A> 2. IT SHALL BE UNLAWFUL FOR ANY PERSON TO FRAUDULENTLY USE STAR #38 OR ANY OTHER SUCH METHOD OR FUNCTION TO CHOOSE THE NAME AND NUMBER, OTHER THAN SUCH PERSON'S ORIGINAL NAME AND NUMBER, WHICH WOULD APPEAR ON THE CALLER ID BOX OF THE PERSON CALLED. <A]

[A> 3. ANY COMPANY THAT PROVIDES LOCAL TELEPHONE DIRECTORIES TO CUSTOMERS IN THIS STATE SHALL INFORM ITS CUSTOMERS OF THE PROVISIONS OF THIS SECTION BY MEANS OF PUBLISHING A NOTICE IN SUCH LOCAL TELEPHONE DIRECTORIES. <A]

[A> 4. THE BOARD SHALL PRESCRIBE RULES AND REGULATIONS TO ADMINISTER THIS SECTION. <A]

Section 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.

SPONSOR: Alesi

SUBJECT: IMPERSONATION (93%); CONSUMER PROTECTION (90%); LEGISLATORS (90%); LEGISLATION (78%);

LOAD-DATE: January 27, 2005

Attachment B

Michigan Public Act 612 of 2003 (introduced as House Bill 4042)

MICHIGAN 91ST LEGISLATURE -- 2002 REGULAR SESSION

HOUSE BILL 4042
(Act 612, Public Acts of 2002)

2002 Mi. ALS 612; 2002 Mi. P.A. 612; 2001 Mi. HB 4042

The People of the State of Michigan enact:

TITLE

An act to prescribe the rights and duties of parties to home solicitation sales; to regulate certain telephone solicitation; to provide for the powers and duties of certain state officers and entities; and to prescribe penalties and remedies.

Sec. 1. As used in this act:

(a) "Home solicitation sale" means a sale of goods or services of more than $ 25.00 in which the seller or a person acting for the seller engages in a personal, telephonic, or written solicitation of the sale, the solicitation is received by the buyer at a residence of the buyer, and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. Home solicitation sale does not include any of the following:

(i) A sale made pursuant to a preexisting revolving charge account.

(ii) A sale made pursuant to prior negotiations between the parties at a business establishment at a fixed location where goods or services are offered or exhibited for sale.

(iii) A sale or solicitation of insurance by an insurance agent licensed by the commissioner of insurance.

(iv) A sale made at a fixed location of a business establishment where goods or services are offered or exhibited for sale.

(v) A sale made pursuant to a printed advertisement in a publication of general circulation.

(vi) A sale of services by a real estate broker or salesperson licensed by the department of consumer and industry services.

(vii) A sale of agricultural or horticultural equipment and machinery that is demonstrated to the consumer by the vendor at the request of either or both of the parties.

(b) "Fixed location" means a place of business where the seller or an agent, servant, employee, or solicitor of that seller primarily engages in the sale of goods or services of the same kind as would be sold at the residence of a buyer.

(c) "Business day" means Monday through Friday and does not include Saturday, Sunday, or the following business holidays: New Year's day, Martin Luther King's birthday, Washington's birthday, Memorial day, Independence day, Labor day, Columbus day, Veterans' day, Thanksgiving day, and Christmas day.

(d) "Federally insured depository institution" means a state or national bank, state or federal savings bank, state or federal savings and loan association, or state or federal credit union that holds deposits insured by an agency of the United States.

(e) As used in only the definition of home solicitation sales, "goods or services" does not include any of the following:

(i) A loan, deposit account, or trust account lawfully offered or provided by a federally insured depository institution or a subsidiary or affiliate of a federally insured depository institution.

(ii) An extension of credit that is subject to any of the following acts:

(A) The mortgage brokers, lenders, and servicers licensing act, *1987 PA 173,* MCL 445.1651 to 445.1684.

(B) The secondary mortgage loan act, *1981 PA 125,* MCL 493.51 to 493.81.

(C) The regulatory loan act, *1939 PA 21,* MCL 493.1 to 493.24.

(D) The consumer financial services act, *1988 PA 161,* MCL 487.2051 to 487.2072.

(E) *1984 PA 379,* MCL 493.101 to 493.114.

(F) The motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141.

(iii) A sale of a security or interest in a security that is subject to the uniform securities act, *1964 PA 265,* MCL 451.501 to 451.818.

(f) "Written solicitation" means a postcard or other written notice delivered to a buyer's residence that requests that the buyer contact the seller or seller's agent by telephone to inquire about a good or service, unless the postcard or other written notice concerns a previous purchase or order or specifies the price of the good or service and accurately describes the good or service.

(g) "ADAD" or "automatic dialing and announcing device" means any device or system of devices that is used, whether alone or in conjunction with other equipment, for the purpose of automatically selecting or dialing telephone numbers.

(h) "Commission" means the public service commission.

(i) "Do-not-call list" means a do-not-call list of consumers and their residential telephone numbers maintained by the commission, by a vendor designated by the commission, or by an agency of the federal government, under section 1a.

(j) "Existing customer" means an individual who has purchased goods or services from a person, who is the recipient of a voice communication from that person, and who either paid for the goods or services within the 12 months preceding the voice communication or has not paid for the goods and services at the time of the voice communication because of a prior agreement between the person and the individual.

(k) "Person" means an individual, partnership, corporation, limited liability company, association, governmental entity, or other legal entity.

(l) "Residential telephone subscriber" or "subscriber" means a person residing in this state who has residential telephone service.

(m) "Telephone solicitation" means any voice communication over a telephone for the purpose of encouraging the recipient of the call to purchase, rent, or invest in goods or services during that telephone call. Telephone solicitation does not include any of the following:

(i) A voice communication to a residential telephone subscriber with that subscriber's express invitation or permission prior to the voice communication.

(ii) A voice communication to an existing customer of the person on whose behalf the voice communication is made, unless the existing customer is a consumer who has requested that he or she not receive calls from or on behalf of that person under section 1c(1)(g).

(iii) A voice communication to a residential telephone subscriber in which the caller requests a face-to-face meeting with the residential telephone subscriber to discuss a purchase, sale, or rental of, or investment in, goods or services but does not urge the residential telephone subscriber to make a decision to purchase, sell, rent, invest, or make a deposit on that good or service during the voice communication.

(n) "Telephone solicitor" means any person doing business in this state who makes or causes to be made a telephone solicitation from within or outside of this state, including, but not limited to, calls made by use of automated dialing and announcing devices or by a live person.

(o) "Vendor" means a person designated by the commission to maintain a do-not-call list under section 1a. The term may include a governmental entity.

Sec. 1a. (1) A home solicitation sale shall not be made by telephonic solicitation using in whole or in part a recorded message. A person shall not make a telephone solicitation that consists in whole or in part of a recorded message.

(2) Within 120 days after the effective date of the amendatory act that added this subsection, the commission shall do 1 of the following:

(a) Establish a state do-not-call list. All of the following apply if the commission establishes a do-not-call list under this subdivision:

(i) The commission shall publish the do-not-call list quarterly for use by telephone solicitors.

(ii) The do-not-call list fund is created in the state treasury. Money received from fees under subparagraph (iii) shall be credited to the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years. Money in the fund may be appropriated to the commission to cover the costs of administering the do-not-call list, but may not be appropriated to compensate or reimburse a vendor designated under subdivision (b) to maintain a do-not-call list under that subdivision.

(iii) The commission shall establish and collect 1 or both of the following fees to cover the costs to the commission for administering the do-not-call list:

(A) Fees charged to telephone solicitors for access to the do-not-call list.

(B) Fees charged to residential telephone subscribers for inclusion on the do-not-call list. The commission shall not charge a residential telephone subscriber a fee of more than $ 5.00 for a 3-year period.

(iv) The commission shall maintain the do-not-call list for at least 1 year. After 1 year, the commission may at any time elect to designate a vendor to maintain a do-not-call list under subdivision (b), in which case subdivision (b) shall apply.

(b) Designate a vendor to maintain a do-not-call list. All of the following apply to a vendor designated to maintain a do-not-call list under this subdivision:

(i) The commission shall establish a procedure or follow existing procedure for the submission of bids by vendors to maintain a do-not-call list under this subdivision.

(ii) The commission shall establish a procedure or follow existing procedure for the selection of the vendor to maintain the do-not-call list. In selecting the vendor, the commission shall consider at least all of the following factors:

(A) The cost of obtaining and the accessibility and frequency of publication of the do-not-call list to telephone solicitors.

(B) The cost and ease of registration on the do-not-call list to consumers who are seeking inclusion on the do-not-call list.

(iii) The commission may review its designation and make a different designation under this subdivision if the commission determines that another person would be better than the designated vendor in meeting the selection factors established under subparagraph (ii) or if the designated vendor engages in activities the commission considers contrary to the public interest.

(iv) If the commission does not establish a state do-not-call list under subdivision (a), the commission shall comply with the designation requirements of this subdivision for at least 1 year. After 1 year, the commission may at any time elect to establish and maintain a do-not-call list under subdivision (a), in which case subdivision (a) shall apply.

(v) Unless the vendor is a governmental entity, a vendor designated by the commission under this subdivision is not a governmental agency and is not an agent of the commission in maintaining a do-not-call list.

(vi) The commission and a vendor designated under this subdivision shall execute a written contract. The contract shall include the vendor's agreement to the requirements of this section and any additional requirements established by the commission.

(vii) The commission shall not use state funds to compensate or reimburse a vendor designated under this subdivision. The vendor may receive compensation or reimbursement for maintaining a designated do-not-call list under this subdivision only from 1 or both of the following:

(A) Fees charged by the vendor to telephone solicitors for access to the do-not-call list.

(B) Fees charged by the vendor to residential telephone subscribers for inclusion on the do-not-call list. A designated vendor shall not charge a residential telephone subscriber a fee of more than $ 5.00 for a 3-year period.

(viii) The designee do-not-call list fund is created in the state treasury. If the vendor is a department or agency of this state, money received from fees under subparagraph (vii) by that vendor shall be credited to the fund. The state treasurer shall direct the investment of the fund. The state treasurer shall credit to the fund interest and earnings from fund investments. Money remaining in the fund at the end of a fiscal year shall be carried over in the fund to the next and succeeding fiscal years. Money in the fund may be appropriated to that vendor to cover the costs of administering the do-not-call list.

(3) In determining whether to establish a state do-not-call list under subsection (2)(a) or designate a vendor under subsection (2)(b), and in designating a vendor under subsection (2)(b), the commission shall consider comments submitted to the commission from consumers, telephone solicitors, or any other person.

(4) Beginning 90 days after the commission establishes a do-not-call list under subsection (2)(a) or designates a vendor to maintain a do-not-call list under subsection (2)(b), a telephone solicitor shall not make a telephone solicitation to a residential telephone subscriber whose name and residential telephone number is on the then-current version of that do-not-call list.

(5) Notwithstanding any other provision of this section, if an agency of the federal government establishes a federal do-not-call list, within 120 days after the establishment of the federal do-not-call list, the commission shall designate the federal list as the state do-not-call list. The federal list shall remain the state do-not-call list as long as the federal list is maintained. A telephone solicitor shall not make a telephone solicitation to a residential telephone subscriber whose name and residential telephone number is on the then-current version of the federal list.

(6) A telephone solicitor shall not use a do-not-call list for any purpose other than meeting the requirements of subsection (4) or (5).

(7) The commission or a vendor shall not sell or transfer the do-not-call list to any person for any purpose unrelated to this section.

Sec. 1b. (1) At the beginning of a telephone solicitation, a person making a telephone solicitation to a residential telephone subscriber shall state his or her name and the full name of the organization or other person on whose behalf the call was initiated and provide a telephone number of the organization or other person on request. A natural person must be available to answer the telephone number at any time when telephone solicitations are being made.

(2) The person answering the telephone number required under subsection (1) shall provide a residential telephone subscriber calling the telephone number with information describing the organization or other person on whose behalf the telephone solicitation was made to the residential telephone subscriber and describing the telephone solicitation.

(3) A telephone solicitor shall not intentionally block or otherwise interfere with the caller ID function on the telephone of a residential telephone subscriber to whom a telephone solicitation is made so that the telephone number of the caller is not displayed on the telephone of the residential telephone subscriber.

Sec. 1c. (1) It is an unfair or deceptive act or practice and a violation of this act for a telephone solicitor to do any of the following:

(a) Misrepresent or fail to disclose, in a clear, conspicuous, and intelligible manner and before payment is received from the consumer, all of the following information:

(i) Total purchase price to the consumer of the goods or services to be received.

(ii) Any restrictions, limitations, or conditions to purchase or to use the goods or services that are the subject of an offer to sell goods or services.

(iii) Any material term or condition of the seller's refund, cancellation, or exchange policy, including a consumer's right to cancel a home solicitation sale under section 2 and, if applicable, that the seller does not have a refund, cancellation, or exchange policy.

(iv) Any material costs or conditions related to receiving a prize, including the odds of winning the prize, and if the odds are not calculable in advance, the factors used in calculating the odds, the nature and value of a prize, that no purchase is necessary to win the prize, and the "no purchase required" method of entering the contest.

(v) Any material aspect of an investment opportunity the seller is offering, including, but not limited to, risk, liquidity, earnings potential, market value, and profitability.

(vi) The quantity and any material aspect of the quality or basic characteristics of any goods or services offered.

(vii) The right to cancel a sale under this act, if any.

(b) Misrepresent any material aspect of the quality or basic characteristics of any goods or services offered.

(c) Make a false or misleading statement with the purpose of inducing a consumer to pay for goods or services.

(d) Request or accept payment from a consumer or make or submit any charge to the consumer's credit or bank account before the telephone solicitor or seller receives from the consumer an express verifiable authorization. As used in this subdivision, "verifiable authorization" means a written authorization or confirmation, an oral authorization recorded by the telephone solicitor, or confirmation through an independent third party.

(e) Offer to a consumer in this state a prize promotion in which a purchase or payment is necessary to obtain the prize.

(f) Fail to comply with the requirements of section 1a or 1b.

(g) Make a telephone solicitation to a consumer in this state who has requested that he or she not receive calls from the organization or other person on whose behalf the telephone solicitation is made.

(2) Except as provided in this subsection, beginning 210 days after the effective date of the amendatory act that added this section, a person who knowingly or intentionally violates this section is guilty of a misdemeanor punishable by imprisonment for not more than 6 months or a fine of not more than $ 500.00, or both. This subsection does not prohibit a person from being charged with, convicted of, or punished for any other crime including any other violation of law arising out of the same transaction as the violation of this section. This subsection does not apply if the violation of this section is a failure to comply with the requirements of section 1a(1), (4), or (5) or section 1b.

(3) A person who suffers loss as a result of violation of this section may bring an action to recover actual damages or $ 250.00, whichever is greater, together with reasonable attorney fees. This subsection does not prevent the consumer from asserting his or her rights under this act if the telephone solicitation results in a home solicitation sale, or asserting any other rights or claims the consumer may have under applicable state or federal law.

Sec. 1d. (1) Beginning 210 days after the effective date of the amendatory act that added this section, if a telephone directory includes residential telephone numbers, a person that publishes a new telephone directory shall include in the telephone directory a notice describing the do-not-call list and how to enroll on the do-not-call list.

(2) Beginning 210 days after the effective date of the amendatory act that added this section, each telecommunication provider that provides residential telephone service shall include a notice describing the do-not-call list and how to enroll on the do-not-call list with 1 of that telecommunication provider's bills for telecommunication services to a residential telephone subscriber each year. If the federal communication commission or any other federal agency establishes a federal "do not call" list, the notice shall also describe that list and how to enroll on that list. As used in this subsection, "telecommunication provider" means that term as defined in section 102 of the Michigan telecommunications act, *1991 PA 179*, MCL 484.2102.

Sec. 1e. Sections 1a, 1b, 1c, and 1d do not apply to a person subject to any of the following:

(a) The charitable organizations and solicitations act, *1975 PA 169*, MCL 400.271 to 400.294.

(b) The public safety solicitation act, *1992 PA 298*, MCL 14.301 to 14.327.

(c) Section 527 of the internal revenue code of 1986.

Sec. 3. (1) In a home solicitation sale, unless the buyer requests the seller to provide goods or services without delay in an emergency, the seller shall present to the buyer and obtain the buyer's signature to a written agreement or offer to purchase that designates as the date of the transaction the date on which the buyer actually signs. The agreement or offer to purchase shall contain a statement substantially as follows in immediate proximity to the space reserved in the agreement or offer to purchase for the signature of the buyer:

"You, the buyer, may cancel this transaction at any time prior to midnight of the third business day after the date of this transaction. See the attached notice of cancellation form for an explanation of this right. Additionally, the seller is prohibited from having an independent courier service or other third party pick up your payment at your residence before the end of the 3-business-day period in which you can cancel the transaction."

(2) The seller shall attach to the copy or cause to be printed on the reverse side of the written agreement or offer to purchase retained by the buyer a notice of cancellation in duplicate that shall appear as follows: "notice of cancellation (enter date of transaction) (date) You may cancel this transaction, without any penalty or obligation, within 3 business days from the above date. If you cancel, any property traded in, any payments made by you under the contract or sale, and any negotiable instrument executed by you will be returned within 10 business days following receipt by the seller of your cancellation notice, and any security interest arising out of the transaction will be canceled. If you cancel, you must make available to the seller at your residence, in substantially as good condition as when received, any goods delivered to you under this contract or sale; or you may if you wish, comply with the instructions of the seller regarding the return shipment of the goods at the seller's expense and risk. If you do make the goods available to the seller and the seller does not pick them up within 20 days of the date of your notice of cancellation, you may retain or dispose of the goods without any further obligation. If you fail to make the goods available to the seller or if you agree to return the goods to the seller and fail to do so, then you remain liable for performance of all obligations under the contract. To cancel this transaction, mail or deliver a signed and dated copy of this cancellation notice or any other written notice, or send a telegram to (name of seller), at (address of seller's place of business) not later than midnight on _____ (date) I hereby cancel this transaction. _____ (date) _____ (buyer's signature) "

(3) The notices required by this section shall be in not less than 10-point bold type and shall be 2 points larger than the text of the contract. A written agreement or offer to purchase and the notice of cancellation attached to the agreement or offer shall be written in the same language as that used in any oral presentation that was given to facilitate sale of the goods or services. The seller shall enter on the blanks in the notice of cancellation the date of transaction, which is the date the buyer signs the written agreement, and the date for mailing the notice of cancellation. An error in entering this information shall not diminish the buyer's rights under this act.

(4) Until the seller has complied with this section, the buyer may cancel the home solicitation sale by notifying the seller in any manner and by any means of his or her intention to cancel.

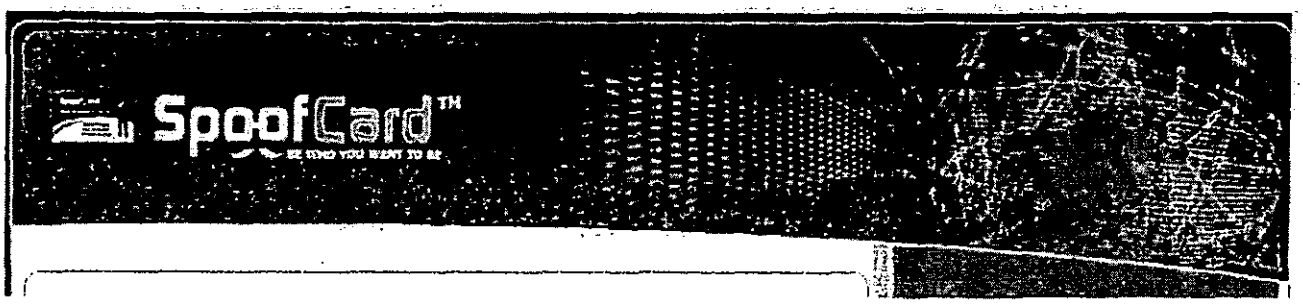
(5) This section does not apply to a home solicitation sale where the seller engaged in a telephone solicitation of the sale if sections 505 to 507 of the Michigan telecommunications act, *1991 PA 179*, MCL 484.2505 to 484.2507, apply to the solicitation or sale.

Sec. 6. In connection with a home solicitation sale, refunds or penalties to which the debtor is entitled pursuant to this act may be set off against the debtor's obligation, and may be raised as a defense to an action on the obligation without regard to the time limitations prescribed by this act.

HISTORY:

Approved by the Governor on December 20, 2002

SPONSOR: Faunce



Frequently Asked Questions

How does SpoofCard work?

SpoofCard is a regular calling card. SpoofCard can be accessed through our dedicated toll free number where a user enters their pin number, desired Caller ID and the number they would like to call. The call is then placed instantly without the need to ever be online or at a computer.

Is this service Legal?

The technology underlying Spoofcard.com is legal in the U.S. and throughout the world.

Does SpoofCard offer call recording?

Yes, SpoofCard offers FREE call recording with instant access via your online control panel or by calling the toll free number.

How can I change my voice?

SpoofCard offers the ability to select a Male or Female voice when making a call. The feature works in real-time and allows the caller to speak in a normal tone while the person on the other end will hear the changed voice.

Are there any restrictions with using SpoofCard?

To ensure SpoofCard is used within our User Agreement, we have implemented several security measures which includes the inability to dial toll free numbers or 911. Federal Regulations prohibit the use of our technology by telemarketers or debt collectors to hide or falsify the telephone number from which they are calling. You must agree that you will not use the SpoofCard in violation of this or any other applicable law or regulation.

What are the advantages of Caller ID spoofing?

Caller ID spoofing gives business professionals the ability to manipulate their identity to their choosing and stay anonymous. Caller ID spoofing is also valuable in defeating popular telephone services such as "*57 Call Trace", "*69 Last Call Return", "Anonymous Call Rejection" and "Detailed Billing". Private Investigators will find Caller ID spoofing valuable for pretext calls.

Who may sign up for your service?

Our target market consists of, but is not limited to, businesses such as: Private Investigators, Law Enforcement, Skip Tracers, Insurance Agencies and Lawyers.

Does SpoofCard store my credit card information?

No, SpoofCard never receives your credit card information from our payment processors, keeping your information secure.

Can I call internationally?

Currently we only support calling within the United States and Canada

Can we send any number as the Caller ID and does it have to be 10 digits long?

Control Panel Login

Calling Card Pin:

ENTER Lost/Forgot PIN

- BUY INSTANT CALLING MINUTES
- MESSAGE BOARD
- FREQUENTLY ASKED QUESTIONS
- CONTACT US
- CUSTOMER SERVICE
- PRIVACY POLICY

Buy $10 Instant Calling Card
- 60 Minutes talk time
- Caller ID Spoofing
- Voice Changer
- Call Recording
- Customer Service

Buy Now

Buy $20 Instant Calling Card
- 120 Minutes talk time
- Caller ID Spoofing
- Voice Changer
- Call Recording
- Customer Service

Buy Now

Buy $40 Instant Calling Card
- 240 Minutes talk time
- Caller ID Spoofing
- Voice Changer
- Call Recording
- Customer Service

Buy Now

You may send any number as the Caller ID. Within the U.S. the number should be 10 digits long (NXX-XXX-XXXX) to guarantee properly delivery, but you may pass numbers of variable length such as "0", "411" or "12345". Results may vary based on location and the receiving ends telephone provider.

How do I get the name to show up on caller ID as well?

The name will automatically be displayed if the number is listed in the phone directory.

How do we sign up?

To sign up please visit the Buy Now Page.

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GovTrack.us

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The next meeting of the Senate is today; the House next meets Feb 2, 2009.

Jan. 13, 2008: Track your representative's YouTube videos on GovTrack. This follows the site updates announced last month.

Congress > Legislation

Email Print ShareThis

H.R. 5126: Truth in Caller ID Act of 2006

109th Congress
2005-2006

To amend the Communications Act of 1934 to prohibit manipulation of caller identification information, and for other purposes.

Overview

Sponsor: Rep. Joe Barton [R-TX] show cosponsors (24)

Text: Summary | Full Text

Cost: less than $1 per American in 2006.

Status:

☑ Introduced	Apr 6, 2006
☑ Referred to Committee	View Committee Assignments
☑ Reported by Committee	May 24, 2006
☑ Passed House	Jun 6, 2006
☐ Voted on in Senate	(did not occur)
☐ Signed by President	(did not occur)

This bill never became law. This bill was proposed in a previous session of Congress. Sessions of Congress last two years, and at the end of each session all proposed bills and resolutions that haven't passed are cleared from the books. Members often reintroduce bills that did not come up for debate under a new number in the next session.

Last Action: Jun 7, 2006: Received in the Senate and Read twice and referred to the Committee on Commerce, Science, and Transportation.

Related: See the Related Legislation page for other bills related to this one and a list of subject terms that have been applied to this bill. Sometimes the text of one bill or resolution is incorporated into another, and in those cases the original bill or resolution, as it would appear here, would seem to be abandoned.

Question & Answer

Have a question about this bill? Submit a short fact-oriented question and see if it will be answered by other visitors. (If you have a general question about how Congress works, see this page instead.)

Votes on Passage

Jun 6, 2006: This bill **passed** in the **House of Representatives** by voice vote. A record of each representative's position was not kept.

To cite this information, click a citation format for a suggestion: Bibliography | Wikipedia.

Because the U.S. Congress posts most legislative information online one legislative day after events occur, GovTrack is usually one legislative day behind.

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109TH CONGRESS
2D SESSION

H. R. 5126

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2006
Received; read twice and referred to the Committee on Commerce, Science, and Transportation

AN ACT

To amend the Communications Act of 1934 to prohibit manipulation of caller identification information, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Truth in Caller ID Act of 2006".

SEC. 2. PROHIBITION REGARDING MANIPULATION OF CALLER IDENTIFICATION INFORMATION.

Section 227 of the Communications Act of 1934 (47 U.S.C. 227) is amended—

(1) by redesignating subsections (e), (f), and (g) as subsections (f), (g), and (h), respectively; and

(2) by inserting after subsection (d) the following new subsection:

"(e) PROHIBITION ON PROVISION OF DECEPTIVE CALLER IDENTIFICATION INFORMATION.—

"(1) IN GENERAL.—It shall be unlawful for any person within the United States, in connection with any telecommunications service or VOIP service, to cause any caller identification service to transmit misleading or inaccurate caller identification information, with the intent to defraud or cause harm.

"(2) PROTECTION FOR BLOCKING CALLER IDENTIFICATION INFORMATION.—Nothing in this subsection may be construed to prevent or restrict any person from blocking the capability of any caller identification service to transmit caller identification information.

"(3) REGULATIONS.—Not later than 6 months after the enactment of this subsection, the Commission shall prescribe regulations to implement this subsection.

"(4) DEFINITIONS.—For purposes of this subsection:

"(A) CALLER IDENTIFICATION INFORMATION.—The term 'caller identification information' means information provided to an end user by a caller identification service regarding the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or VOIP service.

"(B) CALLER IDENTIFICATION SERVICE.—The term 'caller identification service' means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call made using a telecommunications service or VOIP service. Such term includes automatic number identification services.

"(C) VOIP SERVICE.—The term 'VOIP service' means a service that—

"(i) provides real-time voice communications transmitted through end user

equipment using TCP/IP protocol, or a successor protocol, for a fee or without a fee;

"(ii) is offered to the public, or such classes of users as to be effectively available to the public (whether part of a bundle of services or separately); and

"(iii) has the capability to originate traffic to, and terminate traffic from, the public switched telephone network.

"(5) SAVINGS PROVISION.—Nothing in this Act may be construed to affect or alter the application of the Commission's regulations regarding the requirements for transmission of caller identification information for telemarketing calls, issued pursuant to the Telephone Consumer Protection Act of 1991 (Public Law 102–243) and the amendments made by such Act.".

Passed the House of Representatives June 6, 2006.

Attest: KAREN L. HAAS,

Clerk.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 20, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/2/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 4**

"An Act relating to false caller identification."

HB 4 FALSE CALLER IDENTIFICATION

Recommends it be replaced with [ ] HCS *or* [ ] CS for _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral-to _____ Committee
[ ] Letter of Intent_____ Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW			✓	

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Greenberg	✓			
	Coghill			✓	
	Holmes			X	
	GATTO	X			
Chair:	RAMRAS			X	
Chair:					

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 4**
() Publish Date:

Identifier (file name): **HB4-DPS-DET-02-02-09**
Title "An Act relating to false caller identification."
Sponsor Representative Lynn
Requester House Judiciary

Public Safety
RDU Alaska State Troopers
Component AST Detachments
Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel	1.0						
Contractual	9.0						
Supplies							
Equipment	15.0						
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**25.0**		**********	**********	**********	**********	**********
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	**25.0**		**********	**********	**********	**********	**********
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**25.0**		**********	**********	**********	**********	**********

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill creates the crime of False Caller Identification in Title 45, Trade Practices. The bill makes it a class A misdemeanor to knowingly and with intent to defraud, enter false information into a caller identification system.

The Department of Public Safety does not expect many of these cases within its jurisdiction in any given year. However, to investigate even one will require special training, equipment, and software. The department's best estimate at this time is a start up expense of approximately $25,000. Changing technology will likely require future equipment upgrades and additional training costs. The true fiscal impact of this legislation can not be fully determined until the department knows the magnitude of the issue.

Prepared by: Lt. Rodney Dial
Division Alaska State Troopers
Approved by: Joseph Masters, Commissioner
Department of Public Safety

Phone 907-247-4480
Date/Time 2/2/09 12:00 AM
Date 2/2/2009

(Revised 11/19/2007 OMB)

HB

6

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" www.RepLynnBlog.com

Session:
Alaska State Capitol, #104
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
Toll Free: (800) 870-4391

Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
Fax: (907) 269-0207

Sponsor Statement for HB 6

"An Act relating to proscribing certain sexual conduct or activities as cruelty to animals."

HB 6 expands the current Alaska law on cruelty to animals to include "sexual conduct." The primary purpose of this bill is not just to protect animals from sexual assault but to protect children and other vulnerable humans.

A compelling body of research confirms a link between animal cruelty and human violence. Studies also point to a connection involving sexual abuse and conduct with animals. For example:

> High rates of sexual abuse of animals exist in the backgrounds of serial sexual homicide perpetrators, according to the FBI.
>
> Ninety-six percent of juvenile offenders who engaged in sex with animals also admitted to sex offenses against humans, according to a 2002 study by Fleming, Jory and Burton.
>
> Sexual relations with animals parallel sexual assault against women and children, because in both instances there are issues of coercion, pain, and lack of consent, according to a 1997 study by Piers Beirne, a criminology professor at the University of Southern Maine.

Thirty five other states outlaw acts of bestiality, with many of them classifying it as a felony, according to the Humane Society of the United States. Several states have language almost identical to HB 6.

This proposed "sexual conduct" offense would be a Class A misdemeanor, added to AS 11.61.140, Cruelty to Animals. This statute includes commonsense exemptions for conduct ranging from scientific research governed by accepted standards, to accepted veterinary and animal husbandry practices.

Contact: Mike Sica, 465-4965 **Revised: Feb. 26, 2009**

CS FOR HOUSE BILL NO. 6(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES LYNN, Dahlstrom

A BILL

FOR AN ACT ENTITLED

"An Act relating to proscribing certain sexual conduct or sexual activities as cruelty to animals."

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

*** Section 1.** AS 11.61.140(a) is amended to read:

(a) A person commits cruelty to animals if the person

(1) knowingly inflicts severe and prolonged physical pain or suffering on an animal;

(2) with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal;

(3) kills or injures an animal by the use of a decompression chamber;

(4) intentionally kills or injures a pet or livestock by the use of poison; [OR]

(5) knowingly kills or injures an animal, other than as provided in (1)

or (3) of this subsection, with the intent to intimidate, threaten, or terrorize another person**; or**

(6) knowingly

(A) engages in sexual conduct with an animal;

(B) under circumstances not proscribed under AS 11.41.455,

(i) photographs or films, for purposes of sexual gratification, a person engaged in sexual conduct with an animal;

(ii) causes, induces, aids, or encourages another person to engage in sexual conduct with an animal; or

(C) permits sexual conduct with an animal to be conducted on any premises under the person's control.

*** Sec. 2.** AS 11.61.140 is amended by adding a new subsection to read:

(h) In this section, "sexual conduct" means any

(1) touching or fondling by a person, either directly or through clothing, of the genitals or anus of an animal or any transfer or transmission of semen by the person on any part of the animal for the purpose of sexual gratification or arousal of the person;

(2) contact, however slight, between the mouth, genitals, or anus of a person and the sex organ or anus of an animal, or any intrusion, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any intrusion of the genitals or anus of the person into the mouth of the animal for the purpose of sexual gratification of the person.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us
1292 Sadler Way, Suite 324
Fairbanks, AK 99701

Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: March 20, 2009

Re: HB6 Passed from HJUD

Please go final on HB6 (26-LS0022\R) with one amendment P.1, L. 1 between the words "or" and "activities" please add the word "sexual".

Thank you

ADOPTED

26-LS0022\R
Luckhaupt
2/24/09

CS FOR HOUSE BILL NO. 6( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE LYNN

A BILL

FOR AN ACT ENTITLED

"An Act relating to proscribing certain sexual conduct or activities as cruelty to animals."

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

*** Section 1.** AS 11.61.140(a) is amended to read:

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(1) knowingly inflicts severe and prolonged physical pain or suffering on an animal;

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(3) kills or injures an animal by the use of a decompression chamber;

(4) intentionally kills or injures a pet or livestock by the use of poison; [OR]

(5) knowingly kills or injures an animal, other than as provided in (1)

or (3) of this subsection, with the intent to intimidate, threaten, or terrorize another person; or

(6) knowingly

(A) engages in sexual conduct with an animal;

(B) under circumstances not proscribed under AS 11.41.455,

(i) photographs or films, for purposes of sexual gratification, a person engaged in sexual conduct with an animal;

(ii) causes, induces, aids, or encourages another person to engage in sexual conduct with an animal; or

(C) permits sexual conduct with an animal to be conducted on any premises under the person's control.

*** Sec. 2.** AS 11.61.140 is amended by adding a new subsection to read:

(h) In this section, "sexual conduct" means any

(1) touching or fondling by a person, either directly or through clothing, of the genitals or anus of an animal or any transfer or transmission of semen by the person on any part of the animal for the purpose of sexual gratification or arousal of the person;

(2) contact, however slight, between the mouth, genitals, or anus of a person and the sex organ or anus of an animal, or any intrusion, however slight, of any part of the body of the person into the sex organ or anus of an animal, or any intrusion of the genitals or anus of the person into the mouth of the animal for the purpose of sexual gratification of the person.

Amendment #1

By: Rep. Gatto

Holmes object for purposes of discussion

withdrawn.

Conceptual Amendment

Insert on page 2 after line 23.

Animal means a non human mammal, bird, reptile or amphibian, either dead or alive

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" www.RepLynnBlog.com

Session:
Alaska State Capitol, #104
Juneau, AK 99801-1182

Phone: (907) 465-4931
Fax: (907) 465-4316
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Interim:
716 W. 4th Ave., #650
Anchorage, AK 99501-2133

Phone: (907) 269-0205
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Changes from HB 6, Version A, to CSHB 6, Version R

"An Act relating to proscribing certain sexual conduct or activities as cruelty to animals."

The CS for HB 6, Version R, simply narrows the title for the bill:

Version A: Delete line 1, "An Act relating to cruelty to animals."

Version R: Add lines 1 and 2, "An Act relating to proscribing certain sexual conduct or activities as cruelty to animals."

Contact: Mike Sica, 465-4965

Revised: March 10. 2009

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" www.RepLynnBlog.com

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Sectional Analysis for HB 6

"An Act relating to proscribing certain sexual conduct or activities as cruelty to animals."

Sec. 1. Amends AS 11.61.140, Cruelty to Animals, to add the offense of **knowingly engaging in "sexual conduct" with an animal:** other related activities ranging from photographing or filming "sexual conduct" with animal to causing or encouraging another person to engage in "sexual conduct" with an animal (not covered under AS 11.41.455, Unlawful exploitation of a minor); and permitting "sexual conduct" with animal to be conducted on any premises under the person's control.

Sec. 2. Amends AS 11.61.140 to add a new subsection to include in this section **a definition of "sexual conduct."**

###

Contact: Mike Sica, 465-4965 **Revised: March 10, 2009**

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB006
() Publish Date:

Identifier (file name): HB006-LAW-CRIM-3-11-09
Dept. Affected: LAW
Title: An Act relating to cruelty to animals
RDU: CRIMINAL
Component: Criminal Justice Litigation
Sponsor: REPRESENTATIVE(s) LYNN
Requester: Judiciary
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

HB 6 amends the crime of cruelty to animals by adding prohibitions on a person from engaging in sexual conduct with an animal; photographing or filming, for sexual gratification, a person engaging in sexual conduct with an animal; and permitting sexual conduct with an animal to be conducted on a person's premises. Sexual conduct is defined to include touching, contact, or penetration. Cruelty to animals is a class A misdemeanor. It is believed that passage of this bill would have a zero fiscal impact on the Department of Law.

Prepared by: Robert Meiners, Deputy Director
Phone 907-465-5427
Division: Administrative Services Division
Date/Time 3/11/09 4:00 PM
Approved by: Richard Svobodny, Acting Attorney General
Date 3/11/2009
Department of Law

(Revised 9/10/2008 OMB)

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: HB6-DOC-OC-03-17-09
Bill Version:
() Publish Date:

Identifier (file name): HB6-DOC-OC-03-17-09
Title "An Act relating to cruelty to animals"
Sponsor Representative Lynn
Requester Governor

Dept. Affected: DOC
RDU Administration & Support
Component Office of the Commissioner
Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

Passage of this legislation should not have a significant fiscal impact on the Department of Corrections.

Prepared by: Leslie Houston, Director — Phone 465-3339
Division Administrative Services — Date/Time 3/17/09 10:30 AM
Approved by: Dwayne Peeples — Date 3/17/2009
Deputy Commissioner

(Revised 9/10/2008 OMB)

FAQ for HB 6

"An Act relating to proscribing certain sexual conduct or activities as cruelty to animals."

What prompted the filing of House Bill 6?

The Anchorage Daily News reported last spring that a child sex offender in Klawock allegedly taped the muzzle of a dog, tied it to a tree, and sexually assaulted it. Alaskans were shocked to learn there was no Alaska law prohibiting sex with animals. Ketchikan District Attorney James Scott was quoted in the news account as saying the state's "very real concern" was that, if a small child had been available and unattended at the time and place where this dog was taken, "that the small child would have been found taped (and) tied in the woods."

Is this really a problem in Alaska and the United States?

Chava Lee, the Executive Director of Gastineau Humane Society in Juneau, receives at least a handful of reports of humans having sex with animals every year. As the agency that enforces Alaska's animal cruelty law locally, Lee must tell complainants that, unless the animal is severely injured or killed, the mistreatment is *not* a crime. The population of Juneau is only about 30,000. Extrapolate the number of human-animal sex reports in Juneau across Alaska, where the population is more than 650,000, and there may be at least 100 incidents a year. If this mistreatment of animals was recognized as a crime, there would likely be even more reports in Alaska.

Nationally, examples of sexual molestation of animals connected to sexual crimes against humans can be found in news accounts across the country. An Animal Abuse Database found under the internet site, Pet-Abuse.Com, turns up an alarming number of horrific cases of sexual abuse and violence against humans co-occurring with acts of bestiality.

(more)

The evidence of humans engaging in sex with animals is overwhelming. Almost any internet search engine will lead you to page after page of very graphic and disturbing material describing and promoting human sexual abuse of animals. Detailed how-to-do-it guides for the sexual abuse of animals involving a variety of species can be found on the internet, along with information on laws, animal-transmitted diseases, personal advertisements, and "pro-zoophile" resources.

What exactly is animal sexual abuse?

Often referred to as "bestiality" or "zoophilia," animal sexual abuse is the sexual molestation of an animal by a human. This kind of animal abuse includes a wide range of behaviors such as vaginal, anal, or oral penetration; fondling; oral-genital contact; penetration using an object; and killing or injuring an animal for sexual gratification. Animal sexual abuse may or may not include physical violence other than sexual violation; and may or may not result in physical injury to the animal. Animal sexual abuse, like rape, is the eroticization of violence, control and exploitation.

Is it really animal abuse if there is no physical injury?

Yes. Many animals are physically restrained during the abuse. Not all cases of animal sexual abuse will involve physical injury to the animal, but all sexual molestation of an animal by a human should be considered abuse.

In his 1993 article, Dr. Frank Ascione, Professor of Sociology at Utah State University, stated "bestiality may be considered cruel even in cases when physical harm to an animal does not occur (this is similar to the case of adult sexual activity with a child where consent is presumed to be impossible)."

In a 1997 article, Piers Beirne, Professor of Criminology at the University of Southern Maine, points out, "for genuine consent to sexual relations to be present ... both participants must be conscious, fully informed and positive in their desires. Bestiality is by nature sexual coercion because animals are incapable of genuinely saying "yes" or "no" to humans in forms we can readily understand."

(more)

In human-animal relationships, the human has power and control over the animal, often in all aspects of the animal's care and well-being. Thus, a sexual "relationship" between human and animal cannot be considered consensual.

Is all this attention on animal abuse an intrusion on an individual's private sexual choices?

No. Unlike sexual interactions between consenting adult humans, animal sexual abuse is not simply about an individual's private sexual choice. As in the case of child sexual abuse and adult rape, animal sexual abuse is an activity in which one party has no choice and cannot consent or refuse. When he/she initiates a sexual activity in which the other partner has no choices and must participate, the sexual abuser leaves the realm of private action.

Is there a connection between animal sexual abuse and domestic violence, child abuse and other violent crimes?

Yes. The sexual abuse of animals is often linked to the sexual abuse of women and children (Kowal, 1998). According to Lenore Walker's (1984) interviews with battered women, bestiality was mentioned as one of the "unusual sex acts" desired by their partners. Child sexual abusers may also sexually abuse animals to enhance, expand or extend the abuse of the genuinely powerless and unsuspecting victim (Adams, 1994).

Research also indicates a connection between animal sexual abuse and other types of violent crimes. According to a 1986 study, 40 percent of the perpetrators of sexually motivated homicides, who had been sexually abused as children, also reported they have sexually abused animals (Ressler, et al. 1986).

Our interviews with Alaska officials who work in the areas of animal cruelty, law enforcement, corrections, domestic violence and sexual assault, confirm the compelling body of research that shows a connection between animal sexual abuse and human sexual abuse and violence.

(more)

Can animal sexual abuse be prosecuted under the existing Alaska animal cruelty law?

Only if the person knowingly inflicts severe and prolonged physical pain or suffering on an animal, or knowingly injures or kills an animal to intimidate, threaten, or terrorize another person.

Are there other Alaska laws that could be used to prosecute animal sexual abuse?

Only if the sexual abuse of an animal also involves a crime against a person (Unlawful Exploitation of a Minor), or involves the damage or loss of property (Criminal Mischief).

Is animal sexual abuse illegal in most states?

Yes. At least 32 states outlaw acts of bestiality, with several classifying bestiality as a felony, according to a Sept. 1, 2008 report by Alaska Legislative Research Services. Recent news reports indicate other states are also looking at criminalizing sexual abuse of animals.

In many of the states that currently outlaw animal molestation, the language of their sexual abuse laws is almost identical to the wording in HB 6.

Why must the wording of this bill be so graphic?

Language must be precise so everyone understands exactly what constitutes the "sexual conduct" part of the crime being proposed under this bill. Although such language may be embarrassing and uncomfortable to read, words must be clear and concise when specifying a criminal offense.

What would be the penalty in Alaska under this bill?

Like most of the other offenses listed under the existing Cruelty to Animals statute, the crime of "sexual conduct" with an animal would be a Class A misdemeanor. Cruelty to Animals is a class C felony if the person is convicted three times under the statute within 10 years.

(more)

Will there be exemptions for accepted professional practices involving "sexual conduct" with animals?

Absolutely. The same defense to a prosecution under the current Cruelty to Animals law would apply to the offense proposed in HB 6. Such defensible conduct includes legitimate scientific research governed by accepted standards, the humane destruction of an animal, accepted veterinary and animal husbandry practices, and other behaviors listed under AS 11.61.140 (c).

(This FAQ was compiled by the office of Rep. Bob Lynn based on studies, research and interviews involving Alaska Legal Services, Alaska Legislative Research Services, Alaska departments of Corrections, Law, Public Health, Public Safety and Environmental Conservation, municipal police departments and law enforcement agencies involved in animal cruelty and domestic violence/sexual assaults, Alaska Farm Bureau, Gastineau Humane Society veterinary clinic in Juneau, Pet-Abuse.Com, Humane Society of the United States, American Humane, and various news accounts in Alaska and around the country, and other sources.)

HB 6 Cruelty to Animals by Rep. Bob Lynn
Contact: Mike Sica, 465-4965
Revised: March 5, 2009

House Bill 6

"An Act relating to proscribing certain sexual conduct or activities as cruelty to animals."

Research, Studies, Fact Sheets

Alaska Legislative Research Report Summary

HSUS Summary on Animal Sexual Abuse State Laws

HSUS Fact Sheet on Bestiality and Other Violent Crimes

HSUS Fact Sheet on Animal Cruelty and Sexual Abuse

American Humane Supports Recognition of Link Between Animal Abuse and Family Violence

Bestiality and Zoophilia Bibliography of Studies

LEGISLATIVE RESEARCH REPORT

SEPTEMBER 1, 2008

REPORT NUMBER 09.004

STATE LAWS: BESTIALITY CRIMES AND PUNISHMENTS

PREPARED FOR REPRESENTATIVE BOB LYNN

BY CHUCK BURNHAM, LEGISLATIVE ANALYST

You asked about bestiality laws among the states. Specifically, you wanted to know which states have laws against bestiality and the penalties for violating those laws.

Our research located laws in thirty-two states that outlaw acts of bestiality.[1] Table 1 lists those states, their relevant statutory citations, and the criminal classification and maximum punishments for each violation. We include copies of the statutes listed in Table 1 as an attachment.

As you can see, the criminal classifications and punishments for bestiality vary substantially among the states. For instance, "indecency with an animal," a class A misdemeanor in Nebraska, is punishable by a maximum fine of $500 and three months in jail. By contrast, an "abominable and detestable crime against nature" with an animal in Rhode Island—materially similar to the Nebraska offense—is an unclassified felony punishable by seven to twenty years imprisonment. Not surprisingly, a number of states—Arizona, Illinois, Indiana, and Kansas, for example—impose dramatically increased penalties for crimes of bestiality where a minor is forced to take part in or otherwise witness the act. Similarly, some states increase penalties for repeat violators, for filming or photographing acts of bestiality, or for committing the act in public or in the presence of others.

I hope you find this information useful. Please do not hesitate to contact us if you have questions or need additional information.

---

[1] "Bestiality," more technically known as "zoophilia," is variously identified in states' laws as "buggery," "sodomy," "sexual assault of an animal," and as a "crime against nature," among other terms. For the purposes of this report "bestiality" refers to any sexual contact between a human and an animal. Although we believe our research to be thorough, there may be other state laws prohibiting bestiality that were not located by our efforts due to variability in wording and construction.

907-465-3991
907-465-3908 (fax)

Alaska Legislature
Legislative Research Services
w3.legis.state.ak.us/laa/research/research.php

State Capitol
Juneau, AK 99801

State Laws: Bestiality Crimes and Punishments

State	Citation	Crime	Criminal Classification	Punishment
Arizona	ARS 13-1403	Public sexual indecency involving bestiality when others are present	Class 1 Misdemeanor; Class 5 Felony if a child under age 15 is present	Class 1 Misdemeanor--maximum fine of $2,500 and/or 6 months in jail Class 5 Felony--maximum fine of $150,000 and/or 1.5 years in jail for first offense
	ARS 13-1411	Bestiality	Class 6 Felony; Class 3 Felony if the defendant causes a child under age 15 to sexually assault an animal	For first offense: Class 6 Felony--maximum fine of $150,000 and/or one year in jail Class 3 Felony--maximum fine of $150,000 and/or 3.5 years in jail In addition, the court may order psychological assessment and counseling and the costs for care of injured animals
Arkansas	ACA 5-14-122	Bestiality	Class A Misdemeanor	Maximum fine of $1,00 and/or one year in jail
California	Cal Penal Code 286.5	Sexually Assault of an Animal	Misdemeanor	Maximum fine of $1,00 and/or six months in jail
Colorado	CRS 18-9-201 to 202	Cruelty to Animals	Class 1 Misdemeanor; a subsequent offense is a Class 6 Felony; additional offenses are Class 5 Felonies	First offense: psychological evaluation and treatment, $500 to $5,000 fine and/or six months to 18 months in jail Second offense: $1,000 to $100,000 fine and/or 1 year to 1.5 years in jail Subsequent offenses: $1,000 to $100,000 fine and/or 1 year to 3 years in jail Court may assign offender psychological treatment plus costs of incarceration and treatment
Delaware	DCA 11-777	Bestiality	Class D Felony	Maximum eight years in jail
Georgia	OCGA 16-6-6	Bestiality	Unclassified	One to five years in jail
Idaho	IC 18-6605	Crime Against Nature	Unclassified	Minimum five years in jail

State Laws: Bestiality Crimes and Punishments (contd.)

State	Citation	Crime	Criminal Classification	Punishment
Illinois	720 ILCS 5/12-35	Sexual Conduct or Sexual Contact with an Animal	Class 4 Felony; Class 3 Felony if a person under age 18 is present or the animal is seriously injured or killed	Class 4 Felony: maximum $25,000 fine and one to three years in jail Class 3 Felony: maximum $25,000 fine and two to five years in jail In addition to the above penalties, court may impose upon offender prohibition from owning or residing with animals; psychological evaluation; and costs of care for animal(s) involved
Indiana	ISA 35-42-4-5	Vicarious Sexual Gratification; Fondling in the Presence of a Minor [directing, aiding, or inducing a minor under age 16 to engage in sexual contact with an animal]	Class C Felony; Class B Felony if child is under 14; Class A Felony if threat of deadly force is used or the minor victim is threatened or drugged	All felonies carry maximum fines of $10,000 and the following jail terms: Class C Felony: two to eight years with an advisory sentence of four years Class B Felony: six to twenty years with an advisory sentence of ten years. Class A Felony: twenty to fifty years with and advisory sentence of thirty years.
	ISA 35-46-3-14	Bestiality	Class D Felony	Maximum $10,00 fine and six months to three years in jail with an advisory sentence of 1.5 years
Iowa	IC 717C.1	Bestiality	Aggravated Misdemeanor	Aggravated Misdemeanor: fine of $626 to $6,250 and maximum two years in jail In addition, the court may order psychological evaluation and treatment at offender's expense
	IC 728.4	Rental or Sale of Hard-Core Pornography [bestiality on film]	Aggravated Misdemeanor; Class D Felony for second and subsequent violations	Aggravated Misdemeanor: fine of $626 to $6,250 and maximum two years in jail Class D Felony: fine of $725 to $7,500 and maximum five years in jail
Kansas	KSA 21-3505	Criminal Sodomy	Class B Nonperson Misdemeanor; Severity Level 3 Person Felony if a child aged 14-15 is caused to engage in the sex act	Class B Nonperson Misdemeanor: maximum fine of $1,000 and/or six months in jail Level 3 Person Felony: maximum $300,000 fine and/or 89 to 100 months in jail with a presumptive sentence of 94 months for first offense

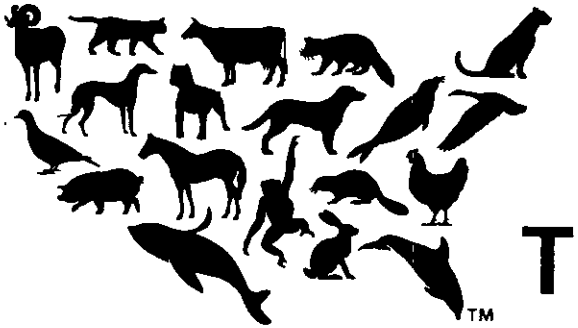
State Laws: Bestiality Crimes and Punishments (contd.)

State	Citation	Crime	Criminal Classification	Punishment
Louisiana	LSA-RS 14:89	Crime Against Nature	Unclassified	Maximum $2,000 fine and/or five years in jail with or without hard labor
Maine	MRSA 17-1031(I)	Cruelty to Animals-Bestiality	Class D Crime; Class C Crime for the third and subsequent convictions	Class D Crime: maximum fine of $2,000 and/or one year in jail Class C Crime: maximum fine of $5,000 and/or five years in jail
Maryland	ACM Crime Law 3-322	Unnatural or Perverted Sexual Practice	Misdemeanor	Maximum fine of $1,000 and/or ten years in jail
Massachusetts	MGLA 272-34	Crime Against Nature	Unclassified	Maximum twenty years in jail
Michigan	MCLA 750-158	Crime Against Nature or Sodomy	Felony	Maximum 15 years in jail, or life in jail if the offender is a "sexual delinquent" at the time of the crime
Minnesota	MS 609.294	Bestiality	Misdemeanor; Gross Misdemeanor if committed in the presence of another person	Misdemeanor--maximum fine of $1,000 and/or ninety days in jail Gross Misdemeanor--maximum fine of $3,000 and/or one year in jail
Montana	MCA 45-5-505	Deviate Sexual Conduct	Unclassified	Maximum fine of $50,000 and/or 10 years in jail
Nebraska	RSN 28-1010	Indecency with an Animal	Class III Misdemeanor	Maximum fine of $500 and/or three months in jail
New York	NY Penal Law 130.20	Sexual Misconduct	Class A Misdemeanor	Maximum fine of $1,000 and/or one year in jail
North Carolina	GSNC 14-177	Crime Against Nature	Class I Felony	Three to eight months in jail with a presumptive sentence of four to six months
North Dakota	NDCC 12.1-20-02 and 12.1-20-12	Deviate Sexual Act	Class A Misdemeanor	Maximum fine of $2,000 and/or one year in jail
Oklahoma	OSA 21-866	Crime Against Nature	Unclassified	Maximum of ten years in jail
Oregon	ORS 167.333	Sexual Assault of an Animal	Class A Misdemeanor	Maximum fine of $6,250 and/or one year in jail
Pennsylvania	PCSA 3129	Sexual Intercourse with Animal	Misdemeanor of the Second Degree	Maximum fine of $5,000 and/or two years in jail

State Laws: Bestiality Crimes and Punishments (contd.)

State	Citation	Crime	Criminal Classification	Punishment
Rhode Island	GLRI 11-10-1	Abominable and Detestable Crime Against Nature	Unclassified	Seven to twenty years in jail
South Carolina	CLSC 16-15-120	Buggery	Felony	Maximum of five years in jail and/or $500 fine
South Dakota	SDCL 22-22-42	Bestiality	Class 6 Felony; Class 5 Felony if offender has previously been convicted of a sex crime	Class 5 Felony: maximum fine of $10,000 and/or five years in jail Class 6 Felony: maximum fine of $4,000 and/or two years in jail
Utah	UCA 76-9-301.8	Bestiality	Class B Misdemeanor	Maximum fine of $1,000 and/or six months in jail
Virginia	CV 18.2-361	Crimes Against Nature	Class 6 Felony	Maximum fine of $2,500 and/or one to five years in jail
Washington	RCWA 15.52.205	Animal Cruelty in the First Degree	Class C Felony	Maximum fine of $10,000 and/or five years in jail. Offender may not own or reside with animals, court may order counseling and reimbursement for animal's care
Wisconsin	WS 944.17	Sexual Gratification	Class A Misdemeanor	Maximum fine of $10,000 and/or nine months in jail

Notes: Although we believe our research to be thorough, there may be other state laws prohibiting bestiality that were not located by our efforts due to variability in wording and construction.
Sources: Animal Legal Defense Fund, "Animal Protection Laws of the United States of America and Canada," Stephen K. Otto ed., 3rd Edition, 2007; available online at *http://www.aldf.org/article.php?id=259*; and the *Lexus* database of state laws.



THE HUMANE SOCIETY OF THE UNITED STATES

ANIMAL SEXUAL ABUSE

35 states have laws prohibiting sexual abuse of animals (AZ, AR, CA, CO, CT, DE, GA, IA, ID, IL, IN, KS, LA, MD, MA, ME, MI, MN, MO, MS, MT, NE, NY, NC, ND, OK, PA, RI, SC, SD, TN, UT, VA, WA and WI).
In many states bestiality may not be illegal, however, it is a crime to have a child perform or simulate bestiality.

ARIZONA	13-1411	A. A person commits bestiality by knowingly doing either of the following: 1. Engaging in oral sexual contact, sexual contact or sexual intercourse with an animal. 2. Causing another person to engage in oral sexual contact, sexual contact or sexual intercourse with an animal. B. In addition to any other penalty imposed for a violation of subsection A of this section, the court may order that the convicted person do any of the following: 1. Undergo a psychological assessment and participate in appropriate counseling at the convicted person's own expense. 2. Reimburse an animal shelter as defined in section 11-1022 for any reasonable costs incurred for the care and maintenance of any animal that was taken to the animal shelter as a result of conduct proscribed by subsection A of this section. C. This section does not apply to: 1. Accepted veterinary medical practices performed by a licensed veterinarian or veterinary technician.

		2. Insemination of animals by the same species, bred for commercial purposes. 3. Accepted animal husbandry practices that provide necessary care for animals bred for commercial purposes. D. Bestiality is a class 6 felony, except that bestiality pursuant to Subsection A, paragraph 2 of this section is a class 3 felony punishable pursuant to section 13-604.01 if the other person is a minor under fifteen years of age. E. For the purposes of this section, "animal" means a nonhuman mammal, bird, reptile or amphibian, either dead or alive
ARKANSAS	5-14-122	(a) A person commits sodomy if such person performs any act of sexual gratification involving: (1) The penetration, however slight, of the anus or mouth of an animal or a person by the penis of a person of the same sex or an animal; or (2) The penetration, however slight, of the vagina or anus of an animal or a person by any body member of a person of the same sex or an animal. (b) Sodomy is a **Class A misdemeanor**.
CALIFORNIA	§ 286.5.	Any person who sexually assaults any animal protected by Section 597f for the purpose of arousing or gratifying the sexual desire of the person is guilty of a **misdemeanor**.
COLORADO		
CONNECTICUT	§ 53a-73a (2001)	A person is guilty of sexual assault in the fourth degree when: (3) such person engages in sexual contact with an animal or dead body; (b) Sexual assault in the fourth degree is a **Class A misdemeanor.**
DELAWARE	s 777	A person is guilty of bestiality when the person intentionally engages in any sexual act involving sexual contact, penetration or intercourse with the genitalia of an animal or intentionally causes another person to engage in any such sexual act with an animal for purposes of sexual gratification. Bestiality is a **Class D felony.**
GEORGIA	16-6-6	A person commits the offense of bestiality when he performs or submits to any sexual act with an animal involving the sex organs of the one and the mouth, anus, penis, or vagina of the other. Penalty: **Imprisonment for not less than one nor more than five years.**
IDAHO	18-6605	Every person who is guilty of the infamous crime against nature, committed with mankind or with any animal, is punishable by imprisonment in the state prison **not less than five (5) years**.
ILLINOIS	720 ILCS 5/12-35 (new 2002)	A person may not knowingly engage in any sexual contact or cause, aid or another person to engage in any sexual contact with an animal. (c) A person may not knowingly permit any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control. (d) A

		person may not knowingly engage in, promote, aid, or abet any activity involving any sexual contact with an animal for a commercial or recreational purpose. (e) A person who violates this Section is guilty of a **Class 4 felony**. A person who violates this Section in the presence of a person under 18 years of age or causes the animal serious physical injury or death is guilty of a **Class 3 felony**. (f) The court must order that the defendant **not harbor animals or reside in any household where animals are present** for a reasonable period of time or permanently, if necessary; and relinquish and permanently forfeit all animals residing in the household to a recognized or duly organized animal shelter or humane society. (3) **Undergo a psychological evaluation and counseling at defendant's expense.** (4) Reimburse the animal shelter or humane society for any reasonable costs incurred for the care and maintenance of the animal involved in the sexual conduct or sexual contact in addition to any animals relinquished to the animal shelter or humane society.
INDIANA	IC 35-46-3-14	A person who knowingly or intentionally performs an act involving: (1) a sex organ of a person and the mouth or anus of an animal; (2) a sex organ of an animal and the mouth or anus of a person; (3) any penetration of the human female sex organ by an animal's sex organ; or (4) any penetration of an animal's sex organ by the human male sex organ; commits bestiality, a **Class D felony**.
IOWA	717C.1	A person who performs a sex act with an animal, is guilty of an **aggravated misdemeanor.** 3. Upon a conviction for a violation of this section, and in addition to any sentence authorized by law, the court shall require the person to submit to a **psychological evaluation and treatment at the person's expense**. The commission of bestiality in the presence of a minor under section 717C.1 by a person who resides in a home with a child, as a result of the acts or omissions of a person responsible for the care of the child **is considered child abuse**.
KANSAS	21-3505	Criminal sodomy is: (1) Sodomy between persons who are 16 or more years of age and members of the same sex or between a person and an animal; (3) causing a child 14 or more years of age but less than 16 years of age to engage in sodomy with any person or animal. (c) Criminal sodomy as provided in subsection (a)(1) is a class B nonperson misdemeanor. Criminal sodomy as provided in subsections (a)(2) and (a)(3) is a **severity level 3, person felony.**
		(1) The unnatural carnal copulation by a human being with another of the same

LOUISIANA	§ 89.	sex or opposite sex or with an animal....Penalty: **fined up to two thousand dollars, or imprisoned, with or without hard labor, for not more than five years, or both.**
MAINE	1031 (2001)	Commits bestiality on an animal means that a person: 1) Engages in a sexual act with an animal for the purpose of that person's sexual gratification; 2) Coerces anyone to engage in a sexual act with an animal; 3) Engages in a sexual act with an animal in the presence of a minor; 4) Uses any part of the person's body or an object to sexually stimulate an animal; 5) Videotapes a person engaging in a sexual act with an animal; or 6) For the purpose of that person's sexual gratification, kills or physically abuses an animal. **Violation of this paragraph is a Class D crime;**
MARYLAND	s 554	Every person who is convicted of taking into his or her mouth the sexual organ of any other person or animal, or who shall be convicted of placing his or her sexual organ in the mouth of any other person or animal, or who shall be convicted of committing any other unnatural or perverted sexual practice with any other person or animal, shall be fined not more than **one thousand dollars or be imprisoned in jail or in the house of correction or in the penitentiary for a period not exceeding ten years, or shall be both fined and imprisoned within the limits above prescribed in the discretion of the court.**
MASSACHUSETTS	Ch.272 Sec. 34	Whoever commits the abominable and detestable crime against nature, either with mankind or with a beast, shall be punished by imprisonment in the state prison for **not more than twenty years.**
MICHIGAN	750.158	Any person who shall commit the abominable and detestable crime against nature either with mankind or with any animal shall be guilty of a **felony,** punishable by imprisonment in the state prison not more than **15 years**, or if such person was at the time of the said offense a sexually delinquent person, may be punishable by imprisonment in the state prison for an indeterminate term, the minimum of which shall be **1 day and the maximum of which shall be life.**
MINNESOTA	609.294	Whoever carnally knows a dead body or an animal or bird is guilty of bestiality, which is a **misdemeanor.** If knowingly done in the presence of another the person may be sentenced to **Imprisonment for not more than one year or to payment of a fine of not more than $3,000 or both.**
		No person shall engage in any sexual conduct with an animal, or cause, aid or

MISSOURI	566.111	abet another person to engage in any sexual conduct with an animal. No person shall permit any sexual conduct with an animal on any premises under such person's charge or control. No person shall engage in, promote, aid or abet any activity involving any sexual conduct with an animal for commercial or recreational purposes. 3. Any person who violates this section shall be guilty of a **Class D felony**. Any person who violates this section in the presence of a minor or causes any animal serious physical injury or death while violating or attempting to violate this section shall be guilty of a **Class C felony**. 4. In addition to the penalty imposed, the court may: (1) prohibit the defendant permanently or for a reasonable time from harboring animals or residing in any household where animals are present; (2) order the defendant to relinquish and permanently forfeit all animals residing in the defendant's household to a recognized or duly incorporated animal shelter or humane society, and order the defendant to reimburse such shelter or humane society for all reasonable costs incurred for the care and maintenance of the animals involved in the violation of this section; and (3) order psychological evaluation and counseling of the defendant, at the defendant's expense.
MISSISSIPPI	§97-29-59	Every person who shall be convicted of the detestable and abominable crime against nature committed with mankind or with a beast, shall be punished by imprisonment in the penitentiary for a term of **not more than ten years.**
MONTANA	45-5-505	Deviate sexual conduct. (1) A person who knowingly engages in deviate sexual relations or who causes another to engage in deviate sexual relations commits the offense of deviate sexual conduct. (2) A person convicted of the offense of deviate sexual conduct shall be imprisoned in the state prison for any term not to exceed 10 years or be fined an amount not to **exceed $50,000, or both**. **45-2-101(20) "Deviate sexual relations" means sexual contact or sexual intercourse between two persons of the same sex or any form of sexual intercourse with an animal.**
NEBRASKA	§ 28-1010	A person commits indecency with an animal when such person subjects an animal to sexual penetration. Sexual penetration shall not require emission of semen indecency with an animal is a **Class III misdemeanor.**
NEW YORK	§ 130.20	A person is guilty of sexual misconduct when: He engages in sexual conduct with an animal or a dead human body. Sexual misconduct is a **class A misdemeanor**
NORTH CAROLINA	§ 14-177	If any person shall commit the crime against nature, with mankind or beast, he shall be punished as a **Class I felon**y.
NORTH DAKOTA	12.1-20-1	A person who performs a deviate sexual act with the intent to arouse or gratify his sexual desire is guilty of a **class A misdemeanor.**

	2	"Deviate sexual act" means any form of sexual contact with an animal, bird, or dead person.
OKLAHOMA	§ 886 (1999)	Every person who is guilty of the detestable and abominable crime against nature, committed with mankind or with a beast, is punishable by imprisonment in the penitentiary **not exceeding ten (10) years**.
PENNSYLVANIA	Title 18, Sec. 3129	A person who engages in any form or sexual intercourse with an animal commits a **misdemeanor of the second degree.**
RHODE ISLAND	11-10-1	Every person who shall be convicted of the abominable and detestable crime against nature, either with mankind or with any beast, shall be imprisoned not exceeding **twenty (20) years nor less than seven (7) years.**
SOUTH CAROLINA	§16-15-120	Whoever shall commit the abominable crime of buggery, whether with mankind or with beast, shall, on conviction, be **guilty of felony** and shall be imprisoned in the penitentiary for five years or shall pay a fine of not less than five hundred dollars, or both, at the discretion of the court.
SOUTH DAKOTA	§22-22-42 (2003)	No person, for the purpose of that person's sexual gratification, may: (1) Engage in a sexual act with an animal; or (2) Coerce any other person to engage in a sexual act with an animal; or (3) Use any part of the person's body or an object to sexually stimulate an animal; or (4) Videotape a person engaging in a sexual act with an animal; or (5) Kill or physically abuse an animal. Any person who violates any provision of this section is guilty of the crime of bestiality. Bestiality is a **Class 6 felony.** However, if any person has been previously convicted of a sex crime pursuant, any subsequent violation of this section is a **Class 5 felony**.
TENNESSEE		
UTAH	76-9-301. 8	A person commits the crime of bestiality if the actor engages in any sexual activity with an animal with the intent of sexual gratification of the actor. A crime of bestiality is a **class B misdemeanor.**
VIRGINIA	s 18.2-36 1	If any person carnally knows in any manner any brute animal, or carnally knows any male or female person by the anus or by or with the mouth, or voluntarily submits to such carnal knowledge, he or she shall be guilty of a **Class 6 felony.**
WASHINGTON	RCW 16.52.205	A person is guilty of animal cruelty in the first degree (**class c felony**) when he or she:(a) Knowingly engages in any sexual conduct or sexual contact with an animal; (b) Knowingly causes, aids, or abets another person to engage in any sexual conduct or sexual contact with an animal;(c) Knowingly permits any sexual conduct or sexual contact with an animal to be conducted on any premises under his or her charge or control; (d) Knowingly engages in, organizes, promotes, conducts, advertises, aids, abets, participates in as an

		observer, or performs any service in the furtherance of an act involving any sexual conduct or sexual contact with an animal for a commercial or recreational purpose; or (e) Knowingly photographs or films, for purposes of sexual gratification, a person engaged in a sexual act or sexual contact with an animal. In addition to the penalty imposed, the court may order that the convicted person do any of the following: (a) Not harbor or own animals or reside in any household where animals are present; (b) Participate in appropriate counseling at the defendant's expense; (c) Reimburse the animal shelter or humane society for any reasonable costs incurred for the care and maintenance of any animals taken to the animal shelter or humane society as a result of conduct proscribed in this section.
WISCONSIN	944.17	In this section, "in public" means in a place where or in a manner such that the person knows or has reason to know that his or her conduct is observable by or in the presence of persons other than the person with whom he or she is having sexual gratification. (2) Whoever does any of the following is guilty of a **Class A misdemeanor:** (c) Commits an act of sexual gratification involving his or her sex organ and the sex organ, mouth or anus of an animal. (d) Commits an act of sexual gratification involving his or her sex organ, mouth or anus and the sex organ of an animal.

Fact Sheet

Bestiality and Other Violent Crime

The FBI researched the backgrounds of serial sexual homicide perpetrators and found high rates of sexual assault of animals.
Ressler, R. K. et al *Sexual homicide: patterns and motives.* Lexington, Mass.: Lexington Books. (1988)

Up to 37% of sexually violent juvenile offenders had a history of animal sexual assault.
Monique R. Frazier, *Physically and Sexually Violent Juvenile Offenders: A Comparative Study of Victimization History Variables 99* (unpublished dissertation, Utah St. U. 1998) (on file with Utah St. U.).

96% of juveniles who had engaged in sex with nonhuman animals also admitted to sex offenses against humans and reported more offenses against humans than other sex offenders their same age and race.
Fleming, William M., Jory, Brian and Burton, David L. *Characteristics of Juvenile Offenders Admitting to Sexual Activity with Nonhuman Animals.* Society and Animals. Vol 10., No.1, pp.31-45 (2002)

In an Australian study, 100% of people who committed sexual homicide had abused animals, and 61.5% of animal abusers had also assaulted a human.
Clarke, J. P. *New South Wales police animal cruelty research project.* Sydney, Australia: Unpublished report, New South Wales Police Service (2002)

Respondents who had been convicted of committing crimes against people were more likely to have had sex with animals during their childhood or adolescence than other respondents. These findings support the sexually polymorphous theory that among these perpetrators sex and aggression have become mutually inclusive, and bestiality as a form of animal cruelty may be linked with interpersonal human violence.
Hensley, Christopher, Tallichet, Suzanne E., and Singer, Stephen D. *Exploring the Possible Link Between Childhood and Adolescent Bestiality and Interpersonal Violence.* Journal of Interpersonal Violence, Vol. 21, No. 7, 910-923 (2006)

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Animal Cruelty and Sexual Abuse

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Sexual abuse of animals often happens concurrently with sexual assaults on people.

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The studies on this page show the connections between animal cruelty, sexual abuse of animals and sex crimes against people, including sexual homicide.

- Sexually-abused children are five times more likely to abuse animals than children who are not sexually abused.[1]
- Twenty percent of children who sexually abuse other children also have histories of sexually abusing animals.[2]
- Up to 37 percent of sexually violent juvenile offenders have a history of animal sexual assault.[3]
- The FBI found high rates of sexual assault of animals in the backgrounds of serial sexual homicide perpetrators.[4]
- In an Australian study, 100 percent of people who committed sexual homicide had abused animals, and 61.5 percent of animal abusers also had assaulted a human.[5]
- Those convicted of committing crimes against people on one or more occasions were more likely to have had sex with animals during their childhood or adolescence than other respondents.[6]
- Of juveniles who engage in sex with animals, 96 percent also admit to sex offenses against humans and reported more offenses against humans than other sex offenders their same age and race.[7]

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3. Monique R. Frazier, Physically and Sexually Violent Juvenile Offenders: A Comparative Study of Victimization History Variables 99 (unpublished dissertation), Utah St. Univ. 1998.

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6. Hensley, Christopher, Tallichet, Suzanne E., and Singer, Stephen D. 2006. Exploring the Possible Link Between Childhood and Adolescent Bestiality and Interpersonal Violence. *Journal of Interpersonal Violence*, Vol. 21, No. 7, 910-923.

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AMERICAN HUMANE

Protecting Children & Animals Since 1877

AMERICAN HUMANE SUPPORTS RECOGNITION OF THE LINK BETWEEN ANIMAL ABUSE AND FAMILY VIOLENCE

Numerous studies in psychology, sociology, and criminology have demonstrated that violent offenders frequently have childhood and adolescent histories of serious and repeated animal cruelty. The FBI has recognized the connection since the 1970s, when its analysis of the lives of serial killers suggested that most had killed or tortured animals as children. Other research has shown consistent patterns of animal cruelty among perpetrators of more common forms of violence, including child abuse, spouse abuse, and elder abuse. In fact, the American Psychiatric Association considers animal cruelty one of the diagnostic criteria of conduct disorder.[1]

The link between animal abuse and human violence is an internationally recognized fact. Each year, defenseless pets face the grim reality that they will be victims of family violence, not only putting themselves in harm's way but as helpless pawns in the power and control mechanisms abusers use to hurt people. The actual killing, torturing and beating of pets -- or the threat of such actions -- is used by abusers as a weapon to ensure submission and silence by women and children. This causes victims -- adults and children alike – to remain in violent households in order to ensure the family pet is not harmed.

In a nationwide study, over 71 percent of battered women reported that their abusers had harmed, killed or threatened animals. More than 75 percent of those incidents occurred in the presence of the women or their children.[2] In a study of battered women in several northeastern states, 48 percent of respondents reported that animal abuse had occurred "often" during the past 12 months, and another 30 percent reported that the abuse occurred "almost always." Types of animal abuse reported included punching, hitting, choking, drowning, shooting, stabbing and throwing the animal against a wall or down the stairs. Respondents reported that animal abuse incidents coincided with violent outbursts against human family members 51 percent of the time.[3]

Tragically, children who grow up in an environment of animal abuse live in constant fear that a beloved family member will be harmed. Children often intervene to protect their mothers and pets from being battered. Some children may even allow themselves to be victimized to save their pet from being harmed or killed.[4] Over time, these children may even become desensitized to the inhumane treatment of animals.

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1 American Psychiatric Association, American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders - Fourth Edition, 2000.

2 Ascione, F.R., Weber, C.V., & Wood, D.S., *The Abuse of Animals and Domestic Violence: A National Survey of Shelters for Women Who are Battered* (Society and Animals, 1997, p. 205-218).

3 Carlisle-Frank, P., Frank, J.M. & Nielsen, L. *Selective battering of the family pet.* (Anthrozoös , 2006, p. 26-42).

4 Edelson, J.L., Mbilinyi, L.F., Beeman, S.K., & Hagemeister, A.K. *How Children are Involved in Adult Domestic Violence: Results from a Four-City Telephone Survey.* (Journal of Interpersonal Violence, vol. 18, 2003 p.18-32).

Research indicates that children who are exposed to domestic violence are nearly three times more likely to treat animals with cruelty than children who are not exposed to such violence.[5] In one study of battered women with children who sought shelter in a safe house, 32 percent reported that their children had hurt or killed a family pet.[6]

Tragically, this behavior is often symptomatic of future abuse toward other animals or human beings[7]: 36.8 percent of boys and 29.4 percent of girls who were victims of physical and sexual abuse and domestic violence have been reported to abuse the family pet.[8] Significant research documents a relationship between childhood histories of animal cruelty and patterns of chronic interpersonal aggression.[9]

Because of its correlation with family violence and other forms of community violence, animal abuse is a crime that must be taken seriously. Identifying and reporting animal abuse is an effective means toward addressing the domestic violence crisis head-on. In many communities, human services, animal services, and law enforcement agencies are sharing resources and expertise to address violence. Professionals are beginning to engage in cross-training and cross-reporting through interagency partnerships, and humane societies are teaming with domestic violence shelters to provide emergency shelter for pets of domestic violence victims. Cross-reporting animal and child abuse is an efficient approach toward strengthening families and intervening to prevent further family violence. Because animal abuse is often an early indicator of child abuse, elder abuse and domestic violence, caseworkers can gain critical information by asking about the family pet.

As the oldest national non-profit organization dedicated to protecting both children and animals from abuse, neglect, and exploitation, the American Humane Association actively addresses the internationally recognized link between animal abuse and family violence. Through its campaigns against violence, American Humane is a leader in raising public awareness, advocating for stronger legislative initiatives, and providing tools for decision makers, social service providers, animal care and control professionals, veterinarians, parents, and other concerned citizens to recognize problems and take appropriate steps to end abuse and protect its both human and non-human victims.

No child or pet should have to live in fear that they will be harmed. On their behalf, American Humane continues to directly address the link between animal abuse and other forms of societal violence.

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House Bill 6

"An Act relating to proscribing certain sexual conduct or activities as cruelty to animals."

Animal Abuse Crime Database from Pet-Abuse.com

Animal Abuse Crime Database Query Page

Bestiality AKA Zoophilia

Abuse Connection: The Link between Animal Cruelty and Interpersonal Violence

Animal Abuse Database: Cases Connecting Sexual Abuse Between Animals and Humans

ANIMAL ABUSE CRIME DATABASE

There are 14,717 cases in the animal abuse database. To select a specific country or state, click on the country name or abbreviation tab below, and then select a local region. Or if you prefer you can **browse all cases.**

Login or **create an account** for additional advocacy tools, including e-mail notifications when updates are posted to selected cases.

Show clickable map

- United States
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All US States
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— Spanish Regions—

Advanced Search

The additional fields below are optional and will allow you to narrow your search further. Please see the database notes for more information about these fields.

Abuse Type:
Beating
Bestiality
Burning - Caustic Substance
Burning - Fire or Fireworks
Choking / Strangulation / Suffocation
Drowning

Animal:
dog (non pit-bull)
dog (pit-bull)
cat
bird (other farmed)
bird (pet)
bird (wildlife)

Status:
– select status –

Approx. Month/Year:
Select Month

Abuser Gender:

☐ Only cases with photos
☐ Abuser is public servant
☐ Abuser works in animal welfare
☑ Only abuse-connection cases
☐ Only cases of loose animals
☐ Only cases of retaliation
☐ Animal was bound or tied
☐ Also child or elder neglect
☐ Drugs or alcohol involved
☐ Breeding suspension**
☐ Animal was tethered or chained**
☐ Repeat offenders

Keyword:

Clear Form Search

** **Please note:** These fields were added more recently, and searches using this criteria may not result in the total number of applicable cases, as older cases may not yet have been updated to reflect these new fields.

Use of this database implies that you have read and agree to the terms and conditions **our disclaimer.**

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BESTIALITY AKA ZOOPHILIA

Bestiality (or zoophilia) is a paraphilia defined as an affinity, attraction or sexual attraction by a human to non-human animals. Because this topic deals openly about about the nature of bestiality, it is intended for mature audiences only.

While moral and clinical descriptions of bestiality differ, Pet-Abuse.Com takes the position that bestiality is sexual assault of an animal and is *always* a crime.

Amazingly, there are still several states in which bestiality is legal. In those situations where the prosecutors do not have specific bestiality laws to use in their case, we recommend exploring the cruelty to animals statues: if it can be proved that the animal was made to suffer, you can use those laws where the bestiality laws may be lacking (or missing outright).

The following is reprinted from:
The Animals' Agenda
P.O. Box 25881 Baltimore, MD 21224
(410) 675-4566 www.animalsagenda.org

The term bestiality actually tells us much more about cultural attitudes toward animals than it does about sex with animals. Concern about bestiality generally focuses on human beings; thus experts tell us it is usually harmless while debating its frequency. If we call it forced sex with animals, we reclaim the animal's perspective as a central concern. It is more prevalent than we can measure and is not harmless; it is always animal abuse.

The American Heritage Dictionary, to cite just one example, defines bestiality as "the quality or condition of being an animal or like an animal; conduct or an action marked by depravity or brutality; or sexual relations between a human being and an animal." Sex with an animal is the last definition of bestiality, while the first two definitions remind us of our culture's general low regard for animals. The multiple meanings for bestiality are part of the problem, implying that bestiality itself is animal behavior. It keeps the "beast" in bestiality. (See sidebar "Acting Like an Animal.") Animals do not have a distinction between public versus private.

Often, people read animals' sexuality as shameless (and inviting) because animals act sexually in "public." They are then viewed as accessible because they have acted in a public manner.

Acting like an Animal

For many centuries negative attitudes toward sexuality have been registered by viewing sex as something that resulted from one's base instincts, that is, as something that reduced a human being to an animal. During the Middle Ages when capital punishment was prescribed for both the animals and the human involved in bestiality many people thought that the serpent in the Garden of Eden had introduced Eve to sex. This belief led to a debate about whether Eve and the serpent had actually had intercourse, and left the strong impression that sexual intercourse itself was bestial. Acting sexually was thus considered acting like an animal. This attitude is evident today when aggressive sexual behavior is referred to as "bringing out the beast in one" or "wolfish behavior" or "animal passions." Indeed, it appears that one reason the missionary position was upheld as the position for intercourse was because it was accomplished face to face rather than face to back, as most animals did it. C.J.A. In its narrowest sense, bestiality involves intercourse, either vaginal or anal, with an animal; but bestiality can also include oral-genital contact of any kind between humans and animals.

The animals who people have access to are the animals who will be sexually used: cats, dogs, sheep, cows, hens, rabbits, goats, ducks, horses, bulls, fishes. Proximity allows for sexual access. This is the primary reason gorillas, chimpanzees, and others are not prevalent sex objects: they are not animals to whom humans have regular access. Many forms of sexual contact between humans and animals are physically destructive to the animals. Few vaginas, especially those of young animals, are large enough to accommodate the penis of a male Homo sapiens. Furthermore, small animals often experience torn rectums and internal bleeding after being sexually assaulted; chickens and rabbits are often killed by the act itself. Sadistic sexual behavior against animals also occurs. Chickens are frequently decapitated because this intensifies the convulsions of the sphincter, thereby increasing the sexual pleasure of the man. Even when it does not involve sadism, bestiality is animal abuse because it is forced sex.

Silence is a major problem. Unlike most forms of sexual contact, in which either partner can report the experience, only one of the participants in bestiality can talk; and because of the stigma surrounding bestiality, that party usually remains silent. Since bestiality is most often something that occurs in private, no one need ever learn about it. So we do not know how widespread it is. Several attempts have been made to uncover an accurate rate of human attempts to have forced sex with animals: by the German psychiatrist Richard von Krafft-Ebing in the 1880s, in the U.S. by Alfred Kinsey and his colleagues in the late 1940s and, more recently, by sociologists at the University of Chicago in 1994. These studies have variously estimated that the percentage of males who engage in bestiality is between one and 65 percent. This wide range probably reflects less about how often bestiality occurs than it does about how bestiality is defined and measured as well as different levels of confidence in answers given by respondents when interviewed either in person or in anonymous questionnaires. In short, we can say almost nothing about the percentage of the population that engages in bestiality.

There are three kinds of sex that humans impose on animals: Opportunistic or safety-valve sex, fixated sex, and domineering sex.

Types of sex with Animals

1. **Opportunistic or Safety-Valve sex:** "I need a sexual release... they're available... there are no human partners around... I'll get it with an animal."

2. **Fixated Sex:** Animals become love objects and are the exclusive sexual "partners" for a human.
3. **Domineering sex:** When batterers, rapists and pornographers force sex between a human and an animal for purposes of humiliation, sexual exploitation, dominance and control. C.J.A. Safety-valve sex is often seen as a casual act of the curious young, as sexual exploration rather

than deviancy.

The notion of bestiality as a safety valve that operates until the (usually young) men are ready for women leads one to ask whether the women to whom these young men graduate are not safety valves, too. Moreover, this form of bestiality is not a harmless aberration. Animals are harmed in safety-valve bestiality, and humans learn that it is okay to treat others as safety valves. In the second kind of bestiality, fixated sex, an animal becomes the exclusive focus of a human's sexual desires. Although many medical terms have been applied to a fixation on sex with animals, those who engage in this kind of sex prefer to be known as "zoophiles," a word borrowed, ironically, from the animal protection community. The zoophile's worldview is similar to the rapist's and child sexual abuser's. They all view the sex they have with their victims as consensual, and they believe it benefits their sexual "partners" as well as themselves.

Just as pedophiles differentiate between those who abuse children and those who love children□placing themselves, of course, in the latter group□zoophiles distinguish between animal sexual abusers (bestialists) and those who love animals (zoophiles). In each of these cases the distinctions are only self-justifications.

Whatever the frequency of bestiality, it has its own newsgroup on the Internet (alt.sex.bestiality), which provides chilling examples of the bestialist's world. One person described having sex with stray dogs and then dropping them off at animal shelters. Another reported episodes of bestiality that occurred while dog sitting for a friend. A third described having sex with his half-Percheron horse.

One cannot talk very long about sex with animals without noticing the gender issues: Men are more likely to do it. Women are more likely to be depicted□or to be forced into□doing it. This type of bestiality, domineering sex, has long been used by batterers to degrade their partners. Battered women's shelters around the country receive reports from women who were forced to have sex with animals. One woman reported that her husband would tie her up and force her to have intercourse with their family dog. Then he would try to have intercourse with the dog while he forced the dog inside his wife. Forced sex with trained dogs was a form of torturing Jewish women in Nazi Germany; it was recently used against female political prisoners in Chile. Bestiality involving women occupies an entire genre in pornography.

Bears, snakes, dogs, and insects□to name just a few species of animals□have been photographed or videotaped in a variety of sexual and sexualized positions with women. sex "clubs" around the globe offer live scenes of sex between women and animals. Some towns along the U.S./Mexican border feature shows "starring" women and donkeys. Women of color are often depicted with animals as a way of enforcing the racist notion that women of color are insatiable. Through pornography, dogs, snakes, and other animals, help a man picture himself in the scene. What the pornography consumer claims to be fantasy, we must regard as documentation of harm: a real woman must have a real snake inside her for a photograph of a snake inside her to exist, a real woman must give oral sex to a real bear in order for a photograph of a woman giving oral sex to a bear to exist.

In addition to being used as a means of degrading women, bestiality figures in racism, homophobia, anti-Semitism, and of course, attitudes toward animals. The imputation of bestiality has been used to portray a specific group of people as "others," to distance them from those making the charges. Sometimes miscegenation (the mixing of races) is referred to as bestiality. One group of American white supremacists believes that Jews are descended from Cain, himself the offspring of Eve's coupling with the snake, while Christians are descended from Abel, the child of Eve and Adam. European colonizers and American slave owners believed that African women enjoyed intercourse with apes. European women charged with being witches were accused of sexual congress with animals, and they□and their animal companions□were killed.

During the Middle Ages, Christians viewed intercourse with Jews as a form of bestiality. Earlier this year, an Israeli judicial official compared homosexuality to bestiality. This comparison occurred, most probably, because homosexuality and bestiality are listed together in Leviticus 18:23 and 20:15-16. Like masturbation, homosexuality and bestiality are forms of non-procreative sex. During a time when childbearing was central to a people's survival, all forms of non-procreative sex would be condemned. Bestiality also violated the order of creation by mixing categories□human and animal□that were meant to be separate and distinct.

Recent views of bestiality as fairly benign have replaced these earlier reactions, but no matter what the prevailing view of bestiality, it does not consider the animals' perspectives at all. It is always animal abuse. Relationships of unequal power cannot be consensual. In human-animal relationships, the human being has control of many□if not all□of the aspects of an animals' well being. Sexual relationships should occur between peers where consent is possible.

Consent is when one can say no, and that no is accepted. Clearly animals cannot do that. Bestiality is the model case of circumventing consent on the one hand, while confusing affection for consent on the other. Despite the omnipresence of animals in pornographic pictures and videos, the animal protection community has yet to identify bestiality as an animal abuse issue.

Bestiality has been studiously avoided by those who should be discussing it□animal rights activists, veterinarians, anti-cruelty law enforcement agents, and feminists.

Carol J. Adams Carol J. Adams, author of The sexual Politics of Meat , is the co-editor with Josephine Donovan of Beyond Animals Rights: A Feminist Caring Ethic for the Treatment of Animals (Continuum 1996) and Animals and Women: Feminist Theoretical Explorations (Duke 1995). Copyright □1995 by Carol J. Adams The Animals' Agenda INVESTIGATIVE Reporting Fund

Related Links (Off-site links open in a new window)

- Pet-Abuse.Com Bestiality Cases

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CRUELTY CONNECTIONS

According to a 1997 study done by the Massachusetts Society for the Prevention of Cruelty to Animals (SPCA) and Northeastern University, animal abusers are five times more likely to commit violent crimes against people and four times more likely to commit property crimes than are individuals without a history of animal abuse.

Many studies in psychology, sociology, and criminology during the last 25 years have demonstrated that violent offenders frequently have childhood and adolescent histories of serious and repeated animal cruelty. The FBI has recognized the connection since the 1970s, when its analysis of the lives of serial killers suggested that most had killed or tortured animals as children. Other research has shown consistent patterns of animal cruelty among perpetrators of more common forms of violence, including child abuse, spouse abuse, and elder abuse. In fact, the American Psychiatric Association considers animal cruelty one of the diagnostic criteria of conduct disorder.

If you break it down to its bare essentials:
"Abusing an animal is a way for a human to find power/joy/fulfillment through the torture of a victim they know cannot defend itself."

Now break down a human crime, say rape. If we substitute a few pronouns, it's the SAME THING.
"Rape is a way for a human to find power/joy/fulfillment through the torture of a victim they know cannot defend themselves."

Now try it with, say, domestic abuse such as child abuse or spousal abuse:
"Child abuse is a way for a human to find power/joy/fulfillment through the torture of a victim they know cannot defend themselves."

Do you see the pattern here?

The line separating an animal abuser from someone capable of committing human abuse is much finer than most people care to consider. People abuse animals for the same reasons they abuse people. Some of them will stop with animals, but enough have been **proven** to continue on to commit violent crimes to people that it's worth paying attention to.

Virtually every serious violent offender has a history of animal abuse in their past, and since there's no way to **know** which animal abuser is going to continue on to commit violent human crimes, they should ALL be taken that seriously. FBI Supervisory Special Agent Allen Brantley was quoted as saying "Animal cruelty... is not a harmless venting of emotion in a healthy individual; this is a warning sign..." It should be looked at as exactly that. Its a clear indicator of psychological issues that can and often DO lead to more violent human crimes.

Dr. Randall Lockwood, who has a doctorate in psychology and is senior vice president for anti-cruelty initiatives and training for the American Society for the Prevention of Cruelty to Animals, states "A kid who is abusive to a pet is quite often acting out violence directly experienced or witnessed in the home," Lockwood said, adding that about one-third of children who are exposed to family violence will act out this violence, often against their own pets.

Others either abuse pets or threaten to abuse them as a way to control an individual.

"So much of animal cruelty... is really about power or control," Lockwood said. Often, aggression starts with a real or perceived injustice. The person feels powerless and develops a warped sense of self-respect. Eventually they feel strong only by being able to dominate a person or animal.

Sometimes, young children and those with developmental disabilities who harm animals don't understand what they're doing, Lockwood said. And animal hoarding - the practice of keeping dozens of animals in deplorable conditions - often is a symptom of a greater mental illness, such as obsessive-compulsive disorder.

Just as in situations of other types of abuse, a victim of abuse often becomes a perpetrator. According to Lockwood, when women abuse animals, they "almost always have a history of victimization themselves. That's where a lot of that rage comes from."

In domestic violence situations, women are often afraid to leave the home out of fear the abuser will harm the family pet, which has lead to the creation of *Animal Safehouse* programs, which provide foster care for the pets of victims in domestic violence situations, empowering them to leave the abusive situation and get help.

Whether a teenager shoots a cat without provocation or an elderly woman is hoarding 200 cats in her home, "both are exhibiting mental health issues... but need very different kinds of attention," Lockwood said.

Those who abuse animals for no obvious reason, Lockwood said, are "budding psychopaths." They have no empathy and only see the world as what it's going to do for them.

History is full of high-profile examples of this connection:

- **Patrick Sherrill**, who killed 14 coworkers at a post office and then shot himself, had a history of stealing local pets and allowing his own dog to attack and mutilate them.
- **Earl Kenneth Shriner**, who raped, stabbed, and mutilated a 7-year-old boy, had been widely known in his neighborhood as the man who put firecrackers in dogs? rectums and strung up cats.
- **Brenda Spencer**, who opened fire at a San Diego school, killing two children and injuring nine others, had repeatedly abused cats and dogs, often by setting their tails on fire.
- **Albert DeSalvo**, the "Boston Strangler" who killed 13 women, trapped dogs and cats in orange crates and shot arrows through the boxes in his youth.
- **Carroll Edward Cole**, executed for five of the 35 murders of which he was accused, said his first act of violence as a child was to strangle

a puppy.

- In 1987, three Missouri high school students were charged with the beating death of a classmate. They had histories of repeated acts of animal mutilation starting several years earlier. One confessed that he had killed so many cats he?d lost count. Two brothers who murdered their parents had previously told classmates that they had decapitated a cat.
- Serial killer **Jeffrey Dahmer** had impaled dogs? heads, frogs, and cats on sticks.

More recently, high school killers such as 15-year-old **Kip Kinkel** in Springfield, Ore., and **Luke Woodham**, 16, in Pearl, Miss., tortured animals before embarking on shooting sprees. Columbine High School students **Eric Harris** and **Dylan Klebold**, who shot and killed 12 classmates before turning their guns on themselves, bragged about mutilating animals to their friends.

As powerful a statement as the high-profile examples above make, they don't even begin to scratch the surface of **the whole truth** behind the abuse connection. **Learning more about the animal cruelty/interpersonal violence connection** is vital for community members and law enforcement alike.

Related Links (Off-site links open in a new window)

- The Whole Picture
- Pet-Abuse.Com Cruelty Connection Cases
- American Humane: The Link
- NCPC: Screening Animal Cruelty Cases for Domestic Violence
- Factors in the Assessment of Dangerousness in Perpetrators of Animal Cruelty
- First Strike: The Connection Between Animal Cruelty and Human Violence
- HSUS: Animal Safe Haven Directory
- Society & Animals Forum: Articles on the Link
- The Abuse of Animals and Domestic Violence
- Battered Women's Reports of Their Partners' and Their Children's Cruelty to Animals
- Animal Welfare and Domestic Violence
- The Latham Foundation for the Promotion of Humane Education
- Animal Abuse and Human Abuse: Partners in Crime
- Bibliography of Materials about Animal Abuse, Child Abuse and Domestic Violence

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ANIMAL ABUSE SEARCH RESULTS

There are 39 cases currently listed in the **United States** where a person of interest involved have a **history of interpersonal violence or the abuse occurred within the context of a domestic dispute or argument** with the abuse type(s) **Bestiality**. Results are displayed 25 per page.

Login or create an account for additional advocacy tools, including e-mail notifications when updates are posted to selected cases.

Pages: 1 2 Next»

Location / Date	Title	Name(s)
CA-Fresno Nov 7, 2008	**Dog sexually assaulted, sex offender charged** Bestiality	ALLEGED **Joe Luis Gloria**
IN-Bloomington Sep 6, 2008	**Sexual assault on woman, dog, videotaped** Bestiality	ALLEGED **Thomas L. Meador**
WA-Longview Jul 23, 2008	**Dog and foster child sexually assaulted** Bestiality	NOT CHARGED **Donald Joe Zeller**
LA-Baton Rouge Jun 18, 2008	**Dog sexually assulted by convicted sex offender** Bestiality	ALLEGED **Alex Chaney**
AK-Klawock Apr 9, 2008	**Dog tied to tree, sexually assaulted** Bestiality	ALLEGED **Harold Simpson**
CO-Delta Dec 11, 2007	**Dogs sexually assaulted, shelter volunteer charged** Bestiality	ALLEGED **Jay Baker**
OH-North Ridgeville Oct 31, 2007	**Dogs, sheep sexually assaulted** Bestiality	ALLEGED **Jonel Berlovan**
GA-Warner Robins Feb 2007	**Dog sexually assaulted, children molested** Bestiality	CONVICTED **John Charles Huff**
IL-Elwood Dec 7, 2006	**Dog repeatedly sexually assaulted** Bestiality	DISMISSED **Dwayne D. Page**
NJ-Moorestown Dec 6, 2006	**Cows and children sexually assaulted** Bestiality	ALLEGED **Robert Melia Jr.**
FL-Rockledge Dec 1, 2006	**Children, animal sexually assaulted** Bestiality	ALLEGED **Ivory Dickerson**
PA-South Beaver Township Nov 16, 2006	**Children sexually abused, bestiality porn** Bestiality	NOT CHARGED **Robert F. Harn**
CO-Glenwood Springs Nov 2006	**Possession of bestiality pornography** Bestiality	NOT CHARGED **Frank Alameno**
MI-Freeland Oct 20, 2006	**Sex with dead dog, assaulting an ACO** Bestiality	CONVICTED **Ronald Kuch**
WI-Superior Oct 11, 2006	**Sex with dead deer** Bestiality	CONVICTED **Bryan James Hathaway**
OR-Lebanon May 18, 2006	**Dogs and children sexually abused** Bestiality	ALLEGED **Denise Ann Roberts** **Jesse Dale Roberts**
PA-Hermitage Apr 2006	**Possession of child, animal pornography** Bestiality	CONVICTED **Roger Ellsworth Henry**
AZ-Tucson Mar 28, 2006	**Dog found burned, maimed, sexually assaulted** Mutilation/Torture, Bestiality, Burning - Fire or Fireworks	CONVICTED **Wayne Allen Dean**

OR-Sherwood Feb 1, 2006	**Dog sexually assaulted by convicted sex offender** Bestiality	ALLEGED **Jason Dane Tapken**
TX-Brownsville Jan 23, 2006	**Child and dog sexually assaulted, videotaped** Bestiality	NOT CHARGED **Jesus De Leon**
CA-Ontario Oct 18, 2005	**Dog sexually assaulted** Bestiality	CONVICTED **Ubaldo Vasquez Huizar**
OH-Lafferty Sep 24, 2005	**Dog sexually assaulted** Bestiality	CONVICTED **John Paskel**
SC-Campobello May 22, 2005	**Puppy sexually assaulted** Bestiality	CONVICTED **Cory Michael Williamson**
LA-Hammond May 17, 2005	**Church cult cited in child rape and animal sex** Bestiality	NOT CHARGED Austin Aaron Bernard III Nicole Bernard Paul Fontenot ***more...***
MI-Harrison Feb 17, 2005	**Bestiality and child pornography** Bestiality	ALLEGED **Rebekah J. Oakley-Pyle** **Malvin D. Pyle**

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Location / Date	Title	Name(s)
FL-Flagler Feb 2, 2005	**Dog, girl sexually assaulted, photos taken** Bestiality	NOT CHARGED Carla Maldonado **David Maldonado**
TX-Kerrville Feb 2005	**Possession of bestiality porn, soliciting a minor** Bestiality	NOT CHARGED **Jonathan Ward Brooke**
MI-Battle Creek Jan 26, 2005	**Sheep sexually assaulted** Bestiality	CONVICTED **Jeffrey Scott Haynes**
FL-Tampa Dec 22, 2004	**Dog stabbed, sodomized with stick** Bestiality, Stabbing	ALLEGED Lubuns Paul Dubeus
VT-Lyndonville Oct 16, 2004	**Dog sodomized and strangled** Bestiality, Choking / Strangulation / Suffocation	CONVICTED **Jeffrey Plourde**
FL-West Palm Beach Jan 8, 2004	**Dog sexually assaulted** Bestiality	ALLEGED **William McPhillips**
IN-Indianapolis Feb 20, 2002	**Distribution and display of beastiality pornography** Bestiality	ALLEGED **Loran Jay Adams**
VT-Richford Jan 15, 2002	**Dog sexually assaulted, videotaped** Bestiality	CONVICTED **Paul Corey** Tammy Paquin
OK-Oklahoma City Feb 14, 2001	**Bestiality** Bestiality	CONVICTED **Robert Malcomb Jr**
FL-East Lake Feb 11, 2001	**Llamas beaten, one sodomized** Beating, Bestiality	CONVICTED **Brandon R. Eldred** **Robert B. Pettyjohn**
CA-Fresno Jul 8, 1997	**Puppy beaten and tortured** Beating, Bestiality	CONVICTED **Reynaldo Chavez**
MI-Ypsilanti May 29, 1997	**Bestiality/Pedophilia** Bestiality	ALLEGED **Bernice Santure** **Carl Santure** **Harvey Santure** *more...*
WI-Janesville Apr 9, 1997	**Sexually abused, tortured and killed cats and dogs** Mutilation/Torture, Bestiality	CONVICTED **Barry Herbeck**
VA-Montgomery County Apr 1951	**Killing animals, having sex with their corpses** Bestiality	NOT CHARGED **Henry Lee Lucas**

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House Bill 6

"An Act relating to proscribing certain sexual conduct or activities as cruelty to animals."

Letters of Support

Joe Schmidt, Alaska Department of Corrections

Bryce Wrigley, Alaska Farm Bureau, Inc.

Angella Long, Alaska Peace Officers Association

Dave Pauli, Humane Society of the United States

Tracy Coppola, American Humane

STATE OF ALASKA

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GOVERNOR

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March 3, 2009

The Honorable Bob Lynn
Alaska House of Representatives
State Capitol Room 104
Juneau, Alaska 99811

Dear Representative Lynn:

Thank you for the opportunity to provide input on House Bill 6, "An Act Relating to the Cruelty of Animals." The connection between animal cruelty, including animal sexual abuse, and violence against people is well documented in the research and findings on domestic violence, sexual assault, child molestation and serial homicide. Although the Department of Corrections (DOC) does not yet have quantitative data on the sexual abuse of animals by sex offenders being managed in Alaska communities, there does appear to be information that is consistent with the research in this area.

Since the DOC began using the polygraph with sex offenders on probation and parole in March 2006, approximately 350 individuals have submitted to polygraph examination; however, we are still in the developmental stages of routine polygraph use. The bulk of our examinations to date (80%) have been for purposes of monitoring the offenders' current behaviors. This focus is for good reason, as these offenders are in the community and it is critical that we know everything we can about their current behaviors. Information about prior abuse of animals tends to come out during sex history polygraph examinations (sex history polygraph examinations are used to examine the offenders past sexual behavior). A routine question during these exams is whether the offender has had sexual contact with animals. Passing the sexual history polygraph examinations is directly tied to progress in treatment. As would be expected, comprehensive information about one's lifetime sexual behavior is not something that is provided without some motivation. The motivation to "come clean" on these issues usually comes as a function of making progress in treatment and sanctions applied for not passing the polygraph. Making progress in treatment tends to take a long time, particularly when treatment occurs only in the community and is less intense.

While DOC does not have a large quantity of data on this topic, we do have some information that is pertinent. The treatment providers and the polygraph examiners that currently provide services to sex offenders on supervision were queried. Three treatment providers were able to give percentages of offenders they had seen in their practices who had engaged in sexual behavior with animals. The range was from 4% to 18%. It should be noted that this information was gathered in the course of assessment and treatment sessions and did not include direct examination of the issue with polygraph. It's likely that more offenders would be identified as having animal victims if they were polygraphed on this issue. In a study of 180 sex offenders in community treatment, English, et al (2003) noted that 4.4% admitted to engaging in bestiality during the course of their lifetime pre-treatment and polygraph and 36.1% admitted post-treatment and polygraph. The sexual history polygraph exams resulted in 8.2 times more offenders admitting to bestiality. The authors have concluded that bestiality is far more prevalent than previously thought.

As noted, not very many sex history polygraphs have been completed. To date, there have been three cases in which the offender specifically admitted to sexually abusing animals (about 6% of the total sex history polygraphs done). Most likely, there are more cases that we have not yet identified. What was interesting to note, however, is that in all three cases the offenders not only had crossover behaviors involving animals, they had crossover behaviors into more than one age and/or gender group of humans. Specifically, one had both male and female child victims as well as adult male victims; a second had child and adult male and female victims; and a third had male and female child victims and also attacked incapacitated adult women. We know from the literature that some offender characteristics are associated with higher re-offense rates, including abuse of both genders and abuse of males. (Abel et al, 1988; Quinsey, et al, 1995).

It is important that sexual abuse of animals be given credence as a potential precursor to various forms of violence against humans. Our initial data would tend to suggest that offenders with a broader range of victim types have likely sexually abused animals at some point in their history. Generally speaking, the further away sexual offending behavior is from normative sexual behavior the higher the likelihood of recidivism. Once an offender crosses the line into bestiality there is little he won't do. Animals are vulnerable because they can't defend themselves and can't report an assault. Children and incapacitated or handicapped adults are also vulnerable and are likely targets for these offenders. Identifying men who sexually abuse animals will likely help DOC identify high risk sex offenders who target the most vulnerable in our communities.

If you require additional information or if we can be of further assistance, please feel free to contact my office.

Sincerely,

Joseph D. Schmidt
Commissioner

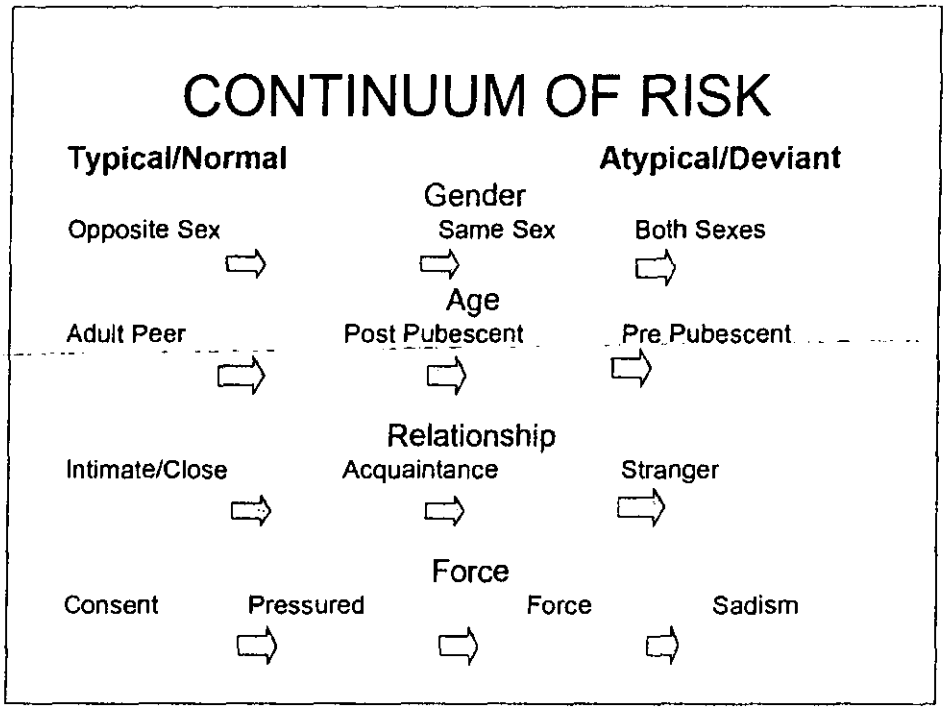
Enclosure: Continuum of Risk

References:

Abel, G., Becker, J., Cunningham-Rathner, J. Mittleman, M. & Rouleau, J. (1988). Multiple paraphilia diagnoses among sex offenders. *Bulletin of the American Academy of Psychiatry and the Law,* 16, 153-168.

English, K., Jones, L., Patrick, D., & Pasini-Hill, D. (2003). Sexual Offender Containment: Use of the Postconviction Polygraph. *Annals of the New York Academy of Sciences, 989, 411-427.*

Quinsey, V.L., Lalumiere, M.L., Rice, M.E., & Harris, G.T. (1995). Predicting sexual offenses. In J.C. Campbell (Ed.), *Assessing dangerousness: Violence by sexual offenders, batterers, and child abusers* (pp. 114-137). Thousand Oaks, CA: Sage.



The further away the offender is from what is typical the higher the risk of recidivism in general. Other non-typical items with higher rates of recidivism include bestiality and sexual acting out in prison.

A.M. Mander, PhD 2007

ALASKA FARM BUREAU, INC.

Bryce Wrigley, President
bjwrigley@wildak.net

Jane Hamilton, Executive Director
janehamilton99737@yahoo.com

February 24, 2009

Representative Bob Lynn
Alaska State Legislature
State Capitol (MS 3100)
Juneau, Alaska 99807-1182

Dear Representative Lynn,

The Alaska Farm Bureau is committed to providing a safe and wholesome product to our consumers. Our farmers and ranchers raise their animals using good animal husbandry practices that provide a safe growing environment, free from cruel treatment.

We feel that all animals should be treated humanely and with respect. We, therefore, wholeheartedly support and endorse HB 6, protecting animals from sexual activity by humans.

We appreciate the specific references to accepted veterinary and animal husbandry practices being acknowledged as specific examples of normal treatment/conduct between humans and animals and not to be construed as sexual activity or cruelty to animals.

Thank you for keeping us involved with this legislation and giving our members a chance to speak to you abut this bill.

Please feel free to contact us at any time with questions and concerns regarding farming and ranching in Alaska.

Sincerely,

Bryce Wrigley,
President

PO Box 760 Delta Junction, Alaska 99737 Telephone: (907) 895-4752

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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

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Thecla LaLonde, Member
Wrangell
Pres. Wrangell Chapter

February 17, 2009

Representative Bob Lynn
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Lynn:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 6, an act relating cruelty to animals.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

THE HUMANE SOCIETY
OF THE UNITED STATES

OFFICERS

STAFF VICE PRESIDENTS

DIRECTORS

February 25, 2009

Dear Legislator:

The Humane Society of the United States, on behalf of our more than 18,000 members and supporters in Alaska, strongly supports passage of HB 6 (Rep. Lynn, R-31), to criminalize the sexual assault of animals. In addition to protecting the animals themselves from cruel treatment, this bill is needed to give law enforcement additional tools to protect human victims from sexually deviant crime.

Several studies have highlighted the link between the sexual abuse of animals and sex crimes against human victims. For example:

- 96% of juveniles who had engaged in sex with nonhuman animals also admitted to sex offenses against humans and reported more offenses against humans than other sex offenders their same age and race. (Fleming, William M., Jory, Brian and Burton, David L. *Characteristics of Juvenile Offenders Admitting to Sexual Activity with Nonhuman Animals*. Society and Animals. Vol 10., No.1, pp.31-45. 2002)

- The FBI researched the backgrounds of serial sexual homicide perpetrators and found high rates of sexual assault of animals. (Ressler, R. K. et al *Sexual homicide: patterns and motives*. Lexington, Mass.: Lexington Books. 1988)

- Up to 37% of sexually violent juvenile offenders had a history of animal sexual assault. (Monique R. Frazier, *Physically and Sexually Violent Juvenile Offenders: A Comparative Study of Victimization History Variables 99* (unpublished dissertation, Utah St. U. 1998) (on file with Utah St. U.).

Thirty-five states currently have criminal penalties for the sexual abuse of animals – twenty punish the crime as a felony.

HB 6 would make sexual conduct with an animal a Class A misdemeanor. Importantly, the bill would also provide penalties for inducing another person to engage in sexual conduct with an animal. Forcing another person to engage in sexual activity with an animal is one of the most abhorrent sex crimes imaginable, and such conduct fits the pattern of behavior common to sexually deviant criminals.

We strongly urge you to support passage of HB 6.

Sincerely,

Dave Pauli

Dave Pauli
Western Region Director

AMERICAN HUMANE

Protecting Children & Animals Since 1877

February 25, 2009

To the Alaska Legislature:

On behalf of the American Humane Association, the nation's oldest non-profit organization dedicated to protecting animals and children from maltreatment, we thank Representative Bob Lynn for introducing House Bill 6, a critical initiative to make the crime of sexual conduct with an animal a Class A misdemeanor.

The Link® between violence to people and violence to animals, and the concept that children who harm animals can become desensitized to violence and go on to commit antisocial acts against people, formed the very basis of our organization more than 130 years ago. To this day, American Humane continues to directly address the Link® between animal abuse and other forms of societal violence. Our strong support for House Bill 6 reflects our commitment to this issue.

HB 6 was drafted to address the horror many Alaskans experienced upon hearing last April's Anchorage Daily News report of a registered child sex offender who allegedly taped the muzzle of a black Lab, tied it to a tree, and sexually assaulted it in the woods of Ketchikan. Because Alaska lacks a law that prohibits sexual molestation of an animal by a human, the alleged offender was merely charged with the low-level property tampering offense of criminal mischief

For the welfare of both humans and animals, the law must treat all acts of violence against animals seriously. Because HB 6 addresses the dynamic of violence, control, and exploitation prevalent in animal sexual abuse, it would be a grave mistake to view HB 6 as a bill that just protects animals. Deliberate abuse of companion animals rarely occurs in isolated instances. Instead, animal abuse is often part of a vicious cycle of violence that escalates to human abuse.

Studies illustrate a strong connection between sexual abuse and conduct with animals. The studies are so compelling that it hardly comes as a surprise that the American Psychiatric Association has labeled "abuse of animals" among the symptoms of conduct disorder[1] and the FBI has found high rates of animal sex assaults in the backgrounds of serial sex homicide offenders.[2]

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[1] American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders (DSM–IV)* (Vol, 4, 1994). Among the symptoms listed for conduct disorder are those categorized under "aggression to people and animals" (which includes cruelty to people or to animals, stealing with confrontation of the victim, and forced sexual activity). *See also* Juvenile Justice Bulletin, *Animal Abuse and Youth Violence*, September, 2001, at http://www.ncjrs.gov/html/ojjdp/jjbul2001_9_2/page5.html

[2] Ressler, R.K., Burgess, A.W., Hartmen, C.R., Douglas, J.E., & McCormack, A., *Murderers Who Rape and Mutilate* (Journal of Interpersonal Violence, v. 1, 1986 p. 273-287).

A 2002 study of juvenile offenders reveals that 96% who admitted to engaging in sex with animals also admitted to committing sex offenses against humans.[3] Another study regarding the perpetrators of sexually motivated homicides reveals the perpetrators had not only been sexually abused as children, but also had sexually abused animals in the past.[4]

A 1998 study found that sexual abuse of animals is often linked to sexual abuse of women and children.[5] That same year, another study reported that bestiality was often forced upon several children who were also forced to participate in pornographic activities.[6] Additionally, a study of several interviews with battered women revealed that bestiality was the sex act of preference for 41% of the abusive partners seeking to further dominate and terrorize their victims.[7]

Sexual molestation of an animal by a human is not a matter of personal privacy. Not only is bestiality severely inhumane, it can cause extensive physical harm and even death to the animal. It is important to note that even in cases where such harm does not occur, bestiality is still a cruel activity because animals lack the ability to clearly consent or refuse. Dr. Frank Ascione, Professor of Psychology at the University of Utah, likens this dynamic to adult sexual activity with a child: "consent is presumed to be impossible."[8] Bestiality is no more a personal sexual activity than is sexual abuse of children or rape of adults.

It is time Alaska joined the thirty-three other states that currently prohibit and penalize bestiality as a form of cruelty toward animals.[9] To help ensure a more humane Alaska for future generations, please pass House Bill 6.

Sincerely,

Allie Phillips, J.D.
Director of Public Policy

Tracy Coppola, J.D., M.S.E.L.
Legislative Analyst

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[3] Fleming, W.M., Jory, B.; Burton, D.L.., *Characteristics of Juvenile Offenders Admitting to Sexual Activity with Nonhuman Animals* (*Society and Animals*. 10 (1), 31-45), (2002).
[4] Ressler, et. al.
[5] Kowal, L.W.., *Recognizing Animal Abuse: What Veterinarians Can Learn from the Field of Child Abuse and Neglect,* Chapter 6: *Recognizing and Reporting Animal Abuse: A Veterinarian's Guide* (American Humane Association, p. 40-49) (1998).
[6] Itzin, C. *Pornography and the Organization of Intra-and Extra-Familial Child Sexual Abuse*, G.K. Kantor and J.L. Jasinski, Ed., Sage Publications,1998, pp. 58-79).
[7] Walker, L.E., *The Battered Woman Syndrome* (Springer Publishing, 1984).
[8] Ascione, Frank R., *Children Who are Cruel to Animal: A Review of Research and Implications for Developmental Psychology* (Anthrozoos, vol. 6, p. 226).
[9] The following felony statutes address bestiality: AZ ST 13-1411; DE ST T. 11 § 777; GA ST 16-6-6; ID ST 18-6605; 720 ILCS 5/12-35; IN ST 35-46-3-14; KS ST 21-3505; MASS GEN LAW CH 272 § 34; MCLA 750.158; MS ST 92-29-59; Okla. Stat. Tit. 21 § 886; RI GEN LAWS 11-10-1; SC ST 16-15-120; SD ST 22-22-42; VA ST 18.2-361; WA ST 16.52.205. The following misdemeanor statutes address bestiality: ACA 5-14-122; Cal. Penal Code 286.5; CRS 18-9-201-202 (subsequent offenses are felonies); IA ST 717C.1; LSA-RS 14:89; MD CRIM LAW CODE ANN 3-322; 17 MSRA 1031 (1); MN ST 609.294; MO ST 566.11; NE ST 28-1010; ND ST 12.1-20-12; NY PENAL LAW 130.20; GSNC 14-177; OR ST 167.333; 18 PCSA 3129; UT ST 76-9-301.8; WI ST 944.17.

Gastineau Humane Society

7705 GLACIER HWY. JUNEAU, ALASKA 99801 (907) 789-0260 FAX (907) 789-1795
WEBSITE: www.ghspets.org E-MAIL: customerservice-ghs@gci.net

March 20, 2009

Dear Representative Lynn and members of the Alaska State Legislature

Thank you for this opportunity to publicly extend my support of HB 6 "An act relating to proscribing certain sexual conduct or activities as cruelty to animals". This is a well crafted piece of legislation that speaks specifically to the crime of sexual misconduct and does not inhibit or criminalize veterinary practices or standard animal husbandry practices. I also wish thank Representative Lynn for introducing HB 6.

As the head of an animal control agency I can tell you that sexual deviancy against animals does exist. Alaska is unfortunately not unique in this behavior. In each case that has come to my attention, coercion, abuse, threat of physical harm or terrorizing a human during the practice of a sexual assault on an animal was present. The people who reported the crimes were afraid for their own safety or the safety of their children. The sexual abuse of the animal had been used to intimidate, threaten or terrorize them into submission.

The animal victims in each of these cases as well as those that happen throughout our state, had no choice and there was little that could be done to protect or defend them. Unfortunately because a crime in the legal sense was not committed, the human victims were also left with no voice, no advocate, and no recourse. There was no justice for either the abused animal or the humans who were threatened by the abuser.

Statistics gathered by the FBI, American Humane Association and other agencies who work with offenders show the high correlation between sexual abuse and torture of animals and sexual abuse and violence towards human beings. In fact, the statistics provided by Representative Lynn in the information packet are staggering.

While it is true that I work for an animal organization, and this piece of legislation is one that deals specifically with animals, there is no escaping the fact that this is a human issue as well. First and foremost, humans are the abusers. Further, statistics show that human abusers (who are often victims of abuse themselves), often began their own cycle of violence by abusing animals. Anything we can do to criminalize that act of abuse helps to break the cycle.

This piece of legislation will unfortunately not stop sexual abuse or sexual torture of animals simply by its passage. It will give the victims recourse under the law. Passing this piece of legislation is the right thing to do.

Submitted by Chava Lee
Executive Director
Gastineau Humane Society
7705 Glacier Highway
Juneau, AK 99801

March 20, 2009

To The House Judiciary Committee and Representative Bob Lynn,

I just verbally testified on HB6 but failed to mention a very important point. The person who committed the crime of killing the 22 cats, has not received any punishment. He is in my class at the Wrangell High School and I do not feel safe going to the same school as him or being in the same classroom. I hope that you pass this bill so that there will be laws to punish people like him.

Talea Davis
PO Box 465
Wrangell, Alaska 99929
meionjade@hotmail.com

House Bill 6

"An Act relating to proscribing certain sexual conduct or activities as cruelty to animals."

News Stories

Registered sex offender has sex with tied-up dog, police say (The Associated Press)

Bestiality: Yes, it's a crime (Seattle PI Editorial Board)

Registered sex offender has sex with tied-up dog, police say

KETCHIKAN: Witnesses say Lab was tied to tree and its mouth was taped shut.

The Associated Press

(04/15/08 00:14:03)

KETCHIKAN -- A 26-year-old Klawock man has been charged with two counts of criminal mischief for allegedly having sex with a tied-up dog.

Harold Simpson, a registered sex offender, is being held on a $10,000 bond.

The charges stemmed from an alleged incident last Wednesday in the woods outside the village.

A witness told Klawock Police Officer Chris Paulson that she saw Simpson coax a white dog into the woods by a green rope and later saw the dog come running out without the rope, according to Paulson's affidavit.

The witness then said she saw Simpson coax a black Labrador retriever to come to him, tying the green rope around the dog's neck and leading it into the woods.

Two men told the officer they went looking in the woods for the dog and found a man having sex with it, according to the affidavit.

The dog was tied to the tree by a green rope, and white tape had been placed around its muzzle, Paulson's report says. He says he later recovered a green rope and white tape with black hair on it from the scene.

The Ketchikan District Attorney's office had charged Simpson with two misdemeanor counts of criminal mischief.

At an arraignment hearing Friday, Ketchikan District Attorney James Scott told Craig District Court Magistrate Kay Clark that there isn't a state law to prohibit having sex with a dog.

The state also asked for bail, a rare move for a low-level offense.

"Mr. Simpson, however, poses perhaps the greatest threat to the community of any defendant that we will see in this court, or any other in Southeast, for some time," Scott said.

According to court records, when Simpson was 16, he was convicted of twice raping a young boy. He's also serving probation for assault after lunging at a child last year.

The state's "very real concern," Scott said, is that if a small child had been available and unattended at the time and place where these dogs were taken, "that the small child would have been found taped (and) tied in the woods.

Simpson has been assigned a public defender, who did not immediately return a call Monday to The Associated Press.

Wednesday, August 10, 2005

Bestiality: Yes, it's a crime

SEATTLE POST-INTELLIGENCER EDITORIAL BOARD

It should be a no-brainer that animal cruelty laws ought to cover sex acts. But after a Seattle man's death at an Enumclaw bestiality ranch last month, it became clear that our animal cruelty laws are gutless.

In other words, welcome to Nobrainsville. The legal and regulated hunting of animals in no way grants us a carte blanche on all aspects of animal life. And arguing that animals seem to enjoy the act is a ridiculous and moot point.

If state Sen. Pam Roach, R-Auburn, wants to bring about a law protecting animals from rape, we say: Go for it, Pam. For once, we're with you.

Carol Jensen
10821 Baronik Street
Anchorage, AK 99518-1724
Email: busface1999@yahoo.com
Phone: 907-244-1979

February 10, 2009

Alaska House Judiciary Committee Fax #907-465-2070
Juneau, Alaska

RE: HB 6

I urge you to pass this bill out of committee as soon as possible with the following changes:

1. Make cruelty to domestic animals a felony (first offense) with mandatory 1 year in jail and fine.
2. Mandate protection from inclement weather for all domestic animals including adequate heat, wholesome water, food, veterinary care, and shelter from wind, sun, precipitation, temperatures for all domestic animals to maintain the animal's optimum health, comfort and welfare.
3. Mandatory forfeiture of all animals owned by a person convicted of animal cruelty and mandate of non allowance to own any animals for 10 years following conviction.
4. Mandatory suspected animal abuse reporting by veterinarians and any government agency personnel.

Alaska ranks near the bottom of the list of states with adequate animal protection laws. Our law is archaic, inadequate and ineffective. Animal abuse is rampant in this state.

It is well documented and proven that abuse of animals often leads to abuse of children, spouses and other humans. It's time to nip in the bud this horrendous abuse and neglect of all animals.

Sincerely,

Carol Jensen

House Bill 6

"An Act relating to proscribing certain sexual conduct or activities as cruelty to animals."

Relevant Alaska Statutes

AS 11.61.140 Cruelty to Animals

AS 11.41.455 Unlawful exploitation of a minor

AS 11.46.475-486 Criminal mischief in the first degree to Criminal mischief in the fifth degree

Sec. 11.61.140. Cruelty to animals.

(a) A person commits cruelty to animals if the person

(1) knowingly inflicts severe and prolonged physical pain or suffering on an animal;

(2) with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal;

(3) kills or injures an animal by the use of a decompression chamber;

(4) intentionally kills or injures a pet or livestock by the use of poison; or

(5) knowingly kills or injures an animal, other than as provided in (1) or (3) of this subsection, with the intent to intimidate, threaten, or terrorize another person.

(b) Each animal that is subject to cruelty to animals under (a) of this section shall constitute a separate offense.

(c) It is a defense to a prosecution under this section that the conduct of the defendant

(1) was part of scientific research governed by accepted standards;

(2) constituted the humane destruction of an animal;

(3) conformed to accepted veterinary or animal husbandry practices;

(4) was necessarily incidental to lawful fishing, hunting or trapping activities;

(5) conformed to professionally accepted training and discipline standards.

(d) In (a)(2) of this section, failure to provide the minimum standards of care for an animal under AS 03.55.100 is prima facie evidence of failure to care for an animal.

(e) This section does not apply to generally accepted dog mushing or pulling contests or practices or rodeos or stock contests.

(f) Except as provided in (g) of this section, cruelty to animals is a class A misdemeanor. The court may also

(1) require forfeiture of any animal affected to the state or to a custodian that supplies shelter, care, or medical treatment for the animal;

(2) require the defendant to reimburse the state or a custodian for all reasonable costs incurred in providing necessary shelter, care, veterinary attention, or medical treatment for any animal affected;

(3) prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

(g) Cruelty to animals is a class C felony if the person has been previously convicted on two or more separate occasions within 10 years of the date of the present offense of a crime under this section, AS 11.61.145 (a)(1) or (2), or a law or ordinance of another jurisdiction having elements similar to those offenses. The court may also

(1) require forfeiture of any animal affected to the state or to a custodian that supplies shelter, care, or medical treatment for the animal;

(2) require the defendant to reimburse the state or a custodian for all reasonable costs incurred in providing necessary shelter, care, veterinary attention, or medical treatment for any animal affected;

(3) prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

Sec. 11.41.455. Unlawful exploitation of a minor.

(a) A person commits the crime of unlawful exploitation of a minor if, in the state and with the intent of producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct listed in (1) - (7) of this subsection, the person knowingly induces or employs a child under 18 years of age to engage in, or photographs, films, records, or televises a child under 18 years of age engaged in, the following actual or simulated conduct:

(1) sexual penetration;

(2) the lewd touching of another person's genitals, anus, or breast;

(3) the lewd touching by another person of the child's genitals, anus, or breast;

(4) masturbation;

(5) bestiality;

(6) the lewd exhibition of the child's genitals; or

(7) sexual masochism or sadism.

(b) A parent, legal guardian, or person having custody or control of a child under 18 years of age commits the crime of unlawful exploitation of a minor if, in the state, the person permits the child to engage in conduct described in (a) of this section knowing that the conduct is intended to be used in producing a live performance, film, audio, video, electronic, or electromagnetic recording, photograph, negative, slide, book, newspaper, magazine, or other material that visually or aurally depicts the conduct.

(c) Unlawful exploitation of a minor is a

(1) class B felony; or

(2) class A felony if the person has been previously convicted of unlawful exploitation of a minor in this jurisdiction or a similar crime in this or another jurisdiction.

(d) In this section, "audio recording" means a nonbook prerecorded item without a visual component, and includes a record, tape, cassette, and compact disc.

Sec. 11.46.475. Criminal mischief in the first degree.

(a) A person commits the crime of criminal mischief in the first degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) the person intentionally damages an oil or gas pipeline or supporting facility;

(2) with intent to cause a substantial interruption or impairment of a service rendered to the public by a utility or by an organization that deals with emergencies involving danger to life or property, the person damages or tampers with property of that utility or organization and causes substantial interruption or impairment of service to the public;

(3) with intent to damage property of another by the use of widely dangerous means, the person damages property of another in an amount exceeding $100,000 by the use of widely dangerous means.

(b) Criminal mischief in the first degree is a class A felony.

Sec. 11.46.480. Criminal mischief in the second degree.

(a) A person commits the crime of criminal mischief in the second degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) the person tampers with an oil or gas pipeline or supporting facility or an airplane or helicopter, with reckless disregard for the risk of harm to or loss of the property; or

(2) with intent to cause physical injury to another person, the person

(A) tampers with food, air, water, or an item that is a drug or cosmetic, or a container for food, air, water, or the item; or

(B) delivers, dispenses, or distributes food, air, water, or an item described in (A) of this paragraph knowing that a person has tampered with the food, air, water, or item or a container for the food, air, water, or item.

(b) In (a)(2) of this section,

(1) "deliver" means the actual, constructive, or attempted transfer from one person to another of food, air, water, or an item;

(2) "dispense" means to deliver a drug to an ultimate user or research subject by or under the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the drug for that delivery;

(3) "distribute" means to deliver food, air, water, or an item, whether or not there is any money or other item of value exchanged; it includes sale, gift, or exchange;

(4) "drug" has the meaning given in AS 11.71.900 (9);

(5) *[Repealed, Sec. 74 ch 35 SLA 2003].*

(c) Criminal mischief in the second degree is a class B felony.

Sec. 11.46.482. Criminal mischief in the third degree.

(a) A person commits the crime of criminal mischief in the third degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with intent to damage property of another, the person damages property of another in an amount of $500 or more;

(2) the person recklessly creates a risk of damage in an amount exceeding $100,000 to property of another by the use of widely dangerous means; or

(3) the person knowingly

(A) defaces, damages, or desecrates a cemetery or the contents of a cemetery or a tomb, grave, or memorial regardless of whether the tomb, grave, or memorial is in a cemetery or whether the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected;

(B) removes human remains or associated burial artifacts from a cemetery, tomb, grave, or memorial regardless of whether the cemetery, tomb, grave, or memorial appears to be abandoned, lost, or neglected.

(b) It is an affirmative defense to a prosecution under (a)(3) of this section that the defendant, at the time of the offense, was

(1) an employee of the cemetery and was engaged in an authorized activity on behalf of the cemetery; or

(2) authorized by law or state permit to engage in the conduct.

(c) In this section,

(1) "contents of a cemetery" includes anything that is designed or used for the protection, security, or ornamentation of a cemetery and that is located within a cemetery;

(2) "memorial" means a headstone, marker, gravestone, monument, or other object designed or intended to mark a gravesite or to memorialize the death of a person;

(3) "tomb" means a mausoleum, columbarium, or crypt, whether that mausoleum, columbarium, or crypt is located above or below ground.

(d) Criminal mischief in the third degree is a class C felony.

Sec. 11.46.484. Criminal mischief in the fourth degree.

(a) A person commits the crime of criminal mischief in the fourth degree if, having no right to do so or any reasonable ground to believe the person has such a right

(1) with intent to damage property of another, the person damages property of another in an amount of $50 or more but less than $500;

(2) the person tampers with a fire protection device in a building that is a public place;

(3) the person knowingly accesses a computer, computer system, computer program, computer network, or part of a computer system or network;

(4) the person uses a device to descramble an electronic signal that has been scrambled to prevent unauthorized receipt or viewing of the signal unless the device is used only to descramble signals received directly from a satellite or unless the person owned the device before September 18, 1984; or

(5) the person knowingly removes, relocates, defaces, alters, obscures, shoots at, destroys, or otherwise tampers with an official traffic control device or damages the work upon a highway under construction.

(b) Criminal mischief in the fourth degree is a class A misdemeanor.

(c) *[Repealed, Sec. 11 ch 71 SLA 1996].*

Sec. 11.46.486. Criminal mischief in the fifth degree.

(a) A person commits the crime of criminal mischief in the fifth degree if, having no right to do so or any reasonable ground to believe the person has such a right,

(1) with reckless disregard for the risk of harm to or loss of the property or with intent to cause substantial inconvenience to another, the person tampers with property of another;

(2) with intent to damage property of another, the person damages property of another in an amount less than $50; or

(3) the person rides in a propelled vehicle knowing it has been stolen or that it is being used in violation of AS 11.46.360 or 11.46.365(a)(1).

(b) Criminal mischief in the fifth degree is a class B misdemeanor.

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, see AS 11.16 and 11.31.110.]

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notice that he or she may also be a theory of accomplice liability if the that the defendant is responsible for s under AS 11.16.110. Baker v. State, laska Ct. App. 1995).

verdict not required. — The jury l to be unanimous as to the precise ich it returned its guilty verdicts. eyond a reasonable doubt that both

defendants participated jointly in the endeavor of shooting deer with the aid of a handheld spotlight. As a matter of law, both men could be held accountable for their own acts or as accomplices. Totemoff v. State, 866 P.2d 125 (Alaska Ct. App. 1993), rev'd on other grounds, 905 P.2d 954 (Alaska 1995), cert. denied, 517 U.S. 1244, 116 S. Ct. 2499, 135 L. Ed. 2d 190 (1996).

Applied in Kinegak v. State, 747 P.2d 541 (Alaska Ct. App. 1987).

Cited in Dailey v. State, 675 P.2d 657 (Alaska Ct. App. 1984).

Sec. 11.16.110. Legal accountability based upon the conduct of another. A person is legally accountable for the conduct of another constituting an offense if

(1) the person is made legally accountable by a provision of law defining the offense;

(2) with intent to promote or facilitate the commission of the offense, the person

(A) solicits the other to commit the offense; or

(B) aids or abets the other in planning or committing the offense; or

(3) acting with the culpable mental state that is sufficient for the commission of the offense, the person causes an innocent person or a person who lacks criminal responsibility to engage in the proscribed conduct. (§ 1 ch 166 SLA 1978)

Cross references. — For solicitation, see AS 11.31.110.

NOTES TO DECISIONS

Annotator's notes. — Some of the cases cited in the notes below were decided under former 12.15.010.

Distinction between principals and accessories abrogated. — Former AS 12.15.010 abrogated the distinction between principals and accessories. Tarnef v. State, 492 P.2d 109 (Alaska 1971).

By former AS 12.15.010, Alaska abolished the common-law distinction between accessories and principals to a crime. Rice v. State, 589 P.2d 419 (Alaska 1979).

Alaskan law does not distinguish the criminal liability of principals and accomplices. Machado v. State, 797 P.2d 677 (Alaska Ct. App. 1990).

Legal accountability statutes apply to fish and wildlife offenses. Knutson v. State, 736 P.2d 775 (Alaska Ct. App. 1987).

Knowledge of fact of criminality irrelevant. — In order for a defendant to be found liable as an accomplice, the state need only prove that defendant intentionally aided codefendant, knowing of codefendant's criminal purpose. It is not necessary that he know of the criminality of the conduct. Mudge v. State, 760 P.2d 1046 (Alaska Ct. App. 1988).

Evidence sufficient to establish accomplice liability. — Evidence was sufficient for convictions of first-degree assault and kidnapping, where defendant and a cohort bound and repeatedly hit a victim over several hours, based on a theory of accomplice liability under paragraph (2) of this section, since defendant and the cohort both actively participated in the binding of the victim and in repeatedly striking him, which resulted in serious injury to the victim, including broken ribs, a broken ankle, and a punctured lung. Anderson v. State, 163 P.3d 1000 (Alaska Ct. App. 2007).

Abrogation did not apply only to punishment. — The abrogation of the distinction between accessories and principals mandated by former AS 12.15.010 did not apply only to punishment. Scharver v. State, 561 P.2d 300 (Alaska 1977).

To "prosecute" one as a principal includes charging him as a principal. Scharver v. State, 561 P.2d 300 (Alaska 1977).

Notice to defendant of theories of liability. — When an indictment alleges that the defendant is on notice that he or she personally committed the acts constituting the crime, the defendant is on notice that he or she may also be convicted under a theory of accomplice liability if the state establishes that the defendant is responsible for the acts of others under this section. Baker v. State, 905 P.2d 479 (Alaska Ct. App. 1995).

Aiders and abettors as principals. — Former AS 12.15.010 provided that anyone aiding or abetting the commission of a crime should be prosecuted, tried, and punished as a principal. Tarnef v. State, 492 P.2d 109 (Alaska 1971).

An accused who is indicted as a principal is subject to conviction upon evidence which shows that he only aided and abetted. Scharver v. State, 561 P.2d 300 (Alaska 1977).

One indicted as a principal may be convicted of the crime on evidence which shows that he merely aided and abetted. Ransom v. State, 460 P.2d 170 (Alaska 1969).

"Aid and abet" means to help, assist, or facilitate the commission of a crime, promote the accomplishment thereof, help in advancing or bringing it about, or encourage, counsel, or incite as to its commission. Thomas v. State, 391 P.2d 18 (Alaska 1964); Carman v. State, 602 P.2d 1255 (Alaska 1979); Hensel v. State, 604 P.2d 222 (Alaska 1979).

It can be inferred that the words "aid and abet" are used synonymously with various combinations of the words assist, advise, counsel, procure, encourage, incite and instigate. Tarnef v. State, 512 P.2d 923 (Alaska 1973); Carman v. State, 602 P.2d 1255 (Alaska 1979).

Intent. — The plain language of this section indicates that an accomplice must intend the commission of the particular offense committed by the principal in order to be convicted of the offense. Erickson v. State, 824 P.2d 725 (Alaska Ct. App. 1991).

Under the complicity statute, there is no criminal liability if the state can prove only that the defendant recklessly disregarded the possibility that his conduct might promote or facilitate a crime, since all accomplice behavior must be intentional. Ashenfelter v. State, 988 P.2d 120 (Alaska Ct. App. 1999).

Culpable mental state. — When two or more

onvicted as an accomplice to the delivery
he or she is acting on behalf of the
ate v. Burden, 948 P.2d 991 (Alaska Ct.

ition" is an affirmative defense, and
s on the defendant to prove it by a
e of the evidence. Hale v. State, 764 P.2d
t. App. 1988).
Braun v. State, 911 P.2d 1075 (Alaska
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Kott v. State, 678 P.2d 386 (Alaska
v. State, 810 P.2d 172 (Alaska Ct. App.

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authority to control the captain or
, and an agent of the group onboard
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's conduct. State v. Greenpeace, Inc.,
aska Ct. App. 2008).

Property.

[Repealed, § 21 ch 166 SLA

h 166 SLA 1978. For current

166 SLA 1978. For current

§ 21 ch 166 SLA 1978. For
l or held, see AS 11.46.210.]

78. For current law, see AS

166 SLA 1978. For current

Secs. 11.20.360 — 11.20.510. False Pretenses and Frauds. [Repealed, § 21 ch 166 SLA 1978. For theft by deception, see AS 11.46.180; for business and commercial offenses, see AS 11.46.600 — 11.46.740.]

Secs. 11.20.515 — 11.20.650. Malicious Mischief and Trespass. [Repealed, § 21 ch 166 SLA 1978. For criminal trespass, see AS 11.46.320 — 11.46.350; for criminal mischief, see AS 11.46.480 — 11.46.486.]

Sec. 11.20.660. [Renumbered as AS 11.76.120.]

Secs. 11.20.670 — 11.20.690. Misuse, Damage, or Destruction. [Repealed, § 21 ch 166 SLA 1978. For criminal mischief, see AS 11.46.480 — 11.46.486.]

Chapter 22. Alaska Credit Card Crimes Act.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.285 — 11.46.290.]

Chapter 25. Forgery and Counterfeiting.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.46.500 — 11.46.580.]

Chapter 30. Offenses Against Public Justice.

[Repealed, § 21 ch 166 SLA 1978. For current law, see AS 11.56.]

Chapter 31. Attempt, Solicitation, and Conspiracy.

Section
100. Attempt
110. Solicitation
120. Conspiracy
125. Duration of conspiracy for purposes of limitations of actions
140. Multiple convictions barred
150. Substantive crimes involving attempt or solicitation

Cross references. — For increase in classification of misdemeanors committed in connection with a criminal street gang, see AS 12.55.137.

Collateral references. — 21 Am. Jr. 2d, Criminal Law, §§ 174-183, 185.

22 C.J.S., Criminal Law, §§ 115-126.

Entrapment to commit or attempt abortion, 53 ALR2d 1156.

What justifies escape or attempt to escape, or assistance in that regard, 70 ALR2d 1430; 69 ALR3d 678.

Attempt to commit assault as criminal offense, 79 ALR2d 597.

Attempts to receive stolen property, 85 ALR2d 259.

Attempt to escape or commit prison breach as affected by means employed, 96 ALR2d 520.

Attempts to commit offenses of larceny by trick, confidence game, false pretenses, and the like, 6 ALR3d 241.

Impotency as defense to charge of rape, attempt to rape, or assault with intent to commit rape, 23 ALR3d 1351.

Woman upon whom abortion is committed or attempted as accomplice for purposes of rule requiring corroboration of accomplice testimony, 34 ALR3d 858.

Comment note on impossibility of consummation of substantive crime as defense in criminal prosecution for conspiracy or attempt to commit crime, 37 ALR3d 375.

What constitutes attempted murder, 54 ALR3d 612.

Temporary unauthorized absence of prisoner as escape or attempted escape, 76 ALR3d 695.

What conduct amounts to an overt act or acts done toward commission of larceny so as to sustain charge of attempt to commit larceny, 76 ALR3d 842.

Robbery, attempted robbery, or assault to commit robbery, as affected by intent to collect or secure debt or claim, 88 ALR3d 1309.

What constitutes driving, operating, or being in control of motor vehicle for purposes of driving while intoxicated statutes, 93 ALR3d 7.

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

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

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

Fact that gun was unloaded as affecting criminal responsibility, 68 ALR4th 507.

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

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

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

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

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

(d) An attempt is

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

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

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

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

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

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

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

Cross references. — For legislative purpose of ch. 45, SLA 1982, see § 1, ch. 45, SLA 1982 in the Temporary and Special Acts.

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

Annotator's notes. — Many of the cases cited in the notes below were decided under former AS 11.05.020.

The word "attempt" generally means the trial or physical effort to do a particular thing. Wooldridge v. United States, 237 F. 775 (9th Cir. 1916).

When attempt complete under former law. — See Lemke v. United States, 14 Alaska 587, 211 F.2d 73 (9th Cir. 1954); Wooldridge v. United States, 237 F. 775 (9th Cir. 1916).

In the area of attempt, criminal culpability was present under former AS 11.05.020 where there was the formation of criminal attempt, a preparation to commit the crime, and a direct unequivocal act toward its perpetration. Braham v. State, 571 P.2d 631 (Alaska 1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Mere preparation to commit a crime, not followed by an overt act done toward its commission, did not constitute an attempt under former AS 11.05.020. There were borderline cases where it was sometimes difficult to determine whether preparation to commit a crime has come near enough to the accomplishment of the act so that an attempt had been committed. Gargan v. State, 436 P.2d 968 (Alaska 1968).

Mere preparation to commit a crime, not followed by an overt act done toward its commission, did not constitute an attempt. Lemke v. United States, 14 Alaska 587, 211 F.2d 73 (9th Cir. 1954).

When one's acts were of such a preliminary nature so as to constitute mere preparation for the contemplated crime, there was no crime of attempt. Braham v. State, 571 P.2d 631 (Alaska 1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Question of degree. — Whether acts taken or done in contemplation of the commission of a crime were merely preparatory and did not constitute an attempt, or whether they were sufficiently close to the consummation of the crime to amount to attempt, was a question of degree and depended upon the facts and

circumstances of a particular ca
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Double jeopardy. — The stat
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denied, 436 U.S. 910, 98 S. Ct. 22
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Applicability of this sectio
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criminal intent and a preparatio
crime. Braham v. State, 571 P.2d
cert. denied, 436 U.S. 910, 98 S. Ct.
410 (1978).

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"Empty pocket doctrine". —
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Attempt statute applied to a
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the attempt statute. Simpson v. U
Alaska 635, 195 F.2d 721 (9th Cir.

An attempt was necessarily
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States, 283 F. 38 (9th Cir. 1922).

Failure to include "substantial
in indictment for attempted mur
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concise description of defendant's ac
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garding his state of mind. Ciervo v.
907 (Alaska Ct. App. 1988), over
grounds, Swain v. State, 817 P.2d
App. 1991).

Indictment need not specify
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gree. — Whether acts taken or ion of the commission of a crime atory and did not constitute at- hey were sufficiently close to the e crime to amount to attempt, was and depended upon the facts and

circumstances of a particular case. Braham v. State, 571 P.2d 631 (Alaska 1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Double jeopardy. — The statutes which proscribe attempted murder, possession of explosives, and arson differ markedly in the conduct which they prohibit and in the specific societal interests which they seek to preserve, and multiple sentences for the three offenses do not violate double jeopardy. Machado v. State, 797 P.2d 677 (Alaska Ct. App. 1990).

Inadequacy of former statute. — Former AS 11.05.020 was apparently inadequate to codify effectively as a crime the situation involving the single act of contracting for another to perform a criminal act. Braham v. State, 571 P.2d 631 (Alaska 1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Applicability of this section. — Since under Alaska law, delivery of cocaine is expressly defined to include an attempted delivery, the more specific statute controls and this section, the general attempt statute, is therefore not applicable to delivery of cocaine. Stuart v. State, 698 P.2d 1218 (Alaska Ct. App. 1985).

Where defendant contracted with someone to kill another, when he instructed the killer to visit the victim, his intention being that there would be fostered a relationship of trust and confidence between the killer and the victim, thus placing the killer in a position where he would be closer to the victim and could more readily kill him, the killer's visit with the victim, at defendant's direction, was the doing of a direct, unequivocal act toward the commission of the crime of murder, which followed the formation of a criminal intent and a preparation to commit this crime. Braham v. State, 571 P.2d 631 (Alaska 1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978).

Factual impossibility not apparent to actor. — A factual impossibility which was not apparent to the actor at the time should not, as a matter of policy, insulate him from conviction for attempting the commission of the offense. Gargan v. State, 436 P.2d 968 (Alaska 1968).

"Empty pocket doctrine". — See Gargan v. State, 436 P.2d 968 (Alaska 1968).

Attempt statute applied to attempted violation of narcotic drug statute. — Persons attempting to commit the crime defined by AS 17.10.010 of the Alaska Uniform Narcotic Drug Act (now repealed) were not exempted or excepted from the provisions of the attempt statute. Simpson v. United States, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

An attempt was necessarily included in an indictment for statutory rape. Sekinoff v. United States, 283 F. 38 (9th Cir. 1922).

Failure to include "substantial step" language in indictment for attempted murder was a defect only as to form, where the indictment included a concise description of defendant's actions that constituted the offense, including the proper language regarding his state of mind. Ciervo v. State, 756 P.2d 907 (Alaska Ct. App. 1988), overruled on other grounds, Swain v. State, 817 P.2d 927 (Alaska Ct. App. 1991).

Indictment need not specify intent to be proved for attempted rape. — There is authority for the proposition that a specific intent must be proved for the crime of attempted rape. But there is no authority supporting the proposition that the indictment must specify that intent. State v. Thomas, 525 P.2d 1092 (Alaska 1974).

Even though there is no question that the crime of attempt requires a specific intent, it seems equally beyond dispute that a charge of attempt to commit a specific crime clearly advises the defendant of the offense with which he is charged. State v. Thomas, 525 P.2d 1092 (Alaska 1974).

Indictment charging attempted rape and citing only the rape statute held sufficient. — See State v. Thomas, 525 P.2d 1092 (Alaska 1974).

Attempted kidnapping was class A felony under this section before 1982 amendment. — Under the law as it existed before the 1982 amendment to this section became effective, attempted kidnapping was unquestionably a class A felony. Galbraith v. State, 693 P.2d 880 (Alaska Ct. App. 1985).

Attempted kidnapping and other attempted crimes. — Every attempted sexual assault, attempted physical assault, or attempted armed robbery does not necessarily involve an attempted kidnapping. In order to make these distinctions clear, it is important that the jury be properly instructed that conviction of attempted kidnapping under AS 11.41.300(a)(1)(C) and this section requires a dual intent (1) to physically or sexually assault the victim and (2) to restrain the victim beyond what was necessary to effectuate the assault. Alam v. State, 793 P.2d 1081 (Alaska Ct. App. 1990).

Attempted first-degree sexual assault. — At the very least, a defendant must have formed a specific intent to engage in sexual penetration in order to be convicted of attempted first-degree sexual assault. Baden v. State, 667 P.2d 1275 (Alaska Ct. App. 1983).

Five-year presumptive sentence for attempted sexual assault. — It was not manifestly unjust to impose a five-year presumptive term upon defendant's conviction of attempted sexual assault of a minor, and he was not automatically entitled as a matter of law to have his case referred to a three-judge panel for sentencing. Aveoganna v. State, 757 P.2d 75 (Alaska Ct. App. 1988).

Attempt to commit second-degree sexual assault is a crime under Alaska law and requires that defendant, intending to engage in sexual contact with another person without regard to that person's lack of consent, take a substantial step toward accomplishing this goal. Guertin v. State, 854 P.2d 1130 (Alaska Ct. App. 1993).

Merger of attempted sexual assault convictions. — Where defendant entered the victim's apartment with the intent to sexually assault her, ripped off her clothing, continued to attack her while she struggled to fight him off, and a rescuer entered the apartment to intervene, defendant's convictions for attempted first-degree sexual assault and attempted second-degree sexual assault should have been merged, because the same conduct was basis for both convictions. Moore v. State, 123 P.3d 1081 (Alaska Ct. App. 2005).

Offense of attempted second-degree murder was an impossibility. Huitt v. State, 678 P.2d 415 (Alaska Ct. App. 1984).

Applicability of partial affirmative defenses. — A person charged with attempted kidnapping is not entitled to assert a partial defense when the intended victim of the crime is voluntarily released unharmed; under the plain language of AS 11.41.300(d), the partial affirmative defense applies only in a prosecution for kidnapping. Laraby v. State, 710 P.2d 427 (Alaska Ct. App. 1985).

Defendant may be found guilty though attempt not expressly charged. — Jury could find defendant guilty of the attempt to commit the crime of possessing narcotic drugs despite the fact that the attempt was not expressly charged. Simpson v. United States, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

Intoxication defense to attempt. — Where defendant was charged with attempted first-degree sexual assault, attempted second-degree sexual assault, and burglary, defendant's intoxication at the time of the offense offered a defense to the culpable mental state. Moore v. State, 123 P.3d 1081 (Alaska Ct. App. 2005).

Substantial evidence of attempt. — In a prosecution for possession of narcotic drugs, although there was no substantial evidence that defendant committed the crime charged in the information, there was substantial evidence that she attempted to commit the crime charged. Simpson v. United States, 13 Alaska 635, 195 F.2d 721 (9th Cir. 1952).

Substantial evidence supported defendant's conviction for attempted first-degree sexual assault; the evidence, when viewed in the light most favorable to the verdict, established that defendant attacked wife and removed some of her clothing while the wife vigorously resisted. Sergie v. State, 105 P.3d 1150 (Alaska Ct. App. 2005).

Conviction of attempted first-degree sexual assault affirmed. — Conviction of attempted sexual assault on the first degree under AS 11.41.410 as it read before the 1983 amendment and this section was affirmed. Sexual charges based on non-consensual genital intercourse do not require proof of a specific sexual intent; and plain error was not established though the prosecutor's expressions which might have been construed as a personal opinion of the guilt of the defendant or an argument relating to a defendant's need for treatment were improper and uninvited. Potts v. State, 712 P.2d 385 (Alaska Ct. App. 1985).

Evidence supported defendant's conviction of attempted sexual assault in the first degree, where he brought his eight-year old stepdaughter and some syrup into a bathroom and asked the child if she would lick the syrup from his penis, and the fact that a wet drop of syrup was found on the counter supported the conclusion that he actually opened the syrup and poured some amount of it. Mitchell v. State, 818 P.2d 1163 (Alaska Ct. App. 1991).

Evidence sufficient to support conviction. — See McCarlo v. State, 677 P.2d 1268 (Alaska Ct. App. 1984).

Conviction and sentence upheld. — See Andrejko v. State, 695 P.2d 246 (Alaska Ct. App. 1985).

Conviction reversed because of insufficient evidence. — See Brower v. State, 728 P.2d 645 (Alaska Ct. App. 1986).

Defendant's conviction of attempted sexual abuse of a minor in the second degree was reversed, where evidence showing that he wrote notes to an eight-year-old girl asking her to be his girlfriend and to kiss him established only that he engaged in preparatory conduct and not that he took a substantial step toward sexual contact with the girl. Sullivan v. State, 766 P.2d 51 (Alaska Ct. App. 1988).

Convictions reversed because of erroneous jury instruction. — Convictions for attempted sexual assault in the first degree and kidnapping were reversed because of an erroneous jury instruction on sexual assault in the first degree concerning consent. The correct standard is whether the defendant recklessly disregarded the victim's lack of consent. Laseter v. State, 684 P.2d 139 (Alaska Ct. App. 1984).

Same offense for sentencing purposes. — Assault with intent to rob and attempted robbery constituted the "same offense" for sentencing purposes. Brookins v. State, 600 P.2d 12 (Alaska 1979).

Sentence upheld. — See Bowie v. State, 494 P.2d 800 (Alaska 1972); Spearman v. State, 543 P.2d 202 (Alaska 1975); Braham v. State, 571 P.2d 631 (Alaska 1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978); Johnson v. State, 580 P.2d 700 (Alaska 1978); Ferguson v. State, 590 P.2d 43 (Alaska 1979); Morris v. State, 592 P.2d 1244 (Alaska 1979); Ramil v. State, 619 P.2d 722 (Alaska 1980); Travelstead v. State, 689 P.2d 494 (Alaska Ct. App. 1984); Schnecker v. State, 739 P.2d 1310 (Alaska Ct. App. 1987).

Sentence for attempted first degree murder upheld. — See Staael v. State, 718 P.2d 948 (Alaska 1986).

Maximum sentence upheld. — Severity of victim's injury, and his resulting long-term impairment, supported judge's conclusion that defendant's assault was among the worst attempted murders and that he should receive the maximum term for the crime. Nelson v. State, 874 P.2d 298 (Alaska Ct. App. 1994).

Consecutive sentences unsupported. — Consecutive sentences for first degree murder and attempted murder were remanded because judge had failed to find that a sentence of that length was necessary to protect the public. Nelson v. State, 874 P.2d 298 (Alaska Ct. App. 1994).

Prohibiting suspended sentence. — The prohibition against the granting of a suspended imposition of sentence applies to persons convicted of an attempt to commit one of the sexual offenses defined in the criminal code. Mack v. State, 900 P.2d 1202 (Alaska Ct. App. 1995).

Sentence under former AS 11.41.410(b) and this section held excessive. — See Bolhouse v. State, 687 P.2d 1166 (Alaska Ct. App. 1984).

Sentence held excessive. — See Hansen v. State, 657 P.2d 862 (Alaska Ct. App. 1983).

Applied in Nicholson v. State, 656 P.2d 1209 (Alaska Ct. App. 1982); Patterson v. State, 732 P.2d 1102 (Alaska Ct. App. 1987); Allen v. State, 769 P.2d 457 (Alaska Ct. App. 1989); Dandova v. State, 72 P.3d 325 (Alaska Ct. App. 2003); Parker v. State, 151 P.3d 478 (Alaska Ct. App. 2006).

Stated in State v. Silas, 595 P.2d 651 (Alaska 1979); Ramil v. State, 619 P.2d 722 (Alaska 1980); Coleman v. State, 621 P.2d 869 (Alaska 1980); Clark v. State, 645 P.2d 1236 (Alaska Ct. App. 1982); Tazruk v. State, 655 P.2d 788 (Alaska Ct. App. 1982); Velez v. State, 762 P.2d 1297 (Alaska Ct. App. 1988).

Cited in Handley v. State, 615 P.2d 627 (Alaska 1980); Walker v. State, 662 P.2d 948 (Alaska Ct. App. 1983); Bell v. State, 668 P.2d 829 (Alaska Ct. App. 1983); Brower v. State, 683 P.2d 290 (Alaska Ct. App. 1984); Hart v. State, 702 P.2d 651 (Alaska Ct. App. 1985); Chief v. State, 718 P.2d 475 (Alaska Ct. App. 1986); Hastings v. State, 736 P.2d 1157 (Alaska Ct. App. 1987); James v. State, 739 P.2d 1314 (Alaska Ct. App. 1987); Stevens v. State, 748 P.2d 771 (Alaska Ct. App. 1988); James v. State, 754 P.2d 1336 (Alaska Ct. App. 1988); Ervin v. State, 761 P.2d 124 (Alaska Ct. App. 1988); Robison v. State, 763 P.2d 1357 (Alaska Ct. App. 1988); Konrad v. State, 763 P.2d 1359 (Alaska Ct. App. 1988); Lawrence v. State, 764 P.2d 318 (Alaska Ct. App. 1988); Charles v. State, 780 P.2d

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Collateral references. -
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Sec. 11.31.110. Sol

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(4) a class C felony if

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377 (Alaska Ct. App. 1989); Gantner v. State, 789 P.2d 381 (Alaska Ct. App. 1990); Capwell v. State, 823 P.2d 1250 (Alaska Ct. App. 1991); Sam v. State, 842 P.2d 596 (Alaska Ct. App. 1992); Kolkman v. State, 857 P.2d 1202 (Alaska Ct. App. 1993); Rudden v. State, 881 P.2d 328 (Alaska Ct. App. 1994); Marino v. State, 934 P.2d 1321 (Alaska Ct. App. 1997); Gwalthney v. State, 964 P.2d 1285 (Alaska Ct. App. 1998); Wilson v. State, 967 P.2d 98 (Alaska Ct. App. 1998); Griffin v. State, 9 P.3d 301 (Alaska Ct. App. 2000); Avila v. State, 22 P.3d 890 (Alaska Ct. App. 2001); State v. Brueggeman, 24 P.3d 583 (Alaska Ct. App. 2001); Ramsey v. State, 56 P.3d 675 (Alaska Ct. App. 2002); Wholecheese v. State, 100 P.3d 14 (Alaska Ct. App. 2004); Kelly v. State, 116 P.3d 602 (Alaska Ct. App. 2005); State v. Parker, 147 P.3d 690 (Alaska 2006); Lambert v. State, 172 P.3d 838 (Alaska Ct. App. 2007); Moore v. State, 174 P.3d 770 (Alaska Ct. App. 2008); Tuttle v. State, 175 P.3d 60 (Alaska Ct. App. 2008); Oviuk v. State, 180 P.3d 388 (Alaska Ct. App. 2008).

Collateral references. — Attempt to commit assault as criminal offense. 93 ALR5th 683.

Sec. 11.31.110. Solicitation. (a) A person commits the crime of solicitation if, with intent to cause another to engage in conduct constituting a crime, the person solicits the other to engage in that conduct.

(b) In a prosecution under this section,

(1) it is not a defense

(A) that the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the crime that is the object of the solicitation; or

(B) that a person whom the defendant solicits could not be guilty of the crime that is the object of the solicitation;

(2) it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, after soliciting another person to engage in conduct constituting a crime, prevented the commission of the crime.

(c) Solicitation is

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

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

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

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

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

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

(d) If the crime solicited is an unclassified crime described in a state law which is not part of this title and no provision for punishment of a solicitation to commit the crime is specified, the punishment for the solicitation is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime solicited is punishable by an indeterminate or life term, the solicitation is a class A felony. (§ 2 ch 166 SLA 1978; am § 2 ch 102 SLA 1980; am § 11 ch 45 SLA 1982; am § 2 ch 54 SLA 1999)

Cross references. — For legislative purpose of ch. 45, SLA 1982, see § 1, ch. 45, SLA 1982, in the Temporary and Special Acts; for legal accountability based on the conduct of another and complicity, see AS 11.16.110. For applicability provisions relating to the 1999 amendment of subsection (c), see § 16, ch. 54, SLA 1999 in the 1999 Temporary & Special Acts.

Effect of amendments. — The 1999 amendment, effective June 5, 1999, rewrote subsection (c).

Legislative history reports. — For a report on Chapter 102, SLA 1980 (HCS CSSB 511), see 1980 Senate Journal Supplement, No. 44, May 29, 1980, or 1980 House Journal Supplement, No. 79, May 28, 1980.

NOTES TO DECISIONS

Former law construed. — See McConkey v. State, 504 P.2d 823 (Alaska 1972); Cassell v. State, 645 P.2d 219 (Alaska Ct. App. 1982) (decided under former AS 11.10.070).

Soliciting unlawful exploitation of minor. — Where defendant was charged with soliciting the crime of unlawful exploitation of a minor based on his asking victims to take off their clothes and let him photograph them, defendant's argument that he did not "solicit" the crime because the victims could not be guilty of the intended crime was foreclosed by the provision of this section that it is no defense that the person solicited could not be guilty of the crime that is the object of the solicitation. Braun v. State, 911 P.2d 1075 (Alaska Ct. App. 1996).

Defendant's convictions for soliciting the crime of unlawful exploitation of a minor which were based on his asking victims to take off their clothes and let him photograph them were erroneous since defendant did not ask anyone else to engage in the prohibited conduct, i.e., inducing a child to engage in one of the sexual activities prohibited by AS 11.41.455, and thus he did not commit the crime of solicitation. Braun v. State, 911 P.2d 1075 (Alaska Ct. App. 1996).

One contracting with another to kill a third person was guilty of attempted first-degree murder, not solicitation. — See Braham v. State, 571 P.2d 631 (Alaska 1977), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978) (decided under former AS 11.10.070 and 11.15.010).

Sentence upheld. — Composite sentence of 40 years of imprisonment for solicitation of murder in the first degree, attempted murder in the first degree, and assault in the first degree was not clearly mistaken. Marzak v. State, 796 P.2d 1374 (Alaska Ct. App. 1990).

Quoted in Sullivan v. State, 766 P.2d 51 (Alaska Ct. App. 1988); Gargan v. State, 805 P.2d 998 (Alaska Ct. App. 1991).

Cited in Hoover v. State, 641 P.2d 1263 (Alaska Ct. App. 1982); P.S. v. State, 655 P.2d 1319 (Alaska Ct. App. 1982); Monroe v. State, 752 P.2d 1017 (Alaska Ct. App. 1988); Bachler v. State, 941 P.2d 200 (Alaska Ct. App. 1997); Ivanoff v. State, 9 P.3d 294 (Alaska Ct. App. 2000); Zemljich v. Municipality of Anchorage, 151 P.3d 471 (Alaska Ct. App. 2006).

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

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

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

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

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

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

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

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

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

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

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

(h) In this section,

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HB 6 Animal Cruelty by Rep. Bob Lynn
House Judiciary Committee, Fri., March 20, 2009

Teleconference requests, including witnesses and sites:

Offnet number from Klawock

Police Chief Cullen Fowler, City of Klawock
755-2777, ext 311 (office)
Email: cfowler@cityofklawock.com

Mayor Donald Marvin, City of Klawock
Office 755-2261

At House Judiciary Committee Room:

Chava Lee, executive director of Gastineau Humane Society
789-0260 (office)
Email: execdir@ghspets.org

Dr. Rachel Dzuiba, GHS veterinarian
463-5022 (office)
Email: bridgevet@acsalaska.net

Offnet number from Anchorage:

Rose Munafo, sex offender programs for Alaska Dept. of Corrections
269-7416 (office)
Email: rose.munafo@alaska.gov

Offnet number from Homer:

Sgt. Larry Kuhns, Homer Police Department
235-3150 (office)
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Colleen James, nurse and SART Kenai member
398-0544
Email: fritz@xyz.net

Contact: Mike Sica, 465-4965, staff for Rep. Bob Lynn

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 20, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 3/20/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 6**

"An Act relating to cruelty to animals."

HB 6 CRUELTY TO ANIMALS

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB6 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [✓] New Title**

[ ] attach amendments
[ ] add new referral to _____ Committee
[ ] Letter of Intent_____ Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW				✓
DOC				✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	✓			
	Gorenkey	–			
	Coghill	✓			
	Gatto	✓			
	Holmes				X
Chair:	RAMRAS			X	
Chair:					

Jane Pierson

From: Rep. Nancy Dahlstrom
Sent: Wednesday, March 25, 2009 11:09 AM
To: Jane Pierson
Subject: FW: HB 6 & Misconceptions

Hi Jane, Nancy received this e-mail this last weekend. Thought it was very interesting to say the least... :o)

Laura Pierre
Legislative Aide
Office of Rep. Nancy Dahlstrom
P. 907.465.3783
F. 907.465.2293
Laura_Pierre@legis.state.ak.us

-----Original Message-----
From: housemajority_email@housemajority.org [mailto:housemajority_email@housemajority.org]
Sent: Saturday, March 21, 2009 2:19 PM
To: Rep. Nancy Dahlstrom
Subject: HB 6 & Misconceptions

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to t.wallace@hotmail.com If suspected Spam please forward to: support@housemajority.org
+----------+

From: t.wallace@hotmail.com

Dear. Rep. Dahlstrom:

First I would like to thank you, as I thanked Rep. Lynn, for your generally outstanding service to the State. As a Libertarian who divides my time between Wasilla and Seattle, I generally support your voting record in the Legislature.

However, it is my Libertarian beliefs in smaller government that are prompting me to write you regarding HB 6 and the component regarding sexual involvement with animals. I am certain you share my view that any new legislation should be considered from all perspectives for present impact and future precedent-setting, and only executed when it is determined that the government must once again intervene in citizens' private lives.

Therefore, as a researcher and clinician in this field, I feel compelled to share some misconceptions upon which you may be basing your co-sponsorship of this bill, but which are not supported by diligent research. This may seem long-winded, but I hope you will give it due consideration as peer-reviewed studies on the paraphilia of zoophilia. Valid sources are cited at the end for your future use.

To say "conduct X is animal cruelty" is valid if, and only if, conduct X is substantially animal cruelty. As a researcher in this field, I assume that such a law is based upon due diligence of research. In which case one must ask why a lawmaker constructs such a law despite some 50 years of research by psychologists, sexologists and ethologists which say its fundamental premise (that conduct X is of necessity cruel) is fatally flawed [1]. Most significant sexual information sources strongly differentiate this activity from animal cruelty activities [2] and make clear that "the quality of the interaction and the relationship - that may be loving, neutral, or violent - and not the fact of a sexual interaction is important." [3].

In light of this, the rationale for building the claim into law as a legislated assumption is of great doubt, and seems to represent a preconception of a non-expert and lack input from experts. This is a poor basis for law, and building this premise into legislation will (as experts at the Kinsey Institute said of human-animal sexuality in 1999) doubtless

"destroy the lives of many citizens" [4].

From a logical and Constitutional perspective, it is not appropriate for government to intervene in people's private lives when there is no evidence of harm. Consider the following arguments:

1) Consent: It does not follow that because an animal can't consent to or request sexual contact with a human (and that point is debated), that it is valid to make a law prohibiting it. Most of us would never consider introducing a bill outlawing the use of leather or the eating of meat, uses that impinge on an animal's "consent" far more than does sexual contact. Instead, strong laws with strict penalties are set in place to make sure that the animal does not suffer while these "non-consensual" acts take place.

Not to mention this bill would still allow breeders to have sexual contact with animals. It seems more than a bit illogical to permit sexual stimulation of an animal for profit but impose criminal penalties if the person enjoys doing it (prosecution of thought).

2) Cruelty: As stated above, animal cruelty laws are already on the books. Indeed, sometimes sexual acts involve cruelty, and I have no problem with strengthening those laws. But, as many of the recent cases around the country prove (for example Klamath Falls, OR, and Enumclaw, WA), sexual contact frquently does not involve cruelty to the animal. Cruelty can be proven by the same standards as is used by law enforcement and animal control when assessing non-sexual allegations of mistreatment. If a private sexual act between a human and an animal does not meet these standards, then it should have no basis for prosecution.

3) "Gateway Crime": Supporters of this bill have cited studies by the FBI and other groups that, for example, a percentage of serial killers, child molesters, etc., had an early history of animal abuse. But simply because these studies show a correlation between bestiality and later serious crimes, it does not logically follow that all practitioners of bestiality will follow this path. Indeed, my own research, as well as published, peer-reviewed studies[5] such as those by Kinsey, Miletski[6], and Weinburg all indicate that there is a dramatic difference between the mindset of a person who forcibly rapes an animal and that of a person who has sexual contact which does not involve force. Most psychologists would tell you (and the research supports this) that the former involves serious pathology and sociopathy (the lack of ability to feel empathy), while the latter is merely a harmless paraphilia. And the vast majority of those studied throughout the past fifty years (and there are literally thousands within the U.S. who practice bestiality regularly) are cases of the latter. This is an exceptionally important point that cannot be overemphasized. There MUST be differentiation between force/rape and non-forced acts. Objective research results demand this.

In consideration of these arguments, what are we then left with? A law designed to dictate morality. But I would respectfully remind you that when the U.S. Supreme Court declared state s@# o*y laws unconstitutional, it stated decisively that you can not legislate personal morality. This law, if passed, will not bear up to constitutional scrutiny.

I hope you are still with me. As a fair lawmaker I believe that you are able to see past the emotional aspects of this issue and the outrage regarding the case in Klawock (which by all accounts is a case of true animal cruelty and should be punished as such under existing laws), to the real issue at hand. Simply put, the more government intervenes in the personal lives of citizens, the easier it becomes to intervene. While most people (myself included) cannot relate to the sexual desire of a member of another species, it is a giant leap backward to send someone to jail for practicing a non-harmful sexual behavior simply because it is viewed as "disgusting".

I therefore ask you to reasonably consider: if you must include sexual contact in your bill, please amend it to penalize such contact that is abusive or inhumane, as judged by a competent vet or animal control officer using the same standards as for non-sexual cases.

Thank you for your time,

Thomas A. Wallace, Psy.D

P.S.: I would strongly urge you not to embrace the Humane Society of the United States (HSUS) too strongly simply due to their support of your bill. This group has a deceptive name: they are NOT government affiliated like the American Humane Society or ASPCA. Their

agenda is extremely anti-hunting, anti-trapping, etc., and generally considered to be only slightly less incendiary than groups such as PETA or ALF[7].

References: [1] Information indicating how professionals knowledgable in the field, view this activity, is linked from sections 4, 5, 7 & 13 at: en.wikipedia[dot] org/wiki/Zoophilia (permanent link: Mar 2009). Peer reviewed research contradicting this assumption Includes Masters Ph.D. (1962), Miletski Ph.D. (1994), Weinberg/Williams (Kinsey Institute, University of Indiana) (1999-2003), Beetz Ph.D. (2002).

[2] Information linked from: en.wikipedia[dot]org/index.php?title=Zoosadism which states "Sexology information sites (if sufficiently detailed) are usually careful to distinguish zoosadism from zoophilia" and lists several sites exemplifying this.

[3] Cited from Andrea Beetz Ph.D. "Love, Violence, and Sexuality in Relationships between Humans and Animals" (2002), which also states categorically: "Former, as well as the here presented research, suggests that zoophilia itself does not represent a clinically significant problem and is not necessarily combined with other clinically significant problems and disorders, even if it may be difficult for some professionals to accept this."

[4] Professors Martin S. Weinberg, PhD and Colin J. Williams, PhD , of the Kinsey Institute, University of Indiana. They wrote in 1999 on a similar subject: "As sociologists and sex researchers at Indiana University for over 30 years, and as professionals who are researching in [bestiality] ... we believe that given our academic disciplines, we write with the benefit of extensive knowledge regarding the consequences of attempting to legally control unconventional forms of sexual expression and the failure of legislators to distinguish between the objective harm resulting from these sexual acts and the displeasure they may feel with regard to them. "No one can argue about the objective harm resulting from a behavior like rape. Such harm arises from the absence of consent and the trauma that accompanies and follows from the act. Opponents of a human having sex with an animal use a similar standard. While what constitutes an animal's consent is difficult to define, people are well aware when an animal is non-consenting. Our research suggests that forcing sex on an unwilling animal is rare [...] "[Practitioners] appear to be extremely caring and concerned for their animal/s and people who know them would be hard put to claim abuse. Implicit in [creating legislation] is that sex with an animal in itself constitutes abuse. We believe that this merely reflects a negative attitude toward such a non-traditional form of sexuality. Disgust should not be a criterion for legislation; only objective evidence of harm should be, and there are sufficient laws against cruelty to animals to handle such cases [...] "Remember that less than half a century ago, all states but one criminalized homosexual acts because many people were uncomfortable with the idea of sexual behavior with members of the same sex. This destroyed the lives of many citizens."

[5] "'Understanding Zoophilia and Bestiality' - A Review" Vern L. Bullough, Ph.D., R.N., as published in the Journal of Sex Research, May 2003 issue, Volume 40, Number 2. Also viewable online at drmiletski[dot]com/bestiality.html.

[6] Hani Miletski, M.S.W., Ph.D, "Understanding Bestiality and Zoophilia", Bethesda, MD, 2002.

[7] Davenport, Clay, "PETA, HSUS, and ALF: The Real Story", retrieved from arbreptiles[dot]com/extremists.shtml, 21 March 2009.

Note: Please forgive the strange URL formatting but your email service does not allow full URL's to be listed.

~ Thomas Wallace
Zip Code: 99687

+----------+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
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HB 9

COMMITTEE DOCUMENTS

(FILE 1)

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REPRESENTATIVE MIKE CHENAULT
SPEAKER OF THE HOUSE

SPONSOR STATEMENT

COMMITTEE SUBSTITUTE for HOUSE BILL 9 (LS0036\E)
An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure."

The impetus for HB 9 really comes from what I view as society's inability to reform or rehabilitate certain criminals. People who commit the most monstrous of crimes will not have the opportunity to reoffend if a death sentence is carried out. 36 states currently have a death penalty on their books, whether they use it or not, and while I don't believe it's a deterrent to crime, I believe it should be an option for the justice system to brandish against the most heinous unremorseful criminals in our society.

Alaska is currently awaiting the trial of a man previously accused of murder who is going on trial for the torture and brutal murder of another woman. Federal prosecutors are deciding whether he should face the death penalty. Many Alaskans believe he should. It is important to note that if this individual had not committed Federal crimes in connection with this case, he would be prosecuted by the state and under current law would not be eligible for the death penalty. But would his torture and murder of a woman be any less offensive?

The most common argument against the death penalty is that you might execute an innocent individual. Let me be perfectly clear in stating I believe that the death penalty should only be used in cases where there is no question of guilt or innocence. No one supports innocent people being put to death for crimes they did not commit. But technology continues to make it more difficult for criminals to hide their offenses and I've included safe guards in the legislation to help ensure that people are not wrongfully convicted and sentenced to death.

It is my hope that we can engage in a healthy dialogue about the death penalty. The Alaska Territorial Legislature abolished the death penalty in 1957. I believe it is time for us to reexamine the issue, discuss advancements made in the judicial system, and once again consider how we as a society can most effectively dispense justice. I want this legislation to give Alaskans the confidence that we have a system of justice they can rely on to handle the most heinous members of our society.

Representative_Mike_Chenault@legis.state.ak.us

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State Capitol, Room 120
Juneau, Alaska 99801

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 7

From: Jane W. Pierson

Date: April 8, 2009

Re: Going Final on HB9

Today, the House Judiciary Committee passed out the CS for HB9 version 26-LS0036\E with the attached three amendments, please note that amendment #3 is as amended. Please make the amendments and go final.

Should you have any questions, please do not hesitate to give me a call.

Rs 1

26-LS0036\E.7
Luckhaupt
3.23.09

AMENDMENT #1

OFFERED IN THE HOUSE

TO: CSHB 9( ), Draft Version "E"

Page 15, line 11, following "fire fighter,":

Insert "emergency medical technician, paramedic, ambulance attendant,"

310

Passed
L - V
G - N
H - N 4-2
C - Y
G - Y
R - Y

26-LS0036\E.6
Luckhaupt
3/23/09

Rep. Ramras

AMENDMENT #2

OFFERED IN THE HOUSE

TO: CSHB 9( ), Draft Version "E"

Page 1, line 4, following the first occurrence of "**Rules**":

Insert "**16,**"

Page 17, following line 29:

Insert new material to read:

"**Sec. 12.58.070. Discovery.** (a) Except as provided in (b) of this section, Rule 16, Alaska Rules of Criminal Procedure, applies to discovery in the penalty phase of a capital felony prosecution if the prosecution is seeking the death penalty.

(b) Thirty days before the guilt phase of a capital felony case is scheduled to begin, the prosecution and the defense shall provide to the opposing party a list of witnesses, other than expert witnesses, that the party is likely to call at the penalty phase if the defendant is found guilty of a charge that is the foundation for the death penalty. In addition to the witness lists, the parties shall include the witnesses' written or recorded statements, a summary of any other statements, and a summary of the testimony the witness will provide the court.

(c) Nothing in this section affects discovery related to expert witnesses under Rule 16, Alaska Rules of Criminal Procedure."

Page 23, following line 1:

Insert a new subsection to read:

"(c) AS 12.58.070, added by sec. 21 of this Act, has the effect of modifying Rule 16, Alaska Rules of Criminal Procedure, by providing for the exchange of the names of witnesses, their written or recorded statements, and summaries of their testimony by the

prosecution and defense for the penalty phase of a capital felony death penalty prosecution."

312

26-LS0036\E.3
Luckhaupt
3/18 09

AMENDMENT #3

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: CSHB 9( ), Draft Version "E"

Page 13, line 21, following "court.":

Insert "The attorney general may not elect to seek the death penalty under this section unless the state is prepared to present to the jury at trial

(1) biological evidence or deoxyribonucleic acid evidence that links the defendant to the act of murder;

(2) a videotaped voluntary confession by the defendant to the murder; or

(3) a video recording that conclusively links the defendant to the murder."

Page 14, line 13:

Delete "and"

Page 14, following line 13:

Insert a new paragraph to read:

"(3) that the state presented

(A) biological evidence or deoxyribonucleic acid evidence that links the defendant to the act of murder;

(B) a videotaped voluntary confession by the defendant to the murder; or

(C) a video recording that conclusively links the defendant to the murder;"

Renumber the following paragraph accordingly.

Page 14, line 29:

Delete "and"

Page 14, following line 29:

Insert a new paragraph to read:

"(3) that the state presented

(A) biological evidence or deoxyribonucleic acid evidence that links the defendant to the act of murder;

(B) a videotaped voluntary confession by the defendant to the murder; or

(C) a video recording that conclusively links the defendant to the murder;"

Renumber the following paragraph accordingly.

Amendment to SB 110
#3

From SB 110

(2) "biological evidence" means

(A) the contents of a sexual assault forensic examination kit;

(B) semen, blood, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable human bodily material, collected as part of a criminal investigation

Page 1

AMENDMENT TO AMEND #3

SECTIONAL ANALYSIS
COMMITTEE SUBSTITUTE for HOUSE BILL 9 (LS0036\E)

"An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure."

Section 1: Amends AS 05.15.105(b), Persons prohibited from involvement. Adds capital offense to the section prohibiting persons from becoming involved in games of skill and chance.

Section 2: Amends AS 05.15.140(b), Proof necessary to qualify for a permit. Adds capital offense to the section requiring a municipality or qualified organization to disclose the name and address of each person responsible for the operation of the activity and whether any person named has committed an offense as listed in subsection (b)(1).

Section 3: Amends AS 08.64.326(a), Grounds for imposition of disciplinary sanctions. Adds capital offense to the subsection where the Medical Board may impose a sanction if the board finds after a hearing that a licensee has committed a class A or unclassified felony.

Section 4: Amends AS 09.65.210, Damages resulting from commission of a felony or while under the influence of alcohol or drugs. Adds capital felony to the section prohibiting a person from recovering damages for a personal injury or death if the person was engaged in conduct that would constitute the commission of a capital, unclassified, class A or class B felonies.

Section 5: Amends AS 11.31.100(d), Attempt. Removes "other than murder in the first degree" from the attempt classifications under subsection (d) (2).

Section 6: Amends AS 11.31.110(c), Solicitation. Removes "other than murder in the first degree" from the solicitation classifications under subsection (e) (2).

Section 7: Amends AS 11.31.120(i), Conspiracy. Removes "other than murder in the first degree" from the conspiracy classifications under subsection (i) (2).

Section 8: Amends AS 11.31.120(h) (2), Conspiracy. Adds capital felony to the definition of serious felony offense in the conspiracy statutes as provided within the newly amended statute, AS 12.55.125(a), Sentences of imprisonment of felonies.

Section 9: Amends AS 11.41.100(b), Murder in the first degree. Defines murder in the first degree as a capital offense as it is provided under AS 12.55.125(a).

Section 10: Amends 12.30.020(a), Bail. Adds capital offense to the list of felonies for which bail may not be applicable unless certain conditions are met.

Section 11: Amends AS 12.30.040(b), Release after conviction. Adds capital offense to the provisions under which a person may not be release on bail before sentencing or pending appeal.

Section 12: Amends AS 12.47.110(b), Commitment on finding of incompetency. Adds capital felony to the list of charges for which a defendant may be charged again after a five-year period.

Section 13: Amends AS 12.50.101(i) (1), Immunity of witnesses. Adds capital offense to the list of "higher level" felonies.

Section 14: Amends AS 12.55.025(i), Sentencing procedures. Exempts imposing a sentence of death from the preponderance of evidence standard of proof as it applies to criminal proceedings.

Section 15: Amends AS 12.55.125(a), Sentences of imprisonment for felonies. Adds the death sentence to the sentencing considerations for murder in the first degree. Also removes the murder of an unborn child from the imposition of a death sentence, listing the parameters of sentencing and lists the possible sentence for one convicted of murder in the first degree and the circumstances that are to be considered upon sentencing.

Section 16: Amends AS 12.55.125(f), Sentences of imprisonment for felonies. Adds a sentence of death to the list of those sentences that may not be suspended.

Section 17: Amends AS 12.55.125(l), Sentences of imprisonment for felonies. Defines the length of sentence of 99 years for those convicted of a capital, unclassified or a class A felony offense when the defendant has been convicted of two or more serious felonies.

Section 18: Amends AS 12.55.145(a), Prior convictions. Adds capital offense to the exceptions for which a certain time period has elapsed when considering prior convictions upon sentencing.

Section 19: Amends AS 12.55.155(f), Factors in aggravation and mitigation. Clarifies that the aggravators listed within this section can only be considered under presumptive sentencing and not for capital punishment.

Section 20: Amends AS 12.55.185(10), Definitions. Adds capital felony to the definition of "most serious felony."

Section 21: Adds a new chapter, Chapter 58, to AS 12, Code of Criminal Procedure.

Article 1. Election to Seek Death Penalty.

Sec. 12.58.010. Prosecutor's election to seek death penalty. Outlines the procedure in which the attorney general can seek the death penalty and the district attorney giving notice and the applicable aggravating factor(s) to the court, the defendant and the defendant's attorney within 120 days of arraignment on the capital felony indictment or within 120 days of arraignment if the indictment has been waived.

Article 2. Imposition of Sentence.

Sec. 12.58.020, Sentencing procedure for a capital felony. If a defendant is convicted of a capital felony, the court conduct a separate sentencing proceeding before the jury to consider imposition of the death penalty. Aggravating or mitigating factors may be presented regardless of the admissibility of the evidence under the rules of evidence as long as this introduction of evidence does not violate the United States or State of Alaska constitutions.

After hearing the evidence, the jury will deliberate and recommend a sentence which includes a written finding of whether the jury agrees there is beyond a reasonable doubt at least one aggravating factor exists and that the aggravating factor(s) outweigh any mitigating factors found to exist by preponderance of the evidence and that death is the appropriate sentence for the defendant.

Sec. 12.58.030, Sentence imposition for capital felony. After hearing the evidence, the court may impose a sentence of death or term of imprisonment. A death sentence may be imposed if a jury finds that there is no reasonable doubt that at least one aggravating factor exists nor is the aggravating factor or factors outweighed by any mitigating factors and a death sentence has been recommended by the jury. If the court determines the defendant is mentally retarded under AS 12.58.060, a death sentence may not be imposed. When the court enters a death sentence, it is to state in writing the jury's findings of aggravating factors and mitigating factors considered but found insufficient to outweigh the aggravators. The death sentence is automatically subject to automatic review by the Supreme Court.

Sec. 12.58.040, Aggravating factors. Lists of aggravating factors that a jury may consider when determining whether a death sentence should be imposed.

Sec. 12.58.050, Mitigating factors. Lists of relevant mitigating factors to be considered when determining whether a death sentence should be imposed.

Sec. 12.58.060, Finding of mental retardation. If a death sentence is recommended, the court is to determine if the defendant was mentally retarded at the time the crime was committed. The procedure for a finding of mental retardation is outlined within this section.

Article 3. Sentence Review.

Sec. 12.58.100, Review of judgment of conviction of a capital offense. States that the Supreme Court shall review a death sentence within 60 days after imposition of the sentence. This time limit may be extended by the court for good cause. This review has priority over all other cases. This section outlines the review process that must be undertaken by the Supreme Court.

Sec. 12.58.110, Issuance of death warrant. If the Supreme Court upholds the conviction and sentence of death, it is to issue a death warrant and specific date of execution. The date of execution is to be no less than 30 days nor no more than 60 days after the date of the warrant. The death warrant is to delivered to the commissioner of Corrections.

Article 4. Administration of the Death Penalty.

Sec. 12.58.200, Administration of the death penalty. The procedure for the execution of a sentence of death will be established by the commissioner of Corrections (commissioner).

Sec. 12.58.210, Execution under Supreme Court death warrant. After receiving the death warrant from the Supreme Court, the commissioner will specify the time and place of execution.

Sec. 12.58.220, Manner of execution. The punishment of death is to be inflicted by a lethal dose of a substance or substances until death is pronounced by a licensed physician and is to be carried out within a state correctional facility.

Sec. 12.58.230, Return of death warrant. The commissioner is to return the death warrant to the Supreme Court showing the time and place in which the defendant was executed.

Article 5. Stay of Execution.

Sec. 12.58,300, Incompetency or pregnancy of person sentenced to death. If after the death sentence is imposed and the commissioner has reason to believe the defendant is incompetent to proceed with the execution or the defendant is pregnant, written notice is to be given immediately to the court in which the death sentence was imposed, the prosecuting attorney and the counsel for the defendant. The execution will be stayed pending further order of the court.

Sec. 12.58.310, Examination into competency. Upon receiving receipt of notice, the sentencing court is to examine the mental condition of the defendant in the same manner as prescribed under AS 12.47.070. If the defendant is found to be incompetent, the court is to certify that finding to the Supreme Court and the commissioner and sentence the defendant under AS 12.55.125(a) and enter an order for confinement. If the defendant is found to be competent, that finding will be certified and and sent immediately to the

Supreme Court and the commissioner. The Supreme Court is then required to issue another death warrant specifying a date of execution unless the finding is appealed.

Sec. 12.58.320, Disposition pending pregnancy. If the defendant is pregnant, the sentencing court is to certify that finding to the Supreme Court and the commissioner and also issue an order staying the execution during the pregnancy. Upon the completion of the pregnancy, the sentencing court is to immediately certify that finding to the Supreme Court and the commissioner. Another death warrant is issued by the Supreme Court specifying the date of execution.

Article 6. General Provisions.

Sec. 12. 58.900, Definitions. Defines commissioner and department as it applies to Chapter 12.58.

Section 22: Amends AS 22.07.020(a), Jurisdiction. Excludes prosecution for a capital felony for which a death sentence is imposed from the Court of Appeals jurisdiction.

Section 23: Amends AS 22.07.020(a), Jurisdiction. Excludes appeals of a death sentence from the Court of Appeals jurisdiction.

Section 24: Amends AS 47.12.030(a), Provisions inapplicable (Welfare, Social Services and Institutions chapter). Includes capital felony as one of the charges for which a 16-year old may be tried.

Section 25: Amends AS 47.12.100(c), Waiver of jurisdiction. Incorporates capital felony into the provisions that a minor is or is not amendable to treatment.

Section 26: Indirect Court Rule Amendments. AS 12.58 has the effect of modifying the sentencing provisions of Rules 32 (Sentence and Judgment), 32.1 (Presentence Procedure for Felony Sentencing) and 32.3 (Judgments and Orders), Alaska Rules of Criminal Procedure. AS 12.58 also has the effect of amending Rules 204 (Appeal: Time--Notice—Bonds), 209 (Appeals at Public Expense), 210 (Record on Appeal) and 212 (Briefs), Alaska Rules of Appellate Procedure.

Section 27: EXCESSIVE REVIEW, added by Section 21 of the bill. Provides that the Supreme Court will review whether a sentence of death is excessive compared to penalties imposed in similar cases. A sentence of death may not be found to be excessive when compared to similar cases based on the fact that a sentence of death had not been previously authorized as a penalty for murder in the state.

26-LS0036\E
Luckhaupt
2/18/09

CS FOR HOUSE BILL NO. 9( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CHENAULT, Ramras

A BILL

FOR AN ACT ENTITLED

"An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure."

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

*** Section 1.** AS 05.15.105(b) is amended to read:

(b) The department shall adopt regulations that provide that a disqualification of a person under (a) of this section based upon a conviction of that person for a violation

(1) of a law of this state that is, or a law or ordinance of another jurisdiction that would be if it was committed in this state, a class B felony other than extortion, a class C felony, or an unclassified felony described outside of AS 11, and

that is not a crime of dishonesty or theft or a violation of gambling laws, terminates 10 years after the person's conviction;

(2) of a law or ordinance of this state or another jurisdiction that is a crime involving theft or dishonesty or a violation of gambling laws, and that is not, or would not be if it was committed in this state, **a capital or** an unclassified felony described in AS 11, a class A felony, or extortion, terminates 10 years after the person's conviction, if the department determines that the

(A) person is of good character, honesty, and integrity; and

(B) person's involvement in charitable gaming is not against the public interest.

*** Sec. 2.** AS 05.15.140(b) is amended to read:

(b) In an application for a permit, a municipality or qualified organization shall disclose the name and address of each person responsible for the operation of the activity and whether any person named

(1) has been convicted of a violation of a law of this state that is, or a law or ordinance of another state that would be if committed in this state, **a capital or** [AN] unclassified felony described in AS 11, a class A felony, extortion, or a violation of a law or ordinance of this state or another jurisdiction that is a crime involving theft or dishonesty or a violation of gambling laws; or

(2) has a prohibited financial interest, as defined in regulations adopted by the department, in the operation of the activity.

*** Sec. 3.** AS 08.64.326(a) is amended to read:

(a) The board may impose a sanction if the board finds after a hearing that a licensee

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation while providing professional services or engaging in professional activities;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted, including conviction based on a guilty plea or plea of nolo contendere, of

(A) a class A, **capital,** or unclassified felony or a crime in another jurisdiction with elements similar to a class A, **capital,** or unclassified felony in this jurisdiction;

(B) a class B or class C felony or a crime in another jurisdiction with elements similar to a class B or class C felony in this jurisdiction if the felony or other crime is substantially related to the qualifications, functions, or duties of the licensee; or

(C) a crime involving the unlawful procurement, sale, prescription, or dispensing of drugs;

(5) has procured, sold, prescribed, or dispensed drugs in violation of a law regardless of whether there has been a criminal action;

(6) intentionally or negligently permitted the performance of patient care by persons under the licensee's supervision that does not conform to minimum professional standards even if the patient was not injured;

(7) failed to comply with this chapter, a regulation adopted under this chapter, or an order of the board;

(8) has demonstrated

(A) professional incompetence, gross negligence, or repeated negligent conduct; the board may not base a finding of professional incompetence solely on the basis that a licensee's practice is unconventional or experimental in the absence of demonstrable physical harm to a patient;

(B) addiction to, severe dependency on, or habitual overuse of alcohol or other drugs that impairs the licensee's ability to practice safely;

(C) unfitness because of physical or mental disability;

(9) engaged in unprofessional conduct, in sexual misconduct, or in lewd or immoral conduct in connection with the delivery of professional services to patients; in this paragraph, "sexual misconduct" includes sexual contact, as defined by the board in regulations adopted under this chapter, or attempted sexual contact with a patient outside the scope of generally accepted methods of examination or treatment of the patient, regardless of the patient's consent or lack of consent, during the term of the physician-patient relationship, as defined by the board in regulations adopted under

this chapter, unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating, courtship, or engagement relationship with the licensee;

(10) has violated AS 18.16.010;

(11) has violated any code of ethics adopted by regulation by the board;

(12) has denied care or treatment to a patient or person seeking assistance from the physician if the only reason for the denial is the failure or refusal of the patient to agree to arbitrate as provided in AS 09.55.535(a); or

(13) has had a license or certificate to practice medicine in another state or territory of the United States, or a province or territory of Canada, denied, suspended, revoked, surrendered while under investigation for an alleged violation, restricted, limited, conditioned, or placed on probation unless the denial, suspension, revocation, or other action was caused by the failure of the licensee to pay fees to that state, territory, or province.

*** Sec. 4.** AS 09.65.210 is amended to read:

Sec. 09.65.210. Damages resulting from commission of a felony or while under the influence of alcohol or drugs. A person who suffers personal injury or death or the person's personal representative under AS 09.55.570 or 09.55.580 may not recover damages for the personal injury or death if the injury or death occurred while the person was

(1) engaged in the commission of a felony, the person has been convicted of the felony, including conviction based on a guilty plea or plea of nolo contendere, and the party defending against the claim proves by clear and convincing evidence that the felony substantially contributed to the personal injury or death;

(2) engaged in conduct that would constitute the commission of **a capital felony,** an unclassified felony, a class A felony, or a class B felony for which the person was not convicted and the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

(B) that the felonious conduct substantially contributed to the

personal injury or death;

(3) fleeing after the commission, by that person, of conduct that would constitute **a capital felony,** an unclassified felony, a class A felony, or a class B felony or being apprehended for conduct that would constitute **a capital felony,** an unclassified felony, a class A felony, or a class B felony if the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

(B) that the conduct during the flight or apprehension substantially contributed to the injury or death;

(4) operating a vehicle, aircraft, or watercraft while under the influence of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was convicted, including conviction based on a guilty plea or plea of nolo contendere, and the party defending against the claim proves by clear and convincing evidence that the conduct substantially contributed to the personal injury or death; or

(5) engaged in conduct that would constitute a violation of AS 28.35.030 for which the person was not convicted if the party defending against the claim proves by clear and convincing evidence

(A) the violation of AS 28.35.030; and

(B) that the conduct substantially contributed to the personal injury or death.

*** Sec. 5.** AS 11.31.100(d) is amended to read:

(d) An attempt is

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

(2) a class A felony if the crime attempted is an unclassified felony [OTHER THAN MURDER IN THE FIRST DEGREE];

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

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

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

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

*** Sec. 6.** AS 11.31.110(c) is amended to read:

(c) Solicitation is

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

(2) a class A felony if the crime solicited is an unclassified felony [OTHER THAN MURDER IN THE FIRST DEGREE];

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

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

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

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

*** Sec. 7.** AS 11.31.120(i) is amended to read:

(i) Conspiracy is

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

(2) a class A felony if the object of the conspiracy is a crime punishable as an unclassified felony [OTHER THAN MURDER IN THE FIRST DEGREE];

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

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

*** Sec. 8.** AS 11.31.120(h)(2) is amended to read:

(2) "serious felony offense" means an offense

(A) against the person under AS 11.41, punishable as **a capital,** an unclassified, or a class A felony;

(B) involving controlled substances under AS 11.71, punishable as an unclassified, a class A, or a class B felony;

(C) that is criminal mischief in the first degree under AS 11.46.475; or

(D) that is terroristic threatening in the first degree under

AS 11.56.807.

*** Sec. 9.** AS 11.41.100(b) is amended to read:

(b) Murder in the first degree is **a capital** [AN UNCLASSIFIED] felony and is punishable as provided in **AS 12.55.125(a)** [AS 12.55].

*** Sec. 10.** AS 12.30.020(a) is amended to read:

(a) A person charged with an offense shall, at that person's first appearance before a judicial officer, be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is **a capital felony,** an unclassified felony, or **a** class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required or will pose a danger to the alleged victim, other persons, or the community. If the offense with which a person is charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that release of the person on the person's personal recognizance or upon the execution of an unsecured appearance bond will not reasonably assure the appearance of the person or will pose a danger to the alleged victim, other persons, or the community.

*** Sec. 11.** AS 12.30.040(b) is amended to read:

(b) Notwithstanding the provisions of (a) of this section, a person may not be released on bail either before sentencing or pending appeal if the person has been convicted of an offense that is

(1) **a capital felony,** an unclassified felony, or a class A felony; or

(2) a class B or class C felony if the person has been previously convicted of an offense in this state that is **a capital felony,** an unclassified felony, a class A felony, or a violation of AS 11.41.260, 11.41.420 - 11.41.425, or 11.41.436 - 11.41.438 or of an offense in another jurisdiction with elements substantially similar to an offense of this state described in this paragraph.

*** Sec. 12.** AS 12.47.110(b) is amended to read:

(b) On or before the expiration of the initial 90-day period of commitment, the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant

remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If, at the expiration of the second 90-day period, the court determines that the defendant continues to be incompetent to stand trial, the charges against the defendant shall be dismissed without prejudice, and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the expiration of the additional six-month period, the charges shall be dismissed without prejudice, and continued commitment proceedings shall be governed by the provisions relating to civil commitment under AS 47.30.700 - 47.30.915. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an offense arising out of the facts alleged in the original charges, except if the original charge is a class A felony**, an** [OR] unclassified felony**, or a capital felony**.

*** Sec. 13.** AS 12.50.101(i)(1) is amended to read:

(1) "higher-level felony" means an unclassified**, capital,** or class A felony;

*** Sec. 14.** AS 12.55.025(i) is amended to read:

(i) Except as provided by AS 12.55.125(a)(3), 12.55.145(d), 12.55.155(f), and 12.55.165, **or in determining if a sentence of death should be imposed under AS 12.58,** the preponderance of the evidence standard of proof applies to sentencing proceedings.

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

(a) A defendant convicted of murder in the first degree [OR MURDER OF AN UNBORN CHILD UNDER AS 11.41.150(a)(1)] shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years**, or shall be**

sentenced to death. A defendant convicted of murder of an unborn child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree**, but not sentenced to death,** shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture;

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery; or

(5) the court finds by clear and convincing evidence that the defendant is a peace officer who used the officer's authority as a peace officer to facilitate the murder.

*** Sec. 16.** AS 12.55.125(f) is amended to read:

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section;

(4) a sentence of death may not be suspended under AS 12.55.080.

*** Sec. 17.** AS 12.55.125(*l*) is amended to read:

(*l*) Notwithstanding any other provision of law, a defendant convicted of **a capital,** an unclassified, or **a** class A felony offense, and not **sentenced to death or** subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of 99 years when the defendant has been previously convicted of two or more most serious felonies. If a defendant is sentenced to a definite term under this subsection,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

*** Sec. 18.** AS 12.55.145(a) is amended to read:

(a) For purposes of considering prior convictions in imposing sentence under

(1) AS 12.55.125(c), (d), or (e),

(A) a prior conviction may not be considered if a period of 10 or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for **a capital,** an unclassified, or **a** class A felony;

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

(2) AS 12.55.125(*l*),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a most serious felony is considered a prior most serious felony conviction;

(B) commission of and conviction for offenses relied on as prior most serious felony offenses must occur in the following order: conviction for the first offense must occur before commission of the second offense, and conviction for the second offense must occur before commission of the offense for which the defendant is being sentenced;

(3) AS 12.55.135(g),

(A) a prior conviction may not be considered if a period of five or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for **a capital,** an unclassified, or **a** class A felony;

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a crime against a person or a crime involving domestic violence is considered a prior conviction;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

(4) AS 12.55.125(i),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a sexual felony is a prior conviction for a sexual felony;

(B) a felony conviction in another jurisdiction making it a crime to commit any lewd and lascivious act upon a child under the age of 16

years, with the intent of arousing, appealing to, or gratifying the sexual desires of the defendant or the victim is a prior conviction for a sexual felony;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective.

*** Sec. 19.** AS 12.55.155(f) is amended to read:

(f) **Under this section, if** [IF] the state seeks to establish a factor in aggravation at sentencing

(1) under (c)(7), (8), (12), (15), (18)(B), (19), (20), (21), or (31) of this section, or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence; the factors in aggravation listed in this paragraph and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury; all findings must be set out with specificity;

(2) other than one listed in (1) of this subsection, the factor shall be presented to a trial jury under procedures set by the court, unless the defendant waives trail by jury, stipulates to the existence of the factor, or consents to have the factor proven under procedures set out in (1) of this subsection; a factor in aggravation presented to a jury is established if proved beyond a reasonable doubt; written notice of the intent to establish a factor in aggravation must be served on the defendant and filed with the court

(A) 20 days before trial, or at another time specified by the court;

(B) within 48 hours, or at a time specified by the court, if the court instructs the jury about the option to return a verdict for a lesser included offense; or

(C) five days before entering a plea that results in a finding of guilt, or at another time specified by the court.

*** Sec. 20.** AS 12.55.185(10) is amended to read:

(10) "most serious felony" means

(A) arson in the first degree, promoting prostitution in the first degree under AS 11.66.110(a)(2), or any **capital,** unclassified, or class A felony prescribed under AS 11.41; or

(B) an attempt, or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, **a capital or** an unclassified felony prescribed under AS 11.41;

*** Sec. 21.** AS 12 is amended by adding a new chapter to read:

Chapter 58. Capital Punishment.

Article 1. Election to Seek Death Penalty.

Sec. 12.58.010. Attorney General's election to seek death penalty. The attorney general shall determine whether to seek the death penalty against the defendant. If the attorney general elects to seek the death penalty, the district attorney shall give notice of election and the applicable aggravating factor or factors in AS 12.58.040 to the court, the defendant, and the defendant's attorney within 120 days of arraignment of the defendant on the capital felony indictment, or within 120 days of arraignment of the defendant if indictment has been waived. The time period for giving notice of election may be extended by the court.

Article 2. Imposition of Sentence.

Sec. 12.58.020. Sentencing procedure for a capital felony. (a) If a defendant is convicted of a capital felony, the court shall conduct a separate sentencing proceeding before the jury as soon as practicable. If a jury trial has been waived or if the defendant has pled guilty, the sentencing proceeding shall be held before a jury impaneled for the purpose.

(b) During the sentencing proceeding, evidence that the court considers to have probative value may be presented as to any aggravating factor under AS 12.58.040 or any mitigating factor, regardless of the admissibility of the evidence under the rules of evidence. The defendant shall have an opportunity to rebut hearsay

evidence that is admitted. The state and the defendant or the defendant's counsel shall be permitted to present oral statements. This subsection does not authorize the introduction of evidence in violation of the Constitution of the State of Alaska or the Constitution of the United States.

(c) After hearing the evidence, the jury shall deliberate and recommend a sentence to the court. The recommended sentence must include written findings of whether the jury unanimously finds

(1) beyond a reasonable doubt that at least one aggravating factor under AS 12.58.040 exists to justify the death sentence and the aggravating factor was noticed by the district attorney under AS 12.58.010; the jury does not have to unanimously agree with regard to a specific aggravating factor;

(2) beyond a reasonable doubt that the aggravating factor or factors outweigh any mitigating factors found to exist by a preponderance of the evidence; and

(3) that death is the appropriate sentence for the defendant.

Sec. 12.58.030. Sentence imposition for capital felony. (a) After considering the evidence and the recommended sentence, the court shall enter a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a). The court may not impose the death sentence unless the jury makes the findings required by AS 12.58.020. If the jury makes the findings required by AS 12.58.020, the court shall sentence the defendant to death unless the court finds the defendant was mentally retarded under AS 12.58.060. If a sentence of death is not recommended by the jury, the court shall sentence the defendant to a term of imprisonment under AS 12.55.125(a).

(b) When the court enters a sentence of death, it shall state in writing the jury's findings

(1) of the aggravating factor or factors that exist to justify the sentence;

(2) of mitigating factors considered but found insufficient to outweigh the aggravating factors; and

(3) that death is the appropriate sentence for the defendant.

(c) A judgment of conviction for which a sentence of death is imposed is

subject to automatic review under AS 12.58.100.

Sec. 12.58.040. Aggravating factors. In determining whether to impose a sentence of death, the following aggravating factors may be considered:

(1) the defendant's conduct caused the death of a child under 18 years of age, the defendant, at the time of the offense, was at least two years older than the child, and the defendant

(A) was kidnapping, assaulting, or sexually assaulting, or was attempting to kidnap, assault, or sexually assault, the child; or

(B) had kidnapped, assaulted, or sexually assaulted the child;

(2) the victim was a uniformed or otherwise clearly identified peace officer, fire fighter, or corrections employee who was engaged in the performance of official duties at the time of the murder;

(3) the defendant has been convicted of murdering two or more individuals under AS 11.41.100, or a similar law of this or another jurisdiction, regardless of whether the deaths occurred as the result of the same act or of several related or unrelated acts;

(4) at the time of the act resulting in the death, the defendant was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(5) the defendant committed the murder under an agreement to receive money or any other thing of value for committing the murder;

(6) the defendant solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for the other person's committing the murder;

(7) the defendant committed the murder to obtain or maintain the defendant's membership or to advance the defendant's position in the hierarchy of an organization, association, or identifiable group;

(8) the victim was a judge, juror or former juror, prospective, current, or former witness in an adjudicative proceeding, prosecuting attorney, deputy prosecuting attorney, defense attorney, member of the board of parole, or probation or

parole officer, and the murder was related to the exercise of official duties performed or to be performed by the victim;

(9) the defendant committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime;

(10) there was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the defendant;

(11) at the time the defendant committed the murder, there existed a court order, issued in this or any other state, that prohibited the defendant from contacting the victim, molesting the victim, or disturbing the peace of the victim, and the defendant had knowledge of the existence of that order.

Sec. 12.58.050. Mitigating factors. In determining whether to impose the death sentence, all relevant mitigating factors may be considered, including the following:

(1) the defendant committed the offense under a degree of duress, coercion, threat, or compulsion that was insufficient to constitute a defense but that significantly affected the defendant's conduct;

(2) the conduct of a youthful defendant was substantially influenced by a person more mature than the defendant;

(3) the defendant acted with serious provocation from the victim;

(4) the defendant assisted authorities to detect or apprehend other persons who committed the offense with the defendant;

(5) the defendant did not have a significant history, either as a juvenile or an adult, of prior criminal activity;

(6) the murder was committed while the defendant was under the influence of extreme mental disturbance;

(7) the victim consented to the act of murder;

(8) the defendant was an accomplice to a murder committed by another person where the defendant's participation in the murder was relatively minor;

(9) the capacity of the defendant to appreciate the wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was substantially impaired as a result of mental disease or defect; however, a person

found to be mentally retarded under AS 12.58.060 may not be sentenced to death;

(10) there is not a likelihood that the defendant will pose a danger to others in the future.

Sec. 12.58.060. Finding of mental retardation. If the jury recommends a sentence of death, the court shall determine if the defendant was mentally retarded under the definition of mental retardation in this section at the time the crime was committed. A diagnosis of mental retardation shall be documented by a licensed psychiatrist or licensed psychologist designated by the court who is an expert in the diagnosis and evaluation of mental retardation. The defense shall establish mental retardation by a preponderance of the evidence, and the court shall make a finding as to the existence of mental retardation. If the court makes the finding of mental retardation, the court shall proceed to sentence the defendant to a term of imprisonment under AS 12.55.125(a). In this section,

(1) "adaptive behavior" means the effectiveness or degree with which an individual meets the standards of personal independence and social responsibility expected for the individual's age;

(2) "developmental period" means the period of time between conception and the 18th birthday;

(3) "general intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning;

(4) "mentally retarded" means the individual has

(A) significantly subaverage general intellectual functioning that exists concurrently with deficits in adaptive behavior; and

(B) both significantly subaverage general intellectual functioning and deficits in adaptive behavior that were manifested during the developmental period;

(5) "significantly subaverage general intellectual functioning" means an intelligence quotient of 70 or below.

Article 3. Sentence Review.

Sec. 12.58.100. Review of judgment of conviction of a capital felony. (a) A

judgment of conviction of a capital felony for which a sentence of death is imposed shall automatically be reviewed by the supreme court within 60 days after imposition of the sentence. This time limit may be extended by the supreme court for good cause.

(b) A review under this section has priority over all other cases, and the case shall be heard in accordance with rules adopted by the supreme court. On review, the court shall determine

(1) whether the sentence was imposed under the influence of passion, prejudice, or other arbitrary factor;

(2) whether the evidence supports the finding of an aggravating factor under AS 12.58.040 and whether the jury has properly considered mitigating factors under AS 12.58.050;

(3) whether the sentence is excessive compared to the penalty imposed in similar cases, considering both the crime and the defendant; and

(4) any other issue that the defendant may raise as a point on appeal.

(c) In its consideration of an automatic appeal under (a) and (b) of this section, the supreme court

(1) may not require the defendant to file a notice of appeal unless the defendant raises an issue as a point on appeal under (b)(4) of this section;

(2) may not require the defendant to pay a fee;

(3) shall designate the entire record of the proceedings before the sentencing court as the record on appeal;

(4) shall prepare the transcript of the proceedings for the record on appeal at public expense; and

(5) may not require the defendant to submit and file a brief unless the defendant raises an issue as a point on appeal under (b)(4) of this section.

Sec. 12.58.110. Issuance of death warrant. If the supreme court upholds a judgment of conviction and sentence of death, the court shall issue a death warrant that specifies a date of execution. The specified date of execution must be not less than 30 days nor more than 60 days after the date of the warrant. The death warrant shall be delivered to the commissioner of corrections.

Article 4. Administration of the Death Penalty.

Sec. 12.58.200. Administration of the death penalty. The commissioner shall establish a procedure for the execution of a sentence of death ordered by the state supreme court at the time and place legally appointed.

Sec. 12.58.210. Execution under supreme court death warrant. After receiving a supreme court warrant issued under AS 12.58.110, the commissioner shall specify the time and place of execution.

Sec. 12.58.220. Manner of execution. (a) The punishment of death shall be inflicted by continuous, intravenous administration of a lethal dose of a substance or substances until death is pronounced by a licensed physician.

(b) A death sentence shall be carried out within a state correctional facility.

Sec. 12.58.230. Return of death warrant. After the execution, the commissioner shall make a return upon the death warrant showing the time and place in which the defendant was executed.

Article 5. Stay of Execution.

Sec. 12.58.300. Incompetency or pregnancy of person sentenced to death. If, after a sentence of death is imposed, the commissioner has reason to believe that the defendant has become incompetent to proceed with the execution or that the defendant is pregnant, the commissioner shall immediately give written notice to the court in which the sentence of death was imposed, the prosecuting attorney, and counsel for the defendant. The execution of sentence shall be stayed pending further order of the court.

Sec. 12.58.310. Examination into competency. (a) On receipt of notice under AS 12.58.300 that the defendant is believed to be incompetent, the sentencing court shall examine the mental condition of the defendant in the same manner as provided for examining persons for competency to stand trial under AS 12.47.070.

(b) If the sentencing court finds that the defendant is incompetent, the court shall immediately certify that finding to the supreme court and the commissioner, shall sentence the defendant under AS 12.55.125(a), and shall order the defendant confined in the same manner as provided for persons under AS 12.47.050.

(c) If the sentencing court finds that the defendant is competent, the court shall immediately certify the finding to the supreme court and the commissioner. The

supreme court shall issue and deliver another warrant to the commissioner under AS 12.58.110, together with a copy of the certified finding. Unless the sentencing court's finding is appealed in accordance with applicable court rule, the warrant shall specify a date of execution that is not less than 30 days nor more than 60 days after the date of the warrant.

Sec. 12.58.320. Disposition pending pregnancy. (a) If the defendant is pregnant, the sentencing court shall immediately certify that finding to the supreme court and the commissioner. The supreme court shall issue an order staying the execution of the sentence of death during the pregnancy.

(b) When the defendant is no longer pregnant, the sentencing court shall immediately certify the finding to the supreme court and the commissioner. The supreme court shall issue and deliver another warrant under AS 12.58.110, together with a copy of the certified finding. Unless the sentencing court's finding is appealed under applicable court rule, the warrant shall specify a date of execution not less than 30 days nor more than 60 days after the date of the warrant.

Article 6. General Provisions.

Sec. 12.58.900. Definitions. In this chapter,

(1) "commissioner" means the commissioner of corrections;

(2) "department" means the Department of Corrections.

*** Sec. 22.** AS 22.07.020(a) is amended to read:

(a) The court of appeals has appellate jurisdiction in actions and proceedings commenced in the superior court involving

(1) criminal prosecution**, except prosecution for a capital felony for which a death sentence is imposed**;

(2) post-conviction relief;

(3) matters under AS 47.12, including waiver of jurisdiction over a minor under AS 47.12.100;

(4) extradition;

(5) habeas corpus;

(6) probation and parole; and

(7) bail.

* **Sec. 23.** AS 22.07.020(b) is amended to read:

(b) Except as limited in AS 12.55.120 **and in this subsection**, the court of appeals has jurisdiction to hear appeals of unsuspended sentences of imprisonment exceeding two years for a felony offense or 120 days for a misdemeanor offense imposed by the superior court on the grounds that the sentence is excessive, or a sentence of any length on the grounds that it is too lenient. The court of appeals, in the exercise of this jurisdiction, may modify the sentence as provided by law and the state constitution. **The court of appeals does not have jurisdiction to hear appeals of death sentences.**

* **Sec. 24.** AS 47.12.030(a) is amended to read:

(a) When a minor who was at least 16 years of age at the time of the offense is charged by complaint, information, or indictment with an offense specified in this subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense for which the minor is charged or to any additional offenses joinable to it under the applicable rules of court governing criminal procedure. The minor shall be charged, held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as an adult. If the minor is convicted of an offense other than an offense specified in this subsection, the minor may attempt to prove, by a preponderance of the evidence, that the minor is amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under this chapter, and the court shall order disposition of the charges of which the minor is convicted under AS 47.12.120(b). The provisions of this subsection apply when the minor is charged by complaint, information, or indictment with an offense

(1) that is **a capital felony,** an unclassified felony, or a class A felony and the felony is a crime against a person;

(2) of arson in the first degree;

(3) that is a class B felony and the felony is a crime against a person in which the minor is alleged to have used a deadly weapon in the commission of the offense and the minor was previously adjudicated as a delinquent or convicted as an adult, in this or another jurisdiction, as a result of an offense that involved use of a

deadly weapon in the commission of a crime against a person or an offense in another jurisdiction having elements substantially identical to those of a crime against a person, and the previous offense was punishable as a felony; in this paragraph, "deadly weapon" has the meaning given in AS 11.81.900(b); or

(4) that is misconduct involving weapons in the first degree under

(A) AS 11.61.190(a)(1); or

(B) AS 11.61.190(a)(2) when the firearm was discharged under circumstances manifesting substantial and unjustifiable risk of physical injury to a person.

*** Sec. 25.** AS 47.12.100(c) is amended to read:

(c) For purposes of making a determination under this section,

(1) the standard of proof is by a preponderance of the evidence; and

(2) the burden of proof that a minor is not amenable to treatment under this chapter is on the state; however, if the petition filed under AS 47.12.040 seeking to have the court declare a minor a delinquent is based on the minor's alleged commission of an offense that is **a capital felony,** an unclassified felony, or a class A felony and that is a crime against a person, the minor

(A) is rebuttably presumed not to be amenable to treatment under this chapter; and

(B) has the burden of proof of showing that the minor is amenable to treatment under this chapter.

*** Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENTS. (a) AS 12.58, added by sec. 21 of this Act, has the effect of modifying the sentencing provisions of Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, by establishing exclusive procedures for imposition of death sentence by a trial court and by authorizing automatic appeal of those sentences to the Alaska Supreme Court.

(b) AS 12.58.100, added by sec. 21 of this Act, has the effect of amending Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure, by establishing procedures and limitations on procedures relating to the filing and disposition of appeals of sentences in cases

in which the death penalty is imposed.

*** Sec. 27.** The uncodified law of the State of Alaska is amended by adding a new section to read:

EXCESSIVE REVIEW. AS 12.58.100(b)(3), added by sec. 21 of this Act, provides that the Alaska Supreme Court will review whether a sentence of death is excessive compared to the penalty imposed in similar cases. Under that review, a sentence of death may not be found excessive compared to the penalty imposed in similar cases based on the fact that a sentence of death has not been previously authorized as a penalty for murder in this state.

FISCAL HB 9		FY 2010 (Thousands of Dollars)	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015
Operating Expenditures							
Public Safety		481.8	334.2	334.2	334.2	334.2	334.2
Health & Social Services		0.0	0.0	0.0	***	***	****
Administration							
	OPA	1052.1	1439.7	2032.9	2016.5	2016.5	2016.5
	PDA	2276.9	3217.8	4184.0	4184.0	4184.0	4184.0
Law		1917.2	3783.3	5365.4	5219.4	5219.4	5219.4
AK Court System							
	Trial Courts	197.3	1412.2	3100.8	3058.3	3058.3	3058.3
	Appellate	0.0	203.7	193.7	193.7	193.7	193.7
DOC		0.0	0	380	392.5	402.5	412.5
Capital Expenditures							
AK Court System							
	Trial Courts		1843.1				
DOC			5000.0				
TOTAL/YEAR		**5925.3**	**17234**	**15591**	**15398.6**	**15408.6**	**15418.6**
CUMMULATIVE TOTAL			**23159.3**	**38750.3**	**54148.9**	**69557.5**	**84976.1**

**At the end of FY 2015, the State of Alaska will have spent almost $85 Million Dollars implementing HB 9 should the bill pass

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: HB9-DOC-OC-02-24-09
Bill Version:
() Publish Date:

Identifier (file name): HB9-DOC-OC-02-24-09
Title "An Act Authorizing Capital Punishment"
Sponsor Representatives Chenault, Ramras
Requester Governor

Dept. Affected: DOC
RDU Administration & Support
Component Office of the Commissioner
Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services				367.5	367.5	367.5	367.5
Travel				10.0	20.0	30.0	40.0
Contractual				2.5	5.0	5.0	5.0
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**380.0**	**392.5**	**402.5**	**412.5**
CAPITAL EXPENDITURES			**5,000.0**				
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF				380.0	392.5	402.5	412.5
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**380.0**	**392.5**	**402.5**	**412.5**

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time				5	5	5	5
Part-time							
Temporary							

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

The Department of Corrections anticipates approximately 2 offenders annually to be sentenced under this legislation. The national average length of time for the appeals process is 13 years. The average annual cost of incarceration of an offender housed at Spring Creek Correctional Center (SCCC) is approximately $51,012. The imposition of a death sentence on an offender who would be given a 99-year sentence under current law would result in a cost avoidance of $51,012 per year once the sentence is carried out and until what would have been the end of the offender's natural life.

Any additional costs associated with execution would be addressed through the annual supplemental process. These costs would primarily be overtime and travel costs associated with the staffing of the death chamber during the fiscal years when an actual execution occurs.

Prepared by: Dwayne Peeples, Deputy Commissioner
Division Office of the Commissioner
Phone 465-4670
Date/Time 2/24/09 7:00 AM

Approved by: Joesph Schmidt, Commissioner
Office of the Commissioner
Date 2/24/2009

(Revised 9/10/2008 OMB)

ANALYSIS CONTINUATION

Capital construction costs added in FY2012 are the anticipated costs associated with the building of a death chamber. These costs are based on construction of a 4,590 square foot stand-alone module to include:
Execution Room
Execution Equipment Room
Execution Witness Room
Public Lobby
Meeting and Contact Visitation Rooms
Non-Contact Visitation Video Station
Restrooms Staff / Inmate / Visitors
Medical Equipment
Medical Waste
Visitor Lockers / Screening
Metal Detector
Storage
Sally Ports Vehicle / Visitation

Annual Operating cost:

71000 Personal Services (FY10 rates employer rates applied, no overtime included):
Conversion of an existing housing unit at Spring Creek Correctional Center to meet a death row housing unit requires 2 security posts. These posts will consists of 5 existing staff and will require 5 new additional staffing of 1 Correctional Officer III and 4 Correctional Officer I/II positions.

72000 Travel:
Dept of Law has determined an average of 1 court hearings per year per inmate during the appeal process. The appeal process can take up to 13 years. Inmates must be transported back to judicial district for court hearing. It is the Department of Corrections responsibility to transport the offender back to the closest facility for each court appearance. Each round-trip is based on current costs for using the Public Safety King Air transportation or for a charter to each geographic region--Southeast, Interior, and Northwestern AK. Ground transportation within the Anchorage area, Mat-Su Valley, and Kenai Peninsula included. Travel is for the inmate and 2 transport officers, per diem and lodging for officers included.

73000 Contractual Services:
The services line is based on anticipated utility costs only. These are current estimates and are associated with the actual death chamber only.

74000 Commodities:
There is no increases anticipated for the daily costs of incarceration as these offenders would already be committed to the departments custody under existing legislation.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **CS HB 009 (JUD)**
() Publish Date:

Identifier (file name): **CSHB009-DPS-DET-02-13-09**
Title "An Act relating to murder; authorizing capital punishment."
Sponsor Representative Chenault
Requester House Judiciary

Dept. Affected: Public Safety
RDU Alaska State Troopers
Component AST Detachments
Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	214.6		214.6	214.6	214.6	214.6	214.6
Travel	47.0		47.0	47.0	47.0	47.0	47.0
Contractual	75.0		57.0	57.0	57.0	57.0	57.0
Supplies	15.6		15.6	15.6	15.6	15.6	15.6
Equipment	129.6		0.0	0.0	0.0	0.0	0.0
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**481.8**	**0.0**	**334.2**	**334.2**	**334.2**	**334.2**	**334.2**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	481.8		334.2	334.2	334.2	334.2	334.2
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**481.8**	**0.0**	**334.2**	**334.2**	**334.2**	**334.2**	**334.2**

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time	2		2	2	2	2	2
Part-time							
Temporary							

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

"An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure."

Due to U.S. Supreme Court case law, passage of this legislation will require the department to conduct additional in-depth investigations on those defendants sentenced to death. Experience in other states has shown that the entire life of the defendant must be investigated for mitigating factors.

Prepared by: Lt. Rodney Dial
Division Alaska State Troopers
Phone 907-247-4480
Date/Time 2/18/09 5:28 PM

Approved by: Joseph Masters, Commissioner
Department of Public Safety
Date

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION

In addition to those investigations conducted for the state it is likely that the department will be asked to assist, or conduct the investigations of other municipal police departments.

In order to adequately comply with this legislation the department estimates that it will require two (2) full time investigators.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: CSHB009 (JUD)
() Publish Date:

Identifier (file name): HB009CS(JUD)-DHSS-API-02-19-09
Title: Capital Punishment
Sponsor: Chenault
Requester: House JUD

Dept. Affected: Health & Social Services
RDU: Behavioral Health
Component: Alaska Psychiatric Hospital
Component Number: 23160

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	*	*	*
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	*	*	*

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

If the proposed legislation is enacted, the fiscal impact to the Department is indeterminate.

If it takes the first cases three to five years to reach sentencing under this legislation, the fiscal impact in the initial three years will be minimal. Beyond that period, the fiscal impact is difficult to estimate since the department cannot estimate the identified population affected. The expectation is that the number of death row inmates meeting the criteria requiring mental health treatment will be negligible. However, should such an individual be identified by the courts and subsequently require transfer to API for treatment, costs are anticipated to be $900.00/day, or $328,500/year based upon current costs.

Prepared by: Melissa Stone
Division: Behavioral Health
Phone: 269-3410
Date/Time: 1/28/09 5:00 PM

Approved by: Alison Elgee, Assistant Commissioner
CHSS Finance & Management Services
Date: 2/19/2009

DRAFT FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 9**
() Publish Date:

Identifier (file name): HB9-DOA-OPA-2-20-09
Dept. Affected: Administration
Title: An Act relating to murder, authorizing capital punishment...
RDU: Legal and Advocacy Services
Component: Office of Public Advocacy
Sponsor: Representative Chenault
Requester: Judiciary
Component Number: 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	512.2		774.6	1,189.9	1,189.9	1,189.9	1,189.9
Travel	157.5		172.5	193.0	193.0	193.0	193.0
Contractual	341.9		455.2	588.0	588.0	588.0	588.0
Supplies	7.0		11.0	17.0	17.0	17.0	17.0
Equipment	33.5		26.4	45.0	28.6	28.6	28.6
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**1,052.1**	**0.0**	**1,439.7**	**2,032.9**	**2,016.5**	**2,016.5**	**2,016.5**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	**1,052.1**		1,439.7	2,032.9	2,016.5	2,016.5	2,016.5
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**1,052.1**	**0.0**	**1,439.7**	**2,032.9**	**2,016.5**	**2,016.5**	**2,016.5**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time	5		7	11	11	11	11
Part-time							
Temporary							

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

See attached pages

Prepared by: Rachel Levitt, Director
Phone 907 269-3504
Division: Office of Public Advocacy
Date/Time 2/20/09, 9:30 a.m.
Approved by: Rachael Petro, Deputy Commissioner
Date 2/20/2009
Department of Administration

[illegible] 6/1/2008 OMB

ANALYSIS CONTINUATION

This bill provides for the availability of the death penalty as a punishment for certain murders.
The costs of pursuing the death penalty have been studied by other jurisdictions with experience in this area, and in preparation of this fiscal note, the agency has drawn heavily from studies of the federal system and the state of Washington where the costs have been closely examined. Murder cases tend to be among the most complex and challenging cases for the attorneys and courts to handle, and capital cases have the additional requirements of added procedures and relevant evidence. Because of the penalty applicable in these cases, additional expectations are placed upon the attorneys providing defense both in terms of the training and qualifications and the substantive work to be performed.

Assumptions
The Office of Public Advocacy is the secondary public criminal defense agency in the state. The agency will only be appointed to capital cases where the Public Defender Agency has a legal conflict of interest precluding it from providing a defendant with services. Based upon our experience with the rate of conflict cases, the agency would expect to receive one-third of the capital cases for trial and direct appeal. Based upon the Department of Law's estimate that it will seek the death penalty in six cases per year, OPA anticipates receiving two pre-trial capital cases per year. After the first year of implementation, the agency expects to handle two cases per year for direct appeal as well. However, because post-conviction relief actions nearly universally include a claim of ineffective assistance of trial or appellate counsel, the agency anticipates handling all or nearly all of the capital post-conviction relief applications. The agency would need to be prepared to take these cases after the first two years of the implementation of capital crimes.

The American Bar Association 2003 Revised Guidelines for capital defense provide in part that no fewer than two qualified attorneys, one investigator, and a mitigation specialist should make up the core of the capital defense team. Further, under these same guidelines, at a minimum attorneys should be required to attend and complete at least once every two years, a specialized training program in capital defense. The Guidelines regarding the qualifications of counsel apply to trial, appeallate, and post-conviction relief counsel equally.

The fiscal note contains an estimate of the costs associated with retaining experts for trial and sentencing of $100,000 per case. The estimate is based upon median costs for experts in federal capital cases. Additionally, the agency estimates $66,000 in costs associated with witness travel for each trial case, and $27,000 in transcription and deposition costs for each case.

Implementation
Year One
During the first year of capital litigation, the agency anticipates creating a capital defense unit comprised of one supervising attorney (Attorney V), one staff attorney (Attorney IV), one investigator (Investigator III), one mitigation specialist (Associate Attorney II) and one law office assistant (LOA I). This unit would operate as a separate law firm in order to avoid conflicts from other staff being imputed to the counsel in this firm. This will allow the agency to keep as many cases in-house as possible. During this year the agency would also be required to provide training for this capital unit, and based upon training that is offered by nationally recognized capital defense programs, the agency would anticipate $2500 in training costs per capital defense professional every two years after the initial training.

ANALYSIS CONTINUATION

Year Two
During the second year of implementation, the agency anticipates adding an additional two appeallate attorneys (Attorney IV) to handle the direct appeals. These attorneys would join the capital defense unit, and would handle all direct appeals generated from the unit's trial caseload.

Year Three
By the third year, the agency anticipates creating a separate capital defense, post-conviction unit to handle the post-conviction relief applications of the OPA clients and those of the Public Defender Agency clients. As previously indicated, because the focus of post-conviction relief litigation is often on whether trial counsel and appeallate counsel provided effective assitance of counsel, the agency anticipates that it will receive all or nearly all of the captial post-conviction relief applications. This unit will be comprised of one supervising attorney (Attorney V), one staff attorney (Attorney IV), one investigator (Investigator III) and one law office assistant (LOA I).

Once the cases are in the post-conviction stage, the caseload will continue to increase over time, and it is not possible to predict with accuracy what the staffing and resource needs will be beyond the first two to three years of operations.

The agency anticipates relying to some degree upon the private criminal defense bar to provide representation in cases where legal conflicts prevent the agency from handling the cases with in-house staff. With the small number of cases under consideration, it is not possible to predict what percentage of cases will have to be handled by outside conflict counsel; however, there is data available related to the costs associated with providing counsel in death penalty cases through private counsel. In a 2008 report reviewing the costs associated with defense in capital cases the average per case costs for cases going to trial was $620,932.00, and the average number of attorney hours spent defending capital cases in the federal system was 3,557 for those that went to trial. A December 2006 report from Washington state noted that the federal rate of $163/hour for attorneys fees was reasonable, and the report recommended against going below $125/hour for those services. Because we do not have an accurate way to estimate the number of cases that will be handled by private counsel, it is too early to suggest what the costs for contracting with private counsel would actually be for capital cases.

FY 10 Fiscal Note Cost (FY10 Governor's Budget)

		Atty V	Atty IV	Atty III	Atty II	Inv III	AA II	LOA II	LOA I	Total	2nd year	3rd year
100 - Salaries and Benefits	Anchorage, Kelchikan, Juneau	1.0	1.0			1.0	1.0		1.0	5.0	2.0	4.0
	Barrow, Kotz									0.0		
	Bethel									0.0		
	Kenai									0.0		
	Kodiak									0.0		
	Fairbanks									0.0		
	Palmer, Sitka									0.0		
	Dillingham									0.0		
	Nome									0.0		
	Total	1.0	1.0	0.0	0.00	1.0	1.0	0.0	1.0	5.0	2.0	4.0
	Anchorage, Kelchikan, Juneau	139.4	131.2	0.0	0.0	88.8	96.9	0.0	55.9			
	Barrow, Kotz	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Bethel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Kenai	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Kodiak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Fairbanks	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Palmer, Sitka	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Dillingham	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Nome	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Other											
Secretarial Support (1/3 cost)	Anchorage, Kelchikan, Juneau											
	Barrow, Kotz											
	Bethel											
	Kenai											
	Kodiak											
	Fairbanks											
	Palmer, Sitka											
	Dillingham											
	Nome											
	Other											
	Total	0.0	0.0	0.0	0.0	0.0						
Secretarial Support (1/3 cost)	Anchorage, Kelchikan, Juneau	0.0	0.0	0.0	0.0	0.0						
	Barrow, Kotz	0.0	0.0	0.0	0.0	0.0						
	Bethel	0.0	0.0	0.0	0.0	0.0						
	Kenai	0.0	0.0	0.0	0.0	0.0						
	Kodiak	0.0	0.0	0.0	0.0	0.0						
	Fairbanks	0.0	0.0	0.0	0.0	0.0						
	Palmer, Sitka	0.0	0.0	0.0	0.0	0.0						
	Dillingham	0.0	0.0	0.0	0.0	0.0						
	Nome	0.0	0.0	0.0	0.0	0.0						
	Other	0.0	16.7	0.0	0.0	0.0						
Total S+B by Location	Anchorage	139.4	131.2	0.0	0.0	88.8	96.9	0.0	55.9	512.2	262.4	415.3
	Barrow, Kotz	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Bethel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Kenai	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Kodiak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Fairbanks	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Palmer, Sitka	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Dillingham	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Nome	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Other	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Total	**139.4**	**131.2**	**0.0**	**0.0**	**88.8**	**96.9**	**0.0**	**55.9**	**512.2**	**774.6**	**1189.9**
200 - Travel												
	Base	7.5	7.5	7.5	7.5	5.0	5.0	5.0	0.5			
	Total	**7.5**	**7.5**	**0.0**	**0.0**	**5.0**	**5.0**	**0.0**	**0.5**	**25.5**	**40.5**	**61.0**
	Witness Travel ($66.0 per case)									**132.0**	**132.0**	**132.0**
200 - Travel										**157.5**	**172.5**	**193.0**
300 - Contractual												
	Base	27.0	27.0	17.4	17.4	6.5	6.5	6.5	3.2			
	Total	**27.0**	**27.0**	**0.0**	**0.0**	**6.5**	**6.5**	**0.0**	**3.2**	**70.2**	**124.2**	**187.9**
300 - Expert Witness										**200.0**	**200.0**	**200.0**
Travel										**5.0**	**5.0**	**10.0**
Deposition transcription charges ($2.5 per case)										**54.0**	**108.0**	**162.0**
Per costs										**12.7**	**18.0**	**28.1**
Total										341.9	355.7	564.0
400 - Supplies	Base	2.0	2.0	2.0	2.0	1.0	1.0	1.0	1.0			
	Total	**2.0**	**2.0**	**0.0**	**0.0**	**1.0**	**1.0**	**0.0**	**1.0**	**7.0**	**11.0**	**17.0**
500 - Equipment	Total Positions											
	PFT's plus PPT	1.0	1.0	0.0	0.0	1.0	1.0	0.0	1.0	5.00	7.0	13.0
	Base	2.6	2.6	2.6	2.6	2.6	2.6	2.6	2.6			
	Personal Computer	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1			
	Total	6.7	6.7	6.7	6.7	6.7	6.7	6.7	6.7			
	Total	**6.7**	**6.7**	**0.0**	**0.0**	**6.7**	**6.7**	**0.0**	**6.7**	**33.5**	**46.9**	**80.4**
	Grand Total	**182.6**	**174.4**	**0.0**	**0.0**	**108.0**	**116.1**	**0.0**	**67.3**	**1052.2**	**1439.7**	**2032.9**

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 9
() Publish Date:

Identifier (file name): HB009-DOA-PDA-2-20-09
Title: An Act relating to murder, authorizing capital punishment...
Sponsor: Representative Chenault
Requester: Judiciary

Dept. Affected: Administration
RDU: Legal and Advocacy Services
Component: Public Defender Agency
Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	1,078.9		1,618.4	2,157.8	2,157.8	2,157.8	2,157.8
Travel	326.5		437.0	571.2	571.2	571.2	571.2
Contractual	789.5		1,099.7	1,381.5	1,381.5	1,381.5	1,381.5
Supplies	15.0		22.5	30.0	30.0	30.0	30.0
Equipment	67.0		40.2	43.5	43.5	43.5	43.5
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**2,276.9**	**0.0**	**3,217.8**	**4,184.0**	**4,184.0**	**4,184.0**	**4,184.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	2,276.9		3,217.8	4,184.0	4,184.0	4,184.0	4,184.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**2,276.9**	**0.0**	**3,217.8**	**4,184.0**	**4,184.0**	**4,184.0**	**4,184.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time	10		15	20	20	20	20
Part-time							
Temporary							

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

See attached pages

Prepared by: Quinlan Steiner, Director — Phone 907 334-4414
Division: Public Defender Agency — Date/Time 2/20/2009, 11:30 AM
Approved by: Rachael Petro, Deputy Commissioner — Date 2/20/2009
Department of Administration

ANALYSIS CONTINUATION

Summary of HB 9

House Bill 9 establishes a capital crime in Alaska and authorizes the use of capital punishment. The following is a summary of material sections of the framework for the death penalty.

This bill establishes that the district attorney for the district in which the prosecution is occurring, with the concurrence of the attorney general, shall decide whether to seek the death penalty against the defendant. If it is elected, the district attorney shall give notice of the election and the applicable aggravating factor justifying the election to the court, the defendant, and the defendant's attorney within 120 days of arraignment on the capital felony indictment.

If a defendant is convicted of a capital felony, the jury must consider whether a sentence of death should be imposed. Evidence with any probative value as to any aggravating or mitigating factor may be presented, without regard to the rules of evidence. The jury then deliberates and must return written findings; these findings must be unanimous and detail whether at least one aggravating factor exists and that the district attorney noticed that factor; whether, beyond a reasonable doubt, the aggravating factor outweighs any mitigating factors found to exist by a preponderance of the evidence; and whether the defendant shall be sentenced to death.

Once the court considers the evidence and the recommended sentence, it shall enter a sentence of death or a term of imprisonment in accordance with AS 12.55.125(a). A court can only impose a death sentence if the jury found no reasonable doubt as to at least one aggravating factor noticed by the district attorney exists, that there is no reasonable doubt that the aggravating factors are not outweighed by any mitigating factors found by a preponderance of the evidence, and that it recommended a sentence of death.

The new section then provides that "If the jury findings include an aggravating factor or factors under AS 12.58.040 that are not outweighed by one or more of the mitigating factors and if the jury recommends a sentence of death, the court shall sentence the defendant to death unless the court finds that the defendant was mentally retarded under AS 12.58.060." If a sentence of death is not recommended, the court shall sentence the defendant to a term of imprisonment.

Following the imposition of a death sentence, the Alaska Supreme court must automatically review the judgment within 60 days, a time period to be extended by the court for good cause. On review, the court shall determine whether the sentence was imposed under the influence of passion, prejudice, or some other arbitrary factor, whether the evidence supports the finding of the aggravating factor and whether the jury properly considered mitigating factors, whether the sentence is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant, and any other issue the defendant may raise on appeal. If the court upholds the sentence of death, the Alaska Supreme Court must issue a death warrant specifying a date of execution, not less than 30 days nor more than 60 days after the date of the warrant.

Basis for Higher Cost

A sentence of death is final and irreversible--mistakes can not be undone. According to the United States Supreme Court, therefore, additional procedures and attention must be devoted to capital cases

ANALYSIS CONTINUATION

to ensure the constitutional requirements of due process are met. It is the responsibility of defense counsel to review and litigate cases in a manner that minimizes the possibility that the death penalty is imposed arbitrarily, inappropriately, with bias, or on the innocent.

Moreover, appropriate resources are necessary to protect against what studies from other jurisdictions have indicated are the primary reasons for appellate reversal of trial court proceedings. The following are a list of the typical grounds for reversal of conviction or sentence in a capital case: (1) false eye-witness identification, (2) false confessions, (3) uncorroborated informant testimony, (4) scientific evidence validity and backlog, (5) prosecutorial misconduct, (6) judicial failure to report misconduct, (7) ineffective assistance of counsel and defense attorney misconduct, (8) failure to disclose exculpatory evidence.

Procedure and Workload

With death penalty cases, the guilt and penalty phases are treated as separate proceedings with the penalty phase often exceeding the guilt phase in both time and expense. Additionally, the post-conviction process involves both the appellate litigation and the collateral litigation that is more extensive than in non-capital cases.

The guilt phase requires the Agency to conduct a fact investigation and a scientific evidence investigation, conduct legal research and engage in motion practice, as well as jury selection, trial, and post-trial litigation. The sentencing phase requires similar, but separate obligations: sentencing mitigation investigation, additional legal research and motion practice, a sentencing hearing, and post-sentence litigation. Sentencing investigations involved investigating the defendant's entire life and can involved extensive invesigation outside the state and the country depending on the defendant's background.

The post-conviction process involves a direct appeal to the Alaska Supreme Court and a petition for certiorari to United States Supreme Court. The collateral litigation requires additional proceedings in the Superior Court. Collateral proceedings involve new and separate investigation, motion practice, and evidentiary presentation. The collateral proceedings also include appeals to the Alaska Court of Appeals and the Alaska Supreme Court.

In addition to the traditional litigation, capital cases also require a petition for clemency to the Governor of Alaska and additional original writs filed with the United States Supreme Court.

Cost Estimates

The Agency typically refers 30% of A and Unclassified cases to the Office of Public Advocacy due to legal conflicts of interest. The cost estimates of this fiscal note are based on an estimate of a total of six capital cases a year, four for the Agency. The average time from the imposition of a death sentence to execution ranges from 13 years to over 20 years. Accordingly, the number of open death penalty cases would rise to approximately 78 to 120 before the cases would begin to close if the estimate of six cases per year remained constant.

It is difficult to predict the resources necessary to process this caseload beyond the first one to three years. The positions and costs contained in this fiscal note are an estimate of the resources necessary

ANALYSIS CONTINUATION

to create and train two trial teams and two post conviction teams to substantively process no more than 4 capital cases each year.

Based upon the ABA Guidelines, the current standard for death penalty litigation is a trial team consisting of two lawyers, one investigator, and one mitigation specialist; and a post-conviction team consisting of two lawyers, investigator, and a paralegal. A law office assistant has also been included for each team. The fiscal note contains the estimate for salary and related equipment costs for these positions starting with two full teams the first year, increasing to four teams by the third year. In the first year, the emphasis would be on hiring and training trial teams, then in the subsequent two years the emphasis would shift to hiring and training appellate teams. It is expected that the initial death penalty cases will likely take 3 years to complete sentencing.

The fiscal note contains an estimate for the cost of training the attorneys and paraprofessionals. The current standard for defense representation requires that attorneys assigned to death penalty cases be certified to handle a capital case. This will require out-of-state training specific to capital cases. Current standards also require significant continuing legal education and recertification every two years. A training and recertification budget of $40,000 has been added for each year. Each team, accordingly, would receive training and recertification every two years.

The fiscal note contains an estimate for the costs associated with retaining experts for trial and sentencing. The mean and median costs for experts in federal capital cases are $158,895 and $101,592 respectively. This fiscal note contains an estimate of $100,000 per case. The fiscal note also reflects increase costs for staff travel, witness travel, depositions, and transcript costs. Additionally, the costs associated with reviewing potential death penalty (potential death eligible cases in which the Attorney General does not elect to pursue the death penalty) are also included in this fiscal note.

The cost estimates in this fiscal note are based on the assumption that the Attorney General will elect to secure a sentence of death in 6 cases per year. This note further assumes that these cases will proceed in a timely and efficient manner, with only 1 or 2 of the cases assigned to the Agency proceeding to trial. If more cases become death penalty cases, or more cases go to trial, or trials must be conducted in rural locations, or the workload is underestimated, or involve investigations in other states or outside the United States, these estimates are expected to be inadequate for the Agency to meet its constitutional obligations and could be expected to increase substantially.

FY 10 Fiscal Note Cost (FY10 Governor's Budget, 09 rates)

		Atty V	Atty IV	Atty III	Atty II	Ins III	AA II	LOAII	LOAI	Total	2nd year	3rd year
100 Salaries and Benefits												
	Anchorage, Ketchikan, Juneau	2.0	3.0			2.0	1.0	2.0		10.0		
	Barrow, Kotz									0.0		
	Bethel									0.0		
	Kenai									0.0		
	Kodiak									0.0		
	Fairbanks									0.0		
	Palmer, Sitka									0.0		
	Dillingham									0.0		
	Nome									0.0		
	Total	2.0	3.0	0.0	0.00	2.0	1.0	2.0	0.0	10.0		
	Anchorage, Ketchikan, Juneau	139.4	131.2	0.0	0.0	88.8	96.9	66.0	0.0			
	Barrow, Kotz	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Bethel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Kenai	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Kodiak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Fairbanks	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Palmer, Sitka	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Dillingham	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Nome	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0			
	Other											
Secretarial Support (1/3 cost)	Anchorage, Ketchikan, Juneau											
	Barrow, Kotz											
	Bethel											
	Kenai											
	Kodiak											
	Fairbanks											
	Palmer, Sitka											
	Dillingham											
	Nome											
	Other											
	Total	0.0	0.0	0.0	0.0	0.0						
Secretarial Support (1/3 cost)	Anchorage, Ketchikan, Juneau	21.8	21.8	21.8	21.8	21.8						
	Barrow, Kotz	0.0	0.0	0.0	0.0	0.0						
	Bethel	0.0	0.0	0.0	0.0	0.0						
	Kenai	0.0	0.0	0.0	0.0	0.0						
	Kodiak	0.0	0.0	0.0	0.0	0.0						
	Fairbanks	0.0	0.0	0.0	0.0	0.0						
	Palmer, Sitka	0.0	0.0	0.0	0.0	0.0						
	Dillingham	0.0	0.0	0.0	0.0	0.0						
	Nome	0.0	0.0	0.0	0.0	0.0						
	Other	0.0	16.7	0.0	0.0	0.0						
Total S+B by Location	Anchorage	278.8	393.6	0.0	0.0	177.6	96.9	132.0	0.0	1078.9		
	Barrow, Kotz	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Bethel	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Kenai	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Kodiak	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Fairbanks	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Palmer, Sitka	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Dillingham	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Nome	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Other	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0		
	Total	**278.8**	**393.6**	**0.0**	**0.0**	**177.6**	**96.9**	**132.0**	**0.0**	**1078.9**	**1618.4**	**2157.8**
200 - Travel												
	Base	7.5	7.5	7.5	7.5	5.0	5.0	5.0	0.5			
	Total	**15.0**	**22.5**	**0.0**	**0.0**	**10.0**	**5.0**	**10.0**	**0.0**	62.5	93.8	125.0
	Witness Travel ($66.0 per case)									264.0	343.2	446.2
200 - Travel										**326.5**	**437.0**	**571.2**
300 Contractual												
	Base	27.0	27.0	17.4	17.4	8.5	6.5	8.5	3.2			
	Total	**54.0**	**81.0**	**0.0**	**0.0**	**13.0**	**6.5**	**13.0**	**0.0**	167.5	251.3	335.0
300 Expert Witness ($100/ per case)										400.0	520.0	676.0
Training										40.0	40.0	40.0
Depo/Arbitration/Deception charges ($77.0 per case)										185.0	240.4	182.5
Lease cars										24.0	248.0	248.0
	Total									**789.5**	**1099.7**	**1381.5**
400 - Supplies												
	Base	4.0	6.0	0.0	0.0	2.0	1.0	2.0	0.0			
	Total	**4.0**	**6.0**	**0.0**	**0.0**	**2.0**	**1.0**	**2.0**	**0.0**	15.0	22.5	30.0
500 Equipment												
	One-time costs											
	PC + Lic FEs	2.0	2.0	0.0	0.0	2.0	2.0	2.0	2.0	10.00	15.0	20.0
	Base	2.6	2.6	1.8	0.0	2.6	2.6	2.6	2.6			
	Personal Computer	4.1	4.1	4.1	4.1	4.1	4.1	4.1	4.1			
	Car	6.7	6.7	6.7	5.0	6.7	6.7	6.7	6.7			
	Total	13.4	13.4	0.0	0.0	13.4	13.4	13.4	0.0	67.0	40.2	43.5
	Grand Total	365.2	516.5	0.0	0.0	216.0	122.8	170.4	0.0	2276.9	3217.7	4164.0

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB009
() Publish Date:

Identifier (file name): HB009-LAW-CRIM-2-20-09
Dept. Affected: LAW
Title: An Act relating to murder; authorizing capital punishment and classifying murder in the first degree as a capital felony.
RDU: CRIMINAL
Component: CRIMINAL JUSTICE LITIGATION
Sponsor: Representative Chenault
Requester: Judiciary
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	837.0		1,449.0	2,164.0	2,164.0	2,164.0	2,164.0
Travel	321.8		614.4	779.6	779.6	779.6	779.6
Contractual	646.4		1,525.1	2,129.6	1,983.6	1,983.6	1,983.6
Supplies	43.0		74.0	111.0	111.0	111.0	111.0
Equipment	69.0		120.8	181.2	181.2	181.2	181.2
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**1,917.2**	**0.0**	**3,783.3**	**5,365.4**	**5,219.4**	**5,219.4**	**5,219.4**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	1,917.2		3,793.3	5,365.4	5,219.4	5,219.4	5,219.4
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**1,917.2**	**0.0**	**3,793.3**	**5,365.4**	**5,219.4**	**5,219.4**	**5,219.4**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time	**8.0**		14	21	21	21	21
Part-time							
Temporary							

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

See attached pages...

Prepared by: Robert Meiners, Deputy Director — Phone 907.465.5427
Division: Administrative Services Division — Date/Time 2/20/09 8:50 AM
Approved by: Richard Svobodny, Acting Attorney General — Date 2/20/2009
Department of Law

ANALYSIS CONTINUATION

HB9 authorizes capital punishment by classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for capital felonies. The bill would establish sentencing procedures for capital felonies; and amend Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure. If enacted, there will be significant costs for the Department of Law.

In the last 15 years there have been several attempts to adopt capital punishment in Alaska. The Department of Law has submitted fiscal notes over these years. In 1993 for SB 127, the department estimated that in the first years after implementation the department would need eight new employees, in the second year the number would be 14 new employees, and the following years the number would be 21 new employees. In 1994 in support of the same bill, the numbers changed to 10 new employees the first year, and 14 for the second year, and then 20 new employees for the following years.

In the 1995 fiscal note for HB 45 the number of new employees was estimated to be eight in the first year, 17 in the second, and 25 in the following years. In 1996, the number of new employees was six new employees in year one, 16 employees in year two, and 20 employees in year three, and 24 employees in the following years.

In 1997 the fiscal note for HB 131 provided for eight employees in the first year, year two 14 employees, and 21 employees for the following years. These numbers are summarized here:

	Year 1	Year 2	Year 3	Year 4
1993	8	14	21	21
1994	10	14	20	20
1995	8	17	25	25
1996	6	16	20	24
1997	8	14	21	21
		HB 9		
2009	8	14	21	21

Although the number of new employees in 2009 is consistent with previous bills, the nature of capital litigation has become more complex and commensurately more costly. The department assumes a methodology based upon a substantially decreased number of capital cases under HB 9 than the number of cases assumed for SB 127 in 1994.

In 1994, the department's criminal division had 17 first degree murder cases in which aggravating factors were present that would justify the death penalty, had a similar provision been the law. The number of murders committed in Alaska varies somewhat from year-to-year and, therefore, the assumptions made in this fiscal note are as conservative as possible. (All murders in Alaska in 2007 totaled 44.)

The Department of Corrections' statistics show the following number of intakes for murder in the first degree in the previous five years:

2004	4
2005	16
2006	10
2007	20
2008	17

ANALYSIS CONTINUATION

These numbers show a spread of 4 to 20 murders in the first degree and a yearly average of 13.4. It is unknown the number of these cases which would be death eligible. However, if approximately half the murders in the first degree were eligible the number would be between 6 and 7. Department of Law statistics show for the same time period - 2003 to 2008 - that 170 murder in the first degree cases were submitted for prosecution. 33 or 19.4% of these cases were dismissed by the state. There were 14 of these cases where the defendant pled guilty to murder in the first degree; 18 cases resulted in a guilty verdict at trial and 5 cases where the verdict was not guilty. The prior three groups of cases total 37. The remaining cases were resolved in some other manner. The 37 cases over this five year period average 7.4 per year. Not all of these cases will be death eligible. If the number of pleas to murder are subtracted from the total number, assuming that these would not be death eligible, then the number is 23, or 4.6 per year. The range between 4.6 and 7.4 suggests a number of 6 (six) capital murders a year. This fiscal note uses as its working assumption the conservative number of six capital murder cases each year.

Overview

Capital felony trials would be bifurcated, that is, held in two parts. The first part would determine innocence or guilt; the second part would determine whether aggravating factors exist sufficient to justify the death penalty, whether mitigating factors exist that outweigh the aggravating factors, and whether the defendant should be sentenced to a term of imprisonment or to death. Based on 1994's data, where there were 17 murders having death penalty aggravators, the department would probably seek the death penalty in ten cases, all of which would require trials. In the remaining seven cases, prosecutors would elect to try the cases as non-capital first degree murders for discretionary reasons, primarily due to the difficulty of obtaining a conviction if the death penalty was included. The department expects that six capital offense convictions will occur each year. Of this latter number, we believe that the death penalty will be imposed four to five times each year.

Thus, the department must be prepared to prosecute capital felonies on six occasions each year, and it must also be prepared to handle a multi-year appellate review process that will grow at an accumulating rate of six cases per year. The experience in other states is that capital trials require far more in the way of prosecution and investigative resources than first degree murder cases that do not include the death penalty.

In its several reviews of capital penalty laws, the United States Supreme Court has taken the position that "death is different." Consequently, the Supreme Court has required that states accord capital defendants procedural and substantive protections that go far beyond those required for non-capital defendants. The Court has, in effect, mandated that capital defendants be accorded "super" due process. The federal courts have consistently held that capital cases demand special consideration, both at trial and on appellate review, because of the exceptional and irrevocable nature of the penalty involved.

In order to meet this heightened level of due process, it will be necessary for the state to employ far greater prosecution resources. Many of the states having a death penalty, for instance, provide two defense attorneys to capital defendants to insure that the due process safeguards required by the courts are met. Likewise, the state's prosecution case must also be properly staffed. The trend is that defense council must be "death penalty certified." This means that each attorney has "second-chaired" in a capital case. In the vast majority of states two defense attorneys are assigned to the guilt phase of the trial and two different attorneys to the penalty phase of the trial. In other words, four defense attorneys per case.

ANALYSIS CONTINUATION

During and prior to the trial phase, crime scene evidence will have to be examined and presented by highly qualified forensic experts. Psychiatric experts will also be required during the trial phase and during sentencing proceedings, to rebut and overcome competency and psychiatric defenses to both the substantive-charge and the capital sentence. Cost studies of capital trials in other states indicate that expert witness expenses for both the trial and sentencing proceedings cost about $60,000 in 1994 dollars. The state believes that expert costs today can easily exceed $100,000.

The state's district attorneys offices do not have investigators as do most prosecutors in capital punishment states. These investigators are specially trained to investigate facts which pertain to the penalty phase of capital cases. The Department of Public Safety is anticipated to present a fiscal note requesting two additional investigators to fulfill this function. Whether in Law or Public Safety, specially trained investigators will be required.

Given the special rules that apply in capital cases, prosecutors and paralegals will need advanced training to deal with these cases.

A sentencing proceeding, or the penalty phase of a capital trial, is categorically different in character, procedure, and magnitude from any counterpart in a non-capital trial, and it accounts for a large part of the increase in costs. The heightened due process requirements, and the right to effective assistance of counsel, apply equally to the sentencing phase as they do to the trial phase. At this stage of the proceeding, the defense may be expected to use many of the socio-psychiatric witnesses employed during the trial phase. Additionally, the defense may also use the defendant's family, friends, neighbors, co-workers, school personnel, and social workers as witnesses. The defense's sentencing phase investigations will involve a complete retrospective analysis of every positive aspect of the defendant's life from the day of birth to the date of sentence. The prosecution, on the other hand, must interview each of the defendant's witnesses to rebut mitigation evidence, and present its own witnesses to prove its aggravating factors. For example, in one California case, 240 persons were investigated and interviewed as potential witnesses and 120 were eventually called as witnesses in a single sentencing proceeding. In addition, a five-fold increase in pretrial motion practice, often involving a state's Supreme Court, has occurred in other states between capital and non-capital first degree murder cases. In view of the foregoing, it appears likely that the same level of state resources, needed for the state's most expensive criminal trials, will also be needed for capital murder trials.

Post-conviction appellate reviews of death sentences will also require a substantial expenditure of state resources. Initially, challenges to the law itself can be expected to be taken to the Alaska Supreme Court on the basis of both state and federal constitutional due process, equal protection, and cruel and unusual punishment doctrines. Such challenges should be expected during the first four or five years after the provisions of the bill go into effect. Otherwise, the bill provides for a straightforward appeals process to the Alaska Supreme Court, but death sentences will nonetheless result in lengthy and complicated appellate litigation. This is because of the substantial appellate avenues available to capital defendants in the federal court system, primarily on claims of: due process, competency, and newly discovered evidence. Typically, these cases move up and down throughout the state and federal court systems, and involve the state superior and supreme courts, the U.S. Supreme Court, and the U.S. Circuit Court of Appeals, and the U.S. District Court. As a result, as has been the experience in every other capital punishment state, it should be expected that many years will pass before a death sentence can be carried out. Information indicates that nationally an average of nearly 12.7 years elapses from the time a death penalty sentence is imposed to the time the sentence is carried out.

ANALYSIS CONTINUATION

Implementation

The Department of Law anticipates that the time from when an offense is committed until a capital felony trial takes place will be between two and three years after the bill takes effect. (A recent study by the Alaska Judicial Council showed that of the 51 felony jury trials in Anchorage in 2007, the average time to disposition was 669 days. Capital cases can be estimated to take substantially longer.) Likewise, the post-conviction appellate review process will not commence until sometime during the latter years. For these reasons, the department has developed a multi-year implementation plan for this fiscal note.

During the first year, it will be necessary to add three attorneys, three paraprofessionals, and two law office assistants to handle capital felony prosecutions. Although perhaps as few as four bifurcated trials may actually get underway during the first year, substantial time will be required preparing for trial. This includes advising police investigators, examining evidence, interviewing witnesses, consulting with psychiatric and forensic experts, and initiating, responding to, and arguing pretrial motions. Also, preparation work on all 17 potential capital felonies expected to occur during the first year must begin as soon as possible after an offense is committed. This is so even if the cases eventually resolve with a conviction of a lesser offense.

The "super" due process required by the courts in death penalty cases, and the requirement for a separate sentencing proceeding, will more than triple the work of the department's staff who handle these cases, compared with non-capital first degree murder cases. Extraordinary amounts of attorney and paraprofessional time will be needed to satisfy these minimum, mandatory requirements. As a consequence, capital felony prosecutions could not readily be undertaken in any of the department's offices, except for Anchorage and possibly Fairbanks, without providing special prosecution staff on a case-by-case basis. And, even for Anchorage and Fairbanks, the existing staff would have to be substantially augmented each time a capital felony is handled. All of the positions to be added to handle capital trials and post-conviction death sentence appeals would therefore be located in the department's Office of Special Prosecutions and Appeals, in Anchorage.

During the second year, six or more additional capital felonies would need to be processed at the same time the previous years cases are readied for trial. At this point, it will be necessary to add one attorney, one paraprofessional, and one law office assistant to handle the increasing capital felony trial caseload. It will also be necessary to establish a capital felony appeals staff during the second year, when appeals from the first four trials are expected to begin the appellate review process. Initially, one attorney, one paraprofessional, and one law office assistant will be needed to handle capital felony appeals.

During the third year, the number of bifurcated capital murder trials should equal the number of new capital offenses charged, although some compression and overlapping of the caseload will likely occur. Consequently, it will be necessary to increase the trial staff during the third year, in order to handle the total annual workload, and to insure against speedy trial problems. The trial staff would be increased by one attorney, one paraprofessional, and one law office assistant. Post-conviction capital felony appeals will have reached stride by year three, and they will continue to increase at the rate of six new cases each year, thereafter. It will, therefore, be necessary to increase the appeals staff in the third year by adding two attorneys, one paraprofessional, and one law office assistant.

It is not possible to accurately predict the eventual annual costs of a capital felony law beyond its first three or four years. There are simply too many unknowns. However, the costs that have been predicted are conservative. The following factors have been considered in arriving at these costs.

ANALYSIS CONTINUATION

(1) Capital felony due process and bifurcated trial requirements will more than triple the cost and time spent in prosecuting first degree murder offenses, at a minimum.

(2) There will need to be two teams of prosecutors: one for the guilt phase at trial and a second team specializing in the penalty phase.

(3) Pretrial motion practice will increase dramatically resulting in additional scheduling problems.

(4) Logistics problems will occur at most locations, except Anchorage and Fairbanks, and these problems will become more severe the smaller and more remote the location.

(5) Witness travel and per diem will be expensive because of the large number of witnesses that will be required for both the trial and the sentencing phases of capital felony prosecutions, and in many cases this includes out-of-state travel.

(6) Staff travel and per diem will likewise be expensive for trials held outside of Anchorage. Extensive staff travel expense will also be necessary, for trials held at all locations, to interview both prosecution and defense witnesses who will appear at sentencing proceedings.

(7) The cost for appeals is calculated only through the sixth year; however, this cost will ultimately grow enormously. The average length of time between a death sentence conviction and an execution in the United States is nearly thirteen years (12.7 in 2007). Consequently, the state will have to provide enough resources to respond to the ongoing appeals of up to 78 (6 capital felony trials per year) or more capital felony defendants annually, within 13 years. The eventual costs for this extended timeframe are not within the scope of this fiscal note analysis.

(8) Therefore, the following per trial expense estimates have been used to calculate the costs of this fiscal note.

Capital Felony Trials
- Witness travel and subsistence, $66,000 per case.
- Staff travel and per diem, $10,000 per attorney, $6,600 per paraprofessional, $4,000 per law office assistant, per annum.
- Expert witness fees, $100,000 per case.
- Standard witness fees paid to others, $2,500 per case.
- Deposition/court reporter charges, $20,000 per case.

Death Sentence Appellate Review
- Staff travel, $4,600 per attorney, $2,500 per paraprofessional, per annum.
- Fees for outside counsel for years two and three only, $50,000, each year.
- Transcription/court reporter costs, $30,000 per case.
- Training first year $10,000, following years $5,000

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ANALYSIS CONTINUATION

Fiscal Analysis HB9
Cost Summary (First Year, Capital Trials)

Assumption: 6 trials per year including trial preparation

OBJECT	(1) Atty V	(2) Atty IV	(2) Assoc Atty I	(1) P/A II	(2) LOA I	Total
100 - Salaries & Benefits	167.0	290.0	180.0	80.0	120.0	837.0
	167.0	290.0	180.0	80.0	120.0	837.0
200 - Travel						
Staff Travel & Per Diem	10.0	19.9	13.3	6.6	8.0	57.8
	10.0	19.9	13.3	6.6	8.0	57.8
300 - Contractual						
Communications, Copy	4.8	9.6	6.4	3.2	6.4	30.3
Office Space Leases	7.4	14.9	14.9	7.4	14.9	59.5
PC Network Maintenance	2.0	4.0	4.0	2.0	4.0	15.9
Staff Training	4.0	4.0	2.0	0.0	0.0	0.0
WestLaw	1.6	3.2	3.2	1.6	0.0	9.6
	19.8	35.6	30.4	14.2	25.2	125.2
400 - Supplies						
Office Consumables	2.4	4.8	4.8	2.4	3.2	17.5
Law Library	1.6	3.2	3.2	1.6	0.0	9.6
New Position Supplies	2.0	4.0	4.0	2.0	4.0	15.9
	6.0	11.9	11.9	6.0	7.2	43.0
500 - Equipment						
New Position Equipment	3.3	6.6	6.6	3.3	6.6	26.6
Personal Computer	5.3	10.6	10.6	5.3	10.6	42.5
	8.6	17.3	17.3	8.6	17.3	69.0
Total	211.4	374.7	252.9	115.4	177.6	1132.0

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ANALYSIS CONTINUATION

Fiscal Analysis HB9
Cost Summary (Second and Third Year Additions, Capital Trials)

Assumption:
Year 2 - 12 trials
Year 3 - 18 trials, preparation on 10 new charges

Second Year OBJECT	(1) Atty IV	(1) Assoc Atty I	(1) LOA I	Total
100 - Salaries & Benefits	145.0	90.0	60.0	295.0
	145.0	90.0	60.0	295.0
200 - Travel				
Staff Travel & Per Diem	10.0	6.6	4.0	20.6
	10.0	6.6	4.0	20.6
300 - Contractual				
Communications, Copy	4.8	4.8	3.2	12.7
Office Space Leases	7.4	7.4	7.4	22.3
PC Network Maintenance	2.0	2.0	2.0	6.0
WestLaw	1.6	1.6	0.0	3.2
	15.8	15.8	12.6	44.2
400 - Supplies				
Office Consumables	2.4	2.4	1.6	6.4
Law Library	1.6	1.6	0.0	3.2
New Position Supplies	2.0	2.0	2.0	6.0
	6.0	6.0	3.6	15.5
500 - Equipment				
New Position Equipment	3.3	3.3	3.3	10.0
Personal Computer	5.3	5.3	5.3	15.9
	8.6	8.6	8.6	25.9
Total	185.4	127.0	88.8	401.2

Third Year OBJECT	(1) Atty IV	(1) P/A II	(1) LOA I	Total
100 - Salaries & Benefits	145.0	80.0	60.0	285.0
	145.0	80.0	60.0	285.0
200 - Travel				
Staff Travel & Per Diem	10.0	6.6	4.0	20.6
	10.0	6.6	4.0	20.6
300 - Contractual				
Communications, Copy	4.8	4.8	3.2	12.7
Office Space Leases	7.4	7.4	7.4	22.3
PC Network Maintenance	2.0	2.0	2.0	6.0
WestLaw	1.6	1.6	0.0	3.2
	15.8	15.8	12.6	44.2
400 - Supplies				
Office Consumables	2.4	2.4	1.6	6.4
Law Library	1.6	1.6	0.0	3.2
New Position Supplies	2.0	2.0	2.0	6.0
	6.0	6.0	3.6	15.5
500 - Equipment				
New Position Equipment	3.3	3.3	3.3	10.0
Personal Computer	5.3	5.3	5.3	15.9
	8.6	8.6	8.6	25.9
Total	185.4	117.0	88.8	391.2

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BILL NO. HB009

ANALYSIS CONTINUATION

Fiscal Analysis HB9
Cost Summary (Second and Third Year Additions, Appellate Review Process)

Assumption:
Year 2 - 4 trials begin appellate review process
Year 3 - 8 trials on appeal, with 6 new cases each following year

Second Year OBJECT	(1) Atty V	(1) Assoc Atty I	(1) LOA I	Total
100 - Salaries & Benefits	167.0	90.0	60.0	317.0
	167.0	90.0	60.0	317.0
200 - Travel				
Staff Travel & Per Diem	4.6	3.3	0.0	8.0
	4.6	3.3	0.0	8.0
300 - Contractual				
Communications, Copy	29.7	29.7	3.2	62.7
Office Space Leases	7.4	7.4	7.4	22.3
PC Network Maintenance	2.0	2.0	2.0	6.0
WestLaw	3.2	3.2	0.0	6.4
	42.4	42.4	12.6	97.3
400 - Supplies				
Office Consumables	2.4	2.4	1.6	6.4
Law Library	1.6	1.6	0.0	3.2
New Position Supplies	2.0	2.0	2.0	6.0
	6.0	6.0	3.6	15.5
500 - Equipment				
New Position Equipment	3.3	3.3	3.3	10.0
Personal Computer	5.3	5.3	5.3	15.9
	8.6	8.6	8.6	25.9
Total	228.6	150.3	84.8	463.7

Third Year OBJECT	(2) Atty IV	(1) P/A II	(1) LOA I	Total
100 - Salaries & Benefits	290.0	80.0	60.0	430.0
	290.0	80.0	60.0	430.0
200 - Travel				
Staff Travel & Per Diem	9.3	3.3	0.0	12.6
	9.3	3.3	0.0	12.6
300 - Contractual				
Communications, Copy	59.5	29.7	3.2	92.4
Office Space Leases	14.9	7.4	7.4	29.7
PC Network Maintenance	4.0	2.0	2.0	8.0
WestLaw	6.4	3.2	0.0	9.6
	84.7	42.4	12.6	139.7
400 - Supplies				
Office Consumables	4.8	2.4	1.6	8.8
Law Library	3.2	1.6	0.0	4.8
New Position Supplies	4.0	2.0	2.0	8.0
	11.9	6.0	3.6	21.5
500 - Equipment				
New Position Equipment	6.6	3.3	3.3	13.3
Personal Computer	10.6	5.3	5.3	21.2
	17.3	8.6	8.6	34.5
Total	413.2	140.3	84.8	638.3

ANALYSIS CONTINUATION

Fiscal Analysis HB9
Out-of-Pocket Costs - Capital Felony Trials

Year 1: (4 cases underway)

Witness travel and per diem $66.0 per case x 4 cases	=	264.0
Expert witness fees $100.0 per case x 4 cases	=	400.0
Witness fees (witnesses of fact) $3.3 per case x 4 cases	=	13.2
Deposition/court reporter charges $27.0 per case x 4 cases	=	108.0

Year 2: (8 cases underway)

Witness travel and per diem $66.0 per case x 8 cases	=	528.0
Expert witness fees $100.0 per case x 8 cases	=	800.0
Witness fees (witnesses of fact) $3.3 per case x 8 cases	=	26.4
Deposition/court reporter charges $27.0 per case x 8 cases	=	216.0

Year 3: (10 cases underway)

Witness travel and per diem $66.0 per case x 10 cases	=	660.0
Expert witness fees $100.0 per case x 10 cases	=	1000.0
Witness fees (witnesses of fact) $3.3 per case x 10 cases	=	33.0
Deposition/court reporter charges $27.0 per case x 10 cases	=	270.0

ANALYSIS CONTINUATION

Fiscal Analysis HB9
Out-of-Pocket Costs - Capital Felony Appeals

Year 2: (4 cases underway)

Outside counsel to uphold statute $66.0 per case x 1 case	=	66.0
Deposition/court reporter charges $40.0 per case x 4 cases	=	160.0

Year 3: (4 cases underway)

Outside counsel to uphold statute $66.0 per case x 1 case	=	66.0
Deposition/court reporter charges $40.0 per case x 8 cases	=	320.0

Year 4: (14 cases underway)

Deposition/court reporter charges $40.0 per case x 6 cases	=	240.0

FISCAL NOTE

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ANALYSIS CONTINUATION

Fiscal Analysis HB9
Cumulative Implementation Cost by Year

Criminal Felony Trial

OBJECT	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
100 - Salaries & Benefits	837.0	1132.0	1417.0	1417.0	1417.0	1417.0
200 - Travel						
Staff Travel & Per Diem	57.8	78.4	99.0	99.0	99.0	99.0
Witness Travel	264.0	528.0	660.0	660.0	660.0	660.0
	321.8	606.4	759.0	759.0	759.0	759.0
300 - Contractual						
Staff Contractual	125.2	159.4	203.6	203.6	203.6	203.6
Outside Services	521.2	1042.4	1303.0	1303.0	1303.0	1303.0
	646.4	1201.8	1506.6	1506.6	1506.6	1506.6
400 - Supplies	43.0	58.5	74.0	74.0	74.0	74.0
500 - Equipment	69.0	94.9	120.8	120.8	120.8	120.8
Total	1917.2	3093.6	3877.4	3877.4	3877.4	3877.4
PFT	8	11	14	14	14	14

Appellate Review

OBJECT	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
100 - Salaries & Benefits	0.0	317.0	747.0	747.0	747.0	747.0
200 - Travel						
Staff Travel & Per Diem	0.0	8.0	20.6	20.6	20.6	20.6
Witness Travel	0.0	0.0	0.0	0.0	0.0	0.0
	0.0	8.0	20.6	20.6	20.6	20.6
300 - Contractual						
Staff Contractual	0.0	97.3	237.0	237.0	237.0	237.0
Outside Services	0.0	226.0	386.0	240.0	240.0	240.0
	0.0	323.3	623.0	477.0	477.0	477.0
400 - Supplies	0.0	15.5	37.0	37.0	37.0	37.0
500 - Equipment	0.0	25.9	60.4	60.4	60.4	60.4
Total	0.0	689.7	1488.0	1342.0	1342.0	1342.0
PFT	0	3	7	7	7	7

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB9-ACS-02-20-09
() Publish Date:

Identifier (file name):
Title: Death Penalty
Sponsor: Representative Chenault
Requester:

Dept. Affected:
RDU: Alaska Court System
Component: Trial Courts
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	128.8	128.8	618.9	1,163.2	1,163.2	1,163.2	1,163.2
Travel			28.8	52.5	47.5	47.5	47.5
Contractual	62.0	62.0	638.0	1,828.1	1,828.1	1,828.1	1,828.1
Supplies	6.5	6.5	126.5	57.0	19.5	19.5	19.5
Equipment							
Land & Structures	1,843.1	1,843.1					
Grants & Claims							
Miscellaneous							
TOTAL OPERATING AND CAPITAL	**2,040.4**	**2,040.4**	**1,412.2**	**3,100.8**	**3,058.3**	**3,058.3**	**3,058.3**
CAPITAL EXPENDITURES	**1,843.1**	**1,843.1**					
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	2,040.4	2,040.4	1,412.2	3,100.8	3,058.3	3,058.3	3,058.3
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**2,040.4**	**2,040.4**	**1,412.2**	**3,100.8**	**3,058.3**	**3,058.3**	**3,058.3**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time	1.0	1.0	7.0	13.0	13.0	13.0	13.0
Part-time							
Temporary	1.0	1.0					

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

Prepared by: Doug Wooliver, Administrative Attorney — Phone 463-4750
Division: Alaska Court System — Date/Time 2-20-09 @ 11:00 am
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director — Date 2/20/2009
Alaska Court System

Alaska Court System
Fiscal Note Calculations for HB 9
2/20/2009

Personal Services	**FY10**	**FY11**	**FY12**	**FY13**	**FY14**	**FY15**
Superior Court Pro Tem Judge - Anchorage	23,100					
Superior Court Judge - Anchorage		238,077	238,077	238,077	238,077	238,077
Staff Attorney (22A), Anchorage, PFT	105,693	105,693	105,693	105,693	105,693	105,693
Law Clerk (13D), Anchorage, PFT		58,440	58,440	58,440	58,440	58,440
Administrative Assistant (12A), Anchorage, PFT		59,376	59,376	59,376	59,376	59,376
In-Court Clerk (12A), Anchorage, PFT		59,376	59,376	59,376	59,376	59,376
Deputy Clerk II (10A), Anchorage, PFT		53,895	53,895	53,895	53,895	53,895
Bailiff (6A), Anchorage, PFT		44,000	44,000	44,000	44,000	44,000
Superior Court Judge - Fairbanks			239,520	239,520	239,520	239,520
Law Clerk (13D), Fairbanks, PFT			65,637	65,637	65,637	65,637
Administrative Assistant (12A), Fairbanks, PFT			65,917	65,917	65,917	65,917
In-Court Clerk (12A), Fairbanks, PFT			65,917	65,917	65,917	65,917
Deputy Clerk II (10A), Fairbanks, PFT			59,376	59,376	59,376	59,376
Bailiff (6A), Fairbanks, PFT			48,000	48,000	48,000	48,000
Subtotal Personal Services	128,793	618,857	1,163,224	1,163,224	1,163,224	1,163,224
Travel						
New Judges' Training		5,000	5,000			
Jury Sequestration, Travel, Meals, Lodging		23,750	47,500	47,500	47,500	47,500
Subtotal Travel	0	28,750	52,500	47,500	47,500	47,500
Contractual						
Jury Costs						
500 Jurors 15 Days for Selection		187,500	187,500	187,500	187,500	187,500
18 Jurors for 66 Days of Trial		29,700	29,700	29,700	29,700	29,700
18 Jurors for 5 Days of Deliberation		2,250	2,250	2,250	2,250	2,250
Deliberation Meals $16/18 jurors + bailiff		1,520	1,520	1,520	1,520	1,520
Total per Superior Court Trial		220,970	220,970	220,970	220,970	220,970
Proposed # Superior Court Trials		2	6	6	6	6
Est. Cost of Jury Fees for Capital Punishment Trials		441,900	1,325,800	1,325,800	1,325,800	1,325,800
Offset Jury Costs for Standard Felony Trials		(15,916)	(47,748)	(47,748)	(47,748)	(47,748)
		425,984	1,278,052	1,278,052	1,278,052	1,278,052
Training (Certification to Hear Capital Cases)	60,000	20,000	20,000	20,000	20,000	20,000
Transcription Costs (24,000 pages per trial)		168,000	504,000	504,000	504,000	504,000
Software	2,000	24,000	26,000	26,000	26,000	26,000
Subtotal Contractual	62,000	637,984	1,828,052	1,828,052	1,828,052	1,828,052
Supplies						
Workstations, Furniture, Computers, Printers, Recording Equipment, Office Equip/Supplies	6,500	126,500	57,000	19,500	19,500	19,500
Capital Expenses						
Remodel Boney & Nesbett Courtrooms	1,696,100					
Complete Fairbanks 5th Floor Superior Court	147,000					
Subtotal Capital	1,843,100	0	0	0	0	0
Total all Costs	2,040,393	1,412,091	3,100,776	3,058,276	3,058,276	3,058,276
Breakdown by Expense Category:						
Personal Services Total	128,800	618,900	1,163,200	1,163,200	1,163,200	1,163,200
Travel Total	0	28,800	52,500	47,500	47,500	47,500
Contractual Total	62,000	638,000	1,828,100	1,828,100	1,828,100	1,828,100
Supplies Total	6,500	126,500	57,000	19,500	19,500	19,500
Capital Total	1,843,100	0	0	0	0	0
Total	2,040,400	1,412,200	3,100,800	3,058,300	3,058,300	3,058,300

ANALYSIS CONTINUATION

House Bill 9 adopts a death penalty system for Alaska. The bill establishes a bifurcated jury trial, with a guilt phase and, if the person is convicted of a capital offense, a penalty phase. All death sentences are automatically appealed to the supreme court. The extent to which the court system will be impacted by this bill is largely determined by the number of capital cases charged, the number that go to trial and the number that result in a death sentence. This note is based on the Department of Law's estimate of six death penalty trials a year, with four of those resulting in a sentence of death.

Pretrial

As thoroughly explained in the department's fiscal note analysis, a death penalty case is time consuming and resource intensive through every phase and for every part of the criminal justice system. The court system will begin to feel the impact soon after the department first gives its notice of election to seek the death penalty in a particular case. It is at that point that pretrial motion practice begins. Experience from other states shows that the number of pretrial motions filed in a death penalty case far exceed those filed in a non-capital case.

Pretrial motions are not only much more plentiful in capital cases, but they address constitutional issues that are not generally relevant in non-capital cases. Defense attorneys must raise these challenges in the trial court if they are going to preserve them for future federal court review. The prosecution must respond to and the court must rule on these motions.

In order to help with all motions filed both before and during trial, this note adds one superior court staff attorney. Although based in Anchorage, where the majority of cases will likely be filed, the position will work on motions filed in all locations.

Trial

Once the pretrial work is completed (and data from other states suggests that it takes an average of one and a half to three years to bring a death penalty case to trial), the trial work begins and it starts with jury selection.

Jury selection in a capital trial is different from jury selection in a non-capital trial. One difference is that capital trials last an average of three months, which is roughly four times the length of a non-capital trial for the same offense. Because few people can afford to sit on a jury for three months, many potential jurors are excused. Additionally, jurors in capital cases must be "death qualified," that is they must be willing to impose the death penalty. This further limits the number of people eligible for jury service.

These two limiting factors result in a much longer jury selection process and a need to call far more people as potential jurors. Evidence from other states suggests that it takes many hundreds of potential jurors and from two to four weeks to seat a jury in a death penalty case. This note assumes 500 potential jurors and a selection process that lasts an average of three weeks.

In addition to jury challenges, long trials require tremendous judicial resources. With three weeks to seat each jury and three months for trial, the department's estimate of six capital trials a year means a total of 22.5 months of trial work each year. That is the equivalent of two superior court judges. The court system will need two new judges to handle this increase in workload. However, because this increase in workload is likely to build over the next three years, this note calls for a pro tem (part-time) judge in year one (FY 10) and the services of a staff attorney to help with the initial pretrial motions. In year two (FY 11), this note calls for a superior court judge in Anchorage to begin with the first trials that we anticipate, and in year 3 (FY 12), when the system is up to its six trial a year level, this note calls for the second judge, who will be seated in Fairbanks.

ANALYSIS CONTINUATION

Appeals

At the conclusion of the trial process, all death sentences go directly to the supreme court for review. The record on appeal consists of the record before the trial court and the trial court transcript, which is estimated to average 24,000 pages. The court has estimated a $3.50 per page expense for transcription services and this note reflects those costs.

As with the other phases of the process, death penalty appeals are different from other appeals. The court conducts a "proportionality review" to ensure that the penalty is being applied in a uniform and non-discriminatory fashion. This process is long and difficult and involves a detailed look at every stage of the process from charging decision through sentencing. It then compares the case against other cases where the death penalty was not charged.

Additionally, and also unlike most other cases, each death penalty case will come before the court multiple times. The state of Arizona reports that each death penalty defendant brings six or seven cases before the Arizona Supreme Court. Similarly, the Florida Supreme Court states that, although they see an average of 15 new death sentence cases each year, because of the multiple appeals and the back and forth with the state trial courts and the federal courts, they currently have before them 75 different appeals in one form or another.

Judicial Training

Finally, this note includes funding for judicial training. Many states require judges to have special death penalty training prior to presiding over a death penalty case. This training helps reduce the number of cases overturned on appeal due to judicial errors that result from a lack of familiarity with the unique complexities of death penalty law.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB9-ACS-02-20-09
() Publish Date:

Identifier (file name):
Title: Death Penalty
Sponsor: Representative Chenault
Requester:

Dept. Affected:
RDU: Alaska Court System
Component: Appellate Courts
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services			178.7	178.7	178.7	178.7	178.7
Travel							
Contractual			10.0	10.0	10.0	10.0	10.0
Supplies			15.0	5.0	5.0	5.0	5.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING AND CAPITAL	**0.0**	**0.0**	**203.7**	**193.7**	**193.7**	**193.7**	**193.7**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF			203.7	193.7	193.7	193.7	193.7
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**203.7**	**193.7**	**193.7**	**193.7**	**193.7**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time			2.0	2.0	2.0	2.0	2.0
Part-time							
Temporary							

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

Prepared by: Doug Wooliver, Administrative Attorney — Phone 463-4750
Division: Alaska Court System — Date/Time 2-20-09 @ 11:00 am
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director — Date 2/20/2009
Alaska Court System

Revised 9/10/2008 OMB

Alaska Court System
Fiscal Note Calculations for HB 9
2/20/2009

Personal Services	FY10	FY11	FY12	FY13	FY14	FY15
Supreme Court Staff Attorney (24A), Anchorage, PFT		119,306	119,306	119,306	119,306	119,306
Legal Technician (12A), Anchorage, PFT		59,376	59,376	59,376	59,376	59,376
Subtotal Personal Services	0	178,682	178,682	178,682	178,682	178,682
Contractual						
Software, Conference Fees, Misc Contractual		10,000	10,000	10,000	10,000	10,000
Subtotal Contractual Services	0	10,000	10,000	10,000	10,000	10,000
Supplies						
Office Supplies, Subscriptions		5,000	5,000	5,000	5,000	5,000
Office Furniture, Equipment (computers, printers)		10,000				
Subtotal Supplies	0	15,000	5,000	5,000	5,000	5,000
Total all Costs	0	203,682	193,682	193,682	193,682	193,682
Breakdown by Expense Category:						
Personal Services Total	0	178,700	178,700	178,700	178,700	178,700
Contractual Total	0	10,000	10,000	10,000	10,000	10,000
Supplies Total	0	15,000	5,000	5,000	5,000	5,000
Total	0	203,700	193,700	193,700	193,700	193,700

ANALYSIS CONTINUATION

House Bill 9 adopts a death penalty system for Alaska. The bill establishes a bifurcated jury trial, with a guilt phase and, if the person is convicted of a capital offense, a penalty phase. All death sentences are automatically appealed to the supreme court. The extent to which the court system will be impacted by this bill is largely determined by the number of capital cases charged, the number that go to trial and the number that result in a death sentence. This note is based on the Department of Law's estimate of six death penalty trials a year, with four of those resulting in a sentence of death.

Pretrial

As thoroughly explained in the department's fiscal note analysis, a death penalty case is time consuming and resource intensive through every phase and for every part of the criminal justice system. The court system will begin to feel the impact soon after the department first gives its notice of election to seek the death penalty in a particular case. It is at that point that pretrial motion practice begins. Experience from other states shows that the number of pretrial motions filed in a death penalty case far exceed those filed in a non-capital case.

Pretrial motions are not only much more plentiful in capital cases, but they address constitutional issues that are not generally relevant in non-capital cases. Defense attorneys must raise these challenges in the trial court if they are going to preserve them for future federal court review. The prosecution must respond to and the court must rule on these motions.

In order to help with all motions filed both before and during trial, this note adds one superior court staff attorney. Although based in Anchorage, where the majority of cases will likely be filed, the position will work on motions filed in all locations.

Trial

Once the pretrial work is completed (and data from other states suggests that it takes an average of one and a half to three years to bring a death penalty case to trial), the trial work begins and it starts with jury selection.

Jury selection in a capital trial is different from jury selection in a non-capital trial. One difference is that capital trials last an average of three months, which is roughly four times the length of a non-capital trial for the same offense. Because few people can afford to sit on a jury for three months, many potential jurors are excused. Additionally, jurors in capital cases must be "death qualified," that is they must be willing to impose the death penalty. This further limits the number of people eligible for jury service.

These two limiting factors result in a much longer jury selection process and a need to call far more people as potential jurors. Evidence from other states suggests that it takes many hundreds of potential jurors and from two to four weeks to seat a jury in a death penalty case. This note assumes 500 potential jurors and a selection process that lasts an average of three weeks.

In addition to jury challenges, long trials require tremendous judicial resources. With three weeks to seat each jury and three months for trial, the department's estimate of six capital trials a year means a total of 22.5 months of trial work each year. That is the equivalent of two superior court judges. The court system will need two new judges to handle this increase in workload. However, because this increase in workload is likely to build over the next three years, this note calls for a pro tem (part-time) judge in year one (FY 10) and the services of a staff attorney to help with the initial pretrial motions. In year two (FY 11), this note calls for a superior court judge in Anchorage to begin with the first trials that we anticipate, and in year 3 (FY 12), when the system is up to its six trial a year level, this note calls for the second judge, who will be seated in Fairbanks.

ANALYSIS CONTINUATION

Appeals

At the conclusion of the trial process, all death sentences go directly to the supreme court for review. The record on appeal consists of the record before the trial court and the trial court transcript, which is estimated to average 24,000 pages. The court has estimated a $3.50 per page expense for transcription services and this note reflects those costs.

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Judicial Training

Finally, this note includes funding for judicial training. Many states require judges to have special death penalty training prior to presiding over a death penalty case. This training helps reduce the number of cases overturned on appeal due to judicial errors that result from a lack of familiarity with the unique complexities of death penalty law.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: HB9-DOC-OC-03-15-09
Bill Version:
() Publish Date:

Identifier (file name): HB9-DOC-OC-03-15-09
Title "An Act Authorizing Capital Punishment"
Sponsor Representatives Chenault, Ramras
Requester Governor

Dept. Affected: DOC
RDU Administration & Support
Component Office of the Commissioner
Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services				367.5	367.5	367.5	367.5
Travel				20.0	40.0	60.0	80.0
Contractual				2.5	5.0	5.0	5.0
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**390.0**	**412.5**	**432.5**	**452.5**
CAPITAL EXPENDITURES			**5,000.0**				
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF				390.0	412.5	432.5	452.5
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**390.0**	**412.5**	**432.5**	**452.5**

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time				5	5	5	5
Part-time							
Temporary							

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

The Department of Corrections anticipates up to four offenders will be sentenced each year under this legislation. The national average length of time for the appeals process is 13 years. The average annual cost of incarceration of an offender housed at Spring Creek Correctional Center (SCCC) is approximately $51,012. The imposition of a death sentence on an offender who would be given a 99-year sentence under current law would result in a cost avoidance of $51,012 per year once the sentence is carried out and until what would have been the end of the offender's natural life.

Any additional costs associated with execution would be addressed through the annual supplemental process. These costs would be the result of transport/security officer overtime and travel costs associated with the staffing of the death chamber during the fiscal year when an actual execution occurs.

Prepared by: Dwayne Peeples, Deputy Commissioner
Division Office of the Commissioner
Phone 465-4670
Date/Time 3/15/2009 1243 pm

Approved by: Joesph Schmidt, Commissioner
Office of the Commissioner
Date 3/15/2009

(Revised 9/10/2008 OMB)

ANALYSIS CONTINUATION

Capital Construction costs added in FY2012 are the anticipated costs associated with the building of a death chamber. These costs are based on construction of a 4,590 square foot stand-alone module to include:

- o Metal Detector
- o Public Lobby
- o Visitor Lockers / Screening
- o Meeting and Contact Visitation Rooms
- o Non-Contact Visitation Video Station
- o Separate restrooms for Staff / Inmate / Visitors
- o Sally Ports Vehicle
- o Execution Room
- o Execution Equipment Room
- o Medical Equipment
- o Medical Waste Collection and Disposal Area
- o Storage
- o Execution Witness Room

Annual Operating Cost:

71000 Personal Services (FY10 rates employer rates applied, no overtime included):

A housing unit located at SCCC will be converted to a death row housing unit. Two security posts will be required with each post consisting of five security officers--1 Correctional Officer III, and 4 Correctional Officer I/II positions. The department will utilize five existing positions and add five new positions to staff these posts.

72000 Travel:

The Department of Law has determined an average of one court hearing per year, per inmate during the appeal process. The appeal process can take up to 13 years. Inmates must be transported back to their judicial district for the court hearing. The Department of Corrections is responsible for transporting the offender to the closest secure facility for each court appearance. Each round-trip is based on current costs for the Public Safety King Air transportation or for a charter to each geographic region--Southeast, Interior, and Northwestern AK. Ground transportation within the Anchorage area, Mat-Su Valley, and Kenai Peninsula is included. Travel is for the inmate and two transport officers, per diem and lodging for the officers is included.

73000 Contractual Services:

The services line is based on anticipated utility costs only. These are current estimates and are associated with the actual death chamber only.

74000 Commodities:

There are no increases anticipated for the daily costs of incarceration as these offenders are already committed to the department's custody under existing legislation.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 20, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4/8/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 9**

"An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure."

HB 9 CAPITAL PUNISHMENT

Recommends it be replaced with [ ] HCS *or* [√] CS *for* HB9 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DOC		✓		
DPS		✓		
DHS			✓	
ADM(OPA)		✓		
ADM(PDA)		✓		
LAW		✓		
CRT(TL)		✓		
CRT(AP)		✓		

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN		X		
	Gruenberg		✓		
	Coghill	✓		*	
	Ostlstrom			X	
	Holmes		X		
	Gatto	✓			
Chair:	LAMMERS	X			
Chair:					

HB 9

RELEVANT LAW

(FILE 2)

MEMORANDUM

STATE OF ALASKA

Department of Law - Criminal Division

To:	Members, House Judiciary Committee	Date:	March 27, 2009
From:	Susan S. McLean SSME Chief Assistant Attorney General	Tel No: Fax:	(907) 269-6379 (907) 269-6305
		Subject:	**Statistics re: HB 9**

On March 23, during a House Judiciary Committee meeting regarding HB 9, Representative Coghill requested statistics regarding the racial composition of the group of Alaska offenders who have been convicted of Murder in the First Degree. Although it was not possible within this time frame to compile statistics regarding all offenders who have ever been convicted of that crime, the Department of Corrections was able to gather that data as it applies to offenders who are currently serving sentences for that crime. The attached document contains those statistics and a short narrative summary.

ETHNICITY OF OFFENDERS IMPRISONED FOR FIRST DEGREE MURDER

Table 1, compiled by the Alaska Department of Corrections, contains data pertaining to offenders who are currently incarcerated, having been convicted in Alaska of the Murder in the First Degree. There are currently 248 offenders serving sentences for the crime of Murder in the First Degree.

Table 1: Prisoners Currently Incarcerated For Murder in the First Degree

ETHNICITY	MALE	FEMALE	TOTAL	PERCENTAGE
Alaska Native	49	2	51	20.6%
Asian/Pacific Island	5	1	6	2.4%
Black	30	0	30	12.1%
Caucasian	148	9	157	63.3%
Hispanic	4	0	4	1.6%
TOTAL	236	12	248	100%

Source: Alaska Department of Corrections

Table 2: U.S. Census Bureau - 2007 Population Estimate

	Alaska	USA
Population 2007 Estimate	683,478	301,621,157
American Indian And Alaska Native Persons, Percent, 2007	15.2%	1.0%
Asian/Pacific Islander, Percent, 2007	5.2%	4.6%
Black Persons, Percent, 2007	4.1%	12.8%
White Persons Not Hispanic, Percent, 2007	66.1%	66.0%
Persons Of Hispanic Or Latino Origin, Percent, 2007	5.9%	15.1%
Persons Reporting Two Or More Races, Percent, 2007	4.7%	1.6%

Table 2 reflects population statistics published by the U.S. Census Bureau in 2007. There is not a significant difference between the percentage of Alaska Natives in the general population of Alaska and the percentage incarcerated for first-degree murder. 4.7% of the Alaska population reported two or more races. It is unknown whether this is relevant to the difference in the percentage of Alaska Natives incarcerated (20.6% of the incarcerated offenders as opposed to 15.2% of the Alaska population).

The percentage of white persons incarcerated for first-degree murder is not significantly lower than the percentage of white persons in the general population. Table 3 on the following page reveals that the number of white offenders serving life sentences for murder is actually higher than the percentage of white persons in the Alaska population.

The percentage of black offenders in prison for murder in the first degree is consistent with the percentage of black persons in the population of the United States. It is, however, greater than the percentage of blacks in the Alaska population.

The percentage of other minorities – Hispanics, Asians and Pacific Islanders – currently incarcerated for murder in the first degree is significantly lower than the percentage of those minorities in either the Alaska population or the United States population.

Absent statutory or judicial limitation on parole eligibility, offenders are normally entitled to release on parole after serving two-thirds of the sentence imposed. Therefore, a sentence in which the average offender would spend the remainder of his or her life in prison is a sentence in excess of 90 years. Courts typically reach the 90-year range in sentencing after concluding that an offense is deserving of a maximum sentence and it is therefore likely that most offenders in this range received 99-year sentences.

Table 3 reflects the length of the sentence which is being served by each of the 248 offenders convicted of murder in the first degree. 108 offenders are serving sentences of more than 90 years and 12 are serving sentences in excess of 100 years.

TABLE 3: LENGTH OF SENTENCES IMPOSED FOR MURDER IN THE FIRST DEGREE

ETHNICITY	SENTENCE LENGTH (YEARS)												
	5 - 19	20 - 29	30 - 39	40 - 49	50 - 59	60 - 69	70 - 79	80 - 89	90 - 99	100+	UNKN	UNSENT	TOTAL
Alaska Native	1	2	1	2	2	4	5	0	22	6	2	4	51
Asian/Pacific Isl	0	0	0	0	2	1	1	0	2	0	0	0	6
Black	3	1	0	0	3	1	2	3	6	3	2	6	30
Caucasian	3	0	9	6	10	13	11	8	77	3	3	14	157
Hispanic	0	0	0	0	1	0	1	1	1	0	0	0	4
TOTAL	**7**	**3**	**10**	**8**	**18**	**19**	**20**	**12**	**108**	**12**	**7**	**24**	**248**

Source: Alaska Department of Corrections

Of the 108 inmates serving 90-99 year sentences, the ethnic composition is as follows

Alaska Native – 22	20.3 %
Asian/Pacific Islander – 2	1.8 %
Black – 6	5.5 %
White – 77	71.2 %
Hispanic – 1	0.9 %

Again, the percentage (by ethnic group) of total offenders serving 90-99 year sentences is closely related to the percentage of the population represented by that group.

Disproportion does exist within the group of 12 offenders who are serving sentences in excess of 100 years. In this group, 6 are Alaska native, 3 are white and 3 are black. Given the small number of people comprising the group, it is difficult to draw conclusions without looking at individual cases. Since the maximum sentence for first degree murder is 99 years, it follows that each of the offenders committed some crime in addition to the one murder. However, given time constraints, it was not possible to determine whether these offenders murdered more than one person, or received the sentence as a result of a second count other than first-degree murder. Furthermore, as a practical matter there is little difference between a sentence of 99 years and a sentence in excess of 100 years since, in either case, the offender is not likely to outlive the time until parole eligibility.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION

SARAH PALIN, GOVERNOR

Address: 310 K. St., Suite 403
Anchorage, AK 9950

Phone: (907) 269-6379
Fax: (907) 269-6305

March 25, 2009

The Honorable Jay Ramras
Chair, House Judiciary Committee
Alaska State Legislature, Room 118
Juneau, AK 99801

Re: Response to testimony by Barbara Brink regarding HB 9

Dear Representative Ramras:

Assistant Attorney General John Novak testified regarding HB 9 on March 2, 2009. Mr. Novak began his testimony by stating that he wished to address the "simple point" that lengthy prison terms do not necessarily protect the public. He informed the committee that the purpose of his testimony was to offer examples which demonstrate that innocent people are still killed by offenders who are serving lengthy prison sentences in secure facilities.

On March 23, 2009 former Public Defender Barbara Brink testified in response to Mr. Novak's remarks. Capital punishment is an emotionally charged topic. It may be that as a result of her passionate opposition to the death penalty, Ms. Brink misunderstood the purpose of Mr. Novak's testimony. To the extent that Ms. Brink purported to express the motives of the Department of Law generally and Mr. Novak specifically, we wish to set the record straight.

The recording of Mr. Novak's testimony speaks for itself. Contrary to Ms. Brink's opinion that the Department of Law's motive was to "create a false impression" regarding the applicability of the death penalty in the cases Mr. Novak described, Mr. Novak clearly *stated* his purpose. He did not say or imply that the offenders he described would have been candidates for the death penalty. He did not claim that Mr. Gustavson, Mr. Cheely or Mr. Abuhl was convicted of murder in the first degree. He clearly stated that Mr. Donnelly was tried and convicted in federal court in Alaska and was then imprisoned in South Carolina. What Mr. Novak *said* is that the all of these offenders were convicted of murder and that the fact that they were in prison did not stop them from killing again. Those statements are unquestionably accurate and consistent with the stated sole purpose of his testimony.

It is unfortunate that the members of this committee were urged to consider, as fact, one person's opinion of another person's reasons for speaking. I urge the members of this committee to review the recording of Mr. Novak's testimony before arriving at unwarranted and unfair conclusions regarding his professional integrity.

Sincerely,

RICHARD SVOBODNY
ACTING ATTORNEY GENERAL

By: Susan McLean
Susan McLean
Acting Deputy Attorney General

cc: Members of the House Judiciary Committee:
Representative Nancy Dahlstrom, Vice Chair
Representative John Coghill
Representative Carl Gatto
Representative Bob Lynn
Representative Max Gruenburg
Representative Lindsey Holmes

John Novak
Barbara Brink

HB 9

DISPOSITION OF FIRST DEGREE MURDER CHARGES
DEPARTMENT OF LAW STATISTICS

A report run in CRIMES (criminal division case management system) for First Degree Murder charges between January 1, 2003 and December 21, 2008 shows the following statistics:

- The report does not include cases referred and not accepted for prosecution. This way, every case has both a DA file number and a court number.
- 159 Murder in the First Degree charges were referred and accepted for prosecution. (133 attempted murder charges were accepted for prosecution, but these were not analyzed because Attempted Murder is not included in HB 9).
- The average number of Murder 1 cases per year is 32
- On April 1, 2009, the following disposition had been made of these cases

Pending Trial

- 37 are pending trial or retrial -- 23.9%

Dismissed

- 33 were dismissed by the state -- 19.4%

REMAINING CHARGES (159 total minus 37 unresolved) -- 122 cases

Conviction of Lesser Offense or Acquitted

- 29 resolved by plea to a lesser offense -- 23.7 %
- 5 found not guilty at jury trial -- 4.1 %
- 5 no true bill by Grand Jury -- 4.1 %
- 4 convicted of lesser offense at jury trial -- 3.2 %
- 1 convicted of lesser offense at court trial -- .82%
- 1 tried on lesser charge at court trial -- .82%
- 1 judgment of acquittal -- .82%
- 1 dismissed by court -- .82%

Convicted as Charged

- 26 convicted of Murder 1 at jury trial -- 21.3 %
- 15 convicted by plea to Murder 1 -- 12.3 %
- 1 convicted as charged at court trial .82%

42 – Total convicted as charged -- 34.4 %

Sec. 05.15.105. Persons prohibited from involvement.

(a) If a person has been convicted of a violation of a law of this state that is, or a law or ordinance of another jurisdiction that would be if it had been committed in this state, a felony, or a violation of a law or ordinance of this state or another jurisdiction that is a crime involving theft or dishonesty or a violation of gambling laws

(1) the department may not issue a license to the person;

(2) the department may not issue a license to, or register as a vendor, an applicant who employs the person in a managerial or supervisory capacity or uses the person as a fund raiser or consultant;

(3) the department may not issue a permit for an activity if the person is responsible for the operation of the activity;

(4) the person may not be employed in a managerial or supervisory capacity by a licensee or vendor or used as a fund raiser or consultant by a licensee or vendor;

(5) the person may not participate in charitable gaming as a permittee, licensee, or vendor.

(b) The department shall adopt regulations that provide that a disqualification of a person under (a) of this section based upon a conviction of that person for a violation

(1) of a law of this state that is, or a law or ordinance of another jurisdiction that would be if it was committed in this state, a class B felony other than extortion, a class C felony, or an unclassified felony described outside of AS 11, and that is not a crime of dishonesty or theft or a violation of gambling laws, terminates 10 years after the person's conviction;

(2) of a law or ordinance of this state or another jurisdiction that is a crime involving theft or dishonesty or a violation of gambling laws, and that is not, or would not be if it was committed in this state, an unclassified felony described in AS 11, a class A felony, or extortion, terminates 10 years after the person's conviction, if the department determines that the

(A) person is of good character, honesty, and integrity; and

(B) person's involvement in charitable gaming is not against the public interest.

History -
(Sec. 7 ch 70 SLA 1993)

Sec. 05.15.140. Proof necessary to qualify for permit.

(a) The department may not issue or renew a permit except upon satisfactory proof that the applicant is a municipality or qualified organization, the activity may be permitted under this chapter, and the issuance of a permit is not detrimental to the best interests of the public. Upon request of the department, the applicant shall prove conclusively each of these requirements before a permit may be issued or renewed.

(b) In an application for a permit, a municipality or qualified organization shall disclose the name and address of each person responsible for the operation of the activity and whether any person named

(1) has been convicted of a violation of a law of this state that is, or a law or ordinance of another state that would be if committed in this state, an unclassified felony described in AS 11, a Class A felony, extortion, or a violation of a law or ordinance of this state or another jurisdiction that is a crime involving theft or dishonesty or a violation of gambling laws; or

(2) has a prohibited financial interest, as defined in regulations adopted by the department, in the operation of the activity.

(c) [Repealed, Sec. 37 ch 70 SLA 1993].

(d) Application forms for permits must contain a notice that a false statement in the application is punishable by law.

Sec. 08.64.326. Grounds for imposition of disciplinary sanctions.

(a) The board may impose a sanction if the board finds after a hearing that a licensee

(1) secured a license through deceit, fraud, or intentional misrepresentation;

(2) engaged in deceit, fraud, or intentional misrepresentation while providing professional services or engaging in professional activities;

(3) advertised professional services in a false or misleading manner;

(4) has been convicted, including conviction based on a guilty plea or plea of nolo contendere, of

(A) a class A or unclassified felony or a crime in another jurisdiction with elements similar to a class A or unclassified felony in this jurisdiction;

(B) a class B or class C felony or a crime in another jurisdiction with elements similar to a class B or class C felony in this jurisdiction if the felony or other crime is substantially related to the qualifications, functions, or duties of the licensee; or

(C) a crime involving the unlawful procurement, sale, prescription, or dispensing of drugs;

(5) has procured, sold, prescribed, or dispensed drugs in violation of a law regardless of whether there has been a criminal action;

(6) intentionally or negligently permitted the performance of patient care by persons under the licensee's supervision that does not conform to minimum professional standards even if the patient was not injured;

(7) failed to comply with this chapter, a regulation adopted under this chapter, or an order of the board;

(8) has demonstrated

(A) professional incompetence, gross negligence, or repeated negligent conduct; the board may not base a finding of professional incompetence solely on the basis that a licensee's practice is unconventional or experimental in the absence of demonstrable physical harm to a patient;

(B) addiction to, severe dependency on, or habitual overuse of alcohol or other drugs that impairs the licensee's ability to practice safely;

(C) unfitness because of physical or mental disability;

(9) engaged in unprofessional conduct, in sexual misconduct, or in lewd or immoral conduct in connection with the delivery of professional services to patients; in this paragraph, "sexual misconduct" includes sexual contact, as defined by the board in regulations adopted under this chapter, or attempted sexual contact with a patient outside the scope of generally accepted methods of examination or treatment of the patient, regardless of the patient's consent or lack of consent, during the term of the physician-patient relationship, as defined by the board in regulations adopted under this chapter, unless the patient was the licensee's spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating, courtship, or engagement relationship with the licensee;

(10) has violated AS 18.16.010;

(11) has violated any code of ethics adopted by regulation by the board;

(12) has denied care or treatment to a patient or person seeking assistance from the physician if the only reason for the denial is the failure or refusal of the patient to agree to arbitrate as provided in AS 09.55.535(a); or

(13) has had a license or certificate to practice medicine in another state or territory of the United States, or a province or territory of Canada, denied, suspended, revoked, surrendered while under investigation for an alleged violation, restricted, limited, conditioned, or placed on probation unless the denial, suspension, revocation, or other action was caused by the failure of the licensee to pay fees to that state, territory, or province.

(b) In a case involving (a)(13) of this section, the final findings of fact, conclusions of law and order of the authority that suspended or revoked a license or certificate constitutes a prima facie case that the license or certificate was suspended or revoked and the grounds under which the suspension or revocation was granted.

Sec. 09.65.210. Damages resulting from commission of a felony or while under the influence of alcohol or drugs.

A person who suffers personal injury or death or the person's personal representative under AS 09.55.570 or 09.55.580 may not recover damages for the personal injury or death if the injury or death occurred while the person was

(1) engaged in the commission of a felony, the person has been convicted of the felony, including conviction based on a guilty plea or plea of nolo contendere, and the party defending against the claim proves by clear and convincing evidence that the felony substantially contributed to the personal injury or death;

(2) engaged in conduct that would constitute the commission of an unclassified felony, a class A felony, or a class B felony for which the person was not convicted and the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

(B) that the felonious conduct substantially contributed to the personal injury or death;

(3) fleeing after the commission, by that person, of conduct that would constitute an unclassified felony, a class A felony, or a class B felony or being apprehended for conduct that would constitute an unclassified felony, a class A felony, or a class B felony if the party defending against the claim proves by clear and convincing evidence

(A) the felonious conduct; and

(B) that the conduct during the flight or apprehension substantially contributed to the injury or death;

(4) operating a vehicle, aircraft, or watercraft while under the influence of intoxicating liquor or any controlled substance in violation of AS 28.35.030, was convicted, including conviction based on a guilty plea or plea of nolo contendere, and the party defending against the claim proves by clear and convincing evidence that the conduct substantially contributed to the personal injury or death; or

(5) engaged in conduct that would constitute a violation of AS 28.35.030 for which the person was not convicted if the party defending against the claim proves by clear and convincing evidence

(A) the violation of AS 28.35.030; and

(B) that the conduct substantially contributed to the personal injury or death.

Sec. 11.31.100. Attempt.

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

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

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

(d) An attempt is

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

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

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

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

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

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

(e) If the crime attempted is an unclassified crime described in a state law which is not part of this title and no provision for punishment of an attempt to commit the crime is specified, the punishment for the attempt is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the amount of the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime attempted is punishable by an indeterminate or life term, the attempt is a class A felony.

Sec. 11.31.110. Solicitation.

(a) A person commits the crime of solicitation if, with intent to cause another to engage in conduct constituting a crime, the person solicits the other to engage in that conduct.

(b) In a prosecution under this section,

(1) it is not a defense

(A) that the defendant belongs to a class of persons who by definition are legally incapable in an individual capacity of committing the crime that is the object of the solicitation; or

(B) that a person whom the defendant solicits could not be guilty of the crime that is the object of the solicitation;

(2) it is an affirmative defense that the defendant, under circumstances manifesting a voluntary and complete renunciation of the defendant's criminal intent, after soliciting another person to engage in conduct constituting a crime, prevented the commission of the crime.

(c) Solicitation is

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

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

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

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

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

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

(d) If the crime solicited is an unclassified crime described in a state law which is not part of this title and no provision for punishment of a solicitation to commit the crime is specified, the punishment for the solicitation is imprisonment for a term of not more than half the maximum period prescribed as punishment for the unclassified crime, or a fine of not more than half the maximum fine prescribed as punishment for the unclassified crime, or both. If the crime solicited is punishable by an indeterminate or life term, the solicitation is a class A felony.

Sec. 11.31.120. Conspiracy.

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

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

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

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

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

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

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

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

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

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

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

(h) In this section,

(1) "overt act in furtherance of the conspiracy" means an act of such character that it manifests a purpose on the part of the actor that the object of the conspiracy be completed;

(2) "serious felony offense" means an offense

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

(B) involving controlled substances under AS 11.71, punishable as an unclassified, class A, or class B felony;

(C) that is criminal mischief in the first degree under AS 11.46.475; or

(D) that is terroristic threatening in the first degree under AS 11.56.807.

(i) Conspiracy is

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

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

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

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

connection with the enactment of this section, see 1993 Senate Journal at 611 - 612.

Sec. 11.41.100. Murder in the first degree.

(a) A person commits the crime of murder in the first degree if

(1) with intent to cause the death of another person, the person

(A) causes the death of any person; or

(B) compels or induces any person to commit suicide through duress or deception;

(2) the person knowingly engages in conduct directed toward a child under the age of 16 and the person with criminal negligence inflicts serious physical injury on the child by at least two separate acts, and one of the acts results in the death of the child;

(3) acting alone or with one or more persons, the person commits or attempts to commit a sexual offense against or kidnapping of a child under 16 years of age and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of the child; in this paragraph, "sexual offense" means an offense defined in AS 11.41.410 - 11.41.470;

(4) acting alone or with one or more persons, the person commits or attempts to commit criminal mischief in the first degree under AS 11.46.475 and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of a person other than one of the participants; or

(5) acting alone or with one or more persons, the person commits terroristic threatening in the first degree under AS 11.56.807 and, in the course of or in furtherance of the offense or in immediate flight from that offense, any person causes the death of a person other than one of the participants.

(b) Murder in the first degree is an unclassified felony and is punishable as provided in AS 12.55.

Sec. 12.30.020. Release before trial.

(a) A person charged with an offense shall, at that person's first appearance before a judicial officer, be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is an unclassified felony or class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required or will pose a danger to the alleged victim, other persons, or the community. If the offense with which a person is charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that release of the person on the person's personal recognizance or upon the execution of an unsecured appearance bond will not reasonably assure the appearance of the person or will pose a danger to the alleged victim, other persons, or the community.

(b) If a judicial officer determines under (a) of this section that the release of a person will not reasonably assure the appearance of the person, or will pose a danger to the alleged victim, other persons, or the community, the judicial officer may

(1) place the person in the custody of a designated person or organization agreeing as a custodian to supervise the person; the court shall, personally and in writing, inform the custodian about the duties required of a custodian, and that failure to report immediately in accordance with the terms of the order that the person released has violated a condition of release may result in the custodian's being held criminally liable under AS 11.56.758;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) [Repealed, Sec. 8 ch 57 SLA 2006].

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, a sum not to exceed 10 percent of the amount of the bond; the deposit to be returned upon the performance of the condition of release;

(5) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash;

(6) require the execution of a performance bond in a specified amount and the deposit in the registry of the court, in cash or other security; the performance bond must be imposed and enforced separately from any appearance bond, and the deposit to be returned upon the performance of the condition of release; or

(7) impose any other condition considered reasonably necessary to assure the defendant's appearance as required and the safety of the alleged victim, other persons, or the community.

(c) In determining the conditions of release under (b) of this section, the judicial officer shall take into account

(1) the nature and circumstances of the offense charged, including the effect of the offense upon the alleged victim;

(2) the weight of the evidence against the person;

(3) the person's family ties;

(4) the person's employment;

(5) the person's financial resources;

(6) the person's character and mental condition;

(7) the length of the person's residence in the community;

(8) the person's record of convictions;

(9) the person's record of appearance at court proceedings;

(10) the flight of the accused to avoid prosecution or the person's failure to appear at court proceedings; and

(11) threats the person has made, and the danger the person poses, to the alleged victim.

(d) A judicial officer authorizing the release of a person under this section shall issue an order containing a statement of the conditions imposed.

(e) The judicial officer shall inform the person of the penalties that may be imposed for a violation of the conditions of release and advise the person that a warrant for the person's arrest will be issued immediately upon a violation or that the person may be arrested without a warrant for a violation of conditions of release as set out in AS 12.25.030(b).

(f) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any other judicial officer in the district may review the conditions. If the conditions are not amended and the person remains in custody, the judicial officer shall set out in writing the reasons for requiring the conditions imposed.

(g) A judicial officer who orders the release of a person on a condition specified in (b) of this section may at any time amend the order to impose additional or different conditions of release, or to release the person under (a) of this section.

(h) Information offered or introduced at a hearing before a judicial officer to determine the conditions of release need not conform to the rules governing the admissibility of evidence in a court of law.

(i) The court shall issue written or oral findings to demonstrate why conditions provided under (b)(1) of this section needed to be imposed.

(j) If a person remains in custody after review of conditions by a judicial officer under (f) of this section, a subsequent review of conditions may be held at the request of the person. Unless the prosecuting authority stipulates otherwise or a defendant has been incarcerated for a period equal to the maximum sentence for the most serious charge for which the defendant is being held, a judicial officer may not schedule a bail review hearing under this subsection unless

(1) the person provides to the court and the prosecuting authority a written statement that new information not considered at the previous review will be presented; the statement must include a description of the information and the reason the information was not presented at a previous hearing; in this paragraph, "new information" does not include the inability to post the required bail;

(2) the prosecuting authority has at least 48 hours' notice before the time set for the review requested under this subsection; and

(3) at least seven days have elapsed between the previous review and the time set for the review requested under this subsection.

Sec. 12.30.040. Release after conviction.

(a) A person who has been convicted of an offense and is awaiting sentence, or who has filed an appeal, shall be treated in accordance with the provisions of AS 12.30.020 unless the court has reason to believe that no one or more conditions of release will reasonably assure the appearance of the person as required or prevent the person from posing a danger to the victim, other persons, or the community. If that determination is made, the person may be remanded to custody. This section does not affect the right of a person appealing from a judgment of conviction from a district court to the superior court to be released on bail pending appeal under Rule 603(b) of the Rules of Appellate Procedure; however, the court shall consider the safety of the victim, other persons, and the community before the person is released under the rule. Before granting bail to a person convicted of an offense that is a crime under AS 11.41.420, 11.41.425, 11.41.436, 11.41.438, or 11.41.450 - 11.41.458, the court shall consider requiring the person to participate in an electronic monitoring program as a condition of release.

(b) Notwithstanding the provisions of (a) of this section, a person may not be released on bail either before sentencing or pending appeal if the person has been convicted of an offense that is

(1) an unclassified felony or a class A felony; or

(2) a class B or class C felony if the person has been previously convicted of an offense in this state that is an unclassified felony, a class A felony, or a violation of AS 11.41.260, 11.41.420 - 11.41.425, or 11.41.436 - 11.41.438 or of an offense in another jurisdiction with elements substantially similar to an offense of this state described in this paragraph.

(c) A person who has been convicted of an offense and who has filed an application for post-conviction relief may not be released on bail until the trial court or an appellate court enters an order vacating all convictions against the person. A person who has prevailed on an application for post-conviction relief may seek release before trial in accordance with the provisions of AS 12.30.020.

Sec. 12.47.110. Commitment on finding of incompetency.

(a) When the trial court determines by a preponderance of the evidence, in accordance with AS 12.47.100, that a defendant is so incompetent that the defendant is unable to understand the proceedings against the defendant or to assist in the defendant's own defense, the court shall order the proceedings stayed, except as provided in (d) of this section, and may commit the defendant to the custody of the commissioner of health and social services or the commissioner's authorized representative for further evaluation and treatment until the defendant is mentally competent to stand trial, or until the pending charges against the defendant are disposed of according to law, but in no event longer than 90 days.

(b) On or before the expiration of the initial 90-day period of commitment the court shall conduct a hearing to determine whether or not the defendant remains incompetent. If the court finds by a preponderance of the evidence that the defendant remains incompetent, the court may recommit the defendant for a second period of 90 days. The court shall determine at the expiration of the second 90-day period whether the defendant has become competent. If at the expiration of the second 90-day period the court determines that the defendant continues to be incompetent to stand trial, the charges against the defendant shall be dismissed without prejudice and continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the expiration of the additional six-month period, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted or the court shall order the release of the defendant. If the defendant remains incompetent for five years after the charges have been dismissed under this subsection, the defendant may not be charged again for an offense arising out of the facts alleged in the original charges, except if the original charge is a class A felony or unclassified felony.

(c) The defendant is not responsible for the expenses of hospitalization or transportation incurred as a result of the defendant's commitment under this section. Liability for payment under AS 47.30.910 does not apply to commitments under this section.

(d) A defendant receiving medication for either a physical or a mental condition may not be prohibited from standing trial, if the medication either enables the defendant to understand the proceedings and to properly assist in the defendant's defense or does not disable the defendant from understanding the proceedings and assisting in the defendant's own defense.

Sec. 12.50.101. Immunity of witnesses.

(a) If a witness refuses, on the basis of the privilege against self-incrimination, to testify or provide other information in a criminal proceeding before or ancillary to a court or grand jury of this state, and a judge issues an order under (b) of this section, the witness may not refuse to comply with the order on the basis of the privilege against self-incrimination. If the witness fully complies with the order, the witness may not be prosecuted for an offense about which the witness is compelled to testify, except in a prosecution based on perjury, giving a false statement or otherwise knowingly providing false information, or hindering prosecution.

(b) In the case of an individual who has been or may be called to testify or provide other information in a criminal proceeding before or ancillary to a court or a grand jury of this state, a superior or district court for the judicial district in which the proceeding is or may be held shall issue, upon the application of the attorney general or the attorney general's designee in accordance with (d) of this section, an order requiring the individual to give testimony or provide other information that the individual refuses to give or provide based on the privilege against self-incrimination.

(c) An order issued under (b) of this section is effective when communicated to the individual specified in the order.

(d) The attorney general or the attorney general's designee may apply for an order under (b) of this section when, in the judgment of the attorney general or the attorney general's designee,

(1) the testimony or other information may be necessary to the administration of criminal justice; and

(2) the individual who is the subject of the application has refused or is likely to refuse to testify or to provide other information on the basis of the privilege against self-incrimination.

(e) If a witness refuses, or there is reason to believe the witness will refuse, to testify or provide other information based on the privilege against self-incrimination, and if the attorney general or the attorney general's designee has not applied for an order under (b) of this section, the court shall inform the witness of the right to be represented by an attorney, and that an attorney will be appointed for the witness if the witness qualifies for counsel under AS 18.85. The court shall recess the proceeding to allow the witness to consult with the attorney for the witness.

(f) If the attorney general or the attorney general's designee declines to seek an order under (b) of this section after the witness has had an opportunity to consult with an attorney, and the witness continues to refuse to testify or provide other information, the court shall hold a hearing to determine the validity of the claim of privilege by the witness. The hearing shall be in camera.

(g) At the hearing under (f) of this section, the attorney for the witness, in the form of a proffer, shall describe the testimony or other information that the witness claims is privileged. The proffer must include a description of how the testimony or other information could connect the witness with a crime. The proffer is privileged and inadmissible for any other purpose. If the proffer establishes a factual basis that there is a real or substantial danger that the testimony or other information to be compelled would support a conviction or would furnish a link in the chain of evidence leading to conviction for a crime, the court may find that the witness has a valid claim of privilege.

(h) If the court finds that the witness has a valid claim of privilege, it shall advise an attorney designated by the attorney general of that finding and inform the attorney of the category or categories of offense to which the privilege applies: a higher-level felony, a lower-level felony, or a misdemeanor. If the designated attorney decides that granting immunity to the witness is appropriate, the designated attorney shall inform the prosecution of that decision, and shall deliver or cause to be delivered a letter to the witness, or an attorney for the witness, granting immunity to the witness. The designated attorney may not disclose the category of offense to anyone.

(i) In this section,

(1) "higher-level felony" means an unclassified or class A felony;

(2) "lower-level felony" means a class B or class C felony;

(3) "other information" means books, papers, documents, records, recordings, or other similar material;

(4) "proffer" means a written or oral statement by the attorney for the witness, stating the attorney's good faith belief of the substance of the witness's testimony or other information.

Sec. 12.55.025. Sentencing procedures.

(a) When imposing a sentence for conviction of a felony offense or a sentence of imprisonment exceeding 90 days or upon a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted in conformity with AS 04.21.010, the court shall prepare, as a part of the record, a sentencing report that includes the following:

(1) a verbatim record of the sentencing hearing and any other in-court sentencing procedures;

(2) findings on material issues of fact and on factual questions required to be determined as a prerequisite to the selection of the sentence imposed;

(3) a clear statement of the terms of the sentence imposed; if a term of imprisonment is imposed, the statement must include

(A) the approximate minimum term the defendant is expected to serve before being released or placed on mandatory parole if the defendant is eligible for and does not forfeit good conduct deductions under AS 33.20.010; and

(B) if applicable, the approximate minimum term of imprisonment the defendant must serve before becoming eligible for release on discretionary parole;

(4) any recommendations as to the place of confinement or the manner of treatment; and

(5) in the case of a conviction for a felony offense, information assessing

(A) the financial, emotional, and medical effects of the offense on the victim;

(B) the need of the victim for restitution; and

(C) any other information required by the court.

(b) The sentencing report required under (a) of this section shall be furnished within 30 days after imposition of sentence to the Department of Law, the defendant, the Department of Corrections, the state Board of Parole if the defendant will be eligible for parole, and to the Alcoholic Beverage Control Board if the defendant is to be sentenced for a conviction of a violation of AS 04, a regulation adopted under AS 04, or an ordinance adopted under AS 04.21.010.

(c) Except as provided in (d) of this section, when a defendant is sentenced to imprisonment, the term of confinement commences on the date of imposition of sentence unless the court specifically provides that the defendant must report to serve the sentence on another date. If the court provides another date to begin the term of confinement, the court shall provide the defendant with written notice of the date, time, and location of the correctional facility to which the defendant must report. A defendant shall receive credit for time spent in custody pending trial, sentencing, or appeal, if the detention was in connection with the offense for which sentence was imposed. A defendant may not receive credit for more than the actual time spent in custody pending trial, sentencing, or appeal. The time during which a defendant is voluntarily absent from official detention after the defendant has been sentenced may not be credited toward service of the sentence.

(d) A sentence of imprisonment shall be stayed if an appeal is taken and the defendant is admitted to bail. If an appeal is taken and the defendant is not admitted to bail, the Department of Corrections shall designate the facility in which the defendant shall be detained pending appeal or admission to bail.

(e) [Repealed, Sec. 7 ch 125 SLA 2004].

(f) A sentence that the defendant pay money, either as a fine or in restitution or both, constitutes a lien in the same manner as a judgment for money entered in a civil action. Nothing in this section limits the authority of the court to otherwise enforce payment of a fine or restitution.

(g) [Repealed, Sec. 7 ch 125 SLA 2004].

(h) [Repealed, Sec. 7 ch 125 SLA 2004].

(i) Except as provided by AS 12.55.125(a)(3), 12.55.145(d), 12.55.155(f), and 12.55.165, the preponderance of the evidence standard of proof applies to sentencing proceedings.

(j) The approximate minimum terms provided under (a)(3) of this section in the sentencing report are for information purposes only. The approximate minimum terms are not part of the sentence imposed and do not form a basis for review or appeal of the sentence imposed or provide a defendant with a right to any specific term of imprisonment or supervised release on mandatory parole.

Sec. 12.55.125. Sentences of imprisonment for felonies.

(a) A defendant convicted of murder in the first degree or murder of an unborn child under AS 11.41.150(a)(1) shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years. A defendant convicted of murder in the first degree shall be sentenced to a mandatory term of imprisonment of 99 years when

(1) the defendant is convicted of the murder of a uniformed or otherwise clearly identified peace officer, fire fighter, or correctional employee who was engaged in the performance of official duties at the time of the murder;

(2) the defendant has been previously convicted of

(A) murder in the first degree under AS 11.41.100 or former AS 11.15.010 or 11.15.020;

(B) murder in the second degree under AS 11.41.110 or former AS 11.15.030; or

(C) homicide under the laws of another jurisdiction when the offense of which the defendant was convicted contains elements similar to first degree murder under AS 11.41.100 or second degree murder under AS 11.41.110;

(3) the court finds by clear and convincing evidence that the defendant subjected the murder victim to substantial physical torture;

(4) the defendant is convicted of the murder of and personally caused the death of a person, other than a participant, during a robbery; or

(5) the court finds by clear and convincing evidence that the defendant is a peace officer who used the officer's authority as a peace officer to facilitate the murder.

(b) A defendant convicted of attempted murder in the first degree, solicitation to commit murder in the first degree, conspiracy to commit murder in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree shall be sentenced to a definite term of imprisonment of at least five years but not more than 99 years. A defendant convicted of murder in the second degree or murder of an unborn child under AS 11.41.150(a)(2) - (4) shall be sentenced to a definite term of imprisonment of at least 10 years but not more than 99 years. A defendant convicted of murder in the second degree shall be sentenced to a definite term of imprisonment of at least 20 years but not more than 99 years when the defendant is convicted of the murder of a child under 16 years of age and the court finds by clear and convincing evidence that the defendant (1) was a natural parent, a stepparent, an adopted parent, a legal guardian, or a person occupying a position of authority in relation to the child; or (2) caused the death of the child by committing a crime against a person under AS 11.41.200 - 11.41.530. In this subsection, "legal guardian" and "position of authority" have the meanings given in AS 11.41.470.

(c) Except as provided in (i) of this section, a defendant convicted of a class A felony may be sentenced to a definite term of imprisonment of not more than 20 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, five to eight years;

(2) if the offense is a first felony conviction

(A) and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury or death during the commission of the offense, or knowingly directed the conduct constituting the offense at a uniformed or otherwise

clearly identified peace officer, fire fighter, correctional employee, emergency medical technician, paramedic, ambulance attendant, or other emergency responder who was engaged in the performance of official duties at the time of the offense, seven to 11 years;

(B) and the conviction is for manufacturing related to methamphetamine under AS 11.71.020(a)(2)(A) or (B), seven to 11 years, if

(i) the manufacturing occurred in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of manufacturing or in preparation for manufacturing, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present;

(3) if the offense is a second felony conviction, 10 to 14 years;

(4) if the offense is a third felony conviction and the defendant is not subject to sentencing under (l) of this section, 15 to 20 years.

(d) Except as provided in (i) of this section, a defendant convicted of a class B felony may be sentenced to a definite term of imprisonment of not more than 10 years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (2) of this subsection, one to three years; a defendant sentenced under this paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085 if, as a condition of probation under AS 12.55.086, the defendant is required to serve an active term of imprisonment within the range specified in this paragraph, unless the court finds that a mitigation factor under AS 12.55.155 applies;

(2) if the offense is a first felony conviction,

(A) the defendant violated AS 11.41.130, and the victim was a child under 16 years of age, two to four years;

(B) two to four years if the conviction is for an attempt, solicitation, or conspiracy to manufacture related to methamphetamine under AS 11.31 and AS 11.71.020(a)(2)(A) or (B), and

(i) the attempted manufacturing occurred, or the solicited or conspired offense was to have occurred, in a building with reckless disregard that the building was used as a permanent or temporary home or place of lodging for one or more children under 18 years of age or the building was a place frequented by children; or

(ii) in the course of an attempt to manufacture, the defendant obtained the assistance of one or more children under 18 years of age or one or more children were present;

(3) if the offense is a second felony conviction, four to seven years;

(4) if the offense is a third felony conviction, six to 10 years.

(e) Except as provided in (i) of this section, a defendant convicted of a class C felony may be sentenced to a definite term of imprisonment of not more than five years, and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(1) if the offense is a first felony conviction and does not involve circumstances described in (4) of this subsection, zero to two years; a defendant sentenced under this

paragraph may, if the court finds it appropriate, be granted a suspended imposition of sentence under AS 12.55.085, and the court may, as a condition of probation under AS 12.55.086, require the defendant to serve an active term of imprisonment within the range specified in this paragraph;

(2) if the offense is a second felony conviction, two to four years;

(3) if the offense is a third felony conviction, three to five years;

(4) if the offense is a first felony conviction, and the defendant violated AS 08.54.720(a)(15), one to two years.

(f) If a defendant is sentenced under (a) or (b) of this section,

(1) imprisonment for the prescribed minimum or mandatory term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed minimum or mandatory term may not be reduced, except as provided in (j) of this section.

(g) If a defendant is sentenced under (c), (d), (e), or (i) of this section, except to the extent permitted under AS 12.55.155 - 12.55.175,

(1) imprisonment may not be suspended under AS 12.55.080 below the low end of the presumptive range;

(2) and except as provided in (d)(1) or (e)(1) of this section, imposition of sentence may not be suspended under AS 12.55.085;

(3) terms of imprisonment may not be otherwise reduced.

(h) Nothing in this section or AS 12.55.135 limits the discretion of the sentencing judge except as specifically provided. Nothing in (a) of this section limits the court's discretion to impose a sentence of 99 years imprisonment, or to limit parole eligibility, for a person convicted of murder in the first or second degree in circumstances other than those enumerated in (a).

(i) A defendant convicted of

(1) sexual assault in the first degree, sexual abuse of a minor in the first degree, or promoting prostitution in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) less than 13 years of age, 25 to 35 years;

(ii) 13 years of age or older, 20 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 30 to 40 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 35 to 45 years;

(E) if the offense is a third felony conviction and the defendant is not subject to sentencing under (F) of this paragraph or (l) of this section, 40 to 60 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (l) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(2) attempt, conspiracy, or solicitation to commit sexual assault in the first degree, sexual abuse of a minor in the first degree, or promoting prostitution in the first degree under AS 11.66.110(a)(2) may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, the offense does not involve circumstances described in (B) of this paragraph, and the victim was

(i) under 13 years of age, 20 to 30 years;

(ii) 13 years of age or older, 15 to 30 years;

(B) if the offense is a first felony conviction and the defendant possessed a firearm, used a dangerous instrument, or caused serious physical injury during the commission of the offense, 25 to 35 years;

(C) if the offense is a second felony conviction and does not involve circumstances described in (D) of this paragraph, 25 to 35 years;

(D) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 30 to 40 years;

(E) if the offense is a third felony conviction, the offense does not involve circumstances described in (F) of this paragraph, and the defendant is not subject to sentencing under (l) of this section, 35 to 50 years;

(F) if the offense is a third felony conviction, the defendant is not subject to sentencing under (l) of this section, and the defendant has two prior convictions for sexual felonies, 99 years;

(3) sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, five to 15 years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, 10 to 25 years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 15 to 30 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 20 to 35 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years;

(4) sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, or attempt, conspiracy, or solicitation to commit sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, or distribution of child pornography, may be sentenced to a definite term of imprisonment of not more than 99 years and shall be sentenced to a definite term within the following presumptive ranges, subject to adjustment as provided in AS 12.55.155 - 12.55.175:

(A) if the offense is a first felony conviction, two to 12 years;

(B) if the offense is a second felony conviction and does not involve circumstances described in (C) of this paragraph, eight to 15 years;

(C) if the offense is a second felony conviction and the defendant has a prior conviction for a sexual felony, 12 to 20 years;

(D) if the offense is a third felony conviction and does not involve circumstances described in (E) of this paragraph, 15 to 25 years;

(E) if the offense is a third felony conviction and the defendant has two prior convictions for sexual felonies, 99 years.

(j) A defendant sentenced to a (1) mandatory term of imprisonment of 99 years under (a) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the mandatory term without consideration of good time earned under AS 33.20.010, or (2) definite term of imprisonment under (l) of this section may apply once for a modification or reduction of sentence under the Alaska Rules of Criminal Procedure after serving one-half of the definite term. A defendant may not file and a court may not entertain more than one motion for modification or reduction of a sentence subject to this subsection, regardless of whether or not the court granted or denied a previous motion.

(k) [Repealed, Sec. 32 ch 2 SLA 2005].

(l) Notwithstanding any other provision of law, a defendant convicted of an unclassified or class A felony offense, and not subject to a mandatory 99-year sentence under (a) of this section, shall be sentenced to a definite term of imprisonment of 99 years when the defendant has been previously convicted of two or more most serious felonies. If a defendant is sentenced to a definite term under this subsection,

(1) imprisonment for the prescribed definite term may not be suspended under AS 12.55.080;

(2) imposition of sentence may not be suspended under AS 12.55.085;

(3) imprisonment for the prescribed definite term may not be reduced, except as provided in (j) of this section.

(m) Notwithstanding (a)(4) and (f) of this section, if a court finds that imposition of a mandatory term of imprisonment of 99 years on a defendant subject to sentencing under (a)(4) of this section would be manifestly unjust, the court may sentence the defendant to a definite term of imprisonment otherwise permissible under (a) of this section.

(n) In imposing a sentence within a presumptive range under (c), (d), (e), or (i) of this section, the total term, made up of the active term of imprisonment plus any suspended term of imprisonment, must fall within the presumptive range, and the active term of imprisonment may not fall below the lower end of the presumptive range.

(o) Other than for convictions subject to a mandatory 99-year sentence, the court shall impose, in addition to an active term of imprisonment imposed under (i) of this section, a minimum period of (1) suspended imprisonment of five years and a minimum period of probation supervision of 15 years for conviction of an unclassified felony, (2) suspended imprisonment of three years and a minimum period of probation supervision of 10 years for conviction of a class A or class B felony, or (3) suspended imprisonment of two years and a minimum period of probation supervision of five years for conviction of a class C felony. The period of probation is in addition to any sentence received under

(i) of this section and may not be suspended or reduced. Upon a defendant's release from confinement in a correctional facility, the defendant is subject to this probation requirement and shall submit and comply with the terms and requirements of the probation.

Sec. 12.55.145. Prior convictions.

(a) For purposes of considering prior convictions in imposing sentence under

(1) AS 12.55.125(c), (d), or (e),

(A) a prior conviction may not be considered if a period of 10 or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a felony defined as such under Alaska law at the time the offense was committed is considered a prior felony conviction;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

(2) AS 12.55.125(l),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a most serious felony is considered a prior most serious felony conviction;

(B) commission of and conviction for offenses relied on as prior most serious felony offenses must occur in the following order: conviction for the first offense must occur before commission of the second offense, and conviction for the second offense must occur before commission of the offense for which the defendant is being sentenced;

(3) AS 12.55.135(g),

(A) a prior conviction may not be considered if a period of five or more years has elapsed between the date of the defendant's unconditional discharge on the immediately preceding offense and commission of the present offense unless the prior conviction was for an unclassified or class A felony;

(B) a conviction in this or another jurisdiction of an offense having elements similar to those of a crime against a person or a crime involving domestic violence is considered a prior conviction;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective;

(4) AS 12.55.125(i),

(A) a conviction in this or another jurisdiction of an offense having elements similar to those of a sexual felony is a prior conviction for a sexual felony;

(B) a felony conviction in another jurisdiction making it a crime to commit any lewd and lascivious act upon a child under the age of 16 years, with the intent of arousing, appealing to, or gratifying the sexual desires of the defendant or the victim is a prior conviction for a sexual felony;

(C) two or more convictions arising out of a single, continuous criminal episode during which there was no substantial change in the nature of the criminal objective are considered a single conviction unless the defendant was sentenced to consecutive sentences for the crimes; offenses committed while attempting to escape or avoid detection or apprehension after the commission of another offense are not part of the same criminal episode or objective.

(b) When sentence is imposed under this chapter, prior convictions not expressly admitted by the defendant must be proved by authenticated copies of court records served on the defendant or the defendant's counsel at least 20 days before the date set for imposition of sentence.

(c) The defendant shall file with the court and serve on the prosecuting attorney notice of denial, consisting of a concise statement of the grounds relied upon and that may be supported by affidavit or other documentary evidence, no later than 10 days before the date set for the imposition of sentence if the defendant

(1) denies

(A) the authenticity of a prior judgment of conviction;

(B) that the defendant is the person named in the judgment;

(C) that the elements of a prior offense committed in this or another jurisdiction are similar to those of a

(i) felony defined as such under Alaska law;

(ii) most serious felony, defined as such under Alaska law;

(iii) crime against a person or a crime involving domestic violence;

(D) that a prior conviction occurred within the period specified in (a)(1)(A) or (3)(A) of this section; or

(E) that a previous conviction occurred in the order required under (a)(2)(B) of this section; or

(2) alleges that two or more purportedly separate prior convictions should be considered a single conviction under (a)(1)(C) or (3)(C) of this section.

(d) Matters alleged in a notice of denial shall be heard by the court sitting without a jury. If the defendant introduces substantial evidence that the defendant is not the person named in a prior judgment of conviction, that the judgment is not authentic, that the conviction did not occur within the period specified in (a)(1)(A) or (3)(A) of this section, that a conviction should not be considered a prior felony conviction under (a)(1)(B) of this section, a prior most serious felony conviction under (a)(2)(A) of this section, or a prior crime against a person or a crime involving domestic violence conviction under (a)(3)(B) of this section, or that a previous conviction did not occur in the order required under (a)(2)(B) of this section, then the burden is on the state to prove the contrary beyond a reasonable doubt. The burden of proof that two or more convictions should be considered a single conviction under (a)(1)(C) or (3)(C) of this section is on the defendant by clear and convincing evidence.

(e) The authenticated judgments of courts of record of the United States, the District of Columbia, or of any state, territory, or political subdivision of the United States are prima facie evidence of conviction.

(f) Under this section, a prior conviction has occurred when a defendant has entered a plea of guilty, guilty but mentally ill, or nolo contendere, or when a verdict of guilty or guilty but mentally ill has been returned by a jury or by the court.

(g) In this section,
(1) "crime against a person" has the meaning given in AS 12.55.135;
(2) "crime involving domestic violence" has the meaning given in AS 18.66.990.

Sec. 12.55.155. Factors in aggravation and mitigation.

(a) Except as provided in (e) of this section, if a defendant is convicted of an offense and is subject to sentencing under AS 12.55.125(c), (d), (e), or (i) and

(1) the low end of the presumptive range is four years or less, the court may impose any sentence below the presumptive range for factors in mitigation or may increase the active term of imprisonment up to the maximum term of imprisonment for factors in aggravation;

(2) the low end of the presumptive range is more than four years, the court may impose a sentence below the presumptive range as long as the active term of imprisonment is not less than 50 percent of the low end of the presumptive range for factors in mitigation or may increase the active term of imprisonment up to the maximum term of imprisonment for factors in aggravation.

(b) Sentences under this section that are outside of the presumptive ranges set out in AS 12.55.125 shall be based on the totality of the aggravating and mitigating factors set out in (c) and (d) of this section.

(c) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence above the presumptive range set out in AS 12.55.125:

(1) a person, other than an accomplice, sustained physical injury as a direct result of the defendant's conduct;

(2) the defendant's conduct during the commission of the offense manifested deliberate cruelty to another person;

(3) the defendant was the leader of a group of three or more persons who participated in the offense;

(4) the defendant employed a dangerous instrument in furtherance of the offense;

(5) the defendant knew or reasonably should have known that the victim of the offense was particularly vulnerable or incapable of resistance due to advanced age, disability, ill health, or extreme youth or was for any other reason substantially incapable of exercising normal physical or mental powers of resistance;

(6) the defendant's conduct created a risk of imminent physical injury to three or more persons, other than accomplices;

(7) a prior felony conviction considered for the purpose of invoking a presumptive range under this chapter was of a more serious class of offense than the present offense;

(8) the defendant's prior criminal history includes conduct involving aggravated or repeated instances of assaultive behavior;

(9) the defendant knew that the offense involved more than one victim;

(10) the conduct constituting the offense was among the most serious conduct included in the definition of the offense;

(11) the defendant committed the offense under an agreement that the defendant either pay or be paid for the commission of the offense, and the pecuniary incentive was beyond that inherent in the offense itself;

(12) the defendant was on release under AS 12.30.020 or 12.30.040 for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

(13) the defendant knowingly directed the conduct constituting the offense at an active officer of the court or at an active or former judicial officer, prosecuting attorney,

law enforcement officer, correctional employee, fire fighter, emergency medical technician, paramedic, ambulance attendant, or other emergency responder during or because of the exercise of official duties;

(14) the defendant was a member of an organized group of five or more persons, and the offense was committed to further the criminal objectives of the group;

(15) the defendant has three or more prior felony convictions;

(16) the defendant's criminal conduct was designed to obtain substantial pecuniary gain and the risk of prosecution and punishment for the conduct is slight;

(17) the offense was one of a continuing series of criminal offenses committed in furtherance of illegal business activities from which the defendant derives a major portion of the defendant's income;

(18) the offense was a felony

(A) specified in AS 11.41 and was committed against a spouse, a former spouse, or a member of the social unit made up of those living together in the same dwelling as the defendant;

(B) specified in AS 11.41.410 - 11.41.458 and the defendant has engaged in the same or other conduct prohibited by a provision of AS 11.41.410 - 11.41.460 involving the same or another victim; or

(C) specified in AS 11.41 that is a crime involving domestic violence and was committed in the physical presence or hearing of a child under 16 years of age who was, at the time of the offense, living within the residence of the victim, the residence of the perpetrator, or the residence where the crime involving domestic violence occurred;

(19) the defendant's prior criminal history includes an adjudication as a delinquent for conduct that would have been a felony if committed by an adult;

(20) the defendant was on furlough under AS 33.30 or on parole or probation for another felony charge or conviction that would be considered a prior felony conviction under AS 12.55.145(a)(1)(B);

(21) the defendant has a criminal history of repeated instances of conduct violative of criminal laws, whether punishable as felonies or misdemeanors, similar in nature to the offense for which the defendant is being sentenced under this section;

(22) the defendant knowingly directed the conduct constituting the offense at a victim because of that person's race, sex, color, creed, physical or mental disability, ancestry, or national origin;

(23) the defendant is convicted of an offense specified in AS 11.71 and

(A) the offense involved the delivery of a controlled substance under circumstances manifesting an intent to distribute the substance as part of a commercial enterprise; or

(B) at the time of the conduct resulting in the conviction, the defendant was caring for or assisting in the care of a child under 10 years of age;

(24) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the transportation of controlled substances into the state;

(25) the defendant is convicted of an offense specified in AS 11.71 and the offense involved large quantities of a controlled substance;

(26) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance that had been adulterated with a toxic substance;

(27) the defendant, being 18 years of age or older,

(A) is legally accountable under AS 11.16.110(2) for the conduct of a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant; or

(B) is aided or abetted in planning or committing the offense by a person who, at the time the offense was committed, was under 18 years of age and at least three years younger than the defendant;

(28) the victim of the offense is a person who provided testimony or evidence related to a prior offense committed by the defendant;

(29) the defendant committed the offense for the benefit of, at the direction of, or in association with a criminal street gang;

(30) the defendant is convicted of an offense specified in AS 11.41.410 - 11.41.455, and the defendant knowingly supplied alcohol or a controlled substance to the victim in furtherance of the offense with the intent to make the victim incapacitated; in this paragraph, "incapacitated" has the meaning given in AS 11.41.470;

(31) the defendant's prior criminal history includes convictions for five or more crimes in this or another jurisdiction that are class A misdemeanors under the law of this state, or having elements similar to a class A misdemeanor; two or more convictions arising out of a single continuous episode are considered a single conviction; however, an offense is not a part of a continuous episode if committed while attempting to escape or resist arrest or if it is an assault upon a uniformed or otherwise clearly identified peace officer; notice and denial of convictions are governed by AS 12.55.145(b), (c), and (d);

(32) the offense is a violation of AS 11.41 or AS 11.46.400 and the offense occurred on school grounds, on a school bus, at a school-sponsored event, or in the administrative offices of a school district if students are educated at that office; in this paragraph,

(A) "school bus" has the meaning given in AS 11.71.900;

(B) "school district" has the meaning given in AS 47.07.063;

(C) "school grounds" has the meaning given in AS 11.71.900;

(33) the offense was a felony specified in AS 11.41.410 - 11.41.455, the defendant had been previously diagnosed as having or having tested positive for HIV or AIDS, and the offense either (A) involved penetration, or (B) exposed the victim to a risk or a fear that the offense could result in the transmission of HIV or AIDS; in this paragraph, "HIV" and "AIDS" have the meanings given in AS 18.15.310;

(34) the defendant committed the offense on, or to affect persons or property on, the premises of a recognized shelter or facility providing services to victims of domestic violence or sexual assault.

(d) The following factors shall be considered by the sentencing court if proven in accordance with this section, and may allow imposition of a sentence below the presumptive range set out in AS 12.55.125:

(1) the offense was principally accomplished by another person, and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim;

(2) the defendant, although an accomplice, played only a minor role in the commission of the offense;

(3) the defendant committed the offense under some degree of duress, coercion, threat, or compulsion insufficient to constitute a complete defense, but that significantly affected the defendant's conduct;

(4) the conduct of a youthful defendant was substantially influenced by another person more mature than the defendant;

(5) the conduct of an aged defendant was substantially a product of physical or mental infirmities resulting from the defendant's age;

(6) in a conviction for assault under AS 11.41.200 - 11.41.220, the defendant acted with serious provocation from the victim;

(7) except in the case of a crime defined by AS 11.41.410 - 11.41.470, the victim provoked the crime to a significant degree;

(8) before the defendant knew that the criminal conduct had been discovered, the defendant fully compensated or made a good faith effort to fully compensate the victim of the defendant's criminal conduct for any damage or injury sustained;

(9) the conduct constituting the offense was among the least serious conduct included in the definition of the offense;

(10) the defendant was motivated to commit the offense solely by an overwhelming compulsion to provide for emergency necessities for the defendant's immediate family;

(11) after commission of the offense for which the defendant is being sentenced, the defendant assisted authorities to detect, apprehend, or prosecute other persons who committed an offense;

(12) the facts surrounding the commission of the offense and any previous offenses by the defendant establish that the harm caused by the defendant's conduct is consistently minor and inconsistent with the imposition of a substantial period of imprisonment;

(13) the defendant is convicted of an offense specified in AS 11.71 and the offense involved small quantities of a controlled substance;

(14) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the distribution of a controlled substance, other than a schedule IA controlled substance, to a personal acquaintance who is 19 years of age or older for no profit;

(15) the defendant is convicted of an offense specified in AS 11.71 and the offense involved the possession of a small amount of a controlled substance for personal use in the defendant's home;

(16) in a conviction for assault or attempted assault or for homicide or attempted homicide, the defendant acted in response to domestic violence perpetrated by the victim against the defendant and the domestic violence consisted of aggravated or repeated instances of assaultive behavior;

(17) except in the case of an offense defined by AS 11.41 or AS 11.46.400, the defendant has been convicted of a class B or C felony, and, at the time of sentencing, has successfully completed a court-ordered treatment program as defined in AS 28.35.028 that was begun after the offense was committed;

(18) except in the case of an offense defined under AS 11.41 or AS 11.46.400 or a defendant who has previously been convicted of a felony, the defendant committed the offense while suffering from a mental disease or defect as defined in AS 12.47.130 that

was insufficient to constitute a complete defense but that significantly affected the defendant's conduct.

(e) If a factor in aggravation is a necessary element of the present offense, or requires the imposition of a sentence within the presumptive range under AS 12.55.125(c)(2), that factor may not be used to impose a sentence above the high end of the presumptive range. If a factor in mitigation is raised at trial as a defense reducing the offense charged to a lesser included offense, that factor may not be used to impose a sentence below the low end of the presumptive range.

(f) If the state seeks to establish a factor in aggravation at sentencing

(1) under (c)(7), (8), (12), (15), (19), (20), (21), or (31) of this section, or if the defendant seeks to establish a factor in mitigation at sentencing, written notice must be served on the opposing party and filed with the court not later than 10 days before the date set for imposition of sentence; the factors in aggravation listed in this paragraph and factors in mitigation must be established by clear and convincing evidence before the court sitting without a jury; all findings must be set out with specificity;

(2) other than one listed in (1) of this subsection, the factor shall be presented to a trial jury under procedures set by the court, unless the defendant waives trail by jury, stipulates to the existence of the factor, or consents to have the factor proven under procedures set out in (1) of this subsection; a factor in aggravation presented to a jury is established if proved beyond a reasonable doubt; written notice of the intent to establish a factor in aggravation must be served on the defendant and filed with the court

(A) 20 days before trial, or at another time specified by the court;

(B) within 48 hours, or at a time specified by the court, if the court instructs the jury about the option to return a verdict for a lesser included offense; or

(C) five days before entering a plea that results in a finding of guilt, or at another time specified by the court.

(g) Voluntary alcohol or other drug intoxication or chronic alcoholism or other drug addiction may not be considered an aggravating or mitigating factor.

(h) In this section, "serious provocation" has the meaning given in AS 11.41.115(f).

Sec. 12.55.185. Definitions.

In this chapter, unless the context requires otherwise,

(1) "active term of imprisonment" has the meaning given in AS 12.55.127;

(2) "building" has the meaning given in AS 11.81.900;

(3) "crime against a person" has the meaning given in AS 33.30.901;

(4) "criminal street gang" has the meaning given in AS 11.81.900(b);

(5) "dangerous instrument" has the meaning given in AS 11.81.900;

(6) "domestic violence" has the meaning given in AS 18.66.990;

(7) "firearm" has the meaning given in AS 11.81.900;

(8) "first felony conviction" means that the defendant has not been previously convicted of a felony;

(9) "judicial officer" has the meaning given in AS 11.56.900;

(10) "most serious felony" means

(A) arson in the first degree, promoting prostitution in the first degree under AS 11.66.110(a)(2), or any unclassified or class A felony prescribed under AS 11.41; or

(B) an attempt, or conspiracy to commit, or criminal solicitation under AS 11.31.110 of, an unclassified felony prescribed under AS 11.41;

(11) "paramedic" means a mobile intensive care paramedic licensed under AS 08.64;

(12) "peace officer" has the meaning given in AS 11.81.900;

(13) "pecuniary gain" means the amount of money or value of property at the time of commission of the offense derived by the defendant from the commission of the offense, less the amount of money or value of property returned to the victim of the offense or seized by or surrendered to lawful authority before sentence is imposed;

(14) "second felony conviction" means that the defendant previously has been convicted of a felony;

(15) "serious physical injury" has the meaning given in AS 11.81.900;

(16) "sexual felony" means sexual assault in the first degree, sexual abuse of a minor in the first degree, sexual assault in the second degree, sexual abuse of a minor in the second degree, unlawful exploitation of a minor, distribution of child pornography, sexual assault in the third degree, incest, indecent exposure in the first degree, possession of child pornography, and felony attempt, conspiracy, or solicitation to commit those crimes;

(17) "third felony conviction" means that the defendant has been at least twice previously convicted of a felony;

(18) "unconditional discharge" means that a defendant is released from all disability arising under a sentence, including probation and parole;

(19) "victim" means

(A) a person against whom an offense has been perpetrated;

(B) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is a minor, incompetent, or incapacitated:

(i) an individual living in a spousal relationship with the person specified in (A) of this paragraph; or

(ii) a parent, adult child, guardian, or custodian of the person;

(C) one of the following, not the perpetrator, if the person specified in (A) of this paragraph is dead:

(i) a person living in a spousal relationship with the deceased before the deceased died;

(ii) an adult child, parent, brother, sister, grandparent, or grandchild of the deceased; or

(iii) any other interested person, as may be designated by a person having authority in law to do so.

Sec. 22.07.020. Jurisdiction.

(a) The court of appeals has appellate jurisdiction in actions and proceedings commenced in the superior court involving

(1) criminal prosecution;

(2) post-conviction relief;

(3) matters under AS 47.12, including waiver of jurisdiction over a minor under AS 47.12.100;

(4) extradition;

(5) habeas corpus;

(6) probation and parole; and

(7) bail.

(b) Except as limited in AS 12.55.120, the court of appeals has jurisdiction to hear appeals of unsuspended sentences of imprisonment exceeding two years for a felony offense or 120 days for a misdemeanor offense imposed by the superior court on the grounds that the sentence is excessive, or a sentence of any length on the grounds that it is too lenient. The court of appeals, in the exercise of this jurisdiction, may modify the sentence as provided by law and the state constitution.

(c) The court of appeals has jurisdiction to review (1) a final decision of the district court in an action or proceeding involving criminal prosecution, post-conviction relief, extradition, probation and parole, habeas corpus, or bail; and (2) the final decision of the district court on a sentence imposed by it if the sentence exceeds 120 days of unsuspended incarceration for a misdemeanor offense. In this subsection, "final decision" means a decision or order, other than dismissal by consent of all parties, that closes a matter in the district court.

(d) An appeal to the court of appeals is a matter of right in all actions and proceedings within its jurisdiction except that

(1) the right of appeal to the court of appeals is waived if an appellant chooses to appeal the final decision of the district court to the superior court; and

(2) the state's right of appeal in criminal cases is limited by the prohibitions against double jeopardy contained in the United States Constitution and the Alaska Constitution.

(e) The court of appeals may in its discretion (1) review a final decision of the superior court on an appeal from a district court in an action or proceeding involving criminal prosecution, post-conviction relief, extradition, probation and parole, habeas corpus or bail; (2) review the final decision of the superior court on appeal of a sentence imposed by the district court. In this subsection, "final decision" means a decision or order, other than a dismissal by consent of all parties, that closes a matter in the superior court.

(f) The court of appeals may issue injunctions, writs, and all other process necessary for the complete exercise of its jurisdiction.

(g) A final decision of the court of appeals is binding on the superior court and on the district court unless superseded by a decision of the supreme court.

Sec. 47.12.030. Provisions inapplicable.

(a) When a minor who was at least 16 years of age at the time of the offense is charged by complaint, information, or indictment with an offense specified in this subsection, this chapter and the Alaska Delinquency Rules do not apply to the offense for which the minor is charged or to any additional offenses joinable to it under the applicable rules of court governing criminal procedure. The minor shall be charged, held, released on bail, prosecuted, sentenced, and incarcerated in the same manner as an adult. If the minor is convicted of an offense other than an offense specified in this subsection, the minor may attempt to prove, by a preponderance of the evidence, that the minor is amenable to treatment under this chapter. If the court finds that the minor is amenable to treatment under this chapter, the minor shall be treated as though the charges had been heard under this chapter, and the court shall order disposition of the charges of which the minor is convicted under AS 47.12.120(b). The provisions of this subsection apply when the minor is charged by complaint, information, or indictment with an offense

(1) that is an unclassified felony or a class A felony and the felony is a crime against a person;

(2) of arson in the first degree;

(3) that is a class B felony and the felony is a crime against a person in which the minor is alleged to have used a deadly weapon in the commission of the offense and the minor was previously adjudicated as a delinquent or convicted as an adult, in this or another jurisdiction, as a result of an offense that involved use of a deadly weapon in the commission of a crime against a person or an offense in another jurisdiction having elements substantially identical to those of a crime against a person, and the previous offense was punishable as a felony; in this paragraph, "deadly weapon" has the meaning given in AS 11.81.900(b); or

(4) that is misconduct involving weapons in the first degree under

(A) AS 11.61.190(a)(1); or

(B) AS 11.61.190(a)(2) when the firearm was discharged under circumstances manifesting substantial and unjustifiable risk of physical injury to a person.

(b) When a minor is accused of violating a statute specified in this subsection, other than a statute the violation of which is a felony, this chapter and the Alaska Delinquency Rules do not apply and the minor accused of the offense shall be charged, prosecuted, and sentenced in the district court in the same manner as an adult; if a minor is charged, prosecuted, and sentenced for an offense under this subsection, the minor's parent, guardian, or legal custodian shall be present at all proceedings; the provisions of this subsection apply when a minor is accused of violating

(1) a traffic statute or regulation, or a traffic ordinance or regulation of a municipality;

(2) AS 11.76.105, relating to the possession of tobacco by a person under 19 years of age;

(3) a fish and game statute or regulation under AS 16;

(4) a parks and recreational facilities statute or regulation under AS 41.21;

(5) AS 04.16.050, relating to possession, control, or consumption of alcohol, except for conduct constituting habitual minor consuming or in possession or control under AS 04.16.050(d); and

(6) a municipal curfew ordinance, whether adopted under AS 29.35.085 or otherwise, unless the municipality provides for enforcement of its ordinance under AS 29.25.070(b) by the municipality; in place of any fine imposed for the violation of a municipal curfew ordinance, the court shall allow a defendant the option of performing community work; the value of the community work, which may not be lower than the amount of the fine, shall be determined under AS 12.55.055(c); in this paragraph, "community work" includes the work described in AS 12.55.055(b) or work that, on the recommendation of the municipal or borough assembly, city council, or traditional village council of the defendant's place of residence, would benefit persons within the municipality or village who are elderly or disabled.

(c) The provisions of AS 47.12.010 - 47.12.260 and the Alaska Delinquency Rules do not apply to driver's license proceedings under AS 28.15.185; the court shall impose a driver's license revocation under AS 28.15.185 in the same manner as adult driver's license revocations, except that a parent or legal guardian shall be present at all proceedings.

Sec. 47.12.100. Waiver of jurisdiction.

(a) If the court finds at a hearing on a petition that there is probable cause for believing that a minor is delinquent and finds that the minor is not amenable to treatment under this chapter, it shall order the case closed. After a case is closed under this subsection, the minor may be prosecuted as an adult.

(b) A minor is unamenable to treatment under this chapter if the minor probably cannot be rehabilitated by treatment under this chapter before reaching 20 years of age. In determining whether a minor is unamenable to treatment, the court may consider the seriousness of the offense the minor is alleged to have committed, the minor's history of delinquency, the probable cause of the minor's delinquent behavior, and the facilities available to the department for treating the minor.

(c) For purposes of making a determination under this section,

(1) the standard of proof is by a preponderance of the evidence; and

(2) the burden of proof that a minor is not amenable to treatment under this chapter is on the state; however, if the petition filed under AS 47.12.040 seeking to have the court declare a minor a delinquent is based on the minor's alleged commission of an offense that is an unclassified felony or class A felony and that is a crime against a person, the minor

(A) is rebuttably presumed not to be amenable to treatment under this chapter; and

(B) has the burden of proof of showing that the minor is amenable to treatment under this chapter.

Rule 32. Sentence and Judgment.

(a) **Sentence.** Sentence shall be imposed without unreasonable delay. Sentencing in felony cases shall follow the procedures established in this rule and Rules 32.1 through 32.6. Sentencing in misdemeanor cases shall follow the procedures established in this rule and Rules 32.2, 32.3, 32.5, and 32.6. When imposing sentence, the judge or magistrate shall explain on the record the reasons for the sentence.

(b) **Other Counts.** At sentencing, the prosecuting attorney must announce the disposition of all counts brought under the same case number that are not addressed in the judgment or in a written notice of dismissal or deferred prosecution. The court will notify the Department of Public Safety of any counts dismissed on the record.

(c) **Judgment**

(1) *Conviction.* A judgment of conviction must, for each count, set forth the offense, including the statute or regulation violated, the defendant's plea, the verdicts or findings, and the sentence imposed. The judge or magistrate must sign the judgment.

(A) *Incarceration.* When the sentence includes a term of incarceration, the clerk promptly shall deliver a copy of the judgment to a peace officer or correctional facility. If the defendant does not appear at the correctional facility at the time specified, the peace officer or a representative of the correctional facility promptly shall notify the court by sworn statement on the record or by affidavit.

(B) *Restitution.* When the sentence includes a requirement that the defendant pay restitution, the judge shall order restitution as described in Rule 32.6. The judgment for restitution is enforceable in the same manner as a judgment in a civil action. If the defendant is placed on probation, the judgment of conviction shall include the payment of restitution as a condition of probation.

(C) *Conviction of a Corporation.* If a corporation is convicted of any criminal offense, the judge shall enter judgment against the corporation and the judgment shall be enforced in the same manner as a judgment in a civil action, or as otherwise provided by law.

(2) *Discharge.* If the defendant is found not guilty or for any other reason is entitled to be discharged, judgment shall be entered accordingly.

(d) **Judgment for Sex Offenses or Child Kidnapping.** When a defendant is convicted of a sex offense defined in AS 12.63.100 or child kidnapping as defined in AS 12.63.100, the written judgment must state the requirements of AS

12.63.010 and the period of registration required under AS 12.63 if the required period can be determined by the court.

(e) **Judgment for Crimes Involving Domestic Violence.** In a case in which the defendant is convicted of an offense listed in AS 18.66.990(3) and the prosecution claims at sentencing that the offense is a crime involving domestic violence, the written judgment must set forth whether the offense is a crime involving domestic violence as defined in AS 18.66.990(3) and (5). A factual and legal determination supporting this finding must be made on the record.

(f) **Judgment for Crime Against a Person.** In a case in which the defendant is convicted of a crime against a person as defined in AS 44.41.035(j), the written judgment must set out the requirements of AS 12.55.015(h).

(g) **Information To Be Included in Judgment.** If provided by the prosecuting authority in the charging document, the judgment must include the following information:

(1) the defendant's full name, including middle name or initial;

(2) the defendant's date of birth;

(3) the defendant's Alaska Public Safety Information Network (APSIN) identification number;

(4) the defendant's driver's license number or state identification number, including the issuing state and whether the license is a commercial driver's license;

(5) the arrest tracking number (ATN) on the Criminal Case Intake and Disposition (CCID) form for each offense being addressed in the judgment;

(6) the three-digit charge tracking number assigned on the CCID form for each offense being addressed in the judgment; and

(7) the statute, regulation, or ordinance, as identified in the Uniform Offense Citation Table,** corresponding to each offense being addressed in the judgment. Regulations not listed in the Uniform Offense Citation Table must be cited by the regulation number.

** The Uniform Offense Citation table was developed by the Department of Public Safety. Changes to the table must be approved by the Department of Law or the appropriate municipal prosecuting authority. It is available at http://www.dps.state.ak.us/statewide/uoct/.

(Adopted by SCO 4 October 4, 1959; amended by SCO 157 effective February 15, 1973; by Amendment No. 5 to SCO 157 effective July 1, 1974; by SCO 330 effective January 1, 1979; by SCO 418 effective August 1, 1980; by SCO 436 effective October 21, 1980; by SCO 437 effective October 21, 1980; by SCO 550 effective February 1, 1983; by SCO 554 effective April 4, 1983; by SCO 603 effective September 14, 1984; by SCO 976 effective January 15, 1990; by SCO 979 effective August 28, 1989; by SCO 1028 effective July 15, 1990; by SCO 1049 effective January 15, 1991; by SCO 1092 effective July 15, 1992; repealed and reenacted by SCO 1136 effective July 15, 1993; amended by SCO 1204 effective July 15, 1995; by SCO 1289 effective January 15, 1998; by SCO 1341 effective September 10, 1998; by SCO 1343 effective January 1, 1999; by SCO 1464 effective March 5, 2002; and by SCO 1614 effective October 15, 2006)

Note to SCO 1204: The requirement that a judgment for conviction of a sex offense must set out the requirements of AS 12.63.010 was added by ch. 41 3 SLA 1994. Section 7 of this order is adopted for the sole reason that the legislature has mandated the amendments.

Note to SCO 1341: Paragraph (e) of Criminal Rule 32 was added by 11 ch. 95 SLA 1998. Section 3 of this order is adopted for the sole reason that the legislature has mandated the amendment.

Rule 32.1. Presentence Procedure for Felony Sentencings.

(a) **Scheduling & Preliminary Filings.**

(1) At the time guilt in a felony case is established by verdict or plea, the judge shall establish the date for a sentencing hearing and a presentencing hearing, if appropriate, and, except as provided in paragraph (g) of this rule, shall order a presentence investigation by the Department of Corrections. The judge may order a presentence investigation in a case in which an investigation is not required under paragraph (g). If the judge elects to schedule a single hearing, all of the procedures for the presentencing and sentencing hearings shall be applicable at the single hearing.

(2) At the time guilt is established as described in (a)(1) above, the parties shall be directed to make the following preliminary filings within ten days, unless otherwise ordered by the court:

(A) *Presumptive Sentencing.* The state shall file a notice indicating whether the defendant's sentence is governed by presumptive sentencing and, if so, listing the defendant's prior convictions that qualify as prior felony convictions under AS 12.45.145, as well as any other factor that triggers a specific presumptive term; and

(B) *Financial Statement.* In cases where restitution may be ordered, the defendant shall submit a financial statement on a form designated by the Administrative Director to the probation office.

(b) **Presentence Investigation and Report.**

(1) *Contents and Filing.* The Department of Corrections shall prepare a presentence report. The report shall be filed with the court and served on counsel at least 30 days before the sentencing hearing, or 30 days before the presentencing hearing, if one is scheduled. The report shall contain all of the defendant's prior criminal convictions and findings of delinquency and any other information about the defendant's characteristics, financial condition, and the circumstances affecting the defendant's behavior that may be helpful in fashioning the defendant's sentence, a victim impact statement, and any other information required by the judge. The presentence report shall comply with the Victims' Rights Act, AS 12.61.100 - .12.61.150 and AS 12.55.022.

(2) *Restitution Information.* In cases where the court may order the defendant to pay restitution, the presentence report must include:

(A) defendant's financial statement completed under subparagraph (a)(2)(B) of this rule; and

(B) information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers.

(3) *Disclosure.* Unless the judge finds that providing specific portions of the report to the defendant would prove detrimental to the rehabilitation of the defendant or the safety of the public, the defense attorney may give a full copy of the report to the defendant. Unless otherwise ordered, or except as specifically allowed by other provisions of law, further disclosure of the report shall be limited to agents of the state's attorney or the defendant's attorney, any reviewing courts, and the agencies having charge of the defendant's rehabilitation.

(4) *Plea Agreements.*

(A) If the parties request preparation of a presentence report to aid them in reaching a plea agreement, the judge may order the department to prepare such a report prior to the time stated in this rule. If a report is prepared prior to entry of a verdict or plea of guilty or no contest, the report shall be submitted only to the parties and not to the judge.

(B) Notwithstanding subparagraph (b)(4)(A), the judge may use the presentence report to determine whether to accept a plea agreement under Criminal Rule 11.

(5) *Service.* The parties must serve the Department of Corrections with all filings relating to sentencing, and the court must distribute all orders related to sentencing to the department.

(c) **Notice of Aggravating Factors, Extraordinary Circumstances, and Restitution.** Within seven days after service of the presentence report on the parties:

(1) The state shall list the aggravating factors and describe the nature of any extraordinary circumstances on which the state intends to rely at sentencing. This notice shall include a written summary of the evidence that the state will rely on to establish each aggravating factor or extraordinary circumstance.

(2) The state shall give notice if it will seek restitution from the defendant in an amount different from the recommendation in the presentence report. The notice shall specify the amount of restitution sought and shall set forth the facts establishing the basis for this amount, and shall include information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, and the names of any co-defendants and their case numbers.

(3) The state shall give notice of any evidence on which it intends to rely at sentencing that is not contained in the presentence report. If the state intends to present any witness, the notice shall contain a brief summary of the witness's anticipated testimony. The notice need not include any information to be presented by a victim's oral or written statement.

(4) Notices under this rule shall be served by delivery to parties in the same community as the party making service, and by facsimile transmission ("fax") to parties in outlying communities. When service is made by fax, a paper copy of the notices shall also be mailed to the intended recipient.

(d) **Notice of Mitigating Factors, Extraordinary Circumstances, and Responses to State's Notices.** Within seven days after service of the notices required by paragraph (c):

(1) The defendant shall file a notice responding to each notice filed by the state under paragraphs (a)(2)(A) and (c)(1). The notice shall indicate whether the defendant concedes or disputes each felony conviction, aggravating factor and extraordinary circumstance and, if so, shall include a description of the basis for the opposition.

(2) The defendant shall list the mitigating factors and describe the nature of any extraordinary circumstances on which the defense intends to rely at sentencing. This notice shall include a written summary of the evidence that the defendant will rely on to establish each mitigating factor or extraordinary circumstance.

(3) If the defendant objects to any recommendation for restitution included in the presentence report or in a notice filed by the state under paragraph (c)(2), the defendant shall file a notice disputing the legal basis for restitution, the factual basis for restitution, or the amount sought. The notice shall set out the specific grounds for contesting the restitution or provide information that the victim or other person entitled to the restitution expressly declines restitution.

(4) The defendant shall give notice of any evidence on which the defendant intends to rely at sentencing that is not contained in the presentence report. If the defendant intends to present any witness, the notice shall contain a brief summary of the witness's anticipated testimony. The notice need not include any information to be presented in the defendant's allocution.

(5) The defendant shall give notice of any objection to any information contained in the presentence report or to any other material the judge or the state has identified as a source of information to be relied upon at sentencing. The notice shall state the basis for the defendant's objection. If the defendant objects to information as inaccurate, the notice shall include any information upon which the defendant intends to rely to refute the objected-to information.

(6) Notices under this rule shall be served by delivery to parties in the same community as the party making service, and by fax to parties in outlying communities. When service is made by fax, a paper copy of the notices shall also be mailed to the intended recipient.

(e) **Disputing Mitigating Factors, Extraordinary Circumstances, and Objections to Restitution.** Within seven days after service of the notices required by paragraph (d):

(1) The state shall file a notice responding to each notice filed by the defendant under paragraph (d)(2). The notice shall indicate whether the state concedes or disputes each mitigating factor and extraordinary circumstance, and shall include a description of the basis for the opposition.

(2) The state shall file a notice responding to each notice filed by the defendant under paragraph (d)(3). The notice shall indicate whether the state disagrees with the contention of the defendant concerning restitution and shall include a brief summary of the basis for its position.

(3) Notices under this rule shall be served by delivery to parties in the same community as the party making service, and by fax to parties in outlying communities. When service is made by fax, a paper copy of the notices shall also be mailed to the intended recipient.

(f) **Adjudicating Disputed Factual and Legal Issues.** The court shall give the parties the opportunity to present evidence and argument on the disputed factual and legal issues related to sentencing at the sentencing hearing or at any presentencing hearing or other supplemental evidentiary hearings that the court may order.

(1) The court shall enter findings regarding whether the defendant's sentence is governed by presumptive sentencing, the number of the defendant's prior felonies as defined in AS 12.55.145, and the existence of any other factor that triggers a specific presumptive term.

(2) The court shall enter findings regarding the aggravating factors, mitigating factors, and extraordinary circumstances raised by the parties. However, no finding is necessary if the court affirmatively determines that resolution of a disputed factor or extraordinary circumstance is immaterial to the imposition of a just sentence.

(3) If the sentencing judge believes that the parties have overlooked a prior felony conviction or any other factor triggering a specific presumptive term, or have overlooked an applicable aggravating or mitigating factor or extraordinary circumstance, the judge shall notify the parties of the court's belief. The judge shall inform the parties of the specific facts which the judge believes establish the

prior felony or presumptive sentencing factor, and the judge must allow the parties an opportunity to respond to the judge's information.

(4) The court shall resolve any factual disputes related to restitution.

(5) The court shall enter findings regarding any disputed assertion in the presentence report. Any assertion that has not been proved shall be deleted from the report; any assertion that has been proved only in part shall be modified in the report. Alternatively, if the court determines that the disputed assertion is not relevant to its sentencing decision so that resolution of the dispute is not warranted, the court shall delete the assertion from the report without making any finding. After the court has made the necessary deletions and modifications, the court's corrected copy shall be labeled the "approved version" of the presentence report. A copy of the approved version must be delivered to the Department of Corrections within seven days after sentencing.

(g) **When Presentence Investigation Not Required.** Unless the defendant may be sentenced to a presumptive term of imprisonment under AS 12.55.125(e)(1) or (2), or the court otherwise orders, a presentence investigation by the Department of Corrections is not required if the defendant is convicted of the following offenses:

(1) vehicle theft in the first degree in violation of AS 11.46.360;

(2) driving while intoxicated under AS 28.35.030(n); or

(3) refusal to submit to a chemical test under AS 28.35.032(p).

(h) **Restitution Procedures When No Presentence Investigation.**

(1) In cases where the court may order the defendant to pay restitution but no presentence investigation report is submitted, the prosecuting authority must file a notice concerning restitution at least ten days before the sentencing hearing, unless otherwise ordered by the court. The notice shall include information concerning the identity of any victims or other persons seeking restitution and, if known, whether any victim or other person expressly declines restitution, the nature and amount of any damages together with any supporting documentation, a restitution amount recommendation, and the names of any co-defendants and their case numbers.

(2) Unless otherwise ordered by the court, the defendant shall file any objections to the information submitted under paragraph (h)(1), or provide information that the victim or other person expressly declines restitution, at least five days before the sentencing hearing, together with defendant's financial statement on a form designated by the Administrative Director.

Rule 32.3 Judgments and Orders.

(a) **Effective Dates of Orders and Judgments.** Orders and judgments become effective the date they are entered.

(1) *Oral Orders.* The date of entry of an oral order is the date the order is put on the official electronic record by the judge unless otherwise specified by the judge. At the time the judge announces an oral order, the judge also shall announce on the record whether the order shall be reduced to writing. If the oral order is reduced to writing, the effective date shall be included in the written order.

(2) *Written Orders Not Preceded by Oral Orders.* The date of entry of a written order not preceded by an oral order is the date the written order is signed unless otherwise specified in the order.

(3) *Judgments.* The date of entry of a criminal judgment is the date the judgment is put on the official electronic record by the judge unless otherwise specified by the judge. All judgments shall be reduced to writing and the effective date shall be included in the written judgment.

(b) **Commencement of Time for Appeal, Review and Reconsideration.** The time within which a notice of appeal may be filed and reconsideration or review of orders and judgments may be requested begins running on the date of notice as defined below.

(c) **Date of Notice.**

(1) *Oral Orders.*

(i) As to the parties present when an oral order is announced, the date of notice is the date the judge announces the order on the official electronic record, unless at that time the judge announces that the order will be reduced to writing in which case the date of notice is the date shown in the clerk's certificate of distribution on the written order.

(ii) As to parties not present at the announcement of an oral order the date of notice is the date shown in the clerk's certificate of distribution of notice of the order. If, however, at the time the judge announces the oral order the judge announces that the order will be reduced to writing, the date of notice is the date shown in the clerk's certificate of distribution on the written order.

(2) *Written Orders.* The date of notice of a written order is the date shown in the clerk's certificate of distribution on the written order.

(3) *Judgments.* All judgments must be reduced to writing. The date of notice of a judgment is the date shown in the clerk's certificate of distribution on the written judgment.

(4) *Other Service Requirements.* These notice provisions apply to the notice of orders and judgments under Rule 44(c) and do not affect the service requirements of any other rule of criminal procedure.

(d) **Clerk's Certificate of Distribution.** Every written notice of an oral order and every written order and judgment shall include a clerk's certificate of distribution showing the date copies of the notice, order or judgment were distributed, to whom they were distributed, and the name or initials of the court employee who distributed them.

Rule 204. Appeal: Time--Notice--Bonds.

(a) **When Taken - Appeals and Cross-Appeals.**

(1) *Appeals.* The notice of appeal shall be filed within 30 days from the date shown in the clerk's certificate of distribution on the judgment appealed from, unless a shorter time for filing a notice of appeal applies as provided by Rules 216-220, or unless a different time applies as provided in AS 23.30.128(g).

(2) *Subsequent Appeals.* If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days of the filing of any timely notice of appeal by any other party, or within 30 days from the date shown in the clerk's certificate of distribution on the judgment, whichever period expires last.

(3) *Motions That Terminate Time for Filing Appeals in Civil Cases.* In a civil case, the running of the time for filing an appeal is terminated by a timely motion filed in the trial court pursuant to those rules of civil procedure enumerated in this section or by AS 23.30.128. The full time for an appeal by any party begins to run again on the date of notice, as defined in Civil Rule 58.1(c), of any of the following orders made on timely motion:

(A) Granting or denying a motion for judgment under Civil Rule 50(b);

(B) Granting or denying a motion to amend or make additional findings of fact under Civil Rule 52 (b) whether or not an alteration of the judgment would be required if the motion is granted;

(C) Granting or denying a motion to alter or amend a judgment under Civil Rule 59;

(D) Denying a new trial under Civil Rule 59; or

(E) Granting or denying a motion for reconsideration filed in the trial court under Civil Rule 77(k) on the date of notice as defined by Civil Rule 58.1(c) or on the date of denial of the motion pursuant to Civil Rule 77(k)(4), whichever is earlier;

(F) Granting or denying a request for reconsideration filed in the Alaska Workers' Compensation Appeals Commission under AS 23.30.128(f) or on the date the request is deemed denied pursuant to that section, whichever is earlier; or

(G) Granting or denying a petition for rehearing under Appellate Rule 506 in an appeal from an administrative agency other than the Alaska Workers' Compensation Appeals Commission.

(4) *Motions That Terminate Time for Filing Appeals in Criminal Cases.* In a criminal case, if a timely motion for a new trial or in arrest of judgment, or a timely

motion for reconsideration has been filed in the superior court, or if a motion for reduction, correction, or suspension of sentence under Criminal Rule 35 has been made within the 30-day period following the date shown in the clerk's certificate of distribution on the judgment, an appeal from a judgment may be filed within 30 days after the date of notice of the order deciding the motion. Date of notice is defined in Criminal Rule 32.3(c).

(5) *Effect of Taxing of Costs and Prejudgment Interest and Awarding of Attorney's Fees.*

(A) The running of the time for filing an appeal is not terminated by proceedings related to the taxing of costs pursuant to Civil Rule 79 or while awaiting calculation of prejudgment interest or proceedings related to the award of attorney's fees. However, the statement of points on appeal filed pursuant to Appellate Rule 204(e) and the designation of transcript filed pursuant to Appellate Rule 210(b)(1) may be amended by motion by an appellant or cross appellant to include the award or denial of costs and attorney's fees or prejudgment interest and pertinent portions of the electronic record. These subjects will thereafter be considered part of the appeal if covered in the brief of appellant or cross-appellant. If no appeal or cross-appeal is pending, the allowance of costs and attorney's fees or the award of prejudgment interest shall be considered a final judgment subject to separate appeal limited to the subject of costs, attorney's fees or prejudgment interest.

(B) Notwithstanding Rule 203, the pendency of an appeal shall not divest the trial court of jurisdiction to consider the matters of costs and attorney's fees pursuant to Civil Rules 79 and 82 or AS 23.30.008(d).

(6) *Premature Appeals.* If a notice of appeal is filed after the announcement of a decision but before the date shown in the clerk's certificate of distribution on the judgment, the notice of appeal shall be treated as filed on the date shown in the clerk's certificate of distribution on the judgment.

(b) **Appeal - How Taken.** A party may appeal from a final order or judgment by filing a notice of appeal with the clerk of the appellate courts. The notice of appeal must identify the party taking the appeal, the final order or judgment appealed from, and the court to which the appeal is taken. The party must file the original and one copy of the notice of appeal accompanied by the original and one copy of the documents listed below:

(1) a completed docketing statement in the form prescribed by these rules, which includes a list of the parties to the appeal;

(2) a copy of the final order or judgment from which the appeal is taken;

(3) a statement of points on appeal as required by Rule 204(e);

(4) unless the party is represented by court-appointed counsel, the party is the state or an agency thereof, or the party is a prisoner found by the court to be eligible to pay less than full fees under AS 09.19.010,

(A) the filing fee required by Administrative Rule 9(a);

(B) a motion for waiver of filing fee pursuant to Administrative Rule 9(f)(1); or

(C) a motion to appeal at public expense pursuant to Rule 209;

(5) unless the party is represented by court-appointed counsel, the party is the state, municipality, or officer or agency thereof, or the party is an employee appealing denial of compensation by the Alaska Workers' Compensation Appeals Commission or denial of benefits under AS 23.20 (Employment Security Act),

(A) the cost bond or deposit re-qui red by Rule 204(c)(1);

(B) a copy of a superior court order approving the party's supersedeas bond or other security in lieu of bond or a copy of the party's motion to the superior court for approval of a supersede-as bond or other security;

(C) a motion for waiver of cost bond; or

(D) a motion to appeal at public expense pursuant to Rule 209;

(6) a designation of transcript if the party intends to have portions of the electronic record transcribed pursuant to Rule 210(b); and

(7) proof of service of the notice of appeal and all required accompanying documents, except the filing fee, on all other parties to the appeal.

A party may move for an extension of time to file the statement of points on appeal and the designation of transcript. The clerk of the appellate courts shall refuse to accept for filing any notice of appeal not conforming to this paragraph and accompanied by the items specified in [1]-[7] or a motion to extend the time for filing item [3] or [6].

(c) **Bond on Appeal.**

(1) Unless a party is exempted by law, a bond for costs on appeal shall be filed with the notice of appeal in a civil case. The bond shall be in the sum of seven hundred fifty dollars ($750.00), unless the superior court fixes a different amount or unless a supersedeas bond is filed, in which event no separate bond on appeal is required. The bond on appeal shall have sufficient surety and shall be conditioned to secure the payment of costs if the appeal is dismissed or the judgment affirmed, or such costs as the supreme court may award if the

judgment is modified. If a bond on appeal in the sum of seven hundred fifty dollars ($750.00) is given, no approval thereof is necessary. After a bond on appeal is filed, an appellee may by motion raise objection to the form or amount of the bond or to the sufficiency of the surety which shall be determined by the superior court. In lieu of filing such cost bond, the appellant may deposit in the office of the clerk of the court from which the appeal is taken a sum of money reasonably sufficient to cover such costs, the amount thereof to be fixed by the superior court.

(2) Notwithstanding subparagraph (1), a bond for costs on appeal shall not be required in an appeal from a decision of the trial court in any criminal case or any civil case where an indigent party is entitled to court-appointed counsel, and a bond shall not be required from an employee appealing from a denial of compensation by the Alaska Workers' Compensation Appeals Commission or from a denial of a claim for benefits under AS 23.20 (Employment Security Act).

(d) **Supersedeas Bond.** Whenever in a civil case an appellant entitled thereto desires a stay on appeal, the appellant may present to the superior court for its approval a supersedeas bond which shall have such surety or sureties as the court requires. The bond shall be conditioned for the satisfaction of the judgment in full, together with costs and interest, if for any reason the appeal is dismissed or if the judgment is affirmed, and to satisfy in full such modification of the judgment and such costs and interest as the supreme court may adjudge and award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, and interest, unless the superior court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, replevin, and actions to foreclose mortgages or when such property is in the custody of the court or the state troopers or when the proceeds of such property of a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the cost of the action, costs on appeal, and interest, unless the superior court, after notice and hearing and for good cause shown, fixes a different amount or orders security other than the bond. A municipality or an officer or agent thereof desiring a stay on appeal is exempted from the requirement of posting supersedeas bond imposed by this subsection.

(e) **Statement of Points.** At the time of filing the notice of appeal, the appellant shall serve and file a concise statement of the points on which appellant intends to rely in the appeal. The appellate court will consider only points included in the statement, and points that the court can address effectively without reviewing untranscribed portions of the electronic record. On motion in the appellate court, and for cause, the statement of points may be supplemented.

(f) **Judgment Against Surety.** By entering into an appeal or supersedeas bond given pursuant to subdivisions (c) and (d) of this rule, the surety submits to the jurisdiction of the superior court and irrevocably appoints the clerk of that court as the surety's agent upon whom any papers affecting the surety's liability on the bond may be served. The surety's liability may be enforced on motion without the necessity of an independent action. The motion and such notice of the motion as the superior court prescribed may be served on the clerk of the superior court who shall forthwith mail copies to the surety if the surety's address is known.

(g) **Parties to the Appeal.** All parties to the trial court proceeding when the final order or judgment was entered are parties to the appeal. A party who files a notice of appeal, whether separately or jointly, is an appellant under these rules. All other parties are deemed to be appellees, regardless of their status in the trial court. An appellee may elect at any time not to participate in the appeal by filing and serving a notice of non-participation. The filing of a notice of non-participation shall not affect whether the party is bound by the decision on appeal.

(h) **Service of Documents.** Papers filed or served in the appeal must be served on all parties, except appellees who have elected not to participate in the action.

(i) **Joint or Consolidated Appeals.** If two or more parties are entitled to appeal from a judgment or order of a court and their interests are such as to make joinder practical, they may file a joint notice of appeal. Appeals may be consolidated by order of the appellate court upon its own motion or upon motion of a party.

Rule 209. Appeals at Public Expense.

(a) **Civil Matters.**

(1) A party to a civil action may file in the supreme court a motion to appeal or to petition for review at public expense. The motion shall be accompanied by a sworn financial statement on a form provided by the clerk of the appellate courts.

(2) In considering the motion to appeal or petition for review at public expense, the court shall determine the indigence or nonindigence of the party.

(3) If the motion is granted:

[a] The court shall specify in the order granting the motion which of the following costs or partial costs are to be covered at public expense:

[1] Filing fees,

[2] Transcript fees,

[3] Costs of printing briefs,

[4] Other costs;

[b] Any costs and attorney fees awarded to the appellant or petitioner as a prevailing party in the supreme court shall accrue to the state to reimburse it for costs relating to the appeal or petition for review.

(4) Leave to file at public expense may be conditioned on repayment of costs to the state. The conditions may include the imposition of liens in favor of the state on costs, attorney fees and other recoveries awarded to the indigent appellant or petitioner.

(5) An appeal or petition for review at public expense will be allowed without additional motion in cases where the appellant is represented by court-appointed counsel.

(6) The provisions of this paragraph do not apply to the filing fees in a prisoner's appeal against the state or an officer, agent, employee, or former officer, agent, or employee of the state that is governed by the provisions of AS 09.19. A prisoner may request a filing fee reduction in an appeal governed by AS 09.19 by submitting an application which satisfies the requirements of AS 09.19.010 with the prisoner's notice of appeal and the items specified in Appellate Rule 204(b).

(b) **Criminal Matters.**

(1) In criminal matters the appellate court shall authorize appeals and petitions for review at public expense on behalf of defendants who are "indigent," as defined by statute, in accordance with the rules and decisions of the appellate courts of Alaska, and where such proceedings are required to be provided by state courts by decisions of the Supreme Court of the United States. Where an appeal or petition for review at public expense is authorized by the court, the costs which shall be borne at public expense include those of providing counsel and of preparing a transcript and briefs.

(2) If a defendant is allowed to proceed at public expense, the clerk of the appellate courts shall send the defendant a written notice and order, to the address provided under Appellate Rule 204(b), that

(A) advises defendant that, if the defendant's conviction is not reversed, the defendant will be ordered to repay the prosecuting authority for the cost of appointed appellate counsel, in accordance with the schedule of costs set out in subparagraph 209(b)(6); and

(B) orders the defendant to apply for permanent fund dividends every year in which the defendant qualifies for a dividend until the cost is paid in full.

(3) A defendant authorized to proceed at public expense in the trial court is presumed to be entitled to appeal or petition for review at public expense.

(4) Counsel appointed to represent a defendant in the trial court pursuant to Criminal Rule 39 shall remain as appointed counsel throughout an appeal or petition for review at public expense authorized under this paragraph and shall not be permitted to withdraw except upon the grounds authorized in Administrative Rule 12. An attorney appointed by the court under Administrative Rule 12(b)(1)(B) will be permitted to withdraw upon a showing that either the public defender agency or the office of public advocacy is able to represent the defendant in the appellate proceeding. If an appeal is to be taken, trial counsel will not be permitted to withdraw until the notice of appeal and the documents required to be filed with the appeal by Rule 204 have been accepted for filing by the clerk of the appellate courts.

(5) At the conclusion of the appellate proceeding, the clerk of the appellate courts shall enter judgment against the defendant for the cost of appointed appellate counsel unless the defendant's conviction was reversed by the appellate court. The amount of the judgment shall be determined by reference to the schedule in subparagraph 209(b)(6). Before entering judgment, the clerk shall mail, to the defendant's address of record, a notice that sets out the amount of the proposed judgment. The defendant may oppose entry of the judgment by filing a written opposition within 45 days after the date shown in the clerk's certificate of distribution on the notice. The opposition shall specifically set out the grounds for opposing entry of judgment. The prosecuting authority may oppose the amount

of the judgment by filing a written opposition within the same deadline. Criminal Rule 39(c)(1)(C) and (c)(2) shall apply to judgments entered under this subparagraph.

(6) The following schedule governs the cost of appointed appellate counsel:

Type of Appellate Proceeding	**Misdemeanor**	**Felony**
Sentence Appeal or Petition for Sentence Review	$ 250	$ 500
Merit Appeal or Appeal from Post-Conviction Relief Proceedings	$ 750	$ 1,500
Combined Merit Appeal and Sentence Appeal or Petition for Sentence Review	$ 1,000	$ 2,000
Other Appellate Actions (Petition for Review, Petition for Hearing, etc.)	$ 500	$ 1,000

(c) **Costs.** Costs, attorney's fees, damages, and interest may be allowed as in other cases, but the state shall not be liable for any of them.

Rule 210. Record on Appeal.

(a) **Composition of Record.** The record on appeal consists of the entire trial court file, including the original papers and exhibits filed in the trial court, the electronic record of proceedings before the trial court, and transcripts, if any, of the trial court proceedings. Except as otherwise ordered by the appellate court, the record does not include documents or exhibits filed after, or electronic records or transcripts of proceedings occurring after, the filing date of the notice of appeal, and does not include transcripts not designated under subsection (b)(1) of this rule unless those transcripts were filed with the trial court prior to the filing date of the notice of appeal. Filings, exhibits, electronic recordings, or transcripts presented to the trial court after the filing date of the notice of appeal may be added to the record on appeal only upon motion pursuant to subsection (i). Material never presented to the trial court may not be added to the record on appeal.

(b) **Preparation of Transcript.**

(1) *Designation of Parts of Record to be Transcribed.*

(A) At the time the notice of appeal is filed, the appellant shall file and serve on the other parties to the appeal a designation of the parts of the electronic record which appellant intends to transcribe. The appellant shall designate all parts which are essential to a determination of the issues on appeal. If appellant claims that the written findings of fact or conclusions of law are insufficient or erroneous, the designation shall include any oral findings of fact and conclusions of law. Within 10 days after service of appellant's designation, any other party to the appeal may file and serve a designation of additional parts of the electronic record to be transcribed.

(B) If a party designates an entire trial or hearing, the partys designation shall include only the nature and dates of the proceeding. If a party designates parts of a trial or hearing, the partys designation shall include the nature and dates of the proceeding, the CD or tape number and log numbers or time where these parts appear [CD (#), at Time 00:00:00 or Tape (#), at Log 00:00:00], and a narrative description of the portions requested. If a party designates a portion of a witness testimony, it must appear from the partys narrative description that part of the witness testimony has been omitted.

(2) *Preparation at Public Expense.* The clerk of the appellate courts shall arrange for preparation of the transcript in cases in which the transcript is prepared at public expense. The transcript shall include all parts of the electronic record designated by the parties to the appeal; however, the voir dire examination of jurors and jury instructions shall not be transcribed unless a party has specifically requested these portions of the trial.

(3) *Preparation Not at Public Expense.* In cases in which the transcript is not prepared at public expense, the appellant shall arrange for preparation of a transcript of all parts of the electronic record designated by the parties to the appeal. Upon request, the clerk of the trial courts shall provide to the transcriber a copy of the designations, a copy of the electronic record or parts thereof, a copy of the log notes and other information necessary for preparation of the transcript. Unless the parties agree otherwise by stipulation, or unless otherwise ordered by the appellate court, the person designated to prepare the transcript shall not be a relative, employee, or attorney of any of the parties, or a relative or employee of that attorney, or be financially interested in the action. Apart from contracting for the preparation of the transcript within a given period of time and at a given price, neither the party nor the party's attorney may exercise control over the preparation of the transcript.

(4) *Time for Completion.* Preparation of the transcript shall be completed within 40 days after filing of the notice of appeal. If the transcript is not being prepared at public expense and the transcriber is unable to complete the transcript within this time, the appellant shall move the appellate court for an extension of time. The motion shall comply with Appellate Rule 503, shall also be served on the clerk of the trial courts, and shall be considered a routine motion within the meaning of Rule 503(b).

(5) *Filing and Distribution.* Upon completion of the transcript, the transcriber shall promptly notify the parties that the transcript has been completed and shall file with the clerk of the appellate courts (i) the original and one copy of the transcript; and (ii) an electronic version of the transcript in the form and format prescribed by administrative bulletin.

(6) *Costs.* If the transcript is not being prepared at public expense, the cost of preparing the original transcript, the copy filed with the court and the computer diskette shall be paid by the appellant. This cost may be taxed as a cost in the case, but if any party causes parts of the electronic record to be transcribed unnecessarily, the court may impose the cost of transcribing such parts on that party.

(7) *Form of Transcript.* Transcripts shall be in the form and format prescribed by administrative bulletin.

(8) *Statement in Lieu of Transcript.* If there is no electronic recording from which a transcript can be prepared, the appellant may prepare a statement of the evidence of proceedings from the best available means, including the appellants recollection, for use instead of a stenographic or electronically recorded transcript. This statement shall be served on the appellee, who may serve objections or proposed amendments, and shall be submitted to the court from which the appeal is being taken for settlement and approval. As settled and

approved, the statement shall be filed with the clerk of that court and transmitted to the appellate court in lieu of a transcript.

(c) **Excerpts of Record.**

(1) *Duty to Prepare.*

(A) Each party shall file and serve an excerpt of record with the party's brief.

(B) In cases involving multiple appellants or appellees, each side shall prepare a single excerpt of record. In a case involving multiple appellants who are filing separate briefs, the appellant who filed the first notice of appeal shall prepare and file the excerpt for the appellants, unless the appellants otherwise agree. In a case involving multiple appellees who are filing separate briefs, the appellees shall decide among themselves which appellee shall prepare and file the excerpt for the appellees. Ten days prior to the date on which a side's briefs are due, the parties who are not responsible for preparation of the excerpt shall transmit to the responsible party a list of documents to be included in the excerpt. The responsible party shall include in the excerpt all documents which are specified by the other parties, provided such documents are in the record. A party who fails to transmit a list of documents to the responsible party by the 10 day deadline waives the right to designate documents for inclusion in the excerpt. The responsible party shall mail a copy of the excerpt to each of the other parties on that side six days before the date the briefs are due, or deliver a copy of the excerpt three days before the date the briefs are due, so that the other parties may include the appropriate citations in their briefs. The cost of copying and mailing the excerpt shall be borne equally by all parties on the side.

(C) A cross-appellant or cross-appellee who elects to file a single brief shall file a single excerpt with that brief. A cross-appellant who makes this election shall include in the excerpt those documents that are properly included in an appellee's excerpt under Rule 210(c)(2). A cross-appellant who elects to file separate briefs shall file and serve notice of this election within 10 days after service of the notice of the due date for appellant's brief. If a cross-appellant makes this election, the cross-appellant and the appellant shall be treated as co-appellants filing separate briefs and shall prepare and submit a combined excerpt as required by Rule 210(c)(1)(B). The cross-appellee and the appellee shall be treated as co-appellees filing separate briefs for purposes of that rule.

(2) *Contents.*

(A) *Appellant's Excerpt.* The appellant's excerpt of record must contain the following parts of the record:

(i) all charging documents, or the petition or complaint, counterclaim, crossclaim, and answer setting out the issues to be tried;

(ii) the judgment or interlocutory order from which the appeal is taken;

(iii) other orders or rulings sought to be reviewed;

(iv) supporting opinions, findings of fact, conclusions of law, or other statements showing the reasoning of the trial court and, if appellant claims that the written findings of fact or conclusions of law are insufficient or erroneous, a copy of the pages of the transcript at which any relevant oral findings of fact and conclusions of law are recorded;

(v) if the appeal is from the grant or denial of a motion, relevant portions of briefs, memoranda, and documents filed in support of and in opposition to the motion;

(vi) if the appellant is challenging the admission or exclusion of evidence, the giving or failure to give a jury instruction, or another oral ruling or order, a copy of the pages of the transcript at which the evidence, offer of proof, ruling, or order and relevant discussion by the court, and any necessary objection are recorded;

(vii) if the appeal is from a final decision in a child-in-need-of-aid proceeding under AS 47.10.080(c) or a case involving the termination of parental rights under AS 25.23.180, the predisposition report prepared in the case; and

(viii) specific portions of other documents in the record, including documentary exhibits, that are referred to in appellant's brief and essential to the resolution of an issue on appeal.

(B) *Appellee's Excerpt.* The appellee's excerpt of record must contain those parts of the record required under (c)(2)(A) and relied on by appellee that were not included in the appellant's excerpt.

(C) *Portions of the Transcript.* Parties may also include in the excerpt selected pages of the transcript that are critical to the appeal.

(D) *Items Not to Be Included in the Excerpts.* Pages of the transcript and briefs and memoranda filed in the trial court may only be included in the excerpts if required under (c)(2)(A) or permitted under (c)(2)(C).

The fact that parts of the record are not included in the excerpts does not prevent the parties or the appellate court from relying on those parts.

(3) *Supplemental Excerpts.* Appellant may file and serve a supplemental excerpt of record with appellant's reply brief or within the time specified for filing a reply brief. No other supplemental excerpt may be filed except by leave of the appellate court granted on motion, or at the request of the appellate court. A supplemental excerpt may not include parts of the record that appear in another excerpt filed in the appeal.

(4) *Form, Filing and Service.* Each party's excerpt of record must be arranged in chronological order, must be bound separately from the party's brief, and must contain a table of contents at the beginning of the first volume. The excerpt and the table of contents must be in the form specified in the Clerk's Instructions for Preparation of Excerpts published in these rules. One copy of the excerpt must be filed and served with the party's original brief. Six copies of the excerpt must be filed with the bound copies of the brief, and one copy must be served on counsel for each party separately represented. The appellate court may specify the filing or service of a different number of copies than required by this rule.

(5) *Excerpts to be Abbreviated.* The parties shall include in the excerpts only those parts of the record which are essential to a determination of the questions presented on appeal. For any infraction of this rule, the appellate court may impose sanctions and withhold or impose costs as the circumstances of the case and discouragement of like conduct in the future may require.

(6) *Costs.* Subject to (c)(5), the prevailing party shall be entitled to recover the cost of copying its excerpt of record under Appellate Rule 508(d).

(d) **RESERVED.**

(e) **Preparation of the Trial Court File.**

(1) *Page Numbering.* Upon receiving the notice of appeal, the regional appeals clerk shall number the pages of the record, assembled in accordance with subsection (a) of this rule, in a single consecutive sequence throughout all volumes. Page numbering must be completed within 40 days after filing of the notice of appeal. In an appeal from the Alaska Workers' Compensation Appeals Commission, the commission's record should be numbered beginning with the number immediately following the number of the last page in the record prepared by the Workers' Compensation Board.

(2) *Confidential Materials.* Papers filed under seal in the trial court and exhibits submitted or introduced at closed hearings in the trial court shall be maintained under seal while they constitute part of a record on appeal, and access to them shall be governed by Rule 512.5(c).

(f) **Briefing Schedule.** Upon filing of the transcript and completion of the page numbering, the clerk of the trial courts shall notify the clerk of the appellate courts that the case is ready for briefing. Upon receiving this notice, the clerk of the appellate courts shall give notice of the due date for the appellant's brief.

(g) **Transmission of the Record.**

(1) *Transmission to Appellate Court.* Upon notification that briefing is complete, the clerk of the trial courts shall transmit the record, excluding physical exhibits,

to the clerk of the appellate courts. Physical exhibits shall be retained by the trial court unless specifically requested by the appellate court. As used in this paragraph, "physical exhibits" includes exhibits other than documents or photographs, and also includes documents or photographs of unusually large size or unusual bulk or weight.

(2) *Transfer to Other Court Locations.* The clerk of the appellate courts may direct that the record be temporarily transferred to another court location within the state for the accommodation of counsel in the preparation of briefs.

(h) **Several Appeals.** When more than one appeal is taken to the appellate court from the same judgment, there shall be a single record on appeal. In preparing the record, deadlines which run from filing of the notice of appeal shall run from filing of the last notice of appeal.

(i) **Power of Court to Correct, Modify, or Supplement.** It is not necessary for the record on appeal to be approved by the trial court or a judge thereof except as provided in paragraph (b)(8) and in Rule 211, but if any difference arises whether the record truly discloses what occurred in the trial court, the difference shall be submitted to and settled by that court and the record made to conform to that courts decision. If anything material to either party is omitted from the record on appeal by error or accident by court personnel, or is misstated therein, the parties by stipulation, the trial court, or the appellate court, on a proper suggestion or of its own initiative, may direct that the omission or misstatement shall be corrected. All other questions as to the content and form of the record shall be presented to the appellate court. Materials (including filings, exhibits, electronic recordings, or transcripts) filed with the trial court after the filing date of the notice of appeal may be added to the record on appeal only upon motion designating by title, description, and filing date the materials sought to be added, and are limited to the following:

(1) materials pertaining to attorneys fees, costs, or prejudgment interest;

(2) amended judgments, and all materials pertaining to those judgments;

(3) oppositions or replies responding to, or orders determining, motions that were filed on or before the filing date of the notice of appeal, and materials pertaining to those documents;

(4) any orders listed in Rule 204(a)(3), together with any motions, oppositions, and replies leading to such orders, and any materials pertaining to those documents;

(5) materials to be added to the record upon entry of an order amending or supplementing the points on appeal; and

(6) materials to be added to the record for other good cause found by the appellate court.

On motion in the appellate court, and for cause, an excerpt of record may also be modified or supplemented to correct omissions by counsel.

Rule 212. Briefs.

(a) **Filing and Serving Briefs.**

(1) *Initial Submission.*

(A) *Time for Serving and Filing Briefs.* The appellant shall serve and file the appellant's brief within 30 days after the court gives notice under Rule 210(f) of the due date for appellant's brief. The appellee shall serve and file the appellee's brief within 30 days after service of the appellant's brief. Within 20 days after service of the appellee's brief, appellant shall serve and file either a reply brief or a notice that no reply brief will be filed. In cases involving multiple appellants or appellees who are filing separate briefs, including parties who are deemed to be co-parties under Rule 210(c)(1)(C), the time for filing these briefs shall be extended by 10 days if the parties are preparing excerpts of record in order to allow compliance with Rule 210(c)(1)(B).

(B) *Number of Copies.* On or before the date the party's brief is due, the party shall file with the clerk the original plus one copy of the brief, printed or written on only one side of each page, together with proof of service on all parties.

(C) *Compliance Check.* The court will review the brief for compliance with (b) and (c) of this rule and return the original to the party, with a notice of rejection, conditional acceptance, or acceptance, for correction or for duplication and binding.

(D) *Changes Not Permitted.* After a brief is returned for correction or binding, the party shall make no changes to the brief other than those required by the binding process or required by the court in any notice of rejection or conditional acceptance. The party may also correct spelling and typographical errors and correct and update citations for cases already cited in the originally submitted brief.

(2) *Bound Copies of Briefs.*

(A) *Time for Service; Number of Copies.* Within ten days after the clerk returns the brief, the party shall serve two bound copies on each party and shall file with the clerk eight bound copies in an appeal before the supreme court or seven bound copies in an appeal before the court of appeals. The clerk may specify a different number of copies or a different time period than required by this rule.

(B) *Form of Bound Copies.* Bound copies must be printed or written on both sides of the paper and securely bound along the left margin in a manner that does not obscure the text, and that permits the brief to lie reasonably flat when open. Unless otherwise permitted by the clerk, the copies must be bound using

comb or spiral binding, but not staples or metal fasteners. The copies must have a suitable cover consisting of heavy paper in the color indicated:

- brief of appellant - ivory or light tan;
- brief of appellee - blue;
- reply brief - green; and
- brief of intervenor or amicus curiae - red.

(b) **Form.** The form of a brief is governed by Rule 513.5(b)(1)-(5) and (c) and by this rule. The left and right margins of a brief must each be one inch. The front cover of a brief must contain: (1) the name of the court and the number of the case; (2) the title of the case; (3) the nature of the proceeding (e.g., appeal, petition for review); (4) the name of the court or agency below, the name of the individual who rendered the decision below, and the case number below; (5) the title of the document (e.g., brief of appellant); and (6) the names, addresses, telephone numbers, and bar numbers of counsel for the party concerned and the name of the law firm or organization with whom counsel is affiliated. In criminal cases, the front cover must also include a certificate indicating whether the brief contains information that is confidential under AS 12.61.100 through 12.61.150. The administrative director shall specify the form and content of the certificate.

(c) **Substantive Requirements.**

(1) *Brief of Appellant.* The brief of the appellant shall contain the following items under appropriate headings and in the order here indicated:

(A) A table of contents, including the titles and subtitles of all arguments, with page references.

(B) A table of cases alphabetically arranged, statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(C) The constitutional provisions, statutes, court rules, ordinances, and regulations principally relied upon, set out verbatim or their pertinent provisions appropriately summarized.

(D) A jurisdictional statement of the date on which judgment was entered and of the legal authority of the appellate court to consider the appeal.

(E) A list of all parties to the case, without using "et al.," or any similar indication, unless the caption of the case on the cover of the brief contains the names of all parties. This list may be contained in a footnote.

(F) A statement of the issues presented for review. In cases of cross-appeal, the cross-appellant may present a statement of the issues presented for review which would require determination if the case is to be reversed and remanded for

further proceedings in the trial court. In the event that the decision is affirmed on the appeal, such issues on the cross-appeal may be deemed waived by the appellate court.

(G) A statement of the case, which shall provide a brief description of the case and a concise statement of the course of proceedings in, and the decision of, the trial court. Appellant shall state the facts relevant to each issue, with references to the record as required by paragraph (c)(8), in this section or in the appropriate argument sections.

(H) A discussion of the applicable standard of review. (If the brief concerns several issues with different standards of review, the discussion of each issue should be preceded by a discussion of the standard of review applicable to that issue).

(I) An argument section, which shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and parts of the record relied on. The section may be preceded by a summary. Each major contention shall be preceded by a heading indicating the subject matter. References to the record shall conform to the requirements of paragraph (c)(8).

(J) A short conclusion stating the precise relief sought.

(K) If the appeal concerns a property division in a divorce case, an appendix consisting of a table listing all assets and liabilities of the parties as reflected in the record, including the trial court's findings as to the nature (marital or individual), value, and disposition of each asset or liability.

(2) *Brief of Appellee.* The brief of the appellee shall conform to the requirements of subdivisions (1)(A) through (1)(J) except that a statement of jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant, and a list of all parties need not be included.

(3) *Reply Brief.* The appellant may file a brief in reply to the brief of the appellee. The reply brief shall conform to the requirements of subdivisions (1)(A), (1)(B), (1)(C), (1)(I), and (1)(J). This brief may raise no contentions not previously raised in either the appellant's or appellee's briefs. If the appellee has cross-appealed and has not filed a single brief under (c)(6) of this rule, the appellee may file a brief in reply to the response of the appellant to the issues presented by the cross-appeal. No further briefs may be filed except with leave of the court.

(4) *Length.* Exclusive of appendices, the appellant's and appellee's briefs may not exceed 50 numbered pages each. Numbered pages for purposes of this paragraph begin with the jurisdictional statement required by (c)(1)(D) of this rule. The appellant's reply brief may not exceed 20 pages. A motion for leave to file a

brief longer than permitted by this paragraph must be accompanied by a copy of the over-length brief proposed to be filed.

(5) *Brief in Cases of Multiple Parties.* In cases involving more than one appellant or appellee, including cases consolidated for purposes of the appeal, any number of either may join in a single brief, and any appellant or appellee may adopt by reference any part of the brief of another.

(6) *Briefs in Cases Involving Cross-Appeals.*

(A) Cross-Appellant. An appellee who is also a cross-appellant may elect to file a single brief that both discusses the appellee's claims of error and answers the original appellant. Such a single brief shall be filed on the date the appellee's brief is due. It shall be divided into two sections: the first section shall contain the issues and arguments involved in the cross-appeal and shall be prepared in accordance with (c)(1) of this rule; the second section shall contain the answer to the brief of the appellant and shall be prepared in accordance with (c)(2) of this rule. The single brief may not exceed 50 numbered pages. If the cross-appellant elects to file a single brief, the right to file a reply brief to the answer to the cross-appeal is waived. If the cross-appellant does not elect to file a single brief, the schedule and form for filing briefs in the cross-appeal shall be in accordance with the procedures for an original appeal.

(B) Cross-Appellee. If the appellee/ cross-appellant elects to file a single brief under [a], the appellant/cross-appellee may file a single brief containing its reply on the appeal and its response to the cross-appeal This combined brief may not exceed 50 numbered pages. The portions of the combined brief that comprise the reply may not exceed 20 numbered pages. The combined brief must be filed within 30 days of the appellee/cross-appellant's single brief.

(7) *References in Briefs and in Oral Arguments to Parties.* In briefs and oral arguments, counsel are expected to minimize references to parties by such designations as "appellant" and "appellee." It promotes clarity to use the designations used in the trial court or in the agency proceedings, or the actual names of parties, or descriptive terms such as"the employee," the "injured person," "the taxpayer," and so forth.

(8) *References in Briefs to the Record.*

(A) *References in Cases in Which Excerpts are Prepared.* References in the briefs to parts of the record reproduced in an excerpt shall be to the pages of the excerpt at which those parts appear. The form for references to pages of the excerpt is [Exc. _____]. Briefs may reference parts of the record not reproduced in an excerpt. The form for references to pages of the transcript is [Tr. ___] and to pages of the trial court file is [R.___]. The form for references to untranscribed

portions of the electronic record is [CD (#), at Time 00:00:00 or Tape (#), at Log 00:00:00].

(B) *References to be Included.* If reference is made to evidence of which the admissibility is in controversy, reference shall be made to the pages of the transcript at which the evidence was identified, offered, and received or rejected. Appellant's brief shall indicate the pages of the record where each point on appeal was raised in the trial court. If the point on appeal was not raised in the trial court, the brief shall explain why the point is raised for the first time on appeal. Failure to comply with the requirements of this paragraph may result in return of the brief as provided in paragraph 11 of this subdivision.

(9) *Brief of an Amicus Curiae.* A brief of an amicus curiae may be filed only if accompanied by written consent of all the parties, or by leave of the appellate court granted on motion, or at the request of the appellate court. The brief may be conditionally filed with the motion for leave. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. Unless all parties otherwise consent, any amicus curiae shall file its brief within the time allowed to the party whose position as to affirmance or reversal the amicus brief will support, unless the court for cause shown shall grant leave for later filing, in which event it shall specify within what period an opposing party may answer. The brief shall be in the form prescribed by this rule and shall be duplicated and served pursuant to the requirements of Rule 212(a)(2). A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons.

(10) *Failure to File Brief.* When the appellant's opening brief is not filed as required, Rule 511.5 shall apply. When the appellee's brief is not filed as required, appellee will not be heard at oral argument except on consent of the appellant, or by request of the court.

(11) *Defective Briefs.* When a brief fails to comply with the requirements of these rules, the appellate court, on application of any party or on its own motion, and with or without notice as it may determine appropriate, may:

(A) Order the brief to be returned to counsel for correction by interlineation, cancellation, revisions or replacement in whole or in part, and to be refiled with the clerk within a time specified in the order; or

(B) Order the brief stricken from the files, with leave to file a new brief within a specified time; or

(C) Disregard defects and consider the brief as if it were properly prepared.

The authority to return briefs under this section may be exercised by the clerk of court pursuant to Rule 102 (f).

(12) *Citation of Supplemental Authorities.* When pertinent authorities come to the attention of a party after the party's brief has been filed, or after oral argument but before decision, the party may promptly advise the clerk of the court, by letter, with a copy to adversary counsel, setting forth the citations.

There shall be a reference either to the page of the brief or to a point argued orally to which the citations pertain, but the letter shall contain no argument or explanations. Any response shall be made promptly and shall be similarly limited.

1 of 22 DOCUMENTS

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** STATUTES CURRENT THROUGH 2008 REGULAR SESSION AND 2008 GENERAL ELECTION **
*** ANNOTATIONS CURRENT THROUGH OCTOBER 2, 2008 ***

TITLE 10. CRIMINAL PROCEDURE
CHAPTER 10.95. CAPITAL PUNISHMENT -- AGGRAVATED FIRST DEGREE MURDER

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.010 (2008)

§ 10.95.010. Court rules

No rule promulgated by the supreme court of Washington pursuant to RCW 2.04.190 and 2.04.200, now or in the future, shall be construed to supersede or alter any of the provisions of this chapter.

HISTORY: 1981 c 138 § 1.

JUDICIAL DECISIONS

CONSTRUCTION WITH OTHER LAW.

Since RCW 10.95.040 and CR 5 both deal with the service of a notice after an attorney has appeared in a case, CR 5 is instructive as to the meaning of service in RCW 10.95.040. This section, which provides that the death penalty statute may not be varied by court rule, is not violated by this interpretation as the court rule does not vary the requirements of chapter 10.95 RCW but gives some guidance as to the meaning of the statute. State v. Clark, 129 Wn.2d 805, 920 P.2d 187 (1996).

RESEARCH REFERENCES

WASHINGTON LAW REVIEW.

Capital Punishment, Proportionality Review, and Claims of Fairness (With Lessons from Washington State)., 79 Wash. L. Rev. 775 (2004).

NOTES APPLICABLE TO ENTIRE TITLE

CROSS REFERENCES.

Criminal justice training commission -- Education and training boards: Chapter 43.101 RCW.
Criminal rules for superior court: Rules of court: Superior Court Criminal Rules (CrR).
Justice without unnecessary delay: State Constitution Art. 1 § 10.
Mental illness -- Financial responsibility: Chapter 71.02 RCW.
Oaths and mode of administering: State Constitution Art. 1 § 6.
Traffic violations: Chapters 46.63, 46.64 RCW.
Victims of crimes, compensation: Chapter 7.68 RCW.

TEXTBOOKS AND TREATISES.
The Law of Evidence in Washington; Robert H. Aronson (Michie).
Washington Criminal Practice in Courts of Limited Jurisdiction; Linda S. Portnoy, Eileen P. Farley (Michie).

NOTES APPLICABLE TO ENTIRE CHAPTER

CROSS REFERENCES.
Homicide: Chapter 9A.32 RCW.

CONSTITUTIONALITY.
Defendant's argument that this chapter creates a mandatory death penalty formula held without merit; the Supreme Court of the United States has repeatedly held that the requirement of individualized sentencing in capital cases is satisfied by allowing the jury to consider all relevant mitigating evidence. Campbell v. Wood, 18 F.3d 662 (9th Cir. 1994), cert. denied, 511 U.S. 1119, 114 S. Ct. 2125, 128 L. Ed. 2d 682 (1994).

CONSTRUCTION.
The Sentencing Reform Act (SRA, chapter 9.94A RCW) and this chapter serve two separate functions and are consistent. The SRA does not purport to govern or guide penalty phase juries in their sentencing decisions. This function is served by this chapter, which guides and channels the jury's discretion in reaching an individualized sentencing decision for each defendant convicted of a capital offense. State v. Brett, 126 Wn.2d 136, 892 P.2d 29 (1995), cert. denied, 516 U.S. 1121, 116 S. Ct. 931, 133 L. Ed. 2d 858 (1996).

PROPORTIONALITY.
The legislative guidelines contained in this chapter ensure the proportionality in the first instance by focusing the jury on the crime and the defendant. On review, RCW 10.95.130 requires the court to determine whether the death sentence is "disproportionate" based on the broad range of "similar cases," as defined by the legislature. State v. Brett, 126 Wn.2d 136, 892 P.2d 29 (1995), cert. denied, 516 U.S. 1121, 116 S. Ct. 931, 133 L. Ed. 2d 858 (1996).

GONZAGA LAW REVIEW.
Campbell v. Wood: the death penalty in Washington state: "hanging" on to a method of execution. 30 Gonz. L. Rev. 163.

SEATTLE UNIV. LAW REVIEW.
Mitigation evidence and capital cases in Washington: Proposals for change. 26 Seattle U.L. Rev. 241 (2002).

TEXTBOOKS AND TREATISES.
The Law of Evidence in Washington; Robert H. Aronson (Michie).
Washington Criminal Practice in Courts of Limited Jurisdiction; Linda S. Portnoy, Eileen P. Farley (Michie).

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** STATUTES CURRENT THROUGH 2008 REGULAR SESSION AND 2008 GENERAL ELECTION **
*** ANNOTATIONS CURRENT THROUGH OCTOBER 2, 2008 ***

TITLE 10. CRIMINAL PROCEDURE
CHAPTER 10.95. CAPITAL PUNISHMENT -- AGGRAVATED FIRST DEGREE MURDER

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.020 (2008)

§ 10.95.020. Definition

A person is guilty of aggravated first degree murder, a class A felony, if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or firefighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The person committed the murder to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group;

(7) The murder was committed during the course of or as a result of a shooting where the discharge of the firearm, as defined in RCW 9.41.010, is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge;

(8) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the indeterminate sentence review board; or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

(9) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender as defined in RCW 9.94A.030;

(10) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

(11) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

(a) Robbery in the first or second degree;

(b) Rape in the first or second degree;

(c) Burglary in the first or second degree or residential burglary;

(d) Kidnapping in the first degree; or

(e) Arson in the first degree;

(12) The victim was regularly employed or self-employed as a newsreporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim;

(13) At the time the person committed the murder, there existed a court order, issued in this or any other state, which prohibited the person from either contacting the victim, molesting the victim, or disturbing the peace of the victim, and the person had knowledge of the existence of that order;

(14) At the time the person committed the murder, the person and the victim were "family or household members" as that term is defined in *RCW 10.99.020(1), and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five-year period, regardless of whether a conviction resulted:

(a) Harassment as defined in RCW 9A.46.020; or

(b) Any criminal assault.

HISTORY: 2003 c 53 § 96; 1998 c 305 § 1. Prior: 1995 c 129 § 17 (Initiative Measure No. 159); 1994 c 121 § 3; 1981 c 138 § 2.

NOTES:
*REVISER'S NOTE: RCW 10.99.020 was amended by 2004 c 18 § 2, changing subsection (1) to subsection (3).

INTENT -- EFFECTIVE DATE -- 2003 C 53: See notes following RCW 2.48.180.

FINDINGS AND INTENT -- SHORT TITLE -- SEVERABILITY -- CAPTIONS NOT LAW -- 1995 C 129: See notes following RCW 9.94A.510.

EFFECT OF AMENDMENTS.
2003 c 53 § 96, effective July 1, 2004, inserted "a class A felony" in the undesignated introductory paragraph.

JUDICIAL DECISIONS

ANALYSIS
Constitutionality
--In general
--Class of persons
--Equal protection
--Overbreadth
--Vagueness
Accomplices.
Closing argument
Common scheme
Concealment
Construction
Contracting for murder
Duties of officer
Enhancement of penalty
Error harmless
Evidence insufficient
Evidence sufficient
Guidelines
"In the course of."
Included offenses
Information
Instructions
Intent
Jury

--Death-opposed
--Findings
--Instructions
--Requirements
--Response
--Verdicts
Multiple victims
"Murders."
Presumption
Prior conviction
Punishment
Relation to official duty
Sentencing -
"Single act."

CONSTITUTIONALITY.

-- IN GENERAL.

Death penalty statute was not unconstitutional. State v. Jeffries, 105 Wn.2d 398, 717 P.2d 722, cert. denied, 479 U.S. 922, 107 S. Ct. 328, 93 L. Ed. 2d 301 (1986).

-- CLASS OF PERSONS.

RCW 10.95.020, the aggravated murder statute, genuinely narrows the class of persons subject to the death penalty as constitutionally required. State v. Bushey, 46 Wn. App. 579, 731 P.2d 553, review denied, 108 Wn.2d 1014 (1987).

-- EQUAL PROTECTION.

State's decision to charge defendant with first degree murder with the aggravating circumstance of second degree burglary rather than charging him separately with the less serious felonies of first degree murder and second degree burglary did not violate equal protection. State v. Howland, 66 Wn. App. 586, 832 P.2d 1339 (1992), review denied, 121 Wn.2d 1006, 848 P.2d 1263 (1993).

The elements of solicitation to commit murder are not the same as the elements of premeditated murder committed with the aggravated circumstance of solicitation, and thus defendant was not denied equal protection when charged with the latter crime rather than the former. State v. Kron, 63 Wn. App. 688, 821 P.2d 1248, review denied, 119 Wn.2d 1004, 832 P.2d 487 (1992).

There is no equal protection problem with the aggravated first degree murder statute. Varying punishments for the same crime classification may rest upon rational distinctions between motives and methods. State v. Bushey, 46 Wn. App. 579, 731 P.2d 553, review denied, 108 Wn.2d 1014 (1987).

Fact that prosecutor could have charged defendant with murder in the first degree or felony murder, but instead charged him with aggravated first degree murder, did not violate equal protection. State v. Carey, 42 Wn. App. 840, 714 P.2d 708, review denied, 106 Wn.2d 1003 (1986).

-- OVERBREADTH.

RCW 10.95.020 is not overbroad under the First Amendment because it is content neutral and does not intrude on constitutionally protected rights; section 10.95.020(6) merely requires an enhanced punishment for committing murder if the murder was committed to obtain, maintain, or advance one's position in the hierarchy of an organization, association, or identifiable group. That a political or other viewpoint was expressed through the particular murder or that the murder furthered the exercise of the murderer's association rights does not alter or shield the criminal act: the First Amendment does not protect violence; violence or other types of potentially expressive activities that produce special harms distinct from their communicative impact are entitled to no constitutional protection. State v. Monschke, 133 Wn. App. 313, 135 P.3d 966 (2006).

-- VAGUENESS.

Term "group" in RCW 10.95.020(6) is not too vague to satisfy due process notice requirements because the term is not ambiguous and its plain dictionary meaning includes white supremacy. A person of ordinary intelligence would

understand that committing murder to advance one's position as a white supremacist is prohibited by RCW 9A.32.030, 10.95.020(6). State v. Monschke, 133 Wn. App. 313, 135 P.3d 966 (2006).

The "committing a murder to conceal a crime" or the "common scheme or plan" aggravating circumstances of this statute are not unconstitutionally vague. Jeffries v. Blodgett, 771 F. Supp. 1520 (W.D. Wash. 1991), aff'd, 974 F.2d 1179 (9th Cir. 1992), rev'd on other grounds, 988 F.2d 923 (9th Cir. 1993).

ACCOMPLICES..

Major participation by a defendant in the acts giving rise to the homicide is required in order to execute a defendant convicted solely as an accomplice to premeditated first degree murder. Merely satisfying the minimal requirements of RCW 9A.08.020, the accomplice liability statute, is insufficient to impose the death penalty under this section, the Eighth and Fourteenth Amendments, and the cruel punishment clause of the Washington State Constitution. State v. Roberts, 142 Wn.2d 471, 14 P.3d 713 (2000).

CLOSING ARGUMENT.

Prosecuting attorney did not commit prejudicial misconduct when, in closing argument of penalty phase of murder trial, he referred to the defendant's right to appeal. In re Jeffries, 110 Wn.2d 326, 752 P.2d 1338, cert. denied, 488 U.S. 948, 109 S. Ct. 379, 102 L. Ed. 2d 368 (1988).

COMMON SCHEME.

Although defendant, who murdered two prostitutes, argued that the trial court substantially lowered the State's burden of proof by improperly defining in a jury instruction the aggravating circumstance of RCW 10.95.020(10), commission of the murders as part of a common scheme or plan, the trial court's instruction properly defined the phrase "common scheme or plan"; any rational trier of fact could have found that defendant's murders of the prostitutes were part of a common scheme or plan. State v. Yates, 161 Wn.2d 714, 168 P.3d 359 (2007).

Defendant claimed that there was insufficient evidence to convict him of conspiracy to commit murder in the first degree. He asserted that there was not enough evidence of an agreement between himself and his co-conspirators, and that his conspiracy conviction was invalid because the substantive offense could not be committed without cooperative action; however, a formal agreement was not required for a conviction, and first-degree murder did not require cooperative action. State v. Anderson, -- Wn. App. --, -- P.3d -- (Aug. 29, 2005).

Where the jury could have reasonably found that defendant was prepared to kill anyone who interfered with his plan to kill a particular victim and himself, the murders of other victims were sufficiently connected to his overall plan to apply the common scheme aggravator. State v. Finch, 137 Wn.2d 792, 975 P.2d 967 (1999), cert. denied, 528 U.S. 922, 120 S. Ct. 285, 145 L. Ed. 2d 239 (1999).

Jury's special finding that victims died as the result of a common scheme or plan, an aggravating factor for premeditated murder in the first degree, was reconciled with defendant's acquittal on the second count of first degree murder since aggravated first degree murder requires that the jury find the defendant committed first degree premeditated murder and the existence of an aggravating circumstance. State v. Baruso, 72 Wn. App. 603, 865 P.2d 512 (1993), review denied, 124 Wn.2d 1008, 879 P.2d 292 (1994).

The phrase "common scheme or plan" does not need to be defined in jury instructions. State v. Peerson, 62 Wn. App. 755, 816 P.2d 43 (1991), review denied, 118 Wn.2d 1012, 824 P.2d 491 (1992).

Substantial evidence existed for trier of fact to find that a common scheme or plan existed to kill both victims. State v. Guloy, 104 Wn.2d 412, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020, 106 S. Ct. 1208, 89 L. Ed. 2d 321 (1986).

The phrase "common scheme or plan" are words of common understanding, thus instruction as to the meaning of the phrase was unnecessary. State v. Guloy, 104 Wn.2d 412, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020, 106 S. Ct. 1208, 89 L. Ed. 2d 321 (1986).

Where the state charged defendant with aggravated first degree murder, specifically relying on the aggravating factor of the killing of more than one victim as part of a scheme to promote gambling, failure of the state to charge a criminal conspiracy did not deny defendant notice of the charges against him. State v. Dictado, 102 Wn.2d 277, 687 P.2d 172 (1984).

CONCEALMENT.

Evidence was sufficient for jury to find defendant committed kidnapping and murder to conceal his identity; if robbery had been the only goal there would have been no reason to kidnap and murder victim. State v. Boot, 89 Wn. App. 780, 950 P.2d 964, review denied, 135 Wn.2d 1015, 960 P.2d 939 (1998).

Even though RCW 9.94A.390(2) does not list efforts to conceal a crime as grounds for imposition of an exceptional sentence, in contrast to subsection (9) of this section, the list of factors in 9.94A.390 is not exhaustive; thus, where the crime could have constituted aggravated first degree murder had the victim not survived despite the injuries, the trial court's reliance on defendant's efforts to conceal the crime as a reason to impose an exceptional sentence upward was not an abuse of discretion. State v. Smith, 82 Wn. App. 153, 916 P.2d 960 (1996).

The correct standard in applying the aggravating factor of concealment is to require the jury to follow the statutory language and find that the murder was committed for the purpose of concealing the identity of a person who committed a crime and that the underlying crime was not the murder. State v. Gentry, 125 Wn.2d 570, 888 P.2d 1105, cert. denied, 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995).

There is no requirement that the prosecution prove that a defendant charged with aggravated first degree murder intended to conceal a particular crime. Jeffries v. Blodgett, 771 F. Supp. 1520 (W.D. Wash. 1991), aff'd, 974 F.2d 1179 (9th Cir. 1992), rev'd on other grounds, 988 F.2d 923 (9th Cir. 1993).

In murder trial, sufficient circumstantial evidence existed of first-degree kidnapping and first or second degree robbery to support a finding beyond a reasonable doubt of the aggravating circumstance that the murder was committed to conceal a crime or the identity of a person committing a crime. State v. Longworth, 52 Wn. App. 453, 761 P.2d 67 (1988), review denied, 112 Wn.2d 1006 (1989).

In aggravated first-degree murder trial, trial court did not err in failing to specify in the jury instructions or in special interrogatories to the jury the crime that the murder allegedly was committed to conceal. State v. Longworth, 52 Wn. App. 453, 761 P.2d 67 (1988), review denied, 112 Wn.2d 1006 (1989).

Trial court was not required to instruct jury as to what crime the defendant was attempting to conceal under the first aggravating circumstance of this statute or what the common scheme or plan was under the second aggravating circumstance. State v. Jeffries, 105 Wn.2d 398, 717 P.2d 722, cert. denied, 479 U.S. 922, 107 S. Ct. 328, 93 L. Ed. 2d 301 (1986).

CONSTRUCTION.

This section does not amend or revise RCW 9A.32.030(1)(a). In re Lord, 123 Wn.2d 296, 868 P.2d 835, modified on other grounds, 123 Wn.2d 737, 870 P.2d 964 (1994).

White supremacy falls within the meaning of RCW 10.95.020(6) because under the statute's plain language, white supremacy is an "identifiable group" with a "hierarchy." State v. Monschke, 133 Wn. App. 313, 135 P.3d 966 (2006).

CONTRACTING FOR MURDER.

Where murder defendant's alleged aggravating act was contracting for murder with his codefendant, the codefendant's subsequent acquittal of the same aggravating act did not require dismissal of defendant's aggravated murder charge. State v. Harris, 106 Wn.2d 784, 725 P.2d 975 (1986), cert. denied, 480 U.S. 940, 107 S. Ct. 1592, 94 L. Ed. 2d 781 (1987).

State, by charging defendant with both aggravated first degree murder and first degree felony murder, and by instructing on both offenses, did not deny defendant a fair trial and violate double jeopardy principles; the two offenses had different statutory elements and were not different means for committing the same offense or greater or lesser offenses, such that the state did not have to charge the two offenses as alternatives. State v. Meas, 118 Wn. App. 297, 75 P.3d 998 (2003), review denied, 151 Wn.2d 1020, 91 P.3d 95 (2004).

DUTIES OF OFFICER.

Whether officer may have made an incorrect judgment regarding one or more of a suspect's constitutional rights in no way determines whether that officer was killed while performing his official duties. State v. Hoffman, 116 Wn.2d 51, 804 P.2d 577 (1991).

In prosecution for the aggravated first degree murder of a policeman, failure of trial court to instruct the jury that to convict defendant it must find that defendant knew the victim was performing his official duties at the time of the murder was not error. State v. Hughes, 106 Wn.2d 176, 721 P.2d 902 (1986).

ENHANCEMENT OF PENALTY.

The statutory aggravating circumstances which, when present, raise premeditated first degree murder to aggravated first degree murder punishable by death or mandatory life imprisonment are "aggravation of penalty" factors which enhance the penalty for the offense, and are not elements of a crime as such; accordingly, it is unnecessary that the aggravating circumstances alleged to exist be set forth as elements of the offense in the "to convict" instruction on the underlying murder charge. State v. Kincaid, 103 Wn.2d 304, 692 P.2d 823 (1985).

ERROR HARMLESS.

There is no such crime as conspiracy to commit aggravated murder, but defendant's conviction on that charge was tantamount to conviction of conspiracy to commit first degree murder with aggravating circumstances, thus any error was harmless. State v. Kron, 63 Wn. App. 688, 821 P.2d 1248, review denied, 119 Wn.2d 1004, 832 P.2d 487 (1992).

EVIDENCE INSUFFICIENT.

In a capital murder case, the evidence was insufficient to establish to establish the aggravating factor that defendant committed the murders of two prostitutes to conceal the crime of patronizing a prostitute; if defendant had killed every prostitute he patronized, one could rationally infer that defendant intended to eliminate any evidence that he had committed the misdemeanor of patronizing prostitutes, but as the defense showed, defendant patronized other prostitutes without killing them. State v. Yates, 161 Wn.2d 714, 168 P.3d 359 (2007).

EVIDENCE SUFFICIENT.

In a capital murder case, the evidence was sufficient to establish that defendant murdered two prostitutes in furtherance of robbery; the jury could have reasonably believed that defendant negotiated the price of a sexual act, paid up front, murdered the women, and then took their money, disturbing or taking articles of clothing in which the women were likely to have concealed their money. State v. Yates, 161 Wn.2d 714, 168 P.3d 359 (2007).

Although petitioner challenged the sufficiency of the evidence that he premeditated the killing of his mother or committed it in the course or furtherance of a robbery, there was considerable circumstantial evidence petitioner used force, at least in part, to obtain his mother's cashbox; petitioner had financial difficulties shortly before the murder, and the mother's husband testified that on the day of the murder the cashbox held approximately $ 1,500. State v. Allen, 159 Wn.2d 1, 147 P.3d 581 (2006).

Since the evidence supported a rational inference that defendant was voluntarily intoxicated, that defendant intentionally shot and killed a deputy, knowing the nature and quality of that act, and that defendant knew the shooting was wrong, a rational trier of fact could have found that defendant failed to prove, by a preponderance of the evidence, that he was insane as a defense to the charge of first degree aggravated murder. State v. Matthews, 132 Wn. App. 936, 135 P.3d 495 (2006).

Evidence was sufficient such that a rational trier of fact could find that defendant murdered the victim to advance his position as a white supremacist because (1) defendant was the member of a white supremacist subgroup; (2) defendant wanted to advance his position in the subgroup and open his own local chapter; (3) acts of violence elevated a member's status in many white supremacist subgroups; (4) defendant sought to elevate a co-defendant's status by helping her obtain "red shoelaces," which defendant believed were earned by violent acts against "inferior" people; (5) defendant had previously advanced his own position in the subgroup through violent acts and wore red shoelaces and white suspenders as an indication of his advancement; (6) defendant and his co-defendants were underneath an interstate looking to "do" someone inferior; (7) the victim was viewed as inferior by defendant and his co-defendants; (8) the victim's murder elevated a co-defendant's status; and (9) defendant wondered aloud whether the victim's murder would elevate his status with God. State v. Monschke, 133 Wn. App. 313, 135 P.3d 966 (2006).

Sufficient evidence supported defendant's conviction for first-degree aggravated murder in violation of RCW 10.95.020 based on the trial court's finding that defendant committed first-degree murder in the course of a burglary and in violation of a no-contact order as provided in RCW 10.95.020(11)(c) and RCW 10.95.020(13). Based on the evidence, a rational trier of fact could have found beyond a reasonable doubt that defendant unlawfully entered the victim's apartment through a broken window or through an unlocked front door, and at the very least, a rational trier of fact could have found that even if the victim permitted defendant to enter the apartment, defendant remained unlawfully because a no-contact order had previously barred him from entering those premises. State v. Mason, 127 Wn. App. 554, 110 P.3d 245 (2005).

In trial of defendant for aggravated first-degree murder in which he was sentenced to death, evidence supported finding of aggravated circumstances, jury instructions concerning unanimity were proper, and jury instructions concerning aggravating and mitigating circumstances were proper. Jeffries v. Blodgett, 988 F.2d 923 (9th Cir. 1993), modified on other grounds, 5 F.3d 1180 (9th Cir. 1993), cert. denied, 510 U.S. 1191, 114 S. Ct. 1294, 127 L. Ed. 2d 647 (1994).

Evidence was sufficient to establish premeditation: killing was committed with a knife and multiple wounds were inflicted, victim was struck in the face with something other than the knife, defensive wounds on victim indicated a prolonged struggle, and defendant's act of obtaining the knife from victim's kitchen could reasonably indicate deliberation. State v. Ortiz, 119 Wn.2d 294, 831 P.2d 1060 (1992).

There was substantial evidence from which the jury could have found that defendants knew or reasonably should have known that the homicide victim was a law enforcement officer engaged in official duties at the time of the homicide. State v. Hoffman, 116 Wn.2d 51, 804 P.2d 577 (1991).

Evidence was sufficient to sustain jury's finding of aggravating circumstances in two counts of aggravated first degree murder. State v. Jeffries, 105 Wn.2d 398, 717 P.2d 722, cert. denied, 479 U.S. 922, 107 S. Ct. 328, 93 L. Ed. 2d 301 (1986).

GUIDELINES.

A county prosecutor is not required to publish guidelines regarding when aggravated murder will be charged. State v. Martin, 41 Wn. App. 133, 703 P.2d 309, review denied, 104 Wn.2d 1016 (1985).

'IN THE COURSE OF.".

Evidence did not support a charge that defendant killed his wife in the course of the arson, and therefore defendant's sentence of life in prison under RCW 10.95.020(11)(e) was reversed, because the murder was complete before the arson and the murder did not further the arson; rather defendant used the arson to cover up the murder. State v. Hacheney, 160 Wn.2d 503, 158 P.3d 1152 (2007).

Where defendant was charged with first degree aggravated murder, proof that a burglary was committed in the course of the murder was only an element of the charge, and defendant's statement that he was not invited to enter the trailer could be used to prove the existence of this aggravator. State v. Finch, 137 Wn.2d 792, 975 P.2d 967 (1999), cert. denied, 528 U.S. 922, 120 S. Ct. 285, 145 L. Ed. 2d 239 (1999).

Evidence held sufficient to find that the murder committed by the defendant was committed in furtherance of, in the course of, or in immediate flight from rape, robbery, and kidnapping as prescribed in (11). State v. Brown, 132 Wn.2d 529, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007, 118 S. Ct. 1192, 140 L. Ed. 2d 322 (1998).

INCLUDED OFFENSES.

Counsel was not ineffective for failing to dismiss the aggravating factor of rape under RCW 10.95.020(11)(b) because the process to dismiss prosecution is not applicable to aggravating factors alleged in murder prosecutions. In re Pers. Restraint of Woods, 154 Wn.2d 400, 114 P.3d 607 (2005).

First degree felony murder is not a lesser included offense of aggravated first degree murder. State v. Pirtle, 127 Wn.2d 628, 904 P.2d 245 (1995), cert. denied, 518 U.S. 1026, 116 S. Ct. 2568, 135 L. Ed. 2d 1084 (1996).

The definition of first degree felony murder includes attempted crimes (RCW 9A.32.030(1)(c)), whereas the aggravating factor defined in subsection (9) does not. In re Lord, 123 Wn.2d 296, 868 P.2d 835, modified on other grounds, 123 Wn.2d 737, 870 P.2d 964 (1994).

Where defendant was charged in the alternative with felony murder and aggravated first degree murder, and admitted being an accomplice to the first degree burglary upon which the felony murder charge was predicated, trial court did not err in refusing to grant instructions on the lesser included offenses of second degree murder and first and second degree manslaughter. State v. Bowerman, 115 Wn.2d 794, 802 P.2d 116 (1990), review denied, State v. Hutcheson, 118 Wn.2d 1020, 827 P.2d 1012 (1992).

INFORMATION.

An information charging first-degree murder that clearly stated "the defendant committed the murder to conceal ... the identity of the person committing a crime" set forth the required elements of the crime. State v. Elmore, 139 Wn.2d 250, 985 P.2d 289 (1999), cert. denied, 531 U.S. 837, 121 S. Ct. 98, 148 L. Ed. 2d 57 (2000).

Information alleging murder was committed in the "course of or furtherance of robbery," rather than the crime of robbery, was sufficient; the information cited to subsection (9)(a), which lists the crime of robbery in the first or second degree as an aggravating factor. State v. Brett, 126 Wn.2d 136, 892 P.2d 29 (1995), cert. denied, 516 U.S. 1121, 116 S. Ct. 931, 133 L. Ed. 2d 858 (1996).

Aggravated first degree murder and first degree felony murder are not different means of committing the same offense, nor are they greater and lesser offenses of each other; thus, for the jury to be instructed on both offenses, the state must include both charges in the information. In re Lord, 123 Wn.2d 296, 868 P.2d 835, modified on other grounds, 123 Wn.2d 737, 870 P.2d 964 (1994).

INSTRUCTIONS.

General unanimity instruction in aggravated first degree murder trial was sufficient to protect defendant's right to a unanimous verdict. Jeffries v. Blodgett, 771 F. Supp. 1520 (W.D. Wash. 1991), aff'd, 974 F.2d 1179 (9th Cir. 1992), rev'd on other grounds, 988 F.2d 923 (9th Cir. 1993).

INTENT.

Conviction of defendant for first degree murder with the aggravated circumstance of second degree burglary was proper regardless of whether defendant had a separate intent to commit the burglary. State v. Howland, 66 Wn. App. 586, 832 P.2d 1339 (1992), review denied, 121 Wn.2d 1006, 848 P.2d 1263 (1993).

It is not necessary to show that an accomplice had the intent that the victim would be killed in order to convict the accomplice of aggravated murder. State v. Guloy, 104 Wn.2d 412, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020, 106 S. Ct. 1208, 89 L. Ed. 2d 321 (1986).

JURY.

-- DEATH-OPPOSED.

In capital cases, exclusion of all jurors opposed to capital punishment is permitted under the United States Constitution and the Washington Constitution. State v. Kron, 63 Wn. App. 688, 821 P.2d 1248, review denied, 119 Wn.2d 1004, 832 P.2d 487 (1992).

Exclusion of "death-opposed" juror from the guilt phase of trial for aggravated first degree murder did not deny defendant due process of law. State v. Jeffries, 105 Wn.2d 398, 717 P.2d 722, cert. denied, 479 U.S. 922, 107 S. Ct. 328, 93 L. Ed. 2d 301 (1986).

-- FINDINGS.

Jury must find the defendant guilty of first degree murder before finding the defendant guilty of aggravated first degree murder. Jeffries v. Wood, 114 F.3d 1484 (9th Cir. 1997).

-- INSTRUCTIONS.

In aggravated first degree murder trial, jury instruction regarding aggravating circumstances did not allow conviction for murder based solely upon statutory aggravating factors or violate the defendants' rights by creating a mandatory presumption. State v. Hoffman, 116 Wn.2d 51, 804 P.2d 577 (1991).

In aggravated first degree murder trial, trial court's justifiable homicide and self-defense instructions correctly stated the law and allowed defendants to argue their defense theories to the jury. State v. Hoffman, 116 Wn.2d 51, 804 P.2d 577 (1991).

Trial court properly instructed the jury that it could consider alternative means of committing aggravated first degree murder; the verdict forms that were used adequately established jury unanimity. In re Jeffries, 110 Wn.2d 326, 752 P.2d 1338, cert. denied, 488 U.S. 948, 109 S. Ct. 379, 102 L. Ed. 2d 368 (1988).

Trial court did not err in instructing the jury that if it did not unanimously find sufficient mitigating circumstances to merit leniency, then the sentence would be life imprisonment without the possibility of parole. State v. Jeffries, 105 Wn.2d 398, 717 P.2d 722, cert. denied, 479 U.S. 922, 107 S. Ct. 328, 93 L. Ed. 2d 301 (1986).

Instruction adequately informed jury that state had burden of proof in showing that there were not sufficient mitigating circumstances to merit leniency. State v. Jeffries, 105 Wn.2d 398, 717 P.2d 722, cert. denied, 479 U.S. 922, 107 S. Ct. 328, 93 L. Ed. 2d 301 (1986).

-- REQUIREMENTS.

In aggravated murder trial, trial court did not err in refusing to either require the jury to describe in a special jury form the common scheme or plan it did find, or to find, as a prerequisite to finding the aggravating circumstance, that the state proved the specific scheme or plan alleged in its bill of particulars. State v. Peerson, 62 Wn. App. 755, 816 P.2d 43 (1991), review denied, 118 Wn.2d 1012, 824 P.2d 491 (1992).

-- RESPONSE.

In aggravated first-degree murder trial, the jury's special interrogatory response that they did not unanimously find that the victim was murdered in the course of first-degree kidnapping or first- or second-degree robbery was not inconsistent with the response that the jurors unanimously found that the victim had been murdered with the intent to conceal the commission of a crime or to protect or conceal the identity of a person committing a crime. State v. Longworth, 52 Wn. App. 453, 761 P.2d 67 (1988), review denied, 112 Wn.2d 1006 (1989).

-- VERDICTS.

Before a penalty for aggravated murder can be imposed, there must first be jury unanimity as to the premeditation means of committing first degree murder; under Washington law, therefore, it is not possible for a defendant to receive a sentence for aggravated first degree murder without jury unanimity as to the underlying premeditated murder. State v. Fortune, 77 Wn. App. 628, 893 P.2d 670 (1995), aff'd, 128 Wn.2d 464, 909 P.2d 930 (1996).

Because the general verdict and special verdict were consistent with a jury finding of second degree murder and the jury had an instruction to support that finding, the verdicts were reconcilable. State v. Baruso, 72 Wn. App. 603, 865 P.2d 512 (1993), review denied, 124 Wn.2d 1008, 879 P.2d 292 (1994).

Although jury returned general verdicts finding defendant guilty of first degree aggravated murder on both counts and special verdicts indicating that only one victim was murdered as part of a common scheme or plan, the general and special verdicts were not so irreconcilably inconsistent as to require reversal of the general verdicts. State v. Peerson, 62 Wn. App. 755, 816 P.2d 43 (1991), review denied, 118 Wn.2d 1012, 824 P.2d 491 (1992).

MULTIPLE VICTIMS.

In order to find aggravated murder for multiple victims, a jury must necessarily find that at least one murder was first degree, and the other was murder in the first or second degree. State v. Baruso, 72 Wn. App. 603, 865 P.2d 512 (1993), review denied, 124 Wn.2d 1008, 879 P.2d 292 (1994).

'MURDERS.".

In statutory aggravating circumstance number 8 which reads "more than one victim and the murders were part of a common scheme or plan or the result of a single act", the reference to "murders" is a reference to either murder in the first degree or murder in the second degree. State v. Kincaid, 103 Wn.2d 304, 692 P.2d 823 (1985).

PRESUMPTION.

Argument that Washington's capital punishment statute creates a mandatory presumption in favor of the death penalty and places the burden on the defendant to prove there are sufficient mitigating circumstances to merit leniency was rejected. Campbell v. Kincheloe, 829 F.2d 1453 (9th Cir. 1987), cert. denied, 488 U.S. 948, 109 S. Ct. 380, 102 L. Ed. 2d 369 (1988).

PRIOR CONVICTION.

Where petitioner's prior manslaughter conviction, entered upon a plea of guilty, was admitted in the penalty phase of his aggravated murder trial, the petitioner could not rely solely on the state's asserted failure to prove the validity of the prior conviction, but instead had to show some infirmity in fact existed in that conviction. In re Harris, 111 Wn.2d 691, 763 P.2d 823 (1988), cert. denied, 490 U.S. 1075, 109 S. Ct. 2088, 104 L. Ed. 2d 651 (1989).

PUNISHMENT.

In a capital case, the jury is to consider not each count separately but all crimes the defendant has been convicted of in deciding whether death is the appropriate punishment. State v. Jeffries, 105 Wn.2d 398, 717 P.2d 722, cert. denied, 479 U.S. 922, 107 S. Ct. 328, 93 L. Ed. 2d 301 (1986).

RELATION TO OFFICIAL DUTY.

Plain language of subsection (8) supports the conclusion that a defendant is not required to be a party in the proceeding in which the victim was, or was going to be, a prospective witness. State v. Goldberg, 149 Wn.2d 888, 72 P.3d 1083 (2003).

SENTENCING.

United States Supreme Court was not persuaded to depart from the state supreme court's determination that a juror misstated Washington's sentencing law because the sole reason the juror expressed for imposing the death penalty, in a case where defendant opposed it, was whether defendant could have been released and would reviolate, and the juror's reason was equivalent to treating the risk of recidivism as the sole aggravating factor, rather than treating lack of future dangerousness as a possible mitigating consideration, under RCW 10.95.020, 10.95.070. Uttecht v. Brown, -- U.S. --, 127 S. Ct. 2218, 167 L. Ed. 2d 1014 (June 4, 2007).

Aggravating factors are not elements of aggravated first-degree murder. The crime is premeditated murder in the first-degree accompanied by one or more of the aggravating factors. The elements of premeditated first-degree murder do not include the elements of first-degree kidnapping. State v. Anderson, -- Wn. App. --, -- P.3d -- (Aug. 29, 2005).

Life without parole is a proper sentence for aggravated first degree murder. State v. Kron, 63 Wn. App. 688, 821 P.2d 1248, review denied, 119 Wn.2d 1004, 832 P.2d 487 (1992).

'SINGLE ACT.".

Multiple murders caused by consecutive gun shots can be the result of a "single act" within the meaning of this statute. State v. Guloy, 104 Wn.2d 412, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020, 106 S. Ct. 1208, 89 L. Ed. 2d 321 (1986).

Defendant's contention that an allegation under the "single act" portion of this statute deprived him of notice of what act the state would rely on to satisfy the statute was rejected since the state's theory was not concealed from the defendant. State v. Dictado, 102 Wn.2d 277, 687 P.2d 172 (1984).

SEATTLE UNIV. LAW REVIEW.

Comparative proportionality review: will the ends, will the means. 18 Seattle U. L. Rev. 593.

RESEARCH REFERENCES

ALR.

Sufficiency of evidence, for purposes of death penalty, to establish statutory aggravating circumstance that defendant committed murder while under sentence of imprisonment, in confinement at correctional custody, and the like -- post-Gregg cases. 67 ALR4th 917.

Sufficiency of evidence, for death penalty purposes, to establish statutory aggravating circumstance that murder was committed in course of committing, attempting, or fleeing from other offense, and the like -- post-Gregg cases. 67 ALR4th 887.

Sufficiency of evidence, for purposes of death penalty, to establish statutory aggravating circumstance that in committing murder, defendant created risk of death or injury to more than one person, to many persons, and the like -- post-Gregg cases. 64 ALR4th 837.

Sufficiency of evidence, for purposes of death penalty, to establish statutory aggravating circumstance that murder was committed to avoid arrest or prosecution to effect escape from custody, to hinder governmental function or enforcement of law, and the like -- post-Gregg cases. 64 ALR4th 755.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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ANNOTATED REVISED CODE OF WASHINGTON
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** STATUTES CURRENT THROUGH 2008 REGULAR SESSION AND 2008 GENERAL ELECTION **
*** ANNOTATIONS CURRENT THROUGH OCTOBER 2, 2008 ***

TITLE 10. CRIMINAL PROCEDURE
CHAPTER 10.95. CAPITAL PUNISHMENT -- AGGRAVATED FIRST DEGREE MURDER

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.030 (2008)

§ 10.95.030. Sentences for aggravated first degree murder

(1) Except as provided in subsection (2) of this section, any person convicted of the crime of aggravated first degree murder shall be sentenced to life imprisonment without possibility of release or parole. A person sentenced to life imprisonment under this section shall not have that sentence suspended, deferred, or commuted by any judicial officer and the indeterminate sentence review board or its successor may not parole such prisoner nor reduce the period of confinement in any manner whatsoever including but not limited to any sort of good-time calculation. The department of social and health services or its successor or any executive official may not permit such prisoner to participate in any sort of release or furlough program.

(2) If, pursuant to a special sentencing proceeding held under RCW 10.95.050, the trier of fact finds that there are not sufficient mitigating circumstances to merit leniency, the sentence shall be death. In no case, however, shall a person be sentenced to death if the person was mentally retarded at the time the crime was committed, under the definition of mental retardation set forth in (a) of this subsection. A diagnosis of mental retardation shall be documented by a licensed psychiatrist or licensed psychologist designated by the court, who is an expert in the diagnosis and evaluation of mental retardation. The defense must establish mental retardation by a preponderance of the evidence and the court must make a finding as to the existence of mental retardation.

(a) "Mentally retarded" means the individual has: (i) Significantly subaverage general intellectual functioning; (ii) existing concurrently with deficits in adaptive behavior; and (iii) both significantly subaverage general intellectual functioning and deficits in adaptive behavior were manifested during the developmental period.

(b) "General intellectual functioning" means the results obtained by assessment with one or more of the individually administered general intelligence tests developed for the purpose of assessing intellectual functioning.

(c) "Significantly subaverage general intellectual functioning" means intelligence quotient seventy or below.

(d) "Adaptive behavior" means the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age.

(e) "Developmental period" means the period of time between conception and the eighteenth birthday.

HISTORY: 1993 c 479 § 1; 1981 c 138 § 3.

JUDICIAL DECISIONS

ANALYSIS
Aggravating circumstances
Construction
Death penalty
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--Constitutionality
--Commutation
--Proper
--Resentencing

AGGRAVATING CIRCUMSTANCES.

Evidence did not support a charge that defendant killed his wife in the course of the arson, and therefore defendant's sentence of life in prison under RCW 10.95.020(11)(e) was reversed, because the murder was complete before the arson and the murder did not further the arson; rather defendant used the arson to cover up the murder. State v. Hacheney, 160 Wn.2d 503, 158 P.3d 1152 (2007).

From the face of the information, defendant was charged with aggravated first-degree murder, for which the maximum penalty was life imprisonment with no possibility of parole, or death if there are no mitigating circumstances to merit leniency. The underlying elements or details of the aggravating factors would not have changed his maximum

penalty and same were not required to be included in the information. State v. Anderson, -- Wn. App. --, -- P.3d -- (Aug. 29, 2005).

The statutory aggravating circumstances which, when present, raise premeditated first degree murder to aggravated first degree murder punishable by death or mandatory life imprisonment are "aggravation of penalty" factors which enhance the penalty for the offense, and are not elements of a crime as such; accordingly, it is unnecessary that the aggravating circumstances alleged to exist be set forth as elements of the offense in the "to convict" instruction on the underlying murder charge. State v. Kincaid, 103 Wn.2d 304, 692 P.2d 823 (1985).

CONSTRUCTION.

Aggravating factors are not elements of aggravated first-degree murder. The crime is premeditated murder in the first-degree accompanied by one or more of the aggravating factors. The elements of premeditated first-degree murder do not include the elements of first-degree kidnapping. State v. Anderson, -- Wn. App. --, -- P.3d -- (Aug. 29, 2005).

Defendant's claim that the trial court had the option to sentence him on either of his two convictions failed, as this section did not give trial courts an option in sentencing defendants convicted of aggravated first degree murder. State v. Meas, 118 Wn. App. 297, 75 P.3d 998 (2003), review denied, 151 Wn.2d 1020, 91 P.3d 95 (2004).

DEATH PENALTY.

Evidence was sufficient to support the imposition of the death penalty based on defendant's conviction on three counts of aggravated first-degree murder of his wife and two of his daughters, because defendant had a history of domestic violence and brutally killed three family members and held another daughter against her will for many hours, although defendant offered four mitigating factors: his near-lack of criminal history, the "extreme mental disturbance" he was under at the time, the fact he was unlikely to be a danger to others in the future, and his underlying mental disease or defect. State v. Cross, 156 Wn.2d 580, 132 P.3d 80 (2006).

In prosecution for four counts of aggravated first-degree murder, while it was the judge who pronounced death sentence, he had no discretion under Washington law; once the jury found insufficient mitigating circumstances to recommend leniency, the death sentence was mandatory. Rice v. Wood, 77 F.3d 1138 (9th Cir. 1996).

Prosecutor's closing argument for the death sentence at penalty phase of murder trial in which he referred to (1) the potential harm to other persons in prison; (2) the potential harm to trial witnesses; and (3) the theory of societal self-defense, did not render the jury's verdict, that there were not sufficient mitigating circumstances to merit leniency, unconstitutional. Campbell v. Kincheloe, 829 F.2d 1453 (9th Cir. 1987), cert. denied, 488 U.S. 948, 109 S. Ct. 380, 102 L. Ed. 2d 369 (1988).

Argument that Washington's capital punishment statute creates a mandatory presumption in favor of the death penalty and places the burden on the defendant to prove there are sufficient mitigating circumstances to merit leniency was rejected. Campbell v. Kincheloe, 829 F.2d 1453 (9th Cir. 1987), cert. denied, 488 U.S. 948, 109 S. Ct. 380, 102 L. Ed. 2d 369 (1988).

Death penalty statute adequately guards against arbitrary infliction of the death penalty. State v. Rupe, 101 Wn.2d 664, 683 P.2d 571 (1984).

The death penalty is not per se unconstitutional under the state constitution. State v. Rupe, 101 Wn.2d 664, 683 P.2d 571 (1984).

Giving defendant a choice between two methods of execution is not unconstitutional. State v. Rupe, 101 Wn.2d 664, 683 P.2d 571 (1984).

EVIDENCE.

Admission of evidence of murder defendant's gun collection in sentencing phase of trial was irrelevant, prejudicial, and violative of his due process rights, requiring remand for new sentencing proceeding. State v. Rupe, 101 Wn.2d 664, 683 P.2d 571 (1984).

LIFE IMPRISONMENT WITHOUT PAROLE.

-- CONSTITUTIONALITY.

Under a former version of this section (in former chapter 10.94 RCW), defendants who went to trial could receive a sentence of death or life imprisonment without possibility of parole, while defendants who pled guilty could receive no more than life with the possibility of parole; the former statute unconstitutionally penalized a defendant who chose to go to trial. Grisby v. Blodgett, 130 F.3d 365 (9th Cir. 1997).

As a matter of law, a sentence of life without the possibility of parole is significantly different from a sentence of life with the possibility of parole. Grisby v. Blodgett, 130 F.3d 365 (9th Cir. 1997).

Where defendant's death sentence imposed under the 1975 version of the penalty statute was vacated after the death penalty portion of the statute was held unconstitutional, and life imprisonment without parole was imposed instead, the life without parole sentence was valid under the 1975 savings clause; the 1975 statute did not suffer from the same constitutional infirmities which rendered the entire 1977 version unconstitutional. Snook v. Wood, 89 F.3d 605 (9th Cir. 1996).

Defendant's conviction by a jury of aggravated first degree murder under the 1975 murder statute and his sentence of life without possibility of parole pursuant to the alternative sentencing provision of that statute were constitutional. In re Snook, 67 Wn. App. 714, 840 P.2d 207 (1992).

A sentence of life imprisonment without possibility of parole is unconstitutional when pursuant to statute it cannot be imposed following a guilty plea. Such a sentence is unconstitutional because it penalizes a defendant's assertion of the right to a trial by jury. Robtoy v. Kincheloe, 871 F.2d 1478 (9th Cir. 1989), cert. denied, 494 U.S. 1031, 110 S. Ct. 1483, 108 L. Ed. 2d 619, 494 U.S. 1061, 110 S. Ct. 1538, 108 L. Ed. 2d 777 (1990).

Mandatory statutory sentence of life imprisonment without possibility of parole, entered on a charge of aggravated murder in the first degree, did not amount to an unconstitutional restriction of the judiciary's sentencing power. State v. Hughes, 106 Wn.2d 176, 721 P.2d 902 (1986).

Sentence of life imprisonment without the possibility of parole did not violate equal protection or public policy. State v. Cummings, 44 Wn. App. 146, 721 P.2d 545, review denied, 106 Wn.2d 1017 (1986).

The penalty of life imprisonment without the possibility of parole is constitutional. State v. Anderson, 41 Wn. App. 85, 702 P.2d 481 (1985), review denied, 106 Wn.2d 1001, 720 P.2d 782 (1986), rev'd on other grounds, 107 Wn.2d 745, 733 P.2d 517 (1987).

Imposition of a sentence of life imprisonment without the possibility of release or parole for defendants who plead guilty to or are convicted of aggravated murder in the first degree is constitutionally valid. Tripp v. Scott, 29 Wn. App. 869, 631 P.2d 973 (1981), overruled on other grounds, Baker v. Leonard, 120 Wn.2d 538, 843 P.2d 1050 (1993).

A sentence of life without possibility of parole reserved solely for those who chose to go to trial and not imposable on those pleading guilty is unconstitutional under United States v. Jackson, 390 U.S. 570, 88 S. Ct. 1209, 20, L. Ed. 2d 138 (1968). Norman v. Ducharme, 871 F.2d 1483 (9th Cir. 1989), cert. denied, 494 U.S. 1031, 110 S. Ct. 1483, 108 L. Ed. 2d 619, 494 U.S. 1061, 110 S. Ct. 1538, 108 L. Ed. 2d 777 (1990).

-- COMMUTATION.

The Governor has the power to commute a sentence of life imprisonment without the possibility of parole. State v. Rupe, 108 Wn.2d 734, 743 P.2d 210 (1987), cert. denied, 486 U.S. 1061, 108 S. Ct. 2834, 100 L. Ed. 2d 934 (1988).

-- PROPER.

Life without parole is a proper sentence for aggravated first degree murder. State v. Kron, 63 Wn. App. 688, 821 P.2d 1248, review denied, 119 Wn.2d 1004, 832 P.2d 487 (1992).

-- RESENTENCING.

The maximum sentence on a plea of guilty to first degree murder of any kind under the first degree murder sentencing scheme in effect in 1980 was life with the possibility of parole; thus petitioner's 1980 sentence, on plea of guilty, to life without possibility of parole, necessitated remand for resentencing to life with the possibility of parole. In re Moore, 116 Wn.2d 30, 803 P.2d 300 (1991).

A defendant has standing to challenge his sentence of life imprisonment without possibility of parole under United States v. Jackson, 390 U.S. 570, 88 S. Ct. 1209, 20, L. Ed. 2d 138 (1968), even though the defendant actually did exercise his right to a jury trial. Jackson applies to statutes that penalize the right to a jury trial as well as those that chill that right. Robtoy v. Kincheloe, 871 F.2d 1478 (9th Cir. 1989), cert. denied, 494 U.S. 1031, 110 S. Ct. 1483, 108 L. Ed. 2d 619, 494 U.S. 1061, 110 S. Ct. 1538, 108 L. Ed. 2d 777 (1990).

OPINIONS OF THE ATTORNEY GENERAL

PLEA OF GUILTY.

Sentencing upon plea of guilty to first degree murder under aggravating circumstances. AGO 1979 No. 10; 1979 Op. Atty Gen. Wash. No. 10.

RESEARCH REFERENCES

UNIVERSITY OF PUGET SOUND LAW REVIEW.
Unbridled prosecutorial discretion and standard less death penalty policies: the unconstitutionality of the Washington capital punishment statutory scheme. 7 U. Puget Sound L. Rev. 299.

WASHINGTON LAW REVIEW.
The death penalty in Washington: an historical perspective. 57 Wash. L. Rev. 525.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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** STATUTES CURRENT THROUGH 2008 REGULAR SESSION AND 2008 GENERAL ELECTION **
*** ANNOTATIONS CURRENT THROUGH OCTOBER 2, 2008 ***

Rev. Code Wash. (ARCW) § 10.95.040 (2008)

§ 10.95.040. Special sentencing proceeding -- Notice -- Filing -- Service

(1) If a person is charged with aggravated first degree murder as defined by RCW 10.95.020, the prosecuting attorney shall file written notice of a special sentencing proceeding to determine whether or not the death penalty should be imposed when there is reason to believe that there are not sufficient mitigating circumstances to merit leniency.

(2) The notice of special sentencing proceeding shall be filed and served on the defendant or the defendant's attorney within thirty days after the defendant's arraignment upon the charge of aggravated first degree murder unless the court, for good cause shown, extends or reopens the period for filing and service of the notice. Except with the consent of the prosecuting attorney, during the period in which the prosecuting attorney may file the notice of special sentencing proceeding, the defendant may not tender a plea of guilty to the charge of aggravated first degree murder nor may the court accept a plea of guilty to the charge of aggravated first degree murder or any lesser included offense.

(3) If a notice of special sentencing proceeding is not filed and served as provided in this section, the prosecuting attorney may not request the death penalty.

HISTORY: 1981 c 138 § 4.

JUDICIAL DECISIONS

ANALYSIS
Constitutionality

Bifurcate
Construction with other law
Discretion of prosecutor
Disqualification
Good cause
Included offenses
Legislative intent
Notice
Purpose
Sentence not disproportionate

CONSTITUTIONALITY.

Argument that Washington's capital punishment statute is unconstitutional because it vests unbridled discretion in the prosecution to decide when to seek the death penalty was rejected. Campbell v. Kincheloe, 829 F.2d 1453 (9th Cir. 1987), cert. denied, 488 U.S. 948, 109 S. Ct. 380, 102 L. Ed. 2d 369 (1988).

BIFURCATE.

It was not an abuse of discretion for the trial court to refuse to bifurcate defendant's trial because evidence of defendant's white supremacist beliefs was relevant to show that he had a motive for the victim's murder and that he premeditated and intended to cause an "inferior" person's death. State v. Monschke, 133 Wn. App. 313, 135 P.3d 966 (2006).

CONSTRUCTION WITH OTHER LAW.

Since this section and CR 5 both deal with the service of a notice after an attorney has appeared in a case, CR 5 is instructive as to the meaning of service in this section. RCW 10.95.010, which provides that the death penalty statute may not be varied by court rule, is not violated by this interpretation as the court rule does not vary the requirements of chapter 10.95 RCW but gives some guidance as to the meaning of the statute. State v. Clark, 129 Wn.2d 805, 920 P.2d 187 (1996).

The manner of serving a notice of special sentencing proceeding is governed by CR 5. While service of the notice on the defendant's attorney in the manner prescribed in CR 5 is a substantial deviation from the rigid service requirements set forth in RCW 4.28.080, it is calculated to give notice to a defendant over whom the trial court already has jurisdiction and who is represented by an attorney. State v. Cronin, 130 Wn.2d 392, 923 P.2d 694 (1996).

DISCRETION OF PROSECUTOR.

Prosecutor's discretion to seek either the death penalty or life imprisonment does not usurp the trial court's sentencing function and therefore does not violate the separation of powers doctrine. State v. Carey, 42 Wn. App. 840, 714 P.2d 708, review denied, 106 Wn.2d 1003 (1986).

Special sentencing proceeding which gives the prosecutor discretion to request the death penalty does not violate equal protection, does not violate separation of powers, and is not unconstitutionally vague. State v. Campbell, 103 Wn.2d 1, 691 P.2d 929 (1984), cert. denied, 471 U.S. 1094, 105 S. Ct. 2169, 85 L. Ed. 2d 526 (1985).

DISQUALIFICATION.

Where prosecuting attorney represented the defendant in a prior criminal case before becoming a prosecutor, the prosecuting attorney and his staff were disqualified from handling the prosecution of the defendant for the crime of aggravated murder in the first degree where the death penalty was sought. State v. Stenger, 111 Wn.2d 516, 760 P.2d 357 (1988).

GOOD CAUSE.

Mere inadvertence in filing notice on the part of the prosecutor does not constitute good cause. State v. Luvene, 127 Wn.2d 690, 903 P.2d 960 (1995).

To show good cause, the state must first provide an external factor for its default. State v. Dearbone, 125 Wn.2d 173, 883 P.2d 303 (1994).

The two-step standard for proving good cause is: first, the state must show an external impediment which prevented it from complying with the requirements of this section, second, the state must establish that the delay in filing or serving notice did not prejudice the preparation of defendant's case. State v. Dearbone, 125 Wn.2d 173, 883 P.2d 303 (1994).

Good cause requires a reason external to the prosecutor for his failure to serve notice. State v. Dearbone, 125 Wn.2d 173, 883 P.2d 303 (1994).

Substantial compliance with this section is insufficient proof of good cause. State v. Dearbone, 125 Wn.2d 173, 883 P.2d 303 (1994).

INCLUDED OFFENSES.

Since felony murder is not a lesser included offense of aggravated first degree murder, a defendant charged with both felony murder and aggravated first degree murder may plead guilty to felony murder when arraigned for the first time; however, such a plea would not preclude the prosecutor from pursuing the companion charge of premeditated first degree murder and from seeking the death penalty upon proof of aggravating circumstances. State v. Thompson, 60 Wn. App. 662, 806 P.2d 1251 (1991).

LEGISLATIVE INTENT.

The legislature could have required that notice under this section be served only on a defendant and that such service be personal, but it did not do so. State v. Cronin, 130 Wn.2d 392, 923 P.2d 694 (1996).

NOTICE.

Where the state timely filed the statutorily mandated notice after defendant's first arraignment, it was not required to file another notice after his rearraignment on an amended information. State v. Woods, 143 Wn.2d 561, 23 P.3d 1046, cert. denied, 534 U.S. 964, 122 S. Ct. 374, 151 L. Ed. 2d 285 (2001).

The time limitation for the notice of special sentencing in this section is a procedural right which may be waived by defense counsel for tactical reasons. State v. Finch, 137 Wn.2d 792, 975 P.2d 967 (1999), cert. denied, 528 U.S. 922, 120 S. Ct. 285, 145 L. Ed. 2d 239 (1999).

This section requires the state to serve a defendant with the notice of special sentencing proceedings, but does not require proof of service. State v. Brown, 132 Wn.2d 529, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007, 118 S. Ct. 1192, 140 L. Ed. 2d 322 (1998).

The statutory death notice requirement under this section is not an element of the crime of aggravated murder. Instead, the notice simply informs the accused of the penalty that may be imposed upon conviction of the crime. While formal notice is required to the accused by information of the criminal charges to satisfy the federal sixth amendment and Wa. Const., Art. I, § 22, such constitutional notice is not extended to the penalty exacted for conviction of the crime. Due process in sentencing requires only adequate notice of the possibility of the death penalty. State v. Clark, 129 Wn.2d 805, 920 P.2d 187 (1996).

Notice of special sentencing proceeding was timely served and filed for purposes of this section because the statutory service on defense counsel was in accordance with CR 5. State v. Clark, 129 Wn.2d 805, 920 P.2d 187 (1996).

Sentence of death was overturned based upon the state's failure to file notice of intent to seek the death penalty within the thirty-day period required by subsection (2). State v. Luvene, 127 Wn.2d 690, 903 P.2d 960 (1995).

Where, on the day notice was due, a deputy prosecutor notified defense counsel by voice mail, and later in person, of the state's intent to seek the death penalty, but the deputy prosecutor did not serve a copy of the notice on defense counsel until after the time limit had expired, good cause did not exist to reopen the period for service. State v. Dearbone, 125 Wn.2d 173, 883 P.2d 303 (1994).

There is no statutory requirement that the prosecutor file a second notice of a special sentencing proceeding when a defendant's conviction is upheld on appeal but the case is remanded for a new sentencing proceeding. State v. Rupe, 108 Wn.2d 734, 743 P.2d 210 (1987), cert. denied, 486 U.S. 1061, 108 S. Ct. 2834, 100 L. Ed. 2d 934 (1988).

PURPOSE.

The purpose of proportionality review is not to second-guess evidentiary determinations or value judgments inherent in prosecutors' charging decisions or juries' verdicts in other cases; the purpose is instead to ensure that a death sentence is not affirmed where death sentences have not generally been imposed in similar cases, or where it has been wantonly and freakishly imposed. In re Jeffries, 114 Wn.2d 485, 789 P.2d 731 (1990).

SENTENCE NOT DISPROPORTIONATE.

Defendant's death sentence was neither excessive nor disproportionate. In re Jeffries, 114 Wn.2d 485, 789 P.2d 731 (1990).

Murder defendant's contention that his death sentence was disproportionate to the prison terms imposed in numerous aggravated first degree murder cases in which the state did not seek the death penalty was rejected. In re Jeffries, 114 Wn.2d 485, 789 P.2d 731 (1990).

RESEARCH REFERENCES

WASHINGTON LAW REVIEW.

Capital Punishment, Proportionality Review, and Claims of Fairness (With Lessons from Washington State)., 79 Wash. L. Rev. 775 (2004).

ALR.

Sufficiency of evidence, for purposes of death penalty, to establish statutory aggravating circumstance that murder was committed for pecuniary gain, as consideration in expectation of receiving something of monetary value, and the like -- post-Gregg cases. 66 ALR4th 417.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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** STATUTES CURRENT THROUGH 2008 REGULAR SESSION AND 2008 GENERAL ELECTION **
*** ANNOTATIONS CURRENT THROUGH OCTOBER 2, 2008 ***

TITLE 10. CRIMINAL PROCEDURE
CHAPTER 10.95. CAPITAL PUNISHMENT -- AGGRAVATED FIRST DEGREE MURDER

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.050 (2008)

§ 10.95.050. Special sentencing proceeding -- When held -- Jury to decide matters presented -- Waiver -- Reconvening same jury -- Impanelling new jury -- Peremptory challenges

(1) If a defendant is adjudicated guilty of aggravated first degree murder, whether by acceptance of a plea of guilty, by verdict of a jury, or by decision of the trial court sitting without a jury, a special sentencing proceeding shall be held if a notice of special sentencing proceeding was filed and served as provided by RCW 10.95.040. No sort of plea, admission, or agreement may abrogate the requirement that a special sentencing proceeding be held.

(2) A jury shall decide the matters presented in the special sentencing proceeding unless a jury is waived in the discretion of the court and with the consent of the defendant and the prosecuting attorney.

(3) If the defendant's guilt was determined by a jury verdict, the trial court shall reconvene the same jury to hear the special sentencing proceeding. The proceeding shall commence as soon as practicable after completion of the trial at which the defendant's guilt was determined. If, however, unforeseen circumstances make it impracticable to reconvene the same jury to hear the special sentencing proceeding, the trial court may dismiss that jury and convene a jury pursuant to subsection (4) of this section.

(4) If the defendant's guilt was determined by plea of guilty or by decision of the trial court sitting without a jury, or if a retrial of the special sentencing proceeding is necessary for any reason including but not limited to a mistrial in a previous special sentencing proceeding or as a consequence of a remand from an appellate court, the trial court shall impanel a jury of twelve persons plus whatever alternate jurors the trial court deems necessary. The defense and prosecution shall each be allowed to peremptorily challenge twelve jurors. If there is more than one defendant, each defendant shall be allowed an additional peremptory challenge and the prosecution shall be allowed a like number of additional challenges. If alternate jurors are selected, the defense and prosecution shall each be allowed one peremptory challenge for each alternate juror to be selected and if there is more than one defendant each defendant shall be allowed an additional peremptory challenge for each alternate juror to be selected and the prosecution shall be allowed a like number of additional challenges.

HISTORY: 1981 c 138 § 5.

JUDICIAL DECISIONS

ANALYSIS
Challenges
Closing argument
Commutation of sentence
Invalid sentence
Jury

CHALLENGES.

In light of two additional peremptory challenges granted, defendant was not denied a fair and impartial jury even if the court erred by denying two challenges for cause. State v. Rupe, 108 Wn.2d 734, 743 P.2d 210 (1987), cert. denied, 486 U.S. 1061, 108 S. Ct. 2834, 100 L. Ed. 2d 934 (1988) (see however, State v. Fire, 145 Wn.3d 152, 34 P.3d 1218 (2001)).

CLOSING ARGUMENT.

Prosecutor's closing argument for the death sentence at penalty phase of murder trial in which he referred to (1) the potential harm to other persons in prison; (2) the potential harm to trial witnesses; and (3) the theory of societal self defense did not render the jury's verdict, that there were not sufficient mitigating circumstances to merit leniency, unconstitutional. Campbell v. Kincheloe, 829 F.2d 1453 (9th Cir. 1987), cert. denied, 488 U.S. 948, 109 S. Ct. 380, 102 L. Ed. 2d 369 (1988).

COMMUTATION OF SENTENCE.

After the penalty phase of an aggravated murder has been remanded to the trial court for a new jury deliberation solely on the death penalty issue, the prosecuting attorney does not have the authority to commute defendant's sentence to life without the possibility of parole and bypass the jury and penalty phase of the trial, but he does have the right to appear before the jury and ask for mitigation and the sparing of defendant's life. State v. Bartholomew, 104 Wn.2d 844, 710 P.2d 196 (1985).

INVALID SENTENCE.

Invalidation of a sentence due to the statutory review process does not automatically result in imposition of a sentence of life imprisonment without parole. Rupe v. Wood, 863 F. Supp. 1315 (W.D. Wash. 1994), aff'd, 93 F.3d 1434 (9th Cir. 1996), cert. denied, 519 U.S. 1142, 117 S. Ct. 1017, 136 L. Ed. 2d 894 (1997).

JURY.

Absent a showing that a trial court's withholding of assent to waiver of a jury in a special sentencing proceeding in a capital case was an abuse of discretion, i.e. that it was clearly untenable or manifestly unreasonable or that the defendant was prejudiced by having his cause heard by a jury, there was no reversible error. State v. Rupe, 108 Wn.2d 734, 743 P.2d 210 (1987), cert. denied, 486 U.S. 1061, 108 S. Ct. 2834, 100 L. Ed. 2d 934 (1988).

Trial court did not err in refusing to impanel a new jury for the penalty phase of a murder trial where, at the guilt phase of the trial, the jury heard evidence of the defendant's involvement in a committed but uncharged crime as well as

about the planning of other crimes which were never committed. State v. Kwan Fai Mak, 105 Wn.2d 692, 718 P.2d 407, cert. denied, 479 U.S. 995, 107 S. Ct. 599, 93 L. Ed. 2d 599 (1986).

RESEARCH REFERENCES

GONZAGA LAW REVIEW.
Refinement of Washington's death penalty act. 17 Gonz. L. Rev. 715.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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** STATUTES CURRENT THROUGH 2008 REGULAR SESSION AND 2008 GENERAL ELECTION **
*** ANNOTATIONS CURRENT THROUGH OCTOBER 2, 2008 ***

TITLE 10. CRIMINAL PROCEDURE
CHAPTER 10.95. CAPITAL PUNISHMENT -- AGGRAVATED FIRST DEGREE MURDER

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.060 (2008)

§ 10.95.060. Special sentencing proceeding -- Jury instructions -- Opening statements -- Evidence -- Arguments -- Question for jury

(1) At the commencement of the special sentencing proceeding, the trial court shall instruct the jury as to the nature and purpose of the proceeding and as to the consequences of its decision, as provided in RCW 10.95.030.

(2) At the special sentencing proceeding both the prosecution and defense shall be allowed to make an opening statement. The prosecution shall first present evidence and then the defense may present evidence. Rebuttal evidence may be presented by each side. Upon conclusion of the evidence, the court shall instruct the jury and then the prosecution and defense shall be permitted to present argument. The prosecution shall open and conclude the argument.

(3) The court shall admit any relevant evidence which it deems to have probative value regardless of its admissibility under the rules of evidence, including hearsay evidence and evidence of the defendant's previous criminal activity regardless of whether the defendant has been charged or convicted as a result of such activity. The defendant shall be accorded a fair opportunity to rebut or offer any hearsay evidence.

In addition to evidence of whether or not there are sufficient mitigating circumstances to merit leniency, if the jury sitting in the special sentencing proceeding has not heard evidence of the aggravated first degree murder of which the defendant stands convicted, both the defense and prosecution may introduce evidence concerning the facts and circumstances of the murder.

(4) Upon conclusion of the evidence and argument at the special sentencing proceeding, the jury shall retire to deliberate upon the following question: "Having in mind the crime of which the defendant has been found guilty, are you convinced beyond a reasonable doubt that there are not sufficient mitigating circumstances to merit leniency?"

In order to return an affirmative answer to the question posed by this subsection, the jury must so find unanimously.

HISTORY: 1981 c 138 § 6.

JUDICIAL DECISIONS

ANALYSIS
Constitutionality
Circumstances of crime
Commutation of sentence
Competency hearing
Evidence
--Constitutionality
--Aggravating
--Circumstantial
--Competency of counsel
--Execution impact
--Mitigating
--No denial of right
--Previous crimes
--Relevant
--Resentencing trial
--Review
--Victim impact statements
Factors
--In general
--Mitigating
Jury
--Consideration of evidence
--Instructions
--Unanimity
Opening statement
Polygraph examination
Presumption

CONSTITUTIONALITY.

Habeas petitioner failed in any way to show that the Washington Supreme Court's decision concerning the constitutionality of RCW 10.95.060(4) was contrary to, or an unreasonable application of, clearly established federal law. Gentry v. Sinclair, -- F. Supp. 2d -- (W.D. Wash. Sept. 15, 2008).

This section is not unconstitutionally vague, nor does it improperly place the burden of proving mitigating circumstances on the defendant. In re Gentry, 137 Wn.2d 379, 972 P.2d 1250 (1999).

Subsection (4) is constitutional. State v. Gentry, 125 Wn.2d 570, 888 P.2d 1105, cert. denied, 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995).

This statute, providing a mandatory sentence of life imprisonment without the possibility of parole in noncapital aggravated murder cases does not violate due process of equal protection. State v. Dictado, 102 Wn.2d 277, 687 P.2d 172 (1984).

CIRCUMSTANCES OF CRIME.

In death penalty cases, the jury must focus on the circumstances of the crime itself. As a general matter, then, these circumstances are properly included in the prosecutor's argument to the jury subject to the following caveats: argument must be restricted to the evidence presented in the case and even argument that is conducted on proper subjects may still

be improper if it is presented in an inflammatory manner. State v. Rice, 110 Wn.2d 577, 757 P.2d 889 (1988), cert. denied, 491 U.S. 910, 109 S. Ct. 3200, 105 L. Ed. 2d 707 (1989).

COMMUTATION OF SENTENCE.

Trial court did not err in permitting the prosecution to ask defendant during cross examination at sentencing phase of capital sentencing jury about the possibility that his sentence might be commuted, since the question was in response to a misleading impression left by the defense that the defendant could never be released into society. State v. Rupe, 108 Wn.2d 734, 743 P.2d 210 (1987), cert. denied, 486 U.S. 1061, 108 S. Ct. 2834, 100 L. Ed. 2d 934 (1988).

COMPETENCY HEARING.

At beginning of sentencing phase of capital murder trial, defense counsel's request for a hearing to determine if defendant was competent to proceed was properly denied because defense counsel did not meet threshold burden of establishing doubt as to defendant's competency. State v. Lord, 117 Wn.2d 829, 822 P.2d 177 (1991), cert. denied, 506 U.S. 856, 113 S. Ct. 164, 121 L. Ed. 2d 112 (1992).

EVIDENCE.

-- CONSTITUTIONALITY.

Provisions of the capital punishment statute allowing the jury to consider evidence regardless of its admissibility under the Rules of Evidence, including hearsay evidence, and evidence of defendant's prior criminal activity regardless of whether defendant was charged or convicted as a result of such activity, were unconstitutional. State v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984).

-- AGGRAVATING.

The prosecution may present at the sentencing phase any evidence relating to the aggravating factors set forth in the capital punishment statute if it would have been admissible at the guilt phase of the trial. State v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984).

-- CIRCUMSTANTIAL.

In aggravated first-degree murder trial, refusal of the court to admit at the penalty phase circumstantial evidence from which it could be inferred that a codefendant and a third party, rather than defendant, planned the murders was constitutional error. Kwan Fai Mak v. Blodgett, 970 F.2d 614 (9th Cir. 1992), cert. denied, 507 U.S. 951, 113 S. Ct. 1363, 122 L. Ed. 2d 742 (1993).

-- COMPETENCY OF COUNSEL.

Counsel's failure to submit jury instructions limiting the definition of "relevant factors" was professionally reasonable, where defendant had not shown that failure to submit such instructions fell below reasonable standards of competence. Rupe v. Wood, 863 F. Supp. 1315 (W.D. Wash. 1994), aff'd, 93 F.3d 1434 (9th Cir. 1996), cert. denied, 519 U.S. 1142, 117 S. Ct. 1017, 136 L. Ed. 2d 894 (1997).

The court must determine whether, in light of all the circumstances, trial counsel's failure to consult an expert and present expert testimony on the reliability of co-conspirator's polygraph results at the second penalty trial was not outside professionally competent assistance. Rupe v. Wood, 863 F. Supp. 1315 (W.D. Wash. 1994), aff'd, 93 F.3d 1434 (9th Cir. 1996), cert. denied, 519 U.S. 1142, 117 S. Ct. 1017, 136 L. Ed. 2d 894 (1997).

When a lawyer fails to present evidence in the penalty phase of a capital case, the conclusion that his performance is deficient does not always follow. Harris ex rel. Ramseyer v. Blodgett, 853 F. Supp. 1239 (W.D. Wash. 1994), aff'd, 64 F.3d 1432 (9th Cir. 1995).

-- EXECUTION IMPACT.

Evidence of the impact of the defendant's execution on third parties, including his family members, is not relevant evidence on the issue of mitigation, and it was not error for the trial court to exclude it. State v. Stenson, 132 Wn.2d 668, 940 P.2d 1239 (1997).

-- MITIGATING.

The defendant in a capital case had a constitutional right to present all relevant mitigating evidence related to his character or the circumstances of the offense at the sentencing phase of his trial. Rupe v. Wood, 863 F. Supp. 1315

(W.D. Wash. 1994), aff'd, 93 F.3d 1434 (9th Cir. 1996), cert. denied, 519 U.S. 1142, 117 S. Ct. 1017, 136 L. Ed. 2d 894 (1997).

The authority provided by the section to consider "any relevant evidence" must be limited to mitigating evidence only. State v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984).

The prosecution is entitled to rebut mitigating evidence produced by defendant, but only if the rebuttal value of the evidence outweighs its prejudicial effect. State v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984).

-- NO DENIAL OF RIGHT.

Refusal of trial court to allow aggravated murder defendant, at the end of the penalty phase of the trial, to present evidence before the jury which would be uncrossexamined, unsworn, unrebuttable and unanswerable by argument did not deny defendant his right to allocution. State v. Kwan Fai Mak, 105 Wn.2d 692, 718 P.2d 407, cert. denied, 479 U.S. 995, 107 S. Ct. 599, 93 L. Ed. 2d 599 (1986).

-- PREVIOUS CRIMES.

Defense counsel's decision not to object to admission of certified copies of a judgment and sentence indicating an exceptional sentence, verdict forms, and municipal court docket entries to prove defendant's prior criminal activity did not fall below an objective standard of reasonableness under prevailing professional norms because defendant could not show that any objection would have been granted by the trial court. Admission of these documents at the penalty phase of defendant's trial was proper, because the certified copies of the prior adjudication were sufficiently reliable to warrant admission. In re Pers. Restraint of Davis, 152 Wn.2d 647, 101 P.3d 1 (2004).

Neither the washout provisions of RCW 9.94A.360(2) nor the ER 403 balancing requirement apply in death penalty cases. State v. Elmore, 139 Wn.2d 250, 985 P.2d 289 (1999), cert. denied, 531 U.S. 837, 121 S. Ct. 98, 148 L. Ed. 2d 57 (2000).

Where defendant's prior molestation of the victim played a significant role in the circumstances of the murder, its consideration by the jury was proper and necessary. State v. Elmore, 139 Wn.2d 250, 985 P.2d 289 (1999), cert. denied, 531 U.S. 837, 121 S. Ct. 98, 148 L. Ed. 2d 57 (2000).

ER 609 does not apply when prior convictions are admissible as substantive evidence; the rule relates only to impeachment by evidence of a conviction. State v. Gentry, 125 Wn.2d 570, 888 P.2d 1105, cert. denied, 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995).

-- RELEVANT.

Where there was no question that the co-conspirator's polygraph evidence was "relevant" was because it related to the "circumstances of the offense," and specifically, it was relevant to defendant's relative culpability, a factor specifically recognized as relevant under Washington law, RCW 10.95.070(4), polygraph evidence was admitted. Rupe v. Wood, 863 F. Supp. 1315 (W.D. Wash. 1994), aff'd, 93 F.3d 1434 (9th Cir. 1996), cert. denied, 519 U.S. 1142, 117 S. Ct. 1017, 136 L. Ed. 2d 894 (1997).

Evidence which is not probative or not relevant is excluded at the sentencing phase. State v. Kwan Fai Mak, 105 Wn.2d 692, 718 P.2d 407, cert. denied, 479 U.S. 995, 107 S. Ct. 599, 93 L. Ed. 2d 599 (1986).

-- RESENTENCING TRIAL.

Trial court did not err in admitting evidence at a resentencing trial of the facts and circumstances of the crime. State v. Rupe, 108 Wn.2d 734, 743 P.2d 210 (1987), cert. denied, 486 U.S. 1061, 108 S. Ct. 2834, 100 L. Ed. 2d 934 (1988).

-- REVIEW.

In reviewing an evidentiary ruling by trial court in penalty phase of capital murder trial, supreme court employs the abuse of discretion standard, although it more carefully reviews the factual basis for the ruling than it would in a noncapital case. State v. Lord, 117 Wn.2d 829, 822 P.2d 177 (1991), cert. denied, 506 U.S. 856, 113 S. Ct. 164, 121 L. Ed. 2d 112 (1992).

-- VICTIM IMPACT STATEMENTS.

In light of the addition of the victims' rights amendment to the Washington constitution, the classes of relevant evidence which may constitutionally be admitted are expanded to also include victim impact evidence. State v. Gentry, 125 Wn.2d 570, 888 P.2d 1105, cert. denied, 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995).

FACTORS.

-- IN GENERAL.

In a capital murder case in which defendant had killed two prostitutes, there was sufficient evidence to justify the affirmative finding to the question posed by RCW 10.95.060(4); a rational jury could have been convinced beyond a reasonable doubt that the circumstances of defendant's crimes outweighed the mitigating factors. State v. Yates, 161 Wn.2d 714, 168 P.3d 359 (2007).

In penalty phase of capital murder trial, defense witnesses may be cross-examined concerning anything relevant raised in mitigation by the defendant; defendant's character witnesses may be cross-examined about personal knowledge of specific incidents of misconduct. State v. Lord, 117 Wn.2d 829, 822 P.2d 177 (1991), cert. denied, 506 U.S. 856, 113 S. Ct. 164, 121 L. Ed. 2d 112 (1992).

-- MITIGATING.

The mere presence of mitigating factors does not require a jury to grant leniency, so long as it is convinced beyond a reasonable doubt that any mitigating factors are outweighed by the circumstances of the crime. State v. Rice, 110 Wn.2d 577, 757 P.2d 889 (1988), cert. denied, 491 U.S. 910, 109 S. Ct. 3200, 105 L. Ed. 2d 707 (1989).

Failure of court to define "mitigating circumstance" for jury at sentencing phase of murder trial was not a constitutional error. State v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984).

The burden of proving the absence of mitigating circumstances is on the State. State v. Rupe, 101 Wn.2d 664, 683 P.2d 571 (1984).

JURY.

-- CONSIDERATION OF EVIDENCE.

Washington prisoner who was sentenced to death under RCW 10.95.060(4) upon conviction for aggravated first-degree murder was entitled to 28 U.S.C.S. § 2254 habeas relief based on a violation of due process rights under U.S. Const. amend. XIV; structural error resulted from the trial court's exclusion for cause of a juror in the absence of evidence that the juror would not follow the law with regard to the death penalty. Brown v. Lambert, 451 F.3d 946 (2006).

Washington's death penalty statute is a "non-weighing" statute; the statute does not require the jury to weigh specified aggravating factors against mitigating factors, but allows it to consider all evidence presented during both the guilt and penalty phases, including non-statutory aggravating factors. State v. Brown, 132 Wn.2d 529, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007, 118 S. Ct. 1192, 140 L. Ed. 2d 322 (1998).

-- INSTRUCTIONS.

The giving of leniency instructions is consistent with Washington's statutory scheme. State v. Brett, 126 Wn.2d 136, 892 P.2d 29 (1995), cert. denied, 516 U.S. 1121, 116 S. Ct. 931, 133 L. Ed. 2d 858 (1996).

Trial court did not err by instructing the jury that the defendant could be convicted of aggravated murder in the first degree based on an accomplice theory. State v. Kwan Fai Mak, 105 Wn.2d 692, 718 P.2d 407, cert. denied, 479 U.S. 995, 107 S. Ct. 599, 93 L. Ed. 2d 599 (1986).

Penalty phase instructions in aggravated murder trial did not amount to reversible error, either individually or collectively. State v. Kwan Fai Mak, 105 Wn.2d 692, 718 P.2d 407, cert. denied, 479 U.S. 995, 107 S. Ct. 599, 93 L. Ed. 2d 599 (1986).

-- UNANIMITY.

Where nothing in the court's instruction said or implied that the defendant could only avoid the death penalty if the jury unanimously answered "no" to the statutory question in subsection (4), there was no reasonable likelihood this defendant's jury would have been confused either as to the consequence of a non-unanimous verdict or as to its ability to report such a verdict; the challenged instruction was not, therefore, constitutionally infirm. In re Benn, 134 Wn.2d 868, 952 P.2d 116 (1998).

In penalty phase of aggravated first-degree murder trial, jury instructions and verdict form combined to improperly emphasize to the jury that unanimous agreement was required not to impose that death penalty. Kwan Fai Mak v. Blodgett, 970 F.2d 614 (9th Cir. 1992), cert. denied, 507 U.S. 951, 113 S. Ct. 1363, 122 L. Ed. 2d 742 (1993).

OPENING STATEMENT.

Trial court did not err in allowing a deputy prosecuting attorney to make an opening statement to the jury at the penalty phase of the trial. State v. Kwan Fai Mak, 105 Wn.2d 692, 718 P.2d 407, cert. denied, 479 U.S. 995, 107 S. Ct. 599, 93 L. Ed. 2d 599 (1986).

In most cases, the opening statement by the prosecution in the sentencing phase of the trial may only consist of defendant's criminal record and evidence which would have been admissible at the guilt phase of the trial, except that if the jury at the sentencing phase is different from the jury at the guilt phase, evidence of the facts and circumstances of the murder may also be presented. State v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984).

POLYGRAPH EXAMINATION.

Subject to certain restrictions, polygraph examination results are admissible by the defense at the sentencing phase of capital cases. State v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984).

PRESUMPTION.

Argument that Washington's capital punishment statute creates a mandatory presumption in favor of the death penalty and places the burden on the defendant to prove there are sufficient mitigating circumstances to merit leniency was rejected. Campbell v. Kincheloe, 829 F.2d 1453 (9th Cir. 1987), cert. denied, 488 U.S. 948, 109 S. Ct. 380, 102 L. Ed. 2d 369 (1988).

RESEARCH REFERENCES

WASHINGTON LAW REVIEW.

Capital Punishment, Proportionality Review, and Claims of Fairness (With Lessons from Washington State)., 79 Wash. L. Rev. 775 (2004).

ALR.

Victim impact evidence in capital sentencing hearings -- post- *Payne v. Tennessee*. 79 ALR5th 33.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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TITLE 10. CRIMINAL PROCEDURE
CHAPTER 10.95. CAPITAL PUNISHMENT -- AGGRAVATED FIRST DEGREE MURDER

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.070 (2008)

§ 10.95.070. Special sentencing proceeding -- Factors which jury may consider in deciding whether leniency merited

In deciding the question posed by RCW 10.95.060(4), the jury, or the court if a jury is waived, may consider any relevant factors, including but not limited to the following:

(1) Whether the defendant has or does not have a significant history, either as a juvenile or an adult, of prior criminal activity;

(2) Whether the murder was committed while the defendant was under the influence of extreme mental disturbance;

(3) Whether the victim consented to the act of murder;

(4) Whether the defendant was an accomplice to a murder committed by another person where the defendant's participation in the murder was relatively minor;

(5) Whether the defendant acted under duress or domination of another person;

(6) Whether, at the time of the murder, the capacity of the defendant to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law was substantially impaired as a result of mental disease or defect. However, a person found to be mentally retarded under RCW 10.95.030(2) may in no case be sentenced to death;

(7) Whether the age of the defendant at the time of the crime calls for leniency; and

(8) Whether there is a likelihood that the defendant will pose a danger to others in the future.

HISTORY: 1993 c 479 § 2; 1981 c 138 § 7.

JUDICIAL DECISIONS

ANALYSIS
Constitutionality
In general
Closing arguments
Criminal history
Factors
--Aggravating
--Mitigating

CONSTITUTIONALITY.

This section does not violate the Eighth and Fourteenth Amendments to the United States Constitution on the basis that the word "relevant" in the statute is vague when interpreted in the context of defendant's "prior criminal activity". In re Brown, 143 Wn.2d 431, 21 P.3d 687 (2001).

It is not unconstitutional for the jury to consider the circumstances of the crime for which the defendant was convicted. State v. Brown, 132 Wn.2d 529, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007, 118 S. Ct. 1192, 140 L. Ed. 2d 322 (1998).

IN GENERAL.

The Sentencing Reform Act does not govern the sentencing of capital defendants. State v. Stenson, 132 Wn.2d 668, 940 P.2d 1239 (1997).

CLOSING ARGUMENTS.

Prosecutor's closing argument for the death sentence at penalty phase of murder trial in which he referred to (1) the potential harm to other persons in prison, (2) the potential harm to trial witnesses, and (3) the theory of societal self-defense did not render the jury's verdict, that there were not sufficient mitigating circumstances to merit leniency, unconstitutional. Campbell v. Kincheloe, 829 F.2d 1453 (9th Cir. 1987), cert. denied, 488 U.S. 948, 109 S. Ct. 380, 102 L. Ed. 2d 369 (1988).

CRIMINAL HISTORY.

Defense counsel's decision not to object to admission of certified copies of a judgment and sentence indicating an exceptional sentence, verdict forms, and municipal court docket entries to prove defendant's prior criminal activity did not fall below an objective standard of reasonableness under prevailing professional norms because defendant could not show that any objection would have been granted by the trial court. Admission of these documents at the penalty phase of defendant's trial was proper, because the certified copies of the prior adjudication were sufficiently reliable to warrant admission. In re Pers. Restraint of Davis, 152 Wn.2d 647, 101 P.3d 1 (2004).

Following the conviction of defendant for aggravated first degree murder, first degree kidnapping, and first degree rape, admission during the sentencing phase of a police statement concerning his previous false imprisonment conviction, over and above the mere judgment and sentence for that crime, was unfairly prejudicial. State v. Clark, 143 Wn.2d 731, 24 P.3d 1006, cert. denied, 534 U.S. 1000, 122 S. Ct. 475, 151 L. Ed. 2d 389 (2001).

A sentencing jury is not limited to considering only those convictions which existed prior to the date of the crime for which a defendant is being tried. It is sufficient if the prior conviction occurred before the sentencing procedure has been completed. In re Brown, 143 Wn.2d 431, 21 P.3d 687 (2001).

Because the defendant offered no specific reasons why his Canadian convictions were constitutionally defective or unreliable, the convictions were properly admitted under this section. State v. Roberts, 142 Wn.2d 471, 14 P.3d 713 (2000).

The defendant's prior criminal convictions, both felony and misdemeanor, are admissible in the penalty phase. State v. Stenson, 132 Wn.2d 668, 940 P.2d 1239 (1997).

Juvenile convictions for both misdemeanors and felonies may be admitted as nonstatutory aggravating evidence in the sentencing phase of a capital trial. State v. Pirtle, 127 Wn.2d 628, 904 P.2d 245 (1995), cert. denied, 518 U.S. 1026, 116 S. Ct. 2568, 135 L. Ed. 2d 1084 (1996).

Additional facts contained in information about a prior conviction did not cause undue prejudice to the defendant. The information informed the jury that assault resulted in substantial bodily harm and involved the use of a deadly weapon. State v. Pirtle, 127 Wn.2d 628, 904 P.2d 245 (1995), cert. denied, 518 U.S. 1026, 116 S. Ct. 2568, 135 L. Ed. 2d 1084 (1996).

Admission of prior convictions does not necessitate a balancing test because such evidence is reasonably objective and reliable. State v. Brett, 126 Wn.2d 136, 892 P.2d 29 (1995), cert. denied, 516 U.S. 1121, 116 S. Ct. 931, 133 L. Ed. 2d 858 (1996).

ER 609 does not apply when prior convictions are admissible as substantive evidence; the rule relates only to impeachment by evidence of a conviction. State v. Gentry, 125 Wn.2d 570, 888 P.2d 1105, cert. denied, 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995).

Juvenile court adjudications of guilt are treated as "convictions" for several purposes, including criminal history. In re Lord, 123 Wn.2d 296, 868 P.2d 835, modified on other grounds, 123 Wn.2d 737, 870 P.2d 964 (1994).

FACTORS.

-- AGGRAVATING.

Defendant's argument that because defendant's future dangerousness is an aggravating factor rather than a mitigating factor, any argument regarding that issue at special sentencing proceeding was improper was rejected. Campbell v. Kincheloe, 829 F.2d 1453 (9th Cir. 1987), cert. denied, 488 U.S. 948, 109 S. Ct. 380, 102 L. Ed. 2d 369 (1988).

The prosecution may present at the sentencing phase any evidence relating to the aggravating factors set forth in the capital punishment statute if it would have been admissible at the guilt phase of the trial. State v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984).

-- MITIGATING.

Counsel was not ineffective for failing to present evidence of the inmate's mental deficiencies during sentencing because he made a strategic decision not to do so based on the potential for damaging rebuttal evidence, which was almost certain after the inmate admitted his deviant sexual feelings toward young girls. In addition, the expert witnesses did not agree on whether, or to what extent, the inmate's mental deficiencies affected his ability to conform to lawful behavior. In re Pers. Restraint of Elmore, 162 Wn.2d 236, 172 P.3d 335 (2007).

Evidence of the impact of the defendant's execution on third parties, including his family members, is not relevant evidence on the issue of mitigation, and it was not error for the trial court to exclude it. State v. Stenson, 132 Wn.2d 668, 940 P.2d 1239 (1997).

Regarding mitigating circumstances in capital cases, only those factors asserted by the defendant to be relevant should be included in the instruction to the jury. State v. Gentry, 125 Wn.2d 570, 888 P.2d 1105, cert. denied, 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995).

Jury instruction adequately guided the jury as to the nature and function of "mitigating circumstances" even though the term itself was not specifically defined. State v. Harris, 106 Wn.2d 784, 725 P.2d 975 (1986), cert. denied, 480 U.S. 940, 107 S. Ct. 1592, 94 L. Ed. 2d 781 (1987).

Where defendant requested that the trial court not give the eight illustrative examples of mitigating circumstances provided in the statute, it was not error not to give them. State v. Jeffries, 105 Wn.2d 398, 717 P.2d 722, cert. denied, 479 U.S. 922, 107 S. Ct. 328, 93 L. Ed. 2d 301 (1986).

This statute, incorporated in jury instruction as a standard for mitigation, gave proper guidance to the jury, did not impose additional aggravating factors, and did not represent an unconstitutional evidentiary comment by the judge. State v. Campbell, 103 Wn.2d 1, 691 P.2d 929 (1984), cert. denied, 471 U.S. 1094, 105 S. Ct. 2169, 85 L. Ed. 2d 526 (1985).

Failure of court to define "mitigating circumstance" for jury at sentencing phase of murder trial was not a constitutional error. State v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984).

The prosecution is entitled to rebut mitigating evidence produced by defendant, but only if the rebuttable value of the evidence outweighs its prejudicial effect. State v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984).

The authority under this section to consider "any relevant factors" is limited to mitigating factors only. State v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984).

RESEARCH REFERENCES

WASHINGTON LAW REVIEW.

Capital Punishment, Proportionality Review, and Claims of Fairness (With Lessons from Washington State)., 79 Wash. L. Rev. 775 (2004).

ALR.

Vulnerability of victim as aggravating factor under state sentencing guidelines. 73 ALR5th 383.

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GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.080 (2008)

§ 10.95.080. When sentence to death or sentence to life imprisonment shall be imposed

(1) If a jury answers affirmatively the question posed by RCW 10.95.060(4), or when a jury is waived as allowed by RCW 10.95.050(2) and the trial court answers affirmatively the question posed by RCW 10.95.060(4), the defendant shall be sentenced to death. The trial court may not suspend or defer the execution or imposition of the sentence.

(2) If the jury does not return an affirmative answer to the question posed in RCW 10.95.060(4), the defendant shall be sentenced to life imprisonment as provided in RCW 10.95.030(1).

HISTORY: 1981 c 138 § 8.

JUDICIAL DECISIONS

ANALYSIS
Constitutionality
Juveniles

CONSTITUTIONALITY.

Washington's death penalty statutes are constitutional, do not violate equal protection guarantees and are not void for vagueness. State v. Rice, 110 Wn.2d 577, 757 P.2d 889 (1988), cert. denied, 491 U.S. 910, 109 S. Ct. 3200, 105 L. Ed. 2d 707 (1989).

Mandatory statutory sentence of life imprisonment without possibility of parole, entered on a charge of aggravated murder in the first degree, did not amount to an unconstitutional restriction of the judiciary's sentencing power. State v. Hughes, 106 Wn.2d 176, 721 P.2d 902 (1986).

JUVENILES.

Neither the declination statute nor the death penalty statute authorizes imposition of the death penalty for crimes committed by juveniles. Without such authorization, a death sentence following conviction of aggravated first degree murder of a juvenile must be overturned. State v. Furman, 122 Wn.2d 440, 858 P.2d 1092 (1993).

RESEARCH REFERENCES

ALR.

Application of death penalty to nonhomicide cases. 62 ALR5th 121.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.090 (2008)

§ 10.95.090. Sentence if death sentence commuted, held invalid, or if death sentence established by chapter held invalid

If any sentence of death imposed pursuant to this chapter is commuted by the governor, or held to be invalid by a final judgment of a court after all avenues of appeal have been exhausted by the parties to the action, or if the death penalty established by this chapter is held to be invalid by a final judgment of a court which is binding on all courts in the state, the sentence for aggravated first degree murder if there was an affirmative response to the question posed by RCW 10.95.060(4) shall be life imprisonment as provided in RCW 10.95.030(1).

HISTORY: 1981 c 138 § 9.

JUDICIAL DECISIONS

EVIDENTIARY ERROR.

A sentence that is found to be the product of "passion or prejudice" because of a garden variety evidentiary error should not be commuted to life imprisonment if a further proceeding could cure that error. Rupe v. Wood, 93 F.3d 1434 (9th Cir. 1996), cert. denied, 519 U.S. 1142, 117 S. Ct. 1017, 136 L. Ed. 2d 894 (1997).

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GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.100 (2008)

§ 10.95.100. Mandatory review of death sentence by supreme court -- Notice -- Transmittal -- Contents of notice -- Jurisdiction

Whenever a defendant is sentenced to death, upon entry of the judgment and sentence in the trial court the sentence shall be reviewed on the record by the supreme court of Washington.

Within ten days of the entry of a judgment and sentence imposing the death penalty, the clerk of the trial court shall transmit notice thereof to the clerk of the supreme court of Washington and to the parties. The notice shall include the caption of the case, its cause number, the defendant's name, the crime or crimes of which the defendant was convicted,

the sentence imposed, the date of entry of judgment and sentence, and the names and addresses of the attorneys for the parties. The notice shall vest with the supreme court of Washington the jurisdiction to review the sentence of death as provided by this chapter. The failure of the clerk of the trial court to transmit the notice as required shall not prevent the supreme court of Washington from conducting the sentence review as provided by chapter 138, Laws of 1981.

HISTORY: 1981 c 138 § 10.

JUDICIAL DECISIONS

ANALYSIS
Constitutionality
Waiver

CONSTITUTIONALITY.
Statutory procedure set forth in RCW 10.95, which requires appellate review of a death sentence but does not require a general appeal, meets constitutional standards. State v. Dodd, 120 Wn.2d 1, 838 P.2d 86 (1992).

WAIVER.
A defendant may, consistent with RCW 10.95, waive his right of general review but may not waive statutory sentence review. State v. Dodd, 120 Wn.2d 1, 838 P.2d 86 (1992).

RESEARCH REFERENCES

WASHINGTON LAW REVIEW.
Capital Punishment, Proportionality Review, and Claims of Fairness (With Lessons from Washington State)., 79 Wash. L. Rev. 775 (2004).
Washington's comparative proportionality review: toward effective appellate review of death penalty cases under the Washington State Constitution. 64 Wash. L. Rev. 111.

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Rev. Code Wash. (ARCW) § 10.95.110 (2008)

§ 10.95.110. Verbatim report of trial proceedings -- Preparation -- Transmittal to supreme court -- Clerk's papers -- Receipt

(1) Within ten days after the entry of a judgment and sentence imposing the death penalty, the clerk of the trial court shall cause the preparation of a verbatim report of the trial proceedings to be commenced.

(2) Within five days of the filing and approval of the verbatim report of proceedings, the clerk of the trial court shall transmit such verbatim report of proceedings together with copies of all of the clerk's papers to the clerk of the supreme court of Washington. The clerk of the supreme court of Washington shall forthwith acknowledge receipt of these documents by providing notice of receipt to the clerk of the trial court, the defendant or his or her attorney, and the prosecuting attorney.

HISTORY: 1981 c 138 § 11.

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GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.120 (2008)

§ 10.95.120. Information report -- Form -- Contents -- Submission to supreme court, defendant, prosecuting attorney

In all cases in which a person is convicted of aggravated first degree murder, the trial court shall, within thirty days after the entry of the judgment and sentence, submit a report to the clerk of the supreme court of Washington, to the defendant or his or her attorney, and to the prosecuting attorney which provides the information specified under subsections (1) through (8) of this section. The report shall be in the form of a standard questionnaire prepared and supplied by the supreme court of Washington and shall include the following:

(1) Information about the defendant, including the following:

(a) Name, date of birth, gender, marital status, and race and/or ethnic origin;

(b) Number and ages of children;

(c) Whether his or her parents are living, and date of death where applicable;

(d) Number of children born to his or her parents;

(e) The defendant's educational background, intelligence level, and intelligence quotient;

(f) Whether a psychiatric evaluation was performed, and if so, whether it indicated that the defendant was:

(i) Able to distinguish right from wrong;

(ii) Able to perceive the nature and quality of his or her act; and

(iii) Able to cooperate intelligently with his or her defense;

(g) Any character or behavior disorders found or other pertinent psychiatric or psychological information;

(h) The work record of the defendant;

(i) A list of the defendant's prior convictions including the offense, date, and sentence imposed; and

(j) The length of time the defendant has resided in Washington and the county in which he or she was convicted.

(2) Information about the trial, including:

(a) The defendant's plea;

(b) Whether defendant was represented by counsel;

(c) Whether there was evidence introduced or instructions given as to defenses to aggravated first degree murder, including excusable homicide, justifiable homicide, insanity, duress, entrapment, alibi, intoxication, or other specific defense;

(d) Any other offenses charged against the defendant and tried at the same trial and whether they resulted in conviction;

(e) What aggravating circumstances were alleged against the defendant and which of these circumstances was found to have been applicable; and

(f) Names and charges filed against other defendant(s) if tried jointly and disposition of the charges.

(3) Information concerning the special sentencing proceeding, including:

(a) The date the defendant was convicted and date the special sentencing proceeding commenced;

(b) Whether the jury for the special sentencing proceeding was the same jury that returned the guilty verdict, providing an explanation if it was not;

(c) Whether there was evidence of mitigating circumstances;

(d) Whether there was, in the court's opinion, credible evidence of the mitigating circumstances as provided in RCW 10.95.070;

(e) The jury's answer to the question posed in RCW 10.95.060(4);

(f) The sentence imposed.

(4) Information about the victim, including:

(a) Whether he or she was related to the defendant by blood or marriage;

(b) The victim's occupation and whether he or she was an employer or employee of the defendant;

(c) Whether the victim was acquainted with the defendant, and if so, how well;

(d) The length of time the victim resided in Washington and the county;

(e) Whether the victim was the same race and/or ethnic origin as the defendant;

(f) Whether the victim was the same sex as the defendant;

(g) Whether the victim was held hostage during the crime and if so, how long;

(h) The nature and extent of any physical harm or torture inflicted upon the victim prior to death;

(i) The victim's age; and

(j) The type of weapon used in the crime, if any.

(5) Information about the representation of the defendant, including:

(a) Date counsel secured;

(b) Whether counsel was retained or appointed, including the reason for appointment;

(c) The length of time counsel has practiced law and nature of his or her practice; and

(d) Whether the same counsel served at both the trial and special sentencing proceeding, and if not, why not.

(6) General considerations, including:

(a) Whether the race and/or ethnic origin of the defendant, victim, or any witness was an apparent factor at trial;

(b) What percentage of the county population is the same race and/or ethnic origin of the defendant;

(c) Whether members of the defendant's or victim's race and/or ethnic origin were represented on the jury;

(d) Whether there was evidence that such members were systematically excluded from the jury;

(e) Whether the sexual orientation of the defendant, victim, or any witness was a factor in the trial;

(f) Whether any specific instruction was given to the jury to exclude race, ethnic origin, or sexual orientation as an issue;

(g) Whether there was extensive publicity concerning the case in the community;

(h) Whether the jury was instructed to disregard such publicity;

(i) Whether the jury was instructed to avoid any influence of passion, prejudice, or any other arbitrary factor when considering its verdict or its findings in the special sentencing proceeding;

(j) The nature of the evidence resulting in such instruction; and

(k) General comments of the trial judge concerning the appropriateness of the sentence considering the crime, defendant, and other relevant factors.

(7) Information about the chronology of the case, including the date that:

(a) The defendant was arrested;

(b) Trial began;

(c) The verdict was returned;

(d) Post-trial motions were ruled on;

(e) Special sentencing proceeding began;

(f) Sentence was imposed;

(g) Trial judge's report was completed; and

(h) Trial judge's report was filed.

(8) The trial judge shall sign and date the questionnaire when it is completed.

HISTORY: 1981 c 138 § 12.

JUDICIAL DECISIONS

ANALYSIS
Abuse of writ
Contesting report
Errors
Review

ABUSE OF WRIT.

Inmate's third personal restraint petition (PRP) was dismissed under the abuse of writ doctrine because the inmate's prior attorneys had the requisite amount of experience, despite never having done a PRP case, and there was no newly discovered evidence, since all of the reports filed with the Washington supreme court under RCW 10.95.120 were considered. In re Pers. Restraint of Stenson, 153 Wn.2d 137, 102 P.3d 151 (2004).

CONTESTING REPORT.

When a trial court imposes the death penalty but that penalty is overturned, or the case is remanded for resentencing by an appellate court, the report of the trial judge is not required to be updated to reflect the change in the sentencing status of that defendant. State v. Woods, 143 Wn.2d 561, 23 P.3d 1046, cert. denied, 534 U.S. 964, 122 S. Ct. 374, 151 L. Ed. 2d 285 (2001).

Defendant's rights were not violated by not giving him the opportunity to contest the report required by this section. State v. Jeffries, 105 Wn.2d 398, 717 P.2d 722, cert. denied, 479 U.S. 922, 107 S. Ct. 328, 93 L. Ed. 2d 301 (1986).

ERRORS.

Even assuming trial judge's report required by this section contained errors or omissions, it did not prejudice defendant. Jeffries v. Blodgett, 771 F. Supp. 1520 (W.D. Wash. 1991), aff'd, 974 F.2d 1179 (9th Cir. 1992), rev'd on other grounds, 988 F.2d 923 (9th Cir. 1993).

REVIEW.

In conducting a proportionality review, RCW 10.95.130(2) indicates that the Washington Supreme Court is obligated to compare a case only to cases in which reports have been filed with the supreme court under RCW 10.95.120. In re Pers. Restraint of Stenson, 153 Wn.2d 137, 102 P.3d 151 (2004).

RESEARCH REFERENCES

WASHINGTON LAW REVIEW.

Capital Punishment, Proportionality Review, and Claims of Fairness (With Lessons from Washington State)., 79 Wash. L. Rev. 775 (2004).

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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** STATUTES CURRENT THROUGH 2008 REGULAR SESSION AND 2008 GENERAL ELECTION **
*** ANNOTATIONS CURRENT THROUGH OCTOBER 2, 2008 ***

TITLE 10. CRIMINAL PROCEDURE
CHAPTER 10.95. CAPITAL PUNISHMENT -- AGGRAVATED FIRST DEGREE MURDER

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.130 (2008)

§ 10.95.130. Questions posed for determination by Supreme Court in death sentence review -- Review in addition to appeal -- Consolidation of review and appeal

(1) The sentence review required by RCW 10.95.100 shall be in addition to any appeal. The sentence review and an appeal shall be consolidated for consideration. The defendant and the prosecuting attorney may submit briefs within the time prescribed by the court and present oral argument to the court.

(2) With regard to the sentence review required by chapter 138, Laws of 1981, the supreme court of Washington shall determine:

(a) Whether there was sufficient evidence to justify the affirmative finding to the question posed by RCW 10.95.060(4); and

(b) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant. For the purposes of this subsection, "similar cases" means cases reported in the Washington Reports or Washington Appellate Reports since January 1, 1965, in which the judge or jury considered the imposition of capital punishment regardless of whether it was imposed or executed, and cases in which reports have been filed with the supreme court under RCW 10.95.120;

(c) Whether the sentence of death was brought about through passion or prejudice; and

(d) Whether the defendant was mentally retarded within the meaning of RCW 10.95.030(2).

HISTORY: 1993 c 479 § 3; 1981 c 138 § 13.

JUDICIAL DECISIONS

ANALYSIS
Constitutionality
Applicability
Arbitrariness
Criminal history
Evidence
Evidentiary error
Proportionality
Review
--Questions
--Waiver
Sentence
--Illustrative cases
--Not arbitrary
--Not excessive
--Proportionality
--Victim impact statement

CONSTITUTIONALITY.

The proportionality review mandated by subsection (2)(b) of this section is not void for vagueness under either the Eighth or Fourteenth Amendments to the United States Constitution, nor under Wa. Const., Art. I, §§ 3 and 14. State v. Brown, 132 Wn.2d 529, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007, 118 S. Ct. 1192, 140 L. Ed. 2d 322 (1998).

In aggravated first degree murder trial, failure to require the jury to articulate what mitigating circumstances it found and how they were weighed against the aggravating factors did not violate defendant's constitutional rights. Jeffries v. Blodgett, 771 F. Supp. 1520 (W.D. Wash. 1991), aff'd, 974 F.2d 1179 (9th Cir. 1992), rev'd on other grounds, 988 F.2d 923 (9th Cir. 1993).

Statutory procedure set forth in RCW 10.95, which requires appellate review of a death sentence but does not require a general appeal, meets constitutional standards. State v. Dodd, 120 Wn.2d 1, 838 P.2d 86 (1992).

APPLICABILITY.

Proportionality is a special statutory proceeding that is conducted by the supreme court and there is no authority for a trial court to engage in a proportionality review in lieu of a special sentencing proceeding. State v. Elmore, 139 Wn.2d 250, 985 P.2d 289 (1999), cert. denied, 531 U.S. 837, 121 S. Ct. 98, 148 L. Ed. 2d 57 (2000).

ARBITRARINESS.

Death penalty statute adequately guards against arbitrary infliction of the death penalty. State v. Rupe, 101 Wn.2d 664, 683 P.2d 571 (1984).

CRIMINAL HISTORY.

A lack of criminal history does not by itself render a death sentence disproportionate. State v. Rice, 110 Wn.2d 577, 757 P.2d 889 (1988), cert. denied, 491 U.S. 910, 109 S. Ct. 3200, 105 L. Ed. 2d 707 (1989).

EVIDENCE.

The test to be applied in determining the sufficiency of the evidence to support the jury's verdict is whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found sufficient evidence to justify the affirmative finding beyond a reasonable doubt. State v. Rice, 110 Wn.2d 577, 757 P.2d 889 (1988), cert. denied, 491 U.S. 910, 109 S. Ct. 3200, 105 L. Ed. 2d 707 (1989).

Sufficient evidence justified jury's affirmative answer to the question whether the members of the jury were convinced beyond a reasonable doubt that there were not sufficient mitigating circumstances to merit leniency. State v. Rupe, 108 Wn.2d 734, 743 P.2d 210 (1987), cert. denied, 486 U.S. 1061, 108 S. Ct. 2834, 100 L. Ed. 2d 934 (1988).

EVIDENTIARY ERROR.

A sentence that is found to be the product of "passion or prejudice" because of a garden variety evidentiary error should not be commuted to life imprisonment if a further proceeding could cure that error. Rupe v. Wood, 93 F.3d 1434 (9th Cir. 1996), cert. denied, 519 U.S. 1142, 117 S. Ct. 1017, 136 L. Ed. 2d 894 (1997).

PROPORTIONALITY.

In conducting a proportionality review, RCW 10.95.130(2) indicates that the Washington supreme court is obligated to compare a case only to cases in which reports have been filed with the supreme court under RCW 10.95.120. In re Pers. Restraint of Stenson, 153 Wn.2d 137, 102 P.3d 151 (2004).

Defendant's death sentence was not disproportionate where the nature of the crime was as brutal and heinous as any considered by the court, his criminal history was extensive and demonstrated a pattern of violence, the jury found numerous aggravating factors, and his mitigating evidence did not convince the jury that he merited leniency. State v. Brown, 132 Wn.2d 529, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007, 118 S. Ct. 1192, 140 L. Ed. 2d 322 (1998).

The legislative guidelines contained in this chapter ensure proportionality in the first instance by focusing the jury on the crime and the defendant. On review, this section requires the court to determine whether the death sentence is "disproportionate" based on the broad range of "similar cases," as defined by the legislature. State v. Brett, 126 Wn.2d 136, 892 P.2d 29 (1995), cert. denied, 516 U.S. 1121, 116 S. Ct. 931, 133 L. Ed. 2d 858 (1996).

Because there are no guidelines or procedures for carrying out the proportionality of sentence review, the defendant's due process rights were violated because he could not fully participate in this review; defendant's review failed to meet the due process requirements of U.S. Const., Amend. 14. Harris ex rel. Ramseyer v. Blodgett, 853 F. Supp. 1239 (W.D. Wash. 1994), aff'd, 64 F.3d 1432 (9th Cir. 1995).

Proportionality requires that a death sentence must not be affirmed where death sentences have not generally been imposed in similar cases, nor where the sentence has been wantonly and freakishly imposed. Occasional aberrational outcomes do not require a reversal, however, so long as the death sentence has been imposed generally in similar cases. State v. Rice, 110 Wn.2d 577, 757 P.2d 889 (1988), cert. denied, 491 U.S. 910, 109 S. Ct. 3200, 105 L. Ed. 2d 707 (1989).

REVIEW.

-- QUESTIONS.

Defendant's death sentence withstood the three appellate review questions mandated by this statute. State v. Campbell, 103 Wn.2d 1, 691 P.2d 929 (1984), cert. denied, 471 U.S. 1094, 105 S. Ct. 2169, 85 L. Ed. 2d 526 (1985).

-- WAIVER.

The absence of a record fully developed through the adversarial process, as the result of defendant's guilty plea and waiver of the right to a general appeal, did not preclude the Supreme Court from making a reasoned decision on the statutory review questions. State v. Sagastegui, 135 Wn.2d 67, 954 P.2d 1311 (1998).

A defendant may, consistent with RCW 10.95, waive his right of general review but may not waive statutory sentence review. State v. Dodd, 120 Wn.2d 1, 838 P.2d 86 (1992).

SENTENCE.

-- ILLUSTRATIVE CASES.

Statutory review performed in the inmate's direct appeal satisfied RCW 10.95.130 where the inmate failed to show that the court's review was so flawed that a complete miscarriage of justice occurred; the inmate had contended that the review was flawed because neither he nor the court had been provided accurate information about the pool of other similar cases and that at least 18 cases were missing; the court held that because precision was not required, the large number of cases that were available provided the court with a sufficient number to enable it to complete a valid and meaningful review. In re Pers. Restraint of Elmore, 162 Wn.2d 236, 172 P.3d 335 (2007).

In a capital murder case in which defendant had killed two prostitutes, the jury could have rationally found the mitigating circumstances insufficient to justify a grant of leniency; the jurors may well have shared the State's viewpoint that defendant's postarrest religious conversion was self-serving and his allocution offensively self-indulgent. State v. Yates, 161 Wn.2d 714, 168 P.3d 359 (2007).

In light of the circumstances of the defendant's brutal murder of his stepdaughter, the jury's death sentence was affirmed. State v. Elmore, 139 Wn.2d 250, 985 P.2d 289 (1999), cert. denied, 531 U.S. 837, 121 S. Ct. 98, 148 L. Ed. 2d 57 (2000).

Evidence showing that defendant premeditatively and viciously assaulted, raped, and murdered a three-year-old boy and then shot and killed the child's mother and her friend justified the imposition of the death penalty. State v. Sagastegui, 135 Wn.2d 67, 954 P.2d 1311 (1998).

Death sentence sustained where the evidence showed that the defendant had a normal childhood, had high average intelligence, did not suffer from a brain dysfunction, and that the murders were committed in a brutal, calculated manner and the sole motive appeared to be financial gain. State v. Stenson, 132 Wn.2d 668, 940 P.2d 1239 (1997).

Considering the heinous nature of the crime, a rational trier of fact could have concluded that a difficult childhood and troubled family life did not constitute sufficient mitigation to deserve leniency. State v. Brown, 132 Wn.2d 529, 940 P.2d 546 (1997), cert. denied, 523 U.S. 1007, 118 S. Ct. 1192, 140 L. Ed. 2d 322 (1998).

In a brutal murder of a 12-year old child, there was sufficient evidence for a rational trier of fact to have found that leniency was not merited. State v. Gentry, 125 Wn.2d 570, 888 P.2d 1105, cert. denied, 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995).

-- NOT ARBITRARY.

From record of defendant's case and proportionality evaluation of that record, court concluded that death penalty imposed upon defendant for double murder was not arbitrary nor imposed in wanton or freakish manner. State v. Benn, 120 Wn.2d 631, 845 P.2d 289, cert. denied, 510 U.S. 944 , 114 S. Ct. 382, 126 L. Ed. 2d 331 (1993).

-- NOT EXCESSIVE.

Death sentence was not excessive or disproportionate. State v. Lord, 117 Wn.2d 829, 822 P.2d 177 (1991), cert. denied, 506 U.S. 856, 113 S. Ct. 164, 121 L. Ed. 2d 112 (1992).

Death sentence was not excessive or disproportionate to the penalty imposed in similar cases for defendant who murdered two bank tellers for the purpose of protecting or concealing his identity as part of a common scheme or plan during the course of a robbery. State v. Rupe, 108 Wn.2d 734, 743 P.2d 210 (1987), cert. denied, 486 U.S. 1061, 108 S. Ct. 2834, 100 L. Ed. 2d 934 (1988).

Death penalty for contract killing was not excessive or disproportionate. State v. Harris, 106 Wn.2d 784, 725 P.2d 975 (1986), cert. denied, 480 U.S. 940, 107 S. Ct. 1592, 94 L. Ed. 2d 781 (1987).

Defendant's death sentence was not excessive or disproportionate to the penalty imposed in similar cases or to the penalty of life imprisonment imposed upon his codefendant. State v. Kwan Fai Mak, 105 Wn.2d 692, 718 P.2d 407, cert. denied, 479 U.S. 995, 107 S. Ct. 599, 93 L. Ed. 2d 599 (1986).

-- PROPORTIONALITY.

In a capital murder case in which defendant had killed two prostitutes, consideration of defendant's prior crimes and his personal history did not suggest that his death sentence was excessive or disproportionate to the penalty imposed in similar cases. State v. Yates, 161 Wn.2d 714, 168 P.3d 359 (2007).

The existence of an analytically flawed federal district court decision holding that application of the statutorily required proportionality review procedure violates due process, was not a compelling reason to vacate defendant's death sentence, or to reconsider the proportionality review in his case. In re Benn, 134 Wn.2d 868, 952 P.2d 116 (1998); State v. Woods, 143 Wn.2d 561, 23 P.3d 1046, cert. denied, 534 U.S. 964, 122 S. Ct. 374, 151 L. Ed. 2d 285 (2001).

-- VICTIM IMPACT STATEMENT.

Victim impact evidence is not irrelevant to the jury's decision in the penalty phase of a capital case and such evidence is subject to an ER 403 balancing test by the trial court. State v. Gentry, 125 Wn.2d 570, 888 P.2d 1105, cert. denied, 516 U.S. 843, 116 S. Ct. 131, 133 L. Ed. 2d 79 (1995).

SEATTLE UNIV. LAW REVIEW.

Comparative proportionality review: will the ends, will the means. 18 Seattle U. L. Rev. 593.

RESEARCH REFERENCES

WASHINGTON LAW REVIEW.

Capital Punishment, Proportionality Review, and Claims of Fairness (With Lessons from Washington State)., 79 Wash. L. Rev. 775 (2004).

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Rev. Code Wash. (ARCW) § 10.95.140 (2008)

§ 10.95.140. Invalidation of sentence, remand for resentencing -- Affirmation of sentence, remand for execution

Upon completion of a sentence review:

(1) The supreme court of Washington shall invalidate the sentence of death and remand the case to the trial court for resentencing in accordance with RCW 10.95.090 if:

(a) The court makes a negative determination as to the question posed by RCW 10.95.130(2)(a); or

(b) The court makes an affirmative determination as to any of the questions posed by RCW 10.95.130(2) (b), (c), or (d).

(2) The court shall affirm the sentence of death and remand the case to the trial court for execution in accordance with RCW 10.95.160 if:

(a) The court makes an affirmative determination as to the question posed by RCW 10.95.130(2)(a); and

(b) The court makes a negative determination as to the questions posed by RCW 10.95.130(2) (b), (c), and (d).

HISTORY: 1993 c 479 § 4; 1981 c 138 § 14.

JUDICIAL DECISIONS

EVIDENTIARY ERROR.

A sentence that is found to be the product of "passion or prejudice" because of a garden variety evidentiary error should not be commuted to life imprisonment if a further proceeding could cure that error. Rupe v. Wood, 93 F.3d 1434 (9th Cir. 1996), cert. denied, 519 U.S. 1142, 117 S. Ct. 1017, 136 L. Ed. 2d 894 (1997).

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Rev. Code Wash. (ARCW) § 10.95.150 (2008)

§ 10.95.150. Time limit for appellate review of death sentence and filing opinion

In all cases in which a sentence of death has been imposed, the appellate review, if any, and sentence review to or by the supreme court of Washington shall be decided and an opinion on the merits shall be filed within one year of receipt by the clerk of the supreme court of Washington of the verbatim report of proceedings and clerk's papers filed under RCW 10.95.110. If this time requirement is not met, the chief justice of the supreme court of Washington shall state on the record the extraordinary and compelling circumstances causing the delay and the facts supporting such circumstances. A failure to comply with the time requirements of this subsection shall in no way preclude the ultimate execution of a sentence of death.

HISTORY: 1988 c 202 § 17; 1981 c 138 § 15.

NOTES:
SEVERABILITY -- 1988 C 202: See note following RCW 2.24.050.

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Rev. Code Wash. (ARCW) § 10.95.160 (2008)

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§ 10.95.160. Death warrant -- Issuance -- Form -- Time for execution of judgment and sentence

(1) If a death sentence is affirmed and the case remanded to the trial court as provided in RCW 10.95.140(2), a death warrant shall forthwith be issued by the clerk of the trial court, which shall be signed by a judge of the trial court and attested by the clerk thereof under the seal of the court. The warrant shall be directed to the superintendent of the state penitentiary and shall state the conviction of the person named therein and the judgment and sentence of the court, and shall appoint a day on which the judgment and sentence of the court shall be executed by the superintendent, which day shall not be less than thirty nor more than ninety days from the date the trial court receives the remand from the supreme court of Washington.

(2) If the date set for execution under subsection (1) of this section is stayed by a court of competent jurisdiction for any reason, the new execution date is automatically set at thirty judicial days after the entry of an order of termination or vacation of the stay by such court unless the court invalidates the conviction, sentence, or remands for further judicial proceedings. The presence of the inmate under sentence of death shall not be required for the court to vacate or terminate the stay according to this section.

HISTORY: 1990 c 263 § 1; 1981 c 138 § 16.

JUDICIAL DECISIONS

ANALYSIS
Appeal
Date of execution
Stay of execution
Validity

APPEAL.

Trial court's order issuing death warrant did not affect substantial rights other than those adjudicated by the judgment imposing the death sentence, and thus appeal of the order was dismissed. State v. Campbell, 112 Wn.2d 186, 770 P.2d 620 (1989).

Appeal from death sentence suspends issuance of death warrant until the judgment is affirmed. State ex rel. Bird v. Superior Court, 30 Wn.2d 110, 190 P.2d 762 (1948).

Appeal from order of lower court setting day of execution affords no ground for stay of execution of the death sentence. State v. Seaton, 27 Wash. 120, 67 P. 572 (1902).

DATE OF EXECUTION.

Once a death warrant has issued and an initial date for execution is set, no further action need be taken by the trial court in order to reset this date. The date of execution will be reset automatically once the stay is lifted. In re Lord, 123 Wn.2d 737, 870 P.2d 964, cert. denied, 513 U.S. 849, 115 S. Ct. 146, 130 L. Ed. 2d 86 (1994).

The department of corrections will set a new execution date once a stay is lifted. No further judicial action is necessary for this date to be set. In re Lord, 123 Wn.2d 737, 870 P.2d 964, cert. denied, 513 U.S. 849, 115 S. Ct. 146, 130 L. Ed. 2d 86 (1994).

STAY OF EXECUTION.

The supreme court has broad discretion as to when an order lifting a stay should be entered. In re Lord, 123 Wn.2d 737, 870 P.2d 964, cert. denied, 513 U.S. 849, 115 S. Ct. 146, 130 L. Ed. 2d 86 (1994).

VALIDITY.

Warrant valid if issued on date authorizing act becomes effective. In re Boyce, 25 Wash. 612, 66 P. 54 (1901).

Death warrant is valid although issued under a law which be invalidated before execution. State ex rel. Campbell v. Superior Court, 25 Wash. 271, 65 P. 183 (1901).

Presence of date of execution in the death sentence will not affect the validity of the judgment. Timmerman v. Territory, 3 Wn. Terr. 445, 17 P. 624 (1888).

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Rev. Code Wash. (ARCW) § 10.95.170 (2008)

§ 10.95.170. Imprisonment of defendant

The defendant shall be imprisoned in the state penitentiary within ten days after the trial court enters a judgment and sentence imposing the death penalty and shall be imprisoned both prior to and subsequent to the issuance of the death warrant as provided in RCW 10.95.160. During such period of imprisonment, the defendant shall be confined in the segregation unit, where the defendant may be confined with other prisoners not under sentence of death, but prisoners under sentence of death shall be assigned to single-person cells.

HISTORY: 1983 c 255 § 1; 1981 c 138 § 17.

NOTES:
SEVERABILITY -- 1983 C 255: See RCW 72.74.900.

CROSS REFERENCES.
Convicted female persons, commitment and procedure as to death sentences: RCW 72.02.250.

JUDICIAL DECISIONS

LOCATION OF CONFINEMENT.
Washington law does not provide a protected liberty interest regarding the location of a death row inmate's confinement. Jeffries v. Reed, 631 F. Supp. 1212 (E.D. Wash. 1986).

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Rev. Code Wash. (ARCW) § 10.95.180 (2008)

§ 10.95.180. Death penalty -- How executed

(1) The punishment of death shall be supervised by the superintendent of the penitentiary and shall be inflicted by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until the defendant is dead, or, at the election of the defendant, by hanging by the neck until the defendant is dead. In any case, death shall be pronounced by a licensed physician.

(2) All executions, for both men and women, shall be carried out within the walls of the state penitentiary.

HISTORY: 1996 c 251 § 1; 1986 c 194 § 1; 1981 c 138 § 18.

NOTES:

SEVERABILITY -- 1996 C 251: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 251 § 2.]

JUDICIAL DECISIONS

ANALYSIS
Constitutionality
Options
Presumption of validity
Religious principles

CONSTITUTIONALITY.

Hanging is not cruel and unusual simply because it causes death, or because there may be some pain associated with death. Campbell v. Wood, 18 F.3d 662 (9th Cir. 1994), cert. denied, 511 U.S. 1119, 114 S. Ct. 2125, 128 L. Ed. 2d 682 (1994).

Execution by hanging does not involve the unnecessary and wanton infliction of pain. Campbell v. Wood, 18 F.3d 662 (9th Cir. 1994), cert. denied, 511 U.S. 1119, 114 S. Ct. 2125, 128 L. Ed. 2d 682 (1994).

Argument that Washington death penalty violates the Eighth Amendment prohibition against cruel and unusual punishment because it forces the defendant to choose the method of his own death, either by hanging or lethal injection, was rejected. Campbell v. Blodgett, 978 F.2d 1502 (9th Cir. 1994).

Giving defendant a choice between two methods of execution is not unconstitutional. State v. Rupe, 101 Wn.2d 664, 683 P.2d 571 (1984).

OPTIONS.

Defendant's refusal to exercise the option of lethal injection insures that death warrant will be fulfilled by judicial hanging. Campbell v. Wood, 18 F.3d 662 (9th Cir. 1994), cert. denied, 511 U.S. 1119, 114 S. Ct. 2125, 128 L. Ed. 2d 682 (1994).

Defendant is not required to make any choice or to participate in the selection of the method to be employed in his execution. Campbell v. Wood, 18 F.3d 662 (9th Cir. 1994), cert. denied, 511 U.S. 1119, 114 S. Ct. 2125, 128 L. Ed. 2d 682 (1994).

Death by hanging is not an unconstitutional punishment; moreover, the defendant would not be hanged if he selected the lethal injection alternative which is constitutional. In re Lord, 123 Wn.2d 296, 868 P.2d 835, modified on other grounds, 123 Wn.2d 737, 870 P.2d 964 (1994).

PRESUMPTION OF VALIDITY.

Traditional methods of execution selected by a state's legislature are presumed to be valid. Rupe v. Wood, 863 F. Supp. 1307 (W.D. Wash. 1994), aff'd in part and vacated in part, 93 F.3d 1434 (9th Cir. 1996), cert. denied, 519 U.S. 1142, 117 S. Ct. 1017, 136 L. Ed. 2d 894 (1997).

RELIGIOUS PRINCIPLES.

Argument by defendant that this statute, permitting him to choose lethal injection instead of hanging as the method of execution, violated his religious principles by requiring him to participate in the decision on how he would die was rejected. State v. Campbell, 112 Wn.2d 186, 770 P.2d 620 (1989).

RESEARCH REFERENCES

GONZAGA LAW REVIEW.

Campbell v. Wood: the death penalty in Washington state: "hanging" on to a method of execution. 30 Gonz. L. Rev. 163.

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Rev. Code Wash. (ARCW) § 10.95.185 (2008)

§ 10.95.185. Witnesses

(1) Not less than twenty days prior to a scheduled execution, judicial officers, law enforcement representatives, media representatives, representatives of the families of the victims, and representatives from the family of the defendant who wish to attend and witness the execution, must submit an application to the superintendent. Such application must designate the relationship and reason for wishing to attend.

(2) Not less than fifteen days prior to the scheduled execution, the superintendent shall designate the total number of individuals who will be allowed to attend and witness the planned execution. The superintendent shall determine the number of witnesses that will be allowed in each of the following categories:

(a) No less than five media representatives with consideration to be given to news organizations serving communities affected by the crimes or by the commission of the execution of the defendant.

(b) Judicial officers.

(c) Representatives of the families of the victims.

(d) Representatives from the family of the defendant.

(e) Up to two law enforcement representatives. The chief executive officer of the agency that investigated the crime shall designate the law enforcement representatives.

After the list is composed, the superintendent shall serve this list on all parties who have submitted an application pursuant to this section. The superintendent shall develop and implement procedures to determine the persons within each of the categories listed in this subsection who will be allowed to attend and witness the execution.

(3) Not less than ten days prior to the scheduled execution, the superintendent shall file the witness list with the superior court from which the conviction and death warrant was issued with a petition asking that the court enter an order certifying this list as a final order identifying the witnesses to attend the execution. The final order of the court certifying the witness list shall not be entered less than five days after the filing of the petition.

(4) Unless a show cause petition is filed with the superior court from which the conviction and death warrant was issued within five days of the filing of the superintendent's petition, the superintendent's list, by order of the superior court, becomes final, and no other party has standing to challenge its appropriateness.

(5) In no case may the superintendent or the superior court order or allow more than seventeen individuals other than required staff to witness a planned execution.

(6) All witnesses must adhere to the search and security provisions of the department of corrections' policy regarding the witnessing of an execution.

(7) The superior court from which the conviction and death warrant was issued is the exclusive court for seeking judicial process for the privilege of attending and witnessing an execution.

(8) For purposes of this section:

(a) "Judicial officer" means: (i) The superior court judge who signed the death warrant issued pursuant to RCW 10.95.160 for the execution of the individual, (ii) the current prosecuting attorney or a deputy prosecuting attorney of the county from which the final judgment and sentence and death warrant were issued, and (iii) the most recent attorney of record representing the individual sentenced to death.

(b) "Law enforcement representatives" means those law enforcement officers responsible for investigating the crime for which the defendant was sentenced to death.

(c) "Media representatives" means representatives from news organizations of all forms of media serving the state.

(d) "Representatives of the families of the victims" means representatives from the immediate families of the victim(s) of the individual sentenced to death, including victim advocates of the immediate family members. Victim advocates shall include any person working or volunteering for a recognized victim advocacy group or a prosecutor-based or law enforcement-based agency on behalf of victims or witnesses.

(e) "Representative from the family of the defendant" means a representative from the immediate family of the individual sentenced to death.

(f) "Superintendent" means the superintendent of the Washington state penitentiary.

HISTORY: 1999 c 332 § 1; 1993 c 463 § 2.

NOTES:

POLICY -- 1993 C 463: "The legislature declares that, to the extent that the attendance of witnesses can be accommodated without compromising the security or the orderly operation of the Washington state penitentiary, it is the policy of the state of Washington to provide authorized individuals the opportunity to attend and witness the execution of an individual sentenced to death pursuant to chapter 10.95 RCW. Further, it is the policy of the state of Washington to provide for access to the execution to credentialed members of the media." [1993 c 463 § 1.]

SEVERABILITY -- 1993 C 463: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 463 § 3.]

RESEARCH REFERENCES

ALR.

Validity of rules and regulations concerning viewing of execution of death penalty. 107 ALR5th 291.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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** STATUTES CURRENT THROUGH 2008 REGULAR SESSION AND 2008 GENERAL ELECTION **
*** ANNOTATIONS CURRENT THROUGH OCTOBER 2, 2008 ***

TITLE 10. CRIMINAL PROCEDURE
CHAPTER 10.95. CAPITAL PUNISHMENT -- AGGRAVATED FIRST DEGREE MURDER

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.190 (2008)

§ 10.95.190. Death warrant -- Record -- Return to trial court

(1) The superintendent of the state penitentiary shall keep in his or her office as part of the public records a book in which shall be kept a copy of each death warrant together with a complete statement of the superintendent's acts pursuant to such warrants.

(2) Within twenty days after each execution of a sentence of death, the superintendent of the state penitentiary shall return the death warrant to the clerk of the trial court from which it was issued with the superintendent's return thereon showing all acts and proceedings done by him or her thereunder.

HISTORY: 1981 c 138 § 19.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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** STATUTES CURRENT THROUGH 2008 REGULAR SESSION AND 2008 GENERAL ELECTION **
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TITLE 10. CRIMINAL PROCEDURE
CHAPTER 10.95. CAPITAL PUNISHMENT -- AGGRAVATED FIRST DEGREE MURDER

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.200 (2008)

§ 10.95.200. Proceedings for failure to execute on day named

Whenever the day appointed for the execution of a defendant shall have passed, from any cause, other than the issuance of a stay by a court of competent jurisdiction, without the execution of such defendant having occurred, the trial court which issued the original death warrant shall issue a new death warrant in accordance with RCW 10.95.160. The defendant's presence before the court is not required. However, nothing in this section shall be construed as restricting the defendant's right to be represented by counsel in connection with issuance of a new death warrant.

HISTORY: 1990 c 263 § 2; 1987 c 286 § 1; 1981 c 138 § 20.

JUDICIAL DECISIONS

ANALYSIS
Appeal
Fixing new day

APPEAL.

Trial court's order issuing death warrant did not affect substantial rights other than those adjudicated by the judgment imposing the death sentence, thus appeal of the order was dismissed. State v. Campbell, 112 Wn.2d 186, 770 P.2d 620 (1989).

Orders concerning restraining execution are not appealable after passage of date set for execution. Grossi v. Long, 136 Wash. 133, 238 P. 983 (1925), overruled on other grounds, State v. Harris, 114 Wn.2d 419, 789 P.2d 60 (1990); State ex rel. Bird v. Superior Court, 30 Wn.2d 110, 190 P.2d 762 (1948).

FIXING NEW DAY.

Superior court judge may fix a new day when time of execution is passed. Craemer v. Washington State, 168 U.S. 124, 18 S. Ct. 1, 42 L. Ed. 407 (1897); State ex rel. Campbell v. Superior Court, 25 Wash. 271, 65 P. 183 (1901).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS
Resentencing

RESENTENCING.

Resentencing following death sentence reprieve. AGO 1933-34, p. 296 (1934), AGO 1945-46, p. 428 (1945).

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

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** STATUTES CURRENT THROUGH 2008 REGULAR SESSION AND 2008 GENERAL ELECTION **
*** ANNOTATIONS CURRENT THROUGH OCTOBER 2, 2008 ***

TITLE 10. CRIMINAL PROCEDURE
CHAPTER 10.95. CAPITAL PUNISHMENT -- AGGRAVATED FIRST DEGREE MURDER

GO TO REVISED CODE OF WASHINGTON ARCHIVE DIRECTORY

Rev. Code Wash. (ARCW) § 10.95.900 (2008)

§ 10.95.900. Severability -- 1981 c 138

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

HISTORY: 1981 c 138 § 22.

USER NOTE: For more generally applicable notes, see notes under the first section of this heading, part, article, chapter or title.

LEGISLATIVE RESEARCH REPORT

FEBRUARY 23, 2009 REPORT NUMBER 09.135

CAPITAL PUNISHMENT IN THE U.S. AND IN ALASKA

PREPARED FOR REPRESENTATIVE MIKE CHENAULT

BY PATRICIA YOUNG, MANAGER

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You asked for information on capital punishment in the United States and in Alaska. Specifically, you wished to know which states authorize capital punishment and by what methods, what crimes are capital offenses, and under what circumstances convictions may be appealed. You also asked for a history of the death penalty in both the Territory and State of Alaska, including information on when capital punishment was abolished and what attempts have been made to restore it in this state.

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State Capitol
Juneau, AK 99801

CAPITAL PUNISHMENT IN THE U.S.

DEATH PENALTY STATES

Thirty-six states, the U.S. military, and the U.S. government allow for capital punishment. States that authorize capital punishment are Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, and Wyoming.

CAPITAL CRIMES—PUNISHABLE BY DEATH

As documented by the Death Penalty Information Center (DPIC), the death penalty in this country is almost exclusively reserved for the crime of first-degree murder—most often accompanied by aggravating circumstances, which vary by state.[1] Although a number of states list various other crimes as punishable by death, no one has been executed for a non-murder offense since the death penalty was reinstated in 1976.[2]

In addition to first-degree murder, laws in seven states authorize the death penalty for the rape of a child. In 2008, however, the U.S. Supreme Court held that the Eighth Amendment's cruel and unusual punishment clause prohibits the death penalty for the rape of a child where the crime did not result, and was not intended to result, in death.[3]

The DPIC identifies the following other non-murder offenses listed in state law as capital crimes:

- Treason (Arkansas, California, Colorado, Georgia, Illinois, Louisiana, Mississippi, Missouri, Washington)
- Aggravated kidnapping (Colorado, Idaho, Illinois, Missouri, Montana)
- Rape of a child (Florida, Georgia, Louisiana, Montana, Oklahoma, South Carolina, Texas)
- Drug trafficking (Florida, Missouri)
- Aircraft hijacking (Georgia, Missouri)
- Placing a bomb near a bus terminal (Missouri)
- Espionage (New Mexico)

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[1] The Death Penalty Information Center is a non-profit organization tracking all aspects of the capital punishment issue. The organization website, *www.deathpenaltyinfo.org*, contains extensive information.

[2] Alison M. Smith, "Capital Punishment: Constitutionality for Non-Homicide Crimes Such as Child Rape," Congressional Research Service Report, March 21, 2008.

[3] The decision in *Kennedy v. Louisiana*, 128 S.Ct. 2641 (2008), was a five-four split: Justice Kennedy delivered the majority opinion which was joined by Justices Stevens, Souter, Ginsburg, and Breyer; Justices Alito, Roberts, Scalia, and Thomas joined in a dissenting opinion.

- Aggravated assault by incarcerated, persistent felons or murderers (Montana).

METHODS OF EXECUTION

Thirty-five of the capital punishment states, the U.S. military and U.S. government authorize lethal injection as the method of execution; only one capital punishment state does not authorize the use of lethal injection.[4] A few states also authorize the use of other methods—electrocution, gas chamber, hanging, and firing squad. Nevertheless, lethal injection is by far the method most commonly used: in 2008, for example, of the 37 executions, 36 were carried out by lethal injection; only one was carried out by electrocution.[5]

Table 1: Authorized Methods of Execution

Method	Executions Since 1976	Authorization	Jurisdiction
Lethal Injection	974	35 states + U.S. Military and U.S. Government	Alabama, Arizona, Arkansas, California, Colorado,Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Missouri, Montana, Nevada, New Hampshire, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming, U.S. Military, U.S. Government
Electrocution	155	9 states	Alabama, Arkansas, Florida, [Illinois], Kentucky, [Oklahoma], South Carolina, Tennessee, Virginia
Gas Chamber	11	5 states (all have lethal injection as an alternative method)	Arizona, California, Maryland, Missouri, [Wyoming]
Hanging	3	2 states (all have lethal injection as an alternative method)	New Hampshire, Washington
Firing Squad	2	2 states (all have lethal injection as an alternative method)	Idaho, [Oklahoma], Utah** ** Utah offers the firing squad only for inmates who chose this method prior to its elimination as an option.

[1]Notes: States in [brackets] authorize the listed method only if a current method is found to be unconstitutional.

In Nebraska, electrocution was the sole method until the Nebraska Supreme Court ruled the method to be unconstitutional in February 2008. Currently, no other method is authorized.

Source: Bureau of Justice Statistice, Capital Punishment 2006; updated by Death Penalty Information Center.

In 2007, the U.S. Supreme Court agreed to hear a case from Kentucky on whether lethal injection violates the Eighth Amendment ban on cruel and unusual treatment. Because lethal injection is so

[4] Electrocution is the only method authorized in Nebraska, and its use has been declared unconstitutional. Last year, the state supreme court ruled that electrocution violates the prohibition against cruel and unusual punishment. *State v. Mata*, 745 N.W.2d 229 (Nebraska, 2008).

[5] The Bureau of Justice Statistics reports that in 2008, nine states executed 37 prisoners (Texas—18; Virginia—4; Georgia and South Carolina each executed 3; Ohio, Florida, Mississippi, and Oklahoma each executed 2; and Kentucky executed 1 prisoner.) Of these executions, 36 were carried out by lethal injection; only one, in South Carolina, was carried out by electrocution. Bureau of Justice Statistics, "Advance Count of Executions: January 1, 2008 – November 30, 2008," *www.ojp.usdoj.gov/bjs/pub/html/cp/2007/tables/cp07sta.htm.*

commonly the method of choice, many capital punishment states unofficially instituted a moratorium on imposing the death penalty pending a decision in that case.[6] On April 16, 2008, the Court affirmed the constitutionality of Kentucky's three-drug protocol for carrying out lethal injections, finding that the procedure does not amount to cruel and unusual punishment under the Eighth Amendment. Although the Court's seven member majority decision is likely to lift the moratorium, the issue appears not fully resolved. As Justice Paul Stevens, noted in his concurring opinion,

> I assumed that our decision would bring the debate about lethal injection as a method of execution to a close. It now seems clear that it will not. The question whether a similar three-drug protocol may be used in other States remains open, and may well be answered differently in a future case on the basis of a more complete record. Instead of ending the controversy, I am now convinced that this case will generate debate not only about the constitutionality of the three-drug protocol, and specifically about the justification for the use of the paralytic agent, pancuronium bromide, but also about the justification for the death penalty itself.[7]

The decision in *Baze*, which upholds this aspect of states' abilities to carry out capital punishment, is a noted departure from recent decisions that have tended to narrow application of the death penalty. For example, in 2002, the Court found that executions of mentally retarded criminals constitute cruel and unusual punishment prohibited by the Eighth Amendment.[8] In 2005, the Court ruled that the death penalty for persons having committed capital crimes while under the age of 18 constitutes cruel and unusual punishment and is, likewise, constitutionally prohibited.[9] And, as mentioned earlier, in 2008, the Court held that the death penalty for the rape of a child where the crime did not result, and was not intended to result, in death is constitutionally prohibited.

CONVICTION AND APPEALS

The U.S. Supreme Court has long held the death penalty should be reserved for only the worst criminals, and because of the seriousness and irreversibility of the penalty, capital cases require special consideration and handling, with procedural and substantive protections that go far beyond those required for non-capital defendants. Capital cases involve separate proceedings for establishing guilt and for determining punishment with exhaustive review of both aggravating and mitigating factors. Following a decision in the trial court, direct appeal, post-conviction appellate review, and habeas corpus review at the federal level are all part of death penalty process. Appellate reviews based on due process rights, the right to effective assistance of counsel, and newly discovered evidence are the most common, and individual cases typically take several years to resolve.

RECENT STATE ACTION

As you know, the death penalty is a perennially hot topic, with fervid debate and passionately argued rationale and counter argument. It is not, therefore, surprising that state legislatures regularly consider measures on the issue, including contradictory measures. According to the Death Penalty Information Center, lawmakers in at least five states—Alaska, Georgia, New Hampshire, Virginia, and Utah—are in the process of considering bills to adopt or expand capital

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[6] *Baze v. Rees*, 128 S.Ct. 1520 (U.S. 2008).

[7] Justice Stevens, concurring in the judgment, but writing separately, *Baze v. Rees*, 128 S.Ct. 1520, at 1542-43.

[8] *Atkins v. Virginia*, 122 S.Ct. 2242 (U.S. 2002).

[9] *Roper v. Simmons*, 125 S.Ct. 1183 (U.S. 2005).

punishment provisions. Lawmakers in at least 15 states are considering bills to limit or abolish capital punishment. Among those states, bills in Colorado, Kansas, Maryland, Missouri, Montana, Nebraska, New Hampshire, New Mexico, and Washington would abolish the death penalty. The Death Penalty Information Center notes that the extreme cost of the death penalty is a factor for many of these states.

HISTORY OF CAPITAL PUNISHMENT IN ALASKA

SUMMARY

Although records are incomplete, it appears that capital punishment was condoned, if not legal, in Alaska from the time of its purchase from Russia in 1867. The available historical records suggest that seven persons were hanged by the army or miners' courts between 1869 and 1899. After 1900, when criminal and civil codes had been established for the Territory, another eight persons were hanged for crimes deemed to warrant death. In 1957, the Territorial Legislature abolished capital punishment, citing concern that innocent persons could be executed.

Since that time, Alaska lawmakers in 11 Legislatures have considered 23 bills pertaining to the issue. Nineteen bills died without reaching a floor vote. Four passed to the other chamber where all died in committee. The bill advancing the furthest was SB 60 (1997), calling for a statewide advisory vote. After passing the Senate, the House Judiciary Committee offered a substitute that would provide the voters with a comparison of the estimated total costs of a capital trial through execution with those of a similar case resulting in life imprisonment without parole. The bill died with a failed attempt to discharge it from the House Finance Committee. Outside of the legislature, a ballot initiative was certified by the Division of Elections in 1985, but it failed to make the ballot because of insufficient public support.

CAPITAL PUNISHMENT IN ALASKA

After its purchase from Russia in 1867, Alaska was administered by the U.S. Army and later by the U.S. Navy until passage of the Organic Act of 1884, by which Congress extended the mining laws of the United States and the Oregon Code of Laws, "so far as they may be applicable" to the district of Alaska.[10] According to Carter's Annotated Alaska Codes published in 1907, the laws regarding death warrants and designating the procedures for execution came from the laws of Oregon—presumably by virtue of the Organic Act. The Organic Act also provided for a governor and a court system. The more pertinent death penalty laws, however—those providing that an individual found guilty of murder in the first degree, or murder occasioned by obstruction of, or damage to, a railroad would be put to death unless the jury returned a verdict specifically qualifying that the sentence should be "without capital punishment"—appear to have been derived from laws in Ohio, and the exact date of their incorporation is uncertain.[11] We know, however, that Congress made provisions

[10] Information from Robert DeArmond's, "Alaska: 1867-1959," in *Alaska: Blue Book 1973*, first edition, 141-154.

[11] See Attachment A, which includes pertinent sections from the following sources: Compilation of the Acts of Congress and Treaties Relating to Alaska from March 30, 1867 to March 3, 1905 (known as the Charlton Code), published in 1906; Carter's Annotated Alaska Codes (known as the Carter Code), published in 1907; Compiled Laws of Alaska (CLA) 1913; Compiled Laws of Alaska, 1933; the Alaska Compiled Laws Annotated (ACLA), 1949; and Chapter 132 Session Laws of Alaska, 1957.

for the rights-of-way for railroads in Alaska in 1898; in 1899, a criminal code was established; and in 1900, a civil code.

Regardless of the exact source or date of inception, the death penalty was used early in Alaska's history. Although records are sketchy and informal, it appears that capital punishment was condoned, if not legal, in Alaska from the time of its purchase from Russia in 1867. The available historical records suggest that seven persons were hanged by the army or miners' courts between 1869 and 1899.[12] Another eight persons were hanged for crimes deemed to warrant death between the advent of criminal and civil codes in Alaska and the abolition of capital punishment in 1957.[13]

The Legislative Library has no record of the debate on the elimination of the death penalty. An Associated Press article published following the bill's passage in the House in 1957, however, suggests that Warren Taylor, the bill's primary sponsor, was concerned about the possibility of individuals being unjustly executed. According to a more recent news article, a "significant basis" for the bill was the uneven application of the penalty—"three-fourths of the people hanged in Alaska this century were members of racial minorities, even though minorities accounted for only about one-fourth of the murders."[14]

Table 2, on the following page, represents a compilation of the historical information available on executions in Alaska. The information has been derived from documents provided by the Historical Collections within the Alaska State Library and from information found in William R. Hunt's *Golden Places: The History of Alaska-Yukon Mining*, published by the National Park Service.

[12] Attachment B contains three items. Items compiled by the Historical Collections of the Alaska State Library include a letter from Alaska Superior Court Judge Gerald Williams dated May 23, 1977, regarding hangings prior to 1900, and a list of hangings in Alaska by date, source unknown. The third document—and excerpt from William R. Hunt's *Golden Places: The History of Alaska-Yukon Mining, With Particular Reference to Alaska's National Parks* (Anchorage: National Park Service, 1990), chapter 16—describes the hanging of Martin Severts by miners isolated in Lituya Bay during the winter of 1899. The incident became the basis for Jack London's "The Unexpected," first published in 1906.

[13] Attachment C contains two items compiled by the Historical Collections of the Alaska State Library: a letter from Charles J. Zibulka to the curator of the Alaska State Museum and Historical Library, dated August 10, 1965, and a table listing executed persons from 1902 forward, source unknown.

[14] Attachment D contains an Associated Press news article, "House Votes to Abolish Alaska Death Penalty," published February 22, 1957; a transcript of that article; and Averil Lerman's," Death's Double Standard: Territorial Alaska's Experience with Capital Punishment Showed Race and Money Mattered," published May 1, 1994, in the *Anchorage Daily News*.

Table 2: Executions in Alaska

Date	Name	Race	Sex	Location
1869	Scutdoo	Indian	male	Wrangell
1869	unknown	Indian	male	Wrangell
1877	Boyd	Caucasian	male	Wrangell
1882	Sad Kajun	Indian	male	Juneau
1882	Kakusakuch Kajun	Indian	male	Juneau
1898	unknown	unknown	male	Valdez
1899	Martin Severts	Caucasian	male	Lituya Bay
1902	Fred Hardy	Caucasian	male	Nome
1903	Homer Bird	Caucasian	male	Sitka
1921	Mailo P. Segura	Immigrated from Montenegro; presumed Caucasian	male	Fairbanks
1921	Hamilton	Indian	male	Fairbanks
1929	Constantine Beaver	Indian	male	Fairbanks
1939	Nelson Charles	Indian	male	Juneau
1948	Austin A. Nelson	African-American	male	Juneau
1950	Eugene LaMoore	African-American	male	Juneau

Sources: Holdings of the Alaska State Library, Historical Collections; and information in William R. Hunt's *Golden Places: The History of Alaska-Yukon Mining, With Particular Reference to Alaska's National Parks* (Anchorage: National Park Service, 1990), chapter 16.

EFFORTS TO REINSTITUTE THE DEATH PENALTY IN ALASKA

Since 1957, lawmakers in 11 Alaska Legislatures have considered 23 bills pertaining to the issue. The first attempt to reinstate capital punishment came in 1974; the most recent was in 1999. Seven bills proposed placing an advisory vote before the public asking whether the legislature should enact a death penalty law.[15] All 16 of the bills to authorize the death penalty specified murder in the first degree as a capital felony; three of those would also have authorized the death penalty for the murder of a child under certain aggravating circumstances.

Of the 23 bills introduced, 18 died in committee without a floor vote of the originating body (13 died without a hearing or in the first committee; six died in the second committee). Of the five bills that reached a floor vote, one failed (HB 675 in 1974) and four passed the originating body but failed to reach the floor of the other body.[16] Three of the bills that passed one chamber proposed only that advisory votes be placed before the public. The following table provides a brief overview of these bills.

[15] Several of the other bills contained provisions for advisory votes, but in those, the advisory vote concerned the effective date of the reinstitution of capital punishment.

[16] House Bill 675 failed to pass the House in 1974. Bills that passed out of their originating bodies were HB 235 in 1983; CSSB 17 (Jud)(ct rules & efds fld) in 1990; CSSSSB 52 (Jud) in 1996; and HB 60 in 1997. In both 1990 and 1997, attempts to discharge the bills from committees failed.

Table 3: Bills to Reinstate the Death Penalty, 1959 - 2008

Legislature	Bill	Sponsors	Provisions	Final Status
8th Legislature 1973 - 1974	HB 675	SAYLORS	Authorizing death penalty for certain murders	failed House
12th Legislature 1981-1982	SB 73	BRADLEY	Classifying 1st degree murder as a capital felony and establishing sentencing procedures	(S) STA
	HB 458	HURLBERT	Authorizing capital punishment, classifying murder in the 1st degree as a capital felony, and establishing sentencing procedures	(H) JUD
13th Legislature 1983-1984	SB 121	PETTYJOHN, Kelly, Fischer P, Faiks	Authorizing capital punishment, classifying murder in the 1st degree as a capital felony, and establishing sentencing procedures	(S) JUD
	HB 140	PESTINGER, Ward, Flood, Liska, Shultz	Authorizing capital punishment, classifying murder in the 1st degree as a capital felony, and establishing sentencing procedures	(H) FIN
	HB 235	BUSSELL, Uehling, Liska, Shultz	Authorizing an advisory vote on the death penalty for 1st degree murder	(S) STA
14th Legislature 1985-1986	SB 119	FISCHER, P, Kelly, DeVries, Coghill, Faiks, Abood	Authorizing capital punishment, classifying murder in the 1st degree as a capital felony, and establishing sentencing procedures	(S) HESS
	HB 163	PETTYJOHN, Jenkins, Shultz, Taylor, Marrou, Gruenberg	Authorizing capital punishment, classifying murder in the 1st degree as a capital felony, and establishing sentencing procedures	(H) HESS
15th Legislature 1987-1988	SB 7	ABOOD, Kelly, Faiks, Fischer, P	Authorizing capital punishment, classifying murder in the 1st degree as a capital felony, and establishing sentencing procedures	(S) JUD
	SB 31	FISCHER, P, Kelly, Faiks	Authorizing capital punishment, classifying murder in the 1st degree as a capital felony, and establishing sentencing procedures	(S) HESS
16th Legislature 1989-1990	SB 17	FISCHER, P, Kelly, Pearce, Halford, Faiks	Authorizing capital punishment, classifying murder in the 1st degree as a capital felony, and establishing sentencing procedures; directing an advisory vote on whether the capital punishment law should take effect	(H) JUD
17th Legislature 1991-1992	SB 13	FISCHER, P, Frank, Pearce, Halford	Providing for an advisory vote on capital punishment	(S) FIN
18th Legislature 1993-1994	SB 127	(S) Judiciary	Authorizing capital punishment, classifying 1st degree murder as a capital felony; establishing sentencing procedures; authorizing an advisory vote on instituting capital punishment	(S) JUD
	HB 162	SANDERS, Olberg, Bunde, Kott, Vezey, James	Authorizing capital punishment, classifying 1st degree murder as a capital felony; establishing sentencing procedures; authorizing an advisory vote on instituting capital punishment	(H) FIN
19th Legislature 1995-1996	SB 52	TAYLOR, Pearce, Rokeberg, Kohring	Providing for an advisory vote on capital punishment	(H) FIN
	HB 45	SANDERS, Kohring	Authorizing capital punishment, classifying 1st degree murder as a capital felony, and establishing sentencing procedures; authorizing an advisory vote on instituting capital punishment	(H) STA
	HB 481	MASEK, Kohring, Ogan	Authorizing capital punishment, classifying 1st degree murder as a capital felony, and allowing the imposition of the death penalty when certain of those murders are committed against children; establishing sentencing procedures; and amending certain Rules of Criminal and Appellate Procedure	(H) JUD
20th Legislature 1997-1998	SB 60	TAYLOR, Pearce	Providing for an advisory vote on capital punishment	(H) FIN
	HB 131	SANDERS, Rokeberg, Kohring	Providing for an advisory vote on capital punishment	(H) JUD
	HB 166	MASEK, Kohring	Authorizing capital punishment, classifying 1st degree murder as a capital felony, and allowing the imposition of the death penalty when certain of those murders are committed against children; establishing sentencing procedures; and amending certain Rules of Criminal and Appellate Procedure	(H) JUD
21st Legislature 1999-2000	HB 20	KOHRING	Providing for an advisory vote on capital punishment	(H) STA
	HB 48	SANDERS	Providing for an advisory vote on capital punishment	(H) STA
	HB 75	MASEK, Kohring	Relating to murder; authorizing capital punishment, classifying 1st degree murder as a capital felony, and allowing the imposition of the death penalty when certain of those murders are committed against children; establishing sentencing procedures; and amending certain Rules of Criminal and Appellate Procedure	(H) JUD

Source: House and Senate Journals and *Final Status of Bills and Resolutions*, various years.

Table 4, on the following page, is a more detailed description of bills that have been before the Alaska legislature. It shows the measures introduced and provides a brief synopsis and the major provisions of each bill. Identical bills introduced in 1981 (HB 458 and SB 73) served as the basis for most of the subsequent proposals.

One additional attempt to bring the issue before the voters began on September 16, 1985, when the Division of Elections certified a ballot initiative proposed by Representative Fritz Pettyjohn, former Representative Sam Pestinger, and William Moffatt. In order to have the initiative appear on the 1988 primary ballot, supporters needed 21,317 signatures on file by October 9, 1986. By that date, supporters had collected only 14,245 signatures, and so the initiative did not appear on the ballot.

We hope you find this information to be useful. If you have questions, need additional information, or would like copies of the various measures, please let us know.

Table 4: ALASKA BILLS PERTAINING TO CAPITAL PUNISHMENT, Details (1959-2008)

Eighth Legislature, 1973 - 1974

House Bill 675

Prime Sponsor: A.M. Saylors

Referred to House Judiciary; committee substitute passed Judiciary; failed to pass House.

(CS made minor text changes).

- Mandated the death penalty for first degree murder if the murder was 1) intentional and carried out under an agreement; 2) the victim was a peace officer intentionally killed in the course of duty; 3) the murder was committed during the commission or attempted commission of robbery under AS 11.15.240, kidnapping under AS 11.15.260, rape, or burglary under 11.20.080-130; 4) the convicted person was, at the time of the murder, confined in prison or had escaped from prison; or 5) the victim was a witness to a crime who was murdered for the purpose of preventing his or her testimony in a criminal proceeding.
- Changed Rule 35, Rules of Criminal Procedure, to eliminate the power of the court to reduce sentences in the case of certain murder convictions.

Twelfth Legislature, 1981 - 1982

Senate Bill 73

Prime Sponsor: Brad Bradley

Referred to Senate State Affairs and Judiciary; did not pass out of State Affairs.

- Classifed murder in the first degree as a capital felony punishable by a prison term of 20-99 yrs or death.
- Set procedure for automatic review by the supreme court for capital punishment sentences and listed determinations to be made by the court, including whether sentence was imposed under the influence of passion, prejudice or other arbitrary factor; the evidence supported the finding of an aggravating factor; and the sentence was excessive or disproportionate to the penalty imposed in similar cases. If the judgment of conviction and death sentence was upheld, the court would specify the time, place, and manner of execution.
- Set out the sentencing procedure for a capital felony, which included a separate proceeding before a jury including any evidence presented to the jury as to mitigating or aggravating factors the court considered to have probative value, followed by an advisory sentence by a jury which would include findings as to whether aggravating factors existed to justify the death sentence, mitigating factors existed which outweighed the aggravating factors and whether the sentence should be imprisonment or death. The court, after considering evidence and the advisory sentence would impose sentence. If it was death, the court would make written findings of aggravating and/or mitigating factors considered.
- Defined the following as aggravating factors: defendant's conduct manifested deliberate cruelty in that it involved torture or aggravated battery; the conduct created a risk of imminent physical injury to three or more persons, other than accomplices; defendant had a prior felony conviction involving the use of violence; defendant committed the offense pursuant to an agreement for gain; defendant was on release for another felony charge or conviction having assault as an element; defendant knowingly directed the offense at an active or former officer of the court, judicial officer, prosecuting attorney, law enforcement officer, correctional employee, or fireman because of or during official duty; or defendant was a member of an organized group and the offense was committed to further the group's criminal objectives.
- Defined the following as mitigating factors: defendant committed the offense under some degree of duress, coercion, threat or complusion insufficient to constitute a defense, but which affected his conduct; the conduct of a youthful defendant was influenced by a more mature person; defendant had provocation from the victim; or defendant assisted authorities detect or apprehend other persons who committed the offense.

House Bill 458 *Text was the same as Senate Bill 73.*

Prime Sponsor: Vern Hurlbert

Referred to House Judiciary; did not pass out of committee.

Table 4: ALASKA BILLS PERTAINING TO CAPITAL PUNISHMENT, Details (1959-2008)

Thirteenth Legislature, 1983 - 1984

Senate Bill 121 *Text was the same as Senate Bill 73, 1981, with the exception listed below.*

Prime Sponsor: Fritz Pettyjohn

Co-Sponsors: Tim Kelly, Paul Fischer, and Jan Faiks

Referred to Senate Judiciary and Finance; did not pass out of Judiciary.

The jury imposed sentence rather than issuing an advisory sentence for the court's imposition of sentence.

House Bill 140 *Text was the same as SB 73, 1981.*

Prime Sponsor: Sam Pestinger

Co-Sponsors: Jerry Ward, Joe Flood, John Liska, Dick Shultz

Referred to House Judiciary and Finance; committee substitute passed Judiciary; did not pass out of Finance.

CSHB 140(Jud) *Added the following provisions:*

- A person convicted of a capital offense may not be released on bail before sentencing or pending appeal.
- Transferred responsibility for issuing the time, place and manner of execution from the supreme court to the commissioner of corrections.
- Gave defendant a choice of execution by lethal injection or by firing squad.
- Stated an execution by firing squad would be carried out at a state prison by a firing squad of six peace officers.
- Stated that the commissioner of corrections in consultation with a physician would select a method of injection and a drug or combination of drugs for use in an execution by lethal injection.
- Stated that the commissioner could invite up to 9 citizens 19 years of age or older to attend the execution, including the prosecuting and defense attorney, relatives, friends or religious representatives designated by the defendant. No more than 6 media members could attend and were to serve as a pool for other members of the media; and that photographic or recording equipment would not be allowed until the site was restored to an orderly condition.
- Stated that if, after sentence was imposed, the defendant was found to be incompetent or pregnant, the court and attorneys would be notified and the execution of sentence would be stayed pending further order of the court. If pregnant, the death sentence would be stayed until the defendant was no longer pregnant. At that time the court would issue another warrant specifying a date of execution not less than 30 days nor more than 60 days after the date of the warrant. If found to be incompetent, an order for commitment as provided under AS 12.47.110 would be issued. If competent, the supreme court would issue another warrant specifying the date of execution not less than 30 days nor more than 60 days after the date of the warrant.

House Bill 235

Prime Sponsor: Charlie Bussell

Co-Sponsors: Rick Uehling, John Liska, Dick Shultz

Passed the House; referred to Senate State Affiars and Judiciary; did not pass out of Senate State Affairs.

Provided for an advisory vote at the next election on whether the legislature should enact a law providing for capital punishment for murder in the first degree.

Table 4: ALASKA BILLS PERTAINING TO CAPITAL PUNISHMENT, Details (1959-2008)

Fourteenth Legislature, 1985 - 1986

Senate Bill 119 *Text was the same as CS HB 140 (Jud), 1983, with the provision below added.*

Prime Sponsor: Paul Fischer

Co-Sponsors: Tim Kelly, Ann DeVries, Jack Coghill, Jan Faiks, and Mitch Abood

Referred to Health, Education, and Social Services, Judiciary and Finance; did not pass out of Health, Education, and Social Services.

Added a provision for an advisory vote at the next election on whether or not capital punishment for murder in the first degree should go into effect 08/15/87.

House Bill 163 *Text was the same as Senate Bill 73, 1981, with the three exceptions listed below.*

Prime Sponsor: Fritz Pettyjohn

Co-Sponsors: Roger Jenkins, Dick Shultz, Robin Taylor, Andre Marrou, Max Gruenberg

Referred to House Health, Education, and Social Services, Judiciary and Finance; did not pass out of Health Education, and Social Services.

- The jury imposed sentence rather than issuing an advisory sentence for the court's imposition of sentence.
- If the death penalty was imposed, the defendant was considered to have applied for modification of the verdict or findings under Criminal Rule 35.
- The execution would be carried out at a state correctional facility by either hanging or by continuous, intravenous administration of a lethal dose of sodium thiopental.

Fifteenth Legislature, 1987 - 1988

Senate Bill 7 *Text was practically the same as CS HB 140(Jud), 1983, with the exceptions listed below.*

Prime Sponsor: Mitch Abood

Co-Sponsors: Tim Kelly, Jan Faiks, Paul Fischer

Referred to Senate Health, Education, and Social Services, Judiciary, and Finance; did not pass out of Judiciary.

- Stated that death warrant was to specify date of execution which was to be no less than 30 nor more than 60 days after the date of the warrant.
- Omitted the guidelines by which the firing squad would be selected and the form of lethal injection would be determined. Simply stated that regulations were to be adopted.
- Omitted the guidelines concerning attendance at executions. Simply stated that regulations were to be adopted.
- Changed the aggravating factors to be considered to the following: defendant's conduct manifested deliberate cruelty in that it involved sexual assault in the first degree, kidnapping or assault in the first degree; defendant's conduct caused the death of two or more persons, other than accomplices; defendant had a prior conviction for murder; defendant knowingly directed the conduct at the President of the U.S. or governor of the state; defendant knowingly directed the conduct at a law enforcement, judicial officer, or correctional officer during or because of official duties; defendant killed a child 9 years of age or younger during the commission of the offense; defendant committed the offense under an agreement for gain; defendant committed the offense while avoiding lawful arrest or escaping from lawful confinement; or defendant committed the offense after escaping from the lawful custody of a peace officer or place of lawful confinement.

Table 4: ALASKA BILLS PERTAINING TO CAPITAL PUNISHMENT, Details (1959-2008)

Fifteenth Legislature (continued)

CSSB 7(HESS) *Added the following provisions.*

- Amended AS 11.31.100(d) and AS 11.31.110(c) to include capital felonies in the definition of class A felonies
- Inserted the guidelines from CSHB 140 (Jud) by which the firing squad would be selected and the form of lethal injection would be determined.
- Inserted the guidelines from CSHB 140(Jud) concerning attendance at executions.
- Made the following revisions to the list of aggravating factors: 1) added torture and aggravated battery to the list of actions manifesting deliberate cruelty; 2) added a prior conviction for a felony involving the use of violence to the factor citing prior murder convictions; 3) added prosecuting attorneys and firemen to the list of people the defendant may have knowingly directed the offense at; 4) added defendant's conduct created a risk of imminent physical injury to 3 or more persons other than accomplices; 5) deleted the factor citing the killing of a child of 9 years of age or younger; and 6) revised the factors concerning the committing the offense while avoiding arrest or escaping from confinement to say that the defendant was on release for another felony charge or conviction having assault as a necessary element. All these revisions made the list of aggravating factors practically the same as those in CS HB 140 (Jud).
- Added a provision for an advisory vote at the next election on whether or not capital punishment for murder in the first degree should go into effect 08/15/89

Senate Bill 31 *Text was the same as CSHB 140(Jud), 1983, with the following addition.*

Prime Sponsor: Paul Fischer

Co-Sponsors: Tim Kelly and Jan Faiks

Referred to Senate Health, Education, and Social Services, Judiciary and Finance; did not pass out of Health, Education, and Social Services.

Added a provision for an advisory vote at the next election on whether or not capital punishment for murder in the first degree should go into effect 08/15/89

Sixteenth Legislature, 1989 - 1990

Senate Bill 17 *Although arranged differently, text of the original version was practically the same as CSSB 7 (HESS) 1987, with the following additions.*

Prime Sponsor: Paul Fischer

Co-Sponsors: Tim Kelly, Drue Pearce, Rick Halford and Jan Faiks

CSSB 17 (Jud) (ct rules & efds fld) passed the Senate; referred to House Judiciary and Finance; failed to pass Judiciary.

- Amended AS 12.30.020(a) to exclude a capital felony from the requirement of bail and release.
- Amended AS 12.30.020(a) to exclude persons charged with a capital felony from the provision prohibiting new charges against a defendant who remains incompetent for five years after the charges have been dismissed under the subsection.
- In the section regarding the review of judgment of conviction, added to the issues the court shall determine "any other issue the defendant may raise as a point on appeal."
- Added sections regarding the applicability of various sections of the bill to criminal and appellate rules.

CSSB 17 (Jud)

- Added a section of Legislative Findings
- Added a section stating that it was up to the prosecuting attorney to determine whether or not to seek the death penalty. If the death penalty was to be sought, the court, defendant and defendant's counsel were to be notified within 10 days of arraignment.
- Deleted the section providing for execution by firing squad.

CSSB 17 (Jud)(ct rules & efds fld)

- Deleted the sections regarding the applicability of the bill to criminal and appellate rules.
- Deleted the sections regarding the effective dates.

Table 4: ALASKA BILLS PERTAINING TO CAPITAL PUNISHMENT, Details (1959-2008)

Seventeenth Legislature, 1991 - 1992

Senate Bill 13

Prime Sponsor: Paul Fischer

Co-Sponsors: Steve Frank, Drue Pearce and Rick Halford

Referred to Senate Judiciary and Finance; did not pass out of Finance.

Provided for an advisory vote at the next general election on whether the legislature should enact a law providing for capital punishment for murder in the first degree.

Eighteenth Legislature, 1993 - 1994

House Bill 162 *Text was practically the same as CSSB 17 (JUD) (ct rules & efds fld), 1989, with the following changes.*

Prime Sponsor: Jerry Sanders

Co-Sponsor: Harley Olberg

Referred to House Judiciary and Finance; did not pass out of Finance.

- Omitted sections amending AS 11.31.100(d) to replace "murder in the first degree" with "capital felony" and omitted amending AS 11.31.110(c).
- Added amendment to AS 12.55.025(i) to "include determining if a sentence of death should be imposed under AS 12.58."
- Required a 99-year sentence for defendants convicted of murder in the 1st degree but not sentenced to death if 1) the conviction was for the murder of a peace officer, firefighter or correctional official engaged in the performance of official duties; 2) the defendant had previous convictions for 1st or 2nd degree murder or homocide with elements of 1st or 2nd degree murder; or 3) the court finds the defendant subjected the victim to substantial physical torture.
- Prohibited a sentence of death from being suspended.
- Required that aggravating factors be found "unanimously beyond a reasonable doubt" and that aggravating factors outweigh mitigating factors unanimously by a preponderance of evidence."
- Removed sexual assault in the first degree, kidnapping, and assault in the 1st degree from the list of aggravating factors. Added being a member of an organized group of 5 or more and committing the offense to further the criminal objectives of the group to the list of aggravating factors.
- Added hanging as a method of execution and specified sodium thiopental as the substance to be used in lethal injection.
- Omitted sections pertaining to witnesses and invitees to and news media coverage of an execution.
- Reinserted sections regarding the applicability of sections of the bill to criminal and appellate rules.
- Reinserted the sections regarding the effective dates.

Table 4: ALASKA BILLS PERTAINING TO CAPITAL PUNISHMENT, Details (1959-2008)

Eighteenth Legislature (continued)

Senate Bill 127 *Text was similar to HB 162 with the following exceptions.*

Prime Sponsor: Senate Judiciary Committee

Referred to Senate Judiciary and Finance; did not pass out of Judiciary.

- Eliminated section on Legislative Findings.
- Eliminated the provision that the prosecuting attorney determines whether to seek the death penalty.
- Eliminated sections on applicibility of the bill to criminal and appellate court rules.

Nineteenth Legislature, 1995 - 1996

House Bill 45 *Text was similar to SB 127 with the following exceptions.*

Prime Sponsor: Jerry Sanders

Co-Sponsor: Vic Kohring

Referred to House State Affairs, Judiciary, and Finance; did not pass out of State Affairs.

- Added a section including capital felonies among violations required to be reported in applications for permits under AS 05.15.140(b).
- Amended AS 11.31 to incorporate capital offenses into attempt, solicitation, and conspiracy to commit a crime.
- Eliminated hanging as the preferred manner of execution.
- Amended AS 47.10 to include capital felony among the charges for which minors of 16 or more must be charged, prosecuted, and sentenced as adults unless they prove themselves amenable to treatment

Senate Bill 52 *Text was the same as HB 45 with the following exceptions.*

Prime Sponsor: Robin Taylor

Co-Sponsor: Drew Pearce

Referred to Judiciary and Finance; committee subsitute for sponsor substitute passed Senate; referred to House Judiciary and Finance; did not pass out of Finance.

- Eliminated sections amending AS 11.31 (attempt, solicitation, and conspiracy to commit a crime).
- Reinserted the provision that death would be inflicted by hanging unless the defendant elected a lethal dose of sodium thiopental.
- Eliminated provision that minors 16 and over committing capital offenses would be charged, prosecuted and sentenced as adults.

SSSB 52 *Text became identical to HB 45.*

CSSSSB 52 (Jud) *Eliminated all previous provisions; provided for an advisory vote at the next election on whether the legislature should enact a law providing for capital puishment for murder in the first degree.*

House Bill 481 *Text was similar to HB 45 with the following exceptions.*

Prime Sponsor: Beverly Masek

Co-Sponsors: Vic Kohring and Scott Ogan

Referred to House State Affairs and Judiciary; did not pass out of Judiciary.

- Aggravating factors were limited to the defendant's having caused the death of a child under the age of 18, the defendant's being at least two years older than the child, and the defendant had or was attempting to kidnap, assault, or sexually assault the child.
- Eliminated the advisory vote provision regarding whether the law as passed should go into effect on a certain date.
- Reinserted sections regarding the applicability of the bill to criminal and appellate rules of court.

Table 4: ALASKA BILLS PERTAINING TO CAPITAL PUNISHMENT, Details (1959-2008)

Twentieth Legislature, 1997 - 1998

House Bill 131 *Called for an advisory vote on capital punishment for 1st degree murder with impostition procedures consistent with the US Constitution as interepreted by the US Supreme Court.*

Prime Sponsor: Jerry Sanders

Co-Sponsors: Norm Rokeberg and Vic Kohring

Referred to Judiciary and Finance; died in Judiciary.

House Bill 166 *Classified 1st degree murder as a capital felony and allowed death penalty for murder of a child under certain circumstances. Made changes to rules of criminal and appellate procedure, and established sentencing procedures for capital felonies.*

Prime Sponsor: Beverly Masek

Co-Sponsors: Vic Kohring

Referred to Judiciary and Finance; died without a hearing.

Senate Bill 60 *Originally identical to HB 131. The House Judiciary Committee substitute inserted information comparing the costs of implementing the death penalty to those for 99 years of incarceration, and required the Lt. Governor to calculate the ratio between those costs to be published on the ballot for the advisory vote.*

Prime Sponsor: Robin Taylor

Co-Sponsors: Drue Pearce

The original version passed the Senate on a vote of 13 to 6; the House Judiciary Committee offered a CS and moved the bill to the Finance Committee where it died after a vote to discharge it from the committee failed 30 to 1.

Twenty-first Legislature, 1999 - 2000

House Bill 20 *Called for a statewide addvisory vote on the death penalty. It adopted the requirement for the fiscal comparison of capital punishment and life imprisonment (99 years) without parole contained in HCS SB 60 (1997).*

Prime Sponsor: Vic Kohring

Co-Sponsors:

The bill died without a hearing.

House Bill 48 *Called for an advisory vote with language identical to HB 131 (1997).*

Prime Sponsor: Jerry Sanders

Co-Sponsors:

The bill died without a hearing.

House Bill 75 *Identical to HB 166 (1997).*

Prime Sponsor: Beverly Masek

Co-Sponsors: Vic Kohring

The bill died in the first committee of referral after two hearings.

Notes: No bills regarding capital punishment were introduced in the 22nd through the 25th Legislatures (2001 - 2008).
Sources: Bill texts, bill histories, *Final Status of Bills and Resolutions*, 1975 - 1992; and Bill Action and Status Inquiry System (B

The distinguishing features of a criminal trial are what are known in the language of the law as the presumption of innocence and the burden of proof beyond a reasonable doubt. The law presumes a defendant to be innocent of crime. Thus, a defendant, although accused, begins the trial with a clean slate -- with no evidence favoring conviction. The presumption of innocence alone is sufficient to acquit a defendant, unless you are satisfied beyond a reasonable doubt of the defendant's guilt, after careful and impartial consideration of all the evidence in the case.

This last-mentioned requirement, that you be satisfied beyond a reasonable doubt of the defendant's guilt, is what is called the burden of proof. It is not required that the prosecution prove guilt beyond all possible doubt, for it is rarely possible to prove anything to an absolute certainty. Rather, the test is one of reasonable doubt. A reasonable doubt is a doubt based upon reason and common sense. Proof beyond a reasonable doubt must be proof of such a convincing character that, after consideration, you would be willing to rely and act upon it without hesitation in your important affairs. A defendant is never to be convicted on mere suspicion or conjecture.

The burden of proving the defendant guilty beyond a reasonable doubt always rests upon the prosecution. This burden never shifts throughout the trial, for the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence. A defendant has the absolute right not to testify, and

you must not draw any inference against the defendant for not testifying. Thus a reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove every essential element of the crime charged, beyond a reasonable doubt, a defendant has the right to rely upon the failure of the prosecution to establish such proof. A defendant may also rely upon evidence brought out on cross-examination of witnesses for the prosecution.

USE NOTE

Comment [sf1]: insert at approximately 6
"

McCurry v. State, 538 P.2d 100 (Alaska 1975); Davenport v. State, 519 P.2d 452 (Alaska 1974).

This instruction is usually given twice, once at the beginning of trial and once with the closing instructions.

MEMORANDUM

STATE OF ALASKA

Department of Law - Criminal Division

To: Members, House Judiciary Committee

Date: February 24, 2009

From: Susan S. McLean
Acting Deputy Attorney General

Tel No: (907) 269-6379
Fax: (907) 269-6305

Subject: Statistics and Constitutional Law – HB 9

The attached documents are provided in response to questions raised yesterday during the initial hearing regarding HB 9. Attached are:

1. DOC statistics pertaining to the length of sentences being served by those convicted of Murder in the First Degree, which reflects those serving more than 90 years.

2. Copies of the following U.S. Supreme Court cases pertaining to capital punishment:

    a. *Roper v. Simmons,* 543 U.S. 551 (2004) (juvenile offenders)
    b. *Kennedy v. Louisiana*, 128 S.Ct. 2641 (2008) and 129 S.Ct. 1 (modifying original opinion) (offenders convicted of raping a child)
    c. *Coker v. Georgia,* 433 U.S. 584 (1977) (offenders convicted of raping an adult)
    d. *Atkins v. Virginia*, 536 U.S. 304 (2002) (offender who is diagnosed as "mentally retarded")

STATISTICS ON MURDER 1 INMATES 12/31/2008

INTAKE YEAR	COUNT
1972	1
1973	1
1976	1
1977	2
1978	1
1980	2
1981	4
1982	2
1983	6
1984	7
1985	2
1986	14
1987	13
1988	7
1989	4
1990	10
1991	4
1992	7
1993	8
1994	6
1995	13
1996	6
1997	16
1998	12
1999	2
2000	5
2001	9
2002	7
2003	9
2004	4
2005	16
2006	10
2007	20
2008	17
TOTAL	248

AGE GROUP	F	M	TOTAL
19 AND UNDER	0	2	2
20 - 24	1	11	12
25 - 29	0	28	28
30 - 34	0	32	32
35 - 39	3	25	28
40 - 44	2	26	28
45 - 49	6	36	42
50 - 54	0	23	23
55 - 59	0	26	26
60 - 64	0	15	15
65 AND OVER	0	12	12
TOTAL	12	236	248

SENT/UNSENT	COUNT
SENTENCED	224
UNSENTENCED	24
TOTAL	248

SENTENCE LENGTH	F	M	TOTAL
LESS THAN 20 YRS	0	8	8
20 - 29 YRS	0	3	3
30 - 39 YRS	0	10	10
40 - 49 YRS	0	8	8
50 - 59 YRS	1	16	17
60 - 69 YRS	0	19	19
70 - 79 YRS	1	19	20
80 - 89 YRS	2	9	11
90 - 99 YRS	4	101	105
100 YRS AND OVER	0	12	12
UNKNOWN	4	31	35
TOTAL	12	236	248

AVERAGE SENTENCE LENGTH
86 YEARS

COURT LOCATION	COUNT
JUNEAU	3
KETCHIKAN	6
BARROW	2
KOTZEBUE	1
NOME	2
ANCHORAGE	85
DILLINGHAM	3
KENAI	10
KODIAK	3
NAKNEK	1
PALMER	5
VALDEZ	1
BETHEL	6
FAIRBANKS	36
UNKNOWN	84
TOTAL	248

Supreme Court of the United States
Donald P. ROPER, Superintendent, Potosi Correctional Center, Petitioner,
v.
Christopher SIMMONS.
No. 03-633.

Argued Oct. 13, 2004.
Decided March 1, 2005.

Background: Defendant convicted after he turned 18 of committing first-degree murder when he was 17, and sentenced to death, 944 S.W.2d 165, petitioned for writ of habeas corpus. The Missouri Supreme Court, Laura Denvir Stith, J., 112 S.W.3d 397, granted relief. Certiorari was granted.

Holding: The Supreme Court, Justice Kennedy, held that execution of individuals who were under 18 years of age at time of their capital crimes is prohibited by Eighth and Fourteenth Amendments; abrogating *Stanford v. Kentucky*, 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306.

Affirmed.

Justice Stevens concurred and filed opinion in which Justice Ginsburg joined.

Justice O'Connor dissented and filed opinion.

Justice Scalia dissented and filed opinion in which Chief Justice Rehnquist and Justice Thomas joined.

West Headnotes

[1] Sentencing and Punishment 350H ⚿1482

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1482 k. Proportionality. Most Cited Cases
Court must refer to evolving standards of decency that mark progress of maturing society when determining which punishments are so disproportionate as to be "cruel and unusual," within meaning of Eighth Amendment prohibition. U.S.C.A. Const.Amend. 8.

[2] Sentencing and Punishment 350H ⚿1618

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(A) In General
350Hk1613 Requirements for Imposition
350Hk1618 k. Narrowing Class of Eligible Offenders. Most Cited Cases

Sentencing and Punishment 350H ⚿1667

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(D) Factors Related to Offense
350Hk1666 Nature or Degree of Offense
350Hk1667 k. In General. Most Cited Cases
Capital punishment must be limited to those offenders who commit narrow category of most serious crimes and whose extreme culpability makes them most deserving of execution.

[3] Sentencing and Punishment 350H ⚿1625

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(A) In General
350Hk1622 Validity of Statute or Regulatory Provision
350Hk1625 k. Aggravating or Mitigating Circumstances. Most Cited Cases

Sentencing and Punishment 350H ⚿1652

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(C) Factors Affecting Imposition in General
350Hk1652 k. Aggravating Circumstances in General. Most Cited Cases
State must give narrow and precise definition to aggravating factors that can result in capital sentence.

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[4] Sentencing and Punishment 350H 1665

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(D) Factors Related to Offense
350Hk1665 k. In General. Most Cited Cases

Sentencing and Punishment 350H 1702

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(E) Factors Related to Offender
350Hk1702 k. Offender's Character in General. Most Cited Cases
In any capital case, defendant has wide latitude to raise as mitigating factor any aspect of his or her character or record and any circumstances of offense that defendant proffers as basis for sentence less than death.

[5] Constitutional Law 92 4743

92 Constitutional Law
92XXVII Due Process
92XXVII(H) Criminal Law
92XXVII(H)6 Judgment and Sentence
92k4741 Capital Punishment; Death Penalty
92k4743 k. Persons Eligible. Most Cited Cases
(Formerly 92k270(1))

Sentencing and Punishment 350H 1643

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(B) Persons Eligible
350Hk1643 k. Juveniles. Most Cited Cases
Eighth and Fourteenth Amendments forbid imposition of death penalty on offenders who were under age of 18 when their crimes were committed; abrogating *Stanford v. Kentucky*, 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306. U.S.C.A. Const.Amends. 8, 14.

*****1184 *551 Syllabus*** [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

At age 17, respondent Simmons planned and committed a capital murder. After he had turned 18, he was sentenced to death. His direct appeal and subsequent petitions for state and federal postconviction relief were rejected. This Court then held, in *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335, that the Eighth Amendment, applicable to the States through the Fourteenth Amendment, prohibits the execution of a mentally retarded person. Simmons filed a new petition for state postconviction relief, arguing that *Atkins*' reasoning established that the Constitution prohibits the execution of a juvenile who was under 18 when he committed his crime. The Missouri Supreme Court agreed and set aside Simmons' death sentence in favor of life imprisonment without eligibility for release. It held that, although *Stanford v. Kentucky*, 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306, rejected the proposition that the Constitution bars capital punishment for juvenile offenders younger than 18, a national consensus has developed against the execution of those offenders since *Stanford*.

Held: The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed. Pp. 1190-1200.

(a) The Eighth Amendment's prohibition against "cruel and unusual punishments" must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design. To implement this framework this Court has established the propriety and affirmed the necessity of referring to "the evolving standards of decency that mark the progress of a maturing society" to determine which punishments are so disproportionate as to be "cruel and unusual." *Trop v. Dulles*, 356 U.S. 86, 100-101, 78 S.Ct. 590, 2 L.Ed.2d 630. In 1988, in *Thompson v. Oklahoma*, 487 U.S. 815, 818-838, 108 S.Ct. 2687, 101 L.Ed.2d 702, a plurality determined that national standards of decency did not permit the execution of any offender under age 16 at the ****1185** time of the crime. The next year, in *Stanford*, a 5-to-4 Court referred to contemporary standards of decency, but concluded the Eighth and Fourteenth Amendments did not proscribe the execution of offenders over 15 but under 18 because 22 of 37 death penalty States permitted that penalty for 16-year-old offenders, and 25 permitted it for 17-year-olds, thereby indicating there was no national consensus. 492 U.S., at 370-371, 109 S.Ct. 2969. A plurality***552** also "emphatically reject[ed]" the suggestion that the Court should

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bring its own judgment to bear on the acceptability of the juvenile death penalty. *Id.*, at 377-378, 109 S.Ct. 2969. That same day the Court held, in *Penry v. Lynaugh*, 492 U.S. 302, 334, 109 S.Ct. 2934, 106 L.Ed.2d 256, that the Eighth Amendment did not mandate a categorical exemption from the death penalty for mentally retarded persons because only two States had enacted laws banning such executions. Three Terms ago in *Atkins*, however, the Court held that standards of decency had evolved since *Penry* and now demonstrated that the execution of the mentally retarded is cruel and unusual punishment. The *Atkins* Court noted that objective indicia of society's standards, as expressed in pertinent legislative enactments and state practice, demonstrated that such executions had become so truly unusual that it was fair to say that a national consensus has developed against them. 536 U.S., at 314-315, 122 S.Ct. 2242. The Court also returned to the rule, established in decisions predating *Stanford*, that the Constitution contemplates that the Court's own judgment be brought to bear on the question of the acceptability of the death penalty. 536 U.S., at 312, 122 S.Ct. 2242. After observing that mental retardation diminishes personal culpability even if the offender can distinguish right from wrong, *id.*, at 318, 122 S.Ct. 2242, and that mentally retarded offenders' impairments make it less defensible to impose the death penalty as retribution for past crimes or as a real deterrent to future crimes, *id.*, at 319-320, 122 S.Ct. 2242, the Court ruled that the death penalty constitutes an excessive sanction for the entire category of mentally retarded offenders, and that the Eighth Amendment places a substantive restriction on the State's power to take such an offender's life, *id.*, at 321, 122 S.Ct. 2242. Just as the *Atkins* Court reconsidered the issue decided in *Penry*, the Court now reconsiders the issue decided in *Stanford*. Pp. 1190-1192.

(b) Both objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question, and the Court's own determination in the exercise of its independent judgment, demonstrate that the death penalty is a disproportionate punishment for juveniles. Pp. 1192-1198.

(1) As in *Atkins*, the objective indicia of national consensus here-the rejection of the juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice-provide sufficient evidence that today society views juveniles, in the words *Atkins* used respecting the mentally retarded, as "categorically less culpable than the average criminal," 536 U.S., at 316, 122 S.Ct. 2242. The evidence of such consensus is similar, and in some respects parallel, to the evidence in *Atkins*: 30 States prohibit the juvenile death penalty, including 12 that have rejected it altogether and 18 that maintain it but, by express provision*553 or judicial interpretation, exclude juveniles from its reach. Moreover, even in the 20 States without a formal prohibition, the execution of juveniles is infrequent. Although, by contrast to *Atkins*, the rate of change in reducing the incidence of the juvenile death penalty, or **1186 in taking specific steps to abolish it, has been less dramatic, the difference between this case and *Atkins* in that respect is counterbalanced by the consistent direction of the change toward abolition. Indeed, the slower pace here may be explained by the simple fact that the impropriety of executing juveniles between 16 and 18 years old gained wide recognition earlier than the impropriety of executing the mentally retarded. Pp. 1192-1194.

(2) Rejection of the imposition of the death penalty on juvenile offenders under 18 is required by the Eighth Amendment. Capital punishment must be limited to those offenders who commit "a narrow category of the most serious crimes" and whose extreme culpability makes them "the most deserving of execution." *Atkins, supra*, at 319, 122 S.Ct. 2242. Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. Juveniles' susceptibility to immature and irresponsible behavior means "their irresponsible conduct is not as morally reprehensible as that of an adult." *Thompson v. Oklahoma*, 487 U.S. 815, 835, 108 S.Ct. 2687, 101 L.Ed.2d 702. Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. See *Stanford, supra*, at 395, 109 S.Ct. 2969. The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. The *Thompson* plurality recognized the import of these characteristics with respect to juveniles under 16. 487 U.S., at 833-838, 108 S.Ct. 2687. The same reasoning applies to all juvenile offenders under 18. Once juveniles' diminished culpability is recognized, it is evident that neither of the two penological justifications for the death penalty-retribution and deterrence of capital crimes by prospective offenders, *e.g.*, *Atkins, supra*, at 319, 122 S.Ct. 2242-provides adequate justification for imposing that penalty on juveniles. Although the Court cannot deny or overlook the brutal crimes too many juvenile offenders have committed, it

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disagrees with petitioner's contention that, given the Court's own insistence on individualized consideration in capital sentencing, it is arbitrary and unnecessary to adopt a categorical rule barring imposition of the death penalty on an offender under 18. An unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's ***554** objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death. When a juvenile commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity. While drawing the line at 18 is subject to the objections always raised against categorical rules, that is the point where society draws the line for many purposes between childhood and adulthood and the age at which the line for death eligibility ought to rest. *Stanford* should be deemed no longer controlling on this issue. Pp. 1194-1198.

(c) The overwhelming weight of international opinion against the juvenile death penalty is not controlling here, but provides respected and significant confirmation for the Court's determination that the penalty is disproportionate punishment for offenders under 18. See, *e.g.*, ****1187***Thompson, supra,* at 830-831, and n. 31, 108 S.Ct. 2687. The United States is the only country in the world that continues to give official sanction to the juvenile penalty. It does not lessen fidelity to the Constitution or pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples underscores the centrality of those same rights within our own heritage of freedom. Pp. 1198-1200.

112 S.W.3d 397, affirmed.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. STEVENS, J., filed a concurring opinion, in which GINSBURG, J., joined, *post,* p. 1205. O'CONNOR, J., filed a dissenting opinion, *post,* p. 1206. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C.J., and THOMAS, J., joined, *post,* p. 1217.
James R. Layton, Jefferson City, MO, for petitioner.

Seth P. Waxman, Washington, DC, for respondent.

Jennifer Herndon, Counsel of Record, St. Louis, MO, Seth P. Waxman, David W. Ogden, Danielle Spinelli, Wilmer, Cutler, Pickering, Hale and Dorr, LLP, Washington, DC, for Respondent.

Jeremiah W. (Jay) Nixon, Attorney General of Missouri, James R. Layton, State Solicitor, Stephen D. Hawke, Counsel of Record, Evan J. Buchheim, Assistant Attorneys General, Jefferson City, MO, for Petitioner.

For U.S. Supreme Court briefs, see:2004 WL 903158 (Pet.Brief)2004 WL 1947812 (Resp.Brief)

Justice KENNEDY delivered the opinion of the Court.

***555** This case requires us to address, for the second time in a decade and a half, whether it is permissible under the Eighth and Fourteenth Amendments to the Constitution of the United States to execute a juvenile offender who was older ***556** than 15 but younger than 18 when he committed a capital crime. In *Stanford v. Kentucky,* 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989), a divided Court rejected the proposition that the Constitution bars capital punishment for juvenile offenders in this age group. We reconsider the question.

I

At the age of 17, when he was still a junior in high school, Christopher Simmons, the respondent here, committed murder. About nine months later, after he had turned 18, he was tried and sentenced to death. There is little doubt that Simmons was the instigator of the crime. Before its commission Simmons said he wanted to murder someone. In chilling, callous terms he talked about his plan, discussing it for the most part with two friends, Charles Benjamin and John Tessmer, then aged 15 and 16 respectively. Simmons proposed to commit burglary and murder by breaking and entering, tying up a victim, and throwing the victim off a bridge. Simmons assured his friends they could "get away with it" because they were minors.

The three met at about 2 a.m. on the night of the murder, but Tessmer left before the other two set out. (The State later charged Tessmer with conspiracy, but dropped the charge in exchange for his testimony against Simmons.) Simmons and Benjamin entered the home of the victim, Shirley Crook, after reaching through an open window and unlocking the ****1188** back door. Simmons turned on a hallway light. Awakened, Mrs. Crook called out, "Who's there?" In response Simmons entered Mrs.

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Crook's bedroom, where he recognized her from a previous car accident involving them both. Simmons later admitted this confirmed his resolve to murder her.

Using duct tape to cover her eyes and mouth and bind her hands, the two perpetrators put Mrs. Crook in her minivan and drove to a state park. They reinforced the bindings, covered her head with a towel, and walked her to a railroad*557 trestle spanning the Meramec River. There they tied her hands and feet together with electrical wire, wrapped her whole face in duct tape and threw her from the bridge, drowning her in the waters below.

By the afternoon of September 9, Steven Crook had returned home from an overnight trip, found his bedroom in disarray, and reported his wife missing. On the same afternoon fishermen recovered the victim's body from the river. Simmons, meanwhile, was bragging about the killing, telling friends he had killed a woman "because the bitch seen my face."

The next day, after receiving information of Simmons' involvement, police arrested him at his high school and took him to the police station in Fenton, Missouri. They read him his *Miranda* rights. Simmons waived his right to an attorney and agreed to answer questions. After less than two hours of interrogation, Simmons confessed to the murder and agreed to perform a videotaped reenactment at the crime scene.

The State charged Simmons with burglary, kidnaping, stealing, and murder in the first degree. As Simmons was 17 at the time of the crime, he was outside the criminal jurisdiction of Missouri's juvenile court system. See Mo.Rev.Stat. §§ 211.021 (2000) and 211.031 (Supp.2003). He was tried as an adult. At trial the State introduced Simmons' confession and the videotaped reenactment of the crime, along with testimony that Simmons discussed the crime in advance and bragged about it later. The defense called no witnesses in the guilt phase. The jury having returned a verdict of murder, the trial proceeded to the penalty phase.

The State sought the death penalty. As aggravating factors, the State submitted that the murder was committed for the purpose of receiving money; was committed for the purpose of avoiding, interfering with, or preventing lawful arrest of the defendant; and involved depravity of mind and was outrageously and wantonly vile, horrible, and inhuman. *558 The State called Shirley Crook's husband, daughter, and two sisters, who presented moving evidence of the devastation her death had brought to their lives.

In mitigation Simmons' attorneys first called an officer of the Missouri juvenile justice system, who testified that Simmons had no prior convictions and that no previous charges had been filed against him. Simmons' mother, father, two younger half brothers, a neighbor, and a friend took the stand to tell the jurors of the close relationships they had formed with Simmons and to plead for mercy on his behalf. Simmons' mother, in particular, testified to the responsibility Simmons demonstrated in taking care of his two younger half brothers and of his grandmother and to his capacity to show love for them.

During closing arguments, both the prosecutor and defense counsel addressed Simmons' age, which the trial judge had instructed the jurors they could consider as a mitigating factor. Defense counsel reminded the jurors that juveniles of Simmons' age cannot drink, serve on juries, or even see certain movies, because "the legislatures**1189 have wisely decided that individuals of a certain age aren't responsible enough." Defense counsel argued that Simmons' age should make "a huge difference to [the jurors] in deciding just exactly what sort of punishment to make." In rebuttal, the prosecutor gave the following response: "Age, he says. Think about age. Seventeen years old. Isn't that scary? Doesn't that scare you? Mitigating? Quite the contrary I submit. Quite the contrary."

The jury recommended the death penalty after finding the State had proved each of the three aggravating factors submitted to it. Accepting the jury's recommendation, the trial judge imposed the death penalty.

Simmons obtained new counsel, who moved in the trial court to set aside the conviction and sentence. One argument was that Simmons had received ineffective assistance at trial. To support this contention, the new counsel called *559 as witnesses Simmons' trial attorney, Simmons' friends and neighbors, and clinical psychologists who had evaluated him.

Part of the submission was that Simmons was "very immature," "very impulsive," and "very susceptible to being manipulated or influenced." The experts testified about Simmons' background including a difficult home environment and dramatic changes in behavior, accompanied by poor school performance in adolescence. Simmons was absent from home for long periods, spending time

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using alcohol and drugs with other teenagers or young adults. The contention by Simmons' postconviction counsel was that these matters should have been established in the sentencing proceeding.

The trial court found no constitutional violation by reason of ineffective assistance of counsel and denied the motion for postconviction relief. In a consolidated appeal from Simmons' conviction and sentence, and from the denial of postconviction relief, the Missouri Supreme Court affirmed. *State v. Simmons*, 944 S.W.2d 165, 169 (en banc), cert. denied, 522 U.S. 953, 118 S.Ct. 376, 139 L.Ed.2d 293 (1997). The federal courts denied Simmons' petition for a writ of habeas corpus. *Simmons v. Bowersox*, 235 F.3d 1124, 1127(CA8),cert. denied, 534 U.S. 924, 122 S.Ct. 280, 151 L.Ed.2d 206 (2001).

After these proceedings in Simmons' case had run their course, this Court held that the Eighth and Fourteenth Amendments prohibit the execution of a mentally retarded person. *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). Simmons filed a new petition for state postconviction relief, arguing that the reasoning of *Atkins* established that the Constitution prohibits the execution of a juvenile who was under 18 when the crime was committed.

The Missouri Supreme Court agreed. *State ex rel. Simmons v. Roper*, 112 S.W.3d 397 (2003) (en banc). It held that since *Stanford*,

> "a national consensus has developed against the execution of juvenile offenders, as demonstrated by the fact that eighteen states now bar such executions for juveniles,***560** that twelve other states bar executions altogether, that no state has lowered its age of execution below 18 since *Stanford*, that five states have legislatively or by case law raised or established the minimum age at 18, and that the imposition of the juvenile death penalty has become truly unusual over the last decade." 112 S.W.3d, at 399.

On this reasoning it set aside Simmons' death sentence and resentenced him to "life imprisonment without eligibility for probation, parole, or release except by act of the Governor." *Id.*, at 413.

****1190** We granted certiorari, 540 U.S. 1160, 124 S.Ct. 1171, 157 L.Ed.2d 1204 (2004), and now affirm.

II

The Eighth Amendment provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The provision is applicable to the States through the Fourteenth Amendment. *Furman v. Georgia*, 408 U.S. 238, 239, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972)*(per curiam)*; *Robinson v. California*, 370 U.S. 660, 666-667, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962); *Louisiana ex rel. Francis v. Resweber*, 329 U.S. 459, 463, 67 S.Ct. 374, 91 L.Ed. 422 (1947) (plurality opinion). As the Court explained in *Atkins*, the Eighth Amendment guarantees individuals the right not to be subjected to excessive sanctions. The right flows from the basic " 'precept of justice that punishment for crime should be graduated and proportioned to [the] offense.' " 536 U.S., at 311, 122 S.Ct. 2242 (quoting *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910)). By protecting even those convicted of heinous crimes, the Eighth Amendment reaffirms the duty of the government to respect the dignity of all persons.

[1] The prohibition against "cruel and unusual punishments," like other expansive language in the Constitution, must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design. To implement this ***561** framework we have established the propriety and affirmed the necessity of referring to "the evolving standards of decency that mark the progress of a maturing society" to determine which punishments are so disproportionate as to be cruel and unusual. *Trop v. Dulles*, 356 U.S. 86, 100-101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion).

In *Thompson v. Oklahoma*, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988), a plurality of the Court determined that our standards of decency do not permit the execution of any offender under the age of 16 at the time of the crime. *Id.*, at 818-838, 108 S.Ct. 2687 (opinion of STEVENS, J., joined by Brennan, Marshall, and Blackmun, JJ.). The plurality opinion explained that no death penalty State that had given express consideration to a minimum age for the death penalty had set the age lower than 16. *Id.*, at 826-829, 108 S.Ct. 2687. The plurality also observed that "[t]he conclusion that it would offend civilized standards of decency to execute a person who was less than 16 years old at the time of his or her offense is consistent with the views that have been expressed by respected professional organizations, by other nations that share our Anglo-American heritage, and by the leading

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members of the Western European community." *Id.*, at 830, 108 S.Ct. 2687. The opinion further noted that juries imposed the death penalty on offenders under 16 with exceeding rarity; the last execution of an offender for a crime committed under the age of 16 had been carried out in 1948, 40 years prior. *Id.*, at 832-833, 108 S.Ct. 2687.

Bringing its independent judgment to bear on the permissibility of the death penalty for a 15-year-old offender, the *Thompson* plurality stressed that "[t]he reasons why juveniles are not trusted with the privileges and responsibilities of an adult also explain why their irresponsible conduct is not as morally reprehensible as that of an adult." *Id.*, at 835, 108 S.Ct. 2687. According to the plurality, the lesser culpability of offenders under 16 made the death penalty inappropriate as a form of retribution, while the low likelihood that **1191 offenders under 16 engaged in "the kind of cost-benefit analysis that *562 attaches any weight to the possibility of execution" made the death penalty ineffective as a means of deterrence. *Id.*, at 836-838, 108 S.Ct. 2687. With Justice O'CONNOR concurring in the judgment on narrower grounds, *id.*, at 848-859, 108 S.Ct. 2687, the Court set aside the death sentence that had been imposed on the 15-year-old offender.

The next year, in *Stanford v. Kentucky*, 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989), the Court, over a dissenting opinion joined by four Justices, referred to contemporary standards of decency in this country and concluded the Eighth and Fourteenth Amendments did not proscribe the execution of juvenile offenders over 15 but under 18. The Court noted that 22 of the 37 death penalty States permitted the death penalty for 16-year-old offenders, and, among these 37 States, 25 permitted it for 17-year-old offenders. These numbers, in the Court's view, indicated there was no national consensus "sufficient to label a particular punishment cruel and unusual." *Id.*, at 370-371, 109 S.Ct. 2969. A plurality of the Court also "emphatically reject [ed]" the suggestion that the Court should bring its own judgment to bear on the acceptability of the juvenile death penalty. *Id.*, at 377-378, 109 S.Ct. 2969 (opinion of SCALIA, J., joined by REHNQUIST, C.J., and White and KENNEDY, JJ.); see also *id.*, at 382, 109 S.Ct. 2969 (O'CONNOR, J., concurring in part and concurring in judgment) (criticizing the plurality's refusal "to judge whether the ' "nexus between the punishment imposed and the defendant's blameworthiness" ' is proportional").

The same day the Court decided *Stanford*, it held that the Eighth Amendment did not mandate a categorical exemption from the death penalty for the mentally retarded. *Penry v. Lynaugh*, 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989). In reaching this conclusion it stressed that only two States had enacted laws banning the imposition of the death penalty on a mentally retarded person convicted of a capital offense. *Id.*, at 334, 109 S.Ct. 2934. According to the Court, "the two state statutes prohibiting execution of the mentally retarded, even when added to the 14 States that have rejected capital punishment completely, *563 [did] not provide sufficient evidence at present of a national consensus." *Ibid.*

Three Terms ago the subject was reconsidered in *Atkins*. We held that standards of decency have evolved since *Penry* and now demonstrate that the execution of the mentally retarded is cruel and unusual punishment. The Court noted objective indicia of society's standards, as expressed in legislative enactments and state practice with respect to executions of the mentally retarded. When *Atkins* was decided only a minority of States permitted the practice, and even in those States it was rare. 536 U.S., at 314-315, 122 S.Ct. 2242. On the basis of these indicia the Court determined that executing mentally retarded offenders "has become truly unusual, and it is fair to say that a national consensus has developed against it." *Id.*, at 316, 122 S.Ct. 2242.

The inquiry into our society's evolving standards of decency did not end there. The *Atkins* Court neither repeated nor relied upon the statement in *Stanford* that the Court's independent judgment has no bearing on the acceptability of a particular punishment under the Eighth Amendment. Instead we returned to the rule, established in decisions predating *Stanford*, that " 'the Constitution contemplates that in the end our own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth **1192 Amendment.' " 536 U.S., at 312, 122 S.Ct. 2242 (quoting *Coker v. Georgia*, 433 U.S. 584, 597, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977) (plurality opinion)). Mental retardation, the Court said, diminishes personal culpability even if the offender can distinguish right from wrong. 536 U.S., at 318, 122 S.Ct. 2242. The impairments of mentally retarded offenders make it less defensible to impose the death penalty as retribution for past crimes and less likely that the death penalty will have a real deterrent effect. *Id.*, at 319-320, 122 S.Ct. 2242. Based on these considerations and on the finding of national consensus against executing the mentally retarded, the Court ruled that the death penalty constitutes an excessive sanction for the entire category of mentally retarded offenders,*564 and that the Eighth Amendment "

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'places a substantive restriction on the State's power to take the life' of a mentally retarded offender." *Id.*, at 321, 122 S.Ct. 2242 (quoting *Ford v. Wainwright*, 477 U.S. 399, 405, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986)).

Just as the *Atkins* Court reconsidered the issue decided in *Penry*, we now reconsider the issue decided in *Stanford*. The beginning point is a review of objective indicia of consensus, as expressed in particular by the enactments of legislatures that have addressed the question. These data give us essential instruction. We then must determine, in the exercise of our own independent judgment, whether the death penalty is a disproportionate punishment for juveniles.

III

A

The evidence of national consensus against the death penalty for juveniles is similar, and in some respects parallel, to the evidence *Atkins* held sufficient to demonstrate a national consensus against the death penalty for the mentally retarded. When *Atkins* was decided, 30 States prohibited the death penalty for the mentally retarded. This number comprised 12 that had abandoned the death penalty altogether, and 18 that maintained it but excluded the mentally retarded from its reach. 536 U.S., at 313-315, 122 S.Ct. 2242. By a similar calculation in this case, 30 States prohibit the juvenile death penalty, comprising 12 that have rejected the death penalty altogether and 18 that maintain it but, by express provision or judicial interpretation, exclude juveniles from its reach. See Appendix A, *infra*. *Atkins* emphasized that even in the 20 States without formal prohibition, the practice of executing the mentally retarded was infrequent. Since *Penry*, only five States had executed offenders known to have an IQ under 70. 536 U.S., at 316, 122 S.Ct. 2242. In the present case, too, even in the 20 States without a formal prohibition on executing juveniles, the practice is infrequent. Since *Stanford*, six States have executed prisoners for crimes committed as juveniles.***565** In the past 10 years, only three have done so: Oklahoma, Texas, and Virginia. See V. Streib, The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973-December 31, 2004, No. 76, p. 4 (2005), available at http:// www. law. onu.edu/faculty/streib/documents/JuvDeathDec2004.pdf (last updated Jan. 31, 2005) (as visited Feb. 25, 2005, and available in Clerk of Court's case file). In December 2003 the Governor of Kentucky decided to spare the life of Kevin Stanford, and commuted his sentence to one of life imprisonment without parole, with the declaration that " '[w]e ought not be executing people who, legally, were children.' " Lexington Herald Leader, Dec. 9, 2003, p. B3, 2003 WL 65043346. By this act the Governor ensured Kentucky would not add itself to the list of ****1193** States that have executed juveniles within the last 10 years even by the execution of the very defendant whose death sentence the Court had upheld in *Stanford v. Kentucky*.

There is, to be sure, at least one difference between the evidence of consensus in *Atkins* and in this case. Impressive in *Atkins* was the rate of abolition of the death penalty for the mentally retarded. Sixteen States that permitted the execution of the mentally retarded at the time of *Penry* had prohibited the practice by the time we heard *Atkins*. By contrast, the rate of change in reducing the incidence of the juvenile death penalty, or in taking specific steps to abolish it, has been slower. Five States that allowed the juvenile death penalty at the time of *Stanford* have abandoned it in the intervening 15 years-four through legislative enactments and one through judicial decision. Streib, *supra*, at 5, 7; *State v. Furman*, 122 Wash.2d 440, 858 P.2d 1092 (1993) (en banc).

Though less dramatic than the change from *Penry* to *Atkins* ("telling," to borrow the word *Atkins* used to describe this difference, 536 U.S., at 315, n. 18, 122 S.Ct. 2242), we still consider the change from *Stanford* to this case to be significant. As noted in *Atkins*, with respect to the States that had abandoned***566** the death penalty for the mentally retarded since *Penry*, "[i]t is not so much the number of these States that is significant, but the consistency of the direction of change." 536 U.S., at 315, 122 S.Ct. 2242. In particular we found it significant that, in the wake of *Penry*, no State that had already prohibited the execution of the mentally retarded had passed legislation to reinstate the penalty. 536 U.S., at 315-316, 122 S.Ct. 2242. The number of States that have abandoned capital punishment for juvenile offenders since *Stanford* is smaller than the number of States that abandoned capital punishment for the mentally retarded after *Penry*; yet we think the same consistency of direction of change has been demonstrated. Since *Stanford*, no State that previously prohibited capital punishment for juveniles has reinstated it. This fact, coupled with the trend toward abolition of the juvenile death penalty, carries special force in light of the general popularity of anticrime legislation, *Atkins*, *supra*, at 315, 122 S.Ct. 2242, and in light of the particular trend in recent years toward cracking down on

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juvenile crime in other respects, see H. Snyder & M. Sickmund, National Center for Juvenile Justice, Juvenile Offenders and Victims: 1999 National Report 89, 133 (Sept.1999); Scott & Grisso, The Evolution of Adolescence: A Developmental Perspective on Juvenile Justice Reform, 88 J.Crim. L. & C. 137, 148 (1997). Any difference between this case and *Atkins* with respect to the pace of abolition is thus counterbalanced by the consistent direction of the change.

The slower pace of abolition of the juvenile **death** penalty over the past 15 **years**, moreover, may have a simple explanation. When we heard *Penry*, only two **death** penalty States had already prohibited the execution of the mentally retarded. When we heard *Stanford*, by contrast, 12 **death** penalty States had already prohibited the execution of any juvenile under **18**, and 15 had prohibited the execution of any juvenile under 17. If anything, this shows that the impropriety of executing juveniles between 16 and **18 years of age** ***567** gained wide recognition earlier than the impropriety of executing the mentally retarded. In the words of the Missouri Supreme Court: "It would be the ultimate in irony if the very fact that the inappropriateness of the **death** penalty for juveniles was broadly recognized sooner than it was recognized for the mentally retarded were to become a reason to continue the execution ****1194** of juveniles now that the execution of the mentally retarded has been barred." 112 S.W.3d, at 408, n. 10.

Petitioner cannot show national consensus in favor of capital punishment for juveniles but still resists the conclusion that any consensus exists against it. Petitioner supports this position with, in particular, the observation that when the Senate ratified the International Covenant on Civil and Political Rights (ICCPR), Dec. 19, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976), it did so subject to the President's proposed reservation regarding Article 6(5) of that treaty, which prohibits capital punishment for juveniles. Brief for Petitioner 27. This reservation at best provides only faint support for petitioner's argument. First, the reservation was passed in 1992; since then, five States have abandoned capital punishment for juveniles. Second, Congress considered the issue when enacting the Federal Death Penalty Act in 1994, and determined that the death penalty should not extend to juveniles. See 18 U.S.C. § 3591. The reservation to Article 6(5) of the ICCPR provides minimal evidence that there is not now a national consensus against juvenile executions.

As in *Atkins*, the objective indicia of consensus in this case-the rejection of the juvenile death penalty in the majority of States; the infrequency of its use even where it remains on the books; and the consistency in the trend toward abolition of the practice-provide sufficient evidence that today our society views juveniles, in the words *Atkins* used respecting the mentally retarded, as "categorically less culpable than the average criminal." 536 U.S., at 316, 122 S.Ct. 2242.

***568** B

A majority of States have rejected the imposition of the death penalty on juvenile offenders under 18, and we now hold this is required by the Eighth Amendment.

[2][3][4] Because the death penalty is the most severe punishment, the Eighth Amendment applies to it with special force. *Thompson*, 487 U.S., at 856, 108 S.Ct. 2687 (O'CONNOR, J., concurring in judgment). Capital punishment must be limited to those offenders who commit "a narrow category of the most serious crimes" and whose extreme culpability makes them "the most deserving of execution." *Atkins, supra*, at 319, 122 S.Ct. 2242. This principle is implemented throughout the capital sentencing process. States must give narrow and precise definition to the aggravating factors that can result in a capital sentence. *Godfrey v. Georgia*, 446 U.S. 420, 428-429, 100 S.Ct. 1759, 64 L.Ed.2d 398 (1980) (plurality opinion). In any capital case a defendant has wide latitude to raise as a mitigating factor "any aspect of [his or her] character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *Lockett v. Ohio*, 438 U.S. 586, 604, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality opinion); *Eddings v. Oklahoma*, 455 U.S. 104, 110-112, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982); see also *Johnson v. Texas*, 509 U.S. 350, 359-362, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993) (summarizing the Court's jurisprudence after *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972)*(per curiam)*, with respect to a sentencer's consideration of aggravating and mitigating factors). There are a number of crimes that beyond question are severe in absolute terms, yet the death penalty may not be imposed for their commission. *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977) (rape of an adult woman); *Enmund v. Florida*, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982) (felony murder where ****1195** defendant did not kill, attempt to kill, or intend to kill). The death penalty may not be imposed on certain classes of offenders, such as juveniles under 16, the insane, and the mentally retarded, no matter how heinous

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the crime. *Thompson v. Oklahoma, supra; Ford v. Wainwright,* 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986); *Atkins, supra.* These rules vindicate the underlying principle*569 that the death penalty is reserved for a narrow category of crimes and offenders.

[5] Three general differences between juveniles under 18 and adults demonstrate that juvenile offenders cannot with reliability be classified among the worst offenders. First, as any parent knows and as the scientific and sociological studies respondent and his *amici* cite tend to confirm, "[a] lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions." *Johnson, supra,* at 367, 113 S.Ct. 2658; see also *Eddings, supra,* at 115-116, 102 S.Ct. 869 ("Even the normal 16-year-old customarily lacks the maturity of an adult"). It has been noted that "adolescents are overrepresented statistically in virtually every category of reckless behavior." Arnett, Reckless Behavior in Adolescence: A Developmental Perspective, 12 Developmental Rev. 339 (1992). In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent. See Appendixes B-D, *infra.*

The second area of difference is that juveniles are more vulnerable or susceptible to negative influences and outside pressures, including peer pressure. *Eddings, supra,* at 115, 102 S.Ct. 869 ("[Y]outh is more than a chronological fact. It is a time and condition of life when a person may be most susceptible to influence and to psychological damage"). This is explained in part by the prevailing circumstance that juveniles have less control, or less experience with control, over their own environment. See Steinberg & Scott, Less Guilty by Reason of Adolescence: Developmental Immaturity, Diminished Responsibility, and the Juvenile Death Penalty, 58 Am. Psychologist 1009, 1014 (2003) (hereinafter Steinberg & Scott) ("[A]s legal minors, [juveniles] lack the freedom that adults have to extricate themselves from a criminogenic setting").

*570 The third broad difference is that the character of a juvenile is not as well formed as that of an adult. The personality traits of juveniles are more transitory, less fixed. See generally E. Erikson, Identity: Youth and Crisis (1968).

These differences render suspect any conclusion that a juvenile falls among the worst offenders. The susceptibility of juveniles to immature and irresponsible behavior means "their irresponsible conduct is not as morally reprehensible as that of an adult." *Thompson, supra,* at 835, 108 S.Ct. 2687 (plurality opinion). Their own vulnerability and comparative lack of control over their immediate surroundings mean juveniles have a greater claim than adults to be forgiven for failing to escape negative influences in their whole environment. See *Stanford,* 492 U.S., at 395, 109 S.Ct. 2969 (Brennan, J., dissenting). The reality that juveniles still struggle to define their identity means it is less supportable to conclude that even a heinous crime committed by a juvenile is evidence of irretrievably depraved character. From a moral standpoint it would be misguided to equate the failings of a minor with those of an adult, for a greater possibility exists that a minor's character deficiencies will **1196 be reformed. Indeed, "[t]he relevance of youth as a mitigating factor derives from the fact that the signature qualities of youth are transient; as individuals mature, the impetuousness and recklessness that may dominate in younger years can subside." *Johnson, supra,* at 368, 113 S.Ct. 2658; see also Steinberg & Scott 1014 ("For most teens, [risky or antisocial] behaviors are fleeting; they cease with maturity as individual identity becomes settled. Only a relatively small proportion of adolescents who experiment in risky or illegal activities develop entrenched patterns of problem behavior that persist into adulthood").

In *Thompson,* a plurality of the Court recognized the import of these characteristics with respect to juveniles under 16, and relied on them to hold that the Eighth Amendment prohibited the imposition of the death penalty on juveniles *571 below that age. 487 U.S., at 833-838, 108 S.Ct. 2687. We conclude the same reasoning applies to all juvenile offenders under 18.

Once the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them with lesser force than to adults. We have held there are two distinct social purposes served by the death penalty: " 'retribution and deterrence of capital crimes by prospective offenders.' " *Atkins,* 536 U.S., at 319, 122 S.Ct. 2242 (quoting *Gregg v. Georgia,* 428 U.S. 153, 183, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.)). As for retribution, we remarked in *Atkins* that "[i]f the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State, the lesser culpability of the mentally retarded

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offender surely does not merit that form of retribution." 536 U.S., at 319, 122 S.Ct. 2242. The same conclusions follow from the lesser culpability of the juvenile offender. Whether viewed as an attempt to express the community's moral outrage or as an attempt to right the balance for the wrong to the victim, the case for retribution is not as strong with a minor as with an adult. Retribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished, to a substantial degree, by reason of youth and immaturity.

As for deterrence, it is unclear whether the death penalty has a significant or even measurable deterrent effect on juveniles, as counsel for petitioner acknowledged at oral argument. Tr. of Oral Arg. 48. In general we leave to legislatures the assessment of the efficacy of various criminal penalty schemes, see *Harmelin v. Michigan*, 501 U.S. 957, 998-999, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (KENNEDY, J., concurring in part and concurring in judgment). Here, however, the absence of evidence of deterrent effect is of special concern because the same characteristics that render juveniles less culpable than adults suggest as well that juveniles will be less susceptible to deterrence. In particular, as the plurality observed in ***572** *Thompson*, "[t]he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent." 487 U.S., at 837, 108 S.Ct. 2687. To the extent the juvenile death penalty might have residual deterrent effect, it is worth noting that the punishment of life imprisonment without the possibility of parole is itself a severe sanction, in particular for a young person.

In concluding that neither retribution nor deterrence provides adequate justification for imposing the death penalty on juvenile offenders, we cannot deny or overlook the brutal crimes too many juvenile offenders have committed. See Brief for ****1197** Alabama et al. as *Amici Curiae*. Certainly it can be argued, although we by no means concede the point, that a rare case might arise in which a juvenile offender has sufficient psychological maturity, and at the same time demonstrates sufficient depravity, to merit a sentence of death. Indeed, this possibility is the linchpin of one contention pressed by petitioner and his *amici*. They assert that even assuming the truth of the observations we have made about juveniles' diminished culpability in general, jurors nonetheless should be allowed to consider mitigating arguments related to youth on a case-by-case basis, and in some cases to impose the death penalty if justified. A central feature of death penalty sentencing is a particular assessment of the circumstances of the crime and the characteristics of the offender. The system is designed to consider both aggravating and mitigating circumstances, including youth, in every case. Given this Court's own insistence on individualized consideration, petitioner maintains that it is both arbitrary and unnecessary to adopt a categorical rule barring imposition of the death penalty on any offender under 18 years of age.

We disagree. The differences between juvenile and adult offenders are too marked and well understood to risk allowing***573** a youthful person to receive the death penalty despite insufficient culpability. An unacceptable likelihood exists that the brutality or cold-blooded nature of any particular crime would overpower mitigating arguments based on youth as a matter of course, even where the juvenile offender's objective immaturity, vulnerability, and lack of true depravity should require a sentence less severe than death. In some cases a defendant's youth may even be counted against him. In this very case, as we noted above, the prosecutor argued Simmons' youth was aggravating rather than mitigating. *Supra*, at 1188-1189. While this sort of overreaching could be corrected by a particular rule to ensure that the mitigating force of youth is not overlooked, that would not address our larger concerns.

It is difficult even for expert psychologists to differentiate between the juvenile offender whose crime reflects unfortunate yet transient immaturity, and the rare juvenile offender whose crime reflects irreparable corruption. See Steinberg & Scott 1014-1016. As we understand it, this difficulty underlies the rule forbidding psychiatrists from diagnosing any patient under 18 as having antisocial personality disorder, a disorder also referred to as psychopathy or sociopathy, and which is characterized by callousness, cynicism, and contempt for the feelings, rights, and suffering of others. American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders 701-706 (4th ed. text rev.2000); see also Steinberg & Scott 1015. If trained psychiatrists with the advantage of clinical testing and observation refrain, despite diagnostic expertise, from assessing any juvenile under 18 as having antisocial personality disorder, we conclude that States should refrain from asking jurors to issue a far graver condemnation-that a juvenile offender merits the death penalty. When a juvenile offender commits a heinous crime, the State can exact forfeiture of some ***574** of the most basic liberties, but the State cannot extinguish his

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life and his potential to attain a mature understanding of his own humanity.

Drawing the line at 18 years of age is subject, of course, to the objections always raised against categorical rules. The qualities that distinguish juveniles from adults do not disappear when an individual turns 18. By the same token, some under 18 have already attained a level of maturity some adults will never reach. For the ****1198** reasons we have discussed, however, a line must be drawn. The plurality opinion in *Thompson* drew the line at 16. In the intervening **years** the *Thompson* plurality's conclusion that offenders under 16 may not be executed has not been challenged. The logic of *Thompson* extends to those who are under **18**. The **age of 18** is the point where society draws the line for many purposes between childhood and adulthood. It is, we conclude, the **age** at which the line for **death** eligibility ought to rest.

These considerations mean *Stanford v. Kentucky* should be deemed no longer controlling on this issue. To the extent *Stanford* was based on review of the objective indicia of consensus that obtained in 1989, 492 U.S., at 370-371, 109 S.Ct. 2969, it suffices to note that those indicia have changed. *Supra,* at 1192-1194. It should be observed, furthermore, that the *Stanford* Court should have considered those States that had abandoned the death penalty altogether as part of the consensus against the juvenile death penalty, 492 U.S., at 370, n. 2, 109 S.Ct. 2969; a State's decision to bar the death penalty altogether of necessity demonstrates a judgment that the death penalty is inappropriate for all offenders, including juveniles. Last, to the extent *Stanford* was based on a rejection of the idea that this Court is required to bring its independent judgment to bear on the proportionality of the death penalty for a particular class of crimes or offenders, *id.,* at 377-378, 109 S.Ct. 2969 (plurality opinion), it suffices to note that this rejection was inconsistent with prior Eighth Amendment decisions, ***575***Thompson,* 487 U.S., at 833-838, 108 S.Ct. 2687 (plurality opinion); *Enmund,* 458 U.S., at 797, 102 S.Ct. 3368; *Coker,* 433 U.S., at 597, 97 S.Ct. 2861 (plurality opinion). It is also inconsistent with the premises of our recent decision in *Atkins.* 536 U.S., at 312-313, 317-321, 122 S.Ct. 2242.

In holding that the death penalty cannot be imposed upon juvenile offenders, we take into account the circumstance that some States have relied on *Stanford* in seeking the death penalty against juvenile offenders. This consideration, however, does not outweigh our conclusion that *Stanford* should no longer control in those few pending cases or in those yet to arise.

IV

Our determination that the death penalty is disproportionate punishment for offenders under 18 finds confirmation in the stark reality that the United States is the only country in the world that continues to give official sanction to the juvenile death penalty. This reality does not become controlling, for the task of interpreting the Eighth Amendment remains our responsibility. Yet at least from the time of the Court's decision in *Trop,* the Court has referred to the laws of other countries and to international authorities as instructive for its interpretation of the Eighth Amendment's prohibition of "cruel and unusual punishments." 356 U.S., at 102-103, 78 S.Ct. 590 (plurality opinion) ("The civilized nations of the world are in virtual unanimity that statelessness is not to be imposed as punishment for crime"); see also *Atkins, supra,* at 317, n. 21, 122 S.Ct. 2242 (recognizing that "within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved"); *Thompson, supra,* at 830-831, and n. 31, 108 S.Ct. 2687 (plurality opinion) (noting the abolition of the juvenile death penalty "by other nations that share our Anglo-American heritage, and by the leading members of the Western European community," and observing that "[w]e have previously recognized the relevance of the views of the international community***576** in determining whether a punishment is cruel ****1199** and unusual"); *Enmund, supra,* at 796-797, n. 22, 102 S.Ct. 3368 (observing that "the doctrine of felony murder has been abolished in England and India, severely restricted in Canada and a number of other Commonwealth countries, and is unknown in continental Europe"); *Coker, supra,* at 596, n. 10, 97 S.Ct. 2861 (plurality opinion) ("It is ... not irrelevant here that out of 60 major nations in the world surveyed in 1965, only 3 retained the death penalty for rape where death did not ensue").

As respondent and a number of *amici* emphasize, Article 37 of the United Nations Convention on the Rights of the Child, which every country in the world has ratified save for the United States and Somalia, contains an express prohibition on capital punishment for crimes committed by juveniles under 18. United Nations Convention on the Rights of the Child, Art. 37, Nov. 20, 1989, 1577 U.N.T.S. 3, 28 I.L.M. 1448, 1468-1470 (entered into force Sept. 2, 1990); Brief for Respondent 48; Brief for European Union et al. as *Amici Curiae* 12-13; Brief for President James Earl Carter, Jr., et al. as *Amici Curiae* 9;

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Brief for Former U.S. Diplomats Morton Abramowitz et al. as *Amici Curiae* 7; Brief for Human Rights Committee of the Bar of England and Wales et al. as *Amici Curiae* 13-14. No ratifying country has entered a reservation to the provision prohibiting the execution of juvenile offenders. Parallel prohibitions are contained in other significant international covenants. See ICCPR, Art. 6(5), 999 U.N.T.S., at 175 (prohibiting capital punishment for anyone under 18 at the time of offense) (signed and ratified by the United States subject to a reservation regarding Article 6(5), as noted; *supra,* at 1194); American Convention on Human Rights: Pact of San Jose, Costa Rica, Art. 4(5), Nov. 22, 1969, 1144 U.N.T.S. 146 (entered into force July 19, 1978) (same); African Charter on the Rights and Welfare of the Child, Art. 5(3), OAU Doc. CAB/LEG/ 24.9/49 (1990) (entered into force Nov. 29, 1999) (same).

***577** Respondent and his *amici* have submitted, and petitioner does not contest, that only seven countries other than the United States have executed juvenile offenders since 1990: Iran, Pakistan, Saudi Arabia, Yemen, Nigeria, the Democratic Republic of Congo, and China. Since then each of these countries has either abolished capital punishment for juveniles or made public disavowal of the practice. Brief for Respondent 49-50. In sum, it is fair to say that the United States now stands alone in a world that has turned its face against the juvenile death penalty.

Though the international covenants prohibiting the juvenile death penalty are of more recent date, it is instructive to note that the United Kingdom abolished the juvenile death penalty before these covenants came into being. The United Kingdom's experience bears particular relevance here in light of the historic ties between our countries and in light of the Eighth Amendment's own origins. The Amendment was modeled on a parallel provision in the English Declaration of Rights of 1689, which provided: "[E]xcessive Bail ought not to be required nor excessive Fines imposed; nor cruel and unusual Punishments inflicted." 1 W. & M., ch. 2, § 10, in 3 Eng. Stat. at Large 441 (1770); see also *Trop, supra,* at 100, 78 S.Ct. 590 (plurality opinion). As of now, the United Kingdom has abolished the death penalty in its entirety; but, decades before it took this step, it recognized the disproportionate nature of the juvenile death penalty; and it abolished that penalty as a separate matter. In 1930 an official committee recommended that the minimum age for execution be raised to 21. House of Commons Report from the Select Committee on Capital Punishment (1930), ****1200** 193, p. 44. Parliament then enacted the Children and Young Person's Act of 1933, 23 Geo. 5, ch. 12, which prevented execution of those aged 18 at the date of the sentence. And in 1948, Parliament enacted the Criminal Justice Act, 11 & 12 Geo. 6, ch. 58, prohibiting the execution of any person under 18 at the time of the offense. In the 56 years that have passed ***578** since the United Kingdom abolished the juvenile death penalty, the weight of authority against it there, and in the international community, has become well established.

It is proper that we acknowledge the overwhelming weight of international opinion against the juvenile death penalty, resting in large part on the understanding that the instability and emotional imbalance of young people may often be a factor in the crime. See Brief for Human Rights Committee of the Bar of England and Wales et al. as *Amici Curiae* 10-11. The opinion of the world community, while not controlling our outcome, does provide respected and significant confirmation for our own conclusions.

Over time, from one generation to the next, the Constitution has come to earn the high respect and even, as Madison dared to hope, the veneration of the American people. See The Federalist No. 49, p. 314 (C. Rossiter ed.1961). The document sets forth, and rests upon, innovative principles original to the American experience, such as federalism; a proven balance in political mechanisms through separation of powers; specific guarantees for the accused in criminal cases; and broad provisions to secure individual freedom and preserve human dignity. These doctrines and guarantees are central to the American experience and remain essential to our present-day self-definition and national identity. Not the least of the reasons we honor the Constitution, then, is because we know it to be our own. It does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom.

* * *

The Eighth and Fourteenth Amendments forbid imposition of the death penalty on offenders who were under the age of 18 when their crimes were committed. The judgment ***579** of the Missouri Supreme Court setting aside the sentence of death imposed upon Christopher Simmons is affirmed.

It is so ordered.

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APPENDIX A TO OPINION OF THE COURT

STATES THAT PERMIT THE IMPOSITION OF THE DEATH PENALTY ON JUVENILES

Alabama	Ala.Code § 13A-6-2(c) (West 2004) (no express minimum age)
Arizona	Ariz.Rev.Stat.Ann. § 13-703(A) (West Supp.2004) (same)
Arkansas	Ark.Code Ann. § 5-4-615 (Michie 1997) (same)
Delaware	Del.Code Ann., Tit. 11 (Lexis 1995) (same)
Florida	Fla. Stat. § 985.225(1) (2003) (same)
Georgia	Ga.Code Ann. § 17-9-3 (Lexis 2004) (same)
Idaho	Idaho Code § 18-4004 (Michie 2004) (same)
Kentucky	Ky.Rev.Stat.Ann. § 640.040(1) (Lexis 1999) (minimum age of 16)
Louisiana	La. Stat. Ann. § 14:30(C) (West Supp.2005) (no express minimum age)
Mississippi	Miss.Code Ann. § 97-3-21 (Lexis 2000) (same)
Missouri	Mo.Rev.Stat. Ann. § 565.020 (2000) (minimum age of 16)
Nevada	Nev.Rev.Stat. § 176.025 (2003) (minimum age of 16)
New Hampshire	N.H.Rev.Stat. Ann. § 630:1(V) (West 1996) (minimum age of 17)
North Carolina	N.C.Gen.Stat. § 14-17 (Lexis 2003) (minimum age of 17, except that those under 17 who commit murder while serving a prison sentence for a previous murder may receive the death penalty)
Oklahoma	Okla. Stat. Ann., Tit. 21, § 701.10 (West 2002) (no express minimum age)
Pennsylvania	18 Pa.Cons.Stat. § 1102 (2002) (same)
South Carolina	S.C.Code Ann. § 16-3-20 (West Supp.2004 and main ed.) (same)
Texas	Tex.Penal Code Ann. § 8.07(c) (West Supp.2004-2005) (minimum age of 17)
Utah	Utah Code Ann. § 76-3-206(1) (Lexis 2003) (no express minimum age)
Virginia	Va.Code Ann. § 18.2-10(a) (Lexis 2004) (minimum age of 16)

**1201

STATES THAT RETAIN THE DEATH PENALTY BUT SET THE MINIMUM AGE AT 18

California	Cal.Penal Code Ann. § 190.5 (West 1999)
Colorado	Colo.Rev.Stat. § 18-1.4-102(1)(a) (Lexis 2004)
Connecticut	Conn. Gen.Stat. § 53a-46a(h) (2005)
Illinois	Ill.Comp.Stat. ch. 720, § 5/9-1(b) (West Supp.2003)
Indiana	Ind.Code Ann. § 35-50-2-3 (2004)
Kansas	Kan.Stat.Ann. § 21-4622 (1995)
Maryland	Md.Crim. Law Code Ann. § 2-202(b)(2)(i) (Lexis 2002)
Montana	Mont.Code Ann. § 45-5-102 (2003)
Nebraska	Neb.Rev.Stat. § 28-105.01(1) (Supp.2004)

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New Jersey	N.J. Stat. Ann. § 2C:11-3(g) (West Supp. 2003)
New Mexico	N.M. Stat. Ann. § 31-18-14(A) (2000)
New York	N.Y. Penal Law Ann. § 125.27 (West 2004)
Ohio	Ohio Rev.Code Ann. § 2929.02(A) (Lexis 2003)
Oregon	Ore. Rev. Stat. §§ 161.620, 137.707(2) (2003)
South Dakota	S.D. Codified Laws § 23A-27A-42 (West 2004)
Tennessee	Tenn. Code Ann. § 37-1-134(a)(1) (1996)
Washington	Minimum age of 18 established by judicial decision. *State v. Furman,* 122 Wash.2d 440, 858 P.2d 1092 (1993)
Wyoming	Wyo. Stat. § 6-2-101(b) (Lexis Supp. 2004)

* * *

During the past year, decisions by the highest courts of Kansas and New York invalidated provisions in those States' death penalty statutes. *State v. Marsh,* 278 Kan. 520, 102 P.3d 445 (2004) (invalidating provision that required imposition of the death penalty if aggravating and mitigating circumstances were found to be in equal balance); *People v. LaValle,* 3 N.Y.3d 88, 783 N.Y.S.2d 485, 817 N.E.2d 341 (2004) (invalidating mandatory requirement to instruct the jury that, in the case of jury deadlock as to the appropriate sentence in a capital case, the defendant would receive a sentence of life imprisonment with parole eligibility after serving a minimum of 20 to 25 years). Due to these decisions, it would appear that in these States the death penalty remains on the books, but that as a practical matter it might not be imposed on anyone until there is a change of course in these decisions, or until the respective state legislatures remedy the problems the courts have identified. *Marsh, supra,* at 524-526, 544-546, 102 P.3d, at 452, 464; *LaValle, supra,* at 99, 783 N.Y.S.2d 485, 817 N.E.2d, at 344.

581 IE STATES WITHOUT THE DEATH PENALTY

Alaska
Hawaii
Iowa
Maine
Massachusetts
Michigan
Minnesota
North Dakota
Rhode Island
Vermont
West Virginia
Wisconsin

****1202** APPENDIX B TO OPINION OF THE COURT

STATE STATUTES ESTABLISHING A MINIMUM AGE TO VOTE

STATE	AGE	STATUTE
Alabama	18	Ala. Const., Amdt. No. 579

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Alaska	18	Alaska Const. Art. V, § 1; Alaska Stat. §15.05.010 (Lexis 2004)
Arizona	18	Ariz. Const., Art. VII, § 2; Ariz.Rev.Stat. § 16-101 (West 2001)
Arkansas	18	Ark. Code Ann. § 9-25-101 (Lexis 2002)
California	18	Cal. Const., Art. 2, § 2
Colorado	18	Colo.Rev.Stat. § 1-2-101 (Lexis 2004)
Connecticut	18	Conn. Const., Art. 6, § 1; Conn. Gen.Stat. § 9-12 (2005)
Delaware	18	Del. Code Ann., Tit. 15, § 1701 (Michie Supp. 2004)
District of Columbia	18	D.C.Code § 1-1001.02(2)(B) (West Supp.2004)
Florida	18	Fla. Stat. ch. 97.041 (2005)
Georgia	18	Ga. Const., Art. 2, § 1, ¶ 2; Ga.Code Ann. § 21-2-216 (Lexis 2003)
Hawaii	18	Haw. Const. Art. II, § 1; Haw.Rev.Stat. § 11-12 (1995)
Idaho	18	Idaho Code § 34-402 (Michie 2001)
Illinois	18	Ill. Const. Art. III, § 1; Ill. Comp.Stat., ch. 10, § 5/3-1 (West 2002)
Indiana	18	Ind.Code Ann. § 3-7-13-1 (2004)
Iowa	18	Iowa Code § 48A.5 (2003)
*582 Kansas	18	Kan. Const., Art. 5, § 1
Kentucky	18	Ky. Const. § 145
Louisiana	18	La. Const., Art. I, § 10; La.Rev.Stat. Ann. § 18:101 (West 2004)
Maine	18	Me. Const. Art. II, § 1 (West Supp. 2004); Me.Rev.Stat. Ann., Tit. 21-A, §§ 111, 111-A (West 1993 and Supp. 2004)
Maryland	18	Md. Elec. Law Code Ann. § 3-102 (Lexis 2002)
Massachusetts	18	Mass. Gen. Laws Ann., ch. 51, § 1 (West Supp. 2005)
Michigan	18	Mich. Comp. Laws Ann. § 168.492 (West 1989)
Minnesota	18	Minn.Stat. § 201.014(1)(a) (2004)
Mississippi	18	Miss. Const., Art. 12, § 241
Missouri	18	Mo. Const. Art. VIII, § 2
Montana	18	Mont. Const., Art. IV, § 2; Mont.Code Ann. § 13-1-111 (2003)
Nebraska	18	Neb. Const. Art. VI, § 1; Neb.Rev.Stat. § 32-110 (2004)
Nevada	18	Nev.Rev.Stat. § 293.485 (2003)
New Hampshire	18	N.H. Const. Pt. I, Art. 11
New Jersey	18	N.J. Const., Art. II, § 1, ¶ 3
New Mexico	18	no provision other than U.S. Const. Amdt. XXVI
New York	18	N.Y. Elec. Law Ann. § 5-102 (West 1998)
North Carolina	18	N.C. Gen.Stat.Ann. § 163-55 (Lexis 2003)
North Dakota	18	N.D. Const., Art. II, § 1
Ohio	18	Ohio Const. Art. V, § 1; Ohio Rev.Code Ann. § 3503.01 (Anderson 1996)
Oklahoma	18	Okla. Const., Art. III, § 1
Oregon	18	Or. Const. Art. II, § 2
Pennsylvania	18	25 Pa. Cons.Stat. Ann. § 2811 (1994)
Rhode Island	18	R.I. Gen. Laws, § 17-1-3 (Lexis 2003)
South Carolina	18	S.C.Code Ann. § 7-5-610 (West Supp.2004)
South Dakota	18	S.D. Const. Art. VII, § 2; S.D. Codified Laws Ann. § 12-3-1 (West 2004)

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Tennessee	**18**	Tenn.Code Ann. § 2-2-102 (2003)
Texas	**18**	Tex.Elec.Code Ann. § 11.002 (West 2003)
Utah	**18**	Utah Const., Art. IV, § 2; Utah Code Ann. § 20A-2-101 (Lexis 2003)
Vermont	**18**	Vt. Stat. Ann. tit. 17, § 2121 (Lexis 2002)
*583 Virginia	**18**	Va. Const., Art. II, § 1
Washington	**18**	Wash. Const., Art. VI, § 1
West Virginia	**18**	W. Va.Code § 3-1-3 (Lexis 2002)
Wisconsin	**18**	Wis. Const., Art. III, § 1; Wis.Stat. § 6.02 (West 2004)
Wyoming	**18**	Wyo. Stat. Ann. §§ 22-1-102, 22-3-102 (Lexis Supp.2004)

* * *

The Twenty-Sixth Amendment to the Constitution of the United States provides that "[t]he right of citizens of the United States, who are **eighteen years of age** or older, to vote shall not be denied or abridged by the United States or by any State on account **of age**."

APPENDIX C TO OPINION OF THE COURT

**1203

STATE STATUTES ESTABLISHING A MINIMUM AGE FOR JURY SERVICE

STATE	*AGE*	*STATUTE*
Alabama	19	Ala.Code § 12-16-60(a)(1) (West 1995)
Alaska	18	Alaska Stat. § 09.20.010(a)(3) (Lexis 2004)
Arizona	**18**	Ariz.Rev.Stat. § 21-301(D) (West 2002)
Arkansas	18	Ark.Code Ann. §§ 16-31-101, 16-32-302 (Lexis Supp.2003)
California	**18**	Cal. Civ. Proc. § 203(a)(2) (West Supp.2005)
Colorado	18	Colo.Rev.Stat. § 13-71-105(2)(a) (Lexis 2004)
Connecticut	**18**	Conn. Gen.Stat. § 51-217(a) (2005)
Delaware	18	Del.Code Ann., Tit. 10, § 4509(b)(2) (Michie 1999)
District of Columbia	**18**	D.C.Code § 11-1906(b)(1)(C) (West 2001)
Florida	18	Fla. Stat. § 40.01 (2005)
Georgia	**18**	Ga.Code Ann. §§ 15-12-60, 15-12-163 (Lexis 2001)
Hawaii	18	Haw.Rev.Stat. § 612-4(a)(1) (Supp.2004)
Idaho	**18**	Idaho Code § 2-209(2)(a) (Michie 2004)
Illinois	18	Ill.Comp.Stat. ch. 705, § 305/2 (West 2002)
Indiana	**18**	Ind.Code § 33-28-4-8 (2004)
Iowa	18	Iowa Code § 607A.4(1)(a) (2003)
Kansas	**18**	Kan. Stat. Ann. § 43-156 (2000) (jurors must be qualified to be electors); Kan. Const., Art. 5, § 1 (person must be **18** to be qualified elector)
*584 Kentucky	18	Ky.Rev.Stat.Ann. § 29A.080(2)(a) (Lexis Supp.2004)
Louisiana	**18**	La.Code Crim. Proc. Ann., Art. 401(A)(2) (West 2003)
Maine	18	Me.Rev.Stat.Ann., tit. 14, § 1211 (West 1980)

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Maryland	**18**	Md. Cts. & Jud. Proc.Code Ann. § 8-104 (Lexis 2002)
Massachusetts	18	Mass. Gen. Laws Ann. ch. 234, § 1 (West 2000) (jurors must be qualified to vote); ch. 51, § 1 (West Supp. 2005) (person must be 18 to vote)
Michigan	**18**	Mich. Comp. Laws Ann. § 600.1307a(1)(a) (West Supp.2004)
Minnesota	18	Minn. Dist. Ct. Rule 808(b)(2) (2004)
Mississippi	21	Miss.Code Ann. § 13-5-1 (Lexis 2002)
Missouri	21	Mo. Rev. Stat. § 494.425(1) (2000)
Montana	**18**	Mont.Code Ann. § 3-15-301 (2003)
Nebraska	19	Neb. Rev. Stat. § 25-1601 (Supp. 2004)
Nevada	**18**	Nev.Rev.Stat. § 6.010 (2003) (juror must be qualified elector); § 293.485 (person must be **18** to vote)
New Hampshire	18	N.H. Rev. Stat. Ann. § 500-A:7-a(I) (Lexis Supp. 2004)
New Jersey	**18**	N.J. Stat. Ann. § 2B:20-1(a) (West 2004 Pamphlet)
New Mexico	18	N.M. Stat. Ann. § 38-5-1 (1998)
New York	**18**	N.Y. Jud. Law Ann. § 510(2) (West 2003)
North Carolina	18	N.C. Gen. Stat. Ann. § 9-3 (Lexis 2005)
North Dakota	**18**	N.D. Cent.Code § 27-09.1-08(2)(b) (Lexis Supp.2003)
Ohio	18	Ohio Rev. Code Ann. § 2313.42 (Anderson 2001)
Oklahoma	**18**	Okla. Stat. Ann., Tit. 38, § 28 (West Supp.2005)
Rhode Island	18	R.I. Gen. Laws § 9-9-1.1(a)(2) (Lexis Supp. 2005)
South Carolina	**18**	S.C.Code Ann. § 14-7-130 (West Supp.2004)
South Dakota	18	S.D. Codified Laws § 16-13-10 (2004)
Tennessee	**18**	Tenn.Code Ann. § 22-1-101 (1994)
Texas	18	Tex. Gov't Code Ann. § 62.102(1) (West 1998)
Utah	**18**	Utah Code Ann. § 78-46-7(1)(b) (Lexis 2002)
Vermont	18	Vt. Stat. Ann., Tit. 4, § 962(a)(1) (Lexis 1999) (jurors must have attained age of majority); Tit. 1, § 173 (Lexis 2005) (age of majority is 18)
***585** Virginia	**18**	Va.Code Ann. § 8.01-337 (Lexis 2000)
Washington	18	Wash. Rev. Code Ann. § 2.36.070 (West 2004)
West Virginia	**18**	W. Va.Code § 52-1-8(b)(1) (Lexis 2000)
Wisconsin	18	Wis. Stat. § 756.02 (West 2001)
Wyoming	**18**	Wyo. Stat. Ann. § 1-11-101 (Lexis 2003) (jurors must be adults); § 14-1-101 (person becomes an adult at **18**)

APPENDIX D TO OPINION OF THE COURT

****1204** .

STATE STATUTES ESTABLISHING A MINIMUM AGE FOR MARRIAGE WITHOUT PARENTAL OR JUDICIAL CONSENT

STATE	*AGE STATUTE*
Alabama	18 Ala. Code § 30-1-5 (West Supp. 2004)

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Alaska	**18**	Alaska Stat. §§ 25.05.011, 25.05.171 (Lexis 2004)
Arizona	18	Ariz.Rev.Stat.Ann. § 25-102 (West Supp.2004)
Arkansas	**18**	Ark.Code Ann. §§ 9-11-102, 9-11-208 (Lexis 2002)
California	18	Cal.Fam.Code Ann. § 301 (West 2004)
Colorado	**18**	Colo.Rev.Stat. Ann. § 14-2-106 (Lexis 2004)
Connecticut	18	Conn.Gen.Stat. § 46b-30 (2005)
Delaware	**18**	Del.Code Ann., Tit. 13, § 123 (Lexis 1999)
District of Columbia	18	D.C.Code § 46-411 (West 2001)
Florida	**18**	Fla. Stat. §§ 741.04, 741.0405 (2003)
Georgia	16	Ga.Code Ann. §§ 19-3-2, 19-3-37 (Lexis 2004) (those under 18 must obtain parental consent unless female applicant is pregnant or both applicants are parents of a living child, in which case minimum age to marry without consent is 16)
Hawaii	**18**	Haw.Rev.Stat. § 572-2 (1993)
Idaho	18	Idaho Code § 32-202 (Michie 1996)
Illinois	**18**	Ill. Comp. Stat., ch. 750, § 5/203 (West 2002)
Indiana	18	Ind.Code Ann. §§ 31-11-1-4, 31-11-1-5, 31-11-2-1, 31-11-2-3 (2004)
Iowa	**18**	Iowa Code § 595.2 (2003)
Kansas	18	Kan.Stat.Ann. § 23-106 (Supp.2006)
Kentucky	**18**	Ky.Rev.Stat. Ann. §§ 402.020, 402.210 (Lexis 1999)
Louisiana	18	La.Children's Code Ann., Arts. 1545, 1547 (West 2004) (minors may not marry without parental consent); La.Civ.Code Ann., Art. 29 (West 1999) (age of majority is 18)
Maine	**18**	Me.Rev.Stat. Ann., Tit. 19-A, § 652 (West 1998 and Supp.2004)
Maryland	16	Md.Fam.Law Code Ann. § 2-301 (Lexis 2004) (those under 18 must obtain parental consent unless female applicant can present proof of pregnancy or a child, in which case minimum age to marry without consent is 16)
Massachusetts	**18**	Mass. Gen. Laws Ann., ch. 207, §§ 7, 24, 25 (West 1998)
Michigan	18	Mich.Comp.Laws Ann. § 551.103 (West 2005)
Minnesota	**18**	Minn.Stat. § 517.02 (2004)
Mississippi	15 or 17	Miss.Code Ann. § 93-1-5 (Lexis 2004) (female applicants must be 15; male applicants must be 17)
Missouri	**18**	Mo.Rev.Stat. § 451.090 (2000)
Montana	18	Mont.Code Ann. §§ 40-1-202, 40-1-213 (2003)
Nebraska	19	Neb.Rev.Stat. § 42-105 (2004) (minors must have parental consent to marry); § 43-2101 (defining "minor" as a person under 19)
Nevada	18	Nev.Rev.Stat. § 122.020 (2003)
New Hampshire	**18**	N.H.Rev.Stat. Ann. § 457:5 (West 1992)
New Jersey	18	N.J.Stat.Ann. § 37:1-6 (West 2002)
New Mexico	**18**	N.M. Stat. Ann. § 40-1-6 (1999)
New York	18	N.Y.Dom.Rel.Law Ann. § 15 (West Supp.2005)
North Carolina	**18**	N.C. Gen.Stat. Ann. § 51-2 (Lexis 2003)
North Dakota	18	N.D.Cent.Code § 14-03-02 (Lexis 2004)

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Ohio	**18**	Ohio Rev.Code Ann. § 3101.01 (2003)
Oklahoma	**18**	Okla. Stat. Ann., Tit. 43, § 3 (West Supp. 2005)
Oregon	**18**	Ore.Rev.Stat. § 106.060 (2003)
Pennsylvania	**18**	23 Pa. Cons. Stat. § 1304 (1997)
Rhode Island	**18**	R.I. Gen. Laws § 15-2-11 (Supp.2004)
South Carolina	**18**	S.C. Code Ann. § 20-1-260 (West Supp. 2004)
South Dakota	**18**	S.D. Codified Laws § 25-1-9 (West 2004)
Tennessee	**18**	Tenn. Code Ann. § 36-3-106 (1996)
Texas	**18**	Tex. Fam. Code Ann. §§ 2.101-2.103 (West 1998)
Utah	**18**	Utah Code Ann. § 30-1-9 (Lexis Supp. 2004)
Vermont	**18**	Vt. Stat. Ann., Tit. **18**, § 5142 (Lexis 2000)
Virginia	**18**	Va. Code Ann. §§ 20-45.1, 20-48, 20-49 (Lexis 2004)
Washington	**18**	Wash. Rev. Code Ann. § 26.04.210 (West 2005)
West Virginia	**18**	W. Va. Code § 48-2-601 (Lexis 2004)
Wisconsin	**18**	Wis. Stat. § 765.02 (2001)
Wyoming	**18**	Wyo. Stat. Ann. § 20-1-102 (Lexis 2003)

Justice STEVENS, with whom Justice GINSBURG joins, concurring.

Perhaps even more important than our specific holding today is our reaffirmation of the basic principle that informs the Court's interpretation of the Eighth Amendment. If the meaning of that Amendment had been frozen when it was originally drafted, it would impose no impediment to the execution of 7-year-old children today. See *Stanford v. Kentucky*, 492 U.S. 361, 368, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989) (describing the common law at the time of the Amendment's adoption). The evolving standards of decency that have driven our construction of this critically important part of the Bill of Rights foreclose any such reading of the Amendment. In the best tradition of the common law, the pace of that evolution is a matter for continuing debate; but that our understanding of the Constitution does change from time to time has been settled since John Marshall breathed life into its text. If great lawyers of his day-Alexander Hamilton, for example-were sitting with us today, I would expect them to join Justice KENNEDY's opinion for the Court. In all events, I do so without hesitation.

****1206** Justice O'CONNOR, dissenting.

The Court's decision today establishes a categorical rule forbidding the execution of any offender for any crime committed before his 18th birthday, no matter how deliberate, wanton, or cruel the offense. Neither the objective evidence of contemporary societal values, nor the Court's moral proportionality analysis, nor the two in tandem suffice to justify this ruling.

***588** Although the Court finds support for its decision in the fact that a majority of the States now disallow capital punishment of 17-year-old offenders, it refrains from asserting that its holding is compelled by a genuine national consensus. Indeed, the evidence before us fails to demonstrate conclusively that any such consensus has emerged in the brief period since we upheld the constitutionality of this practice in *Stanford v. Kentucky*, 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989).

Instead, the rule decreed by the Court rests, ultimately, on its independent moral judgment that death is a disproportionately severe punishment for any 17-year-old offender. I do not subscribe to this judgment. Adolescents *as a class* are undoubtedly less mature, and therefore less culpable for their misconduct, than adults. But the Court has adduced no evidence impeaching the seemingly reasonable conclusion reached by many state legislatures: that at least *some* 17-year-old murderers are sufficiently mature to deserve the death penalty in an appropriate case. Nor has it been shown that capital sentencing juries are incapable of accurately assessing a youthful defendant's maturity or of giving due weight to the mitigating characteristics associated with youth.

On this record-and especially in light of the fact that so little has changed since our recent decision in *Stanford*-I would not substitute our judgment about the moral propri-

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ety of capital punishment for 17-year-old murderers for the judgments of the Nation's legislatures. Rather, I would demand a clearer showing that our society truly has set its face against this practice before reading the Eighth Amendment categorically to forbid it.

I

A

Let me begin by making clear that I agree with much of the Court's description of the general principles that guide our Eighth Amendment jurisprudence. The Amendment ***589** bars not only punishments that are inherently " 'barbaric,' " but also those that are " 'excessive' in relation to the crime committed." *Coker v. Georgia*, 433 U.S. 584, 592, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977) (plurality opinion). A sanction is therefore beyond the State's authority to inflict if it makes "no measurable contribution" to acceptable penal goals or is "grossly out of proportion to the severity of the crime." *Ibid.* The basic "precept of justice that punishment for crime should be ... proportioned to [the] offense," *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910), applies with special force to the death penalty. In capital cases, the Constitution demands that the punishment be tailored both to the nature of the crime itself and to the defendant's "personal responsibility and moral guilt." *Enmund v. Florida*, 458 U.S. 782, 801, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982); see also *id.*, at 825, 102 S.Ct. 3368 (O'CONNOR, J., dissenting); *Tison v. Arizona*, 481 U.S. 137, 149, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987); *Eddings v. Oklahoma*, 455 U.S. 104, 111-112, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982).

It is by now beyond serious dispute that the Eighth Amendment's prohibition of "cruel and unusual punishments" is not a static command. Its mandate would be ****1207** little more than a dead letter today if it barred only those sanctions-like the execution of children under the age of seven-that civilized society had already repudiated in 1791. See *ante*, at 1205 (STEVENS, J., concurring); cf. *Stanford, supra*, at 368, 109 S.Ct. 2969 (discussing the common law rule at the time the Bill of Rights was adopted). Rather, because "[t]he basic concept underlying the Eighth Amendment is nothing less than the dignity of man," the Amendment "must draw its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 100-101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion). In discerning those standards, we look to "objective factors to the maximum possible extent." *Coker, supra*, at 592, 97 S.Ct. 2861 (plurality opinion). Laws enacted by the Nation's legislatures provide the "clearest and most reliable objective evidence of contemporary values." *Penry v. Lynaugh*, 492 U.S. 302, 331, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989). ***590** And data reflecting the actions of sentencing juries, where available, can also afford " 'a significant and reliable objective index' " of societal mores. *Coker, supra*, at 596, 97 S.Ct. 2861 (plurality opinion) (quoting *Gregg v. Georgia*, 428 U.S. 153, 181, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.)).

Although objective evidence of this nature is entitled to great weight, it does not end our inquiry. Rather, as the Court today reaffirms, see *ante*, at 1191-1192, 1197-1198,"the Constitution contemplates that in the end our own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment," *Coker, supra*, at 597, 97 S.Ct. 2861 (plurality opinion). "[P]roportionality-at least as regards capital punishment-not only requires an inquiry into contemporary standards as expressed by legislators and jurors, but also involves the notion that the magnitude of the punishment imposed must be related to the degree of the harm inflicted on the victim, as well as to the degree of the defendant's blameworthiness." *Enmund, supra*, at 815, 102 S.Ct. 3368 (O'CONNOR, J., dissenting). We therefore have a "constitutional obligation" to judge for ourselves whether the death penalty is excessive punishment for a particular offense or class of offenders. See *Stanford*, 492 U.S., at 382, 109 S.Ct. 2969 (O'CONNOR, J., concurring in part and concurring in judgment); see also *Enmund, supra*, at 797, 102 S.Ct. 3368 ("[I]t is for us ultimately to judge whether the Eighth Amendment permits imposition of the death penalty").

B

Twice in the last two decades, the Court has applied these principles in deciding whether the Eighth Amendment permits capital punishment of adolescent offenders. In *Thompson v. Oklahoma*, 487 U.S. 815, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988), a plurality of four Justices concluded that the Eighth Amendment barred capital punishment of an offender for a crime committed before the age of 16. I concurred in that judgment on narrower grounds. At the time, 32 state legislatures had "definitely concluded that no 15-year-old should be exposed to the threat ***591** of execution," and no legislature had affirmatively endorsed such a practice. *Id.*, at 849, 108 S.Ct. 2687

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(O'CONNOR, J., concurring in judgment). While acknowledging that a national consensus forbidding the execution of 15-year-old offenders "very likely" did exist, I declined to adopt that conclusion as a matter of constitutional law without clearer evidentiary support. *Ibid.* Nor, in my view, could the issue be decided based on moral proportionality arguments of the type advanced ****1208** by the Court today. Granting the premise "that adolescents are generally less blameworthy than adults who commit similar crimes," I wrote, "it does not necessarily follow that all 15-year-olds are incapable of the moral culpability that would justify the imposition of capital punishment." *Id.*, at 853, 108 S.Ct. 2687. Similarly, we had before us no evidence "that 15-year-olds as a class are inherently incapable of being deterred from major crimes by the prospect of the death penalty." *Ibid.* I determined instead that, in light of the strong but inconclusive evidence of a national consensus against capital punishment of under-16 offenders, concerns rooted in the Eighth Amendment required that we apply a clear statement rule. Because the capital punishment statute in *Thompson* did not specify the minimum age at which commission of a capital crime would be punishable by death, I concluded that the statute could not be read to authorize the death penalty for a 15-year-old offender. *Id.*, at 857-858, 108 S.Ct. 2687.

The next year, in *Stanford v. Kentucky, supra,* the Court held that the execution of 16- or 17-year-old capital murderers did not violate the Eighth Amendment. I again wrote separately, concurring in part and concurring in the judgment. At that time, 25 States did not permit the execution of under-18 offenders, including 13 that lacked the death penalty altogether. See *id.*, at 370, 109 S.Ct. 2969. While noting that "[t]he day may come when there is such general legislative rejection of the execution of 16- or 17-year-old capital murderers that a clear national consensus can be said to have developed," I concluded that that day had not yet arrived. ***592***Id.*, at 381-382, 109 S.Ct. 2969. I reaffirmed my view that, beyond assessing the actions of legislatures and juries, the Court has a constitutional obligation to judge for itself whether capital punishment is a proportionate response to the defendant's blameworthiness. *Id.*, at 382, 109 S.Ct. 2969. Nevertheless, I concluded that proportionality arguments similar to those endorsed by the Court today did not justify a categorical Eighth Amendment rule against capital punishment of 16- and 17-year-old offenders. See *ibid.* (citing *Thompson, supra,* at 853-854, 108 S.Ct. 2687 (O'CONNOR, J., concurring in judgment)).

The Court has also twice addressed the constitutionality of capital punishment of mentally retarded offenders. In *Penry v. Lynaugh,* 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989), decided the same year as *Stanford,* we rejected the claim that the Eighth Amendment barred the execution of the mentally retarded. At that time, only two States specifically prohibited the practice, while 14 others did not have capital punishment at all. 492 U.S., at 334, 109 S.Ct. 2934. Much had changed when we revisited the question three Terms ago in *Atkins v. Virginia,* 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002). In *Atkins,* the Court reversed *Penry* and held that the Eighth Amendment forbids capital punishment of mentally retarded offenders. 536 U.S., at 321, 122 S.Ct. 2242. In the 13 years between *Penry* and *Atkins,* there had been a wave of legislation prohibiting the execution of such offenders. By the time we heard *Atkins,* 30 States barred the death penalty for the mentally retarded, and even among those States theoretically permitting such punishment, very few had executed a mentally retarded offender in recent history. 536 U.S., at 314-316, 122 S.Ct. 2242. On the basis of this evidence, the Court determined that it was "fair to say that a national consensus ha[d] developed against" the practice. *Id.*, at 316, 122 S.Ct. 2242.

****1209** But our decision in *Atkins* did not rest solely on this tentative conclusion. Rather, the Court's independent moral judgment was dispositive. The Court observed that mentally retarded persons suffer from major cognitive and behavioral ***593** deficits, *i.e.,* "subaverage intellectual functioning" and "significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18." *Id.*, at 318, 122 S.Ct. 2242. "Because of their impairments, [such persons] by definition ... have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others." *Ibid.* We concluded that these deficits called into serious doubt whether the execution of mentally retarded offenders would measurably contribute to the principal penological goals that capital punishment is intended to serve-retribution and deterrence. *Id.*, at 319-321, 122 S.Ct. 2242. Mentally retarded offenders' impairments so diminish their personal moral culpability that it is highly unlikely that such offenders could ever deserve the ultimate punishment, even in cases of capital murder. *Id.*, at 319, 122 S.Ct. 2242. And these same impairments made it very improbable that the threat of the death penalty would deter mentally retarded persons from committing capital crimes. *Id.*, at 319-320, 122 S.Ct. 2242. Having concluded that capital punishment of the

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mentally retarded is inconsistent with the Eighth Amendment, the Court " 'le[ft] to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences.' " *Id.*, at 317, 122 S.Ct. 2242 (quoting *Ford v. Wainwright*, 477 U.S. 399, 416-417, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986)).

II

A

Although the general principles that guide our Eighth Amendment jurisprudence afford some common ground, I part ways with the Court in applying them to the case before us. As a preliminary matter, I take issue with the Court's failure to reprove, or even to acknowledge, the Supreme Court of Missouri's unabashed refusal to follow our *594 controlling decision in *Stanford*. The lower court concluded that, despite *Stanford's* clear holding and historical recency, our decision was no longer binding authority because it was premised on what the court deemed an obsolete assessment of contemporary values. Quite apart from the merits of the constitutional question, this was clear error.

Because the Eighth Amendment "draw[s] its meaning from ... evolving standards of decency," *Trop*, 356 U.S., at 101, 78 S.Ct. 590 (plurality opinion), significant changes in societal mores over time may require us to reevaluate a prior decision. Nevertheless, it remains "*this* Court's prerogative *alone* to overrule one of its precedents." *State Oil Co. v. Khan*, 522 U.S. 3, 20, 118 S.Ct. 275, 139 L.Ed.2d 199 (1997) (emphasis added). That is so even where subsequent decisions or factual developments may appear to have "significantly undermined" the rationale for our earlier holding. *United States v. Hatter*, 532 U.S. 557, 567, 121 S.Ct. 1782, 149 L.Ed.2d 820 (2001); see also *State Oil Co., supra*, at 20, 118 S.Ct. 275; *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989). The Eighth Amendment provides no exception to this rule. On the contrary, clear, predictable, and uniform constitutional standards are especially desirable in this sphere. By affirming the lower court's judgment without so **1210 much as a slap on the hand, today's decision threatens to invite frequent and disruptive reassessments of our Eighth Amendment precedents.

B

In determining whether the juvenile death penalty comports with contemporary standards of decency, our inquiry begins with the "clearest and most reliable objective evidence of contemporary values"-the actions of the Nation's legislatures. *Penry, supra*, at 331, 109 S.Ct. 2934. As the Court emphasizes, the overall number of jurisdictions that currently disallow the execution of under-18 offenders is the same as the number that forbade the execution of mentally retarded offenders when *Atkins* was decided. *595 *Ante*, at 1192. At present, 12 States and the District of Columbia do not have the death penalty, while an additional 18 States and the Federal Government authorize capital punishment but prohibit the execution of under-18 offenders. See *ante*, at 1201-1202 (Appendix A). And here, as in *Atkins*, only a very small fraction of the States that permit capital punishment of offenders within the relevant class has actually carried out such an execution in recent history: Six States have executed under-18 offenders in the 16 years since *Stanford*, while five States had executed mentally retarded offenders in the 13 years prior to *Atkins*. See *Atkins*, 536 U.S., at 316, 122 S.Ct. 2242; V. Streib, The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973-December 31, 2004, No. 76, pp. 15-23 (2005), available at http:// www. law. onu. edu/ faculty/ streib/ documents/ Juv DeathDec2004.pdf (last updated Jan. 31, 2005) (as visited Feb. 25, 2005, and available in Clerk of Court's case file) (hereinafter Streib). In these respects, the objective evidence in this case is, indeed, "similar, and in some respects parallel to," the evidence upon which we relied in *Atkins*. *Ante*, at 1192.

While the similarities between the two cases are undeniable, the objective evidence of national consensus is marginally weaker here. Most importantly, in *Atkins* there was significant evidence of *opposition* to the execution of the mentally retarded, but there was virtually no countervailing evidence of affirmative legislative *support* for this practice. Cf. *Thompson*, 487 U.S., at 849, 108 S.Ct. 2687 (O'CONNOR, J., concurring in judgment) (attributing significance to the fact that "no legislature in this country has affirmatively and unequivocally endorsed" capital punishment of 15-year-old offenders). The States that permitted such executions did so only because they had not enacted any prohibitory legislation. Here, by contrast, at least seven States have current statutes that specifically set 16 or 17 as the minimum age at which *596 commission of a capital crime can expose the offender to the death penalty. See *ante*, at 1200-1201 (Appendix A).[FN*] Five of these seven States presently have one or more juvenile offenders**1211 on death row (six if respondent is included in the count), see Streib 24-31, and four of

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them have executed at least one under-18 offender in the past 15 years, see *id.*, at 15-23. In all, there are currently over 70 juvenile offenders on death row in 12 different States (13 including respondent). See *id.*, at 11, 24-31. This evidence suggests some measure of continuing public support for the availability of the death penalty for 17-year-old capital murderers.

> FN* In 12 other States that have capital punishment, under-18 offenders can be subject to the death penalty as a result of transfer statutes that permit such offenders to be tried as adults for certain serious crimes. See *ante,* at 1200-1201 (Appendix A). As I observed in *Thompson v. Oklahoma,* 487 U.S. 815, 850-852, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (opinion concurring in judgment): "There are many reasons, having nothing whatsoever to do with capital punishment, that might motivate a legislature to provide as a general matter for some [minors] to be channeled into the adult criminal justice process." Accordingly, while these 12 States clearly cannot be counted as *opposing* capital punishment of under-18 offenders, the fact that they permit such punishment through this indirect mechanism does not necessarily show affirmative and unequivocal legislative support for the practice. See *ibid.*

Moreover, the Court in *Atkins* made clear that it was "not so much the number of [States forbidding execution of the mentally retarded] that [was] significant, but the consistency of the direction of change." 536 U.S., at 315, 122 S.Ct. 2242. In contrast to the trend in *Atkins,* the States have not moved uniformly toward abolishing the juvenile death penalty. Instead, since our decision in *Stanford,* two States have expressly reaffirmed their support for this practice by enacting statutes setting 16 as the minimum age for capital punishment. See Mo.Rev.Stat. § 565.020.2 (2000); Va.Code Ann. § 18.2-10(a) (Lexis 2004). Furthermore, as the Court emphasized in *Atkins* itself, 536 U.S., at 315, n. 18, 122 S.Ct. 2242, the pace of legislative action in this context has been considerably slower than it was with regard to capital punishment of the mentally retarded.***597** In the 13 years between our decisions in *Penry* and *Atkins,* no fewer than 16 States banned the execution of mentally retarded offenders. See *Atkins, supra,* at 314-315, 122 S.Ct. 2242. By comparison, since our decision 16 years ago in *Stanford,* only four States that previously permitted the execution of under-18 offenders, plus the Federal Government, have legislatively reversed course, and one additional State's high court has construed the State's death penalty statute not to apply to under-18 offenders, see *State v. Furman,* 122 Wash.2d 440, 458, 858 P.2d 1092, 1103 (1993) (en banc). The slower pace of change is no doubt partially attributable, as the Court says, to the fact that 12 States had already imposed a minimum age of 18 when *Stanford* was decided. See *ante,* at 1193-1194. Nevertheless, the extraordinary wave of legislative action leading up to our decision in *Atkins* provided strong evidence that the country truly had set itself against capital punishment of the mentally retarded. Here, by contrast, the halting pace of change gives reason for pause.

To the extent that the objective evidence supporting today's decision is similar to that in *Atkins,* this merely highlights the fact that such evidence is not dispositive in either of the two cases. After all, as the Court today confirms, *ante,* at 1191, 1197-1198, the Constitution requires that " 'in the end our own judgment ... be brought to bear' " in deciding whether the Eighth Amendment forbids a particular punishment, *Atkins, supra,* at 312, 122 S.Ct. 2242 (quoting *Coker,* 433 U.S., at 597, 97 S.Ct. 2861 (plurality opinion)). This judgment is not merely a rubber stamp on the tally of legislative and jury actions. Rather, it is an integral part of the Eighth Amendment inquiry-and one that is entitled to independent weight in reaching our ultimate decision.

Here, as in *Atkins,* the objective evidence of a national consensus is weaker than in most prior cases in which the Court has struck down a particular punishment under the Eighth Amendment. See *Coker, supra,* at 595-596, 97 S.Ct. 2861 (plurality opinion) (striking down death penalty for rape of an adult ***598** woman, where only one jurisdiction authorized such punishment); *Enmund,* 458 U.S., at 792, 102 S.Ct. 3368 (striking down death penalty for certain crimes of aiding and abetting felony-murder, where only eight jurisdictions authorized such punishment); ****1212***Ford v. Wainwright,* 477 U.S., at 408, 106 S.Ct. 2595 (striking down capital punishment of the insane, where no jurisdiction permitted this practice). In my view, the objective evidence of national consensus, standing alone, was insufficient to dictate the Court's holding in *Atkins.* Rather, the compelling moral proportionality argument against capital punishment of mentally retarded offenders played a *decisive* role in persuading the Court that the practice was inconsistent with the Eighth Amendment. Indeed, the force of the proportionality argument in *Atkins* significantly bolstered the Court's confidence that the objective evidence in that case did, in fact,

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herald the emergence of a genuine national consensus. Here, by contrast, the proportionality argument against the juvenile death penalty is so flawed that it can be given little, if any, analytical weight-it proves too weak to resolve the lingering ambiguities in the objective evidence of legislative consensus or to justify the Court's categorical rule.

C

Seventeen-year-old murderers must be categorically exempted from capital punishment, the Court says, because they "cannot with reliability be classified among the worst offenders." *Ante,* at 1195. That conclusion is premised on three perceived differences between "adults," who have already reached their 18th birthdays, and "juveniles," who have not. See *ante,* at 1195-1196. First, juveniles lack maturity and responsibility and are more reckless than adults. Second, juveniles are more vulnerable to outside influences because they have less control over their surroundings. And third, a juvenile's character is not as fully formed as that of an adult. Based on these characteristics, the Court determines that 17-year-old capital murderers are not as ***599** blameworthy as adults guilty of similar crimes; that 17-year-olds are less likely than adults to be deterred by the prospect of a death sentence; and that it is difficult to conclude that a 17-year-old who commits even the most heinous of crimes is "irretrievably depraved." *Ante,* at 1195-1197. The Court suggests that "a rare case might arise in which a juvenile offender has sufficient psychological maturity, and at the same time demonstrates sufficient depravity, to merit a sentence of death." *Ante,* at 1197. However, the Court argues that a categorical age-based prohibition is justified as a prophylactic rule because "[t]he differences between juvenile and adult offenders are too marked and well understood to risk allowing a youthful person to receive the death penalty despite insufficient culpability." *Ante,* at 1197.

It is beyond cavil that juveniles as a class are generally less mature, less responsible, and less fully formed than adults, and that these differences bear on juveniles' comparative moral culpability. See, *e.g., Johnson v. Texas,* 509 U.S. 350, 367, 113 S.Ct. 2658, 125 L.Ed.2d 290 (1993) ("There is no dispute that a defendant's youth is a relevant mitigating circumstance"); *id.,* at 376, 113 S.Ct. 2658 (O'CONNOR, J., dissenting) ("[T]he vicissitudes of youth bear directly on the young offender's culpability and responsibility for the crime"); *Eddings,* 455 U.S., at 115-116, 102 S.Ct. 869 ("Our history is replete with laws and judicial recognition that minors, especially in their earlier years, generally are less mature and responsible than adults"). But even accepting this premise, the Court's proportionality argument fails to support its categorical rule.

First, the Court adduces no evidence whatsoever in support of its sweeping conclusion, see *ante,* at 1196-1197, that it is only in "rare" cases, if ever, that 17-year-old murderers are sufficiently mature and act with sufficient depravity to warrant the death penalty. The fact that juveniles are ****1213** generally *less* culpable for their misconduct than adults does not necessarily mean that a 17-year-old murderer cannot be *sufficiently* culpable to merit the death penalty. At most, the ***600** Court's argument suggests that the average 17-year-old murderer is not as culpable as the average adult murderer. But an especially depraved juvenile offender may nevertheless be just as culpable as many adult offenders considered bad enough to deserve the death penalty. Similarly, the fact that the availability of the death penalty may be *less* likely to deter a juvenile from committing a capital crime does not imply that this threat cannot *effectively* deter some 17-year-olds from such an act. Surely there is an age below which no offender, no matter what his crime, can be deemed to have the cognitive or emotional maturity necessary to warrant the death penalty. But at least at the margins between adolescence and adulthood-and especially for 17-year-olds such as respondent-the relevant differences between "adults" and "juveniles" appear to be a matter of degree, rather than of kind. It follows that a legislature may reasonably conclude that at least *some* 17-year-olds can act with sufficient moral culpability, and can be sufficiently deterred by the threat of execution, that capital punishment may be warranted in an appropriate case.

Indeed, this appears to be just such a case. Christopher Simmons' murder of Shirley Crook was premeditated, wanton, and cruel in the extreme. Well before he committed this crime, Simmons declared that he wanted to kill someone. On several occasions, he discussed with two friends (ages 15 and 16) his plan to burglarize a house and to murder the victim by tying the victim up and pushing him from a bridge. Simmons said they could " 'get away with it' " because they were minors. Brief for Petitioner 3. In accord with this plan, Simmons and his 15-year-old accomplice broke into Mrs. Crook's home in the middle of the night, forced her from her bed, bound her, and drove her to a state park. There, they walked her to a railroad trestle spanning a river, "hog-tied" her with electrical cable, bound her face completely with duct tape, and pushed her, still alive, from the trestle. She drowned in the water

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below. *Id.,* at 4. One can ***601** scarcely imagine the terror that this woman must have suffered throughout the ordeal leading to her death. Whatever can be said about the comparative moral culpability of 17-year-olds as a general matter, Simmons' actions unquestionably reflect " 'a consciousness materially more "depraved" than that of'... the average murderer." *Atkins,* 536 U.S., at 319, 122 S.Ct. 2242 (quoting *Godfrey v. Georgia,* 446 U.S. 420, 433, 100 S.Ct. 1759, 64 L.Ed.2d 398 (1980)). And Simmons' prediction that he could murder with impunity because he had not yet turned 18 though inaccurate suggests that he *did* take into account the perceived risk of punishment in deciding whether to commit the crime. Based on this evidence, the sentencing jury certainly had reasonable grounds for concluding that, despite Simmons' youth, he "ha[d] sufficient psychological maturity" when he committed this horrific murder, and "at the same time demonstrate[d] sufficient depravity, to merit a sentence of death." *Ante,* at 1197.

The Court's proportionality argument suffers from a second and closely related defect: It fails to establish that the differences in maturity between 17-year-olds and young "adults" are both universal enough and significant enough to justify a bright-line prophylactic rule against capital punishment of the former. The Court's analysis is premised on differences *in the aggregate* between juveniles and adults, which frequently do not hold true when comparing individuals. Although it may ****1214** be that many 17-year-old murderers lack sufficient maturity to deserve the death penalty, some juvenile murderers may be quite mature. Chronological age is not an unfailing measure of psychological development, and common experience suggests that many 17-year-olds are more mature than the average young "adult." In short, the class of offenders exempted from capital punishment by today's decision is too broad and too diverse to warrant a categorical prohibition. Indeed, the age-based line drawn by the Court is indefensibly arbitrary-it quite likely will protect a number of offenders who are mature enough to ***602** deserve the death penalty and may well leave vulnerable many who are not.

For purposes of proportionality analysis, 17-year-olds as a class are qualitatively and materially different from the mentally retarded. "Mentally retarded" offenders, as we understood that category in *Atkins,* are *defined* by precisely the characteristics which render death an excessive punishment. A mentally retarded person is, "by definition," one whose cognitive and behavioral capacities have been proved to fall below a certain minimum. See *Atkins,* 536 U.S., at 318, 122 S.Ct. 2242; see also *id.,* at 308, n. 3, 122 S.Ct. 2242 (discussing characteristics of mental retardation); *id.,* at 317, and n. 22, 122 S.Ct. 2242 (leaving to the States the development of mechanisms to determine which offenders fall within the class exempt from capital punishment). Accordingly, for purposes of our decision in *Atkins,* the mentally retarded are not merely *less* blameworthy for their misconduct or *less* likely to be deterred by the death penalty than others. Rather, a mentally retarded offender is one whose demonstrated impairments make it so highly unlikely that he is culpable enough to deserve the death penalty or that he could have been deterred by the threat of death, that execution is not a defensible punishment. There is no such inherent or accurate fit between an offender's chronological age and the personal limitations which the Court believes make capital punishment excessive for 17-year-old murderers. Moreover, it defies common sense to suggest that 17-year-olds as a class are somehow equivalent to mentally retarded persons with regard to culpability or susceptibility to deterrence. Seventeen-year-olds may, on average, be less mature than adults, but that lesser maturity simply cannot be equated with the major, lifelong impairments suffered by the mentally retarded.

The proportionality issues raised by the Court clearly implicate Eighth Amendment concerns. But these concerns may properly be addressed not by means of an arbitrary, categorical age-based rule, but rather through individualized ***603** sentencing in which juries are required to give appropriate mitigating weight to the defendant's immaturity, his susceptibility to outside pressures, his cognizance of the consequences of his actions, and so forth. In that way the constitutional response can be tailored to the specific problem it is meant to remedy. The Eighth Amendment guards against the execution of those who are "insufficient[ly] culpab[le]," see *ante,* at 1197, in significant part, by requiring sentencing that "reflect[s] a reasoned *moral* response to the defendant's background, character, and crime." *California v. Brown,* 479 U.S. 538, 545, 107 S.Ct. 837, 93 L.Ed.2d 934 (1987) (O'CONNOR, J., concurring). Accordingly, the sentencer in a capital case must be permitted to give full effect to all constitutionally relevant mitigating evidence. See *Tennard v. Dretke,* 542 U.S. 274, 283-285, 124 S.Ct. 2562, 2569-2570, 159 L.Ed.2d 384 (2004); *Lockett v. Ohio,* 438 U.S. 586, 604, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality opinion). A ****1215** defendant's youth or immaturity is, of course, a paradigmatic example of such evidence. See *Eddings,* 455 U.S., at 115-116, 102 S.Ct. 869.

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Although the prosecutor's apparent attempt to use respondent's youth as an aggravating circumstance in this case is troubling, that conduct was never challenged with specificity in the lower courts and is not directly at issue here. As the Court itself suggests, such "overreaching" would best be addressed, if at all, through a more narrowly tailored remedy. See *ante,* at 1197. The Court argues that sentencing juries cannot accurately evaluate a youthful offender's maturity or give appropriate weight to the mitigating characteristics related to youth. But, again, the Court presents no real evidence-and the record appears to contain none-supporting this claim. Perhaps more importantly, the Court fails to explain why this duty should be so different from, or so much more difficult than, that of assessing and giving proper effect to any other qualitative capital sentencing factor. I would not be so quick to conclude that the constitutional safeguards, the sentencing juries, and the trial judges upon ***604** which we place so much reliance in all capital cases are inadequate in this narrow context.

D

I turn, finally, to the Court's discussion of foreign and international law. Without question, there has been a global trend in recent years toward abolishing capital punishment for under-18 offenders. Very few, if any, countries other than the United States now permit this practice in law or in fact. See *ante,* at 1199. While acknowledging that the actions and views of other countries do not dictate the outcome of our Eighth Amendment inquiry, the Court asserts that "the overwhelming weight of international opinion against the juvenile death penalty ... does provide respected and significant confirmation for [its] own conclusions." *Ante,* at 1200. Because I do not believe that a genuine *national* consensus against the juvenile death penalty has yet developed, and because I do not believe the Court's moral proportionality argument justifies a categorical, age-based constitutional rule, I can assign no such *confirmatory* role to the international consensus described by the Court. In short, the evidence of an international consensus does not alter my determination that the Eighth Amendment does not, at this time, forbid capital punishment of 17-year-old murderers in all cases.

Nevertheless, I disagree with Justice SCALIA's contention, *post,* at 1225-1229 (dissenting opinion), that foreign and international law have no place in our Eighth Amendment jurisprudence. Over the course of nearly half a century, the Court has consistently referred to foreign and international law as relevant to its assessment of evolving standards of decency. See *Atkins, supra,* at 317, n. 21, 122 S.Ct. 2242; *Thompson,* 487 U.S., at 830-831, and n. 31, 108 S.Ct. 2687 (plurality opinion); *Enmund,* 458 U.S., at 796-797, n. 22, 102 S.Ct. 3368; *Coker,* 433 U.S., at 596, n. 10, 97 S.Ct. 2861 (plurality opinion); *Trop,* 356 U.S., at 102-103, 78 S.Ct. 590 (plurality opinion). This inquiry reflects the special character of the Eighth ***605** Amendment, which, as the Court has long held, draws its meaning directly from the maturing values of civilized society. Obviously, American law is distinctive in many respects, not least where the specific provisions of our Constitution and the history of its exposition so dictate. Cf. *post,* at 1226-1227 (SCALIA, J., dissenting) (discussing distinctively American rules of law related to the Fourth Amendment and the Establishment Clause). But this Nation's evolving understanding of human dignity certainly****1216** is neither wholly isolated from, nor inherently at odds with, the values prevailing in other countries. On the contrary, we should not be surprised to find congruence between domestic and international values, especially where the international community has reached clear agreement-expressed in international law or in the domestic laws of individual countries-that a particular form of punishment is inconsistent with fundamental human rights. At least, the existence of an international consensus of this nature can serve to confirm the reasonableness of a consonant and genuine American consensus. The instant case presents no such domestic consensus, however, and the recent emergence of an otherwise global consensus does not alter that basic fact.

* * *

In determining whether the Eighth Amendment permits capital punishment of a particular offense or class of offenders, we must look to whether such punishment is consistent with contemporary standards of decency. We are obligated to weigh both the objective evidence of societal values and our own judgment as to whether death is an excessive sanction in the context at hand. In the instant case, the objective evidence is inconclusive; standing alone, it does not demonstrate that our society has repudiated capital punishment of 17-year-old offenders in all cases. Rather, the actions of the Nation's legislatures suggest that, although a clear and durable national consensus against this practice may in time ***606** emerge, that day has yet to arrive. By acting so soon after our decision in *Stanford,* the Court both pre-empts the democratic debate through which genuine consensus might develop and simultaneously runs a considerable risk of inviting lower court reassessments of our Eighth Amendment prece-

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dents.

To be sure, the objective evidence supporting today's decision is similar to (though marginally weaker than) the evidence before the Court in *Atkins*. But *Atkins* could not have been decided as it was based solely on such evidence. Rather, the compelling proportionality argument against capital punishment of the mentally retarded played a decisive role in the Court's Eighth Amendment ruling. Moreover, the constitutional rule adopted in *Atkins* was tailored to this proportionality argument: It exempted from capital punishment a defined group of offenders whose proven impairments rendered it highly unlikely, and perhaps impossible, that they could act with the degree of culpability necessary to deserve **death**. And *Atkins* left to the States the development of mechanisms to determine which individual offenders fell within this class.

In the instant case, by contrast, the moral proportionality arguments against the juvenile **death** penalty fail to support the rule the Court adopts today. There is no question that "the chronological **age** of a minor is itself a relevant mitigating factor of great weight," *Eddings*, 455 U.S., at 116, 102 S.Ct. 869, and that sentencing juries must be given an opportunity carefully to consider a **defendant's age** and maturity in deciding whether to assess the **death** penalty. But the mitigating characteristics associated with youth do not justify an absolute **age** limit. A legislature can reasonably conclude, as many have, that some 17-**year**-old murderers are mature enough to deserve the **death** penalty in an appropriate case. And nothing in the record before us suggests that sentencing juries are so unable accurately to assess a 17-**year**-old **defendant's*607** maturity, or so incapable of giving proper weight to youth as a mitigating factor, that the Eighth Amendment requires the bright-line rule imposed today. In the end, the Court's flawed proportionality argument simply **1217 cannot bear the weight the Court would place upon it.

Reasonable minds can differ as to the minimum **age** at which commission of a serious crime should expose the **defendant** to the **death** penalty, if at all. Many jurisdictions have abolished capital punishment altogether, while many others have determined that even the most heinous crime, if committed before the **age of 18**, should not be punishable by **death**. Indeed, were my office that of a legislator, rather than a judge, then I, too, would be inclined to support legislation setting a minimum **age of 18** in this context. But a significant number of States, including Missouri, have decided to make the **death** penalty potentially available for 17-**year**-old capital murderers such as respondent. Without a clearer showing that a genuine national consensus forbids the execution of such offenders, this Court should not substitute its own "inevitably subjective judgment" on how best to resolve this difficult moral question for the judgments of the Nation's democratically elected legislatures. See *Thompson*, 487 U.S., at 854, 108 S.Ct. 2687 (O'CONNOR, J., concurring in judgment). I respectfully dissent.

Justice SCALIA, with whom THE CHIEF JUSTICE and Justice THOMAS join, dissenting.

In urging approval of a constitution that gave life-tenured judges the power to nullify laws enacted by the people's representatives, Alexander Hamilton assured the citizens of New York that there was little risk in this, since "[t]he judiciary ... ha[s] neither FORCE nor WILL but merely judgment." The Federalist No. 78, p. 465 (C. Rossiter ed.1961). But Hamilton had in mind a traditional judiciary, "bound down by strict rules and precedents which serve to define *608 and point out their duty in every particular case that comes before them." *Id.*, at 471. Bound down, indeed. What a mockery today's opinion makes of Hamilton's expectation, announcing the Court's conclusion that the meaning of our Constitution has changed over the past 15 years-not, mind you, that this Court's decision 15 years ago was *wrong*, but that the Constitution *has changed*. The Court reaches this implausible result by purporting to advert, not to the original meaning of the Eighth Amendment, but to "the evolving standards of decency," *ante*, at 1190 (internal quotation marks omitted), of our national society. It then finds, on the flimsiest of grounds, that a national consensus which could not be perceived in our people's laws barely 15 years ago now solidly exists. Worse still, the Court says in so many words that what our people's laws say about the issue does not, in the last analysis, matter: "[I]n the end our own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment." *Ante*, at 1191-1192 (internal quotation marks omitted). The Court thus proclaims itself sole arbiter of our Nation's moral standards-and in the course of discharging that awesome responsibility purports to take guidance from the views of foreign courts and legislatures. Because I do not believe that the meaning of our Eighth Amendment, any more than the meaning of other provisions of our Constitution, should be determined by the subjective views of five Members of this Court and like-minded foreigners, I dissent.

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I

In determining that capital punishment of offenders who committed murder before age 18 is "cruel and unusual" under the Eighth Amendment, the Court first considers, in accordance with our modern (though in my view mistaken) jurisprudence, whether there is a "national consensus," *ibid.* (internal quotation marks omitted),**1218 that laws allowing such *609 executions contravene our modern "standards of decency," [FN1] *Trop v. Dulles*, 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958). We have held that this determination should be based on "objective indicia that reflect the public attitude toward a given sanction"-namely, "statutes passed by society's elected representatives." *Stanford v. Kentucky*, 492 U.S. 361, 370, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989) (internal quotation marks omitted). As in *Atkins v. Virginia*, 536 U.S. 304, 312, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), the Court dutifully recites this test and claims halfheartedly that a national consensus has emerged since our decision in *Stanford*, because 18 States-or 47% of States that permit capital punishment-now have legislation prohibiting the execution of offenders under 18, and because all of 4 States have adopted such legislation since *Stanford*. See *ante*, at 1192-1193.

> FN1. The Court ignores entirely the threshold inquiry in determining whether a particular punishment complies with the Eighth Amendment: whether it is one of the "modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted." *Ford v. Wainwright*, 477 U.S. 399, 405, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986). As we have noted in prior cases, the evidence is unusually clear that the Eighth Amendment was not originally understood to prohibit capital punishment for 16- and 17-year-old offenders. See *Stanford v. Kentucky*, 492 U.S. 361, 368, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989). At the time the Eighth Amendment was adopted, the death penalty could theoretically be imposed for the crime of a 7-year-old, though there was a rebuttable presumption of incapacity to commit a capital (or other) felony until the age of 14. See *ibid.* (citing 4 W. Blackstone, Commentaries *23-*24; 1 M. Hale, Pleas of the Crown 24-29 (1800)).

Words have no meaning if the views of less than 50% of death penalty States can constitute a national consensus. See *Atkins, supra*, at 342-345, 122 S.Ct. 2242 (SCALIA, J., dissenting). Our previous cases have required overwhelming opposition to a challenged practice, generally over a long period of time. In *Coker v. Georgia*, 433 U.S. 584, 595-596, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977), a plurality concluded the Eighth Amendment prohibited capital punishment for rape of an adult woman where only one jurisdiction authorized such punishment. The plurality also observed that "[a]t no time in the last 50 years ha[d] a majority of *610 States authorized death as a punishment for rape." *Id.*, at 593, 97 S.Ct. 2861. In *Ford v. Wainwright*, 477 U.S. 399, 408, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986), we held execution of the insane unconstitutional, tracing the roots of this prohibition to the common law and noting that "no State in the union permits the execution of the insane." In *Enmund v. Florida*, 458 U.S. 782, 792, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982), we invalidated capital punishment imposed for participation in a robbery in which an accomplice committed murder, because 78% of all death penalty States prohibited this punishment. Even there we expressed some hesitation, because the legislative judgment was "neither 'wholly unanimous among state legislatures,' ... nor as compelling as the legislative judgments considered in *Coker*." *Id.*, at 793, 102 S.Ct. 3368. By contrast, agreement among 42% of death penalty States in *Stanford*, which the Court appears to believe was correctly decided at the time, *ante*, at 1197-1198, was insufficient to show a national consensus. See *Stanford, supra*, at 372, 109 S.Ct. 2969.

In an attempt to keep afloat its implausible assertion of national consensus, the Court throws overboard a proposition well established in our Eighth Amendment jurisprudence. "It should be observed," the Court says, "that the *Stanford* Court **1219 should have considered those States that had abandoned the death penalty altogether as part of the consensus against the juvenile death penalty ... ; a State's decision to bar the death penalty altogether of necessity demonstrates a judgment that the death penalty is inappropriate for all offenders, including juveniles." *Ante*, at 1198. The insinuation that the Court's new method of counting contradicts only "the *Stanford* Court" is misleading. *None* of our cases dealing with an alleged constitutional limitation upon the death penalty has counted, as States supporting a consensus in favor of that limitation, States that have eliminated the death penalty entirely. See *Ford, supra*, at 408, n. 2, 106 S.Ct. 2595; *Enmund, supra*, at 789, 102 S.Ct. 3368; *Coker, supra*, at 594, 97 S.Ct. 2861. And with good reason. Consulting States that bar the death penalty concerning the necessity of making an exception to the penalty*611 for offenders

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under 18 is rather like including old-order Amishmen in a consumer-preference poll on the electric car. Of *course* they don't like it, but that sheds no light whatever on the point at issue. That 12 States favor *no* executions says something about consensus against the death penalty, but nothing-absolutely nothing-about consensus that offenders under 18 deserve special immunity from such a penalty. In repealing the death penalty, those 12 States considered *none* of the factors that the Court puts forth as determinative of the issue before us today-lower culpability of the young, inherent recklessness, lack of capacity for considered judgment, etc. What might be relevant, perhaps, is how many of those States permit 16- and 17-year-old offenders to be treated as adults with respect to noncapital offenses. (They all do; [FN2] indeed, some even *require* that juveniles as young as 14 be tried as adults if they are charged with murder.[FN3]) The attempt by the Court to turn its remarkable minority consensus into a faux majority by counting Amishmen is an act of nomological desperation.

FN2. See Alaska Stat. § 47.12.030 (Lexis 2002); Haw.Rev.Stat. § 571-22 (1999); Iowa Code § 232.45 (2003); Me.Rev.Stat. Ann., Tit. 15, § 3101(4) (West 2003); Mass. Gen. Laws Ann., ch. 119, § 74 (West 2003); Mich. Comp. Laws Ann. § 764.27 (West 2000); Minn.Stat. § 260B.125 (2004); N.D. Cent.Code § 27-20-34 (Lexis Supp.2003); R.I. Gen. Laws § 14-1-7 (Lexis 2002); Vt. Stat. Ann., Tit. 33, § 5516 (Lexis 2001); W. Va.Code § 49-5-10 (Lexis 2004); Wis. Stat. § 938.18 (2003-2004); see also National Center for Juvenile Justice, Trying and Sentencing Juveniles as Adults: An Analysis of State Transfer and Blended Sentencing Laws 1 (Oct.2003). The District of Columbia is the only jurisdiction without a death penalty that specifically exempts under-18 offenders from its harshest sanction-life imprisonment without parole. See D.C.Code § 22-2104 (West 2001).

FN3. See Mass. Gen. Laws Ann., ch. 119, § 74 (West 2003); N.D. Cent.Code § 27-20-34 (Lexis Supp.2003); W. Va.Code § 49-5-10 (Lexis 2004).

Recognizing that its national-consensus argument was weak compared with our earlier cases, the *Atkins* Court found additional support in the fact that 16 States had prohibited execution of mentally retarded individuals since ***612** *Penry v. Lynaugh*, 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989). *Atkins*, 536 U.S., at 314-316, 122 S.Ct. 2242. Indeed, the *Atkins* Court distinguished *Stanford* on that very ground, explaining that "[a]lthough we decided *Stanford* on the same day as *Penry*, apparently *only two* state legislatures have raised the threshold age for imposition of the death penalty." 536 U.S., at 315, n. 18, 122 S.Ct. 2242 (emphasis added). Now, the Court says a legislative change in four States is "significant" enough to trigger a constitutional prohibition.[FN4] *Ante*, at 1193. It is amazing to ****1220** think that this subtle shift in numbers can take the issue entirely off the table for legislative debate.

FN4. As the Court notes, Washington State's decision to prohibit executions of offenders under 18 was made by a judicial, not legislative, decision. *State v. Furman*, 122 Wash.2d 440, 459, 858 P.2d 1092, 1103 (1993), construed the State's death penalty statute-which did not set any age limit-to apply only to persons over 18. The opinion found that construction necessary to avoid what it considered constitutional difficulties, and did not purport to reflect popular sentiment. It is irrelevant to the question of changed national consensus.

I also doubt whether many of the legislators who voted to change the laws in those four States would have done so if they had known their decision would (by the pronouncement of this Court) be rendered irreversible. After all, legislative support for capital punishment, in any form, has surged and ebbed throughout our Nation's history. As Justice O'CONNOR has explained:

"The history of the death penalty instructs that there is danger in inferring a settled societal consensus from statistics like those relied on in this case. In 1846, Michigan became the first State to abolish the death penalty .... In succeeding decades, other American States continued the trend towards abolition .... Later, and particularly after World War II, there ensued a steady and dramatic decline in executions .... In the 1950's and 1960's, more States abolished or radically restricted capital punishment, and executions ceased completely for several years beginning in 1968....

***613** "In 1972, when this Court heard arguments on the constitutionality of the death penalty, such statistics might have suggested that the practice had become a relic, implicitly rejected by a new societal consensus.... We now know that any inference of a societal consen-

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> sus rejecting the death penalty would have been mistaken. But had this Court then declared the existence of such a consensus, and outlawed capital punishment, legislatures would very likely not have been able to revive it. The mistaken premise of the decision would have been frozen into constitutional law, making it difficult to refute and even more difficult to reject." *Thompson v. Oklahoma*, 487 U.S. 815, 854-855, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (opinion concurring in judgment).

Relying on such narrow margins is especially inappropriate in light of the fact that a number of legislatures and voters have expressly affirmed their support for capital punishment of 16- and 17-year-old offenders since *Stanford*. Though the Court is correct that no State has lowered its death penalty age, both the Missouri and Virginia Legislatures-which, at the time of *Stanford*, had no minimum age requirement-expressly established 16 as the minimum. Mo.Rev.Stat. § 565.020.2 (2000); Va.Code Ann. § 18.2-10(a) (Lexis 2004). The people of Arizona [FN5] and Florida [FN6] have ***614** done the same by ballot initiative.****1221** Thus, even States that have not executed an under-18 offender in recent years unquestionably favor the possibility of capital punishment in some circumstances.

> FN5. In 1996, Arizona's Ballot Proposition 102 exposed under-18 murderers to the death penalty by automatically transferring them out of juvenile courts. The statute implementing the proposition required the county attorney to "bring a criminal prosecution against a juvenile in the same manner as an adult if the juvenile is fifteen, sixteen or seventeen years of age and is accused of ... first degree murder." Ariz.Rev.Stat. Ann. § 13-501 (West 2001). The Arizona Supreme Court has added to this scheme a constitutional requirement that there be an individualized assessment of the juvenile's maturity at the time of the offense. See *State v. Davolt*, 207 Ariz. 191, 214-216, 84 P.3d 456, 479-481 (2004).

> FN6. Florida voters approved an amendment to the State Constitution, which changed the wording from "cruel *or* unusual" to "cruel *and* unusual," Fla. Const., Art. I, § 17 (2003). See Commentary to 1998 Amendment, 25B Fla. Stat. Ann., p. 180 (West 2004). This was a response to a Florida Supreme Court ruling that "cruel *or* unusual" excluded the death penalty for a defendant who committed murder when he was younger than 17. See *Brennan v. State*, 754 So.2d 1, 5 (1999). By adopting the federal constitutional language, Florida voters effectively adopted our decision in *Stanford v. Kentucky*, 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989). See Weaver, Word May Allow Execution of 16-Year-Olds, Miami Herald, Nov. 7, 2002, p. 7B.

The Court's reliance on the infrequency of executions for under-18 murderers, *ante*, at 1192-1193, 1194, credits an argument that this Court considered and explicitly rejected in *Stanford*. That infrequency is explained, we accurately said, both by "the undisputed fact that a far smaller percentage of capital crimes are committed by persons under 18 than over 18," 492 U.S., at 374, 109 S.Ct. 2969, and by the fact that juries are required at sentencing to consider the offender's youth as a mitigating factor, see *Eddings v. Oklahoma*, 455 U.S. 104, 115-116, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982). Thus, "it is not only possible, but overwhelmingly probable, that the very considerations which induce [respondent] and [his] supporters to believe that death should *never* be imposed on offenders under 18 cause prosecutors and juries to believe that it should *rarely* be imposed." *Stanford, supra*, at 374, 109 S.Ct. 2969.

It is, furthermore, unclear that executions of the relevant age group have decreased since we decided *Stanford*. Between 1990 and 2003, 123 of 3,599 death sentences, or 3.4%, were given to individuals who committed crimes before reaching age 18. V. Streib, The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes, January 1, 1973-September 30, 2004, No. 75, p. 9 (Table 3) (last updated Oct. 5, 2004), http:// www. law. onu. edu/ faculty/ streib/ documents/ Juv Death Sept 302004. pdf (all Internet materials as visited Jan. 12, 2005, and available in Clerk of Court's case file) (hereinafter Juvenile Death Penalty Today). ***615** By contrast, only 2.1% of those sentenced to death between 1982 and 1988 committed the crimes when they were under 18. See *Stanford, supra*, at 373, 109 S.Ct. 2969 (citing V. Streib, Imposition of Death Sentences for Juvenile Offenses, January 1, 1982, Through April 1, 1989, p. 2 (paper for Cleveland-Marshall College of Law, April 5, 1989)). As for actual executions of under-18 offenders, they constituted 2.4% of the total executions since 1973. Juvenile Death Penalty Today 4. In *Stanford*, we noted that only 2% of the executions between 1642 and 1986 were of under-18 offenders and found that that lower number did

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not demonstrate a national consensus against the penalty. 492 U.S., at 373-374, 109 S.Ct. 2969 (citing V. Streib, Death Penalty for Juveniles 55, 57 (1987)). Thus, the numbers of under-18 offenders subjected to the death penalty, though low compared with adults, have either held steady or slightly increased since *Stanford.* These statistics in no way support the action the Court takes today.

II

Of course, the real force driving today's decision is not the actions of four state legislatures, but the Court's " ' "own judgment" ' " that murderers younger than 18 can never be as morally culpable as older counterparts. *Ante,* at 1191-1192 (quoting *Atkins,* 536 U.S., at 312, 122 S.Ct. 2242 (in turn quoting *Coker,* 433 U.S., at 597, 97 S.Ct. 2861 (plurality opinion))). The Court claims that this usurpation of the role of moral arbiter is simply a "retur[n] to the rul[e] established in decisions predating *Stanford,*" *ante,* at 1191. That supposed **1222 rule-which is reflected solely in dicta and never once in a *holding* that purports to supplant the consensus of the American people with the Justices' views [FN7]-was repudiated in *Stanford* for the very good reason*616 that it has no foundation in law or logic. If the Eighth Amendment set forth an ordinary rule of law, it would indeed be the role of this Court to say what the law is. But the Court having pronounced that the Eighth Amendment is an ever-changing reflection of "the evolving standards of decency" of our society, it makes no sense for the Justices then to *prescribe* those standards rather than discern them from the practices of our people. On the evolving-standards hypothesis, the only legitimate function of this Court is to identify a moral consensus of the American people. By what conceivable warrant can nine lawyers presume to be the authoritative conscience of the Nation? [FN8]

FN7. See, *e.g., Enmund v. Florida,* 458 U.S. 782, 801, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982) ("[W]e have no reason to disagree with th[e] judgment [of the state legislatures] for purposes of construing and applying the Eighth Amendment"); *Coker v. Georgia,* 433 U.S. 584, 597, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977) (plurality opinion) ("[T]he legislative rejection of capital punishment for rape strongly confirms our own judgment").

FN8. Justice O'CONNOR agrees with our analysis that no national consensus exists here, *ante,* at 1210-1212 (dissenting opinion). She is nonetheless prepared (like the majority) to override the judgment of America's legislatures if it contradicts her own assessment of "moral proportionality," *ante,* at 1212. She dissents here only because it does not. The votes in today's case demonstrate that the offending of selected lawyers' moral sentiments is not a predictable basis for law-much less a democratic one.

The reason for insistence on legislative primacy is obvious and fundamental: " '[I]n a democratic society legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people.' " *Gregg v. Georgia,* 428 U.S. 153, 175-176, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.) (quoting *Furman v. Georgia,* 408 U.S. 238, 383, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (Burger, C. J., dissenting)). For a similar reason we have, in our determination of society's moral standards, consulted the practices of sentencing juries: Juries " 'maintain a link between contemporary community values and the penal system' " that this Court cannot claim for itself. *Gregg, supra,* at 181, 96 S.Ct. 2909 (quoting *Witherspoon v. Illinois,* 391 U.S. 510, 519, n. 15, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968)).

Today's opinion provides a perfect example of why judges are ill equipped to make the type of legislative judgments the Court insists on making here. To support its opinion that States should be prohibited from imposing the death *617 penalty on anyone who committed murder before age 18, the Court looks to scientific and sociological studies, picking and choosing those that support its position. It never explains why those particular studies are methodologically sound; none was ever entered into evidence or tested in an adversarial proceeding. As THE CHIEF JUSTICE has explained:

"[M]ethodological and other errors can affect the reliability and validity of estimates about the opinions and attitudes of a population derived from various sampling techniques. Everything from variations in the survey methodology, such as the choice of the target population, the sampling design used, the questions asked, and the statistical analyses used to interpret the data can skew the results." *Atkins, supra,* at 326-327, 122 S.Ct. 2242 (dissenting opinion) (citing R. Groves, Survey Errors and Survey **1223 Costs (1989); 1 C. Turner & E. Martin, Surveying Subjective Phenomena (1984)).

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In other words, all the Court has done today, to borrow from another context, is to look over the heads of the crowd and pick out its friends. Cf. *Conroy v. Aniskoff*, 507 U.S. 511, 519, 113 S.Ct. 1562, 123 L.Ed.2d 229 (1993) (SCALIA, J., concurring in judgment).

We need not look far to find studies contradicting the Court's conclusions. As petitioner points out, the American Psychological Association (APA), which claims in this case that scientific evidence shows persons under 18 lack the ability to take moral responsibility for their decisions, has previously taken precisely the opposite position before this very Court. In its brief in *Hodgson v. Minnesota*, 497 U.S. 417, 110 S.Ct. 2926, 111 L.Ed.2d 344 (1990), the APA found a "rich body of research" showing that juveniles are mature enough to decide whether to obtain an abortion without parental involvement. Brief for APA as *Amicus Curiae*, O.T.1989, No. 88-805 etc., p. 18. The APA brief, citing psychology treatises and studies too numerous to list here, asserted: "[B]y middle adolescence (age 14-15) young people develop abilities similar to adults in reasoning ***618** about moral dilemmas, understanding social rules and laws, [and] reasoning about interpersonal relationships and interpersonal problems." *Id.*, at 19-20 (citations omitted). Given the nuances of scientific methodology and conflicting views, courts-which can only consider the limited evidence on the record before them-are ill equipped to determine which view of science is the right one. Legislatures "are better qualified to weigh and 'evaluate the results of statistical studies in terms of their own local conditions and with a flexibility of approach that is not available to the courts.' " *McCleskey v. Kemp*, 481 U.S. 279, 319, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987) (quoting *Gregg, supra*, at 186, 96 S.Ct. 2909).

Even putting aside questions of methodology, the studies cited by the Court offer scant support for a categorical prohibition of the death penalty for murderers under 18. At most, these studies conclude that, *on average*, or *in most cases*, persons under 18 are unable to take moral responsibility for their actions. Not one of the cited studies opines that all individuals under 18 are unable to appreciate the nature of their crimes.

Moreover, the cited studies describe only adolescents who engage in risky or antisocial behavior, as many young people do. Murder, however, is more than just risky or antisocial behavior. It is entirely consistent to believe that young people often act impetuously and lack judgment, but, at the same time, to believe that those who commit premeditated murder are-at least sometimes-just as culpable as adults. Christopher Simmons, who was only seven months shy of his 18th birthday when he murdered Shirley Crook, described to his friends *beforehand*-"[i]n chilling, callous terms," as the Court puts it, *ante*, at 1187-the murder he planned to commit. He then broke into the home of an innocent woman, bound her with duct tape and electrical wire, and threw her off a bridge alive and conscious. *Ante*, at 1188. In their *amici* brief, the States of Alabama, Delaware, Oklahoma, Texas, Utah, and Virginia offer additional examples***619** of murders committed by individuals under 18 that involve truly monstrous acts. In Alabama, two 17-year-olds, one 16-year-old, and one 19-year-old picked up a female hitchhiker, threw bottles at her, and kicked and stomped her for approximately 30 minutes until she died. They then sexually assaulted her lifeless body and, when they were finished, ****1224** threw her body off a cliff. They later returned to the crime scene to mutilate her corpse. See Brief for Alabama et al. as *Amici Curiae* 9-10; see also *Loggins v. State*, 771 So.2d 1070, 1074-1075 (Ala.Crim.App.1999); *Duncan v. State*, 827 So.2d 838, 840-841 (Ala.Crim.App.1999). Other examples in the brief are equally shocking. Though these cases are assuredly the exception rather than the rule, the studies the Court cites in no way justify a constitutional imperative that prevents legislatures and juries from treating exceptional cases in an exceptional way-by determining that some murders are not just the acts of happy-go-lucky teenagers, but heinous crimes deserving of death.

That "almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent,"*ante*, at 1195, is patently irrelevant-and is yet another resurrection of an argument that this Court gave a decent burial in *Stanford*. (What kind of Equal Justice under Law is it that-without so much as a "Sorry about that"-gives as the basis for sparing one person from execution arguments *explicitly rejected* in refusing to spare another?) As we explained in *Stanford*, 492 U.S., at 374, 109 S.Ct. 2969, it is "absurd to think that one must be mature enough to drive carefully, to drink responsibly, or to vote intelligently, in order to be mature enough to understand that murdering another human being is profoundly wrong, and to conform one's conduct to that most minimal of all civilized standards." Serving on a jury or entering into marriage also involve decisions far more sophisticated than the simple decision not to take another's life.

***620** Moreover, the age statutes the Court lists "set the

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appropriate ages for the operation of a system that makes its determinations in gross, and that does not conduct individualized maturity tests." *Ibid.* The criminal justice system, by contrast, provides for individualized consideration of each defendant. In capital cases, this Court requires the sentencer to make an individualized determination, which includes weighing aggravating factors and mitigating factors, such as youth. See *Eddings*, 455 U.S., at 115-117, 102 S.Ct. 869. In other contexts where individualized consideration is provided, we have recognized that at least some minors will be mature enough to make difficult decisions that involve moral considerations. For instance, we have struck down abortion statutes that do not allow minors deemed mature by courts to bypass parental notification provisions. See, *e.g.*, *Bellotti v. Baird*, 443 U.S. 622, 643-644, 99 S.Ct. 3035, 61 L.Ed.2d 797 (1979) (opinion of Powell, J.); *Planned Parenthood of Central Mo. v. Danforth*, 428 U.S. 52, 74-75, 96 S.Ct. 2831, 49 L.Ed.2d 788 (1976). It is hard to see why this context should be any different. Whether to obtain an abortion is surely a much more complex decision for a young person than whether to kill an innocent person in cold blood.

The Court concludes, however, *ante,* at 1196-1197, that juries cannot be trusted with the delicate task of weighing a defendant's youth along with the other mitigating and aggravating factors of his crime. This startling conclusion undermines the very foundations of our capital sentencing system, which entrusts juries with "mak[ing] the difficult and uniquely human judgments that defy codification and that 'buil[d] discretion, equity, and flexibility into a legal system.' " *McCleskey, supra,* at 311, 107 S.Ct. 1756 (quoting H. Kalven & H. Zeisel, The American Jury 498 (1966)). The Court says, *ante,* at 1197, that juries will be unable to appreciate the significance of a defendant's youth when faced with details of a brutal crime. This assertion is based on no evidence; to the contrary, the Court itself acknowledges ****1225** that the execution of under-18 offenders is "infrequent" even in the States "without***621** a formal prohibition on executing juveniles,"*ante,* at 1192, suggesting that juries take seriously their responsibility to weigh youth as a mitigating factor.

Nor does the Court suggest a stopping point for its reasoning. If juries cannot make appropriate determinations in cases involving murderers under 18, in what other kinds of cases will the Court find jurors deficient? We have already held that no jury may consider whether a mentally deficient defendant can receive the death penalty, irrespective of his crime. See *Atkins*, 536 U.S., at 321, 122 S.Ct. 2242. Why not take other mitigating factors, such as considerations of childhood abuse or poverty, away from juries as well? Surely jurors "overpower[ed]" by "the brutality or cold-blooded nature" of a crime, *ante,* at 1197, could not adequately weigh these mitigating factors either.

The Court's contention that the goals of retribution and deterrence are not served by executing murderers under 18 is also transparently false. The argument that "[r]etribution is not proportional if the law's most severe penalty is imposed on one whose culpability or blameworthiness is diminished,"*ante,* at 1196, is simply an extension of the earlier, false generalization that youth *always* defeats culpability. The Court claims that "juveniles will be less susceptible to deterrence,"*ibid.*, because " '[t]he likelihood that the teenage offender has made the kind of cost-benefit analysis that attaches any weight to the possibility of execution is so remote as to be virtually nonexistent,' " *ibid.*(quoting *Thompson*, 487 U.S., at 837, 108 S.Ct. 2687). The Court unsurprisingly finds no support for this astounding proposition, save its own case law. The facts of this very case show the proposition to be false. Before committing the crime, Simmons encouraged his friends to join him by assuring them that they could "get away with it" because they were minors. *State ex rel. Simmons v. Roper*, 112 S.W.3d 397, 419 (Mo.2003) (Price, J., dissenting). This fact may have influenced the jury's decision to impose capital punishment despite Simmons' age. ***622** Because the Court refuses to entertain the possibility that its own unsubstantiated generalization about juveniles could be wrong, it ignores this evidence entirely.

III

Though the views of our own citizens are essentially irrelevant to the Court's decision today, the views of other countries and the so-called international community take center stage.

The Court begins by noting that "Article 37 of the United Nations Convention on the Rights of the Child, [1577 U.N.T.S. 3, 28 I.L.M. 1448, 1468-1470, entered into force Sept. 2, 1990,] which every country in the world has ratified *save for the United States* and Somalia, contains an express prohibition on capital punishment for crimes committed by juveniles under 18." *Ante,* at 1199 (emphasis added). The Court also discusses the International Covenant on Civil and Political Rights (ICCPR), December 19, 1966, 999 U.N.T.S. 175,*ante,* at 1194, 1199,

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which the Senate ratified only subject to a reservation that reads:

"The United States reserves the right, subject to its Constitutional constraints, to impose capital punishment on any person (other than a pregnant woman) duly convicted under existing or future laws permitting the imposition of capital punishment, including such punishment for crimes committed by persons below eighteen years of age." Senate Committee on Foreign Relations, International **1226 Covenant on Civil and Political Rights, S. Exec. Rep. No. 102-23, p. 11 (1992).

Unless the Court has added to its arsenal the power to join and ratify treaties on behalf of the United States, I cannot see how this evidence favors, rather than refutes, its position. That the Senate and the President-those actors our Constitution empowers to enter into treaties, see Art. II, § 2-have declined to join and ratify treaties prohibiting *623 execution of under-18 offenders can only suggest that *our country* has either not reached a national consensus on the question, or has reached a consensus contrary to what the Court announces. That the reservation to the ICCPR was made in 1992 does not suggest otherwise, since the reservation still remains in place today. It is also worth noting that, in addition to barring the execution of under-18 offenders, the United Nations Convention on the Rights of the Child prohibits punishing them with life in prison without the possibility of release. If we are truly going to get in line with the international community, then the Court's reassurance that the death penalty is really not needed, since "the punishment of life imprisonment without the possibility of parole is itself a severe sanction,"*ante,* at 1196, gives little comfort.

It is interesting that whereas the Court is not content to accept what the States of our Federal Union *say,* but insists on inquiring into what they *do* (specifically, whether they in fact *apply* the juvenile death penalty that their laws allow), the Court is quite willing to believe that every foreign nation-of whatever tyrannical political makeup and with however subservient or incompetent a court system-in fact *adheres* to a rule of no death penalty for offenders under 18. Nor does the Court inquire into how many of the countries that have the death penalty, but have forsworn (on paper at least) imposing that penalty on offenders under 18, have what no State of this country can constitutionally have: a *mandatory* death penalty for certain crimes, with no possibility of mitigation by the sentencing authority, for youth or any other reason. I suspect it is most of them. See, *e.g.,* R. Simon & D. Blaskovich, A Comparative Analysis of Capital Punishment: Statutes, Policies, Frequencies, and Public Attitudes the World Over 25, 26, 29 (2002). To forbid the death penalty for juveniles under such a system may be a good idea, but it says nothing about our system, in which the sentencing authority, typically a jury, always can, and almost *624 always does, withhold the death penalty from an under-18 offender except, after considering all the circumstances, in the rare cases where it is warranted. The foreign authorities, in other words, do not even speak to the issue before us here.

More fundamentally, however, the basic premise of the Court's argument-that American law should conform to the laws of the rest of the world-ought to be rejected out of hand. In fact the Court itself does not believe it. In many significant respects the laws of most other countries differ from our law-including not only such explicit provisions of our Constitution as the right to jury trial and grand jury indictment, but even many interpretations of the Constitution prescribed by this Court itself. The Court-pronounced exclusionary rule, for example, is distinctively American. When we adopted that rule in *Mapp v. Ohio,* 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961), it was "unique to American jurisprudence." *Bivens v. Six Unknown Fed. Narcotics Agents,* 403 U.S. 388, 415, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971) (Burger, C. J., dissenting). Since then a categorical exclusionary rule has been "universally rejected" by other countries, including those with rules prohibiting illegal searches and police misconduct,**1227 despite the fact that none of these countries "appears to have any alternative form of discipline for police that is effective in preventing search violations." Bradley, *Mapp* Goes Abroad, 52 Case W. Res. L.Rev. 375, 399-400 (2001). England, for example, rarely excludes evidence found during an illegal search or seizure and has only recently begun excluding evidence from illegally obtained confessions. See C. Slobogin, Criminal Procedure: Regulation of Police Investigation 550 (3d ed.2002). Canada rarely excludes evidence and will only do so if admission will "bring the administration of justice into disrepute." *Id.,* at 550-551 (internal quotation marks omitted). The European Court of Human Rights has held that introduction of illegally seized evidence does not violate the "fair trial" requirement in Article 6, § 1, of the European Convention on *625 Human Rights. See Slobogin, *supra,* at 551; Bradley, *supra,* at 377-378.

The Court has been oblivious to the views of other countries when deciding how to interpret our Constitution's

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requirement that "Congress shall make no law respecting an establishment of religion...." Amdt. 1. Most other countries-including those committed to religious neutrality-do not insist on the degree of separation between church and state that this Court requires. For example, whereas "we have recognized special Establishment Clause dangers where the government makes direct money payments to sectarian institutions," *Rosenberger v. Rector and Visitors of Univ. of Va.*, 515 U.S. 819, 842, 115 S.Ct. 2510, 132 L.Ed.2d 700 (1995) (citing cases), countries such as the Netherlands, Germany, and Australia allow direct government funding of religious schools on the ground that "the state can only be truly neutral between secular and religious perspectives if it does not dominate the provision of so key a service as education, and makes it possible for people to exercise their right of religious expression within the context of public funding." S. Monsma & J. Soper, The Challenge of Pluralism: Church and State in Five Democracies 207 (1997); see also *id.*, at 67, 103, 176. England permits the teaching of religion in state schools. *Id.*, at 142. Even in France, which is considered "America's only rival in strictness of church-state separation,""[t]he practice of contracting for educational services provided by Catholic schools is very widespread." C. Glenn, The Ambiguous Embrace: Government and Faith-Based Schools and Social Agencies 110 (2000).

And let us not forget the Court's abortion jurisprudence, which makes us one of only six countries that allow abortion on demand until the point of viability. See Larsen, Importing Constitutional Norms from a "Wider Civilization": *Lawrence* and the Rehnquist Court's Use of Foreign and International Law in Domestic Constitutional Interpretation, 65 Ohio St. L.J. 1283, 1320 (2004); Center for Reproductive***626** Rights, The World's Abortion Laws (June 2004), http: // www. reproductive rights. org/ pub_ fac_ abortion_ laws. html. Though the Government and *amici* in cases following *Roe v. Wade*, 410 U.S. 113, 93 S.Ct. 705, 35 L.Ed.2d 147 (1973), urged the Court to follow the international community's lead, these arguments fell on deaf ears. See McCrudden, A Part of the Main? The Physician-Assisted Suicide Cases and Comparative Law Methodology in the United States Supreme Court, in Law at the End of Life: The Supreme Court and Assisted Suicide 125, 129-130 (C. Schneider ed.2000).

The Court's special reliance on the laws of the United Kingdom is perhaps the most indefensible part of its opinion. It is of course true that we share a common history with the United Kingdom, and that we often consult English sources when ****1228** asked to discern the meaning of a constitutional text written against the backdrop of 18th-century English law and legal thought. If we applied that approach today, our task would be an easy one. As we explained in *Harmelin v. Michigan*, 501 U.S. 957, 973-974, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991), the "Cruell and Unusuall Punishments" provision of the English Declaration of Rights was originally meant to describe those punishments " 'out of [the Judges'] Power' "-that is, those punishments that were not authorized by common law or statute, but that were nonetheless administered by the Crown or the Crown's judges. Under that reasoning, the death penalty for under-18 offenders would easily survive this challenge. The Court has, however-I think wrongly-long rejected a purely originalist approach to our Eighth Amendment, and that is certainly not the approach the Court takes today. Instead, the Court undertakes the majestic task of determining (and thereby prescribing) *our* Nation's *current* standards of decency. It is beyond comprehension why we should look, for that purpose, to a country that has developed, in the centuries since the Revolutionary War-and with increasing speed since the United Kingdom's recent submission to the jurisprudence of European courts dominated by continental ***627** jurists-a legal, political, and social culture quite different from our own. If we took the Court's directive seriously, we would also consider relaxing our double jeopardy prohibition, since the British Law Commission recently published a report that would significantly extend the rights of the prosecution to appeal cases where an acquittal was the result of a judge's ruling that was legally incorrect. See Law Commission, Double Jeopardy and Prosecution Appeals, LAW COM No. 267, Cm 5048, p. 6, ¶ 1.19 (Mar.2001); J. Spencer, The English System in European Criminal Procedures 142, 204, and n. 239 (M. Delmas-Marty & J. Spencer eds.2002). We would also curtail our right to jury trial in criminal cases since, despite the jury system's deep roots in our shared common law, England now permits all but the most serious offenders to be tried by magistrates without a jury. See D. Feldman, England and Wales, in Criminal Procedure: A Worldwide Study 91, 114-115 (C. Bradley ed.1999).

The Court should either profess its willingness to reconsider all these matters in light of the views of foreigners, or else it should cease putting forth foreigners' views as part of the *reasoned basis* of its decisions. To invoke alien law when it agrees with one's own thinking, and ignore it otherwise, is not reasoned decisionmaking, but sophistry.[FN2]

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FN9. Justice O'CONNOR asserts that the Eighth Amendment has a "special character," in that it "draws its meaning directly from the maturing values of civilized society." *Ante,* at 1215. Nothing in the text reflects such a distinctive character-and we have certainly applied the "maturing values" rationale to give brave new meaning to other provisions of the Constitution, such as the Due Process Clause and the Equal Protection Clause. See, *e.g., Lawrence v. Texas,* 539 U.S. 558, 571-573, 123 S.Ct. 2472, 156 L.Ed.2d 508 (2003); *United States v. Virginia,* 518 U.S. 515, 532-534, 116 S.Ct. 2264, 135 L.Ed.2d 735 (1996); *Planned Parenthood of Southeastern Pa. v. Casey,* 505 U.S. 833, 847-850, 112 S.Ct. 2791, 120 L.Ed.2d 674 (1992). Justice O'CONNOR asserts that an international consensus can at least "serve to confirm the reasonableness of a consonant and genuine American consensus." *Ante,* at 1216. Surely not unless it can also demonstrate the *un*reasonableness of such a consensus. Either America's principles are its own, or they follow the world; one cannot have it both ways. Finally, Justice O'CONNOR finds it unnecessary to consult foreign law in the present case because there is "no ... domestic consensus" to be confirmed. *Ibid.* But since she believes that the Justices can announce their own requirements of "moral proportionality" despite the absence of consensus, why would foreign law not be relevant to *that* judgment? If foreign law is powerful enough to supplant the judgment of the American people, surely it is powerful enough to change a personal assessment of moral proportionality.

**1229 *628 The Court responds that "[i]t does not lessen our fidelity to the Constitution or our pride in its origins to acknowledge that the express affirmation of certain fundamental rights by other nations and peoples simply underscores the centrality of those same rights within our own heritage of freedom." *Ante,* at 1200. To begin with, I do not believe that approval by "other nations and peoples" should buttress our commitment to American principles any more than (what should logically follow) disapproval by "other nations and peoples" should weaken that commitment. More importantly, however, the Court's statement flatly misdescribes what is going on here. Foreign sources are cited today, *not* to underscore our "fidelity" to the Constitution, our "pride in its origins," and "our own [American] heritage." To the contrary, they are cited *to set aside* the centuries-old American practice-a practice still engaged in by a large majority of the relevant States-of letting a jury of 12 citizens decide whether, in the particular case, youth should be the basis for withholding the death penalty. What these foreign sources "affirm," rather than repudiate, is the Justices' own notion of how the world ought to be, and their diktat that it shall be so henceforth in America. The Court's parting attempt to downplay the significance of its extensive discussion of foreign law is unconvincing. "Acknowledgment" of foreign approval has no place in the legal opinion of this Court *unless it is part of the basis for the Court's judgment*-which is surely what it parades as today.

IV

To add insult to injury, the Court affirms the Missouri Supreme Court without even admonishing that court for its *629 flagrant disregard of our precedent in *Stanford.* Until today, we have always held that "it is this Court's prerogative alone to overrule one of its precedents." *State Oil Co. v. Khan,* 522 U.S. 3, 20, 118 S.Ct. 275, 139 L.Ed.2d 199 (1997). That has been true even where " 'changes in judicial doctrine' ha[ve] significantly undermined" our prior holding, *United States v. Hatter,* 532 U.S. 557, 567, 121 S.Ct. 1782, 149 L.Ed.2d 820 (2001) (quoting *Hatter v. United States,* 64 F.3d 647, 650 (C.A.Fed.1995)), and even where our prior holding "appears to rest on reasons rejected in some other line of decisions," *Rodriguez de Quijas v. Shearson/American Express, Inc.,* 490 U.S. 477, 484, 109 S.Ct. 1917, 104 L.Ed.2d 526 (1989). Today, however, the Court silently approves a state-court decision that blatantly rejected controlling precedent.

One must admit that the Missouri Supreme Court's action, and this Court's indulgent reaction, are, in a way, understandable. In a system based upon constitutional and statutory text democratically adopted, the concept of "law" ordinarily signifies that particular words have a fixed meaning. Such law does not change, and this Court's pronouncement of it therefore remains authoritative until (confessing our prior error) we overrule. The Court has purported to make of the Eighth Amendment, however, a mirror of the passing and changing sentiment of American society regarding penology. The lower courts can look into that mirror as well as we can; and what we saw 15 years ago bears no necessary relationship to what they see today. Since they are not looking at the same text, but at a different**1230 scene, why should our earlier decision control their judgment?

However sound philosophically, this is no way to run a

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legal system. We must disregard the new reality that, to the extent our Eighth Amendment decisions constitute something more than a show of hands on the current Justices' current personal views about penology, they purport to be nothing more than a snapshot of American public opinion at a particular point in time (with the timeframes now shortened to a mere 15 years). We must treat these decisions*630 just as though they represented *real* law, *real* prescriptions democratically adopted by the American people, as conclusively (rather than sequentially) construed by this Court. Allowing lower courts to reinterpret the Eighth Amendment whenever they decide enough time has passed for a new snapshot leaves this Court's decisions without any force-especially since the "evolution" of our Eighth Amendment is no longer determined by objective criteria. To allow lower courts to behave as we do, "updating" the Eighth Amendment as needed, destroys stability and makes our case law an unreliable basis for the designing of laws by citizens and their representatives, and for action by public officials. The result will be to crown arbitrariness with chaos.

U.S.Mo.,2005.
Roper v. Simmons
543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1, 73 USLW 4153, 05 Cal. Daily Op. Serv. 1735, 18 Fla. L. Weekly Fed. S 131

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128 S.Ct. 2641, 171 L.Ed.2d 525, 76 USLW 4584, 08 Cal. Daily Op. Serv. 7920, 2008 Daily Journal D.A.R. 9470, 21 Fla. L. Weekly Fed. S 472
(Cite as: 128 S.Ct. 2641)

Supreme Court of the United States
Patrick KENNEDY, Petitioner,
v.
LOUISIANA.
No. 07-343.

Argued April 16, 2008.
Decided June 25, 2008.
As Modified Oct. 1, 2008.

Background: Defendant was convicted of aggravated rape of his eight-year-old stepdaughter, and was sentenced to death. On his appeal, the Supreme Court of Louisiana, 957 So.2d 757, affirmed. Defendant petitioned for certiorari which was granted.

Holding: The Supreme Court, Kennedy, J., held that the Eighth Amendment prohibits the **death penalty** for the **rape** of a **child** where the crime did not result, and was not intended to result, in death of the victim.

Reversed and remanded.

Justice Alito filed dissenting opinion in which Chief Justice Roberts and Justices Scalia and Thomas joined.

West Headnotes

[1] Sentencing and Punishment 350H ⇐1667

350H Sentencing and Punishment
350HVIII The **Death Penalty**
350HVIII(D) Factors Related to Offense
350Hk1666 Nature or Degree of Offense
350Hk1667 k. In General. Most Cited Cases
The Eighth Amendment prohibits the **death penalty** for the **rape** of a **child** where the crime did not result, and was not intended to result, in death of the victim. U.S.C.A. Const.Amend. 8.

[2] Sentencing and Punishment 350H ⇐1624

350H Sentencing and Punishment
350HVIII The **Death Penalty**
350HVIII(A) In General
350Hk1622 Validity of Statute or Regulatory Provision
350Hk1624 k. Provision Authorizing **Death Penalty**. Most Cited Cases
Louisiana statute authorizing **death penalty** for **rape** of **child** under 12 years of age violated Eighth Amendment proscription against cruel and unusual punishment when applied to defendant convicted of aggravated rape of his then-eight-year-old stepdaughter, where crime did not result, and was not intended to result, in death of victim, considering national consensus against capital punishment for crime of **child rape** and evolving standards of decency. U.S.C.A. Const.Amend. 8; LSA. R.S. 14:42.

[3] Sentencing and Punishment 350H ⇐1482

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1482 k. Proportionality. Most Cited Cases
The Eighth Amendment's protection against excessive or cruel and unusual punishments flows from the basic precept of justice that punishment for a crime should be graduated and proportioned to the offense; whether that requirement has been fulfilled is determined not by the standards that prevailed when the Eighth Amendment was adopted in 1791 but by the norms that currently prevail. U.S.C.A. Const.Amend. 8.

[4] Sentencing and Punishment 350H ⇐41

350H Sentencing and Punishment
350HI Punishment in General
350HI(C) Factors or Purposes in General

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350Hk41 k. Deterrence. Most Cited Cases

Sentencing and Punishment 350H ⇐44

350H Sentencing and Punishment
350HI Punishment in General
350HI(C) Factors or Purposes in General
350Hk44 k. Retribution. Most Cited Cases

Sentencing and Punishment 350H ⇐45

350H Sentencing and Punishment
350HI Punishment in General
350HI(C) Factors or Purposes in General
350Hk45 k. Rehabilitation and Reform. Most Cited Cases
Punishment is justified under one or more of three principal rationales: rehabilitation, deterrence, and retribution.

West Codenotes
Held UnconstitutionalLSA-R.S. 14:42
Validity Called into DoubtWest's Ga.Code Ann. § 16-6-1; MCA 45-5-503; 10 Okl.St.Ann. § 7115(K); S.C.Code 1976, § 16-3-655(C)(1); V.T.C.A., Penal Code § 12.42(c)(3).

***2641** *Syllabus* [FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

Louisiana charged petitioner with the aggravated rape of his then-8-year-old stepdaughter. He was convicted and sentenced to death under a state statute authorizing capital punishment for the **rape** of a **child** under 12. The State Supreme Court affirmed, rejecting petitioner's reliance on *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982, which barred the use of the **death penalty** as punishment for the rape of an adult woman but left ***2642** open the question which, if any, other nonhomicide crimes can be punished by death consistent with the Eighth Amendment. Reasoning that children are a class in need of special protection, the state court held **child rape** to be unique in terms of the harm it inflicts upon the victim and society and concluded that, short of first-degree murder, there is no crime more deserving of death. The court acknowledged that petitioner would be the first person executed since the state law was amended to authorize the **death penalty** for **child rape** in 1995, and that Louisiana is in the minority of jurisdictions authorizing death for that crime. However, emphasizing that four more States had capitalized **child rape** since 1995 and at least eight others had authorized death for other nonhomicide crimes, as well as that, under *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1, and *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335, it is the direction of change rather than the numerical count that is significant, the court held petitioner's death sentence to be constitutional.

Held: The Eighth Amendment bars Louisiana from imposing the **death penalty** for the **rape** of a **child** where the crime did not result, and was not intended to result, in the victim's death. Pp. 2649 - 2665.

1. The Amendment's Cruel and Unusual Punishment Clause "draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630. The standard for extreme cruelty "itself remains the same, but its applicability must change as the basic mores of society change." *Furman v. Georgia*, 408 U.S. 238, 382, 92 S.Ct. 2726, 33 L.Ed.2d 346. Under the precept of justice that punishment is to be graduated and proportioned to the crime, informed by evolving standards, capital punishment must "be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.' " *Roper,supra*, at 568, 125 S.Ct. 1183. Applying this principle, the Court held in *Roper* and *Atkins* that the execution of juveniles

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and mentally retarded persons violates the Eighth Amendment because the offender has a diminished personal responsibility for the crime. The Court also has found the **death penalty** disproportionate to the crime itself where the crime did not result, or was not intended to result, in the victim's death. See, *e.g., Coker, supra; Enmund v. Florida,* 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140. In making its determination, the Court is guided by "objective indicia of society's standards, as expressed in legislative enactments and state practice with respect to executions." *Roper, supra,* at 563, 125 S.Ct. 1183. Consensus is not dispositive, however. Whether the **death penalty** is disproportionate to the crime also depends on the standards elaborated by controlling precedents and on the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose. Pp. 2649 - 2651.

2. A review of the authorities informed by contemporary norms, including the history of the **death penalty** for this and other nonhomicide crimes, current state statutes and new enactments, and the number of executions since 1964, demonstrates a national consensus against capital punishment for the crime of **child rape**. Pp. 2651 - 2658.

(a) The Court follows the approach of cases in which objective indicia of consensus demonstrated an opinion against the **death penalty** for juveniles, see *Roper, supra,* mentally retarded offenders, see *Atkins, supra,* and vicarious felony murderers, see *Enmund, supra.* Thirty-seven ***2643** jurisdictions-36 States plus the Federal Government-currently impose capital punishment, but only six States authorize it for **child rape**. In 45 jurisdictions, by contrast, petitioner could not be executed for **child rape** of any kind. That number surpasses the 30 States in *Atkins* and *Roper* and the 42 in *Enmund* that prohibited the **death penalty** under the circumstances those cases considered. Pp. 2651 - 2653.

(b) Respondent's argument that *Coker*'s general discussion contrasting murder and rape, 433 U.S., at 598, 97 S.Ct. 2861, has been interpreted too expansively, leading some States to conclude that *Coker* applies to **child rape** when in fact it does not, is unsound. *Coker*'s holding was narrower than some of its language read in isolation indicates. The *Coker* plurality framed the question as whether, "with respect to rape of an adult woman," the **death penalty** is disproportionate punishment, *id.,* at 592, 97 S.Ct. 2861, and it repeated the phrase "adult woman" or "adult female" eight times in discussing the crime or the victim. The distinction between adult and **child rape** was not merely rhetorical; it was central to *Coker*'s reasoning, including its analysis of legislative consensus. See, *e.g., id.,* at 595-596, 97 S.Ct. 2861. There is little evidence to support respondent's contention that state legislatures have understood *Coker* to state a broad rule that covers minor victims, and state courts have uniformly concluded that *Coker* did not address that crime. Accordingly, the small number of States that have enacted the **death penalty** for **child rape** is relevant to determining whether there is a consensus against capital punishment for the **rape** of a **child**. Pp. 2653-2656.

(c) A consistent direction of change in support of the **death penalty** for **child rape** might counterbalance an otherwise weak demonstration of consensus, see, *e.g., Atkins,* 536 U.S., at 315, 122 S.Ct. 2242, but no showing of consistent change has been made here. That five States may have had pending legislation authorizing death for **child rape** is not dispositive because it is not this Court's practice, nor is it sound, to find contemporary norms based on legislation proposed but not yet enacted. Indeed, since the parties submitted their briefs, the legislation in at least two of the five States has failed. Further, evidence that, in the last 13 years, six new **death penalty** statutes have been enacted, three in the last two years, is not as significant as the data in *Atkins,* where 18 States between 1986 and 2001 had enacted legislation prohibiting the execution of mentally retarded persons. See *id.,* at 314-315, 122 S.Ct. 2242. Respondent argues that this case is like *Roper* because, there, only five States had shifted their positions between 1989 and 2005, one less

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State than here. See 543 U.S., at 565, 125 S.Ct. 1183. But the *Roper* Court emphasized that the slow pace of abolition was counterbalanced by the total number of States that had recognized the impropriety of executing juvenile offenders. See *id.*, at 566-567, 125 S.Ct. 1183. Here, the fact that only six States have made **child rape** a capital offense is not an indication of a trend or change in direction comparable to the one in *Roper*. The evidence bears a closer resemblance to that in *Enmund*, where the Court found a national consensus against death for vicarious felony murder despite eight jurisdictions having authorized it. See 458 U.S., at 789, 792, 102 S.Ct. 3368. Pp. 2656 - 2657.

(d) Execution statistics also confirm that there is a social consensus against the **death penalty** for **child rape**. Nine States have permitted capital punishment for adult or **child rape** for some length of time between the Court's 1972 *Furman* decision and today; yet no individual has been executed *2644 for the rape of an adult or child since 1964, and no execution for any other nonhomicide offense has been conducted since 1963. Louisiana is the only State since 1964 that has sentenced an individual to death for **child rape**, and petitioner and another man so sentenced are the only individuals now on death row in the United States for nonhomicide offenses. Pp. 2657 - 2658.

3. Informed by its own precedents and its understanding of the Constitution and the rights it secures, the Court concludes, in its independent judgment, that the **death penalty** is not a proportional punishment for the crime of **child rape**. Pp. 2658 - 2664.

(a) The Court's own judgment should be brought to bear on the **death penalty's** acceptability under the Eighth Amendment. See, *e.g., Coker, supra,* at 597, 97 S.Ct. 2861. Rape's permanent and devastating impact on a child suggests moral grounds for questioning a rule barring capital punishment simply because the crime did not result in the victim's death, but it does not follow that death is a proportionate penalty for **child rape**. The constitutional prohibition against excessive or cruel and unusual punishments mandates that punishment "be exercised within the limits of civilized standards." *Trop,* 356 U.S., at 99-100, 78 S.Ct. 590. Evolving standards of decency counsel the Court to be most hesitant before allowing extension of the **death penalty**, especially where no life was taken in the commission of the crime. See, *e.g., Coker,* 433 U.S., at 597-598, 97 S.Ct. 2861; *Enmund,* 458 U.S., at 797, 102 S.Ct. 3368. Consistent with those evolving standards and the teachings of its precedents, the Court concludes that there is a distinction between intentional first-degree murder on the one hand and nonhomicide crimes against individuals, even including **child rape**, on the other. The latter crimes may be devastating in their harm, as here, but "in terms of moral depravity and of the injury to the person and to the public," they cannot compare to murder in their "severity and irrevocability," *id,* at 598, 97 S.Ct. 2861. The Court finds significant the substantial number of executions that would be allowed for **child rape** under respondent's approach. Although narrowing aggravators might be used to ensure the **death penalty's** restrained application in this context, as they are in the context of capital murder, all such standards have the potential to result in some inconsistency of application. The Court, for example, has acknowledged that the requirement of general rules to ensure consistency of treatment, see, *e.g., Godfrey v. Georgia,* 446 U.S. 420, 100 S.Ct. 1759, 64 L.Ed.2d 398, and the insistence that capital sentencing be individualized, see, *e.g., Woodson v. North Carolina,* 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944, have resulted in tension and imprecision. This approach might be sound with respect to capital murder but it should not be introduced into the justice system where death has not occurred. The Court has spent more than 32 years developing a foundational jurisprudence for capital murder to guide the States and juries in imposing the **death penalty**. Beginning the same process for crimes for which no one has been executed in more than 40 years would require experimentation in an area where a failed experiment would result in the execution of individuals undeserving of death. Pp.

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2658 - 2661.

(b) The Court's decision is consistent with the justifications offered for the **death penalty**, retribution and deterrence, see, *e.g., Gregg v. Georgia,* 428 U.S. 153, 183, 96 S.Ct. 2909, 49 L.Ed.2d 859. Among the factors for determining whether retribution is served, the Court must look to whether the **death penalty** balances the wrong to the victim in nonhomicide cases. ***2645** Cf. *Roper, supra,* at 571, 125 S.Ct. 1183. It is not at all evident that the **child rape** victim's hurt is lessened when the law permits the perpetrator's death, given that capital cases require a long-term commitment by those testifying for the prosecution. Society's desire to inflict death for **child rape** by enlisting the child victim to assist it over the course of years in asking for capital punishment forces a moral choice on the child, who is not of mature age to make that choice. There are also relevant systemic concerns in prosecuting **child rape**, including the documented problem of unreliable, induced, and even imagined child testimony, which creates a "special risk of wrongful execution" in some cases. Cf. *Atkins, supra,* at 321, 122 S.Ct. 2242. As to deterrence, the evidence suggests that the **death penalty** may not result in more effective enforcement, but may add to the risk of nonreporting of **child rape** out of fear of negative consequences for the perpetrator, especially if he is a family member. And, by in effect making the punishment for **child rape** and murder equivalent, a State may remove a strong incentive for the rapist not to kill his victim. Pp. 2661 - 2664.

4. The concern that the Court's holding will effectively block further development of a consensus favoring the **death penalty** for **child rape** overlooks the principle that the Eighth Amendment is defined by "the evolving standards of decency that mark the progress of a maturing society," *Trop,* 356 U.S., at 101, 78 S.Ct. 590. Confirmed by the Court's repeated, consistent rulings, this principle requires that resort to capital punishment be restrained, limited in its instances of application, and reserved for the worst of crimes, those that, in the case of crimes against individuals, take the victim's life. Pp. 2664 - 2665.

957 So.2d 757, reversed and remanded.

KENNEDY, J., delivered the opinion of the Court, in which STEVENS, SOUTER, GINSBURG, and BREYER, JJ., joined. ALITO, J., filed a dissenting opinion, in which ROBERTS, C.J., and SCALIA and THOMAS, JJ., joined.

Jeffrey L. Fisher, for petitioner.

Juliet L. Clark, for respondent.

R. Ted Cruz, et al. as amici curiae, by special leave of Court, in support of respondent.

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Paul D. Connick, Jr., District Attorney, Jefferson Parish, State of Louisiana, Juliet L. Clark, Counsel of Record, Assistant District Attorney, Terry M. Boudreaux, Assistant District Attorney, Office of the District Attorney, Gretna, Louisiana, for respondent.

For U.S. Supreme Court briefs, see:2008 WL 466093 (Pet.Brief)2008 WL 727814 (Resp.Brief)2008 WL 954280 (Reply.Brief)

Justice KENNEDY delivered the opinion of the Court.

[1][2] The National Government and, beyond it, the separate States are bound by the proscriptive mandates of the Eighth Amendment to the Constitution of the United States, and all persons within those respective jurisdictions may invoke its protection. See Amdts. 8 and 14, § 1; *Robinson v. California,* 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962). Patrick Kennedy, the petitioner here, seeks to set aside his death sentence under the Eighth Amendment. He was charged by the respondent, ***2646** the

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State of Louisiana, with the aggravated rape of his then-8-year-old stepdaughter. After a jury trial petitioner was convicted and sentenced to death under a state statute authorizing capital punishment for the **rape** of a **child** under 12 years of age. See La. Stat. Ann. § 14:42 (West 1997 and Supp.1998). This case presents the question whether the Constitution bars respondent from imposing the **death penalty** for the **rape** of a **child** where the crime did not result, and was not intended to result, in death of the victim. We hold the Eighth Amendment prohibits the **death penalty** for this offense. The Louisiana statute is unconstitutional.

I

Petitioner's crime was one that cannot be recounted in these pages in a way sufficient to capture in full the hurt and horror inflicted on his victim or to convey the revulsion society, and the jury that represents it, sought to express by sentencing petitioner to death. At 9:18 a.m. on March 2, 1998, petitioner called 911 to report that his stepdaughter, referred to here as L. H., had been raped. He told the 911 operator that L.H. had been in the garage while he readied his son for school. Upon hearing loud screaming, petitioner said, he ran outside and found L.H. in the side yard. Two neighborhood boys, petitioner told the operator, had dragged L.H. from the garage to the yard, pushed her down, and raped her. Petitioner claimed he saw one of the boys riding away on a blue 10-speed bicycle.

When police arrived at petitioner's home between 9:20 and 9:30 a.m., they found L.H. on her bed, wearing a T-shirt and wrapped in a bloody blanket. She was bleeding profusely from the vaginal area. Petitioner told police he had carried her from the yard to the bathtub and then to the bed. Consistent with this explanation, police found a thin line of blood drops in the garage on the way to the house and then up the stairs. Once in the bedroom, petitioner had used a basin of water and a cloth to wipe blood from the victim. This later prevented medical personnel from collecting a reliable DNA sample.

L.H. was transported to the Children's Hospital. An expert in pediatric forensic medicine testified that L. H.'s injuries were the most severe he had seen from a sexual assault in his four years of practice. A laceration to the left wall of the vagina had separated her cervix from the back of her vagina, causing her rectum to protrude into the vaginal structure. Her entire perineum was torn from the posterior fourchette to the anus. The injuries required emergency surgery.

At the scene of the crime, at the hospital, and in the first weeks that followed, both L.H. and petitioner maintained in their accounts to investigators that L.H. had been raped by two neighborhood boys. One of L. H.'s doctors testified at trial that L.H. told all hospital personnel the same version of the rape, although she reportedly told one family member that petitioner raped her. L.H. was interviewed several days after the rape by a psychologist. The interview was videotaped, lasted three hours over two days, and was introduced into evidence at trial. On the tape one can see that L.H. had difficulty discussing the subject of the rape. She spoke haltingly and with long pauses and frequent movement. Early in the interview, L.H. expressed reservations about the questions being asked:

> "I'm going to tell the same story. They just want me to change it .... They want me to say my Dad did it .... I don't want to say it .... I tell them the same, same story." Def. Exh. D-7, 01:29:07-:36.

***2647** She told the psychologist that she had been playing in the garage when a boy came over and asked her about Girl Scout cookies she was selling; and that the boy "pulled [her by the legs to] the backyard,"*id.*, at 01:47:41-:52, where he placed his hand over her mouth, "pulled down [her] shorts," Def. Exh. D-8, 00:03:11-:12, and raped her, *id.*, at 00:14:39-:40.

Eight days after the crime, and despite L. H.'s insistence that petitioner was not the offender, petitioner was arrested for the rape. The State's investigation had drawn the accuracy of petitioner and L.

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H.'s story into question. Though the defense at trial proffered alternative explanations, the case for the prosecution, credited by the jury, was based upon the following evidence: An inspection of the side yard immediately after the assault was inconsistent with a rape having occurred there, the grass having been found mostly undisturbed but for a small patch of coagulated blood. Petitioner said that one of the perpetrators fled the crime scene on a blue 10-speed bicycle but gave inconsistent descriptions of the bicycle's features, such as its handlebars. Investigators found a bicycle matching petitioner and L. H.'s description in tall grass behind a nearby apartment, and petitioner identified it as the bicycle one of the perpetrators was riding. Yet its tires were flat, it did not have gears, and it was covered in spider webs. In addition police found blood on the underside of L. H.'s mattress. This convinced them the rape took place in her bedroom, not outside the house.

Police also found that petitioner made two telephone calls on the morning of the rape. Sometime before 6:15 a.m., petitioner called his employer and left a message that he was unavailable to work that day. Petitioner called back between 6:30 and 7:30 a.m. to ask a colleague how to get blood out of a white carpet because his daughter had " 'just become a young lady.' " Brief for Respondent 12. At 7:37 a.m., petitioner called B & B Carpet Cleaning and requested urgent assistance in removing bloodstains from a carpet. Petitioner did not call 911 until about an hour and a half later.

About a month after petitioner's arrest L.H. was removed from the custody of her mother, who had maintained until that point that petitioner was not involved in the rape. On June 22, 1998, L.H. was returned home and told her mother for the first time that petitioner had raped her. And on December 16, 1999, about 21 months after the rape, L.H. recorded her accusation in a videotaped interview with the Child Advocacy Center.

The State charged petitioner with aggravated **rape** of a **child** under La. Stat. Ann. § 14:42 (West 1997 and Supp.1998) and sought the **death penalty**. At all times relevant to petitioner's case, the statute provided:

> "A. Aggravated rape is a rape committed ... where the anal or vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one or more of the following circumstances:
>
> .....
>
> "(4) When the victim is under the age of twelve years. Lack of knowledge of the victim's age shall not be a defense.
>
> .....
>
> "D. Whoever commits the crime of aggravated rape shall be punished by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence.
>
> "(1) However, if the victim was under the age of twelve years, as provided by Paragraph A(4) of this Section:
>
> "(a) And if the district attorney seeks a capital verdict, the offender shall be ***2648** punished by death or life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury."

(Since petitioner was convicted and sentenced, the statute has been amended to include oral intercourse within the definition of aggravated rape and to increase the age of the victim from 12 to 13. See La. Stat. Ann. § 14:42 (West Supp.2007).)

Aggravating circumstances are set forth in La.Code Crim. Proc. Ann., Art. 905.4 (West 1997 Supp.). In pertinent part and at all times relevant to petitioner's case, the provision stated:

> "A. The following shall be considered aggravating circumstances:

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"(1) The offender was engaged in the perpetration or attempted perpetration of aggravated rape, forcible rape, aggravated kidnapping, second degree kidnapping, aggravated burglary, aggravated arson, aggravated escape, assault by drive-by shooting, armed robbery, first degree robbery, or simple robbery.

.....

"(10) The victim was under the age of twelve years or sixty-five years of age or older."

The trial began in August 2003. L.H. was then 13 years old. She testified that she " 'woke up one morning and Patrick was on top of [her].' " She remembered petitioner bringing her "[a] cup of orange juice and pills chopped up in it" after the rape and overhearing him on the telephone saying she had become a "young lady." 2005-1981, pp. 12, 15, 16 (La.5/22/07), 957 So.2d 757, 767, 769, 770. L.H. acknowledged that she had accused two neighborhood boys but testified petitioner told her to say this and that it was untrue. *Id.*, at 769.

The jury having found petitioner guilty of aggravated rape, the penalty phase ensued. The State presented the testimony of S.L., who is the cousin and goddaughter of petitioner's ex-wife. S.L. testified that petitioner sexually abused her three times when she was eight years old and that the last time involved sexual intercourse. *Id.*, at 772. She did not tell anyone until two years later and did not pursue legal action.

The jury unanimously determined that petitioner should be sentenced to death. The Supreme Court of Louisiana affirmed. See *id.*, at 779-789, 793; see also *State v. Wilson*, 96-1392, 96-2076 (La.12/13/96), 685 So.2d 1063 (upholding the constitutionality of the **death penalty** for **child rape**). The court rejected petitioner's reliance on *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977), noting that, while *Coker* bars the use of the **death penalty** as punishment for the rape of an adult woman, it left open the question which, if any, other nonhomicide crimes can be punished by death consistent with the Eighth Amendment. Because " 'children are a class that need special protection,' " the state court reasoned, the **rape** of a **child** is unique in terms of the harm it inflicts upon the victim and our society. 957 So.2d, at 781.

The court acknowledged that petitioner would be the first person executed for committing **child rape** since La. Stat. Ann. § 14:42 was amended in 1995 and that Louisiana is in the minority of jurisdictions that authorize the **death penalty** for the crime of **child rape**. But following the approach of *Roper v. Simmons*, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), and *Atkins v. Virginia*, 536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002), it found significant not the "numerical counting of which [S]tates ... stand for or against a particular capital prosecution," but "the direction of change." *2649957 So.2d, at 783 (emphasis deleted). Since 1993, the court explained, four more States-Oklahoma, South Carolina, Montana, and Georgia-had capitalized the crime of **child rape** and at least eight States had authorized capital punishment for other nonhomicide crimes. By its count, 14 of the then-38 States permitting capital punishment, plus the Federal Government, allowed the **death penalty** for nonhomicide crimes and 5 allowed the **death penalty** for the crime of **child rape**. See *id.*, at 785-786.

The state court next asked whether "child rapists rank among the worst offenders." *Id.*, at 788. It noted the severity of the crime; that the execution of child rapists would serve the goals of deterrence and retribution; and that, unlike in *Atkins* and *Roper*, there were no characteristics of petitioner that tended to mitigate his moral culpability. *Id.*, at 788-789. It concluded: "[S]hort of first-degree murder, we can think of no other non-homicide crime more deserving [of capital punishment]." *Id.*, at 789.

On this reasoning the Supreme Court of Louisiana rejected petitioner's argument that the **death penalty** for the **rape** of a **child** under 12 years is dis-

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proportionate and upheld the constitutionality of the statute. Chief Justice Calogero dissented. *Coker, supra,* and *Eberheart v. Georgia,* 433 U.S. 917, 97 S.Ct. 2994, 53 L.Ed.2d 1104 (1977), in his view, "set out a bright-line and easily administered rule" that the Eighth Amendment precludes capital punishment for any offense that does not involve the death of the victim. 957 So.2d, at 794.

We granted certiorari. See 552 U.S. ----, 128 S.Ct. 829, 169 L.Ed.2d 625 (2008).

II

[3] The Eighth Amendment, applicable to the States through the Fourteenth Amendment, provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." The Amendment proscribes "all excessive punishments, as well as cruel and unusual punishments that may or may not be excessive." *Atkins,* 536 U.S., at 311, n. 7, 122 S.Ct. 2242.The Court explained in *Atkins, id.,* at 311, 122 S.Ct. 2242, and *Roper, supra,* at 560, 125 S.Ct. 1183, that the Eighth Amendment's protection against excessive or cruel and unusual punishments flows from the basic "precept of justice that punishment for [a] crime should be graduated and proportioned to [the] offense." *Weems v. United States,* 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793 (1910). Whether this requirement has been fulfilled is determined not by the standards that prevailed when the Eighth Amendment was adopted in 1791 but by the norms that "currently prevail." *Atkins,supra,* at 311, 122 S.Ct. 2242. The Amendment "draw[s] its meaning from the evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles,* 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion). This is because "[t]he standard of extreme cruelty is not merely descriptive, but necessarily embodies a moral judgment. The standard itself remains the same, but its applicability must change as the basic mores of society change." *Furman v. Georgia,* 408 U.S. 238, 382, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (Burger, C. J., dissenting).

[4] Evolving standards of decency must embrace and express respect for the dignity of the person, and the punishment of criminals must conform to that rule. See *Trop, supra,* at 100, 78 S.Ct. 590 (plurality opinion). As we shall discuss, punishment is justified under one or more of three principal rationales: rehabilitation, deterrence, and retribution. See ***2650***Harmelin v. Michigan,* 501 U.S. 957, 999, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (KENNEDY, J., concurring in part and concurring in judgment); see also Part IV-B, *infra.* It is the last of these, retribution, that most often can contradict the law's own ends. This is of particular concern when the Court interprets the meaning of the Eighth Amendment in capital cases. When the law punishes by death, it risks its own sudden descent into brutality, transgressing the constitutional commitment to decency and restraint.

For these reasons we have explained that capital punishment must "be limited to those offenders who commit 'a narrow category of the most serious crimes' and whose extreme culpability makes them 'the most deserving of execution.' " *Roper,supra,* at 568, 125 S.Ct. 1183 (quoting *Atkins, supra,* at 319, 122 S.Ct. 2242). Though the **death penalty** is not invariably unconstitutional, see *Gregg v. Georgia,* 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), the Court insists upon confining the instances in which the punishment can be imposed.

Applying this principle, we held in *Roper* and *Atkins* that the execution of juveniles and mentally retarded persons are punishments violative of the Eighth Amendment because the offender had a diminished personal responsibility for the crime. See *Roper, supra,* at 571-573, 125 S.Ct. 1183; *Atkins, supra,* at 318, 320, 122 S.Ct. 2242. The Court further has held that the **death penalty** can be disproportionate to the crime itself where the crime did not result, or was not intended to result, in death of the victim. In *Coker,* 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982, for instance, the Court held it would be unconstitutional to execute an offender

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who had raped an adult woman. See also *Eberheart, supra* (holding unconstitutional in light of *Coker* a sentence of death for the kidnaping and rape of an adult woman). And in *Enmund v. Florida,* 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982), the Court overturned the capital sentence of a defendant who aided and abetted a robbery during which a murder was committed but did not himself kill, attempt to kill, or intend that a killing would take place. On the other hand, in *Tison v. Arizona,* 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987), the Court allowed the defendants' death sentences to stand where they did not themselves kill the victims but their involvement in the events leading up to the murders was active, recklessly indifferent, and substantial.

In these cases the Court has been guided by "objective indicia of society's standards, as expressed in legislative enactments and state practice with respect to executions." *Roper,* 543 U.S., at 563, 125 S.Ct. 1183; see also *Coker, supra,* at 593-597, 97 S.Ct. 2861 (plurality opinion) (finding that both legislatures and juries had firmly rejected the penalty of death for the rape of an adult woman); *Enmund, supra,* at 788, 102 S.Ct. 3368 (looking to "historical development of the punishment at issue, legislative judgments, international opinion, and the sentencing decisions juries have made"). The inquiry does not end there, however. Consensus is not dispositive. Whether the **death penalty** is disproportionate to the crime committed depends as well upon the standards elaborated by controlling precedents and by the Court's own understanding and interpretation of the Eighth Amendment's text, history, meaning, and purpose. See *id.,* at 797-801, 102 S.Ct. 3368; *Gregg, supra,* at 182-183, 96 S.Ct. 2909 (joint opinion of Stewart, Powell, and STEVENS, JJ.); *Coker, supra,* at 597-600, 97 S.Ct. 2861 (plurality opinion).

Based both on consensus and our own independent judgment, our holding is that a death sentence for one who raped but ***2651** did not kill a child, and who did not intend to assist another in killing the child, is unconstitutional under the Eighth and Fourteenth Amendments.

III

A

The existence of objective indicia of consensus against making a crime punishable by death was a relevant concern in *Roper, Atkins, Coker,* and *Enmund,* and we follow the approach of those cases here. The history of the **death penalty** for the crime of rape is an instructive beginning point.

In 1925, 18 States, the District of Columbia, and the Federal Government had statutes that authorized the **death penalty** for the **rape** of a **child** or an adult. See *Coker, supra,* at 593, 97 S.Ct. 2861 (plurality opinion). Between 1930 and 1964, 455 people were executed for those crimes. See 5 Historical Statistics of the United States: Earliest Times to the Present, pp. 5-262 to 5-263 (S. Carter et al. eds. 2006) (Table Ec343-357). To our knowledge the last individual executed for the **rape** of a **child** was Ronald Wolfe in 1964. See H. Frazier, Death Sentences in Missouri, 1803-2005: A History and Comprehensive Registry of Legal Executions, Pardons, and Commutations 143 (2006).

In 1972, *Furman* invalidated most of the state statutes authorizing the **death penalty** for the crime of rape; and in *Furman*'s aftermath only six States reenacted their capital rape provisions. Three States-Georgia, North Carolina, and Louisiana-did so with respect to all rape offenses. Three States-Florida, Mississippi, and Tennessee-did so with respect only to **child rape**. See *Coker, supra,* at 594-595, 97 S.Ct. 2861 (plurality opinion). All six statutes were later invalidated under state or federal law. See *Coker, supra* (striking down Georgia's capital rape statute); *Woodson v. North Carolina,* 428 U.S. 280, 287, n. 6, 301-305, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (plurality opinion) (striking down North Carolina's mandatory **death penalty**

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statute); *Roberts v. Louisiana,* 428 U.S. 325, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976) (striking down Louisiana's mandatory **death penalty** statute); *Collins v. State,* 550 S.W.2d 643, 646 (Tenn.1977) (striking down Tennessee's mandatory **death penalty** statute); *Buford v. State,* 403 So.2d 943, 951 (Fla.1981) (holding unconstitutional the imposition of death for **child rape**); *Leatherwood v. State,* 548 So.2d 389, 402-403 (Miss.1989) (striking down the **death penalty** for **child rape** on state-law grounds).

Louisiana reintroduced the **death penalty** for **rape** of a **child** in 1995. See La. Stat. Ann. § 14:42 (West Supp.1996). Under the current statute, any anal, vaginal, or oral intercourse with a child under the age of 13 constitutes aggravated rape and is punishable by death. See La. Stat. Ann. § 14:42 (West Supp.2007). Mistake of age is not a defense, so the statute imposes strict liability in this regard. Five States have since followed Louisiana's lead: Georgia, see Ga.Code Ann. § 16-6-1 (2007) (enacted 1999); Montana, see Mont.Code Ann. § 45-5-503 (2007) (enacted 1997); Oklahoma, see Okla. Stat., Tit. 10, § 7115(K) (West 2007 Supp.) (enacted 2006); South Carolina, see S.C.Code Ann. § 16-3-655(C)(1) (Supp.2007) (enacted 2006); and Texas, see Tex. Penal Code Ann. § 12.42(c)(3) (West Supp.2007) (enacted 2007); see also Tex. Penal Code Ann. § 22.021(a) (West Supp.2007). Four of these States' statutes are more narrow than Louisiana's in that only offenders with a previous rape conviction are death eligible. See Mont.Code Ann. § 45-5-503(3)(c); Okla. Stat., Tit. 10, § 7115(K); S.C.Code Ann. § 16-3-655(C)(1); Tex. Penal Code Ann. § 12.42(c)(3). Georgia's statute makes **child rape** a capital offense ***2652** only when aggravating circumstances are present, including but not limited to a prior conviction. See Ga.Code Ann. § 17-10-30 (Supp.2007).

By contrast, 44 States have not made **child rape** a capital offense. As for federal law, Congress in the Federal **Death Penalty** Act of 1994 expanded the number of federal crimes for which the **death penalty** is a permissible sentence, including certain nonhomicide offenses; but it did not do the same for **child rape** or abuse. See 108 Stat.1972 (codified as amended in scattered sections of 18 U.S.C.). Under 18 U.S.C. § 2245, an offender is death eligible only when the sexual abuse or exploitation results in the victim's death.

Petitioner claims the **death penalty** for **child rape** is not authorized in Georgia, pointing to a 1979 decision in which the Supreme Court of Georgia stated that "[s]tatutory rape is not a capital crime in Georgia." *Presnell v. State,* 243 Ga. 131, 132-133, 252 S.E.2d 625, 626 (1979). But it appears *Presnell* was referring to the separate crime of statutory rape, which is not a capital offense in Georgia, see Ga.Code Ann. § 26-2018 (1969); cf. Ga.Code. Ann. § 16-6-3 (2007). The State's current capital rape statute, by contrast, is explicit that the rape of "[a] female who is less than ten years of age" is punishable "by death." Ga.Code Ann. §§ 16-6-1(a)(2), (b) (2007). Based on a recent statement by the Supreme Court of Georgia it must be assumed that this law is still in force: "Neither the United States Supreme Court, nor this Court, has yet addressed whether the **death penalty** is unconstitutionally disproportionate for the crime of raping a child." *State v. Velazquez,* 283 Ga. 206, 208, 657 S.E.2d 838, 840 (2008).

Respondent would include Florida among those States that permit the **death penalty** for **child rape**. The state statute does authorize, by its terms, the **death penalty** for "sexual battery upon ... a person less than 12 years of age." Fla. Stat. § 794.011(2) (2007); see also § 921.141(5) (2007). In 1981, however, the Supreme Court of Florida held the **death penalty** for child sexual assault to be unconstitutional. See *Buford, supra.* It acknowledged that *Coker* addressed only the constitutionality of the **death penalty** for rape of an adult woman, 403 So.2d, at 950, but held that "[t]he reasoning of the justices in *Coker*... compels [the conclusion] that a sentence of death is grossly disproportionate and excessive punishment for the crime of sexual as-

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sault and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment," *id.*, at 951. Respondent points out that the state statute has not since been amended. Pursuant to Fla. Stat. § 775.082(2) (2007), however, Florida state courts have understood *Buford* to bind their sentencing discretion in **child rape** cases. See, *e.g.*, *Gibson v. State,* 721 So.2d 363, 367, and n. 2 (Fla.App.1998) (deeming it irrelevant that "the Florida Legislature never changed the wording of the sexual battery statute"); *Cooper v. State,* 453 So.2d 67 (Fla.App.1984) ("After *Buford,* death was no longer a possible penalty in Florida for sexual battery"); see also Fla. Stat. § 775.082(2) ("In the event the **death penalty** in a capital felony is held to be unconstitutional by the Florida Supreme Court ... the court having jurisdiction over a person previously sentenced to death for a capital felony ... shall sentence such person to life imprisonment").

Definitive resolution of state-law issues is for the States' own courts, and there may be disagreement over the statistics. It is further true that some States, including States that have addressed the issue in just the last few years, have made **child rape** a capital offense. The summary recited here, however, does allow us to make ***2653** certain comparisons with the data cited in the *Atkins, Roper,* and *Enmund* cases.

When *Atkins* was decided in 2002, 30 States, including 12 noncapital jurisdictions, prohibited the **death penalty** for mentally retarded offenders; 20 permitted it. See 536 U.S., at 313-315, 122 S.Ct. 2242. When *Roper* was decided in 2005, the numbers disclosed a similar division among the States: 30 States prohibited the **death penalty** for juveniles, 18 of which permitted the **death penalty** for other offenders; and 20 States authorized it. See 543 U.S., at 564, 125 S.Ct. 1183. Both in *Atkins* and in *Roper,* we noted that the practice of executing mentally retarded and juvenile offenders was infrequent. Only five States had executed an offender known to have an IQ below 70 between 1989 and 2002, see *Atkins, supra,* at 316, 122 S.Ct. 2242; and only three States had executed a juvenile offender between 1995 and 2005, see *Roper, supra,* at 564-565, 125 S.Ct. 1183.

The statistics in *Enmund* bear an even greater similarity to the instant case. There eight jurisdictions had authorized imposition of the **death penalty** solely for participation in a robbery during which an accomplice committed murder, see 458 U.S., at 789, 102 S.Ct. 3368, and six defendants between 1954 and 1982 had been sentenced to death for felony murder where the defendant did not personally commit the homicidal assault, *id.*, at 794, 102 S.Ct. 3368. These facts, the Court concluded, "weigh[ed] on the side of rejecting capital punishment for the crime." *Id.*, at 793, 102 S.Ct. 3368.

The evidence of a national consensus with respect to the **death penalty** for child rapists, as with respect to juveniles, mentally retarded offenders, and vicarious felony murderers, shows divided opinion but, on balance, an opinion against it. Thirty-seven jurisdictions-36 States plus the Federal Government-have the **death penalty**. As mentioned above, only six of those jurisdictions authorize the **death penalty** for **rape** of a **child**. Though our review of national consensus is not confined to tallying the number of States with applicable **death penalty** legislation, it is of significance that, in 45 jurisdictions, petitioner could not be executed for **child rape** of any kind. That number surpasses the 30 States in *Atkins* and *Roper* and the 42 States in *Enmund* that prohibited the **death penalty** under the circumstances those cases considered.[FN*]

FN* When issued and announced on June 25, 2008, the Court's decision neither noted nor discussed the military penalty for rape under the Uniform Code of Military Justice. See 10 U.S.C. §§ 856, 920; Manual for Courts-Martial, United States, Part IV, ¶ 45.f(1) (2008). In a petition for rehearing respondent argues that the military penalty bears on our consideration of the question in this case. For the reasons set forth in the statement respecting the

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denial of rehearing, *post* p. ----, we find that the military penalty does not affect our reasoning or conclusion.

B

At least one difference between this case and our Eighth Amendment proportionality precedents must be addressed. Respondent and its *amici* suggest that some States have an "erroneous understanding of this Court's Eighth Amendment jurisprudence." Brief for Missouri Governor Matt Blunt et al. as *Amici Curiae* 10. They submit that the general propositions set out in *Coker,* contrasting murder and rape, have been interpreted in too expansive a way, leading some state legislatures to conclude that *Coker* applies to **child rape** when in fact its reasoning does not, or ought not, apply to that specific crime.

This argument seems logical at first, but in the end it is unsound. In *Coker,* a four-Member plurality of the Court, plus Justice Brennan and Justice Marshall in concurrence, held that a sentence of death for the rape of a 16-year-old woman, who was a minor under Georgia law, see Ga.Code Ann. § 74-104 (1973), yet was characterized by the Court as an adult, was disproportionate and excessive under the Eighth Amendment. See 433 U.S., at 593-600, 97 S.Ct. 2861; see also *id.,* at 600, 97 S.Ct. 2861 (Brennan, J., concurring in judgment); *ibid.* (Marshall, J., concurring in judgment). (The Court did not explain ***2654** why the 16-year-old victim qualified as an adult, but it may be of some significance that she was married, had a home of her own, and had given birth to a son three weeks prior to the rape. See Brief for Petitioner in *Coker v. Georgia,* O.T.1976, No. 75-5444, pp. 14-15.)

The plurality noted that only one State had a valid statute authorizing the **death penalty** for adult rape and that "in the vast majority of cases, at least 9 out of 10, juries ha[d] not imposed the death sentence." *Coker,* 433 U.S., at 597, 97 S.Ct. 2861; see also *id.,* at 594, 97 S.Ct. 2861 ("Of the 16 States in which rape had been a capital offense, only three provided the **death penalty** for rape of an adult woman in their revised statutes-Georgia, North Carolina, and Louisiana. In the latter two States, the **death penalty** was mandatory for those found guilty, and those laws were invalidated by *Woodson* and *Roberts* "). This "history and ... objective evidence of the country's present judgment concerning the acceptability of death as a penalty for rape of an adult woman," *id.,* at 593, 97 S.Ct. 2861, confirmed the Court's independent judgment that punishing adult rape by death was not proportional:

> "Rape is without doubt deserving of serious punishment; but in terms of moral depravity and of the injury to the person and to the public, it does not compare with murder, which does involve the unjustified taking of human life. Although it may be accompanied by another crime, rape by definition does not include the death of ... another person. The murderer kills; the rapist, if no more than that, does not .... We have the abiding conviction that the **death penalty**, which 'is unique in its severity and irrevocability,' *Gregg v. Georgia,* 428 U.S., at 187, 96 S.Ct. 2909, is an excessive penalty for the rapist who, as such, does not take human life." *Id.,* at 598, 97 S.Ct. 2861 (footnote omitted).

Confined to this passage, *Coker*'s analysis of the Eighth Amendment is susceptible of a reading that would prohibit making **child rape** a capital offense. In context, however, *Coker*'s holding was narrower than some of its language read in isolation. The *Coker* plurality framed the question as whether, "with respect to rape of an adult woman," the **death penalty** is disproportionate punishment. *Id.,* at 592, 97 S.Ct. 2861. And it repeated the phrase "an adult woman" or "an adult female" in discussing the act of rape or the victim of rape eight times in its opinion. See *Coker, supra.* The distinction between adult and **child rape** was not merely rhetorical; it was central to the Court's reasoning. The opinion does not speak to the constitutionality of the **death penalty** for **child rape,** an issue not then before the

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Court. In discussing the legislative background, for example, the Court noted:

"Florida, Mississippi, and Tennessee also authorized the **death penalty** in some rape cases, but only where the victim was a child and the rapist an adult. The Tennessee statute has since been invalidated because the death sentence was mandatory. The upshot is that Georgia is the sole jurisdiction in the United States at the present time that authorizes a sentence of death when the rape victim is an adult woman, and only two other jurisdictions provide capital punishment when the victim is a child .... [This] obviously weighs very heavily on the side of rejecting capital punishment as a suitable penalty for raping an adult woman." *Id.*, at 595-596, 97 S.Ct. 2861 (citation and footnote omitted).

Still, respondent contends, it is possible that state legislatures have understood *Coker* to state a broad rule that covers the ***2655** situation of the minor victim as well. We see little evidence of this. Respondent cites no reliable data to indicate that state legislatures have read *Coker* to bar capital punishment for **child rape** and, for this reason, have been deterred from passing applicable **death penalty** legislation. In the absence of evidence from those States where legislation has been proposed but not enacted we refuse to speculate about the motivations and concerns of particular state legislators.

The position of the state courts, furthermore, to which state legislators look for guidance on these matters, indicates that *Coker* has not blocked the emergence of legislative consensus. The state courts that have confronted the precise question before us have been uniform in concluding that *Coker* did not address the constitutionality of the **death penalty** for the crime of **child rape**. See, *e.g., Wilson,* 685 So.2d, at 1066 (upholding the constitutionality of the **death penalty** for **rape** of a **child** and noting that "[t]he plurality [in *Coker*] took great pains in referring only to the rape of adult women throughout their opinion" (emphasis deleted)); *Upshaw v. State,* 350 So.2d 1358, 1360 (Miss.1977) ("In *Coker* the Court took great pains to limit its decision to the applicability of the **death penalty** for the rape of an adult woman .... As we view *Coker* the Court carefully refrained from deciding whether the **death penalty** for the rape of a female child under the age of twelve years is grossly disproportionate to the crime"). See also *Simpson v. Owens,* 207 Ariz. 261, 268, n. 8, 85 P.3d 478, 485, n. 8 (App.2004) (addressing the denial of bail for sexual offenses against children and noting that "[a]lthough the **death penalty** was declared in a plurality opinion of the United States Supreme Court to be a disproportionate punishment for the rape of an adult woman ... the **rape** of a **child** remains a capital offense in some states"); *People v. Hernandez,* 30 Cal.4th 835, 869, 134 Cal.Rptr.2d 602, 69 P.3d 446, 466 (2003) (addressing the **death penalty** for conspiracy to commit murder and noting that "the constitutionality of laws imposing the **death penalty** for crimes not necessarily resulting in death is unresolved").

There is, to be sure, some contrary authority contained in various state-court opinions. But it is either dicta, see *State v. Barnum,* 921 So.2d 513, 526 (Fla.2005) (addressing the retroactivity of *Thompson v. State,* 695 So.2d 691 (Fla.1997)); *State v. Coleman,* 185 Mont. 299, 327, 605 P.2d 1000, 1017 (1979) (upholding the defendant's death sentence for aggravated kidnaping); *State v. Gardner,* 947 P.2d 630, 653 (Utah 1997) (addressing the constitutionality of the **death penalty** for prison assaults); equivocal in its conclusion, see *People v. Huddleston,* 212 Ill.2d 107, 141, 287 Ill.Dec. 560, 816 N.E.2d 322, 341-342 (2004) (citing law review articles for the proposition that the constitutionality of the **death penalty** for nonhomicide crimes "is the subject of debate"); or from a decision of a state intermediate court that has been superseded by a more specific statement of the law by the State's supreme court, compare, *e.g., Parker v. State,* 216 Ga.App. 649, 650, n. 1, 455 S.E.2d 360, 361, n. 1 (1995) (characterizing *Coker* as holding that the **death penalty** "is no longer permitted for rape where the victim is not killed"), with *Velazquez,*

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283 Ga., at 208, 657 S.E.2d, at 840 ("[T]he United States Supreme Court ... has yet [to] addres[s] whether the **death penalty** is unconstitutionally disproportionate for the crime of raping a child").

The Supreme Court of Florida's opinion in *Buford* could be read to support respondent's argument. But even there the state court recognized that "[t]he [Supreme] Court has yet to decide whether [*Coker*'s rationale] holds true for the **rape** of a ***2656 child**" and made explicit that it was extending the reasoning but not the holding of *Coker* in striking down the **death penalty** for **child rape**. 403 So.2d, at 950, 951. The same is true of the Supreme Court of California's opinion in *Hernandez, supra,* at 867, 134 Cal.Rptr.2d 602, 69 P.3d, at 464.

We conclude on the basis of this review that there is no clear indication that state legislatures have misinterpreted *Coker* to hold that the **death penalty** for **child rape** is unconstitutional. The small number of States that have enacted this penalty, then, is relevant to determining whether there is a consensus against capital punishment for this crime.

C

Respondent insists that the six States where **child rape** is a capital offense, along with the States that have proposed but not yet enacted applicable **death penalty** legislation, reflect a consistent direction of change in support of the **death penalty** for **child rape**. Consistent change might counterbalance an otherwise weak demonstration of consensus. See *Atkins,* 536 U.S., at 315, 122 S.Ct. 2242 ("It is not so much the number of these States that is significant, but the consistency of the direction of change"); *Roper,* 543 U.S., at 565, 125 S.Ct. 1183 ("Impressive in *Atkins* was the rate of abolition of the **death penalty** for the mentally retarded"). But whatever the significance of consistent change where it is cited to show emerging support for expanding the scope of the **death penalty**, no showing of consistent change has been made in this case.

Respondent and its *amici* identify five States where, in their view, legislation authorizing capital punishment for **child rape** is pending. See Brief for Missouri Governor Matt Blunt et al. as *Amici Curiae* 2, 14. It is not our practice, nor is it sound, to find contemporary norms based upon state legislation that has been proposed but not yet enacted. There are compelling reasons not to do so here. Since the briefs were submitted by the parties, legislation in two of the five States has failed. See, *e.g.,* S. 195, 66th Gen. Assembly, 2d Reg. Sess. (Colo.2008) (rejected by Senate Appropriations Committee on Apr. 11, 2008); S. 2596, 2008 Leg., Reg. Sess. (Miss.2008) (rejected by House Committee on Mar. 18, 2008). In Tennessee, the house bills were rejected almost a year ago, and the senate bills appear to have died in committee. See H.R. 601, 105th Gen. Assembly, 1st Reg. Sess. (2007) (taken off Subcommittee Calendar on Apr. 4, 2007); H.R. 662, *ibid.* (failed for lack of second on Mar. 21, 2007); H.R. 1099, *ibid.* (taken off notice for Judiciary Committee calendar on May 16, 2007); S. 22, *ibid.* (referred to General Subcommittee of Senate Finance, Ways, and Means Committee on June 11, 2007); S. 157, *ibid.*(referred to Senate Judiciary Committee on Feb. 7, 2007; action deferred until Jan. 2008); S. 841, *ibid.*(referred to General Subcommittee of Senate Judiciary Committee on Mar. 27, 2007). In Alabama, the recent legislation is similar to a bill that failed in 2007. Compare H.R. 456, 2008 Leg., Reg. Sess. (2008), with H.R. 335, 2007 Leg., Reg. Sess. (2007). And in Missouri, the 2008 legislative session has ended, tabling the pending legislation. See Mo. Const., Art. III, § 20(a).

Aside from pending legislation, it is true that in the last 13 years there has been change towards making **child rape** a capital offense. This is evidenced by six new **death penalty** statutes, three enacted in the last two years. But this showing is not as significant as the data in *Atkins,* where 18 States between 1986 and 2001 had enacted legislation prohibiting the execution of mentally retarded persons. See ***2657***Atkins, supra,* at 313-315, 122 S.Ct. 2242. Respondent argues the instant case is like *Roper* be-

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cause, there, only five States had shifted their positions between 1989 and 2005, one less State than here. See *Roper, supra,* at 565, 125 S.Ct. 1183. But in *Roper,* we emphasized that, though the pace of abolition was not as great as in *Atkins,* it was counterbalanced by the total number of States that had recognized the impropriety of executing juvenile offenders. See 543 U.S., at 566-567, 125 S.Ct. 1183. When we decided *Stanford v. Kentucky,* 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989), 12 **death penalty** States already prohibited the execution of any juvenile under 18, and 15 prohibited the execution of any juvenile under 17. See *Roper, supra,* at 566-567, 125 S.Ct. 1183 ("If anything, this shows that the impropriety of executing juveniles between 16 and 18 years of age gained wide recognition earlier"). Here, the total number of States to have made **child rape** a capital offense after *Furman* is six. This is not an indication of a trend or change in direction comparable to the one supported by data in *Roper.* The evidence here bears a closer resemblance to the evidence of state activity in *Enmund,* where we found a national consensus against the **death penalty** for vicarious felony murder despite eight jurisdictions having authorized the practice. See 458 U.S., at 789, 792, 102 S.Ct. 3368.

D

There are measures of consensus other than legislation. Statistics about the number of executions may inform the consideration whether capital punishment for the crime of **child rape** is regarded as unacceptable in our society. See, *e.g., id.,* at 794-795, 102 S.Ct. 3368; *Roper, supra,* at 564-565, 125 S.Ct. 1183; *Atkins, supra,* at 316, 122 S.Ct. 2242; Cf. *Coker,* 433 U.S., at 596-597, 97 S.Ct. 2861 (plurality opinion). These statistics confirm our determination from our review of state statutes that there is a social consensus against the **death penalty** for the crime of **child rape.**

Nine States-Florida, Georgia, Louisiana, Mississippi, Montana, Oklahoma, South Carolina, Tennessee, and Texas-have permitted capital punishment for adult or **child rape** for some length of time between the Court's 1972 decision in *Furman* and today. See *supra,* at 2651; *Coker, supra,* at 595, 97 S.Ct. 2861 (plurality opinion). Yet no individual has been executed for the rape of an adult or child since 1964, and no execution for any other nonhomicide offense has been conducted since 1963. See Historical Statistics of the United States, at 5-262 to 5-263 (Table Ec343-357). Cf. *Thompson v. Oklahoma,* 487 U.S. 815, 852-853, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (O'Connor, J., concurring in judgment) (that "four decades have gone by since the last execution of a defendant who was younger than 16 at the time of the offense ... support[s] the inference of a national consensus opposing the **death penalty** for 15-year-olds").

Louisiana is the only State since 1964 that has sentenced an individual to death for the crime of **child rape;** and petitioner and Richard Davis, who was convicted and sentenced to death for the aggravated rape of a 5-year-old child by a Louisiana jury in December 2007, see *State v. Davis,* Case No. 262,971 (1st Jud. Dist., Caddo Parish, La.) (cited in Brief for Respondent 42, and n. 38), are the only two individuals now on death row in the United States for a nonhomicide offense.

After reviewing the authorities informed by contemporary norms, including the history of the **death penalty** for this and other nonhomicide crimes, current state statutes and new enactments, and the number of executions since 1964, we conclude there is ***2658** a national consensus against capital punishment for the crime of **child rape.**

IV

A

As we have said in other Eighth Amendment cases, objective evidence of contemporary values as it relates to punishment for **child rape** is entitled to

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great weight, but it does not end our inquiry. "[T]he Constitution contemplates that in the end our own judgment will be brought to bear on the question of the acceptability of the **death penalty** under the Eighth Amendment." *Coker, supra,* at 597, 97 S.Ct. 2861 (plurality opinion); see also *Roper, supra,* at 563, 125 S.Ct. 1183; *Enmund, supra,* at 797, 102 S.Ct. 3368 ("[I]t is for us ultimately to judge whether the Eighth Amendment permits imposition of the **death penalty**"). We turn, then, to the resolution of the question before us, which is informed by our precedents and our own understanding of the Constitution and the rights it secures.

It must be acknowledged that there are moral grounds to question a rule barring capital punishment for a crime against an individual that did not result in death. These facts illustrate the point. Here the victim's fright, the sense of betrayal, and the nature of her injuries caused more prolonged physical and mental suffering than, say, a sudden killing by an unseen assassin. The attack was not just on her but on her childhood. For this reason, we should be most reluctant to rely upon the language of the plurality in *Coker,* which posited that, for the victim of rape, "life may not be nearly so happy as it was" but it is not beyond repair. 433 U.S., at 598, 97 S.Ct. 2861. Rape has a permanent psychological, emotional, and sometimes physical impact on the child. See C. Bagley & K. King, Child Sexual Abuse: The Search for Healing 2-24, 111-112 (1990); Finkelhor & Browne, Assessing the Long-Term Impact of Child Sexual Abuse: A Review and Conceptualization in Handbook on Sexual Abuse of Children 55-60 (L. Walker ed.1988). We cannot dismiss the years of long anguish that must be endured by the victim of **child rape**.

It does not follow, though, that capital punishment is a proportionate penalty for the crime. The constitutional prohibition against excessive or cruel and unusual punishments mandates that the State's power to punish "be exercised within the limits of civilized standards." *Trop,* 356 U.S., at 99, 100, 78 S.Ct. 590 (plurality opinion). Evolving standards of decency that mark the progress of a maturing society counsel us to be most hesitant before interpreting the Eighth Amendment to allow the extension of the **death penalty**, a hesitation that has special force where no life was taken in the commission of the crime. It is an established principle that decency, in its essence, presumes respect for the individual and thus moderation or restraint in the application of capital punishment. See *id.,* at 100, 78 S.Ct. 590.

To date the Court has sought to define and implement this principle, for the most part, in cases involving capital murder. One approach has been to insist upon general rules that ensure consistency in determining who receives a death sentence. See *California v. Brown,* 479 U.S. 538, 541, 107 S.Ct. 837, 93 L.Ed.2d 934 (1987) ("[**D**]**eath penalty** statutes [must] be structured so as to prevent the penalty from being administered in an arbitrary and unpredictable fashion" (citing *Gregg,* 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859; *Furman,* 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346)); *Godfrey v. Georgia,* 446 U.S. 420, 428, 100 S.Ct. 1759, 64 L.Ed.2d 398 (1980) (plurality opinion) (requiring a State to give narrow and precise definition to the aggravating factors that warrant its ***2659** imposition). At the same time the Court has insisted, to ensure restraint and moderation in use of capital punishment, on judging the "character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the process of inflicting the penalty of death." *Woodson,* 428 U.S., at 304, 96 S.Ct. 2978 (plurality opinion); *Lockett v. Ohio,* 438 U.S. 586, 604-605, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality opinion).

The tension between general rules and case-specific circumstances has produced results not all together satisfactory. See *Tuilaepa v. California,* 512 U.S. 967, 973, 114 S.Ct. 2630, 129 L.Ed.2d 750 (1994) ("The objectives of these two inquiries can be in some tension, at least when the inquiries occur at the same time"); *Walton v. Arizona,* 497 U.S. 639,

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664-665, 110 S.Ct. 3047, 111 L.Ed.2d 511 (1990) (SCALIA, J., concurring in part and concurring in judgment) ("The latter requirement quite obviously destroys whatever rationality and predictability the former requirement was designed to achieve"). This has led some Members of the Court to say we should cease efforts to resolve the tension and simply allow legislatures, prosecutors, courts, and juries greater latitude. See *id.,* at 667-673, 110 S.Ct. 3047 (advocating that the Court adhere to the *Furman* line of cases and abandon the *Woodson- Lockett* line of cases). For others the failure to limit these same imprecisions by stricter enforcement of narrowing rules has raised doubts concerning the constitutionality of capital punishment itself. See *Baze v. Rees,* 553 U.S. ----, ---- - ----, 128 S.Ct. 1520, 1532-1534, 170 L.Ed.2d 420 (2008) (STEVENS, J., concurring in judgment); *Furman, supra,* at 310-314, 92 S.Ct. 2726 (White, J., concurring); *Callins v. Collins,* 510 U.S. 1141, 1144-1145, 114 S.Ct. 1127, 127 L.Ed.2d 435 (1994) (Blackmun, J., dissenting from denial of certiorari).

Our response to this case law, which is still in search of a unifying principle, has been to insist upon confining the instances in which capital punishment may be imposed. See *Gregg, supra,* at 187, 184, 96 S.Ct. 2909 (joint opinion of Stewart, Powell, and STEVENS, JJ.) (because "death as a punishment is unique in its severity and irrevocability," capital punishment must be reserved for those crimes that are "so grievous an affront to humanity that the only adequate response may be the penalty of death" (citing in part *Furman,* 408 U.S., at 286-291, 92 S.Ct. 2726 (Brennan, J., concurring); *id.,* at 306, 92 S.Ct. 2726 (Stewart, J., concurring))); see also *Roper,* 543 U.S., at 569, 125 S.Ct. 1183 (the Eighth Amendment requires that "the **death penalty** is reserved for a narrow category of crimes and offenders").

Our concern here is limited to crimes against individual persons. We do not address, for example, crimes defining and punishing treason, espionage, terrorism, and drug kingpin activity, which are offenses against the State. As it relates to crimes against individuals, though, the **death penalty** should not be expanded to instances where the victim's life was not taken. We said in *Coker* of adult rape:

> "We do not discount the seriousness of rape as a crime. It is highly reprehensible, both in a moral sense and in its almost total contempt for the personal integrity and autonomy of the female victim .... Short of homicide, it is the 'ultimate violation of self.' ...[But] [t]he murderer kills; the rapist, if no more than that, does not.... We have the abiding conviction that the **death penalty,** which 'is unique in its severity and irrevocability,' is an excessive penalty for the rapist who, as such, does not take human life." ***2660**433 U.S., at 597-598, 97 S.Ct. 2861 (plurality opinion) (citation omitted).

The same distinction between homicide and other serious violent offenses against the individual informed the Court's analysis in *Enmund,* 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140, where the Court held that the **death penalty** for the crime of vicarious felony murder is disproportionate to the offense. The Court repeated there the fundamental, moral distinction between a "murderer" and a "robber," noting that while "robbery is a serious crime deserving serious punishment," it is not like death in its "severity and irrevocability." *Id.,* at 797, 102 S.Ct. 3368 (internal quotation marks omitted).

Consistent with evolving standards of decency and the teachings of our precedents we conclude that, in determining whether the **death penalty** is excessive, there is a distinction between intentional first-degree murder on the one hand and nonhomicide crimes against individual persons, even including **child rape,** on the other. The latter crimes may be devastating in their harm, as here, but "in terms of moral depravity and of the injury to the person and to the public," *Coker,* 433 U.S., at 598, 97 S.Ct. 2861 (plurality opinion), they cannot be compared to murder in their "severity and irrevocability."

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Ibid.

In reaching our conclusion we find significant the number of executions that would be allowed under respondent's approach. The crime of **child rape**, considering its reported incidents, occurs more often than first-degree murder. Approximately 5,702 incidents of vaginal, anal, or oral **rape** of a **child** under the age of 12 were reported nationwide in 2005; this is almost twice the total incidents of intentional murder for victims of all ages (3,405) reported during the same period. See Inter-University Consortium for Political and Social Research, National Incident-Based Reporting System, 2005, Study No. 4720, http:// www. icpsr. umich. edu (as visited June 12, 2008, and available in Clerk of Court's case file). Although we have no reliable statistics on convictions for **child rape**, we can surmise that, each year, there are hundreds, or more, of these convictions just in jurisdictions that permit capital punishment. Cf. Brief for Louisiana Association of Criminal Defense Lawyers et al. as *Amici Curiae* 1-2, and n. 2 (noting that there are now at least 70 capital rape indictments pending in Louisiana and estimating the actual number to be over 100). As a result of existing rules, see generally *Godfrey,* 446 U.S., at 428-433, 100 S.Ct. 1759 (plurality opinion), only 2.2% of convicted first-degree murderers are sentenced to death, see Blume, Eisenberg, & Wells, Explaining Death Row's Population and Racial Composition, 1 J. of Empirical Legal Studies 165, 171 (2004). But under respondent's approach, the 36 States that permit the **death penalty** could sentence to death all persons convicted of raping a child less than 12 years of age. This could not be reconciled with our evolving standards of decency and the necessity to constrain the use of the **death penalty**.

It might be said that narrowing aggravators could be used in this context, as with murder offenses, to ensure the **death penalty's** restrained application. We find it difficult to identify standards that would guide the decisionmaker so the penalty is reserved for the most severe cases of **child rape** and yet not imposed in an arbitrary way. Even were we to forbid, say, the execution of first-time child rapists, see *supra* at 2651, or require as an aggravating factor a finding that the perpetrator's instant rape offense involved multiple victims, the jury still must balance, in its discretion, those aggravating factors against mitigating circumstances. In this ***2661** context, which involves a crime that in many cases will overwhelm a decent person's judgment, we have no confidence that the imposition of the **death penalty** would not be so arbitrary as to be "freakis[h]," *Furman,* 408 U.S., at 310, 92 S.Ct. 2726 (Stewart, J., concurring). We cannot sanction this result when the harm to the victim, though grave, cannot be quantified in the same way as death of the victim.

It is not a solution simply to apply to this context the aggravating factors developed for capital murder. The Court has said that a State may carry out its obligation to ensure individualized sentencing in capital murder cases by adopting sentencing processes that rely upon the jury to exercise wide discretion so long as there are narrowing factors that have some " 'common-sense core of meaning ... that criminal juries should be capable of understanding.' " *Tuilaepa,* 512 U.S., at 975, 114 S.Ct. 2630 (quoting *Jurek v. Texas,* 428 U.S. 262, 279, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976) (White, J., concurring in judgment)). The Court, accordingly, has upheld the constitutionality of aggravating factors ranging from whether the defendant was a " 'cold-blooded, pitiless slayer,' " *Arave v. Creech,* 507 U.S. 463, 471-474, 113 S.Ct. 1534, 123 L.Ed.2d 188 (1993), to whether the "perpetrator inflict[ed] mental anguish or physical abuse before the victim's death," *Walton,* 497 U.S., at 654, 110 S.Ct. 3047, to whether the defendant " 'would commit criminal acts of violence that would constitute a continuing threat to society,' " *Jurek, supra,* at 269-270, 274-276, 96 S.Ct. 2950 (joint opinion of Stewart, Powell, and STEVENS, JJ.). All of these standards have the potential to result in some inconsistency of application.

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As noted above, the resulting imprecision and the tension between evaluating the individual circumstances and consistency of treatment have been tolerated where the victim dies. It should not be introduced into our justice system, though, where death has not occurred.

Our concerns are all the more pronounced where, as here, the **death penalty** for this crime has been most infrequent. See Part III-D, *supra.* We have developed a foundational jurisprudence in the case of capital murder to guide the States and juries in imposing the **death penalty**. Starting with *Gregg,* 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859, we have spent more than 32 years articulating limiting factors that channel the jury's discretion to avoid the **death penalty's** arbitrary imposition in the case of capital murder. Though that practice remains sound, beginning the same process for crimes for which no one has been executed in more than 40 years would require experimentation in an area where a failed experiment would result in the execution of individuals undeserving of the **death penalty**. Evolving standards of decency are difficult to reconcile with a regime that seeks to expand the **death penalty** to an area where standards to confine its use are indefinite and obscure.

B

Our decision is consistent with the justifications offered for the **death penalty**. *Gregg* instructs that capital punishment is excessive when it is grossly out of proportion to the crime or it does not fulfill the two distinct social purposes served by the **death penalty**: retribution and deterrence of capital crimes. See *id.,* at 173, 183, 187, 96 S.Ct. 2909 (joint opinion of Stewart, Powell, and STEVENS, JJ.); see also *Coker,* 433 U.S., at 592, 97 S.Ct. 2861 (plurality opinion) ("A punishment might fail the test on either ground").

As in *Coker,* here it cannot be said with any certainty that the **death penalty** for **child rape** serves no deterrent or retributive function. See ***2662***id.,* at 593, n. 4, 97 S.Ct. 2861 (concluding that the **death penalty** for rape might serve "legitimate ends of punishment" but nevertheless is disproportionate to the crime). Cf. *Gregg, supra,* at 185-186, 96 S.Ct. 2909 (joint opinion of Stewart, Powell, and STEVENS, JJ.) ("[T]here is no convincing empirical evidence either supporting or refuting th[e] view [that the **death penalty** serves as a significantly greater deterrent than lesser penalties]. We may nevertheless assume safely that there are murderers ... for whom ... the **death penalty** undoubtedly is a significant deterrent"); *id.,* at 186, 96 S.Ct. 2909 (the value of capital punishment, and its contribution to acceptable penological goals, typically is a "complex factual issue the resolution of which properly rests with the legislatures"). This argument does not overcome other objections, however. The incongruity between the crime of **child rape** and the harshness of the **death penalty** poses risks of overpunishment and counsels against a constitutional ruling that the **death penalty** can be expanded to include this offense.

The goal of retribution, which reflects society's and the victim's interests in seeing that the offender is repaid for the hurt he caused, see *Atkins,* 536 U.S., at 319, 122 S.Ct. 2242; *Furman, supra,* at 308, 92 S.Ct. 2726 (Stewart, J., concurring), does not justify the harshness of the **death penalty** here. In measuring retribution, as well as other objectives of criminal law, it is appropriate to distinguish between a particularly depraved murder that merits death as a form of retribution and the crime of **child rape**. See Part IV-A, *supra* ; *Coker, supra,* at 597-598, 97 S.Ct. 2861 (plurality opinion).

There is an additional reason for our conclusion that imposing the **death penalty** for **child rape** would not further retributive purposes. In considering whether retribution is served, among other factors we have looked to whether capital punishment "has the potential ... to allow the community as a whole, including the surviving family and friends of the victim, to affirm its own judgment that the culpability of the prisoner is so serious that

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the ultimate penalty must be sought and imposed." *Panetti v. Quarterman,* 551 U.S. ----, ----, 127 S.Ct. 2842, 2847, 168 L.Ed.2d 662 (2007). In considering the **death penalty** for nonhomicide offenses this inquiry necessarily also must include the question whether the **death penalty** balances the wrong to the victim. Cf. *Roper,* 543 U.S., at 571, 125 S.Ct. 1183.

It is not at all evident that the **child rape** victim's hurt is lessened when the law permits the death of the perpetrator. Capital cases require a long-term commitment by those who testify for the prosecution, especially when guilt and sentencing determinations are in multiple proceedings. In cases like this the key testimony is not just from the family but from the victim herself. During formative years of her adolescence, made all the more daunting for having to come to terms with the brutality of her experience, L.H. was required to discuss the case at length with law enforcement personnel. In a public trial she was required to recount once more all the details of the crime to a jury as the State pursued the death of her stepfather. Cf. G. Goodman et al., Testifying in Criminal Court: Emotional Effects on Child Sexual Assault Victims 50, 62, 72 (1992); Brief for National Association of Social Workers et al. as *Amici Curiae* 17-21. And in the end the State made L.H. a central figure in its decision to seek the **death penalty,** telling the jury in closing statements: "[L. H.] is asking you, asking you to set up a time and place when he dies." Tr. 121 (Aug. 26, 2003).

Society's desire to inflict the **death penalty** for **child rape** by enlisting the child ***2663** victim to assist it over the course of years in asking for capital punishment forces a moral choice on the child, who is not of mature age to make that choice. The way the **death penalty** here involves the child victim in its enforcement can compromise a decent legal system; and this is but a subset of fundamental difficulties capital punishment can cause in the administration and enforcement of laws proscribing **child rape**.

There are, moreover, serious systemic concerns in prosecuting the crime of **child rape** that are relevant to the constitutionality of making it a capital offense. The problem of unreliable, induced, and even imagined child testimony means there is a "special risk of wrongful execution" in some **child rape** cases. *Atkins, supra,* at 321, 122 S.Ct. 2242. See also Brief for National Association of Criminal Defense Lawyers et al. as *Amici Curiae* 5-17. This undermines, at least to some degree, the meaningful contribution of the **death penalty** to legitimate goals of punishment. Studies conclude that children are highly susceptible to suggestive questioning techniques like repetition, guided imagery, and selective reinforcement. See Ceci & Friedman, The Suggestibility of Children: Scientific Research and Legal Implications, 86 Cornell L.Rev. 33, 47 (2000) (there is "strong evidence that children, especially young children, are suggestible to a significant degree-even on abuse-related questions"); Gross, Jacoby, Matheson, Montgomery, & Patil, Exonerations in the United States 1989 Through 2003, 95 J.Crim. L. & C. 523, 539 (2005) (discussing allegations of abuse at the Little Rascals Day Care Center); see also Quas, Davis, Goodman, & Myers, Repeated Questions, Deception, and Children's True and False Reports of Body Touch, 12 Child Maltreatment 60, 61-66 (2007) (finding that 4- to 7-year-olds "were able to maintain [a] lie about body touch fairly effectively when asked repeated, direct questions during a mock forensic interview").

Similar criticisms pertain to other cases involving child witnesses; but **child rape** cases present heightened concerns because the central narrative and account of the crime often comes from the child herself. She and the accused are, in most instances, the only ones present when the crime was committed. See *Pennsylvania v. Ritchie,* 480 U.S. 39, 60, 107 S.Ct. 989, 94 L.Ed.2d 40 (1987). Cf. Goodman, Testifying in Criminal Court, at 118. And the question in a capital case is not just the fact of the crime, including, say, proof of rape as distinct from abuse short of rape, but details bearing

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upon brutality in its commission. These matters are subject to fabrication or exaggeration, or both. See Ceci and Friedman, *supra;* Quas, *supra.* Although capital punishment does bring retribution, and the legislature here has chosen to use it for this end, its judgment must be weighed, in deciding the constitutional question, against the special risks of unreliable testimony with respect to this crime.

With respect to deterrence, if the **death penalty** adds to the risk of non-reporting, that, too, diminishes the penalty's objectives. Underreporting is a common problem with respect to child sexual abuse. See Hanson, Resnick, Saunders, Kilpatrick, & Best, Factors Related to the Reporting of Childhood **Rape**, 23 **Child** Abuse & Neglect 559, 564 (1999) (finding that about 88% of female rape victims under the age of 18 did not disclose their abuse to authorities); Smith et al., Delay in Disclosure of Childhood Rape: Results From A National Survey, 24 Child Abuse & Neglect 273, 278-279 (2000) (finding that 72% of women raped as children disclosed their abuse to someone, but that only 12% of the victims reported the rape to authorities). Although we know little about what differentiates***2664** those who report from those who do not report, see Hanson, *supra,* at 561, one of the most commonly cited reasons for nondisclosure is fear of negative consequences for the perpetrator, a concern that has special force where the abuser is a family member, see Goodman-Brown, Edelstein, Goodman, Jones, & Gordon, Why Children Tell: A Model of Children's Disclosure of Sexual Abuse, 27 Child Abuse & Neglect 525, 527-528 (2003); Smith, *supra,* at 283-284 (finding that, where there was a relationship between perpetrator and victim, the victim was likely to keep the abuse a secret for a longer period of time, perhaps because of a "greater sense of loyalty or emotional bond"); Hanson, *supra,* at 565-566, and Table 3 (finding that a "significantly greater proportion of reported than nonreported cases involved a stranger"); see also *Ritchie, supra,* at 60. The experience of the *amici* who work with child victims indicates that, when the punishment is death, both the victim and the victim's family members may be more likely to shield the perpetrator from discovery, thus increasing underreporting. See Brief for National Association of Social Workers et al. as *Amici Curiae* 11-13. As a result, punishment by death may not result in more deterrence or more effective enforcement.

In addition, by in effect making the punishment for **child rape** and murder equivalent, a State that punishes **child rape** by death may remove a strong incentive for the rapist not to kill the victim. Assuming the offender behaves in a rational way, as one must to justify the penalty on grounds of deterrence, the penalty in some respects gives less protection, not more, to the victim, who is often the sole witness to the crime. See Rayburn, Better Dead Than R(ap)ed?: The Patriarchal Rhetoric Driving Capital Rape Statutes, 78 St. John's L.Rev. 1119, 1159-1160 (2004). It might be argued that, even if the **death penalty** results in a marginal increase in the incentive to kill, this is counterbalanced by a marginally increased deterrent to commit the crime at all. Whatever balance the legislature strikes, however, uncertainty on the point makes the argument for the penalty less compelling than for homicide crimes.

Each of these propositions, standing alone, might not establish the unconstitutionality of the **death penalty** for the crime of **child rape**. Taken in sum, however, they demonstrate the serious negative consequences of making **child rape** a capital offense. These considerations lead us to conclude, in our independent judgment, that the **death penalty** is not a proportional punishment for the **rape** of a **child**.

V

Our determination that there is a consensus against the **death penalty** for **child rape** raises the question whether the Court's own institutional position and its holding will have the effect of blocking further or later consensus in favor of the penalty from

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developing. The Court, it will be argued, by the act of addressing the constitutionality of the **death penalty**, intrudes upon the consensus-making process. By imposing a negative restraint, the argument runs, the Court makes it more difficult for consensus to change or emerge. The Court, according to the criticism, itself becomes enmeshed in the process, part judge and part the maker of that which it judges.

These concerns overlook the meaning and full substance of the established proposition that the Eighth Amendment is defined by "the evolving standards of decency that mark the progress of a maturing society." *Trop,* 356 U.S., at 101, 78 S.Ct. 590 (plurality opinion). Confirmed by repeated,***2665** consistent rulings of this Court, this principle requires that use of the **death penalty** be restrained. The rule of evolving standards of decency with specific marks on the way to full progress and mature judgment means that resort to the penalty must be reserved for the worst of crimes and limited in its instances of application. In most cases justice is not better served by terminating the life of the perpetrator rather than confining him and preserving the possibility that he and the system will find ways to allow him to understand the enormity of his offense. Difficulties in administering the penalty to ensure against its arbitrary and capricious application require adherence to a rule reserving its use, at this stage of evolving standards and in cases of crimes against individuals, for crimes that take the life of the victim.

The judgment of the Supreme Court of Louisiana upholding the capital sentence is reversed. This case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Justice ALITO, with whom THE CHIEF JUSTICE, Justice SCALIA, and Justice THOMAS join, dissenting.

The Court today holds that the Eighth Amendment categorically prohibits the imposition of the **death penalty** for the crime of raping a child. This is so, according to the Court, no matter how young the child, no matter how many times the child is raped, no matter how many **children** the perpetrator **rapes**, no matter how sadistic the crime, no matter how much physical or psychological trauma is inflicted, and no matter how heinous the perpetrator's prior criminal record may be. The Court provides two reasons for this sweeping conclusion: First, the Court claims to have identified "a national consensus" that the **death penalty** is never acceptable for the **rape** of a **child**; second, the Court concludes, based on its "independent judgment," that imposing the **death penalty** for **child rape** is inconsistent with " 'the evolving standards of decency that mark the progress of a maturing society.' " *Ante,* at 2649, 2653, 2654 (citation omitted). Because neither of these justifications is sound, I respectfully dissent.

I

A.

I turn first to the Court's claim that there is "a national consensus" that it is never acceptable to impose the **death penalty** for the **rape** of a **child**. The Eighth Amendment's requirements, the Court writes, are "determined not by the standards that prevailed" when the Amendment was adopted but "by the norms that 'currently prevail.' " *Ante,* at 2649 (quoting *Atkins v. Virginia,* 536 U.S. 304, 311, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002)). In assessing current norms, the Court relies primarily on the fact that only 6 of the 50 States now have statutes that permit the **death penalty** for this offense. But this statistic is a highly unreliable indicator of the views of state lawmakers and their constituents. As I will explain, dicta in this Court's decision in *Coker v. Georgia,* 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977), has stunted legislative consideration of the question whether the **death penalty** for the targeted offense of raping a young

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child is consistent with prevailing standards of decency. The *Coker* dicta gave state legislators and others good reason to fear that any law permitting the imposition of the **death penalty** for this crime would meet precisely the fate that has now befallen the Louisiana statute that is currently before us, and this threat strongly discouraged state legislators-regardless of their own values and those of ***2666** their constituents-from supporting the enactment of such legislation.

As the Court correctly concludes, the *holding* in *Coker* was that the Eighth Amendment prohibits the **death penalty** for the rape of an " 'adult woman,' " and thus *Coker* does not control our decision here. See *ante,* at 2654. But the reasoning of the Justices in the majority had broader implications.

Two Members of the *Coker* majority, Justices Brennan and Marshall, took the position that the **death penalty** is always unconstitutional. 433 U.S., at 600, 97 S.Ct. 2861 (Brennan, J., concurring in judgment) and (Marshall, J., concurring in judgment). Four other Justices, who joined the controlling plurality opinion, suggested that the Georgia capital rape statute was unconstitutional for the simple reason that the impact of a rape, no matter how heinous, is not grievous enough to justify capital punishment. In the words of the plurality: "Life is over for the victim of the murderer; for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair." *Id.,* at 598, 97 S.Ct. 2861. The plurality summarized its position as follows: "We have the abiding conviction that the **death penalty**... is an excessive penalty for the rapist who, as such, does not take human life." *Ibid.*

The implications of the *Coker* plurality opinion were plain. Justice Powell, who concurred in the judgment overturning the death sentence in the case at hand, did not join the plurality opinion because he understood it to draw "a bright line between murder and all rapes-regardless of the degree of brutality of the rape or the effect upon the victim." *Id.*, at 603, 97 S.Ct. 2861. If Justice Powell read *Coker* that way, it was reasonable for state legislatures to do the same.

Understandably, state courts have frequently read *Coker* in precisely this way. The Court is correct that state courts have generally understood the limited scope of the *holding* in *Coker,ante,* at 2654 - 2655, but lower courts and legislators also take into account-and I presume that this Court wishes them to continue to take into account-the Court's dicta. And that is just what happened in the wake of *Coker.* Four years after *Coker,* when Florida's capital **child rape** statute was challenged, the Florida Supreme Court, while correctly noting that this Court had not *held* that the Eighth Amendment bars the **death penalty** for **child rape,** concluded that "[t]he reasoning of the justices in *Coker v. Georgia* compels us to hold that a sentence of death is grossly disproportionate and excessive punishment for the crime of sexual assault and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment." *Buford v. State,* 403 So.2d 943, 951 (1981).

Numerous other state courts have interpreted the *Coker* dicta similarly. See *State v. Barnum,* 921 So.2d 513, 526 (Fla.2005) (citing *Coker* as holding that " 'a sentence of death is grossly disproportionate and excessive punishment for the crime of rape,' " not merely the rape of an adult woman); *People v. Huddleston,* 212 Ill.2d 107, 141, 287 Ill.Dec. 560, 816 N.E.2d 322, 341 (2004) (recognizing that "the constitutionality of state statutes that impose the **death penalty** for nonhomicide crimes is the subject of debate" after *Coker*); *People v. Hernandez,* 30 Cal.4th 835, 867, 134 Cal.Rptr.2d 602, 69 P.3d 446, 464-467 (2003) (*Coker*"rais[ed] serious doubts that the federal Constitution permitted the **death penalty** for any offense not requiring the actual taking of human life" because "[a]lthough the high court did not expressly hold [in *Coker*] that the Eighth Amendment prohibits capital punishment for *all* crimes not resulting in death, the plurality ***2667** stressed that the crucial difference between rape and murder is that a

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rapist 'does not take human life' "); *State v. Gardner,* 947 P.2d 630, 653 (Utah 1997) ("The *Coker* holding leaves no room for the conclusion that any rape, even an 'inhuman' one involving torture and aggravated battery but not resulting in death, would constitutionally sustain imposition of the **death penalty**"); *Parker v. State,* 216 Ga.App. 649, n. 1, 455 S.E.2d 360, 361, n. 1 (1995) (citing *Coker* for the proposition that the **death penalty**"is no longer permitted for rape where the victim is not killed"); *Leatherwood v. State,* 548 So.2d 389, 406 (Miss.1989) (Robertson, J., concurring) ("There is as much chance of the Supreme Court sanctioning death as a penalty for *any* non-fatal rape as the proverbial snowball enjoys in the nether regions"); *State v. Coleman,* 185 Mont. 299, 327-328, 605 P.2d 1000, 1017 (1979) (stating that "[t]he decision of the Court in *Coker v. Georgia* is relevant only to crimes for which the penalty has been imposed which did *not* result in the loss of a life" (citations omitted)); *Boyer v. State,* 240 Ga. 170, 240 S.E.2d 68 (1977)*(per curiam)* (stating that "[s]ince death to the victim did not result ... the **death penalty** for rape must be set aside"); see also 2005-1981 (La.Sup.Ct.5/22/07), 957 So.2d 757, 794 (case below) (Calogero, C.J., dissenting) (citing the comments of the *Coker* plurality and concluding that the Louisiana **child rape** law cannot pass constitutional muster).[FN1]

FN1. Commentators have expressed similar views. See Fleming, Louisiana's Newest Capital Crime: The **Death Penalty** for **Child Rape**, 89 J.Crim. L. & C. 717, 727 (1999) (the *Coker* Court drew a line between "crimes which result in loss of life, and crimes which do not"); Baily, Death is Different, Even on the Bayou: The Disproportionality of Crime, 55 Wash. & Lee L.Rev. 1335, 1357 (1998) (noting that "[m]any post-Coker cases interpreting the breadth of *Coker*'s holding suggest that the Mississippi Supreme Court's narrow reading of *Coker* in Upshaw is a minority position"); Matura, When Will It Stop? The Use of the **Death Penalty** for Nonhomicide Crimes, 24 J. Legis. 249, 255 (1998) (stating that the *Coker* Court did not "draw a distinction between the rape of an adult woman and the rape of a minor"); Garvey, "As the Gentle Rain from Heaven": Mercy in Capital Sentencing, 81 Cornell L.Rev. 989, 1009, n. 74 (1996) (stating that courts generally understand *Coker* to prohibit death sentences for crimes other than murder); Nanda, Recent Developments in the United States and Internationally Regarding Capital Punishment-An Appraisal, 67 St. John's L.Rev. 523, 532 (1993) (finding that *Coker* stands for the proposition that a death sentence is excessive when the victim is not killed); Ellis, Guilty but Mentally Ill and the **Death Penalty**: Punishment Full of Sound and Fury, Signifying Nothing, 43 Duke L.J. 87, 94 (1994) (referencing *Coker* to require capital offenses to be defined by unjustified human death); Dingerson, Reclaiming the Gavel: Making Sense out of the **Death Penalty** Debate in State Legislatures, 18 N.Y.U. Rev. L. & Soc. Change 873, 878 (1991) (stating that *Coker*"ruled that the imposition of the **death penalty** for crimes from which no death results violates the cruel and unusual punishment provision of the eighth amendment" and that "[n]o subsequent Supreme Court decision has challenged this precedent").

For the past three decades, these interpretations have posed a very high hurdle for state legislatures considering the passage of new laws permitting the **death penalty** for the **rape** of a **child**. The enactment and implementation of any new state **death penalty** statute-and particularly a new type of statute such as one that specifically targets the **rape** of young **children**-imposes many costs. There is the burden of drafting an innovative law that must take into account this Court's exceedingly complex Eighth Amendment jurisprudence. Securing pas-

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sage of controversial legislation may interfere in a variety of ways with the enactment of other bills on the legislative agenda. *2668 Once the statute is enacted, there is the burden of training and coordinating the efforts of those who must implement the new law. Capital prosecutions are qualitatively more difficult than noncapital prosecutions and impose special emotional burdens on all involved. When a capital sentence is imposed under the new law, there is the burden of keeping the prisoner on death row and the lengthy and costly project of defending the constitutionality of the statute on appeal and in collateral proceedings. And if the law is eventually overturned, there is the burden of new proceedings on remand. Moreover, conscientious state lawmakers, whatever their personal views about the morality of imposing the **death penalty** for **child rape**, may defer to this Court's dicta, either because they respect our authority and expertise in interpreting the Constitution or merely because they do not relish the prospect of being held to have violated the Constitution and contravened prevailing "standards of decency." Accordingly, the *Coker* dicta gave state legislators a strong incentive not to push for the enactment of new capital **child-rape** laws even though these legislators and their constituents may have believed that the laws would be appropriate and desirable.

B

The Court expresses doubt that the *Coker* dicta had this effect, but the skepticism is unwarranted. It would be quite remarkable if state legislators were not influenced by the considerations noted above. And although state legislatures typically do not create legislative materials like those produced by Congress, there is evidence that proposals to permit the imposition of the **death penalty** for **child rape** were opposed on the ground that enactment would be futile and costly.

In Oklahoma, the opposition to the State's capital **child-rape** statute argued that *Coker* had already ruled the **death penalty** unconstitutional as applied to cases of rape. See Oklahoma Senate News Release, Senator Nichols Targets Child Predators with **Death Penalty**, Child Abuse Response Team, May 26, 2006, on line at http:// www. oksenate. gov/ news/ press_ releases/ press_ releases_ 2006/pr20060526d.htm (all Internet materials as visited June 23, 2008, and available in Clerk of Court's case file). Likewise, opponents of South Carolina's capital **child-rape** law contended that the statute would waste state resources because it would undoubtedly be held unconstitutional. See The State, **Death Penalty** Plan in Spotlight: Attorney General to Advise Senate Panel on Proposal for Repeat Child Rapists, Mar. 28, 2006 (quoting Laura Hudson, spokeswoman for the S. C. Victim Assistance Network, as stating that " '[w]e don't need to be wasting state money to have an appeal to the [United States] Supreme Court, knowing we are going to lose it' "). Representative Fletcher Smith of the South Carolina House of Representatives forecast that the bill would not meet constitutional standards because "death isn't involved." See Davenport, Emotion Drives **Child Rape Death Penalty** Debate in South Carolina, Associated Press, Apr. 4, 2006.

In Texas, opponents of that State's capital **child-rape** law argued that *Coker*'s reasoning doomed the proposal. House Research Organization Bill Analysis, Mar. 5, 2007 (stating that "the law would impose an excessive punishment and fail to pass the proportionality test established by the U.S. Supreme Court" and arguing that "Texas should not enact a law of questionable constitutionality simply because it is politically popular, especially given clues by the U.S. Supreme Court that **death penalty** laws that would be rarely imposed *2669 or that are not supported by a broad national consensus would be ruled unconstitutional").

C

Because of the effect of the *Coker* dicta, the Court is plainly wrong in comparing the situation here to that in *Atkins* or *Roper v. Simmons*, 543 U.S. 551,

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125 S.Ct. 1183, 161 L.Ed.2d 1 (2005). See *ante,* at 2652 - 2653. *Atkins* concerned the constitutionality of imposing the **death penalty** on a mentally retarded defendant. Thirteen years earlier, in *Penry v. Lynaugh,* 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989), the Court had held that this was permitted by the Eighth Amendment, and therefore, during the time between *Penry* and *Atkins,* state legislators had reason to believe that this Court would follow its prior precedent and uphold statutes allowing such punishment.

The situation in *Roper* was similar. *Roper* concerned a challenge to the constitutionality of imposing the **death penalty** on a defendant who had not reached the age of 18 at the time of the crime. Sixteen years earlier in *Stanford v. Kentucky,* 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989), the Court had rejected a similar challenge, and therefore state lawmakers had cause to believe that laws allowing such punishment would be sustained.

When state lawmakers believe that their decision will prevail on the question whether to permit the **death penalty** for a particular crime or class of offender, the legislators' resolution of the issue can be interpreted as an expression of their own judgment, informed by whatever weight they attach to the values of their constituents. But when state legislators think that the enactment of a new **death penalty** law is likely to be futile, inaction cannot reasonably be interpreted as an expression of their understanding of prevailing societal values. In that atmosphere, legislative inaction is more likely to evidence acquiescence.

D

If anything can be inferred from state legislative developments, the message is very different from the one that the Court perceives. In just the past few years, despite the shadow cast by the *Coker* dicta, five States have enacted targeted capital **child-rape** laws. See Ga.Code Ann. § 16-6-1 (1999); Mont.Code Ann. § 45-5-503 (1997); Okla. Stat., Tit. 10, § 7115(K) (West Supp.2008); S.C.Code Ann. § 16-3-655(C)(1) (Supp.2007); Tex. Penal Code Ann. §§ 22.021(a), 12.42(c)(3) (West Supp.2007). If, as the Court seems to think, our society is "[e]volving" toward ever higher "standards of decency," *ante,* at 2664 - 2665, these enactments might represent the beginning of a new evolutionary line.

Such a development would not be out of step with changes in our society's thinking since *Coker* was decided. During that time, reported instances of child abuse have increased dramatically; [FN2] and there ***2670** are many indications of growing alarm about the sexual abuse of children. In 1994, Congress enacted the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Program, 42 U.S.C. § 14071 (2000 ed. and Supp. V), which requires States receiving certain federal funds to establish registration systems for convicted sex offenders and to notify the public about persons convicted of the sexual abuse of minors. All 50 States have now enacted such statutes.[FN3] In addition, at least 21 States and the District of Columbia now have statutes permitting the involuntary commitment of sexual predators,[FN4] and at least 12 States ***2671** have enacted residency restrictions for sex offenders.[FN5]

> FN2. From 1976 to 1986, the number of reported cases of child sexual abuse grew from 6,000 to 132,000, an increase of 2,100%. A. Lurigio, M. Jones, & B. Smith, Child Sexual Abuse: Its Causes, Consequences, and Implications for Probation Practice, 59 Sep Fed. Probation 69 (1995). By 1991, the number of cases totaled 432,000, an increase of another 227%. *Ibid.* In 1995, local child protection services agencies identified 126,000 children who were victims of either substantiated or indicated sexual abuse. Nearly 30% of those child victims were between the age of four and seven. Rape, Abuse & Incest National Network Statistics, online at ht-

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tp:// www. rainn. org/ get- information/ statistics/sexual-assault-victims. There were an estimated 90,000 substantiated cases of child sexual abuse in 2003. Crimes Against Children Research Center, Reports from the States to the National Child Abuse and Neglect Data System, available at www. unh. edu/ ccrc/ sexual-abuse/ChildS exualÄbuse.pdf.

FN3. Ala.Code §§ 13A-11-200 to 13A-11-203, 1181 (1994); Alaska Stat §§ 1.56.840, 12.63.010-100, 18.65.087, 28.05.048, 33.30.035 (1994, 1995, and 1995 Cum.Supp.); Ariz.Rev.Stat. Ann. §§ 13-3821 to -3825 (1989 and Supp.1995); Ark.Code Ann. §§ 12-12-901 to -909 (1995); Cal.Penal Code Ann. §§ 290 to 290.4 (West Supp.1996); Colo.Rev.Stat. Ann. § 18-3-412.5 (Supp.1996); Conn. Gen.Stat. Ann. §§ 54-102a to 54-102r (Supp.1995); Del.Code Ann. Tit. 11, § 4120 (1995); Fla. Stat. Ann. §§ 775.13, 775.22 (1992 and Supp.1994); Ga.Code Ann. § 42-9-44.1 (1994); 1995 Haw. Sess. Laws No. 160 (enacted June 14, 1995); Idaho Code §§ 9-340(11)(f), 18-8301 to 18-8311 (Supp.1995); Ill. Comp. Stat. Ann., ch. 730, §§ 150/1 to 150/10 (2002); Ind.Code §§ 5-2-12-1 to 5-2-12-13 (West Supp.1995); 1995 Iowa Legis. Serv. 146 (enacted May 3, 1995); Kan. Stat. Ann. §§ 22-4901 to 22-4910 (1995); Ky.Rev.Stat. Ann. §§ 17.500 to 17.540 (West Supp.1994); La. Stat. Ann. §§ 15:540 to 15:549 (West Supp.1995); Me.Rev.Stat. Ann., Tit. 34-A, §§ 11001 to 11004 (West Supp.1995); 1995 Md. Laws p. 142 (enacted May 9, 1995); Mass. Gen. Laws Ann., ch. 6, § 178D; 1994 Mich. Pub. Acts p. 295 (enacted July 13, 1994); Minn.Stat. § 243.166 (1992 and Supp.1995); Miss.Code Ann. §§ 45-33-1 to 45-33-19 (Supp.1995); Mo.Rev.Stat. §§ 566.600 to 566.625 (Supp.1996); Mont.Code Ann. §§ 46-23-501 to 46-23-507 (1994); Neb.Rev.Stat. §§ 4001 to 4014; Nev.Rev.Stat. §§ 207.080, 207.151 to 207.157 (1992 and Supp.1995); N.H.Rev.Stat. Ann. §§ 632-A:11 to 632-A:19 (Supp.1995); N.J. Stat. Ann. §§ 2c:7-1 to 2c:7-11 (1995); N.M. Stat. Ann. §§ 29-11A-1 to 29-11A-8 (Supp.1995); N.Y. Correct. Law Ann. §§ 168 to 168-V (West Supp.1996); N.C. Gen.Stat. Ann. §§ 14-208.5-10 (Lexis Supp.1995); N.D. Cent.Code § 12.1-32-15 (Lexis Supp.1995); Ohio Rev.Code Ann. §§ 2950.01-.08 (Baldwin 1997); Okla. Stat., Tit. 57, §§ 582-584 (2003 Supp.); Ore.Rev.Stat. §§ 181.507 to 181.519 (1993); 1995 Pa. Laws p. 24 (enacted Oct. 24, 1995); R.I. Gen. Laws § 11-37-16 (1994); S.C.Code Ann. § 23-3-430; S.D. Codified Laws §§ 22-22-30 to 22-22-41 (Supp.1995)Tenn.Code Ann. §§ 40-39-101 to 40-39-108 (2003); Tex.Rev.Civ. Stat. Ann., Art. 6252-13c.1 (Vernon Supp.1996); Utah Code Ann. §§ 53-5-212.5, 77-27-21.5 (Lexis Supp.1995); Vt. Stat. Ann., Tit. 13, § 5402; Va.Code Ann. §§ 19.2-298.1 to 19.2-390.1 (Lexis 1995); Wash. Rev.Code §§ 4.24.550, 9A.44.130, 9A.44.140, 10.01.200, 70.48.470, 72.09.330 (1992 and Supp.1996); W. Va.Code §§ 61-8F-1 to 61-8F-8 (Lexis Supp.1995); Wis. Stat. § 175.45 (Supp.1995); Wyo. Stat. Ann. §§ 7-19-301 to 7-19-306 (1995).

FN4. Those States are Arizona, California, Connecticut, the District of Columbia, Florida, Illinois, Iowa, Kansas, Kentucky, Massachusetts, Minnesota, Missouri, Nebraska, New Jersey, North Dakota, Oregon, Pennsylvania, South Carolina, Texas, Virginia, Washington, and Wisconsin. See Ariz.Rev.Stat. §§ 36-3701 to 36-3713 (West 2003 and Supp.2007); Cal. Welf. & Inst.Code Ann. §§ 6600 to 6609.3 (West

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1998 and Supp.2008); Conn. Gen.Stat. § 17a-566 (1998); D.C.Code §§ 22-3803 to 22-3811 (2001); Fla. Stat. §§ 394.910 to 394.931 (West 2002 and Supp.2005); Ill. Comp. Stat., ch. 725, §§ 207/1 to 207/99 (2002); Iowa Code §§ 229A.1-.16 (Supp.2005); Kan. Stat. Ann. § 59-29a02 (2004 and Supp.2005); Ky.Rev.Stat. Ann. § 202A.051 (West ___); Mass. Gen. Laws, ch. 123A (1989); Minn.Stat. § 253B.02 (1992); Mo. Ann. Stat. §§ 632.480 to 632.513 (West 2000 and Supp.2006); Neb.Rev.Stat. §§ 83-174 to 83-174.05 (2007); N.J. Stat. Ann. §§ 30:4-27.24 to 30:4-27.38 (West Supp.2004); N.D. Cent.Code Ann. § 25-03.3 (Lexis 2002); Ore.Rev.Stat. § 426.005 (1998); Pa. Stat. Ann., Tit. 42, §§ 9791 to 9799.9 (2007); S.C.Code Ann. §§ 44-48-10 to 44-48-170 (2002 and Supp.2007); Tex. Health & Safety Code Ann. §§ 841.001 to 841.147 (West 2003); Va.Code Ann. §§ 37.2-900 to 37.2-920 (2006 and Supp.2007); Wash. Rev.Code § 71.09.010 (West 1992 and Supp.2002); Wis. Stat. § 980.01-13 (2005).

FN5. See Ala.Code § 15-20-26 (Supp.2000) (restricts sex offenders from residing or accepting employment within 2,000 feet of school or child-care facility); Ark.Code Ann. § 5-14-128 (Supp.2007) (unlawful for level three or four sex offenders to reside within 2,000 feet of school or daycare center); Cal.Penal Code Ann. § 3003 (West Supp.2008) (parolees may not live within 35 miles of victim or witnesses, and certain sex offenders on parole may not live within a quarter mile from a primary school); Fla. Stat. § 947.1405(7)(a)(2) (2001) (released sex offender with victim under 18 prohibited from living within 1,000 feet of a school, daycare center, park, playground, or other place where children regularly congregate); Ga.Code Ann. § 42-1-13 (Supp.2007) (sex offenders required to register shall not reside within 1,000 feet of any childcare facility, school, or area where minors congregate); Ill. Comp. Stat., ch. 720, § 5/11-9.3(b-5) (Supp.2008) (child sex offenders prohibited from knowingly residing within 500 feet of schools); Ky.Rev.Stat. Ann. § 17.495 (West 2000) (registered sex offenders on supervised release shall not reside within 1,000 feet of school or childcare facility); La.Rev.Stat. Ann. § 14:91.1 (West Supp.2004) (sexually violent predators shall not reside within 1,000 feet of schools unless permission is given by school superintendent); Ohio Rev.Code Ann. § 2950.031 (Lexis 2003) (sex offenders prohibited from residing within 1,000 feet of school); Okla. Stat., Tit. 57, § 590 (West 2003) (prohibits sex offenders from residing within 2,000 feet of schools or educational institutions); Ore.Rev.Stat. §§ 144.642, 144.643 (1999) (incorporates general prohibition on supervised sex offenders living near places where children reside); Tenn.Code Ann. § 40-39-111 (2006) (repealed by Acts 2004, ch. 921, § 4, effective Aug. 1, 2004) (sex offenders prohibited from establishing residence within 1,000 feet of school, childcare facility, or victim).

Seeking to counter the significance of the new capital **child-rape** laws enacted during the past two years, the Court points out that in recent months efforts to enact similar laws in five other States have stalled. *Ante,* at 2656. These developments, however, all took place after our decision to grant certiorari in this case, see 552 U.S. ----, 128 S.Ct. 829, 169 L.Ed.2d 625 (2008), which gave state legislators reason to delay the enactment of new legislation until the constitutionality of such laws was clarified. And there is no evidence of which I am aware that these legislative initiatives failed because the proposed laws were viewed as inconsistent with our society's standards of decency.

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On the contrary, the available evidence suggests otherwise. For example, in Colorado, the Senate Appropriations Committee in April voted 6 to 4 against Senate Bill 195, reportedly because it "would have cost about $616,000 next year for trials, appeals, public defenders, and prison costs." Associated Press, Lawmakers Reject **Death Penalty** for Child Sex Abusers, Denver Post, Apr. 11, 2008. Likewise, in Tennessee, the capital **child-rape** bill was withdrawn in committee "because of the high associated costs." The bill's sponsor stated that " '[b]e-cause of the state's budget situation, we thought to withdraw that bill.... We'll revisit it next year to see if we can reduce the cost of the fiscal note.' " Green, Small Victory in Big Fight for Tougher Sex Abuse Laws, The Leaf-Chronicle, May 8, 2008, p. 1A. Thus, the failure to enact capital **child-rape** laws cannot be viewed as evidence of a moral consensus against such punishment.

E

Aside from its misleading tally of current state laws, the Court points to two additional "objective indicia" of a "national ***2672** consensus," *ante,* at 2651, but these arguments are patent makeweights. The Court notes that Congress has not enacted a law permitting a federal district court to impose the **death penalty** for the **rape** of a **child**, *ante,* at 2651 - 2652, but due to the territorial limits of the relevant federal statutes, very few rape cases, not to mention **child-rape** cases, are prosecuted in federal court. See 18 U.S.C. §§ 2241, 2242 (2000 ed. and Supp. V); United States Sentencing Commission, Report to Congress: Analysis of Penalties for Federal Rape Cases, p. 10, Table 1. Congress' failure to enact a **death penalty** statute for this tiny set of cases is hardly evidence of Congress' assessment of our society's values.[FN6]

FN6. Moreover, as noted in the petition for rehearing, the Uniform Code of Military Justice permits such a sentence. See 10 U.S.C. § 856; Manual for Courts-Martial, United States, Part II, Ch. X, Rule 1004(c)(9) (2008); *id.*, Part IV, ¶ 45.f(1).

Finally, the Court argues that statistics about the number of executions in rape cases support its perception of a "national consensus," but here too the statistics do not support the Court's position. The Court notes that the last execution for the **rape** of a **child** occurred in 1964, *ante,* at 2657, but the Court fails to mention that litigation regarding the constitutionality of the **death penalty** brought executions to a halt across the board in the late 1960's. In 1965 and 1966, there were a total of eight executions for all offenses, and from 1968 until 1977, the year when *Coker* was decided, there were no executions for any crimes.[FN7] The Court also fails to mention that in Louisiana, since the state law was amended in 1995 to make **child rape** a capital offense, prosecutors have asked juries to return death verdicts in four cases. See *State v. Dickerson,* 01-1287 (La.App.6/26/02), 822 So.2d 849 (2002); *State v. Leblanc,* 01-1322 (La.App.5/31/01), 788 So.2d 1255; 2005-1981 (La.Sup.Ct.5/22/07), 957 So.2d 757; *State v. Davis,* Case No. 262,971 (1st Jud. Dist., Caddo Parish, La.) (cited in Brief for Respondent 42, and n. 38). In two of those cases, Louisiana juries imposed the **death penalty**. See 2005-1981 (La.Sup.Ct.5/22/07), 957 So.2d 757; *Davis, supra.* This 50% record is hardly evidence that juries share the Court's view that the **death penalty** for the rape of a young child is unacceptable under even the most aggravated circumstances.[FN8]

FN7. Department of Justice, Bureau of Justice Statistics, online at http:// www. ojp. usdoj. gov/ bjs/ glance/ tables/ exetab. htm; see also **Death Penalty** Information Center, Executions in the U.S. 1608-2002: The ESPY File Executions by Date (2007), online at http:// www. death penalty-info.org/ESPYyear.pdf.

FN8. Of course, the other five capital **child rape** statutes are too recent for any indi-

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vidual to have been sentenced to death under them.

F

In light of the points discussed above, I believe that the "objective indicia" of our society's "evolving standards of decency" can be fairly summarized as follows. Neither Congress nor juries have done anything that can plausibly be interpreted as evidencing the "national consensus" that the Court perceives. State legislatures, for more than 30 years, have operated under the ominous shadow of the *Coker* dicta and thus have not been free to express their own understanding of our society's standards of decency. And in the months following our grant of certiorari in this case, state legislatures have had an additional reason to pause. Yet despite the inhibiting legal atmosphere that has prevailed since 1977, six States have recently enacted new, targeted **child-rape** laws.

I do not suggest that six new state laws necessarily establish a "national consensus" or even that they are sure evidence of an ineluctable trend. In terms of the Court's metaphor of moral evolution, these ***2673** enactments might have turned out to be an evolutionary dead end. But they might also have been the beginning of a strong new evolutionary line. We will never know, because the Court today snuffs out the line in its incipient stage.

II

A

The Court is willing to block the potential emergence of a national consensus in favor of permitting the **death penalty** for **child rape** because, in the end, what matters is the Court's "own judgment" regarding "the acceptability of the **death penalty**." *Ante,* at 2658. Although the Court has much to say on this issue, most of the Court's discussion is not pertinent to the Eighth Amendment question at hand. And once all of the Court's irrelevant arguments are put aside, it is apparent that the Court has provided no coherent explanation for today's decision.

In the next section of this opinion, I will attempt to weed out the arguments that are not germane to the Eighth Amendment inquiry, and in the final section, I will address what remains.

B

A major theme of the Court's opinion is that permitting the **death penalty** in **child-rape** cases is not in the best interests of the victims of these crimes and society at large. In this vein, the Court suggests that it is more painful for **child-rape** victims to testify when the prosecution is seeking the **death penalty**. *Ante,* at 2662. The Court also argues that "a State that punishes **child rape** by death may remove a strong incentive for the rapist not to kill the victim,"*ante,* at 2664, and may discourage the reporting of **child rape**, *ante,* at 2663 - 2664.

These policy arguments, whatever their merits, are simply not pertinent to the question whether the **death penalty** is "cruel and unusual" punishment. The Eighth Amendment protects the right of an accused. It does not authorize this Court to strike down federal or state criminal laws on the ground that they are not in the best interests of crime victims or the broader society. The Court's policy arguments concern matters that legislators should-and presumably do-take into account in deciding whether to enact a capital **child-rape** statute, but these arguments are irrelevant to the question that is before us in this case. Our cases have cautioned against using " 'the aegis of the Cruel and Unusual Punishment Clause' to cut off the normal democratic processes," *Atkins v. Virginia,* 536 U.S. 304, 323, 122 S.Ct. 2242, 153 L.Ed.2d 335 (2002) (Rehnquist, C. J., dissenting), in turn quoting *Gregg v. Georgia,* 428 U.S. 153, 176, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), (joint opinion of Stewart, Powell, and

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STEVENS, JJ.), but the Court forgets that warning here.

The Court also contends that laws permitting the **death penalty** for the **rape** of a **child** create serious procedural problems. Specifically, the Court maintains that it is not feasible to channel the exercise of sentencing discretion in **child-rape** cases, *ante,* at 2660 - 2661, and that the unreliability of the testimony of child victims creates a danger that innocent defendants will be convicted and executed, *ante,* at 2663 - 2664. Neither of these contentions provides a basis for striking down all capital **child-rape** laws no matter how carefully and narrowly they are crafted.

The Court's argument regarding the structuring of sentencing discretion is hard to comprehend. The Court finds it "difficult to identify standards that would guide the decisionmaker so the penalty is reserved*2674 for the most severe cases of **child rape** and yet not imposed in an arbitrary way." *Ante,* at 2660 - 2661. Even assuming that the age of a child is not alone a sufficient factor for limiting sentencing discretion, the Court need only examine the **child-rape** laws recently enacted in Texas, Oklahoma, Montana, and South Carolina, all of which use a concrete factor to limit quite drastically the number of cases in which the **death penalty** may be imposed. In those States, a defendant convicted of the **rape** of a **child** may be sentenced to death only if the defendant has a prior conviction for a specified felony sex offense. See Mont.Code Ann. § 45-5-503(3)(c) (2007) ("If the offender was previously convicted of [a felony sexual offense] ... the offender shall be ... punished by death ..."); Okla. Stat., Tit. 10, § 7115(K) (West Supp.2008) ("Notwithstanding any other provision of law, any parent or other person convicted of forcible anal or oral sodomy, rape, rape by instrumentation, or lewd molestation of a child under fourteen (14) years of age subsequent to a previous conviction for any offense of forcible anal or oral sodomy, rape, rape by instrumentation, or lewd molestation of a child under fourteen (14) years of age shall be punished by death"); S.C.Code Ann. § 16-3-655(C)(1) (Supp.2007) ("If the [defendant] has previously been convicted of, pled guilty or nolo contendere to, or adjudicated delinquent for first degree criminal sexual conduct with a minor who is less than eleven years of age ... he must be punished by death or by imprisonment for life"); Tex. Penal Code Ann. § 12.42(c)(3) (2007 Supp.); ("[A] defendant shall be punished for a capital felony if it is shown on the trial of an offense under Section 22.021... that the defendant has previously been finally convicted of [a felony sexual offense against a victim younger than fourteen years of age]").

Moreover, it takes little imagination to envision other limiting factors that a State could use to structure sentencing discretion in **child rape** cases. Some of these might be: whether the victim was kidnapped, whether the defendant inflicted severe physical injury on the victim, whether the victim was raped multiple times, whether the rapes occurred over a specified extended period, and whether there were multiple victims.

The Court refers to limiting standards that are "indefinite and obscure," *ante,* at 2661, but there is nothing indefinite or obscure about any of the above-listed aggravating factors. Indeed, they are far more definite and clear-cut than aggravating factors that we have found to be adequate in murder cases. See, *e.g., Arave v. Creech,* 507 U.S. 463, 471, 113 S.Ct. 1534, 123 L.Ed.2d 188 (1993) (whether the defendant was a " 'cold-blooded, pitiless slayer' "); *Walton v. Arizona,* 497 U.S. 639, 646, 110 S.Ct. 3047, 111 L.Ed.2d 511 (1990) (whether the " 'perpetrator inflict[ed] mental anguish or physical abuse before the victim's death' "); *Jurek v. Texas,* 428 U.S. 262, 269, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.) (whether the defendant " 'would commit criminal acts of violence that would constitute a continuing threat to society' "). For these reasons, concerns about limiting sentencing discretion provide no support for the Court's blanket condemnation of all capital

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rape statutes.

That sweeping holding is also not justified by the Court's concerns about the reliability of the testimony of child victims. First, the Eighth Amendment provides a poor vehicle for addressing problems regarding the admissibility or reliability of evidence, and problems presented by the testimony of child victims are not unique to capital cases. Second, concerns about ***2675** the reliability of the testimony of child witnesses are not present in every **child-rape** case. In the case before us, for example, there was undisputed medical evidence that the victim was brutally raped, as well as strong independent evidence that petitioner was the perpetrator. Third, if the Court's evidentiary concerns have Eighth Amendment relevance, they could be addressed by allowing the **death penalty** in only those **child-rape** cases in which the independent evidence is sufficient to prove all the elements needed for conviction and imposition of a death sentence. There is precedent for requiring special corroboration in certain criminal cases. For example, some jurisdictions do not allow a conviction based on the uncorroborated testimony of an accomplice. See, *e.g.*,Ala.Code 12-21-222 (1986); Alaska Stat. § 12.45.020 (1984); Ark.Code Ann. § 16-89-111(e)(1) (1977); Cal.Penal Code Ann. § 1111 (West 1985); Ga.Code Ann. § 24-4-8 (1995); Idaho Code § 19-2117 (Lexis 1979); Minn.Stat. § 634.04 (1983); Mont.Code Ann. § 46-16-213 (1985); Nev.Rev.Stat. § 175.291 (1985); N.D. Cent.Code Ann. § 29-21-14 (1974); Okla. St., Tit. 22, § 742 (West 1969); Ore.Rev.Stat. § 136.440 (1984); S.D. Codified Laws § 23A-22-8 (1979). A State wishing to permit the **death penalty** in **child-rape** cases could impose an analogous corroboration requirement.

C

After all the arguments noted above are put aside, what is left? What remaining grounds does the Court provide to justify its independent judgment that the **death penalty** for **child rape** is categorically unacceptable? I see two.

1

The first is the proposition that we should be "most hesitant before interpreting the Eighth Amendment to allow the *extension* of the **death penalty**." *Ante,* at 2658 (emphasis added); see also *ante,* at 2659 - 2660, 2661 (referring to expansion of the **death penalty**). But holding that the Eighth Amendment does not categorically prohibit the **death penalty** for the rape of a young child would not "extend" or "expand" the **death penalty**. Laws enacted by the state legislatures are presumptively constitutional, *Gregg,* 428 U.S., at 175, 96 S.Ct. 2909 (joint opinion of Stewart, Powell, and STEVENS, JJ.) ("[I]n assessing a punishment selected by a democratically elected legislature against the constitutional measure, we presume its validity"), and until today, this Court has not held that capital **child rape** laws are unconstitutional, see *ante,* at 2654 (*Coker* "does not speak to the constitutionality of the **death penalty** for **child rape**, an issue not then before the Court"). Consequently, upholding the constitutionality of such a law would not "extend" or "expand" the **death penalty**; rather, it would confirm the status of presumptive constitutionality that such laws have enjoyed up to this point. And in any event, this Court has previously made it clear that "[t]he Eighth Amendment is not a ratchet, whereby a temporary consensus on leniency for a particular crime fixes a permanent constitutional maximum, disabling States from giving effect to altered beliefs and responding to changed social conditions." *Harmelin v. Michigan,* 501 U.S. 957, 990, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (principal opinion); see also *Gregg, supra,* at 176, 96 S.Ct. 2909 (joint opinion of Stewart, Powell, and STEVENS, JJ.).

2

The Court's final-and, it appears, principal-justification for its holding is that murder, the only crime for which defendants have been executed

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since this *2676 Court's 1976 **death penalty** decisions,[FN9] is unique in its moral depravity and in the severity of the injury that it inflicts on the victim and the public. See *ante,* at 2659 - 2660. But the Court makes little attempt to defend these conclusions.

FN9. *Gregg v. Georgia,* 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976); *Proffitt v. Florida,* 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976); *Jurek v. Texas,* 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976); *Woodson v. North Carolina,* 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976); *Roberts v. Louisiana,* 428 U.S. 325, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976).

With respect to the question of moral depravity, is it really true that every person who is convicted of capital murder and sentenced to death is more morally depraved than every child rapist? Consider the following two cases. In the first, a defendant robs a convenience store and watches as his accomplice shoots the store owner. The defendant acts recklessly, but was not the triggerman and did not intend the killing. See, *e.g., Tison v. Arizona,* 481 U.S. 137, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987). In the second case, a previously convicted child rapist kidnaps, repeatedly rapes, and tortures multiple child victims. Is it clear that the first defendant is more morally depraved than the second?

The Court's decision here stands in stark contrast to *Atkins* and *Roper,* in which the Court concluded that characteristics of the affected defendants-mental retardation in *Atkins* and youth in *Roper*-diminished their culpability. See *Atkins,* 536 U.S., at 305, 122 S.Ct. 2242; *Roper,* 543 U.S., at 571, 125 S.Ct. 1183. Nor is this case comparable to *Enmund v. Florida,* 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982), in which the Court held that the Eighth Amendment prohibits the **death penalty** where the defendant participated in a robbery during which a murder was committed but did not personally intend for lethal force to be used. I have no doubt that, under the prevailing standards of our society, robbery, the crime that the petitioner in *Enmund* intended to commit, does not evidence the same degree of moral depravity as the brutal rape of a young child. Indeed, I have little doubt that, in the eyes of ordinary Americans, the very worst child rapists-predators who seek out and inflict serious physical and emotional injury on defenseless young children-are the epitome of moral depravity.

With respect to the question of the harm caused by the **rape** of **child** in relation to the harm caused by murder, it is certainly true that the loss of human life represents a unique harm, but that does not explain why other grievous harms are insufficient to permit a death sentence. And the Court does not take the position that no harm other than the loss of life is sufficient. The Court takes pains to limit its holding to "crimes against individual persons" and to exclude "offenses against the State," a category that the Court stretches-without explanation-to include "drug kingpin activity." *Ante,* at 2659. But the Court makes no effort to explain why the harm caused by such crimes is necessarily greater than the harm caused by the **rape** of young **children**. This is puzzling in light of the Court's acknowledgment that "[r]ape has a permanent psychological, emotional, and sometimes physical impact on the child." *Ante,* at 2658. As the Court aptly recognizes, "[w]e cannot dismiss the years of long anguish that must be endured by the victim of **child rape**." *Ibid.*

The rape of any victim inflicts great injury, and "[s]ome victims are so grievously injured physically or psychologically that life *is* beyond repair." *2677*Coker,* 433 U.S., at 603, 97 S.Ct. 2861 (opinion of Powell, J.). "The immaturity and vulnerability of a child, both physically and psychologically, adds a devastating dimension to rape that is not present when an adult is raped." Meister, Murdering Innocence: The Constitutionality of Capital **Child Rape** Statutes, 45 Ariz. L.Rev. 197, 208-209 (2003). See also *State v. Wilson,* 96-1392, p. 6 (La.Sup.Ct.12/13/96), 685 So.2d 1063, 1067; Broughton, "On Horror's Head Horrors Accumu-

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late": A Reflective Comment on Capital **Child Rape** Legislation, 39 Duquesne L.Rev. 1, 38 (2000). Long-term studies show that sexual abuse is "grossly intrusive in the lives of children and is harmful to their normal psychological, emotional and sexual development in ways which no just or humane society can tolerate." C. Bagley & K. King, Child Sexual Abuse: The Search for Healing 2 (1990).

It has been estimated that as many as 40% of 7- to 13-year-old sexual assault victims are considered "seriously disturbed." A. Lurigio, M. Jones, & B. Smith, Child Sexual Abuse: Its Causes, Consequences, and Implications for Probation Practice, 59 Sep Fed. Probation 69, 70 (1995). Psychological problems include sudden school failure, unprovoked crying, dissociation, depression, insomnia, sleep disturbances, nightmares, feelings of guilt and inferiority, and self-destructive behavior, including an increased incidence of suicide. Meister, *supra,* at 209; Broughton, *supra,* at 38; Glazer, Child Rapists Beware! The **Death Penalty** and Louisiana's Amended Aggravated Rape Statute, 25 Am. J.Crim. L. 79, 88 (1997).

The deep problems that afflict **child-rape** victims often become society's problems as well. Commentators have noted correlations between childhood sexual abuse and later problems such as substance abuse, dangerous sexual behaviors or dysfunction, inability to relate to others on an interpersonal level, and psychiatric illness. Broughton, *supra,* at 38; Glazer, *supra,* at 89; Handbook on Sexual Abuse of Children 7 (L. Walker ed.1988). Victims of **child rape** are nearly 5 times more likely than nonvictims to be arrested for sex crimes and nearly 30 times more likely to be arrested for prostitution. *Ibid.*

The harm that is caused to the victims and to society at large by the worst child rapists is grave. It is the judgment of the Louisiana lawmakers and those in an increasing number of other States that these harms justify the **death penalty**. The Court provides no cogent explanation why this legislative judgment should be overridden. Conclusory references to "decency," "moderation," "restraint," "full progress," and "moral judgment" are not enough.

III

In summary, the Court holds that the Eighth Amendment categorically rules out the **death penalty** in even the most extreme cases of **child rape** even though: (1) This holding is not supported by the original meaning of the Eighth Amendment; (2) neither *Coker* nor any other prior precedent commands this result; (3) there are no reliable "objective indicia" of a "national consensus" in support of the Court's position; (4) sustaining the constitutionality of the state law before us would not "extend" or "expand" the **death penalty**; (5) this Court has previously rejected the proposition that the Eighth Amendment is a one-way ratchet that prohibits legislatures from adopting new capital punishment statutes to meet new problems; (6) the worst child rapists exhibit the epitome of moral depravity; and (7) **child rape** inflicts grievous injury on victims and on society in general.

***2678** The party attacking the constitutionality of a state statute bears the "heavy burden" of establishing that the law is unconstitutional. *Gregg,* 428 U.S., at 175, 96 S.Ct. 2909 (joint opinion of Stewart, Powell, and STEVENS, JJ.). That burden has not been discharged here, and I would therefore affirm the decision of the Louisiana Supreme Court.

U.S.,2008.
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128 S.Ct. 2641, 171 L.Ed.2d 525, 76 USLW 4584, 08 Cal. Daily Op. Serv. 7920, 2008 Daily Journal D.A.R. 9470, 21 Fla. L. Weekly Fed. S 472

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129 S.Ct. 1
129 S.Ct. 1, 171 L.Ed.2d 932, 77 USLW 3194, 21 Fla. L. Weekly Fed. S 541
(Cite as: 129 S.Ct. 1)

H

Supreme Court of the United States
Patrick KENNEDY, Petitioner,
v.
LOUISIANA
No. 07-343.

Oct. 1, 2008.

Statement of Justice KENNEDY, with whom Justice STEVENS, Justice SOUTER, Justice GINSBURG, and Justice BREYER join, respecting the denial of rehearing.

The opinion of the Court is modified by the addition of a footnote at page 15, after the word "considered" in the last paragraph of Part II-A. The footnote is as follows:

> * When issued and announced on June 25, 2008, the Court's decision neither noted nor discussed the military penalty for rape under the Uniform Code of Military Justice. See 10 U.S.C. §§ 856, 920; Manual for Courts-Martial, United States, Part IV, ¶ 45.f(1) (2008). In a petition for rehearing respondent argues that the military penalty bears on our consideration of the question in this case. For the reasons set forth in the statement respecting the denial of rehearing, *post,* p. 1, we find that the military penalty does not affect our reasoning or conclusions.

The dissenting opinion is modified as follows:

(1) By the addition of the words "a federal district court to impose" at page 13 between the words "a law permitting" and the words "the **death penalty**" in the first paragraph of Part I-E;

(2) By the addition of footnote 6 after the word "values" in said paragraph. The footnote is as follows:

> [6] Moreover, as noted in the petition for rehearing, the Uniform Code of Military Justice permits such a sentence. See 10 U.S.C. § 856; Manual for Courts-Martial, United States, Part II, Ch. X, Rule 1004(c)(9) (2008); *id.,* Part IV, ¶ 45.f(1).

The petition for rehearing is denied.

Justice THOMAS and Justice ALITO would grant the petition for rehearing.Statement of Justice KENNEDY, with whom Justice STEVENS, Justice SOUTER, Justice GINSBURG, and Justice BREYER join, respecting the denial of rehearing.

In its petition for rehearing respondent argues that the military penalty for rape, a congressional amendment of the Uniform Code of Military Justice (UCMJ) in 2006, and a related executive order in 2007 should alter the Court's analysis of the Eighth Amendment question in this case. After considering the petition as well as supplemental briefs from the parties and the United States, the Court has determined that rehearing is not warranted.

The military **death penalty** for rape has been the rule for more than a century. As respondent acknowledges in its petition for rehearing, military law has included the **death penalty** for **rape** of a **child** or adult victim since at least 1863. See § 30, 12 Stat. 736. Since 1950, that punishment has applied to peacetime offenses by members of the military. See Art. 120, 64 Stat. 140. The **death penalty,** however, has not been carried out against a military offender for almost 50 years. The last instance of military capital punishment, in 1961, was for the crimes of rape and attempted murder. See R. Paternoster, R. Brame, & S. Bacon, The **Death Penalty**: America's Experience with Capital Punishment 69 (2008). There are six individuals now subject to a final sentence of death under the *2 UCMJ, see NAACP Legal Defense and Educational Fund, Inc., Death Row U.S.A. 66 (Winter 2008), all of whom committed offenses that involved the death of a victim.

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In 2006, Congress passed the National Defense Authorization Act, which authorized that year's appropriations for military and national-security activities. Pub L. 109-163. Also in that bill, Congress revised the military's sexual-assault statutes, in part by reclassifying the UCMJ's offense of rape as two separate crimes: adult **rape** and **child rape**. § 552(a)(1), 119 Stat. 3257. It is unclear what effect, if any, that reclassification worked on the availability of the military **death penalty**. Pending the President's setting the maximum penalty for adult **rape** and **child rape**, Congress included a temporary provision applying the existing maximum punishment of death for rape as the "interim maximum punishment" for those crimes. *Id.*, § 552(b)(1), at 3263; see also 10 U.S.C. § 856. But Congress also removed from the text of the statute itself, § 920, the specific authorization of "death" as a punishment; the new statute provides only that adult **rape** and **child rape** shall be punished "as a court-martial may direct." For his part, the President later left in place, in the Manual for Courts-Martial, the availability of the **death penalty** for rape of an adult or child victim. Exec. Order No. 13447, 72 Fed.Reg. 56214 (2007); Manual for Courts-Martial, United States, Part IV, ¶ 45.f(1) (2008). The parties disagree on the effect of Congress' and the President's actions in light of 10 U.S.C. § 818, which allows imposition of the **death penalty** only "when specifically authorized by this chapter."

In any event, authorization of the **death penalty** in the military sphere does not indicate that the penalty is constitutional in the civilian context. The military **death penalty** for rape was in effect before the decisions in *Furman v. Georgia,* 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972)*(per curiam),* and *Coker v. Georgia,* 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977); and when the Court surveyed state and federal law in *Coker,* it made no mention of the military penalty. See *id.*, at 595-596, 593, and n. 6, 97 S.Ct. 2861 (plurality opinion) (not including the military as a "jurisdiction in the United States" that authorized the **death penalty** for rape, and naming the Federal Government among jurisdictions that recognized the **death penalty** for rape prior to *Furman* but citing only the nonmilitary provision). The same is true of more recent Eighth Amendment cases in the civilian context. See *Enmund v. Florida,* 458 U.S. 782, 789-793, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982); *Tison v. Arizona,* 481 U.S. 137, 152-154, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987). This case, too, involves the application of the Eighth Amendment to civilian law; and so we need not decide whether certain considerations might justify differences in the application of the Cruel and Unusual Punishments Clause to military cases (a matter not presented here for our decision). Cf. *Loving v. United States,* 517 U.S. 748, 755, 116 S.Ct. 1737, 135 L.Ed.2d 36 (1996).

That the Manual for Courts-Martial retains the **death penalty** for **rape** of a **child** or an adult when committed by a member of the military does not draw into question our conclusions that there is a consensus against the **death penalty** for the crime in the civilian context and that the penalty here is unconstitutional. The laws of the separate States, which have responsibility for the administration of the criminal law for their civilian populations, are entitled to considerable weight over and above the punishments Congress and the President consider appropriate in the military context. The more relevant federal benchmark*3 is federal criminal law that applies to civilians, and that law does not permit the **death penalty** for **child rape**. Until the petition for rehearing, none of the briefs or submissions filed by the parties or the *amici* in this case cited or discussed the UCMJ provisions.

Statement of Justice SCALIA, with whom THE CHIEF JUSTICE joins, respecting the denial of rehearing.

Respondent has moved for rehearing of this case because there has come to light a federal statute enacted in 2006 permitting the death sentence under the Uniform Code of Military Justice for rape of a minor. See Pub L. 109-163, § 552(b)(1), 119 Stat. 3263. This provision was not cited by either party,

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nor by any of the numerous *amici* in the case; it was first brought to the Court's attention after the opinion had issued, in a letter signed by 85 Members of Congress. Respondent asserts that rehearing is justified because this statute calls into question the majority opinion's conclusion that there is a national consensus against capital punishment for **rape** of a **child**.

I am voting against the petition for rehearing because the views of the American people on the **death penalty** for **child rape** were, to tell the truth, irrelevant to the majority's decision in this case. The majority opinion, after an unpersuasive attempt to show that a consensus against the penalty existed, in the end came down to this: "[T]he Constitution contemplates that in the end our own judgment will be brought to bear on the question of the acceptability of the **death penalty** under the Eighth Amendment." --- U.S. ----, 128 S.Ct. 2641, 2658, 171 L.Ed.2d 525. Of course the Constitution contemplates no such thing; the proposed Eighth Amendment would have been laughed to scorn if it had read "no criminal penalty shall be imposed which the Supreme Court deems unacceptable." But that is what the majority opinion said, and there is no reason to believe that absence of a national consensus would provoke second thoughts.

While the new evidence of American opinion is ultimately irrelevant to the majority's decision, let there be no doubt that it utterly destroys the majority's claim to be discerning a national consensus and not just giving effect to the majority's own preference. As noted in the letter from Members of Congress, the bill providing the **death penalty** for **child rape** passed the Senate 95-0; it passed the House 374-41, with the votes of a majority of each State's delegation; and was signed by the President. Justice KENNEDY's statement posits two reasons why this act by Congress proves nothing about the national consensus regarding permissible penalties for **child rape**. First, it claims the statute merely "reclassif[ied]" the offense of **child rape**. *Ante,* at 2. But the law did more than that; it specifically *established* (as it would have to do) the penalty for the *new offense* of **child rape**-and that penalty was death: "For an offense under subsection (a) (rape) or subsection (b) (**rape** of a **child**), *death or such other punishment as a court-martial may direct.*" § 552(b)(1), 119 Stat. 3263 (emphasis added). By separate executive order, the President later expressly reauthorized the **death penalty** as a punishment for **child rape**. Exec. Order No. 13447, 72 Fed.Reg. 56214 (2007). Based on these acts, there is infinitely more reason to think that Congress and the President made a judgment regarding the appropriateness of the **death penalty** for **child rape** than there is to think that the many *non*-enacting state legislatures upon which the majority relies did so-especially since it was widely believed that *Coker* took the capital-punishment option off the table. See ***4***Coker v. Georgia,* 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977).

Second, Justice KENNEDY speculates that the Eighth Amendment may permit subjecting a member of the military to a means of punishment that would be cruel and unusual if inflicted upon a civilian for the same crime. That is perhaps so where the fact of the malefactor's membership in the Armed Forces makes the offense more grievous. One can imagine, for example, a social judgment that treason by a military officer who has sworn to defend his country deserves the **death penalty** even though treason by a civilian does not. (That is not the social judgment our society has made, see 18 U.S.C. § 2381, but one can imagine it.) It is difficult to imagine, however, how **rape** of a **child** could sometimes be deserving of death for a soldier but never for a civilian.

U.S.,2008.
Kennedy v. Louisiana
129 S.Ct. 1, 171 L.Ed.2d 932, 77 USLW 3194, 21 Fla. L. Weekly Fed. S 541

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97 S.Ct. 2861
433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982
(Cite as: 433 U.S. 584, 97 S.Ct. 2861)

Supreme Court of the United States
Ehrlich Anthony COKER, Petitioner,
v.
State of GEORGIA.
No. 75-5444.

Argued March 28, 1977.
Decided June 29, 1977.

By a judgment of the Superior Court, Ware County, Georgia, the defendant was convicted of the crimes of motor vehicle theft, armed robbery, rape, kidnapping, and escape. A sentence of death was imposed for the offense of rape and he appealed. The Supreme Court of Georgia, 234 Ga. 555, 216 S.E.2d 782, affirmed and certiorari was granted. Mr. Justice White announced as the judgment of the Supreme Court that a sentence of death for the crime of rape of adult woman was grossly disproportionate and excessive punishment forbidden by Eighth Amendment.

Reversed and remanded.

Mr. Justice Brennan and Mr. Justice Marshall each filed opinions concurring in the judgment in the judgment.

Mr. Justice Powell filed an opinion concurring in the judgment in part and dissenting

Mr. Chief Justice Burger, with whom Mr. Justice Rehnquist joined, filed a dissenting opinion.

West Headnotes

Sentencing and Punishment 350H ⇐1667

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(D) Factors Related to Offense
350Hk1666 Nature or Degree of Offense
350Hk1667 k. In General. Most Cited Cases
(Formerly 110k1213.8(8), 110k1213)
Sentence of death for crime of rape of adult woman was grossly disproportionate and excessive punishment forbidden by the Eighth Amendment as cruel and unusual punishment. Code Ga. § 26-2001; U.S.C.A.Const. Amend. 8.

****2862** Syllabus[FN*]

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See United States v. Detroit Timber & Lumber Co., 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

***584** While serving various sentences for murder, rape, kidnaping, and aggravated assault, petitioner escaped from a Georgia prison and, in the course of committing an armed robbery and other offenses, raped an adult woman. He was convicted of rape, armed robbery, and the other offenses and sentenced to death on the rape charge, when the jury found two of the aggravating circumstances present for imposing such a sentence, viz., that the rape was committed (1) by a person with prior capital-felony convictions and (2) in the course of committing another capital felony, armed robbery. The Georgia Supreme Court affirmed both the conviction and sentence. Held: The judgment upholding the death sentence is reversed and the case is remanded. Pp. 2865-2870.

234 Ga. 555, 216 S.E.2d 782, reversed and remanded.

Mr. Justice WHITE, joined by Mr. Justice STEWART, Mr. Justice BLACKMUN, and Mr. Justice STEVENS, concluded that the sentence of death for the crime of rape is grossly disproportionate and excessive punishment and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment. Pp. 2865-2870.

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(a) The Eighth Amendment bars not only those punishments that are 'barbaric' but also those that are 'excessive' in relation to the crime committed, and a punishment is 'excessive' and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the severity of the crime. Pp. 2865-2866.

(b) That death is a disproportionate penalty for rape is strongly indicated by the objective evidence of present public judgment, as represented by the attitude of state legislatures and sentencing juries, concerning the acceptability of such a penalty, it appearing that Georgia is currently the only State authorizing the death sentence for rape of an adult woman, that it is authorized for rape in only two other States but only when the victim is a child, and that in the vast majority (9 out of 10) of rape convictions in Georgia since 1973, juries have not imposed the death sentence. Pp. 2866-2868.

(c) ***585** Although rape deserves serious punishment, the death penalty, which is unique in its severity and irrevocability, is an excessive penalty for the rapist who, as such and as opposed to the murderer, does not unjustifiably take human life. Pp. 2868-2869.

(d) The conclusion that the death sentence imposed on petitioner is disproportionate punishment for rape is not affected by the fact that the jury found the aggravating circumstances of prior capital-felony convictions and occurrence of the rape while committing armed robbery, a felony for which the death sentence is also authorized, since the prior convictions do not change the fact that the rape did not involve the taking of life, and since the jury did not deem the robbery itself deserving of ****2863** the death penalty, even though accompanied by the aggravating circumstances of prior capital-felony convictions. P. 2869.

(e) That under Georgia law a deliberate killer cannot be sentenced to death, absent aggravating circumstances, argues strongly against the notion that, with or without such circumstances, a rapist who does not take the life of his victim should be punished more severely than the deliberate killer. Pp. 2869-2870.

Mr. Justice BRENNAN concluded that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. P. 2870.

Mr. Justice MARSHALL concluded that the death penalty is a cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. P. 2870.

Mr. Justice POWELL concluded that death is disproportionate punishment for the crime of raping an adult woman where, as here, the crime was not committed with excessive brutality and the victim did not sustain serious or lasting injury. P. 2870.
David E. Kendall, New York City, for petitioner.

***586** B. Dean Grindle, Jr., Atlanta, Ga., for respondent.

Mr. Justice WHITE announced the judgment of the Court and filed an opinion in which Mr. Justice STEWART, Mr. Justice BLACKMUN, and Mr. Justice STEVENS, joined.

Georgia Code Ann. s 26-2001 (1972) provides that '(a) person convicted of rape shall be punished by death or by imprisonment for life, or by imprisonment for not less than one nor more than 20 years.'[FN1]Punishment is determiend by a jury in a separate sentencing proceeding in which at least one of the statutory aggravating circumstances must be found before the death penalty may be imposed.[FN2]Petitioner Coker was convicted of rape and sentenced to death. Both the conviction and the sentence were affirmed by the Georgia Supreme Court. Coker was granted a writ of certiorari, 429 U.S. 815, 97 S.Ct. 56, 50 L.Ed.2d 75, limited to the single claim, rejected by the Georgia court, that the punishment of death for rape violates the Eighth

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Amendment, which proscribes 'cruel and unusual punishments' and which must be observed by the States as well as the Federal Government. Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962).

FN1. The section defines rape as having 'carnal knowledge of a female, forcibly and against her will. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ.'

FN2. See n. 3, infra.

***587** I

While serving various sentences for murder, rape, kidnaping, and aggravated assault, petitioner escaped from the Ware Correctional Institution near Waycross, Ga., on September 2, 1974. At approximately 11 o'clock that night, petitioner entered the house of Allen and Elnita Carver through an unlocked kitchen door. Threatening the couple with a 'board,' he tied up Mr. Carver in the bathroom, obtained a knife from the kitchen, and took Mr. Carver's money and the keys to the family car. Brandishing the knife and saying 'you know what's going to happen to you if you try anything, don't you,' Coker then raped Mrs. Carver. Soon thereafter, petitioner drove away in the Carver car, taking Mrs. Carver with him. Mr. Carver, freeing himself, notified the police; and not long thereafter petitioner was apprehended. Mrs. Carver was unharmed.

Petitioner was charged with escape, armed robbery, motor vehicle theft, kidnaping, and rape. Counsel was appointed to represent him. Having been found competent to stand trial, he was tried. The jury returned a verdict of guilty, rejecting his ****2864** general plea of insanity. A sentencing hearing was then conducted in accordance with the procedures dealt with at length in Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), where this Court sustained the death penalty for murder when imposed pursuant to the statutory procedures.[FN3] The jury was ***588** instructed that ****2865** it could consider as aggravating circumstances whether the rape ***589** had been committed by a person with a prior record of conviction for a capital felony and whether the rape had been committed in the course of committing another capital felony, namely, the armed robbery of Allen Carver. The court also instructed, pursuant to statute, that even if ***590** aggravating circumstances were present, the death penalty need not be imposed if the jury found they were out-weighed by mitigating circumstances, that is, circumstances not constituting justification or excuse for the offense in question, ***591** 'but which, in fairness and mercy, may be considered as extenuating or reducing the degree' of moral culpability or punishment. App. 300. The jury's verdict on the rape count was death by electrocution. Both aggravating circumstances on which the court instructed were found to be present by the jury.

FN3.Ga.Code s 26-3102 (Supp. 1976):

'Capital offenses; jury verdict and sen- tence.

'Where, upon a trial by jury, a person is convicted of an offense which may be punishable by death, a sentence of death shall not be imposed unless the jury verdict includes a finding of at least one statutory aggravating circumstance and a recommendation that such sentence be imposed. Where a statutory aggravating circumstance is found and a recommendation of death is made, the court shall sentence the defendant to death. Where a sentence of death is not recommended by the jury, the court shall sentence the defendant to imprisonment as provided by law. Unless the jury trying the case makes a finding of at least one statutory aggravating circumstance and recommends the death sentence in its verdict, the court shall not sentence the defendant to death, provided that no such finding of statutory aggravating cir-

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cumstance shall be necessary in offenses of treason or aircraft hijacking. The provisions of this section shall not affect a sentence when the case is tried without a jury or when the judge accepts a plea of guilty.'

Ga.Code s 27-2302 (Supp.1976):

Recommendation to mercy.

'In all capital cases, other than those of homicide, when the verdict is guilty, with a recommendation to mercy, it shall be legal and shall be a recommendation to the judge of imprisonment for life. Such recommendation shall be binding upon the judge.'

Ga.Code s 27-2534.1 (Supp.1976):

'Mitigating and aggravating circumstances; death penalty.

'(a) The death penalty may be imposed for the offenses of aircraft hijacking or treason, in any case.

'(b) In all cases of other offenses for which the death penalty may be authorized, the judge shall consider, or he shall include in his instructions to the jury for it to consider, any mitigating circumstances or aggravating circumstances otherwise authorized by law and any of the following statutory aggravating circumstances which may be supported by the evidence:

'(1) The offense of murder, rape, armed robbery, or kidnapping was committed by a person with a prior record of conviction for a capital felony, or the offense of murder was committed by a person who has a substantial history of serious assaultive criminal convictions.

'(2) The offense of murder, rape, armed robbery, or kidnapping was committed while the offender was engaged in the commission of another capital felony, or aggravated battery, or the offense of murder was committed while the offender was engaged in the commission of burglary or arson in the first degree.

'(3) The offender by his act of murder, armed robbery, or kidnapping knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which would normally be hazardous to the lives of more than one person.

'(4) The offender committed the offense of murder for himself or another, for the purpose of receiving money or any other thing of monetary value.

'(5) The murder of a judicial officer, former judicial officer, district attorney or solicitor or former district attorney or solicitor during or because of the exercise of his official duty.

'(6) The offender caused or directed another to commit murder or committed murder as an agent or employee of another person.

'(7) The offense of murder, rape, armed robbery or kidnapping was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim.

'(8) The offense of murder was committed against any peace officer, corrections employee or fireman while engaged in the performance of his official duties.

'(9) The offense of murder was committed by a person in, or who has escaped from, the lawful custody of a peace officer or place of lawful confinement.

'(10) The murder was committed for the

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purpose of avoiding, interfering with, or preventing a lawful arrest or custody in a place of lawful confinement, of himself or another.

'(c) The statutory instructions as determined by the trial judge to be warranted by the evidence shall be given in charge and in writing to the jury for its deliberation. The jury, if its verdict be a recommendation of death, shall designate in writing, signed by the foreman of the jury, the aggravating circumstance or circumstances which it found beyond a reasonable doubt. In non-jury cases the judge shall make such designation. Except in cases of treason or aircraft hijacking, unless at least one of the statutory aggravating circumstances enumerated in section 27-2534.1(b) is so found, the death penalty shall not be imposed.'

Ga.Code s 27-2537 (Supp.1976):

'Review of death sentences.

'(a) Whenever the death penalty is imposed, and upon the judgment becoming final in the trial court, the sentence shall be reviewed on the record by the Supreme Court of Georgia. The clerk of the trial court, within ten days after receiving the transcript, shall transmit the entire record and transcript to the Supreme Court of Georgia together with a notice prepared by the clerk and a report prepared by the trial judge. The notice shall set forth the title and docket number of the case, the name of the defendant and the name and address of his attorney, a narrative statement of the judgment, the offense, and the punishment prescribed. The report shall be in the form of a standard questionnaire prepared and supplied by the Supreme Court of Georgia.

'(b) The Supreme Court of Georgia shall consider the punishment as well as any errors enumerated by way of appeal.

'(c) With regard to the sentence, the court shall determine:

'(1) Whether the sentence of death was imposed under the influence of passion, prejudice, or any other arbitrary factor, and

'(2) Whether, in cases other than treason or aircraft hijacking, the evidence supports the jury's or judge's finding of a statutory aggravating circumstance as enumerated in section 27-2534.1(b), and

'(3) Whether the sentence of death is excessive or disproportionate to the penalty imposed in similar cases, considering both the crime and the defendant.

'(d) Both the defendant and the State shall have the right to submit briefs within the time provided by the court, and to present oral argument to the court.

'(e) The court shall include in its decision a reference to those similar cases which it took into consideration. In addition to its authority regarding correction of errors, the court, with regard to review of death sentences, shall be authorized to:

'(1) Affirm the sentence of death; or

'(2) Set the sentence aside and remand the case for resentencing by the trial judge based on the record and argument of counsel. The records of those similar cases referred to by the Supreme Court of Georgia in its decision, and the extracts prepared as hereinafter provided for, shall be provided to the resentencing judge for his consideration.

'(f) There shall be an Assistant to the Supreme Court, who shall be an attorney ap-

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pointed by the Chief Justice of Georgia and who shall serve at the pleasure of the court. The court shall accumulate the records of all capital felony cases in which sentence was imposed after January 1, 1970, or such earlier date as the court may deem appropriate. The Assistant shall provide the court with whatever extracted information it desires with respect thereto, including but not limited to a synopsis or brief of the facts in the record concerning the crime and the defendant.

'(g) The court shall be authorized to employ an appropriate staff and such methods to compile such data as are deemed by the Chief Justice to be appropriate and relevant to the statutory questions concerning the validity of the sentence.

'(h) The office of the Assistant shall be attached to the office of the Clerk of the Supreme Court of Georgia for administrative purposes.

'ni) The sentence review shall be in addition to direct appeal, if taken, and the review and appeal shall be consolidated for consideration. The court shall render its decision on legal errors enumerated, the factual substantiation of the verdict, and the validity of the sentence.'

II

Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972), and the Court's decisions last Term in Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976); Proffitt v. Florida, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976); Jurek v. Texas, 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976); Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976); and Roberts v. Louisiana, 428 U.S. 325, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976), make unnecessary the recanvassing of certain critical aspects of the controversy about the constitutionality of capital punishment. It is now settled that the death penalty is not invariably cruel and unusual **2866 punishment within the meaning of the Eighth Amendment; it is not inherently barbaric or an unacceptable mode of punishment for crime; neither is it always disproportionate to the crime for which it is imposed. It is also established that imposing capital punishment, at least for murder, in accordance with the procedures provided under the Georgia statutes saves the sentence from the infirmities which led the Court to invalidate the prior Georgia capital punishment statute in Furman v. Georgia, supra.

In sustaining the imposition of the death penalty in Gregg, *592 however, the Court firmly embraced the holdings and dicta from prior cases, Furman v. Georgia, supra; Robinson v. California, 370 U.S. 660, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962); Trop v. Dulles, 356 U.S. 86, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958); and Weems v. United States, 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793 (1910), to the effect that the Eighth Amendment bars not only those punishments that are 'barbaric' but also those that are 'excessive' in relation to the crime committed. Under Gregg, a punishment is 'excessive' and unconstitutional if it (1) makes no measurable contribution to acceptable goals of punishment and hence is nothing more than the purposeless and needless imposition of pain and suffering; or (2) is grossly out of proportion to the sevrity of the crime. A punishment might fail the test on either ground. Furthermore, these Eighth Amendment judgments should not be, or appear to be, merely the subjective views of individual Justices; judgment should be informed by objective factors to the maximum possible extent. To this end, attention must be given to the public attitudes concerning a particular sentence history and precedent, legislative attitudes, and the response of juries reflected in their sentenceing decisions are to be consulted. In Gregg, after giving due regard to such sources, the Court's judgment was that the death penalty for deliberate murder was neither the purposeless imposition of severe

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punishment nor a punishment grossly disproportionate to the crime. But the Court reserved the question of the constitutionality of the death penalty when imposed for other crimes. 428 U.S., at 187 n. 35, 96 S.Ct., at 2932.

III

That question, with respect to rape of an adult woman, is now before us. We have concluded that a sentence of death is grossly disproportionate and excessive punishment for the crime of rape and is therefore forbidden by the Eighth Amendment as cruel and unusual punishment.[FN4]

FN4. Because the death sentence is a disproportionate punishment for rape, it is cruel and unusual punishment within the meaning of the Eighth Amendment even though it may measurably serve the legitimate ends of punishment and therefore is not invalid for its failure to do so. We observe that in the light of the legislative decisions in almost all of the States and in most of the countries around the world, it would be difficult to support a claim that the death penalty for rape is an indispensable part of the States' criminal justice system.

*593 A

As advised by recent cases, we seek guidance in history and from the objective evidence of the country's present judgment concerning the acceptability of death as a penalty for rape of an adult woman. At no time in the last 50 years have a majority of the States authorized death as a punishment for rape. In 1925, 18 States, the District of Columbia, and the Federal Government authorized capital punishment for the rape of an adult female.[FN5]By 1971 just prior to the decision in Furman v. Georgia, that number had declined, but not substantially, to 16 States plus the Federal Government.[FN6]Furman then invalidated **2867 most of the capital punishment statutes in this country, including the rape statutes, because, among other reasons, of the manner in which the death penalty was imposed and utilized under those laws.

FN5. See Bye, Recent History and Present Status of Capital Punishment in the United States, 17 J.Crim.L. & C., 234, 241-242 (1926).

FN6.Ala.Code, Tit. 14, s 395 (1958); Ark.Stat.Ann. s 41-3403 (1964); Fla.Stat.Ann. s 794.01 (1965); Ga.Code s 26-2001 (1970); Ky.Rev.Stat.Ann. ss 435.080-435.090 (1962); La.Rev.Stat.Ann. s 14:42 (1950); Md.Ann.Code, Art. 27, s 461 (1957); Miss.Code Ann. s 2358 (1957); Mo. Rev.Stat. s 559260 (1969); Nev.Rev.Stat. s 200.360 (1963) (rape with substantial bodily harm); N.C.Gen.Stat. s 14-21 (1969); Okl.Stat.Ann., Tit. 21, s 1115 (1958); S.C.Code Ann. ss 16-72, 16-80 (1962); Tenn. Code Ann. s 39-3702 (1955); Tex.Penal Code s 1189 (1961); Va.Code Ann. s 18.1-44 (1960); 18 U.S.C. s 2031.

With their death penalty statutes for the most part invalidated, the States were faced with the choice of enacting modified capital punishment laws in an attempt to satisfy the requirements of Furman or of being satisfied with life imprisonment as the ultimate punishment for any offense. Thirty-fiveStates *594 immediately reinstituted the death penalty for at least limited kinds of crime. Gregg v. Georgia, 428 U.S., at 179 n. 23, 96 S.Ct., at 2928.This public judgment as to the acceptability of capital punishment, evidenced by the immediate, post-Furman legislative reaction in a large majority of the States, heavily influenced the Court to sustain the death penalty for murder in Gregg v. Georgia, supra, at 179-182, 96 S.Ct., at 2928-2929.

But if the 'most marked indication of society's endorsement of the death penalty for murder is the legislative response to Furman,' Gregg v. Georgia,

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supra, at 179-180, 96 S.Ct., at 2928, it should also be a telling datum that the public judgment with respect to rape, as reflected in the statutes providing the punishment for that crime, has been dramatically different. In reviving death penalty laws to satisfy Furman's mandate, none of the States that had not previously authorized death for rape chose to include rape among capital felonies. Of the 16 States in which rape had been a capital offense, only three provided the death penalty for rape of an adult woman in their revised statutes Georgia, North Carolina, and Louisiana. In the latter two States, the death penalty was mandatory for those found guilty, and those laws were invalidated by Woodson and Roberts. When Louisiana and North Carolina, responding to those decisions, again revised their capital punishment laws, they reenacted the death penalty for murder but not for rape; none of the seven other legislatures that to our knowledge have amended or replaced their death penalty statutes since July 2, 1976, including four States (in addition to Louisiana and North Carolina) that had authorized the death sentence for rape prior to 1972 and had reacted to Furman with mandatory statutes, included rape among the crimes for which death was an authorized punishment.[FN7]

> FN7. 1976 Okla.Sess.Laws, c. 1, p. 627; 1976 La. Acts, Nos. 657, 694; 1976 Ky.Acts. c. 15 (Ex. Sess.); 1977 Wyo.Sess.Laws, c. 122. Recent legislative action has taken place in North Carolina, Virginia, Maryland, California, and New Jersey. The legislation has been signed into law in North Carolina and Virginia, N.C.Sess. Laws (May 19, 1977); 1977 Va.Acts, c. 492 (Mar. 29, 1977), and has been vetoed in Maryland and California, Washington Post, May 27, 1977, p. Al, col. 1; N.Y. Times, May 28, 1977, p. 8, col. 6. The Governor of New Jersey apparently has not yet acted on the legislation in that State.

***595** Georgia argues that 11 of the 16 States that authorized death for rape in 1972 attempted to comply with Furman by enacting arguably mandatory death penalty legislation and that it is very likely that, aside from Louisiana and North Carolina, these States simply chose to eliminate rape as a capital offense rather than to require death for each and every instance of rape.[FN8] The argument is not without force; but 4 of the 16 States did not take the mandatory course and also did not continue rape of an adult ****2868** woman as a capital offense. Further, as we have indicated, the legislatures of 6 of the 11 arguably mandatory States have revised their death penalty laws since Woodson and Roberts without enacting a new death penalty for rape. And this is to say nothing of 19 other States that enacted nonmandatory, post-Furman statutes and chose not to sentence rapists to death.

> FN8. The legislation that respondent places in this category is as follows:
>
> Ky.Rev.Stat. s 507.020 (1975); La.Rev.Stat.Ann. s 14:30 (1974); Md.Code Ann., Art. 27, s 413(b) (Supp. 1976); Miss.Code Ann. ss 97-3-19, 97-3-21, 97-25-55, 99-17-20 (Supp. 1975); Mo.Rev.Stat. ss 559.005, 559.009 (Supp. 1975); Nev.Rev.Stat. s 200.030 (1975); N.C.Gen.Stat. ss 14-17, 14-21 (Supp. 1975); Okl.Stat.Ann., Tit. 21, ss 701.1-701.3 (Supp. 1975); S.C.Code Ann. s 16-52 (Supp. 1975); Tenn.Code Ann. ss 39-2402, 39-2406, 39-3702 (1975); Va.Code Ann. ss 18.2-10, 18.2-31 (1975). Brief for Respondent 19 n. 38.

It should be noted that Florida, Mississippi, and Tennessee also authorized the death penalty in some rape cases, but only where the victim was a child and the rapist an adult.[FN9]The Tennessee statute has since been invalidated because the death sentence was mandatory. Collins v. State, 550 S.W.2d 643 (Tenn.1977). The upshot is that Georgia is the sole jurisdiction***596** in the United States at the present time that authorizes a sentence of death when the rape victim is an adult woman, and

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only two other jurisdictions provide capital punishment when the victim is a child.

> FN9.Fla.Stat.Ann. s 794.011(2) (1976); Miss.Code Ann. s 97-3-65 (Supp.1976); Tenn.Code Ann. s 39-3702 (1974).

The current judgment with respect to the death penalty for rape is not wholly unanimous among state legislatures, but it obviously weighs very heavily on the side of rejecting capital punishment as a suitable penalty for raping an adult woman.[FN10]

> FN10. In Trop v. Dulles, 356 U.S. 86, 102, 78 S.Ct. 590, 598, 2 L.Ed.2d 630 (1958), the plurality took pains to note the climate of international opinion concerning the acceptability of a particular punishment. It is thus not irrelevant here that out of 60 major nations in the world surveyed in 1965, only 3 retained the death penalty for rape where death did not ensue. United Nations, Department of Economic and Social Affairs, Capital Punishment 40, 86 (1968).

B

It was also observed in Gregg that '(t)he jury . . . is a significant and reliable objective index of contemporary values because it is so directly involved.' 428 U.S., at 181, 96 S.Ct., at 2929, and that it is thus important to look to the sentencing decisions that juries have made in the course of assessing whether capital punishment is an appropriate penalty for the crime being tried. Of course, the jury's judgment is meaningful only where the jury has an appropriate measure of choice as to whether the death penalty is to be imposed. As far as execution for rape is concerned, this is now true only in Georgia and in Florida; and in the latter State, capital punishment is authorized only for the rape of children.

According to the factual submissions in this Court, out of all rape convictions in Georgia since since 1973 and that total number has not been tendered 63 cases had been reviewed by the Georgia Supreme Court as of the time of oral argument; and of these, 6 involved a death sentence, 1 of which was set aside, leaving 5 convicted rapists now under sentence ***597** of death in the State of Georgia. Georgia juries have thus sentenced rapists to death six times since 1973. This obviously is not a negligible number; and the State argues that as a practical matter juries simply reserve the extreme sanction for extreme cases of rape and that recent experience surely does not prove that jurors consider the death penalty to be a disproportionate punishment for every conceivable instance of rape, no matter how aggravated. Nevertheless, it is true that in the vast majority of cases, at least 9 out of 10, juries have not imposed the death sentence.

IV

These recent events evidencing the attitude of state legislatures and sentencing juries do not wholly determine this controversy, for the Constitution contemplates that in the end our own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment. Nevertheless, the legislative rejection of capital punishment for rape strongly confirms our own judgment, ****2869** which is that death is indeed a disproportionate penalty for the crime of raping an adult woman.

We do not discount the seriousness of rape as a crime. It is highly reprehensible, both in a moral sense and in its almost total contempt for the personal integrity and autonomy of the female victim and for the latter's privilege of choosing those with whom intimate relationships are to be established. Short of homicide, it is the 'ultimate violation of self.' [FN11]It is also a violent crime because it normally involves force, or the threat of force or intimidation, to overcome the will and the capacity of the victim to resist. Rape is very often accompanied***598** by physical injury to the female and can also inflict mental and psychological damage.[FN12]Because it undermines the community's

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sense of security, there is public injury as well.

> FN11. U.S.Dept. of Justice Law Enforcement Assistance Administration Report, Rape and Its Victims: A Report for Citizens, Health Facilities, and Criminal Justice Agencies 1 (1975), quoting Bard & Ellison, Crisis Intervention and Investigation of Forcible Rape, The Police Chief (May 1974), reproduced as Appendix I B to the Report.
>
> FN12. See Note, The Victim In a Forcible Rape Case: A Feminist View, 11 Am.Crim.L.Rev. 335, 338 (1973); Comment, Rape and Rape Laws: Sexism in Society and Law, 61 Calif.L.Rev. 919, 922-923 (1973).

Rape is without doubt deserving of serious punishment; but in terms of moral depravity and of the injury to the person and to the public, it does not compare with murder, which does involve the unjustified taking of human life. Although it may be accompanied by another crime, rape by definition does not include the death of or even the serious injury to another person.[FN13]The murderer kills; the rapist, if no more than that, does not. Life is over for the victim of the murderer; for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair. We have the abiding conviction that the death penalty, which 'is unique in its severity and irrevocability,' Gregg v. Georgia, 428 U.S., at 187, 96 S.Ct., at 2931, is an excessive penalty for the rapist who, as such, does not take human life.

> FN13. See n. 1, supra, for the Georgia definition of rape.

This does not end the matter; for under Georgia law, death may not be imposed for any capital offense, including rape, unless the jury or judge finds one of the statutory aggravating circumstances and then elects to impose that sentence. Ga.Code s 26-3102 (1976 Supp); Gregg v. Georgia, supra, 428 U.S., at 165-166, 96 S.Ct., at 2921-2922.For the rapist to be executed in Georgia, it must therefore be found not only that he committed rape but also that one or more of the following aggravating circumstances were present: (1) that the rape was committed by a person with a prior record of conviction for a capital felony; (2) that the rape was committed while the offender was engaged in the commission of another capital felony, or aggravated battery; or (3) the rape 'was outrageously or wantonly vile, horrible or ***599** inhuman in that it involved torture, depravity of mind, or aggravated battery to the victim.'[FN14]Here, the first two of these aggravating circumstances were alleged and found by the jury.

> FN14. There are other aggravating circumstances provided in the statute, see n. 3, supra, but they are not applicable to rape.

Neither of these circumstances, nor both of them together, change our conclusion that the death sentence imposed on Coker is a disproportionate punishment for rape. Coker had prior convictions for capital felonies rape, murder, and kidnaping but these prior convictions do not change the fact that the instant crime being punished is a rape not involving the taking of life.

It is also true that the present rape occurred while Coker was committing armed robbery, a felony for which the Georgia statutes authorize the death penalty.[FN15]But ****2870** Coker was tried for the robbery offense as well as for rape and received a separate life sentence for this crime; the jury did not deem the robbery itself deserving of the death penalty, even though accompanied by the aggravating circumstance, which was stipulated, that Coker had been convicted of a prior capital crime.[FN16]

> FN15. In Gregg v. Georgia, the Georgia Supreme Court refused to sustain a death sentence for armed robbery because, for one reason, death had been so seldom imposed for this crime in other cases that such a sentence was excessive and could

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not be sustained under the statute. As it did in this case, however, the Georgia Supreme Court apparently continues to recognize armed robbery as a capital offense for the purpose of applying the aggravating-circumstances provisions of the Georgia Code.

FN16. Where the accompanying capital crime is murder, it is most likely that the defendant would be tried for murder, rather than rape; and it is perhaps academic to deal with the death sentence for rape in such a circumstance. It is likewise unnecessary to consider the rapefelony murder a rape accompanied by the death of the victim which was unlawfully but nonmaliciously caused by the defendant.

Where the third aggravating circumstance mentioned in the text is present that the rape is particularly vile or involves torture or aggravated battery it would seem that the defendant could very likely be convicted, tried, and appropriately punished for this additional conduct.

***600** We note finally that in Georgia a person commits murder when he unlawfully and with malice aforethought, either express or implied, causes the death of another human being. He also commits that crime when in the commission of a felony he causes the death of another human being, irrespective of malice. But even where the killing is deliberate, it is not punishable by death absent proof of aggravating circumstances. It is difficult to accept the notion, and we do not, that the rapist, with or without aggravating circumstances, should be punished more heavily than the deliberate killer as long as the rapist does not himself take the life of his victim. The judgment of the Georgia Supreme Court upholding the death sentence is reversed, and the case is remanded to that court for further proceedings not inconsistent with this opinion.

So ordered.

Mr. Justice BRENNAN, concurring in the judgment.

Adhering to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v. Georgia, 428 U.S. 153, 227, 96 S.Ct. 2909, 2971, 49 L.Ed.2d 859 (1976) (dissenting opinion), I concur in the judgment of the Court setting aside the death sentence imposed under the Georgia rape statute.

Mr. Justice MARSHALL, concurring in the judgment.

In Gregg v. Georgia, 428 U.S. 153, 231, 96 S.Ct. 2909, 2973, 49 L.Ed.2d 859 (1976) (dissenting opinion), I stated: 'In Furman v. Georgia, 408 U.S. 238, 314, 92 S.Ct. 2726, 2764, 33 L.Ed.2d 346 (1972) (concurring opinion), I set forth at some length my views on the basic issue presented to the Court in these cases. The death penalty, I concluded, is a cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. That continues to be my view.'

***601** I then explained in some detail my reasons for reaffirming my position. I continue to adhere to those views in concurring in the judgment of the Court in this case.

Mr. Justice POWELL, concurring in the judgment in part and dissenting in part.

I concur in the judgment of the Court on the facts of this case, and also in the plurality's reasoning supporting the view that ordinarily death is disproportionate punishment for the crime of raping an adult woman. Although rape invariably is a reprehensible crime, there is no indication that petitioner's offense was committed with excessive brutality or that the victim sustained serious or lasting injury. The plurality, however, does not limit its holding to the case before us or to similar cases. Rather, in an opinion that ranges well beyond what is necessary, it holds that capital punishment always regardless of the circumstances is a disproportionate penalty for the crime of rape.

The Georgia statute, sustained in Gregg v. Georgia,

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428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), specifies aggravating ****2871** circumstances that may be considered by the jury when appropriate. With respect to the crime of rape, only three such circumstances are specified: (i) the offense was committed by a person with a prior record of conviction for a capital felony; (ii) the offense was committed while the offender was engaged in another capital felony or in aggravated battery; and (iii) the offense was 'outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim.'Ante, at 2864, n. 3. Only the third circumstance describes in general the offense of aggravated rape, often identified as a separate and more heinous offense than rape. See, e. g., ALI, Model Penal Code s 207.4, Comment, p. 246 (Tent.Draft No. 4, 1955); ALI, Model Penal Code s 213.1 (Prop. Off. Draft, 1962); Nev.Rev.Stat. s 200.363 (1975). That third circumstance was not submitted***602** to the jury in this case, as the evidence would not have supported such a finding. It is therefore quite unnecessary for the plurality to write in terms so sweeping as to foreclose each of the 50 state legislatures from creating a narrowly defined substantive crime of aggravated rape punishable by death.[FN1]

> FN1. It is not this Court's function to formulate the relevant criteria that might distinguish aggravated rape from the more usual case, but perhaps a workable test would embrace the factors identified by Georgia: the cruelty or viciousness of the offender, the circumstances and manner in which the offense was committed, and the consequences suffered by the victim. See also Ralph v. Warden, 438 F.2d 786 (CA4 1970), cert. denied, 408 U.S. 942, 92 S.Ct. 2846, 33 L.Ed.2d 766 (1972); 438 F.2d, at 794 (opinion of Haynsworth, C. J.). The legislative task of defining, with appropriate specificity, the elements of the offense of aggravated rape would not be easy, see Furman v. Georgia, 408 U.S. 238, 460, 92 S.Ct. 2726, 2839, 33 L.Ed.2d 346 (1972) (Powell, J., dissenting), but certainly this Court should not assume that the task is impossible.

The dissent of THE CHIEF JUSTICE, relying on selected excerpts from my opinion in Furman, seeks to buttress the view that for sentencing purposes meaningful distinctions cannot be drawn between rapes regardless of the circumstances and effect upon the victim. Post, at 2873, n. 2. The dissent emphasizes the difficulties of proof. But the jury system is designed and operates successfully to resolve precisely this type of factual issue. The law of negligence, for example, is replete with issues requiring the jury to determine degrees of culpability and the extent or permanency of physical and psychological injury.

I am complimented by the frequency with which THE CHIEF JUSTICE, in his dissent, cites and quotes from my opinion in Furman.That opinion, however, did not prevail, and as with most of the writing in Furman it now must be read in light of Gregg and Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976), which have established the controlling general principles. But contrary to implications in THE CHIEF JUSTICE's dissent, my opinion in Furman did emphasize that the proportionality test as to rape should be applied on a case-by-case basis, noting that in some cases the death sentence would be 'grossly excessive.' 408 U.S., at 461, 92 S.Ct., at 2839.I remain in disagreement with the simplistic all-or-nothing views of the plurality opinion and the dissenting opinion of THE CHIEF JUSTICE.

In accord with our decisions last Term, the plurality opinion states:

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'(T)he death penalty is not invariably cruel and unusual punishment within the meaning of the Eighth Amendments *603 it is not inherently barbaric or an unacceptable mode of punishment for crime; neither is it always disproportionate to the crime for which it is imposed.'Ante, at 2865.

Thus capital punishment may be imposed on those sentenced in accordance with the procedures identified in Gregg and Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976), at least when the offender is convicted of murder, the crime involved in all five of last Term's capital cases.

Today, in a case that does not require such an expansive pronouncement, the plurality draws a bright line between murder and all rapes regardless of the degree of brutality of the rape or the effect upon the victim. I dissent because I am not persuaded that such a bright line is appropriate. As noted in Snider v. Peyton, 356 F.2d 626, 627 (CA4 1966), '(t)here is extreme variation in the degree of culpability of **2872 rapists.'The deliberate viciousness of the rapist may be greater than that of the murderer. Rape is never an act committed accidentally. Rarely can it be said to be unpremeditated. There also is wide variation in the effect on the victim. The plurality opinion says that '(l)ife is over for the victim of the murderer; for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair.'Ante, at 2869. But there is indeed 'extreme variation' in the crime of rape. Some victims are so grievously injured physically or psychologically that life is beyond repair.

Thus, it may be that the death penalty is not disproportionate punishment for the crime of aggravated rape. Final resolution of the question must await careful inquiry into objective indicators of society's 'evolving standards of decency,' particularly legislative enactments and the responses of juries in capital cases.[FN2]See Gregg v. Georgia, supra, 428 U.S., at 173-182, 96 S.Ct., at 2925-2929 *604 joint opinion of Stewart, Powell, and Stevens, JJ.); Woodson v. North Carolina, supra, 428 U.S., at 294-295, 96 S.Ct., at 2987 (plurality opinion); Furman v. Georgia, 408 U.S. 238, 436-443, 92 S.Ct. 2726, 2827-2830, 33 L.Ed.2d 346 (1972) (Powell, J., dissenting). The plurality properly examines these indicia, which do support the conclusion that society finds the death penalty unacceptable for the crime of rape in the absence of excessive brutality or severe injury. But it has not been shown that society finds the penalty disproportionate for all rapes. In a proper case a more discriminating inquiry than the plurality undertakes well might discover that both juries and legislatures have reserved the ultimate penalty for the case of an outrageous rape resulting in serious, lasting harm to the victim. I would not prejudge the issue. To this extent, I respectfully dissent.

> FN2. These objective indicators are highly relevant, but the ultimate decision as to the appropriateness of the death penalty under the Eighth Amendment as the plurality notes, ante, at 2868 must be decided on the basis of our own judgment in light of the precedents of this Court.

Mr. Chief Justice BURGER, with whom Mr. Justice REHNQUIST joins, dissenting.

In a case such as this, confusion often arises as to the Court's proper role in reaching a decision. Our task is not to give effect to our individual views on capital punishment; rather, we must determine what the Constitution permits a State to do under its reserved powers. In striking down the death penalty imposed upon the petitioner in this case, the Court has overstepped the bounds of proper constitutional adjudication by substituting its policy judgment for that of the state legislature. I accept that the Eighth Amendment's concept of disproportionality bars the death penalty for minor crimes. But rape is not a minor crime; hence the Cruel and Unusual Punishments Clause does not give the Members of this Court license to engraft their conceptions of proper public policy onto the considered legislative judgments of the States. Since I cannot agree that Georgia lacked the constitutional*605 power to impose

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the penalty of death for rape, I dissent from the Court's judgment.

(1)

On December 5, 1971, the petitioner, Ehrlich Anthony Coker, raped and then stabbed to death a young woman. Less than eight months later Coker kidnaped and raped a second young woman. After twice raping this 16-year-old victim, he stripped her, severely beat her with a club, and dragged her into a wooded area where he left her for dead. He was apprehended and pleaded guilty to offenses stemming from these incidents. He was sentenced by three separate courts to three life terms, two 20-year terms, and one 8-year term of imprisonment.[FN1] Each judgment specified that the **2873 sentences it imposed were to run consecutively rather than concurrently. Approximately 1 1/2 years later, on September 2, 1974, petitioner escaped from the state prison where he was serving these sentences. He promptly raped another 16-year-old woman in the presence of her husband, abducted her from her home, and threatened her with death and serious bodily harm. It is this crime for which the sentence now under review was imposed.

> FN1. On March 12, 1973, the Superior Court of Richmond County, Ga., sentenced Coker to 20 years' imprisonment for the kidnaping of petitioner's second victim, and to life imprisonment for one act of rape upon her. On May 28, 1973, the Superior Court of Taliaferro County, Ga., sentenced Coker to eight years' imprisonment for aggravated assault upon the same victim, and to life imprisonment for the second rape upon her. On April 6, 1973, the Superior Court of Clayton County, Ga., sentenced Coker to 20 years' imprisonment for the rape of petitioner's first victim, and to life imprisonment for her murder. App. 307-312.

The Court today holds that the State of Georgia may not impose the death penalty on Coker. In so doing, it prevents the State from imposing any effective punishment upon Coker for his latest rape. The Court's holding, moreover, bars Georgia from guaranteeing its citizens that they *606 will suffer no further attacks by this habitual rapist. In fact, given the lengthy sentences Coker must serve for the crimes he has already committed, the Court's holding assures that petitioner as well as others in his position will henceforth feel no compunction whatsoever about committing further rapes as frequently as he may be able to escape from confinement and indeed even within the walls of the prison itself. To what extent we have left States 'elbowroom' to protect innocent persons from depraved human beings like Coker remains in doubt.

(2)

My first disagreement with the Court's holding is its unnecessary breadth. The narrow issue here presented is whether the State of Georgia may constitutionally execute this petitioner for the particular rape which he has committed, in light of all the facts and circumstances shown by this record. The plurality opinion goes to great lengths to consider societal mores and attitudes toward the generic crime of rape and the punishment for it; however, the opinion gives little attention to the special circumstances which bear directly on whether imposition of the death penalty is an appropriate societal response to Coker's criminal acts: (a) On account of his prior offenses, Coker is already serving such lengthy prison sentences that imposition of additional periods of imprisonment would have no incremental punitive effect; (b) by his life pattern Coker has shown that he presents a particular danger to the safety, welfare, and chastity of women, and on his record the likelihood is therefore great that he will repeat his crime at the first opportunity; (c) petitioner escaped from prison, only a year and a half after he commenced serving his latest sentences; he has nothing to lose by further escape attempts; and (d) should he again succeed in escaping from prison, it is reasonably predictable

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that he will repeat his pattern of attacks on *607 women and with impunity since the threat of added prison sentences will be no deterrent.

Unlike the plurality, I would narrow the inquiry in this case to the question actually presented: Does the Eighth Amendment's ban against cruel and unusual punishment prohibit the State of Georgia from executing a person who has, within the space of three years, raped three separate women, killing one and attempting to kill another, who is serving prison terms exceeding his probable lifetime and who has not hesitated to escape confinement at the first available opportunity? Whatever one's view may be as to the State's constitutional power to impose the death penalty upon a rapist who stands before a court convicted for the first time, this case reveals a chronic rapist whose continuing danger to the community is abundantly clear.

Mr. Justice POWELL would hold the death sentence inappropriate in this case because 'there is no indication that petitioner's offense was committed with excessive brutality or that the victim sustained **2874 serious or lasting injury.'Ante, at 2870.[FN2]Apart from the reality that rape is inherently one *608 of the most egregiously brutal acts one human being can inflict upon another, there is nothing in the Eighth Amendment that so narrowly limits the factors which may be considered by a state legislature in determining whether a particular punishment is grossly excessive. Surely recidivism, especially the repeated commission of heinous crimes, is a factor which may properly be weighed as an aggravating circumstance, permitting the imposition of a punishment more severe than for one isolated offense. For example, as a matter of national policy, Congress has expressed its will that a person who has committed two felonies will suffer enhanced punishment for a third one, 18 U.S.C. s 3575(e)(1); Congress has also declared that a second conviction for assault on a mail carrier may be punished more seriously than a first such conviction, 18 U.S.C. s 2114. Many States *609 provide an increased penalty for habitual criminality. See, e. g., Wis.Stat.Ann. s 939.62 (1958); see also Annot., 58 A.L.R. 20 (1929); 82 A.L.R. 345 (1933); 79 A.L.R.2d 826 (1961).[FN3] As a factual matter, the **2875 plurality opinion is correct in stating that Coker's 'prior convictions do not change the fact that the instant crime being punished is a rape not involving the taking of life,'ante, at 2869; however, it cannot be disputed that the existence of these prior convictions makes Coker a substantially more serious menace to society than a first-time offender: [FN4]

> FN2. The position today adopted by Mr. Justice POWELL constitutes a disquieting shift from the view he embraced several Terms ago in Furman v. Georgia, 408 U.S. 238, 460-461, 92 S.Ct. 2726, 2839, 33 L.Ed.2d 346 (1972) (dissenting opinion), where he stated:
>
> 'While I reject each of (petitioners') attempts to establish specific categories of cases in which the death penalty may be deemed excessive, I view them as groping toward what is for me the appropriate application of the Eighth Amendment. While in my view the disproportionality test may not be used either to strike down the death penalty for rape altogether or to install the Court as a tribunal for sentencing review, that test may find its application in the peculiar circumstances of specific cases. Its utilization should be limited to the rare case in which the death penalty is rendered for a crime technically falling within the legislatively defined class but factually falling outside the likely legislative intent in creating the category.' (Emphasis ad- ded.)
>
> While Mr. Justice POWELL purports to dissent from the broadest sweep of the Court's holding, I cannot see that his view differs materially from that of the plurality. He suggests two situations where it might be proper to execute rapists: (1) where the

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'offense (is) committed with excessive brutality'; and (2) where 'the victim sustained serious or lasting injury.'The second part of this test was rejected by Mr. Justice POWELL himself in Furman, and with good reason: '(T)he emotional impact (upon the rape victim) may be impossible to gauge at any particular point in time. The extent and duration of psychological trauma may not be known or ascertainable prior to the date of trial.' Id., at 460, 92 S.Ct., at 2839.Can any Member of the Court state with confidence that a 16-year-old woman who is raped in the presence of her husband three weeks after giving birth to a baby 'sustained (no) serious or lasting injury'? This bifurcation of rape into categories of harmful and nonharmful eludes my comprehension.

The difficulty with the first part of Mr. Justice POWELL's test is that rape is inherently an aggravated offense; in Mr. Justice POWELL's own words, 'the threat of both (physical and psychological) injury is always present.' Id., at 459, 92 S.Ct., at 2838.Therefore the 'excessive brutality' requirement must refer to something more, I assume, than the force normally associated with physically coercing or overpowering the will of another. Rather, what must be meant is that the rapist has engaged, in torture or has committed an aggravated battery upon the victim. See, ante, at 2870-2871, and n. 1. However, torture and aggravated battery are offenses separate from rape, and ordinarily are punished separately. The clear negative inference of Mr. Justice POWELL's analysis therefore appears to be that where rape alone is committed, i. e., rape unaccompanied by any other criminal conduct, the death penalty may never be imposed.

FN3. This Court has consistently upheld the constitutional validity of such punishment-enhancing statutes. See, e. g., Spencer v. Texas, 385 U.S. 554, 559-560, 87 S.Ct. 648, 651, 17 L.Ed.2d 606 (1967):

'No claim is made here that recidivist statutes are . . . unconstitutional, nor could there be under our cases. Such statutes and other enhanced-sentence laws, and procedures designed to implement their underlying policies, have been enacted in all the States, and by the Federal Government as well. . . . Such statutes . . . have been sustained in this Court on several occasions against contentions that they violate constitutional strictures dealing with double jeopardy, ex post facto laws, cruel and unusual punishment, due process, equal protection, and privileges and immunities.'(Footnote and citations omitted; emphasis added.)

Accord, Oyler v. Boles, 368 U.S. 448, 451, 82 S.Ct. 501, 503, 7 L.Ed.2d 446 (1962).

FN4. This special danger is demonstrated by the very record in this case. After tying and gagging the victim's husband, and raping the victim, petitioner sought to make his getaway in their automobile. Leaving the victim's husband tied and gagged in his bathroom, Coker took the victim with him. As he started to leave, he brandished the kitchen knife he was carrying and warned the husband that 'if he would get pulled over or the police was following him in any way that he would kill he would kill my wife. He said he didn't have nothing to lose that he was in prison for the rest of his life, anyway . . ...' Testimony of the victim's husband, App. 121 (emphasis added).

'There is a widely held view that those who present the strongest case for severe measures of incapacitation are not murderers as a group (their offenses often are situational) but rather those who have re-

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peatedly engaged in violent, combative behavior. A well-demonstrated ***610** propensity for life-endangering behavior is thought to provide a more solid basis for infliction of the most severe measures of incapacitation than does the fortuity of a single homicidal incident.'Packer, Making the Punishment Fit the Crime, 77 Harv.L.Rev. 1071, 1080 (1964). (Emphasis added.)

In my view, the Eighth Amendment does not prevent the State from taking an individual's 'well-demonstrated propensity for life-endangering behavior' into account in devising punitive measures which will prevent inflicting further harm upon innocent victims. See Gregg v. Georgia, 428 U.S. 153, 183 n. 28, 96 S.Ct. 2909, 2930, 49 L.Ed.2d 859 (1976). Only one year ago Mr. Justice White succinctly noted: '(D)eath finally forecloses the possibility that a prisoner will commit further crimes, whereas life imprisonment does not.' Roberts v. Louisiana, 428 U.S. 325, 354, 96 S.Ct. 3001, 3016, 49 L.Ed.2d 974 (1976) (dissenting opinion); see also Furman v. Georgia, 408 U.S., at 311, 92 S.Ct., at 2763 (White, J., concurring).

In sum, once the Court has held that 'the punishment of death does not invariably violate the Constitution,' Gregg v. Georgia, supra, 428 U.S., at 169, 96 S.Ct., at 2923, it seriously impinges upon the State's legislative judgment to hold that it may not impose such sentence upon an individual who has shown total and repeated disregard for the welfare, safety, personal integrity, and human worth of others, and who seemingly cannot be deterred from continuing such conduct.[FN5]I therefore would ***611** hold that the death sentence here imposed is within the power reserved to the State and leave for another day the question of whether such sanction would be proper under other circumstances. The dangers which inhere whenever the Court casts its constitutional decisions in terms sweeping beyond the facts of the case presented, are magnified in the context of the Eighth Amendment. In Furman v. Georgia, supra, at 431, 92 S.Ct., at 2824, Mr. Justice POWELL, in dissent stated:

FN5. Professor Packer addressed this:

'What are we to do with those whom we cannot reform, and, in particular, those who by our failure are thought to remain menaces to life? Current penal theories admit, indeed insist upon, the need for permanent incapacitation in such cases. Once this need is recognized, the death penalty as a means of incapacitation for the violent psychopath can hardly be objected to on grounds that will survive rational scrutiny, if the use of the death penalty in any situation is to be permitted. And its use in rape cases as a class, while inept, is no more so than its use for any other specific offense involving danger to life and limb.'Making the Punishment Fit the Crime, 77 Harv.L.Rev. 1071, 1081 (1964). (Emphasis added.)

'(W)here, as here, the language of the applicable (constitutional) provision provides****2876** great leeway and where the underlying social policies are felt to be of vital importance, the temptation to read personal preference into the Constitution is understandably great. It is too easy to propound our subjective standards of wise policy under the rubric of more or less universally held standards of decency.'(Emphasis added.)

Since the Court now invalidates the death penalty as a sanction for all rapes of adults at all times under all circumstances,[FN6] I reluctantly turn to what I see as the broader issues raised by this holding.

FN6. I find a disturbing confusion as to this issue in the plurality opinion. The issue is whether Georgia can, under any circumstances and for any kind of rape 'mild' or 'gross' impose the death penalty. Yet the plurality opinion opens its discussion, apparently directed at demonstrating that this was not an 'aggravated' rape, saying that following the rape and kidnaping, 'Mrs. Carver was unharmed.' Ante, at 2863. If the Court is holding that no rape can ever

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be punished by death, why is it relevant whether Mrs. Carver was 'unharmed'?

(3)

The plurality, ante, at 2868-2869, acknowledges the gross nature of the crime of rape. A rapist not only violates a victim's privacy and personal integrity, but inevitably causes serious psychological as well as physical harm in the process. The longrange effect upon the victim's life and health is likely ***612** to be irreparable; it is impossible to measure the harm which results. Volumes have been written by victims, physicians, and psychiatric specialists on the lasting injury suffered by rape victims. Rape is not a mere physical attack it is destructive of the human personality. The remainder of the victim's life may be gravely affected, and this in turn may have a serious detrimental effect upon her husband and any children she may have. I therefore wholly agree with Mr. Justice WHITE's conclusion as far as it goes that '(s)hort of homicide, (rape) is the 'ultimate violation of self."Ante, at 2868. Victims may recover from the physical damage of knife or bullet wounds, or a beating with fists or a club, but recovery from such a gross assault on the human personality is not healed by medicine or surgery. To speak blandly, as the plurality does, of rape victims who are 'unharmed,' or to classify the human outrage of rape, as does Mr. Justice POWELL, in terms of 'excessively brutal,' ante, at 2870, versus 'moderately brutal,' takes too little account of the profound suffering the crime imposes upon the victims and their loved ones.

Despite its strong condemnation of rape, the Court reaches the inexplicable conclusion that 'the death penalty . . . is an excessive penalty' for the perpetrator of this heinous offense.[FN7]This, the Court holds, is true even though in Georgia the death penalty may be imposed only where the rape is coupled with one or more aggravating circumstances. The process by which this conclusion is reached is startling as it is disquieting. It represents a clear departure from precedent by making this Court 'under the aegis of the Cruel and Unusual Punishments Clause, the ultimate arbiter of the standards of criminal responsibility in diverse areas of the ***613** criminal law, throughout the country.' Powell v. Texas, 392 U.S. 514, 533, 88 S.Ct. 2145, 2154, 20 L.Ed.2d 1254 (1968) (opinion of Marshall, J.).[FN8] This seriously strains and distorts our ****2877** federal system, removing much of the flexibility from which it has drawn strength for two centuries.

FN7. While only three Justices have joined Mr. Justice WHITE in this portion of his opinion, see separate opinion of Mr. Justice POWELL, ante, p. 2870, I take this to be the view of the Court in light of Mr. Justice BRENNAN's and Mr. Justice MARSHALL's statements joining the judgment.

FN8. Only last Term in Gregg v. Georgia, 428 U.S. 153, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976), Mr. Justice Stewart, Mr. Justice Powell, and Mr. Justice Stevens warned that 'the requirements of the Eighth Amendment must be applied with an awareness of the limited role to be played by the courts,' and noted that 'we may not act as judges as we might as legislators,' Id., at 174-175,96 S.Ct., at 295. Accord, Roberts v. Louisiana, 428 U.S. 325, 355-356, 96 S.Ct. 3001, 3017, 49 L.Ed.2d 974 (1976). (White, J., dissenting). Mr. Justice STEWART, Mr. Justice POWELL, and Mr. Justice STEVENS further noted that '(t)he deference we owe to decisions of the state legislatures under our federal system, (Furman v. Georgia, 408 U.S.), at 465-470, 92 S.Ct., at 2842-2844 (Rehnquist, J., dissenting), is enhanced where the specification of punishments is concerned, for 'these are peculiarly questions of legislative policy.' Gore v. United States, 357 U.S. 386, 393, 78 S.Ct. 1280, 1285, 2 L.Ed.2d 1405 (1958).' 428 U.S., at 176, 96 S.Ct., at 2926 (Emphasis added.)

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The analysis of the plurality opinion is divided into two parts: (a) an 'objective' determination that most American jurisdictions do not presently make rape a capital offense, and (b) a subjective judgment that death is an excessive punishment for rape because the crime does not, in and of itself, cause the death of the victim. I take issue with each of these points.

(a)

The plurality opinion bases its analysis, in part, on the fact that 'Georgia is the sole jurisdiction in the United States at the present time that authorizes a sentence of death when the rape victim is an adult woman.'Ante, at 2867. Surely, however, this statistic cannot be deemed determinative, or even particularly relevant. As the opinion concedes, ante, at 2867, two other States Louisiana and North Carolina have enacted death penalty statutes for adult rape since this Court's 1972 decision in Furman v. Georgia, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346.If the Court is to rely on some 'public opinion' process, does this not suggest the beginning of a 'trend'?

*614 More to the point, however, it is myopic to base sweeping constitutional principles upon the narrow experience of the past five years. Considerable uncertainty was introduced into this area of the law by this Court's Furman decision. A large number of States found their death penalty statutes invalidated; legislatures were left in serious doubt by the expressions vacillating between discretionary and mandatory death penalties, as to whether this Court would sustain any statute imposing death as a criminal sanction.[FN9] Failure of more States to enact statutes imposing death for rape of an adult woman may thus reflect hasty legislative compromise occasioned by time pressures following Furman, a desire to wait on the experience of those States which did enact such statutes, or simply an accurate forecast of today's holding.

FN9. I take no satisfaction in my predictive caveat in Furman:

> 'Since there is no majority of the Court on the ultimate issue presented in these cases, the future of capital punishment in this country has been left in an uncertain limbo. Rather than providing a final and unambiguous answer on the basic constitutional question, the collective unpact of the majority's ruling is to demand an undetermined measure of change from the various state legislatures and the Congress.' 408 U.S., at 403, 92 S.Ct., at 2811 (dissenting opinion).

In any case, when considered in light of the experience since the turn of this century, where more than one-third of American jurisdictions have consistently provided the death penalty for rape, the plurality's focus on the experience of the immediate past must be viewed as truly disingenuous. Having in mind the swift changes in positions of some Members of this Court in the short span of five years, can it rationally be considered a relevant indicator of what our society deems 'cruel and unusual' to look solely to what legislatures have refrained from doing under conditions of great uncertainty arising from our less than lucid holdings on the Eighth Amendment? Far more representative of societal mores of the 20th century is the accepted *615 practice in a substantial number of jurisdictions preceding the Furman decision. '(The) problem . . . is the suddenness of the Court's perception of progress in the human attitude since **2878 decisions of only a short while ago.' Furman v. Georgia, supra, at 410, 92 S.Ct., at 2814 (Blackmun, J., dissenting). Cf. Rudolph v. Alabama, 375 U.S. 889, 84 S.Ct. 155, 11 L.Ed.2d 119 (1963).

However, even were one to give the most charitable acceptance to the plurality's statistical analysis, it still does not, to my mind, support its conclusion. The most that can be claimed is that for the past year Georgia has been the only State whose adult rape death penalty statute has not otherwise been invalidated; two other state legislatures had enacted

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rape death penalty statutes in the last five years, but these were invalidated for reasons unrelated to rape under the Court's decisions last Term. Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976); Roberts v. Louisiana, 428 U.S. 325, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976). Even if these figures could be read as indicating that no other States view the death penalty as an appropriate punishment for the rape of an adult woman, it would not necessarily follow that Georgia's imposition of such sanction violates the Eighth Amendment.

The Court has repeatedly pointed to the reserve strength of our federal system which allows state legislatures, within broad limits, to experiment with laws, both criminal and civil, in the effort to achieve socially desirable results. See, e. g., Whalen v. Roe, 429 U.S. 589, 597-598, and n. 22, 97 S.Ct. 869, 875-876, 51 L.Ed.2d 64 (1977); Johnson v. Louisiana, 406 U.S. 356, 376, 92 S.Ct. 1620, 1641, 32 L.Ed.2d 152 (1972) (opinion of Powell, J.); California v. Green, 399 U.S. 149, 184-185, 90 S.Ct. 1930, 1948-1949, 26 L.Ed.2d 489 (1970) (Harlan, J., concurring); Fay v. New York, 332 U.S. 261, 296, 67 S.Ct. 1613, 1631, 91 L.Ed. 2043 (1947). Various provisions of the Constitution, including the Eighth Amendment and the Due Process Clause, of course place substantive limitations on the type of experimentation a State may undertake. However, as the plurality admits, the crime of rape is second perhaps only to murder in its gravity. It follows then that Georgia did not approach ***616** such substantive constraints by enacting the statute here in question. See also infra at 2879-2881.

Statutory provisions in criminal justice applied in one part of the country can be carefully watched by other state legislatures, so that the experience of one State becomes available to all. Although human lives are in the balance, it must be remembered that failure to allow flexibility may also jeopardize human lives those of the victims of undeterred criminal conduct. See, infra, at 2880.Our concern for the accused ought not foreclose legislative judgments showing a modicum of consideration for the potential victims.

Three state legislatures have, in the past five years, determined that the taking of human life and the devastating consequences of rape will be minimized if rapists may, in a limited class of cases, be executed for their offenses.[FN10] That these States are presently a minority does not, in my view, make their judgment less worthy of deference. Our concern for human life must not be confined to the guilty; a state legislature is not to be thought insensitive to human values because it acts firmly to protect the lives and related values of the innocent. In this area the choices for legislatures are at best painful and difficult and deserve a high degree of deference. Only last Term Mr. Justice White observed:

> FN10. The statute here in question does not provide the death penalty for any and all rapes. Rather, the jury must find that at least one statutorily defined aggravated circumstance is present. Ga.Code ss 26-3102, 27-2534.1(b)(1), (2), and (7) (Supp.1976).

'It will not do to denigrate these legislative judgments as some form of vestigial savagery or as purely retributive in motivation; for they are solemn judgments, reasonably based, that imposition of the death penalty will save the lives of innocent persons. This concern for life and human values and the sincere efforts of the States to pursue them are matters of the greatest moment with which the judiciary should be most reluctant***617** to interfere.'****2879** Roberts v. Louisiana, supra, 428 U.S., at 355, 96 S.Ct., at 3017 (dissenting opinion). (Emphasis added.)

The question of whether the death penalty is an appropriate punishment for rape is surely an open one. It is arguable that many prospective rapists would be deterred by the possibility that they could suffer death for their offense; it is also arguable that the death penalty would have only minimal deterrent effect.[FN11]It may well be that rape victims would

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become more willing to report the crime and aid in the apprehension of the criminals if they knew that community disapproval of rapists was sufficiently strong to inflict the extreme penalty; or perhaps they would be reluctant to cooperate in the prosecution of rapists if they knew that a conviction might result in the imposition of the death penalty. Quite possibly, the occasional, well-publicized execution of egregious rapists may cause citizens to feel greater security in their daily lives;[FN12] or, on the contrary, it may be that members of a civilized community will suffer the pangs of a heavy conscience because such punishment will be perceived as excessive.[FN13]We cannot know which among ***618** this range of possibilities is correct, but today's holding forecloses the very exploration we have said federalism was intended to foster. It is difficult to believe that Georgia would long remain alone in punishing rape by death if the next decade demonstrated a drastic reduction in its incidence of rape, an increased cooperation by rape victims in the apprehension and prosecution of rapists, and a greater confidence in the rule of law on the part of the populace.

FN11.'The value of capital punishment as a deterrent of crime is a complex factual issue the resolution of which properly rests with the legislatures, which can evaluate the results of statistical studies in terms of their own local conditions and with a flexibility of approach that is not available to the courts. Furman v. Georgia, (408 U.S.,) at 403-405, 92 S.Ct., at 2810-2812 (Burger, C. J., dissenting).' Gregg v. Georgia, 428 U.S., at 186, 96 S.Ct., at 2931 (joint opinion of Stewart, Powell, and Stevens, JJ.).

FN12.'There are many cases in which the sordid, heinous nature of a particular (rape), demeaning, humiliating, and often physically or psychologically traumatic, will call for public condemnation.' Furman v. Georgia, 408 U.S., at 459, 92 S.Ct., at 2839 (Powell, J., dissenting).

FN13. Obviously I have no special competence to make these judgments, but by the same token no other Member of the Court is competent to make a contrary judgment. This is why our system has, until now, left these difficult policy choices to the state legislatures, which may be no wiser, but surely are more attuned to the mores of their communities, then are we.

In order for Georgia's legislative program to develop it must be given time to take effect so that data may be evaluated for comparison with the experience of States which have not enacted death penalty statutes. Today, the Court repudiates the State's solemn judgment on how best to deal with the crime of rape before anyone can know whether the death penalty is an effective deterrent for one of the most horrible of all crimes. And this is done a few short years after Mr. Justice Powell's excellent statement:

'In a period in our country's history when the frequency of (rape) is increasing alarmingly, it is indeed a grave event for the Court to take from the States whatever deterrent and retributive weight the death penalty retains.' Furman v. Georgia, 408 U.S., at 459, 92 S.Ct., at 2839 (dissenting opinion) (footnote omitted).

To deprive States of this authority as the Court does, on the basis that '(t)he current judgment with respect to the death penalty for rape . . . weighs very heavily on the side of rejecting capital punishment as a suitable penalty for raping an adult woman,'ante, at 2867, is impermissibly rash. The current judgment of some Members of this Court has undergone significant change in the short time since Furman.[FN14]Social ****2880** change on great issues generally reveals itself in small increments, and the 'current judgment' of many States could ***619** well be altered on the basis of Georgia's experience, were we to allow its statute to stand.[FN15]

FN14. Indeed as recently as 1971 a year

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before Furman a majority of this Court appeared to have no doubt about the constitutionality of the death penalty. See McGautha v. California, 402 U.S. 183, 91 S.Ct. 1454, 28 L.Ed.2d 711 (1971).

FN15. To paraphrase Mr. Justice Powell, '(w)hat (the Court is) saying, in effect, is that the evolutionary process has come suddenly to an end; that the ultimate wisdom as to the appropriateness of capital punishment (for adult rape) under all circumstances, and for all future generations, has somehow been revealed.' Furman v. Georgia, supra, at 430-431, 92 S.Ct., at 2824 (dissenting opinion).

(b)

The subjective judgment that the death penalty is simply disproportionate to the crime of rape is even more disturbing than the 'objective' analysis discussed supra. The plurality's conclusion on this point is based upon the bare fact that murder necessarily results in the physical death of the victim, while rape does not. Ante, at 2869, 2870. However, no Member of the Court explains why this distinction has relevance, much less constitutional significance. It is, after all, not irrational nor constitutionally impermissible for a legislature to make the penalty more severe than the criminal act it punishes[FN16] in the hope it would deter wrongdoing:

FN16. For example, hardly any thief would be deterred from stealing if the only punishment upon being caught were return of the money stolen.

'We may not require the legislature to select the least severe penalty possible so long as the penalty selected is not cruelly inhumane or disproportionate to the crime involved.' Gregg v. Georgia, 428 U.S., at 175, 96 S.Ct., at 2926.

Accord, Furman v. Georgia, supra, 408 U.S., at 451, 92 S.Ct., at 2834 (Powell, J., dissenting).

It begs the question to state, as does the plurality opinion:

'Life is over for the victim of the murderer; for the rape victim, life may not be nearly so happy as it was, but it is not over and normally is not beyond repair.'Ante, at 2869.

***620** Until now, the issue under the Eighth Amendment has not been the state of any particular victim after the crime, but rather whether the punishment imposed is grossly disproportionate to the evil committed by the perpetrator. See Gregg v. Georgia, supra, at 173, 96 S.Ct., at 2925; Furman v. Georgia, supra, at 458, 92 S.Ct., at 2838 (Powell, J., dissenting). As a matter of constitutional principle, that test cannot have the primitive simplicity of 'life for life, eye for eye, tooth for tooth.'Rather States must be permitted to engage in a more sophisticated weighing of values in dealing with criminal activity which consistently poses serious danger of death or grave bodily harm. If innocent life and limb are to be preserved I see no constitutional barrier in punishing by death all who engage in such activity, regardless of whether the risk comes to fruition in any particular instance. See Packer, 77 Harv.L.Rev., at 1077-1079.

Only one year ago the Court held it constitutionally permissible to impose the death penalty for the crime of murder, provided that certain procedural safeguards are followed. Compare Gregg v. Georgia, supra; Proffitt v. Florida, 428 U.S. 242, 96 S.Ct. 2960, 49 L.Ed.2d 913 (1976), and Jurek v. Texas, 428 U.S. 262, 96 S.Ct. 2950, 49 L.Ed.2d 929 (1976), with Roberts v. Louisiana, 428 U.S. 325, 96 S.Ct. 3001, 49 L.Ed.2d 974 (1976), and Woodson v. North Carolina, 428 U.S. 280, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976). Today, the plurality readily admits that '(s)hort of homicide, (rape) is the 'ultimate violation of self."Ante, at 2868. Moreover, as stated by Mr. Justice Powell:

'The threat of serious injury is implicit in the definition of rape; the victim is either forced into submission by physical violence or by the threat of viol-

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ence.' Furman v. Georgia, supra, 408 U.S., at 460, 92 S.Ct., at 2839 (dissenting opinion).

**2881 Rape thus is not a crime 'light years' removed from murder in the degree of its heinousness; it certainly poses a serious potential danger to the life and safety of innocent victims apart from the devastating psychic consequences. It would *621 seem to follow therefore that, affording the States proper leeway under the broad standard of the Eighth Amendment, [FN17] murder is properly punishable by death, rape should be also, if that is the considered judgment of the legislators.

> FN17. Mr. Justice Stewart, Mr. Justice Powell, and Mr. Justice Stevens in Gregg v. Georgia noted: '(I)n assessing a punishment selected by a democratically elected legislature against the constitutional measure (of the Eighth Amendment), we presume its validity. . . . (A) heavy burden rests on those who would attack the judgment of the representatives of the people.' 428 U.S., at 175, 96 S.Ct., at 2926 (emphasis added). Accord, Furman v. Georgia, supra, 408 U.S., at 451, 92 S.Ct., at 2834 (Powell, J., dissenting).
>
> The reason for this special deference to state legislative enactments was described:
>
> 'This is true in part because the constitutional test is interwined with an assessment of contemporary standards and the legislative judgment weighs heavily in ascertaining such standards. '(I)n a democratic society legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people.' Furman v. Georgia, (408 U.S.,) at 383, 92 S.Ct., at 2800 (Burger, C. J., dissenting).' 428 U.S., at 175-176, 96 S.Ct., at 2926.

The Court's conclusion to the contrary is very disturbing indeed. The clear implication of today's holding appears to be that the death penalty may be properly imposed only as to crimes resulting in death of the victim. This casts serious doubt upon the constitutional validity of statutes imposing the death penalty for a variety of conduct which, though dangerous, may not necessarily result in any immediate death, e. g., treason, airplane hijacking, and kidnaping. In that respect, today's holding does even more harm than is initially apparent. We cannot avoid taking judicial notice that crimes such as airplane hijacking, kidnaping, and mass terrorist activity constitute a serious and increasing danger to the safety of the public. It would be unfortunate indeed if the effect of today's holding were to inhibit States and the Federal Government from experimenting with various remedies including possibly imposition of the penalty of death to prevent and deter such crimes.

*622 Some sound observations, made only a few years ago, deserve repetition:

'Our task here, as must so frequently be emphasized and re-emphasized, is to pass upon the constitutionality of legislation that has been enacted and that is challenged. This is the sole task for judges. We should not allow our personal preferences as to the wisdom of legislative and congressional action, or our distaste for such action, to guide our judicial decision in cases such as these. The temptations to cross that policy line are very great. In fact, as today's decision reveals, they are almost irresistible.' Furman v. Georgia, 408 U.S., at 411, 92 S.Ct., at 2815 (Blackmun, J., dissenting).

Whatever our individual views as to the wisdom of capital punishment, I cannot agree that it is constitutionally impermissible for a state legislature to make the 'solemn judgment' to impose such penalty for the crime of rape. Accordingly, I would leave to the States the task of legislating in this area of the law.

U.S.Ga., 1977.
Coker v. Georgia
433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982

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Supreme Court of the United States
Daryl Renard ATKINS, Petitioner,
v.
VIRGINIA.
No. 00-8452.

Argued Feb. 20, 2002.
Decided June 20, 2002.

Defendant was convicted, in the Circuit Court, York County, N. Prentis Smiley, Jr., J., of capital murder and was sentenced to death. The Virginia Supreme Court affirmed the conviction, 257 Va. 160, 510 S.E.2d 445, and sentence, 260 Va. 375, 534 S.E.2d 312.Certiorari was granted. The Supreme Court, Justice Stevens, held that executions of mentally retarded criminals were "cruel and unusual punishments" prohibited by Eighth Amendment, abrogating Penry v. Lynaugh, 109 S.Ct. 2934.

Reversed and remanded.

Chief Justice Rehnquist dissented and filed opinion in which Justices Scalia and Thomas joined.

Justice Scalia dissented and filed opinion in which Chief Justice Rehnquist and Justice Thomas joined.

West Headnotes

[1] Sentencing and Punishment 350H 1482

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1482 k. Proportionality. Most Cited Cases
Punishment is "excessive," and therefore prohibited by Eighth Amendment, if it is not graduated and proportioned to offense. U.S.C.A. Const.Amend. 8.

[2] Sentencing and Punishment 350H 1435

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(A) In General
350Hk1434 Scope of Prohibition
350Hk1435 k. In General. Most Cited Cases
Claim that punishment is unconstitutionally excessive is judged by currently prevailing standards of decency. U.S.C.A. Const.Amend. 8.

[3] Sentencing and Punishment 350H 1480

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1480 k. In General. Most Cited Cases
(Formerly 110k1480)

Sentencing and Punishment 350H 1483

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of Sentence
350Hk1483 k. Punishment Authorized by Statute. Most Cited Cases
(Formerly 110k1483)
Determination of whether punishment in particular case is unconstitutionally excessive in light of evolving community standards should be informed by objective factors to maximum possible extent, with clearest and most reliable one being legislation enacted by country's legislatures. U.S.C.A. Const.Amend. 8.

[4] Criminal Law 110 1134.75

110 Criminal Law
110XXIV Review
110XXIV(L) Scope of Review in General
110XXIV(L)8 Sentencing
110k1134.75 k. In General. Most Cited Cases
(Formerly 110k1134(3))

Sentencing and Punishment 350H 1480

350H Sentencing and Punishment
350HVII Cruel and Unusual Punishment in General
350HVII(E) Excessiveness and Proportionality of

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Sentence
350Hk1480 k. In General. Most Cited Cases
In deciding whether punishment in particular case is unconstitutionally excessive, Supreme Court may bring its own judgment to bear by asking whether there is reason to agree or disagree with judgment reached by citizenry and its legislators. U.S.C.A. Const.Amend. 8.

[5] Sentencing and Punishment 350H 1642

350H Sentencing and Punishment
350HVIII The Death Penalty
350HVIII(B) Persons Eligible
350Hk1642 k. Mentally Retarded Persons. Most Cited Cases
Execution of mentally retarded criminal is unconstitutionally "cruel and unusual punishment," abrogating Penry v. Lynaugh, 109 S.Ct. 2934.

***2242 *304 Syllabus** FN*

FN* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 50 L.Ed. 499.

Petitioner Atkins was convicted of capital murder and related crimes by a Virginia jury and sentenced to death. Affirming, the Virginia Supreme Court relied on *Penry v. Lynaugh*, 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256, in rejecting Atkins' contention that he could not be sentenced to death because he is mentally retarded.

**2243 *Held:* Executions of mentally retarded criminals are "cruel and unusual punishments" prohibited by the Eighth Amendment. Pp. 2246-2252.

(a) A punishment is "excessive," and therefore prohibited by the Amendment, if it is not graduated and proportioned to the offense. *E.g.*, *Weems v. United States*, 217 U.S. 349, 367, 30 S.Ct. 544, 54 L.Ed. 793. An excessiveness claim is judged by currently prevailing standards of decency. *Trop v. Dulles*, 356 U.S. 86, 100-101, 78 S.Ct. 590, 2 L.Ed.2d 630. Proportionality review under such evolving standards should be informed by objective factors to the maximum possible extent, see, *e.g.*, *Harmelin v. Michigan*, 501 U.S. 957, 1000, 111 S.Ct. 2680, 115 L.Ed.2d 836, the clearest and most reliable of which is the legislation enacted by the country's legislatures, *Penry*, 492 U.S., at 331, 109 S.Ct. 2934. In addition to objective evidence, the Constitution contemplates that this Court will bring its own judgment to bear by asking whether there is reason to agree or disagree with the judgment reached by the citizenry and its legislators, *e.g.*, *Coker v. Georgia*, 433 U.S. 584, 597, 97 S.Ct. 2861, 53 L.Ed.2d 982.Pp. 2246-2248.

(b) Much has changed since *Penry's* conclusion that the two state statutes then existing that prohibited such executions, even when added to the 14 States that had rejected capital punishment completely, did not provide sufficient evidence of a consensus. 492 U.S., at 334, 109 S.Ct. 2934. Subsequently, a significant number of States have concluded that death is not a suitable punishment for a mentally retarded criminal, and similar bills have passed at least one house in other States. It is not so much the number of these States that is significant, but the consistency of the direction of change. Given that anticrime legislation is far more popular than legislation protecting violent criminals, the large number of States prohibiting the execution of mentally retarded persons (and the complete absence of legislation reinstating such executions) provides powerful evidence that today society views mentally retarded offenders as categorically less culpable than the average criminal. The evidence carries even greater force when it is noted that the legislatures addressing the issue have voted overwhelmingly in favor of the prohibition. *305 Moreover, even in States allowing the execution of mentally retarded offenders, the practice is uncommon. Pp. 2248-2250.

(c) An independent evaluation of the issue reveals no reason for the Court to disagree with the legislative consensus. Clinical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills. Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial, but, by definition, they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand others' reactions. Their deficiencies do not warrant an exemption from criminal sanctions, but diminish their personal culpability. In light of these deficiencies, the Court's death penalty jurisprudence provides two reasons to agree with the legislative consensus. First, there is a serious question whether either justification underpinning the death penalty-retribution and deterrence of capital crimes-applies to

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mentally retarded offenders. As to retribution, the severity of the appropriate punishment necessarily depends on the offender's culpability. If the culpability of the average murderer is insufficient to justify imposition of death, see *Godfrey v. Georgia*, 446 U.S. 420, 433, 100 S.Ct. 1759, 64 L.Ed.2d 398, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution. As to deterrence, the same cognitive and behavioral impairments that make mentally retarded defendants less morally culpable ****2244** also make it less likely that they can process the information of the possibility of execution as a penalty and, as a result, control their conduct based upon that information. Nor will exempting the mentally retarded from execution lessen the death penalty's deterrent effect with respect to offenders who are not mentally retarded. Second, mentally retarded defendants in the aggregate face a special risk of wrongful execution because of the possibility that they will unwittingly confess to crimes they did not commit, their lesser ability to give their counsel meaningful assistance, and the facts that they are typically poor witnesses and that their demeanor may create an unwarranted impression of lack of remorse for their crimes. Pp. 2250-2252.

260 Va. 375, 534 S.E.2d 312, reversed and remanded.

STEVENS, J., delivered the opinion of the Court, in which O'CONNOR, KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. REHNQUIST, C.J., filed a dissenting opinion, in which SCALIAand THOMAS, JJ., joined, *post,* p. 2252. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C.J., and THOMAS, J., joined, *post,* p. 2259.

***306** James W. Ellis, for the petitioner.

Pamela A. Rumpz, for the respondent.

For U.S. Supreme Court briefs, see:2001 WL 1663817 (Pet.Brief)2002 WL 63726 (Resp.Brief)2002 WL 225883 (Reply.Brief)

Justice STEVENS delivered the opinion of the Court.

Those mentally retarded persons who meet the law's requirements for criminal responsibility should be tried and punished when they commit crimes. Because of their disabilities in areas of reasoning, judgment, and control of their impulses, however, they do not act with the level of moral culpability that characterizes the most serious adult criminal conduct. Moreover, their impairments can jeopardize the ***307** reliability and fairness of capital proceedings against mentally retarded defendants. Presumably for these reasons, in the 13 years since we decided *Penry v. Lynaugh*, 492 U.S. 302, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989), the American public, legislators, scholars, and judges have deliberated over the question whether the death penalty should ever be imposed on a mentally retarded criminal. The consensus reflected in those deliberations informs our answer to the question presented by this case: whether such executions are "cruel and unusual punishments" prohibited by the Eighth Amendment to the Federal Constitution.

I

Petitioner, Daryl Renard Atkins, was convicted of abduction, armed robbery, and capital murder, and sentenced to death. At approximately midnight on August 16, 1996, Atkins and William Jones, armed with a semiautomatic handgun, abducted Eric Nesbitt, robbed him of the money on his person, drove him to an automated teller machine in his pickup truck where cameras recorded their withdrawal of additional cash, then took him to an isolated location where he was shot eight times and killed.

Jones and Atkins both testified in the guilt phase of Atkins' trial.[FN1] Each confirmed most of the details in the other's account of the incident, with the important exception that each stated that the other had actually shot and killed Nesbitt. Jones' testimony, which was both more coherent and credible than Atkins', was obviously credited by the jury and was ****2245** sufficient to establish Atkins' guilt.[FN2] At the penalty ***308** phase of the trial, the State introduced victim impact evidence and proved two aggravating circumstances: future dangerousness and "vileness of the offense." To prove future dangerousness, the State relied on Atkins' prior felony convictions as well as the testimony of four victims of earlier robberies and assaults. To prove the second aggravator, the prosecution relied upon the trial record, including pictures of the deceased's body and the autopsy report.

FN1. Initially, both Jones and Atkins were indicted for capital murder. The prosecution ultimately permitted Jones to plead guilty to first-degree murder in exchange for his testimony against Atkins. As a result of the plea, Jones became ineligible to receive the death penalty.

FN2. Highly damaging to the credibility of Atkins' testimony was its substantial inconsistency with the statement he gave to the police upon his

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arrest. Jones, in contrast, had declined to make an initial statement to the authorities.

In the penalty phase, the defense relied on one witness, Dr. Evan Nelson, a forensic psychologist who had evaluated Atkins before trial and concluded that he was "mildly mentally retarded." [FN3] His conclusion was based on interviews with people who knew Atkins,[FN4] a review of school and court ***309** records, and the administration of a standard intelligence test which indicated that Atkins had a full scale IQ of 59.[FN5]

FN3. The American Association on Mental Retardation (AAMR) defines mental retardation as follows: "*Mental retardation* refers to substantial limitations in present functioning. It is characterized by significantly subaverage intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication, self-care, home living, social skills, community use, self-direction, health and safety, functional academics, leisure, and work. Mental retardation manifests before age 18." Mental Retardation: Definition, Classification, and Systems of Supports 5 (9th ed.1992).

The American Psychiatric Association's definition is similar: "The essential feature of Mental Retardation is significantly subaverage general intellectual functioning (Criterion A) that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication, self-care, home living, social/interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health, and safety (Criterion B). The onset must occur before age 18 years (Criterion C). Mental Retardation has many different etiologies and may be seen as a final common pathway of various pathological processes that affect the functioning of the central nervous system." Diagnostic and Statistical Manual of Mental Disorders 41 (4th ed.2000). "Mild" mental retardation is typically used to describe people with an IQ level of 50-55 to approximately 70. *Id.*, at 42-43.

FN4. The doctor interviewed Atkins, members of his family, and deputies at the jail where he had been incarcerated for the preceding 18 months. Dr. Nelson also reviewed the statements that Atkins had given to the police and the investigative reports concerning this case.

FN5. Dr. Nelson administered the Wechsler Adult Intelligence Scales test (WAIS-III), the standard instrument in the United States for assessing intellectual functioning. AAMR, Mental Retardation, *supra.* The WAIS-III is scored by adding together the number of points earned on different subtests, and using a mathematical formula to convert this raw score into a scaled score. The test measures an intelligence range from 45 to 155. The mean score of the test is 100, which means that a person receiving a score of 100 is considered to have an average level of cognitive functioning. A. Kaufman & E. Lichtenberger, Essentials of WAISIII Assessment 60 (1999). It is estimated that between 1 and 3 percent of the population has an IQ between 70 and 75 or lower, which is typically considered the cutoff IQ score for the intellectual function prong of the mental retardation definition. 2 Kaplan & Sadock's Comprehensive Textbook of Psychiatry 2952 (B. Sadock & V. Sadock eds. 7th ed.2000).

At the sentencing phase, Dr. Nelson testified: "[Atkins'] full scale IQ is 59. Compared to the population at large, that means less than one percentile .... Mental retardation is a relatively rare thing. It's about one percent of the population." App. 274. According to Dr. Nelson, Atkins' IQ score "would automatically qualify for Social Security disability income." *Id.*, at 280. Dr. Nelson also indicated that of the over 40 capital defendants that he had evaluated, Atkins was only the second individual who met the criteria for mental retardation. *Id.*, at 310. He testified that, in his opinion, Atkins' limited intellect had been a consistent feature throughout his life, and that his IQ score of 59 is not an "aberration, malingered result, or invalid test score." *Id.*, at 308.

The jury sentenced Atkins to death, but the Virginia Supreme Court ordered a second****2246** sentencing hearing because the trial court had used a misleading verdict form. 257 Va. 160, 510 S.E.2d 445 (1999). At the resentencing, Dr. Nelson again testified. The State presented an expert

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rebuttal witness, Dr. Stanton Samenow, who expressed the opinion that Atkins was not mentally retarded, but rather was of "average intelligence, at least," and diagnosable as having antisocial personality disorder.[FN6] App. 476. The jury again sentenced Atkins to death.

> FN6. Dr. Samenow's testimony was based upon two interviews with Atkins, a review of his school records, and interviews with correctional staff. He did not administer an intelligence test, but did ask Atkins questions taken from the 1972 version of the Wechsler Memory Scale. *Id.*, at 524-525, 529. Dr. Samenow attributed Atkins' "academic performance [that was] by and large terrible" to the fact that he "is a person who chose to pay attention sometimes, not to pay attention others, and did poorly because he did not want to do what he was required to do." *Id.*, at 480-481.

***310** The Supreme Court of Virginia affirmed the imposition of the death penalty. 260 Va. 375, 385, 534 S.E.2d 312, 318 (2000). *Atkins* did not argue before the Virginia Supreme Court that his sentence was disproportionate to penalties imposed for similar crimes in Virginia, but he did contend "that he is mentally retarded and thus cannot be sentenced to death." *Id.*, at 386, 534 S.E.2d, at 318. The majority of the state court rejected this contention, relying on our holding in *Penry*. 260 Va., at 387, 534 S.E.2d, at 319. The court was "not willing to commute Atkins' sentence of death to life imprisonment merely because of his IQ score." *Id.*, at 390, 534 S.E.2d, at 321.

Justice Hassell and Justice Koontz dissented. They rejected Dr. Samenow's opinion that Atkins possesses average intelligence as "incredulous as a matter of law," and concluded that "the imposition of the sentence of death upon a criminal defendant who has the mental age of a child between the ages of 9 and 12 is excessive." *Id.*, at 394, 395-396, 534 S.E.2d, at 323-324. In their opinion, "it is indefensible to conclude that individuals who are mentally retarded are not to some degree less culpable for their criminal acts. By definition, such individuals have substantial limitations not shared by the general population. A moral and civilized society diminishes itself if its system of justice does not afford recognition and consideration of those limitations in a meaningful way." *Id.*, at 397, 534 S.E.2d, at 325.

Because of the gravity of the concerns expressed by the dissenters, and in light of the dramatic shift in the state legislative landscape that has occurred in the past 13 years, we granted certiorari to revisit the issue that we first addressed in the *Penry* case. 533 U.S. 976, 122 S.Ct. 24, 150 L.Ed.2d 805 (2001).

***311** II

[1] The Eighth Amendment succinctly prohibits "[e]xcessive" sanctions. It provides: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." In *Weems v. United States*, 217 U.S. 349, 30 S.Ct. 544, 54 L.Ed. 793 (1910), we held that a punishment of 12 years jailed in irons at hard and painful labor for the crime of falsifying records was excessive. We explained "that it is a precept of justice that punishment for crime should be graduated and proportioned to [the] offense." *Id.*, at 367, 30 S.Ct. 544. We have repeatedly applied this proportionality precept in later cases interpreting the Eighth Amendment. See *Harmelin v. Michigan*, 501 U.S. 957, 997-998, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (KENNEDY, J., concurring in part and concurring in judgment); see also *id.*, at 1009-1011, 111 S.Ct. 2680 (White, J., dissenting).[FN7] Thus, even ****2247** though "imprisonment for ninety days is not, in the abstract, a punishment which is either cruel or unusual," it may not be imposed as a penalty for "the 'status' of narcotic addiction," *Robinson v. California*, 370 U.S. 660, 666-667, 82 S.Ct. 1417, 8 L.Ed.2d 758 (1962), because such a sanction would be excessive. As Justice Stewart explained in *Robinson:* "Even one day in prison would be a cruel and unusual punishment for the 'crime' of having a common cold." *Id.*, at 667, 82 S.Ct. 1417.

> FN7. Thus, we have read the text of the Amendment to prohibit all excessive punishments, as well as cruel and unusual punishments that may or may not be excessive.

[2] A claim that punishment is excessive is judged not by the standards that prevailed in 1685 when Lord Jeffreys presided over the "Bloody Assizes" or when the Bill of Rights was adopted, but rather by those that currently prevail. As Chief Justice Warren explained in his opinion in *Trop v. Dulles*, 356 U.S. 86, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958): "The basic concept underlying the Eighth Amendment is nothing less than the dignity of man.... The Amendment must draw its meaning from the ***312** evolving standards of decency that mark the progress of a maturing society." *Id.*, at 100-101, 78 S.Ct. 590.

[3] Proportionality review under those evolving standards

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should be informed by " 'objective factors to the maximum possible extent,' " see *Harmelin*, 501 U.S., at 1000, 111 S.Ct. 2680 (quoting *Rummel v. Estelle*, 445 U.S. 263, 274-275, 100 S.Ct. 1133, 63 L.Ed.2d 382 (1980)). We have pinpointed that the "clearest and most reliable objective evidence of contemporary values is the legislation enacted by the country's legislatures." *Penry*, 492 U.S., at 331, 109 S.Ct. 2934. Relying in part on such legislative evidence, we have held that death is an impermissibly excessive punishment for the rape of an adult woman, *Coker v. Georgia*, 433 U.S. 584, 593-596, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977), or for a defendant who neither took life, attempted to take life, nor intended to take life, *Enmund v. Florida*, 458 U.S. 782, 789-793, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982). In *Coker*, we focused primarily on the then-recent legislation that had been enacted in response to our decision 10 years earlier in *Furman v. Georgia*, 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972)*(per curiam)*, to support the conclusion that the "current judgment," though "not wholly unanimous," weighed very heavily on the side of rejecting capital punishment as a "suitable penalty for raping an adult woman." *Coker*, 433 U.S., at 596, 97 S.Ct. 2861. The "current legislative judgment" relevant to our decision in *Enmund* was less clear than in *Coker* but "nevertheless weigh[ed] on the side of rejecting capital punishment for the crime at issue." *Enmund*, 458 U.S., at 793, 102 S.Ct. 3368.

[4] We also acknowledged in *Coker* that the objective evidence, though of great importance, did not "wholly determine" the controversy, "for the Constitution contemplates that in the end our own judgment will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment." 433 U.S., at 597, 97 S.Ct. 2861. For example, in *Enmund*, we concluded by expressing our own judgment about the issue:

"For purposes of imposing the death penalty, Enmund's criminal *culpability* must be limited to his participation ***313** in the robbery, and his punishment must be tailored to his personal responsibility and moral guilt. Putting Enmund to death to avenge two killings that he did not commit and had no intention of committing or causing does not measurably contribute to the retributive end of ensuring that the criminal gets his just deserts. This is the judgment of most of *the legislatures that have recently addressed the matter, and we have no reason to disagree with that judgment* for purposes of construing and applying the Eighth Amendment." 458 U.S., at 801, 102 S.Ct. 3368 (emphasis added).

Thus, in cases involving a consensus, our own judgment is "brought to bear," *Coker*, 433 U.S., at 597, 97 S.Ct. 2861, by asking whether there is reason to disagree with ****2248** the judgment reached by the citizenry and its legislators.

Guided by our approach in these cases, we shall first review the judgment of legislatures that have addressed the suitability of imposing the death penalty on the mentally retarded and then consider reasons for agreeing or disagreeing with their judgment.

III

The parties have not called our attention to any state legislative consideration of the suitability of imposing the death penalty on mentally retarded offenders prior to 1986. In that year, the public reaction to the execution of a mentally retarded murderer in Georgia [FN8] apparently led to the enactment***314** of the first state statute prohibiting such executions.[FN9] In 1988, when Congress enacted legislation reinstating the federal death penalty, it expressly provided that a "sentence of death shall not be carried out upon a person who is mentally retarded." [FN10] In 1989, Maryland enacted a similar prohibition.[FN11] It was in that year that we decided *Penry*, and concluded that those two state enactments, "even when added to the 14 States that have rejected capital punishment completely, do not provide sufficient evidence at present of a national consensus." 492 U.S., at 334, 109 S.Ct. 2934.

FN8. Jerome Bowden, who was identified as having mental retardation when he was 14 years old, was scheduled for imminent execution in Georgia in June 1986. The Georgia Board of Pardons and Paroles granted a stay following public protests over his execution. A psychologist selected by the State evaluated Bowden and determined that he had an IQ of 65, which is consistent with mental retardation. Nevertheless, the board lifted the stay and Bowden was executed the following day. The board concluded that Bowden understood the nature of his crime and his punishment and therefore that execution, despite his mental deficiencies, was permissible. See Montgomery, Bowden's Execution Stirs Protest, Atlanta Journal, Oct. 13, 1986, p. A1.

FN9. Ga.Code Ann. § 17-7-131(j) (Supp.1988).

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FN10. The Anti-Drug Abuse Act of 1988, Pub.L. 100-690, § 7001(*l*), 102 Stat. 4390, 21 U.S.C. § 848(*l*). Congress expanded the federal death penalty law in 1994. It again included a provision that prohibited any individual with mental retardation from being sentenced to death or executed. Federal Death Penalty Act of 1994, 18 U.S.C. § 3596(c).

FN11. Md. Ann.Code, Art. 27, § 412(f)(1) (1989).

Much has changed since then. Responding to the national attention received by the Bowden execution and our decision in *Penry*, state legislatures across the country began to address the issue. In 1990, Kentucky and Tennessee enacted statutes similar to those in Georgia and Maryland, as did New Mexico in 1991, and Arkansas, Colorado, Washington, Indiana, and Kansas in 1993 and 1994.[FN12] In 1995, when New York reinstated its death penalty, it emulated the Federal Government by expressly exempting the mentally retarded.[FN13] Nebraska followed suit in 1998.[FN14] There appear ***315** to have been no similar enactments during the next two years, but in 2000 and 2001 six more States-South Dakota, Arizona, Connecticut, Florida, Missouri, and North Carolina-joined the procession.[FN15] The Texas Legislature unanimously****2249** adopted a similar bill,[FN16] and bills have passed at least one house in other States, including Virginia and Nevada.[FN17]

FN12. Ky.Rev.Stat. Ann. §§ 532.130, 532.135, 532.140; Tenn.Code Ann. § 39-13-203; N.M. Stat. Ann. § 31-20A-2.1; Ark.Code Ann. § 5-4-618; Colo.Rev.Stat. § 16-9-401; Wash. Rev.Code § 10.95.030; Ind.Code §§ 35-36-9-2 through 35-36-9-6; Kan. Stat. Ann. § 21-4623.

FN13. N.Y.Crim. Proc. Law § 400.27. However, New York law provides that a sentence of death "may not be set aside ... upon the ground that the defendant is mentally retarded" if "the killing occurred while the defendant was confined or under custody in a state correctional facility or local correctional institution." N.Y.Crim. Proc. Law § 400.27.12(d) (McKinney 2001-2002 Interim Pocket Part).

FN14. Neb.Rev.Stat. § 28-105.01.

FN15. S.D. Codified Laws § 23A-27A-26.1; Ariz.Rev.Stat. Ann. § 13-703.02; Conn. Gen.Stat. § 53a-46a; Fla. Stat. § 921.137; Mo.Rev.Stat. § 565.030; 2001-346 N.C. Sess. Laws p. 45.

FN16. House Bill No. 236 passed the Texas House on April 24, 2001, and the Senate version, S. 686, passed the Texas Senate on May 16, 2001. Governor Perry vetoed the legislation on June 17, 2001. In his veto statement, the Texas Governor did not express dissatisfaction with the principle of categorically excluding the mentally retarded from the death penalty. In fact, he stated: "We do not execute mentally retarded murderers today." See Veto Proclamation for H.B. No. 236. Instead, his motivation to veto the bill was based upon what he perceived as a procedural flaw: "My opposition to this legislation focuses on a serious legal flaw in the bill. House Bill No. 236 would create a system whereby the jury and judge are asked to make the same determination based on two different sets of facts .... Also of grave concern is the fact that the provision that sets up this legally flawed process never received a public hearing during the legislative process." *Ibid.*

FN17. Virginia Senate Bill No. 497 (2002); House Bill No. 957 (2002); see also Nevada Assembly Bill 353 (2001). Furthermore, a commission on capital punishment in Illinois has recently recommended that Illinois adopt a statute prohibiting the execution of mentally retarded offenders. Report of the Governor's Commission on Capital Punishment 156 (Apr. 2002).

It is not so much the number of these States that is significant, but the consistency of the direction of change.[FN18] Given the well-known fact that anticrime legislation is far more popular than legislation providing protections for persons guilty of violent crime, the large number of States prohibiting the execution of mentally retarded persons (and the ***316** complete absence of States passing legislation reinstating the power to conduct such executions) provides powerful evidence that today our society views mentally retarded offenders as categorically less culpable than the average criminal. The evidence carries even greater force when it is noted that the legislatures that have addressed the issue have voted overwhelmingly in

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favor of the prohibition.[FN19] Moreover, even in those States that allow the execution of mentally retarded offenders, the practice is uncommon. Some States, for example New Hampshire and New Jersey, continue to authorize executions, but none have been carried out in decades. Thus there is little need to pursue legislation barring the execution of the mentally retarded in those States. And it appears that even among those States that regularly execute offenders and that have no prohibition with regard to the mentally retarded, only five have executed offenders possessing a known IQ less than 70 since we decided *Penry*.[FN20] The practice, therefore, has become truly unusual, and it is fair to say that a national consensus has developed against it.[FN21]

FN18. A comparison to *Stanford v. Kentucky*, 492 U.S. 361, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989), in which we held that there was no national consensus prohibiting the execution of juvenile offenders over age 15, is telling. Although we decided *Stanford* on the same day as *Penry*, apparently only two state legislatures have raised the threshold age for imposition of the death penalty. Mont.Code Ann. § 45-5-102 (1999); Ind.Code § 35-50-2-3 (1998).

FN19. App. D to Brief for AAMR et al. as *Amici Curiae*.

FN20. Those States are Alabama, Texas, Louisiana, South Carolina, and Virginia. D. Keyes, W. Edwards, & R. Perske, People with Mental Retardation are Dying Legally, 35 Mental Retardation (Feb.1997) (updated by Death Penalty Information Center, available at http://www.advocacyone.org/deathpenalty. html (as visited June 18, 2002).

FN21. Additional evidence makes it clear that this legislative judgment reflects a much broader social and professional consensus. For example, several organizations with germane expertise have adopted official positions opposing the imposition of the death penalty upon a mentally retarded offender. See Brief for American Psychological Association et al. as *Amici Curiae;* Brief for AAMR et al. as *Amici Curiae.* In addition, representatives of widely diverse religious communities in the United States, reflecting Christian, Jewish, Muslim, and Buddhist traditions, have filed an *amicus curiae* brief explaining that even though their views about the death penalty differ, they all "share a conviction that the execution of persons with mental retardation cannot be morally justified." Brief for United States Catholic Conference et al. as *Amici Curiae* 2. Moreover, within the world community, the imposition of the death penalty for crimes committed by mentally retarded offenders is overwhelmingly disapproved. Brief for European Union as *Amicus Curiae* 4. Finally, polling data shows a widespread consensus among Americans, even those who support the death penalty, that executing the mentally retarded is wrong. Bonner & Rimer, Executing the Mentally Retarded Even as Laws Begin to Shift, N.Y. Times, Aug. 7, 2000, p. A1; App. B to Brief for AAMR, et al. as *Amici Curiae* (appending approximately 20 state and national polls on the issue). Although these factors are by no means dispositive, their consistency with the legislative evidence lends further support to our conclusion that there is a consensus among those who have addressed the issue. See *Thompson v. Oklahoma*, 487 U.S. 815, 830, 831, n. 31, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (considering the views of "respected professional organizations, by other nations that share our Anglo-American heritage, and by the leading members of the Western European community").

**2250 *317 To the extent there is serious disagreement about the execution of mentally retarded offenders, it is in determining which offenders are in fact retarded. In this case, for instance, the Commonwealth of Virginia disputes that Atkins suffers from mental retardation. Not all people who claim to be mentally retarded will be so impaired as to fall within the range of mentally retarded offenders about whom there is a national consensus. As was our approach in *Ford v. Wainwright*, 477 U.S. 399, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986), with regard to insanity, "we leave to the State[s] the task of developing appropriate ways to enforce the constitutional restriction upon [their] execution of sentences." *Id.*, at 405, 416-417, 106 S.Ct. 2595.[FN22]

FN22. The statutory definitions of mental retardation are not identical, but generally conform to the clinical definitions set forth in n. 3, *supra*.

IV

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This consensus unquestionably reflects widespread judgment about the relative culpability of mentally retarded offenders, and the relationship between mental retardation and the penological purposes served by the death penalty. Additionally, it suggests that some characteristics of mental retardation undermine the strength of the procedural protections that our capital jurisprudence steadfastly guards.

318** As discussed above, clinical definitions of mental retardation require not only subaverage intellectual functioning, but also significant limitations in adaptive skills such as communication, self-care, and self-direction that became manifest before age 18. Mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial. Because of their impairments, however, by definition they have diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others.[FN23] There is no evidence that they are more likely to engage in criminal conduct than others, but there is abundant evidence that they often act on impulse rather than pursuant to a premeditated plan, and that in group settings they are followers rather than leaders.[FN24] Their deficiencies*2251** do not warrant an exemption from criminal sanctions, but they do diminish their personal culpability.

FN23. J. McGee & F. Menolascino, The Evaluation of Defendants with Mental Retardation in the Criminal Justice System, in The Criminal Justice System and Mental Retardation 55, 58-60 (R. Conley, R. Luckasson, & G. Bouthilet eds.1992); Appelbaum & Appelbaum, Criminal-Justice Related Competencies in Defendants with Mental Retardation, 14 J. of Psychiatry & L. 483, 487-489 (Winter 1994).

FN24. See, *e.g.*, Ellis & Luckasson, Mentally Retarded Criminal Defendants, 53 Geo. Wash. L.Rev. 414, 429 (1985); Levy-Shiff, Kedem, & Sevillia, Ego Identity in Mentally Retarded Adolescents, 94 Am. J. Mental Retardation 541, 547 (1990); Whitman, Self Regulation and Mental Retardation, 94 Am. J. Mental Retardation 347, 360 (1990); Everington & Fulero, Competence to Confess: Measuring Understanding and Suggestibility of Defendants with Mental Retardation, 37 Mental Retardation 212, 212-213, 535 (1999) (hereinafter Everington & Fulero).

In light of these deficiencies, our death penalty jurisprudence provides two reasons consistent with the legislative consensus that the mentally retarded should be categorically excluded from execution. First, there is a serious question as to whether either justification that we have recognized as ***319** a basis for the death penalty applies to mentally retarded offenders. *Gregg v. Georgia*, 428 U.S. 153, 183, 96 S.Ct. 2909, 49 L.Ed.2d 859, (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.), identified "retribution and deterrence of capital crimes by prospective offenders" as the social purposes served by the death penalty. Unless the imposition of the death penalty on a mentally retarded person "measurably contributes to one or both of these goals, it 'is nothing more than the purposeless and needless imposition of pain and suffering,' and hence an unconstitutional punishment." *Enmund*, 458 U.S., at 798, 102 S.Ct. 3368.

With respect to retribution-the interest in seeing that the offender gets his "just deserts"-the severity of the appropriate punishment necessarily depends on the culpability of the offender. Since *Gregg*, our jurisprudence has consistently confined the imposition of the death penalty to a narrow category of the most serious crimes. For example, in *Godfrey v. Georgia*, 446 U.S. 420, 100 S.Ct. 1759, 64 L.Ed.2d 398 (1980), we set aside a death sentence because the petitioner's crimes did not reflect "a consciousness materially more 'depraved' than that of any person guilty of murder." *Id.*, at 433, 100 S.Ct. 1759. If the culpability of the average murderer is insufficient to justify the most extreme sanction available to the State, the lesser culpability of the mentally retarded offender surely does not merit that form of retribution. Thus, pursuant to our narrowing jurisprudence, which seeks to ensure that only the most deserving of execution are put to death, an exclusion for the mentally retarded is appropriate.

With respect to deterrence-the interest in preventing capital crimes by prospective offenders-"it seems likely that 'capital punishment can serve as a deterrent only when murder is the result of premeditation and deliberation,' " *Enmund*, 458 U.S., at 799, 102 S.Ct. 3368. Exempting the mentally retarded from that punishment will not affect the "cold calculus that precedes the decision" of other potential murderers. *Gregg*, 428 U.S., at 186, 96 S.Ct. 2909. Indeed, that sort of calculus is at the opposite end of the spectrum from behavior of mentally retarded ***320** offenders. The theory of deterrence in capital sentencing is predicated upon the notion that the increased severity of the punishment will inhibit criminal actors from carrying

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out murderous conduct. Yet it is the same cognitive and behavioral impairments that make these defendants less morally culpable-for example, the diminished ability to understand and process information, to learn from experience, to engage in logical reasoning, or to control impulses-that also make it less likely that they can process the information of the possibility of execution as a penalty and, as a result, control their conduct based upon that information. Nor will exempting the mentally retarded from execution lessen the deterrent effect of the death penalty with respect to offenders who are not mentally retarded. Such individuals are unprotected by the exemption and will continue to face the threat of execution. Thus, executing the mentally retarded will not measurably further the goal of deterrence.

The reduced capacity of mentally retarded offenders provides a second justification for a categorical rule making such offenders ineligible for the death penalty. The risk "that the death penalty will be imposed in spite of factors which may call for a less severe penalty," *Lockett v. Ohio*, 438 U.S. 586, 605, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978), is enhanced, not only by the **2252 possibility of false confessions,[FN25] but also by the lesser ability of mentally retarded defendants to make a persuasive showing of mitigation in the face of prosecutorial evidence of one or more aggravating factors. Mentally retarded defendants may be less able to give meaningful assistance to their counsel and *321 are typically poor witnesses, and their demeanor may create an unwarranted impression of lack of remorse for their crimes. As *Penry* demonstrated, moreover, reliance on mental retardation as a mitigating factor can be a two-edged sword that may enhance the likelihood that the aggravating factor of future dangerousness will be found by the jury. 492 U.S., at 323-325, 109 S.Ct. 2934. Mentally retarded defendants in the aggregate face a special risk of wrongful execution.

> FN25. See Everington & Fulero 212-213. Despite the heavy burden that the prosecution must shoulder in capital cases, we cannot ignore the fact that in recent years a disturbing number of inmates on death row have been exonerated. These exonerations have included at least one mentally retarded person who unwittingly confessed to a crime that he did not commit. See Baker, Death-Row Inmate Gets Clemency; Agreement Ends Days of Suspense, Washington Post, Jan. 15, 1994, p. A1.

[5] Our independent evaluation of the issue reveals no reason to disagree with the judgment of "the legislatures that have recently addressed the matter" and concluded that death is not a suitable punishment for a mentally retarded criminal. We are not persuaded that the execution of mentally retarded criminals will measurably advance the deterrent or the retributive purpose of the death penalty. Construing and applying the Eighth Amendment in the light of our "evolving standards of decency," we therefore conclude that such punishment is excessive and that the Constitution "places a substantive restriction on the State's power to take the life" of a mentally retarded offender. *Ford*, 477 U.S., at 405, 106 S.Ct. 2595.

The judgment of the Virginia Supreme Court is reversed and the case is remanded for further proceedings not inconsistent with this opinion.

It is so ordered.

Chief Justice REHNQUIST, with whom Justice SCALIA and Justice THOMAS join, dissenting.
The question presented by this case is whether a national consensus deprives Virginia of the constitutional power to impose the death penalty on capital murder defendants like petitioner, *i.e.*, those defendants who indisputably are competent to stand trial, aware of the punishment they are about to suffer and why, and whose mental retardation has been found an insufficiently compelling reason to lessen their individual responsibility for the crime. The Court pronounces *322 the punishment cruel and unusual primarily because 18 States recently have passed laws limiting the death eligibility of certain defendants based on mental retardation alone, despite the fact that the laws of 19 other States besides Virginia continue to leave the question of proper punishment to the individuated consideration of sentencing judges or juries familiar with the particular offender and his or her crime. See *ante*, at 2248.

I agree with Justice SCALIA, *post*, at 2259 (dissenting opinion), that the Court's assessment of the current legislative judgment regarding the execution of defendants like petitioner more resembles a *post hoc* rationalization for the majority's subjectively preferred result rather than any objective effort to ascertain the content of an evolving standard of decency. I write separately, however, to call attention to the defects in the Court's decision to place weight on foreign laws, the views of professional and religious organizations, and **2253 opinion polls in reaching its conclusion. See *ante*, at 2249-2250, n. 21. The Court's suggestion that these sources are relevant to the constitutional question finds little support in our

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precedents and, in my view, is antithetical to considerations of federalism, which instruct that any "permanent prohibition upon all units of democratic government must [be apparent] in the operative acts (laws and the application of laws) that the people have approved." *Stanford v. Kentucky*, 492 U.S. 361, 377, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989) (plurality opinion). The Court's uncritical acceptance of the opinion poll data brought to our attention, moreover, warrants additional comment, because we lack sufficient information to conclude that the surveys were conducted in accordance with generally accepted scientific principles or are capable of supporting valid empirical inferences about the issue before us.

In making determinations about whether a punishment is "cruel and unusual" under the evolving standards of decency embraced by the Eighth Amendment, we have emphasized that legislation is the "clearest and most reliable objective *323 evidence of contemporary values." *Penry v. Lynaugh*, 492 U.S. 302, 331, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989). See also *McCleskey v. Kemp*, 481 U.S. 279, 300, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987). The reason we ascribe primacy to legislative enactments follows from the constitutional role legislatures play in expressing policy of a State. " '[I]n a democratic society legislatures, not courts, are constituted to respond to the will and consequently the moral values of the people.' " *Gregg v. Georgia*, 428 U.S. 153, 175-176, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and STEVENS, JJ.) (quoting *Furman v. Georgia*, 408 U.S. 238, 383, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972) (Burger, C. J., dissenting)). And because the specifications of punishments are "peculiarly questions of legislative policy," *Gore v. United States*, 357 U.S. 386, 393, 78 S.Ct. 1280, 2 L.Ed.2d 1405 (1958), our cases have cautioned against using " 'the aegis of the Cruel and Unusual Punishment Clause' " to cut off the normal democratic processes, *Gregg, supra*, at 176, 96 S.Ct. 2909 (quoting *Powell v. Texas*, 392 U.S. 514, 533, 88 S.Ct. 2145, 20 L.Ed.2d 1254 (1968) (plurality opinion)).

Our opinions have also recognized that data concerning the actions of sentencing juries, though entitled to less weight than legislative judgments, " 'is a significant and reliable objective index of contemporary values,' " *Coker v. Georgia*, 433 U.S. 584, 596, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977) (plurality opinion) (quoting *Gregg, supra*, at 181, 96 S.Ct. 2909), because of the jury's intimate involvement in the case and its function of " 'maintain[ing] a link between contemporary community values and the penal system,' " *Gregg, supra*, at 181, 96 S.Ct. 2909 (quoting *Witherspoon v. Illinois*, 391 U.S. 510, 519, n. 15, 88 S.Ct. 1770, 20 L.Ed.2d 776 (1968)). In *Coker, supra*, at 596-597, 97 S.Ct. 2861, for example, we credited data showing that "at least 9 out of 10" juries in Georgia did not impose the death sentence for rape convictions. And in *Enmund v. Florida*, 458 U.S. 782, 793-794, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982), where evidence of the current legislative judgment was not as "compelling" as that in *Coker* (but more so than that here), we were persuaded by "overwhelming [evidence] that American juries ... repudiated imposition of the death penalty" for a defendant who neither took life nor attempted or intended to take life.

*324 In my view, these two sources-the work product of legislatures and sentencing jury determinations-ought to be the sole indicators by which courts ascertain the contemporary American conceptions of decency for purposes of the Eighth Amendment. They are the only objective indicia of contemporary values firmly supported by our precedents. More importantly, however, they can be reconciled with the undeniable precepts that the democratic branches of government and individual sentencing juries are, by design, **2254 better suited than courts to evaluating and giving effect to the complex societal and moral considerations that inform the selection of publicly acceptable criminal punishments.

In reaching its conclusion today, the Court does not take notice of the fact that neither petitioner nor his *amici* have adduced any comprehensive statistics that would conclusively prove (or disprove) whether juries routinely consider death a disproportionate punishment for mentally retarded offenders like petitioner.[FN*] Instead, it adverts to the fact that other countries have disapproved imposition of the death penalty for crimes committed by mentally retarded offenders, see *ante*, at 2249-2250, n. 21 (citing the Brief for European Union as *Amicus Curiae* 2). I fail to see, however,*325 how the views of other countries regarding the punishment of their citizens provide any support for the Court's ultimate determination. While it is true that some of our prior opinions have looked to "the climate of international opinion," *Coker, supra*, at 596, n. 10, 97 S.Ct. 2861, to reinforce a conclusion regarding evolving standards of decency, see *Thompson v. Oklahoma*, 487 U.S. 815, 830, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (plurality opinion); *Enmund, supra*, at 796-797, n. 22, 102 S.Ct. 3368; *Trop v. Dulles*, 356 U.S. 86, 102-103, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion); we have since explicitly rejected the idea that the sentencing practices of other countries could "serve to

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establish the first Eighth Amendment prerequisite, that [a] practice is accepted among our people." *Stanford*, 492 U.S., at 369, n. 1, 109 S.Ct. 2969 (emphasizing that "*American* conceptions of decency ... are dispositive" (emphasis in original)).

> FN* Apparently no such statistics exist. See Brief for American Association on Mental Retardation et al. as *Amici Curiae* 19, n. 29 (noting that "actions by individual prosecutors and by juries are difficult to quantify with precision"). Petitioner's inability to muster studies in his favor ought to cut against him, for it is his "heavy burden," *Stanford v. Kentucky*, 492 U.S. 361, 373, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989) (internal quotation marks omitted), to establish a national consensus against a punishment deemed acceptable by the Virginia Legislature and jury who sentenced him. Furthermore, it is worth noting that experts have estimated that as many as 10 percent of death row inmates are mentally retarded, see R. Bonner & S. Rimer, Executing the Mentally Retarded Even as Laws Begin to Shift, N.Y. Times, Aug. 7, 2000, p. A1, a number which suggests that sentencing juries are not as reluctant to impose the death penalty on defendants like petitioner as was the case in *Coker v. Georgia*, 433 U.S. 584, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977), and *Enmund v. Florida*, 458 U.S. 782, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982).

Stanford's reasoning makes perfectly good sense, and the Court offers no basis to question it. For if it is evidence of a *national* consensus for which we are looking, then the viewpoints of other countries simply are not relevant. And nothing in *Thompson*, *Enmund*, *Coker*, or *Trop* suggests otherwise. *Thompson*, *Enmund*, and *Coker* rely only on the bare citation of international laws by the *Trop* plurality as authority to deem other countries' sentencing choices germane. But the *Trop* plurality-representing the view of only a minority of the Court-offered no explanation for its own citation, and there is no reason to resurrect this view given our sound rejection of the argument in *Stanford*.

To further buttress its appraisal of contemporary societal values, the Court marshals public opinion poll results and evidence that several professional organizations and religious groups have adopted official positions opposing the imposition of the death penalty upon mentally retarded offenders. See *ante*, at 2249-2250, n. 21 (citing Brief for American Psychological Association et al. as *Amici Curiae;* Brief for American Association on Mental Retardation et al. as *Amici Curiae;* noting that "representatives of widely diverse religious***326** communities ****2255** ... reflecting Christian, Jewish, Muslim, and Buddhist traditions ...'share a conviction that the execution of persons with mental retardation cannot be morally justified' "; and stating that "polling data shows a widespread consensus among Americans ... that executing the mentally retarded is wrong"). In my view, none should be accorded any weight on the Eighth Amendment scale when the elected representatives of a State's populace have not deemed them persuasive enough to prompt legislative action. In *Penry*, 492 U.S., at 334-335, 109 S.Ct. 2934, we were cited similar data and declined to take them into consideration where the "public sentiment expressed in [them]" had yet to find expression in state law. See also *Stanford*, 492 U.S., at 377, 109 S.Ct. 2969 (plurality opinion) (refusing "the invitation to rest constitutional law upon such uncertain foundations" as "public opinion polls, the views of interest groups, and the positions adopted by various professional associations"). For the Court to rely on such data today serves only to illustrate its willingness to proscribe by judicial fiat-at the behest of private organizations speaking only for themselves-a punishment about which no across-the-board consensus has developed through the workings of normal democratic processes in the laboratories of the States.

Even if I were to accept the legitimacy of the Court's decision to reach beyond the product of legislatures and practices of sentencing juries to discern a national standard of decency, I would take issue with the blind-faith credence it accords the opinion polls brought to our attention. An extensive body of social science literature describes how methodological and other errors can affect the reliability and validity of estimates about the opinions and attitudes of a population derived from various sampling techniques. Everything from variations in the survey methodology, such as the choice of the target population, the sampling design used, the questions asked, and the statistical analyses used to interpret the data can skew the results. See, *e.g.*, R. Groves, Survey ***327** Errors and Survey Costs (1989); 1 C. Turner & E. Martin, Surveying Subjective Phenomena (1984).

The Federal Judicial Center's Reference Manual on Scientific Evidence 221-271 (1994) and its Manual for Complex Litigation § 21.493, pp. 101-103 (3d ed.1995), offer helpful suggestions to judges called upon to assess the

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weight and admissibility of survey evidence on a factual issue before a court. Looking at the polling data (reproduced in the Appendix to this opinion) in light of these factors, one cannot help but observe how unlikely it is that the data could support a valid inference about the question presented by this case. For example, the questions reported to have been asked in the various polls do not appear designed to gauge whether the respondents might find the death penalty an acceptable punishment for mentally retarded offenders in rare cases. Most are categorical (*e.g.*,"Do you think that persons convicted of murder who are mentally retarded should or should not receive the death penalty?"), and, as such, would not elicit whether the respondent might agree or disagree that all mentally retarded people by definition can never act with the level of culpability associated with the death penalty, regardless of the severity of their impairment or the individual circumstances of their crime. Second, none of the 27 polls cited disclose the targeted survey population or the sampling techniques used by those who conducted the research. Thus, even if one accepts that the survey instruments were adequately designed to address a relevant question, it is impossible to know whether the sample was representative enough or the methodology sufficiently sound to tell us anything about the opinions of the citizens of a particular State or the American public at large. Finally, the information provided to us does not indicate why a particular survey was conducted or, in a few cases, by whom, factors which also can bear on the ****2256** objectivity of the results. In order to be credited here, such surveys should be offered as ***328** evidence at trial, where their sponsors can be examined and cross-examined about these matters.

* * *

There are strong reasons for limiting our inquiry into what constitutes an evolving standard of decency under the Eighth Amendment to the laws passed by legislatures and the practices of sentencing juries in America. Here, the Court goes beyond these well-established objective indicators of contemporary values. It finds "further support to [its] conclusion" that a national consensus has developed against imposing the death penalty on all mentally retarded defendants in international opinion, the views of professional and religious organizations, and opinion polls not demonstrated to be reliable. *Ante,* at 2249-2250, n. 21. Believing this view to be seriously mistaken, I dissent.

APPENDIX TO OPINION OF REHNQUIST, C. J.

[1] Poll survey results reported in Brief for American Association on Mental Retardation et al. as *Amici Curiae* in Support of Petitioner and cited by the Court *ante,* at 2249-2250, n. 21.

ST.	POLL	DATE	RESPONSE	QUESTION
AR	Arkansans' Opinion on the Death Penalty, Opinion Research Associates, Inc., Q. 13 (July 1992) John DiPippa, *Will Fairchild's Death Violate the Constitution, or Simply Our Morality?,* Arkansas Forum, Sept. 1993	1992	61% never appropriate 17% is appropriate 5% opposed to all executions 17% undecided	"Some people say that there is nothing wrong with executing a person who is mentally retarded. Others say that the death penalty should never be imposed on a person who is mentally retarded. Which of these positions comes closest to your own?"
AZ	Behavior Research Center, Survey 2000-3 (July 2000)	2000	71% oppose 12% favor 11% it depends 6% ref/unsure	"For persons convicted of murder, do you favor or oppose use of the death penalty when the defendant is mentally retarded?"
CA	Field Research Corp., California Death Penalty Survey, Q. 22 (Dec.1989) Frank Hill, *Death Penalty For The Retarded,* San Diego Union-	1989	64.8% not all right 25.7% is all right 9.5% no opinion	"Some people feel there is nothing wrong with imposing the death penalty on persons who are mentally retarded depending on the circumstances. Others feel the death penalty

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	Tribune, Mar. 28, 1993, at G3			should never be imposed on persons who are mentally retarded under any circumstance. The death penalty on a mentally retarded person is ... ?"
CA	Field Research Corp., California Death Penalty Survey, Q. 62b (Dec. 1997); Paul Vang Slambrouck, *Execution Ends a Convict's Mental Stay*, The Christian Science Monitor, Apr. 27, 1998, at 1.		74% disagree 17% agree 9% no opinion	"Mentally retarded defendants should be given the death penalty when they commit capital crimes."
CT	Quinnipac University Polling Institute, Death Penalty Survey Info., Q. 35 (April 23, 2001)	2001	77% no 12% yes 11% don't know	"Do you think that persons convicted of murder who are mentally retarded should or should not receive the death penalty?"
FL	Amnesty International; Martin Dyckman, *Death Penalty's High Price*, St. Petersburg Times, Apr. 19, 1992, at 3D.	1986	71% opposed	[not provided]
GA	Georgia State University Tracy Thompson, *Executions of Retarded Opposed*, Atlanta Journal, Jan. 6, 1987, at 1B	1987	66% opposed 17% favor 16% depends	[not provided]
LA	Marketing Research Inst., Loyola Death Penalty Survey, IQ's (Feb. 1993)	1993	71% no 12% yes 13% uncertain	"Would you vote for the death penalty if the convicted person is mentally retarded?"
LA	Louisiana Poll, Poll 104, Q. 9 (Apr.2001)	2001	68% no 19% yes 11% no opinion 2% won't say	"Do you believe mentally retarded people, who are convicted of capital murder, should be executed?"
MD	Survey Research Center, University of Maryland (Nov. 1988)	1988	82% opposed 8% favor 10% other	"Would you favor or oppose the death penalty for a person convicted of murder if he or she is mentally retarded?"
MO	Missouri Mental Retardation and Death Penalty Survey, Q. 5 (Oct.1993)	1993	61.3% not all right 23.7% is all right 15% don't know	"Some people feel there is nothing wrong with imposing the death penalty on *persons who are mentally retarded* depending on the circumstances. Others feel that the death penalty should never be imposed on persons who are mentally retarded under any circumstances. Do you think it IS or IS NOT all right to impose the death penalty on a mentally retarded person?"
NC, SC	Charlotte Observer-WVIR-TV News Poll (Sept. 2000); Diane Suchetka, *Carolinas Join Emotional Debate Over Execu*	2000	64% yes 21% no 14% not sure	"Should the Carolinas ban the execution of people with mental retarda- tion? [illegible]

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	Living Mentally Retarded, Charlotte Observer, Sept. 13, 2000			
N M	Research & Polling Inc., Use of the Death Penalty Public Opinion Poll, Q. 2 (Dec.1990)	1990	57.1% oppose 10.5% support 26.2% depends 6.1% don't know	62% support the death penalty. *Asked of those that support it*, "for which of the following do you support use of the death penalty ... when the convicted person is mentally retarded?"
	NY, Patrick Caddell Enterprises, N.Y. Public Opinion Poll: The Death Penalty: An Executive Summary, 6, 7, (May 1989) Ronald Tabak & J. Mark Lane, *The Execution of Injustice: A Cost and Lack of Benefit Analysis of the Death Penalty*, 25 Loyola (LA) L.Rev. 59, 95 (1989)	1989	82% oppose 10% favor 9% don't know	"I'd like you to imagine you are a member of a jury. The jury has found the defendant guilty of murder beyond a reasonable doubt and now needs to decide about sentencing. You are the last juror to decide and your decision will determine whether or not the offender will receive the death penalty. Would you favor or oppose sentencing the offender to the death penalty if the convicted person were mentally retarded?"
OK	Survey of Oklahoma Attitudes Regarding Capital Punishment: Survey Conducted for Oklahoma Indigent Defense System, Q. C (July 1999)	1999	83.5% should not be executed 10.8% should be executed 5.7% depends	"Some people think that persons convicted of murder who are mentally retarded (or have a mental age of between 5 and 10 years) should not be executed. Other people think that 'retarded' persons should be subject to the death penalty like anyone else. Which is closer to the way you feel, that 'retarded' persons should not be executed, or that 'retarded' persons should be subject to the death penalty like everyone else?"
	TX, Austin American-Statesman, Nov. 15, 1988, at B7	1988	73% opposed	not provided
TX	Sam Houston State University, College of Criminal Justice, Texas Crime Poll On-line (1995) Domingo Ramirez, Jr., *Murder Trial May Hinge on Defendant's IQ*, The Fort Worth Star-Telegram, Oct. 6, 1997, at 1	1995	61% more likely to oppose	"For each of the following items that have been found to affect people's attitude about the death penalty, please state if you would be more likely to favor or more likely to oppose the death penalty, or wouldn't it matter ... if the murderer is severely mentally retarded?"
	TX, Scripps Howard Texas Poll, Death Penalty (Mar.2001) Dan Parker, *More Texans Support Death Penalty*, Corpus Christi Caller Times, Mar. 22, 2001, at A1	2001	66% no 17% yes 17% don't know, no answer	"Should the state use the death penalty when the inmate is considered mentally retarded?"
TX	Houston Chronicle (Feb.2001)	2001	59.9% no support	"Would you support the death pen-

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	Stephen Brewer & Mike Tolson, *A Deadly Distinction: Part III, Debate Fervent in Mental Cases, Johnny Paul Penry Illustrates a Lingering Capital Conundrum,* The Houston Chronicle, Feb. 6, 2001, at A6		19.3% support 20.7% not sure/no answer	alty if you were convinced the defendant were guilty, but the defendant is mentally impaired?"
	US Harris Poll, Unfinished Agenda on Race, Q. 32 (Sept. 1988) Saundra Torry, *High Court to Hear Case on Retarded Slayer,* The Washington Post, Jan. 11, 1989, at A6		71% should not be executed 21% should be executed 4% depends 4% not sure/refused	Some people think that persons convicted of murder who have a mental age of less than 18 (or the retarded) should not be executed. Other people think that retarded persons should be subject to the death penalty like anyone else. Which is closer to the way you feel, that retarded persons should not be executed or that retarded persons should be subject to the death penalty like anyone else?"
US	Yankelovich Clancy Shulman, Time/CNN Poll, Q. 14 (July 7, 1989) Samuel R. Gross, *Second Thoughts: Americans' Views on the Death Penalty at the Turn of the Century,* Capital Punishment and the American Future (Feb.2001)	1989	61% oppose 27% favor 12% not sure	"Do you favor or oppose the death penalty for mentally retarded individuals convicted of serious crimes, such as murder?"
	US The Tarrance Group, Death Penalty Poll, Q. 9 (Mar. 1993) Samuel R. Gross, *Update: American Public Opinion on the Death Penalty-It's Getting Personal,* 83 Cornell L.Rev. 1448, 1467 (1998)	1993	56% not all right 32% is all right 11% unsure	"Some people feel that there is nothing wrong with imposing the death penalty on persons who are mentally retarded, depending on the circumstances. Others feel that the death penalty should never be imposed on persons who are mentally retarded under any circumstances. Which of these views comes closest to your own?"
US	Public Policy Research, Crime in America, Q. 72 (July 1995)	1995	67% likely to oppose 7% likely to favor 26% wouldn't matter	"For each item please tell me if you would be more likely to favor the death penalty, more likely to oppose the death penalty or it wouldn't matter ... if it is true that the murderer is severely mentally retarded?"
	US Princeton Research, Newsweek Poll, Q. 16 (Nov. 1995) Samuel R. Gross, *Update: American Public Opinion on the Death Penalty-It's Getting Personal,* 83 Cornell L.Rev. 1448,		83% oppose 9% favor 8% don't know/refused	If the convicted person was mentally retarded would you favor or oppose the death penalty?"

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US	Peter Hart Research Associates, Inc., Innocence Survey, Q. 12 (Dec.1999)	1999	58% strongly/somewhat favor 26% strongly/somewhat oppose 12% mixed/neutral 4% not sure	"... [F]or each proposal I read, please tell me whether you strongly favor, somewhat favor, have mixed or neutral feelings, somewhat oppose, or strongly oppose that proposal .... [P]rohibit the death penalty for defendants who are mentally retarded."
US	Peter Hart Research Associates, Inc., Innocence Survey, Q. 9 (Dec.1999)	1999	52% much/somewhat less likely 19% no difference 7% not sure 47% much less likely 5% somewhat less likely	"Suppose you were on a jury and a defendant was convicted of murder. Now it's time to determine the sentence. If you knew that the defendant was mentally retarded or otherwise mentally impaired in a serious way, would you be much less likely to support the use of the death penalty in this specific case, somewhat less likely, or would it make no difference to you?"
US	Houston Chronicle (Feb.2001) Stephen Brewer & Mike Tolson, *A Deadly Distinction: Part III, Debate Fervent in Mental Cases, Johnny Paul Penry Illustrates a Lingering Capital Conundrum,* The Houston Chronicle, Feb. 6, 2001, at A6	2001	63.8% no support 16.4% support 19.8% not sure/no answer	"Would you support the death penalty if you were convinced the defendant were guilty, but the defendant is mentally impaired?"

*337 Justice SCALIA, with whom THE CHIEF JUSTICE and Justice THOMAS join, dissenting.

Today's decision is the pinnacle of our Eighth Amendment death-is-different jurisprudence. Not only does it, like all of that jurisprudence, find no support in the text or history of the Eighth Amendment; it does not even have support in current social attitudes regarding the conditions that render *338 an otherwise just death penalty inappropriate. Seldom has an opinion of this Court rested so obviously upon nothing but the personal views of its Members.

I

I begin with a brief restatement of facts that are abridged by the Court but important to understanding this case. After spending the day drinking alcohol and smoking marijuana, petitioner Daryl Renard Atkins and a partner in crime drove to a convenience store, intending to rob a customer. Their victim was Eric Nesbitt, an airman from Langley Air Force Base, whom they abducted, drove to a nearby automated teller machine, and forced to withdraw $200. They then drove him to a deserted area, ignoring his pleas to leave him unharmed. According to the co-conspirator, whose testimony the jury evidently credited, Atkins ordered Nesbitt out of the vehicle and, after he had taken only a few steps, shot him one, two, three, four, five, six, seven, eight times in the thorax, chest, abdomen, arms, and legs.

The jury convicted Atkins of capital murder. At resentencing (the Virginia Supreme Court affirmed his conviction but remanded for resentencing because the trial court had used an improper verdict form, 257 Va. 160, 179, 510 S.E.2d 445, 457 (1999)), the jury heard extensive evidence of petitioner's alleged mental retardation. A psychologist testified that petitioner was mildly mentally retarded with an IQ of 59, that he was a "slow learner," App. 444, who showed a "lack of success in pretty much every domain of his life,"*id.,* at 442, and that he had an "impaired" capacity to **2260 appreciate the criminality of his conduct and to conform his conduct to the law, *id.,* at 453. Petitioner's family members offered additional evidence in support of his mental retardation claim (*e.g.,* that petitioner is a "follower," *id.,* at 421). The Commonwealth contested the evidence of retardation and pre-

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sented testimony of a psychologist who found "absolutely no evidence other than the IQ score ... indicating that [petitioner]*339 was in the least bit mentally retarded" and concluded that petitioner was "of average intelligence, at least." *Id.*, at 476.

The jury also heard testimony about petitioner's 16 prior felony convictions for robbery, attempted robbery, abduction, use of a firearm, and maiming. *Id.*, at 491-522. The victims of these offenses provided graphic depictions of petitioner's violent tendencies: He hit one over the head with a beer bottle, *id.*, at 406; he slapped a gun across another victim's face, clubbed her in the head with it, knocked her to the ground, and then helped her up, only to shoot her in the stomach, *id.*, at 411-413. The jury sentenced petitioner to death. The Supreme Court of Virginia affirmed petitioner's sentence. 260 Va. 375, 534 S.E.2d 312 (2000).

II

As the foregoing history demonstrates, petitioner's mental retardation was a *central issue* at sentencing. The jury concluded, however, that his alleged retardation was not a compelling reason to exempt him from the death penalty in light of the brutality of his crime and his long demonstrated propensity for violence. "In upsetting this particularized judgment on the basis of a constitutional absolute," the Court concludes that no one who is even slightly mentally retarded can have sufficient "moral responsibility to be subjected to capital punishment for any crime. As a sociological and moral conclusion that is implausible; and it is doubly implausible as an interpretation of the United States Constitution." *Thompson v. Oklahoma*, 487 U.S. 815, 863-864, 108 S.Ct. 2687, 101 L.Ed.2d 702 (1988) (SCALIA, J., dissenting).

Under our Eighth Amendment jurisprudence, a punishment is "cruel and unusual" if it falls within one of two categories: "those modes or acts of punishment that had been considered cruel and unusual at the time that the Bill of Rights was adopted," *Ford v. Wainwright*, 477 U.S. 399, 405, 106 S.Ct. 2595, 91 L.Ed.2d 335 (1986), and modes of punishment that are inconsistent with *340 modern " 'standards of decency,' " as evinced by objective indicia, the most important of which is "legislation enacted by the country's legislatures," *Penry v. Lynaugh*, 492 U.S. 302, 330-331, 109 S.Ct. 2934, 106 L.Ed.2d 256 (1989).

The Court makes no pretense that execution of the mildly mentally retarded would have been considered "cruel and unusual" in 1791. Only the *severely* or *profoundly* mentally retarded, commonly known as "idiots," enjoyed any special status under the law at that time. They, like lunatics, suffered a "deficiency in will" rendering them unable to tell right from wrong. 4 W. Blackstone, Commentaries on the Laws of England 24 (1769) (hereinafter Blackstone); see also *Penry*, 492 U.S., at 331-332, 109 S.Ct. 2934 ("[T]he term 'idiot' was generally used to describe persons who had a total lack of reason or understanding, or an inability to distinguish between good and evil"); *id.*, at 333, 109 S.Ct. 2934 (citing sources indicating that idiots generally had an IQ of 25 or below, which would place them within the "profound" or "severe" range of mental retardation under modern standards); 2 A. Fitz-Herbert, *Natura Brevium* 233B (9th ed. 1794) (originally published 1534) (An idiot is "such a person who cannot account or number twenty pence, nor can tell who was his father or mother, nor how old he is, etc., so as it may appear that he hath no understanding of reason what shall be for his profit, or what for his loss"). Due to their incompetence, idiots were "excuse[d] **2261 from the guilt, and of course from the punishment, of any criminal action committed under such deprivation of the senses." 4 Blackstone 25; see also *Penry, supra*, at 331, 109 S.Ct. 2934. Instead, they were often committed to civil confinement or made wards of the State, thereby preventing them from "go[ing] loose, to the terror of the king's subjects." 4 Blackstone 25; see also S. Brakel, J. Parry, & B. Weiner, The Mentally Disabled and the Law 12-14 (3d ed.1985); 1 Blackstone 292-296; 1 M. Hale, Pleas of the Crown 33 (1st Am. ed. 1847). Mentally retarded offenders with less severe impairments-those who were not "idiots"-suffered criminal prosecution *341 and punishment, including capital punishment. See, *e.g.*, I. Ray, Medical Jurisprudence of Insanity 65, 87-92 (W. Overholser ed.1962) (recounting the 1834 trial and execution in Concord, New Hampshire, of an apparent "imbecile"-imbecility being a less severe form of retardation which "differs from idiocy in the circumstance that while in [the idiot] there is an utter destitution of every thing like reason, [imbeciles] possess some intellectual capacity, though infinitely less than is possessed by the great mass of mankind"); A. Highmore, Law of Idiocy and Lunacy 200 (1807) ("The great difficulty in all these cases, is to determine where a person shall be said to be so far deprived of his sense and memory as not to have any of his actions imputed to him: or where notwithstanding some defects of this kind he still appears to have so much reason and understanding as will make him accountable for his actions ...").

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The Court is left to argue, therefore, that execution of the mildly retarded is inconsistent with the "evolving standards of decency that mark the progress of a maturing society." *Trop v. Dulles*, 356 U.S. 86, 101, 78 S.Ct. 590, 2 L.Ed.2d 630 (1958) (plurality opinion) (Warren, C. J.). Before today, our opinions consistently emphasized that Eighth Amendment judgments regarding the existence of social "standards" "should be informed by objective factors to the maximum possible extent" and "should not be, or appear to be, merely the subjective views of individual Justices." *Coker v. Georgia*, 433 U.S. 584, 592, 97 S.Ct. 2861, 53 L.Ed.2d 982 (1977) (plurality opinion); see also *Stanford v. Kentucky*, 492 U.S. 361, 369, 109 S.Ct. 2969, 106 L.Ed.2d 306 (1989); *McCleskey v. Kemp*, 481 U.S. 279, 300, 107 S.Ct. 1756, 95 L.Ed.2d 262 (1987); *Enmund v. Florida*, 458 U.S. 782, 788, 102 S.Ct. 3368, 73 L.Ed.2d 1140 (1982). "First" among these objective factors are the "statutes passed by society's elected representatives," *Stanford v. Kentucky, supra*, at 370, 109 S.Ct. 2969; because it "will rarely if ever be the case that the Members of this Court will have a better sense of the evolution in views of the American people than do their elected representatives," *Thompson, supra*, at 865, 108 S.Ct. 2687 (SCALIA, J., dissenting).

***342** The Court pays lipservice to these precedents as it miraculously extracts a "national consensus" forbidding execution of the mentally retarded, *ante*, at 2250, from the fact that 18 States-less than *half* (47%) of the 38 States that permit capital punishment (for whom the issue exists)-have very recently enacted legislation barring execution of the mentally retarded. Even that 47% figure is a distorted one. If one is to say, as the Court does today, that *all* executions of the mentally retarded are so morally repugnant as to violate our national "standards of decency," surely the "consensus" it points to must be one that has set its righteous face against *all* such executions. Not 18 States, but only 7-18% of death penalty jurisdictions-have legislation of that scope. Eleven of those that the Court counts enacted statutes prohibiting execution of mentally retarded defendants *convicted after, or convicted of crimes committed after, the effective date* of the legislation; [FN1] those already on death row, ****2262** or consigned there before the statute's effective date, or even (in those States using the date of the crime as the criterion of retroactivity) tried in the future for murders committed many years ago, could be put to death. That is not a statement of absolute moral repugnance, but one of current preference between two tolerable approaches. Two of these States permit execution of the mentally retarded in other situations as well: Kansas apparently permits execution of all ***343** except the *severely* mentally retarded; [FN2] New York permits execution of the mentally retarded who commit murder in a correctional facility. N.Y.Crim. Proc. Law § 400.27.12(d) (McKinney 2001); N.Y. Penal Law § 125.27 (McKinney 2002).

FN1. See Ariz.Rev.Stat. Ann. § 13-703.02(I) (Supp.2001); Ark.Code Ann. § 5-4-618(d)(1) (1997); *Reams v. State*, 322 Ark. 336, 340, 909 S.W.2d 324, 326-327 (1995); Fla. Stat. § 921.137(8) (Supp.2002); Ga.Code Ann. § 17-7-131(j) (1997); Ind.Code § 35-36-9-6 (1998); *Rondon v. State*, 711 N.E.2d 506, 512 (Ind.1999); Kan. Stat. Ann. §§ 21-4623(d), 21-4631(c) (1995); Ky.Rev.Stat. Ann. § 532.140(3) (1999); Md. Ann.Code, Art. 27, § 412(g) (1996); *Booth v. State*, 327 Md. 142, 166-167, 608 A.2d 162, 174 (1992); Mo.Rev.Stat. § 565.030(7) (Supp.2001); N.Y.Crim. Proc. Law § 400.27.12(c) (McKinney Supp.2002); 1995 N.Y. Laws, ch. 1, § 38; Tenn.Code Ann. § 39-13-203(b) (1997); *Van Tran v. State*, 66 S.W.3d 790, 798-799 (Tenn.2001).

FN2. The Kansas statute defines "mentally retarded" as "having significantly subaverage general intellectual functioning ... to an extent which substantially impairs one's capacity to appreciate the criminality of one's conduct or to conform one's conduct to the requirements of law." Kan. Stat. Ann. § 21-4623(e) (2001). This definition of retardation, petitioner concedes, is analogous to the Model Penal Code's definition of a "mental disease or defect" excusing responsibility for criminal conduct, see ALI, Model Penal Code § 4.01 (1985), which would not include mild mental retardation. Reply Brief for Petitioner 3, n. 4.

But let us accept, for the sake of argument, the Court's faulty count. That bare number of States alone-*18*-should be enough to convince any reasonable person that no "national consensus" exists. How is it possible that agreement among 47% of the death penalty jurisdictions amounts to "consensus"? Our prior cases have generally required a much higher degree of agreement before finding a punishment cruel and unusual on "evolving standards" grounds. In *Coker, supra*, at 595-596, 97 S.Ct. 2861, we proscribed the death penalty for rape of an adult woman after finding that only one jurisdiction, Georgia, authorized such a punishment. In *Enmund, supra*, at 789, 102 S.Ct. 3368, we invalidated the death penalty for mere participation in a robbery in which an accomplice took a

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life, a punishment not permitted in 28 of the death penalty States (78%). In *Ford*, 477 U.S., at 408, 106 S.Ct. 2595, we supported the common-law prohibition of execution of the insane with the observation that "[t]his ancestral legacy has not outlived its time," since not a single State authorizes such punishment. In *Solem v. Helm*, 463 U.S. 277, 300, 103 S.Ct. 3001, 77 L.Ed.2d 637 (1983), we invalidated a life sentence without parole under a recidivist statute by which the criminal "was treated more severely than he would have been in any other State." What the Court calls evidence of "consensus" in the present case (a fudged 47%) more closely resembles evidence that we found *inadequate* ***344** to establish consensus in earlier cases. *Tison v. Arizona*, 481 U.S. 137, 154, 158, 107 S.Ct. 1676, 95 L.Ed.2d 127 (1987), upheld a state law authorizing capital punishment for major participation in a felony with reckless indifference to life where only 11 of the 37 death penalty States (30%) prohibited such punishment. *Stanford*, 492 U.S., at 372, 109 S.Ct. 2969, upheld a state law permitting execution of defendants who committed a capital crime at age 16 where only 15 of the 36 death penalty States (42%) prohibited death for such offenders.

Moreover, a major factor that the Court entirely disregards is that the legislation of all 18 States it relies on is still in its infancy. The oldest of the statutes is only 14 years old; [FN3] five were enacted last ****2263** year; [FN4] over half were enacted within the past eight years.[FN5] Few, if any, of the States have had sufficient experience with these laws to know whether they are sensible in the long term. It is "myopic to base sweeping constitutional principles upon the narrow experience of [a few] years." *Coker*, 433 U.S., at 614, 97 S.Ct. 2861 (Burger, C. J., dissenting); see also *Thompson*, 487 U.S., at 854-855, 108 S.Ct. 2687 (O'CONNOR, J., concurring in judgment).

FN3. Ga.Code Ann. § 17-7-131(j).

FN4. Ariz.Rev.Stat. Ann. § 13-703.02; Conn. Gen.Stat. § 53a-46a(h); Fla. Stat. § 921.137; Mo.Rev.Stat. §§ 565.030(4)-(7); N.C. Gen.Stat. § 15A-2005.

FN5. In addition to the statutes cited n. 4 *supra*, see S.D. Codified Laws § 23A-27A-26.1 (enacted 2000); Neb.Rev.Stat. §§ 28-105.01(2)-(5) (1998); N.Y.Crim. Proc. Law § 400.27(12) (1995); Ind.Code § 35-36-9-6 (1994); Kan. Stat. Ann. § 21-4623 (1994).

The Court attempts to bolster its embarrassingly feeble evidence of "consensus" with the following: "It is not so much the number of these States that is significant, but the *consistency* of the direction of change." *Ante*, at 2249 (emphasis added). But in what *other* direction *could we possibly* see change? Given that 14 years ago *all* the death penalty statutes included the mentally retarded, *any* change (except precipitate undoing of what had just been done) was *bound* ****345** to be* in the one direction the Court finds significant enough to overcome the lack of real consensus. That is to say, to be accurate the Court's "*consistency*-of-the-direction-of-change" point should be recast into the following unimpressive observation: "No State has yet undone its exemption of the mentally retarded, one for as long as 14 whole years." In any event, reliance upon "trends," even those of much longer duration than a mere 14 years, is a perilous basis for constitutional adjudication, as Justice O'CONNOR eloquently explained in *Thompson:*

> "In 1846, Michigan became the first State to abolish the death penalty .... In succeeding decades, other American States continued the trend towards abolition .... Later, and particularly after World War II, there ensued a steady and dramatic decline in executions .... In the 1950's and 1960's, more States abolished or radically restricted capital punishment, and executions ceased completely for several years beginning in 1968 ....
>
> "In 1972, when this Court heard arguments on the constitutionality of the death penalty, such statistics might have suggested that the practice had become a relic, implicitly rejected by a new societal consensus.... We now know that any inference of a societal consensus rejecting the death penalty would have been mistaken. But had this Court then declared the existence of such a consensus, and outlawed capital punishment, legislatures would very likely not have been able to revive it. The mistaken premise of the decision would have been frozen into constitutional law, making it difficult to refute and even more difficult to reject." 487 U.S., at 854-855, 108 S.Ct. 2687.

Her words demonstrate, of course, not merely the peril of riding a trend, but also the peril of discerning a consensus where there is none.

***346** The Court's thrashing about for evidence of "consensus" includes reliance upon the *margins* by which state legislatures have enacted bans on execution of the retarded. *Ante*, at 2249. Presumably, in applying our Eighth Amendment "evolving-standards-of-decency" jurispru-

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dence, we will henceforth weigh not only how many States have agreed, but how many States have agreed *by how much*. Of course if the percentage of legislators voting for the bill is significant, surely the number of people *represented* by the legislators voting for the bill is also significant: the fact that 49% of the legislators in a State with a population of 60 million voted *against* the bill should be more impressive than the fact that 90% of the legislators in ****2264** a State with a population of 2 million voted *for* it. (By the way, the population of the death penalty States that exclude the mentally retarded is only 44% of the population of all death penalty States. U.S. Dept. of Commerce, Bureau of Census, Statistical Abstract of the United States 21 (121st ed.2001).) This is quite absurd. What we have looked for in the past to "evolve" the Eighth Amendment is a consensus of the same sort as the consensus that *adopted* the Eighth Amendment: a consensus of the sovereign States that form the Union, not a nose count of Americans for and against.

Even less compelling (if possible) is the Court's argument, *ibid.*, that evidence of "national consensus" is to be found in the infrequency with which retarded persons are executed in States that do not bar their execution. To begin with, what the Court takes as true is in fact quite doubtful. It is not at all clear that execution of the mentally retarded is "uncommon," *ibid.*, as even the sources cited by the Court suggest, see *ante,* at 2249, n. 20 (citing D. Keyes, W. Edwards, & R. Perske, People with Mental Retardation are Dying Legally, 35 Mental Retardation (Feb.1997) (updated by Death Penalty Information Center, available at http://www.advocacyone.org/ deathpenalty.html (as visited ***347** June 12, 2002) (showing that 12 States executed 35 allegedly mentally retarded offenders during the period 1984-2000)). See also Bonner & Rimer, Executing the Mentally Retarded Even as Laws Begin to Shift, N.Y. Times, Aug. 7, 2000, p. A1 (reporting that 10% of death row inmates are retarded). *If,* however, execution of the mentally retarded *is* "uncommon"; and if it is not a sufficient explanation of this that the retarded constitute a tiny fraction of society (1% to 3%), Brief for American Psychological Association et al. as *Amici Curiae* 7; then surely the explanation is that mental retardation is a constitutionally mandated mitigating factor at sentencing, *Penry,* 492 U.S., at 328, 109 S.Ct. 2934. For that reason, even if there were uniform national sentiment in *favor* of executing the retarded in appropriate cases, one would still expect execution of the mentally retarded to be "uncommon." To adapt to the present case what the Court itself said in *Stanford,* 492 U.S., at 374, 109 S.Ct. 2969: "[I]t is not only possible, but overwhelmingly probable, that the very considerations which induce [today's majority] to believe that death should *never* be imposed on [mentally retarded] offenders ... cause prosecutors and juries to believe that it should *rarely* be imposed."

But the Prize for the Court's Most Feeble Effort to fabricate "national consensus" must go to its appeal (deservedly relegated to a footnote) to the views of assorted professional and religious organizations, members of the so-called "world community," and respondents to opinion polls. *Ante,* at 2249-2250, n. 21. I agree with THE CHIEF JUSTICE, *ante,* at 2254-2256 (dissenting opinion), that the views of professional and religious organizations and the results of opinion polls are irrelevant.[FN6] Equally irrelevant are the practices of the ***348** "world community," whose notions of justice are (thankfully) not always those of our people. "We must never forget that it is a Constitution for the United States of America that we are expounding. ... [W]here there is not first a settled consensus among our own people, the views of other nations, however enlightened the Justices of this Court may think them to be, cannot be imposed upon Americans through the Constitution." ****2265***Thompson,* 487 U.S., at 868-869, n. 4, 108 S.Ct. 2687 (SCALIA, J., dissenting).

> FN6. And in some cases positively counterindicative. The Court cites, for example, the views of the United States Catholic Conference, whose members are the active Catholic Bishops of the United States. See *ante,* at 2249-2250, n. 21 (citing Brief for United States Catholic Conference et al. as *Amici Curiae* 2). The attitudes of that body regarding crime and punishment are so far from being representative, even of the views of Catholics, that they are currently the object of intense national (and entirely ecumenical) criticism.

III

Beyond the empty talk of a "national consensus," the Court gives us a brief glimpse of what really underlies today's decision: pretension to a power confined *neither* by the moral sentiments originally enshrined in the Eighth Amendment (its original meaning) *nor even* by the current moral sentiments of the American people. " '[T]he Constitution,' the Court says, 'contemplates that in the end *our own judgment* will be brought to bear on the question of the acceptability of the death penalty under the Eighth Amendment.' "*Ante,* at 2247 (quoting *Coker,* 433 U.S., at 597, 97 S.Ct. 2861) (emphasis added). (The unexpressed

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reason for this unexpressed "contemplation" of the Constitution is presumably that really good lawyers have moral sentiments superior to those of the common herd, whether in 1791 or today.) The arrogance of this assumption of power takes one's breath away. And it explains, of course, why the Court can be so cavalier about the evidence of consensus. It is just a game, after all. " ' [I]n the end,' " *Thompson, supra,* at 823, n. 8 (plurality opinion (quoting *Coker, supra,* at 597 (plurality opinion))), it is the *feelings* and *intuition* of a majority of the Justices that count-"the perceptions of decency, or of penology, or of mercy, entertained ... by a majority of the small and ***349** unrepresentative segment of our society that sits on this Court." *Thompson, supra,* at 873, 108 S.Ct. 2687 (SCALIA, J., dissenting).

The genuinely operative portion of the opinion, then, is the Court's statement of the reasons why it agrees with the contrived consensus it has found, that the "diminished capacities" of the mentally retarded render the death penalty excessive. *Ante,* at 2250-2252. The Court's analysis rests on two fundamental assumptions: (1) that the Eighth Amendment prohibits excessive punishments, and (2) that sentencing juries or judges are unable to account properly for the "diminished capacities" of the retarded. The first assumption is wrong, as I explained at length in *Harmelin v. Michigan,* 501 U.S. 957, 966-990, 111 S.Ct. 2680, 115 L.Ed.2d 836 (1991) (opinion of SCALIA, J.). The Eighth Amendment is addressed to always-and-everywhere "cruel" punishments, such as the rack and the thumbscrew. But where the punishment is in itself permissible, "[t]he Eighth Amendment is not a ratchet, whereby a temporary consensus on leniency for a particular crime fixes a permanent constitutional maximum, disabling the States from giving effect to altered beliefs and responding to changed social conditions." *Id.,* at 990, 111 S.Ct. 2680. The second assumption-inability of judges or juries to take proper account of mental retardation-is not only unsubstantiated, but contradicts the immemorial belief, here and in England, that they play an *indispensable* role in such matters:

> "[I]t is very difficult to define the indivisible line that divides perfect and partial insanity; but it must rest upon circumstances duly to be weighed and considered both by the judge and jury, lest on the one side there be a kind of inhumanity towards the defects of human nature, or on the other side too great an indulgence given to great crimes ...." 1 Hale, Pleas of the Crown, at 30.

Proceeding from these faulty assumptions, the Court gives two reasons why the death penalty is an excessive punishment for all mentally retarded offenders. First, the "diminished***350** capacities" of the mentally retarded raise a "serious question" whether their execution contributes to the "social purposes" of the death penalty, viz., retribution and deterrence. *Ante,* at 2250-2251. (The Court conveniently ignores a third "social purpose" of the death penalty-"incapacitation of dangerous criminals and the consequent prevention of crimes that they may otherwise commit in the future," ****2266***Gregg v. Georgia,* 428 U.S. 153, 183, n. 28, 96 S.Ct. 2909, 49 L.Ed.2d 859 (1976) (joint opinion of Stewart, Powell, and Stevens, JJ.). But never mind; its discussion of even the other two does not bear analysis.) Retribution is not advanced, the argument goes, because the mentally retarded are *no more culpable* than the average murderer, whom we have already held lacks sufficient culpability to warrant the death penalty, see *Godfrey v. Georgia,* 446 U.S. 420, 433, 100 S.Ct. 1759, 64 L.Ed.2d 398 (1980) (plurality opinion). *Ante,* at 2251. Who says so? Is there an established correlation between mental acuity and the ability to conform one's conduct to the law in such a rudimentary matter as murder? Are the mentally retarded really more disposed (and hence more likely) to commit willfully cruel and serious crime than others? In my experience, the opposite is true: being childlike generally suggests innocence rather than brutality.

Assuming, however, that there is a direct connection between diminished intelligence and the inability to refrain from murder, what scientific analysis can possibly show that a mildly retarded individual who commits an exquisite torture-killing is "no more culpable" than the "average" murderer in a holdup-gone-wrong or a domestic dispute? Or a moderately retarded individual who commits a series of 20 exquisite torture-killings? Surely culpability, and deservedness of the most severe retribution, depends not merely (if at all) upon the mental capacity of the criminal (above the level where he is able to distinguish right from wrong) but also upon the depravity of the crime-which is precisely why this sort of question has traditionally been thought answerable not by a categorical rule of the sort the Court today ***351** imposes upon all trials, but rather by the sentencer's weighing of the circumstances (both degree of retardation and depravity of crime) in the particular case. The fact that juries continue to sentence mentally retarded offenders to death for extreme crimes shows that society's moral outrage sometimes demands execution of retarded offenders. By what principle of law, science, or logic can the Court pronounce that this is wrong? There is none. Once the Court admits (as it does) that mental retardation does not render

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the offender morally *blameless, ante,* at 2250-2251, there is no basis for saying that the death penalty is *never* appropriate retribution, no matter *how* heinous the crime. As long as a mentally retarded offender knows "the difference between right and wrong,"*ante,* at 2250, only the sentencer can assess whether his retardation reduces his culpability enough to exempt him from the death penalty for the particular murder in question.

As for the other social purpose of the death penalty that the Court discusses, deterrence: That is not advanced, the Court tells us, because the mentally retarded are "less likely" than their non-retarded counterparts to "process the information of the possibility of execution as a penalty and ... control their conduct based upon that information." *Ante,* at 2251. Of course this leads to the same conclusion discussed earlier-that the mentally retarded (because they are less deterred) are more likely to kill-which neither I nor the society at large believes. In any event, even the Court does not say that *all* mentally retarded individuals cannot "process the information of the possibility of execution as a penalty and ... control their conduct based upon that information"; it merely asserts that they are "less likely" to be able to do so. But surely the deterrent effect of a penalty is adequately vindicated if it successfully deters many, but not all, of the target class. Virginia's death penalty, for example, does not fail of its deterrent effect simply because *some* criminals are unaware that Virginia *has* the death penalty. In other words, the supposed fact that *some* ***352** retarded criminals cannot fully appreciate the death penalty has nothing to do with the deterrence rationale, but is simply an echo of the arguments denying a retribution rationale, discussed and rejected ****2267** above. I am not sure that a murderer is somehow less blameworthy if (though he knew his act was wrong) he did not fully appreciate that he could die for it; but if so, we should treat a mentally retarded murderer the way we treat an offender who may be "less likely" to respond to the death penalty because he was abused as a child. We do not hold him immune from capital punishment, but require his background to be considered by the sentencer as a mitigating factor. *Eddings v. Oklahoma,* 455 U.S. 104, 113-117, 102 S.Ct. 869, 71 L.Ed.2d 1 (1982).

The Court throws one last factor into its grab bag of reasons why execution of the retarded is "excessive" in all cases: Mentally retarded offenders "face a special risk of wrongful execution" because they are less able "to make a persuasive showing of mitigation,""to give meaningful assistance to their counsel," and to be effective witnesses. *Ante,* at 2252. "Special risk" is pretty flabby language (even flabbier than "less likely")-and I suppose a similar "special risk" could be said to exist for just plain stupid people, inarticulate people, even ugly people. If this unsupported claim has any substance to it (which I doubt), it might support a due process claim in all criminal prosecutions of the mentally retarded; but it is hard to see how it has anything to do with an *Eighth Amendment* claim that execution of the mentally retarded is cruel and unusual. We have never before held it to be cruel and unusual punishment to impose a sentence in violation of some *other* constitutional imperative.

* * *

Today's opinion adds one more to the long list of substantive and procedural requirements impeding imposition of the death penalty imposed under this Court's assumed power to invent a death-is-different jurisprudence. None of those ***353** requirements existed when the Eighth Amendment was adopted, and some of them were not even supported by current moral consensus. They include prohibition of the death penalty for "ordinary" murder, *Godfrey,* 446 U.S., at 433, 100 S.Ct. 1759, for rape of an adult woman, *Coker,* 433 U.S., at 592, 97 S.Ct. 2861, and for felony murder absent a showing that the defendant possessed a sufficiently culpable state of mind, *Enmund,* 458 U.S., at 801, 102 S.Ct. 3368; prohibition of the death penalty for any person under the age of 16 at the time of the crime, *Thompson,* 487 U.S., at 838, 108 S.Ct. 2687 (plurality opinion); prohibition of the death penalty as the mandatory punishment for any crime, *Woodson v. North Carolina,* 428 U.S. 280, 305, 96 S.Ct. 2978, 49 L.Ed.2d 944 (1976) (plurality opinion), *Sumner v. Shuman,* 483 U.S. 66, 77-78, 107 S.Ct. 2716, 97 L.Ed.2d 56 (1987); a requirement that the sentencer not be given unguided discretion, *Furman v. Georgia,* 408 U.S. 238, 92 S.Ct. 2726, 33 L.Ed.2d 346 (1972)*(per curiam),* a requirement that the sentencer be empowered to take into account all mitigating circumstances, *Lockett v. Ohio,* 438 U.S. 586, 604, 98 S.Ct. 2954, 57 L.Ed.2d 973 (1978) (plurality opinion), *Eddings v. Oklahoma, supra,* at 110, 102 S.Ct. 869; and a requirement that the accused receive a judicial evaluation of his claim of insanity before the sentence can be executed, *Ford,* 477 U.S., at 410-411, 106 S.Ct. 2595 (plurality opinion). There is something to be said for popular abolition of the death penalty; there is nothing to be said for its incremental abolition by this Court.

This newest invention promises to be more effective than any of the others in turning the process of capital trial into

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a game. One need only read the definitions of mental retardation adopted by the American Association on Mental Retardation and the American Psychiatric Association (set forth in the Court's opinion, *ante,* at 2245, n. 3) to realize that the symptoms of this condition can readily be feigned. And whereas the capital defendant who feigns insanity risks commitment to a mental institution until he can be cured (and then tried and executed), ****2268***Jones v. United States,* 463 U.S. 354, 370, and n. 20, 103 S.Ct. 3043, 77 L.Ed.2d 694 (1983), the capital defendant who feigns mental retardation risks nothing at all. The mere pendency ***354** of the present case has brought us petitions by death row inmates claiming for the first time, after multiple habeas petitions, that they are retarded. See, *e.g., Moore v. Texas,* 535 U.S. 1044, 122 S.Ct. 1814, 152 L.Ed.2d 668 (2002) (SCALIA, J., dissenting from grant of applications for stay of execution).

Perhaps these practical difficulties will not be experienced by the minority of capital-punishment States that have very recently changed mental retardation from a mitigating factor (to be accepted or rejected by the sentencer) to an absolute immunity. Time will tell-and the brief time those States have had the new disposition in place (an average of 6.8 years) is surely not enough. But if the practical difficulties do not appear, and if the other States share the Court's perceived moral consensus that *all* mental retardation renders the death penalty inappropriate for *all* crimes, then that majority will presumably follow suit. But there is no justification for this Court's pushing them into the experiment-and turning the experiment into a permanent practice-on constitutional pretext. Nothing has changed the accuracy of Matthew Hale's endorsement of the common law's traditional method for taking account of guilt-reducing factors, written over three centuries ago:

"[Determination of a person's incapacity] is a matter of great difficulty, partly from the easiness of counterfeiting this disability ... and partly from the variety of the degrees of this infirmity, whereof some are sufficient, and some are insufficient to excuse persons in capital offenses. ...

"Yet the law of England hath afforded the best method of trial, that is possible, of this and all other matters of fact, namely, by a jury of twelve men all concurring in the same judgment, by the testimony of witnesses ..., and by the inspection and direction of the judge." 1 Pleas of the Crown, at 32-33.

I respectfully dissent.

U.S.,2002.
Atkins v. Virginia
536 U.S. 304, 122 S.Ct. 2242, 153 L.Ed.2d 335, 70 USLW 4585, 02 Cal. Daily Op. Serv. 5439, 2002 Daily Journal D.A.R. 6937, 15 Fla. L. Weekly Fed. S 397

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January 15, 1997

MEMORANDUM

TO: Representative Al Vezey

FROM: Patricia Young
Legislative Analyst

RE: **History of Capital Punishment in Alaska**
Research Request 97.029

You asked for a legislative history of capital punishment in Alaska, both before and since statehood. You requested information on bills introduced to reestablish capital punishment within the state as well as votes by the pubic in regard to the death penalty.

Summary

Although records are incomplete, it appears that capital punishment was condoned, if not legal, in Alaska from the time of its purchase from Russia in 1867. The available historical records suggest that seven persons were hanged by the army or miners' courts between 1869 and 1899. Another eight persons were hanged for crimes deemed to warrant death after criminal and civil codes had been established for Alaska. In 1957, the Territorial Legislature abolished capital punishment, citing concern that innocent persons could be executed. Since that time, nine Alaska Legislatures have considered 17 bills pertaining to the issue. Of the 17, two original bills and the final version of a third focused only on placing an advisory vote before the public regarding whether the legislature should enact a death penalty law. None of the bills, including those for advisory votes, passed. In 1985 the division of elections certified a ballot initiative, but it did not appear on the ballot because of insufficient public support.

The Death Penalty in Alaska

After its purchase from Russia in 1867, Alaska was administered by the U.S. Army and later by the U.S. Navy until passage of the Organic Act of 1884, by which Congress extended the mining laws of the United States and the Oregon Code of Laws, "so far as they may be applicable" to the district of Alaska.[1] According to Carter's Annotated Alaska Codes published in 1907, the laws regarding death warrants and designating the

[1]Information from Robert DeArmond's, "Alaska: 1867-1959," found in *Alaska: Blue Book 1973*, first edition, 141-154.

procedures for execution came from the laws of Oregon--presumably by virtue of the Organic Act. The Organic Act also provided for a governor and a court system. However, the more pertinent death penalty laws--those providing that an individual found guilty of murder in the first degree, or murder occasioned by obstruction of, or damage to, a railroad would be put to death unless the jury returned a verdict specifically qualifying that the sentence should be "without capital punishment"-- appear to have been derived from laws in Ohio, and the exact date of their incorporation is uncertain.[2] We know, however, that Congress made provisions for the rights-of-way for railroads in Alaska in 1898; in 1899, a criminal code was established; and in 1900, a civil code.

Regardless of the exact source or date of inception, the death penalty was used early in Alaska's history. Although records are sketchy and informal, it appears that capital punishment was condoned, if not legal, in Alaska from the time of its purchase from Russia in 1867. The available historical records suggest that seven persons were hanged by the army or miners' courts between 1869 and 1899.[3] Another eight persons were hanged for crimes deemed to warrant death between the advent of criminal and civil codes in Alaska and the abolition of capital punishment in 1957.[4]

Although the Legislative Library has no record of the debate on the elimination of the death penalty, an Associated Press article published following the bill's passage in the House in 1957 suggests that Warren Taylor, the bill's primary sponsor, was concerned about the possibility of individuals being unjustly executed. According to a more recent news article, a "significant basis" for the bill was the uneven application of the penalty--"three-fourths of the people hanged in Alaska this century were members of racial minorities, even though minorities accounted for only about one-fourth of the murders."[5]

The following table represents a compilation of the historical information available on executions in Alaska. The information has been derived from documents provided by the Historical Collections within the Alaska State Library and from information found in *Glacier Bay: The Land and the Silence*, published by the Alaska National Parks and Monuments Association.

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[2]See Attachment A, which includes pertinent sections from the following sources: Compilation of the Acts of Congress and Treaties Relating to Alaska from March 30, 1867 to March 3, 1905 (known as the Charlton Code), published in 1906; Carter's Annotated Alaska Codes (known as the Carter Code), published in 1907; Compiled Laws of Alaska (CLA) 1913; Compiled Laws of Alaska, 1933; the Alaska Compiled Laws Annotated (ACLA), 1949; and Chapter 132 Session Laws of Alaska, 1957.

[3]Attachment B contains two items compiled by the Historical Collections of the Alaska State Library and an excerpt describing and documenting the hanging of Michael Dennin in 1899 from Dave Bohn's *Glacier Bay: The Land and the Silence* published by the Alaska National Parks and Monuments Association.. Library documents include what appears to be a letter from Alaska Superior Court Judge Gerald Williams to "Karen," dated May 23, 1977, regarding hangings prior to 1900, and a list of hangings in Alaska by date, source unknown.

[4]Attachment C contains two items compiled by the Historical Collections of the Alaska State Library:. a letter from Charles J. Zibulka to the curator of the Alaska State Museum and Historical Library, dated August 10, 1965, and a table listing executed persons from 1902 forward, source unknown.

[5]Attachment D contains an Associated Press news article entitled "House Votes to Abolish Alaska Death Penalty," published February 22, 1957; a transcript of that article; and Averil Lerman's," Death's Double Standard: Territorial Alaska's Experience with Capital Punishment Showed Race and Money Mattered," published May 1, 1994, in the *Anchorage Daily News*.

EXECUTIONS IN ALASKA				
Name	**Race**	**Sex**	**Location of Hanging**	**Date of Hanging**
Scutdoo	Indian	male	Wrangell	December 29,1869
unknown	Indian	male	Wrangell	1869
Boyd	Caucasian	male	Wrangell	Fall, 1877
Sad Kajun (?)	Indian	male	Juneau	July, 1882
Kakusakuch Kajun (?)	Indian	male	Juneau	July, 1882
unknown	unknown	male	Valdez	1898
Michael Dennin	Caucasian	male	Lituya Bay	1899
Fred Hardy	Caucasian	male	Nome	September 9, 1902
Homer Bird	Caucasian	male	Sitka	March 6, 1903
Mailo P. Segura	Immigrated from Montenegro; presumed Caucasian	male	Fairbanks	April 15, 1921
Hamilton	Indian	male	Fairbanks	October 7, 1921
Constantine Beaver	Indian	male	Fairbanks	September 7, 1929
Nelson Charles	Indian	male	Juneau	November 10, 1939
Austin A. Nelson	African-American	male	Juneau	March 1, 1948
Eugene LaMoore	African-American	male	Juneau	April 14, 1950

Prepared by Legislative Research Services, January 1997 (97.029).

Source: Documents provided by the Historical Collections of the Alaska State Library, and information in *Glacier Bay: The Land and the Silence*, published by the Alaska National Parks and Monuments Association.

Efforts to Reinstitute the Death Penalty in Alaska

Since 1957, nine Alaska Legislatures have considered 17 bills pertaining to the issue. The first attempt to reinstate capital punishment came in 1974, the most recent was in 1996. Of the 17, two original bills--House Bill (HB) 235 introduced in 1983, and Senate Bill (SB) 13 introduced in 1991--and the final version of a third (SB 52 introduced in 1995) focused only on placing advisory votes before the public regarding whether the legislature should enact death penalty laws. The other 14 bills set guidelines for the imposition of the death penalty.[6]

None of the bills passed. Of the 17 bills introduced, 13 died in committee without a floor vote of the originating body (eight died in the first committee; five in the second committee). Of the four bills to progress to a floor vote, one failed (HB 675 in 1974) and three passed the originating body but failed to reach the floor of the other body [HB 235 in 1983, CSSB 17 (Jud)(ct rules & efds fld), and CSSSSB 52 (Jud) in 1996]. Two of the bills that passed one chamber proposed only that advisory votes be placed before the voters.

The attached table, "Alaska Legislation Pertaining to Capital Punishment (1959-1996)," lists the measures introduced and includes a brief synopsis and the major provisions of each bill. As you will see, identical bills introduced in 1981 (HB 458 and SB 73) formed the basis for most of the subsequent proposals.

One additional attempt to bring the issue before the voters began on September 16, 1985, when the division of elections certified a ballot initiative proposed by Representative Fritz Pettyjohn, former Representative Sam Pestinger, and William Moffatt. In order to have the initiative appear on the 1988 primary ballot, supporters needed 21,317 signatures on file by October 9, 1986. Because only 14,245 signatures were collected, the initiative did not appear on the ballot.

I hope this information is helpful. If you have questions, need further information, or would like copies of the various bills, please let me know.

Attachments

[6]Several of the other bills contained provisions for advisory votes, but in those, the advisory vote concerned the effective date of the reinstitution of capital punishment.

ALASKA LEGISLATION PERTAINING TO CAPITAL PUNISHMENT (1959-1996)

1974 - Eighth Legislature

House Bill 675

Prime Sponsor: A.M. Saylors
Referred to House Judiciary; committee substitute passed Judiciary; failed to pass House.
(CS made minor text changes).

- Mandated the death penalty for first degree murder if the murder was 1) intentional and carried out under an agreement; 2) the victim was a peace officer intentionally killed in the course of duty; 3) the murder was committed during the commission or attempted commission of robbery under AS 11.15.240, kidnapping under AS 11.15.260, rape, or burglary under 11.20.080-130; 4) the convicted person was, at the time of the murder, confined in prison or had escaped from prison; or 5) the victim was a witness to a crime who was murdered for the purpose of preventing his or her testimony in a criminal proceeding.
- Changed Rule 35, Rules of Criminal Procedure, to eliminate the power of the court to reduce sentences in the case of certain murder convictions.

1981 - Twelfth Legislature

Senate Bill 73

Prime Sponsor: Brad Bradley
Referred to Senate State Affairs and Judiciary; did not pass out of State Affairs.

- Classifed murder in the first degree as a capital felony punishable by a prison term of 20-99 yrs or death.
- Set procedure for automatic review by the supreme court for capital punishment sentences and listed determinations to be made by the court, including whether sentence was imposed under the influence of passion, prejudice or other arbitrary factor; the evidence supported the finding of an aggravating factor; and the sentence was excessive or disproportionate to the penalty imposed in similar cases. If the judgment of conviction and death sentence was upheld, the court would specify the time, place, and manner of execution.
- Set out the sentencing procedure for a capital felony, which included a separate proceeding before a jury including any evidence presented to the jury as to mitigating or aggravating factors the court considered to have probative value, followed by an advisory sentence by a jury which would include findings as to whether aggravating factors existed to justify the death sentence, mitigating factors existed which outweighed the aggravating factors and whether the sentence should be imprisonment or death. The court, after considering evidence and the advisory sentence would impose sentence. If it was death, the court would make written findings of aggravating and/or mitigating factors considered.
- Defined the following as aggravating factors: defendant's conduct manifested deliberate cruelty in that it involved torture or aggravated battery; the conduct created a risk of imminent physical injury to three or more persons, other than accomplices; defendant had a prior felony conviction involving the use of violence; defendant committed the offense pursuant to an agreement for gain; defendant was on release for another felony charge or conviction having assault as an element; defendant knowingly directed the offense at an active or former officer of the court, judicial officer, prosecuting attorney, law enforcement officer, correctional employee, or fireman because of or during official duty; or defendant was a member of an organized group and the offense was committed to further the group's criminal objectives.
- Defined the following as mitigating factors: defendant committed the offense under some degree of duress, coercion, threat or complusion insufficient to constitute a defense, but which affected his conduct; the conduct of a youthful defendant was influenced by a more mature person; defendant had provocation from the victim; or defendant assisted authorities detect or apprehend other persons who committed the offense.

House Bill 458 *Text was the same as Senate Bill 73.*

Prime Sponsor: Vern Hurlbert
Referred to House Judiciary; did not pass out of committee.

1983 - Thirteenth Legislature

Senate Bill 121 *Text was the same as Senate Bill 73, 1981, with the exception listed below.*

Prime Sponsor: Fritz Pettyjohn
Co-Sponsors: Tim Kelly, Paul Fischer, and Jan Faiks
Referred to Senate Judiciary and Finance; did not pass out of Judiciary.

The jury imposed sentence rather than issuing an advisory sentence for the court's imposition of sentence.

House Bill 140 *Text was the same as SB 73, 1981.*

Prime Sponsor: Sam Pestinger
Co-Sponsors: Jerry Ward, Joe Flood, John Liska, Dick Shultz
Referred to House Judiciary and Finance; committee substitute passed Judiciary; did not pass out of Finance.

CSHB 140(Jud) *Added the following provisions:*

- A person convicted of a capital offense may not be released on bail before sentencing or pending appeal.
- Transferred responsibility for issuing the time, place and manner of execution from the supreme court to the commissioner of corrections.
- Gave defendant a choice of execution by lethal injection or by firing squad.
- Stated an execution by firing squad would be carried out at a state prison by a firing squad of six peace officers.
- Stated that the commissioner of corrections in consultation with a physician would select a method of injection and a drug or combination of drugs for use in an execution by lethal injection.
- Stated that the commissioner could invite up to 9 citizens 19 years of age or older to attend the execution, including the prosecuting and defense attorney, relatives, friends or religious representatives designated by the defendant. No more than 6 media members could attend and were to serve as a pool for other members of the media; and that photographic or recording equipment would not be allowed until the site was restored to an orderly condition.
- Stated that if, after sentence was imposed, the defendant was found to be incompetent or pregnant, the court and attorneys would be notified and the execution of sentence would be stayed pending further order of the court. If pregnant, the death sentence would be stayed until the defendant was no longer pregnant. At that time the court would issue another warrant specifying a date of execution not less than 30 days nor more than 60 days after the date of the warrant. If found to be incompetent, an order for commitment as provided under AS 12.47.110 would be issued. If competent, the supreme court would issue another warrant specifying the date of execution not less than 30 days nor more than 60 days after the date of the warrant.

House Bill 235

Prime Sponsor: Charlie Bussell
Co-Sponsors: Rick Uehling, John Liska, Dick Shultz
Passed the House; referred to Senate State Affiars and Judiciary; did not pass out of Senate State Affairs.

Provided for an advisory vote at the next election on whether the legislature should enact a law providing for capital punishment for murder in the first degree.

1985 - Fourteenth Legislature

Senate Bill 119 *Text was the same as CS HB 140 (Jud), 1983, with the provision below added.*

Prime Sponsor: Paul Fischer
Co-Sponsors: Tim Kelly, Ann DeVries, Jack Coghill, Jan Faiks, and Mitch Abood
Referred to Health, Education, and Social Services, Judiciary and Finance; did not pass out of Health, Education, and Social Services.

Added a provision for an advisory vote at the next election on whether or not capital punishment for murder in the first degree should go into effect 08/15/87.

House Bill 163 *Text was the same as Senate Bill 73, 1981, with the three exceptions listed below.*

Prime Sponsor: Fritz Pettyjohn
Co-Sponsors: Roger Jenkins, Dick Shultz, Robin Taylor, Andre Marrou, Max Gruenberg
Referred to House Health, Education, and Social Services, Judiciary and Finance; did not pass out of Health Education, and Social Services.

- The jury imposed sentence rather than issuing an advisory sentence for the court's imposition of sentence.
- If the death penalty was imposed, the defendant was considered to have applied for modification of the verdict or findings under Criminal Rule 35.
- The execution would be carried out at a state correctional facility by either hanging or by continuous, intravenous administration of a lethal dose of sodium thiopental.

1987 - Fifteenth Legislature

Senate Bill 7 *Text was practically the same as CS HB 140(Jud), 1983, with the exceptions listed below.*

Prime Sponsor: Mitch Abood
Co-Sponsors: Tim Kelly, Jan Faiks, Paul Fischer
Referred to Senate Health, Education, and Social Services, Judiciary, and Finance; did not pass out of Judiciary.

- Stated that death warrant was to specify date of execution which was to be no less than 30 nor more than 60 days after the date of the warrant.
- Omitted the guidelines by which the firing squad would be selected and the form of lethal injection would be determined. Simply stated that regulations were to be adopted.
- Omitted the guidelines concerning attendance at executions. Simply stated that regulations were to be adopted.
- Changed the aggravating factors to be considered to the following: defendant's conduct manifested deliberate cruelty in that it involved sexual assault in the first degree, kidnapping or assault in the first degree; defendant's conduct caused the death of two or more persons, other than accomplices; defendant had a prior conviction for murder; defendant knowingly directed the conduct at the President of the U.S. or governor of the state; defendant knowingly directed the conduct at a law enforcement, judicial officer, or correctional officer during or because of official duties; defendant killed a child 9 years of age or younger during the commission of the offense; defendant committed the offense under an agreement for gain; defendant committed the offense while avoiding lawful arrest or escaping from lawful confinement; or defendant committed the offense after escaping from the lawful custody of a peace officer or place of lawful confinement.

1987 - Fifteenth Legislature (continued)

CSSB 7(HESS) *Added the following provisions.*

- Amended AS 11.31.100(d) and AS 11.31.110(c) to include capital felonies in the definition of class A felonies
- Inserted the guidelines from CSHB 140 (Jud) by which the firing squad would be selected and the form of lethal injection would be determined.
- Inserted the guidelines from CSHB 140(Jud) concerning attendance at executions.
- Made the following revisions to the list of aggravating factors: 1) added torture and aggravated battery to the list of actions manifesting deliberate cruelty; 2) added a prior conviction for a felony involving the use of violence to the factor citing prior murder convictions; 3) added prosecuting attorneys and firemen to the list of people the defendant may have knowingly directed the offense at; 4) added defendant's conduct created a risk of imminent physical injury to 3 or more persons other than accomplices; 5) deleted the factor citing the killing of a child of 9 years of age or younger; and 6) revised the factors concerning the committing the offense while avoiding arrest or escaping from confinement to say that the defendant was on release for another felony charge or conviction having assault as a necessary element. All these revisions made the list of aggravating factors practically the same as those in CS HB 140 (Jud).
- Added a provision for an advisory vote at the next election on whether or not capital punishment for murder in the first degree should go into effect 08/15/89

Senate Bill 31 *Text was the same as CSHB 140(Jud), 1983, with the following addition.*

Prime Sponsor: Paul Fischer
Co-Sponsors: Tim Kelly and Jan Faiks
Referred to Senate Health, Education, and Social Services, Judiciary and Finance; did not pass out of Health, Education, and Social Services.

Added a provision for an advisory vote at the next election on whether or not capital punishment for murder in the first degree should go into effect 08/15/89

1989 - Sixteenth Legislature

Senate Bill 17 *Although arranged differently, text of the original version was practically the same as CSSB 7 (HESS) 1987, with the following additions.*

Prime Sponsor: Paul Fischer
Co-Sponsors: Tim Kelly, Drue Pearce, Rick Halford and Jan Faiks
CSSB 17 (Jud) (ct rules & efds fld) passed the Senate; referred to House Judiciary and Finance; failed to pass Judiciary.

- Amended AS 12.30.020(a) to exclude a capital felony from the requirement of bail and release.
- Amended AS 12.30.020(a) to exclude persons charged with a capital felony from the provision prohibiting new charges against a defendant who remains incompetent for five years after the charges have been dismissed under the subsection.
- In the section regarding the review of judgment of conviction, added to the issues the court shall determine "any other issue the defendant may raise as a point on appeal."
- Added sections regarding the applicability of various sections of the bill to criminal and appellate rules.

CSSB 17 (Jud)

- Added a section of Legislative Findings
- Added a section stating that it was up to the prosecuting attorney to determine whether or not to seek the death penalty. If the death penalty was to be sought, the court, defendant and defendant's counsel were to be notified within 10 days of arraignment.
- Deleted the section providing for execution by firing squad.

1989 - Sixteenth Legislature (continued)

CSSB 17 (Jud)(ct rules & efds fld)

- Deleted the sections regarding the applicability of the bill to criminal and appellate rules.
- Deleted the sections regarding the effective dates.

1991 - Seventeenth Legislature

Senate Bill 13

Prime Sponsor: Paul Fischer
Co-Sponsors: Steve Frank, Drue Pearce and Rick Halford
Referred to Senate Judiciary and Finance; did not pass out of Finance.

Provided for an advisory vote at the next general election on whether the legislature should enact a law providing for capital punishment for murder in the first degree.

1993 - Eighteenth Legislature

House Bill 162 *Text was practically the same as CSSB 17 (JUD) (ct rules & efds fld), 1989, with the following changes.*

Prime Sponsor: Jerry Sanders
Co-Sponsor: Harley Olberg
Referred to House Judiciary and Finance; did not pass out of Finance.

- Omitted sections amending AS 11.31.100(d) to replace "murder in the first degree" with "capital felony" and omitted amending AS 11.31.110(c).
- Added amendment to AS 12.55.025(i) to "include determining if a sentence of death should be imposed under AS 12.58."
- Required a 99-year sentence for defendants convicted of murder in the 1st degree but not sentenced to death if 1) the conviction was for the murder of a peace officer, firefighter or correctional official engaged in the performance of official duties; 2) the defendant had previous convictions for 1st or 2nd degree murder or homocide with elements of 1st or 2nd degree murder; or 3) the court finds the defendant subjected the victim to substantial physical torture.
- Prohibited a sentence of death from being suspended.
- Required that aggravating factors be found "unanimously beyond a reasonable doubt" and that aggravating factors outweigh mitigating factors unanimously by a preponderance of evidence."
- Removed sexual assault in the first degree, kidnapping, and assault in the 1st degree from the list of aggravating factors. Added being a member of an organized group of 5 or more and committing the offense to further the criminal objectives of the group to the list of aggravating factors.
- Added hanging as a method of execution and specified sodium thiopental as the substance to be used in lethal injection.
- Omitted sections pertaining to witnesses and invitees to and news media coverage of an execution.
- Reinserted sections regarding the applicability of sections of the bill to criminal and appellate rules. Reinserted the sections regarding the effective dates.

ALASKA LEGISLATION PERTAINING TO CAPITAL PUNISHMENT (1959-1996)

1993 - Eighteenth Legislature (continued)

Senate Bill 127 *Text was similar to HB 162 with the following exceptions.*

Prime Sponsor: Senate Judiciary Committee
Referred to Senate Judiciary and Finance; did not pass out of Judiciary.

- Eliminated section on Legislative Findings.
- Eliminated the provision that the prosecuting attorney determines whether to seek the death penalty.
- Eliminated sections on applicibility of the bill to criminal and appellate court rules.

1995 - Nineteenth Legislature

House Bill 45 *Text was similar to SB 127 with the following exceptions.*

Prime Sponsor: Jerry Sanders
Co-Sponsor: Vic Kohring
Referred to House State Affairs, Judiciary, and Finance; did not pass out of State Affairs.

- Added a section including capital felonies among violations required to be reported in applications for permits under AS 05.15.140(b).
- Amended AS 11.31 to incorporate capital offenses into attempt, solicitation, and conspiracy to commit a crime.
- Eliminated hanging as the preferred manner of execution.
- Amended AS 47.10 to include capital felony among the charges for which minors of 16 or more must be charged, prosecuted, and sentenced as adults unless they prove themselves amenable to treatment

Senate Bill 52 *Text was the same as HB 45 with the following exceptions.*

Prime Sponsor: Robin Taylor
Co-Sponsor: Drew Pearce
Referred to Judiciary and Finance; committee subsitute for sponsor substitute passed Senate; referred to House Judiciary and Finance; did not pass out of Finance.

- Eliminated sections amending AS 11.31 (attempt, solicitation, and conspiracy to commit a crime).
- Reinserted the provision that death would be inflicted by hanging unless the defendant elected a lethal dose of sodium thiopental.
- Eliminated provision that minors 16 and over committing capital offenses would be charged, prosecuted and sentenced as adults.

SSSB 52 *Text became identical to HB 45.*

CSSSSB 52 (Jud) *Eliminated all previous provisions; provided for an advisory vote at the next election on whether the legislature should enact a law providing for capital puishment for murder in the first degree.*

ALASKA LEGISLATION PERTAINING TO CAPITAL PUNISHMENT (1959-1996)

1995 - Nineteenth Legislature (continued)

House Bill 481 *Text was similar to HB 45 with the following exceptions.*

Prime Sponsor: Beverly Masek
Co-Sponsors: Vic Kohring and Scott Ogan
Referred to House State Affairs and Judiciary; did not pass out of Judiciary.

- Aggravating factors were limited to the defendant's having caused the death of a child under the age of 18, the defendant's being at least two years older than the child, and the defendant had or was attempting to kidnap, assault, or sexually assault the child.
- Eliminated the advisory vote provision regarding whether the law as passed should go into effect on a certain date.
- Reinserted sections regarding the applicability of the bill to criminal and appellate rules of court.

Source: Individual legislation, bill histories, and final status of bills and resolutions for the respective years.

NATIONAL CONFERENCE *of* STATE LEGISLATURES

The Forum for America's Ideas

Capital Case Sentencing Procedure

A unanimous jury must sentence to death in 24 states: Arkansas, California, Connecticut, Illinois, Kansas, Louisiana, Maryland, Mississippi, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Virginia, Washington, Wyoming.

In Missouri, a jury sentences to death unless a defendant waives trial by jury, and then the judge determines guilt and assesses the death penalty. Similarly in New Mexico, the jury that found a defendant guilty determines in a separate court proceeding whether the defendant should be sentenced to death or life imprisonment. In a nonjury trial, the trial judge makes that determination, also in a sentencing proceeding.

A judge with jury recommendation hands down a death sentence in six states: Alabama, Delaware, Florida, Georgia, Indiana, Kentucky. In Alabama, Georgia, Indiana, Kentucky and Ohio, the jury recommendation must be unanimous.

A judge sentences to death in four states: Arizona, Idaho, Montana, Nebraska

Colorado has three-judge panels that determine a death sentence.

Thirty-six states have a death penalty.

Date: June 2008

Source: Conference of State Court Administrators and the National Center for State Courts.

Clemency Process By State

Governor Has Sole Authority (14)

Alabama	New Jersey	South Carolina
California	New Mexico	Virginia
Colorado	New York	Washington
Kansas	North Carolina	Wyoming
Kentucky	Oregon	

Governor: Must Have Recommendation of Clemency from Board or Advisory Group (9)

Arizona	Indiana	Oklahoma
Delaware	Louisiana	Pennsylvania
Florida*	Montana	Texas

Governor: After Non-binding Recommendation of Clemency from Board or Advisory Group (9)

Arkansas	Mississippi	Ohio
Illinois	Missouri	South Dakota
Maryland	New Hampshire	Tennessee

Board or Advisory Group Makes Determination (3)

Connecticut

Georgia

Idaho

Governor Sits on Clemency Board Which Makes the Determination (3)

Nebraska

Nevada
Utah

Notes:
*Florida's Governor must have recommendation of Board, on which s/he sits.

For Federal Death Row inmates, the President alone has pardon power.

Source: "Executive Clemency Process and Execution Warrant Procedure In Death Penalty Cases," National Coalition to Abolish the Death Penalty (1993), with updates by DPIC.

2008 enactments:

IDAHO SB 1246 Provides that a judge is not required to sequester a jury in first degree murder cases when the state has not filed a notice of intent to seek the death penalty or has withdrawn such notice.

IDAHO SB1422 Extends the time limitation for filing notice of intent to seek the death penalty in capital cases, allows the state and defense to stipulate or agree to a different time limitation as deemed reasonable by the court.

Illinois SB 2657 Amends the Capital Punishment Reform Study Committee Act. Amends the date by which the Capital Punishment Reform Study Committee must submit its final report to the General Assembly.

MARYLAND HB 1111 Establishes a State Commission on Capital Punishment, provides for the membership of the Commission, authorizes the Commission to hold public hearings, provides for the staffing of the Commission, requires specified entities to cooperate with the Commission.

MARYLAND SB 614 Establishes a State Commission on Capital Punishment, provides for the membership of the Commission, provides for the chair of the Commission, authorizes the Commission to hold public hearings, provides for the staffing of the Commission, requires specified entities to cooperate with the Commission, provides for the funding of the Commission, provides that a member of the Commission may not receive compensation but is entitled to specified reimbursement.

TENNESSEE SB 2718 Extends the reporting period for the Special Committee to Study the Administration of the Death Penalty and provides that upon submitting its report the committee shall cease to exist.

TENNESSEE SB 4154 Concerns sentencing, relates to first degree murder, adds as a statutory aggravating circumstance for a sentence of death or imprisonment for life without parole, the fact that the murder was committed against a probation and parole officer.

UTAH SB 150 Provides an attempt to commit a felony punishable by imprisonment for life without parole is a first degree felony, provides that a person who is convicted of aggravated murder, based on an aggravating circumstance that also constitutes a separate offense, may also be convicted of, and punished for, the separate offense, provides a person who is convicted of murder, based on a predicate offense that also constitutes a separate offense, may also be convicted of, and punished for, the separate offense.

UTAH SB 187 Modifies the Code of Criminal Procedure regarding bail in aggravated murder cases, provides that a charge of aggravated murder is considered a capital felony and not subject to bail unless the prosecutor files a notice that the death penalty will not be sought, or the time for filing the notice has passed.

6) 2007 enactments:

Illinois SB 1023 – Creates the Capital Crimes Database to collect and retain all information on the prosecution, pendency, and disposition of capital and capital eligible cases. Provides that a defendant may request Integrated Ballistic Identification System testing on evidence not previously requested because the technology was not available. Requires any new fingerprint evidence that does not match the defendant or

victim to be submitted to the FBI's Integrated Automated Fingerprint Identification System. Requires the creation of guidelines for all mandated recordings of custodial interrogations in homicide investigations. Prohibits the classification of "armed violence" to attach with any offense that makes the possession or use of a dangerous weapon either an element of the base offense, an aggravated or enhanced version of the offense, or a mandatory sentencing factor that increases the sentencing range. Removes the criminal sexual assault from the list of crimes for which the sentence for armed violence may run consecutively.

Louisiana SB 147 Provides a district attorney with the option to not seek a capital verdict, provides that if the district attorney seeks a capital verdict, the offender shall be punished by death or by life imprisonment at hard labor without benefit of parole, probation, or suspension of sentence, in accordance with the determination of the jury, relates to cases of capital punishment.

Missouri HB 820
Requires the selection of an execution team by the Director of the Department of Corrections that will consist of medical support personnel and individuals who administer lethal gas or chemicals, provides the identities of the team members must be kept confidential, provides that the department's records of such personnel is confidential, prohibits any licensing board or department from sanctioning a professional license of a team member due to his or her lawful participation in an execution.

Nevada AB 58: Expands the list of first degree murder acts committed in the perpetration or attempted perpetration of specified crimes to provide that murder of the first degree also includes murder committed in the perpetration or attempted perpetration of abuse of an older person or vulnerable person.

North Carolina HB 784 Increases from 17 years old to 18 the minimum eligible age for the death penalty.

South Dakota HB 1175 Provides for substances used in the execution of a sentence of death and to allow the choice of the substances used in an execution under certain circumstances.

Texas HB 1545 Relates to competency to be executed in a capital case.

Texas SB 705 Relates to an annual report by the Office of Court Administration of the Judicial System about jury charges and sentences in capital cases.

Utah HB 93 Provides that the commission or attempt to commit specified offenses, including sexual offenses, against a child as part of the commission of the homicide constitutes aggravated murder, if committed with reckless indifferences to human life, modifies an element of aggravated murder regarding acting for pecuniary gain, modifies an element of murder to specify knowing as the level of intent when the defendant acts with depraved indifference.

Utah HB 228 Relates to penalty for homicide of a child, provides that murder of a child younger than 14 years of age is a capital felony, amends the definition of aggravated murder, which is a capital offense, to include the intentional or knowing murder of a child younger than 14 years of age.

Utah SB 114 Provides that aggravated murder is a capital felony if the prosecutor elects to file notice of intent to seek the death penalty within 60 days after the arraignment, provides the court may not receive a plea to a noncapital first degree aggravated homicide offense during the filing period unless agreed to by the prosecution, provides that a person who has been convicted of or has pled to a noncapital aggravated homicide offices shall be sentenced to life in prison without parole.

Virginia HB 2418 Relates to prisoner transfer to a facility housing a death chamber, provides that the identities of persons designated to carry out an execution are confidential and not subject to discovery or introduction as evidence in any proceeding, removes the specific time constraints on when a prisoner condemned to die must be transferred to the correctional center wherein the death chamber is housed and when the prisoner must elect to execution by a method other than lethal injection.

Virginia SB 1295 Relates to the transfer of a prisoner to a facility housing death chamber, concerns confidentiality of execution records.

7) 2006 enactments:

Arizona SB 1376 Establishes the State Capital Postconviction Public Defender Office to represent persons who are not financially able to employ counsel in postconviction relief proceedings in state court after a judgment of death has been rendered.

Goergia HB 57 Protects physicians and medical professionals involved in state ordered executions from challenges to their licensure soley on the basis of their participation in such executions.

Idaho HB 533 Adds sexual abuse in conjunction with murder of a minor to the list of agrravating circumstances for the death penalty.

Idaho SB 1302 Provides in a death penalty case that a trial judge does not have to prepare and submit to the state supreme court a report unless the jury has been waved for sentencing. Eliminates the term "excessive" due to the Idaho Supreme Court ruling in State v. Fields, 1995.

Indiana SB 160 Reduces from ten to five the number of family members of a convicted person that may be present at the execution. Allows eight adult family members of the victim to be present at the execution. Instructs the department of corrections to create procedures for determining which family members may attend an execution if there is more than one vicitm or more than eight immediate family members. Establishes a support room for the use of family members of a victim and support persons who will not be present at the execution.

Louisiana HB 635 Adds 2nd degree robbery, cruelty to juveniles, 2nd degree cruelty to juveniles, and terrorism to the list of aggravating circumstances that should be considered in imposing the death sentence.

Oklahoma SB 1807 Prohibits a sentence of death for defendants who experienced an onset of mental retardation before the age of eighteen. Provides the burden of proof is on the defendant. If the courts deems the defendant mentally sound, it does not prohibit the defendant from raising the issue during the sentencing trial or during the appeals process.

South Carolina SB 1138 Creates the crime of criminal sexual conduct with a minor. Provides if the victim is under 11 years of age the mandatory sentence is twenty-five years to life imprisonment. Provides if the defendant has a previous conviction for sexual conduct involving sexual or anal intercourse with a minor who is less than 11 years the sentence will be death or life imprisonment. Provides at least one aggravating circumstance must be found to implement the death penalty. Provides for trial procudure when the prosecuting attorney is seeking the death peanlty and provides for an appeals process.

Virginia HB 45 Raises the age limit of the death penalty from 16 years of age to 18 or older at the time of the capital offense.

8) 2005 enactments:

Mississippi H 63
Appropriates funds and budgets the Office of Capital Post-Conviction Counsel.

Nevada AB 6
Amends the minimum age for death penalty to 18 years old in order to comply with Supreme Court decision *Roper v. Simmons.*

North Carolina H 1436
Directs the sentencing commission to study and make a recommendation on whether murder committed in violation of a valid domestic violence order of protection should be an aggravating factor in capital sentencing.

Oklahoma S. 329
Provides compensation for state assigned lead counsels or co-counsels, other than a county indigent defender, serving a defendant who is subject to the death penalty shall be compensated at levels established for ordinary state appointed counsel. Allows the fee maximum to be exceeded only when counsel establishes that the case is an exceptional one which requires an extraordinary amount of time to litigate and that the request for extraordinary attorney fees is reasonable.

Texas S 1791
Includes among capital crimes the act of murdering another person in retaliation for or on account of the person's status as a judge.

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Death Penalty and the Mentally Retarded
Updated January 2007

Currently, 26 of the 36 states prescribing capital punishment prohibit the imposition of death on defendants determined to be mentally retarded. Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maryland, Missouri, Nebraska, Nevada, New Mexico, New York, North Carolina, South Dakota, Tennessee, Utah, Virginia, Washington disallow sentencing mentally retarded defendants to death.

Of the 26 states listed above, Arizona, Arkansas, Delaware, Idaho, Illinois, Kentucky, Maryland, Nebraska, New Mexico, North Carolina, South Dakota, Tennessee and Washington include an I.Q. level either as part of the definition of mental retardation or as a basis in creating a presumption of mental retardation. In creating presumptions, Arizona and Arkansas use the lowest level of 65 while Nebraska, New Mexico and South Dakota employ a level of 70. Illinois uses an IQ of 75. Delaware, Idaho, Kentucky, Maryland, Tennessee and Washington incorporate an I.Q. level of 70 into the definition of mental retardation.

A few of the states provide general guidelines in helping courts determine if the defendant is mentally retarded. Arizona, Colorado, Florida, Georgia, Indiana, Kansas, Louisiana, Virginia and Washington require court ordered psychiatric evaluations of defendants. Alternatively, Connecticut, Maryland, Nebraska, New Mexico, South Dakota and Washington either require an "individually administered" or a "reliable" form of testing when determining a defendant's I.Q. level or general intellectual functioning.

As for retroactive application, Nebraska's statute specifically delineates the process an inmate, sentenced prior to the effective date, must use in motioning for a hearing on mental retardation. Similarly, Arizona, Florida, Kentucky, Missouri and South Dakota's texts only apply to offenses committed after the effective dates. Additionally, the historical notes and references listed after the statutory texts in Colorado, New York and Tennessee clearly prohibit any retroactive application. Courts in Georgia and Indiana have interpreted their respective statutes as to retroactive application. The Georgia Supreme Court ruled that "when a defendant who was tried before the effective date ... alleges in a petition for habeas corpus that he or she is mentally retarded, the habeas corpus court must first determine whether the petitioner has presented sufficient credible evidence to create a genuine issue regarding petitioner's retardation." *Fleming v. Zant*, 259 Ga. 687, 286 S.E.2d 339 (Ga. 1989). In contrast, the Indiana Supreme Court held that the Mental Retardation Statute does not apply retroactively. *Rhodes v. State*, 698 N.E.2d 304, (Ind. 1998).

Statutory Definitions:

- ARIZ. REV. STAT. §13-703 and §13-703.02
  Defines mental retardation as a condition based on a mental deficit that involves significantly subaverage general intellectual functioning. Existing concurrently with significant impairment in adaptive behavior, where the onset of the foregoing conditions occurred before the defendant reached the age of eighteen. Creates a rebuttable presumption when the defendant has an IQ of 65 or less. Defendant has the burden of proving by clear and convincing evidence. The court determines whether the defendant is mentally retarded prior to trial, however the defendant may present evidence of mental retardation during the sentencing proceeding, even if deemed not mentally retarded prior to trial.

- ARK. CODE ANN. §5-4-618
  Defines mental retardation as significantly subaverage general intellectual functioning accompanied by significant deficits or impairments in adaptive functioning manifest in the development period, but no later than age 18; and deficits in adaptive behavior. Creates a rebuttable presumption when a defendant has an I.Q. of 65 or below. Defendant has the burden of proving by a preponderance of the evidence. Prior to trial, the court determines whether the defendant is mentally retarded, but the defendant may bring the issue up again during the sentencing phase if the court determined prior to trial that the defendant was not mentally retarded.

- CALIFORNIA PENAL CODE 1376
  Defines mental retardation as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested before the age of 18.

- COLO. REV. STAT. ANN. §16-9-401 through 405
  Defines "mentally retarded defendant" as one with significantly subaverage general intellectual functioning existing concurrently with substantial deficits in adaptive behavior and manifested and documented during the developmental period. Allows documentation excused if court finds extraordinary circumstances. Requires the defendant prove by clear and convincing evidence and that the court enter its findings on the defendant's pre-trial motion. Mandates the court to order evaluations of defendant when defendant's pre-trial motion is filed. Permits the use of defendant's statements and medical history in determining whether the defendant is mentally retarded.

- CONN. GEN. STAT. §1-1g and §53a-46a
  Defines "mentally retarded" as having significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period which is between birth and age 18.

- DEL. SB 450
  Defines "serious mental retardation" as having significantly subaverage intellectual functioning that exists concurrently with substantial deficits in adaptive behavior that were both manifested before the individual became 18 years of age.

- FLA. STAT. ANN. §921.137
  Defines "mentally retarded" as having significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from conception to 18. Defendant must notify the court of intent to raise mental retardation bar to execution. After being convicted and sentenced to death, defendant may then file motion to determine whether mental retardation exists. Court then appoints two experts to evaluate the defendant. Court must find by clear and convincing evidence that defendant is mentally retarded. State may appeal a determination of mental retardation.

- GA. CODE ANN. §17-7-131
  Defines mentally retarded as having significantly subaverage general intellectual functioning resulting in or associated with impairments in adaptive behavior which manifested during the developmental period. Requires the defendant be examined by a licensed psychologist or psychiatrist prior to acceptance of defendant's guilty by mentally retarded plea. Specifically states that trials commencing on or after July 1, 1988 cannot impose the death penalty on mentally retarded defendants.

- IDAHO STATUTES §19-2515A
  "Mentally retarded" means significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in a least two of the following skill areas: communication, self-care, home living, social or interpersonal skills, use of community resources, self-direction, functional academic skills, work, leisure, health and safety. The onset of significant limitations in adaptive functioning must occur before the age of 18. "Significant subaverage general intellectual functioning" means an intelligence quotient of 70 or below.

- ILLINOIS COMPILED STATUTES §725 ILCS 5/114-15
  The mental retardation must have manifested itself by the age of 18. AN intelligence quotient (IQ) of 75 or below is presumptive evidence of mental retardation. IQ tests and psychometric tests administered by the defendant must be the kind and type recognized by experts in the field of mental retardation. In order for the defendant to be considered mentally retarded, a low IQ must be accompanied by significant deficits in adaptive behavior in at least 2 of the following skill areas: communication, self-care, social or interpersonal skills, home living, self-direction, academics, health and safety, use of community resources, and work.

- IND. CODE ANN. §35-36-9 through 9-7
  Defines mental retardation as significantly subaverage intellectual functioning and substantial impairment of adaptive behavior prior to becoming 22 years of age that is documented in a court ordered evaluative report. Requires the court to order an evaluation and the defendant must prove by clear and convincing evidence.

- KAN. STAT. ANN. §76-12b01, §21-4623 & 4634
  Defines mental retardation as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the period from birth to age 18. Requires an examination of the defendant.

- KY. REV. STAT. ANN. §532-130, 135 & 140
  Defines mental retardation as significant subaverage intellectual functioning existing concurrently with substantial deficits in adaptive behavior and manifested during the developmental period. Defines significantly subaverage as an I.Q. of 70 or below. Applies to trials commenced after the effective date.

- LA. ACTS 698, CODE OF CRIMINAL PROCEDURE, ARTICLE 905.5.1
  Defines mental retardation as a disability characterized by significant limitations in both intellectual functioning and adaptive behavior as expressed in conceptual, social, and practical adaptive skills. Onset must have occurred before the age of 18.

- MD. CODE ANN. §27-412
  Defines mentally retarded as significantly subaverage intellectual functioning as evidenced by an I.Q. of 70 or below on an individually administered I.Q. test and impairment in adaptive behavior, and the mental retardation is manifested prior to the age of 22. Requires the defendant prove by a preponderance of the evidence.

- MO. REV. STAT. §565.030
  Defines mental retardation as significantly subaverage intellectual functioning with continual extensive related deficits and limitations in two or more adaptive behaviors .... which conditions are manifested and documented before 18 years of age. Issue of mental retardation can be decided prior to trial or can be submitted later to the trier of fact.

- NEB. REV. STAT. §28-105.01
  Defines mental retardation as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and an I.Q. of 70 or below on a reliable test is presumptive evidence. The court must find by a preponderance of the evidence. Allows defendants sentenced prior to the

effective date to motion for a hearing on the determination of mental retardation. Defendants were given 120 days after the effective date to file a motion.

- NEVADA - NRS 174
  Defines mental retardation as significant subaverage general intellectual functioning which exists concurrently with deficits in adaptive behavior and manifested during the developmental period.

- N.M. STAT. ANN. §31-20A-2.1
  Defines mental retardation as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and an I.Q. of 70 or below on a reliable test is presumptive evidence. The court must find by a preponderance of the evidence.

- N.Y. CPL LAW §400.27
  Defines mental retardation as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior existing prior to age 18. The court must find by a preponderance of the evidence. Allows the use of psychiatric evidence.

- NC SB 173
  Defines mental retardation as significantly subaverage general intellectual functioning (IQ of 70 or below), existing concurrently with significant limitations in adaptive functioning (having significant limitations in two or more of the following adaptive skill areas: communications, self-care, home, living, social skills, community use, self-direction, health and safety, functional academics, leisure skills and work skills), both of which were manifested before the age of 18. Allows for post-conviction determination of mental retardation.

- S.D. CODIFIED LAWS §23A-27A-26.1 and 26.2
  Defines mental retardation as significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive skill areas existing prior to age 18. An I.Q. exceeding 70 on a reliably standardized measure is presumptive evidence that defendant is not mentally retarded. The court must find by a preponderance of the evidence. Applies to trials commenced after the effective date.

- TENN. CODE ANN. §39-13-203
  Defines mental retardation as significantly subaverage general intellectual functioning as evidenced by a functional I.Q. of 70 prior to the age of 18 and deficits in adaptive behavior. Requires the defendant prove by a preponderance of the evidence.

- UTAH CODE §77-15A-101
  Defines mental retardation as significant subaverage general intellectual functioning hat results in and exists concurrently with significant deficiencies in adaptive

functioning that exists primarily in the areas of reasoning or impulse control, or in both of these areas; and the subaverage general intellectual functioning and the significant deficiencies in adaptive functioning are both manifested prior to age 22.

- VIRGINIA CODE §19.2-264.3
  Defines "mentally retarded" as a disability, originating before the age of 18, characterized by (i) significantly subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social and practical adaptive skills.

- WASH. REV. CODE §10.95.030
  Requires a psychologist or psychiatrist to diagnose the defendant. The defendant must establish by a preponderance of the evidence. Defines mental retardation as significant subaverage intellectual functioning existing concurrently with substantial deficits in adaptive behavior and manifested during the developmental period. Defines general intellectual functioning as the results obtained by assessment with one or more of the individually administered general intelligence tests. Defines significant subaverage intellectual functioning as an I.Q. of 70 or below. Adaptive behavior means the effectiveness or degree with which individuals meet the standards of personal independence and social responsibility expected for his or her age. Developmental period is the time between conception and age 18.

Source for how many and which states prohibit execution of the mentally retarded: Death Penalty Information Center: deathpenaltyinfo.org

For more information contact Sarah Hammond at sarah.hammond@ncsl.org

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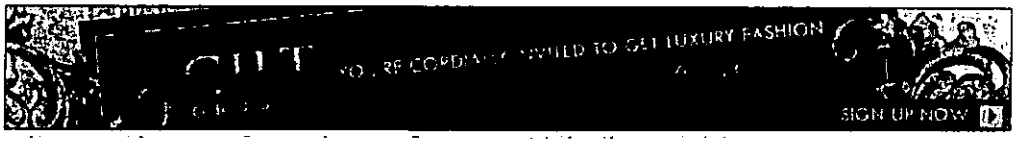

Citing Cost, States Consider End to Death Penalty

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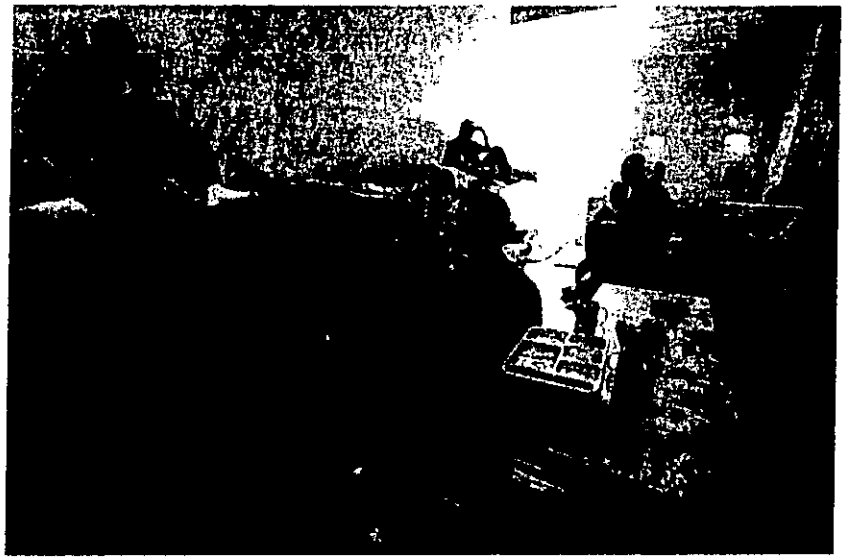

A county jail in Lawrenceville, Va., was designed for half as many inmates as it houses. Many states are trying to cut prison costs.

By IAN URBINA
Published: February 24, 2009

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ANNAPOLIS, Md. — When Gov. Martin O'Malley appeared before the Maryland Senate last week, he made an unconventional argument that is becoming increasingly popular in cash-strapped states: abolish the death penalty to cut costs.

Mr. O'Malley, a Democrat and a Roman Catholic who has cited religious opposition to the death penalty in the past, is now arguing that capital cases cost three times as much as homicide cases where the death penalty is not sought. "And we can't afford that," he said, "when there are better and cheaper ways to reduce crime."

Lawmakers in Colorado, Kansas, Nebraska and New Hampshire have made the same argument in recent months as they push bills seeking to repeal the death penalty, and experts say such bills have a good chance of passing in Maryland, Montana and New Mexico.

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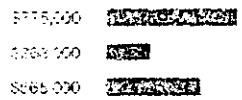

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The Cost of Capital Cases

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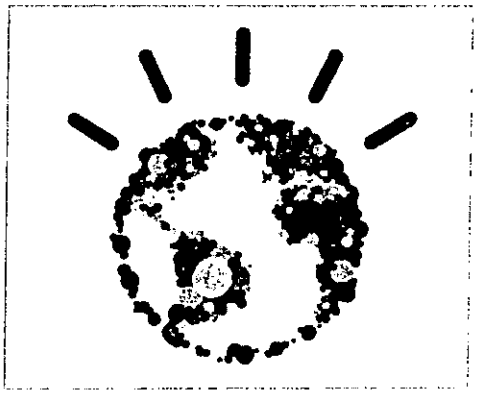

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Gov. Martin O Malley

Death penalty opponents say they still face an uphill battle, but they are pleased to have allies raising the economic argument.

Efforts to repeal the death penalty are part of a broader trend in which states are trying to cut the costs of being tough on crime. Virginia and at least four other states, for example, are considering releasing nonviolent offenders early to reduce costs.

The economic realities have forced even longtime supporters of the death penalty, like Gov. Bill Richardson of New Mexico, to rethink their positions.

Mr. Richardson, a Democrat, has said he may sign a bill repealing capital punishment that passed the House last week and is pending in a Senate committee. He cited growing concerns about miscarriages of justice, but he added that cost was a factor in his shifting views and was "a valid reason in this era of austerity and tight budgets."

Capital cases are expensive because the trials tend to take longer, they typically require more lawyers and more costly expert witnesses, and they are far more likely to lead to multiple appeals.

In New Mexico, lawmakers who support the repeal bill have pointed out that despite the added expense, most defendants end up with life sentences anyway.

That has been true in Maryland. A 2008 study by the Urban Institute, a nonpartisan public policy group, found that in the 20 years after the state reinstated the death penalty in 1978, prosecutors sought the death penalty in 162 felony-homicide convictions, securing it in 56 cases, most of which were overturned; the rest of the convictions led to prison sentences.

Since 1978, five people have been executed in Maryland, and five inmates are on death row.

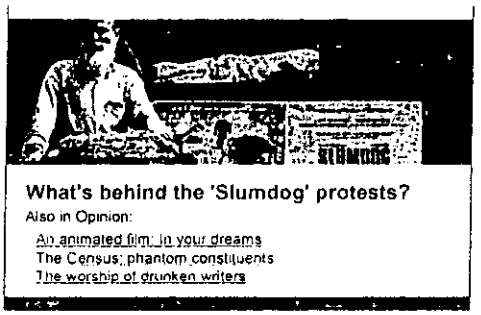
Opponents of repealing capital punishment say such measures are short-sighted and will result in more crime and greater costs to states down the road. At a time when police departments are being scaled down to save money, the role of the death penalty in deterring certain crimes is more important than ever, they say.

"How do you put a price tag on crimes that don't happen because threat of the death penalty deters them?" said Scott Shellenberger, the state's attorney for Baltimore County, Md., who opposes the repeal bill.

Kent Scheidegger, legal director of the Criminal Justice Legal Foundation, an organization in Sacramento that works on behalf of crime victims, called the anticipated savings a mirage. He added that with the death penalty, prosecutors can more easily offer life sentences in a plea bargain and thus avoid trial costs.

But Eric M. Freedman, a death penalty expert at Hofstra Law School, said studies had shown that plea bargaining rates were roughly the same in states that had the death penalty as in states that did not.

"It makes perfect sense that states are trying to spend their criminal justice budgets better," he said, "and that the first place they look to do a cost-benefit analysis is the death penalty."



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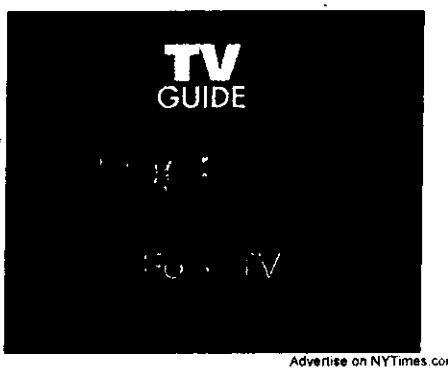

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States are looking elsewhere as well.

Last year, in an effort to cut costs, probation and parole agencies in Arizona, Kentucky, Mississippi, New Jersey and Vermont reduced or dropped prison time for thousands of offenders who violated conditions of their release. In some states, probation and parole violators account for up to two-thirds of prison admissions each year; typical violations are failing drug tests or missing meetings with parole officers.

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A version of this article appeared in print on February 25, 2009, on page A1 of the New York edition.

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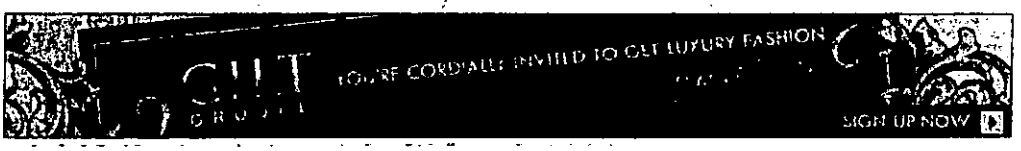

Citing Cost, States Consider End to Death Penalty

Published: February 24, 2009

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As prison crowding has become acute, lawsuits have followed in states like California, and politicians find themselves having to choose among politically unattractive options: spend scarce tax dollars on expanding prisons, loosen laws to stem the flow of incarcerations, or release some nonviolent offenders.

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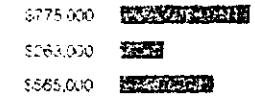

Graphic

The Cost of Capital Cases

The costs of death penalty cases can be extraordinarily high.

The Urban Institute study of Maryland concluded that because of appeals, it cost as much as $1.9 million more for a state prosecutor to put someone on death row than it did to put a person in prison. A case that resulted in a death sentence cost $3 million, the study found, compared with less than $1.1 million for a case in which the death penalty was not sought.

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In Kansas, State Senator Carolyn McGinn introduced a bill this month that would abolish the death penalty in cases sentenced after July 1. "We are in such a dire deficit situation, and we need to look at things outside the box to solve our budget problems," said Mrs. McGinn, a Republican. Kansas is facing a budget shortfall of $199 million, and Mrs. McGinn said that opting for life imprisonment without parole rather than the death penalty could save the state over $500,000 per capital case.

But skeptics contend that prosecutors will still be on salary and will still spend the same amount, just on different cases. In Colorado, lawmakers plan to consider a bill this week that would abolish the death penalty and use the savings to create a cold-case unit to investigate the state's roughly 1,400 unsolved murders. While the police must continue investigating these cases, there is no money in the budget for that. A group of families who lost relatives in unsolved murders has lobbied lawmakers on the bill.

In Virginia, competing sentiments are evident in the legislature.

While lawmakers have proposed allowing prison officials to release low-risk offenders up to 90 days before the end of their sentences, citing a potential saving of $50 million, they are also considering expanding who is eligible for capital punishment to people who assist in killings but do not commit them and to people convicted of murdering fire marshals or auxiliary police officers who are on duty.

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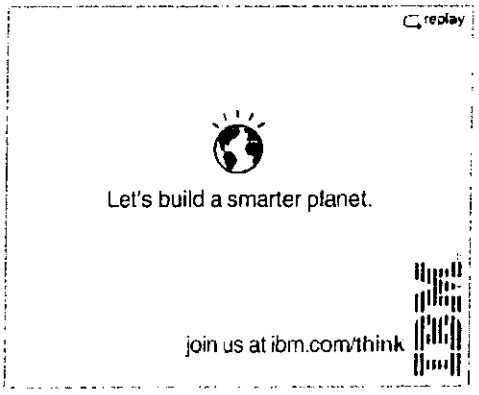

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It is considered unlikely, however, that Gov. Tim Kaine, a Democrat who opposes capital punishment, would sign such a bill.

In 2007, New Jersey became the first state in a generation to abolish the death penalty.

That same year, a vote in Maryland to abolish the death penalty came up one vote short of passing. In December, however, a state commission on capital punishment recommended that Maryland abolish the death penalty because of the high cost and the danger of executing an innocent person.

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Capital Cases Stall as Costs Grow Daunting

By SHAILA DEWAN and BRENDA GOODMAN
Published: November 4, 2007

ATLANTA, Nov. 3 — When Hilton M. Fuller Jr., a semiretired judge of the silver-haired, Southern-gentleman variety, agreed to preside over the trial in a notorious courthouse shooting here, he took a job no one else wanted — the legal community was still in shock over the death of a judge, a court reporter, a sheriff's deputy and a federal agent.

Judge Hilton M. Fuller Jr. has faced harassment threats, a lawsuit and ridicule over his handling of the murder trial of Brian Nichols. (photos)

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But now, two years later, the truly thankless nature of Judge Fuller's task has become evident. The legislature has threatened to impeach him. Columnists have taken him to task. On Friday, the district attorney sued him in State Supreme Court. Even fellow judges have abandoned their usual reticence. On a recent afternoon, he received a copy of an e-mail message from a colleague calling him a "debacle," an "embarrassment" and a "fool." And the trial has yet to begin.

The anger directed at Judge Fuller revolves around an issue more and more states are being forced to confront -- the rising cost of an adequate defense in death-penalty cases. Even as an examination of lethal injection by the Supreme Court has seemingly suspended the practice across the country, many experts predict that the cost issue will have far broader implications for the future of the death penalty.

States unwilling to pay the huge costs of defending people charged in capital cases may be unable to conduct executions.

For Brian Nichols, accused of killing four in the courthouse shooting in March 2005, the costs have already reached $1.2 million. That, together with legislative cuts, has left the state public defender system with no money. Until the bills are paid, the judge has delayed the trial, saying that it is unconstitutional not to pay the defense and thus pointless to proceed. In turn, lawmakers have accused him of conspiring to end the death penalty in Georgia.

The state could avoid the multimillion-dollar trial by dropping the death penalty option. Mr. Nichols has offered to plead guilty in exchange for a sentence of life without parole, but the district attorney, Paul L. Howard Jr., has declined.

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Judge Fuller is not the only jurist to try to force states to pay for a defense that will pass muster with higher courts. Last month, the New Mexico Supreme Court suspended the prosecution of two prison inmates accused of killing a guard, saying their lawyers' pay was so low it was unlikely they could be effective. In Utah, a judge has asked if he can force a lawyer to represent a convicted killer on appeal because, at fees amounting to less than $10 an hour, no one wants the job.

In California, a federal judge complained in May that death row inmates were waiting more than three years to get a lawyer because the state would not raise the hourly rate. Arizona, Texas and Louisiana are having similar troubles.

"I don't think there's any question that lethal injection is going to be allowed, it's just a question of how," said Stephen B. Bright, a capital defense lawyer and president of the Southern Center for Human Rights in Atlanta. "But the right to counsel is as fundamental as it gets — every other right depends on it."

Defense costs are just one factor in the steep price states are beginning to consider. A 2005 study by New Jersey Policy Perspective, a liberal research group, estimated that capital punishment had cost the state $256 million since 1983, including $60 million for defense, and the state has not executed a single inmate in that time. A bill to abolish the death penalty is given a fair chance of passing.

But the issue has come into sharpest relief here, thanks to the scrutiny of the courthouse case, arguably the most complicated murder case in state history.

State Senator Preston W. Smith, the Republican chairman of the Judiciary Committee, has complained that Mr. Nichols is receiving a "high-end, O.J.-style defense" that most taxpayers could not afford. But while the price sounds high, especially for a man whose guilt no one doubts, the cost of even a minimal capital defense has been driven up by technology and the increasing sophistication of law enforcement.

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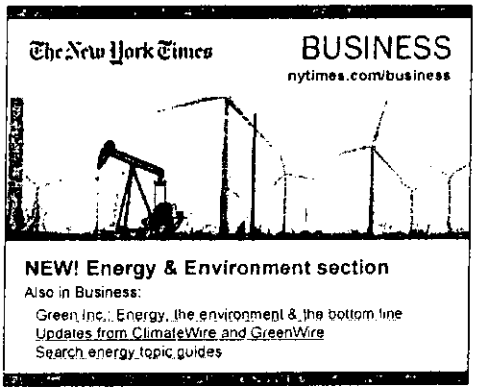

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Capital Cases Stall as Costs Grow Daunting

Published: November 4, 2007

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MICKEY ROURKE

Mr. Nichols faces a 54-count indictment, a team of five prosecutors, and 400 potential prosecution witnesses. Prosecutors gave the defense team 32,000 pages of documents and 400 hours of taped telephone calls. The defense team has an obligation to review all of the information and investigate each witness. To the irritation of lawmakers, Judge Fuller has kept budget requests sealed to keep the defense strategy from becoming public.

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Ideas & Trends: It's Not Whether to Kill, but How (November 4, 2007)

Judge Fuller is bound by recent Supreme Court decisions that have underscored the importance of the defense counsel's performance during the sentencing phase of the trial, when juries consider mitigating and aggravating factors in deciding whether to impose the death penalty. In a 2003 case, the court ordered a new sentencing hearing because defense lawyers failed to fully investigate their client's background and present evidence of severe childhood sexual and physical abuse. In a 2005 case, the Supreme Court again found that a more thorough review by the defense would have unearthed information that the jury should have heard.

In both cases, the court cited guidelines issued by the American Bar Association in 2003, which detail the special skills capital defenders must have and the "extraordinary efforts" they must undertake because of the irreversible punishment. Capital defendants must have at least two lawyers, the guidelines say, and each phase of the appeals process should include an independent investigation.

Exonerations have also highlighted the need for a competent defense. "We have all this new evidence being discovered 10 years later," said George H. Kendall, who has monitored capital defense in Georgia and now works in the New York office of Holland & Knight. "If there was a real defense at the time, it would have come up then."

The Nichols defense team, which plans to argue that its client was suffering from a mental disorder, says the anger at Judge Fuller is misplaced. The defense budgets are first presented to the Georgia Public Defender Standards Council, which has not objected to any of the requests as unreasonable. It has simply said it cannot pay.

But neither the judge nor the council has been spared.

The council was established as a statewide public defense system in 2005 in response to widespread problems, including divorce lawyers assigned to capital cases and lawyers

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sleeping through trials. Three months later, the Nichols trial became the first major test of lawmakers' commitment to the new system. They have seized control of the council and gutted its capital defense budget, cutting it to $4.8 million from $7 million a year.

Courts have repeatedly demanded a better defense in capital cases, but states have repeatedly refused to pay for it. In 1996, Congress established a "fast track" that would shorten federal deadlines in capital cases if states agreed to provide competent representation to death row inmates. No state has fulfilled the requirements.

Capital-defense lawyers face the highest possible stakes, but in many states the job is one of the lowest-paid in the legal system. In New Mexico, for example, appointed capital defenders work under a contract system that caps their fee at $24,500, a salary that amounts to an hourly wage of just $19.50 for the average death penalty case, not enough to cover their overhead, according to a brief filed by the New Mexico Criminal Defense Lawyers. In contrast, private criminal defense lawyers in New Mexico made an average of $161 per hour in 2004.

The lead lawyer in the Nichols case, Henderson Hill, is billing $175 an hour instead of his usual $325. Another of his four lawyers has waived her fee. None have been paid since July.

Lawmakers say Judge Fuller and the defense lawyers are deliberately driving up the costs to make sure that the death penalty is too expensive for the state.

And in fact, better-financed systems do reduce the number of capital cases — coming closer, advocates say, to ensuring that the death penalty is reserved for the worst of the worst offenders. North Carolina, which instituted what is often pointed to as a model capital defense system in 2001, has gone from an average of 24 capital convictions a year to 5. It is too soon to know if the reversal rate, extraordinarily high in death penalty cases, has also been reduced.

When Judge Fuller took on the Nichols trial, prosecutors and defense lawyers alike praised the choice, saying he had rarely, if ever, been overturned on appeal. But his reputation has since taken a beating.

"I'm beginning to think I am a fool for taking this case," the judge said, rereading the e-mail message in which a fellow judge called him one. "I thought people would give me the benefit of the doubt. That was naïve."

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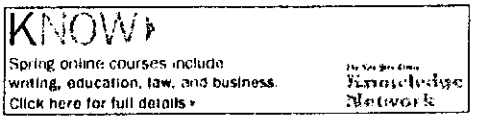

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February 19, 2009

Study Calls for Oversight of Forensics in Crime Labs

By SOLOMON MOORE

Crime laboratories around the country are grossly underfunded, lack a scientific foundation and are compromised by critical delays in analyzing physical evidence, according to a broad study of forensic techniques published Wednesday by the National Academy of Sciences, the nation's premier scientific body.

Among its many criticisms, the study counted a backlog of 359,000 requests for forensic analysis in 2005, a 24 percent increase in delays since 2002. A survey of crime laboratories found 80 percent of them to be understaffed.

A new federal agency is needed to regulate these laboratories, standardize forensic techniques and pay for research, according to the report, which was financed by Congress in 2005.

The study recommends that an agency, to be called the National Institute of Forensic Science, be created and be independent of the Justice Department, which has traditionally been the nation's primary forensics research agency. Crime laboratories should be managed separately from police departments to ensure that their findings are protected from bias, the report said.

"The potential for conflicts of interest between the needs of law enforcement and the broader needs of forensic science are too great," the authors wrote.

The report, the product of a two-year review by the academy, an independent body, is not legally binding. But legislators from both parties have already committed to holding hearings on the study, and officials from all the federal law enforcement agencies are reviewing the document in anticipation of possible policy changes.

"I am troubled by the report's general finding that far too many forensic disciplines lack the standards necessary to ensure their scientific reliability in court," said Senator Patrick J. Leahy, Democrat of Vermont and chairman of the Judiciary Committee.

Senator Arlen Specter of Pennsylvania, the ranking Republican on the committee, said he was also troubled by the findings.

The report calls into question the scientific merit of virtually every commonly used forensic method, including analysis of fingerprints, hair, fibers, blood spatters, ballistics and arson. Only DNA, which the panel said had benefited from rigorous scientific scrutiny and peer review outside of the forensics discipline, escaped significant criticism.

"The fact is that many forensic tests, such as those used to infer the source of tooth marks and bite marks,

have never been exposed to stringent scientific scrutiny," the report said. The report highlights crime laboratory scandals involving hundreds of tainted cases handled by police agencies in Michigan, Texas and West Virginia, and by the Federal Bureau of Investigation. At least 10 wrongly convicted men have been exonerated as a result of those laboratory investigations, and the cases of hundreds of other people convicted with the help of those facilities are under review.

The panel also found that most of the nation is served by death investigation offices that lack accreditation. It cited an 18-year-old high school student in Indiana who was recently elected deputy coroner after a short training course.

The academy said that in addition, judges and lawyers generally lacked the scientific expertise necessary to "comprehend and evaluate forensic evidence in an informed manner."

Attorney General Eric H. Holder Jr. said his office would be reviewing the report over the next several days.

"We have the potential to solve a lot of crimes, to find people who are guilty and to absolve a lot of people who are not through the use of these great forensic techniques," Mr. Holder said.

Justice Department officials declined to comment on specific recommendations, including the establishment of a National Institute of Forensic Science.

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February 5, 2009

Science Found Wanting in Nation's Crime Labs

By SOLOMON MOORE

Forensic evidence that has helped convict thousands of defendants for nearly a century is often the product of shoddy scientific practices that should be upgraded and standardized, according to accounts of a draft report by the nation's pre-eminent scientific research group.

The report by the National Academy of Sciences is to be released this month. People who have seen it say it is a sweeping critique of many forensic methods that the police and prosecutors rely on, including fingerprinting, firearms identification and analysis of bite marks, blood spatter, hair and handwriting.

The report says such analyses are often handled by poorly trained technicians who then exaggerate the accuracy of their methods in court. It concludes that Congress should create a federal agency to guarantee the independence of the field, which has been dominated by law enforcement agencies, say forensic professionals, scholars and scientists who have seen review copies of the study. Early reviewers said the report was still subject to change.

The result of a two-year review, the report follows a series of widely publicized crime laboratory failures, including the case of Brandon Mayfield, a lawyer from Portland, Ore., and Muslim convert who was wrongly arrested in the 2004 terrorist train bombing in Madrid that killed 191 people and wounded 2,000.

American examiners matched Mr. Mayfield's fingerprint to those found at the scene, although Spanish authorities eventually convinced the Federal Bureau of Investigation that its fingerprint identification methods were faulty. Mr. Mayfield was released, and the federal government settled with him for $2 million.

In 2005, Congress asked the National Academy to assess the state of the forensic techniques used in court proceedings. The report's findings are not binding, but they are expected to be highly influential.

"This is not a judicial ruling; it is not a law," said Michael J. Saks, a psychology and law professor at Arizona State University who presented fundamental weaknesses in forensic evidence to the academy. "But it will be used by others who will make law or will argue cases."

Legal experts expect that the report will give ammunition to defense lawyers seeking to discredit forensic procedures and expert witnesses in court. Lawyers could also use the findings in their attempts to overturn convictions based on spurious evidence. Judges are likely to use the findings to raise the bar for admissibility of certain types of forensic evidence and to rein in exaggerated expert testimony.

The report may also drive federal legislation if Congress adopts its recommendations. Senator Richard C. Shelby, Republican of Alabama, who has pushed for forensic reform, said, "My hope is that this report will

provide an objective and unbiased perspective of the critical needs of our crime labs."

Forensics, which developed within law enforcement institutions — and have been mythologized on television shows from "Quincy, M.E." to "CSI: Miami" — suffers from a lack of independence, the report found.

The report's most controversial recommendation is the establishment of a federal agency to finance research and training and promote universal standards in forensic science, a discipline that spans anthropology, biology, chemistry, physics, medicine and law. The report also calls for tougher regulation of crime laboratories.

In an effort to mitigate law enforcement opposition to the report, which has already delayed its publication, the draft focuses on scientific shortcomings and policy changes that could improve forensics. It is largely silent on strictly legal issues to avoid overstepping its bounds.

Perhaps the most powerful example of the National Academy's prior influence on forensic science was a 2004 report discrediting the F.B.I. technique of matching the chemical signatures of lead in bullets at a crime scene to similar bullets possessed by a suspect. As a result, the agency had to notify hundreds of people who potentially had been wrongfully convicted.

In its current draft report, the National Academy wrote that the field suffered from a reliance on outmoded and untested theories by analysts who often have no background in science, statistics or other empirical disciplines.

Although it is not subject to significant criticism in the report, the advent of DNA profiling clearly set the agenda. DNA evidence is presented in less than 10 percent of all violent crimes but has revolutionized the entire science of forensics. While DNA testing has helped to free more than 200 wrongfully convicted people, "DNA was a shock to police culture and created an alternative scientific model, which promoted standardization, transparency and a higher level of precision," said Paul Giannelli, a forensic science expert at Case Western Reserve University School of Law who presented his research to the National Academy. Enforcement officials, Mr. Giannelli said, "chose to say they never make mistakes, but they have little scientific support, and this report could blow them out of the water."

Peter J. Neufeld, a co-director of the Innocence Project, a nonprofit group that uses DNA evidence to exonerate the wrongfully convicted, presented to the academy a study of trial transcripts of 137 convictions that were overturned by DNA evidence and found that 60 percent included false or misleading statements regarding blood, hair, bite mark, shoe print, soil, fiber and fingerprint analyses.

The courts have long struggled with the proper role of scientific evidence. In a 1993 landmark decision, Daubert v. Merrell Dow Pharmaceuticals, the Supreme Court held that scientific testimony had to meet an objective standard. Federal courts have occasionally excluded evidence like handwriting and hair analysis.

Donald Kennedy, a Stanford scientist who helped select the report's authors, said federal law enforcement agencies resented "intervention" of mainstream science — especially the National Academy — in the courts.

He said the National Institute of Justice, a research arm of the Justice Department, tried to derail the forensic study by refusing to finance it and demanding to review the findings before publication. A bipartisan

vote in Congress in 2005 broke the impasse with a $1.5 million appropriation.

Mr. Shelby also accused the National Institute of Justice of trying to infiltrate the forensic study panel with lobbyists for private DNA analysis companies, who were seeking to limit the research to DNA studies.

The National Institute of Justice said it would not comment until the report was released. But a preview of potential turf wars played out in the presentations to the National Academy in December 2007. A forensic expert from the Secret Service blasted the F.B.I. for developing questionable techniques "on an ad-hoc basis, without proper research."

He said the Secret Service wanted the National Academy "to send a message to the entire forensic science community that this type of method development is not acceptable practice."

Everyone interviewed for this article agreed that the report would be a force of change in the forensics field.

One person who has reviewed the draft and who asked not to be identified because of promises to keep the contents confidential said: "I'm sure that every defense attorney in the country is waiting for this report to come out. There are going to be challenges to fingerprints and firearms evidence and the general lack of empirical grounding. It's going to be big."

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Reciprocal Discovery

H

Supreme Court of Alaska.
STATE of Alaska, Petitioner,
v.
David E. SUMMERVILLE, Respondent.
No. S-7869.

Nov. 14, 1997.
Rehearing Denied Jan. 2, 1998.

Defendant charged with sex offenses moved for protective order in response to state's request for **reciprocal discovery**. The Superior Court, Fourth Judicial District, Fairbanks, Richard D. Savell, J., granted protective order, and State appealed. The Court of Appeals, 926 P.2d 465, affirmed, and defendant appealed. The Supreme Court held that amendment to criminal rules allowing **reciprocal discovery** violated state constitutional privilege against self-incrimination.

Affirmed.

West Headnotes

Criminal Law 110 ⚿393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In General. Most Cited Cases

Criminal Law 110 ⚿627.5(3)

110 Criminal Law
110XX Trial
110XX(A) Preliminary Proceedings
110k627.5 Discovery Prior to and Incident to Trial
110k627.5(3) k. Prosecution's Right to Disclosure. Most Cited Cases
Amendment to criminal rules allowing **reciprocal discovery** violated state constitutional privilege against self-incrimination. Const. Art. 1, § 9; Rules Crim.Proc., Rule 16.

***469** Eric A. Johnson, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Bruce M. Botelho, Attorney General, Juneau, for Petitioner.

William R. Satterberg, Jr., Law Offices of William R. Satterberg, Jr., Fairbanks, for Respondent.

Marcia E. Holland, Assistant Public Defender, Fairbanks, and Barbara K. Brink, Public Defender, Anchorage, for Amicus Curiae Alaska Public Defender Agency.

James H. McComas, Pro Bono Counsel, Anchorage, for Amicus Curiae Office of Public Advocacy.

Before MATTHEWS, C.J., and COMPTON, EASTAUGH and FABE, JJ.

OPINION

PER CURIAM.

The decision in this case is controlled by *Scott v. State*, 519 P.2d 774 (Alaska 1974), unless we are persuaded to overrule *Scott*. In *State v. Dunlop*, 721 P.2d 604 (Alaska 1986), we stated:

> We do not lightly overrule our past decisions.... [I]t is a "salutory policy to follow past decisions." ...[W]here we are "clearly convinced the rule was originally erroneous or is no longer sound because of changed conditions, and that more good than harm would result from a departure from precedent," we will so depart.

Id. at 610 (footnote omitted) (quoting *State v. Souter*, 606 P.2d 399, 400 (Alaska 1980)). We are not persuaded that these standards are met, at least with respect to *Scott*'s holding that the production of the names of non-alibi ***470** witnesses and their statements cannot be constitutionally compelled. Because the **reciprocal discovery** provisions enacted in section 1 of Chapter 95 SLA 1996 are non-severable, and at least one of those provisions violates article 1, section 9 of Alaska's constitution, the entire section is

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invalid. The pre-existing version of Alaska Criminal Rule 16 must remain in effect. AFFIRMED.

BRYNER, J., not participating.
Alaska,1997.
State v. Summerville
948 P.2d 469

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Reciprocal Discovery

Supreme Court of Alaska.
Roy Anthony SCOTT, a/k/a Roy Anthony Stropkai, Petitioner,
v.
STATE of Alaska, Respondent.
No. 1968.

March 1, 1974.

The Superior Court, Third Judicial District, Anchorage, Ralph E. Moody, J., issued a pretrial discovery order which required accused to disclose certain information, and petition for review was granted. The Supreme Court, Fitzgerald, J., held that requiring accused to disclose names and addresses of witnesses, statements of witnesses, and evidence relating to alibi defense violated accused's privilege against self-incrimination under the State Constitution, but that requiring accused to give notice of alibi defense was proper.

Vacated and remanded.

West Headnotes

[1] Criminal Law 110 ⚿627.5(3)

110 Criminal Law
110XX Trial
110XX(A) Preliminary Proceedings
110k627.5 Discovery Prior to and Incident to Trial
110k627.5(3) k. Prosecution's Right to Disclosure. Most Cited Cases
Order requiring accused to produce information not expressly provided for in rules for criminal procedure did not constitute an improper promulgation of new rule of criminal procedure. Rules of Criminal Procedure, rule 16(c); Const. art. 4, § 15.

[2] Criminal Law 110 ⚿632(1)

110 Criminal Law
110XX Trial
110XX(A) Preliminary Proceedings
110k632 Dockets and Pretrial Procedure
110k632(1) k. In General. Most Cited Cases
(Formerly 110k632)
Broad latitude must be accorded trial court in conduct and management of pretrial procedures.

[3] Criminal Law 110 ⚿627.5(3)

110 Criminal Law
110XX Trial
110XX(A) Preliminary Proceedings
110k627.5 Discovery Prior to and Incident to Trial
110k627.5(3) k. Prosecution's Right to Disclosure. Most Cited Cases
Mere fact that court ordered accused to submit pretrial information which was not specifically included in rule relating to discovery in criminal case did not establish that court abused its discretion. Rules of Criminal Procedure, rule 16(a, c).

[4] Criminal Law 110 ⚿1991

110 Criminal Law
110XXXI Counsel
110XXXI(D) Duties and Obligations of Prosecuting Attorneys
110XXXI(D)2 Disclosure of Information
110k1991 k. Constitutional Obligations Regarding Disclosure. Most Cited Cases
(Formerly 110k700(2.1), 110k700(2), 110k700)
Prosecution has affirmative duty to disclose to accused any information within its control which tends to negate defendant's guilt.

[5] Courts 106 ⚿97(1)

106 Courts
106II Establishment, Organization, and Procedure
106II(G) Rules of Decision
106k88 Previous Decisions as Controlling or as Precedents
106k97 Decisions of United States Courts as Authority in State Courts
106k97(1) k. In General. Most Cited Cases

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State Supreme Court is not bound to follow blindly a federal constitutional construction of fundamental principle if state court is convinced that result is based on unsound reason or logic.

[6] Criminal Law 110 ⚿393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In General. Most Cited Cases

Privilege against compelled self-incrimination under Alaska Constitution prohibits extensive pretrial prosecutorial discovery in criminal proceedings. Rules of Criminal Procedure, rule 16(c); Const. art. 1, § 9.

[7] Criminal Law 110 ⚿393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In General. Most Cited Cases

Fundamental right not to incriminate one's self should apply at every stage of criminal inquiry or proceedings regardless of judge-made exclusionary or evidentiary rules. Rules of Criminal Procedure, rule 16(c); Const. art. 1, § 9; U.S.C.A.Const. Amend. 5.

[8] Criminal Law 110 ⚿393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In General. Most Cited Cases

Pretrial order requiring accused to disclose names and addresses of witnesses violated accused's privilege against self-incrimination under state Constitution. Rules of Criminal Procedure, rule 16(c); Const. art. 1, § 9.

[9] Criminal Law 110 ⚿393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In General. Most Cited Cases

Pretrial order requiring accused to produce for inspection and copying all written or recorded statements of prospective defense or government witnesses which accused possesses violated accused's right against self-incrimination under State Constitution. Rules of Criminal Procedure, rule 16(c); Const. art. 1, § 9.

[10] Criminal Law 110 ⚿393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In General. Most Cited Cases

Pretrial discovery order which required accused to produce advance notice of alibi defense together with information indicating place or places he claimed to have been violated accused's right against self-incrimination under State Constitution. Rules of Criminal Procedure, rule 16(c); Const. art. 1, § 9.

[11] Criminal Law 110 ⚿393(1)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k393 Compelling Self-Incrimination
110k393(1) k. In General. Most Cited Cases

Pretrial discovery order requiring accused to furnish notice of alibi defense did not violate accused's privilege against self-incrimination under State Constitution. Rules of Criminal Procedure, rule 16(c); Const. art. 1, § 9.

*775 Herbert D. Soll, Public Defender, Larry A. Jordan, Asst. Public Defender, Anchorage, for petitioner.

John E. Havelock, Atty. Gen., Juneau, Seaborn J. Buckalew, Jr., Dist. Atty., Louis Agi, Asst. Dist. Atty., Anchorage, for respondent.

Before RABINOWITZ, C. J., and CONNOR, ER-

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WIN, BOOCHEVER, and FITZGERALD, JJ.

OPINION

FITZGERALD, Justice.

This petition for review raises the question of the constitutionality of a superior court pretrial order authorizing broad prosecutorial discovery.

The petitioner Scott was arraigned in superior court on an indictment charging him with rape. [FN1] The court in conformity to Rule 16(f) of the Alaska Rules of Criminal Procedure scheduled a pretrial omnibus hearing. A few days before the hearing, the respondent State of Alaska filed a motion for a sweeping discovery order. Petitioner filed opposition to the motion, but his objections were overruled. The superior court granted respondent's motion such ordered petitioner to disclose: motion and ordered petitioner to disclose:

(1) the names and addresses of all prospective defense witnesses, other than defendant himself.

(2) the production or inspection and copying of any written or recorded statements in defendant's possession of prospective defense or government witnesses, other than defendant himself.

(3) advance notice of an alibi defense, together with information indicating the place or places defendant claims to have been and the names of witnesses upon whom he intends to rely.

Petitioner promptly sought interlocutory appellate review of the discovery order by way of a petition for review.

We granted the petition for review in this case because we concluded that postponement of appellate review until a final judgment may 'result in injustice because of impairment of a legal right' and because 'the order . . . sought to be reviewed is of such substance and importance as to justify deviation from the normal appellate procedure by way of appeal and to require the immediate attention of this court.'[FN2]

FN2.Alaska App.R. 23(e), 24(a).

In his petition for review, Scott claims error on the part of the trial court in several respects. He suggests that the court, *776 in ordering the pretrial production of certain information not expressly provided for in Rule 16(c) of the Alaska Rules of Criminal Procedure, promulgated a new rule of criminal procedure. This is, he argues, constitutionally impermissible since article IV, section 15 of the Alaska constitution placed the rule-making authority in this court. Petitioner also claims that the discovery order infringes upon his privilege against compulsory self-incrimination under article I, section 9 of the Alaska constitution and the fifth and fourteenth amendments of the United States Constitution. Furthermore, he argues that the discovery order violates his right to effective confrontation and cross-examination secured by article I, section 11 of the Alaska constitution and the sixth and fourteenth amendments to the United States Constitution. Petitioner also advances one claim of procedural error. He argues that the superior court abused its discretion in making a discovery order which goes beyond the express provisions of Criminal Rule 16(c).

[1] We find no merit in Scott's claim that the superior court, in ordering the production of certain information not expressly mentioned in Criminal Rule 16(c),[FN3] effectively promulgated a new rule of criminal procedure and thereby usurped this court's constitutional rule-making authority. The record does not establish that the superior court intended to promulgate new rules to govern pretrial procedure in criminal proceedings. Moreover petitioner's reliance upon Lee v. State[FN4] is misplaced. While in Lee we did observe that the 'superior court has no responsibility or authority to promulgate rules of practice and procedure,'[FN5] the statement was not made in the context of a pretrial order by the superior court. In Lee the appellants contended that the trial court was in error for having failed to promulgate rules of procedure by which appeals could be taken from the magistrate's court. In the case before us now, the trial court was ruling upon a motion for discovery brought under existing rules of criminal procedure. Since the underlying facts of the Lee case are essentially different, its rationale is not applicable to the case at bar.

FN3.Alaska R.Crim.P. 16(c) provides:

(1) Non-Testimonial Identification Procedures. A judicial officer may upon motion

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for good cause shown, require the accused to do or submit to any or all of the following:

(i) Appear in a line-up;

(ii) Speak for identification by witnesses to an offense;

(iii) Be fingerprinted;

(iv) Pose for photographs not involving reenactment of a scene;

(v) Try on articles of clothing;

(vi) Permit the taking of specimens of material under his fingernails;

(vii) Permit the taking of samples of his blood, hair and other materials of his body which involve no unreasonable intrusion thereof;

(viii) Provide specimens of his handwriting;

(ix) Submit to a reasonable physical or medical inspection of his body.

(2) Reports or Statements of Experts. The trial court may require that the prosecuting attorney be informed of and permitted to inspect and to copy or photograph any reports or statements of experts made in connection with the particular case, including results of physical or mental examinations and of scientific tests, experiments or comparisons which are intended by the defendant to be used at trial. Information obtained by the state under the provisions of this section shall be used only for cross-examination or rebuttal of defense testimony.

(3) Notice of Intent to Raise Insanity Defense. Following substantial compliance by the state with section (b) of this rule a defendant who intends to offer evidence of a defense of insanity shall inform the state of such intention at the time of plea or at such other time as may be designated by the trial court. The court may order the defendant to submit to psychiatric examination by a psychiatrist or psychologist selected by the court, and the report shall be made available to both parties. Notice of intent to raise a defense of insanity shall not be commented on by the prosecution at trial.

FN4. 374 P.2d 868 (Alaska 1962).

FN5. Id. at 869.

We also disagree with petitioner's contention that since the order in question exceeds the scope of materials discoverable under Criminal Rule 16(c), it constitutes *777 an abuse of trial court discretion.Criminal Rule 16(c) permits the trial court, upon proper motion by the prosecution, to order the accused to submit to certain non-testimonial identification procedures, to allow discovery of experts' reports or statements and to require notice if the accused intends to raise insanity as a defense. The discovery order before us, however, goes beyond the material enumerated in the rule and orders the petitioner to produce the names and addresses of defense witnesses, written statements taken from defense and government witnesses, advance notice of an alibi defense, together with names of prospective alibi witnesses and information concerning the locations to be relied upon for alibi purposes.

[2][3] In our opinion, broad latitude must be accorded a trial court in the conduct and management of pretrial procedures. This interpretation is in keeping with the spirit and purpose of discovery rules generally, and comports with the expressed term of Criminal Rule 16(a).

(a) Scope of Discovery. In order to provide adequate information for informed pleas, expedite trial, minimize surprise, afford opportunity for effective cross-examination, and meet the requirements of due process, discovery prior to trial should be as full and free as possible consistent with protection of persons, effective law enforcement, and the adversary system. (emphasis added)

Reading sections (a) and (c) of Rule 16 together, we conclude that a ruling compelling the production of items not expressly mentioned in section (c) of the rule is within the 'broad discretion of the trial court.'We find no abuse of discretion merely because

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information not specifically included in the rule is ordered to be disclosed.

The most serious constitutional claim advanced by petitioner is that the broad prosecutorial discovery order contravenes his privilege against self-incrimination[FN6] under the fifth and fourteenth amendments to the United States Constitution[FN7] and article 1, section 9 of the Alaska constitution.[FN8] In other words, we must determine whether petitioner has a constitutional right to refuse to disclose some or all of the evidentiary material required to be disclosed by the discovery order.

FN6. Recently, the tension existing between prosecutorial discovery and the constitutional privilege against self-incrimination has received considerable attention from legal commentators. See, e. g., Everett, Discovery in Criminal Cases-In Search of a Standard, 1964 Duke L.J. 477, 492-94, 503-05; Moran, Federal Criminal Rules Changes: Aid or Illusion for the Indigent Defendant?, 51 A.B.A.J. 64 (1965); Nakell, Criminal Discovery for the Defense and the Prosecution-the Developing Constitutional Considerations, 50 N.C.L.Rev. 437 479-516 (1972); Rezneck, Justice Brennan and Discovery in Criminal Cases, 4 Rutgers-Camden L.J. 85 (1972); Symposium, Discovery in Federal Criminal Cases, 33 F.R.D. 47-128 (1965); Traynor, Ground Lost and Found in Criminal Discovery, 39 N.Y.U.L.Rev. 228 (1964); Wilder, Prosecution Discovery and the Privilege Against Self-Incrimination, 6 Am.Crim.L.Q. 3 (1967); Zagel and Carr, State Criminal Discovery and the New Illinois Rules, 1971, U.Ill.L.Forum 557 (1971); Annot., 45 A.L.R.3d 959 (1972); Annot., 96 A.L.R.2d 1224 (1964); Comment, Developments in the Law-Discovery, 74 Harv.L.Rev. 940 (1961); Note, The Self-Incrimination Privilege: Barrier to Criminal Discovery?, 51 Calif.L.Rev. 135 (1963); Note, Prosecutorial Discovery Under Proposed Rule 16, 85 Harv.L.Rev. 994 (1972); 35 Colo.R.Rev. 290 (1963); 63 Colum.L.Rev. 361 (1963); 76 Harv.L.Rev. 838 (1963); 49 Ia.L.Rev. 176 (1963); 61 Mich.L.Rev. 987 (1963); 15 Stan.L.Rev. 700 (1963).

FN7. The fifth amendment to the United States Constitution provides in part:

> No person . . . shall be compelled in any criminal case to be a witness against himself nor be deprived of life, liberty, or property, without due process of law . . ..

5th Am. U.S. Constitution

The fifth amendment has been made applicable to the states through the fourteenth amendment to the United States Constitution. Malloy v. Hogan, 378 U.S. 1, 84 S.Ct. 1489, 12 L.Ed.2d 653 (1964).

FN8.Art. I, s 9 of the Alaska constitution provides:

> No person shall be compelled in any criminal proceeding to be a witness against himself.

Art. I §9 Ak Constitution

*778 [4] We begin our analysis by examining the historical development of criminal discovery in the context of the privilege against self-incrimination under the fifth amendment to the United States Constitution. The common law recognized no right of discovery in a criminal case by either the prosecution or the defendant. Nor was such a right said to exist under traditional concepts of due process.[FN9] In recent years, however, several exceptions have emerged. The prosecution has an affirmative duty to disclose to an accused any information within its control which tends to negate defendant's guilt.[FN10] It has now become well-settled in many jurisdictions that trial courts have broad discretionary power to order the prosecution to disclose to the defendant any relevant information in the possession or control of the prosecution.[FN11]

FN9. Cicenia v. LaGay, 357 U.S. 504, 510, 78 S.Ct. 1297, 1301,2 L.Ed. 1523, 1529 (1958); State v. Thompson, 11 Terry 456, 134 A.2d 266, 268 (Del.1957); Commonwealth v. Bartolini, 299 Mass. 503, 13 N.E.2d 382, 386 (1938), cert. denied, 304 U.S. 565, 58 S.Ct. 950, 83 L.Ed. 1531 (1938); State v. Goldberg, 261 N.C. 181, 134 S.E.2d 334, 340-341 (1964).

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FN10. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963); United States ex rel. Butler v. Maroney, 319 F.2d 662, 627 (3d Cir. 1963); People v. Hoffman, 32 Ill.2d 96, 203 N.E.2d 873 (1965).

FN11. State v. Coon, 2 Alaska L.J. No. 1 at 3 (Super.Ct.1964); State ex rel. Polley v. Superior Court of Santa Cruz County, 81 Ariz. 127, 302 P.2d 263, 265 (1956); People v. Riser, 47 Cal.2d 566, 305 P.2d 1, 12 (1956), cert. denied, 358 U.S. 646, 79 S.Ct. 537, 3 L.Ed.2d 568 (1959); State v. Haas, 188 Md. 643, 51 A.2d 647, 649 (1947); Commonwealth v. Bartolini, 299 Mass. 503, 13 N.E.2d 382, 385 (1938), cert. denied, 304 U.S. 565, 58 S.Ct. 950, 83 L.Ed. 1531 (1938); People v. Johnson, 356 Mich. 619, 97 N.W.2d 739, 741-743 (1959); People v. Calandrillo, 29 Misc.2d 495, 215 N.Y.S.2d 364, 366 (Suffolk County Ct.1961); State v. Leland, 190 Or. 598, 227 P.2d 785, 793 (1961), aff'd, 343 U.S. 790, 793, 72 S.Ct. 1002, 1004, 96 L.Ed. 1302 (1952).

Prosecutorial discovery was strongly condemned in early American jurisprudence. The United States Supreme Court in 1886 announced strong opposition to compulsory self-incrimination through discovery orders. In Boyd v. United States,[FN12] Mr. Justice Bradley, speaking for the court, stated:

FN12. 116 U.S. 616, 6 S.Ct. 524, 29 L.Ed. 746 (1886).

Now it is elementary knowledge that one cardinal rule of the court of chancery is never to decree a discovery which might tend to convict the party of a crime, or to forfeit his property. And any compulsory discovery by extorting the party's oath, or compelling the production of his private books and papers, to convict him of crime or to forfeit his property, is contrary to the principles of a free government. It is abhorrent to the instincts of an Englishman; it is abhorrent to the instincts of an American. It may suit the purposes of despotic power, but it cannot abide the pure atmosphere of political liberty and personal freedom.[FN13]

FN13. Id. at 631-632, 6 S.Ct. at 533, 29 L.Ed. at 751 (footnote omitted).

Similar views have since been expressed by Professor Wigmore:

It follows that the production of documents or chattels by a person (whether ordinary witness or party witness) in response to a subpoena, or to a motion to order production, or to other form of process relying on his moral responsibility for truthtelling, may be refused under the protection of the privilege (against self-incrimination). This is universally conceded. (emphasis in original)[FN14]

FN14. 8 J. Wigmore, Evidence s 2264 (McNaughton rev. 1961) (footnote omitted).

As recently as 1967, a federal district court observed that the fifth amendment privilege against self-incrimination operated to bar prosecutorial discovery of evidence to be used in the government's case-in-chief.[FN15]

FN15. In United States v. Fratello, 44 F.R.D. 444 (S.D.N.Y.1967), the trial court declined to condition defense discovery upon the defendant's provision to the prosecution of documentary evidence under the former's control. The court concluded that 'the right of a defendant in a criminal case to remain silent in face of accusations against him, even at the discovery stage, seems clear.'

*779 The constitutional questions arising out of prosecutorial discovery are reflected in Rule 16(c) of the Federal Rules of Criminal Procedure. That rule by its terms does not directly compel the defendant to provide prosecutorial discovery. Rather, it permits the court to condition discovery when sought by the defense by requiring the defense to make a reciprocal exchange with the government.[FN16] Any possible conflict with fifth amendment rights is thought to be avoided on theories of implied consent or waiver by the defendant. Thus the Federal Rules of Criminal Procedure have preserved without resolving the constitutional questions raised by prosecutorial discovery.[FN17]

Federal Rules of Discovery

FN16.Fed.R.Crim.P. 16(c) provides:

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> (c) Discovery by the Government. If the court grants relief sought by the defendant under subdivision (a)(2) or subdivision (b) of this rule, it may, upon motion of the government, condition its order by requiring that the defendant permit the government to inspect and copy or photograph scientific or medical reports, books, papers, documents, tangible objects, or copies or portions thereof, which the defendant intends to produce at the trial and which are within his possession, custody or control, upon a showing of materiality to the preparation of the government's case and that the request is reasonable. Except as to scientific or medical reports, this subdivision does not authorize the discovery or inspection of reports, memoranda, or other internal defense documents made by the defendant, or his attorneys or agents in connection with the investigation or defense of the case, or of statements made by the defendant, or by government or defense witnesses, or by prospective government or defense witnesses, to the defendant, his agents or attorneys.

Fed. Rule of Discovery

FN17. The Advisory Committee on Rules suggested:

'Mutual disclosure so far as consistent with the privilege against self-incrimination would seem as appropriate as in civil cases.' Fed.R.Crim.P. 16, 18 U.S.C.A. Rule 16, at 19 (1969).

Possibly one of the greatest influences in the development of new concepts of criminal discovery generally and prosecutorial discovery in particular has been Justice Roger J. Traynor, formerly Chief Justice of the Supreme Court of California. Writing for that court in 1962, Justice Traynor upheld broad prosecutorial discovery in Jones v. Superior Court of Nevada County.[FN18] The defendant in the case had been charged with rape. He asserted an affirmative defense of impotency. The Supreme Court of California upheld the prosecution's right to discover the names of witnesses upon whom the defendant intended to rely in advancing his affirmative defense as well as any relevant medical reports and X-rays.[FN19]

FN18. 58 Cal.2d 56, 22 Cal.Rptr. 879, 372 P.2d 919 (1962).

FN19. For critical constitutional commentary upon the holding reached in Jones, supra n. 19, see Smith and McCollom, Counterdiscovery in Criminal Cases: Fifth Amendment Privileges Abridged, 54 A.B.A.J. 256 (1968); Wilder, Prosecution Discovery and the Privilege Against Self-Incrimination, 6 Am.Crim.L.Q. 3 (1967); Note, 63 Colum.L.Rev. 361 (1963); Note, 15 Stan.L.Rev. 700 (1963).

Justice Traynor reasoned that prosecutorial discovery of information relating to issues raised by the affirmative defense

> "does not violate the privilege against self-incrimination. Nor to this extent does it violate the attorney-client privilege. It simply requires petitioner to disclose information that he will shortly reveal anyway. Such information is discoverable.[FN20] "

FN20. 22 Cal.Rptr. at 882, 372 P.2d at 922.

Justice Traynor has discussed the holding in Jones in a law review article and has further explained his reasoning that prosecutorial discovery merely accelerated the timing of the defendant's strategic midtrial decisions.

> (Notice-of-alibi) statutes have been sustained over the objection that they violate constitutional privileges against self-incrimination, for they do not compel the defendant to reveal or produce anything, but merely regulate the procedure*780 by which he presents his case. We found this reasoning persuasive. The trial court's order that the defendant reveal the names of witnesses he intended to call and produce reports and X-rays he intended to introduce in evidence simply required him to disclose information that he would shortly reveal in any event. He was thus required only to decide at a point earlier in time than he would ordinarily have to whether to remain silent or to disclose the information. He lost only the possible tactical advantage of taking the prosecution by surprise at the trial, an advantage that in any event would easily have gone for naught given the probability that the trial court would have granted the prosecution a continuance to prepare a rebuttal.[FN21]

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FN21. Traynor, Ground Lost and Found in Criminal Discovery, 39 N.Y.U.L.Rev. 228, 247 (1964) (footnote omitted).

In the same discussion, Justice Traynor went on to analogize criminal discovery to civil discovery in which pretrial discovery is a 'two-way street' for both litigants.

Likewise, nothing is lost of the privilege, and much is gained in orderly procedure, if the defendant is required to give advance notice of the evidence he intends to offer in defense after he has himself received pretrial discovery of the prosecution's case. He can hardly demand pretrial discovery and still insist on reserving his own surprises for the trial. The good coin of discovery gains in value when it is fairly exchanged at the appropriate procedural hours.

The Jones case, indicating the two-sideness of the discovery process, suggests that we may be on the way to abandoning our preoccupation with surprise tactics just as we have substantially abandoned the technicalities of pleading that in their time were also overvalued.[FN22]

FN22.Id. at 248, 250.

Seven years after Jones the California Supreme Court decided People v. Pike.[FN23] In that case, a prosecution for first degree murder, the court held that the state was entitled to pretrial discovery of the names, addresses and expected testimony of defense witnesses. But within a year, the California Supreme Court retrenched somewhat from its leading position on prosecutorial discovery. In Prudhomme v. Superior Court of Los Angeles County,[FN24] another prosecution for murder, a trial court was restrained from enforcing a discovery order which would have compelled the defendant's attorney to disclose to the prosecution the names, addresses and expected testimony of defense witnesses. Concluding that the 'trial court failed to inquire into the incriminatory nature of the information sought,'[FN25] the Supreme Court of California was apparently influenced by the limited and conditional nature of the privisions of Rule 16(c) of the Federal Rules of Criminal Procedure.[FN26] The court may also have been cautiously anticipating a negative decision by the United States Supreme Court on the constitutionality of prosecutorial discovery.[FN27] Thus having substantially advanced the concept of prosecutorial discovery, the California court in Prudhomme, after carefully reviewing the policy consideration underlying the privilege against self-incrimination, retreated from its vanguard position.

FN23. 71 Cal.2d 595, 78 Cal.Rptr. 672, 455 P.2d 776 (1969).

FN24. 2 Cal.3d 320, 85 Cal.Rptr. 129, 466 P.2d 673 (1970).

FN25. 85 Cal.Rptr. at 134, 466 P.2d at 678.

FN26. Regarding Fed.R.Crim.P. 16(c), the court stated:

Thus, federal rule 16, subdivision (c) is limited to the 'reasonable' disclosure of physical evidence; there is no provision authorizing disclosure of names, addresses or expected testimony of defense witnesses.

Id., 85 Cal.Rptr. at 131, 466 P.2d at 675-676 (footnote omitted.)

FN27. Regarding the forthcoming United States Supreme Court decision on notice-of-alibi statutes, the court observed:

Finally, the United States Supreme Court recently granted certiorari in Williams v. Florida (C.A.Fla.) 224 So.2d 406, which had upheld Florida's alibi statute against the claim that it violated the accused's Fifth Amendment rights.

85 Cal.Rptr. at 132, 466 P.2d at 676.

***781** Ironically perhaps the case which may have influenced the California court to draw back in Prudhomme was decided the other way by the United States Supreme Court. The Court in Williams v. Florida[FN28] upheld a Florida notice-of-alibi rule[FN29] against a claim of fifth amendment privilege, adopting the rationale of Jones v. Superior Court of Nevada County. In that case, the defendant in a robbery prosecution challenged the constitutionality of a Florida rule of criminal procedure which

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compelled him in advance of trial to provide the prosecution with the names and addresses of prospective alibi witnesses as well as information pertaining to the place where he claimed to have been. Rejecting the defendant's fifth amendment claim, the Supreme Court cited Jones v. Superior Court of Nevada County and Justice Traynor's law review article.[FN30] Speaking for six members of the court, Justice White concluded that:

FN28. 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970).

FN29. For state cases that have upheld notice-of-alibi defense and alibi witnesses requirements, see State v. Stump, 254 Iowa 1181, 119 N.W.2d 210, 219-220,cert. denied, 375 U.S. 853, 84 S.Ct. 113, 11 L.Ed.2d 80 (1963); State v. Baldwin, 47 N.J. 379, 221 A.2d 199, 204-205,cert. denied, 385 U.S. 980, 87 S.Ct. 527, 17 L.Ed.2d 442 (1966); People v. Rakiec, 260 App.Div. 452, 23 N.Y.S.2d 607, 612-613 (1940); Commonwealth v. Vecchiolli, 208 Pa.Super. 483, 224 A.2d 96, 99 (1966).

FN30. 399 U.S. at 83, n. 13, 90 S.Ct. at 1897, 26 L.Ed.2d at 451.

However 'testimonial' or 'incriminating' the alibi defense proves to be, it cannot be considered 'compelled' within the meaning of the Fifth and Fourteenth Amendments.[FN31]

FN31. Id. at 84, 90 S.Ct. at 1897, 26 L.Ed.2d at 451.

Accepting Justice Traynor's rationale in Jones that pretrial prosecutorial discovery merely accelerated the defendant's mid-trial strategy decisions, Justice White reasoned that:

(T)he notice-of-alibi rule by itself in no way affected petitioner's crucial decision to call alibi witnesses or added to the legitimate pressures leading to that course of action. At most, the rule only compelled petitioner to accelerate the time of his disclosure, forcing him to divulge at an earlier date information that the petitioner from the begining planned to divulge at trial. Nothing in the Fifth Amendment privilege entitles a defendant as a matter of constitutional right to await the end of the State's case before announcing the nature of his defense, any more than it entitles him to await the jury's verdict on the State's case-in-chief before deciding whether or not to take the stand himself.[FN32]

FN32. Id. at 85, 90 S.Ct. at 1898, 26 L.Ed.2d at 452.

The holding of the court squarely upheld the prosecution right in advance of trial to obtain the names of witnesses and the location of defendant's alibi against his claim of self-incrimination.

We decline to hold that the privilege against compulsory self-incrimination guarantees the defendant the right to surprise the State with an alibi defense. [FN33]

FN33. Id. at 86, 90 S.Ct. at 1898, 26 L.Ed.2d at 452.

Justice Black, with whom Justice Douglas concurred, forcefully dissented from the majority's holding on the prosecutorial discovery question. According to Justice Black, the Florida notice-of-alibi rule violated the defendant's fifth amendment privilege against self-incrimination, and the majority's decision constituted a dangerous move towards the erosion of a constitutional scheme which imposes upon the prosecution the complete burden of proof. Justice Black reasoned:

Although this case itself involves only a notice-of-alibi provision, it is clear that the decision means that a State can require a defendant to disclose in advance of trial any and all information he might possibly use to defend himself at trial. This decision, in my view, is a radical and dangerous departure from the historical*782 and constitutionally guaranteed right of a defendant in a criminal case to remain completely silent, requiring the State to prove its case without any assistance of any kind from the defendant himself.[FN34]

FN34. Id. at 107-108, 90 S.Ct. at 1909-1910, 26 L.Ed.2d at 480.

The dissenting justice disputed the central premise

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upon which the court based its holding.

The core of the majority's decision is an assumption that compelling a defendant to give notice of an alibi defense before a trial is no different from requiring a defendant, after the State has produced the evidence against him at trial, to plead alibi before the jury retires to consider the case . . .. That statement is plainly and simply wrong as a matter of fact and law, and the Court's holding based on that statement is a complete misunderstanding of the protections provided for criminal defendants by the Fifth Amendment and other provisions of the Bill or Rights.[FN35]

> FN35. Id. at 108, 90 S.Ct. at 1910, 26 L.Ed.2d at 480-481 (footnote omitted).

The rationale of Justice Black's objection to the majority's reasoning is that a defendant's 'pretrial decision cannot be analyzed as simply a matter of 'timing,' influenced by the same factors operating at trial itself.'[FN36]Moreover, Justice Black expressed his concern that the 'timing' rationale employed by the Court would predictably be applied to justify the prosecutorial discovery of other information in the defendant's possession.

> FN36. Id. at 110, 90 S.Ct. at 1911, 26 L.Ed.2d at 482.

The rationale of today's decision is in no way limited to alibi defenses, or any other type or classification of evidence. The theory advanced goes at least so far as to permit the State to obtain under threat of sanction complete disclosure by the defendant in advance of trial of all evidence, testimony, and tactics he plans to use at that trial. In each case the justification will be that the rule affects only the 'timing' of the disclosure, and not the substantive decision itself. This inevitability is clearly revealed by the citation to Jones v. Superior Court . . .[FN37]

> FN37. Id. at 114, 90 S.Ct. at 1913, 26 L.Ed.2d at 484 (citation omitted).

A substantial number of states in addition to Florida have by rule or statute imposed upon the defendant an obligation to disclose his defenses to the prosecution in advance of trial. Almost without exception provisions of this type have been upheld. In reaching that result the courts have grounded their decision on a variety of reasons. Some of the decisions would seem to apply notice-of-alibi provisions without discussing the constitutional considerations. E.g., State v. Baldwin, 47 N.J. 379,221 A.2d 119, 204-205 (1966); State v. Thayer, 124 Ohio St. 1, 176 N.E. 656, 657 (1931); Commonwealth v. Vecchiolli, 208 Pa.Super. 483, 224 A.2d 96, 99 (1966); State v. Kopacka, 261 Wis. 70, 51 N.W.2d 495, 498 (1952). Still other decisions do not extensively discuss or analyze the constitutional problems but subordinate the issues to matters of procedure. E.G., State v. George, 100 Ariz. 350, 414 P.2d 730, 733 (1966); People v. Shulenberg, 279 App.Div. 1115, 112 N.Y.S.2d 374, 375 (1952).

Montana

One state decision which does squarely face the constitutional issues arising out of a notice-of-defense statute is State ex rel. Sikora v. District Court of the Thirteenth Judicial District, 154 Mont. 241, 462 P.2d 897, decided by the Supreme Court of Montana in 1969. Sikora arose under the following circumstances. Under Montana law the defendant in a criminal case is required to give advance notice of his intention to interpose the defenses of insanity, self-defense or alibi and to file with the clerk names and addresses of supporting witnesses. Marie Sikora and two others were charged with murder. After an unfavorable ruling on a pretrial motion, the defendants filed petitions with the Supreme Court of Montana challenging the constitutionality of the statute. Addressing*783 itself first to the notice provision of the statute, the court found no apparent constitutional infirmity. This was so, the court reasoned, since merely giving notice of an intended defense at a procedural stage is ordinarily not incriminating.[FN38] Turning to the statutory requirement compelling pretrial disclosure of supporting witnesses, the court concluded that not all information obtained from a defendant is privileged under the fifth amendment.[FN39] Nevertheless, the court recognized that the application of the statute might itself lead to an invasion of the privilege against self-incrimination. Essentially, the court's holding comes down to this: while much of the statute requiring a defendant to make a pretrial disclosure of his defense and his witnesses may not be on its face unconstitutional, the use or application of the statute may lead to an unconstitutional result. The principal significance of Sikora is that it points out the difficulty in upholding disclosure provisions when courts do attempt to deal

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directly with constitutional issues of self-incrimination arising out of compelled pretrial disclosure.

FN38. Justice Haswell dissented in part contending that required disclosure of claims of self defense or insanity violated the constitutional privilege against self-incrimination.

FN39. This has been widely recognized. E. g., Gilbert v. California, 388 U.S. 263, 87 S.Ct. 1951, 18 L.Ed.2d 1178 (1967); United States v. Wade, 388 U.S. 218, 87 S.Ct. 1926, 18 L.Ed.2d 1149 (1967); Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1966); Roberts v. State, 458 P.2d 340 (Alaska 1969).

The rather extended review which we have taken furnishes a backdrop against which we are prepared to consider the question in the light of our own state's legal history and our own state's constitution.

[5] In Baker v. City of Fairbanks [FN40] we acknowledged our responsibility to depart whenever necessary from constitutional interpretations enunciated by the United States Supreme Court and to develop rights and privileges under the Alaska constitution in accordance with our own unique legal background. In particular we stated:

FN40. 471 P.2d 386 (Alaska 1970).

While we must enforce the minimum constitutional standards imposed upon us by the United States Supreme Court's interpretation of the Fourteenth Amendment, we are free, and we are under a duty, to develop additional constitutional rights and privileges under our Alaska Constitution if we find such fundamental rights and privileges to be within the intention and spirit of our local constitutional language and to be necessary for the kind of civilized life and ordered liberty which is at the core of our constitutional heritage. We need not stand by idly and passively, waiting for constitutional direction from the highest court of the land. Instead, we should be moving concurrently to develop and expound the principles embedded in our constitutional law.[FN41]

FN41. Id. at 401-402 (footnote omitted).

We are not bound to follow blindly a federal constitutional construction of a fundamental principle if we are convinced that the result is based on unsound reason or logic.

We agree with the general principle that the court has a substantial interest in reducing the element of surprise in criminal proceedings. So to this extent at least we must be concerned with the constitutional administration of criminal justice as well as with efficient management of prosecutions and other trial activities. However, we share Justice Black's concern for the integrity of the privilege against self-incrimination and agree with his conclusion that the 'timing' rationale employed by the United States Supreme Court in Williams v. Florida to justify pretrial prosecutorial discovery is unpersuasive.

It is our view that a defendant's midtrial strategy choices are not identical to his pretrial decisions; nor are the problems and opportunities contemplated by an accused in formulating the course of action to be followed during the presentation of ***784** his defense at trial identical to the same considerations before trial. The weakness of this 'timing' rationale has been accurately pointed out by at least one commentator:

But Justice White's analysis-which equates the defendant's at-trial choice, either to open a source of potentially incriminating information or to forego the opportunity to present a defense, with a parallel choice before trial-confuses one issue and begs a second. Of course, there is some similarity between defendant's pretrial and at-trial choices: in each case the defendant must weigh his critical need to produce exculpatory evidence against the risks of revealing incriminating information. But because of the prosecutor's heavy burden of proof, the defendant is best advised not to open up any source of potentially adverse information unless he feels that the state has in all likelihood proved its case; and it is only after the prosecutor has presented his evidence in court that the defendant can adequately make this judgment. By contrast, there is no way the defendant can know before trial the actual strength of the evidence against him as it will appear to the trier of fact, even if he has himself benefited from extensive discovery; witnesses' testimony under oath and cross-examination may radically depart from their versions of the events as given to the police or defense counsel prior to

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trial.[FN42]

FN42. Note, Prosecutorial Discovery Under Proposed Rule 16, 85 Harv.L.Rev. 994, 1007-1008 (1972) (footnote omitted).

Our form of government has imposed an extraordinary burden of proof upon the state in criminal litigation. We think that the appropriate constitutional analysis is not the mere balancing of the state's interests in facilitating efficient law enforcement with the interest of the citizenry in maintaining maximum liberty.[FN43]

FN43. Cf. Baker v. City of Fairbanks, 471 P.2d 386, 394 (Alaska 1970):

> Substantial reasons of policy must play an important part in any disposition of (the question whether petty offenses fall within the right to a jury trial). These naturally divide themselves into two major groups. On the one hand, we have considerations of convenience or expediency for the state and its legal subdivisions. It imposes a certain burden upon the machinery of government to make every offense triable by jury . . .
>
> The argument from expediency contains inherent defects. If an individual right is vested by the Constitution, the overriding demands of governmental efficiency must be of a compelling nature and must be identifiable as flowing from some enumerated constitutional power. To allow expediency to be the basic principle would place the individual constitutional right in a secondary position, to be effectuated only if it accorded with expediency. (footnote omitted)

As Justice Black observed:

A criminal trial is in part a search for truth. But it is also a system designed to protect 'freedom' by insuring that no one is criminally punished unless the State has first succeeded in the admittedly difficult task of convincing a jury that the defendant is guilty. That task is made more difficult by the Bill of Rights, and the Fifth Amendment may be one of the most difficult of the barriers to surmount. The Framers decided that the benefits to be derived from the kind of trial required by the Bill of Rights were well worth any loss in 'efficiency' that resulted.[FN44]

FN44. Williams v. Florida, 399 U.S. at 113-114, 90 S.Ct. at 1912, 26 L.Ed.2d at 484 (concurring and dissenting opinion).

Nor are we convinced that discovery in criminal proceedings is completely analogous to discovery in civil litigation; pretrial criminal discovery is not a 'two-way street.' The analogy to civil discovery fails for a number of reasons. A criminal proceeding from its very inception is quite unlike civil litigation. There is ordinarily available to the prosecution substantial and effective avenues of discovery, such as the investigative resources of the police, access to official records, the power to compel testimony by way of grand jury subpoena which are not equally at the hand of the accused. Even more, as Justice Peters noted*785 in his dissent in Jones v. Superior Court:

The simple fact is that our system of criminal procedure is founded upon the principle that the ascertainment of the facts is a 'one-way street.' It is the constitutional right of the defendant, who is presumed to be innocent, to stand silent while the state attempts to meet its burden of proof, that is, to prove the defendant's guilt beyond a reasonable doubt. (emphasis in original) [FN45]

FN45. Jones v. Superior Court of Nevada County, 58 Cal.2d 56, 22 Cal.Rptr. 879, 884, 372 P.2d 919, 924 (1962) (dissenting opinion). Similarly, in Prudhomme v. Superior Court of Los Angeles County, 2 Cal.3d 320, 85 Cal.Rptr. 129, 134, 466 P.2d 673, 678 (1970) (concurring opinion), Justice Peters stated:

> Discovery is not a 'two-way street' because of the constitutional rights of defendants not accorded the prosecution . . ..

In our examination of the constitutional issues we found difficulty in accepting the reasoning of Jones v. Superior Court of Nevada County[FN46] and Williams v. Florida.[FN47] The dissenting opinions of Justice Peters in Jones and Justice Black in Williams seem to us more logical and better reasoned.

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FN46. 58 Cal.2d 56, 22 Cal.Rptr. 879, 372 P.2d 919 (1962).

FN47. 399 U.S. 78, 90 S.Ct. 1893, 26 L.Ed.2d 446 (1970).

[6] We are therefore persuaded to interpret article I, section 9, of the Alaska constitution more broadly than the United States Supreme Court construed the fifth amendment in Williams. We hold that the privilege against compelled self-incrimination under the Alaska constitution prohibits extensive pretrial prosecutorial discovery in criminal proceedings.[FN48]

FN48. At least one legal commentator construes the privilege against self-incrimination under the fifth amendment to the United States Constitution in a similar manner.

> . . . (T)he policies inherent in the fifth amendment privilege against self-incrimination indicate that the prosecutorial discovery provisions of the proposed amendment to (federal criminal) Rule 16 are unconstitutional and should be rejected . . . (and) that the contention that increased defense discovery must be dependent upon increased prosecutorial discovery exaggerates the risk of defense discovery and is unpersuasive.
>
> Note, Prosecutorial Discovery Under Proposed Rule 16, 85 Harv.L.Rev. 994 (1972).

The principles we choose to follow in deciding whether or not compelled disclosure of defenses may undermine the privilege against self-incrimination involve a three-fold test: Is the evidence testimonial; is it incriminating; and is it compelled? Applying this three-part rule to the court's discovery order in the case now before us leads to the conclusion that the order is in a large part constitutionally impermissible.

The discovery order directs petitioner to produce 'the names and addresses of all prospective defense witnesses, other than the defendant himself,' including 'the names of (alibi) witnesses upon whom he intends to rely.'

The requirement that petitioner produce a list of names and addresses of witnesses meets the testimonial or communicative criterion of the constitutional analysis. That is, a document containing such facts transmitted from one party to another constitutes a communication of cognizable information from one source to another. Secondly, we are of the opinion that the list of names of prospective witnesses may, at least in some instances, tend to be incriminating. Although the list might not appear to be incriminating on its face, certain of the persons identified in such a list may be known felons, perjurers, accomplices, co-defendants, or individuals under suspicion or police surveillance. Moreover, the police may possess additional incriminating information about some of the witnesses and an accused's reference to such persons may tend to arouse suspicion about his relationship with the witness or may tend to implicate him in the criminal activities of such witness.

[7][8] The incriminating nature of requiring a defendant to disclose the names and addresses of his witnesses prior to ***786** trial may be more readily understood if placed in another context. We doubt, for instance, whether any court would uphold a statute or rule which would require the defendant to make such disclosure to the police at the station house. It can be said with assurance that such a procedure would be universally found to be a rank violation of the defendant's privilege against self-incrimination. There are, of course, important substantive differences between the investigatory stage of a criminal proceeding and the point of pretrial procedure. Our purpose is using the example is to make clear the incriminating nature of the disclosure. However, we feel the stage of the proceedings is irrelevant to the analysis of this constitutional privilege. The fundamental right not to incriminate one's self should apply at every stage of criminal inquiry or proceedings regardless of judge-made exclusionary or evidentiary rules. As Justice Connor noted in his majority opinion in McConkey v. State:

> The privilege extends not only to answers that would in themselves support a conviction but also to those which might furnish 'a link in the chain of evidence' leading to a conviction.[FN49]

FN49. 504 P.2d 823, 826 (Alaska 1972)

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(footnote omitted).

Finally, we agree with petitioner's contention that the names and addresses of the witnesses would by the terms of the order be 'compelled' from him in a constitutional sense. Since the production of a list of names and addresses of witnesses is testimonial in nature, incriminating, and compelled by court order, we hold that this portion of the superior court's discovery order violates petitioner's privilege against self-incrimination under article I, section 9, of the Alaska constitution.

[9] The discovery order next commands 'the production or inspection and copying of any written or recorded statements in defendant's possession of prospective defense or government witnesses . . ..' Again, we are of the view that written or recorded statements are 'testimonial' or 'communicative' in nature. Nor do we think it inconceivable that some, although not necessarily all, of such statements will be incriminating and will tend to furnish a link in the chain of evidence leading to a conviction. The potential incriminating nature of such statements was recognized by the Supreme Court of California in Prudhomme v. Superior Court:

> For example, if a defendant in a murder case intended to call witness A to testify that defendant killed in self-defense, pre-trial disclosure of that information could provide the prosecution with its sole eyewitness to defendant's homicide. Similarly, consider the effect of disclosing the name or expected testimony of witness B, whom defendant intends to call only as a 'last resort' to testify that defendant only committed a lesser-included offense.[FN50]

> FN50. See Prudhomme v. Superior Court of Los Angeles County, 2 Cal.3d 320, 85 Cal.Rptr. 129, 466 P.2d 673, 677 (1970).

As in the case of the list of names and addresses of witnesses, we conclude that the witness statements are being 'compelled' in a constitutional sense. Indeed, we are of the opinion that among the species of information sought to be discovered by respondent, disclosure of pretrial recorded statements of defense witnesses presents the most serious infringement upon petitioner's privilege against self-incrimination. Hence, we hold that this section of the superior court's discovery order is unconstitutional under article I, section 9 of our constitution.

[10] Finally, the discovery order requires petitioner to produce 'advance notice of an alibi defense, together with information indicating the place or places defendant claims to have been . . ..' As with the list of witnesses' names, addresses and recorded statements, information going to alibi is, in our opinion, 'communicative' or 'testimonial.' Again, the information is verbal rather than physical, direct rather than indirect, and immediately cognizable. Documents containing written information are simply not fingerprints, voice samples, physical appearances *787 or line-up identifications. Additionally, for the reasons set forth above, we conclude that the information commanded by this portion of the discovery order is 'compelled' in a constitutional sense from petitioner. And we are of the view that information pertaining to an alternate location where an accused claims to have been tends to be incriminating and may provide the state with another 'link' in its chain of evidence. The information sought could be particularly incriminating if the state were able to demonstrate that no one else in such alternative location had seen the accused during the relevant time period. Further, compelled disclosure of the place the defendant claims to have been is as constitutionally infirm as coerced disclosure of witnesses' names, for it may serve to identify the witnesses. Often the place a defendant will specify will be a residence or a place of business, and in many instances the residents of the home or the proprietor of the place of business will have been present. These persons may be able to provide the police with information probative of the defendant's guilt-information the police might never have found but for the compelled disclosure.

It is no answer to say that the defendant would have to disclose the same facts at trial anyway if he intended to rely on an alibi defense, for the state's case may be so weak that the defendant will choose not to expose himself to further criminal liability by revealing incriminating evidence which was nonetheless exculpatory of the crime for which he stands charged. Hence, we hold that the portion of the superior court's order which commands the production of alibi information concerning the place or places the accused claims to have been also offends petitioner's privilege against self-incrimination under the Alaska constitution.

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[11] Whether the mere notice of an alibi defense tends to be incriminating to an accused, however, is more questionable. We find it difficult to conceive how a notice of this particular defense, standing by itself, might tend to be incriminating. Nor has petitioner persuasively demonstrated to us how such notice alone would disclose the substance of his defense theory or any incriminating weaknesses or inconsistencies therein. Rather, we are of the view that the advance notice of an alibi defense is in the nature of any pretrial plea, much like a plea of 'not guilty.' We find nothing incriminating about this inquiry. Accordingly, we hold that the portion of the superior court's discovery order which calls upon petitioner to furnish respondent with advance notice of an alibi defense does not violate article I, section 9, of the Alaska constitution.[FN51]

> FN51. We do not, however, mean to express our view of the constitutionality of portions of Criminal Rule 16(c) or other pretrial prosecutorial discovery orders not presently before us.

We do not believe that our decision in the instant case will leave respondent in a disadvantaged posture during future prosecutions. Certainly in the past, the state has experienced no substantial inability to conduct prosecutions without the benefit of extensive pretrial discovery. We anticipate that it will continue to perform as effectively in the future. In the event that the state should be unfairly surprised or prejudiced at trial by unexpected defense witnesses, statements or theories, we assume that the trial courts will exercise sound discretion in the regulation of trial proceedings and grant the state a continuance or other appropriate remedy. We recognize that in some cases this may result in delays and inconvenience at trial, but we are not prepared to exchange a fundamental constitutional right for expediency.

We vacate the superior court's pretrial order and remand the case for further proceedings.[FN52]

> FN52. Due to our holdings and disposition in this petition for review, we decline to reach petitioner's claim that the discovery order violated his right to effective confrontation and cross-examination under article I, section 11 of the Alaska constitution or the sixth and fourteenth amendments to the United States Constitution.

Alaska 1974.
Scott v. State
519 P.2d 774

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'I AM JIVERY WONG SHOOTING THE PEOPLE'

The man who gunned down 13 people in an immigrant center in Binghampton, N.Y., thought police had harassed him for years, even spreading rumors about him and touching him in his sleep, he wrote in a letter mailed to a TV station the day of the massacre. — *The Associated Press*

NEWS DIGEST

NATION

D.C.

Prolonged, secret questioning isn't allowable, high court says

WASHINGTON — The Supreme Court refused 5-4 Monday to permit prolonged, secret questioning of crime suspects, ruling that even voluntary confessions may not be used in a federal court if the defendant was held more than six hours before he talked. Justice David Souter pointed to the number of people who have been shown to be innocent through DNA evidence, but who nonetheless had confessed to the crime. Police questioning "isolates and pressures the individual," he said, "and there is mounting empirical evidence that these pressures can induce a frighteningly high percentage of people to confess to crimes they never committed."

MASSACHUSETTS

DNA test for cancer virus praised over Pap smear

BOSTON — A new DNA test for the virus that causes cervical cancer does so much better than current methods that some gynecologists hope it will replace the Pap smear in wealthy countries and cruder tests in poor ones. Not only could the new test for human papillomavirus, or HPV, save lives, but scientists also say that women over 30 could drop annual Pap smears and instead have the DNA test just once every three, five or even 10 years. The study was published last week in the New England Journal of Medicine.

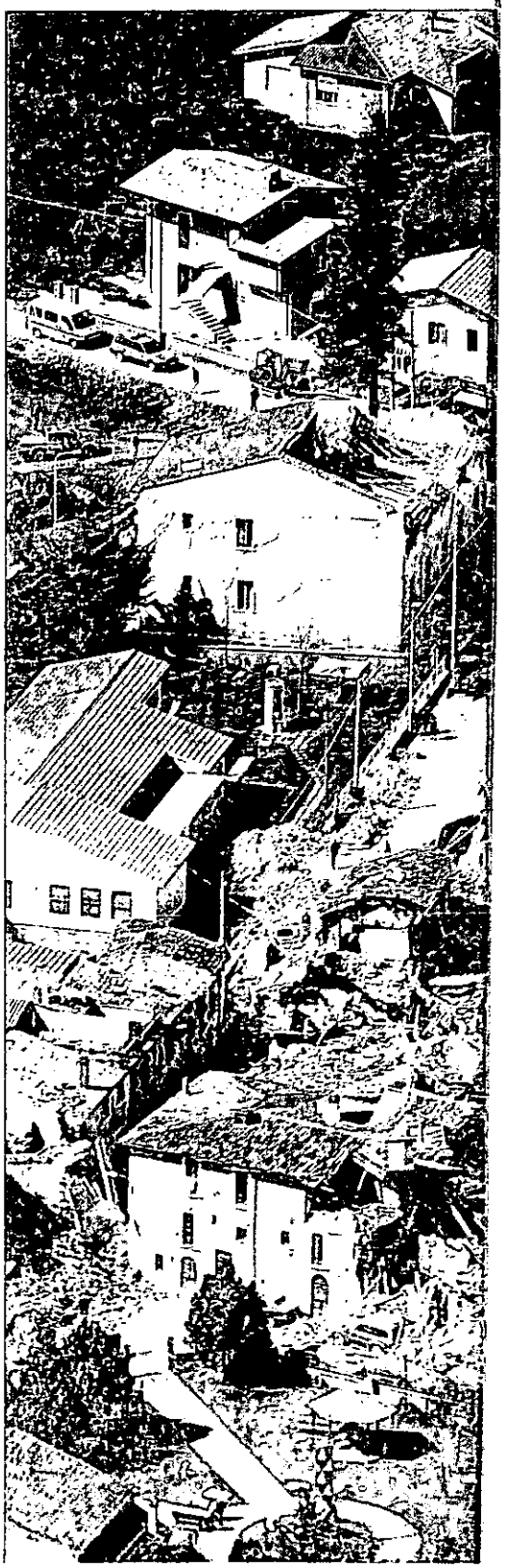
ILLINOIS

1 in 5 American 4-year-olds is obese, report suggests

CHICAGO — A striking new study says almost 1 in 5 American 4-year-olds is obese, and the rate is alarmingly higher among American Indian children, with nearly a third of them obese. Overall, more than half a million 4-year-olds are obese, the study suggests. Almost 13 percent of Asian children were obese, along with 16 percent of whites, almost 21 percent of blacks, 22 percent of Hispanics, and 31 percent of American Indians. The study appeared in Monday's Archives of Pediatrics & Adolescent Medicine.

WORLD

Italian qu



HB 9

SUPPORT

(FILE 3)

From: Rep. Lindsey Holmes
Sent: Monday, February 23, 2009 10:06 AM
To: Jane Pierson
Subject: FW: Death Penalty

-----Original Message-----
From: James McCarty [mailto:James_McCarty@msn.com]
Sent: Friday, February 20, 2009 1:40 PM
To: Rep. Lindsey Holmes
Subject: Death Penalty

FYI I am pro death penalty and have researched info on it in the past and what you have in youu article is not always true it depends upon the age of the criminal when they are sentenced. I do whole heartily that any death penatly passed should be very limited in application. Such as killing multiple people, killers for hire and those who hired them, repeat murderers. And if it were up to me second offence child malestors would be executed.

D. THE COST OF LIFE WITHOUT PAROLE VS THE DEATH PENALTY

Many opponents present, as fact, that the cost of the death penalty is so expensive (at least $2 million per case?), that we must choose life without parole ("LWOP") at a cost of $1 million for 50 years. Predictably, these pronouncements may be entirely false. JFA estimates that LWOP cases will cost $1.2 million - $3.6 million more than equivalent death penalty cases.

Cost of Life Without Parole: Cases Equivalent To Death Penalty Cases	Cost of Death Penalty Cases
1. $34,200/year (1) for 50 years (2), at (1) for 6 years (5), at a 2% (3) annual cost increase, plus $75,000 (4) for trial & appeals = $3.01 million	$60,000/year a 2% (3) annual cost increase, plus $1.5 million (4) for trial & appeals = $1.88 million
2. Same, except 3% (3) = $4.04 million	Same, except 3% (3) = $1.89 million
3. Same, except 4% (3) = $5.53 million	Same, except 4% (3) = $1.91 million

The full article is at: http://www.prodeathpenalty.com/DP.html
There are also other articles pro death penality.

Have a wonderful day and hang in there,
Jim

Dana Strommen

From: irl@gci.net on behalf of Irl Stambaugh [irl@gci.net]
Sent: Sunday, March 08, 2009 6:08 AM
To: Rep. Jay Ramras
Subject: victim rights

March 8, 2009

Representative Jay Ramras

Dear Representative Ramras,

Attached you will find a letter to the editor that was submitted by the Stambaugh family in regards to the death penalty, the article was printed as a compass piece in the AND on 3-8-09. We fully understand that there are strong opinions on all sides of this issue and would never assume that we would change your beliefs (or want to); however I would hope you are able to review the attached with an eye towards possibly minimizing some of the victim impact.

Our sister Jody Stambaugh was raped and murdered in Fairbanks, Alaska at the University of Alaska on December 10, 1972, she was 18 years old and attending her first year at the college. Our primary reason for writing after so many years is Walunga's most recent Parole application in 2008.

Alan Walunga was arrested and tried for the rape /murder, and in addition the vicious assault on Jody's roommate. During the sentencing the report stated that Walunga as a juvenile had a troubled childhood with a history of sexual abuse of minors in his community, then at Mt. Edgecombe School, and then in Fairbanks at Ft. Wainright, finally ending with the murder at UAF. This raises the first question that has been asked before but never adequately addressed.

Just because they are juveniles in most cases, why are students not pre-screened with a background check before they are allowed to reside in a co-ed dorm, don't the other students deserve that protection?

Since his sentencing Walunga has applied for probation / parole on 6 different occasions, even though he was sentenced to a life sentence with a 15 year concurrent time period. The first time he applied was in 1987 he was told at that time he would not be eligible to apply in the future. Then in 2005 the board reconsidered and stated he would again be eligible to apply with no notice to victims and families of the change. As, I'm sure you can imagine our shock in 2008 when Walunga was again allowed to apply. (His request was denied).

Why was he allowed to apply when he had been sentenced to life?

Why was the rule changed in 2005?

Why were victim families not notified that this was the new policy?

As we stated in the attached, please don't get us wrong we are not blaming corrections or their probation/parole section; they have done an amazing job under difficult circumstances in keeping a violent sexual predator in jail where he belongs. What we are attempting to address are some of the policies, regulations and statutes that govern how the entire process is administered and to bring some

additional awareness to some of the problems in the hope that they can be improved.

Our final area of concern is that the hearings are closed to the public. In our opinion if a violent offender is trying to be released into a particular community that community should have a right to know. It is our understanding that this privacy extends to local law enforcement who are not informed, at the very least it would seem prudent to advise, and seek comment from law enforcement within an affected community.

Thank you for your time and consideration, for the past 37 years we have quietly gone about our business dealing with our grief in our own way. We hope by bringing this to your attention some positive changes may be made in the way these matters are handled.

Respectfully Submitted;

Irl Stambaugh

Gary Stambaugh

Cc: corrections, Parole board, victims for justice

The Death Penalty, Justified? Maybe.

Our sister Jody Stambaugh was an 18 year old University of Alaska, Fairbanks student when she was raped and murdered in her dorm room during the early evening hours on December 10, 1972. In addition her roommate who came into the room was also seriously assaulted and may have been killed had it not been for others hearing the assault and coming to her aid. This horrendous crime occurred so many years ago, how could it possibly be relevant in today's discussion on the death penalty. I guess I should start at the beginning.

Jody, a third generation Alaskan was born in Ketchikan, Alaska and raised with her two brothers and parents in Ketchikan and Juneau. Both of our parents were state of Alaska employees who worked for

the state until their retirement. Jody was an exceptional person, always calm, always kind, and always considerate of others, a good student and a good person who was loved by all she came into contact with. After graduation from high school in Juneau she decided to attend the University of Alaska in Fairbanks and was murdered during her first year at the school.

Allen Walunga spent his early years in a small community in the interior of Alaska. At an early age he became a violent sexual predator when he sexually assaulted several underage girls. (He later admitted to sexually assaulting several young boys in the community during this same time period). So, what did the powers to be do to resolve the issue, they shipped him off to school at Mt. Edgecombe in Sitka, Alaska.

While attending school at Mount Edgecombe he once again exhibited his sexual predatory behavior when he obtained a gas soaked rag and held it to the mouth and nose of an intoxicated female student until she went limp, he thought he had killed her so he ran away. After that incident he moved to Fairbanks and attended high school.

During his time in Fairbanks, Alaska he was charged with pedophilia and child molestation of a female dependant of an officer from Ft. Wainright, Alaska. He was placed on probation for this offense and was still on probation when he killed Jody.

He then went to the University of Alaska, Fairbanks where no one inquired as to his background before they placed him into a co-ed dorm. (Yeah, I know juvenile records are confidential even when it involves a violent sexual predator being in contact with an entire campus of potential victims).

On December 10, 1972 our lives were changed forever, Jody was murdered, another wonderful young lady was assaulted, Walunga was taken into custody. Then the nightmare started.

During Walunga's trial and sentencing before Judge Van Hoomissen in Fairbanks the following facts were entered into the record.

> Walunga was found guilty of murder in the 1st degree and assault with the intent to kill.
>
> The judge found that Walunga "was an extremely dangerous offender who presented a clear and present danger of killing another person if ever released from prison".
>
> Even the defense expert stated in his report: Defendant was treated for psychiatric problems at an early age and was obsessed with the likelihood that he would do an impulsive criminal, and perhaps murderous act to another human being.
>
> In a May 1973 psychiatric report the Doctor states that the "individual be committed to a mental institution for the continuous treatment of his schizophrenia condition. I do not believe that unless some new or revolutionary treatment of schizophrenia becomes known that he should be permitted to walk the streets in a free society".
>
> The other psychologists and psychiatrists that evaluated Walunga formulated a less favorable opinion, as well as Judge Van Hoomissen who all agreed that Walunga never again should be free in our community.
>
> District Attorney Clayton at sentencing took into account the above information and recommended the court impose a sentence that would assure he (Walunga) never again would walk the streets, due to his anti-social personality disorder, being extremely dangerous,

obsessed with killing, is fatality bent on destruction, and is schizophrenic.

The probation officer stated in Part:

If we had a death penalty in this state, I would recommend whatever that death penalty might be. This is a heinous crime and I agree that the chances for rehabilitation are poor.

Judge Van Hoomissen goes on to state in part: The evidence is replete with testimony concerning his obsession with killing. The public does need protection. This is probably the most vicious crime that I have had contact with. If we were to release him and say, "let's watch to see if he will do it again". I don't think we can afford to do that.

Judge Van Hoomissen then sentenced Walunga using the following language:

The judge imposed a life sentence on the murder with a concurrent 15 years on the assault with intent to kill count,

The judge concluded by stating:

It is further the order of the court that should the defendant be considered for parole by the parole board, they should have competent legal evidence available to them from competent experts that there is a reasonable probability that Allen Riley Walunga will not commit an offense involving a crime of violence against another human being.

At that time our family felt that justice had been done and Walunga would remain in jail for the remainder of his life. We continued with our lives and through time minimized our grief. Our father had a serious heart attack that I will always, partially attribute to the grief and sorrow he lived with after our sister's death.

Then in September of 1987 we were shocked to find out that Walunga was able to ask for a parole hearing. We learned at that time that by statute he was allowed to apply and that each time he requested a parole hearing the victims are notified and allowed to respond in person or in writing.

So, here we go again the entire senseless murderous incident being rehashed in a hearing, as a family, as individuals, and as victims we responded to Walunga's request and he was denied.

1989 – Requested commutation of sentence, denied.

1991- Tested the waters and applied for a parole hearing, waived hearing.

1992- Applied for a parole hearing, denied.

1997- Tested the waters and applied for a parole hearing, waived hearing.

1998-Applied for a parole hearing, denied, with the additional statement from the parole board that the release of defendant on discretionary parole wholly was out of the question and that the board would never again consider another parole application.

The family and victims breathed another sigh of relief that it was finally over and Walunga would remain in jail.

Then unknown to any family member or victim the new parole board in 2005 decided that it would consider discretionary parole applications every ten years despite what any prior board had decided,

and contrary to what Judge Van Hoomissen recommended with good reason in his sentencing report.

2008-Applied for a parole hearing, hearing held in November 2008, denied

It is interesting to note at this particular hearing Walunga was in Arizona corrections and was being represented by a high profile Anchorage attorney. Walunga entered into the record a psychiatric report he had paid for but we were not entitled to see because we were told that it was a medical record. In addition Walunga provided the board and victims with a parole request report that says in part:

He is sorry for the murder, However he fails to mention that there was a second victim,

He has found god,

He thinks he will do well on probation unless he is confronted with "his temptation to form adulterous friendships with abnormally large breasted women",

He also fails to mention his previous sexual misconduct,

The state of Alaska had not done a psychiatric report due to the costs involved. The state attorney was not allowed to remain in the room because we were told at the last minute that it was a closed hearing. We were never afforded the opportunity to obtain our own legal counsel.

In addition we learned that all hearings of this nature were closed to the public and only victims were allowed to attend. We also learned that this privacy rule extended to those that should have had a right to know, an example being the local police chief in the community where Walunga wished to reside did not have a right to know that a violent sexual predator may be released into his community.

This is not an attempt to bash the probation/parole department at corrections, through it all, after having to deal with antiquated rules, regulations and statutes they have done a remarkable job in keeping Walunga behind bars where he cannot harm anyone in our communities.

After going through another emotionally grueling hearing Walunga's request was again denied.

If you can, imagine the heartache we have endured over the last 37 years always fearing that this may be the hearing where he gets his way. During that same time period life continues on with our father and mother having passed away, our children have grown but we continue to attend hearings, and as I promised our mother I will continue to attend hearings.

The other victim has raised a family, but continues to attend hearings fearing that Walunga will be released.

Do we think that this will change anyone's mind on the death penalty? Probably not, but we do hope it makes you think.

Do we think my sister would agree with the death penalty, probably not, she was a better person than a lot of us.

Would we agree with the death penalty? In this case with the above set of facts, you bet we do.

Irl Stambaugh

Gary Stambaugh

Arguments for the Death Penalty
02-27-09

Testimony By: Frank L. Girard, M.Sc., 20 Year resident of Wasilla
1245 East Scotwood Drive
Wasilla, Alaska 99654
373-3072

To the members of House Judiciary:

I am for the death penalty for premeditated, first-degree murder--particularly when the victims are women or children. Society must have more compassion for the murdered and their families than for murderers.

Clearly, the efficacy of a punishment for murder is determined by its deterrence. Does the existence of capital punishment deter more than the threat of life in prison? The answer must be yes. In the biological realm, reproduction trumps, directly or indirectly, all other considerations. Those who are more likely to reproduce will have a greater influence over the genetics of oncoming generations than those who are less likely to reproduce. Those who have a greater fear of death, who have better instinctual resources to avoid death-dealing situations, will produce more offspring than those who are less endowed in these areas. Nothing ruins reproductive capability like being dead! Therefore, after countless generations, we all have a death fear hardwired into our nervous systems. The prospect of death has a strong, even painful, emotional gut-wrenching effect. It takes a brave person indeed to act contrarily to this terrible feeling. Since jail time was unknown in prehistory, the prospect of life in prison elicits only an academic, intellectual response--no strong, raw, aversive emotions like the prospect of death does. Therefore the death penalty must have a stronger deterrence than life in prison.

OBJECTIONS:

(A) Death- row inmates claim they were not deterred by the death penalty.

Clearly the inmates were not deterred; otherwise they would not be on death row. The people to ask about the deterrence of capital punishment are those NOT on death row because they were deterred by the specter of the death penalty.

(B) A state without capital punishment may have a murder rate less than another state that has capital punishment.

There is a different population makeup between the two states. Take an extreme example. Assume a hypothetical state with no death penalty and whose population is mostly nuns. The state would be expected to have a lower murder rate than a capital-punishment state made up of the rest of us. A jurisdiction may technically have capital punishment, but if it very rarely, if ever, executes obviously guilty murderers, its death-penalty statute will have little deterrence.

South Africa, where I lived for many years, had capital punishment and a moderately high murder rate. With the advent of black rule, the death penalty was abolished. The murder rate shot up exponentially. Now South Africa has probably the highest murder rate in the world--MUCH higher than that of the United States.

(C) The death penalty is too expensive because of ceaseless litigation. Therefore it would be cheaper to lock up murderers than to kill them.

Perhaps litigation could be trimmed by legislation or court rulings so that only that which bears directly on the guilt or innocence of the accused is entertained. As life prisoners become geriatric, their health care could eat up any initial financial advantage. States that several decades ago were lavish with life sentences without parole are now realizing this expensive truth. A few prisons have degenerated into nursing homes.

(D) Everything must be done to avoid executing the innocent. I AGREE!!!

We should pay more to get better public defenders and provide larger allowances for them to gather evidence such as DNA findings, etc. At least in capital cases, we should pay a public defender a handsome bonus if he/she gets an acquittal. (Even if only a long prison term is at issue, a bonus would be less than the cost of imprisonment--about $40,000 per year.)

In closing, if having capital punishment on the books only saves the life of one potential murder victim, then it's worth it!

F. L. Girard

Wayne Anthony Ross

From: wws@alaskalife.net on behalf of Wev Shea [wws@alaskalife.net]
Sent: Wednesday, February 25, 2009 8:32 AM
To: Wayne Ross Anthony
Subject: Alaska Death Penalty - Wayne: I thought you might find my article of interest. My Best, Wev

Alaska Dispatch

TALK OF THE TUNDRA

Alaska death penalty debate far more complex than meets the eye

Wev Shea
Feb 25, 2009

As the U.S. Attorney for Alaska, I was the first prosecutor to seek the death penalty against two individuals since the passage of statehood.

These two young men executed another young man in a drive-by shooting. They were convicted of murder in state court.

While these two killers were in separate Alaska prisons, they somehow conspired. They devised a plan and instructed others outside prison to build a bomb to murder the key witness against them in the murder case. These individuals built a bomb and mailed it.

The mail bomb was sent to the witness's Post Office box in Chugiak, as directed by the incarcerated murders. The targeted witness, also a young man, was out of state. His parents picked up the mail bomb package and opened it in the kitchen of their home. The father was killed instantly and the mother was severely maimed, with hundreds of wounds to her face and body.

I arrived at their home within a couple hours of the explosion. Body tissue from the father was stuck to everything in the kitchen that hadn't been destroyed by the horrific blast. It was a crime scene you never forget. You play back the horror experienced by the parents upon opening the package meant for their son. I never forgot it.

I sought the death penalty for the two incarcerated murders who had killed and maimed two innocent bystanders in their attempt to kill the son.

Here is a summary of the key facts I remember as defined for the Assistant Attorney General for the Criminal Division, Robert S. Mueller, III [now director of the FBI] and U.S. Attorney General William P. Barr:

--Histories of intimidation and threats going back to school days

--Histories of abuse and misuse of firearms and explosives

--Histories of attempting to intimidate witnesses against them

--Convicted murderers who killed in a vehicle drive-by

--From two separate Alaska prisons, a successful plan to mail a bomb to execute a trial

witness

--From two separate Alaska prisons, instructed and planned with others outside the prisons

--Co-conspirators missed their mail bomb target and killed and maimed innocent bystanders

Attorney General Barr and Assistant Attorney General Mueller demanded I justify in detail why the death penalty should be applicable in this particular case. I personally felt the conduct was so outrageous that the penalty of death was warranted -- not just applicable to the killers.

AAG Mueller and AG Barr ultimately agreed with me after extensive Main Justice review by experts. But they (and rightfully so) attached a caveat: "There will be no compromise or plea deal. The threat of the death penalty must never be used to intimidate the defendant. You, as the United States Attorney for the District of Alaska, have no authority to compromise this case." And, due to the terrorism nature of this case, Main Justice had a key role in all of this.

Despite the forgoing facts, an Alaska U.S. District Court judge held the death penalty was inappropriate for this case. Ultimately, the U.S. Court of Appeals for the Ninth Circuit agreed with the trial court that the death penalty was not an appropriate remedy for the prison felon killers.

I personally believe heinous crimes as described herein, as well as against children, demand the punishment of death. But when I hear the political rhetoric led by conservatives, like me, in Juneau, I wonder if they have any clue as to the uniqueness of Alaska's grave problems in criminal matters statewide. When I hear a pro-life believer like myself "scream" for the death penalty in Alaska, I know the individual is not knowledgeable on the key issues. The fact is this state is very unique. Alaska, like nowhere else in our nation, has a vastly different justice system in the Bush than other parts of the state, like the Railbelt and Southeast.

Here are some of the reasons why we must think hard about whether we want to reinstitute the death penalty in Alaska:

--Our law enforcement in rural Alaska (including state troopers, prosecutors, defense attorneys and judges) is gravely unfunded.

--Rural Alaska is plagued with injustice because of inadequate investigation resources for prosecutors and defendants.

--Inexperienced prosecutors, including district attorneys, are ill-equipped to address death decisions.

--Inexperienced defense lawyers are ill-equipped to protect potential death-penalty defendants.

--We have an inexperienced Attorney General who is more at home in an apple orchard than the courtroom.

--We have opinionated assistant Attorney Generals entrenched in their own death-penalty views.

--We have politically motivated District Attorneys (and an Attorney General) who place the governor's interest over Alaskans' well-being.

--And overall, our Alaska criminal justice system, from investigators to judges to counsel to prisons, is sorely under-funded.

Grandstanding by members of the Legislature on either side of the death penalty debate is a disservice to the public. This is a complex debate that deserves a thorough analysis. Hopefully the Legislature will delve into the complexities before voting.

***Wev Shea**, a Republican and an attorney admitted in Alaska in 1977, has been an outspoken critic of corruption in Alaska's GOP. He was a U.S. Attorney for Alaska from 1990 to 1993. He was also a deputy prosecuting attorney in Honolulu from 1981 to 1982. Shea joined the U.S. Navy in 1961, serving in combat from 1967 to 1969, with a nuclear delivery certification in A-6 Intruder attack jets.*

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Death penalty would end punishment of victim's family

COMPASS: Other points of view

By IRL STAMBAUGH AND GARY STAMBAUGH

(03/07/09 17:29:03)

Our sister Jody Stambaugh was an 18-year-old University of Alaska, Fairbanks student when she was raped and murdered in her dorm room during the early evening hours on Dec. 10, 1972. Her roommate was also seriously assaulted and might have been killed had not others heard the assault and come to her aid.

This horrendous crime occurred so many years ago. How could it possibly be relevant in today's discussion on the death penalty?

We should start at the beginning.

Jody, a third generation Alaskan, was raised with her two brothers in Ketchikan and Juneau. Jody was an exceptional person, always calm, always kind, and always considerate of others. After graduation from high school in Juneau she decided to attend the University of Alaska in Fairbanks.

A known offender

Allen Walunga spent his early years in a small community in Interior Alaska. At an early age he became a violent sexual predator and sexually assaulted several underage girls. (He later admitted to sexually assaulting several young boys in the community during this same time period).

So, what did the powers to be do? They shipped him off to school at Mount Edgecumbe in Sitka, Alaska.

While attending school at Mount Edgecumbe, he obtained a gas soaked rag and held it to the mouth and nose of an intoxicated female student until she went limp. He thought he had killed her so he ran away. After that incident he moved to Fairbanks and attended high school.

During his time in Fairbanks he was charged with pedophilia and child molestation. He was placed on probation.

He then went to the University of Alaska, Fairbanks where no one inquired as to his background before they placed him in a co-ed dorm. (Juvenile records are confidential even when it involves a violent sexual predator being in contact with an entire campus of potential victims).

The nightmare starts

On Dec. 10, 1972, our lives were changed forever. Jody was murdered, another wonderful young lady was assaulted, and Walunga was taken into custody.

Then the nightmare started.

Walunga was found guilty of murder in the 1st degree and assault with the intent to kill.

Judge Van Hoomissen found that Walunga "was an extremely dangerous offender who presented a clear and present danger of killing another person if ever released from prison".

The probation officer stated in part:

If we had a death penalty in this state, I would recommend whatever that death penalty might be. This is a heinous crime and I agree that the chances for rehabilitation are poor."

Judge Van Hoomissen said, "This is probably the most vicious crime that I have had contact with."

He imposed a life sentence on the murder with a concurrent 15 years on the assault with intent to kill count.

At that time our family felt that justice had been done and Walunga would remain in jail for the remainder of his life. We continued with our lives and through time minimized our grief. Our father had a serious heart attack that I will always partially attribute to the grief and sorrow he lived with after our sister's death.

The first parole request

Then in September of 1987 we were shocked to find out that Walunga was able to ask for a parole hearing.

So here we went again. The entire senseless murderous incident was being rehashed in a hearing. As a family, as individuals, and as victims, we responded to Walunga's request and he was denied.

In 1989 he requested commutation of his sentence and was denied.

In 1991 he tested the waters and applied for a parole hearing.

In 1992 he applied for a parole hearing and was denied.

In 1997 he tested the waters and applied for a parole hearing.

In 1998 he applied for a parole hearing and was denied. The parole board said that the release of the defendant on discretionary parole was wholly out of the question and that the board would never again consider another parole application.

The family and victims breathed another sigh of relief that it was finally over and Walunga would remain in jail.

We thought it was over

Then unknown to any family member or victim, the new parole board in 2005 decided that it would consider discretionary parole applications every 10 years, despite what any prior board had decided and contrary to what Judge Van Hoomissen recommended in his sentencing report.

In 2008 Walunga got a parole hearing. It is interesting to note Walunga was being represented by a high-profile Anchorage attorney. Walunga entered into the record a psychiatric report he had paid for. We were not entitled to see it because we were told that it was a medical record.

Sorry?

In addition, Walunga provided the board and victims with a report that says in part he is sorry for the murder (however, he fails to mention that there was a second victim). He says he has found God. He thinks he will do well on probation unless he is confronted with "his temptation to form adulterous friendships with abnormally large breasted women." He also fails to mention his previous sexual misconduct.

This is not an attempt to bash the probation/parole department at corrections. Through it all, after having to deal with antiquated rules, regulations and statutes they have done a remarkable job in keeping Walunga behind bars where he cannot harm anyone in our communities.

After another emotionally grueling hearing for us, Walunga's request was again denied.

37 years of heartache

If you can, imagine the heartache we have endured over the last 37 years, always fearing that this may be the hearing where he gets his way. During that same time period life continues on. Our father and mother have passed away, and our children have grown but we continue to attend hearings. As we promised our mother, we will continue to attend hearings.

The other victim has raised a family, but continues to attend hearings fearing that Walunga will be released.

Do we think that telling our story will change anyone's mind on the death penalty? Probably not, but we do hope it makes you think.

Do we think my sister would agree with the death penalty? Probably not. She was a better person than a lot of us.

Do we agree with the death penalty? In this case with the above set of facts, you bet we do.

Irl Stambaugh is a retired police officer. Gary Stambaugh is a former sergeant-at-arms for the Alaska State Senate. Both are lifelong Alaskans.

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From: Sharpjfa@aol.com
Sent: Monday, February 23, 2009 9:50 AM
To: Tom Wright; Jane Pierson
Subject: The Death Penalty is a Deterrent - 16 Recent Studies

For some of the recent 16 deterrence studies, go to:

http://www.cjlf.org/deathpenalty/DPDeterrence.htm

US Senate testimony
http://judiciary.senate.gov/testimony.cfm?id=1745&wit_id=4991

The Death Penalty as a Deterrent - 16 Recent Studies
Dudley Sharp, Justice Matters, updated 82207

CONTACT information for all of the study authors is within the footnotes

"I oppose the death penalty. " " But my results show that the death penalty (deters) — what am I going to do, hide them?" "Science does really draw a conclusion. It did. There is no question about it." "The results are robust, they don't really go away" "The conclusion is there is a deterrent effect.".

Prof. Naci Mocan, Economics Chairman, University of Colorado at Denver
"Studies say death penalty deters crime", ROBERT TANNER, Associated Press, Jun 10, 2007, 2:01 PM ET

(2003) Emory University Economics Department Chairman Hashem Dezhbakhsh and Emory Professors Paul Rubin and Joanna Shepherd state that "our results suggest that capital punishment has a strong deterrent effect. An increase in any of the probabilities -- arrest, sentencing or execution -- tends to reduce the crime rate. In particular, each execution results, on average, in eighteen fewer murders -- with a margin of error of plus or minus 10." (1) Their data base used nationwide data from 3,054 US counties from 1977-1996.

(2003) University of Colorado (Denver) Economics Department Chairman Naci Mocan and Graduate Assistant R. Kaj Gottings found "a statistically significant relationship between executions, pardons and homicide. Specifically each additional execution reduces homicides by 5 to 6, and three additional pardons (commutations) generate 1 to 1.5 additional murders." Their "data set contains detailed information on the entire 6,143 death sentences between 1977 and 1997. (2)

(2001) University of Houston Professors Dale Cloninger and Roberto Marchesini, found that death penalty moratoriums contribute to more homicides. They found: "The (Texas) execution hiatus (in 1996), therefore, appears to have spared few, if any, condemned prisoners while the citizens of Texas experienced a net 90 (to as many as 150) additional innocent lives lost to homicide. Politicians contemplating moratoriums may wish to consider the possibility that a seemingly innocuous moratorium on executions could very well come at a heavy cost." (3)

(2001) SUNY (Buffalo) Professor Liu finds that legalizing the death penalty not only adds capital punishment as a deterrent but also increases the marginal productivity of other deterrence measures in reducing murder rates. "Abolishing the death penalty not only gets rid of a valuable deterrent, it also decreases the deterrent effect of other punishments." "The deterrent effects of the certainty and severity of punishments on murder are greater in retentionist (death penalty) states than in abolition (non death penalty) states." (4)

(2003) Clemson U. Professor Shepherd found that each execution results, on average, in five fewer murders. Longer waits on death row reduce the deterrent effect. Therefore, recent legislation to shorten the time prior to execution should increase deterrence and thus save more innocent lives. Moratoriums and other delays should put more innocents at risk. In addition, capital punishment deters all kinds of murders, including crimes of passion and murders by intimates. Murders of both blacks and whites decrease after executions. (5) NOTE In a later review of individual state data, Shepherd found that for states executing less than once every 27 months, that there was no effect on murders or murders actually rose. Citations to follow.

(2003) FCC economist Dr. Paul Zimmerman finds: "Specifically, it is estimated that each state execution deters somewhere between 3 and 25 murders per year (14 being the average). Assuming that the value of human life is approximately $5 million {i.e. the average of the range estimates provided by Viscussi (1993)}, our estimates imply that society avoids losing approximately $70 million per year on average at the current rate of execution all else equal." The study used state level data from 1978 to 1997 for all 50 states (excluding Washington D.C.). (6)

(2003) Emory University Economics Department Chairman Hashem Dezhbakhsh and Clemson U. Professor Shepherd found that "The results are boldly clear: executions deter murders and murder rates increase substantially during moratoriums. The results are consistent across before-and-after comparisons and regressions regardless of the data's aggregation level, the time period, or the specific variable to measure executions." (7)

(2005) In a review of Illinois state data, University of Houston Professors Dale Cloninger and Roberto Marchesini found that 150 additional Illinois' citizens died, in a four year period because of Governor Ryan suspended executions and commuted all death sentences. (Applied Economics, forthcoming 2006).

Criticisms rebutted and additional studies

(2006) " . . . (Donohue and Wolfers' "D&W") criticisms of Zimmerman's analysis are misrepresentative, moot or unsupportable in terms of the analyses they perform." "It is shown that Zimmerman's published empirical results, or the conclusions drawn from them, are not in any way refuted by D&W's critique." (pg 3) "This later estimate suggests that each execution deters 14 murders on average . . .". (pg 7) "It is shown that D&W made a number of serious misinterpretations in their review of Zimmerman's study and

that none of the analyses put forward by D&W (which ostensibly refute Zimmerman's original results and conclusions) hold up under scrutiny. (pg8) " . . . D&W do not even report Zimmerman's "preferred" results correctly, and then proceed by carrying on this error throughout the remainder of their critique."(pg8) "Of course, (D&W's) omission tends to create a strong impression that Zimmerman's analysis 'purports to find reliable relationships between executions and homicides', when his actual conclusions regarding the deterrent effect of capital punishment are far more agnostic." (pg10) " . . . D&W's method of interpreting their results is not consistent with that proscribed by the received econometric literature on randomized testing . . .". "As such, D&W's interpretation of their randomized test in itself does not (and cannot) reasonably lead one to conclude that Zimmerman's estimates suggesting a deterrent effect of capital punishment are spurious." (pg12) " . . . D&W do not appear to have interpreted their randomization test in any meaningful fashion." (pg14) " . . . the state clustering correction employed by D&W may not be producing statistically meaningful results." (pg16) "And while D&W once lamented that recent econometric studies purporting to demonstrate a deterrent effect of capital punishment yield 'heat rather than light', as shown herein, their criticisms of Zimmerman (2004) tend to yield 'smoke rather than fire'."(pg26)
Zimmerman, Paul R., "On the Uses and 'Abuses' of Empirical Evidence in
the Death Penalty Debate" (November 2006). ssrn(dot)com/abstract=948424

(2006) "This analysis shows that attempts to make the deterrence effect disappear are ineffective." (p 16)
--- Existence of the death penalty, in law, has a statistically significant impact on reducing murders. (p 23)
--- Execution rates show significant impact in reducing murders. (p 13 & 23)
--- Death row commutations, and other removals, increase murders. (p13 & 23)
--- The criticism of our studies is flawed and does not effect the strength of the measured deterrent effect.
"The Impact of Incentives On Human Behavior: Can we Make It Disappear? The Case of the Death Penalty", Naci H. Mocan, R. Kaj Gittings, NBER Working Paper, 10/06, www(dot)nber.org/papers/w12631

(2007) "Had (D&W's) paper been subjected to the normal blind peer review process in an authoritative economic journal it is highly unlikely that it would have survived intact , if at all. "

"(D&W's) Quibbling over numerous and sometimes meaningless statistical issues obscures the picture painted by the cumulative effect of the nearly dozen studies published since the turn of the 21st century."

"Using differing methodologies and data sets at least five groups of scholars each working independently (and often without knowledge of the others) have arrived at the same conclusion—there is significant and robust evidence that executions deter some homicides. While there may be merit in some of (D&W's) specific criticisms, none addresses the totality of the collection of studies. The probability that chance alone explains the coincidence of these virtually simultaneous conclusions is negligible."

"DW's unsupported claim that the appropriate variable in studies of deterrence using these borrowed tools from portfolio analysis is the amount or level of homicides in the respective jurisdictions. This claim is without theoretical basis or empirical precedent. "

"With regard to DW's specific comments on our two papers (Cloninger & Marchesini, 2001 & 2006) we find very little requiring defense. Implicit in their critique, and explicitly stated in private communications, DW were able to replicate our results based on data we furnished, at their request, as well as data they acquired independently. "

"Reflections on a Critique", Dale O Cloninger and Roberto Marchesini, forthcoming Applied Economic Letters

The findings for deterrence reflect reason, common sense and history.

"According to the standard economic model of crime, a rational offender would respond to perceived costs and benefits of committing crime." "Capital punishment is particularly significant in this context, because it represents a very high cost for committing murder (loss of life). Thus, the presence of capital punishment in a state, or the frequency with which it is used, should unequivocally deter homicide." Furthermore, "an increase in pardons (commutations) implies a decrease in the probability of execution, which economic theory predicts should have a positive (increase) impact on murder rates." (8)

Isaac Ehrlich (1975) provided the first systemic analysis of the relationship between capital punishment and the crime of murder along with the first empirical analysis of the deterrence hypothesis. He found that each execution deterred, on average, 8 murders. Many additional studies have found corroborating evidence supporting the deterrent effect of the death penalty -- from the United States (Ehrlich, 1977, Layson, 1985, Cloninger, 1992, Ehrlich and Liu, 1999, Dezhbakhsh et al, 2000) and Canada (Layson 1983) and the UK (Wolpin, 1978). (9)

Pubic policy makers take note. Stopping executions will sacrifice innocent lives. Reinstating capital punishment will spare more innocent lives.

full report

THE DETERRENT EFFECT OF THE DEATH PENALTY
by Dudley Sharp
last update 42707
(contact info, below)

". . . (E)ach execution results, on average, in eighteen fewer murders . . . ".

Deterrence

The potential for negative consequences deters some behavior. The most severe criminal sanction -- execution -- does not contradict that finding. Reason, common sense, history and the weight of the studies support the deterrent effect of the death penalty. The death penalty protects innocent lives. The absence of the death penalty sacrifices innocent lives.

Is there any group, be they criminologists, historians, psychologists, economists, philosophers, physicians, journalists or criminals that does not recognize that the prospect of negative consequences constrains or deters the behavior of some? Of course not -- not even fiction writers so speculate. Even irrational people wear seat belts, choose not to smoke and do not rob police stations because of the potential for negative consequences.

I. Twelve Recent Deterrence Studies-- The death penalty saves innocent lives

Above

II. Historical support

Reason, history and common sense all support that the potential for negative consequences deters or alters behavior. In short, incentives, negative or positive, matter. That is undisputed.

Numerous, previous studies have also supported a deterrence finding. And the studies that find a deterrent effect of other criminal sanctions give additional support to the deterrent effect of the death penalty, because, if lesser sanctions deter, then we know that more severe sanctions also deter. The studies that find a deterrent effect of 1. increased police presence, or any other levels of security; 2. arrest/arrest rates; 3. criminal sentencing/incarceration terms; and 4. the presence of rules, laws and statutes all provide additional, collateral support for the deterrent effect of the death penalty. And there are likely hundreds, if not thousands, of such studies and examples (database in progress).

III. Negative consequences matter

Many have discounted a deterrent effect because of the irrationality of potential and active criminals. However, both reason and the evidence support that the potential for negative consequences does affect criminal behavior.

Criminals who try to conceal their crime do so for only one reason -- fear of punishment. Likely, more than 99% of all criminals, including capital murderers, act in such a fashion. Fear of capture does not exist without an expectation of punishment.

This doesn't mean that they sit down before every crime, most crimes or even their first crime, and contemplate a cost to benefit analysis of a criminal action. Weighing negative consequences may be conscious or subconscious, thoughtful or instinctive. And we instinctively know the potential negative consequences of some actions. Even pathetically stupid or irrational criminals will demonstrate such obvious efforts to avoid detection. And there is only one reason for that -- fear of punishment.

When dealing with less marginalized personalities, those who choose not to murder, such is a more reasoned group. It would be illogical to assume that a more reasoned group would be less responsive to the potential for negative consequences. Therefore, it would be illogical to assume that some potential murderers were not additionally deterred by the more severe punishment of execution.

As legal writer and death penalty critic Stuart Taylor observes: "All criminal penalties are based on the incontestable theory that most (or at least many) criminals are somewhat rational actors who try so hard not to get caught because they would prefer not to be imprisoned. And most are even keener about staying alive than about avoiding incarceration." (10)

Based upon the overwhelming evidence that criminals do respond to the potential of negative consequences, reason supports that executions deter and that they are an enhanced deterrent over lesser punishments.

IV. The pre trial, trial and death row evidence - the survival effect

At every level of the criminal justice process, virtually all criminals do everything they can to lessen possible punishments. I estimate that less than 1% of all convicted capital murderers request a death sentence in the punishment phase of their trial. The apprehended criminals' desire for lesser punishments is overwhelming and unchallenged.

Of the 7300 inmates sentenced to death since 1973, 85, or 1.2% have waived remaining appeals and been executed. 98.8% have not waived appeals. The evidence is overwhelming that murderers would rather live on death row than die. Why? The survival effect -- life is preferred over death and death is feared more than life. Even on death row, that is the rule.

Even such marginalized personalities as capital murderers fear death more than imprisonment. And that which we fear the most, deters the most. (kudos to Ernest van den Haag and many others)

It is logical to conclude that some of those less marginalized personalities, who choose not to murder, also, overwhelmingly, fear death more than life, and, we, thus, logically conclude that some are deterred from murdering because of the enhanced deterrent effect of execution.

The evidence for the survival effect in pretrial, trial and appeals is overwhelming and that weighs in favor of execution as a deterrent and as an enhanced deterrent over lesser sentences.

V. If unsure about deterrence

Common sense, reason and history all support that the potential for negative consequences restricts the behavior of some. But, if unsure of deterrence, we face the following dilemma -- If executions do deter, halting executions causes more innocents to be murdered and gives those living murderers the opportunity to harm and murder again. If the death penalty does not deter, and we do execute, we punish murderers as the jury deemed appropriate and we prevent those executed murderers from harming or murdering again.

Oddly, death penalty opponents believe that the burden of proof is on those who say the death penalty is a deterrent. Clearly it is not. The weight of the evidence, within reason, history, common sense and the social sciences is that the potential for negative consequences restricts the behavior of some. That is not in dispute. Furthermore, if opponents cannot prove it is not a deterrent, which they never have and never will, then they are the ones who risk sacrificing innocents, both by absence of deterrence and reduced incapacitation.

Regardless of jurisdiction, under all debated scenarios, more innocents are put at risk when we fail to execute. Any alleged concern for innocents weighs in favor of executions.

VI. The individual deterrent effect

The individual deterrent effect is represented by those who state that they were deterred from committing a murder only because of the prospects of a death sentence. Individual cases support the enhanced deterrent effect. (11)

One Iowa prisoner, who escaped from a transportation van, with a number of other prisoners, stated that he made sure that the overpowered guards were not harmed, because of his fear of the death penalty in Texas. The prisoners were being transported through Texas, on their way to New Mexico, when the escape occurred. Most compelling is that he was a twice convicted murderer from a non death penalty state, Iowa. In addition, he was under the false impression that Texas had the death penalty for rape and, as a result, also protected the woman guard from assault. (12)

New York Law School Professor Robert Blecker recorded his interview with a convicted murderer. The murderer robbed and killed drug dealers in Washington DC., where he was conscious that there was no death penalty. He specifically did not murder a drug dealer in Virginia because, and only because, he envisioned himself strapped in the electric chair, which he had personally seen many times while imprisoned in Virginia. (13)

Senator Dianne Feinstein explained, "I remember well in the 1960s when I was sentencing a woman convicted of robbery in the first degree and I remember looking at her commitment sheet and I saw that she carried a weapon that was unloaded into a grocery store robbery. I asked her the question: 'Why was your gun unloaded?' She said to me: 'So I would not panic, kill somebody, and get the death penalty.' That was firsthand testimony directly to me that the death penalty in place in California in the sixties was in fact a deterrent."(13A)

Logic requires that the individual deterrent effect cannot exist without the general deterrent effect. Therefore, reason dictates that the general deterrent effect must exist. The question is not: "Does deterrence exist?" It does. The issue is: "What is the quantifiable impact of deterrence?"

Individual cases support the individual deterrent effect and such cases insure that general deterrence must exist. And, for both, the evidence also suggests that executions provide enhanced deterrence over incarceration.

VII. Conflicting studies

In reviewing 30 years of deterrence studies, the strongest statement one may make against deterrence is that there is conflicting data (14).

Yet, even when academic bias against capital punishment is overt, such as in the case of the American Society of Criminology -- the subtitle to their death penalty resources page is "Anti-Capital Punishment Resources" -- even they fail to state that the death penalty does not deter some potential murderers, only that "social science research has found no consistent evidence of crime deterrence through execution." (15) That is far from stating that executions do not deter. And the criminologists are, very likely, that academic group most hostile toward the death penalty. What social science conflicts with the notion that the potential for negative consequences restrains the behavior of some? And most would agree that execution is the most serious negative consequence that a murderer may face.

Numerous studies find that executions do deter. And there is a rational conclusion based upon common experience. It appears that all criminal sanctions deter some. It would be irrational to conclude that the most severe and publicized sanction -- execution -- does not deter some potential murderers.

Those studies which do not find deterrence say that they could not detect it, not that it doesn't exist. Those studies which find for deterrence state such.

As Professor Cloninger states: " . . . (Our recent) study is but another on a growing list of empirical work that finds evidence consistent with the deterrence hypothesis. These studies as a whole provide robust evidence -- evidence obtained from a variety of different models, data sets and methodologies that yield the same conclusion. It is the cumulative effect of these studies that causes any neutral observer to pause." (16)

Conflicting studies and reason both weigh in favor of the death penalty as a deterrent and as an enhanced deterrent over lesser punishments.

VIII. The brutalization effect of executions

Some, particularly death penalty opponents, find that the brutalization effect is more likely than the deterrent effect. The brutalization effect finds that murders will increase because potential murderers will murder because of the example of state executions.

Why would potential and active murderers be so influenced by the state in such a deep philosophical manner, revealed by brutalization, but they wouldn't be more affected by the simple "you murder, we execute you?"

Death penalty opponents make an interesting about face on this issue. They insist that criminals are so thoughtless and impulsive that they can't be affected by the potential of negative consequences but, then, those same opponents see criminals as so contemplative that their criminal actions increase BECAUSE those criminals follow the example of the state. One might ask those opponents: "Is there any other government action which influences criminals in such a fashion?" Do criminals kidnap more BECAUSE the state increases incarceration rates? Do criminals give money to potential victims BECAUSE the state donates to needy causes?

Murder rates and execution rates

Although deterrence is much more than a simple look at only execution rates and murder rates, we do find that as executions have risen dramatically, the murder rate has plunged.

From 1966-1980, a period which included our last national moratorium on executions (June 1967- January 1976), murders in the United States more than doubled from 11,040 to 23,040. The murder rate also nearly doubled, from 5.6 to 10.2/100,000. During that 1966-1980 period, the US averaged 1 execution every 3 years, with a maximum of two executions per year. From 1995-2000 executions averaged 71 per year, a 21,000% increase over the 1966-1980 period. The US murder rate dropped from a high of 10.2/100,000 in 1980 to 5.5/100,000 in 2000 -- a 46% reduction. The US murder rate is now at its lowest level since 1966 (17).

The Texas example -- The murder rate in Harris County (Houston), Texas has fallen 73% since executions resumed in 1982, through 2000, from 31/100,000 to 8.5/100,000 (18). Harris County is, by far, the most active death penalty sentencing and execution jurisdiction in the US. The Harris County murder rate dropped nearly 70% more than did the national murder rate, during similar periods. Texas' murder rate dropped 62% during that same period, or 41% more than the national average.

Potential murderers may have been affected by the example of the state of Texas but, likely, not in a manner consistent with brutalization.

And "(t)he biggest decline in murder rates has occurred in states that aggressively use capital punishment." (19)

After a thorough review of deterrence studies, Professor Samuel Cameron observed, "The brutalization idea is not one the economists have given any credence." "We must conclude that the deterrence effect dominates the opposing brutalization effect." (20)

Reason, history, common sense and the studies weigh against the brutalization effect.

IX. The incapacitation effect

The incapacitation effect states that executed murderers cannot harm or murder again. Reason dictates that living murderers are infinitely more likely to harm and murder again than are executed murderers.

That obvious logic escapes death penalty opponents who say that we can have foolproof incarceration. What hypocrisy. This is the same group of folks who tell us that our system of justice is so fraught with error that we cannot possibly continue the death penalty. Yet, the facts tell us that living murderers harm and murder again, in prison, after escape and after improper release. Executed murderers do not. In addition, the US death penalty appears to be that criminal justice sanction which is the least likely to convict the factually innocent and the most likely to remedy such rare error upon post conviction review.

Stuart Taylor: "Statistical studies and common sense aside, it's undeniable that the death penalty saves some lives: those of the prison guards and other inmates who would otherwise be killed by murderers serving life sentences without parole, and of people who might otherwise encounter murderous escapees". (21)

Under all circumstances, the execution of murderers will protect innocents at a higher rate than will incarceration.

X. Death Penalty Opponents

Why is it that some death penalty opponents appear to laugh off any potential for a deterrent effect of executions? Because to admit that executions deter some potential murderers would be to admit that, in reaching their goals, they will knowingly benefit murderers at the cost of sacrificing more innocent lives. Of course, opponents will never prove it is not a deterrent and many will admit that executions do deter some.

How many would still oppose executions if they knew that the evidence supported the deterrent effect and that many more innocents are put at risk by not executing?

Stuart Taylor: "So those of us who lean against the death penalty must confront the very real possibility that abolishing it could lead to the violent deaths of unknown numbers of innocent men, women, and children. And those who are still skeptical that the death penalty deters any killings must also confront the risk-benefit calculus suggested by political scientist John McAdams of Marquette University: 'If we execute murderers, and there is, in fact, no deterrent effect, we have killed a bunch of murderers. If we fail to execute murderers, and doing so would in fact have deterred other murders, we have allowed the killing of a bunch of innocent victims. I would much rather risk the former. This, to me, is not a tough call.' " (22)

XI. Conclusion

Those of us who support execution do so because it is a just punishment. The moral foundation for all punishments is that they are deserved. One cannot support a punishment based upon deterrence alone.

Reason, common sense and history all fall on the side of deterrence. Be it Sweden or Rwanda, Texas or Michigan, Singapore or Chile, England or Japan, whether high crime rates or low, the death penalty will always deter some potential murderers. Regardless of jurisdiction, the potential for negative outcomes will always restrict the behavior of some. And, the weight of the evidence clearly supports execution as an enhanced deterrent.

As Professor Rubin states, "Our evidence is that there are substantial benefits from executions and, thus, substantial costs of changing this policy (23).

From Prof. Robert Blecker, New York Law School,

"We support execution as a just and appropriate forfeiture of lives which deserve to be taken. We also support execution as a just and appropriate method to save lives which deserve to be saved. "

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Mr. Sharp has appeared on ABC, BBC, CBS, CNN, C-SPAN, FOX, NBC, NPR, PBS, VOA and many other TV and radio networks, on such programs as Nightline, The News Hour with Jim Lehrer, The O'Reilly Factor, etc., has been quoted in newspapers throughout the world and is a published author.

A former opponent of capital punishment, he has written and granted interviews about, testified on and debated the subject of the

death penalty, extensively and internationally.

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From: Sharpjfa@aol.com
Sent: Monday, February 23, 2009 10:39 AM
To: Tom Wright; Jane Pierson
Subject: Physicians & The State Execution of Murderers: No Ethical/Medical Dilemma

Physicians & The State Execution of Murderers: No Ethical/Medical Dilemma
The Hippocratic Oath and "Do No Harm" have nothing to do with executions
Dudley Sharp, Justice Matters, contact info below

Some in the medical community have attempted to create an ethical prohibition against medical professionals involvement in state executions by invoking the famous "do no harm" credo and words within the Hippocratic Oath.

Neither reference is in the context of the state execution of murderers.

THE OATH OF HIPPOCRATES

The select Hippocratic Oath quote, in its original (translated) form, is "I will give no deadly medicine to any one if asked, nor suggest any such counsel; . . " (1) It is a prohibition against euthanasia and has nothing to do with some imagined medical prohibition of participation in state sanctioned executions.

I am unaware of any other ancient texts or translations which indicate a historical context, with that quote, that prohibits physicians from participation in executions.

In 2004, Dr. Markel, a medical historian, writes, "There are two highly controversial vows in the original Hippocratic Oath that we continue to ponder and struggle with as a profession: the pledges never to participate in euthanasia and abortion." (2)

In reality, these are, barely, controversial, now. They are, however, inconvenient. The article never mentions a context of state execution of murderers, because the oath has nothing to do with it.

Dr. Markel continues: "The Hippocratics' reasons for refusing to participate in euthanasia may have been based on a philosophical or moral belief in preserving the sanctity of life or simply on their wish to avoid involvement in any act of assisted suicide, murder, or manslaughter." (2)

Dr. Markel is speculating. What we do know is that it was a reference to euthanasia, specifically. There is not even speculation that the reference had anything to do with the state execution of murderers.

The following are " . . .the results of a study . . . in which 157 deans of allopathic and osteopathic schools of medicine in Canada and the United States were surveyed regarding the use of the Hippocratic Oath": (3)

1. In 1993, 98% of schools administered some form of the Oath.
2. In 1928, only 26% of schools administered some form of the Oath.
3. Only 1 school used the original Hippocratic Oath.
4. 68 schools used versions of the original Hippocratic Oath.
5. 100% of current Oaths pledge a commitment to patients.
6. Only 43% vow to be accountable for their actions.
7. 14% include a prohibition against euthanasia.
8. Only 11% invoke a diety.
9. 8% prohibit abortion.

10. Only 3% prohibit sexual contact with patients.

There is no mention of the state execution of murderers, because the Hippocratic Oath has nothing to do with it.

Although there is no prohibition on the death penalty, there is one against both euthanasia and abortion. Yet, various medical associations have decided to create an imagined ethical problem with the death penalty and have, nearly, fully accepted both abortion and euthanasia.

Now, only 3% prohibit sexual contact with patients, but the original Hyppocratic Oath states: "(I) will abstain from every voluntary act of mischief and corruption; and, further, from the seduction of females or males, of freemen and slaves."

100% pledge a commitment to their patients, but only 43% vow being accountable for their medical actions. Some commitment. (3A)

With these survey results and with medical professionals bringing up the Hippocratic Oath, as if it has something to say in the death penalty debate, possibly we should, now, in the true context of euthanasia and abortion, and other issues, call it what it has become, the Hypocrisy Oath. For example, is the North Carolina Medical Board trying to prevent physicians from performing abortions or have they issued a statement condemning euthanasia? Of course not. But the death penalty? Well, doctors must not participate!

The doctors doth protest too much, me thinks.

DO NO HARM

The famous physician credo "First, do no harm" (a phrase translated into Latin as "Primum non nocere") is often mistakenly ascribed to the (Hippocratic) oath, although it appears nowhere in that venerable pledge." (2)

"Hippocrates came closest to issuing this directive in his treatise Epidemics, in an axiom that reads, "As to disease, make a habit of two things — to help, or at least, to do no harm." (2)

"As to disease". Nothing else. There is no relevance outside medicine and, most certainly, no prohibition against medical professionals participation in the state execution of murderers.

REASON & REALITY

Those ethical codes pertain to the medical profession, only, and to patients, only.

Judicial execution is not part of the medical profession and executions do not make death row inmates patients. Is that news?

The acknowledged anti death penalty editors of The Public Library of Science (PLoS) Medicine agree. They write:

"Execution by lethal injection, even if it uses tools of intensive care such as intravenous tubing and beeping heart monitors, has the same relationship to medicine that an executioner's axe has to surgery." ("Lethal Injection Is Not Humane", PLoS, 4/24/07).

The PLoS Medicine editors make the obvious point: The state execution of murderers is not equivalent or connected to the medical treatment of patients. There is no ethical or moral connection. Hardly a mystery.

Similar acts and similar equipment do not establish any ethical equivalence or connection. Any rational person can see that the state execution of murderers is not a medical treatment, but a criminal justice sanction. The basis for medical treatment is to improve the plight of the patient, for which the medical profession provides obvious and daily exceptions. The basis for execution

is to carry out a criminal justice sentence where death is the sanction.

Doctors and nurses can be police and soldiers and can kill, when deemed appropriate, within those lines of duty and without violating the ethical codes of their medical profession, because there is no ethical connection. Similarly, medical professionals do not violate medical codes of ethics, when participating in the state execution of murderers.

Physicians are often part of double or triple blind studies where there is hope that the tested drugs may, someday, prove beneficial. The physicians and other researchers know that many patients, taking placebos or less effective drugs, will suffer more additional harm or death because they are not taking the subject drug or that the subject drug will actually harm or kill more patients than the placebo of other drugs used in the study.

Physicians knowingly harm individual patients, in direct contradiction to their "do no harm" oath.

For the greater good, those physicians sacrifice innocent, willing and brave patients. Of course, there have been medical experiments without consent and, even, today, they continue ("Critical Care Without Consent", Washington Post, May 27, 2007; Page A01).

Physicians knowingly make exceptions to their "do no harm" requirement, every day, within their profession, where that code actually does apply. And, they should. There are obvious ethical nuances and we should consider and pay attention to them, as is done within the medical profession.

SEE DO NO HARM: Additional Notes, at bottom.

Physicians and medical institutions will pick and chose those ethical foundations which they, from time to time and issue to issue, find convenient and, hopefully, truly relevant to ethics.

Medical professionals need to stop the ridiculous ethical posturing and tell the truth - they don't like the death penalty. In medical writings, against executions, you can easily find a strong bias, evidenced by use of the common and inaccurate anti death penalty claims, with no apparent effort at fact checking or balance. (4)

Any participation in executions by medical professionals should be a matter for their own personal conscience. In fact, 20-40% of doctors surveyed would participate in the execution process.

There is no ethical prohibition against medical professionals participating in executions. Stop using personal bias to create one.

It's unethical.

DO NO HARM: Additional Notes:

40,000 to 100,000 innocents die, every year, in the US because of medical misadventure or improper medical treatment. (5)

It appears that some 500-1000 innocent patients die, every year, in the US, due to some type of medical misadventure, with anesthesia. (5)

There is no proof of an innocent executed in the US since 1900.

Furthermore, even with errors in lethal injection, those cases resulted in the death of the inmate - the intended outcome for the guilty murderer.

In the errors of medical professionals, we are speaking of a large number of deaths and injuries

to innocent patients - the opposite of the intended outcome.

---

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Additional info

The following is a Dutch protocol for parenteral (intravenous) administration to obtain euthanasia:

Intravenous administration is the most reliable and rapid way to accomplish euthanasia and therefore can be safely recommended. A coma is first induced by intravenous administration of 20 mg/kg sodium thiopental (Nesdonal) in a small volume (10 ml physiological saline). Then a triple intravenous dose of a non-depolarizing neuromuscular muscle relaxant is given, such as 20 mg pancuronium bromide (Pavulon) or 20 mg vecuronium bromide (Norcuron). The muscle relaxant should preferably be given intravenously, in order to ensure optimal availability. Only for pancuronium bromide (Pavulon) are there substantial indications that the agent may also be given intramuscularly in a dosage of 40 mg.

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originally written May, 2005. Updated as merited.

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Mr. Sharp has appeared on ABC, BBC, CBS, CNN, C-SPAN, FOX, NBC, NPR, PBS , VOA and many other TV and radio networks, on such programs as Nightline, The News Hour with Jim Lehrer, The O'Reilly Factor, etc., has been quoted in newspapers throughout the world and is a published author.

A former opponent of capital punishment, he has written and granted interviews about, testified on and debated the subject of the death penalty, extensively and internationally.

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From: Sharpjfa@aol.com
Sent: Monday, February 23, 2009 10:36 AM
To: Tom Wright; Jane Pierson
Subject: Catholic Scholars: Support for the Death Penalty

Catholic Scholars: Support for the Death Penalty
Dudley Sharp, Justice Matters, contact info below

There are thoughtful writings on both sides of this debate, but the pro death penalty position is much stronger.

Recently deceased Avery Cardinal Dulles, in one of his final interviews, states that he thought the Church may return to a "more traditional posture" on the death penalty. "Recent popes, Dulles conceded, beginning with John XXIIII, seem to have taken quasi-abolitionist positions on both matters. Yet used sparingly and with safeguards to protect the interests of justice, Dulles argued, both the death penalty and war have, over the centuries, been recognized by the church as legitimate, sometimes even obligatory, exercises of state power. The momentum of "internal solidification," he said, may lead to some reconsideration of these social teachings." ("An unpublished interview with Avery Dulles", All Things Catholic by John L. Allen, Jr., NCRcafe.org, Posted on Dec 19, 2008, at http://ncrcafe.org/node/2340)

Based upon the strength of the Catholic biblical, theological and traditional support for the death penalty as, partially, revealed, below, I think the Church will have to.

Even today, a Catholic in good standing can call for more executions, if their prudential judgements finds for that.

(1) "Capital Punishment: New Testament Teaching", 1998, Fr. John A. Hardon, S.J., considered one of the most prominent Roman Catholic theologians of the 20th century. See bottom. http://www.therealpresence.org/archives/Sacred_Scripture/Sacred_Scripture_014.htm

"There are certain moral norms that have always and everywhere been held by the successors of the Apostles in communion with the Bishop of Rome. Although never formally defined, they are irreversibly binding on the followers of Christ until the end of the world." "Such moral truths are the grave sinfulness of contraception and direct abortion. Such, too, is the Catholic doctrine which defends the imposition of the death penalty."

"Most of the Church's teaching, especially in the moral order, is infallible doctrine because it belongs to what we call her ordinary universal magisterium."

"Equally important is the Pope's (Pius XII) insistence that capital punishment is morally defensible in every age and culture of Christianity." " . . . the Church's teaching on 'the coercive power of legitimate human authority' is based on 'the sources of revelation and traditional doctrine.' It is wrong, therefore 'to say that these sources only contain ideas which are conditioned by historical circumstances.' On the contrary, they have 'a general and abiding validity.' (Acta Apostolicae Sedis, 1955, pp 81-2)."

about Fr. John A. Hardon, S.J.
http://www.mariancatechist.com/html/general/stjohnhardon.htm
http://www.therealpresence.org/archives/archives.htm
http://www.mariancatechist.com/html/general/fatherhardon.htm
http://www.saintphilomena.com/newpage4.htm
http://credo.stormloader.com/Saints/hardon.htm

(2) "The Death Penalty", by Romano Amerio, a faithful Catholic Vatican insider, scholar, professor at the Academy of Lugano, consultant to the Preparatory Commission of Vatican II, and a peritus (expert theologian) at the Council.
http://www.domid.blogspot.com/2007/05/amerio-on-capital-punishment.html

"Amerio has the great gift of going to the heart of a subject in a few lines and very neatly distinguishes genuine Catholicism from imitations and aberrations." "What makes Amerio's analysis unique is that he restricts himself to official and semi-official pronouncements by popes, cardinals, bishops, episcopal conferences and articles in L'Osservatore Romano, from the time of Pope John XXIII to 1985 when the book was originally written." (1)

titled "Amerio on capital punishment ", Chapter XXVI, 187. The death penalty, from the book Iota Unum, May 25, 2007

About Romano Amerio
http://chiesa.espresso.repubblica.it/articolo/176565?eng=y
http://www.newliturgicalmovement.org/2006/02/romano-amerio-and-pope-benedict.html
http://www.latin-mass-society.org/2007/romanoamerio.html
http://www.angeluspress.org/oscatalog/item/6700/iota-unum

(3) "Christian Scholars & Saints: Support for the Death Penalty", at
http://www.homicidesurvivors.com/2006/10/12/catholic-and-other-christian-references-support-for-the-death-penalty.aspx

(4) "Capital Punishment: A Catholic Perspective",
by Br. Augustine (Emmanuel Valenza)
http://www.sspx.org/against_the_sound_bites/capital_punishment.htm

(5) "Capital Punishment: The Case for Justice", Prof. J. Budziszewski, First Things, August / September 2004 http://www.orthodoxytoday.org/articles4/BudziszewskiPunishment.shtml

(6) "The Death Penalty", by Solange Strong Hertz at
http://www.ourworld.compuserve.com/HOMEPAGES/REMNANT/death2.htm

(7) "A Seamless Garment In a Sinful World" by John R. Connery, S. J., America, 7/14/84, p 5-8).

(8) "God's Justice and Ours" by US Supreme Court Justice Antonin Scalia, First Things, 5/2002
http://www.firstthings.com/article.php3?id_article=2022

(9) Forgotten Truths: "Is The Church Against Abortion and The Death Penalty"
by Luiz Sergio Solimeo, Crusade Magazine, p14-16, May/June 2007
http://www.tfp.org/index.php?option=com_content&task=view&id=957

(10) "The Purpose of Punishment (in the Catholic tradition)",
by R. Michael Dunningan, J.D., J.C.L., CHRISTIFIDELIS, Vol.21,No.4, sept 14, 2003
http://www.st-joseph-foundation.org/newsletter/lead.php?document=2003/21-4

(11) "MOST CATHOLICS OPPOSE CAPITAL PUNISHMENT?",
KARL KEATING'S E-LETTER, Catholic Answers, March 2, 2004
http://www.catholic.com/newsletters/kke_040302.asp

(12) "THOUGHTS ON THE BISHOPS' MEETING: NOWADAYS, VOTERS IGNORE BISHOPS", KARL KEATING'S E-LETTER, Catholic Answers,, Nov. 22, 2005
http://www.catholic.com/newsletters/kke_051122.asp

Christian, non Catholic Scholars

(13) Chapter V:The Sanctity of Life, "Principles of Conduct: Aspects of Biblical Ethics" By John Murray
http://books.google.com/books?id=phoqAAaGMpUC&pg=PA107&lpg=PA114&ots=mFvByHqGSy&dq=Murray+%22It+is+the+sanctity+of+human+life+that+underlies+the+sixth+commandment.%22&ie=ISO-8859-1&output=html&sig=ACfU3U1b0mdM3BfpNSXnhrwFYXaE_9Ij9A

(14) "Capital Punishment: What the Bible Says", Dr. Lloyd R. Bailey, Abingdon Press, 1987. The definitive biblical review of the death penalty.

(15) "Why I Support Capital Punishment", by Andrew Tallman
sections 7-11 biblical review, sections 1-6 secular review
http://andrewtallmanshowarticles.blogspot.com/search?q=Capital+punishment

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Religious positions in favor of capital punishment are neither necessary not needed to justify that sanction. However, the biblical and theological record is very supportive of the death penalty.

Many of the current religious campaigns against the death penalty reflect a fairly standard anti death penalty message, routed in secular arguments. When they do address religious issues, they often neglect solid theological foundations, choosing, instead, select biblical sound bites which do not impact the solid basis of death penalty support.

Footnotes:
(1) Books: 'Iota Unum: A Study of Changes in the Catholic Church', by Romano Amerio, Fr Peter Joseph (reviewer)
IOTA UNUM: A Study of Changes in the Catholic Church in the 20th Century
by Romano Amerio (English translation by Fr John Parsons)
(Sarto House, USA, 786 pp)
Reprinted from AD2000 Vol 9 No 8 (September 1996), p. 14

70% of Catholics supported the death penalty as of May, 2005, Gallup Poll, Moral Values and Beliefs. The May 2-5, 2005 poll also found that 74% of Americans favor the death penalty for murderers, while 23% oppose.

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Mr. Sharp has appeared on ABC, BBC, CBS, CNN, C-SPAN, FOX, NBC, NPR, PBS , VOA and many other TV and radio networks, on such programs as Nightline, The News Hour with Jim Lehrer, The O'Reilly Factor, etc., has been quoted in newspapers throughout the world and is a published author.

A former opponent of capital punishment, he has written and granted interviews about, testified on and debated the subject of the death penalty, extensively and internationally.

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From: Sharpjfa@aol.com
Sent: Monday, February 23, 2009 10:31 AM
To: Tom Wright; Jane Pierson
Subject: New Jersey's bad example

Subject: Gov. O'Malley and Maryland's Majority Report, against the death penalty, make some of the same errors found in the New Jersey Study.

To: Maryland Legislature, Prosecutors and media throughout the region

From: Dudley Sharp, contact info below

New Jersey DEAD WRONG: Abolishes Death Penalty
by Dudley Sharp, Justice Matters, contact info below

from http://www.hallnj.org/cm/listing.jsp?cId=3

Summary

The New Jersey Death Penalty Commission made significant errors within their findings. The evidence, contrary to the Commissions findings, was so easy to obtain that it appears either willful ignorance or deception guided their report.

A brief review.

FORMAT: Below, are the 7 points made within the New Jersey Death Penalty Study Commission Report, January, 2007. The RUBUTTAL presents the obvious points avoided by the Commission and discussed by this author, a death penalty expert.

I was invited to be a presenter, before the NJDPSC, but my time didn't fit their schedule.

1) There is no compelling evidence that the New Jersey death penalty rationally serves a legitimate penological intent.

REBUTTAL:

- The reason that 81% of Americans found that Timothy McVeigh should be executed was justice - the most profound concept in criminal justice, as in many other aspects of life. It is the same reason that New Jersey citizens, 12 jurors, put all those on death row.

- Although the Commission and the NJ Supreme Court both attempt to discount deterrence, logically, they cannot.

First, all prospects for a negative outcome deter some. This is not, logically or historically rebutted. It cannot be. Secondly, those studies which don't find for deterrence, do not say that it doesn't exist, only that their study didn't find it. Those studies which find for deterrence did. 16 recent studies do.

- The Commission had ample opportunity and, more importantly, the responsibility to read and contact the authors of those many studies which have, recently, found for deterrence. There seems to be no evidence that they did so. On such an important factor as saving innocent lives, why didn't they? The testimony before the Commission, critical of those studies, would not withstand a review by the authors of those studies. That should be an important issue that the Commission should have investigated, but did not.

- LIFE WITHOU PAROLE: The Commission considered the risk of innocents executed and concluded that it wasn't worth the risk and that a life sentence would serve sufficiently without that risk to innocents.

Again, the Commission avoided both fact and reason. The risk to innocents is greater with a life sentence than with the death penalty.

First, we all know that living murderers, in prison, after escape or after improper release, are much more likely to harm and murder, again, than are executed murderers - an obvious truism ignored by the Commission.

Secondly, no knowledgeable and honest party questions that the death penalty has the most extensive due process protections in US criminal law. Therefore, it is logically conclusive, that actual innocents are more likely to be sentenced to life imprisonment and more likely to die in prison serving under that sentence, that it is that an actual innocent will be executed.

Thirdly, there has been a recent explosion of studies finding for death penalty deterrence. The criticism of those studies has, itself, been rebutted.

- Therefore, in choosing a life without parole and calling for the end of the death penalty, the Commission has made the choice to put more innocents at risk - the opposite of their stated rationale.

2) The costs of the death penalty are greater than the costs of life in prison without parole, but it is not possible to measure these costs with any degree of precision.

REBUTTAL:

- The NJ legislature's own cost review found that the cost differential was indeterminate. However, based upon their exclusions, LWOP may very well be more expensive.

- For the amount of time and resources allegedly expended by the Commission, this section of their review was unconscionable in its lack of responsibility to the Commission's directive.

- The Commission concludes that the current system in New Jersey is very expensive, without noting the obvious ways in which those issues can be addressed to lessen those costs. Why?

One example, they find that proportionality review cost $93, 000 per case. Why didn't the Commission recommend doing away with proportionality review? There is no reason, legally, to have it and it has been a disaster, cost wise, with no benefit.

Secondly, the Commission states: "Nevertheless, consistent with the Commission's findings, recent studies in states such as Tennessee, Kansas, Indiana, Florida and North Carolina have all concluded that the costs associated with death penalty cases are significantly higher than those associated with life without parole cases. These studies can be accessed through the Death Penalty Information Center." (Report, page 33).

On many topics the Death Penalty Information Center has been one of the most deceptive or one sided anti death penalty groups in the country. While it is not surprising that the Commission would give them as a reference, multiple times, it doesn't speak well of the Commission.

Did the Commission read any of the studies referenced by the DPIC? It appears doubtful, or the Commission would not have referenced them.

For example, let's look at the North Carolina (Duke University) study. That cost study compared the cost of only a twenty year "life sentence" to the death penalty. Based upon that study, a true life without parole sentence would be more costly than the death penalty. Somehow the Commission missed that rather important fact.

These types of irresponsible and misleading references by the Commission do nothing to inspire any confidence in their findings, but do reinforce the opinion that their conclusions were predetermined.

Please see "Cost Comparisons: Death Penalty Cases Vs Equivalent Life Sentence Cases", to follow.

3) There is increasing evidence that the death penalty is inconsistent with evolving standards of decency.

REBUTTAL:

The Commission uses several references to prove their point. None of them succeeded.

- The first was based upon polling in New Jersey. The data showed strong support (78%) for executions in NJ, except when asking those polled to choose between a life sentence or a death sentence, for which life gets greater support. The major problem with this long standing and misleading polling question is that it has nothing to do with the legal reality of sentencing. Secondly, that poll shows broad support for BOTH sanctions, not a call to abandon either. The Commission, somehow, overlooked that obvious point.

Jurors have the choice of both sentences in states with the death penalty and life without parole. Therefore, a proper polling question for NJ would be,

A) should we eliminate the death penalty and ONLY have life without parole? or
B) should we give jurors the OPTION of choosing life or death in capital murder cases?

Based upon other polls, I suspect B would be the resounding winner of this poll in NJ.

We know support is 78% in NJ, for crimes similar to those on NJ death row.

Secondly, the Commissions polling speaker avoided the most obvious and reliable polling question on this topic - asking about the punishment for a specific crime, just as jurors have to decide.

NOTE: 78% of NJ citizens support the death penalty for crimes such as those on NJ's death row. (Dec., 2007)

81% of Americans supported the execution of Timothy McVeigh. 85% of Connecticut citizens polled supported the execution of serial rapist/murderer Michael Ross.

Thirdly, poll New Jersey citizens with the following questions. Is life without parole or the death penalty the most appropriate punishment for those who rape and murder children? Or should NJ remove the death penalty as a jury option for those who rape and murder children?

- Two religious speakers spoke against execution. Both are easily rebutted by religious scholars holding different views.

- Another alleged example of this evolving standard is based upon the fact there has been a reduction in death sentences. Such reduction is easily explained by a number of factors, other than some imagined "evolving standard of decency".

Murders have dropped some 40%, capital murders have likely dropped by even a greater number, based upon other factors. This, by itself, explains the overwhelming percentage of the drop in death sentences.

In addition, many prosecutors, such as those in NJ, know that their courts will not allow executions, leading to prosecutorial frustration as a contributing factor in any reduction - not

an evolving standard of decency, but an evolving and increasing frustration.

Please review: "Why the reduction in death sentences?", to follow.

4) The available data do not support a finding of invidious racial bias in the application of the death penalty in New Jersey.

CLARIFICATION:

In fact, there is no data to support any racial bias, invidious or otherwise. The Commission must have read the series of NJ studies.

5) Abolition of the death penalty will eliminate the risk of disproportionality in capital sentencing.

REBUTTAL:

Yes, Commission, and the abolition of all criminal sentences will eliminate the risk of disproportionality in all sentences, as well. This is hardly a rational reason to get rid of any sentence. Get rid of the expensive and unnecessary proportionality review.

6) The penological interest in executing a small number of persons guilty of murder is not sufficiently compelling to justify the risk of making an irreversible error.

REBUTTAL:

- The risk to innocents is greater with life without parole than with the death penalty. See (1), above LIFE WITHOUT PAROLE.

7) The alternative of Life imprisonment in a maximum security institution without the possibility of parole would sufficiently ensure public safety and address other legitimate social and penological interests, including the interests of the families of murder victims.

REBUTTAL:

This Commission statement is quite simply, false.

- Life imprisonment puts more innocents at risk than does the death penalty.

- Justice, just punishment, retribution and/or saving innocent lives, among others, are all legitimate social and penological interests all served by the death penalty.

- 81% of Americans supported the execution of Timothy McVeigh. 85% of Connecticut citizens polled supported the execution of serial, rapist/murderer Michael Ross.

The overwhelming majority of those polled did not have family members murdered.

Is the Commission trying to tell us that a poll of NJ murder victim survivors would show a majority opposed to the death penalty? Of course not, that would be as absurd as the Commissions conclusions in this section.

Conclusion:

Almost without exception, The Commission accepted the standard anti death penalty position, without presenting the easily accessible rebuttal to that position.

Enough said.

NJ Death Penalty Study Commission

It is alleged that the Commission had fair hearings, with both sides adequately presented.

Alleged fair hearings mean nothing, if decisions are predetermined, as this one was.

11 of the 13 committee members were either known or leaning anti death penalty. The contempt for and discounting of pro death penalty positions in both the hearings and final report confirm that.

All the prosecutors on the Commission were up for reappointment - by the staunchly anti death penalty Governor. Would any of them sacrifice their livelihood to fight for the death penalty? Of course not and they did not.

One committee member - one - was confirmable as pro death penalty.

Most, if not all, of Committee Chairman Rev. Howard's previous affiliations were anti death penalty.

Rev. Howard's fairness is best shown by the Commission's final report, which was laughable in its exclusion of pro death penalty positions, positions which would have either overwhelmed or neutralized the anti death penalty, predetermined conclusions of the panel, had those pro death penalty positions been given a fair showing in that report - which they weren't.

The Commission hearings and final report were, as all show trials, a farce.

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A former opponent of capital punishment, he has written and granted interviews about, testified on and debated the subject of the death penalty, extensively and internationally.

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From: Sharpjfa@aol.com
Sent: Monday, February 23, 2009 10:30 AM
To: Tom Wright; Jane Pierson
Subject: Death Penalty and Deterrence: Let's be clear

Death Penalty and Deterrence: Let's be clear
by Dudley Sharp, Justice Matters, 0104

In their story, "States With No Death Penalty Share Lower Homicide Rates", The New York Times did their best to illustrate that the death penalty was not a deterrent, by showing that the average murder rate in death penalty states was higher than the average rate in non death penalty states and, it is. (1)

What the Times failed to observe is that their own study confirmed that you can't simply compare those averages to make that determination regarding deterrence.

As one observer stated: "The Times story does nothing more than repeat the dumbest of all dumb mistakes — taking the murder rate in a traditionally high-homicide state with capital punishment (like Texas) and comparing it to a traditionally low-homicide state with no death penalty (like North Dakota) and concluding that the death penalty doesn't work at all. Even this comparison doesn't work so well. The Times own graph shows Texas, where murder rates were 40 percent above Michigan's in 1991, has now fallen below Michigan . . .". (2)

Within the Times article, Michigan Governor John Engler states, "I think Michigan made a wise decision 150 years ago," referring to the state's abolition of the death penalty in 1846. "We're pretty proud of the fact that we don't have the death penalty."(3)

Even though easily observed on the Times' own graphics, they failed to mention the obvious. Michigan's murder rate is near or above that of 31 of the US's 38 death penalty states. And then, it should be recognized that Washington, DC (not found within the Times study) and Detroit, Michigan, two non death penalty jurisdictions, have been perennial leaders in murder and violent crime rates for the past 30 years. Delaware, a jurisdiction similar in size to them, leads the nation in executions per murder, but has significantly lower rates of murders and violent crime than do either DC or Detroit, during that same period.

Obviously, the Times study and any other simple comparison of jurisdictions with and without the death penalty, means little, with regard to deterrence.

Also revealed within the Times study, but not pointed out by them,: "One-third of the nation's executions take place in Texas—and the steepest decline in homicides has occurred in Texas, Oklahoma, Louisiana and Arkansas, which together account for nearly half the nation's executions." (4)

And, the Times also failed to mention that the major US jurisdiction with the most executions is Harris County (Houston, Texas), which has seen a 73% decrease in murder rates since resuming executions in 1982 -- possibly the largest reduction for a major metropolitan area since that time.

Also omitted from the Times review, although they had the data, is that during a virtual cessation of executions, from 1966-1980, that murders more than doubled in the US. Any other rise and fall in murders, after that time, has been only a fraction of that change, indicating a strong and direct correlation between the lack of executions and the dramatic increase in murders, if that is specifically what you are looking for.

If deterrence was measured by direct correlation's between execution, or the lack thereof, and murder rates, as implied by the Times article, and as wrongly assumed by those blindly accepting that model, then there would be no debate, only more confusion. Which may have been the Times' goal.

Let's take a look at the science.

Some non death penalty jurisdictions, such as South Africa and Mexico lead the world in murder and violent crime rates. But then some non death penalty jurisdictions, such as Sweden, have quite low rates. Then there are such death penalty jurisdictions as Japan and Singapore which have low rates of such crime. But then other death penalty jurisdictions, such as Rwanda and Louisiana, that have high rates.

To which an astute observer will respond: But socially, culturally, geographically, legally, historically and many other ways, all of those jurisdictions are very different. Exactly, a simple comparison of only execution rates and murder rates cannot tell the tale of deterrence. And within the US, between states, there exist many variables which will effect the rates of homicides.

See REVIEW, below

And, as so well illustrated by the Times graphics, a non death penalty state, such as Michigan has high murder rates and another non death penalty state, such as North Dakota, has low murder rates and then there are death penalty states, such as Louisiana, with high murder rates and death penalty states, such South Dakota, with low rates. Apparently, unbeknownst to the Times, but quite obvious to any neutral observer, there are other factors at play here, not just the presence or absence of the death penalty. Most thinking folks already knew that.

As Economics Professor Ehrlich stated in the Times piece and, as accepted by all knowledgeable parties, there are many factors involved in such evaluations. That is why there is a wide variation of crime rates both within and between some death penalty and non death penalty jurisdictions, and small variations within and between others. Any direct comparison of only execution rates and only murder rates, to determine deterrence, would reflect either ignorance or deception.

Ehrlich called the Times study "a throwback to the vintage 1960s statistical analyses done by criminologists who compared murder rates in neighboring states where capital punishment was either legal or illegal." "The statistics involved in such comparisons have long been recognized as devoid of scientific merit." He called the Times story a "one sided affair" devoid of merit. Most interesting is that Ehrlich was interviewed by the Time's writer, Fessenden, who asked Ehrlich to comment on the results before the story was published. Somehow Ehrlich's overwhelming criticisms were left out of the article.

Ehrlich also referred Fessenden to some professors who produced the recently released Emory study. Emory Economics department head, Prof. Deshbakhsh "says he was contacted by Fessenden, and he indicated to the Times reporter that the study suggested a very strong deterrent effect of capital punishment." Somehow,
Fessenden's left that out of the Times story, as well. (5).

There is a constant within all jurisdictions -- negative consequences will always have an effect on behavior.

Maybe the Times will be a bit more thoughtful, next time.

REVIEW

"The List: Murder Capitals of the World", 09/08, Foreign Policy Magazine
Capital punishment (cp) or not (ncp)
murder rates/100,000 population

4 out of the top 5 do not have the death penalty

1. Caracas (ncp), Venezuela 130-160
Bad policing.
2. New Orleans (cp), La, USA 69-95
Variable because of different counts in surging population. Drug related.
Nos 2 & 3 in US, Detroit (ncp), 46 and Baltimore (cp), 45.
3. Cape Town (ncp), South Africa 62
Most crimes with people who know each other.
4. Port Mores (ncp), Papua New Guinea 54
Chinese gangs, corrupt policing
5. Moscow (ncp), Russia 9.6
various

Of the Top 10 Countries With Lowest Murder Rates (1), 7 have the death penalty

O f the Top 10 Countries With Highest Murder Rates (2), 5 have the death penalty

Top 10 Countries With Lowest Murder Rates
Iceland 0.00 ncp
Senegal 0.33 ncp
Burkina Faso 0.38 cp
Cameroon 0.38 cp
Finland 0.71 ncp
Gambia 0.71 cp
Mali 0.71 cp
Saudi Arabia 0.71 cp
Mauritania 0.76 cp
Oman cp

Top 10 Countries With Highest Murder Rates
Honduras 154.02 ncp
South Africa 121.91 ncp
Swaziland 93.32 cp
Colombia 69.98 ncp
Lesotho 50.41 cp
Rwanda 45.08 ncp
Jamaica 37.21 cp
El. Salvador 36.88 cp
Venezuela 33.20 ncp
Bolivia 31.98 cp

(1) http://www.mapsofworld.com/world-top-ten/countries-with-lowest-murder-rates.html no date

(2) http://www.mapsofworld.com/world-top-ten/countries-with-highest-murder-rates.html no date

FOOTNOTES

1) "States With No Death Penalty Share Lower Homicide Rates", The New York Times 9/22/00 located at www (dot) nytimes.com/2000/09/22/national/22STUD.html and www (dot) nytimes.com/2000/09/22/national/22DEAT.html
2) "Don't Know Much About Calculus: The (New York) Times flunks high-school math in death-penalty piece", William Tucker, National Review, 9/22/00, located

at www (dot) nationalreview.com/comment/comment092200c.shtml
3) ibid, see footnote 11
4) "The Death Penalty Saves Lives", AIM Report, August 2000, located atwww (dot) aim.org/publications/aim_report/2000/08a.html
5) "NEW YORK TIMES UNDER FIRE AGAIN", Accuracy in Media, 10/16/00, go to www (dot) aim.org/

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Pro death penalty sites

homicidesurvivors.com/categories/Dudley%20Sharp%20-%20Justice%20Matters.aspx

www.dpinfo.com
www.cjlf.org/deathpenalty/DPinformation.htm
www.clarkprosecutor.org/html/links/dplinks.htm
www.coastda.com/archives.html
www.lexingtonprosecutor.com/death_penalty_debate.htm
www.prodeathpenalty.com
yesdeathpenalty.googlepages.com/home2 (Sweden)
www.wesleylowe.com/cp.html

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From: Sharpjfa@aol.com
Sent: Monday, February 23, 2009 10:29 AM
To: Jane Pierson
Subject: the 130 "innocents" fraud death penalty

from dudley sharp

Re: fact checking issues, on innocence and the death penalty.

It is very important to take note that the 130 exonerated from death row is a blatant scam, easily uncovered by fact checking.

The Death Penalty Information Center has been responsible for some of the most serious deceptions by the anti death penalty side, inclusive of this 130 exonerated and innocence scam.

Dieter and DPIC have produced the claims regarding the exonerated and innocents released from death row list. The scam is that DPIC just decided to redefine what exonerated and innocence mean according to their own perverse definitions.

Richard Dieter, head of the Death Penalty Information Center (DPIC): defining what "exonerated" or "innocent" means.

". . . (DPIC) makes no distinction between legal and factual innocence. " 'They're innocent in the eyes of the law,' Dieter says. 'That's the only objective standard we have.' "

That is untrue, of course. We are all aware of the differences between legal guilt and actual guilt and legal innocence (not guilty) and actual innocence, just as the courts are.

Furthermore, there is no finding of actual innocence, but it is "not guilty". Dieter knows that we are all speaking of actual innocence, those cases that have no connection to the murder(s). He takes advantage of that by redefining exonerated and innocence.

Dieter "clarifies" the three ways that former death row inmates get onto their "exonerated" by "innocence" list.

"A defendant whose conviction is overturned by a judge must be further exonerated in one of three ways: he must be acquitted at a new trial, or the prosecutor must drop the charges against him, or a governor must grant an absolute pardon."

None establishes actual innocence.

DPIC has " . . . included supposedly innocent defendants who were still culpable as accomplices to the actual triggerman."

DPIC: "There may be guilty persons among the innocents, but that includes all of us."

Good grief. DPIC wishes to apply collective guilt of capital murder to all of us.

Dieter states: "I don't think anybody can know about a person's absolute innocence." (Green). Dieter said he could not pinpoint how many are "actually innocent" -- only the defendants themselves truly know that, he said." (Erickson)

Or Dieter won't assert actual innocence in 1, 102 or 350 cases. He doesn't want to clarify a real number with proof of actual innocence, that would blow his entire deception.

Or, Dieter declare all innocent: "If you are not proven guilty in a court of law, you're innocent." (Green)

Dieter would call Hitler and Stalin innocent. Those are his "standards".

And that is the credibility of the DPIC.

For fact checking.

1. "Case Histories: A Review of 24 Individuals Released from Death Row", Florida Commission on Capital Cases, 6/20/02, Revised 9/10/02 at http://www.floridacapitalcases.state.fl.us/Publications/innocentsproject.pdf

83% error rate in "innocent" claims.

2. "Is 'the innocence list' an appropriate name?", 1/19/03 FRANK GREEN, TIMES-DISPATCH STAFF WRITER http://www.stopcapitalpunishment.org/coverage/106.html

Dieter admits they don't discern between legal innocence and actual innocence. One of Dieter's funnier quotes;"The prosecutor, perhaps, or Dudley Sharp, perhaps, thinks they're still guilty because there was evidence of their guilt, but that's a subjective judgment." Yep, "EVIDENCE OF GUILT", can't you see why Dieter would think they were innocent? And that's how the DPIC works.

3. The Death of Innocents: A Reasonable Doubt, New York Times Book Review, p 29, 1/23/05, Adam Liptak, national legal correspondent for The NY Times

"To be sure, 30 or 40 categorically innocent people have been released from death row . . . ".

That is out of the DPIC claimed 119 "exonerated", at that time, for a 75% error rate.

NOTE: It's hard to understand how an absolute can have a differential of 33%. I suggest the "to be sure" is, now, closer to 25.

4. CRITIQUE OF DPIC LIST ("INNOCENCE:FREED FROM DEATH ROW"), Ward Campbell, http://www.prodeathpenalty.com/DPIC.htm

5. "The Death Penalty Debate in Illinois", JJKinsella,6/2000, http://www.dcba.org/brief/junissue/2000/art010600.htm

6.THE DEATH PENALTY - ALL INNOCENCE ISSUES, Dudley Sharp http://homicidesurvivors.com/2006/03/20/all-innocence-issues--the-death-penalty.aspx

Origins of "innocence" fraud, and review of many innocence issues

7. "Bad List", Ramesh Ponnuru, National Review, 9/16/02 www.nationalreview.com/advance/advance091602.asp#title5

How bad is DPIC?

8. "Not so Innocent", By Ramesh Ponnuru,National Review, 10/1/02 www.nationalreview.com/ponnuru/ponnuru100102.asp

DPIC from bad to worse.

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Mr. Sharp has appeared on ABC, BBC, CBS, CNN, C-SPAN, FOX, NBC, NPR, PBS , VOA and many other TV and radio networks, on such programs as Nightline, The News Hour with Jim Lehrer, The O'Reilly Factor, etc., has been quoted in newspapers throughout the world and is a published author.

A former opponent of capital punishment, he has written and granted interviews about, testified on and debated the subject of the death penalty, extensively and internationally.

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Jane Pierson

From: Sharpjfa@aol.com
Sent: Monday, February 23, 2009 11:06 AM
To: Tom Wright; Jane Pierson
Subject: Cost Comparisons: Death Penalty Cases Vs Equivalent Life Sentence Cases Dudley S
Follow Up Flag: Follow up
Flag Status: Red

Cost Comparisons: Death Penalty Cases Vs Equivalent Life Sentence Cases
Dudley Sharp, Justice Matters, contact info below

In comparing the cost of death penalty cases to other sentences, the studies are woefully incomplete.

Generally, such studies have one or more of the following problems.

1) Most studies exclude the cost of geriatric care, recently found to be $60,000-$80,000/inmate/yr. A significant omission from life sentence costs.

2) All studies exclude the cost savings of the death penalty, which is the ONLY sentence which allows for a plea bargain to a maximum life sentence. Such plea bargains accrue as a cost benefit to the death penalty, such benefit being the cost of trials and appeals for every such plea bargain, estimated at $500,000 to $1 million, which would accrue as a cost benefit/credit to the death penalty.

Depending upon jurisdiction, this MIGHT result in a minimal cost differential between the two sanctions or an actual net cost benefit to the death penalty, depending upon how many LWOP cases are plea bargained and how many death penalty cases result in a death sentence.

3) FCC economist Dr. Paul Zimmerman finds that executions result in a huge cost benefit to society. "Specifically, it is estimated that each state execution deters somewhere between 3 and 25 murders per year (14 being the average). Assuming that the value of human life is approximately $5 million {i.e. the average of the range estimates provided by Viscussi (1993)}, our estimates imply that society avoids losing approximately $70 million per year on average at the current rate of execution all else equal." The study used state level data from 1978 to 1997 for all 50 states (excluding Washington D.C.). (1)

That is a cost benefit of $70 million per execution. 15 additional recent studies, inclusive of their defenses, support the deterrent effect.

No cost study has included such calculations.

Although we find it inappropriate to put a dollar value on life, evidently this is not uncommon for economists, insurers, etc.

We know that living murderers are infinitely more likely to harm and murder, again, than are executed murderers. There is no doubt that executions do save innocent lives. What value do you put on the lives saved? Certainly not less than $5 million.

4) Some "cost studies" are blatantly deceptive. Always fact check.
a) Some studies compare the cost of a death penalty case, including pre trial, trial, appeals and incarceration, to only the cost of incarceration for 40 years, excluding all trial costs and appeals, for a life sentence. The much cited Texas "study" does this. Hardly an apples to apples cost comparison.

b) The pure deception in some cost "studies" is overt. It has been claimed that it costs $3.2 million/execution in Florida. That "study" decided to add the cost of the entire death penalty system in Florida ($57 million), which included all of the death penalty cases and dividing that number by only the number of executions (18). One could just have easily stated that the cost of the estimated 200 death row inmates was $285,000 per case.

5) There is no reason for death penalty appeals to take longer than 5-7 years, prior to execution, as in Virginia. All death penalty appeals, direct and writ, should travel through the process concurrently, thereby giving every appellate issue 5-7 years of consideration through both state and federal courts. Again, as in Virginia, strict and enforced time limitations, for both the state and the inmate, should be used. There is no need for endless repetition and delay.

Justice
6) The main reason sentences are given is because jurors find that it is the most just punishment available. No state, concerned with justice, will base a decision on cost alone. If they did, all cases would be plea bargained and every crime would have a probation option.

1). "State Executions, Deterrence and the Incidence of Murder", Paul R. Zimmerman (zimmy@att.net), March 3. 2003, Social Science Research Network, http://papers.ssrn.com/sol3/delivery.cfm/SSRN_ID354680_code021216500.pdf?abstractid=354680

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Pro death penalty sites

homicidesurvivors.com/categories/Dudley%20Sharp%20-%20Justice%20Matters.aspx

www.dpinfo.com
www.cjlf.org/deathpenalty/DPinformation.htm
www.clarkprosecutor.org/html/links/dplinks.htm
www.coastda.com/archives.html
www.lexingtonprosecutor.com/death_penalty_debate.htm
www.prodeathpenalty.com
yesdeathpenalty.googlepages.com/home2 (Sweden)
www.wesleylowe.com/cp.html

Jane Pierson

From: Sharpjfa@aol.com
Sent: Monday, February 23, 2009 10:51 AM
To: Tom Wright; Jane Pierson
Subject: The Death Penalty: Not a Human Rights Violation
Follow Up Flag: Follow up
Flag Status: Red

The Death Penalty: Not a Human Rights Violation
Dudley Sharp, Justice Matters

Some wrongly state that executions are a human rights violation. The human rights violation argument often comes from European leadership and human rights organizations.

The argument is as follows: Life is a fundamental human right. Therefore, taking it away is a fundamental violation of human rights.

Those who say that the death penalty is a human rights violation have no solid moral or philosophical foundation for making such a statement. What opponents of capital punishment really are saying is that they just don't approve of executions.

Certainly, both freedom and life are fundamental human rights. On this, there is virtually no disagreement. However, again, virtually all agree, that freedom may be taken away when there is a violation of the social contract. Freedom, a fundamental human right, may be taken away from those who violate society's laws. So to is the fundamental human right of life forfeit when the violation of the social contract is most grave.

No one disputes that taking freedom away is a different result than taking life away. However, the issue is the incorrect claim that taking away fundamental human rights -- be that freedom or life -- is a human rights violation. It is not. It depends specifically on the circumstances.

How do we know? Because those very same governments and human rights stalwarts, rightly, tell us so. Universally, both governments and human rights organizations approve and encourage taking away the fundamental human right of freedom, as a proper response to some criminal activity.

Why do governments and human rights organizations not condemn just incarceration of criminals as a fundamental human rights violation? Because they think incarceration is just fine.

Why do some of those same groups condemn execution as a human rights violation? Only because they don't like it. They have no moral or philosophical foundation for calling execution a human rights violation.

In the context of criminals violating the social contract, those criminals have voluntarily subjected themselves to the laws of the state. And they have knowingly placed themselves in a position where their fundamental human rights of freedom and life are subject to being forfeit by their actions.

Opinion is only worth the value of its foundation. Those who call execution a human rights violation have no credible foundation for that claim. What they are really saying is "We just don't like it."

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www.clarkprosecutor.org/html/links/dplinks.htm
www.coastda.com/archives.html
www.lexingtonprosecutor.com/death_penalty_debate.htm
www.prodeathpenalty.com
yesdeathpenalty.googlepages.com/home2 (Sweden)
www.wesleylowe.com/cp.html

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Jane Pierson

From: Sharpjfa@aol.com

Sent: Monday, February 23, 2009 10:50 AM

To: Tom Wright; Jane Pierson

Subject: cost studies _ LET ME KNOW - They're all different, see this one Maryland

In a message dated 2/18/2009 2:24:55 P.M. Central Standard Time, Sharpjfa writes:

To: Maryland Legislature, Prosecutors and media throughout the region

From: Dudley Sharp, contact info below

SUMMARY: The cost errors, within the Majority Report, are so substantial that their cannot be considered reliable. Is it possible that a properly managed death penalty system could be less expensive than a true life sentence? Read on.

NOTE: See the hidden "Minority Report", stuck between pages 128 and 129 of the majority report. It is a 23 page rebuttal of the majority report. The Governor made sure that is was well hidden. There is not even a reference to it in the Table of Contents, even though the Minority Report is much, much longer than any section of the majority report. Politics at is worst.

Some observations on the Urban Institute (UI) Cost of the Death Penalty in Maryland (1) as well as on the Majority Report.

The UI conclusion was that the lifetime case cost for the 56 death penalty cases will cost Maryland taxpayers $186 million, or $106 million more than if death wasn't pursued in those cases or about $47,000 per year per inmate, more.

The study found that the average cost of a case where a death notice was not sought was $1.1 million/case, that being $250,000 for adjudication and $860,000 for confinement/prison costs.

Unfortunately, many more cases were used than just those which make up life without parole (LWOP). This, wrongly and totally, skewed the results.

That was inappropriate from a public policy standpoint and the majority should have known it.

The only public policy cost discussion regarding the death penalty, nationwide, is the cost differential between LWOP cases and death penalty cases. This is very well known, If anyone doesn't know it, it would take 10 minutes online to figure it out.

It begs the question, why did the UI muddy the waters with a bunch of cases that didn't get LWOP?

Regardless of UI's reasons, the answer is, they shouldn't have.

Here's why.

1) The public policy debate is concentrated on LWOP as a considered replacement for the death penalty. Sentences less than LWOP are not under consideration in this current debate.

2) By including cases of less than LWOP, within the non death category, UI and the majority has lowered the costs of that category, perhaps substantially, and has misled or confused the public as to the real cost disparities, if any, which may exist between the death penalty and LWOP in Maryland.

3) Had UI only included LWOP cases in that category, the cost disparity would be reduced, perhaps substantially.

Using current data, scenarios exist that could result in a finding that the death penalty may actually be less expensive than LWOP. See below.

What wasn't calculated

4) a) Each case, whereby a plea bargain to a sanction less than death was rendered, the state saves about $250, 000/case for legal expenses, based upon UI estimates.

b) The number is, likely, far above that $250,000/case evaluation, because 1) UI wrongly included non LWOP cases and 2) wrongly credited the cost reduction of those pleas, within the LWOP category, when, instead, 3) a credit of $250,000/case, but likely much larger, should have been placed in the death case data calculations, resulting in an additional increase per case cost within the true LWOP category and a greater reduction in the death case category.

Properly, this credit can happen only when LWOP plea cases are isolated. This is public policy 101. The majority wrongly discounted plea bargains to a life sentence. The cost savings are substantial.

5) For example:

a) Presume the average LWOP case, resulting in LWOP, has adjudication costs of $500, 000, from pre trial to conviction and throughout appeals. If a LWOP sentence was given as part of a plea bargain, prior to a death notice being filed, UI shows that cost as $0 for adjudication, thus lowering the average cost of all cases where death wasn't pursued in potentially capital cases.

That would be improper, from any standpoint.

b) A LWOP plea bargain can only occur because the state has the death penalty. So, instead of lowering the average cost of all LWOP cases, all LWOP plea cases would be removed from the LWOP database and a cost credit of $500,000 would be applied as a cost benefit within death penalty category, because it was solely the presence of the death penalty which allows for a plea bargain to LWOP. Thus, death penalty costs and overall costs to the state, would drop substantially and the average costs of LWOP would rise.

c) That results in two changes:
1) The average cost of LWOP cases will rise, possibly substantially, because a $0 adjudication cost entry will be removed from the LWOP cases; and
2) The average cost of death penalty cases may lower, possibly substantially, because a $500, 000 cost reduction will be made to the death penalty cost basis, for each such LWOP plea.

To state the obvious, UI made an error in reversing the credit in pleas.

6) For an accurate public policy review of death penalty costs vs LWOP costs, Maryland Legislators should:

a) Compare the costs of only the death penalty cases which were pursued and a death

penalty resulted and only LWOP cases that were pursued, resulting in a LWOP sentence; and

b) include the proper calculations for credit of LWOP pleas bargains, which are solely the result of the presence of the death penalty.

c) Why exclude the death penalty cases which were pursued, resulting in sentences less than the death penalty? For the same reason we exclude LWOP cases which result in sentences of less than LWOP.

You should be looking , only, at true death cases costs vs true LWOP costs. If UI wants to add a bunch of other cost categories, fine, but these are the two that must be done.

They weren't.

COST SAVINGS - Death Row incarceration

1) The extra $350,000 per case for additional cost for death row incarceration is an unnecessary waste of taxpayer money. Missouri doesn't even have a death row for their death sentenced prisoners.

2) There is no reason that death penalty appeals should take longer than 7-10 years.
a) Both appellate paths, direct appeal and writ, should travel through the appellate process, at the same time.
b) The legislature, trial and appellate courts should work together to establish reasonable time frames for appeals and responses to them.

GERIATRIC CARE - Prisoner geriatric care has recently been found to be about $70,000/inmate/year, on average. Has that been calculated in Maryland?

REQUIREMENT

Maryland must redo their calculations to compare costs of true LWOP cases to death penalty cases, for two reasons.

First, it is the only public policy cost issue which exists, with regard to the death penalty in Maryland

Secondly, what you have, now, cannot be relied upon.

UI: Additional Errors in Judgement

UI's reliance on Donahue and Wolfers (2006), who have been highly critical of some of the recent studies finding for deterrence, was unwarranted and inappropriate.

UI's authors failed to note that Donahue and Wolfers criticisms have been dissected and trashed by those authors whose studies found for deterrence.

I believe all of those replies, heavily critical of Donahue and Wolfers, were published prior to the UI report.
Furthermore, UI failed to mention that Donahue and Wolfers' work was not peer reviewed, but many and most of the studies finding for deterrence were. Had Donahue and Wolfers work been peer reviewed, it is a question if it ever would have been published in a peer reviewed publication.

Both of these points are important and inexcusable omissions by UI.

Instead of mentioning the rebuttals, UI, instead, deferred to Donahue and Wolfers, as a way of neutralizing the importance of the studies finding for deterrence, and then mentioned a study which found against deterrence.

UI wrongly states that studies go either way so we shouldn't bother with them.

Total nonsense. 16 recent studies, including strong rebuttals to criticism, find for death penalty deterrence.

In one reply to Donahue and Wolfers, after their data had been re-run, based upon Donahue and Wolfers criticism:

"I oppose the death penalty. " " But my results show that the death penalty (deters) — what am I going to do, hide them?" "Science does really draw a conclusion. It did. There is no question about it." "The results are robust, they don't really go away" "The conclusion is there is a deterrent effect.".

Prof. Naci Mocan, Economics Chairman, University of Colorado at Denver
"Studies say death penalty deters crime", ROBERT TANNER, Associated Press, June 10, 2007, 2:01 PM ET

Furthermore, one of the deterrence studies found a $70 million cost benefit, per execution, because of the number of lives saved per execution.

Obviously, that would render the death penalty a huge cost benefit in Maryland.

Many other important conclusions of the deterrence studies were omitted from the UI report. If UI didn't wish to give a proper, accurate review of deterrence, stay away from it. Why wrongly muddy the waters?

Public policy makers take note.

Misleading Conclusion

The UI authors stated that:

"Prior research on the costs of capital punishment in other states unambiguously finds that capital cases are more expensive to prosecute than non-capital cases. "

To "prosecute", generally yes, but not always.

And when did the studies ONLY look at prosecution?

In one of UI's included studies, Cook, North Carolina Cost Study (1993), the UI authors seemed to have missed a very important and obvious point.

The study finds that, for two different calculations, that the death penalty costs $163, 000 and $213,000/case more than a life sentence.

But, the calculation for a life sentence is only to 20 years.

For a true life sentence, you would be adding $300, 000 or more to each life case, meaning that a life sentence costs more than the death penalty.

Furthermore, the authors conceded not including geriatric care, recently found to be $69, 000/inmate/yr. meaning lifers cost a lot more than death sentenced prisoners, possibly adding an additional $300,000/case, or more, for a true LWOP sentence.

That could render life cases $600, 000 or more, more expensive than death sentences in North Carolina.

Furthermore, the calculations didn't include the benefit of plea bargains to life, possible only because of the death penalty.

Unambiguous, UI? Not close.

Based upon the UI authors not seeing these very obvious and important facts, or deciding not to share them within their report, one may conclude that UI authors may have made similar errors or omissions in their review of the other included studies.

Reviewers should keep that in mind.

CONCLUSION

UI, a public policy institution, avoided the only public policy issue which exists in the death penalty cost debate:

"What is the difference in cost between the death penalty and a true LWOP?"

Depending upon the number of plea bargains to LWOP, there may be very little cost difference between the death penalty and LWOP.

Furthermore, if both the presence of the death penalty, as well as executions, saves many innocent lives, as 16 of the recent deterrence studies(1) suggest, then the benefit of the death penalty far surpasses any alleged cost deficit, if any, or is a huge added benefit to any cost benefit of the death penalty, if there is one.

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www.coastda.com/archives.html see Death Penalty
www.lexingtonprosecutor.com/death_penalty_debate.htm
www.prodeathpenalty.com
http://yesdeathpenalty.googlepages.com/home2 (Sweden)
www.wesleylowe.com/cp.html

(1) http://www.urban.org/UploadedPDF/411625_md_death_penalty.pdf

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Jane Pierson

From: Sharpjfa@aol.com
Sent: Thursday, February 26, 2009 6:36 AM
To: Tom Wright; Jane Pierson
Subject: Reply please Can Rev. Carroll Pickett be trusted "At the Death House Door"?

Dear Jane and Tom:

I didn't see this in the record. I may have missed it.

The opposition put a flyer , in the record, regarding this film, In addition, there is an anti death penalty meeting on March 8th, with Rev Pickett as the speaker. http://www.aadp.info/

dudley

In a message dated 2/23/2009 2:36:07 P.M. Central Standard Time, Sharpjfa writes:

> **Can Rev. Carroll Pickett be trusted "At the Death House Door"?**
> **Dudley Sharp, Justice Matters, contact info below**
>
> **To: Film schools, festivals, institutes, websites and reviewers, worldwide .**
> **Distributed since May, 2008**
>
> **Rev. Pickett is on a promotional tour for the anti death penalty film "At the Death House Door". It is, primarily, about the Reverend's experience ministering to 95 death row inmates executed in Texas.**
>
> **Rev. Pickett's inaccuracies are many and important.**
>
> **Does Rev. Pickett just make facts up as he goes along, hoping that no one fact checks, or is he just confused or ignorant?**
>
> **Some of his miscues are common anti death penalty deceptions. The reverend is an anti death penalty activist.**
>
> **Below are comments or paraphrases of Rev. Pickett, taken from interviews, followed by my REPLY:.**
>
> **I encourage more fact checking.**
>
> **1) Pickett: (In 1989) "I was so 100% certain that he couldn't have committed this crime. (Carlos) was a super person to minister to. I knew Carlos was not guilty. " "I knew (executed inmate) Carlos (De Luna) didn't do it." (1)**
>
> **REPLY: There is this major problem. It appears that Rev. Pickett is, now, either lying about his own 1989 opinions or he is very confused.**
>
> **In 1999, 4 years after Rev. Pickett had left his death row ministry, and he had become an anti death penalty activist, and 10 years after De Luna's execution, the reverend was asked, in a PBS Frontline interview,**
>
> **"Do you think there have been some you have watched die who were strictly innocent?"**
>
> **Pickett's reply: "I never felt that."(2)**

For at least 15 years, Pickett never felt that any of the 95 executed were actually innocent.

This directly conflicts with his current statements on Carlos De Luna. Rev. Pickett is, now, saying that he was 100% sure of De Luna's innocence in 1989!

If he was 100% sure of DeLuna's execution in 1989, what's up with the PBS interview?.

How could Rev. Pickett forget the only "innocent" person he saw executed - he was 100% sure of his innocence - on his watch? Wouldn't anyone find that to be 100% impossible to forget, particularly when you are asked, specifically, about it during a formal interview?

When is the first confirmable date that Rev. Pickett stated he believed in DeLuna's actual innocence?

It appears the reverend has either revised history to support his new anti death penalty activism - he's lying - or he is, again, very confused. Reverend?

2) Sara Hickman, musician, anti death penalty activist, and acquaintance of Pickett's, wrote " . . . Rev. Carroll Pickett (the death row minister who witnessed 95 executions in Huntsville; he is convinced that at least 15 of those men were innocent),. . . ". (3)

Reply: In 1999 Rev. Pickett didn't believe any of those 95 executed were innocent, now, in 2008, he is convinced that 15 innocents were executed. Quite remarkable, if true.

Rev. Pickett can you tell us which 15 you are convinced were executed innocents? And what is your evidence? Or did Ms. Hickman get it wrong? Reverend?

I have inquired with Ms. Hickman (sara@sarahickman.com) and Rev Pickett (carrollpickett57@gmail.com) but, so far, no reply.

3) Introduction: In 1974, prison librarian Judy Standley and teacher Von Beseda were murdered during an 11 day prison siege and escape attempt. Ignacio Cuevas was sentenced to death, as one of three prisoners who were involved. The other two died in the shootout.

Ms. Standley and Ms. Beseda were part of Rev. Pickett's congregation, outside of prison.

Pickett: After Cuevas was executed, Rev. Pickett alleges that he met with Judy Standley's family and they told the reverend that "This (the execution) didn't bring closure." "This didn't help us." According to Rev. Pickett, "They didn't want him (Ignacio Cuevas) executed." (1)

Reply; There might be a big problem. Judy Standley's five children wrote a statement, before the execution, which stated: "We are relieved the ordeal may almost be over, but we are also aware that to some, this case represents only one of many in which, arguably, `justice delayed is justice denied," "We are hopeful the sentence will finally be carried out and that justice will at last be served," said the statement, signed by Ty, Dru, Mark, Pam and Stuart Standley. (4)

Sure seemed like the kids wanted Cuevas to be executed. Doesn't it? Reverend?

4) Pickett: spoke of the Soldier of Fortune murder for hire case, stating the husband got the death penalty, while the hired murderer got 6 years. (1)

Reply: Rev. Pickett's point, here, appears to be the unfairness of the sentence disparity. *More fact problems. John Wayne Hearn, the hitman, was sentenced to life* imprisonment for the murder of Sandra Black.

5) Pickett: "A great majority of them (the 95 executed inmates he ministered to) were black or Hispanic." (1)

Reply: The reverend's point, here, appears to emphasize the alleged racist nature of the death penalty. There is a problem for the reverend- the facts - the "great majority" were 47 white (49%) with 32 black (34%), and 16 Hispanic (17%).

6) Pickett: "Out of the 95 we executed only one that had a college degree. All the rest of them their education was 9th grade and under." (1)

Reply: Not even close. Rev. Pickett's point, here, seems to be that capital murderers are, almost all, idiots who can't be held responsible for their actions. But, there are more fact problems for the reverend. In a review of only 31 of the 95 cases, 5 had some college or post graduate classes and 16 were high school graduates or completed their GED. Partial review (Incomplete Count) , below.

Would Rev. Pickett tell us about the educational achievements of all the true innocent murder victims and those that weren't old enough for school?

7) Pickett: believes that, no way, could someone, so afraid of lightning and thunder, such as Carlos De Luna, use a knife (in a crime). (1)

Reply: Is the reverend not aware of DeLuna's record? In 1980, "De Luna was charged with attempted aggravated rape and driving a stolen vehicle, he pleaded no contest and was sentenced to 2 to 3 years. Paroled in May 1982, De Luna returned to Corpus Christi. Not long after, he attended a party for a former cellmate and was accused of attacking the cellmate's 53-year-old mother. She told police that De Luna broke three of her ribs with one punch, removed her underwear, pulled down his pants, then suddenly left. He was never prosecuted for the attack, but authorities sent him back to prison on a parole violation. Released again in December of that year, he came back to Corpus Christi and got a job as a concrete worker. Almost immediately, he was arrested for public intoxication. During the arrest, De Luna allegedly laughed about the wounding of a police officer months earlier and said the officer should have been killed. Two weeks after that arrest, Lopez was murdered." (Chicago Tribune) Being a long time criminal, we can presume that there were numerous additional crimes committed by De Luna and which remained unsolved.

Was De Luna capable of committing a robbery murder, even though he had big brown eyes and was scared of lightning? Of course. Rev. Pickett?

8) Pickett: speaks of how sincere hostage taker, murderer Ignacio Cuevas was. Rev. Pickett states that "between 11 and midnight (I) believe almost everything" the inmates say, because they are about to be executed. (1)

Reply: Bad judgement. Minutes later, Cuevas lied when on the gurney, stating that he was innocent. This goes to show how Rev. Pickett and many others are easily fooled by these murderers. Pickett concedes the point.

9) Pickett: "In my opinion and in the opinion of the convicts, life in prison, with no hope of parole, is a much worse punishment (than the death penalty)." "Most of these people (death row inmates) fear life in prison more than they do the possibility of execution." (5)

REPLY: More fact problems. We know that isn't the opinion of those facing a possible death sentence of those residing on death row. This gives more support to my suspicion that Rev. Pickett is putting words into the inmates' mouths.

Facts: What percentage of capital murderers seek a plea bargain to a death sentence,

rather than seeking a life sentence? Zero or close to it. They prefer long term imprisonment. What percentage of convicted capital murderers argue for execution in the penalty phase of their capital trial? Zero or close to it. They prefer long term imprisonment. What percentage of death row inmates waive their appeals and speed up the execution process? Nearly zero (less than 2%). They prefer long term imprisonment. This is not, even remotely, in dispute. How could Rev. Pickett not be aware of this? How long was he ministering to Texas' death row? 13 years? So, what? Did he just make this up?

10) Pickett: stated that "doctors can't (check the veins of inmates pending execution), it's against the law." (1)

Reply: Ridiculous. Obviously untrue.

11) Pickett: Pavulon (a paralytic) has been banned by vets but we use it on people. (1)

REPLY: This is untrue and is a common anti death penalty deception. The American Veterinary Medical Association (AVMA) states, "When used alone, these drugs (paralytics) all cause respiratory arrest before loss of consciousness, so the animal may perceive pain and distress after it is immobilized." Obviously, paralytics are never used alone in the human lethal injection process or animal euthanasia. The AVMA does not mention the specific paralytic - Pavulon - used in lethal injection for humans. These absurd claims, falsely attributed to veterinary literature, have been a bald faced lie by anti death penalty activists.

In Belgium and the Netherlands, their euthanasia protocol is as follows: A coma is first induced by intravenous administration of 20 mg/kg sodium thiopental (Nesdonal) (NOTE-the first drug in human lethal injection) in a small volume (10 ml physiological saline). Then a triple intravenous dose of a non-depolarizing neuromuscular muscle relaxant is given, such as 20 mg pancuronium bromide (Pavulon) (NOTE-the second drug, the paralytic, in human lethal injection) or 20 mg vecuronium bromide (Norcuron). The muscle relaxant should preferably be given intravenously, in order to ensure optimal availability (NOTE: as in human lethal injection). Only for pancuronium bromide (Pavulon) are there substantial indications that the agent may also be given intramuscularly in a dosage of 40 mg. (NOTE: That is how effective the second drug in human lethal injection is, that it can be given intramuscularly and still hasten death).

Just like execution/lethal injection in the US, although we give a third drug which speeds up death, even more.

12) Pickett: "Most of the inmates would ask the question, "How can Texas kill people who kill people and tell people that killing people is wrong?" That came out of inmates' mouths regularly and I think it's a pretty good question to ask." (5)

REPLY: I simply don't believe it. Most? Would that be more than 47 out of 95? 10 out of 95? Doubtful. I suspect it is no coincidence that "Why do we kill people to show that killing is wrong" has been a common anti death penalty slogan for a very long time. I suspect that Rev. Pickett has just picked it up, used it and placed it in inmate's mouths. Furthermore, we don't execute murderers to show that murder is wrong. Most folks know that murder is wrong even without a sanction.

13) Pickett: said an inmate said "its burning" "its burning", during an execution. (1)

REPLY: This may have occurred for a variety of reasons and does not appear to be an issue. It is the third drug which is noted for a burning sensation, if one were conscious during its injection. However, none of the inmates that Rev. Pickett handled were conscious after the first drug was administered. That would not be the case, here, as the burning complaints came at the very beginning of the injection process, which would involve a reaction where the burning would be quite minor. Has Rev. Pickett reviewed

the pain and suffering of the real victims - the innocent murdered ones?

Bottom line. Reverend Pickett's credibility is as high as a snakes belly.

Time to edit the movie?!

Incomplete count
this is a review of 31 out of the 95 death row inmates ministered by Rev. Pickett

21 of the 31 below had some college or post graduate classes (5)
or were high school graduates or completed their GED (16)
---
1) Brooks 12
3) O'Bryan post graduate degree - dentist
41 James Russel 10th
42 G Green sophomore college
45 David Clark 10th and GED
46 Edward Ellis 10th
47 Billy White 10th
48 Justin May 11th
49 Jesus Romero 11th and GED
50 Robert Black, Jr. a pilot (probably beyond 12th)
55. Carlos Santana 11th
57 Darryl Stewart 12th
58 Leonel Herrera 11th and GED
60) Markum Duff Smith Post graduate College
33) Carlos De Luna 9th
95 Ronald Keith Allridge 10th and GED
93 Noble Mays Junior in College
92 Samuel Hawkins 12th
91 Billy Conn Gardner 12th
90 Jeffery Dean Motley 9th
89 Willie Ray Williams 11th
86 Jesse Jacobs 12th
85 Raymond Carl Kinnamon 11th and GED
84 Herman Clark sophomore college
83 Warren Eugene Bridge 11th
82 Walter Key Williams 12th
72 Harold Barnard 12th
73 Freddie Webb 11th and GED
75 Larry Anderson 12th
77 Stephen Nethery 12th
79 Robert Drew 10th

1) "Chaplain Discusses 'Death House' Ministry", Interview, Legal Affairs, FRESH AIR, NPR, May 19, 2007.

2) "The Execution: Interview with Reverend Carroll Pickett", PBS, FRONTLINE, 1999 www(DOT)pbs.org/wgbh/pages/frontline/shows/execution/readings/pickett.html

3) "Hickman: Texas needs to start a dialogue on the death penalty", OTHER TAKES, Austin American-Statesman, July 30, 2008

4) "Appellate court refuses to stay killer's execution", Kathy Fair, HOUSTON CHRONICLE, Section A, Page 1, 2 Star edition, 05/23/1991

5) THE FAILURE INTERVIEW: REVEREND CARROLL PICKETT—AUTHOR OF

"WITHIN THESE WALLS: MEMOIRS OF A DEATH HOUSE CHAPLAIN" Interview, by Kathleen A. Ervin
www(DOT) failuremag.com/arch_history_carroll_pickett_interview.html

Dudley Sharp, Justice Matters
e-mail sharpjfa@aol.com, 713-622-5491,
Houston, Texas

Mr. Sharp has appeared on ABC, BBC, CBS, CNN, C-SPAN, FOX, NBC, NPR, PBS , VOA and many other TV and radio networks, on such programs as Nightline, The News Hour with Jim Lehrer, The O'Reilly Factor, etc., has been quoted in newspapers throughout the world and is a published author.

A former opponent of capital punishment, he has written and granted interviews about, testified on and debated the subject of the death penalty, extensively and internationally

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Jane Pierson

From: Sharpjfa@aol.com
Sent: Thursday, February 26, 2009 7:03 AM
Subject: STUDY: COST SAVINGS FROM REPEAL OF DEATH PENALTY MAY BE ELUSIVE

To: Maryland Legislature, Prosecutors and media throughout the region

Forwarded by Dudley Sharp, contact info at bottom

NOTE: I think CJLF is being very generous. Not only do most, if not all, cost evaluations avoid the death penalty credit for plea bargains to life, they usually don't calculate the cost of geriatric care for lifers and, quite often, the evaluations are so biased, against the death penalty, that they don't represent anything close to a balanced review. For example, the Maryland cost review reversed the credit for the plea bargain to a life sentence.

I am not affiliated with CJLF.

CJLF
Criminal Justice Legal Foundation

09-05

PRESS RELEASE

FOR IMMEDIATE RELEASE
February 25, 2009

Michael Rushford, President
(916) 446-0345

STUDY: COST SAVINGS FROM REPEAL OF DEATH PENALTY MAY BE ELUSIVE

Prior Studies Fail to Account for Savings from Guilty Pleas with Life Sentences

Legislatures expecting a large savings in trial costs from repealing the death penalty may be in for a disappointment, according to a study released today by the Sacramento-based Criminal Justice Legal Foundation. The most widely cited estimates ignore or minimize an important cost-saving effect of having the death penalty available.

In states where the death penalty is the maximum punishment, a larger number of murder defendants are willing to plead guilty and receive a life sentence. The greater cost of trials where the prosecution does seek the death penalty is offset, at least in part, by the savings from avoiding trial altogether in cases where the defendant pleads guilty. Although this effect is well known to people working in the field, there appears to be no prior study to determine the actual size of this effect.

An example of the plea bargaining effect occurred two weeks ago in Navarro County, Texas. Shaun Earl Arender confessed to the sexual assault and murder of six-year-old Hanna Mack and was sentenced to life in prison without the possibility of parole in return for avoiding the death penalty. If Texas did not have the death penalty, this case would almost certainly have gone to trial. Sentencing expert Douglas Berman of Ohio

State University notes on his blog, "I think an important and underexamined aspect of the death penalty is its impact on plea bargaining and other pre-trial aspects of the investigation and prosecution of horrible murders."

The study released today, The Death Penalty and Plea Bargaining of Life Sentences, analyzed data gathered by the U.S. Bureau of Justice Statistics from 33 large urban counties. The study examined how many of the murder cases were resolved by guilty plea, how many went to trial, and how many resulted in a sentence of at least 20 years.

In states with the death penalty, the average county obtained sentences of 20 years or more in 50.7% of cases where the defendant was charged with murder and convicted of murder or voluntary manslaughter. These sentences were obtained through a guilty plea in 18.9% of the cases. In states without the death penalty, sentences of 20 years or more were obtained in 40.5% of such cases, but only 5.0% of those were guilty pleas, a little over a quarter of the number in the death penalty states.

The difference in the two groups of counties is "statistically significant," meaning it is highly unlikely to have happened at random. A correlational study such as this cannot definitively prove that the death penalty is the cause of the difference observed, but no other explanation is apparent.

This result is consistent with a 2006 study by economist Ilyana Kuziemko, then at Harvard and now at Princeton. She found that the availability of the death penalty did not have a large effect on the total number of cases plea bargained, but without the death penalty more defendants obtained reductions to lower degrees of homicide.

Opponents of the death penalty contend that life imprisonment will serve just as well to incapacitate convicted murderers. (The separate question of deterrence remains hotly disputed.) However, incapacitation will certainly be reduced and more innocent people will be murdered if fewer defendants are actually sentenced to life in prison. Without the threat of the death penalty, either many more cases must go to trial or many more murderers will be released in the future.

In a recent, widely cited study of death penalty costs in Maryland by the Urban Institute, one-third of the cases eligible for the death penalty were resolved by a guilty plea. Yet the study's estimate of costs makes no allowance for the possibility that percentage would drop sharply if the death penalty were repealed. Study commission reports in New Jersey and California have similarly ignored the issue or made inadequate allowance for it.

"The fact that these studies have omitted an important and obvious factor raises serious questions about their credibility," said CJLF's Legal Director Kent Scheidegger, the author of the study. "What else did they leave out?" To take just one example, both the Maryland and California studies calculate death row imprisonment costs on the assumption that inmates sentenced to death will live out their natural lives in prison. With an effective death penalty system executing its judgments in an average of five years, the imprisonment costs would be dramatically lower than these estimates.

"Repeal advocates are promising legislatures a pot of gold," said Scheidegger. "That pot may be as elusive as the mythical one at the end of the rainbow, or it may be purchased with the lives of innocent people."

CJLF Legal Director Kent Scheidegger is available for comment at (916) 446-0345.

The working paper for this study may be found on CJLF's web site at:
http://www.cjlf.org/papers/wpaper09-01.pdf

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Pro death penalty sites

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www.dpinfo.com
www.cjlf.org/deathpenalty/DPinformation.htm
www.clarkprosecutor.org/html/links/dplinks.htm
www.coastda.com/archives.html see Death Penalty
www.lexingtonprosecutor.com/death_penalty_debate.htm
www.prodeathpenalty.com
http://yesdeathpenalty.googlepages.com/home2 (Sweden)
www.wesleylowe.com/cp.html

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Jane Pierson

From: Sharpjfa@aol.com
Sent: Friday, March 06, 2009 10:53 AM
To: catholicanchor@gci.net
Subject: The Death Penalty Provides More Protection for Innocents

The Death Penalty Provides More Protection for Innocents
Dudley Sharp, Justice Matters, contact info below

Often, the death penalty dialogue gravitates to the subject of innocents at risk of execution. Seldom is a more common problem reviewed. That is, how innocents are more at risk without the death penalty.

Enhanced Due Process

No knowledgeable and honest party questions that the death penalty has the most extensive due process protections in US criminal law.

Therefore, actual innocents are more likely to be sentenced to life imprisonment and more likely to die in prison serving under that sentence, that it is that an actual innocent will be executed.

That is. logically, conclusive.

Enhanced Incapacitation

To state the blatantly clear, living murderers, in prison, after release or escape, are much more likely to harm and murder, again, than are executed murderers.

Although an obvious truism, it is surprising how often folks overlook the enhanced incapacitation benefits of the death penalty over incarceration.

There are a few absolutes when it comes to Life Without Parole. The legislature can lessen sentences, retroactively, and the executive branch can lessen any individual sentence.

Enhanced Deterrence

16 recent studies, inclusive of their defenses, find for death penalty deterrence.

A surprise? No.

Life is preferred over death. Death is feared more than life.

Some believe that all studies with contrary findings negate those 16 studies. They don't. Studies which don't find for deterrence don't say no one is deterred, but that they couldn't measure those deterred.

What prospect of a negative outcome doesn't deter some? There isn't one . . . although committed anti death penalty folk may say the death penalty is the only one.

However, the premier anti death penalty scholar accepts it as a given that the death penalty is a deterrent, but does not believe it to be a greater deterrent than a life sentence. Yet, the evidence is compelling and un refuted that death is feared more than life.

Enhanced Fear

Some death penalty opponents argue against death penalty deterrence, stating that it's a harsher penalty to be locked up without any possibility of getting out.

Reality paints a very different picture.

What percentage of capital murderers seek a plea bargain to a death sentence? Zero or close to it. They prefer long term imprisonment.

What percentage of convicted capital murderers argue for execution in the penalty phase of their capital trial? Zero or close to it. They prefer long term imprisonment.

What percentage of death row inmates waive their appeals and speed up the execution process? Nearly zero. They prefer long term imprisonment.

This is not, even remotely, in dispute.

What of that more rational group, the potential murderers who choose not to murder, is it likely that they, like most of us, fear death more than life?

Life is preferred over death. Death is feared more than life.

Furthermore, history tells us that lifers have many ways to get out: Pardon, commutation, escape, clerical error, change in the law, etc.

In choosing to end the death penalty, or in choosing not implement it, some have chosen to spare murderers at the cost of sacrificing more innocent lives.

Furthermore, possibly we have sentenced 25 actually innocent people to death since 1973, or 0.3% of those so sentenced. Those have all been released upon post conviction review. The anti death penalty claims, that the numbers are significantly higher, are a fraud, easily discoverable by fact checking.

The innocents deception of death penalty opponents has been getting exposure for many years. Even the behemoth of anti death penalty newspapers, The New York Times, has recognized that deception.

To be sure, 30 or 40 categorically innocent people have been released from death row . . . (1) This when death penalty opponents were claiming the release of 119 "innocents" from death row. Death penalty opponents never required actual innocence in order for cases to be added to their "exonerated" or "innocents" list. They simply invented their own definitions for exonerated and innocent and deceptively shoe horned large numbers of inmates into those definitions - something easily discovered with fact checking.

There is no proof of an innocent executed in the US, at least since 1900.

If we accept that the best predictor of future performance is past performance, we can, reasonably, conclude that the DNA cases will be excluded prior to trial, and that for the next 8000 death sentences, that we will experience a 99.8% accuracy rate in actual guilt convictions. This improved accuracy rate does not include the many additional safeguards that have been added to the system, over and above DNA testing.

Of all the government programs in the world, that put innocents at risk, is there one with a safer record and with greater protections than the US death penalty?

Unlikely.

Full report -All Innocence Issues: The Death Penalty, upon request.

Full report - The Death Penalty as a Deterrent, upon request

(1) The Death of Innocents: A Reasonable Doubt,
New York Times Book Review, p 29, 1/23/05, Adam Liptak,
national legal correspondent for The NY Times

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www.lexingtonprosecutor.com/death_penalty_debate.htm
www.prodeathpenalty.com
http://yesdeathpenalty.googlepages.com/home2 (Sweden) www.wesleylowe.com/cp.html

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Jane Pierson

From: Sharpjfa@aol.com
Sent: Friday, March 06, 2009 10:54 AM
To: catholicanchor@gci.net
Subject: Catholic Scholars: Support for the Death Penalty

Catholic Scholars: Support for the Death Penalty
Dudley Sharp, Justice Matters, contact info below

There are thoughtful writings on both sides of this debate, but the pro death penalty position is much stronger.

Recently deceased Avery Cardinal Dulles, in one of his final interviews, states that he thought the Church may return to a "more traditional posture" on the death penalty. "Recent popes, Dulles conceded, beginning with John XXIIII, seem to have taken quasi-abolitionist positions on both matters. Yet used sparingly and with safeguards to protect the interests of justice, Dulles argued, both the death penalty and war have, over the centuries, been recognized by the church as legitimate, sometimes even obligatory, exercises of state power. The momentum of "internal solidification," he said, may lead to some reconsideration of these social teachings." ("An unpublished interview with Avery Dulles", All Things Catholic by John L. Allen, Jr., NCRcafe.org, Posted on Dec 19, 2008, at http://ncrcafe.org/node/2340)

Based upon the strength of the Catholic biblical, theological and traditional support for the death penalty as, partially, revealed, below, I think the Church will have to.

Even today, a Catholic in good standing can call for more executions, if their prudential judgements finds for that.

(1) "Capital Punishment: New Testament Teaching", 1998, Fr. John A. Hardon, S.J., considered one of the most prominent Roman Catholic theologians of the 20th century. See bottom.http://www.therealpresence.org/archives/Sacred_Scripture/Sacred_Scripture_014.htm

"There are certain moral norms that have always and everywhere been held by the successors of the Apostles in communion with the Bishop of Rome. Although never formally defined, they are irreversibly binding on the followers of Christ until the end of the world." "Such moral truths are the grave sinfulness of contraception and direct abortion. Such, too, is the Catholic doctrine which defends the imposition of the death penalty."

"Most of the Church's teaching, especially in the moral order, is infallible doctrine because it belongs to what we call her ordinary universal magisterium."

"Equally important is the Pope's (Pius XII) insistence that capital punishment is morally defensible in every age and culture of Christianity." " . . . the Church's teaching on 'the coercive power of legitimate human authority' is based on 'the sources of revelation and traditional doctrine.' It is wrong, therefore 'to say that these sources only contain ideas which are conditioned by historical circumstances.' On the contrary, they have 'a general and abiding validity.' (Acta Apostolicae Sedis, 1955, pp 81-2)."

about Fr. John A. Hardon, S.J.
http://www.mariancatechist.com/html/general/stjohnhardon.htmhttp://www.therealpresence.o

(2) "The Death Penalty", by Romano Amerio, a faithful Catholic Vatican insider, scholar, professor at the Academy of Lugano, consultant to the Preparatory Commission of Vatican II, and a peritus (expert theologian) at the Council.

http://www.domid.blogspot.com/2007/05/amerio-on-capital-punishment.html

"Amerio has the great gift of going to the heart of a subject in a few lines and very neatly distinguishes genuine Catholicism from imitations and aberrations." "What makes Amerio's analysis unique is that he restricts himself to official and semi-official pronouncements by popes, cardinals, bishops, episcopal conferences and articles in L'Osservatore Romano, from the time of Pope John XXIII to 1985 when the book was originally written." (1)

titled "Amerio on capital punishment ", Chapter XXVI, 187. The death penalty, from the book Iota Unum, May 25, 2007

About Romano Ameriohttp://chiesa.espresso.repubblica.it/articolo/176565?eng=yhttp://www.newliturgicalmovement.org/2006/02/romano-amerio-and-pope-benedict.htmlhttp://www.latin-mass-society.org/2007/romanoamerio.htmlhttp://www.angeluspress.org/oscatalog/item/6700/iota-unum

(3) "Christian Scholars & Saints: Support for the Death Penalty", at http://www.homicidesurvivors.com/2006/10/12/catholic-and-other-christian-references-support-for-the-death-penalty.aspx

(4) "Capital Punishment: A Catholic Perspective",
by Br. Augustine (Emmanuel Valenza)
http://www.sspx.org/against_the_sound_bites/capital_punishment.htm

(5) "Capital Punishment: The Case for Justice", Prof. J. Budziszewski, First Things, August / September 2004 http://www.orthodoxytoday.org/articles4/BudziszewskiPunishment.shtml

(6) "The Death Penalty", by Solange Strong Hertz at
http://www.ourworld.compuserve.com/HOMEPAGES/REMNANT/death2.htm

(7) "A Seamless Garment In a Sinful World" by John R. Connery, S. J., America, 7/14/84, p 5-8).

(8) "God's Justice and Ours" by US Supreme Court Justice Antonin Scalia, First Things, 5/2002
http://www.firstthings.com/article.php3?id_article=2022

(9) Forgotten Truths: "Is The Church Against Abortion and The Death Penalty"
by Luiz Sergio Solimeo, Crusade Magazine, p14-16, May/June 2007
http://www.tfp.org/index.php?option=com_content&task=view&id=957

(10) "The Purpose of Punishment (in the Catholic tradition)",
by R. Michael Dunningan, J.D., J.C.L., CHRISTIFIDELIS, Vol.21,No.4, sept 14, 2003
http://www.st-joseph-foundation.org/newsletter/lead.php?document=2003/21-4

(11) "MOST CATHOLICS OPPOSE CAPITAL PUNISHMENT?",
KARL KEATING'S E-LETTER, Catholic Answers, March 2, 2004
http://www.catholic.com/newsletters/kke_040302.asp

(12) "THOUGHTS ON THE BISHOPS' MEETING: NOWADAYS, VOTERS IGNORE BISHOPS",
KARL KEATING'S E-LETTER, Catholic Answers,, Nov. 22, 2005
http://www.catholic.com/newsletters/kke_051122.asp

Christian, non Catholic Scholars

(13) Chapter V:The Sanctity of Life, "Principles of Conduct: Aspects of Biblical Ethics" By John Murray
http://books.google.com/books?id=phoqAAaGMpUC&pg=PA107&lpg=PA114&ots=mFvByHqGSy&dq=Murray+%22It+is+the+sanctity+of+human+life+that+underlies+the+sixth+commandment.%22&ie=ISO-8859-1&output=html&sig=ACfU3U1bomdM3BfpNSXnhrwFYXaE_9Ij9A

(14) "Capital Punishment: What the Bible Says", Dr. Lloyd R. Bailey, Abingdon Press, 1987. The definitive biblical review of the death penalty.

(15) "Why I Support Capital Punishment", by Andrew Tallman
sections 7-11 biblical review, sections 1-6 secular review
http://andrewtallmanshowarticles.blogspot.com/search?q=Capital+punishment

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Religious positions in favor of capital punishment are neither necessary not needed to justify that sanction. However, the biblical and theological record is very supportive of the death penalty.

Many of the current religious campaigns against the death penalty reflect a fairly standard anti death penalty message, routed in secular arguments. When they do address religious issues, they often neglect solid theological foundations, choosing, instead, select biblical sound bites which do not impact the solid basis of death penalty support.

Footnotes:
(1) Books: 'Iota Unum: A Study of Changes in the Catholic Church', by Romano Amerio, Fr Peter Joseph (reviewer)
IOTA UNUM: A Study of Changes in the Catholic Church in the 20th Century
by Romano Amerio (English translation by Fr John Parsons)
(Sarto House, USA, 786 pp)
Reprinted from AD2000 Vol 9 No 8 (September 1996), p. 14

70% of Catholics supported the death penalty as of May, 2005, Gallup Poll, Moral Values and Beliefs. The May 2-5, 2005 poll also found that 74% of Americans favor the death penalty for murderers, while 23% oppose.

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www.dpinfo.com
www.cjlf.org/deathpenalty/DPinformation.htm
www.clarkprosecutor.org/html/links/dplinks.htm
www.coastda.com/archives.html see Death Penalty
www.lexingtonprosecutor.com/death_penalty_debate.htm
www.prodeathpenalty.com
http://yesdeathpenalty.googlepages.com/home2 (Sweden)
www.wesleylowe.com/cp.html

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Jane Pierson

From: Sharpjfa@aol.com
Sent: Friday, March 20, 2009 7:56 AM
Subject: Rebuttal of Gov. Richardson - New Mexico Repeal

To: Governors, Legislatures, Attorneys General & Media throughout the US

From: Dudley Sharp, contact info below

SETTING THE RECORD STRAIGHT: A Rebuttal to Governor Richardson
Repeal of the Death Penalty in New Mexico
Dudley Sharp, contact info below

1) Gov. Bill Richardson states: "Faced with the reality that our system for imposing the death penalty can never be perfect, my conscience compels me to replace the death penalty with a solution that keeps society safe." (1)

REBUTTAL: There is no proof of an innocent executed in the US since 1900. There is overwhelming proof that many thousands of innocents have been murdered because of the lack of perfection in parole, probation, early release, prison/jail management etc.

Why did the Governor choose to end that criminal justice practice - the death penalty - which may be the least likely to result in innocent deaths?

Lack of perfection had nothing to do with his decision.

In addition, the death penalty protects innocents at a higher level than does a life sentence. (FOOTNOTE: "Death penalty repeal arguments are false" paragraph 2 & 3).

No one disputes that the death penalty has greater due process than lesser sentences - meaning that actual innocents, serving life, are more likely to die in prison than are actual innocents likely to be executed.

2) Governor Richardson stated: "The bill I am signing today .. . replaces the death penalty with true life without the possibility of parole – a sentence that ensures violent criminals are locked away from society forever .. . ." . (1)

REBUTTAL: Governor Richardson knows that there is no such thing as true life without "possibility" of parole.

The only absolute with sentencing is that the executive branch, a Governor or President, can commute any sentence and release criminals, early - as Governor Richardson did, in Nov. 2004, when he commuted Janet Vigil's "life" case. (2)

How quickly he "forgot".

Gov. Richardson's buddy, former New Mexico Gov. Toney Anaya, commuted William Wayne Gilbert's death sentence in 1986.

Gilbert led a 7 inmate prison escape, a few months later, where Gilbert shot a guard. (3)

Gilbert had previously murdered " . . . his wife, Carol; a newlywed couple, Kenn and Noel Johnson, and a young model, Barbara McMullen. He bragged of other murders, as well. 'It was very easy to kill," he said. "It's almost like it's the night before Christmas when you're 5 years old.' "

Hardly a great candidate for commutation. But, this commutation wasn't about the criminal or about the citizens of New Mexico. It was all about Gov. Anaya. His commutations of all death row, had nothing to do with allegations of protecting innocents - it did just the opposite, of course - he just didn't like the death penalty and he takes no responsibility for the outcome.

In addition, legislatures can write new laws which, retroactively, reduce sentences already given.

Gov. Richardson is aware that states around the US are, now, doing just that, as more consider reducing life sentences to save money by releasing lifers, early.

3) The Governor stated: "More than 130 death row inmates have been exonerated in the past 10 years in this country, including four New Mexicans – a fact I cannot ignore." (1)

REBUTTAL: The Governor has been informed, repeatedly, that the 130 exonerated is a complete fraud, as has been well documented by many and presented to the Governor, often (FOOTNOTE, paragraph 3). Not only is he not ignoring this deception, he is advancing it, even when it is so easy to disprove. Governor, how many innocents were harmed and murdered because of the lack of perfection in parole, probation, early release, prison/jail management etc.?

---

4) What about law enforcements' concerns?

"The New Mexico Sheriffs' and Police Association opposed repeal, saying capital punishment deters violence against police officers, jailers and prison guards. District attorneys also opposed the legislation, arguing that the death penalty was a useful prosecutorial tool." (4)

They told the Governor that the death penalty saves lives and helped solve cases.

The Governor conceded that "the death penalty may be a deterrent"(1), thereby telling us that the death penalty is more likely to save innocent lives than it is to take them.

He also conceded that by repealing the death penalty he was taken away a tool for law enforcement. (1) He didn't speculate how many innocent lives he was sacrificing by ending that tool.

We may never know why he really ended the death penalty. We do know that it had nothing to do with saving innocent lives.

"Bernalillo County Sheriff Darren White said law enforcement officers have 'lost a layer of protection and it's a sad day in New Mexico.' " (4)

(1) Gov. Bill Richardson's statement on signing the repeal of New Mexico's death penalty (3/18/09)

(2) " In Loving Memory of Estevan Vigil", http://www.nmsoh.org/vigil_estevan_mem.htm

(3) "Let Loose by the Governor", The Justice Story, The New York Daily News, 3/11/07 http://www.nydailynews.com/news/ny_crime/2007/03/11/2007-03-11_let_loose_by_the_governor.html

(4) "New Mexico governor signs measure to abolish death penalty" DEBORAH BAKER, Associated Press Writer, Originally published Wednesday, March 18, 2009 at 5:21 PM

FOOTNOTE: "Death penalty repeal arguments are false"

In a message dated 3/17/2009 4:37:39 P.M. Central Daylight Time, Sharpjfa writes:

To: Governor Richardson, staff and cabinet and
Corrections Department and Police Agencies and media throughout New Mexico

From: Dudley Sharp, contact info, below

Dear Honorable Governor Richardson:

In addition to all of the pro-repeal arguments being weak or false (see below), the death penalty should remain as the just sanction for some of the worst crimes.

JUSTICE: The death penalty should remain in New Mexico because of justice. New Mexico is currently investigating serial murders which, to date, have reached 14 victims. Leave the death penalty option up to New Mexico jurors, for such cases as this, as well as the rape/murder of children and the murder of police officers and correction workers and other crimes.

1) COST SAVINGS

The LFC fiscal evaluation wrongly found the North Carolina death penalty more expensive than a 20 year "life" sentence. It wasn't. The was the only study cited (1)

Reasonable and responsible protocols, currently in use, will produce a death penalty which will cost less or no more than LWOP. (2)

Example: Virginia executes in 5-7 years; 65% of those sentenced to death have been executed; 15% of their death penalty cases are overturned. With the high costs of long term imprisonment, a true life sentence will be more expensive than such a death penalty protocol. (2)

Most cost studies suffer from major problems, such as a) not crediting the death penalty for allowing plea bargains to a true life sentence ($300,000 to $1 million savings or more, for each plea); 2) not including geriatric care for life sentences (cost of $60,000-$90,000/year/inmate); c) deceptively inflating costs of executions, based upon putting all the

costs of every death penalty case into those executed (see Florida); d) many more such problems, or even worse. (2)

2) MORE PROTECTION FOR INNOCENTS

Of all the government programs in the world, that put innocents at risk, is there one with a safer record and with greater protections than the US death penalty? Unlikely.

Innocents are more protected because of enhanced due process, enhanced incapacitation and enhanced deterrence. (3)

Anti death penalty folks claim that 130 "innocents" have been released from death row, nationally. Fact checking easily uncovers this as a scam. Study reviews have found that 70-83% of those claims are not credible. Possibly 25 "actual" innocents have been identified and released from death row. (4)

There is no proof of an innocent executed in the US, at least since 1900.

There is overwhelming proof that living murderers harm and murder, again. Executed ones don't.

3) 16 recent studies find for DETERRENCE

16 recent studies, inclusive of their defenses, find for death penalty deterrence. No surprise. Life is preferred over death, death is feared more than life. (5)

There is a constant within all jurisdictions -- negative consequences will always deter some - a truism.

NOTE: Repeal proponents bring up that many death penalty states have higher murder rates than non death penalty states. That has nothing to do with the deterrent effect failing, as fully explained to them and you in a previous email. (6)

Whether a jurisdiction has high murder rates or low ones, rather rising or lowering rates, the presence of the death penalty will produce fewer net murders, the absence of the death penalty will produce more net murders.

An analogy. Consider smoking. Whether a jurisdiction has high smoking rates or low ones, or rising or lowering rates, the knowledge of medical problems from smoking will produce fewer net smokers, the absence of any medical problems from smoking would produce more net smokers.

4. STRONG PUBLIC SUPPORT

80% death penalty support, for specific capital murders, such as mass murder, serial murders, rape/murders, terrorism, etc. (6)

-- 82% in the US favor executing Saddam Hussein, In Great Britain: 69%, France: 58%, Germany: 53%, Spain: 51%, Italy: 46%. , Le Monde (France) , 12/06
-- 81% support Timothy McVeigh's execution - "the consensus of all major groups, including

men, women, whites, nonwhites, "liberals" and "conservatives." 16% oppose (Gallup 5/2/01).

-- 85% of liberal Connecticut supported serial/rapist murderer Michael Ross' "voluntary" execution. (Quinnipiac 1/12/05)
-- 79% support death penalty for terrorists (4/26/2007 New York State poll)
-- 78% of Nebraskans support death penalty for "heinous crimes." 16% opposed. 76% opposed legislation to abolish. MPB Public Affairs Poll, 2/14/08)

Most quoted polls wrongly poll for murder, not capital murders. The death penalty is only an option in capital cases. Possibly, 10% of all murder cases are death eligible. Those are the only cases relevant to death penalty polling.

5) THE LEAST ARBITARY PUNISHMENT

The US death penalty is likely the least arbitrary and capricious criminal sanctions in the US. About 60,000 murders qualified for a death penalty eligible trial, since 1973. 8000 murderers were so sentenced or 13% of those eligible. Based upon pre trial, trial, appellate and clemency/commutation realities and that high percentage (13%) of receiving the maximum sentence (absent mandatory sentences) the death penalty must be the least arbitrary and capricious sanction.

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Respectfully submitted, Dudley Sharp, Justice Matters
e-mail sharpjfa@aol.com, 713-622-5491,
Houston, Texas

Mr. Sharp has appeared on ABC, BBC, CBC, CBS, CNN, C-SPAN, FOX, NBC, NPR, PBS , VOA and many other TV and radio networks, on such programs as Nightline, The News Hour with Jim Lehrer, The O'Reilly Factor, etc., has been quoted in newspapers throughout the world and is a published author.

A former opponent of capital punishment, he has written and granted interviews about, testified on and debated the subject of the death penalty, extensively and internationally

1) "LFC Fiscal Error: Death Penalty Repeal - For Senate Judiciary Committee Record" email to Senate, 3/9/2009 6:11:28 P.M. Central Daylight Time
2) "Cost Savings: The Death Penalty: For Senate Judiciary Committee Record", email to Senate, 3/9/2009 4:45:21 P.M. Central Daylight Time
3) "Death Penalty: More Protection for Innocents" NM, email to Governor Richardson, legislature and media, 3/4/2009 2:49:23 P.M. Central Daylight Time
4) "The death row 130 "innocents" scam" NM, email to Governor Richardson, legislature and media, 3/4/2009 1:36:11 P.M. Central Standard Time
5) "The Death Penalty is a Deterrent - 16 Recent Studies", NM, email to Governor Richardson, legislature and media on 3/4/2009 1:31:35 P.M. Central Daylight Time
6) "Death Penalty and Deterrence: Let's be clear" NM, email to Governor Richardson,

legislators and media on 3/4/2009 1:52:09 P.M. Central Standard Time

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Dana Strommen

From: Sharpjfa@aol.com
Sent: Monday, March 23, 2009 9:20 AM
Subject: Death Penalty, Deterrence & Murder Rates: Let's be clear

To: Governors. Legislators, Attorneys General and Media throughout the US

From: Dudley Sharp, Contact info below

Death Penalty, Deterrence & Murder Rates: Let's be clear
by Dudley Sharp, Justice Matters, 0309

There is a constant within all jurisdictions -- negative consequences will always deter some. Whether a jurisdiction with high murder rates or low ones, rather rising or lowering rates, the presence of the death penalty will produce fewer net murders, the absence of the death penalty will produce more net murders.
In their story, "States With No Death Penalty Share Lower Homicide Rates", The New York Times did their best to illustrate that the death penalty was not a deterrent, by showing that the average murder rate in death penalty states was higher than the average rate in non death penalty states and, it is. (1)

What the Times failed to observe is that their own study confirmed that you can't simply compare those averages to make that determination regarding deterrence.

As one observer stated: "The Times story does nothing more than repeat the dumbest of all dumb mistakes — taking the murder rate in a traditionally high-homicide state with capital punishment (like Texas) and comparing it to a traditionally low-homicide state with no death penalty (like North Dakota) and concluding that the death penalty doesn't work at all. Even this comparison doesn't work so well. The Times own graph shows Texas, where murder rates were 40 percent above Michigan's in 1991, has now fallen below Michigan . . .". (2)

Within the Times article, Michigan Governor John Engler states, "I think Michigan made a wise decision 150 years ago," referring to the state's abolition of the death penalty in 1846. "We're pretty proud of the fact that we don't have the death penalty."(3)

Even though easily observed on the Times' own graphics, they failed to mention the obvious. Michigan's murder rate is near or above that of 31 of the US's 38 death penalty states. And then, it should be recognized that Washington, DC (not found within the Times study) and Detroit, Michigan, two non death penalty jurisdictions, have been perennial leaders in murder and violent crime rates for the past 30 years. Delaware, a jurisdiction similar in size to them, leads the nation in executions per murder, but has significantly lower rates of murders and violent crime than do either DC or Detroit, during that same period.

Obviously, the Times study and any other simple comparison of jurisdictions with and without the death penalty, means little, with regard to deterrence.

Also revealed within the Times study, but not pointed out by them,: "One-third of the

nation's executions take place in Texas—and the steepest decline in homicides has occurred in Texas, Oklahoma, Louisiana and Arkansas, which together account for nearly half the nation's executions." (4)

And, the Times also failed to mention that the major US jurisdiction with the most executions is Harris County (Houston, Texas), which has seen a 73% decrease in murder rates since resuming executions in 1982 -- possibly the largest reduction for a major metropolitan area since that time.

Also omitted from the Times review, although they had the data, is that during a virtual cessation of executions, from 1966-1980, that murders more than doubled in the US. Any other rise and fall in murders, after that time, has been only a fraction of that change, indicating a strong and direct correlation between the lack of executions and the dramatic increase in murders, if that is specifically what you are looking for.

If deterrence was measured by direct correlation's between execution, or the lack thereof, and murder rates, as implied by the Times article, and as wrongly assumed by those blindly accepting that model, then there would be no debate, only more confusion. Which may have been the Times' goal.

Let's take a look at the science.

Some non death penalty jurisdictions, such as South Africa and Mexico lead the world in murder and violent crime rates. But then some non death penalty jurisdictions, such as Sweden, have quite low rates. Then there are such death penalty jurisdictions as Japan and Singapore which have low rates of such crime. But then other death penalty jurisdictions, such as Rwanda and Louisiana, that have high rates.

To which an astute observer will respond: But socially, culturally, geographically, legally, historically and many other ways, all of those jurisdictions are very different. Exactly, a simple comparison of only execution rates and murder rates cannot tell the tale of deterrence. And within the US, between states, there exist many variables which will effect the rates of homicides.

See REVIEW, below

And, as so well illustrated by the Times graphics, a non death penalty state, such as Michigan has high murder rates and another non death penalty state, such as North Dakota, has low murder rates and then there are death penalty states, such as Louisiana, with high murder rates and death penalty states, such South Dakota, with low rates. Apparently, unbeknownst to the Times, but quite obvious to any neutral observer, there are other factors at play here, not just the presence or absence of the death penalty. Most thinking folks already knew that.

As Economics Professor Ehrlich stated in the Times piece and, as accepted by all knowledgeable parties, there are many factors involved in such evaluations. That is why there is a wide variation of crime rates both within and between some death penalty and non death penalty jurisdictions, and small variations within and between others. Any direct comparison of only execution rates and only murder rates, to determine deterrence, would reflect either ignorance or deception.

Ehrlich called the Times study "a throwback to the vintage 1960s statistical analyses done by criminologists who compared murder rates in neighboring states where capital punishment was either legal or illegal." "The statistics involved in such comparisons have long been recognized as devoid of scientific merit." He called the Times story a "one sided affair" devoid of merit. Most interesting is that Ehrlich was interviewed by the Time's writer, Fessenden, who asked Ehrlich to comment on the results before the story was published. Somehow Ehrlich's overwhelming criticisms were left out of the article.

Ehrlich also referred Fessenden to some professors who produced the recently released Emory study. Emory Economics department head, Prof. Deshbakhsh "says he was contacted by Fessenden, and he indicated to the Times reporter that the study suggested a very strong deterrent effect of capital punishment." Somehow,
Fessenden's left that out of the Times story, as well. (5).

An analogy. Consider smoking. Whether a jurisdiction has high smoking rates or low ones, rather rising or lowering rates, the knowledge of medical problems from smoking will produce fewer net smokers, the absence of any medical problems from smoking would produce more net smokers.

It is the same for all prospects of a negative outcome - they all deter some.

Maybe the Times will be a bit more thoughtful, next time.

REVIEW

"The List: Murder Capitals of the World", 09/08, Foreign Policy Magazine
Capital punishment (cp) or not (ncp)
murder rates/100,000 population

4 out of the top 5 do not have the death penalty

1. Caracas (ncp), Venezuela 130-160
Bad policing.
2. New Orleans (cp), La, USA 69-95
Variable because of different counts in surging population. Drug related.
Nos 2 & 3 in US, Detroit (ncp), 46 and Baltimore (cp), 45.
3. Cape Town (ncp), South Africa 62
Most crimes with people who know each other.
4. Port Mores (ncp), Papua New Guinea 54
Chinese gangs, corrupt policing
5. Moscow (ncp), Russia 9.6
various

Of the Top 10 Countries With Lowest Murder Rates (1), 7 have the death penalty

O f the Top 10 Countries With Highest Murder Rates (2), 5 have the death penalty

Top 10 Countries With Lowest Murder Rates

Iceland 0.00 ncp
Senegal 0.33 ncp
Burkina Faso 0.38 cp
Cameroon 0.38 cp
Finland 0.71 ncp
Gambia 0.71 cp
Mali 0.71 cp
Saudi Arabia 0.71 cp
Mauritania 0.76 cp
Oman cp

Top 10 Countries With Highest Murder Rates
Honduras 154.02 ncp
South Africa 121.91 ncp
Swaziland 93.32 cp
Colombia 69.98 ncp
Lesotho 50.41 cp
Rwanda 45.08 ncp
Jamaica 37.21 cp
El. Salvador 36.88 cp
Venezuela 33.20 ncp
Bolivia 31.98 cp

(1) http://www.mapsofworld.com/world-top-ten/countries-with-lowest-murder-rates.html no date

(2) http://www.mapsofworld.com/world-top-ten/countries-with-highest-murder-rates.html no date

FOOTNOTES

1) "States With No Death Penalty Share Lower Homicide Rates", The New York Times 9/22/00 located at www (dot) nytimes.com/2000/09/22/national/22STUD.html and www (dot) nytimes.com/2000/09/22/national/22DEAT.html
2) "Don't Know Much About Calculus: The (New York) Times flunks high-school math in death-penalty piece", William Tucker, National Review, 9/22/00, located at www (dot) nationalreview.com/comment/comment092200c.shtml
3) ibid, see footnote 11
4) "The Death Penalty Saves Lives", AIM Report, August 2000, located atwww (dot) aim.org/publications/aim_report/2000/08a.html
5) "NEW YORK TIMES UNDER FIRE AGAIN", Accuracy in Media, 10/16/00, go to www (dot) aim.org/

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e-mail sharpjfa@aol.com, 713-622-5491,
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Pro death penalty sites

homicidesurvivors.com/categories/Dudley%20Sharp%20-%20Justice%20Matters.aspx

www.dpinfo.com
www.cjlf.org/deathpenalty/DPinformation.htm
www.clarkprosecutor.org/html/links/dplinks.htm
www.coastda.com/archives.html
www.lexingtonprosecutor.com/death_penalty_debate.htm
www.prodeathpenalty.com
yesdeathpenalty.googlepages.com/home2 (Sweden)
www.wesleylowe.com/cp.html

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Dana Strommen

From: Sharpjfa@aol.com
Sent: Wednesday, March 25, 2009 4:38 AM
Subject: Support for the death penalty: A Brief

To: Governors. Legislators, Attorneys General and Media throughout the world

From: Dudley Sharp, Contact info below

Support for the death penalty: A Brief
Dudley Sharp, contact info below

Full review in FOOTNOTE

1) COST SAVINGS

Reasonable and responsible protocols, currently in use, will produce a death penalty which will cost less or no more than LWOP.

Example: Virginia executes in 5-7 years; 65% of those sentenced to death have been executed; 15% of their death penalty cases are overturned. With the high costs of long term imprisonment, a true life sentence will be more expensive than such a death penalty protocol.

Most cost studies suffer from major problems, such as a) not crediting the death penalty for allowing plea bargains to a true life sentence ($300,000 to $1 million savings or more, for each plea); 2) not including geriatric care for life sentences (cost of $60,000-$90, 000/year/inmate); c) deceptively inflating costs of executions, based upon putting all the costs of every death penalty case into those executed (see Florida); d) many more such, as the recent Maryland cost study have even worse problems.

2) MORE PROTECTION FOR INNOCENTS

Of all the government programs in the world, that put innocents at risk, is there one with a safer record and with greater protections than the US death penalty? Unlikely.

Innocents are more protected because of enhanced due process, enhanced incapacitation and enhanced deterrence.

Anti death penalty folks claims that 130 "innocents" have been released from death row, nationally. Fact checking easily uncovers this as a scam. Study reviews have found that 70-83% of those claims are not credible. Possibly 25 "actual" innocents have been identified and released from death row.

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There is overwhelming proof that murderers murder, again.

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An analogy. Consider smoking. Whether a jurisdiction has high smoking rates or low ones, or rising or lowering rates, the knowledge of medical problems from smoking will produce fewer net smokers, the absence of any medical problems from smoking would produce more net smokers.

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6) Review of any more topics upon request

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Dudley Sharp, Justice Matters
e-mail sharpjfa@aol.com, 713-622-5491,
Houston, Texas

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Pro death penalty sites

FOOTNOTE: homicidesurvivors.com/categories/Dudley%20Sharp%20-%20Justice%20Matters.aspx

www.dpinfo.com
www.cjlf.org/deathpenalty/DPinformation.htm
www.clarkprosecutor.org/html/links/dplinks.htm
www.coastda.com/archives.html see Death Penalty
www.lexingtonprosecutor.com/death_penalty_debate.htm
www.prodeathpenalty.com
http://yesdeathpenalty.googlepages.com/home2 (Sweden)
www.wesleylowe.com/cp.html

Great Deals on Dell 15" Laptops - Starting at $479

HB 9

OPPOSITION

(FILE 4)

Resolution Adopted by the CCAR

Capital Punishment

Adopted by the CCAR at the 90th Annual Convention of the Central Conference of American Rabbis Phoenix, Arizona, March 26-29, 1979

In 1958 and again in 1960, the Central Conference of American Rabbis stated its opposition to all forms of capital punishment.

We reaffirm that position now. Nothing which we have observed during the intervening years has shaken our convictions that:

a. Both in concept and in practice, Jewish tradition found capital punishment repugnant, despite Biblical sanctions for it. For the past 2.000 years. with the rarest of exceptions, Jewish courts have refused to punish criminals by depriving them of their lives.

b. No evidence has been marshaled to indicate with any persuasiveness that capital punishment serves as a deterrent to crime.

c. We oppose capital punishment under all circumstances.

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info@ccarnet.org
For questions or comments about this site email the webmaster:
webmaster@ccarnet.org

From: Rabbi Michael Oblath 2/19/09

AMERICAN CIVIL LIBERTIES UNION OF ALASKA
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Anchorage, AK 99520
(907) 258-0044
(907) 258-0288 (fax)
WWW.AKCLU.ORG

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GALEN PAINE, Sitka
JUNE PINNELL-STEVENS, Fairbanks
RICHARD SEIFERT, Fairbanks
NADINE WINTERS, Fairbanks

February 24, 2009

The Honorable Jay Ramras
Chair, House Judiciary Committee
Alaska State House of Representatives
State Capitol, Room 118
Juneau, AK 99801-1182

Via fax 907-465-2070 and email: Rep_Jay_Ramras@legis.state.ak.us

Re: **Opposition to HB 9**

Dear Chairman Ramras:

On behalf of the American Civil Liberties Union (ACLU) of Alaska and our thousands of members and activists throughout the state, as well as our Board of Directors and Staff, I am writing to express our **strong opposition to House Bill 9** seeking to authorize capital punishment in the State of Alaska.

The American Civil Liberties Union of Alaska is a non-partisan organization which preserves and expands personal freedom through public advocacy. As a state affiliate of the national ACLU, we are part of the country's largest and preeminent civil liberties organization, which has been instrumental in shaping constitutional law at the state and federal levels. The ACLU of Alaska protects all Alaskans, with the mission of defending those rights guaranteed under the United States and Alaska Constitutions.

Capital Punishment Denies Civil Liberties

The death penalty is the ultimate denial of civil liberties. The ACLU opposes capital punishment as a clear violation of the United States Constitution's Eighth Amendment ban on cruel and unusual punishments. Capital punishment is routinely imposed based on wholly improper factors, such as race, class, or the quality of counsel. Its administration is fraught with error

and results in the conviction and execution of the innocent. To date, 130 death-row inmates have been exonerated in the modern death penalty era.

Unequal justice is no justice at all.

As a State, Alaska has never had the death penalty, and we don't need it now.

Capital punishment is proven to be an unreliable and expensive means of punishment. It is – quite simply – a failed government program. The State of Alaska does not need to visit these failures on our citizens. In brief, capital punishment would:

- Do nothing to protect Alaskans from crime;
- Seriously harm the survivors of homicide victims; and
- Cost Alaska far more than life imprisonment without release.

The United States remains the only advanced Western democracy that fails to recognize capital punishment as a profound human rights violation and as a frightening abuse of government power. Our state does not need to take a step backwards and institute an archaic system whose time has passed.

Many Factually Innocent Persons Have Been Sentenced to Death

130 persons have been exonerated from death row in the last 35 years. These startling numbers establish the unreliability of the capital punishment process. Were Alaskans to institute the death penalty, we would essentially guarantee the wrongful imposition of the ultimate penal sanction.

A 2001 study by the Center for Wrongful Convictions at Northwestern Law School found that 86 innocent people were sentenced to death based on:

Eyewitness error - from confusion or faulty memory;

Government misconduct - by both the police and the prosecution;

Junk science - mishandled evidence or use of unqualified "experts;"

Snitch testimony - often given in exchange for a reduction in sentence;

False confessions - resulting from mental illness or retardation, as well as from police torture; or

Other causes – such as hearsay, questionable circumstantial evidence, etc.

No legislation can create a capital punishment system immune from these shortcomings.

A Columbia Law School study published in 2002, covered 23 years of capital cases and found an overall rate of prejudicial error in the American capital punishment system of 68%.

Death penalty proponents may argue that exonerations establish that the "system works." However, sadly, evidence shows the system has grievously failed:

> Cameron Willingham was executed in Texas in 2004 for arson and the murder of his three daughters. In 2004, the *Chicago Tribune* had fire experts review the case and in 2006, the Innocence Project had a different set of fire experts review Willingham's case. The experts for the *Tribune* and Innocence Project found that the science used is no longer valid and that the fire may have been accidental.
>
> Texas itself has hired an investigator to also look at the evidence in Willingham's case. Ernest Willis was exonerated from death row because the science used to convict him is no longer valid. This same science was used to convict and ultimately execute Willingham.
>
> Carlos DeLuna was executed in 1989. The *Chicago Tribune* also investigated his case. Another man confessed to the crime and there was not sufficient evidence that pointed to DeLuna as the killer.

Numerous Studies Establish the Racial Inequities in Imposition of the Death Penalty

Like the divisions in the Jim Crow South, the death penalty – to this day – continues to divide us by race and socioeconomic status. In 1976, the Supreme Court approved modern death penalty statutes that were ***supposed*** to ensure that death sentences were neither arbitrary nor discriminatory.

However, evidence from the past 33 years irrefutably establishes that capital punishment remains arbitrary and improperly linked to race and socioeconomic status. Very recent blue ribbon studies in California,[1] and Maryland,[2] reiterate empirical research from across the country that

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[1] *California Commission on the Fair Administration of Justice Report and Recommendations on the Administration of the Death Penalty in California*, June 30, 2008. "Overall, controlling for all other predictor variables, they found all those who kill African Americans, regardless of the ethnicity or race of the perpetrator, are 59.3% less likely to be sentenced to death than those who kill non-Hispanic whites." *Id.* at 92. The report may be viewed at: http://www.ccfaj.org/documents/reports/dp/official/FINAL%20REPORT%20DEATH%20PENALTY.pdf.

consistently demonstrates: a defendant who kills a white person is far more likely to receive the death penalty than a defendant who kills a person of color; and the racial configuration most likely to result in a death sentence is a black-on-white crime. Similarly, this research demonstrates that defendants whose victims are high in socioeconomic status face a significantly higher risk of execution.

It is important to note, that the death penalty's racial and socioeconomic bias persists ***despite the best efforts of legislators and judges to erect fair and equitable capital punishment procedures.*** This bias sends the clear and morally repugnant message that society values wealthy victims more than poor and middle class victims, and white victims more than victims of color. Current statistics in the State of Alaska establish that our Alaska Native population and communities of color are disproportionately represented in the criminal justice system. This fact alone should be sufficient to establish that we must not introduce a flawed and racially inequitable capital punishment system into our State.

Finally, capital punishment is harmful to people of color and poor people for another reason: the death penalty aggressively consumes scarce state resources upon which many poor people and people of color depend. In cities across the country, prosecuting death penalty cases has left prosecutors' offices in dire financial straits. In New Orleans, for example, the prosecutor's office filed for bankruptcy after being held civilly liable for wrongfully sentencing to death an innocent man. Every dollar spent on the death penalty is one dollar unavailable for community policing and other measures to make poor or at-risk communities safer.

Maintaining a Capital Punishment System is Significantly
More Expensive than Life Without the Possibility of Parole

Several states have released studies which demonstrate how expensive it is to continue capital punishment. Maryland's Commission on Capital Punishment reported that death penalty cases cost about $1.9 million dollars more per case than non-capital cases. Studies in California, New Jersey, North Carolina, Tennessee, Texas and Washington have reached similar conclusions.

The fiscal notes to HB 9 demonstrate that Alaska would be faced with a similar unjustifiable economic burden.

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[2] Maryland Commission on Capital Punishment, *Final Report to the General Assembly*, December 12, 2008. "Finding: Racial disparities exist in Maryland's capital sentencing system. While there is no evidence of purposeful discrimination, the statistics examined from death penalty cases from 1978 to 1999 demonstrate racial disparities when the factors of the race of the defendant and the race of the victim are combined. (Results of Commission Vote on Finding: AGREE = 20; DISAGREE = 1)." *Id.* at 10. The report may be viewed at: http://goccp.org/capital-punishment/documents/death-penalty-commission-final-report.pdf.

And testimony by State of Alaska agency representatives to this Committee has shown, the cost is not just for indigent defense necessary to attempt to meet constitutional mandates which have ineffectively sought to address the unfair and arbitrary nature of capital punishment. Death penalty cases exhaust the resources of ***prosecutor's offices*** as well. Those resources should be put to better use.

Capital Punishment Has No Deterrent Effect

Simply put: there are no studies that show conclusively that the death penalty deters murder. Testimony to this Committee has acknowledged that fact.

Since 1977 over 80% of all executions have occurred in the South, the region with the highest murder rate. The Northeast, the region with the lowest murder rate, has accounted for less than 1% of the executions. Although the issue of deterrence has been studied extensively, there is no credible evidence that capital punishment deters murder or makes us any safer.

Introducing the Death Penalty into Alaska
Would Put Our State on the Wrong Side of History

Civil societies understand the inherent problems with, and moral failings of, capital punishment.

In 2007, New Jersey abolished the death penalty. The Maryland Commission on Capital Punishment recommended abolition of the death penalty.

This year abolition is being seriously discussed and may occur in New Mexico, Montana, Maryland and Colorado.

Last year, Harris County, Texas which if it were a state would be second only to Texas in executions, did not send one person to death row.

The Bureau of Justice Statistics show that in 2007, death sentences were at an all time low since the death penalty was reinstated in 1976.

According to the Death Penalty Information Center, several law enforcement officials and pro-death penalty politicians have misgivings about the use, cost and fairness of the death penalty. These officials include:

> Jeanne Woodward, former Director of the California Department of Corrections and Warden of San Quentin Prison;

James Abbott, Police Chief, West Orange, NJ, and member of the New Jersey Death Penalty Study Commission;

Donald McCartin, former Orange County, CA, Superior Court Judge, who sentenced nine men to death; and

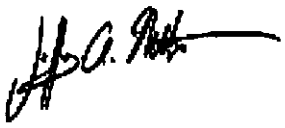
Sen. Joseph Tydings, former U.S. Senator and prosecutor

At a time when our sister states are confronting the myriad shortcomings with capital punishment, Alaska should reject any efforts to introduce this failed system to our State.

The ACLU of Alaska urges the Committee Members to reject House Bill 9.

Please feel free to contact the undersigned if you wish additional documentation regarding any of the information provided.

Sincerely,



Jeffrey Mittman
Executive Director

cc: House Judiciary Committee

Vice Chair Dahlstrom, via email: Representative_Nancy_Dahlstrom@legis.state.ak.us
Representative Coghill, via email: Representative_John_Coghill@legis.state.ak.us
Representative Gatto, via email: Representative_Carl_Gatto@legis.state.ak.us
Representative Lynn, via email: Representative_Bob_Lynn@legis.state.ak.us
Representative Gruenberg, via email: Representative_Max_Gruenberg@legis.state.ak.us
Representative Holmes, via email: Representative_Lindsey_Holmes@legis.state.ak.us

Catholic Bishop of Northern Alaska
1316 Peger Road
Fairbanks, AK 99709
(907) 374-9500

11 March 2009

The Honorable Jay Ramras, Chair
House Judiciary Committee
State Capitol
Juneau, Alaska 99811

Dear Representative Ramras:

As you know, the Catholic Church staunchly defends life: the seamless fabric of life that extends from those still in the womb to those facing their final moments on this earth. As Catholics we believe the taking of life is permissible only in the most extraordinary circumstances in order to prevent the taking of other life. That is why I am distressed at the legislation you co-sponsored, House Bill 9, authorizing capital punishment.

As Archbishop Roger Schwietz has already expressed to you, there are compelling arguments against capital punishment: it is ineffective in deterring violent crime; it falls most heavily on those who are already the most disenfranchised in our society, the poor and those of color; and the evidence sending the convicted to their deaths is too often flawed. For all these reasons capital punishment is not only unjust, it also undermines the dignity of life in our society and our sense of self-worth. Finally, polling data suggests the majority of Alaskans oppose the death penalty.

Thus, I urge you and your legislative colleagues to withdraw your support for HB 9, an unjust, ineffective and potentially unpopular piece of legislation. Rather, I urge you to turn your attention to those pieces of legislation that will increase justice, fairness and the common good.

Thank you for your time and attention.

In His service.

Donald J Kettler

Bishop Donald J. Kettler

cc: Members of House Judiciary
Rep. Scott Kawasaki
Rep. David Guttenburg
Rep. Mike Kelly

COVER SHEET

FAX to: REP. HOLMES 18 pages to follow

907 465-[illegible]

From: Mary Beth Koster
Letters for Justice
Holy Family Cathedral
Anchorage, AK 99501

RE: HB 9

The following letter(s) were written by church members in February. Please work to see that the Death Penalty does NOT return to Alaska.

COVER SHEET

Fax to: Rep. JAY RAMAS
(907) 465-2070

17 pages to follow

From: Mary Beth Koster
Letters for Justice
Holy Family Cathedral
Anchorage, AK 99501

RE: HB 9

The following letter(s) were written by church members in February. Please work to see that the Death Penalty does NOT return to Alaska.

letter re: opposition

Sunday, February 8, 2009 10:09 AM

From: "SManf10089@aol.com" <SManf10089@aol.com>
To: marybethkoster@yahoo.com
Cc: SManf10089@aol.com

To Whom it May Concern:

I am writing to express my opposition to the Death Penalty being reinstated in Alaska.
In reality, it makes no difference in the statistics.
It may make some people feel better.
It costs more money to impose the death penalty than to incarcerate the person.

I also believe we do not do enough to help with prevention of violence, or giving people hope and the tools to help others and themselves. I see many triggers that perpetuate the dangers to the unborn, the general population, and the elderly. Let's put our money into the following to help these populations:

More money for police and health care practitioners as well as:

- decent wages and jobs
- health care
- homes with necessary support
- treatment for mental illness at community level
- reliable treatment, counseling and meds for those wanting to get off drugs and alcohol
- more reasonable rates for child birth assistance and day care.

Thank you! Again, I oppose the imposition of the death penalty.

Sandra Manfred
1503 Elmendorf Drive
Anchorage, Alaska
907 333-1926

Feb. 8th 2009

Holy Family Cathedral
Letters for Justice
Statement in Opposition to the Death Penalty

We, the undersigned, are called to voice our opposition to House Bill 9, which calls for reinstatement of the death penalty.

We object to the death penalty for the following reasons:

- Catholic teaching, as expressed in the *Catechism of the Catholic Church* and other statements of the Vatican and the bishops, makes clear that the use of the death penalty cannot be justified when the state has other ways to protect society.

-We have other ways to punish criminals and protect society.

-The death penalty in our land is deeply flawed. More than115 people on death row have been exonerated. The death penalty is unfairly applied due to many factors, including where a crime is committed, the race of the victim and offender, and the quality and costs of defense.

-The death penalty diminishes all of us. Its use ought to be abandoned not only for what it does to those who are executed, but what it does to us as a society. We cannot teach respect for life by taking life. The sanction of death, when it is not necessary to protect society, violates respect for human life and dignity.

-The cost of the death penalty are significantly greater than imprisoning convicts for life.

We oppose the death penalty and do not want to see it reinstated in Alaska. We welcome your response and urge you to oppose any legislation calling for the use of capital punishment. Thank you.

Holy Family Cathedral Members

Name		Address	
Kay F Gayewski	1805	Juneau Dr Anchorage	AK 99501
Carol Bodges	3541	Heartwood Pl. Anch.	AK 99504
Leone M. Barrett	3761	Winterset Dr	99508
Mary E Mills	4100	Balchen Dr	99517
Greg Bidwell	3301	Purdue St Anch	AK 99508
MANUEL LOPEZ	12571	JOHNS ROAD	ANCH 99515
Lorraine R. Lopez	12871	Johns Road	Anchorage 99515-3708

Dominic DeMaio 811 W. 6th Ave. Anchorage, AK 99501
Mary Jane Henrichsen 2938 Princeton Anchorage AK 99508
Jennifer Shin JOSEPH P. SHIN 3515 LAKESHORE DRIVE ANCHORAGE AK 99517
Scott D. Keller Scott D. Keller 811 W 6th Ave. Anchorage AK 99501
Maureen Johnson Maureen Johnson 124 E. 23rd Anch AK 99503
matt johnson matt johnson 124 E. 23rd Anch. AK 99503

Holy Family Cathedral
Letters for Justice
Statement in Opposition to the Death Penalty

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-We have other ways to punish criminals and protect society.

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-The cost of the death penalty are significantly greater than imprisoning convicts for life.

We oppose the death penalty and do not want to see it reinstated in Alaska. We welcome your response and urge you to oppose any legislation calling for the use of capital punishment. Thank you.

Holy Family Cathedral Members

Name	Address
Glen Nielsen	2830 Windys Way 99517
Matt Abbay	2502 Leighton Cr 99517
Rita Friedrichs	7445 Questa Ave EAFB 99506
Mary Kim	10260 Jamestown Dr. #22 99507
David A. Talbot	7813 Baymar 99518
TIMOTHY WALSH	PO BOX 91234 ANC. AK. 99509
THERESA L. LUTES	1335 W. 12TH AVE ANCH, AK 99501

G

Guadalupe Ortega 1210 Thuja Ave Anchorage, AK 99501
Lynne R. Alton - P.O. Box 190436, Anchorage, AK 99519-0436
Gillian A. Callahan 570 L #705 - Anch. 99504
Maria Angela Diaz 3424 E. 15th Ave. Anchorage 99508
Lorrie Benson 364 E 23rd anchorage 99503
DAVID VAN TUYL 460 E. 56TH #H ANCHORAGE 99518
Wayne Blue Jacky 19950 Driftwood Bay Dr Eagle River 99577
Guadalupe Ortega 1210 THUJA AVE AK 99507
Maria De Soto PO Box 102247 Anch AK 99510
Brenda Mills 414 E. 23rd Anch. AK 99503
Francisco H Castro 1036 E 9th Ave Anchorage AK 99501
Victoria Castro 1036 E 9th Ave Anchorage AK 99501

Feb 8, 2009

Dear Governor Palin,

Just a quick note asking you to stand firm on opposing the death penalty.

Sincerely

Mary Jane Henrickson

February 8th, 2009

To Senator French

As a constituent of your, living in Anchorage, Alaska, I write to you to express my opposition to the death penalty.

- Pope John Paul II and the bishops have clearly asked us to act to end the use of the death penalty.

-Catholic teaching, as expressed in the *Catechism of the Catholic Church* and other statements of the Vatican and the bishops, makes clear that the use of the death penalty cannot be justified when the state has other ways to protect society.

- The death penalty in our land is deeply flawed. More than115 people on death row have been exonerated. The death penalty is unfairly applied due to many factors, including where a crime is committed, the race of the victim and offender, and the quality and costs of defense.

-The death penalty diminishes all of us. Its use ought to be abandoned not only for what it does to those who are executed, but what it does to us as a society.

-We cannot teach respect for life by taking life.

I urge you to oppose any legislation that would call for the death penalty to be reinstated in Alaska. I welcome your response.

Sincerely,

Mary E Mills
4100 J Balchen Dr.
Anchorage AK 99517

July 8, 2009

Mr Yara,

I was unable to attend the Bartlett block meeting Thurs. but I understand that a state defense atty. gave a wonderful talk against the death penalty.

Also, belief in the Catholic faith of which I am a member is against the death penalty.

I hope that when this issue comes up that you will vote against it

Sincerely
Mary Jane Henrickson

To Lee Gale, February 8, 2009

I oppose the death penalty. It is inhumane, unfair to race, class, gender and does not prevent Crime.
Let us not allow the death penalty to taint its ugly face on the state of Alaska. Defeat House Bill 9

Sincerely,
Kay Gajewski (KAY GAJEWSKI)
18015 Juneau Dr
Anchorage, AK 99501

February 8th, 2009

To Les Gara

As a constituent of your, living in Anchorage, Alaska, I write to you to express my opposition to the death penalty.

- Pope John Paul II and the bishops have clearly asked us to act to end the use of the death penalty.

-Catholic teaching, as expressed in the *Catechism of the Catholic Church* and other statements of the Vatican and the bishops, makes clear that the use of the death penalty cannot be justified when the state has other ways to protect society.

- The death penalty in our land is deeply flawed. More than115 people on death row have been exonerated. The death penalty is unfairly applied due to many factors, including where a crime is committed, the race of the victim and offender, and the quality and costs of defense.

-The death penalty diminishes all of us. Its use ought to be abandoned not only for what it does to those who are executed, but what it does to us as a society.

-We cannot teach respect for life by taking life.

I urge you to oppose any legislation that would call for the death penalty to be reinstated in Alaska. I welcome your response.

Sincerely, Matt & Maureen Johnson

124 E. 23rd Ave.
Anchorage, AK 99503

February 8th, 2009

To Les Gara,

As a constituent of your, living in Anchorage, Alaska, I write to you to express my opposition to the death penalty.

- Pope John Paul II and the bishops have clearly asked us to act to end the use of the death penalty.

-Catholic teaching, as expressed in the *Catechism of the Catholic Church* and other statements of the Vatican and the bishops, makes clear that the use of the death penalty cannot be justified when the state has other ways to protect society.

- The death penalty in our land is deeply flawed. More than115 people on death row have been exonerated. The death penalty is unfairly applied due to many factors, including where a crime is committed, the race of the victim and offender, and the quality and costs of defense.

-The death penalty diminishes all of us. Its use ought to be abandoned not only for what it does to those who are executed, but what it does to us as a society.

-We cannot teach respect for life by taking life.

I urge you to oppose any legislation that would call for the death penalty to be reinstated in Alaska. I welcome your response.

Sincerely, Maureen Johnson

124 E 23rd Ave
Anch. AK 99503

February 8th, 2009

To Johnny Ellis

As a constituent of your, living in Anchorage, Alaska, I write to you to express my opposition to the death penalty.

- Pope John Paul II and the bishops have clearly asked us to act to end the use of the death penalty.

-Catholic teaching, as expressed in the *Catechism of the Catholic Church* and other statements of the Vatican and the bishops, makes clear that the use of the death penalty cannot be justified when the state has other ways to protect society.

- The death penalty in our land is deeply flawed. More than115 people on death row have been exonerated. The death penalty is unfairly applied due to many factors, including where a crime is committed, the race of the victim and offender, and the quality and costs of defense.

-The death penalty diminishes all of us. Its use ought to be abandoned not only for what it does to those who are executed, but what it does to us as a society.

-We cannot teach respect for life by taking life.

I urge you to oppose any legislation that would call for the death penalty to be reinstated in Alaska. I welcome your response.

Sincerely,

L Warren Johnson Mary Johnson

124 E. 23rd Ave

Anch. AK 99503

2/6/09

Dear Senator Ellis

I am writing to you as a constituent and supporter urging you to vote against HB89 for the following reasons:

Studies have shown that the death penalty does not deter people from committing murder.

States that have the death penalty have found it very expensive to administer in terms of the expense of appeals and subsequent investigations.

Mistakes are made, and innocent people have been released from death row.

The administration of the death penalty necessarily discriminates based on race and socioeconomic factors. Minorities, especially those that kill whites, are much more likely to find themselves on death row. Rich clients can present themselves more sympathetically and hire attorneys that can dedicate themselves wholly to the defendants defense.

As a Catholic, I believe life is precious, and the state should not institute a penalty that undermines the taking of life appear justified. The penalty says it's alright to kill if done righteously - a dangerous message to send.

Also, as a Catholic, I believe that everyone, no matter how debased they are currently, can eventually come to regret their actions and feel contrition. They should be given that opportunity.

Feb. 9,

Dear Mr Ellis,

We are a group at Holy Family church are writing to Juneau in hopes that the death penalty will not be used in Alaska.

Not only am I against it from a religious standpoint but from the financial point as I understand the cost of life imprisonment is much less than death penalty.

I hope you will heed our plea.

Sincerely

Mary Jane Kinneckson

1 of 2

2/6/09

Dear Representative Gardner,

I am writing to you as a constituent and supporter urging you to vote against HB9, the bill that seeks to reinstitute the death penalty in Alaska.

There are many practical reasons why the death penalty should not be reinstituted. It hasn't been shown to be a deterrent, especially in its current form in the United states, where the execution is done in secret, away from public eyes. Studies have found that it cost more to administer the death penalty constitutionally given the greater expense with the trial, the appeal, and subsequent investigations. The death penalty almost can't help but be administered in a way that discriminates based on racial and socio-economic grounds. The rich can afford better attorneys, can often present themselves better, and a jury of community members will more easily identify (and not seek the death penalty for) with people like them - people of the same race. Finally, if done in a rapid and public way, the risk of making a tragic mistake increases, and frequent executions desensitize the public to the awfulness of taking a human life, even if the taking is sanctioned by the state.

I oppose the death penalty as a Catholic for more than just practical reasons. I believe in the sanctity of life. I believe a human being, even one declared enough to commit murder, can obtain an eternal redemption before the eyes of God. I am not claiming that a murderer can be rehabilitated, or that the law should go easy on them. I think a murderer should contemplate what they've done, and privately come to ask for forgiveness. For ~~please~~

2 of 2

Sorry for the length of the letter but I care about this issue.

Please oppose HB9.

Greg Bidwell
3301 Arctic St.

February 8th, 2009

To Senator Leslie McGuire,

As a constituent of yours, living in District 28 Anchorage, Alaska, I write to you to express my opposition to the death penalty.

- Pope John Paul II and the bishops have clearly asked us to act to end the use of the death penalty.

-Catholic teaching, as expressed in the *Catechism of the Catholic Church* and other statements of the Vatican and the bishops, makes clear that the use of the death penalty cannot be justified when the state has other ways to protect society.

- The death penalty in our land is deeply flawed. More than 115 people on death row have been exonerated. The death penalty is unfairly applied due to many factors, including where a crime is committed, the race of the victim and offender, and the quality and costs of defense.

-The death penalty diminishes all of us. Its use ought to be abandoned not only for what it does to those who are executed, but what it does to us as a society.

-We cannot teach respect for life by taking life.

I urge you to oppose any legislation that would call for the death penalty to be reinstated in Alaska. I welcome your response.

Sincerely,

Lorraine R. Lopez

12871 JOHNS ROAD

99515-3708

Testimony on House Bill 9
25 February 2009

Chairman Ramras and members of the Judiciary Committee:

Good afternoon. My name is Charles Rohrbacher and I am a deacon of the Roman Catholic diocese of Juneau. As a Catholic I am pro-life and I believe that as a society we have a duty to protect human life from conception to natural death. In keeping with the Church's magisterial teaching, as a matter of faith and of principle I am opposed to capital punishment in every circumstance.

But I have come to speak to you this afternoon about my personal experience with the death penalty. In 1977 as a journalist, I became involved in the case of a young Korean immigrant named Chol Soo Lee. He had been wrongfully convicted of a 1973 gang slaying in San Francisco and while in prison was attacked by another inmate and in self-defense killed his attacker. But having been convicted as a gang killer already, his plea of self defense was brushed aside and in short order he was convicted and sentenced to death.

As a journalist I helped in the investigation into the circumstances of the first degree murder conviction that landed Chol Soo Lee in prison in the first place. We discovered that he had been convicted on the basis of being identified as the murderer by white tourists who had witnessed the crime from a distance. He barely spoke English, his public defender got a change of venue and then pulled out of the case two weeks before trial and he was defended by a pro bono attorney appointed by the court at the last minute. In addition, there was a tremendous amount of pressure from the public and from political officials to get a conviction.

Years later it was discovered that police and prosecutors had suppressed important, exculpatory evidence: they failed to inform his defense attorney that the police had statements from other witnesses to the crime who had told police that he wasn't the gunman or who identified an entirely different person as the killer.

In 1982 after eight years of solitary confinement on San Quentin's Death Row, Chol Soo Lee was granted a new trial and was completely exonerated and released from San Quentin's Death Row.

My involvement in the struggle to save this innocent young man from execution taught me this: that human beings are inherently fallible. Human beings can be relied on to make mistakes from time to time. They can be relied on to get things wrong, and even, to act carelessly and at times, unjustly. Our institutions, including our judicial system, are human institutions and are therefore fallible.

Ordinarily, when our courts make mistakes, which are inevitable, it is possible to rectify the wrong done and restore a wrongfully convicted person's liberty to them.

But the death penalty is irrevocable. It is beyond the powers of limited and fallible human beings to bring a wrongfully executed person back from the dead. And because of the fallibility of human beings and of human institutions, one thing is certain: innocent men and women have and will be condemned to death, and have and will be executed.

The possibility, even the probability, that, despite whatever safeguards may be in place, that innocent persons will die at the hands of the state, should deter us from restoring the death penalty in the state of Alaska.

For this reason I urge you to vote against House Bill 9.

Deacon Charles Rohrbacher
Cathedral of the Nativity of the Blessed Virgin Mary
416 5th St.
Juneau, AK 99801
charlesr@gci.net

The Gospel of Life and the Sentence of Death: Catholic Teaching on Capital Punishment

By Rev. Augustine Judd, O.P.

Many Catholics find the Church's teaching on capital punishment confusing. While Christian faith affirms the sanctity of human life, the Church also affirms the legitimacy of executing a duly convicted criminal in particular circumstances. To eliminate this confusion, two distinct but related questions need to be considered: 1) Does society have the right to put a criminal to death for a heinous crime? If so, 2) Do today's circumstances justify the exercise of this right?

The Public Debate

Certainly, recent developments have prompted public officials to reconsider these two issues. For example, last year the State of Illinois released Anthony Porter after more than fifteen years on death row and officially reversed his conviction. Another man had confessed on videotape and was charged with the double murder for which Porter had been convicted and sentenced to die.

On one level, extraordinary circumstances mark Porter's case. In 1998 Porter came within two days of his execution before the court spared him on the grounds it wanted to examine his mental capacity. Porter has an IQ of fifty-one. Nor was the new case for his innocence uncovered in the usual manner. It did not come through the work of attorneys, but through the efforts of an independent investigator collaborating closely with a professor at Northwestern University and his journalism students. In the course of their investigation, they found a witness at the trial who had been pressured by police to testify against Porter.

On another level, Porter's case is not extraordinary at all. Too frequently the administration of justice comes dangerously close to what Illinois governor George Ryan calls "the ultimate nightmare, the state's taking an innocent life." According to the Death Penalty Information Center, since 1973 almost ninety people have been freed from death row after the discovery of exculpatory evidence.

For this reason, public officials in jurisdictions supporting capital punishment have begun recently to question whether it can ever fairly be put into practice. On January 31, 2000, Governor Ryan--a death penalty proponent–inaugurated a moratorium on Illinois executions for an indefinite period. His move was prompted by the exoneration of thirteen Illinois death row inmates since 1977–one more than the number actually executed in that state.

Others have followed Ryan's lead. Although the governor vetoed it, the Nebraska legislature passed a moratorium bill last year. At the time this article was being written, the New Hampshire House of Representatives passed a bill abolishing the death penalty and sent it on to the state Senate for further consideration.
At the national level, doubts about the death penalty have spurred legislative efforts. Sen. Patrick Leahy of Vermont has introduced a bill to preserve biological evidence in capital cases for later testing while making that testing more accessible. It would also establish defense counsel competency requirements, inform juries of alternative sentencing options, and limit the federal government's seeking the death penalty in non-death penalty states. In the House of Representatives, Rep. Jesse Jackson Jr. of Illinois has introduced a bill requiring a minimum seven-year moratorium on all executions. Its purpose is to allow all death row inmates the opportunity to explore potentially exculpatory evidence. The executive branch has been involved in this issue as well. Many have recently called upon President Clinton to suspend federal executions, while the Justice Department has announced it will conduct an internal study on whether bias exists in applying for capital sentences.

The changed attitude about the death penalty among public officials seems to mirror a change in the general population. A recent Gallup poll showed support for the death penalty at its lowest level in nineteen years. At sixty-six percent, it represents a drop of fourteen percentage points in six years. Moreover, only fifty-two percent support the death penalty if there is an existing law allowing life without parole. Ninety-one percent

(an eleven percent rise from the previous year) said they believed innocent people have been sentenced to death.

Other factors have raised questions about how fairly the death penalty can be applied. Racial bias is one of them. Since the federal death penalty was reinstated, seventy-six percent of those sentenced to death in federal court have been members of minority groups. In the cases where the Attorney General has authorized the government to seek the death penalty, twenty-four percent of the defendants have been white, nineteen percent Hispanic, five percent Asian/Indian, and fifty-two percent African American. At present, seventy-four percent of the nineteen inmates under active federal death sentences are non-white. Of the 127 homicides for which ninety-eight convicts were executed in 1999, 104 were committed against whites, while only twenty-three were committed against African Americans, Hispanics, and Asians.

Another factor has been the growing importance of DNA testing. DNA evidence is responsible for reversing at least eight capital convictions over the last twenty-five years. Of the thirteen Illinois inmates freed from death row, five were freed on these grounds. Unfortunately, DNA testing is difficult to attain even in non-capital cases. Clyde Charles, for example, was freed from a Louisiana prison in 1999, after eighteen years for a rape conviction, when DNA testing proved his innocence. His attorneys and family requested this testing as early as 1989, but were blocked by the state for nine years.

Inadequate representation is a final element casting doubt on the fairness of the death penalty's application. Defendants charged with capital crimes often cannot afford expert counsel and must rely on overworked public defenders or inexperienced, low-paid, court-appointed attorneys. *The Chicago Tribune* found in a study that attorneys who were later disbarred or suspended represented thirty-three men convicted of capital crimes in Illinois. The lawyer for Betty Lou Beets, a grandmother recently executed in Texas for killing a physically abusive husband, was himself later convicted of a felony.

The Church Asks: Can We?

The Church has also asked whether society may take the life of the guilty. In answering, the Church has always turned first to what God reveals to us in Sacred Scripture and Tradition. Yet Scripture alone is not conclusive on the matter. In the Old Testament, the first murderer's punishment is not death. God cursed and banished Cain for slaying Abel, but also threatened a sevenfold vengeance on anyone who harmed him (Gen 4:15). However, when Noah leaves the Ark, the Lord blesses him and says to him: "Whoever sheds the blood of man, by man shall his blood be shed; for God made man in his own image."(Gen 9:6).

When God gives Moses the Ten Commandments, the prohibition against killing is not absolute. The ordinances given to Moses in conjunction with the commandments prescribe death for murderers and others. Despite this, God occasionally calls for restraint and mercy. As He says to Ezekiel: "I have no pleasure in the death of the wicked, but that the wicked turn back from his ways and live"(Ez 33:11).

Like the Old Testament, the New Testament is not conclusive about capital punishment. On one hand, Jesus certainly stresses the need to be merciful. Consider the parable of the wheat and the tares (Mt 13:24-30). In this parable, the wheat and the tares represent the righteous and the evildoers. Both are allowed to coexist. Unrepentant evildoers will be punished only at the end of time. The point is that ultimately God alone punishes grave offenders.

On the other hand, Jesus seems to tolerate the practice of capital punishment. When Pilate tells Jesus he has the power to release him or have him crucified, Jesus answers: "You would have no power over me unless it had been given you from above."(Jn 19:11) Jesus refers only to the divine basis of civil power, and does not judge the morality of capital punishment. Nor does he contradict the good thief crucified next to him: "We are receiving the due reward of our deeds...."(Lk 23:41)

St. Paul addresses the issue of capital punishment in his Letter to the Romans. He writes: "Would you have no fear of him who is in authority? Then do what is good, and you will receive his approval, for he is God's servant for your good. But if you do wrong, be afraid, *for he does not bear the sword in vain; he is the servant of God to execute his wrath on the wrongdoer.*" (Rom 13:3-4, emphasis added) Here St. Paul simply tolerates a ruler's authority to carry out capital punishment, without commenting on its morality. Certainly his toleration need not imply his approval.

Neither does the Church in the post-apostolic age establish a clear consensus regarding capital punishment. The views of this period range from accommodation to limited acceptance to outright prohibition of the

practice. St. Clement of Alexandria (c. 150-215) was the first Christian teacher to attempt to devise a theory accommodating capital punishment. He justified his position from the standpoint of self-defense. He suggested that one could become evil beyond any expectation for reform or "cure." In this case the evildoer may be removed by death to prevent further evildoing. He was the first to argue that an evildoer is like an infected limb that plagues the body. If it cannot be cured, the physician (the judge and executioner) must remove it to prevent the infection from harming the rest of the body (society). Others like Tertullian (c.160-220) and Origen (c.185-220) accepted capital punishment as a civil reality, but condemned Christian participation in it. St. John Chrysostom (349-407) and St. Augustine (354-430) recognized the Christian emperor's "power of the sword," even while they thought its application severe on occasion. Still others like Lactantius (d.317) believed that the Fifth Commandment's prohibition against killing allowed no exceptions, even civil.

By the Middle Ages, Christians widely accepted the civil power's right to put evildoers to death. Even so, the Church was quick to condition this right. St. Thomas Aquinas (1225-1274), for example, points out that only a public authority may judge and execute a serious offender where the society's defense is at stake, and where the offender's reform is not expected. St. Thomas leaves no room for private vigilantism.

Following St. Thomas, Catholic moral theologians down to our own day continued to qualify the situations where the death penalty may be applied. Eventually, they formulated three general prerequisites:

1. *For the defense of society*, only a public authority may impose capital punishment. This condition excludes both individual and mob acts of vengeance.

2. *Capital punishment may be imposed only if it corresponds to the gravity of the crime.* In peacetime, capital punishment is chiefly reserved for the crime of murder.

3. *Capital punishment may be imposed only if the accused person's guilt is morally certain.* In normal circumstances this means the accused has the right to a fair trial and a reasonable defense.

The Church Asks: Should We?

Up to this point, we have only examined whether, according to Catholic teaching, society has the right to impose capital punishment. There is another pertinent question Catholic teaching considers, namely, "Should society exercise that right?" Those answering in the affirmative traditionally appeal to three arguments:

1. **Capital punishment as retribution.** It restores the balance of justice by inflicting punishment in exchange for the harm done to an individual and society. Opponents of this argument criticize it for being vindictive. They argue capital punishment cannot be applied in degrees. Yet a convict's culpability for a capital crime often does admit of degrees.

2. **Capital punishment as deterrence.** The threat of death discourages someone from committing heinous acts against individuals and society. Critics dispute the deterrent capability of capital punishment. They say capital punishment may even harden a criminal, who, to avoid arrest and the prospect of execution, is driven to further acts of desperation. Nor will capital punishment effectively deter murders committed "in the heat of passion,"or by the mentally ill or those under the influence of drugs. Finally, critics wonder how executions performed in the presence of just a few witnesses can *publicly* deter potential wrongdoers.

3. **Capital punishment as reform.** The threat of imminent death can spur the conversion and repentance of the convicted, aptly preparing him or her for the next life. Yet, execution poignantly eliminates a converted criminal's period of earthly grace and penitence, since one's lifetime is the only period of "probation" one can enjoy.

Authoritative Catholic teaching draws upon all that has been discussed thus far. It distinguishes between society's *right* to inflict capital punishment, and the *need* to do so. While the Church does not deny the death penalty's proper legitimacy under certain conditions, she does oppose its modern *application*, given the particular circumstances of our culture.

Various national conferences of Catholic bishops have defended this teaching. The U.S. bishops have observed how the abolition of capital punishment would reaffirm the Church's teaching on "the unique worth and dignity of each human person from the moment of conception, a creature made in the image and likeness of God" (*U.S. Bishops Statement on Capital Punishment*, Nov. 1980). Along this line, the Filipino bishops have rejected the classic notion comparing a criminal execution to the removal of a diseased organ. They note that a "human being is not only a member of society as an organ is a member of a living body...". A human being has a value in himself/herself and is not...a limb or organ..." ("Restoring the Death Penalty: 'A Backward Step,'" *Catholic International*, 15-31 Oct. 1992, Vol. 3 No. 18, pp. 886-887).

The *Catechism of the Catholic Church*, published during the pontificate of Pope John Paul II, remains a definitive source of recent authoritative Catholic teaching on capital punishment. It states that the "defense of the common good requires that the unjust aggressor be rendered unable to cause harm"(CCC 2266). The Catechism is clear about what this implies: "Assuming that the guilty party's identity and responsibility have been fully determined, the traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor" (CCC 2267).

Thus, the right of civil society to inflict the death penalty is affirmed. In explaining the right, however, the Catechism adds an important caveat: "If...non-lethal means are sufficient to defend and protect people's safety from the aggressor, authority will limit itself to such means, as these are more in keeping with the concrete conditions of the common good and more in conformity with the dignity of the human person" (CCC 2267).

Papal teaching also plays a most instructive role in elaborating Catholic teaching on capital punishment. In *Evangelium Vitae*, Pope John Paul writes:

The nature and extent of the punishment must be carefully evaluated and decided upon, and ought not go to the extreme of executing the offender except *in cases of absolute necessity*: In other words, when it would not be possible otherwise to defend society. Today however, as a result of steady improvements in the organization of the penal system, *such cases are very rare if not practically nonexistent* (*Evangelium Vitae*, 56, emphasis added).

According to the Holy Father, a society's inability to protect itself by any other means is the determining factor in the decision to execute a criminal. Since our society can remove those guilty of serious offenses by means of life imprisonment, the Holy Father judges as negligible society's need to use the death penalty. Inflicting capital punishment when it is not necessary would transgress Catholic teaching. The pope's opposition to the use of the death penalty is therefore a legitimate exercise of his pastoral leadership as the Vicar of Christ on earth.

Finally, Catholic teaching on capital punishment is an opportunity to examine our own attitudes. While we must show compassion for the victims of crime and support society's legitimate and just self-defense, in Christ we are not free to direct revenge or hate toward anyone. This includes those guilty of criminal wrongdoing. To aid the new evangelization in the new millennium, we must take the words of the American bishops' 1999 *Good Friday Appeal to End the Death Penalty* to heart:

Increasing reliance on the death penalty diminishes all of us and is a sign of growing disrespect for human life. We cannot overcome crime by simply executing criminals, nor can we restore the lives of the innocent by ending the lives of those convicted of their murders. The death penalty offers the tragic illusion that we can defend life by taking life.... Through education, through advocacy, and through prayer and contemplation on the life of Jesus, we must commit ourselves to a persistent and principled witness against the death penalty, against a culture of death, and for the Gospel of Life.

What Every Catholic Should Know About the Death Penalty

Scripture and the Death Penalty

In *A Culture of Life and the Penalty of Death*, the bishops explain the scriptural roots of Catholic teaching on the death penalty. This begins with the story of creation which teaches "that every life is a precious gift from God (see Gn 2:7, 21-23). This gift must be respected and protected. We are created in God's image and redeemed by Jesus Christ, who himself was crucified."

The bishops also explain "some argue that biblical statements about 'life for life, eye for eye, tooth for tooth' (see Ex 21:23-25, Lv 24:17, Dt 19:21) require that the death penalty be used for certain crimes. A correct interpretation of these passages indicates, however, that the principal intent of such laws was to limit the retribution that could be exacted for an offense, not to require a minimum punishment. Furthermore, it is important to read individual passages in the context of Sacred Scripture as a whole. While the Old Testament includes some passages about taking the life of one who kills, the Old Testament and the teaching of Christ in the New Testament call us to protect life, practice mercy, and reject vengeance."

From a Victim's Family...

"No one in our family ever wanted to see the killer of our brother and his wife put to death. We felt instinctively that vengeance wouldn't alleviate our grief. We wanted this murderer in prison so he could never hurt another person. But wishing he would suffer and die would only have diminished us and shriveled our own souls. Hatred doesn't heal. Every time the state kills a person, human society moves in the direction of its lowest, most base urges. We don't have to make that choice. Our lawmakers have the capacity to help us abolish the death penalty and along with it, the fantasy that it will make the pain go away."

—Mary Bosco Van Valkenburg, whose brother and sister-in-law were murdered

Catholic Teaching and the Death Penalty

Catholic teaching offers a unique perspective on crime and punishment. It begins with the recognition that the dignity of the human person applies to both victims and offenders. It affirms our commitment to comfort and support victims and their families, while acknowledging the God-given dignity of every human life, even those who do great harm.

Catholic teaching on human life is rooted in the belief that all life is a gift from God that must be respected and defended from conception to natural death. In his encyclical *The Gospel of Life*, the Holy Father challenges followers of Christ to be "unconditionally pro life." He reminds us that "the dignity of human life must never be taken away, even in the case of someone who has done great evil. Modern society has the means of protecting itself, without definitively denying criminals the chance to reform" (*Gospel of Life*, 27).

I renew the appeal I made most recently at Christmas for a consensus to end the death penalty, which is both cruel and unnecessary . . .

Pope John Paul II, St. Louis, Missouri, January 27, 1999

The *Catechism of the Catholic Church* explains that "the traditional teaching of the Church does not exclude recourse to the death penalty, if this is the only possible way of effectively defending human lives against the unjust aggressor. If, however, non-lethal means are sufficient to defend and protect people's safety from the aggressor, authority will limit itself to such means" (*CCC*, 2267). The test of whether the death penalty can be used is not the gravity of the offense, but whether it is absolutely necessary to protect society. The *Catechism* adds that today "the cases in which the execution of the offender is an absolute necessity 'are very rare, if not practically non-existent'" (*CCC*, 2267).

The Catholic bishops of the United States have spoken out clearly and strongly against the use of the death penalty. In 1999 they issued *A Good Friday Appeal to End the Death Penalty*. They explained their opposition to the death penalty is based on more than concern for "what it does to those guilty of horrible crimes but for what it does to all of us as a society." In 2005 they issued *A Culture of Life and the Penalty of Death*. They acknowledged that sentences such as "life in prison without parole" provide non-lethal alternatives and called for an end to the use of the death penalty in the United States, stating "it is time for our nation to abandon the illusion that we can protect life by taking life."

Ending the death penalty would be one important step away from a culture of death and toward building a culture of life.

United States Catholic Bishops, 2005 A Culture of Life and the Penalty of Death

Facts About the Death Penalty

Who Is Affected?

Approximately 3300 inmates are on death row in 35 state, military, and federal prisons. Since 1976, there have been 1138 executions in the United States, including four in 2009. But the impact of the death penalty goes well beyond those on death row. It also impacts the families of inmates, as well as the families of victims. Moreover, citizens of 36 states are implicated in the death penalty through their tax dollars.

Misspent Millions

Studies in state after state have shown that the death penalty is more costly than alternative sentences. For example, the California death penalty system costs taxpayers $114 million per year over and above the costs of keeping convicts locked up for life *(L.A. Times, March 6, 2005)*.

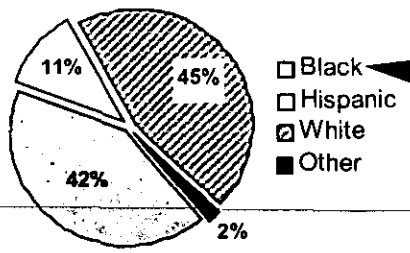
Innocent Lives in the Balance

The criminal justice system is run by human beings—and we make mistakes. At least 130 people from 26 states have been exonerated from death row after evidence of innocence was found. Rather than showing the system is working, exonerations provide evidence that our system is flawed. DNA testing cannot solve these problems. DNA evidence exists in only 10 percent of criminal cases.

Is the Justice System Just?

- Over 90 percent of those on death row across the country were too poor to afford their own attorney.
- Studies by states across the country show geography plays a role in who lives and dies. Similar murders might get death in one county, but not in one nearby.
- Over 80 percent of those executed in the United States were convicted of killing a white person, even though African-Americans are the victims in at least half of all homicides (*Death Row USA*, NAACP Legal Defense Fund).

Race of Death Row Inmates



Blacks constitute 12.9% of the US population, but 42% of death row inmates

Source: Death Penalty Information Center

What You Can Do

Pray for victims of crime and their families, those who have been wrongly convicted, and those awaiting execution.

Learn about Catholic social teaching, U.S. criminal justice policies, and the policies in your state. Go to the Web site listed below for more information about the death penalty.

Educate people in your parish or community about Catholic social teaching and the criminal justice system. Visit the Web site listed below for Vatican and U.S. bishops' statements on the death penalty, as well as statements from individual bishops and state Catholic Conferences.

Advocate by contacting your elected officials. Discuss Catholic teaching on the death penalty and what steps could be taken at the state and national level to curtail or end its use.

To receive information regarding the Catholic Church's work on the death penalty at the national level, or to link with a particular state's efforts, visit the U.S. Conference of Catholic Bishops' Web site at

usccb.org/deathpenalty.

Join the Catholic Mobilizing Network for the Catholic Campaign to End the Use of the Death Penalty to receive regular updates and information on what you can do to bring an end to the use of the death penalty in the U.S. Go to **www.catholicsmobilizing.org** for more information.

Catholic UPDATE

C0995

An abbreviated version of

The Gospel of Life

Pope John Paul II's Pro-life Encyclical

JEAN-CLAUDE LEJEUNE

THE GOSPEL OF LIFE is at the heart of Jesus' message. Lovingly received by the Church, it is to be preached as "good news" to the people of every age and culture.

This encyclical is meant to be a pressing appeal addressed to each and every person, in the name of God: *Respect, protect, love and serve life, every human life!*

The Second Vatican Council, in a passage which retains all its relevance today, forcefully condemned a number of crimes and attacks against human life:

"Whatever is opposed to life itself, such as any type of murder, genocide, abortion, euthanasia, or willful self-destruction, whatever violates the integrity of the human person, such as mutilation, torments inflicted on body or mind, attempts to coerce the will itself; whatever insults human dignity, such as subhuman living conditions, arbitrary imprisonment, deportation, slavery, prostitution, the selling of women and children; as well as disgraceful working conditions, where people are treated as mere instruments of gain rather than as free and responsible persons; all these things and others like them are infamies indeed.

"They poison human society, and they do more harm to those who practice them than to those who suffer from the injury. Moreover, they are a supreme dishonor to the Creator."

Unfortunately, this disturbing state of affairs, far from decreasing, is expanding. With the new prospects opened up by scientific and technological progress there arise new forms of attacks on the dignity of the human being.

The end result of this is tragic. Not only is the fact of the destruction of so many human lives, still to be born or in their final stage, extremely grave and disturbing. No less grave and disturbing is the fact that conscience itself, darkened as it were by such widespread conditioning, is finding it increasingly difficult to distinguish between good and evil in what concerns the basic value of human life.

Recognize positive signs

Many initiatives of help and support for people who are weak and defenseless have sprung up and continue to spring up in the Christian community and in civil society.

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EDITOR JACK WINTZ O.F.M. MANAGING EDITOR JOHN BOOKSER FEISTER ART DIRECTOR MARY ALFIERI

that would only secure a precarious and burdensome prolongation of life, so long as the normal care due to the sick person in similar cases is not interrupted"....To forgo extraordinary or disproportionate means is not the equivalent of suicide or euthanasia; it expresses acceptance of the human condition in the face of death.

Among the questions which arise is the use of various types of painkillers and sedatives for relieving the patient's pain when this involves the risk of shortening life....Pius XII affirmed that it is licit to relieve pain by narcotics, even when the result is decreased consciousness and a shortening of life, "if no other means exist, and if, in the given circumstances, this does not prevent the carrying out of other religious and moral duties."

In such a case, death is not willed or sought, even though for reasonable motives one runs the risk of it: There is simply a desire to ease pain effectively by using the analgesics which medicine provides. All the same, "it is not right to deprive the dying person of consciousness without a serious reason."

I confirm that euthanasia is a grave violation of the law of God, since it is the deliberate and morally unacceptable killing of a human person.

Physician-assisted suicide

To concur with the intention of another person to commit suicide and to help in carrying it out through so-called "assisted suicide" means to cooperate in, and at times to be the actual perpetrator of, an injustice which can never be excused, even if it is requested. In a remarkably relevant passage St. Augustine writes that "it is never licit to kill another: even if he should wish it, indeed if he request it, hanging between life and death...nor is it licit even when a sick person is no longer able to live."

Even when not motivated by a selfish refusal to be burdened with the life of someone who is suffering, euthanasia must be called a *false mercy*, and indeed a disturbing perversion of mercy. True compassion leads to sharing another's pain; it does not kill the person whose suffering we cannot bear. Moreover, the act of euthanasia appears all the more perverse if it is carried out by those, like relatives, who are supposed to treat a family member with patience and love, or by those, such as doctors, who by virtue of their specific profession are supposed to care for the sick person even in the most painful terminal stages.

The choice of euthanasia becomes more serious when it takes the form of a *murder* committed by others on a person who has in no way requested it and who has never consented to it. The height of arbitrariness and injustice is reached when certain people, such as physicians or legislators, arrogate to themselves the power to decide who ought to live and who ought to die....The life of the person who is weak is put into the hands of the one who is strong; in society the sense of justice is lost, and mutual trust, the basis of every authentic interpersonal relationship, is undermined at its root.

The request which arises from the human heart in the supreme confrontation with suffering and death, especially when faced with the temptation to give up in utter desperation, is above all a request for companionship, sympathy and support in the time of trial.

Responding to unjust abortion and euthanasia laws

The value of democracy stands or falls with the values which it embodies and promotes....The basis of these values cannot be provisional and changeable majority opinions, but only the acknowledgment of an objective moral law, the natural law written in the human heart....Even in participatory systems of government, the regulation of interests often occurs to the advantage of the most powerful, since they are the ones most capable of maneuvering not only the levers of power but also the formation of consensus. Democracy easily becomes an empty word.

Laws which legitimize the direct killing of innocent human beings through abortion or euthanasia are in complete opposition to the inviolable right to life proper to every individual; they thus deny the equality of everyone before the law.

Laws which authorize and promote abortion and euthanasia are therefore radically opposed not only to the good of the individual but also to the common good; as such they are completely lacking in authentic juridical validity.

Abortion and euthanasia are thus crimes which no human law can claim to legitimize. There is no obligation in conscience to obey such laws; instead there is a *grave and clear obligation to oppose them by conscientious objection*. From the very beginnings of the Church, the apostolic preaching reminded Christians of their duty to obey legitimately constituted public authorities (see Rom 13:1-7; 1 Pt 2:13-14), but at the same time it firmly warned that "we must obey God rather than men" (Acts 5:29).

Build a 'new culture of life'

On the eve of the Third Millennium, the challenge facing us is an arduous one: Only the concerted efforts of all those who believe in the value of life can prevent a setback of unforeseeable consequences for civilization.

What is urgently called for is a *general mobilization of consciences* and a *united ethical effort* to activate a *great campaign in support of life. All together, we must build a new culture of life*: new, because it will be able to confront and solve today's unprecedented problems affecting human life; new, because it will be adopted with deeper and more dynamic conviction by all Christians; new, because it will be capable of bringing about a serious and courageous cultural dialogue among all parties. ■

Editors' note: *This highly condensed version of the pope's 1995 encyclical* The Gospel of Life (Evangelium Vitae) *by* Catholic Update *is not intended as a substitute for reading the complete document but as an overview of major points. We encourage readers to study the entire document, which can be obtained at many bookstores.*

Next: The Sacrament of Confirmation (by Carol Luebering)

To qualify for bulk rates all copies must be mailed to same address. Order by telephone 1-800-488-0488 or use address on front. Prices are subject to change.

Dana Strommen

From: Sr. Donna Kramer [dkramer@caa-ak.org]
Sent: Thursday, February 26, 2009 3:32 PM
To: Rep. Jay Ramras
Subject: CAPITAL PUNISHMENT

DEAR REPRESENTATIVE RAMRAS,

I UNDERSTAND YOUR COMMITTEE IS STUDYING HOUSE BILL #9 REGARDING THE REINSTITUTION OF CAPITAL PUNISHMENT.
I WOULD LIKE TO ADD MY VOICE TO THE MANY VOICES OF THOSE WHO FIND THE TAKING OF LIFE, IN ANY MANNER (EXCEPT IN SELF-DEFENSE OR IN DEFENSE OF OUR COUNTRY) TO BE A VIOLATION OF GOD'S LAW AND THE BASIC HUMANE LAW. PEOPLE ARE NOT ANIMALS TO BE EUTHANIZED. HARDENED CRIMINALS CAN LIVE OUT A LIFE'S SENTENCE WITHOUT PAROLE AND IN THIS WAYKEEP SOCIETY SAFE FROM THEIR PREDATORY NATURE. KILLING HAS NEVER SOLVED A PROBLEM NOR BROUGHT COMFORT AND SOLACE TO THE FAMILY WHO WERE VICTIMIZED BY LOSING A LOVED ONE THROUGH VIOLENT MEANS. REVENGE IS NOT A SOLUTION BUT A CONTINUANCE OF THE VIOLENCE. I HOPE IN YOUR DELIBERATIONS YOU WILL TAKE INTO ACCOUNT AND VOTE AGAINST REINSTATING THE DEATH PENALTY.

THANK YOU.

Sister Donna Kramer, DC

Coordinator of Catholic Native Ministry

225 Cordova ST.

Anchorage, AK 99501

907-297-7777

Statement on HB 9

Amy Paige
592 Seatter Street
Juneau, Alaska 99801

February 23, 2009

I am dismayed to think that there are Alaskans who still consider the death penalty to be the solution to dealing with those who commit the serious crime of murder. I know there are dangerous people we do not want roaming the streets, but existing laws that allow such people to be sentenced to life in prison without possibility of parole are more than adequate to ensure the public safety.

I believe adoption of this legislation would unjustly impact minorities that are disproportionately represented in Alaska's prisons. And there is the matter of individuals being falsely convicted, and subsequently found innocent. Most of us are aware of the many such cases that have come to light in recent years in other states, resulting in many states putting a moratorium of executions. You will hear others who will speak to these issues, and to the matter of excessive cost to the state to implement this change in the statutes.

I am opposed to capital punishment on moral and religious grounds. I believe it is a violation of the sacredness of human personality, no different that the crimes it seeks to punish; that it disregards the fundamental capacity of all persons to respond to right influences. The death penalty removes all opportunity for the offender to repent for his or her offense, or for those falsely convicted a chance for their innocence to be discovered. Even the most hardened criminal with God's help, may come to recognize the error of his ways.

It is morally wrong for the state to enact laws based on revenge or wrongs committed. The death penalty makes criminals of us all. The violence and brutality of capital punishment is as reprehensible as the crimes it seeks to prevent. It can bring us no security from the actions of criminals. In pretending to support a reverence for life, it in reality destroys it.

I urge you to reject this legislation as morally indefensible and totally unacceptable to the people of Alaska.

Kenai River Quakers Minute Regarding the Proposed Alaskan Death Penalty

The society we build is a reflection of us all and is a model for our children. In this time of economic upheaval, with horrors presented as entertainment pushed at us by the media, and the newspapers headlining atrocities in other lands, it is easy to feel our fear grow. It is somewhat predictable, at this time of insecurity, that the death penalty would be put before us, yet again.

The death penalty is promoted in many ways--as fair revenge; as punishment that will deter future crime; and, as a way to protect society against the acts of violent individuals, and so make our lives safer. We have thought about each of these.

As revenge, the death penalty seems to be a shotgun approach; often the people who are hurt most are family members of the convicted or the people who must sentence and kill the convicted in our name. Also, the inequality between rich and poor, black and white, educated and uneducated, in our legal system belie the idea of our revenge being fair.

Some people hope that by killing the killer, crime will be deterred. Those who kill once in an act of rage, with thinking deadened by drugs or alcohol, do not take time to consider the consequences. Those who live lives of violence, where the threat of injury or death is constant, will not be deterred by threats of more violence. By killing the killer, we take away the killer's chance to atone, to make restitution, to teach his or her children not to kill. By killing the killer, we take away *our* chance of forgiving, atoning, or making restitution for our mistakes.

We all want to make our lives safer. We fear for the safety of our children most of all. Children often model their behavior after what we do, not what we say. If we do not teach our children the sanctity of life, how do we make them safer? If our society models killing, who will our children be?

Historically, certain people and groups have been sacrificed to collective fear. It is precisely now, in times of uncertainty, that we must reaffirm the sanctity of human life.

As Quakers, we believe that of God is within us all. We seek traditions that will teach our children about justice and the value of human life. An Alaskan death penalty will do neither.

Dana Hallett, clerk

for Kenai River Quaker Worship Group

15 February 2009

With the introduction of death penalty legislation in the State Legislature, Alaska stands at a historic turning point. The State has not carried a death penalty since Territorial days. We of the Anchorage Friends Meeting (Quakers) urge all Alaskans to think carefully about the repercussions that would be brought by a death penalty in our state, and what our collective decision says about us as a society. The criminal sanctions we embrace not only reflect our deepest values and beliefs, but also shape the community we become.

For more than 300 years, Quakers have sought to answer that of God in every person, and have therefore sought to address injustices and inequalities in our own lives and in the societies to which we belong. That our country's justice system is subject to human error, leading to the conviction of innocent people, is a matter of public record. That it is subject to human blindness, leading to disturbing racial disparity in the application of capital punishment, has been amply demonstrated. In recent decades, the death penalty has been suspended or abolished in many states, in recognition of errors in conviction and racial disparity in application.

These and many other compelling arguments speak volumes against capital punishment on purely rational grounds, and we urge all citizens to consider the excellent information put together by Amnesty International, Alaskans Against the Death Penalty, and American Friends Service Committee, among others. For us, it is a matter that goes even further. Even if our court system was flawless, and there were no conceivable questions of error, innocence, or equality, we would still uphold the sanctity of each human life: that of God in every person and the possibility of redemption and reconciliation. We cannot escape the conclusion that the death penalty, as an instrument of any government, and perhaps especially a democratic government, brutalizes and degrades that society which it strives to protect.

Anchorage Monthly Meeting of the Religious Society of Friends (Quakers)

Contact: Ministry and Nurturance Committee
Corinne Smith, cls37@cornell.edu
Monica Elkinton, monica.elkinton@gmail.com
Karen Niedermier, kwnieder@earthlink.net

House Judiciary - testimony on HB 9.

March 1, 2009

We of the Homer Friends Meeting (Quakers) affirm the value and dignity of human life. We stand with people who seek to make their communities safe. We do not believe, however, that capital punishment provides the safety and order which it seems to promise. We oppose the death penalty as an affront to the value of life, a step backward in the administration of justice, and an arbitrary, ineffective, and uneconomic form of law enforcement. We urge other Alaskans, our legislature, and our governor to reject it.

We find several compelling reasons to oppose the death penalty.

- We live in an imperfect society with an imperfect legal system. When that system assumes the power to take life, it leads to the inevitable taking of innocent life, and to disturbing racial and class disparities in its application.
- Although always represented as an action of the state, capital punishment is a delegated action that requires specific state employees to premeditatedly kill a human being, and to do so at a moral and psychological peril to themselves that neither they nor the state can calculate in advance.
- Attention and energy is focused away from healing and help for victims, for offenders, and for families and communities affected by crime.
- Capital punishment is certainly not cheaper than life imprisonment - nor has it been shown to reduce the murder rate.
- We feel that capital punishment is not justice but vengeance - akin to "taking an eye for an eye," or cutting off the hand of a thief - acts most Alaskans would find reprehensible as cruel and unusual. It is murder for murder, and as such, has, in fact, a debasing effect on the community. It produces the very brutality it seeks to prevent.

Ginger Byrant + Art Koeninger

For more than 350 years, the Religious Society of Friends (Quakers) have sought to answer that of God in every person, and therefore to address injustices and inequalities in our own lives and in the societies to which we belong. We believe the role of government is to alleviate the roots of violence. We urge the Alaska Legislature to table further discussions of the death penalty and resume consideration of measures which will better exemplify this role.

Ginger Bryant,

Ginger D. Bryant

Art Koeninger,

Art Koeninger

co-clerks, for Homer (Alaska) Friends Meeting, Religious Society of Friends, P.O. 974, Homer, AK 99605

Dana Strommen

From: revsilides@gci.net on behalf of George Silides [revsilides@gci.net]
Sent: Tuesday, March 03, 2009 10:16 AM
To: Rep. Jay Ramras
Cc: Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes
Subject: House Bill 9 Rev. George Silides
Attachments: HB 9.doc

ır Representative Ramras,

ough you, let me thank the Judiciary Committee for allowing me the privilege to speak to the issue of House Bill Unanimous among all whom I spoke with afterwards was gratefulness for the even tenor of the proceedings, respect paid to all who offered their testimony. This note is simply to reiterate three points:

. state whose law enforcement and investigative resources are stretched beyond the breaking point—where many ıles throughout the state have no VPSO or police or trooper presence whatsoever—how can it be that the proper ɛstigative resources can be brought to bear in those locales in a timely manner when dealing with capital crimes ch bear the potential of a final solution—death to the convicted perpetrator?

ondly, in my experience, there is less, not more resolution for the victim's family upon the occasion of an cution. There is a satisfaction of vengeance, sometimes, but the potential for anything else—even documented ɛs of reconciliation—are lost. Mourning the loss of their loved one, families also mourn over time for lost sibilities of making it clear to the perpetrator the depth of their loss and any hope of understanding the mind of perpetrator.

l thirdly, related to the second, addressing what Representative Coghill intimated by his comment about "the e bearing the sword" is the point that we law-abiding citizens have surrendered our absolute freedom to the will . governed society specifically and especially to be guided—even protected by this government of laws away n our baser motives of vengeance and retribution, especially when that vision is clouded by unimaginable and earable pain—and an irresistible desire for vengeance. The gentleman from Kodiak testified specifically to this ıt: "If someone murdered my wife I would want vengeance, absolutely, but it is still wrong." We law abiding ɛens depend upon you to keep us from this wrong, and to curb our desires when we cannot ourselves.

l if I may now slip in a fourth which caused me a pause in my testimony—a pause of emotion which was a imony in itself: The conversation about the efficacy of the death penalty does not stop when a law allowing h is passed. It is debated with a ferocity born of desperation each and every time another human being is put to th by the state. I have witnessed this desperation over and over at the gates of San Quentin, and the vitriol which ɜons the social fabric of our community life for weeks before and after each execution.

ɛre are of course dozens of reasons besides these few which I might make against the passage of HB 9, but I ɾe those to more eloquent voices, and review only the testimony you were so kind to allow me. Please know that and each of the Committee remain in our prayers. Every blessing and kindness;

ɛerely,

ɔrge Silides, rector
y Trinity Episcopal Church

Dana Strommen

From: Mepburke@aol.com
Sent: Sunday, March 01, 2009 6:32 PM
To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes
Cc: michael@Godsview.org; Mepburke@aol.com; Rep. Berta Gardner
Subject: HB 9 testimony

Dear Honorable Representatives Ramras and Dahlstrom,

I am writing to oppose HB9, which I find to be bad public policy, financially unwise and morally objectionable.

Given the rural and urban disparities in resources to investigate, and prosecute capital crimes, I believe such a system will become unmanageable, fundamentally unjust and untrustworthy.

At a time when we need increasingly broad public confidence in the efficiency and fairness of our criminal justice system, the adoption of capital punishment will be most counterproductive.

My own Christian denomination, The Episcopal Church, has a long-standing opposition to the death penalty. This highly public stance was first declared by our General Convention in 1958, and subsequently reaffirmed in 1969, 1979, and 1991. For over fifty years, members of our church have worked to educate their fellow citizenry and promote alternatives that nurture a culture of life in response to even the most heinous of crimes.

I stand alongside so many others from our churches and faith communities in opposing this bill.

Sincerely,

The Rev. Michael Burke
Rector / Sr Pastor
St. Mary's Episcopal Church
Anchorage, Alaska
(907) 349-0369

cc Judiciary Committee membership

The two most recent statements of The Episcopal Church are attached below:

The Episcopal Church

CAPITAL PUNISHMENT

Statement of the 1979 General Conference.

WHEREAS, the 1958 General Convention of the Episcopal Church opposed capital punishment on a theological basis that the life of an individual is of infinite worth in the sight of Almighty God; and the taking of such a human life falls within the providence of Almighty God and not within the right of Man; and

WHEREAS, this opposition to capital punishment was reaffirmed at the General Convention of 1969; and

WHEREAS, a preponderance of religious bodies continue to oppose capital punishment as contrary to the concept of Christian love as revealed in the New Testament; and

WHEREAS, we are witnessing the reemergence of this practice as a social policy in many states; and

WHEREAS, the institutionalized taking of human life prevents the fulfillment of Christian commitment to seek the redemption and reconciliation of the offender; and

WHEREAS, there are incarceration alternatives for those who are too dangerous to be set free in society; therefore be it

RESOLVED, the House of Bishops concurring, that this 66th General Convention of the Episcopal Church reaffirms its opposition to capital punishment and calls on the dioceses and members of this church to work actively to abolish the death penalty in their states; and be it further

RESOLVED, the House of Bishops concurring, that this 66th General Convention instruct the Secretary of General Convention to notify the several governors of the states of our action.

General Convention 1991.

RESOLVED, the House of Bishops concurring, that this 70th General Convention of the Episcopal Church reaffirm the position taken in opposition to capital punishment by the 1958, 1969, and 1979 General Conventions; and be it further

RESOLVED, that this 70th General Convention of the Episcopal Church oppose federal initiatives to establish constitutional procedures for the institution of the sentence of death for various crimes; and be it further

RESOLVED, that the 70th General Convention of the Episcopal Church deplores the expansion of capital offenses by federal legislative action; and be it further

RESOLVED, that this 70th General Convention of the Episcopal Church support state and local initiatives to establish a range of community sanctions and services offering alternatives to incarceration and reducing recidivism; and be it further

RESOLVED, that the Presiding Bishop's Open Statement on Capital Punishment be sent to the President, the Attorney General, and every member of the Senate and Congress of the United States of America; and be it further

RESOLVED, that this 70th General Convention of the Episcopal Church urge the provinces, dioceses, parishes, missions, and individual members of this Church to engage in serious study on the subject of capital punishment and work actively to abolish the death penalty in their states.

The Episcopal Church

815 Second Avenue

New York, NY 10017-4594

(212) 867-8400

You're invited to Hollywood's biggest party: Get Oscars updates, red carpet pics and more at Moviefone.

Dana Strommen

From: corinne [cls37@cornell.edu]

Sent: Sunday, March 01, 2009 9:40 PM

To: Rep. Lindsey Holmes; Rep. Max Gruenberg; Rep. Bob Lynn; Rep. Nancy Dahlstrom; Rep. Jay Ramras; Rep. John Coghill; Rep. Carl Gatto

Subject: Please vote NO on HB 9 (Death Penalty)

Attachments: DeathPenalty_minute.doc

To the House Judiciary Committee:

With the introduction of death penalty legislation in the State Legislature, Alaska stands at a historic turning point. The State has not carried a death penalty since Territorial days. We of the Anchorage Friends Meeting (Quakers) urge all Alaskans to think carefully about the repercussions that would be brought by a death penalty in our state, and what our collective decision says about us as a society. The criminal sanctions we embrace not only reflect our deepest values and beliefs, but also shape the community we become.

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These and many other compelling arguments speak volumes against capital punishment on purely rational grounds, and we urge all citizens to consider the excellent information put together by Amnesty International, Alaskans Against the Death Penalty, and American Friends Service Committee, among others. For us, it is a matter that goes even further. Even if our court system was flawless, and there were no conceivable questions of error, innocence, or equality, we would still uphold the sanctity of each human life: that of God in every person and the possibility of redemption and reconciliation. We cannot escape the conclusion that the death penalty, as an instrument of any government, and perhaps especially a democratic government, brutalizes and degrades that society which it strives to protect.

Anchorage Monthly Meeting of the Religious Society of Friends (Quakers)

Contacts:
Ministry and Nurturance Committee
Corinne Smith, cls37@cornell.edu
Monica Elkinton, monica.elkinton@gmail.com
Karen Niedermier, kwnieder@earthlink.net
Cynthia Monroe, Recording Clerk, cynthia@alaskalisten.org

Dana Strommen

From: Robert P. Hannon [robert@cbna.org]
Sent: Friday, March 13, 2009 4:43 PM
To: Rep. Jay Ramras
Subject: Letter regarding HB 9
Attachments: Letter to Representative Ramras.pdf

Dear Representative Ramras,

Please find attached a letter Bishop Kettler addressed to you regarding House Bill 9. As you will see, Bishop Kettler feels strongly that HB 9 is unjust and potentially unpopular.

We have also sent you the letter via the United States Post Office; please feel free to have your office contact me if you fail to receive the attachment.

Despite our disagreement regarding this piece of legislation we thank you for your service.

God bless,

Robert Hannon
Chancellor & Special Assistant for the
Most Reverend Donald J. Kettler, JCL
Bishop of Northern Alaska
1316 Peger Road
Fairbanks, AK 99709-5199
(907) 374-9510
robert@cbna.org

Alaska State Legislature

Please enter into the record my testimony to the Judiciary committee name

committee on HB 9 bill/subject . dated 2 March 2009 .

Signed: John David Thorbe
Testifier

Prince of Peace Mennonite Church
Representing (Optional)

PO Box 241312, Anchorage AK 99524
Address

907 346 2909
Phone No.

9/86 Legislative Information Office

I am John David Thacker, pastor of Prince of Peace Mennonite Church in Anchorage. I speak on behalf of my congregation and all the Mennonites across Alaska. We oppose House Bill 9 and the death penalty. We believe that following Jesus Christ requires us to make peace, to love our enemies, to seek reconciliation and to practice forgiveness. We have chosen life over death and we ask you to do the same.

Mennonite Church USA has adopted many resolutions calling upon its members to work for the abolition of the death penalty. In this effort, we join with millions of other Christians in this nation who have also called upon our government to abolish the death penalty. This list includes Catholics, Lutherans, Methodists, Quakers, Brethren, Baptists, Episcopalians, Orthodox, Moravians, Presbyterians, Reformed and many more.

We believe that capital punishment is ineffective, inequitable, irreversible, and inhumane. True restorative justice works to rehabilitate the offender, to address the needs of the victims and to restore the community. An execution cannot rehabilitate. It cannot make the victims whole, and it cannot heal our communities.

We are deeply grateful that the State of Alaska has refused to kill its own citizens. We urge the members of this committee to preserve Alaska as a state free of the death penalty.

Mr. Chairman, and members of the Judiciary Committee, Thank you for giving the public the opportunity to comment on HB #9

My name is Dale Kelley and I am the pastor of First Christian Church here in Anchorage. My own denomination – along with over 29 other faith communions, including the US Catholic Conference and the American Jewish Committee – have issued strong statements opposing the death penalty on all counts. It stands in opposition to all that we believe about the sacredity of all life –

In ~~most~~ all of these statements you will find ~~very~~ adamant positions in opposition. And not only religious opposition has surfaced. Of the 37 states which still have the death penalty, some states are even now reviewing the efficacy of this position and are looking to abolish it. ~~Almost 200 persons~~ a # of persons have been executed who were later found to be innocent. The death penalty is fraught with errors, and issues of racism.

I believe It is ludicrous for a caring, thinking population to seek to end violence through the sheer use of violence. Why do we continue to kill people to teach people that killing people is wrong? Where is the logic in that? - It has never been shown to be a deterrent.

Aside from the moral bankruptcy of such a belief, there is the purely financial considerations that threatens to bankrupt our state of Alaska – if and when we might choose to pour millions upon millions into to re-creating a vastly new legal code – BEFORE we even have the first capital case on the docket.

I respectfully ask you — How will you ~~Try~~ explaining to your constituents that you are going to chose to take millions of dollars away from critical and barely funded ~~UNFUNDED~~ needs for them, their towns and villages. How will you ~~Try~~ telling them that YOU are instead choosing to put upwards of $50 million plus dollars into setting the stage for the first case to be tried.

I respectfully urge you to re-consider voting down this barbaric practice and re-focus your attention to the REAL needs of our Alaska citizens.

Thank you very much for your time

Dale Kelley
4451 DeArmoun Rd.
Anchorage, AK 99516
(907) 644-4132

The Right of Return

Dana Strommen

From: Nelson Angapak [nangapak@nativefederation.org]
Sent: Wednesday, March 04, 2009 11:51 AM
To: Rep. Jay Ramras
Cc: Rep. Reggie Joule; Rep. Bryce Edgmon; Rep. Woodie Salmon; Rep. Bob Herron
Subject: Letter in Opposition to HB 9
Attachments: HB 9 Letter Opposing the bill.pdf

Dear Chairman Ramras:

Attached, herewith, please find a letter that Julie Kitka, President wrote to you opposing HB 9. Please incorporate this letter and the resolution attached to it (last two pages) into the public hearing record of HB 9. She had intentions of testifying on HB 9 when the House Judiciary Committee held public hearing on HB 9 but due to time constraints, she was unable to testify in front of your committee via teleconference out of Anchorage, AK.

If you have any questions regarding the attached letter and the resolution attached to this letter, please contact Julie Kitka at 907-274-3611.

Thank you for your consideration.

Nelson N. Angapak, Sr.
Vice President
Alaska Federation of Natives

ALASKA FEDERATION OF NATIVES, INC.
1577 C Street, Suite 300, Anchorage, Alaska 99501
907-274-3611 Fax 907-276-7989

March 4, 2009

The Honorable Jay Ramras, Chairman
Alaska State House Judiciary Committee
Juneau, Alaska
Representative_Jay_Ramras@legis.state.ak.us
Facsimile: 907-465-0270

Dear Chairman Ramras:

On behalf of the Alaska Federation of Natives (AFN), thank you for holding the recent public hearing on Alaska State House Bill 9, "An Act relating to murder; authorizing capital punishment, classifying murder in the first degree as a capital felony, and allowing the imposition of the death penalty for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, and 32.3, Alaska Rules of Criminal Procedure, and Rules 204, 209, 210, and 212, Alaska Rules of Appellate Procedure."

Founded in 1966, AFN is the largest statewide Alaska Native organization in Alaska. Its membership includes 178 villages (both federally-recognized tribes and village corporations), 13 regional Native corporations and 12 regional nonprofit and tribal consortiums that contract and run federal and state programs. The mission of AFN is to enhance and promote the cultural, economic and political voice of the entire Alaska Native community. AFN and its members are concerned with and advocates for equitable treatment of Alaska Natives within the judicial system of the State of Alaska. For more information on AFN, please visit our website at www.nativefederation.org.

Due to time constraints, I was unable to submit my comments on behalf AFN regarding HB 9 during the public hearing on HB 9. For the record, **AFN is opposed to HB 9** for reasons expressed by the whereases of the attached Alaska Federation of Natives Board of Directors Resolution 09-01 entitled "OPPOSING THE REINSTATEMENT OF DEATH PENALTY IN ALASKA;" the AFN Board passed this resolution unanimously when they met in Juneau on February 11, 2009. It was my intend to submit this resolution into the public hearing record on HB 9 as it reflects AFN's absolute opposition to this bill and other HB 9 type of bills.

For the record, please allow me to excerpt some of the key elements of the attached resolution and our opposition on HB 9:

1. In Alaska, eighteen (18) percent of Alaska's total of population of 655,435[1] people is composed of the American Indians and Alaska Natives, the highest proportion of the total population of any state in the United States of America.[2]

2. The Alaska Native population is disproportionately represented in the correctional system in that Alaska Natives represent between 30% and 40% of the state's inmate population at any given point in time.[3]

3. There is significant evidence of racial bias toward economically disadvantaged members of ethnic minorities in the administration of death penalty in other jurisdictions.

4. There is substantial concern among the Alaska Native Community, and there is no evidence to the contrary, that in all likelihood the Alaska system of criminal jurisprudence is not capable of avoiding racial bias in the trail process.

5. The majority of Alaska Natives and people residing in rural areas of the State of Alaska do not have the means to acquire adequate legal defense counsel when charged with serious crimes.

Please incorporate this letter and the attached AFN Board of Directors Resolution 09-01 into the public hearing record of HB 9. Again, AFN is opposed to HB9.

Thank you for your consideration, if you have any questions regarding this letter or the attachment, please call me at 907-274-3611.

Sincerely,

Julie Kitka
President

CC: Representative Reggie Joule: Rep.Reggie.Joule@legis.state.ak.us

[1] http://www.ask.com/web?q=Alaska&qsrc=8&o=2825&l=dir
[2] http://www.census.gov/Press-Release/www/releases/archives/population/011910.html
[3] http://tpj.sagepub.com/cgi/content/abstract/83/1/90

ALASKA FEDERATION OF NATIVES, INC.
1577 C Street, Suite 300, Anchorage, Alaska 99501
907-274-3611 Fax 907-276-7989

ALASKA FEDERATION OF NATIVES
BOARD OF DIRECTORS

RESOLUTION 09-01

TITLE: OPPOSING THE REINSTATEMENT OF DEATH PENALTY IN ALASKA

WHEREAS: The Alaska Federation of Natives, Inc. is concerned with and advocates for equitable treatment of Alaska Natives within the judicial system of the State of Alaska, and;

WHEREAS: In Alaska, eighteen (18) percent of Alaska's total population of 655,435[1] people is composed of American Indians and Alaska Natives, the highest proportion of the total population of any state in the United States of America,[2] and;

WHEREAS: The Alaska Native population is disproportionately represented in the correctional system in that Alaska Natives represent between 30% and 40% of the state's inmate population at any given point in time,[3] and;

WHEREAS: There is significant evidence of racial bias toward economically disadvantaged members of ethnic minorities in the administration of the death penalty in other jurisdictions, and;

WHEREAS: There is substantial concern among the Alaska Native Community, and there is no evidence to the contrary, that in all likelihood the Alaska system of criminal jurisprudence is not capable of avoiding racial bias in the trail process, and;

WHEREAS: The majority of Alaska Natives and people residing in rural areas of the State of Alaska do not have the means to acquire adequate legal defense counsel when charged with serious crimes, and;

WHEREAS: Establishing a death penalty law and implementing it will cost millions of dollars that the State of Alaska can ill afford during these times of economic situations in the nation and in the State of Alaska, and;

[1] http://www.ask.com/web?q=Alaska&qsrc=8&o=2825&l=dir
[2] http://www.census.gov/Press-Release/www/releases/archives/population/011910.html
[3] http://tpj.sagepub.com/cgi/content/abstract/83/1/90

WHEREAS: The Native American tribes and organizations have historically opposed the death penalty as demonstrated by past actions to defeat the federal death penalty legislation, and;

WHERAS: We believe that capital punishment degrades and brutalizes any society that practices it by teaching the use of violence in reaction to violence, and;

WHERAS: We believe that capital punishment does not deter crime, but serves only to exact revenge, and;

NOW THEREFORE BE IT RESOLVED by the Board of Directors of the Alaska Federation of Natives (AFN) that they are opposed to the reinstatement of the death penalty in the State of Alaska, and;

BE IT FURTHER RESOLVED THAT the AFN Board urges the members of the Alaska State Legislature, both rural and urban, to oppose any effort of reinstatement of the death penalty in Alaska, including but not limited to House Bill 9 (HB 9).

ADOPTED THIS DAY 11th OF FEBRUARY 2009

Julie E. Kitka
President

NATIVE VILLAGE OF AMBLER
Kuuvanmiit Inupait Nunaaqqiat Ivisaappaanli
Ambler Traditional Council Ivisaappaanli Aippaanisun Quakliqpiat Atangitch

Tribal Office
PO Box 47
Ambler, AK 99786

Phone: 907-445-2196
Fax: 907-445-2181

RESOLUTION 09-02

A RESOLUTION OPPOSING AN ALASKA DEATH PENALTY

WHEREAS: the Native Village of Ambler (hereinafter "Tribe") is a sovereign Traditional Government of the aboriginal Kuuvanmiut Nation in Northwest Alaska predating the United States Constitution and the State of Alaska; and,

WHEREAS: the Native Village of Ambler is a federally recognized Tribe with responsibilities inherent in a sovereign government; and,

WHEREAS: the Ambler Traditional Council is the governing body of the Native Village which is the modern day successor to the historical sovereign tribe for the region; and,

WHEREAS: the death penalty has been shown to be disproportionately imposed on minorities. According to the Federal Death Penalty Resource Counsel Project, between 1988 and June 28, 2006, 73% federal government death penalty prosecutions were against minority population; and,

WHEREAS: the death penalty was used exclusively against Alaska Natives and ethnic minorities between 1903 and 1957 in Territorial Alaska, although most murders were committed by white men; and,

WHEREAS: there has been little research into criminal justice issues impacting rural off-reservation Indigenous Peoples as described in Archambeault, William G., "Government Reductionism and Academic Bias in Criminal Justice Research on American Indian Crime and Justice Issues "Indigenous Policy, Journal of The Indigenous Policy Network, Vol. XVIV, No. 2 Summer, 2008; and,

WHEREAS: Alaska Natives already suffer prosecution and incarceration rates far beyond their representation in the Population; and,

WHEREAS: Alaska Natives are entitled to protections of International law pertaining to discriminatory state actions Against indigenous peoples.

NOW THEREFORE BE IT RESOLVED, that we oppose laws subjecting indigenous Alaskans to the death penalty.

Fred Greist
Fred Greist, Second Chief

CERTIFICATION

I, the undersigned, hereby certify that the Ambler Traditional Council is composed of seven (7) members and that 6 were present on the 23rd day of February, 2009 and resolution 09-02 was passed with an affirmative vote of 6 and 0 against.

Carol B. Cleveland
Carol Cleveland, Tribal Clerk

February 23, 2009
Date

Grand Camp
Alaska Native Brotherhood

Capital Punishment
HB No. 9
March 1, 2009

Mr. Chairman and members of the committee. Thank you for giving me the opportunity to testify on HB No. 9 Capital Punishment.

My name is Alfred McKinley, Sr., residence is Juneau, Alaska. I am an Executive Committee Member of Grand Camp Alaska Native Brotherhood. A delegate to Central Council Tlingit and Haida Indian Tribes of Alaska, and I serve on the Judiciary Committee. Served in the U.S. Army from December 21, 1950 to December 20, 1957.

During the territory era our people were discriminated against, that's one of the reason our Alaska Natives and other citizens voted to abolish capital punishment. Its no different today, our Alaska Natives are being discriminated against. Only the minority will be affected.

For example the Alaska Native receive longer sentence and we have no money to defend ourselves. There are no police officers in the rural villages to maintain peace or control on drugs and alcohol being shipped to the rural communities that prohibit the aforementioned.

I visited Frank C. White, Sr. who I grew up with in Hoonah, Alaska. Frank served in the U.S. Marine Corp. Force Recon outfit. Frank retired as Chief Police Officer, and is also the leader of the Eagle Wolf clan.

This is what my wife recorded during our visit on February 28, 2009.

Recording: Visitation: Frank White, Sr. We will be getting some information on the death penalty during the territorial days of why this was discontinued.

When a minority is coming out of a bar the police arrested him right in public. A legislature saw what was happening and wanted prove if this action was a misdemeanor. So he went down town and waited until police were present and watching the bar - He then came out of the bar and urinated right on the side walk and then on the police car. The legislature was a white man that wanted to do away with this misdemeanor.

The cops arrested anybody that stunk. That's the same way when a guy kills someone that was not determined whether it was premeditated. A premeditated murder to kill is an automatic death penalty because he plan on it - this happened spontaneously - it drops down to second degree, third degree, fourth degree. Anytime a minority kills someone it

was automatic premeditation - whether it happened in a bar fight or elsewhere - if a guy died in the fight the guy had it because he is a minority. So it shows right there that a minority gets the death penalty. It was not determined that it was a first degree, second degree murder.

Another example: A young girl was adopted from my tribe by a white man. She was taken to their mine at Admiralty Island. She was abducted and killed and found her lying in the bushes. A couple of young warriors went looking for her. After the tribe took her to Ground Hog Bay and buried her, the tribal warriors went to the mine to kill all the miners, except for one.

The warriors got in a canoe and went to Skagway, the territorial jail was there, the pen.. And turned themselves in to the U.S. Marshall. The U.S. Marshall did not know what to do with the three men. The one guy that was spared his life told a different story- as a result - all got executed. The face value - they were going to hang all three of them.

Nobody explained to them of the white man law. This is why I do not like capital punishment.

In conclusion of the testimony we oppose Capital Punishment because of above reference.

Alfred McKinley, Sr.
Executive Committee
Grand Camp, Alaska Native
Brotherhood

Submitted by: ASSEMBLY MEMBER GRAY-JACKSON AND CHAIR DRUMMOND
Reviewed by: Assembly Counsel
For reading: February 24, 2009

CLERK'S OFFICE
APPROVED
Date: 2-24-09

ANCHORAGE, ALASKA
AR NO. 2009–55

A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY IN OPPOSITION TO INSTITUTING THE DEATH PENALTY IN ALASKA.

WHEREAS, House Bill No. 9 has been pre-filed for the 26th Legislature – First Session to allow imposition of the death penalty in Alaska for certain state crimes; and

WHEREAS, flaws in forensic evidence analysis on the national level are coming to light daily, calling for massive institutional reforms to be implemented; and

WHEREAS, many prisoners now on death row in states with capital punishment are subject to exoneration because of advances in *DNA* analysis; and

WHEREAS, Alaska as a state has never instituted the death penalty; and

WHEREAS, the Alaska Territorial Legislature abolished capital punishment in 1957 in a measure stating "The death penalty is and shall hereafter be abolished as punishment in Alaska for the commission of any crime"; and

WHEREAS, in the 50th year and golden anniversary of Alaska statehood, the will of the people of Alaska should be celebrated and not shunned; and

WHEREAS, the pervasive will of the people since prior to statehood has steadfastly been to forego capital punishment in the state of Alaska; and

WHEREAS, House Bill No. 9 has been referred to the Judiciary Committee and is scheduled for hearings on Monday, February 23rd and Wednesday, February 25th;

NOW, THEREFORE, the Anchorage Assembly resolves as follows:

The Anchorage Assembly opposes the introduction of measures by the 26th Alaska Legislature to institute capital punishment in Alaska.

PASSED AND APPROVED by the Anchorage Assembly this 24th day of February, 2009.

Chair

ATTEST:

Municipal Clerk

AR 2009-55

Content ID: 007461
Type: AR_AllOther - All Other Resolutions
Title: A RESOLUTION OF THE ANCHORAGE MUNICIPAL ASSEMBLY IN OPPOSITION TO INSTITUTING THE DEATH PENALTY IN ALASKA.
Author: gray-jacksone
Initiating Dept: Assembly
Review Depts: Assembly
Date Prepared: 2/20/09 9:21 AM
Director Name: Harriet Drummond
Assembly Meeting Date: 2/24/09

Workflow Name	Action Date	Action	User	Security Group	Content ID
Clerk_Admin_SubWorkflow	2/20/09 9:22 AM	Exit	Elvi Gray-Jackson	Public	007461
AllOtherARWorkflow	2/20/09 9:22 AM	Checkin	Elvi Gray-Jackson	Public	007461

Addendum – CONSENT AGENDA – **RESOLUTIONS FOR ACTION-OTHER**

Richard C. Dieter
EXECUTIVE DIRECTOR

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DEATH PENALTY INFORMATION CENTER

FAX COVER SHEET

DATE: March 17 2009

TO: Rep. Jay Ramsee
Chair, House Judiciary Committee

FAX: 1-907-465-2070

FROM: Richard Dieter

Number of sheets (including cover sheet): 4

Response to question at hearing.

Board of Directors Anthony Amsterdam David Bruck George Kendall Michael G. Millman Christina Swarns
David J. Bradford Phoebe Ellsworth John R. MacArthur Diann Rust-Tierney Ronald J. Tabak

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DEATH PENALTY INFORMATION CENTER

M E M O R A N D U M

TO: Rep. Jay Ramras
Chair, House Judiciary Committee
State of Alaska

FROM: Richard Dieter
Executive Director, Death Penalty Information Center

RE: *Results of changes in death penalty law*

DATE: March 17, 2009

On February 25, I offered oral testimony by telephone before your committee regarding a bill to reinstate the death penalty in Alaska. During the questioning following my testimony, one of the Representatives (whom I could not identify because I was not physically present) asked whether there were individuals who had been executed in the United States in the past but who could not be executed today because of Supreme Court decisions. I indicated that there certainly were such individuals, but that I did not have an exact count and would provide the Committee with additional information at a later time. This memo addresses that question.

One of the most sweeping Supreme Court decisions on the death penalty occurred in 1972 in *Furman v. Georgia* in which the Court overturned approximately 600 death sentences because the death penalty was being applied in an arbitrary and capricious manner. Thousands of executions had occurred prior to this decision, but it would be difficult to determine exactly when the punishment moved from one which was regularly and constitutionally applied to one in which its rarity and lack of guidance made it arbitrary and unconstitutional.

I suspect that the thrust of the Representative's question was about the modern application of the death penalty after 1972, when every state that wished to adopt capital punishment re-wrote their death penalty laws. Since then, there have been two decisions that clearly excluded future defendants from the death penalty who had been subjected to execution after 1972. One decision involved defendants with mental retardation (*Atkins v. Virginia* (2002)) and the other involved those who were under the age of 18 at the time of their crime (*Roper v. Simmons* (2005)). From the time of these respective decisions, no could be executed with either of those characteristics, regardless of when they were sentenced to death. But some defendants in each category were executed between 1972 and the date of the decisions.

BOARD OF DIRECTORS: Anthony Amsterdam, David J. Bradford, David Bruck, Phoebe C. Ellsworth, George Kendall, John R. MacArthur, Michael C. Mitman, Diann Rust-Tierney, Christina Swarns, Ronald J. Tabak

Mentally Retarded

According to Dr. Denis Keyes, William Edwards, Esq., & Robert Perske, "People with Mental Retardation are Dying - Legally: At least 44 have been executed," Mental Retardation, Vol. 3, June 2002, pp. 243-44, there were 44 executions of people with mental retardation between 1972 and 2002. The article lists the names of the defendants and in most cases their IQ scores on tests indicating mental retardation.

Juveniles

According to Victor L. Streib, "The Juvenile Death Penalty Today: Death Sentences and Executions for Juvenile Crimes January 1973 - December 31, 2004" (2005), there 22 executions of defendants under the age of 18 at the time of their crime between 1972 and 2005.

Other Decisions

The Supreme Court has issued many other decisions restricting the death penalty, but it is difficult to know whether earlier executions would have been excluded by these rulings since many of the decisions depend on how the law would be applied to the facts presented in the case. No such determination is made by courts after a person has been executed. For some decisions, no executions under the issue decided occurred in the modern era, before or after the decision. Some of the more prominent decisions restricting the death penalty have been:

Coker v. Georgia (1977) – no death penalty for the crime of rape of an adult (no such executions in the modern era had occurred)

Enmund v. Florida (1982) – no death penalty for a defendant only indirectly involved in a felony who did not kill, or intend to kill the victim (no such executions in the modern era had occurred, and cases would depend on the facts)

Ford v. Wainwright (1986) – no death penalty for the insane (probably no such executions in the modern era had occurred, though defendants had not been routinely given adequate hearings to determine insanity)

Ring v. Arizona (2002) – defendant entitled to a jury to determine if he is eligible for the death penalty (executions occurred in the modern era prior to this decision, but the decision only entitled the defendant to a new hearing with a jury, not the permanent removal of the death sentence)

Wiggins v. Smith (2003) – for a defense attorney to be effective, a full investigation of the defendant's social history to determine the existence of mitigating factors is required (whether a prior case would have been affected by this decision would depend on an interpretation of the facts of that case)

Panetti v. Quarterman (2007) – clarifying the conditions that might lead to a judgment of insanity (whether a prior case would have been affected by this decision would depend on an interpretation of the facts of that case)

Kennedy v. Louisiana (2007) – no death penalty for the crime of child rape or other offenses against an individual other than murder (no such executions in the modern era had occurred)

I hope this memo is of assistance to your Committee. I would be happy to try to answer any other questions members of the Committee might have.

Thank you for your consideration of this important matter.

Summary of Testimony of Robert C. Bundy

Alaska State House Judiciary Committee

House Bill No. 9

Capital Punishment

February 25, 2009

I. Introduction

I am an attorney in private practice in Anchorage. I was admitted to practice law in the State of Alaska in 1972. I was a prosecutor for almost half of my career. I served as an Assistant District Attorney in Anchorage, District Attorney in Nome and United States Attorney for the District of Alaska. In my duties as United States Attorney I had occasion to take part in three cases in Alaska involving the federal death penalty.

After careful thought I have come to oppose the institution of a death penalty in Alaska for a number of reasons, including the problems of cost, prioritization of criminal justice resources and racial disparity. Those issues have been well documented and discussed by other witnesses. I wish to discuss another issue particularly relevant to my experience: the possibility of wrongful convictions and executions.

II. The Problem of Wrongful Convictions

For the past several years I have been working with the Innocence Project, which is an organization founded to assist persons in proving their innocence through post-conviction DNA testing.

- To date, there have been 220 men and women exonerated by post conviction DNA testing nationwide.

- 17 had been sentenced to death.
  30 more were eligible cases
- 85% of convictions on serious charges do NOT involve biological evidence susceptible to DNA testing, meaning that exonerations achieved through the use of DNA testing represent only a small proportion of wrongful convictions occurring in the system.

Post-Conviction DNA testing has demonstrated that the risk of convicting an innocent is much greater than even the most cynical expected, as is the risk of executing an innocent. In addition to exonerations of the convicted, DNA has revealed other data that points out the frequency of error in the system.

- FBI exclusion data. In the Department of Justice's National Institute of Justice survey of DNA exclusions, the FBI reported that since it began conducting DNA testing in 1989, it found that in at least 24% of the cases in which it gets results – ordinarily matters in which a suspect has been arrested or indicted on non-DNA evidence – the defendant was excluded. (Remember, 85% of cases do not involve DNA evidence.)

- Pre-conviction/post indictment exclusions. Although no system exists for tracking data, law enforcement officials across the country acknowledge that in thousands of cases, including many homicides, arrests and indictments based on seemingly compelling proof like detailed confessions and multiple eyewitnesses, have been dismissed and the real assailant identified before conviction based on DNA testing.

- Governor Warner's Virginia Experiment. When an unexpected cache of specimens of biological evidence from cases resulting in convictions on serious crimes was found in Virginia archives, Gov. Warner ordered DNA testing (that was not available at the time of conviction) of evidence used to convict. Out of the first 29 randomly selected cases, there were two exonerations (and in one case the real assailant was identified)—close to a 7% exoneration rate. See, "Follow the DNA to Find the Truth," The Roanoke Times, 12/16/05.

III. Causes of wrongful convictions are exacerbated by the death penalty.

- A number of Innocence Project exonerations came in cases in which the defendant pleaded guilty. These guilty pleas were the result of a plea bargain in which an innocent man plead guilty to a homicide and a life sentence to avoid the prospect of a death sentence. - at least 4 guilty pleas to be exonerated

- Death penalty eligible cases are usually the most heinous crimes committed against the most sympathetic victims charged against the least sympathetic defendants - with the most publicity. Police and prosecutors (and judges) become emotionally invested in convicting the person they think is guilty. A theme running through almost every case in which a person convicted of a heinous crime is later exonerated is the problem of "tunnel vision." Tunnel vision is a natural human tendency that has particularly pernicious effects in the criminal justice system. It is the group of mistakes and logical fallacies to which we are all susceptible, that leads actors in the criminal justice system to focus on a suspect, select and filter the evidence that will build a case for conviction, while ignoring or suppressing evidence that points away from guilt. Evidence inconsistent with the chosen theory is easily overlooked or dismissed as irrelevant, incredible, or unreliable. Tunnel vision is more the product of the human condition and institutional and cultural pressures than of maliciousness or indifference. The problem of tunnel vision in the justice system is thoroughly discussed in "The Multiple Dimensions of Tunnel vision in Criminal Cases" 2006 WISCONSIN LAW REVIEW 291. See also, Dianne L. Martin, *Lessons About Justice from the "Laboratory" of Wrongful Convictions: Tunnel Vision, the Construction of Guilt and Informer Evidence*, 70 UMKC L. REV. 847 (2002); Samuel R. Gross et al., *Exoneration in the United States, 1989 through 2003*, 95 J. CRIM. L. & CRIMINOLOGY 523 (2005).

- The details of cases in which individuals were exonerated by post-conviction DNA testing are found on the Innocence Project web site: www.innocenceproject.org. The facts of many of these cases are startling. Many of the cases involve

multiple eyewitnesses, confessions, guilty pleas and/or forensic science. Before the DNA testing, reviewing courts on appeal or in post-conviction proceedings often characterized the evidence as overwhelming. Nonetheless DNA testing proved innocence often after years of imprisonment, some on death row.

- Exclusion is definitive
  - when even one mark is absent — exclusion

- Inclusion
  - on less than full 13-mark profile
    matches subject to probability statistics, not certainty.
    - ~~Partial, meaning~~
    - Incomplete profiles are recorded in ~~the~~ CODIS
      - retained in CODIS

ALASKA HISTORY SHOWS US THAT THE TERRITORIAL LEGISLATURE WAS RIGHT TO ABOLISH THE DEATH PENALTY IN 1957.

Respectfully submitted to the members of the House Judiciary Committee: *Chair Jay Ramras; Vice-Chair Nancy Dahlstrom; Members John Coghill, Jr., Carl Gatto, Bob Lynn, Max Gruenberg, and Lindsay Holmes, on February 25, 2009, in reference to House Bill 9.*

My name is Averil Lerman. I speak to you today to ask that you reject any bill authorizing the death penalty in Alaska.

I come before you today as a legal historian, who spent many years studying the history of the death penalty in Territorial Alaska between 1900 and 1957. My research has included extensive documentary review, in archives, libraries, and private collections. I also collected an oral history from more than 50 people who were involved with or affected by the hangings in the territory.

My research shows that Alaska communities who used the death penalty later came to reject it. In Fairbanks, there were three hangings in the 1920's. After that decade, not one more person was hanged, although homicide in Fairbanks continued. The same thing happened in Juneau, where there were three hangings between 1939 and 1950, and then no further hangings, although homicide in Juneau also continued.

Why did the Territorial Legislature abolish the death penalty in Alaska in 1957? Why did the hangings stop?

My answer is that the reality of the death penalty is very different that what people say it will be. People who don't personally experience all the special things that happen in a death process often think that maybe capital punishment is a good thing -- maybe it will help us reduce violent crime; maybe it is fair to take a life for a life; Maybe it is plain justice. I used to be a person who had no particular exposure to the death penalty - and I used to think the death penalty might be a good idea.

But people who live with a death system in their community start to change their minds after being exposed to it for a while. That's what happened here in Alaska.

Some people change their minds about the death penalty when they see that only the poor go to death row. Rich men don't hang from that rope, or drop from that needle. In Territorial days, rich murderers like Guy Prince and Harry de Groot in Juneau never got a death sentence. The same is true in death states today.

Some people change their minds about the death penalty when they see that non-white people and other minorities are much more likely to go to death row than white people. In Territorial Alaska, the only people hanged after 1904 were non-white or ethnic minorities, although 75% of all murder was

committed by white men.[1] The Fairbanks hangings executed two Alaska Natives and one foreign man from Montenegro, who was perceived as an ethnic minority. The Juneau hangings executed one Indian (probably from the Puget Sound area) and two African-Americans.

Some people change their minds when they see that, although the death penalty is intended initially only for the most heinous murderers, it ends up being imposed on many other criminals as well. In 1929, Constantine Beaver was sentenced to die for killing his good friend during a drunken brawl. Beaver loved his friend, and was overwhelmed with remorse. U.S. Deputy Frank P. Young described hanging Beaver in Fairbanks as "the saddest affair I have had to witness," and resigned shortly thereafter. No further executions were held in Fairbanks.

Some people change their minds when they see what administering death to other people does to the people who have to actually turn the levers of the death process. Even 50 years after participating in one of the Juneau death cases, the people I spoke to were emotional about what had happened to them, and upset about being asked about it. I talked to a man who had, as a young Juneau policeman, been involved with an execution. When I asked if the condemned man had been shaking, he answered angrily, "Not any more than the rest of us." The wife of another patrolman asked me, "Doesn't anyone think about the people who have to do these things?" The same question was raised by jurors at he trial of Eugene LaMoore, who asked the judge if he could decide on the sentence, instead of them, and found out he could not. The death system puts a heavy weight on the backs of a lot of average people, for life.

One person who changed his mind about the death penalty was Supreme Court Justice Harry A. Blackmun. This is what he said:

> Twenty years have passed since this court declared that the death penalty must be imposed fairly and with reasonable consistency or not at all, and despite the effort of the states and courts to devise legal formulas and procedural rules to meet this...challenge, the death penalty remains fraught with arbitrariness, discrimination...and mistake..."
>
> From this day forward, I no longer shall tinker with the machinery of death. For more than 20 years I have endeavored...to develop...rules that would lend more than the mere appearance of fairness to the death penalty endeavor...Rather than continue to coddle the court's delusion that the desired level of fairness has been achieved...I feel...obligated simply to concede that the death penalty experiment has failed. It is virtually self-evident to me now that no combination of procedural rules or substantive regulations ever can save the death penalty from its inherent constitutional deficiencies... [2]

The same decision was reached by the Alaska Territorial Legislature in 1957. It was a good decision. We should not change it.

---

[1] K .S. Knell, *A Different Frontier: Alaska Criminal Justice 1935-1965*, University Press of America, Inc., Langham, MD (1991).

[2] *Callins v. Collins*, 510 U.S. 1141 (dissent) (February 22, 1994).

Biographical Information about Averil Lerman:

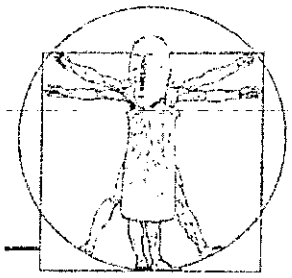
Averil Lerman is an attorney and legal historian. She received grants from the National Endowment of the Humanities and from the Alaska Native Justice Center for the oral history of the last three hangings in Territorial Alaska.

Articles on that history, including those written by Ms. Lerman, are available on the internet through the University of Alaska Justice Center in Anchorage. The internet links are:

***"Capital Punishment in Territorial Alaska: The Last Three Executions,"** originally published in Frame of Reference, Alaska Humanities Forum 9(1), April 1998.*
Online at http://justice.uaa.alaska.edu/death/alaska/juneauexecutions.html

***"The Trial and Hanging of Nelson Charles,"** Alaska Justice Forum 13(1), Spring 1996.*
Online at http://justice.uaa.alaska.edu/forum/13/1spring1996/a_nelson.html

Ms. Lerman has worked for two decades as a post-conviction, appeal, and habeas attorney for Alaskans convicted of crimes. This work has given her a detailed understanding of the things that go wrong between a crime and an execution, and how innocent people end up on death row. Ms. Lerman has been listed in Who's Who in the World, and Who's Who in American Law, and Who's Who of American Women.



FRAME of REFERENCE

A PUBLICATION OF THE ALASKA HUMANITIES FORUM • VOL. IX, NO. 1 • APRIL 1998

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"Capital Punishment in Territorial Alaska: The Last Three Executions" by Averil Lerman

Originally published in Frame of Reference [Alaska Humanities Forum] 9(1): 6–9, 16–19, April 1998. Reprinted with permission at the Justice Center Web Site, University of Alaska Anchorage, http://justice.uaa.alaska.edu/death/alaska/juneauexecutions.html.

Alaska as a state has never had a death penalty. However, in Alaska's territorial days, eight men were executed under civil authority between 1900 and 1957. This article provides an account of the last three executions in Territorial Alaska between 1939 and 1950: Nelson Charles, Austin Nelson, and Eugene LaMoore.

The complete issue from which this article is excerpted is available at the Alaska Humanities Forum website, http://www.akhf.org/newsletter/april_1998_vol9_no1.pdf

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CAPITAL PUNISHMENT I

The Last Three Executions

Research for Averil Lerman's *Capital Punishment in Territorial Alaska*, was supported with grants from the Alaska Humanities Forum and the National Endowment for the Humanities and assistance from the Alaska Native Justice Center. In addition to studying the documentary record of these cases, which all took place in Territorial Alaska between 1939 and 1950, the author conducted over fifty interviews.

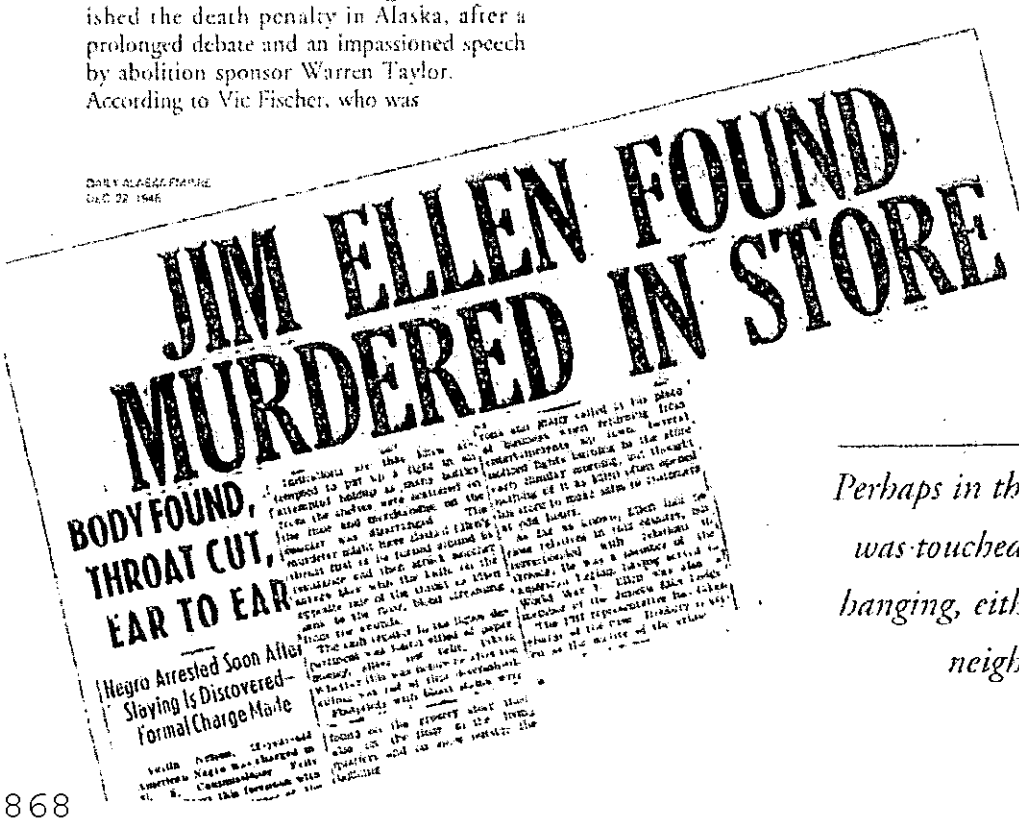
ALASKA HAD A DEATH PENALTY UNTIL 1957, when it was abolished by the Territorial Legislature. Between 1900 and 1957, eight men were legally executed in the Territory, each convicted of murder. Most of the murders were committed by white men,[1] but most of the men who hanged were non-white,[2] and after 1904, all of the men hanged were of minority status. Three were Alaska Natives, two were African-American, and one was a foreigner from Montenegro, viewed as a minority by the citizens who tried him.[3]

In 1957, the Territorial Legislature abolished the death penalty in Alaska, after a prolonged debate and an impassioned speech by abolition sponsor Warren Taylor. According to Vic Fischer, who was the junior sponsor of the abolition bill, one of the factors motivating abolition was concern about the apparent race bias in the application of the death penalty.[4]

The death penalty was rare in Territorial Alaska, although murder was not uncommon, and the communities that did experience several capital trials and executions appear to have spontaneously refused to impose further executions. In the 1920s, three men were hanged in Fairbanks. After 1929, no other hanging occurred in Fairbanks, although it appears that murder there continued. The same thing happened in Juneau where three men were hanged between 1939 and 1950, but none after that.

Perhaps in these small communities everyone was touched by the crime, the trial, or the hanging, either directly or through a friend, neighbor, or family member. The process was not carried out by some unknown strangers, and that may have influenced the manner in which the communities of Fairbanks and Juneau experienced the use and then the non-use of the death penalty. Many of the people who were interviewed for this article recalled their experiences with some bitterness, sadness, or uncertainty.

This article discusses the last three executions that took place in Territorial Alaska. They were all in Juneau. One of the executed men was native and the other two were black.


DAILY ALASKA EMPIRE
OCT. 22 1946

JIM ELLEN FOUND MURDERED IN STORE

BODY FOUND, THROAT CUT, EAR TO EAR

Negro Arrested Soon After Slaying Is Discovered—Formal Charge Made

Nelson Charles

NELSON CHARLES was a Ketchikan fisherman. Charles, described in the newspaper accounts as "an Indian" perhaps from the Puget Sound area, had been tried and convicted in Ketchikan for the 1938 murder of his mother-in-law. The crime was committed when both he and his victim had been drinking heavily. Charles himself had summoned the police immediately after the killing, and had taken them to the hillside where the stabbing had occurred. Cecilia Johnson, his victim, had been stabbed in the back and the chest, and had been sexually molested.

Charles was represented at trial by well-known Ketchikan lawyer, A.H. Ziegler, who was appointed by the court on behalf of the indigent defendant. Ziegler is remembered as an intelligent and well-respected attorney,[5] with a sardonic sense of humor.[6] Ziegler, a Democrat, was viewed as "very conservative" on social issues, and was an unlikely champion for an Indian charged with murder.[7] He had served three terms in the Territorial Legislature, and was elected mayor of Ketchikan in the same year as Nelson Charles's trial.[8]

Ziegler was appointed to the case only one week before the trial was to begin. The trial jurors were all white. The defense called no witnesses at the trial aside from the defendant. The jury

Perhaps in these small communities everyone was touched by the crime, the trial, or the hanging, either directly or through a friend, neighbor, or family member.

N TERRITORIAL ALASKA

—by Averil Lerman

deliberated for only four hours before returning a guilty verdict, with a finding that Charles should be punished by death rather than by life in prison.

It does not appear that Ziegler did much pretrial investigation.[8] After his client was sentenced to hang, however, Ziegler tried to compensate for the lack of pretrial work by submitting the affidavit of William H. Caswell, a retired U.S. marshal, who stated that Charles was ordinarily a peaceable man, and that "when not under the influence of liquor he is a quiet, peaceful and polite person and I have never known him to even have an argument or get into trouble of any kind." Caswell continued, stating that he had seen Charles a few days before the murder, and that *he had the same bulging of the eyes and stare and had every appearance of an insane person; that from my experience with the man, my observation of his action and conduct when drunk I am convinced that intoxication produces a condition in his mind of insanity . . .*

THE EVIDENCE was too little, too late. Ziegler's request for a new trial was denied, and Charles was sentenced to hang. No appeal was filed; there was no provision for appointed lawyers on appeal, and like most of the men hanged in Alaska, Nelson Charles had no money, and thus could not afford to bring any appeal from his conviction. Unsuccessful efforts for clemency were made on his behalf by the Alaska Native Brotherhood, through a petition to President Roosevelt.

While Charles was attempting to avoid the scaffold, the U.S. marshal's office in Juneau was trying to figure out how to build a scaffold. The U.S. marshal was William Mahoney. Like others in his position during Territorial times, he was a political appointee, and his second-in-command, Walter Hellan, was often delegated the important tasks. George Sundborg, a young reporter for a local weekly called *The Juneau Independent* recalls seeing the marshal and his deputies pore through the manuals in order to learn their new duty:

They of course had never conducted a hanging, and I think they got a few books out of libraries somewhere, probably from the U.S. Marshal Service, to tell them how a hanging was to be set up and carried through. And I know that they had done some dry runs with the trap that they built, and had carefully calculated the weight of the victim — of the accused, so that he wouldn't be dropped so far as to behead him, which sometimes happens in a hanging, I learned at that time.[9]

Sundborg also learned that, like a firing squad where one of the squad has a blank cartridge, the marshal's deputies were to be insulated from individual responsibility for the act of executing Nelson Charles. Sundborg explained:

And so Walter Hellan, who was in charge of all of this, had told me that, so that the person who actually sprung the trap would not know that he had done it, they set up several, I think four, different ropes that would pull a pin that dropped the trap. And three of them would be false, and one would be the one that actually did it. And so the four men, all of whom were deputy marshals — the one who did it would not know that it was he who had pulled the one that actually caused this man's death.

THE SCAFFOLD was constructed in a stairwell of the building which housed both the Federal Jail and the marshal's residence. According to Sundborg:

It was a large building which previously had been the capitol. And it was a wooden building but very large, and quite attractive. But it had grown old and it had been supplanted by the federal building, which was across the street from it. It had outside stairways, that is, one was out in the open when going from the second floor to the third floor, and so on. And [the marshal's office] had decided that they would do the hanging under one of these stairways because there was an open space there with quite a drop. And so we went in and they had set up a floor in the place with a trap in the middle of it.

The plan was to permit a drop of four and one-half feet below the level of the trapdoor. Construction of the scaffold was started three days before the hanging.[11]

Charles faced his imminent death calmly. According to the local newspaper, Charles left behind 13 letters of farewell, one of which was addressed to Marshal Mahoney, stating that the marshal "had treated him kindly and that he did not hold Mahoney in any way to blame for what was about to happen to him."[12] The paper also reported on Charles's condition on the night before his death: "Nelson Charles was calm throughout the night, jailers said, and ate a hearty breakfast. He slept about an hour and a half."[13]

The law required the execution to take place in front of 12 witnesses selected by the marshal. Those selected included three journalists, a priest, a minister, two doctors, men from the marshal's office, and several others who had no professional connection to the process (including one man who worked for the Internal Revenue Service).

A rope had been hung from the bottom of the second floor landing to the trapdoor structure that had been built over the open area into which the lower stair descended.

The witnesses were seated on benches beneath the ascending staircase. The marshal came out of the door, and told everyone that there was to be no talking once Nelson Charles came out. Al Anderson, one of the journalists present, recalled hearing someone say, "Jesus Christ, what a way to make a living."

Nelson Charles was brought out of the jail by Mahoney and a deputy. He was a small, dark-skinned man, wearing blue serge trousers, a white shirt, a carefully knotted necktie, and black shoes. Charles's arms and hands were bound tightly to his sides with white straps. As the witnesses watched, Mahoney took another strap and bound Charles's legs together.

Another of the journalists present, John Gaffney, wrote a remarkable essay shortly after the execution, in which he recorded details of the event, and some of his reactions to it.[14] He recounts,

As [Mahoney] finished his task, he stepped back a little: is there anything you'd like to say, Nelson? he asked. We listened as we had never thought a man could listen, listened till our ears would burst, listened while we expected him to say nothing, but hoped he would; we expected a brief negative nod of the dark head. But he

spoke, his voice a half-sob, whispering, barely more: I am innocent of killing my mother-in-law, he murmured. I don't want to hang; I still say I am innocent. His head was bowed forward, you could feel if not see the hot tears in his eyes, you could feel his trembling in your own body.

Mahoney pulled a black knit hood over Charles's head, and then took the noose off a peg on the wall, and placed it over Charles' hooded head. Then he stepped back a step, and raised his arm, and softly said, "OK."

Gaffney recorded his own thoughts at that moment:

Had I any thought of a man, a criminal, about to pay for his crime? Any thought of a disreputable and dangerous killer about to give his life for one he had taken? No; nothing like that. Only that a man was about to die; that there, almost within reach, was a man, a man like ourselves; a young man who somewhere had a wife, who had once slept an untroubled sleep, had only the day before laughed and hoped for life. I was aware of some feeling as I sat there then, some unusual feeling that was strange to me; then it was vague, and there was not time to fathom it. But now I know: it was the certainty, the sureness of it. I knew for the only time in my life that within minutes this man who now lived as I lived would be dead, a stone, lifeless, cold and stiff. Men have been stricken with fatal diseases and we have known they will die; we have held our buddies in our arms at the front and watched the last breaths spend themselves; but even then there has been hope, and when not hope, the awareness that death might stay away yet awhile. Would it come now, or later, perhaps? But none of that now; nothing less than a miracle can save this fellow, and there are no miracles in this life; we know no other. Soon he will be a stone.

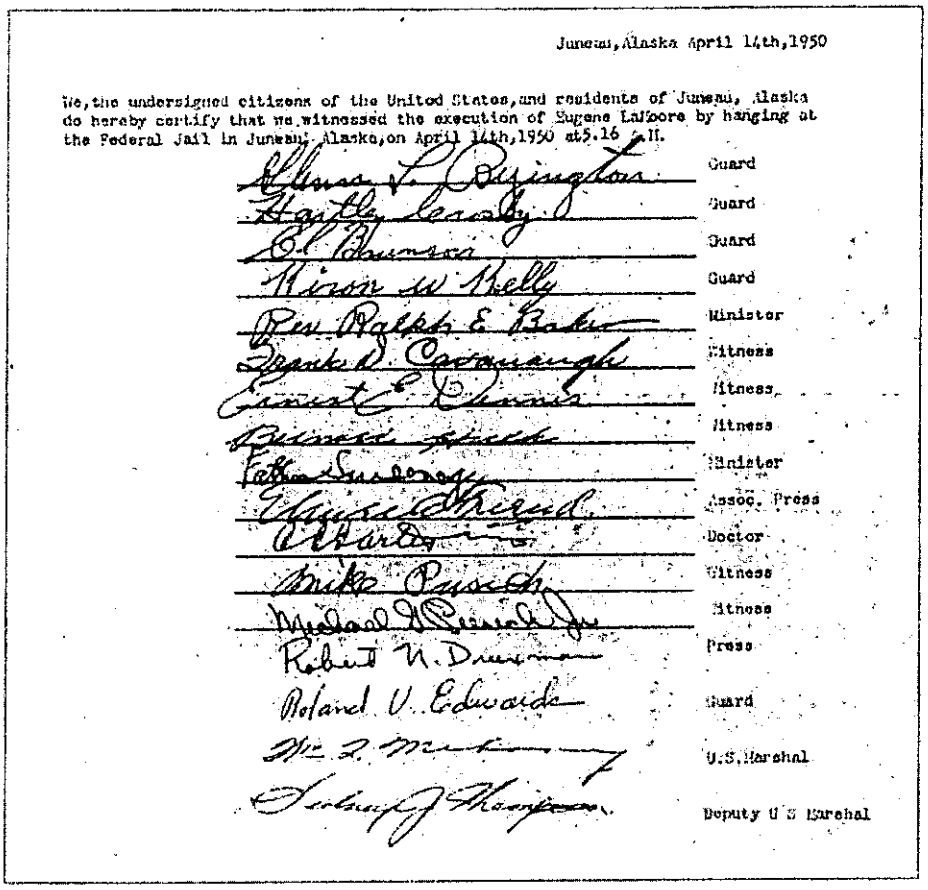
Deputy Marshal Walter Hellan flipped a switch on the wall and there was a clicking sound. Gaffney recalled:

Then, the clicking stopped with the louder sound of the trap's springing. There it was: the square of wood on which he stood fell away and he fell toward the pit, fell then swung. Not a movement, just swung, turning, turning, now right, now left; like a stone on a string, a bit of paper on a cord, held in the air for a kitten to leap at.

The marshal went downstairs to help the doctors climb up a pile of boxes from the floor below to determine whether or not Nelson Charles was still alive. "Dead," was all the second doctor said. The witnesses left.

Al Anderson remembered what happened after the hanging, dropping his voice to quote Mahoney:

And afterwards, I'll never forget, the United States marshal congratulating Walter Hellan on the '... smooth job, well done.' And I think after that, I went downtown to a bar and had a good stiff drink, then came back to my office at the Alaska Daily Press, *wrote the story, and everybody stayed away from me because they knew I had enough on my mind.*



Juneau, Alaska April 14th, 1950

We, the undersigned citizens of the United States, and residents of Juneau, Alaska do hereby certify that we witnessed the execution of Eugene LaMoore by hanging at the Federal Jail in Juneau, Alaska, on April 14th, 1950 at 5.16 A.M.

Guard
Guard
Guard
Guard
Minister
Witness
Witness
Witness
Minister
Assoc. Press
Doctor
Witness
Witness
Press
Guard
U.S. Marshal
Deputy U.S. Marshal

Witnesses to the execution of Eugene LaMoore.

GEORGE SUNDBORG recalled emerging after the execution from the dark jail into the rainy daylight, and seeing a "... very striking scene, one of the greatest, most striking scenes of my life." There was a ring of several hundred people around the jail:

I was dumbstruck to see that the entire ring — it was on a hillside, and every point of vantage where a person could stand was filled with a Native Alaskan, an Indian. You've probably seen the movies in the old days where the wagon trains are going through a valley, and all of a sudden an Indian will appear on the horizon, and then there would be nothing but Indians all the way around. Well, that was the way it was on the day of the execution.

The crowd was "absolutely silent."

Nelson Charles had asked that any funeral be conducted by the Salvation Army. He was buried in an unmarked grave in Evergreen Cemetery. His wife was in Ketchikan at the time of the hanging. According to the newspaper, she was serving time on a charge of being drunk and disorderly. He left behind a young daughter as well.

Austin Nelson and Eugene LaMoore

AUSTIN NELSON AND EUGENE LAMOORE were separately convicted of the 1946 murder of a Juneau convenience store owner named Jim Ellen. Both Nelson and LaMoore were African-American.

Jim Ellen owned a small grocery and liquor store on Willoughby Avenue, in the rougher area of Juneau. He lived in the back room of the store premises. A 53 year-old bachelor, he was a Greek immigrant who had come to the United States as a child in 1909, and had been in Juneau since about 1925. Ellen was a veteran of World War I and a member of the

American Legion and the Juneau Elks Lodge. He was a hardy man, and powerful. Stores like his were then, as now, a common target of thieves.[14] The local newspaper reported several previous robberies of Ellen's store in 1937, 1938, and 1944. In one of those instances, Ellen had successfully resisted two armed robbers, who he chased away after a struggle.[15]

The murder of Jim Ellen hit a nerve in post-war Juneau. One former resident, Isabelle McLean, recalled anxiety in the town:

It was just after the war, you know, and there had been a lot of unsettled feeling in Juneau because there were many strangers, many people who had worked various construction jobs during the war, were drifting in and out.[17]

ELLEN'S BODY was found on the floor of his store, on the morning of December 22, 1946. His throat had been cut. Merchandise was scattered around the store, and all of the paper money from the cash register was gone, with one exception. The robber had left on the store counter a check signed over to Jim Ellen by one "Austin Nelson." Austin Nelson was a 24 year-old black man, who had worked at various odd jobs around Juneau. Nelson was immediately arrested on suspicion of murder.

Trial was set for April 10, 1947. Because it was a homicide and Alaska still a territory, the investigation was done by the Federal Bureau of Investigation. Agents interviewed twenty witnesses, and forwarded evidence to a scientific laboratory in Washington, D.C. for testing and analysis. FBI records show that agents sent a radiogram to Washington, stating that they wanted to secretly record conversation between the accused man and his lawyer, which wouldn't be hard, they said, because the elderly lawyer was very deaf, and any conversation with him would have to be pretty loud. Washington responded that the request was ill-advised.

Austin Nelson, in contrast, had no opportunity to conduct an investigation into the charges filed against him. Counsel was not appointed to represent him until ten days before the scheduled trial. Because it was a capital case, the court could appoint two defense lawyers. The first appointment was Henry Roden, one of the grand old men of Alaska Law, who had himself served as the compiler of law in the territory. At 73, however, Roden was past his prime, too frail, by one report, to walk up the steep hill to the jail to see his client. Roden told the Court that eight days would be long enough for him to prepare his client's defense, but asked that the court appoint someone to assist him. Joseph A. McLean, who had passed the bar exam just two months earlier, was appointed as his co-counsel. McLean had studied for the bar by serving for a period of years as an intern to Herbert "Bert" Faulkner, a preeminent attorney in Juneau.

NELSON'S TRIAL BEGAN ON APRIL 14, 1947, with the picking of the jury. Seven of the twelve jurors who were chosen for the trial had just served together on another murder jury the week before. Argument by the United States Attorney and introduction of evidence began on the next day, and consumed a total of four days.

"Like most of the men hanged in Alaska, Nelson had no money with which to pay for an appeal, and there was no provision for a public lawyer for appeal."

The main evidence against Nelson was the testimony of a woman named Marguerite "Dolly" Silvers. Silvers had, in fact, been held in jail for a month before the Nelson trial on a high bond, on the grounds that she was a material witness. Such an arrest was extremely unusual, according to one former territorial prosecutor.[18] The basis for it in this case is not known.

Silvers testified at Nelson's trial that she had seen Austin Nelson in Ellen's shop late on the night of the murder, when she was walking back home after the bars had closed.

Other witnesses testified that Nelson had once owned a straight-edged razor, that a case for such a razor had been found in his rented room, that he had small bloodstains on his clothes, and that he had been seen on Willoughby Avenue on the night of the killing. The government submitted as evidence for the jury's examination a photograph of Ellen lying in a pool of his own blood with his throat cut, a photograph of Ellen lying in the morgue, the blood soaked shirt and pants that Ellen had died in, and a glass vial containing Ellen's blood. The evidentiary value of the vial of blood is unknown.

Henry Roden made no opening argument on behalf of his client. Nelson put forward an alibi defense to the effect that, although he had been downtown that Saturday night, and had been walking on Willoughby Avenue, he had nothing to do with Ellen's death. One of the witnesses gave highly persuasive testimony in support of Nelson's alibi. He stated that Nelson had been with him for much of the evening, spending some time at a downtown bar, and visiting friends for a drink at a local hotel, and walking down the Avenue to try to collect a debt from a friend. That witness was Eugene LaMoore, a black, 42 year-old fisherman married to a Juneau Tlingit woman with whom he had three young children. As remembered by one of the jurors at Nelson's trial, LaMoore's testimony was detailed and credible:

He made a tremendous witness. He was just straightforward. Looked at everybody, looked the prosecuting attorney right in the eye, straightforward answers, no hesitation, very sincere. You couldn't help but believe him.[19]

But LaMoore's credibility with the jury was short-lived. Without advance notice, the prosecutor asked LaMoore if, twenty years before, he had been convicted of a felony in California. LaMoore denied it. The next morning, LaMoore returned to the courtroom and corrected his testimony of the previous day, admitting to a 1927 conviction. As a young man, LaMoore had, in fact, been convicted of robbery.

LaMoore's failure to admit the conviction, however, destroyed his credibility with the jury regarding everything else he had said about Austin Nelson. Even 50 years later, the scene was vivid in the mind of one of the men who served on Nelson's jury:

As far as LaMoore was concerned, I think the rest of the jury felt like I did. They were stunned when [United States Attorney] Gilmore brought him back in because I think we believed the guy when he testified the first time around. He was just ... — if anybody could have saved this guy's neck, it was [LaMoore].

Nelson's lawyers argued that the case was purely circumstantial, that the Government had never explained the problematic facts that none of the money taken from the store was found, that no murder weapon had been found, and that the murderer's bloody footprints, which had been found on the linoleum floor of the store, and cut out by the police, had never been introduced by the prosecutor.

[continued on page 16]

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Capital Punishment

[continued from page 9]

AFTER FOUR HOURS of deliberation on Friday, April 18, the jury returned with a verdict of guilty. As required by law, the jury was also charged with deciding whether Nelson should be sentenced to life in prison or sentenced to hang. The jury's verdict was death.

Before imposing sentence, Judge Pratt asked Austin Nelson if he had anything to say on the subject. Nelson's answer was transcribed by the court reporter:

Yes I have, your Honor. Your honor, I was prosecuted and condemned for a crime I have not committed. I haven't the least idea of what it is all about. I knew nothing about it. I guess I have been prosecuted for somebody else. I am innocent. That is all. ... If it is possible for a new trial, there is an attorney I can get to take the trial. He isn't here, but I am positive he will take it to prove my innocence, because I absolutely don't know anything about it.

Forced to respond to this disconcerting dialogue, Judge Pratt answered:

The jury has found you guilty, Mr. Nelson, and they made that finding without the recommendation that you were guilty without capital punishment. Having so found you guilty, there is only one sentence the Court can pronounce, and that is the sentence of death.

Therefore, it is the sentence and judgment of the Court that you suffer the death penalty by hanging by the neck until dead, upon the 1st day of July, 1947. Please sit down.

Nelson persisted:

Your honor, is there no way for me to get a new trial whatsoever?

The Judge told him to ask his attorney, and, again, to sit down.

Nelson's conviction was not appealed. Like most of the men hanged in Alaska, Nelson had no money with which to pay for an appeal, and there was no provision for a public lawyer for appeal.

ON THE DAY Eugene LaMoore came back into court to change his testimony regarding the conviction twenty years earlier, he was arrested by the U.S. marshal and charged by the local FBI agent with committing perjury. The fact that he had retracted that statement the following day was disregarded. Bond on the perjury charge was set at $10,000, a very high bond in 1947.[20]

LaMoore was incarcerated in the federal jail, in a cell by himself, shackled in leg irons - a short length of chain with iron bracelets on each side which were locked around each of his ankles, and later shackled to a ball and chain. He was repeatedly interviewed by the FBI agent and by local law enforcement authorities, not about the perjury charge for which he had been charged and imprisoned, but about the murder of Jim Ellen. LaMoore denied any involvement.

The government attorneys and investigators continued to interrogate LaMoore, who had no attorney nor any ability to obtain an attorney. Shortly before Nelson was to be hanged, they brought Nelson and LaMoore together in the jail for the first time since LaMoore's arrest. Their efforts paid off: On July 1, 1947, the day that Austin Nelson was supposed to die, Eugene LaMoore signed a typed confession stating that he, too, had participated in the robbery of Jim Ellen, and that, during the robbery, Nelson had killed Ellen, although LaMoore had begged him not to.

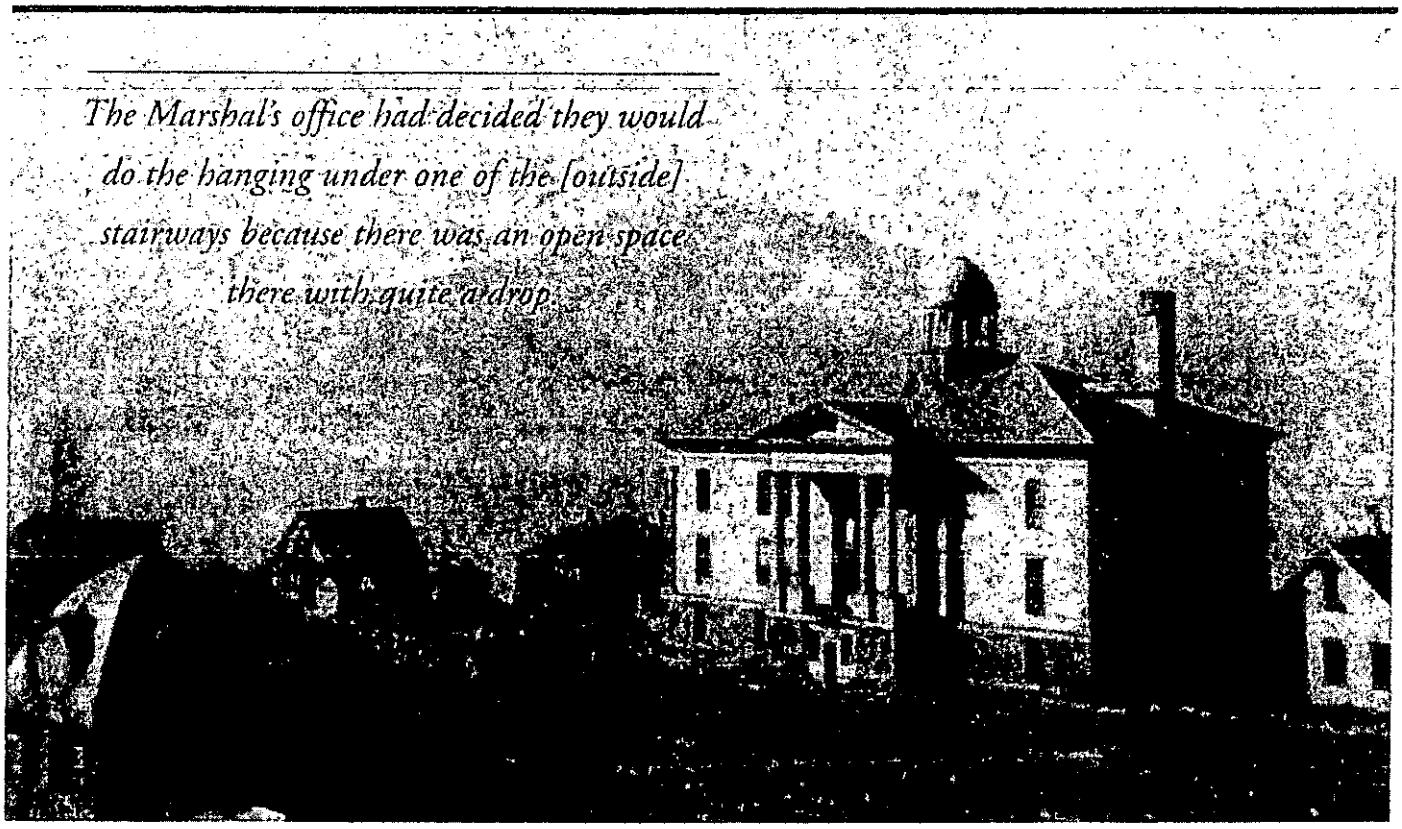
Nelson's hanging was postponed; the Government said that he was now a necessary and material witness against LaMoore, who was charged with first degree murder. A grand jury indicted LaMoore for murder on January 6, 1948, nine months after he had been jailed on the perjury complaint. On January 12, Henry Roden and Joseph McLean, the same two lawyers who had represented Austin Nelson, were appointed to represent LaMoore. LaMoore's trial began two weeks later, on February 2, 1947. It took three days.

The government's case against LaMoore hinged completely on the confession he had given at the federal jail. No murder weapon was introduced. No money from the robbery was introduced. Two witnesses testified that, on the night of Ellen's murder, LaMoore was wearing a coat that he didn't have any longer. One policeman testified that there had been bloody footprints on the floor of Ellen's store, which looked to be about the same size as LaMoore's feet. But the linoleum flooring with those footprints that had been cut out by the police on the day of the murder was never introduced by the government, and there was no explanation offered for its absence.

The only critical evidence against LaMoore was the confession. But at trial LaMoore retracted the confession. He testified that after he had been implicated by Nelson (which only occured in the final days before Nelson's scheduled hanging), the two had been brought together in the jail, and Nelson had burst into tears, apologized for telling lies, and had begged for help saving his life:

[Nelson] would not sit down. He stood behind his chair and cried and called himself many dirty names. He told me to forgive him, 'but help me save my life.' It hurts me to say this. He said, 'Help me save my life. It will come out all right.'[21]

The Marshal's office had decided they would do the hanging under one of the [outside] stairways because there was an open space there with quite a drop.



The old capital building housed the federal jail and the marshal's residence. It was eventually torn down to make room for the new state office building.

LaMoore said that he decided to help Nelson. At trial, in response to questioning by the prosecutor about whether or not his confession was true, the following exchange took place:

Q: You told [Deputy U.S. Marshal Hellan] a lie, did you?
A: *That was a lie. He asked me to swear to it, and I refused.*
Q: Did you mean to lie to him?
A: *To help that boy save his life if possible.*
Q: And your admitting to Mr. Hellan that you participated with him in the robbery and the murder, you thought you helped Austin Nelson by that?
A: *He is alive, isn't he?*
Q: Well, yes.
A: *It undoubtedly helped.*
Q: Your making that statement got him a stay of execution?
A: *That man was framed, and you know it.*
Q: Just answer the questions.[22]

Then the prosecutor asked:

Q: Didn't you think you were taking a chance to help?
A: *I take a chance walking across the streets.*
Q: You were willing to take that chance?
A: *I have took chances before.*[23]

"I remember it was not a nice day. There was a feeling of malaise, or dourness, or maybe the best word is the German word, angst. *"*

◆

LaMoore also claimed that his confession was obtained by a ruse. His defense attorneys put forth uncontroverted evidence that LaMoore's confession was only obtained after Hellan called on one of the most prominent lawyers in Juneau to come down to the jail and talk to LaMoore in connection with the unfiled murder charge. That lawyer was Herbert L. "Bert" Faulkner. Bert Faulkner was probably the most famous lawyer in Juneau at the time: he represented the banks, fish processors, and other big businesses. Before he had entered the practice of law, Faulkner had been a deputy U.S. marshal. He was close friends with George Folta, the newly appointed federal judge, and he had close ties with the federal prosecutor's office.

According to LaMoore's testimony, Bert Faulkner met with LaMoore privately, and then they called in Hellan, and Bert Faulkner sat down with LaMoore and typed the statement that LaMoore dictated.

LaMoore testified that he had believed Faulkner to be his attorney, and that when Faulkner told him to give the statement, he did so.

Faulkner denied LaMoore's testimony. He testified that he told LaMoore he would not be his attorney, but that he was just coming to see him because he had been requested to do so.

LaMoore's junior attorney, Joseph McLean, had expected that Henry Roden would take on the venerable Mr. Faulkner, since Faulkner was a close friend of McLean's father, as well as McLean's teacher and mentor. But when the moment for cross-examination came, Roden poked McLean in the side with his elbow, and told him to "go to it." McLean asked a few weak questions of his teacher, and sat down.[24] He never got before the jury the fact that Faulkner was a close friend of Deputy Marshal Walter Hellan, and

EUGENE LAMOORE HANGED

Convicted Slayer Goes to Gallows Here Pleading He Is Innocent

Pleading his innocence to the last, Eugene La Moore alias Austin Rollin, 42-year-old convicted slayer, went to the gallows at the Federal Jail here this morning for his part in the murder and robbery of grocaryman Jim Ellen.

La Moore, a slim 5 feet 10 inch tall Negro, was dropped through the trap at 5:1d a.m., as Protestant and Catholic ministers spoke final words of prayer for his soul. The condemned man faced his hangman bravely and calmly as he made his final peace with God.

"I did not kill Jim Ellen," he began his final speech. "I have never taken innocent blood," he declared but indirectly implied that he had killed on other occasions. La Moore had a long and colorful criminal record.

Law enforcement officers explained that La Moore honestly believed that he had not killed Ellen at the victim's grocery store on Willoughby Avenue, Dec. 22, 1946 They said, however, that all evidence proved that he had hit Ellen on the head and that his partner Austin Nelson, had done the actual killing by slitting the victim's throat with a knife. Nelson had implicated La Moore in the crime before he himself, went to the gallows here on March 1, 1948.

La Moore was convicted by a local Federal District Court jury in February 1948 but his execution was delayed until today by the long process of appeal. The execution was final at 5:31 a.m., when Dr. C. P. Carter pronounced him officially dead. He is survived by a wife and three children, all residents of Juneau.

Administering the last rites were Rev. Ralph E. Baker, of the Bethel Tabernacle and the Rev. Leo J. Sweeney and the Rev. John E. Carr both of the Catholic Church. Interment later today was private.

La Moore was the ninth man to be legally executed in the history of U. S. government in Alaska. This was the third in Juneau.

[continued from page 17]

that Faulkner had close ties with the marshal's office from his own early years as a deputy marshal, or that Faulkner had close ties with the prosecutor's office even then.

Dolly Silvers, the witness who had been jailed for a month before the Nelson trial to make sure she was available, was called by LaMoore's attorney to testify. She stated that she had walked down Willoughby Avenue on that night, and had seen into the lighted windows of Jim Ellen's store, where she saw Jim Ellen with only one other man, Austin Nelson. No one else was there, she said. This was the same thing she had stated at the request of the prosecutor at Nelson's trial. Now, however, the same testimony was unwelcome by the prosecutor. He attacked her, suggesting that she was a drunk, and unreliable.

Austin Nelson had been kept alive at the request of the prosecutor on the grounds that "... it would be impossible to prove a murder charge against LaMoore without the testimony of said Austin Nelson."[25] He was expected to be "the Government's star witness" by the Juneau newspaper, in its first report of the LaMoore trial.[26] Although he was alive in the federal jail across the street from the courthouse in which LaMoore's trial was held, Nelson was never called to testify at the trial by the government.[27] No explanation for his absence was made. The government never told the jury (and apparently never told the defense either) that after Nelson's trial, Nelson directed agents to $1,151 in the bathroom ceiling in Austin Nelson's rooming house. The FBI also found a straight-edged razor there. LaMoore's lawyers could have used this information to argue that Nelson, having all the money in his possession, was the sole perpetrator.

During deliberations the jury sent the judge a note asking whether or not the judge could decide on the punishment. Judge Folta responded with a note stating that the jury had to do that. A death verdict was returned five hours later. On hearing the verdict, Eugene LaMoore burst into tears.[28]

On February 10, less than a week after the end of the LaMoore trial, the court scheduled the execution of Austin Nelson for March 1.

Nelson was hanged in the federal jail at 5:40 on the morning of March 1, 1948. He fought all the way from his cell to the scaffold, according to witnesses, and blacked the eye of Deputy U.S. Marshal Sidney Thompson. Walt Sinn, a city policeman who assisted with the execution, recalled how Thompson was behind Nelson, and leaned forward when Nelson leaned forward, and then was surprised by Nelson's suddenly throwing his head backward, to strike Thompson in the face.

After Nelson was put on the scaffold, Sinn descended into the basement, below the scaffold. He waited for Marshal Mahoney to touch a switch above him, which illuminated a light bulb below. At that signal, Sinn was to pull the rope opening the trapdoor.

When the light bulb flashed, Sinn tripped the trapdoor. He recalled that Nelson dropped down right in front of him.

There was no reflex action whatsoever, except I can remember hearing fluid hit the floor, and it turned out of course that he was .... urinating. It was very quiet except for that.

He remembered being surprised at how long it took before Nelson's heart stopped beating:

A doctor, I can't remember if it was Doctor Whitehead or another of the local doctors was there with a stethoscope and remained there, and as I remember, the heart beat for quite some time it seems to me, eleven minutes or something? I was surprised at what good condition that man was, he was a strong and young man, so possibly that was why.

One woman, a young social worker in Juneau at the time, whose husband would later be one of the first State Troopers in Alaska, remembered the day on which Nelson was hanged:

To me, it seemed that the hanging cast a pall over the whole town. I remember it was not a nice day. There was a feeling of malaise, or dourness, or maybe the best word is the German word, angst. *That was my impression at the time.*[29]

NELSON WAS BURIED in an unmarked grave in Evergreen cemetery. One man, now a hundred years old, remembers the burial.

I was pallbearer for both of those boys [Nelson and LaMoore]. The funeral was right out there in that little cemetery in Juneau. There was a priest or a minister. Nelson, he was Catholic. Eugene LaMoore, I don't know what religion he was. But they buried him out there.

We didn't take the Catholic in church. When we goes up there, my car was taking the pallbearers. The hearse had the body. The priest said, 'There's no need taking them in the church, nobody's there except the hearse driver.' We gets in my car and goes out there, and the father puts cross on his grave. And that's the truth.[30]

AN UNSUCCESSFUL APPEAL was brought from Eugene LaMoore's conviction by Joseph McLean, who received no fee or reimbursement of the cost for traveling to San Francisco to argue the case.

LaMoore was hanged in the federal jail on April 14, 1950, just after 5:00 a.m. Two of the men who assisted in the hanging were

drafted from the Juneau city police beat that they usually walked at night. "Was LaMoore trembling?" I asked one of the former patrolmen. He answered, with what seemed like a touch of remembered bitterness, "Not any more than the rest of us." Even Marshal Mahoney looked shaken up, he said. Once LaMoore was standing on the scaffold, the two city patrolman both retreated down the corridor to the furthest point from the actual execution, unwilling witnesses to the final act."[1] The widow of the other patrolman who had been there that night recounted how disturbing the whole thing had been to her husband. She asked, "Doesn't anyone think about the people who have to do these things?"[2]

After the hanging of Eugene LaMoore, the U.S. marshal's office made arrangements with the State of Washington. If there were to be any more executions, they would be done there, and not in Juneau. The marshal's office had had enough.[3]

Like Nelson Charles and Austin Nelson, Eugene LaMoore was buried in an unmarked grave in Evergreen Cemetery. His wife put her two sons and daughter into an orphanage. Her family in Juneau would have nothing to do with them. She died young, perhaps of alcohol-related complications. According to the recollection of LaMoore's daughter, LaMoore's sister adopted two of the children, but her request to adopt the third child was denied, on the grounds that the third child was so light-skinned as to appear white, and she was black.

BETWEEN 1939, when Nelson Charles was hanged, and 1950, when Eugene LaMoore was hanged, there were many other homicides in Juneau and in Southeast Alaska, but none of the other wrongdoers was executed. Forrest Smith was sentenced in 1939 to serve 20 years for murder in a dispute related to Smith's wife. Guy Prince, a rich man who lived off the income of a trust fund set up for him by his wealthy California family, got 20 years for strangling his wife with a nylon stocking in 1946. George Meeks, convicted of the robbery and murder of a construction worker, was sentenced to life in prison in 1948. All of these men were white.

There were no more hangings in Juneau or anywhere else in the Territory, even during the seven year period before the death penalty was abolished by the Legislature in 1957. ■

Averil Lerman is an attorney whose practice focuses on criminal appeals. She is on the Humanities Forum's Speaker's Bureau, and has lectured on a variety of topics including historical research, the death penalty, and racial issues in public policy. She lives with her family in Anchorage.

Endnotes

1. Kermit S. Kyndl: *A Different Frontier: Alaska Criminal Justice, 1935-1965*. University Press of America, Lanham, MD, 1991.
2. Only two of the men hanged during this period were white: Fred Hardy, executed in Nome in 1902, and Homer Bird, executed in Sitka in 1903.
3. After the executions of Hardy and Bird, three men were hanged in Fairbanks: Mailo Segura, in 1921, "John Doe" Hamilton in 1921, and Constantine Beaver, in 1929. After that date, there were no more hangings in Fairbanks.
4. Telephonic interview with Vic Fischer, March 1994.
5. Interviews with A.A., G.S., T.S.
6. Per remarks made by Juneau attorney Norman Banfield at a memorial service in honor of A.H. Ziegler on May 25, 1972. Transcript of service housed with historical records in the visiting judge's chambers in the Old Federal Building in Anchorage, Alaska.
7. Interview with G.S., June 23, 1994, in Seattle, Washington
8. *Daily Alaska Empire*, 2/15/44.
9. A. Lerman: "The Trial and Hanging of Nelson Charles." 13 Alaska Justice Forum No. 1, University of Alaska Anchorage, Spring 1996.
10. Interview with George Sundborg, in Seattle, June 1994.
11. *The Daily Alaska Empire*, November 7, 1939.
12. *The Daily Alaska Empire*, November 10, 1939.
13. *The Daily Alaska Empire*, November 10, 1939, p. 1.
14. This essay, titled "Thoughts Inspired by an Execution," was recently published as the epilogue to *Frontiers of Justice: The Death Penalty*, edited by C. Whitman & J. Zimmerman, Biddle Publishing Co., Brunswick, ME (1997).
15. Tony Simin, the owner of a similar store in Douglas, was killed in 1942 during an apparent burglary. A Native man, William Paddy, was convicted of murdering Simin, and was sentenced to hang by the trial jury. His death sentence was commuted to life after a successful request for clemency in March of 1945.
16. *The Daily Alaska Empire*, November 26, 1937..
17. Isabelle McLean, interviewed in Seattle, Washington in June, 1994.
18. Telephone interview with Judge Seaborn Buckalew, in September, 1995.
19. Interview with Curtis Shattuck, October, 1994.
20. By contrast, bond was set at $3500 when a perjury charge was brought against Deputy U.S. Marshal Sidney Thompson in 1953. Thompson was charged and convicted for lying to a grand jury investigating corruption in Ketchikan. U.S. Attorney Pat Gilmore, Jr., the prosecutor who obtained death verdicts against Nelson and LaMoore, was barred from participating in the grand jury investigation by Federal Judge George Folta. Gilmore left the U.S. Attorney's Office shortly thereafter, and returned to his home in Ketchikan as described by Judge James Fitzgerald in an interview in June, 1994. According to one of Gilmore's fellow Ketchikan lawyers, Judge Folta treated Gilmore with barely restrained contempt after those events.
21. Testimony of Eugene LaMoore, transcript of trial of Eugene LaMoore, Case No. 2472-B, p. 122.
22. LaMoore trial transcript, p. 126.
23. LaMoore trial transcript, p. 135.
24. Interview with Joseph A. McLean, June 1994 at his home in Seattle, Washington.
25. Affidavit of U.S. Attorney Pat Gilmore, Jr., filed on June 30, 1947 in connection with the motion to stay the execution of Austin Nelson.
26. *The Daily Alaska Empire* February 2, 1948.
27. The reasons for the decision not to call Nelson are not known. It could be speculated, however, that the prosecutor was not sure what Nelson would say, since the only time that Nelson had ever admitted that he himself was involved in Ellen's murder was immediately preceding the day first scheduled for his execution. At all other times, including the day on which he was in fact hanged, Nelson claimed he was innocent. Such a witness might not further the government's case against LaMoore, especially where there was a confession already signed by LaMoore.
28. *The Daily Alaska Empire*, February 5, 1948, p.1.
29. Interview by telephone with Harriet Botelho, in October, 1994.
30. Telephone interview with Jasper Frambough, in February, 1995.
31. Interview with P. C., in October, 1994.
32. Telephone interview with Gladyss Byington, in Anchorage, October 1994.
33. Interview with Hartley "Pete" Crosby, at his home in Juneau, October 7, 1994.

The New York Times

From: Averil Lerman

April 16, 1997

REPORT CRITICIZES SCIENTIFIC TESTING AT F.B.I. CRIME LAB

By DAVID JOHNSTON

The Justice Department's inspector general said today that the Federal Bureau of Investigation's renowned crime laboratory was riddled with flawed scientific practices that had potentially tainted dozens of criminal cases, including the bombings of the Federal Building in Oklahoma City and the World Trade Center in New York.

The inspector general, Michael R. Bromwich, announced his findings after an 18-month investigation that he said had uncovered "extremely serious and significant problems" at a laboratory that for more than six decades, since its founding by J. Edgar Hoover in 1932, has been a symbol of the F.B.I.'s cutting-edge scientific sleuthing.

The investigation found that the laboratory's explosives, chemistry-toxicology and materials analysis units were rife with substandard performance that had forced F.B.I. officials to review several hundred past and current cases to determine how many might have been jeopardized by faulty work.

The findings are expected to give added impetus to defense lawyers in scores of cases, including the defense in the Oklahoma City bombing case, which served notice in pretrial hearings months ago that it intended to challenge the integrity of the F.B.I. investigation and analysis of physical evidence in the case.

The inspector general's report recognized the central role played by a chemist in the explosives laboratory, Frederic Whitehurst, who was single-handedly responsible for the investigation after filing numerous complaints since 1989 about the laboratory's poor performance and the failings of his colleagues.

The report represented another blow to the reputation of the F.B.I. and its Director, Louis J. Freeh, who took over the bureau in September 1993 as the seriousness of the laboratory's problems began to emerge. In recent months, Mr. Freeh's competence has been under attack in Congress in connection with a botched interview with a suspect in the Olympic Centennial Park bombing in Atlanta last July and the release of F.B.I. background files to the White House.

Although Mr. Freeh has tried to improve the laboratory, that attack continued today. Senator Charles E. Grassley, Republican of Iowa, said the report demonstrated that the bureau "needs better leadership."

Mr. Bromwich recommended the censure, transfer or other discipline of five agents who worked in the laboratory, including the agent who first asserted that it had problems. He said the inquiry had found numerous instances in which F.B.I. agents who work as scientific examiners had prepared sloppy reports, exaggerated their findings against defendants and inadequately documented their test results.

Moreover, the report found that supervisors had failed to supervise the examiners adequately, had allowed indefensible conclusions to go unchallenged and had left too much discretion to subordinates who reached findings that were unsupported by scientific evidence. The report suggested that the laboratory had maintained its reputation for years even as its managers clung to outmoded methods and failed to respond to internal complaints.

The bureau's Deputy Director, William J. Esposito, expressed regret and acknowledged the criticism of the laboratory's performance. He said the F.B.I. would focus "on how did we get to this point, and address these problems so they don't reoccur."

The problems seemed most serious in two major cases: the bombing on Feb. 26, 1993, of the World Trade Center, which killed 6 people, and the bombing on April 19, 1995, of the Oklahoma City Federal Building, which killed 168 people. A group of Muslim fundamentalists was convicted in the World Trade Center case. Two men are now on trial in Denver or are scheduled to be tried for the Oklahoma City bombing.

In the World Trade Center case, the report said an examiner in the explosives laboratory, David R. Williams, "gave inaccurate and incomplete testimony and testified to invalid opinions that appeared tailored to the most incriminating result."

Mr. Williams's testimony in the case, the report said, "exceeded his expertise, was unscientific and speculative, was based on improper nonscientific grounds and appeared to be tailored to correspond with his estimate of the amount of explosive used in the bombing."

Mr. Williams was also assigned to the Oklahoma case, and the inspector general concluded that "many of the same errors committed by Williams in the World Trade Center case were repeated in the Oklahoma City case – principally that Williams based some of his conclusions not on a valid scientific analysis, but on speculation from the evidence associated with the defendants."

Mr. Williams's findings, the report concluded, were "tilted" to incriminate the defendants. For example, he determined that the Oklahoma City bomb was composed of ANFO, ammonium nitrate and fuel oil, not from chemical analysis but from a speculative judgment based on "the fact that one of the defendants purchased ANFO components."

The report found that Mr. Williams's supervisor, J. Thomas Thurman, failed to review his subordinate's work properly and that both agents should be singled out for "special censure" for their roles in the Oklahoma City case because of the "enormous national significance" of the prosecution.

Mr. Williams, who was transferred along with Mr. Thurman and two other agents in January in response to the inspector general's findings, said in a reply to the report that he had tried to provide rapid scientific evaluations based on information available to him at the time. But he acknowledged that he had "overstated" his conclusions in a report on the Oklahoma City bombing.

The report made public today reported similar lapses in less well known cases, including the 1989 bombing of an Avianca Airlines jet that exploded after taking off from Bogota, Colombia, killing all 107 people on board, including 2 Americans.

Mr. Bromwich said he had not found any instance in which laboratory examiners had committed a crime or had intentionally faked forensic evidence, obstructed justice or lied about their findings in court. He said his inquiry had not reached any conclusions about whether the flaws were damaging enough to overturn the outcome of any case.

So far, Attorney General Janet Reno said, prosecutors have identified 55 cases in which examiners might have committed errors serious enough to warrant advising defense lawyers of potentially exculpatory evidence. Of these, prosecutors have decided to turn over data to defense lawyers in 25 cases. In 13 of these cases that have gone to trial, Ms. Reno said, "there has been no change in the outcome of the case."

The Attorney General added, "Today's report does identify significant instances of testimonial errors, substandard analytical work and deficient practices." But she said the laboratory was capable of performing or providing "unbiased analyses that will help solve crimes, punish the guilty and exonerate the innocent."

The report contained a mixed review of the accuracy of Mr. Whitehurst's assertions. Mr. Bromwich said that many of Mr. Whitehurst's criticisms were confirmed but that his most sensational charges, including fabrication of evidence and perjury, was unsubstantiated.

A lawyer for Mr. Whitehurst, Stephen M. Kohn, maintained that Mr. Whitehurst's main charges had been sustained. "If you look at the report, it validates every major allegation he made," Mr. Kohn said, adding that the dismissal of Mr. Whitehurst's most sweeping assertions was unfair. "What they did is shoot the messenger," Mr. Kohn asserted.

Mr. Bromwich said an F.B.I. internal inquiry into some of Mr. Whitehurst's complaints in 1992 was a rapid effort that uncovered no wrongdoing because it failed to dig deeply enough to unearth problems when they were first reported.

Mr. Esposito said the bureau had accepted the criticism and was putting into effect each of the 40 recommendations, including the hiring of a scientist from outside the F.B.I. as a supervisor and instituting a number of organizational and procedural changes at the laboratory.

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from: Aoeul Leman

The New York Times

August 5, 2004

New Doubt Cast on Testing in Houston Police Crime Lab

By ADAM LIPTAK AND RALPH BLUMENTHAL; MAUREEN BALLEZA CONTRIBUTED REPORTING FOR THIS ARTICLE.

The police crime laboratory in Houston, already reeling from a scandal that has led to retesting of evidence in 360 cases, now faces a much larger crisis that could involve many thousands of cases over 25 years.

Six independent forensic scientists, in a report to be filed in a Houston state court today, said that a crime laboratory official -- because he either lacked basic knowledge of blood typing or gave false testimony -- helped convict an innocent man of rape in 1987.

The panel concluded that crime laboratory officials might have offered "similarly false and scientifically unsound" reports and testimony in other cases, and it called for a comprehensive audit spanning decades to re-examine the results of a broad array of rudimentary tests on blood, semen and other bodily fluids.

Elizabeth A. Johnson, a former director of the DNA laboratory at the Harris County medical examiner's office in Houston, said the task would be daunting.

"A conservative number would probably be 5,000 to 10,000 cases," Dr. Johnson said. "If you add in hair, it's off the board."

The official whose testimony was challenged, James Bolding, said in a telephone interview that he did not recall the particular case. But Mr. Bolding said that both his scientific work and his testimony were always careful and professional. When he testified in 1987, he was the supervisor of the laboratory's serology unit. He later became the head of its DNA unit.

His testimony helped convict George Rodriguez, who has served 17 years for raping a 14-year-old girl in 1987. DNA results have now cleared him, according to court-ordered testing, and the papers to be filed today will seek his release. As in many of the 146 DNA exonerations across the country, the new information also calls into question the scientific evidence used to convict Mr. Rodriguez in the first place.

A re-examination of the work by the Houston crime laboratory is already under way, but only of the DNA evidence used to convict people. That effort involves hundreds of cases and has produced a staggering workload, prosecutors in Houston say. One man has been exonerated, and significant problems have arisen in at least 40 cases.

The discovery of flawed work in the laboratory that led to the Rodriguez conviction would seem to require similar reviews of its work, legal experts said, but prosecutors would not immediately say what they will do or whether they will oppose Mr. Rodriguez's release.

Barry Scheck, one of Mr. Rodriguez's lawyers, said that Harris County was the worst place in America for a crime laboratory scandal.

"We know already that they couldn't do DNA testing properly," Mr. Scheck said. "Now we have a scandal that calls into question many thousands more cases. And this jurisdiction has produced more executions than any other county in America."

Since the death penalty was reinstated in 1976, Texas has executed 323 people, 73 for crimes in Harris County.

A state audit of the crime laboratory, completed in December 2002, has found that DNA technicians there misinterpreted data, were poorly trained and kept shoddy records. In many cases, the technicians used up all available evidence, making it impossible for defense experts to refute or verify their results. Even the laboratory's building was a mess, with a leaky roof contaminating evidence.

The DNA unit was shut down soon afterward, and it remains closed.

Police officers and prosecutors vowed to retest DNA evidence in every case where it was used to obtain a conviction. The size of that job, far smaller than the one called for by experts in the Rodriguez case, has involved many thousands of hours.

"It's massive," said Marie Munier, the assistant district attorney supervising the re-examinations. "If you had asked me when it happened would it take us over two years to complete this, I would have said: 'You're crazy. No way.'"

"Maybe if they'd gotten 50 or 100 people," she added, "they could have gotten it done faster."

Ms. Munier said retesting had resulted in one exoneration, that of Josiah Sutton, who was released last year after serving more than four years for a rape he did not commit.

Though DNA is often thought of as a tool for exonerations, prosecutors in Mr. Sutton's case had used it to convict him, submitting false

scientific evidence asserting that there was a solid match between Mr. Sutton's DNA and that found at the crime scene. In fact, 1 of every 8 black people, including Mr. Sutton, shared the relevant DNA profile. More refined retesting cleared him.

Ms. Munier said her office had overseen retesting in 360 DNA cases so far. "In 18 cases, they were unable to confirm the original H.P.D. results," she said, referring to the Houston Police Department. "In 21 cases, I am told by H.P.D. that additional testing is in progress because the first tests did not confirm the original results. In six cases, the retests confirmed the original inclusion or exclusion, but the H.P.D.'s statistical analysis was off."

She said that defendants and their lawyers were being told of these results, and that they were free to file motions contesting their convictions.

That approach has critics.

"In Harris County," said William C. Thompson, a professor of criminology at the University of California, Irvine, who has followed the crime laboratory scandals closely, "defendants were prosecuted with flawed scientific evidence and defended by court-appointed lawyers who lacked the knowledge and resources to challenge it and complain about the injustice. Now that the scandal has come to light, the system is relying on the same inept, timid lawyers to make it right."

There were signs of problems in Mr. Rodriguez's case from the start.

On Feb. 24, 1987, two men abducted and raped a 14-year-old girl. One, Manuel Beltran, confessed. Mr. Beltran and his brother Uvaldo said the second rapist was Isidro Yanez. Mr. Yanez's car was used in the abduction. The victim selected Mr. Yanez and Mr. Rodriguez from photographs before identifying Mr. Rodriguez as the second rapist.

Mr. Rodriguez had an alibi: he was working at a factory that made bed frames at the time of the rape, and his boss swore to that in court.

So it was Mr. Bolding who provided the crucial testimony against Mr. Rodriguez. He said Mr. Yanez's blood type categorically excluded him as a possible rapist.

"Is he a possible donor of the semen?" a prosecutor, Bill Hawkins, asked at the trial, referring to Mr. Yanez.

"No, sir," Mr. Bolding responded, "he is not."

In his opening and closing statements, Mr. Hawkins hammered this point home. "Scientific evidence really nails this man to the wall," he said of Mr. Rodriguez. It "shows beyond a doubt that Isidro Yanez could not have committed the offense."

Yet recent court-ordered DNA testing shows that Mr. Yanez's DNA profile matches a pubic hair recovered at the crime scene.

Mr. Hawkins did not respond to a message seeking comment. Nor did Jack Roady, the prosecutor who has been supervising the retesting in the Rodriguez case, or Chuck Rosenthal, the Harris County district attorney. Through a prison spokeswoman, Mr. Yanez, who is serving time for kidnapping, declined a request for an interview.

Mr. Bolding's misstatement was fundamental and egregious, the experts' report said.

"There is absolutely no scientific basis for Bolding's testimony that Isidro Yanez could not have been the donor of the semen samples," the scientists wrote.

Dr. Johnson, the former DNA laboratory director, agreed. "That's kindergarten stuff," she said.

Mr. Bolding, speaking generally, said his conclusion was scientifically defensible. "You can have as many experts as you want," he said.

Mr. Rodriguez, now 43, said his 17 years behind bars had ruined his life and torn his family apart. He has four daughters and a son, though he has not seen anyone in his family for many years.

"My mom came to visit me a couple of times," he said in a telephone interview. "I'd say about four or five times since I been locked up. Of course, that was back in the early 90's."

Now, though, he said, he is growing optimistic.

"It feels good to me to know what's going on and to prove my innocence," he said.

Mr. Bolding retired in 2003 after police investigators recommended that he be terminated for various professional and supervisory failures, including submitting false information to auditors in 2000 and 2001.

Last month, a judge in Midland, Tex., dismissed perjury charges against Mr. Bolding, saying the statute of limitations had expired. In that case, Mr. Bolding was accused of overstating his academic credentials in a 2002 sexual assault trial. He said a court reporter had transcribed his testimony incorrectly.

from Averil Lerman

The New York Times

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February 5, 2009

Science Found Wanting in Nation's Crime Labs

By SOLOMON MOORE

Forensic evidence that has helped convict thousands of defendants for nearly a century is often the product of shoddy scientific practices that should be upgraded and standardized, according to accounts of a draft report by the nation's pre-eminent scientific research group.

The report by the National Academy of Sciences is to be released this month. People who have seen it say it is a sweeping critique of many forensic methods that the police and prosecutors rely on, including fingerprinting, firearms identification and analysis of bite marks, blood spatter, hair and handwriting.

The report says such analyses are often handled by poorly trained technicians who then exaggerate the accuracy of their methods in court. It concludes that Congress should create a federal agency to guarantee the independence of the field, which has been dominated by law enforcement agencies, say forensic professionals, scholars and scientists who have seen review copies of the study. Early reviewers said the report was still subject to change.

The result of a two-year review, the report follows a series of widely publicized crime laboratory failures, including the case of Brandon Mayfield, a lawyer from Portland, Ore., and Muslim convert who was wrongly arrested in the 2004 terrorist train bombing in Madrid that killed 191 people and wounded 2,000.

American examiners matched Mr. Mayfield's fingerprint to those found at the scene, although Spanish authorities eventually convinced the Federal Bureau of Investigation that its fingerprint identification methods were faulty. Mr. Mayfield was released, and the federal government settled with him for $2 million.

In 2005, Congress asked the National Academy to assess the state of the forensic techniques used in court proceedings. The report's findings are not binding, but they are expected to be highly influential.

and law professor at Arizona State University who presented fundamental weaknesses in forensic evidence to the academy. "But it will be used by others who will make law or will argue cases."

Legal experts expect that the report will give ammunition to defense lawyers seeking to discredit forensic procedures and expert witnesses in court. Lawyers could also use the findings in their attempts to overturn convictions based on spurious evidence. Judges are likely to use the findings to raise the bar for admissibility of certain types of forensic evidence and to rein in exaggerated expert testimony.

The report may also drive federal legislation if Congress adopts its recommendations. Senator Richard C. Shelby, Republican of Alabama, who has pushed for forensic reform, said, "My hope is that this report will provide an objective and unbiased perspective of the critical needs of our crime labs."

Forensics, which developed within law enforcement institutions — and have been mythologized on television shows from "Quincy, M.E." to "CSI: Miami" — suffers from a lack of independence, the report found.

The report's most controversial recommendation is the establishment of a federal agency to finance research and training and promote universal standards in forensic science, a discipline that spans anthropology, biology, chemistry, physics, medicine and law. The report also calls for tougher regulation of crime laboratories.

In an effort to mitigate law enforcement opposition to the report, which has already delayed its publication, the draft focuses on scientific shortcomings and policy changes that could improve forensics. It is largely silent on strictly legal issues to avoid overstepping its bounds.

Perhaps the most powerful example of the National Academy's prior influence on forensic science was a 2004 report discrediting the F.B.I. technique of matching the chemical signatures of lead in bullets at a crime scene to similar bullets possessed by a suspect. As a result, the agency had to notify hundreds of people who potentially had been wrongfully convicted.

In its current draft report, the National Academy wrote that the field suffered from a reliance on outmoded and untested theories by analysts who often have no background in science, statistics or other empirical disciplines.

Although it is not subject to significant criticism in the report, the advent of DNA profiling clearly set the agenda. DNA evidence is presented in less than 10 percent of all violent crimes but has revolutionized the entire science of forensics. While DNA testing has helped to free more than 200 wrongfully convicted people, "DNA was a shock to police culture and created an alternative scientific model, which promoted standardization, transparency and a higher level of precision," said Paul Giannelli, a forensic science expert at Case Western Reserve University School of Law who presented his research to the National Academy. Enforcement officials, Mr. Giannelli said, "chose to say they never make mistakes, but they have little scientific support, and this report could blow them out of the water."

Peter J. Neufeld, a co-director of the Innocence Project, a nonprofit group that uses DNA evidence to exonerate the wrongfully convicted, presented to the academy a study of trial transcripts of 137 convictions that were overturned by DNA evidence and found that 60 percent included false or misleading statements regarding blood, hair, bite mark, shoe print, soil, fiber and fingerprint analyses.

The courts have long struggled with the proper role of scientific evidence. In a 1993 landmark decision, Daubert v. Merrell Dow Pharmaceuticals, the Supreme Court held that scientific testimony had to meet an objective standard. Federal courts have occasionally excluded evidence like handwriting and hair analysis.

Donald Kennedy, a Stanford scientist who helped select the report's authors, said federal law enforcement agencies resented "intervention" of mainstream science — especially the National Academy — in the courts.

He said the National Institute of Justice, a research arm of the Justice Department, tried to derail the forensic study by refusing to finance it and demanding to review the findings before publication. A bipartisan vote in Congress in 2005 broke the impasse with a $1.5 million appropriation.

Mr. Shelby also accused the National Institute of Justice of trying to infiltrate the forensic study panel with

lobbyists for private DNA analysis companies, who were seeking to limit the research to DNA studies.

The National Institute of Justice said it would not comment until the report was released. But a preview of potential turf wars played out in the presentations to the National Academy in December 2007. A forensic expert from the Secret Service blasted the F.B.I. for developing questionable techniques "on an ad-hoc basis, without proper research."

He said the Secret Service wanted the National Academy "to send a message to the entire forensic science community that this type of method development is not acceptable practice."

Everyone interviewed for this article agreed that the report would be a force of change in the forensics field.

One person who has reviewed the draft and who asked not to be identified because of promises to keep the contents confidential said: "I'm sure that every defense attorney in the country is waiting for this report to come out. There are going to be challenges to fingerprints and firearms evidence and the general lack of empirical grounding. It's going to be big."

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Testimony on HB 9 before House Judiciary – February 25, 2009

My name is Sue Johnson and I am the Executive Director of the Alaskans Against the Death Penalty.

I became involved with this group when former Senator Robin Taylor tried to move legislation on this around 10 years ago. Since that time, I have donated money to AADP and attended occasional events. When they asked me to come and work for them a year ago, I accepted.

Since HB 9 was pre-filed and the article came out in the Daily News, our membership has grown exponentially. I am gaining a large number of new members every day.

The importance of personal education about the death penalty cannot be overstated. The more I learn about the DP, the more fascinated I am with it. At first I could not believe the unfairness in all aspects of the DP could be true in America. So, I conducted my own on-line research, read several books, and viewed a number of films, met with many exonerees, law enforcement officials, clergy, doctors, MVFM and others who had firsthand knowledge of the intricacies involved in the DP.

I read about former Governors of DP states who continue to be haunted by the people they killed and who said that was the absolute worst part of their job, politicians who regret having voted to support the death penalty especially when they later discovered they may have killed innocent people. I learned about states pouring millions of dollars in building a death house that was never used. If we are to pour millions of dollars in a death house in Alaska – I doubt it will be used and if it is it will be 25 years from now and we may have an entirely different group of lawmakers who will be stuck having to do the killing. So, after all that research, I've concluded that the DP is wrong for hundreds of reasons – many of which I am sure you will hear about through other testimony.

Alaskans Against the Death Penalty feels confident the majority of Alaskans supports our side of the issue and opposes the DP.

Finally, I would like to mention that I had a friend who was murdered by her husband after many years of torture and abuse and her body was tossed out in an Anchorage Park. She left 3 babies behind.

I sat through some of the trial hoping to lend support to her parents. Watching her parents go through the gory details of the murder of their only daughter tore my heart out. The man is in prison for life and the grandparents are raising the children. I never talked with her parents about the DP, but I remember thinking as much as I disliked this man, I was glad there was not a DP in this state because I am not sure her parents would be able to go through all those trials

and hearings again and again as is apparently the norm in DP cases. Not to mention dealing with the press on this issue.

In closing, it the morality of this issue is not enough, cost issues in these economic times should persuade anyone still on the fence. Reliable data shows a state faces a far greater cost in litigating a DP case through all the appellate levels than even the cost of lifetime incarceration.

Thank you.

Sue C Johnson
Anchorage AK 99517

Thank you,

My name is Bill Pelke and I live in Anchorage.

I am a board member of Alaskans Against the Death Penalty. I am a founding member of the World Coalition to Abolish the Death Penalty. I have been a board member of the National Coalition to Abolish the Death Penalty since 1996, serving as chair from 2005-2008. I am a founding and present board member of Murder Victim's Families for Human Rights. I am a cofounder, President and Chairman of the board of the Journey of Hope...from Violence to Healing. I have written a book with the same name and I will be presenting a copy to this committee.

The Journey of Hope is an organization led by murder victim's family members who are opposed to the death penalty in all situations. We conduct speaking tours throughout the country and around the world. We share our stories of from violence to healing. We talk about how the death penalty has absolutely nothing to do with the healing that murder victim family members need after a loved one has been killed and how in fact it continues the cycle of violence and creates more murder victim family members.

On our tours we are joined by death row family member, some who have loved ones on death row, and some whose loved ones have been executed. They share with the audiences the pain that the death penalty brought to their family. Exonerated death row survivors also join us. They share what they and their families went through after being sentenced to death for crimes of murder for which they were innocent. Over 130 people have been sentenced to death by various states in this country since the death penalty was reinstated in 1976 for crimes they didn't commit. Fortunately they were able to prove their innocence before their executions took place.

Each one of them will tell you that they were not saved by the system; they were saved in spite of the system. As long as you have human beings making these decisions we are going to make mistakes. When it comes to the death penalty there is no room for mistakes.

My grandmother was brutally murdered in 1985 when four teenage girls entered her home on the pretext of taking Bible lessons that she taught. One of the girls, Paula Cooper who was fifteen-year-old at the time of the crime was sentenced to die in the electric chair by the state of Indiana. Although I

originally supported her death sentence I became convinced that my grandmother would have been appalled that this girl was on death row and that so many people wanted to see her burn. I was convinced beyond a shadow of a doubt that she would have in fact had love and compassion for Paula and her family.

I felt my grandmother wanted someone in my family to have that same sort of love and compassion and I felt it fell upon my shoulders. I didn't have any love or compassion for this girl, but so convinced that is what Nana would have wanted I begged my God to give me love and compassion for Paula Cooper and her family.

That prayer was answered, and when it was I knew I could no longer wanted her to die. You cannot have compassion for someone and want to see them put into the death chamber. It is impossible. The answer is not the death penalty; the answer is love and compassion for all of humanity.

Marietta Jaeger Lane, a Journey of Hope cofounder, made this statement concerning the kidnapping and murder of her precious seven-year-old daughter. "No amount of retaliatory deaths will make up for Susie's murder. To say the death of one malfunctioning individual will repay the inestimable value of my little girl is insulting. It's really an insult to our loved ones."

Thank you

From: pstandefer [pstandefer@alaska.net]
Sent: Sunday, February 22, 2009 8:47 AM
To: Rep. Jay Ramras
Subject: Death Penalty

Please vote NO on this bill. Paula Standefer POB 2438 Soldotna

From: Rep. Lindsey Holmes
Sent: Monday, February 23, 2009 9:59 AM
To: Jane Pierson
Subject: FW: HB 9

From: jfriedman@alaska.com [mailto:jfriedman@alaska.com]
Sent: Sunday, February 22, 2009 10:33 AM
To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes
Subject: HB 9

Chair Ramras and Committee Members,

I am writing to urge you not to support HB 9 which will be heard by the Judiciary Committee on Monday.

HB 9 is a death penalty bill. Killing criminals satisfies our desire for revenge. It serves no other purpose. My basic, emotional objection to the death penalty is that it is wrong to kill people. I simply do not want my government in the business of killing people or deciding which people are worthy of killing and which are not.

There are other, logical reasons to oppose the death penalty. First, it is a known fact that some people are wrongly convicted. It doesn't happen often, but it does occur more often than any one would like. Unfortunately, DNA evidence is not always available to prove innocence and there is no way to ensure that we will never kill an innocent person who has been wrongly convicted. Life in prison for an innocent person isn't a wonderful alternative, but it is better than death.

Second, the current method of administering lethal substances is not perfect, and occasionally has caused extreme pain, agony, and suffering. I don't want my government torturing anyone, not even a murderer.

Third, the cost of a death penalty prosecution is enormous. When a life is at stake, the defense spares no expense, and the prosecution must meet the challenge and also do its best. Since many of these cases will involve the Public Defender's Office, the State will be paying for both sides of a very expensive criminal case. It makes little sense to add this large financial burden on to the Public Defender and the District Attorney's offices.

Fourth, there are very few instances of people convicted of 1st degree

murder being released (or escaping) from prison who go on to kill another person. When this happens, it is highlighted in the media, so it seems like it occurs more often, but it is truely very rare.

Fifth, there is no evidence that the existence of capital punishment deters murder. People who commit first degree murder don't think they are going to be caught, so they don't think about what the punishment might be if they are caught.

Capital punishment is emotionally satisfying for some people. But the measure of our justice is in how we treat the most reprehensible and evil people. Redemption and forgiveness should be available for all people, not just those who we like or who we can sympathise with. It is not our place to take that possibility away from anyone.

Thank you for your consideration.

Jeff Friedman
1534 D Street
Anchorage, AK 99501

From: Rep. Lindsey Holmes
Sent: Monday, February 23, 2009 9:58 AM
To: Jane Pierson
Subject: FW: Death Penalty Bill

From: Zobel, Patricia [mailto:pzobel@dmgz.com]
Sent: Sunday, February 22, 2009 11:53 AM
To: Rep. Lindsey Holmes
Subject: Death Penalty Bill

Lindsey - I understand that the death penalty bill is coming to the Judiciary committee this week. Please take a hard stand against such a bill. I have always been proud of the fact that Alaska was a civilized place and did not engage in barbaric acts such as the death penalty. As the testing for such things as DNA evolves, we are having it clearly brought home that many times, innocent people are sent to jail and the death of even one of those innocents is too much to trade for a death penalty. It is a reprehensible bill - that the government thinks that it has the power to put people to death, for whatever reason. We have jails and we can keep people who kill there away from society and for society's protection. But who will protect the people of the society that thinks that it can adopt mores that continence the killing of others by the government itself? Please vote no and speak out to protest this barbaric bill. Thank you. Penny Zobel.

Patricia L. "Penny" Zobel

DeLisio Moran Geraghty & Zobel, P.C.

907-279-9574

www.dmgz.com

From: Rep. Lindsey Holmes
Sent: Monday, February 23, 2009 10:08 AM
To: Jane Pierson
Subject: FW: death penalty

From: Caitlin Shortell [mailto:shortellc@yahoo.com]
Sent: Friday, February 20, 2009 1:38 PM
To: Rep. Lindsey Holmes
Subject: death penalty

Dear Lindsey,

As one of your consituents, I wanted to write to express my intense opposition to the institution of the death penalty in Alaska. I am a lawyer and have worked on both state and federal death cases in other jurisdictions. My objections to the death penalty are multiple. First, I believe that the death penalty is morally wrong. Second, I agree with the ABA and the European Community that the death penalty is cruel and should not stand in a civilized society. Third, the possibility of error in the charging, trial, and sentencing process is all too great, which results in wrongful executions of innocent people. Finally, in this economic climate, the cost of capital punishment is too great for the state to bear. I urge you to reject any proposal that would bring the death penalty to our state.

Thank you.

Sincerely,

Caitlin Shortell

From: Rep. Lindsey Holmes
Sent: Monday, February 23, 2009 10:10 AM
To: Jane Pierson
Subject: FW: Keep the Death Penalty Out of Alaska

-----Original Message-----
From: pamkelley@ak.net [mailto:pamkelley@ak.net]
Sent: Thursday, February 19, 2009 6:29 PM
To: Rep. Lindsey Holmes
Subject: Re: Keep the Death Penalty Out of Alaska

Thanks for taking a pragmatic stand against bad public policy, something we can ill afford right now.

From: Rep. Lindsey Holmes
Sent: Monday, February 23, 2009 9:55 AM
To: Jane Pierson
Subject: FW: death penalty

-----Original Message-----
From: carolyn murray [mailto:carolynmur400@yahoo.com]
Sent: Sunday, February 22, 2009 10:32 PM
To: Rep. Lindsey Holmes
Subject: death penalty

Dear Lindsey,

I believe you are correct that many people will be talking about the death penalty. I am writing to you this evening as a representative of Church Women United. At our last business meeting our members discussed several reasons we are against the death penalty. The two most common reasons being that we fear an innocent person may be but to death and that the death penalty is not a deterrent to violent crime.

With this facts in mind I respectfully request that you oppose any legislation that would bring the death penalty to Alaska.

Thank you in advance for your consideration,

Carolyn Murray
Church Women United- Anchorage, Ak
Legislative Liaison

From: Rep. Lindsey Holmes
Sent: Monday, February 23, 2009 9:57 AM
To: Jane Pierson
Subject: FW: HB 9

From: ruthb@alaska.com [mailto:ruthb@alaska.com]
Sent: Sunday, February 22, 2009 2:48 PM
To: Rep. Lindsey Holmes
Subject: HB 9

Please oppose HB9. MAYBE when the death penalty sentence is never in error, does not result in costly appeals and is administered without prejudice to murderers of all races and economic and social conditions, I may waver in my opposition, but not before those conditions are met. Please vote NO on this ill-advised proposal.

Ruth Benson
--
1551 Farmers Loop
Fairbanks, Alaska 99709
Tel: 907 479-6912

From: Rep. Lindsey Holmes
Sent: Monday, February 23, 2009 10:00 AM
To: Jane Pierson
Subject: FW: HB 9

From: akimpact@gci.net [mailto:akimpact@gci.net]
Sent: Sunday, February 22, 2009 9:03 AM
To: Rep. Lindsey Holmes
Subject: HB 9

Dear Rep. Holmes:

The death penalty does not deter capital crimes. It is much more expensive than life imprisonment. It is increasingly considered a violation of the International Declaration of Human Rights at the United Nations. The direction among the States of the US is away from the death penalty for many good reasons. One is that it has been disproportionately used against minorities. Of the 8 executions by federal authority in Alaska during the first half of the 20th Century, 2 were for Whites and the 6 others were for Alaska Natives and Blacks.

To legalize the death penalty in Alaska would be taking a giant step backwards. So may HB 9 and any other legislation of this kind quickly find the way to the trash bin (and the paper recycled).

Faithfully,

Richard K. Heacock, Jr.
Executive Director
Alaska IMPACT
Also: WW II veteran, Chaplain for Alaska Legislatures (1956 - 66)

From: Trouba Door [trouba93@gmail.com]
Sent: Saturday, February 21, 2009 7:20 PM
To: Rep. Jay Ramras
Subject: HB 9

Debbie McKay
55441 Chinook Rd.
Kenai, AK 99611
(907)776-5745
debbiemckayinak@gmail.com

Please take care when voting on the upcoming bill on capital punishment, HB 9.

In the past 35 years, 130 inmates were found to be innocent and released from death row. How Many Innocent Victims are Too Many?

The vast majority of those executed are poor. About 90% cannot afford a lawyer when they go to trial. They have to rely upon an over worked, under paid, court-appointed lawyer.

Relatively few other developed countries in the world impose the death penalty. Japan and South Korea are the only established democracies in the world, other than the U.S., which still conduct executions. The execution rate in Japan is a small fraction of that in the U.S.

The homicide rate in Canada has been gradually dropping since executions were stopped. Though it has never been convincingly proven that there is a relationship between the decrease in homicides and the cessation of the death penalty, this phenomenon has been observed in many other countries who have abandoned the death penalty.

Recent Cost Studies:

A 2003 legislative audit in Kansas found that the estimated cost of a death penalty case was 70% more than the cost of a comparable non-death penalty case. Death penalty case costs were counted through to execution (median cost $1.26 million). Non-death penalty case costs were counted through to the end of incarceration (median cost $740,000).

(December 2003 Survey by the Kansas Legislative Post Audit)

In Tennessee, death penalty trials cost an average of 48% more than the average cost of trials in which prosecutors seek life imprisonment.

(2004 Report from Tennessee Comptroller of the Treasury Office of Research)

In Maryland death penalty cases cost 3 times more than non-death penalty cases, or $3 million for a single case.

(Urban Institute, The Cost of the Death Penalty in Maryland, March 2008)

In California the current system costs $137 million per year; it would cost $11.5 million for a system without the death penalty.

The greatest costs associated with the death penalty occur prior to and during trial, not in post-conviction proceedings. Even if all post-conviction proceedings (appeals) were abolished, the death penalty would still be more expensive than alternative sentences.

The death penalty diverts resources from genuine crime control measures. Spending money on the death penalty system means:

Reducing the resources available for crime prevention, mental health treatment, education and rehabilitation, meaningful victims' services, and drug treatment programs.

Diverting it from existing components of the criminal justice system, such as prosecutions of drug crimes, domestic violence, and child abuse.

There are many matters to consider when deciding this particular issue. Please take all into consideration. In my opinion the financial factor cannot be ignored. In this time of economic uncertainty, it becomes more difficult to justify adding something so costly and controversial to our agenda. Please vote no on HB 9.

Debbie McKay

From: zoom@gci.net on behalf of Scott [zoom@gci.net]
Sent: Saturday, February 21, 2009 11:23 PM
To: Rep. Jay Ramras
Subject: HB9

Hi Jay--

Hey, I'm not in your district, but I'm a fan of you and your commitment to public service.

HB9 SUCKS.

HB9 is HORRIBLE.

HB9 is a step in the wrong direction for our civilization.

I've got a longer discourse, but I wanted you to know CLEARLY that I think this is a BAD BILL and I would urge you to vote NO on it.

Thanks again for your service, Jay. Just back off this lousy, rotten piece of JUNK that parades as a bill in our legislature. B-A-D.

s

Scott McMurren
Alaska Travelgram
www.alaskatravelgram.com
zoom@gci.net

From: Rep. Lindsey Holmes
Sent: Monday, February 23, 2009 10:00 AM
To: Jane Pierson
Subject: FW: HB 9

From: Sarah Drummond [mailto:scdrummond@gmail.com]
Sent: Sunday, February 22, 2009 10:26 AM
To: Rep. Lindsey Holmes
Subject: HB 9

Hi, Representative Holmes. It's my understanding that HB 9 will be discussed this coming week and I would like to take this opportunity to express my concern about it to you, as my representative in the State House. As I'm sure you've noticed, we are in the middle (well, let's hope in the middle and not still in the beginning) of a recession and Representative Chenault wants to change the punishment of first degree murder to the death penalty, which is far more expensive than a life sentence. Although, there are some murderers who have committed crimes that are so heinous that I dread the idea of them ever being released from prison, I know that Alaska has a much longer average life sentence than the rest of the U.S. When I took criminology in 2003, the average life sentence in Alaska was 23 years, compared to the 7 year average life sentence nation wide. I'm not sure if that has changed at all in the past 6 years, but it's clear to me that in Alaska, we're pretty good about keeping people locked up a good long time and economically the death penalty is not a very good idea. It is much cheaper to keep a person in prison for 23 years or so than to pay for all the automatic appeals required with capital punishment. If it weren't so expensive, I might be okay with allowing the death penalty in Alaska as punishment for first degree murder, but it is extremely expensive and apparently there's no way to get around all those expensive appeals. From the quick skim I did of the HB 9, it seemed to allow capital punishment from crimes other than first degree murder, which I am not okay with at all. It's silly enough to demonstrate how wrong it is to kill people, by killing people. To give people a death sentence for assault and battery is just ridiculous. Please vote against HB 9 and encourage your fellow legislators to do the same, because this bill is not good for the state of Alaska. At best, it would just be a frivolous expense added to a shrinking budget. Thank you.

~Sarah Drummond
district 26 resident

From: Rep. Lindsey Holmes
Sent: Monday, February 23, 2009 10:05 AM
To: Jane Pierson
Subject: FW: Rep. Holmes enews update

From: Bernhard Richert [mailto:berney@alaska.net]
Sent: Friday, February 20, 2009 3:38 PM
To: Rep. Lindsey Holmes
Subject: RE: Rep. Holmes enews update

Thank you for the update, Lindsey: We are strongly opposed to the Death Penalty for all the reasons. I hope the bloodthirsty legislators back off, if for no other reasons than the expense you noted. Best regards, Berney and Family

From: Rep. Lindsey Holmes [mailto:Representative_Lindsey_Holmes@legis.state.ak.us]
Sent: Friday, February 20, 2009 12:49 PM
To: Rep. Lindsey Holmes
Subject: Rep. Holmes enews update

From: Rep. Lindsey Holmes
Sent: Monday, February 23, 2009 10:04 AM
To: Jane Pierson
Subject: FW: Death Penalty

From: acliburd@ak.net [mailto:acliburd@ak.net]
Sent: Friday, February 20, 2009 4:29 PM
To: Rep. Lindsey Holmes
Subject: Death Penalty

Hello Lindsey,

I hope you will work against adoption of the death penalty. It is barbaric and has been applied unjustly too many times. Differential enforcement remains a significant issue.

I have always been proud that Alaska abolished the death penalty before statehood.

Sincerely,
Ann Liburd

Testimony in Opposition to House Bill 9

I am opposed to HB 9 and I support holding a person who commits murder accountable for his or her actions. In many ways, the current legal punishment of life in prison is a more severe sentence because the period of suffering is long and intense.

I have conducted meditation sessions, as a volunteer, for a cumulative period of two years in the Lemon Creek Correctional Center and I can personally attest to the fact that imprisonment is an excruciatingly painful experience.

My objection to HB 9 is about whether certain specific acts of murder should result in another form of killing, a form of killing that is ritualized, sanitized and sanctioned through public policy.

I have heard people argue in favor of a death penalty by asking, "did the murderer have any sympathy for his/her victim?" My answer would be that the murderer may not have felt sympathy for the victim. HB 9 does not address an emotional issues such as sympathy. The issue HB 9 poses for me is one of, how do we treat one another so that our actions are aligned with values that will in turn support healthy communities?

HB 9 sends the wrong message in regards to people killing people. Opposition to HB 9 is about taking a stand against violence while holding individuals accountable for their actions.

I recently heard someone quote a statewide poll that indicated that 65% of Alaskan adults are opposed to capital punishment. The survey was not identified so it is not possible to evaluate the accuracy of such a poll but, intuitively this seems right. Most people are not comfortable with acts of killing whether it done through state sanction or by an individual.

The introduction of HB 9 asks us citizens to consider what kind of world do we want to create for ourselves. People found guilty of murder are punished according to the type of murder and aggravating and mitigating factors. Making a law to kill murderers is not going to undo the harm, will not support healthy human values, nor will such a law make us any safer.

Sincerely,

Glen Ray
9238 Emily Way
Juneau, AK 99801

Feb 19, 2009

Representative Jay Ramras
120 4th Street
Juneau, AK 99801-1182

Dear Representative Ramras,

As a State, Alaska has never had the death penalty, and we don't need it now.
As your constituent, I ask you not to support HB 9 which seeks to authorize capital punishment. This is a huge step backward into medieval punitive politics.
Capital punishment:
- does nothing to protect people from crime;
- seriously harms the survivors of homicide victims; and
- would cost Alaska far more than life imprisonment without release.
The administration of the death penalty is fraught with error and

results in the conviction and execution of the innocent. In the past 35 years, 130 inmates were found to be innocent and released from death row. And, while DNA testing has exonerated a lot of prisoners locked up for crimes they didn't commit, it isn't a fail-safe that will prevent the innocent from being executed.
The United States remains the only advanced Western democracy that fails to recognize capital punishment as a profound human rights violation and as a frightening abuse of government power.

Thank you for opposing HB 9.

Sincerely,

Mr. Richard Seifert
PO Box 82066
Fairbanks, AK 99708-2066

Feb 19, 2009

Representative Jay Ramras
120 4th Street
Juneau, AK 99801-1182

Dear Representative Ramras,

As a State, Alaska has never had the death penalty, and we don't need it now.
As your constituent, I ask you not to support HB 9 which seeks to authorize capital punishment.
Capital punishment:
- does nothing to protect people from crime;
- seriously harms the survivors of homicide victims; and
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The United States remains the only advanced Western democracy that fails to recognize capital punishment as a profound human rights violation and as a frightening abuse of government power.

Thank you for opposing HB 9.

Sincerely,

Ms. frances williams
401 7th Ave Apt 312
Fairbanks, AK 99701-4965

Dana Strommen

From: ACLU [aclu@aclu.org] on behalf of Angela Schmidt [fsajs4@uaf.edu]
Sent: Wednesday, February 18, 2009 1:45 PM
To: Rep. Jay Ramras
Subject: Keep the Death Penalty Out of Alaska

Feb 18, 2009

Representative Jay Ramras
120 4th Street
Juneau, AK 99801-1182

Dear Representative Ramras,

As a State, Alaska has never had the death penalty, and we don't need it now.
As your constituent, I ask you not to support HB 9 which seeks to authorize capital punishment.
Capital punishment:
- does nothing to protect people from crime;
- seriously harms the survivors of homicide victims; and
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The administration of the death penalty is fraught with error and

results in the conviction and execution of the innocent. In the past 35 years, 130 inmates were found to be innocent and released from death row. And, while DNA testing has exonerated a lot of prisoners locked up for crimes they didn't commit, it isn't a fail-safe that will prevent the innocent from being executed.
The United States remains the only advanced Western democracy that fails to recognize capital punishment as a profound human rights violation and as a frightening abuse of government power.

Thank you for opposing HB 9.

Sincerely,

Ms. Angela Schmidt
PO Box 750160
410 2nd Ave
Fairbanks, AK 99701-4727

Dana Strommen

From: ACLU [aclu@aclu.org] on behalf of Bret Luick [ffbrl@uaf.edu]
Sent: Wednesday, February 18, 2009 1:45 PM
To: Rep. Jay Ramras
Subject: Keep the Death Penalty Out of Alaska

Feb 18, 2009

Representative Jay Ramras
120 4th Street
Juneau, AK 99801-1182

Dear Representative Ramras,

As a State, Alaska has never had the death penalty, and we don't need it now.
As your constituent, I ask you not to support HB 9 which seeks to authorize capital punishment.
Capital punishment:
- does nothing to protect people from crime;
- seriously harms the survivors of homicide victims; and
- would cost Alaska far more than life imprisonment without release.
The administration of the death penalty is fraught with error and

results in the conviction and execution of the innocent. In the past 35 years, 130 inmates were found to be innocent and released from death row. And, while DNA testing has exonerated a lot of prisoners locked up for crimes they didn't commit, it isn't a fail-safe that will prevent the innocent from being executed.
The United States remains the only advanced Western democracy that fails to recognize capital punishment as a profound human rights violation and as a frightening abuse of government power.

Thank you for opposing HB 9.

Sincerely,

Dr. Bret Luick
PO Box 750222
Fairbanks, AK 99775-0222

Feb 18, 2009

Representative Jay Ramras
120 4th Street
Juneau, AK 99801-1182

Dear Representative Ramras,

As a State, Alaska has never had the death penalty, and we don't need it now.

As your constituent, I ask you to strongly oppose HB 9 which seeks to authorize capital punishment.
Perhaps there are people I or others believe "deserve to die for what they have done." But who other than God should make such a decision?? Let alone the government!

While our governmental employees do their best to do what is right, we all know the government makes mistakes. How and why would we empower the government to kill its own citizens? I just don't understand.
Other states are backing away from the death penalty because its implementation is so plagued with problems.
I also believe that lifetime imprisonment is a worse punishment than

death, as the guilty has to live with their deeds everyday (death would be the easy way out). This also allows the state to release them should they later be found innocent - which is too often the case.
The administration of the death penalty is fraught with error and

results in the conviction and execution of the innocent. In the past 35 years, 130 inmates were found to be innocent and released from death row. And, while DNA testing has exonerated a lot of prisoners locked up for crimes they didn't commit, it isn't a fail-safe that will prevent the innocent from being executed.
The United States remains the only advanced Western democracy that fails to recognize capital punishment as a profound human rights violation and as a frightening abuse of government power.

Thank you for opposing HB 9.

Sincerely,

Mr. Tim Stallard
PO Box 82096
Fairbanks, AK 99708-2096

Feb 18, 2009

Representative Jay Ramras
120 4th Street
Juneau, AK 99801-1182

Dear Representative Ramras,

As a State, Alaska has never had the death penalty, and we don't need it now.
As your constituent, I ask you not to support HB 9 which seeks to authorize capital punishment.
Capital punishment:
- does nothing to protect people from crime;
- seriously harms the survivors of homicide victims; and
- would cost Alaska far more than life imprisonment without release.
The administration of the death penalty is fraught with error and

results in the conviction and execution of the innocent. In the past 35 years, 130 inmates were found to be innocent and released from death row. And, while DNA testing has exonerated a lot of prisoners locked up for crimes they didn't commit, it isn't a fail-safe that will prevent the innocent from being executed.
The United States remains the only advanced Western democracy that fails to recognize capital punishment as a profound human rights violation and as a frightening abuse of government power.

Thank you for opposing HB 9.

Sincerely,

Dr. Bret Luick
PO Box 750222
Fairbanks, AK 99775-0222

Dana Strommen

From: Richard Reem [rreem@mosquitonet.com]
Sent: Sunday, February 22, 2009 4:31 PM
To: Rep. Jay Ramras
Subject: The death penalty

Rep. Ramas, I am concerned about the death penalty. The well known Hartman case seems to be a strong argument against doing in presumed killers and other criminals as the people in jail may well be innocent.

It is bad enough that we allow abortions, death to clearly innocent folks. Thank you for your service in the Legislature. Richard Reem

Dana Strommen

From: patrick dubbs [dubbs@alaska.net]

Sent: Monday, February 23, 2009 6:59 PM

To: Rep. Alan Austerman; Rep. Anna Fairclough; Rep. Berta Gardner; Rep. Beth Kerttula; Rep. Bill Stoltze; Rep. Bill Thomas; Rep. Bob Buch; Rep. Bob Herron; Rep. Bob Lynn; Rep. Bryce Edgmon; Rep. Cathy Munoz; Rep. Carl Gatto; Rep. Craig Johnson; Rep. Charisse Millett; Rep. Chris Tuck; Rep. David Guttenberg; Rep. Harry Crawford; Rep. Pete Petersen; Rep. Jay Ramras; Rep. John Coghill; Rep. John Harris; Rep. Kurt Olson; Rep. Kyle Johansen; Rep. Les Gara; Rep. Lindsey Holmes; Rep. Mark Neuman; Rep. Max Gruenberg; Rep. Mike Chenault; Rep. Mike Doogan; Rep. Mike Hawker; Rep. Mike Kelly; Rep. Nancy Dahlstrom; Rep. Paul Seaton; Rep. Peggy Wilson; Rep. Reggie Joule; Rep. Richard Foster; Rep. Scott Kawasaki; Rep. Sharon Cissna; Rep. Wes Keller; Rep. Woodie Salmon

Subject: HB 9

Representative Ramras:

While I applaud your efforts to alleviate shortages in western Alaska and to keep our wandering governor on task in Alaska, I am appalled by your co-sponsorship of HB 9 which would reinstate the death penalty in Alaska. It is inconceivable to me that when much of the world has recognized the barbarity and miscarriages of justice surrounding the death penalty, you are proposing that Alaska adopt such a penalty.

There are no winners in capital punishment executions and nothing is restored by the death of another human being. Killing another human being is simply inhumane and when it is sanctioned by the state, it diminishes us all.

A simple and obvious solution to Representative Chenault's concern that "People who commit the most monstrous of crimes will not have the opportunity to reoffend . . ." is to impose a sentence of "life in prison with no possibility of parole, medical, or compassionate release."

Patrick Dubbs
2101 Charlijo Loop
Fairbanks 99709

CC: Alaska Legislature House Members

Dana Strommen

From: alaska@ak.net on behalf of Barbara Hatch [alaska@ak.net]
Sent: Monday, February 23, 2009 8:36 PM
To: Rep. Jay Ramras
Subject: HB9

Please note that I do not favor HB9 in any way, shape or form. Please leave this alone and concentrate on more pressing matters facing Alaska at this time. There is no time to waste.

You may also note that I was impressed with several things you spoke publicly on in recent weeks, however, that respect has now dissolved when I saw you co-sponsor this bill.

Thank you,
Barbara Hatch

911

Dana Strommen

From: James Hobson [jlhobson@gmail.com]
Sent: Monday, February 23, 2009 8:39 PM
To: Rep. Jay Ramras
Subject: HB 9

Chairman Ramras,

I'm contacting you in regards to House Bill 9, which would authorize capital punishment in Alaska. I am, like many Alaskans (and many Republicans who actually believe in limited government), vehemently opposed to the death penalty, and would be ashamed if my state were to re-institute state-sanctioned murder. It would be an incredible step backward.

The death penalty simply doesn't work and is often unfairly applied to racial minorities. Compound this with the reality that our criminal justice system is far from perfect, and you can understand my concerns. Too many people, even those condemned to die, have been wrongfully convicted. Further, prosecuting capital cases, and going through the necessary appeal process, is incredibly expensive. More so, the families of victims are denied closure for years, as the appeals process is exhausted. Finally, just look at the statistics: tates that regularly execute their residents tend to have higher murder rates than those that have moved beyond such archaic forms of "justice."

Killing someone - for killing someone - to demonstrate that killing is wrong, is asinine. Our justice system should not resort to blood lust. We deserve better than that.

Please do the right thing, and not shame our state.

Cordially,

James Hobson

"Damn the consequences, give me the pen!" -Lewis Morris, upon signing the Declaration of Independence

"I will be as harsh as truth and as uncompromising as justice...I will not retreat a single inch, and I will be heard!" -William Lloyd Garrison; Salutatory of the Liberator

"Let them call me a rebel and I welcome it, I feel no concern from it; but I should suffer the misery of demons were I to make a whore of my soul." -Thomas Paine

Dana Strommen

From: carlb@alaska.com on behalf of Carl S. Benson [carlb@alaska.com]
Sent: Monday, February 23, 2009 9:50 PM
To: Rep. Jay Ramras
Cc: Rep. David Guttenberg
Subject: HB 9

Dear Jay,
I am writing to oppose HB9. The reasons are well known. When you say mistakes may be made, you are talking about taking innocent lives. My advice is:
No.
Absolutely No.
Don't even think about it!
Shame on you for bringing it up.
Carl S. Benson
--
1551 Farmers Loop
Fairbanks, Alaska 99709
Tel: 907 479-6912

Dana Strommen

From: drobbins@gci.net on behalf of Doris Robbins [drobbins@gci.net]
Sent: Tuesday, February 24, 2009 1:40 AM
To: Rep. Jay Ramras; Rep. Nancy Dahlstrom
Cc: Rep. John Coghill; Rep. Carl Gatto; Rep. Lindsey Holmes; Rep. Bob Lynn
Subject: RE: HB 9 The Death Penalty
Attachments: Doris Robbins.vcf

Representative Ramras,
Representative Dahlstrom,
Judiciary Committee,

RE: HB 9 The Death Penalty

I am opposed to the death penalty. I don't think killing another person is the right solution. That is also an easy way out for the criminal. More punishing would be life imprisonment without parole!

Knowing that there are many in prison who are not guilty, it would be possible later to free those wrongly convicted if they had not been put to death. In addition, it is difficult and expensive to actually get to the final stage where a death sentence is carried out.

I ask you not to pass HB 9 and instead use life without parole for the worst offenses.

Sincerely,

Doris Robbins
drobbins@gci.net
1281 Overhill Dr.
Fairbanks AK 99709
(907) 374-0597

Dana Strommen

From: ~Marie~ [alaskanmarie@gmail.com]
Sent: Tuesday, February 24, 2009 4:18 AM
To: Rep. Jay Ramras
Subject: HB 9 Death Penalty

I am writing to ask you to please not take Alaska backwards by working to implement the death penalty in this state. It really is as simple as 2 wrongs don't make a right.

Marie Anderson
alaskanmarie@gmail.com

Dana Strommen

From: Gail Fullerton [tadandgail@acsalaska.net]
Sent: Tuesday, February 24, 2009 8:53 AM
To: Rep. Jay Ramras
Subject: House Bill 9

When our State has so many urgent problems to resolve, why are we spending our precious time and energy on the issue of capital punishment? If this issue ever needs to be considered, the time is certainly not now.

Gail and Tad Fullerton
Fairbanks AK 99709
tadandgail@acsalaska.net

State of Alaska
House Judiciary Committee

RE: HB 9

I am Julia Smith, former Administrator of the Sitka Pioneers' Home. I live at 4775 Halibut Point Road, Sitka Alaska. As a thirty-year citizen of the State of Alaska, I have always been proud of our state in part because we prohibit capital punishment. I was very dismayed to learn that HB 9 is being considered to authorize capital punishment.

It is my believe that the cost of Capital punishment:

- does nothing to protect people from crime;
- seriously harms the survivors of homicide victims; and
- would cost Alaska far more than life imprisonment without release.

The administration of the death penalty is fraught with error and results in the conviction and execution of the innocent. In the past 35 years, 130 inmates were found to be innocent and released from death row. And, while DNA testing has exonerated a lot of prisoners locked up for crimes they didn't commit, it isn't a fail-safe that will prevent the innocent from being executed.

The United States remains the only advanced Western democracy that fails to recognize capital punishment as a profound human rights violation and as a frightening abuse of government power.

Thank you for allowing me to testify.

Sincerely, Julia A. Smith

Dana Strommen

From: Eric Treider [gilpatrick_mine@yahoo.com]

Sent: Tuesday, February 24, 2009 11:46 AM

To: Rep. Jay Ramras; Rep. Bob Lynn; Rep. Lindsey Holmes; Rep. Max Gruenberg; Rep. Carl Gatto; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Mike Chenault

Dear Representatives,

I pray that you will oppose HB9, the Death Penalty bill. For the last twenty-five years that I've lived in Alaska, I was always so proud that we don't resort to state-sanctioned murder like they do in backward places like Mississippi and Alabama. Now I feel like something that set our state apart from others -- something that made me proud of this state and it's people -- is being flushed down the toilet.

Sure, there are a lot of ignorant, vicious people who would love nothing better than to pack a picnic basket and attend a public execution on a Sunday afternoon -- and I guess that's who this bill is supposed to satisfy -- but think about what you are getting into:

> How are you going to feel when you realize that legislation you've supported has resulted in the execution of an innocent person. This WILL happen. Won't you have their blood on your hands? How will you be able to sleep at night, knowing you opened this Pandora's box?
>
> How will we explain this to our kids??? I remember seeing the electric chair at the New Mexico state penitentiary when I was four. It shook me up for days and I lost a lot of trust in adults, knowing that they felt they had to resort to murder in order to prevent murder. Even a child can see that it's wrong.
>
> How does this square with what we want to become as a people? Who do you admire most? The Amish who practice radical forgiveness or the gang of brutes who threw a necktie party for Saddam Hussein....and the reason we killed Saddam was because he killed other people. Where does it all end?
>
> Think about the moral and emotional burden you are going to be placing on the people who actually have to conduct these executions. Are you personally willing to get involved in the actual process? If you aren't willing to do this personally, how can you, in good conscience, make this a condition of employment for some of the folks in the Department of Corrections.
>
> Even as a taxpayer, I object to this because it's more expensive to execute someone than it is to keep them behind bars.
>
> Last, capital punishment completely violates my Christian beliefs. By shutting down an execution of an adulteress, Christ taught us that there is a better way.

I appeal to the noble, high-minded reaches of your heart to turn your back on state-sanctioned murder! It may be very popular among certain constituencies but as our representatives, we rely on you to draw a distinction between what might be most popular and what is the right and proper thing to do. Please show some courage and oppose this bill....

Kind regards,

Eric Treider
PO Box 3565
Soldotna, AK 99669

Dana Strommen

From: WILLIAM MAILER [wmailer@mtaonline.net]
Sent: Tuesday, February 24, 2009 1:45 PM
To: Rep. Jay Ramras
Subject: HB 9

Dear Rep. Ramras: We do not support the great State of Alaska sanctioning capitol punishment. The death penalty does nothing to reduce crime, does not comfort victims and families and is frankly barbaric. When a person is convicted of a crime to which the death penalty would be applied we should simply incarcerate that person for life and make that existence as difficult as possible.

Please vote NO on HB 9. Thank you.

WILLIAM AND KATHY MAILER
P.O. Box 947
12374 Hagion Shores Drive
Willow, Alaska 99688-0947
907.495.3647
wmailer@mtaonline.net

...imbibo locus actum omnimodus...

Comments on House bill 9

On February 24, 2003 at 4:44am I received a phone call informing me of a problem at my Sister in laws home. I got dressed and arrived at the Wrangell Police dept a few minutes later.
The events of the day have changed my families' life for ever. My Sister in Law Sheryl Nelson 43Yrs, my niece Adriane Nore 24yrs, and my niece Shandelle Nelson 19yrs had all been murdered. The gunman had committed suicide.
One cannot fathom the emotions and turmoil that one goes through when faced with a tragic event as overwhelming as this was to us. It not only sent shock waves to our family members, but also to the City of Wrangell as a whole. News media invaded our town as this became a state wide event.
In a town of some 2000 people there was 1500 that attended the Funeral Services. The Episcopal Bishop of Alaska came to Wrangell from Fairbanks to officiate and all Wrangell Churches helped in the proceedings.
I am a God fearing man and I believe that a power greater than all of us will have the final judgment, but I also believe we in our human frailties need to build safe guards for society. I do not envy you your task at hand but feel you need information from a family that has experienced such an event.
I look at the death penalty as a deterrent, and do not feel that housing a person for the remainder of there natural lives are doing fair justice to society. We need deterrents such as this (especially for our first responders) to help in some way to protect them in the execution of their duties. I thank you for having this bill brought forward and encourage you to reinstate this penalty.
Please remember that murder will affect the remaining family members for the remainder of their lives.

Respectfully Submitted

Don McConachie
Box 361
Wrangell Alaska 99929

THE ALASKA LEGISLATURE

In Memoriam

SHERYL ROBERTA NELSON
February 3, 1960 – February 24, 2003

SHANDELLE MARIE NELSON
November 16, 1984 – February 24, 2003

ADRIENNE SHALON NORE
March 2, 1978 – February 24, 2003

May tender memories
soften your grief,
May fond recollection
bring you relief,
May you find comfort
and peace in the thought
Of the joy that knowing
your loved one brought
For time and space
can never divide
Or keep your loved one
from your side
When memory paints
in colors true
The happy hours
that belonged to you.

The Twenty-third Alaska State Legislature salutes the lives and honors the memories of Sheryl Roberta Nelson, Shandelle Marie Nelson, and Adrienne Shalon Nore. We join their families, friends and the community of Wrangell during this time of mourning.

PETE KOTT
SPEAKER OF THE HOUSE

GENE THERRIAULT
PRESIDENT OF THE SENATE

PEGGY WILSON
PRIME SPONSOR

ROBIN TAYLOR
PRIME SPONSOR

Date: April 8, 2003

Cosponsors: Representatives Kott, Anderson, Berkowitz, Chenault, Cissna, Coghill, Crawford, Croft, Dahlstrom, Fate, Foster, Gara, Gatto, Grussendorf, Guttenberg, Harris, Hawker, Holm, Jaime, Kapsner, Kerttula, Kohring, Masek, McGuire, Meyer, Morgan, Ogg, Rokeberg, Samuels, Seaton, Weyhrauch, Williams, Wolf, Senators Taylor, Therriault, Bunde, Crowdery, Davis, Dyson, Elton, Green, Guess, Hoffman, Lincoln, Olson, Seekins, Ben Stevens, Gary Stevens, Wilken

Feb 18, 2009

Representative Jay Ramras
120 4th Street
Juneau, AK 99801-1182

Dear Representative Ramras,

As a State, Alaska has never had the death penalty, and we don't need it now.

As your constituent, I ask you to strongly oppose HB 9 which seeks to authorize capital punishment.
Perhaps there are people I or others believe "deserve to die for what they have done." But who other than God should make such a decision?? Let alone the government!

While our governmental employees do their best to do what is right, we all know the government makes mistakes. How and why would we empower the government to kill its own citizens? I just don't understand.
Other states are backing away from the death penalty because its implementation is so plagued with problems.
I also believe that lifetime imprisonment is a worse punishment than

death, as the guilty has to live with their deeds everyday (death would be the easy way out). This also allows the state to release them should they later be found innocent - which is too often the case.
The administration of the death penalty is fraught with error and

results in the conviction and execution of the innocent. In the past 35 years, 130 inmates were found to be innocent and released from death row. And, while DNA testing has exonerated a lot of prisoners locked up for crimes they didn't commit, it isn't a fail-safe that will prevent the innocent from being executed.
The United States remains the only advanced Western democracy that fails to recognize capital punishment as a profound human rights violation and as a frightening abuse of government power.

Thank you for opposing HB 9.

Sincerely,

Mr. Tim Stallard
PO Box 82096
Fairbanks, AK 99708-2096

Feb 18, 2009

Representative Jay Ramras
120 4th Street
Juneau, AK 99801-1182

Dear Representative Ramras,

As a State, Alaska has never had the death penalty, and we don't need it now.
As your constituent, I ask you not to support HB 9 which seeks to authorize capital punishment.
Capital punishment:
- does nothing to protect people from crime;
- seriously harms the survivors of homicide victims; and
- would cost Alaska far more than life imprisonment without release.
The administration of the death penalty is fraught with error and

results in the conviction and execution of the innocent. In the past 35 years, 130 inmates were found to be innocent and released from death row. And, while DNA testing has exonerated a lot of prisoners locked up for crimes they didn't commit, it isn't a fail-safe that will prevent the innocent from being executed.
The United States remains the only advanced Western democracy that fails to recognize capital punishment as a profound human rights violation and as a frightening abuse of government power.

Thank you for opposing HB 9.

Sincerely,

Dr. Bret Luick
PO Box 750222
Fairbanks, AK 99775-0222

Dana Strommen

From: Yael Hickok [jerhickok@hotmail.com]
Sent: Tuesday, February 24, 2009 3:00 PM
To: Rep. Jay Ramras
Subject: vote no on HB 9

Representative Ramras,

My name is Yael Hickok. I am a registered voter in Anchorage and I am strongly against HB-9. I am totally against the idea of my government getting into the business of killing. I recognize there are horrible offenses committed by some very disturbed individuals, and I do not want my state leaders doing the same thing. A lifetime sentence is the responsible and appropriate choice for criminals who cannot be rehabilitated. Capital punishment trials are far too lengthy and costly for our over-burdened judicial system, and they do not serve as a deterrent. What criminal would actually stop their crime because they think capital punishment might await them versus a life sentence?! And as we all know our judicial system is not perfect. Juries make mistakes, and offenders with more money or influence can sometimes have an advantage. So why set up a punishment is not reversible; that cannot be re-examined later with new evidence? Please vote no on HB-9. Thank you for your service, and your time in reading my letter.

Yael Hickok
8631 Rosalind St.
Anchorage 99507

Dana Strommen

From: Penny Cowan [pennyc@acsalaska.net]
Sent: Tuesday, February 24, 2009 4:26 PM
To: Rep. Jay Ramras
Subject: HB 9

Please, please, please vote no on HB 9. The thought of reinstituting the death penalty in Alaska sickens me. On so many levels, we, as a civilized state, cannot afford to return to such barbaric measures to deal with those who commit crimes.

Thank you for your thoughtful consideration.

Jane A. (Penny) Cowan
Anchorage, Alaska

Dana Strommen

From: Richard Morrison [richard.james.morrison@gmail.com]

Sent: Tuesday, February 24, 2009 6:07 PM

To: Rep. Bob Lynn; Rep. Carl Gatto; Rep. Jay Ramras; Rep. John Coghill; Rep. Lindsey Holmes; Rep. Max Gruenberg; Rep. Nancy Dahlstrom

Subject: House Bill 9

Dear Representatives of the Judicial Committee:

I am writing you to voice my opposition to House Bill 9 and urge you to vote "NO" on that bill as it stands before you. I have always been proud that Alaska has been free of the death penalty since before we were a state, and I believe that the moral and financial stakes are far too high to backtrack now.

As you have probably heard by now, Colorado, Kansas, Maryland, Montana, New Hampshire, Nebraska, and New Mexico are actively looking to abolish their death penalty systems, primarily due to the high cost of operating such a system in this faltering economic climate. Most of the estimates I have seen claim that killing someone on behalf of the state costs 14-21 times the amount of money that would be spent to keep someone in prison and attempt to rehabilitate them or to house them for the remainder of their life. As a state reintroducing the death penalty, we would also have to look at the costs of creating a death penalty infrastructure that we do not have. In this faltering economic climate, with falling oil prices, a hiring freeze in place for most SOA positions, and our government trying to hash out what programs we are going to be able to afford and what needs to be cut, introducing a program that is more costly than our current system is fiscally irresponsible at best and financially catastrophic at worst.

The moral cost is far higher. Nationwide, scores of people have been executed for crimes they have not committed, and they have only been exonerated posthumously. Forensic science is not perfect; like any other human pursuit, there is always a margin of error, and I don't feel that death penalty cases are a gamble we can take. The National Academy of Sciences just released a study last Wednesday calling for a total overhaul of the nation's crime labs, citing the wide variation in quality of practice for tests that many cases hang on, and which judges and jurors have often believed to be infallible. Not only is someone's innocence or guilt on the line, their very life hangs in the balance. If we make a mistake in incarcerating them, we can't give them back the years we took, but we can give them their freedom and make restitution. If we make a mistake in executing someone, we can never give them their life back. Beyond any of these faults in the system, how can we possibly claim the moral high ground and say killing is wrong if we turn kill ourselves? If someone stabs another person, we do not stab them; we put them in jail for a certain period of time, attempt to rehabilitate them, and they pay restitution. If someone steals, we do not steal from them; we put them in jail for a certain period of time, attempt to rehabilitate them, and they pay restitution. If someone rapes another person, we do not rape them; we put them in jail for a certain period of time, attempt to rehabilitate them, and they pay restitution. Why should murder be any different in this way? It is a crime, but it should punished as any other crime: put them in jail for a certain period of time, attempt to rehabilitate them, and they pay restitution.

Killing a murderer corrects very little; we as a society cannot obviously rehabilitate a corpse, and it does not bring the victims back. Some families may feel a sense of relief knowing the person who took their loved one's life is also dead, but some families have also come forward to say that did not receive the relief they were expecting from the death of a killer, or that they don't wish anyone to die - not even the killer of a loved one. Through incarceration, we at least have a chance at helping the criminal become a contrite and contributing member of society.

Reinstating the death penalty is little more than reinstating revenge killing. As a just society, we cannot make our decisions based on feelings of anger and revenge on behalf of the few. Killing in the name of society is not the kind of justice I want to see in my home state. Please vote "NO" on House Bill 9.

Sincerely,

Richard James Morrison

"Holding on to anger is like grasping a hot coal with the intent of throwing it at someone else; you are the one who gets burned." - Buddha

Dana Strommen

From: Lindsey Meyn [meynself@gmail.com]

Sent: Tuesday, February 24, 2009 8:29 PM

To: Rep. Bob Lynn; Rep. Carl Gatto; Rep. Jay Ramras; Rep. John Coghill; Rep. Lindsey Holmes; Rep. Max Gruenberg; Rep. Nancy Dahlstrom

Subject: The Thoughts and Concerns of a Lifelong Alaskan

Hello,

I hope this email is read. I am afraid that each of you will simply delete it the moment you see that it isn't something "truly" urgent or even important. I can only hope you have more ethical integrity than that.

I value human life -- all human life. This value is an integral part of what our country stands for. I never thought I would see the day that my home state, my favorite state in the country, might begin to question this value. It has been mentioned in the ADN's coverage of the proposal to reinstate the death penalty that no one actually expects it to go through, but that it is part of a plan to change the values of Alaskans. Why do we want this? I am all for conversation, so please, those of you who support capital punishment, begin a dialog with me. I know you are all very busy and maybe you don't have time (or don't care enough) to engage in a conversation with every person in Alaska on your beliefs. But I want to know why. If you have good reasons for wanting Alaskans to support the death penalty, please do share. All I ask in return is that you consider and respond to my response to your reasons.

I am not alone in feeling sickened at the idea that killing a person is ever the right course of action. You may gain a lot of insight into the perspectives of most Alaskans through a conversation with me. This can only be a good thing for a representative, I hope.

Please give this issue some serious, soul-searching thought,

Lindsey Meyn

--

"Uttering a word is like striking a note on the keyboard of the imagination." ~ Ludwig Wittgenstein

Dana Strommen

From: Joyce Bamberger [joyce.bamberger@gmail.com]
Sent: Wednesday, February 25, 2009 9:56 AM
To: Rep. Jay Ramras
Subject: HB 9

I am testifying today to oppose HB 9, the bill to reinstate the death penalty in Alaska. I cannot understand why in these times you would introduce this legislation except for your own political interests. Numerous studies have shown that the death penalty has been used to unfairly against non-whites, that it costs more to administer and that it turns government which exists for public safety into a public executioner. See, e.g. http://justice.uaa.alaska.edu/death/alaska.html; http://www.deathpenaltyinfo.org/FactSheet.pdf.

Even you -- Rep. Chenault admit that the death penalty does not act as a deterrent. http://www.iht.com/articles/ap/2009/02/24/america/NA-US-Death-Penalty-Alaska.php. I strongly urge you to drop pursuit of this legislation and use your time and skills for legislation that would best help Alaskans.

--
Joyce E. Bamberger
1036 West 22nd Street
Anchorage, Alaska 99503
907-277-7354

PO Box 202045

Anchorage, AK 99520

February 24, 2009

RE: HB 9

Representative Jay Ramras, Chair

Members of House Judiciary Committee

Thank you for this opportunity to add my voice of dismay. Alaska is a leader. New Mexico, Montana and Maryland are working to join us; New Jersey decided last year to become death penalty free.

Chair Ramras is correct: there are many more critical, crucial and pressing matters for which your time and expertise are sorely needed this legislative session. I am puzzled by those who do not trust government with our personal matters who say they are willing to allow government to kill its own citizens!

Many others have provided studies, data and personal stories. I was taught not to kill, not to hit in anger and to work (and it is work) for understanding.

I ask that you hold this bill in your committee as Alaska needs to remain death penalty free.

Mary Grisco

Archdiocese of Anchorage

225 Cordova Street • Anchorage, Alaska 99501-2409
907/297-7755 • fax: 907/279-3885

Office of the Archbishop

January 24, 2009

The Honorable Jay Ramras, Chair
House Judiciary Committee
State Capitol
Juneau, Alaska 99811

Dear Representative Ramras:

I am writing in advance of testifying on HB 9—a bill authorizing capital punishment here in Alaska. The primary reason I am against the death penalty is because it is simply unnecessary and unjustified in a civilized society. The government should not be in the business of deciding who is to live and who is to die. In your own testimony (as reported in the Anchorage Daily News) you expressed your own belief that capital punishment was not a deterrent to crime. I share that belief. If deterrence is not the reason for reinstituting the death penalty, then we must carefully examine the rationale for taking this action. To think that we can protect human life by taking it is an illusion and an argument that is without merit.

For over 30 years, the United States Conference of Catholic Bishops, (the national organization for Catholic bishops in the United States) has taught that our nation should forgo the use of the death penalty for four reasons:

- The sanction of death, when it is not necessary to protect society, violates respect for human life and dignity;
- State-sanctioned killing in our names diminishes all of us;
- Its application is deeply flawed and can be irreversibly wrong, is prone to errors, and is biased by factors such as race, the quality of legal representation, and where the crime was committed;
- We have other ways to punish criminals and protect society.

Regarding the first and last point, in the United States where many of our jails have become "high tech" there is no longer a need to put someone to death to protect society. Those who have committed heinous crimes can serve a life sentence without parole in an environment that ensures the safety of those around them. I have been assured that in Alaska we have jails (and are building a new jail that will have) the capability of segregating offenders to ensure they serve out a life sentence for their crime without the possibility of harming others again. No matter how heinous the crime, if society can protect itself without ending a human life, it should do so. We have other ways to punish criminals.

In Alaska a large percentage of the population does not support the death penalty. I have serious concerns about violating the conscience of people that might be called on to perform the act. Our US Supreme Court in its decisions has held that all jurors who sit in judgment on a federal death penalty case must agree prior to being seated on a jury that they have no objection to the death penalty. While Alaska's law would need to conform to Supreme Court precedent, it does not allow for others to be released from having to carry out the jobs associated with the death penalty, including the Commissioner of Corrections, correctional employees and medical personnel. I can not support a law that requires people who believe in the sanctity of life to be placed in a position violating their conscience because of their chosen career path.

My final concern is the demographic that traditionally become victims of the death penalty. The people most likely subjected to the death penalty are the poor and marginalized in our society and people who are unable to afford good legal representation. Prior to the death penalty being outlawed in the territory of Alaska, fifteen men were put to death either under territorial laws or under what were known as "miner's laws". Of these, seven were Alaska natives, two were identified as black, three were Caucasian and two were of unknown race. These statistics should concern us all. Fundamental fairness ought to cause us to consider the uneven and perhaps biased manner in which capital punishment has been applied.

In these reflections, I have not addressed particular elements of the proposed legislation several of which are seriously flawed. For example, section 12.58.320 (b) relating to a pregnant woman on death row. Stating in unclear language that the pregnant mother will not be executed prior to the end of the pregnancy leaves the option open to pressure the woman to have an abortion thus creating a double rather than single execution. The horror of a child growing up and living its life knowing its birth was the occasion of his mother's execution is hard to imagine.

Rather than promoting a culture of death in Alaska, we should focus our energy on promoting ways to respond to violent crimes that act out of justice for everyone. We should work to find ways to protect society and hold accountable the truly guilty in a way that reflects our society's best values. The death penalty simply does not do this. Its application makes us all complicit in the death of another human being and in the process cheapens the sacredness of all human life.

Thank you for your time and consideration of my position.

Sincerely yours in Christ and Mary,

+Roger L. Schwietz

+Roger L. Schwietz, OMI
Archbishop of Anchorage

cc: Members of the House Judiciary
Speaker Mike Chenault

Dana Strommen

From: jenny bell [jennydaalaai@yahoo.com]
Sent: Wednesday, February 25, 2009 11:55 AM
To: Rep. Jay Ramras
Subject: House Bill 9

Dear Representative Ramras; I cannot express strongly enough my opposition to the in-statement of the Death Penalty here in Alaska. I am shocked and concerned that you would be supporting such an endeavor.The Death Penalty is an outdated, inhumane, and particularly uncivilized method of dealing with offenders, and has no place in our State.It does not reduce crime.The United States is to my knowledge the only modern industrialized nation that retains this onerous penalty and it should be to our embarrassment that we do. Fortunately most States have seen fit to do away with this aberration, not wanting to find themselves on equal footing with countries like Iran, Sudan and China.We should not be defiling ourselves by joining those that have not.
As an Indigenous person I am well aware of the racial inequities that exist in our State's justice system. It chills my blood to think that this system, already so poorly balanced, might ever have the power to impose the ultimate penalty of death on anyone who must pass through it.
I hope and pray that you will reconsider your support for House Bill 9.
Jenny Bell-Jones
308 Noyes Street
Fairbanks, Alaska, 99701.

222 Seward Street, Suite 210
Juneau, Alaska 99801

Telephone (907) 586-2200

DIXIE A. HOOD, M.A.
Marriage, Family & Child Counselor

February 24, 2009

Members of the House
Judiciary Committee
Finance Committee

Dear Members,

I have been a resident of Alaska for 34 years and a Licensed Marriage and Family therapist in private practice here in Juneau. I have been employed by numerous social service agencies and have also worked under contract.

There are many reasons that I am happy to live in this state and, especially, in this city. I consider it was an enlightened move when Alaska abolished the death penalty. Why any legislator would choose to reverse this action five decades afterwards is not rational. Not a deterrant. Not financially responsible. And, I believe, morally reprehensible.

I want to describe some of my own experience relating to the state prison system. In 1985 I wrote a grant proposal and developed the Substance Abuse Treatment Program at Lemon Creek Correctional Center here in Juneau. I facilitated the education classes and conducted both individual and group therapy sessions for inmates in this maximum security prison. At that time, Lemon Creek was the only facility in the State for those convicted of the most serious and violent crimes — rapes, assaults, armed robbery, murders.

Sometimes I felt uneasy leading a group in a distant room near the gymnasium, with no staff oversight or ability to call for help. But I was never threatened and

actually had more hostility and obstructive behavior directed at me from guards who believed that prisons were for punishment only. They resented and interfered with college teachers, counselors and even chaplains. The idea of rehabilitation was generally scorned. I was disturbed by this attitude.

Also disturbing was the disproportionate numbers of Alaska Native inmates. Though the population statewide was about 17 percent, it was about 40% at this penal institution. I heard many devestating personal stories, especially from persons from the more remote villages. One young man, aged 24, told of being responsible for the care of his six brothers and sisters, at the age of twelve. His father had died in a snowmobile accident while under the influence and his mother was an alcoholic and wasn't at home for the children. He scrounged for food. Another man described his inability to attend school because of the demands and beatings by both his mother and father who drank excessively and fought all the time. Alcohol seemed to have played a part in most of the offenses committed.

Some inmates in my program had sentences so long they had no anticipation of being released within their lifetime. This prison was so far away from home village and family that they never had any visitors either. If they were deemed too dangerous to return to the "Street", life sentence without parole would certainly protect the public.

At any rate, the Substance Abuse Treatment Program seemed to offer them a welcome break in an otherwise dismal routine and they were active participants. Work in the kitchen or an opportunity to make furniture or grow plants was earned by a lucky few.

As a family counselor, I have worked with residents from Halfway Houses, co-led

mens' Anger Management groups, both in-patient and out-patient substance abuse clients, counseled both victims and perpetrators of domestic violence, young people who have dropped-out or run away from dysfunctional family systems. There is a great unmet need for additional funding for educational and social services, for both preventive programs and rehabilitation programs.

Alaska should fund more in-state facilities and programs. The money it would take to construct new buildings, staff and train additional correction officers and establish many more public defenders to provide for reinstatements of the death penalty could be directed toward a much more effective community health and safety expenditure of public funds.

I urge you to kill House Bill No. 9 — not human beings.

Yours sincerely,
Dixie A. Hood

Dana Strommen

From: akimpact@gci.net on behalf of Richard K. Heacock, Jr. [akimpact@gci.net]
Sent: Friday, February 27, 2009 11:31 AM
To: Rep. Jay Ramras
Subject: HB 9

Dear Rep. Ramras:

The death penalty does not deter capital crimes. It is much more expensive than life imprisonment. It is increasingly considered a violation of the International Declaration of Human Rights at the United Nations. The direction among the States of the US is away from the death penalty for many good reasons. One is that it has been disproportionately used against minorities. Of the 8 executions by federal authority in Alaska during the first half of the 20th Century,
2 were for Whites and the 6 others were for Alaska Natives and Blacks.

To legalize the death penalty in Alaska would be taking a giant step backwards. So may HB 9 and any other legislation of this kind quickly find the way to the trash bin (and the paper recycled).

Faithfully,

Richard K. Heacock, Jr.
Executive Director
Alaska IMPACT
Also: WW II veteran, Chaplain for Alaska Legislatures (1956)

Dana Strommen

From: Dawn Bell [dawnbell2@yahoo.com]
Sent: Friday, February 27, 2009 10:59 AM
To: Rep. Jay Ramras
Subject: HB #9

Hello Mr. Ramras,
I am an MSW student at UAA taking a social policy course. An assisgnment this semester is to choose a bill and follow it through the legislative process. I have selected a bill you are sponsoring, HB # 9 " An act relating to murder; authorizing capital punishment, classifying murder in the first degree for certain murders; establishing sentencing procedures for capital felonies; and amending Rules 32, 32.1, 32.3, Alaska Rules of Criminal Procedures, and Rules 204, 209, 210, and 212, Alaska Rules of Apellate procedure."

I would be interested in receiving correspondence from you regarding this bill. I understand that Senator Robin Taylor tried unsuccessfully to get a vote to bring back the death penalty in 1997 and I would like to know what you feel may have changed in our state that would lead you to believe this bill might be more successful in 2009. I would also be interested in understanding if you feel the death penalty is a deterrant to murder and other serious offenses.

I do not support this bill for the following reasons:

No violent criminal put in prison for the rest of his life has ever re-offended outside prison walls again either.

The death penalty does not dissuade the irrational from committing crimes.

The death penalty costs society more than life imprisonment.

The death penalty has resulted in the death of those innocent of the crimes they have been accused of.

The death penalty is an act of violence that perpetuates violence in society.

We don't need it. It's a bad idea.

Thank you for your time,
Dawn M. Bell

Knights of Columbus
Making a Difference for Life

James C. Betts
Alaska State Advocate
PO Box 34954
Juneau AK 99803

February 25, 2009

My name is Jim Betts, I am a resident of Alaska, a Catholic and a Knight of Columbus, an organization of over 1.8 million men with 1800 members in Alaska. As Advocate for the Alaska State Council of The Knights of Columbus I wish to have my feelings and those of this great organization heard today. Together with the Knights of Columbus, I am opposed to the passage of House Bill 9.

Perhaps it is good that Representatives Chenault and Ramras have brought forward House Bill 9 imposing the death penalty for certain offenses in the State of Alaska. Through this process, the voice of the people of Alaska will again be heard in an overwhelming response to reject capital punishment; the imposition of death by lethal injection. Let us bury only one item in this procedure today. Bury this bill, not another body. There has been only one death to save the lives of others that I can recall and Jesus is definitely among us here today.

House Bill 9 must be defeated. It should not even leave the House Judicial or Finance Committee hearing rooms. Remember that we are an evolving creation, that we,

as humans, are mandated to improve, not diminish the human condition. The idea that we might deprive another human of their life as a quid pro quo; i.e. "an eye for an eye" is an old and untenable cliché. The idea that the death penalty is a deterrent; we are not convinced. We must not live in a "Culture of Death" where we create another wrong if we execute one person who may be innocent

We have alternatives. Life imprisonment without the possibility of parole speaks volumes to the journey we have made from crude logic, barbarism, and brutality. Let us evolve our actions, set the bar of human response above the base of animal instinct, to leave the cruelty with the neoliths and move to a world where we turn our cheeks to knee jerk punishment solutions.

Now is the time to be heard, unabashed, certain and resolved that life in any form is to be cherished. Life is precious from the womb to the tomb and as such we turn away from the "Culture of Death" and create instead a "Culture of Life". Death and death alone will be the time for final reckoning. All humans will reconcile with God and that judgment is His and His alone.

Sincerely,

James C. Betts

March 2, 2009

From: Cris Tyree
To: Senators & Representatives
Rep: Death Penalty

NO!! NO!! NO!!

1. "Justice" system is <u>not</u> just. Evidence is not allowed, judges tell jurors to only judge facts (not true, they judge spirit, motive, & intent of law & accused), lawyer is "officer of court", which is conflict of interest, 16.a (criminal rule 16.a), lawyer "not bound to do everything for client", lawyer "appears to do justice", if lawyer officer of court they can discuss case w/ others that should not be privy to info, etc.

2. 7 States Stopping death penalty cause it costs too much money

3. First to "tattle tale" in their crime may, can & do lie about their part so partner in crime serves the death penalty, <u>not</u> the true criminal.

4. THOU SHALT NOT JUDGE, or thee will be judged!!

When this state does not allow for fairness, justice, evidence, honesty, truthfulness, etc. NO!! NO! NO!

Cris

Dana Strommen

From: marytom@gci.net on behalf of Ben, Mary and Tom [marytom@gci.net]
Sent: Saturday, March 21, 2009 12:02 PM
To: Rep. Jay Ramras
Subject: HB9

Dear Rep. Ramras

As an Alaskan resident and taxpayer, I strongly oppose HB 9 and the reinstatement of the death penalty in Alaska.

There is no good argument for the death penalty, and many good ones against it. Life imprisonment is less costly to the taxpayer than execution with all its attendant appeals, and reversible if the convicted person is later found to be innocent. Execution, on the other hand, lowers each and every member of the citizenry to the inhumane level of criminals who commit heinous acts against their fellow humans.

I urge your opposition to this proposed legislation which will smear Alaska's reputation in the rest of the civilized world. We Alaskans are better than this!

Thank you

Mary Spears
PO Box 4096
Soldotna, AK 99669

(907) 260-5779

Dana Strommen

From: Susan Pagenkopf [queue@acsalaska.net]
Sent: Saturday, March 21, 2009 7:57 PM
To: Rep. Jay Ramras
Subject: Re: Death Penalty/for your consideration

Economist.com

WORLD
UNITED STATES

■

The death penalty

Saving lives and money

Mar 12th 2009 | NEW YORK
From The Economist print edition

States plagued by fiscal woes rethink their stance on the death penalty

AN EYE for an eye, or at any rate a death for a death, is the type of justice that most states still embrace. Only 14 of the 50 states have banned capital punishment. But that may change with the recession. As state governments confront huge budget deficits, eight more states have proposed an unusual measure to cut costs: eliminate the death penalty.

The states considering abolition, including Colorado, Kansas, New Mexico and New Hampshire, have shifted the debate about capital punishment, at least in part, from morality to cost. Studies show that administering the death penalty is even more expensive than keeping someone in prison for life. The intensive jury selection, trials and appeals required in capital cases can take over a decade and run up a huge tab for the state. Death row, where prisoners facing execution are kept in separate cells under intense observation, is also immensely costly.

A recent study by the Urban Institute, a think-tank, estimates that the death penalty cost Maryland's taxpayers $186m between 1978 and 1999. According to the report, a case resulting in a death sentence cost $3m, almost $2m more than when the death penalty was not sought.

In an age of austerity, every million dollars counts. Proponents of the abolition bills describe the death penalty as an expensive programme with few benefits. There is little evidence that the death penalty deters. In fact, some of the states that most avidly execute prisoners, such as Texas and Oklahoma, have higher crime rates than states that offer only life in prison without parole. There is also the danger that innocent people may be put to death. So far, more than 130 people who had been sentenced to death have been exonerated.

Colorado, one of the states that has introduced a bill to overturn the death penalty, intends to spend the money it will save each year by eliminating capital punishment on an investigations unit. According to Paul Weissman, the state House majority leader and the bill's co-sponsor, around 1,400 murders are still unsolved in the state. Eliminating the death penalty will finance the new unit and leave an extra $1m for other state programmes. Other states are trying to free up funding to help offset their huge deficits. Savings from abolishing the death penalty in Kansas, for example, are estimated at $500,000 for every case in which the death penalty is not sought.

Many other states, including Texas, which last year carried out almost half of all executions in America, have no plans to follow suit. But a prolonged recession may change a few Texan minds.

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Dana Strommen

From: mpugh@gci.net on behalf of Margaret Pugh [mpugh@gci.net]
Sent: Monday, March 23, 2009 4:11 PM
To: Rep. Jay Ramras
Subject: hb 9

Thank you for your kind remarks during today's hearing on HB 9. You asked a question about something, and I answered that I didn't know. That demonstrates that I am rusty at giving testimony! I actually believe I do know, even though as I said, I am not an attorney. You asked how it can be that an dangerous offender can get an appeal for a sentence modification downward, and yet I don't support the strongest measure, the death penalty.

I think I was on the right track in the answer I gave, but it was incomplete. I said something to the effect that the laws are very narrow in who, and under what circumstances an offender might qualify for a sentence modification hearing...that the laws are so narrow, in fact that there are death row offenders in other states who have been proven innocent by DNA test, and yet they remain incarcerated because there is no mechanism to get them to a sentence review hearing. (In fact the laws are quite different from state to state on the ways to get back into court after having been found guilty and sentenced to whatever.)

On the larger scale, it occurs to me after the fact of the hearing of course: the US system of justice is based upon presumption of innocence - on the rights of the accused to have a fair trial ---on the right to confront accusers --that the STATE is on the hook to prove guilt, and the accused presents defense to that accusation. Not the other way around. All that because, the founding fathers were acutely aware of how the law could be used against innocents and how out of proportion sanctions sometimes were for those found guilty, innocent or not really so innocent---so, they built the system to provide strong protections for the accused. Tie goes to the runner.

Had to get this off my chest - thanks for reading, and thanks again for a nicely run hearing.

Margaret Pugh

Dana Strommen

From: Fernando Cardoso [mr_cardoso@hotmail.com]

Sent: Thursday, March 19, 2009 9:51 AM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes

Subject: Issue of Death Penalty

Good morning,

I am writing to you in regards to the reinstitution of the death penalty in Alaska. I am opposed to this in the deepest level and will withdraw my support and vote for any candidate who votes in favor of it. I realize that never voting for someone again because of the way they voted on one issue is harsh but on the issue of the death penalty there can be no two ways about it.

I thank you for your time,

Fernando Cardoso

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Dana Strommen

From: billandmarti@gci.net on behalf of Marti Pausback Bill Michaelson [billandmarti@gci.net]
Sent: Tuesday, March 17, 2009 8:00 PM
To: Rep. Jay Ramras
Subject: Vote NO on the Death Penalty

Dear Jay Ramaras
The Death Penalty is costly and barbaric.. Let's spend time and money in Alaska on more productive legislation!

Marti Pausback
3220 Beamreach Ct
Anchorage AK 99516

947

Dana Strommen

From: Ronkadawn@aol.com
Sent: Tuesday, March 17, 2009 3:18 PM
To: Rep. Jay Ramras
Subject: Death Penalty

Please do not re-instate the death penalty in Alaska!
Thank you,
Dawn Tisdale, Anchorage

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

Dana Strommen

From: mjspccarol@gci.net on behalf of Carol [mjspccarol@gci.net]

Sent: Thursday, March 19, 2009 2:27 PM

To: Rep. Mike Doogan; Rep. Bob Lynn; Rep. Lindsey Holmes; Rep. Max Gruenberg; Rep. Carl Gatto; Rep. John Coghill; Rep. Nancy Dahlstrom; Rep. Jay Ramras

Cc: mjspc@gci.net

Subject: Oppose HB 9

Attachments: Oppose HB 9.pdf

Dear Members of the House Judiciary Committee:

Please find attached, in .pdf format, a letter from Michael J. Schneider regarding HB 9.

Please feel free to contact Mr. Schneider at (907) 277-9306 or mjspc@gci.net to discuss the contents of his letter further.

Thank you for your consideration.

Yours very truly,

LAW OFFICES
MICHAEL J. SCHNEIDER, P.C.

Carol L. McNeese
Secretary to Michael J. Schneider

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LAW OFFICES
Michael J. Schneider, P.C.
880 "N" STREET, SUITE 202
ANCHORAGE, ALASKA 99501

TELEPHONE (907) 277-9306
FACSIMILE (907) 274-8201

EMAIL mispc@gci.net
WEBSITE aktriallaw.com

VIA EMAIL ONLY

March 19, 2009

Representative Jay Ramras, Chair House Judiciary Committee	Representative_Jay_Ramras@legis.state.ak.us
Representative Nancy Dahlstrom, Vice Chair	Representative_Nancy_Dahlstrom@legis.state.ak.us
Representative John Coghill, Jr., Member	Representative_John_Coghill@legis.state.ak.us
Representative Carl Gatto, Member	Representative_Carl_Gatto@legis.state.ak.us
Representative Max Gruenberg, Member	Representative_Max_Gruenberg@legis.state.ak.us
Representative Lindsey Holmes, Member	Representative_Lindsey_Holmes@legis.state.ak.us
Representative Bob Lynn, Member	Representative_Bob_Lynn@legis.state.ak.us
Representative Mike Doogan, Alternate	Representative_Mike_Doogan@legis.state.ak.us

RE: OPPOSE HB 9
(INTRODUCTION OF THE DEATH PENALTY IN ALASKA)

Dear Members of the House Judiciary Committee:

I appreciate that these epistles are best kept to a paragraph or two, but because HB 9 would put state government in the business of killing its citizens, I beg your greater indulgence.

I have been practicing law throughout Alaska, but primarily in Anchorage, for approximately 33 years. I am an Alaska charter member of the American Board of Trial Advocates, as well as a former and future president of that organization. I am currently a member of the board of the Alaska Association for Justice, formerly a president of that organization, and formerly one of its two delegates to the American Association for Justice Board of Governors. I am admitted to all the state and federal courts in Alaska, the Ninth Circuit Court of Appeals, and to practice before the United States Supreme Court. In 2002, I received the Alaska Bar Association's Professionalism Award. I have prosecuted misdemeanor criminal cases for Yakima County, Washington, as an intern decades ago, and I have defended and tried dozens of criminal cases as a private attorney in the first three or four years of my practice. I have a deep and boundless admiration for our legal system and the role it plays in making America the greatest country in the history of the human race. The foregoing "resume" is only offered to support that I have an equally deep

and broad appreciation for our system's imperfections. I also want to make it clear that my opinions in this letter are my own. They are not made on behalf of other organizations. Nor do I have a dog in this fight. I am not personally charged with an offense of any kind, let alone one that would qualify me for the death penalty if this bill were adopted. I am not representing anyone in those unfortunate circumstances, nor do I have any relatives or friends subject to such charges, or likely to be in the future. I have not defended a criminal case in three decades.

Statutes are rules applicable to our society. Rules, themselves, are notions of general application. Please keep this trite, but very important, concept in mind as you read the paragraphs that follow and consider this bill. Once we establish the rule, that a certain class of offense is entitled to the death penalty, that rule will be enforced where there is absolutely no moral doubt about a defendant's guilt, just as it will be enforced where there is a very high level of doubt about a defendant's guilt. This is exactly why we see so many cases of "actual innocence." These, as you know, are those cases where defendants convicted of capital offenses ultimately are able to prove to a scientific and moral certainty that they were innocent of the crime for which they were convicted.

I note that Sections 14 and 15 of the bill appear to be "the guts" of the matter. Section 14 would allow the imposition of the death penalty applying no more than "the preponderance of the evidence standard of proof" at sentencing. I respectfully suggest that this standard, by itself, invites the sort of errors that have left morally blameless men and women to the helplessness and hopelessness of death row, and, ultimately, to their unjust execution in those states in America that retain this unfortunate vestige of Old Testament philosophy.

If we fail to learn from history, we will be doomed to repeat it. America's love affair with the death penalty, viewed from hindsight, teaches us that:

1. The remedy is horrifically expensive in terms of dollars of cents.

2. The remedy is horrifically expensive in terms of the personal and psychological costs to those employees of the government whose curse it is to carry out this remedy.

3. The remedy has invariably been inflicted disproportionally on minority cultures and races.

4. The remedy has invariably resulted in the innocent being put to death.

As long as we have a system of justice run by people, human imperfection will, as the night follows the day, assure that the problems I have outlined above will visit themselves on our state should it adopt this ill-considered measure. I want to make it clear that I do not doubt the good faith, or commitment to good public policy, of this bill's sponsors. I only ask that they seriously reconsider their position. This debate may be valuable, but this bill will be a self-inflicted wound for our state.

I strongly urge each of you, including the bill's sponsors, to oppose this bill.

Yours very truly,

LAW OFFICES
MICHAEL J. SCHNEIDER, P.C.

Michael J. Schneider

MJS/clm

Box 182
Seldovia Ak
99663
19 March 2009

Rep. Jay Ramras, House Judiciary Committee

Dear Rep. Ramras:

I am strongly opposed to HR9. The judicial system is not perfect. The innocent are sometimes convicted. How many executions of innocent people are we willing to accept as a reasonable price for the questionable benefits of killing some prisoners?

When I was a girl, a young woman in a nearby town was raped and murdered. Two brothers were charged with the crime. They never stopped maintaining their innocence right up until their execution. Several years later another man confessed to the crime. Not much comfort to their mother.

In Texas a man on death row was cleared by DNA evidence. The Attorney General decreed that this

man was to be executed anyway because he had been legally convicted. Gov. Richards fired the A.G. This man's life was spared not by the evidence, but by the good sense of the governor. What if someone else had been governor?

DNA evidence has resulted in convictions of men on death row being overturned. How many men did DNA evidence come too late for?

We cannot know what new techniques will be developed that will result in more accurate legal findings. We must not kill people who might eventually establish their innocence.

I have a friend whose son was charged with murder. She knew he was innocent because they were together in her car and out of town at the time. She was not allowed to testify for him because in Utah a mother is not allowed to testify for her child

(or wasn't at that time). She was told, "We're going to convict him and we're going to execute him." Fortunately, more evidence surfaced and he was released. My friend has suffered from heart trouble ever since.

No one is safe from a false accusation. Let us not be killing people in order to hide judicial errors.

Then there are the overly ambitious prosecutors, who care only about winning. Not many perhaps, but just one is too many. Live people can be released.

Please do not allow our Alaska to degenerate to the level of Texas and Utah.

Sincerely,

Sera Baxter

Sera Baxter

Testimony on HB 9
2/23/09

Christine Reichman
Anchorage

"As a citizen of this democracy and as a lover of human life, I am against the death penalty and this bill, because when we kill we treat the other person as less than human, and we treat ourselves as less than human.

Killing as a government just adds more killing."

Alaska State Legislature

Please enter into the record my testimony to the Judiciary committee on HB 9 bill/subject, dated _____.

committee name

See next page.

Signed: B. A. Johnson
Testifier

Representing (Optional)

631 W. 3RD, #133
Address

Anchorage, AK 99503
Phone No.

9/86 Legislative Information Office

March 10, 2009

To: Representatives Ramras, Dahlstrom, Coghill, Gatto, Lynn, Gruenberg, and Holmes
Alaska State House Judiciary Committee

Re: H.B. 9 (regarding the death penalty)

Please oppose moving H.B. 9 out of the Judiciary committee.

Society can now protect against perpetrators of heinous crimes by utilizing life imprisonment. Killing criminals when not necessary diminishes respect for human life, which adversely affects all members of society.

A significant percentage of those executed have been later proven to be innocent, a terrible tragedy. Thomas Jefferson ~~who~~ said he would rather 100 men go free than have one be executed who was innocent.

There is no credible evidence that killing criminals by execution deters crime. In fact, it perpetuates violence as a way of life.

Statistics concerning higher percentages of minorities receiving the death penalty are troubling and suggest injustice in the application of the system.

It is questionable whether the death penalty saves society any money, since executions themselves involve enormous expense in legal defenses.

Thank you for your consideration.

Barbara A. Johnson
631 W. 32ND, #133
Anchorage, AK 99503

Dana Strommen

From: John S. Cooley [john.cooley2@acsalaska.net]

Sent: Tuesday, March 10, 2009 8:44 AM

To: Rep. Jay Ramras

Cc: Sen. Con Bunde; Rep. Mike Hawker

Subject: HB 9--to authorize capital punishment

Dear Representative Ramras:
I am writing to urge you to help keep this bill from becoming law. Alaska does NOT need capital punishment to protect its citizens.

John S. Cooley, PE
Cooley Consulting

Wayne Anthony and Barbara L. Ross
P.O. Box 101522
Anchorage, Alaska 99510
907-346-2697

March 10, 2009

To Members of the House Judiciary Committee:

Rep. Ramras	Rep. Dahlstrom	Rep. Coghill
Rept. Gatto	Rep. Lynn	Rep. Holmes
Rep. Gruenberg		

Both collectively and individually, we are opposed to the death penalty because:

The sanction of death, when it is not necessary to protect society, violates respect for human life and dignity;

State sanctioned killing in our names diminishes all of us;

We have other ways to punish criminals and protect society;

And, our imperfect system of justice could cause conviction and execution of an innocent person.

Therefore, we **strongly oppose** you moving HB9 out of your committee.

Thank you for considering our request.

Wayne Anthony Ross

Barbara L. Ross

6029 Camrose Drive
Anchorage, AK 99504
March 12, 2009

Dear Alaskan Legislator:

I am an Alaskan resident of nearly 30 years. We raised our boys here, worked in the public service sector, and donated our money to help make this a better, kinder place to live.

House Bill 9—a bill authorizing capital punishment—is a move in the wrong direction for us Alaskans. This proposed *LAW* is anything but a legal regulation for this state. Over and over the material I read about capital punishment states that it will not deter any one or any action. Yes, I know that the violence in our home town has seen periods of increase; but adopting a violent response is never a thoughtful and just move. For government body to approve killing criminals is just another addition to the culture of death that exists today.

How many times over the last five years have we fans of NPR heard a story about a death-row convict being released from prison after a legal group championed his/her story and followed up with the newest technical research and discovered innocence? I strongly refuse to be a part of any legislative action that would seek to take another person's life.

Besides all this, we have other ways to punish criminals and protect society.

I **urge** you, a dedicated public servant, to work to find ways to hold accountable the truly guilty in a way that reflects our state's and our society's best values.

Hopefully,

Lou Ann S. Balensiefer
Registered voter

Jane Pierson

From: Sue Johnson [scjohnson@gci.net]
Sent: Sunday, March 08, 2009 10:46 AM
To: Jane Pierson
Cc: Lisa Valenta
Subject: FW: John Novak's testimony was misleading

Hi Jane, Will you please distribute this to the House Judiciary members and include with HB 9 documentation? Thank you. Sue

From: Averil Lerman [mailto:lermntan@alaska.net]
Sent: Friday, March 06, 2009 10:52 AM
To: scjohnson@gci.net
Subject: John Novak's testimony was misleading

Dear Sue:

I was present at the Legislative Information Office in Anchorage on Monday, March 2, 2009, and heard John Novak testify that the death penalty should be reinstated because it would protect innocent people from being murdered by people who had already been imprisoned for murder, and who then killed again. Mr. Novak cited to the cases of Raymond Cheely and Douglas Gustafson, and to the case of Carl Abuhl, to support his argument.

Cheely and Gustafson were two young men who killed a motorist on the Glenn Highway, and then, after trial, killed the father of a man who testified against them, with a mail bomb. Carl Abuhl was a man who beat his roommate to death, and then, after his trial, killed a cellmate in prison.

Mr. Novak implied that, if these people had been sentenced to death the first time around, they could not have killed again.

What Mr. Novak failed to mention is that **neither Cheely *nor* Gustafson *nor* Abuhl had been convicted of first-degree murder for their initial crime.** Cheely, Gustafson, and Abuhl were each charged with and tried on first-degree murder. In each of those cases, however, the defendants were found *not guilty by the jury* of first-degree murder, and were convicted instead of second-degree murder. **Alaska jurors, sitting in long and hard cases, made these decisions.**

Thus, even if Alaska had had a death penalty at the time of their trial, none of them could have received it, and thus the public would have been no safer that it was without the death penalty. Mr. Novak never mentioned that

these men had not been convicted of first-degree murder, so far as I recall.

The death penalty is such an important matter that it is imperative to understand what it is – and what it isn't – with correct facts.
The facts of these cases are set out in: *Gustafson v. State*, 854 P.2d 751 (Alaska App. 1993) and *Abuhl v. State*, 2004 WL 2020346 (Alaska App. 2004).

Dana Strommen

From: LIO Fairbanks
Sent: Monday, March 09, 2009 7:46 AM
To: Rep. Jay Ramras
Subject: FW: HB 9

From: Rose Beth Levno [rosebethlevno@hotmail.com]
Sent: Friday, March 06, 2009 5:27 PM
To: LIO Fairbanks
Subject: HB 9

Representative Ramras,

Thank you for your service.

I have heard that you are in favor of a death penalty law. I hope this is untrue! Many of us believe that such a law is subject to abuse-- an aspect of all laws that should always be considered. Citizens must be aware that power can be misplaced, and that individuals can misuse punitive laws politically in the future.

There are many other good arguments against the death penalty in Alaska, among them being the fact that minorities are disproportionately arrested and convicted.

Respectfully, R. D. Levno
POB 10804, Fairbanks, AK 99710

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March 11, 2009

Representative Jay Ramras
State Capitol
Juneau, Ak. 99801

Re: Death Penalty

Representative Ramras:

I am against the Death Penalty and feel people should not be placed in a position contrary to their conscience because of this law.

Those who have committed a serious crime should serve a "Life Sentence With Out Parole", which would secure safety to society from such a person.

I believe we should focus on promoting ways to respond to serious crimes that will hold the guilty accountable in a way that reflects our values as HUMAN BEINGS. The death penalty does not do this.

I cannot/will not support a law or a candidate who votes for this law.

Carol Long

Respectfully,

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on HB 9 Capital Punishment, dated 2-23-09
bill # / subject — public hearing date

There are many reasons NOT TO ENDORSE the death penalty, spiritual, economic, & moral. The additional cost to the State of Alaska for the death penalty takes money from critical programs; police protection and child protection. Statistics don't support the death penalty as a deterrent. The murder rate per 100,000 is much lower where there is no death penalty. Please stop HB9 and other efforts to reinstate the death penalty now. Thank you.

Signed: DANA HALLETT
Testifier

Self
Representing (optional)

35555 Kenai Spur Hwy. PMB 364 Soldotna, AK 99669
Address

907-394-4412
Phone number

966

Mr. Chairman, and members of the Judiciary Committee, Thank you for giving the public the opportunity to comment on HB #9

My name is Dale Kelley and I am the pastor of First Christian Church here in Anchorage. My own denomination – along with over 29 other faith communions, including the US Catholic Conference and the American Jewish Committee – have issued strong statements opposing the death penalty on all counts. It stands in opposition to act that "belies ~~the~~ sacredity of all life –

In ~~most~~ all of these statements you will find ~~very~~ adamant positions in opposition. And not only religious opposition has surfaced. Of the 37 states which still have the death penalty, some states are even now reviewing the efficacy of this position and are looking to abolish it. ~~Almost 200 persons~~ a # of person have been executed who were later found to be innocent. The death penalty is fraught with errors, and issues of racism.

I believe It is ludicrous for a caring, thinking population to seek to end violence through the sheer use of violence. Why do we continue to kill people to teach people that killing people is wrong? Where is the logic in that? – DP has never been shown to be a deterr

Aside from the moral bankruptcy of such a belief, there is the purely financial considerations that threatens to bankrupt our state of Alaska – if and when we might choose to pour millions upon millions into to re-creating a vastly new legal code – BEFORE we even have the first capital case on the docket.

I respectfully ask you — How will you barely funded explaining to your constituents that you are going to chose to take millions of dollars away from critical and ~~UNFUNDED~~ needs for them, their towns and villages. How will you ~~telling~~ them that YOU are instead choosing to put upwards of $50 million plus dollars into setting the stage for the first case to be tried.

I respectfully urge you to re-consider voting down this barbaric practice and re-focus your attention to the REAL needs of our Alaska citizens.

Thank you very much for your time

Dale Kelley
4451 D'Armoun Rd
Anchorage, AK 99516
(907) 644-4132

Joyce E. Bamberger
1036 West 22nd Street
Anchorage, Alaska 99503
February 25, 2009

House Judiciary Committee
Alaska State Legislature
Juneau, Alaska 99801

Re: HB 9

Dear Representatives Ramras and Chenault:

I am testifying today to oppose HB 9, the bill to reinstate the death penalty in Alaska. I cannot understand why in these times you would introduce this legislation except for your own political interests. Numerous studies have shown that the death penalty has been used to unfairly discriminate against non-whites, that it costs more to administer and that it turns government which exists for public safety into a public executioner. See, e.g. http://justice.uaa.alaska.edu/death/alaska.html; http://www.deathpenaltyinfo.org/FactSheet.pdf.

Even you -- Rep. Chenault -- admit that the death penalty does not act as a deterrent. http://www.iht.com/articles/ap/2009/02/24/america/NA-US-Death-Penalty-Alaska.php. I strongly urge you to drop pursuit of this legislation and use your time and skills for legislation that would best help Alaskans.

Best wishes,

Joyce E. Bamberger

February 25, 2009

Testimony on HB 9, Death Penalty Legislation

Chair Ramas and members of the House Judicary,

I thank you for this opportunity to present testimony. I am opposed to this legislation and hope you will vote against it leaving committee.

In principal, I am opposed because our judicial system is not a perfect one. People who have been convicted and served many years incarcerated are now found not to have committed the crime due to advancement in scientific procedure.

If I were called to sit on a jury with the death penalty as the outcome, I could not do so. And if I can not bring myself to make this decision, how could I ask others to do so?

Right now our state is facing a financial "crisis" and this legislation would require a great deal more in the budget for this procedure. The building of a separate facility which would be an additional cost we do not presently have. I am not certain of all the facts but I do believe it is more costly to provide attorneys for death penalty cases. Our state attorneys would be charged with enforcing the charge against the defendant and our pubic defender system would be used for the defendant. And, since the final outcome is death, the killing of another human being, the case would probably lengthy and the costs exstreme.

Please do not support this legislation if for no other reason than the cost.

Thank you,

Mary Kvalheim

Mary Kvalheim
1001 E Pullman Dr
Wasilla AK 99654
(907) 376-5742

Alaska State Legislature

Please enter into the record my testimony to the Judiciary Committee
Committee name

Committee on HB 9 - Death Penalty, dated 2/25/09
Bill/Subject

Our state has other priorities right now. Villages are suffering, people lack healthcare and we are looking at a deficit. The cost affiliated with HB9 are too high and would be fically irresponsible.

In addition, as a member of the Alaskan Hispanic community, I oppose this bill because statistics show that minorities and the poor make up the majority of people in death row.

Overall, Capital Punishment is premeditated murder and send a message that revenge is the only way.

Signed: Erick Cordero Giorgana
Testifier

Self
Representing (Optional)

1401 S Bonanzo St. Palmer Ak 99645
Address

907- 982-0353
Phone number

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee
Committee name

Committee on HB 9 Capital Punishment, dated 2/23/09
Bill/Subject

I am opposed to HB 9 and to legislating capital punishment in Alaska.

Reasons include:

Inherent legal problems connected to capital punishment including errors, appeals, infrastructure.

Costs related to implementing capital punishment – known costs – courts, death row, death chambers, and unknown costs – appeals & ?

The nation and the world are both moving away from capital punishment

Attract negative attention to Alaska for moving backward in its approach to criminal justice.

– I do support the idea of engaging communities in a dialogue on justice & dispensing justice and to look at how do we help community members to not be compelled to commit heinous acts.

Signed: Mollie Boyer
Testifier

Representing (Optional)

P.O. Box 317, Palmer, AK 99645
Address

745-6714
Phone number

Alaska State Legislature

Please enter into the record my testimony to the HJUD (COMMITTEE NAME)

committee on HB9 (BILL / SUBJECT), dated 2/25/09 (TODAY'S DATE).

please see attached written testimony

2 letters

1 - from Elizabeth Neumann

1 - from Karen Cauble

Thanks,
Amber @
HOMER LIO
235-7878

Signed: _____
TESTIFIER (Signed, PRINTED NAME)

REPRESENTING

ADDRESS

PHONE NO.

2/25/09

To the Members of the
House of Judiciary Committee

My name is Elizabeth Neumann and I live in Anchor Point Alaska.

I am opposed to HB 9. I ask you that you also oppose this bill.

Capital Punishment - The Death Sentence

- Does nothing to deter crime
- It is more costly the life imprisonment
- Our judicial system is fallible. The chance of innocent people being killed is always possible
- But most importantly to say that murder is justified in certain circumstances is unexceptable. I do not agree with anyone having that power to say someone must die.

Thank You for opposing HB 9

Elizabeth Neumann

ELIZABETH NEUMANN
42410 Old Sterling Hwy
Anchor Pt AK 99556

February 25, 2009

To Members of the House Judiciary Committee
regarding H.B # 9 authorizing capital punishment.

A death sentence is a primitive response to crime/murder and reflects long standing institutional decisions that are both racist and class biased.
Incarceration itself is burdened by a racist and class bias.
Our new Obama administration gives us hope that we may seek a kinder less punitive, less violent, culture in America and that hopefully moves our society forward in addressing the causes of crime, seeking the tools of healing and reconciliation.
Violence begets violence; retribution continues the chain of violence. To kill another, to murder, is repugnant, even more so for a state to retaliate in kind. Note well! That when a state seeks to retaliate by death, it actually condones by leadership that killing for revenge is OK.
• The state of Alaska needs to continue without the death penalty.
• The state of Alaska can continue

to lead with the Obama administration seeking a less punitive, less primitive society.

• The state of Alaska needs to lead in a more advanced society by adressing the causes of violence and crime such as alcoholism, ignorance and racism.

Karen Cauble

KAREN CAUBLE
PO BOX 1686
HOMER, AK 99603

Lisa M. Fitzpatrick
1964 Loussac Drive
Anchorage, Alaska 99517

March 2, 2009

Re: HB 9

Dear Chairman Ramras and Members of the House Judiciary Committee,

I am unable to attend the committee's hearing this afternoon on HB 9. By this letter, I would like to state my opposition to the bill.

I listened to the testimony as I waited to testify last Wednesday and echo many of the comments already made to you. There were many, more articulate than I, who spoke with their hearts of the myriad reasons the death penalty should never be reinstated in Alaska. The most compelling reason is that the bill can never do what the sponsor promises – ensure that no innocent person will ever be executed. The day the criminal justice system achieves perfection, I'll reconsider my position.

The sponsor of the bill, Rep. Chenault, states as a justification for the bill: "Most of us would sleep better at night knowing a criminal will never have the opportunity to harm another human being." I'm not sure why he believes life in prison doesn't meet this goal but I'm satisfied it does.

Looking at the fiscal notes submitted to this committee, I wonder how anyone can economically justify passage of this bill. The Department of Law's fiscal note surmises that approximately six defendants per year would face the kind of charges that would bring him/her within the ambit of the death penalty sentencing provision. To execute six people – people who would otherwise be spending the rest of their lives in prison - why would we as a State incur these staggering costs? If we have that kind of discretionary spending ability, why not, instead, spend that money working towards public safety? Let's put that money towards crime prevention; let's put that money towards hiring more police; let's put that money towards enabling the police to purchase the equipment they need; let's put that money into drug prevention programs; let's put that money into after school programs for kids to keep them off the streets and away from exposure to crime; let's put more money into domestic violence awareness; let's put more money into education so these kids have a chance....

I imagine a thousand better ways to spend this money – opportunities to improve the public's safety – that don't involve killing people, no matter how bad these people may be.

I implore you – stop this bill in committee. It's bad law and it's bad public policy. Thank you.

Thank you. Lisa Fitzpatrick

Dana Strommen

From: Chris Haigh [chaigh1949@gmail.com]
Sent: Sunday, March 01, 2009 6:45 PM
To: Rep. Jay Ramras
Subject: No Death Penalty

Please don't legitimize the state killing Alaskans. Most civilized nations ban capital punishment. Mistakes happen.

To legalize the death penalty in Alaska would be taking a giant step backwards. So may HB 9 and any other legislation of this kind quickly find the way to the trash bin.

Chris Haigh

Dana Strommen

From: bherman@gci.net on behalf of Bill Herman [bherman@gci.net]
Sent: Sunday, March 01, 2009 10:38 PM
To: Rep. Jay Ramras
Subject: HB 9 Capital Punishment
Importance: High

Dear Representative Ramras,

There are many very good reasons for not passing the Death Penalty Bill, such as too great a chance that the wrong person would be executed due to a fallible judicial system, excessive costs, or the fact we are one of the few democratic countries which still has the death penalty allowed anywhere within it.

But the overriding reason is that it is just wrong to take a life for another. We lower our society by murdering (or as you say "executing") a murderer. I further believe that there is "that of God in everyone," even a murderer, and by executing them we rob our society of benefiting from his/her possible redemption and possible gifts that could be given by that person to other inmates. We also rob our society of making at least some degree of amends if it is later found we have wrongly convicted him or her.

Please kill the Death Penalty Bill.

(Please share this message with other members of the House Judiciary Committee.)

Respectfully submitted,

Bill Herman
1845 Parkside Dr
Anchorage, AK 99501
(907) 243-9520 (H)
bherman@gci.net

Dana Strommen

From: Denise Petrash [dpetrash@alaska.com]
Sent: Saturday, March 14, 2009 10:17 AM
To: Rep. Jay Ramras
Subject: Request for a vote against HB 9

Dear Representative Ramras,

Once upon a time in a land far, far away (Texas), I was an ardent supporter of the death penalty. I believed in it wholeheartedly, believed in its justice, believed in its efficaciousness.

In the years since - even before I left to come to the great state of Alaska 18 years ago, in fact - I have come around 180 degrees. The more that I have read about it, studied it, examined the facts, the more I have come to the conclusion that while there may be some exceptions, overall the death penalty is riddled with problems. It is not a clear deterrent, it is consistently more expensive than life without parole, and it is disproportionately applied to minorities.

And beyond that, I came to see the inconsistency between my fervent pro-life position and my willingness to have others killed, whatever their crime. Everyone deserves the time on this earth granted by God - the time all of us need to be fully converted to His holy desire.

It is my hope that HB 9 will not pass out of the Judiciary Committee, and it will be soundly defeated before it can even be voted on in the House.

Thank you for hearing this bill, and for considering my comments.

Best wishes,
Denise Petrash
Registered Republican
House District 31

Dana Strommen

From: chuck & carol szopa [akszopa@acsalaska.net]
Sent: Friday, March 13, 2009 1:29 PM
To: Rep. Jay Ramras
Subject: Death Penalty

Please vote against the death penalty.

Also, thank you for chairing the hearing on HB35. I appreciate your concern for life.
Sincerely,
Carol Szopa
Anchorage, Alaska

Dana Strommen

From: Wasroop@aol.com
Sent: Tuesday, March 03, 2009 4:43 PM
To: Rep. Jay Ramras
Subject: HB 9

Please vote no on HB 9. You know the reasons: it doesn't make sense from an economic, justice, or crime-prevention point of view.

Mary Ellen Harris

A Good Credit Score is 700 or Above. See yours in just 2 easy steps!

Dana Strommen

From: renowned@acsalaska.net
Sent: Sunday, March 15, 2009 7:04 PM
To: Rep. Jay Ramras
Subject: ALaska death penalty legislation

I urge you to vote against adoption of the death penalty in Alaska. Our justice system is too imperfect for us to assume the right to end a human life.

Pam Tuomi

March 23, 2009
To: Alaska House of Representatives, Judiciary Committee
Testimony on House Bill 9, reinstating the death penalty for first degree murder.

Mr. Chairman, and distinguished committee members.

My name is Art Koeninger. I am currently a resident of Homer and have resided in Alaska since 1975. Thank you for this opportunity to speak to you in opposition to this bill.

This bill purports to better protect society from the most heinous of crimes, and to impart a more perfect justice, while protecting the rights of the innocent . I value and support those goals. However, this bill does little if anything that our existing system, with the possibility of life without parole, does not already offer with less expense, and less ~~violence~~ harm to our collective psyche. It is not enough to appear tough on crime. There are more cost-effective ways to be smart on crime.

I am not unfamiliar with with life and death issues, having served as a first responder, fire fighter, community association leader and businessman for 25 years in my former community in the Copper Valley. I have traveled and worked extensively throughout the state, particularly in small villages, most of them predominately Native.

I have known murderers and victims, and their families. They were my neighbors. As much as we might wish it to, more killing will not heal the pain of the victims' families, will create more pain for the perpetrators' families, who are just as innocent as their neighbors, and will not make us safer, any more than it will bring back the dead.

I am also not unfamiliar with capital punishment and the effects it has on corrections personnel tasked with its implementation, on victims' families as well as families of the executed, not to mention the larger community where it is carried out.

I hope that you were able to meet with Reverend Carroll Pickett, the former death house chaplain from Huntsville,Texas. If you did not have that opportunity, I encourage you to view the documentary film "At the Death House Door" about his experiences there, and his transformation

Art Koeninger
HB9

0/6

from a supporter of the death penalty to an opponent.

I grew up literally in the shadow of that same prison. My father worked as the Director of the Bureau of Classifications for the Texas Department of Corrections, and taught sociology and criminology at the local college. As a criminologist with access to decades of statistical data on every prisoner admitted to Texas prisons, he grew to oppose the death penalty when his studies of the data demonstrated many of the glaring racial and class discrepancies inherent in the application of the death penalty.

Even today, a half-century later, our justice system is as imperfect as the humans administering it. I'm sure the Native Justice Center will give convincing reasons why this law will fall disproportionately on Alaska Natives. If my dear friend Rachel King, a former state defense attorney, were alive today, she would outline for you many of the ways that cultural and economic as well as geographical and logistical factors contribute to the higher incarceration rates of Alaska Natives, proportionate to their population. I encourage you to read her article "Bush Justice: The Intersection of Alaska Natives and the Criminal Justice System in Rural Alaska" in the Oregon Law Review, Volume 77, #1, Spring 1998., where she cites her own experiences as well as many studies and case law.

And though I know that you cannot remedy those inequities with one bill, that this one would perpetrate them terminally on the ethnically different and the poor,is particularly egregious.

Its irreversibility, once a person is executed, differentiates it radically from all other laws.

As you know, most developed western nations have stopped executing their citizens.

Other states are finding that their capital punishment systems are ineffective , the associated costs are becoming prohibitive, and they are beginning to rescind state sanctioned killing in practice as well as by law, New Mexico being the most recent.

Alaskans have gotten along without the death penalty for decades, and in time will rid themselves of this injustice again, should this bill pass.

Art Koeninger 2/6
HB9

Unfortunately, future changes in law, whether by legislation or by the courts, will be of no avail to the executed.

No amount of legal tweaking or rationalization can assure that the innocent will not be put to death. DNA cannot prove guilt, only innocence, and only a fraction of murder cases have DNA evidence.

The mere presumption that any one human or human system can adjudicate who is most heinous, unrepentant, or incapable of rehabilitation and is thus unworthy of living, disturbs me. To so designate a 16 -18 year old is doubly unthinkable to me.

The mere fact that many if not most murders are committed while under the influence of alcohol or other drugs, should give some hope that once they're cleaned up, they might be redeemable enough to spend their lives in prison.

The delegation of the responsibility to premeditatedly kill another human being is an abhorrent burden to state employees and medical personnel, and a violation of their oath to do no harm. Reverend Pickett spoke of the necessity of appointing extra guards to this duty because inevitably two or more of them would throw up or otherwise be incapable of carrying out their task.

This is a final solution we do not need.

I encourage you to table this bill, to turn from retributive justice, and focus on a restorative justice with real solutions that address the root causes of crime.

To help set you in that direction I will point you to a recent study of the Alaska corrections system by the Pew Center on the States. <http://www.adn.com/front/story/707881.html>

For $4 million/year extra in existing rehabilitation and prevention programs, we can reduce the prison population by 1,000 prisoners/year, saving $129/prisoner/day or $47,085,000/year according to the information below. At least some of those 1,000 would be murders that wouldn't happen.

Art Koeninger 3/6
HB9

Art Koeninger
254 Charles Way
Homer, AK 99603
907-235-1014
<akoeninger@acsalaska.net>

Corrections report warns of underfunding rehabilitation

By STEVE QUINN
The Associated Press

Published: March 2nd, 2009 09:56 AM

JUNEAU -- Even as the state of Alaska prepares to break ground on a 1,500-bed, medium-security prison, a newly released national study says investments should be in rehabilitating prisoners instead of locking them up.

"We cannot build our way to public safety," says a report titled The Long Reach of American Corrections released today by The Pew Center on the States.

"With the costs of imprisonment rising and the benefits failing, our ability to keep communities safe depends more than ever upon our ability to better manage the 5 million offenders on probation and parole," says the report.

The study examined the number of people in the corrections system -- those incarcerated, on probation or on parole -- and the money spent on corrections from 1982-2007.

According to the report, 1 out of every 88 Alaskans is incarcerated in a state or federal prison, placing it 12th nationally.

The reports says 1 of every 61 Alaska adults is on probation or parole, placing the state 33rd nationally.

A separate study presented in January to the Alaska Legislature by the University of Alaska's Institute of Social and Economic Research -- or

Art Koeninger
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4/6

ISER -- says Alaska's inmate population could to go from roughly 5,300 to 10,500 by the year 2030.

If the state spent an additional $4 million annually on existing rehabilitation and prevention programs, that population could be closer to 9,500, according to the ISER study.

Making those investments, however, is a tough economic sell in a state facing a financial crunch with the dropping price of oil and the public demanding immediate results, said Stephanie Martin, ISER's assistant professor of economics and public policy.

"The state wouldn't start to see any return for probably at least five years, but after that it becomes tremendous," Martin said. "It's just hard for people to think like that. It's easy to do on a computer, but politically it's tougher to do."

According to the Pew study:

• Alaska spent $240 million or 4.7 percent of its general fund on corrections last year, 2.2 percentage points less than the national average even though comparative state-to-state spending is difficult to pin down because of variances in calculations.

• The cost for one day spent in prison is nearly $129 per inmate, or the same amount for one prisoner's total costs for either 90 days of parole or 22 days of probation. The national average for prison is $79 per day, or 10 days of parole or 22 days of probation.

• For every dollar Alaska spent on prisons in 2008, it spent 6 cents on probation and parole. Only data from 34 states was available, but among those, 14 cents was spent on probation and parole for every dollar spent on prisons.

• Forty-one percent of those under correctional supervision -- be it probation, parole or incarceration -- was in prison or jail at the end of 2007.

Joseph Schmidt, the state's Department of Corrections commissioner, said he agrees with the study's assertions that corrections departments

Art Koeninger 5/6
1489

need to be proactive to ease the burden on the prisons. The department has a $246.3 million budget. Of that $13.1 million is spent on parole and probation programs.

Plans for the new prison in Palmer would enable Alaska to house 700 prisoners currently in Arizona facilities. The Alaska prison is scheduled to open in 2012.

"Confinement is the foundation of the system, but we are trying to move away from the philosophy that incarceration will solve the problem," Schmidt said.

One program launched two months ago at Spring Creek Correctional Center in Seward involves 264 inmates to be released within 6 to 18 months. The program closely follows a Federal Bureau of Prisons guide in helping inmates transition back to life outside prison.

Prisoners attend parenting and anger management classes, receive tutoring in life skills such as house hunting and job interviewing, and they work on getting vocational skills or a high school diploma.

"We are focusing on re-entering society, so they don't come back into the system," Schmidt said. "What we are hoping is that we don't grow our prison population to a point where we can't afford it."

Art Koeninger

HB 6

6/16

SANTA FE NEW MEXICAN.com

Senate backs death-penalty repeal

Decision now moves to governor; 2008 election propelled vote, lawmakers say

By Steve Terrell | The New Mexican

3/13/2009

Photo by: Jane Phillips/The New Mexican

Friday's decisive state Senate vote to repeal the death penalty in New Mexico was a direct result of November's election of several new lawmakers.

That's the opinion expressed both by a leading supporter and by a leading opponent of House Bill 285, which would replace the death penalty with a sentence of life in prison without possibility of parole.

The bill, which cleared the House 40-28 last month, passed the Senate 24-18 after a nearly three-hour debate. It now goes to Gov. Bill Richardson, who in recent days has said his support for capital punishment has softened and he hasn't decided whether he'll sign the legislation.

"I have met with many people and will continue to consider all sides of the issue before making a decision," said the Democratic governor, who called it "an extremely difficult issue."

New Mexico, one of 36 states with a death penalty, would be the first to ban executions since New Jersey in 2007.

The bill's sponsor, Rep. Gail Chasey, D-Albuquerque, said Friday that she was able to get the bill through the Senate this year because the 2008 election added three more senators to the Democratic majority. In recent years, the bill had been stopped in the Senate Judiciary Committee. Last week that committee voted in favor of HB285 by a one-vote margin.

"The election gave us a more comfortable margin," Chasey said.

Lem Martinez, who is district attorney for the 13th Judicial District, has spoken against the repeal bill at committee hearings on behalf of the state District Attorneys Association. He said Friday that the Senate vote was the result of (President Barack) Obama's coattails. "Last November, the voters spoke," Martinez said.

Martinez said he intends to speak with Richardson to lobby for a veto of HB265.

Chasey said she also plans to talk to Richardson. "Our work's not finished yet," she said.

The Governor's Office set up a phone line for gathering the opinions of New Mexicans on the issue. The number is 505-476-2225. Those wishing to weigh in via e-mail can do so by visiting the governor's Web site at www.governor.state.nm.us and clicking on "Contact the Governor."

Richardson must act on the bill within three days after he receives it. A spokesman said he hadn't received the bill by the end of Friday but expects to get it today. That would make Wednesday the deadline for him to sign or veto the bill.

One person who intends to call that hot line is Colleen Gore, mother of the 9-year-old Artesia girl, Dena Lynn Gore, who was murdered in 1986 by Terry Clark. Clark was lethally injected in 2001, the most recent execution by the state of New Mexico.

Colleen Gore said in a telephone interview Friday that she was disappointed by the Senate vote. "I think it's kind of sad," she said.

"I think instead of repealing the death penalty they should be working on ways to shorten the appeals process," said Gore, who spent 15 years attending court hearings for Clark. Clark voluntarily stopped his appeals process shortly before he was executed.

"I got closure from the execution," Gore said.

Two men remain on death row: Timothy Allen, 47, of Farmington, who was sentenced to death in 1995 for the murder, kidnapping and attempted rape of 17-year-old Sandra Phillips, and Robert Fry, 35, of Bloomfield, who was condemned in 2002 for killing Betty Lee, 36, in 2000.

Technically, neither sentence would be affected if Richardson signs the law. However, the governor could lift their death sentences.

One death-penalty case is pending in Santa Fe — that of John La Bombard, 36, who confessed to the shooting death of Frank Segura, 39, in the Santa Fe National Forest.

During Friday's Senate debate, many of the arguments centered on questions of religion, morals and justice.

The death penalty is just, said Sen. Rod Adair, R-Roswell. "Six thousand years of recorded history confirms it is and 400 years of American Judeo-Christian tradition says it is."

But Sen. Jerry Ortiz y Pino, D-Albuquerque, argued, "In 6,000 years we've evolved. ... We shouldn't be relying on the lizard part of our brain as we did 6,000 years ago."

Sen. Kent Cravens, R-Albuquerque, argued that the death penalty puts the "fear of God" into those who commit terrible crimes. He disagreed with repeal supporters who have argued that most condemned killers would rather be executed than face years in prison. "Life in prison would be a picnic compared with (execution)," Cravens said.

Sen. Linda Lovejoy, D-Crownpoint, spoke about her native Navajo culture's attitude toward crime. The

Navajo way, she said, puts more emphasis on healing and restoring harmony than retribution.

Senate Republican Whip Bill Payne of Albuquerque argued that getting rid of the death penalty for those who kill police and corrections officers would make it more dangerous for law-enforcement personnel.

Senate Majority Leader Michael Sanchez, D-Belen, who carried the bill, said it's been nearly 100 years since anyone in New Mexico was executed for killing a law-enforcement officer.

The 24 senators who voted for the bill were all Democrats. Three Democratic senators — Richard Martinez of Española, Tim Jennings of Roswell and John Arthur Smith of Deming — joined the 15 Senate Republicans in opposing the bill.

This was the first time since 2001 the Senate has voted on a death-penalty repeal. Martinez that year voted for the repeal, but Sen. Phil Griego, D-San Jose, who voted Friday for HB285, had voted against the similar bill in 2001.

Among those attending the Senate debate was Santa Fe screenwriter Dennis Yares, who recently wrote a screenplay for a book about a controversial, racially charged New Mexico execution in 1933. The book, *Justice Betrayed* by Ralph Melnick, deals with Thomas Johnson, the first person to die in New Mexico's electric chair. The book makes the argument that Johnson, a black man, was framed for the murder of Angelina Jaramillo.

Yares told a reporter that shooting for the feature film is scheduled to begin in Santa Fe this fall.

The Associated Press reports that repeal legislation has passed the state Senate in Montana and awaits a House hearing. The state Senate in Kansas is expected to debate a repeal bill Monday.

Contact Steve Terrell at 986-3037 or sterrell@sfnewmexican.com. Read his political blog at roundhouseroundup.com.

Los Angeles Times

http://www.latimes.com/news/nationworld/nation/la-na-death-penalty-costs14-2009mar14,0,7550491.story
From the Los Angeles Times

States weigh cost of death penalty

With executions in decline, some lawmakers want to abolish capital punishment, citing expenses as a factor.

By Steve Mills

March 14, 2009

Reporting from Chicago — To New Mexico Atty. Gen. Gary King, a prison guard's slaying cried out for the death penalty: Inmates had stabbed him two dozen times.

But when the defense ran out of money, the state Supreme Court ruled that King could not seek a death sentence until the lawyers were paid -- approximately $200,000 for each of the three defendants, King said. When state legislators refused to allocate more money, prosecutors dropped their pursuit of the death penalty.

In January, one of the inmates was sentenced to 54 years in prison.

"Unless the Legislature is willing to appropriate a lot of money for the defense, then I think that the death penalty is pretty well negated in New Mexico," King said in an interview.

"If we had death penalty cases on the horizon, there would be a big discussion about whether we could take a budget cut," he added. "We can't just absorb that in our standard budget."

Debate over the death penalty has undergone shifts over the years. During the last decade, the discussion has focused on accuracy and fairness, with exonerations of dozens of death row inmates sparking calls for reform and abolition. Now, with the nation's economy slumping, the issue is cost.

Several states have introduced measures to abolish the death penalty, many of them citing its cost. New Mexico's Legislature voted Friday to do so.

In Colorado, a bill would take money usually spent on capital cases and use it to help clear unsolved cases. In Kansas, a legislator wants to use money for capital cases to close a budget shortfall.

"In a way, we have life without parole, but we're paying more money to achieve it," said state Sen. Carolyn McGinn, a Republican, noting that Kansas has not executed an inmate in decades.

New Jersey cited cost as one factor when it abolished the death penalty in 2007, and a commission that studied the death penalty in Maryland recently cited cost as well.

In Georgia, the public defender system is underfunded and in crisis after the death penalty trial of a man convicted of killing a judge and three others during his 2005 escape from an Atlanta courthouse. The case cost more than $2 million. The man, Brian Nichols, received a life sentence.

In California, legislators are wrestling with the cost of maintaining the nation's largest death row even though the state has executed only 13 inmates since 1976. Officials are also debating construction of a new $395-million death row prison that many lawmakers say the state cannot afford.

And in Louisiana, the Orleans Parish district attorney's office has considered filing for bankruptcy protection after it was ordered to pay $15 million to John Thompson. He sued prosecutors after he was acquitted of murder and freed from death row; a jury found that prosecutors had engaged in misconduct.

"This is a time where if you have a government program and it's not producing a lot but it's costing a lot, then it's ripe for examination," said Richard Dieter, executive director of the nonprofit Death Penalty Information Center. "It's not like libraries, which you need, or other crucial programs. This is a program that's not really producing."

The scrutiny of the costs of capital punishment comes as the death penalty is in decline. Prosecutors are obtaining fewer death sentences -- in part because more states offer juries the option of life without the possibility of parole -- and states are carrying out fewer executions.

Many of the costs are built into the system and cannot be changed. They include the costs of specially trained defense lawyers, mental health and mitigation experts, and a longer course of appeals. And there are the many added costs of housing death row prisoners.

"As long as you have a death penalty system, you'll have regular expenses. And those expenses aren't getting cheaper," Dieter said. "There's a maintenance cost to the death penalty."

Death penalty cases can have an outsized effect in smaller counties, which tend to have smaller budgets. There, a case can cost hundreds of thousands of dollars -- close to $1 million if the issues are particularly complicated -- and force officials to cut programs to fund the prosecution.

Prosecutors say they have to take that into consideration, although it is not the only factor.

"Any good prosecutor is going to have to consider cost, especially in smaller, rural counties," said R. Lowell Thompson, district attorney for Navarro County in Texas, south of Dallas.

"But cost isn't the only consideration. Our job is to seek justice, and we have to carry that out."

smmills@tribune.com

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partners:

The death penalty

Saving lives and money

NEW YORK

States plagued by fiscal woes rethink their stance on the death penalty

AN EYE for an eye, or at any rate a death for a death, is the type of justice that most states still embrace. Only 14 of the 50 states have banned capital punishment. But that may change with the recession. As state governments confront huge budget deficits, eight more states have proposed an unusual measure to cut costs: eliminate the death penalty.

The states considering abolition, including Colorado, Kansas, New Mexico and New Hampshire, have shifted the debate about capital punishment, at least in part, from morality to cost. Studies show that administering the death penalty is even more expensive than keeping someone in prison for life. The intensive jury selection, trials and appeals required in capital cases can take over a decade and run up a huge tab for the state. Death row, where prisoners facing execution are kept in separate cells under intense observation, is also immensely costly.

A recent study by the Urban Institute, a think-tank, estimates that the death penalty cost Maryland's taxpayers $186m between 1978 and 1999. According to the report, a case resulting in a death sentence cost $3m, almost $2m more than when the death penalty was not sought.

In an age of austerity, every million dollars counts. Proponents of the abolition bills describe the death penalty as an expensive programme with few benefits. There is little evidence that the death penalty deters. In fact, some of the states that most avidly execute prisoners, such as Texas and Oklahoma, have higher crime rates than states that offer only life in prison without parole. There is also the danger that innocent people may be put to death. So far, more than 130 people who had been sentenced to death have been exonerated.

Colorado, one of the states that has introduced a bill to overturn the death penalty, intends to spend the money it will save each year by eliminating capital punishment on an investigations unit. According to Paul Weissman, the state House majority leader and the bill's co-sponsor, around 1,400 murders are still unsolved in the state. Eliminating the death penalty will finance the new unit and leave an extra $1m for other state programmes. Other states are trying to free up funding to help offset their huge deficits. Savings from abolishing the death penalty in Kansas, for example, are estimated at $500,000 for every case in which the death penalty is not sought.

Many other states, including Texas, which last year carried out almost half of all executions in America, have no plans to follow suit. But a prolonged recession may change a few Texan minds.

▸ can score 70 points worse than their peers in Wyoming and receive the same grade. The Fordham Institute, a think-tank, measured the same 18 primary schools by different states' benchmarks. In rigorous Massachusetts, only one passed muster. In sloppy Wisconsin, 17 did. Mr Obama promised that, later this year, he would tie federal money to results. But he did not say how.

He correctly identified another problem: that while most American public schools are pretty good, a significant minority are atrocious. He put it more politely, of course, noting that a mere 2,000 high schools (out of 28,000) produce more than half of all dropouts. Dysfunctional schools are concentrated in the rougher parts of cities, such as Detroit and Los Angeles. Mr Obama offered some sensible small ideas, such as extra money for pre-school, and hinted at bigger reforms.

He urged the states, for example, to stop restricting the number of charter schools. These are publicly funded but autonomous schools that, freed from bureaucracy, typically educate poor children better for less money than nearby public schools do. Naturally, the bureaucrats hate them. Many states restrict the number that can be set up. "That isn't good for our children," said Mr Obama. But he cannot force the states to stop doing it.

Mr Obama called for longer school hours, which teachers' unions are not keen on, and merit pay, which they hate. Ever tactful, he avoided the incendiary word "merit". But he said that "good teachers will be rewarded with more money for improved student achievement". As for persistently bad teachers, he pointed out that "There's no excuse for [them] to continue teaching." Parents would love that; but no president has come close to achieving it.

Meanwhile, Democrats in Congress quietly voted to kill a voucher programme that allows around 1,700 students, mostly black, poor or both, to escape Washington, DC's, awful public schools and attend private ones. Mr Obama supports killing the programme, but his flacks say he wants the students currently enrolled in it, who include two at his daughters' excellent private school, to be allowed to complete their studies. How kind. ■

Africa policy

Don't expect a revolution

NEW YORK AND PRETORIA

Barack Obama may differ little from George Bush in his approach to Africa

IT MIGHT seem obvious that American policy towards Africa would change under America's first African-American president. But while the new man seems set to break with his predecessor in many other foreign-policy areas, changes towards Africa may be less substantial.

Though unloved in much of the world, George Bush is still popular in most of Africa. He vastly increased America's development aid towards the continent. He created the President's Emergency Plan for AIDS Relief (PEPFAR), which was reauthorised last year with a budget of $48 billion over five years, to help stop the spread of HIV and to treat those infected. While PEPFAR has been less successful at prevention than its proponents had hoped, it has kept 2.1 people, most of them African, on life-saving antiretroviral treatment.

One much-criticised PEPFAR provision was an anti-prostitution pledge required of recipients, who had to swear that they would not "support" prostitution. This provision was retained when the plan was reauthorised last year, and Mr Obama could not change it without rewriting the bill. In any event, many anti-AIDS campaigners found ways of getting round Bush's restrictions. So beyond sacking the boss of PEPFAR, which he has just done, Mr Obama is unlikely to do much to change a policy that is working well.

Mr Obama brings with him some figures with strong opinions on one of America's bloodiest conflicts, in the Sudanese region of Darfur. Joe Biden, his vice-president, has called in the past for a threat of military action against the Sudanese government to stop the killings there. Mr Obama's ambassador to the UN, Susan Rice, has backed the threat of force to

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
Committee name

Committee on Death Penalty HB 9, dated 3-2-09
Bill/Subject

See attached

Signed: M. Cris Tyree
Testifier

THE PEOPLE
Representing (Optional)

Bx 872085 Wasilla
Address

907-357-7688
Phone number

March 2 2009

From: Cris Tyree
To: LIO for Reps
Death Penalty

Front Sheet:

1. Letter from me on death penalty
2. 4 pages on jurors rights (not just on judging facts)
3. 6 pages of letter to American Bar Assoc., Alaska Bar Assoc., AK Daily News on

Alaska Rules of Professional Conduct
w/ fax front

12 pages w/ this fax front

MAR-02-2009 MON 01:19 PM MAT-SU LIO FAX NO. 9073766180 P. 04

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JURIES ARE ALLOWED TO JUDGE THE LAW, NOT JUST THE FACTS

In order to guard citizens against the whims of the King, the right to a trial by jury was established by the Magna Carta in 1215, and it has become one of the most sacrosanct legal aspects of British and American societies. We tend to believe that the duty of a jury is solely to determine whether someone broke the law. In fact, it's not unusual for judges to instruct juries that they are to judge only the facts in a case, while the judge will sit in judgment of the law itself. Nonsense.

Juries are the last line of defense against the power abuses of the authorities. They have the right to judge the law. Even if a defendant committed a crime, a jury can refuse to render a guilty verdict. Among the main reasons why this might happen, according to attorney Clay S. Conrad:

When the defendant has already suffered enough, when it would be unfair or against the public interest for the defendant to be convicted, when the jury disagrees with the law itself, when the prosecution or the arresting authorities have gone "too far" in the single-minded quest to arrest and convict a particular defendant, when the punishments to be imposed are excessive or when the jury suspects that the charges have been brought for political reasons or to make an unfair example of the hapless defendant...

Some of the earliest examples of jury [illegible] refusals to convict people who had spoken ill of the government (they were prosecuted under "seditious libel" laws) or who were practicing forbidden religions, such as Quakerism. Up to the time of the Civil War, American juries often refused to convict the brave souls who helped runaway slaves. In the 1800s, jury nullifications saved the hides of union organizers who were being prosecuted with conspiracy to restrain trade. Juries used their power to free people charged under the anti-alcohol laws of Prohibition, as well as antiwar protesters during the Vietnam era. Today, juries sometimes refuse to convict drug users (especially medical marijuana users), tax protesters, abortion protesters, gun owners, battered spouses, and people who commit "mercy killings."

Judges and prosecutors will often outright lie about the existence of this power, but centuries of court decisions and other evidence prove that jurors can vote their consciences.

When the US Constitution was created, with its Sixth Amendment guarantee of a jury trial, the most popular law dictionary of the time said that juries "may not only find things of their own knowledge, but they go according to their consciences." The first edition of Noah Webster's celebrated dictionary (1828) said that juries "decide both the law and the fact in criminal prosecutions."

Jury nullification is specifically enshrined in the constitutions of Pennsylvania, Indiana, and Maryland. The state codes of Connecticut and Illinois contain similar provisions.

The second US President, John Adams, wrote: "It is not only [the juror's] right, but his duty...to find the verdict according to his own best understanding, judgment, and conscience, though in direct opposition to the direction of the court." Similarly, Founding Father Alexander Hamilton declared: "It is essential to the security of personal rights and public liberty, that the jury should have and exercise the power to judge both of the law and of the criminal intent."

Legendary Supreme Court Chief Justice John Jay once instructed a jury:

It may not be amiss, here, Gentlemen, to remind you of the good old rule, that on questions of fact, it is the providence of the jury, on questions of law, it is the providence of the court to decide. But it must be observed that by the same law, which recognizes this reasonable distribution of jurisdiction, you have nevertheless the right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy.

The following year, 1795, Justice James Iredell declared: "[T]hough the jury will generally respect the sentiment of the court on points of law, they are not bound to deliver a verdict conformably to them." In 1817, Chief Justice John Marshall said that "the jury in a capital case were judges, as well of the law as the fact, and were bound to acquit where either was doubtful."

In more recent times, the Fourth Circuit Court of Appeals unanimously held in 1969:

If the jury feels that the law under which the defendant is accused is unjust, or that extenuating circumstances justified the actions of the accused, or for any

acquit, and the courts must abide that decision.

Three years later, the DC Circuit Court of Appeals noted: "The pages of history shine on instances of the jury's exercise of its prerogative to disregard uncontradicted evidence and instructions of the judge."

In a 1993 law journal article, federal Judge Jack B. Weinstein wrote: "When juries refuse to convict on the basis of what they think are unjust laws, they are performing their duties as jurors."

Those who try to wish away the power of jury nullification often point to cases in which racist juries have refused to convict white people charged with racial violence. As attorney Conrad shows in his book, *Jury Nullification: The Evolution of a Doctrine*, this has occurred only in very rare instances. Besides, it's ridiculous to try to stamp out or deny a certain power just because it can be used for bad ends as well as good. What form of power hasn't been misused at least once in a while?

The Fully Informed Jury Association (FIJA) is the best-known organization seeking to tell all citizens about their powers as jurors. People have been arrested for simply handing out FIJA literature in front of courthouses. During jury selections, FIJA members have been excluded solely on the grounds that they belong to the group.

FIJA also seeks laws that would require judges to tell jurors that they can and should judge the law, but this has been an uphill battle, to say the least. In a still-standing decision (*Sparf and Hansen v US*, 1895), the Supreme Court ruled that judges don't have to let jurors know their full powers. In cases where the defense has brought up jury nullification during the proceedings, judges have sometimes held the defense attorney in contempt. Still, 21 state legislatures have introduced informed-jury legislation, with three of them passing it through one chamber (ie, House or Senate).

Quite obviously, the justice system is terrified of this power, which is all the more reason for us to know about it.

23
THE POLICE AREN'T LEGALLY OBLIGATED TO PROTECT YOU

Without even thinking about it, we take it as a given that the police must protect each of us. That's their whole reason for existence, right?

While this might be true in a few jurisdictions in the US and Canada, it is actually the exception, not the rule. In general, court decisions and state laws have held that cops don't have to do a damn thing to help you when you're in danger.

In the only book devoted exclusively to the subject, *Dial 911 and Die*, attorney Richard W. Stevens writes:

It was the most shocking thing I learned in law school. I was studying Torts in my

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YOUR VOTE COUNTS!

Your vote of **NOT GUILTY** must be respected by all other members of the **JURY** — it is the **RIGHT** and the **DUTY** of a **JUROR** to **Never, Never, Never** yield his or her sacred vote — for you are not there as a fool, merely to agree with the majority, but as an officer of the court and a qualified judge in your own right. Regardless of the pressures or abuse that may be heaped on you by any other members of the **JURY** with whom you may in good conscience disagree, you can await the reading of the verdict secure in the knowledge you have voted your own conscience and convictions — and not those of someone else.

YOU ARE NOT A RUBBER STAMP!

By what logic do we send our youth to battle tyranny on foreign soil, while we refuse to do so in our courts? Did you know that many of the planks of the "Communist Manifesto" are now represented by law in the U.S.? How is it possible for Americans to denounce communism and practice it simultaneously.

The JURY judges the Spirit, Motive and Intent of both the law and the Accused, whereas the prosecutor only represents the letter of the law.

Therein lies the opportunity for the accomplishment of "LIBERTY and JUSTICE for ALL." If you, and numerous other **JURORS** throughout the State and Nation begin and continue to bring in verdicts of NOT GUILTY in such cases where a man-made statute is defective or oppressive, these statutes will become as ineffective as if they had never been written.

"If we love wealth better than liberty, the tranquility of servitude better than the animating contest of freedom, go home from us in peace. We ask not your counsels or your arms. Crouch down and lick the hands which feed you. May your chains set lightly upon you, and may posterity forget that ye were our countrymen."[14]

JURY OF PEERS

Our forefathers felt that in order to have JUSTICE, it is obvious that a JURY of "PEERS" must be people who actually know the defendant. How else would they be able to judge motive and intent?

"PEERS" of the defendant, like the rights of the JURY have also been severely tarnished. Originally, it meant people of "equals in station and rank," (Black's 1910), "freeholders of a neighborhood," (Bouvier's 1886), or "A companion; a fellow; an associate. (Webster's 1828).

WHO HAS A RIGHT TO SIT ON A JURY?

Patrick Henry, along with others, was deeply concerned as to who has a right to sit on a JURY. Listen to our forefather's wisdom on the subject of "PEERS."

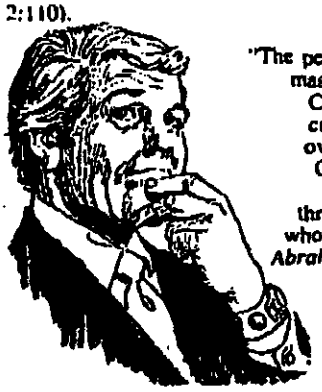
MR. HENRY

"By the bill of rights of England, a subject has a right to a trial by his peers. What is meant by his peers? Those who reside near him, his neighbors, and who are well acquainted with his character and situation in life." Patrick Henry, (Elliot, **The Debates in the Several State Conventions on the Adoption of the Federal Constitution**, 3:579).

Patrick Henry also knew that originally the JURY of PEERS was designed as a protection for Neighbors from outside governmental oppression. Henry states the following, "Why do we love this trial by jury? Because it *prevents* the hand of oppression from cutting you off . . . This gives me comfort — that, as long as I have existence, my neighbors will protect me." (Elliot, 3:545, 546).

MR. HOLMES

Mr. Holmes, from Massachusetts, argued strenuously that for JUSTICE to prevail, the case must be heard in the vicinity where the fact was committed by a JURY of PEERS. ". . . a jury of the peers would, from their local situation, have an opportunity to form a judgment of the *CHARACTER* of the person charged with the crime, and also to judge of the *CREDIBILITY* of the witnesses." (Elliot, 2:110).



"The people are the masters of both Congress and courts, not to overthrow the Constitution, but to overthrow the men who pervert it!" *Abraham Lincoln*

MR. WILSON

Mr. Wilson, signer of "The unanimous Declaration," who also later became a supreme Court Justice, stressed the importance of the JURORS knowing personally both the defendant and the witnesses. "Where jurors can be acquainted with the characters of the parties and the witnesses — where the whole cause can be brought within their knowledge and their view — I know no mode of investigation equal to that by a trial by jury: they hear every thing that is alleged; they not only hear the words, but they see and mark the features of the countenance; they can judge of weight due to such testimony; and moreover, it is a cheap and expeditious manner of distributing justice. There is another advantage annexed to the trial by jury; the jurors may indeed return a mistaken or ill-founded verdict, but *their errors cannot* be *systematical*." (Elliot, 2:516).

FREEDOM FOR WILLIAM PENN

"Those people who are not governed by GOD will be ruled by tyrants."

William Penn

Edward Bushell and three fellow **JURORS** learned this lesson well. They *refused* to bow to the court. They believed in the absolute power of the **JURY**, though their eight companions cowered to the court. The four **JURORS** spent nine weeks of torture in prison, often without food or water, soaked with urine, smeared with feces, barely able to stand, and even threatened with fines, yet they would not give in to the judge. Edward Bushell said, "My liberty is not for sale," though he had great wealth and commanded an international shipping enterprise. These "tumble heads", so the court thought, proved the power of the people was stronger than any power of government. They emerged total victors.

THE FIRST AMENDMENT

The year was 1670, and the case Bushell sat on was that of William Penn, who was on trial for violation of the "Conventicle Act." This was an elaborate Act which made the Church of England the only legal church. The Act was struck down by their not guilty vote. **Freedom of Religion** was established and became part of the English Bill of Rights and later it became the First Amendment to the U.S. Constitution. In addition, the **Right to peaceful assembly** was founded, **Freedom of Speech**, and also habeas corpus. The first such writ of habeas corpus ever issued by the Court of Common Pleas was used to free Edward Bushell. Later this trial gave birth to the prosecutor, William Penn most likely would have been executed as he clearly broke the law.

HE BROKE THE LAW!

Then there would have been no Liberty Bell, no Independence Hall, no city of Philadelphia, and no state called Pennsylvania, for young William Penn, founder of Pennsylvania, and leader of the Quakers, was on trial for his life. His alleged crime was preaching and teaching a different view of the Bible than that of the Church of England. This appears innocent today, but then, one could be executed for such *actions*. He believed in freedom of religion, freedom of speech and the right to peaceful assembly. He had broken the government's law, but he had injured no one. Those four heroic **JURORS** knew that only when actual injury to someone's person or property takes place is there a real crime. No law is broken when no injury can be shown. Thus there can be no loss or termination of rights unless actual damage is proven. Many imposter laws were repealed as a result of this case.

IT IS ALMOST UNFAIR!

This trial made such an impact that every colony but one established the jury as the first liberty to maintain all other liberties. It was felt that the liberties of people could never be wholly lost as long as the jury remained strong and independent, and that unjust laws and statutes could not stand when confronted by conscientious **JURORS**. **JURORS** today face an avalanche of impostor laws. **JURORS** not only still have the power and the **RIGHT**, but also the **DUTY**, to nullify bad laws by voting "not guilty". At first glance it appears that it is almost unfair, the power **JURORS** have over [illegible] necessary when considering

FOR THE "COMMON GOOD"?

Where the people fear the government you have tyranny; where the government fears the people, you have liberty.

Politicians, bureaucrats and especially judges would have you believe that too much freedom will result in chaos. Therefore, we should gladly give up some of our **RIGHTS** for the good of the community. In other words, people acting in the name of government, say we need more **laws** and more **JURORS** to *enforce these laws* — *even if we have to give up some* **RIGHTS** in the process. They believe the more laws we have, the more control, thus a better society. This theory may sound good on paper, and apparently many of our leaders think this way, as evidenced by the thousands of new laws that are added to the books each year in this country. But, no matter how cleverly this Marxist argument is made, the hard fact is that whenever you give up a **RIGHT** you lose a **"FREE CHOICE"**!

This adds another control. Control's real name is **BONDAGE!** The logical conclusion would be, if giving up some **RIGHTS** produces a better society, then by giving up all **RIGHTS** we could produce the perfect society. We could chain everybody to a tree, for lack of **TRUST.** This may prevent a crime, but it would *destroy* **PRIVACY,** which is the heartbeat of **FREEDOM!** It would also destroy **TRUST** which is the foundation for **DIGNITY.** Rather than giving up **RIGHTS,** we should be giving up wrongs! The opposite of control is not chaos. More laws do not make less criminals! We must give up wrongs, not rights, for a better society! William Pitt of the British House of Commons once proclaimed, ***"Necessity is the plea for every infringement of human liberty; it is the argument of tyrants; it is the creed of slaves."***

NATURAL RIGHTS!

NATURAL RIGHTS ARE THOSE RIGHTS such as **LIFE** (from conception), **LIBERTY** and the **PURSUIT OF HAPPINESS** eg. **FREEDOM** of **RELIGION, SPEECH, LEARNING, TRAVEL, SELF-DEFENSE,** ETC. Hence laws and statutes which violate NATURAL RIGHTS, though they have the color of law, are not law but impostors! The U.S. Constitution was written to protect these NATURAL RIGHTS from being tampered with by legislators.* Further, our forefathers also wisely knew that the U.S. Constitution would be utterly worthless to restrain government legislators unless it was clearly understood that the people had the right to compel the government to keep within the Constitutional limits.

In a jury trial the real judges are the **JURORS!** Surprisingly, judges are actually just referees bound by the Constitution!

*Lysander Spooner wrote as follows:

"Government is established for the protection of the weak against the strong. This is the principal, if not the sole motive for the establishment of all legitimate government. It is only the weaker party that lose their liberties, when a government becomes oppressive. The stronger party, in all governments are free by virtue of their superior strength. They never oppress themselves. Legislation is the work of this stronger party; and if, in addition to the sole power of legislation, they have the sole power of determining what legislation shall be enforced, they have all power in their hands, and the weaker party are the subjects of an absolute government. Unless the weaker party have a veto, they have no power whatever in the government and . . . no liberties . . . The trial by jury is the only institution that gives the weaker party any veto upon the power of the stronger. Consequently it is the only institution that gives them any *effective* voice in the *government;* or any guaranty against oppression."

Essay on the Trial by Jury

A JURY'S Rights, Powers and Duties:

The Charge to the **JURY** in the First **JURY** Trial before the supreme Court of the U. S. Illustrates the **TRUE POWER OF THE JURY.** In the February term of 1794, the supreme* Court conducted a **JURY** trial and said ". . . it is *presumed*, that the *juries* are the best judges of facts; it is, on the other hand, presumed that the courts are the best judges of law. But still both objects are within your power of decision."

"You have a right to take upon yourselves to judge of both, and to determine the law as well as the fact in controversy."

(State of Georgia vs. Brailsford, et al, 3 Dall. 1)

"The **JURY** has an unreviewable and unreversible power . . . to acquit in disregard of the *instructions* on the law given by trial judge . . ." (emphasis added)

U.S. vs. Dougherty, 473 F 2nd 1113, 1139 (1972)

Hence, **JURY** disregard of the limited and generally conviction-oriented evidence presented for its consideration, and **JURY** disregard for what the trial judge wants them to believe is the controlling law in any particular case (sometimes referred to as **"JURY** lawlessness")* is not something to be scrupulously avoided, but rather encouraged. Witness the following quotation from the eminent legal authority above-mentioned: "Jury lawlessness is the greatest corrective of law in its actual administration. The will of the state at large imposed on a reluctant community, the will of a majority imposed on a vigorous and determined minority, find the same obstacle in the local **JURY** that formerly confronted kings and ministers." (emphasis added)

(Dougherty, cited above, note 32, at 1130.)

*Supreme is not explained in the Constitution, however Believer is. Art. III.

*Jury lawlessness means willingness to nullify bad law.

9

The Right of the JURY to be Told of Its Power

Almost every **JURY** in the land is falsely instructed by the judge when it is told it must accept as the law that which is given to them by the court, and that the **JURY** can decide only the facts of the case. This is to destroy the purpose of a Common Law **JURY,** and to permit the imposition of tyranny upon a people.

"There is nothing more terrifying than ignorance in action."

Goethe

— engraved on a plaque at the Naval War College

"To embarrass justice by a multiplicity of laws, or to hazard it by confidence in judges, are the opposite rocks on which all civil institutions have been wrecked."

Johnson I — engraved in Minnesota State Capitol Outside the Supreme Court Chambers

". . . The letter killeth, but the spirit giveth life."

II Corinthians 3:6

"It is error alone which needs the support of government. Truth can stand by itself."

Thomas Jefferson

The **JURY'S** options are by no means limited to the choices presented to it in the courtroom. "The jury gets its understanding as to the arrangements in the legal system from more than one voice. There is the formal communication from the 'judge.' There is the informal communication from the total culture — literature; current comment, conversation;

1

LAWS, FACTS AND EVIDENCE!

Without the power to decide what facts, law and evidence are applicable, **JURIES** cannot be a protection to the accused. If people acting in the name of government are permitted by **JURORS** to dictate any law whatever, they can also unfairly dictate what evidence is admissible or inadmissible and thereby prevent the **WHOLE TRUTH** from being considered. Thus if government can manipulate and control *both* the law and evidence, the issue of fact becomes virtually irrelevant. In reality, true **JUSTICE** would be denied leaving us with a trial by government and not a trial by **JURY!**

HOW DOES TYRANNY BEGIN? WHY ARE THERE SO MANY LAWS?

Heroes are men of glory who are so honored because of some heroic deed. People often out of gratitude yield allegiance to them. Honor and allegiance are nice words for power! Power and allegiance can only be held rightfully by trust as a result of continued character.

When people acting in the name of government violate ethics, they break trust with **"WE THE PEOPLE."** The natural result is for **"WE THE PEOPLE"** to pull back power (honor and allegiance).

The loss of power creates fear for those losing the power. Fearing the loss of power, people acting in the name of government often seek to regain or at least hold their power. Hence, to legitimatize their quest for control, laws and force are often instituted.

Unchecked power is the foundation of tyranny. It is the **JUROR'S** duty to use the **JURY ROOM** as a vehicle to stem the tide of oppression and tyranny. To prevent bloodshed by peacefully removing power from those who have abused it. The **JURY** is the primary

November 17, 2005

From: Cris Tyree + Ron Huckstep

To: Anchorage Daily News, Lisa Demer)
Barbara Brink, Attorney
Alaska Bar Association)
Alaska Representatives (House + Senate)
Concerning Newspaper Article "Lawyer)
says Patients Don't Get Fair Hearing"
Sunday, November 6, 2005

In Alaska very few clients get a fair hearing.
Ms. Brink you're quoted "If the client says
fight, we fight." Not True + here is why.
Alaska Rules of Professional Conduct,
hereby ARPC. Rules Lawyers sign an oath
to uphold. Rules set up to go against the
client. Rules set up to purposely lose cases
Rules client do not know about before they hire
the lawyer. Rules that are unfair + unjust.
Rules that lead to revenues for the adversary
systems (Court systems) + law enforcement.
And the lawyer.

The following pages are points, questions +
facts about the wording, sentence framing,
gray areas, etc. about ARPC.

Cris Tyree ; Ronald C. Huckstep

ALASKA RULES OF PROFESSIONEL CONDUCT

1. Page 1, a lawyer is an officer of the legal system. Isn't this a conflict of interest? As officer of legal system, a lawyer's loyalties lie with the adversary system + it's revenues. Also this leads to protection of law enforcement (police, troopers, etc). So how is client fairly represented? Will you, the lawyer, discuss the client's affairs, case, evidence, etc with judges, court clerks, police, etc? Isn't this why several charges are made so client will plead to at least one, leading to revenue for court?
2. Page 1, "assure justice is being done" Why use the word "assure"? This is a gray area + allows for lawyer to go behind client's back. It gives "play room" for lawyer. No client "assumes", they "expect".
3. Page 1, "Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to client, to the legal system, etc." Why is the legal system part of the conflict? Sometimes the legal system is the problem because they are violating ones' Constitutional Rights, so one may want to sue the legal system, but lawyer's

can't represent a client well with lawyer's loyalties lying with adversary system + law enforcement. Why hire a lawyer?

4. Page 2, "close relationship between the profession, the processes of government + law enforcement." Again conflict of interest. If police lie or tamper with evidence, how can the lawyer serve his client + the police? Where is the fair hearing? Why the processes of government? In America we have the Constitution of the United States. Simple Law. So since the government + law enforcement are violating Constitutional Rights, where is the fair hearing? How can lawyer represent client in lawsuit against the government, fair + just? Again lawyer can not serve two masters.

5. Page 2, "Every lawyer is responsible for observance of ARPC. A lawyer should also aid in securing their observance by other lawyers." We live in America!! This is Nazi!! Let's definitly make sure client doesn't get great representation or fairness!! No Lawyer should have to watch another lawyer + have to "tattle tale."

6. Page 3, "The attorney-client privilege is that of the client, not the lawyers." Another gray area. Leaves room for indiscretion on lawyers end. The privilege is the lawyers's, for being hired by client.
7. Page 4, "The client shall be advised of the lawyer's limited knowledge in the field to which advice is sought." Are lawyer's really honest with the client on this? Do lawyers tell client the Constitution of the United States is not allowed in Alaska Courts? Do lawyers tell clients about Page 5, Rule 1.2c on limiting scope? Do lawyers explain Criminal Rule 11a + how they conned Alaska Representatives to pass as law? Do lawyers tell client about loyalties to adversary system + lawenforcement?
8. Page 5, lawyer discusses waiving jury trial + appeal. Why would client want to give up his Constitutionally secured right to a jury of his peers? Why mention appeal? Does lawyer know he's going to lose case?
9. Page 5, Rule 1.2c, limit scope. This is not in the interest of client. This is a basic right also secured in Constitution, Bill of Rights. Clients want all their

evidence". Again this is conflict of interest, protecting law enforcement, not client. Which brings us to the Killer sentence in ARPC.

10. Page 9. "However, a lawyer is not bound to press for every advantage that might be realized for a client." This sentence says it all!! Do your lawyers share this with the client? As you are suppose to be honest, fair, truthful humans with morals, values & ethics.

11. Not in ARPC, but Alaska Bar Association (ABA) conning Alaska Representatives to pass Criminal Rule 16a. Why would ABA want this law passed when it goes against this clients best interest? Does this law show loyalty, honesty, truthfulness, ethics, values, morals, kindness, love from Alaska Bar Association (Lawyers, Judges), law enforcement & our fine Alaska Representatives? No, it shows their evilness. Their cruelty. Their GREED.

We have other points & questions on ARPC.

Cris Tyree ; Ronald L. Huckstep

State of Alaska
Legislative Affairs Agency
Kenai LIO
145 Main St Lp Ste 217
Kenai, AK 99611
(907) 283-2030

Date: ____3-2-09_____

Please accept the enclosed original(s) of written testimony for the

_____HJUD_____ teleconference hearing that was

scheduled on _____2-25-09_____.

A copy of this testimony was transmitted to your committee via fax on

_____3-2-09_____.

Thank you,

M B Byrne

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on HB 9 Capital Punishment, dated 2-25-09
bill # / subject public hearing date

From Fox News 2-25-09

Lawmakers Cite Economic Crisis in Effort to Ban Death Penalty

A number of state legislators are citing the country's economic woes as a reason to overturn capital punishment laws

Colorado, Kansas, Maryland, Montana, New Hampshire, Nebraska and New Mexico are among those states actively considering abolishing executions as a way to cut costs.

In Alaska news, Governor Palin is interested in a new state crime lab. While I do not have enough information to debate this issue, it seems convenient that instituting the death penalty in Alaska would require new facilities. (see testimony from Monday's Judiciary hearing) Of course this could just be a coincidence.

Economic stimulus? Yes! Attorneys and support staff. New crime lab.

A step in the right direction – or a giant leap backwards?

Since I'm unable to tune in to the hearing today, I just hope and pray that your comfort level will not include our state choosing to enact this legislation. I know we "don't care how they do it Outside," but surely we can be open to learning a little and continuing to lead the country as the Territorial Legislature chose in 1957. Sometimes the wisdom of the past is just that – wisdom.

When people who might not be paying attention right now, realize that your committee is discussing when it's okay to execute a 16 year old or a pregnant woman or a retarded peson, I suspect you will be sitting in a very uncomfortable position.

The best way out is a quick "no." Please vote "no" on HB9.

A. Susan Smalley, 105 Linwood Lane, Kenai, AK 99611 (907) 238-7469

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on HB 9 Capital Punishment, dated 2-23-09
bill # / subject public hearing date

1) In 1957 the Alaska Territorial Legislature outlawed the death penalty. Our wise forefathers felt strongly enough to do this – without the knowledge of "mistakes" that we have today. I am very sad that my state, with full knowledge of the execution of innocent people, is even considering HB9. With full knowledge and proof that innocent people have been killed in capital punishment states, HB 9 is still alive. Innocent people killed with the best intentions, fortified by jury decisions and all those safeguards. But none of these justifications can ever right a wrongful death. I strongly believe that this is only one reason why we should not be considering HB9 – but shouldn't it be enough?

2) Looking at this through the lens of Christ's teachings, I find it even more disturbing. "An eye for an eye and a tooth for a tooth," while being Old Testament wisdom, was overridden by Jesus' words and actions as he walked on this earth. You might remember that the New Testament testifies to his actually stopping an execution that was sanctioned by the laws of his time. This was NOT a popular action at the time, but it spoke loudly to who Jesus was and what he had come to teach us.

Signed: Susan Smalley
Testifier

Representing (optional)

105 Linwood Lane Kenai AK 99611
Address

907 283-7469
Phone number

1008

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

Committee on HB 9 Capital Punishment, dated 2-23-09
bill # / subject public hearing date

3) At a time of financial crisis, it is mind boggling to me that our legislators are looking in this direction. Statistics (and Speaker Chenault) show that the death penalty is not a deterrent. And it is incredibly expensive. And just at the time many other states are Reversing their views, we are spending valuable legislative time, effort & money to consider instituting the death penalty. From my perspective as a 39 year Super voter Alaskan and concerned citizen, it looks like a distraction from what should be the business at hand.

In closing, I'd like to summarize my points

1) Mistakes are irrevocable. - other states set up safeguards too
2) HB 9 does not represent my Christian values (or those of the United Methodist Church, of which I am a member)
3) It's bad economics (unless you're an attorney)
4) "It's not a deterrent." (Spkr Chenault 2/23/09)

Signed: _____
Testifier

_____
Representing (optional)

_____
Address

_____
Phone number

1009

Please do not misunderstand or misrepresent my views and intent. I strongly believe there are some people who should be imprisoned for life - without parole. It just saddens me that elected officials in my beloved state, faced with monumental fiscal issues affecting each one of us and our children & grandchildren, are wanting to take, what I believe is a giant leap — backwards!

I found the conversation abhorrent at the hearing today. "How do we choose whether to execute 16 year olds?" * We'll let pregnant women deliver and then execute them. Why are our Alaskan legislators involved in this?

I urge you to vote "no" on HB9, freeing up your time & energy on the pressing issues of our State.

Sincerely, A. Susan Smalley

* from the work draft

1010

Dana Strommen

From: Susan S [asusansmalley@yahoo.com]

Sent: Tuesday, February 24, 2009 5:57 AM

To: Rep. Jay Ramras; Rep. Bob Lynn; Rep. Lindsey Holmes; Rep. Max Gruenberg; Rep. Carl Gatto; Rep. Nancy Dahlstrom; Rep. John Coghill

Subject: HB9

Dear Judiciary Committee Members,
Although it was unlikely that I would have been able to testify yesterday, it was a disappointment when the power went out in Kenai during your first hearing. I trust you will take time to read my testimony as it was sent to you, with my apologies for not having it in print, having had to resort to handwriting.
When I was debriefing with friends last evening, they too were incredulous that our state could be having a discussion about which 16 year olds are executable and how to execute a pregnant woman. Our consensus is that a bill that leads us to developing protocols for letting the mother deliver and then killing her, takes us, as a people, to a place where we shouldn't be going. And frankly, if we took out the 16 year olds, the mentally retarded, and pregnant women, it still would reflect something to which we don't want to aspire.
Additionally, unless this is part of the economic stimulus program for attorneys and support staff and crime lab, it is an enormous financial undertaking at a time of serious financial hardship in so many places on our state.
I gathered many quotes yesterday but I would like to leave you with your member John Coghill's words, "when we start talking about the death penalty we rachet up the responsiblity of the state." There is much wisdom in this statement.
Please vote down HB9.

Susan Smalley
105 Linwood Lane
Kenai, AK 99611

March 3, 2009

Dear Representative Ramras,

Through you, let me thank the Judiciary Committee for allowing me the privilege to speak to the issue of House Bill 09. Unanimous among all whom I spoke with afterwards was gratefulness for the even tenor of the proceedings, and respect paid to all who offered their testimony. This note is simply to reiterate three points:

In a state whose law enforcement and investigative resources are stretched beyond the breaking point—where many locales throughout the state have no VPSO or police or trooper presence whatsoever—how can it be that the proper investigative resources can be brought to bear in those locales in a timely manner when dealing with capital crimes which bear the potential of a final solution—death to the convicted perpetrator?

Secondly, in my experience, there is less, not more resolution for the victim's family upon the occasion of an execution. There is a satisfaction of vengeance, sometimes, but the potential for anything else—even documented cases of reconciliation—are lost. Mourning the loss of their loved one, families also mourn over time for lost possibilities of making it clear to the perpetrator the depth of their loss and any hope of understanding the mind of the perpetrator.

And thirdly, related to the second, addressing what Representative Coghill intimated by his comment about "the state bearing the sword" is the point that we law-abiding citizens have surrendered our absolute freedom to the will of a governed society specifically and especially to be guided—even protected by this government of laws away from our baser motives of vengeance and retribution, especially when that vision is clouded by unimaginable and unbearable pain—and an irresistible desire for vengeance. The gentleman from Kodiak testified specifically to this point: "If someone murdered my wife I would want vengeance, absolutely, but it is still wrong." We law abiding citizens depend upon you to keep us from this wrong, and to curb our desires when we cannot ourselves.

And if I may now slip in a fourth which caused me a pause in my testimony—a pause of emotion which was a testimony in itself: The conversation about the efficacy of the death penalty does not stop when a law allowing such is passed. It is debated with a ferocity born of desperation each and every time another human being is put to death by the state. I have witnessed this desperation over and over at the gates of San Quentin, and the vitriol which poisons the social fabric of our community life for weeks before and after each execution.

There are of course dozens of reasons besides these few which I might make against the passage of HB 9, but I leave those to more eloquent voices, and review only the testimony you were so kind to allow me. Please know that you and each of the Committee remain in our prayers. Every blessing and kindness;

Sincerely,

George

George Silides, rector
Holy Trinity Episcopal Church
Juneau, Alaska 99801

To: The Honorable Jay Ramras
State Capitol
Juneau, AK 99801

March 2, 2009

Dear Representative Ramras,

I am writing this letter as written testimony for HB9 regarding the introduction of the death penalty to our great State of Alaska. I have lived in Nikiski for 20 years.

Theoretically the death penalty has a certain logic; however, what is theory and what is real is not always the same thing. Theoretically it would deter crime. In reality that does not appear to be the case. Please review the 2006 FBI Crime Report. Consistent with previous years, the regions of the country that have the highest execution rates continue to have the highest murder rates. In addition a nation wide survey of police chiefs, the majority did not see the death penalty as an effective tool in law enforcement. For the few (1%) that did, 3 times as many named reducing guns, 10 times as many named more police officers, 17 as many named jobs and better economy and 31 times as many named reducing drug abuse as the primary focus need to reduce violent crimes. Theoretically it would save money, as we wouldn't be housing those prisoners for life. The reality of states that do have the death penalty show a very different picture. In December 2003 the Kansas Performance Audit Report stated capital cases are 70% more expensive than non-capital offenses, including the costs of incarceration. In 2005 the LA Times reported California taxpayers pay $114 million per year beyond the costs of keeping convicts locked up for life for their death penalty system.

Sharing evidence that suggests the death penalty is extremely ~~and~~ expensive and ineffective, while important, is not my main reason for writing this testimony. My main reason is this: I believe our judiciary system is one of the best in the world, but it is dishonest for me to say it operates perfectly. Because it is a system operated by human beings and human beings are fallible, the system is fallible. There are cases where a person has been found guilty of a crime they ~~did not~~ committed by another. There are cases in our legal system where

over →

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someone has been found guilty of a capital offense when they are innocent. Some of these cases have been discovered in time. Since 1973 over 120 people have been released from death row with evidence of their innocense. Since the turn of the millenia, there has been an average of 5 exonerations per year. Each year we've been able to identify approximately 5 people mistakenly put on death row. It is good to recognize and acknowledge that we have checks and balances which help us more accurately and fairly serve justice. It is what makes our justice system the best in the world. However, it should also remind us that our system is not infallible. If the death penalty becomes a part of our state's legal system, at some point, we the people of Alaska will sanction the killing of an innocent person. It is likely that we will do so unwittingly, but it will be inevitable. It would be a great and tragic irony to make it so important to kill wrongdoers for killing innocent people that we put ourselves at risk for doing that very wrong. Our great state has managed to avoid this tragic irony by being one of 14 states without the death penalty. Because of this, we are a more fair and just state than the majority in the union. My hope is that you will ~~continue to~~ have us continue to be so. Please do not let this bill out of the judiciary commitee.

Sincerely, Gretchen E Graeff

Gretchen E Graeff
46430 Jakes Way
Kenai AK 99611

(907). 776. 8650

Dana Strommen

From: Barb Brink [Barb_Brink@fd.org]
Sent: Wednesday, March 11, 2009 2:37 PM
To: Rep. Jay Ramras
Subject: RE: HB9 Opposition

Written Summary of Testimony by Barbara Brink before the House Judiciary Committee on February 23, 2008 HB 9

My name is Barbara Brink and I believe that House Bill 9 (the death penalty) is the wrong approach from a practical public policy point of view. My opinions have been shaped by my 23 years as a public defender in the state of Alaska, first as a trial lawyer, then for eight years as the Deputy Director, and nine years as the Director. As Representative Coghill wondered, based upon my experience, we do not have a system of justice that we can rely upon with confidence in the state of Alaska.

This is not to disparage the excellent people within criminal the system, from the eyewitnesses that report crime, to those that investigate, those that prosecute, those that defend, and those that conduct the trials in these cases. The point is that we are all human, and a human system of justice makes mistakes.

Since 1972, 124 death row inmates in 25 states were found to be actually innocent and exonerated. These were people who had their cases decided beyond a reasonable doubt by juries; people whose regular appeals had been exhausted; people who were scheduled to be executed by the government. Please do not think that these exonerations prove the system works. These people were exonerated despite the system, by the dedication of journalists and lawyers, family and friends, and advances in technology that fortunately occurred before the government killed them. At least 8 documented innocent people were not so fortunate, and were executed. If Alaska engages in the risky business of capital punishment, our state at some time will get it wrong and kill an innocent person.

Some people argue that current DNA technology will prevent any wrongful executions. However, technology is always advancing. Last week the National Academy of Science released a report casting serious doubt on the very types of "scientific" evidence that has been used for years to convict. All of these techniques were hailed at the time of their use as reliable and trustworthy. This includes fingerprint, firearm and bite mark identification, and blood spatter, hair and handwriting analysis. The study, ordered by Congress, found that evidence around the country tended to be handled by poorly trained technicians who exaggerated the accuracy of their methods and their findings in court, in part because of the universal alignment with law enforcement.

This is not a new discovery. In 2004 the FBI had to notify hundreds of people who were potentially wrongfully convicted that the technique of matching the chemical make up of bullets was in fact not reliable and that the scientific experts who had made such claims had "overtestified."

We can assume that technology will continue to advance. We cannot assume that the technology of today is infallible. And even as DNA technique becomes more and more refined, less than 10% of all violent crimes involve DNA evidence. As fallible as human beings are, we should neither give ourselves nor our government the power to decide who lives and who dies.

Trying to prevent an irreversible mistake in the capital system has resulted in an expensive and cumbersome system. I think adoption of this system is I bad idea from a practical public policy point of view. It simply costs more to kill a person than it does top keep them in prison for life. The fiscal notes of the Public Defender Agency and the Office of Public Advocacy are not an ideal. They are constitutionally required. The U.S. Supreme Court has set requirements for heightened due process when the result can be death. Two lawyers with death penalty experience are required for every case. A mitigation team and investigation is required for every case. Expert witnesses and a thorough appellate review is required in every case. This costs

money.

States that have had the death penalty for years are considering abolishing it as they reassess the costs of the system versus the benefits.
New Jersey found it has spent 253 million dollars over and above regular criminal justice costs since 1983 and has as of yet executed no one in their capital punishment system. Many question what better uses that quarter of a billion dollars could have been put to in terms of more law enforcement personnel and public safety, and in terms of prevention such as schools, job training or drug treatment. Similar analysis has been conducted in Florida, Texas, California and Maryland as tough economic times force state to reconsider these huge expenditures. It is generally accepted that the death penalty does not deter murder. Nationally, the states and regions that do not execute their citizens have a lower homicide rate than those that do. States are also wondering if they could use these funds to actually assist murder victims' families more directly in the areas of restitution and grief counseling.

Maryland's former Speaker of the House, Casper Taylor Jr. , who spent 28 years in Maryland's House of Delegates, recently wrote an op-ed piece after a study of the capital system he helped to re-impose in 1978.
"Today, that vote haunts me, " he said. Since reinstatement, Maryland's 30 years of experience with the death penalty have been a colossal failure."

Please allow Alaska to benefit from the history and experience of the rest of the country. The establishment of capital punishment in Alaska would be a terrible mistake.

Dana Strommen

From: Cheryl Roderer [roderer@gci.net]
Sent: Wednesday, March 11, 2009 10:12 AM
To: Rep. Jay Ramras
Subject: Death Penalty Opposition: HB 9

Dear Representative Ramras:

I am strongly opposed to the death penalty. Killing someone who has committed a crime, even a heinous crime, is deeply flawed. Each and every human being deserves the respect of life. If even one person is put to death in error because he/she was not guilty of the accused crime we have taken away every tidbit of dignity and decency that we, as humans, have.

I urge you and the other members of the Judiciary Committee to oppose moving HB 9 out of committee and allow all Alaskans to maintain respect for life.

Pax et bonum, Cheryl Roderer
4712 Potter Crest Circle
Anchorage, AK 99516

(907) 868-3080 home
(907) 868-5115 fax
(907) 250-0050 cell

HB

13

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN
State Capitol Juneau, AK 99801-1182 (907) 465-3719
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

Sponsor Statement

HB 13 "An Act relating to property crimes"
(26-LS0069\A)

The purpose of House Bill 13 is to raise the threshold amounts that distinguish felony theft from misdemeanor theft, and further distinguish class A misdemeanor theft from class B misdemeanor theft.

For example, it is a class C felony to commit theft of property valued at $500 or more (up to $25,000) under current law; it is a class A misdemeanor to commit theft of property valued under $500 (but over $50). These amounts were adopted in 1978 and, like the other threshold amounts, have not been adjusted for inflation since that time.

House Bill 13 would raise these threshold amounts to more accurately reflect their current value.

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN
State Capitol Juneau, AK 99801-1182 (907) 465-3719
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

Sectional

HB 13
"An Act relating to property crimes"
(26-LS0069\A)

Section 1: AS 11.46.130(a) is amended to read:
This section will increase the minimum amount of property or services for the crime of theft in the second degree.

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

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

(6) the value of the property is **$250** [$50] or more but less than **$1,500** [$500]

Section 2. AS 11.46.140(a) is amended to read:
This section will increase the minimum amount of property or services for the crime of theft in the third degree.

(a) commits the crime of theft in the third degree if the person commits theft as defined in AS 11.46.100 and

(1) the value of property or services is **$250** [$50] or more but less than **$1,500** [$500]; **or**

(2) [REPEALED

(3)] the value of the property is less than **$250** [$50]

Section 3. AS 11.46.150(a) is amended to read:
This section will increase the minimum amount of property or services for the crime of theft in the fourth degree.

(a) A person commits the crime of theft in the fourth degree if the person commits theft as defined in AS 11.46.100 and the value of the property or services is less than **$250** [$50].

Section 4. AS 11.46.220(c) is amended to read:
This section will increase the minimum amount of merchandise for the crime of concealment of merchandise for a class C felony, and class A and B misdemeanors.

(c) Concealment of merchandise is
(1) a class C felony if
(B) the value of the merchandise is **$1,500** [$500] or more, or
(C) the value of the merchandise is **$250** [$50] or more but less than **$1,500** [$500] and,
(2) a class A misdemeanor if
(A) the value of the merchandise is **$250** [$50] or more but less than **$1,500** [$500}; or
(B) the value of the merchandise is less than **$250** [$50] and,
(3) a class B misdemeanor if the value of the merchandise is less than **$250** [$50].

Section 5. AS 11.46.260(b) is amended to read:
This section will increase the minimum amount of property that identification marks are removed from for a class C felony and class A and B misdemeanors.

(b) Removal of identification marks is
(1) a class C felony if the value of the property on which the serial number or identification mark appeared is **$1,500** [$500] or more,
(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared is **$250** [$50] or more but less than **$1,500** [$500};
(3) a class B misdemeanor if the value of the property on which the serial number of identification mark appeared is less than **$250** [$50].

Section 6. AS 11.46.270(b) is amended to read:
This section will increase the minimum amount of unlawful possession of property for a class C felony and class A and B misdemeanors.

(b) Unlawful possession is

(1) a class C felony if the value of the property on which the serial number or identification mark appeared is **$1,500** [$500] or more,

(2) a class A misdemeanor if the value of the property on which the serial number or identification mark appeared is **$250** [$50] or more but less than **$1,500** [$500};

(3) a class B misdemeanor if the value of the property on which the serial number of identification mark appeared is less than **$250** [$50].

Section 7. AS 11.46.280(d) is amended to read:
This section will increase the minimum amount of a bad check for a class C felony and class A and B misdemeanors.

(d) Issuing a bad check is

(1) a class B felony if the face amount of the check is $25,000 or more;

(2) a class C felony if the face amount of the check is **$1,500** [$500] or more but less than $25,000;

(3) a class A misdemeanor if the face amount of the check is **$250** [$50] or more but less than **$1,500** [$500];

(4) a class B misdemeanor if the face amount of the check is less than **$250** [$50].

Section 8. AS 11.46.280(d) is amended to read:
This section will increase the minimum amount of the fraudulent use of an access device for a class C felony and class A misdemeanor.

(b) Fraudulent use of an access device is

(1) a class B felony if the value of the property or services obtained is $25,000 or more;

(2) a class C felony if the value of the property or services obtained is **$1,500** [$50] or more but less than $25,000;

(3) a class A misdemeanor if the value of the property or services obtained is less than **$1,500** [$50].

Section 9. AS 11.46.295 is amended to read:

Sec. 11.46.295. Prior convictions. For purposes of considering prior convictions in prosecuting a crime of theft under AS 11.46.130(a)(6) or **11.46.140(a)(2)** [11.46.140(a)(3)], or in prosecuting the crime of concealment of merchandise under AS 11.46.220(c), a conviction for an offense under another law or ordinance with similar elements is a conviction of an offense having elements similar to those of an offense defined as such under Alaska law at the time the offense was committed. The court shall consider the date of a prior conviction as occurring on the date that sentence is imposed for the prior offense.

Section 10. AS 11.46.360(a) is amended to read:
This section will increase the minimum amount of property damage and expenses as a result of the loss of use of a vehicle.

(2) the propelled vehicle of another and

(A) the vehicle or any other property of another is damaged in a total amount of **$1,500** [$500] or more;

(B) the owner incurs reasonable expenses as a result of the loss of use of the vehicle, in a total amount of **$1,500** [$500] or more; or

Section 11. AS 11.46.482(a) is amended to read:
This section will increase the minimum amount of property damage for the crime of criminal mischief in the third degree.

(1) with intent to damage property of another, the person damages property of another in an amount of **$1,500** [$500] or more;

Section 12. AS 11.46.484(a) is amended to read:
This section will increase the minimum amount of property damage for the crime of criminal mischief in the fourth degree.

(2) with intent to damage property of another, the person damages property of another in an amount of **$250** [$50] or more but less than **$1,500** [$500];

Section 13. AS 11.46.486(a) is amended to read:
This section will increase the minimum amount of property damage for the crime of criminal mischief in the fifth degree.

(2) with intent to damage property of another, the person damages property of another in an amount less than **$250** [$50]; or

Section 14. AS 11.46.530(b) is amended to read:
This section will increase the minimum amount of property damage for the crime of criminal simulation for a class C felony and class A and B misdemeanors.

(1) a class C felony if the value of what the object purports to represent is **$1,500** [$500] or more;
(2) a class A misdemeanor if the value of what the object purports to represent is **$250** [$50] or more but less than **$1,500** [$500];
(3) a class B misdemeanor if the value of what the object purports to represent is less than **$250** [$50].

Section 15. AS 11.46.620(d) is amended to read:
This section will increase the amount of the value of the property for the crime of misapplication of the value of property for a class C felony and class A misdemeanor.

(1) a class C felony if the value of the property misapplied is **$1,500** [$500] or more;
(2) a class A misdemeanor if the value of the property misapplied is less than **$1,500** [$500].

Section 16. AS 11.46.730(c) is amended to read:
This section will increase the minimum amount for the crime of defrauding creditors under certain conditions for a class A misdemeanor, and class C felony.

(c) Defrauding creditors is a class A misdemeanor unless that secured party, judgment creditor, or creditor incurs a pecuniary loss of **$1,500** [$500] or more as a result to the defendant's conduct, in which case defrauding secured creditors is
(1) a class B felony if the loss is $25,000 or more;
(2) a class C felony if the loss is **$1,500** [$500] or more but less than $25,000.

Section 17. The uncodified law of the State of Alaska is amended by adding a new section to read:
This section will establish the date this act will apply to offenses committed.

APPLICABILITY. This Act applies to offenses committed on or after the effective date of this Act.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB13-ACS-02-12-09
() Publish Date:

Identifier (file name):
Dept. Affected:
Title: Property Crimes
RDU: Alaska Court System
Component: Trial Courts
Sponsor: Representative Coghill
Requester:
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

House Bill 13 raises the dollar amounts associated with a variety of property crimes. The increases that have the potential to impact the court system are those that raise from $500 to $1,500 the value of property that must be stolen or damaged before a felony crime is committed. These changes will impact the court if they result in a significant number of cases moving from the superior court, where the cost per case is high, to the district court, where the cost per case is lower. However, a review of available information shows that, because of the way these cases are prosecuted and processed, the majority of property crimes impacted by this bill are already resolved in the district court. Because of this, this bill will not have a measurable impact on the court system. What it will do, however, is change the way these cases are counted to more accurately reflect current workloads.

Prepared by: Doug Wooliver, Administrative Attorney — Phone 463-4750
Division: Alaska Court System — Date/Time 02-12-09 @ 3:00 pm
Approved by: Doug Wooliver for Stephanie Cole, Administrative Director — Date 2/12/2009
Alaska Court System

(Revised 9/10/2008 OMB)

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 13**
() Publish Date:

Identifier (file name): HB013-LAW-CRIM-02-13-09
Dept. Affected: Law
Title: An Act relating to property crimes.
RDU: Criminal
Component: Criminal Justice Litigation
Sponsor: Representative Coghill
Requester: Jud
Component Number: 2203

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0		0.0	0.0	0.0	0.0	0.0
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

HB 13 raises the amount or value of property under the theft laws that are the thresholds between felony and misdemeanor theft, and between class A misdemeanor theft and class B misdemeanor theft. For example, under current law, the threshold between class C felony theft and class A misdemeanor theft is $500. HB 13 would raise this to $1,500.

It makes these changes to the various types of theft, including issuing a bad check and fraudulent use of an access device. It is anticipated this legislation will have no fiscal impact on the Department.

Prepared by: Dave Blaisdell, Director — Phone 465-3673
Division: Administrative Services Division — Date/Time 2/13/09 12:00 AM
Approved by: Rick Svobodny, Acting Attorney General — Date 2/13/2009
Department of Law

(Revised 9/10/2008 OMB)

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB13-DOC-OC-02-16-09**
() Publish Date:

Identifier (file name): HB13-DOC-OC-02-16-09
Dept. Affected: DOC
Title "Act relating to property crimes."
RDU Adminstration & Support
Component Office of the Commissioner
Sponsor Representative Coghill
Requester Governor
Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

Passage of this legislation will increase the minimum amounts for property values associated with property thefts.

This legislation should impact the number of offenders incarcerated under this statute by changing what is currently a felony conviction to a misdemeanor conviction. As of December 31, 2008 there were 203 offenders incarcerated under the existing legislation but the department cannot determine which of those would be considered a misdemeanor under this revised legislation. Although the fiscal impact is indeterminate, it is anticipated that the overall impact should be a reduction in the total number and cost of incarcerated offenders. (continued on page 2)

Prepared by: Leslie Houston, Director — Phone (907) 465-3339
Division Administration and Support — Date/Time 2/16/09 12:42 PM
Approved by: Dwayne Peeples, Deputy Commissioner — Date 2/16/2009
Department of Corrections

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB13-DOC-OC-02-16-09

ANALYSIS CONTINUATION

At this time, data is not available for the department to calculate the number of offenders that would be now be sentenced as misdemeanors under this bill. The department will continue to work to determine the number of offenders that could potentially be impacted by passage of this legislation. A revised fiscal note may be submitted at a later date if appropriate.

STATE OF ALASKA
OFFICE OF VICTIMS' RIGHTS

February 27, 2009

Max F. Gruenberg, Jr.
State Representative, House District 20
State Capitol Building Room 110
Juneau, Alaska 99801-1181

Via Fax to 907-465-3766

Allison Laffen
Legislative Aide
State Capitol Building Room 110
Juneau, Alaska 99801-1181

Via Fax to 907-465-3766

Re: House Bill 13

Dear Representative Gruenberg, Jr. and Ms. Laffen:

I write in response to your request for comments on House Bill 13. I have reviewed the pending legislation and discussed it with senior victim's advocate, Katherine J. Hansen.

The Alaska Office of Victims' Rights ("OVR") *only has jurisdiction* to assist crime victims involved *in felony level property offenses* [See, Alaska Statue 24.65.100(a)].

Since House Bill 13 increases the dollar amount of property constituting a felony offense, the bill stands to potentially decrease the number of crime victims eligible for OVR assistance. Under the current law, for example, a crime victim who has had $800.00 worth of property stolen is eligible for OVR assistance; under House Bill 13, the victim would not be eligible since the crime would be a misdemeanor.

In addition, crime victims, like criminal defendants, tend to be disproportionately poor. See, U.S. Department of Justice, Bureau of Justice Statistics, *Criminal Victimization in the United States*, tbl. 14 (2006) (finding higher victimization rates at lower income levels). A $500.00 property offense (particularly during difficult economic times) could

be considered a meaningful deprivation of a victim's property interest warranting felony level prosecution.

The categorization of property offenses in House Bill 13 stands to reduce collection resources available to crime victims. In general, misdemeanor property crimes in the Third Judicial District are prosecuted by the Municipality of Anchorage which has very limited resources to help victims collect restitution judgments. Lastly, misdemeanor probationers are unsupervised and thus less likely to pay restitution judgments.

If you have any questions or concerns regarding these comments please do not hesitate to contact me. The OVR stands ready to contribute positively to improving the administration of criminal justice throughout Alaska.

Respectfully submitted,

D. Victor Kester
Executive Director

HB 13 – Bad public policy

I recently learned of HB 13 which proposes increasing the dollar amounts assigned to degrees of Theft and Concealment of Merchandise offenses three to five times more than current law – raising the A Misdemeanor threshold from $50 to $250; and the Felony threshold from $500 to $1500.

Initially, I questioned what is to be accomplished by passage of the bill. I wondered if it was thought that changing current law would reduce the workload of police officers, prosecutors, or the courts. I wondered if it was proposed in order to make enforcement of law more efficient; somehow providing more effective protection for our communities; or, insuring greater vindication of citizens victimized by these crimes. Admittedly, I could find no positive conclusions to these questions. In effect, the only persons benefitted by HB 13 are criminals.

As an 18-year Alaska State Trooper I have charged numerous individuals with theft crimes. My experience has taught me that, although our Courts and District Attorneys are genuinely concerned that all cases are fully prosecuted, reality is that they cannot address their case loads without some dismissals and plea agreements. Consequently, a large number of B Misdemeanor cases are dismissed and many felony charges are reduced to misdemeanors. HB 13 does nothing to alleviate this problem and, in fact, will likely exacerbate it over time. By raising the A/B Misdemeanor threshold to $250 (five times current law), "petty" thefts or incidents of shoplifting will transform into financially crippling losses without legal recognition of their significance. Additionally, the Misdemeanor/Felony threshold increase significantly eases the consequences of theft due to plea agreements. This then, has high potential of increasing the number of these crimes because of the ease of obtaining large amounts of property with decreased consequence.

Criminal laws are, and should be, created to set parameters on socially unacceptable behavior by discouraging tendencies toward criminal thought and shielding from victimization. Often, property crimes are given low priority and little consideration is given to the emotions these victims experience. Feelings of anger, violence, vulnerability, retaliation, and being violated are among some of the strongest. When victims fail to see tangible results of an investigation or prosecution further frustration, distrust, and isolation can follow. Increasing the thresholds for these crimes will likely amplify this problem and leave potential victims at greater risk of larger losses.

Some may argue that raising the thresholds will prevent misguided youthful offenders from unnecessarily being labeled as felons. We must remember that it is not a felony charge, but rather a felony conviction, that carries the label. Additionally, those who offend under the age of 18 will realize a fresh start at that age. And, raising the thresholds may actually inhibit early intervention by dismissing serious misbehavior as an insignificant misdemeanor.

Others may argue that the thresholds addressed in HB13 should be reconsidered because of their age, I believe it is more important to remember the significance that $250 or $500 is to each of us. I dare say that all of us carefully budget before spending these amounts and when these amounts go missing due to loss, theft, or damage, there is significant impact upon us – particularly in today's economy. In short, HB13 simply attempts to inflation-proof these crimes. This should never be the motivator for altering and passing law.

Thank you for your consideration of these reasons to oppose HB 13.

Rob Cox
President
Public Safety Employees Association

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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

Business Manager

Joseph Young
Anchorage

Board of Directors

Angella Long, President
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Dan Frerich, Member
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Pres. Anchorage Chapter

John Jansen, Member
Mat-Su
Pres. Mat-Su Chapter

Jim Janke, Member
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Dan Boone, Member
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A.J. Charlton, Member
Ketchikan
Pres. First City Chapter

Matt Betzen, Member
Unalaska
Pres. Aleutian Islands Chapter

Thecla LaLonde, Member
Wrangell
Pres. Wrangell Chapter

February 17, 2009

Representative John Coghill
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Coghill:

On behalf of the Alaska Peace Officers Association (APOA), I am writing regarding your introduction of House Bill 13, relating to property crimes.

The APOA Legislative Committee recently reviewed this proposed legislation and is unanimously opposed to this bill.

We oppose any effort to raise the amounts in property crimes. $500 is still a significant loss to many people. Raising the dollar amount of the felony level theft reduces the ability to charge individuals with a felony. Current law provides prosecutors the opportunity and flexibility to plea down to a misdemeanor in the interest of justice. With the current state of the economy, $500 is a reasonable threshold and we see no need to change it.

We urge you to reconsider this legislation. Please contact the APOA office in Anchorage at 277-0515 if you have any questions.

Sincerely,

Angella Long
State President

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 20, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4/1/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 13**

"An Act relating to property crimes."

HB 13 PROPERTY CRIMES

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CRT				✓
LAW				✓
DOC			✓	

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN		X		
	Gruenberg		–		
	Coghill	✓			
	Ralph Samuels			X	
	Gatto			X	
Chair:	RAMRAS				
Chair:					

HB

15

ALASKA STATE LEGISLATURE

Juneau
State Capitol Bldg. Rm 422
Juneau, AK 99801-1182
Phone (907) 465-4930
Fax (907) 465-3834
1-800-331-4930

Anchorage
716 W. 4th Avenue
Anchorage, AK 99501
Phone (907) 269-0174
Fax (907) 269-0177

Representative Berta Gardner

House District 24

February 16, 2009

SPONSOR STATEMENT
HB 15

"An Act relating to prohibiting the use of cellular telephones by minors when driving a motor vehicle; and providing for an effective date."

Our automobile insurance rates illustrate the well-established fact that younger and less experience drivers have more vehicle accidents than older drivers. Today, a growing body of evidence shows that use of cell phones increases risk of accident for all drivers, but especially for younger ones.

Each year, Alaska sees an increase in the number of motor vehicle accidents involving the use of cellular phones by drivers. Between 2002 and 2006 there were 289 traffic accidents involving cell phones in Alaska. The largest group, about 35 percent, involved drivers between 16 and 20 years old, although they make up only about 7.6% of Alaskan drivers.

Additionally, people between 16 and 24 are the most frequent cell phone users. While drivers age 21 or older with cell phones are about equally likely to use their cell phones for outgoing calls as they are to take incoming calls, cell phone-using drivers age 16-20 are more likely to use their cell phones to take incoming calls than they are to make outgoing calls while driving.

Other statistics show:

- 16 and 17 year old drivers have the highest fatality rate in car crashes.
- For the 16-to-20 age group, the crash fatality rate in 2004 was nearly twice as high as other age groups
- Motor vehicle crashes are number 1 cause of death among teenagers

The National Highway Traffic Safety Administration (NHTSA) has gathered data that nearly 25% of all vehicle accidents directly involve the use of cell phones. By limiting a minor's use of a cell phone while driving, we can make our roads safer for everyone.

Please join me in supporting House Bill 15 to make our roads safer.

CS FOR HOUSE BILL NO. 15(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES GARDNER AND TUCK, Muñoz

A BILL

FOR AN ACT ENTITLED

"An Act relating to prohibiting the use of cellular telephones by minors when driving a motor vehicle; and providing for an effective date."

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

*** Section 1.** AS 28.35 is amended by adding a new section to read:

Sec. 28.35.165. Prohibited use of cellular telephone. (a) A person under 18 years of age may not use a cellular telephone when driving a motor vehicle on a highway or vehicular way or area.

(b) Notwithstanding any other provision of law, a peace officer may not stop or detain a motor vehicle to determine compliance with (a) of this section, or issue a citation for a violation of (a) of this section, unless the peace officer is authorized by law to stop or detain the motor vehicle other than for a violation of (a) of this section.

(c) A person who violates this section is guilty of an infraction and may be punished as provided under AS 28.90.010.

*** Sec. 2.** This Act takes effect July 1, 2009.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us
1292 Sadler Way, Suite 324
Fairbanks, AK 99701

Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: March 19, 2009

Re: Please go final on HB15

Jerry,

Today the House Judiciary Committee passed out HB15 version 26-LS0110\E with amendment E.1, please go final?

Thank you

Amendment #2

26-LS0110\E.1
Luckhaupt
3/18/09

AMENDMENT

By Rep Kawasa

OFFERED IN THE HOUSE

TO: HB 15

Page 1, lines 10 - 11:

Delete "has probable cause"

Insert "is authorized by law"

Amendment #1 was conceptual

and was p. 1 L 10-11 - delete "probable cause" and insert "Reasonable Suspision".

w/d.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 015**
() Publish Date:

Identifier (file name): **HB015-DPS-DET-03-17-09**
Title: BAN CELL PHONE USE BY MINORS WHEN DRIVING
Sponsor: Representative Gardner
Requester: House Judiciary

Public Safety
RDU: Alaska State Troopers
Component: AST Detachments
Component Number: 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

Passage of this legislation will have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial
Division: Alaska State Troopers
Approved by: Joseph Masters, Commissioner
Department of Public Safety

Phone 907-247-4480
Date/Time 3/17/09 1:00 PM
Date 3/17/2009

(Revised 11/19/2007 OMB)

Science of Safe Driving Among Adolescents

Special Supplement to *Injury Prevention*

June 20, 2006

Teen Driver Facts

- Traffic crashes occur disproportionately among newly driving young adults with one in four crash fatalities in the US involving 16 to 24 year olds (FARS)[1].

- The crash fatality rate (crash fatalities/100,000 population) is highest for 16 to 17 year olds – with the first six months after licensure the most dangerous – and remains high through age 24[2].

- For the 16-to-20 age group, the crash fatality rate in 2004 was nearly twice as high as other age groups: 27deaths/100,000 population for 16 to 20 year olds, as compared with 15 for 25 to 34 year olds and 11 for those 55 to 64 and 18 for those 74 years and older[3].

- Approximately two-thirds (63 percent) of teen (13 to 19 year olds) passenger deaths occur when other teenagers are driving. Child passengers (under age 16 years) driven by teenaged (16 to 19 year olds) drivers have three times the risk of injury in a crash than children driven by adults. Overall, 9 percent of child fatalities occur with a driver under age 19[4, 5].

- US research demonstrates that the "overwhelming majority" of crashes involving teen drivers were due to failure to employ safe operating practices and failure to recognize the inherent risk rather than "thrill seeking" or deliberate risk-taking[6].

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1. NHTSA. *Traffic Safety Facts 2004 Data: Overview.* 2006 [cited 2006 May 22, 2006]; 1-12]. Available from: http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2004/809911.pdf.
2. Mayhew, D.R., H.M. Simpson, and A. Pak, *Changes in collision rates among novice drivers during the first months of driving.* Accident Analysis and Prevention, 2003. **35**: p. 683-691.
3. NHTSA. *Traffic Safety Facts 2004: A Compilation of Motor Vehicle Crash Data from the Fatality Analysis Reporting System and the General Estimates System.* 2006 [cited 2006 May 22, 2006]; 1-222]. Available from: http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSFAnn/TSF2004.pdf.
4. Williams, A.F. and S.A. Ferguson, *Rationale for graduated licensing and the risks it should address.* Injury Prevention, 2002. **8**(Suppl II): p. ii9-ii16.
5. (IIHS), I.I.f.H.S., *FATALITY FACTS 2004: TEENAGERS.* 2006, Insurance Institute for Highway Safety: Arlington, VA. p. 1-11.
6. McKnight, A.J. and A.S. McKnight, *Young novice drivers: careless or clueless?* Accident Analysis and Prevention, 2003. **35**: p. 921-925.

LEGISLATIVE RESEARCH REPORT

FEBRUARY 13, 2009

REPORT NUMBER 09.141

CELLULAR PHONE USE BY TEEN DRIVERS

PREPARED FOR REPRESENTATIVE BERTA GARDNER

BY TIM SPENGLER, LEGISLATIVE ANALYST

You asked for information about states that have enacted laws prohibiting cellular (cell) phone use by teenagers while driving. Specifically, you wanted to know the effectiveness of such laws.[1]

In 2003, the National Traffic Safety Board recommended that states limit or bar young drivers from using cell phones. As of January 2009, seventeen states and the District of Columbia have enacted legislation restricting novice drivers from talking on cell phones while driving.[2] Six states (California, Connecticut, New Jersey, New York, Utah, and Washington) ban the use of hand-held (as opposed to hands-free) cell phones by all drivers regardless of age. We include, as Attachment A, a table from the Insurance Institute for Highway Safety (IIHS) that shows states' cell phone laws (not just for teenagers), including whether states specifically ban text messaging.[3] Also in Attachment A, we include a February 2009 *question and answer* sheet from the IIHS on cell phones and driving. It provides a thorough overview of the myriad issues surrounding this topic.

According to Dr. Anne McCartt, Senior Vice President of the IIHS, there has been no research on whether there are fewer accidents in jurisdictions where cell phone use by teen drivers have been banned.[4] She explains that such research would be nearly impossible to conduct as police crash reports do not reliably report drivers' cell phone use. Additionally, police must rely on the accounts of drivers, many of whom would be unlikely to report phone use prior to a crash—especially in jurisdictions where such use is illegal.

---

[1] Background for this report came from numerous sources including the Insurance Institute for Highway Safety (*www.iihs.org*), the Highway Safety Research Center at the University of North Carolina (*www.hsrc.unc.edu*), the National Transportation Safety Board (*www.ntsb.gov*), and the National Conference of State Legislatures (*www.ncsl.org*).

[2] A "novice" driver generally means a teenage driver with less than three years driving experience. States with restrictions on cell phone use by novice drivers are California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Minnesota, Nebraska, New Jersey, North Carolina, Oregon, Rhode Island, Tennessee, Texas, Virginia, and West Virginia.

[3] Alaska is one of the seven states that prohibit all drivers from text messaging while operating an automobile.

[4] Anne McCartt can be reached at (703) 247-1534. All of our other sources concurred that no research has been conducted on the effectiveness of cell phone bans in limiting accidents.

907-465-3991
907-465-3908 (fax)

Alaska Legislature
Legislative Research Services
w3.legis.state.ak.us/laa/research/research.php

State Capitol
Juneau, AK 99801

The only study that has evaluated a cell phone law pertaining to teen drivers (it does not track accidents) was co-authored by Dr. McCartt. Entitled, "Short-term Effects of a Teenage Driver Cell Phone Restriction," the study was conducted jointly by the Insurance Institute for Highway Safety and the Highway Safety Research Center at the University of North Carolina. The study examined whether teens in North Carolina changed their driving habits after that state enacted a cell phone ban for drivers younger than 18. The two-part study coupled researchers' observations of teenage drivers with telephone surveys of teens and their parents. The researchers found that the legislation did not lower the use of cell phone by teen drivers. One to two months *prior* to the ban's December 2006 start, 11 percent of teen drivers were observed using cell phone as they left school while driving automobiles. Five months *after* the ban took effect, almost 12 percent of teen drivers were observed using phones.[5] Clearly the law did not produce the intended effects. We include a copy of the study as Attachment B.

The study further found that lack of enforcement plays a significant role in the poor results observed in North Carolina. Most of the parents and teenagers surveyed for the study reported that they believed enforcement was rare or non-existent. Dr. McCartt asserts that law enforcement is supportive of legislative efforts to limit cell phone use by drivers but enforcing these laws is highly problematic. She puts it this way

> Cell phone bans for teen drivers are difficult to enforce. Drivers with phones to their ears aren't hard to spot, but it's nearly impossible for police officers to see hands-free devices or correctly guess how old drivers are.

The survey also found that about only around two-thirds of all teenagers and around 40 percent of adults even knew that the law had been enacted. Perhaps better public education would have improved compliance with the law.

Arthur Goodwin, Senior Research Associate at the Highway Safety Research Center, concurs with Dr. McCartt that the North Carolina study (in which he participated) clearly shows that the state's cell phone ban was not effective.[6] He does not believe such laws are without merit, however. Mr. Goodwin likened the situation to when seat belt laws came to the fore in the United States; it took quite a while to educate the public and for people to change their habits but eventually most did. He believes this may be the case with cell phone laws—that it will take time and continued efforts for these laws to become solidified in our national consciousness. Another aspect Mr. Goodwin stresses is the need for parents, rather than law enforcement, to be the prime enforcers of cell phone restrictions. This can be tricky, however, as parents generally *want* their sons and daughters to have cell phones with them for safety reasons, which of course allows them the opportunity to use the phones while driving. Legislating greater parental involvement is likely impossible.

While there are no data linking cell phone bans with lower accident rates, Mr. Goodwin directed us to a 2005 IIHS study from Western Australia that found drivers (not just teen drivers) who use cell phones increased their likelihood of being in a crash *fourfold*. In the study, cell phone billing

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[5] Cell phone use remained steady at about 13 percent during this time period at comparison sites in South Carolina, where teen driver cell phone used is not restricted. Interestingly, although the law was not obeyed in North Carolina, it was supported verbally by 95 percent of parents, and 74 percent of teens when they were interviewed on the telephone.

[6] Arthur Goodwin can be reached at (919) 843-5038.

records were used to verify phone use by drivers who had been in crashes.[7] According to Mr. Goodwin, the accident potential when driving while using a cell phone is roughly equivalent to the risk of a driver operating a vehicle under the influence of alcohol. We include the paper that examines the Australia study as Attachment C.

A 2006 report from the National Highway Traffic Safety Administration (NHTSA) found that drivers who are distracted (i.e. putting on makeup, disciplining children, eating lunch, talking on a cell phone) are three times more likely to be involved in a crash than drivers who are being attentive.[8] According to the study, the use of cell phones was the most common distraction. Additionally, the report found that drivers between 18-20 were four times as likely to be in a crash as drivers over 35. According to Jacqueline Glassman, acting administrator of the NHTSA when the study was released,

> This important research illustrates the potentially dire consequences that can occur while driving distracted or drowsy. It's crucial that drivers always be alert when on the road.

We include, as Attachment D, a bulleted summary from NHTSA that highlights the study's findings.[9]

Notwithstanding the lack of specific statistical evidence, all the experts with whom we spoke, and literature we reviewed, support states enacting laws restricting the use of cell phones while driving. While such legislation is difficult to enforce, it does send a message that the behavior is unsafe. It is clear from the Australian and NHTSA studies that restricting not just teenagers but all drivers from using cell phones while driving is likely to reduce roadway accidents.

We hope you find this information to be useful. Please let us know if you have questions or need additional information.

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[7] According to our sources, the Australian study was consistent with a 1997 study from Canada that also utilized cell phone billing records. There have been no similar studies in the United States in part because law enforcement agencies (short of a subpoena) cannot access cell phone records to verify that a driver was using his or her call phone at the time of an accident.

[8] The Transportation Institute at Virginia Tech University was also involved in the study.

[9] The entire 224 page NHTSA report can be viewed at *www-nrd.dot.gov/departments/nrd-13/81059/810594.html.*

Number of Crashes Involving Cell Phone Use, By Age of Driver Using Cell Phone, Alaska 2002-2006

Age of Driver using Cell Phone	2002	2003	2004	2005	2006	TOTAL
under 10						0
10-15			1			1
16-20	17	20	22	24	16	99
21-25	8	9	8	6	12	43
26-30	7	5	6	8	5	31
31-35	9	7	6	6	2	30
36-40	7	3	6	3	7	26
41-45	4	6	3	6	4	23
46-50	3	7	6	5	1	22
51-55		1	1	1		3
56-60	1		2	1		4
61-65		1		1		2
66-70	1			1		2
71-75	1					1
76-80						0
81+					1	1
Unknown	1					1
TOTAL	59	59	61	62	48	289

Source: State of Alaska, DOT&PF, Highway Analysis System, Data Port

Number of Crashes Involving Cell phone Use, Alaska 2002-2006

	Property Damage Only	Minor Injury	Major Injury	Fatal	TOTAL
2002	38	16	5	0	59
2003	34	24	1	0	59
2004	33	22	6	0	61
2005	38	21	3	0	62
2006	24	21	3	0	48
TOTAL	167	104	18	0	289

Source: State of Alaska, DOT&PF, Highway Analysis System, Data Port

Number of Occupant Injuries in Crashes Involving Cell Phone Use, Alaska 2002-2006

	No Injuries	Minor Injury	Major Injury	Fatalities	TOTAL
2002	132	30	6	0	168
2003	140	39	1	0	180
2004	121	32	6	0	159
2005	109	32	3	0	144
2006	94	38	3	0	135
TOTAL	596	171	19	0	786

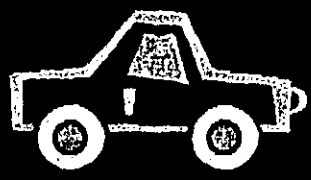
Source: State of Alaska, DOT&PF, Highway Analysis System, Data Port

PDSR144P
DATE: 02/15/08

VALID LICENSED DRIVERS AS OF
FEBRUARY 15, 2008

CLASS	AGE	FEMALE	MALE	UNKNOWN	TOTAL
D					
	14		1		1
	15				
	16	1,377	1,508		2,885
	17	2,665	2,746		5,411
	18	3,303	3,727		7,030
	19	3,883	4,340		8,223
	20	4,250	4,641		8,891
	21	4,325	4,728		9,053
	22	4,821	4,843		9,664
	23	4,733	4,889	1	9,623
	24	5,031	5,087		10,118
	25 - 29	23,906	22,977	4	46,887
	30 - 34	21,153	18,428	1	39,582
	35 - 39	21,512	18,513	2	40,027
	40 - 44	21,744	17,914		39,658
	45 - 49	24,466	19,512	2	43,980
	50 - 54	23,875	18,830	3	42,708
	55 - 59	19,329	16,979		36,308
	60 - 64	13,141	12,747		25,888
	65 - 69	8,131	8,265		16,396
	70 - 74	4,890	5,285		10,175
	75 +	6,281	7,036		13,317
	SUB TOTALS:	222,816	202,996	13	425,825
D/M1					
	14				
	15				
	16	4	11		15
	17	6	30		36
	18	18	59		77
	19	28	85		113
	20	21	131		152
	21	47	162		209
	22	56	241		297
	23	55	270	1	326
	24	69	337		406
	25 - 29	398	1,986		2,384
	30 - 34	476	2,279	1	2,756
	35 - 39	577	2,782		3,359
	40 - 44	700	3,257		3,957
	45 - 49	898	3,705		4,603
	50 - 54	951	3,940		4,891
	55 - 59	571	3,119		3,690
	60 - 64	282	1,896		2,178
	65 - 69	107	930		1,037
	70 - 74	44	443		487
	75 +	50	308		358
	SUB TOTALS:	5,358	25,971	2	31,331

Cell Phones and Highway Safety



National Conference of State Legislatures

2006 State Legislative Update

By Matt Sundeen

March 2007

In 2006, cell phones in motor vehicles continued to be a significant traffic safety concern for state legislatures. However, although phones in cars grabbed the most headlines, many state lawmakers now have broadened the topic to include a wider variety of driver distractions and potential regulations. This report provides information about cell phones and driving and the larger driver distraction debate. It examines the latest statistics and studies, details relevant laws and legislative activity, and analyzes the most critical issues.

Driver Distraction and Cell Phones

Most experts agree that distracted driving is a substantial problem. According to the National Highway Traffic Safety Administration (NHTSA), in 2005, 43,443 people died and approximately 2.7 million people were injured in an estimated 6.16 million police-reported motor vehicle traffic crashes.[1] NHTSA estimates that each year, motor vehicle crashes cost Americans approximately $230 billion in economic damages.[2] Driver inattention is a leading factor in these crashes. A 2006 study published by NHTSA and the Virginia Tech Transportation Institute (VTTI) estimated that nearly 80 percent of crashes and 65 percent of near crashes involve some form of driver inattention.[3] As a percentage of national statistics, the NHTSA and VTTI estimate would mean that driver inattention causes as many as 4.9 million crashes, 34,000 fatalities and 2.1 million injuries each year and as much as $184 billion in economic damage.

Although many agree that driver awareness—or lack thereof—is a significant concern, there is little agreement over which distractions pose the most significant threat or what should be done about them. Driver distraction has been a potential problem since cars were invented. A virtually limitless number of events, activities and objects, both inside and outside the motor vehicle, can divert a driver from his or her primary task—the safe operation of the vehicle. A January 2007 survey by Nationwide Mutual Insurance found that 31 percent of respondents admitted they daydream while driving; 19 percent acknowledge that they fix their hair, text or instant message; 14 percent comfort or discipline children; and 8 percent drive with a pet in their lap. Surveyed drivers also confessed to changing seats with passengers, reading books, watching movies, writing grocery lists, nursing babies, putting in contact lenses, painting toenails, urinating out the car window, changing shoes and shaving while driving.

Recent interest in driver focus seems to stem almost exclusively from the introduction of cell phones into the driving environment. Two decades ago, cell phones were a novelty item in cars and a non-factor in traffic safety. Less than 900,000 people in the United States subscribed to wireless services, few people lugged around the pricey, shoebox-sized devices, and few traffic safety experts mentioned driver distraction as a safety concern.

Much has changed in 20 years. According to the wireless industry association, CTIA, the number of wireless subscribers in the United States has grown to more than 230 million.[4] Recent studies confirm something most of us already know—many people are using their phones in the driving environment, and their popularity in the car continues to grow. A December 2005 NHTSA observational survey estimated that, at any given daylight moment, approximately 10 percent of U.S. drivers are using some type of phone, whether hand-

Cell phone use by younger drivers also continues to be a popular target for state legislators. Lawmakers in 13 states—Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Minnesota, New Jersey, North Carolina, Rhode Island, Tennessee, Texas and West Virginia—and the District of Columbia currently prohibit or restrict novice driver cell phone use. All current novice driver laws prohibit young drivers—those under age 18 or 21—who only hold a learner's or instructional driving permit from using any type of wireless device while operating a motor vehicle, except in emergency situations. In 2006, legislators in 28 states considered similar proposals, with new laws passing in Minnesota, North Carolina, Rhode Island and West Virginia. Although most of the 2006 bills linked novice driver restrictions to a learner's permit or intermediate license, several bills would have prohibited all teen drivers, regardless of license status, from using wireless devices.

Eleven states—Arizona, Arkansas, California, Connecticut, Delaware, Illinois, Massachusetts, New Jersey, Rhode Island, Tennessee and Texas—and the District of Columbia prohibit school bus drivers from using phones while operating a school bus. Legislators in five states proposed school bus driver phone restrictions in 2004, while legislatures in seven states considered such measures in 2005.

State legislatures also are taking an active role in improving the collection of data and information about the involvement of cell phones and other wireless devices in crashes. At least 27 states and the District of Columbia now require some or all law enforcement officers to collect information about cell phone involvement in crashes, up from just two states in 1998 (see table 1). In many states, such data collection is required by statute. In addition, legislatures or individual legislators in at least nine states—California, Delaware, Louisiana, Minnesota, New Jersey, New York, Pennsylvania, Virginia and Wisconsin—approved or asked for studies about the effects of wireless phones on traffic safety in their jurisdictions. The Pennsylvania General Assembly's Joint State Government Commission published a report on driver distraction and public safety in December 2001,[21] and a special legislative task force in Delaware published a report on driver distractions in 2003.[22] Washington passed a bill in 2005 that requires state police to track in accident report forms information about the involvement of wireless communication devices in motor vehicle crashes. The measure also requires the state police to include this information in its annual report of traffic safety statistics.

States also are moving to assert authority over the distracted driving issue. Legislatures in 10 states have moved to restrict local cell phone laws. Florida, Kentucky, Louisiana, Mississippi, Nevada, New Jersey, New York, Oklahoma, Oregon and Utah preempt local jurisdictions from restricting cell phone use while driving. This move was significant in Florida, where several local communities, including Miami-Dade County, had prohibited the use of hand-held phones while driving. Utah's law, enacted in 2006, pre-empted a prohibition on hand-held phones in Sandy, Utah.

Four other states—California, Florida, Illinois and Massachusetts—have enacted measures related to cell phone use while driving. California requires that rental cars with embedded cell phone equipment provide written instructions on the safe use of the cell phone. Florida and Illinois require that drivers who use headsets with their phones can use only a headset that blocks sound to one ear. Massachusetts generally allows cell phone use, provided the driver keeps at least one hand on the steering wheel at all times. Other states have considered legislation to increase driver negligence for being involved in a crash while using a cell phone; however, no state has passed such a proposal.

An emerging trend in legislation is to address multiple behaviors—not only cell phone use—on the road. Washington, D.C., prohibits several potential distracted driver behaviors, including reading, writing, personal grooming, interacting with pets or unsecured cargo, using personal communications technologies, or engaging in other activities that cause distractions. Connecticut's cell phone law, enacted in June 2005, includes a broad distraction provision that prohibits drivers from engaging in any activity not related to the actual operation of a motor vehicle in a manner that interferes with the safe operation of such vehicle on any highway. Seven other states considered broad distraction bills in 2006.

Other state legislatures have examined driver use of televisions and DVD players (see appendix B). At least 38 states restrict or prohibit televisions in motor vehicles. California and Louisiana restrict the placement of DVD players and similar entertainment devices to locations out of the vision of the driver. Illinois prohibits any visual media technology, other than a navigational system, to be located at points forward of the driver's seat. Tennessee and Virginia forbid the display of

pornographic videos in cars. In addition, Virginia prohibits the display of a video or motion picture in front of the driver's seat or within view of the driver. Legislatures in 14 states in 2006 considered legislation related to the use of televisions, DVD players or videos in cars.

Federal Action

As of February, 2007 the federal government had not acted on the distracted driving issue. Legislation considered by Congress in 2003 and 2001 failed to make it out of committee. Several federal agencies have studied the effects of wireless phones on traffic safety. In June 2003, the National Transportation Safety Board (NTSB) issued a report about a 2002 crash in Maryland that involved a young driver who was using a cell phone. According to the NTSB analysis, the crash involved multiple risk factors, and the NTSB could not determine the exact extent of the role of distraction due to wireless phone use. However, NTSB concluded that, " ... current State laws are inadequate to protect young, novice drivers from distractions that can lead to accidents."[23] The NTSB recommended that the states that do not have restrictions for young drivers enact legislation to prohibit holders of learner's permits and intermediate licenses from using interactive wireless communication devices while driving.

In the same report, NTSB recommended improvements in driver education. The NTSB concluded that the public may not be aware of the risks associated with using the wireless phone while driving. NTSB urged that, " ... all drivers should be educated about the risks of distracted driving, including the cognitive demands associated with use of interactive communication devices."[24] NTSB also urged states to improve data collection by including codes for interactive wireless communications devices on their traffic accident investigation forms.

NHTSA has long studied driver distraction and traffic safety but has not issued any regulations to address the topic. In 1997, NHTSA published a report—*An Investigation of the Safety Implications of Wireless Communications in Vehicles*—that summarized driver distraction research. In 2000, NHTSA conducted a driver distraction online forum and accepted public comments on driver distraction issues. NHTSA also has published several observational surveys in an attempt to document driver cell phone use.

A policy statement regarding cellular phone use while driving, posted on NHTSA's website, warned drivers of potential cell phone risks. According to the statement, " ... the primary responsibility of the driver is to operate a motor vehicle safely. The task of driving requires full attention and focus. Cell phone use can distract drivers from this task, risking harm to themselves and others. Therefore, the safest course of action is to refrain from using a cell phone while driving."[25]

Several federal agencies, national organizations, and state and local government agencies also have worked to improve data collection. In June 2003, the national Governors' Highway Safety Association released a revised edition of the Model Minimum Uniform Crash Criteria (MMUCC), which included changes intended to help gauge the effects of driver distractions. The criteria, which were developed in collaboration with NHTSA, the Federal Highway Administration, the Federal Motor Carrier Safety Administration, and numerous state and local agencies, describe what kinds of information states need to collect at crash scenes. The changes to the MMUCC are intended to help policymakers paint a more accurate picture of the role of cell phones and other distractions in motor vehicle crashes.

Local Action

Many counties, cities, towns and municipalities across the United States have considered restrictions on cell phone use while driving. The largest community—Chicago, Illinois—prohibits motorists from using hand-held phones while driving. More than two dozen local jurisdictions—in Florida, Illinois, Massachusetts, Michigan, New Jersey, New Mexico, New York, Ohio, Pennsylvania and Utah—have enacted similar restrictions. Local jurisdictions that have passed ordinances include: •

USA states breakdown

State	Banned?	Notes
Alabama	No	
Alaska	No	
Arkansas	Partial	School bus drivers are banned from using a cell phone.
Arizona	Partial	A bill to introduce a ban was lost by a 4-3 vote in the Senate Transportation Committee. Bus drivers are banned from using a cell phone
California	Yes	Beginning July 1, 2008, violators face a US$20 fine for a first offense and a US$50 ticket for subsequent infractions. Law passed Sept 2007 bans all under-18s from using a phone at all, even with handsfree kit. Text messaging while driving (inc emails) banned with effect from Jan 1st 2009.
Colorado	No	Teens with restricted licenses are banned - but can only be stopped for another violation first
Connecticut	Yes	Banned with effect from Oct. 2005 - teens are also forbidden from using handsfree kits while moving
Delaware	No	A driver can already be prosecuted for "inattentive driving" - which can include using a cell phone. Studies into the issue have been requested
District of Columbia	Yes	Banned from July 2004
Florida	Partial	State Attorney General said that cities can set local regulations - July 2001. Overturned by Governor Bush..
Georgia	Partial	School bus drivers banned from using cell phones while driving. DeKalb County has fines when crashes can be attributed to driving while using a cellphone.
Hawaii	Being debated	A bill has been introduced in Hawaii's legislature by Sen. Joseph Souki, D-Wailuku-Waiehu.
Idaho	No	
Illinois	Partial	School bus drivers are banned - Chicago and Gary City Council have passed local laws banning driving without a hands-free kit.
Indiana	No	Ban proposed by State Sen. Rose Antich Carr - Jan 2004
Iowa	Being debated	
Kansas	No	Bill to introduce ban failed in 2000

Kentucky	No	
Louisiana	Partial	Teenagers and new drivers are banned - all drivers banned from text messaging only.
Maine	Partial	Minors and those on learner driving licenses may not use a cell phone while driving
Maryland	No	Bill to ban dropped Feb. 2001. New proposal in the House, proposed by Delegates Arnick and Mandel
Massachusetts	Partial	Bill for most users pending - but bus drivers already banned. Drivers required to keep at least one hand on the steering wheel while holding a phone.
Michigan	No	
Minnesota	Partial	Teenagers and provisional drivers are banned - $100 fine plus delays in license upgrades for offenders
Mississippi	No	Legislation prevents local councils enacting their own ban.
Missouri	No	
Montana	No	
Nebraska	No	Bill planned by State Sen. Jim Cudaback - Jan 2004
Nevada	No	State bill to introduce ban failed April 1999. Local bill in Clark County also blocked Nov. 2001. Nevada state passed bill banning local regulations, March 2003.
New Hampshire	Partial	Not explicitly banned, but you can be prosecuted if using a cellphone when involved in an driving accident.
New Jersey	Yes	Banned from 2004, updated from March 2008 - fine US$100. Bill extended June 2008 to include text messaging.
New Mexico	Partial	Being debated - local ban in the cities of Santa Fe, Albuquerque, Taos, and Las Vegas
New York	Yes	Ban effective from Nov. 2001
North Carolina	Being debated	Study into the effects of cell phone usage while driving being carried out.
North Dakota	Being debated	Bill proposed by Sen. Harvey Tallackson, D-Grafton, Feb 2005
Ohio	Partial	The City of Cleveland is discussing a ban. Ban in place in Brooklyn.
Oklahoma	No	Bill to introduce ban failed in May 1999. Legislation prevents local councils enacting their own ban.
Oregon	Partial	Ban applies to teenagers only.
Pennsylvania	Partial	Local cities have their own laws - state legislation pending
Rhode Island	No	Governor Almond rejected a ban - July 2001. School buses are banned from using a cell phone. Proposal for a ban being

		debated, April 2004.
South Carolina	Partial	Bill to ban holders of a beginner's permit, conditional or special restricted driver's license passed by House committee, April 2008
South Dakota	No	
Tennessee	Partial	School buses are banned from using a cell phone
Texas	No	Senate Bill 154 proposed. If passed would come into effect from 2008. A previous attempt in 2005 failed
Utah	No	Bill to introduce ban failed March 1998. Highland city planning a ban - Feb 2005
Vermont	No	
Virginia	Partial	Bill banning minors passed Jan 2005. Bill banning 16-17yr olds with conditional licenses passed March 2007
Washington	Yes	Ban imposed, to come into effect from July 2008. Driving while sending text messages separately banned with effect from Jan 1st 2008
West Virginia	No	Bill proposed in 1999, but never debated
Wisconsin	No	Bill to introduce ban failed in April 1998. Bill to ban younger drivers only being debated.
Wyoming	No	Bill proposed by Rep. Floyd Esquibel but not debated

Q&As: Cellphones and driving

February 2009

Show all answers

1 | How many people use cellphones?

Cellphone use in the United States has grown quickly during the past decade. There were more than 262 million wireless cellphone subscribers, representing 84 percent of the US population, as of June 2008, according to the Cellular Telecommunications and Internet Association.[1] That's up 35 percent from 194 million in June 2005 and nearly three times more than the 97 million wireless subscribers in June 2000. Minutes of use have surged to more than 1 trillion in June 2008 from 195 billion in June 2000.

2 | Do drivers frequently use phones behind the wheel?

Yes, though it's hard to accurately determine just how many drivers use phones. Observational data from the federal government indicate that 6 percent of drivers in 2007 were using hand-held phones at any moment during the day. The 2007 use rate means that about 1 million passenger vehicles on the road at any moment during the day are driven by people talking on hand-held phones.[2]

3 | Who is most likely to talk on a cellphone while driving?

Female drivers across all age groups more frequently use hand-held cellphones than male drivers (8 percent vs. 5 percent), according to daytime observational surveys of drivers conducted nationwide in 2007. Young drivers ages 16-24 also are much more likely than other drivers to talk on hand-held cellphones. Nine percent of drivers ages 16-24 were observed talking on hand-held phones, compared with 6 percent of those ages 25-69 and 1 percent of drivers 70 and older.[2]

4 | Does using a cellphone while driving increase crash risk?

Yes. Two controlled studies now link talking on a cellphone directly to increased crash risk. A 2005 Institute study of drivers in Western Australia found cellphone users four times as likely to get into crashes serious enough to injure themselves.[3] The study used cellphone billing records to verify phone use of crash-involved drivers. Increased risk was similar for males and females, drivers younger than 30 and those 30 and older, and hands-free and hand-held phones. The findings were consistent with 1997 research that showed phone use among Canadian drivers was associated with a fourfold increase in the risk of a property damage crash. This study also used cellphone billing records.[4]

5 | Are hands-free cellphones safer?

No, at least not after the conversation begins. Both studies of crashes using cellphone billing records to verify phone use found about a fourfold increase in crash risk with conversing on both hands-free and hand-held phones.[3,4] The studies were unable to estimate crash risk from different types of hands-free devices. They also were unable to determine whether there was any benefit associated with hands-free devices while placing the call. Experimental research using driving simulators indicates that phone conversation tasks, whether using hand-held or hands-free devices, affect some measures of driving performance.[5,6] Hands-free phones may eliminate some of the physical distraction of handling phones, but the cognitive distraction from phone conversations remains.

6 | How does cellphone use affect driving performance?

An Institute review of more than 120 cellphone studies, about half of which were experimental studies using driving simulators or instrumented vehicles, found that nearly all reported that some measures of driver performance were affected by the cognitive distractions associated with cellphone tasks.[5] Phone conversation tasks typically decreased

limiting nighttime driving and the number of passengers a novice driver can carry. Cellphone bans are being added to those restrictions.

See Q&A: Teenagers — graduated driver licensing

More about the licensing law in your state, or any state

10 | Do teenagers comply with cellphone bans?

Young drivers often ignore cellphone restrictions, according to a 2008 Institute study of North Carolina's cellphone ban for young beginning drivers. The state bans the use of any telecommunications device by drivers younger than 18 under its graduated licensing system. Observed cellphone use by teenagers leaving high schools in the afternoon changed little from 1-2 months before and 5 months after the restriction took effect on Dec. 1, 2006. About 11 percent of teenage drivers were seen using phones before the law. That percentage rose slightly to 12 percent in the postlaw survey. Cellphone use remained steady at about 13 percent at comparison sites in South Carolina, which doesn't restrict teenage drivers' phone use. When observed postlaw, less than 1 percent of teenage drivers in North Carolina were using hands-free phones. About 2 percent were observed dialing or texting and about 9 percent were holding a phone to their ear.

The study coupled driver observations with telephone surveys of North Carolina parents and their teenagers. In postlaw surveys, about two-thirds of teenagers said they knew about their state's law, compared with 39 percent of parents. Three-quarters of teenagers and 95 percent of parents said they approved of the law. The proportion of teenagers who reported using phones while driving declined somewhat following the law. However, of those who owned a phone and admitted to ever talking on the phone while driving, about half admitted they used their phones, if they had driven, on the day prior to the interview. There was no evidence of focused enforcement or publicity of the law. Only 22 percent of teenagers and 13 percent of parents believed the ban was being enforced fairly often or a lot.[17]

11 | Is cellphone use more distracting to drivers than other tasks?

Evidence is mixed. For example, some experimental studies found that phone conversations are more disruptive than conversations with passengers or adjusting a radio.[6] However, two statistical analyses combining the results of multiple experimental studies found similar decrements in reaction time for conversation tasks with passengers and with hand-held or hands-free phones.[5,7] Two studies suggest that talking on cellphones or having a 0.08 percent blood alcohol concentration (BAC) — the legal threshold for impairment — has a comparable effect on some simulated driving tasks.[18,19] However, the risks associated with alcohol impairment accumulate over the entire duration of a trip, whereas the risks of cellphone use generally apply for only a portion of a trip. In addition, crash risk increases substantially at very high BACs, and the implications of the experimental studies for drivers in their own vehicles is unknown.

12 | Is texting while driving a problem?

Over 600 billion text messages were sent in 2008. This is up nearly 4 times from the number sent in 2006, according to the Cellular Telecommunications and Internet Association.[1] Among drivers 30 and younger who own cell phones, nearly 40 percent said they send or read text messages while driving, based on the findings from a survey by Nationwide Insurance. There hasn't been a lot of research on texting and driving, but two studies of young drivers using driving simulators all found that receiving, and especially sending, text messages, led to decrements in driving behavior, particularly reaction time and lane keeping ability.[20,21]

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Teen Drivers

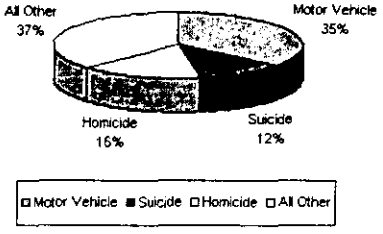
A Comprehensive Approach to Teen Driver Safety

NHTSA has developed a three-tiered strategy to prevent motor-vehicle-related deaths and injuries for teens: increasing seat belt use, implementing graduated driver licensing, and reducing teens' access to alcohol.

Leading Cause of Death for Teens

The heart of the National Highway Traffic Safety Administration's (NHTSA's) mission is keeping families safe on America's roadways. Young drivers, ages 15- to 20-years old, are especially vulnerable to death and injury on our roadways – traffic crashes are the leading cause of death for teenagers in America. Mile for mile, teenagers are involved in three times as many fatal crashes as all other drivers.

Leading Causes of Death for Teens



We Know the Causes

Research shows which behaviors contribute to teen-related crashes. Inexperience and immaturity combined with speed, drinking and driving, not wearing seat belts, distracted driving (cell phone use, loud music, other teen passengers, etc.), drowsy driving, nighttime driving, and other drug use aggravate this problem.

The Objective of this Site

We've designed this site to provide you with the fundamental resources and information you'll need to help promote what research clearly shows reduces teen crashes –

- Increasing seat belt use,
- Implementing graduated driver licensing, and
- Reducing teens' access to alcohol.

We've designed the template materials so they are quick and easy to customize to promote your teen program. You'll find talking points, earned media tools, collateral materials and various other marketing materials designed to be tailored to maximize your local outreach efforts to various key audiences.

Seat Belt Use
Earned Media Materials
Creative Materials
TV/Radio Spots

Graduated Driver Licensing
GDL System
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Va. House To Teens: 'Hang Up And Drive'

Lawmakers Pass Ban on Cellphones

By Tim Craig and Amy Gardner
Washington Post Staff Writers
Thursday, February 22, 2007; A01

RICHMOND, Feb. 21 -- The Virginia House of Delegates approved a bill Wednesday that would prohibit teenagers from using their cellphones while driving, which safety advocates say would reduce accidents.

The Senate has approved a nearly identical measure, meaning that the cellphone ban proposal is likely headed to Gov. Timothy M. Kaine (D), who is expected to sign it, aides said. If Kaine does approve the ban, Virginia will join the District, Maryland and 11 other states that bar teens from using a phone while driving.

Under the bill, drivers ages 15, 16 and 17 would not be able to talk, send text messages or snap photos with a phone while on Virginia roads. The ban would also apply to hands-free devices but would allow teens to use a phone during an emergency.

The legislation originated with lawmakers in Northern Virginia.

"We are saying, 'Hang up and drive,' " said Del. Timothy D. Hugo (R-Fairfax).

Like Virginia's seat-belt law, the teenage cellphone ban would be considered a secondary offense, so an officer could cite a teenage driver only if he or she were pulled over for another moving violation.

Even so, safety advocates said that the 86 to 10 vote in the House was a milestone in Virginia, where legislators have historically been slow to embrace new traffic safety laws.

The proposal, sponsored by Sen. James K. "Jay" O'Brien Jr. (R-Fairfax), gained momentum after a spate of fatal accidents involving teenagers on Washington area highways.

Though the accidents were not necessarily caused by teens talking on cellphones, they spurred a regionwide debate about teen driving safety. Maryland passed a series of teen driving bills two years ago. The District requires all drivers to use hands-free devices to talk on the phone. O'Brien resisted efforts in Virginia to make exceptions for teenagers using hands-free devices.

"It doesn't matter if the phone is in their hands or hands-free," O'Brien said. "The distraction for the teen is the same. They're taking their concentration off the road and giving it to a conversation during a period when they have zero driving experience."

Some teenagers were split on their opinion of the ban. Pape Diop, 17, a senior at Annandale High

School in Fairfax County who often chats on the phone while he's behind the wheel, said he thinks the ban would make him and his friends safer drivers.

"I think it's pretty reasonable, because we do have a tendency to talk on our phones a lot, and a lot of accidents happen," Diop said. "Even if I'm in the car with an adult, I see it distracts them."

But Andrew Supanich, 16, a sophomore at Stonewall Jackson High School in Prince William County, said he thinks that the ban is a bad idea but that if it does go forward, it should include adults. "It's not fair for them to take it away from teenagers when adults could be on the cellphone and could get in a car accident just as well," he said.

Supanich said he would use the phone for legitimate purposes. "If I was ever on my cellphone while driving, it wouldn't be just, 'I'm bored, and I want to talk to someone.' It would be if I was going to someone else's house and needed directions, or if my mom calls me to go to the grocery store," he said.

Several lawmakers said they were influenced by images of young drivers paying more attention to phone calls and text messages than the road. "It's a simple premise: Young people who do not have experience endanger not only themselves but other drivers," said Del. Adam P. Ebbin (D-Alexandria).

A few conservative lawmakers said they opposed the bill because parents -- not the state -- should be making rules for their children. Del. Terry G. Kilgore (R-Scott) said that there might be many items in a car that could distract a driver, such as a radio or purse. "I am the parent of a young driver, and the thing about this bill that concerns me is I can't call my daughter," he said. "There are a lot of times my wife and I would like to know where she is at."

Ebbin responded, "If parents have trouble reaching their kids, they should leave a message."

According to AAA Mid-Atlantic, which lobbied for the bill, the bans can greatly reduce the odds of a teenager being in an accident. A University of Utah study found that "young drivers who use cellphones at the wheel drive like the elderly -- with slower reaction times and an increased risk of accidents," according to AAA.

Kaine prohibits his 17-year-old son, Nat, from using a cellphone while driving. "It is the rule in the Kaine household," said Kevin Hall, spokesman for the governor. "Regardless of what he decides to do with this bill, the governor thinks this is a conversation that every parent should have with their teen driver."

Staff writers Maria Glod and Ian Shapira contributed to this report.

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Army Regulation 190–5
OPNAV 11200.5D
AFI 31-218(I)
MCO 5110.1D
DLAR 5720.1

Military Police

Motor Vehicle Traffic Supervision

Headquarters
Departments of the Army,
the Navy,
the Air Force,
Marine Corps,
Defense Logistics Agency
Washington, DC
22 May 2006

UNCLASSIFIED

(2) Complete studies of traffic operations of entire installations. (This can include long–range planning for future development of installation roads, public highways, and related facilities.)

(3) Assistance in complying with established traffic engineering standards.

e. Installation commanders should submit requests for traffic engineering services in accordance with applicable Service or agency directives.

4–2. Installation traffic codes

a. Installation or activity commanders will establish a traffic code for operation of motor vehicles on the installation. Commanders in overseas areas will establish a traffic code, under provisions of this regulation, to the extent military authority is empowered to regulate traffic on the installation under the applicable SOFA. Traffic codes will contain the rules of the road (parking violations, towing instructions, safety equipment, and other key provisions). These codes will, where possible, conform to the code of the State or host nation in which the installation is located. In addition, the development and publication of installation traffic codes will be based on the following:

(1) Highway Safety Program Standards (23 USC 402).

(2) Applicable portions of the Uniform Vehicle Code and Model Traffic Ordinance published by the National Committee on Uniform Traffic Laws and Ordinances.

b. The installation traffic code will contain policy and procedures for the towing, searching, impounding, and inventorying of POVs. These provisions should be well publicized and contain the following:

(1) Specific violations and conditions under which the POV will be impounded and towed.

(2) Procedures to immediately notify the vehicle owner.

(3) Procedures for towing and storing impounded vehicles.

(4) Actions to dispose of the vehicle after lawful impoundment.

(5) Violators are responsible for all costs of towing, storage, and impounding of vehicles for other than evidentiary reasons.

c. Installation traffic codes will also contain the provisions discussed below. (Army users, see AR 385–55.)

(1) *Motorcycles and mopeds.* For motorcycles and other self–propelled, open, 2–wheel, 3–wheel, and 4–wheel vehicles powered by a motorcycle–type engine, the following traffic rules apply:

(a) Headlights will be on at all times when in operation.

(b) A rear view mirror will be attached to each side of the handlebars.

(c) Approved protective helmets, eye protection, hard–soled shoes, long trousers, and brightly colored or reflective outer upper garment will be worn by operators and passengers when in operation.

(2) *Restraint systems.*

(a) Restraint systems (seat belts) will be worn by all operators and passengers of U.S. Government vehicles on or off the installation.

(b) Restraint systems will be worn by all civilian personnel (family members, guests, and visitors) driving or riding in a POV on the installation.

(c) Restraint systems will be worn by all military Service members and Reserve Component members on active Federal Service driving or riding in a POV whether on or off the installation.

(d) Infant/child restraint devices (car seats) will be required in POVs for children 4 years old or under and not exceeding 45 pounds in weight.

(e) Restraint systems are required only in vehicles manufactured after model year 1966.

(3) *Driver distractions.* Vehicle operators on a DOD installation and operators of Government owned vehicles will not use cell phones unless the vehicle is safely parked or unless they are using a hands–free device. The wearing of any other portable headphones, earphones, or other listening devices (except for hands–free cellular phones) while operating a motor vehicle is prohibited. Use of those devices impairs driving and masks or prevents recognition of emergency signals, alarms, announcements, the approach of vehicles, and human speech. The DOD component safety guidance should note the potential for driver distractions such as eating and drinking, operating radios, CD players, global positioning equipment, and so on. Whenever possible this should only be done when the vehicle is safely parked.

d. Only administrative actions (reprimand, assessment of points, loss of on–post driving privileges, or other actions) will be initiated against Service members for off–post violations of the installation traffic code.

e. In States where traffic law violations are State criminal offenses, such laws are made applicable under the provisions of 18 USC 13 to military installations having concurrent or exclusive Federal jurisdiction.

f. In those States where violations of traffic law are not considered criminal offenses and cannot be assimilated under 18 USC, DODD 5525.4, enclosure 1 expressly adopts the vehicular and pedestrian traffic laws of such States and makes these laws applicable to military installations having concurrent or exclusive Federal jurisdiction. It also delegates authority to installation commanders to establish additional vehicular and pedestrian traffic rules and regulations for their installations. Persons found guilty of violating the vehicular and pedestrian traffic laws made applicable on the installation under provisions of that directive are subject to a fine as determined by the local magistrate or imprisonment for not more than 30 days, or both, for each violation. In those States where traffic laws

1062

Municipality of Anchorage

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Matt Claman,
Acting Mayor

Office of the Mayor

February 5, 2008

Representative Berta Gardner
Alaska House of Representatives
State Capitol Building, RM 422
Juneau, AK 99801-1182

Dear Representative Gardner:

I write to you in support of House Bill 15 (HB 15), an act relating to prohibiting the use of cellular telephones by minors when driving a motor vehicle.

As the statistics from the National Highway Transportation Safety Administration indicate, cell phones pose a significant distraction to drivers and distractions cause accidents. From my limited reading on the subject, it appears that cell phone usage by teen drivers is higher than the adult average.

As other states move toward protecting the public from distracted drivers, Alaskans should not be left behind. We, and our children, deserve those same protections. In particular, if we can assist young drivers form healthy driving habits through this measure, we will have started them on a course for a lifetime of safer driving.

Because this does not create a primary offense, I anticipate that it would not dramatically affect law enforcement budgets. In the meantime, it will be helpful in instructing young, impressionable drivers that the driver's seat is not the appropriate place for cell phone calls.

Thanks for your leadership on this important public safety issue.

Sincerely,

Matt Claman
Acting Mayor

cc: Rob Heun, Anchorage Police Department

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TELEPHONE: (907) 796-4999
FACSIMILE: (907) 796-4998
E-MAIL: l-w@gci.net

VIA HAND DELIVERY

February 5, 2009

The Honorable Berta Gardner
Alaska House of Representatives
State Capitol, Room 424
Juneau, Alaska 99801-1182

Re: State Farm Support for HB 15 - Ban on Cell Phone Use by Minors While Driving

Dear Representative Gardner:

State Farm strongly supports a ban on cell phone use by minors while driving. There is no doubt this bill will in fact immediately begin to save lives and prevent injuries. Drivers between the ages 16 - 19 are four times more likely to be involved in a crash as other drivers. One in five of all auto deaths is attributed to teen driving. The leading causes of teen accidents include inexperience and distraction. A recent Research Report by the Children's Hospital of Philadelphia and State Farm determined that 9 out of 10 teenagers reported teen use of cell phones while driving was common, and 7 out of 10 said they have observed teens driving while being emotionally upset using a cell phone. That same survey indicated legal prohibitions and restrictions were the top motivations teens said would keep them from using a cell phone while driving.

As the insurance industry representative on the Alaska Highway Safety Improvement Program, State Farm thanks you for sponsoring this bill. Through an alliance with Children's Hospital of Philadelphia, State Farm has access to a wealth of information and resources should you or other members of the Legislature desire. If we can provide you any information or assistance, please let me know.

Sincerely,

Sheldon E. Winters
Lobbyist for State Farm Insurance Companies

SEW/eaf
Gardner 2-5-09 letter of support.wpd

Noah Hanson

From: Kristin McCune [kemccune@gmail.com]
Sent: Wednesday, January 14, 2009 11:08 AM
To: Rep. Berta Gardner
Subject: House Bill 15

Dear Rep. Gardner,
I heartily support your bill to limit cell phone use, however, I wish it would extend to all ages.

On a sunny afternoon in late May 2008 I was riding my bicycle in a quiet old Turnagain neighborhood on broad streets with no traffic or parked cars when an 18 year old drove up fom behind me and turned into my immediate path. The vehicle became a wall a few inches in front of me. One of my first thoughts, as I lay on the ground before the ambulance came is that I was somehow invisible to this young woman even though there were no visual obstacles to her seeing me. Cell phone use was denied but is strongly suspected and records wlll be supheaoned in the legal proceedings.
Thank you for introducing this bill. I believe the age should be extended upward. At any rate, this is a very good start. I would hope that data is available in Alaska on cell phone related motor vehicle accidents to support passage of this type of legislation.

Sincerely,
Kristin McCune
Retired Public Health Nurse

Noah Hanson

From: Jim Campbell [jimc_79@msn.com]
Sent: Wednesday, January 14, 2009 6:33 AM
To: Rep. Berta Gardner
Subject: Bravo!!

I applaud your bill to ban cell phone use while driving. I am 48 years old, I drive, and I have a cell phone. The ban should apply to me also. Please work your magic to make driving and cell phone use (and texting, and tittering [what the heck is that?!]) illegal for everyone. I can't believe we have allowed it to continue as long we have; we all know that a person's driving is impaired while driving and talking on the cell phone. Thank you for putting this forth.

Sincerely,

Jim Campbell

Windows Live™: Keep your life in sync. Check it out.

Noah Hanson

From: Donna Powell [donna@alaskacoachtours.com]
Sent: Tuesday, February 17, 2009 9:06 AM
To: Rep. Berta Gardner
Subject: Cell Phone Bill Support

Good morning Representative Gardner,

I read in the paper today the bill you'll be putting forward about banning teenagers from using cell phones while driving. I fully support cell phone bans for everyone! Too many times I've witness people making careless decisions while driving only to discover – duh, they're on the cell phone. I would happily give up my cell phone while in my car – it is one of the last places for peace and quiet anyway.

Best regards,
Donna Powell
Juneau

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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February 17, 2009

Representative Berta Gardner
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Gardner:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 15, an act prohibiting the use of cellular telephones by minors when driving a motor vehicle; and providing for an effective date.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and unanimously decided to offer conditional support of this bill. We'd ask that it be amended to include all drivers and not be restricted to just minors. There is now empirical data showing that cell phone conversations (whether handheld or not) put the driver and other motorists at significant risk. A number of other states have now passed legislation outlawing the practice for all drivers, regardless of age.

We thank you for addressing this issue and urge you to consider expanding the bill to include all drivers. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

Noah Hanson

From: Ted R [htr@ak.net]
Sent: Friday, February 20, 2009 1:20 PM
To: Rep. Berta Gardner
Subject: Cell phone bill

Hi Berta:
I am especially interested in your bill to curb cell phone use while driving because, on February 21, 2006 I was hit by a car while crossing the street as a pedestrian. I had the green "walk" light, and the driver had a red light. She was talking on her cell phone and said that she looked left for oncoming traffic but didn't look right. I don't cross in front of a car at a crosswalk unless I know the driver has seen be -- and she looked right at me -- but said she didn't see me. She got a citation and I got a brain concussion!
Frankly, banning the use of cell phones while driving would suit me just fine. Your bill to prohibit drivers 18 or under from using cell phones is certainly a good first step.
Thank you!
Ted Ryberg

Anchorage
Police
Department
Employees
Association

Phone (907) 561-7500
P.O. Box 230330
Anchorage, Alaska 99523
500 West International Airport Road
Anchorage, Alaska
www.apdea.org

February 20, 2009

Members of the Alaska State Legislature:

The Anchorage Police Department Employees Association represents over 450 rank-and-file employees of the Anchorage Police Department. As President of the APDEA, I am writing in support of HB 15, which would ban the use of cell phones by minors operating a motor vehicle.

APDEA members see first hand the fatalities, injury, and property damage resulting from vehicular cell phone use by minors. Minors not only have the highest crash rates of any drivers, they are also involved in a highly disproportionate number of fatal accidents. When you add to the mix that minors are the most frequent cell phone users, a dangerous combination is created.

There is now a huge body of research on cell phones and driving. Studies both in this country and from places such as Canada and Australia consistently show that talking on cell phones quadruples a driver's chances of being involved in an accident. A recent study in Utah demonstrated that individuals talking on cell phones performed about as well at driving as individuals with a blood alcohol level of .08 percent. Major corporations such as Exxon/Mobil, DuPont, and Shell have become so concerned about safety and liability that they banned on-road use of cell phones by their employees during work hours. The Harvard Center for Risk Analysis estimates that 2,600 deaths and 12,000 serious injuries occur each year in highway crashes caused by cell phone use.

Inexperienced drivers using cell phones only heightens the risk. APDEA members would love to never again respond to a serious accident involving a teenage driver talking on a cell phone. HB 15 would help achieve that goal.

Sincerely,

Derek Hsieh
President
APDEA

Jane Pierson

From: Michele Czajkowski [mcz@mtaonline.net]

Sent: Friday, February 20, 2009 8:54 PM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Max Gruenberg; Rep. Lindsey Holmes

Cc: Sen. Gene Therriault; Rep. Mike Chenault; Rep. Mark Neuman; Rep. John Harris; Rep. Cathy Munoz; Rep. Berta Gardner; Rep. Les Gara; Rep. Chris Tuck; Rep. Craig Johnson; Rep. Bob Herron

Subject: HB 15: Ban Cell Phone Use by Minors When Driving

Dear Mr. Chairman, Madam Vice Chairman, and Members of the House Judiciary Committee:

I am contacting you to express my **strong** opposition to HB 15, "*An Act relating to prohibiting the use of cellular telephones by minors when driving a motor vehicle; and providing for an effective date.*" HB 15 unfairly targets a very small percentage of the cell phone-using drivers in Alaska. Even if HB 15 were amended to include cell phone-using drivers of all ages, it would do nothing to address the real problem: inattentive driving.

I believe that the following position statement (please see below) from the National Motorists Association (http://www.motorists.org/distracted/) states my opinion very eloquently. I hope you will take a moment to read this before taking any action on HB 15.

Thank you for your time and consideration.

Sincerely,
Michele Czajkowski
894 N Angus Loop
Palmer, AK 99645
home phone: (907) 745-2399
cell phone: (907) 715-2291
(mailing address: PO Box 2517, Palmer, AK 99645)

cc: Sponsors of HB 15

NMA Position On Distracted Driving

Every state, to our knowledge has some form of law that addresses inattentive driving. The cause of the inattentiveness is largely irrelevant.

It doesn't matter that the driver is distracted by a conversation with another vehicle passenger, tuning the radio, eating a snack, or talking on a cell phone. If the level of distraction reaches a point that the driver is no longer safely and responsibly driving his or her car they are guilty of inattentive driving, and other violations that may result from their inattentiveness. Inattentive driving, in all its forms, can best be addressed through educational forums and to a limited degree, enforcement activities.

Ultimately, it has to be recognized that most people do not want to be involved in a traffic accident. If they are sufficiently and frequently forewarned that "inattentiveness" is the leading

cause of all traffic accidents, the message may well take hold. Reinvesting public resources, that are now invested in "speed kills" campaigns and related enforcement excesses, into educational and public relations efforts focused on inattentive driving would be a far more productive use of these funds.

Pre-emptive laws that make otherwise innocent harmless acts illegal are pervasive and endemic in the United States. The girth and range of pre-emptive state and federal statutes are so extensive that it is literally impossible for the average citizen to function from day to day without violating multiple laws and regulations. This is particularly true for those persons driving motor vehicles on public roads.

Most of these pre-emptive laws are put in place for one of two reasons. The first is the belief that by making the innocent and harmless act illegal it will eliminate the possibility that this act will lead to another, actually harmful act. For example, the carrying of a concealed firearm actually harms no one. However, most states and local jurisdictions prohibit the carrying of concealed firearms under the theory that preventing the possession eliminates the possibility that the firearm would be used to cause harm.

The second reason, and the underlying reason for making the harmless use of cell phones illegal by vehicle operators, is ease of enforcement. A blanket prohibition of cell phone use by vehicle drivers is far easier to enforce than are inattentive driving laws. This eliminates the need for exercising thoughtful discretion and reasoned judgment. The issue appears black and white. That the cell phone user was causing no harm and endangering no one does not have to enter the decision making process. The NMA opposes this type of politically expedient enforcement practice. Innocent, harmless behavior, in and of itself, should not be illegal.

Letter Of Support for HOUSE BILL NO. 15

As a parent and Drivers Education Instructor I support the House Bill Number 15 banning and prohibiting the use of cellular telephones by persons less than 18 years of age when driving a motor vehicle.

Parents should support laws against their teenage children using cell phones while driving, but they will have to do more than expect police to enforce such laws, they have to do some "enforcement" themselves.

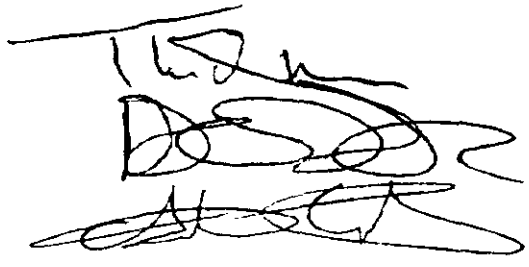
Young people may claim to be more adept at using electronic devices than their elders — and they probably are.

But they are also less experienced at driving, thereby increasing the danger of distractions, whether those distractions are talking on a cell phone, sending text messages, eating or selecting music while driving. In other words, parents can influence their teen's behavior — perhaps more than they realize. Therefore, it is important for parents to talk about phone use while driving, and also impose their own restrictions. Enforce that driving is a privilege not a right.

Motor Vehicle accidents are the fifth leading cause to all deaths in the country. Among teens however, motor vehicle accidents are the leading cause of death.

NSC (National Safety Council) says that while driving and talking on the phone puts drivers at four time's greater risk of a crash. NSC estimates that cell phone use while driving contributes to 6 percent of crashes.

Talking on a cell phone may be less distracting than other activities that people may engage in while driving, but the use of cell phones and texting is much more pervasive, making it more dangerous overall. As a parent I stand for this Bill to pass, we need to educate our teens. Even if that means putting them through a defensive driving course. Our children are the future. This change may not happen overnight but if parents and police enforce this law we will see that day when change has happened.



p.1 907-455-0010 Thomas McGhee Feb 23 09 04:37p

March 13, 2009

The Honorable Berta Gardner
Alaska State Capitol, Room 424
Juneau, Alaska 99801

Dear Representative Gardner:

We are pleased to offer the National Safety Council's support of HB15, an Act prohibiting the use of cellular telephones by minors while driving a motor vehicle, to be considered by the Alaska Legislature during its 2009 session.

The National Safety Council applauds the Alaska Legislature for considering HB15. This Act's prohibition of cellular telephone use by teens while driving in Alaska would be a major step toward improving the safety of its citizens. As "novice" drivers, teens lack driving experience and tend to ignore risks; consequently, they are proportionately involved in twice as many fatal crashes as drivers 35-74 years of age. This is why the NSC and many other transportation safety leaders advocate that Graduated Driver Licensing (GDL) laws include a ban on teen driver cell phone and text messaging use while driving. At present sixteen states have a similar provision in their teen driver licensing law.

It is estimated that 80% of preventable motor vehicle crashes are caused in part by some form of driver inattention. Scientific research has determined that talking on a cell phone increases a driver's risk of a crash by four times. One study has reported that text messaging while driving increased the odds of a crash by six times. We invite the Alaska legislature to consider further action restricting the use of cell phones for all drivers and offer you the following links to scientifically reliable information for your reference should you wish to consider such action.
http://www.nsc.org/resources/issues/factsheet.aspx
http://www.nsc.org/resources/issues/distracteddriving.aspx

The National Safety Council is a non-profit organization that saves lives at work, at home, in communities and on the roads through leadership, research, education and advocacy. During the last forty years, the NSC has trained over sixty million drivers in defensive driving techniques. Please contact John Ulczycki, NSC's Group Vice President for Research, Communications, and Advocacy (john.ulczycki@nsc.org or 630-775-2160) if we may offer further assistance.

Sincerely,

Janet Froetscher

Janet Froetscher
President & CEO

1025 Connecticut Avenue, N.W., Suite 1200 • Washington D.C. 20036-5405 •202-293-2270 • 202-293-0032 fax
Headquarters 1121 Spring Lake Drive• Itasca, IL 60143 • 630.285.1121 • 630.2851315 fax •www.nsc.org

Elizabeth Moceri
Regional Counsel
Northwest Region

March 16, 2009

Berta Gardner
House of Representatives
State Capitol, Room
Juneau, AK 99801-1182

Dear Rep. Gardner:

Thank you for your support of HB 15. Allstate applauds your efforts to keep our teens and all of us safe by removing distractions from the road.

Mounting research indicates – and common sense supports – that that the use of cell phones while driving, especially among young drivers, is highly dangerous. A study published in the British Medical Journal found that cell phone use while driving resulted in a four-fold increase in crashes. Young drivers not only have the least experience but drivers between ages 16 and 24 also display the highest rates of cell phone use while driving, according to a study by the National Highway Traffic Safety Administration (NHTSA).

In 2005, The Allstate Foundation conducted a national survey of teen driving attitudes and behaviors. In the survey, 56 percent of teens said they make and answer cell phone calls while driving, and 13 percent write and/or read text messages. With 12.5 million teen drivers in the U.S., that's 1.62 million drivers writing and/or reading text messages while operating their vehicle.

This is truly an issue where you can make a lifesaving difference for families in Alaska. We look forward to the opportunity to work with you.

Sincerely,

Elizabeth Moceri
Regional Counsel

Allstate Insurance Company
18911 North Creek Parkway, Suite 301, Bothell, WA 98011 425-489-5399 emoce@allstate.com

(HB 15)

" BAN Cell / PHONE USE BY MINORS."

MY NAME is ALBERT JUDSON
BOX 1151 HAINES, AK. 99827

ACCORDING TO SOME REPORTS THE USE of Cell PHONES CAUSES CANCER.

AS FOR THE USE OF Cell / PHONES WHILE driving - THERE IS ALREADY A LAW AGAINST driving W/ one HAND. I DON'T KNOW IF THAT'S STILL on THE BOOKS.

IT CAN be AMended TO MEAN Cell PHONE USE BY ANYONE WHILE driving. DOES ANYONE HAVE THE % OF ACCIDENTS WHILE driving & USING Cell PHONES?
I BELIEVE THE USE of Cell PHONES WHILE driving W/ 1 hand should be amended TO mean ANYONE not just minors.
I'd just like to ask why is there a focus on Minors? for example there

Westlaw.

553 P.2d 40
553 P.2d 40
(Cite as: 553 P.2d 40)

Supreme Court of Alaska.
Elijah **COLEMAN**, Appellant,
v.
STATE of Alaska, Appellee.
No. 2331.

July 14, 1976.

Defendant was convicted in the Superior Court, Third Judicial District, Anchorage District, Peter J. Kalamarides, J., of two counts of rape and one count of robbery, and he appealed. The Supreme Court, Erwin, J., held that police officers acted reasonably in stopping defendant's automobile for investigation and thus evidence in plain view on floor of automobile was properly seized and admitted at defendant's trial; that indictment against defendant was not improper due to alleged irregularities which occurred during grand jury proceedings; and that ten-year sentence imposed by trial court was not excessive.

Affirmed.

Boochever, C. J., concurred with opinion in which Rabinowitz, J., joined.

West Headnotes

[1] Arrest 35 ⇐63.5(4)

35 Arrest
35II On Criminal Charges
35k63.5 Investigatory Stop or Stop-And-Frisk
35k63.5(3) Grounds for Stop or Investigation
35k63.5(4) k. Reasonableness; Reasonable or Founded Suspicion, Etc. Most Cited Cases
(Formerly 349k7(1), 35k3.1)

Arrest 35 ⇐63.5(6)

35 Arrest
35II On Criminal Charges
35k63.5 Investigatory Stop or Stop-And-Frisk
35k63.5(6) k. Motor Vehicles, Stopping. Most Cited Cases
(Formerly 35k63.1)

Arrest 35 ⇐63.5(7)

35 Arrest
35II On Criminal Charges
35k63.5 Investigatory Stop or Stop-And-Frisk
35k63.5(7) k. Mode of Stop; Warnings; Arrest Distinguished. Most Cited Cases
(Formerly 35k63.1)
Police officers, acting on information that strong-arm robbery was in progress or had just occurred near golf course, who, upon arriving at scene less than two minutes later, observed vehicle exiting from vicinity on little-used side road, driven by black man in a T-shirt who matched description of robbery suspect acted reasonably in stopping said vehicle to make investigation, and questioning of defendant by officers was not an arrest but was a reasonable course of action in light of circumstances and thus was lawful under the Fourth Amendment. Const. art. 1, § 14; U.S.C.A.Const. Amend. 4.

[2] Arrest 35 ⇐63.5(5)

35 Arrest
35II On Criminal Charges
35k63.5 Investigatory Stop or Stop-And-Frisk
35k63.5(3) Grounds for Stop or Investigation

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35k63.5(5) k. Particular Cases. Most Cited Cases
(Formerly 35k63.1)
Stopping and questioning of defendant who met description of robbery suspect would have been reasonable whether defendant was driving automobile or walking down street in area where crime was committed. Const. art. 1, § 14; U.S.C.A.Const. Amend. 4.

[3] Arrest 35 ⚿63.5(1)

35 Arrest
35II On Criminal Charges
35k63.5 Investigatory Stop or Stop-And-Frisk
35k63.5(1) k. In General. Most Cited Cases
(Formerly 35k63.1)
In determining reasonableness of investigative stop, courts will not distinguish between persons who travel by automobile and those who travel by foot; in fact, there might be more justification for policeman stopping automobile leaving vicinity of suspected crime, for in such a situation, if action is not immediately taken, there is not likely to be another chance. Const. art. 1, § 14; U.S.C.A.Const. Amend. 4.

[4] Arrest 35 ⚿63.4(3)

35 Arrest
35II On Criminal Charges
35k63 Officers and Assistants, Arrest Without Warrant
35k63.4 Probable or Reasonable Cause
35k63.4(3) k. Suspicion or Rumor. Most Cited Cases
(Formerly 349k7(1))
Rule permitting temporary detention of suspects for questioning in certain cases, i. e., cases where police officer has a reasonable suspicion that imminent public danger exists or serious harm to persons or property has recently occurred, does not conflict with the Fourth Amendment or the State Constitution. Const. art. 1, § 14; U.S.C.A.Const. Amend. 4.

[5] Criminal Law 110 ⚿394.4(12)

110 Criminal Law
110XVII Evidence
110XVII(I) Competency in General
110k394 Evidence Wrongfully Obtained
110k394.4 Unlawful Search or Seizure
110k394.4(12) k. Vehicles. Most Cited Cases

Searches and Seizures 349 ⚿63

349 Searches and Seizures
349I In General
349k60 Motor Vehicles
349k63 k. Plain View. Most Cited Cases
(Formerly 349k3.3(4))
Where police officers' investigatory stop of suspect driving automobile was proper under circumstances, bank bag which was in plain view on automobile's floor was legitimately seized and trial court did not err in refusing to suppress it as evidence at defendant's trial for robbery and rape. Const. art. 1, § 14; U.S.C.A.Const. Amend. 4.

[6] Criminal Law 110 ⚿1980

110 Criminal Law
110XXXI Counsel
110XXXI(D) Duties and Obligations of Prosecuting Attorneys
110XXXI(D)1 In General
110k1980 k. In General. Most Cited Cases
(Formerly 110k700(1), 110k700)

Grand Jury 193 ⚿34

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193 Grand Jury
193k34 k. Participation of Prosecuting Attorney, Attorney General, or Special Attorney. Most Cited Cases
As officer of state, it is prosecutor's duty to be an advocate; he must exert his best efforts to prosecute successfully those who have violated the criminal law; on the other hand, as an officer of the court, he is required to act as grand jury's legal advisor, to aid but not to interfere in its determination of probability of guilt. Rules of Criminal Procedure, rule 6(i).

[7] Grand Jury 193 ⚿33

193 Grand Jury
193k33 k. Conduct of Proceedings in General. Most Cited Cases
Grand jury proceedings cannot be turned into a minitrial; grand jury is an accusatorial body operating without judicial officer to pass on admissibility of evidence, and as such is charged with determination of probability of guilt.

[8] Grand Jury 193 ⚿34

193 Grand Jury
193k34 k. Participation of Prosecuting Attorney, Attorney General, or Special Attorney. Most Cited Cases
District attorney's statements to grand jury upon their request for indication of what medical examination of alleged rape victim showed after incident indicating that he did not think calling a doctor was necessary and that he thought jury had heard enough to have person tried and that " * * * we can't go calling in experts on every case." were not an improper attempt by prosecutor to influence grand jury, particularly where assistant district attorney immediately reinstructed grand jurors on standard for determining sufficiency of evidence after exchange. Rules of Criminal Procedure, rules 6(i, r).

[9] Grand Jury 193 ⚿34

193 Grand Jury
193k34 k. Participation of Prosecuting Attorney, Attorney General, or Special Attorney. Most Cited Cases
Where not all of grand jurors expressed need to hear additional testimony from examining physician as to victim's condition subsequent to alleged rape, district attorney's failure to subpoena examining physician upon jury foreman's request for information as to results of such examination was not error, particularly in light of fact that district attorney specifically instructed grand jury that they had right to call any witnesses they wanted.

[10] Criminal Law 110 ⚿2132(1)

110 Criminal Law
110XXXI Counsel
110XXXI(F) Arguments and Statements by Counsel
110k2129 Comments on Accused's Silence or Failure to Testify
110k2132 Comments on Failure of Accused to Testify
110k2132(1) k. In General. Most Cited Cases
(Formerly 110k721(1))

Witnesses 410 ⚿297(1)

410 Witnesses
410III Examination
410III(D) Privilege of Witness
410k297 Self-Incrimination
410k297(1) k. In General. Most Cited Cases
Right not to be compelled in any criminal case to be witness against oneself is secured by the Fifth Amendment, and implicit in this right is notion that when an ac-

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cused person chooses to exercise his right to silence, such silence may not be commented upon. Const. art. 1, § 9; U.S.C.A.Const. Amend. 5; Rules of Criminal Procedure, rule 26(b)(6).

[11] Grand Jury 193 ⚿36.8

193 Grand Jury
193k36 Witnesses and Evidence
193k36.8 k. Scope of Proof; Admissibility. Most Cited Cases
(Formerly 193k36)
Under compelling circumstances, use of hearsay evidence may be permitted at grand jury proceeding even though such evidence would not be admissible at trial. Rules of Criminal Procedure, rule 6(q, r).

[12] Grand Jury 193 ⚿34

193 Grand Jury
193k34 k. Participation of Prosecuting Attorney, Attorney General, or Special Attorney. Most Cited Cases
District attorney did not commit error by inquiring of police officer at grand jury proceeding whether accused had made any statement after arrest even though accused had exercised his Fifth Amendment right to remain silent after arrest. U.S.C.A.Const. Amend. 5; Rules of Criminal Procedure, rule 6(r).

[13] Sentencing and Punishment 350H ⚿201

350H Sentencing and Punishment
350HII Sentencing Proceedings in General
350HII(A) In General
350Hk201 k. Duties of Court or Judge in General. Most Cited Cases
(Formerly 110k977(1))
Primary responsibility for sentencing rests in trial court.

[14] Rape 321 ⚿64

321 Rape
321III Sentence and Punishment
321k64 k. Nature and Extent of Punishment. Most Cited Cases

Robbery 342 ⚿30

342 Robbery
342k30 k. Sentence and Punishment. Most Cited Cases
Imposition of ten-year sentence on defendant convicted of two counts of rape and one count of robbery was not excessive.
***42** Brian Shortell, Public Defender, and Phillip P. Weidner, Asst. Public Defender, Anchorage, for appellant.

Avrum M. Gross, Atty. Gen., Juneau, and Joseph D. Balfe, Dist. Atty. and Stephen G. Dunning and Ivan Lawner, Asst. Dist. Attys., Anchorage, for appellee.

OPINION

Before BOOCHEVER, C. J., and RABINOWITZ, CONNOR, ERWIN and BURKE, JJ.
ERWIN, Justice.

Elijah Coleman appeals from a conviction on two counts of rape and one count or robbery. Three issues are presented in this appeal: first, whether the trial court erred in failing to suppress evidence which was utilized in securing Coleman's conviction; second, whether the indictment against Coleman should have been dismissed because of alleged irregularities which occurred during the grand jury proceedings; and third, whether the sentence imposed by the trial court was excessive.

In August, 1973, Mrs. S. was employed as

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a sales clerk in the Salvation Army Store at Sixth and H Streets in Anchorage, Alaska. Because the family car was being repaired, she normally took a bus to her job and, since she usually got off work after the buses had ceased running for the evening, walked to her home near the Russian Jack Springs area.

On the evening of August 15, Mrs. S. left the downtown area at about 7:45 p.m., carrying with her among other items a blue First National Bank money bag with approximately $18.00 of the Salvation Army's money for safekeeping. As she walked along a wooded ski trail through the Russian Jack Springs area, she was attacked from behind by a man, forced off the trial, pushed to the ground, and raped. Subsequently, the assailant asked Mrs. S. whether she had any money, and she surrendered the blue bank bag. Upon being released, she ran home and immediately reported the incident to the Anchorage Police Department by telephone.

The police dispatcher received her call at 9:30 p.m. and immediately relayed it by radio to Officers Walker and Swensen who were riding together on patrol about three-quarters of a mile from the Russian Jack Springs area. The message reached the officers as a 'Code 4' dispatch (indicating a crime in progress or one that has just occurred) to investigate a 'strongarm' robbery, i.e., a robbery accomplished by force but without weapons, which had just taken place near the Russian Jack Springs Golf Course. The dispatch also contained the following information: that the suspect was a short[FN1] black man wearing a white T-shirt and levis, carrying a blue bank bag containing stolen cash, who had left the scene of the crime in a northbound direction. The dispatch did not contain any information concerning the suspect's mode of transportation.

> FN1. Another account was that the dispatch described the suspect as either 5 6 or 5 7 tall, and Coleman states that his height is actually 5 11 .

Although the officers were dispatched to the victim's house, since it was such a short time after the call Officer Walker decided to swing through the Russian Jack Springs area to see if he could intercept the suspect. The officers proceeded to the turnoff to the Russian Jack Springs Golf Course, north of the scene of the crime, and arrived within 1 to 1 1/2 minutes after the police call. There they observed a yellow Fairlane automobile leaving an infrequently used area[FN2] east of the driveway, ***43** headed west. As the two vehicles approached each other from opposite directions, the officers saw that the driver of the automobile, who was operating the car in a legal manner, was black, was wearing a white T-shirt, and 'looked short.' One of the officers noted that the driver's facial expression showed a marked reaction to the officers' observations. The officers then made a U-turn and halted the automobile in the manner of a routine traffic stop. The officers radioed that they had stopped the suspect; it was 9:32 p.m. The officers approached the car and the driver was asked for his driver's license. The suspect exited from his car, whereupon Officer Walker observed a blue bank bag on the front floor of the passenger seat. At that point the suspect, identified as Elijah Coleman, was arrested and the bag was seized as evidence.

> FN2. This area was not a parking lot, but rather a wide spot in the road that was sometimes, but not normally, used as a parking area.

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The grand jury indicted Coleman for rape, sodomy and robbery. Prior to trial he brought motions to dismiss the indictment and to suppress the evidence of the stolen property. Both were denied. Coleman was tried by a superior court jury in April, 1974, and was convicted on the rape and robbery counts but acquitted of the charge of sodomy. Thereafter, he entered a plea of guilty to another charge of rape involving a different victim. The trial court sentenced him, in essence, to ten years imprisonment; and he now appeals from his conviction and sentence.

I. THE INVESTIGATIVE STOP

It is not disputed that probable cause to arrest Coleman existed once the police knew of the existence of the blue bank bag in the front seat of his vehicle. Coleman contends, however, that the police used constitutionally impermissible procedures in discovering the bank bag; specifically, he asserts that the officers had no right to stop his automobile in the first place. The State, on the other hand, argues that the officers' actions in halting Coleman's car were justified under the 'investigative stop' doctrine and thus the bag, which was in plain view when Coleman exited the vehicle, was properly seized.

In two previous cases involving investigative detention not at first amounting to an arrest, this court recognized the principle that a police officer with a reasonable suspicion that imminent public danger exists or serious harm that has recently occurred was caused by a particular person may stop that person. In Goss v. State,[FN3] a state police officer on patrol shortly after midnight just outside of Anchorage observed a car drive away from the side of a building where a distributorship business was located and proceed for about half a block without its headlights on. The officer followed the car, and after it had turned around and headed in the opposite direction, stopped it. The court concluded that the officer was in his lawful authority in making the stop:

> FN3. 390 P.2d 220 (Alaska 1964), cert. denied, 379 U.S. 859, 85 S.Ct. 118, 13 L.Ed.2d 62 (1964).

When the officer stopped the car he was doing nothing more than conducting an investigation in response to circumstances that aroused his suspicions. Considering the lateness of the hour, the fact that the car was seen coming from the side of the building rather than from the parking lot in front, and that it was being driven without its headlights on, we believe the police officer had the right and the duty to make a prompt investigation, which required him as a matter of practical necessity to stop the car and question the occupants.[FN4]

> FN4.Id. at 224.

In Maze v. State,[FN5] a city police officer observed the defendant standing on a window sill and holding onto the top of a metal grillwork on the window of a loan company office. The officer shined his flashlight on the defendant, who alighted and walked toward a nightclub. As the defendant neared the entrance of the club, the officer shouted and ran after him. The defendant had run into the club's outside***44** entrance when the officer grabbed him. The officer asked him what he was doing on the window sill of the loan company, and the defendant said he did not know what the officer was talking about. The officer then noted that the window of the loan company office was broken and arrested the defendant. The court noted that

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cause existed for the stop and for the arrest, stating:

> FN5. 425 P.2d 235 (Alaska 1967).

In Goss v. State we held that police officers have the right to stop and question a person under suspicious circumstances, and if probable cause is then found to exist, the person may be arrested.[FN6]

> FN6. Id. at 238 (footnote omitted). The reasoning of Goss and Maze was grounded in Art. I, s 14 of the Alaska Constitution.

Subsequent to our decisions in Goss and Maze, the United States Supreme Court in Terry v. Ohio[FN7] likewise adopted the 'investigative stop' concept. In Terry a Cleveland detective with 39 years of experience watched two men alternatively leave a corner on which the other was stationed, walk up a particular street, peer into the window of either a jewelry store or an airline office, and then return to the corner to converse with the other. This procedure was repeated several times by both men. During this time a third man approached the corner, spoke briefly with the two men, and departed. The two men then left the corner and again met the third man on another street. The detective was apprehensive about their actions and suspected them of planning a robbery or burglary. The detective approached the three men, identified himself, and asked for their names. Receiving only a mumbled response, he 'frisked' the men and discovered fully-loaded weapons on two of them. Both men were convicted of the offense of carrying a concealed weapon.

> FN7. 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

In upholding Terry's conviction[FN8] the court recognized,

> FN8. Following the grant of the writ of certiorari, the other petitioner died.

. . . that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.[FN9]

> FN9. Id. 392 U.S. 1, 22, 88 S.Ct. 1868, 1880, 20 L.Ed.2d 889, 906-07 (1968).

The court, however, rejected the notion that such an investigatory stop and limited search was not subject to the requirements of the Fourth Amendment. The court stated that the central inquiry under the Fourth Amendment is to 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.'[FN10]Thus the governmental intrusion is subject to the Fourth Amendment, and:

> FN10. Id. 392 U.S. at 19, 88 S.Ct. at 1878, 20 L.Ed.2d at 904.

'Search' and 'seizure' are not talismans. We therefore reject the notions that the Fourth Amendment does not come into play at all as a limitation upon police conduct if the officers stop short of something called a 'technical arrest' or 'full-blown search.'

In this case there can be no question, then that Officer McFadden 'seized' petitioner and subjected him to a 'search' when he took hold of him and patted down the outer surfaces of his clothing.[FN11]

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FN11.Id.

The court refused to apply the requirement of 'probable cause' contained in the Fourth Amendment to such police actions. The court limited the requirement of probable cause to situations which historically have been and practically are subject to the warrant procedure.

But we deal here with an entire rubric of police conduct-necessarily swift action predicated upon the on-the-spot observations of the officer on the beat-which historically has not been, and as ***45** a practical matter could not be, subjected to the warrant procedure. Instead, the conduct involved in this case must be tested by the Fourth Amendment's general proscription against unreasonable searches and seizures.[FN12]

FN12. Id. 392 U.S. at 20, 88 S.Ct. at 1879, 20 L.Ed.2d at 905 (emphasis added; footnote omitted).

Using the general test of balancing the governmental interest justifying the official intrusion against the invasion of the constitutionally protected interests of the private citizen, the court concluded that:

. . . the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion. . . . And in making that assessment it is imperative that the facts be judged against an objective standard: would the facts available to the officer at the moment of the seizure or the search 'warrant a man of reasonable caution in the belief' that the action taken was appropriate?[FN13]

FN13. Id. 392 U.S. at 21-22, 88 S.Ct. at 1880, 20 L.Ed.2d at 906 (footnote omitted).

Four years later the United States Supreme Court in Adams v. Williams[FN14] devoted some consideration to the justification for a 'stop' as a separate issue. In Adams a police officer was alone early in the morning in a high-crime area when a known informer approached his cruiser and told him that an individual seated in a nearby vehicle was carrying narcotics and a gun at his waist. After calling for assistance on his radio, the officer approached the vehicle to investigate the informant's tip. The officer tapped on the car window and asked the occupant to open the door. When the man rolled down the window instead, the officer reached into the car and removed a fully-loaded revolver from the occupant's waistband. He was then arrested for unlawful possession of the hand gun, and a search incident to the arrest disclosed that he was carrying heroin. The court concluded 'that the policeman's actions . . . conformed to the standards . . . laid down' in Terry.[FN15]

FN14. 407 U.S. 143, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972).

FN15. Id. 407 U.S. at 145, 92 S.Ct. at 1923,32 L.Ed. at 616.

Noting that

. . . Terry recognizes that it may be the essence of good police work to adopt an intermediate response (between an arrest based on probable cause and simply allowing a crime to occur),

the intermediate response being a 'reasonable investigatory stop,' the court stated:
A brief stop of a suspicious individual, in order to determine his identity or to main-

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tain the status quo momentarily while obtaining more information, may be most reasonable in light of the facts known to the officer at the time.[FN16]

> FN16. Id. 407 U.S. at 146, 92 S.Ct. at 1923, 32 L.Ed.2d at 617 (citations omitted).

With the foregoing in mind we proceed to the facts of the case at bar.[FN17]

> FN17. The only other case in which the United States Supreme Court has applied the 'stop and frisk' criteria is United States v. Brignoni-Ponce, 422 U.S. 873, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975). In Brignoni-Ponce, the only issue presented was whether a roving patrol could stop a vehicle in an area near the border and question its occupants when the only ground for suspicion was that the occupants appeared to be of Mexican ancestry. Although the court ultimately held that the particular stop was unjustified, there was an extended discussion of the purpose and principles of the 'investigative stop' doctrine. The only post-Terry case arising in Alaska wherein the problem of investigative stops is touched upon is that of Mattern v. State, 500 P.2d 228 (Alaska 1972). In Mattern the majority opinion made the following observation at footnote 15:
>
> Our brother Erwin in his concurring opinion concludes that the police action in this case was legitimate under the stop and frisk doctrine enunciated by the Supreme Court in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). We do not feel that this case is a proper vehicle for discussion of the stop and frisk question. There is language in our opinion in Goss v. State, 390 P.2d 220 (Alaska 1964), which approves of the stop and frisk practice. However, we note that, unlike many jurisdictions which allow this practice, Alaska does not have a statute authorizing the police to forcibly stop a citizen on less than probable cause to arrest. It should also be noted that several members of the United States Supreme Court have begun to re-evaluate the Terry opinion. In a recent opinion Justice Brennan expressed the same concern of Judge Friendly that, unless it is held in check, there is a danger that 'Terry will have opened the sluicegates for serious and unintended erosion of the protection of the Fourth Amendment.' Adams v. Williams, 407 U.S. 143, 153, 92 S.Ct. 1921, 1927, 32 L.Ed.2d 612 (1972) (dissenting opinion).
>
> It is noted that the particular concern expressed by Justice Brennan and Judge Friendly, quoted in the Mattern opinion, was that the doctrine of stop and frisk enunciated in Terry should not be extended beyond situations requiring immediate police response to protect the public in serious cases where there is likelihood of imminent danger about to occur or where serious harm has recently been perpetrated to persons or property. While we agree with the view expressed by Justice Brennan and Judge Friendly, their concern is not applicable in the case at bar.

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***46** Within minutes after receiving information that a strong-arm robbery was in progress or had just occurred near the Russian Jack Springs Golf Course, the officers proceeded to the area in which the crime had been committed. Upon arriving at the scene less than two minutes later, they observed a vehicle exiting from Russian Jack Springs Park on a little-used side road, driven by a black man in a T-shirt who appeared to be short. Having been informed by the radio dispatch that the suspect had these physical characteristics, the officers stopped the car.

[1][2][3] In light of the facts known to the officers, we think that they 'had the right and the duty to make a prompt investigation which required (them) as a matter of practical necessity to stop the car and question'[FN18] Coleman. The stopping and questioning of Coleman by the officers was not an arrest but was a reasonable course of action in light of the circumstances confronting them; and being reasonable, it was lawful under the Fourth Amendment to the United States Constitution and Art. I, s 14 of the State Constitution.[FN19]

> FN18. Goss v. State, 390 P.2d 220, 224 (Alaska 1964), cert. denied, 379 U.S. 859, 85 S.Ct. 118, 13 L.Ed.2d 62 (1964).
>
> FN19. Had Coleman been walking down the same street, we think it would have been reasonable for the officers to take the opportunity to question him about his activities in the area. We are unwilling to distinguish between persons who travel by auto and those who travel by foot. In fact, there might be more justification for a policeman stopping an automobile leaving the vicinity of a suspected crime, for in such a situation, if action is not immediately taken, there is not likely to be another chance.

[4] We do not believe that our rule permitting temporary detention for questioning in certain cases, i.e., cases where the police officer has a reasonable suspicion that imminent public danger exists or serious harm to persons or property has recently occurred, conflicts with the Fourth Amendment [FN20] or the State Constitution.

> FN20. The concept of an 'investigative stop' under suspicious circumstances is not a novel one, and there were a number of cases which predated our decisions in Goss v. State, 390 P.2d 220 (Alaska 1964), and Maze v. State, 425 P.2d 235 (Alaska 1967), and the United States Supreme Court in Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). See U. S. v. Rios, 364 U.S. 253, 80 S.Ct. 1431, 4 L.Ed.2d 1688 (1960); U. S. v. Vita, 294 F.2d 524 (2nd Cir. 1961); U. S. v. Bonanno, 180 F.Supp. 71 (D.C.N.Y.1960); People v. Mickelson, 59 Cal.2d 448, 30 Cal.Rptr. 18, 380 P.2d 658 (1963); People v. Gibson, 220 Cal.App.2d 15, 33 Cal.Rptr. 775 (1963); State v. Gulczynski, 120 A. 88 (Del.1922); Cornish v. State, 215 Md. 64, 137 A.2d 170 (1957); and State v. Hatfield, 112 W.Va. 424, 164 S.E. 518 (1932). For a survey of recent decisions, see U. S. v. Collins, 532 F.2d 79, 19 Crim.L.Rep. 2008 (8th Cir. 1976); U. S. v. Hall, 525 F.2d 857 (D.C.Cir. 1976); U. S. v. Miller, 468 F.2d 1041 (4th Cir. 1972); State v. Kelly, 543 P.2d 780 (Ariz. 1975); People v. Atmore, 13 Cal.App.3d

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244, 91 Cal.Rptr. 311 (1970); and People v. Whalen, 213 N.W.2d 116 (Mich.1973).

It strikes a balance between a person's interest in immunity from police interference and the community's interest in ***47** law enforcement. It wards off pressure to equate reasonable cause to investigate with reasonable cause to arrest, thus protecting the innocent from the risk of arrest when no more than reasonable investigation is justified.[FN21]

FN21. People v. Mickelson, 59 Cal.2d 448, 30 Cal.Rptr. 18, 380 P.2d 658, 660 (1963).

[5] Having found that the investigatory stop was proper under the circumstances, we conclude that the bank bag which was in plain view was legitimately seized and the trial court did not err in refusing to suppress it as evidence.

II. Grand Jury Proceedings

Although no provision of the United States or Alaska Constitutions specifically guarantees the right of an accused to be indicted by a grand jury free of prosecutor instigated prejudice, a strong historical basis exists for holding that the grand jury should operate to control abuses by the government and protect the interests of the accused.[FN22]

FN22. Johnston, 'The Grand Jury-Prosecutorial Abuse of the Indictment Process,' 65 J.Crim.L. and Criminology, 157-69 (1974).

Article I, s 7, of the Alaska Constitution provides that '(n)o person shall be deprived of life, liberty or property without due process of law.'The Hawaii Supreme Court in State v. Joao,[FN23] and the Arizona Court of Appeals in State v. Good,[FN24] have held that a defendant was denied due process of law when indicted by a grand jury prejudiced by the prosecutor.

FN23. 53 Haw. 226, 491 P.2d 1089 (1971).

FN24. 10 Ariz.App. 556, 460 P.2d 662 (1969).

The United States Supreme Court has not ruled on the issue but has inferred that a defendant is entitled to have an indictment returned by an impartial tribunal. In Lawn v. United States,[FN25] the Supreme Court said:

FN25. 355 U.S. 339, 349, 78 S.Ct. 311, 318, 2 L.Ed.2d 321, 330 (1958).

An indictment returned by a legally constituted nonbiased grand jury . . . is enough to call for a trial of the charge on the merits. (Emphasis added)
Then, in Beck v. United States,[FN26] the Supreme Court indicated that it may be willing to extend due process protections to the indictment procedures established by the states:

FN26. 369 U.S. 541, 546, 82 S.Ct. 955, 8 L.Ed.2d 98, 105 (1962).

It may be that the Due Process Clause of the Fourteenth Amendment requires the State, having once resorted to a grand jury procedure, to furnish an unbiased grand jury. . . .

Article I, s 8 of the Alaska Constitution states that '(n)o person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury.'Alaska Rule of Crim-

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inal Procedure 6(i) sets out the duties of the District Attorney during a grand jury proceeding as follows:

The prosecuting attorney shall prepare all indictments and presentments for the grand jury and shall attend to their sittings to advise them of their duties and to examine witnesses in their presence.

The same duties are stated in AS 12.40.070.

[6] It is the prosecutor's function to prepare indictments, present evidence thereon, and advise the grand jury.[FN27] It has been noted that the modern prosecutor in performing this function plays two, sometimes inconsistent, roles.[FN28] As an officer of the State, it is the prosecutor's duty to be an advocate; he must exert his best efforts to prosecute successfully those who had violated the criminal law. On the other hand, as an officer of the court, he is required to act as the grand jury's legal advisor, to aid but not interfere in its determination of the probability of guilt.

FN27. Alaska Criminal Rule 6(i).

FN28. See Comment, Grand Jury Proceedings, The Prosecutor, The Trial Judge, and Undue Influence, 39 U.Chic.L.R. 761-765 (1972).

***48** The American Bar Association Standards characterize the prosecutor's function in the grand jury process as follows:

Relations with Grand Jury

(a) Where the prosecutor is authorized to act as legal advisor to the grand jury he may appropriately explain the law and express his opinion on the legal significance of the evidence but he should give due deference to its status as an independent legal body.

(b) The prosecutor should not make statements or arguments in an effort to influence grand jury action in a manner which would be impermissible at trial before a petit jury.

(c) The prosecutor's communications and presentations to the grand jury should be on the record.[FN29]

FN29. ABA Project on Standards Relating to the Prosecution Function and the Defense Function, s 3.5 at 87 (Approved Draft 1971). The commentary to this section notes that

where the prosecutor must prosecute an indictment returned by the grand jury, it is especially important that he be free to express his opinion. A prosecutor who had conducted an adequate investigation and analyzed the evidence is in a position to furnish guidance to the grand jury on the law and the weight of the evidence and should be free to do so whether this leads to a determination to indict or not to in- dict.

The commentary cautions that the prosecutor should not 'take advantage of his role as an ex parte representative of the State before the grand jury to unduly or unfairly influence it in voting on charges before it.'Id. at 88.

[7] It is apparent that the grand jury proceedings cannot be turned into a minitrial. The grand jury is an accusatorial body operating without a judicial officer to pass on

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the admissibility of evidence, and as such is charged with a determination of the probability of guilt.[FN30]

> FN30. See Taggard v. State, 500 P.2d 238 (Alaska 1972); Burkholder v. State, 491 P.2d 754 (Alaska 1971).

[8] In the instant case, the grand jury's deliberation was interrupted by a request from the grand jury foreman to the district attorney. The following exchange took place:

THE FOREMAN: We haven't finished deliberating yet, but our question basically is, was there an examination of the victim in relationship to the rape charge and sodomy charge?

DISTRICT ATTORNEY: Yes.

THE FOREMAN: Can we get-is there anyone here without belaboring and looking for other witnesses, is there anyone here who can tell us what the results of these examinations were?

DISTRICT ATTORNEY: I can't tell you anything. It would have to be the doctor. He can give you the. . . .

THE FOREMAN: Well, it is in the police records?

DISTRICT ATTORNEY: I can give you the records, yes. I don't know if you can read it.

THE FOREMAN: No.

DISTRICT ATTORNEY: I mean you have them for whatever they're worth.

THE FOREMAN: No, but I mean can a-I don't feel during deliberations that the particular question that's being answered would warrant waiting to hear from a doctor. Can't the police department or one of the officers here indicate to us whether by examination there was indication of rape and sodomy or not?

DISTRICT ATTORNEY: No, that would be hearsay.

UNIDENTIFIED JUROR: The doctor is the only one that could present that testimony?

DISTRICT ATTORNEY: Yes. We can give you the lab sheets, but that's not going to tell you anything. I've looked at them.

THE FOREMAN: Can you tell us whether or not there was any indication from the. . . .

***49** DISTRICT ATTORNEY: I can't tell you because that would be hearsay too and I'm not even testifying.

THE FOREMAN: Can you help us out in any manner, ways or means other than calling a doctor in. . . .

DISTRICT ATTORNEY: No.

THE FOREMAN: . . . as to the answering of our question?

DISTRICT ATTORNEY: I don't think calling a doctor is needed. I think you've heard enough to have this person tried. I don't think there's-well, I haven't talked to the doctor. I don't know anything but what I've seen from these reports. (Emphasis added)

UNIDENTIFIED JUROR: I'd like to say something, but I don't know if I should or not. I don't think we're going to have justice in voting-or not justice really-I don't think we're going to get a proper vote if we don't hear from a doctor personally.

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DISTRICT ATTORNEY: Well, now you've got to remember you're not trying these people.

UNIDENTIFIED JUROR: Well, I know it but we. . . .

DISTRICT ATTORNEY: And we can't go calling in experts on every case. You've heard a victim tell you this. If you don't-you know what the burden of proof is. If it's unexplained-or uncontradicted, if it would merit a conviction, then you come out with a true bill and you've heard her testimony and you found-you've had an officer testify he found the defendant right where she said he would be and he had the bag and I don't think it. . . .

UNIDENTIFIED JUROR: Then it's up to him to disprove it, right?

DISTRICT ATTORNEY: Well, not that necessarily. We still have to show you enough proof here to warrant the indictment. He never has to come in and prove his innocence, but you can't expect us to put on the trial that we have put on in front of the petit jury. But now. . . .

UNIDENTIFIED JUROR: If there were a trial. . . .

DISTRICT ATTORNEY: . . . you certainly have a right to call any witnesses you want.

UNIDENTIFIED JUROR: If there were a trial the doctor would testify.

DISTRICT ATTORNEY: Oh, yes. (Emphasis added)

Coleman objects to two statements by the district attorney during this exchange: 'I think you've heard enough to have this person tried' and '. . . we can't go calling in experts on every case.'Both of these allegedly improper statements by the district attorney and the whole exchange set out above show undue prosecutorial influence over the grand jury, according to Coleman.

The Alaska case dealing most directly with undue prosecutorial influence is Anthony v. State.[FN31] The court did not rule on the issue since it was not raised at trial but stated in a footnote:

FN31. 521 P.2d 486 (Alaska 1974).

We note with disapproval comments made and solicited by the district attorney before the grand jury, referring to matters which would not have been admissible at trial. The district attorney emphasized Anthony's prior criminal record, adverted to the results of polygraph examinations, expressed his suspicion that Anthony was involved in Fairbanks drug traffic, related evidentiary details of the potential narcotics case being prepared by his office, introduced speculative testimony that a witness fled to New Orleans out of fear of Anthony, and stated, utterly without evidentiary support, that '(W)e know he's been given contracts (to kill). . . .' We cannot condone such conduct, and we direct the district attorney's attention to s ***50** 3.5(b) of the American Bar Association Standards Relating to the Prosecution Function (Approved Draft 1971): 'The prosecutor should not make statements or arguments in an effort to influence grand jury action in a manner which would be impermissible at trial before a petit jury.'[FN32]

FN32. Id. at 496, note 37.

The statements made by the district attorney in the instant case are clearly not as egregious as those condemned by this court in Anthony. After viewing the entire proceeding, we are unable to find the portion

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challenged by Coleman was an improper attempt by the prosecutor to influence the grand jury, particularly where the assistant district attorney immediately reinstructed the grand jurors on the standard for determining the sufficiency of the evidence as follows:

. . . You've heard a victim tell you this. If you don't-you know what the burden of proof is. If it is unexplained-or uncontradicted, it would merit a conviction, then you come out with a true bill-[FN33]

> FN33. Alaska Rule of Criminal Procedure 6(q) states in pertinent part: 'The grand jury shall find an indictment when all the evidence taken together, if unexplained or uncontradicted, would warrant a conviction of the defendant.'

UNIDENTIFIED JUROR: Then it's up to him to disprove it, right?

DISTRICT ATTORNEY: Well, not that necessarily. We still have to show you enough proof here to warrant the indictment.

[9] We similarly find that the district attorney's failure to subpoena the examining physician was not error. Not all of the jurors felt the need to hear additional testimony from the examining physician. The jury foreman stated:

No, but I mean-I don't feel during deliberations that the particular question that's being answered would warrant waiting to hear from a doctor.

Furthermore, the district attorney specifically instructed the grand jurors that, 'You certainly have the right to call any witnesses you want.'A fair reading of the grand jury record demonstrates that, while not in the most prudent prosecutorial tradition, the actions of the prosecuting attorney cannot be said to have improperly influenced the grand jury.

[10] Coleman also contends that the district attorney commented to the grand jury on his exercise of his constitutional right to remain silent after arrest. The right not be compelled in any criminal case to be a witness against oneself is secured by the Fifth Amendment of the United States Constitution and Art. I, s 9, of the Alaska Constitution. Implicit in this right is the notion that when an accused person chooses to exercise his right to silence, such silence may not be commented upon.[FN34]

> FN34. See, for example, Alaska Rule of Criminal Procedure 26(b)(6):
>
> If the accused in a criminal action exercises his or her privilege not to testify or to prevent another from testifying.
>
> (i) no person shall make any comment thereon, and
>
> (ii) no presumption shall arise with respect to the exercise of the privilege, and
>
> (iii) no adverse inference shall be drawn therefrom by the trier of fact.

The disputed comment arose in the following context when the district attorney was interrogating Officer Walker, the policeman who arrested Coleman:

DISTRICT ATTORNEY: Did the man make any statement to you?

WALKER: No, he didn't say a word during

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the entire contact.

DISTRICT ATTORNEY: I have no further questions.

THE FOREMAN: Do any of the grand jurors have any questions?

By Unidentified Jurors:

Q: He said what?

WALKER: He didn't say anything. Not-during the whole time I talked to ***51** him. He didn't give me his name, didn't give me his address, nothing. I advised him of his rights and he didn't even acknowledge having been advised of them, just sat in the car.

Q: Was there ever a statement made?

WALKER: Not to my knowledge. Another officer transported him to the jail and booked him in and he didn't talk to that officer, wouldn't give him his address in there either.

Q: I don't quite understand. You mean the man has never been questioned on this charge?

WALKER: I didn't question him that night and there's nothing in the entire report to indicate that the investigators followed it up and questioned him. He was given an opportunity to talk, but he wouldn't say anything.

THE FOREMAN: What-excuse me. What's the law on that, Chuck, after they're advised of their rights? Apparently they don't have to say anything at all regardless of how much investigating or questioning, am I correct or . . ..

DISTRICT ATTORNEY: That's correct, yes.

THE FOREMAN: In other words he can sit there and not say anything, hum?

WALKER: That's right.

[11] Coleman faults the district attorney for presenting the arresting police officer as a witness without first ascertaining whether the accused had chosen to remain silent after the arrest. If informed that the accused had exercised his Fifth Amendment right to silence, Coleman contends that the prosecutor should not have questioned the officer on this issue before the grand jury. Coleman compares this to the situation where the prosecutor compels the appearance of an accused before the grand jury with prior knowledge that the accused will rely on his privilege not to testify. Standard 3.6(e) of the American Bar Association's Standards Relating to the Prosecution Function addresses itself to this situation:

The prosecutor should not compel the appearance of a witness whose activities are the subject of the (grand jury) inquiry if the witness states in advance that if called he will exercise his constitutional privilege not to testify.[FN35]

> FN35. ABA Project on Standards Relating to the Prosecution Function and the Defense Function, s 3.6 at 88 (Approved Draft 1971).

Coleman claims that by putting information about his silence after arrest before the grand jury, the district attorney prejudiced his case with evidence which would be inadmissible at trial. Coleman points to Alaska Rule of Criminal Procedure 6(r), which provides in part: 'Evidence which would be legally admissible at trial shall be admissible before the grand jury,' and he argues that this rule must be read to imply its inverse: evidence which would not be

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legally admissible at trial shall not be admissible before the grand jury. However, this proposition does not seem to be supported by Criminal Rule 6(r) itself:

Hearsay evidence shall not be presented to the grand jury absent compelling justification for its introduction. If hearsay evidence is presented to the grand jury, the reasons for its use shall be stated on the record.

Thus, Rule 6(r) permits in compelling circumstances the use of hearsay evidence which would not be admissible at trial. In State v. Parks,[FN36] this court upheld an indictment based entirely on hearsay. In Galauska v. State, [FN37] this court stated that hearsay evidence that would be inadmissible at trial could be introduced to the grand jury when there was a compelling justification. Thus, Alaska Rule of Criminal Procedure 6(r) would not seem to prohibit the admission of evidence of Coleman's***52** silence after arrest on the sole ground that such evidence would not be admissible at trial.

FN36. 437 P.2d 642, 645 (Alaska 1968).

FN37. 527 P.2d 459 (Alaska 1974).

[12] The State argues that the district attorney did not commit error by inquiring of the police officer whether Coleman had made any statement after arrest for the following reasons: Alaska Rule of Criminal Procedure 6(q) provides that the grand jury may require the prosecuting attorney to subpoena witnesses when it has reason to believe that other available evidence will explain away the charge.[FN38] In order to determine whether other available evidence will explain away the charge, the grand jury had the right to know if the defendant had made any exculpatory statements to the police. The district attorney properly questioned the police officer on this matter and immediately dropped the questioning when he was told that no statement had been made. It was the jurors who took up the questioning. Furthermore, questioning of the district attorney by the grand jury foreman showed that the latter understood that a defendant has a right to remain silent upon arrest. This understanding was reinforced for all the jurors by the district attorney.

FN38. Alaska Rule of Criminal Procedure 6(q) states in part:

When the grand jury has reason to believe that other available evidence will explain away the charge, it shall order such evidence to be produced and for that purpose may require the prosecuting attorney to subpoena witnesses.

We find, therefore, that there were no such irregularities which occurred during the grand jury proceeding as to warrant reversal.[FN39]

FN39. We take this opportunity to express the view that there is evidence that the grand jury indictment process may no longer be fulfilling its intended functions, and recommendations have been made that it should be replaced by the preliminary hearing procedure. In this regard, see Rubinstein, The Grand Jury in Alaska: Tentative Recommendations to the Judicial Council (1975).

III. Sentence Review

At the conclusion of the sentencing hear-

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ing, the trial judge imposed a sentence of ten years on each of the rape counts, and a sentence of seven and one half years on the robbery count, all sentences to run concurrently. Coleman contends that this sentence is excessive.

The presentence report reflects that Coleman was born in 1951, the oldest of four children. His youth was spent in Tuskegee, Alabama, where he was raised by his parents and grandparents. Coleman did not complete high school, having dropped out after the 11th grade, but he subsequently received his General Equivalency Diploma through a course in Alabama. In 1971 he joined the United States Army and received an honorable discharge in 1973. At sentencing, it was disclosed that Coleman, who was unemployed at the time the offenses in question occurred, did not have any prior record, was not a user of drugs, and was only a social drinker.

The presentence report which was furnished to the trial court prior to sentencing contains a written statement by Coleman which provides in part as follows:

I've never raped or robbed anybody in my entire life. But, I was convicted of something I didn't do. I didn't get an honest verdict from my jury. Any honest person could see that. I didn't rape either of those two women and nobody proved in court that I did.

In imposing what was in essence a term of ten years imprisonment, the trial judge stated:

Your attorney indicated that it would take some time for you, perhaps, to be rehabilitated and recommended to the court certain matters in which he felt that you could become rehabilitated and become a good citizen. I hope that you can be. But at the present time, because of the nature of the offense, I find that you are, in fact, a danger to this community. I will tell you that I would have unhesitatingly followed the recommendation made by your attorney if there was ***53** but one count, with your background, your history, and no prior convictions; but we are not faced with merely one count here, we are faced with three. . . . It is further the recommendation of this court in both of these matters that you will be transferred to the Eagle River institution, with the further recommendation that any psychological evaluation be continued, with a view toward teaching you a skill or a craft so that you may become skilled, and that upon rehabilitation, be released from the said institution. As I stated before, I not only consider you at present a danger to the community, but I also feel because of your youth that there is hope for rehabilitation.

[13][14] As we have often stated, the primary responsibility for sentencing rests in the trial court. Our review of the record reveals that the trial judge carefully weighed the Chaney[FN40] objectives before imposing the sentence in question. In light of the nature of the crimes, herein, [FN41] the defendant's character, and the need for protecting society, we are unable to say that the trial judge was clearly mistaken[FN42] in imposing a sentence of ten years.

FN40. State v. Chaney, 477 P.2d 441, 443 (Alaska 1970). For a review of the rules that guide the court in applying the doctrine of Chaney, see Newsom v. State, 533 P.2d 904, 911 (Alaska 1975).

FN41. In State v. Chaney, 477 P.2d 441, 446 (Alaska 1970), we stated

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that '(f) orcible rape and robbery rank among the most serious crimes.'

FN42. This court has previously expressed the view that violent crimes involving physical injury to innocent people are to be regarded as our most serious offenses and are not to be treated lightly. See the following for rape cases where long-term sentences were affirmed: Newsom v. State, 533 P.2d 904 (Alaska 1975) (15 years); Ames v. State, 533 P.2d 246 (Alaska 1975) (8 years); Torres v. State, 521 P.2d 386 (Alaska 1974) (20 years); Newsom v. State, 512 P.2d 557 (Alaska 1973) (15 years); Gordon v. State, 501 P.2d 772 (Alaska 1972) (10 years). See also Lancaster v. State, 550 P.2d 1257 (Alaska 1976), where a sentence of two years was disapproved as being too lenient.

The judgment is affirmed.

BOOCHEVER, J., concurred with opinion in which RABINOWITZ, J., joined.BOOCHEVER, Chief Justice, with whom RABINOWITZ, Justice, joins, concurring

I concur in the majority opinion in all respects except for the discussion of the prosecutor's conduct in questioning Mr. Coleman before the grand jury about his silence after arrest. An inference of guilt may not be drawn from a failure to speak or to explain when a person has been arrested,[FN1] and evidence of silence in the face of custodial interrogation by police is not properly admissible in a trial.[FN2] Similarly, a prosecutor should not intentionally elicit evidence before a grand jury of an accused's silence at the time of his arrest.

FN1. Miranda v. Arizona, 384 U.S. 436, 444, 86 S.Ct. 1602, 16 L.Ed.2d 694, 695-96 (1966); Ivey v. United States, 344 F.2d 770 (5th Cir. 1965).

FN2. Doyle v. Ohio, - U.S. -, 96 S.Ct. 2240, 49 L.Ed.2d 91, 44 U.S.L.W. 4902 (June 17, 1976); United States v. Hale, 422 U.S. 171, 95 S.Ct. 2133, 45 L.Ed.2d 99 (1975); United States v. Impson, 531 F.2d 274, 19 Cr.L.Rptr. 2172 (5th Cir. 1976); Fowle v. United States, 410 F.2d 48, 50-51 (9th Cir. 1969); United States v. Nolan, 416 F.2d 588, 594 (10th Cir. 1969); United States v. Mullings, 364 F.2d 173, 175 (2nd Cir. 1966). The practice of commenting to a trial jury upon an accused's silence after arrest has been specifically disapproved by this court in Davis v. State, 501 P.2d 1026, 1031 (Alaska 1972).

A prosecuting attorney who has properly prepared his case for the grand jury will know whether the accused remained silent or offered exculpatory statements after arrest. If the district attorney knows of exculpatory statements made by an accused after arrest, it is his duty to bring this information before the grand jury. If he knows that the accused remained silent after arrest, the prosecutor should not seek to bring this out. If any member of the grand jury specifically raises this issue, the ***54** prosecuting attorney should explain the constitutional right to remain silent in such circumstances.

I do not find that the prosecutor's conduct amounted to reversible error in this case because it appears from the transcript that the grand jurors were subsequently made

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aware of the accused's right to remain silent. I cannot agree with the majority, however, that the district attorney acted properly in questioning the police officer about Coleman's response after arrest.

Alaska 1976.
Coleman v. State
553 P.2d 40

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HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 20, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 3/19/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 15**

"An Act relating to prohibiting the use of cellular telephones by minors when driving a motor vehicle; and providing for an effective date."

HB 15 BAN CELL PHONE USE BY MINORS WHEN DRIVING

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB15 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DPS				✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN		X		
	Brueneke	-			
	Coghill			✓	
	Dahlstrom			X	
	Gatto	X			
	Holmes			X	
Chair:	RAMOS	X		✓	
Chair:					

HB

35

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SPONSOR STATEMENT
HB 35 Parental Notification and Consent for a Pregnant Minor Aborting an Unborn Child

---

HB 35 requires parental consent unless the minor chooses a judicial bypass and enacts a notification process that the Court determined is the least restrictive means of achieving the State's compelling interest. It leaves intact the four exemptions from parental consent: *married minors, minors who have been legally emancipated, minors who have entered the armed services of the United States, and minors who have become employed and self-subsisting.*

On November 2, 2007 in *State of Alaska v. Planned Parenthood of Alaska*, the Alaska Supreme Court, in a 3 – 2 decision, has once again undermined a long history of social law, the intent of the Constitution, and the will of the people of Alaska.

The legislature passed the Parental Consent Act (PCA) in 1997. In July of that same year, Alaska Superior Court Judge Sen Tan ruled the law was unconstitutional because "the privacy clause of the Alaska Constitution protects minors as well as adults." The Superior Court did not address whether or not the PCA violated the privacy clause. The State appealed the decision and the Supreme Court ruled that the privacy clause extends to minors unless **there is a compelling state interest using the least restrictive means available**. The Supreme Court remanded the case back to Sen Tan to hold an evidentiary hearing to determine if PCA furthered a compelling state interest.

In January 2003 the Superior Court held a bench trial spanning almost three weeks to hear evidence regarding the constitutionality of the PCA. In October 2003, Judge Sen Tan ruled the PCA was **unconstitutional because it did not further a compelling state interest while using the least restrictive means available**. In January 2004 the Superior Court enjoined the State from enforcing the PCA declaring the PCA was unconstitutional under the equal protection and privacy clauses of the Alaska Constitution.

On November 2, 2007, the court agreed with the State that *"protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities"* are *"compelling interests."* So the issue at hand for the court was whether the PCA was the least restrictive means of achieving the State's compelling interests.

HB 35 addresses the legal issues of parental consent in a practical manner based on the historical beliefs of our forefathers. The Parental Consent Act of 1997 was fully compliant with the U.S. Supreme Court precedent *Bellotti v. Baird,* (443 U.S. 622 1979). In essence, the Alaska Supreme Court in its November 2, 2007 decision struck down a decision of the U.S. Supreme Court. Justice Carpeneti eloquently wrote the dissenting decision stating the following:

> *"Because this court's rejection of the legislature's thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislature's role in expressing the will of the people, I respectfully dissent."*

The dissent opinion brought to light the lack of consideration or recognition in case law that *"children are not generally considered competent to consent to medical procedures."* It brought to light the four exemptions in the PCA, *"married minors, ... minors who have been legally emancipated, ...minors who have entered the armed services of the United States ,and ...who have become employed and self-subsisting."* For those pregnant minors who did not fall into the four exempt categories a judicial bypass provision was provided for appropriate circumstances. It was a process designed to be speedy and cost-free to the child. The PCA called for a five-day response of the court; HB 364 calls for a three-day response. Failure by the court to respond in time would be construed as an act constructive authorization. The judicial bypass requires a sworn statement from the pregnant minor and an adult family member or state agent such as an Office of Children's Services caseworker or law enforcement officer.

Carpeneti discussed the fact that the Court quickly recognized that there was a compelling State interest but failed *to "look closely at the nature of the state's and parents' interests"* leaving *"its constitutional 'balance' one-sided."* Carpeneti continues in his dissent to outline case law that creates a judicial history of *"treating minors differently from adults," "protecting twelve-year-olds from older teenagers and from their own immaturity in choosing to participate in harmful activity,"* prohibiting minors from making contract to *"smoke cigarettes or drink alcoholic beverages or consent to sexual intercourse. Without a parent's consent they may not become licensed drivers or get married or obtain general medical or dental treatment."*

> *"In sum, the Alaska Parental Consent Act appears to be the product of a concerted effort to make certain that those pregnant girls who are sufficiently mature to make the decision to obtain an abortion on their own are allowed to do so while those who are not sufficiently mature either obtain a parent's consent or, in the case of parental abuse, a judicial determination that the procedure is in their best interest."*

In his dissenting opinion, Carpeneti uses the litmus test for parental consent that is required for participation in school field trips to demonstrating the extent to which the State must go to terminate parental rights is his argument:

> *"In addition to society's interest in protecting children from their own immaturity, we have long held that parents have a fundamental right in raising of their children."*

Carpeneti's dissenting opinion determines that the State's compelling interest does outweigh the equal protection and privacy clauses because:

"In sum, the norm in American, and Alaskan, life and law is that the parents are a child's first and most important resource for assistance in decision-making. For that reason, the state's interest in protecting children from the consequences of their own immaturity, and in so doing protecting the health of its children, and its interest in supporting parents' right and duty to guide the upbringing of their children is particularly compelling."

I believe parental consent can still recognize the State's compelling interest in *"protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities."* In addition to **parental consent**, HB 35 provides for a judicial bypass for sexual abuse cases using a ***lower standard than the 1997 PCA Act's clear and convincing*** provision, and a **provision prohibiting the parents from coercing a pregnant minor to have an abortion**.

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SECTIONAL

House Bill 35
Parental Notification and Consent for a Pregnant Minor's Abortion

Section 1: AS 18.16.010(a) Abortions
This section amends the requirement that notice, along with consent, be given prior to an abortion being performed on a minor, except if a court has authorized the minor to consent to the abortion without parental notice.

Section 2: AS 18.16.010(g) Abortions
This section adds language to provide a defense for a physician or surgeon that performs an abortion on a minor because in their clinical judgment the minor was in serious risk to her life or physical health. This section defines the terms "clinical judgment" and "defense" and adds the words "medical instability caused by a" which broadens the definition of the term "medical emergency".

Section 3: AS 18.16.020 Notice and consent required before minor's abortion.
This section is repealed and reenacted to include notification to parents, legal guardian, or custodian prior to an abortion and address the needs of a minor that is a victim of abuse. The section states that before an abortion can be performed on a minor at least one of the following applies: (1) one of the minor's parents, legal guardian or custodian has been given notice of the planned abortion not less than 48 hours prior to the abortion and has consented in writing to the procedure; (2) a court issues an order; (3) court inaction results in constructive authorization for the minor to consent to the abortion without notice and consent; or (4) the minor is a victim of abuse and the abuse is documented, signed and notarized by the minor and certain other individuals. Additionally physicians are required to report suspected abuse, and when informed that a pregnancy resulted from sexual assault retain and preserve all products of conception and evidence for use by law enforcement.

Section 4: AS 18.16.030(a) Judicial by-pass for minor seeking an abortion.
This section adds conforming language "notice to" when a pregnant minor is filing a complaint with the superior court for authorization to the procedure without "notice or" consent of a parent, guardian, or custodian.

Section 5: AS 18.16.030(b) Judicial by-pass for minor seeking an abortion
This section adds "notice to or" regarding the statement submitted to the superior court when a minor is trying to get judicial by-pass in order to have an abortion without "notice or" consent of a parent, guardian, or custodian. .

Section 6: AS 18.16.030(c) Judicial by-pass for minor seeking an abortion
This section amends the number of days for the court to schedule a hearing from five to three business days. Conforming language "notice to or" has been added before consent because if a hearing is not held by the third business day it is considered a constructive order of the court authorizing the complainant to consent to an abortion without notice or consent.

Section 7: AS 18.16.030(j) Judicial by-pass for minor seeking an abortion
This section amends the number of days for the superior court to deliver a copy of an appeal to the supreme court from four days to three days after an appeal is filed. It also amends from four days to three days for the appellant to file a brief after the appeal is docketed. Conforming language "notice to or" has been added before consent because if the court fails to meet the timeframe set above the court's inaction is considered a constructive order authorizing the appellant to consent to an abortion without notice or consent.

Section 8: AS 18.16.030(n) Judicial by-pass for minor seeking an abortion
This section amends the information provided to a minor to include requesting the court to direct the school to provide the minor with an excused absence and directing the school not to notify the minor's parent, legal guardian, or custodian.

Section 9: AS 18.16: New Sections
AS 18.16.035 Coercion/emancipation
This section states that a person may not coerce a pregnant minor to have an abortion. Denial of financial support by a parent or guardian who has a legal duty of support for purposes of coercing a minor to have an abortion shall be sufficient evidence of emancipation status. "Coercion" means to restrain or dominate a minor by force, threat of force, or deprivation of food, support, or shelter.

AS 18.16.040 Reports
This section sets out the timeframe and information physicians are required to file reports with DHSS if they have performed an abortion on a minor. Reports filed under this section may not include any identifying information on the minor except her age.

Sections 10, 11, 13: Direct Court Rule Amendments
These sections deal with Scope, Petition, and Findings & Order and add in **notice to and the** consent **of a parent, guardian, or custodian** to conform to the intent of this bill requiring notice and consent for a minor to get an abortion.

Sections 12 and 15: Direct Court Rule Amendments – Constructive Order
These sections provide "constructive orders" to Rules 220(h) and Rule 20(f) changing the time lines for the courts for entering an order and holding a hearing from [FIVE] to **three** days.

Section 16: SEVERABILITY:
This section discusses what happens to the remainder of the bill if any provisions are found to be invalid or unenforceable.

26-LS0192\A

Bellotti v. Baird, 443 U.S. 622 (1979)

U.S. Supreme Court, (July 02, 1979)

Docket number: 78-329
Permanent Link: http://supreme.vlex.com/vid/bellotti-v-baird-19981639
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U.S. Supreme Court - Smith v. Organization of Foster Families For Equality & Reform, 431 U.S. 816 (1977)

U.S. Supreme Court - Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52 (1976)

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Ohio Supreme Court - State v. Warren , Slip Opinion No. 2008-Ohio-2011

U.S. Court of Appeals for the 1st Cir. - William Baird, Et Al., Plaintiffs, Appellees, v. Francis X. Bellotti, Et Al., Defendants, Appellees. Planned Parenthood League of Massachusetts, Plaintiffs-Intervenors, Appellants. William Baird, Et Al., Plaintiffs, Appellants, v. Francis X. Bellotti, Et Al., Defendants, Appellees., 724 F.2d 1032 (1st Cir. 1984)

Florida Supreme Court - , 866 So. 2d 612 (2003)

Constitution of the United States (Annotated) - Fourteenth Amendment. Section 1: Privileges and immunities of citizenchip, due process and equal protection

U.S. Supreme Court - Dallas v. Stanglin, 490 U.S. 19 (1989)

U.S. Supreme Court - Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476 (1983)

U.S. Supreme Court - Eddings v. Oklahoma, 455 U.S. 104 (1982)

U.S. Court of Appeals for the 5th Cir. - Causeway Medical Suite; Hope Medical Group for Women, on Behalf of Themselves and the Patients They Serve, Plaintiffs-Appellees, v. Richard P. Ieyoub, Attorney General, State of Louisiana; Michael J. Foster, Jr., Governor, State of Louisiana; Bobby P. Jindal, Secretary of the Louisiana Department of Health and Hospitals; Madlyn B. Bagneris, Secretary of the Louisiana Department of Social Services, Defendants-Appellants., 123 F.3d 849 (5th Cir. 1997)

U.S. Supreme Court - Ohio v. Akron Center for Reproductive Health, 497 U.S. 502 (1990)

- *See all citations to this document*

Text:

U.S. Supreme Court BELLOTTI v. BAIRD, 443 U.S. 622 (1979) 443 U.S. 622

BELLOTTI, ATTORNEY GENERAL OF MASSACHUSETTS, ET AL. v. BAIRD ET AL. APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS No. 78-329. Argued February 27, 1979. Decided July 2, 1979.*

[Footnote *] Together with No. 78-330, Hunerwadel v. Baird et al., also on appeal from the same court.

A Massachusetts statute requires parental consent before an abortion can be performed on an unmarried woman under the age of 18. If one or both parents refuse such consent, however, the abortion may be obtained by order of a judge of the superior court "for good cause shown." In appellees' class action challenging the constitutionality of the statute, a three-judge District Court held it unconstitutional. Subsequently, this Court vacated the District Court's judgment, Bellotti v. Baird, 428 U.S. 132, holding that the District Court should have abstained and certified to the Massachusetts Supreme Judicial Court appropriate questions concerning the meaning of the statute. On remand, the District Court certified several questions to the Supreme Judicial Court. Among the questions certified was whether the statute permits any minors - mature or immature - to obtain judicial consent to an abortion without any parental consultation whatsoever. The Supreme Judicial Court answered that, in general, it does not; that consent must be obtained for every nonemergency abortion unless no parent is available; and that an available parent must be given notice of any judicial proceedings brought by a minor to obtain consent for an abortion. Another question certified was whether, if the superior court finds that the minor is capable of making, and has, in fact, made and adhered to, an informed and reasonable decision to have an abortion, the court may refuse its consent on a finding that a parent's, or its own, contrary decision is a better one. The Supreme Judicial Court answered in the affirmative. Following the Supreme Judicial Court's judgment, the District Court again declared the statute unconstitutional and enjoined its enforcement.

Held:

The judgment is affirmed. Pp. 633-651; 652-656.

450 F. Supp. 997, affirmed.

MR. JUSTICE POWELL, joined by MR. CHIEF JUSTICE BURGER, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST, concluded that:

1. There are three reasons justifying the conclusion that the constitutional

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rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the guiding role of parents in the upbringing of their children. Pp. 633-639.

2. The abortion decision differs in important ways from other decisions facing minors, and the State is required to act with particular sensitivity when it legislates to foster parental involvement in this matter. Pp. 639-642.

3. If a State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained. A pregnant minor is entitled in such a proceeding to show either that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes, or that even if she is not able to make this decision independently, the desired abortion would be in her best interests. Such a procedure must ensure that the provision requiring parental consent does not in fact amount to an impermissible "absolute, and possibly arbitrary, veto." Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 74. Pp. 642-644.

4. The Massachusetts statute, as authoritatively interpreted by the Supreme Judicial Court, unduly burdens the right to seek an abortion. The statute falls short of constitutional standards in two respects. First, it permits judicial authorization for an abortion to be withheld from a minor who is found by the superior court to be mature and fully competent to make this decision independently. Second, it requires parental consultation or notification in every instance, whether or not in the pregnant minor's best interests, without affording her an opportunity to receive an independent judicial determination that she is mature enough to consent or that an abortion would be in her best interests. Pp. 644-651.

MR. JUSTICE STEVENS, joined by MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN, concluded that the Massachusetts statute is unconstitutional because under the statute, as written and as construed by the Massachusetts Supreme Judicial Court, no minor, no matter how mature and capable of informed decisionmaking, may receive an abortion without the consent of either both parents or a superior court judge, thus making the minor's abortion decision subject in every instance to an absolute third-party veto. Planned Parenthood of Central Missouri v. Danforth, , controlling. Pp. 652-656.

POWELL, J., announced the judgment of the Court and delivered an opinion, in which BURGER, C. J., and STEWART and REHNQUIST, JJ., joined.

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REHNQUIST, J., filed a concurring opinion, post, p. 651. STEVENS, J., filed an opinion concurring in the judgment, in which BRENNAN, MARSHALL, and BLACKMUN, JJ., joined, post, p. 652. WHITE, J., filed a dissenting opinion, post, p. 656.

Garrick F. Cole, Assistant Attorney General of Massachusetts, argued the cause for appellants in No. 78-329. With him on the briefs were Francis X. Bellotti, Attorney General, pro se, and Michael B. Meyer and Thomas R. Kiley, Assistant Attorneys General. Brian A. Riley argued the cause for appellant in No. 78-330. With him on the brief was Thomas P. Russell.

Joseph J. Balliro argued the cause for appellees in both cases. With him on the brief was Joan C. Schmidt. John H. Henn also argued the cause for appellees in both cases. With him on the brief were Scott C. Moriearty, Sandra L. Lynch, Loyd M. Starrett, and John Reinstein.Fn

Fn

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Stuart D. Hubbell and Robert A. Destro filed a brief for the Catholic League for Religious and Civil Rights et al. as amici curiae urging reversal in No. 78-329. Eve W. Paul, Harriet F. Pilpel, and Sylvia A. Law filed a brief for the Planned Parenthood Federation of America, Inc., et al. as amici curiae urging

affirmance in both cases. Briefs of amici curiae were filed by Victor G. Rosenblum, Dennis J. Horan, and John D. Gorby in both cases for Americans United for Life, Inc., et al.; and by George E. Reed and Patrick F. Geary in No. 78-329 for the United States Catholic Conference.

MR. JUSTICE POWELL announced the judgment of the Court and delivered an opinion, in which THE CHIEF JUSTICE, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST joined.

These appeals present a challenge to the constitutionality of a state statute regulating the access of minors to abortions. They require us to continue the inquiry we began in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), and Bellotti v. Baird, 428 U.S. 132 (1976).

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I

A

On August 2, 1974, the Legislature of the Commonwealth of Massachusetts passed, over the Governor's veto, an Act pertaining to abortions performed within the State. 1974 Mass. Acts, ch. 706. According to its title, the statute was intended to regulate abortions "within present constitutional limits." Shortly before the Act was to go into effect, the class action from which these appeals arise was commenced in the District Court[Footnote 1] to enjoin, as unconstitutional, the provision of the Act now codified as Mass. Gen. Laws Ann., ch. 112, 12S (West Supp. 1979).[Footnote 2]

Section 12S provides in part:

"If the mother is less than eighteen years of age and has not married, the consent of both the mother and her parents [to an abortion to be performed on the mother] is required. If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary. Such a hearing will not require the appointment of a guardian for the mother. If one of the parents has died or has deserted his or her family, consent by the remaining parent is sufficient. If both parents have died or have deserted their family, consent of the mother's guardian or other

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person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient. The commissioner of public health shall prescribe a written form for such consent. Such form shall be signed by the proper person or persons and given to the physician performing the abortion who shall maintain it in his permanent files."

Physicians performing abortions in the absence of the consent required by 12S are subject to injunctions and criminal penalties. See Mass. Gen. Laws Ann., ch. 112, 12Q, 12T, and 12U (West Supp. 1979).

A three-judge District Court was convened to hear the case pursuant to 28 U.S.C. *2281* (1970 ed.), repealed by Pub. L. 94-381, 1, 90 Stat. 1119.[Footnote 3] Plaintiffs in the suit, appellees in both the cases before us now, were William Baird; Parents Aid Society, Inc. (Parents Aid), of which Baird is founder and director; Gerald Zupnick, M. D., who regularly performs abortions at the Parents Aid clinic; and an unmarried minor, identified by the pseudonym "Mary Moe," who, at the commencement of the suit, was pregnant, residing at home with her parents, and desirous of obtaining an abortion without informing

them.[Footnote 4]

Mary Moe was permitted to represent the "class of unmarried minors in Massachusetts who have adequate capacity to give a valid and informed consent [to abortion], and who do not wish to involve their parents." Baird v. Bellotti, 393 F. Supp. 847, 850 (Mass. 1975) (Baird I). Initially there was some confusion whether the rights of minors who wish abortions without parental involvement but who lack "adequate capacity" to give such consent also could be adjudicated in

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the suit. The District Court ultimately determined that Dr. Zupnick was entitled to assert the rights of these minors. See Baird v. Bellotti, 450 F. Supp. 997, 1001, and n. 6 (Mass. 1978).[Footnote 5]

Planned Parenthood League of Massachusetts and Crittenton Hastings House & Clinic, both organizations that provide counselling to pregnant adolescents, and Phillip Stubblefield, M. D. (intervenors),[Footnote 6] appeared as amici curiae on behalf of the plaintiffs. The District Court "accepted [this group] in a status something more than amici because of reservations about the adequacy of plaintiffs' representation [of the plaintiff classes in the suit]." Id., at 999 n. 3.

Defendants in the suit, appellants here in No. 78-329, were the Attorney General of Massachusetts and the District Attorneys of all counties in the State. Jane Hunerwadel was permitted to intervene as a defendant and representative of the class of Massachusetts parents having unmarried minor daughters who then were, or might become, pregnant. She and the class she represents are appellants in No. 78-330. [Footnote 7]

Following three days of testimony, the District Court issued an opinion invalidating 12S. Baird I, supra. The court rejected appellees' argument that all minors capable of becoming pregnant also are capable of giving informed consent

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to an abortion, or that it always is in the best interests of a minor who desires an abortion to have one. See 393 F. Supp., at 854. But the court was convinced that "a substantial number of females under the age of 18 are capable of forming a valid consent," id., at 855, and "that a significant number of [these] are unwilling to tell their parents." Id., at 853.

In its analysis of the relevant constitutional principles, the court stated that "there can be no doubt but that a female's constitutional right to an abortion in the first trimester does not depend upon her calendar age." Id., at 855-856. The court found no justification for the parental consent limitation placed on that right by 12S, since it concluded that the statute was "cast not in terms of protecting the minor, . . . but in recognizing independent rights of parents." Id., at 856. The "independent" parental rights protected by 12S, as the court understood them, were wholly distinct from the best interests of the minor.[Footnote 8]

B

Appellants sought review in this Court, and we noted probable jurisdiction. Bellotti v. Baird, 423 U.S. 982 (1975). After briefing and oral argument, it became apparent that 12S was susceptible of a construction that "would avoid or substantially modify the federal constitutional challenge to the statute." Bellotti v. Baird, 428 U.S. 132, 148 (1976) (Bellotti I). We therefore vacated the judgment of the District Court, concluding that it should have abstained and certified to the Supreme Judicial Court of

Massachusetts appropriate questions concerning the meaning of 12S, pursuant to existing

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procedure in that State. See Mass. Sup. Jud. Ct. Rule 3:21.

On remand, the District Court certified nine questions to the Supreme Judicial Court.[Footnote 9] These were answered in an

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opinion styled Baird v. Attorney General, 371 Mass. 741, 360 N. E. 2d 288 (1977) (Attorney General). Among the more important aspects of 12S, as authoritatively construed by the Supreme Judicial Court, are the following:

1. In deciding whether to grant consent to their daughter's abortion, parents are required by 12S to consider exclusively what will serve her best interests. See id., at 746-747, 360 N. E. 2d, at 292-293.

2. The provision in 12S that judicial consent for an abortion shall be granted, parental objections notwithstanding, "for good cause shown" means that such consent shall be granted if found to be in the minor's best interests. The judge "must disregard all parental objections, and other considerations, which are not based exclusively" on that standard. Id., at 748, 360 N. E. 2d, at 293.

3. Even if the judge in a 12S proceeding finds "that the minor is capable of making, and has made, an informed and reasonable decision to have an abortion," he is entitled to withhold consent "in circumstances where he determines that the best interests of the minor will not be served by an abortion." Ibid., 360 N. E. 2d, at 293.

4. As a general rule, a minor who desires an abortion may not obtain judicial consent without first seeking both parents' consent. Exceptions to the rule exist when a parent is not available or when the need for the abortion constitutes "`an emergency requiring immediate action.'"[Footnote 10] Id., at 750, 360 N. E. 2d, at 294. Unless a parent is not available, he must be notified of any judicial proceedings brought under 12S. Id., at 755-756, 360 N. E. 2d, at 297.

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5. The resolution of 12S cases and any appeals that follow can be expected to be prompt. The name of the minor and her parents may be held in confidence. If need be, the Supreme Judicial Court and the superior courts can promulgate rules or issue orders to ensure that such proceedings are handled expeditiously. Id., at 756-758, 360 N. E. 2d, at 297-298.

6. Massachusetts Gen. Laws Ann., ch. 112, 12F (west Supp. 1979), which provides, inter alia, that certain classes of minors may consent to most kinds of medical care without parental approval, does not apply to abortions, except as to minors who are married, widowed, or divorced. See 371 Mass., at 758-762, 360 N. E. 2d, at 298-300. Nor does the State's common-law "mature minor rule" create an exception to 12S. Id., at 749-750, 360 N. E. 2d, at 294. See n. 27, infra.

C

Following the judgment of the Supreme Judicial Court, appellees returned to the District Court and

obtained a stay of the enforcement of 12S until its constitutionality could be determined. Baird v. Bellotti, 428 F. Supp. 854 (Mass. 1977) (Baird II). After permitting discovery by both sides, holding a pretrial conference, and conducting further hearings, the District Court again declared 12S unconstitutional and enjoined its enforcement. Baird v. Bellotti, 450 F. Supp. 997 (Mass. 1978) (Baird III). The court identified three particular aspects of the statute which, in its view, rendered it unconstitutional.

First, as construed by the Supreme Judicial Court, 12S requires parental notice in virtually every case where the parent is available. The court believed that the evidence warranted a finding "that many, perhaps a large majority of 17-year olds are capable of informed consent, as are a not insubstantial number of 16-year olds, and some even younger." Id., at 1001. In addition, the court concluded that it would not be in

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the best interests of some "immature" minors - those incapable of giving informed consent - even to inform their parents of their intended abortions. Although the court declined to decide whether the burden of requiring a minor to take her parents to court was, per se, an impermissible burden on her right to seek an abortion, it concluded that Massachusetts could not constitutionally insist that parental permission be sought or notice given "in those cases where a court, if given free rein, would find that it was to the minor's best interests that one or both of her parents not be informed . . . ." Id., at 1002.

Second, the District Court held that 12S was defective in permitting a judge to veto the abortion decision of a minor found to be capable of giving informed consent. The court reasoned that upon a finding of maturity and informed consent, the State no longer was entitled to impose legal restrictions upon this decision. Id., at 1003. Given such a finding, the court could see "no reasonable basis" for distinguishing between a minor and an adult, and it therefore concluded that 12S was not only "an undue burden in the due process sense, [but] a discriminatory denial of equal protection [as well]." Id., at 1004.

Finally, the court decided that 12S suffered from what it termed "formal overbreadth," ibid., because the statute failed explicitly to inform parents that they must consider only the minor's best interests in deciding whether to grant consent. The court believed that, despite the Supreme Judicial Court's construction of 12S, parents naturally would infer from the statute that they were entitled to withhold consent for other, impermissible reasons. This was thought to create a "chilling effect" by enhancing the possibility that parental consent would be denied wrongfully and that the minor would have to proceed in court.

Having identified these flaws in 12S, the District Court considered whether it should engage in "judicial repair." Id., at 1005. It declined either to sever the statute or to give

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it a construction different from that set out by the Supreme Judicial Court, as that tribunal arguably had invited it to do. See Attorney General, 371 Mass., at 745-746, 360 N. E. 2d, at 292. The District Court therefore adhered to its previous position, declaring 12S unconstitutional and permanently enjoining its enforcement.[Footnote 11] Appellants sought review in this Court a second time, and we again noted probable jurisdiction. 439 U.S. 925 (1978).

II

A child, merely on account of his minority, is not beyond the protection of the Constitution. As the Court said in In re Gault, 387 U.S. 1, 13 (1967), "whatever may be their precise impact, neither the Fourteenth Amendment nor the Bill of Rights is for adults alone."[Footnote 12] This observation, of course, is but the beginning of the analysis. The Court long has recognized that the status of minors under the law is unique in many respects. As Mr. Justice Frankfurter aptly put it: "Children have a very special place in life which law should reflect. Legal theories and their phrasing in other cases readily lead to fallacious reasoning if uncritically transferred to determination

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of a State's duty towards children." May v. Anderson, 345 U.S. 528, 536 (1953) (concurring opinion). The unique role in our society of the family, the institution by which "we inculcate and pass down many of our most cherished values, moral and cultural," Moore v. East Cleveland, 431 U.S. 494, 503-504 (1977) (plurality opinion), requires that constitutional principles be applied with sensitivity and flexibility to the special needs of parents and children. We have recognized three reasons justifying the conclusion that the constitutional rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing.

A

The Court's concern for the vulnerability of children is demonstrated in its decisions dealing with minors' claims to constitutional protection against deprivations of liberty or property interests by the State. With respect to many of these claims, we have concluded that the child's right is virtually coextensive with that of an adult. For example, the Court has held that the Fourteenth Amendment's guarantee against the deprivation of liberty without due process of law is applicable to children in juvenile delinquency proceedings. In re Gault, supra. In particular, minors involved in such proceedings are entitled to adequate notice, the assistance of counsel, and the opportunity to confront their accusers. They can be found guilty only upon proof beyond a reasonable doubt, and they may assert the privilege against compulsory self-incrimination. In re Winship, (1970); In re Gault, supra. See also Ingraham v. Wright, 430 U.S. 651, 674 (1977) (corporal punishment of schoolchildren implicates constitutionally protected liberty interest); cf. Breed v. Jones, (1975) (Double Jeopardy Clause prohibits prosecuting juvenile as an adult after an adjudicatory finding in juvenile court that he had violated a criminal statute).

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Similarly, in Goss v. Lopez, 419 U.S. 565 (1975), the Court held that children may not be deprived of certain property interests without due process.

These rulings have not been made on the uncritical assumption that the constitutional rights of children are indistinguishable from those of adults. Indeed, our acceptance of juvenile courts distinct from the adult criminal justice system assumes that juvenile offenders constitutionally may be treated differently from adults. In order to preserve this separate avenue for dealing with minors, the Court has said that hearings in juvenile delinquency cases need not necessarily "`conform with all of the requirements of a criminal trial or even of the usual administrative hearing.'" In re Gault, supra, at 30, quoting Kent v. United States, 383 U.S. 541, 562 (1966). Thus, juveniles are not constitutionally entitled to trial by jury in delinquency adjudications. McKeiver v. Pennsylvania, (1971). Viewed together, our cases show that although children generally are protected by the same constitutional guarantees against governmental deprivations as are adults, the State is entitled to adjust its legal system to account for children's vulnerability and their needs for "concern, . . . sympathy, and . . . paternal attention." Id., at 550 (plurality

opinion).

B

Second, the Court has held that the States validly may limit the freedom of children to choose for themselves in the making of important, affirmative choices with potentially serious consequences. These rulings have been grounded in the recognition that, during the formative years of childhood and adolescence, minors often lack the experience, perspective, and judgment to recognize and avoid choices that could be detrimental to them.[Footnote 13]

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Ginsberg v. New York, 390 U.S. 629 (1968), illustrates well the Court's concern over the inability of children to make mature choices, as the First Amendment rights involved are clear examples of constitutionally protected freedoms of choice. At issue was a criminal conviction for selling sexually oriented magazines to a minor under the age of 17 in violation of a New York state law. It was conceded that the conviction could not have stood under the First Amendment if based upon a sale of the same material to an adult. Id., at 634. Notwithstanding the importance the Court always has attached to First Amendment rights, it concluded that "even where there is an invasion of protected freedoms `the power of the state to control the conduct of children reaches beyond the scope of its authority over adults . . .,'" id., at 638, quoting Prince v. Massachusetts, 321 U.S. 158, 170 (1944).[Footnote 14] The Court was convinced that the New York Legislature rationally could conclude that the sale to children of the magazines in question presented a danger against which they should be guarded. Ginsberg, supra, at 641. It therefore rejected the

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argument that the New York law violated the constitutional rights of minors.[Footnote 15]

C

Third, the guiding role of parents in the upbringing of their children justifies limitations on the freedoms of minors. The State commonly protects its youth from adverse governmental action and from their own immaturity by requiring parental consent to or involvement in important decisions by minors.[Footnote 16] But an additional and more important justification for state deference to parental control over children is that "[t]he child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." Pierce v. Society of Sisters, 268 U.S. 510, 535 (1925). "The duty to prepare the child for `additional obligations' . . .

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must be read to include the inculcation of moral standards, religious beliefs, and elements of good citizenship." Wisconsin v. Yoder, 406 U.S. 205, 233 (1972). This affirmative process of teaching, guiding, and inspiring by precept and example is essential to the growth of young people into mature, socially responsible citizens.

We have believed in this country that this process, in large part, is beyond the competence of impersonal political institutions. Indeed, affirmative sponsorship of particular ethical, religious, or political beliefs is something we expect the State not to attempt in a society constitutionally committed to the ideal of

individual liberty and freedom of choice. Thus, "[i]t is cardinal with us that the custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder." Prince v. Massachusetts, supra, at 166 (emphasis added).

Unquestionably, there are many competing theories about the most effective way for parents to fulfill their central role in assisting their children on the way to responsible adulthood. While we do not pretend any special wisdom on this subject, we cannot ignore that central to many of these theories, and deeply rooted in our Nation's history and tradition, is the belief that the parental role implies a substantial measure of authority over one's children. Indeed, "constitutional interpretation has consistently recognized that the parents' claim to authority in their own household to direct the rearing of their children is basic in the structure of our society." Ginsberg v. New York, supra, at 639.

Properly understood, then, the tradition of parental authority is not inconsistent with our tradition of individual liberty; rather, the former is one of the basic presuppositions of the latter. Legal restrictions on minors, especially those supportive of the parental role, may be important to the child's chances for the full growth and maturity that make eventual

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participation in a free society meaningful and rewarding.[Footnote 17] Under the Constitution, the State can "properly conclude that parents and others, teachers for example, who have [the] primary responsibility for children's well-being are entitled to the support of laws designed to aid discharge of that responsibility." Ginsberg v. New York, 390 U.S., at 639.[Footnote 18]

III

With these principles in mind, we consider the specific constitutional questions presented by these appeals. In 12S, Massachusetts has attempted to reconcile the constitutional right of a woman, in consultation with her physician, to choose to terminate her pregnancy as established by Roe v. Wade, (1973), and Doe v. Bolton, 410 U.S. 179 (1973), with the special interest of the State in encouraging an unmarried pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child. As noted above, 12S was before us in Bellotti I, 428 U.S. 132 (1976), where we remanded the case for interpretation of its provisions by the Supreme Judicial Court of Massachusetts. We previously had held in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52 (1976), that a State could not lawfully authorize an absolute parental veto over the decision of a minor to terminate her pregnancy. Id., at 74. In

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Bellotti I, supra, we recognized that 12S could be read as "fundamentally different from a statute that creates a `parental veto,'" 428 U.S., at 145, thus "avoid[ing] or substantially modify[ing] the federal constitutional challenge to the statute." Id., at 148. The question before us - in light of what we have said in the prior cases - is whether 12S, as authoritatively interpreted by the Supreme Judicial Court, provides for parental notice and consent in a manner that does not unduly burden the right to seek an abortion. See id., at 147.

Appellees and intervenors contend that even as interpreted by the Supreme Judicial Court of Massachusetts 12S does unduly burden this right. They suggest, for example, that the mere requirement of parental notice constitutes such a burden. As stated in Part II above, however, parental notice and

consent are qualifications that typically may be imposed by the State on a minor's right to make important decisions. As immature minors often lack the ability to make fully informed choices that take account of both immediate and long-range consequences, a State reasonably may determine that parental consultation often is desirable and in the best interest of the minor.[Footnote 19] It may further determine, as a general proposition, that such consultation is particularly desirable with respect to the abortion decision - one that for some people raises profound moral and religious concerns.[Footnote 20] As MR. JUSTICE STEWART wrote in concurrence in Planned Parenthood of Central Missouri v. Danforth, supra, at 91:

"There can be little doubt that the State furthers a constitutionally permissible end by encouraging an unmarried

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pregnant minor to seek the help and advice of her parents in making the very important decision whether or not to bear a child. That is a grave decision, and a girl of tender years, under emotional stress, may be ill-equipped to make it without mature advice and emotional support. It seems unlikely that she will obtain adequate counsel and support from the attending physician at an abortion clinic, where abortions for pregnant minors frequently take place." (Footnote omitted.)[Footnote 21]

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But we are concerned here with a constitutional right to seek an abortion. The abortion decision differs in important ways from other decisions that may be made during minority. The need to preserve the constitutional right and the unique nature of the abortion decision, especially when made by a minor, require a State to act with particular sensitivity when it legislates to foster parental involvement in this matter.

A

The pregnant minor's options are much different from those facing a minor in other situations, such as deciding whether to marry. A minor not permitted to marry before the age of majority is required simply to postpone her decision. She and her intended spouse may preserve the opportunity for later marriage should they continue to desire it. A pregnant adolescent, however, cannot preserve for long the possibility of aborting, which effectively expires in a matter of weeks from the onset of pregnancy.

Moreover, the potentially severe detriment facing a pregnant woman, see Roe v. Wade, 410 U.S., at 153, is not mitigated by her minority. Indeed, considering her probable education, employment skills, financial resources, and emotional maturity, unwanted motherhood may be exceptionally burdensome for a minor. In addition, the fact of having a child brings with it adult legal responsibility, for parenthood, like attainment of the age of majority, is one of the traditional criteria for the termination of the legal disabilities of minority. In sum, there are few situations in which denying a minor the right to make an important decision will have consequences so grave and indelible.

Yet, an abortion may not be the best choice for the minor. The circumstances in which this issue arises will vary widely. In a given case, alternatives to abortion, such as marriage to the father of the child, arranging for its adoption, or assuming the responsibilities of motherhood with the assured support of

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family, may be feasible and relevant to the minor's best interests. Nonetheless, the abortion decision is one that simply cannot be postponed, or it will be made by default with far-reaching consequences.

For these reasons, as we held in Planned Parenthood of Central Missouri v. Danforth, 428 U.S., at 74, "the State may not impose a blanket provision . . . requiring the consent of a parent or person in loco parentis as a condition for abortion of an unmarried minor during the first 12 weeks of her pregnancy." Although, as stated in Part II, supra, such deference to parents may be permissible with respect to other choices facing a minor, the unique nature and consequences of the abortion decision make it inappropriate "to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." 428 U.S., at 74. We therefore conclude that if the State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure [Footnote 22] whereby authorization for the abortion can be obtained.

A pregnant minor is entitled in such a proceeding to show either: (1) that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes;[Footnote 23] or

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(2) that even if she is not able to make this decision independently, the desired abortion would be in her best interests. The proceeding in which this showing is made must assure that a resolution of the issue, and any appeals that may follow, will be completed with anonymity and sufficient expedition to provide an effective opportunity for an abortion to be obtained. In sum, the procedure must ensure that the provision requiring parental consent does not in fact amount to the "absolute, and possibly arbitrary, veto" that was found impermissible in Danforth. Ibid.

B

It is against these requirements that 12S must be tested. We observe initially that as authoritatively construed by the highest court of the State, the statute satisfies some of the concerns that require special treatment of a minor's abortion decision. It provides that if parental consent is refused, authorization may be "obtained by order of a judge of the superior court for good cause shown, after such hearing as he deems necessary." A superior court judge presiding over a 12S proceeding "must disregard all parental objections, and other considerations, which are not based exclusively on what would serve the minor's best interests."[Footnote 24] Attorney General,

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371 Mass., at 748, 360 N. E. 2d, at 293. The Supreme Judicial Court also stated: "Prompt resolution of a [12S] proceeding may be expected. . . . The proceeding need not be brought in the minor's name and steps may be taken, by impoundment or otherwise, to preserve confidentiality as to the minor and her parents. . . . [W]e believe that an early hearing and decision on appeal from a judgment of a Superior Court judge may also be achieved." Id., at 757-758, 360 N. E. 2d, at 298. The court added that if these expectations were not met, either the superior court, in the exercise of its rulemaking power, or the Supreme Judicial Court would be willing to eliminate any undue burdens by rule or order. Ibid.[Footnote 25]

Despite these safeguards, which avoid much of what was objectionable in the statute successfully challenged in Danforth, 12S falls short of constitutional standards in certain respects. We now consider

these.

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(1)

Among the questions certified to the Supreme Judicial Court was whether 12S permits any minors - mature or immature - to obtain judicial consent to an abortion without any parental consultation whatsoever. See n. 9, supra. The state court answered that, in general, it does not. "[T]he consent required by [12S must] be obtained for every nonemergency abortion where the mother is less than eighteen years of age and unmarried." Attorney General, supra, at 750, 360 N. E. 2d, at 294. The text of 12S itself states an exception to this rule, making consent unnecessary from any parent who has "died or has deserted his or her family."[Footnote 26] The Supreme Judicial Court construed the statute as containing an additional exception: Consent need not be obtained "where no parent (or statutory substitute) is available." 371 Mass., at 750, 360 N. E. 2d, at 294. The court also ruled that an available parent must be given notice of any judicial proceedings brought by a minor to obtain consent for an abortion.[Footnote 27] Id., at 755-756, 360 N. E. 2d, at 297.

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We think that, construed in this manner, 12S would impose an undue burden upon the exercise by minors of the right to seek an abortion. As the District Court recognized, "there are parents who would obstruct, and perhaps altogether prevent, the minor's right to go to court." Baird III, 450 F. Supp., at 1001. There is no reason to believe that this would be so in the majority of cases where consent is withheld. But many parents hold strong views on the subject of abortion, and young pregnant minors, especially those living at home, are particularly vulnerable to their parents' efforts to obstruct both an abortion and their access to court. It would be unrealistic, therefore, to assume that the mere existence of a legal right to seek relief in superior court provides an effective avenue of relief for some of those who need it the most.

We conclude, therefore, that under state regulation such as that undertaken by Massachusetts, every minor must have the opportunity - if she so desires - to go directly to a court without first consulting or notifying her parents. If she satisfies the court that she is mature and well enough informed to make intelligently the abortion decision on her own, the court must authorize her to act without parental consultation or consent. If she fails to satisfy the court that she is competent to make this decision independently, she must be permitted to show that an abortion nevertheless would be in her

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best interests. If the court is persuaded that it is, the court must authorize the abortion. If, however, the court is not persuaded by the minor that she is mature or that the abortion would be in her best interests, it may decline to sanction the operation.

There is, however, an important state interest in encouraging a family rather than a judicial resolution of a minor's abortion decision. Also, as we have observed above, parents naturally take an interest in the welfare of their children - an interest that is particularly strong where a normal family relationship exists and where the child is living with one or both parents. These factors properly may be taken into account by a court called upon to determine whether an abortion in fact is in a minor's best interests. If, all things considered, the court determines that an abortion is in the minor's best interests, she is entitled to court authorization without any parental involvement. On the other hand, the court may deny the abortion request of an immature minor in the absence of parental consultation if it concludes that her best interests

would be served thereby, or the court may in such a case defer decision until there is parental consultation in which the court may participate. But this is the full extent to which parental involvement may be required.[Footnote 28] For the reasons stated above, the constitutional right to seek an abortion may not be unduly burdened by state-imposed conditions upon initial access to court.

(2)

Section 12S requires that both parents consent to a minor's abortion. The District Court found it to be "custom" to perform other medical and surgical procedures on minors with the consent of only one parent, and it concluded that "nothing about abortions . . . requires the minor's interest to be treated

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differently." Baird I, 393 F. Supp., at 852. See Baird III, supra, at 1004 n. 9.

We are not persuaded that, as a general rule, the requirement of obtaining both parents' consent unconstitutionally burdens a minor's right to seek an abortion. The abortion decision has implications far broader than those associated with most other kinds of medical treatment. At least when the parents are together and the pregnant minor is living at home, both the father and mother have an interest - one normally supportive - in helping to determine the course that is in the best interests of a daughter. Consent and involvement by parents in important decisions by minors long have been recognized as protective of their immaturity. In the case of the abortion decision, for reasons we have stated, the focus of the parents' inquiry should be the best interests of their daughter. As every pregnant minor is entitled in the first instance to go directly to the court for a judicial determination without prior parental notice, consultation, or consent, the general rule with respect to parental consent does not unduly burden the constitutional right. Moreover, where the pregnant minor goes to her parents and consent is denied, she still must have recourse to a prompt judicial determination of her maturity or best interests.[Footnote 29]

(3)

Another of the questions certified by the District Court to the Supreme Judicial Court was the following: "If the superior court finds that the minor is capable [of making], and has, in fact, made and adhered to, an informed and reasonable decision to have an abortion, may the court refuse its consent based on a finding that a parent's, or its own, contrary decision

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is a better one?" Attorney General, 371 Mass., at 747 n. 5, 360 N. E. 2d, at 293 n. 5. To this the state court answered:

"[W]e do not view the judge's role as limited to a determination that the minor is capable of making, and has made, an informed and reasonable decision to have an abortion. Certainly the judge must make a determination of those circumstances, but, if the statutory role of the judge to determine the best interests of the minor is to be carried out, he must make a finding on the basis of all relevant views presented to him. We suspect that the judge will give great weight to the minor's determination, if informed and reasonable, but in circumstances where he determines that the best interests of the minor will not be served by an abortion, the judge's determination should prevail, assuming that his conclusion is supported by the evidence and adequate findings of fact." Id., at 748, 360 N. E. 2d, at 293.

The Supreme Judicial Court's statement reflects the general rule that a State may require a minor to wait

until the age of majority before being permitted to exercise legal rights independently. See n. 23, supra. But we are concerned here with the exercise of a constitutional right of unique character. See supra, at 642-643. As stated above, if the minor satisfies a court that she has attained sufficient maturity to make a fully informed decision, she then is entitled to make her abortion decision independently. We therefore agree with the District Court that 12S cannot constitutionally permit judicial disregard of the abortion decision of a minor who has been determined to be mature and fully competent to assess the implications of the choice she has made.[Footnote 30]

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IV

Although it satisfies constitutional standards in large part, 12S falls short of them in two respects: First, it permits judicial authorization for an abortion to be withheld from a minor who is found by the superior court to be mature and fully competent to make this decision independently. Second, it requires parental consultation or notification in every instance, without affording the pregnant minor an opportunity to receive an independent judicial determination that she is mature enough to consent or that an abortion would be in her best interests.[Footnote 31] Accordingly, we affirm the judgment of the District Court insofar as it invalidates this statute and enjoins its enforcement.[Footnote 32]

Affirmed.

FootnotesFootnote 1 The court promptly issued a restraining order which remained in effect until its decision on the merits. Subsequent stays of enforcement were issued during the complex course of this litigation, with the result that Mass. Gen. Laws Ann., ch. 112, 12S (West Supp. 1979), never has been enforced by Massachusetts.

Footnote 2 As originally enacted, 12S was designated as 12P of chapter 112. In 1977, the provision was renumbered as 12S, and the numbering of subdivisions within the section was eliminated. No changes of substance were made. We shall refer to the section as 12S throughout this opinion.

Footnote 3 The proceedings before the court and the substance of its opinion are described in detail in Bellotti v. Baird, 428 U.S. 132, 136-143 (1976).

Footnote 4 Three other minors in similar circumstances were named in the complaint, but the complaint was dismissed as to them for want of proof of standing. That decision has not been challenged on appeal.

Footnote 5 Appellants argue that these "immature" minors never were before the District Court and that the court's remedy should have been tailored to grant relief only to the class of "mature" minors. It is apparent from the District Court's opinions, however, that it considered the constitutionality of 12S as applied to all pregnant minors who might be affected by it. We accept that the rights of this entire category of minors properly were subject to adjudication.

Footnote 6 In 1978, the District Court permitted postjudgment intervention by these parties, who now appear jointly before this Court as intervenor-appellees.

Footnote 7 As their positions are closely aligned, if not identical, appellants in Nos. 78-329 and 78-330 are hereinafter referred to collectively as appellants.

Footnote 8 One member of the three-judge court dissented, arguing that the decision of the majority to

allow Mary Moe to proceed in the case without notice to her parents denied them their parental rights without due process of law, and that 12S was consistent with the decisions of this Court recognizing the propriety of parental control over the conduct of children. See 393 F. Supp., at 857-865.

Footnote 9 The nine questions certified by the District Court, with footnotes omitted, are as follows: "1. What standards, if any, does the statute establish for a parent to apply when considering whether or not to grant consent? "a) Is the parent to consider `exclusively . . . what will serve the child's best interest'? "b) If the parent is not limited to considering exclusively the minor's best interests, can the parent take into consideration the `long-term consequences to the family and her parents' marriage relationship'? "c) Other? "2. What standard or standards is the superior court to apply? "a) Is the superior court to disregard all parental objections that are not based exclusively on what would serve the minor's best interests? "b) If the superior court finds that the minor is capable, and has, in fact, made and adhered to, an informed and reasonable decision to have an abortion, may the court refuse its consent based on a finding that a parent's, or its own, contrary decision is a better one? "c) Other? "3. Does the Massachusetts law permit a minor (a) `capable of giving informed consent,' or (b) `incapable of giving informed consent,' `to obtain [a court] order without parental consultation'? "4. If the court answers any of question 3 in the affirmative, may the superior court, for good cause shown, enter an order authorizing an abortion, (a), without prior notification to the parents, and (b), without subsequent notification? "5. Will the Supreme Judicial Court prescribe a set of procedures to implement c. 112, [12S] which will expedite the application, hearing and decision phases of the superior court proceeding provided thereunder? Appeal? "6. To what degree do the standards and procedures set forth in c. 112, 12F (Stat. 1975, c. 564), authorizing minors to give consent to medical and dental care in specified circumstances, parallel the grounds and procedures for showing good cause under c. 112, [12S]? "7. May a minor, upon a showing of indigency, have court-appointed counsel? "8. Is it a defense to his criminal prosecution if a physician performs an abortion solely with the minor's own, valid, consent, that he reasonably,

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and in good faith, though erroneously, believed that she was eighteen or more years old or had been married? "9. Will the Court make any other comments about the statute which, in its opinion, might assist us in determining whether it infringes the United States Constitution?"

Footnote 10 Section 12S itself dispenses with the need for the consent of any parent who "has died or has deserted his or her family."

Footnote 11 The dissenting judge agreed that the State could not permit a judge to override the decision of a minor found to be mature and capable of giving informed consent to an abortion. He disagreed with the remainder of the court's conclusions: the best-interests limitation on the withholding of parental consent in the Supreme Judicial Court's opinion, he argued, must be treated as if part of the statutory language itself; and he read the evidentiary record as proving that only rarely would a pregnant minor's interests be disserved by consulting with her parents about a desired abortion. He also noted the value to a judge in a 12S proceeding of having the parents before him as a source of evidence as to the minor's maturity and what course would serve her best interests. See Baird III, 450 F. Supp., at 1006-1020.

Footnote 12 Similarly, the Court said in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 74 (1976): "Constitutional rights do not mature and come into being magically only when one attains the state-defined age of majority. Minors, as well as adults, are protected by the Constitution and possess constitutional rights."

Footnote 13 As MR. JUSTICE STEWART wrote of the exercise by minors of the First Amendment

rights that "secur[e] . . . the liberty of each man to

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decide for himself what he will read and to what he will listen," Ginsberg v. New York, 390 U.S. 629, 649 (1968) (concurring in result): "[A]t least in some precisely delineated areas, a child - like someone in a captive audience - is not possessed of that full capacity for individual choice which is the presupposition of First Amendment guarantees. It is only upon such a premise, I should suppose, that a State may deprive children of other rights - the right to marry, for example, or the right to vote - deprivations that would be constitutionally intolerable for adults." Id., at 649-650 (footnotes omitted).

Footnote 14 In Prince an adult had permitted a child in her custody to sell religious literature on a public street in violation of a state child-labor statute. The child had been permitted to engage in this activity upon her own sincere request. 321 U.S., at 162. In upholding the adult's conviction under the statute, we found that "the interests of society to protect the welfare of children" and to give them "opportunities for growth into free and independent well-developed men and citizens," id., at 165, permitted the State to enforce its statute, which "[c]oncededly . . . would be invalid," id., at 167, if made applicable to adults.

Footnote 15 Although the State has considerable latitude in enacting laws affecting minors on the basis of their lesser capacity for mature, affirmative choice, Tinker v. Des Moines School Dist., (1969), illustrates that it may not arbitrarily deprive them of their freedom of action altogether. The Court held in Tinker that a schoolchild's First Amendment freedom of expression entitled him, contrary to school policy, to attend school wearing a black armband as a silent protest against American involvement in the hostilities in Vietnam. The Court acknowledged that the State was permitted to prohibit conduct otherwise shielded by the Constitution that "for any reason - whether it stems from time, place, or type of behavior - materially disrupts classwork or involves substantial disorder or invasion of the rights of others." Id., at 513. It upheld the First Amendment right of the schoolchildren in that case, however, not only because it found no evidence in the record that their wearing of black armbands threatened any substantial interference with the proper objectives of the school district, but also because it appeared that the challenged policy was intended primarily to stifle any debate whatsoever - even nondisruptive discussions - on important political and moral issues. See id., at 510.

Footnote 16 See, e. g., Mass. Gen. Laws Ann., ch. 207 7, 24, 25, 33, 33A (West 1958 and Supp. 1979) (parental consent required for marriage of person under 18); Mass. Gen. Laws Ann., ch. 119, 55A (West Supp. 1979) (waiver of counsel by minor in juvenile delinquency proceedings must be made through parent or guardian).

Footnote 17 See Hafen, Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Children to Their "Rights," 1976 B. Y. U. L. Rev. 605.

Footnote 18 The Court's opinions discussed in the text above - Pierce, Yoder, Prince, and Ginsberg - all have contributed to a line of decisions suggesting the existence of a constitutional parental right against undue, adverse interference by the State. See also Smith v. Organization of Foster Families, 431 U.S. 816, 842-844 (1977); Carey v. Population Services International, 431 U.S. 678, 708 (1977) (opinion of POWELL, J.); Moore v. East Cleveland, (1977) (plurality opinion); Stanley v. Illinois, 405 U.S. 645, 651 (1972); Meyer v. Nebraska, 262 U.S. 390, 399 (1923). Cf. Parham v. J. R., (1979); id., at 621 (STEWART, J., concurring in result).

Footnote 19 In Planned Parenthood of Central Missouri v. Danforth, 428 U.S., at 75, "[w]e emphasize[d] that our holding . . . [did] not suggest that every minor, regardless of age or maturity, may give effective

consent for termination of her pregnancy."

Footnote 20 The expert testimony at the hearings in the District Court uniformly was to the effect that parental involvement in a minor's abortion decision, if compassionate and supportive, was highly desirable. The findings of the court reflect this consensus. See Baird I, 393 F. Supp., at 853.

Footnote 21 MR. JUSTICE STEWART'S concurring opinion in Danforth underscored the need for parental involvement in minors' abortion decisions by describing the procedures followed at the clinic operated by the Parents Aid Society and Dr. Gerald Zupnick: "The counseling . . . occurs entirely on the day the abortion is to be performed . . . . It lasts for two hours and takes place in groups that include both minors and adults who are strangers to one another . . . . The physician takes no part in this counseling process . . . . Counseling is typically limited to a description of abortion procedures, possible complications, and birth control techniques . . . . "The abortion itself takes five to seven minutes . . . . The physician has no prior contact with the minor, and on the days that abortions are being performed at the [clinic], the physician . . . may be performing abortions on many other adults and minors . . . . On busy days patients are scheduled in separate groups, consisting usually of five patients . . . . After the abortion [the physician] spends a brief period with the minor and others in the group in the recovery room . . . ." 428 U.S., at 91-92, n. 2, quoting Brief for Appellants in Bellotti I, O. T. 1975, No. 75-73, pp. 43-44. In Roe v. Wade, 410 U.S. 113 (1973), and Doe v. Bolton, 410 U.S. 179 (1973), we emphasized the importance of the role of the attending physician. Those cases involved adult women presumably capable of selecting and obtaining a competent physician. In this case, however, we are concerned only with minors who, according to the record, may range in age from children of 12 years to 17-year-old teenagers. Even the latter are less likely than adults to know or be able to recognize ethical, qualified physicians, or to have the means to engage such professionals. Many minors who bypass their parents probably will resort to an abortion clinic, without being able to distinguish the competent and ethical from those that are incompetent or unethical.

Footnote 22 As 12S provides for involvement of the state superior court in minors' abortion decisions, we discuss the alternative procedure described in the text in terms of judicial proceedings. We do not suggest, however, that a State choosing to require parental consent could not delegate the alternative procedure to a juvenile court or an administrative agency or officer. Indeed, much can be said for employing procedures and a forum less formal than those associated with a court of general jurisdiction.

Footnote 23 The nature of both the State's interest in fostering parental authority and the problem of determining "maturity" makes clear why the State generally may resort to objective, though inevitably arbitrary, criteria such as age limits, marital status, or membership in the Armed Forces for lifting some or all of the legal disabilities of minority. Not only is it difficult to

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define, let alone determine, maturity, but also the fact that a minor may be very much an adult in some respects does not mean that his or her need and opportunity for growth under parental guidance and discipline have ended. As discussed in the text, however, the peculiar nature of the abortion decision requires the opportunity for case-by-case evaluations of the maturity of pregnant minors.

Footnote 24 The Supreme Judicial Court held that 12S imposed this standard on the superior court in large part because it construed the statute as containing the same restriction on parents. See supra, at 630. The court concluded that the judge should not be entitled "to exercise his authority on a standard broader than that to which a parent must adhere." Attorney General, 371 Mass., at 748, 360 N. E. 2d, at 293. Intervenors argue that, assuming state-supported parental involvement in the minor's abortion decision is

permissible, the State may not endorse

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the withholding of parental consent for any reason not believed to be in the minor's best interests. They agree with the District Court that, even though 12S was construed by the highest state court to impose this restriction, the statute is flawed because the restriction is not apparent on its face. Intervenors thus concur in the District Court's assumption that the statute will encourage parents to withhold consent for impermissible reasons. See Baird III, 450 F. Supp., at 1004-1005; Baird II, 428 F. Supp. 854, 855-856 (Mass. 1977). There is no basis for this assertion. As a general rule, the interpretation of a state statute by the State's highest court "is as though written into the ordinance itself," Poulos v. New Hampshire, 345 U.S. 395, 402 (1953), and we are obliged to view the restriction on the parental-consent requirement "as if [12S] had been so amended by the [Massachusetts] legislature." Winters v. New York, 333 U.S. 507, 514 (1948).

Footnote 25 Intervenors take issue with the Supreme Judicial Court's assurances that judicial proceedings will provide the necessary confidentiality, lack of procedural burden, and speed of resolution. In the absence of any evidence as to the operation of judicial proceedings under 12S - and there is none, since appellees successfully sought to enjoin Massachusetts from putting it into effect - we must assume that the Supreme Judicial Court's judgment is correct.

Footnote 26 The statute also provides that "[i]f both parents have died or have deserted their family, consent of the mother's guardian or other person having duties similar to a guardian, or any person who had assumed the care and custody of the mother is sufficient."

Footnote 27 This reading of the statute requires parental consultation and consent more strictly than appellants themselves previously believed was necessary. In their first argument before this Court, and again before the Supreme Judicial Court, appellants argued that 12S was not intended to abrogate Massachusetts' common-law "mature minor" rule as it applies to abortions. See 428 U.S., at 144. They also suggested that, under some circumstances, 12S might permit even immature minors to obtain judicial approval for an abortion without any parental consultation. See 428 U.S., at 145; Attorney General, supra, at 751, 360 N. E. 2d, at 294. The Supreme Judicial Court sketched the outlines of the mature minor rule that would apply in the absence of 12S: "The mature minor rule calls for an analysis of the nature of the operation, its likely benefit, and the capacity of the particular minor to understand fully what the medical procedure involves. . . . Judicial intervention is not required. If

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judicial approval is obtained, however, the doctor is protected from a subsequent claim that the circumstances did not warrant his reliance on the mature minor rule, and, of course, the minor patient is afforded advance protection against a misapplication of the rule." Id., at 752, 360 N. E. 2d, at 295. "We conclude that, apart from statutory limitations which are constitutional, where the best interests of a minor will be served by not notifying his or her parents of intended medical treatment and where the minor is capable of giving informed consent to that treatment, the mature minor rule applies in this Commonwealth." Id., at 754, 360 N. E. 2d, at 296. The Supreme Judicial Court held that the common-law mature minor rule was inapplicable to abortions because it had been legislatively superseded by 12S.

Footnote 28 Of course, if the minor consults with her parents voluntarily and they withhold consent, she is free to seek judicial authorization for the abortion immediately.

Footnote 29 There will be cases where the pregnant minor has received approval of the abortion decision by one parent. In that event, the parent can support the daughter's request for a prompt judicial determination, and the parent's support should be given great, if not dispositive, weight.

Footnote 30 Appellees and intervenors have argued that 12S violates the Equal Protection Clause of the Fourteenth Amendment. As we have concluded that the statute is constitutionally infirm for other reasons, there is no need to consider this question.

Footnote 31 Section 12S evidently applies to all nonemergency abortions performed on minors, without regard to the period in pregnancy during which the procedure occurs. As the court below recognized, most abortions are performed during the early stages of pregnancy, before the end of the first trimester. See Baird III, 450 F. Supp., at 1001; Baird I, 393 F. Supp., at 853. This coincides approximately with the pre-viability period during which a pregnant woman's right to decide, in consultation with her physician, to have an abortion is most immune to state intervention. See Roe v. Wade, 410 U.S., at 164-165. The propriety of parental involvement in a minor's abortion decision does not diminish as the pregnancy progresses and legitimate concerns for the pregnant minor's health increase. Furthermore, the opportunity for direct access to court which we have described is adequate to safeguard throughout pregnancy the constitutionally protected interests of a minor in the abortion decision. Thus, although a significant number of abortions within the scope of 12S might be performed during the later stages of pregnancy, we do not believe a different analysis of the statute is required for them.

Footnote 32 The opinion of MR. JUSTICE STEVENS, concurring in the judgment, joined by three Members of the Court, characterizes this opinion as "advisory"

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and the questions it addresses as "hypothetical." Apparently, this is criticism of our attempt to provide some guidance as to how a State constitutionally may provide for adult involvement - either by parents or a state official such as a judge - in the abortion decisions of minors. In view of the importance of the issue raised, and the protracted litigation to which these parties already have been subjected, we think it would be irresponsible simply to invalidate 12S without stating our views as to the controlling principles. The statute before us today is the same one that was here in Bellotti I. The issues it presents were not then deemed "hypothetical." In a unanimous opinion, we remanded the case with directions that appropriate questions be certified to the Supreme Judicial Court of Massachusetts "concerning the meaning of [12S] and the procedure it imposes." 428 U.S., at 151. We directed that this be done because, as stated in the opinion, we thought the construction of 12S urged by appellants would "avoid or substantially modify the federal constitutional challenge to the statute." Id., at 148. The central feature of 12S was its provision that a state-court judge could make the ultimate decision, when necessary, as to the exercise by a minor of the right to an abortion. See id., at 145. We held that this "would be fundamentally different from a statute that creates a `parental veto' [of the kind rejected in Danforth.]" Ibid. (footnote omitted). Thus, all Members of the Court agreed that providing for decisionmaking authority in a judge was not the kind of veto power held invalid in Danforth. The basic issues that were before us in Bellotti I remain in the case, sharpened by the construction of 12S by the Supreme Judicial Court.

MR. JUSTICE REHNQUIST, concurring.

I join the opinion of MR. JUSTICE POWELL and the judgment of the Court. At such time as this Court is willing to

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reconsider its earlier decision in Planned Parenthood of Central Missouri v. Danforth, (1976), in which I joined the opinion of MR. JUSTICE WHITE, dissenting in part, I shall be more than willing to participate in that task. But unless and until that time comes, literally thousands of judges cannot be left with nothing more than the guidance offered by a truly fragmented holding of this Court.

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN join, concurring in the judgment.

In Roe v. Wade, 410 U.S. 113, the Court held that a woman's right to decide whether to terminate a pregnancy is

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entitled to constitutional protection. In Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 72-75, the Court held that a pregnant minor's right to make the abortion decision may not be conditioned on the consent of one parent. I am persuaded that these decisions require affirmance of the District Court's holding that the Massachusetts statute is unconstitutional.

The Massachusetts statute is, on its face, simple and straightforward. It provides that every woman under 18 who has not married must secure the consent of both her parents before receiving an abortion. "If one or both of the mother's parents refuse such consent, consent may be obtained by order of a judge of the superior court for good cause shown." Mass. Gen. Laws Ann., ch. 112, 12S (West Supp. 1979).

Whatever confusion or uncertainty might have existed as to how this statute was to operate, see Bellotti v. Baird, , has been eliminated by the authoritative construction of its provisions by the Massachusetts Supreme Judicial Court. See Baird v. Attorney General, 371 Mass. 741, 360 N. E. 2d 288 (1977). The statute was construed to require that every minor who wishes an abortion must first seek the consent of both parents, unless a parent is not available or unless the need for the abortion constitutes "`an emergency requiring immediate action.'" Id., at 750, 360 N. E. 2d, at 294. Both parents, so long as they are available, must also receive notice of judicial proceedings brought under the statute by the minor. In those proceedings, the task of the judge is to determine whether the best interests of the minor will be served by an abortion. The decision is his to make, even if he finds "that the minor is capable of making, and has made, an informed and reasonable decision to have an abortion." Id., at 748, 360 N. E. 2d, at 293. Thus, no minor in Massachusetts, no matter how mature and capable of informed decisionmaking, may receive an abortion without the consent

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of either both her parents or a superior court judge. In every instance, the minor's decision to secure an abortion is subject to an absolute third-party veto.1

In Planned Parenthood of Central Missouri v. Danforth, supra, this Court invalidated statutory provisions requiring the consent of the husband of a married woman and of one parent of a pregnant minor to an abortion. As to the spousal consent, the Court concluded that "we cannot hold that the State has the constitutional authority to give the spouse unilaterally the ability to prohibit the wife from terminating her pregnancy, when the State itself lacks that right." 428 U.S., at 70. And as to the parental consent, the Court held that "[j]ust as with the requirement of consent from the spouse, so here, the State does not have the constitutional authority to give a third party an absolute, and possibly arbitrary, veto over the decision of the physician and his patient to terminate the patient's pregnancy, regardless of the reason for withholding the consent." Id., at 74. These holdings, I think, equally apply to the Massachusetts statute.

The differences between the two statutes are few. Unlike the Missouri statute, Massachusetts requires the consent of both of the woman's parents. It does, of course, provide an alternative in the form of a suit initiated by the woman in superior court. But in that proceeding, the judge is afforded an absolute veto over the minor's decisions, based on his judgment of her best interests. In Massachusetts, then, as in Missouri, the State has imposed an "absolute limitation on the minor's right to obtain an abortion." id., at 90 (STEWART, J., concurring), applicable to every pregnant minor in the State who has not married.

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The provision of an absolute veto to a judge - or, potentially, to an appointed administrator2 - is to me particularly troubling. The constitutional right to make the abortion decision affords protection to both of the privacy interests recognized in this Court's cases: "One is the individual interest in avoiding disclosure of personal matters, and another is the interest in independence in making certain kinds of important decisions." Whalen v. Roe, 429 U.S. 589, 599-600 (footnotes omitted). It is inherent in the right to make the abortion decision that the right may be exercised without public scrutiny and in defiance of the contrary opinion of the sovereign or other third parties. In Massachusetts, however, every minor who cannot secure the consent of both her parents - which under Danforth cannot be an absolute prerequisite to an abortion - is required to secure the consent of the sovereign. As a practical matter, I would suppose that the need to commence judicial proceedings in order to obtain a legal abortion would impose a burden at least as great as, and probably greater than, that imposed on the minor child by the need to obtain the consent of a parent.3 Moreover, once this burden is met, the only standard provided for the judge's decision is the best interest of the minor. That standard provides little real guidance to the judge, and his decision must necessarily reflect personal and societal values and mores whose enforcement upon the minor - particularly when contrary to her own informed and reasonable decision - is fundamentally at odds

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with privacy interests underlying the constitutional protection afforded to her decision.

In short, it seems to me that this litigation is governed by Danforth; to the extent this statute differs from that in Danforth, it is potentially even more restrictive of the constitutional right to decide whether or not to terminate a pregnancy. Because the statute has been once authoritatively construed by the Massachusetts Supreme Judicial Court, and because it is clear that the statute as written and construed is not constitutional, I agree with MR. JUSTICE POWELL that the District Court's judgment should be affirmed. Because his opinion goes further, however, and addresses the constitutionality of an abortion statute that Massachusetts has not enacted, I decline to join his opinion.4

[Footnote 1] By affording such a veto, the Massachusetts statute does far more than simply provide for notice to the parents. See post, at 657 (WHITE, J., dissenting). Neither Danforth nor this case determines the constitutionality of a statute which does no more than require notice to the parents, without affording them or any other third party an absolute veto.

[Footnote 2] See ante, at 643 n. 22.

[Footnote 3] A minor may secure the assistance of counsel in filing and prosecuting her suit, but that is not guaranteed. The Massachusetts Supreme Judicial Court in response to the question whether a minor, upon a showing of indigency, may have court-appointed counsel, "construe[d] the statutes of the Commonwealth to authorize the appointment of counsel or a guardian ad litem for an indigent minor at public expense, if necessary, if the judge, in his discretion, concludes that the best interests of the minor

would be served by such an appointment." Baird v. Attorney General, 371 Mass. 741, 764, 360 N. E. 2d 288, 301 (1977) (emphasis added).

[Footnote 4] Until and unless Massachusetts or another State enacts a less restrictive statutory scheme, this Court has no occasion to render an advisory opinion on the constitutionality of such a scheme. A real statute - rather than a mere outline of a possible statute - and a real case or controversy may well present questions that appear quite different from the hypothetical questions MR. JUSTICE POWELL has elected to address. Indeed, there is a certain irony in his suggestion that a statute that is intended to vindicate "the special interest of the State in encouraging an unmarried pregnant minor to seek the advice of her parents in making the important decision whether or not to bear a child," see ante, at 639, need not require notice to the parents of the minor's intended decision. That irony makes me wonder whether any legislature concerned with parental consultation would, in the absence of today's advisory opinion, have enacted a statute comparable to the one my Brethren have discussed.

MR. JUSTICE WHITE, dissenting.

I was in dissent in Planned Parenthood of Central Missouri v. Danforth, 428 U.S. 52, 94-95 (1976), on the issue of the validity of requiring the consent of a parent when an unmarried woman under 18 years of age seeks an abortion. I continue to have the views I expressed there and also agree with much of what MR. JUSTICE STEVENS said in dissent in that

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case. Id., at 101-105. I would not, therefore, strike down this Massachusetts law.

But even if a parental consent requirement of the kind involved in Danforth must be deemed invalid, that does not condemn the Massachusetts law, which, when the parents object, authorizes a judge to permit an abortion if he concludes that an abortion is in the best interests of the child. Going beyond Danforth, the Court now holds it unconstitutional for a State to require that in all cases parents receive notice that their daughter seeks an abortion and, if they object to the abortion, an opportunity to participate in a hearing that will determine whether it is in the "best interests" of the child to undergo the surgery. Until now, I would have thought inconceivable a holding that the United States Constitution forbids even notice to parents when their minor child who seeks surgery objects to such notice and is able to convince a judge that the parents should be denied participation in the decision.

With all due respect, I dissent.

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Other documents:

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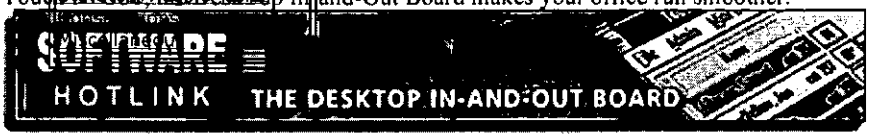

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State v. Planned Parenthood of Alaska (11/02/2007) sp-6184, 171 P3d 577

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THE SUPREME COURT OF THE STATE OF ALASKA

STATE OF ALASKA,	)
	) Supreme Court Nos. S- 11365/11386
Appellant/	)
Cross-Appellee,	) Superior Court No.
	) 3AN-97-06014 CI
v.	)
	) O P I N I O N
PLANNED PARENTHOOD OF	)
ALASKA and JAN WHITEFIELD,	) No. 6184 November 2, 2007
M.D.,	)
	)
Appellees/	)
Cross-Appellants.	)
	)

Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Sen K. Tan, Judge.

Appearances: Kevin G. Clarkson, Brena, Bell & Clarkson, P.C., Anchorage, for Appellant and Cross-Appellee. Janet Crepps, Center for

Reproductive Rights, Simpsonville, South Carolina, and Suzanne Novak, Center for Reproductive Rights, New York, New York, for Appellees and Cross-Appellants, and Jeffrey M. Feldman, Feldman & Orlansky, Anchorage, for Appellees and Cross-Appellants, and Cooperating Attorney for the Alaska Civil Liberties Union. Paul Benjamin Linton, Northbrook, Illinois, and Robert Flint, Hartig, Rhodes, Hoge & Lekisch, Anchorage, for Amicus Curiae Alaska State Legislature. Kenneth C. Kirk, Kenneth Kirk & Associates, Anchorage, for Amicus Curiae Family Research Council. Wayne Anthony Ross, Ross & Miner, Anchorage, for Amicus Curiae Americans United for Life. Geoffrey G. Currall, Keene & Currall, Ketchikan, for Amicus Curiae Liberty Legal Institute. Sara Trent, Anchorage, Cooperating Attorney for the Alaska Civil Liberties Union, and Kent A. Yalowitz, Arnold & Porter LLP, New York, New York, for Amicus Curiae Alaska Chapter of the American Academy of Pediatrics. Erica A. Green and Deborah Kovsky-Apap, Wilmer Cutler Pickering Hale & Dorr LLP, Washington, D.C., and Christine Schleuss, Friedman Rubin & White, Anchorage, for Amici Curiae American College of Obstetricians and Gynecologists, Society of Adolescent Medicine, and Physicians for Reproductive Choice and Health. Janell Hafner, Reges & Boone, LLC, Juneau, and Stacey I. Young, Womens Law Project, Pittsburgh, Pennsylvania, for Amici Curiae National Association of Social Workers Alaska Chapter, Alaska Womens Lobby, Alaska Pro-Choice Coalition, National Center for Youth Law, Juvenile Law Center, and Janes Due Process. Debra J. Brandwein, Foster Pepper Rubini & Reeves LLC, Anchorage, for Amicus Curiae Northwest Womens Law Center.

Before: Bryner, Chief Justice, Matthews, Eastaugh, Fabe, and Carpeneti, Justices.

FABE, Justice.
CARPENETI, Justice, with whom Matthews, Justice, joins, dissenting.

I. INTRODUCTION

From time to time, we are called upon to decide constitutional cases that touch upon the most contentious moral, ethical, and political issues of our day. In deciding such cases, we are ever mindful of the unique role we play in our democratic system of government. We are not legislators, policy makers, or pundits charged with making law or assessing the wisdom of legislative enactments. We are not philosophers, ethicists, or theologians, and cannot aspire to answer fundamental moral questions or resolve societal debates.1 We are focused only on upholding the constitution and laws of the State of Alaska.

Today, we are once again called upon to decide a case that implicates the controversial issue of abortion; more specifically, we are called upon to decide whether the Parental Consent Act impermissibly infringes upon a minors fundamental right to privacy when deciding whether to terminate a pregnancy.

We decide today that the State has an undeniably compelling interest in protecting the health of minors and in fostering family involvement in a minors decisions regarding her pregnancy.

And contrary to the arguments of Planned Parenthood, we determine that the constitution permits a statutory scheme which ensures that parents are notified so that they can be engaged in their daughters important decisions in these matters. But we ultimately conclude that the Act does not strike the proper constitutional balance between the States compelling interests and a minors fundamental right to privacy.

This is the second time that this case has been before us, and we earlier held that the privacy clause of the Alaska Constitution extends to minors as well as adults and that the State may restrict a minors privacy right only when necessary to further a compelling state interest and only if no less restrictive means exist to advance that interest.2 The States asserted interest in protecting a minor from her own immaturity by encouraging parental involvement in her decision-making process is undoubtedly compelling. But by prohibiting a minor from obtaining an abortion without parental consent, the Act effectively shifts that minors fundamental right to choose if and when to have a child from the minor to her parents. There exists a less burdensome and widely used means of actively involving parents in their minor childrens abortion decisions: parental notification.3 The United States Supreme Court has recognized, in a different context, that notice statutes are not equivalent to consent statutes because they do not give anyone a veto power over a minors abortion decision.4 And many states currently employ this less restrictive approach. Because the State has failed to establish that the greater intrusiveness of a statutory scheme that requires parental consent, rather than parental notification, is necessary to achieve its compelling interests, the Parental Consent Act does not represent the least restrictive means of achieving the States interests and therefore cannot be sustained.

II. FACTS AND PROCEEDINGS

In 1997 the Alaska Legislature passed the Alaska Parental Consent Act (PCA).5 The PCA prohibits doctors from performing an abortion on an unmarried, unemancipated woman under 17 years of age without parental consent or judicial authorization.6 The Act subjects doctors who knowingly perform abortions on minors without the required consent or judicial authorization to criminal prosecution.7 The parental consent requirement can be met through written consent from a parent, guardian, or custodian of the minor.8 The Act also includes a judicial bypass procedure whereby a minor may file a complaint in superior court and obtain judicial authorization to terminate a pregnancy if she can establish by clear and convincing evidence either that she is sufficiently mature and well enough informed to decide intelligently whether to have an abortion or that being required to obtain parental consent would not be in her best interests.9 If the court fails to hold a hearing within five business days after the complaint is filed, the courts inaction is considered a constructive order authorizing the minor to consent to terminate the pregnancy.10

On July 25, 1997, Planned Parenthood, Drs. Jan Whitefield and Robert Klem, and ten unidentified Jane Does filed a complaint in superior court seeking declaratory and injunctive relief. The complaint alleged that the PCA violates state constitutional rights to privacy, equal protection, and due process. On January 7, 1998, the plaintiffs filed a motion for summary judgment. The superior court granted that motion, concluding that the PCA violates the equal protection clause of the Alaska Constitution. The superior court also concluded that the privacy clause of the Alaska Constitution protects minors as

well as adults. However, in light of its equal protection ruling, the superior court did not decide whether the PCA violates the Alaska Constitutions privacy clause.

The State appealed, and on November 16, 2001, we issued our decision in Planned Parenthood I.11 In that case, we concluded that the privacy clause of the Alaska Constitution extends to minors as well as adults and that the State may constrain a pregnant minors privacy right only when necessary to further a compelling state interest and only if no less restrictive means exist to advance that interest.12 We also reversed the grant of summary judgment and remanded the case for an evidentiary hearing to determine whether the PCA actually furthers compelling state interests using the least restrictive means available.13

On October 4, 2002, prior to the evidentiary hearing on remand, the plaintiffs again moved for summary judgment, this time arguing that the PCA violates the constitution by failing to exclude abortions performed in medical emergencies. On January 2, 2003, the superior court denied the motion for summary judgment.

From January 6 to January 24, 2003, the superior court held a bench trial to hear evidence regarding the constitutionality of the PCA. On October 13, 2003, the superior court issued a decision on remand holding that the PCA is unconstitutional because it fails to further compelling state interests using the least restrictive means available. On January 7, 2004, the superior court entered judgment declaring that the PCA was unconstitutional under the equal protection and privacy clauses of the Alaska Constitution and enjoining the State from enforcing the Act.

The State now appeals the superior courts judgment. The plaintiffs cross-appeal the superior courts denial of their motion seeking summary judgment based on the absence of a medical emergency exception.

III. STANDARD OF REVIEW

We review the superior courts factual determinations for clear error.14 We review constitutional questions de novo, adopting the most persuasive rule of law in light of precedent, reason, and policy.15 We uphold a statute against a facial constitutional challenge if despite any occasional problems it might create in its application to specific cases, [the statute] has a plainly legitimate sweep.16

IV. DISCUSSION

Under our case law, we begin our analysis in cases such as the one at hand by measuring the weight and depth of the individual right at stake so as to determine the proper level of scrutiny with which to review the challenged legislation.17 If this individual right proves to be fundamental, we must then review the challenged legislation strictly, allowing the law to survive only if the State can establish that it advances a compelling state interest using the least restrictive means available.18 In cases involving the right to privacy, the precise degree to which the challenged legislation must actually further a compelling state interest and represent the least restrictive alternative is determined, at least in part, by the relative weight of the competing rights and interests.19 As we have previously explained, the rights to privacy and liberty are neither absolute nor comprehensive . . . [and] their limits depend on a balance of interests.20

A. The Individual Right at Stake Is Fundamental.

The plaintiffs assert that the PCA burdens minors fundamental right to privacy under article I, section 22 of the Alaska Constitution.21 This section of the constitution maintains that [t]he right of the people to privacy is recognized and shall not be infringed. As we have previously explained, the primary

purpose of this section is to protect Alaskans personal privacy and dignity against unwarranted intrusions by the State.22 Because this right to privacy is explicit, its protections are necessarily more robust and broader in scope than those of the implied federal right to privacy.23

Included within the broad scope of the Alaska Constitutions privacy clause is the fundamental right to reproductive choice. As we have stated in the past, few things are more personal than a womans control of her body, including the choice of whether and when to have children, and that choice is therefore necessarily protected by the right to privacy.24 Of course, our original decision concerning the fundamental right to reproductive choice specifically addressed only the privacy interests of adult women, but because the uniquely personal physical, psychological, and economic implications of the abortion decision . . . are in no way peculiar to adult women,25 its reasoning was and continues to be as applicable to minors as it is to adults.26 Thus, in Planned Parenthood I, we explicitly extended the fundamental reproductive rights guaranteed by the privacy clause to minors.27

In the case at hand, the PCA requires minors to secure either the consent of their parent or judicial authorization before they may exercise their uniquely personal reproductive freedoms. This requirement no doubt places a burden on minors fundamental right to privacy. As such, the PCA must be subjected to strict scrutiny and can only survive review if it advances a compelling state interest using the least restrictive means of achieving that interest.28

B. The States Asserted Interests Are Compelling.

The State asserts that the PCA works, on the most generalized level, to advance two interrelated interests: protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities.29 We agree with the State that these are compelling interests.

Although the Alaska Constitution extends the right to privacy in equal measure to both minors and adults, it is not blind to the unique vulnerabilities and needs that accompany minority. As we noted in Planned Parenthood I, state interests that are inapplicable to adults may sometimes be compelling with regard to minors.30 And this is certainly the case with regard to the States asserted interest in protecting minors from their own immaturity. Lacking in experience, perspective, and judgment, minors often do not possess the capacity to make informed, mature decisions, and are therefore susceptible to a host of pitfalls and dangers unknown in adult life.31 As we have recognized in the past, the State has a special, indeed compelling, interest in the health, safety, and welfare of its minor citizens and may properly take affirmative steps to safeguard minors from their own immaturity.32

Insofar as and to the same extent that the State has an interest in protecting minors, so too does it have an interest in aiding parents to fulfill their parental responsibilities. A minor child is not [a] mere creature of the state,33 and the affirmative process of teaching, guiding, and inspiring34 a minor child is, in large part, beyond the competence of impersonal political institutions.35 Parents, therefore, have an important guiding role to play in the upbringing of their children.36 Indeed, it is the right and duty, privilege and burden, of all parents to involve themselves in their childrens lives; to provide their children with emotional, physical, and material support; and to instill in their children moral standards, religious beliefs, and elements of good citizenship.37 We thus echo the United States Supreme Courts statement that, [u]nder the Constitution, the State can properly conclude that parents . . . who have [the] primary responsibility for childrens well-being

are entitled to the support of laws designed to aid [in the] discharge of that responsibility. 38

C. The PCA Is Not the Least Restrictive Means of Achieving the States Compelling Interests.

Having identified and weighed the rights and interests at stake, we now turn to the task of assessing whether the PCA advances the States compelling interests using the least restrictive means available.

We recognize that the legislature has made a serious effort to narrowly tailor the scope of the PCA by exempting seventeen-year-olds and other categories of pregnant minors from the Acts ban. It is true that the PCA is less restrictive than many other state statutes in terms of the scope of its coverage. But scope is only one of the important criteria that determine the extent to which a parental involvement law restricts minors privacy rights. The method by which the statute involves parents is also central to determining whether the Acts provisions constitute the least restrictive means of pursuing the States ends.

By prohibiting minors from terminating a pregnancy without the consent of their parents, the PCA bestows upon parents what has been described as a veto power over their minor childrens abortion decisions.39 This veto power does not merely restrict minors right to choose whether and when to have children, but effectively shifts a portion of that right from minors to parents. In practice, under the PCA, it is no longer the pregnant minor who ultimately chooses to exercise her right to terminate her pregnancy, but that minors parents. And it is this shifting of the locus of choice this relocation of a fundamental right from minors to parents that is constitutionally suspect. For a review of statutory schemes enacted around the nation reveals a widely used legislative alternative that does not shift a minors right to choose: parental notification.

Currently, fifteen states have parental notification statutes in place.40 Although the precise details of these statutes vary, they all prohibit minors from terminating a pregnancy until their parents have been notified and afforded an appropriate period of time to actively involve themselves in their minor childrens decision-making processes.41 Stated another way, these statutes seek to involve parents, not by giving them veto power, but by giving them notice and time to consult with and guide their daughters through this important decision. As such, although parental notification statutes undoubtedly burden the privacy rights of minors, they do not go so far as to shift a portion of those rights to parents.

Of course, as the dissent emphasizes, the PCA does include a judicial bypass procedure through which some minors may effectively regain the right to reproductive choice by obtaining judicial authorization to forgo parental consent.42 The State argues that judicial bypass is the means by which a girl can relieve herself of the burden of parental consent. (Emphasis in original.) But the State and its supporting amici fail to effectively rebut the trial courts express findings to the contrary. According to the superior courts findings, the PCAs bypass procedures build in delay that may prove detrimental to the physical health of the minor, particularly for minors in rural Alaska who already face logistical obstacles to obtaining an abortion. The trial court found that judicial bypass procedures will increase these problems, delay the abortion, and increase the probability that the minor may not be able to receive a safe and legal abortion. The State has not expressly challenged as clearly erroneous the superior courts findings on this point but dismisses these concerns, arguing that [r]ural

Alaskan girls will pursue bypass on the same trip to the same urban location where they must go to obtain their procedures. But not all minors possess the wherewithal to embark upon a formal legal adjudication during a time of crisis.

Moreover, the inclusion of this judicial bypass procedure does not reduce the restrictiveness of the PCA relative to a parental notification statute. Every state to enact a parental notification regime has opted to include either a judicial bypass procedure similar to the PCAs procedure or an even more permissive bypass procedure.43 As such, the PCAs inclusion of a judicial bypass procedure does not set the PCA apart from or reduce its intrusiveness relative to parental notification statutes.

Ultimately, because the PCA shifts the right to reproductive choice to minors parents, we must conclude that the PCA is, all else being held equal, more restrictive than a parental notification statute. The State has failed to establish that the greater intrusiveness of consent statutes is in any way necessary to advance its compelling interests. In fact, in its briefing before us, the State has not focused on the PCAs benefits as flowing directly from the parental veto power; instead, it has consistently suggested that the PCAs benefits flow from increased parental communication and involvement in the decision-making process. According to the State, the PCA protects minors from their own immaturity by increasing adult supervision; it protects the physical, emotional, and psychological health of minors, [p]articularly in the post-abortion context, [by increasing] parental participation . . . for the purposes of monitoring . . . risks; it ensures that minors give informed consent to the abortion procedure by making it more likely that they will receive counsel that a doctor cannot give, advice, adapted to her unique family situation, that covers the moral, social and religious aspects of the abortion decision; it protects minors from sexual abuse since once appr[]ised of a young girls pregnancy, parents . . . will ask who impregnated her and will report any sexual abuse; and it strengthens the parent-child relationship by increas[ing] parental involvement, parental consultation, and open and honest communication.

These expressed legislative goals increased parental communication, involvement, and protection are no less likely to accompany parental notification than the parental veto power. The dissent suggests that where a minor forgoes judicial bypass, parental consent guarantees a conversation. But it guarantees no more than a one-way conversation and allows parents to refuse to consent not only where their judgment is better informed and considered than that of their daughter, but also where it is colored by personal religious belief, whim, or even hostility to her best interests.44

Notification statutes protect minors by enhancing the potential for parental consultation concerning a [minors] decision.45 In fact, to the extent that parents who do not possess a veto power over their minor childrens abortion decision have a greater incentive to engage in a constructive and ongoing conversation with their minor children about the important medical, philosophical, and moral issues surrounding abortion, a notification requirement may actually better serve the States compelling interests.

In sum then, the PCA does not represent the least restrictive means of achieving the States asserted interests and therefore cannot be sustained. In reaching this decision, we go no further than the Alaska Constitution demands, and merely reaffirm that the State does not strike the proper constitutional balance between its own compelling interests and the fundamental rights of its citizens by adopting an unnecessarily restrictive

statute.

V. CONCLUSION

For the reasons detailed above, we AFFIRM the superior courts decision striking down the Parental Consent Act as a violation of the Alaska Constitutions right to privacy.

CARPENETI, Justice, with whom MATTHEWS, Justice, joins, dissenting.

In 1997, faced with competing interests of the highest constitutional level an underage pregnant girls constitutional right to privacy in deciding whether to terminate her pregnancy, her parents constitutional right (and duty) to protect her best interests, and the states compelling interests in protecting children against their own immaturity the Alaska Legislature carefully crafted the Alaska Parental Consent Act in an effort to recognize and protect all of these interests. That law is fully consistent with United States Supreme Court precedent, yet todays opinion strikes it down. Because this courts rejection of the legislatures thoughtful balance is inconsistent with our own case law and unnecessarily dismissive of the legislatures role in expressing the will of the people, I respectfully dissent.

I. The Constitutional Framework

Before looking at the Parental Consent Act in detail to determine how it balances the strong competing interests involved, it is helpful to consider the analytical framework used by courts in deciding constitutional challenges of the kind involved in this case. In a series of cases, we have established a three-step process. We have first looked to the nature and extent of the individual right that is claimed. If we determine that the right is fundamental, we then examine whether the states interest in burdening the individual right is compelling. If the states interest is compelling, we look to make certain that there is a sufficiently close fit between the goals of the legislation and the means adopted by the state to reach those goals.

The individual right claimed in this case is the fundamental right of an unmarried pregnant minor to privacy in her decision whether to terminate her pregnancy. The compelling interest claimed by the state is multi-faceted, including protecting minors from their own immaturity (by recognizing the parents right (and duty) to guide their childrens upbringing) and protecting the health of minors. If both the individual right is fundamental and the states interest is compelling, the court must decide whether the law is tailored closely enough to achieve its intended purpose.

II. The Alaska Parental Consent Act

The hallmark of the Alaska Parental Consent Act (PCA or the Act) is the remarkable length to which the legislature went in order to accommodate all of the various, and at times competing, interests that are involved when an unmarried teenage (or pre-teen) girl is faced with pregnancy.1 In recognition of the primary role that parents are normally expected to play in the upbringing of their children, and in recognition of the fact that children are generally not considered competent to consent to medical procedures, the Act requires the consent of a parent in order for the child to undergo an abortion.2 In recognition of the fact that divulging her pregnancy to her parents may in some instances be unnecessary or inappropriate because the minor is sufficiently mature and intelligent to decide the question on her own or because her parent or parents have engaged in physical, sexual, or emotional abuse against her (or because obtaining their consent is otherwise not in the childs best interests) the Act provides for a confidential and speedy judicial bypass procedure in which a judge decides whether the minor is competent to decide for herself.3

The legislature engrafted multiple exceptions to the scope of the Act in an effort to create a law that was

specifically targeted, to the greatest extent possible, at the population of underage pregnant girls who would be in greatest need of adult guidance in reaching the decision whether to terminate pregnancy. First, the legislature exempted from the scope of the Act all seventeen-year-old girls.4 The importance of this exemption can hardly be overstated. Studies consistently show that nearly half of all underage abortions are obtained by girls who have reached the age of seventeen.5 Moreover, only one state consent law exempts seventeen-year-olds from its scope,6 and only one state notification law does so.7 This exception also identifies the population of teenage girls most likely competent, by virtue of maturity and experience, to make the decision regarding abortion without adult assistance, and allows them to do so.

Second, the legislature exempted from the scope of the Act four additional classes of minors. Each exemption shows that the legislature was attempting to shape a law that would be applied only to those pregnant girls who would most be in need of adult help. Accordingly, the law does not apply to married minors,8 to minors who have been legally emancipated,9 to minors who have entered the armed services of the United States,10 and to minors who have become employed and self-subsisting.11

Third, in an apparent effort to make certain that the Act would not have coverage over any other underage pregnant girls who were capable of making the decision on their own, the legislature included a catch-all exception to the Act: any who had otherwise become independent from the care and control of [her] parent, guardian, or custodian.12

The legislature next created a judicial bypass procedure to cover those cases of underage pregnancy not covered by these exceptions. The judicial bypass procedure is designed to be confidential, speedy, cost-free to the child, and easy to use. The court system is directed to prepare forms for use by the child13 without charge14 and have them available at every court location in the state: superior court, district court, and magistrate.15 Counsel shall immediately be made available without charge to any minor who seeks judicial bypass16 and the forms shall contain this notification.17 There are no filing fees to be charged18 and no court costs assessed19 against the child.

The proceedings surrounding judicial bypass are strictly confidential: Courts are instructed to conduct all proceedings so as to preserve the anonymity of the child.20 Moreover, the Act specifically directs the court that it may not notify the parents, guardian, or custodian of the child that she is pregnant or seeks an abortion.21 All papers and records pertaining to the matter shall be kept confidential and are not public records under Alaska law.22

In deference to the need for speedy resolution of the consent question in cases where an abortion is sought, the Act provides for extremely short timelines. The court is directed to set the hearing at the earliest possible time and in any event not more than five business days after the complaint is filed.23 The court is directed to enter judgment immediately after the hearing is ended.24 If the hearing is not held by the fifth day after the case is filed, that failure will be considered to be a constructive authorization by the court for the child to consent to an abortion.25 Similarly short deadlines apply to an appeal.26

As to the substance of the inquiry that the judge must make, it is straightforward and simple: The court determines whether the child is sufficiently mature and informed to make the decision to have an abortion.27 (In those cases where the minor has alleged abuse by her parent or guardian, the court determines whether such abuse has occurred.28) If the child is sufficiently

mature to make the decision (or if abuse has occurred and an abortion is in the minors best interest), the court authorizes her to consent to an abortion; if she is not sufficiently mature to decide on her own or if there has not been abuse, the case is dismissed.29

In sum, the Alaska Parental Consent Act appears to be the product of a concerted effort to make certain that those pregnant girls who are sufficiently mature to make the decision to obtain an abortion on their own are allowed to do so while those who are not sufficiently mature either obtain a parents consent or, in the case of parental abuse, a judicial determination that the procedure is in their best interest.

III. Analysis

Application of the three-part test for constitutionality (set out above in the discussion of the constitutional framework) has tended in this case to focus on the third part of the test: whether the means chosen by the legislature are sufficiently narrowly tailored to the goals of the legislation. I agree that this inquiry is the most difficult in this case. But I also believe that failure to focus carefully on the nature of the interests involved can lead to a failure to assess correctly the success of the legislatures effort to tailor the legislation to meet its goals. For this reason, I turn now to each step of the test for constitutionality.

A. The Individual Right To Exercise Autonomy in the Control of Ones Body, and in the Choice to Bear a Child Is Fundamental.

The individual right involved in this case is the right to privacy. While that right is often associated with the maintenance of secrecy or confidentiality with regard to ones affairs (and that is present to some extent in this case), the gravamen of the individuals concerns in this case is the right to exercise autonomy in the control of ones body. In Valley Hospital Association v. Mat-Su Coalition for Choice,30 we relied on the need for a woman to have control of her body, and the choice whether or when to bear children,31 in determining that reproductive rights are fundamental, and that they are encompassed within the right to privacy.32

But it is important to remember that Valley Hospital concerned the rights of adult women. Todays opinion relies on the courts statement in its earlier decision in this case that minors and adults start from the same constitutional footing,33 but it does not meet the promise of that earlier opinion fully to take into account the fact that the persons to whom the statute in this case is directed are children. In holding that [c]onstitutional rights do not mature and come into being magically only when one attains the state-defined age of majority,34 the courts earlier opinion in this case hastened to add:

> Of course this does not mean that evidence of the peculiar vulnerability of children [and] their inability to make critical decisions in an informed, mature manner has no place in determining whether the parental consent or judicial authorization act is constitutional. To the contrary, we have long emphasized the states special interest in protecting the health and welfare of children.[35]

The opinion then explained how this peculiar vulnerability of children was to be taken into account in the constitutional

analysis: [A] statutes relationship to minors properly is employed in the constitutional calculus in determining whether an asserted state purpose or interest is compelling. 36 Indeed, in support of its conclusion that minors enjoy a constitutional right to privacy similar to that of adults, this court quoted Justice Marshalls dissent in H.L. v. Matheson37 that, rather than saying the minors privacy right is somehow less fundamental than an adults, the more sensible view is that state interests inapplicable to adults may justify burdening the minors right.38 But when the court looks to the states and parents interests in this case, it treats them in conclusory fashion. A fuller exposition is warranted.

B. The States Interests To Protect Children from Their Own Immaturity and To Protect Parents Rights and Duties To Raise Their Children Are Compelling.

Despite the promise of Planned Parenthood I to take into account the fact that children are involved during step two of the constitutional analysis the step that asks whether an asserted state purpose or interest is compelling the court today quickly passes over this step.

The courts cursory discussion of the nature of the states compelling interests at stake in this case is inconsistent with our case law on the right to privacy; moreover, it deprives the courts later means-to-ends analysis of any context. Let us consider each of these failings in turn.

In Sampson v. State,39 a privacy-based challenge to Alaska law precluding physician-assisted suicide, we set out the importance of carefully examining the nature of the competing interests involved. In upholding the ban on physician-assisted suicide, we said:

> This court has often emphasized the importance of personal autonomy under our constitution. Yet we have also recognized that the rights to privacy and liberty are neither absolute nor comprehensive that their limits depend on a balance of interests. The nature of the balance varies with the importance of the rights actually infringed.[40]

Because the nature of the balance varies with the importance of the rights involved and because in the context of the case before us now pregnant children who are considering abortion there are important rights on both sides of the equation, including the rights of parents to guide their children, it is particularly important that the court look closely at the nature of the states interests in the legislation.

The courts failure to look closely at the nature of the states and parents interests leaves its constitutional balance one-sided. Because the court has not fully and accurately set out the nature of societys compelling interest in the protection of children and of parents right and duty to raise their children, it is impossible to accurately gauge how close the law comes to meeting its objectives. As a detailed look at the states interest shows, it is multi-faceted and is served in many ways by Alaskas Parental Consent Law. It consists of at least two41 separate aspects.

First, society has longstanding and pervasive interests in protecting children from their own immaturity. The United States Supreme Court has repeatedly recognized societys interest in protecting children from their own immaturity. In Hodgson v. Minnesota,42 the Court held: The State has a strong and legitimate interest in the welfare of its young citizens, whose

immaturity, inexperience, and lack of judgment may sometimes impair their ability to exercise their rights wisely.43 The Court noted that [t]hat interest, which justifies state-imposed requirements that a minor obtain his or her parents consent before undergoing an operation, marrying, or entering military service, extends also to the minors decision to terminate her pregnancy.44 In Stanford v. Kentucky,45 Justice Brennan noted:

> [M]inors are treated differently from adults in our laws, which reflects the simple truth derived from communal experience that juveniles as a class have not the level of maturation and responsibility that we presume in adults and consider desirable for full participation in the rights and duties of modern life.
>
> . . . Adolescents are more vulnerable, more impulsive, and less self-disciplined than adults, and are without the same capacity to control their conduct and to think in long-range terms.[46]

State courts too have long recognized that children require protection from their own immaturity. Pennsylvania, for example, has noted that the states strong interest in protecting younger minors from the sexual aggressiveness of minors over sixteen is based on the immaturity and poor judgment of younger minors.47 Similarly, Florida upheld a law prohibiting consensual sexual contact between minors sixteen and older and those under thirteen because the state had a compelling interest in protecting twelve-year-olds from older teenagers and from their own immaturity in choosing to participate in harmful activity.48

As Justice Matthews set out in his dissent in our earlier consideration of this case, Planned Parenthood I:

> Childrens freedoms have long been constrained in ways that would not be permissible for adults. Constraints on children are imposed in order to protect them, and sometimes society as a whole, from the consequences of their immaturity. Thus children may not exercise the fundamental right to vote. They generally may not make contracts or smoke cigarettes or drink alcoholic beverages or consent to sexual intercourse. Without a parents consent they may not become licensed drivers or get married or obtain general medical or dental treatment. Alaskas parental consent/judicial bypass act is in the tradition of these constraints on childrens freedoms. . . . The act is designed to ensure that each child makes a decision that is best for her.[49]

The notion that parental consent laws further the state interest of protecting minors from their immaturity is neither novel nor surprising. As a matter of law society demands much of parents; it is expected that they will assist their children in making proper decisions until those children reach adulthood.

Parents of teenagers and younger children are familiar with the ubiquitous permission slips which must be signed before their children may go on a school field trip; and parental permission is routinely required before minors may join a sports team, before an under-seventeen minor may view an R-rated movie, and before a minor may even lift weights at the local gym.50 Parental involvement in the everyday decisions of their children enables parents to continue to help their children develop, even as the children grow older and more independent. The rights and obligations of parents to remain involved is intricately bound up with the rights of children to receive guidance and to be protected from their own immaturity. Courts have long recognized these interests: [T]he custody, care and nurture of the child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder.51

For an immature pregnant minor, parental involvement is at least as important in the difficult decision concerning abortion as it is in the permission slip activities mentioned in the last paragraph. In Ohio v. Akron Center for Reproductive Health (Akron II),52 a case concerning a parental notification requirement, the United States Supreme Court held that the requirement furthered the states interest in helping minors to make more mature decisions.53 Some minors may hesitate to seek parental advice if not required to by law because they are young and afraid. In those cases where a pregnant minor has been abused or fears an improper parental response, the PCA carves out a judicial bypass procedure whereby the minor may avoid all parental notification. However, it is improper for this court to assume that harmful parental responses will be a likely or typical response for the minors compelled to seek parental consent under the PCA. As Justice Kennedy noted in Akron II, [i]t is both rational and fair for the State to conclude that, in most instances, the family will strive to give a lonely or even terrified minor advice that is both compassionate and mature.54 Indeed, to prohibit states from ensuring that in most cases young women receive guidance from a parent when making this decision would deny all dignity to the family.55 Similarly, Justice Stevens noted that it is reasonable for a state legislature to conclude that most parents will be primarily interested in the welfare of their children, making the imposition of a consent requirement an appropriate method of giving the parents an opportunity to foster that welfare by helping a pregnant distressed child to make and implement a correct decision.56 Because pregnant minors in Alaska will normally benefit from the involvement of a parent in one of the most critical decisions they can ever make, the PCA furthers the state interests of protecting minors from their immaturity and preserving the rights of parents to raise their children.

The PCA seeks to protect a second compelling interest in abortion cases involving children. In addition to societys interest in protecting children from their own immaturity, we have long held that parents have a fundamental right in the raising of their children. In S.O. v. W.S.,57 we noted that when the state seeks to terminate the parent-child relationship, the result may be the involuntary deprivation of the fundamental natural right of parents to nurture and direct the destiny of their children.58 S.O. relied on and quoted Turner v. Pannick,59 in which Justice Dimond, in commenting on this fundamental right of parents to nurture and direct the upbringing of their children, stated: This is a truth which one discovers by reason, and has the status of knowledge rather than mere opinion.60 He noted that [the family] forms the basic unit of our society and is one of the oldest institutions known to mankind.61

In sum, the norm in American, and Alaskan, life and law is that parents are a childs first and most important resource for assistance in decision-making. For that reason, the states interest in protecting children from the consequences of their own immaturity, and in so doing protecting the health of its children, and its interest in supporting parents right and duty to guide the upbringing of their children is particularly compelling.

C. The Fit Between the States Interests and the Means Adopted To Reach Them Are Sufficiently Close To Pass Constitutional Muster.

We now reach the third part of the constitutional analysis. In order to survive constitutional scrutiny, the PCA must be narrowly tailored in meeting the states interests. Because the childs privacy interests are fundamental, there must be no less restrictive alternative available to the state.62 As the following shows, the PCA is narrowly tailored to its goals. In addition, the alternatives discussed by the superior court and todays opinion are either more restrictive than the PCA or ineffective at meeting the states interests, or both.

1. The PCA is narrowly tailored.

Before embarking on this analysis, however, it is important to address the majoritys assertion that the PCA bestows upon parents what has been described as a veto power over their minor childrens abortion decisions.63 Indeed, the claim that the PCA gives parents a veto power runs throughout todays Opinion,64 and this supposed veto power may fairly be seen as the fundamental weakness of the PCA in the courts view. But the claim is false as it applies to minors who are sufficiently mature to make the decision, and it relies on quotation of the United States Supreme Court taken out of context. The claim is false because a pregnant minor faced with the abortion decision may decide to obtain an abortion without parental consent by using the judicial bypass procedure.65 The quotation is taken out of context because the case it comes from, Ohio v. Akron Center for Reproductive Health, restated the Supreme Courts clearly established precedent that, in order to prevent another person from having an absolute veto power over a minors decision to have an abortion, a State must provide some sort of bypass procedure if it elects to require parental consent.66 Thus, todays Opinions repeated assertions that the PCA gives parents a veto power over their childs abortion decision is simply not true as applied to children who are sufficiently mature to make the decision. And its implication that the United States Supreme Court would regard the PCA as giving parents a veto power is equally wrong: Because the PCA does provide a bypass procedure,

> the Act in the language of the Supreme Court prevent[s] the parent from holding veto power.

The Parental Consent Act is very narrowly drawn to achieve its compelling state interests. To begin, as noted above, the PCA excludes all seventeen-year-olds.67 We have seen that the exclusion of seventeen-year-olds is particularly noteworthy because almost half of minor abortions are performed on seventeen-year-old minors,68 and thus by excluding seventeen-year-olds the legislature almost halved the pool to which the PCA applies. We have also seen that this narrowing of the minors covered by the Act is not arbitrary, but instead is tailored to eliminate those least likely to need the legislation: the most mature of the pregnant minors.

The use of age as a proxy for maturity is fundamental to our legal system and social culture. As the Supreme Court recently noted in Roper v. Simmons,69 the difference in maturity levels between adults and children is evidenced by both common sense and science:

> [A]s any parent knows and as the scientific and sociological studies . . . tend to confirm, a lack of maturity and an underdeveloped sense of responsibility are found in youth more often than in adults and are more understandable among the young. These qualities often result in impetuous and ill-considered actions and decisions. . . . Even the normal 16-year-old customarily lacks the maturity of an adult. . . . [A]dolescents are overrepresented statistically in virtually every category of reckless behavior. In recognition of the comparative immaturity and irresponsibility of juveniles, almost every State prohibits those under 18 years of age from voting, serving on juries, or marrying without parental consent.[70]

Age distinctions are not made with an expectation that they perfectly track maturity.71 All minors under age eighteen are prohibited from voting not because it is unfathomable that a seventeen-year-old is capable of responsibly exercising the right to vote, nor is the prohibition based upon the assumption that all adults vote responsibly. Rather, the legal system accepts lack of perfection in meeting the states interests in order to create a feasible, more convenient, and less intrusive system of governance. As Justice Holmes noted in Louisville Gas & Electric Co. v. Coleman:

> When a legal distinction is determined, as no one doubts that it may be, between night and day, childhood and maturity, or any other extremes, a point has to be fixed or a line has to be drawn, or gradually picked out by successive decisions, to mark where the change takes place. Looked at by itself without regard to the necessity behind it the line or point seems arbitrary. It might as well or nearly as well be a little more to one side or the other. But when it is seen that a line or point there must be, and that there is no mathematical or logical way of fixing it precisely, the decision of the Legislature must be accepted unless we can say that it is very wide of any reasonable mark.[72]

The Alaska Court of Appeals similarly noted in Allam v. State73 that [s]tatutes [that set the age for possession of tobacco, possession of alcohol, age of consent for sexual intercourse, etc.,] and the social policy decisions that underlie them, are within the province of the legislature. There is no legal requirement that the same age of majority apply to all activities and circumstances.74 By exempting seventeen-year-olds from the PCA, the legislature appropriately tailored the legislation to affect the less mature population of pregnant minors.

Significantly, this narrowing of the PCA based on age also makes it less restrictive than every other parental consent

law but one[75] and less restrictive than all but one of the notification laws in effect in other states because all the rest apply to seventeen-year-olds,[76] as discussed in more detail below.

As noted, the legislature further tailored the PCA by excluding four additional categories of minors: legally emancipated minors,[77] married minors,[78] minors living independently,[79] and minors who are members of the armed services.[80] These are hallmarks of maturity in our society. By excluding identifiably mature minors age sixteen and under, the legislature went a long way towards assuring that the legislation would not be over-inclusive. Furthermore, in these respects the PCA is less restrictive than every other states notification laws that do not contain these exceptions.[81]

The final narrowing of the PCA is derived from the judicial bypass procedure. Although neither the superior court nor this courts majority analyze the bypass procedure under the least restrictive means test, the judicial bypass significantly narrows the effect of the law because it provides a way for mature minors who are not otherwise statutorily exempted to obtain an abortion without parental consent. As Justice Matthews recognized in Planned Parenthood I, the judicial bypass procedure satisfies all the criteria established by the United States Supreme Court in Bellotti v. Baird.[82] Indeed, the judicial bypass process was meticulously crafted with the minors need for confidentiality and an expedited decision incorporated into the system. The PCA errs on the side of granting the judicial bypass whenever delay is threatened: If the superior court fails to provide a hearing within five business days of a minor filing the petition, the delay operates as an automatic finding in the minors favor, resulting in a constructive waiver of the consent requirement. Similarly, if the minor loses in the superior court and the hearing on appeal is delayed more than five days after the docketing of the appeal, a constructive order must issue authorizing the minor to undergo the abortion.[83]

2. The PCA is the least restrictive means to achieve the states compelling interests.

The PCA not only furthers a compelling state interest in a manner narrowly tailored and in compliance with the federal constitution, but it is also the least restrictive means of doing so. The least restrictive means test is properly a difficult burden for the state to meet, as it protects fundamental rights against unnecessary state intrusion. However, it is not an impossible standard for the state to meet. A mere showing that the state might have taken less restrictive action, say, by enacting a notification statute instead, is not sufficient to defeat legislation absent a determination that the less restrictive action would effectively achieve the states compelling interests. Indeed, the least restrictive action that a state may take in every case is not to legislate at all.

In Treacy v. Municipality of Anchorage,[84] in upholding the constitutionality of an Anchorage curfew law imposed on minors under age eighteen, we found proposed less restrictive alternatives to be unavailing because they were not effective in meeting the municipalitys compelling interests.[85] Alternatives to the PCA which are less restrictive are therefore not bars to the constitutionality of the legislation unless such alternatives are effective in meeting the states compelling interests.

Todays opinion repeatedly proffers the alternative of parental notification rather than parental consent, (an approach followed by only fifteen state legislatures[86] in comparison to the twenty-six state legislatures[87] that have adopted consent statutes[88]).

But every one of these parental notification statutes that lacks exceptions for seventeen-year-olds and other mature

minors is more restrictive than Alaskas PCA.89 More importantly, such parental notification statutes fail to achieve the same goals as consent laws, as discussed below.

The majority enthusiastically adopts the notion that a notice statute is less restrictive than the PCA because it does not give parents a veto power. But as shown above, the PCA does not create a veto power because it includes a judicial bypass provision. Moreover, the United States Supreme Court has upheld a parental consent statute containing a judicial bypass procedure but fewer statutory exceptions than those included in Alaskas PCA.90 Indeed, as Justice Matthews noted in Planned Parenthood I, [c]urrently it appears that all members of the United States Supreme Court believe that a judicial authorization procedure that meets the conditions of the second Bellotti case as the PCA does is constitutional.91 In Akron II, which todays opinion cites to support its conclusion that notice statutes are less restrictive than consent statutes, the Court limited its distinction between consent and notification statutes to the central requirement that in order to prevent another person from having an absolute veto power over a minors decision to have an abortion, a State must provide some sort of bypass procedure if it elects to require parental consent.92 The PCA provides such a procedure: judicial bypass.

Indeed, notification laws may present the worst case scenario by posing all the risks of privacy infringements of a consent/bypass statute with fewer of its mitigating effects. What could be further from the productive and supportive conversation that a consent statute aims to produce than the cold reality of parents receiving (perhaps after the abortion) a note in the mail informing them of their daughters pregnancy and decision to abort? It is certainly reasonable for a legislature to conclude that consent statutes are more likely to foster actual conversations and parental involvement rather than the one-way, limited flow of information called for in notification statutes. Thus, the existence of notification statutes in a minority of states should not lead to invalidation of Alaskas consent statute unless it is clear that a notification statute would further the states compelling interests.

3. The legislature could reasonably conclude that parental notification statues are not effective in protecting a pregnant girl against her own immaturity or in protecting her parents right and duty to aid in her upbringing.

Despite todays Opinions rosy assertion that all [notification statutes] prohibit minors from terminating a pregnancy until their parents have been notified and afforded an appropriate period of time to actively involve themselves in their minor childrens decision-making processes,93 it is truly questionable whether many notification statutes accomplish anything in the way of meaningful parental notification. Many do not even require that a parent be notified.

Thus, Delaware, identified by the majority opinion as a notification state, allows notification of a licensed mental health professional to substitute for parental notification.94 Maryland, ostensibly another notification state, allows the physician performing the abortion to dispense with notification to the childs parent if in the physicians judgment the child is mature and capable of giving informed consent or if notification would not be in her best interests.95 West Virginia, another notification state, allows the physician performing the abortion to dispense with notification if another doctor finds the child mature enough to make the decision for herself or that notification would not be in her best interests.96 In all states the waiting period is so short that in many instances it will be largely meaningless.97 Can it really be said that a requirement

that written notification be sent to a childs parent, along with the presumption that notice is effective upon mailing and no waiting period (e.g., Maryland98) or a twenty-four hour waiting period (e.g., West Virginia with actual notice99) or even a forty-eight hour waiting period (e.g., West Virginia with constructive notice100), would in any way further the states interest in protecting the child against her immaturity and lack of judgment or protect the parents role in helping to raise their child? It often will be, in truth, little more than a note sent into the night.

The court asserts that the states compelling interests (it refers to them only as legislative goals) are no less likely to accompany parental notification than parental veto power. 101 Of course, as we have seen, there is no veto power in the PCA. But more importantly, only wishful thinking supports that conclusion. How can a statute that does not even require that parents be notified as in Delaware, which allows notification of a mental health professional enhance the potential for parental consultation? Or a statute that deems notice to be effective upon mailing and requires no waiting period or only a twenty-four hour waiting period? The court optimistically talks of giving [parents] notice and time to consult with and guide their daughters through this important decision,102 but this is not what notification statutes do. The longest waiting period in any current notification statute measured from the time of mailing of the notice is seventy-two hours.103 Most are substantially shorter.104 Under these circumstances, to conclude, as todays Opinion does, that a notification statute provides a better chance than a consent statute that parents will engage in a constructive and ongoing conversation with their minor children about the important medical, philosophical, and moral issues surrounding abortion105 is truly wishful thinking. At least under a consent statute, where the child opts not to seek judicial bypass, there must be a conversation. Under a notification statute, where the child opts not to seek judicial bypass, there is only a mailing. There is little reason to believe that notification statutes are effective in protecting minors from their own immaturity or effective in protecting parents rights (and duties) to help their children negotiate the difficult path to adulthood.

We should heed our admonition in Treacy: In analyzing the argument that a legislative solution is not the least restrictive one, courts must take care to require the challenger to demonstrate that the supposedly less restrictive alternative is actually effective in protecting the states (and parents) compelling interests. The court today fails to show that a notification statute will achieve the States compelling interests. This is because, as we have seen, notification laws are ineffective in so many ways in protecting children from their immaturity and in protecting parents rights and obligations to guide their childrens upbringing. And todays opinion declines even to say whether a parental notification approach would be constitutional.

IV. Conclusion

The Alaska Legislature carefully balanced the constitutional right of an underage pregnant girl to privacy and the states compelling interests in protecting children against their own immaturity and protecting parents constitutional right (and duty) to guide their children to maturity. Because the PCA is the least restrictive alternative which will effectively advance the states compelling interests while protecting the childs constitutional right, we should hold that the superior court erred in invalidating it. I respectfully dissent.

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1 State, Dept of Health & Soc. Servs. v. Planned

Parenthood of Alaska, 28 P.3d 904, 906 (Alaska 2001) (noting that we do not decide philosophical questions about abortion which we, as a court of law, cannot aspire to answer).

2 State v. Planned Parenthood of Alaska, 35 P.3d 30, 41 (Alaska 2001) (Planned Parenthood I).

3 Ohio v. Akron Ctr. for Reproductive Health, 497 U.S. 502, 511 (1990) (citing H.L. v. Matheson, 450 U.S. 398, 411 n.17 (1981)).

4 Id.

5 Ch.14, 1-10, SLA 1997.

6 AS 18.16.010(a)(3); AS 18.16.020.

7 AS 18.16.010(c). The Act provides the doctor with an affirmative defense to prosecution and civil liability where compliance with the Act was not possible because an immediate threat of serious risk to the life or physical health of the pregnant minor from the continuation of the pregnancy created a medical emergency necessitating the immediate performance or inducement of an abortion. AS 18.16.010(g). We note that the superior court interpreted this statutory language as broad enough to contain[] an appropriate medical emergency exception.

8 AS 18.16.020(1).

9 AS 18.16.030.

10 AS 18.16.030(c). Similar time limits apply to this courts consideration of a minors appeal from a denied petition. AS 18.16.030(j).

11 35 P.3d 30 (Alaska 2001).

12 Id. at 41.

13 Id. at 46.

14 Grimm v. Wagoner, 77 P.3d 423, 427 (Alaska 2003).

15 Treacy v. Municipality of Anchorage, 91 P.3d 252, 260 (Alaska 2004).

16 Id. at 260 n.14.

17 Ravin v. State, 537 P.2d 494, 497 (Alaska 1975).

18 Planned Parenthood I, 35 P.3d at 41.

19 Cf. Sampson v. State, 31 P.3d 88, 91 (Alaska 2001).

20 Id.

21 Because we conclude that the PCA violates the right to privacy under the Alaska Constitution, we need not address the plaintiffs arguments that the Act also violates the equal protection clause or that the superior court erred in interpreting the Act to include a medical emergency exception.

22 Luedtke v. Nabors Alaska Drilling Inc., 768 P.2d 1123, 1129 (Alaska 1989) (quoting Woods & Rhode, Inc. v. State, Dept of Labor, 565 P.2d 138, 148 (Alaska 1977)).

23 See Ravin, 537 P.2d at 514-15 (Boochever, J., concurring) (reasoning that [s]ince the citizens of Alaska . . . enacted an amendment to the Alaska Constitution expressly providing for a right to privacy not found in the United States Constitution, it can only be concluded that that right is broader in scope than that of the Federal Constitution).

24 Valley Hosp. Assn v. Mat-Su Coalition for Choice, 948 P.2d 963, 968 (Alaska 1997) (internal quotations omitted).

25 Planned Parenthood I, 35 P.3d at 40 (internal quotations omitted).

26 Id. (noting that [d]eciding whether to terminate a pregnancy is at least as difficult, and the consequences of such decisions are at least as profound, for minors as for adults).

27 Id.

28 The dissent appears to liken a minors decision of whether to terminate a pregnancy to decisions about attending school field trips, joining sports teams, viewing R-rated movies, and lifting weights at the gym. But this analogy overlooks the fundamental autonomy at stake in an adolescents control over her own body. And in other important ways, a minors decision to terminate a pregnancy is wholly unlike these decisions the immediacy of the need to address the situation, coupled with the lasting and profound consequences of the decision, make it utterly unlike the day-to-day decisions mentioned by the dissent.

29 More specifically, the State asserts that the PCA aims to (1) ensure that minors make an informed decision on whether to terminate a pregnancy; (2) protect minors from their own immaturity; (3) protect minors physical and psychological health; (4) protect minors from sexual abuse; and (5) strengthen the parent-child relationship.

30 35 P.3d at 41 (quoting Am. Acad. of Pediatrics v. Lungren, 940 P.2d 797, 819 (Cal. 1997)) (stating that a statutes relationship to minors properly is employed in the constitutional calculus in determining whether an asserted state purpose or interest is compelling).

31 Bellotti v. Baird, 443 U.S. 622, 635 (1979).

32 See, e.g., Planned Parenthood I, 35 P.3d at 40 (noting that we have long emphasized the States special interest in protecting the health and welfare of children).

33 Bellotti, 443 U.S. at 637 (quoting Pierce v. Socy of Sisters, 268 U.S. 510, 535 (1925)).

34 Id. at 638.

35 Id.

36 H.L. v. Matheson, 450 U.S. 398, 410 (1981).

37 Wisconsin v. Yoder, 406 U.S. 205, 233 (1972).

38 Bellotti, 443 U.S. at 639 (quoting Ginsberg v. New York, 390 U.S. 629, 639 (1968)).

39 Ohio v. Akron Ctr. for Reproductive Health, 497 U.S.

502, 511 (1990) (citing Matheson, 450 U.S. at 511 n.17).

40 Colo. Rev. Stat. Ann. 12-37.5-101 to 107; Del. Code Ann. tit. 24, 1780-1789(B); Fla. Stat. 390.01114; Ga. Code Ann. 15-11-110 to 114; Ill. Comp. Stat. 70/1-99; Iowa Code 135L.3; Kan. Stat. Ann. 65-6701 to 6709; Md. Code Ann., Health-Gen. 20-103; Minn. Stat. 144.343; Mont. Code Ann. 50-20-201 to 215; Neb. Rev. Stat. 71-6901 to 6908; Nev. Rev. Stat. 442.255; NJ Stat. Ann. 9:17A-1.1 to 1.12; S.D. Codified Laws 34-23A-7; W. Va. Code 16-2F-1 to 9.

41 See, e.g., Ga. Code Ann. 15-11-112(a) (prohibiting physicians from performing an abortion on a minor unless the physicians give either 24 hours actual notice, in person or by telephone, to a parent or guardian or twenty-four hours written notice, which is deemed delivered forty-eight hours after mailing); Iowa Code 135L.3(1) (prohibiting physicians from performing an abortion on a minor until at least forty-eight hours prior notification is provided to a parent of the pregnant minor).

42 AS 18.16.030(e)(f) provides that a minor may bypass the PCAs parental consent requirement if a court determines by clear and convincing evidence that she is sufficiently mature and well enough informed to decide whether to have an abortion or that parental consent would not be in her best interests.

43 See, e.g., Md. Code Ann., Health-Gen. 20-103(c)(1) (providing that a physician may perform an abortion without notice to a parent or guardian if, in the professional judgment of the physician[,] . . . [n]otification would not be in the best interest of the minor); W. Va. Code 16-2F-3(c) (providing that parental notification may be waived by a physician, other than the physician who is to perform the abortion, if such other physician finds that the minor is mature enough to make the abortion decision independently or that notification would not be in the minors best interest).

44 State v. Koome, 530 P.2d 260, 265 (Wash. 1975) (holding that parental consent statute violates state constitutional right to privacy); see also Am. Acad. of Pediatrics v. Lundgren, 940 P.2d 797, 816 (Cal. 1997) (holding that parental consent law intrude[s] upon a pregnant minors protected privacy interest under the California Constitution).

45 Matheson, 450 U.S. at 412; see also Planned Parenthood Assn of the Atlanta Area, Inc. v. Miller, 934 F.2d 1462, 1472-74 (11th Cir. 1991) (holding that Georgias notification statute furthered the states interest in protecting immature minors and promoting parental input).

1 In drafting the Alaska Parental Consent Act, the legislature appears to have tracked carefully the requirements for parental consent and parental notification laws set out by the United States Supreme Court in City of Akron v. Akron Ctr. for Reproductive Health, Inc., 462 U.S. 416 (1983); Bellotti v. Baird, 443 U.S. 622 (1979); H. L. v. Matheson, 450 U.S. 398 (1981); Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476 (1983); Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52 (1976), partially overruled on other grounds by Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992).

2 AS 18.16.020(1).

3 AS 18.16.020(2). In the event that the court fails to act, such failure will be considered to be judicial authorization for the abortion. AS 18.16.020(3).

4 AS 18.16.020.

5 Stanley K. Henshaw & Kathryn Kost, Parental Involvement in Minors Abortion Decisions, 24 Family Planning Perspectives, Sept/Oct. 1992 at Table 1. See also Letter from Susan K. Steeg, General Counsel, Texas Department of Health (May 26, 2004) (stating that of the 3654 minor women who obtained an abortion in Texas in 2002, 1694 or forty-six percent of them were age seventeen); Aida Torres, Jacqueline Darroch Forrest & Susan Eisman, Telling Parents: Clinic Policies and Adolescents Use of Family Planning and Abortion Services, 12 Family Planning Perspectives, Nov/Dec 1980, 284, 287 (forty-four percent of the 1170 unmarried minor abortion patients surveyed were seventeen years old).

6 S.C. Code Ann. 44-41-10(m) (2006).

7 Del. Code Ann. tit. 24 1782(6) (2007).

8 AS 18.16.020.

9 Id. and AS 18.16.090(2)(C).

10 AS 18.16.020, .090(2)(A).

11 AS 18.16.020, .090(2)(B).

12 AS 18.16.020, .090(2)(D).

13 AS 18.16.030(l).

14 Id.

15 AS 18.16.030(n).

16 AS 18.16.030(d). The only exception is that if the child already has counsel. Id.

17 AS 18.16.030(n)(3).

18 AS 18.16.030(n)(1).

19 AS 18.16.030(n)(2).

20 AS 18.16.030(k).

21 AS 18.16.030(h).

22 AS 18.16.030(k).

23 AS 18.16.030(c).

24 Id.

25 Id.

26 AS 18.16.030(j). See also Alaska R. App. P. 220.

27 AS 18.16.030(e).

28 AS 18.16.030(f).

29 AS 18.16.030(e), (f).

30 948 P.2d 963 (Alaska 1997).

31 Id. at 968.

32 Id. at 969.

33 Opinion at 7; State v. Planned Parenthood of Alaska, 35 P.3d 30, 41 (Alaska 2001) (Planned Parenthood I).

34 35 P.3d at 40 (quoting Planned Parenthood of Cent. Mo. v Danforth, 428 U.S. 52, 74 (1976)).

35 35 P.3d at 40 (footnote omitted).

36 Id. at 41 (quoting American Acad. of Pediatrics v. Lungren, 940 P.2d 797, 819 (Cal. 1997)).

37 450 U.S. 398 (1981).

38 Id. at 441 n.32.

39 31 P.3d 88 (Alaska 2001).

40 31 P.3d at 91 (footnotes omitted).

41 The superior court actually identified six compelling state interests in its opinion. They were as follows: (1) State has a compelling interest in protecting minors from their own immaturity. (2) State has a compelling interest in protecting the physical, emotional, and psychological health of minors. (3) State has a compelling interest in ensuring that doctors obtain informed consent from their minor patients contemplating pregnancy related decisions. (4) State has a compelling interest in protecting minors from sexual abuse . . . . (5) The court finds that the state does have many interests, some of them compelling, in fostering and protecting the family structure . . . . (6) This court finds that protecting rights to a civil action is a compelling state interest.

42 497 U.S. 417 (1990).

43 Id. at 444.

44 Id. at 444-45. See also Planned Parenthood Assn of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476, 490-91 (1983) (A States interest in protecting immature minors will sustain a requirement of a consent substitute, either parental or judicial.); Parham v. J. R., 442 U.S. 584, 603 (1979) (Most children, even in adolescence, simply are not able to make sound judgments concerning many decisions, including their need for medical care or treatment. Parents can and must make those judgments.); Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 102-04 (1976) (Stevens, J., concurring and dissenting) (minors may not make enforceable bargains, work, or travel where they please, attend exhibitions of constitutionally-protected adult motion pictures, marry, etc.); Gallegos v. Colorado, 370 U.S. 49, 54 (1962) (holding that fourteen-year-olds criminal confession made without advice of adult violated due process because of childs inherent lack of maturity).

45 492 U.S. 361 (1989), overruled by Roper v. Simmons, 543 U.S. 551 (2005).

46 Id. at 395 (Brennan, J., dissenting) (quoting Twentieth Century Fund Task Force on Sentencing Policy Toward Young Offenders, Confronting Youth Crime 7 (1978)).

47 Commonwealth v. Albert, 758 A.2d 1149, 1154 (Pa. 2000).

48 J.A.S. v. State, 705 So. 2d 1381, 1386 (Fla. 1998). See also In re E.G., 549 N.E.2d 322, 327 (Ill. 1989) (holding that court should distinguish mature minors from immature minors for purpose of determining right to refuse medical treatment because the State has a parens patriae power to protect those incompetent to protect themselves).

49 35 P.3d at 46-47.

50 Todays Opinion mistakenly asserts that the dissent appears to liken a minors decision of whether to terminate a pregnancy to decisions about attending school field trips, joining sports teams, viewing R-rated movies, and lifting weights at the gym and argues that the decision to terminate a pregnancy is wholly unlike these decisions. (Opinion 10, n.28) The Opinion misses the point entirely: Of course permission-slip decisions do not have the lasting and profound consequences (Opinion 10, n.28) of the abortion decision, and yet the law imposes the necessity of parental consent upon them. If society deems parental consent critical in such lesser matters, should not the parents play a similar role when the consequence to the child are so vastly greater? And in arguing that fundamental autonomy [is] at stake in an adolescents control over her own body, (Opinion 10, n.28) the Opinion ignores that parental consent is required for virtually every other medical procedure involving a child. See Hodgson v. Minnesota, 497 U.S. 417, 423 (1990) (recognizing the common-law requirement of parental consent for any medical procedure performed on minors.).

51 Prince v. Massachusetts, 321 U.S. 158, 166 (1944).

52 497 U.S. 502 (1990).

53 Id. at 519.

54 Id. at 520.

55 Id.

56 Planned Parenthood v. Danforth, 428 U.S. 52, 104 (1976) (Stevens, J., concurring).

57 643 P.2d 997 (Alaska 1982).

58 Id. at 1006.

59 540 P.2d 1051 (Alaska 1975).

60 Id. at 1055 (Dimond, J., concurring).

61 Id. at 1055-56.

62 Planned Parenthood I, 35 P.3d 30, 41 (Alaska 2001).

63 Opinion 12, quoting Ohio v. Akron Ctr. for Reproductive Health, 497 U.S. 502, 511 (1990).

64 See, e.g., Opinion at 4 (the Act effectively shifts that minors fundamental right to choose if and when to have a child from the minor to the parents); 4 (veto power); 12 (same); 13 (same); 15 (the PCA shifts the right to reproductive choice to minors parents); 16 (veto power).

65 See AS 18.16.030. The judge in a bypass case must decide whether the child is sufficiently mature and well enough informed to decide intelligently whether to have an abortion. If she is, the court issues an order authorizing her to consent to the procedure without the consent of a parent, guardian, or custodian. AS 18.16.030(e). (If she is not, the court dismisses the case. Id. Presumably, a child found to be insufficiently mature to make such a decision should not make it.)

66 497 U.S. at 510-11 (emphasis added). Moreover, although the reference in todays Opinion to the use of veto power in the United States Supreme Courts opinions in H.L. v. Matheson and Ohio v. Akron Center is technically accurate (in the sense that the term appears in both opinions), it is also misleading. Ohio v. Akron Center, when it referred to Matheson, simply established that notice statutes are not equivalent to consent statutes for the purpose of constitutional analysis. Neither Matheson nor Akron Center directly addressed what types of bypass procedures are capable of curing the constitutionally fatal veto power found in consent statutes without bypass procedures. Instead, both Matheson and Akron Center dealt solely with the constitutionality of parental notification statutes.

67 AS 18.16.020.

68 See supra note 5.

69 543 U.S. 551 (2005).

70 Id. at 569 (internal quotations and citations omitted).

71 Planned Parenthood of Cent. Mo. v. Danforth, 428 U.S. 52, 104-05 (1976) (Stevens, J., concurring and dissenting) (In all . . . situations [where state legislation seeks to protect minors from the consequences of decisions they are not prepared to make] chronological age has been the basis for imposition of a restraint on the minors freedom of choice even though it is perfectly obvious that such a yardstick is imprecise and perhaps even unjust in particular cases.).

72 277 U.S. 32, 41 (1928) (Holmes, J., dissenting).

73 830 P.2d 435 (Alaska App. 1992).

74 Id. at 438.

75 See S.C. Code Ann. 44-41-10(m) (also defining minors as under the age of seventeen).

76 Delaware appears to be the only exception among notification states. Del. Code Ann. tit. 24, 1782(6) (requiring notification for those under age sixteen). But cf. Kan. Stat. Ann. 65-6701(f) (2006); Md. Code Ann., Health-Gen. 20-103 (2005); Minn. Stat. 144.343 (2005); Mont. Code Ann. 50-

20-203(6) (2005); Neb. Rev. Stat. 71-6901(5) (2006); Nev. Rev. Stat. 442.255 (2005); S.D. Codified Laws 34-23A-7 (2006); Tex. Fam. Code Ann. 33.002 (2007); W. Va. Code 16-2F-2 (2007).

77 AS 18.16.020 (applying the statute only to minors known to be unmarried . . . and unemancipated). The majority opinion notes that a minor must prove by clear and convincing evidence that she is sufficiently mature in order to obtain a judicial bypass, while the standard of proof for legal emancipation is a preponderance of the evidence. Because any minor who has established legal emancipation is already exempted from the scope of the PCA, however, the PCA is not over-broad on this account. Furthermore, it is logical that a minor who cannot prove that she is globally ready to be free from parental supervision may nonetheless be mature on the specific issue of the decision to terminate her pregnancy. This discrepancy in what must be proven negates an easy comparison regarding the burden of proof that a minor must satisfy.

78 Id.

79 AS 18.16.090(2)(B). By its express terms the PCA provides a much broader interpretation of the term unemancipated than Alaskas formal emancipation statute, AS 09.55.590. The term is defined in AS 18.16.090(2):

> unemancipated means that a woman who is unmarried and under 17 years of age has not done any of the following:
> (A) entered the armed services of the United States;
> (B) become employed and self-subsisting;
> (C) been emancipated under AS 09.55.590; or
> (D) otherwise become independent from the care and control of the womans parent, guardian, or custodian.

80 AS 18.16.090(2)(A).

81 Md. Code Ann., Health-Gen. 20-103 (no exception for emancipated minors); Kan. Stat. Ann. 65-6705 (2006) (no exception for unemancipated minors living independently); Minn. Stat. 144.343 (same); Mont. Code Ann. 50-20-201 to 215 (same); Neb. Rev. Stat. 71-6901 to 6908 (same); S.D. Codified Laws 34-23A-7 (same); Tex. Fam. Code Ann. 33.001 to 011 (same); W. Va. Code 16-2F-1 to 9 (same).

82 35 P.3d at 51-52 (Matthews, C.J. , dissenting) (citing to Bellotti, 443 U.S. 622 (1979)) (noting that (1) proceedings must except minor from any parental consent requirements if minor can establish she is mature enough to make abortion decision, or that requiring consent is not in her best interests and (2) proceedings must be completed with anonymity and sufficient expedition).

83 AS 18.16.030(j).

84 91 P.3d 252 (Alaska 2004).

85 Id. at 267.

86 Colo. Rev. Stat. Ann. 12-37.5-101 to 107 (West 2007); Del. Code Ann. tit. 24, 1780 to 1789B; Fla. Stat. 390.01114 (West 2007); Ga. Code Ann. 15-11-110 to 118 (West 2007); 750 Ill. Comp. Stat.Ann. 70/1 to 99 (West 2007); Iowa Code Ann. 135L.3 (West 2007); Kan. Stat. Ann. 65-6701 to 6709; Md. Code

Ann., Health-Gen. 20-103; Minn. Stat. 144.343; Mont. Code Ann. 50-20-201 to 215; Neb. Rev. Stat. 71-6901 to 6908; Nev. Rev. Stat. 442.255; N.J. Stat. Ann. 9:17A-1.1 to 1.12 (West 2007); S.D. Codified Laws 34-23A-7; W. Va. Code 16-2F-1 to 9 (2006). Oklahoma, Texas, and Utah, not counted here, require both notification and consent. Okla. Stat. Ann. tit . 63, 1-740.2 (West 2006); Tex. Fam. Code Ann. 33.001 to .011; Tex. Occ. Code Ann. 164.052(a)(19); Utah Code Ann. 76-7-304, 76-7-304.5 (West 2006).

87 Ala. Code 26-21-1 to 8 (1992); Ariz. Rev. Stat. Ann. 36-2152 (2006); Ark. Code Ann. 20-16-801 to 810 (West 2006); Cal. Health & Safety Code 123450 (West 2007); Idaho Code Ann. 18-609A (West 2007); Ind. Code 16-34-2-4 (West 2006); Ky. Rev. Stat. Ann. 311.720, 311.732 (West 2006); La. Stat. Ann. 40:1299.35.5 (2006); Me. Rev. Stat. Ann. tit. 22, 1597-A (2006); Mass. Gen. Laws ch. 112, 12S (2004); Mich. Comp. Laws Ann. 722.901 to 722.909 (West 2006); Miss. Code Ann. 41-41-53 (West 2006); Mo. Ann. Stat. 188.028 (West 2006); N.C. Gen. Stat. Ann. 90-21.6 to 90.21.10 (West 2006); N.D. Cent. Code 14-02.1 to 03.1 (2005); Ohio Rev. Code Ann. 2919.121 (West 2006); Okla. Stat. Ann. tit. 63, 1-740.2 (West 2006); 18 Pa. Cons. Stat. Ann. 3206 (West 2006); R.I. Gen. Laws 23-4.7-6 (2006); S.C. Code Ann. 44-41-31 (2006); Tenn. Code Ann. 37-10-301 to 308 (2005); Tex. Fam. Code Ann. 33.001 to .011; Tex. Occ. Code Ann. 164.052(a)(19); Utah Code Ann. 76-7-304, 76-7-304.5; Va. Code Ann. 16.1-241(V) (West 2006); Wis. Stat. Ann. 48.375 (West 2005); Wyo. Stat. Ann. 35-6-118 (2006).

88 Three states, Oklahoma, Texas, and Utah, have adopted both consent and notification statutes.

89 See Treacy, 91 P.3d at 267.

90 See Planned Parenthood Assn of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476, 493-94 (1983).

91 35 P.3d at 51 (Matthews, J., dissenting). It should be noted that since those words were written, Chief Justice John Roberts and Justice Samuel Alito have replaced Chief Justice William Rehnquist and Justice Sandra Day OConnor.

92 497 U.S. 502, 510-11 (1990).

93 Opinion 13.

94 Del. Code. Ann. tit. 24 1783(a).

95 Md. Code. Ann., Health-Gen. 20-103(c)(1)(ii), (iii).

96 W. Va. Code 16-2F-3(c).

97 The waiting periods range between twenty-four hours (Delaware, West Virginia (twenty-four hours after actual notice), Georgia, Kansas, and Utah) and forty-eight hours (West Virginia (forty-eight hours after mailing notice), Iowa, Colorado, Illinois, Minnesota, Nebraska, South Dakota, Texas, Montana).

98 Md. Code. Ann., Health-Gen. 20-103.

99 W. Va. Code. 16-2F-3(a).

100 Id.

101 Opinion 16.

102 Id. at 13.

103 See Ga. Code Ann. 15-11-112(a) (written notice deemed delivered forty-eight hours after mailing; abortion may be performed twenty-fours hours after).

104 See, e.g., Del. Code Ann. tit. 24 1783; Ga. Code Ann. 112(a)(1)(B); Utah Code Ann. 76-7-304(3); W. Va. Code Ann. 16-25-3(a) (all requiring a waiting period of only twenty-four hours).

105 Opinion 16.

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BELLOTTI V. BAIRD, 443 U. S. 622 (1979)

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U.S. Supreme Court

Bellotti v. Baird, 443 U.S. 622 (1979)

Bellotti v. Baird

No. 78-329

Argued February 27, 1979

Decided July 2, 1979*

443 U.S. 622

Syllabus

A Massachusetts statute requires parental consent before an abortion can be performed on an unmarried woman under the age of 18. If one or both parents refuse such consent, however, the abortion may be obtained by order of a judge of the superior court "for good cause shown." In appellees' class action challenging the constitutionality of the statute, a three-judge District Court held it unconstitutional. Subsequently, this Court vacated the District Court's judgment, *Bellotti v. Baird,* 428 U. S. 132, holding that the District Court should have abstained and certified to the Massachusetts Supreme Judicial Court appropriate questions concerning the meaning of the statute. On remand, the District Court certified several questions to the Supreme Judicial Court. Among the questions certified was whether the statute permits any minors -- mature or immature -- to obtain judicial consent to an abortion without any parental consultation whatsoever. The Supreme Judicial Court answered that, in general, it does not; that consent must be obtained for every nonemergency abortion unless no parent is available; and that an available parent must be given notice of any judicial proceedings brought by a minor to obtain consent for an abortion. Another question certified was whether, if the superior court finds that the minor is capable of making, and has, in fact, made and adhered to, an informed and reasonable decision to have an abortion, the court may refuse its consent on a finding that a parent's, or its own, contrary decision is a better one. The Supreme Judicial Court answered in the affirmative. Following the Supreme Judicial Court's judgment, the District Court again declared the statute unconstitutional and enjoined its enforcement.

Held: The judgment is affirmed. Pp. 443 U. S. 633-651; 443 U. S. 652-656.

450 F.Supp. 997, affirmed.

MR. JUSTICE POWELL, joined by MR. CHIEF JUSTICE BURGER, MR. JUSTICE STEWART, and MR. JUSTICE REHNQUIST, concluded that:

1. There are three reasons justifying the conclusion that the constitutional

Page 443 U. S. 623

rights of children cannot be equated with those of adults: the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the guiding role of parents in the upbringing of their children. Pp. 443 U. S. 633-639.

2. The abortion decision differs in important ways from other decisions facing minors, and the State is required to act with particular sensitivity when it legislates to foster parental involvement in this matter. Pp. 443 U. S. 639-642.

3. If a State decides to require a pregnant minor to obtain one or both parents' consent to an abortion, it also must provide an alternative procedure whereby authorization for the abortion can be obtained. A pregnant minor is entitled in such a proceeding to show either that she is mature enough and well enough informed to make her abortion decision, in consultation with her physician, independently of her parents' wishes, or that, even if she is not able to make this decision independently, the desired abortion would be in her best interests. Such a procedure must ensure that the provision requiring parental consent does not, in fact, amount to an impermissible "absolute, and possibly arbitrary, veto." *Planned Parenthood of Central Missouri v. Danforth,* 428 U. S. 52, 428 U. S. 74. Pp. 443 U. S. 642-644.

4. The Massachusetts statute, as authoritatively interpreted by the Supreme Judicial Court, unduly burdens the right to seek an abortion. The statute falls short of constitutional standards in two respects. First, it permits judicial authorization for an abortion to be withheld from a minor who is found by the superior court to be mature and fully competent to make this decision independently. Second, it requires parental consultation or notification in every instance, whether or not in the pregnant minor's best interests, without affording her an opportunity to receive an independent judicial determination that she is mature enough to consent or that an abortion would be in her best interests. Pp. 443 U. S. 644-651.

MR. JUSTICE STEVENS, joined by MR. JUSTICE BRENNAN, MR. JUSTICE MARSHALL, and MR. JUSTICE BLACKMUN, concluded that the Massachusetts statute is unconstitutional because under the statute, as written and as construed by the Massachusetts Supreme Judicial Court, no minor, no matter how mature and capable of informed decisionmaking, may receive an abortion without the consent of either both parents or a superior court judge, thus making the minor's abortion decision subject in every instance to an absolute third-party veto. *Planned Parenthood of Central Missouri v. Danforth,* 428 U. S. 52, controlling. Pp. 443 U. S. 652-656.

POWELL, J., announced the judgment of the Court and delivered an opinion, in which BURGER, C.J., and STEWART and REHNQUIST, JJ., joined.

Page 443 U. S. 624

REHNQUIST, J., filed a concurring opinion, *post,* p. 443 U. S. 651. STEVENS, J., filed an opinion concurring in the judgment, in which BRENNAN, MARSHALL, and BLACKMUN, JJ., joined, *post,* p. 443 U. S. 652. WHITE, J., filed a dissenting opinion, *post,* p. 443 U. S. 656.

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT_____

In the Matter of)
)
)
)
)
_____)
(Type or Print Name of Petitioner))
)
) CASE NO._____PR
Date of Birth_____)
_____)

PETITION TO BYPASS
PARENTAL CONSENT

Clerk's Instructions: This is a confidential matter requiring immediate appointment of counsel and a hearing within 48 hours. No filing fee is required and no court costs may be assessed.

I request that the court issue an order authorizing me to consent to an abortion without asking for the consent of my parent, guardian or custodian. I swear or affirm under penalty of perjury that the following information is true.

1. I am pregnant.

2. I am unmarried, under 17 years of age, and unemancipated.

3. I wish to have an abortion without the consent of a parent, guardian or custodian.

4. Parental consent should not be required because (check all that apply):

   ☐ a. I am sufficiently mature and well enough informed to decide intelligently whether to have an abortion without the consent of a parent, guardian, or custodian.

   ☐ b. One or both of my parents or my guardian or custodian has engaged in physical abuse, sexual abuse, or a pattern of emotional abuse against me.

   ☐ c. It is not in my best interest to require me to obtain the consent of a parent, guardian, or custodian.

5. I ☐ do not have an attorney. I understand the court must appoint one for me.
   ☐ am represented by the following attorney:
   Attorney's Name:_____ Telephone_____
   Attorney's Address:_____

AS 18.16.030
AS 09.63.020
Probate Rule 20

6. ☐ **I understand that I must contact the court to find out my hearing date and how to contact my attorney if I do not get this information at the time I file this petition. (The hearing will be held within 48 hours after the court receives the petition.)**

7. ☐ I request that I be allowed to participate in the hearing by telephone rather than attending the hearing in person. I understand that I must give the court a telephone number where I can be reached for the hearing and that the court will pay for the call.

_____ _____
Date Signature

_____
Daytime Telephone (optional)
(If possible, please give a telephone number where court personnel can reach you or leave a message for you.)

NOTARIZATION

Subscribed and sworn to or affirmed before me at _____, Alaska on _____.
(date)

(SEAL)

_____
Clerk of Court, Notary Public, or other person authorized to administer oaths.
My commission expires_____

CERTIFICATION

[Complete the following certificate if no notary or other official is available to administer an oath.]

I certify under penalty of perjury that

1. all of the information in this petition is true, and
2. a notary public or other official empowered to administer oaths is not available.

_____ _____ _____
Date Place (city) Signature

Instructions For Requesting Judicial Permission To Bypass Parental Consent

If you are a woman under 17 years old and want to have an abortion in Alaska, you must first get the written consent of one of your parents or your guardian or custodian.[1] Apart from medical emergencies,[2] there are just three exceptions[3] to this Alaska law. You do not need parental consent if:

1. you are emancipated, or

2. you obtain a court order dispensing with parental consent for one of the reasons listed in the statute, or

3. you request the above court order but the court fails to hold the required hearing within five business days, thus "constructively authorizing" the abortion without parental consent.

Emancipation. You are "emancipated" for purposes of the abortion law[4] if any of the following are true: you are (1) married, (2) a member of the armed services of the United States, (3) employed and self-subsisting, (4) emancipated under Alaska Statute 09.55.590[5], or (5) independent from the care and control of your parents, guardian or custodian.

Court Order. The procedure for requesting this court order is described below. Your request will be kept confidential by the court. The court is not allowed to notify your parents or anyone else that you are pregnant or that you want to have an abortion. The court will provide the forms you need for your request and will appoint an attorney to represent you (at state expense) if you do not have an attorney. You will not be charged any fees or court costs.

How To Request A Court Order

To request a court order, do the following:

1. Fill out the attached form P-505, Petition To Bypass Parental Consent. Type or print clearly, using black ink.

   a. Leave the "AT" line at the top of the form blank. The court clerk will fill it in.

   b. On the next line, fill in your name as petitioner and your date of birth.

---

1 AS 18.16.010(a)(3)

2 See AS 18.16.010(g) for what constitutes a "medical emergency."

3 AS 18.16.020

4 AS 18.16.090(2)

5 AS 09.55.590 allows minors who are at least 16 years old to petition the superior court for emancipation. This can usually be done only with the consent of each living parent or guardian of the minor. The minor must be living separate and apart from the minor's parents or guardian, be capable of sustained self-support and be capable of managing his/her own financial affairs.

c. Leave the "CASE NO." line blank. The court clerk will fill it in.

d. In #4, check any of the boxes that apply to your situation.

e. In #5, check the first box if you do not have an attorney. The court will appoint one for you. Check the second box and fill in the information if you have hired your own attorney.

f. In #6, check the box (agreeing to call the court if you do not find out your hearing time and how to contact your attorney when you file your petition). (See #2 below.) Since the court may have no way of contacting you, you need to contact the court to get this information.

g. In #7, check the box if you want to participate in the court hearing by telephone instead of in person. The hearing will be held within 48 hours after you file your petition. You will not have to pay for the telephone call.

h. Your petition must be notarized, so you should wait to date and sign it until you get to the court clerk's office where a clerk can notarize it for you. If you do not plan to file your petition in person, see the discussion about notarization in paragraph 3 below.

i. If possible, please fill in a telephone number where court personnel can call you or leave a message for you. The court may need to contact you, for example, if the time of the hearing has to be changed. If you do not have a telephone number where the court can call you, you do not have to fill this in.

2. Bring your filled out petition to the clerk's office at your local court and tell the clerk you want to file it. The clerk will ask you to sign it under oath and will notarize it for you (at no charge). Please bring a photo ID (for example, your driver's license) with you because the clerk needs to see identification in order to notarize your petition. The clerk will ask you to wait a few minutes while the clerk schedules your court hearing and assigns an attorney to represent you. The clerk will give you a Notice form (P-510) with this information on it.

3. If there is no court in your community (or if you do not want to use the local court), you can mail or fax your petition to the nearest superior court. Addresses and fax numbers are listed on page 4. Before faxing or mailing the petition, you need to get it notarized locally by a notary public or postmaster. If there is no notary public or postmaster available, you must sign and date the petition and fill out the "Certification" section at the bottom.

   If you fax the petition, call the court to make sure they received it and to find out your hearing date and who your attorney will be.

   If you mail the petition, call the court and tell the clerk that you have mailed a petition. Ask the clerk how to find out the date and time of your hearing and how to contact your attorney.

4. Contact your attorney <u>immediately</u>. Because the hearing will be held so soon (within 48 hours), your attorney will need to talk to you as soon as possible.

5. Attend the court hearing. You can participate by telephone if you need to do so. To do this, you must give the court or your attorney a telephone number where the court can reach you at the time of the hearing.

   The hearing will be confidential (not open to the public).

6. At or immediately after the hearing, the court will issue an order granting or denying your request.

   If your request is denied, you can appeal this decision. Your court-appointed attorney will continue to represent you in the appeal. Form P-520, Notice of Appeal, should be used to file the appeal. This form is available at all court locations.

Constructive Authorization

If the superior court fails to hold a hearing on your request within five business days (not counting holidays and weekends) after you file your petition, the law[6] allows you to consent to the abortion without first obtaining the consent of one of your parents. If you need proof that no hearing was held, you can get a certificate from the court stating this. Your attorney can help you get the certificate.

---

6 AS 18.16.030(c)

Superior Court Locations

Anchorage
Probate Office
Boney Courthouse
303 K Street Room 239
Anchorage, AK 99501-2083
Phone: 264-0433
Fax: 264-0598

Barrow
Clerk of Court
Box 270
Barrow, AK 99723-0270
Phone: 852-4800
Fax: 852-4804

Bethel
Clerk of Court
Box 130
Bethel, AK 99559-0130
Phone: 543-3348
Fax: 543-4419

Dillingham
Clerk of Court
Box 909
Dillingham, AK 99574-0209
Phone: 842-5215
Fax: 842-5746

Fairbanks
Probate Office
604 Barnette Street Suite 116
Fairbanks, AK 99701-4569
Phone: 452-9256
Fax: 452-9216

Juneau
Clerk of Court
Box 114100
Juneau, AK 99811-4100
Phone: 463-4700
Fax: 463-3788

Kenai
Clerk of Court
125 Trading Bay Drive Suite 100
Kenai, AK 99611-7723
Phone: 283-3110
Fax: 283-7702

Ketchikan
Clerk of Court
415 Main Street Room 400
Ketchikan, AK 99901-6399
Phone: 225-3195
Fax: 225-7849

Kodiak
Clerk of Court
204 Mission Road Room 10
Kodiak, AK 99615-7312
Phone: 486-1600
Fax: 486-1660

Kotzebue
Clerk of Court
Box 317
Kotzebue, AK 99752-0317
Phone: 442-3208
Fax: 442-3974

Nome
Clerk of Court
Box 1110
Nome, AK 99762-1110
Phone: 443-5216
Fax: 443-2192

Palmer
Clerk of Court
435 South Denali
Palmer, AK 99645-7759
Phone: 746-8109
Fax: 746-4151

Petersburg
Clerk of Court
Box 1009
Petersburg, AK 99833-1009
Phone: 772-3824
Fax: 772-3018

Sitka
Clerk of Court
304 Lake Street Room 203
Sitka, AK 99835-7759
Phone: 747-8109
Fax: 747-6690

Wrangell
Clerk of Court
Box 869
Wrangell, AK 99929-0869
Phone: 874-2311
Fax: 874-3509

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT_____

In the Matter of

_____
(Type or Print Name of Petitioner)

Date of Birth_____

CASE NO._____PR

NOTICE AND ASSIGNMENT
RE PETITION TO BYPASS
PARENTAL CONSENT

NOTICE OF HEARING

Assigned Judge:_____

Hearing Date & Time:_____
(within 48 hours after petition is filed)

APPOINTMENT OF ATTORNEY

☐ The Office of Public Advocacy is appointed to represent you.

Attorney's Name:_____

Attorney's Address:_____

Attorney's Phone:_____

You should contact the attorney as soon as possible.

_____ _____
Date Clerk

Clerk's Certificate

The above information was given to

☐ Petitioner ☐ in person ☐ by telephone ☐ _____

on _____ _____
(date) (time)

☐ Petitioner's attorney on_____ by ☐ fax ☐ personal delivery
(date)

Clerk:_____

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
AT_____

In the Matter of

_____
(Petitioner's Name)

Date of Birth_____

CASE NO._____PR

ORDER ON REQUEST TO BYPASS PARENTAL CONSENT

FINDINGS

Hearing Held:_____ Present Were:_____

The court finds by clear and convincing evidence that

☐ the petitioner is sufficiently mature and well enough informed to decide intelligently whether to have an abortion.

☐ one or both of the petitioner's parents or the petitioner's guardian or custodian has engaged in physical abuse, sexual abuse or a pattern of emotional abuse of the petitioner.

☐ it is not in the best interest of the petitioner to require her to obtain the consent of her parents, guardian or custodian.

ORDER

It is therefore ordered

☐ Petitioner is authorized to consent to the performance or inducement of an abortion without the consent of a parent, guardian or custodian.

☐ The petition is denied because the court is unable to make any one of the findings required by AS 18.16.030(e)-(g). Petitioner has the right to appeal this decision to the supreme court. Notice of Appeal form P-520 is available at the court. The attorney appointed to represent the petitioner will continue to represent the petitioner during the appeal.

_____ _____
Date Superior Court Judge

_____
Type Judge's Name

I certify that on_____
a copy of this order was faxed or handed to petitioner's attorney/petitioner.

Clerk:_____

Recommended for approval.

_____
Master Date

IN THE SUPREME COURT FOR THE STATE OF ALASKA
AT ANCHORAGE

In the Matter of)
)
)
)
)
)
_____)
(Name of Appellant))
)
_____)

Supreme Court Case No._____
Superior Court Case No._____

NOTICE OF APPEAL
RE PETITION TO BYPASS
PARENTAL CONSENT

Instructions to trial court clerks: This notice of appeal may be filed in any district or superior court, or directly with the clerk of the appellate courts. If it is filed in a district or superior court, the clerk must immediately call the clerk of the appellate courts for instructions.

Instructions to supreme court clerks: This is a confidential matter requiring immediate action by the supreme court. No filing fee is required. See Appellate Rule 220 for the procedure that must be followed when one of these appeals is filed.

Appellant appeals from the order of the superior court denying her request for authorization to consent to an abortion without obtaining the consent of a parent, guardian or custodian. A copy of the superior court's order is attached.

☐ Appellant waives the right to oral argument.

_____ _____
Date Signature of Appellant's Attorney

Attorney's Name:_____

Address:_____

Telephone:_____

Fax:_____

If filed by fax, appellant's attorney should call the court to confirm that the Notice of Appeal has been received. Supreme Court Fax: 264-0878. Supreme Court Phone: 264-0609.

Citation/Title
PROB Rule 20, Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion

Probate Rules, Rule 20

WEST'S ALASKA STATUTES ANNOTATED
ALASKA COURT RULES
PROBATE RULES
PART III. PROTECTIVE PROCEEDINGS

Current with amendments received through 8/22/2008

Rule 20. Judicial Bypass Procedure to Authorize Minor to Consent to an Abortion

(a) Petition. An action for an order authorizing a minor under age 17 to consent to an abortion without the consent of a parent, guardian, or custodian is commenced by filing a petition. The petition must be under oath and must include the information required by AS 18.16.030(b). The petitioner is not required to provide an address or telephone number. Blank petition forms will be available at all court locations and will be mailed or faxed to a petitioner upon request. No fee will be charged for this service or other services provided to a petitioner.

(b) Filing. The petition may be filed in any district or superior court location in person, by mail, or by fax. No filing fee will be charged. If a petition is filed in a district court location, the clerk or magistrate shall immediately notify the clerk of the nearest superior court and fax the petition to that court, unless the local judicial officer has been appointed as a master to conduct these proceedings.

(c) Appointment of Counsel. If the petitioner is not represented by a private attorney, the clerk shall appoint the Office of Public Advocacy to represent the petitioner. The clerk shall immediately notify the Office of Public Advocacy of the appointment.

(d) Expedited Hearing. Upon receipt of the petition, the court shall schedule a hearing to be held within 48 hours, including weekends and holidays, after the petition is filed. At the hearing, the court shall follow the procedure specified in AS 18.16.030(e)-(g). Upon request, the petitioner will be allowed to participate telephonically at court system expense.

(e) Findings and Order. The court shall enter an order immediately after the hearing is concluded. The court shall grant the petition if the court finds by clear and convincing evidence that one of the statutory grounds for dispensing with parental consent exists. Otherwise, the court shall deny the petition. If the petition is denied, the court shall inform the petitioner of her right to an expedited appeal to the supreme court.

***1051** (f) Constructive Order. If the court fails to hold a hearing within five days after the petition is filed, the presiding judge of the judicial district, or another judge designated by the presiding judge, shall issue a certificate stating that (1) no hearing was held within five business days after the petition was filed; and (2) under AS 18.16.030(c), the failure to hold a hearing constitutes a constructive order of the court authorizing the minor to consent to an abortion without the consent of a parent, guardian, or custodian. A certificate should not be issued if the hearing was not held because it was postponed at the petitioner's request or because the petitioner failed to appear at the hearing.

(g) Confidentiality. Petitions filed under AS 18.16.030 and all hearings, proceedings, and records are confidential. Court personnel are prohibited from notifying a minor's parents, guardian, or custodian that a minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

(h) Appeal. A petitioner may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal in any district or superior court, or directly with the clerk of the appellate courts. If the notice of appeal is filed in a district or superior court, the clerk or magistrate shall immediately notify the clerk of the appellate courts that the notice of appeal has been filed.

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The procedure for appeals is governed by Appellate Rule 220. This rule supersedes the appeal procedure established by AS 18.16.030(j).

[Adopted effective July 31, 1997.]

REFERENCES

CROSS REFERENCES

AS 18.16.030

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Citation/Title
RAP Rule 220, Judicial Bypass Appeals

Rules of Appellate Procedure, Rule 220

WEST'S ALASKA STATUTES ANNOTATED
ALASKA COURT RULES
RULES OF APPELLATE PROCEDURE
PART II. PROCEDURE ON APPEALS AS OF RIGHT

Current with amendments received through 8/22/2008

Rule 220. Judicial Bypass Appeals

(a) Scope. This rule applies to an appeal from an order denying or dismissing a petition filed by a minor under age 17 to bypass parental consent to an abortion under AS 18.16.030. In such appeals, this rule supersedes the other appellate rules to the extent they may be inconsistent with this rule. It also supersedes the procedure for bypass appeals established by AS 18.16.030(j).

(b) Jurisdictional Limitation. This rule does not permit an appeal to be taken in any circumstances in which an appeal would not be permitted by Appellate Rule 202.

(c) Notice of Appeal.

(1) A minor may appeal an order denying or dismissing a petition to bypass parental consent by filing a notice of appeal in any district or superior court, or directly with the clerk of the appellate courts. The notice of appeal may be filed in person, by mail, or by fax, and must be accompanied by a copy of the order from which the appeal is taken. No filing fee will be charged. If the notice of appeal is filed in a district or superior court, the clerk or magistrate shall immediately notify the clerk of the appellate courts that the appeal has been filed.

(2) The notice of appeal must indicate that the appeal is being filed pursuant to this rule, but the court will apply this rule to cases within its scope whether they are so identified or not.

(3) Blank notice of appeal forms will be available at all court locations and will be mailed or faxed to a minor upon request. No fee will be charged for this service or other services provided to a minor in an appeal under this rule.

(d) Record on Appeal. The record on appeal consists of the superior court file, including all papers and exhibits filed in the superior court, and, unless otherwise ordered, a recording of the proceedings before the superior court. The clerk of the appellate courts shall request the record immediately upon receiving notice that the appeal has been filed. Upon receiving this request, the clerk of the trial court shall immediately transmit the record to the supreme court by overnight mail or in another manner that will cause it to arrive within 48 hours after the notice of appeal is filed.

***656** (e) Brief. A brief is not required. However, the minor may file a typewritten memorandum in support of the appeal.

(f) Oral Argument. Unless the minor waives the right to oral argument in the notice of appeal, oral argument will be held within 72 hours, including weekends and holidays, after the notice of appeal is filed. Upon request, the minor will be allowed to participate telephonically at court system expense.

(g) Disposition. The court shall enter an order stating its decision immediately after oral argument or, if oral argument has been waived, within three days after the date the notice of appeal is filed. The court may issue an opinion explaining the decision at any time following entry of the order.

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(h) Constructive Order. If the court fails to enter an order within five days after the date the clerk of the appellate courts receives the record on appeal, the clerk shall issue a certificate stating that (1) no order was entered within five days after the appeal was docketed; and (2) under AS 18.16.030(j), the failure to enter an order constitutes a constructive order of the court authorizing the minor to consent to an abortion without the consent of a parent, guardian, or custodian. For purposes of AS 18.16.030(j), an appeal is deemed to be docketed on the date the clerk of the appellate courts receives the record on appeal.

(i) Confidentiality. Documents and proceedings in an appeal under this rule are confidential. Court personnel are prohibited from notifying the minor's parents, guardian, or custodian that the minor is pregnant or wants to have an abortion, or from disclosing this information to any member of the public.

(j) Attorney. If the minor is not represented by an attorney, the clerk of the appellate courts shall appoint the Office of Public Advocacy to represent the minor in the appeal. If the Office of Public Advocacy was appointed to represent the minor in the trial court, the appointment continues through the appeal.

(k) Filing Defined. For purposes of this rule only, a document is deemed filed on the date it is received by the district court, the superior court, or the clerk of the appellate courts if the appeal is filed directly with the clerk.
***657**

[Adopted effective July 31, 1997.]

HISTORICAL NOTES

NOTE

Under AS 18.16.030(j), the failure to enter a judgment in the appeal within five days after the appeal is docketed constitutes a constructive order of the court authorizing the appellant to consent to an abortion without the consent of a parent, guardian, or custodian.

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FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 035
() Publish Date:

Identifier (file name): HB035-DHSS-MS-03-09-09
Dept. Affected: Health & Social Services
Title: Notice & Consent for Minor's Abortion
RDU: Health Care Services
Component: Medicaid Services
Sponsor: Coghill
Requester: House JUD
Component Number: 2077

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims	***	***	***	***	***	***	***
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match	***	***	***	***	***	***	***
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This fiscal note is indeterminate (***).

There is no way to determine which minors enrolled in Medicaid had consent from a parent or guardian for abortions because the department does not require a consent form to process claims.

Expenditures for abortions are made from general fund dollars. These claims are paid pursuant to an Alaska Supreme Court decision that requires state funding of medically necessary abortions for low-income women eligible for Medicaid. (continued on page 2)

Prepared by: William J. Streur, Deputy Commissioner
Division: Health Care Services
Phone: 269-7827
Date/Time: 3/9/09 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner
DHSS Finance & Management Services
Date: 3/9/2009

FISCAL NOTE

STATE OF ALASKA

2009 LEGISLATIVE SESSION

BILL NO. HB035

ANALYSIS CONTINUATION

The only abortion services eligible for federal financial participation are those that the department is required to cover under the federal Hyde amendment. To qualify under the Hyde amendment, the abortion must be the result of rape or incest, or the life of the mother must be endangered if the pregnancy were carried to term. Hyde amendment qualifying abortion claims are rare—in FY 2008, there were no Hyde amendment claims.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version:
() Publish Date:

Identifier (file name): HB035-LAW-CIV-3-6-09
Title: An Act relating to notice and consent for a minor's abortion.
Sponsor: REPRESENTATIVE(s) COGHILL, Neuman, et al.
Requester: Judiciary

Dept. Affected: LAW
RDU: CIVIL
Component: HUMAN SERVICES
Component Number: 2208

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

Prepared by: Robert Meiners, Deputy Director — Phone 907-465-5427
Division: Administrative Services Division — Date/Time 3/9/09 10:20 PM
Approved by: Richard Svobodny, Acting Attorney General — Date 3/9/2009
Department of Law

(Revised 5/10/2008 OMB)

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. HB035

ANALYSIS CONTINUATION

HB35 would amend existing state statutes regarding the requirement of parental notice and consent to be given if a person under age 17, who is unmarried, unemancipated, and pregnant, intends to obtain an abortion. The bill prohibits a person from performing an abortion unless the requisite parental notice and consent is provided or the person qualifies for an exception to those requirements. The bill also enacts new provisions of law regarding coercion of a minor who is pregnant and regarding certain reports that must be filed by physicians.

If this bill is enacted there would be a zero cost of implementation to the department. Should a legal challenge be mounted, especially of a constitutional nature, there would be costs in defending the provisions of this bill. Costs of defending legislation may arise with any legislature and often can not be anticipated; however, the department has previously defended the constitutionality of similar legislation. Those efforts approached $500,000 in addition to the payment of a court ordered award of $940,000 in costs and fees to the plaintiffs in the case.

AMEND #1 A.2 FAILED

26-LS0192\A.2
Kurtz/Mischel
3/13/09

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 35

Page 2, line 29:

Delete "**medical instability caused by a**"

Lynn N
Gruen Y
Holmes Y
Dahlstrom N
Coghill N
Gatto N
Ramras N

2 Y 5 N

1176

FAILED

Amend #2 Coghill object

26-LS0192\A.9
Mischel
3/13/09

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 35

Page 3, lines 6 - 7:

Delete "not less than 48 hours before the abortion is performed"

Page 4, line 23:

Delete "48 hours"

Gruen Y
Holme Y
Dahl N
Cog N
Lynn N
Gatto N
Rem N

24

1177

Amend #3

FAILED

26-LS0192\A.1
Kurtz/Mischel
3/13/09

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 35

Page 2, line 27:

Following "death":

Insert "**or serious risk to the minor's health**"

Holmes Y
Dahl N
Cog N
Lynn N
Max Y
N
N

1178

NOT OFFERED

26-LS0192\A.3
Kurtz/Mischel
3/13/09

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 35

Page 3, lines 6 - 7:

Delete "not less than 48 hours before the abortion is performed"

1179

Amend # 4 - Dahlstrom ob

FAILED

26-LS0192\A.4
Kurtz/Mischel
3/13/09

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 35

Page 3, line 17:

Delete "by a declaration of the"

Insert "in a writing signed by the minor under penalty of perjury."

Page 3, lines 18 - 28:

Delete all material.

Lynn N
Gruen Y
Coghill N
Ramras N
Dahlstrom N
Holmes Y
Gatto N

24/5n

1180

Amendment #5

Dahl ob

FAILED

26-LS0192\A.5
Kurtz/Mischel
3/13/09

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 35

Page 1, line 3, following "**abortion**":

Insert "**or to bear a child**"

Page 7, line 25, following "abortion":

Insert "or to bear a child"

Page 7, line 28, following "abortion":

Insert "or to bear a child"

Lynn N
Gruenberg Y
Coghill N
RAMRAS A.
Dahlstrom N
Holmes Y
GATTO N

1181

NOT OFFERED

26-LS0192\A.6
Kurtz/Mischel
3/13/09

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 35

Page 7, line 27:

Delete "parent, legal guardian, or custodian"

Insert "person"

1182

NOT OFFERED

26-LS0192\A.7
Kurtz/Mischel
3/13/09

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 35

Page 6, following line 11:

Insert new bill sections to read:

"* **Sec. 7.** AS 18.16.030(e) is amended to read:

(e) If the complainant makes only the allegation set out in (b)(4)(A) of this section and if the court finds by **a preponderance of the** [CLEAR AND CONVINCING] evidence that the complainant is sufficiently mature and well enough informed to decide intelligently whether to have an abortion, the court shall issue an order authorizing the complainant to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian. If the court does not make the finding specified in this subsection, it shall dismiss the complaint.

* **Sec. 8.** AS 18.16.030(f) is amended to read:

(f) If the complainant makes only the allegation set out in (b)(4)(B) of this section and the court finds that there is clear and convincing evidence of physical abuse, sexual abuse, or a pattern of emotional abuse of the complainant by one or both of the minor's parents or the minor's guardian or custodian, or by **a preponderance of the** [CLEAR AND CONVINCING] evidence the consent of the parents, guardian, or custodian of the complainant otherwise is not in the best interest of the complainant, the court shall issue an order authorizing the complainant to consent to the performance or inducement of an abortion without the consent of a parent, guardian, or custodian. If the court does not make the finding specified in this subsection, it shall dismiss the complaint."

Renumber the following bill sections accordingly.

Page 9, lines 29 - 30:

Delete "clear and convincing"

Insert "**a preponderance of the** [CLEAR AND CONVINCING]"

NOT OFFERED

26-LS0192\A.8
Kurtz/Mischel
3/13/09

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 35

Page 1, following line 7:

Insert a new bill section to read:

"* **Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE FINDINGS. The legislature finds, for purposes of this Act, that expedited consideration of any case challenging AS 18.16.010 - 18.16.030, as amended by secs. 2 - 9 of this Act, or AS 18.16.035 or 18.16.040, enacted by sec. 10 of this Act, is necessary both to determine whether the statutes are constitutional and to avoid a chilling effect of those statutes under the Constitution of the State of Alaska."

Page 1, line 8:

Delete "**Section 1**"

Insert "**Sec. 2**"

Renumber the following bill sections accordingly.

Page 10, following line 15:

Insert new bill sections to read:

"* **Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

EXPEDITED CONSIDERATION BY COURT. The Alaska Supreme Court and the Alaska Superior Court shall provide expedited consideration at both the trial and appellate levels of any judicial proceedings involving the constitutionality of AS 18.16.010 - 18.16.030,

1185

as amended by secs. 2 - 9 of this Act, or AS 18.16.035 or 18.16.040, enacted by sec. 10 of this Act.

*** Sec. 18.** The uncodified law of the State of Alaska is amended by adding a new section to read:

EXPEDITED CONSIDERATION OF ISSUES RELATED TO REGULATION OF A MINOR'S ABORTION; LEGISLATIVE FINDING OF NO COURT RULE CHANGE. The legislature finds that expedited consideration by a court under sec. 17 of this Act does not constitute a court rule change necessitating a two-thirds vote of the legislature under art. IV, sec. 15, or other provisions of the Constitution of the State Alaska, for the following reasons:

(1) the legislature has passed similar laws to require expedited consideration of other disputes, examples of which include AS 18.66.120 (modification of protective orders) and AS 25.30.460 (enforcement of child custody decree);

(2) sec. 17 of this Act does not change any court rules, but expedited consideration resolves and harmonizes potential conflicts between several court rules and creates a limited exception to several rules; and

(3) even if the court finds that sec. 17 of this Act is beyond the scope of the legislature's authority under the Constitution of the State of Alaska, the legislature requests the court to expedite review of the constitutionality of any challenged provisions of AS 18.16.010 - 18.16.040 as a matter of comity."

Renumber the following bill sections accordingly.

Dana Strommen

From: Haase, Donald J. [HaaseDJ@alyeska-pipeline.com]
Sent: Wednesday, February 25, 2009 7:27 AM
To: Rep. Jay Ramras; jayramras@hotmail.com
Subject: HB35, Restoring Parental Rights

Honorable members of the House Judiciary Committee,

You have before you the opportunity to provide great help to parents in Alaska. Currently, a pregnant 13-year-old can be coerced into an abortion without the advice, knowledge or consent of either of her parents. Your daughter could be driven to the clinic by the 21-year-old coach, neighbor or teacher who impregnated her through statutory rape – unbelievable! If your underage daughter is raped by her older boyfriend, he is now able to hide his crime by coercing her into an abortion and you will never know until medical or emotional complications come forth.

As the father of a teenage daughter, I feel it is my responsibility to help her make the best medical decisions possible. Current law says that she can make these decisions alone, or worse, with only the coercive advice of the man who impregnated her. I ask that you correct this wrong by passing HB35 promptly in order to proved plenty of time for consideration by the full House and Senate.

Thank you,

Don Haase
Box 3423
Valdez AK 99686
(907)834-7359

Jane Pierson

From: Chris & Jennie Grimwood [ckiwigrim@gci.net]
Sent: Tuesday, March 03, 2009 10:37 AM
To: Jane Pierson
Subject: letter for parental consent file

Dear Jane:

This is not a copy of another letter. I wrote it myself. I just forwarded it to another

Jennie Grimwood
Cordova

Dear Representative Ramras:

I think parental consent is an important issue. It affirms the rights of parents to raise their children. A government entity that wants to become the parent and make generic decisions for parents creates a nanny state. How can a government write policy on "How to be a parent" ? Our traditions of raising children have for centuries have been handed down through the family. A recent invasion of government to dictate personal family matters can never replace a long history of parents making decisions for their families unless it was serfdom or slavery.

Values have been handed down through families. HB 35 Parental consent to abortion should be an easily understood bill. Parents consent is required for school field trips, visits to the hospital, medical treatment, tatoos, girl scout trips, athletic activities and many other events.

Parents need to know if their minor daughter is having an abortion. Sexual predators have accompanied young girls to abortion clinics to wipe out their crime. Young girls don't understand the side effects of various abortion pills. Young girls don't understand the aftereffects of abortions such as heavy bleeding that can last for weeks. I recently spoke to a legislative aide who had used a cocktail of birth control pills (how-tos found on web sites) to have an abortion. She said she wouldn't recommend it because of the extreme pain. A morning after pill given by an abortion clinic can be a deadly dose.

Sincerely,

Jennie Grimwood
Cordova

Dana Strommen

From: Wayne McCready [wjmccready@mosquitonet.com]
Sent: Thursday, March 05, 2009 12:19 PM
To: Rep. Jay Ramras
Subject: HB 35

Dear Rep. Ramras,

Thank you for sponsoring House Bill 35, the parental consent for a minor's abortion bill. Parents are society's best advocate for their children, are held legally responsible for their child's actions, and of course are morally responsible to God for raising them, not the State. The State has no right and no business to allow a dangerous, morally-laden medical and emotional decision to be remade by minors without parental involvement. Thank you for fighting to right an egregious violation of family rights and responsibilities. Please make this bill into law.

Yours truly,

Janine McCready

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name

committee on HB 35 bill/subject . dated 3-9-09

Dear Legislators:

My name is Patricia Anker and I live in Anchorage - District 423.

Thank you for taking public testimony regarding HB 35.

I understand this bill will be heard in the House Judiciary Committee this coming Monday, Wednesday and Friday.

Please vote **YES** on this bill and support parental rights as they provide for, support, educate, and love their children. They - the parents - are, after all, responsible in every way for the well-being of their children - they certainly should have the information they need to guide their children in all areas.

Thank You,
Patricia K. Anker

Signed:

From: John and Patti Anker [ankzam@gci.net]
Sent: Sunday, March 08, 2009 12:35 AM
To: LIO Anchorage
Subject: HB35 Notice and Consent for Minor's Abortion

Address

Phone No.

9/86 Legislative Information Office

Dana Strommen

From: Deborah Brollini [deb_brollini@yahoo.com]
Sent: Tuesday, March 10, 2009 11:06 AM
To: Rep. Bob Lynn; Rep. Jay Ramras; Rep. Nancy Dahlstrom

I am not going to be able to testify regarding parental consent. I am at home with my kids for spring break. I did watch a portion of yesterday's testimony. Questions I have:

- My daughter cannot go on a field trip with ASD, or when she was in private school without my consent. My daughter cannot go to Providence without my consent. My daughter will be 13 in August, and how can receive a major medical procedure without my consent? How is that okay?
- Major complications with an abortion with my daughter who is going to pay for future medical issues? My child commits a crime… I am responsible for the damage my child commits. My daughter is hospitalized for infection from a bad abortion without my consent; who is going to pay for it?

These are my questions I have for the Dr. who is going to testify and examples.

Thank you.

Deborah Brollini

Dana Strommen

From: Aimee Kopp [yukonaimee@yahoo.com]
Sent: Tuesday, March 10, 2009 8:14 PM
To: Rep. Jay Ramras
Subject: HB35

Please support bill HB35 to protect the rights of parents and the safety of children and youth.
Thank you,
Aimee' Kopp
Houston, AK

"Though you have not seen Him, you love Him; and even though you do not see Him now, you believe in Him and are filled with an inexpressible and glorious joy, for you are receiving the goal of your faith, the salvation of your souls." 1Peter 1:8-9

Dana Strommen

From: Nicole Kirk [NicoleKirk@acsalaska.net]
Sent: Tuesday, March 10, 2009 7:07 PM
To: Rep. Jay Ramras
Subject: I Support HB35

Representative Ramras,

Please support House Bill 35. It is important that Alaskans re-establish their fundamental right to oversee the health decisions of their children. This bill is about the fundamental right of parents to be involved in the medical decisions of their underage children.

Sincerely,

Nicole Kirk
PO Box 376
Girdwood, Alaska 99587
(907) 783-2131

Dana Strommen

From: Ben Hastings [hastings_ben@hotmail.com]

Sent: Tuesday, March 10, 2009 6:25 PM

To: Rep. Kyle Johansen; Rep. Peggy Wilson; Rep. Beth Kerttula; Rep. Cathy Munoz; Rep. Bill Thomas; Rep. Woodie Salmon; Rep. Mike Kelly; Rep. David Guttenberg; Rep. Scott Kawasaki; Rep. Jay Ramras; Rep. John Coghill; Rep. John Harris; Rep. Carl Gatto; Rep. Wes Keller; Rep. Mark Neuman; Rep. Bill Stoltze; Rep. Anna Fairclough; Rep. Nancy Dahlstrom; Rep. Pete Petersen; Rep. Max Gruenberg; Rep. Harry Crawford; Rep. Sharon Cissna; Rep. Les Gara; Rep. Berta Gardner; Rep. Mike Doogan; Rep. Lindsey Holmes; Rep. Bob Buch; Rep. Craig Johnson; Rep. Chris Tuck; Rep. Charisse Millett; Rep. Bob Lynn; Rep. Mike Hawker; Rep. Kurt Olson; Rep. Mike Chenault; Rep. Paul Seaton; Rep. Alan Austerman; Rep. Bryce Edgmon; Rep. Bob Herron; Rep. Richard Foster; Rep. Reggie Joule

Dear Representative,
I have been a resident of Alaska for 17 years and I would like to voice my vehement support for the parental consent bill currently being debated in the Alaska House. Our nation is in urgent need for our leaders to stand straight and defend families. When families are broken down, society breaks down. Parents must be given the right to guide their children and protect them from making the mistake of taking away the life of their baby.
Sincerely,
Ben Hastings
Po Box 3883
Soldotna, AK 99669
907 262 2629

Windows Live™ Contacts: Organize your contact list. Check it out.

Dana Strommen

From: Marty Greenstreet [marty@mtaonline.net]
Sent: Wednesday, March 11, 2009 2:54 PM
To: Rep. Jay Ramras
Subject: HB35

I strongly support HB35 that would require parental consent for any health decision of a minor. It is a known medical fact that the front part of the brain that is responsible for relating consequences to actions, is not fully developed until later years. The weight of some medical decisions are so great and long lasting that a minor should not bear it alone without the support and consent of a parent. I strongly believe this is a fundamental right as a parent to be involved in all aspects of raising our children. I tried to call 888-295-4546 to voice my support for HB35 but all the teleconference lines were busy. The gentlement suggested I email my support to you. Thank you for your time. An Alaskan for 54 years.

Martha Greenstreet
P.O. Box 1191
Palmer, AK 99645
(907)745-7047

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee
Committee name

Committee on HB 35, dated 3/11/09
Bill/Subject

As a mother of 3 girls, 2 of them teenaged, I do support the idea of parental consent and would like to see this pass. But

I do not know if the portion regarding a consent other than the parents in the case of abuse (or similar) does not cause undue hardship on girls as young as 12 (or younger). Who is there for them to guide them through this? process

Signed: Annemarie Acord

Testifier

Representing (Optional)

POBox 870790 Wasilla, AK 99687
Address

(907) 376 0692
Phone number

Alaska State Legislature

Please enter into the record my testimony to the HB 35
Committee name

Committee on HOUSE JUDICIAL COMMITT., dated 3/11/09
Bill/Subject

I AM IN SUPPORT OF HB 35 PARENTAL CONSENT FOR MINORS SEEKING AN ABORTION. IT IS INCONSIVABLE TO ME THAT AN ABORTION COULD EVEN BE CONSIDERED WITHOUT PARENTAL CONSENT. IF THIS WERE YOUR DAUGHTER, WOULDN'T YOU WANT TO KNOW THIS? WHAT ABOUT THE CONSIQUENCES OF PROBLEMS WITH THIS PROCEDURE AND THE EMOTIONAL AFTER MATH WITHOUT FAMILY SUPPORT. DOES THE ABORTION INDUSTRY HAVE THAT MUCH POWER TO ~~PURSE~~ PUSH THIS PAST PARENTS BEHIND THEIR BACKS

Signed: IN SECRET John V Miller
Testifier

SELF
Representing (Optional)

P.O. BOX 876854 WASILLA, AK 99687
Address

(907) 745-7611
Phone number

Alaska State Legislature

Please enter into the record my testimony to the HB 35
Committee name

Committee on PARENTAL CONSENT, dated 3/11/09
Bill/Subject

I want to support HB 35 on parental Concent

Signed: Jerald G. Knaber
Testifier

Representing (Optional)

5351 E CHERRY DR WASILLA, AK 99654
Address

907-357-6362
Phone number

Alaska State Legislature

Please enter into the record my testimony to the HB 35
Committee name

Committee on House Judiciary Committee, dated 3/11/09
Bill/Subject

I AM IN SUPPORT OF HB 35 - PARENTAL CONSENT FOR MINORS SEEKING AN ABORTION
I STRONGLY BELIEVE THAT PARENTS SHOULD HAVE THIS RIGHT.

Signed: William H Thomas
Testifier

Representing (Optional)

1403 S CENTER POINT DR WASILLA AK 99654
Address

(907) 357-4033
Phone number

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee
Committee name

Committee on HB35 - Parental Notification, dated 3/11/09
Bill/Subject

As a mom, I love my children very much + I want what's best for them. I realize there are abusive parents + this bill makes allowances for that. However, the vast majority of parents in Alaska are real people doing the best we can to help our children grow into adults who make wise decisions.

In regards to major medical decions in the life of a child, an adult will influence that child. It seems logical to have that adult be one or both parents, who are naturally going to have the child's best interests at heart.

Whether or not I agree with another parent's decision for their child, they have the right + responsibility to help their child make decisions, especially something as major as an abortion.

Please let parents help their children through this major medical decision.

I support HB35.

Signed: Laura Horning
Testifier

Self
Representing (Optional)

37666 N. Paradise Ln. Wasilla, AK 99654
Address

(907) 357-7735
Phone number

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the House Judiciary Committee
Committee Name

Committee on HB 35 Dated _____
Bill / Subject

page attached

SIGNED: _____
Testifier

SELF
Representing

2325-30th Avenue Fairbanks, AK 99701
Address / Phone Number 907-452-5538

March 11, 2009

I support the Parental Consent Bill HB 35 and thank you for hearing it.

I am a parent and even if I were not a parent it is a "no-brainer" to understand that parents have the right to be involved in ALL medical decisions that involve their minor children. The dictionary defines parent as "A father or mother, he or she that produces young. The duties of parents to their children are to maintain, protect and educate them."

How can a parent protect their children if the law prevents medical information from being available to them? Some foes of parental consent may cite examples of abuse by parents. Examples can always be stacked up to satisfy different sides of a problem. Other foes such as representatives of planned parenthood or the ACLU think that they should have more power and influence over tweens, teens and minors than parents should.

If my teen has a medical decision to make and I am unaware of it, then how can I help them financially? As a parent how can I "pick up the pieces" of a procedure gone wrong if I don't know what is going on? What if that teen or younger dies in the process of a medical procedure and I had no knowledge that something was being done? Then what? I don't even get to say "good-bye" or have closure with my child.

If you are a legislator who remembers that we live in a Republic and what that means, then you also know that your decisions should be made based on principles of right and wrong under our Constitution, rather than polls, number of people testifying on one side or the other, or majority rule. The founding principles protect the family. It is wrong for the law to allow others to advise minor children but block bills like this one, which guarantee and reestablish parental rights.

Our family urges the passage of HB 35.

ALASKA STATE LEGISLATURE

Please enter into the record my testimony to the Judiciary
Committee Name

Committee on HB35 Dated 3/11/09
Bill / Subject

Please pass HB35. We are discussing children having the maturity to make a life changing decision without the help of their parents. Children, especially teenagers do not have the capacity needed to make medical decisions.

This is not about abortion but the rights of parents to do their job. We as parents are legally responsible for the actions of our minor children. All we as parents are asking is to give our rights back. Do not punish the good parents because of a few irresponsible ones. Please allow us to be able to wrap our love + support around our most precious asset

SIGNED: Jammie Wilson
Testifier

Representing

889 Esro, Fbks, AK 99712 490-0312
Address / Phone Number

March 11, 2009

To: The Alaska State Legislature

We the undersigned Alaskan registered voters from Fairbanks encourage the passage of HB 35 to require parental consent for minors seeking abortions. We realize that children are often pressured into making decisions on life changing events without proper consideration of the consequences. Parental consent will help minors and parents to properly evaluate the long term ramifications of abortion.

Parental consent can recognize the State's compelling interest in "*protecting minors from their own immaturity and aiding parents in fulfilling their parental responsibilities.*" In addition to **parental consent**, HB 35 provides for a judicial bypass for sexual abuse cases.

Parents are a child's first and most important resource for assistance in decision-making. For that reason, the state's interest in protecting children from the consequences of their own immaturity, and in so doing protecting the health of its children, and its interest in supporting parents' right and duty to guide the upbringing of their children is particularly compelling.

The Alaska Parental Consent Act attempts to ensure that pregnant minors who are sufficiently mature to make the decision to obtain an abortion on their own are allowed to do so while those who are not sufficiently mature either obtain a parent's consent or, in the case of parental abuse, a judicial determination that the procedure is in their best interest.

Name (Printed)	Address	Date	Signatures
Vince Meurlott	596 Arvita Court, Fairbanks, AK 99712	3-11-09	
Annie Meurlott	596 Arvita Court, Fairbanks, AK 99712	3-11-09	
Clare De Hernandez	596 Arvita Court, Fairbanks, AK 99712	3-11-09	
Nancy Sams	1308 Hartzog Lp. North Pole, AK 99705	3-11-09	
Trina Jeannet	599 Arvita Court, Fairbanks, AK 99712	3-11-09	
Charlie Jeannet	599 Arvita Court, Fairbanks, AK 99712	3-11-09	
Carder Adcock	" " "	3-11-09	
Nick Meurlott	596 Arvita Court, Fairbanks, AK 99712	3-11-09	
Alyssa Jeannet	599 Arvita Ct, Fairbanks AK 99712	3/11/09	

Thank you for your consideration

Dana Strommen

From: GIRDWOOD REALTY [nicole@girdwoodrealty.com]
Sent: Wednesday, March 11, 2009 5:56 PM
To: Rep. Jay Ramras
Subject: Children have a Right to Be Protected by their Parents

Representative Ramras,

Having an abortion is a life-changing event with serious physical and emotional consequences for a minor child. By passing HB35, you are assuring that children remain under the protective umbrella of their parents. It is the parents, not Planned Parenthood or the ACLU, that have the child's best interest in mind. Who is best to guard the minor girl who thinks abortion is the only answer: the sperm donor, Planned Parenthood, or the ACLU? THE PARENTS!! Also, parents are the ones held legally accountable for their child's well-being.

The Supreme Court has maintained that parents possess a fundamental and constitutional right to direct the upbringing of their children. "Those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." 1925 The Supreme Court, Pierce v. Society of Sister

Those who oppose HB35, are attacking parental rights and the fundamental child-parent relationship. The role of parents in a child's life is an irreplaceable one – instituted for the well-being and protection of the child!

Please support the right of minor children to be protected by their parents and the right of the parent to protect their children before receiving an intrusive medical surgery that kills the child's unborn baby. Vote Yes on House Bill 35!

Scott Kirk
PO Box 376
Girdwood, AK 99587
907-223-9651

Dana Strommen

From: housemajority_email@housemajority.org
Sent: Wednesday, March 11, 2009 9:58 PM
To: Rep. Jay Ramras
Subject: thank you

+--+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to stephanieschurter@yahoo.com If suspected Spam please forward to: support@housemajority.org
+--+

From: stephanieschurter@yahoo.com

I hope this is going to the right person. I participated in the 3/11/09 hearing regarding house bill 35 from my home in Anchorage. I forgot to state my overwhelming gratitude to have the chance to speak my opinions and beliefs and to be afforded that chance while staying in the privacy of my own home and caring for 3 children. I am truly blessed to be in this country and to be able to speak freely. Thank you for your time and consideration on this huge subject. My hope is that the decision will be made to grant parents the rights to have control over all medical care given to their children and that in regards to the other issues brought up such as issues of abuse and incest that other resources will be sought out and planning committees created to meet the needs of those girls in desparate situations. Crisis Pregnancy Center has a program that helps place a vulnerable pregnant teen into a caring home that will support her throughout her pregnancy and up to 6 weeks after the child is born. Just an example of a way to address the needs of the teen without undermining the authority of all parents in this great state.
Again, thank you for your time and consideration.
Stephanie Schurter

~ Stephanie Schurter
Zip Code: 99515

+--+
DO NOT REPLY DIRECTLY TO THIS EMAIL: your reply will go to enews@housemajority.org To correspond with the author Hit 'Reply' or 'Forward'.
Then change the TO: address to stephanieschurter@yahoo.com If suspected Spam please forward to: support@housemajority.org
+--+

Dana Strommen

From: peacemkr [peacemkr@wildak.net]
Sent: Wednesday, March 11, 2009 11:37 PM
To: Rep. Jay Ramras
Subject: HB 35

Greetings from the interior,
My name is Maureen Henry. I would like to thank you for hearing this bill. I believe it is the parent's right to be involved in all their children's medical decisions. Please vote YES on HB 35.
Cordially yours,
Maureen Henry

Dana Strommen

From: Mark Milligan [sewardshipsace@seward.net]
Sent: Wednesday, March 11, 2009 4:12 PM
To: Rep. Jay Ramras
Subject: HB35

Dear House Judiciary Standing Committee,
Thank you for taking the time to read written testimony for the hearing on HB35.
My name is Mark Milligan, and I'm a resident of Moose Pass, AK. I would like to ask you to support HB35, which I believe is a critical piece of legislation in regards to both the safety and care of minors and in regards to parental rights.

Taking the parents out of this critical decision making process, is not a good solution for anyone.

Children, teenagers or otherwise, have an understood fundamental need for guidance. Therefore I am completely baffled at why the Parental Consent Act of 1997 was ever struck down in the first place. Parents have the fundamental responsibility to care for their children. An abortion is unarguably a medical procedure, and a decision to undergo an abortion is at least as important as the decision whether to get a prescription for a general illness such as a sinus infection! It is simply nonsense to regulate the decisions of teenagers in every area except in regards to their decision to obtain an abortion. It is unfair to remove from parents their rights to guide and direct their children.

I ask that you consider the safety of our minors and the responsibility of parents to oversee the decision-making of their children. Please support HB 35. Thank you for your time and consideration of my thoughts on this matter.

Sincerely,
Mark Milligan

Dana Strommen

From: Mark & Wendy Milligan [milligansnorth@gmail.com]
Sent: Wednesday, March 11, 2009 3:32 PM
To: Rep. Jay Ramras
Subject: House Judiciary Committe/HB35

Dear House Judiciary Standing Committee,
Thank you for taking the time to read written testimony for the hearing on HB35.
My name is Wendy Milligan, and I'm a resident of Moose Pass, AK. I would like to ask you to support HB35, which I believe is a critical piece of legislation in regards to both the safety and care of minors and in regards to parental rights.

How do we as a society keep our children safe and healthy? Twelve, thirteen, and fourteen year olds are not given the license to drive, and for good reason. We, as a society, do not view children of that age as mature enough to handle the responsibility and decision-making crucial to safe driving. Children up through the teenage years do not, as a general rule, attend doctor and dentist offices unattended. Why? We view children of that age as too immature to make important medical decisions. They lack the understanding and experience to guide decisions regarding medical procedures. Pharmacies do not issue prescription drugs to teenagers for the same reason.

Teenagers lack the maturity and experience to successfully navigate a myriad of decision-making processes, from driving, to schooling, to medical decisions. Children have parents to help them navigate these processes, making decision for them until they are mature enough to make them on their own. Teenagers who lack parental figures are not left to their own devices; they are subject to the state through foster care or other means. Why? It is fundamentally understood that teenagers are still in need of guidance.

Children, teenagers or otherwise, have an understood fundamental need for guidance. Therefore I am completely baffled at why the Parental Consent Act of 1997 was ever struck down in the first place. Parents have the fundamental responsibility to care for their children. An abortion is unarguably a medical procedure, and a decision to undergo an abortion is at least as important as the decision whether to get a prescription for a general illness such as a sinus infection! It is simply nonsense to regulate the decisions of teenagers in every area except in regards to their decision to obtain an abortion. It is unfair to remove from parents their rights to guide and direct their children.

In closing, I ask that you consider the safety of our minors and the responsibility of parents to oversee the decision-making of their children. Please support HB 35. Thank you for your time and consideration of my thoughts on this matter.

Sincerely,
Wendy Millligan

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name

committee on HB 35 bill/subject . dated 3-11-09 .

Dears Sirs,
I am stongly in favor of HB 35 allowing for parental consent before abortions on young women. Any potentially life threatening proceedure should be discussed with family members in underage children, especially if they must suffer the loss of a loved one. Just another way the State is destroying the basis of our society..our families.
Sincerely,
Ronald E. Christensen, MD
Family Practice
Diplomate, American Board of Family Medicine
Diplomate, American College of Sportmedicine

Signed:

From: rec [rchristensen@ipmsak.net]
Sent: Wednesday, March 11, 2009 10:06 AM
To: LIO Anchorage
Subject: HB 35

Address

Phone No.

9/86 Legislative Information Office

Dana Strommen

From: peagan@mosquitonet.com
Sent: Wednesday, March 11, 2009 1:02 PM
To: Rep. Jay Ramras
Subject: HB 35, Parental Consent -- please vote Yes

Re: House Bill 35 Notice & Consent For Minor's Abortion
Sponsored by Rep. John Coghill
Co-Sponsors: Rep. Neuman, Rep. Keller, Rep. Dahlstrom, Rep. Millett, Rep. Kelly, Rep. Harris, Rep. Lynn, Rep. Wilson, Rep. Ramras, Rep. Gatto

Dear Jay -

Please pass this e-mail along to the other members of the House Judiciary Committee

Please vote Yes on this bill.

As the father of three teenagers, I am incredulous that they need parental permission (usually written or sometimes verbal) to take an over-the-counter cold medication at school, go on a field trip, go to the doctor, join a club, etc. -- yet my girls could have an abortion with my wife and I being completely out of the loop. This is appalling, and is so wrong, and it is so sadly representative of our throw-away society that favors the quick fix out-of-sight / out-of-mind solution over one's responsibility for one's actions.

Please vote for this bill.

Sincerely, Pete Eagan 699 Yak Rd, Fairbanks, AK 99709 451-5401w 455-4793h

Dana Strommen

From: Connie [montana.girl@yahoo.com]
Sent: Wednesday, March 11, 2009 2:10 PM
To: Rep. Jay Ramras
Cc: Scot Akers
Subject: HB35

March 11, 2009

Dear Representative Ramras:

Please vote YES on HB 35 "Parental Consent". Parental involvement in a minor child's medical treatment is an integral part of raising a child. It is a parent's right and responsibility.

Abortion is a major medical procedure that has life-long consequences for the woman involved as well as family and significant others in her life. Most women do not want to kill their unborn children through abortion but feel alone and unsupported, turning to abortion as a last resort. To protect the right of a parent to be involved in a daughter's life changing decision can lead to a choice for life for the baby and a life of fewer regrets for the young mother. This is the only good decision for the unborn baby, the family, and society as a whole.

Thank you.

Sincerely,
Connie Akers
Homer, AK

Dana Strommen

From: Rory Callanan Schneeberger [roryalaska@yahoo.com]

Sent: Wednesday, March 11, 2009 1:54 PM

To: Rep. Max Gruenberg; Rep. John Coghill; Rep. Nancy Dahlstrom; Rep. Bob Lynn; Rep. Carl Gatto; Rep. Jay Ramras

Subject: Thank you for supporting HB 35

It's the right thing to do and move to make to come alongside and strengthen positive family relationships in our great land of Alaska.

Gratefully,
Rory (Rosemary) Schneeberger
Hoonah

Dana Strommen

From: crystalk@gci.net on behalf of Crystal [crystalk@gci.net]
Sent: Wednesday, March 11, 2009 1:20 PM
To: Rep. Jay Ramras
Cc: Rep. Bob Lynn; Rep. Nancy Dahlstrom; Rep. John Coghill; Rep. Wes Keller
Subject: Support for HB 35

Representative Ramras,

As an advocate for children in many forums in Eagle River, in Anchorage and throughout the state I am in support of this bill for several reasons. First, I am the mother of an unwed daughter who experienced an unplanned pregnancy and I could not imagine not having the ability to help make the best decision possible for her, only to have to leave that important decision up to the influence of her friends and the pro-abortion philosophy of abortion clinic personnel. It's reprehensible and sinister at its worst and lacking in plain old common sense at best.

Also, I am very involved with Heart To Heart Pregnancy Resource Center in Eagle River and in that office, we regularly see parents actively engaged in the decisions that their daughters face with an unplanned pregnancy. Teens are often scared to tell their parents but that feeling is no different than if they had to admit that they wrecked the family car. It's make that parental permission even more imperative.
Parents do step up to the plate and offer their opinion and guidance in assisting their daughter with her decision.

I believe from the testimony I've heard, that the controversy lies more with the abortion issue itself rather than the merits of this bill.
The fear of those who oppose this bill is based on speculating that any move of any kind to regulate abortion services would be a foot in the door of totally reversing the decision of Roe versus Wade. That is not the case here. This bill will only help to secure the right of any parent to be involved in the health decision of their minor child. Those opposing this bill are doing so not with any individual young woman in mind but with the fear of losing ground on the controversial issue of abortion in general.

One comment heard previously was in regard to how a teen might be intimidated by the court process were she to have to use the legal system to gain permission for the abortion should her parent not grant that permission and that that process might be too much to handle given the teen's emotionally unstable condition at the time. The same emotional instability experienced by any teen in the situation of an unplanned pregnancy is exactly why a teen must have the support and permission of the parent and exactly why the vast majority of parents will appropriately help the teen make the best decision for their situation.

There is a huge range of activities that children cannot engage in until they are considered of an age appropriate enough for that activity; getting a simple tattoo is one. For some things a child can only engage in an activity if the parent takes that responsibility.
For example, body piercing. For a child to receive immunizations, though they are required for attending public school, a parent must grant permission. In the Anchorage School District, for a student under the age of 18 to even participate in any after school sports parental permission is required. For a child to go on a field trip, parental permission is required. Obviously, the importance of such permission is recognized in a multitude of situations, so why would we not require permission for something as physiologically invasive as an abortion procedure? In a time when we're trying to make parents more responsible for their children, limiting that role in any way is counterproductive. Parents should not only have the right to help their daughter face this decision, but their permission for an activity such as an abortion is crucial and should be absolutely required.

Thank you!
Crystal Kennedy
696-2320
crystalk@gci.net

Dana Strommen

From: Catherine Giessel [cgiessel@mac.com]
Sent: Wednesday, March 11, 2009 1:05 PM
To: Rep. Jay Ramras
Subject: HB 35 - please pass

Representative Ramras,

I am writing in support of HB 35.

There are three compelling facts that make HB 35 the right thing to do.

First, pregnancy is a very stressful experience, physically and emotionally. Even for a planned pregnancy, emotions run high. A young pregnant teen will certainly feel overwhelmed, confused.

Second, teens make bad choices, because they lack of life experience and a long- range vision for the future. They are highly vulnerable to outside influences. Every adult can recall at least one bad choice they made in those tumultuous teen years, when wisdom was minimal and opportunity plentiful.

So picture the situation - a young pregnant woman, maybe 13 years old, very stressed, confused, afraid, lacking the wisdom and experience to rationally consider options and make the best choices. This young teen is very vulnerable, and in need of guidance from someone caring about her well-being.

This brings us to the third compelling reason that HB 35 is the right thing to do - Parents have the responsibility, morally and legally, for the safety and well being of their child until adulthood. Parents fundamentally have best interest of their child in mind. Furthermore to deny a parent the authority to fully care for their child under age 17 denies the validity of the core unit of our society – the family.

Certainly there are a few exceptions to a good parent and HB 35 provides very adequate judicial bypass provisions for the situations where parents are absent, uninvolved or even abusers.

In summary, our society must preserve the parental authority to guide the young pregnant woman in an exceedingly stressful situation, in making wise decisions.

HB 35 is the right thing to do.

Respectfully,

Cathy Giessel
cgiessel@mac.com

12701 Ridgewood Road
Anchorage, AK 99516-2934

345 5470 (h)
242 5450 (c)

Dana Strommen

From: Michael Schumacher [mike@schu.net]
Sent: Wednesday, March 11, 2009 2:19 PM
To: Dana Strommen
Subject: HB35 written testimony

Regarding HB35

Parental consent should be mandated for every medical procedure involving a minor.
Parents are legally responsible for their own children until the age of 18. That legal authority extends to medical decisions regarding the minor children.
Children should not be given sole responsibility for their medical decisions.

Parents provide adult perspectives and guidance to their children until their children reach adulthood.
A child under the age of 18 has not reached adulthood and should not be given full adult responsibilities regarding medical decisions.

Sincerely,

Michael Schumacher
982-1917

3321 N. Bonnie Jim #1
Wasilla, Alaska 99654

Dana Strommen

From: sing purdy [singpurdy@yahoo.com]
Sent: Wednesday, March 11, 2009 1:58 PM
To: Dana Strommen
Subject: HB35 written testimony

Regarding HB35

In the state of Alaska Persons under the age of 21 are not permitted to purchase or legally consume alcohol. Persons under the age of 19 are not permitted to purchase cigarettes.

I am sure that the reasons that these laws were created was intended to protect the children from the harmful effects that smoking and drinking would have on their young developing bodies.

Children under the age of 18 are not permitted to vote. This could suggest that they are not mentally mature enough to handle the responsibility of voting.
Yet these teens have been allowed the sole decision as to obtain the invasive medical procedure of abortion without their parent's (or legal guardian's) knowledge or consent.

These teens may not know that abortions cause long term psychological consequences such as depression, shame, remorse and a deep sense of loss that is associated with losing a child. Such long term consequences could be avoided with the proper parental intervention and support.

It is the parent's role to research and advise their children of the consequences of medical procedures, which medical professional may fail to mention to a child.

Parents are legally responsible for their children until they turn 18, therefore a person under the age of 18 is not solely responsible for their own medical decisions.

Medical staff should be required to obtain the consent of the child's legal custodian before any medical procedure can be performed on a minor.
It is the parent's responsibility to take care of their children. Medical professionals do not hold that responsibility, therefore they should not be permitted to allow children to make such an invasive decision as abortion without parental consent.

Sincerely,

Gina Schumacher.

907-715-8440

3321 N. Bonnie Jim #1
Wasilla, Alaska, 99654

Dana Strommen

From: Kristina Johannes [AMDG@alaska.net]
Sent: Wednesday, March 11, 2009 2:22 PM
To: Rep. Jay Ramras
Subject: HB 35

Dear Rep. Ramras,

I support HB 35, the parental consent bill. Children should not be making this life changing decision without help from their parents. Children do not have the maturity to always look at the big picture and understand the consequences in a way that adults do.

Thank you,

Kristina Johannes

2928 McCollie Ave

Anchorage, AK 99517

Dana Strommen

From: Wayne McCready [wjmccready@mosquitonet.com]
Sent: Wednesday, March 11, 2009 2:42 PM
To: Rep. Jay Ramras
Subject: HB 35

Dear Representative Ramras,

Since I was unable to get through on the phone lines to testify today (I tried, waited an hour, and tried again), I was told by the gentleman who spoke with me to write my testimony to you and that you, as Chair, would make sure the other members received my comments. Thank you for that.

My name is Janine McCready, and I live in District 7. Thank you for hearing this bill. Parents are society's best advocate for their children, and are held legally responsible for their children's actions. It is widely recognized that medications and procedures cannot be done without parental consent. Schools require permission slips. Just this week a friend's sister, who is a minor, could not get her ears pierced in Fairbanks without a parent present to give permission. Why is abortion the exception to this? Abortion is an invasive, potentially dangerous medical procedure, with huge emotional and ethical complexity, that should not be made by minors without parental consent. If a teenager needs parental consent to go on a field trip, what makes the State think she doesn't need it for an abortion? That is a violation of parental rights and responsibilities.

Vote YES on House Bill 35.

Yours truly,

Janine McCready

Dana Strommen

From: Deborah Brollini [deb_brollini@yahoo.com]
Sent: Wednesday, March 11, 2009 2:15 PM
To: Rep. Bob Lynn; Rep. Jay Ramras; Rep. Nancy Dahlstrom
Subject: Fw: Pro-life

Attachments: Pro-life

Pro-life

This is an email I sent to Loren Lehman last year. Loren wanted me to document my son's story. In my opinion this physician was not acting in my, or my unborn child's best interest.

I do not believe that some teachers, nurses, or physicians may not act in the best interest of my child.

I am watching this hearing on Gavel to Gavel and really concerned about the physicians, and teachers.

The doctor from the YK delta misspoke. The YK delta's culture believes in life; like most rural villages. The villages take responsibility for their families. I do understand that there is a great deal of sexual abuse in the region. However, there is already checks and balances in place to protect the child.

I am growing more and more frustrated with continued attempt to take my parental rights away.

Dana Strommen

From: Deborah Brollini [deb_brollini@yahoo.com]
Sent: Sunday, October 05, 2008 2:24 PM
To: loren@lorenleman.com
Subject: Pro-life

Attachments: DSCN0062.JPG; DSCN0063.JPG; DSCN0043.JPG

DSCN0062.JPG (2 MB)

DSCN0063.JPG (2 MB)

DSCN0043.JPG (2 MB)

Hi Loren,

I have attached a picture of you and my kids. We have been fans for a long time. I too believe in a culture of life. The story of my unaborted son Van begins when I was hospitalized for my asthma back in 1997.

History:

I have been hospitalized (11 days) for my asthma while pregnant with each child. Dr. Stewart treated me on an outpatient basis with intervenous asthma steriods, narcotic cough syrup, and breathing treatments prior to each hospitalization. This is standard of care. I was under the care of Alaska's leading physicians in their field; Dr. James Bertleson (OB/GYN) and Dr. George Stewart (Asthma). Both children were delivered healthy. Lyndsey 9.5lbs, and Van 10.5lbs. The children continue to be extremely healthy, and happy.

Physician recommends abortion:

August 31, 1997 I was admitted to Alaska Regional by Dr. Burton Newton because my physicians were out-of-town for the Labor Day weekend. Dr. Newton admitted me, then took me off my asthma medicines. I thought I was going to die. He refused to contact Dr. Stewart's on-call physician. Dr. Gerboth (on-call physician) did come and visit me the following day and started me back on my previous regime. Both my doctors were back to work after the holiday weekend.

Dr. Newton came to visit me because he was visiting a patient of his. This was three days after he signed off on my case. He told me that I should seriously consider terminating the pregnancy, and I had three weeks in the State of Alaska to do so. I was so scared and mortified. I could not believe he said that to me. Luckily, Dr. Bertleson walked in while Dr. Newton was leaving. Dr. Bertleson explained to me that there was no need to terminate the pregnancy. He felt that even if it was to become an issue... it would be a conversation between me Dr. Stewart because asthma kills. Thank goodness I had good physicians taking care of me and my babies.

A father who was giving me communion everyday raced to see me because he had "a feeling." I explained to him what happened. His comment was "please do not think ill of him for being misinformed." That is a hard pill to swallow. However, I had to forgive, and move on. If I did not have a strong faith, and in the care of excellent physicians... I could of made a difference choice."

March 26, 1998

We welcomed Venanzio Raymond Brollini, III via c-section. Guess, who assisted Dr. Bertleson with the delivery? Dr. Newton!!!! I found out a few minutes before the surgery. They had to medicate me because I was going to get up and walk out. Baby Van was hard hard to push out. Dr. Newton needed to get up on the operating table, and push Van out. His comment "what a big baby." Had I not been medicated I would of said "that is the big baby you wanted to abort!"

In closing, it was good to tell you Van's story. He is a wonderful, loving, and caring child. I appreciate you speaking about the culture of life. This is an issue close to my

heart. This was one of the reason's me and the kids waved signs with you at the corner of O'Malley and the Old Seward. Keep up the good work.

Warm regards,

Deborah Brollini

Alaska State Legislature

Please enter into the record my testimony to the HOUSE JUDICIAL COMMITTEE (COMMITTEE NAME)

committee on HB 35 (BILL / SUBJECT), dated 3/11/2009 (TODAY'S DATE).

MY NAME IS SCOTT CARDOZA. THANK YOU FOR TAKING TIME TO HEAR TESTIMONIES ON THIS BILL.

MY WIFE AND I HAVE TWO WONDERFUL CHILDREN THAT WE PROCLAIM AS GIFTS FROM GOD. WE CONSIDER IT OUR GOD GIVEN RESPONSIBILITY TO CARE, LOVE AND NURTURE FOR OUR CHILDREN.

WE AS PARENTS ARE GRANTED A BRIEF PERIOD OF TIME TO RAISE OUR CHILDREN INTO INDEPENDANT ADULTS. [redacted], IT IS OUR RESPONISIBITY TO HELP THEM IN ALL MATTERS AND DECISIONS OF LIFE WHILE THEY ARE MINORS.

PLEASE, DO NOT TAKE THE RIGHTS OF ALL LOVING PARENTS TO PROTECT AND CARE FOR THEIR CHILDREN. - PLEASE VOTE "YES" ON HB 35

MY VIEWS ARE BEST VIEWED BY MR. DAHLSTROMS STATEMENT MADE ON 1:45 P.M. 3/11/09 BEFORE THE COMMITTEE..... THANK YOU!!

Signed: Scott Cardoza
TESTIFIER (Signed, PRINTED NAME)

SELF
REPRESENTING

BOX 2817 HOMER, AK 99603
ADDRESS

907 235-2623
PHONE NO.

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary Committee
COMMITTEE NAME

committee on HB35 BILL / SUBJECT, dated March 11, 2009 TODAY'S DATE.

My name is Shana Cardoza of Homer.
Thank you for having hearing on HB35.
I would ask you to vote YES on HB35.
Parents have a right to be involved in ALL
medical decisions that involve our children/minor.
Please vote YES on HB35

Signed: Shana L. Cardoza Shana L. Cardoza
TESTIFIER (Signed, PRINTED NAME)

Self & as a parent / Pregnancy Care Center of Homer
REPRESENTING

P.O. Box 2817, Homer, AK 99603
ADDRESS

907-299-3561
PHONE NO.

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary (COMMITTEE NAME)

committee on HB 35 (BILL/SUBJECT), dated March 11, 09 (TODAY'S DATE).

My NAME IS DARCY SWENSON, I'm 44YRS OLD WIFE AND MOTHER OF 5 CHILDREN.

I HAD AN ABORTION AS A TEENAGER. I REGRET IT. I WAS 18, A TEEN. HAD I BEEN REQUIRED TO TELL MY PARENT (S), (AND LET'S FACE IT, NO TEEN WANTS TO ADMIT THEY ARE HAVING SEX WITH THIER BOYFRIEND AND ARE NOW PREGNATE.)

I ~~NOW~~ KNOW I WOULD NOT HAVE HAD THAT ABORTION, IF I HAD BEEN REQUIRED TO TALK WITH MY PARENTS AND WORK OUT A PLAN. MY ABORTION WAS CHOSEN OUT OF FEAR AND ISOLATION.

My ABORTION AS A TEEN IS A GREAT REGRET AND IT WAS A MISSED CHANCE TO WORK TOGETHER W/ MY PARENTS TO RESPOND [redacted] TO AN UNPLANNED PRENANCY.

I URGE YOU TO PASS THIS BILL. THANK* YOU.

Signed: [signature]
TESTIFIER (Signed, PRINTED NAME)

Darcy Swenson
REPRESENTING

4645 Sabrina Rd, Homer, AK 99603
ADDRESS

235-3878
PHONE NO.

Dana Strommen

From: Janet Pinnix [janet@thepinnixfamily.com]
Sent: Wednesday, March 11, 2009 3:44 PM
To: Rep. Jay Ramras
Subject: HB35

I am currently out of Alaska right now as my husband is serving in the military. I love my 6 beautiful children and am troubled that my state government is discussing whether my children should be allowed to make medical decisions secretively behind my back. I believe that any agency seeking to give medical advice or treatment to children should have written permission from the parent. It is obvious that "care" givers who would seek otherwise have their own selfish agendas and should be shutdown.

Janet Pinnix
64 Ross Lane
Deatsville, AL 36022
(907) 227-0183
www.thepinnixfamily.com

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name

committee on HB 35 bill/subject, dated 3-11-09.

I am unable to be present to testify for HB35. Please let be put on record that I, Gerry C. Keffer, of 18910 Danny Dr., Eagle River, AK 99577-8598 am in FULL support of this bill.

Gerry

Signed:

From: Gerry [gck@mtaonline.net]
Sent: Wednesday, March 11, 2009 4:25 PM
To: LIO Anchorage
Subject: HB35

Address

Phone No.

9/86 Legislative Information Office

Jane Pierson

From: LIO Fairbanks
Sent: Wednesday, March 11, 2009 1:36 PM
To: Jane Pierson
Subject: FW: My Testimony Regarding HB 35

From: aksunny@gci.net [aksunny@gci.net]
Sent: Wednesday, March 11, 2009 1:34 PM
To: LIO Fairbanks
Subject: My Testimony Regarding HB 35

Good afternoon,

As I sat waiting to testify regarding House Bill 35, my phone connection was dropped. When I called back in, I was told that all the telephone ports were taken and to call back again in about 30 minutes to see if one comes open.

In case I am unable to get through on the phone, I submit my testimony here via email. Thank you for providing different avenues to express concerns and support.

Good Afternoon,

Thank you very much for the opportunity to testify. I strongly support HB 35. I am a parent of two children and testify as a private citizen: Diane Kardash, North Pole, Alaska, aksunny@gci.net, 907-378-8410

Our Alaska courts have upheld that the state has a compelling interest in protecting juvenile girls against their own immaturity and that parents have a constitutional right -- a duty -- to guide their children. However, in 2007, Planned Parenthood headed up the opposition to Alaska's law requiring minors to obtain consent before an abortion. This work by Planned Parenthood is disturbing and the reinstatement of legislation that requires consent before children under 17 years of age obtain an abortion is critical to the safety and well-being of these children.

The latest annual report from Planned Parenthood available on their website plannedparenthood.org shows the nation's largest abortion business has made over $1 billion in income for the first time in its history. Planned Parenthood currently has at least 5 clinics in our state.

Planned Parenthood has a strong financial incentive to provide abortion services to the people of Alaska. As a parent of two minor children in Fairbanks, I am very concerned about Planned Parenthood being the only counselor to my children should they seek an abortion without me. Our local Fairbanks Planned Parenthood clinic is convienently located nextdoor to the local movie theater giving this organization easy availability to minor children seeking help with an unplanned pregnancy.

Without the passage of House Bill no. 35, very young, pregnant teens may find themselves in a situation where their only adult counsel is from an abortion provider who stands to earn money based on the services provided. HB35's consent requirements ensure that a very young, pregnant teen is not left alone to decide on an abortion with her only adult counsel being the abortion provider.

In 2007, Lila Rose, of the Mona Lisa Project, posed as a pregnant 15- year old girl impregnated by a 23-year old boyfriend. She was counseled to lie about her age so that the Santa Monica California Planned Parenthood clinic would not have to report the statutory rape. In 2008, Rose exposed other unlawful counseling sessions by Planned Parenthood employees in Indiana and Arizona. I hope that that our local abortion providers are never exposed as counseling young girls unlawfully.

However, without the safeguards of HB 35, the abortion providers may be the only adult counselors for very young women alone with unplanned pregnancies. I ask for you to vote yes on HB 35 to provide more adult support for our young, pregnant Alaskan teens.

Jane Pierson

From: LIO Fairbanks
Sent: Wednesday, March 11, 2009 4:33 PM
To: Jane Pierson
Subject: FW: HB35 public testimony

From: Jeff & Ruth Humphries [7frozenhumphries@acsalaska.net]
Sent: Wednesday, March 11, 2009 3:53 PM
To: LIO Fairbanks
Subject: HB35 public testimony

Thank you for reading my testimony and considering HB35. I am a mother of 5 children, 4 of which are daughters. I cannot imagine any medical decision being made for them without my involvement or consent. Any threat to my rights as a parent are very scary to me.

So many people act as if having a baby is such a bad thing, and abortion will solve the problems. I don't believe this is true. I believe the psychological and/or physical effect of having an abortion will be worse than actually carrying and having the baby. Abortion doesn't solve problems, it just creates more. Please support HB 35.

Thank you,
Ruth Humphries
North Pole

Jane Pierson

From: LIO Fairbanks
Sent: Wednesday, March 11, 2009 12:30 PM
To: Jane Pierson
Subject: FW: HB35

From: LeConte [leconte@gci.net]
Sent: Wednesday, March 11, 2009 12:24 PM
To: LIO Fairbanks
Subject: HB35

Thank you for hearing this bill.
I believe that parents have a right to be involved in ALL medical decisions that involve their minor children.
PLEASE VOTE YES on House Bill 35.

Thank you.
Sincerely, Paula J. Merrifield
1556 Dogwood Street
Fairbanks, AK. 99709

Archdiocese of Anchorage

225 Cordova Street • Anchorage, Alaska 99501-2409
907/297-7755 • fax: 907/279-3885

Office of the Archbishop

March 11, 2009

The Honorable John Coghill
State Capitol
Juneau, Alaska 99811

Dear Representative Coghill:

I am writing you today regarding your bill, HB 35, relating to parental notification and consent when a minor is considering an abortion. As you might suspect, I strongly support your introduction of this bill and hope that the legislature will fast track the legislation this session.

I understand the bill was drafted with the Supreme Court opinion in mind after the courts struck down the 1997 Parental Consent Act. The legislation clearly has provisions to take into account emergency situations and situations where it would be better for a court to act *in loco parentis* for a minor. At the same time, the bill ultimately allows parents to be parents and be aware of life changing situations that their often immature children become involved in.

Over the course of my years as a priest and a bishop, I have heard many personal stories related to the devastating effects abortion has had on women's lives. Passage of this bill would ensure that parents are fully aware of the challenges their daughters would be facing if they did indeed go through with an abortion. In any situation, if they carry the baby to term and make an adoption plan or choose to raise the baby, or if they abort the fetus, they will need counseling and parental support. Finally, I was pleased to note that the bill also included a section that ensured the minor could not be forced into having an abortion once she told her parents.

I would be willing and pleased to testify on the bill or have a representative do so at the appropriate time. Please let Mary Gore in my office know at 297-7755 and I will try and arrange to be present.

Sincerely yours in Christ and Mary,

+Roger L. Schwietz, OMI
Archbishop of Anchorage

cc: House Judiciary Committee

Jane Pierson

From: LIO Fairbanks
Sent: Wednesday, March 11, 2009 10:50 AM
To: Jane Pierson
Subject: FW: Please vote yes on HB35

From: kim bjornstad [akbjornstad@hotmail.com]
Sent: Wednesday, March 11, 2009 10:35 AM
To: LIO Fairbanks
Subject: Please vote yes on HB35

My name is Kimberly Bjornstad and as the mother of a pre-teen daughter, I believe I have not only the right, but the responsibility, concerning all medical decisions made on her behalf. I would urge you to vote yes on HB35.

Thank you for your time.

Sincerely,
Kimberly Bjornstad

Hotmail® is up to 70% faster. Now good news travels really fast. Find out more.

Dana Strommen

From: Hannah Foreman [hforeman08@gmail.com]
Sent: Wednesday, March 11, 2009 11:20 AM
To: Dana Strommen
Subject: HB 35 Document for Committee

Dana,

I just spoke with you on the phone as I plan on testifying about HB35 today at the LIO in Anchorage.

Here is the link for the document I will refer to:

http://www.hss.state.ak.us/ocs/ChildrensTrust/pdf/CRK_PDF_Kit/Parents%20R&R.pdf

I would appreciate it if this could be distributed to the Judiciary Committee. It addresses the rights parents have over their children.

Regards,

Hannah Foreman
907-622-4661
hforeman08@gmail.com

Dana Strommen

From: karyn.wise@acsalaska.net
Sent: Wednesday, March 11, 2009 9:53 AM
To: Rep. Jay Ramras
Subject: HB 35

Representative Ramras,
Thank you for your sponsorship of HB 35. I support this legislation and would like to see it become law. Our minor children are legally prohibited from making major life decisions for good reason, and choosing abortion is a major life decision, regardless of which side of the abortion question a person is on. Passage of this bill will actually protect minors from coercion by others who have no moral, legal, or financial responsibility for their well-being or protection. Thank you for your attention to this issue.
Karyn Wise

Dana Strommen

From: Steven Veldstra [dblm@xyz.net]
Sent: Wednesday, March 11, 2009 9:17 AM
To: Rep. Jay Ramras
Subject: HB 35

Representative Ramras,

I would like you to know that I support HB35. It is very important that parent have the right to be involved in the medical decisions of their underage children.

Thank you for your time

Steven Veldstra

Dutch Boy LANDSCAPING
Christmas Decor™
Box 251 Homer, AK 99603 907-235-7140

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name committee on HB 35 bill/subject, dated 3-11-09.

To Whom It May Concern:

We are writing in support of HB 35. As parents of minor children, including two daughters, we are horrified at the thought of one of them going through the physical, mental and emotional trauma of abortion, and at the idea that they now have every right to discard one of our grandchildren without so much as our knowledge. Parents have every right to be involved in the medical care of their children, especially in decisions involving so much physical risk and emotional baggage. This law has been introduced to correct a grave, terrible wrong in our legal system, one which paves the way for destroying relationships, families, and preborn children.

Mark and Carolyn Sorvoja
Eagle River, Alaska

msorvoja@gci.net
csorvoja@gci.net

Signed:

From: Mark Sorvoja [msorvoja@gci.net]
Sent: Wednesday, March 11, 2009 8:29 AM
To: LIO Anchorage
Subject: HB 35

Address

Phone No.

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name

committee on HB 35 bill/subject . dated 3-11-09 .

Please accept this in lieu of direct testimony.

To the Alaska House of Representatives,

My name is Karl von Luhrte. Let me take the brief opportunity to thank you for hearing House Bill 35. As a parent of both a son and daughter, I would like to express my firm conviction that as a parent I should have the right to be involved in ALL medical decisions that involve my children until they reach majority age (18).

I am asking for your support to this bill to ensure that all Alaskan parents' rights are protected with respect to medical decisions for their minor children.

Our children are the foundation for the future; please help us give them every opportunity to succeed. Transparency and communication will build a better future, not secrecy and deception.

Respectfully,
//SIGNED//
Karl & Tonia von Luhrte
Eagle River
Alaska

Signed: _____

From: Karl [knt@gci.net]
Sent: Tuesday, March 10, 2009 9:59 PM
To: LIO Anchorage
Cc: lorareinbold@yahoo.com
Subject: House Bill 35

Phone No.

9/86 Legislative Information Office

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name

committee on HB 35 bill/subject, dated 3-11-09

To Members of the Legislature,

Thank you for your consideration of this testimony.

I have been an attorney and resident of the State of Alaska since 1969.

Since I am sure that the public hearing on this bill will be very crowded, I wanted to submit my brief testimony on this bill by email. I thank you for the appropriate distribution of this email.

I support parental notification/consent for the performance of an abortion on one of their children. Parental consent is required for any other medical procedure performed on a minor child. An abortion is a serious medical procedure, with particular emotional overtones. There is no reason that parental notification and consent should not be required as it is for ordinary medical procedures.

In the rare case where the matter cannot be dealt with between the parents and the child, HB 35 provides for judicial intervention. Whether or not you believe that the judiciary should be allowed to interfere in the intra-family relationships, this judicial oversight provision will help when HB 35 is enacted and then if it is challenged in Court.

In summary, I support HB 35. Thank you.

Kenneth P. Jacobus
310 K Street, Suite 200
Anchorage AK 99501-2064
Phone 907-277-3333
Fax 907-264-6666
kpjlaw@yahoo.com

Address

Phone No.

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name

committee on HB 35 bill/subject, dated 03-11-09.

From: Barb Heinrichs [mailto:baheinrichs@gmail.com]
Sent: Wednesday, March 11, 2009 5:10 AM
To: LIO Kodiak
Subject: HB35 - Parental Consent Bill

Honorable Representatives:

An illness prevents me from testifying by phone. I sincerely hope that this form of communication will suffice.

I would like to thank the originators of this bill for supporting parents in their responsibilities, especially in the area of minors seeking an abortion. I implore the House to pass this bill as a positive step in restoring a parent's ability to ***parent***. Most of us take this role seriously. We do so with immeasurable love and dedication, but there are no guarantees.

Parents need to be told when their child is in trouble and needs help, as much as a child needs to know the healing support of family. A careless act anywhere along the way may result in serious consequences: cheating on an exam ~ driving after drinking ~ an unplanned pregnancy.

Relating to this bill: A baby's life, planned or unplanned, is a gift. A young woman who finds herself in the difficult situation of carrying an unplanned child may respond impetuously to the situation with an abortion without thinking through the far-reaching ramifications of such a choice. Disallowing parents the opportunity to counsel, comfort, and reassure their own child with a decision of this magnitude presumes that a child has the maturity and wisdom to choose the future of the life she carries. Parents of minor children *need and should have* the responsibility to counsel and help their child make a competent decision.

The creators of this bill retained exceptions for emancipated minors, minors who are married. minors who live as productive, self-sufficient adults, and minors serving in the military. They maintain parental responsibility and opportunity of those minors under their protection. Please pass this bill.

Thank you.

Sincerely,
Barbara Heinrichs
377 Neva Way
Kodiak, AK 99615
(907) 942-2911
baheinrichs@gmail.com

Jane Pierson

From: LIO Fairbanks
Sent: Wednesday, March 11, 2009 10:04 AM
To: Jane Pierson
Subject: FW: HB 35 - testimony

From: Desiree Buma [desiree@acetekk.com]
Sent: Wednesday, March 11, 2009 9:57 AM
To: LIO Fairbanks
Subject: HB 35 - testimony

Ladies and Gentlemen of the House,

As a mother of three I would ask that you please vote yes on HB 35. Children under eighteen are not capable of making a wise decision and weighing the consequences of their actions. The laws of the land have already established this premise.
It is a parents responsibility to nurture and protect their children. If we are not informed of the choices they are considering we cannot guide, counsel, or protect them. This bill upholds society's laws by not usurping our parental rights and protecting the next generation.

Thank you,
Desiree Buma

No virus found in this outgoing message.
Checked by AVG.
Version: 7.5.557 / Virus Database: 270.11.10/1995 - Release Date: 3/11/2009 8:28 AM

Jane Pierson

From: LIO Fairbanks
Sent: Wednesday, March 11, 2009 8:01 AM
To: Jane Pierson
Subject: FW: Vote Yes on HB35, Parental Consent Bill

From: Karen Karlen [alaskakarlens@alaska.net]
Sent: Tuesday, March 10, 2009 7:28 PM
To: LIO Fairbanks
Subject: Vote Yes on HB35, Parental Consent Bill

To Whom It May concern:

Thank you for hearing HB35.

Parents have a right to be involved in ALL medical decisions that involve their minor children.

Please vote yes on HB35.

Sincerely,

Karen Karlen
1108 Tyrol Street
Fairbanks AK 99712
(907) 456-3822

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary
committee name

committee on HB 35 . dated 3-11-09 .
bill/subject

To Whom It May Concern:

Thank you for hearing bill HB35. Please vote YES on the bill. Parents should be involved in ALL medical decisions for their minor children.

With much gratitude,
Kathy Murray

Signed: _____

From: Kathy Murray [seedtothesower@gmail.com]
Sent: Wednesday, March 11, 2009 4:59 AM
To: LIO Anchorage
Subject: Vote YES on HB35

Address

_____

Phone No.

9/86 Legislative Information Office

Alaska State Legislature

Please enter into the record my testimony to the House Judiciary committee name committee on HB 35 bill/subject, dated 3-11-09.

Hi,

My name is Julie Thomas. I wanted to thank you for hearing the HB35 bill. I am witting out of concern for parental rights and child protection. Please vote yes for HB35. Thank you.

Sincerely, Julie Thomas

Signed:

From: Julie Thomas [juliesnowgirl1000@yahoo.com]
Sent: Wednesday, March 11, 2009 11:20 AM
To: LIO Anchorage
Subject: HB35

Address

Phone No.

9/86 Legislative Information Office

alaska RIGHT TO LIFE, pac
3400 Spenard Road • Suite 4 • Anchorage, Alaska 99503-3738 • (907) 276-1912

Attn: House Judiciary Chairman Ramras and Committee Members

There are approximately 1,200,000 abortions committed in the U.S. each year, and about 20% of those are committed on teens. That equates to about 240,000 teen abortions.

The pro-abortion Alan Guttmacher Institute estimates that approximately 40% of teenage abortions take place without parental involvement. (about 100,000) As a result, these teens' parents have no advance warning about the physical or emotional complications their children may experience. When the abortion causes subsequent emotional reactions that are not understood...such as depression, anger, and substance abuse...parents may react with anger and confusion, exacerbating the problems of the teen and her family.

The cost of such concealment can be deadly. Both 16-year-old Erica Richardson of Maryland and 13-year-old Dawn Ravanell of New York died from complications after they had abortions without telling their parents. Sandra Kaiser, a 14-year-old St. Louis girl with a history of psychiatric problems, committed suicide three weeks after her half-sister took her for an abortion without telling Sandra's mother.

Sadly, abortion advocates continue to fight laws that could help prevent tragedies like these.

Teenagers are more likely to report higher levels of feeling misinformed in pre-abortion counseling, and less satisfaction with abortion services and also, greater post abortion stress. They consider the abortion procedure itself to be stressful and associated with feelings of guilt, depression, and a sense of isolation.

Teenage abortion has been linked to a number of physical and psychological problems:

1). including drug and alcohol abuse.

2). Suicide or suicide attempts (studies show aborted teens are 2-4 times more likely to commit suicide)

3). In a study of teenage abortion patients, half suffered a worsening of psychosocial functioning within 7 months after the abortion. The immediate impact appeared to be greatest on the patients who were under 17 years of age and for those with previous psychosocial problems, Symptoms included: self-reproach, depression, social regression, withdrawal, obsession with need to become pregnant again, and hasty marriages. Teens are more likely to develop psychological problems, and are generally in need of more counseling and guidance pertaining to their abortion than adult women who obtain abortions. Aborted teens are nearly 3 times more likely to be admitted to mental health hospitals compared to adult women who've obtained abortions.

4). Teenage abortion patients are up to twice as likely to experience cervical lacerations during abortion compared to older women. (12.5% of first trimester abortions require stitching for cervical lacerations) Cervical damage is also caused because in order to commit the abortion, the cervix must be stretched open with a great deal of force. There is almost always microscopic tearing of the cervix muscles and occasionally severe ripping of the uterine wall, also. The cervical damage which results during the abortion frequently results in a permanent weakening of the cervix, and therefore an incontinent cervix, which causes the premature delivery of subsequent babies.

5). Teens are at higher risk for post-abortion infections. And because teens are less likely than adults to take prescribed antibiotics for infection, they are at greater risk for infertility, hysterectomy, ectopic pregnancy and other complications.

6). The abortion/breast cancer link is yet another injurious factor. The risk of breast cancer almost doubles after one abortion, and rises further with two or more abortions. As of 2006, 8 medical organizations recognize that abortion raises a woman's risk for breast cancer.

A pregnant teenager is in the most vulnerable time of her life; and in the most vulnerable situation she'll likely ever face in her entire lifetime. She's fearful, and uncertain, and in a fragile state of mind. There is no other time that she needs her parents more. To remove her parents involvement from the most life-changing decision she'll ever make, is beyond understanding. Parents, overwhelmingly, give loving guidance and solid advise to their children, especially in crisis situations.

And for the Courts, Planned Parenthood and others involved in the abortion industry, to believe that an underage child can bear the full burden of an abortion decision, and weight of guilt from that decision, along with life long damages incurred from the abortion, is simply outrageous and completely irresponsible. The Courts are designed to protect the people, not to contribute to their destruction.

It is the business of legislators to enact laws that will protect the citizens. And I applaud those of you legislators who are supporting this bill. It is good legislation and on behalf of myself and the tens of thousands of pro-life members of Alaska Right to Life, ask that the bill move forward. Thank you for hearing us.
In His service,

Karen L. Lewis
Executive Director
Alaska Right to Life

*Legal abortion is reported as the fifth leading cause of maternal death in the United States, though, in fact, it is recognized that most abortion related deaths are not officially reported as such. *Kaunitz, "Causes of Maternal Mortality in the United States," Obstetrics and Gynecology,65(5) May 1985.

Jane Pierson

From: LIO Fairbanks
Sent: Thursday, March 12, 2009 8:37 AM
To: Jane Pierson
Subject: FW: HB35,Parental Consent Bill

From: Torie Pendleton [pens4jc@yahoo.com]
Sent: Thursday, March 12, 2009 8:12 AM
To: LIO Fairbanks
Subject: HB35,Parental Consent Bill

Thank you for hearing this bill.Please vote yes to this bill and keep parental rights intact.

Sincerly,

Torie Pendleton
Eielson AFB, Ak 99702

"Now faith is the substance of things hoped for, the evidence of things not seen." ☺ Hebrews 11:1

Jane Pierson

From: LIO Fairbanks
Sent: Thursday, March 12, 2009 9:54 AM
To: Jane Pierson
Subject: FW:

From: cindy lewis [emmagees@alaska.net]
Sent: Thursday, March 12, 2009 9:44 AM
To: LIO Fairbanks
Subject:

Thank-you for hearing the HB35 Bill! We believe that parents have the right to be involved in All medical decisions that involve minor children! We are e-mailing you, to encourage you to stand with us and vote YES on the HB35 Bill. Thank-you for your time. Ray and Cindy Lewis, P.O. Box 293 Ester, Alaska 99725 Thanks again!

To: Lindsay Holmes
From: Jackie Cason
Date: Friday, March 13, 2009

Dear Representative Holmes,

Though I gave oral public testimony on HB35 on Wed. 3/11/09, many legislators had already left the room. I am writing as well so that my story might inform the judiciary committee's decisions on this important legislation, and I hope you'll hear me out. The saddest part of my story is that it is an ordinary one. I am a survivor of child sexual abuse, and my story is the story of 1 in 5 young girls/women. I hope you will listen to it as a representative anecdote for many young women who experience similar abuse. (http://www.sciencefriday.com/pages/2005/May/hour1_051305.html. I will attach a recent article that suggests 20% of females are sexually abused.)

I grew up in a very ordinary family. My dad was the blue-collar breadwinner, and my mom remained at home all the way up passed my high school years. They were loving and attentive, interested in my life, not perfect, but I always knew they loved me. In spite of that, I was molested for 4-5 years, starting when I was 11 and had been menstruating for less than a year, so I was only recently passed from being a girl into a woman.

You might ask yourself, why didn't my parents or my family know? How do these things happen in ordinary families? Do all cases of abuse happen in families like the Pilgrims? My sister was working nights, doing piecework for Bell Helmets, putting fiberglass on motorcycle helmets. It was hard and dirty work. My parents were buying new property and developing it with five houses, still trying to run a business as usual. Everyone was occupied, and I was going to my sister's in the afternoon to help babysit her kids and get dinner started, before their dad came home from work. As a preteen, I was filling in the gap between the day shift and the swing shift as so many families do. You can imagine the rest, and it went on for years at different times. I was very shy, lacked some self-esteem, and felt physically incapable of sharing the secret.

How DO these things happen? You should realize that sexual predators are intelligent. They can spot weak and vulnerable victims for their purposes. They can gain access because they are trusted members of families. (He worked for my dad and was around frequently). Predators seek shy, less secure young people and then give them positive attention and flatter them frequently. These predators may groom their prey for months or years and will take advantage of a girl's natural self-consciousness about her emerging sexuality and will lead her to believe that her family would reject her if she told the secret. And victims sometimes believe and fear rejection. But mostly, it would be the feelings of shame that silence victims. This kind of story happens all the time, in unlikely places, to twenty-percent of the children, primarily females.

On the lucky side, at least I didn't get pregnant because the predator had already had a vasectomy. But pregnancy could happen to someone else in this all too ordinary scenario.

Had I gotten pregnant, could I have told my parents? I don't think so. You know, I've often played out alternative "what-if" scenarios, and I've asked what would have happened if I'd told. On the one hand, it might have saved my sister from many more years of domestic violence, which escalated after my dad died. I wonder if my dad would have killed him, literally. My dad was a hunter and had ready access to guns and the ability to use them decisively. Who wouldn't understand the passion that could drive a father to murder the man who was psychologically abusing one daughter and molesting a younger one? You might even want to acquit him of his revenge, but he wouldn't have been acquitted.

I couldn't tell my sister because her husband was the one molesting me. I couldn't tell my brothers because, I don't know, we just didn't talk about stuff like that. I might have gone to my middle sister who was 5 years older, but she was going through her own growing pains. Planned Parenthood or an organization like that might have been my only option.

Even now, I am uncomfortable talking or writing about this.

I come before you today healed, but not completely whole. The damage done to my spirit is permanent. But still, I am well enough to pursue happiness and a fulfilling life. I selected a mate who is generous and kind, I've been married 23 years, and I'm most proud of my three sons. Most importantly, I speak openly with them about human sexuality. They have attended the Our Whole Lives program, and we try to be sure the conversation stays open.

However, if I had borne a child from that horrific episode in my life, I would have been reminded of those many days and nights every time I looked that child in the eye. It would have harmed me further to force me to tell my parents, because I could not have brought myself to tell them. I would have waited, until I was past the first trimester. I would have delayed acting until it was too late. Though I'd like abortion to be rare, I think it should happen as early as possible in a situation like this. I might even have committed suicide. Though I can't be certain what I would have done, I can tell you that I discovered my cervix when I was 13. I didn't know what it was, and in my ignorance I imagined it to be a cancerous tumor that would certainly kill me by the time I was 18. The sad part is that I saw the justice in that. I thought that I deserved to die.

What would have changed my experience? Not HB35, because I never got pregnant. What might have enabled me to confide in my parents, who would have protected me from further assault? They might have reached me, and I might have reached out to them if they had begun a conversation about sexuality much earlier in life, a conversation free of shame and embarrassment. I would have known not only that what was happening was wrong but that I had recourse. I might have gone running into their arms, and they would never have considered rejecting me. I know that now. I didn't know that then. But I might also have seen my father spend his latter days in prison, at least a 50-50 chance I'm sure. My mom MIGHT have been able to stop him, but he could be violently tempered at times, and this would have been one of them.

If the state is going to compel a conversation in the event of a crisis pregnancy, then the state should go all the way and compel a lifelong conversation about healthy sexuality, age appropriate of course. Insist that parents accompany their minor children to human sexuality night at the community council or the local school. Force them to communicate, but don't lead them to believe that they can get away with near-silence on the topic and then rely on the state to force a conversation after it's too late. That might have saved me, and it might save young girls from being like me. It might empower them to embrace their sexuality as part of who they are, not feel shame, and allow them to grow comfortable talking about their bodies and the physiological changes that occur naturally through life. Who knows, they might even grow up to become healthy senior citizens who enjoy a sex life without shame. We're never too old to learn.

I know you are likely to vote against this legislation, but because you are my representative and on the judiciary committee, I wanted to write to your directly to ask you to emphasize my testimony, even though many had already left the room when I told my story.

Thank you for listening.

Jackie Cason

Jane Pierson

From: Ray and Jeanne Rzeszut [rzeszut@chugach.net]
Sent: Saturday, March 14, 2009 12:05 PM
To: Jane Pierson
Subject: HB 35

Dear Jane,

As discussed on the phone yesterday, Friday 13, 2009, I'm emailing you to "officially" let Rep. Ramras and the rest of the House Judiciary Committee know that my husband, Raymond Rzeszut, and I are very much in favor of the legislature passing HB 35. As a mother and a grandmother I feel strongly that parents should be involved in all aspects of their children's lives. It is time for parents to stop trying to be their children's "friends" and start being parents. Parental wisdom and experience should be evident to all and affect the decisions they make.

Parental consent should be required for any medical procedure--I'm amazed that in this litigous society any procedure can be done without consent.

Have times changed so much that you don't even need a permission slip for your child to go on a field trip at school?

Please pass on this information to Representative Ramras, other members of the House Judiciary Committee, and our Representative, the Honorable Mike Hawker.

Thank you for your consideration in this matter. Please keep us informed about the progress of this bill.

Respectfully yours, Jeanne E. Rzeszut and Raymond A. Rzeszut, House District 32.

Arguments against HB 35

Economic consequences for minors:

- The economic effects of childbirth can be particularly severe when a teen drops out of high school and attempts to support herself and a child.
- Employment opportunities for teens and young adults are limited and typically low-wage jobs which often do not include any benefits such as health care (higher unemployment for teenagers)
- To have to care for a child at a young age saddles the teen with responsibilities that limit opportunities for education and limits a person's contribution to society

Health consequences for minors can also be harsh

- Maternal mortality and non-fatal complications from premature births and low weight babies are higher with women under 20 than with adult women
- Access to health care, including abortion is vital for pregnant minor women and being free of parental interference can be just as vital
- Parental notification may make girls vulnerable to physical and emotional violence
- Parental notification laws often frighten teenagers away from medical care, delaying counseling and abortion until later in pregnancy
    - This increases second and third term abortions obtained by teens. First term abortions are the safest
    - Increases the likelihood of illegal of teens seeking an abortion outside the health care system.
- Most professional medical societies, including the AMA - American Medical Association oppose parental notification laws

ALPHA

ALASKA PUBLIC HEALTH ASSOCIATION

Committed To Advancing Alaska's Public Health Since 1978

March 9, 2009

Jay Ramras, Representative
Chairman, House Judiciary Committee
State Capitol, Room Juneau , AK 99801

Dear Representative Ramras:

I am writing to express the Alaska Public Health Association (ALPHA) opposition to HB 35, NOTICE & CONSENT FOR MINOR'S ABORTION. The primary mission of the ALPHA is the enhancement of the public's health. In fulfilling that mission we oppose any efforts to limit women's access to safe abortion services.

Since 1973, the US Supreme Court's landmark Roe v. Wade decision has ensured that all women, throughout the US, have the right to abortion by allowing elective abortions before viability, or afterwards in order to preserve the health of the woman. ALPHA acknowledges that in the ideal, families provide a nurturing environment of open communication and support for its children. In the event of a teen pregnancy, many families are able to come together to assist a pregnant teen in making the difficult decisions of what is best for that situation, as well as obtain the necessary medical services. This, however, is not the case for too many of Alaskan teens. Too many families are impacted by substance and alcohol abuse, interpersonal violence and incest, making it unrealistic for the young woman to get parental consent. To require a judge's order for a woman who is pregnant, unmarried, under 17 years of age and unemancipated to have an abortion can and will result in delays in teens talking to anyone about a pregnancy and a delay in seeking medical services. Teens in troubled families are at greatest risk.

On behalf of the Alaska Public Health Association and Alaska's children, I strongly urge your opposition of SB35.

Sincerely,

Jayne E. Andreen, President
Alaska Public Health Association

Cc: Representative Nancy Dahlstrom
Representative John Coghill;
Representative Carl Gatto
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

P.O. Box 91825 Anchorage, AK 99509 Ph: 907-450-2452 Fax: 907-450-2470 e-mail: brenda@iiataska.com email: www.alaskapublichealth.org

Dana Strommen

From: Debra Caldera [debrac@acsalaska.net]
Sent: Sunday, March 08, 2009 10:21 PM
To: Rep. Jay Ramras
Subject: House Bill 35

Dear Representative Ramras,

Please oppose House Bill 35 requiring notice and consent for a minor's abortion. House Bill 35/Senate Bill 6 has been reintroduced in direct response to a ruling, in 2007, by the Alaska State Supreme Court which ruled Alaska's parental Consent Act, passed in 1997, unconstitutional.

Teen pregnancy happens. In most situations the young women, when faced with the pregnancy receives support from a caring partner and parents committed to the wellbeing of their child, the unborn child and the child's partner. Together they determine the best course to be taken. There are however young women who truly cannot count on the support of their families or partner to help in a crisis pregnancy. Having mustered the courage to seek medical care and having learned of her choices, she should not be required to then seek her parent's consent or that of the courts to determine the course of her pregnancy. This is a decision that impacts the course of her life and ultimately, she alone should make that decision. Requiring parental or court consent for the teen seeking an abortion places undue barriers to her resolving her situation as quickly as possible.

Please vote no on House Bill 35.

Thank you.

Debra Caldera

Dana Strommen

From: latanya.semones@ppgnw.org
Sent: Monday, March 09, 2009 1:07 AM
To: Rep. Jay Ramras
Subject: Keep Teens Safe - Vote "NO" on HB 35

Representative Jay Ramras
Alaska State Legislature
State Capitol, MS 3100, Room 120
Juneau, AK 99801

Dear Representative Ramras,

Alaskan parents and families are relying on you this session to vote "NO" on House Bill 35 (Parental Consent and Notification).

As an Alaskan resident and voter, I think it is important that you know the facts about HB 35.

In Alaska, the majority of teens are talking to their parents and involving them in their lives, and life-changing decisions, like whether or not to have a baby.

Unfortunately, not all parents and families have good communication, and it is those few situations, and with those few teens where HB 35 will have a detrimental impact to the health and safety of Alaska's teens.

In a home where communication is not possible, desperate Alaskan teens will take desperate measures. Instead of navigating a crowded courthouse or face a judge in rural Alaska that she may be related to, I am worried that our Alaskan daughters will delay speaking to anyone about a pregnancy, will delay seeking medical services, resort to an unsafe or back alley abortion, or even contemplate suicide.

Our daughters don't need HB 35-they need counseling and quality medical care without delay.

Teens in troubled families, and in rural Alaska, where health care access is already an issue, are truly at risk. Politicizing the abortion debate at the expense of the health and safety of Alaska's teens is not good policy.

Vote "NO" on House Bill 35. Please help keep our teens safe.
Thank you.

Sincerely,
Latanya Semones
705 24th Ave
Fairbanks, AK 99701

Dana Strommen

From: Margaret Gadsden [margaretmcdg@mac.com]
Sent: Saturday, March 07, 2009 4:31 PM
To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; Rep. Max Gruenberg
Cc: Rep. John Coghill; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Lindsey Holmes
Subject: HB 35

Dear Members of the House Judiciary Committee,

I am writing to you today to encourage you to vote NO on House Bill 35 - Parental Consent and Notification. I feel strongly that if passed this would be a dangerous piece of legislation that would result in serious harm and possibly death to some of Alaska's young women. I can understand the idea that a parent would want to know if their daughter was planning to undergo a medical procedure. I can understand that a parent may feel the as a mom or dad they would have a right to know that information. I feel that for most Alaskan families parents do know when their children are sexually active, that they know when their daughters become unexpectedly pregnant, and that they know when their daughters decide not to continue a pregnancy because they have fostered open and honest communication with their daughter throughout her entire life. I sincerely believe that what this bill is trying to do is something that already happens in many Alaskan homes. I also feel that in the homes where this isn't the case it is for a good reason. Sadly, not all Alaskan young women have a home environment that is safe, loving, and supportive.
I work as a high school counselor and I see that too often, because it shouldn't happen at all. But, the reality is that there are young women in our state who when they find themselves unexpectedly pregnant do not feel that it is safe to tell their parents. And there are some who feel that sharing with their parents that they do not wish to continue the pregnancy could be a life threatening conversation. Even though this is a minority of Alaskan girls, these girls still should be entitled to safe and affordable medical care, even if that care includes an abortion. These young women are entitled to the same protections under the law and the same rights to reproductive privacy. I understand that HB 35 provides a means for a young woman to still access an abortion through court consent, but that is just a road block that keeps young women from being able to get the medical care they need and desire. Our teens generally don't have the cognitive or emotional tools needed to navigate their way through court proceedings, it is not reasonable to assume that this is access, it is not. This legislation would lead young women to find other means of ending a pregnancy, and that would be much more dangerous.

What really needs to happen in Alaska is we need to have statewide support for comprehensive, medically accurate, age appropriate sex education in our public schools. If we had that then perhaps we wouldn't find ourselves in a situation where teenagers are needing abortion services. We wouldn't have the high number of teen pregnancies that we have each year. We wouldn't have the high rate of sexually transmitted infections (1 in 4 Alaskan teens) that currently exists in our state. In this area we in the United States are truly a joke among the industrialized nations of the world. I think changing this image starting here in Alaska would be the best legacy our legislature could offer.

Thank you for your time. I urge you to vote NO on House Bill 35.

Sincerely,
Margaret Gadsden
Anchorage, Alaska

Dana Strommen

From: mimi.chapin@uaf.edu
Sent: Saturday, March 07, 2009 9:19 AM
To: Rep. Jay Ramras
Subject: Keep Teens Safe - Vote "NO" on HB 35

Representative Jay Ramras
Alaska State Legislature
State Capitol, MS 3100, Room 120
Juneau, AK 99801

Dear Representative Ramras,

Alaskan parents and families are relying on you this session to vote "NO" on House Bill 35 (Parental Consent and Notification).

As an Alaskan resident and voter, I think it is important that you know the facts about HB 35.

In Alaska, the majority of teens are talking to their parents and involving them in their lives, and life-changing decisions, like whether or not to have a baby.

Unfortunately, not all parents and families have good communication, and it is those few situations, and with those few teens where HB 35 will have a detrimental impact to the health and safety of Alaska's teens.

In a home where communication is not possible, desperate Alaskan teens will take desperate measures. Instead of navigating a crowded courthouse or face a judge in rural Alaska that she may be related to, I am worried that our Alaskan daughters will delay speaking to anyone about a pregnancy, will delay seeking medical services, resort to an unsafe or back alley abortion, or even contemplate suicide.

Our daughters don't need HB 35-they need counseling and quality medical care without delay.

Teens in troubled families, and in rural Alaska, where health care access is already an issue, are truly at risk. Politicizing the abortion debate at the expense of the health and safety of Alaska's teens is not good policy.

Vote "NO" on House Bill 35. Please help keep our teens safe.
Thank you.

Sincerely,
Melissa Chapin
2158 Penrose Lane
Fairbanks, AK 99709

Dana Strommen

From: Amy Devereux [amydevereux@hotmail.com]
Sent: Thursday, March 05, 2009 5:11 PM
To: Rep. Jay Ramras
Subject: HB 35

Dear Representative Ramras,

I am a 31 year old, working mother and registered voter in South Anchorage. I was born and raised in Alaska and have spent the majority of my adult life living here in this great state. I am writing to you today to express my opposition to House Bill no. 35.

I became pregnant with my now 11-year-old son at the age of 19, a few years older than the teens that will be impacted by this bill, but because of my personal experience I empathize with the young Alaskan women who will be affected if this bill passes. An unintended pregnancy at a young age can be a confusing and scary experience for any young person. In my case, I had a loving, caring, accepting family that helped me through a difficult time and helped me to make the right choice for my personal experience. But my story is not typical of all teenage pregnancies. I grew up with friends here in Alaska who had abusive relationships with their parents, some of which would have been homeless if their parents had been informed of an unintended pregnancy. Thank goodness that at that time those women were able to get the help they needed from others outside of their family unit and had access to safe, accessible, and legal reproductive health services.

The truth of the matter is, that here in Alaska, we have high rates of child abuse and we have teens that do not feel safe or secure in talking to their parents or guardians about unintended pregnancies. As a parent, of course, I would want my son to talk to me about any and every difficult situation that comes his way, but the truth of the matter is, no matter how close we are and how understanding and open minded that I try to be, he may not want to talk to me about the issues in his life. My greatest fear would then be that he could not get access to the services that he needed, due to his fear of talking about those issues with me. Though I love him more than anything in this world and I want to be apart of all aspects of his life I know that there will come a day when he does not want to share all those aspects with me.

My concern with HB 35 is this; if a young woman must seek parental consent to receive a safe and legal abortion in Alaska, and feels that she cannot talk to her family about her pregnancy, for whatever reason, that she will then seek out an abortion in an illegal and unsafe way. I do not believe that a law can mandate family communication and the reality of the situation is that not all Alaskan families have open and positive lines of communication. For these reasons I oppose House Bill 35.

Thank you for your time and I appreciate all the positive work you do for Alaskans.

Sincerely,
Amy Devereux

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Dana Strommen

From: Lori Siebe [lories7@hotmail.com]

Sent: Wednesday, March 11, 2009 1:23 AM

To: Rep. Jay Ramras; Rep. Nancy Dahlstrom; representative_john_coghill@ligis.state.ak.us; Rep. Carl Gatto; Rep. Bob Lynn; Rep. Lindsey Holmes; Rep. Max Gruenberg

Subject: I Oppose State House Bill 35

Thank you for your time. I was fortunate to testify on the phone Monday and appreciate the opportunity to do so. While waiting to speak I listened to those who spoke before me and heard alot of important input from people who are also againest this bill.

I oppose House Bill 35. You can not force children to talk to thier parents. I mentioned the case of Becky Bell in Indiana, she died from complications from a back alley abortion because she did not want her parents to know she got pregnant, she did not want to disappoint them. She was close to her parents, they were supportive and loved her, she died. This bill doesn't only hurt girls in situations of, incest and abuse it hurts all of them.

If a girl is going to talk to her parents about an unwanted pregnancy it isnt going to be because of a law.

This bill is not to determine the legality of abortion in the state of Alaska, it is legal. I feel some of the legislators seemed determined to discuss that issue and even tried to sway those giving testimony to their way of thinking.

I also found it very disrespectful when a Representative emplied that Doctors like Dr. Whitefield, who are advocates of quality womens health care, who offer women options and excellent medical services be questioned about thier financial motives. Dr. Whitefield delivered my daughter under challenging circumstances and was a very caring profesional who did a wonderful job bringing her safely into the world.

I think you need to keep your discussion to the direct implications of this bill and not try to bring in to it your beliefs about the rights or wrongs of abortion. That is not the discussion.
Again thank you for your time and please vote againest HB 35.

Windows Live™: Keep your life in sync. Check it out.

Dana Strommen

From: amhjgd@alaska.net
Sent: Tuesday, March 10, 2009 5:52 PM
To: Jane Pierson
Cc: Rep. Jay Ramras; Rep. John Coghill
Subject: Opposition to House Bill 35

To the House Judiciary Committee
c/o Ms. Jane Pierson,

Re: Opposition to House Bill 35.

I am writing to you to express my opposition to House Bill 35. I am the mother of a 14 year old girl. Although I communicate with her about sex and the consequences of unprotected sex, I also know that she is a teenager. I would hope that she would communicate with us if she became pregnant, but a frightened teenager may not communicate if they think that mom and dad might be angry. Even though she knows she can talk to us, we cannot force her to. There are many teens who cannot talk to their parents so do not even have that choice. I want my daughter to know that she has choices. I also do not want any young girl to be forced to navigate the legal system – nor do I want any teen to feel they have no choice but to try to get a back alley abortion. Kids health needs must come first. No legislation can force kids to communicate with their parents or parents to communicate with their kids. House Bill 35, by requiring a minor to obtain parental consent for an abortion, will result in unnecessary health risks to teenage girls.

Thank you,

Janet Daley
Fairbanks, Alaska

Dana Strommen

From: Maggie Yngve [myngve@gmail.com]
Sent: Tuesday, March 10, 2009 10:05 AM
To: Rep. Alan Austerman; Sen. Gary Stevens; Rep. Beth Kerttula; Rep. Kyle Johansen; Rep. Jay Ramras
Subject: House Bill 35

Dear person in position of responsibility and power subjected to higher moral calling,

Alaskan parents and families are relying on you this session to vote "NO" on House Bill 35 (Parental Consent and Notification).

As a female Alaskan resident and voter, I believe it is your duty on a personal level, and a professional level to hear my concerns and act upon them. For this reason, I have taken time out of my intensely homework laden collegiate existence to compose this letter to you. Please do not simply ignore it, since you know as well as I do that your duty is to your constituents, which I am one of. Thus I am here to share my concerns and voice my disapproval of HB 35.

In Alaska, for the most part, teens and parents have decent communication. However, there are also a great deal of broken families held together only by the necessity for financial codependence. Unfortunately it is in these families that the parents are often so focused on themselves that the children are left by the wayside as the "adults" attempt to battle out their differences and become increasingly embittered. It is in these types of situations that kids are often NOT given the proper sexual education, NOT offered birth control, and NOT given the understanding that would allow a woman to make the right decision-- a decision NOT made to appease parents or save face for the family.

Parents tend to NOT see the desperation in these situations of unwanted pregnancy, and often the child is brought into the world to a mother who feels as though she was robbed of an adolescence and grandparents who seem to think they can raise a girl to be a mother in 9 short months, while they failed to raise her to be a responsible young adult in 16 years. You do see the problem...

In a home where communication is not possible, desperate Alaskan teens will take desperate measures. Instead of navigating a crowded courthouse and running the gauntlet of public humiliation, not to mention the scorns of radical Christian fundamentalists or face a judge in rural Alaska that she may be related to, I am worried that our Alaskan daughters will delay speaking to anyone about a pregnancy, will delay seeking medical services, resort to an unsafe or b ack alley abortion, or even contemplate suicide.

Us daughters don't need HB 35. We need proper sex education, free no-questions asked quality birth control, counseling and quality medical care without delay.

I feel that this issue runs a little too close to the hearts of some of our lawmakers, and they will not be making decisions for the public as much as they will be making decisions because they selfishly cannot imagine being unable to dictate their daughters' next 20 years. I feel that family issues--personal issues--should be left out of state law. While I am not elected to exercise discernment and power, YOU are and it is YOUR duty to do what is right in an objective perspective, and that is to allow women as much freedom as possible in their decisions.

Teens in troubled families, and in rural Alaska, where health care access is already an issue, are truly at risk. Politicizing the abortion debate at the expense of the health and safety of Alaska's teens is not good policy.
vote "NO" on House Bill 35. Please help keep our teens safe. Thank you.

--
Peace,

Maggie Yngve

Dana Strommen

From: Erik Lie-Nielsen [gnarlyerik@gmail.com]

Sent: Monday, March 09, 2009 12:56 PM

To: Rep. John Coghill

Cc: Rep. Charisse Millett; Rep. Bob Lynn; Rep. Wes Keller; Rep. Carl Gatto; Rep. Mark Neuman; Rep. Nancy Dahlstrom; Rep. Mike Kelly; Rep. John Harris; Rep. Peggy Wilson; Rep. Jay Ramras

Subject: HB 35: Shame on You!

Shame on You!

When will you party-line dinosaurs learn that the public does NOT APPRECIATE your meddling in matters of a private medical nature, or of an individuals' sex or sexuality? We do not appreciate your efforts to foist your misguided opinions or standard on everyone else. You bring to mind those self-righteous missionaries who destroy cultures all over the planet with their shameful excuses in the name of 'morality'. You fool no one with all your high sounding phrases for the purpose of this bill. Everyone one can see its true reason. At least you ought to be honest about it.

Utterly contemptible!

You have much more important issues to deal with rather than attempt to legislate to the detriment of our young people. Is there any wonder that the public holds partisan legislators in such contempt?

Shame on you and the horse you rode in on! This one will bite you as it well should. Voters will deal with you appropriately for your busybody meddling in due course.

Very sincerely,

Erik Lie-Nielsen

Dana Strommen

From: kodiakbelle@gmail.com
Sent: Wednesday, March 11, 2009 11:02 AM
To: Rep. Jay Ramras
Subject: Keep Teens Safe - Vote "NO" on HB 35

Representative Jay Ramras
Alaska State Legislature
State Capitol, MS 3100, Room 120
Juneau, AK 99801

Dear Representative Ramras,

Alaskan parents and families are relying on you this session to vote "NO" on House Bill 35 (Parental Consent and Notification).

As an Alaskan resident and voter, I think it is important that you know the facts about HB 35.

In Alaska, the majority of teens are talking to their parents and involving them in their lives, and life-changing decisions, like whether or not to have a baby.

Unfortunately, not all parents and families have good communication, and it is those few situations, and with those few teens where HB 35 will have a detrimental impact to the health and safety of Alaska's teens.

In a home where communication is not possible, desperate Alaskan teens will take desperate measures. Instead of navigating a crowded courthouse or face a judge in rural Alaska that she may be related to, I am worried that our Alaskan daughters will delay speaking to anyone about a pregnancy, will delay seeking medical services, resort to an unsafe or back alley abortion, or even contemplate suicide.

Our daughters don't need HB 35-they need counseling and quality medical care without delay.

Teens in troubled families, and in rural Alaska, where health care access is already an issue, are truly at risk. Politicizing the abortion debate at the expense of the health and safety of Alaska's teens is not good policy.

Vote "NO" on House Bill 35. Please help keep our teens safe.
Thank you.

Sincerely,
laurie lindsey
226 Saint Anns Ave.
Douglas, AK 99824

Jane Pierson

From: Kate McGlone West [katemcglone@gmail.com]
Sent: Wednesday, March 11, 2009 2:46 PM
To: Jane Pierson
Subject: Opposition testimony re: HB35

To Whom It May Concern:

I am writing to testify in strong opposition to House Bill 35. This idealistic bill infringes on a young woman's fundamental right to reproductive freedom and opens the door for potentially dangerous practices and abuse.

As a former employee of Planned Parenthood of Alaska, I saw women of a range of reproductive ages seeking safe, legal abortion services, under a range of challenging circumstances. In most cases, teens under 16 years of age willingly notified their parents of their situation, even without a law mandating such communication. These teens were lucky enough to have parents they could trust, even in a difficult situation, who were not as risk of abuse as a result of their situation. Those who did not notify their parents of their situation had reasons for not doing so. Society has an obligation to protect the few teens who are unable to confide in their parents about their pregnancy, due to a two-way lack of communication, or potential abuse from their family members. While this bill may intend to protect teens, mandatory notification and consent laws could result in teens delaying or failing to receive medical services, or in the case of teens in troubled families, additional risk of abuse.

In addition, in states where parental consent laws have been enacted, the numbers of late term abortions (which are more expensive and pose greater physical risks to the woman) obtained by teens have increased. In Alaska, where late term abortions are not legal, this delay in seeking medical care would result in increased cost and travel to obtain legal abortions out of state, or else would result in teens attempting to remedy the situation through self-induced, potentially dangerous means.

Laws cannot mandate good family relationships and open communication between parents and teens. I strongly urge the House Judiciary Committee to oppose HB35.

Thank you, Kathleen West

--
Kate McGlone West
MS Graduate Student
Dept of Biology
Institute of Arctic Biology
University of Alaska Fairbanks

fnkkm@uaf.edu
(907)978-3461

Alaska State Legislature

Please enter into the record my testimony to the Judiciary Committee
Committee name

Committee on HB 35, dated 3-11-09
Bill/Subject

So, what is HB35 all about?

HB35 is about *undermining* the legal foundations of Roe v. Wade. HB35 is one of a group of bills that are annually introduced in legislatures around the country and in Alaska. These bills seek to establish a legal precedent where a mother does not have the right to choose abortion or to establish the rights of personhood for a fetus. Once established, those laws could influence future judicial decisions on abortion.

HB35 is about *religious belief*. The Liberty Legal Institute (LLI) promotes and defends parental consent laws. It is associated with evangelical leader James Dobson's Focus on the Family, which lists its guiding principles as promotion of conservative Christian values. Those include the well-known doctrine that men will protect women and women will submit graciously in return. HB35 suggests that fathers will fairly protect their daughters' interests. But the cruel reality is that many Alaskan women and girls can't count on it. Consider these facts:

- The Dept. of Justice reports over 85% of domestic violence victims are women.

And the state of Alaska website states:
- "Alaska ranks among the top 5 states in the nation for per capita rates of domestic violence."
- "If the mother is not safe, neither are the children."
- "Alaska has 6 times the national average of reported child sexual assault."

When I think of parental consent laws, I think about the 17-year-old Valley high school student a few years back who chose suicide as the solution for her secret pregnancy. When others think about HB35 they tell me two words come to mind: Papa Pilgrim.

This anti-abortion bill places an undue burden on our girls and I oppose it.

Signed: Barbara McDaniel
Testifier

Representing (Optional)

1040 N Craig Stadler Lp, Wasilla AK
Address

907-373-6977
Phone number

Alaska State Legislature

the House Judiciary Committee

Please enter into the record my testimony to the HB 35 (COMMITTEE NAME)

committee on HB 35 (BILL / SUBJECT), dated MARCH 11, 2009 (TODAY'S DATE)

I oppose this bill because I think it

1. violates the constitution
2. violates the rights of the teenage girl.
3. makes teenage abortion less likely when abortion can make a positive effect on the girl's future life.
4. Increases the likelihood of another child living in poverty with less chance of a good life.
5. That it impedes reproductive freedom which is as important as freedom of speech.

I agree with the Doctor from Bethel who knows the serious problems surrounding teenage pregnancy; this bill hurts rather than helps the problems.

Signed: Amy Bollenbach (TESTIFIER (Signed, PRINTED NAME)) AMY BOLLENBACH

MYSELF (REPRESENTING)

P O Box 3468, HOMER AK 99603 (ADDRESS)

907-235-6954 (PHONE NO.)

Dana Strommen

From: Kiatcha Benson [kiatcha_benson@yahoo.com]
Sent: Wednesday, March 11, 2009 4:41 PM
To: Rep. Jay Ramras
Subject: House Bill 35 Testimony

Hello,

My name is Kiatcha Benson. I'm writing to oppose House Bill 35. I believe we should keep teens safe and healthy. If this legislation is passed it may deter some teens from seeking a medical abortion and they may take other means to remove the fetus. Especially in cases where there is abuse occurring in the family. Ultimately it is the choice of the individual over their own body.

We should respect another human beings ability to make their own decisions. You can not force communication between a child and their parent via legislation. Further more children are not owned by their parents but are merely on loan to us and we as parents should be there to guide and provide for them not control them.

Thanks, Kiatcha Benson

PARENTAL RIGHTS and RESPONSIBILITIES

What legal responsibilities do I have as a parent? A parent has two major responsibilities. They are:

1. to support your child by providing him or her with the necessities of life; and
2. to supervise and control your child.

What are the necessities of life? The necessities of life are **more than just food, shelter, and clothing**. They also include medical care, a safe and nurturing environment, an education, and legal help when required. **NOTE:** failure to provide the necessities of life for your child can be considered neglect.

How long does my duty to support my child last? The duty to support your child lasts until he or she reaches the age of majority, which is 18. There are some exceptions to this rule, they vary from state to state. They vary by such things as marriage of the child, and termination of parental rights.

I never married my child's other parent and my child does not live with me. Do I still have to support my child? Yes. The duty to provide support for your child is not affected by the marriage or absence of marriage between parents

What if I can afford to support my child, yet I don't? If the state is forced to support a child, the state is entitled to reimbursement from parents who are capable, but have refused, to provide for such support.

Does my duty to supervise and control my child mean that I, as a parent, will be held liable for any harm/damage caused by my child? Generally, parents are not held liable for the harm caused by their children. However, there are exceptions to this rule. For example, if you (a parent) knew or should have known of your child's propensities for engaging in improper behavior, or have aided or encouraged such behavior, you can be liable for harm/damage caused by your child. Additionally, there are specific statutes which make parents liable for the harm caused by their children under particular circumstances. Each state in the US has differing statutes. You can get information from your local library, or online at the state of Alaska website. **(This is not meant to constitute legal advice, but is a brief overview of parental rights and responsibilities.)**

PARENTAL RIGHTS and RESPONSIBILITIES

Do I have any rights as a parent? Yes, 4, listed below

1. The right to **custody and control** of your child. This means that as a parent you can make important decisions about your child's life. That a parent can decide where your child will live, with whom he or she will live, what he or she will do from day to day, what school he or she will attend, when he or she needs medical care, and what, if any, religion he or she will practice. (**NOTE:** The court maintains the right to stop you making decisions that would adversely affect the rights or welfare of the child.)

2. The right to cooperation and obedience from your child entitles you to just that: cooperation and obedience. This right translates into the right to discipline your child in **a non-abusive and non-neglectful manner. NOTE:** Your child does not have to obey you if you have ordered him or her to do something that is dangerous or illegal. *In fact, if you have encouraged your child to commit dangerous or illegal acts you may be charged with contributing to the delinquency of a minor, child abuse, or neglect.*

3. The right to your child's earnings means that you as a parent can legally collect and keep the money that your child earns. However, there are **limitations** on this right. Your child's earnings will not be entirely available if you have exploited, neglected, or abandoned your child; if your child's income is the result of his or her special talent or athletic ability; or if your child's income is the result of a gift or inheritance. Furthermore, most parents allow their children to keep the money that they have earned.

4. The right to sue if someone wrongfully injures or kills your child enables you to recover costs such as medical and funeral expenses, as well as lost earnings, lost companionship, and pain and suffering in the event of your child's death or injury.

Do my rights as a parent ever cease?

Yes. When your child reaches the age of majority they do. (that is, 18). In addition, your rights and authority as a parent can be suspended or terminated in any of the following situations: the court appoints a guardian of the person over your child; your child gets married; *the court suspends or terminates your parental rights due to abuse or abandonment; your child is made a ward of the juvenile court;* has been emancipated by the court; or enlists in the military.

The Science of Child Sexual Abuse
Jennifer J Freyd; Frank W Putnam; Thomas D Lyon; Kathryn A Becker-Blease; et al
Science; Apr 22, 2005; 308, 5721; ProQuest Education Journals
pg. 501

POLICY FORUM

PSYCHOLOGY

The Science of Child Sexual Abuse

Jennifer J. Freyd,[1]* Frank W. Putnam,[2] Thomas D. Lyon,[3] Kathryn A. Becker-Blease,[4] Ross E. Cheit,[5] Nancy B. Siegel,[6] Kathy Pezdek[7]

Child sexual abuse (CSA) involving sexual contact between an adult (usually male) and a child has been reported by 20% of women and 5 to 10% of men worldwide (*1–3*). Surveys likely underestimate prevalence because of underreporting and memory failure (*4–6*). Although official reports have declined somewhat in the United States over the past decade (*7*), close to 90% of sexual abuse cases are never reported to the authorities (*8*).

CSA is associated with serious mental and physical health problems, substance abuse, victimization, and criminality in adulthood (*9–12*). Mental health problems include posttraumatic stress disorder, depression, and suicide (*13, 14*). CSA may interfere with attachment, emotional regulation, and major stress response systems (*15*). CSA has been used as a weapon of war and genocide and is associated with abduction and human trafficking (*2*).

Much of the research on CSA has been plagued by nonrepresentative sampling, deficient controls, and limited statistical power (*16*). Moreover, CSA is associated with other forms of victimization (*17*), which complicates causal analysis of its role in adult functioning. However, associations in larger scale community and well-patient samples have been confirmed after controlling for family dysfunction and other risk factors (*18, 19*), in longitudinal investigations that measure pre- and post-CSA functioning (*20*), and in twin studies that control for environmental and genetic factors (*12, 21*).

Most CSA is committed by family members and individuals close to the child (*1*), which increases the likelihood of delayed disclosure (*22*), unsupportive reactions by caregivers and lack of intervention (*8, 23*), and possible memory failure [(*24, 25*), compare (*26*)]. These factors all undermine the credibility of abuse reports, yet there is evidence that when adults recall abuse, memory veracity is not correlated with memory persistence (*27, 28*). Research on child witness reliability has focused on highly publicized allegations of abuse by preschool operators and has emphasized false allegations rather than false denials (*29, 30*). Cognitive and neurological mechanisms that may underlie the forgetting of abuse have been identified (*31–33*).

Scientific research on CSA is distributed across numerous disciplines, which results in fragmented knowledge that is often infused with unstated value judgments. Consequently, policy-makers have difficulty using available scientific knowledge, and gaps in the knowledge base are not well articulated. We recommend interdisciplinary research initiatives and a series of international consensus panels on scientific and clinical practice issues related to CSA. This can promote (i) increased inclusion of CSA education in the curriculum in medical and mental health fields; (ii) improved education of the public, the media, and professionals who work with alleged CSA victims; (iii) greater visibility and improved dissemination of CSA research; (iv) increased focus on CSA by researchers in a range of disciplines; and (v) improved cost-benefit analyses of intervention, including prevention efforts.

We call on researchers from social science, medical, and criminal justice fields to gather better information on the prevalence (*34*), causes, consequences, prevention, and treatment of CSA. A 1996 report from the Department of Justice (*35*) estimated rape and sexual abuse of children to cost $1.5 billion in medical expenses and $23 billion total annually to U.S. victims. Whereas $2 is spent on research for every $100 in cost for cancer, only $0.05 is spent for every $100 dollars in cost for child maltreatment (*36*). The National Child Traumatic Stress Network is a federally funded network of 54 sites providing community-based treatment to children and their families exposed to a wide range of trauma. The network should be expanded to address the enormous public health consequences of child trauma, and supported to develop new forms of treatment. Even creation of a new Institute of Child Abuse and Interpersonal Violence within the NIH would be justified on the basis of the emotional and economic cost of these problems.

[1]Department of Psychology, University of Oregon, Eugene, OR, 97403–1227; [2]Department of Pediatrics, Children's Hospital Medical Center, Cincinnati, OH 45229; [3]Law School, University of Southern California, Los Angeles, CA 90089; [4]Family Research Laboratory, University of New Hampshire, Durham, NH 03824; [5]Department of Political Science, Brown University, Providence, RI; 02912 [6]NBS Associates, Columbia, MD 21046; [7]Department of Psychology, Claremont Graduate University, Claremont, CA 91711, USA.

*Author for correspondence. E-mail: jjf@dynamic.uoregon.edu

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From Dr. Jan Whitfield

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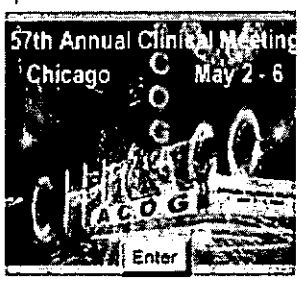

ACOG *Statement of Policy*

As issued by the ACOG Executive Board

ABORTION POLICY

The following statement is the American College of Obstetricians and Gynecologists' (ACOG) general policy related to abortion, with specific reference to the procedure referred to as "intact dilatation and extraction" (intact D & X).

1. The abortion debate in this country is marked by serious moral pluralism. Different positions in the debate represent different but important values. The diversity of beliefs should be respected.
2. ACOG recognizes that the issue of support of or opposition to abortion is a matter of profound moral conviction to its members. ACOG, therefore, respects the need and responsibility of its members to determine their individual positions based on personal values or beliefs.
3. Termination of pregnancy before viability is a medical matter between the patient and physician, subject to the physician's clinical judgment, the patient's informed consent and the availability of appropriate facilities.
4. The need for abortions, other than those indicated by serious fetal anomalies or conditions which threaten maternal welfare, represents failures in the social environment and the educational system.

   The most effective way to reduce the number of abortions is to prevent unwanted and unintended pregnancies. This can be accomplished by open and honest education, beginning in the home, religious institutions and the primary schools. This education should stress the biology of reproduction and the responsibilities involved by boys, girls, men and women in creating life and the desirability of delaying pregnancies until circumstances are appropriate and pregnancies are planned.

   In addition, everyone should be made aware of the dangers of sexually transmitted diseases and the means of protecting each other from their transmission. To accomplish these aims, support of the community and the school system is essential.

   The medical curriculum should be expanded to include a focus on the components of reproductive biology which pertain to conception control. Physicians should be encouraged to apply these principles in their own practices and to support them at the community level.

   Society also has a responsibility to support research leading to improved methods of contraception for men and women.

5. Informed consent is an expression of respect for the patient as a person; it particularly respects a patient's moral right to bodily integrity, to self-determination regarding sexuality and reproductive capacities, and to the support of the patient's freedom within

caring relationships.

A pregnant woman should be fully informed in a balanced manner about all options, including raising the child herself, placing the child for adoption, and abortion. The information conveyed should be appropriate to the duration of the pregnancy. The professional should make every effort to avoid introducing personal bias.

6. ACOG supports access to care for all individuals, irrespective of financial status, and supports the availability of all reproductive options. ACOG opposes unnecessary regulations that limit or delay access to care.
7. If abortion is to be performed, it should be performed safely and as early as possible.
8. ACOG opposes the harassment of abortion providers and patients.
9. ACOG strongly supports those activities which prevent unintended pregnancy.

The College continues to affirm the legal right of a woman to obtain an abortion prior to fetal viability. ACOG is opposed to abortion of the healthy fetus that has attained viability in a healthy woman. Viability is the capacity of the fetus to survive outside the mother's uterus. Whether or not this capacity exists is a medical determination, may vary with each pregnancy and is a matter for the judgment of the responsible attending physician.

Intact Dilatation and Extraction

The debate regarding legislation to prohibit a method of abortion, such as the legislation banning "partial birth abortion," and "brain sucking abortions," has prompted questions regarding these procedures. It is difficult to respond to these questions because the descriptions are vague and do not delineate a specific procedure recognized in the medical literature. Moreover, the definitions could be interpreted to include elements of many recognized abortion and operative obstetric techniques.

ACOG believes the intent of such legislative proposals is to prohibit a procedure referred to as "intact dilatation and extraction" (Intact D & X). This procedure has been described as containing all of the following four elements:

1. deliberate dilatation of the cervix, usually over a sequence of days;
2. instrumental conversion of the fetus to a footling breech;
3. breech extraction of the body excepting the head; **and**
4. partial evacuation of the intracranial contents of a living fetus to effect vaginal delivery of a dead but otherwise intact fetus.

Because these elements are part of established obstetric techniques, it must be emphasized that unless all four elements are present in sequence, the procedure is not an intact D & X. Abortion intends to terminate a pregnancy while preserving the life and health of the mother. When abortion is performed after 16 weeks, intact D & X is one method of terminating a pregnancy.

The physician, in consultation with the patient, must choose the most appropriate method based upon the patient's individual circumstances.

According to the Centers for Disease Control and Prevention (CDC), only 5.3% of abortions performed in the United States in 1993, the most recent data available, were performed after the 16th week of pregnancy. A preliminary figure published by the CDC for 1994 is 5.6%. The CDC does not collect data on the specific method of abortion, so it is unknown how many of these

were performed using intact D & X. Other data show that second trimester transvaginal instrumental abortion is a safe procedure.

Terminating a pregnancy is performed in some circumstances to save the life or preserve the health of the mother.

Intact D & X is one of the methods available in some of these situations. A select panel convened by ACOG could identify no circumstances under which this procedure, as defined above, would be the only option to save the life or preserve the health of the woman. An intact D & X, however, may be the best or most appropriate procedure in a particular circumstance to save the life or preserve the health of a woman, and only the doctor, in consultation with the patient, based upon the woman's particular circumstances can make this decision. The potential exists that legislation prohibiting specific medical practices, such as intact D & X, may outlaw techniques that are critical to the lives and health of American women. **The intervention of legislative bodies into medical decision making is inappropriate, ill advised, and dangerous.**

Approved by the Executive Board
General policy: January 1993
Reaffirmed and revised: July 1997
Intact D & X statement: January 1997
Combined and reaffirmed: September 2000
Reaffirmed: July 2004
Reaffirmed: July 2007

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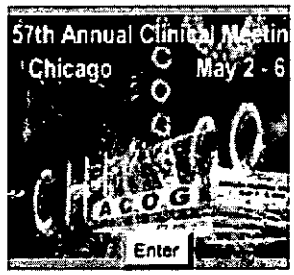

ACOG
Committee on Adolescent Health Care

Committee Opinion

This document reflects emerging clinical and scientific advances as of the date issued and is subject to change. The information should not be construed as dictating an exclusive course of treatment or procedure to be followed.

The College wishes to thank Richard Guido, MD, and Abigail English, JD, for their assistance in the development of this document.

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Evaluation and management of abnormal cervical cytology and histology in the adolescent. ACOG Committee Opinion No. 330. American College of Obstetricians and Gynecologists.

[PDF format]

Number 330, April 2006

Evaluation and Management of Abnormal Cervical Cytology and Histology in the Adolescent

ABSTRACT: The management of abnormal cervical cytology in adolescents differs from that for the adult population in many cases. Certain characteristics of adolescents may warrant special management considerations. It is important to avoid aggressive management of benign lesions in adolescents because most cervical intraepithelial neoplasia grades 1 and 2 regress. Surgical excision or destruction of cervical tissue in a nulliparous adolescent may be detrimental to future fertility and cervical competency. Care should be given to minimize destruction of normal cervical tissue whenever possible. A compliant, health-conscious adolescent may be adequately served with observation in many situations.

Background

The past decade has seen a remarkable increase in the knowledge of the natural history of cervical dysplasia, the role of human papillomavirus (HPV) in cervical cancer, and the development of new technologies for cervical cancer screening, specifically HPV testing and liquid-based cytology. This new information prompted the American Cancer Society (ACS) to develop new guidelines pertaining to cervical cancer screening (1). Based on the natural history data and the rarity of cervical cancer in the population of women younger than 21 years, the ACS recommendations for initial Pap testing changed, and the new criteria have been endorsed by the American College of Obstetricians and Gynecologists (ACOG) (2). Adolescents should undergo their first Pap test approximately 3 years after the onset of vaginal intercourse or no later than age 21 years. The decision about the initiation of cervical cytology screening in an adolescent patient should be based on the clinician's assessment of risks,

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including 1) age of first sexual activity, 2) behaviors that may place the adolescent patient at greater risk for HPV infection, and 3) risk of noncompliance with follow-up visits. Obtaining a complete and accurate sexual history, therefore, is critical (3).

The new information also prompted ACOG to develop new guidelines on the management of abnormal cervical cytology and histology (4). Some of these guidelines are unique for adolescents. The objectives of this Committee Opinion are to 1) highlight when the management of abnormal cervical cytology in adolescents differs from that for the adult population and 2) identify characteristics of adolescents that may warrant special considerations. It is important to avoid aggressive management of benign lesions in adolescents because most cervical intraepithelial neoplasia (CIN) grades 1 and 2 regress. Surgical excision or destruction of cervical tissue in a nulliparous adolescent may be detrimental to future fertility and cervical competency. Care should be given to minimize destruction of normal cervical tissue whenever possible. A compliant, health-conscious adolescent may be adequately served with observation in many situations.

Natural History of Human Papillomavirus

Most women infected with HPV are asymptomatic. The virus is detected by an abnormal Pap test result, HPV test result, or the presence of clinically evident genital warts, and most likely will resolve without treatment. In natural history studies of adolescents with newly acquired HPV infection, the average length of detectable HPV is 13 months. In most adolescent patients with an intact immune system, an HPV infection will resolve within 24 months (5). Further evidence that the HPV infection will resolve without treatment comes from the high rates of resolution of CIN 1 and CIN 2, 70% and 50% respectively (6–9).

Managing Abnormal Cervical Cytology in Adolescents

The new guidelines provided by ACOG address the therapy of cytologic and histologic abnormalities. These guidelines are based on best evidence when possible and expert opinion when limited data are available. For some but not all of the abnormalities, the guidelines have specific recommendations for care of the adolescent population that may differ from recommendations for adults and are summarized in Table 1. The following recommendations are unique to the adolescent population and address the clinical situations that can be managed by cytologic follow-up, HPV testing, colposcopy, or a combination of these approaches. A positive HPV test result refers to the presence of high-risk HPV DNA as determined by Hybrid Capture II. Testing for low-risk HPV types has no role in cervical cancer prevention.

Management Considerations

Atypical Squamous Cells of Undetermined Significance

Atypical squamous cells of undetermined significance (ASC-US) is a cytologic abnormality that in many cases identifies a woman harboring HPV infection. In the adolescent population, the prevalence of HPV in ASC-US will be higher than its prevalence in the older population. The risk of invasive cancer in adolescents approaches zero, and the likelihood of HPV clearance is very high. The preferred method of triage for patients with ASC-US who have undergone liquid-based cytologic screening is testing for high-risk HPV and, for those with a positive test result, triage to colposcopy. The ACOG guidelines address the high rate of HPV clearance by allowing less expensive alternative care than immediate colposcopy for adolescents with ASC-US and a positive high-risk HPV test result. Adolescents with atypical squamous cells and high-risk HPV-positive results may be monitored with cytology twice at 6-month intervals or a single high-risk HPV test at 12 months. If repeat cytology test results are abnormal, or there is evidence of persistent HPV, colposcopy should be performed. These alternatives are equally sensitive for the detection of CIN 2, CIN 3, or cervical cancer; avoid the expense of colposcopy and biopsy; and allow for the clearance of CIN and HPV (10). Immediate colposcopy is an acceptable alternative for the management of the adolescent who tests positive for ASC-US and HPV. Adolescents with ASC-US who have an HPV test result negative for high-risk HPV DNA should have a Pap test in 12 months.

Low-Grade Squamous Intraepithelial Lesions or Atypical Squamous Cells: Cannot Exclude High-Grade Squamous Intraepithelial Lesions

The Atypical Squamous Cells of Undetermined Significance/Low-Grade Squamous Intraepithelial Lesions Triage Study (ALTS) has demonstrated that the patients with the cytologic report of low-grade squamous intraepithelial lesions (LSIL) and ASC-US behave in a very similar manner with regard to the clearance of HPV and the risk for developing CIN 2, CIN 3, or cervical cancer. Because of the similarity in natural history of these two reports, the ACOG recommendations for treatment of LSIL are identical to those for ASC-US-positive HPV. Adolescents with an LSIL test result can be monitored by repeat cytology at 6-month intervals or by a high-risk HPV test in 12 months. These individuals should undergo colposcopy for any cytologic abnormality or the persistence of HPV infection at 1 year. Immediate colposcopy is an acceptable alternative for adolescents with LSIL Fig.1).

No studies specifically address atypical squamous cells: cannot rule out high-grade squamous intraepithelial lesions (ASC-H) in adolescents. Because of a lack of specific evidence and the higher rate of CIN 2, CIN 3, and cervical cancer in individuals with ASC-H, the adolescent with ASC-H should undergo immediate colposcopic evaluation.

High-Grade Squamous Intraepithelial Lesions

High-grade squamous intraepithelial lesions (HSIL) are a significant cytologic abnormality that requires colposcopic evaluation because of a much higher rate of histologically confirmed CIN 2, CIN 3, or cervical cancer. Colposcopy with endocervical assessment is the recommended treatment for adult and adolescent women with HSIL. In the adult population, ACOG guidelines include a "see and treat" alternative for individuals with HSIL using a loop electrosurgical excision procedure (LEEP). Although this is an acceptable alternative in the adult, it should be avoided in the adolescent population. A significant number of adolescents with HSIL will have CIN 2 on biopsy. Because of the high rate of resolution of CIN 2 in adolescents and the low rate of cervical cancer, adolescents with biopsy-confirmed CIN 2 with adequate colposcopy and normal histology test results on endocervical assessment may be monitored without intervention. The specific method of follow-up should be individualized by the health care professional. A reasonable approach to the follow-up could be either cytology or colposcopy at 4–6-month intervals.

Postcolposcopy Diagnosis of CIN 1 or Less in an Adolescent With HSIL Cytology

Because interobserver variability is most pronounced in younger women (11), the risk of invasive cancer is extremely low, and the likelihood of spontaneous resolution of CIN 1 or CIN 2 is high, follow-up with colposcopy and cytology at 4–6 months may be undertaken (12), as long as the colposcopy is adequate and the endocervical assessment is negative. Excision is an acceptable alternative to colposcopic follow-up, but it is known to increase the risk of cervical stenosis and preterm labor.

Atypical Glandular Cells

The Bethesda 2001 system for reporting cytologic abnormalities separates atypical glandular cells (AGC) into "not otherwise specified" (NOS) and "favor dysplasia." The cytology report further classifies the abnormalities based on the probable location of the cell of origin (endocervix, endometrium, or unknown). The prevalence of AGC cytology in the adolescent population is very low, and most of these abnormalities will arise from the squamous component of the cervix (13). Because of the rare nature of this diagnosis, a gynecologist with expertise in managing cervical dysplasia should manage cases of AGC cytology in the adolescent. The adolescent with AGC should undergo a colposcopy and endocervical sampling. Endometrial sampling would not be used in most adolescents unless they are morbidly obese, they have abnormal uterine bleeding or oligomenorrhea, or there is a suspicion of endometrial cancer.

Treatment of Dysplasia in Adolescents

Cervical Intraepithelial Neoplasia 1

Depending on the time from HPV exposure to evaluation, the

adolescent who is infected may have a normal cervix, a mildly abnormal cervix, or biopsy-confirmed CIN 1. Assuming that CIN 2 or greater has been ruled out by colposcopy, prospective studies of an adult population demonstrate that the risk of CIN 2 or greater developing over a 2-year period is 10% (10). In the adolescent population, the rate of resolution of CIN 1 is extremely high (greater than 85%). Therefore, management without therapy is the preferred recommendation for CIN 1 (14). This approach not only reduces the cost of delivering care to the adolescent but also avoids some of the potential risks of therapy, such as an increased rate of cervical stenosis, premature rupture of membranes, and preterm labor (15). The American College of Obstetricians and Gynecologists specifically states, "Observation provides the best balance between risk and benefit and should be encouraged" (4). Cervical intraepithelial neoplasia 1 in adolescents should be monitored using a protocol of either repeat cytologic testing at 6 and 12 months or of HPV DNA testing at 12 months. Colposcopy should then be performed for any abnormal cytology results or for positive high-risk HPV DNA results.

For those few individuals who require therapy for CIN 1, a variety of options are available. Randomized prospective clinical trials have demonstrated that cryotherapy, laser therapy, and LEEP are equally effective interventions for the treatment of CIN 1 (16). When therapy is required, the type of intervention is based on the geometry of the cervical lesion as well as the clinical recommendations of the clinician who is caring for the patient. Care should be taken to remove the least amount of cervical tissue that is necessary to eradicate the lesion.

Cervical Intraepithelial Neoplasia 2

Cervical intraepithelial neoplasia 2 is a significant abnormality that has classically required therapy. A variety of studies, including the ALTS trial, have demonstrated that this lesion may have a significant rate of resolution (up to 40%) in adults. This rate of resolution is suspected to be higher in adolescents. Based on these data and expert opinion, CIN 2 can be managed in adolescents with either observation or ablative or excision therapy. The adolescent patient who is monitored without therapy should be an individual deemed to be reliable regarding follow-up and have a good understanding of the nature of the abnormality and its risks. Follow-up can be individualized, with colposcopy or cytology every 4–6 months being a very conservative approach.

Cervical Intraepithelial Neoplasia 3

Cervical intraepithelial neoplasia 3 is a significant cervical abnormality. Despite the fact that cervical cancer is very rare in the adolescent population, the natural history of CIN 3 in this population has not been examined. Therapy is recommended for all women with CIN 3. Randomized prospective clinical trials have demonstrated that cryotherapy, laser therapy, and LEEP are equally effective interventions for the treatment of CIN 3. In one of

the largest follow-up studies of women having undergone outpatient ablative therapy of CIN, four cases of microinvasive cervical cancer and five cases of frankly invasive cancer were subsequently diagnosed among 3,783 women (17). Because of these considerations, some authors have recommended that excision be used for the management of biopsy-confirmed CIN 3, especially for large lesions that are at increased risk of having microinvasive or occult invasive carcinoma. The type of intervention is based on the geometry of the cervical lesion as well as the clinical recommendations of the health care provider.

Special Considerations for Colposcopy

Consent

The minor undergoing a colposcopic examination represents a unique situation in that the abnormal Pap test result frequently is obtained during confidential screening for sexually transmitted diseases (STDs) or during counseling for contraception. Both interactions frequently occur without the knowledge of a parent or guardian.

Minors undergoing a colposcopic examination might find it helpful to have parental involvement for the procedure. However, colposcopic examinations are considered evaluation for STDs, and minors generally are allowed to consent for diagnosis of STDs (18). For that reason, parental consent, although preferred, should not be required. If parental consent is not obtained, consent for the examination should be obtained from the minor and indicated in the medical record.

The issues regarding parental consent for biopsy or therapy for cervical dysplasia are more complicated. The need for consent depends on whether the biopsy or therapy is considered part of STD evaluation and treatment and on the specifics of state law. Even if the minor legally can consent, the law may not ensure confidentiality. Some states allow minors to consent for STD care but give the health care provider discretion to disclose information to parents, particularly if it is necessary to protect the minor's health (18).

Biopsy and therapy for cervical dysplasia are more invasive than a colposcopic examination and carry a higher risk of complication. They also are likely to generate a bill, which can compromise confidentiality. These issues need to be considered when determining whether parental consent should be obtained, even if it is not legally required, before providing biopsy or therapy for a minor. Medical care providers throughout the United States provide such care without parental consent under the umbrella of the treatment of STDs. Any health care provider who delivers such care should be fully informed of their state laws and established local standards of care.

Screening for Sexually Transmitted Diseases

The adolescent population represents an at-risk population for cervical infection, specifically chlamydia and gonorrhea. Little evidence exists to support the routine screening of the cervix for chlamydia and gonorrhea before performing a colposcopy. Screening for STDs should be based on the ACOG guidelines for screening adolescents who are sexually active (19, 20).

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ACOG *Statement of Policy*

As issued by the ACOG Executive Board

STATEMENT ON PROVIDING EFFECTIVE CONTRACEPTION TO MINORS

The never-married, never-pregnant, sexually involved female has not yet been reached with effective contraception. The laws of some states indirectly prohibit this service for minors and thereby prevent the gynecologist from serving them or place the physician in legal jeopardy if he does so.

The American College of Obstetricians and Gynecologists believes that:

1. The unmarried female of any age whose sexual behavior exposes her to possible conception should have access to the most effective methods of contraception.

2. In order to accomplish this, the individual physician, whether working alone, in a group or in a clinic, should be free to exercise his best judgment in prescribing contraception and therefore, the legal barriers which restrict his freedom should be removed.

3. These restricting legal barriers should be removed even in the case of an unemancipated minor who refuses to involve her parents. A pregnancy should not be the price she has to pay for contraception. On the other hand, in counseling the patient, all possible efforts should be made to involve her parents.

4. The contraceptive services should be offered whenever possible in a broad spectrum counseling context which would include mental health and venereal disease.

5. Every effort should be made to include male partners in such services and counseling.

Approved by the Executive Board
May 1971
Reaffirmed July 1987

The Science of Child Sexual Abuse
Jennifer J Freyd; Frank W Putnam; Thomas D Lyon; Kathryn A Becker-Blease; et al
Science; Apr 22, 2005; 308, 5721; ProQuest Education Journals
pg. 501

POLICY FORUM

PSYCHOLOGY

The Science of Child Sexual Abuse

Jennifer J. Freyd,[1]* Frank W. Putnam,[2] Thomas D. Lyon,[3] Kathryn A. Becker-Blease,[4] Ross E. Cheit,[5] Nancy B. Siegel,[6] Kathy Pezdek[7]

Child sexual abuse (CSA) involving sexual contact between an adult (usually male) and a child has been reported by 20% of women and 5 to 10% of men worldwide (*1–3*). Surveys likely underestimate prevalence because of underreporting and memory failure (*4–6*). Although official reports have declined somewhat in the United States over the past decade (*7*), close to 90% of sexual abuse cases are never reported to the authorities (*8*).

CSA is associated with serious mental and physical health problems, substance abuse, victimization, and criminality in adulthood (*9–12*). Mental health problems include posttraumatic stress disorder, depression, and suicide (*13, 14*). CSA may interfere with attachment, emotional regulation, and major stress response systems (*15*). CSA has been used as a weapon of war and genocide and is associated with abduction and human trafficking (*2*).

Much of the research on CSA has been plagued by nonrepresentative sampling, deficient controls, and limited statistical power (*16*). Moreover, CSA is associated with other forms of victimization (*17*), which complicates causal analysis of its role in adult functioning. However, associations in larger scale community and well-patient samples have been confirmed after controlling for family dysfunction and other risk factors (*18, 19*), in longitudinal investigations that measure pre- and post-CSA functioning (*20*), and in twin studies that control for environmental and genetic factors (*12, 21*).

Most CSA is committed by family members and individuals close to the child (*1*), which increases the likelihood of delayed disclosure (*22*), unsupportive reactions by caregivers and lack of intervention (*8, 23*), and possible memory failure [(*24, 25*), compare (*26*)]. These factors all undermine the credibility of abuse reports, yet there is evidence that when adults recall abuse, memory veracity is not correlated with memory persistence (*27, 28*). Research on child witness reliability has focused on highly publicized allegations of abuse by preschool operators and has emphasized false allegations rather than false denials (*29, 30*). Cognitive and neurological mechanisms that may underlie the forgetting of abuse have been identified (*31–33*).

Scientific research on CSA is distributed across numerous disciplines, which results in fragmented knowledge that is often infused with unstated value judgments. Consequently, policy-makers have difficulty using available scientific knowledge, and gaps in the knowledge base are not well articulated. We recommend interdisciplinary research initiatives and a series of international consensus panels on scientific and clinical practice issues related to CSA. This can promote (i) increased inclusion of CSA education in the curriculum in medical and mental health fields; (ii) improved education of the public, the media, and professionals who work with alleged CSA victims; (iii) greater visibility and improved dissemination of CSA research; (iv) increased focus on CSA by researchers in a range of disciplines; and (v) improved cost-benefit analyses of intervention, including prevention efforts.

We call on researchers from social science, medical, and criminal justice fields to gather better information on the prevalence (*34*), causes, consequences, prevention, and treatment of CSA. A 1996 report from the Department of Justice (*35*) estimated rape and sexual abuse of children to cost $1.5 billion in medical expenses and $23 billion total annually to U.S. victims. Whereas $2 is spent on research for every $100 in cost for cancer, only $0.05 is spent for every $100 dollars in cost for child maltreatment (*36*). The National Child Traumatic Stress Network is a federally funded network of 54 sites providing community-based treatment to children and their families exposed to a wide range of trauma. The network should be expanded to address the enormous public health consequences of child trauma, and supported to develop new forms of treatment. Even creation of a new Institute of Child Abuse and Interpersonal Violence within the NIH would be justified on the basis of the emotional and economic cost of these problems.

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1284

Jane Pierson

From: Christopher Clark [cgcalaska@yahoo.com]

Sent: Friday, February 27, 2009 8:38 AM

To: Tim Barry; John Bitney; Shannon Devon; Peter Fellman; Linda Hay; Crystal Koeneman; Paul Labolle; Karen Lidster; Tom Maher; John Manly; Rynnieva Moss; Jane Pierson; Chris Wyatt

Subject: Daily News: History of parental consent law in Alaska

History of parental consent law in Alaska

Published: February 27th, 2009 03:38 AM
Last Modified: February 27th, 2009 03:44 AM

1997: Passed by Legislature, became law over veto by then-Gov. Tony Knowles. Challenged immediately. Never went into effect. What it did: Required girls younger than 17 to get a parent's or judge's permission before obtaining an abortion.

1997: Appealed by ACLU, Planned Parenthood and local doctors.

1998: Superior Court Judge Sen Tan rules the law unconstitutional. The state appeals.

2001: Alaska Supreme Court orders Judge Tan to hear testimony and decide if the law furthers **"a compelling state interest" using the "least restrictive means"** available. This is a standard balancing test used to decide if something is important enough to the state that it should be allowed even if it might infringe on a citizen's rights.

2003: Superior Court trial held as ordered.

2003: Judge Tan rules the law does not meet the **compelling state interest-least restrictive** means test. He ruled it unconstitutional under the **equal protection and privacy clauses** of the Alaska Constitution.

2004: The state appealed Tan's ruling to the Alaska Supreme Court.

2005: Oral argument before the Supreme Court

2007: In a 3-2 vote, the Supreme Court rules the law unconstitutional on privacy grounds.

Changes in Alaska Supreme Court:

The votes to overturn the parental consent law in 2007 were cast by Justices Dana Fabe, Alex Bryner and Robert Eastaugh.

Justices Walter Carpeneti and Warren Matthews voted to uphold it.

The current make-up of the court: Fabe and Eastaugh remain on the bench.

Bryner has been replaced by Palin appointee Daniel Winfree.

Carpeneti remains on the bench. **Matthews will soon be replaced by an upcoming Palin appointment.**

Source: Anchorage Daily News. Associated Press, ACLU

Charleston Daily Mail
DAILYMAIL.COM

41°

Friday March 13, 2009 2:05 pm » More weather Feels like 41°

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Statehouse News

Wednesday March 11, 2009

Bill would require minors to get parental consent to use tanning beds

by Michelle Saxton
Daily Mail Capitol Reporter

CHARLESTON, W.Va. – Teenagers wanting a bronze, sun-kissed look in a pinch may have to get written consent from their parents before heading to the tanning salon under a bill pending with West Virginia lawmakers.

Senate Bill 488 would require parents or legal guardians to sign a statement granting permission for children under 18 who want to use a tanning facility. In cases where a child was under 14, parents or guardians would have to accompany them.

"There is so much skin cancer, and we know that tanning beds contribute," said Sen. Ron Stollings, a physician. "It's an add-on over years."

Stollings, D-Boone, introduced the bill last week. It is pending in the Senate Judiciary Committee.

"From a business standpoint we don't want to close anybody down," said Stollings, whose district also includes Logan, Lincoln and part of Wayne counties. "We just want to make people aware of the risks.

"People are still going to go to the tanning bed, but at least we're trying to raise awareness that it's not a benign process," he said. "It's not like we don't know it's an issue or not - the studies are there. The more UV radiation you get, the more increased risk for skin cancer."

Signed consent forms would be valid for one calendar year and would state that "the parent or legal guardian has read and understood the warnings given by the tanning facility, and that they consent to the minor's use of the tanning device and agree that the minor will use protective eyewear," the bill says.

"It's a wonderful step in the right direction," said Erin Mulvey, communications director for the Skin Cancer Foundation in New York. The foundation ultimately hopes tanning salons will be illegal for minors, she said, and it is working to encourage young women and others to stop tanning through its Go With Your Own Glow public awareness campaign.

"The reason we feel so strongly is because of the direct link to skin cancer," Mulvey said. "We just want people to be healthy and take care of your skin.'

It is projected that more than 62,000 Americans were diagnosed in 2008 with melanoma, the deadliest form of skin cancer, according to American Cancer Society estimates. The estimated figure for new cases of melanoma in West Virginia last year is 440, according to the Skin Cancer Foundation.

Skin damage or burns can occur if you are careless, whether out in the sun or in a tanning bed, but salons provide a controlled environment where tanning time is monitored, some businesses say.

"At any age it's very bad for your skin to get a bad sunburn," said Krystle Smith, who co-owns Hot Spot Tanning in Charleston. "If parents are more involved, their children are more apt to be safe about it."

Hot Spot Tanning is among West Virginia salons that already require parental permission for minors.

Toni Richardson, who co-owns the salon with Smith, her daughter, has had parents sign for their children since starting the business in 1999.

"I think the bill is a great idea," Richardson said.

Richardson remembers one customer who had previously gone to a different tanning

Parental Rights on Tanning Beds

facility without her parents' knowledge, stayed too long under the tanning device and got burned.

"I think that if her parents were aware maybe the mother would have said, 'Don't stay so long,' " Richardson said. "I do have a couple of parents that do that."

"It's important that parents know everything their children are doing," she said. "There's a lot of controversy on tanning. I think that the parents need to make the decision whether to let their children tan or not."

Advertiser

11 Comments on "Bill would require minors to get parental consent to use tanning beds"
Post a comment

Posted By: **morning sick...** (19 hours ago) ⚠Report Abuse

Hey teach...why don't you just make sure Johnny can read, write and add on an 8th grade level when they graduate High School like you've been doing and stop trying to save everyone from themselves by trampling on our civil liberties to push your socialist goodt two shoe utopian agenda.

Posted By: **unreal** (10:00am 03-12-2009) ⚠Report Abuse

I have had a member of my family pass with skin cancer and I still think this is the stupidest thing I have heard of...parents should know what their children do and do not need the government requiring it. I worried more about whether the young kids will have a job here in our state when they graduate than how many lay in the tanning beds. Heck what next make the parents sign a parental consent for the kids to go outside when the sun is shining?

Posted By: **WVTEACH** (8:46am 03-12-2009) ⚠Report Abuse

Morning Sick - I guess you do not think skin cancer in an issue? The risk of cancer increases immensely if you start tanning early. Girls are tanning as early as middle school now. Think of the damage that will be done before they graduate college. Whether you want to believe it or not this is a MAJOR PROBLEM. I'm sure if you had someone in your family die from skin cancer you would think differently about this bill. BTW - In West Virginia we have something called Content Standards and Objectives. That is what teachers use to guide their teachings.

Posted By: **morning sick...** (6:58am 03-12-2009) ⚠Report Abuse

WVTEACH....I am so glad I do not have children in the public schools because public education is "child abuse". I would not want you indoctrinating my child with your "common sense"

More Comments »

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 20, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 3/13/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 35**

"An Act relating to notice and consent for a minor's abortion; relating to penalties for performing an abortion; relating to a judicial bypass procedure for an abortion; relating to coercion of a minor to have an abortion; relating to reporting of abortions performed on minors; amending Rule 220, Alaska Rules of Appellate Procedure, and Rule 20, Alaska Probate Rules, relating to judicial bypass for an abortion; and providing for an effective date."

HB 35 NOTICE & CONSENT FOR MINOR'S ABORTION

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW				✓
DHS			✓	

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Gruenberg		✓		
	Coghill	✓			
			X		
	Gatto	X			
Chair:	RAMRAS	X			
Chair:	Dahlstrom	X			

1288

HB

36

ALASKA STATE LEGISLATURE

REPRESENTATIVE KYLE JOHANSEN
MAJORITY LEADER

SPONSOR STATEMENT – HOUSE BILL 36

Alaska's lawmaking process is highly public and strives to be transparent. Shown by the passage of an omnibus ethics bill in 2006, Alaskan voters want to know who is contributing to candidate campaigns. Initiative-created law has the same authority and effect as law created by elected officials; therefore voters should be allowed to know who is making law through the initiative process. House Bill 36, also known as the Open and Transparent Initiative Act (OTIA), seeks to identify people and/or groups who financially contribute to initiative campaigns and requires all initiative groups to register with the Alaska Public Office's Commission. These guidelines are similar to those imposed upon elected officials. In addition, OTIA mandates that initiative sponsors hold public hearings in 30 house districts, limits signature-gathers to work one petition at a time, restricts the use of per-signature commission, and requires all of the language of a proposed ballot measure be published in the petition booklets so potential signers have the opportunity to read all of the language rather than a short summary.

Initiative committees in Alaska are not held to a high enough disclosure standard. There are loopholes in the current disclosure process that allow groups to hide contributors. There are signature-gathers without accountability. There is a lack of public hearings and input. There is financial information that is not disclosed until after the election. These shortcomings are not acceptable, and the Open and Transparent Initiative Act seeks to close these loopholes, repair the initiative process, and restore the faith of Alaskans in our election process.

Session: State Capitol, Juneau, AK 99801-1182 • (907) 465-3424 • Fax (907) 465-3793
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CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 36(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JOHANSEN, MILLETT, AND WILSON, Johnson

A BILL

FOR AN ACT ENTITLED

"An Act relating to ballot initiative proposal applications and to ballot initiatives."

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

*** Section 1.** AS 15.13.040(k) is amended to read:

(k) Every individual, person, nongroup entity, or group contributing a total of $500 or more to a group organized for the principal purpose of influencing the outcome of a proposition**, and every individual, person, nongroup entity, or group contributing a total of $500 or more to a group organized for the principal purpose of filing an initiative proposal application under AS 15.45.020 or that has filed an initiative proposal application under AS 15.45.020,** shall report the contribution or contributions on a form prescribed by the commission not later than 30 days after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that group by that individual, person, nongroup entity, or group during the calendar year.

*** Sec. 2.** AS 15.13.050(a) is amended to read:

(a) Before making an expenditure in support of or in opposition to a candidate or before making an expenditure in support of or in opposition to a ballot proposition or question **or to an initiative proposal application filed with the lieutenant governor under AS 15.45.020**, each person other than an individual shall register, on forms provided by the commission, with the commission.

*** Sec. 3.** AS 15.13.065(c) is amended to read:

(c) Except for reports required by AS 15.13.040 and 15.13.110 and except for the requirements of AS 15.13.050, 15.13.060, and 15.13.112 - 15.13.114, the provisions of AS 15.13.010 - 15.13.116 do not apply to limit the authority of a person to make contributions to influence the outcome of a ballot proposition. In this subsection, in addition to its meaning in AS 15.60.010, "proposition" includes

(1) an issue placed on a ballot to determine whether

(A) [(1)] a constitutional convention shall be called;

(B) [(2)] a debt shall be contracted;

(C) [(3)] an advisory question shall be approved or rejected; or

(D) [(4)] a municipality shall be incorporated**;**

(2) an initiative proposal application filed with the lieutenant governor under AS 15.45.020.

*** Sec. 4.** AS 15.13.110(e) is amended to read:

(e) A group formed to sponsor [AN INITIATIVE,] a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter**,** each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

*** Sec. 5.** AS 15.13.110 is amended by adding a new subsection to read:

(g) An initiative committee, person, group, or nongroup entity receiving contributions exceeding $500 or making expenditures exceeding $500 in a calendar year in support of or in opposition to an initiative on the ballot in a statewide election or an initiative proposal application filed with the lieutenant governor under AS 15.45.020 shall file a report within 10 days after the end of each calendar quarter

on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) and (b) of this section. If the report is a first report, it must cover the period beginning on the day an initiative proposal application is filed under AS 15.45.020 and ending three days before the due date of the report.

*** Sec. 6.** AS 15.13.400(4) is amended to read:

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made**, and includes the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that is rendered to the candidate or political party,** and that is made for the purpose of

(i) influencing the nomination or election of a candidate**;**

(ii) [, AND IN AS 15.13.010(b) FOR THE PURPOSE OF] influencing a ballot proposition or question**; or**

(iii) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020 [, INCLUDING THE PAYMENT BY A PERSON OTHER THAN A CANDIDATE OR POLITICAL PARTY, OR COMPENSATION FOR THE PERSONAL SERVICES OF ANOTHER PERSON, THAT ARE RENDERED TO THE CANDIDATE OR POLITICAL PARTY];

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

*** Sec. 7.** AS 15.13.400(6) is amended to read:

(6) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; [OR]

(iv) influencing the outcome of a ballot proposition or question; **or**

(v) supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020;

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

*** Sec. 8.** AS 15.45.080 is amended to read:

Sec. 15.45.080. Bases of denial of certification. The lieutenant governor shall deny certification upon determining in writing that

(1) the proposed bill to be initiated is **not confined to one subject or is otherwise** not in the required form;

(2) the application is not substantially in the required form; or

(3) there is an insufficient number of qualified sponsors.

*** Sec. 9.** AS 15.45.090(a) is amended to read:

(a) If the application is certified, the lieutenant governor shall prepare a sufficient number of sequentially numbered petitions to allow full circulation throughout the state. Each petition must contain

(1) a copy of the proposed bill [IF THE NUMBER OF WORDS INCLUDED IN BOTH THE FORMAL AND SUBSTANTIVE PROVISIONS OF THE BILL IS 500 OR LESS];

(2) an impartial summary of the subject matter of the bill;

(3) a statement of minimum costs to the state associated with certification of the initiative application and review of the initiative petition, excluding legal costs to the state and the costs to the state of any challenge to the validity of the petition;

(4) an estimate of the cost to the state of implementing the proposed law;

(5) the statement of warning prescribed in AS 15.45.100;

(6) sufficient space for the printed name, a numerical identifier, the signature, the date of signature, and the address of each person signing the petition; and

(7) other specifications prescribed by the lieutenant governor to ensure proper handling and control.

*** Sec. 10.** AS 15.45.110(c) is amended to read:

(c) A circulator may not receive payment or agree to receive payment [THAT IS GREATER THAN $1 A SIGNATURE], and a person or an organization may not pay or agree to pay an amount**, based on the number of registered voters who sign a petition. This subsection does not prohibit a person or an organization from**

employing a circulator and

(1) paying an hourly wage or salary;

(2) establishing express or implied minimum signature requirements for the circulator;

(3) terminating the petition circulator's employment if the circulator fails to meet certain productivity requirements; or

(4) paying discretionary bonuses based on the circulator's reliability, longevity, and productivity [THAT IS GREATER THAN $1 A SIGNATURE, FOR THE COLLECTION OF SIGNATURES ON A PETITION].

*** Sec. 11.** AS 15.45 is amended by adding a new section to read:

Sec. 15.45.195. Public hearings. (a) At least 30 days before the election at which an initiative is to appear on the ballot, the lieutenant governor or a designee of the lieutenant governor shall hold two or more public hearings concerning the initiative in each judicial district of the state. Each public hearing under this section shall include the written or oral testimony of one supporter and one opponent of the initiative.

(b) The lieutenant governor shall provide reasonable notice of each public hearing required under this section. The notice must include the date, time, and place of the hearing. The notice may be given using print or broadcast media. The lieutenant governor shall provide notice in a consistent fashion for all hearings required under this section.

*** Sec. 12.** AS 15.58.010 is amended to read:

Sec. 15.58.010. Election pamphlet. Before each state general election, and before each state primary **or special** election at which a ballot proposition is scheduled to appear on the ballot, the lieutenant governor shall prepare, publish, and mail at least one election pamphlet to each household identified from the official registration list. The pamphlet shall be prepared on a regional basis as determined by the lieutenant governor.

*** Sec. 13.** AS 15.58.020(b) is amended to read:

(b) Each primary **or special** election pamphlet shall contain only the information specified in (a)(6) and (a)(9) of this section for each ballot measure

scheduled to appear on the primary election ballot.

*** Sec. 14.** AS 24.05 is amended by adding a new section to article 4 to read:

Sec. 24.05.186. Review of initiatives certified by the lieutenant governor by standing committees of the legislature. (a) A standing committee of the legislature shall consider an initiative that the lieutenant governor has determined was properly filed under AS 15.45.160.

(b) A standing committee shall conduct reviews under this section within 30 days after the convening of the legislative session preceding the statewide election at which the initiative proposition must appear on the election ballot under AS 15.45.190.

*** Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies only to an initiative, the application for which is filed with the lieutenant governor under AS 15.45.020 on or after the effective date of this Act.

PASSED

26-LS0197\E.3
Bullard
4/9/09

AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE COGHILL

TO: SSHB 36

Page 5, lines 4 - 7:

Delete all material.

Renumber the following bill sections accordingly.

Page 6, line 11, through page 7, line 5:

Delete all material.

Renumber the following bill sections accordingly.

Removes Sec. 8
Sec 11 - one petition at a time
Sec. 12

1298

26-LS0197\E.4
Bullard
4/9/09

AMENDMENT #2

OFFERED IN THE HOUSE BY REPRESENTATIVE COGHILL

TO: SSHB 36

Page 2, line 21:

Delete "[AN INITIATIVE,]"

Insert "**a municipal** [AN] initiative," w/D 2A

2A

Page 2, line 22, following "governor":

Insert "**or the division of elections**"

Page 2, line 27, through page 3, line 8: 2B Passed.

Delete all material and insert:

"(g) An initiative committee, person, group, or nongroup entity receiving contributions exceeding $500 or making expenditures exceeding $500 in a calendar year in support of or in opposition to an initiative on the ballot in a statewide election or an initiative proposal application filed with the lieutenant governor under AS 15.45.020 shall file a report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) and (b) of this section. If the report is a first report, it must cover the period beginning on the day an initiative proposal application is filed under AS 15.45.020 and ending three days before the due date of the report."

2B

Adds municipal language

1299

PASSED

26-LS0197\E.8
Bullard
4/14/09

AMENDMENT #4

Coghill

OFFERED IN THE HOUSE

TO: SSHB 36

Page 7, lines 7 - 10:

Delete all material and insert:

"**Sec. 15.45.195. Public hearings.** (a) At least 30 days before the election at which an initiative is to appear on the ballot, the lieutenant governor or a designee of the lieutenant governor shall hold two or more public hearings concerning the initiative in each judicial district of the state. Each public hearing under this section shall include the testimony of one supporter and one opponent of the initiative."

WRITTEN OR ORAL

Page 7, line 11:

Delete "sponsors"

Insert "lieutenant governor"

Page 7, line 13:

Delete "sponsors"

Insert "lieutenant governor"

Page 7, line 15, through page 8, line 12:

Delete all material.

Renumber the following bill sections accordingly.

PASSED

26-LS0197\E.9
Bullard
4/15/09

AMENDMENT #5

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: SSHB 36

Page 5, following line 7:

Insert a new bill section to read:

"*** Sec. 9.** AS 15.45.080 is amended to read:

Sec. 15.45.080. Bases of denial of certification. The lieutenant governor shall deny certification upon determining in writing that

(1) the proposed bill to be initiated is **not confined to one subject or is otherwise** not in the required form;

(2) the application is not substantially in the required form; or

(3) there is an insufficient number of qualified sponsors."

Renumber the following bill sections accordingly.

1301

PASSED

26-LS0197\E.6
Bullard
4/11/09

AMENDMENT #6

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: SSHB 36

Page 9, lines 4 - 6:

Delete all material and insert:

"APPLICABILITY. This Act applies only to an initiative, the application for which is filed with the lieutenant governor under AS 15.45.020 on or after the effective date of this Act."

1302

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

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To: Alpheus Bullard
Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 6

From: Jane W. Pierson

Date: April 16, 2009

Re: HB36

Yesterday the House Judiciary Committee heard and passed SSHB36 (26-LS0197\E) from committee with the attached 5 amendments. Please go final on a CS. If you have any questions concerning this matter, please do not hesitate to contact me.

26-LS0197\E.5
Bullard
4/10/09

W/D

AMENDMENT # 3

OFFERED IN THE HOUSE BY REPRESENTATIVE COGHILL

TO: SSHB 36

Page 7, lines 9 - 10: Jud. Dist.

Delete "the sponsors shall hold public hearings concerning the proposed bill in at least 30 house districts"

Insert "the lieutenant governor or a designee of the lieutenant governor shall hold at least two public hearings concerning the proposed bill in each judicial district of the state. Public hearings under this section shall be conducted in a manner that allows the initiative's sponsors, other affected and interested parties supporting or opposing the initiative, and citizens an opportunity to be heard"

Page 7, line 11: Lt Gov.

Delete "sponsors"

Insert "lieutenant governor or a designee of the lieutenant governor"

Page 7, line 13:

Delete "sponsors"

Insert "lieutenant governor or a designee of the lieutenant governor"

Page 7, line 15, through page 8, line 12:

Delete all material.

Renumber the following bill sections accordingly.

Conceptual Amendment after cert. Pet. is

1304

ALASKA STATE LEGISLATURE

REPRESENTATIVE KYLE JOHANSEN
MAJORITY LEADER

SECTIONAL ANALYSIS – HOUSE BILL 36

Section 1. Requires an individual, person, non-group entity, or group that contributes a total of $500 or more to a group organized for the principal purpose of influencing a bill proposed for inclusion on the ballot as an initiative under AS 15.45.020, to report the individual's, person's, non-group entity's, or group's contribution or contributions on a form prescribed by the Alaska Public Offices Commission (APOC) not later than 30 days after the contribution is made.

Section 2. Provides that each person other than an individual shall register with APOC before making an expenditure in support of or in opposition to a proposed initiatives bill filed with the lieutenant governor under AS 15.45.020.

Section 3. Expands the meaning of "proposition" under AS 15.13.065(c) to include an initiative proposal application filed with the lieutenant governor under AS 15.45.020.

Section 4. Conforms subsection AS 15.13.110(e) to the enhanced initiative reporting requirements found in the bill's sec. 5.

Section 5. Establishes new reporting requirements for initiative committees, persons, groups, or non-group entities making certain contributions or expenditures in support of or in opposition to an initiative proposal application filed with the lieutenant governor under AS 15.45.020 or an initiative that has been approved for placement on the ballot.

Section 6. Expands the definition of "contribution" applicable to state election campaigns to include certain purchases, payments, promises, or obligations to pay, loans or loan guarantees, deposits or gifts of money, good, or services for which a charge is ordinarily made that is made for the purpose of supporting or opposing an initiatives proposal application filed with the lieutenant governor under AS 15.45.020.

Section 7. Expands the definition of "expenditure" applicable to state election campaigns to include certain purchases or transfers of money or anything of value, or promises or agreements to purchase or transfer money or anything value, incurred or made for the purpose of supporting or opposing an initiative proposal application filed with the lieutenant governor under AS 15.45.020.

Section 8. Prohibits an initiative that is substantially similar to an initiative that has appeared on the ballot in the previous two years that was not adopted by the electorate.

Session: State Capitol, Juneau, AK 99801-1182 • (907) 465-3424 • Fax (907) 465-3793
Interim: 50 Front Street, Suite 203, Ketchikan, AK 99901 • (907) 247-4672 • Fax (907) 225-8546

Coffman Cove • Hollis • Ketchikan • Meyers Chuck • Saxman • Thorne Bay

Section 9. Requires that each initiative petition contains a copy of the proposed initiative bill.

Section 10. Prohibits paying initiative petition circulators on a per signature basis.

Section 11. Prohibits initiative petition circulators from gathering signatures for more than one initiative at a time.

Section 12. Provides that the affidavit required to accompany an initiative petition must state in substance that the person circulating the petition did not gather signatures for more than one petition at a time.

Section 13. Requires that initiative sponsors (1) hold hearings in at least 30 house districts before a petition is filed with the lieutenant governor under AS 15.45.140 and (2) provide reasonable notice of each public hearing. Provides that an initiative petition will not be placed on the ballot if the sponsors fail to hold, or provide proper notice of, the public hearings.

Section 14. Requires initiative sponsors to include a sworn affidavit, and proof acceptable to the lieutenant governor, that the initiative sponsors held public hearings in 30 house districts and provided proper notice of the hearings.

Section 15. Requires the lieutenant governor to review the affidavit provided under the bill's sec 14, and any accompanying proof submitted, at the time the lieutenant governor reviews the initiative petition.

Section 16. Adds initiative sponsors' failure to hold public hearings in 30 house districts or sponsors' failure to provide reasonable notice of hearings, to the bases upon which the lieutenant governor may determine that an initiative petition is improperly filed.

Section 17. Requires an election pamphlet to be prepared and mailed to each household for any special election at which a ballot proposition is scheduled to appear on the ballot.

Section 18. Provides that an election pamphlet for a special election at which a ballot measure is scheduled to appear on the ballot shall contain (1) the full text of the proposition, (2) the ballot title and summary of the proposition, (3) a statement of the costs to the state of implementing the law proposed in an initiative, (4) a neutral summary of the proposition, (5) statements submitted that advocate voter approval or rejection of the proposition not to exceed 500 words, and (6) any additional information on voting procedures that the lieutenant governor considers necessary.

Section 19. Requires that a standing committee of the legislature review initiatives that the lieutenant governor has approved for placement on the ballot.

Section 20. Provides that the provisions of the Act apply to an initiative proposed by filing an application with the lieutenant governor under AS 15.45.020 on or after the effective date of the Act.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB36**
() Publish Date:

Identifier (file name): HB036-OOG-DOE-4-3-09
Dept. Affected: OOG
Title "An Act relating to ballot initiative proposal applications and to ballot initiatives."
RDU Elections
Component Elections
Sponsor Representatives Johansen, Millet, Wilson and Johnson
Requester House Judiciary Committee
Component Number 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*
This legislation will have no fiscal impact on the division of elections.

Prepared by: Gail Fenumiai, Director — Phone 465-4611
Division: Division of Elections — Date/Time 4/3/09,10:00am
Approved by: Linda Perez, Director — Date 4/3/2009
Administrative Services

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **SSHB36**
() Publish Date:

Identifier (file name): SSHB036-DOA-APOC-04-05-09
Dept. Affected: Administration
Title "An Act relating to ballot initiative proposal applications and to ballot initiatives."
RDU AK Public Offices Commission
Component AK Public Offices Commission
Sponsor Reps, JOHANSEN, MILLETT, WILSON, Johnson
Requester (H)JUD
Component Number 70

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill would impact the Alaska Public Offices Commission (APOC) through changes to regulations, changes to the electronic filing program and increased workload for staff. Changes to regulations could be incorporated into a proposed contract to draft regulations at little or no increased cost. To the extent that the regulations expand reporting of contributions to groups supporting ballot measures, this would require changes to the existing reporting forms and to the proposed format of the electronic filing system. Additional costs generated by these changes are unknown at this time. Requiring that groups sponsoring initiative ballot propositions file earlier than currently required would generate increased filings, which would increase staff workload.

Prepared by: Holly Roberson Hill, Executive Director
Phone 907-276-4176
Division Alaska Public Offices Commission
Date/Time 4/4/09, 11:21 a.m.
Approved by: Kevin Brooks
Date 4/5/2009
Deputy Commissioner

(Revised 9/10/2008 OMB)

The League of Women Voters

A Voice For Citizens, A Force For Change

The League of Women Voters of Alaska is a non-partisan political organization that encourages informed and active citizen participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy. We write today to comment on SSHB 36, "An Act relating to ballot initiative proposal applications and to ballot initiatives." While there are provisions of the bill that would improve and strengthen the process in Alaska, others would effectively put the initiative process out of the reach of the average citizen.

Direct democracy through popular initiatives and referenda began a century ago as a grassroots, progressive reform aimed at circumventing corrupt legislatures, increasing civic involvement and wresting control of the state's political process away from well-heeled special interest groups. The initiative process places legislative power directly in the hands of the voters.

After exhaustive study, in 2001 the Alaska League adopted a position (attached) in support of the existing initiative process and made several recommendations for improvements. The League's official position supports "disclosure on each initiative petition of the names(s) or group(s) that is paying the gatherer and how they are paid, such as by signature or by the hour." For that reason, the League is in favor of the provision in SSHB 36 that requires individuals and groups to disclose their financial involvement in preparing and filing an initiative. Voters need to know all sources of support for a proposed ballot initiative in order to make an informed choice regarding support or opposition.

In addition, the League supports the provision in SSHB 36 that reforms the way in which initiative petition collectors are paid. The current practice of paying by the signature creates an incentive that contributes to fraud and erodes the people's trust and support of the initiative process.

The League cannot support three provisions in the bill that would create major barriers to citizen's participation of the initiative process. First, banning an unsuccessful ballot initiative for a two-year "election cycle" is overly restrictive and most likely unconstitutional. We do not believe the legislature has the right to dictate the behavior of citizens as they exercise their right to the law-making process. In addition, requiring a standing committee of the legislature to review the initiative language is intrusive and provides the opportunity for the legislature to kill an initiative with simple inaction. Finally, the provision that requires public hearings in 30 House districts would be a financial burden that only the most well resourced groups can successfully mount – this provision alone has the potential to kill access to the initiative process for the average Alaskan. We urge you to amend SSHB36 to remove these provisions.

Thank you for your consideration of our perspective. Please contact me at 452-4532 for further information pertaining to the Alaska League's positions.

Sincerely,

/s/ Marilyn Russell, President
League of Women Voters of Alaska

STATEMENT OF POSITION

The League of Women Voters of Alaska supports the existing initiative process and makes the following recommendations:

- Initiatives should be voted on only at General Elections, not special or primary elections.
- Support change that requires simplicity and clarity of the wording of initiative questions with a "yes" vote to indicate in favor of the measure and a "no" vote to indicate opposition to the measure.
- Support disclosure on each initiative petition of the name(s) or group(s) that is paying the gatherer and how they are paid, such as by signature or by the hour.
- Support the requirement for not less than 500 qualified voters as sponsors to the prospective petition with the Lieutenant Governor's office.
- Support the requirement for a number of valid signatures not less than ten (10%) percent of the total number of the votes cast in the preceding general elections.
- Support a formula for at least 50 signatures in each of two-thirds of the legislative districts in order to reflect statewide interest in a measure.
- Support the requirement an attorney general advisory opinion as to the constitutionality of each proposed initiative after it has qualified for the ballot, such opinion to be published in the State Election Pamphlet.
- Support the existing limit on time for collecting signatures to one year.
- Support the requirement for a cost analysis to be on each initiative petition.
- Support the requirement that signature gatherers be qualified voters of Alaska.

☑ ☑☑☑

Adopted 2001 at Post-Convention Board Meeting: Reaffirmed each year since Convention

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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MEMORANDUM March 2, 2009

SUBJECT: Constitutional questions relating to initiatives, House Bill No. 36 (Work Order No. 26-LS0197\A)

TO: Representative Pete Petersen
Attn: David Dunsmore

FROM: Alpheus Bullard
Legislative Counsel

You have asked a series of questions relating to House Bill No. 36 (HB 36). The bill contains a number of provisions relating to initiatives. You have inquired as to the constitutionality of some of the bill's provisions. Your questions are addressed below. I have also included some historical and constitutional context regarding the initiative in Alaska that may be helpful.

Constitutional context

The right of Alaska's people to petition to legislate through the initiative process is a right protected by the state constitution. Article XI, sec. 1 of the state constitution provides that "[t]he people may propose and enact laws by the initiative, and approve or reject acts of the legislature by referendum." Alaska courts have recognized the exercise of the initiative power as a right reserved to Alaska's people and that the constitutional and statutory provisions under which the people may propose and enact laws by initiative should be liberally construed. N.W. Cruiseship Ass'n of Alaska v. Office of Lieutenant Governor, Div. of Elections, 145 P.3d 573, 578 (Alaska 2006); Thomas v. Bailey, 595 P.2d 1, 3 (Alaska 1979); Anchorage v. Frohne, 568 P.2d 3, 8 (Alaska 1977); and Boucher v. Engstrom, 528 P.2d 456, 462 (Alaska 1974).

While previous cases have primarily addressed the question of appropriate subject matters for initiatives, it is my opinion that this principle of "liberal interpretation" is likely to be similarly applied by an Alaska court to the people's right "to initiative" secured by the state constitution. Given such an understanding, it is likely that some of the provisions of HB 36, together or in part, might be challenged as diminishing or restricting the people's initiative power reserved under the state constitution's art. XI, sec. 1.

At the Alaska Constitutional Convention, in sharing the commentary of the Committee on the Article of Initiative, Referendum, and Recall, Delegate Ernest B. Collins declared that "[t]his section reserves the authority of the people to initiate laws by petition and

vote of the people directly" and "[t]he exercise of the initiative is a fundamental right of the people. . . ." Minutes of the Daily Proceedings, Alaska Constitutional Convention, p. 929. It is my legal opinion that these statements would be interpreted by a court as illustrative of an underlying legal premise held by the authors of our state constitution that "all political power is inherent in the people" (art. I, sec. 2), that a just government derives its power from the consent of the governed, and accordingly, that the initiative should not be understood as a right granted to the people, but a power reserved by them. See also Idaho Coalition United for Bears v. Cenarrusa, 342 F.3d 1073, 1076 (9th Cir. Idaho 2003) ("[t]he ballot initiative . . . is a basic instrument of democratic government . . .") quoting Cuyahoga Falls v. Buckeye Comm. Hope Found., 538 U.S. 188, 196 (2003) (quoting Eastlake v. Forest City Enters., Inc., 426 U.S. 668, 679 (1976)). For this reason, legislative efforts that can be interpreted to interfere with this right are likely to invite a constitutional challenge.

Prohibiting concurrent solicitation of signatures for more than one petition

Section 6 of HB 36 amends AS 15.45.110 (Circulation of petition; prohibitions and penalty) by adding a new subsection (g) that provides that "a circulator may not concurrently solicit signatures for more than one petition." This prohibition applies only to circulators soliciting signatures for initiatives.[1] It is my legal opinion that a court would interpret the phrase "concurrent solicitation of signatures for more than one petition" to mean that an initiative petition circulator may not collect signatures for more than one initiative at any one time and location.[2] If a petition circulator was found to violate this prohibition, any petition which that person circulated while soliciting signatures for another petition could be denied certification under AS 15.45.130.[3] If an individual petition is denied certification, the signatures on that petition would not be counted toward the requisite number of signatures required for an initiative to be placed on the ballot under AS 15.45.140.[4]

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[1] The provisions of AS 15.45 that are proposed to be amended or added to by HB 36 apply only to initiatives.

[2] You have asked "[w]ould it be considered concurrent soliciting for a [petition circulator] to approach [a person] about signing one petition, and after [the person signs] that petition, the [petition circulator asks the person] if they would like to sign a different petition?" If your question is restricted to initiative petitions, it is my legal opinion that a court would interpret a petition circulator asking a person at the same time and in the same place to consider or sign two different petitions as concurrent solicitation for multiple petitions.

[3] Section 7 of HB 36 adds language to AS 15.45.130 that would require a petition circulator to state in substance that the circulator has not concurrently solicited signatures for more than one petition in the affidavit that the circulator must file with the petition.

[4] Courts have been sympathetic to states that refuse to count signatures on a petition because of a violation of certification requirements, and have found that certification

Whether a court would uphold a prohibition against petition circulators concurrently soliciting signatures for more than one initiative at a time is a separate question addressed below.

Legal framework

The legislature may statutorily regulate the initiative process in order to keep the process open, fair, and free of corruption. If any statute or regulation pertaining to initiatives is challenged, a court will scrutinize whether the statute or regulation impermissibly burdens constitutional rights or unreasonably restricts the availability of the initiative power to the people. A statute or regulation that burdens initiative sponsors' First Amendment rights of free speech and the right to petition will survive judicial scrutiny only if it is shown, at a minimum, to serve a significant and legitimate government interest and be a reasonably and narrowly tailored means of promoting the significant governmental interest without unnecessary abridgment of First Amendment rights.

The added prohibitions and requirements of HB 36 may be found unconstitutional by a court because they limit the people's right of initiative and burden initiative sponsors' fundamental First Amendment rights, by restricting the range of subjects that may be addressed through the initiative, and by imposing additional expenses that limit the availability of the initiative power to initiative sponsors of lesser financial means, without being narrowly tailored to significant and legitimate state interests. A court will ask what interests of the state are addressed by these requirements, what interests necessitate the burdening of the political speech and petition rights of initiative sponsors, and whether there are approaches to satisfying these same state interests that would not burden the sponsors' fundamental rights.

Prohibiting initiatives that are substantially similar to initiatives that have failed in the previous two years

It is my legal opinion that a court is likely to interpret art. XI, sec. 7 of the state constitution, which provides list of the subjects that may not be proposed by initiative, as delineating the entirety of subjects that may be restricted.[5] Article XI, sec. 7 provides, in relevant part:

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requirements are important to prevent fraud and preserve the integrity of the initiative process. See for example Loontjer v. Robinson, 670 N.W.2d 301 (Neb. 2003) (where sponsors failed to submit a sworn statement including the addresses of the sponsors, the initiative petition was held to be legally insufficient); Maine Taxpayers Action Network v. Sec'y of State, 795 A.2d 75 (Me. 2002) (where circulator lied about his identity, the veracity of other statements on his affidavit was called into question and invalidation of the signatures he collected was upheld).

[5] A court could arrive at this conclusion by applying the maxim of legal and statutory interpretation that holds that items that are not on a list are not to be included (*expressio*

> **Restrictions**. The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. . . .

It is likely that an Alaska court "liberally construing" the right of initiative and interpreting art. XI, sec. 7 as providing the entirety of those subjects that may be restricted could find that sec. 3 of HB 36 (prohibiting the proposal of an initiative that is substantially similar to another initiative that failed to garner a majority of the votes cast in the previous two years) is an unconstitutional un-enumerated additional restriction of the initiative power.

If art. XI, sec. 7 is not interpreted to prohibit additional restrictions of the initiative power, it is still likely that a court would invalidate this restriction based on the people's right to petition and freedom of speech secured by the First Amendment to the United States Constitution[6] and art. I, secs. 5 and 6[7] of the state constitution. While First Amendment freedoms are not absolute, see Messerli v. State, 626 P.2d 81, 86 (Alaska 1981), "statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." Broadrick v. Oklahoma, 413 U.S. 601, 611 - 612 (1973) (citations omitted). The prohibition against initiatives that are substantially similar to those that have failed in preceding election cycles is a content-based restriction on the political speech of ballot sponsors and the electorate. While a state may impose content-neutral restrictions on the time, place, or manner of speech, if the restrictions further a "significant and legitimate" government

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unius est exclusio alterius). For an analogous legal interpretation involving the Alaska constitution, see Bradner v. Hammond, 553 P.2d 1 (Alaska 1976) (in a case relating to separation of powers and the branches of government, the court held that the lack of ambiguity in art. III, sec. 25 and 26 of the Alaska constitution mandated that these two constitutional provisions be interpreted to embody the maximum parameters of the delegation of the executive appointment power subject to legislative confirmation).

[6] **Amendment I. Freedom of religion, of speech, and of the press.** Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

[7] **Article I, sec. 5. Freedom of Speech.** Every person may freely speak, write, and publish on all subjects, being responsible for the abuse of that right.

Article I, sec. 6. Assembly; Petition. The right of the people peaceably to assemble, and to petition the government shall never be abridged.

interest (see Consolidated Edison Company of New York, Inc. v. Public Service Commission, 447 U.S. 530, 535 (1980); Barber v. Municipality of Anchorage, 776 P.2d 1035, 1037 (Alaska 1989) (upholding application of content neutral ordinance banning portable signs)), such a content-based restriction on free speech must serve a "compelling" governmental interest. Mickens v. City of Kodiak, 640 P.2d 818, 821 (Alaska 1982) ("Laws prohibiting free expression, based on the content of the expression, are sustainable only for the most compelling of reasons."). I am unsure what legally sufficient arguments could be made that might support the prohibiting of initiatives that are substantially similar to those that have failed in the previous election cycle.

Constitutional issues relating to prohibitions and requirements relating to initiative petition circulators and initiative sponsors

You asked specifically about the constitutionality of prohibiting a petition circulator from concurrently soliciting signatures for more than one initiative petition and also whether other provisions of the bill might invite constitutional challenge. Those elements of HB 36 that (1) prohibit initiative petition circulators from collecting signatures for more than one ballot measure at a time, (2) prohibit initiative petition circulators from being paid per signature, (3) require initiative sponsors to hold hearings in at least 30 house districts within one year after the application is certified by the lieutenant governor, and (4) require initiative sponsors to pay to the lieutenant governor the cost of printing the full text of the initiative in election pamphlets are likely to be challenged on the same or similar constitutional grounds. A legal challenge to these provisions would likely characterize these statutory changes, together or in part, as hurdles placed in way of the people's ability to exercise their constitutional right to petition the government through the initiative process, infringements on initiative sponsors' First Amendment right of free speech and a denial of equal protection in access to the ballot.

Prohibiting petition circulators from gathering signatures for more than one petition at a time

If the provision in sec. 6 of HB 36 that prohibits petition circulators from gathering signatures for more than initiative petition at a time were challenged, a court will evaluate the evidence relating to the burden imposed on petition sponsors' political speech rights by the prohibition and the evidence as to the nature of the state's justification for the prohibition. Is the burden on petition sponsors offset by the benefits of reducing electoral fraud or voter confusion? Would such a procedure improve the reliability and integrity of the election process? Much would turn on the factual evidence. While this prohibition does not seem unreasonable on its face, it is difficult to predict whether a court would find it constitutional. In the words of Judge McKeague of the Sixth Circuit:[5]

[5] See Citizens for Tax Reform v. Deters, 518 F.3d 375 (6th Cir. 2008) (cert. denied, 129 S. Ct. 596 (U.S. 2008) (affirming an earlier federal district court ruling that an Ohio law that prohibited paying petitioners by the signature was an unconstitutional abridgement of the First Amendment).

> [T]he First Amendment is a jealous mistress. It enables the people to exchange ideas (popular and unpopular alike), to assemble with the hope of changing minds, and to alter or preserve how we govern ourselves. But in return, it demands that sometimes seemingly reasonable measures enacted by our governments give way.

While a similar law is being considered in the Missouri House of Representatives,[9] I am not aware of any previous judicial scrutiny of such a requirement.

Requiring ballot sponsors to hold public hearings

Requiring initiative sponsors, at their own expense, to hold public hearings is unlikely to be interpreted as a narrowly tailored measure justified by a significant and legitimate state interest. If the electorate is poorly informed as to the potential effects of a proposed ballot measure, burdening the fundamental constitutional rights of the measure's sponsors is unlikely to be interpreted by a court as a narrowly tailored remedy. Even if the education of the electorate in regard to proposed ballot measures is found to be a compelling interest of the state, a court is unlikely to find that an initiative's sponsors are responsible for the task. While initiative sponsors presumably are motivated to inform the electorate as to the merits of their initiative, would public hearings serve to educate the electorate? Would the measure's sponsors be required to provide an opposing view as to the merits of their measure?

Prohibiting the paying of petition circulators by the signature

In Meyer v. Grant, 486 U.S. 414 (1988), the Supreme Court invalidated a Colorado statute that prohibited payment for the circulation of initiative petitions, finding that petition circulation is "core political speech" entitled to substantial First Amendment protection and that states may not impermissibly burden the exercise of the right to petition through use of the initiative. In the same decision, and in other decisions, the Supreme Court recognized the need for some substantial regulation of elections if they are to be fair, honest, and orderly. Subsequently, a number of courts have examined prohibitions against paying initiative petition circulators per signature, with disparate results.[10]

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[9] Missouri House Bill 228, available on February 20, 2009, at http://www.house.mo.gov/content.aspx?info=/bills091/bills/hb228.htm.

[10] See Idaho Coalition United for Bears v. Cenarrusa, 234 F. Supp. 2d 1159, 1165 - 66 (D. Idaho 2001) (the court found Idaho presented no evidence of fraud in the signature gathering process and thus struck down a ban on paying initiative petition circulators per signature as violating the First Amendment) and On Our Terms '97 PAC v. Sec'y of State of Maine, 101 F. Supp. 2d 19, 25 - 26 (D. Me. 1999) (the court found that a prohibition on paying petition circulators per signature burdened the signature gathering process and noted that Maine provided "no evidence whatsoever that fraud is more pervasive among

In five states (North Dakota, Oregon, South Dakota, Montana, and Wyoming), initiative sponsors are banned from paying petition circulators by the signature. North Dakota and Oregon's provisions have been upheld by the U.S. Eighth and Ninth Circuit Courts, respectively. Similar laws in Ohio, Idaho, Maine, Mississippi, and Washington have been found unconstitutional by federal district courts. In 2007, South Dakota and Montana passed pay per signature bans with language designed to balance the issue, and these are as yet untested. The "pay-per-signature" provision at sec. 5 of HB 36 is modeled on the South Dakota law. House Bill No. 36 prohibits initiative petition circulators from being paid by the signature, but does allow performance based incentives and productivity requirements. The provision is drafted to balance the competing concerns between (1) possible fraud resulting from paying petition circulators per signature and (2) initiative sponsors' ability to gather signatures without a significant increase in the costs and the time associated with obtaining the number of signatures required to qualify for the ballot.

If an Alaska court is called upon to determine whether the prohibition in HB 36 against paying petition circulators per signature is constitutionally permissible, it will evaluate the evidence relating to the burden imposed on petition sponsors' political speech rights by the prohibition and the evidence as to the nature of the state's justification for the prohibition. I am unaware of any prosecution of fraud relating to the gathering of initiative petition signatures in the state and do not know how an Alaska court would rule on the constitutionality of this provision.

Requiring ballot measure sponsors to pay the cost of printing the full text of the initiative in election pamphlets

While candidates for public office are required to pay a nominal fee for space in the election pamphlet under AS 15.58.060,[11] requiring initiative sponsors to pay the printing

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circulators paid per signature, or even that fraud in general has been a noteworthy problem in the lengthy history of the Maine initiative and referendum process"); but see Prete v. Bradbury, 438 F.3d 949 (9th Cir. 2006) (the court affirmed a lower court ruling that an Oregon law that prohibited initiative petition circulators from being paid by the signature did not (1) significantly diminish the pool of potential petition circulators, (2) increase the cost of signature gathering, or (3) increase the invalidity rate of signatures gathered; thus, the law did not burden the plaintiff party under the First Amendment. The court affirmed that the State of Oregon had an important regulatory interest in preventing fraud, and that the law was constitutional as applied.)

[11] **Sec. 15.58.060. Charges for space in pamphlet.**
(a) Each general election candidate shall pay to the lieutenant governor at the time of filing material under this chapter the following:
(1) President or Vice-President of the United States, United States senator, United States representative, governor, lieutenant governor, supreme court justice, and court of appeals judge, $300 each;

costs associated with the inclusion of an initiative in the election pamphlet could be interpreted by a court as an unconstitutional restriction of the people's right to initiative under the state constitution's art. XI, sec. 1. This requirement would treat the sponsors of an initiative differently (1) from candidates, (2) from the legislature, when it puts a question before the voters, and (3) perhaps from the sponsors of another initiative that is of a different printed length. A court would examine this requirement in the same manner as the prohibitions and restrictions detailed above. Does the state's interest in reining in election material printing costs justify adding an additional expense to those citizens seeking to utilize the initiative process? Would such a requirement result in one initiative being treated differently from another because of its printed length? Does this state interest outweigh the resulting burden on the First Amendment rights of initiative sponsors?

End note

While the legislature may regulate the initiative process, a number of the provisions in HB 36 would appear to burden fundamental constitutional rights of initiative sponsors. Regulation of the initiative process is a dynamic and rapidly evolving area, with little applicable precedent in the state. It is my legal opinion that a court is unlikely to uphold a prohibition against initiatives that are substantially similar to those that have failed in the previous two years. I am not familiar with the arguments and facts that might be employed in support of HB 36's other provisions, consequently, whether a court would uphold the bill's other prohibitions and requirements relating to initiative sponsors and petition circulators is not clear to me.

If you have any questions, or if I can be of further assistance, please do not hesitate to contact me.

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(2) superior court judge and district court judge, $150 each;
(3) state senator and state representative, $100 each.

(b) The state chair or executive committee of a political party shall pay to the lieutenant governor at the time of filing material under this chapter $600 for each page purchased.

(c) There is no charge for statements and recommendations submitted by the judicial council or for statements advocating approval or rejection of a proposition submitted to the voters for approval.

LEGAL SERVICES

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MEMORANDUM March 30, 2009

SUBJECT: Constitutional questions relating to Sponsor Substitute for House Bill 36 (Work Order No. 26-LS0197\Q)E

TO: Representative Pete Petersen
Attn: David Dunsmore

FROM: Alpheus Bullard
Legislative Counsel

You asked that I review the Sponsor Substitute for House Bill 36 (SSHB 36) and update, if appropriate, the legal opinion I'd provided to your office on March 2, 2009, relating to the constitutionality of House Bill No. 36. David Dunsmore, of your staff, clarified that you were interested only in the differences between the original bill and the sponsor substitute.

Differences between SSHB 36 and HB 36

The Sponsor Substitute for House Bill 36 contains new bill sections relating to (1) the identification of certain communications, (2) the disclosure of certain contributions and expenditures relating to initiative proposal applications, (3) publication of public hearings held by initiative sponsors, and (4) consequences for initiative sponsors' failure to hold or properly publicize public hearings. The Sponsor Substitute eliminates a provision in HB 36 that required initiative sponsors to bear the printing costs of including an initiative in election pamphlets.

Provisions relating to the identification of communications and the disclosure of contributions and expenditures pertaining to initiative proposal applications

The Sponsor Substitute for House Bill 36 moves the statutory boundary for the requisite identification of certain advertisements and the disclosure of certain contributions and expenditures from those that concern a ballot proposition as defined under AS 15.60.010 to those that relate to an initiative proposal application proposed for placement on the ballot under AS 15.45.020.

It is not clear to me how a court might interpret the expansion of contribution and expenditure disclosure requirements to those that relate to an initiative proposal application filed with the lieutenant governor under AS 15.45.020. It seems likely that a court would interpret the government's interest in requiring contribution and expenditure

disclosure in this context as different (if only by a matter of degree) from the government interest served by identification and disclosure requirements once an initiative proposition is on the ballot.

While funds spent to influence whether an issue is placed, or not placed, before the electorate may be characterized as different than funds spent to influence the manner in which the electorate will vote on an issue that is on the ballot, I am not familiar with any applicable precedent relevant to determining the boundaries of the government's interest in mandating disclosure in this context. Consequently, I am unsure at what point an Alaska court would determine that speech relating to an issue that may or may not appear on the ballot can be constitutionally required to be identified or disclosed.

The Alaska Supreme Court has analyzed expenditures made to influence the outcome of a ballot proposition in terms of "close[ness]" to pure political speech.[1] It is, therefore, likely that an Alaska court will analyze the constitutionality of the state's regulatory interest in requiring disclosures of certain funds spent that relate to an initiative proposed for placement on the ballot and the importance of the individual rights affected by SSHB 36's provisions on a sliding scale.[2] That analysis would concern itself with considering

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[1] The key decision is Messerli v. State, 626 P.2d 81, 85 (Alaska 1980):

> [W]e believe that an expenditure for influencing the outcome of a ballot proposition or question comes far closer to pure political speech than does an expenditure advocating the election or defeat of a particular candidate. An individual's right of expression in the latter circumstances consists of giving the candidate funds to convey the candidate's message to the public. But in ballot proposition contests, the message is often the contributor's own. The contributor exercises the right of free speech directly on his own behalf, addresses whatever he sees as the merits of an issue, expresses his own opinions, and makes his own recommendations to the public. This is the essence of political speech.

[2] The Alaska Supreme Court has adopted a sliding scale approach to both the analysis of constitutional issues and statutory interpretation. For purposes of analyzing the equal protection clause, the Alaska Supreme Court adopted the following test:

> . . . [W]e have adopted a three-step, sliding-scale test that places a progressively greater or lesser burden on the state, depending on the importance of the individual right affected by the disputed classification and the nature of the governmental interests at stake: first, we determine the weight of the individual interest impaired by the classification; second, we examine the importance of the purposes underlying the government's action; and third, we evaluate the means employed to further those goals to determine the closeness of the means-to-end fit.

whether the political speech at issue relating to an initiative proposed for placement on the ballot may be more "pure" and less susceptible to constitutionally permissible regulation than is political speech intended to influence the vote of the electorate on an initiative that is on the ballot.

I do not know whether a court would hold that the stricter requirements of SSHB 36 are sufficiently tailored to be of use to "individual citizens seeking to make informed choices in the political marketplace." McConnell v. Federal Election Commission, 540 U.S. 93, 196 (2003) (quoting McConnell v. FEC, 251 F. Supp. 2d, 176, 237 (D.D.C. 2003). Content-based regulation of core political speech, the sort that is at issue here, must be "narrowly tailored to serve an overriding state interest" in order to survive scrutiny. American Civil Liberties Union of Nevada v. Heller, 378 F.3d 979, 993 (9th Cir. 2004), quoting McIntyre v. Ohio Elections Commission, 514 U.S. 334, 357 (1995). To survive constitutional challenge, the state would have to demonstrate that SSHB 36's provisions relating to the identification of disclosure of contributions and expenditures is justified by a compelling state interest that is superior to any resulting burden on the political speech of groups, nongroup entities, and individuals (see California Pro-Life Council, Inc. v. Randolph, 507 F.3d 1172 (9th Cir. 2007)).

Added provisions relating to public hearings held by initiative sponsors

House Bill 36 required that initiative sponsors hold public hearings in at least 30 house districts about the measure that they are proposing for inclusion on the ballot. The Sponsor Substitute adds sections that provide that (1) notice for these public hearings must be provided, and (2) an initiative petition will be determined to be improperly filed (and consequently be denied placement on the ballot) if the lieutenant governor finds that the initiative sponsors did not hold hearings in at least 30 house districts or that the initiative sponsors failed to provide reasonable notice of each public hearing.

As I indicated in my memorandum of March 2, requiring initiative sponsors, at their own expense, to hold public hearings is unlikely to be interpreted as narrowly tailored and justified by a compelling state interest. The Sponsor Substitute's additional bill sections relating to notice requirements for these public hearings and initiative petition disqualification (if the initiative sponsors do not hold the requisite number of hearings or fail to provide proper notice of the hearings) are likely to be interpreted to further restrict the fundamental First Amendment rights of initiative sponsors and the people's right to petition and legislate through the initiative process under the state constitution's art. XI,

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Malabed v. North Slope Borough, 70 P.3d 416, 420 - 421 (Alaska 2003).

In interpreting statutes, Alaska's Supreme Court also employs a sliding-scale approach; the more plain the language of the statute, the more convincing the evidence of contrary legislative intent must be (see Interior Cabaret, Hotel, Rest. & Retailers Ass'n v. Fairbanks N. Star Borough, 135 P.3d 1000, 1011 fn. 8 (Alaska 2006)).

sec. 1. It is my legal opinion that an Alaska court is likely to find these provisions unconstitutional.

If you have further questions relating to SSHB 36, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:lmb
09-018.lmb

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MEMORANDUM April 15, 2009

SUBJECT: Single subject requirement and ballot initiatives (Work Order No. 26-LS0197\E.9)

TO: Representative Jay Ramras
Attn: Jane Pierson

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the amendment referenced above. Jane Pierson, of your staff, asked that I draft an amendment to Sponsor Substitute for House Bill 36 (SSHB 36) that would require the lieutenant governor to deny certification to a ballot initiative that was not confined to a single subject. The amendment makes this requirement explicit in that statutory section which provides the "[b]ases of denial of certification" (AS 15.45.080). I have two comments.

Please note that a proposed initiative is already required to be confined to a single subject under AS 15.45.040 ("[f]orm of proposed bill").

Please also note, notwithstanding AS 15.45.040, that it is not entirely clear that the legislature has the constitutional power to require an initiative to be confined to a single subject. While the law-making power of the legislature and the people (through the initiative) are equal,[1] and the single-subject requirement of the state constitution's art. II, sec. 13 applies to initiatives,[2] the Alaska Supreme Court has held "[i]n initiative cases decided since Boucher, we have consistently restated the language of Boucher that limits pre-election review to cases involving compliance with 'the particular constitutional and

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[1] Article XII, section 11 states:

> **Law-Making Power.** As used in this constitution, the terms "by law" and "by the legislature," or variations of these terms, are used interchangeably when related to law-making powers. Unless clearly inapplicable, the law-making powers assigned to the legislature may be exercised by the people through the initiative, subject to the limitations of Article XI.

[2] Yute Air Alaska, Inc. v. McAlpine, 698 P.2d 1173 (Alaska 1973).

statutory provisions regulating initiatives'"[3] State v. Trust the People, 113 P.3d 613, 625 - 626 (Alaska 2005) referencing Boucher v. Engstrom, 528 P.2d 456, 462 (Alaska 1974). See also Walters v. Cease, 394 P.2d 670 (Alaska 1964); Starr v. Hagglund, 374 P.2d 316 (Alaska 1962).

In short, while it is undisputed that an initiative must be confined to a single subject, there is ambiguity as to whether the lieutenant governor has the authority to deny placement on the ballot to an initiative that isn't restricted to a single subject.[4]

If you have any questions, or if I can be of further assistance, please do to hesitate to contact me.

TLAB:ljw
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Enclosure

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[3] Article XI, section 7 states:

> **Restrictions**. The initiative shall not be used to dedicate revenues, make or repeal appropriations, create courts, define the jurisdiction of courts or prescribe their rules, or enact local or special legislation. The referendum shall not be applied to dedications of revenue, to appropriations, to local or special legislation, or to laws necessary for the immediate preservation of the public peace, health, or safety.

[4] Notwithstanding legal arguments, it has been the practice of the lieutenant governor to deny placement on the ballot to initiatives that the Department of Law has found to violate the single-subject rule. For example, the lieutenant governor denied "[a]n Act establishing a program of public funding for campaigns for state elected offices, to be known as the Alaska Clean Elections Act, and amending the oil and gas production tax to levy and collect a surcharge on oil as a source of funding for that program" placement on the ballot on July 19, 2007, because the Office of the Attorney General determined that "the initiative application did not comply with the constitutional and statutory provisions governing the use of the initiative." AG File number: 663-07-0191. Available on April 15, 2009, at http://www.elections.alaska.gov/petitions/status.php.

From Ketchikan Daily News; Sat/Sun March 14-15 2009.

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Initiatives deserve same vetting as bills

By KYLE JOHANSEN

POINT OF VIEW

House Bill 36, also known as the Open and Transparent Initiative Act, is an attempt to tackle an enormous problem we have here in Alaska: Our initiative process is used as a way for special interests to maneuver around the lawmaking body to enact laws without regard for the public as a whole. The right to petition government belongs to the citizens of Alaska. It is imperative that the process be protected from abuse. HB36 offers those safeguards. I am taking this opportunity to review the changes I believe need to happen to protect our initiative process.

Currently, initiative sponsors are not required to hold public hearings. However, the Legislature is required to hold public hearings on all bills that are voted on as a body. Most bills receive multiple committee referrals and spend hours being publically vetted. Though bills passed by the Legislature and initiatives passed by the people have the same effect, they are not held to the same public-hearing requirements. Mandating a proposed initiative go through a public hearing process is an essential element for developing sound public policy. HB36 requires that a standing committee review the proposed initiative. This allows the affected state agencies to come forward and express how the initiative will affect their operations. When a bill is in front of the Legislature, the affected state agencies come before the appropriate committee and explain the implementation of the policy. Initiatives that are passed by the people are law, and the agencies that have to administer those laws should be afforded the same ability.

Prohibiting initiatives that are substantially similar to a failed initiative says that the people have spoken. We have seen the same initiatives proposed year after year, with a lack of regard for the public's will. If an initiative fails, the public has spoken. However, people's attitudes, beliefs, and perceptions can change. That is why I think it is appropriate that failed initiatives be restricted from the ballot for one election cycle to save the state money, time, and resources.

Signature-gatherers are commonly paid on a per-signature basis. In Alaska, they are not supposed to receive more than $1 per signature. Twenty-four states have an initiative process, and many have banned the practice of paying per signature because of fraud. Petition circulators in other states have been caught using disingenuous practices to gather more signatures to receive a bigger paycheck. If petition circulators did not collect payment based on the number of signatures, they would be less inclined to commit fraud.

Petition circulators are allowed to solicit signatures for more than one initiative at a time. This means that someone can have multiple clipboards outside the grocery store, shuffling them around while trying to convince you to sign their petitions. It is easy to confuse which petition was explained to you and which petition you have agreed to sign. Petition circulators should be allowed to collect signatures for only one initiative at a time to reduce confusion, deceptive practices, and misleading information.

Unlike the current initiative process, HB36 will go through many public committee hearings where it will be vetted, debated and amended. This is a chance for the public to weigh in on the bill, for lawmakers to ask questions and clarify issues of concern, for changes to be proposed, and many other aspects to be publicly debated so the best public policy is put forward. As a reminder, this is not required of initiative legislation. What you see is what you get, and unfortunately, what you don't see is what you get as well.

I encourage you to read the legislation yourself. Please form your own opinion based on the facts of the bill itself, rather than regurgitate information given to you by parties with their own agenda. HB36 can be found at www.legis.state.ak.us/basis.

(Republican Kyle Johansen represents Ketchikan in the Alaska House.)

Fighting for Second Amendment rights

Initiative and Referendum in the 21st Century

Final Report and Recommendations of the NCSL I&R Task Force

NATIONAL CONFERENCE of STATE LEGISLATURES

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July 2002

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EXECUTIVE SUMMARY

On December 7, 2001, the National Conference of State Legislatures assembled a task force to review the growing use of initiatives and referendums around the country and to examine their effect on representative democracy at the state level.

The Initiative and Referendum Task Force found that opportunities for abuse of the process outweigh its advantages and does not recommend that states adopt the initiative process if they currently do not have one.

The task force also developed recommendations that would enable initiative states to make their processes more representative. For states that are intent upon adopting an initiative process, the task force offers a set of guidelines to enhance the process and to avoid many of the pitfalls currently experienced by the initiative states. The task force urges such states to consider giving preference to a process that encourages citizen participation without enacting specific constitutional or statutory language—specifically, the advisory initiative or the general policy initiative.

The 34 recommendations contained in this report acknowledge that the initiative process has outgrown the existing laws that govern it. After listening to expert testimony from a wide variety of witnesses and compiling data from all 50 states, the task force concluded that the initiative has evolved from its early days as a grassroots tool to enhance representative democracy into a tool that too often is exploited by special interests. The initiative lacks critical elements of the legislative process and can have both intended and unintended effects on the ability of the representative democratic process to comprehensively develop policies and priorities.

As a result, the task force suggests that initiative states reform drafting, certification, signature-gathering and financial disclosure statutes; adhere to single subject rules; and improve practices regarding voter education. It also recommends that initiatives be allowed only on general election ballots.

It is the task force's intent that the discussion and adoption of the reforms in this report lead to a more thoughtful lawmaking process, improve interaction between initiative proponents and legislatures, and ultimately produce better public policy and reinforce representative democracy.

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TASK FORCE RECOMMENDATIONS

The following 34 recommendations were adopted unanimously at the final meeting of the NCSL Initiative and Referendum Task Force in Denver, Colorado, on April 26-27, 2002.

The task force does not recommend that states that currently do not have an initiative process adopt one. The task force believes that representative democracy is more desirable than the initiative. The disadvantages of the initiative as a tool for policymaking are many, and the opportunities for abuse of the process outweigh its advantages. However, if a state is intent upon adopting an initiative process, the first four recommendations lay out the task force's view of an effectively structured process.

The remaining recommendations deal with specific elements of the initiative process and are intended as guidelines to improve existing procedures. The task force believes that the adoption of these recommendations will improve the initiative process to the benefit of both state government and voters and will result in improved public policy making via the initiative.

General Recommendations Regarding the Initiative Process

Recommendation 1.1: States that are considering adopting an initiative process should give preference to one that encourages citizen participation without enacting specific constitutional or statutory language. Specifically, states should consider:

A. First, adopting the advisory initiative; or
B. In the alternative, adopting the general policy initiative.

Recommendation 1.2: If states wish to adopt an initiative process and neither the advisory initiative nor the general policy initiative are adopted, they should adopt an indirect initiative process.

Recommendation 1.3: If states adopt a direct initiative process, they should adopt only a statutory initiative process, not a constitutional amendment initiative process.

Recommendation 1.4: If states adopt a constitutional amendment initiative process, they also should adopt a statutory initiative process.

Involving the Legislature in the Initiative Process

Recommendation 2.1: States that currently have a direct initiative process should consider adopting an indirect process as well, and provide incentives to encourage its use.

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Recommendation 2.2: After a specified percentage of signatures has been gathered for an initiative petition, the legislature should provide for public hearings on the initiative proposal.

Recommendation 2.3: When appropriate, the legislature should place an alternative legislative referral on the ballot with an initiative that appears on the ballot.

The Subject Matter of Initiatives

Recommendation 3.1: States should encourage the sponsors of initiatives to propose them as statutory initiatives when possible, rather than as constitutional amendments.

Recommendation 3.2: States should adopt the single subject rule to enhance clarity and transparency in the initiative process.

Recommendation 3.3: If an initiative measure is rejected by voters, states should prohibit an identical or substantially similar initiative measure from appearing on the ballot for a specified period of time.

The Drafting and Certification Phase

Recommendation 4.1: States should require a review of proposed initiative language by either the legislature or a state agency. The review should include non-binding suggestions for improving the initiative's technical format and content, and should be considered public information.

Recommendation 4.2: States should require the drafting and certification of a ballot title and summary for each initiative proposal. Ballot titles must identify the principal effect of the proposed initiative and must be unbiased, clear, accurate, and written so that a "yes" vote changes current law.

Recommendation 4.3: States should require the drafting of a fiscal impact statement for each initiative proposal. The statement should appear on the petition, in the voter information pamphlet, and on the ballot.

Recommendation 4.4: States should establish a review process and an opportunity for public challenge of technical matters, including adherence to single subject rules, and ballot title, summary and fiscal note sufficiency, to be made prior to the signature-gathering phase.

The Signature Gathering Phase

Recommendation 5.1: States should require that initiative proponents file a statement of organization as a ballot measure committee prior to collecting signatures. States should void any signature that is gathered before a statement of organization is filed.

Recommendation 5.2: States should provide for safeguards against fraud during the signature gathering process. Safeguards should include:

A. Prohibiting the giving or accepting of money or anything else of value to sign or not sign a petition.
B. Requiring a signed oath by circulators, stating that the circulator witnessed each signature on the petition and that to the best of the circulator's knowledge, the signatures are valid.
C. Requiring circulators to disclose whether they are paid or volunteer.

Recommendation 5.3: States should provide for an adequate but limited time period for gathering signatures. The deadline for submission should allow a reasonable time for verification of signatures before the ballot must be certified.

Recommendation 5.4: States should establish a limit on the length of time that verified signatures are valid.

Recommendation 5.5: States should require a higher number of signatures for constitutional amendments than is required for statutory initiatives.

Recommendation 5.6: To achieve geographical representation, states should require that signatures be gathered from more than one area of the state.

Recommendation 5.7: Each state should establish a uniform process for verifying that the required number of valid signatures has been gathered.

Voter Education

Recommendation 6.1: States should provide to the public a manual describing the initiative and referendum process.

Recommendation 6.2: States should encourage public education and discussion about measures on the ballot.

Recommendation 6.3: States should produce and distribute a voter information pamphlet containing information about each measure certified for the ballot.

Recommendation 6.4: In addition to a printed voter information pamphlet, states should consider alternative methods of providing information on ballot measures, such as the Internet, video and audio tapes, toll-free phone numbers, and publication in newspapers.

Financial Disclosure

Recommendation 7.1: States should require financial disclosure by any individual or organization that spends or collects money over a threshold amount for or against a ballot measure.

Recommendation 7.2: After a title has been certified for an initiative measure, states should require that proponents and opponents of the initiative measure file a statement of organization as a ballot measure committee prior to accepting contributions or making expenditures.

Recommendation 7.3: States should make the disclosure requirements for initiative campaigns consistent with the disclosure requirements for candidate campaigns.

Recommendation 7.4: States should prohibit the use of public funds or resources to support or oppose an initiative measure. This should not preclude elected public officials from making statements advocating their position on an initiative measure.

Voting on Initiatives

Recommendation 8.1: States should allow initiatives only on general election ballots.

Recommendation 8.2: States should adopt a requirement that creates a higher vote threshold for passage of a constitutional amendment initiative than for passage of a statutory initiative.

Recommendation 8.3: States should require that any initiative measure that imposes a special vote requirement for the passage of future measures must itself be adopted by the same special vote requirement.

Recommendation 8.4: States should ensure that statutory initiative measures require the same vote threshold for passage that is required of the legislature to enact the same type of statute.

Recommendation 8.5: States should adopt a procedure for determining which initiative measure prevails when two or more initiative measures approved by voters are in conflict.

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INTRODUCTION

Initiative and referendum operated quietly in the background of state politics for much of the 20th century, but during the last decade, it has come back into vogue. More initiatives are circulated, more make it to the ballot, and more money is spent in the process than ever before. Consider the numbers: 183 statewide votes on initiatives in the 1970s, 253 in the 1980s, and 383 in the 1990s, more than double the total from the 1970s. California alone accounts for 130 of the total 819 measures during that 30-year period; Oregon can claim 107. Between them, these two states account for nearly 30 percent of all initiatives from 1970 to 1999. It is no wonder that people in California and Oregon are beginning to voice concerns about the initiative process.

Initiative advocates say the resurgence of the initiative is good for states—it means citizens are using it as a tool to implement new laws and reforms that the legislature is unable or unwilling to enact. Besides accomplishing policy change, supporters also say that initiatives increase citizen involvement with government—people are not only more aware of state policy issues, but they are also more likely to vote. For these reasons, movements have begun to establish an initiative process in some of the states that currently do not have such a process.

However, in some states where the initiative is heavily used, there is growing public frustration with initiatives, and some people are beginning to speak out against the process. Legislatures are struggling to find ways to prevent fraud in the signature-gathering process; disclose information about who pays for initiative campaigns; and add flexibility to the process to accommodate more debate, deliberation and compromise than presently exists. Equally concerning to many is the disadvantage that, unlike our legislatures' process of representative government, decisions made through the initiative process do not provide an opportunity to accommodate minority interests. Most importantly, initiatives ask voters to make simple yes-no decisions about complex issues without subjecting the issue to detailed expert analysis and without asking voters to balance competing needs with limited resources. In short, the initiative affects the ability of representative democracy to develop policies and priorities in a comprehensive and balanced manner.

The problems with the initiative process are not easy to solve for a number of reasons. The courts have made it difficult to regulate both petition circulators and initiative campaign finance, and almost any reform can be a difficult political issue because proponents of the initiative generally are hostile to legislative attempts to change the process.

The initiative is a vital and popular part of democracy in half the states (refer to appendix A for a list of initiative states), but it is clear that the initiative has outgrown the existing state laws governing it. NCSL's Initiative and Referendum Task Force set out to first gather the facts and data necessary to paint an accurate picture of how the initiative process works in each state. It identified and focused on problems in the process, then considered ways that the process might be made more open and flexible. The task force feels strongly that the changes it recommends in the initiative process would equally benefit both voters and the legislative process, and that, in the end, a reformed initiative process might produce better public policy.

The task force met three times during a five-month period. Meetings were held on:

- December 7-8, 2001, in Washington, D.C.;
- February 8-9, 2002, in Washington, D.C.; and
- April 26-27, 2002, in Denver, Colorado.

The task force took great care to ensure that it heard testimony from experts and activists on a wide array of issues and from as many points of view as possible. Presenters included both supporters and critics of the initiative process, citizens who use the initiative process, and election administrators. The experts who testified before the task force were:

David Broder, *Washington Post*, Washington, D.C.;
Lois Court, Save our Constitution, Colorado;
Neal Erickson, Office of the Secretary of State, Nebraska;
Wayne Pacelle, Humane Society of the United States, Washington, D.C.;
John Perez, Speaker's Commission on the California Initiative Process, California;
Honorable Joe Pickens, State Representative, Florida;
Larry Sokol, Speaker's Commission on the California Initiative Process, California;
M. Dane Waters, Initiative and Referendum Institute, Washington, D.C.; and
Joseph F. Zimmerman, State University of New York-Albany, New York.

In addition to the experts who testified before the task force, the task force members themselves are experts on the initiative process. The perspectives and suggestions that each member brought to the table contributed to the extensive body of knowledge the task force developed about how the initiative works around the country. Finally, the task force also relied on a wide array of written materials on the initiative process. These include reports from earlier initiative reform commissions and task forces, and the many books and academic papers that are listed in appendix B and in the reference section of this report.

The task force adopted 30 recommendations for legislatures in the initiative states that are seeking guidance on how their initiative process might be improved. Four additional recommendations are meant for states that may be thinking about adopting an initiative process. Although the task force does not recommend that non-initiative states adopt such a procedure, these four recommendations are offered for those states that have, nonetheless, made the decision to go forward.

All the recommendations were based on a set of observations and conclusions about representative and direct democracy that were adopted by the task force at its first meeting. These principles reflect the task force members' belief that it is important to carefully balance the pure democratic impulse of the initiative with the deliberative, consensus-

building practices of representative democracy. It also is the belief of task force members that the adoption of this set of recommended reforms by initiative states will lead to a more thoughtful lawmaking process, improved interaction between initiative proponents and legislatures, and ultimately, better public policy.

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Observations and Conclusions About Representative and Direct Democracy

Adopted by the NCSL I&R Task Force on April 27, 2002

We offer in the following observations regarding representative and direct democracy.

1. Representative democracy is the foundation of America's system of government.

2. Representative democracy has provided a stable and flexible system of government that has served America well for more than 200 years.

3. Direct democracy, as envisioned in the initiative and referendum system, was first instituted as a check on representative democracy. It was meant to enhance representative government, not to supercede or abolish it.

4. As intended by its founders, the initiative and referendum process was meant to give citizens a tool to break what they perceived as the hold of special interests over some state legislatures.

5. In most of the 24 states where it exists, the initiative is a popular part of the lawmaking process.

6. The initiative brings to the fore issues that may not receive legislative attention or final action and engages citizens in a debate of important public policy issues.

Based on these observations, we draw the following conclusions about direct democracy.

1. The initiative has evolved from its early days as a grassroots tool to enhance representative government. Today, it is often a tool of special interests.

2. The initiative process, as it exists today, lacks some of the critical elements of the representative system of government, including debate, deliberation, flexibility, compromise and transparency.

3. The initiative process does not involve all the checks and balances that representative government does.

4. The initiative can affect the ability of representative democracy to develop policies and priorities in a comprehensive and balanced manner.

5. As the initiative process and the way it is used have evolved over time, a review of the laws governing it is merited.

1336

NATIONAL CONFERENCE of STATE LEGISLATURES

The Forum for America's Ideas

Banning Payment-per-Signature for Initiative Petition Circulators
Updated May 28, 2008

It is common for initiative sponsors to pay circulators on a per-signature basis to gather petition signatures. Payments typically range from $1 to $3 per signature, and occasionally are as high as $10 per signature. Critics argue that this encourages fraud—since a circulator who collects more signatures will earn more money, circulators who are paid per signature are more likely to commit acts of fraud such as forging signatures or misrepresenting the content of the petition in order to encourage people to sign.

Presently, six states (Montana, Nebraska, North Dakota, Oregon, South Dakota and Wyoming), have laws which ban initiative sponsors from paying petition circulators per signature. Instead, they may pay a flat fee or an hourly salary. These laws have been challenged in the courts with mixed results. North Dakota and Oregon's provisions have been upheld by the U.S. 9th and 8th Circuit Courts, respectively. However, similar provisions in Idaho, Maine, Mississippi, Ohio and Washington were held unconstitutional by federal district courts. The Ohio case was upheld by the U.S. 6th Circuit Court of Appeals in March 2008.

Montana (MCA §13-27-102(2)(b))
"A person gathering signatures for the initiative, the referendum, or to call a constitutional convention...may not be paid anything of value based upon the number of signatures gathered" (2007 Mont. Laws, Chap. 481)

Nebraska (NRS §32-630(3)(g))
No person shall pay a circulator based on the number of signatures collected.
(2008 Neb. Laws, L.B. 39)

North Dakota (N.D. Cent. Code §16.1-01-12(11))
"It is unlawful for a person to...[p]ay or offer to pay any person, or receive payment or agree to receive payment, on a basis related to the number of signatures obtained for circulating an initiative, referendum, or recall petition. This subsection does not prohibit the payment of salary and expenses for circulation of the petition on a basis not related to the number of signatures obtained, as long as the circulators file their intent to remunerate prior to submitting the petitions..."
Upheld in 2001 by the U.S. 8th Circuit Court of Appeals, Initiative & Referendum Institute v. Jaeger.

Oregon (Or. Const. Art. IV §1b)
"It shall be unlawful to pay or receive money or other thing of value based on the number of signatures obtained on an initiative or referendum petition. Nothing herein prohibits payment for signature gathering which is not based, either directly or indirectly, on the number of signatures

obtained. [Created through initiative petition filed Nov. 7, 2001, and adopted by the people Nov. 5, 2002]"
Upheld in February 2006 by the U.S. 9th Circuit Court of Appeaks, Prete v. Bradbury.

South Dakota (new section added to §12-13 during the 2007 legislative session, HB 1156)
No person may employ, reward, or compensate any person to circulate a petition for an initiated measure, referred law, or proposed amendment to the South Dakota Constitution based on the number of registered voters who signed the petition. Nothing in this section prohibits any person from employing a petition circulator based on one of the following practices:
(1) Paying an hourly wage or salary;
(2) Establishing either express or implied minimum signature requirements for the petition circulator;
(3) Terminating the petition circulator's employment, if the petition circulator fails to meet certain productivity requirements; and
(4) Paying discretionary bonuses based on reliability, longevity, and productivity.
Any violation of this section is a Class 2 misdemeanor.

Wyoming (Wyo. Stat. §22-24-125)
"A circulator of an initiative or a referendum petition or a person who causes the circulation of an initiative or a referendum petition may not receive payment for the collection of signatures if that payment is based upon the number of signatures collected. Nothing in this section prohibits a circulator of an initiative or a referendum petition or a person who causes the circulation of an initiative or a referendum petition from being paid a salary that is not based upon the number of signatures collected."

Dollar-Amount Limitations on Payment per Signature

In Alaska, circulators may not be paid more than $1 per signature (AS §15.45.110(c)).

Source: National Conference of State Legislatures
May 2008
For more information, contact Jennie Drage Bowser at 303-856-1356.

Held Unconstitutional:

Idaho
Held unconstitutional in 2001 by a U.S. District Court. Idaho Coalition United for Bears v. Cenarrusa.

Maine (Me. Rev. Stat. tit. 21-A §904-A (REPEALED))
Held unconstitutional in 1999 by the U.S. District Court of Maine. On Our Terms '97 PAC v. Secretary of State of State of Maine.

Mississippi (Miss. Code Ann. §23-17-57(3))
Held unconstitutional in 1997. Term Limits Leadership Council v. Clark, 984 F.Supp. 470 (S.D. Miss. 1997)

Ohio (Ohio Code §3599.111)
Made it a felony to pay petitioners in any manner except upon their time worked.
Declared unconstitutional on December 1, 2006 by a U.S. District Court Judge. Citizens for Tax Reform v. Deters, 1:05-cv-212 (Cincinnati). Upheld by the 6th Circuit Court of Appeals in March 2008.

Washington (REPEALED)
Held unconstitutional in 1994 by a federal district court, LIMIT v. Maleng.

Source: National Conference of State Legislatures
May 2008
For more information, contact Jennie Drage Bowser at 303-856-1356.

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April 5, 2009

Representative Jay Ramras, Chair
House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, AK 99801

Chair Ramras and Members of the House Judiciary Committee,

The Alaska State Chamber of Commerce strongly supports sponsor substitute for House Bill 36. As one of our top five legislative priorities, ballot initiative reform legislation is of great interest to our membership. In order for a more fair initiative process to occur, the Chamber advocates for streamlined financial disclosure requirements and additional opportunities for public involvement within the initiative process. SSHB 36 appears to accomplish both of these tasks, which reflect our written policy encompassing this state chamber legislative priority.

For many, the initiative process has become a way of setting un-vetted state policy with little public input or for that matter, little transparency in whom is funding the initiative. For the business of Alaska and the general business of the state, we believe SSHB 36 makes a good attempt at making the initiative process more open with regards to financial disclosures while opening the initiative process up for general input.

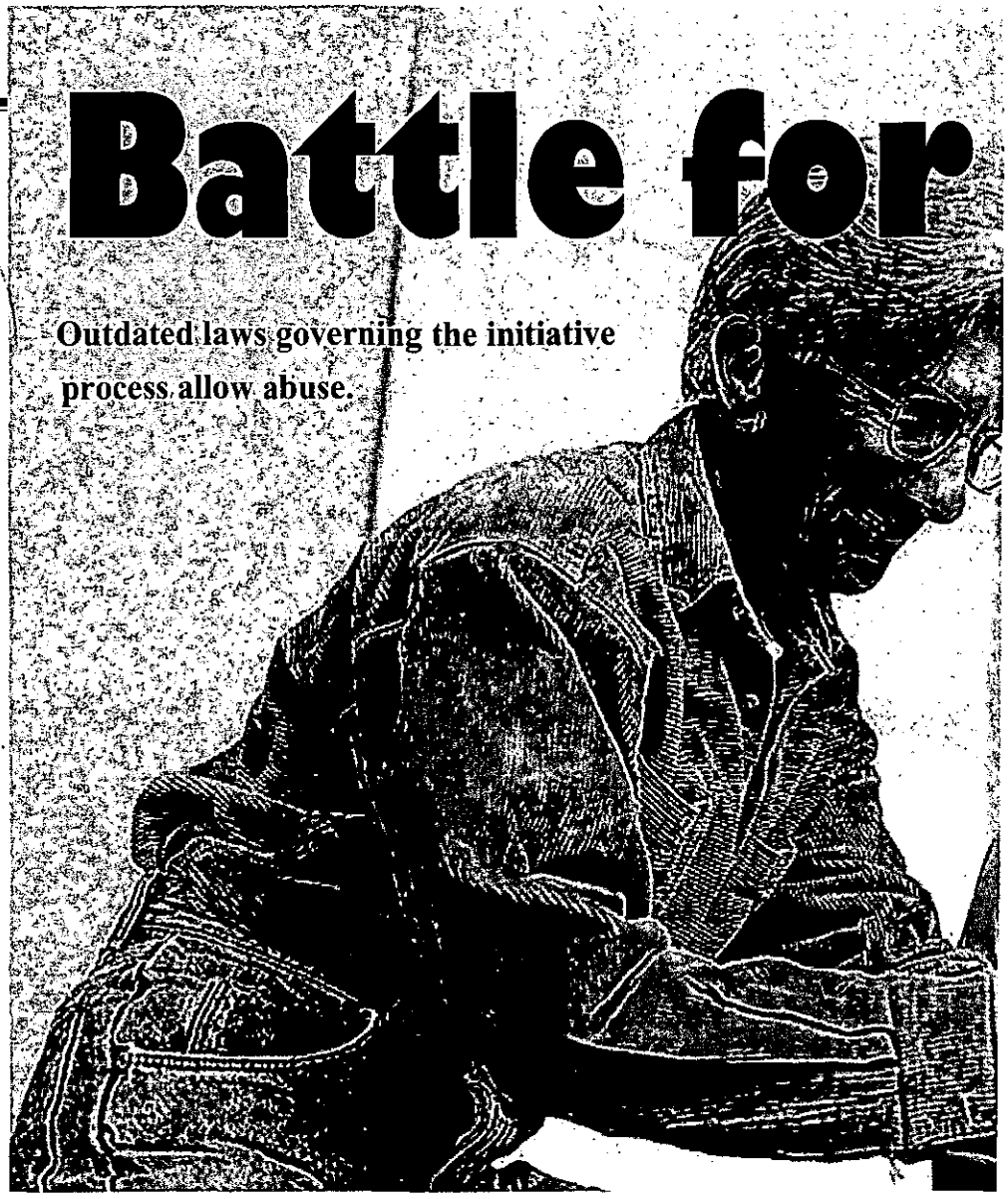
We are hopeful this legislation will receive due diligence by your committee and be moved quickly through the legislative process. Please find our attached legislative priority encompassing most of the material found in SSHB 36.

Best Regards,

Wayne A. Stevens
President/CEO

Battle for

Outdated laws governing the initiative process allow abuse.



BY JENNIE DRAGE BOWSER

One of the little-noticed stories of the 2008 election was the escalating tug-of-war between legislatures and activists over the rules governing the citizen initiative process.

The struggle has ramped up dramatically since the 2006 election. Legislatures in the 24 states that allow initiatives have shown a keen interest in improving the process ever since the use of the citizen petition to place issues on the ballot skyrocketed in the 1990s. And recent legislative activity has been higher than ever before.

States have passed about double the number of bills addressing the initiative process in the 2007-2008 biennium (a total of 47 so far, with legislatures still in session in a handful of states) compared to the previous two biennia (22 in 2005-2006 and 32 in 2003-2004).

Why the heightened interest?

The process has changed tremendously in the past two decades. The initiative "industry"—individuals and firms that make a living from the initiative process by researching and drafting proposals, gathering signatures or campaigning for or against initiatives—has exploded. The average number of initiatives on ballots nationwide has doubled from 31 a year in the 1970s to 62 a year in the 2000s. And laws governing the process haven't kept pace.

Some state laws, for example, do not specify which official has the authority to investigate and prosecute abuses, while others lack the capacity to verify that circulators meet the legal qualifications.

Colorado Representative Andy Kerr was one of the co-sponsors of an unsuccessful referendum on the 2008 ballot that would have made qualifying constitutional initiatives harder, but statutory initiatives easier.

REPRESENTATIVE ANDY KERR COLORADO

Jennie Drage Bowser is NCSL's expert on ballot measures.

He sees flaws in the initiative process, particularly in a state that had more measures on the ballot in 2008 than any other state.

"Citizens have a lot of power to change and propose laws and constitutional amendments," he says. "But the way the process is set up in Colorado, our constitution can be changed frequently without these amendments being fully vetted first."

HARD SELL

It is difficult, however, for legislatures to limit the number of initiatives qualifying for ballots, and whether or not they should is a controversial question. Increasing the number of signatures required, tinkering with time limits and restricting the subject matter involves amending state constitutions. And that requires voter approval.

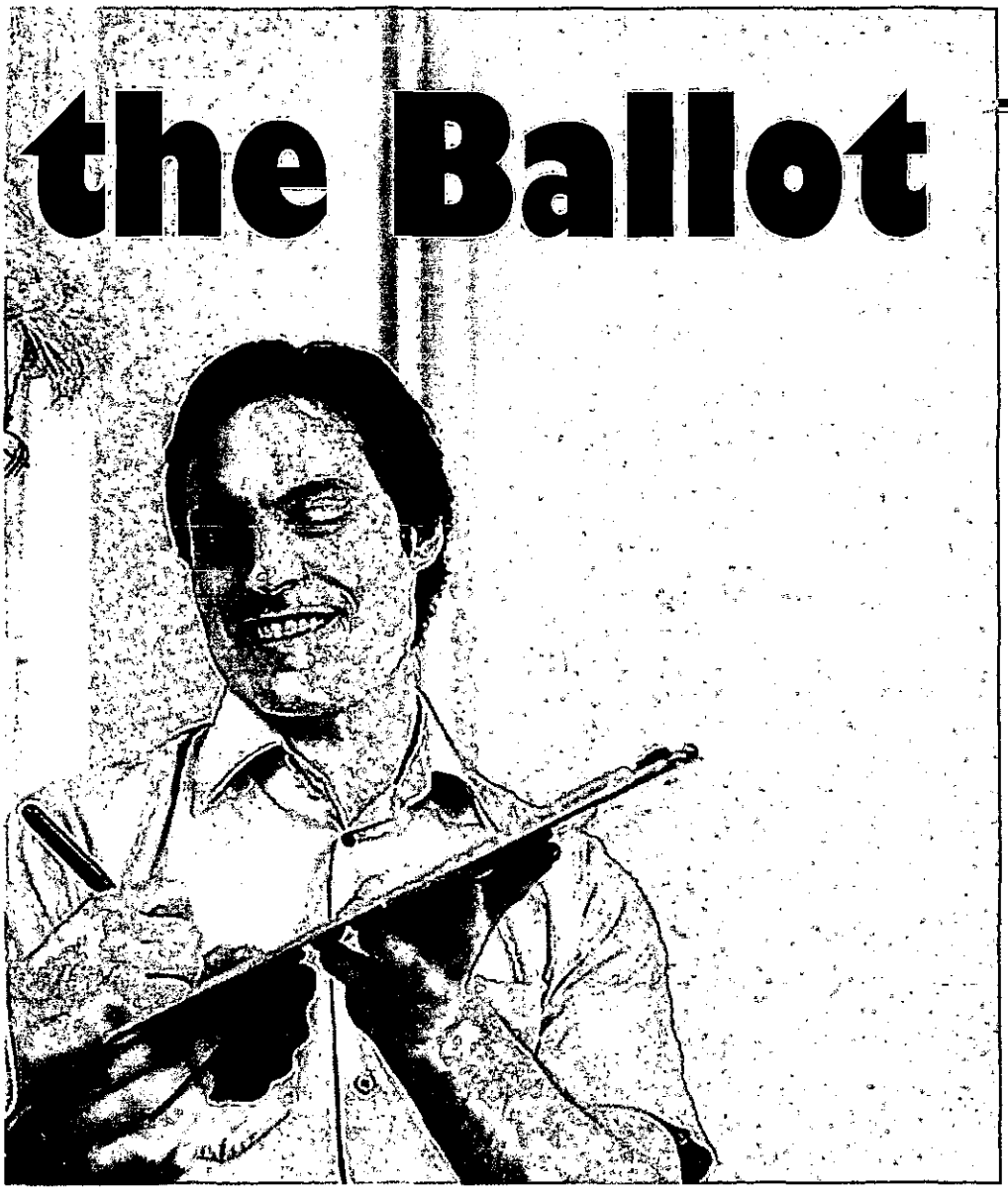
It isn't always easy to convince voters that changing the process is a good idea, as Kerr learned in November.

Making the process more difficult rarely slows down well-funded petition efforts that can afford to hire and pay an army of circulators. It's the grassroots efforts, which depend on volunteers, that suffer from higher signature thresholds and shorter petition timeframes.

Details of the process in state law are what legislatures can, and with increasing frequency do, change without voter approval. States have clarified rules for petition formats, restructured timelines to allow for the added administrative burdens of processing a high volume of petitions, and spelled out more clearly the procedures for evaluating and counting signatures. Voter education is an area ripe for reform, too, particularly as technological advances make it easier to use multimedia and multi-lingual approaches to explain measures on the ballot.

1341

the Ballot



SIGNATURE-GATHERING FRAUD

Along with the explosion in the number of initiatives is the issue of fraud. The courts removed at least half a dozen measures from the ballot in 2006 for deceit in gathering signatures. In a Montana case, a court wrote that the "signature-gathering process was permeated ... by a pattern of deceit, fraud and procedural noncompliance."

Specific instances of fraud in Montana, Nevada and Oklahoma included circulators who opened the phone book and forged the signatures of listings onto their petitions. Others inserted carbon paper and a second petition beneath the one they asked voters to sign, thus obtaining a signature on another petition without the signer's knowledge. One circulator told voters they needed to sign in three different places if they supported the issue. In reality, they were unwittingly signing three separate petitions. And accusations of circulators who misrepresent or conceal the content of their petition are common.

Kristina Wilfore is executive director of the Ballot Initiative Strategy Center, which serves as a clearinghouse for progressive ballot measures. She says policing the process is tough.

"Part of the problem is that the state officials in charge of watching over the process aren't equipped, funded or modernized enough to catch the few bad apples that are responsible for the vast majority of what eventually gets on the ballot," she says.

Wilfore says that it was only a few years ago that she began to hear about extreme abuses in the process by a handful of signature-gathering companies.

Signature-gathering is now dominated by a few professional firms that hire people who make a living moving from state to state. In more than one initiative state, they are not required to register. That means they cannot be identified or prosecuted for fraud because signatures can't be traced to particular circulator. Wilfore calls the signature-gathering process "one of the most neglected areas" of the initiative process when it comes to state laws and regulations.

Efforts to curb abuse include new laws to ban paying signature gatherers on a per-signature basis, and instead require an hourly wage. Six states now prohibit payment-per-signature, with three of those laws adopted in the 2007-2008 legislative session. Other new laws require circulators to offer people a chance to read the proposal in full before signing, set age and residency requirements for circulators, and apply criminal penalties for forgeries and fraud in knowingly submitting a petition with invalid signatures.

ACTIVISTS STRIKE BACK

Initiative supporters are rarely happy when the legislature enacts changes that add to the cost or complexity of the initiative process. In some states, they have fought back by trying to get measures on the ballot that would make the initiative process easier.

But voters don't necessarily support them. In 2006, Colorado voters rejected Amendment 38, an initiative that would have significantly reduced regulation of the initiative process. And petitions easing regulation of the initiative process were circulated but failed to qualify this year in Arizona, Massachusetts, Oregon and Washington.

Legislatures started calling for reform of the initiative process in the early 2000s. It's not just state legislatures that are calling for reform these days, however. Cities and academic groups and even pro-initiative groups have joined the call for change.

Given the number of initiatives on statewide ballots over the past two decades, it's clear the initiative is not going away. It will continue to be a vibrant process in most of the states that allow it. But it's up to legislatures to ensure the process promotes ethical behavior among those involved, and that the rules surrounding it allow for as much transparency and deliberation as possible without restraining a process whose popularity is not likely to decline. It's not an easy task, and is certain to be one that legislatures grapple with well into the next decade.

1342

Jane Pierson

From: Christopher Clark [cgcalaska@yahoo.com]

Sent: Thursday, March 26, 2009 5:52 AM

To: Kevin Adams; Tim Barry; John Bitney; Shannon Devon; Peter Fellman; Linda Hay; Paul Labolle; Karen Lidster; Tom Maher; John Manly; Rynnieva Moss; Jane Pierson; Chris Wyatt

Subject: Kyle Johansen/News-Miner: Alaska's initiatives need review (HB36)

Alaska's initiatives need review

Kyle Johansen

Published Wednesday, March 25, 2009

The Open and Transparent Initiative Act is an attempt to tackle an enormous problem we have in Alaska: Our initiative process is used as a way for special interests to maneuver around the lawmaking body to enact laws without regard for the public as a whole.

The right to petition government belongs to the citizens of Alaska. It is imperative that the process be protected from abuse. HB 36 offers those safeguards. I am taking this opportunity to review the changes I believe need to happen to protect our initiative process.

Initiative sponsors are not required to host public hearings. However, the Legislature is required to host public hearings on all bills that are voted on as a body. Most bills receive multiple committee referrals and spend hours being publicly vetted. Though bills passed by the Legislature and initiatives passed by the people have the same effect, they are not held to the same public hearing requirements. Mandating a proposed initiative go through a public hearing process is an essential element for developing sound public policy.

HB 36 requires that a standing committee review the proposed initiative. This allows the affected state agencies to come forward and express how the initiative will effect their operations. When a bill is in front of the Legislature, the affected state agencies come before the appropriate committee and explain the implementation of the policy. Initiatives that are passed by the people are law, and the agencies that have to administer those laws should be afforded the same ability.

Prohibiting initiatives that are substantially similar to a failed initiative says the people have spoken. We have seen the same initiatives proposed year after year with a lack of regard for the public's will. If an initiative fails, the public has spoken. However, people's attitudes, beliefs and perceptions can change. That is why I think it is appropriate that failed initiatives be restricted from the ballot for one election cycle to save the state money, time and resources.

Signature-gatherers are commonly paid on a per-signature basis. In Alaska, they are not supposed to receive more than $1 per signature. Twenty-four states have an initiative process, and many have banned the practice of paying per signature because of fraud.

Petition circulators in other states have been caught using disingenuous practices to gather more signatures to receive a bigger paycheck. If petition circulators did not collect payment based on the amount of signatures, they would be less inclined to commit fraud.

Petition circulators are allowed to solicit signatures for more than one initiative at a time. This means that someone can have multiple clipboards outside the grocery store, shuffling them around while trying to convince you to sign their petitions. It is easy to confuse which petition was explained to you and which petition you have agreed to sign.

Petition circulators should be allowed to collect signatures for only one initiative at a time to reduce confusion,

deceptive practices and misleading information.

Unlike the current initiative process, HB 36 will go through many public committee hearings where it will be vetted, debated and amended. This is a chance for the public to weigh in on the bill, for lawmakers to ask questions and clarify issues of concern, for changes to be proposed and many other aspects to be publicly debated so the best public policy is put forward. As a reminder, this is not required of initiative legislation. What you see is what you get, and unfortunately, what you don't see is what you get as well.

I encourage you to read the legislation yourself.

Please form your own opinions based on the facts of the bill itself, rather than regurgitate information given to you by parties with their own agenda. HB 36 can be found at www.legis.state.ak.us/basis.

Rep. Kyle Johansen, R-Ketchikan, is a lifelong Alaskan who serves as majority leader of the Alaska House of Representatives.

HB 49

ALASKA STATE LEGISLATURE

Interim:
716 West 4th Avenue, Suite 640
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Phone (907) 269-0200
Fax (907) 269-0204
Rep_Craig_Johnson@legis.state.ak.us

Session:
State Capitol Building, Room 126
Juneau, Alaska 99801-1182
Phone (907) 465-4993
Fax (907) 465-3872
Toll-free (866) 465-4993

REPRESENTATIVE CRAIG JOHNSON
HOUSE DISTRICT 28

SPONSOR STATEMENT

House Bill 49

"An Act further limiting the exercise of eminent domain"

HB 49 strengthens the individual's property rights by protecting privately owned recreational structures from the exercise of eminent domain for recreational purposes.

Eminent domain is an important right of the government. However, it should only be used for the most judicious of purposes, and every effort should be made to minimize its impact to the right of the individual to own private property.

AS 09.55.240 limits the government's authority to exercise eminent domain and seize personal residences by clearly outlining its legitimate use (namely the construction and/or expansion of roads, schools, and public buildings) and by prohibiting its exercise for the purpose of economic development or to generate increased government revenues.

HB 49 affords privately owned recreational structures the same protection from government seizure already granted to personal residences in AS 09.55.240.

The right to own private property is one of the most important rights of Alaskans. By prohibiting government seizure of privately owned recreational structures for recreational purposes, HB 49 strengthens that right and ensures the continued use of land in the greatest of ways – that of private ownership.

Co-Chair, House Resources Committee
Member of Rules, State Affairs, Transportation Committees

CS FOR HOUSE BILL NO. 49(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES JOHNSON, Ramras

A BILL

FOR AN ACT ENTITLED

"An Act relating to the prohibition of the exercise of the power of eminent domain against a recreational structure for the purposes of developing a recreational facility or project."

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

*** Section 1.** AS 09.55.240(e) is amended to read:

(e) The power of eminent domain may not be exercised for the purpose of developing a recreational facility or project if the property to be acquired includes an individual landowner's personal residence **or recreational structure** or that portion of an individual's property attached to and within 250 linear feet of an individual landowner's personal residence **or recreational structure** unless the landowner consents either before or after a condemnation proceeding has been filed. **In this subsection, "recreational structure" means a permanent structure that is used by the owner or beneficiary of a trust holding legal title to the structure as a dwelling for seasonal recreational purposes.**

* **Sec. 2.** AS 09.55.240(h)(3) is amended to read:

(3) "personal residence" means a structure that is the dwelling place of an individual that

(A) must be used by the owner or beneficiary of a trust holding legal title to the structure as a dwelling unit, as opposed to a rental, storage, or other commercial space;

(B) must be inhabited by the owner, prior owner, or beneficiary of a trust holding legal title to the structure for at least 90 days during the 12-month period immediately before the date an action for the exercise of the power of eminent domain is filed;

(C) must constitute an ordinary home for general living purposes [, AS OPPOSED TO A DWELLING USED ONLY FOR SEASONAL RECREATIONAL OR TEMPORARY PURPOSES]; and

(D) may not have been constructed, placed, or occupied for the purpose of avoiding eminent domain proceedings;

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

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Room, 118
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Rep. Carl Gatto
Room 108
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Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: February 9, 2009

To: Don Bullock
Leg. Legal

From: Jane W. Pierson

Re: JUD CS for HB49

Don,

Might you please make the following change to HB 49:

Amendment #1, page 1, line 13 delete the word **of**.

Thank you

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version:
() Publish Date:

Identifier (file name): HB49-DOT-CO-2-06-09
Dept. Affected: DOT&PF
Title: Eminent Domain: Recreational Structures
RDU: Administration and Support
Component: Commissioner's Office
Sponsor: Rep. Johnson
Requester: H Jud
Component Number: 530

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

There is no fiscal impact to the Department of Transportation and Public Facilities

Prepared by: Mary Siroky, Legislative Liaison — Phone 465-4772
Division: Department of Transportation and Public Facilities — Date/Time 2/6/09 11:31 AM
Approved by: Nancy Slagle, Admin Director — Date 2/6/2009
Department of Transportation and Public Facilities

(Revised 9/10/2008 OMB)

Alaska Association of REALTORS
The Voice of Real Estate in Alaska
4205 Minnesota Drive
Anchorage, Alaska 99503
(907) 563-7133

February 4, 2009

The Honorable Craig Johnson
Alaska House of Representatives
State Capitol Building
Juneau, Alaska 99801

RE: House Bill 49 - "An Act relating to the prohibition of the exercise of the power of eminent domain against a recreational structure for the purposes of developing a recreational facility or project."

Dear Representative Johnson,

The Alaska Association of REALTORS® with over 1,600 members statewide supports House Bill 49, which relates to eminent domain and recreational structures.

The Association supported HB 318, the eminent domain legislation which defined whether or not it is appropriate to take a person's private property for economic development and whether it is appropriate to take all or part of one's primary residence for recreational opportunities of another.

We favor this consumer protection legislation because it would change the definition of primary residences to include recreational structures and second homes which are very common throughout Alaska.

The Association encourages the passage of House Bill 49.

Sincerely,

Art Clark
AAR President

(f) Notwithstanding the limitations on the power of eminent domain in (d) and (e) of this section, the legislature may approve the exercise of eminent domain against private property in an Act, the subject of which is limited to the transfer of the property for a purpose otherwise restricted under (d) or (e) of this section.

(g) The power of eminent domain may only be delegated by statute.

(h) In this section,

(1) "common carrier" has the meaning given in AS 04.16.125;

(2) "economic development" means development of property for a commercial enterprise carried on for profit or to increase tax revenue, tax base, or employment;

(3) "personal residence" means a structure that is the dwelling place of an individual that

(A) must be used by the owner or beneficiary of a trust holding legal title to the structure as a dwelling unit, as opposed to a rental, storage, or other commercial space;

(B) must be inhabited by the owner, prior owner, or beneficiary of a trust holding legal title to the structure for at least 90 days during the 12-month period immediately before the date an action for the exercise of the power of eminent domain is filed;

(C) must constitute an ordinary home for general living purposes, as opposed to a dwelling used only for seasonal recreational or temporary purposes; and

(D) may not have been constructed, placed, or occupied for the purpose of avoiding eminent domain proceedings;

(4) "private person" means a person that is not a public corporation as defined in AS 45.77.020 or a government as defined in AS 11.81.900;

(5) "recreational facility or project"

(A) means a facility or project, the primary purpose of which is recreational;

(B) includes a park, trail or pedestrian pathway, greenbelt, amusement park, fresh water boat harbor, sports facility, playground, infrastructure, or other facility related to or in support of an indoor or outdoor recreational facility or project;

(C) does not include

(i) a highway, sidewalk, or path within the right-of-way of a highway;

(ii) a path, trail, or lane used as a safe route to a school program;

(iii) a wayside or rest stop;

(iv) a development, the primary purpose of which is not recreational, such as a path, trail, or lane developed to reduce congestion, or to encourage use of an alternate, gas-saving mode of transportation;

(v) a path or trail to or between villages or from a village to a facility or resource;

(vi) a stormwater retention or treatment facility or wetland, habitat, or other acquisition required to obtain a permit for a highway, airport, or other public project;

(vii) a taking under AS 19.05.110, 19.05.120, AS 19.22.020, AS 27.21.300, AS 35.20.040, 35.20.050, or AS 41.35.060;

(viii) a taking not prohibited by law before January 1, 2007, under AS 41.21; and

(ix) a path, trail, road, or site for which no reasonable alternative exists and which is necessary to preserve or establish public access to or along publicly owned land or water, if the use of the path, trail, road, or site itself is for transportation to or to facilitate use of publicly owned land or water. (§ 13.01 ch 101 SLA 1962; am § 2 ch 72 SLA 1972; am § 1 ch 62 SLA 1973; am § 24 ch 3 FSSLA 1973; am § 15 ch 59 SLA 1982; am §§ 2, 3 ch 84 SLA 2006)

Cross references. — For statement of legislative intent and findings for the 2006 amendment of (a) of this section and addition of (d) — (h) of this section, see § 1, ch. 84, SLA 2006, in the 2006 Temporary and Special Acts.

Effect of amendments. — The 2006 amendment, effective October 3, 2006, added "Except as provided in (d) and (e) of this section" at the beginning of subsection (a), inserted paragraph (a)(8), renumbering paragraphs (a)(8) — (12) as (a)(9) — (13), added subsections (d) through (h), and made a minor stylistic change.

Editor's notes. — Under § 6, ch. 84, SLA 2006, the 2006 amendment of (a) of this section and addition of (d) — (h) of this section apply "only to condemnation actions filed on or after October 3, 2006."

Opinions of attorney general. — The state may use its condemnation powers for a state office complex to be constructed by, and leased from, a private developer. In order to insure that the leasing arrangement clearly qualifies as a public use, however, the department should enter into a long-term lease with the developer, and should not grant the developer any sort of purchase option at the conclusion of the lease term. April 17, 1981, Op. Att'y Gen.

NOTES TO DECISIONS

I. General Consideration.
II. Power to Condemn.
III. Public Uses.
A. Generally.
B. Mines.
C. Tramway Lines.

I. GENERAL CONSIDERATION.

Eminent domain proceedings are unique, and are governed by comprehensive rules of procedure applicable to condemnation actions alone. Stewart & Grindle, Inc. v. State, 524 P.2d 1242 (Alaska 1974).

Strict construction. — Eminent domain statutes are universally construed strictly, particularly where a different construction would render the act of doubtful validity. Northern Mining & Trading Co. v. Alaska Gold Recovery Co., 20 F.2d 5 (9th Cir. 1927).

Public subject matter. — The subject matter of eminent domain proceedings is one of public rather than of private interest. Alaska Gold Recovery Co. v. Northern Mining & Trading Co., 7 Alaska 386 (1926).

Questions to be considered by court. — Ordinarily the only questions to be considered by the courts in condemnation proceedings are: First, whether the petitioner has the power to exercise the right of eminent domain; second, whether the property itself is of a nature subject to condemnation; third, whether the property is being taken for a public or a private use; and fourth, whether the power is being used for taking an excessive amount of property. Town of Seward v. Margules, 9 Alaska 354 (1938).

Appropriation deemed exercise of power of eminent domain. — Neither the failure of the state to institute a condemnation action nor the owners' assertion of a claim based on the theory of trespass changed the essential nature of the state's action in appropriating the owners' property from one of the exercise of the power of eminent domain. State, Dep't of Highways v. Crosby, 410 P.2d 724 (Alaska 1966).

Improvements to right of way reserved in patent. — While the original reservation of a right-of-way and election provided for in former § 41-1-4 ACLA 1949 was without limitation as to initial choice on the part of either the federal government or Alaska, once the right-of-way has been selected and defined, later improvements necessitating the utilization of land upon which the road is not already located can only be accomplished pursuant to the condemnation and compensation provisions of this article. Hillstrand v. Alaska, 181 F. Supp. 219 (D. Alaska 1960), petition for interlocutory review denied, 282 F.2d 633 (1960).

Cited in Mount Juneau Enters., Inc. v. City of Juneau, 922 P.2d 768 (Alaska 1996).

II. POWER TO CONDEMN.

Inherent power in government. — The power of eminent domain is inherent in the government and does not depend upon the constitution. Alaska Gold Recovery Co. v. Northern Mining & Trading Co., 7 Alaska 386 (1926).

Constitution only acts as limitation on power. — See Alaska Gold Recovery Co. v. Northern Mining & Trading Co., 7 Alaska 386 (1926).

The right of a municipality to proceed in eminent domain is conferred, when this section is considered in connection with the express statutory grant of power to municipalities to provide for the location, construction, and maintenance of the necessary streets, alleys, crossings, sidewalks, sewers, and wharves. Ashby v. City of Juneau, 174 F. 737 (9th Cir. 1910).

The power to locate and construct a street can only be exercised by a municipality, and can only be made effective by invoking the power of eminent domain. Ashby v. City of Juneau, 174 F. 737 (9th Cir. 1910).

Borough. — A borough's authority to condemn land for a school can be inferred from the eminent domain statutory scheme. Greater Anchorage Area Borough v. 10 Acres More or Less, 563 P.2d 269 (Alaska 1977).

The express and exclusive authority to operate a school system, coupled with the statutory permission to condemn land for public buildings for school districts, conferred upon a borough the authority to condemn land for a school. Greater Anchorage Area Borough v. 10 Acres More or Less, 563 P.2d 269 (Alaska 1977).

Pipeline company as agent of state. — Although pipeline company could, upon delegation from state, exercise power of eminent domain through declaration of taking or otherwise, its statutory authority does not extend so far as to immunize it from liability for trespass if it has not initiated eminent domain proceedings. Ostrem v. Alyeska Pipeline Serv. Co., 648 P.2d 986 (Alaska 1982).

Right of foreign or domesticated corporations to condemn lands. — See Miocene Ditch Co. v. Lyng, 138 F. 544 (9th Cir. 1905).

III. PUBLIC USES.

A. Generally.

"Public use" extends to use for public welfare. — The term "public use" has received enlarged scope and meaning, and the test is no longer confined to use by the public, but use for the public welfare. The power of a state to work out from the conditions existing in a mining region the largest welfare of its inhabitants has often been recognized. Alaska Gold Recovery Co. v. Northern Mining & Trading Co., 7 Alaska 386 (1926).

Question of public use is ultimately for jury. — The question whether the use is in fact public or not, so as to justify the taking without the consent of the owner, is, ultimately, one which the courts alone may determine. Alaska Gold Recovery Co. v. Northern

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 20, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 2/9/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 49**

"An Act relating to the prohibition of the exercise of the power of eminent domain against a recreational structure for the purposes of developing a recreational facility or project."

HB 49 EMINENT DOMAIN: RECREATIONAL STRUCTURES

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB49 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[✓] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DOT				✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Gruenberg	–			
	Coghill	–			
	Gatto	X			
Chair:	RAMRAS	4			
Chair:					

HB 49 - House Judiciary, 2/09/09, 1:00 p.m.

People available to testify/answer questions:

In person to Testify:

Carol Winton	Realtor in Juneau

In Person to Answer Questions

Don Bullock	Legislative Legal – drafted the bill

Offnet to Answer Questions

Wyn Menefee	Division Operations Manager with Division of Mining, Land and Water/DNR
Joe Joyner	Natural Resources Manager with Division of Mining, Land and Water/DNR
Jim Cantor	Chief Assistant Attorney General – Transportation Section with the Dept. of Law

HB

52

Representative Beth Kerttula

House Minority Leader

Sponsor Statement

House Bill 52

"An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony."

The jury system is a fundamental component of the American legal system. Jurors are asked to carry out a civic duty, yet there is the possibility of experiencing excessive levels of stress and no support is offered to help jurors cope with normal reactions to abnormal events, at its worse resembling a milder version of Post Traumatic Stress Disorder. Categorized as secondary trauma, jurors become traumatized through the traumatic experience of victims.

House Bill 52 would allow judges to offer 10 hours of post-trial group counseling to a juror who serves in a criminal trial involving extraordinarily graphic, gruesome, or emotional evidence or testimony. This bill would not apply to every juror in every case. Counseling sessions are necessary in only a small percentage of trials but are nonetheless highly valuable when needed.

The public's impression of the administration of justice is largely based on jury service. Offering counseling to jurors will ensure that care it taken of citizens' welfare, while also enhancing positive public attitudes toward jury service. As the government compels citizens to report for jury duty, it should minimize the burden it places on jurors. With public trust and confidence as a fundamental goal of courts nationwide, judges, court administrators and court staff must be concerned with the juror experience and the effect of the experience upon those called to serve. Jurors are unprepared for some consequences and courts do not currently provide any assistance in finding help from mental health professionals. In order to protect the integrity of the legal system I think courts are obligated to help improve the jury experience, including addressing juror stress. Proper counseling helps people cope with their normal reactions to abnormal events and provides tools to adapt to those reactions. I greatly appreciate your support of House Bill 52.

Alaska State Legislature ✧ District 3 ✧ Juneau
State Capitol ✧ Juneau, Alaska 99801-1182 ✧ (907) 465-4766 ✧ Fax (907) 465-4718
Rep.Beth.Kerttula@legis.state.ak.us ✧ www.kerttula.net

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 52
() Publish Date:

Identifier (file name):
Title: Post-Trial Juror Counseling
Sponsor: Representative Kurttula
Requester:

Dept. Affected:
RDU: Alaska Court System
Component: Trial Courts
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual	15.0	15.0	15.0	15.0	15.0	15.0	15.0
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**15.0**	**15.0**	**15.0**	**15.0**	**15.0**	**15.0**	**15.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	15.0	15.0	15.0	15.0	15.0	15.0	15.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**15.0**	**15.0**	**15.0**	**15.0**	**15.0**	**15.0**	**15.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

House Bill 52 would allow a trial judge to offer a juror up to 10 hours of counseling services following a trial that involved extraordinarily gruesome or emotional testimony or evidence. This option would be available in homicide, felony assault and sex offense cases. The court system would contract with local counselors or psychologists for the counseling services. Although difficult to estimate, this note assumes that approximately 10 jurors a year would take advantage of the 10 hours of counseling and that the court system will be able to procure that counseling at an average rate of $150 and hour.

Prepared by: Doug Wooliver, Administrative Attorney
Division: Alaska Court System
Phone 907-453-4750
Date/Time 2/22/10 @ 8:45 am

Approved by: Doug Wooliver for Christine Johnson, Administrative Director
Alaska Court System
Date 2/22/2010

(Revised 10/13/2009 OMB)

March 8, 2009

Alaska State Legislature
State Capitol
Juneau, AK 99801

RE: Support for House Bill 52

Members of the Legislature,

First, I would like to thank the legislature for considering House Bill 52, which will grant some form of counseling for Jurors in a criminal trial. My reason for requesting and supporting this legislation is because of my experiences as a juror on a murder trial. I know I am not the only one who feels this way. Details of the trial are still painful to recall, but if my remembering can help even one future juror begin healing far earlier than I did through this early counseling/intervention, then that may bring me another measure of peace; to know something good can come from something so completely gruesome.

I have lived in Alaska for over 15 years. It is a place of peace and great beauty. However three years ago I answered a jury summons and, suddenly, for two weeks, my mind was saturated with facts no person should have to carry around. It was like watching a horror movie for seven hours (or so) a day and not being allowed out of the theatre except to sleep and get ready for the next day's movie.

I learned in great detail how two men plotted to torture an innocent woman to death. A woman, who served her community, loved her family and had no idea what awaited her. I sat in the same room with the murderers and experienced and watched a level of emotion in that court room that was intense and overwhelming. It was slow torture for me. Every night I cried at home and felt so alone because I had taken an oath as a juror and could not share any details of the horrors I was hearing even with my closest friend and confidant, my husband. For two weeks I took it in. Each night was a challenge to sleep and each morning a test in determination to stay strong and walk into the court room.

What did I learn from my court experience? That there are many ways to break into a house; that breaking a person's neck is not as simple as they make it on television; that you can never be sure what another person's distorted view of you could be; that someone could be lying in wait for you to come home alone so as to abduct you and burn you alive.

I also learned you cannot imagine the challenges you will face as a juror on a criminal trial. That even though what you hear in court did not happen to you, knowing that it did happen to someone, seeing the parties involved and having them see you are more intense than you can expect. That getting over it and moving on is not as simple in practice as it is in theory for a juror.

When the trial was over I approached our Judge, for whom I have great respect as she was the only saving grace of this awful experience. I asked if there was any form of counseling or other resources available to help in transitioning out of this trial. She stated the court system does not provide for counseling or any other kind of support following a criminal trial.

I asked her with tears in my eyes, how am I supposed to get all this out of my head? I feel like I have lived this event and I don't know what to do with it. I wanted my peaceful life back; I want to be able to feel the peace I had before the trial. She apologized and said there was nothing she can offer.

I believe if there had been some form of counseling available to provide jurors tools for processing and releasing the intense and graphic details of a criminal trial, then healing could have started a lot earlier for me and the people I served with. I tried to repress the experience. It wasn't until over a year later when the anxiety and stress became too overwhelming that I finally turned to counseling and was diagnosed with post traumatic stress disorder. Today, I am pleased to report, I have found better tools to help me move on and the beauty of Alaska has returned to my life.

As jurors we live through the details of these violent and disturbing trials essentially in silence. Trying very hard to rationalize and process what we're seeing and hearing. This has an impact... an impact on people such as what I am still dealing with today. I believe passing this bill is a very important step in supporting the jurors of violent trials and helping them find a path back to peace. I urge you to support House Bill 52 and the constituents who have or will serve on jury duty.

Again, thank you for your time and consideration.
Very Sincerely,

Mindy Lobaugh
1013 Bonnie Doon Dr.
Juneau, Alaska 99801

February 19, 2010

Representative Beth Kerttula
State Capital
Juneau, AK 99801

Dear Representative Kerttula:

I'm writing to extend my utmost support for your legislation – HB 52 - "An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony."

As a juror on the 2003 Joshua Wade trial in Anchorage, I can attest to the need for counseling after a trial involving a heinous crime against an individual. Unlike prime time TV where crimes are committed, investigated and solved in 60 minutes, real life murder trials are gruesome, disturbing and in our case, debated in a court room over the course of nearly four months. Blood spatter patterns, rape, death by repeated blows to the head with a rock, torture, dehumanization – I would argue that these may be things judges, prosecutors, police officers, forensic specialists are trained and equipped to psychologically handle, but the average citizen called to jury duty is not.

At the conclusion of our trial, we were given specific instruction on how to process the evidence, on how to deliberate, on how to come to deliver a verdict according to the instruction presented by the court. We were not however, given any instruction on how we might move past the sound of the victim's mother wailing in the courtroom; of the pictures that we were shown day after day of a woman's raped and beaten body; of the testimony from expert witnesses stating that for blood to have traveled "x" feet from a body, it would have had to have been beaten with "y" severity.

Fortunately, I have a friend and colleague who does trauma counseling. At the conclusion of the Wade trial, this individual did one group counseling session (gratis) for all of us; she then saw me (again, gratis) for several other sessions so that I could further process, and move beyond the prior 4 months. Not all jurors will be as fortunate to have access to free services.

Thank you for your leadership in recognizing and addressing the needs of ordinary citizens who find themselves on an extraordinary jury. While it is our duty to serve, I believe that it is also the duty of the court to provide a means of support at the conclusion of a particularly heinous trial.

With thanks,

Anne M. Gore

Anne M. Gore * 9400 Main Tree Drive * Anchorage AK 99507

Robert H. Edwardson
3842 Killewich Drive
Juneau, AK 99801
March 1, 2009

The Honorable Beth Kerttula
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Dear Representative Kerttula:

Thank you for sponsoring *HB 52, "An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony."* Throughout my years of as an emergency responder and law enforcement professional, I have witnessed responder trauma caused by reactions to critical incidents. It is appropriate that jurors, as an important component of the law enforcement and judicial systems, become entitled to the same assistance enjoyed by other members of our law enforcement team.

Proper counseling prepares people for their normal reactions to abnormal events. It also provides tools to adapt to those reactions. Loss of sleep, reliving events and disruption of normal routines are just some of the examples of normal reactions to critical incidents that people may not intuitively understand. They may attribute their seemingly abnormal reactions weakness in their own character, or by misattributing their changed behavior to concurrent, yet unrelated events in their lives. Their normal coping skills may be ill prepared to help them, and may actually cause them to turn use mal-adaptive coping mechanisms such as self-medication, or withdrawal from their emotional support networks when they most need them. I can attest that some responders suffer negative life-altering changes by ignoring proper counseling.

Ultimately, the public benefit of providing counseling is the facilitation of jurors' orderly return to daily life, prepared to appropriately respond to their experience. And although they may remain forever changed by vicarious trauma, they will have the skill to properly deal with their reactions. Thank you for your efforts, you have my support.

Sincerely,

Robert (Rob) Edwardson,
CWO2, USCG (Ret)
CISM Basic, Peer and Advanced
Lifelong Alaska Resident

STATE OF ALASKA

DEPARTMENT OF ADMINISTRATION

VIOLENT CRIMES COMPENSATION BOARD

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FAX: (907) 465-2379

February 22, 2010

Representative Beth Kerttula
State Capitol
Juneau, AK 99801

Dear Representative Beth Kerttula:

Thank you for considering HB 52, "An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony." We understand that certain criminal trials can generate serious levels of stress among jurors that can last weeks or months after the trial is over. Traditionally, jurors in a critical trial end their service without ascertaining whether or not the events of that trial have had any psychological impact. For years, there have been cases of post-trial jurors experiencing their own mental pain and difficulty focusing back on their daily lives. Symptoms of juror stress manifest themselves as a number of physical and psychological reactions, including increased anxiety and frustration, disrupted eating and sleeping routines, nausea, depression, and anger and hostility. In many instances, talking to jurors about their symptoms validates their feelings and helps them understand that what they are experiencing is normal and can in itself bring considerable stress relief.

After exposure to a highly graphic criminal case jurors can develop stress by having to relive the traumatic experiences of the victim. For some, it is difficult to suddenly step back into their own world without some form of closure. We believe this is a unique opportunity for courts to have a positive interaction with individuals from the communities they serve. A juror who is asked to fulfill their civic duty should be protected from the potentially negative health effects of the trial process.

In general, post-trial group counseling could reduce stress and offer information on mental health services for those who might need it, provide closure, promote confidence in the judicial system, and enhance satisfaction. We support HB 52 because it would offer traumatized jurors access to group counseling services to help counteract the negative effects which may result from jury service.

Sincerely,

Gerad Godfrey
Chairman

1362

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February 24, 2010

Representative Beth Kerttula
State Capitol
Juneau, AK 99801

Dear Representative Kerttula:

I believe this is an important bill. As a social worker, I often work through very emotionally difficult situations and problems with clients. This can lead to professional grief, a topic social workers are familiar with and so often form support networks to help them process the challenges of the profession. There are times when I have been very shaken and traumatized by the work I do and I lean on the supports I have developed. However, jurors might not even be aware of the concept of professional grief and likely won't have the networks they need to process what they have been through. I think professional grief can be due to cumulative stress or one particularly stressful event. I think that not only should the counseling be offered, but that jurors participating in traumatic cases should also be advised that counseling should be considered, even if they don't think they will need it.

Professional grief can bring about responses that might not seem to be associated with the cause of the grief. In addition, professional grief often takes the form of hidden grief and is internalized and unexpressed. Individuals experiencing it might feel irritable, angry, anxious, helpless, or guilty without relating it to the experience. Jurors should be made aware of the possibility of professional grief and the importance of working through it.

Please let me know if you have any other questions. Thank you and good luck!

Jeannette Lacey Dunn, MSW

13694

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PERIODICALS DEPT

Vicarious Traumatisation as a Consequence of Jury Service

NOELLE ROBERTSON, GRAHAM DAVIES and ALICE NETTLEINGHAM

Noelle Robertson is Senior Lecturer in Clinical Psychology, Graham Davies is Professor Emeritus and Alice Nettleingham is Graduate Student, School of Psychology, University of Leicester

Abstract: Recent research on past-traumatic stress disorder (PTSD) has highlighted the adverse consequences of trauma, not just for victims, but also for those who interact with them: vicarious traumatisation. British citizens are required to sit on juries, where they may be exposed to gruesome exhibits and harrowing testimony: can such experiences also lead to vicarious traumatisation? Previous studies have demonstrated that some jurors do suffer both short- and longer-term trauma from jury service, both from hearing evidence and deliberation in the jury room. A first exploratory survey of British jurors confirms that a minority of jurors are so affected. The article calls for modifications to the current arbitrary allocation of jurors and for greater provision of information and guidance to minimise the negative consequences of an essential civic duty.

Keywords: juries; stress; vicarious traumatisation

To serve as a member of a jury is considered a civic duty, not only in Britain, but also in the United States and most Commonwealth countries (Vidmar 2000; Kaplan and Martin 2006). In England and Wales, following the Criminal Justice Act 2003, almost all citizens aged between the ages of 18 and 69 years are now eligible for jury service (the exceptions being those with serious mental health problems or significant criminal records). On average, some 390,000 citizens serve on juries each year, selected at random from those on the electoral role (Jury Central Summoning Bureau 2007). Once at court, all prospective jurors are shown a film briefly outlining their duties and allocation of jurors to particular trials is arbitrary. Some jurors will be selected to serve on cases involving crimes against the person and will be exposed to testimony from visibly distressed victims, which will frequently be graphic and shocking. They will be expected to handle exhibits and examine explicit and gruesome photographs. When they retire to the jury room, they will have to rehearse such evidence and weigh up its significance for the guilt of the accused before reaching a verdict. They may find themselves in a minority on the jury, trying to change the minds of others while resisting pressures to conform to the

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majority view. All these processes have the potential to lead to significant distress, both in the short and longer term, for the jurors concerned. Yet, despite its time-honoured tradition, little research has been conducted to date on the impact of jury service on jurors' mental health and well-being. This article reports a first exploratory study on the stresses experienced by jurors in England and Wales and raises the question as to whether current procedures could have serious long-term consequences for at least a minority of vulnerable citizens.

Research on the Impact of Stress and Trauma

In recent years, considerable research has been directed toward understanding the consequences of traumatic experience for an individual's mental health (Ozer *et al.*. 2003). Experiences yielding traumatic consequences include events with a direct threat to the person involved, such as sexual or physical assaults, and responses to disasters, both natural (the Boxing-Day Tsunami) and man-made (road traffic accidents; the King's Cross Fire). Most information, however, has been derived from studies of veterans of active military service; indeed, it was as a direct result of such research on US survivors of the Vietnam conflict that the condition of post-traumatic stress disorder (PTSD) was formally recognised and defined in the psychiatric literature.

Symptoms shown by patients diagnosed with PTSD can include excessive arousal and irritability, behaviours to avoid reminders of traumatic material, emotional numbing, and impaired memory for the original events, which nonetheless intrude into consciousness as 'flash-backs', with all the vividness and intensity of the original experience (DSM-IV-TR 2004). A more recent development has been the recognition that traumatisation is not confined solely to the victims of overwhelming events: it can also affect those endeavouring to help them. Professionals such as the police, emergency services and medical personnel called to the scene, even the therapists who treat the victims and must empathise with the intensely distressing accounts offered by survivors, may all develop PTSD symptoms: so-called vicarious traumatisation (McCann and Pearlman 1990). The question arises as to whether jurors, too, can suffer such vicarious traumatisation through exposure to and empathy with victim accounts and gruesome evidence at trial. It can be argued that only in long and complex trials is their immersion likely to be prolonged, but the material with which they must grapple will often be shocking and vivid and may have relevance to their own experiences. Some support for this view comes from the limited previous studies which have explored juror stress.

Individual Juror Reactions: Jury Debriefing

Reports on the impact of stress on individual jurors have figured in many articles in the media (for example, Woolcock 2007; McAree 2004; Trafford and White 2003; Davies 2005) and at least one television programme. In *Juror* (BBC Television 1997), ordinary people involved in jury service in

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high-profile trials reflected on its impact on their lives. 'Jenny' reported that she had turned up at the court 'a happy, confident level-headed person' but after ten days of the trial, she was 'too frightened to open her front door'. Another juror reported: 'we all felt terribly vulnerable and exposed: stuck in a nightmare we could not get out of'. Other jurors felt that their experiences and reactions were not understood: 'I don't think they appreciate what it costs an ordinary person to do their civic duty'. The prohibitions on speaking to others embodied in the Law of Contempt had been impressed upon them and this served to increase their isolation: 'We were given clear instructions not to talk to anyone. I wanted desperately to talk to anybody, but I couldn't, not even my husband'.

These anecdotal reports are supported by more systematic accounts collected by psychologists and psychiatrists who have been called in to discuss with jurors their experiences and feelings after trials in which stress has been an issue. Such 'juror debriefing' is modelled on the controversial 'critical incident stress debriefing' sometimes offered to emergency service personnel after major incidents. Such debriefing for jurors is widely employed in the US, but rarely in the UK, although the jury in the Rosemary West serial murder case were offered counselling at the end of the trial (Lloyd-Bostock and Thomas 1999).

Feldmann and Bell (1993) were recruited to debrief the jury following the sensational trial of serial killer, Jeffrey Dahmer. Among symptoms reported by all jurors were sleep disturbances, intrusive thoughts, restlessness and agitation. Jurors attributed these symptoms to the graphic evidence to which they had been exposed, their lack of knowledge of legal procedure, and the insensitive and patronising way in which they were treated by the officers of the court and expert witnesses. Jurors reported that their difficulties were not exclusive to the evidence and exhibits, but also extended to the decision-making process (see also Feldmann and Bell 1991; Bell and Feldmann 1992). Kaplan and Winget (1992) interviewed 40 jurors who had deliberated in four high-profile trials including two murder cases. No fewer than 27 jurors reported stress-related symptoms including depression, sexual problems, headaches, eating disorders and somatic complaints: gastro-intestinal distress being the most frequently cited (ten jurors). Some seven jurors became physically ill during the course of the proceedings and at least one fulfilled DSM-IV criteria for a diagnosis of PTSD.

Clearly, these were high-profile trials, frequently featuring crimes involving extreme violence, where there was sufficient official concern over their impact on individual jurors to warrant professional intervention. While the long-term benefits of juror debriefing remain a matter of controversy (for example, Figley 1995), these studies provide ample evidence that jurors in these trials suffered significant amounts of stress and on occasion, longer-term trauma. However, it can be argued that such cases provide a poor guide as to the likely experiences of the average juror in a typical trial. For a more representative picture, it is necessary to look at surveys conducted on jurors in a wider range of cases, involving both person-centred and property offences.

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Systematic Surveys of Perceived Levels of Juror Stress

Most of the published survey studies have been conducted with American jurors. In a pioneering study, Shuman, Hamilton and Daley (1994) secured questionnaires from 152 individuals who had served on juries in the Dallas area. Respondents had served on what were defined as traumatic (for example, murder; kidnapping; aggravated sexual assault) and non-traumatic trials (for example, burglary; credit card fraud; drug possession). They provided self-ratings of stress as a consequence of jury service, in addition to background information relating to the trial and themselves, including any pre-existing medical conditions to control for levels of pre-trial stress. Participants who had sat on trials classified as traumatic reported nearly three times as many PTSD-related symptoms as those in non-traumatic trials and overall, women reported significantly more symptoms than did men, but the symptoms persisted longer amongst the men. Deliberation emerged as a particular source of stress for all jurors with the effects being more persistent than for other stressors, such as shocking visual material. A later study by Bornstein *et al.* (2005) underlined the significance of deliberation as a source of stress, both at trial and post-trial as well as examining the impact of professional post-trial debriefing. Whilst the interventions were well received by jurors at the time, they had no noticeable impact on the severity of symptoms at a one-month follow-up, consistent with other evidence noting only transitory effects of debriefing (Arendt and Elklit 2001).

In the most comprehensive study of stress in American jurors, conducted by the National Center for State Courts (NCSC) (1998), judicial opinion was surveyed as well as the views of 401 jurors involved in diverse cases across six jurisdictions. Jurors completed three questionnaires. The *Jury Duty Survey* was modelled on the *Impact of Events Scale* routinely used in PTSD research (Horowitz, Wilner and Alvarez 1979) and required jurors to give a yes/no response to a series of statements covering jury service (for example, 'I look back on my jury with fondness'). The *Jury Environment Scale* covered various aspects of jury duty, including interactions with judges, court officials and fellow jurors. The *Jury Duty Stress Scale* required jurors to rate some 50 potential sources of stress at trial (for example, receiving summons; grisly evidence; media coverage) on a five-point scale; judges, too, completed this scale. In addition, judges were asked to recall their most recent trial where juror stress was an issue, to describe how they detected it and what, if anything, they did to minimise the problem.

The NCSC found that jurors involved in all types of trial reported significant amounts of stress. The highest numbers of respondents reported stress in cases concerning offences against the person, with murder trials involving a decision on the death penalty producing the highest of all (86%). Reported stress increased with length of trial, reaching 92% for cases which lasted for over eleven days. A common response of those under stress was to speak to others regarding their experiences, a reaction also noted in a smaller-scale study of US jurors by Kelley (1994). In general, jurors attributed higher levels of stress to their fellow jurors

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than they did to themselves. Again, jury discussions and reaching a verdict were rated the most distressing aspects of the trial, more so than harrowing aspects of the evidence.

This picture of widespread concern among jurors over their experiences may be contrasted with the perceptions of the judges, some 30% of whom could not recall a single trial in the preceding year where stress had been an issue. Over 90% of judges believed that fewer than 10% of jurors suffered as a consequence of jury service, but did acknowledge that it was their duty to minimise distress where it occurred. However, they failed to identify the widespread concern among jurors over the deliberative process and instead, singled out type of trial (child abuse; murder) as the principal cause.

It would be unwise to generalise these US findings to juries as a whole. American juries differ from those in the UK and Commonwealth countries on a wide variety of dimensions: for instance, means by which jurors are selected (the availability of peremptory challenge through the Voir Dire procedure); the rules on unanimity and their particular role in determining the death penalty in those states where capital punishment persists (Kaplan and Martin 2006). Once a trial is completed, American jurors in many states are not bound by the rules of confidentiality which constrain what questions can be asked by researchers regarding their experiences.

Two studies on juror stress which have been conducted in Canada and New Zealand underscore the differences as well as the similarities in juror concerns in different judiciaries. An unpublished dissertation by Chopra (2004) involved some 80 jurors who were solicited through newspaper advertisement in Vancouver and who completed the *Jury Duties Stress Scale* and an adapted version of the *Impact of Events Scale*. Patterns of stress in response to different aspects of the proceedings paralleled the NCSC study: deliberative processes generally received high ratings. Indeed, seven of the top ten concerns focused on aspects of group decision making. Levels of stress reported were generally much higher in the Canadian than in the US study and 11.3% of jurors reported a cluster of symptoms consistent with PTSD. Chopra attributes the higher reported stress levels to the lack of opportunity for Canadian jurors to discuss their experiences. However, the method of soliciting the sample may have attracted a disproportionate number of jurors who had negative experiences to disclose.

A government-sponsored study of New Zealand jurors (Young, Cameron and Tinsley 1999) included a number of questions designed to probe negative as well as positive aspects of jury service. While 82% of the sample had found the experience worthwhile, some 23% reported feeling tired and exhausted, which they attributed to the need to concentrate on the evidence during the day and loss of sleep at night. As in the US studies, some respondents reported symptoms of stress both during and after the trial: deliberation again figured as a difficulty, along with concern over intimidation from the accused and their associates, and links between their own personal experiences and aspects of the trial evidence. Counselling for jurors is available in New Zealand, but was rarely taken up.

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Surprisingly then, no robust study has been undertaken to examine stress experienced by jurors in England, perhaps because of the prohibitions on questioning jurors embodied in Section 8 of the Contempt of Court Act 1981. A major study of the English jury undertaken for the Home Office (Matthews, Hancock and Briggs 2004) was careful to avoid any questions which might be construed as violating the provisions of the Act, but did include a question on juror stress. Matthews, Hancock and Briggs reported that 20% of women and 16% of men had suffered significant stress, with concerns highest among jurors in their 20s and lowest in those aged over 60 years. As in the North American studies, decision-making processes emerged as the greatest source of concern. The authors acknowledged stress as a significant issue, recommending that concerned jurors should have routine access to counselling services.

The current exploratory study examined the levels of stress among jurors serving in the English legal system. It used a novel technique for recruiting a sample of jurors – a web-based questionnaire – but like earlier research it attempted to establish the extent of distress, trauma symptoms and perceived sources of strain reported, in this study, by a representative sample of English jurors. Using and tailoring a range of measures which have been developed and validated in earlier studies, it aimed to compare and contrast the experiences of English jurors with those from other jurisdictions with rather different rules and conventions regarding the selection, duties and conduct of jurors.

The Leicester Study

The web-based questionnaire was compiled with each respondent requested to complete it in its totality. It covered the following:

(i) *Personal information*, including age, gender, ethnicity, educational level and employment status.

(ii) *Information about the trial* for which they had served as a juror, including the length of trial, time since participating and the nature of the charges against the defendant.

(iii) A measure of *Trait Anxiety* derived from the *State-Trait Anxiety Inventory* (Spielberger, Gorsuch and Lushene 1970) consisting of a series of statements, such as: 'I am comfortable; tense; relaxed', for each of which participants were required to rate themselves, using a four-point Likert scale.

(iv) A *Prior Trauma* questionnaire which invited participants to volunteer any personal history of direct experience of a range of traumatic events (for example: sexual assault/abuse; a major fire).

(v) A *Trauma Symptoms Check List* (Briere and Runtz 1989) examining whether the juror had experienced any of a range of somatic symptoms (such as headaches, insomnia or weight loss) during and subsequent to the trial.

(vi) The *Jury Duty Stress Scale* (National Center for State Courts 1998) adapted for use in England. This asked jurors to rate 44 different facets of jury service (for example, disturbing grisly evidence; jury deliberation and

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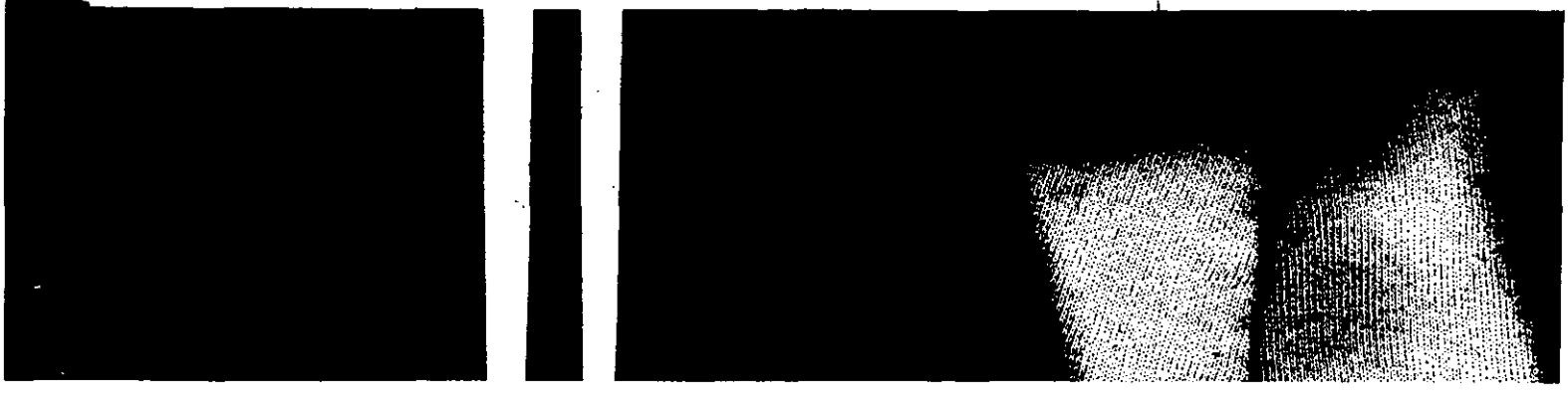

discussion) on a five-point Likert scale from 'not at all stressful' to 'extremely stressful'.

(vii) A measure of post-traumatic stress disorder derived from the *Mini International Psychiatric Interview* (Sheehan *et al.* 1998). Respondents were requested to consider their jury service and to respond to 15 questions, including: 'Have you noticed that your feelings are numbed?' and 'Have you had trouble recalling some important part of what happened?' A score of nine positive responses or more predicts the presence of PTSD.

(viii) A *Jury Deliberation Questionnaire* for which jurors were invited to comment on aspects of the jury process including the impact of being part of a long-term group and the role of foreman, where appropriate.

A pilot study revealed that the on-line questionnaire took typically between 30 and 45 minutes to complete. The questionnaire was also scrutinised by two senior legal academics with a working knowledge of the Contempt of Court Act 1981, to ensure that none of the content infringed the terms of the Act. All questionnaires were submitted on an anonymous basis and care was taken not to elicit information which might have led to the identification of either the juror or the trial on which they sat. Responses for all the clinical measures were assessed for internal consistency using Cronbach's alpha: coefficients ranging from 0.77 to 0.93, indicating robust reliability.

In order to generate interest in completion of the on-line questionnaire, a press release was produced, raising the general issue of whether jury service could be a significant source of stress and emphasising the lack of such studies in the UK. This generated considerable publicity in both the local and national media in which the web-address of the questionnaire featured prominently. In the event, some 64 jurors based in England and Wales fully completed the questionnaire during the four-month period in which it was available on the web.

Characteristics of the On-line Sample

The respondents consisted of 26 males and 38 females, all resident in the UK and all with jury experience. They ranged in age from 18 to 67 years with a mean age of 36.09 years (SD = 12.45 years) and 89% described themselves as of white British nationality. A high proportion (61%) worked in some form of public service and only 10% were retired or unemployed; just over half (56%) were married or cohabiting.

The great majority of participants (95%) had served on criminal trials, while the remainder sat on civil matters, and their jury experience dated from one to 25 months previously. Some 55% had been involved in trials lasting three days or less, but 22% sat on cases which lasted six or more days. They reported that 59% of the trials involved crimes against the person, of which allegations of rape, theft and grievous bodily harm were the most frequent; the remainder sat on trials involving property crimes, including arson, vandalism and burglary. In all, 54% of trials ended with a guilty verdict.

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On the adapted version of the *Impact of Events Scale*, participants scored an average of 14.94 (SD = 16.41) which fell below clinical significance for the sample as a whole. However, 23% (n = 15) showed scores indicative of moderate to severe stress and 13% (n = 8), all female, scored above the cut-off point for severe clinical stress. Some 13 respondents acted as foremen: this role was generally associated with elevated stress levels, with four respondents reporting this as 'quite a bit' or 'extremely' stressful.

Female jurors experienced higher levels of stress than males, t (62) = 2.53, $p < 0.01$, and females who sat on a case relevant to a past trauma in their own lives reported particularly elevated levels, t (62) = 2.37, $p < 0.02$. Trials involving crimes against the person produced higher levels of stress than property crime, t (62) = 2.56, $p < 0.01$. The effects of levels of trait anxiety, t (62) = 1.67, $p < 0.10$, and prior juror experience, t (62) = 1.70, $p < 0.10$, approached significance in predicting an elevation and lowering respectively of stress levels, but age, education and professional background were not significant predictors. There was also a trend for jurors involved in longer trials to report higher levels of stress, but the difference did not reach significance due to inter-participant variability, F (2,61) = 1.80, ns.

Responses from the *Trauma Symptoms Check List* indicated that jurors experienced a range of symptoms of distress during and after the trial, of which restless sleep (22% during; 8% after); sadness (17% during; 6% after); feeling isolated (14% during; 3% after); headaches (13% during; 3% after); waking at night (11% during; 5% after); flashbacks (11% during; 5% after) and feeling tense all the time (11% during; 5% after) were the most common.

As to the particular sources of stress, the findings from the *Jury Duty Stress Scale* indicated that among the ten most frequently reported sources of stress (see *Table 1*), those relating to jury decision making were the most prominent, though listening to disturbing evidence and being sequestered for the entire trial were also significant sources of concern. There were also significant gender differences on some items: female jurors were more likely than males to highlight being distressed by dissension or differences among jurors, t (58) = 2.25, $p < 0.03$; answering questions in front of other people t (61) = 2.78, $p < 0.01$, or disturbing or grisly evidence t (33) = 2.69, $p < 0.01$.

As regards longer-term effects associated with PTSD, responses to the *Mini International Psychiatric Interview* indicated that 23% (seven male and eight female) of jurors reported having experienced, witnessed or had to deal with traumatic events in the course of their trial and 5% (three persons) reported that they had responded with intense fear, helplessness or horror. Principal symptoms reported were difficulty with sleeping (17%, n = 11) and concentration (19%, n = 12) and overall, one juror out of the total sample fulfilled the criteria for current PTSD with a score of 9.

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Source of stress
Deciding on a verdict
Fear of making a mistake
Reaching a majority not unanir
Jury discussion and deliberatior
Being in a minority position in
Dissensions/differences among
Sentencing a criminal defendar
Answering questions in front of
Disturbing/grisly evidence
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TABLE 1
The Top Ten Most Reported Sources of Stress in the Leicester On-line Survey

Source of stress	M	SD	n
Deciding on a verdict	3.13	1.27	62
Fear of making a mistake	3.13	1.36	63
Reaching a majority not unanimous verdict	3.04	1.43	28
Jury discussion and deliberation	2.95	1.12	61
Being in a minority position in debate	2.87	1.40	39
Dissensions/differences among jurors	2.87	1.31	60
Sentencing a criminal defendant	2.67	1.41	45
Answering questions in front of other people	2.46	1.13	63
Disturbing/grisly evidence	2.46	1.34	35
Sequestration during the trial period	2.43	1.56	14

(*Notes:* M = mean; SD = standard deviation of the ratings. All ratings based on a five-point scale where 1 = 'not at all stressful' and 5 = 'extremely stressful'. Numbers (n) indicate the number of respondents mentioning a given source, based on a maximum possible total of 64.)

Conclusions

These results from this first exploratory survey from the UK confirm that jury service can be a significant source of anxiety and for a vulnerable minority, can engender moderate to severe clinical levels of stress and in the longer term, lead to symptoms associated with PTSD. Trials involving crimes against the person are more likely to induce a stressful reaction than those involving property crimes. Women as a group appear to be more vulnerable than men, especially when the trial touches upon a past traumatic event that has been personally experienced. As regard sources of stress, those most widely shared were linked to the deliberative and decision-making phases of the trial. Dealing with repellent and horrific evidence was also highlighted as a significant area of concern, particularly so for women, who also attached greater stress to dealing with dissension and answering questions in the jury room.

Inevitably, caution needs to be exercised in drawing sweeping conclusions from a relatively small and self-selected sample of respondents, but many of the findings echo those of earlier studies conducted in other judiciaries. Studies in North America also found a greater impact of crimes against the person as opposed to property crime (National Center for State Courts 1998; Shuman, Hamilton and Daley 1994) and pointed to the deliberative phase as the most common source of stress in most trials (Bornstein *et al.* 2005; Chopra 2004). As regards the levels of stress within the jury population, the levels reported in the Leicester study were somewhat lower than those reported in North American studies, though still substantial for a minority of participants. Caution is required in extrapolating the figures obtained in the Leicester study to British jurors as a whole, given the size and self-selected nature of the sample; nonetheless, they confirm that jury service is a potent source of stress and for a small minority of jurors, an overwhelming one.

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There is nothing in the current findings to suggest that jurors drawn from the general population should not, in principle, continue to play a valuable and essential role in Crown Court trials. Some moderate level of stress is inherent in the legal process, whether as defendant, witness or juror. Much has been done in recent years to provide additional support for witnesses, through the Witness Support organisation and improved facilities (Criminal Justice System 2008). There is much that could be done to improve support for jurors: more extensive preparation and briefing and such simple courtesies as clear directions and an assured parking space, something which is routine in many American judiciaries (for example, Floyd County 2008), but not elsewhere. Currently, those jurors who are troubled by their experiences have little external support: the law, for good legal reasons, precludes jurors from discussing their thoughts and feelings with others, even their loved ones, both during and after a trial. As Chopra (1994) and others have emphasised, this can only increase the sense of isolation experienced by the juror outside the jury room: one of the ten most often cited stressors for the Leicester sample. Undue levels of distress among jurors can also impair the effectiveness of decision making and thus undermine the whole rationale of the citizen juror (Flin *et al.* 1997). The availability at Crown Court Centres of a supporter for jurors, similar to the supporters now available for vulnerable witnesses, could play a useful role in being able to discuss the experiences with troubled jurors under the privileges engendered by a shared and binding legal oath.

The current study has replicated earlier findings from other judiciaries in finding that for a small minority of citizens, jury service may be a significant danger to their mental health. In particular, this study has highlighted the greatly increased levels of stress experienced by women who sit on trials where the events are relevant to their personal history. Currently, persons are allocated by lot to juries; a simple questionnaire focusing on past experiences would be sufficient to eliminate vulnerable jurors from potentially traumatic trials, to the benefit of the criminal justice system and the mental health of the individuals concerned. Finally, the current results replicate others in pointing to discussions and deliberations in the jury room as the single greatest source of stress for most jurors. There may be ways in which that stress can be mitigated without interfering with the independence and confidentiality of such deliberations, through the wider use of guidelines or decision heuristics as occurs in some Australian courts (Goodman-Delahunty and Tait 2006). Sadly, it is not possible to even begin to answer this question as long as social scientists in the UK are legally precluded from either talking to jurors about their experiences or observing juries at work.

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Juror Stress: Symptoms, Syndromes, and Solutions

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Abstract: *As civic duties go, jury service can be among the most stressful experiences that a citizen can undergo. This article describes the common sources of juror stress, including jury summons, jury selection, understanding and coping with complex or disturbing evidence and testimony, jury deliberation, and the pressure to arrive at a just verdict. The article then goes on to delineate a number of intervention models for helping jurors manage stress reactions and prevent the development of more serious traumatic stress syndromes. Finally, some recommendations are offered for professionalizing jury service that would act in the interests of civil and criminal justice. [International Journal of Emergency Mental Health, 2008, 10(3), pp.203-218].*

Key words: *forensic psychology, criminal justice, juror stress, jury system, legal stress, stress management*

Imagine you awaken one night with a mysterious pain. You make your way to the nearest emergency room and ask to see a doctor. You're told that, instead, you will be examined by 12 citizens who have been pulled off their jobs and ordered to the emergency room to decide your case. When you begin explaining your symptoms and medical history, someone in the back of the room stands up and objects that your past illnesses and treatments are irrelevant and that this medical decision panel must make their treatment decision based solely on their current examination findings. You're asked a series of yes-no questions and when you try to explain further, are told to only answer the question as it's been asked. After they've finished with you, the 12 citizens retire to a separate room to deliberate your case. When you try to protest that this is no way to practice medicine, they tell you to feel lucky to live in a country where you can receive a "fair" examination and have your diagnosis and treatment decided by 12 of your peers.

Sound ridiculous? Yet, these kinds of complex life-altering decisions are made every day in courts throughout the United States and many other countries by juries with no more knowledge of the law than the above hypothetical panel has of medicine. While the merit of this kind of justice system is a topic for another venue, this article will focus on what those 12 souls may go though in trying to do the best they can in negotiating the justice system. This article will delineate some of the major stresses and stress syndromes associated with jury service and offer some recommendations for helping jurors cope with the ordeals of their service and the pressures associated with certain kinds of trials.

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Juror Stress: Scope of the Problem

A core feature of the American civil and criminal justice systems is the right of a defendant to a trial by jury. Serving as a juror is considered a civic duty and a citizen's failure to respond to this call may result in judicial sanctions and penalties. Other than the occasional traffic citation, jury service is one of the primary means by which the average, law-abiding citizen comes into contact with the American judicial system. Most jurors take their responsibilities seriously and carry out their jury service to the best of their abilities. But until recently, little consideration has been given to the psychological impact of jury service on the jurors themselves (Butler, 2007; Hafemeister, 1993).

Ironically, much of this attention has come from the observations of judges who have to deal with stressed-out juries on a regular basis and who are subject to their own judicial stresses and challenges (Miller et al., 2007; Zimmerman, 2006), which will be the subject of a future article in this series. On a practical level, heightened awareness of juror stress may result in a shrinking pool of citizens who are willing to report for jury service. As greater numbers of citizens manage to avoid jury service, juries become less and less representative of their communities, leading to a deterioration of public trust and confidence in jury verdicts, making still more people reluctant to serve, and so on, in a vicious cycle. In addition, extreme juror stress levels may compromise their ability to render a fair judgment or impel jurors to make premature decisions, resulting in the appeals of many more verdicts than necessary and, in some cases, the corruption of justice (Butler, 2007; Curridan, 1995; Hafemeister, 1993; Hafemeister & Ventis, 1992; Sturgess, 1990).

The Jury Process

The odyssey of jury service typically begins when a citizen receives a *jury summons*. The very term, "summons" can make the citizen feel like he or she is already guilty of something and conveys to the recipient that this service is not optional; indeed, failing to report for jury duty can result in the citizen being held in contempt of court, possibly fined and jailed, and ultimately being forced to appear. The summons either orders the citizen to report to the courthouse on a specific date or instructs them to call the courthouse over several days to see when their service is required. Some jurisdictions give citizens the option of postponing jury service for a limited period of time.

When arriving at the courthouse, prospective jurors are typically herded into a large auditorium where they are given a brief orientation, by video or live speaker, to the civil and criminal justice systems. They wait to be called for empanelment, which may be almost immediately or at any time throughout the day. In some jurisdictions, if a juror is not empaneled on that day, his or her service is done; in other jurisdictions, they must return day after day until selected for a jury or rejected during jury selection.

Jury selection involves the careful examination, or *voir dire*, of each prospective juror by the opposing attorneys in the case. Ostensibly, the goal is to select jurors who can make an impartial decision, free of personal biases that might taint their careful, objective weighing of the issues. In reality, voir dire often represents a way for attorneys from either side to "stack" the jury with individuals who most likely will be favorable to their case (Kressel & Kressel, 2002). Since a wide range of jury characteristics may affect their thinking about a given case, voir dire questions may range from opinions about points of law ("Do you believe the death penalty is ever an appropriate punishment?") to personal habits or preferences ("How many hours a week do you think is normal for someone to be looking at internet pornography?"). Typically, the initial weeding-out is accomplished by means of a written interrogatory, or questionnaire, and those prospective jurors who pass this first hurdle are then interviewed in vior dire. The law also allows a limited number of jurors to be rejected on a "peremptory" basis, which means the attorney doesn't have to give a reason, and which usually occurs to exclude a juror because of some personal feature such as ethnicity or social background. The acceptance/rejection ratio of jury selection explains the "cattle-call" nature of summoning vast numbers of potential jurors to the courthouse on any given day.

After a jury is empaneled, the case generally begins. Depending on the nature of the case, jurors spend anywhere from a few days to many weeks hearing complex and conflicting testimony from plaintiff and defendant (in a civil case), prosecutor and defendant (in a criminal case), fact witnesses (who have observed or have personal knowledge about something pertinent to the case), and expert witnesses (professionals with specialized training who can render opinions about technical issues of the case). Attorneys naturally try to present evidence that will be most favorable to their side of the case to "sway" the jury (Kressel & Kressel, 2002).

Traditionally, jurors are not allowed to take notes or ask questions and are supposed to process all this material in their heads to prepare for deliberation. Perhaps responding to the realities of human cognition, some jurisdictions now permit limited questions by jurors during the trial in order to help clarify crucial points that they will deliberate on. In most trials, jurors get to go home at the end of each day but are not allowed to discuss the case with anyone. In some high-profile cases, juries may be *sequestered* – literally isolated in a hotel room between court appearances, and deprived of newspapers, TV, or any contact with the outside world that might taint their view of the case.

After testimony and each attorney's closing statements are completed, the jury retires to a separate room for their deliberation, which may take a couple of hours or many days. Since, in most cases, verdicts must be unanimous, this can be an extremely grueling process, as jurors may change their minds several times throughout the deliberations and their decision-making processes may be influenced by anything from new insights on the case to what will get them out of there the quickest. Prior to deliberation, the judge usually provides a set of jury instructions as to which aspects of the case they just heard can be considered and which parts they should disregard; admittedly this kind of cognitive compartmentalization can be extremely difficult to accomplish ("Do not assign any weight to the bereaved mother's spontaneous crying and unsolicited comment about how she misses her murdered daughter.")

At any point in the trial prior to the actual reading of the verdict, the two sides of the case can arrive at an agreement that obviates the need for a jury. A number of juries have been in the position of sweating over a weeks-long trial, spending several more hectic days in heated deliberations, only to be told at the last moment that the case has been settled and "thank you for your service." It is hard to imagine a more frustrating set of circumstances than to have placed one's whole life on hold, to have had one's thoughts and emotions wrenched by days of testimony that ranged from the soporific to the horrific, to have deliberated earnestly and hard, only to be told, often at the brink of a unanimous decision, the judicial version of "never mind." Perhaps the only thing worse are cases where the judge "sets aside" the jury's verdict after it has been read because he or she decides that these 12 citizens could not possibly have reached this conclusion if they had properly considered all the pertinent facts and points of law in the case. In these circumstances, juries understandably feel like bad little schoolchildren who failed their class assignment. Even where the court accepts the jury's verdict, they know it's not over yet, because most serious verdicts are appealed.

Positive Aspects of Jury Service

Although this article will focus on the negative psychological effects of jury service, to be fair, a number of surveys and studies have found that most American and Canadian jurors view their service positively (Butler, 2007; Casey, 1998; Diamond, 1993). For many citizens, this is the most important thing they have done in terms of having a real impact on their communities. Individuals who may feel that they plod meaninglessly through life and receive scant acknowledgement for their efforts at their jobs or at home are suddenly thrust into a position of trust, treated like adults, and accorded great respect, with the weight of another human being's fate placed in their collective hands. Jurors often emerge with much enhanced respect for the legal system after seeing how seriously and carefully most cases are tried, with learned attorneys in expensive suits vying for their decision through meticulously researched and cogently presented arguments, all parties forced to follow strict rules of evidence under the watchful gaze of an enrobed judge sitting on high. This experience often inculcates in jurors a sense of empowerment and engagement with civic life; in fact, serving on a jury makes people more likely to vote. Many jurors surveyed say they would like to serve again (Butler, 2007; Casey, 1998).

However, some of the positive feelings reported on juror surveys may be the result of rationalization and cognitive dissonance: having been conscripted to legal servitude for days or weeks at a time, suffered loss of income and restrictions in their family time, many jurors may feel compelled to justify to themselves that this all must have been for some greater good in order not to feel like chumps (Butler, 2007). And, as will be discussed below, this positive perception of jury service is far from universal; indeed, from the results of other surveys and studies, one can only conclude that, for many jurors, their service amounts to a descent into hell.

Stresses of Jury Service

Even short of hell, many jurors experience stresses that range from mild to severe. While trials containing complex and/or grisly evidence may be understood to be inherently stressful, even more mundane cases can take a grueling toll.

For all the lip service about their noble mission, courts can be surprisingly unaccommodating to jurors who are often relegated to the bottom of the courtroom pecking order. This may be due to a strong social identification factor: Judges and lawyers share a common level of education, training, and experience; indeed, many judges were once practicing lawyers and career shifts in the other direction are not uncommon either. Thus, they understand that they are in a different social and demographic league than most jurors who tend to come from a more working-class and nonprofessional population – i.e. the type of people who cannot easily get out of jury duty. In addition, the same judges and lawyers tend to interact with one another repeatedly in the same kinds of cases, whereas jurors are here for one case, and then gone. Thus, it is easy for the courtroom "regulars" to unconsciously treat the newcomers as transients who are there to do their jobs and then scram (Butler, 2007; Curridan, 1995).

A survey by the National Center for State Courts (Casey, 1998) asked a large sample of jurors or alternate jurors from a wide range of civil and criminal cases (e.g. robbery, drunk driving, malpractice, and personal injury) to rate the level of perceived stress they experienced from a list of stressors. The top ten sources of stress for jurors serving on non-death-penalty cases were: deciding on a verdict; jury deliberations and discussions; disruptions to daily routines; fear of making a mistake; violent crimes; the jury selection process; crimes against children; answering questions in front of other people; sentencing a criminal defendant; and dissension/differences among jurors. Looking at the top items on the list should remind us that, even in relatively routine cases, most jurors take their responsibilities very seriously and are acutely aware that they are making decisions that will greatly affect people's lives, what Bornstein and colleagues (2005) refer to as the "burden of justice." It is this very sense of responsibility that often makes their jobs so stressful (Hafemeister, 1993).

But how stressful? Most surveys have found that about 40% of jurors report stress levels hovering around the mild to moderate range, but that clinically significant anxiety or depressive disorders are rare (Antonio, 2006; Bornstein, Miller, Nemeth, Page, & Musil, 2005; Casey, 1998; Kaplan & Winget, 1992; Kelly, 1994; Casey, 1998; Shuman, Hamilton, & Daley, 1994). So, even though most jurors aren't actually being "driven crazy" by their ordeal, the stresses of jury service can have a sufficient effect on their daily lives to demand serious attention.

Sources of Juror Stress

Jurors experience stressors from a variety of sources associated with their service. A review of the relevant literature (Antonio, 2006; Bell & Feldman, 1992; Bishop, 1992; Bornstein & Nemeth, 1999; Bornstein et al., 2005; Butler, 2007; Casey, 1998; Diamond, 1993; Fishfader, Howells, Katz, & Terese, 1996; Goleman, 1991; Greene & Bornstein, 2000; Hafemeister, 1993; Haney, Sontag, & Costanzo, 1994; Kelley, 1994; McAree, 2004; Miller, Flores, & Dolezilek, 2007; Mott, Hans, & Simpson, 2000; Rauch, 1992) suggests that these can be divided into two main categories, those associated with the judicial process of jury selection and empanelment, and those associated with the content and conduct of the trial itself.

Court Procedures

Physical setting. The physical environment in various courthouses throughout the country ranges from reasonably comfortable to atrocious. Stress factors cited by jurors include poor temperature controls, limited access to food and bathroom facilities, cramped and overcrowded waiting areas ("cattle pens"), and the inconvenience of getting to and from the courthouse (lack of public transportation, poor parking, courthouse in bad neighborhood).

Payment. For all the high-minded talk of how jurors are a vital component in our system of justice, the daily compensation rate for jurors – typically far below minimum wage – can only be seen as diluting the supposed high regard that the court has for them. "I couldn't get someone to clean my toilets for this kind of money," is a typical complaint. A few jurors have commented that they tore up the check when it came or sent it back with a nasty note.

Life disruption. A near-universal complaint of jurors and prospective jurors is the disruption of work and family schedules necessitated by their service. Under the mantle of civic responsibility, jurors may lose days or weeks from work and have to delegate childcare and other household responsibilities. Although employers, as an expression of good citizenship, are supposed to give their employees days off with compensation to attend jury duty, in most cases the worker absorbs a pay loss. Adding insult to injury, when the term of jury service extends more than a few days, the worker may return to find that his or her job has been filled by someone else.

For the self-employed, the situation can be even worse. Salespeople live by their commissions and most small businesses can't afford to close down for even a few days. Even in medium-sized companies, the worker may not have anybody to take his or her place if he or she is in court; clients and customers may quickly go elsewhere. Some jurors report that they have had their businesses ruined by a lengthy term of service.

And it's not just work. Time away from spouses and children strains family relationships; women jurors especially appear to feel the strain of isolation very acutely. Not being allowed to discuss the case when he or she comes home from court deprives the juror of a main source of tension reduction that most people have for unloading their daily stress, and further marginalizes the rest of the family who see their loved one in distress but are unable to do anything to help them (Feldman & Bell, 1991; Hafemeister, 1993; Slind-Flor, 1992).

As previously noted, in some high-profile cases, to avoid "contamination" of the jury by media, casual conversation, etc., jurors may be sequestered, which essentially amounts to enforced isolation during the trial. Because of state and local budgets, accommodations are rarely first-class. This heightened isolation from work, family, and friends may cause many jurors to feel that they are being treated like "criminals," "POW's," or "terrorists at Guantanomo Bay," as some jurors have put it. It is these conditions that most often lead some jurors to fear they are losing their minds (Antonio, 2006).

But, at least for American jurors, the ordeal is over when the trial ends, at which time they are free to talk, write books, or expound on TV about their role in a famous trial (although most jurors just want to go home and forget it). No such consideration is afforded their northern brethren, as the Canadian Criminal Code makes it an offense for their jurors to ever disclose information regarding jury proceedings. Canadian jurors cite this ban as one of the most difficult things to deal with (Butler, 2007; Hafemeister, 1993). On the other hand, this permanent gag order may free these jurors from the relentless media intrusion that often dogs American jurors in high-profile cases and which often seems designed to provoke a media-worthy lurid reaction from jurors.

For example, after the high-profile Rodney King beating trial, jurors were assailed by the press to the point that local police warned them not to remain in their homes because of all the publicity they were garnering. These jurors felt compelled to defend their decision to friends and family and felt that they were being condemned in the press for the rioting that took place after the verdict. One juror received a bomb threat at her workplace. Another juror bought a gun for protection, while still another slept with an axe. Many jurors compared their experience to having been raped; they suffered anxiety, hypervigilance, tearfulness, exhaustion, sleep and weight loss, and disruption of family relationships. A few of the jurors sought professional counseling, but most suffered in silence (Davis, 1993).

Jury selection process. For many jurors, especially those that value their privacy, filling out detailed questionnaires and answering sometimes very personal questions in front of a group of strangers can be extremely uncomfortable. Many jurors have reported feeling as if they were the ones on trial. For example, in financial fraud cases, lawyers may want to know what the juror's salary is or whether he or she has ever "thought about" cheating on their taxes. In sex-related cases, jurors may be queried about their sexual preferences or whether they have ever "thought about" cheating on their spouse. Simply refusing to answer could technically result in the juror being cited for contempt of court, but few judges would be willing to subject the juror to further duress. More commonly, embarrassed jurors will simply lie and tell the questioning attorney whatever they believe will make the lawyer move on. The result may be the empanelment of a jury containing several members who have been seated under false pretenses, thereby compromising the whole rationale of jury selection.

Perhaps for these kinds of reasons, while American lawyers can question potential jurors to screen out those they don't like during the voir dire process, in Canada this kind of jury selection process is considered prejudicial and all eligible jurors are assigned on a first-come-first-serve basis. The absence of a rigorous juror screening process has been found in surveys to increase stress on those Canadian jurors who are seated (Butler, 2007). It would be an interesting empirical question to see which system is associated with the greatest psychological morbidity and satisfaction with jury service.

Trial Factors

Death penalty cases. Understandably, the decision to find a defendant guilty of a crime warranting the death penalty is one that most American jurors take very seriously.

reflecting the "burden of justice" (Bornstein et al., 2005) that jurors feel more intensely, the more serious the trial (e.g., capital murder vs. grand larceny). In some jurisdictions, the jury determines guilt or innocence in a capital crime and the judge imposes a sentence. In other courts, the jury may first decide on guilt and then deliberate a second time to determine the sentence, usually either death or life imprisonment. Findings from the Capital Jury Project (Antonio, 2006) and other studies have shown jurors who render a death penalty verdict to suffer from a variety of stress reactions, including *posttraumatic stress disorder* (PTSD) at higher rates than those who render a life sentence.

Some jurors describe nightmares that replicate how the victim was killed or that relate to details of the crime scene, many of the images coming from photographs viewed at trial. Some jurors report feeling physically sick during and after the trial. Jurors may express regret at their final punishment decision, often feeling that the wrong decision was reached. In some cases, jurors regret the death sentence; but in a few others they wish death had been meted out instead of life imprisonment. Many jurors who harbor second thoughts post-trial feel they were pressured or "brainwashed" by other jurors to go along with the majority decision: "I should have stuck to my guns, but everybody else was so sure of their side and we all just wanted to get out of there."

Fear of reprisal by the defendant or his cohorts is a common theme reported among jurors serving on capital trials. Many report that the defendant would sit in court and stare intimidatingly at individual jurors during the trial. Nightmares of such possible reprisals by the defendant are commonly reported, more frequently by women. Other jurors are simply afraid of running into either the victim's or defendant's family in or around the courthouse. Some fear wider censure by their own families, friends, and communities for making the "wrong" decision in socially sensitive cases. Most jurors who have served on capital cases are determined not to repeat the experience.

Interestingly, in the Capital Jury Project study (Antonio, 2006), a number of jurors specifically expressed the need for some kind of post-trial counseling and half thought it should be made available by courts themselves. Others took the initiative and sought counseling on their own after the trial had ended, either from a family member, clergyman, or mental health clinician (Antonio, 2006).

Grisly evidence. One of the distressing aspects of murder trials or those where there has been significant bodily injury is the frequent necessity for juries to view gruesome hospital or crime scene photos depicting death and or mutilation, as well as to hear sometimes horrifying testimony of how victims were assaulted, tortured, raped, and/or killed (Bishop, 1992, Boone, 2008). Remember that police officers, criminal attorneys, judges, and specially trained mental health counselors who work with the court system all have years of experience dealing with disturbing evidence, yet, even in these hard-boiled veterans, particularly heinous crimes (often those involving child victims) may evoke destabilizing emotional reactions that require intervention in the form of critical incident debriefing or other mental health contact (Miller, 1998c, 1999, 2006a, 2006b, 2007a, 2007b, 2008a, 2008b, 2008c).

How much greater must the reaction be to this kind of evidence by untrained, inexperienced jurors who are being assailed by grisly evidence throughout the trial. This is frequently compounded by the fact that prosecution and defense counsel each have their own agendas that they may play off the jury. For example, the prosecution may specifically try to shock the jury by literally throwing the exhibit (crime scene photo, bloody clothing, murder weapon) in front of the jury precisely to spur an emotional reaction that will hopefully lead to a conviction (another variation of this is to abruptly display an image of the disturbing exhibit on a huge projection screen in the ominously darkened courtroom). For its part, the defense team will initially try to exclude evidence they consider "inflammatory" or, alternatively, if it is presented, may try keep it exposed as long as possible or present it repeatedly in order to try to desensitize the jury to its presence. Sometimes this works and jurors get used to seeing the bloody knife and the photographic stab wounds lying on the evidence table day after day. But sometimes the tactic backfires and the jurors grow increasingly sensitized, rather than immunized, with each exposure.

Studies are near-unanimous in reporting high rates of anxiety, depression, and PTSD symptoms in jurors sitting on capital murder, aggravated kidnapping, aggravated sexual assault, aggravated assault, and child abuse cases (Antonio, 2006; Feldman & Bell, 1993; Hafemeister, 1993). Some of this may relate to the concept of *vicarious trauma*, in which those who work frequently and closely with victims of violence come to empathically absorb and internalize some of the psychic pain and begin to show PTSD symptoms themselves (Davis & Friedman, 1985; Figley, 1983; Fullerton, Carroll, Ursano, & Wright, 1992; Miller, 1998a, 1998b, 2008c; Moon,

1999; Talbot, Dalton, & Dunn, 1995; White, Lawrence, Biggerstaff, & Grubb, 1985; Yassen, 1995). These kinds of reactions may have implications for adjudication of the case if jurors make extreme decisions based primarily on their emotions rather than on a rational analysis of the evidence, or if they become so numbed to the savagery of the crime through repetitive testimony or evidence presentation that they come to diminish the seriousness of the criminal act in their deliberations (Miller et al., 2007).

Complex Evidence. Another feature of murder trials or other violent felony trials is that they tend to be long and contain vast amounts of complex and ambiguous evidence. In most courts, jurors are forbidden to take notes or ask questions, although some jurisdictions are very recently beginning to allow limited forms of these activities. Thus, the juror is placed in the position of having to process complex technical information and conflicting eyewitness narratives presented by two different sides who are each trying to spin the evidence to the fullest extent that the court will allow, with the juror permitted to take no (or limited) notes and ask no (or limited) questions. Add to this the fact that much testimony is just plain boring or literally incomprehensible and there is evidence that jurors forget a great deal of what they hear in court (Rosehan, 1994). If this were a college course, what grade do you think the jurors would get? Yet, they are charged with the task of taking this information and using it to render what, in some cases, is literally a life or death decision about someone's fate.

Complicating the process is the fact that, in the case of a college course, the students are all more or less equivalent in background in terms of education, training, and native intelligence, and have probably all completed at least some prerequisite coursework for the present class. But jury members come from all walks of life and will have vastly differing levels of sophistication in handling complex testimony and in understanding the legal instructions they're given (Antonio, 2006; Bornstein et al., 2005; Butler, 2007; Miller et al., 2007; Steele & Thornburg, 1991). Because most professional people in their 30s to 50s, as well as most mothers with childcare responsibilities, can probably find some reason to get out of jury duty, most juries will contain a disproportionate number of very young, very old, less educated, and less family-grounded individuals. In deliberations, less comprehending jurors may feel intimidated by seemingly more savvy members who, for their part, may be frustrated with their slower compatriots' failure to grasp their arguments or see things their way.

Indeed, an entire industry of *jury persuasion*, often trafficking under the euphemism of *trial consulting*, has sprung up precisely to capitalize on juries' frequent cluelessness and to help attorneys use this to their own advantage (Kressel & Kressel, 2002; Posey & Wrightsman, 2005; Vinson & Davis, 1996). For example, we know from cognitive psychology and everyday experience that most people make decisions not by carefully weighing evidence and using inductive reasoning to arrive at a conclusion. Rather, they make an immediate judgment which is typically based on emotion and first impressions and lies within their pre-existing frame of reference and comfortable world-view. Then, they selectively scan the available data to cherry-pick information that will self-justifyingly support their original position. Hence, most jurors strive to reach verdicts which do not conflict strongly with the views they've held at the beginning of the trial; that is, they strive to reduce cognitive dissonance (Feigenson, 2000; Nisbett & Ross, 1980; Petty & Ciacioppo, 1986; Singer, 1998; Sunby, 1997).

Thus, lawyers know that it is good trial strategy to build your case around a small number of fundamental principles about which most jurors are surmised to feel strongly and that consequently act as screens or filters to interpret, distort, or reinforce information presented during the trial. Tactically, the more an attorney can frame his or her case in terms of the jurors' own personal experience, the greater the likelihood of winning the case (Kressel & Kressel, 2002; Murphy, Loveland, & Munsterman, 1992; Vinson & Davis, 1996). Finally, human beings form impressions about other human beings more strongly than they do about abstract data. When jurors can understand the content of the testimony, they usually factor this into their decisions. But when the complexity of the subject matter exceeds their comprehension, they rely on the perceived sincerity and persuasiveness of the witness (Cooper, Bennett, & Sukel, 1996).

Today's poor, benighted jurors may be forgiven their blunders if only because the complexity of the world as a whole has changed much in just a few centuries, while the human brain and human nature have not. No less an authority than retired Supreme Court justice Sandra Day O'Connor (2003) has lamented this modern state of affairs:

> The world is a very different place now than it was in 1220 or in 1789 or fifty years ago. We therefore

should not be surprised to learn that aspects of the jury system that worked well in those times work less well today and need some repairs. What should surprise us is that so little of the necessary repair work has been done.

There are three aspects of the jury system that need particular attention. First, *the conditions of jury service*. When citizens are called for jury service, they often view it as a burden rather than a privilege. And for good reason: when they arrive at the courthouse they frequently are treated more like sheep than people, and the system can seem designed to disrupt their lives to a maximum degree. Second, *jury selection*. The process of selecting a jury out of the citizens called for jury service on a particular day has changed from a necessary safeguard against potentially biased jurors to a way for highly paid jury consultants to attempt to ensure a jury favorable to the side paying their fees. And third, *the conduct of the trial itself*. Too often, jurors are allowed to do nothing but to listen passively to the testimony without any idea what the legal issues are in the case, and without being permitted to take notes or participate in any way, finally to be read a virtually incomprehensible set of instructions and sent to the jury room to reach a verdict in a case they may not understand much better than they did before the trial began (O'Connor, 2003, pp. 217-218; cited in Posey & Wrightsman, 2005, pp. 218).

Jury deliberation. This is where it all comes together, where the jurors are supposed to put their heads together and come up with a decision that follows the law and respects the evidence in the case. They have already been instructed that there are specific things they are and are not allowed to include in their thinking about the case; they may or may not understand these rules. A number of surveys have shown that the interactions and dynamics of these 12 strangers, thrown together from diverse cultures and walks of life, with widely varying cognitive skills and personalities, can often be the biggest source of stress for jurors during the trial. While many jury deliberations proceed tolerably, and in some instances may even be enjoyably challenging, others are described by jurors as the worst experience they've ever had (Antonio, 2006; Butler, 2007).

The types of stresses during jury deliberation can be multiple and can range from little personal irritations from another juror's mannerisms or tone of voice, to a particularly obnoxious, ignorant, or intimidating juror who just ticks everybody else off and makes the process so much more unpleasant. Not to be overlooked is the physical setting, with poorly ventilated jury chambers resembling sweaty locker rooms after a few hours. The deliberation process itself can be contentious and the juror who evinces a minority opinion may find him- or herself reviled and alienated for "not letting us get on with this." Some jury deliberations have reportedly almost broken into fistfights, and breakdowns in decorum with inadvertent or intentional spewing of stereotypes and prejudices are not uncommon, as the mounting stress brings out the ugly side of the deliberators (Bornstein et al., 2005; Butler, 2007; Casey, 1998).

Juror Stress: Symptoms and Syndromes

Butler (2007) points out that if a research committee were to propose a study on the human stress response that incorporated the factors reviewed above, they would no doubt be fired from their university and banned from research for the rest of their lives. Another, perhaps more germane, way to look at it is that the kind of working environment that many jurors are subjected to during their service would be strictly illegal in all regulated American public and private organizations, and discovery of such conditions would subject the organization to civil penalties and criminal prosecution.

Juror stress symptoms can be conceptualized along three dimensions: (1) symptom type; (2) symptom severity; and (3) symptom time course.

Symptom Type

Juror stress symptoms tend to replicate those reported more generally in the stress and trauma literature (Antonio, 2006; Bell & Feldman, 1992; Bornstein et al., 2004; Butler, 2007; Casey, 1998; Costanzo & Costanzo, 1994; Davis, 1993; Feldman & Bell, 1993; Kaplan & Winget, 1992; Kelley, 1994; Shuman et al., 1994) and include the following:

Physical symptoms. Impaired sleep, headaches, heart palpitation, high blood pressure, cutaneous reactions (hives and rashes), ulcers, impaired sexual functioning, muscle tension, tremors, chest pain, faintness.

Psychological symptoms. Intrusive recollections, nightmares, emotional numbing and detachment, anxiety, depression, increased alcohol consumption.

Symptom Severity

Juror stress appears to show the standard *dose-response ratio* seen with other stressors, that is, the greater the level of stress, the more severe the symptoms (Butler, 2007). For example, jurors serving on "traumatic" trials, including rape, murder, and aggravated kidnapping, were found to experience more severe symptoms than jurors on "non-traumatic" trials such as burglary or drug possession (Shuman et al., 1994). In particular, the jurors on traumatic trials were many times more likely to experience depression (Miller et al., 2007).

Symptom Time Course

In the Capital Jury Project (Antonio, 2006), jurors' stress reactions were found to occur in three main stages: during the trial; immediately after the sentence was announced; and in the days, weeks, or months after the trial ended.

During the trial. Interestingly, only a few of the jurors reported that the full impact of their jury experience was felt while the trial was occurring; most jurors seemed to go "on automatic" to function while the trial was in progress. The major source of stress at this time was determining the actual punishment decision. Other stressors included having to view disturbing crime scene evidence and the isolation of not being able to speak to their families about the case.

Immediately after the trial. In many cases, the stress response came as a "delayed reaction" right after the trial was over. Most of the jurors in this category reported crying at some point, either from the strain of their recent ordeal or out of sheer relief that it was over. Two female jurors in this sample were concerned about the effect the verdict would have on the victim's family.

Days, weeks, or months after the trial. Most of the jurors reported that serving in a capital murder trial affected them long after the trial ended. Some jurors experienced changes in their relationships and lifestyles. Many reported difficulty forgetting what they heard or saw during the trial, and a few reported classic symptoms of PTSD, including nightmares, intrusive recollection, and emotional numbing (Antonio, 2006).

Alleviating Juror Stress

Several authorities have proposed recommendations for making the juror system less stressful and more humane, based on their analyses of juror responses to surveys and general experience (Antonio, 2006; Bornstein et al., 2005; Casey, 1998; McAree, 2004; Miller et al., 2007; Nordgren & Thelen, 1999). I have divided these recommendations into procedural measures and clinical approaches.

Court Procedural Measures

These issues relate to changing the courtroom setting and the conditions of jury service (Antonio, 2006; Bornstein et al., 2005; Casey, 1998; McAree, 2004; Miller et al., 2007; Nordgren & Thelen, 1999) and include the following:

Improve jury notification and reporting for service. Provide sufficient time for prospective jurors to respond to jury summons. Many courts now provide the option of deferring jury service one or more times, as long as the summonee reports within a specified period of time (usually about 6 months). Giving jurors time to arrange their affairs provides a sense of control that may increase juror cooperation and motivation to participate. Provide basic information with regard to how to respond to the summons, where to report, directions, relevant phone numbers, etc. Provide safe transportation and security escort between the courthouse and transportation (parking lot, bus stop). Remember, anything the court can do that makes it easier, not harder, for jurors to report for jury duty will increase compliance rates. Consider adjusted compensation rates for self-employed jurors or jurors whose employers will not compensate the worker for his or her service time.

Explain the trial process. All too often, the initial orientation to the legal system consists of a short, prepackaged video played on a screen in a busy auditorium that may be all but incomprehensible to most of the stressed and harried audience in the pre-panel "cattle call" room. Felons' confessions may be thrown out if police cannot affirmatively demonstrate that the suspect made a knowing and informed waiver of his or her Miranda rights at the time of arrest. Similarly, considering that people's legal fates are at stake, shouldn't prospective jurors be required to demonstrate that they understand the relevant law and legal procedures? Judges should take the initiative to explain things to the jurors in a clear, understandable fashion and solicit their feedback with regard to their understanding.

Also, give jurors a head's-up as to what to expect in general from the trial on which they are being selected to serve. Obviously, the nature of the trial, whether criminal (murder, robbery, rape, drug possession) or civil (personal injury lawsuit, contract dispute, family law case), should be explained. Many jurors state that they would have liked to have been forewarned that the trial could include gruesome photographs, foul language, pornographic material, and/or graphic descriptions of criminal acts. This may be contested by some judges and attorneys who are leery of discussing any type of evidence that has not yet been determined admissible. Additionally, many attorneys may actually be counting on the emotional shock value of certain evidence to sway jurors' opinions and don't want them desensitized by previous discussion; other attorneys may not want to "tip their hand" about sensitive forthcoming evidence. Courts should strive to work out some compromise solution that preserves the rules of evidence while assuring that jurors will be in a proper mental state to hear the case.

Facilitate the jury selection process. One aspect of the trial system that should be clearly explained is the necessity for attorneys to ask jurors probing questions during voir dire. This should include an explanation of the purpose of the voir dire examination, an explanation of the difference between peremptory challenges and challenges for cause, introductory information on the particular case, an estimate of how long the trial may last, and an indication of whether the jury will be sequestered and, if so, for how long and why.

Be sensitive to jurors' privacy concerns. Responses from jurors indicate that some judges and attorneys may view voir dire as a fishing expedition to gain as much information as possible about each juror rather than just enough information to determine if a juror can be fair and impartial. Questions about mental illness, substance abuse, extramarital affairs, job and salary history, or past run-ins with the law may be shrugged off by some potential jurors but shocking to others. Many jurors may be understandably concerned about who will get their personal information or will have access to court records. Any juror questionnaires should be collected at the end of the selection process and the procedures for assuring juror privacy should be explained.

Basic, commonsense recommendations include reducing waiting time, providing comfortable accommodations, and endeavoring to treat prospective jurors with the kind of respect the court pays lip service to when intoning the sacred civic duty to uphold our system of justice.

Maintain control of the courtroom and trial process. When people are under pressure in an unfamiliar environment, they want the grownups to be in charge. Jurors report that much of their stress occurs when they perceive the judge as losing control of the courtroom. Intimidating, bickering, or grandstanding attorneys should be reined in, and TV cameras should be removed if they interfere with the trial process. Loud or obtrusive witnesses or courtroom audience members should be quieted or ejected. Taking control doesn't mean being a tyrant; judges should always be civil with attorneys, jurors, and witnesses, but they should make it clear that they will tolerate no breaches of procedure or decorum in their courtroom. Control also means keeping the trial process humming along so things don't bog down; ironically, boredom is often as much a threat to juror concentration as overstimulation. Finally, in high-profile cases, jurors should be given some guidance on how to deal with the media.

Modulate the presentation of disturbing evidence and testimony. As noted above, viewing grisly evidence or listening to emotionally disturbing testimony is reported by many jurors as being among the most stressful aspects of their service. Although gruesome evidence is typically associated with criminal trials, civil trials involving claims of negligent injury or medical malpractice often contain their share of hideous material. I recall testifying in one civil case where the plaintiff's claim of developing PTSD after seeing a loved one killed in a traffic accident was bolstered by full-color accident scene photos detailing what the speeding vehicle had done to the victim's head and body. Again, the purpose of preparing juries for disturbing testimony is not necessarily to lessen the import of the criminal or civilly negligent act, or to bias their view of the evidence in any way, but simply to alert them that such potentially disturbing material is coming. Indeed, juries who are shocked and overwhelmed by blatantly violent or pornographic material may be less capable of rendering a fair decision.

Allow greater juror participation in the trial process. Under traditional trial procedures, jurors are expected to play a passive role, quietly listening and absorbing the presented evidence and testimony in preparation for their deliberations. Recalling the point made at the beginning of this article, in no other field – medicine, law enforcement, emergency services, business and industry, government, the military – are critical decisions made in the context of deliberate restriction of relevant information. While certain aspects of a legal trial are

unique, such as the importance of controlling bias, research on juror decision making increasingly shows that this passive role – no note-taking allowed, no questions asked by the jury – is unnatural and uncomfortable for most jurors, hindering their ability to remain objective, to concentrate on evidence and testimony, and to integrate new, unfamiliar material; just imagine trying to pass a high school or college course under these conditions. Conversely, studies show that juror comprehension and satisfaction are increased if jurors are allowed a more active role in trials (Cooper et al., 1996; Dann, 1993; Heuer & Penrod, 1994; Rosehan, 1994).

Accordingly, many courts are now permitting limited note-taking by jurors and the asking of limited questions. The latter usually takes the form of having the juror write the query on a piece of paper which is then passed to the judge for review. If he or she determines that it is an appropriate question, the judge will then read it to the witness (or sometimes have the bailiff or court reporter read it). In my experience, this has almost always occurred in the context of expert witness testimony, where the jury has a legitimate question concerning some technical matter that the expert has just expounded upon. Given that jury verdicts may well be determined by their understanding of such complex material, anything that will increase their understanding should well serve the purposes of a fair and just verdict.

Facilitate jury deliberations. Arguably, the jury deliberation process is the most critical aspect of juror activity in the trial because it is here that the fate of the stakeholders is decided. Most jurors rank the process of deciding on a verdict and the fear of making a mistake among the top sources of stress in their trials. One problem often cited is their lack of a clear understanding of the judge's jury instructions, and research has demonstrated generally low comprehension of juror instructions in general (Greene & Bornstein, 2000; Steele & Thornburg, 1991). Accordingly, it is crucial for judges to ascertain that their juries understand the relevant instructions.

After days of listening to complex, confusing, disturbing, and/or boring testimony, just throwing a group of strangers into a room and expecting them to arrive at a just decision may be more a reflection of naive optimism than reality. The conduct of jury deliberations can range from polite and civil to something resembling a dog fight. Most jurors report that they would have liked some guidelines for their deliberations. Especially in tense criminal trials or where jurors are having difficulty getting along, judges should be prepared to provide some guidelines for cooperative and collaborative deliberation, such as listening to one another's points without interruption, disagreeing respectfully, and not taking arguments about the case personally. Business people take hours of courses and training seminars on decision-making processes, conflict resolution strategies, and how to conduct productive meetings (Miller, 2008d) – shouldn't juries be given some guidance on this as well? If jury sequestration is a possibility in this trial, prepare jurors for this in advance, from the outset of jury selection.

Clinical Measures

The following recommendations entail more of an interface between judicial and mental health professionals in terms of providing specific interventions to help jurors cope with stress. There are some things that judges and court personnel can do; other approaches require the direct or consultative role of a qualified mental health professional (Antonio, 2006; Bienen, 1993; Bornstein et al., 2005; Casey, 1998; Dabs, 1992; McAree, 2004; Miller et al., 2007).

Pre-trial interventions. This is the proactive aspect of juror stress management. The purpose of pre-trial interventions is to prepare jurors ahead of time for the stress they may experience during the course of a trial. These measures include informal discussions or prepared educational modules about the potential effects of stress, how to recognize symptoms, and how to utilize a range of coping techniques. The techniques themselves are familiar from stress management applications in other fields, such as law enforcement and emergency services (Miller, 2008a, 2008b).

Juror stress debriefing. Sometimes it may not be clear how stressful a trial has been until it has ended, at which time appropriate follow-up mental health services may be required (Goleman, 1991). Although court-sponsored services for crime victims exist in all 50 states (Miller, 2008c) and psychological services for law enforcement have existed in most jurisdictions for decades (Miller, 2006b), prior to 1990 there were few institutionalized programs through the courts for providing any kind of mental health services for jurors (McAree, 2004). Following several highly-publicized trials containing horrific evidence, including the Jeffrey Dahmer serial cannibalism trial, the trial of the Oklahoma City bombers, and the Pam Basu trial, in which a mother was dragged and mutilated during a carjacking, courts have begun offering psychological services to jurors (Bell & Feldman, 1992;

Feldman & Bell, 1991, 1993; Hafemeister, 1993; Hafemeister & Ventis, 1992), largely in the form of one or more clinical varieties of *critical incident stress debriefing* (CISD) approaches, part of the larger domain of *critical incident stress management* (CISM), familiar to most readers of this journal (Everly & Mitchell, 1997; Miller, 1998c, 1999; Mitchell & Everly, 2003).

Developed in the field of public safety and emergency services, the debriefing model has now been applied to a wide range of crises, including crime victimization, natural disasters, and victims of terrorism (Miller, 1998c, 2008c). As developed in the emergency services field, CISD debriefing is a peer-led, clinician-guided process, usually consisting of one or more mental health professionals and one or more peer debriefers, i.e. fellow police officers, firefighters, paramedics, or crisis clinicians who have been trained in the CISD process and who may have been through critical incidents and debriefings in their own careers. The purpose of the debriefing is to normalize and detoxify the immediate traumatic stress reactions being experienced by the subjects and to strengthen resistance to further psychological disability. This is done through a semiformal seven-stage process, including the introduction, fact, thought, reaction, symptom, education, and reaction phases, designed to ease the process of ventilating distress, but then reseal psychological stability and encourage natural healing, aided, if necessary, by follow-up referral to additional mental health services.

Recent applications have expanded the use of CISD techniques with civilian groups. Bell & Feldman (1992) and Feldman & Bell (1991, 1993) developed a post-trial debriefing model specifically for jurors and other court personnel that is essentially similar to the crisis debriefings utilized for victims of crimes, natural disasters, or similar traumas. In general, effective debriefing sessions reduce stress, offer information on mental health services for those who might need it, provide closure, promote confidence in the judicial system, and enhance satisfaction.

As with most interventions, controversy exists. Bornstein and colleagues (2005) conducted a study that measured jurors' stress before and after a post-trial debriefing and found that, while jurors overwhelmingly said that they found the debriefing intervention helpful, their measured stress levels and symptom indices were similar at pre- and post-debriefing. Juror stress levels were lower at one month post-trial regardless of whether they had received the debriefing service or not. This, in fact, is an intriguing finding that runs through the stress debriefing efficacy literature: participants frequently say it helps, but formal measurements of distress or symptoms remain unchanged (Arendt & Elklit, 2001).

As with stress debriefing in other contexts, a major part of the problem with using this intervention with jurors probably relates to the appropriateness of its application; mental health clinicians who advise the courts should guide court officials to use this technique only where it is legitimately needed (Casey, 1998). For example, for trials that involve relatively low levels of stress, jurors may need only general discharge instructions from the trial judge prior to being dismissed. In general, informal meetings with the trial judge can provide a sense of closure for the jurors. In more stressful trials, the judge may choose to hold a more lengthy discussion with the jurors or bring in a mental health professional to conduct a formal debriefing. This may be the case in particularly gruesome trials or those which attract a great deal of media attention. However, surveys indicate that some judges like to handle these sessions on their own, only rarely calling in a mental health professional (Bornstein et al., 2005; Casey, 1998; McAree, 2004). Other judges seem to recognize that this is out of their league and are only too happy to find a mental health professional who will take over – if there are any available who do this kind of work (Miller et al., 2007).

Some recommendations for optimizing the juror debriefing session (Bornstein et al., 2005; Miller et al., 2007) include:

- Consider the best time of day for the debriefing. The afternoon the trial ends may leave jurors feeling drained; all they want to do is go home. Set up a separate day for the session, perhaps giving jurors a few days to recoup.
- Make the jurors feel comfortable. Debriefing should be voluntary and there should be no stigma attached. Nothing that goes on in the session should be on the record – the trial is over; this is solely for the jurors' well-being.
- Unlike public safety professionals, jurors may not quite know how to proceed, so prime the conversational pump to get people talking, but maintain control over the discussion, so that it helps, not hurts. Encourage productive venting, not unhealthy spewing or accusing. Keep the focus on the positive.
- Positive focus includes normalizing juror stress. This should be conceptualized as a normal reaction by

normal people to an abnormally challenging situation. Reassure the jurors that they did their best at a difficult job in making a crucial decision.

- Cover any lingering questions jurors may have. Address concerns about safety and fears of retribution. Help jurors deal with the media. Seek juror feedback as to how things could be improved in the future so that they feel part of the solution.

In cases where the judge suspects that jurors are experiencing significant stress or showing symptoms of a serious mental disorder, they can refer the juror to a qualified mental health professional for more individualized counseling – again, courts should be proactive in identifying clinicians in the community who can serve as resources for these services.

Combined interventions. One criticism that has been leveled against debriefing-type interventions is that their standard, one-size-fits-all format lacks the flexibility to deal with diverse types of people and problems. While the CISM model continues to expand and adapt to new challenges, Nordgren & Thelen (1999) have developed a multifaceted intervention program they call *Graduated Jury Stress Management* (GJSM) which contains five intervention levels that are administered according to the stress level of the individual juror. Although GJSM is designed to be a post-trial intervention, some aspects of it (i.e. written instructions) could also be adapted as a pre-trial intervention:

- *Level 1: Basic Information.* Jurors who have not yet evinced any problems simply receive written educational materials about stress reactions and potential coping strategies.
- *Level 2: Stress Management Instruction.* This applies to jurors with mild stress levels. The judge individually gives these jurors basic stress management information along with the standard post-trial discharge instructions.
- *Level 3: "Flexible Defusing."* Jurors with moderate stress receive a 15-20 minute debriefing during which a mental health professional explains normal stress reactions, offers coping strategies, and assesses individual jurors to determine if further clinical services are necessary.
- *Level 4: "Jury Stress Debriefing."* This intervention is adapted from the CISD model commonly utilized with emergency workers and is applied to jurors who are showing significant levels of stress.
- *Level 5: Individual Psychotherapy.* This may range from a few sessions to ongoing treatment and is intended for jurors who are showing extreme stress reactions and/or clinical symptoms of a mental disorder. Not uncommonly, these may have been jurors who had difficulties in functioning prior to the trial and the trial stresses have exacerbated their preexisting or dormant psychopathology.

Clearly, Nordgren & Thelen's GJSM (1999) appears to formalize the stages of intervention that most clinicians would apply to the treatment of traumatic stress cases. But, as effective as these proactive and responsive clinical measures might be, and as best we may try to make procedural changes within the existing American jury system, perhaps real efforts to increase accuracy and efficiency and reduce stress within the jury system can only come when more fundamental changes are considered.

Conclusions and Recommendations

Based on a review of the literature and my own clinical and forensic experience, the following recommendations for improving the civil and criminal justice systems in the United States are offered.

Let judges judge. Just as we maintain strict training and credentialing criteria for authorizing people to call themselves doctors and attorneys and to practice medicine and law, we should do the same for those who practice jurisprudence; we should let the judges judge. Many countries already do this. In some court divisions, such as family court, judges, not juries, often decide cases. In many other cases, defendants have the option of waiving a jury trial and opting for a *bench trial*, which is having the judge hear the case and render a verdict.

Utilize professional jurors. Okay, even doctors have assistants to perform routine clinical tasks and lawyers use paralegals for similar purposes because there just aren't enough physicians and attorneys to go around. But these paraprofessional staff still receive some degree of training and certification to do what they do. So why not recruit reasonably intelligent and educated citizens on a voluntary basis, provide them with specialized training in the law, decision-making, and interpersonal skills, and credential them as *Certified Jurors* or some such appellation.

There could even be board-certified subspecialties within the Certified Juror field, such as "certified medical juror," "certified mental health juror," "certified business-economics juror," "certified industrial-mechanics juror," and so on. The next step would be to compensate them for their service (just as medical assistants and paralegals get paid a fair wage) and utilize them as part of a rotating pool of professional jurors who can objectively decide cases with a basic prerequisite of knowledge and training both in the law and in the subject matter of the case.

Meanwhile, professionals within the legal system, and the mental health clinicians who advise them, must strive to make jury service as efficient, accurate, and comfortable as possible. Whether in the emergency room or the courtroom, people's lives are at stake, in one way or another. We must assure that those who are called to make the crucial decisions are afforded the proper conditions to do so in a manner that serves justice.

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HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 20, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/26/10

The JUDICIARY Committee considered: **HOUSE BILL NO. 52**

"An Act authorizing psychological counseling for jurors serving in criminal trials who are traumatized by graphic evidence or testimony."

HB 52 POST-TRIAL JUROR COUNSELING

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CRT	1	✓		

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Bob Lynn	LYNN	X			
Max Gruenberg	Gruenberg	-			
Robert E Herron	HERRON	X			
Mary Dahlstrom	Dahlstrom	X			
Chair: Tony K	RAMKAS	X			
Chair(					

HB

71

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
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Juneau, Alaska 99801-1182
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House District 10

Fax

To: Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 2

From: Jane W. Pierson

Date: March 15, 2010

Re: HJUD CS for HB71

Today HJUD Committee heard HB71 (26-LS0289\T) and passed the bill out of committee with no amendments.

Please go final on this CS.

Thank you

Representative_Jay_Ramras@legis.state.ak.us

HB71 AMEND #1

Page 3 Line 3

change "may" to "shall"

H - N

D - Y

H - Y

G - NP FAILS

L - N

G - N

R - Y

26-LS0289\T
Kurtz/Bannister
1/21/10

CS FOR HOUSE BILL NO. 71( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HOLMES, DAHLSTROM, MILLETT, AND KAWASAKI

A BILL

FOR AN ACT ENTITLED

"An Act relating to a registry for advance health care directives."

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

*** Section 1.** AS 13.52.080 is amended by adding a new subsection to read:

(d) A health care facility or hospital is not subject to civil or criminal liability for

(1) acting in reliance on an advance health care directive obtained from the directive registry established under AS 13.52.310; or

(2) not checking the directive registry established under AS 13.52.310 to determine if a patient of the health care facility or hospital has filed an advance health care directive in the registry.

*** Sec. 2.** AS 13.52 is amended by adding a new section to read:

Sec. 13.52.310. Advance health care directive registry. (a) The department shall establish and maintain, or contract with a registry organization to establish and maintain, a registry for advance health care directives. The registry must consist of

(1) a list of the names of individuals who have made written directives

New Text Underlined [DELETED TEXT BRACKETED]

L

1396

for themselves and who have filed them with the registry under (b) of this section; and

(2) scanned copies of the directives identified in (1) of this subsection.

(b) An individual who has made a written directive for the individual may file the directive with the registry.

(c) Except as provided in this subsection and by (d) of this section, the registry is confidential, and the department or a contractor may not use information in the registry for another purpose. The department may release by mail, facsimile, or secure Internet access,

(1) the name of an individual who filed a directive with the registry under (b) of this section and a copy of a directive in the registry to

(A) the individual who made the directive;

(B) the agent, guardian, or surrogate of the individual who made the directive; or

(C) a health care facility in this state or hospital in this state if the individual who made the directive is a patient of the health care facility or hospital;

(2) a copy of a directive in the registry to a hospital in another state if requested by the

(A) individual who made the directive; or

(B) agent, guardian, or surrogate of the individual who made the directive.

(d) The department shall make the registry accessible for viewing on the Internet 24 hours a day to a hospital in this state to determine if an individual who is a patient at the hospital has a directive or to obtain a copy of a directive for an individual who is a patient at the hospital.

(e) The department is not required to review a directive for validity or compliance with this chapter or another law before the directive is placed in the registry.

(f) The department shall remove a directive from the registry if the individual who made the directive requests in writing that the directive be removed.

(g) Not filing a directive with the registry does not affect the validity of the

directive. Failure to notify the department that a directive in the registry has been revoked does not affect the validity of the revocation.

(h) The department may charge a fee to file a directive in the registry or provide a copy of a directive filed in the registry under this section, except that the department may not charge a fee for removing a directive from the registry or for answering an inquiry by a health care facility in this state or hospital in this state regarding whether an individual has a directive in the registry. The fee may not exceed the department's administrative costs of fulfilling the request.

(i) To protect the security of the directives and names on the registry, the department shall establish by regulation identification procedures and requirements for an individual, agent, surrogate, guardian, hospital, or health care facility to access the registry.

(j) The department shall establish by regulation criteria and procedures for the collection, storage, access, distribution, removal, and disposal of directives in the registry and a schedule for removing directives from the registry.

(k) The department and its employees are not liable for civil damages as a result of an act or omission in the establishment or maintenance of the registry or other implementation of this section.

(*l*) In this section,

(1) "directive" means a written advance health care directive;

(2) "registry" means the registry established under this section.

Representative Lindsey Holmes

House Bill 71 Sponsor Statement
An Act relating to a registry for advance health care directives.

An advance health care directive is a document that allows a person to designate what health care they wish to receive and who can make medical decisions for them in the case that they are incapacitated. Alaska Statute 13.52.010 provides that anyone may fill out an advance health care directive, but it does not provide a system to store and access these important documents.

Medical emergencies can occur at any place at any time. A person may be on vacation and not have a copy of their advance health care directive with them, or family members may simply be too distraught to remember or find a copy of the directive. In cases like these, medical professionals and family members need an effective tool to locate and access information on a patient's health care wishes.

House Bill 71 would establish a voluntary registry of advance health care directives for the State of Alaska. The registry would be strictly voluntary—no person would ever be required to submit his or her advance health care directive to the registry, and directives not filed with the registry would remain every bit as valid. Other features of the registry include:

- Hospitals and similar health care facilities would have 24-hour online access to their patients' records in case of emergencies.
- A person or his or her agent, guardian or surrogate would be able to request copies of their directive.
- The Department of Health and Social Services would be able to charge modest fees to pay for administrative costs of the registry.
- All advance health care directives in the registry would be confidential.
- An individual could update or remove his or her advance health care directive from the registry at any time.

A number of other states already use an advance health care directive registry to ensure that patients' wishes are available to guide the decisions of doctors and loved ones during medical emergencies.

Please join me in helping to ensure that Alaskans' medical decisions are respected by supporting this legislation.

State Capitol, Juneau, Alaska 99801 · (907) 465-4919 · Fax: (907) 465-2137
Rep.Lindsey.Holmes@legis.state.ak.us

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM January 23, 2009

SUBJECT: Sectional summary of HB 71, a bill relating to a registry for advance health care directives (Work Order No. 26-LS0289\E)

TO: Representative Lindsey Holmes
Attn: James Waldo

FROM: Theresa Bannister
Legislative Counsel

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

Section 1. Protects a health care facility from civil or criminal liability for two listed types of actions related to the directive registry.

Section 2. Allows a hospital to make a reasonable search of the directive registry when the hospital refers an individual at or near death to a procurement organization.

Section 3. Makes a procurement organization's access to the department's records subject to the new directive registry provisions.

Section 4. This is the main authorizing section for the directive registry. Directs the department to maintain a registry for advance health care directives. Allows individuals to place their directives in the registry. Makes the registry confidential and indicates when the department may release information from the registry. Directs the department to make the registry accessible for viewing on the Internet 24 hours a day to a health care facility for the facility's patients. States that the department is not required to review a directive for validity or compliance with law before placing it in the registry. Directs the department to remove a directive from the registry and return it to the maker when requested by the maker or an agent, guardian, or surrogate of the maker. Requires the department to review the registry every five years and to remove directives of individuals deceased for six months or more. Provides that not filing a directive does not affect the directive's validity. Provides that failing to tell the department about a revocation does not affect the revocation. Allows the department to charge certain fees to implement the section. Directs the department to adopt regulations about identification procedures and requirements to protect the security of the registry.

If I may be of further assistance, please advise.

TLB:ljw
09-040.ljw

Representative Lindsey Holmes

HB 71 Version C—Summary of Changes

To sum up:

1) We removed two sections that allowed access to department records by outside agencies. This was at department request.
2) We clarified that the registry would consist only of names and scanned copies of the directives.
3) We clarified that only an individual can ask the Department to remove their own directive from the registry.
4) Instead of mandating how and when the Department remove directives of deceased individuals, we have changed it to allow the Department to establish regulations for this.
5) We have exempted the Department from liability in operating the registry.

The long description of corresponding changes:

1) Removes sections 2 & 3 of the original bill. Those sections had allowances for procurement organizations to search departmental records for organ donor information. The department requested their removal.

Section 4 of the original bill, section 2 in the CS has had these four changes made.

2) First, 13.52.310(a) has been changed to clarify precisely what the registry will consist of—a list of the names of the individuals with directives on file and scanned copies of those directives.

3) Second, 13.52.310(f) was changed to tighten requirements for removing a directive from the registry. The original bill allowed an individual or their guardian, agent or surrogate to remove a directive from the registry. The CS requires that only an individual can request a directive be removed and that such a request must be in writing.

4) 13.52.310(g) of the original bill has been moved to 13.52.310(j) of the CS and it has been changed to give the department greater flexibility in establishing criteria and a schedule for removing old directives from the registry.

5) 13.52.310(k) has been added. It exempts the department from liability in the operation of the registry.

State Capitol, Juneau, Alaska 99801 · (907) 465-4919 · Fax: (907) 465-2137
Rep.Lindsey.Holmes@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **CSHB071(JUD)**
() Publish Date:

Identifier (file name): HB071CS(JUD)-DHSS-IPEMS-2-15-10
Dept. Affected: Health & Social Services

Title: Advance Health Care Directives Registry
RDU: Public Health
Component: Injury Prevention & Emergency Medical Services

Sponsor: Holmes, Dahlstrom, Millett

Requester: Judiciary
Component Number: 2876

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services	111.4		111.4	83.5	55.7	55.7	55.7
Travel	10.0		5.0	5.0	4.0	4.0	4.0
Contractual	56.0		15.0	15.0	15.0	15.0	15.0
Supplies	4.0		2.0	2.0	1.0	1.0	1.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**181.4**	**0.0**	**133.4**	**105.5**	**75.7**	**75.7**	**75.7**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	181.4	0.0	133.4	105.5	75.7	75.7	75.7
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**181.4**	**0.0**	**133.4**	**105.5**	**75.7**	**75.7**	**75.7**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time	1.0		1.0	0.75	0.5	0.5	0.5
Part-time							
Temporary							

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

The bill is to construct an advance health care directive system by creating a central registry for access by health care facilities, hospitals, and individuals. Modeled after the State of Washington's *Living Will Registry* system, Alaska will contract with a national registry to maintain the data securely with 24/7 access. There will be no cost to the individual to register. Start up contractual costs of $56.0 include training, software, licensing, and system configuration. Ongoing, there is an annual license of $15.0 based on less than 749 participants. Actual costs vary slightly depending on the number of participants. One FTE, a Public Health Specialist II (R20, step C) at $111.4 will be necessary to establish a secure system, respond to toll-free hotline, support users with technical assistance, and travel to provide community outreach. Additional costs include office supplies and promotional materials. By the 3rd year, the program will be fully operational and outreach efforts can be scaled back to 0.75 FTE and level off at 0.5 FTE thereafter.

Prepared by: Ward B. Hurlburt, M.D., MPH, Chief Medical Officer/Director
Phone 269-6680
Division: Public Health
Date/Time 12/8/09 1:00 PM

Approved by: Alison Elgee, Assistant Commissioner
Date 2/15/2010
DHSS Finance & Management Services

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 71(HSS)
(H) Publish Date: 4/15/09

Identifier (file name): HB071-DHSS-IPEMS-02-22-09
Dept. Affected: Health & Social Services
Title: Advance Health Care Directives Registry
RDU: Public Health
Component: Injury Prevention and Emergency Medical Services
Sponsor: Holmes
Requester: House HSS
Component Number: 2876

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	156.1		156.1	156.1	156.1	156.1	156.1
Travel	5.0		20.0	5.0	5.0	5.0	5.0
Contractual	50.0		50.0	50.0	50.0	50.0	50.0
Supplies	1.5		1.5	1.5	1.5	1.5	1.5
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**212.6**	**0.0**	**227.6**	**212.6**	**212.6**	**212.6**	**212.6**
CAPITAL EXPENDITURES	**300.0**						
CHANGE IN REVENUES (							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	512.6		227.6	212.6	212.6	212.6	212.6
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**512.6**	**0.0**	**227.6**	**212.6**	**212.6**	**212.6**	**212.6**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time	**2.0**		2	2	2	2	2
Part-time							
Temporary							

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

The bill is intended to more effectively honor and implement an individual's advance health care directive by creating a central registry for access by health care providers and procurement organizations. Information Technology Business Applications staff estimate that development of the registry, either by the state or a third party vendor, will require an estimated capital expenditure of $250K with an additional $50K to develop an interface with the Bureau of Vital Statistics. Two FTE personnel will be required to enter the documents into the registry and provide access to the information: Public Health Specialist II (R20, step C) at $100K and an Administrative Clerk III (R10, step C)at $56.1K. Work stations, lease, phone service, etc. is estimated to be $19K for the 2 employees . An additional contractual expenditure is system maintenance (10%), or $25K per year. Training expenditures for hospital and other personnel to access the registry is estimated at $6K per year, with a one-time travel increase in FY2011 to train hospital personnel. Supplies are estimated at $1.5K per year. The fund source amount includes the total anticipated operating and capital expenditures.

Prepared by: Beverly Wooley, Director
Phone 465-4079
Division: Public Health
Date/Time 2/2/09 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner
Date 2/22/2009
DHSS Finance Management Services

(Revised 9/10/2008 OMB)

C

West's Alaska Statutes Annotated Currentness
Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts
Chapter 52. Health Care Decisions Act (Refs & Annos)
§ 13.52.010. Advance health care directives

(a) Except as provided in AS 13.52.173, an adult may give an individual instruction. Except as provided in AS 13.52.177, the instruction may be oral or written. The instruction may be limited to take effect only if a specified condition arises.

(b) An adult may execute a durable power of attorney for health care, which may authorize the agent to make any health care decision the principal could have made while having capacity. The power remains in effect notwithstanding the principal's later incapacity and may include individual instructions. The power must be in writing, contain the date of its execution, be signed by the principal, and be witnessed by one of the following methods:

(1) signed by at least two individuals who are personally known by the principal, each of whom witnessed either the signing of the instrument by the principal or the principal's acknowledgment of the signature of the instrument; or

(2) acknowledged before a notary public at a place in this state.

(c) Unless related to the principal by blood, marriage, or adoption, an agent under a durable power of attorney for health care may not be an owner, operator, or employee of the health care institution at which the principal is receiving care.

(d) A witness for a durable power of attorney for health care may not be

(1) a health care provider employed at the health care institution or health care facility where the principal is receiving health care;

(2) an employee of the health care provider providing health care to the principal, or of the health care institution or health care facility where the principal is receiving health care; or

(3) the agent.

(e) At least one of the individuals used as a witness for a durable power of attorney for health care shall be someone who is not

(1) related to the principal by blood, marriage, or adoption; or

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(2) entitled to a portion of the estate of the principal upon the principal's death under a will or codicil of the principal existing at the time of execution of the durable power of attorney for health care or by operation of law then existing.

(f) Unless otherwise specified in the durable power of attorney for health care, the authority of an agent becomes effective only upon a determination that the principal lacks capacity and ceases to be effective upon a determination that the principal has recovered capacity.

(g) Unless otherwise specified in a written advance health care directive, a determination that a principal lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, shall be made by

(1) the primary physician, except in the case of mental illness;

(2) a court in the case of mental illness, unless the situation is an emergency; or

(3) the primary physician or another health care provider in the case of mental illness where the situation is an emergency.

(h) An agent shall make a health care decision in accordance with the principal's individual instructions, if any, and other wishes to the extent known to the agent. Otherwise, the agent shall make the decision in accordance with the agent's determination of the principal's best interest. In determining the principal's best interest, the agent shall consider the principal's personal values to the extent known to the agent.

(i) A health care decision made by an agent for a principal is effective without judicial approval.

(j) A written advance health care directive may include the individual's nomination of a guardian of the individual.

(k) Except as provided in AS 13.52.247(a), an advance health care directive, including an advance health care directive that is made in compliance with the laws of another state, is valid for purposes of this chapter if it complies with this chapter, regardless of where or when it was executed or communicated.

(*l*) Notwithstanding the sample form provided under AS 13.52.300, an individual instruction that would be valid by itself under this chapter is valid even if the individual instruction is contained in a writing that also contains a durable power of attorney for health care and the durable power of attorney does not meet the witnessing or other requirements of this chapter.

CREDIT(S)

SLA 2004, ch. 83, § 3; SLA 2006, ch. 103, §§ 1, 2, eff. Aug. 5, 2006. Amended by SLA 2008, ch. 100, §§ 10, 11, eff. Sept. 15, 2008.

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Chapter 52. Health Care Decisions Act (Refs & Annos)
→ § 13.52.020. Revocation of advance health care directive

(a) Except in the case of mental illness under (c) of this section, a principal may revoke the designation of an agent only by a signed writing or by personally informing the supervising health care provider.

(b) Except in the case of mental illness under (c) of this section and except as provided by AS 13.52.183, a principal may revoke all or part of an advance health care directive, other than the designation of an agent, at any time and in any manner that communicates an intent to revoke.

(c) In the case of mental illness, an advance health care directive may be revoked in whole or in part at any time by the principal if the principal does not lack capacity and is competent. A revocation is effective when a competent principal with capacity communicates the revocation to a physician or other health care provider. The physician or other health care provider shall note the revocation on the principal's medical record. In the case of mental illness, the authority of a named agent and an alternative agent named in the advance health care directive continues in effect as long as the advance health care directive appointing the agent is in effect or until the agent has withdrawn. For the purposes of this subsection, a principal is not considered competent when

(1) it is the opinion of the court in a guardianship proceeding under AS 13.26, the opinion of two physicians, at least one of whom is a psychiatrist, or the opinion of a physician and a professional mental health clinician, that the principal is not competent; or

(2) a court in a hearing under AS 47.30.735, 47.30.750, or 47.30.770 determines that the principal is gravely disabled; in this paragraph, "gravely disabled" has the meaning given in AS 47.30.915(7)(B).

(d) A health care provider, agent, guardian, or surrogate who is informed of a revocation shall promptly communicate the fact of the revocation to the supervising health care provider and to any health care institution at which the patient is receiving care.

(e) A decree of annulment, divorce, dissolution of marriage, or legal separation revokes a previous designation of a spouse as agent unless otherwise specified in the decree or in a durable power of attorney for health care.

(f) An advance health care directive that conflicts with an earlier advance health care directive revokes the earlier directive to the extent of the conflict.

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SLA 2004, ch. 83, § 3; SLA 2006, ch. 103, § 3, eff. Aug. 5, 2006. Amended by SLA 2008, ch. 100, § 12, eff. Sept. 15, 2008.

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Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts
Chapter 52. Health Care Decisions Act (Refs & Annos)
§ 13.52.025. Rescission of withdrawal by agent

A person who has withdrawn as an agent may rescind the withdrawal by executing an acceptance after the date of the withdrawal. A person who rescinds a withdrawal shall give notice to the principal if the principal has capacity or to the principal's health care provider if the principal does not have capacity.

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SLA 2004, ch. 83, § 3.

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Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts
Chapter 52. Health Care Decisions Act (Refs & Annos)
§ 13.52.030. Surrogates

(a) Except in the case of mental health treatment and except as provided by AS 13.52.173 and 13.52.193, a surrogate may make a health care decision for a patient who is an adult if an agent or guardian has not been appointed or the agent or guardian is not reasonably available, and if the patient has been determined by the primary physician to lack capacity.

(b) Subject to AS 13.52.055(b), a surrogate may make a decision regarding mental health treatment for a patient who is an adult if

(1) an agent or guardian has not been appointed or the agent or guardian is not reasonably available;

(2) the mental health treatment is needed on an emergency basis; and

(3) the patient has been determined to lack capacity by

(A) two physicians, one of whom is a psychiatrist; or

(B) a physician and a professional mental health clinician.

(c) Except as provided for anatomical gifts in AS 13.52.173, an adult may designate an individual to act as surrogate for that adult by personally informing the supervising health care provider. Except as provided by AS 13.52.173 or 13.52.193, in the absence of a designation, or if the designee is not reasonably available, a member of the following classes of the patient's family who is reasonably available, in descending order of priority, may act as surrogate:

(1) the spouse, unless legally separated;

(2) an adult child;

(3) a parent; or

(4) an adult sibling.

(d) Except as provided by (*f*) of this section or AS 13.52.173 or 13. 52.193, if none of the individuals eligible to act as surrogate under (c) of this section is reasonably available, an adult who has exhibited special care and concern for the patient, who is familiar with the patient's personal values, and who is reasonably available may act as surrogate.

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Title 13. Decedents' Estates, Guardianships, Transfers, and Trusts
Chapter 52. Health Care Decisions Act (Refs & Annos)
→ **§ 13.52.040. Decisions by guardian**

(a) Subject to AS 13.52.183, 13.52.193, and 13.52.203, a guardian shall comply with the ward's individual instructions and may not revoke a ward's advance health care directive executed before the ward's incapacity unless a court expressly authorizes the revocation.

(b) Unless there is a court order to the contrary, a health care decision of an agent takes precedence over that of a guardian.

(c) Except as provided in (a) of this section, a health care decision made by a guardian for the ward is effective without judicial approval.

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SLA 2004, ch. 83, § 3. Amended by SLA 2008, ch. 100, § 16, eff. Sept. 15, 2008.

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Chapter 52. Health Care Decisions Act (Refs & Annos)
→ **§ 13.52.045. Withholding or withdrawing of life-sustaining procedures**

Notwithstanding any other provision of this chapter, an agent or a surrogate may determine that life-sustaining procedures may be withheld or withdrawn from a patient with a qualifying condition when there is

(1) a durable power of attorney for health care or other writing that clearly expresses the patient's intent that the procedures be withheld or withdrawn; or

(2) no durable power of attorney for health care or other writing that clearly expresses the patient's intent to the contrary, the patient has a qualifying condition as determined under AS 13.52.160, and withholding or withdrawing the procedures would be consistent with the patient's best interest.

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Chapter 52. Health Care Decisions Act (Refs & Annos)
§ 13.52.050. Decisions for exceptional procedures

Unless there is a durable power of attorney for health care or another writing clearly expressing an individual's intent to the contrary, an agent or surrogate may not consent on behalf of a patient to an abortion, sterilization, psychosurgery, or removal of bodily organs except when the abortion, sterilization, psychosurgery, or removal of bodily organs is necessary to preserve the life of the patient or to prevent serious impairment of the health of the patient.

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Chapter 52. Health Care Decisions Act (Refs & Annos)
§ 13.52.055. Pregnancy

(a) Before implementing a health care decision for a woman of childbearing age that would affect a fetus if present, the supervising health care provider shall take reasonable steps to determine whether the woman is pregnant.

(b) Notwithstanding any other provision of this chapter to the contrary, an advance health care directive by a patient or a decision by the person then authorized to make health care decisions for a patient may not be given effect if

(1) the patient is a woman who is pregnant and lacks capacity;

(2) the directive or decision is to withhold or withdraw life-sustaining procedures;

(3) the withholding or withdrawal of the life-sustaining procedures would, in reasonable medical judgment, be likely to result in the death of the patient; and

(4) it is probable that the fetus could develop to the point of live birth if the life-sustaining procedures were provided.

(c) This section does not apply to emergency services in the field.

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Chapter 52. Health Care Decisions Act (Refs & Annos)
§ 13.52.060. Obligations of health care providers, institutions, and facilities

(a) Before implementing a health care decision made for a patient, a supervising health care provider, if possible, shall promptly communicate to the patient the decision made and the identity of the person making the decision.

(b) A supervising health care provider who knows of the existence of an advance health care directive, a revocation of an advance health care directive, or a designation or disqualification of a surrogate shall promptly record its existence in the patient's health care record, shall request a copy if it is in writing, and shall arrange for its maintenance in the health care record if a copy is furnished.

(c) A supervising health care provider who makes or is informed of a determination that a patient lacks or has recovered capacity, or that another condition exists that affects an individual instruction or the authority of an agent, a guardian, or a surrogate, shall promptly record the determination in the patient's health care record and communicate the determination to the patient, if possible, and to any person then authorized to make health care decisions for the patient.

(d) Except as provided in (e), (f), and (i) of this section and by AS 13.52.253, a health care provider, health care institution, or health care facility providing care to a patient shall comply with

(1) an individual instruction of the patient and with a reasonable interpretation of that instruction made by a person then authorized to make health care decisions for the patient; and

(2) a health care decision for the patient made by a person then authorized to make health care decisions for the patient to the same extent as if the decision had been made by the patient while having capacity.

(e) A health care provider may decline to comply with an individual instruction or a health care decision for reasons of conscience, except for a do not resuscitate order. A health care institution or health care facility may decline to comply with an individual instruction or health care decision if the instruction or decision is contrary to a policy of the institution or facility that is expressly based on reasons of conscience and if the policy was timely communicated to the patient or to a person then authorized to make health care decisions for the patient.

(f) A health care provider, health care institution, or health care facility may decline to comply with an individual instruction or a health care decision that requires medically ineffective health care or health care contrary to generally accepted health care standards applicable to the provider, institution, or facility. In this subsection, "medically ineffective health care" means health care that according to reasonable medical judgment cannot cure

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the patient's illness, cannot diminish its progressive course, and cannot effectively alleviate severe discomfort and distress.

(g) A health care provider, health care institution, or health care facility that declines to comply with an individual instruction or a health care decision shall

(1) promptly inform the patient, if possible, and any person then authorized to make health care decisions for the patient that the provider, institution, or facility has declined to comply with the instruction or decision;

(2) provide continuing care to the patient until a transfer is effected; and

(3) unless the patient or person then authorized to make health care decisions for the patient refuses assistance, immediately cooperate and comply with a decision by the patient or a person then authorized to make health care decisions for the patient to transfer the patient to another health care institution, to another health care facility, to the patient's home, or to another location chosen by the patient or by the person then authorized to make health care decisions for the patient.

(h) Except as provided for civil commitments under AS 47.30.817, a health care provider, health care institution, or health care facility may not require or prohibit the execution or revocation of an advance health care directive as a condition for providing health care.

(i) Notwithstanding the exception in (e) of this section for do not resuscitate orders, a health care provider may perform cardiopulmonary resuscitation or other resuscitative measures on a patient even if there is a do not resuscitate order for the patient if the condition requiring cardiopulmonary resuscitation or other resuscitative measures is precipitated by complications arising out of medical services being provided by the health care provider to the patient.

(j) The provisions of (i) of this section do not apply when a health care provider performs emergency medical services on a patient in the field, unless an online physician orders the health care provider to perform cardiopulmonary resuscitation or other resuscitative measures; in this subsection,

(1) "health care provider" does not include a physician;

(2) "in the field" does not include in a health care facility, health care institution, hospital, or mental health facility;

(3) "online physician" means a physician who is immediately available in person or by radio or telephone, when medically appropriate, for communication of medical direction to health care providers.

CREDIT(S)

SLA 2004, ch. 83, § 3; SLA 2005, ch. 44, § 3; SLA 2006, ch. 103, §§ 4, 5, eff. Aug. 5, 2006. Amended by SLA 2008, ch. 100, § 17, eff. Sept. 15, 2008.

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Chapter 52. Health Care Decisions Act (Refs & Annos)
→ **§ 13.52.300. Optional form**

The following sample form may be used to create an advance health care directive. The other sections of this chapter govern the effect of this or any other writing used to create an advance health care directive. This form may be duplicated. This form may be modified to suit the needs of the person, or a different form that complies with this chapter may be used, including the mandatory witnessing requirements:

ADVANCE HEALTH CARE DIRECTIVE

Explanation

You have the right to give instructions about your own health care to the extent allowed by law. You also have the right to name someone else to make health care decisions for you to the extent allowed by law. This form lets you do either or both of these things. It also lets you express your wishes regarding the designation of your health care provider. If you use this form, you may complete or modify all or any part of it. You are free to use a different form if the form complies with the requirements of AS 13.52.

Part 1 of this form is a durable power of attorney for health care. A "durable power of attorney for health care" means the designation of an agent to make health care decisions for you. Part 1 lets you name another individual as an agent to make health care decisions for you if you do not have the capacity to make your own decisions or if you want someone else to make those decisions for you now even though you still have the capacity to make those decisions. You may name an alternate agent to act for you if your first choice is not willing, able, or reasonably available to make decisions for you. Unless related to you, your agent may not be an owner, operator, or employee of a health care institution where you are receiving care.

Unless the form you sign limits the authority of your agent, your agent may make all health care decisions for you that you could legally make for yourself. This form has a place for you to limit the authority of your agent. You do not have to limit the authority of your agent if you wish to rely on your agent for all health care decisions that may have to be made. If you choose not to limit the authority of your agent, your agent will have the right, to the extent allowed by law, to

(a) consent or refuse consent to any care, treatment, service, or procedure to maintain, diagnose, or otherwise affect a physical or mental condition, including the administration or discontinuation of psychotropic medication;

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(b) select or discharge health care providers and institutions;

(c) approve or disapprove proposed diagnostic tests, surgical procedures, and programs of medication;

(d) direct the provision, withholding, or withdrawal of artificial nutrition and hydration and all other forms of health care; and

(e) make an anatomical gift following your death.

Part 2 of this form lets you give specific instructions for any aspect of your health care to the extent allowed by law, except you may not authorize mercy killing, assisted suicide, or euthanasia. Choices are provided for you to express your wishes regarding the provision, withholding, or withdrawal of treatment to keep you alive, including the provision of artificial nutrition and hydration, as well as the provision of pain relief medication. Space is provided for you to add to the choices you have made or for you to write out any additional wishes.

Part 3 of this form lets you express an intention to make an anatomical gift following your death.

Part 4 of this form lets you make decisions in advance about certain types of mental health treatment.

Part 5 of this form lets you designate a physician to have primary responsibility for your health care.

After completing this form, sign and date the form at the end and have the form witnessed by one of the two alternative methods listed below. Give a copy of the signed and completed form to your physician, to any other health care providers you may have, to any health care institution at which you are receiving care, and to any health care agents you have named. You should talk to the person you have named as your agent to make sure that the person understands your wishes and is willing to take the responsibility.

You have the right to revoke this advance health care directive or replace this form at any time, except that you may not revoke this declaration when you are determined not to be competent by a court, by two physicians, at least one of whom shall be a psychiatrist, or by both a physician and a professional mental health clinician. In this advance health care directive, "competent" means that you have the capacity

(1) to assimilate relevant facts and to appreciate and understand your situation with regard to those facts; and

(2) to participate in treatment decisions by means of a rational thought process.

PART 1

DURABLE POWER OF ATTORNEY FOR

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_____

(address) (city) (state) (zip code)

_____

(home telephone) (work telephone)

(2) AGENT'S AUTHORITY. My agent is authorized and directed to follow my individual instructions and my other wishes to the extent known to the agent in making all health care decisions for me. If these are not known, my agent is authorized to make these decisions in accordance with my best interest, including decisions to provide, withhold, or withdraw artificial hydration and nutrition and other forms of health care to keep me alive, except as I state here:

_____

_____

_____

(Add additional sheets if needed.)

Under this authority, "best interest" means that the benefits to you resulting from a treatment outweigh the burdens to you resulting from that treatment after assessing

(A) the effect of the treatment on your physical, emotional, and cognitive functions;

(B) the degree of physical pain or discomfort caused to you by the treatment or the withholding or withdrawal of the treatment;

(C) the degree to which your medical condition, the treatment, or the withholding or withdrawal of treatment, results in a severe and continuing impairment;

(D) the effect of the treatment on your life expectancy;

(E) your prognosis for recovery, with and without the treatment;

(F) the risks, side effects, and benefits of the treatment or the withholding of treatment; and

(G) your religious beliefs and basic values, to the extent that these may assist in determining benefits and burdens.

(3) WHEN AGENT'S AUTHORITY BECOMES EFFECTIVE. Except in the case of mental illness, my

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agent's authority becomes effective when my primary physician determines that I am unable to make my own health care decisions unless I mark the following box. In the case of mental illness, unless I mark the following box, my agent's authority becomes effective when a court determines I am unable to make my own decisions, or, in an emergency, if my primary physician or another health care provider determines I am unable to make my own decisions. If I mark this box [ ], my agent's authority to make health care decisions for me takes effect immediately.

(4) AGENT'S OBLIGATION. My agent shall make health care decisions for me in accordance with this durable power of attorney for health care, any instructions I give in Part 2 of this form, and my other wishes to the extent known to my agent. To the extent my wishes are unknown, my agent shall make health care decisions for me in accordance with what my agent determines to be in my best interest. In determining my best interest, my agent shall consider my personal values to the extent known to my agent.

(5) NOMINATION OF GUARDIAN. If a guardian of my person needs to be appointed for me by a court, I nominate the agent designated in this form. If that agent is not willing, able, or reasonably available to act as guardian, I nominate the alternate agents whom I have named under (1) above, in the order designated.

PART 2

INSTRUCTIONS FOR HEALTH CARE

If you are satisfied to allow your agent to determine what is best for you in making health care decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want. There is a state protocol that governs the use of do not resuscitate orders by physicians and other health care providers. You may obtain a copy of the protocol from the Alaska Department of Health and Social Services. A "do not resuscitate order" means a directive from a licensed physician that emergency cardiopulmonary resuscitation should not be administered to you.

(6) END-OF-LIFE DECISIONS. Except to the extent prohibited by law, I direct that my health care providers and others involved in my care provide, withhold, or withdraw treatment in accordance with the choice I have marked below: (Check only one box.)

[ ](A) Choice To Prolong Life

I want my life to be prolonged as long as possible within the limits of generally accepted health care standards; OR

[ ](B) Choice Not To Prolong Life

I want comfort care only and I do not want my life to be prolonged with medical treatment if, in the judgment of my physician, I have (check all choices that represent your wishes)

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[ ](i) a condition of permanent unconsciousness: a condition that, to a high degree of medical certainty, will last permanently without improvement; in which, to a high degree of medical certainty, thought, sensation, purposeful action, social interaction, and awareness of myself and the environment are absent; and for which, to a high degree of medical certainty, initiating or continuing life-sustaining procedures for me, in light of my medical outcome, will provide only minimal medical benefit for me; or

[ ](ii) a terminal condition: an incurable or irreversible illness or injury that without the administration of life-sustaining procedures will result in my death in a short period of time, for which there is no reasonable prospect of cure or recovery, that imposes severe pain or otherwise imposes an inhumane burden on me, and for which, in light of my medical condition, initiating or continuing life-sustaining procedures will provide only minimal medical benefit;

[ ] Additional instructions: _____

_____

(C) Artificial Nutrition and Hydration. If I am unable to safely take nutrition, fluids, or nutrition and fluids (check your choices or write your instructions),

[ ]I wish to receive artificial nutrition and hydration indefinitely;

[ ]I wish to receive artificial nutrition and hydration indefinitely, unless it clearly increases my suffering and is no longer in my best interest;

[ ]I wish to receive artificial nutrition and hydration on a limited trial basis to see if I can improve;

[ ]In accordance with my choices in (6)(B) above, I do not wish to receive artificial nutrition and hydration.

[ ]Other instructions:_____

_____

(D) Relief from Pain.

[ ]I direct that adequate treatment be provided at all times for the sole purpose of the alleviation of pain or discomfort; or

[ ]I give these instructions:

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_____

_____

(E) Should I become unconscious and I am pregnant, I direct that _____

_____

_____

(7) OTHER WISHES. (If you do not agree with any of the optional choices above and wish to write your own, or if you wish to add to the instructions you have given above, you may do so here.) I direct that

_____

_____

Conditions or limitations: _____

_____

(Add additional sheets if needed.)

PART 3

ANATOMICAL GIFT AT DEATH

(OPTIONAL)

If you are satisfied to allow your agent to determine whether to make an anatomical gift at your death, you do not need to fill out this part of the form.

(8) Upon my death: (mark applicable box)

[ ](A) I give any needed organs, tissues, or other body parts, OR

[ ](B) I give the following organs, tissues, or other body parts only _____

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[ ](C) My gift is for the following purposes (mark any of the following you want):

[ ](i) transplant;

[ ](ii) therapy;

[ ](iii) research;

[ ](iv) education.

[ ](D) I refuse to make an anatomical gift.

PART 4

MENTAL HEALTH TREATMENT

This part of the declaration allows you to make decisions in advance about mental health treatment. The instructions that you include in this declaration will be followed only if a court, two physicians that include a psychiatrist, or a physician and a professional mental health clinician believe that you are not competent and cannot make treatment decisions. Otherwise, you will be considered to be competent and to have the capacity to give or withhold consent for the treatments.

If you are satisfied to allow your agent to determine what is best for you in making these mental health decisions, you do not need to fill out this part of the form. If you do fill out this part of the form, you may strike any wording you do not want.

(9) PSYCHOTROPIC MEDICATIONS. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding psychotropic medications are as follows:

_____ I consent to the administration of the following medications: _____

_____ I do not consent to the administration of the following medications: _____

Conditions or limitations: _____

_____

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(10) ELECTROCONVULSIVE TREATMENT. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding electroconvulsive treatment are as follows:

_____ I consent to the administration of electroconvulsive treatment.

_____ I do not consent to the administration of electroconvulsive treatment.

Conditions or limitations: _____

_____

(11) ADMISSION TO AND RETENTION IN FACILITY. If I do not have the capacity to give or withhold informed consent for mental health treatment, my wishes regarding admission to and retention in a mental health facility for mental health treatment are as follows:

_____ I consent to being admitted to a mental health facility for mental health treatment for up to _____ days. (The number of days not to exceed 17.)

_____ I do not consent to being admitted to a mental health facility for mental health treatment.

Conditions or limitations: _____

_____

OTHER WISHES OR INSTRUCTIONS

_____

_____

_____

Conditions or limitations: _____

_____

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PART 5

PRIMARY PHYSICIAN

(OPTIONAL)

(12) I designate the following physician as my primary physician:

_____

(name of physician)

_____

(address) (city) (state) (zip code)

_____

(telephone)

OPTIONAL: If the physician I have designated above is not willing, able, or reasonably available to act as my primary physician, I designate the following physician as my primary physician:

_____

(name of physician)

_____

(address) (city) (state) (zip code)

_____

(telephone)

(13) EFFECT OF COPY. A copy of this form has the same effect as the original.

(14) SIGNATURES. Sign and date the form here:

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(date) (sign your name)

(print your name)

(address) (city) (state) (zip code)

(15) WITNESSES. This advance care health directive will not be valid for making health care decisions unless it is

(A) signed by two qualified adult witnesses who are personally known to you and who are present when you sign or acknowledge your signature; the witnesses may not be a health care provider employed at the health care institution or health care facility where you are receiving health care, an employee of the health care provider who is providing health care to you, an employee of the health care institution or health care facility where you are receiving health care, or the person appointed as your agent by this document; at least one of the two witnesses may not be related to you by blood, marriage, or adoption or entitled to a portion of your estate upon your death under your will or codicil; or

(B) acknowledged before a notary public in the state.

ALTERNATIVE NO. 1

Witness Who is Not Related to or a Devisee of the Principal

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney for health care in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, and that I am not

(1) a health care provider employed at the health care institution or health care facility where the principal is receiving health care;

(2) an employee of the health care provider providing health care to the principal;

(3) an employee of the health care institution or health care facility where the principal is receiving health care;

(4) the person appointed as agent by this document;

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(5) related to the principal by blood, marriage, or adoption; or

(6) entitled to a portion of the principal's estate upon the principal's death under a will or codicil.

_____

(date) (signature of witness)

_____

(printed name of witness)

_____

(address) (city) (state) (zip code)

Witness Who May be Related to or a Devisee of the Principal

I swear under penalty of perjury under AS 11.56.200 that the principal is personally known to me, that the principal signed or acknowledged this durable power of attorney for health care in my presence, that the principal appears to be of sound mind and under no duress, fraud, or undue influence, and that I am not

(1) a health care provider employed at the health care institution or health care facility where the principal is receiving health care;

(2) an employee of the health care provider who is providing health care to the principal;

(3) an employee of the health care institution or health care facility where the principal is receiving health care; or

(4) the person appointed as agent by this document.

_____

(date) (signature of witness)

_____

(printed name of witness)

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(address) (city) (state) (zip code)

ALTERNATIVE NO. 2

State of Alaska

_____ Judicial District

On this ___ day of _____, in the year _____, before me, _____ (insert name of notary public) appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to this instrument, and acknowledged that the person executed it.

Notary Seal

_____

(signature of notary public)

CREDIT(S)

SLA 2004, ch. 83, § 3.

Current through the 2008 Second Regular and Fourth Special Session of the 25th Legislature

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END OF DOCUMENT

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DRAFT

26G-1
(1/22/2009)
(1:46 pm)

AMENDMENT

OFFERED IN THE HOUSE HEALTH AND SOCIAL SERVICES COMMITTEE

BY _____

TO: HB 71

Page 3, following line 14:

Insert:

"(k) The department and its employees are not liable for civil damages as a result of an act or omission in the establishment or maintenance of the registry."

Page 3, line 15:

Delete "(k)"

Insert "(*l*)"

MAR-28-2009 SAT 09:30 AM LBSA and LEGS/RECS JUNO FAX NO. 907 465 2520 P. 02

1430

AARP Alaska
3601 C Street
Suite 1420
Anchorage, AK 99503

T 1-866-227-7447
F 907-341-2270
TTY 1-877-434-7598
www.aarp.org/ak

March 31, 2009

The Honorable Wes Keller, Co-Chair
House Health and Social Services Committee
Alaska Capitol, Room 13
Juneau, AK 99801-1182

The Honorable Bob Herron, Co-Chair
House Health and Social Services Committee
Alaska Capitol, Room 415
Juneau, AK 99801-1182

RE: HB 71 (Holmes, Dahlstom, Millett, Kawasaki)—Support

Dear Co-Chairs Keller and Herron:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Health and Social Services Committee to support HB 71, authored by your Committee colleague Representative Lindsey Holmes and Representatives Nancy Dahlstrom, Charisse Millett, and Scott Kawasaki.

AARP encourages our 97,000 members in Alaska to prepare advance health care directives and to discuss their wishes with their family.

Unfortunately, all too often a serious illness or accident may strike when an individual does not have their directives on their person. It is also not uncommon for someone to arrive at a hospital and be unable to speak and express their wishes. This often results in a health care provider being unable to discern or to follow the preferences of a patient.

HB 71 would help alleviate this situation. HB 71 would establish a voluntary registry for health care directives which could be accessed by health care providers in time of need.

HB 71 offers everything we could ask for:

- Voluntary
- Confidential
- Available on a 24 hour basis
- Inexpensive
- Available for updating if the individual so chooses

Jennie Chin Hansen, President
William D. Novelli, Chief Executive Officer

If passed, AARP Alaska will encourage every one of our members to participate in the registry and to encourage their younger family members to do likewise.

AARP urges an "AYE" vote on HB 71.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

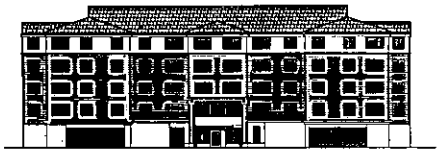
Thank you for your consideration.

Sincerely,

Marie Darlin

Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Representative John Coghill
Representative Bob Lynn
Representative Paul Seaton
Representative Sharon Cissna
Representative Lindsey Holmes
Representative Nancy Dahlstrom
Representative Charisse Millett
Representative Scott Kawasaki



Fireweed Place

Tlingit-Haida Regional Housing Authority
"Housing Designed by Seniors for Seniors"
415 Willoughby Avenue Juneau, Alaska 99801
(907) 586-5000 • Fax (907) 586-5001

My name is Lorilyn Swanson and I live at 3101 Riverwood Drive, Juneau, Alaska.

I have been the Manager of Fireweed Place an independent living senior apartment complex in Juneau for the last 15 years. I also sit on the Juneau Commission on Aging.

I am here today to testify in favor of the State of Alaska establishing and maintaining a registry for Advance Health Care Directives which will hopefully lead to incorporation into the National Health Care Directives Registry.

I support this for several reasons:

- Many of us have Advanced Directives and they are filed away in our home files – yes we know they are there but I ask you how many family members know where it is or how to access the information especially during an emergency. We live in the age of world travel – for those having an Advanced Directive they probably do not carry it with them I know I don't and I image that many of you do not as well. It is said well those persons can wear a medical alert bracelet – this is fine but many do not want to wear these bracelets and if they do it doesn't have the detailed information needed.

- I also see first hand the confusion that can be created by medical emergencies- I manage an apartment building for an aging senior population. A 911 call leads to emergency personnel being called to the building and one of the first questions I am usually asked if it is a life threatening emergency is do you know if this person has an Advanced Directive in place? I may know but unless it is lying on the table or in plain site in the apartment I do not feel comfortable answering that question unless that tenant has specifically instructed me to do so in case of an emergency and then I am still not comfortable with it.

In both of these cases should there be a State Registry with coordination to the National Registry any emergency personnel or institution would have computer access to this information immediately - this is why we all have an Advanced Directive in place so that **it can be acted upon per our own personal wishes and instructions.**

I would like to say, however, that I do not feel there should be a filing fee for registering. I feel that this would be a deterrent for many to not file – especially the low income.

We worked hard to have the Advance Directive recognized in this State and now it is time to make it work by establishing the State Registry.

Thank you

February 24, 2010

HB 88

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us
1292 Sadler Way, Suite 324
Fairbanks, AK 99701

Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Sponsor Statement
HB 88
"An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."

The Alaska Bar Association was established in 1955. The Bar Association's two primary functions are to screen applicants for admission, thereby ensuring all successful applicants are fit to practice law, and to provide discipline by investigating grievances against members of the Bar. The Bar Association also performs a wide variety of other functions including offering classes for continuing legal education, lawyer referral services, and fee arbitration.

The Board consists of twelve members, nine attorneys elected by the active membership of the Bar Association, and three non-attorney, public members appointed by the Governor and confirmed by the Legislature.

The Division of Legislative Audit, in its November 4, 2008, report concluded that "the board, through the Alaska Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a disciplinary process designed to promote licensed individuals to act in a competent and professional manner." The Division of Legislative Audit further recommended that the termination date of the board be extended to June 30, 2017.

The Board of Governors of the Alaska Bar Association is currently scheduled to terminate on June 30, 2009, and would have one year to conclude its administrative operations unless the legislature acts this session. House Bill 88 will extend the termination date for the Board of Governors of the Alaska Bar Association for another eight years.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: **26-LS0410\A**
() Publish Date:

Identifier (file name): House Bill 88
Title: Extend Bar Ass'n Board of Governors
Sponsor: Rep. Jay Ramras
Requester:

Dept. Affected: None
RDU
Component
Component Number

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This legislation would extend the Board of Governors of the Alaska Bar Association to 2017. The board is governed by the Board of Governors of the Alaska Bar. Accordingly, this legislation would not have a fiscal impact on any division of the State of Alaska.

Prepared by: House Judiciary Committee
Division: Legislative
Approved by: House Judiciary Committee Chairman Jay Ramras

Phone 465-4990
Date/Time 2/4/09 at 2:45 p.m.
Date 2/4/2009

(Revised 9/10/2008 OMB)

Jane Pierson

From: Theresa Nangle Obermeyer [tobermeyer@gci.net]
Sent: Friday, January 30, 2009 3:30 PM
To: Jane Pierson
Subject: Response to Alaska Bar Association Audit #41-20057-08

1/6/09

Theresa Nangle Obermeyer, Ph.D.

Alaska Type A Teaching Certificate since 1979

Alaska Real Estate Broker since 1979

3000 Dartmouth Drive

Anchorage, Alaska 99508-4413

(907)278-9455 Phone/Fax/Msg.

http://www.tobermeyer.info

Alaska Legislative Audit #41-20057-08 Alaska Bar Association Sunset June 30, 2009 recommends Alaska Bar Association extension. The Audit is online at http://www.legaudit.state.ak.us/pages/digests/2008/20057dig.htm

****

ALASKA BAR ASSOCIATION SHOULD BE SUNSET JUNE 30, 2009 during Alaska 50th Anniversary of Statehood year for the foreseeable future while Alaska Legislature has time to analyze the two essential functions of admissions and discipline. Alaska has unique circumstances as the only state without a law school or any elected attorney. Legislative Audit #41-20057-08 is a "white wash." Sunset should be reevaluated by 26th Alaska Legislature 2nd Session. Please review the "Summary" of the Audit "four objectives of our report" including the termination date extension of Board of Governors Alaska Bar Association (Board), whether the Board is operating in the public interest, to determine if the Board has exercised appropriate oversight of licensed attorneys, and to provide current status on the recommendations made in the prior report. Board of Governors Alaska Bar Association demonstrate none of these objectives at the present time. Ms. Patricia Davidson, Alaska Legislative Auditor, is unable to write the essence of the lack of accountability of Alaska Bar Association as she is a public employee without legal recourse. Alaska Bar Association Audit is the most important of all the State of Alaska Audits done because if any other Alaska professional has a problem with licensure in his/her profession, the applicant must hire a licensed Alaska attorney in order to appeal. Only Alaska Legislature can create accountability of Alaska Bar Association. Major issues follow:

1. American and Alaskan Jurisprudence

Please specifically review Page 19 of Alaska Bar Association Audit #41-20057-08. Article I Section 3 of the Alaska Bar Association Bylaws sets out the purposes of the Alaska Bar which are:

"1. To cultivate and advance the SCIENCE OF JURISPRUDENCE." (Emphasis added.) "Jurisprudence is the philosophy of the law or science . . . which has for its function to ascertain the principles on which legal rules are based . . . (in order to) produce the greatest advantage to the community" according to Black's Law Dictionary. Please see "In Re Obermeyer II

8/23/00" and In the Matter of the Application of Thomas S. Obermeyer 717 Pacific Reporter 2d 382, 57 American Law Reports 4th 1195 (Alaska 4/18/86), both of which can be found at http://www.state.ak.us/courts "Appellate Courts" "Alaska Case Law Precedent since 1960," Thomson-West page, "By Party Name" "Obermeyer." THESE CASES ARE AMERICAN AND ALASKAN JURISPRUDENCE.

2. Alaska Bar Association Admission by Reciprocity Gives More Rights to Out of State Attorneys than Alaska Attorneys

The current Alaska Bar Rules of Alaska Bar Association give an Alaska law license to any applicant by reciprocity if he/she has been licensed by written Bar Exam in the 33 of 50 reciprocal states, pays $1,500, and gets three letters from clients in the preceding state that the applicant has practiced law there for 5 out of the last 7 years. Alaska Active Out of State attorneys number over 18% of the Total Alaska attorneys or 530 out of 2,938 per Todd Communications Alaska Directory of Attorneys Fall, 2008 Page 2. **July, 2006-June, 2008 per the "Audit" Page 31, 45% of Alaska Bar Association admission has been by reciprocity – most of whom have never set foot on Alaska soil judging by their current addresses.** Why do these out of state applicants want reciprocity here? Obviously, these attorneys are making money off Alaska. Another almost 30% of Alaska In State Active Attorneys work for the Government per Directory Spring, 2008 Page 64.

Alaska Bar Exam, "a test of minimal competency," has an average 63% passage rate July, 2006-June, 2008 per Page 31 of the Audit. Alaska has as high requirements as any state in the U.S. for sitting for this Alaska Bar Exam but presumably has the lowest passage rate of the 50 states of Bar Association applicants, all of whom went to American Bar Association accredited law schools.

If 45% of Alaska Bar admissions currently are by reciprocity to those who overwhelmingly are not Alaska residents, what will the number be if Alaska Legislature goes along with the Audit recommendation and continues Alaska Bar Association without review until June 30, 2017 or eight long years?

3. Current licensure by exam or reciprocity does not assure competence, ethical behavior, protection, or service to the public. Board of Governors Alaska Bar Association (Board) offers no alternatives.

Massachusetts Supreme Judicial Court has allowed a Massachusetts Bar applicant who graduated from an on-line law school owned by testing-prep company, Kaplan, Inc., to sit for Massachusetts Bar Exam. See Ross E. Mitchell vs. Board of Bar Examiners, SJC-10157, September 3, 2008 – November 20, 2008. The applicant was allowed to take and pass the California Bar Exam, a state which allows applicants to sit for this Exam from unaccredited law schools. What does this tell the Alaska public about bar exams? About competency to practice? About ethics? About dealing with clients, peers, and the courts in a timely and courteous way? If the practice of law boils down to one exam, one score on one sheet of paper, does it truly protect the public and inspire confidence, when a legal education was acquired at whatever rate of speed on-line? Mr. Mitchell has made both Alaska's licensure practices and American Bar Association accredited law schools' three years of Socratic Method teaching archaic. At Alaska Statehood 1959 and after, some attorneys and judges obtained Alaska law licenses by clerking for the court without having gone to law school at all. The on-line law degree points out that there are alternatives to practice that Alaska Bar Association is unwilling to visit.

Unlike all the other 49 states, Alaska Bar Association Board of Governors offers no alternative methods of admission like a possible clerkship at a law firm or for a judge, even after the Alaska Bar applicant has faithfully obtained American Bar Association 3 year law school education. Furthermore, the Alaska Bar Rule 2.2(b)(3) disallows admission by reciprocity if applicants have failed Alaska Bar Exam in the last five years even if licensed by written Bar Exam in a reciprocal state. This harms Alaska residents who live and work in Alaska and only highlights the unfairness of reciprocity applicants from 33 states who have never sat for the Alaska Bar Exam simply paying

$1,500 to be licensed here. On point is Ms. Marla Greenstein, who as Executive Director, Alaska Commission of Judicial Conduct since 1982, was admitted by reciprocity in 1997 without having ever taken the Alaska Bar Exam. There are others including Ms. Angela O'Brien, licensed by reciprocity on September 30, 2008, who live in Alaska but have not taken Alaska Bar Exam. Alaskans currently would be fools to take Alaska Bar Exam with our low passage rate by going through our established Alaska Bar Association channels. The shrewd approach is to circumvent Alaska Bar Exam and become licensed in Alaska by reciprocity which is easier. Ms. Greenstein, Ms. O'Brien, and the others only had to have been licensed by written Bar Exam in a state that has reciprocity with Alaska and presumably proved in some perfunctory way that they had practiced five of seven years in their state of previous admission.

By contrast, Thomas S. Obermeyer, Alaska resident for 30 years and Attorney, licensed since 1990 by similar Missouri Bar Exam, a state that presumably has reciprocity with Alaska, has dedicated himself in good faith having paid for, studied for, and taken Alaska Bar Exam 34 times most recently "failed" on October 30, 2008 over an almost 25 year period in an effort to create fair Alaska law licensure. Tom has only chosen to go through the established process to obtain his Alaska law license and begin with his legal career. The lack of assistance given to Tom Obermeyer over such a long period of time shows how outrageously unfairly one Alaska Bar applicant could have been treated while seemingly everyone else is given favorable treatment.

4. Fairness to Alaska Bar Applicants for Admission

Please review attached "Draft Bill Authorizing Admission of Reciprocal Applicants to Alaska Bar Association" which can be downloaded at http://www.tobermeyer.info/pdfs/26thAKLeg1stSess2009.pdf and the precedent, "Laws of Alaska 1966 HB 520 Chapter 144 An Act-Authorizing the Department of Labor to enter into reciprocal agreements with other states regarding wage claims; and providing for an effective date," that can be downloaded at http://www.tobermeyer.info/pdfs/LawsofAK.pdf. The current practice of Board of Governors Alaska Bar Association penalizes local licensed attorneys who are admitted by Bar Exam in the 33 reciprocal states. "DRAFT Bill Authorizing Admission of Reciprocal Applicants to Alaska Bar Association" would change this practice that currently gives more rights to attorneys who have never landed on Alaska soil. Do Alaskans want those from other states to have more rights than we have? Does the "DRAFT Bill" protect the Alaska public?

5. The current Financial Position, Revenue, and Expense statements of Alaska Bar Association are jumbled and combined to confuse and hide actual expenses in the "ivory tower" Atwood Building #1900 in Anchorage.

The Audit fails to delineate details of operating expenses and personnel assigned to each activity, and it fails to list salaries of Executive Director, Bar Counsel, other attorneys and staff. RESULT: THE QUASI-GOVERNMENTAL ALASKA BAR ASSOCIATION HAS NO GOVERNMENTAL SUPERVISION. Auditor Patricia Davidson did not so much as discuss the details of Alaska Bar Association Operating Budget information in her Appendices. The salaries and travel of the Alaska staff attorneys of Alaska Bar Association especially Ms. Deborah O'Regan and Mr. Stephen Van Goor, who have been employed at Alaska Bar Association since 1980 and whose salaries the Obermeyers have been paying since 1984, are not included. **By contrast, when bills authorizing governmental activity are introduced in Alaska Legislature, attached are fiscal notes with personnel costs.**

The Alaska Supreme Court should take over the Alaska Bar Association as a governmental body for the foreseeable future.

Admissions

If Alaska Supreme Court administers both exams and admission by reciprocity, there would be better communication between Alaska Bar Association Board of Governors and the Court, fewer

admissions by reciprocity, more fairness and alternative options for admissions, better treatment of Alaska applicants, and more public trust. This would be an interim solution that should be tried for a year at a time with analysis by Alaska Legislature to see if it is working.

Alaska State Court justices/judges should be more fully scrutinized as well. I will update http://www.tobermeyer.info/asj.html which shows Alaska justices/judges got 50% salary increases per CSSB237 in 2006. Another increase was implemented by 25th Alaska Legislative 2nd Session SCS CSHB 417(FIN) Section 20 (a) (b) and (c). Research should be undertaken to analyze how many State of Alaska justice/judges are appropriate based on Alaska population and Alaska Bar Association membership. At the moment, becoming Alaska State Court justice/judge is much more coveted than actively practicing law as an Alaska attorney advocate. There is "Alaska Judicial Retirement System" through Alaska Retirement Management Board under Alaska Department of Revenue. Is there Alaska Judicial Retirement System Board? There should be more analysis of our Alaska State Court justices/judges by Alaska Legislature.

Discipline

Ms. Davidson indicates that discipline should be controlled by Alaska Supreme Court. Suspensions and disbarments are already submitted to the Supreme Court, but complete supervision of discipline should be imposed by the court. In many states there is a separate Office of the Disciplinary Counsel with a separate Board.

In the Alaska Bar Audit there is no discussion of "Citizen Complaints" against Alaska attorneys to Alaska Bar Association. The reader is expected to believe that there are no Alaska citizen initiated complaints at all to Alaska Bar Association. I have direct experience in this area per http://www.tobermeyer.info/pdfs/VanGoor41505.pdf about the lack of any discipline whatsoever at Alaska Bar Association regarding the 30 lengthy complaints that I filed at Alaska Bar Association 1993-2003. I would be pleased to produce the three boxes of comprehensive timely stamped filings with lengthy transcripts of my 30 complaints against licensed Alaska attorneys which resulted in my worse treatment by more Alaska attorneys. In other words, I am positive today that every complaint I filed was used against me.

Regarding Alaska Attorney "Discipline Function" per Page 3 of the Audit, I am aware that very high profile Alaska attorneys who have been convicted in courts of law of criminal offenses after pleading "No Contest" have not been disciplined by Alaska Bar Association including Mr. Robert C. Ely and Mr. Mitchell Gravo. Former Alaska Attorney General Gregg Renkes resigned February 5, 2005 over a highly publicized conflict of interest but was never disciplined. He is a licensed Alaska Active Out of State attorney today. I have observed Board of Governors "throwing the book" at a handful of unknown Alaska attorneys in private practice whose ethical lapses are grave but these attorneys do not have criminal convictions from a court of law. I have not observed any semblance of consistency in "Attorney Discipline" for sanctions for similar offenses. All are approved by Alaska Supreme Court which is ultimately responsible for equitable fairness and justice in the practice of law.

The current discipline procedures of Alaska Bar Association are probably a primary reason why Alaska has the highest number of government attorneys in the U.S. in addition to the fact the Alaska attorney government employment is exceedingly lucrative offering excellent benefits and outstanding retirement packages. Alaska Legislature should get the salaries and benefits packages for the 576 or more State of Alaska attorneys out of a total 705 including State of Alaska, Municipal, and U.S. Government attorneys. State of Alaska attorneys are 82% of the total of all Alaska In State Government attorneys. In Spring, 2008 30% of the total of 2,395 Alaska In State attorneys were employed by the Government according to Todd Communications Alaska Directory of Attorneys. Fall, 2008 stopped publishing the number which probably exceeds 30% at this time.

Continuing Legal Education

So far, voluntary CLE in Alaska has been a farce. Regarding "Findings and Recommendations" of Audit #41-20057-08, no specific recommendation was made about how many hours of Mandatory Continuing Legal Education (MCLE) should be required for practicing Alaska attorneys. Ms. Davidson wrote on Page 7 of the "Audit" that 41 of the 50 states have MCLE. To date, 3 clock hours of Mandatory Ethics Continuing Legal Education (MECLE) began on January 1, 2008 and "has teeth" in that there are sanctions for non-compliance to be imposed after January 1, 2009 per Alaska Supreme Court Order No. 1640. Alaska Legislature should ask for a full report on how the newly concluded December 31, 2008 MECLE went. To my knowledge, all other professions in Alaska have much longer and expensive mandatory requirements for continuing licensure. Alaska Bar Association should do so as well. At least twelve hours of mandatory MCLE would improve the profession greatly in Alaska. It would also assure collegiality among lawyers and impose a sense of purpose and ethical public service. Ethics training is important but most attorneys know right from wrong long before they deviate from the norm.

I follow actively Alaska Bar Association activities and this Audit is the first I have known that a "Bar CLE Committee consisting of 15 members assists CLE director" Page 19 exists. What I know is that Ms. Barbara Armstrong, CLE Director since about 1980, was President, American Continuing Legal Education Association, about 10 years ago when Alaska Bar did not require Continuing Legal Education and many years prior to January 1, 2008 MECLE three clock hours implementation.

There is a Law Related Education (LRE) Committee of Alaska Bar Association which to my knowledge only gives money to K-12 education. I applied for three grants including "Keep the Kids in School Initiative Anchorage School District," "Alaska Permanent Fund Board Confirmation Committee," and "Fair Alaska Law Licensure" on January 10, 2007 to Ms. Barbara Hood, Alaska Teaching Justice Network. All were rejected by Ms. Barbara A. Jones, Chair, LRE Committee on January 31, 2007. In 2008 I was unable to find out when the LRE grant applications were due. I intend to apply again by January 16, 2009 but will be applying to Ms. Deborah O'Regan, Executive Director, instead of the Chair, LRE Committee. Ms. O'Regan is in control of the entire process.

Ethics Reform was presumably implemented in 25th Alaska Legislature 1st Session. There can be no Ethics Reform unless Alaska Bar Association is improved. I filed Complaint AGO File No. 661-08-0157 in September, 2007 which was a paper copy of Alaska Permanent Fund Board Confirmation Committee per http://www.apfboardconfirmation.org to Ms. Julia Bockmon, State of Alaska Attorney General's Office, requesting an investigation. Instead, I got a letter dated November 30, 2007 from Ms. Bockman copying Mr. Michael J. Burns, Attorney who has never attempted to be licensed to practice law in Alaska, former Chair, University of Alaska Board of Regents, and current Executive Director, Alaska Permanent Fund, stating "Further statements regarding the existence of your complaint or our investigation may result in penalties for violation of the Executive Branch Ethics Act." In other words, I was threatened with economic sanctions for filing the complaint.

Conclusion

Alaska Bar Association offices and personnel should become a State of Alaska governmental agency under direct supervision of Alaska Supreme Court with annual governmental budgets subject to Alaska Legislative scrutiny for the immediate future. This decision should be subject to review yearly.

Alaska Legislative Audit #41-20057-08 does little to dig into the details of the operation of the Alaska Bar Association. The Audit does not recognize that Alaska Bar Association fails in several of its intended purposes as stated on Page 19 because Alaska Bar has the benefit of governmental protection without direct daily governmental oversight. Alaska Bar does not advance jurisprudence and justice; increase public service and efficiency of the bar; promote reform in the law and procedure; or mandate substantive legal education. The Audit proposes more public notice and participation of public in teleconference meetings but the public is afraid of Alaska Bar so public

notice and participation of the public in teleconferences will have no effect. Nothing could serve the public more than to make Alaska Bar functions a matter of total government control. Are the employees of the Alaska Bar Association staff, Bar Counsel, Executive Director, etc., the beneficiaries of State retirement and medical benefits? This should have been explained fully in the Audit but is not addressed.

Public participation currently is discouraged at all levels. When my husband, Thomas Obermeyer, Missouri Attorney since 1990, appeared before the Senate Judiciary Committee in May, 2007 regarding sunset of the Alaska Bar Association, he was the only person to appear. Bar Counsel Stephen Van Goor was on line by teleconference. When Tom asked for time to contradict Mr. Van Goor's statements, Hollis French, still current Alaska State Senate Judiciary Chair, cut him off. The minutes of the meeting were never transcribed. Would anyone be more articulate than Tom Obermeyer who had in 2007 weathered 23 years and 30 Alaska Bar Exam "failures?" This was the same Hollis French who as a State of Alaska Prosecutor charged and prosecuted me in State of Alaska/Hilton Anchorage vs. Theresa Nangle Obermeyer 3AN-S98-2211 CR for over nine months until I was acquitted in a seven day jury trial on November 10, 1998. How much did that cost?

In my case, I have been defamed endlessly by Alaska corrupt media which is about 95% owned in many Lower 48 states because I continue to believe that I have a right to attend a public meeting. I was jailed over night in a set-up orchestrated by Ms. O'Regan and Mr. Van Goor when Board of Governors was at court on January 15, 1999. If a person dares to go to an advertised "public meeting," he/she is made to look foolish and is targeted. I have lived this fact for many years. Governor Sarah Palin nominated me December 2, 2008 http://www.tobermeyer.info/pdfs/fbresponse.pdf for a position as a "Public Member" Board of Governors Alaska Bar Association. I hope that I will be appointed.

Alaska Bar Association has the best of both worlds – private and quasi-governmental. Currently, Alaska Supreme Court "rubber stamps" admissions and discipline actions and no Alaska State Agency oversees the Board's operations. This has to change. Alaska Bar dues are among the highest in the nation because Alaska attorneys do not want any competition. The Board allows the employees to lavish themselves with high salaries, travel, and plush offices as long as competition is limited. Alaska Active Out of State attorneys are very weak and totally depend on the handful of local Alaska attorneys who control everything that goes on in Alaska. Substantive truth and real numbers never surface.

This document is meant to create much more discussion about Alaska Bench and Bar. Alaska Legislature must send a strong message to Alaska Bar Association that "the light of day" will shine on its totally unaccountable practices that hurt all Alaskans.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET AND AUDIT COMMITTEE

Division of Legislative Audit

P.O. Box 113300
Juneau, AK 99811-3300
(907) 465-3830
FAX (907) 465-2347
legaudit@legis.state.ak.us

November 4, 2008

Members of the Legislative Budget
and Audit Committee:

In accordance with the provisions of Title 24 of the Alaska Statutes, the attached report is submitted for your review.

BOARD OF GOVERNORS OF THE
ALASKA BAR ASSOCIATION
SUNSET REVIEW

November 4, 2008

Audit Control Number
41-20057-08

The audit was conducted as required by AS 44.66.050 and under the authority of AS 24.20.271(1). Alaska Statute 44.66.050(c) lists criteria to be used to assess the demonstrated public need for a given board, commission, agency, or program subject to the sunset review process. Currently, under AS 08.03.010(c)(2), the Board of Governors of the Alaska Bar Association is scheduled to terminate on June 30, 2009.

In our opinion, the termination date for this board should be extended. The regulation and licensure of attorneys contributes to the protection of the public's welfare. We recommend the legislature extend the termination date to June 30, 2017.

The audit was conducted in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Fieldwork procedures utilized in the course of developing the findings and discussion presented in this report are discussed in the Objectives, Scope, and Methodology.

Pat Davidson

Pat Davidson, CPA
Legislative Auditor

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OBJECTIVES, SCOPE, AND METHODOLOGY

In accordance with Title 24 and Title 44 of the Alaska Statutes (sunset legislation), we have reviewed the activities of the Board of Governors of the Alaska Bar Association (board). Under AS 44.66.050(a), the legislative committee of reference is to consider this report during the legislative oversight process to determine whether the board's termination date should be extended. Currently, AS 08.03.010(c)(2) requires the board to terminate on June 30, 2009. If the legislature takes no action to extend the termination date, the board will have one year from that date to conclude its operations.

Objectives

There are four central objectives of our report. They are:

1. To determine if the termination date for the board should be extended.

2. To determine if the board is operating in the public's interest.

3. To determine if the board has exercised appropriate oversight of licensed members of the Alaska Bar Association (Bar).

4. To provide a current status on the recommendations made in the prior report.

The assessment of the operations and performance of the board was based on criteria set in AS 44.66.050(c). Criteria set out in this statute relates to the determination of a demonstrated public need for the board.

Scope and Methodology

Our review focused on the continuing legal education requirement, discipline function provided by the Bar, as well as board proceedings. Our audit reviewed board operations and activities from July 1, 2006 through June 30, 2008.

We reviewed and evaluated the following:

- Applicable statutes, Alaska Bar Rules, Alaska Rules of Professional Conduct, and Bar bylaws

- Board minutes

- Bar annual reports

- Attorney discipline files
- Audited financial statement of the board

In addition, we conducted interviews of the board president, staff, including the executive director, board counsel, director of continuing legal education, and comptroller.

ORGANIZATION AND FUNCTION

The practice of law in the State of Alaska is regulated by the Board of Governors of the Alaska Bar Association (board). The board consists of 12 members including nine attorneys elected by the active membership of the Alaska Bar Association (Bar) and three non-attorney public members that are appointed by the governor and confirmed by the legislature in joint session.

The powers and duties of the board are conferred by the Alaska Integrated Bar Act (AS 08.08), the Alaska Bar Rules, and the Rules of Professional Conduct which are promulgated by the Alaska Supreme Court. The purpose of the board includes the following: to cultivate and advance the science of jurisprudence, to promote reform in the law and in judicial procedure, to facilitate the administration of justice, to encourage continuing legal education (CLE) for the membership, and to increase the public service and efficiency of the Bar.

Exhibit 1

The Board of Governors of the Alaska Bar Association (as of October 20, 2008)
Mitch Seaver, President *First Judicial District*
Sidney K. Billingslea, President-elect *Third Judicial District*
Don McLean, Vice-president *Public Member*
Jason A. Weiner, Treasurer *Second/Fourth Judicial District*
Christopher R. Cooke, Secretary *Third Judicial District*
Carl Ekstrom *Public Member*
William A. Granger *Public Member*
Donald W. McClintock *Third Judicial District*
Allison Mendel *Third Judicial District*
Hanna Sebold *First Judicial District*
Krista S. Stearns *Third Judicial District*
John J. Tiemessen *Second/Fourth Judicial District*

The two primary functions of the Bar are the admission and discipline of its members. To accomplish these and other functions, the Bar operated with a 2008 budget of $1,983,738. Funding is provided primarily by membership dues ($410 per year), admission fees, lawyer referral fees, CLE charges, administrative discipline fees, and interest income.

Admission Function The board is responsible for screening applicants for admission to the Bar. The board certifies to the Supreme Court that all successful applicants are fit to practice law. The board appoints an executive director who is responsible for directing all staff functions, including the oversight of the admissions function.

Discipline Function The board is responsible for investigating grievances against all members of the Bar. The board appoints the discipline counsel. This counsel is responsible for oversight of all disciplinary actions taken against the Bar's membership and provides an ethics course that is required for all applicants. The board selects hearing committee members from a group of individuals in each judicial district

appointed by the Chief Justice of the Supreme Court. The board is also responsible for issuing reprimands when warranted, and for recommending the Supreme Court impose disbarment, suspension, probation, or public censure when appropriate.

Miscellaneous Functions The Bar also performs a wide variety of miscellaneous functions that include providing classes for and accrediting CLE providers, a lawyer referral service, client mediation, and fee arbitration with clients. In conjunction with the Alaska Legal Services Corporation, the Bar sponsors the Alaska Pro Bono Program. The Bar provides a number of other member services including attorney liability protection, group insurance, the *Alaska Bar Rag*, ethics opinions, and alcohol and drug counseling. In addition, the association provides grants through the Alaska Bar Foundation from earnings of interest on the lawyers trust account program. These grants are used to support legal services for the economically disadvantaged and improve the administration of justice.

The Bar's office is located in Anchorage and is currently staffed by 19 full-time and job-share employees.

The board's decision involving examination and discipline may be appealed to the Alaska Supreme Court. The Alaska Supreme Court issues the order of admission to the Bar and lawyer disciplinary sanctions involving disbarment, suspension, probation, and public censure.

REPORT CONCLUSIONS

In our opinion, the termination date of the Board of Governors of the Alaska Bar Association (board) should be extended. The regulation and licensing of qualified attorneys contributes to the protection of the public's welfare.

The board, through the Alaska Supreme Court, protects the public by ensuring that persons licensed to practice law are qualified. It also provides for the investigation of complaints and has established a disciplinary process designed to promote licensed individuals to act in a competent and professional manner. Chapter 58, SLA 2005 amended AS 08.03.020(c) to increase from four to eight years the period for which a board scheduled for termination may be continued or reestablished by the legislature. As such, we recommend that the legislature extend the termination date of the board to June 30, 2017.

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FINDINGS AND RECOMMENDATIONS

In the prior audit, *Board of Governors of the Alaska Bar Association, Follow Up, September 15, 2006*, (Audit Control No. 41-20050-06), there were three recommendations, one of which has been fully implemented. The implemented recommendation was to adopt a due date for timely issuance of annual reports. The recommendation was resolved at the board's September 7, 2006 meeting where the board voted to amend their Standing Policies, setting April 15 as the due date for the completion of the preceding year's annual report. Review of the 2006 and 2007 annual report documentation confirmed they were completed prior to the April 15 due date.

The recommendation to adopt mandatory minimum continuing legal education (CLE) for attorneys is partially implemented and is reiterated as Recommendation No. 1

The final recommendation, which relates to the Alaska Bar Association (Bar) developing a database of disciplined lawyers, has not been addressed and is reiterated as Recommendation No. 2. In addition, review of board meeting proceedings resulted in noted deficiencies. The deficiencies are further discussed in Recommendation No. 3

Recommendation No. 1

The board should recommend to the Alaska Supreme Court that mandatory minimum CLE for attorneys be adopted.

Prior Finding

CLE for attorneys is voluntary rather than required. The Supreme Court adopted voluntary CLE under Bar Rule 65 in 1999. It encouraged all active members of the Bar to complete at least 12 credit hours of approved CLE, including one credit hour of ethics. Incentives, such as reduction of Bar dues and eligibility to participate in the Lawyer Referral Service, are authorized to those who comply with the Bar rule.

Forty-one legal jurisdictions in the United States have a mandatory CLE requirement for attorneys desiring to practice law in their jurisdiction. Mandatory CLE requirements range from 8 to 27 credit hours per year with the majority of the jurisdictions requiring between 12 and 15 hours. Specific course requirements vary.

Most professions require continuing education to maintain licensure in Alaska. For example, Alaska-licensed dentists, doctors, pharmacists, and psychologists are required to meet minimum continuing education standards.

Overall, we believe a mandatory minimum CLE requirement will enhance the membership's continued professional competence and raise the public's confidence in attorneys. The board should encourage the Supreme Court to adopt an Alaska Bar Rule requiring mandatory minimum CLE.

Legislative Audit's Current Position

The board voted at their September 7, 2006 meeting to send the mandatory CLE rule, as published, to the Alaska Supreme Court. Based on this rule, the Alaska Supreme Court amended Alaska Bar Rule 65 through Supreme Court Order No. 1640, to require all members to complete three credit hours of mandatory ethics continuing legal education (MECLE) per year. In addition to MECLE, all members are encouraged to complete nine credit hours of approved voluntary continuing legal education (VCLE). Members must certify with the Bar that they have completed the required MECLE and provide the number or an estimated number of completed VCLE.

The Supreme Court Order No. 1640 also added Alaska Bar Rule 66 for the suspension of members who have not complied with completing the required MECLE or members who failed to report the MECLE and VCLE for the year. These rules became effective January 1, 2008.

The mandatory ethics requirement does not fully achieve the goal of promoting competency and professionalism in members of the Bar. Although ethics education is part of the goal, requiring CLE, as opposed to encouraging VCLE, will strengthen the public's confidence that attorneys are professional and competent. Therefore, we reiterate our prior recommendation.

Recommendation No. 2

The board should consider developing a database of disciplined lawyers in the Bar's website.

Prior Finding

While current procedures are adequate, the board could increase efficient and effective communication of lawyer discipline to the public by publishing their discipline list on the Bar's website.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. Currently, the board publishes the names of these attorneys in four major newspapers throughout the State, the local newspaper where the attorney practiced, the *Alaska Bar Rag*, and in the board's annual report. Notice of all disciplines imposed by the court, all orders granting reinstatements, and all public reprimands are also transmitted to the American Bar Association National Lawyer Regulatory Data Bank. These are long-standing means of providing public notice; however, 15 states currently also publish their lawyers discipline list on their websites.

The board should consider developing a database for the Bar's website of the disciplines imposed against lawyers. It would be an effective medium in addition to the others used to inform the public of lawyers who have been disciplined. It would enhance public notification and client protection through increased accessibility of discipline information.

Legislative Audit's Current Position

In their response to the prior recommendation, the board agreed that having public discipline information available on its website was a desirable goal and that they would work to that end. Although some steps have been taken towards the possible implementation of our recommendation, attorney discipline information is not yet available from the Bar's website.

The board stated in the prior recommendation that the new discipline module of the replacement database, including online reporting of public discipline would be operational in the summer of 2007. However, due to changing priorities, the Bar has not started implementing the discipline module, though it is tentatively scheduled for early 2009.

Legislative Audit's position remains unchanged. We continue to believe the board should develop a database of disciplined lawyers to which access is provided the public via the Bar's website.

Recommendation No. 3

The board should adhere to existing public notice requirements for all meetings or modify the bylaws to clearly address conference call board meeting procedures and public notice requirements.

The board, as the governing body of the Bar, is vested with the power and authority to adopt regulations and policies concerning activities, affairs, and organization of the Bar, as well as collect and disburse all monies of the organization. In order to achieve these responsibilities, the board meets at least four times during the year. In addition to the four regular meetings, the president may, or upon written request of three governors, call emergency meetings. Public notice for regular and emergency meetings must be provided at least thirty and three days prior to the meeting, respectively. The proceedings for these board meetings are outlined in the Bar bylaws under Article IV specific to the board.

Since June 30, 2006, there were eight regular and five conference call board meetings. None of the conference call meetings met the public notice requirements for board meetings. There appears to be some confusion by the board as to the public notice requirements for conference call meetings.

The bylaws do not identify conference call meetings as a unique type of board meeting with unique public notice requirements; therefore the board should adhere to the public notice requirements for regular board meetings. Adequate public notice of meetings is necessary to allow for maximum public participation in public activities.

If the board believes the conference call meetings are inherently different from regular meeting then the bylaws should be modified to clearly address conference call board meetings to ensure the appropriate procedures are followed and the public receives adequate notice for such meetings.

AUDITOR'S COMMENTS

The sunset process allows for an objective and independent review of various boards and commissions to determine if the public need for protection continues to exist and if the entity is satisfying that need. The overall conclusions of our review are that the Board of Governors of the Alaska Bar Association (board) is operating in the public interest and that there is a continuing public need for the attorney admission and discipline functions of the Alaska Bar Association (Bar). Nevertheless, an overall evaluation of the basic approach to these functions should be undertaken from time to time. Whether the discipline function is to be controlled by government or by attorneys is a policy-level determination that should be carefully considered by the Supreme Court, the board, and the legislature. The following comments are intended to assist in such consideration.

Self-regulation, whether by industry or profession, has always been viewed skeptically by the citizenry. There is often a perception of conflict of interest in whether actions are for the benefit of the organization's membership or for the citizens' benefit. The attorney discipline system of the Bar is a self-regulatory function that may suffer from this public perception.

The board is comprised of twelve members, of which nine are attorney members elected by the Bar's membership and three public members appointed by the governor. As the majority is elected by the membership, the Bar's discipline activities will likely be perceived as self-regulation.

We believe that the attorney discipline system in Alaska could be a government function. The American Bar Association concurs and, in fact has recommended that the disciplinary function of state bars be under the direct control of the Supreme Court. The American Bar Association's *Model Rules for Lawyer Disciplinary Enforcement,* August 1993,[1] recommended the following:

> *The disciplinary system should be controlled and managed exclusively by the state's highest court and not the state or local bar association...the disciplinary process should be directed solely by the disciplinary policy of the court and its appointees and not influenced by internal politics of the bar association... the disciplinary system should be free from even the appearance of conflicts of interest or impropriety.*

The following options should be considered in a move away from attorney self-regulation:

- Disciplinary investigations performed by judicial branch employees.

[1] The *Model Rules for Lawyer Disciplinary Enforcement,* August 1993 was amended on August 5, 1996, on February 8, 1999 and on August 12, 2002. The 1993 recommendation is in the commentary under Rule 2.

- Disciplinary function placed under the Supreme Court with a Disciplinary Board appointed by the court.

There should be no general fund net cost to either of these options. They would be paid for by attorney licensing fees, the same as they currently are, and as they are for other occupations. Fees are established such that full costs are recouped.

From a citizen's perspective, there are no advantages to allowing the legal profession to self-regulate. However, there will always be the disadvantage of at least the perception of inadequate discipline. In a move away from self-regulation, the legal profession and the State's citizens would likely benefit.

ANALYSIS OF PUBLIC NEED

The following analyses of the Board of Governors of the Alaska Bar Association (board) activities relate to the public-need factors defined in AS 44.66.050(c). These analyses are not intended to be comprehensive, but to address the areas we were able to cover within the scope of our review.

Determine the extent to which the board, commission, or program has operated in the public interest.

The board admits applicants to practice law through an examination process that was designed in consultation with a national expert. The board also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of the last seven years in states with which Alaska has a reciprocal agreement.[2]

Additionally, the Alaska Bar Association (Bar) also provides services that are more typically provided by professional associations rather than regulatory agencies. These include:

- The Bar has a committee to administer the Lawyers' Fund (fund) for Client Protection. This fund receives $10 from each active member's annual dues. The fund is used to reimburse clients for losses[3] caused by dishonest conduct[4] of a lawyer which is not covered by insurance or fidelity bond, whether of the lawyer or the client. The maximum amount payable to any individual is the lesser of $50,000 or 10% of the fund amount at the time of the award. The aggregate maximum amount that may be paid to all claimants under a fee arbitration case arising from the dishonest conduct of a particular lawyer is $200,000.

- Since 1976, the Bar has maintained a fee arbitration process allowing a client to resolve attorney fee disputes that have not been determined by statute or court rule or decision. For fee disputes of $5,000 or less, the process provides for a single arbitrator. Disputes over $5,000 are heard by a three-member panel that consists of two attorneys and one

[2] As of June 30, 2008, the Alaska Bar Association has reciprocal agreements with 33 states.

[3] Reimbursable losses are losses of money, property, or other things of value caused by the lawyer when: (1) acting in a fiduciary capacity customary to the practice of law, such as a administrator, executor, trustee, guardian or conservator; (2) acting as an escrow holder; or (3) filed within three years after the claimant knew or should have known of the dishonest conduct of the lawyer (Alaska Bar Rule 45).

[4] Alaska Bar Rule 45 defines dishonest conduct as,

> *. . .wrongful acts committed by a lawyer in the manner of defalcation or embezzlement of money, or the wrongful taking or conversion of money, property or other things of value.*

public member. Failure by an attorney to participate in this process may be grounds for disciplinary action.

- The Bar also offers a mediation process that attempts to resolve the differences between attorneys and their clients. This process is not used when the issues are of a very serious nature such as allegations of intentional dishonesty, material misrepresentation, or the alleged conduct could lead to suspension or disbarment. Mediation requires the approval of both parties and the Bar counsel. The agreement is considered a contract and is legally enforceable in court.

- The Bar operates a lawyer referral service funded by enrollment fees from participating members. Members of the public can call an instate toll free number and obtain the names of three attorneys who have listed themselves as practicing law in a certain field. Lawyer referral service statistics are shown in Appendix D.

- The Bar provides grants to support legal services for the economically disadvantaged. Through the Alaska Bar Foundation, the earnings from the interest on Lawyers Trust Account are used to improve the administration of justice.

- The Bar jointly sponsors the Alaska Pro Bono Program with the Alaska Legal Services Corporation in which attorneys provide free legal advice to low-income Alaskans.

- The Bar also has a Lawyer Assistance Committee that provides assistance and counseling to members of the Bar, their families, or business associates when it appears a Bar member has substance abuse problems.

Determine the extent to which the operation of the board, commission, or agency program has been impeded or enhanced by existing statutes, procedures, and practices that it has adopted, and any other matter, including budgetary, resource, and personnel matters.

The operations of the board are funded entirely by the membership through dues, admission fees, continuing legal education charges, lawyer referral fees, convention fees, and interest income. In September 2005, the board adopted an amendment to Bylaw III, Section 1(a) which states that, "*the annual membership fee for an active member is the amount approved by the board.*" Thus, the board can set the dues amount in accordance with the operating expenses and number of Bar members.

The 2008 budgeted revenue is $1,983,738. The Bar has cumulative net assets of $3,496,544 as of the end of calendar year 2007. The net assets include approximately $1.1 million for the Lawyers' Fund for Client Protection. This fund is for clients who have suffered monetary losses as a result of dishonest acts by their lawyer. These funds are designed to protect the public and cannot be used for general operating expenses.

The maintenance of substantial net assets is not consistent with the other professions regulated by the State, under the jurisdiction of the Department of Commerce, Community, and Economic Development (DCCED) – Division of Corporations, Business, and Professional Licensing. Those professional fees are required by statute to be set so the total fee collections approximately equal the actual regulatory cost of the occupation. As the Bar is not included in DCCED's organizational structure, the ability to pool resources and meet funding shortages is not available. Although the Bar's funding needs are greater, the net assets are still substantial.

In order to address the cumulative net assets, the board voted at the end of 2007 to reduce the active members' due from $550 to $410, effective in the 2008 membership year. The Bar anticipates that with the reduction in membership dues net assets will be reduced by approximately $400,000 per year.

Determine the extent to which the board, commission, or agency has recommended statutory changes that are generally of benefit to the public interest.

Although the board has a Statutes, Bylaws, and Rules Committee, consisting of 12 members responsible for drafting proposed revisions of the statutes, bylaws, and rules which govern the activities of the Bar, the board has not recommended any statutory changes during July 1, 2006 through June 30, 2008. However, the board has been active in the process of evaluating and revising the Alaska Bar Rules, bylaws, and Rules of Professional Conduct that govern Bar policies and procedures.

Determine the extent to which the board, commission, or agency has encouraged interested persons to report to it concerning the effect of its regulations and decisions on the effectiveness of service, economy of service, and availability of service that it has provided.

The Bar's membership is involved in its operations. This operation may include service on one of the ten standing committees or five Alaska Bar Rules committees. It may include participation in one of 23 sections or groups of members with similar specialization (bankruptcy, criminal law, etc).

In addition to the above committees, members of the Bar may be appointed to serve in an adjunct organization, such as the Alaska Legal Services Corporation. Also, special committees are established from time to time by the president with the advice and consent of the board.

The Bar publishes all proposed changes to the Alaska Bar Rules in its quarterly publication, the *Alaska Bar Rag,* which is distributed to all members of the Bar and to interested members of the public. Members are asked to submit any and all comments on proposed rule changes for review by the board.

The board advertises board meetings on the Alaska Public Online Notice system and on the Bar's website. Members of the general public are encouraged to make comments and adequate time is allotted at all meetings.

Determine the extent to which the board, commission, or agency has encouraged public participation in the making of its regulations and decisions.

In addition to the three public members who serve on the board, non-attorneys serve on disciplinary hearing committees and fee arbitration panels throughout the State.

As mentioned above, the Bar publicly advertises meetings of the board. Time is allotted at all board meetings for public comments. However, some board meetings did not have adequate public notice. Further discussion on public notice of the conference call board meetings is in Recommendation No. 3.

Determine the efficiency with which public inquiries or complaints regarding the activities of the board, commission, or agency filed with it, with the department to which a board or commission is administratively assigned, or with the office of victims' rights or the office of the ombudsman have been processed and resolved.

The Bar is an instrumentality of the State, but is not administratively assigned to any department. However, the Alaska Supreme Court exercises a great degree of oversight. Two complaints specifically involving the actions and activities of the board were filed with and investigated by the Office of the Ombudsman during July 1, 2006 through June 30, 2008. The investigations were closed due to the Ombudsman not having jurisdiction over the activities of the Bar.

There were no complaints filed with the Office of Victim's Rights against the board from July 1, 2006 through June 30, 2008.

The board has a lawyer discipline process for investigation of grievances alleging attorney misconduct. If a grievance does not result in an investigation being opened by the bar counsel, the complainant may ask for that decision to be reviewed by the board discipline liaison. Additionally the Supreme Court may review decisions made by the bar counsel or the liaison, though this is done rarely.

Sanctions are imposed on those found in violation of the Rules of Professional Conduct. The Supreme Court reviews only the most serious disciplinary actions, such as public censure, disbarment, suspension, or probation. Other disciplinary cases are not subject to Supreme Court review. These sanctions would include written private admonition and board reprimand. This process for professional discipline was developed through a cooperative effort of the Alaska Supreme Court, the board, Bar staff, and a review team from the American Bar Association's Standing Committee on Professional Discipline.

The Bar receives an average of 228 complaints annually. Analyses of the complaints filed during July 1, 2006 through June 30, 2008 shows that all were reviewed, but relatively few were pursued beyond the initial investigation. Approximately 80% of the grievances received were not accepted for investigation due to lack of merit. The Bar estimates that 10 to 15 appeals are reviewed annually by the board discipline liaison, and 1 or 2 reviews by the Supreme Court.

Over 650 grievances were filed during 2006, 2007, and 2008,[5] resulting in 143 cases being opened and the remaining grievances were not accepted. The investigations resulted in thirty-two cases[6] with sanctions against a total of twenty-one attorneys. Four attorneys were disbarred, seventeen were suspended, three were publicly and two were privately reprimanded, five received private admonition, and one was publicly censured. Discipline statistics are shown in Appendix B. Closure of grievance cases with sanctions such as disbarment, suspension, public censure, public reprimand, and admonition appear reasonable.

Board procedures provide for public notice of all attorneys who have been disbarred, suspended, put on probation, publicly censured, or reprimanded. The names of these attorneys are published in four major newspapers throughout the State, the local newspaper where the attorney practiced, the *Alaska Bar Rag*, and in the board's annual report. Notice of all disciplines imposed by the court, all orders granting reinstatements, and all public reprimands are transmitted to the American Bar Association's National Lawyer Regulatory Data Bank. However, as discussed in Recommendation No. 2, the board does not publish the names of lawyers who were suspended, disbarred, publicly reprimanded or censured on their website.

Determine the extent to which a board or commission that regulates entry into an occupation or profession has presented qualified applicants to serve the public.

The board admits applicants to practice law through an examination process that was designed in consultation with a national expert. Admission is contingent on the following:

- Passing the Alaska Bar Examination.
- Passing the Multi-state Professional Responsibility Examination.
- Passing character investigation to determine if the applicant is of good moral character.
- Attendance[7] of a mandatory three hour ethics presentation by the board.

[5] Complaints received for 2008 include January 1 through June 30.
[6] A single attorney may have multiple cases filed against them.
[7] This requirement may be fulfilled by watching the ethics videotape and signing an affidavit.

The board also admits members by motion for reciprocity. This option is limited to attorneys in the active practice of law for five of the last seven years in the 33 states with which Alaska has a reciprocal agreement.

Examination and admission statistics are shown in Appendix C.

Per Bar Rule 65, in order to promote competence and professionalism, the Alaska Supreme Court and the Bar encourage all members to engage in continuing legal education (CLE).

Supreme Court issued Order No. 1640, which amended Bar Rule 65, to require all active Bar members to complete three credit hours per calendar year of approved mandatory ethics continuing legal education (MECLE). In addition, all active Bar members are encouraged to engage in nine hours per calendar year of approved voluntary continuing legal education (VCLE). This order became effective January 1, 2008.

The Supreme Court Order No. 1640 also added Alaska Bar Rule 66 for the suspension of members who have not complied with completing the required MECLE or members who failed to report the MECLE and VCLE for the year.

The Bar offers CLE for its membership and maintains an educational library. The majority of live CLE programs are presented and video taped in Anchorage. For lawyers located outside of Anchorage, the Bar has regularly scheduled video replays in Juneau, Fairbanks, and Kenai. Also available are DVDs and CLE materials for purchase through the Bar's online CLE library catalog.

In 2006, the Bar partnered with the online CLE provider LegalSpan to develop online CLE seminars and live webcasting of selected programs. The Bar presented 10 live webcasts in 2007. All of the video taped live seminars are also available as online CLE through LegalSpan.

Determine the extent to which state personnel practices, including affirmative action requirements, have been complied with by the board, commission, or agency to its own activities and the area of activity or interest.

The board allows special accommodations for applicants who have been determined to have disabilities.

We did not find any evidence that the board was not complying with state personnel laws, including affirmative action in qualifying applicants for licensure. In no instance did the board deny an applicant a license based on personal attributes.

Determine the extent to which statutory, regulatory, budgeting, or other changes are necessary to enable the agency, board, or commission to better serve the interests of the public and to comply with the factors enumerated in this subsection.

Please refer to the Findings and Recommendations and Auditor's Comments sections of this report.

Determine the extent to which the board, commission, or agency has effectively attained its objectives and purposes and the efficiency with which the board, commission, or agency has operated.

Article I Section 3 of the Bar bylaws sets out the purposes of the Bar which are:

1. To cultivate and advance the science of jurisprudence.
2. To promote reform in the law and in judicial procedure.
3. To facilitate the administration of justice.
4. To encourage legal education for the membership.
5. To increase the public service and efficiency of the Bar.

To achieve these purposes, the Bar has established and maintains various committees and performs certain functions. For example, the Bar maintains a Law Related Education Committee to present programs to the community and school system to aid in the understanding of the law and legal system. The committee is divided into subcommittees in Anchorage, Fairbanks, Juneau, Kenai, Matanuska-Susitna, and other communities where the board president sees the need to appoint a subcommittee.

The board appoints three attorneys to serve staggered six-year terms on the Alaska Judicial Council (Council). The Council recommends candidates for judicial office and conducts studies for the improvement of the administration of justice in Alaska. Council members survey, investigate, and evaluate incumbent justices and judges standing for retention. The evaluation is published in the Lieutenant Governor's Official Elections Pamphlet. They are also involved in screening of applicants for the state public defenders' office.

The Bar's CLE committee, consisting of 15 members, assists the CLE director in overseeing the presentation of substantive legal education programs to educate Alaskan lawyers about developments in the field of law, and emphasize their ethical responsibilities. The Bar has conducted 68 live, 2 satellite, 15 webcasts, and 36 conventions for CLE presentations for 3,926, 4,820, and 1,976 attorney participants from calendar year 2006 through 2008,[8] respectively.

Determine the extent to which the board, commission, or agency duplicates the activities of another governmental agency or the private sector.

[8] Data is presented as of June 30, 2008.

The board does not duplicate the activities of another governmental agency. However, many of its activities are those typically performed by a professional association. As discussed earlier, some of these more typical private sector activities include such things as fee arbitration, referral services, and sponsorship of a pro bono program.

APPENDICES

Alaska Bar Association
Funds

The Alaska Bar Association (Bar) maintains three separate funds for accounting and reporting purposes. These include a General Fund, the Lawyers' Fund for Client Protection, and the Court System Library Fund. The following describes these funds and their purpose.

- General Fund – This fund is the Bar's operating fund. It accounts for the financial resources and transactions not accounted for in other funds.

- Lawyers' Fund for Client Protection – In accordance with Alaska Bar Rules promulgated by the court system, this fund is maintained solely for the purpose of making reimbursements to clients who have incurred non-insured losses of money or property as a result of dishonest conduct by attorneys. Related trustee counsel compensation may be paid from this fund under certain circumstances.

- Court System Library Fund – This fund is maintained by the Bar, pursuant to a cooperative agreement with the Alaska Court System and the Anchorage Bar Association. The purpose of the fund is to account for the portion of receipts generated from copying services provided in the Anchorage Law Library that are to be used for purchasing legal research resources for the Alaska Court Libraries as designated by the State Law Librarian.

The financial information of Bar funds is from the Bar's audited financial statements for 2007.

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Appendix A

Alaska Bar Association
Statement of Financial Position
Calendar Year 2007

Assets	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Current Assets				
Cash	$ 534,056	$ 137,534	$ 23,472	$ 695,062
Investments	2,133,208	907,611	–	3,040,819
Accounts receivable	1,016,821	–	–	1,016,821
Accrued interest receivable	27,514	8,158	–	35,672
Due from general fund	–	58,287	–	58,287
Prepaid Expenses	92,744	–	–	92,744
Total Current Assets	3,804,343	1,111,590	23,472	4,939,405
Property and Equipment, at cost				
Office furniture and equipment	452,421	–	–	452,421
Leasehold improvements	94,898	–	–	94,898
Video tape library and equipment	7,587	–	–	7,587
Historical artifacts	3,750	–	–	3,750
Subtotal Property and Equipment	558,656	–	–	$ 558,656
Less accumulated depreciation	(486,130)	–	–	(486,130)
Total Property and Equipment	72,526	–	–	72,526
Total Assets	**$ 3,876,869**	**$ 1,111,590**	**$ 23,472**	**$ 5,011,931**
Liabilities and Net Assets				
Current Liabilities				
Deferred dues and fees	1,281,715	29,260	–	1,310,975
Accounts payable and accrued expenses	126,423	–	–	126,423
Due to other funds	72,965	–	–	72,965
Due to Bar Foundation	1,274	–	–	1,274
Total Current Liabilities	2,112,876	29,260	–	1,511,637
Net Assets				
Unrestricted (designated by the Board of Governors)				
Designated for Working Capital	800,000	–	–	800,000
Designated for Asset Acquisition	124,874	–	–	124,874
Undesignated	1,465,868	1,082,330	23,472	2,571,670
Permanently restricted	3,750	–	–	3,750
Total Net Assets	2,394,492	1,082,330	23,472	3,500,294
Total Liabilities and Net Assets	**$ 3,876,869**	**$ 1,111,590**	**$ 23,472**	**$ 5,011,931**

Appendix A

Alaska Bar Association
Revenues Compared with Expenses
Calendar Year 2007

	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Revenues				
Dues	$ 1,686,571	$ 29,043	$ –	$ 1,715,614
Admission Fees	150,850	–	–	150,850
Continuing Legal Education	136,404	–	–	136,404
Lawyer Referral Fees	41,593	–	–	41,593
Annual Meeting	134,557	–	–	134,557
Earnings on Investments	126,973	43,425	205	170,603
Other	235,298	14,727	2,140	252,165
Total Revenues	2,512,246	87,195	2,345	2,601,786
	–	–	–	–
Expenses	–	–	–	–
Admissions	182,457	–	–	182,457
Board of Governors	47,822	–	–	47,822
Discipline	664,488	–	–	664,488
Fee Arbitration	66,780	–	–	66,780
Lawyer Referral	52,504	–	–	52,504
Continuing Legal Education	327,828	–	–	327,828
Administration	492,382	–	–	492,382
Annual Meeting	112,091	–	–	112,091
Other	288,028	157,902	12	445,942
Total Expenses	2,234,380	157,902	12	2,392,294
	–	–	–	–
Increase (decrease) in net	–	–	–	–
unrestricted assets	277,866	(70,707)	2,333	209,492
	–	–	–	–
Unrestricted Net assets at	–	–	–	–
beginning of year:	–	–	–	–
Designated for Working Capital	775,000	–	–	775,000
Designated for Asset Acquisition	130,239	–	–	130,239
Undesignated	1,207,637	1,153,037	21,139	2,381,813
Total at Beginning of Year	2,112,876	1,153,037	21,139	3,287,052
	–	–	–	–
Unrestricted Net assets at	–	–	–	–
end of year:	–	–	–	–
Designated for Working Capital	800,000	–	–	800,000
Designated for Asset Acquisition	124,874	–	–	124,874
Undesignated	1,465,868	1,082,330	23,472	2,571,670
Total at End of Year	$ 2,390,742	$ 1,082,330	$ 23,472	$ 3,496,544

Alaska Bar Association
General Fund Revenues Compared with Expenses
Calendar Years 2006 through 2007

	2006	2007
Revenues		
Dues	$ 1,702,211	$ 1,686,571
Admission Fees	174,750	150,850
Continuing Legal Education	131,979	136,404
Lawyer Referral Fees	42,242	41,593
Annual Meeting	123,905	134,557
Earnings on Investments	105,092	126,973
Other	148,861	235,298
Total Revenues	2,429,040	2,512,246
Expenses		
Admissions	175,898	182,457
Board of Governors	42,364	47,822
Discipline	646,385	664,488
Fee Arbitration	63,311	66,780
Lawyer Referral	50,785	52,504
Continuing Legal Education	360,525	327,828
Administration	460,255	492,382
Annual Meeting	122,746	112,091
Other	226,520	288,028
Total Expenses	2,148,789	2,234,380
Increase (decrease) in net unrestricted assets	280,251	277,866
Unrestricted Net assets at beginning of year:		
Designated for Working Capital	700,000	775,000
Designated for Asset Acquisition	129,375	130,239
Undesignated	1,003,250	1,207,637
Total at Beginning of Year	1,832,625	2,112,876
Unrestricted Net assets at end of year:		
Designated for Working Capital	775,000	800,000
Designated for Asset Acquisition	130,239	124,874
Undesignated	1,207,637	1,465,868
Total at End of Year	$ 2,112,876	$ 2,390,742

Alaska Bar Association
Lawyers' Fund for Client Protection Revenues Compared with Expenses
Calendar Years 2006 through 2007

	2006	2007
Revenues		
Dues	$ 28,623	$ 29,043
Earnings on Investments	44,047	43,425
Unrealized (Loss) Gain on Investments	5,413	11,547
Other	2,368	3,180
Total Revenues	80,451	87,195
Expenses		
Claims Awarded	71,672	127,235
Other	1,920	30,667
Total Expenses	73,592	157,902
Increase (decrease) in net unrestricted assets	6,859	(70,707)
Unrestricted Net assets at beginning of year:		
Undesignated	1,146,178	1,153,037
Total at Beginning of Year	1,146,178	1,153,037
Unrestricted Net assets at end of year		
Undesignated	1,153,037	1,082,330
Total at End of Year	$ 1,153,037	$ 1,082,330

Appendix A

Alaska Bar Association
Court System Library Fund Revenues Compared with Expenses
Calendar Years 2006 through 2007

	2006	2007
Revenues		
Earnings on Investments	$ 190	$ 205
Share from Copiers	1,856	2,140
Total Revenues	2,046	2,345
Expenses		
Other	12	12
Total Expenses	12	12
Increase (decrease) in net unrestricted assets	2,034	2,333
Unrestricted Net assets at beginning of year:		
Undesignated	19,105	21,139
Total at Beginning of Year	19,105	21,139
Unrestricted Net assets at end of year		
Undesignated	21,139	23,472
Total at End of Year	$ 21,139	$ 23,472

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Appendix B

Board of Governors of the Alaska Bar Association
Discipline Statistics
Calendar Years 2006 through 2008[9]

Disposition of Closed Disciplinary Cases	2006	2007	2008
Disbarment by Supreme Court	–	2	2
Suspension by Supreme Court	7	5	5
Public Censure by Supreme Court	–	1	–
Public Reprimand by Disciplinary Board	2	1	1
Private Reprimand by Disciplinary Board	2	–	1
Private Admonition by Discipline Counsel	4	1	2
Dismissed	31	21	5
Closed After Mediation	–	–	–
Total Closed Cases	46	31	12
Status of Open Cases at Year End			
Attorney on Probation	1	1	1
Pending Supreme Court	1	3	7
Pending Disciplinary Board	5	8	–
Pending Hearing Committee	5	–	12
Pending Stipulation	–	3	8
Pending Approval to File Formal Hearing	10	11	7
Pending Written Private Admonition	–	–	–
Abeyance due to Court Case	9	9	9
Pending Bar Counsel Investigation/Decision	23	33	40
Pending Complainant Reply	1	1	10
Pending Respondent Response	3	17	21
Pending Mediation	–	–	–
Total Open Cases	58	86	115

Source: Data for 2006-2007 was obtained from annual reports of the Alaska Bar Association. The 2008 data is from Alaska Bar Association's quarterly Discipline Reports to the Alaska Supreme Court for January 1, 2008 through June 30, 2008.

[9] The amounts reported for 2008 includes activity from January 1 through June 30, 2008.

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Appendix C

Board of Governors of the Alaska Bar Association
Bar Examination and Admission Statistics

Examination Statistics

Examination Dates	Number Taking Exam	Number Passing Exam	Percent Passing Exam
July 2006	82	52	63%
February 2007	54	26	48%
July 2007	75	52	69%
February 2008	37	27	73%
Total	**248**	**157**	**63%**

Admission Statistics

Calendar Year	Admission By Examination	Admission By Reciprocity	Total Admissions
2006	85	30	115
2007	70	43	113
2008[10]	40	14	54
Total	**195**	**87**	**282**

Source: Alaska Bar Association's 2006-2007 Annual Reports and 2008 information provided by the Alaska Bar Association's executive director.

[10] Admissions through June 30, 2008.

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Board of Governors of the Alaska Bar Association
Attorney Referrals
January 1, 2006 through June 30, 2008
(Unaudited)

Practice Categories	2006	2007	2008
Administrative	194	219	128
Admiralty	18	12	7
Adoption	16	35	15
Arts	2	3	4
Bankruptcy	52	79	63
Commercial	112	149	76
Construction	29	63	15
Consumer	315	275	152
Criminal: Felony	92	166	55
Criminal: Misdemeanor	114	170	75
Divorce/Dissolution/Custody	784	809	402
Eminent Domain	4	–	4
Environmental	6	–	–
Foreign Language	–	2	3
Guardian/Conservator	64	11	18
Immigration	28	52	18
Insurance	51	61	23
Labor Relations	355	392	194
Landlord/Tenant	63	30	49
Malpractice	197	244	96
Negligence	380	556	211
Patent/Copyright	5	41	8
Public Interest	3	1	1
Real Estate	175	257	112
Social Security Insurance Cases	22	48	2
Traffic	49	8	3
Trusts/Wills/Estates	144	222	107
Workers' Compensation	192	229	110
Total	3,468	4,134	1,951

Source: Data for 2006-2007 was obtained from Annual Reports of the Alaska Bar Association. The 2008 data provided by the Alaska Bar Association's executive director is for 6 months of attorney referrals.

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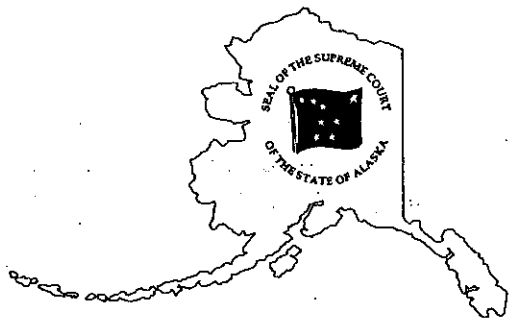

ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

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Deputy Administrative Director

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November 20, 2008

Pat Davidson
Legislative Auditor
Division of Legislative Audit
P.O. Box 113300
Juneau, Alaska 99811-3300

RECEIVED
NOV 25 2008
LEGISLATIVE AUDIT

Re: Preliminary Audit Report
Board of Governors of Alaska Bar Association
Sunset Review, November 8, 2008

Dear Ms. Davidson:

Thank you for the opportunity to offer a written response to the findings and recommendations contained in the above-referenced preliminary audit report. This response represents the views of the Administrative Office of the Alaska Court System (AOC).

The AOC takes no position on the findings and recommendations directed at the Board of Governors of the Alaska Bar Association. We agree with the conclusion that the Board protects the public by ensuring that persons licensed to practice law are qualified. We also concur in the recommendation to the legislature that the termination date of the Board be extended to June 30, 2017.

However, we take issue with the auditor's comments beginning on page 11. Those comments go beyond the scope of the audit by making conclusory observations about the merits of self-regulation by the Bar, and suggesting that attorney discipline in Alaska could be a government function. Specifically, it is suggested that the following options be considered:

- Disciplinary investigations performed by Alaska Court System employees
- Place disciplinary function under the Supreme Court with a Disciplinary Board appointed by the court

The historical record shows that attorney discipline has always been a matter of importance to the supreme court. In fact, when the supreme court first asserted control of the Bar over the Bar's strenuous objection in 1964, it did so by promulgating rules governing the discipline of attorneys, among other things. See *In the Matter of an Application for an Order Vacating ALASKA SUPREME COURT ORDERS NO. 64, 68, 69, 70 and 71, and Other Relief*, 395 P.2d 853 (Alaska 1964). Public confidence in the process of attorney discipline is essential.

Equally important, however, is the need to keep separate the prosecutorial and adjudicative functions inherent in attorney discipline. Under our system of government, it is imperative that those who have the duty of charging transgressors and proving their guilt do not have the final say in determining that guilt. As currently designed, the system of attorney discipline keeps a wall between those two roles. It is the Bar which has the duty to investigate and prosecute allegations of attorney misconduct, to make preliminary findings, and to recommend punishment. It is the supreme court which makes the final determination of guilt or innocence, and which makes the final determination regarding appropriate punishment.

The fundamental problem with placing the attorney discipline function within the court system is that the entity responsible for investigating and prosecuting attorney misconduct would also be the entity responsible for making the ultimate determination of guilt or innocence. As the final adjudicative body for cases decided under the Alaska Constitution, it is inappropriate for the supreme court to exercise both executive and judicial powers in disciplinary matters.

There may be other states in which the supreme court exercises both prosecutorial and adjudicative authority. However, that does not mean that it is good public policy to do so, or that doing so is consistent with the fundamental principles under which our system was intended to operate. Administrative convenience is not an adequate justification for this consolidation of government power.

If it is ever determined that the current system of attorney discipline does not work adequately and needs to be changed, a better model would be the one utilized by the Judicial Conduct Commission. This commission is part of the judicial branch of government, not the court system, and as such it is independent of the supreme court. The commission engages in investigatory and prosecutorial tasks when allegations of judicial misconduct are made, and makes recommendations to the supreme court. The supreme court exercises the judicial function, serving as the final arbiter of guilt or innocence.

It is true that a separate disciplinary entity such as this could be paid for by Bar dues and have no cost to the general fund at this time. However, the persons staffing said agency would be new state employees. The legislature has demonstrated an intent in recent years to limit the addition of permanent, full-time state employees, and absent concrete evidence that the current system does not adequately serve the public interest, it may be disinclined to create a new state bureaucracy.

Thank you for providing the opportunity to comment on this audit. Please feel free to contact me if you have any questions.

Very truly yours,

C. S. Christensen III
Deputy Administrative Director

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ALASKA BAR ASSOCIATION

December 2, 2008

RECEIVED
DEC 02 2008
LEGISLATIVE AUDIT

Pat Davidson
Legislative Auditor
c/o Division of Legislative Audit
4341 B Street, Ste. 400
Anchorage, AK 99503

Dear Ms. Davidson:

Thank you for the thorough sunset review of the Alaska Bar Association and the opportunity to respond to your preliminary audit report.

Sunset and Fiscal Note

The Board concurs with extending the sunset date of the Alaska Bar Association Board of Governors until June 30, 2017.

There will be no fiscal note attached to any bill filed with the legislature to extend the sunset date of the Board of Governors, as the Bar Association will not be seeking any state funding for its operational costs. The Bar Association has obtained state funding only during the limited time frame between 1981 and 1986, and only for the per diem and travel expenses of the three public members who sat on the Board. For the past 22 years, the Bar Association has paid those expenses without state funding.

As noted in the audit, the operations of the Bar Association are funded entirely by Bar members through bar dues, admission fees, Continuing Legal Education seminar fees, Lawyer Referral Service charges, convention fees, and interest income. Ironically, a decision to sunset the Bar would have a multi-million dollar fiscal impact to the state.

Response to Recommendation No. 1: The Supreme Court has adopted an MCLE rule and will review the program in three years.

The Alaska Supreme Court adopted an MCLE rule in December 2007, effective January 1, 2008. Bar Association members will be required to report for the first time by February 1, 2009.

The MCLE rule requires that all active Bar members complete at least three hours of ethics CLE per year and report that they have done so. Members must also report whether they have completed nine hours of general CLE, and if they have not done so, they must report the estimated hours of general CLE that they did complete.

In their commentary to the rule, the Supreme Court stated that "To protect the public, ensure that lawyers remain mindful of their obligations to their clients, and to address the area about which the Association receives the majority of questions from and complaints about lawyers, the Supreme Court is imposing a mandatory requirement for ethics CLE on all active Bar members."

The Court also stated that "At the end of three years, the Supreme Court will again assess the project's results, including recommendations and statistics provided by the Association, and will determine whether an expanded mandatory CLE program is necessary."

At the end of the three year period, the Association will have the benefit of its experience in administering the mandatory ethics and reporting program. It will be able to determine what issues and problems have arisen and will also allow the Association time to educate Bar members about complying with the educational and reporting requirements.

The Association has hired a part-time MCLE Administrator to administer the program. In addition, the Association is offering a free ethics CLE program on November 5, 2008, in accordance with the Supreme Court's wish that the Association provide at least three hours a year of ethics CLE at no cost to members. This program will be available in a variety of formats: live, via webcast or on DVD.

Response to Recommendation No. 2. We agree that Lawyer Public Discipline History should be available on the Alaska Bar Association website.

The legislative auditor notes that the Alaska Bar Association has joined a consortium of other state and local bars aimed at replacing our database with a new member management system. This will include a module specifically for lawyer discipline data. This system will provide a means to post public discipline information on the Bar's website.

It has been the Bar's goal since the website was first launched in 1998 to post public discipline information.

Like many computer programming projects, the implementation of the new database is taking longer than originally anticipated. Issues include the need to modify and test programs that are unique to Alaska. The new MCLE requirement also took priority over the implementation of other program modules, such as discipline.

In addition, the fact that only a minority of states publish their lawyers discipline list on their websites indicates the difficulty many states have in automating this information. Timeliness and accuracy are essential to this process.

The Board agrees that having public discipline information available on our website is a desirable goal and we will continue to work to that end. We anticipate that the new discipline module, including online reporting of public discipline, will be operational in the coming 12 – 18 months.

Response to Recommendation No. 3. We agree that the Bylaws of the Alaska Bar Association should be modified to specifically include conference call meetings of the Board and to provide for reasonable public notice of those meetings.

From time to time the Board of Governors finds it necessary to call meetings between regularly scheduled Board meetings to take up specific items which should not be delayed until the next Board meeting. The Board limits its action to those items listed in the call of the meeting.

Bar staff recognizes that the conference call meetings since June 30, 2006 did not meet the 30 day public notice requirement for Board meetings. However, the need for a conference call meeting of the Board is often realized only a week or two in advance, and therefore, it could not meet the 30 day notice requirement.

The staff will draft a proposed amendment to the Bylaws, to be taken up by the Board of Governors, to provide that the President may call a conference call meeting of the Board as appropriate to conduct business as necessary between regularly scheduled Board meetings. This will recognize conference calls as a unique type of Board meeting, and, in

accordance with AS 44.62.310(e), the proposed Bylaw will state that "reasonable public notice" will be given.

The Bylaws will also be amended to clarify that Board of Governors meetings, as well as Association meetings, are governed according to Roberts Rules of Order, Newly Revised. The Board has operated under these rules, but this will be clearly stated in the Bylaws.

Matters "not accepted" for investigation.

Page 17 states that 80% of the grievances received were not accepted for investigation due to lack of merit. While formal investigations were not conducted, these matters were thoroughly reviewed by discipline section staff counsel with expertise in attorney grievance matters and both complainants and respondent attorneys were informed in writing of the reasons that the matters were not accepted for investigation.

Concluding Comments: Lawyer self-regulation has been effective and efficient in Alaska.

The overall conclusion of the audit is that the Board effectively serves the public interest through its lawyer admission and discipline process. We also believe that lawyer self-regulation is working very effectively and efficiently in Alaska. To its credit, the Alaska Bar Association has one of the most aggressive and effective discipline systems in the country.

In 2006, the Bar Association conducted an e-mail and phone survey of the members of the National Organization of Bar Counsel whose members staff disciplinary jurisdictions nationwide. Of the 48 states the Bar was able to contact, 26 indicated that they were not state government agencies.

As reported in our December 16, 2005 response, 13[1] jurisdictions, in addition to Alaska, indicated that they were not state government agencies under their supreme courts; 13[2] generally indicated that they were considered creations of their supreme courts, but either not

[1] Alabama, Arizona, Hawaii, Idaho, Kentucky, Montana, Nevada, North Carolina, Oregon, South Dakota, Utah, Washington, and Wyoming.

[2] Arkansas, Florida, Idaho, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Mississippi, Missouri, North Dakota, Pennsylvania, and West Virginia.

considered state government agencies or state employees; and, 22[3] indicated that they were state government agencies under their supreme courts.

Based on this survey, Alaska is not unique in its approach to attorney discipline. Indeed, because the Bar Association performs these vital functions under the supervision of the Alaska Supreme Court, its system is similar to those in place in a significant number of other state jurisdictions.

We believe that there would be significant additional costs to both the court and the Bar Association if the attorney discipline system in Alaska was carried out by a government agency. Currently, the Bar Association has one bar counsel, two assistant bar counsel, one paralegal, two legal secretaries, and two other employees of the Bar who provide support to the discipline system in addition to their other Bar duties.

Currently these employees have the benefit of shared costs of office space, conference room, computer system, telephone system, copy machines, etc. with the rest of the Bar staff. In addition, the Bar's system administrator provides computer support to all Bar employees. If the discipline employees were split off from the Bar Association, they would lose the benefit of this shared functionality and they would have to purchase and maintain separate space and equipment.

Currently discipline hearings are heard by a members of a volunteer committee made up of attorneys and public members. If discipline were split off from the Bar Association, the state would need to staff this function with state hearing officers.

Currently bar counsel supervises the assistant bar counsel and discipline staff, as well as handling such other discipline matters as reinstatement, etc. He also handles approximately 800 calls a year giving informal ethics advice to members of the Bar. If a new state agency had less than three lawyers on staff, this valuable service would not be feasible and the current caseload would likely see a dramatic increase in processing time. The discipline section would also lose the assistance of the two staff persons who provide other support to the discipline section.

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[3] California, Colorado, Connecticut, Delaware, Georgia, Illinois, Indiana, Louisiana, Minnesota, Nebraska, New Hampshire, New Jersey, New Mexico, New York, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Virginia, and Wisconsin.

Meanwhile, the Board of Governors would still need to have its own staff counsel, so the Bar Association would still have the expense of a lawyer and legal secretary on its staff.

There would also be additional expense if there was a Disciplinary Board separate from the Board of Governors. Currently, the Board of Governors acts as the Disciplinary Board at its regularly scheduled board meetings. The budget for the Board travel is included in the Board of Governors budget, and is not included as part of the discipline budget, so Discipline Board meetings would be a new expense.

The cost to Bar members to support additional staff, separate offices and equipment and separate Boards would mean a significant increase in bar dues, the addition of a separate disciplinary assessment, or that these expenses come out of the state general fund.

We believe that the subjective benefit of splitting out the discipline function from the Bar is outweighed by the practical and economic realities.

It is also our belief that the present management system of the Bar provides a blend of private and governmental functions, insuring both accountability and good management. For example, the Bar is an instrumentality of the state and subject to legislative audits. Its meetings are open to the public. Members of the public sit on discipline hearings and fee arbitration panels as well as on the Board of Governors. Its rule making and discipline functions are overseen by the Supreme Court, which assures a sound investigative and judicial process of discipline. Finally, the statewide lawyer membership on the Board also ensures that the Bar Association is both responsive to the needs of its members, and qualified to address such issues as admission standards and peer review.

Reserves of the Alaska Bar

The Board has a policy to hold a working capital reserve in an amount equal to four month's expenses ($212,500/month or $850,000.) However it is not unusual for a non-profit association to hold a reserve in an amount equal to six to nine months of expenses. (Ranging from $1,275,000 - $1,912,000.)

Unlike state agencies, the Bar cannot request supplemental appropriations from the Legislature or pool resources if an unexpected event occurs which would incur significant financial expense. The Board also needs to be able to "save" for the financial viability of planned projects or events. For example, the Bar is in the process of replacing its entire database, a multi-year project that will cost nearly $200,000.

Between 1981 and 2005, Bar dues had only been raised twice: from $310 to $450 in 1994; and, from $450 to $550 in 2005.

At the October 2007 meeting, the Board of Governors approved the first bar dues reduction in the history of the Alaska Bar Association. To make the reduction, the Board voted to change a twenty-five year old budget policy that increased the unappropriated capital to offset future year deficits, deferring an increase in bar dues. Now the Board will budget on a "pay as you go" basis. This resulted in an approved draw down of the then $1.2 million unappropriated capital by approximately $400,000 for 2008. Active members of the bar saw their 2008 dues decrease to $410. 2008 inactive member dues were $135.

The Board reviewed the 2009 budget at the October 2008 meeting and voted to set 2009 active member bar dues at $450 (plus $10 for the Lawyers' Fund for Client Protection) and inactve dues at $150. This will result in an estimated loss in 2009 of $340,697, leaving a projected estimate of unappropriated capital of $670,536 at the end of 2009.

Lawyers' Fund for Client Protection

Every year, Bar members each pays ten dollars to the Lawyers' Fund for Client Protection. This is a trust fund which serves as a safety net primarily for clients who have suffered monetary losses as a result of dishonest acts by their lawyers. This Fund currently has $1,122,144. These funds are designed to protect the public and cannot be used for general operating expenses.

To date in 2008, $28,100 in claims was awarded to clients of attorneys who were found to be dishonest in their dealings with the clients. $127,235 was awarded in 2007 and $31,972 was awarded in 2006.

As an instrumentality that predates the ratification of the Alaska Constitution, the Alaska Bar maintains these funds under Article IX, Sec.

7 of the Alaska Constitution. It is unclear whether the Bar could continue to do so if portions of its powers were split to a state agency.

Again, thank you for the opportunity to comment on the audit report. We trust that our response has been helpful, and that it demonstrates the Board's continuing commitment to improving the legal profession and service to the public.

Sincerely,
Alaska Bar Association

Deborah O'Regan

for Mitchell Seaver
President

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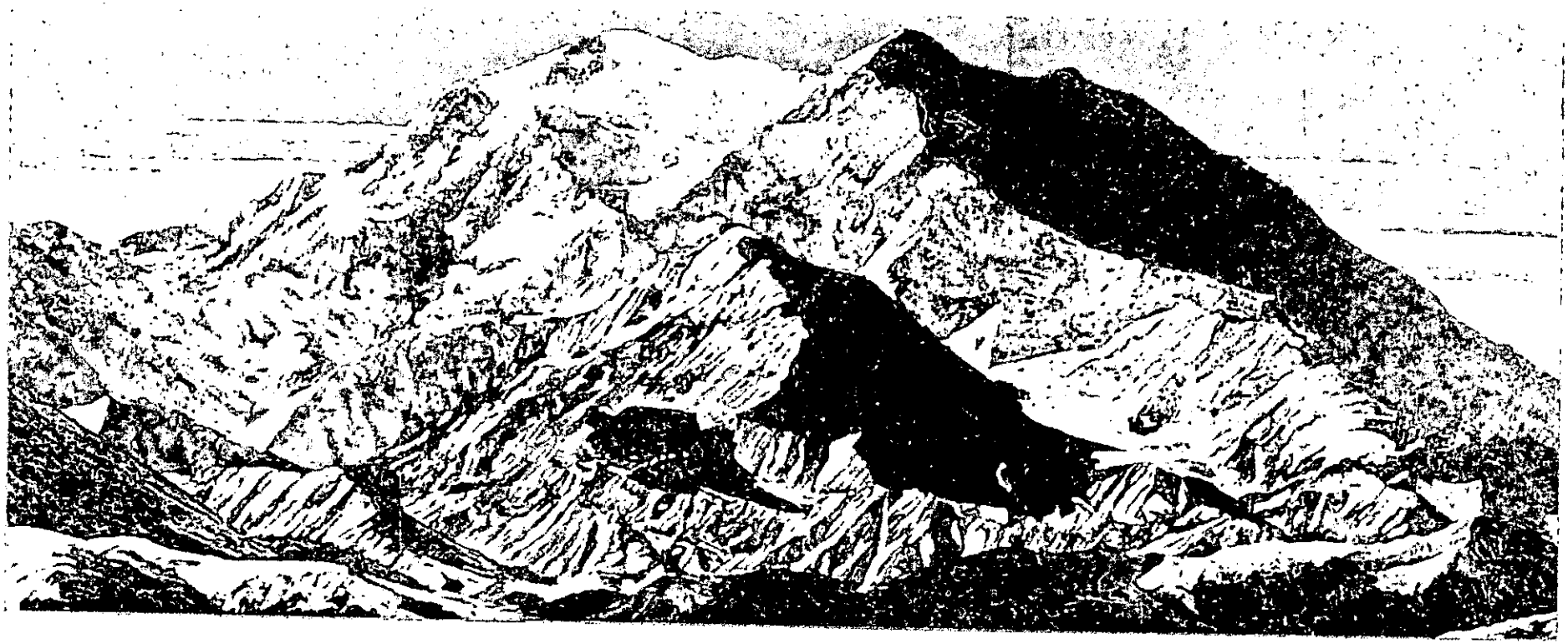
ALASKA BAR ASSOCIATION

2007 Annual Report



THE ALASKA BAR ASSOCIATION

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Mitchell Seaver, President-Elect
William Granger, Vice President
Krista Stearns, Secretary
Sidney Billingslea, Treasurer
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Deborah O'Regan, Executive Director
Barbara Armstrong, Assistant Director & CLE Director
Krista Scully, Pro Bono Director
Kristi Powell, Executive Assistant
Karen A. Schmidlkofer, Controller
Candice Goard Bryant, Accounting Assistant
Kara Bridge, CLE Coordinator
Devon Richardson, Admissions Assistant/Receptionist
Charissa Feltman, Lawyer Referral Assistant
Brent Reynolds, Webmaster & Network Technician
Jonathan Minton, CLE Assistant

Stephen J. Van Goor, Bar Counsel
Mark Woelber, Assistant Bar Counsel
Louise R. Driscoll, Assistant Bar Counsel
Deborah C. Ricker, Discipline Investigator/Paralegal
JoAnne Baker, Section Coordinator & Arbitration/Discipline/CLE Library
Ingrid Varenbrink, Arbitration/Discipline/CLE Library
Gail Welt, Executive Assistant
Annette Ravithis, Discipline Secretary

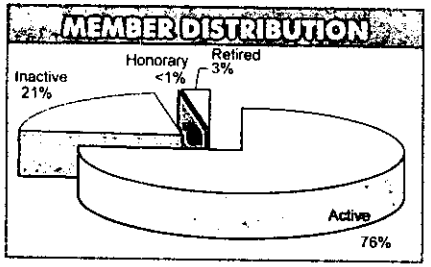
Cover art: Denali Spring, 2000, 24" x 60," oil on canvas. By Kesler Woodward (www.keslerwoodward.com)

Introduction & Overview

In 2007, the Alaska Bar Association had 3,865 members in the following categories: 2,931 Active (2,406 In-state and 525 Outside), 825 Inactive, 108 Retired, and 1 Honorary. Its affairs are governed by a 12-member Board of nine attorneys and three non-attorney citizens. A (non-voting) New Lawyer Liaison also advises the Board.

Written guidelines for governance are contained in the Integrated Bar Act, the Alaska Bar Rules (promulgated by the Supreme Court of Alaska), the Alaska Rules of Professional Conduct, the Association's Bylaws and Regulations, the Board of Governors' Policy Manual, and a Personnel Manual.

The two most important functions of the Bar are the admission and discipline of its members, both of which are carried out under the supervision of the Supreme Court of Alaska.



There are presently 9 standing committees, 23 sections, 5 bar rule committees, and special committees as appointed by the Board. In addition, the Bar Association participates in a number of adjunct organizations and administers special projects, such as the Statewide Lawyer Referral Service. More than half of the membership participates, voluntarily and without remuneration, in the affairs of the association.

The staff of the Alaska Bar has grown from a part-time, volunteer executive secretary when it was founded in 1968, to 19 employees.

The association is primarily funded by its membership's annual dues, continuing legal education program registration fees, admissions, the annual convention, the Lawyer Referral Service, and interest income. The Association received no public monies in the 2007 fiscal year.

Principal Activities

• Bar Examination

The Alaska Bar Examination is conducted twice annually in Anchorage, Fairbanks and Juneau. It consists of: 1) one day of essay questions on Alaska law prepared by a permanent

2003 - 2007 Bar Exam Results

Date	Applicants	Passed	Pass Rate
July 2007	75	52	69%
	54 1st timers	47	87%
Feb. 2007	54	26	48%
	24 1st timers	17	71%
July 2006	82	52	63%
	64 1st timers	46	72%
Feb. 2006	66	40	61%
	46 1st timers	36	78%
July 2005	70	39	56%
	49 1st timers	35	71%
Feb. 2005	62	44	71%
	50 1st timers	39	78%
July 2004	61	43	70%
	52 1st timers	40	77%
Feb. 2004	56	37	66%
	31 1st timers	27	87%
July 2003	86	51	59%
	63 1st timers	44	70%
Feb. 2003	53	27	51%
	31 1st timers	25	81%

> "The two most important functions of the Bar are the admission and discipline of its members, both of which are carried out under the supervision of the Supreme Court of Alaska."

Admissions

All applicants are required to attend a course on ethics as prescribed by the Board prior to admission.

All applicants must also submit an affidavit that they have read and are familiar with the Alaska Rules of Professional Conduct. (Bar Rule 64)

committee of the Association known as the Alaska Law Examiners; 2) two half-days of objective, multiple choice questions (the Multistate Bar Examination or "MBE"), prepared by the National Conference of Bar Examiners (NCBE) and administered simultaneously in 48 states and D.C.; and 3) a half day of the performance test (the Multistate Performance Test or "MPT") prepared by NCBE.

In addition, a Multistate Professional Responsibility Exam (MPRE) is given separately three times a year (March, August, and November).

In 2007, 129 individuals took the Bar Exam and 78 passed the exam.

Admission Without Examination

Bar Rule 2, Section 2 provides an admission without examination rule, with reciprocity provisions. An applicant who has taken a written bar exam in a reciprocal jurisdiction and has engaged in the active practice of law for five of the previous seven years may be eligible for reciprocal admission.

In 2007, 43 applicants were approved for admission without examination.

• Discipline of Members

The Alaska Supreme Court has held that an attorney's license to practice law is "a continuing proclamation by the Court that the holder is fit to be entrusted with professional and judicial matters...as an officer of the courts." Investigation and recommendations for professional conduct matters have been delegated by the Court to the Bar Association.

Expenditures for the Discipline Section totaled $664,488 during 2007, a substantial allocation of Bar Association resources for the protection of clients, the public, and the legal system in Alaska.

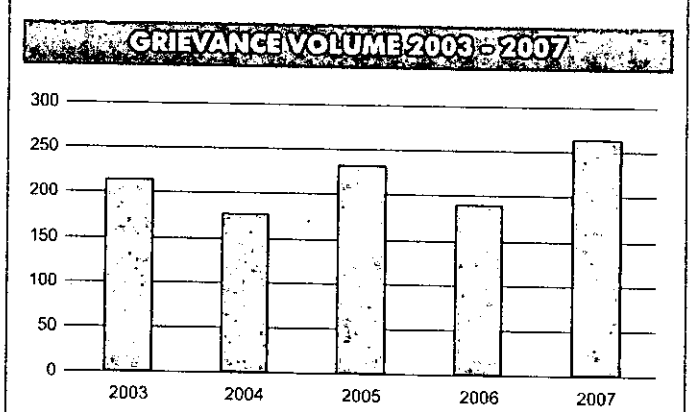
2007 Grievances

The Discipline Section received 264 grievances in 2007, compared with 190 in 2006, representing a 39% increase. Summary statistical data related to discipline status are contained in the charts.

2007 Grievances

The number of grievance matters processed increased 39%

New Cases Opened	59
Grievances Not Accepted for Investigation	205
2007 Grievance Volume Total	264



Discipline Case Statistics[1]
2003-2007

	'03	'04	'05	'06	'07
Open cases pending as of Jan. 1	106	83	63	61	58
New cases opened in 2007(+)	25	31	36	43	59
TOTAL open and new cases	***131***	***114***	***99***	***104***	***117***
Cases closed in 2003-2007					
Closed after disbarment by Supreme Court	17	0	3	0	2
Closed after suspension by Supreme Court	1	10	3	7	5
Closed after probation ended	0	0	0	0	0
Closed after public censure by Supreme Court	1	1	4	0	1
Closed after reprimand publicly imposed by Disciplinary Board	2	0	1	2	1
Closed after reprimand privately imposed by Disciplinary Board	0	1	0	2	0
Closed after written private admonition by Bar Counsel	0	2	3	4	1
Dismissed by Bar Counsel	26	36	24	31	21
Closed after mediation	1	1	0	0	0
TOTAL closed cases (-)	**48**	**51**	**38**	**46**	**31**
Open cases pending as of Dec. 31, 2007	**83**	**63**	**61**	**58**	**86**

[1] All numbers reflect individual grievances filed and not the number of attorneys involved.

Status of Open Cases as of December 31

	'03	'04	'05	'06	'07
Pending First Response from Respondent Attorney	3	7	7	3	15
Pending Complainant's Reply	3	1	2	1	1
Pending Second Response from Respondent Attorney	0	7	0	0	2
Pending Bar Counsel Investigation/Decision	62	32	25	23	33
Abeyance Pending Outcome of Related Court Case Pending Mediation	2	2	9	9	9
Abeyance Pending Outcome of Fee Arbitration	1	0	0	0	0
Pending Approval to Issue Written Private Admonition	0	0	0	0	0
Pending Acceptance of Written Private Admonition by Respondent Attorney	0	0	1	0	0
Pending Approval to File Petition for Formal Hearing	0	1	0	0	0
Pending Stipulation for Discipline between Bar Counsel and Respondent Attorney	0	5	8	10	11
Pending Stipulation Consideration by Disciplinary Board	2	0	0	0	0
Pending Stipulation Consideration by Supreme Court	0	0	6	0	0
Pending before Area Hearing Committee	0	0	0	0	3
Pending before Disciplinary Board	1	0	0	5	0
Pending before Supreme Court	2	2	0	5	8
Respondent Attorney on Probation	6	5	2	1	3
TOTAL open cases	1	1	1	1	1
	83	**63**	**61**	**58**	**86**

Summary of Public Discipline Actions in 2007

- The Alaska Supreme Court disbarred William S. Labahn effective September 14, 2007 and Mitchel J. Schapira effective November 21, 2007.
- The Court suspended Larry A. Wiggins for 180 days with 90 days stayed on conditions effective June 25, 2007.
- The Court issued a public censure to Anthony L. Strong effective August 22, 2007.
- The Court interimly suspended Mark J. Avery effective April 17, 2007.
- The Disciplinary Board publicly reprimanded James A. Wendt effective October 26, 2007.

> "The Bar Association, under the Alaska Bar Rules, maintains an Attorney Fee Dispute Review Committee to hear fee disputes between attorneys and clients."

Summary of Reinstatement Actions in 2007

A suspended or disbarred attorney may be reinstated by the Alaska Supreme Court, but only after the appropriate review procedures are followed.

The Court reinstated Eugene B. Cyrus effective March 23, 2007.

Summary of Disability Actions in 2007

The Rules of Disciplinary Enforcement also anticipate circumstances where the need for protection of the public arises from mental or physical infirmity, illness, or addiction to controlled substances.

Ronald W. Lorensen was transferred to disability inactive status due to a physical disability effective February 14, 2007. Unfortunately, Mr. Lorensen passed away on March 29, 2007. Clifford W. Holst was transferred to disability inactive status due to a physical disability effective March 30, 2007.

• The Attorney Fee Dispute Review Committee

The Bar Association, under the Alaska Bar Rules, maintains an Attorney Fee Dispute Review Committee to hear fee disputes between attorneys and clients where such disputes have not been determined by statute, court rule, or decision. Five subcommittees residing in Ketchikan, Juneau, Anchorage, Kenai and Fairbanks comprise the Committee. Each subcommittee consists of a "pool" of attorney and non-attorney members who serve for three years on a volunteer basis. From these subcommittees, a panel of two attorneys and one non-attorney is convened to hear a fee dispute. If the amount in dispute is $5,000 or less, a single panel member hears the matter.

2003 - 2007 Fee Arbitration Statistics

	'03	'04	'05	'06	'07
Arbitrations pending January 1	37	33	21	27	26
Arbitrations opened during year (+)	58	39	60	53	58
Arbitrations closed during year (-)	62	51	54	54	51
Arbitrations pending Dec. 31year-end	33	21	27	26	33

• The Lawyers' Fund for Client Protection Committee

The Bar Association maintains a fund for the purpose of reimbursing attorneys' clients who have suffered non-insured losses of money, property, or other things of value, as a result of dishonest conduct by attorneys. Dishonest conduct is defined as acts of embezzlement, wrongful taking, or conversion of money, property, or other things of value. The fund also pays the cost of trustee counsel appointed by the superior court to close the practice of a deceased sole practitioner or a lawyer who has abandoned his or her practice. The monies of the fund come from yearly assessments on active members, paid concurrently with membership dues, as well as interest earned on the fund balance.

At the close of 2007, four (4) claims were pending before the LFCP Committee. The Committee and the Board of Governors took action on 21 claims during the year.

2007 LFCP Actions

Case Number	Reimbursement(s)* Paid by Board	Reimbursement(s) Rejected by Board	Reimbursement(s) Rejected by LFCP Committee
20061002	$3,500.00		
20061004	$3,000.00		
20061005	$3,750.00		
20061006	$1,500.00		
20061008	$25,000.00		
20061009	$19,000.00		
20061011	$25,000.00		
20061012	$20,000.00		
20061013	$1,250.00		
20061014	$3,500.00		
20061019	$2,500.00		
20061022			**$750.00
20061024			$1,500.00
20071001	$2,000.00		
20071002			$6,500.00
20071004			$12,743.05
20071005	$2,500.00		
20071006	$11,235.00		
20071007	$2,000.00		
20071008	$1,000.00		
20071010	$500.00		
Totals	**$127,235.00**		**$21,493.05**

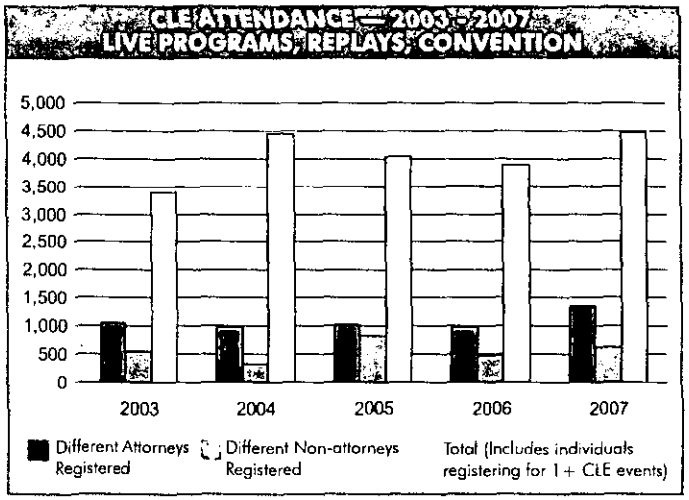
*These figures reflect reimbursements from the Fund which may be less than the amount requested by the claimant.
**Withdrawn when attorney agreed to pay claimant.

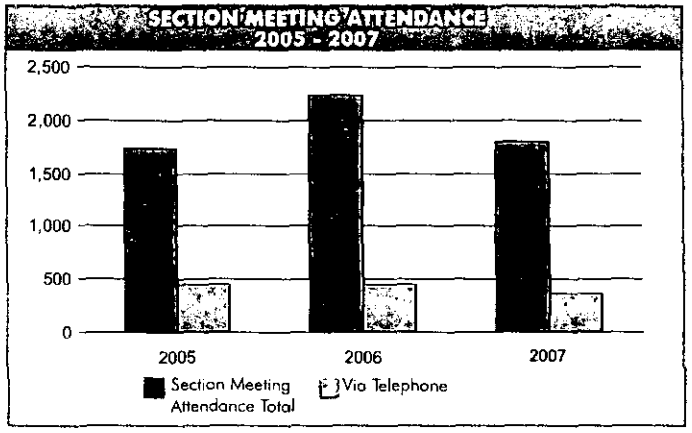
• Continuing Legal Education (CLE)

The Continuing Legal Education Committee and the Association's Director of Continuing Legal Education are responsible for presenting and administering all CLE programs and activities, including the CLE Library.

The substantive law sections of the Bar Association are responsible for sponsoring a minimum of one CLE seminar every two years. In 2007 there were 23 active substantive law sections, with a total membership of 2033 for all sections, an increase of 608 members over 2006 membership.

The majority of live CLE programs are presented in Anchorage, which has the largest concentration of lawyers in the state. All of these programs are videotaped.





Alaska Bar CLE Attendance

In 2007, registrations for CLE programs and events totaled 4,463.

Attendance at CLE programs totaled 2,110 (including 122 speakers), and 528 individuals attended one or more convention events.

Section Meeting Attendance

In addition, 1,439 attorneys attended in person and 359 participated by telephone in the Bar's substantive law sections' meetings. Attendance declined slightly in 2007 due to several sections opting to meet quarterly vs. monthly.

VCLE Compliance

A total of 1,096 active members of the Bar reported compliance with the VCLE Rule for the period of Jan. 1 - Dec. 31, 2007.

To provide CLE opportunities for attorneys practicing outside of Anchorage, the Bar has regularly scheduled video replays at law firms in Juneau, Fairbanks, and Kenai, as well having DVDs and CLE materials available for purchase through our online CLE Library Catalog. In 2006, the Bar began its partnership with the online CLE provider LegalSpan to develop online CLE seminars and live webcasting of selected programs. The Bar presented 10 live webcasts in 2007, and all of our videotaped live seminars are available 24/7 as online CLE through our online provider. The goal is to increase the number of programs we webcast live and to continue to add to our online CLE selections.

The Alaska Bar CLE program continues to work with Seattle University School of Law CLE and Summer Law School Programs. Faculty of the Seattle University's Summer Law Program at UAA meet with the Bar's substantive law sections, and section members make presentations to the law students enrolled in the program.

2003 - 2007 CLE Programs Summary

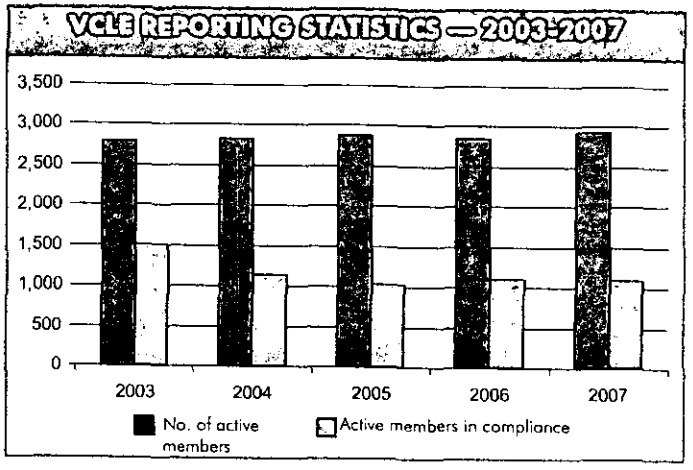
	'03	'04	'05	'06	'07
Topics	23	18	29	26	30
Live Bar Programs	25	20	36	27	33
Mandatory Ethics*	2	4	5	5	4
Convention CLE Programs	10	13	9	14	10
Video Replays	62	36	42	40	11
Satellite Seminars	1	3	4	2	0
Webinars	—	—	—	—	1
Live Webcasts	—	—	—	—	10

*"Don't Cross That Line: Practicing Ethically and Successfully In Your First Years – A Mandatory Course for New Lawyers in Alaska," a 1.5 hour DVD, is required viewing for admission to the Alaska Bar. Group video replays are scheduled in the spring and fall in Anchorage, and admittees may also view the DVD individually.

• Voluntary Continuing Legal Education (VCLE) – Final VCLE Year

The Voluntary CLE Rule, originally a three-year pilot project, became effective on September 2, 1999 and recommended a minimum of 12 hours of approved CLE credit (including one in ethics) each calendar year. This incentive-based VCLE rule was adopted by the Alaska Supreme Court in response to the rule proposed by the Alaska Bar.

In May 2005, the Board of Governors appointed a Mandatory CLE Task Force, comprised of representatives of the Board, the Alaska Court System, and the Alaska Judicial Council, to study the issue of whether MCLE should be adopted in Alaska. The Task Force subcommittee reports were submitted to the Board of Governors for consideration in January 2006.



In September 2006, the Board of Governors voted to amend the Bar Rules to establish an MCLE program in Alaska, and to forward the proposed amendments to the Alaska Supreme Court for approval.

• Mandatory CLE Rule (MCLE)

In December 2007, the Alaska Supreme Court approved a Mandatory CLE Rule (MCLE) effective January 1, 2008. The new MCLE Rule requires all active Alaska Bar members to:

- Complete 3 hours of approved ethics CLE and report completion.
- Report whether the member has completed more than 9 hours of approved general (VCLE) CLE.
- Report an estimate of how many hours of approved general (VCLE) CLE completed if fewer than 9 hours completed.

• Lawyer Referral Service

The Bar Association operates a statewide Lawyer Referral Service for the purpose of providing the general public with names of enrolled active members of the Alaska Bar Association who are in good standing and are willing and able to accept referral clients at a reasonable fee.

Each caller requesting services is given the names of three lawyers in his/her geographic area who are listed in the category requested. Each lawyer pays a $4 surcharge to the Bar Association on each referral made, regardless of

Total Lawyer Referrals 2003 - 2007

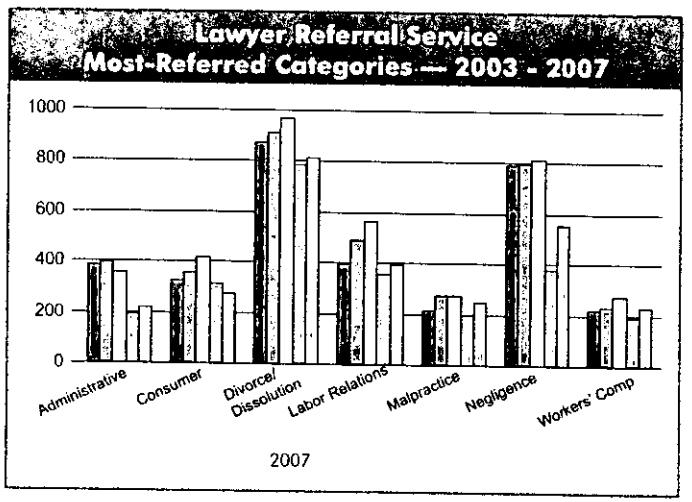
	'03	'04	'05	'06	'07
Administrative	382	396	357	194	219
Admiralty	19	17	17	18	12
Adoption	34	34	37	16	35
Alaska Native Law	—	—	2	—	—
Arts	—	—	—	2	3
Bankruptcy	108	110	142	52	79
Commercial	148	123	212	112	149
Construction	14	37	40	29	63
Consumer	326	356	419	315	275
Criminal: Felony	130	127	228	92	166
Criminal: Misdemeanor	162	143	175	114	170
Discrimination	66	13	—	—	—
Divorce/Dissolution/Custody	869	907	962	784	809
Eminent Domain	—	—	5	4	—
Environmental	—	—	6	6	—
Foreign Language	—	2	—	—	2
Guardian/Conservator	—	33	52	64	11
Immigration	25	70	—	28	52
Insurance	87	88	89	51	61
Labor Relations	395	488	563	355	392
Landlord/Tenant	161	182	250	63	30
Malpractice	212	276	275	197	244
Military	—	—	—	—	—
Mining	—	—	—	—	—
Negligence	791	794	812	380	556
Patent/Copyright	—	—	—	5	41
Public Interest	8	4	3	3	1
Real Estate	206	281	290	175	257
SSI Cases	28	82	51	22	48
Tax	8	—	—	—	—
Traffic	8	4	21	49	8
Trusts/Wills/Estates	167	187	227	144	222
Workers' Compensation	217	228	276	192	229
	4,585	**4,982**	**5,511**	**3,468**	**4,134**
Change from previous year	-8%	+9%	+11%	-37%	+16%

> "At the end of 2007, 77 attorneys were enrolled in 33 practice categories in the Lawyer Referral Service with total referrals of 4,134—a 16% increase from 2006."

"In addition to services associated with CLE, the Bar Association provides other programs to assist members of the Bar in their practices."

whether the caller actually contacts the lawyer as a result of the referral. The first half-hour conference may be charged at a maximum of $50. Thereafter the fee is agreed upon by the attorney and the client.

At the end of 2007, a total of 77 attorneys were enrolled in 33 practice categories in the Lawyer Referral Service, with total referrals of 4,134 a 16 % increase from the 3,468 referrals in 2006.



• Pro Bono Services

The Alaska Bar Association's Pro Bono Director works in partnership with Alaska's legal service providers, the legal community, Pro Bono Services Committee of the Bar Association, and other organizations in Alaska to promote, educate, recognize and recruit attorneys and other professional services to assist low-income citizens. The program serves as an information clearinghouse for the membership regarding volunteer opportunities, resources, training, and other volunteer support services, as well as a point of contact for legal service providers.

Selected as an internship site by Seattle University School of Law since 2006, the program enjoyed the labor of a talented first year law student to help further the issues of pro bono needs in Alaska. Projects included volunteer attorney recruitment, legal literacy curriculum research and development, and organizational capacity building.

Through a partnership with the Anchorage Bar Association's Young Lawyer Section, the Pro Bono Director assisted in the creation, planning, and execution of a project to benefit Alaska's senior citizen population through the development of a legal resources guide. The project was one of eight selected for funding nationally by the American Bar Association and will be complete by July 2008.

In 2007, the Pro Bono Director, accompanied by the Bar President or a member of the Board of Governors traveled to seven communities—Kodiak, Nome, Kotzebue, Kenai, Soldotna, Homer, and Juneau—as an outreach function and to increase volunteerism in smaller communities. The director made presentations to 16 of the 23 substantive law sections, six community groups, assisted in the establishment of Alaska's only language interpreter center and served on the search committee for the organization's new director, spearheaded two community service projects in the areas of tax and estate planning, and presented at two swearing-in ceremonies of new attorneys to further educate them about the need for civil justice representation to Alaska's nearly 80,000 low-income citizens.

• Committees of the Alaska Bar

Substantial work is accomplished through the extensive committee structure of the Alaska Bar Association.

Governance is structured around the Board of Governors and its three major committees, with administrative and day-to-day activity as the responsibility of the Executive Director and staff.

Committees of the Bar include:

- The Bar Rules Committees, which include the Committee of Law Examiners, Area Disciplinary Hearing Committees, the Mediation Panel, the Attorney Fee Dispute Review Committees, the Lawyers' Fund for Client Protection Committee, and Admission Waiver Programs.
- The Standing Committees, including Bar Polls and Elections, Continuing Legal Education, Ethics, Bar Historians, Law Related Education, Pro Bono Services, Lawyers' Assistance, Fair & Impartial Courts, and Alaska Rules of Professional Conduct.
- The Substantive Law Sections, comprised of 23 peer groups practicing in specific areas of the law.

Members and chairs of these committees and sections are found in the appendices.

Membership Services

In addition to services associated with CLE and other activity areas, the Bar Association provides other programs that assist members of the Bar in their practices. Complete information about these as well as other Bar programs and services can be found on the Bar's website at www.alaskabar.org.

Programs include:

- **ALPS (Attorney Liability Protection Society).** The Alaska Bar Association is a member of a multi-state, lawyer-owned insurance company. Membership in ALPS increases the availability of coverage to Alaska lawyers at rates that are predictable and which avoid dramatic fluctuations caused by policies and practices over which the lawyers have no control.

- **Casemaker.** This online legal research tool is available to all Alaska Bar members at no cost to members. It is included in bar dues. The Alaska Unreported Court Opinions Database will now be hosted by Casemaker. Alaska joined about 28 other states offering this web-based research library and search engine to their Bar members

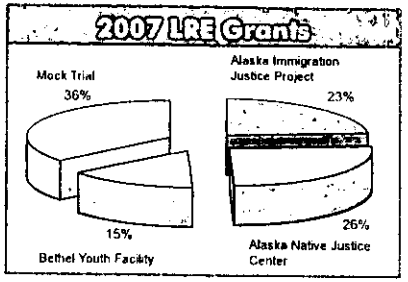
- **Computerized Legal Research.** The Bar Association sponsors a group program to provide members with access to LEXIS, a computer-assisted legal research service. Participating firms pay a $25 monthly subscription fee. Additionally, all members' use of LEXIS aggregates to take advantage of volume discounts.

- **Free Downloading of Alaska Bar CLE Materials.** All Alaska Bar CLE materials one calendar year old or older are available on the Bar website for free downloading. These materials are not searchable or linked.

- **Group Insurance.** The Bar Association sponsors a life insurance program for Bar members with LifeWise Assuance Company. All members of the Association and employees of their firms are eligible. The Bar Association

> "Substantial work is accomplished through the extensive committee structure of the Alaska Bar Association."

> In 2007, the Board of Governors distributed $6,930 for grants to organizations delivering Law Related Education (LRE) programs and materials. These annual grants are targeted to programs that offer practical or direct LRE programs in urban and Bush areas.



also sponsors a group medical program. Medical, dental, vision, life and disability coverage are available to firms ranging in size from sole practitioners to those with more than 100 employees. The plan is underwritten by Premera Blue Cross Blue Shield of Alaska. The Bar Association also sponsors a disability insurance program offered by Unimerica Insurance Co.

- **The *Alaska Bar Rag.*** This quarterly periodical is the official publication of the Bar Association, with content provided by the Bar, attorneys, and organizations in the legal and justice communities. The editor is Thomas V. Van Flein.

- **E-News.** This weekly e-mail newsletter is sent to all members for whom the Bar has e-mail addresses, and contains announcements about Bar Association activities, court news, upcoming CLE programs, and other timely items of interest.

- **Unreported Court Opinions Database.** This database, formerly hosted on the Alaska Bar website, will now be available through Casemaker.

- **Section News.** This newsletter, containing notices of section meetings, CLE seminars, and information on new case law, is e-mailed monthly to 85% of substantive law section members. Members without e-mail are mailed a hard copy. Section meeting dates are posted on the website calendar, and the full newsletter is posted on the Bar website at www.alaskabar.org.

- **Ethics Opinions.** All Alaska Bar Ethics Opinions are published in the Alaska Bar Rag and online at the Bar's website at www.alaskabar.org.

- **Public Copying Machines.** The Alaska Bar Association and the Alaska Court System are continuing a cooperative agreement to provide copying services in the Anchorage Law Library. The Alaska Bar Association has a service agreement with the Anchorage Bar Association for the purpose of providing copiers in the Anchorage Law Library for the use of all library patrons. The revenue is divided as follows: Alaska Court System 40%; Anchorage Bar Association 50%; Alaska Bar Association 10%.

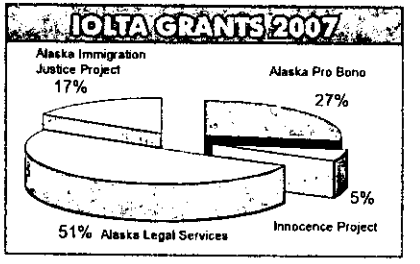
ADJUNCT INVOLVEMENT

The Alaska Bar Association cooperates, partners and supports with its membership a number of programs related to the Alaska legal and justice system:

- **The Alaska Bar Foundation** was established in 1972 for the purpose of fostering and maintaining the honor and integrity of the profession, improving and facilitating the administration of justice, promoting the study of law and continuing legal education, administering loans and scholarships, and maintaining a law library and research center.

- **IOLTA** is an opt-out Interest on Lawyers Trust Accounts program for the placement of client trust money into interest-bearing accounts. The interest earned on each account is paid periodically to the Alaska Bar Foundation for its charitable and public service work.

In 2007, the IOLTA program earned $161,415 from interest, and awarded grants totaling $140,000.



Foundation grants included: $71,000 to Alaska Legal Services Corp.; $38,000 to the Alaska Pro Bono Program; $23,500 to the Alaska Immigration Justice Project; and $7,500 to the Alaska Innocence Project.

- **Alaska Law Review,** edited by law students at Duke University School of Law in Durham, NC, includes articles by practicing attorneys, law professors, and notes and comments by Duke law students. The Bar publishes the law review semi-annually for the education of the legal community. Bar members receive the publication as part of their Bar dues benefits.

- **Alaska Legal Services Corporation** provides legal assistance to persons lacking the financial resources to obtain private counsel.

- **Alaska Code Revision Commission,** established in 1976, reviews and recommends revisions to the laws of Alaska.

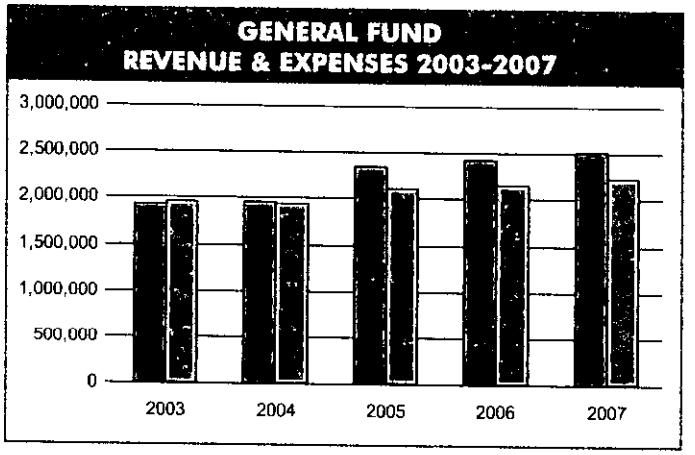
- **Alaska Commission on Judicial Conduct** includes three attorney members who have practiced law in Alaska for at least 10 years. They are appointed to the commission by the Governor from recommendations submitted by the Board of Governors.

- **Alaska Judicial Council** includes three attorneys who serve staggered, six-year terms. The council's purpose is to recommend candidates who are seeking judicial office and to conduct studies for the improvement of the administration of justice in Alaska.

- **Other Relationships.** The Bar Association maintains relationships with other, non-Alaskan organizations, usually with representation by a member of the Board of Governors or Bar executive staff. These include the American Bar Association, National Conference of Bar Presidents, Ninth Circuit Judicial Conference, National Association of Bar Executives, Association for Continuing Legal Education (ACLEA), CLEreg (MCLE Regulators), National Organization of Bar Counsel, National Conference of Bar Examiners, and Western States Bar Conference.

Financial Statements & Budget

The 2007 financial reports reflect total general fund revenue of $2,512,246, with total expenses of $2,234,380. The net gain of $277,866 was a slight decline from the 2006 gain of $280,251.



“The 2007 financial reports reflect total general fund revenue of $2,512,246, with total expenses of $2,234,380. The net gain of $277,866 was a slight decline from the 2006 gain of $280,251.”

Daniel, Hewko & Tharp

Certified Public Accountants • A Professional Corporation

INDEPENDENT AUDITORS' REPORT

Board of Governors
Alaska Bar Association

We have audited the accompanying statements of financial position of the General Fund, the Lawyers' Fund for Client Protection and the Court System Library Fund of the Alaska Bar Association as of December 31, 2007, and the related statements of activities, functional expenses, and cash flows for the year then ended. These financial statements are the responsibility of the Association's management. Our responsibility is to express an opinion on these financial statements based on our audit.

We conducted our audit in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe our audit provides a reasonable basis for our opinion.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of the General Fund, the Lawyers' Fund for Client Protection and the Court System Library Fund of the Alaska Bar Association as of December 31, 2006, and the changes in net assets and cash flows for the year then ended in conformity with accounting principles generally accepted in the United States of America.

Daniel, Hewko & Tharp

Anchorage, Alaska
February 27, 2008

ALASKA BAR ASSOCIATION

STATEMENT OF ACTIVITIES
For the Year Ended December 31, 2007

UNRESTRICTED NET ASSETS	General Fund	Lawyers' Fund for Client Protection	Court System Library Fund	Total All Funds
Revenue and Other Income				
Dues	$ 1,686,571	$ 29,043	$ -	$ 1,715,614
Admission fees	150,850		-	150,850
Continuing legal education	136,404		-	136,404
Lawyer referral fees	41,593		-	41,593
Annual meeting	134,557		-	134,557
Share from copiers	-		2,140	2,140
Rule 81 fees	128,510	2,390	-	130,900
Other	83,412	790	-	84,202
Earnings on investments	126,973	43,425	205	170,603
Unrealized gain on investments	23,376	11,547	-	34,923
Total unrestricted revenue	2,512,246	87,195	2,345	2,601,786
Expenses				
Admissions	182,457	-	-	182,457
Board of Governors	47,822	-	-	47,822
Discipline	664,488	-	-	664,488
Fee arbitration	66,780	-	-	66,780
Lawyer referral	52,504	-	-	52,504
Continuing legal education	327,828	-	-	327,828
Administration	492,382	-	-	492,382
Pro Bono	89,252	-	-	89,252
Voluntary CLE	22,300	-	-	22,300
Annual meeting	112,091	-	-	112,091
Claims awarded	-	127,235	-	127,235
Rule 31 Trustee Counsel	-	30,367	-	30,367
Other	176,476	300	12	176,788
Total expenses	2,234,380	157,902	12	2,392,294
Increase (decrease) in unrestricted net assets	277,866	(70,707)	2,333	209,492
Net assets, beginning of year	2,112,876	1,153,037	21,139	3,287,052
Net assets, end of year	$ 2,390,742	$ 1,082,330	$ 23,472	$ 3,496,544

The full Independent Auditor's Report and accompanying financial statements and notes are available for inspection at the Bar Association office.

APPENDIX A

Bar Bylaws and Regulations Added, Modified, or Repealed in 2007

Article VII, Section 1(a)(11)

September 2007: The Board amended Bylaws, Article VII, Section 1(a)(11) to change the name of the "Judicial Independence Committee" to the "Committee for Fair and Impartial Courts."

Article VII, Section 1(a)(3)

October 2007: The Board amended Bylaws, Article VII, Section 1(a)(3) to change the reference from the "Code of Professional Responsibility" to the "Alaska Rules of Professional Conduct."

Bar Rules Proposed to the Supreme Court in 2007

Alaska Bar Rules

January 2007: The Board proposed an amendment to Bar Rule 39(a) correcting the Bar Association's address.

January 2007: The Board proposed an amendment to Bar Rule 40(u) correcting the citations to the uniform arbitration acts.

February 2007: The Board proposed a new rule, Bar Rule 15.1, that would require lawyers to have their trust accounts only at institutions that agree to provide trust account overdraft notices to bar counsel.

February 2007: The Board proposed an addition to Bar Rule 13 that would provide for a challenge procedure to mediators and referral back to grievance investigation or fee arbitration if there is no response to scheduling requests.

February 2007: The Board proposed an addition to Bar Rule 38 that would provide for the appointment of a mediator to the Executive Committee of the Fee Dispute Resolution Program and making the President-Elect a non-voting member.

February 2007: The Board proposed an amendment to Bar Rule 40 that would change the start of the time period for requesting modification of a fee arbitration decision from "delivery" to "service" of the decision and would change the start of the time period for objection from "receipt" of notice to "service" of notice.

February 2007: The Board proposed an amendment to Bar Rule 61(a) that would remove the filing date for a petition to suspend for nonpayment of dues. In addition, the amendment would direct the petition to the entire Supreme Court rather than an individual justice.

October 2007: The Board proposed amendments to Bar Rule 44 regarding legal intern permit eligibility and renewal as well as permitted acts by a legal intern.

October 2007: The Board proposed an amendment to Bar Rule 44.1(f)(2)(A) that would change the reference from the "Code of Professional Responsibility" to the "Alaska Rules of Professional Conduct."

November 2007: The Board proposed an amendment to Bar Rule 63 that would require a nonlawyer who prepares or completes documents for compensation to obtain and maintain for five years a signed statement from the consumer that warns that the preparer is not a lawyer, that the document may not be legally enforceable, that the document should be reviewed by a lawyer admitted to practice in Alaska, and that the consumer may report any problems with the document to the Bar Association.

December 2007: The Board proposed an amendment to Bar Rule 6, Section 7(b) that would delete the appeal provision relating to residency requirements since the residency requirement has been abolished.

December 2007: The Board proposed an amendment to Bar Rule 5, Section 3 that would allow any state or federal judicial officer to sign an order of admission if eligibility is certified and would permit any state or federal judicial officer or any person authorized to administer oaths to administer the oath of admission to the Bar.

Bar Rules Adopted by the Supreme Court in 2007

Alaska Bar Rules

Effective April 16, 2007: The Court amended Bar Rules 8(3) and 22(p) to clarify the contents of excerpts of record to be filed in admissions and discipline appeals.

Effective October 15, 2007: The Court amended Bar Rule 61(d) to correct the name of the "Child Support Enforcement Division" to the "Child Support Services Division."

Effective October 15, 2007: The Court amended Bar Rule 5, Section 1(b) to add the filing of the Bar Rule 64 affidavit to the requirement to file membership acceptance forms within 60 days of completion of certain admissions requirements.

Effective October 15, 2007: The Court added Bar Rule 43.2 permitting practice by Emeritus Attorneys for qualified legal services organizations.

Effective October 15, 2007: The Court amended Bar Rule 3, Section 6 to change the reapplication deadline for the July Alaska bar examination to June 15th.

Effective January 1, 2008: The Court modified Bar Rule 65 to provide for a mandatory ethics continuing legal education requirement of three hours per year and a voluntary continuing legal education recommendation of nine hours per year. In addition, the Court clarified activities that qualify for continuing education credit and other aspects of the program. The Court also amended Bar Rule 66 regarding suspension for failure to comply with the mandatory requirement. These modifications came as the result of a concerted effort on the part of the Court and the Board to achieve a meaningful program.

Effective April 15, 2008: The Court amended Bar Rule 29 to permit appeals or petitions for hearing in disciplinary reinstatement matters.

APPENDIX B

Bar Sections & Committees

Substantive Sections and Chairs, 2007

At the end of 2007 there were 23 active sections.
The Sections, Chairs, and Co-Chairs at the end of 2007 follow:

Administrative Law
Kathy Atkinson
Admiralty Law
Steve Shamburek & Mark Manning
Alaska Native Law
Mike Robbins
Alternate Dispute Resolution
Glenn Cravez
Bankruptcy Law
Michelle Boutin & Gary Spraker
Business Law
Leonard Anderson
Corporate Counsel
Marcia Davis & Carol Johnson
Elder Law
Ilona Bessenyey & Una Gandbhir
Employment Law
Tom Daniel, Will Schendel & Rob Schmidt
Environmental/Natural Resources Law
Larry Albert, Larry Hartig & Russ Winner
Estate Planning/Probate Law
Tonja Woelber
Family Law
Lori Ann Colbert & SJ Lee
Health Law
Joan Wilson
Immigration Law
Kathy Atkinson
Intellectual Property Law
Jon Dawson & Elizabeth Hodes
International Law
Andy Haas, Nevhiz Calik & Julie Webb
Law & Community Health Forum
Hanley Smith
Municipal Law
Scott Brandt-Erichsen & Rhonda Fehlen-Westover
New Lawyers
Teresa Buelow & Beth Trimmer
Real Estate Law
Joan Travostino
Tax Law
Charles Schuetze
Torts/Personal Injury Law
Jim Leik
Workers' Comp
Joe Kalamarides

CLE Committee Members
June 30, 2006 - June 30, 2007

Fairbanks	
James DeWitt, Chair	6/2008
Gail Ballou	6/2008
Aimee Anderson Oravec	6/2007
Anchorage	
Peter Ashman	6/2008
Nora Barlow	6/2009
Jason Bergevin	6/2007
David Carter	6/2007
Lea Filippi	6/2009
Bonnie Harris	6/2009
Barbara Jones	6/2008
Christine Thoreson	6/2008
Nehviz Calik Young Lawyer Rep	6/2009
Zach Manzella Young Lawyer Rep	6/2008
Juneau	
David Ingram	6/2009
Kodiak	
Judge Joel Bolger Judicial Representative	6/2009

Bar Committees and Chairs

Alaska Bar Rag
Tom Van Flein
Alaska Rules of Professional Conduct
Jerome Juday
Bar Polls & Elections
Tim Middleton
Continuing Legal Education
James DeWitt
Ethics
Bob Mahoney
Fair & Impartial Courts
Susie Dosik
Historians
Leroy Barker
Law Examiners
Mary Gilson
Law Related Education
Barbara Jones
Lawyers Assistance
Vacant
Lawyers Fund for Client Protection
Paul Nangle
Pro Bono Services
Robert Stewart

550 West 7th Avenue, Suite 1900
Anchorage, Alaska 99501
Phone: 907-272-7469

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 26, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/4/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 88**

"An Act extending the termination date of the Board of Governors of the Alaska Bar Association; and providing for an effective date."
HB 88 EXTEND BAR ASS'N BOARD OF GOVERNORS

commends it be replaced with [ ] HCS *or* **[ ] CS** *for* _____(_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LEG				✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN			X	
	Gruenberg				–
	Coghill			✓	
	Holmes	X			
	[illegible]				X
Chair:				X	
Chair:					

HB 98

Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature
House of Representatives

While in Session
State Capitol, Room 118
Juneau, Alaska 99801-1182
(907) 465- 3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Representative Jay Ramras
District 10

Sponsor Statement
HB 98

"An Act relating to minor consuming and repeat minor consuming; and providing for an effective date."

HB 98 fixes a problem that occurred with the enactment of HB 359, a bill that passed the House unanimously in the 25th Legislative Session. HB 359 originated due to the desire of Alaskan youths to join the military and not being able to due to probation restrictions from a minor consuming charge that may have occurred 5 years previously. Unfortunately, when the bill was drafted, it left a loop-hole in the repeat minor consuming law.

HB 98 fixes this loop-hole by amending the language of AS 04.16.050(c) to include in the list of predicate offenses for repeat minor consuming "previously granted suspended imposition of sentence", and "a prior conviction under AS 04.16.050(b)(2)."

This new language will now cover all repeat offenders, no matter how their previous minor consuming charges were adjudicated.

Representative_Jay_Ramras@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB098
() Publish Date:

Identifier (file name): HB098-LAW-CRIM-1-31-09
Title: An Act relating to minor consuming and repeat minor consuming
Sponsor: Representative Ramras
Requester: Judiciary

Dept. Affected: LAW
RDU: CRIMINAL
Component: Criminal Justice Litigation
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The bill would clarify the existing minor consuming statute regarding when a minor would be designated as a habitual offender. The Department of Law does not anticipate any fiscal impact from passage of this legislation.

Prepared by: Robert Meiners, Deputy Director
Phone 907-465-5427
Division: Administrative Services Division
Date/Time 1/31/09 4:00 PM
Approved by: Talis Colberg, Attorney General
Department of Law
Date 1/31/2009

Revised 9/10/2008 OMB

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB98-ACS-01-28-09
() Publish Date:

Identifier (file name):
Dept. Affected:
Title: Minor Consuming
RDU: Alaska Court System
Component: Trial Courts
Sponsor: Representative Ramras
Requester:
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The court system does not anticipate any fiscal impact from the passage of HB 98.

Prepared by: Doug Wooliver, Administrative Attorney — Phone 463-4750
Division: Alaska Court System — Date/Time 01-28-09 @ 2:30 pm
Approved by: Doug Wooliver for Stephanie Cole, Administrative Attorney — Date 1/28/2009
Alaska Court System

(Revised 9/10/2008 OMB)

Westlaw.

AS § 04.16.050 Page 1

C

West's Alaska Statutes Annotated Currentness
Title 4. Alcoholic Beverages
Chapter 16. Regulation of Sales and Distribution
Article 1. Prohibited Acts
→ **§ 04.16.050. Possession, control, or consumption by persons under the age of 21**

(a) A person under the age of 21 years may not knowingly consume, possess, or control alcoholic beverages except those furnished persons under AS 04.16.051(b).

(b) A person who violates (a) of this section and who has not been previously convicted or received a suspended imposition of sentence under (1) of this subsection is guilty of minor consuming or in possession or control. Upon conviction in the district court, the court

(1) may grant a suspended imposition of sentence under AS 12.55.085 and place the person on probation for up to one year if the person has not been convicted of a violation of this section previously; among the conditions of probation, the court shall, with the consent of a community diversion panel, refer the person to the panel, and require the person to comply with conditions set by the panel, including counseling, education, treatment, community work, and payment of fees; in this paragraph, "community diversion panel" means a youth court or other group selected by the court to serve as a sentencing option for a person convicted under this section; or

(2) shall impose a fine of at least $200 but not more than $600, shall require the person to attend alcohol information school if the school is available, and shall place the person on probation for up to one year under (e) of this section; the court may suspend a portion of the fine imposed under this paragraph that exceeds $200 if the person is required to pay for education or treatment required under (e) of this section.

(c) A person is guilty of repeat minor consuming or in possession or control if the person was placed on probation under (b)(1) of this section or has been previously convicted once, and the person violates (a) of this section. Upon conviction in the district court, the court shall

(1) impose a fine of $1,000 and require at least 48 hours of community work;

(2) revoke the person's driver's license for three months;

(3) take possession of the person's driver's license; and

(4) suspend up to $500 of the fine and place the person on probation for up to one year under (e) of this section.

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(d) A person is guilty of habitual minor consuming or in possession or control if the person was placed on probation under (c) of this section, or has been previously convicted twice, and the person violates (a) of this section. Habitual minor consuming or in possession or control is a class B misdemeanor. Upon conviction, the court may impose an appropriate period of imprisonment and fine and place the person on probation under (e) of this section for one year, or until the person is 21 years of age, whichever is later, and shall

(1) impose at least 96 hours of community work;

(2) revoke the person's driver's license for six months;

(3) within five working days, notify the agency responsible for the administration of motor vehicle laws of the revocation; and

(4) take possession of the person's driver's license.

(e) The court shall place a person sentenced under (b)(2), (c), or (d) of this section on probation for the appropriate period. The person may not refuse probation. The court may require the person to pay for and enroll in a juvenile alcohol safety action program, if one is available. The court shall impose the following conditions of probation:

(1) the person shall pay for and successfully complete any education or treatment recommended;

(2) the person may not consume inhalants or possess or consume controlled substances or alcoholic beverages, except as provided in AS 04.16. 051(b);

(3) the person shall timely complete any community work ordered, as provided in (f) of this section; and

(4) other conditions the court considers appropriate.

(f) A person ordered to perform community work under this section shall perform the work within 120 days of the entry of judgment for a conviction. The court may expand the time period for up to 30 days upon a showing of good cause. The person shall submit verification of completion of community work to the clerk of court on a form provided by the court. If the verification is not provided within the time period required by this subsection, the court shall, within 30 days, schedule further proceedings in the case to determine whether a violation of probation has occurred.

(g) The treatment recommended by a juvenile alcohol safety action program for a person placed on probation under (e) of this section may include a period of inpatient treatment if the judgment specifies the maximum period of inpatient treatment authorized. A person who has been recommended for inpatient treatment may make a written request to the sentencing court for review of the referral. A person shall make a request for review within seven days after the

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recommendation and shall specifically set out the grounds upon which the request for review is based. The court may order a hearing on the request for review.

(h) The juvenile alcohol safety action program to which a person is referred under this section shall inform the court or a minor's juvenile probation officer if the person fails to submit to evaluation or fails to complete successfully any education or treatment recommended. If the court finds that the person has failed to perform community work as ordered, to submit to evaluation, or to complete successfully the education or treatment recommended, the court may impose the suspended fine, and may impose any period of suspended incarceration. If the person was convicted under (c) or (d) of this section, the court shall revoke the person's driver's license for an additional six months beyond the revocation imposed under (c) or (d) of this section. A court revoking a person's driver's license under this subsection shall notify the agency responsible for the administration of motor vehicle laws of the revocation within five working days.

(i) When considering the financial resources of a minor for purposes of determining eligibility for court-appointed counsel under this section, the court shall consider the resources of both the defendant and the defendant's parent or guardian, unless the court finds good cause to treat the defendant's or the defendant's parent's or guardian's resources as being unavailable to the defendant.

(j) A driver's license revocation under this section is consecutive to a revocation imposed under another provision of law, but is concurrent with a revocation under another provision of law based on a prior conviction, adjudication of delinquency, or informal adjustment under AS 47.12.060.

(k) Notwithstanding (b), (c), and (e) of this section, a person sentenced under (b) or (c) of this section may make a motion to the court to terminate probation of that person before the end of the probationary period required under those subsections. The court may grant the motion if the court finds, by clear and convincing evidence, that

(1) the person completed any community work ordered under (f) of this section;

(2) the person has successfully completed any education or treatment program ordered by the court and, if required by the court, has either

(A) paid for the programs; or

(B) made a good faith effort to pay for the programs, agreed to have the debt reduced to a civil judgment, entered into a repayment plan with the provider or the state, and agreed that the civil judgment may be enforced in the manner provided for restitution and fines in AS 12.55.051;

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(3) the person has either

(A) paid the fine; or

(B) made a good faith effort to pay the fine, agreed to have the remaining fine amount reduced to a civil judgment, entered into a plan with the state, and agreed that the civil judgment may be enforced in the manner provided for restitution and fines in AS 12.55.051; and

(4) the person has substantially complied with the other conditions of probation.

(*l*) In this section,

(1) "driver's license" has the meaning given in AS 28.90.990;

(2) "juvenile alcohol safety action program" means

(A) a juvenile alcohol safety action program developed and implemented or approved by the Department of Health and Social Services under AS 47.37;

(B) any other alcohol education or treatment program approved by the Department of Health and Social Services under AS 47.37 if a program described in (A) of this paragraph is not available in the community in which the person resides; or

(C) a program or counseling approved by the court if a program or treatment described in (A) of this paragraph is not available in the community where the person resides;

(3) "previously convicted" means a conviction or an adjudication as a delinquent for a violation of AS 11.71, AS 28.35.030, 28.35.032, 28.35.280--28.35.290, or a law or ordinance in another jurisdiction with substantially similar elements.

CREDIT(S)

SLA 1980, ch. 131, § 3; SLA 1983, ch. 109, § 8; SLA 1995, ch. 81, § 1; SLA 2001, ch. 65, §§ 1, 2. Amended by SLA 2008, ch. 75, §§ 1 to 5, eff. July 1, 2008.

HISTORICAL AND STATUTORY NOTES

SLA 2008, ch. 75, inserted "up to" after "on probation for" and deleted "or until the person is 21 years of age, whichever is later" after "one year" in subsec. (b)(1); inserted "for up to one year" after "person on probation" in subsec. (b)(2); substituted "(b)(1)" for "(b)" and inserted "once" after "previously convicted" in subsec. (c), and inserted "for up to one year" in subsec. (c)(4); inserted "for one year, or until the person is 21 years of age, whichever is later" in subsec. (d); substituted "(b)(2)" for "(b)" and "the appropriate period" for "one year, or until the person is 21 years of age, whichever is later" in subsec. (e); and added subsec. (*l*) (now subsec. k).

SLA 2008, ch. 75, § 43 provides:

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"APPLICABILITY. (a) Sections 6--9, 14--16, 22--24, 29--31, and 40 of this Act apply to an offense occurring on or after July 1, 2008. References to previous convictions in secs. 8 and 9 of this Act apply to convictions occurring before, on, or after July 1, 2008.

"(b) Sections 5 and 13 of this Act apply to an offense occurring before, on, or after July 1, 2008.

"(c) Sections 17, 18, 39, and 41 of this Act apply to search warrants applied for on or after July 1, 2008, regardless of whether the offense occurred before, on, or after July 1, 2008.

"(d) Sections 19--21, 36, and 37 of this Act apply to procedures occurring after July 1, 2008, regardless of whether the offense occurred before, on, or after July 1, 2008.

"(e) Section 25 of this Act applies to applications for criminal extraditions submitted on or after July 1, 2008, regardless of whether the offense occurred before, on, or after July 1, 2008.

"(f) Section 12 of this Act applies to offenses occurring and actions arising on or after July 1, 2008.

"(g) Sections 26--28 and 42 of this Act apply to applications submitted on or after July 1, 2008."

SLA 2008, ch. 75, § 44 provides:

"SEVERABILITY. Under AS 01.10.030, if any provision of this Act, or the application of it to any person or circumstance, is held invalid, the remainder of this Act and the application to other persons or circumstances are not affected."

In 2008, new subsec. (*l*) was redesignated as (k) and existing subsec. (k) as (*l*) by the revisor.

CROSS REFERENCES

Administrative revocation of license to drive, see § 28.15.183.
Attempt, classification of offenses, see § 11.31.100.
Civil liability of persons providing alcoholic beverages, see § 04.21.020.
Classification of offenses, see § 11.81.250.
Court reports to Department of Transportation, conviction records, see § 28.15.191.
Court revocation of a minor's license to drive, see § 28.15.185.
Court suspensions, revocations, and limitations, see § 28.15.181.
Criminal jurisdiction, see § 22.15.060.
Fines, see § 12.55.035.
Gangs, additional penalties for activities punishable as misdemeanors, see § 12.55.137.
Grounds for arrest by private person or peace officer without warrant, see § 12.25.030.
Juvenile delinquency, certain provisions inapplicable, see § 47.12.030.
Juvenile delinquents, criminal consequences, see § 47.12.060.
Juvenile delinquents, judgment and orders, see § 47.12.120.
Legal accountability based upon the conduct of another, see §§ 11.16.110 and 11.16.120.
Misdemeanors, sentences of imprisonment, see § 12.55.135.

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Motor vehicle insurance following driver's license revocation, see § 21.89.027.
Offenses defined by statute, see § 11.81.220.
Periods of limitation, suspension or revocation, see § 28.15.211.
Prior convictions, effect on sentencing, see § 12.55.145.
Private manufacture of alcoholic beverages, see § 04.21.015.
Restitution and compensation, see § 12.55.045.
Restrictions on driver's license issued to a person under 18, see § 28.15.057.
Victims of crimes, rights, see § 12.61.010 et seq.

LIBRARY REFERENCES

Intoxicating Liquors ⚿ 131, 139.
Westlaw Key Number Searches: 223k131; 223k139.
C.J.S. Intoxicating Liquors §§ 311, 323 to 324, 361 to 364, 366 to 368.

NOTES OF DECISIONS

Counsel for accused 7
Defenses 5
Detention and custody 4.5
Double jeopardy 6
Nature of offense 2
Persons liable 4
Presumptions and burden of proof 8
Probation 10
Search warrants 3
Validity 1
Weight and sufficiency of evidence 9

1. Validity

Provision in statute prohibiting possessing, controlling, or consuming alcoholic beverages by a person under the age of 21, which provision requires younger offenders to stay on probation longer than older offenders by mandating that person convicted of violating statute be placed on probation for one year, or until the person reached 21 years of age, whichever is later, does not violate state equal protection clause; state has compelling interest in preserving health and welfare of minors and, given that younger offenders are more at risk than older offenders, challenged provision bears substantial relationship to legislature's goal of preserving minors' health and welfare by preventing unlawful underage drinking. Const. Art. 1, § 1; AS 04.16.050. State v. Morgan (2005) Alaska App., 111 P.3d 360. Constitutional Law ⚿ 3819; Intoxicating Liquors ⚿ 19

Portions of statute imposing automatic "probation," which made statute unconstitutional in denying underage drinkers right to jury trial and appointed counsel on showing of indigency, could not be stricken, leaving rest of statute intact, where offensive potential punishments of custodial in-patient treatment and community service were clearly important to achievement of legislative goals, and even if offensive portions were removed, fact that underage drinker

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did not receive jury trial for first offense would prohibit imposition of increased penalties for subsequent offense, thus defeating legislative scheme of enhanced punishment for repeat offenders. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11; AS 04.16.050. State v. Auliye (2002) Alaska App., 57 P.3d 711. Statutes ⚿ 64(6)

2. Nature of offense

Underage drinking violations are a class of quasi-criminal offenses which, while they are not serious, are to be disposed of within the criminal justice system. State v. Euteneier (2001) Alaska App., 31 P.3d 111. Intoxicating Liquors ⚿ 131

3. Search warrants

Underage drinking violations can be enforced by traditional criminal procedures, including the use of search warrants. State v. Euteneier (2001) Alaska App., 31 P.3d 111. Intoxicating Liquors ⚿ 249

4. Persons liable

Possibility that minor who purchases alcohol may drive automobile, and that alcohol-related accident may result, is well within scope of foreseeable risk, for purpose of determining liquor licensee's liability in negligence. AS 04.16.051, 04.21.020, 04.21.050. Loeb v. Rasmussen, 1991, 822 P.2d 914. Intoxicating Liquors ⚿ 288

4.5. Detention and custody

Police officers did not breach their duty to act reasonably in releasing intoxicated sixteen-year old to her parents, and thus city was not liable in wrongful death action brought by parents after sixteen-year old killed herself shortly after being released; officers initially and properly took sixteen-year old into custody based on their reasonable belief that she had violated law prohibiting minors from consuming alcohol, once officers detained sixteen-year old, they were then governed by statute that provided that the police must release a minor who has consumed alcohol to her parents unless there is a lawful reason not to do so, and parents did not show that there was a lawful reason to keep sixteen-year old in custody. Estate of Logusak ex rel. Logusak v. City of Togiak (2008) Alaska, 185 P.3d 103. Municipal Corporations ⚿ 747(3)

5. Defenses

Minor's willful misconduct in unlawfully purchasing and consuming alcohol, and in subsequently driving while intoxicated, did not bar recovery in negligence from owner of liquor store. AS 04.16.051, 04.21.020, 04.21.050. Loeb v. Rasmussen, 1991, 822 P.2d 914. Intoxicating Liquors ⚿ 295

6. Double jeopardy

Administrative revocation of a minor's driver's license for alcohol-related violation is not "punishment" for double jeopardy purposes; valid regulatory purpose exists in restricting or

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revoking driver's licenses of underage drinkers. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 9; AS 04.16.050, 28.15.183. Rexford v. State (1997) Alaska App., 941 P.2d 906. Double Jeopardy ⚿ 24

7. Counsel for accused

Statute requiring revocation of driver's license of minor convicted of underage drinking or possession of alcohol was a punitive measure, entitling minors, under State Constitution, to jury trial and court-appointed counsel if indigent. Const. Art. 1, § 11; AS 04.16.050(a), 28.15.185. State v. District Court, 1996, 927 P.2d 1295. Criminal Law ⚿ 1715; Jury ⚿ 19.5

8. Presumptions and burden of proof

Exceptions in statute making it offense for person under age of 21 years to consume, possess, or control alcoholic beverages in those cases where beverages are furnished by parents, guardians, spouses, or licensed physicians or nurses were "defenses" to criminal liability, and thus, if defendant wished to invoke one of these exceptions, defendant had to affirmatively raise exception and point to some evidence from which reasonable jury could decide on issue in his or her favor; state was not required to disprove possibility that exception applied. AS 04.16.050, 04.16.051(b). Trout v. State, 1994, 866 P.2d 1323. Intoxicating Liquors ⚿ 224

9. Weight and sufficiency of evidence

Defendant charged with consuming alcohol while under 21 years of age failed to properly raise any of the statutory exceptions to criminal liability by failing to present some evidence from which reasonable jury could decide that issue in his favor, and thus, defendant was not entitled to judgment of acquittal or to jury instruction that would have required state to disprove exceptions to criminal liability. AS 04.16.050, 04.16.051(b). Trout v. State, 1994, 866 P.2d 1323. Intoxicating Liquors ⚿ 236(1); Intoxicating Liquors ⚿ 239(2)

10. Probation

Trial court did not violate doctrine of separation of powers by requiring minor who was convicted of consuming alcoholic beverages to return to court every other week to report on her progress on probation; responsibilities for probation function were shared by executive and judicial branches, and legislative history of statute indicated that legislature wanted to assure that courts were part of the monitoring process for minors who were convicted of possessing or consuming alcoholic beverages. AS 04.16.050. Jackson v. State (2006) Alaska App., 127 P.3d 835, as amended. Constitutional Law ⚿ 2545(1); Infants ⚿ 225

Trial court's requirement that minor who was convicted of minor consuming alcoholic beverages return to court every other week to report on her progress on probation did not impermissibly relieve State's burden to prove a violation of probation, where trial court specifically stated that any petition to revoke minor's probation would have to be initiated by State, not by court. AS 04.16.050. Jackson v. State (2006) Alaska App., 127 P.3d 835, as amended. Infants ⚿ 225

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Penalty of automatic "probation" for underage drinking, which permitted sentencing judge to order custodial in-patient treatment, community work service, and revocation of driver's license, were sufficiently severe that underage defendant was entitled to trial by jury and, if defendant was indigent, to counsel at public expense, where each of sentencing judge's permitted orders, if imposed as direct punishment, would have entitled defendant to trial by jury and right to appointed counsel upon finding of indigency. U.S.C.A. Const.Amends. 6, 14; Const. Art. 1, § 11; AS 04.16.050(e). State v. Auliye (2002) Alaska App., 57 P.3d 711. Infants ⚿ 68.4; Jury ⚿ 22(2)

AS § 04.16.050, AK ST § 04.16.050
Current through the 2008 Second Regular and Fourth Special Session of the 25th Legislature

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END OF DOCUMENT

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HOUSE COMMITTEE REPC T

(7)
Date Referred to Committee: January 28, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/2/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 98**

"An Act relating to minor consuming and repeat minor consuming; and providing for an effective date."

HB 98 MINOR CONSUMING

Recommends it be replaced with [ ] HCS *or* [ ] CS for _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW				✓
CRT				✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Bob Lynn	LYNN	X			
[illegible]	[illegible]	~			
[illegible]	Coghill	✓			
[illegible]	Holmes	~			
[illegible]	GATTO	X			
Chair: [illegible]	RAUHUT	✓			
Chair:					

HB

101

HOUSE JUDICIARY COMMITTEE

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Rep. Max Gruenberg
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Rep. Lindsey Holmes
Room 405
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MEMORANDUM

Date: March 20, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File HB101

Please accept this memo as the referral file for HB101. Attached are the following documents:

- Sponsor Statement
- CSHB101(JUD) 26-LS0176\C
- Fax to Leg. Legal re: CS
- Sectional HB101(JUD)
- Sponsor Statement version\E
- HB101 26-LS0176\R
- Sectional HB101 version R
- HL&C Fiscal Note
- Letter of Support
- HJUD Report
- HJUD Testifier List

ALASKA STATE HOUSE OF REPRESENTATIVES

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Room 214

REPRESENTATIVE JOHN COGHILL

Sponsor Statement
CS to HB 101 (JUD)

"An Act exempting the full value of life insurance and annuity contracts from levy to satisfy a debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."

This bill will provide people with better security and planning for their families after they have passed on. This bill exempts the full value of life insurance and annuity contracts from levy or garnishment to satisfy a debt. The bill also includes an applicability section which states that it will apply only to a debt that is created on or after the effective date of the bill.

When fewer employers are offering retirement plans, the state can help offer families the opportunity to better plan for their future. People who are self-employed or working for an employer that does not offer a retirement plan can use annuities as a retirement plan and know that these funds are protected. With the uncertainty of social security, families need to be sure that they can provide for themselves and their survivors.

This bill encourages personal responsibility and protects the future of Alaskan families.

CS FOR HOUSE BILL NO. 101(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Lynn

A BILL

FOR AN ACT ENTITLED

"An Act exempting the full value of life insurance and annuity contracts from levy to satisfy a debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."

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

*** Section 1.** AS 09.38.015(a) is amended to read:

(a) An individual is entitled to exemption of the following property:

(1) a burial plot for the individual and the individual's family;

(2) health aids reasonably necessary to enable the individual or a dependent to work or to sustain health;

(3) benefits paid or payable for medical, surgical, or hospital care to the extent they are or will be used to pay for the care;

(4) an award under AS 18.67 (Violent Crimes Compensation Board) or a crime victim's reparations act of another jurisdiction;

(5) benefits paid or payable as a longevity bonus under AS 47.45;

(6) compensation or benefits paid or payable and exempt under federal law;

(7) liquor licenses granted under AS 04;

(8) tuition credit or savings accounts under a higher education savings account established under AS 14.40.802 or an advance college tuition savings contract authorized under AS 14.40.809(a);

(9) a permanent fund dividend to the extent allowed under AS 43.23.065;

(10) [REPEALED

(11)] benefits paid or payable under AS 47.45.301 - 47.45.309;

(11) unmatured life insurance and annuity contracts owned by the individual.

*** Sec. 2.** AS 09.38.030(e) is amended to read:

(e) The following property, unless exempt without limitation under AS 09.38.015 or 09.38.017, upon receipt by and while it is in the possession of the individual, shall be treated as earnings, income, cash, or other liquid assets under this section:

(1) benefits paid by reason of disability, illness, or unemployment;

(2) money or property received for alimony or separate maintenance;

(3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent;

(4) proceeds or benefits paid [OR PAYABLE] on the death of an insured, if the individual was the spouse or a dependent of the insured; and

(5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service.

*** Sec. 3.** AS 09.38.025(a) is repealed.

*** Sec. 4.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 09.38.015(a), as amended by sec. 1 of this Act, and the repeal of AS 09.38.025(a) by sec. 3 of this Act apply to a debt that is created on or after the effective date of this Act from which an exemption is sought.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us
1292 Sadler Way, Suite 324
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Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Fax

To: Dennis Bailey
Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: March 19, 2009

Re: Please go final on HB101

Dennis,

Today the House Judiciary Committee passed out the CSHB101 version 26-LS0176\P, would you please go final?

Thank you

ALASKA STATE HOUSE OF REPRESENTATIVES

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Fax# (907)-488-4271

Session

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State Capitol
Room 214

REPRESENTATIVE JOHN COGHILL

SECTIONAL
CS to HB 101 (JUD)

"An Act exempting the full value of life insurance and annuity contract from levy to satisfy a debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."

Section 1: AS 09.38.015 Property exempt without limitation is amended to read:

(a) (11) adds unmatured life insurance and annuity contracts owned by the individual to the list of property exempt without limitation.

Section 2: AS 09.38.030 Exemption of earnings and liquid assets is amended to read:

(e) (4) proceeds or benefits paid [OR PAYABLE] on the death of an insured, if the individual was the spouse or a dependant of the insured; and

This section clarifies a potential ambiguity regarding trying to garnish someone's death benefit before that person has passed away.

Section 3: AS 09.38.025(a) is repealed because there is no longer any reason to have a section dedicated to the exemption of unmatured life insurance and annuity contracts since they now fall under the category of property exempt without limitation in AS 09.38.015.

Section 4: is an applicability section that states that this will only apply to a debt that is created on or after the effective date of this Act.

HOUSE BILL NO. 101

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE COGHILL

Introduced: 1/30/09
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act exempting the full value of life insurance and annuity contracts from levy to satisfy unsecured debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."

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

*** Section 1.** AS 09.38.025(a) is amended to read:

(a) Except as provided in this section or AS 09.38.017, an individual is entitled to exemption of unmatured life insurance and annuity contracts owned by the individual. [IF THE CONTRACTS HAVE ACCRUED DIVIDENDS AND LOAN VALUES AVAILABLE TO THE INDIVIDUAL AGGREGATING MORE THAN $10,000, A CREDITOR MAY OBTAIN A COURT ORDER REQUIRING THE INDIVIDUAL DEBTOR TO PAY THE CREDITOR, AND AUTHORIZING THE CREDITOR ON THE DEBTOR'S BEHALF TO OBTAIN PAYMENT OF, THE AMOUNT OF THE ACCRUED DIVIDENDS AND LOAN VALUES IN EXCESS

OF $10,000 OR THE AMOUNT OF THE CREDITOR'S CLAIM, WHICHEVER IS LESS.]

* **Sec. 2.** AS 09.38.030(e) is amended to read:

(e) The following property, unless exempt without limitation under AS 09.38.015 or 09.38.017, upon receipt by and while it is in the possession of the individual, shall be treated as earnings, income, cash, or other liquid assets under this section:

(1) benefits paid by reason of disability, illness, or unemployment;

(2) money or property received for alimony or separate maintenance;

(3) proceeds of insurance, a judgment, or a settlement, or other rights accruing as a result of bodily injury of the individual or of the wrongful death or bodily injury of another individual of whom the individual was or is a dependent;

(4) proceeds or benefits paid [OR PAYABLE] on the death of an insured, if the individual was the spouse or a dependent of the insured; and

(5) amounts paid under a stock bonus, pension, profit-sharing, annuity, or similar plan or contract, providing benefits by reason of age, illness, disability, or length of service.

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REPRESENTATIVE JOHN COGHILL

SECTIONAL
CS to HB 101

"An Act exempting the full value of life insurance and annuity contract from levy to satisfy a debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."

The change in the title makes the debt term broader so as to include other circumstances, besides unsecured debt, in which exemptions apply.

Section 1: AS 09.38.025 Exemption of unmatured life insurance and annuity contracts is amended to read:

(a) Except as provided in this section or AS 09.38.017, an individual is entitled to exemption of unmatured life insurance and annuity contracts owned by the individual. [IF THE CONTRACTS HAVE ACCRUED DIVIDENDS AND LOAN VALUES AVAILABLE TO THE INDIVIDUAL AGGREGATING MORE THAN $10,000, A CREDITOR MAY OBTAIN A COURT ORDER REQUIRING THE INDIVIDUAL DEBTOR TO PAY THE CREDITOR, AND AUTHORIZING THE CREDITOR ON THE DEBTOR'S BEHALF TO OBTAIN THE PAYMENT OF, THE AMOUNT OF THE ACCRUED DIVIDENDS AND LOAN VALUES IN EXCESS OF $10,000 OR THE AMOUNT OF THE CREDITOR'S CLAIM, WHICHEVER IS LESS.]

Section 2: AS 09.38.030 Exemption of earnings and liquid assests is amended to read:

(e) The following property, unless exempt without limitation under AS 09.38.015 or 09.38.017, upon receipt by and while it is in the possession of the individual, shall be treated as earnings, income, cash, or other liquid assets under this section:

(4) proceeds or benefits paid [OR PAYABLE] on the death of an insured, if the individual was the spouse or a dependant of the insured; and

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 101
() Publish Date: 2/18/2009

Identifier (file name): HB 101 26-LS0176\R
Title: Exemptions: Life Insurance Annuities
Sponsor: Representative Coghill
Requester: House Labor & Commerce Committee

Dept. Affected:
RDU
Component
Component Number

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

Prepared by: Konrad Jackson, Committee Aide — Phone 907-465-2693
Division: House Labor & Commerce — Date/Time 02/18/2009 5:30pm
Approved by: Representative Kurt Olson — Date 2/18/2009
Chair, Labor & Commerce Committee

(Revised 9/10/2008 OMB)

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ANCHORAGE, ALASKA 99518
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Executive Director:
Johanna Raisch
907-677-2426

Professional Development Chair
A Michael Daniels

Board of Directors:
Noni Baldwin
Nathan McKay
Tim Haworth
Rhiannon Benedetti

Attn: The Alaska Legislature;

03/12/2009

RE; House Bill 101

Dear Madams and Sirs,

NAIFA-Alaska supports House Bill 101.

In order for Alaskan's to protect their families, and to plan for retirements, we feel House Bill 101 is extremely important. We feel the safe passage of this Bill is a positive step in this security.

This protection IS already available in numerous other states. We would like to have this protection for Alaska's families as well.

We appreciate your support of this Bill. Thank you!!

Regards,

Kent S Kallander, LUTCF
NAIFA-Alaska President

HOUSE COMMITTEE REPO T

(7)
Date Referred to Committee: February 20, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 3/19/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 101**

"An Act exempting the full value of life insurance and annuity contracts from levy to satisfy unsecured debt, and amending the description of earnings, income, cash, and other assets relating to garnishment of life insurance proceeds payable upon the death of an insured."

HB 101 EXEMPTIONS: LIFE INSURANCE; ANNUITIES

Recommends it be replaced with | | HCS *or* |✓| CS *for* HB101 (JCD)
For Senate Bills with new title: | | Technical Title | | New Title: HCR_____ | | Same Title |✓| New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
HLC	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Greenberg	✓			
	Caltagirone	✓			
	Killion	X		✓	D.V.
	Gatto	✓			
Chair:	PAWLOWSKI	✓			
Chair:					

HB

102

HOUSE JUDICIARY COMMITTEE

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Rep. Lindsey Holmes
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MEMORANDUM

Date: March 16, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File for HB102

Attached please find the referral file for HB102, which is represented by the following documents:

- Sponsor Statement
- Legal Memo
- CSHB102(JUD) 26-LS0059\S
- Explanation of Changes
- Sectional Analysis
- HB102 26-LS0059\E
- Information re: Uniform Law Commission
- CED Zero fiscal note
- Testifier Lists
- HJUD Committee Report

ALASKA STATE LEGISLATURE
HOUSE LABOR & COMMERCE COMMITTEE

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State Capitol, Room 124
Juneau, AK 99801-1182
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Rep Mark Neuman, V-Chair
Rep. John Coghill
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SPONSOR STATEMENT

CSHB 102(JUD) – UNIFORM COMMERCIAL CODE

"An Act relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, and to lease-purchases of personal property; amending Rules 403 and 902, Alaska Rules of Evidence; and providing for an effective date."

The Uniform Commercial Code is a uniform act created with the objective of synchronizing the law of sales and other commercial transactions in all fifty states. The UCC is a joint project of the National Conference of Commissioners on Uniform State Laws (NCCUSL) and the American Law Institute (ALI). The UCC is not itself law, but provides recommendation of the laws that should be adopted by individual states. All fifty states have adopted the UCC in one version or another, and it is a major part of Title 45 of the Alaska Statutes.

The UCC was originally released in 1952; periodically, the NCCUSL and ALI revisit the UCC and make appropriate recommendations for revisions to states statutes. This bill reflects the recent revisions of Articles 1 and 7 of the UCC. The Alaska Uniform Law commissioners have recommended passage of these revisions this legislative session.

Article 1 provides definitions and general provisions for the UCC; the updates to Article 1 modernize and reflect changing business practices and developments in the law and are necessary to bring Article 1 up to date. Thirty-four other states have already adopted the revised Article 1 language.

Article 7 of the UCC pertains to warehouse receipts, bills of lading, and other documents of title. The revisions to Article 7 introduce new rules concerning electronic documents of title. The substantive revisions to Article 7 fall into four main categories: recognition of electronic documents of title; extension of the statute of fraud requirements to include electronic records and signatures as equivalent to paper documents and written manual signatures; establishment of the unique original in electronic form; and interchangeability between electronic and tangible documents of title. Thirty-one other states have already adopted the revised Article 7 language.

An expert from the NCCUSL will be available to testify and answer questions at the hearing, along with an Alaska Commissioner to the NCCUSL and Chief Administrative Law Judge Terry Thurbon. Should you have questions before the hearing, please do not hesitate to call legislative aide Allison Laffen at 465-2840.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 24, 2009

SUBJECT: CSHB 102(JUD) relating to the Uniform Commercial Code, contractual duties, and liens (Work Order No. 26-LS0059\R)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Theresa Bannister
Legislative Counsel

This memo accompanies a draft of the bill described above.

Single subject considerations. With the addition of just the lien language amendment in AS 34.35, the bill would have a single subject of "commercial transactions." With the addition of just the contract duty language amendment in AS 09.70.030, the bill would have to rely on a somewhat questionable single subject of "contracts." With the addition of both, the bill will have to rely on the somewhat questionable subject of "contracts."

Although I believe that this single subject would not ultimately be held to violate the constitutional single subject rule,[1] there is definitely an issue here. First, it is difficult to reduce the Uniform Commercial Code to "contracts," although that is the ultimate basis for its commercial transactions. The Supreme Court has held that the purpose of the constitutional provision is to guard against legislative log-rolling, "the practice of deliberately inserting in one bill several dissimilar or incongruous subjects in order to secure the necessary support for passage of the measure."[2] However, it is likely that the general perception, at least of the legal community, of the UCC, the contract duty in AS 09.70.030, and the lien provisions would be that they are logically related. So they may not be considered dissimilar or incongruously placed together in the bill. Second, it is not clearly spelled out in the AS 34.35 lien language that the transactions it covers are based on a contract. However, the treatment in AS 34.35 suggests that there was some kind of expectation or agreement that the other party would pay for the services provided.

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[1] Art. II, sec. 13, Constitution of the State of Alaska.

[2] Evans v. State, 56 P.3d 1046, 1069 (Alaska 2002), quoting from State v. First National Bank of Anchorage, 660 P.2d 406, 415 (Alaska 1982).

Although some justices in dissents have expressed concern that the court's broad construction may possibly make the rule meaningless,[3] the Supreme Court has not overturned legislation because of a failure of the single-subject requirement. The Court has indicated that one meaning of the general subject is that all matters treated of should be so connected with or related to each other, either logically or in popular understanding as to be part of, or germane to, one general subject.[4] It appears logical to group the amendments and the original bill together as related to contractual relations. As mentioned earlier, it also appears likely that, at least in the legal community, the general perception of the items in the bill would be that they are logically related.

When construing the single-subject rule, the Court will "resolve doubts in favor of validity."[5] In order "to warrant the setting aside of enactments for failure to comply, the violation must be substantial and plain."[6] In this case, the possible lack of a single subject among the provisions is not plain and it does not appear to be substantial.

In light of all these factors, I would say that relying on the single subject of "contracts" probably would not be fatal for the legislation. However, it is an issue and I wanted you to be aware of it.

If I may be of further assistance, please advise.

TLB:ljw
09-101.ljw

Enclosure

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[3] See Yute Air Alaska, Inc., et. al. v. Stephen A McAlpine, et al., 698 P.2d 1173, 1180 - 1183 (Alaska 1985); and Gellert v. State, 522 P.2d 1120, 1124 (Alaska 1974).

[4] See State v. First National Bank of Anchorage, supra at 415.

[5] See Suber v. Alaska State Bond Committee, 414 P.d 546, 557 (Alaska 1966).

[6] See State v. First National Bank of Anchorage, supra at 415 (Alaska 1982), citing, among other cases, North Slope Borough v. Sohio Petroleum Corp., 585 P.2d 534, 545 (Alaska 1978).

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EXPLANATION OF CHANGES – AMENDED 3/16/09

Changes between HB102 and CSHB102(JUD):

- Adds **Section 1**, which codifies in Title 9 of the Alaska Statutes a requirement already found in the common law of the state that all parties to a contract have a duty to act fairly and in good faith in the performance and enforcement of the contract. The Alaska Supreme Court has previously found that the duty of good faith and fair dealing is implied in every contract in Alaska, and has gone so far as to call the duty "a long-standing tenet of Alaska law." McConnell v. State, Dept of Health and Social Services, 991 P.2d 178, 184 (Alaska 1999). The covenant of good faith and fair dealing assures parties to a contract that no party "will do anything which will interfere with the right of [another] party to receive the benefits of the agreement." Guin v. Ha, 591 P.2d 1281, 1291 (Alaska 1979). The covenant is implied "in order to effectuate the reasonable expectations of the parties to the agreement." Ramsey v. City of Sand Point, 936 P.2d 126, 133 (Alaska 1997); see generally Casey v. Semco Energy, Inc, 92 P.3d 379, 384 (Alaska 2004); Keffer v. Keffer, 852 P.2d 394 (Alaska 1993); Municipality of Anchorage v. Gentile, 922 P.2d 248 (Alaska 1996). Since common law is more malleable than statutory law, codification through this legislation offers additional guarantees of the duty of good faith and fair dealing to all parties of a contract.
- Adds **Sections 4-7**, which modernizes the language of AS 34.35.200 and AS 34.25.225, relating to carrier, warehouse, and animal care liens, and clarifies that the remedies available under AS 34.35.225 and AS 45.07.210(g) are not mutually exclusive; an owner of property wrongfully disposed of has rights and remedies

Note that this is a summary only. This sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

under each statute in the event both statutes apply. Adds **Section 47** amending AS 45.07.210(g) clarifying that rights and remedies available under that section are in addition to rights and remedies under AS 34.35.225.

- Updates the language of **Section 50**, relating to AS 45.07.302. Professor William H. Henning, Distinguished Professor of Law at the University of Alabama School of Law, provide the following rationale for the change:

"The language in the uniform version of Section 7-302 was included because of the interface between state and federal law. At the time revised Article 7 was adopted by the Uniform Law Commission, federal law provided that performing or connecting carriers could not alter obligations if they were within the ambit of federal law regarding carrier obligations. The language in 7-302 designated what was outside that ambit and was included merely to point out what would have been true without the language - if the parties were outside federal law, the performing carrier COULD alter liability by agreement. Since the ULC adopted the act, much of federal law regarding carriers has been restated and reorganized and that exact formulation does not seem to be used. The new language that we suggested should be appropriate regardless of the scope of current federal law."

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SECTIONAL ANAYLSIS
CSHB 102(JUD) – UNIFORM COMMERCIAL CODE

"An Act relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, and to lease-purchases of personal property; amending Rules 403 and 902, Alaska Rules of Evidence; and providing for an effective date."

(Sections Making Substantive, Non-technical Changes)

Section 1 codifies in Title 9 of the Alaska Statutes a requirement already found in the common law of the state that all parties to a contract have a duty to act fairly and in good faith in the performance and enforcement of the contract.

Section 2 provides for the Uniform Electronic Transactions Act (UETA) to apply to sections of the Uniform Commercial Code (UCC) concerning warehouse receipts, bills of lading and documents of title previously excluded from application of UETA.

Sections 4 – 7 modernizes the language of AS 34.35.200 and AS 34.25.225, relating to carrier, warehouse, and animal care liens, and clarifies that the remedies available under AS 34.35.225 and AS 45.07.210(g) are not mutually exclusive; an owner of property wrongfully disposed of has rights and remedies under each statute in the event both statutes apply.

Section 8 adds a short title, describes the scope, and adds rules of construction and severability provision for the UCC, and addresses modification of federal electronic signatures laws.

Section 9 adds several new sections to AS 45.01 to promote uniformity in UCC-covered transactions by revising or modifying general rules. These include: general definitions; standards for determining when someone has notice or knowledge; provisions on distinguishing between leases and security interests, what constitutes value given for rights, and determining whether actions are timely performed and what facts must be

Note that this is a summary only. This sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

presumed; choice of laws; good faith; course of performance and dealings, and usage of trade; and various rights and remedies.

Sections 15 & 17 amend payment requirement as it relates to delivery of goods and passage of title to goods to facilitate use of electronic documents of title.

Section 30 adds several new sections to AS 45.07 to modernize the UCC Documents of Title statutes, especially to reflect the use of electronic documents of title by the shipping and warehousing industries. These include: general definitions; negotiation of documents of title; use of alternative media (electronic versus tangible documents); and control of electronic documents of title.

Section 39 updates the language of warehouse lien provisions to include liens arising from storage agreements and clarifies (in this provision rather than by cross reference to another statute) the protection afford the rights of a person with a perfected security interest in the goods who did not entrust the goods/document of title.

Section 54 amends the lien provisions applicable to the carrier of goods to ensure that a carrier's lien extends to the proceeds of the goods, not just the goods themselves.

Section 61 modernizes the language of and clarifies the ability to limit a carrier's liability by specifically referring to bills of lading and transportation agreements at the source documents for limitation of liability provisions.

Section 68 modernizes the standards for negotiation of documents of title to address use of negotiable electronic documents.

Section 71 amends provisions on the rights arising from transfer of documents of title to address the rights of lessors and lessees.

Section 77 revises remedial provisions for dealing with lost or missing documents of title by changing the standards for require the posting of security before the courts order delivery of goods or of a substitute document, and eliminates archaic classification and tariff-related conditions from the standard for whether delivery of goods in good faith constitutes conversion.

Section 100 amends duties of secured parties who must respond to debtors' demands to include duties for a party with control over an electronic document of title to respond to such demands.

Sections 114 & 118 describe two indirect amendments of the rules of evidence and provide for those changes to take effect only if the necessary two-thirds majority vote is achieved.

Note that this is a summary only. This sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

A Few Facts About The...

REVISED UNIFORM COMMERCIAL CODE ARTICLE 1, GENERAL PROVISIONS (2001)

PURPOSE:
Updates the general provisions section of the Uniform Commercial Code, to harmonize with ongoing UCC projects and recent revisions.

ORIGIN:
Completed by the Uniform Law Commissioners and the American Law Institute in 2001.

APPROVED BY:
American Bar Association

STATE ADOPTIONS:

Alabama	Minnesota
Arizona	Montana
Arkansas	Nebraska
California	Nevada
Colorado	New Hampshire
Connecticut	New Mexico
Delaware	North Carolina
Florida	North Dakota
Hawaii	Oklahoma
Idaho	Pennsylvania
Illinois	Rhode Island
Indiana	South Dakota
Iowa	Tennessee
Kansas	Texas
Kentucky	U.S. Virgin Islands
Louisiana	Utah
	Vermont
	Virginia
	West Virginia

2009 INTRODUCTIONS:

For any further information regarding the Revised UCC Article 1, please contact Michael Kerr or Katie Robinson at 312-450-6600.

SUMMARY

Revised Article 1 of the Uniform Commercial Code

Article 1 of the Uniform Commercial Code (UCC) provides definitions and general provisions which, in the absence of conflicting provisions, apply as default rules covering transactions and matters otherwise covered under a different article of the UCC. As other parts of the UCC have been revised and amended to accommodate changing business practices and development in the law, these modifications need to be reflected in an updated Article 1. Thus, Article 1 contains many changes of a technical, non-substantive nature, such as reordering and renumbering sections, and adding gender neutral terminology. In addition, over the years it has been in place, certain provisions of Article 1 have been identified as confusing or imprecise. Several changes reflect an effort to add greater clarity in light of this experience. Finally, developments in the law have led to the conclusion that certain changes of a substantive nature needed to be made.

The first substantive change is intended to clarify the scope of Article 1. Section 1-102 now expressly states that the substantive rules of Article 1 apply only to transactions within the scope of other articles of the UCC. The statute of frauds requirement aimed at transactions beyond the coverage of the UCC has been deleted. Second, amended Section 1-103 clarifies the application of supplemental principles of law, with clearer distinctions about where the UCC is preemptive. Third, the definition of "good faith" found in 1-201 is revised to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing". This change conforms to the definition of good faith that applies in all of the recently revised UCC articles except Revised Article 5. Finally, evidence of "course of performance" may be used to interpret a contract along with course of dealing and usage of trade.

Perhaps the most important change to Article 1, however, has to do with default choice-of-law provisions found in 1-301, which replaces previous 1-105. Under the Article 1 before the 2001 amendments, parties to a transaction may agree to be governed by the law of any jurisdiction that bears a reasonable relation to that transaction. Revised Article 1 provides a different basic rule that applies except for consumer transactions in certain circumstances.

With respect to all transactions, an agreement by the parties to use the law of any state (or in the case of an international transaction, country) is effective, regardless of whether the transaction bears a reasonable relation to that state. However, if one of the parties to a transaction is a consumer, such a choice-of-law provision in a contract may not deprive the consumer of legal protections afforded by the law of the state or country in which the consumer resides, or of the state or country where the consumer contracts and takes delivery of goods. Also, with respect to all transactions, an agreement to use the law of a designated state or country is ineffective to the extent that application would violate a fundamental public policy of the state or country which has jurisdiction to adjudicate a dispute arising out of the transaction. The forum state's law will govern the transaction if the contract is silent on the issue of choice of law.

Uniform Law Commissioners
The National Conference of Commissioners on Uniform State Laws

A Few Facts About The...

REVISED UNIFORM COMMERCIAL CODE ARTICLE 7 (2003)

PURPOSE:
The 2003 Revision of UCC Article 7 updates the original UCC7 to provide a framework for the further development of electronic documents of title, and to update the article for modern times in light of state, federal and international developments.

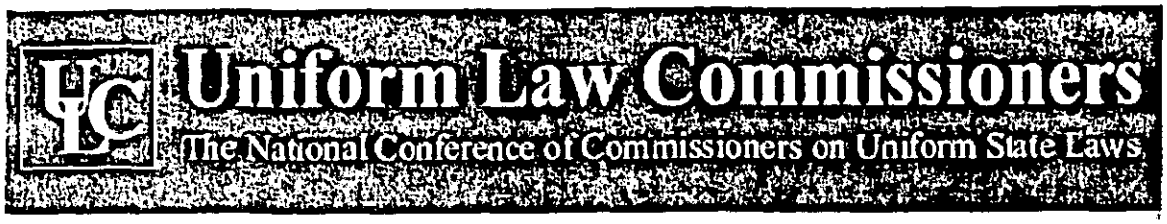
ORIGIN:
Completed by the National Conference of Commissioners on Uniform State Laws and the American Law Institute in 2003.

ENDORSED BY:
International Association of Refrigerated Warehouses
International Warehouse Logistics Association

STATE ADOPTIONS:

Alabama	Nebraska
Arizona	Nevada
Arkansas	New Hampshire
California	New Mexico
Colorado	North Carolina
Connecticut	North Dakota
Delaware	Oklahoma
Hawaii	Pennsylvania
Idaho	Rhode Island
Illinois	Tennessee
Indiana	Texas
Iowa	Utah
Kansas	Virginia
Maryland	West Virginia
Minnesota	
Mississippi	
Montana	

2009 INTRODUCTIONS:



SUMMARY

Uniform Commercial Code - Revised Article 7 (2003)

Revision in 2003

The original Article 7 of the Uniform Commercial Code, "Warehouse Receipts, Bills of Lading and Other Documents of Title," combined two earlier uniform acts, the Uniform Warehouse Receipts Act (1906) and the Uniform Bills of Lading Act (1909), with some principles from the Uniform Sales Act (which became Article 2-Sales of the UCC). Article 7 had not been revisited after the 1951 promulgation of the original Uniform Commercial Code until 2003, a period of 52 years. The longevity of the principles of warehouse receipts and bills of lading suggests very successful law and law-making as it pertains to the commercial storage and shipment of goods. The basic principles do not change basically in the 2003 revision. But there are reasons to readdress this area of the commercial law in 2003, which shall be discussed a little later. First, it is necessary to establish some of the basics.

Introduction to Documents of Title

The storage and shipment of tangible goods for commercial purposes has been going on for centuries. The physical side of the business is carried on by entities that provide warehouses (warehousemen) and entities that carry the goods from place of origin to destination (common carriers). These are tangible, visible businesses. What is not tangible and visible is the transfer of rights in the goods while they are stored and/or shipped. The common law provided the rules of bailment. The terminology of bailor and bailee is still incorporated in the Uniform Act. As the law developed, the transfer of rights came to depend upon the transfer of specific documents of title. The transfer of the documents from one person to another became the transfer of the rights. The title documents were warehouseman's receipts on the storage/warehouse side, and the bill of lading on the carrier side. The original uniform acts and the 2003 revision all incorporate these basics.

One of the important principles carried forward into the 2003 revision is that of negotiability. Free transfer of interests is an important policy norm throughout the UCC. In Article 7, documents of title may be negotiable. Whether a document is negotiable or non-negotiable depends upon how it identifies the transferee and how it is transferred. A negotiable document may be one of two kinds of paper documents, bearer paper or order paper. A document made out to bearer may be transferred from one person to another by simple delivery of possession. The delivery transfers the rights to the goods (therefore the title) to the transferee. Order paper is made out to a specific person. After initial delivery to the person named on the document, it may be negotiated to another person by the indorsement of the named person and delivery of possession to that other person. The rights to the goods (and therefore the title) pass with the negotiation to the transferee.

Documents of title may also be made non-negotiable. This is primarily done by a statement on the face of the instrument. Non-negotiable documents of title may also be assigned or transferred. The difference between negotiable and non-negotiable documents is the rights that they may transfer. A non-negotiable document of title transfers only the actual interests of the transferor. A negotiable document of title may transfer more than the actual interests of the transferor. If negotiated, for example, it transfers free of any claims against the issuer of the document. A non-negotiable document is not free of such claims.

Negotiation as a concept exists to make commerce in goods possible. Goods would not be transferred if the purchaser always has to look behind the transaction to see who may come after the goods after the transfer is complete. Negotiation erases the peril. The principle enunciated in Article 7 is consistent with other parts of the UCC governing notes, drafts, checks and investment securities.

Electronic Documents of Title

Article 7 governs other important aspects of the transfer of rights in goods when stored or shipped, such as the liens of warehousemen and carriers and their enforcement and allocation of risk of loss of the goods either in storage or transit, but the issue of negotiation has been its most important aspect, up to the revisions in 2003. Something very important has happened to change the way we look at the principle of negotiation. That something is computers, electronic communications and the ability to create electronic documents of title. Computers have been accused and applauded for their impact on commerce and business. Their impact on storage and shipment of goods is profound. Federal law has actually recognized electronic documents for some time, but electronic documents of title cannot be substituted one to one with tangible documents of title. Their characteristics in electronic form are not the same as their characteristics in tangible form.

The tangible form is a written document on paper with signatures of issuers and subsequent transferors. The individual document is a unique token of the rights and interests it represents. Even if there is a copy, there is always the original. This is not so with electronic documents. Originals and copies are indistinguishable from each other in electronic form. Signatures in the sense of an individual's scribing them uniquely on a piece of paper cannot be equally duplicated in an electronic document. Transferors and transferees, who are remote from each other when tangible documents are transferred, are not remote from each other in electronic media. Electronic communications can occur between any two persons anywhere in the world. Yet, it is difficult for each participant in an electronic communication to verify or authenticate the identity of the other party. To have the effective electronic documents that commerce demands, new concepts have to be introduced into the law. The concept of negotiation as we have known it in American law cannot apply in electronic media. The great addition to Article 7, therefore, is the new rules for electronic documents of title.

These rules must deal with distinct issues: recognition of electronic documents of title; statute of fraud extensions; establishment of the unique original in electronic form (sometimes thought of as authentication); and interchangeability between electronic and tangible documents of title. In addition, the rules for electronic documents of title must fit as seamlessly as possible into the existing system governing tangible documents of title. The law should avoid skewing the choice between tangible and electronic documents of title in the favor of either form. Only the actual marketplace should determine users' choices. Revised Article 7 deals with these issues and meets the test of seamless insertion into the existing law.

Recognition of Electronic Documents of Title

Recognition of electronic documents of title begins in the definition of "Document of Title:" "An electronic document of title is evidence by a record consisting of information stored in an electronic medium." Other definitions have been modified to accord with this root definition. For example, "Holder" is defined to include: "a person in control of a negotiable electronic document of title." Electronic documents of title become the equal to tangible documents of title.

Statute of Frauds Requirements

Revised Article 7 extends statute of fraud requirements to include electronic records and signatures. Any writing requirement that relates to enforceability of a document is a statute of frauds requirement. Article 7 treats electronic records and signatures as the equivalent of paper documents and written, manual signatures. This initially occurs in new definitions of "record" and "sign." A record is "information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form." The term "sign" is defined to

"execute or adopt a tangible symbol" and "to attach or logically associate with the record an electronic sound, symbol or process." Within Revised Article 7, wherever the term "writing" or an equivalent may have been used before revision, the term "record" is uniformly used. When a document is required to be signed anywhere in Revised Article 7, electronic signing meets the test.

In addition, Revised Article 7 provides language stating expressly that it modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act. This express language, permitted in the federal act, avoids any issue of federal preemption. The federal statute allows specific tailoring for the purposes of incorporating electronic records and signatures into state law.

Establishing the Unique Token

It is not possible to transfer an electronic document of title in the same manner as a tangible document of title, particularly in terms of negotiating it. It cannot be guaranteed that a transfer directly from one person to the next by delivery and/or signature will transfer the authentic original document of title. An electronic alternative to the tangible system is necessary. To accomplish the equivalent system for electronic documents of title, Article 7 adapts the concept of "control" to the purpose. It is not a brand-new concept. It initially was developed in Article 8 of the Uniform Commercial Code for investment securities in the indirect holding system. The 1999 revisions to Article 9 adapted the concept further for secured transactions. Further adaptation of the concept occurred in Section 16 of the Uniform Electronic Transactions Act for promissory notes. This latter adaptation is most important for Revised Article 7, because the issues of negotiation for promissory notes are very similar to those for documents of title.

A person has control of a document of title for Article 7 purposes "if a system employed for evidencing the transfer of interests in the electronic document reliably establishes that person as the person to which the electronic document was issued or transferred." Such a system exists when it establishes a "single authoritative copy ...which is unique, identifiable and ... unalterable." The authoritative copy must identify the person in control or the next person to whom the document has transferred. The person in control determines to whom the document is next transferred. Further, the standard requires that copies that are not authoritative, including copies of the authoritative copy, must be readily identifiable as not being the authoritative copy.

There is more than one way to meet this set of standards, unlike negotiation of a paper document, which occurs in one way only. One way to establish the single authoritative document is to have a single custodian of the electronic record, who enters all transfers of the document and identifies the person in control on its records, records that for all who want to know is the source of the single authoritative copy. In such a system, the person in control notifies the custodian of any transfer or authorized change in the document, who then notates its records appropriately and notifies the person in control and other relevant parties of the action. A transfer would obviously shift control from transferor to transferee. The transferee would become the new person in control.

Encryption technology may provide other methods for meeting these standards. Some kind of hybrid system of encryption and custodian may arise. UCC Article 7 prescribes no system per se and more than one system may develop over time. It is not possible to predict what technology may finally bring to electronic transfer systems. Revised Article 7 allows the technology to develop without need to amend it later when a new kind of technology comes along.

Interchangeability

UCC Article 7 provides for an electronic system of transfer for electronic documents of title and for the traditional paper system of documents of title which includes negotiable documents of title. There are dual tracks. Control is the operative term with electronic documents and negotiation is the operative term for tangible documents of title. With respect to the transfer of rights in a particular group of goods, can electronic documents be converted to tangible documents and vice versa? UCC Article 7 provides for such conversions. An electronic document may be converted

when the person in control surrenders control to the issuer, which then issues a tangible document of title containing a statement that it substitutes for the electronic document. The same kind of process will convert a tangible document to an electronic one. The person entitled to enforce a tangible document surrenders possession to the issuer. The electronic document must also state that it is a substitute for the tangible document. Without the ability to convert from tangible to electronic documents, this system would not work.

Other Benefits to Revision

The revisions to UCC Article 7, beyond making way for electronic documents of title, primarily update or clarify existing rules of law. There are references to tariffs and regulations in original UCC Article 7 that no longer exist with deregulation. These have been eliminated in the revision. There is nothing as significant as the rules for electronic documents of title. But these rules alone make it imperative for the states to enact the revision to UCC Article 7 as soon as practicable. Documents of title are fundamental to the transfer of goods in interstate commerce. The new rules are wholly commerce friendly and every state needs them as soon as possible.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 102
(H) Publish Date: 2/16/09

Identifier (file name): HB102-CED-CO-2-9-09
Dept. Affected: DCCED
Title: Uniform Commercial Code
RDU: Commissioner's Office
Component: Commissioner's Office
Sponsor: House Labor & Commerce
Requester: House Labor & Commerce
Component Number: 1027

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*
The Department of Community, Commerce and Economic Development does not anticipate any fiscal impact due to passage of this legislation.

Prepared by: Tyson Fick, Legislative Liaison
Phone 465-2503
Division: DCCED
Date/Time 2/9/09 6:00pm
Approved by: Emil Notti, Commissioner
Date 2/9/2009
Department of Commerce, Community and Economic Development

(Revised 9/10/2008 OMB)

HB 102: UNIFORM COMMERCIAL CODE

Witness List (H) JUD 3 15 09

Terry Thurbon (in person)
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(907)465-1886

Bill Henning (off-net)
Distinguished Professor of Law
Alabama Commissioner to NCCUSL
University of Alabama School of Law
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Professor Henning currently serves as Distinguished Professor of Law at the University of Alabama School of Law. Before coming to Alabama, he was the R.B. Price Professor of Law at the University of Missouri-Columbia School of Law. At Missouri, he was a three-time winner of the Distinguished Faculty Teaching Award and the first member of the law faculty to be selected for a William T. Kemper Fellowship for Teaching Excellence, awarded annually to ten faculty members from all areas of the university. He has published widely in the field of commercial law, including several books on aspects of the Uniform Commercial Code. In 1994, Professor Henning was appointed to serve as a Missouri Commissioner with the Uniform Law Commission (ULC), and in that capacity he served from 1999-2001 as Chair of the Drafting Committee to Amend Uniform Commercial Code Article 2 (Sales) and Article 2A (Leases). In 2001, he became the ULC's Executive Director, a position he held until 2007. He now serves as an Alabama Commissioner. Professor Henning is a member of the American Law Institute, where he serves as an Adviser to the *Principles of the Law Governing Software Contracts* project.

Michael R. Kerr
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Michael R. Kerr is Legislative Director for the National Conference of Commissioners on Uniform State Laws (NCCUSL), and is responsible for the planning and execution of nation-wide enactment efforts for NCCUSL's Uniform and Model Acts. Prior to joining NCCUSL he was a Deputy Legislative Counsel for the State Of California. He holds a bachelor's degree in public policy from Stanford University, a J.D. from the University of Southern California, and a Certificate in Government Practice from the McGeorge School of Law at the University of the Pacific. He works with a broad range of uniform and models acts on behalf of NCCUSL, with an emphasis in business organizations, commercial transactions, regulatory measures, health law, family law, and land use acts.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 16, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 3/16/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 102**

"An Act relating to the Uniform Commercial Code, to the general provisions of the Uniform Commercial Code, to documents of title under the Uniform Commercial Code, to the Uniform Electronic Transactions Act, and to lease-purchases of personal property; amending Rules 403 and 902, Alaska Rules of Evidence; and providing for an effective date."

HB 102 UNIFORM COMMERCIAL CODE

Recommends it be replaced with [ ] HCS *or* [√] CS *for* HB102 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR _____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____ Committee
[ ] Letter of Intent _____ Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
CED	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Lynn			X	
	Gruenberg	-			
	Coghill			✓	
	Gatti			✓	
	Dahlstrom			X	
	Holmes	X			
Chair:	Ramras	X			
Chair:					

HB

108

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

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Rep. Carl Gatto
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Rep. Max Gruenberg
Room 110
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Rep. Lindsey Holmes
Room 405
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MEMORANDUM

Date: April 6, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Request for HB108 to be heard on the floor

Please accept this memo as both the referral file and a request for HB108 to be heard on the floor. Attached you will find the following documents:

- Sponsor Statement
- CSHB108(JUD) 26-LS0318\C
- Amendment P.2
- Work Draft CSHB108(JUD) 26-LS0318\P
- Explanation of changes between version R and proposed version P
- Sectional Summary
- Revenue zero fiscal note
- CSHB108(L&C) 26-LS0318\R
- HB108 26-LS0318\A
- Letters of Support
- HJUD Committee Report

Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
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Alaska State Legislature
House of Representatives

While in Session
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Juneau, Alaska 99801-1182
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Toll Free: (877) 465-3004

Representative Jay Ramras
District 10

Sponsor Statement
HB 108 - Property Foreclosures and Executions
(3/27/09)

Alaska's statutes on non judicial foreclosure of real property are antiquated, ambiguous and unclear, and therefore, prone to unnecessary litigation. House Bill 163 clarifies the present statutory language, by simplifying and modernizing the foreclosure process. The suggested changes benefit lenders, borrowers and title insurance companies by bringing clarity and certainty to the foreclosure process.

HB 108 would improve many aspects of the foreclosure process as they appear in Title 34. Some of these changes are:

- Clarifies how proceeds from a foreclosure auction are to be disbursed
- Assures that foreclosure trustees are fiscally responsible by imposing reasonable bond requirements
- Allows trustees to nullify sales when mistakes are made that negatively affect the integrity of the sale
- Sets up procedures to follow involving a deceased borrower
- Creates common-sense rules to govern times and methods for posting foreclosure properties
- Defines when one's rights are terminated in the foreclosure process
- Allows acceptance of foreclosure auction bids via email, internet, and telephone for greater accessibility

Passage of HB 108 will streamline and simplify the foreclosure language in Alaska statutes and provide for a more open, accessible and fair auction process, benefiting borrowers, lenders, and title insurers, as well as reducing unnecessary litigation.

Representative_Jay_Ramras@legis.state.ak.us

26-LS0318\P.2
Bannister
4/2/09

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: CSHB 108(JUD), Draft Version "P"

Page 2, lines 27 - 29:

Delete "The notice must be published for at least 30 days, including at least 10 of the last 15 days before the actual date of the sale. Giving notice under this subsection is not required unless there is an Internet website that qualifies under (c) of this section."

Insert "Publication of the notice must begin not later than the first day that the notice is published under (a)(2) of this section and must continue at least through the day in the fourth week that the notice is published under (a)(2) of this section."

Page 4, line 21, following "**AS 34.20.080(e)**":

Insert "**, unless the trust deed was entered into before the effective date of this Act and provides for a different time to cure the default before the sale**"

Page 5, lines 15 - 21:

Delete all material and insert:

"(1) payment of the sum then in default, other than the principal that would not then be due if default had not occurred, and foreclosure fees and costs actually incurred by the beneficiary and trustee due to the default is made

(A) at any time up to two days before the sale date stated in the notice of default, or two days before a date to which the sale is postponed; or

(B) if the trust deed was entered into before the effective date of this Act and provides for a different time than the time described in (A) of this paragraph to cure the default before the sale, within the time provided in the trust deed; and"

26-LS0318\P
Bannister
3/26/09

CS FOR HOUSE BILL NO. 108(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES RAMRAS, Gatto

A BILL

FOR AN ACT ENTITLED

"An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."

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

*** Section 1.** AS 09.35.140 is amended to read:

Sec. 09.35.140. Notice of sale on execution. Before the sale of property on execution, notice of the sale shall be given as follows:

(1) notice of the sale of personal property is given by posting a written or printed notice of the time and place of sale in three public places within five miles of the place where the sale is to be held, not less than 10 days before the day of sale; [ONE OF THE NOTICES SHALL BE POSTED AT THE POST OFFICE NEAREST TO THE PLACE WHERE THE SALE IS TO TAKE PLACE;]

(2) notice of the sale of real property is given by posting a similar notice particularly describing the property, including the property's street address if there is a street address for the property, not less than 30 days before the day of sale in

three public places, as provided in (1) of this section, and publishing a copy of the notice four times, once a week for four successive weeks in a newspaper of general circulation published nearest to the place of sale; an inaccuracy in the street address may not be used to set aside a sale if the legal description is correct [; IN THIS PARAGRAPH, "NEWSPAPER OF GENERAL CIRCULATION" MEANS A PUBLICATION THAT

(A) IS PUBLISHED IN NEWSPAPER FORMAT;

(B) IS DISTRIBUTED AT LEAST ONCE A WEEK FOR AT LEAST 50 WEEKS EACH YEAR WITHIN THE JUDICIAL DISTRICT, EXCLUDING A PERIOD WHEN PUBLICATION IS INTERRUPTED BY A LABOR DISPUTE OR BY A NATURAL DISASTER OR OTHER CASUALTY THAT THE PUBLISHER CANNOT CONTROL; AND HAS A TOTAL PAID CIRCULATION OR PAID DISTRIBUTION OF AT LEAST 500 COPIES, OR 10 PERCENT OF THE TOTAL POPULATION OF THE JUDICIAL DISTRICT, WHICHEVER IS LESS; IN THIS SUBPARAGRAPH, "JUDICIAL DISTRICT" MEANS THE JUDICIAL DISTRICT WHERE THE PLACE OF SALE IS LOCATED;

(C) HOLDS A SECOND CLASS MAILING PERMIT FROM THE UNITED STATES POSTAL SERVICE;

(D) IS NOT PUBLISHED PRIMARILY TO DISTRIBUTE ADVERTISING; AND

(E) IS NOT INTENDED PRIMARILY FOR A PARTICULAR PROFESSIONAL OR OCCUPATIONAL GROUP].

*** Sec. 2.** AS 09.35.140 is amended by adding new subsections to read:

(b) In addition to the notice required by (a) of this section, notice of the sale of real property on execution shall be given by publishing a notice of the sale on an Internet website beginning at least 45 days before the date of the sale. The notice must be published for at least 30 days, including at least 10 of the last 15 days before the actual date of the sale. Giving notice under this subsection is not required unless there is an Internet website that qualifies under (c) of this section.

(c) To qualify as an Internet website on which notices of sale may be

published under (b) of this section, an Internet website must,

(1) if operated by a newspaper of general circulation, be completely free to the public for viewing and not require a subscription; or

(2) if operated by a newspaper that is not covered by (1) of this subsection, or by another person,

(A) be available to any person;

(B) be completely free to the public for viewing and not require a subscription;

(C) be used primarily to advertise real property under foreclosure;

(D) have been in continuous operation for more than one year;

(E) have a viewership of at least 5,000 different visitors each month that is verified by an independent audit; and

(F) have an office in the state and the office has staff that includes a senior management person.

(d) In this section, "newspaper of general circulation" means a publication that

(1) is published in newspaper format;

(2) is distributed at least once a week for at least 50 weeks each year within the judicial district, excluding a period when publication is interrupted by a labor dispute or by a natural disaster or other casualty that the publisher cannot control; and has a total paid circulation or paid distribution of at least 500 copies, or 10 percent of the total population of the judicial district, whichever is less; in this paragraph, "judicial district" means the judicial district where the place of sale is located;

(3) holds a second class mailing permit from the United States Postal Service;

(4) is not published primarily to distribute advertising; and

(5) is not intended primarily for a particular professional or occupational group.

*** Sec. 3.** AS 09.35.142 is amended to read:

Sec. 09.35.142. Action to establish newspaper <u>or Internet website</u> status. A

person who owns a publication may bring an action under AS 22.10.020(g) to establish that the publication is a newspaper of general circulation under **AS 09.35.140. A person who owns an Internet website may bring an action under AS 22.10.020(g) to establish that the Internet website qualifies as an Internet website on which notices of sale may be published under AS 09.35.140(b)** [AS 09.35.140(2)].

*** Sec. 4.** AS 34.20.070(b) is amended to read:

(b) Not less than 30 days after the default and not less than **90 days** [THREE MONTHS] before the sale, the trustee shall record in the office of the recorder of the recording district in which the trust property is located a notice of default setting out (1) the name of the trustor, (2) the book and page where the trust deed is recorded or the serial number assigned to the trust deed by the recorder, (3) a description of the trust property, including the property's street address if there is a street address for the property, (4) a statement that a breach of the obligation for which the deed of trust is security has occurred, (5) the nature of the breach, (6) the sum owing on the obligation, (7) the election by the trustee to sell the property to satisfy the obligation, [AND] (8) the date, time, and place of the sale**, and (9) the statement described in (e) of this section describing conditions for curing the default**. An inaccuracy in the street address may not be used to set aside a sale if the legal description is correct. At any time **up to two days** before the sale **date stated in the notice of default or to which the sale is postponed under AS 34.20.080(e)**, if the default has arisen by failure to make payments required by the trust deed, the default may be cured **and sale under this section terminated** by payment of the sum **then** in default, other than the principal that would not then be due if no default had occurred, **and foreclosure** [PLUS ATTORNEY] fees **and** [OR COURT] costs actually incurred by the **beneficiary and** trustee due to the default. If, under the same trust deed, notice of default under this subsection has been recorded two or more times previously and the default has been cured under this subsection, the trustee may elect to refuse payment and continue the sale.

*** Sec. 5.** AS 34.20.070(c) is amended to read:

(c) Within 10 days after recording the notice of default, the trustee shall mail a

copy of the notice by certified mail to the last known address of each of the following persons or their legal representatives: (1) the **trustor** [GRANTOR] in the trust deed; (2) the successor in interest to the **trustor** [GRANTOR] whose interest appears of record or of whose interest the trustee or the beneficiary has actual notice, or who is in **actual physical** possession of the property; (3) any other person **actually** in **physical** possession of [OR OCCUPYING] the property; (4) any person having a lien or interest subsequent to the interest of the trustee in the trust deed, where the lien or interest appears of record or where the trustee or the beneficiary has actual notice of the lien or interest**, except as provided in (f) of this section**. The notice may be delivered personally instead of by mail.

*** Sec. 6.** AS 34.20.070 is amended by adding new subsections to read:

(e) The statement required by (b)(9) of this section must state that, if the default has arisen by failure to make payments required by the trust deed, the default may be cured and the sale under this section terminated if

(1) payment of the following amounts is made at any time up to two days before the sale date stated in the notice of default, or two days before a date to which the sale is postponed:

(A) the sum then in default, other than the principal that would not then be due if no default had occurred; and

(B) foreclosure fees and costs actually incurred by the beneficiary and trustee due to the default; and

(2) when notice of default under (b) of this section has been recorded two or more times previously under the same trust deed and the default has been cured under (b) of this section, the trustee does not elect to refuse payment and continue the sale.

(f) In (c)(4) of this section, if the existence of a lien or nonpossessory interest can only be inferred from an inspection of the real property, the person holding the lien or nonpossessory interest is not entitled to notice under (c) of this section unless the lien or nonpossessory interest appears of record or a written notice of the lien or nonpossessory interest has been given to the beneficiary or trustee before the recording of the notice of default.

(g) If the trustee delivers notice personally under (c) of this section to the property or to an occupant of the property, the trustee may, notwithstanding (c) of this section, deliver the notice up to 20 days after the notice of default is recorded. If there is not a structure on the property and a person is not present on the property at the time of delivery, the trustee may place the notice on the property, or as close as practicable to the property if

(1) there is not a practical road access to the property; or

(2) access to the property is restricted by gates or other barriers.

(h) If the trustee or other person who delivered notice under (g) of this section signs an affidavit for the delivery, the affidavit is prima facie evidence that the trustee complied with (g) of this section. After one year from the delivery, as evidenced by the affidavit, the trustee is conclusively presumed to have complied with (g) of this section unless, within one year from the delivery, an action has been filed in court to contest the foreclosure based on failing to comply with (g) of this section.

(i) If a person who is entitled to receive notice by mail under (c) of this section is known by the beneficiary or trustee to be deceased, the trustee may satisfy the notice requirements of (c) of this section by mailing the notice to the last known address of the deceased person and to the personal representative of the deceased person if the beneficiary or trustee knows that a personal representative has been appointed for the deceased person.

(j) If a person who is entitled to receive notice by mail under (c) of this section is known by the beneficiary or trustee to be deceased but the trustee and the beneficiary do not know that a personal representative has been appointed for the deceased person, the trustee may satisfy the notice requirements of (c) of this section by

(1) mailing the notice to the heirs and devisees of the deceased person

(A) whose names and addresses are known to the beneficiary or trustee; or

(B) who have recorded a notice of their interest in the property; and

(2) publishing and posting the notice of the foreclosure as provided by

law for the sale of real property on execution, except that the notice must be titled "To the Heirs or Devisees of (insert the name of the deceased person)" and include in the body of the notice a list of the names of the persons who are known by the beneficiary or trustee to be the heirs and devisees of the deceased person.

(k) If notice is given as required by (i) and (j) of this section, an heir or devisee of the deceased person may not challenge the foreclosure on the ground that the heir or devisee did not receive notice of the sale, unless the heir or devisee challenges the foreclosure on this ground within 90 days after the sale.

(*l*) A person may bring an action in court to enjoin a foreclosure on real property only if the person is

(1) the trustor of the deed of trust under which the real property was foreclosed;

(2) a guarantor of the obligation that the real property is securing;

(3) a person who has an interest in the real property that has been recorded;

(4) a person who has a recorded lien against the real property;

(5) an heir to the real property;

(6) a devisee of the real property; or

(7) the attorney general acting under other legal authority.

(m) If a person brings an action under (*l*) of this section to stop a sale of real property, and if the sale is being brought because of a default in the performance of a nonmonetary obligation required by the deed of trust that the real property is securing, the court may impose on the person the conditions that the court determines are appropriate to protect the beneficiary.

(n) In this section, "devisee," "heir," and "personal representative" have the meanings given in AS 13.06.050.

*** Sec. 7.** AS 34.20.080(a) is amended to read:

(a) The sale authorized in AS 34.20.070 shall be made under the terms and conditions and in the manner set out in the deed of trust. **The proceeds from a sale shall be placed in escrow until they are disbursed.** However, the sale shall be made

(1) at public auction held at the front door of a courthouse of the

superior court in the judicial district where the property is located, unless the deed of trust specifically provides that the sale shall be held in a different place**, except that a trustee may also accept bids by telephone, the Internet, and electronic mail if the trustee has taken reasonable steps to ensure that the bidding methods using the telephone, the Internet, or electronic mail are fair, accessible, and designed to result in money that is immediately available for disbursement**; and

(2) after public notice of the time and place of the sale has been given in the manner provided by law for the sale of real property on execution.

*** Sec. 8.** AS 34.20.080(b) is amended to read:

(b) The attorney for the trustee **or another agent of the trustee** may conduct the sale and act in the sale as the auctioneer for the trustee. **The trustee may set reasonable rules and conditions for the conduct of the sale.** Sale shall be made to the highest and best bidder. The beneficiary under the trust deed may bid at the trustee's sale. **Except as provided by (g) of this section, the** [THE] trustee shall execute and deliver to the purchaser a deed to the property sold.

*** Sec. 9.** AS 34.20.080(e) is amended to read:

(e) The trustee may postpone sale of all or any portion of the property by delivering to the person conducting the sale a written and signed request for the postponement to a stated date and hour. The person conducting the sale shall publicly announce the postponement to the stated date and hour at the time and place originally fixed for the sale. This procedure shall be followed in any succeeding postponement**, but the foreclosure may not be postponed for more than 12 months unless a new notice of the sale is given under (a)(2) of this section. A sale may be postponed for up to 12 months from the sale date stated in the notice of default under AS 34.20.070(b) without providing a basis for challenging the validity of the foreclosure process because of the length of time the foreclosure has been pending**.

*** Sec. 10.** AS 34.20.080 is amended by adding new subsections to read:

(f) After delivery of a deed under (b) of this section, the trustee shall distribute any cash proceeds of the sale in the following order to

(1) the beneficiary of the deed of trust being foreclosed until the

beneficiary is paid the full amount that is owed under the deed of trust to the beneficiary;

(2) the persons who held, at the time of the sale, recorded interests, except easements, in the property, that were subordinate to the foreclosed deed of trust; the distribution under this paragraph shall be made according to the priority of the recorded interest, and a recorded interest with a higher priority shall be satisfied before distribution is made to the recorded interest that is next lower in priority; however, if a person holds a recorded interest that is an assessment, the person is entitled only to the amount of the assessment that was due at the time of the sale; in this paragraph, "recorded interest" means an interest, including a lease, recorded under AS 40.17;

(3) the trustor in the trust deed if the trustor is still the owner of the property at the time of the foreclosure sale, but, if the trustor is not still the owner of the property at the time of the foreclosure sale, then to the trustor's successor in interest whose interest appears of record at the time of the foreclosure sale.

(g) The trustee may withhold delivery of the deed under (b) of this section for up to five days after the sale. If, during the five days, the trustee determines that the sale should not have proceeded, the trustee may not issue the deed but shall

(1) inform the beneficiary, the otherwise successful bidder, and the trustor of the trust deed or the trustor's successor in interest that the sale is rescinded; and

(2) return to the otherwise successful bidder money received from the otherwise successful bidder as a bid on the property; return of this money is the otherwise successful bidder's only remedy if the trustee withholds delivery of the deed under (b) of this section.

(h) If a trustee rescinds a sale under (g) of this section and the obligation secured by the deed of trust remains in default, the trustee may, at the request of the beneficiary, reschedule the sale for a date that is not less than 45 days after the date of the rescinded sale. Not less than 30 days before the rescheduled sale date, the trustee shall

(1) mail notice of the rescheduled sale date by certified mail to the last

known address of each of the persons identified by AS 34.20.070(c); and

(2) publish and post the notice of the rescheduled sale date as provided by law for the sale of real property on execution.

(i) Unless a sale is rescinded under (g) of this section, the sale completely terminates the rights of the trustor of the trust deed in the property.

(j) If a sale is rescinded under (g) of this section, the deed of trust foreclosed in the rescinded sale is restored to the validity and priority it would have had as though the sale had not occurred.

*** Sec. 11.** AS 34.20.120(a) is amended to read:

(a) The trustee under a trust deed upon real property given to secure an obligation to pay money and conferring no duties upon the trustee other than the duties that are incidental to the exercise of the power of sale conferred in the deed may be substituted by recording in the mortgage records of the recording district in which the property is located a substitution executed and acknowledged by

(1) all the beneficiaries under the trust deed, or their successors in interest**; or**

(2) the attorneys for all of the beneficiaries or the attorneys for all of the beneficiaries' successors in interest.

*** Sec. 12.** AS 34.20.120(b) is amended to read:

(b) The substitution must contain

(1) the date of execution of the trust deed;

(2) the names of the trustee, trustor, and beneficiary**, and, if the substitution is executed by the attorney for the beneficiary or successor in interest to the beneficiary, the name, address, and Alaska Bar Association identification number of the attorney**;

(3) the book and page where the trust deed is recorded or the serial number assigned to the trust deed by the recorder;

(4) the name of the new trustee; and

(5) an acknowledgment signed and acknowledged by the trustee named in the trust deed of a receipt of a copy of the substitution, or an affidavit of service of a copy of it.

* **Sec. 13.** AS 34.20 is amended by adding a new section to read:

Sec. 34.20.125. Trustee bond required. (a) Before performing the duties of a trustee under AS 34.20.070 and 34.20.080, a person shall obtain a surety bond in the amount of $250,000 to protect the trustors and beneficiaries of trust deeds against fraud or defalcation by the trustee in the performance of the duties.

(b) The bond required by (a) of this section must be a bond that is terminable at any time by the surety by sending written notice by first class United States mail to the obligee and the principal at the address for each that is last known by the surety, and to the department. The bond terminates when 45 days have expired after the date the notice is mailed. The surety is not liable for an act or omission of the principal that occurs after the termination. The surety is not liable after the termination for more than the face amount of the bond, regardless of the number of claims made against the bond or the number of years the bond remains in force. A revision of the amount of the bond is not cumulative.

(c) If a bond terminates under (b) of this section, the person who obtained the bond under (a) of this section shall give notice of the bond's termination to the department and may not act as a trustee until the person obtains another bond under (a) of this section.

(d) Each year, a trustee shall file evidence of the bond with the department. The department shall verify that the evidence is satisfactory to indicate the existence of the bond, keep an updated list of trustees who are bonded, and make the evidence and the list available to the public for inspection. The department may charge the trustee a reasonable fee for verifying the existence of the bond and maintaining the records required by this subsection.

(e) The bonding requirements of this section do not apply to

(1) a title insurance company authorized under AS 21.66 to transact a title insurance business in this state;

(2) a title insurance limited producer who is licensed as required by AS 21.66.270; or

(3) a state agency, including the Alaska Housing Finance Corporation and the Alaska Industrial Development and Export Authority.

(f) In this section, "department" means the Department of Commerce, Community, and Economic Development.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

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Chairman
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Committee Members:
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Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Explanation of Changes Between CSHB108(L&C) version 26-LS0318\R and Proposed CSHB108(JUD) 26-LS0318\P

Sec. 2 AS 09.35.140. Adds back into HB108 the requirement that the notice of execution of the sale of real property also be noticed on an Internet website. This new language expands the list of qualified sites, to newspapers of general circulation provided they meet the requirements of proposed AS 09.35.140(c). Thus if a newspaper qualifies to run legal ads, it will be qualified to run the internet publication. A new qualifier is that the site be free to the viewing public.

Sec. 4 AS 34.20.070(b). Adds a requirement under AS 34.20.070(e) that the notice of default served on the trustor include language stating that payment to cure the default must be made two days prior to the sale dated stated in the notice of default, or two days prior to the date to which the sale date is postponed. This will give the trustor full disclosure in the original notice of the two day cure period.

AS 34.20.070(e) new conforming language to AS 34.20.070(b)

Sec. 10. AS 34.20.080(j) adds new language that states that, if a sale is rescinded under (g) of this section, the deed of trust foreclosed in the rescinded sale is restored to the validity and priority it would have had as though the sale did not occur.

Alaska State Legislature

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State Capitol, Room 118
Juneau, Alaska 99801-1182
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Representative Jay Ramras
House District 10

Chair, House Judiciary • Chair, House Economic Development, Trade & Tourism • Member, Energy • Member, House Military & Veteran Affairs, Member, Joint Armed Services

Sectional HB 108 Property Foreclosures and Executions

Section 1. AS 09.35.140 is amended –Removes the U.S. Post Office as a posting requirement.

Section 2. Amends AS 09.35.140 to add a new subsection. Adds a new section to AS 09.35 (execution on property) to require the notice of the execution sale of real property also be noticed on an Internet website, including newspaper websites. Also, Describes the requirements that the Internet websites must meet to qualify, and the Internet notice requirement for a non judicial foreclosure.

Section 3. Amends AS 09.35.142 to allow an Internet website owner to bring a court action to establish that the website qualifies under AS 09.35.140(b)

Section 4. Amends AS 34.20.070(b) to adjust to 90 days the minimum length of time that must elapse between recording a notice of default on a deed of trust and holding the foreclosure sale. Sets a limit of two days (before a foreclosure sale) when certain defaults on a deed of trust may be cured by a specific payment.

Section 5. Amends AS 34.20.070(c) requires that possession be actual physical possession where possession is required for certain persons to be entitled to receive a notice of default for foreclosure sale.

Section 6. Adds new subsection to AS 34.20.070 (foreclosure by trustee).

Proposed 34.20.070(e) establishes when a person who holds a lien or non-possessory property interest that can be inferred from an inspection of the property is entitled to receive a notice of default for a foreclosure sale.

Proposed 34.20.070(f) allows a trustee additional time (after recording) to deliver the notice of default when the trustee delivers the notice personally to the property or to an occupant of the property. Allows the trustee to place the notice on the property or as close as practicable to the property under certain conditions.

Proposed sec 34.20.070(g) states that an affidavit signed by a trustee or another person who delivered notice personally under sec. 34.20.070(f) is prima facie evidence that the trustee complied with sec. 34.20.070(f). Establishes a conclusive presumption

(as evidenced by the affidavit) after one year unless a court action is filed within the year to challenge the foreclosure for failure to comply with sec. 34.20.070(f)

Proposed sec. 34.20.070(h) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary knows a personal representative has been appointed.

Proposed sec. 34.20.070(i) establishes how a trustee may satisfy the notice requirements for a person known by the trustee to be deceased and for whom the trustee or the deed of trust beneficiary know that a personal representative has been appointed for the deceased person.

Proposed sec. 34.20.070(j) states that an heir or devisee of a deceased person must challenge a foreclosure sale within 90 days if alleging non-receipt of notice and if the trustee gave notice as required by (h) – (i).

Proposed sec. 34.20.070(k) describes the persons who may bring a court action to enjoin a foreclosure sale.

Proposed sec. 34.20.070(l) states that when a court injunction action meets certain conditions, a court may impose conditions that it considers appropriate to protect the deed of trust beneficiary.

Proposed sec. 34.20.070(m) defines certain terms for AS 34.20.070

Section 7. AS 34.20.080(a) is amended to require that the proceeds from a foreclosure sale are placed in escrow until disbursed. This section allows a trustee to accept foreclosure bids by telephone, the Internet, and electronic mail if certain conditions are met.

Section 8. Amends AS 34.20.080(b) Allowing the attorney or other agent of the trustee to conduct the sale. Additionally, allows the trustee to set reasonable rules for the conduct of the sale. Adds language that conforms the deed delivery requirements to the new provision in sec. 34.20.070(g) allowing the trustee to rescind the sale under certain circumstances.

Section 9. Amends AS 34.20.080(e) Limiting the postponement of a foreclosure sale to not more than 12 months unless a new notice of sale is given. Establishes that postponement for up to 12 months does not provide a basis for challenging the validity of the foreclosure because of how long the foreclosure has been pending.

Section 10. Adds a new subsections to AS 34.20.080(foreclosure sale).

Proposed sec. 34.20.080(f) indicates how any cash proceeds of the sale are to be distributed after delivery of a deed.

Proposed sec. 34.20.080(g) allows a trustee to withhold delivery of the deed for up to five days, prohibits the trustee from issuing the deed under certain conditions, and describes what the trustee must do when rescinding the sale.

Proposed sec. 34.20.080(h) allows the trustee to reschedule a rescinded sale, establishes a minimum time that must elapse after the rescinded sale before the new sale may be held, and establishes the notice procedure that the trustee must follow for the rescheduled sale.

E-Mail Representative_Jay_Ramras@legis.state.ak.us

Proposed sec. 34.20.080(i) establishes that if a sale is not rescinded it completely terminates the rights of the trustor of the deed in the property.

Section 11. AS 34.20.120(a) is amended. Allowing the attorneys for the beneficiaries or their successors in interest to execute and acknowledge the substitution of a trustee for certain trust needs.

Section 12. AS 34.20.120(b) is amended. Adds a requirement to the contents of a trustee substitution for a situation when the substitution is executed by the attorneys for the beneficiaries or their successors in interest.

Section 13. Adds a new section AS 34.20.125(a) requiring a trustee to provide a surety bond before performing trustee duties under a deed of trust foreclosure.

AS 34.20.125(b) requires the bond to be terminable at any time by the surety by complying with certain requirements, indicates when the bond terminates, and indicates that the surety is not liable after termination for more than the face amount of the bond. States that a revision of the amount of the bond is not cumulative.

AS 34.20.125(c) gives notice requirements for a termination of the bond.

AS 34.20.125(d) requires a trustee to file evidence of a bond each year with the Department of Commerce, Community, and Economic Development. Requires the department to verify that the evidence is satisfactory, keep an updated list of bonded trustees, and make the evidence and the list available to the public. Allows the department to charge the trustee a reasonable fee for the verification and maintenance of records.

AS 34.20.125(e) exempts certain persons from the bonding requirements.

AS 34.20.125(f) defines "department" in this section to mean the Department of Commerce, Community, and Economic Development

E-Mail Representative_Jay_Ramras@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **CSHB108(L&C)**
() Publish Date:

Identifier (file name): CSSB108(L&C)-DOR-AHFC-3-16-09
Title: Property Foreclosures and Executions
Sponsor: Representative Ramras
Requester:

Dept. Affected: Revenue
RDU: Alaska Housing Finance Corp.
Component: Operations
Component Number: 110

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

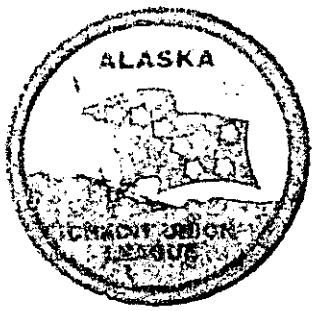
Full-time							
Part-time							
Temporary							

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

Under the House Labor and Commerce Committee version of House Bill 108, there would be no expected fiscal impact on the Alaska Housing Finance Corporation.

Prepared by: Bryan Butcher
Phone: 330-8445
Division: Alaska Housing Finance Corporation
Date/Time: 3/16/09 12:00 AM
Approved by:
Date:

(Revised 11/19/2007 OMB)



ALASKA CREDIT UNION LEAGUE

March 8, 2009

Stephen Routh
Routh Crabtree, apc
3000 A Street Suite 200
Anchorage, AK 99503

Re: HB 108-An Act relating to real property foreclosures, to the sale of property on execution, and to deed of trust.

Dear Mr. Routh;

We are an association representing all thirteen credit unions doing business in Alaska, with a combined membership base of over 500,000.

Thank you for alerting us to this legislation. We think the changes proposed in the bill are well thought-out, necessary, and will benefit borrowers, financial institutions, and title agents. Much of the bill is housekeeping, which will reduce future litigation. Other parts are forward-thinking, like developing methods for internet advertising and bidding, that will tend to increase bidding at foreclosure auctions.

We are pleased to support this legislation.

Sincerely,

James M Wileman
Chair

Kirk Wickersham
280 W. 34th Ave.
Anchorage, Alaska 99503

907-561-3726

March 18, 2009

Re: House Bill 108 "***An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust.***"

Dear Members of the Legislature,

I am a real estate lawyer, real estate broker and title insurance licensee.

I have had the opportunity to review HB 108, which updates the provisions of Alaska's foreclosure law. It contains many housekeeping items that clarify existing law, as well as some sections that will take Alaska solidly into the 21st century.

An outstanding provision is the requirement for publication on the Internet. Most folks look to the internet today for foreclosure information. Having this information on the web will improve dissemination of the sale information to the general public, and thus it should increase the number of bids above the offset bid.

Bids above the offset bid are in everyone's interest. The debtor receives the net proceeds of the sale. The lender does not have to take title, renovate and market the property. And the successful bidder is obviously happy.

I encourage you to adopt this bill. It is my understanding that, if adopted, this bill will become a model for legislation in other states. Please contact me if you have any questions.

Sincerely,

Kirk Wickersham

Alaska Mortgage Bankers Association
P.O. Box 9-2691
Anchorage, Alaska 99509-2691

April 2, 2009

Re: House Bill 108

Stephen Routh
Routh Crabtree, APC
3000 "A" Street Suite 200
Anchorage, AK 99503

Dear Stephen;

The Alaska Mortgage Bankers Association is a trade organization composed of loan origination companies, servicing companies, and affiliated industry service providers. We have been serving Alaska's mortgage and housing industry since 1980. Our members adhere to a canon of ethics that calls for the use of sound and ethical business practices.

The Alaska Mortgage Bankers Association is dedicated to the preservation and improvement of the Mortgage Banking Industry through a proactive relationship with Federal and State legislators, industry agencies, and other housing trade organizations. Our members are kept informed about changes in mortgage laws and pending legislation.

Our standing committees provide seminars, meetings, and general information for the purpose of education for our members and the public.

The Association promotes public education, high ethical standards, sound business practices, and cooperation among legislators, regulators and other members of the industry.

Consistent with our mission, we are pleased to offer our support for HB 108. It will modernize Alaska Statutes, and make the foreclosure process more fair, transparent, and efficient. It will tend to reduce litigation, and encourage bidders to attend foreclosure auctions to the benefit of borrowers, lenders, and neighborhoods alike.

Sincerely,

Gail K. Stafford
President

KENNETH P. EGGERS, P.C.
SALLY J. KUCKO
DENNIS G. FENERTY
DAVID A. DEVINE, P.C.
ROBERT H. SCHMIDT
SARAH A. BADTEN

CLIFFORD J. GROH, SR.
1926-1998

LAW OFFICES OF
GROH EGGERS, LLC
2600 CORDOVA STREET, SUITE 110
ANCHORAGE, ALASKA 99503

Telephone
(907) 562-6474
Facsimile
(907) 562-6044
www.groheggers.com

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MAR

March 11, 2009

The Honorable Kurt Olson
House of Representatives
Alaska State Capitol
Juneau, Alaska 99801-1182

Via E-mail: Representative_Kurt_Olson@legis.state.ak.gov

re: HB 108 – "A Bill Relating to Foreclosures, etc."
Our File No. 85-19-15

Dear Representative Olson:

I am writing on my own behalf, and on behalf of my law firm, to voice my opposition to the as-written version of HB 108 changing Alaska's laws relating to deed of trust foreclosures. While the majority of the bill contains beneficial changes, HB 108, as written, will create a requirement for Internet publication that will result in giving monopoly power to the law firm that wrote HB 108.

HB 108 requires publication on the Internet prior to a foreclosure. I have no objection to Internet publication as a general matter. In fact, current law requires that all default notices must be published in a newspaper, and most newspapers that publish default notices simultaneously publish the default notice on the newspaper's accompanying website. Every judicial district already has a newspaper of general circulation that publishes legal notices online. **Therefore, almost all default notices in Alaska are already published on the Internet.**

However, HB 108 goes further to provide that, to qualify as a website for publishing default notices, the website must have 5,000 unique visitors a month, be used primarily for advertising foreclosure properties, and have senior management within the state. Under this definition, almost no websites will qualify. **The websites operated by the Anchorage Daily News, Alaska Journal of Commerce, Juneau Empire, and Fairbanks Daily News-Miner, among others, will not qualify because they are not "used primarily to advertise real property under foreclosure[.]"** Websites such as Craigslist, which was mentioned favorably in the February 23, 2009 committee hearing, would not qualify because it is not used primarily for foreclosures, and because it does not have senior management in Alaska. Websites operated by banks will not qualify because they are not used primarily for foreclosures. Websites operated by local law firms will not qualify because they do not get 5,000 unique visitors a month. Finally, the State of Alaska's own website will not qualify because it is not used primarily to advertise foreclosures.

It is my belief that the only website that will qualify under the current HB 108 is USA-Foreclosure.com, which is half owned by Mr. Stephen Routh, whose law firm wrote HB108. Mr. Routh's law firm, with over 400 employees and offices in seven states, should not be granted monopoly power to conduct all foreclosures in Alaska.

I recommend the committee do one of two things with HB 108. I would recommend that all provisions relating to Internet advertising be eliminated. This is what happened last year with HB 163 and I recommend the same change be made now. Alternately, I recommend that proposed subsections AS 09.35.140(c)(3), (5) and (6) be eliminated. This would take away the requirement that a website "be used primarily to advertise real property under foreclosure", that the website have 5,000 unique visitors a month, and the website have senior management in Alaska. This would allow newspaper websites, bank websites, law firm websites, and Craigslist to qualify.

Thank you for the opportunity to provide information to the Committee on HB 108. If I can be of any further assistance, please don't hesitate to contact me.

Very truly yours,

GROH EGGERS, LLC

Robert H. Schmidt

cc: House Labor & Commerce Committee Members (via E-mail)

MATANUSKA VALLEY
FEDERAL CREDIT UNION

1020 S. Bailey St.
Palmer, Alaska 99645
(907) 745-4891
(907) 694-4891
Fax: (907) 745-9131
www.mvfcu.coop

February 24, 2009

Mr. Stephen Routh
Routh & Crabtree, APC
3000 A Street, Suite 200
Anchorage, AK 99503

Re: HB 108 – Property Foreclosures and Executions

Dear Mr. Routh,

This letter is being written in support of House Bill 108 "An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."

The proposed changes to the above referenced bill will clarify and update the current foreclosure process and language.

If there are any questions please don't hesitate to contact me at 745-9140.

Sincerely,

Al Strawn
CEO

/geg

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NCUA

AlaskaUSA
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February 6, 2009

Mr. Stephen Routh
Routh & Crabtree, APC
3000 A Street, Suite 200
Anchorage, AK 99503

Re: HB 108-An Act relating to property foreclosures and executions

Dear Mr. Routh:

Thank you for alerting us to this legislation. We think the changes proposed in the bill are well thought out, necessary, and will benefit borrowers, financial institutions, and title agents.

We are pleased to support this legislation.

Sincerely,

William B. Eckhardt
President

P.O. Box 196613 • Anchorage, Alaska 99519-6613
Phone (907) 563-4567 • (800) 525-9094 outside Anchorage • (800) 742-7084 TTY/Hearing Impaired • www.alaskausa.org

First American
Title Insurance Company

BRYAN S. MERRELL
REGIONAL COUNSEL

February 5, 2009

RE: House Bill 108 *"An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."*

To Whom It May Concern:

This letter is written in support of House Bill 108, relating to Deeds of Trust and Foreclosures.

I am Regional Counsel for First American Title Insurance Company. First American is the leading title insurer in the United States, and in Alaska. I am a 20 year member of the Alaska Bar, and a former long time resident of Alaska. In my capacity as an in-house attorney for First American, I have had many occasions to be involved in non-judicial foreclosure related issues and controversies, as First American has produced title insurance produces related to such foreclosures, and acted as trustee in many cases as well.

HB 108 would clarify a large number of issues relative to non-judicial foreclosure actions. It would fill in gaps in the current statutes relative to procedure. It would clarify issues which Alaska Supreme Court opinions over the years have made unclear. The result of passage of the bill would be a clearer pattern of conduct for the parties to the foreclosure, which should result in less litigation and higher bidding for the properties involved in the process. I urge your yes vote for the bill, and would be happy to answer any questions you may have regarding it.

Very truly yours,

FIRST AMERICAN TITLE INSURANCE CO.

Bryan S. Merrell
Regional Counsel

818 Stewart Street, Suite 800, Seattle, WA 98101
TEL 206.728.0400 ext. 6281 • TOLL FREE 800.526.7544 ext. 6281 • DIRECT 206.448.6281
bmerrell@firstam.com • firstam.com

HOUSE COMMITTEE REPO

(7)
Date Referred to Committee: March 18, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 4/3/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 108**

"An Act relating to real property foreclosures, to the sale of property on execution, and to deeds of trust."

HB 108 PROPERTY FORECLOSURES AND EXECUTIONS

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB108 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[X] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LINN			X	
	Gruenberg			—	
	Coghill	—			
				X	
	Holmes				X
	Gatto			✓	
Chair:	KAWASAKI	X			
Chair:					

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
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Alaska State Legislature

House of Representatives

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1292 Sadler Way, Suite 324
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Toll Free: (877) 465-3004

House District 10

Fax

To: Terry Bannister
Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: April 3, 2009

Re: Final on HB108

Today the House Judiciary Committee heard HB108 (26-LS0318\P) please go final on the bill with the following amendment:

1. P.2 (as drafted)

Thank you, if you have any questions call.

Representative_Jay_Ramras@legis.state.ak.us

HB

137

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN
State Capitol Juneau, AK 99801-1182 (907) 465-3719
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

Sponsor Statement

HB 137

"An Act relating to an interstate compact on educational opportunity for military children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."

The purpose of House Bill 137 is to eliminate some of the barriers that face children of military personnel as they transition from one school system to another. The average student will move from six to nine times from kindergarten to 12th grade.

While the armed services has done much to ease the transition for children of military personnel, there is much that can be done at the state and local levels to ensure that these children are afforded the same opportunities for educational success as other children.

Alaska enjoys a close relationship with our service men and women and their families and recognizes the sacrifice and stress they face with frequent moves and deployment. There are 12,106 active duty children between the ages of five and 18 plus the children of active members of the guard and reserve that will benefit from this compact.

Eleven states in 2008 adopted this compact and presently 22 states have pending legislation to join the compact. Passing this legislation will help remove some of that stress by providing the children timely enrollment as the children move from one school district to another.

(26-LS0588\R)

ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN
State Capitol Juneau, AK 99801-1182 (907) 465-3719
3340 Badger Road Suite #290, North Pole, AK 99705 (907) 488-5725

Sectional
HB 137

"An Act relating to an interstate compact on educational opportunity for military children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."

Section 1: AS 14. Adds a new chapter:
Chapter 34. Interstate Compact on Educational Opportunity for Military Children

Article I – Purpose
This article describes the purposes of this compact which is to remove barriers to educational success for military children by facilitating enrollment, placement, and timely graduation; providing enforcement of rules, uniform collection and sharing of information; and promoting coordination, flexibility, and cooperation among member states.

Article II – Definitions
This article provides definitions for terms used throughout the compact.

Article III – Applicability
This article defines the children covered by this compact.

Article IV – Educational Records and Enrollment
This article outlines how sending and receiving states handle a military student's unofficial and official educational records. The Interstate Commission determines what information must be included in the records, and the time line for providing the records. It provides a 30-day grace period for immunizations. Kindergarten and first grade entrance is addressed for both grade level and age.

Article V – Placement and Attendance
This article describes course placement; education program placement, and special education services to address federal requirements for students with disabilities. Placement flexibility and absences related to deployment are also addressed.

Article VI – Eligibility
This article provides information on enrollment eligibility. It prohibits the student from being charged a tuition if the student lives in a different jurisdiction, and allows the student to continue to attend the school they were enrolled in while residing with the custodial parent. The military student shall have as many opportunities as possible to participate in extracurricular activities, even if they have missed the application deadlines.

Article VII – Graduation
This article facilitates on-time graduation by providing procedures for waivers, exit exams and transfers during a military student's senior year.

Article VIII – State Coordination
This article establishes requirement for creation of a State Council or other existing body to provide coordination among its government, local and military agencies. Membership requirements are also addressed.

Article IX – Interstate Commission on Ed Opportunity for Military Children
This article deals with creating the commission and its responsibilities, powers, and duties. It details membership, voting rights, meetings, executive committee, bylaws and rules, data collection, and a process for reporting alleged violations.

Article X – Powers and Duties of the Interstate Commission
This article lists the powers and duties of the Interstate Commission: Dispute resolution; promulgate rules; issue advisory opinions; enforce compliance; and other powers and duties related to establishing and running and supporting the state councils at a national level.

Article XI – Organization and Operation of the Interstate Commission
This article provides the structure for the Interstate Commission to organize, establish bylaws, set up executive and other committees, establish procedures for meetings, and providing for start-up rules for the initial administration of the compact.

Article XII – Rulemaking Functions of the Interstate Commission
This article gives the Interstate Commission rulemaking authority, and rulemaking guidelines and a provision for judicial review of a proposed rule.

Article XIII – Oversight, Enforcement, and Dispute Resolution
This article addresses oversight, enforcement and dispute resolution specifically. Oversight: Charges the executive, legislative and judicial branches of state governments regarding the purpose and intent of the Compact. It further states that the Interstate Commission shall receive all service of process and has standing to intervene. Further addresses consequences of default by a member state. Dispute Resolution: If requested the Interstate Commission will attempt to resolve disputes and provide rules for mediation and binding dispute resolution. Enforcement: The Interstate Commission shall enforce the rules and provisions of this compact and may initiate legal action to enforce compliance with the provisions of the compact.

Article XIV – Financing the Interstate Commission
This article provides a method for the Interstate Commission to pay its reasonable expenses by collecting annual assessments from each member state. There are limits on incurring obligations and the need for accurate accounting of all receipts and disbursements, and the requirement for a yearly audit by a certified or licensed CPA.

Article XV – Member States, Effective Date and Amendment
States are eligible to become members, the compact becomes effective when no less than 10 states enact the compact into law and the member state passes the law. Rules for how amendments become effective and binding.

Article XVI – Withdrawal and Dissolution
This article addresses how member states withdraw from the compact, what their responsibilities of notice, time, and responsibility for assessments. This article also addresses reinstatement, and compact dissolution.

Article XVII – Severability and Construction
Provisions of this compact are severable and any portion deemed unenforceable does not affect the remaining compact. The compact should be liberally construed, and nothing in this compact inhibits other interstate compacts.

Article XVIII – Binding Effect of Compact and Other Laws
Nothing in this compact prevents the enforcement of other laws that are not inconsistent with this compact. Conflicting laws are superseded by the compact to the extent of the conflict. All rules of the Interstate Commission are binding on the members states. Any provisions that exceed constitutional limits are ineffective to the extent of the conflict of the member state.

Sec. 14.34.020 Compact Administrator.
Establishing a compact administrator and the duties of that office.

Sec. 14.34.030 State Council.
Establishes the state council as a subcommittee of the membership.

Sec. 14.34.040 Regulations.
The board may adopt regulations to implement this chapter.

Sec. 14.34.090 Short Title.
Interstate Compact of Educational Opportunity for Military Children

Section 2: Uncodified law of the State of Alaska is amended by adding a new section:

INDIRECT COURT RULE AMENDMENTS. The changes made by Sec. 1 of this Act have the effect of changing Alaska Rules of Civil Procedure:

(1) Rule 4 – entitles the Interstate Commission to receive service of process of a judicial proceeding that pertains to a Compact provision or rule.

(2) Rule 24(b) - entitles the Interstate Commission to intervene in a judicial proceeding in which the validity of a compact provision or rule is at issue.

Section 3: Uncodified law of the State of Alaska is amended by adding a new section:

CONDITIONAL EFFECT OF CERTAIN PROVISIONS.

Provisions set out in Section 1 concerning service of process and standing to intervene, take effect only if Section 2 receives two-thirds majority vote of each house required by the State Constitution.

Section 4: Uncodified law of the State of Alaska is amended by adding a new section:

CONDITIONAL EFFECT OF ACT; COMMISSIONER'S DUTY TO NOTIFY.

When Sections 1 and 2 of this Act will take effect and notification requirements when the 10 or more states have ratified this compact.

Section 5: Setting out the effective dates of this Act to be not less than 10 states other than this state ratify the Compact or July 1, 2009, whichever is later.

(26-LS0588\R)

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version:
() Publish Date:

Identifier (file name):
Dept. Affected: Education
Title: Interstate Compact on Educational Opportunity for Military Children
RDU: Education Support Services
Component: Executive Administration
Sponsor
Requester
Component Number: 2736

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel	6.1	6.1					
Contractual	16.2	16.2					
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**22.3**	**22.3**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	22.3	22.3					
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**22.3**	**22.3**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

Estimated cost to join Interstate compact on Educational Opportunity for Military Children. The compact requires the state to establish a state council to oversee the implementation of the compact. EED recommends a five member state council. The council will consist of the Commissioner of the Department of Education and Early Development, Superintendents of Anchorage and Fairbanks School Districts, a state legislator and the Military advisor appointed to the State Board of Education and Early Development.

Prepared by: Eddy Jeans, Director
Phone 465-8679
Division: School Finance
Date/Time 1/22/09 12:00 AM
Approved by:
Date

(Revised 9/10/2008 OMB)

1597

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

BILL NO. _____

ANALYSIS CONTINUATION

Military compact, page 2 of fiscal note

Article VIII - State Coordination

Estimated travel cost.
Two, two day meetings a year. One in Anchorage and one in Juneau.
Four members will travel for each meeting.
Airfare is estimated at $500
Per Diem is estimated at $60 a day
Hotel is estimated at $200 a night

Estimated total travel cost is $6,080.

Contractual Component - Estimated buy in for membership in the compact is $1 per dependent of an active duty militaryparent. Alaska currently has 16,200 active duty military dependents, therfore membership is $16,200.

Case Study #1

Commissioned Personnel

Family of a Major General, United States Air Force; stationed in Virginia

Due to multiple reassignments for our family, my son attended ten different schools prior to graduating from high school. Though he was certified as academically advanced by previous school systems, he was denied advanced placement in one school system solely because he was not in that system for the required period of time. He was denied advanced placement in another system due to its different qualifying criteria as compared to previous jurisdictions. For one four year period during which we were reassigned each year, my son was required to read Romeo and Juliet for each of those four years despite having done so in each preceding state. He was denied the opportunity to participate in sports on more than one occasion because we were reassigned after team tryouts and he was told he was too late. Finally, we had to take the drastic measure of placing him in a private school after one reassignment because, in order for him to graduate on time from his assigned public school, he would have been required to stay in school for an extra year since the new school system refused to accept all of his credits that he had completed in the previous jurisdiction.

My daughter, currently a high school freshman, has attended seven different schools. She had an IEP (Special Education: Individual Education Plan) from one state that was not continued in the next state because her success out-scored their expectation of what her aptitude score indicated she could achieve. In our current state of residence, she is required to pass six course competency tests, even though she took some of those courses in a different state. Furthermore, the preparatory curriculum for these tests is different than in the last jurisdiction so her burden has been needlessly increased. What is most problematic is that, in order for her to graduate high school on time, she must pass an exit exam which is designed for students who have been in this particular state system for twelve years. For that reason, and because previously earned credits have not been accepted by the present jurisdiction, she must take summer school courses every summer for the next three years.

Case Study #2

Enlisted Personnel

Family of a Technical Sergeant, United States Air Force; stationed in Florida

My daughter is 10 years old and is in the 5th grade. Our family moved to Patrick AFB, Florida from Kirtland AFB in New Mexico last May on military orders. My husband is in the Air Force. We enrolled my daughter in elementary school in Florida during the summer and her new school requested her school records in August from her previous school in New Mexico. By the middle of October, the records had not yet been sent to the new school. After repeated written requests, phone calls and emails from Florida school officials and myself to her previous school in New Mexico, some of her records arrived in late October. However, her complete record did not arrive until November 19th.

When her records finally arrived, the school transferred her to the fifth grade QUEST class which is an advanced placement class for students who are gifted and talented. This is where she should have been placed at the beginning of the semester. However, due to the inexplicable delay in transferring her records, her new school placed her in a less challenging learning environment. Therefore, she spent almost a whole semester in an inappropriate classroom setting. The effects of this delay, which may seem to be of little consequence to adults, have been severe and profound for my 10 year old. She was miserable in school for months, forced to study material she had already mastered. She was bored and restless, and she sometimes got into trouble as a result. She is also not where she should be academically and has some catching up to do.

Despite this setback, now that she is in the proper class, she is back to being my happy, well behaved student. However, had legislation such as the proposed compact been in place in time for my daughter, we could have avoided this situation entirely.

DEPARTMENT OF THE AIR FORCE
PACIFIC AIR FORCES

MAR 19 2009

General Carrol H. Chandler
PACAF/CC
25 E Street, Suite G-214
Hickam AB HI 96853-5420

Representative John Coghill, Chair
Members of the House Committee on Education
Alaska State Capitol
Juneau, AK 99801

Re: IN SUPPORT OF HB137
Hearing: Fri, 20 Mar 09 at 0800

Dear Representative Coghill and Committee Members

Partnership and collaboration are longstanding keystones for military and local community support to Alaska public school students. In this spirit, I provide my support to House Bill HB137 "Interstate Compact on Educational Opportunities for Military Children."

HB137 is groundbreaking legislation written specifically for the unique requirements of a transient student population. Issues such as enrollment, testing standards and graduation requirements are addressed through the interstate compact. These types of standards allow a military student to progress without fear of having to reaccomplish work to meet a new requirement after a move. Additionally, this compact provides an avenue for states to not only establish this list of standards but to collaborate on future issues as they arise.

I look forward to increased cooperation with those who set policy for and educate our children in Alaska. The changes implemented from HB137 will directly impact the social, emotional and academic experience of transitioning students who attend Hawaii public schools.

I personally appreciate the hard work and dedication of all those involved with HB137. Thank you for your submission and continued support of our military families.

Very respectfully

Carrol H. Chandler

CARROL H. CHANDLER
General, USAF
Commander

1601

DEPARTMENT OF THE ARMY
HEADQUARTERS, UNITED STATES ARMY, PACIFIC
FORT SHAFTER, HAWAII 96858-5100

REPLY TO
ATTENTION OF

Office of the Commanding General

18 Mar 09

State Representative John Coghill
House District 11- North Pole
State Capitol, Room 214
120 4th Street
Juneau, Alaska 99801-1182

Re: **In SUPPORT of HB# 137 "Interstate Compact on Educational Opportunities for Military Children"**

Dear Representative Coghill:

The United States Army, Pacific (USARPAC) would like to inform you of our **support** for the Interstate Compact on Educational Opportunities for Military Children (House Bill #137). When considering the number of school-age military children impacting each state, Alaska has approximately 12,000 school-age military dependents attending public, private, and homeschooling venues. As these students move from state to state, many of them encounter considerable challenges when dealing with enrollment, eligibility, placement, extra-curricular activities, and graduation requirements. Often, military students lose course credits due to multiple school transfers and are often improperly placed in courses due to the varying school requirements.

USARPAC appreciates all that Alaska public schools have done on behalf of our military children regarding transition and deployment issues. The Interstate Compact on Educational Opportunities for Military Children will only serve to compliment and augment what is already being done in the Alaska public schools. Additionally, this bill will join Alaska with other states in an effort to streamline the school transition process and create much needed uniformity between states.

For these reasons, USARPAC supports this compact and encourages the Alaska House of Representatives to pass House Bill #HB137. If you need additional information, please contact my Well Being/Education Specialist, Ruth Davis, at 808-438-4177 or E-mail nancy.ruth.davis@us.army.mil.

Sincerely,

Benjamin R. Mixon
Lieutenant General, US Army
Commanding General

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY ALASKA
724 POSTAL SERVICE LOOP #5000
FORT RICHARDSON, ALASKA 99505-5000

March 18, 2009

REPLY TO
ATTENTION OF:

Office of the Commanding General

Honorable John Coghill
Alaska House of Representatives
House District 11- North Pole
State Capitol, Room 214
120 4th Street
Juneau, Alaska 99801-1182

Subject: Support of House Bill #137, "Interstate Compact on Educational Opportunities for Military Children"

Dear Mr. Coghill:

The United States Army Alaska (USARAK) would like to inform you of our support for the Interstate Compact on Educational Opportunities for Military Children (House Bill #137). In the state of Alaska, there are approximately 12,000 school age children of active duty military personnel. As these students move from state to state, many of them encounter considerable challenges when dealing with enrollment, eligibility, placement, extra-curricular activities, and graduation requirements. Often, military students lose course credits due to multiple school transfers and are sometimes improperly placed in courses due to the varying school requirements. The Interstate Compact on Educational Opportunities for Military Children will help to ease this frustration and will aid military students in the school transition process.

USARAK appreciates all that Alaska public schools have done on behalf of our military children regarding transition and deployment issues. The Interstate Compact on Educational Opportunities for Military Children will only serve to complement and augment what is already being done in the Alaska public schools. Additionally, this bill will join Alaska with other states in an effort to streamline the school transition process and create much needed uniformity between states.

For these reasons, USARAK supports this compact and encourages the Alaska House of Representatives to pass House Bill #137.

Sincerely,

Stephen R. Layfield
Major General, U.S. Army
Commanding Officer

DEPARTMENT OF THE ARMY
HEADQUARTERS, U.S. ARMY ALASKA
724 POSTAL SERVICE LOOP #5000
FORT RICHARDSON, ALASKA 99505-5000

March 18, 2009

REPLY TO
ATTENTION OF:

Office of the Commanding General

Honorable John Coghill
Alaska House of Representatives
House District 11- North Pole
State Capitol, Room 214
120 4th Street
Juneau, Alaska 99801-1182

Subject: Support of House Bill #137, "Interstate Compact on Educational Opportunities for Military Children"

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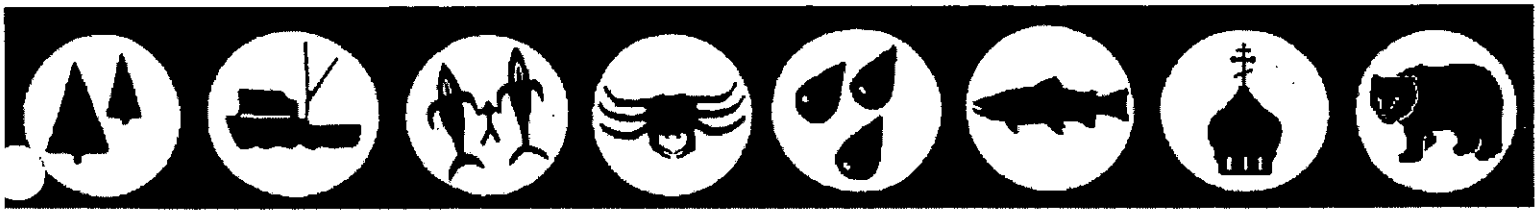
USARAK appreciates all that Alaska public schools have done on behalf of our military children regarding transition and deployment issues. The Interstate Compact on Educational Opportunities for Military Children will only serve to complement and augment what is already being done in the Alaska public schools. Additionally, this bill will join Alaska with other states in an effort to streamline the school transition process and create much needed uniformity between states.

For these reasons, USARAK supports this compact and encourages the Alaska House of Representatives to pass House Bill #137.

Sincerely,

Stephen R. Layfield
Major General, U.S. Army
Commanding Officer

1604



Kodiak Island Borough School District
Office of the Superintendent
722 Mill Bay Road
Kodiak, AK 99615
(907) 481-6200

March 2, 2009

Twenty-Sixth Alaska State Legislature
House of Representatives
State Capitol
Juneau, AK 99801

Dear Representatives:

Kodiak Island Borough School District wholeheartedly endorses House Bill 137. A substantial number of Kodiak Island students come to us from the United States Coast Guard as well as the United States Navy.

We eagerly join this compact's intent to remove the barriers to educational success imposed on the children of military families due to the frequent moves and deployment of their parents. We will be committed to supporting and enforcing the rules and provisions of this compact. It is our District's goal to provide uniform collection and sharing of information; and to promote coordination, flexibility and cooperation between educational systems and families in order to achieve educational success for the student.

We thank Representative Coghill for sponsoring House Bill 137. His concern is for the best interest of the children whose parents are serving this nation with such honor. We appreciate their service and this bill represents a small token of thanks as well as removes several obstacles that are imposed upon their children during their service to our country.

Sincerely,

Stewart McDonald
Superintendent

COMMANDER, U.S. PACIFIC COMMAND
(USPACOM)
CAMP H.M. SMITH, HAWAII 96861-4028

19 March 2009

Representative John Coghill
Alaska State Capitol
Room 214
Juneau, Alaska 99801

Re: **IN SUPPORT of HB 137:**
Interstate Compact on Educational Opportunities for Military Children
Hearing: Friday, March 20, 2009, 1:30 PM

Dear Representative Coghill and Education Committee Members:

The US Pacific Command wishes to formally register support for the Interstate Compact on Educational Opportunities for Military Children. With over 12,000 school-age military dependents, Alaska ranks 15th in the nation for the number of military students educated within the state. Representing the Army, Navy, Air Force, Marines and Coast Guard, the children of our military families in Alaska come from and move to nearly every state in the country and numerous US Department of Defense schools around the globe. Each year, approximately one-third of our children transfer from Alaska and are replaced by incoming military-affiliated students. Because of the mobility imposed on families due to assignments and deployments, our children face significant educational challenges including enrollment, eligibility, placement, and graduation.

The passage of this bill allows Alaska to join with other states to create the Interstate Compact, a program that seeks to remove barriers to educational success due to the frequent military moves. The Interstate Compact provides a venue for states to work together which allows our military families to fulfill the mission of serving our country without penalizing the education of their children.

I wholeheartedly support and urge the passage of House Bill 137. Thank you for all you do for the children of military families who, in their own way, also serve our country.

Sincerely,

Stephen D. Tom
Major General, U.S. Army
Chief of Staff

Louie Flora

From: Friedman_Jeff [Friedman_Jeff@asdk12.org]
Sent: Friday, March 20, 2009 6:41 PM
To: Rep. Paul Seaton; Rep. Cathy Munoz; Rep. Bryce Edgmon; Rep. Wes Keller; Rep. Peggy Wilson; Rep. Bob Buch; Rep. Berta Gardner
Cc: Comeau_Carol; Siegfried_Robin; David.Shutt@us.army.mil
Subject: HB 137 Compact: Education of Military Children

Follow Up Flag: Follow up
Flag Status: Blue

Chair Seaton and Members of the Education Committee,

I am writing to urge your support for this compact which will be heard by your committee Monday morning.

This compact will provide useful support to our military members and their families. Anchorage educates a large number of students of military families. Many of these families have major transitions during the year as parents are deployed or transferred to or from Anchorage. We work closely with Ft. Richardson and Elmendorf AFB to make these transitions easier, and this Compact will assist us in that process.

Jeff Friedman
Anchorage School Board
1534 D Street
Anchorage, AK 99501
907-742-4699 (Home)

March 24, 2009

Anchorage School District

5530 E. Northern Lights Blvd.
Anchorage, Alaska 99504-3135
(907) 742-4000

Representative Paul Seaton
Alaska State Legislature
State Capitol (MS 3100)
Juneau, AK 99801-1182

Dear ~~Representative~~ Paul Seaton:

Last night, the Anchorage School Board passed the enclosed resolution in support of the Interstate Military Compact on Educational Opportunity for Military Children. I am also enclosing the School Board memorandum which accompanied the resolution. The vote was unanimous. Our military representative strongly supported this resolution and testified in support of passage.

I am very grateful to Representative Coghill for introducing this important legislation. This compact reinforces our strong commitment to our military families and students and is more important now than ever as they serve our country in these uncertain times.

I hope that this legislation moves quickly through the House and on to the Senate during this legislative session.

If you have any questions, please do not hesitate to contact me at comeau_carol@asdk12.org or 907-742-4312.

Sincerely yours,

Carol

Carol Comeau
Superintendent

Enclosures

Cc: Larry LeDoux, Commissioner of Education and Early Development
Eddy Jeans, Director of School Finance

ANCHORAGE SCHOOL DISTRICT
ANCHORAGE, ALASKA

ASD MEMORANDUM # 252 (2008-2009) March 23, 2009

TO: SCHOOL BOARD

FROM: OFFICE OF THE SUPERINTENDENT Carol Comeau

SUBJECT: RESOLUTION IN SUPPORT OF THE INTERSTATE MILITARY COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

RECOMMENDATION:

It is the recommendation of the administration that the School Board approve a resolution in support of the interstate military compact on educational opportunity for military children (attachment A). It is further recommended that the School Board and administration communicate the support of the Anchorage School District to the Alaska Legislature, the State Board of Education and Early Development, and the Governor.

PERTINENT FACTS:

The United States Departments of Education and Defense signed a historic agreement in June of 2008. This historic agreement set the state for a formalized working agreement to work collaboratively to ease the challenges of transitions for military dependent students. As of the beginning of the 2008-2009 school year, the following states have passed legislation in support of military compacts: Arizona, Colorado, Connecticut, Delaware, Florida, Kansas, Kentucky, Michigan, Missouri, North Carolina, and Oklahoma. Other states have legislation pending. Subsequent to that action, the State Board of Education and Early Development discussed the military compact and expressed strong support for Alaska entering into this compact. This was communicated to the Alaska Legislature and to Governor Palin.

Subsequently, Representative John Coghill, filed HB 137, "An act relating to the Interstate Compact on Educational Opportunity for Military Children..." It is moving through the legislature during this first session of the twenty-sixth

legislature. Representative Dahlstrom has attended meetings relating to this issue as part of her legislative responsibilities.

The administration has reviewed the military compact and the proposed legislation and urges the School Board to pass this resolution in support of its guiding principles. The administration supports this compact because it validates our close working relationships and current practices with our military installations and dependent families. The Mat-Su, Fairbanks, Kodiak, and Sitka school districts are in support of this compact and are in the process of supporting this action for their districts. The administration would like to work with our military representatives and members of the legislature on this important legislation.

An information packet provided to school districts provides general information to the School Board in support of this administrative recommendation and is included as Attachment B.

CC

Prepared and approved by: Carol Comeau, Superintendent

ANCHORAGE SCHOOL BOARD
ASDR 2008-2009-12

A RESOLUTION ENDORSING THE GUIDING PRINCIPLES OF THE INTERSTATE COMPACT ON EDUCATIONAL OPPORTUNITY FOR MILITARY CHILDREN

WHEREAS, military students are faced with numerous transitions during their formative years, and

WHEREAS, moves during the school years, particularly the high school years, present special challenges to learning and future achievement, and

WHEREAS, there is a large and growing military student population in the Anchorage School District, and

WHEREAS, the Anchorage School District can help ease the school transition challenges faced by its military students through awareness, flexibility and accommodations as reflected in the Interstate Compact on Educational Opportunity for Military Children,

THEREFORE, BE IT RESOLVED that the Anchorage School Board endorses the guiding principles expressed on Attachment B of this document, and urges all employees to institute these practices no later than the beginning of the 2009-2010 school year.

PASSED AND APPROVED by the Anchorage School Board this 23rd day of March, 2009.

ANCHORAGE SCHOOL BOARD

Jeff Friedman, President

Pat Higgins
Crystal Kennedy
Jeannie Mackie
Macon Roberts
Tim Steele
John Steiner

Carol Comeau, Superintendent

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 23, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 3/30/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 137**

"An Act relating to an interstate compact on educational opportunity for military children; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."

HB 137 COMPACT: EDUCATION OF MILITARY CHILDREN

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
EDU	1	✓		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Gruenberg	✓			
	Coghill	✓			
	Stoltz	✓			
	Holmes	✓			
Chair:	RAUKATA	X			
Chair:					

HB

138

Alaska State Legislature

Interim:
600 E. Railroad Ave
Wasilla, AK 99654

Phone: (907) 376-3725
Fax: (907) 376-4768

Session:
Alaska State Capitol, Rm 108
Juneau, AK 99801-1182

Phone: (907) 465-3743
Fax: (907) 465-2381
Toll Free: (800) 565-3743
Rep_Carl_Gatto@legis.state.ak.us

Representative Carl Gatto

Chair, House Military and Veteran Affairs Committee
District 13 - Palmer

SPONSOR STATEMENT HB 138
"An Act relating to cruelty to animals."

There is an unquestionable connection linking animal abuse and domestic violence. There is also credible evidence that individuals who practice violent acts against animals also present a danger to the public. Lets be honest, some people torture animals for amusement and fun. This activity is often seen associated with other serious crimes including drug offenses, gang activity, weapons violations, sexual assault and domestic violence—and can be one of the most visible parts of the entire history of antisocial behavior.

Studies in psychology, sociology, and criminology during the last 25 years have shown that violent offenders habitually have childhood and adolescent histories of serious and repeated animal cruelty. Even the FBI has recognized these connections since the 1970s when its analysis of the lives of serial killers suggested that most had killed or tortured animals as children. Criminal history often shows consistent patterns of animal cruelty previously existed among perpetrators of more widespread forms of violence, including child abuse, spouse abuse, and elder abuse. In fact, a leading Psychiatric Association considers animal cruelty one of the diagnostic criteria of conduct disorder.

Cruelty to animals is increasingly viewed as a significant issue by professionals in law enforcement and mental health—and certainly also the general public. Effective prosecution of animal abuse produces real benefits. It provides early and timely responses to those who are, or who are at risk of becoming, a threat to the safety of others. It provides an added tool for the protection of those who are victims of family violence. We cannot achieve a truly compassionate society, but we can do things that move us in that direction.

HB 138 strengthens animal cruelty laws while recognizing dog mushing as an Alaskan sport, allows for the humane destruction of dangerous animals as well as vermin and pests that threaten our structures and personal safety, and makes knowingly, deliberately, or intentionally inflicting severe and prolonged pain or suffering upon an animal a felony offence. Torture of an animal must be considered a felony if we are to do all we can to protect our children, elders and all of our citizens.

Alaska State Legislature

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801
Phone: (907) 465-3743
1-800-565-3743
Fax: (907) 465-2381

INTERIM ADDRESS:
600 E Railroad Avenue
Wasilla, AK 99654
Phone : 907-376-3725
Fax: (907) 376-4768

Representative Carl Gatto

Memorandum

Date: February 5, 2010

To: Representative Jay Ramras, Chairman
House Judiciary Committee

From: Representative Carl Gatto

Re: Explanation of Changes between HB 138 Original and (CS) for HB 138

The original version of HB 138 called for Cruelty to Animals in the First and Second Degree. Second degree cruelty to animals would have been a class A misdemeanor resulting from negligence or killing of an animal in an attempt to harass or intimidate another person. First degree cruelty to animals would have been a class C felony resulting from the second offense following cruelty to animals in the second degree, use of a decompression chamber, or use of poison.

The sponsor decided to alter HB 138 to make it a companion bill to SB 214. Under the new language in HB 138, criminal negligence in the care of an animal is a class A misdemeanor. The killing or injuring of an animal—except by torture, poison, or decompression chamber—in an attempt to intimidate or terrorize another is also a class A misdemeanor. Torturing or poisoning an animal, or placing it in a decompression chamber, is a class C felony under the new language. Again, these changes are meant to bring HB 138 in line with SB 214. In that same vein, the title of the bill has been changed from "an Act relating to cruelty to animals" to "an Act relating to penalties for cruelty to animals."

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 138**
() Publish Date:

Identifier (file name): HB138-LAW-CRIM-02-12-10
Title: An Act relating to cruelty to animals.
Sponsor: Representative(s) GATTO, Gruenberg
Requester: House Judiciary

Dept. Affected: Law
RDU: CRIMINAL
Component: Criminal Justice Litigation
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

HB 138 expands the penalties for most cruelty to animals charges. The fiscal impact to the Department of Law is difficult to predict. In testimony before the Senate Judiciary Committee in 2008 an animal shelter person from Fairbanks said they get 20 cases of cruelty to animals a month. This equals 240 cases a year for a population of 97,970 (US census date for 2008). The same date shows a state population of 686,293. This would mean an annual statewide caseload of approximately 1,608 for cruelty to animals. With the changes of many misdemeanors to a class C felony the state would need at least an additional four to five attorneys. Department of Law numbers should approximate four cases a year hence an indeterminate fiscal note.

Prepared by: Eileen Donahue, Division Operations Manager — Phone 465-5427
Division: Administrative Services — Date/Time 2/12/10 5:05 PM
Approved by: Daniel S. Sullivan, Attorney General — Date 2/12/2010
Department of Law

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: HB138-DOC-OC-2-25-10
Bill Version:
() Publish Date:

Identifier (file name): "An Act Relating to Cruelty to Animals"
Title
Dept. Affected: DOC
RDU Administration & Support
Component Commissioner's Office
Sponsor Representatives Gatto, Gruenberg
Requester House Judiciary Committee
Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

If passed, this legislation makes knowingly and intentionally inflicting severe prolonged pain or suffering upon an animal a felony. The Department of Corrections (DOC) does not have the data needed to quantify the impact of this legislation. We currently have three inmates with cruelty to animal convictions, however, for all three incarcerated individuals there are numerous other convictions in addition to cruelty to animals. For example, in addition to the cruelty to animal conviction, one inmate was convicted of: Theft 2, Murder 1, Vehicle Theft 1, Cruelty to Animals, Attempted Murder 1, and Murder 1 intent to cause death. If this legislation is passed, DOC will closely monitor the impact and could potentially request additional funding based on actual impacts.

Prepared by: Leslie Houston, Director
Phone (907) 465-3339
Division Administration and Support
Date/Time 2/25/10 2:30pm
Approved by: Dwayne Peeples, Deputy Commissioner
Date 2/25/2010
Department of Corrections

(Revised 11/6/2009 OMB)

Juneau Office
130 Seward St #209
Juneau, Alaska 99801
Phone: (907) 586-3650
Fax: (907) 463-4493
www.andvsa.org

ANDVSA
Alaska Network on Domestic Violence & Sexual Assault

Sitka Office
PO Box 6631
Sitka, Alaska 99835
Phone: (907) 747-7545
Fax: (907)747-7547

February 19, 2010

Representative Carl Gatto
State Capitol, Room 108
Juneau, AK 99801

Re: Letter of Support
HB 138 – An Act Relating to Animal Cruelty

Dear Representative Gatto:

On behalf of the eighteen domestic violence and sexual assault member organizations throughout the state that comprise the Alaska Network on Domestic Violence & Sexual Assault, we submit this letter of support for HB 138 - An Act Relating to Cruelty.

HB 138 changes the current Class A misdemeanor animal cruelty provision relating to a perpetrator who "knowingly kills or injures an animal . . . with the intent to intimidate, threaten, or terrorize another person" to a Class C felony, if the person has been previously convicted within the last 10 years.

The link between pet abuse and domestic violence is well-documented and has been a subject studied in increasing detail over the past ten years. Scholarly studies cited by the National Coalition to End Domestic Violence provide evidence of this:

- 71% of pet owners entering domestic violence shelters report that their batterer had threatened, injured, or killed family pets.
- 87% of batterer-perpetrated incidents of pet abuse are committed in the presence of their partners for the purpose of revenge or control.
- Similar to domestic violence, abusers often threaten, harm, or kill animals as a means of demonstrating power and control over the family.[i]

In order to understand how a perpetrator of domestic violence may abuse animals as a means of intimidating, threatening, or terrorizing another person, it may help to briefly consider the elements of domestic violence. Domestic violence is most commonly defined as a pattern of coercive behaviors by which one person tries to control another person. Perpetrators who wish to control their victims' behavior may use animals to demonstrate and confirm dominance over the family. For instance, a perpetrator might beat a dog, or even kill it, and then say to a victim:

"Don't make me do this to you." Perpetrators may even use animals to degrade the victim through involvement in the abuse; in fact, a March 2008 incident in Indiana illustrates this sobering dynamic all too vividly: in this case, a father was jailed after forcing his seven-year-old young daughter to stab the family cat. [ii]

Although Alaska-specific studies have not been conducted, anecdotal evidence from shelter advocates suggests a similar prevalence of these issues in our state. In addition, we know from our work that when family pets are used as a weapon of control and dominance, the situation has reached a high lethality level. In response to this reality, many shelter programs have cooperative agreements with their local humane society chapters. In Juneau, for example, representatives from Gastineau Humane Society serve on the local Domestic Violence Task Force, and the AWARE shelter has a cooperative agreement with GHS allowing shelter residents to board their animals free of charge.

Thank you for sponsoring HB 138. Making this specific provision of the animal cruelty statutes a Class C felony will hold perpetrators who use pets as weapons accountable, keeping victims safe by reducing the lethality in these serious domestic violence situations.

Sincerely,

Peggy Brown, Executive Director

cc: Lisa Mariotti, Policy Director

---

[i] "Pets and Domestic Violence" Fact Sheet. National Coalition Against Domestic Violence: http://www.ncadv.org/files/petsanddv.pdf

[ii] "Cops: Dad Forced Daughter to Kill Pet Cat." Associated Press: March 14, 2008. http://www.cbsnews.com/stories/2008/03/14/national/main3937815.shtml?source=mostpop_story.

THE HUMANE SOCIETY
OF THE UNITED STATES

OFFICERS

STAFF VICE PRESIDENTS

DIRECTORS

March 18, 2009

Dear Legislator:

On behalf of The Humane Society of the United States (The HSUS), the nation's largest animal protection organization with more than 18,000 members and constituents in Alaska, I am writing to urge you to support H.B. 138.

Last year, the Senate and the House Judiciary Committee passed legislation (S.B. 273) to make the worst types of animal cruelty a felony on the first offense. Unfortunately, on the last day of the session with time running out, the language was amended to require two prior convictions before felony penalties could be imposed, and substituted into another bill to ensure passage.

There are now five states without felony level penalties for the most malicious acts of animal cruelty. Alaska is one of only two states where only a third offense triggers the felony clause. Passage of H.B. 138 would fulfill the legislature's original intent to bring Alaska's cruelty code in line with the rest of the country, and protect Alaskan communities from the very worst animal abusers.

Strong laws against animal cruelty protect not only animals, but also our communities. An irrefutable body of research confirms the connection between animal cruelty and human violence. Animal cruelty is often a component of domestic violence, as pets are used to threaten or intimidate a spouse or child.

Numerous studies over the last 25 years have demonstrated that violent offenders frequently have childhood and adolescent histories of serious and repeated animal cruelty. The FBI has recognized the connection since the 1970s, when its analysis of the lives of serial killers suggested that most had killed or tortured animals as children. Other research has shown consistent patterns of animal cruelty among perpetrators of more common forms of violence, including child abuse, spouse abuse, and elder abuse. Newer studies show that 70% of animal abusers are involved in other crimes.

Passage of a first offense felony animal cruelty law is an essential initial step in halting the progression of violent crime—against humans and nonhumans. The HSUS strongly supports H.B. 138 and urges its quick passage through the Alaska legislature.

Sincerely,

Dave Pauli

Dave Pauli
Director, Western Regional Office

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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

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Thecla LaLonde, Member
Wrangell
Pres. Wrangell Chapter

March 27, 2009

Representative Carl Gatto
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Gatto:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 138, an act relating to cruelty to animals.

The APOA State Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

Angella Long
State President

Sandra Wilson

From: Dick Evans [evansdds@mtaonline.net]
Sent: Wednesday, April 01, 2009 7:53 PM
To: Sandra Wilson
Subject: HB 138 Animal Cruelty

I am a full-time health care provider living and working in Eagle River. Having been involved in canine training for over thirty years, I have recently devoted a great deal of time and energy learning about animal behavior and animal behavioral medicine. Currently, on a limited basis, I do canine and feline behavior consultations; attempting to help owners with problematic behaviors. I have also become involved in training birds, primarily parrots and raptors.

I wish to express my support for HB 138.

Thank you for your consideration.

William R. Evans, DDS
Eagle River, Alaska

Sandra Wilson

From: Cathie Mihalko [cathiem@criteriongeneral.com]
Sent: Wednesday, April 01, 2009 4:46 PM
To: Sandra Wilson
Subject: House Bill #138

TO WHOM IT MAY CONCERN:

I totally support HB 138 - an act relating to cruelty to animals. Although this bill is far from adequate, in my opinion, it is a step in the right direction. No one has the right to harm or neglect any animal. By prosecuting people who engage in these practices, we will also be able to minimize the number of spousal and child abuse cases. Alaska's reputation could certainly benefit from stricter laws and enforcement in this area.

Thank you.

Mary Mihalko
1450 Northview Drive, #J-4
Anchorage, AK 99504-2870
(907) 337-1962

adn.com
Anchorage Daily News

Mat-Su man cited for inhumane dog care

LAZY MOUNTAIN: Borough takes in 25 animals it says were emaciated, dehydrated.

By T.C. MITCHELL
tcmitchell@adn.com

(05/08/08 00:26:24)

WASILLA -- Acting on complaints, the Matanuska-Susitna Borough Animal Care took in 25 emaciated dogs this week from two properties on Lazy Mountain, east of Palmer.

Many of Doug Bartko's dogs are so thin and dehydrated they needed intravenous fluids before they could stomach food, according to Patty Sullivan, borough public affairs director.

Bartko, who calls himself a recreational musher, was cited for five counts of interference with an investigation and 10 counts of failure to provide humane animal care.

He was also served notice that his kennel license could be revoked and that the borough intends to keep the seized animals. More charges are pending, including possible cruelty charges.

"This has turned into a nightmare," Bartko said from his home Wednesday. "I've been under some financial stress."

He said he had friends in Anchorage who had been giving him frozen fish for his dogs, about a ton once or twice a month. But he said his truck broke down and he was unable to get the fish.

"I had some fish and some commercial food," he said. "But I was down for about three weeks and some dogs dropped weight."

Officers contacted Bartko on Friday, but he refused to let them inspect the dogs, according to the borough. The officers left dog food with Bartko.

"I was appreciative of that," Bartko said. "I thought they were trying to work with me."

Monday the officers returned to Bartko's home on Lazy Mountain Drive with a search warrant and removed the dogs. They reported finding 12 malnourished dogs and three dead dogs that were tossed over an embankment on the property. The officers also found evidence that other dogs had been recently removed.

"I took some dogs to a different location to give them some care," Bartko said. "I didn't want to show them the remote place. They just did a hit job on me. There was some distrust there, I guess."

TIP LEADS TO MORE DOGS

A tip Tuesday led officers to another property off Wolverine Road where a dead dog was seen being removed, according to Sullivan. Nine dogs were seized there. All were emaciated, dehydrated and many had injuries.

Tuesday, officers tried to contact Bartko at his residence and found four more emaciated and dehydrated dogs.

The 25 husky-mix dogs are under veterinary care for a variety of untreated injuries, as well as dehydration, malnutrition and parasites, according to the borough. The cause of death for the one dog is under investigation.

Bartko, whose family he said has run dogs since the 1970s, was convicted in 2006 of animal cruelty. He said that conviction was a mistake because the dog was dying of cancer and not malnourished.

"We had her out front and were just saying our last goodbyes. Trying to make her comfortable."

He said the same relative who turned him this time, turned him in in 2006 as well.

Calls to the animal shelter Wednesday evening were not returned.

Find T.C. Mitchell at adn.com/contact/tcmitchell or 907-352-6716.

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Anchorage Daily News

APD will start paying closer attention to animal cruelty

RESEARCH Studies indicate there's a link to domestic violence.

By JAMES HALPIN

(12/17/08 00:45:32)

Anchorage police plan to take a harder look around at the scenes of animal cruelty cases they respond to in the hopes of catching domestic violence offenders who beat man and beast alike.

The new effort, announced Tuesday, is part of a plan to partner with the Anchorage Animal Care and Control Center to investigate and prosecute animal cruelty cases, which can be a harbinger of abuse to come, police say.

"Research is showing more and more that there's a direct link between domestic violence and anger vented against animals," police Lt. Dave Parker said. "Recognizing that, and that it's supported by good, sound research, it makes sense for us to look at that as another avenue to help people as well as creatures."

According to the Humane Society of the United States, abusive family members sometimes threaten, injure or kill pets in their efforts to be controlling. The society backs up that assertion in part with a 1997 survey of 50 of the largest shelters for battered women in the United States, which reported that 85 percent of women and 63 percent of children entering shelters had witnessed pet abuse in the family.

At a conference discussing the link between cruelty to animals and domestic violence this fall, police, prosecutors and animal control officials saw that there was a need to coordinate their efforts, said Brooke Taylor, spokeswoman for animal control.

"In the past, cruelty cases weren't always a priority for APD and other parties involved," she said. "It got the dialogue going to say that not only do we need to prosecute these animal cruelty cases and really hold people responsible ... but that there's a larger issue here, that if we prosecute these cases it can bring to light other serious family problems."

Animal control will now be able to work with a single police contact, detective Jackie Conn, said.

Conn, who currently works theft cases, is being specially trained in animal cases and will provide expertise that the officers on the streets, who previously handled such cases, can draw from, Parker said.

All officers are also being asked to take a deeper look around when responding to cases of animal cruelty -- misdemeanors under city law -- to see if there are human victims as well, he said.

"Where there is an anger control issue, there's an anger control issue," Parker said. "If a person's anger is vented against a pet for whatever reason, often we find that that same kind of anger, that outburst, will be vented towards another person."

Find James Halpin online at adn.com/contact/jhalpin or call him at 257-4589.

adn.com
Anchorage Daily News

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Man pleads no contest to charges in attack on dogs

By JULIA O'MALLEY
jomalley@adn.com
(02/12/09 12:46:25)

A Russian Mission man charged with stabbing four chained sled dogs, leaving two of them dead, pleaded no contest to animal cruelty Tuesday in a Bethel courtroom.

Carl Vaska, 20, was drunk on home brew the night of Dec. 7, when he took a knife and slashed the animals where they were chained in a yard, according to an affidavit from an investigating state wildlife trooper. Vaska's parents later found bloody gloves in his room.

The dogs' owners, Andrew and Christine Stephanoff, told wildlife trooper Dan Dahl that Christine went to feed the dogs the next day and "found two dead dogs and two that were really badly wounded."

"It was a really bad scene, a lot of blood of course," Dahl said.

Word got around the small village quickly. Vaska's parents confronted their son after they found the gloves and he admitted to the killing, Dahl said. The parents called the Stephanoffs to apologize right away, and put their son on the phone.

"I guess he was crying," Dahl said.

Vaska's dog, Bear, had been killed earlier in the year and he suspected someone in the village had done it Dahl said. In his drunken state, Vaska thought he was taking revenge on his dog's killer, he told Dahl. Vaska said he blacked out and couldn't remember the incident clearly.

One of the injured dogs is still unable to bark, Dahl said. The other is weak, but slowly improving.

Vaska faces up to a year in jail for each count of cruelty as well as a fine. He is scheduled to be sentenced Feb 25.

Sale and importation of alcohol are banned in Russian Mission, a village of about 300 people in Southwest Alaska about 70 miles northeast of Bethel.

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Man enters plea for animal cruelty

Anchorage Daily News
(02/13/09 00:26:25)

A Russian Mission man charged with stabbing four chained sled dogs, leaving two of them dead, pleaded no contest to animal cruelty Tuesday in a Bethel courtroom. Carl Vaska, 20, was drunk on home brew the night of Dec. 7 when he took a knife and slashed the animals, which were chained in a yard, according to an affidavit from an investigating state wildlife trooper. Vaska's parents later found bloody gloves in his room.

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Sale and importation of alcohol are banned in Russian Mission, a village of about 300 people in Southwest Alaska about 70 miles northeast of Bethel.

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Anchorage Daily News

Animal advocates fight neglect in the Bush

Spay and neuter services, vet care almost nonexistent

By DEBRA McKINNEY
dmckinney@adn.com

(02/25/09 21:58:53)

Finding half-dead puppies lying on the floor of a shed at 40 below with no food, water or bedding did not go over well with Kathy Sweeney of Aniak. But when this Yup'ik grandmother picked one up to check it over and part of its frozen tail fell off, that was the last straw.

No more silence. Now anyone who neglects or abuses an animal in her village is going to be hearing from her. The family responsible for these puppies did.

They'd gone upriver for several weeks, leaving their dog and her newborn pups to fend for themselves. Sweeney learned later there had been 14 in the litter. By the time she intervened, 10 had frozen to death.

This is often how it goes in remote areas of the state where people live closer to the edge -- places without regular access to veterinary care, animal control services and the resources to back up animal welfare and cruelty laws.

In Bush Alaska, where a sack of dog food can run $60 and spaying and neutering is uncommon in some villages, nonexistent in others, it's a matter of practicality to let nature take its course. That means unwanted dogs often freeze or starve to death, except for the lucky ones, relatively speaking, that get it over with quickly by being shot.

Aniak, like many villages, has an ordinance requiring dogs be contained or controlled, since dog bites, with the possibility of rabies, are a public health issue. Without animal control services, there really isn't much in the way of options other than "disposing" of them the old-fashioned way.

That's why people like Sweeney are taking matters into their own hands. As animal advocates, they hope to change the way people think about dogs and other domestic animals, and are doing what they can to save a few without going broke in the process.

After the puppy-tail incident, Sweeney and two friends -- Bev LeMaster and Sue Luchsinger -- put together a rescue group they call Canine Comfort in Aniak, a village of 600 or so about 90 air miles up the Kuskokwim River from Bethel. It's not an official nonprofit; it's just three women spreading the word on responsible pet ownership and saving some dogs along the way.

"We see a lot of dead dogs," said LeMaster, who's lived in Aniak going on 13 years. "They're expendable. If it doesn't work out, you shoot it or abandon it."

Canine Comfort raises money through bake sales and such to help pay for dog food and other rescue expenses. Last summer, Sweeney did a lot of scrounging for materials at the dump, pulling nails out of boards, for making dog houses since so many village dogs spend their lives on chains without any kind of shelter.

Aniak city manager Ron Powell is "100 percent supportive" of the team's efforts.

"They're rendering a service and not getting a lot of recognition for it," he said. "At least on my watch, we're going to do whatever we can to help them out."

The city has offered use of some land behind the public works shop, and the plan is to fence in an area for Canine Comfort's dogs. For now they go to Sweeney's place, and she's got 10 of her own as it is.

Jumping into the Bush dog issue takes some backbone. It's a touchy subject with no easy fix.

"They haven't had anything like this out here in the Bush, ever," Sweeney said. "And we are finding a lot of resistance and a lot of resentment. People have referred to us as 'those dog lovers.'

"I don't take that as an insult."

'I DON'T WANT TO KNOW'

Canine Comfort isn't alone.

In Kalskag, teacher Melanie Pitka got her ninth-grade homeroom students involved in a project they named Humane Humans after she took in a mother dog and pups that weren't being fed.

In her village, with no practical alternatives, unwanted dogs get "taken to the dump."

Meaning?

"I never questioned that too much," she said, "because I don't want to know."

Pitka has rescued a few village dogs and pups here and there, keeping some, finding homes for others, sending some into the animal shelter in Anchorage. A few of her students have done fundraising for dog food and supplies, and some girls built dog houses in shop class. But when the Kalskag school burned down last month, they went up in smoke along with everything else.

Pitka is discouraged but not giving up. She's looking forward to Operation Arctic Care, a roving, joint military project offering free health care for people and veterinary services for pets in remote parts of the state. It's headed to the Bethel area this spring.

In Galena along the Yukon River, Suzette LaPine-Rosecrans has rescued so many dogs the city manager dubbed her "the official unofficial dog catcher."

"When we first came here 11 years ago, I was just distraught," she said. "I was told puppy control was taking them to the dump and dropping them off, where they'd be bear bait.

"It doesn't have to be that way."

In a place where gasoline costs $7 a gallon, and a gallon of milk is $10, people are just trying to survive, she said. And Galena hasn't had a spay and neuter clinic since the last time itinerant vet Eric Jayne came to town two years ago.

The Bush Vet, as Jayne is widely known, is a spay and neuter crusader who will "fix" dogs on people's kitchen tables if that's all he has to work with -- and for cheap. Often for free. He's practicing out of state now, but still comes up to do Bush clinics, sponsored now and then by the Humane Society of the United States, according to Regional Director Dave Pauli, who has accompanied him on some of these runs, including one village-hopping trip down the Yukon.

A MISSION

Spaying and neutering is the big-picture solution to the Bush dog problem, advocates say.

Aniak gets a visiting vet once or twice a year, but a spay or neuter there costs up to $245. Families don't have that kind of money to spend on a dog, so Canine Comfort has also subsidized a couple of those surgeries. The Aniak rescuers wish they could do more, but it's not like those bake sales provide a huge budget for them to work with.

Robert Sept, who has practices in Chugiak and Bethel, is one of several veterinarians around the state who travel to rural Alaska, offering clinics. He said he's seen a "huge improvement" in animal care in the past 25 years. But there are still too many dogs nobody wants. And it's not just a village problem. Even in Anchorage, where people have access to low-cost spay and neuter programs, there are enough people who don't bother to fix their pets to keep animal shelters packed and rescue groups hopping.

Since resources are so thin, the rescue folks in Aniak, Kalskag and Galena have been sending batches of puppies and the occasional adult dog, along with a $20 surrender fee for each, to animal control in Anchorage and Fairbanks on air carriers willing to fly them in for free on a space-available basis.

Sweeney and the others can usually find someone heading into the city willing to do escort duty. Having someone pick up on the other end, take the dog to animal control and then return the pet carrier to the airport has been the hard part. And there's no guarantee the dogs will be adopted instead of euthanized at the pound. But at least they have a chance.

So far, Pitka's rescued puppies have been adopted within 24 hours, she said. LeMaster of Canine Comfort says her group has heard back from a few people who've adopted Aniak dogs, one of whom mentioned how happy the dog was to discover the couch.

This arrangement works for now because it's small scale, but it makes Anchorage Animal Care and Control Center officials a little nervous. There are more than enough irresponsible pet owners in Anchorage to keep its kennels full.

As Anchorage animal-control spokesperson Brooke Taylor puts it, the unfortunate reality is that when the shelter is full, "the difficult decision must then be made to euthanize adoptable animals."

In addition to pushing the spay and neuter solution, Sweeney would like to strengthen Alaska's animal-welfare laws. According to the Animal Legal Defense Fund, a national group working to toughen cruelty laws, our state could use that. Although Alaska is no longer close to dead last in terms of animal protection laws, the state merely inched from 48th to 42nd place after the Legislature made a third cruelty, abandonment or neglect offense a felony last year.

"This is something that's really important to me," Sweeney said.

"I used to wonder why I'm here on Earth. It didn't seem like I was doing anything productive for anybody but my family. Once we started Canine Connection, I felt like that empty spot in me has been filled."

Canine Comfort can be reached at canine.comfort@hotmail.com, or PO Box 242, Aniak, AK, 99557.

Find reporter Debra McKinney online at adn.com/contact/dmckinney.

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U.S. Cruelty Laws Felony Vs. Misdemeanor

This matrix will allow you to quickly see whether or not your state has felony statutes in place for cruelty to animals. Click on the table header to re-sort the matrix.

There are 6 states without felony provisions for cruelty to animals: **Alaska, Arkansas, Idaho, Mississippi, North Dakota, and South Dakota.**

This list was last updated on **Apr 3, 2008.**

Show information about fields used in this chart

STATE	FELONY	YEAR	MAX. JAIL	MAX. FINE	COUNSEL-ING	BAN	PPO
Alabama	✓	2000	10 years	$5,000	✗	✗	✗
Alaska	✗		1 years	$10,000	✓	✗	✗
Arizona	✓	1999	1 years	$150,000	✗	✗	✗
Arkansas	✗		1 years	$1,000	✓	✗	✗
California	✓	1988	3 years	$20,000	✓	✗	✓
Colorado	✓	2002	6 years	$500,000	✓	✓	✓
Connecticut	✓	1996	5 years	$5,000	✓	✗	✓
Delaware	✓	1994	3 years	$5,000	✗	✓	✗
D.C.	✓	2001	5 years	$25,000	✗	✗	✗
Florida	✓	1989	5 years	$10,000	✓	✗	✗
Georgia	✓	2000	5 years	$15,000	✓	✗	✗
Hawaii	✓	2007	5 years	$10,000	✗	✗	✗
Idaho	✗		1 years	$9,000	✗	✗	✗
Illinois	✓	1999	5 years	$50,000	✓	✗	✗
Indiana	✓	1998	3 years	$10,000	✓	✗	✗
Iowa	✓	2000	5 years	$75,000	✓	✗	✗
Kansas	✓	2006	1 years	$5,000	✓	✗	✗
Kentucky	✓	2003	5 years	$10,000	✗	✗	✗
Louisiana	✓	1995	10 years	$25,000	✓	✗	✗
Maine	✓	2001	5 years	$10,000	✓	✓	✓
Maryland	✓	2001	3 years	$5,000	✓	✓	✗
Massachusetts	✓	1804	5 years	$2,500	✗	✗	✗
Michigan	✓	1931	4 years	$5,000	✓	✓	✗
Minnesota	✓	2001	4 years	$10,000	✓	✓	✗
Mississippi	✗		6 months	$1,000	✗	✗	✗
Missouri	✓	1994	5 years	$5,000	✗	✗	✗
Montana	✓	1993	2 years	$2,500	✗	✓	✗
Nebraska	✓	2002	5 years	$10,000	✗	✗	✗

Nevada	✓	1999	5 years	$10,000	✓	✗	✓
New Hampshire	✓	1994	7 years	$4,000	✗	✓	✗
New Jersey	✓	2001	5 years	$15,000	✓	✗	✗
New Mexico	✓	1999	18 months	$5,000	✓	✗	✗
New York	✓	1999	2 years	$5,000	✓	✓	✓
North Carolina	✓	1998	6 months	$1,000	✗	✗	✗
North Dakota	✗		1 years	$2,000	✗	✗	✗
Ohio	✓	2002	1 years	$2,000	✓	✗	✗
Oklahoma	✓	1887	5 years	$5,000	✗	✗	✗
Oregon	✓	1995	5 years	$100,000	✓	✗	✗
Pennsylvania	✓	1995	7 years	$15,000	✓	✗	✗
Rhode Island	✓	1896	2 years	$1,000	✓	✗	✗
South Carolina	✓	2000	5 years	$5,000	✗	✗	✗
South Dakota	✗		1 years	$1,000	✗	✗	✗
Tennessee	✓	2001	9 months		✓	✓	✗
Texas	✓	1997	2 years	$10,000	✓	✗	✗
Utah	✓		1 years	$5,000	✓	✗	✗
Vermont	✓	1998	5 years	$7,500	✓	✓	✓
Virginia	✓	1999	5 years	$2,500	✓	✓	✗
Washington	✓	1994	5 years	$10,000	✓	✗	✗
West Virgnia	✓	2003	5 years	$5,000	✓	✓	✗
Wisconsin	✓	1986	5 years	$10,000	✗	✗	✗
Wyoming	✓	2003	2 years	$5,000	✗	✓	✗

Related Links (Off-site links open in a new window)

HSUS State Cruelty Chart (PDF)
HSUS: Animal Cruelty Laws - Where Does Your State Stand?
AnimalLaw.Com
ASPCA: Lobby for Animals

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The Humane Society of the United States
2100 L Street, NW
Washington, DC 20037
202-452-1100

Animal Cruelty/Domestic Violence Fact Sheet

Why do batterers threaten, abuse, or kill animals?

- To demonstrate and confirm power and control over the family.
- To isolate the victim and children.
- To eliminate competition for attention.
- To force the family to keep violence a secret.
- To teach submission.
- To retaliate for acts of independence and self-determination.
- To perpetuate the context of terror.
- To prevent the victim from leaving or coerce her/him to return.
- To punish the victim for leaving.
- To degrade the victim through involvement in the abuse.

Why should we recognize animal abuse as a form of battering?

- Animal abuse exposes the deliberateness of battering rather than loss of control.
- Animal abuse and child abuse are closely related.
- Animal abuse is often a tool used by batterers to emotionally control or coerce victims.
- Threatening, injuring, or killing animals can indicate the potential for increased violence or lethality.
- Victims may postpone leaving out of fear for their pets' safety.
- Identifying animal abusers can help identify other victims of violence within the family.

What can victims of domestic violence do to protect their pets?

- Develop an emergency plan for sheltering the pets, themselves, and their children (Review a copy of the First Strike® planning guide, *Making the Connection: Protecting Your Pet From Domestic Violence.*)
- Establish ownership of the pets (obtain an animal license, proof of vaccinations or veterinary receipts in victim's name to help prove they own the pets).
- Prepare the pets for departure (collect vaccination and medical records, collar and identification, medication, bowls, bedding, etc.).
- Ask for assistance from law enforcement or animal care and control officers to reclaim the pets if left behind.

What are suggested intake questions regarding pets that should be asked by a domestic violence shelter?

- Do you now have a pet? If yes, how many and what kinds?
- Have you had a pet in the past 12 months? If yes, what kinds?
- Has your partner ever hurt or killed a family pet? If yes, describe.
- Has your partner ever threatened to hurt or kill a family pet? If yes, describe.
- Have you ever hurt or killed a family pet? If yes, describe.
- Have any of your children ever hurt or killed a family pet? If yes, describe.
- Was the animal considered the child's, yours, your partner's or the family's pet?
- Did your concern for a pet's welfare keep you from coming to a shelter

sooner than now? If yes, explain.
- Did you leave the abusive partner because of the abuse of a pet? If yes, describe.

What can advocates do to raise awareness about the connection between animal cruelty and domestic violence in their communities?

- Take animal abuse seriously.
- Contact their counterparts in other agencies.
- Develop cross-training and cross-reporting among animal welfare, domestic violence, child abuse and other related agencies.
- Support strong anticruelty laws.
- Develop community anti-violence coalitions.
- Develop community based programs to promote empathy and humane education.
- Encourage research on the connection.
- Work with local animal shelters, veterinarians, veterinary schools and boarding kennels to develop emergency housing programs for pets.
- Collect data in their own agencies.
- Add questions to intake forms about animal cruelty.

What does The HSUS's First Strike campaign do to help other organizations?

- Provide First Strike materials and related information.
- Assist with outreach efforts (e.g., workshops, contacts, etc.).
- Provide information and contacts for model programs across the country.
- Provide advice, support, and technical assistance.
- Provide assistance on cases involving animal cruelty.
- Assist with legislative efforts.
- Help raise awareness of domestic violence, child abuse and other forms of human violence among animal protection organizations and activists.

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OF INTEREST

By Naseem Stecker

Domestic Violence and the Animal Cruelty Connection

A cat or a dog is deliberately set on fire; kittens are placed in boxes and thrown out as garbage to be crushed alive by trash compactors; a dog is purposely starved to death to "teach it a lesson"; an angry man intent to hurt his wife and children beats and buries the family dog while it is still alive. Neighbors hear the crying dog and call the police who arrive to dig up a dead pet. Incidents such as these are often under-reported, but cruelty towards companion animals in domestic violence situations is slowly pushing its way into the common consciousness as more prosecutors, psychologists, and others are highlighting the dimensions of the problem.

"Historically, there's been a view that these types of crimes are just not as serious as crimes involving people, but I've seen over the 17 years that I've been a prosecutor that there's a very strong link between other violence and animal cruelty and abuse. To me it's just absolutely proven," said Gail Benda, a prosecutor in Ionia County. Her assessment is backed by three decades of studies on the human-animal connection that shows the clear link between animal cruelty, domestic violence, child abuse, and other criminal activity.

Findings from a 1997 national survey show that 85 percent of women seeking the services at safe houses have mentioned incidents of pet abuse. Sixty-three percent of children also spoke of animal abuse in the home. More often than not, many victims of domestic violence will remain in an abusive situation rather than leave their animal behind since companion animals provide support and comfort and are often regarded as family members. Such women will often risk their own safety to shield their animals.

A disheartening effect of this cycle is that children who come from abusive homes often imitate the violence by taking it out on helpless animals. Understanding this form of aggressive and antisocial behavior psychologists say, will add another "piece to the puzzle of understanding and preventing youth violence." Studies also indicate that a lot of animal cruelty takes place "below the radar." Three recent studies have been conducted to try to determine how common it is for children to commit serious acts of animal cruelty. The results show that between 10 and 34 percent of the male subjects said that they had "stabbed, burned, tortured, mutilated or killed" an animal as a child. Psychologists say most of these people never turn up in a crime report.

Oreo

At the extreme end of this violence spectrum are serial killers like Jeffrey Dahmer and Albert DeSalvo, also known as the Boston Strangler, who had histories of abusing animals before brutally killing their human victims. This "link" has long been recognized by The Federal Bureau of Investigation, which routinely incorporates animal cruelty as a factor in assessing the threat level a subject poses to society.

In Michigan, the primary anti-cruelty provision MCL 750.50b punishes the willful and malicious infliction of injury to animals without just cause or excuse. Injuries include killing, torturing, mutilating, maiming, disfiguring, or poisoning. The offense is a felony punishable by up to four years in prison. The Michigan Legislature has also enacted two other provisions that relate to cruelty to animals: a duty to provide care and a prohibition against animal fighting. Both carry misdemeanor and felony convictions depending on the case.

"Michigan is a strong state for anti-cruelty laws, well above the average," according to Professor David Favre from Michigan State University's DCL College of Law. He points out that while our laws are fairly good for companion animals, how judges sentence those that are found in violation of law is another issue altogether. "If a teenager sets a dog on fire, that's a clear violation of the intentional cruelty law. And if it's a second offense, it's potentially a four-year felony. Looking at the law you have no idea what the judge is going to do in a particular case. He may give him a suspended six-month sentence and not spend any jail time at all."

Often that's the case according to Bill Nemeth, a veterinarian for over 30 years who's now a fourth-year law student at the University of Detroit Mercy School of Law. Nemeth who worked for many years with the Michigan Humane Society said most of their cases that actually went to court were pled out, the agreement usually involving a misdemeanor, probation, no pet ownership, and some sort of fine or restitution. "I think they look upon these kinds of things as not being

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real problems. So they want to get it out of the way without taking up time in the docket and get the thing put aside and over with. If it's a really heinous thing like some of these dogfights and some of the felony situations, they'll pursue that a little more, especially if it gets in the press. But your average everyday cruelty thing—starving your dog to death or beating your dog to death, those things tend to get brushed over," Nemeth said.

Although Michigan has made great strides in keeping animals safe, there is always room for improvement according to Battle Creek Prosecutor John Hallacy who is advocating a change in the sentencing guidelines. "The variables used in determining the sentence do not specifically address animal abuse and neglect. Without such a variable, as a prosecutor, I believe it is difficult for an appropriate sentence to be fashioned in these cases," Hallacy said.

Prosecutors want stiffer penalties. Current sentencing guidelines treat animals as property and prosecutors have a problem with that. David Wallace from the Prosecuting Attorneys Association of Michigan says "pain has been caused and we feel that the sentencing guidelines should be readdressed to make it more of a significant issue especially in egregious cases where the dog, the cat, the animal has been significantly tortured. Right now the guidelines don't have that distinction." Benda echoes this view. "The majority of people treat their pet as a family member and not as property." She suggests changing the animal sentencing guidelines to reflect and take into account the psychological distress of families whose pet is tortured or killed.

Under the provisions of the cruelty statute, MCL 750.50 only the owner or person in control of the animal can be charged with the 93-day misdemeanor. "So if you had a cat or a dog and I came over and kicked it three or four times but didn't kill it, there's really no charge for that. It's your dog, your cat. There's no charge because it's not mine. I can't be charged with cruelty to an animal that's not my animal," Wallace explained.

Defense lawyers argue that overzealous prosecution presents some problems as well. "It really is a tough situation. I think that probably the judges who aren't giving tough enough sentences are doing so because their jails are full. If you've got somebody who is assaulting his wife and someone who is not taking care of their dog, the wife assaulter certainly deserves jail more than the dog abuser in most people's eyes. I think that judges are somewhat limited by what is available to them primarily because of economic constraints and the realistic limitation of jail cells," observed Dan Balice, an Ionia lawyer who recently defended a controversial case involving a client accused of cruelty to his pet horse.

"Is society prepared to allow the police and the prosecutor to prosecute you because you didn't have the heart to put your arthritic dog down?" asks Balice. In essence, that's what happened to his client—a man in his 50s whose horse had a hoof deformity, which looked like it had been abused. When Rusty the horse, which by many accounts was well-fed and well-cared for, wandered away from its pen one day, animal control and police were called in. Based on the report of a vet who said that the pony's deformed foot had been neglected and that the horse was living in pain, Rusty's owner was handcuffed and led to jail. Although efforts were made to "save the pony, they ended up euthanizing the horse. In the necropsy they found out that it [the hoof] was a congenital birth defect," Balice recounts. The case was dismissed without going to trial.

For more information see:

Ascione, Frank R. Animal abuse and youth violence. Juvenile Justice Bulletin, September 2001.

Miller, K. S. and Knutson, J. R. (1997). Reports of severe physical punishment and exposure to animal cruelty by inmates convicted of felonies and by university students. Child Abuse and Neglect, 21, 59–82.

Flynn, C. P. (2000). Why family professionals can no longer ignore violence toward animals. Family Relations, 49, 87–95.

Baker, D. G., Boat, B. W., Grinvalsky, H. T. and Geracioti, T. D. "Interpersonal Trauma and Animal-Related Experiences in Female and Male Military Veterans: Implications for Program Development." Military Medicine, 1998, 163, 1:020.

In 1990, only four states had felony provisions for serious acts of animal cruelty. Forty-one states now have those provisions, including Michigan, but they vary widely. In some states, the felony law may apply only to companion animals. In others, the felony provision is only enacted after the second or third offense. "It would be nice to have something in between the misdemeanor and felony charge. A lot of times what we have may seem like it needs more than just a 93-day misdemeanor but seems to fall short of the proofs necessary for the four-year felony," Benda said.

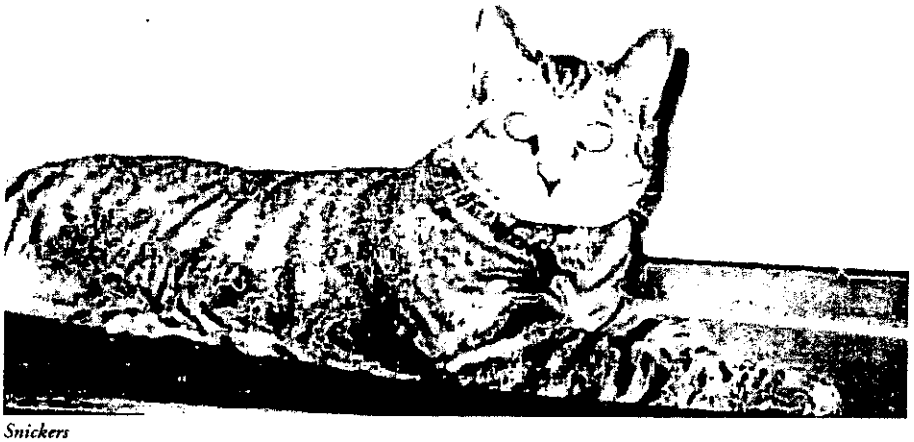
According to psychologist Dr. Marylou Randour, who's the Director of Education of the Doris Day Animal Foundation in Washington D.C., 27 states (including Michigan) have provisions for counseling for juveniles and adults convicted of animal cruelty. Dr. Randour, who lectures frequently to the legal community, says that although animals are legally defined as property, cruelty to animals has different psychological, social, and ontological implications than other property crimes. The FBI, she says, categorizes crimes against society, against persons, and against property. "If animal cruelty were re-categorized under 'crimes against society' it would help make the point that animal cruelty is a public safety issue and would encourage judges and prosecutors to assign a more appropriate weight to animal cruelty offenses than current sentencing guidelines allow."

Dr. Randour also points out that no crime statistics are kept at the juvenile or adult level on animal cruelty crimes. "This should change. If it doesn't, we have no way of understanding what the trends are, at what age animal cruelty is most likely to occur, whether it is increasing, what parts of the country, if any, have higher cases, etc. At the very least the juvenile justice community could institute a change so that animal cruelty adjudications are recorded with a separate category so they can be picked up later for analysis."

In this country, no state or government agency keeps systematic statistics on animal cruelty, but the problem is significant enough that some programs have emerged nationally. In Maryland and New York, programs stress hands-on interaction between juvenile offenders and animals. A safe shelter

program—PetSafe was created in Maryland five years ago to house animals from abusive homes. Shelters in Lansing and East Lansing are also involved in these efforts. "We ask shelter residents at our intake about pet abuse and pet needs. We have a woman who takes in pets when she can, at no charge to the family staying in our shelter," said Holly Rosen, Safe Place director in East Lansing. Plans are also under way to establish a Michigan State University program to temporarily house the pets of domestic violence victims. Hillary Noyes, a veterinary medicine student at MSU who received a fellowship to establish PetSafe, will develop the logistics of the program cooperatively with the college, local shelters, and other emergency advocates in the area. It's expected to be in operation by early September 2004.

Balice, the Ionia lawyer, says that educating people is an important first step. People have an obligation to take care of their animals but he adds that "society also has an obligation not to turn good people into criminals by arresting them and charging them with crimes just because they had too much heart—because they didn't have the heart to put down their dog. And that's the danger."



Snickers

Bill Nemeth, the veterinarian in law school, attributes a lot of animal cruelty to ignorance of what needs to happen to take care of an animal. "It's not something you can truly legislate a solution to. There should be more education, stricter enforcement of current laws, and these kinds of things are going to have to get some more publicity so that the general public knows that there are consequences if you don't take care of your animals." ✦

Naseem Stecker is a staff writer for the Michigan Bar Journal. *She can be contacted by e-mail at nstecker@mail.michbar.org.*

THE CONNECTION BETWEEN ANIMAL ABUSE AND DOMESTIC VIOLENCE

By Susan J. Holland

A woman in another area recently wrote a letter to the editor pertaining to an animal welfare issue. Almost immediately she was met with negative rebuttals. One reader snidely remarked it was too bad the writer didn't care as much about aborted babies and abused children. Others supported the rebuttal with questions about human rights, poverty in America, and the list goes on.

Step back and take a deep breath. We need to care about animal cruelty and animal welfare. Why? We need to care because studies have proven a direct link between animal cruelty and domestic violence. Consider the following excerpt from Animal Cruelty, Breaking the Cycle of Abuse, a brochure from NAHEE, an educational division of HSUS.

"It is well documented that animal cruelty is a sign of serious psychological distress. It often indicates that a child (or adult) has either experienced violence firsthand or is at risk of becoming violent toward people. Many studies in psychology, criminology, and sociology have demonstrated that violent offenders frequently have childhood and adolescent histories of serious and repeated animal cruelty. As early as the 1970s, the FBI's analysis of the lives of serial killers revealed that most had, as children, killed or tortured animals. Other research has shown consistent patterns of animal cruelty among perpetrators of more common violence, including child abuse, spouse abuse and abuse of the elderly."

Facts cited from an article, Pet Abuse Disconnect, written by Tim White of *The Fayetteville Observer:* "The FBI sees animal cruelty as a predictor of violence and considers animal abuse when profiling serial killers. More than 80 percent of families in treatment for child abuse were also involved in animal abuse."

Sometimes people will say, "So what? It's only an animal." Take a minute to tell them why it is more than that. You don't have to be an animal lover to be against animal cruelty, animal neglect or disrespect for the quality of animal life. No, you don't have to be an animal lover. But you do need to care, because there is a very obvious parallel between animal cruelty and human behavioral dysfunction in a majority of cases.

Please review The Gadsden County Humane Society's Mission Statement.
"Our mission is to prevent cruelty and suffering to animals, and to create a humane world for all animals through education, advocacy and the promotion of respect and compassion." Capable professional speakers with informative Power Point Presentations are available for your club, group or organization. Additionally, a teacher certified through the Humane Society of the United States (HSUS) is also available to present humane lessons in the classroom for all age groups. Lessons can be tailored to meet State of Florida education requirements in many subjects. For more information on our local education programs write to humaneeducation@tds.net. Please visit our website at www.gadsdenhumane.org to learn more about us and opportunities for membership, volunteering, fostering and donating. Why don't you join us? We need you.

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Man pleads no contest to charges in attack on dogs

By JULIA O'MALLEY
jomalley@adn.com
Published: February 12th, 2009 12:46 PM
Last Modified: February 12th, 2009 01:04 PM

A Russian Mission man charged with stabbing four chained sled dogs, leaving two of them dead, pleaded no contest to animal cruelty Tuesday in a Bethel courtroom.

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Carl Vaska, 20, was drunk on home brew the night of Dec. 7 when he took a knife and slashed dogs chained in the yard, according to an affidavit from an investigating state trooper. Vaska's parents later found bloody gloves in his room. Troopers said he admitted the attack and told them he blacked out.

The dogs' owners, Andrew and Christine Stephanoff, told troopers that part of the knife was found in one of the dead dogs.

After the attack, Vaska called the Stephanoffs to apologize, at his parents' urging, the affidavit said.

Vaska faces up to a year in jail for each count of cruelty as well as a fine. He is scheduled to be sentenced Feb 25.

Sale and importation of alcohol are banned in Russian Mission, a village of about 300 people in Southwest Alaska about 70 miles northeast of Bethel.

Find Julia O'Malley online at ***adn.com/contact/jomalley*** *or call 257-4591.*

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Covering the stories and trooper reports on Alaska's crime scene.

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ANIMAL CRUELTY

There are many different reasons why individuals abuse animals. Animal cruelty covers a wide range of actions (or lack of action), so one blanket answer simply isn't possible. Each type of abuse has displayed certain patterns of behavior that we can use to help understand more about why people commit the crimes we encounter today.

Animal cruelty is often broken down into two main categories: **active** and **passive**, also referred to as **comission** and **omission**, respectively.

Passive Cruelty (Acts of Omission)

Passive cruelty is typified by cases of neglect, where the crime is a lack of action rather than the action itself - however do not let the terminology fool you. Severe animal neglect can cause incredible pain and suffering to an animal.

Examples of neglect are starvation, dehydration, parasite infestations, allowing a collar to grow into an animal's skin, inadequate shelter in extreme weather conditions, and failure to seek veterinary care when an animal needs medical attention.

In many cases of neglect where an investigator feels that the cruelty occurred as a result of ignorance, they may attempt to educate the pet owner and then revisit the situation to check for improvements. In more severe cases however, exigent circumstances may require that the animal is removed from the site immediately and taken in for urgent medical care.

Active Cruelty (Acts of Comission)

Active cruelty implies malicious intent, where a person has deliberately and intentionally caused harm to an animal, and is sometimes referred to as NAI (Non-Accidental Injury). Acts of intentional cruelty are often some of the most disturbing and should be considered signs of serious psychological problems. This type of behavior is often associated with sociopathic behavior and should be taken very seriously.

Animal abuse in violent homes can take many forms and can occur for many reasons. Many times a parent or domestic partner who is abusive may kill, or threaten to kill, the household pets to intimidate family members into sexual abuse, to remain silent about previous or current abuse, or simply to psychologically torture the the victims, flexing their "power".

Related Links (Off-site links open in a new window)

The Abuse Connection (aka "The Link")

Reporting Abuse

Contact Pet-Abuse.Com
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888-523-PETS
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CRUELTY CONNECTIONS

According to a 1997 study done by the Massachusetts Society for the Prevention of Cruelty to Animals (SPCA) and Northeastern University, animal abusers are five times more likely to commit violent crimes against people and four times more likely to commit property crimes than are individuals without a history of animal abuse.

Many studies in psychology, sociology, and criminology during the last 25 years have demonstrated that violent offenders frequently have childhood and adolescent histories of serious and repeated animal cruelty. The FBI has recognized the connection since the 1970s, when its analysis of the lives of serial killers suggested that most had killed or tortured animals as children. Other research has shown consistent patterns of animal cruelty among perpetrators of more common forms of violence, including child abuse, spouse abuse, and elder abuse. In fact, the American Psychiatric Association considers animal cruelty one of the diagnostic criteria of conduct disorder.

If you break it down to its bare essentials:
"Abusing an animal is a way for a human to find power/joy/fulfillment through the torture of a victim they know cannot defend itself."

Now break down a human crime, say rape. If we substitute a few pronouns, it's the SAME THING.
"Rape is a way for a human to find power/joy/fulfillment through the torture of a victim they know cannot defend themselves."

Now try it with, say, domestic abuse such as child abuse or spousal abuse:
"Child abuse is a way for a human to find power/joy/fulfillment through the torture of a victim they know cannot defend themselves."

Do you see the pattern here?

The line separating an animal abuser from someone capable of committing human abuse is much finer than most people care to consider. People abuse animals for the same reasons they abuse people. Some of them will stop with animals, but enough have been **proven** to continue on to commit violent crimes to people that it's worth paying attention to.

Virtually every serious violent offender has a history of animal abuse in their past, and since there's no way to **know** which animal abuser is going to continue on to commit violent human crimes, they should ALL be taken that seriously. FBI Supervisory Special Agent Allen Brantley was quoted as saying "Animal cruelty... is not a harmless venting of emotion in a healthy individual; this is a warning sign..." It should be looked at as exactly that. Its a clear indicator of psychological issues that can and often DO lead to more violent human crimes.

Dr. Randall Lockwood, who has a doctorate in psychology and is senior vice president for anti-cruelty initiatives and training for the American Society for the Prevention of Cruelty to Animals, states "A kid who is abusive to a pet is quite often acting out violence directly experienced or witnessed in the home," Lockwood said, adding that about one-third of children who are exposed to family violence will act out this violence, often against their own pets.

Others either abuse pets or threaten to abuse them as a way to control an individual.

"So much of animal cruelty... is really about power or control," Lockwood said. Often, aggression starts with a real or perceived injustice. The person feels powerless and develops a warped sense of self-respect. Eventually they feel strong only by being able to dominate a person or animal.

Sometimes, young children and those with developmental disabilities who harm animals don't understand what they're doing, Lockwood said. And animal hoarding - the practice of keeping dozens of animals in deplorable conditions - often is a symptom of a greater mental illness, such as obsessive-compulsive disorder.

Just as in situations of other types of abuse, a victim of abuse often becomes a perpetrator. According to Lockwood, when women abuse animals, they "almost always have a history of victimization themselves. That's where a lot of that rage comes from."

In domestic violence situations, women are often afraid to leave the home out of fear the abuser will harm the family pet, which has lead to the creation of *Animal Safehouse* programs, which provide foster care for the pets of victims in domestic violence situations, empowering them to leave the abusive situation and get help.

Whether a teenager shoots a cat without provocation or an elderly woman is hoarding 200 cats in her home, "both are exhibiting mental health issues... but need very different kinds of attention," Lockwood said.

Those who abuse animals for no obvious reason, Lockwood said, are "budding psychopaths." They have no empathy and only see the world as what it's going to do for them.

History is full of high-profile examples of this connection:

- **Patrick Sherrill**, who killed 14 coworkers at a post office and then shot himself, had a history of stealing local pets and allowing his own dog to attack and mutilate them.
- **Earl Kenneth Shriner**, who raped, stabbed, and mutilated a 7-year-old boy, had been widely known in his neighborhood as the man who put firecrackers in dogs? rectums and strung up cats.
- **Brenda Spencer**, who opened fire at a San Diego school, killing two children and injuring nine others, had repeatedly abused cats and dogs, often by setting their tails on fire.
- **Albert DeSalvo**, the "Boston Strangler" who killed 13 women, trapped dogs and cats in orange crates and shot arrows through the boxes in his youth.
- **Carroll Edward Cole**, executed for five of the 35 murders of which he was accused, said his first act of violence as a child was to strangle

a puppy.

- In 1987, three Missouri high school students were charged with the beating death of a classmate. They had histories of repeated acts of animal mutilation starting several years earlier. One confessed that he had killed so many cats he?d lost count. Two brothers who murdered their parents had previously told classmates that they had decapitated a cat.
- Serial killer **Jeffrey Dahmer** had impaled dogs? heads, frogs, and cats on sticks.

More recently, high school killers such as 15-year-old **Kip Kinkel** in Springfield, Ore., and **Luke Woodham**, 16, in Pearl, Miss., tortured animals before embarking on shooting sprees. Columbine High School students **Eric Harris** and **Dylan Klebold**, who shot and killed 12 classmates before turning their guns on themselves, bragged about mutilating animals to their friends.

As powerful a statement as the high-profile examples above make, they don't even begin to scratch the surface of **the whole truth** behind the abuse connection. **Learning more about the animal cruelty/interpersonal violence connection** is vital for community members and law enforcement alike.

Related Links (Off-site links open in a new window)

The Whole Picture
Pet-Abuse.Com Cruelty Connection Cases
American Humane: The Link
NCPC: Screening Animal Cruelty Cases for Domestic Violence
Factors in the Assessment of Dangerousness in Perpetrators of Animal Cruelty
First Strike: The Connection Between Animal Cruelty and Human Violence
HSUS: Animal SafeHaven Directory
Society & Animals Forum: Articles on the Link
The Abuse of Animals and Domestic Violence
Battered Women's Reports of Their Partners' and Their Children's Cruelty to Animals
Animal Welfare and Domestic Violence
The Latham Foundation for the Promotion of Humane Education
Animal Abuse and Human Abuse: Partners in Crime
Bibliography of Materials about Animal Abuse, Child Abuse and Domestic Violence

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888-523-PETS
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THE WHOLE PICTURE

The fact is that the serial killer examples are only the ones that are sensational enough to make the news. These are the high-profile cases that some animal welfare organizations use to drive their point home, but the reality is that this pattern has shown itself over and over again in much less "news-worthy" cases. One might argue that they in fact, *lessen* the impact, because it makes this connection appear to be something that only exists in serial killers and "psychos", when in fact its very likely that everyone reading these words knows *someone* who has abused animals.

Surely you know at least one person who suffers from child-abuse, or is beaten by their spouse...

- In **88 percent** of 57 New Jersey families being treated for child abuse, animals in the home had been abused.
- Of 23 British families with a history of animal neglect, **83 percent** had been identified by experts as having children at risk of abuse or neglect.
- In one study of battered women, **57 percent of those with pets said their partners had harmed or killed the animals**. One in four said that she stayed with the batterer because she feared leaving the pet behind.

Because the household pet is often used as a control device to keep the abused from seeking help, some shelters have developed programs to assist in these situations. Programs like Rancho Coastal Humane Society's Animal Safehouse Program allows victims to leave their animals in foster care while they seek medical attention, counseling and help. For a national listing of Animal Safehouse/Safe Haven organizations, visit the **HSUS Safe Haven Directory**.

What Can be Done?

Children who have abused animals should learn through teachers, social situations, and good parenting that abuse is wrong, and correct their behavior. This is a critical time, and if any one of those corrective elements is missing, that child is high risk for potentially becoming more abusive later on. As said by Anthropologist Margaret Mead, "One of the most dangerous things that can happen to a child is to kill or torture an animal and get away with it".

There are things that can be done. Be sure to stop by the **Prevent section** to read some of our suggestions on how you can get involved, and how small things you can do now will help to **raise your children to be caring adults** - and be sure to **educate others about the abuse connection**.

While animal abuse is an important sign of child abuse, the parent isn't always the one harming the animal. Children who abuse animals may be repeating a lesson learned at home; like their parents, they are reacting to anger or frustration with violence. Their violence is directed at the only individual in the family more vulnerable than themselves: an animal. One expert says, "Children in violent homes are characterized by ... frequently participating in pecking-order battering," in which they may maim or kill an animal. Indeed, domestic violence is the most common background for childhood cruelty to animals.

Related Links (Off-site links open in a new window)

Silent Witness

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Dana Strommen

From: Christine Cikan [ccikan@hotmail.com]
Sent: Wednesday, April 08, 2009 11:19 AM
To: Rep. Jay Ramras
Subject: HB138 Testimony

Dear Representative Ramras,

I support HB138, the animal cruelty bill, and I hope you will see this issue through my eyes as I tell you my experience.

A few years ago I pulled into Russian Jack Park's parking lot right next to another parked car. I saw no one in the car and thought nothing of it. I opened my door and one dog, Sammy, jumped out. I could hear barking from inside the other car. The dog's owner jumped up and out of the car swearing and swinging as he charged me. I pulled away but Sammy looked up at the man quizzically and for that he was punched in the face. My other dog, still in the car went wild and the man then threw his Doberman pincher at my car perhaps hoping he would bite me or fight my dog. I was safe but Sammy lost vision in one eye and later the eye had to be removed. He also had migraines for a year. Sammy has never been the same and we think there was brain damage.

I reported the incident to the police. The officer I made my report to knew the man by name. He is a brutal man who had recently served 15 years in prison with no time off for good behavior. The car he emerged from had been reported as stolen but when the person learned who had taken his car he withdrew his complaint...he was too afraid to press charges.

I was very angry and I wanted to file a complaint but the officer said my complaint would not get this man off the street. My dog was considered property and below the cost that would have put this man back in jail. The officer was very sorry because he expected this man to hurt someone soon.

I have two thoughts on this. People who injure animal are highly likely to injure people too. That's why the Anchorage Police Department is now becoming pro-active on animal abuse. A co-dependant woman might not report her abusive partner and a child might be too afraid to complain but neighbors with injured animals could get the brute off the street and save human suffering.

My other thought is this...Sammy's injuries were meant for me. Had I been the victim, this man would be in jail. But my poor Sammy, who did nothing but stand still, is worth next to nothing under the law. How can this be justice?

Please pass HB138 out of Judiciary. It can save animal lives and humans too.

Thank you for reading my testimony.

Christine Marie Cikan
2100 Ivan Drive
Anchorage, Alaska 99507

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Sec. 11.61.140. Cruelty to animals.

(a) A person commits cruelty to animals if the person

(1) knowingly inflicts severe and prolonged physical pain or suffering on an animal;

(2) with criminal negligence, fails to care for an animal and, as a result, causes the death of the animal or causes severe physical pain or prolonged suffering to the animal;

(3) kills or injures an animal by the use of a decompression chamber;

(4) intentionally kills or injures a pet or livestock by the use of poison; or

(5) knowingly kills or injures an animal, other than as provided in (1) or (3) of this subsection, with the intent to intimidate, threaten, or terrorize another person.

(b) Each animal that is subject to cruelty to animals under (a) of this section shall constitute a separate offense.

(c) It is a defense to a prosecution under this section that the conduct of the defendant

(1) was part of scientific research governed by accepted standards;

(2) constituted the humane destruction of an animal;

(3) conformed to accepted veterinary or animal husbandry practices;

(4) was necessarily incidental to lawful fishing, hunting or trapping activities;

(5) conformed to professionally accepted training and discipline standards.

(d) In (a)(2) of this section, failure to provide the minimum standards of care for an animal under AS 03.55.100 is prima facie evidence of failure to care for an animal.

(e) This section does not apply to generally accepted dog mushing or pulling contests or practices or rodeos or stock contests.

(f) Except as provided in (g) of this section, cruelty to animals is a class A misdemeanor. The court may also

(1) require forfeiture of any animal affected to the state or to a custodian that supplies shelter, care, or medical treatment for the animal;

(2) require the defendant to reimburse the state or a custodian for all reasonable costs incurred in providing necessary shelter, care, veterinary attention, or medical treatment for any animal affected;

(3) prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

(g) Cruelty to animals is a class C felony if the person has been previously convicted on two or more separate occasions within 10 years of the date of the present offense of a crime under this section, AS 11.61.145(a)(1) or (2), or a law or ordinance of another jurisdiction having elements similar to those offenses. The court may also

(1) require forfeiture of any animal affected to the state or to a custodian that supplies shelter, care, or medical treatment for the animal;

(2) require the defendant to reimburse the state or a custodian for all reasonable costs incurred in providing necessary shelter, care, veterinary attention, or medical treatment for any animal affected;

(3) prohibit or limit the defendant's ownership, possession, or custody of animals for up to 10 years.

Sec. 11.61.145. Promoting an exhibition of fighting animals.

(a) A person commits the crime or offense, as applicable, of promoting an exhibition of fighting animals if the person

(1) owns, possesses, keeps, or trains an animal with intent that it be engaged in an exhibition of fighting animals;

(2) instigates, promotes, or has a pecuniary interest in an exhibition of fighting animals; or

(3) attends an exhibition of fighting animals.

(b) The animals, equipment, vehicles, money, and other personal property used by a person in a violation of (a)(1) or (2) of this section shall be forfeited to the state if the person is convicted of an offense under this section.

(c) In this section, "animal" means a vertebrate living creature not a human being, but does not include fish.

(d) Promoting an exhibition of fighting animals

(1) under (a)(1) or (2) of this section is a class C felony;

(2) under (a)(3) of this section is a violation for the first offense, a class B misdemeanor for the second offense, and a class A misdemeanor for the third and each subsequent offense.

Charges of Cruelty to Animals (For both AS 11.61.140 and AS 11.61.145)

2002 – 10 cases referred for prosecution
5 cases accepted for prosecution

2003 – 25 cases referred for prosecution
22 cases accepted for prosecution

2004 – 15 cases referred for prosecution
11 cases accepted for prosecution

2005 – 10 cases referred for prosecution
7 cases accepted for prosecution

2006 – 12 cases referred for prosecution
7 cases accepted for prosecution

2007 – 18 cases referred for prosecution
10 cases accepted for prosecution

2008 – 2 cases referred for prosecution
2 cases accepted for prosecution

Office: State Wide
Charges: Statutes begining with AS 11.61.140, AS 11.61.145
Exceptions: No exceptions selected
Case Status: Screening, Active, Inactive, & Closed

Court: All Courts
Case Flag: All
Sort Option: A - By Defendant

Charge Set: Convicted
Severity: All (Felony and Misdeameanor)
Charge Modifier: All Cases (Modified or Unmodified)

LIST OF DEFENDANTS AND SENTENCES – BASED ON PRIMARY CHARGE
1/ 1/2002 - 12/31/2008

DEFENDANT	DA FILE #	CRT DOCKET	PRIMARY STATUTE	TYPE	PRIMARY CHARGE	MODIFIER	JAIL	UNITS	JAIL SUSP	UNITS	SIS	CONS
Anchorage												
Constantine, Keith	AN03-04897	3AN-S03-10164	AS 11.61.140	M	Cruelty To Animals		100	Days			N	N
Sorenson, Jayme	AN07-04725	3AN-07-8111	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		60	Days	60	Days	N	N
		Anchorage Charges: 2										
Barrow												
Rexford-Brown, Miranda	BA04-90169		AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		10	Days	10	Days	N	N
		Barrow Charges: 1										
Bethel												
Aloralrea, Tyrell	BE03-00439	4CH-S03-27	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		45	Days	45	Days	N	N
Mike, Bernadette	BE03-00912	4SM-S03-108	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		30	Days	30	Days	N	N
Spencer, Martha	BE03-00934	4SM-S03-109	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		30	Days	30	Days	N	N
Waska, Bruce	BE03-00680	4EM-S03-52	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		0	Days	0	Days	Y	N
		Bethel Charges: 4										
Dillingham												
Zimin, Joan	DI05-90207	3NA-S05-19	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care							
		Dillingham Charges: 1										
Fairbanks												
Burk, Julia	FA06-01050	4FA-S06-945	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		60	Days	58	Days	N	N
Farrell, Ricardo	FA07-05018	4FA-07-3739	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		30	Days	29	Days	N	N
Frolov, Svetlana	FA05-04117	4DJ-S05-151	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		10	Days	10	Days	N	N
Kulikovskiy, Ruslan	FA05-04117	4DJ-S05-152	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		10	Days	10	Days	N	N
Martin, John	FA05-04286	4FA-S05-3105	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		60	Days	0	Days	N	N
Mercer, Rex	FA03-01141	4FA-S03-1139	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain							
Vent, Warner	FA08-00922	4GA-07-92	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		30	Days	20	Days	N	N
		Fairbanks Charges: 7										
Juneau												
Brown, Frank	JU03-00558	1HN-S03-37	AS 11.61.140	M	Cruelty To Animals		0	Days	0	Days	Y	N
Hughes, Mark	JU03-00056	1HA-S02-78	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		90	Days	90	Days	N	N

LIST OF DEFENDANTS AND SENTENCES – BASED ON PRIMARY CHARGE
1/ 1/2002 - 12/31/2008

DEFENDANT	DA FILE #	CRT DOCKET	PRIMARY STATUTE	TYPE	PRIMARY CHARGE	MODIFIER	JAIL	UNITS	JAIL SUSP	UNITS	SIS	CONS
Juneau												
Ragonese, Giovanni	JU02-01375	1SK-S02-57	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		150	Days	120	Days	N	N
		Juneau Charges: 3										
Kenai												
Boughton, Carolyn	KN02-90316	3KN-S02-384	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		365	Days	365	Days	N	N
James, Jon	KN04-02436	3KN-S04-1888	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		60	Days	55	Days	N	N
Jones, Christopher	KN04-01234	3KN-S04-1017	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		30	Days	25	Days	N	N
		Kenai Charges: 3										
Ketchikan												
Mann, Mary	KE06-01293	1KE-06-1180	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		0	Days	0	Days	Y	N
Rue, William	KE02-00384	1WR-S02-49	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		40	Days	40	Days	N	N
		Ketchikan Charges: 2										
Kodiak												
Calibo, Angel	KO06-00181	3KO-S06-137	AS 11.61.145(a)(1)	M	Exhibit Fighting Animals-own or train	Attempted	0	Days	0	Days	N	N
Stormo, Sigmund	KO04-00722	3KO-S04-599	AS 11.61.140	M	Cruelty To Animals		2	Days	2	Days	N	N
		Kodiak Charges: 2										
Kotzebue												
Melton, Matthew	KB07-00874		AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		90	Days	0	Days	N	N
		Kotzebue Charges: 1										
Palmer												
Cahill, Jessica	PA07-03673	3PA-07-2853	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care							
Dunning, Thomas	PA04-04435	3VA-S04-242	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		200	Days	190	Days	N	N
Fank, Gary	PA06-01407	3PA-06-1100	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		0	Days	0	Days	N	N
Gregorieff, Adrian	PA08-01693	3VA-08-137	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		30	Days	30	Days	N	N
Johns, Vickie	PA07-00120	3GL-06-250	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		0	Days	0	Days	Y	N
Jones, Edward	PA03-02043	3VA-S03-178	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		90	Days	90	Days	N	N
Mccracken, Samantha	PA07-00265	3PA-07-289	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		0	Days	0	Days	N	N
Mccracken, Terry	PA07-00265	3PA-07-287	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		0	Days	0	Days	N	N
Mckee, Daniel	PA07-01192	3VA-07-53	AS 11.61.140(a)(1)	M	Cruelty To Animals-inflict severe pain		28	Days	0	Days	N	N
Nardini, Deborah	PA06-01407	3PA-06-1099	AS 11.61.140(a)(2)	M	Cruelty To Animals- fail to care		0	Days	0	Days	Y	N
		Palmer Charges: 10										

LIST OF DEFENDANTS AND SENTENCES – BASED ON PRIMARY CHARGE
1/ 1/2002 - 12/31/2008

DEFENDANT	DA FILE #	CRT DOCKET	PRIMARY STATUTE	TYPE	PRIMARY CHARGE	MODIFIER	JAIL	UNITS	JAIL SUSP	UNITS	SIS	CONS

Total Charges: 36

To Whom It May Concern:

In October 2008, I asked that I be a point of contact for Animal Cruelty investigations and I was allowed to do this. I work closely with Anchorage Animal Care and Control to try to insure that Animal Cruelty complaints are followed up on and the suspects are prosecuted if at all possible.

There have been several studies that have shown that Animal Cruelty is statistically related to other crimes. Someone that commits cruelty to animals is also more likely to commit other crimes such as domestic violence or other violent crimes. It is also been statistically shown that people who commit animal cruelty will also more likely commit other crimes such as property crimes, drug crimes, and disorderly conduct. In a large majority of the cases I have investigated I have seen this in practice. They have many other police contacts and other criminal convictions.

Animal Cruelty is an important issue in our community. When there have been higher profile cases it is obvious by the response from the public, that this issue is important to our community. People are thankful that more is being done but some are also aware that more still needs to be done. There are statistics that show that in communities with better animal cruelty laws and better enforcement and prosecution of animal cruelty laws, the over all crime rate is lower. This makes sense taking into account the statistics that show the relationship between people who commit animal cruelty and other crimes.

I have been frustrated in some of the cases that I have investigated, that the ending result can only be a misdemeanor crime. My main job duty is investigating thefts. If I have a theft case in which someone steals something that is valued at $500 or more or if someone breaks a window of a vehicle and/or damages a vehicle to get into it to steal something, and the damage is $500 or more, I can charge that person with a C felony. If someone beats their pet to death, starves their pet to death, tortures their pet etc. the most I can charge them with is an A Misdemeanor. If someone accidentally runs into a dog with their car and kills it and they do not stop to try to render aid and find an owner, they can be charged with an A misdemeanor. Again if they torture their pet and kill it etc., the most I can charge them with is an A Misdemeanor.

I support the passage of this HB 138 and SB214. Animal Cruelty is a problem in our state. Having a felony level law will allow the worst offenders to have a possibility of a punishment that fits the crime better then it currently is. Because of the connection between Animal Cruelty and Domestic Violence and other crimes, I feel it will also help in identifying the people committing other crimes and hopefully help in intervening before innocent citizens became victims.

Thank you,

Detective Jackie Conn

Jane Pierson

From: lindalance@gci.net on behalf of Linda Lance [lindalance@gci.net]
Sent: Thursday, February 25, 2010 10:48 PM
To: Jane Pierson
Subject: Support of HB138 - Please share with the Judiciary Committee

February 25, 2010

To the Honorable Alaska Legislators of the Judiciary Committee,

I support HB 138, Cruelty to Animals. The Board of the Kodiak Humane Society, of which I am a member, has worked locally to try to enhance city codes to address animal cruelty and abuse. HB 138 would strengthen cruelty laws state-wide; not only protecting our animal friends, but, as stated in Rep. Gatto's Statement, would go after those individuals that have propensity for abuse of children, spouses, and others.

Alaska has fallen behind other states in recognizing the seriousness of animal cruelty. Stronger laws in Alaska means protection for those that are vulnerable and ultimately making our communities safer.

I urge you to pass HB 138.

Sincerely,

Linda Lance
1338 Mountain View Drive
Kodiak, AK 99165
907-486-5044

think it was Massachusetts Sen. Scott Brown's bad fortune to have what was billed as his first national television interview since taking office with the smoke from the Austin IRS offices as his backdrop.

The Republican who won the late Ted Kennedy's seat with a strong pickup-driving, regular-guy appeal was asked by Fox News's Neil Cavuto about those who "invariably" are going to blame the Texas tragedy on "populist rage." Brown agreed with Cavuto that such an assumption was Brown saw similarities be- nd those that troubled Stack. ·agic, and I feel for the fami- : are being affected by it," he now if it's related, but I can / in my election but since be- gton, people are frustrat- ısparency. They want their be accountable and open : about the things that are y lives. So I'm not sure if ɔn. I certainly hope not. But gs better."

·pect to Brown, I don't think : the real victims in this trag- ·eople killed and injured by ough he almost sounded like to a radio program on which ɔmplained, "Someone needs ɔng to violently attack the

hould. As a man who worked Austin TV news reporter: . These are our friends, our ıll, inside every government e's a human being. They

ɔn the fringes of the new an- of extreme anti-tax resis- ɔuthern Poverty Law Cen- Project has counted five ·rrorist plots against the IRS s, including a plot against an stin in 1995. "There's been :h of anti-government mili- Patriot groups" over the past lirector Mark Potok, "and many of them is that taxes gitimate."

:alled such attacks nec- ıe noble principles of the ıe says. No, thanks. I'm old- ɔr the days when we defined :one who supports our coun- think we should attack our 'e it.

nist for The Chicago Tribune. E-mail,

cling year round.

Maybe it's the endorphins they get from bicycling, maybe its just that they feel great, maybe they are saving money by not using a car, but they are out there, typically heading from their homes to Downtown, Midtown, the U-Med district and shopping centers — places that our greenbelt trails don't go directly. It is safe to assume that every adult "utility"

Southport and the new Elmore Road extension are examples of roads where this approach can work well.

Even without this plan Anchorage is recognized as a Bicycle Friendly City with a bronze designation, but this plan, created with the help of the ad hoc group, "Bicycle Commuters of Anchorage" promises a safer future for bicycling in Anchorage. It will help

drive with people of all ages through all seasons t trail system — just a 40 years ago.

It is time to take it adopting the new An

Lanie Fleischer is a longtime The trail along Chester Creel

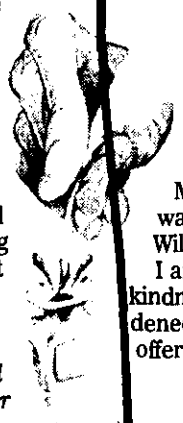
Letters to the Editor

Lawmakers to be commended for animal cruelty measure

I write to commend Sen. Bill Wielechowski and Rep. Bob Lynn for their efforts to treat animal cruelty, in all its many forms, as a felony.

It's almost a foregone conclusion that those who abuse and torture animals inevitably don't treat their human counterparts any better. Many of us remember the case in Anchorage wherein a young man broke into a woman's home and stabbed her German Shepherd to death after the woman managed to escape. What might have happened to her if she was unable to get away?

Studies of serial killers (Ted Bundy, Jeffrey Dahmer, and others) have shown that they were animal torturers in their early years.



These bills do not put animals on a par with humans, but try to curtail or punish appropriately what should be unacceptable, criminal behavior in our society. Such behavior, if given "a pass," will lead to the equivalent of a jury setting free a repeat offender, just so that offender can repeat and accelerate his/her crimes. Everyone should be in support of these bills.

— Lynn Mitchell
Palmer

We are all human in the end

The fact that a man or woman serving their country and defending our freedom can be discharged from service if their sexual orientation is either discovered or disclosed seems rather nonsensical. Homosexual/bisexual/transexual Americans deserve the same rights as heterosexual Americans. I fail to see how someone's sexual orientation, no matter what it may be, impedes their ability to serve their country.

"Don't ask, don't tell" states that one could be discharged for disclosing information of a homosexual nature (i.e., marriage, relationships, family conditions). If this is so, it should be the same for heterosexuals who are serving. However, since everyone is assumed at birth to be heterosexual, we see it as acceptable to discuss openly about relationships of those nature.

Last time I checked, I was a human being just like everyone else attempting the American dream and the pursuit of happiness. I ask you, should it really matter if another fellow American's pursuit of happiness differs from yours?

— Arielle J. Zarr
Anchorage

Is community spirit dead?

On Feb. 9 I had the unfortunate incident of my car completely quitting on Minnesota Boulevard at 6:45 a.m. It just quit with no power at all; I could not even put on flashers. It was a dark and dangerous situation. Fire Chief Mark Hall stopped, set out flares and waited with me until APD Officer James Williams arrived.

I am deeply grateful to both men for their kindness and patience. I am deeply saddened by the people who drove rapidly by offering suggestions and obscenities. I grew up in Anchorage and there once was a time when other motorists would have stopped and given assistance. We could have had the car moved out of the way and not wasted the time of other commuters or public safety officers.

Come on, Anchorage, we can revive our community spirit.

— Lynnette Shaw
Anchorage

Begich didn't reply to letters

In response to Sen. Begich's Anchorage press secretary (Feb 7) on my complaint about writing three letters to the senator concerning President Obama's health care bill and receiving one "form" letter in reply:

All my correspondence was sent to the senator's Washington address on July 30, Sept. 21, and on Oct. 18, 2009.

Copies of the July letter were also sent to Sen. Murkowski anc though the letter wa received specific rep

The Nov. 4 call to office was my last Soon after, the form ured "why bother?"

Oil, gas produc hearing; Jenkin

I agree with you and gas producers s hearing regarding o They deserve respe their contributions a

Recent articles . ments in the same p ing them a fair shake

I agree that oil c honestly respond tc The same should b who writes his opini Gov. Parnell and De its effects.

Admitted and cc owned the Anchora paper to promote hi Paul Jenkins was ed works at influencing ments with regard tc

Gov. Parnell imp governor who has th at heart. Paul Jenkin to honestly answer lieve his opinions.

SUBMIT YOU

- Send letters of 175 words letters@adn.com and inclu a daytime phone number verify authorship and hom submissions become the p the Daily News. By submit represent that you are autl and that we may use it in a compensation to the owne

Distributed by Rep. Gruenberg

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 18, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/26/10

The JUDICIARY Committee considered: **HOUSE BILL NO. 138**

"An Act relating to cruelty to animals."

HB 138 CRUELTY TO ANIMALS

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB138 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [✓] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
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EED
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DFG
GOV
DHS
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LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW	1		✓	
DOC	2			✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Bob Lynn	LYNN	X			
Max Zimmerman	Zimmerman	✓			
Robert E. Herron	HERRON			X	
Kelly Dahlstrom	Dahlstrom			X	
Chair:					
Chair:					

HB

139

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
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Rep. Bob Lynn
Room 104
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Rep. Carl Gatto
Room 108
(907) 465-3743

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: March 27, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File for HB139 - Allow Screen Devices in Utility Vehicles

Please accept this memo as the referral file for HB139. Attached are the following documents:

- Sponsor Statement
- HB139 (26-LS0573\A)
- Zero Fiscal Note DPS
- Enacted Copy of HB88
- Relevant Statutes
- Legal Services Memo dated 3/4/09
- Letters of Support
- HJUD Committee Report
- HSTA Committee Report
- HJUD Testifier List

Alaska State Legislature

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Wasilla, AK 99654

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Session:
Alaska State Capitol, Rm 108
Juneau, AK 99801-1182

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Fax: (907) 465-2381
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Rep_Carl_Gatto@legis.state.ak.us

Representative Carl Gatto

Chair, House Military and Veteran Affairs Committee
District 13 - Palmer

SPONSOR STATEMENT
HB 139: ALLOW SCREEN DEVICES IN UTILITY VEHICLES

"An Act providing for an exception to allow drivers of public utility motor vehicles to operate those vehicles with certain screen devices operating and visible to the drivers."

HB 139 is a fix-it bill to correct an oversight in HB 88 that passed in the 25th Legislature. HB 88 prohibits the driver of an automobile from having a screen device, such as a television, video monitor, portable computer, or similar device, operating within their view while the automobile is in motion. Exceptions were made in HB 88 for cell phone usage for verbal communication, navigation or global positioning, maps, etc. HB 88 also recognized that the Department of Transportation and Public Facilities may need to access a screen device in their automobiles while performing highway construction, maintenance or repair, and included an exception for those activities; however, HB 88 failed to include an additional exception for public utilities.

This legislation would provide public utilities with similar access for maintenance, repair, or data acquisition in order to perform their duties. As an example, meter readers for a gas company no longer physically exit their car to collect usage information; instead the information is collected by interrogating the meter as the meter reader drives past the location. The drivers need to verify as they drive by a home, for example, that the data is being collected. More importantly, if there is a gas leak, the driver will see on his screen device that there is a problem with the line as he drives by the point of leak. Finally, the drivers also receive messages from police and fire departments in the case of an emergency where a gas line would need to be shut off. Other public utilities, as defined in AS 42.05.990, have similar reasons for needing access to a screen device in performance of their duties.

HB 139 is intended to correct this oversight and provide public utilities an exception in order to allow them to fully perform their job functions.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB139**
() Publish Date:

Identifier (file name): **HB139-DPS-DET-03-02-09**
Title "An Act providing for an exception to allow drivers of public... utility vehicles to operate the vehicle with screen devices".
Sponsor Representative Gatto
Requester House State Affairs

RDU Public Safety
Component Alaska State Troopers / AST Detachments
Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill amends AS 28.35.161(c) by adding an exemption for those operating public utility vehicles to operate those vehicles with screen devices.

This bill will have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial — Phone 907-247-4480
Division Alaska State Troopers — Date/Time 3/5/09 12:44 PM
Approved by: Joseph Masters, Commissioner — Date 3/5/2009
Department of Public Safety

(Revised 11/19/2007 OMB)

LAWS OF ALASKA

2008

Source
SCS CSHB 88(JUD)

Chapter No.
_____

AN ACT

Relating to televisions, monitors, portable computers, and similar devices in motor vehicles; relating to the definition of physical injury for the Alaska Uniform Vehicle Code; and providing for an effective date.

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

THE ACT FOLLOWS ON PAGE 1

AN ACT

Relating to televisions, monitors, portable computers, and similar devices in motor vehicles; relating to the definition of physical injury for the Alaska Uniform Vehicle Code; and providing for an effective date.

*** Section 1.** AS 28.35 is amended by adding a new section to read:

Sec. 28.35.161. Driving a motor vehicle with a screen device operating; unlawful installation of television, monitor, or similar device. (a) A person commits the crime of driving with a screen device operating if

(1) the person is driving a motor vehicle;

(2) the vehicle has a television, video monitor, portable computer, or any other similar means capable of providing a visual display that is in full view of a driver in a normal driving position while the vehicle is in motion; and

(3) the monitor or visual display is operating while the person is driving.

(b) A person may not install or alter equipment described in (a)(2) of this section that allows the images to be viewed by the driver in a normal driving position while the vehicle is in motion.

(c) Subsections (a) and (b) of this section do not apply to

(1) portable cellular telephones or personal data assistants being used for verbal communication or displaying caller identification information;

(2) equipment that is displaying only

(A) audio equipment information, functions, and controls;

(B) vehicle information or controls related to speed, fuel level, battery charge, and other vehicle safety or equipment information;

(C) navigation or global positioning;

(D) maps;

(E) visual information to

(i) enhance or supplement the driver's view forward, behind, or to the sides of the motor vehicle for the purpose of maneuvering the vehicle; or

(ii) allow the driver to monitor vehicle occupants seated behind the driver;

(F) vehicle dispatching and response information for motor vehicles providing emergency road service or roadside assistance;

(G) vehicle dispatching information for passenger transport or freight or package delivery; or

(H) information for use in performing highway construction, maintenance, or repair or data acquisition by the Department of Transportation and Public Facilities or a municipality.

(d) Subsections (a) and (b) of this section do not apply to devices and equipment installed in an emergency vehicle. In this subsection, "emergency vehicle" means a police, fire, or emergency medical service vehicle.

(e) It is an affirmative defense to a prosecution under (b) of this section that the equipment installed or altered includes a device that, when the motor vehicle is being driven, disables the equipment for all uses except those described in (c) of this

section.

(f) A person who violates (a) of this section is guilty of

(1) a class A misdemeanor, unless any of the circumstances described in (2) - (4) of this subsection apply;

(2) a class C felony if the person's driving causes physical injury to another person;

(3) a class B felony if the person's driving causes serious physical injury to another person;

(4) a class A felony if the person's driving causes the death of another person.

(g) A person who violates (b) of this section is guilty of a class A misdemeanor.

* **Sec. 2.** AS 28.90.990(a) is amended by adding a new paragraph to read:

(30) "physical injury" has the meaning given in AS 11.81.900.

* **Sec. 3.** This Act takes effect September 1, 2008.

C
West's Alaska Statutes Annotated Currentness
Title 42. Public Utilities and Carriers
Chapter 05. Alaska Public Utilities Regulatory Act
Article 10. General Provisions
§ 42.05.990. Definitions

In this chapter

(1) "affiliated interest" includes:

(A) a person owning or holding directly or indirectly five percent or more of the voting securities of a public utility engaged in intrastate business in this state;

(B) a person, other than those specified in (A) of this paragraph, in a chain of successive ownership of five percent or more of voting securities, the chain beginning with the holder of the voting securities of such public utility;

(C) a corporation five percent or more of whose voting securities are owned by a person owning five percent or more of the voting securities of the public utility or by a person in such a chain of successive ownership of five percent or more of the voting securities;

(D) a corporation five percent or more of whose voting securities are owned or held by a public utility;

(E) a person with whom the public utility has a management or service contract;

(F) a person who is an officer or director of such a public utility or of a corporation in a chain of successive ownership of five percent or more of voting securities;

(G) a corporation which has one or more officers or directors in common with a public utility;

(H) a person or corporation who or which the commission determines as a matter of fact, after investigation and hearing, actually is exercising such substantial influence over the policies and actions of a utility in conjunction with one or more other corporations or persons with whom they are related by ownership or blood, or by action in concert, that together they are affiliated with the utility within the meaning of this section even though none of them alone is so affiliated; or

(I) a person or corporation who or which the commission determines as a matter of fact after investigation and hearing actually is exercising substantial influence over the policies and actions of a utility even though such influence is not based upon stockholdings, stockholders, officers or directors to the extent specified in this section;

(2) "commission" means the Regulatory Commission of Alaska;

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(3) "public" or "general public" means

(A) a group of 10 or more customers that purchase the service or commodity furnished by a public utility;

(B) one or more customers that purchase electrical service for use within an area that is certificated to and presently or formerly served by an electric utility if the total annual compensation that the electrical utility receives for sales of electricity exceeds $50,000; and

(C) a utility purchasing the product or service or paying for the transmission of electric energy, natural or manufactured gas, or petroleum products that are re-sold to a person or group included in (A) or (B) of this paragraph or that are used to produce the service or commodity sold to the public by the utility;

(4) "public utility" or "utility" includes every corporation whether public, cooperative, or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant, pipeline, or system for

(A) furnishing, by generation, transmission, or distribution, electrical service to the public for compensation;

(B) furnishing telecommunications service to the public for compensation;

(C) furnishing water, steam, or sewer service to the public for compensation;

(D) furnishing by transmission or distribution of natural or manufactured gas to the public for compensation;

(E) furnishing for distribution or by distribution petroleum or petroleum products to the public for compensation when the consumer has no alternative in the choice of supplier of a comparable product and service at an equal or lesser price;

(F) furnishing collection and disposal service of garbage, refuse, trash, or other waste material to the public for compensation;

(5) "rate" includes each rate, toll, fare, rental, charge, or other form of compensation demanded, observed, charged, or collected by a public utility for its services;

(6) "service" means, unless the context indicates otherwise, every commodity, product, use, facility, convenience, or other form of service that is offered for and provided by a public utility for the convenience and necessity of the public;

(7) "tariff" means a rate, charge, toll, rule, or regulation of a utility relating to services furnished by the utility to the general public for compensation and every map, page, adoption notice, instrument, or other document filed with the commission setting out the terms and conditions under which utility services are offered to the public and instruments of concurrence and all other documents and data setting out the terms of a utility's business relations with another utility insofar as they affect the general public either directly or indirectly;

(8) "telecommunications" means the transmission and reception of messages, impressions, pictures, and signals by means of electricity, electromagnetic waves, and any other kind of energy, force variations, or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points.

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CREDIT(S)

SLA 1970, ch. 113, § 6; SLA 1971, ch. 36, § 2; SLA 1973, ch. 76, § 2; SLA 1990, ch. 140, § 4; SLA 1990, ch. 168, § 19; SLA 1999, ch. 25, § 12.

NOTES OF DECISIONS

Franchises 2
Service 1

1. Service

Electric utility was not exempt from requirement that it had to obtain an additional certificate of public convenience and necessity from the Regulatory Commission prior to selling power outside its assigned geographical area, even though it argued it was selling a "commodity" rather than providing a "service," as the statutory definition of service included commodities. AS 42.05.221(a), 42.05.990(6). Chugach Electric Ass'n, Inc. v. Regulatory Com'n of Alaska (2002) Alaska, 49 P.3d 246. Electricity 8.1(2.1)

In determining whether to issue certificate of public convenience and necessity for coal-fired electric generation plant, Alaska Public Utilities Commission (APUC) was not required to consider costs associated with environmental externalities or public subsidies not paid by consumers as part of rate charged for service; language of statute governing issuance of certificate was limited specifically to "services," rather than construction of particular facility, and statutory requirement that APUC find applicant "fit, willing and able to provide the utility services applied for" only required APUC to focus on applicant. AS 42.05.221(a), 42.05.241. Alaska Federation for Community Self-Reliance v. Alaska Public Utilities Com'n, 1994, 879 P.2d 1015. Electricity 8.1(1)

Borough engaged in "collection" and "disposal" within meaning of AS 29.48.033(b) requiring certificate of public convenience and necessity when it opened large public dumping floor and transported garbage from there to final disposal site. Drake v. Fairbanks North Star Borough, 1986, 715 P.2d 1167. Environmental Law 369

Contracts which were awarded by city and which covered all hauling of refuse to sanitary landfills and maintenance and operation of transfer sites pertained to "collection and disposal," within statute precluding political subdivision from providing for waste collection and disposal service in any area, to extent it lies within area granted to waste carrier by certificate issued by Public Utilities Commission, until subdivision has purchased certificate, equipment and facilities of carrier or that portion which would be affected at fair market value; thus city was liable for fair market value of certificate of public convenience and necessity issued by Commission or that portion of certificate that would be affected. AS 29.48.033(b), 42.05.221(f). McClellan v. Kenai Peninsula Borough, 1977, 565 P.2d 175. Environmental Law 368

2. Franchises

Franchise agreements which originated in the form of municipal ordinances were in fact contracts, in that a "franchise" is a contract binding upon both parties regardless of method by which it comes into being, and thus, franchises were not "enactments" within meaning of statute superseding certain municipal "enactments." AS 29.13.100. B-C Cable Co., Inc. v. City and Borough of Juneau, 1980, 613 P.2d 616. Franchises 1

AS § 42.05.990, AK ST § 42.05.990

Current through the 2008 Second Regular and Fourth Special Session of the 25th Legislature

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END OF DOCUMENT

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DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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FAX (907) 465-2029
Mail Stop 3101

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 4, 2009

SUBJECT: HB 139 - Public Utility Exception
(Work Order No. 26-LS0573\A)

TO: Representative Max Gruenberg
Attn: Allison Laffen

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked if the exception provided by this bill for public "utility construction, maintenance, [or] repair" would include dispatching and response information for those purposes. In my opinion it would include dispatching and response information as well as other activities related to "utility construction, maintenance, [or] repair." Of course if the utility companies are more concerned with providing an exception for public utility motor vehicle dispatching and response, then I would recommend removing the reference to "construction, maintenance, and repair" and just refer to dispatching and response for public utility purposes. Something like the following would suffice:

> vehicle dispatching and response information for public utility motor vehicles or information for use in performing data acquisition by a public utility.

GPL:plm
09-138.plm

ENSTAR
Natural Gas Company

3000 Spenard Road
PO Box 190288
Anchorage, AK 99519-0288
www.enstarnaturalgas.com

February 27, 2009

Honorable Max Gruenberg
Alaska House of Represenatives
State Capitol
Juneau, Alaska 99801-1182

Dear Represenative Gruenberg,

I would like to thank you for sponsoring House Bill 139 "An Act providing for an exception to allow drivers of public utility motor vehicles to operate those vehicles with certain screen devices operating and visible to the drivers". ENSTAR Natural Gas Company is a leader in using new technology to provide better customer service in an attempt to hold down operating costs, thereby saving the consumer money. We currently provide automated meter reading and will soon be introducing a "Field Order System" (FOS) to provide real time information on work orders between field personnel, dispatch and customer service, thereby providing an improved customer experience.

ENSTAR would like to include a reference to "vehicle dispatching and response information" under the new subsection (I). There currently are references in existing statues to vehicle dispatching information for passenger transport, freight or package delivery. ENSTAR currently dispatches our service technician and distribution crews as a normal course of business, which includes gas leaks, fires and other emergency situations. ENSTAR is proud that our dispatch and response rate is ranked one of the highest in the nation.

However, without a reference in the bill to utility dispatching, it could be interpreted we are not in compliance with state law. Anything you could do to clarify the language would be greatly appreciated.

We appreciate your time and efforts in this matter.

Sincerely,

Curtis W. Thayer
Director, Corporate and External Affairs

CHUGACH
POWERING ALASKA'S FUTURE

March 6, 2009

Representative Max Gruenberg
State Capitol, Room 110
Juneau, AK 99801-1182

Dear Rep. Gruenberg:

I am writing in support of your efforts to secure an appropriate utility amendment to the law addressing screen devices in vehicles. We believe House Bill 139 offers a reasonable exemption to allow Chugach to continue to safely conduct routine utility operations.

Thank you for seeking this amendment.

Sincerely,

Bradley Evans, Chief Executive Officer
Chugach Electric Association

Chugach Electric Association, Inc.
5601 Electron Drive, P.O. Box 196300, Anchorage, Alaska 99519-6300 • (907) 563-7494 Fax (907) 562-0027 • (800) 478-7494
www.chugachelectric.com • info@chugachelectric.com

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: March 12, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 3/27/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 139**

"An Act providing for an exception to allow drivers of public utility motor vehicles to operate those vehicles with certain screen devices operating and visible to the drivers."

HB 139 ALLOW SCREEN DEVICES IN UTILITY VEHICLES

Recommends it be replaced with [ ] HCS *or* **[ ] CS** *for* _____ (_____)
*For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

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***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Greenberg				
	Dickson			X	
Chair:	RAMIRAS	X			
Chair:					

1671

HOUSE COMMITTEE REPC T

(7)
Date Referred to Committee: February 18, 2009 **FURTHER REFERRALS: Judiciary**

Date of Committee Action: 3-10-09

The STATE AFFAIRS Committee considered: **HOUSE BILL NO. 139**

"An Act providing for an exception to allow drivers of public utility motor vehicles to operate those vehicles with certain screen devices operating and visible to the drivers."

HB 139 ALLOW SCREEN DEVICES IN UTILITY VEHICLES

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

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LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
Public Safety				X

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Johnson			X	
	SEATON	X			
	Greenberg	-			
	Petersen	X			
Chair:	LYNN	X			
Chair:					

HB

141

Please accept this memo as the referral file for HB141. Attached you will find the following documents:

- HB141 Sponsor Statement
- HB141 Bill version R
- HB141 Sectional
- HB141 DOC Fiscal Note
- HB141 DHS Fiscal Note
- HB141 Backup
- HB141Letters of Support
- HB141 HJUD Testifier List
- HB141 HJUD Committee Report

Jane W. Pierson, Staff
Representative Jay Ramras
State Capitol, Room 118
Juneau, AK 99801
Phone: (907) 465-4990
Cell: (907) 978-5115
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ALASKA STATE HOUSE OF REPRESENTATIVES

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Session

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State Capitol
Room 214

REPRESENTATIVE JOHN COGHILL

Sponsor Statement
HB 141

"An Act relating to the Interstate Compact for Juveniles; relating to the State Council for Interstate Adult Offender Supervision; amending Rules 4 and 24, Alaska Rules of Civil Procedure; and providing for an effective date."

This bill would enact the new Interstate Compact for Juveniles into law. This would replace the old compact which was created in 1955. The purpose of the Compact is to ensure the supervision of juvenile offenders and the return of runaways, escapees and absconders. The Compact provides the procedural means to regulate the movement of juveniles who are under court supervision across state lines. The Association of Compact Administrators estimates that the Interstate Compact on Juveniles is used in 20,000 to 30,000 transfer and supervision cases annually.

The new Compact ensures that all states will have identical language in their statutes which would help with compliance issues. The new Compact provides procedures for enforcement which the old Compact lacked. The Interstate Compact for Juveniles also provides for the collection of standardized information and information sharing systems.

This is a chance for the states to have the means to deal with state problems and enforce state solutions without having any federal intervention. 35 states have already passed this compact. If Alaska chooses not to enact this Compact the state would have to deal with every other state on a case-by-case basis which would cost the state more money than it would cost to implement the Compact.

The compact provides for the safety of the juvenile offender and the state as a whole. The importance of this compact cannot be overstated. This legislation is necessary to ensure the public safety and security of Alaskans. It will help ensure that Alaska receives notification about juveniles who are relocated or traveling to Alaska before they arrive here, and will expedite Alaska's ability to send juveniles from here to other jurisdictions.

ALASKA STATE HOUSE OF REPRESENTATIVES

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FAX# (907)-465-3258
State Capitol
Room 214

REPRESENTATIVE JOHN COGHILL

SECTIONAL

HB 141

"An Act relating to the Interstate Compact for Juveniles; relating to the State Council for Interstate Adult and Juvenile Offender Supervision; amending Rules 4 and 24(b), Alaska Rules of Civil Procedure; and providing for an effective date."

Section 1: AS 33.36.140 State Council:

(a) Adds the words **and Juvenile** to the State Council for Interstate Offender Supervision. Adds a reference to the repealed and reenacted statute AS 47.15.010.

Section 2: AS 33.36.140

(b) changes the number of council members from seven to **nine**.

(6) adds the position of **the commissioner of health and social services** and provides that the commissioner may appoint a designee to serve in his/her capacity.

(7) adds the position of the **compact administrator appointed under AS 47.15.020**.

Section 3: AS 44.21.410(a)

(a) (5) deletes the word [UNIFORM], adds the word **for** and deletes the word [ON] in order to change the name of the Compact to the Interstate Compact for Juveniles.

Section 4: AS 47.15.010

The Execution of interstate compact is repealed and reenacted.

Section 5: AS 47.15.020

Changes the designator of the compact administrator from the Governor to the commissioner of health and social services and adds a comma to ensure proper grammar.

Section 6: AS 47.15

Adds a new section: AS 47.15.025 which designates the State Council for Interstate Adult and Juvenile Offender Supervision to serve as the state council under AS 47.15.010.

Section 7: AS 47.15

Adds a new section: AS 47.15.035 which allows the Department of Health and Social Services to adopt regulations to implement the provisions of this chapter.

Section 8: AS 47.15.070

Cleanup of section for clarity.

Section 9: AS 47.15.080

States that the short title of this chapter may be cited as the Interstate Compact for Juveniles.

Section 10: AS 47.15.050

Appointment of attorney or guardian provision is covered in AS 47.12.090.

Section 11: The uncodified law of the State of Alaska is amended by adding a new section:

(1) Changes the name of the Compact to the Interstate Compact for Juveniles in Rule 4 in Alaska Rules of Civil Procedure.

(2) Changes the name of the Compact to the Interstate Compact for Juveniles in Rule 24(b) in the Alaska Rules of Civil Procedure.

Section 12: The uncodified law of the State of Alaska is amended by adding a new section: This section applies the old Compact to the states who do not opt to join the new Compact.

Section 13: The uncodified law of the State of Alaska is amended by adding a new section: Court rule changes only take effect if it is approved by 2/3 of the majority of each house.

Section 14: The uncodified law of the State of Alaska is amended by adding a new section: The Compact takes effect only if at least 34 other states ratify the Interstate Compact for Juveniles.

Section 15: Setting the effective date as either the day after the date on which the commissioner of health and social services or the commissioner's designee notifies the revisor of statutes that at least 34 other states have ratified the new Compact or July 1, 2009 whichever is later.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB141
() Publish Date:

Identifier (file name): HB141-DHSS-PS-03-04-09
Dept. Affected: Health & Social Services
Title: Compact for Juveniles: Interstate Council
RDU: Juvenile Justice
Component: Probation Services
Sponsor: Coghill
Requester: House HSS
Component Number: 2134

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel	13.0		13.0	13.0	13.0	13.0	13.0
Contractual	27.0		27.0	27.0	27.0	27.0	27.0
Supplies	5.0		5.0	5.0	5.0	5.0	5.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**45.0**	**0.0**	**45.0**	**45.0**	**45.0**	**45.0**	**45.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	45.0		45.0	45.0	45.0	45.0	45.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**45.0**	**0.0**	**45.0**	**45.0**	**45.0**	**45.0**	**45.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

Since 1960, the Interstate Compact on Juveniles has provided states, including Alaska, with the procedural means to regulate the movement of court-supervised juveniles across state lines. Approximately 160 juveniles under the supervision of the Department of Health and Social Services leave or enter Alaska each year. This bill would place a new, extensively revised compact into Alaska statute replacing the current compact. The new compact seeks to correct deficiencies in the existing compact that have been identified at the national level with regard to administration, rules, enforcement procedures, financial management, communications and data sharing.

(continued on next page)

Prepared by: Stephen F. McComb
Phone 907-261-4335
Division: Juvenile Justice
Date/Time 3/2/09 12:00 AM

Approved by: Alison Elgee, Assistant Commissioner
Date 3/4/2009
DHSS Finance & Management Services

FISCAL NOTE

STATE OF ALASKA **BILL NO.** HB 141

2009 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

Participation in the new compact requires that the state council implement and oversee compact functions. However, because some of the membership requirements for the juvenile compact council are the same as those required for the Alaska State Council for Interstate Adult Offender Supervision, the state intends to have a single state council oversee both compacts. Combining the two responsibilities under the authority of a single council will save the state the effort and duplication of creating and managing two councils with similar functions.

Being part of the new compact will create additional costs to the division. Costs include the following:

$13.0 Travel associated with membership participation, including travel to required meetings by staff
$27.0 Membership Dues, teleconferences, overhead costs that include chargeback, etc.
$ 5.0 Supplies for staff and required meetings

Dues to participate in the current compact are $400 per year. Dues to participate in the new compact are expected to be $14,000 per year.

The cost estimates for the participation in the state council only reflect those anticipated for the operations for the juvenile justice compact and do not include operational and other costs associated with the ongoing adult council activities. The existing adult council has not had in-person meetings for several years, and at least initially the division anticipates that such meetings will be necessary to address the added juvenile justice functions. The travel costs reflected in this fiscal note are again only intended to portray the costs for the juvenile compact activities. The travel costs also reflect the intent that council members represent all areas of the state.

A possible one-time additional cost to the division may also be incurred by adoption of this bill. The new compact will require use of a national database management system that may need to communicate with the division's MIS. The national system is still under development. Without knowing when the new system will be available, or how difficult it will be to link the two systems, we are not prepared to estimate a cost at this time. The division may need to make a specific request to meet this cost at some point in the future.

In addition, the division will be monitoring the amount of additional staff time required to participate in the new compact. At some point an increment request may be needed to fund a position if absorption of these duties is too challenging for our existing staff. The division needs to ensure we do not hamper our ability to research, apply for, and successfully win grants, such as the federal Re-Entry and Gang Prevention grants that have been invaluable in improving public safety and helping the state monitor and improve its response to gang issues. If the increase in workload forces staff to spend less time involved in the management of existing programs (these include the federal Juvenile Justice and Delinquency Prevention Formula Program, the Enforcing Underage Drinking Laws program, Title V, Juvenile Accountability Block Grants, Bureau of Justice Assistance grant management, and Youth Court earmark) current federal funding that the division receives could be at risk.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: HB141-DOC-OC-3-24-09
Bill Version:
() Publish Date:

Identifier (file name): HB141-DOC-OC-3-24-09
Dept. Affected: DOC
Title "An Act Relating to the Interstate Compact for Juveniles"
RDU Administration & Support
Component Office of the Commissioner
Sponsor Representative Coghill
Requester Governor
Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

Passage of this legislation should not have a significant impact on the Department of Corrections.

Prepared by: Leslie Houston, Director — Phone 465-3339
Division Administrative Services Division — Date/Time 3/24/2009 1535
Approved by: Dwayne Peeples, Deputy Commissioner — Date 3/24/2009
Office of the Commissioner

(Revised 9/10/2008 OMB)

Interstate Compact for Juveniles
State Legislative Status

Update February 26, 2009

State	Bill	Primary Sponsor	Status
Alabama			Signed into law, 4/22/04
Alaska	**HB 141**	**Coghill**	**Intro'd & ref'd Jud & H&SS, 2/23**
Arizona			Signed into law, 4/30/03
Arkansas			Signed into law, 4/6/05
California			
Colorado			Signed into law, 4/26/04
Connecticut			Signed into law, 6/18/03
Delaware			Signed into law, 7/8/03
Florida			Signed into law, 5/26/05
Georgia			
Hawaii	**HB297 / SB109**	**Say / Hanabusa**	**Rec pass w. Amnds 2/10 / Ref'd to Ways & Means 2/13**
Idaho			Signed into law, 3/19/04
Illinois			Signed into law, 8/26/08
Indiana			
Iowa			
Kansas			Signed into law, 3/29/04
Kentucky			Signed into law, 3/18/05
Louisiana			Signed into law, 7/3/03
Maine			Signed into law, 6/25/03
Maryland			Signed into law, 5/17/07
Massachusetts	*SB 2187*	*Sen. McGee*	*Passed S; H ref'd to Ways & Means 7/1/08*
Michigan			Signed into law, 7/11/03
Minnesota			
Mississippi	**HB465 / HB759 / SB2595**	**Holland / Hines / Hyde-Smith**	**S Jud DO PASS 2/24 / Died in Comm 2/03 / H ref'd to Jud 2/09**
Missouri			Signed into law, 4/1/03
Montana			Signed into law, 4/1/03
Nebraska	**LB 237**	**Lathrop**	**Ref'd to Judiciary, 1/15**
Nevada			Signed into law, 5/19/05

State	Bill	Primary Sponsor	Status
New Hampshire			
New Jersey			Signed into law, 9/10/04
New Mexico			Signed into law, 3/19/03
New York			
North Carolina			Signed into law, 7/18/05
North Dakota			Signed into law, 3/13/03
Ohio			
Oklahoma			Signed into law, 4/21/04
Oregon	**SB 107**	**Senate President**	**Work session 2/26**
Pennsylvania			Signed into law, 7/2/04
Rhode Island			Signed into law, 7/10/03
South Carolina			Signd into law, 5/24/06
South Dakota			Signed into law, 2/13/04
Tennessee			Signed into law, 6/20/08
Texas			Signed into law, 6/18/05
Utah			Signed into law, 3/16/05
Vermont			
Virginia			Signed into law, 3/12/07
Washington			Signed into law, 5/9/03
West Virginia			Signed into law, 4/6/04
Wisconsin			Signed into law, 3/30/06
Wyoming			Signed into law, 3/5/04
Amer. Samoa			
Dist. of Columbia			
Guam			
N. Mariana Is.			
Puerto Rico			
U.S. Virgin Is.			

Resolution of the
Association of Juvenile Compact Administrators

"Interstate Compact for Juveniles"

Whereas, The Interstate Compact on Juveniles was established in 1955 and is the compact addressing the needs of juveniles within the juvenile justice system who move between states and has not been sufficiently amended in its forty-seven (47) year existence; and

Whereas, This compact is the only vehicle for the interstate supervision of juvenile offenders, the return of absconders and escapees, and runaways; and

Whereas, The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision and program expectations to include currently unregulated practices such as victim input and notification requirements, sex offender registration, and age related issues; and

Whereas, After national surveys and a detailed study by a task force appointed by the Office of Juvenile Justice and Delinquency Prevention, the recommendation has been to rewrite the document to bring about an effective management capacity that addresses public safety concerns and juvenile accountability.

Be it therefore resolved, That the Association of Juvenile Compact Administrators hereby endorses and recommends adoption of the new compact entitled "Interstate Compact for Juveniles" by the fifty (50) states, the District of Columbia, and affected territories of the United States of America.

Adopted this 10th day of August, 2002.

RESOLUTION OF THE
AMERICAN PROBATION AND PAROLE ASSOCIATION

"Interstate Compact for Juveniles"

Whereas, The Interstate Compact on Juveniles was established in 1955 and is the primary compact addressing the needs of juveniles within the justice system who move between states and has not been sufficiently amended in its 47-year existence; and

Whereas, This compact is the only vehicle for the controlled movement of juveniles released from custody or on probation across state lines; and

Whereas, The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision expectations to include currently unregulated practices such as victim input, victim notification requirements and sex offender registration; and

Whereas, After national surveys and a detailed study by a task force appointed by the Office of Juvenile Justice and Delinquency Prevention, the overwhelming recommendation has been to amend the document to bring about an effective management capacity that addresses public safety concerns, offender accountability and effective treatment needs.

BE IT THEREFORE RESOLVED, That the Board of Directors of the American Probation and Parole Association hereby endorses and recommends adoption of the amended and newly titled Interstate Compact for Juveniles by the 50 states and affected territories of the United States of America.

January 5, 2003

CSG GOVERNING BOARD/EXECUTIVE COMMITTEE

RESOLUTION ON

THE INTERSTATE COMPACT FOR JUVENILES

WHEREAS, The Interstate Compact on Juveniles was established in 1955 and is the compact addressing the needs of juveniles within the juvenile justice system who move between states and has not been sufficiently amended in its forty-seven (47) year existence; and

WHEREAS, This compact is the only vehicle for the interstate supervision of juvenile offenders, the return of absconders and escapees, and runaways; and

WHEREAS, The complexities of the compact have become more difficult to administer, and many jurisdictions have expanded supervision and program expectations to include currently unregulated practices such as victim input and notification requirements, sex offender registration, and age related issues; and

WHEREAS, After exhaustive research and detailed study, the Office of Juvenile Justice and Delinquency Prevention and The Council of State Governments convened an Advisory Group and Drafting Team to formulate recommendations and implement changes to the compact language to better address public safety, enforcement, accountability and communication concerns.

NOW THEREFORE BE IT RESOLVED, That The Council of State Governments hereby endorses and recommends adoption of the new compact entitled, "Interstate Compact for Juveniles" by the fifty (50) states, the District of Columbia, Puerto Rico and effected territories of the United States of America.

Adopted this 8th Day of December, 2002 at the
CSG Annual State Trends and Leadership Forum
In Richmond, Virginia

AJJAC

ALASKA JUVENILE JUSTICE ADVISORY COMMITTEE

Alaska Juvenile Justice Advisory Committee
P.O. Box 110635
Juneau, AK 99811-0635
Phone: (907) 465-3855
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Beverly Jenkins
Larry LeDoux
Judy Norton-Bedge
Laura Ogan
Michael Reed
Samantha Wheaton
Tina Woods

March 4, 2009

Alaska Legislature
Alaska State Capitol
Juneau, AK 99801

Dear Legislators:

The Alaska Juvenile Justice Advisory Committee (AJJAC) held an in-person meeting in Juneau on March 2-3, 2009. At the meeting Division of Juvenile Justice (DJJ) presented information on HB 141, which included the benefits of passing this legislation as well as the potential public safety issues if HB 141 does not pass.

After discussion, the AJJAC voted unanimously on March 2, 2009 to support HB 141, the Interstate Compact for Juveniles.

Please feel free to contact me if you have any questions.

Sincerely,

Carol Brenckle
AJJAC Chair

NDAA

Office of the President

National District Attorneys Association
99 Canal Center Plaza, Suite 510, Alexandria, Virginia 22314
703.549.9222 / 703.836.3195 Fax
www.ndaa-apri.org

February 19 , 2003

Mr. Daniel M. Sprague
Executive Director
The Council of State Governments
P.O. Box 11910
Lexington, KY 40578-8001

Dear Mr. Sprague:

On behalf of the Board of Directors of the National District Attorneys Association I want to offer our support for the Interstate Compact for Juveniles. Our Board unanimously voted to support your effort during our recent meeting in Texas.

As local prosecutors we have to work daily with juveniles that require the attention of our court system and we recognize the need for interstate supervision of juvenile offenders and for the return of those who have escaped, run away or fail to live up to release expectations.

We also recognize that the changes in the complexities of our society have made many of the provisions of the compact badly out dated. Ideas such as community corrections, sexual predator registrations and victims rights provisions all impact on the how states must relate to each other in dealing with criminal offenders and in this instance, juveniles.

The Board of Directors considered the importance of addressing consistent treatment of juveniles in need of both consequences and treatment. The proposed Compact language provides states with the means of accomplishing these goals.

Sincerely,

Daniel M. Alsobrooks
District Attorney General, 23rd Judicial District, Tennessee
President, National District Attorneys Association

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NATIONAL CENTER FOR MISSING & EXPLOITED CHILDREN®

Charles B. Wang International
Children's Building
699 Prince Street
Alexandria, VA 22314-3175
U.S.A.

Telephone 703.274.3900

Facsimile 703.274.2200

www.missingkids.com

November 1, 2002

Mr. Daniel M. Sprague
Executive Director
The Council of State Governments
Headquarters Office
P.O. Box 11910
Lexington, Kentucky 40578-8001

Dear Mr. Sprague:

The National Center for Missing & Exploited Children (NCMEC) is pleased to support the proposed Interstate Compact Initiative for Juveniles. As an organization that provides services to runaway youth and their families, we are pleased that this enhanced initiative will ensure consistent use of those policies governing the Compact.

Although, primarily designed to assist those organizations working within the juvenile justice, and social service systems, the Compact will assist NCMEC in it's work to bring children back home by providing law enforcement professionals with clear guidelines and procedures once a missing youth is recovered.

As you work to implement this initiative throughout the 50 states, please do not hesitate to let us know if we can be of further assistance in this most important venture.

Sincerely,

Ernie Allen
President & CEO
NCMEC

Branches
California
Florida
Kansas City
New York
South Carolina

National Juvenile Detention Association | NJDA

Eastern Kentucky University • 301 Perkins Building • 521 Lancaster Avenue
Richmond, Kentucky 40475-3102 • Telephone: (859) 622-6259
Fax: (859) 622-2333 • E-Mail: NJDAEKU@aol.com • Website: www.njda.com

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48823-5239
(517) 432-1242

January 28, 2003

Chad S. Foster
Policy Analyst
The Council of State Governments
2760 Research Park Drive
PO Box 11910
Lexington, KY 40578-1910

Dear Mr. Foster:

As one of participating entities, the National Juvenile Detention Association (NJDA) has been actively involved in the review and update of the Interstate Compact or Juveniles, originally established in 1955. The two-year effort to modernize the Compact has been thorough and comprehensive and has engaged the efforts of many practitioners from the juvenile justice field. The process addressed a multiplicity of issues regarding the Compact that have been identified as problematic or outdated in an effort to develop a document that meets the current needs of stakeholders in the signatory states.

The nation's detention centers deal with the Contract frequently as the entities responsible for housing juveniles found to be in violation of placement agreements or of state laws in the receiving states. The proposed modifications to the Compact should address many of the issues that have created problems for detention centers and will offer assistance to them in dealing with both sending and receiving states.

As the association serving juvenile detention nationally, NJDA supports the proposed changes to the Compact. The changes are designed to address the needs of the states, of the agencies within the states, and of the public in ensuring that placement agreements are complied with and community safety is ensured.

We are happy to offer assistance to you in your efforts to achieve adoption of the revised Interstate Compact for Juveniles.

Sincerely,

Earl L. Dunlap

Earl L. Dunlap, Executive Director
National Juvenile Detention Association

cc: file
Executive Committee

List of People to Testify on HB 141

- Barb Murray or Anthony Newman
- Carol Brenkle
- Barb Tyndall
- Michael Jeffery

Departments Affected

- Department of Corrections: They will be sharing the duties of administering the interstate council

HOUSE COMMITTEE REPO

(7)
Date Referred to Committee: March 23, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 3/27/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 141**

"An Act relating to the Interstate Compact for Juveniles; relating to the State Council for Interstate Adult and Juvenile Offender Supervision; amending Rules 4 and 24(b), Alaska Rules of Civil Procedure; and providing for an effective date."

HB 141 COMPACT FOR JUVENILES; INTERSTATE COUNCIL

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DOC	2			✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
DHS	1	✓		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	Y			
	Gruenberg	–			
	[illegible]	X			
Chair:					
Chair:					

STATE OF ALASKA

DEPARTMENT. OF HEALTH AND SOCIAL SERVICES

DIVISION OF JUVENILE JUSTICE

Sarah Palin, GOVERNOR

P.O. BOX 110635
JUNEAU, ALASKA 99811-0635
PHONE: (907) 465-1382
FAX (907) 465-2333

April 1, 2009

The Honorable Jay Ramras
Chair, House Judiciary Committee
Alaska State Legislature
Alaska State Capitol
Juneau, AK 99811

Dear Representative Ramras:

In the House Judiciary Committee hearing held on March 27, 2009, Representative Max Gruenberg asked the following questions about House Bill 141 (Interstate Compact for Juveniles):

- When did the first state adopt the new Interstate Compact for Juveniles?

  We contacted Keith Scott, Director of the National Center for Interstate Compacts at the Council of State Governments, to answer this question; he reported that the first state to adopt the new Compact did so in March 2003 (North Dakota). The 35th state to adopt the Compact, Illinois, did so in August 2008. Adoption of the Compact by 35 states placed the Compact into "active" status, meaning that participating states are now developing the new rules that will govern interstate travel by juveniles. With the 35th state enacting the Compact, the first Interstate Commission meeting was held in December 2008. States that have not enacted the new Compact by December 2009 will not be able to transfer juveniles to and from states operating under the new Compact at that time, and will be required to develop individualized Memoranda of Agreement to transfer juveniles to and from those states.

- What are Hawaii's amendments to its bill on the Interstate Compact for Juveniles, noted in the materials provided by Rep. Coghill's office?

  To answer this question we contacted Hawai's juvenile compact administrator. She stated that Hawaii is currently considering two changes to the Compact:

  1.) In Article III, subsection (h)(7), deleting the phrase "regulated person or entity" and replacing it with the word "juvenile." The Hawaiian compact administrator said they believed the phrase "regulated person or entity" to be confusing.

2.) In Article VI of the Compact (found in Section 4 of Alaska's HB 141), deleting section (f), which reads: "The existing rules governing the operation of the Interstate Compact on Juveniles shall be null and void 12 months after the first meeting of the Interstate Commission created under this compact." The Hawaiian compact administrator said they made this change to ensure that Hawaii could continue to work with states that have adopted the new compact as well as states that continue to operate under the old compact.

We consulted with Jan Rutherdale and Deborah Behr at the Department of Law on these issues. Our two agencies agree that Hawaii's amendments are not needed in Alaska's bill and would only complicate what is intended to be a nationally uniform document. In the first case, we do not believe the term used in the Compact, "regulated person or entity," is confusing. It clearly refers to the individuals subject to the compact. In the second case, we believe Alaska's ability to work with other states, including those that do not adopt the new compact, is ensured in Section 12 of Alaska's HB 141, which reads:

> The Department of Health and Social Services may continue to implement the provisions of former AS 47.15.010 (the old Interstate Compact on Juveniles), as it read on the day before the effective date of this Act, to certain states that are compacting states to the Uniform Interstate Compact on Juveniles, but have not yet enacted the Interstate Compact for Juveniles, set out in AS 47.15.010, as repealed and reenacted by sec. 4 of this Act, or a substantially similar form of that compact.

- Have other states made amendents to the Compact?

To answer this question we contacted the Keith Scott, Director of the National Center for Interstate Compacts at the Council of State Governments. We asked Mr. Scott if he could provide a list of other states' amendments to the Interstate Compact for Juveniles. Mr. Scott said no such list has been assembled by the Council. While he has received occasional inquiries and provided feedback on potential amendments on the Compact from various states, he has not maintained a list of these inquiries and does not know which, if any, of these potential amendments have been adopted. To fully answer this question therefore would require us to contact individual states and review their legislation that enacted the Interstate Compact for Juveniles.

At the request of Acting Chair Nancy Dahlstrom we are sending a copy of this response to the members of the House Finance Committee, the next committee of referral for HB 141.

Sincerely,

Tony Newman
Social Services Program Officer

Barb Murray
Deputy Administrator
Interstate Compact on Juveniles

Cc: The Honorable Carl Gatto, Alaska House of Representatives
The Honorable Lindsay Holmes, Alaska House of Representatives
The Honorable Nancy Dahlstrom, Alaska House of Representatives
The Honorable Bob Lynn, Alaska House of Representatives
The Honorable Max Gruenberg, Alaska House of Representatives
The Honorable Mike Hawker, Alaska House of Representatives
The Honorable Bill Thomas, Alaska House of Representatives
The Honorable Bill Stoltze, Alaska House of Representatives
The Honorable Alan Austerman, Alaska House of Representatives
The Honorable Anna Fairclough, Alaska House of Representatives
The Honorable Richard Foster, Alaska House of Representatives
The Honorable Reggie Joule, Alaska House of Representatives
The Honorable Mike Kelly, Alaska House of Representatives
The Honorable Harry Crawford, Alaska House of Representatives
The Honorable Les Gara, Alaska House of Representatives
The Honorable Woodie Salmon, Alaska House of Representatives
Jan Rutherdale, Civil Division, Alaska Department of Law
Deborah Behr, Civil Division, Alaska Department of Law
Wilda Laughlin, Commissioner's Office, Alaska Department of Health and Social Services

HB 144

Representative Jay Ramras
Chair, House Judiciary
House Labor & Commerce
House Oil & Gas
House Military & Veteran Affairs
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature

· in Session
itol, Room 118
aska 99801-1182
465- 3004
465-2070
(877) 465-3004

District 10

House of Representatives

Memo

To: Representative Dahlstrom
Chair House Rules Committee

CC: Rachelle Fenderson, Committee Aide

From: Representative Jay Ramras

Date: February 2, 2010

Re: HB 144: Uniform Probate Code, Trusts and Wills

Please schedule House Bill 144, Uniform Probate Code, Trusts and Wills to be heard on the House Floor.

Attached to this memo please find the following documents:

- HB 144 Sponsor Statement
- HB 144 version 26-LS0634\A
- HB 144 Sectional version 26-LS0634\A
- Letter of support
- Information on the Uniform Probate Code (UPC)
- Law 0 Fiscal Note
- Office Contact: Jane Pierson, 465-4990

Thank you.

Representative_Jay_Ramras@legis.state.ak.us

Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
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Fairbanks, Alaska 99701
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Representative Jay Ramras
District 10

Sponsor Statement
HB144 - UNIFORM PROBATE CODE; TRUSTS, WILLS

Alaska passed the first piece of trust legislation in 1997. Other states have adopted similar pieces of legislation because they realize the effectiveness of Alaska's trust laws. The trust and estate planning community continuously recommends to the legislature updates and improvements to Alaska trust laws to make sure that Alaska stays on the leading edge of providing the best estate and financial planning solutions.

Alaska's trust laws have had a significant impact on Alaska's economy. The State of Alaska has directly received millions of dollars of insurance premium tax dollars that the state would not have received without our trust laws. Local banks have also benefited, for example Alaska Trust Company has over twenty-million dollars on deposit with local Alaska banks. Many jobs have also been created in the trust, banking, insurance and legal fields.

HB144 provides the following amendments to the Uniform Probate Code to facilitate the administration of wills and trusts in Alaska:

- Adds provisions allowing the settlor of a trust to designate a representative who can represent or bind an incapacitated person in future proceedings relating to the trust administration.

- Establishes that an augmented estate does not include property transferred to an irrevocable trust if the settlor is a discretionary beneficiary of the trust and if the transfer was made more than 30 days before marriage, or with the consent of the decedent's spouse. This provision is similar to statutory provisions adopted in Delaware.

- HB144 also creates a procedure for the establishment of will and trust validity before death. Situations arise where there is a question concerning a person's capacity to execute a will or trust, or whether the document was executed as the result of undue

influence, duress, fraud, or mistake. The new procedure will allow these issues to be brought before the court while the testator or settlor is alive and when evidence is fresh. Similar procedures are allowed in three other states.

- HB144 also provides for venue of a probate proceeding if the decedent was not domiciled in Alaska, but significant assets are located within the state.

The passage of HB144 will ensure that Alaska stays the premier state in which to establish trusts and estates.

Representative_Jay_Ramras@legis.state.ak.us
1/19/10

Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
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Representative Jay Ramras
District 10

HB 144 - UNIFORM PROBATE CODE; TRUSTS, WILLS
SECTIONAL (26-LS0634\A 1.19.10)

Section 1. Amends AS 13.06.120(2), which lists the situations when persons are bound by orders binding others in proceedings under the Uniform Probate Code. Allows a person designated by a trust instrument to represent and bind a born or unborn trust beneficiary. Allows the settlor to designate the person in the trust in various ways. Generally does not allow a designated person serving as a trustee to represent and bind the beneficiaries. Generally does not allow the designated person to represent and bind a beneficiary if the designated person is also a beneficiary.

Also provides that certain persons who represent other persons under AS 13.06.120(2)(A)-(F) are not liable for good faith acts and omissions to the beneficiaries whose interests are represented or to persons claiming through those beneficiaries.

Section 2. Amends AS 13.12.201(b)(9). Makes grammatical and conforming amendments to the definition of "transfer" for certain provisions of the Uniform Probate Code that relates to the elective share of a surviving spouse.

Section 3. Amends AS 13.12.205, which relates to a decedent's nonprobate transfers to other persons. Deletes an irrevocable transfer in trust with a transfer restriction from the property that is included in the augmented estate.

Section 4. Adds AS 13.12.205(b). Provides that the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction if two conditions relating to the trust's settlor and the transfer's timing are met.

Section 5. Makes a conforming amendment for bill section 4 to a cross-reference in AS 13.12.206(3).

Section 6. Makes a conforming amendment for bill section 4 to a cross-reference in AS 13.12.207(b).

Representative_Jay_Ramras@legis.state.ak.us

Section 7. Makes a conforming amendment for bill section 4 to a cross-reference in AS 13.12.209(b).

Section 8. Adds a new set of sections that provide for establishing the validity of wills and trusts before the testator's death.

Sec. 13.12.530. Allows certain persons to petition the court to determine the validity of a will before the testator's death.

Sec. 13.12.535. Allows certain persons to petition the court to determine the validity of a will before the testator's death.

Sec. 13.12.540. Establishes the venue for a petition to determine will or trust validity.

Sec. 13.12.545. Identifies what a petition for will validity must contain.

Sec. 13.12.550. Identifies what a petition for will validity must contain.

Sec. 13.12.555. Authorizes a court to declare a will or trust to be valid. Declares that the will has full legal effect and must be admitted to probate on request of the testator's death, unless modified or revoked after the court's declaration.

Sec. 13.12.560. Makes the court's validity declaration binding on other persons.

Sec. 13.12.565. Directs the court to hold a hearing after a petition is filed. Requires the petitioner to notify the spouse, children, and heirs of the testator or settlor. For a will, also requires the petitioner to notify the testator, the personal representatives nominated in the will, and the devisees under the will. For a trust, also requires the petitioner to notify the settlor and parties in interest.

Sec. 13.12.570. Establishes the burden of proof for the petitions.

Sec. 13.12.575. Allows a testator to modify or revoke the will after the court's declaration.

Sec. 13.12.580. Allows a trust to be modified, terminated, revoked, or reformed after the court's declaration.

Sec. 13.12.585. Establishes which records related to a petition are public, which are available only to certain persons, and which are confidential. Allows the court to order confidential records to be made available to other persons when good cause is shown.

Sec. 131.12.590. Defines terms used in the new article.

Section 9. Amends AS 13.16.410. Allows personal representatives to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

Section 10. Amends AS 13.36.109. Allows trustees to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

Section 11. Indicates how certain provisions in the bill amends court rules.

Section 12. States that those sections that amend the court rules only take effect if the bill section 11 is approved by a two-thirds vote.

Representative_Jay_Ramras@legis.state.ak.us

HOMPESCH & EVANS
ATTORNEYS AT LAW
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FAIRBANKS, ALASKA 99701-2879

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(907)452-1700
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RICHARD W. HOMPESCH II
SUSAN L. EVANS
MICHAEL J. CAVALIERE

PROFESSIONAL STAFF
BARBARA CORY-HOMPESCH
ENROLLED AGENT (IRS)

March 23, 2009

VIA FAX (907) 465-2070

Representative Jay Ramras
State Capitol
Juneau, Alaska 99801-1182

Re: HB 144

Dear Representative Ramras:

I am writing in support of HB 144. I have worked as a will and trust attorney for nearly 25 years. If House Bill 144 becomes law, Alaska will be the first state to my knowledge that permits a testator to petition the court for an order regarding the validity of his or her will during the lifetime of the testator.

Under current law the validity of the will cannot be determined until after the death of the most important witness – the testator. This gives a procedural advantage to the party contesting the will and in my opinion is unfair. House Bill 144 will level the playing field and will allow a person to testify in court in order to establish the validity of his or her own will. This will allow the court to evaluate first hand the testator's competency and to determine whether the testator was unduly influenced into signing the will.

Thank you for sponsoring HB 144.

Sincerely yours,

HOMPESCH & EVANS
A Professional Corporation

R. Hompesch

Richard W. Hompesch II

RWH

Uniform Probate Code

The Uniform Probate Code (UPC) is a comprehensive statute that unifies, clarifies, and modernizes the laws governing the affairs of decedents and their estates, certain transfers accomplished other than by a will, and trusts and their administration. The UPC was originally approved by the National Conference of Commissioners on Uniform State Laws and the House of Delegates of the American Bar Association in 1969. The purpose of the UPC is to modernize probate law and probate administration and to encourage uniformity through the adoption of the code by all fifty states. The UPC, which has been amended numerous times, has been adopted in its entirety by sixteen states: Alaska, Arizona, Colorado, Florida, Hawaii, Idaho, Maine, Michigan, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Carolina, South Dakota, and Utah. The other thirty-four states have adopted parts of the UPC, but in general the UPC has not succeeded in providing a uniform body of substantive and procedural probate law.

The UPC contains seven substantive articles. Article I contains general provisions, definitions, and jurisdictional topics. Article II governs wills and intestate succession, which occurs when a person dies without leaving a will. Article III deals with the probate of wills and the administration of estates, article IV concerns the probating of estates in states other than the domicile of the decedent, article V extends protection to persons under disability and their property, and article VI governs nonprobate transfers of property. Article VII contains comprehensive provisions on trust administration.

The prime objective of the UPC is to simplify the probate process. For example, article III provides for supervised and unsupervised administration of probate. For estates with few assets and no disputes among the beneficiaries, the UPC allows unsupervised administration. In this case the executor of the will, who is called a Personal Representative in the UPC, handles the probating of the estate without direct supervision by the probate court. The personal representative handles every step of the probate process by filing a series of simple forms with the probate court. Unsupervised administration reduces the cost of probate and speeds up the process. Probate courts are freed from dealing with routine matters and may concentrate their efforts on estates with substantial assets or contested matters, where supervised administration is necessary.

The adoption of the UPC by state legislatures has been fought both by attorneys, who are opposed to unsupervised administration and to the overturning of current state laws governing probate, and by bonding companies, which stand to lose business because unsupervised probate does not require the posting of a bond. In light of this opposition, the Commissioners on Uniform State Laws have developed freestanding acts from similar provisions integrated into the UPC. This technique permits provisions, such as those involving powers of attorney and guardianship, to become law without disturbing other parts of a state's probate code.

Further readings

Averill, Lawrence H., Jr. 2001. *Uniform Probate Code in a Nutshell.* 5th ed. St. Paul, Minn.: West Group.

——. 1992. "An Eclectic History and Analysis of the 1990 Uniform Probate Code." *Albany Law Review* 55 (summer).

Stimmel, Andrew. 2002. "Mediating Will Disputes: A Proposal to Add a Discretionary Mediation Clause to the Uniform Probate Code." *Ohio State Journal on Dispute Resolution* 18 (fall).

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FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 144**
() Publish Date:

Identifier (file name): HB144-LAW-CIV-2-02-10
Title: An Act relating to the Uniform Probate Code.
Sponsor: REPRESENTATIVE(s) RAMRAS
Requester: JUDICIARY

Dept. Affected: Law
RDU: Civil
Component: Com. And Fair Business
Component Number: 2717

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill provides conformity between Alaska's elective share and testamentary proof provisions in Alaska's Uniform Probate Code with those adopted in the 2009 amendments to the official Uniform Probate Code. It ensures that irrevocable trusts with transfer restrictions are excluded from the augmented estate. Finally, it allows petitioners to determine the validity of wills and trusts prior to the death of the settler and establishes the procedures to be followed in accomplishing this.

Prepared by: Eileen Donahue, Division Operations Manager — Phone 465-5427
Division: Administrative Services — Date/Time 2/2/10 12:00 AM
Approved by: Daniel S. Sullivan, Attorney General — Date 2/2/2010
Department of Law

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB144
(H) Publish Date: 4/14/09

Identifier (file name): HB144-LAW-CIV-4-2-09
Title: An Act relating to the Uniform Probate Code.
Sponsor: Labor and Commerce
Requester: REPRESENTATIVE(s) RAMRAS

Dept. Affected: Law
RDU: Civil
Component: Com. And Fair Business
Component Number: 2717

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill provides conformity between Alaska's elective share and testamentary proof provisions in Alaska's Uniform Probate Code with those adopted in the 2009 amendments to the official Uniform Probate Code. It ensures that irrevocable trusts with transfer restrictions are excluded from the augmented estate. Finally, it allows petitioners to determine the validity of wills and trusts prior to the death of the settler and establishes the procedures to be followed in accomplishing this.

Prepared by: Robert Meiners, Deputy Director — Phone 465-3673
Division: Administrative Services — Date/Time 4/2/09 2:00 PM
Approved by: Wayne Anthony Ross, Attorney General — Date 4/2/2009
Department of Law

(Revised 9/10/2008 OMB)

[redacted] HOUSE COMMITTEE REPO[redacted]

(7)
Date Referred to Committee: April 14, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 1/29/10

The JUDICIARY Committee considered: **HOUSE BILL NO. 144**

"An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate transfers, augmented estates, personal representatives, and trustees; and amending Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate Procedure, and Rule 37.5, Alaska Rules of Administration."

HB 144 UNIFORM PROBATE CODE; TRUSTS, WILLS

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW	1			✓

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN			X	
	Gruenberg	/			
	HERRON			X	
	Gatto			X	
Chair:				X	
Chair:					

HB

146

Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services
1292 Sadler Way, Suite 324
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Toll Free: (877) 465-3004

Representative Jay Ramras
District 10

SPONSOR STATEMENT
HB 146 – AN ACT RELATING TO TRANSFER RESTRICTIONS ON TRUST INTERESTS
(26-LS0633\A)
1/19/10

HB146 aims to update and clarify Alaska trust laws making Alaska a better place for investors and families to invest in the competitive arena of trust management. This bill provides the following amendments to Alaska's current law:

- Clarifies the burden of proof which a creditor must meet to establish that a transfer in trust was done with the intent to defraud a creditor.
- Clarifies that a spendthrift provision will apply to a trust if distributions are made under the exercise of discretion by a trustee who is not the settlor, whether or not the exercise of the discretion is governed by a standard.
- Provides that the spendthrift provision in a trust will apply even though the trustee may distribute income or principal to the settlor or to pay income taxes.
- Clarifies that a beneficiary's interest in a trust, whether or not vested, is not considered a factor or economic circumstance in the division of property subject to division of property subject to divorce.

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ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us
1292 Sadler Way, Suite 324
Fairbanks, AK 99701

Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Sectional HB 146
"An Act relating to transfer restrictions on trust interests."

Sections 1 and 2 of the bill amend Alaska's statute by adopting the following provisions which have been adopted in other twelve other states:

- A creditor must establish by clear and convincing evidence that a transfer was made with intent to defraud a creditor. (This standard has been adopted by nine of the other twelve states);
- Distributions can be made under the discretion of a trustee pursuant to a standard, as well as with absolute discretion;
- The settlor may be reimbursed for income taxes attributable to the trust;
- The settlor can retain the power to replace a trustee/advisor with a non-related, non-subordinate party.

Section 3 of the bill clarifies existing Alaska law to provide that in the event of a divorce or dissolution of the marriage of a beneficiary of the trust, the beneficiary's interest, even though not vested, may not be considered a factor or economic circumstance in the division of property.

1/19/10

1708

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 146
(H) Publish Date: 1/27/10

Identifier (file name): HB146-LAW-CIV-1-25-10
Title: An Act relating to transfer restrictions on trust interests
Sponsor: REPRESENTATIVE(s) RAMRAS
Requester: REPRESENTATIVE(s) RAMRAS

Dept. Affected: Law
RDU: Civil
Component: Com. And Fair Business
Component Number: 2717

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE	(Thousands of Dollars)						
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS							
Full-time							
Part-time							
Temporary							

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

This bill proposes amendments to statutes relating to transfer restrictions on trust interests including provisions to receive a distribution of trust's income or principal. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager
Division: Administrative Services
Phone: 465-5427
Date/Time: 1/25/10 12:00 AM

Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date: 1/25/2010

(Revised 11/6/2009 OMB)

Dawn L. Olson
HC-35 box 5438
Wasilla, AK 99654

Jan 25, 2010

Notice, Disclaimer
and enforcement
House Bill 146 (Restrictions on trusts)

I disclaim this Bill. (or amendments
without a law school, scholarly thought process
is diminished. Fix the law school, or I will.
Too often no thought (in 90 days as given.
90 days is illegal, exercise an legislature.
If people restrict the legislature, then I restrict
You. (notice of constitutional challenge).
(the right to scholarly debate) is not subjective.
To give fish, animals, wildlife, birds exclusive
collective trusts and deny endowment trusts
is rational, only if law is not involved.
Creditors already have legal definition ... law dictionary.
Creators desire, rules, not intent.
The terms of trusts cannot be thrown out
by reason.

Fraudulent transfer does not exist. Do we want -
government overseeing everything? Indian cemeteries
is federal law. Mines in Treadwell creek. (State knows).
Child support order is only law in present tense
because the civil rule is a presumption.
It voidable. And if it isn't, why not?
And Judge Eric Smith cannot change it, saving multiple jobs
IRS code mentions, Face a Challenge just because
from Sunshine Act. it makes the
State liable
(not consenting
to enjoined
workers compensation).

1710

D. L. Olson
25 JAN 2010

Notice, Disclaimer
and enforcement
House Bill 146 cont.

Business trusts is too broad a subject.
1st Amendment challenge.
If limited partnerships with an agency
is valid, then I counter challenge
DNA and labor
divisionism within agency by the governor or
Administration to over-ride statutory law, of
partnership, limited partnerships.

The creator of a trust defines protectors
not the legislature.

I had the right to alienate collective trust
of Walmart, and I did it already.
It was for medical and career purposes. (public welfare)
Alienation is valid exercise of law.
State
Beneficiaries are not of creation, nor
is the State a beneficiary

There is no circumstance favoring displaced
older women, Not federal or state and sex
based on religion is alleged. (Anglo-Saxon)
Veterans did recognize role of women. (brainwashing)
Mental capacity of Parkinson Disease
was environmentally caused, how can a state
defer to feds, who have no marriage standards,
of brain disease.
An adversial system of tearing children
into pieces was not in my childrens best
interest. I alienated the claim. (after
children grown). Its my right, not yours.

Dena L Olson

Alaska State Legislature
House Judiciary Committee

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701

Committee Members
Representative Nancy Dahlstrom
Vice Chairman
Representative Bob Lynn
Representative Carl Gatto
Representative Bob Herron
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

To: Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson, Aide
House Judiciary Committee

Date: February 3, 2010

Re: Amendment to HB146

Please make the following amendment to HB146. Remove Sec. 3, Page 3- 4, L.28 – 8 and go final.

Thank you

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 27, 2010 **FURTHER REFERRALS:**

Date of Committee Action: 2/3/10

The JUDICIARY Committee considered: **HB 146**

HOUSE BILL NO. 146
"An Act relating to transfer restrictions on trust interests."

HB 146-TRANSFER RESTRICTIONS ON TRUSTS

Recommends it be replaced with [ ] HCS *or* [√] CS *for* HB146 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
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LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
~~LAW~~	+			✓

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN			X	
	Gruenberg	✓			
	HERRON			X	
	DAVIS			X	
	Holmes			X	
	Gatto	X			
Chair:					
Chair:	FAULKNER	X			

CS FOR HOUSE BILL NO. 146(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE RAMRAS

A BILL

FOR AN ACT ENTITLED

"An Act relating to transfer restrictions on trust interests."

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

*** Section 1.** AS 34.40.110(b) is amended to read:

(b) If a trust contains a transfer restriction allowed under (a) of this section, the transfer restriction prevents a creditor existing when the trust is created or a person who subsequently becomes a creditor from satisfying a claim out of the beneficiary's interest in the trust, unless the creditor is a creditor of the settlor and

(1) **the creditor establishes by clear and convincing evidence that** the settlor's transfer of property in trust was made with the intent to defraud that creditor, and a cause of action or claim for relief with respect to the fraudulent transfer complies with the requirements of (d) of this section; however, a settlor's expressed intention to protect trust assets from a beneficiary's potential future creditors is not evidence of an intent to defraud;

(2) the trust, except for an eligible individual retirement account trust, provides that the settlor may revoke or terminate all or part of the trust without the

consent of a person who has a substantial beneficial interest in the trust and the interest would be adversely affected by the exercise of the power held by the settlor to revoke or terminate all or part of the trust; in this paragraph, "revoke or terminate" does not include a power to veto a distribution from the trust, a testamentary nongeneral power of appointment or similar power, or the right to receive a distribution of income, principal, or both in the discretion of a person, including a trustee, other than the settlor, or a right to receive a distribution of income or principal under **(3)(A), (B), (C), (D), (E), or (F)** [(3)(A), (B), (C), OR (D)] of this subsection;

(3) the trust, except for an eligible individual retirement account trust, requires that all or a part of the trust's income or principal, or both, must be distributed to the settlor; however, this paragraph does not apply to a settlor's right to receive the following types of distributions, which remain subject to the restriction provided by (a) of this section until the distributions occur:

(A) income or principal from a charitable remainder annuity trust or charitable remainder unitrust; in this subparagraph, "charitable remainder annuity trust" and "charitable remainder unitrust" have the meanings given in 26 U.S.C. 664 (Internal Revenue Code) as that section reads on October 8, 2003, and as it may be amended;

(B) a percentage of the value of the trust each year as determined from time to time under the trust instrument, but not exceeding the amount that may be defined as income under AS 13.38 or under 26 U.S.C. 643(b) (Internal Revenue Code) as that subsection reads on October 8, 2003, and as it may be amended;

(C) the transferor's potential or actual use of real property held under a qualified personal residence trust within the meaning of 26 U.S.C. 2702(c) (Internal Revenue Code) as that subsection reads on September 15, 2004, or as it may be amended in the future; [OR]

(D) income or principal from a grantor retained annuity trust or grantor retained unitrust that is allowed under 26 U.S.C. 2702 (Internal Revenue Code) as that section reads on September 15, 2004, or as it may be amended in the future;

(E) distributions that are made under the exercise of discretion by a trustee who is not the settlor, whether or not the exercise of the discretion is governed by a standard; or

(F) the transferor's potential or actual receipt of income or principal to pay, in whole or in part, income taxes due on income of the trust if the potential or actual receipt of income or principal is made under a provision in the trust instrument that expressly provides for the payment of the taxes and if the potential or actual receipt of income or principal would be the result of a trustee's acting in the trustee's discretion or under a mandatory direction in the trust instrument; distributions to pay income taxes made under a discretionary or mandatory provision included in a governing instrument referred to in this subparagraph may be made by direct payment to the taxing authorities; or

(4) at the time of the transfer, the settlor is in default by 30 or more days of making a payment due under a child support judgment or order.

*** Sec. 2.** AS 34.40.110(h) is repealed and reenacted to read:

(h) A transfer restriction is allowed under (a) of this section and is enforceable under (b) of this section even if the settlor has the authority under the terms of the trust instrument to

(1) appoint a trustee, a trust protector under AS 13.36.370, or an advisor under AS 13.36.375;

(2) remove a trustee or trust protector and appoint a replacement trustee or trust protector who is not a related or subordinate party; in this paragraph, "related or subordinate party" has the meaning given in 26 U.S.C. 672(c) (Internal Revenue Code); or

(3) remove an advisor and appoint a replacement advisor.

HB 149

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
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Fax: (907) 465-2070
Representative_Jay_Ramras@legis.state.ak.us
1292 Sadler Way, Suite 324
Fairbanks, AK 99701

Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

SPONSOR STATEMENT

HB149 – "An Act allowing appropriations to the civil legal services fund from court filing fees." (26-LS0624\A 3.12.09)

This bill is designed to help fund civil legal services for low-income Alaskans. House Bill 149 will provide a mechanism for funding the Alaska Legal Services Corporation (ALSC), by allowing the legislature to appropriate up to 25 percent of filing fees paid to the Alaska Court System during the previous fiscal year into the Civil Legal Services Fund. In the fiscal year of 2008, the Alaska Court System collected and turned over to the State of Alaska a total of $2,525,300.

The Alaska Legal Services Corporation was established in 1966 to address the civil legal aid needs of low-income Alaskans. ALSC is not a state agency, but is instead a nonprofit charitable 501(c)(3) whose funding comes from a variety of state, federal, and private sources. Over the last several years ALSC funding has dwindled, from $4.2 million as of 1987 to $3.1 million as of 2007, while it struggles to serve a larger number of poverty-level applicants. Appropriations from the State of Alaska that were once as high as $1.2 million in FY84 are currently at $200,000. House Bill 149 aims to correct this lack of funding and helps ensure civil legal representation for Alaska's most needy population.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 149**
() Publish Date:

Identifier (file name): HB149-DOR-TRS-03-23-09
Title: approps to civil legal services fund from court filing fees
Sponsor: Representative Ramras
Requester: Representative Ramras

Dept. Affected: DOR
RDU: Taxation and Treasury
Component: Treasury Division
Component Number: 121

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE	(Thousands of Dollars)						
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

Investment of these funds would be included in the GFONSI investment group where they are currently invested. There would be no additional costs to the Department of Revenue for investment purposes.

Prepared by: Ginger Blaisdell, Director — Phone 465-2312
Division: Administrative Services — Date/Time 3/23/2009 9:35am
Approved by: Ginger Blaisdell, Director — Date 3/23/2009
Administrative Services

Jane Pierson

From: Doug Wooliver [dwooliver@courts.state.ak.us]
Sent: Friday, February 27, 2009 10:28 AM
To: Jane Pierson
Subject: RE: HB149

Hello Jane. Here is what we collected and turned over to the state in the last few years. Doug

FY08 – $2,525,300

FY07 – $2,402,700

FY06 – $2,623,400

FY05 – $2,651,300

-----Original Message-----
From: Jane Pierson [mailto:Jane_Pierson@legis.state.ak.us]
Sent: Thursday, February 26, 2009 2:34 PM
To: Doug Wooliver
Subject: HB149

Hi Doug,

Just to let you know, I have the same request into revenue. However, I was curious to know how much money was taken in last year in court filing fees.

Thanks,

Jane W. Pierson, Staff
Representative Jay Ramras
State Capitol, Room 118
Juneau, AK 99801
Phone: (907) 465-4990
Cell: (907) 978-5115
Fax: (907) 465-2070

LSC

ALASKA LEGAL SERVICES CORPORATION
FAIRBANKS OFFICE

1648 CUSHMAN STREET, SUITE 300
FAIRBANKS, ALASKA 99701-6238
TELEPHONE (907) 452-5181
FAX (907) 456-6359
WWW.ALASKALAWHELP.ORG

March 6, 2009

Representative Jay Ramras
Alaska State Capitol, Room 118
Juneau AK 99801

Dear Representative Ramras,

I want to thank you again for having HB 149 introduced by the House Judiciary Committee. This bill if enacted into law can play a vital role in protecting the basic necessities of life for indigent Alaskans from jeopardy through civil legal proceedings.

Although I know that you understand this, it is not widely understood by the public at large that, although Alaskans who are charged with crimes are entitled to appointed attorneys, Alaskans who have civil legal problems are left on their own.

Thus, Alaskan families can face evictions or foreclosures forcing them out of their homes; garnishments or attachments raiding their bank accounts or paychecks; loss of health insurance coverage; victimization by domestic violence; and any number of other hazards, with none of the legal assistance or protections made available to an indigent Alaskan facing a criminal charge.

ALSC's mission is to provide meaningful access to justice in resolving legal problems for low-income clients through our civil justice system, thus promoting family stability and reducing the legal consequences of poverty.

ALSC provides this help with a cost-effectiveness that could not be equaled by any state agency. It recruits private attorneys to volunteer their time to represent indigent families for free, through its successful Volunteer Attorney Support program. Also, as a private charitable organization, ALSC salaries are considerably lower than either private practice or state employment. For example, a just-admitted law school graduate coming to work for ALSC would get about $32,000; the same attorney going to work for a state governmental agency would start at about $60,000.

In addition, providing indigent litigants with counsel helps our entire justice system. Pro se litigants require more judicial time, with attention to other cases postponed; pro se litigants are more apt to return to court repeatedly due to their lack of understanding; and presiding over pro se litigation frequently pushes the judge towards the role of educator, or advisor, to the pro se party, detracting from his/her role as neutral decision-maker.

It is for this reason that looking to civil case filing fees as a designated program receipt, to help provide the legal assistance that will yield more just results for indigent Alaskans, and will benefit our justice system as a whole, is an appropriate and salutary measure.

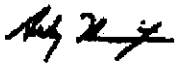
Last year, ALSC opened up slightly more than 1500 new cases, providing assistance to almost 4000 individuals through direct attorney-client relationships. Many more received help through attendance at ALSC classes and clinics, and through ALSC's self-help web site.

At the same time, though, ALSC has figures for those it has been unable to serve, or unable to serve completely. We turned down 900 applications, and of those, about 40% were turned down for inadequate staffing and resources within ALSC. We recorded another 680 inquiry calls that were not followed up with an application, and about 40% of those appeared to be in situations where the caller likely could have benefitted from ALSC assistance had ALSC been able to offer it. And of the 1500 cases where we did provide assistance, about 9% were situations in which the client wanted more than what ALSC was able to provide.

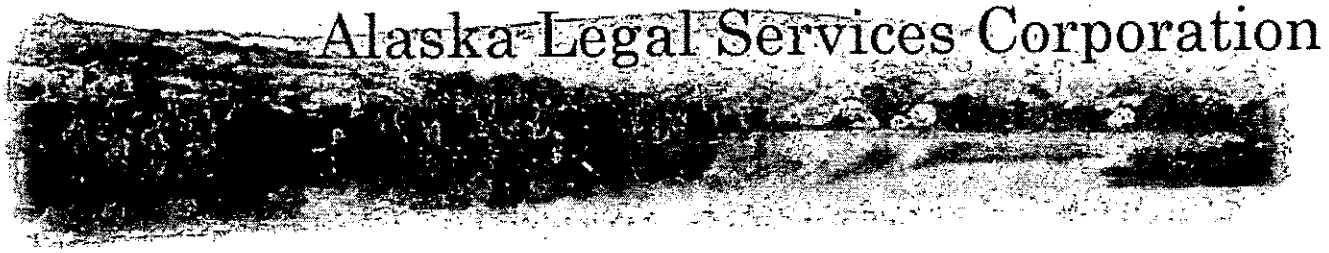
Thus, although ALSC stretches its resources to help as many as possible, there is a large amount of unmet need, and the above figures do not include persons who did not even contact ALSC, either because they did not know about the possibility of assistance or because they were too discouraged to do so. There is much work that still needs doing.

Again, thank you for you willingness to put HB 149 before the legislature; it is sorely needed, and we are greatly appreciative of your efforts.

Sincerely,



Andy Harrington
Executive Director



For information on employment opportunities at ALSC, click here.

Google™ Google Search

Search Google Search alsc-law.org only

ALSC provides legal advice and representation to:

-Help resolve serious legal problems of low-income Alaskans

-Promote family, social and economic stability by upholding the rule of law

-Reduce the legal consequences of poverty

Alaska Legal Services Corporation (ALSC) is a private, nonprofit law firm that provides free civil legal assistance to low-income Alaskans.

Press Releases

For more than 40 years, ALSC has responded to the civil legal needs of low-income Alaskans who would otherwise go without legal assistance.

Our efforts improve the quality of life for our children, our families, the elderly and disadvantaged, and our community.

You can help support the legal assistance that ALSC provides. Click here for more information on the Partners In Justice, CIRI, Guess and Rudd Challenge.

For many self-help legal resources please visit AlaskaLawHelp.org

This web site has been prepared by Alaska Legal Services Corporation (ALSC) for general information purposes only. The information on this web site is not intended as a substitute for legal advice. Legal advice is dependent upon the specific circumstances of each situation. Accessing this web site does not create or constitute an attorney-client relationship between ALSC and the user. For more specific information about your problem, you should contact an attorney. ALSC is not able to respond to requests for legal assistance made by e-mail.

Alaska Legal Services Corporation is funded in part by the Legal Services Corporation. As a condition of receiving this funding, Alaska Legal Services Corporation may not use any funds for any activity prohibited by the Legal Services Corporation Act or by Section 504 of Public Law 104-134.

Send your comments regarding this website to webmaster

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This page last updated March 16, 2009

(Please note the webmaster is NOT a lawyer, Contact one of our Local Offices if you have a legal question.)

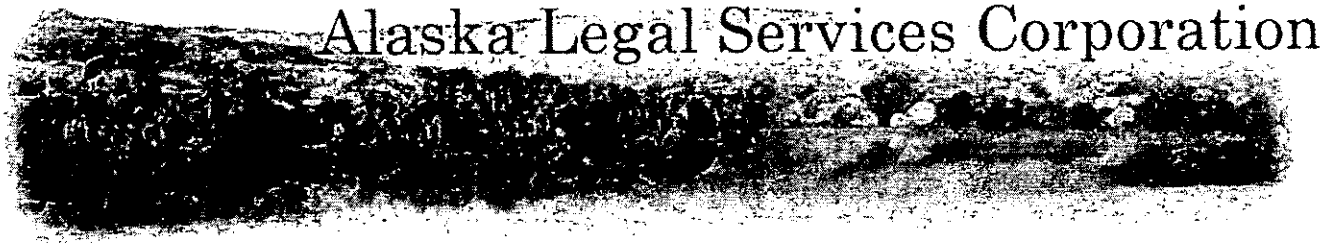
Please Note:
Alaska Legal Services Corporation does not handle criminal cases, accident claims, personal injury or wrongful death cases, or representation of prisoners.

We typically handle cases involving:

Family law
Divorce
Custody/Visitation
Child Support
Paternity
Adoptions
Guardianships
Conservatorships
Domestic violence

Housing
Consumer Issues
Government Benefits
Health Issues
Wills and Probates
Native Allotments
Subsistence Issues
Indian/Tribal law

LSC



Client eligibility is determined by income level and the type of legal problem. Current income eligibility figures are:

Size of Family Unit	Maximum Gross Yearly Income
1	$16,250
2	$21,875
3	$27,500
4	$33,125
5	$38,750
6	$44,375
Each Additional	$5,625

Press Releases

There are a number of factors that are considered when we make a decision about the income eligibility. Depending on your situation, you might be eligible to receive services even if your income is higher than these guidelines. Income eligibility determinations are made on a case-by-case basis, so if you aren't sure whether your income is too high you should contact your nearest ALSC office.

Alaskans over the age of 60 are generally provided assistance without regard to income, although a priority is placed on providing assistance to Seniors in social or economic need.

If you are serving as a caregiver, contact your nearest ALSC office to see if we can help you.

Native Allotment clients receive free legal services no matter what their income is, or where they live. ALSC's statewide Native Allotment unit is located in Anchorage.

For information on the types of cases that ALSC may be able to handle, see Types of Cases. If you have questions about income eligibility, contact the nearest Alaska Legal Services Corporation office

We also have a web based eligibility presentation you may try. Click here to give it a try.

LSC

HOUSE COMMITTEE REPC Γ

(7)
Date Referred to Committee: February 25, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 3/20/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 149**

"An Act allowing appropriations to the civil legal services fund from court filing fees."

HB 149 CIVIL LEGAL SERVICES FUND

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
REV				✓

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	**Printed Last Name**	**DP**	**DNP**	**NR**	**AM**
	LYNN	X			
	Gruenberg	✓			
	Coghill			✓	
	Gatto		X		
	Holmes	X			
Chair:	ROMKES	X			
Chair:					

HB

152

Representative Jay Ramras
Chair, House Judiciary
House Labor & Commerce
House Oil & Gas
House Military & Veteran Affairs
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146

Alaska State Legislature

While in Session
State Capitol, Room 118
Juneau, Alaska 99801-1182
(907) 465- 3004
Fax: 465-2070
Toll Free: (877) 465-3004

House District 10

House of Representatives

Memo

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Date: March 20, 2009

Re: Referral File for HB152

Attached please find the following documents, which represent the referral file for HB152:

- Sponsor Statement
- CSHB152(JUD) 26-LS0158\S
- Fiscal note
- Sectional
- Amendment 26-LSO158\E.1
- Amendment 26-LSO158\E.3
- Amendment 26-LSO158\E.4
- Amendment 26-LSO158\E.5
- HB152 26-LSO158\E
- Sectional for HB152 26-LSO158\E
- Letter from Acting Attorney General
- AS Chapter 5
- Committee Referrals

Representative_Jay_Ramras@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB152
() Publish Date:

Identifier (file name): HB152-LAW-CIV-3-11-09
Dept. Affected: LAW
Title: 2009 REVISOR'S BILL
RDU: CIVIL
Component: LEGISLATION & REGULATIONS
Sponsor: RULES BY REQUEST OF LEGISLATIVE COUNCIL
Requester: JUDICIARY
Component Number: 2209

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

HB 152 makes important technical changes to the Alaska statutes to correct deficiencies, conflicts, or obsolete provisions. It is believed there will be no fiscal impacts on the Department of Law if HB 152 is enacted into law.

Prepared by: Robert Meiners, Deputy Director — Phone 907.465.5427
Division: Administrative Services Division — Date/Time 3/11/09 4:00 PM
Approved by: Richard Svobodny, Acting Attorney General — Date 3/11/2009
Department of Law

(Revised 9/10/2008 OMB)

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

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Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Fax

To: Kathryn Kurtz
Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: March 19, 2009

Re: Please go final on HB152

Jerry,

Today the House Judiciary Committee passed out HB152 version 26-LS0158\E with the following amendments E.1, E.3, and E.4. Please make the amendments and go final.

Thank you

1730

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 18, 2009

SUBJECT: Changes in HB 152 involving federal statutes
(Work Order No. 26-LS0158\E)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Kathryn L. Kurtz KK
Assistant Revisor

Thank you very much for hearing this bill on Monday morning. After the hearing, I analyzed the 11 bill sections which change references to federal statutes. I offer this analysis as a supplement to the sectional summary.

Sections 18, 23, and 73 of the bill insert the word "former" in statutes where the federal section cited has been repealed. This insertion is particularly important in section 18, where the material referenced has been removed from the federal statute and different material inserted at that designation.[1]

---

[1] Section 18 inserts the word "former" before a cite to 20 U.S.C. 7703(f)(2)(B) in AS 14.17.990(5).

AS 14.17.990 defines terms for AS 14.17, which relates to financing of public schools. The term "eligible federal impact aid", defined in AS 14.17.990(5), is used in AS 14.17.410(b) and (e) in calculating state aid for school districts. This paragraph cites 20 U.S.C. 7703(f)(2)(B). That subparagraph no longer exists. The existing 20 U.S.C. 7703(f) was enacted as 20 U.S.C. 7703(h), and carried that designation when AS 14.17.990 was enacted in 1982. It was redesignated as 20 U.S.C. 7703(f) in 2000.

The current reference in the Alaska statute directs the reader to text that is obviously not that to which the legislature in 1982 intended to refer. Insertion of the word "former" in this instance alerts the reader not to rely on the text currently codified at 20 U.S.C. 7703(f) in interpreting this section.

In addition to this change, the legislature and the administration may wish to review whether the federal impact funding described in the former 20 U.S.C. 7703(f)(2)(B) is still forthcoming, and if so, if there is a more useful way to describe that funding.

Section 39 of the bill contains two changes. The first reflects a redesignation of a paragraph in the federal code.[2] The redesignation is a change in numbering only, not a change in the wording or the substance of the federal statute. The second change replaces a definition that has been repealed[3] with a different federal definition[4] that is very similar

---

[2] The first reference amended in this section is currently inaccurate because the paragraph in question was renumbered after the bill enacting AS 23.20.401 was passed, but before it took effect. August 13, 1981, 42 U.S.C. 654(20)(B)(i) was enacted, in sec. 2335, P.L. 97-35. On June 24, 1982, the governor approved CCSSB 552, which became ch. 115, SLA 1981. Section 18 of that Act, which enacted AS 23.20.401, took effect September 26, 1982. Meanwhile, at the federal level, sec. 171(b)(1)(C) of P.L. 97-248, dated September 3, 1982, redesignated 42 U.S.C. 654(20)(B)(i) as 42 U.S.C. 654(19)(B)(i). The content of the subparagraph was not changed in the redesignation, and has not been amended since.

[3] Former 42 U.S.C. 662(e) read:

> **§ 662. Definitions**
> For purposes of section 459 [42 USCS § 659]--
> . . .
> (e) The term "legal process" means any writ, order, summons, or other similar process in the nature of garnishment, which--
>
> (1) is issued by (A) a court of competent jurisdiction within any State, territory, or possession of the United States, (B) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process, or (C) an authorized official pursuant to an order of such a court of competent jurisdiction or pursuant to State or local law, and
>
> (2) is directed to, and the purpose of which is to compel, a governmental entity, which holds moneys which are otherwise payable to an individual, to make a payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support or make alimony payments.

[4] 42 U.S.C. 659(i) provides:

> (i) Definitions. For purposes of this section--
> ...
> (5) Legal process. The term "legal process" means any writ, order, summons, or other similar process in the nature of garnishment--
> (A) which is issued by--

to the definition in the section cited.[5] In case the committee, after reviewing this memo, prefers not to substitute this definition, amendments 1) removing this change and leaving the first change intact (amendment E.3) and 2) substituting the text of the repealed definition for the reference (amendment E.5) are enclosed. The second amendment addresses the repeal, the first would leave it for another bill. Only one of the amendments should be used.

Section 66 reflects a recodification of federal law. According to the code, the recodification did not effect a substantive change to the underlying federal law.[6]

(i) a court or an administrative agency of competent jurisdiction in any State, territory, or possession of the United States;

(ii) a court or an administrative agency of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor the process; or

(iii) an authorized official pursuant to an order of such a court or an administrative agency of competent jurisdiction or pursuant to State or local law; and

(B) which is directed to, and the purpose of which is to compel, a governmental entity which holds moneys which are otherwise payable to an individual to make a payment from the moneys to another party in order to satisfy a legal obligation of the individual to provide child support or make alimony payments.

[5] The definition of "legal process" in a section, 42 U.S.C. 662, was repealed in 1996. The definition in 42 U.S.C. 659(i) is suggested as a replacement because, although it is not identical to the repealed definition, it is very similar. The department has indicated its support for this change. If the differences between the two definitions render 42 U.S.C. 659(i) unacceptable as a substitute, an alternate drafting approach would be to delete the reference and insert the text of the definition found in former 42 U.S.C. 662 into AS 23.20.401(b)(3). Either of these options would most likely be more useful to the reader than the current situation, which forces the reader to locate the text of former 42 U.S.C. 662 as it existed before the repeal.

[6] The federal laws cited, former 49 U.S.C. 1671, et seq. (Natural Gas Pipeline Safety Act of 1968) and former 49 U.S.C. 2001, et seq. (Hazardous Liquid Pipeline Safety Act of 1979), were combined and recodified in 1994 in 49 U.S.C. 60101 et seq. The Act recodifying the sections specifically provided that the recodification was made without substantive change to the laws being recodified:

Sec. 6.(a) Sections 1-4 of this Act restate, without substantive change, laws enacted before July 1, 1993, that were replaced by those sections. Those sections may not be construed as making a substantive change in the laws replaced. Laws enacted after June 30, 1993, that are inconsistent with this Act supersede this Act to the extent of the inconsistency.

Section 70 fixes an apparent error in the Alaska Statutes. Please refer to the sectional summary for further information.

The changes made in the remaining five sections (secs. 7, 20, 46, 84, and 85) are more complicated, in that the underlying federal programs they refer to have changed since the enactment of the referring Alaska statute. If the legislature wishes to review the substance of the changes to the federal laws referred to, it may be preferable to leave the issues presented in these sections to be addressed in substantive bills. An amendment that would delete these five sections from the bill, amendment E.4, is enclosed.

KLK:ljw
09-167.ljw

Enclosures

P.L. 103 - 272, sec. 6(a), July 5, 1994, 49 USC prec. 101 note. For this reason, substitution of a cite to current federal law for the citations to former federal laws in AS 46.03.450 does not substantively change the law of the state. However, provision of the current citation should assist the reader in locating the relevant federal law.

Passed.

26-LS0158\E.1
Kurtz
3/4/09

AMENDMENT

Offered by: Rep. Ramras

OFFERED IN THE HOUSE

TO: HB 152

Page 6, lines 10 - 12:

Delete all material.

Renumber the following bill sections accordingly.

Page 48, line 22:

Delete "Section 89"

Insert "Section 88"

Page 48, line 27:

Delete "sec. 89"

Insert "sec. 88"

Page 48, line 28:

Delete "sec. 90"

Insert "sec. 89"

Page 48, line 29:

Delete "sec. 59"

Insert "sec. 58"

Page 48, line 30:

Delete "secs. 92 and 93"

1 Insert "secs. 91 and 92"

Amendment #2 - PASSED

26-LS0158\E.3
Kurtz
3/18/09

AMENDMENT

Offered by: Rep Coghill

OFFERED IN THE HOUSE

TO: HB 152

Page 14, lines 11 - 12:

Delete "**42 U.S.C. 659(i)(5) (sec. 459(i)(5), Social Security Act)** [42 U.S.C. 662(e) (SEC. 462(e), SOCIAL SECURITY ACT)]"

Insert "42 U.S.C. 662(e) (sec. 462(e), Social Security Act)"

1737

Amend #3 Passed

26-LS0158\E.4
Kurtz
3/18/09

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 152

Page 3, lines 10 - 15:

Delete all material.

Renumber the following bill sections accordingly.

Page 6, line 31, through page 7, line 5:

Delete all material.

Renumber the following bill sections accordingly.

Page 29, line 31, through page 30, line 5:

Delete all material.

Renumber the following bill sections accordingly.

Page 46, line 4, through page 48, line 1:

Delete all material.

Page 48, line 22:

Delete "Section 89"

Insert "Section 84"

Page 48, line 27:

Delete "sec. 89"
Insert "sec. 84"

Page 48, line 28:
Delete "sec. 90"
Insert "sec. 85"

Page 48, line 29:
Delete "Section 59"
Insert "Section 56"

Page 48, line 30:
Delete "secs. 92 and 93"
Insert "secs. 87 and 88"

NOT OFFERED

26-LS0158\E.5
Kurtz
3/18/09

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 152

Page 14, lines 10 - 13:

Delete all material and insert:

"(3) any amount required to be deducted and withheld through legal process [, AS DEFINED IN 42 U.S.C. 662(e) (SEC. 462(e), SOCIAL SECURITY ACT),] properly served upon the department**; in this paragraph, "legal process" means any writ, order, summons, or other similar process in the nature of garnishment, that is**

(A) directed to, and the purpose of which is to compel, a governmental entity that holds money that is otherwise payable to an individual to make a payment from that money to another party to satisfy a legal obligation of an individual to provide child support or make alimony payments; and

(B) issued by

(i) a court of competent jurisdiction in any state, territory, or possession of the United States;

(ii) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement that requires the United States to honor that country's process; or

(iii) an authorized official under an order of a court of competent jurisdiction or under state or local law."

LEGAL SERVICES

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MEMORANDUM March 13, 2009

SUBJECT: 2009 Revisor's Bill Sectional Summary - HB 152
(Work Order No. 26-LS0158\E)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Kathryn L. Kurtz
Assistant Revisor

The following is a sectional summary of the 2009 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the revisor of statutes

> . . . shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state.

To assist the reader in understanding the bill, I have summarized the contents by listing sections that have similar purposes or effects.

Sections that delete, repeal, or update obsolete provisions: Sections 2 - 5, 7, 15, 18 - 21, 23, 28, 29, 35, 38, 39, 43, 44, 46, 52, 65 - 69, 73, 81, 84, 85, 88, 89, and 91 amend or repeal provisions that have become obsolete through other legislative action.

Sections that correct errors or oversights: Sections 8, 10, 13, 14, 16, 25, 26, 30 - 32, 40, 47, 54, 63, 70 - 72, 74 - 77, 80, 82, 83, 86, and 87 correct errors or oversights.

Sections that improve the form or substance of the law: Sections 1, 6, 9, 11, 12, 17, 22, 24, 27, 33, 34, 36, 37, 41, 42, 44, 45, 48 - 51, 53, 55 - 62, 64, 78, and 79 propose amendments to improve the form or substance of the statutory law of Alaska.

SECTIONAL SUMMARY

Bill section 1 substitutes a generic description for a specific reference to the division of agriculture in AS 03.09.020(a). There is no statutorily created division of agriculture. Currently there is an administratively created division of agriculture within the Department of Natural Resources; however, that name could be changed

administratively. The generic reference will apply no matter what name is given to the division administratively.

Bill section 2 substitutes a generic reference to "college or department of the University of Alaska responsible for the agricultural and forestry experiment station" for a specific reference to the "Institute of Agricultural Sciences" in AS 03.22.010. The University no longer has an institute called the "Institute of Agricultural Sciences." According to the office of the Dean of the School of Natural Resources and Agricultural Sciences, what was the Institute of Agricultural Sciences is now known as the Agricultural and Forestry Experiment Station.

Bill section 3 amends AS 03.22.020 by substituting a generic reference to "college or department of the University of Alaska responsible for the agricultural and forestry experiment station" for a specific reference to the "Institute of Agricultural Sciences". See bill section 2.

Bill section 4 amends AS 03.22.040 by adding "and Forestry" to reflect the current name of the University of Alaska Agriculture and Forestry Experiment Station and makes the reference to the University generic for consistency with other references. See bill section 2.

Bill section 5 amends AS 03.22.050 by substituting a generic reference to "college or department of the University of Alaska responsible for the agricultural and forestry experiment station" for a specific reference to the "Institute of Agricultural Sciences". See bill section 2.

Bill section 6 substitutes a generic description for a specific reference to the division of agriculture in AS 03.47.040(2). See bill section 1.

Bill section 7 amends AS 03.58.010 to expand a spanned reference to the federal Organic Foods Production Act of 1990 to include a new section added in 2002.

Bill section 8 amends AS 08.36.246(a) to repeal subparagraph (B), which refers to "a specialty examination given by the Central Regional Examining Board" because there is no such exam given by that entity. The Chief Assistant Attorney General of the Legislation and Regulations section at the Attorney General's office is in accord with this change.

Bill section 9 inserts the word "acid" in AS 11.56.762 to reflect the full name of the system established in AS 44.41.035.

Bill section 10 corrects an apparent error by changing "adopted parent" to "adoptive parent" in AS 12.55.125(b). Although Alaska law provides a process for parents to adopt children, it does not provide for the adoption of parents by children.

Bill section 11 adds an "or" and changes "from" to "to" to improve the form and readability of AS 12.61.020(a).

Bill section 12 deletes two commas to improve the form and readability of AS 12.61.020(c).

Bill section 13 deletes "is" and inserts "are" to create agreement between the two subjects and the verb in the first sentence of AS 12.62.160(a).

Bill section 14 changes "heirs" plural to the singular "heir" in AS 13.06.050(21) to match the singular tense used elsewhere in the paragraph. Under AS 01.10.050, words in the singular include the plural. In this instance, use of the singular throughout improves readability.

Bill section 15 amends AS 14.03.075(g)(2) to delete a reference to the definition of "individualized education program team" in AS 14.30.350, since that definition was repealed in 2001. This section replaces the reference with a description.

Bill section 16 changes the phrase "counting period" in AS 14.17.600 to "count period" to match the usage in AS 14.17.420(a)(2) and 14.17.990.

Bill section 17 adds a new subsection to AS 14.17.920, providing that the Department of Education and Early Development shall, by regulation, define the term "school" for purposes of AS 14.17. This codifies sec. 40(b), ch. 83, SLA 1998. While the revisor has the power to codify uncodified law editorially, the significance of this provision suggests that public review would be a good idea. If the legislature determines that sec. 40(b), ch. 83, SLA 1998 was not intended to be of unlimited duration, instead of codifying this section, it could be repealed.

Bill section 18 amends AS 14.17.990(5) to reflect the repeal of 20 U.S.C. 7703(f)(2)(B), by inserting the word "former".

Bill section 19 deletes "by July 1, 1997," from AS 14.20.149(a), as the deadline has become obsolete.

Bill section 20 amends AS 14.30.174(b)(2) to update a reference to federal law. The sections at the end of the previous spanned reference (20 U.S.C. 7141 - 7142) were omitted in a 2002 revision of the law, however, similar provisions were added at 20 U.S.C. 7161 - 7165, under the heading of safe and drug-free schools and communities. Since additional sections may be added to the federal law, the change in this section is to "et seq."

Bill section 21 amends AS 14.35.025 by deleting a reference to the "United States Department of Health, Education, and Welfare," which no longer exists (it has been

superseded by the Department of Health and Human Services and the Department of Education), and inserting a generic reference to "the appropriate federal agency."

Bill section 22 deletes the word "or" in one place in AS 14.40.826(a)(5), and adds commas and the word "have" in two places to improve the form and readability of the paragraph.

Bill section 23 amends AS 14.50.010 to indicate the repeal of 20 U.S.C. 401 - 602.

Bill section 24 amends AS 14.57.199 to substitute a generic description for a specific reference to the division of state libraries, archives, and museums. The division is not created in statute and could be renamed or reorganized administratively.

Bill section 25 deletes "two-thirds" and replaces it with "three-fourths" in AS 15.45.160 and adds a provision relating to the minimum number of signatures per district to conform this section to AS 15.45.140 and article XI, sec. 3, Constitution of the State of Alaska.

Bill section 26 deletes "two-thirds" and replaces it with "three-fourths" in AS 15.45.390 and adds a provision relating to the minimum number of signatures per district to conform this section to AS 15.45.370 and article XI, sec. 3, Constitution of the State of Alaska.

Bill section 27 makes a conforming change in AS 17.37.070(6) to reflect the removal of the definition of "treatment facility" in AS 47.14.990(12). The term "treatment facility" is not used anywhere in AS 47.14, so a definition of the term does not belong in AS 47.14.990. The term "treatment facility" is used in AS 47.12, and a definition of the term identical to that in AS 47.14.990 appears in AS 47.12.990. AS 17.37.070(6) refers to the definition of "treatment facility" in AS 47.14.990. Since that term and the other terms defined by reference are also defined in AS 47.12.990, and those definitions are identical to the ones found in AS 47.14.990, a reference to AS 47.12.990 is substituted for the original reference here to preserve the content of the definitions for purposes of this section despite the removal of the definition of "treatment facility" in bill section 77.

Bill section 28 deletes material applicable only before October 1, 2006 from AS 19.15.025(a).

Bill section 29 deletes material applicable only before October 1, 2006 from AS 19.15.025(b).

Bill section 30 deletes the word "care" and inserts "insurance" in AS 21.54.120(a) to accurately reflect the title of the federal Health Insurance Portability and Accountability Act of 1996.

Bill section 31 deletes the word "care" and inserts "insurance" in AS 21.54.500(11) to accurately reflect the title of the federal Health Insurance Portability and Accountability Act of 1996.

Bill section 32 deletes the word "care" and inserts "insurance" in AS 21.54.500(17) to accurately reflect the title of the federal Health Insurance Portability and Accountability Act of 1996.

Bill section 33 replaces a comma with the word "and" to improve the readability of AS 23.05.060(3).

Bill section 34 deletes "Alaska Workers' Compensation Board" in AS 23.05.067(a)(1)(B) and replaces it with "division of workers' compensation in the department." The reports referred to in AS 23.30.155(m) and (n) are made to the division.

Bill section 35 amends AS 23.20.175(c) to remove an obsolete date reference.

Bill section 36 is a conforming amendment to AS 23.20.276(b) that reflects the repeal of AS 23.20.525(a)(4) and (5) and the renumbering of paragraphs in AS 23.20.525(a) in bill section 41.

Bill section 37 amends AS 23.20.277(c) to remove a paragraph that has become obsolete, as well as an obsolete date reference.

Bill section 38 is a conforming amendment to AS 23.20.278 that reflects the renumbering of paragraphs in AS 23.20.525(a) in bill section 41.

Bill section 39 corrects a citation in AS 23.20.401(b)(2) to reflect a 1982 renumbering of the referenced paragraph in the U.S.C. It also replaces a citation to the definition of legal process in 42 U.S.C. 662 (which has been repealed), with a reference to the definition in 42 U.S.C. 659(i)(5).

Bill section 40 amends AS 23.20.408(h) to remove a reference to AS 23.20.408(g), since that subsection has not included the defined phrase since 1982.

Bill section 41 amends AS 23.20.525(a) to remove several obsolete date references, to repeal paragraphs (4) and (5) which have become obsolete, and to renumber the remaining paragraphs. Also makes a conforming change in AS 23.20.525(b).

Bill section 42 makes conforming changes required by the renumbering of paragraphs in AS 23.20.525(a) in bill section 41. Replaces the words "newsboys" and "salesman" in AS 23.20.526(a) to avoid use of gender specific terms; the phrase "service performed by an individual under the age of 18", used to replace "newsboys", is found in 26 U.S.C. 3306(c)(15)(A). Deletes a grammatically incorrect occurrence of the word "some".

Inserts "United States" before "Secretary of Labor" and substitutes "that" for "which" to conform with current drafting style.

Bill section 43 makes conforming amendments in AS 23.20.526(d) required by the renumbering of paragraphs in AS 23.20.525(a) in bill section 41.

Bill section 44 removes obsolete date references in AS 23.20.530(b), and changes the word "tax" to "taxation". Also substitutes "that" for "which" and semi-colons for commas to conform to current drafting style.

Bill section 45 amends AS 24.05.135(c) to substitute a generic description for a specific reference to the division of state libraries, archives, and museums. The division is not created in statute and could be renamed or reorganized administratively.

Bill section 46 amends AS 25.27.125(a), which refers to federal incentive payments received by the state under 42 U.S.C. 658. However, 42 U.S.C. 658 was repealed in 1998. The current federal statute relating to incentive payments is 42 U.S.C. 658a, so after consulting with the Department of Law, we have substituted a reference to that section instead.

Bill section 47 shortens the descriptive phrase "voter approval of alteration or abolishment of service areas" in AS 29.10.200(46) to "service areas" to reflect the scope of AS 29.35.450. Under AS 29.35.450(d), all of AS 29.35.450 applies to home rule municipalities, not just subsection (c), which deals with voter approval of alteration or abolishment of a service area. This corrects a drafting error.

The section amends a reference in AS 29.10.200(50) to reflect the 1992 renumbering of AS 29.45.570 as AS 29.45.800.

This section also amends AS 29.10.200(57) to remove "construction" and insert "revenue bonds" to reflect the actual content of AS 29.47.260 as noted in the current catchline. The original catchline for AS 29.47.260 was "construction" and that has been changed editorially to "Applicability of AS 37.10.085", but the text of the section, which relates to revenue bonds, has not been changed. AS 37.10.085 relates to financial aid to corporations by the state or a political subdivision of the state.

Bill section 48 adds language to AS 29.46.010(b) indicating that the subsection applies to home rule municipalities. The subsection already appears on the list in AS 29.10.200 of limitations on home rule powers. The change brings this section into conformity with other sections on the list, which include applicability in the text of the section listed.

Bill section 49 changes the word "section" in AS 29.46.030(a) to "subsection", since only subsection (a) of that section refers to findings.

Bill section 50 amends AS 29.60.860(b) to resolve a contradiction between the first and second sentences of the subsection. The agency has indicated that the revised wording is consistent with the agency's interpretation of the statute.

Bill section 51 deletes a reference to AS 12.55.185 in AS 33.16.090(c)(1) and replaces it with a reference to AS 12.55.127. The definition referred to in AS 12.55.185 simply directs the reader to the definition in AS 12.55.127, so the change enables the reader to refer to the relevant section directly.

Bill section 52 amends AS 33.30.015 by deleting "on and after August 17, 1999", a phrase setting a date after which the commissioner of corrections may not perform certain actions. Since the date is long past, the phrase is no longer needed.

Bill section 53 amends AS 38.07.030 to substitute a generic description for a specific reference to the division of agriculture, since that division is not created in statute and could be changed administratively. See bill section 1.

Bill section 54 amends AS 39.25.110(14) by adding the word "Alaska" before "Oil and Gas Conservation Commission", to conform to the statutory name of that commission created in AS 31.05.005.

Bill section 55 amends AS 41.10.100(b)(6) by substituting a generic description for a specific reference to the division of agriculture. See the full explanation at bill section 1.

Bill section 56 amends AS 44.41.035(b) by inserting "identification" in two places in order to make all references to the DNA identification registration system consistent.

Bill section 57 amends AS 44.41.035(*l*) by inserting the word "identification" in order to make all references to the DNA identification registration system consistent.

Bill section 58 amends AS 44.41.035(n) by inserting "identification" in order to make all references to the DNA identification registration system consistent.

Bill section 59 amends AS 44.41.035(p) by inserting "DNA" in order to make all references to the DNA identification registration system consistent.

Bill section 60 amends AS 45.07.309(a) to change "man" to "person" in order to avoid a gender specific reference, and "must" to "shall" since the subsection imposes a duty on a person.

Bill section 61 amends AS 45.10.220(6) to change the phrase "multiplied times" to "multiplied by" to conform to usage elsewhere in the Alaska Statutes.

Bill section 62, without changing the wording of the section, removes the subparagraph designators (A) and (B), making AS 45.14.403(a)(2) a unitary paragraph, rather than a

paragraph with subparagraphs. This change is consistent with the Article 4A of the Uniform Commercial Code. It removes an inappropriate break following subparagraph (A) to clarify that the phrase "payment occurs when the credit is withdrawn or, if not withdrawn, at midnight of the day on which the credit is withdrawable and the receiving bank learns of that fact" applies to the material in (A) as well as (B).

Bill section 63 corrects a reference in AS 45.29.313(b) to reflect the content of the corresponding sections of Article 9 of the Uniform Commercial Code (secured transactions).

Bill section 64 removes an extraneous "or" from AS 45.29.314(a).

Bill section 65 amends AS 45.50.471(b)(34) to remove AS 08.66.200 - 08.66.250 from a spanned reference, since those sections were repealed in 2002.

Bill section 66 updates a reference to federal law in AS 46.03.450(8). The section cites 49 U.S.C. 1671 et seq.; following revisions to the federal code, those sections no longer exist. However, they formed the basis of the new 49 U.S.C. 60101 et seq., so those sections are cited instead.

Bill section 67 removes an outdated date reference from AS 46.06.090(a).

Bill section 68 removes an outdated date reference from AS 46.06.090(b).

Bill section 69 removes a reference to AS 46.14.170(b) from AS 46.14.170(c); this is a conforming amendment required by the repeal of AS 46.14.170(b). See bill section 88.

Bill section 70 changes a reference in AS 46.14.300(c) from "15 U.S.C. 631" to "15 U.S.C. 632." AS 46.14.300(c) refers to the definition of a "small business concern." 15 U.S.C. 631 is the first section of the federal Small Business Act, but it is a purpose section and does not contain a definition of "small business concern." Criteria for identifying a "small business concern" are listed in 15 U.S.C. 632, and that section is referred to as the source of the definition elsewhere in federal law. *See* sec. 2, 105 P.L. 135 (Small Business Reauthorization Act of 1997) ("the term 'small business concern' has the meaning given the term in section 3 of the Small Business Act (15 U.S.C. 632)").

Bill section 71 changes a reference in AS 46.14.990(24) from "15 U.S.C. 631" to "15 U.S.C. 632." See bill section 70 for further explanation.

Bill section 72 updates a reference in AS 46.15.035(c)(2) from AS 16.05.870 to AS 16.05.871. AS 16.05.870 was repealed and renumbered as AS 41.14.870 by Executive Order No. 107, and that section was in turn repealed and renumbered as AS 16.05.871 in Executive Order No. 114. This section inserts the current cite.

Bill section 73 amends AS 46.15.165(c) by inserting the word "former" before a reference to 43 U.S.C. 270-1 and 270-2, to reflect the 1971 repeal of those sections. The reference is to land for which the patent, deed, or certificate was issued under those sections, so the reference should be retained.

Bill section 74 adds two words to AS 46.30.080 to correct a reference to the name of the advisory board created in AS 46.30.020, consistent with other references to the board in AS 46.30.

Bill section 75 amends AS 47.10.396 to remove the word "nonprofit" in two places to conform to amendments made by ch. 107, SLA 1998 to AS 47.10.392, 47.10.398, and 47.10.399, which now refer to corporations rather than nonprofit corporations.

Bill section 76 adds a subsection to AS 47.14.100 defining the term "adult family member" for purposes of that section. This change is related to the repeal of AS 47.14.295(1). The phrase "adult family member" is not used in AS 47.14.205 - 47.14.295, and has not been since those sections were enacted in 2005. However, the term is also used, without benefit of definition, in AS 47.14.100(e), (f), and (m). It appears that the placement of the definition in AS 47.14.295(1) instead of where it would apply to AS 47.14.100 was a drafting error in ch. 64, SLA 2005. This section relocates the definition to where it is needed. For the repeal of AS 47.14.295(1), see bill section 88.

Bill section 77 removes the term "treatment facility" from AS 47.14.990(12), because that term is not used in AS 47.14. See bill section 27.

Bill sections 78 and 79 amend AS 47.30.660(b) and AS 47.30.662(c) to substitute a generic description for specific references to the division of mental health and developmental disabilities. The department no longer has a division with that name, and the former division's duties have been divided among other divisions.

Bill section 80 expands a citation in AS 47.30.772, enacted in 1984 and amended in 1992, to reflect the 2004 addition of AS 47.30.817 to the AS 47.30 article relating to patient rights.

Bill section 81 updates a spanned reference in AS 47.30.835(b), which now refers to "a determination of legal incapacity under AS 13.26.005 - 13.26.330." Since this section was enacted in 1981, AS 13.25.325 and .330, relating to powers of attorney and disability and incompetence, have been repealed. This bill section removes AS 13.25.325 and .330 from the scope of the spanned reference.

Bill section 82 changes the word "lead" in AS 47.30.838(b) to "led". Although the mistake appeared in the enacting law, the past tense is clearly more appropriate in this context.

Bill section 83 expands a citation in AS 47.30.855 to reflect the 2004 addition of AS 47.30.817 to the AS 47.30 list of patient rights.

Bill section 84 updates a citation in AS 47.80.040(a), deleting "20 U.S.C. 1482", which was repealed in 2000, and inserting "42 U.S.C. 15025", which contains similar provisions. It also deletes the word "planning", since the term "planning council" was used in 20 U.S.C. 1482, but 42 U.S.C. 15025 refers to "councils".

Bill section 85 updates several citations in AS 47.80.090. 42. U.S.C. 6024 and 42 U.S.C. 6022 have been repealed; 40 U.S.C. 15025 and 40 U.S.C. 15024 contain similar provisions. 20 U.S.C. 1483 - 1485 have been omitted from the U.S.C., so the spanned reference has been shortened accordingly. 42 U.S.C. 6000 - 6083 have been repealed and 42 U.S.C. 15001 - 15083 contain similar provisions.

Bill section 86 amends sec. 14, ch. 137, SLA 2002, which contains a delayed amendment to AS 16.43.970(b). The existing delayed amendment would sunset changes made to that section in 2002 effective December 30, 2013. An intervening amendment was made to AS 16.43.970(b) in sec. 16, ch. 42, 2006, adding the words "in the second degree" after "unsworn falsification" to conform to a change in AS 11.56.210 of the designation of that crime. The 2006 Act did not make a conforming change to the delayed amendment. This bill remedies that omission by adding the words "**in the second degree**" to the text of the delayed amendment scheduled to take effect in 2013. This will have the effect of retaining the intervening amendment. Note that the other changes indicated in the section, including deletion of "vessel interim-use permit, or vessel entry permit" are the changes made by the 2002 sunset provision. The only change being made in this bill is the addition of the words "**in the second degree**", which is a conforming amendment.

Bill section 87 amends sec. 12, ch. 50, SLA 2005 to remove the repeal of AS 14.25.070(b). AS 14.25.070(b) was enacted in 2005, and relettered as (c) that same year. AS 14.25.070 was repealed and reenacted July 1, 2008 by sec. 3, ch. 13, SLA 2008. This change corrects an oversight in sec. 3, ch. 13, SLA 2008. See bill section 89.

Bill section 88 repeals several sections.

- AS 08.36.246(a)(4)(B) appears to be obsolete since the Central Regional Examining Board does not offer a specialty examination.
- AS 31.05.080(b) was impliedly repealed by the enactment of AS 22.10.020(d), *Allen v. Alaska Oil and Gas Conservation Commission,* 147 P.3d 664, 667 - 668 (Alaska 2006); here, the repeal is made express.
- AS 44.88.180(b) was made obsolete by the 1982 amendment of AS 44.88.180(a), and was removed from the statutes when the changes to AS 44.88.180(a) were made, but was not expressly repealed by ch. 113, SLA 1982.
- AS 46.14.170(b) provides for "a phased schedule for acting on operating permit applications submitted within 12 months following the date on which the federal administrator approves the state program under 42 U.S.C. 7661a(d)". The federal administrator gave the final interim approval of the state program in 1996. *See* 61

Federal Register 64463-64475 (December 5, 1996). Full approval of the operating permit program was effective November 30, 2001. *See* 66 Federal Register 63,184 (December 5, 2001). Since well more than 12 months have passed since the federal approval, this subsection has become obsolete.

- AS 46.14.990(13) defines the term "fugitive emissions", which is not found anywhere else in the Alaska statutes. The term was used in the definition of "potential to emit" in AS 46.14.990(21), until that definition was repealed and reenacted in sec. 57, ch. 46, SLA 2003.
- AS 47.14.295(1) defines the phrase "adult family member" for purposes of AS 47.14.205 - 47.14.295, where it is not used. See bill section 76.
- AS 47.14.990(11) defines the phrase "serious offense", which does not appear in the chapter to which AS 47.14.990 applies.
- AS 47.20.390(4) defines the term "health care insurer". That term does not appear elsewhere in AS 47.20.300 - 47.20.390, so the definition is superfluous.
- Secs. 33 and 34, ch. 122, SLA 1977, provide for the sunset of several changes to the state's unemployment compensation laws in case the federal law underlying those changes is held to be unconstitutional or is repealed. When these sections were enacted, in the spring of 1977, there was a live controversy about the constitutionality of 26 U.S.C. 3304(a)(6), as amended in 1976, which, among other things, required states to cover employees of the state and its political subdivisions in order to obtain federal certification of the state program and its concomitant tax and grant benefits. Other states challenged the constitutionality of the federal law, arguing that it constituted an impermissible infringement on state sovereignty under the Tenth Amendment to the federal constitution. In *New Hampshire Department of Employment Security v. Marshall*, 616 F.2d 240 (1st Cir. 1980), *cert. denied* 449 U.S. 806 (1980), the court held that the 1976 amendments to the federal unemployment tax act did not impair the sovereignty of New Hampshire. In *County of Los Angeles v. Marshall*, 631 F.2d 767, 769 (D.C. Cir. 1980), *cert. denied* 449 U.S. 837 (1980), the D.C. circuit adopted the first circuit's reasoning, holding that the "voluntary and wholly optional aspect" of the federal program defeated the argument that there was an "coercion and improper transgression upon the sovereignty of the state shielded by the *Tenth Amendment*." (emphasis in original). So, when the legislature enacted the changes necessitated by 26 U.S.C. 3304(a)(6) in 1977, there was an active controversy about whether the 1976 amendment to the federal act was constitutional. By the end of 1980, that controversy had been resolved in favor of the constitutionality of the federal statute, and the Supreme Court had declined to review the issue. However, the provisions of secs. 33 and 34, ch. 122, SLA 1977, providing for the return of several sections of the Alaska Statutes to their pre-1977 state, remains. The first paragraph of sec. 34's contingency language appears to be obsolete, given the resolution of the constitutional controversy. The second paragraph, calling for the sunset of the changes to the Alaska statutes in case 26 U.S.C. 3304(a)(6) is repealed, could conceivably take effect. However, it seems likely that this second paragraph was inserted in the contingency in case the federal government decided to repeal the offending section rather than

litigating the issue to its conclusion--which is not what happened. It is not clear that the 1977 legislature meant for the changes to the Alaska statutes to be reversed if the federal statute were repealed for some other reason more than 30 years later. Arguably, then, the entire contingency provision has become obsolete.

Bill section 89 repeals AS 14.25.070(e), which relies on AS 14.20.135, to reflect the repeal of AS 14.20.135 under secs. 12 and 15, ch. 57, SLA 2001, as amended by sec. 6, ch. 15, SLA 2003, and by secs. 10 and 17, ch. 50, SLA 2005.

Bill section 90 conditions the effectiveness of bill section 89 on the repeal of AS 14.20.135.

Bill section 91 repeals sec. 34, ch. 122, SLA 1977, which is the effective date for sec. 33, ch. 122, SLA 1977. See bill section 88.

Bill section 92 provides an effective date for sec. 89.

Bill section 93 provides a special effective date for bill section 59, which amends AS 44.41.035(p), since that subsection will not take effect until July 1, 2009. The effective dates of the section and of the change made to the section in this bill should be the same.

Bill section 94 provides an immediate effective date for the bill, except sections 59 and 89.

Please give me a call if you have any questions about the above.

TEXT OF REPEALED PROVISIONS

AS 08.36.246(a)(4)(B):

> (B) pass a specialty examination given by the Central Regional Examining Board;

AS 31.05.080(b):

> (b) A person who has applied for reconsideration and is dissatisfied with the disposition of the application for reconsideration may appeal to the superior court. The questions reviewed on appeal are limited to the questions presented to the commission by the application for reconsideration.

AS 44.88.180(b):[1]

> (b) The state officer serves as a member from time to time and for all purposes of this chapter is a member for the purpose of voting on the resolution but after each vote the authority shall again consist of members referred to in AS 44.88.030 only, until one or more members may not again vote on a resolution because of the prohibition.

---

[1] AS 44.08.180(a) was amended by sec. 56, ch. 113, SLA 1982 as follows:

> (a) A [NO] member of the authority may **not** vote on a resolution of the authority relating to a lease or contract to be entered into by the authority under this chapter if **the member** [HE] is a party to the lease or contract or has a direct ownership or equity interest in a firm, partnership, corporation, or association **that** [WHICH] may be a party to the contract or lease. **A resolution of the authority that is approved by a majority of the members who are not barred from voting under this subsection is a valid action of the authority for all purposes.** [IF A PERSON MAY NOT VOTE BECAUSE OF THIS PROHIBITION, FOR ALL PURPOSES REGARDING ACTION OF THE AUTHORITY RELATING TO ADOPTION OF THE RESOLUTION, THE POSITION OF THE PERSON AS A MEMBER SHALL BE TRANSFERRED TO THE FIRST ONE OF THE FOLLOWING STATE OFFICERS WHO IS NOT THEN ACTING AS A MEMBER AND WOULD NOT BE PROHIBITED FROM VOTING ON THE RESOLUTION BECAUSE OF THE SAME PROHIBITION: COMMISSIONER OF ADMINISTRATION, ATTORNEY GENERAL, COMMISSION OF REVENUE, COMMISSIONER OF HEALTH AND WELFARE, COMMISSIONER OF LABOR, COMMISSIONER OF PUBLIC WORKS, COMMISSIONER OF PUBLIC SAFETY.]

AS 46.14.170(b):

> (b) Notwithstanding (a) of this section, the department may establish a phased schedule for acting on operating permit applications submitted within 12 months following the date on which the federal administrator approves the state program under 42 U.S.C. 7661a(d). A phased schedule must ensure that at least one-third of the applications submitted during the first 12 months of the state's operation of its permit program after federal approval will be acted on by the department during each of the first three 12-month periods following federal approval of the program. The department shall give priority to the issuance of permits for new stationary sources and modifications of existing stationary sources.

AS 46.14.990(13):

> (13) "fugitive emissions" has the meaning given in 40 C.F.R. 51.166(b);

AS 47.14.295(1):

> (1) "adult family member" has the meaning given in AS 47.10.990;

AS 47.14.990(11):

> (11) "serious offense" has the meaning given in AS 12.62.900;

AS 47.20.390(4):

> (4) "health care insurer" means an entity regulated by the director of insurance, Department of Commerce, Community, and Economic Development, and includes a health, hospital, or medical service plan corporation, and a health maintenance organization;

Section 33, ch. 122, SLA 1977:

> * **Sec. 33.** Sections 4, 5, 13, 15, 16, 21 and 22 of this Act, AS 23.20.525(a)(14) as enacted in sec. 18 of this Act, and the repeal of AS 23.20.526(a)(16) and (18) enacted in sec. 25 of this Act, are repealed and the language of AS 23.20.278, 23.20.325(a), 23. 20.520(12), 23.20.525(a)(4), (5), and (14), 23.210.526(a)(16) and (18) and 23.20.526(d), as it existed before January 1, 1978, is revived.

Section 34, ch. 122, SLA 1977:

> * **Sec. 34.** Section 33 of this Act takes effect upon the condition and at the time that:

(1) a decision of a federal court of competent jurisdiction, which decision is not subject to appeal or for which the time in which to appeal has run without and appeal having been taken, that the requirement of 26 U.S.C. 3304(a)(6) is unconstitutional becomes final; or

(2) Congressional repeal of 26 U.S.C. 3304(a)(6) takes effect in accordance with law.

KLK:plm:med
09-023.med

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SARAH PALIN, GOVERNOR

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

February 26, 2009

The Honorable Jay B. Ramras, Chair
House Judiciary Committee
Alaska State Legislature
State Capital, Room 118
Juneau, Alaska 99801-1182

Re: 2009 Revisor's Bill - HB 152

Dear Representative Ramras:

The Department of Law has reviewed HB 152, 2009 revisor of statutes' bill. The bill makes technical improvements in the statutes. We believe these improvements are appropriate and will assist making necessary clarifications in the statutes.

If you need additional information, please let me know.

Sincerely,

RICHARD A. SVOBODNY
ACTING ATTORNEY GENERAL

By: Deborah E. Behr
Deborah E. Behr
Chief Assistant Attorney General

DEB:ajh

cc: Jerry Gallagher, Legislative Director, Office of the Governor
Kathryn Kurtz, Assistant Revisor of Statutes, Legislative Affairs Agency

Title 1. General Provisions.

Chapter
05. Alaska Statutes (§§ 01.05.006 — 01.05.036)
10. Laws and Statutes (§§ 01.10.010 — 01.10.110)

Revisor's notes. — The provisions of this title were redrafted in 1982 to remove personal pronouns pursuant to § 4, ch. 58, SLA 1982, and in 1982, 1990, and 2000 to make other minor word changes.

Chapter 05. Alaska Statutes.

Section
06. Adoption of Alaska Statutes
11. Designation and citation
16. Effect of adoption
21. Effect of repeal on prior offenses and punishments
26. Supplements as part of Alaska Statutes
31. Revision of statutes
36. Improvement of statutes

Collateral references. — 73 Am. Jur. 2d, Statutes, § 1 et seq.
82 C.J.S., Statutes, § 1 et seq.

Sec. 01.05.006. Adoption of Alaska Statutes. The bulk formal revision of the laws of Alaska which was authorized by AS 24.20.070 and prepared under the direction of the Alaska Legislative Council and published by The Michie Company, legal publishers, of Charlottesville, Virginia, and titled "Alaska Statutes," as set out in the 47 titles of the Alaska Statutes, but not including the table of contents, indexes, citations to Alaska Compiled Laws Annotated, 1949, and session laws, chapter, article, section, subsection, and paragraph headings, annotations, collateral references, notes, and decisions, is adopted and enacted as the general and permanent law of Alaska. (§ 1 ch 1 SLA 1963)

Cross references. — For exception to provision that section headings are not a part of the law, see AS 45.01.109.

Editor's notes. — Section 2, ch. 1, SLA 1963, repealed all general and permanent laws enacted by the territorial and state legislatures before the convening of the regular session of the Third State Legislature on January 28, 1963.

NOTES TO DECISIONS

Applied in Ketchikan Retail Liquor Dealers Ass'n v. State, ABC Bd., 602 P.2d 434 (Alaska 1979).

Quoted in Employment Sec. Comm'n v. Wilson, 461 P.2d 425 (Alaska 1969).

Cited in Larson v. State, 564 P.2d 365 (Alaska 1977); Anderson v. Municipality of Anchorage, 645 P.2d 205 (Alaska Ct. App. 1982); Schnabel v. State, 663 P.2d 960 (Alaska Ct. App. 1983); Rollins v. State ex rel. Municipality of Anchorage, 748 P.2d 767 (Alaska Ct. App. 1988); Schouten v. State, 77 P.3d 739 (Alaska Ct. App. 2003).

Sec. 01.05.010. Adoption of revision. [Repealed, § 2 ch 1 SLA 1963.]

Sec. 01.05.011. Designation and citation. The bulk formal revision of Alaska law adopted and enacted into law by AS 01.05.006 and as amended and supplemented is known as the "Alaska Statutes" and may be cited "AS" followed by the number of the title, chapter, and section, separated by periods. For example, this title may be cited "AS 01";

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 25, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 3/19/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 152**

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; providing for an effective date by repealing the effective date of sec. 33, ch. 122, SLA 1977; and providing for an effective date."

HB 152 2009 REVISOR'S BILL

Recommends it be replaced with [ ] HCS *or* **[ ] CS** *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW				✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN			X	
	Coghill	✓			
	Johnston			X	
	Gatto			X	
	Holmes			X	
Chair:	RAMRAS	X			
Chair:					

HOUSE COMMITTEE REPC Γ

(7)
Date Referred to Committee: February 25, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 3/19/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 152**

"An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes; providing for an effective date by repealing the effective date of sec. 33, ch. 122, SLA 1977; and providing for an effective date."

HB 152 2009 REVISOR'S BILL

Recommends it be replaced with [ ] HCS *or* [✓] CS for HB152 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR _____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
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DOT
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***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
~~LAW~~ LAW				✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN			X	
	Coghill	✓			
	Dahlstrom			X	
	Gatto			X	
	Holmes			X	
Chair:	RAMRAS	X			
Chair:					

HB 153

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Carl Gatto
Room 108
(907) 465-3743

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 1, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File for HB153

Please accept this memo as the referral file for HB153. Attached are the following documents:

- Open Meetings: Sponsor Statement
- CSHB153(JUD) 26-LS0653\S
- CSHB153(CRA) 26-LS0653\E
- HB153 26-LS0653\R
- EED Zero Fiscal Note
- Support
- Relevant Statutes and Ordinances
- HJUD Committee Report

PROPOSED CHANGES TO THE OPEN MEETINGS ACT TO MAKE IT WORKABLE FOR ADVISORY BOARDS AND COMMISSIONS WHILE PRESERVING THE INTENT AND PURPOSE OF THE ACT

The proposed legislation attempts to solve two typical problems encountered by volunteer advisory boards and commissions when attempting to comply with the Open Meetings Act. The proposed changes make the law more workable while maintaining the intent and purposes of the Act.

1. The first issue arises because some municipal volunteer boards and commissions perform managerial and administrative functions. Examples include both fire and road service area commissioners who are responsible, once the assembly approves the service area budget, to supervise and manage the affairs of the service area. These include decisions concerning when to plow the streets, whether a pothole needs to be fixed, etc. In implementing these duties commissioners are really fulfilling the role of municipal employees.

Current state law exempts most administrative and managerial activities by exempting staff meetings and gatherings. This exemption recognizes that it would be impossible to apply the Act to the everyday transactions of governmental employees confronting day-to-day issues and problems. This exemption, however, does not currently extend to members of governmental bodies that also have administrative and managerial responsibilities. Thus, volunteer boards and commissions that try to supervise and manage the affairs of a governmental entity, like a service area, often find that they must choose between complying with the Act or providing delayed and unresponsive services.

Exempting these boards and commissions only when they meet only to fulfill their administrative and managerial functions allows them to effectively conduct business without harming any of the purposes or intent of the Open Meetings Act. These advisory bodies are still required to comply with the Act whenever they meet to make or discuss legislative or policy decisions, including recommending their annual budget and tax levy, adopting strategic plans, or discussing any other legislative policies.

2. The second issue arises due to an anomaly in state law. Although state law prescribes a minimum number of members necessary to constitute a meeting for policy-making bodies, this exception does not exist for advisory-only bodies. All that is required for a meeting of an advisory body is that the meeting be prearranged. Accordingly, a meeting exists under the Act if only two of a 12 member advisory body decide to meet to discuss to consider the business of the body. In this circumstance the rule for advisory bodies is **more** stringent than the rule governing actual policy-making bodies. The proposed change removes this anomaly by allowing two members of an advisory board to have a prearranged meeting as long as it does not result in a violation of the "three or a majority" rule applicable to policy-making bodies.

26-LS0653\S
Kane
3/25/09

CS FOR HOUSE BILL NO. 153(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE COMMUNITY AND REGIONAL AFFAIRS COMMITTEE BY REQUEST

A BILL

FOR AN ACT ENTITLED

"An Act exempting municipal service area boards from the requirements of conducting meetings open to the public when a meeting is administrative or managerial in nature; and amending the definition of 'meeting' as it relates to public governmental meetings."

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

*** Section 1.** AS 44.62.310(d) is amended to read:

(d) This section does not apply to

(1) a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

(5) meetings of the governmental body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications,

privileges, or discipline;

(6) staff meetings or other gatherings of the employees of a public entity, including meetings of an employee group established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents; [OR]

(7) meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at the meetings**; or**

(8) meetings of municipal service area boards established under AS 29.35.450 - 29.35.490 when meeting solely to act on matters that are administrative or managerial in nature.

*** Sec. 2.** AS 44.62.310(h)(2) is amended to read:

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) **more than three members or a majority of the members, whichever is less, are present,** the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act, and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB153**
() Publish Date:

Identifier (file name):HB153-CED-CRA-03-02-09
Dept. Affected: DCCED
Title: Open Meeting Exemptions & Definition
RDU: Community & Regional Affairs
Component: Community & Regional Affairs
Sponsor: Community & Regional Affairs
Requester: Community & Regional Affairs
Component Number: 2879

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
1036 Com Fish							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time							
Temporary							

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

This bill proposes to grant advisory boards and commissions the legal authority to respond to managerial and administrative functions, which otherwise may be delayed because of the Open Meeting Act.

The Department of Commerce, Community & Economic Development foresees zero fiscal impact with this legislation.

Prepared by: Tyson Fick, Legislative Liason DCCED
Phone 465-2503
Division: DCCED - Community & Regional Affairs
Date/Time 03/02/09 9:00am
Approved by: Emil Notti, Commissioner
Date 3/2/2009
Department of Commerce, Community and Economic Development

(Revised 9/10/2008 OMB)

Fairbanks North Star Borough
Office of the Mayor
809 Pioneer Road P.O. Box 71267 Fairbanks, Alaska 99707-1267 907-459-1300
Fax 907-459-1102
Email mayor@co.fairbanks.ak.us

March 3, 2009

Representative Cathy Munoz, Co-Chair
Representative Bob Herron, Co-Chair
House Community & Regional Affairs Committee
State Capitol
Juneau, Alaska 99801

Re: Support for HB 153

Dear Representatives Munoz & Herron:

The Fairbanks North Star Borough (FNSB) appreciates the House Community & Regional Affairs Committee for introducing House Bill 153, which will help make the Open Meetings Act more workable for volunteer advisory boards and commissions while preserving the intent and purpose of the Act.

The Open Meetings Act requires that all meetings of public bodies are open to the public and that the public body must provide reasonable notice of its meetings. The FNSB strongly supports maintaining the essence of the Act which is to protect the public's right to know.

Currently, there are provisions in the open meetings law that exempt meetings of juries, parole boards, staff meetings of public employees, etc. There is no exemption, however, for members of advisory bodies that also have administrative and managerial responsibilities. This is causing hardship to volunteer advisory board members – such as the FNSB's service area commissioners - who often find that they must choose between complying with the Act or providing delayed or unresponsive services. The FNSB supports the provision in HB 153 that would allow a further exemption for volunteer advisory bodies when meeting solely to act on matters that are administrative or managerial in nature, such as calling out snow plows, clearing brush or fixing potholes as needs arise.

With regard to the definition of "meeting" for advisory-only bodies such as the FNSB's service area commissions, the law is currently *more* stringent than the law governing policy-making bodies. Our service area commissions perform duties that are administrative and managerial in nature, requiring some discussion between commissioners, thus making compliance with current state law difficult to comply with. The FNSB supports the provision in HB 153 that will allow members of an advisory board to meet as long as it does not result in a violation of the "three or a majority" rule applicable to policy-making bodies.

The Fairbanks North Star Borough strongly supports HB 153 in its purpose to amend state law to allow volunteer advisory boards and commissions to effectively conduct business within their areas, while maintaining the basic intent of the Open Meetings Act.

Sincerely,

Jim Whitaker, Mayor

Nadine Winters, Presiding Officer

By: Assembly Road Service Area Committee
Introduced: July 21, 2008
Approved: July 21, 2008

Fairbanks North Star Borough
Assembly Road Service Area Committee

RESOLUTION NO. 2008-C

A RESOLUTON OF THE ASSEMBLY ROAD SERVICE AREA COMMITTEE ASKING THE ASSEMBLY TO REQUEST A STATE LAW CHANGE TO THE OPEN MEETINGS ACT

WHEREAS, there are a variety of rules, regulations, and procedures in Alaska State Law governing the conduct of public meetings, which are intended to ensure that decisions made and actions taken are public knowledge and represent the will of the public that the governing body serves. One of these is the state's Open Meetings Act; and

WHEREAS, the Open Meetings Act requires that all meetings of public bodies are open to the public and that the public body must provide reasonable notice of its meetings. In essence, the Open Meetings Act protects the public's right to know. To accomplish this, the act requires that:

- All deliberations and action taken by a public entity must be done in public view, with limited exceptions;
- The public must be provided prior knowledge of all steps occurring in the decision making process, with limited exceptions; and
- Individual actions of an official are made known.

WHEREAS, in order for these requirements to have full effect, meetings must occur as provided in the notice; and, with few exceptions, the public must be allowed to involve itself in the meeting; the public must also have access to materials being considered during the meeting; and

WHEREAS, with regard to advisory only bodies such as the Fairbanks North Star Borough Road Service Area Commissions, current law dictates that a meeting is:

- a gathering
- of any number of members of the body
- prearranged
- for the purpose of considering any matter upon which the body is empowered to act; and

WHEREAS, Service Area Commissions have management and maintenance duties to perform, requiring some discussion between commissioners thus making compliance with current state law difficult to comply with; and

WHEREAS, exemption from and/or amendments to the following areas of the Act are requested:

- Specify the number of members of an advisory body required for action to constitute a meeting as defined in AS 44.62.310(h)(2)(B);
- Include an exemption in AS 44.62.310(d) when governmental bodies such as Service Area Commissions meet to act on behalf of the borough to supervise and manage the affairs of the service area, to implement policies and programs to protect the safety of the public and preserve the service area's capital assets in a fiscally prudent manner, and other duties considered managerial in nature;

NOW, THEREFORE, BE IT RESOLVED by the Fairbanks North Star Borough Assembly Road Service Area Committee requests that a recommendation be made to the Alaska State Legislature by the Fairbanks North Star Borough Assembly to amend state law to change the Open Meetings Act to allow Road Service Area Commissions to effectively conduct business within their areas.

BE IT FURTHER RESOLVED that a copy of this resolution shall be forwarded to the Fairbanks North Star Borough Assembly.

PASSED AND APPROVED THIS 21st DAY OF JULY, 2008.

Randy Frank
Chair

Fairbanks Daily News-Miner
The voice of Interior Alaska since 1903

Open and effective

Published September 3, 2008

A request by some local road service area commissioners for greater leeway under the state open meetings law seems worthy of consideration. Newspapers usually opine in favor of greater openness in government and tighter rules to make it happen. Strict application of the current law, though, causes nearly impossible problems for the small, volunteer commissions that keep many of our borough roads passable.

Wet summers, such as the one just concluding, can make a mess of the roads, especially those with gravel surfaces. Potholes are unavoidable. Washouts and soft spots are common.

Some of these problems must be fixed rapidly to avoid accidents and damage to vehicles.

Legally, commissioners must discuss and make decisions at quarterly meetings that are open to the public and announced in advance. That's reasonable and advisable.

However, Mother Nature doesn't play by the same rules. Rain clouds don't advertise in the newspaper.

Those clouds can cause damage that requires immediate work. That work may be too expensive to fit within the agreed-upon plan. Commissioners cannot legally talk with each other to reach a consensus about what to do in such situations, though, without holding a public meeting.

The Fairbanks North Star Borough's guidelines for service area commissioners explain the rules: If you need to speak to each other, you have enough business for a public meeting. To discuss work and make decisions about what will be done in the service area outside of a public meeting is a violation of the Open Meetings Act.

Perhaps the problem could be solved by giving the commissions authority to delegate some actions. If not, the law may need some tweaking, because the current situation obviously doesn't provide the kind of flexibility that road service commissions need to do their jobs.

The revisions should be limited in scope, though. Not all road service areas are informal little neighborhood operations. Some spend large amounts of money. For those reasons, their actions should be not only effective but open to public scrutiny.

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FAIRBANKS
Daily News - Miner

Open meeting rules hamper Fairbanks area road officials

By Rena Delbridge

Published Tuesday, March 31, 2009

JUNEAU — Road service area commissioners and municipal officials in Fairbanks urged legislators to approve a bill allowing commissioners to bypass open meeting law requirements when making routine decisions.

"Road service commissioners cannot have any discussion amongst themselves. ... without having a public meeting," said Ronald Illingworth, chairman of the 23-Mile Slough Road Service Area near Fairbanks.

Instead, the volunteers are forced to either comply with, ignore or figure ways to circumvent public meetings laws, he said.

"This should not be an acceptable practice," he testified before a legislative committee Monday. "This bill addresses those concerns."

Sen. Gene Therriault, R-North Pole, pre-filed Senate Bill 48 before the session started. Sen. Joe Thomas, D-Fairbanks, is a co-sponsor.

Most of the state's service areas are within the Fairbanks North Star Borough. Anchorage has several.

Therriault said the bill would offer some relief to service area commissioners when they need to consult one another on basic decisions — things like whether to call out a contractor to remove hard-packed snow or to replace a washed-out culvert.

That business is most effectively done with a phone call, an e-mail or a window-to-window chat stopped on the road, he suggested.

But under the Alaska Open Meetings Act, commissioners can't talk to each other, he said. Two or more elected officials talking official business constitutes a meeting.

His bill would offer leeway in carrying out basic tasks, but it would require the boards to conduct regular business, such as making policy and crafting budgets, in public meetings.

"Road service areas are a fact of life in our region," Illingworth said. "the current public meeting law makes it almost impossible to conduct routine business without breaking the law."

A committee of first referral expanded Therriault's plan to exempt a greater range of boards.

"There was some thought that was just too broad," he said.

The Alaska Municipal League supports the bill, director Kathy Wasserman said.

While the league respects the Open Meetings Act, Therriault's measure would "enable business to get done without having to call a meeting to plow a road," she testified.

Renee Broker, an attorney for the Fairbanks North Star Borough, said the measure would fix two "unintended consequences" of the meetings act without diluting public policy goals.

Commissioners, who are generally volunteers, can't keep within the act's bounds while performing day-to-day administrative work, she said.

"If it only takes two to have a gathering, then you've got a meeting," Broker said.

Sen. Bill Wielechowski, D-Anchorage, was hesitant to move fast on the bill.

"This is going to impact much more than just municipal service area boards," he cautioned.

Judiciary chairman Sen. Hollis French, D-Anchorage, said the bill is "something we probably want to ponder, at least overnight," and held the bill for more deliberation. Therriault sits on Judiciary.

Versions passed through the Community and Regional Affairs and the Transportation committees.

Date of Committee Action: 3.12.09

The COMMUNITY AND REGIONAL AFFAIRS Committee considered: HOUSE BILL NO. 153

"An Act exempting municipal boards, committees, commissions, or other similar bodies from the requirements of conducting meetings open to the public when a meeting is administrative or managerial in nature; and amending the definition of 'meeting' as it relates to public governmental meetings."

HB 153 OPEN MEETINGS: EXCEPTION AND DEFINITION

Recommends it be replaced with [ ] HCS *or* [X] CS *for* HB 153 (CRA)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [X] New Titl

[ ]-attach-amendments-
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CED				X

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	CISSNA			V	
	MILLETT			—	
	HARRIS			✓	
	Keller			X	
	Gardner			X	
Chair:	HERRON	X			
Chair:	MUÑIZ	X			

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(7) whether and to what extent the governmental body has, before or after the lawsuit was filed to void the action, engaged in or attempted to engage in the public reconsideration of matters originally considered in violation of this section;

(8) the degree to which violations of this section were wilful, flagrant, or obvious;

(9) the degree to which the governing body failed to adhere to the policy under AS 44.62.312(a).

(g) Subsection (f) of this section does not apply to a governmental body that has only authority to advise or make recommendations to a public entity and has no authority to establish policies or make decisions for the public entity.

(h) In this section,

(1) "governmental body" means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members;

(2) "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

(3) "public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government. (§ 1 art VI (ch 1) ch 143 SLA 1959; am § 1 ch 48 SLA 1966; am § 1 ch 78 SLA 1968; am § 1 ch 7 SLA 1969; am §§ 1, 2 ch 98 SLA 1972; am § 2 ch 100 SLA 1972; am § 1 ch 189 SLA 1976; am §§ 2, 3 ch 54 SLA 1985; am § 2 ch 201 SLA 1990; am § 7 ch 74 SLA 1991; am §§ 2 — 8 ch 69 SLA 1994; am § 7 ch 54 SLA 2000)

Cross references. — For provisions related to meetings of legislative bodies, see AS 24.60.037.

Effect of amendments. — The 2000 amendment, effective May 12, 2000, substituted "posting notice of a meeting on the Alaska Online Public Notice System as required by AS 44.62.175(a)" for "the publication required by AS 44.62.175(a) in the Alaska Administrative Journal" in the third sentence in subsection (e).

Opinions of attorney general. — The mental health lands working group is not a public body covered by the Open Meetings Act, and its meetings are not covered by the Open Meetings Act. That working group was not a formally established entity with a specific charge to take specific action or give specific advice, and the activities of the group were not financed by public money. It consisted of individuals, including state department heads, meeting merely to begin settlement discussions to resolve the legal issues in a lawsuit. January 1, 1992, Op. Att'y Gen.

The notice requirements of the Open Meetings Act require that the Museum Collections Advisory Committee publish a schedule of its fixed monthly meetings twice yearly, stating the date, time, and place of the meetings. For unscheduled meetings, the public may be notified by public service announcements on the radio, as long as there is confidence that the announcements will in fact be made; but regardless of the media used, at least three days notice should be given. December 30, 1992, Op. Att'y Gen.

The present practice of allowing boards and commissions to conduct routine business by mail does not violate the Open Meetings Act. It neither constitutes a meeting, nor is it motivated by an intent to circumvent the Open Meetings Act. Rather, mail voting is expressly authorized by statute. It also furthers sound policy by reducing both administrative costs and administrative burdens. July 5, 1994 Op. Att'y Gen.

AS 44.62.310(a) unambiguously provides for teleconference meetings. AS 44.62.310(e) also requires that all teleconferencing facilities be open to the public and that they be noticed. If undue hardship makes it impossible or impractical for a member to participate from a noticed public teleconferencing site, then the governmental body may allow that member to participate in deliberations and votes of that governmental body by telephone without giving public notice of him or her location. Aug. 21, 1995 Op. Att'y Gen.

"Meeting". — A private meeti
rum of the Anchorage Municipa
developer to discuss in detail the
tion for rezoning violated this sect
purposes of the Open Meetings
step of the deliberative and decisi
when a governmental unit meets
business. The rezoning ordinance
assembly that allowed a modified p
was therefore held void.
Homeowners Ass'n v. Municipality
P.2d 1317 (Alaska 1985).

Findings. — There is nothing
tive Procedure Act requiring a b
findings when exercising its qua
tion, and therefore there is nothing
ing the manner in which findings
approved. State v. Hebert, 743 P.2
App. 1987), aff'd, 803 P.2d 863 (Al

The scope of subsection (a), et
not limited to decision-making bodi
of Alaska v. Geistauts, 666 P.2d
(decided prior to 1994 amendment
exclusion under paragraph (d)(6)).

Neither the Department of Co
Department of Administration visi
trative Procedure Act, because the
to informal groups of state employ
power to take collective action by v
impossible to apply the act to the ev
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those outside of state government
conduct of state's business. KHLA, I
of Admin., 876 P.2d 1102 (Alaska 1

No express exception to pr
quirements of Public Records
Meetings Act, which provides for
sessions when subjects potentially
utation are discussed, does not est
exception to the pro-disclosure req
Public Records Act or otherwise pe
sion of documents produced at such
ipality of Anchorage v. Anchorage
P.2d 584 (Alaska 1990).

Meetings with attorney. — Bec
chent privilege operates concurrent
tion although it is not an express
board's executive session, called to
of this case with its attorney, did
section. The privilege should not be
is not enough that the public boa
litigation. Rather, the rationale for t
of the specific communication at is
which the confidentiality doctrine
candid discussion of the facts and le
The privilege thus should be appli
revelation of the communication will
interest or there is some other reco
keeping the communication confiden
Inc. v. Fairbanks N. Star Borough
(Alaska 1993).

Section applies to local univers
mittee. — The local tenure commit
sity of Alaska comes within the an
meetings statute, University of Ala
666 P.2d 424 (Alaska 1983) (decid
amendment which added the exclu
graph (d)(6)).

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§ 10 ch 74 SLA 1985)

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Article 6. Construction of Powers.

Section
400. General construction
410. Extent of powers
420. Enumeration of powers

Sec. 29.35.400. General construction. A liberal construction shall be given to all powers and functions of a municipality conferred in this title. (§ 10 ch 74 SLA 1985)

NOTES TO DECISIONS

Quoted in McCormick v. City of Dillingham, 16 P.3d 735 (Alaska 2001); Stanek v. Kenai Peninsula Borough, 81 P.3d 268 (Alaska 2003).

Sec. 29.35.410. Extent of powers. Unless otherwise limited by law, a municipality has and may exercise all powers and functions necessarily or fairly implied in or incident to the purpose of all powers and functions conferred in this title. (§ 10 ch 74 SLA 1985)

NOTES TO DECISIONS

The city may exercise implied authority in police control where the exigencies of municipal life seem to require more rigid regulation than is required in the state at large. Guidoni v. Wheeler, 230 F. 93 (9th Cir. 1916), decided under former, similar law.

Quoted in Stanek v. Kenai Peninsula Borough, 81 P.3d 268 (Alaska 2003).

Sec. 29.35.420. Enumeration of powers. A specific example in an enumerated power or function conferred upon a municipality in this title is illustrative of the object and not a limitation on or exclusion from the exercise of the power or function. (§ 10 ch 74 SLA 1985)

Revisor's notes. — In 2008, "A specific example" was substituted for "Specific examples" to correct a manifest grammatical error.

Article 7. Service Areas.

Section
450. Service areas
460. Service area boards
470. Financing
480. Service areas in first class boroughs
490. Service areas in second and third class boroughs

Sec. 29.35.450. Service areas. (a) A service area to provide special services in a borough or unified municipality may be established, operated, altered, or abolished by ordinance, subject to (c) of this section. Special services include services not provided by the unified municipality or a higher or different level of services. Special services include services not provided by a borough on an areawide or nonareawide basis in the borough or a higher or different level of services than that provided on an areawide or nonareawide basis. A borough may include a city in a service area if

(1) the city agrees by ordinance; or

(2) approval is granted by a majority of voters residing in the city, and by a majority of voters residing inside the boundaries of the proposed service area but outside of the city.

(b) A new service area may not be established if, consistent with the purposes of Alaska Const., art. X, the new service can be provided by an existing service area, by annexation to a city, or by incorporation as a city.

(c) If voters reside within a service area that provides road, fire protection, or parks and recreation services, abolishment of the service area is subject to approval by the

majority of the voters residing in the service area who vote on the question. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be abolished and replaced by a larger service area unless that proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area. A service area that provides road, fire protection, or parks and recreation services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of service areas that is affected by the proposal. This subsection does not apply

(1) to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is not more than six percent and would add not more than 1,000 residents;

(2) in a second class borough to abolishment of a road service area or consolidation of two or more road service areas if

(A) taxes have not been levied in the service area for road maintenance or construction during the last 12 months and there is no balance in any account available to pay for these road services for the service area;

(B) during the last 12 months, the service area board has not met with a quorum present and in accordance with law; or

(C) there are no road maintenance contracts in effect for the service area or the existing road maintenance contracts fail to provide for minimum road standards required by law that are necessary to protect the borough from civil liability;

(3) to require approval by the voters residing in a subdivision or parcel proposed to be added to a road service area if roads maintained by the service area provide the only access to the subdivision or parcel or provide access to the subdivision or parcel that is required by the subdivision plat or by other regulation or ordinance;

(4) to a change in the boundaries of a road service area to exclude a subdivision or parcel that does not rely on the use of roads maintained by the service area for the subdivision's or parcel's only access or for access that is required by the subdivision plat or by other regulation or ordinance.

(d) This section applies to a home rule or general law municipality. (§ 10 ch 74 SLA 1985; am §§ 2, 3 ch 31 SLA 2001; am § 1 ch 29 SLA 2005; am § 1 ch 21 SLA 2007)

Effect of amendments. — The 2005 amendment, effective May 27, 2005, in subsection (c) added the last sentence in the introductory language, added paragraphs (1) — (3), and made stylistic changes.

The 2007 amendment, effective September 4, 2007, inserted the paragraph (c)(1) and (c)(2) designations, making related changes, and added paragraphs (c)(3) and (c)(4).

Opinions of attorney general. — While local emergency planning districts may have the same geographical boundaries as service areas, the districts and the LEPCs cannot take the form of service areas. May 29, 1992 Op. Att'y Gen.

NOTES TO DECISIONS

AS 29.05.021(b) is not in conflict with either subsection (b) or Alaska Const., art X, § 5; rather subsection (b), which follows the language of the Alaska Consitution is a limitation on the creation of new service areas and in contrast, AS 29.05.021(b) is a limitation on the incorporation of cities. Keane v. Local Boundary Comm'n, 893 P.2d 1239 (Alaska 1995).

Expansion of service area. — A municipality had the authority under its charter and ordinances to expand a police service area to include an area without a separate vote of that area's residents. Area G Home & Landowners Org., Inc. v. Anchorage, 927 P.2d 728 (Alaska 1996), cert. denied, 520 U.S. 1211, 117 S. Ct. 1694, 137 L. Ed. 2d 821 (1997).

Preference for incorporation of cities. — It is reasonable to interpret subsection (b) and Alaska Const., art. X, § 5 as preferring incorporation of a city over the creation of new service areas. Keane v. Local Boundary Comm'n, 893 P.2d 1239 (Alaska 1995).

An ordinance was valid without voter approval where it was merely an "alteration" of existing

service areas. The governing b
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consolidated four service areas

Sec. 29.35.460. Servic
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Sec. 29.35.470. Finan
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Sec. 29.35.480. Servic
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Sec. 29.35.490. Servi
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Article 8. Haz

Section
500. Reporting
510. Inspections; penalties
520. Fees

service areas. The governing board changed from elected to appointed, which was an alteration in the administration of the service area, and the ordinance consolidated four service areas into one, which allowed the same powers to be exercised within the same areas. North Kenai Peninsula Rd. Maintenance Serv. Area v. Kenai Peninsula Borough, 850 P.2d 636 (Alaska 1993).

Sec. 29.35.460. Service area boards. The assembly may provide for an appointed or elected board to supervise the furnishing of special services in a service area. (§ 10 ch 74 SLA 1985)

Sec. 29.35.470. Financing. (a) The assembly may levy or authorize the levying of taxes, charges, or assessments in a service area to finance the special services. If the assembly authorizes the levying of taxes, charges, or assessments, the rate of taxation and the issuance of bonds are subject to assembly approval.

(b) The assembly may by ordinance establish, alter, and abolish differential tax zones within a service area to provide and levy property taxes for a different level of services than that provided generally in the service area. Taxes levied within a differential tax zone that exceed the amount that would have otherwise been levied may only be used for the services provided in that zone. (§ 10 ch 74 SLA 1985; am § 4 ch 31 SLA 2001)

Sec. 29.35.480. Service areas in first class boroughs. In a first class borough, the assembly may exercise in a service area any power granted a first class city by law. The assembly may exercise in a service area any nonareawide power that may be exercised by a first class borough. (§ 10 ch 74 SLA 1985)

Sec. 29.35.490. Service areas in second and third class boroughs. (a) A second class borough may exercise in a service area any power granted a first class city by law or a nonareawide power that may be exercised by a first class borough if

(1) the exercise of the power is approved by a majority of the voters residing in the service area; or

(2) all owners of real property in the service area consent in writing to the exercise of the power if no voters reside in the service area.

(b) If the exercise of the power is approved by a majority of the voters residing in the service area, a third class borough may exercise in a service area any power not otherwise prohibited by law.

(c) A second or third class borough may establish a service area that includes only vacant, unappropriated, and unreserved land owned by the borough. A second or third class borough may establish a service area, with the concurrence of the commissioner of natural resources, that includes only vacant, unappropriated, and unreserved land owned by the state and classified for disposal to individuals. By ordinance a second or third class borough may provide the services in a service area established under this subsection necessary to develop state or municipal land as required by the planning, platting, and land use regulations of the borough. (§ 10 ch 74 SLA 1985)

NOTES TO DECISIONS

When voter approval not required. — Where a mayor and assembly are exercising the same powers within the same geographical area and are subject to the same constraints with respect to approval and appropriation that existed before the alteration, voter approval of an ordinance is not required. North Kenai Peninsula Rd. Maintenance Serv. Area v. Kenai Peninsula Borough, 850 P.2d 636 (Alaska 1993).

Article 8. Hazardous Chemicals, Materials, and Wastes.

Section
500. Reporting
510. Inspections; penalties
520. Fees
530. Duties of municipalities; powers of other agencies
540. Public access to information

Chapter 14.02
SERVICE AREA DISTRICT COUNCILS

Sections:

14.02.010 Establishment of service area district councils.
14.02.020 Service area district council membership and representation.
14.02.030 Assembly road service area committee membership.
14.02.040 Powers and duties.
14.02.050 Procedures and miscellaneous matters.

14.02.010 Establishment of service area district councils.

There is hereby established six service area district councils with the geographic boundaries as shown on the map entitled "Service Area District Council Geographical Boundaries" in the clerk's office and further described as follows:

A. District 1 – Salcha. Commencing at the confluence of the Chena River flood control levee and the north bank of the Tanana River; thence northeasterly along the flood control levee to the Chena River; thence generally easterly along the center of the Chena River to the confluence with the east fork of the Chena River (also known as the middle fork); thence easterly along the center of the east fork of the Chena River to where its headwaters meet with the Fairbanks North Star Borough boundary; thence easterly along the FNSB boundary for approximately 25 miles until the boundary turns to the south; thence continuing to follow the FNSB boundary generally south for approximately 32 miles until the boundary turns to the west, which forms the southern FNSB boundary; thence continuing to follow the southern FNSB boundary generally west for approximately 70 miles to its intersection with the Tanana River; thence generally north-northwesterly along the north bank of the Tanana River for approximately 45 miles to the intersection with the Chena flood control levee and the point of beginning for this description.

B. District 2 – Badger. Commencing at the confluence of the Chena River flood control levee and the north bank of the Tanana River; thence northeasterly along the flood control levee to the Chena River; thence generally northwesterly along the center of the Chena River to its intersection with the section line between Sections 10 and 11, T1S, R2E; thence north along the eastern section line of Sections 10 and 3, T1S, R2E to the northeast corner of Section 3, T1S, R2E and the Fairbanks base line; thence west along the Fairbanks base line 6.5 miles to the intersection with the eastern boundary of the city of Fairbanks; thence generally southerly along the city of Fairbanks boundary to the intersection with the north bank of the Tanana River; thence generally east-southeast along the north bank of the Tanana River to the confluence of the Chena River flood control levee and the north bank of the Tanana River and the point of beginning for this description.

C. District 3 – Chena Hot Springs Road. Commencing at intersection of the Steese Highway and the Fairbanks base line, which coincides, with the northern boundary of the city limits of the city of Fairbanks; thence generally east along the northern Fairbanks city limits, through Section 36, T1N, R1W, and Sections 31, 32, and 33, T1N, R1E to Section 34, T1N, R1E; thence east along the north section line of Section 34 approximately 0.5 mile; thence south along the east boundary of the city of Fairbanks to the intersection with the Fairbanks base line; thence east along the Fairbanks base line 6.5 miles to the northeast corner of Section 3, T1S, R2E; thence south along the eastern section line of Sections 3 and 10, T1S, R2E to the

intersection with the Chena River; thence generally easterly along the center of the Chena River to the confluence with the east fork of the Chena River (also known as the middle fork); thence easterly along the center of the east fork of the Chena River to where its headwaters meet with the Fairbanks North Star Borough boundary; thence generally west-northwest along the FNSB boundary for approximately 68 miles to an intersection with a ridgeline that separates the Chena River drainage from the Chatanika River drainage, located in the northwest quarter of Section 9, T5N, R8E; thence generally west along a ridgeline that separates the Chena River drainage from the Chatanika River drainage for a distance of approximately 35 miles to the intersection of the ridgeline with the corner of Sections 9, 10, 15, and 16, T3N, R3E; thence south along the eastern section line of Sections 16, 21, 28, and 33, T3N, R3E and Section 4, T2N, R3E to the southeast corner of Section 4; thence west along the southern section line of Sections 4 and 5, T2N, R3E to the southwest corner of Section 5; thence south along the eastern section lines of Sections 7, 18, 19 and 30, T2N, R3E to the southeast corner of Section 30; thence west along the southern section lines of Section 30, T2N, R3E and continuing along the southern section lines of Sections 25, 26, 27, 28, 29, and 30, T2N, R2E, and continuing along southern section lines of Sections 25, 26, 27, 28, and 29, T2N, R1E to the intersection with the Steese Highway; thence generally south along the centerline of the Steese Highway to the intersection of the Steese Highway and the Fairbanks base line and the point of beginning of this description.

D. District 4 – Farmer's Loop. Commencing at intersection of the Steese Highway and the Fairbanks base line, which coincides with the northern boundary of the city limits of the city of Fairbanks; thence generally north along the centerline of the Steese Highway to the intersection with Goldstream Road; thence west along the centerline of Goldstream Road to the crossing of Goldstream Creek; thence generally west along the center of Goldstream Creek to the intersection with the western section line of Section 24, T1N, R2W; thence south along the western section lines of Sections 24, 25, and 36, T1N, R2W to the intersection with Sheep Creek Road; thence generally east along the centerline of Sheep Creek Road to the intersection with Tanana Farm Road; thence continuing generally east along the centerline of Tanana Farm Road to the intersection with Tanana Loop Road; thence east along the centerline of Tanana Loop Road as it continues generally east, then turns north, continuing to the intersection with North Tanana Drive; thence east along North Tanana Drive to the intersection with the north section line of Section 6, T1S, R1W; thence east along the north section line of Sections 6 and 5, T1S, R1W to the intersection with College Road; thence east along the centerline of College Road until it coincides with the northern boundary of the city of Fairbanks; thence generally east along the north boundary of the city of Fairbanks to the intersection with the Steese Highway and the point of beginning of this description.

E. District 5 – North Borough. Commencing at the intersection of the Steese Highway and Goldstream Road; thence west along the centerline of Goldstream Road to the crossing of Goldstream Creek; thence generally west along the center of Goldstream Creek to the intersection with the western section line of Section 24, T1N, R2W; thence south along the western section lines of Sections 24, 25, and 36, T1N, R2W to the intersection with Sheep Creek Road; thence generally southeast along the centerline of Sheep Creek Road to the intersection with the Fairbanks base line; thence west along the Fairbanks base line approximately 23 miles to the western FNSB boundary; thence north along the western FNSB boundary to the northwest corner of the FNSB; thence generally east along northern FNSB boundary to the intersection with the Steese Highway; thence generally south along the

eastern FNSB boundary approximately 11.5 miles to an intersection with a ridgeline that separates the Chena River drainage from the Chatanika River drainage, located in the northwest quarter of Section 9, T5N, R8E; thence generally west along a ridgeline that separates the Chena River drainage from the Chatanika River drainage for a distance of approximately 35 miles to the intersection of the ridgeline with the corner of Sections 9, 10, 15, and 16, T3N, R3E; thence south along the eastern section line of Sections 16, 21, 28, and 33, T3N, R3E and Section 4, T2N, R3E to the southeast corner of Section 4; thence west along the southern section line of Sections 4 and 5, T2N, R 3E to the southwest corner of Section 5; thence south along the eastern section lines of Sections 7, 18, 19 and 30, T2N, R3E to the southeast corner of Section 30; thence west along the southern section lines of Section 30, T2N, R3E and continuing along the southern section lines of Sections 25, 26, 27, 28, 29, and 30, T2N, R2E, and continuing along southern section lines of Sections 25, 26, 27, 28, and 29, T2N, R1E to the intersection with the Steese Highway; thence generally south along the centerline of the Steese Highway to the intersection of the Steese Highway and Goldstream Road and the point of beginning of this description.

F. District 6 – West Borough. Commencing at the intersection of Sheep Creek Road and the Fairbanks base line; thence generally east along the centerline of Sheep Creek Road to the intersection with Tanana Farm Road; thence continuing generally east along the centerline of Tanana Farm Road to the intersection with Tanana Loop Road; thence east along the centerline of Tanana Loop Road as it continues generally east, then turns north, continuing to the intersection with North Tanana Drive; thence east along North Tanana Drive to the intersection with the north section line of Section 6, T1S, R1W; thence east along the north section line of Sections 6 and 5, T1S, R1W to the intersection with College Road; thence east along the centerline of College Road until it coincides with the northern boundary of the city of Fairbanks; thence generally south along the city of Fairbanks boundary until it intersects with the Tanana River within the west one-fourth of Section 25, T1S, R1W; thence generally west along the north bank of the Tanana River to the intersection with the western FNSB boundary; thence north along the western FNSB boundary to the intersection with the Fairbanks base line; thence east along the Fairbanks base line to the intersection with Sheep Creek Road and the point of beginning of this description. (Ord. 2004-69 § 2, 2004)

14.02.020 Service area district council membership and representation.

The chairperson of each service area located within the district council geographic boundaries shall appoint one of the service area's commissioners to serve on the district council who will then serve at the pleasure of the appointing service area commission. The chair of a service area may appoint a representative from their road service area who is not a member of the commission to represent that service area on the district council. There shall be no quorum requirements. (Ord. 2008-11 § 3, 2008; Ord. 2004-69 § 2, 2004)

14.02.030 Assembly road service area committee membership.

A member of each service area district council shall be appointed to serve on the assembly road service area committee. Each district council shall select a member of their district council to serve on the assembly road service area committee at the first district council meeting. If necessary, the chair of the district council may appoint a representative who is not a member of the council, if no member of the council is willing to serve on the assembly road service area committee. The selected member

shall serve at the pleasure of the appointing district council. (Ord. 2004-69 § 2, 2004)

14.02.040 Powers and duties.

A. The assembly road service area committee shall have the following powers and duties:

1. The committee shall establish priorities and recommend allocation of service area matching grant funds to qualified road service areas. The allocations to road service areas shall be made in compliance with a matrix and scoring system process annually approved by the committee with notice to the assembly. Assembly consent shall be considered given if not vetoed within 60 days of the notice.

2. Funds allocated by the committee pursuant to the service area matching grant program shall require a 10 percent match from the service area. Funds borrowed from the road service revolving loan fund may be used for the required match.

3. To make recommendations to the assembly concerning road service area issues including ordinances and resolutions.

B. Each service area district council shall have the following powers and duties:

1. To examine and make recommendations to the mayor and assembly concerning necessary upgrade and maintenance needs within the district including a prioritization of those needs.

2. To examine and consider available cost-savings within the district through the combined use of contractors or other use of their collective purchasing power.

3. To make recommendations to the mayor and the assembly concerning needed changes or other solutions to problems experienced by service areas within the district.

4. To coordinate and facilitate communication within the service areas in the district and between the service areas and the mayor and assembly.

5. To communicate with other councils. (Ord. 2007-39 § 2, 2007; Ord. 2004-69 § 2, 2004)

14.02.050 Procedures and miscellaneous matters.

A. Chapter 2.21 FNSBC, Boards and Commissions, shall govern the service area district councils, except to the extent it may conflict with the requirements of this chapter. Each district council should hold meetings on at least a quarterly basis or, if meetings are held less regularly, agree upon a means through which their assembly road service committee member can provide the district council with written updates, a copy of which must be filed with the clerk's office.

B. The presiding officer, mayor and chair of the assembly road service area committee shall jointly schedule and hold an annual meeting each year with all service area commissioners to discuss service area concerns and provide necessary training. All assembly members and road service area committee members shall be invited to attend and participate in this informal meeting. (Ord. 2008-11 § 4, 2008; Ord. 2004-69 § 2, 2004)

This page of the Fairbanks North Star Borough Code is current through Ordinance 2009-06, passed February 26, 2009.
Disclaimer: The Borough Clerk's Office has the official version of the Fairbanks North Star Borough Code. Users should contact the Borough Clerk's Office for ordinances passed subsequent to the ordinance cited above.

Borough Website: http://www.co.fairbanks.ak.us/
Telephone number: (907) 459-1401

Code Publishing Company
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HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: March 13, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 4/1/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 153**

"An Act exempting municipal boards, committees, commissions, or other similar bodies from the requirements of conducting meetings open to the public when a meeting is administrative or managerial in nature; and amending the definition of 'meeting' as it relates to public governmental meetings."

HB 153 OPEN MEETINGS: EXCEPTION AND DEFINITION

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB153 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
~~ADM~~				
CED	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Cornoyer	–			
	Coghill	✓			
	Parish	X			
	Gatto	X			
Chair:	RAMRAS	X			
Chair:					

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

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Chairman
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Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Fax

To: Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 3

From: Jane W. Pierson

Date: March 25, 2009

Re: CSHB153(JUD)

Please draft a House Judiciary CS for the above referenced bill to include the following changes from CSHB153(CRA) 26-LS0653\E.

Should you have any questions, please do not hesitate to call.

DRAFT CSHB153(JUD)

"An Act exempting municipal service area boards from the requirements of conducting meetings open to the public when a meeting is administrative or managerial in nature; and amending the definition of meeting as it relates to public governmental meetings."

* Section 1. AS 44.62.310(d) is amended to read:

(d) This section does not apply to

(1) a governmental body performing a judicial or quasi-judicial function when holding a meeting solely to make a decision in an adjudicatory proceeding;

(2) juries;

(3) parole or pardon boards;

(4) meetings of a hospital medical staff;

(5) meetings of the governmental body or any committee of a hospital when holding a meeting solely to act upon matters of professional qualifications, privileges~ or discipline;

(6) staff meetings or other gatherings of the employees of a public entity, including meetings of an employee group established by policy of the Board of Regents of the University of Alaska or held while acting in an advisory capacity to the Board of Regents; [OR]

(7) meetings held for the purpose of participating in or attending a gathering of a national, state, or regional organization of which the· public entity, governmental body, or member of the governmental body is a member, but only if no action is taken and no business of the governmental body is conducted at thc meetings; or

(8) meetings of service area boards established under AS 29.35.450 - 29.35.490 when meeting solely to act on matters that are administrative or managerial in nature.

* Sec. 2. AS 44.62.31 0(h)(2) is amended to read:

(2). "meeting" means a gathering of members of a governmental body when

(A) more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity; or

(B) more than three members or a majority of the members, whichever is less, are present, the gathering is prearranged for the purpose of considering a matter upon which the governmental body is empowered to act~ and the governmental body has only authority to advise or make recommendations for a public entity but has no authority to establish policies or make decisions for the public entity;

Jeanne Ostnes

From: Derek Miller
Sent: Wednesday, April 01, 2009 11:40 AM
To: Jeanne Ostnes
Subject: HB 201

Jeanne – Mick Manns and Jack McManus will be in the Fairbanks LIO to testify to the bill. He may bring another fellow as well.

-D

Derek Miller / Legislative Aide
Office of Representative Mike Kelly
Fairbanks, District 7
p: 907.465.6879/ c: 907.978.1360/ f: 907.465.3883
http://www.housemajority.org/kelly/index.php

HB

170

HOUSE JUDICIARY COMMITTEE

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Rep. Carl Gatto
Room 108
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Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: March 25, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File for HB170

Please accept this memo as the referral file for HB170. Attached are the following documents:

- Sponsor Statement
- HB170 (26-LS0578\A)
- CTS Zero fiscal note
- DOC Zero fiscal note
- 4/26/95 Letter from Alaska Court System to Robin Taylor, Chairman Senate Judiciary Committee
- Senate Bill No. 167
- SCSCSHB119(FIN)
- Relevant Statutes
- HJUD Committee Report

Alaska State Legislature

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REPRESENTATIVE MIKE CHENAULT
SPEAKER OF THE HOUSE

SPONSOR STATEMENT
House Bill 170: "An Act repealing the authority for day fines."

House Bill 170 repeals the authority established for day fines. The legislation establishing day fines for certain misdemeanor offenses, House Bill 119, was passed into law in 1994 and became effective July 1, 1994.

One of the provisions in the legislation was for the Court System to adopt a day fine plan. As required by the bill, the Supreme Court created a committee to establish a fine schedule based on the guidelines of House Bill 119. The committee found several problems in adopting a day fine plan and requested the legislature to introduce a bill to solve those problems. Senate Bill 167 was introduced in 1995 but did not get out of the Senate. Without the changes requested by the Supreme Court, the court did not implement the provisions of House Bill 119.

According to the Court System, "some of the technical issues identified by the committee included concerns over which misdemeanors were included and excluded, significant time delays associated with judges making written findings, problems in determining defendant income, conflicts with ordering substance abuse treatment and concerns over he levels of fines imposed and the time allowed to pay them."

The committee also expressed concerns that the bill would not accomplish what the sponsor had intended. The sponsor statement stated the intent of the legislation was to improve fine collection and reduce the number of misdemeanor offenders who were sentenced to jail. The committee believed that because the misdemeanors that were excluded from the day fine provisions and because of the technical problems identified by the committee, the sponsor's goals would not be met.

Since these statutes are not in use and will not be used by the courts, I propose that we repeal the statutes that impose a day fine plan rather than keeping these statutes in the books.

Representative_Mike_Chenault@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB170-ACS-3-24-09
( ) Publish Date:

Identifier (file name):
Title: Repeal Authority for Day Fines
Sponsor: Representative Chenault
Requester:

Dept. Affected:
RDU: Alaska Court System
Component: Trial Courts
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

House Bill 170 repeals the statutory provisions related to day fines and the court's authority to impose them. Because of problems with the original bill that authorized day fines, they have never been imposed. Because of this, passage of HB 170 will not have a fiscal impact on the court system.

Prepared by: Doug Abbuhl, Administrative Attorney — Phone: 463-4750
Division: Alaska Court System — Date/Time: 3.24.09 @ 11:30 am
Approved by: Doug Abbuhl for Stephanie Cole, Administrative Director, Alaska Court System — Date: 3.24.2009

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: HB170-DOC-OC-3-24-09
Bill Version:
( ) Publish Date:

Identifier (file name): HB170-DOC-OC-3-24-09
Dept Affected: COC
Title: "An Act Repealing the Authority for Day Fines"
RDU: Administration & Support
Component: Office of the Commissioner
Sponsor: Speaker-Chenault
Requester: Governor
Component Number: 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost: 0.0

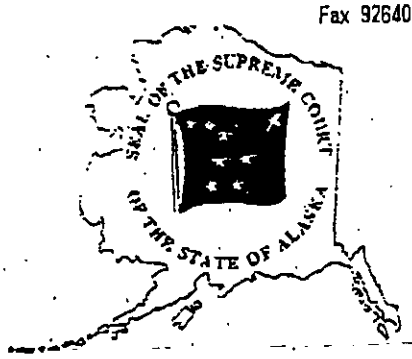
POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: (Attach a separate page if necessary)

Passage of this legislation should not have a significant impact on the Department of Corrections

Prepared by: [illegible] Phone: 269-7397
Division: [illegible]
Approved by: [illegible] Date/Time: 3/24/2009 [illegible]
Agency: [illegible] Date: 3/24/2009



Alaska Court System
State of Alaska

303 "K" STREET
ANCHORAGE, ALASKA
99501

ARTHUR H. SNOWDEN II
ADMINISTRATIVE DIRECTOR

(907) 264-0547
FAX (907) 276-5808

April 26, 1995

The Honorable Robin Taylor
Chairman, Senate Judiciary Committee
State Capitol - Room 30
Juneau, Alaska 99811

Dear Senator Taylor:

The 1994 Alaska Legislature passed a law that authorizes courts to impose day fines for certain misdemeanor offenses. The legislation went into effect July 1, 1994.

The day fine law directs the Alaska Supreme Court to adopt a "day fine plan." In June 1994, Chief Justice Daniel A. Moore appointed a committee of six judges and five representatives of other agencies to develop this plan. The committee met once a month from September through December and presented a plan to the supreme court on December 22.

In the course of developing the day fines plan, certain problems became apparent. Some of these problems could be rectified by simple amendments to the original day fines legislation. However, other problems are more fundamental. SB 167 addresses the more technical difficulties. This legislation does not address the fundamental problems, which are discussed in Part II below.

I. Technical Problems With Day Fines Law.

A. Classification of Misdemeanors.

AS 12.55.036(b)(1) requires the supreme court to adopt a day fines plan that includes "an assessment of the gravity of all misdemeanor offenses, which assessment must include the existence of prior offenses . . . ." It would take months to compile a comprehensive list of all the misdemeanor offenses in the Alaska Statutes and such a list would include many relatively obscure offenses that are never charged. The Day Fines Committee only ranked offenses that were charged ten or more times since January 1, 1990 and offenses for which a fine or imprisonment was imposed in FY 94. The committee also could not think of a simple way to make the ranking of offenses reflect the existence of prior offenses. Instead, the committee decided to treat prior offenses as an aggravating factor.

The committee has recommended that AS 12.55.036(b)(1) be amended to require that the day fines plan include an assessment of common misdemeanor offenses and to delete the requirement that the assessment reflect the existence of prior offenses. This proposal is contained in section 2 of SB 167.

B. Written Findings.

AS 12.55.036(c)(2) requires that the judge make written findings of the facts considered in determining the existence of aggravating and mitigating factors and in determining the defendant's income. Given the volume of misdemeanor sentencings in some court locations, it is not feasible for judges to make written findings in these cases. Therefore, the Day Fines Committee has recommended that the legislature eliminate AS 12.55.036(c)(2). This proposal is contained in section 3 of SB 167.

C. Felony Aggravators and Mitigators.

AS 12.55.036(b)(3) authorizes the court to increase or decrease the presumptive day fine penalty for an offense if the court finds the existence of an aggravating factor under AS 12.55.155(c) or a mitigating factor under AS 12.55.155(d). AS 12.55.155 lists the aggravating and mitigating factors that apply in felony cases. Because of the volume of misdemeanor cases, it is not feasible for judges to review the lists of felony aggravators and mitigators each time a defendant is sentenced. In addition, some of these factors are not applicable to the offenses for which a day fine may be imposed. In the proposed day fine plan, the Day Fines Committee recommended that a shorter, more general list be adopted that would be easier for judges to use. The committee

recommended that AS 12.55.036(b)(3) be amended to eliminate the references to AS 12.55.155. This proposal is contained in section 2 of SB 167.

D. Set Aside of Convictions.

Many first and second misdemeanor offenders currently receive SISs and suspended sentences which are significantly less severe than the sentences they would receive under the proposed day fines plan. In order to increase the attractiveness of day fines in such cases, the Day Fines Committee recommended that courts be allowed to set aside convictions in appropriate cases upon payment of a day fine. Another benefit of this change in the law is that the possibility of eliminating the conviction from the defendant's record might increase the likelihood of payment. This proposal is contained in section 6 of SB 167.

E. Net Income Versus Gross Income.

AS 12.55.036(b)(4) requires the court to use the defendant's gross income to calculate the defendant's net daily income for purposes of day fines. However, unless they are carrying their pay stubs, people generally know only the amount of their take home pay. The Day Fines Committee recommended that AS 12.55.036(b)(4) be revised so that the method of calculating net daily income is based on a defendant's net income after taxes instead of gross income. This proposal is contained in section 2 of SB 167.

F. Additional Time to Pay.

AS 12.55.036(d) states that the court may permit day fines to be paid in installments over time, provided the entire fine is paid within 180 days. The Day Fines Committee recommends that the legislature amend AS 12.55.036(d) to allow courts to give defendants up to one year to pay. The committee believes that additional time is needed to allow for seasonal variations in income. In addition, the projected fine amounts are high enough that some defendants will not have enough discretionary income to pay their fine in full within a six-month period. This proposal is contained in section 4 of SB 167.

G. Access to Employment Information.

The Day Fines Committee recommended that the legislature amend AS 23.20.110 to authorize the Department of Labor to give the Department of Law Collections Unit access to confidential employment information (to the extent permitted by federal

law). The purpose of this change is to improve collections by making it easier for the Department of Law to locate a defendant's places of employment. This proposal is contained in sections 7, 8, and 9 of SB 167.

H. Treatment.

The Day Fines Committee is concerned that day fines may not be used in cases involving alcohol or drugs because a day fine cannot be combined with an order for treatment. AS 12.55.015 lists the sentences judges can impose as direct court orders. This statute only authorizes the court to order treatment for defendants who are incarcerated. Therefore, the only way a judge can order treatment outside of prison is if a specific statute authorizes it (which very few do) or as a condition of probation. Since day fines cannot be combined with probation, judges will be unlikely to impose day fines when they believe treatment is necessary. The Day Fines Committee has recommended that the day fines law be amended to allow the court to enter a direct court order requiring a defendant who receives a day fine to participate in a treatment program related to the defendant's offense. This proposal is contained in section 1 of SB 167.

I. Biennial Reports.

AS 12.55.036(f) requires the court system to evaluate the use and effectiveness of day fines and report every two years to the legislature. This section specifies what the report must contain. The Day Fines Committee does not believe that certain information listed in this section can be collected given the current state of the various justice agencies' information systems. The committee has recommended that the Alaska Supreme Court invite the Alaska Judicial Council to work with the court system to develop appropriate evaluation criteria (given available information systems) and to design the information collection procedures necessary to make the reports to the legislature. To accommodate this, SB 167 amends AS 12.55.036(f) to reflect the fact that it is not yet possible to provide information on recidivism. This proposal is contained in section 5.

II. Fundamental Problems with Day Fines Law.

Now I would like to discuss the more fundamental problems that are not addressed in the attached bill.

The first problem relates to the legislature's intent in passing the law. In her March 10, 1993 memorandum transmitting the bill, Representative Fran Ulmer stated that the

intent of the legislation was to decrease the number of misdemeanor offenders who are sent to jail and to increase fine collection rates. The day fines legislation as enacted will not achieve either of these objectives.

In the course of its work, the Day Fines Committee determined that the day fines law excludes most of the misdemeanors for which people are currently sentenced to jail. Therefore, the law will not result in a meaningful decrease in the jail population as the legislature intended.

Increased fine collection is also unlikely. Under the new law, a day fine is only one of several sentencing options available to a judge. A judge will not select this option unless the judge believes the fine will be collected. In reviewing the State's collection practices, the Day Fines Committee discovered that current fine collection rates are low. The day fines program will not be widely used - or increase fine revenues - unless the Department of Law receives additional collection tools and resources. (The Department of Law's Collections Unit is funded solely through program receipts.) An example of a new tool would be to make payment of fines a condition for state licenses. The Day Fines Committee recommended that the legislature consider prohibiting the issuance or renewal of state licenses and permits to persons who have unpaid fines and other obligations to the state.

A second fundamental concern pertains to the fine amounts that result from the day fines formula. In order to avoid separation of powers questions, the legislature specified in the statute the unit scale and general formula for computing day fines. This scale would have resulted in inappropriately high fine amounts for the misdemeanors that the legislature included in the day fines program. Even though the Day Fines Committee reduced the scale as much as they thought possible - from a maximum of 365 units to a maximum of 45 units - the formula still results in very high fine amounts for all but the poorest offenders. The supreme court is reluctant to proceed without further legislative review of the fines that would result under the formula prescribed in the law.

A third fundamental concern pertains to one of the largest categories of misdemeanors - fish and game offenses. After much deliberation, the Day Fines Committee excluded these offenses from its day fines plan. Unlike criminal law, which has a relatively clear statutory framework as a result of the classification system that went into effect in 1980, fish and game has no clear sentencing structure. Title 5 includes numerous penalty provisions and it is not always obvious which ones apply to particular offenses. In addition, because offense definitions overlap, the same conduct can be charged under different statutes and regulations, with different consequences. The

committee was ultimately unwilling to impose another layer of complexity in this area until the underlying statutory and regulatory problems are resolved. Instead, the committee recommended that the legislature appoint a special legislative committee or an interagency group to assess and restructure fish and game penalty provisions and definitions of offenses.

III. Conclusion.

The attached bill addresses the problems described in Part I above. It does not address the Day Fines Committee's - and the supreme court's - more fundamental concerns discussed in Part II. Both the court and the committee question whether it is wise to proceed without addressing these concerns. It will require a significant commitment of resources in order to implement the day fines program. Without significant changes, the law is unlikely to result in the savings or the revenues that the legislature originally expected.

Sincerely,

Arthur H. Snowden, II
Administrative Director

9-LS1069\A

SENATE BILL NO. 167

IN THE LEGISLATURE OF THE STATE OF ALASKA

NINETEENTH LEGISLATURE - FIRST SESSION

BY THE SENATE JUDICIARY COMMITTEE BY REQUEST

Introduced: 4/25/95
Referred: JUD. FIN

A BILL

FOR AN ACT ENTITLED

"An Act relating to day fines in certain criminal cases and release of employment information for use in the collection of criminal judgments."

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

* Section 1. AS 12.55.036(a) is amended to read:

(a) Upon conviction of a misdemeanor, other than a violation of AS 11.41 and AS 11.56.740, a defendant may be sentenced to pay a day fine as authorized by this section. If a day fine is imposed under this section, the defendant may not be sentenced to pay a fine under AS 12.55.035, serve a term of imprisonment, or be placed on probation. However, the court may order a defendant to participate in or comply with a screening, evaluation, or treatment program related to the defendant's offense.

* Sec. 2. AS 12.55.036(b) is amended to read:

(b) The Alaska Supreme Court shall adopt a day fine plan that includes

(1) an assessment of the gravity of common [ALL] misdemeanor

offenses [, WHICH ASSESSMENT MUST INCLUDE THE EXISTENCE OF PRIOR OFFENSES,] and the assignment of presumptive penalties to them in day fine units within the following ranges:

(A) for class A and unclassified misdemeanors, not to exceed 365-day fine units;

(B) for class B misdemeanors, not to exceed 90-day fine units;

(2) a schedule of the presumptive day fine penalties;

(3) procedures for a court to increase or decrease the presumptive day fine penalties if the court finds the existence of an aggravating factor [UNDER AS 12.55.155(c)] or a mitigating factor [UNDER AS 12.55.155(d)];

(4) a table for the conversion of a defendant's actual, potential, or estimated net [GROSS] income after taxes, less one-third for a defendant above the federal poverty guideline as determined by the United States Department of Health and Human Services, and less one-half for a defendant below the federal poverty guideline into net daily income amounts; the table must include adjustments for the number of dependents actually supported by the defendant;

(5) procedures for a court to gather information about the defendant's occupation, actual, estimated, and potential income, number of dependents, and other facts necessary or relevant to sentencing a person to a day fine; a court may order the production of the financial or other records of a person it determines to be relevant to a determination under this section; the procedures must include a requirement that the facts shall be received

(A) under oath so that the defendant is subject to prosecution under AS 11.56.200; or

(B) in a writing or recording that bears notice that false statements made in it are punishable under AS 11.56.210; and

(6) other information the court determines to be necessary for implementing the day fine plan.

* Sec. 3. AS 12.55.036(c) is amended to read:

(c) The amount of a day fine shall be the product of the net daily income of the defendant, adjusted for the number of dependents actually supported by the

defendant, times the day fine penalty. When imposing a sentence of a day fine, the court shall

[(1)] state on the record the

(1) [(A)] presumptive day fine penalty for the offense, and whether the court is adjusting the presumptive day fine penalty for the existence of aggravating or mitigating factors;

(2) [(B)] net daily income of the income of the defendant, adjusted for the number of dependents actually supported by the defendant; and

(3) [(C)] amount of the day fine [;

(2) MAKE WRITTEN FINDINGS OF THE FACTS CONSIDERED IN

(A) FINDING THE EXISTENCE OF AGGRAVATING OR MITIGATING FACTORS AND IN ASSIGNING A VALUE TO THOSE FACTORS; AND

(B) DETERMINING THE DEFENDANT'S GROSS AND DAILY NET INCOMES].

* Sec. 4. AS 12.55.036(d) is amended to read:

(d) When imposing a sentence of a day fine, the court may permit the payment of the day fine in specified installments or within a certain period of time, provided the entire day fine is paid within one year [180 DAYS] of imposition.

* Sec. 5. AS 12.55.036(f) is amended to read:

(f) The Alaska Court System shall evaluate and report every two years to the legislature not later than February 1 on the use of day fines and their effectiveness. The report must include

(1) a comparison of the number of defendants receiving a day fine as a sentence with the number of other defendants, eligible to receive a day fine, who receive another sentence;

(2) to the extent that recidivism information is available, a comparison of the recidivism rates between defendants receiving a day fine with other defendants,

(A) eligible for a day fine, who receive another sentence; and

(B) not eligible for a day fine, who receive another sentence;

(3) the potential savings to the state from the number of defendants who are eligible to receive a sentence of imprisonment, and who receive a day fine, assuming those defendants would have been sentenced to a term of imprisonment;

(4) the amount of day fines collected, the success rate of collections, and the number of cases requiring civil process to collect the day fine; and

(5) recommendations concerning expansion or restriction of the use of day fines, including proposals for legislation.

* Sec. 6. AS 12.55.036 is amended by adding a new subsection to read:

(h) When there are mitigating circumstances, when the ends of justice will be served, and when the good conduct and reform of the defendant warrant it, the court may upon payment of the entire day fine within the time specified by the court set aside the conviction and issue to the defendant a certificate to that effect.

* Sec. 7. AS 23.20.110(a) is amended to read:

(a) Except as provided in (h), [AND] (i), and (l) of this section, the department shall hold information obtained from an employing unit or individual in the course of administering this chapter and determinations as to the benefit rights of an individual confidential and may not disclose them or open them to public inspection in a manner that [WHICH] reveals the identity of the individual or employing unit. A claimant or the legal representative of the claimant is entitled to information from the records of the department to the extent necessary for the proper presentation of the claim in a proceeding under this chapter. Subject to restrictions that [WHICH] the department prescribes by regulation, the information may be made available to an agency of this state or another state or federal agency charged with the administration of an unemployment compensation law or the maintenance of a system of public employment offices, or, for the purposes of the Federal Unemployment Tax Act, to the Internal Revenue Service of the United States, or, for tax purposes, to the Department of Revenue. Information obtained in connection with the administration of the employment service may be made available to persons or agencies for purposes appropriate to the operation of a public employment service.

* Sec. 8. AS 23.20.110(j) is amended to read:

(j) Notwithstanding (h), [OR] (i), or (l) of this section, the department may not release information to an administrator under (h) of this section, [OR] on an employer's hiring practices under (i) of this section, or to the Department of Law as provided under (l) of this section if the United States Secretary of Labor rules that release of the information would be grounds to find that the state is in substantial noncompliance with 42 U.S.C. 503(a).

* Sec. 9. AS 23.20.110 is amended by adding a new subsection to read:

(l) The department shall make information obtained from an employing unit or an individual available on request to the Department of Law to assist the Department of Law in the collection of criminal judgments.

SENATE CS FOR CS FOR HOUSE BILL NO. 119(FIN)
"An Act authorizing a sentencing court to impose a sentence of a day fine instead of a sentence of imprisonment on a defendant convicted of a misdemeanor; directing the Alaska Supreme Court to develop and implement a day fine plan; requiring the Alaska Court System to report to the legislature on the use of day fines; amending Alaska Rule of Criminal Procedure 32; and providing for an effective date."

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

* Section 1. AS 12.55.015(a) is amended to read:

(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a

(A) fine when authorized by law and as provided in AS 12.55.035; or

(B) a day fine when authorized by law and as provided in AS 12.55.036, if the court does not impose a term of periodic or continuous imprisonment or place the defendant on probation;

(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation [,] if the program is made available to the defendant by the Department of Corrections.

* Sec. 2. AS 12.55.035(a) is amended to read:

(a) Except as provided in AS 12.55.036, upon [UPON] conviction of an

offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

* Sec. 3. AS 12.55.035(b) is amended to read:

(b) Except as provided in AS 12.55.036, upon [UPON] conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) $75,000 for murder in the first or second degree, attempted murder in the first degree, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, or misconduct involving a controlled substance in the first degree;

(2) $50,000 for a class A, B, or C felony;

(3) $5,000 for a class A misdemeanor;

(4) $1,000 for a class B misdemeanor;

(5) $300 for a violation.

* Sec. 4. AS 12.55.035(c) is amended to read:

(c) Except as provided in AS 12.55.036, upon [UPON] conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) an amount that is

(A) $500,000 for a felony offense or for a misdemeanor offense that results in death;

(B) $200,000 for a class A misdemeanor offense that does not result in death;

(C) $25,000 for a class B misdemeanor offense that does not result in death;

(D) $10,000 for a violation;

(2) two times the pecuniary gain realized by the defendant as a result of the offense; or

(3) two times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.

* Sec. 5. AS 12.55 is amended by adding a new section to read:

Sec. 12.55.036. DAY FINES. (a) Upon conviction of a misdemeanor, other than a violation of AS 11.41 and 11.56.740, a defendant may be sentenced to pay a day fine as authorized by this section. If a day fine is imposed under this section, the defendant may not be sentenced to pay a fine under AS 12.55.035, serve a term of imprisonment, or be placed on probation.

(b) The Alaska Supreme Court shall adopt a day fine plan that includes

(1) an assessment of the gravity of all misdemeanor offenses, which assessment must include the existence of prior offenses, and the assignment of presumptive penalties to them in day fine units within the following ranges:

(A) for class A and unclassified misdemeanors, not to exceed 365-day fine units;

(B) for class B misdemeanors, not to exceed 90-day fine units;

(2) a schedule of the presumptive day fine penalties;

(3) procedures for a court to increase or decrease the presumptive day fine penalties if the court finds the existence of an aggravating factor under AS 12.55.155(c) or a mitigating factor under AS 12.55.155(d);

(4) a table for the conversion of a defendant's actual, potential, or estimated gross income, less one-third for a defendant above the federal poverty guideline as determined by the United States Department of Health and Human Services, and less one-half for a defendant below the federal poverty guideline into net daily income amounts; the table must include adjustments for the number of dependents actually supported by the defendant;

(5) procedures for a court to gather information about the defendant's occupation, actual, estimated, and potential income, number of dependents, and other facts necessary or relevant to sentencing a person to a day fine; a court may order the production of the financial or other records of a person it determines to be relevant to a determination under this section; the procedures must include a requirement that the facts shall be received

(A) under oath so that the defendant is subject to prosecution under AS 11.56.200; or

(B) in a writing or recording that bears notice that false statements made in it are punishable under AS 11.56.210; and

(6) other information the court determines to be necessary for implementing the day fine plan.

(c) The amount of a day fine shall be the product of the net daily income of the defendant, adjusted for the number of dependents actually supported by the defendant, times the day fine penalty. When imposing a sentence of a day fine, the court shall

(1) state on the record the

(A) presumptive day fine penalty for the offense, and whether the court is adjusting the presumptive day fine penalty for the existence of aggravating or mitigating factors;

(B) net daily income of the income of the defendant, adjusted for the number of dependents actually supported by the defendant; and

(C) amount of the day fine;

(2) make written findings of the facts considered in

(A) finding the existence of aggravating or mitigating factors and in assigning a value to those factors; and

(B) determining the defendant's gross and daily net incomes.

(d) When imposing a sentence of a day fine, the court may permit the payment of the day fine in specified installments or within a certain period of time, provided the entire day fine is paid within 180 days of imposition.

(e) A sentence imposing a day fine shall be considered a civil judgment for the day fine. The Department of Law shall enforce the judgment and may utilize any procedure available for the enforcement of civil judgments. If the Department of Law uses the civil process of the court to enforce or collect a day fine, the department shall be awarded costs and attorney fees.

(f) The Alaska Court System shall evaluate and report every two years to the legislature not later than February 1 on the use of day fines and their effectiveness. The report must include

(1) a comparison of the number of defendants receiving a day fine as a sentence with the number of other defendants, eligible to receive a day fine, who receive another sentence;

(2) a comparison of the recidivism rates between defendants receiving a day fine with other defendants,

(A) eligible for a day fine, who receive another sentence; and

(B) not eligible for a day fine, who receive another sentence;

(3) the potential savings to the state from the number of defendants, who are eligible to receive a sentence of imprisonment, and who receive a day fine, assuming those defendants would have been sentenced to a term of imprisonment;

(4) the amount of day fines collected, the success rate of collections, and the number of cases requiring civil process to collect the day fine; and

(5) recommendations concerning expansion or restriction of the use of day fines, including proposals for legislation.

(g) Money collected under this section shall be deposited into the general fund and separately accounted for under AS 37.05.142. The annual estimated balance in the account maintained under AS 37.05.142 for day fines collected under this section may be appropriated by the legislature as follows: (1) 25 percent of the annual estimated balance for grants and claims paid by the Council on Domestic Violence and Sexual Assault; (2) 25 percent of the annual estimated balance for grants and claims paid by the Violent Crimes Compensation Board; and (3) the balance for any lawful purpose. Nothing in this subsection creates a dedicated fund.

* Sec. 6. CHANGE OF CRIMINAL RULE. AS 12.55.036, added by sec. 5 of this Act, has the effect of modifying the sentencing provisions of Alaska Rules of Criminal Procedure 32, by establishing procedures for imposition of sentences of day fines.

* Sec. 7. AS 12.55.036(f), as enacted by sec. 5 of this Act, is repealed February 2, 2004.

* Sec. 8. This Act takes effect July 1, 1994.

Sec. 12.55.015. Authorized sentences; forfeiture.

(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a

(A) fine when authorized by law and as provided in AS 12.55.035; or

(B) day fine when authorized by law and as provided in AS 12.55.036 if the court does not impose a term of periodic or continuous imprisonment or place the defendant on probation;

(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment, but only if an employment obligation of the defendant preexisted sentencing and the defendant receives a composite sentence of not more than two years to serve;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the defendant by the Department of Corrections;

(11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

(12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is unconditionally discharged.

(b) The court, in exercising sentencing discretion as provided in this chapter, shall impose a sentence involving imprisonment when

(1) the defendant deserves to be imprisoned, considering the seriousness of the present offense and the defendant's prior criminal history, and imprisonment is equitable considering sentences imposed for other offenses and other defendants under similar circumstances;

(2) imprisonment is necessary to protect the public from further harm by the defendant; or

(3) sentences of lesser severity have been repeatedly imposed for substantially similar offenses in the past and have proven ineffective in deterring the defendant from further criminal conduct.

(c) In addition to the penalties authorized by this section, the court may invoke any authority conferred by law to order a forfeiture of property, suspend or revoke a license, remove a person from office, or impose any other civil penalty. When forfeiting property under this subsection, a court may award to a municipal law enforcement agency that participated in the arrest or conviction of the defendant, the seizure of property, or the identification of property for seizure, (1) the property if the property is worth $5,000 or less and is not money or some other thing that is divisible, or (2) up to 75 percent of the property or the value of the property if the property is worth more than $5,000 or is money or some other thing that is divisible. In determining the percentage a municipal law enforcement agency may receive under this subsection, the court shall consider the municipal law enforcement agency's total involvement in the case relative to the involvement of the state.

(d) [Repealed, Sec. 1 ch 188 SLA 1990].

(e) If the defendant is ordered to serve a definite term of imprisonment, the court may recommend that the defendant serve all or part of the term

(1) in a correctional restitution center;

(2) by electronic monitoring.

(f) Notwithstanding (a) of this section, the court shall order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of a crime involving domestic violence.

(g) Unless a defendant is ineligible for a deduction under AS 33.20, when a defendant is sentenced to a term of imprisonment of two years or more, the sentence consists of two parts: (1) a minimum term of imprisonment that is equal to not less than two-thirds of the total term of imprisonment; and (2) a maximum term of supervised release on mandatory parole that is equal to not more than one-third of the total term of imprisonment; the amount of time that the inmate actually serves in imprisonment and on supervised release is subject to the provisions of AS 33.20.010 - 33.20.060.

(h) In addition to penalties authorized by this section, the court shall order a person convicted of an offense requiring the state to collect a blood sample, oral sample, or both, for the deoxyribonucleic acid identification registration system under AS 44.41.035 to submit to the collection of

(1) the sample or samples when requested by a health care professional acting on behalf of the state to provide the sample or samples; or

(2) an oral sample when requested by a juvenile or adult correctional, probation, or parole officer, or a peace officer.

(i) In this section "deadly weapon" has the meaning given in AS 11.81.900.

Sec. 12.55.035. Fines.

(a) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) $500,000 for murder in the first or second degree, attempted murder in the first degree, murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, promoting prostitution in the first degree under AS 11.66.110(a)(2), or misconduct involving a controlled substance in the first degree;

(2) $250,000 for a class A felony;

(3) $100,000 for a class B felony;

(4) $50,000 for a class C felony;

(5) $10,000 for a class A misdemeanor;

(6) $2,000 for a class B misdemeanor;

(7) $500 for a violation.

(c) Except as provided in AS 12.55.036, upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) an amount that is

(A) $1,000,000 for a felony offense or for a misdemeanor offense that results in death;

(B) $200,000 for a class A misdemeanor offense that does not result in death;

(C) $25,000 for a class B misdemeanor offense that does not result in death;

(D) $10,000 for a violation;

(2) three times the pecuniary gain realized by the defendant as a result of the offense; or

(3) three times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(e) In imposing a fine under (c) of this section, in addition to any other relevant factors, the court shall consider

(1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;

(2) measures taken by the organization to prevent a recurrence of the offense;

(3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and

(4) the extent to which the organization will pass on to consumers the expense of the fine.

(f) In imposing a fine, the court may not reduce the fine by the amount of a surcharge or otherwise consider the applicability of a surcharge to the offense.

Sec. 12.55.036. Day fines.

(a) Upon conviction of a misdemeanor, other than a violation of AS 11.41 and AS 11.56.740, a defendant may be sentenced to pay a day fine as authorized by this section. If a day fine is imposed under this section, the defendant may not be sentenced to pay a fine under AS 12.55.035, serve a term of imprisonment, or be placed on probation.

(b) The Alaska Supreme Court shall adopt a day fine plan that includes

(1) an assessment of the gravity of all misdemeanor offenses, which assessment must include the existence of prior offenses, and the assignment of presumptive penalties to them in day fine units within the following ranges:

(A) for class A and unclassified misdemeanors, not to exceed 365-day fine units;

(B) for class B misdemeanors, not to exceed 90-day fine units;

(2) a schedule of the presumptive day fine penalties;

(3) procedures for a court to increase or decrease the presumptive day fine penalties if the court finds the existence of an aggravating factor under AS 12.55.155(c) or a mitigating factor under AS 12.55.155(d);

(4) a table for the conversion of a defendant's actual, potential, or estimated gross income, less one-third for a defendant above the federal poverty guideline as determined by the United States Department of Health and Human Services, and less one-half for a defendant below the federal poverty guideline into net daily income amounts; the table must include adjustments for the number of dependents actually supported by the defendant;

(5) procedures for a court to gather information about the defendant's occupation, actual, estimated, and potential income, number of dependents, and other facts necessary or relevant to sentencing a person to a day fine; a court may order the production of the financial or other records of a person it determines to be relevant to a determination under this section; the procedures must include a requirement that the facts shall be received

(A) under oath so that the defendant is subject to prosecution under AS 11.56.200; or

(B) in a writing or recording that bears notice that false statements made in it are punishable under AS 11.56.210; and

(6) other information the court determines to be necessary for implementing the day fine plan.

(c) The amount of a day fine shall be the product of the net daily income of the defendant, adjusted for the number of dependents actually supported by the defendant, times the day fine penalty. When imposing a sentence of a day fine, the court shall

(1) state on the record the

(A) presumptive day fine penalty for the offense, and whether the court is adjusting the presumptive day fine penalty for the existence of aggravating or mitigating factors;

(B) net daily income of the income of the defendant, adjusted for the number of dependents actually supported by the defendant; and

(C) amount of the day fine;

(2) make written findings of the facts considered in

(A) finding the existence of aggravating or mitigating factors and in assigning a value to those factors; and

(B) determining the defendant's gross and daily net incomes.

(d) When imposing a sentence of a day fine, the court may permit the payment of the day fine in specified installments or within a certain period of time, provided the entire day fine is paid within 180 days of imposition.

(e) A sentence imposing a day fine shall be considered a civil judgment for the day fine. The Department of Law shall enforce the judgment and may utilize any procedure available for the enforcement of civil judgments. If the Department of Law uses the civil process of the court to enforce or collect a day fine, the department shall be awarded costs and attorney fees.

(f) [Repealed, Sec. 7 ch 79 SLA 1994].

(g) Money collected under this section shall be deposited into the general fund and separately accounted for under AS 37.05.142. The annual estimated balance in the account maintained under AS 37.05.142 for day fines collected under this section may be appropriated by the legislature as follows: (1) 25 percent of the annual estimated balance for grants and claims paid by the Council on Domestic Violence and Sexual Assault; (2) 25 percent of the annual estimated balance for grants and claims paid by the Violent Crimes Compensation Board; and (3) the balance for any lawful purpose. Nothing in this subsection creates a dedicated fund.

History -

(Sec. 5 ch 79 SLA 1994; am Sec. 6 ch 21 SLA 1995)

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: March 9, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 3/25/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 170**

"An Act repealing the authority for day fines."

HB 170 REPEAL AUTHORITY FOR DAY FINES

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title / [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CRT	1			✓
DOC	2			✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Gruenberg			—	
	Cook 4-1			—	
	Williams			X	
Chair:	ABRAMS	X			
Chair:					

HB

186

Alaska State Legislature

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Member
House Finance Committee

Representative Mike Kelly

House District 7

Sponsor Statement – Blank CS for HB 186 ( )

"ALASKA FIREARMS FREEDOM ACT"

The United States Constitution gives Congress the authority to regulate Interstate Commerce between the states and 18 USC 922 makes it unlawful for any person not licensed as a manufacturer or dealer in firearms to engage in the business of manufacturing or dealing in firearms. Collectively, the Interstate Commerce Clause and 18 USC 922 are used by the federal government as a means to regulate firearms.

The Alaska Firearms Freedom Act addresses this by exempting firearms, firearm accessories, and ammunition manufactured and retained in the state from all federal firearm control laws including registration, as firearms that meet these criteria shouldn't be regulated by the federal government because they have not traveled in interstate commerce. Firearms exempt from this Act must have the words "Made in Alaska" clearly stamped on a central metallic part such as the receiver or frame.

This bill frees certain firearms from federal regulation as long as certain conditions are met. It frees the state of Alaska from restrictive federal firearm regulation and allows the state to take responsible firearm regulation into her own hands. The federal government has historically used the Interstate Commerce Clause to regulate firearms and has consistently pursued legislation that imposes its will on states. Outdoorsmen, hunters, and Alaskans defending their families and property will benefit from the passage of HB 186.

CS FOR HOUSE BILL NO. 186(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLY, Wilson, Lynn, Gatto

A BILL

FOR AN ACT ENTITLED

"An Act declaring that certain firearms and accessories are exempt from federal regulation."

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

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

FINDINGS. The legislature finds that the authority for this Act is the following:

(1) the Tenth Amendment to the Constitution of the United States guarantees to the states and their people all powers not granted to the federal government elsewhere in the constitution and reserves to the state and people of Alaska certain powers as they were intended at the time that Alaska was admitted to statehood in 1959; the guaranty of those powers is a matter of contract between the state and people of Alaska and the United States as of the time that the compact with the United States was agreed upon and adopted by Alaska and the United States in 1959;

(2) the Ninth Amendment to the Constitution of the United States guarantees

to the people rights not granted in the constitution and reserves to the people of Alaska certain rights as they were intended at the time that Alaska was admitted to statehood in 1959; the guaranty of those rights is a matter of contract between the state and people of Alaska and the United States as of the time that the compact with the United States was agreed upon and adopted by Alaska and the United States in 1959;

(3) the regulation of intrastate commerce is vested in the states under the Ninth and Tenth Amendments to the Constitution of the United States, particularly if not expressly preempted by federal law; the United States Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearm accessories, and ammunition;

(4) the Second Amendment to the Constitution of the United States reserves to the people the right to keep and bear arms as that right was intended at the time that Alaska was admitted to statehood in 1959, and the guaranty of the right is a matter of contract between the state and people of Alaska and the United States as of the time that the compact with the United States was agreed upon and adopted by Alaska and the United States in 1959;

(5) art. I, sec. 19, Constitution of the State of Alaska clearly secures to Alaska citizens and prohibits government interference with the right of individual Alaska citizens to keep and bear arms.

*** Sec. 2.** AS 44.99 is amended by adding a new section to read:

Article 5. Alaska Firearms Freedom Act.

Sec. 44.99.500. State policy, declarations, and requirements concerning certain firearms not in interstate commerce and not subject to federal regulation. (a) A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in this state and that remains in the state is not subject to federal law or federal regulation, including registration, under the authority of the United States Congress to regulate interstate commerce as those items have not traveled in interstate commerce.

(b) This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in this state from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state. Generic and insignificant parts that have other manufacturing or consumer product applications are

not firearms, firearm accessories, or ammunition, and their importation into this state and incorporation into a firearm, a firearm accessory, or ammunition manufactured in this state does not subject the firearm, firearm accessory, or ammunition to federal regulation. Basic materials, such as unmachined steel and unshaped wood, are not firearms, firearm accessories, or ammunition and are not subject to congressional authority to regulate firearms, firearm accessories, and ammunition under interstate commerce as if they were actually firearms, firearm accessories, or ammunition. The authority of the United States Congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearm accessories, and ammunition made in this state from those materials. Firearm accessories that are imported into this state from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in this state.

(c) A firearm manufactured or sold in this state and not subject to federal regulation under this section must have the words "Made in Alaska" clearly stamped on a central metallic part, such as the receiver or frame.

(d) In this section,

(1) "firearm accessory" means an item that is used in conjunction with or mounted on a firearm but is not essential to the basic function of a firearm, including a telescopic or laser sight, magazine, flash or sound suppressor, folding or aftermarket stock and grip, speedloader, ammunition carrier, and light for target illumination;

(2) "generic and insignificant parts" includes springs, screws, nuts, and pins;

(3) "manufactured" means a firearm, a firearm accessory, or ammunition that has been created from basic materials for functional usefulness, including forging, casting, machining, or other processes for working materials.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 44.99.500, added by sec. 2 of this Act, applies to firearms,

firearm accessories, and ammunition that are manufactured and retained in this state after October 1, 2009.

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
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Representative_Jay_Ramras@legis.state.ak.us
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Committee Members:
Representative Nancy Dahlstrom,
Vice-Chairman
Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Fax

To: Leg. Legal

Fax #: 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: April 6, 2009

Re: Go Final on HB186

This morning the House Judiciary Committee passed Hb186 from committee with the following amendment:

P.1, L. 10; P.2, L2; P. 2. L.12 change "understood" to "intended"

Please also check to make sure this does not appear elsewhere in the bill, since the amendment was to change "understood anywhere it appeared in this context.

Thank you.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB186**
() Publish Date:

Identifier (file name): HB186-LAW-CRIM-4-3-09
Title: An Act exempting certain firearms from federal regulation
Sponsor: REPRESENTATIVE(s) KELLY, Wilson
Requester: JUDICIARY

Dept. Affected: Law
RDU: CRIMINAL
Component: CRIMINAL JUSTICE LITIGATION
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill attempts to declare that firearms that are made in Alaska are exempt from any federal law or regulation. The bill also requires the Attorney General for Alaska to pursue a declaratory judgment action in federal court upholding this declaration, and requires the Attorney General to defend any Alaska citizen prosecuted for violating federal law regarding firearms. The bill has significant constitutional issues. These issues would most likely arise in the context of a state citizen being charged with a crime in federal court and could result in significant litigation in both state and federal court. While such litigation is likely, it is difficult to estimate with any certainty the costs that might be incurred and they are therefore indeterminate at this point.

Prepared by: Robert Meiners, Deputy Director — Phone 465-3673
Division: Administrative Services — Date/Time 4/3/09 2:03 PM
Approved by: Wayne Anthony Ross, Attorney General — Date 4/3/2009
Department of Law

(Revised 9/10/2008 OMB)

26-LS0627\E
Luckhaupt
4/3/09

CS FOR HOUSE BILL NO. 186( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES KELLY, Wilson

A BILL

FOR AN ACT ENTITLED

"An Act declaring that certain firearms and accessories are exempt from federal regulation."

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

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

FINDINGS. The legislature finds that the authority for this Act is the following:

(1) the Tenth Amendment to the Constitution of the United States guarantees to the states and their people all powers not granted to the federal government elsewhere in the constitution and reserves to the state and people of Alaska certain powers as they were understood at the time that Alaska was admitted to statehood in 1959; the guaranty of those powers is a matter of contract between the state and people of Alaska and the United States as of the time that the compact with the United States was agreed upon and adopted by Alaska and the United States in 1959;

(2) the Ninth Amendment to the Constitution of the United States guarantees

1823

to the people rights not granted in the constitution and reserves to the people of Alaska certain rights as they were understood at the time that Alaska was admitted to statehood in 1959; the guaranty of those rights is a matter of contract between the state and people of Alaska and the United States as of the time that the compact with the United States was agreed upon and adopted by Alaska and the United States in 1959;

(3) the regulation of intrastate commerce is vested in the states under the Ninth and Tenth Amendments to the Constitution of the United States, particularly if not expressly preempted by federal law; the United States Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearm accessories, and ammunition;

(4) the Second Amendment to the Constitution of the United States reserves to the people the right to keep and bear arms as that right was understood at the time that Alaska was admitted to statehood in 1959, and the guaranty of the right is a matter of contract between the state and people of Alaska and the United States as of the time that the compact with the United States was agreed upon and adopted by Alaska and the United States in 1959;

(5) art. I, sec. 19, Constitution of the State of Alaska clearly secures to Alaska citizens and prohibits government interference with the right of individual Alaska citizens to keep and bear arms.

*** Sec. 2.** AS 44.99 is amended by adding a new section to read:

Article 5. Alaska Firearms Freedom Act.

Sec. 44.99.500. State policy, declarations, and requirements concerning certain firearms not in interstate commerce and not subject to federal regulation. (a) A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in this state and that remains in the state is not subject to federal law or federal regulation, including registration, under the authority of the United States Congress to regulate interstate commerce as those items have not traveled in interstate commerce.

(b) This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in this state from basic materials and that can be manufactured without the inclusion of any significant parts imported from another state. Generic and insignificant parts that have other manufacturing or consumer product applications are

not firearms, firearm accessories, or ammunition, and their importation into this state and incorporation into a firearm, a firearm accessory, or ammunition manufactured in this state does not subject the firearm, firearm accessory, or ammunition to federal regulation. Basic materials, such as unmachined steel and unshaped wood, are not firearms, firearm accessories, or ammunition and are not subject to congressional authority to regulate firearms, firearm accessories, and ammunition under interstate commerce as if they were actually firearms, firearm accessories, or ammunition. The authority of the United States Congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearm accessories, and ammunition made in this state from those materials. Firearm accessories that are imported into this state from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in this state.

(c) A firearm manufactured or sold in this state and not subject to federal regulation under this section must have the words "Made in Alaska" clearly stamped on a central metallic part, such as the receiver or frame.

(d) In this section,

(1) "firearm accessory" means an item that is used in conjunction with or mounted on a firearm but is not essential to the basic function of a firearm, including a telescopic or laser sight, magazine, flash or sound suppressor, folding or aftermarket stock and grip, speedloader, ammunition carrier, and light for target illumination;

(2) "generic and insignificant parts" includes springs, screws, nuts, and pins;

(3) "manufactured" means a firearm, a firearm accessory, or ammunition that has been created from basic materials for functional usefulness, including forging, casting, machining, or other processes for working materials.

*** Sec. 3.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 44.99.500, added by sec. 2 of this Act, applies to firearms,

firearm accessories, and ammunition that are manufactured and retained in this state after October 1, 2009.

Alaska State Legislature

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Member
House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: **April 6, 2009**

TO: **Representative Mike Kelly**

FROM: **Derek Miller**

RE: **Sectional Analysis for blank CS for HB 186( )**
(26-LS0627\E)

A sectional summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1.
Findings Section. The authority of this Act is the Second, Ninth, and Tenth Amendments to the Constitution of the United States. The Second Amendment reserves to the people the right to keep and bear arms, the Ninth Amendment guarantees to the people rights not granted in the constitution, and the Tenth Amendment guarantees to the states and their people all powers not granted to the federal government elsewhere in the constitution. The United States Congress has not expressly preempted state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearm accessories, and ammunition. Article I, Section 19 of the Constitution of the State of Alaska secures to the citizens and prohibits government interference with the right of individual Alaska citizens to keep and bear arms.

Section 2.
(a) A personal firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in this state and that remains in the state is not subject to federal law or federal regulation including registration under the authority of the United States Congress to regulate intrastate commerce.

(b) This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in this state from basic materials without the inclusion of significant parts imported from another state. Generic and insignificant parts that have other manufacturing or consumer applications are not firearms, firearm accessories, or ammunition and their incorporation into a firearm, firearm accessory, or ammunition manufactured in this state does not subject them to federal regulation. Basic materials, such as unmachined steel and unshaped wood are not firearms, firearm accessories, and ammunition and are not subject to federal regulation under intrastate commerce. Firearm accessories imported into this state from another state and are attached to or used in conjunction with a firearm in this state does not subject the firearm to federal regulation under intrastate commerce.

(c) A firearm manufactured or sold in this sate and not subject to federal regulation mush have the words "Made in Alaska" clearly stamped on a central metallic part, such as the receiver or frame.

(d) Definitions section.

"Firearm accessory" – an item that is used in conjunction with or mounted on a firearm but is not essential to the basic function of a firearm. This includes: a telescope or laser sight, magazine, flash or sound suppressor, folding or aftermarket stock and grip, speedloader, ammunition carrier, and light for target illumination.

"Generic and insignificant parts" – includes springs, screws, nuts, and pins.

"Manufactured" – means a firearm a firearm accessory, or ammunition that has been created from basic materials for functional usefulness, including forging, casting, machining, or other processes for working materials.

Section 3.
Applicability section. This Act applies to firearms, firearm accessories, and ammunition that are manufactured and retained in this state after October 1, 2009.

SENATE BILL 1644

By Beavers

AN ACT to amend Tennessee Code Annotated, Title 4, relative to exempting from regulation under the commerce clause of the Constitution of the United States a firearm, firearm accessory, or ammunition manufactured and retained in Tennessee.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 4, is amended by adding Sections 2 through 6 of this act as a new chapter thereto.

SECTION 2. This chapter shall be known and may be cited as the "Tennessee Firearms Freedom Act".

SECTION 3. The general assembly declares that the authority for this chapter is the following:

(1) The tenth amendment to the United States Constitution guarantees to the states and their people all powers not granted to the federal government elsewhere in the Constitution and reserves to the state and people of Tennessee certain powers as they were understood at the time that Tennessee was admitted to statehood. The guarantee of those powers is a matter of contract between the state and people of Tennessee and the United States as of the time that the compact with the United States was agreed upon and adopted by Tennessee and the United States;

(2) The ninth amendment to the United States Constitution guarantees to the people rights not granted in the Constitution and reserves to the people of Tennessee certain rights as they were understood at the time that Tennessee was admitted to statehood. The guarantee of those rights is a matter of contract between the state and

people of Tennessee and the United States as of the time that the compact with the United States was agreed upon and adopted by Tennessee and the United States.

(3) The regulation of intrastate commerce is vested in the states under the ninth and tenth amendments to the United States Constitution, particularly if not expressly preempted by federal law. Congress cannot preempt state regulation of intrastate commerce pertaining to the manufacture on an intrastate basis of firearms, firearms accessories, and ammunition;

(4) The second amendment to the United States Constitution reserves to the people the right to keep and bear arms as that right was understood at the time that Tennessee was admitted to statehood, and the guarantee of the right is a matter of contract between the state and people of Tennessee and the United States as of the time that the compact with the United States was agreed upon and adopted by Tennessee and the United States; and

(5) The Tennessee Constitution clearly secures to Tennessee citizens, and prohibits government interference with, the right of individual Tennessee citizens to keep and bear arms.

SECTION 4. As used in this chapter, unless the context otherwise requires:

(1) "Firearms accessories" means items that are used in conjunction with or mounted upon a firearm but are not essential to the basic function of a firearm, including but not limited to telescopic or laser sights, magazines, flash or sound suppressors, folding or aftermarket stocks and grips, speedloaders, ammunition carriers, and lights for target illumination;

(2) "Generic and insignificant parts" includes but is not limited to springs, screws, nuts, and pins; and

(3) "Manufactured" means creating a firearm, a firearm accessory, or ammunition from basic materials for functional usefulness, including but not limited to forging, casting, machining, or other processes for working materials.

SECTION 5. A firearm, a firearm accessory, or ammunition that is manufactured commercially or privately in Tennessee is not subject to federal law or federal regulation, including registration, under the authority of congress to regulate interstate commerce. It is declared by the legislature that those items have not traveled in interstate commerce. This section applies to a firearm, a firearm accessory, or ammunition that is manufactured in Tennessee from basic materials and that can be manufactured without the inclusion of any significant parts imported into this state. Generic and insignificant parts that have other manufacturing or consumer product applications are not firearms, firearms accessories, or ammunition, and their importation into Tennessee and incorporation into a firearm, a firearm accessory, or ammunition manufactured in Tennessee does not subject the firearm, firearm accessory, or ammunition to federal regulation. It is declared by the legislature that basic materials, such as unmachined steel and unshaped wood, are not firearms, firearms accessories, or ammunition and are not subject to congressional authority to regulate firearms, firearms accessories, and ammunition under interstate commerce as if they were actually firearms, firearms accessories, or ammunition. The authority of congress to regulate interstate commerce in basic materials does not include authority to regulate firearms, firearms accessories, and ammunition made in Tennessee from those materials. Firearms accessories that are imported into Tennessee from another state and that are subject to federal regulation as being in interstate commerce do not subject a firearm to federal regulation under interstate commerce because they are attached to or used in conjunction with a firearm in Tennessee.

SECTION 6. A firearm manufactured or sold in Tennessee under this chapter must have the words "Made in Tennessee" clearly stamped on a central metallic part, such as the receiver or frame.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.

LEGISLATIVE RESEARCH REPORT

APRIL 8, 2005

REPORT NUMBER 05.237

COSTS OF DEFENDING UNCONSTITUTIONAL LAWS

PREPARED FOR REPRESENTATIVE LES GARA

BY CHUCK BURNHAM, LEGISLATIVE ANALYST

BACKGROUND: LANDMARK ALASKA COURT RULINGS ON MARIJUANA POSSESSION 2

CHANGES TO POSSESSION LAWS PROPOSED IN HB 96 3

Table 1: Current and Proposed Crimes of Marijuana Possession 4

LEGAL COSTS OF DEFENDING CERTAIN LAWS DETERMINED TO BE UNCONSTITUTIONAL 4

Noy v. State of Alaska 5

Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al. 5

You asked for an analysis of HB 96, which relates to the use, possession, and criminality of marijuana in Alaska. Specifically, you wanted to know how this bill differs from the provision of AS 11.71.060(a)—regarding marijuana possession—that was recently found unconstitutional by the Alaska Court of Appeals. In addition, you asked about the costs to the state for mounting legal defenses for certain laws found to be unconstitutional. Specifically, you asked that we determine the costs for attorneys, support staff, and other significant expenses associated with defending the statutes and regulations that were found by the courts to be unconstitutional in the following cases:

- *Noy v. State of Alaska*; and
- *Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al.*

907-465-3991
907-465-3908 (fax)

Alaska Legislature
Legislative Research Services
w3.legis.state.ak.us/Research/research_home.htm

State Capitol
Juneau, AK 99801

SUMMARY

In 1975 and 2003 Alaska courts issued rulings that found the possession of small amounts of marijuana—under four ounces—to be protected by privacy provisions of the state constitution. Nonetheless, both bodies of the Alaska Legislature are currently considering bills that would decrease the marijuana possession thresholds for the criminal charges of misconduct involving a controlled substance in the fourth, fifth, and sixth degrees, respectively. To the extent that the governor's bills, HB 96 and SB 74, seek to criminalize the possession of less than four ounces of marijuana in private homes for personal use, the bills appear to contravene the rulings of Alaska's courts.

The significant measurable costs to the state of defending AS 11.71.060(a) in *Noy v. Alaska* were approximately **$7,600**. Because *Noy* began as a relatively routine misdemeanor case, the costs were relatively low. By contrast, the total costs to the state upon the 2001 final ruling in the civil case *Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al* were about **$452,000**.

In the remainder of this report we provide further information on state court rulings regarding marijuana possession, a brief analysis of HB 96, and details of the costs of defending the state's position in the *Noy* and *Planned Parenthood* cases.

BACKGROUND: LANDMARK ALASKA COURT RULINGS ON MARIJUANA POSSESSION

In 1975, the Alaska Supreme Court ruled in *Ravin v. State* that the privacy clause of the Alaska Constitution (Article 1, Section 22) protects the possession of marijuana in one's home for personal use. The court's decision is summarized in *Lexis* online as follows:

> The court held that privacy in the home was a fundamental right under both constitutions. However, the right had to yield when it interfered in a serious manner with the health, safety, or rights of others, or with the public welfare. The state had to meet a substantial burden of showing that proscription of possession of marijuana in the home was in the interest of public welfare. It did not meet that burden because the evidence presented did not prove that marijuana as presently used in the country was generally a danger to the user or others. The privacy of the home could not be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. However, possession at home of amounts of marijuana indicative of intent to sell rather than for personal use was unprotected.[1]

Following the *Ravin* decision, Alaska laws were changed to allow possession of less than four ounces of marijuana by adults in their homes. Fifteen years later, in the 1990 general election, however, Alaska voters approved Ballot Measure 2, which criminalized possession of marijuana in any amount.[2] The initiative amended AS 11.71.060(a) to read as follows:

---

[1] *Ravin v. State of Alaska*, No. 2135, Supreme Court of Alaska; 537 P.2d 494; 1975 Alas. LEXIS 334.

[2] Initiative No. 88MARI: Marijuana Law Amendments, appeared on the November 6, 1990, general election ballot.

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the sixth degree if the person

(1) uses or displays any amount of a schedule VIA [including marijuana] controlled substance or possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half pound containing a schedule VIA controlled substance; or

(2) refuses entry into a premise for an inspection authorized under AS 17.30.

The amended law effectively made possession of even very small amounts of marijuana a Class B misdemeanor punishable by up to ninety days in jail and a one-thousand dollar fine.[3]

In *Noy v. State of Alaska* (2003), however, the Alaska Court of Appeals, looking to the Supreme Court's decision in *Ravin*, determined neither the legislature *nor* the voters have the power to enact laws that criminalize possession of small amounts of marijuana. The court, therefore, found AS 11.71.060(a) to be unconstitutional to the extent that it prohibits possession of less than four ounces of marijuana in one's home for personal use.[4]

CHANGES TO POSSESSION LAWS PROPOSED IN HB 96

In the transmittal letter accompanying HB 96, Governor Murkowski identified the primary purposes of the bill as follows:

> This bill would provide a forum for the Legislature to hear expert testimony on the effects of marijuana and to make findings that the courts can rely on in cases where marijuana is an issue. In addition to educating the Legislature, courts, and the public about the harmful effects of marijuana, this bill would deter possession and use of marijuana by increasing criminal penalties for certain types of possession. It also would provide a fair and efficient process for determining the usable weight of live marijuana plants in criminal prosecutions.

Section 6 of the bill would amend AS 11.71.060(a)—the section found unconstitutional by the Alaska Court of Appeals—as follows (bolded, underlined text has been added; text in brackets is deleted):

> Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the sixth degree if the person
>
> (1) uses or displays any amount of a schedule VIA controlled substance**;**
>
> **(2)** [OR] possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than **one ounce** [ONE-HALF POUND] containing a schedule VIA controlled substance; [OR]
>
> **(3) manufactures, delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half ounce containing a schedule VIA controlled substance;**
>
> **(4) possesses one or more preparations, compounds, mixtures, or substances containing a schedule VIA controlled substance while a passenger in a motor vehicle, aircraft, or motorized watercraft;**

---

[3] Maximum fines for Class B misdemeanors were subsequently increased to $2,000.

[4] *Noy v. State*, 79 P.3d 1201, 2003 Alas. App. LEXIS 209 (Alaska Ct. App., 2003).

(5) being the driver or operator of a motor vehicle, aircraft, or motorized watercraft, knowingly permits a passenger to possess one or more preparations, compounds, mixtures, or substances containing a schedule VIA controlled substance; or

(6) [(2)] refuses entry into a premise for an inspection authorized under AS 17.30.[5]

As you can see, the second provision of this section decreases the amount of marijuana required to justify a charge of misconduct involving a controlled substance in the sixth degree—a Class B misdemeanor. Amendments proposed in Sections 4 and 5 of the bill also decrease possession thresholds for the charges of misconduct with a controlled substance in the fourth and fifth degree, respectively. It appears that in criminalizing the possession of less than four ounces of marijuana in the privacy of one's home, Sections 5 and 6 of HB 96 may contravene the Courts' decisions in *Ravin* and *Noy*. Table 1 shows current possession thresholds and those proposed by HB 96, the criminal charges for those levels of possession, and the maximum punishment allowed for each charge.

Table 1: Current Statutory Language and Proposed Crimes of Marijuana Possession

Statute / HB 96 Section	Level of Crime	Possession Threshold		Maximum Sentence	
		Current	Proposed: HB 96	Imprisonment	Fine
AS 11.71.040 / Section 4	Class C Felony	One pound or more	Four ounces or more	Five years	$50,000
AS 11.71.050 / Section 5	Class A Misdemeanor	One-half pound or more	One ounce or more	One year	$10,000
AS 11.71.060 / Section 6	Class B Misdemeanor	Less than one-half pound	Less than one ounce	Ninety days	$2,000

Notes: More serious charges involving marijuana are generally restricted to crimes involving selling the drug. In its ruling in *Ravin v. State*, the Alaska Supreme Court determined that selling marijuana, unlike possessing small amounts for personal use in the home, is not afforded constitutional protection.
Source: Alaska Statutes (2004), HB 96 (2005).

LEGAL COSTS OF DEFENDING CERTAIN LAWS DETERMINED TO BE UNCONSTITUTIONAL

Kathryn Daughhetee, Administrative Services Director, Alaska Department of Law provided cost figures including salaries for attorneys and other staff and fees awarded by the court, where applicable.[6] Other costs, such as witnesses' fees and travel costs, which Ms. Daughhetee estimated to be relatively minimal, are not included. It is important to note that the primary attorneys representing the state in both of the cases were Department of Law staff. The Department does not consider the salaries of these attorneys and their support staff to be strictly associated with these cases. That is, had the attorneys and staff not been working on the cases

[5] We include, as Attachment A, a copy of HB 96.

[6] Ms. Daughhetee can be reached at (907) 465-3673.

in question, they would have, nonetheless, been drawing the same salaries while working on other cases. Nonetheless, for the purposes of this report, Department of Law staff salaries are included in the state's costs for these cases.

NOY V. STATE OF ALASKA

As we mentioned, *Noy* was a criminal case involving a misdemeanor charge of marijuana possession. Following a two-day trial in the Fourth District Court in Fairbanks, the defendant was convicted. On appeal, the Alaska Court of Appeals found that Mr. Noy was entitled to a new trial because the trial judge had incorrectly instructed the jury on how to determine the weight of marijuana plants. The Court of Appeals held unconstitutional the marijuana possession statute under which Mr. Noy was convicted, AS 11.71.060(a), because the state did not show a sufficient governmental interest in limiting Alaskans' right to privacy under the state constitution by criminalizing marijuana possession.[7]

The Criminal Division of the Alaska Department of Law does not track attorney and staff time by case. Nonetheless, the Department estimates that a total of 77.5 "billable" hours were dedicated to the case at an average rate of $98 per hour for attorney and staff salaries. The total of these costs to the state, therefore, was approximately **$7,600**.

DEPARTMENT OF HEALTH AND SOCIAL SERVICES, KAREN PURDUE COMMISSIONER V. PLANNED PARENTHOOD OF ALASKA, INC., ET AL.

In 1998, Planned Parenthood of Alaska and two private practice physicians brought this civil suit challenging 7 AAC 43.140, which relates to Medicaid funding for abortions. Under the regulation, Medicaid funds could be used for abortions only in cases where the life of the mother was in danger or where the pregnancy was the result of rape or incest. In 2001, the Third District Superior Court found, and the Alaska Supreme Court affirmed, that the state, having undertaken a program to provide health care for poor Alaskans, was required to adhere to neutral criteria in distributing that care. It could not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the courts found that the regulation discriminatorily burdened the exercise of constitutional rights by poor Alaskan women by denying funding solely on political disapproval of a medically necessary procedure. In the view of the courts, this selective denial of medical benefits violated Alaska's constitutional guarantee of equal protection.[8]

The state was represented in the case by the Attorney General's office. In addition, the Legislature contracted with the Anchorage law firm of Brena, Bell & Clarkson to file an amicus brief in support of the regulation. Further substantial costs were incurred because, having

[7] We include, as Attachment B, a copy of the decision in *David S. Noy v State of Alaska*, Court of Appeals No. A-8327, No. 1906, November 14, 2003; 83 P.3d 545; 2003 Alas. App. LEXIS 234

[8] We include, as Attachment C, a copy of the decision in *Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al.*, Supreme Court No. S-9109, No. 5443; 28 P.3d 904; 2001 Alas. LEXIS 97.

prevailed against the state, the plaintiff was awarded full attorney's fees.[9] The total costs of attorneys, staff, fees, and the contracted amicus brief in this case was approximately **$452,000**. The components of this total amount are as follows:

- Department of Law costs $158,000
- Plaintiff's fees $269,000
- Contract for amicus brief $25,000

Please note, however, the Department of Law does not consider the costs for its attorneys and staff to have been incurred strictly due to this case because salaries for those positions would be paid regardless of the existence of this particular case.

If you would like a legal opinion of the chances of HB 96 or SB 74 passing constitutional muster, please contact Legal Services.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

[9] The criteria the court uses in weighing a plaintiff's private motivation against the extent of public interest involved appear among the annotations to Civil Rule 82 as follows: (1) Is the case designed to effectuate strong public policies? (2) If the plaintiff succeeds will numerous people receive benefits from the lawsuit? (3) Can only a private party have been expected to bring the suit? (4) Would the purported public interest litigant have sufficient economic incentive to file suit even if the action involved only narrow issues lacking general importance?

Attachment A

HB 96 (2005)

HOUSE BILL NO. 96

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FOURTH LEGISLATURE - FIRST SESSION

BY THE HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced: 1/21/05
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

"An Act making findings relating to marijuana use and possession; relating to marijuana and misconduct involving a controlled substance; and providing for an effective date."

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

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

PURPOSE. The purpose of this Act is to protect the health and safety of persons in this state, and to provide legislative findings concerning this Act regarding marijuana and its effects in this state.

*** Sec. 2.** The uncodified law of the State of Alaska is amended by adding a new section to read:

FINDINGS. The legislature finds that marijuana poses a threat to the public health that justifies prohibiting its use and possession in this state, even by adults in private. The legislature further finds that

(1) marijuana has been for many years and continues to be the most commonly used illegal controlled substance in the United States;

(2) marijuana has many adverse health and social effects, and there is evidence that it has addictive properties similar to heroin and other similar illegal controlled substances;

(3) in addition to concerns about marijuana use generally, the legislature is particularly concerned with the rates of use of marijuana by young people and Alaska Natives, which exceed national averages;

(4) early exposure of children to marijuana increases the likelihood of lifelong health and social problems, and makes it much more likely that the person will go on to use more potent illegal controlled substances;

(5) a high percentage of adults arrested in this state for domestic violence test positive for marijuana at the time of arrest;

(6) marijuana use by children is associated with an increased risk of attempting suicide;

(7) marijuana consists of over four hundred different chemicals and can affect almost every organ and system in the body, including the lymph system, the heart, and the lungs; marijuana can disrupt memory, attention, judgment, and other cognitive functions and can impair motor coordination, time perception, and balance, especially in children;

(8) marijuana smoke contains more carcinogenic hydrocarbons than tobacco smoke and a person who smokes several marijuana cigarettes a week may be taking in as many cancer-causing chemicals as someone who smokes a full pack of tobacco cigarettes every day;

(9) the potency of marijuana in the 1960s and 1970s was very low compared to the potency in 2005; the average amount of delta-9-tetrahydrocannabinol (THC), the main psychoactive ingredient, nationwide, was less than one percent in the 1960s and 1970s, but has increased steadily in the 1980s and especially the 1990s, and by 2003 was more than six times that level, at 6.4 percent; in addition, marijuana grown in this state is often more potent than national averages, and has been tested with THC levels of over 20 percent; marijuana of the potency generally available in 2005 is a strong hallucingenic drug that can command hundreds of dollars per ounce on the illegal market; the increasing potency of marijuana

corresponds to an increase in the number of persons seeking emergency medical care for marijuana-related incidents;

(10) several hundred adults and children in this state are admitted into treatment each year for marijuana abuse, with more than half of the admissions being children under the age of 18 and more than a third of the admissions being Alaska Natives; youth and Alaska Natives made up a disproportionate number of the total statewide treatment admissions for marijuana abuse in 2003;

(11) Alaska consistently ranks in the top 10 states, and occasionally in the top five states, nationwide, in the amount of marijuana illegally grown indoors, and large amounts of marijuana grown in this state are sold throughout the state and exported to other parts of the United States; the price of high-quality marijuana is hundreds of dollars per ounce and thousands of dollars per pound; testimony received by the legislature in 1999 and confirmed in 2005, shows that marijuana often sells for $500 or more per ounce;

(12) a large percentage of persons arrested in this state, including adults and juveniles who commit violent offenses, have marijuana in their system at the time of arrest;

(13) marijuana use by a parent has been, and will continue to be, a major contributing factor to children having easy access to and using marijuana;

(14) criminal penalties for marijuana possession and education efforts are effective in reducing marijuana use and limiting its access by children;

(15) possession of marijuana, even for personal, recreational use, has been, and continues to be, illegal under federal law;

(16) in Noy v. State, 83 P.3d 538 (Alaska App. 2003), the Alaska court of appeals adopted a statute enacted two decades ago that was repealed by the voters in 1990, and allows adults to possess up to four ounces as the constitutionally-protected amount of marijuana that each adult can have in their home; this decision usurped the legislature's and the voters' authority to change laws relating to health and safety;

(17) the Noy decision by the Alaska court of appeals also struck down the one-ounce possession limit in the medical marijuana law enacted in 1999, thus further usurping the legislature's and the voters' authority to change laws relating to health and safety;

(18) the Noy decision by the Alaska court of appeals also led this court in Crocker v. State, 97 P.3d 93 (Alaska App. 2004) to adopt unnecessary and unreasonable

requirements for search warrants to investigate marijuana-growing in this state that inhibit law enforcement efforts to reduce the amount of marijuana illegally grown indoors and illegally sold or exported; and

(19) the potency of marijuana today, the profit to be made growing marijuana today, and the consequences to the health of Alaskans, make it necessary for the legislature to reconfirm by this Act that it is illegal to possess any amount of marijuana anywhere in this state, and to reassess the legislative lines that have been drawn in the past that classify marijuana possession as either felony or misdemeanor conduct; in taking this legislative action, the legislature has taken into consideration its duty to implement the right to privacy in art. I, sec. 22, Constitution of the State of Alaska.

*** Sec. 3.** AS 11.71.030(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the third degree if the person

(1) under circumstances not proscribed under AS 11.71.020(a)(2) - (4), manufactures or delivers any amount of a schedule IIA or IIIA controlled substance or possesses any amount of a schedule IIA or IIIA controlled substance with intent to manufacture or deliver;

(2) delivers any amount of a schedule IVA, VA, or VIA controlled substance to a person under **21** [19] years of age [WHO IS AT LEAST THREE YEARS YOUNGER THAN THE PERSON DELIVERING THE SUBSTANCE]; or

(3) possesses any amount of a schedule IA or IIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center;

or

(B) on a school bus.

*** Sec. 4.** AS 11.71.040(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the fourth degree if the person

(1) manufactures or delivers any amount of a schedule IVA or VA controlled substance or possesses any amount of a schedule IVA or VA controlled

substance with intent to manufacture or deliver;

(2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of one ounce or more containing a schedule VIA controlled substance;

(3) possesses

(A) any amount of a schedule IA or IIA controlled substance;

(B) 25 or more tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(C) one or more preparations, compounds, mixtures, or substances of an aggregate weight of three grams or more containing a schedule IIIA or IVA controlled substance;

(D) 50 or more tablets, ampules, or syrettes containing a schedule VA controlled substance;

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of six grams or more containing a schedule VA controlled substance;

(F) one or more preparations, compounds, mixtures, or substances of an aggregate weight of **four ounces** [ONE POUND] or more containing a schedule VIA controlled substance; or

(G) 25 or more plants of the genus cannabis;

(4) possesses a schedule IIIA, IVA, VA, or VIA controlled substance

(A) with reckless disregard that the possession occurs

(i) on or within 500 feet of school grounds; or

(ii) at or within 500 feet of a recreation or youth center;

or

(B) on a school bus;

(5) knowingly keeps or maintains any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place that is used for keeping or distributing controlled substances in violation of a felony offense under this chapter or AS 17.30;

(6) makes, delivers, or possesses a punch, die, plate, stone, or other thing which prints, imprints, or reproduces a trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of these upon a drug, drug container, or labeling so as to render the drug a counterfeit substance;

(7) knowingly uses in the course of the manufacture or distribution of a controlled substance a registration number that is fictitious, revoked, suspended, or issued to another person;

(8) knowingly furnishes false or fraudulent information in or omits material information from any application, report, record, or other document required to be kept or filed under AS 17.30;

(9) obtains possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge; or

(10) affixes a false or forged label to a package or other container containing any controlled substance.

*** Sec. 5.** AS 11.71.050(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the fifth degree if the person

(1) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of one-half ounce or more containing a schedule VIA controlled substance;

(2) manufactures or delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half ounce containing a schedule VIA controlled substance, for remuneration;

(3) possesses

(A) less than 25 tablets, ampules, or syrettes containing a schedule IIIA or IVA controlled substance;

(B) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than three grams containing a schedule IIIA or IVA controlled substance;

(C) less than 50 tablets, ampules, or syrettes containing a schedule VA controlled substance;

(D) one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than six grams containing a schedule VA controlled substance; or

(E) one or more preparations, compounds, mixtures, or substances of an aggregate weight of **one ounce** [ONE-HALF POUND] or more containing a schedule VIA controlled substance;

(F) one or more preparations, compounds, mixtures, or substances containing a schedule VIA controlled substance while driving or operating a motor vehicle, aircraft, or motorized watercraft; or

(4) fails to make, keep, or furnish any record, notification, order form, statement, invoice, or information required under AS 17.30.

*** Sec. 6.** AS 11.71.060(a) is amended to read:

(a) Except as authorized in AS 17.30, a person commits the crime of misconduct involving a controlled substance in the sixth degree if the person

(1) uses or displays any amount of a schedule VIA controlled substance**;**

(2) [OR] possesses one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than **one ounce** [ONE-HALF POUND] containing a schedule VIA controlled substance; [OR]

(3) manufactures, delivers, or possesses with the intent to manufacture or deliver, one or more preparations, compounds, mixtures, or substances of an aggregate weight of less than one-half ounce containing a schedule VIA controlled substance;

(4) possesses one or more preparations, compounds, mixtures, or substances containing a schedule VIA controlled substance while a passenger in a motor vehicle, aircraft, or motorized watercraft;

(5) being the driver or operator of a motor vehicle, aircraft, or motorized watercraft, knowingly permits a passenger to possess one or more preparations, compounds, mixtures, or substances containing a schedule VIA

controlled substance; or

(6) [(2)] refuses entry into a premise for an inspection authorized under AS 17.30.

*** Sec. 7.** AS 11.71.080 is amended to read:

Sec. 11.71.080. Aggregate weight of live marijuana plants. For purposes of calculating the aggregate weight of a live marijuana plant, the aggregate weight shall be **one-sixth of the measured weight of the marijuana plant after the roots of the marijuana plant have been removed** [THE WEIGHT OF THE MARIJUANA WHEN REDUCED TO ITS COMMONLY USED FORM].

*** Sec. 8.** This Act takes effect immediately under AS 01.10.070(c).

Attachment B

David S. Noy v. State of Alaska, Court of Appeals, No. A-8327, No. 1906, November 14, 2003; 83 P.3d 545; 2003 Alas. App. LEXIS 234

DAVID S. NOY, Appellant, v. STATE OF ALASKA, Appellee.

Court of Appeals No. A-8327, No. 1906

COURT OF APPEALS OF ALASKA

83 P.3d 545; 2003 Alas. App. LEXIS 234

November 14, 2003, Decided

PRIOR HISTORY: **[**1]** Appeal from the District Court, Fourth Judicial District, Fairbanks, Jane F. Kauvar, Judge. Trial Court No. 4FA-01-3003 Cr.

Noy v. State, 79 P.3d 1201, 2003 Alas. App. LEXIS 209 (Alaska Ct. App., 2003).

DISPOSITION: Rehearing denied

LexisNexis(R) Headnotes

COUNSEL: Appearances: William R. Satterberg, Jr., Fairbanks, for the Appellant.

Kenneth M. Rosenstein, Assistant Attorney General, Office of Special Prosecutions and Appeals, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for the Appellee.

JUDGES: Before: Coats, Chief Judge, and Mannheimer and Stewart, Judges.

OPINIONBY: MANNHEIMER

OPINION: **[*545]** ON REHEARING

MANNHEIMER, Judge.

In *Ravin v. State, 537 P.2d 494 (Alaska 1975)*, the Alaska Supreme Court held that the privacy clause of the Alaska Constitution (Article I, Section 22) protects the possession of marijuana in one's home for personal use. In 1990, the voters of Alaska enacted *AS 11.71.060(a)*, **[*546]** which purports to criminalize the possession of any amount of marijuana, even when the marijuana is possessed in one's home for personal use. In our initial opinion in this case **[**2]** -- *Noy v. State*, Alaska App. Opinion No. 1897 (August 29, 2003) n1 -- we held that this statute is unconstitutional because it conflicts with the right of privacy recognized in the *Ravin* decision. However, we concluded that the statute could be preserved to the extent that it prohibits possession of four ounces or more of marijuana.

n1 *80 P.3d 255, 2003 Alas. App. LEXIS 167, 2003 WL 22026345.*

The State now seeks rehearing. In its petition for rehearing, the State argues that this Court's initial opinion is flawed in some half-dozen ways, but most of the State's arguments ultimately rest on one underlying assertion: that we misunderstood the nature of the Alaska Supreme Court's decision in *Ravin*.

In our initial decision in this case, we read the *Ravin* opinion to say that the privacy clause of the Alaska Constitution restricts the legislature's (and the voters') authority to enact laws prohibiting the possession of marijuana in one's home for personal use. The State **[**3]** contends that this view of *Ravin* is fundamentally flawed -- that *Ravin* did not announce a constitutional restriction on the government's law-making power.

According to the State, *Ravin* did not hold that Article I, Section 22 of the Alaska Constitution restricts the government's authority to *enact* statutes that prohibit possession of marijuana in one's home for personal use. Rather, *Ravin* restricted the government's authority to *enforce* such statutes -- by creating an affirmative defense that individual defendants can raise if they are prosecuted for violating such a statute.

The State argues that this defense is similar to a claim of entrapment or selective prosecution, in that it does not rest on a claim that the defendant is innocent of wrongdoing, but rather on a claim that the government violated constitutional guarantees when it singled out this particular defendant as the target of prosecution.

According to the State, *Ravin* stands for the proposition that, in any prosecution for possession of marijuana in one's home, the defendant can assert that the possession was of a small amount for personal use. If the defendant raises such a claim, the matter **[**4]** is decided (before trial) by a judge, not a jury. To defeat the proposed defense, the State would have to prove either (1) that the marijuana was not for personal use, or (2) that the government had a sufficient interest in prohibiting the possession of that particular amount of marijuana under the specific circumstances of that defendant's case.

In other words, the State argues that *Ravin* created a system in which the constitutionality of marijuana prosecutions would be decided by trial judges on a case-by- case basis -- and that, in these case-specific hearings, the State would repeatedly try to convince numerous different judges that there is a sufficient government interest to justify imposing criminal penalties on people who possess varying amounts of marijuana.

The State's proposed interpretation of the *Ravin* decision would seemingly put us on the road to legal chaos. Under the State's proposal, dozens of judges across the state would be required to issue potentially inconsistent rulings as to whether, under the facts of a particular defendant's case, the State had sufficient justification to criminalize the defendant's possession of 3.0 ounces, or 2.2 ounces, or **[**5]** 1.4 ounces, or 0.6 ounces of marijuana.

However, our primary reason for rejecting the State's interpretation of *Ravin* is that the State's interpretation is inconsistent with *Ravin* itself.

The *Ravin* decision does not speak of an affirmative defense of the type proposed by the State in its petition for rehearing, nor does the *Ravin* opinion describe itself as establishing case-specific limits on the State's enforcement of marijuana statutes. Rather, in the opening sentence of *Ravin*, the Alaska Supreme Court described the issue before them as "the constitutionality of Alaska's statute prohibiting possession of marijuana". n2 **[*547]** Later in the opinion, after the supreme court held that Article I, Section 22 of our state constitution guarantees a right of privacy in one's home n3, the court declared that two major questions remained:

n2 *Ravin, 537 P.2d at 496.*

n3 *Id. at 504.*

Whether the State has demonstrated sufficient justification for **[**6]** the prohibition of possession of marijuana in general ... and ... whether the State has met the greater burden of showing a close and substantial relationship between the public welfare and control of ingestion or possession of marijuana in the home for personal use.

Ravin, 537 P.2d at 504.

The supreme court then proceeded to analyze the scientific data concerning the uses and effects of marijuana. The court did not attempt to analyze the particular facts of Irwin Ravin's case; rather, the court assessed the legislature's overall justification for regulating *any* person's possession of marijuana in their home. n4

n4 *See id., 537 P.2d at 504-511.*

And when the *Ravin* court announced its conclusion, the court did not frame that conclusion in terms of whether the State had an interest in prohibiting the possession of marijuana under the particular facts of the case before it. Instead, the court framed its conclusion as a general restriction on the government's authority **[**7]** to legislatively control this aspect of people's personal behavior:

We conclude that [the state has shown] no adequate justification for the state's intrusion into the citizen's right to privacy by its prohibition of possession of marijuana by an adult for personal consumption in the home[.] The privacy of the individual's home cannot be breached absent a persuasive showing of a close and substantial relationship of the intrusion to a legitimate governmental interest. Here, mere scientific doubts will not suffice. The state must demonstrate a need based on proof that the public health or welfare will in fact suffer if the controls are not applied.

The state has a legitimate concern with avoiding the spread of marijuana use to adolescents who may not be equipped with the maturity to handle the experience prudently, as well as a legitimate concern with the problem of driving under the influence of marijuana. Yet these interests are insufficient to justify intrusions into the rights of adults in the privacy of their own homes.

Ravin, 537 P.2d at 511.

In the years since *Ravin* was decided, there has been no suggestion (until now) that *Ravin* was something **[**8]** other than normal constitutional litigation in which the supreme court adjudicated the constitutionality of a particular category of criminal statute. For example, six months after *Ravin*, in *Belgarde v. State*, the supreme court referred to *Ravin* as "[a] case [in which] we held that the state may not prohibit possession of [marijuana] by an adult in [their] home for personal consumption".

n5 In 1978, in *State v. Erickson*, the supreme court again declared that *Ravin* represented a restriction on the state's power to legislate:

n5 *543 P.2d 206, 207 (Alaska 1975).*

In *Ravin v. State*, this court held that the state could not bar the personal use and possession of marijuana in the home. In view of the relative harmlessness of the drug, the individual's right to privacy under the Alaska Constitution was found to outweigh the state interest in regulation.

574 P.2d 1, 21 (Alaska 1978) (footnote omitted). And more recently, in *Luedtke v. Nabors Alaska Drilling,* **[**9]** *Inc.*, the supreme court declared that "*Ravin* addressed the issue of whether the state could prohibit the use of marijuana in the home. We held that it could not." n6

n6 *768 P.2d 1123, 1135 (Alaska 1989).*

Based on this analysis of the *Ravin* decision and the later supreme court decisions construing *Ravin*, we are convinced that the State's interpretation of *Ravin* is wrong. *Ravin* did not create an affirmative defense that defendants might raise, on a case-by-case basis, when they were prosecuted for possessing marijuana in their home for personal use. Instead, both in the *Ravin* opinion itself and in the supreme court's later descriptions of *Ravin*, the Alaska Supreme **[*548]** Court has repeatedly and consistently characterized the *Ravin* decision as announcing a constitutional limitation on the government's authority to enact legislation prohibiting the possession of marijuana in the privacy of one's home.

Accordingly, we reject the State's suggestion that *Ravin* **[**10]** left Alaska's marijuana statutes intact but created an affirmative defense to be litigated in each individual case.

Although this is not a factor in our interpretation of *Ravin*, we note that the Alaska Legislature took this same view of *Ravin* when they refashioned this state's drug laws twenty years ago. As we described in *Walker v. State* n7, the legislature responded to *Ravin* in 1982 by enacting a statute -- former *AS 11.71.060(a)(4)* -- that prohibited possession of four ounces or more of marijuana, even if the marijuana was possessed in one's home for personal use. In the commentary that accompanied this statute, the legislature declared:

N7 *991 P.2d 799 (Alaska App. 1999).*

This legislation is intended to clarify the law in Alaska concerning possession of marijuana, in light of the decision of the Supreme Court of Alaska in *Ravin v. State, 537 P.2d 494 (Alaska 1975). Ravin* held that Alaska's constitutional right to privacy protects the possession and use **[**11]** of marijuana by an adult, in the home, in amounts indicative of personal use in a purely personal, non-commercial context. The approach taken in this Act is to define, for purposes of the decision in *Ravin*, an amount which is indicative of personal use, and to provide a clear line of demarcation of four ounces, so that citizens of this state will know precisely what conduct is prohibited.

Commentary and Sectional Analysis for the 1982 Revision of Alaska's Controlled Substances Laws (CCSB 190), p. 19 (quoted in *Walker v. State, 991 P.2d at 802-03*).

Thus, not only is the State's suggested interpretation of *Ravin* at odds with the supreme court's statements on this question, but it is also at odds with the Alaska Legislature's announced policy aims in this area of the law: the aim of "defining, for purposes of ... *Ravin*, [a specific] amount which is indicative of personal use", and the aim of "providing a clear line of demarcation ..., so that citizens of this state will know precisely what conduct is prohibited".

We now address certain other aspects of the State's petition for rehearing.

In our original decision in this case, we stated that because **[**12]** the jury acquitted Noy of the charge of possessing eight ounces or more of marijuana, the State is barred from asserting, in any future litigation, that Noy did indeed possess eight ounces or more of marijuana. The State argues that this conclusion is mistaken for two reasons.

First, the State contends that the doctrine of collateral estoppel does not apply when the aggrieved party had no method of seeking appellate review of the adverse judgement. The State points out that the *double jeopardy clauses* of the federal and state constitutions preclude the State from seeking appellate review of a jury's verdict of acquittal. Thus, the State argues, the fact that Noy's jury acquitted him of possessing eight ounces or more of marijuana should not estop the State from continuing to assert that Noy possessed more marijuana than the jury found.

The problem with the State's argument is that it is directly contrary to the United States Supreme Court's holding in *Ashe v. Swenson, 397 U.S. 436, 445-46, 25 L. Ed. 2d 469, 90 S. Ct. 1189, 1195-96 (1970).*

Second, the State argues that the jury's acquittal should not be considered conclusive because the jury was misinstructed on **[**13]** how to calculate the weight of marijuana. The State asserts that, given the evidence presented at Noy's trial, it is obvious that Noy possessed at least eight ounces of marijuana, and therefore the jury's verdict of acquittal must have been the fruit of the flawed jury instruction.

But as we explained in our initial opinion, the State did not introduce the marijuana itself; instead, the State relied on photographs and testimony concerning the marijuana. The photographs showed that the marijuana contained stalks, not just leaves **[*549]** and buds. Even if the jury had been correctly instructed, they would have been told that stalks are not to be considered when assessing the weight of harvested marijuana. Although there may be a substantial possibility that the erroneous weight-calculation instruction influenced the jury's thinking when they assessed the weight of the marijuana, it is also possible that the jurors were not convinced beyond a reasonable doubt that the harvested marijuana, minus the stalks, weighed eight ounces or more. Thus, we must apply the collateral estoppel rule of *Ashe v. Swenson*. See our discussion of a related point in *State v. McDonald, 872 P.2d 627, 660 (Alaska App. 1994)* **[**14]** .

Moreover, even if we assume that the erroneous jury instruction played an instrumental role in the jury's decision to acquit Noy of possessing eight or more ounces of marijuana, the State would still be bound by the jury's verdict. The law on this point is summarized in Wayne R. LaFave, Jerold H. Israel, and Nancy J. King, *Criminal Procedure* (2nd ed. 1999):

> If the jury reaches a verdict of acquittal or the judge grants a judgment of acquittal, double jeopardy bars a new trial even if it appears that the acquittal was based on an erroneous interpretation of the law.

Id., § 25.1(g), Vol. 5, p. 648. *See also id.*, § 25.3(b), Vol. 5, pp. 666-68.

This view of the *double jeopardy clause* is borne out in the case law. *See United States v. Martin Linen Supply Co., 430 U.S. 564, 571, 51 L. Ed. 2d 642, 97 S. Ct. 1349, 1354 (1977); Livingston v. Murdaugh, 183 F.3d 300, 301-02 (4th Cir. 1999).*

Finally, the State argues for the first time that if we adjudicate the constitutionality of *AS 11.71.060(a)* in Noy's case, our decision will unfairly preclude the State from attempting to prove that *Ravin* should **[**15]** be overruled or limited -- *i.e.*, preclude the State from attempting to prove that there is sufficient justification for a criminal statute prohibiting any and all possession of marijuana, even possession of marijuana by adults in their home for personal use.

But our decision in this case merely implements the supreme court's constitutional ruling in *Ravin*. The State remains free in the future to challenge the continuing vitality of *Ravin*.

For all of these reasons, the State's petition for rehearing is DENIED.

Attachment C

Department of Health and Social Services, Karen Purdue Commissioner v. Planned Parenthood of Alaska, Inc., et al., Supreme Court No. S-9109, No. 5443; 28 P.3d 904; 2001 Alas. LEXIS 97

STATE OF ALASKA, DEPARTMENT OF HEALTH & SOCIAL SERVICES, KAREN PERDUE, Commissioner, Appellant, v. PLANNED PARENTHOOD OF ALASKA, INC., JAN WHITEFIELD, M.D., and SUSAN LEMAGIE, M.D., Appellees.

Supreme Court No. S-9109, No. 5443

SUPREME COURT OF ALASKA

28 P.3d 904; 2001 Alas. LEXIS 97

July 27, 2001, Decided

PRIOR HISTORY: [**1] Appeal from the Superior Court of the State of Alaska, Third Judicial District, Anchorage, Sen K. Tan, Judge. Superior Court No. 3AN-98-7004 CI.

DISPOSITION: The manner in which the State allocates public benefits is subject to constitutional limitation under Alaska's equal protection provision. The State, having undertaken to provide health care for poor Alaskans, must adhere to neutral criteria in distributing that care. It may not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the DHSS regulation in this case discriminatorily burdens the exercise of a constitutional right. Because we conclude that denial of Medicaid assistance to poor women who medically require abortions violates equal protection, we AFFIRM the decision of the superior court.

LexisNexis(R) Headnotes

COUNSEL: Lisa M. Kirsch, Assistant Attorney General, and Bruce M. Botelho, Attorney General, Juneau, for Appellant.

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JUDGES: Before: Fabe, Chief Justice, Matthews, Eastaugh, Bryner, and Carpeneti, Justices.

OPINIONBY: FABE

OPINION: [*905]

FABE, Chief Justice.

I. INTRODUCTION

Alaska's Medicaid program funds virtually all necessary medical services for poor Alaskans -- "regardless of race, age, national origin, or economic standing" **n1** -- but it denies funding for medically necessary abortions. Alone among

Medicaid-eligible Alaskans, women whose health is endangered **[**3]** by pregnancy are denied health care based solely on political disapproval of the medically necessary procedure. This selective denial of medical benefits violates Alaska's constitutional guarantee of equal protection. Our conclusion is supported by the majority of jurisdictions that have considered comparable restrictions on state funding of medically necessary abortions: these state courts have concluded that, under their state constitutions, government health care programs that fund other medically necessary procedures may not deny assistance to eligible women whose health depends on obtaining abortions. **n2**

n1 *AS 47.07.010.*

n2 See *Committee to Defend Reprod. Rights v. Myers, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981); Moe v. Secretary of Admin. & Fin., 382 Mass. 629, 417 N.E.2d 387 (Mass. 1981); Women of Minnesota v. Gomez, 542 N.W.2d 17 (Minn. 1995); Right to Choose v. Byrne, 91 N.J. 287, 450 A.2d 925 (N.J. 1982); New Mexico Right to Choose/NARAL v. Johnson, 1999 NMSC 5, 975 P.2d 841, 126 N.M. 788 (N.M. 1998),* cert. denied, *526 U.S. 1020, 143 L. Ed. 2d 352 (1999); Women's Health Ctr. of W. Va., Inc. v. Panepinto, 191 W. Va. 436, 446 S.E.2d 658 (W. Va. 1993);* but see *Renee B. v. Florida Agency for Health Care Admin., 790 So. 2d 1036, 2001 Fla. LEXIS 1396, 2001 WL 776533 (Fl. 2001); Doe v. Department of Soc. Servs., 439 Mich. 650, 487 N.W.2d 166 (Mich. 1992); Rosie J. v. North Carolina Dep't of Human Resources, 347 N.C. 247, 491 S.E.2d 535 (N.C. 1997); Hope v. Perales, 83 N.Y.2d 563, 634 N.E.2d 183, 611 N.Y.S.2d 811 (N.Y. 1994); Fischer v. Department of Pub. Welfare, 509 Pa. 293, 502 A.2d 114 (Pa. 1985).*

A number of lower state courts have also found that funding restrictions similar to those challenged today violated their state constitutions. See Simat Corp. v. Arizona Cost Containment System Admin., [slip op.], No. CV1999014614 (Ariz. Super. May 23, 2000); *Doe v. Maher, 40 Conn. Supp. 394, 515 A.2d 134 (Conn. Super. 1986);* Roe v. Harris, [slip op.], NO. 96977 (Idaho Dist. Feb. 1, 1994); Doe v. Wright, [slip op.], No. 91-CH-1958 (Ill. Cir. Dec. 2, 1994); Clinic for Women v. Humphreys, [slip op.], No. 49D12-9908-MI-1137 (Ind. Super. Oct. 18, 2000); Jeannette R. v. Ellery, [slip op.], No. BDV-94-811 (Mont. Dist. May 19, 1995); *Planned Parenthood Ass'n v. Department of Human Resources of Oregon 63 Ore. App. 41, 663 P.2d 1247 (Or. App. 1983),* aff'd on other grounds, *297 Ore. 562, 687 P.2d 785 (Or. 1984)* (declining to reach constitutional issue); *Low-Income Women of Texas v. Bost, 38 S.W.3d 689 (Tex. App. 2000);* Doe v. Celani, [slip op.], No. S81-84CnC (Vt. Super. May 23, 1986); but see Doe v. Childers, [slip op.], No. 94CI02183 (Ky. Cir. Aug. 7, 1995).

[4]**

This case concerns the State's denial of public assistance to eligible women whose health is in danger. It does not concern State payment for elective abortions; nor **[*906]** does it concern philosophical questions about abortion which we, as a court of law, cannot aspire to answer. We join the California Supreme Court in clarifying that "this case does not turn on the morality or immorality of abortion, and most decidedly does not concern the personal views of the individual justices as to the wisdom of the legislation itself or the ethical considerations involved in a woman's individual decision whether or not to bear a child." **n3** Indeed, as the California Supreme Court emphasized, "similar constitutional issues would arise if the Legislature . . . funded [Medicaid] abortions but refused to provide comparable medical care for poor women who choose childbirth." **n4** The constitutional issue in this case therefore "does not involve a weighing of the value of abortion as against childbirth, but instead concerns the protection of either procreative choice from discriminatory governmental treatment." **n5** As the California court recognized, the issue presented is "not whether **[**5]** the state is generally obligated to subsidize the exercise of constitutional rights for those who cannot otherwise afford to do so." **n6** Rather, the issue is whether the State, having enacted a benefits program, may discriminate between recipients in the manner attempted by the Department of Health and Social Services (DHSS) today. We hold that it may not. Once the State undertakes to fund medically necessary services for poor Alaskans, it may not selectively exclude from that program women who medically require abortions.

n3 *Myers, 625 P.2d at 780.*

n4 Id.

n5 Id.

n6 Id.

Although the State argues that courts may not enjoin unconstitutional use of the legislative appropriations power, this proposition is unsupported by case law from any jurisdiction. The legislature's spending power does not create license to disregard citizens' constitutional rights. In rejecting this part of the State's argument, we concur with every state and federal court **[**6]** that has considered this issue.

II. FACTS AND PROCEEDINGS

Alaska provides medical services for poor Alaskans primarily through the Medicaid program. **n7** Medicaid is a comprehensive health care program designed to provide medical assistance for all eligible poor per **[*907]** sons in the state. **n8** But a DHSS regulation, 7 Alaska Administrative Code (AAC) 43.140, imposes a limit on the state's health care funding: It denies Medicaid assistance for medically necessary abortions unless a pregnant woman is at risk of dying or her pregnancy resulted from rape or incest. **n9** Because DHSS offers no other funding source for abortions, 7 AAC 43.140 ensures that a woman who medically requires an abortion will receive no assistance from the state.

n7 See AS 47.07; see also *42 U.S.C. § 1396*-1396v (1997).

A second program, Chronic and Acute Medical Assistance (CAMA) complements Medicaid by providing some medical care for Alaskans who are poor but ineligible for Medicaid. See *AS 47.08.150.* CAMA's predecessor, the General Relief Medical program (GRM), funded abortions for eligible women when the procedure was necessary to protect their health or when pregnancy resulted from sexual assault, sexual abuse of a minor, or incest. See 7 AAC 47.200(a)(4)(F) (2000); 7 AAC 47.290(8) (2000). In 1998, after nearly 30 years of government support for medically necessary abortions through GRM, the legislature stopped funding the program and enacted CAMA as a replacement. CAMA covers essentially the same services as GRM, except that it does not fund any abortions. Compare *AS 47.08.150* with 7 AAC 47.200. **[**7]**

n8 See *AS 47.07.010.* Medicaid relies on joint state-federal funding, with the federal government paying a portion of the state's costs. See *42 U.S.C. § § 1396b*(a), 1396d(b). The "Hyde Amendment" limits federal Medicaid contributions for abortions: Federal funding is available for abortions in cases of rape or incest or where the woman's life is in danger, but not for abortions necessary to protect a woman's health. See Pub. L. No. 106-554, § § 508-509, 114 Stat. 2763 (2000); *Right to Choose v. Byrne, 91 N.J. 287, 450 A.2d 925, 928-29 (N.J. 1982)* (discussing history of Hyde Amendment).

n9 7 AAC 43.140 (2000) provides in part:

(a) Payment for an abortion will, in the department's discretion, be covered under Medicaid if the physician services invoice is accompanied by certification that the

(1) life of the mother would be endangered if the pregnancy were carried to term; or

(2) pregnancy is the result of an act of rape or incest.

The range of women whose access to medical care is restricted **[**8]** by the regulation is broad. According to medical evidence provided to the superior court, some women -- particularly those who suffer from pre-existing health problems -- face significant risks if they cannot obtain abortions. Women with diabetes risk kidney failure, blindness, and preeclampsia or eclampsia -- conditions characterized by simultaneous convulsions and comas -- when their disease is complicated by pregnancy. Women with renal disease may lose a kidney and face a lifetime of dialysis if they cannot obtain an abortion. And pregnancy in women with sickle cell anemia can accelerate the disease, leading to pneumonia, kidney infections, congestive heart failure, and pulmonary conditions such as embolus. Poor women who suffer from conditions such as epilepsy or bipolar disorder face a particularly brutal dilemma as a result of DHSS's regulation --

medication needed by the women to control their own seizures or other symptoms can be highly dangerous to a developing fetus. Without funding for medically necessary abortions, pregnant women with these conditions must choose either to seriously endanger their own health by forgoing medication, or to ensure their own safety but endanger **[**9]** the developing fetus by continuing medication. Finally, without state funding, Medicaid-eligible women may reach an advanced stage of pregnancy before they can gather enough money for an abortion; resulting late-term abortions pose far greater health risks than earlier procedures.

In June 1998 the plaintiffs -- two medical doctors and Planned Parenthood of Alaska -- filed a complaint against DHSS. They sought to enjoin enforcement of 7 AAC 43.140 and also sought a judgment declaring that the State's denial of funding for medically necessary abortions violates Alaska's Constitution. Superior Court Judge Sen K. Tan granted summary judgment in favor of Planned Parenthood. Based on this court's holding that "reproductive rights are fundamental . . . [and] include the right to an abortion," **n10** the superior court concluded that 7 AAC 43.140 impermissibly interferes with Medicaid-eligible women's constitutional rights to privacy. Because the State failed to articulate a compelling state interest for this interference, the superior court permanently enjoined DHSS from enforcing the regulation "so as to deny coverage for medically necessary abortions." The State now appeals. **n11** **[**10]**

n10 *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice, 948 P.2d 963, 969 (Alaska 1997).*

n11 For part of the time that this appeal was pending, DHSS continued to withhold funding for medically necessary abortions, despite the superior court's injunction. On Planned Parenthood's motion, the superior court held a show cause hearing to determine whether the Department was in contempt of court. The court heard DHSS's claim that funding was unavailable, and determined, after a "struggle", not to hold the agency in contempt. However, the court issued a new injunction to reiterate the terms of the first injunction and explicitly direct that, while DHSS retained discretion over its use of resources, it should consider state Medicaid funds available to pay for medically necessary abortions. The parties on appeal presented records from these proceedings and additional related briefing.

[*908] III. STANDARD OF REVIEW

We review a grant of summary judgment de novo, exercising our independent **[**11]** judgment to "determine whether the parties genuinely dispute any material facts and, if not, whether the undisputed facts entitle the moving party to judgment as a matter of law." **n12** On questions of constitutional law, we also apply our independent judgment. **n13** We may affirm the superior court on any ground supported by the record. **n14**

n12 *M.C. v. Northern Ins. Co. of N.Y., 1 P.3d 673, 674-75 (Alaska 2000).*

n13 See *Rollins v. State, Dep't of Revenue, Alcoholic Beverage Control Bd., 991 P.2d 202, 206 (Alaska 1999).*

n14 See *James v. McCombs, 936 P.2d 520, 523 n.2 (Alaska 1997);* see also *Dixon v. Dixon, 747 P.2d 1169, 1175 n.5 (Alaska 1987).*

IV. DISCUSSION

A. The Challenged Regulation Violates Equal Protection.

By providing health care to all poor Alaskans except women who need abortions, the challenged regulation violates the state constitutional guarantee of "equal rights, opportunities, **[**12]** and protection under the law." **n15** The State, having established a health care program for the poor, may not selectively deny necessary care to eligible women merely because the threat to their health arises from pregnancy. Because we decide this case on state constitutional equal protection grounds, we do not review the superior court's privacy-based ruling. We do note, however, that our analysis today closely parallels that applied by many of the fifteen courts that have rejected similar restrictions. **n16** Although other courts' decisions have rested on a variety of state constitutional provisions, including equal protection, **n17** constitutional equal-rights-for-women clauses, **n18** due process, **n19** and privacy, **n20** the underlying logic has

been the same in decision after decision: "When state government seeks to act for the common benefit, protection, and security of the people in providing medical care for the poor, it has an obligation to do so in a neutral manner so as not to infringe upon the constitutional rights of our citizens." **n21** As the Massachusetts Supreme Judicial Court observed, the constitutional principle at issue is straightforward: **[**13]** "It is elementary that 'when a State decides to alleviate some of the hardships of poverty by **[*909]** providing medical care, the manner in which it dispenses benefits is subject to constitutional limitations.'" **n22** The State's spending discretion is limited by the constitution -- "while the State retains wide latitude to decide the manner in which it will allocate benefits, it may not use criteria which discriminatorily burden the exercise of a fundamental right." **n23**

n15 Alaska Const. art. I, § 1.

n16 See supra note 2.

n17 See, e.g., *Doe v. Maher, 40 Conn. Supp. 394, 515 A.2d 134, 157-59 (Conn. Super. 1986); Right to Choose v. Byrne, 91 N.J. 287, 450 A.2d 925, 934-37 (N.J. 1982); Planned Parenthood Ass'n v. Department of Human Resources of Oregon, 63 Ore. App. 41, 663 P.2d 1247, 1257-61 (Or. App. 1983),* aff'd on other grounds, *297 Ore. 562, 687 P.2d 785 (Or. 1984);* see also *Committee to Defend Reprod. Rights v. Myers, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981).* **[**14]**

n18 See, e.g., *New Mexico Right to Choose/NARAL v. Johnson, 1999 NMSC 5, 975 P.2d 841, 850-57, 126 N.M. 788 (N.M. 1998); Doe v. Maher, 515 A.2d at 159-62.*

n19 See, e.g., *Moe v. Secretary of Admin. & Fin., 382 Mass. 629, 417 N.E.2d 387, 398-99 (Mass. 1981); Doe v. Maher, 515 A.2d at 146-57.*

n20 See, e.g., *Women of Minnesota v. Gomez, 542 N.W.2d 17, 26-32 (Minn. 1995); Women's Health Ctr. of W. Va., Inc. v. Panepinto, 191 W. Va. 436, 446 S.E.2d 658, 664-66 (W. Va. 1993).*

n21 *Panepinto, 446 S.E.2d at 667;* see also *Myers, 625 P.2d at 781* (addressing the narrow question "whether the state, having enacted a general program to provide medical services to the poor, may selectively withhold such benefits from otherwise qualified persons because such persons seek to exercise their constitutional right of procreative choice in a manner which the state does not favor and does not wish to support" and holding that it may not); *Gomez, 542 N.W.2d at 28* (defining the "relevant inquiry" as "whether, having elected to participate in a medical assistance program, the state may selectively exclude from such benefits otherwise eligible persons solely because they make constitutionally protected health care decisions with which the state disagrees," and concluding that the state may not); *Byrne, 450 A.2d at 937* ("We hold that the State may not jeopardize the health and privacy of poor women by excluding medically necessary abortions from a system providing all other medically necessary care for the indigent."); *Johnson, 975 P.2d at 856* ("Courts very rarely require the government to fund its citizens' exercise of their constitutional rights. . . . But that is not to say that when the Department elects to provide medically necessary services to indigent persons, it can do so in a way that discriminates against some recipients on account of their gender."). **[**15]**

n22 *Moe, 417 N.E.2d at 401* (quoting *Maher v. Roe, 432 U.S. 464, 469-70, 53 L. Ed. 2d 484, 97 S. Ct. 2376 (1977)).*

n23 Id.

Alaska's constitutional equal protection clause mandates "equal treatment of those similarly situated;" **n24** it protects Alaskans' right to non-discriminatory treatment more robustly than does the federal equal protection clause. **n25** In analyzing a challenged law under Alaska's equal protection provision, we first determine what level of scrutiny to apply, using Alaska's "sliding scale" standard. **n26** The "weight [that] should be afforded the constitutional interest impaired by the challenged enactment" is "the most important variable in fixing the appropriate level of review." **n27**

Second, we examine the State's interests served by the challenged regulation. **n28** If the burden placed on constitutional rights by the regulation is minimal, then the State need only show that its objectives were legitimate for the regulation to survive an equal protection challenge. **n29** But if "the objective **[**16]** degree to which the challenged legislation tends to deter [exercise of constitutional rights]" **n30** is significant, the regulation cannot survive constitutional challenge unless it serves a compelling state interest. **n31** Finally, if the State shows that its interests justify burdening the rights of citizens, for the regulation to survive constitutional challenge the State must demonstrate that the means it has chosen to advance those goals are well-fitted to the ends, and that its goals could not be accomplished by less restrictive means. **n32**

n24 *Alaska Pacific Assurance Co. v. Brown, 687 P.2d 264, 271 (Alaska 1984).*

n25 See *State v. Anthony, 810 P.2d 155, 157 (Alaska 1991).*

n26 See *Matanuska-Susitna Borough Sch. Dist. v. State, 931 P.2d 391, 396 (Alaska 1997).*

n27 Id. (quoting *Alaska Pacific Assurance Co., 687 P.2d at 269).*

n28 See id.; *State v. Ostrosky, 667 P.2d 1184, 1192 (Alaska 1983).*

n29 See id.

n30 *Alaska Pacific Assurance Co., 687 P.2d at 271.* **[**17]**

n31 See *Matanuska-Susitna Borough Sch. Dist., 931 P.2d at 396* (quoting *Alaska Pacific Assurance Co., 687 P.2d at 269-70).*

n32 See *931 P.2d at 396-97.*

The regulation at issue in this case affects the exercise of a constitutional right, the right to reproductive freedom. **n33** Therefore, the regulation is subject to the most searching judicial scrutiny, often called "strict scrutiny." **n34** We have explained in the past that such scrutiny is appropriate where a challenged enactment affects "fundamental rights," including "the exercise of intimate personal choices." **n35** This court has specified that the right to reproductive freedom "may be legally constrained only when the constraints are justified by a compelling state interest, and no less restrictive means could advance that interest." **n36**

n33 See *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice, 948 P.2d 963, 968-69 (Alaska 1997).*

n34 See *State v. Ostrosky, 667 P.2d 1184, 1192 (Alaska 1983).* **[**18]**

n35 Id.

n36 *Valley Hosp., 948 P.2d at 969.*

Judicial scrutiny of state action is equally strict where the government, by selectively denying a benefit to those who exercise a constitutional right, effectively deters the exercise of that right. In Alaska Pacific Assurance Co. v. Brown, we held the State to a "very high" burden to justify a statute that reduced workers' compensation benefits paid to workers who exercised their constitutional right to leave the state. **n37** We concluded that the challenged regulation did not meet this high standard and thus violated equal protection. **n38** Like the regulation at issue today, **[*910]** the challenged statute in Alaska Pacific Assurance Co. did not forbid individual exercise of constitutional rights; rather, it limited the government benefits distributed to the class of individuals who exercised that right. **n39** As we explained in that case, we look to the real-world effects of government action to determine the appropriate level of equal protection

scrutiny: "The suspicion with which this court will [**19] view infringements upon [constitutional rights] depends upon . . . the objective degree to which the challenged legislation tends to deter [the exercise of those rights]." **n40**

n37 *687 P.2d at 273-74.*

n38 See id. We have since applied more relaxed scrutiny where "the infringement on [the] right to travel is relatively small and would not be likely to deter a person from traveling." *Church v. State, Dep't of Revenue, 973 P.2d 1125, 1131 (Alaska 1999).* In this case the likelihood of deterring exercise of the right is very high: The State's own statistics and the findings of the superior court indicate that, under the challenged regulation, some women "will have no choice but to go forward with the pregnancy." We therefore follow Alaska Pacific Assurance Co. in applying strict scrutiny.

n39 See *687 P.2d at 266-67.*

n40 *Id. at 271.*

We reached a similar conclusion in Alaska Gay Coalition v. Sullivan, [**20] holding that the Municipality of Anchorage could not constitutionally withhold a public benefit based on a potential recipient's beliefs and public expression. **n41** The municipality had undertaken to publish a guidebook to public and private organizations in Anchorage, but excluded the Alaska Gay Coalition from the book. **n42** We held that this exclusion violated the Coalition's constitutional rights to equal protection under the law. **n43** We explained:

n41 *578 P.2d 951, 960 (Alaska 1978).*

n42 Id.

n43 Id.

When the Municipality decided to publish a limited informational guide to public and private local resources, it did not thereby assume the obligation of providing space to every possible group. . . . Had the Municipality deleted groups at random or used criteria not related to the nature of the particular organizations, constitutional violations may not have resulted. In deleting the Alaska Gay Coalition . . . however, appellees denied that group [**21] access to a public forum based solely on the nature of its beliefs. In so doing, they violated appellant's constitutional rights to . . . equal protection under the law.[**n44**]

n44 Id.

Similarly, in the instant case, the State's obligations do not depend on whether the State has undertaken to provide limitless health care services to all poor Alaskans. Rather, DHSS is constitutionally bound to apply neutral criteria in allocating health care benefits, even if considerations of expense, medical feasibility, or the necessity of particular services otherwise limit the health care it provides to poor Alaskans.

The State argues in this case that it does not provide all necessary medical care to indigent Alaskans. For support, it cites 7 AAC 43.385, a regulation that excludes from Medicaid coverage such services as medically unnecessary inpatient treatment, **n45** beautifying cosmetic surgery, **n46** and transplants of organs other than kidney, cornea, skin, and bone marrow. **n47** This [**22] regulation has not been challenged, and the issue has not been thoroughly briefed by the parties, but the restrictions appear to relate to medical necessity, cost, and feasibility -- all politically neutral criteria. Such spending limits are irrelevant to the constitutional issue raised by the State's denial of coverage for medically necessary abortions. As the United States Supreme Court noted in Shapiro v. Thompson:

We recognize that the State has a valid interest in preserving the fiscal integrity of its programs. It may legitimately attempt to limit its expenditures, whether for public assistance, public education, or any other program. But a State may not accomplish such a purpose by invidious distinctions between classes of its citizens.**[n48]**

n45 7 AAC 43.385(2), (6), (9), (11) & (12).

n46 7 AAC 43.385(4).

n47 7 AAC 43.385(17).

n48 *394 U.S. 618, 633, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969).*

[23]**

Like Alaska Pacific Assurance Co., Alaska Gay Coalition establishes that under Alaska's equal protection provision the government **[*911]** may not allocate state benefits so as to deter citizens' exercise of constitutional rights.

In this case, it is undisputed that 7 AAC 43.140 deters women from obtaining abortions. The State itself stated that eliminating public assistance for medically necessary abortions would cause about thirty-five percent of women who would otherwise have obtained abortions to instead carry their pregnancies to term, despite the associated threat to their health. Under Alaska Pacific Assurance Co., such a restriction warrants the highest degree of judicial scrutiny.

In the seminal Shapiro v. Thompson decision, the United States Supreme Court also strictly scrutinized -- and ultimately held unconstitutional -- state programs that denied benefits to citizens based on their exercise of constitutional rights. **n49** Shapiro invalidated state laws that denied welfare benefits to persons who had moved into the jurisdiction within the past year. **n50** The Court found that "the prohibition of benefits . . . creates a classification which constitutes **[**24]** an invidious discrimination denying [new residents] equal protection of the laws." **n51** The Court held that states could not constitutionally tailor their benefits programs to deter immigration from other states: "If a law has no other purpose . . . than to chill the assertion of constitutional rights by penalizing those who choose to exercise them, then it [is] patently unconstitutional." **n52**

n49 *394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969),* partly rev'd on other grounds, *Edelman v. Jordan, 415 U.S. 651, 670-71, 39 L. Ed. 2d 662, 94 S. Ct. 1347 (1974).*

n50 See *394 U.S. at 621.*

n51 *Id. at 627.*

n52 *Id. at 631* (internal quotations omitted) (alteration in original) (quoting *United States v. Jackson, 390 U.S. 570, 581, 20 L. Ed. 2d 138, 88 S. Ct. 1209 (1968)).* This precedent was not discussed in the U.S. Supreme Court's later decision, in Harris v. McRae, that the Hyde Amendment was permissible under the federal constitution. *448 U.S. 297, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980).* But in Valley Hospital, we explained that Alaska's broader constitutional protection at times mandates parting ways with federal precedent. See *948 P.2d at 969.* In that case, we rejected the plurality opinion of *Planned Parenthood v. Casey, 505 U.S. 833, 877-78, 120 L. Ed. 2d 674, 112 S. Ct. 2791 (1992),* in order to declare that a woman's right to an abortion is fundamental. See *Valley Hosp., 948 P.2d at 969.* We now join the majority of state courts in concluding that the federal Supreme Court's decision in McRae provides inadequate protection under our state constitution.

[25]**

Although Shapiro and Alaska Pacific Assurance Co. applied strict scrutiny to reject restrictions like the one at issue in this case, 7 AAC 43.140 would fail equal protection analysis under any standard. Under the regulation, the State grants needed health care to some Medicaid-eligible Alaskans, but denies it to others, based on criteria entirely

unrelated to the Medicaid program's purpose of granting uniform and high quality medical care to all needy persons of this state. **n53** Thus, even if 7 AAC 43.140 did not affect constitutional privacy rights and we applied our most deferential standard of review, the regulation still could not withstand equal protection challenge. Under Alaska's rational basis standard, **n54** differential treatment of similarly situated people is permissible only if the distinction between the persons "rests upon some ground of difference having a fair and substantial relation to the object of the legislation." **n55** DHSS provides necessary medical care to all Medicaid-eligible Alaskans except women who medically require abortions. This differential treatment lacks a fair and substantial relation to the object of the Medicaid program, **[**26]** and therefore violates equal protection. **n56**

n53 In the "Purpose" section of the Medicaid statute, the legislature "declares as a matter of public concern that the needy persons of this state receive uniform and high quality medical care, regardless of race, age, national origin, or economic standing." *AS 47.07.010.*

n54 See *Sonneman v. Knight, 790 P.2d 702, 705 (Alaska 1990)* (using term "rational basis" to describe lowest standard of review under Alaska's sliding scale).

n55 *Isakson v. Rickey, 550 P.2d 359, 362 (Alaska 1976)* (quoting *State v. Wylie, 516 P.2d 142, 145 (Alaska 1973)).* Isakson establishes that Alaska's rational basis review is more rigorous than that of the United States Supreme Court. Id.

n56 We note that the United States Supreme Court reached the opposite conclusion regarding the analogous federal regulation in *Harris v. McRae, 448 U.S. 297, 65 L. Ed. 2d 784, 100 S. Ct. 2671 (1980).* However, as noted above, federal rational basis review is a less rigorous standard than Alaska's rational basis review. See *Isakson, 550 P.2d at 362.* We have explained that Alaska's broader constitutional protection at times mandates parting ways with federal precedent. See *Valley Hospital, 948 P.2d at 969.* The United States Supreme Court in Harris v. McRae did not consider the discriminatory allocation of government benefits cases, *Shapiro v. Thompson, 394 U.S. 618, 22 L. Ed. 2d 600, 89 S. Ct. 1322 (1969)* and *United States Department of Agriculture v. Moreno, 413 U.S. 528, 37 L. Ed. 2d 782, 93 S. Ct. 2821 (1973),* discussed in this opinion.

[27]**

[*912] The United States Supreme Court reached a similar conclusion in Shapiro: although the Court invalidated states' differential treatment of similarly situated welfare recipients under strict scrutiny, it also noted that the differentiation would be deemed "irrational and unconstitutional" even under federal rational basis review. **n57** In United States Department of Agriculture v. Moreno, the United States Supreme Court invalidated a similar restriction under rational basis scrutiny alone. **n58** The Court found no rational basis for a statute denying food stamps to unrelated persons who shared a household; it therefore concluded that the statute violated equal protection. **n59**

n57 *Shapiro, 394 U.S. at 638.*

n58 *413 U.S. at 538.*

n59 See id. The Court noted legislative history indicating congressional intent to exclude "so[-]called 'hippies' and 'hippie communes'" from the food stamp program. *Id. at 534.* But it concluded:

The challenged classification clearly cannot be sustained by reference to this congressional purpose. For if the constitutional conception of "equal protection of the laws" means anything, it must at the very least mean that a bare congressional desire to harm a politically unpopular group cannot constitute a legitimate government

interest. As a result, [a] purpose to discriminate against hippies cannot, in and of itself and without reference to [some independent] considerations in the public interest, justify the [challenged] amendment.

Id. at 534-35 (internal quotations omitted, third alteration added).

[28]**

Lower court decisions have applied this principle to states' allocation of health care benefits, and concluded that "classification [among recipients] must be based upon some difference between the classes which is pertinent to the purpose for which the legislation is designed." **n60** A California court found that the state violated equal protection by paying for attendant services by spouses of elderly and blind aid recipients, but denying payment for the same services by the spouses of otherwise disabled aid recipients. **n61** And New York's highest court held that equal protection was violated by a statute that "effectively provided . . . that the aged, disabled, and blind are entitled to less public assistance than other needy persons." **n62**

n60 *Vincent v. State, 22 Cal. App. 3d 566, 572, 99 Cal. Rptr. 410 (Cal. App. 1971).*

n61 See id.

n62 *Lee v. Smith, 43 N.Y.2d 453, 373 N.E.2d 247, 248, 402 N.Y.S.2d 351 (N.Y. 1977);* see also *White v. Beal, 555 F.2d 1146, 1149-50 (3d Cir. 1977)* (finding equal protection issue sufficient to support jurisdiction, but not deciding on equal protection grounds, where remedial eye-care was available only if a person's visual impairment resulted from eye disease or pathology); *County of Orange v. Ivansco, 67 Cal. App. 4th 328, 337-38 (Cal. App. 1998)* (finding equal protection violation where parents supporting noncustodial children received different benefits depending on the children's eligibility for AFDC); but see *Moreno v. Draper, 70 Cal. App. 4th 886, 888-89 (Cal. App. 1999)* (analyzing same regulation as in County of Orange and finding no equal protection violation).

[29]**

DHSS's differential treatment of Medicaid-eligible Alaskans violates equal protection under rational basis review as surely as it does under strict scrutiny. Under any standard of review, "the State may not jeopardize the health and privacy of poor women by excluding medically necessary abortions from a system providing all other medically necessary care for the indigent." **n63**

n63 *Right to Choose v. Byrne, 91 N.J. 287, 450 A.2d 925, 937 (N.J. 1982).*

Because 7 AAC 43.140 infringes on a constitutionally protected interest, the State bears a high burden to justify the regulation. **n64** Unless the State asserts a compelling state interest, the statute will necessarily fail constitutional scrutiny. **n65** The State has failed to demonstrate such an interest in this case. It primarily defends 7 AAC 43.140 on **[*913]** the grounds that "medical and public welfare interests . . . are served by the legislature's decision to fund childbirth." But the regulation does not relate to funding for **[**30]** childbirth, and the State's decision to fund prenatal care and other pregnancy-related services has not been challenged. Indeed, a woman who carries her pregnancy to term and a woman who terminates her pregnancy exercise the same fundamental right to reproductive choice. Alaska's equal protection clause does not permit governmental discrimination against either woman; both must be granted access to state health care under the same terms as any similarly situated person. The State's undisputed interest in providing health care to women who carry pregnancies to term has no effect on the State's interest in providing medical care to Medicaid-eligible women who, for health reasons, require abortions.

n64 See *Matanuska-Susitna Borough School Dist., 931 P.2d 391, 396-97 (Alaska 1997)* (outlining State's burden for justifying regulations); *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice, 948 P.2d 963, 971 (Alaska 1997)* ("Since the right is fundamental, it cannot be interfered with unless the interference is justified by a compelling state interest.").

n65 See *Matanuska-Susitna Borough Sch. Dist., 931 P.2d at 396-97.*

[31]**

The State also asserts an interest in minimizing health risks to mother and child, and submits that these interests are often closely aligned. But those interests are not aligned in precisely the situation contemplated by 7 AAC 43.140's Medicaid exclusion: when pregnancy threatens a woman's health. Under the U.S. Supreme Court's analysis in Roe v. Wade, the State's interest in the life and health of the mother is paramount at every stage of pregnancy. **n66** And in Alaska, "the scope of the fundamental right to an abortion . . . is similar to that expressed in Roe v. Wade." **n67** Thus, although the State has a legitimate interest in protecting a fetus, at no point does that interest outweigh the State's interest in the life and health of the pregnant woman. **n68**

n66 *410 U.S. 113, 163-64, 93 S. Ct. 705, 35 L. Ed. 2d 147 (1973).*

n67 *Valley Hospital, 948 P.2d at 969.*

n68 Accord *Byrne, 450 A.2d at 935* (holding, based on Roe, that "at no point in pregnancy may [the state's interest in protection of potential life] outweigh the superior interest in the life and health of the mother").

[32]**

Because the State has not asserted an interest sufficiently compelling to justify denying medically necessary care to women who need abortions, we need not consider the means-ends fit of the challenged regulation. We conclude that 7 AAC 43.140 violates equal protection under the Alaska Constitution.

B. The Separation of Powers Doctrine Cannot Shield Unconstitutional Legislation.

The State argues that by holding the Medicaid program to constitutional standards, the superior court effected an appropriation of funds in violation of the separation of powers between branches of government. We disagree. Under Alaska's constitutional structure of government, "the judicial branch . . . has the constitutionally mandated duty to ensure compliance with the provisions of the Alaska Constitution, including compliance by the legislature." **n69** The superior court had not only the power but the duty to strike the challenged restriction and any underlying legislation if it found them to violate constitutional rights; the same duty mandates our decision today.

n69 *Malone v. Meekins, 650 P.2d 351, 356 (Alaska 1982);* see also *Marbury v. Madison, 5 U.S. (1 Cranch) 137, 177, 2 L. Ed. 60 (1803)* ("It is emphatically the province and duty of the judicial department to say what the law is.").

[33]**

The separation of powers doctrine and its complementary doctrine of checks and balances are implicit in the Alaska Constitution. **n70** In light of the separation **[*914]** of powers doctrine, we have declined to intervene in political questions, which are uniquely within the province of the legislature. **n71** But under the same doctrine, we "cannot defer to the legislature when infringement of a constitutional right results from legislative action"; legislative intent is not paramount when that intent conflicts with the constitution. **n72** And the mere fact that the legislature's appropriations power underlies Medicaid funding cannot insulate the program from constitutional review. As the California Supreme Court observed in rejecting nearly identical restrictions on abortion funding, the State's claim would remove all constitutional restraints from legislative exercise of the spending power:

n70 See *State v. Dupere, 709 P.2d 493, 496 (Alaska 1985),* modified, *721 P.2d 638 (Alaska 1986)* ("The separation of powers doctrine must be considered along with the complementary doctrine of checks and balances."); *Alaska State-Operated Sch. Sys. v. Mueller, 536 P.2d 99, 103 (Alaska 1976); Public Defender Agency v. Superior Court, 534 P.2d 947, 950 (Alaska 1975).*

> The United States Supreme Court recently discussed the division of powers within the federal system of government. See *United States v. Morrison, 529 U.S. 598, 120 S. Ct. 1740, 146 L. Ed. 2d 658 (2000).* It reiterated the duty of courts to limit acts of legislation when those acts conflict with rights guaranteed by the Constitution, explaining that the framers of the Constitution divided power among the three branches of government so that the Constitution's provisions would not be defined solely by the political branches nor the scope of legislative power limited only by public opinion and the legislature's self-restraint. It is thus a permanent and indispensable feature of our constitutional system that the . . . judiciary is supreme in the exposition of the law of the Constitution.
>
> *120 S. Ct. at 1753 n.7* (internal quotations and citations omitted). **[**34]**

n71 See *Abood v. League of Women Voters, 743 P.2d 333, 338 (Alaska 1987); Malone, 650 P.2d at 356-57.*

n72 *Valley Hosp. Ass'n v. Mat-Su Coalition for Choice, 948 P.2d 963, 972 (Alaska 1997).*

There is no greater power than the power of the purse. If the government can use it to nullify constitutional rights, by conditioning benefits only upon the sacrifice of such rights, the Bill of Rights could eventually become a yellowing scrap of paper.**[n73]**

n73 *Committee to Defend Reprod. Rights v. Myers, 29 Cal. 3d 252, 625 P.2d 779, 172 Cal. Rptr. 866 (Cal. 1981).*

Legislative exercise of the appropriations power has not in the past, and may not now, bar courts from upholding citizens' constitutional rights. Indeed, constitutional legal rulings commonly affect state programs and funding. Many of the most heralded constitutional decisions **[**35]** of the past century have, as a practical matter, effectively required state expenditures. In Green v. County School Board, the United States Supreme Court ordered effective desegregation of public schools; **n74** in Gideon v. Wainwright, it required funding of counsel for indigent criminal defendants; **n75** and in Shapiro v. Thompson, it required states to give newcomers to the jurisdiction equal welfare benefits. **n76** In each of these cases, a judicial decision upholding constitutional rights required state expenditures to support those rights. As appellee doctors and Planned Parenthood point out, the funding implications and separation of powers issue in this case would be identical if the State relied on other suspect criteria, such as race, to deny Medicaid benefits. Following the State's argument, the exclusion of one ethnic group -- or inclusion only of other specified groups -- within legislative Medicaid appropriations would be immunized from constitutional review, merely because the legislature had exercised its spending power. We emphatically reject such a claim. Like the Supreme Court decisions listed above, today's holding is squarely within the **[**36]** authority of the court, not in spite of, but because of, the judiciary's role within our divided system of government.

n74 *391 U.S. 430, 88 S. Ct. 1689, 20 L. Ed. 2d 716 (1968).*

n75 *372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963).*

n76 *394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969),* partly rev'd on other grounds, *Edelman v. Jordan, 415 U.S. 651, 670-71, 39 L. Ed. 2d 662, 94 S. Ct. 1347 (1974).*

Our conclusion that the separation of powers doctrine supports today's decision is firmly supported by twenty-one other courts that have considered a state's exclusion of medically necessary abortions from state-funded health care programs. **n77** The State has not identified a single state or federal case holding that the separation of powers precludes a court from ordering the state to provide equal funding for women whose health is endangered by pregnancy. **n78** Courts that have explicitly considered separation of powers challenges to holdings like the one we reach today have dismissed the challenges in no uncertain **[**37]** terms. The Massachusetts Supreme Judicial Court, for example, wrote:

n77 See supra note 2.

n78 A single justice in a concurring opinion stated that the judiciary may not, under the equal protection clause of Michigan's constitution, require legislative funding for medically necessary abortion. *Doe v. Department of Soc. Servs., 439 Mich. 650, 487 N.W.2d 166, 182-83 (Mich. 1992)* (Levin, J., concurring). To our knowledge, his is the sole dissenting voice on this issue.

We have never embraced the proposition that merely because a legislative action involves an exercise of the appropriations power, it is on that account immunized against judicial review. [We reject] the **[*915]** argument that either the doctrine of separation of powers or the political question doctrine requires that result. Without in any way attempting to invade the rightful province of the Legislature to conduct its own business, we have a duty, certainly since Marbury v. Madison, to adjudicate a claim that a **[**38]** law and the actions undertaken pursuant to that law conflict with the requirements of the Constitution. "This," in the words of Mr. Chief Justice Marshall, "is of the very essence of judicial duty."**[n79]**

n79 *Moe v. Secretary of Admin. & Fin., 382 Mass. 629, 417 N.E.2d 387, 395 (Mass. 1981)* (internal citations omitted); see also *Committee to Defend Reprod. Rights v. Cory, 132 Cal. App. 3d 852, 183 Cal. Rptr. 475, 478 (Cal. App. 1982)* ("When there is an unconstitutional restriction in an existing appropriation, it offends no constitutional principle to direct that the disputed payments be made from funds already appropriated for the same general purpose."); Clinic for Women, Inc. v. Humphreys, No. 49D12-9908-MI-1137, Slip Op. at 12 (Ind. Super., Oct. 18, 2000) ("If the challenged enactments violate the state Constitution, the Court can grant relief even if doing so means that state funds will be spent in a manner not explicitly approved by the Legislature. The Court has the power to shape appropriate remedies and the Legislature has a duty to appropriate funds to meet its constitutional obligations."); *Low-Income Women v. Bost, 38 S.W.3d 689, 702 (Tex. App. 2000)* ("The relief sought by Low-Income Women -- funding medically necessary abortions -- cannot be characterized as a new appropriation. They do not ask for a new appropriation of funds to the Medical Assistance Program. Rather, they seek declaratory and injunctive relief against unconstitutional restrictions placed on the use of funds already appropriated pursuant to a pre-existing law authorizing funds to be used for health care under the program.").

[39]**

We agree with this articulation of the court's fundamental powers and duties.

A federal case, State of Georgia v. Heckler, also directly supports our conclusion. **n80** In that case, the state of Georgia sought reimbursement from the federal Department of Health and Human Services (HHS) for money spent by the state to fund medically necessary abortions. Although the Court of Appeals for the Eleventh Circuit ultimately denied Georgia's claim, it emphatically rejected HHS's argument that because Congress had not appropriated money for medically necessary abortions, a district court could not compel HSS to pay the claims. **n81** As the Eleventh Circuit court noted, the statute could preclude payment only if an interpreting court so determined. **n82** "There is no doubt," the Heckler court concluded, "that if this Court decided that these payments were legally required, HHS would be authorized to make them." **n83**

n80 *768 F.2d 1293 (11th Cir. 1985).*

n81 See *id. at 1295-96.*

n82 See *id. at 1296.* **[**40]**

n83 Id.

We agree with the Eleventh Circuit: It is legally indisputable that a trial court order requiring state compliance with constitutional standards does not violate the separation of powers doctrine.

V. CONCLUSION

The manner in which the State allocates public benefits is subject to constitutional limitation under Alaska's equal protection provision. The State, having undertaken to provide health care for poor Alaskans, must adhere to neutral criteria in distributing that care. It may not deny medically necessary services to eligible individuals based on criteria unrelated to the purposes of the public health care program. Moreover, the DHSS regulation in this case discriminatorily burdens the exercise of a constitutional right. Because we conclude that denial of Medicaid assistance to poor women who medically require abortions violates equal protection, we AFFIRM the decision of the superior court.

HOUSE COMMITTEE REPO

(7)
Date Referred to Committee: March 12, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4/6/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 186**

"An Act declaring that certain firearms and accessories are exempt from federal regulation."

HB 186 AK FIREARMS EXEMPT FROM FED. REGULATION

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB186 **(JUD)**
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW	1		✓	

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Stoltze			–	
	Coghill	✓			
	Holmes			X	
	Gatto	X			
Chair:	RAMRAS	✓			
Chair:					

HB 193

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REPRESENTATIVE JOHN COGHILL

House Bill 193 Legislative Ethics Amendments
Sponsor Statement

The Select Committee on Legislative Ethics requested some changes to the Legislative Ethics Statutes to address several issues discussed by the committee.

Two amendments requested by the committee address tickets to charity events and disclosure of gifts of tickets for charitable events that have a value of more than $250.00. They allow persons who are not lobbyists to give a gift of a ticket to a charitable event sanctioned by the Legislative Council to a legislator or legislative employee that has a value of more than $250.00. However, the recipient of the ticket must disclose to the Select Committee on Legislative Ethics the value of the ticket that exceeds the $250.00 limit. The bill clarifies that lobbyists, immediate family members of lobbyists, or persons acting on behalf of a lobbyist may not exceed the $250 limit.

The committee also recommended two changes to the statutes that deal with the public members of the Select Committee on Legislative Ethics. First, public members would be paid a $150 a day stipend for attending meetings. Secondly, an alternate member of the committee selected to replace a regular member of the committee for some purpose would serve for the entire duration of the proceeding.

The bill clarifies that disclosures prohibited by state and federal law are not required by the Select Committee on Legislative Ethics.

The bill draws a bright line for legislators and legislative staff to follow for assisting constituents with problems they encounter with state agencies. Once an issue has been appealed to an administrative hearing officer, the legislator or legislative staffer may no longer make contacts with the agency, unless he or she is acting in a private capacity and reports any compensation for the representation to the Select Committee on Legislative Ethics.

Finally this bill reopens the discussion of AS 24.60.030(a)(2), the use of public funds, facilities, etc for the private benefit of either the legislative, a legislative employee, or another person. The committee has recognized that many things a legislator or staff does for constituents, such as problems with child support or the permanent fund dividend, results in a monetary benefit for the constituent. Section 8 of this bill adds definitions for "constituent", "constituent service", "legislative purpose", "nonlegislative purpose", and "private benefit" to better clarify the law. While Representative Coghill disagrees with some of the definitions, he feels it is important to open the dialogue on the subject and fix the problem.

CS FOR HOUSE BILL NO. 193(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES COGHILL, Lynn

A BILL

FOR AN ACT ENTITLED

"An Act increasing the amount of money certain lobbyists may spend on food and beverage for immediate consumption by a legislator, legislative employee, or a spouse or domestic partner of a legislator or legislative employee without disclosure to the Alaska Public Offices Commission; prohibiting public members of the Select Committee on Legislative Ethics from disclosing information that is confidential under the Legislative Ethics Act; relating to representation by a legislator or legislative employee of another person in an administrative hearing; relating to prohibitions on the use of state resources under the Legislative Ethics Act; relating to charity events under the Legislative Ethics Act; requiring compensation of public members of the Select Committee on Legislative Ethics; exempting certain information from disclosure requirements of the Legislative Ethics Act; relating to the selection of alternate members and the participation of members and alternate members in formal proceedings of the

Select Committee on Legislative Ethics and its subcommittees; and defining 'constituent,' 'constituent service,' 'legislative purpose,' 'nonlegislative purpose,' and 'private benefit' for the purposes of the Legislative Ethics Act."

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

*** Section 1.** AS 24.45.051(b) is amended to read:

(b) A lobbyist required to report to the commission under (a) of this section, who provides or pays for food or beverage for immediate consumption by a legislator or legislative employee or a spouse or domestic partner of a legislator or legislative employee shall report the date the food or beverage was provided or paid for and the recipient's name and relationship to the legislator or legislative employee, unless the food and beverage

(1) cost **$50** [$15] or less; or

(2) are provided as part of an event that is open to all legislators or legislative employees.

*** Sec. 2.** AS 24.60.030(a) is amended to read:

(a) A legislator or legislative employee may not

(1) solicit, agree to accept, or accept a benefit other than official compensation for the performance of public duties; this paragraph may not be construed to prohibit lawful solicitation for and acceptance of campaign contributions, solicitation or acceptance of contributions for a charity event, as defined in AS 24.60.080(a)(2)(B), or the acceptance of a **gift** [LAWFUL GRATUITY] under **AS 24.60.075 or 24.60.080** [AS 24.60.080];

(2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of [EITHER] the legislator, legislative employee, or another person; this paragraph does not prohibit

(A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or

legislative employee reimburses the state for the cost of the use;

(B) the use of **a legislator's legislative mailing list for campaign purposes, or the use of** mailing lists, computer data, or other information lawfully obtained from a government agency and available to the general public for nonlegislative purposes;

(C) the legislative council, notwithstanding AS 24.05.190, from designating a public facility for use by legislators and legislative employees for health or fitness purposes; when the council designates a facility to be used by legislators and legislative employees for health or fitness purposes, it shall adopt guidelines governing access to and use of the facility; the guidelines may establish times in which use of the facility is limited to specific groups;

(D) a legislator from using the legislator's private office in the capital city during a legislative session, and for the 10 days immediately before and the 10 days immediately after a legislative session, for nonlegislative purposes if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of the space and equipment, other than utility costs and minimal wear and tear, or the legislator promptly reimburses the state for the cost; an office is considered a legislator's private office under this subparagraph if it is the primary space in the capital city reserved for use by the legislator, whether or not it is shared with others;

(E) a legislator from use of legislative employees to prepare and send out seasonal greeting cards;

(F) a legislator from using state resources to transport computers or other office equipment owned by the legislator but primarily used for a state function;

(G) use by a legislator of photographs of that legislator;

(H) reasonable use of the Internet by a legislator or a legislative employee except if the use is for election campaign purposes;

(I) a legislator or legislative employee from soliciting, accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable organization in a state facility;

(J) a legislator from sending any communication in the form of a newsletter to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(K) full participation in a charity event approved in advance by the Alaska Legislative Council;

(3) knowingly seek, accept, use, allocate, grant, or award public funds for a purpose other than that approved by law, or make a false statement in connection with a claim, request, or application for compensation, reimbursement, or travel allowances from public funds;

(4) require a legislative employee to perform services for the private benefit of the legislator or employee at any time, or allow a legislative employee to perform services for the private benefit of a legislator or employee on government time; it is not a violation of this paragraph if the services were performed in an unusual or infrequent situation and the person's services were reasonably necessary to permit the legislator or legislative employee to perform official duties;

(5) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning; this paragraph does not prohibit

(A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use;

(B) the use of **a legislator's legislative mailing list, or the use of** mailing lists, computer data, or other information lawfully obtained from a government agency and available to the general public for nonlegislative purposes;

(C) storing or maintaining, consistent with (b) of this section, election campaign records in a legislator's office;

(D) a legislator from using the legislator's private office in the

capital city during a legislative session, and for the 10 days immediately before and the 10 days immediately after a legislative session, for nonlegislative purposes if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of the space and equipment, other than utility costs and minimal wear and tear, or the legislator promptly reimburses the state for the cost; an office is considered a legislator's private office under this subparagraph if it is the primary space in the capital city reserved for use by the legislator, whether or not it is shared with others; or

(E) use by a legislator of photographs of that legislator.

*** Sec. 3.** AS 24.60.030(i) is amended to read:

(i) Except **when representing another person for compensation subject to AS 24.60.100 and as a professional who is licensed in the state** [FOR SUPPLYING INFORMATION REQUESTED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE, OR WHEN RESPONDING TO CONTACTS INITIATED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE], a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the **matter** [CASE] unless [THE]

(1) **the** contact is made in the presence of all parties to the hearing or the parties' representatives **while the legislator or legislative employee is acting as a party or a witness in the matter or responding to a question asked of the legislator or legislative employee by the hearing officer, individual, board, or commission** and the contact is made a part of the record; or

(2) **the contact is inadvertent and ex parte and the** fact and substance of the contact **are** [IS] promptly disclosed by the legislator or legislative employee to all parties to the hearing and [THE CONTACT IS] made a part of the record.

* **Sec. 4.** AS 24.60.060(a) is amended to read:

(a) A legislator, [OR] legislative employee, **or public member of the committee** may not knowingly make an unauthorized disclosure of information that is made confidential by law and that the person acquired in the course of official duties. A person who violates this section is subject to a proceeding under AS 24.60.170 and may be subject to prosecution under AS 11.56.860 or another law.

* **Sec. 5.** AS 24.60.080(a) is amended to read:

(a) Except as otherwise provided in this section, a legislator or legislative employee may not

(1) solicit, accept, or receive, directly or indirectly, a gift worth $250 or more, whether in the form of money, services, a loan, travel, entertainment, hospitality, promise, or other form, or gifts from the same person worth less than $250 that in a calendar year aggregate to $250 or more in value;

(2) solicit, accept, or receive a gift with any monetary value from a lobbyist, an immediate family member of a lobbyist, or a person acting on behalf of a lobbyist, except

(A) food or beverage for immediate consumption;

(B) a contribution to a charity event, [FROM ANY PERSON AT ANY TIME, AND] tickets **to** [FOR] a charity event, **and** [AT ANY TIME, EXCEPT THAT TICKETS TO OR] gifts received **in connection with** [AT] a charity event**; however, tickets to a charity event and gifts received in connection with a charity event that are not included in the price of the ticket** [UNDER THIS SUBPARAGRAPH] are subject to the calendar year limit on the value of gifts received by a legislator or legislative employee in (1) of this subsection; in this subparagraph, "charity event" means an event the proceeds of which go to a charitable organization with tax-free status under 26 U.S.C. 501(c)(3) and that the Alaska Legislative Council has approved in advance; the tickets may entitle the bearer to admission to the event, to entertainment, to food or beverages, or to other gifts or services **in connection with** [INVOLVED IN] the charity event;

(C) a gift that is unconnected with the recipient's legislative

status and is from a member of the legislator's or legislative employee's immediate family;

(D) a gift delivered on the premises of a state facility and accepted on behalf of a recognized nonpolitical charitable organization; or

(E) a compassionate gift under AS 24.60.075.

*** Sec. 6.** AS 24.60.080(c) is amended to read:

(c) Notwithstanding (a)(1) of this section, it is not a violation of this section for a person who is a legislator or legislative employee to accept

(1) hospitality, other than hospitality described in (4) of this subsection,

(A) with incidental transportation at the residence of a person; however, a vacation home located outside the state is not considered a residence for the purposes of this subparagraph; or

(B) at a social event or meal;

(2) discounts that are available

(A) generally to the public or to a large class of persons to which the person belongs; or

(B) when on official state business, but only if receipt of the discount benefits the state;

(3) food or foodstuffs indigenous to the state that are shared generally as a cultural or social norm;

(4) travel and hospitality primarily for the purpose of obtaining information on matters of legislative concern;

(5) gifts from the immediate family of the person; in this paragraph, "immediate family" means

(A) the spouse of the person;

(B) the person's domestic partner;

(C) a child, including a stepchild and an adoptive child, of the person or of the person's domestic partner;

(D) a parent, sibling, grandparent, aunt, or uncle of the person;

(E) a parent, sibling, grandparent, aunt, or uncle of the person's

spouse or the person's domestic partner; and

(F) a stepparent, stepsister, stepbrother, step-grandparent, step-aunt, or step-uncle of the person, the person's spouse, or the person's domestic partner;

(6) gifts that are not connected with the recipient's legislative status;

(7) a discount for all or part of a legislative session, including time immediately preceding or following the session, or other gift to welcome a legislator or legislative employee who is employed on the personal staff of a legislator or by a standing or special committee to the capital city or in recognition of the beginning of a legislative session if the gift or discount is available generally to all legislators and the personal staff of legislators and staff of standing and special committees; this paragraph does not apply to legislative employees who are employed by the Legislative Affairs Agency, the office of the chief clerk, the office of the senate secretary, the legislative budget and audit committee, the office of victims' rights, or the office of the ombudsman;

(8) a gift of legal services in a matter of legislative concern and a gift of other services related to the provision of legal services in a matter of legislative concern;

(9) a gift of transportation from a legislator or a legislative employee to a legislator or a legislative employee if the transportation takes place in the state on or in an aircraft, boat, motor vehicle, or other means of transport owned or under the control of the donor; this paragraph does not apply to travel described in (4) of this subsection or travel for political campaign purposes; or

(10) a contribution to a charity event from any person at any time**, or a ticket to a charity event from a person who is not a lobbyist, an immediate family member of a lobbyist, or acting on behalf of a lobbyist**; in this paragraph, "charity event" has the meaning given in (a)(2)(B) of this section.

*** Sec. 7.** AS 24.60.080(d) is amended to read:

(d) A legislator or legislative employee who accepts a gift under (c)(4) **of this section that has a value of $250 or more or a ticket to a charity event under (c)(10)** of this section that has a value of $250 or more shall disclose to the committee,

within 30 days after receipt of the gift, the name and occupation of the donor and the approximate value of the gift. A legislator or legislative employee who accepts a gift under (c)(8) of this section that the recipient expects will have a value of $250 or more in the calendar year shall disclose to the committee, within 30 days after receipt of the gift, the name and occupation of the donor, a general description of the matter of legislative concern with respect to which the gift is made, and the approximate value of the gift. The committee shall maintain a public record of the disclosures it receives relating to gifts under (c)(4), (c)(8), **(c)(10),** and (i) of this section and shall forward the disclosures to the appropriate house for inclusion in the journal. The committee shall forward to the Alaska Public Offices Commission copies of the disclosures concerning gifts under (c)(4), (c)(8), **(c)(10),** and (i) of this section that it receives from legislators and legislative directors. A legislator or legislative employee who accepts a gift under (c)(6) of this section that has a value of $250 or more shall, within 30 days after receiving the gift, disclose to the committee the name and occupation of the donor and a description of the gift. The committee shall maintain disclosures relating to gifts under (c)(6) of this section as confidential records and may only use, or permit a committee employee or contractor to use, a disclosure under (c)(6) of this section in the investigation of a possible violation of this section or in a proceeding under AS 24.60.170. If the disclosure under (c)(6) of this section becomes part of the record of a proceeding under AS 24.60.170, the confidentiality provisions of that section apply to the disclosure.

*** Sec. 8.** AS 24.60.105 is amended by adding a new subsection to read:

(d) A person may submit a written request to refrain from making a disclosure that is required by this chapter if making the disclosure would violate the United States Constitution, the Constitution of the State of Alaska, or other state or federal law. The committee shall approve or deny the request, or require further justification from the person making the request. At the request of the committee or a person authorized to act on behalf of the committee, a person who seeks to refrain from making a disclosure under this subsection shall provide the committee with justification in writing, and the committee may review the written justification to determine whether it is sufficient.

* **Sec. 9.** AS 24.60.130(f) is amended to read:

(f) The committee may contract for professional services and may employ staff as it considers necessary. A committee employee, including a person who provides personal services under a contract with the committee, may not be a legislator, an elected or appointed official of a state or local governmental entity, an officer of a political party, a candidate for public office, or a registered lobbyist. The legislative council shall provide office space, equipment, and additional staff support for the committee. The committee shall submit a budget for each fiscal year to the finance committees of the legislature and shall annually submit an estimated budget to the governor for information purposes in preparation of the state operating budget. Public members of the committee **shall receive** [SERVE WITHOUT] compensation **of $150 a day while attending committee meetings and** [FOR THEIR SERVICES, BUT] are entitled to per diem and travel expenses authorized for boards and commissions under AS 39.20.180.

* **Sec. 10.** AS 24.60.130(n) is amended to read:

(n) **A member who participates at the commencement of a proceeding under AS 24.60.170 shall participate for the duration of the proceeding unless disqualified or unable to continue participating for any reason; however, provision shall be made for service by alternate members on the committee or on a subcommittee, as follows:**

(1) when [WHEN] appointing members of the legislature to serve on the committee, the speaker of the house or the president of the senate, as appropriate, shall appoint an alternate member for each regular member**; an** [. AN] alternate must have the same qualifications as the regular member for whom the alternate stands as alternate and is subject to confirmation as required for the regular member**;**

(2) when selecting public members to serve on the committee, the Chief Justice of the Alaska Supreme Court shall also select one alternate public member; the alternate public member's selection is subject to ratification as required for selection of the regular public members;

(3) if, except as to a proceeding under AS 24.60.170, [. IF] a regular [LEGISLATIVE] member of the committee or a subcommittee is unable to

participate in [ATTEND] a meeting, the chair of the committee or a subcommittee shall designate the regular member's alternate to **participate** [SERVE] in place of the regular member at the meeting, and the designated alternate**, unless for any reason unable to participate,** shall **participate for the duration of that meeting; if** [SERVE UNLESS UNABLE TO SERVE FOR ANY REASON. IF] a regular [LEGISLATIVE] member of the committee or a subcommittee is disqualified under (h) of this section from **participating in** [SERVING ON THE COMMITTEE OR THE SUBCOMMITTEE CONCERNING] a proceeding under AS 24.60.170 or if the regular member is unable to **participate** [ATTEND], the chair of the committee or a subcommittee shall designate the regular member's alternate to **participate** [SERVE] in place of the regular member **for the duration of** [IN] the proceeding unless the alternate is [ALSO] disqualified **or is for any reason unable to participate; the** [FROM SERVING. THE] designation shall be treated as confidential to the same extent that the identity of the subject of a complaint is required to be kept confidential.

*** Sec. 11.** AS 24.60.990(a) is amended by adding new paragraphs to read:

(17) "constituent" means a person to whom a legislator owes a duty of representation under the Constitution of the State of Alaska;

(18) "constituent service" means assistance, including representation other than legal representation and advice other than legal advice, that is provided by a legislator or a legislator's staff to a constituent;

(19) "legislative purpose" means legislative action or providing constituent service;

(20) "nonlegislative purpose" means a purpose other than a legislative purpose;

(21) "private benefit" means a benefit that is conferred on a person with a purpose that is mainly a nonlegislative purpose.

Prepared by: Ethics Staff
April 3, 2009

REGARDING: HB 193, LEGISLATIVE ETHICS

A conceptual amendment was drafted at the House Judiciary committee meeting on Friday, April 3, concerning confidentiality of information obtained by members of the Ethics Committee and staff. I'm not sure the language proposed accomplishes the intent of the committee.

RECOMMENDED LANGUAGE: A member of the Select Committee on Legislative Ethics or staff to the committee may not make a disclosure of information related to a proceeding under AS 24.60.170 or an advisory opinion request under AS 24.60.160 unless allowed by statute.

EXPLANATION: What this statement does is prevent someone on the committee and staff from disclosing information related to a complaint proceeding and an advisory opinion request. The language recommended at the House Judiciary committee meeting only related to information obtained during a meeting. I believe all information related to these subjects should be confidential. Many times information is available and provided to committee members prior to an actual meeting.

QUESTION: AS 24.60.060(a) may already accomplish what members of House Judiciary were suggesting with the addition of language covering public member of the committee. Additionally, this statute provides consequences when confidentiality is violated.

AS 24.60.060(a) A legislator, [OR] legislative employee, **or a public member of the committee** may not knowingly make an unauthorized disclosure of information that is made confidential by law and that the person acquired in the course of official duties. A person who violates this section is subject to a proceeding under AS 24.60l.170 and may be subject to prosecution under AS 11.56.860 or another law.

EXPLANANTION: Both the complaint process and the advisory opinion process are determined confidential by statute.

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
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Juneau, Alaska 99801-1182
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House of Representatives

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House District 10

Fax

To: Dan Wayne
Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: April 3, 2009

Re: Final on HB193

Today the House Judiciary Committee heard HB193 (26-LS0656\T) please go final on the bill with the following 5 amendments:

1. Conceptual - p.8, l. 30 after "may" insert "submit a written request to"
2. Conceptual – under 24.45.051(b)(1) change "$15" to "$50"
3. Conceptual – Add a new section to Title 24 regarding confidentiality to read something like… A person or member of the select committee on legislative ethics or staff may not make any disclosure related to information obtained during a proceeding or advisory opinion meeting of the committee under AS 24.60.160.
4. Amendment T.2 as drafted
5. Amendment T.1 as drafted

Thank you, if you have any questions call.

Representative_Jay_Ramras@legis.state.ak.us

Amend #6 Passed

26-LS0656\T.1
Wayne
4/3/09

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: CSHB 193(STA)

Page 4, line 26:

Delete "**A** [EXCEPT"

Insert "Except **when representing another person for compensation subject to AS 24.60.100 and as a professional who is licensed in the state,** ["

Page 4, line 31:

Delete "A]"

Insert "] a"

1884

AMEND #5 Passed

26-LS0656\T.2
Wayne
4/3/09

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: CSHB 193(STA)

Page 10, line 30, through page 11, line 4:

Delete all material and insert:

"(21) "private benefit" means a benefit that is conferred, on a person, with a purpose that is mainly a non-legislative purpose."

1885

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 26, 2009

SUBJECT: Legislative Ethics Act changes (CSHB 193(STA), Work Order No. 26-LS0656\T)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Nancy Manly

FROM: Dan Wayne
Legislative Counsel

At the March 25, 2009, meeting of the House State Affairs subcommittee that reviewed this bill, I expressed some concerns about the definitions in the bill and the subcommittee asked that I restate them in a memo to be transmitted with the bill when it leaves your committee.

In the course of drafting or reviewing advisory opinions I have observed that certain undefined terms are very difficult to interpret and apply. Among them are the terms "constituent" and "non-legislative purpose."

The definition of constituent in this bill, "a person to whom a legislator owes a duty of representation under the Constitution of the State of Alaska," leaves the meaning of the term subject to varying interpretation. Article XII, section 5 of the state constitution, requires all public officers to take an oath of office.[1] The language reads as follows: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as . . . [a legislator] to the best of my ability." This suggests that a legislator has, in addition to the general duty of a public officer to support and defend the state and federal constitutions, additional duties specific to that office. However, those duties are not further described in the state constitution.

Other than the requirement that a constituent be a "person," the meaning of constituent is wide open to interpretation under the definition in this bill. Every person in Alaska, including corporations and non-citizens, has rights under the state constitution. A legislator may owe every person in the state a duty in the sense that the legislator has sworn to uphold the state and federal constitutions, but that does not necessarily mean

[1] Legislators are further required, by AS 24.05.060, to take this oath before undertaking the duties of office.

that an individual legislator owes each person in the state a duty of representation. If the intent of the bill's definition of "constituent" is that a legislator's constituent is every person who is in or of Alaska, then it might be more accurate to say:

> "constituent" means a person who resides in the state, is registered to vote in the state, or is licensed by the state to do business, or a person who is an immediate family member of a person who resides in the state or is registered to vote in the state.

A definition of the term "legislative purpose" is necessary to the bill in order to support the bill's definition of "non-legislative purpose," a term that is prominent in AS 24.60.030(a)(2). However, the definition of "legislative purpose" provided in this bill is unclear because it describes action, not purpose.

DCW:ljw
09-184.ljw

AMENDMENT

OFFERED IN THE HOSUE

BY REPRESENTATIVE SEATON

TO CSHB193 v. C

Page 5 line 7 following "**or witness in the matter**" insert "**or responding to an interrogative from an administrative officer**"

inquiry

R

AMENDMENT

OFFERED IN THE HOUSE BY: REPRESENTATIVE GRUENBERG
TO: HB 193

Page 1, line 12 insert:

(i) Except when representing another person as a licensed professional in the State of Alaska in the case for compensation and subject to AS 24.60.100

26-LS0656\S.1
Wayne
3/25/09

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 193( ), Draft Version "S"

Page 1, line 7, following "**subcommittees;**":

Insert "**establishing that persons who are subject to the Legislative Ethics Act may rely without prejudice on certain advice from employees of the Select Committee on Legislative Ethics;**"

Page 7, following line 22:

Insert a new bill section to read:

"*** Sec. 8.** AS 24.60.158 is repealed and reenacted to read:

Sec. 24.60.158. Informal advice. (a) The committee shall authorize and train at least one committee staff employee to respond to requests from legislators, legislative employees, or public members of the committee for advice about the legal requirements of this chapter, including advice as to whether the facts and circumstances of a particular case constitute a violation of ethical standards under this chapter. However, the advice provided by staff is not binding on the committee except as provided under (b) of this section.

(b) A person who is a legislator, legislative employee, or public member of the committee may request a written staff opinion as to whether the facts and circumstances of a particular case constitute a violation of ethical standards under this chapter, and committee staff shall respond to a request made under this subsection in a writing entitled "staff advisory opinion." If the person who requests the opinion provides with the request all information that the person reasonably believes is material to the request, and all information the staff requests, and if the information provided is accurate to the best of the person's understanding, then the person may rely

on the written opinion without prejudice unless it is rescinded by the committee.

(c) The committee is bound by a staff advisory opinion under (b) of this section to the same extent it is bound by an advisory opinion under AS 24.60.160; however, a staff advisory opinion may be rescinded by a majority vote of the committee. An opinion under (b) of this section, whether or not it is rescinded, is subject to the redaction and confidentiality requirements of AS 24.60.160(b)."

Renumber the following bill section accordingly.

R

AMENDMENT

OFFERED IN THE HOUSE BY: REPRESENTATIVE GRUENBERG
TO: HB 193

Page 1, line 12 insert:

(i) Except when representing another person as a licensed professional in the State of Alaska in the case for compensation and subject to AS 24.60.100

ALASKA STATE HOUSE

House State Affairs Subcommittee Report Form

Date: March 25, 2009

Time Meeting Called to Order: 3:08 p.m.

Name of Chairman: Representative Paul Seaton

Members Present: Representative Seaton, Representative Craig Johnson, and Representative Max Gruenberg.

Subject of Meeting: Legislative Ethics

Relevant Legislation: House Bill 193 Legislative Ethics

Persons participating other than committee members: Representative Mike Doogan, Representative Berta Gardner, Dan Wayne (Legislative Legal), Joyce Anderson (Director, Select Committee on Legislative Ethics), and Rynnieva Moss (Legislative Aide to Representative Coghill, sponsor of HB 193).

Subcommittee Recommendations: The subcommittee adopted a CS that made amendments to Section 1 and Section 8; they amended AS 24.60.030(a)(1) to replace the word "gratuity" with "gift" and added a reference to AS 24.60.075 (compassionate gift) to AS 24.60.030(a)(1).

AM #1: Page 8, lines 2, 3, & 4: Delete the word "financial"
Moved by Representative Gruenberg
Passed without objection

AM #2: Introduced and withdrawn by Representative Gruenberg

AM #3: Page 7, line 29: Delete "a goal of a" AND "a"
Insert after "action" the word "providing"
Moved by Representative Gruenberg
Passed without objection

AM #5: Page 7, line 24: Delete the word "natural"

AM #6: Page 1, 12 through Page 2, line 16: Delete all language and insert:

(i) [EXCEPT WHEN REPRESENTING ANOTHER PERSON AS A LICENSED PROFESSIONAL IN THE STATE OF ALASKA IN THE CASE FOR

COMPENSATION AND SUBJECT TO AS 24.60.100 FOR SUPPLYING INFORMATION REQUESTED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE, OR WHEN RESPONDING TO CONTACTS INITIATED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE,] A legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives **while the legislator or legislative employee is acting as a party or witness** and the contact is made a part of the record; or

(2) **in the event of an inadvertent *ex parte* contact and if the** fact and substance of the contact **are** [IS] promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record.

Moved by Representative Gruenberg
Passed: Yea – Johnson and Seaton Nay - Gruenberg

AM #7: Amends AS 24.60.030(a)(1) as follows:

(a) A legislator or legislative employee may not

(1) solicit, agree to accept, or accept a benefit other than official compensation for the performance of public duties; this paragraph may not be construed to prohibit lawful solicitation for and acceptance of campaign contributions, solicitation or acceptance of contributions for a **gift** [GRATUITY] event, as defined in AS 24.60.080 (a)(2)(B), or the acceptance of a lawful gratuity under **AS 24.60.075 and** AS 24.60.080 ;

Moved by Representative Gruenberg by request of Dan Wayne
Passed without objection

In addition the committee instructed Dan Wayne to check Title 24.60 to see if the assumption that it was ethical to use a legislative newsletter email database for campaign purposes. If AS 24.60 does not allow that prepare an amendment that would correct the problem.

Representative Seaton also asked Dan Wayne to prepare a legal opinion about the definition of "constituent" and what legal interpretation of "duty of representation under the Constitution of the State of Alaska" is.

Representative Seaton allowed Representative Gara to discuss an amendment he was attempting to have drafted that would basically allow for a person who submitted in writing a request for a determination by the director of the Select Committee on Legislative Ethics for an ethics issue to be exempt from a ethics violation if the committee met at a later date and found the action unethical if the person who receive the determination acted in good faith on the advice of the

director. Representative Seaton said that was out of the scope of the purposes of the subcommittee and welcomed Representative Gara to present the issue to the full committee.

Representative Gara asked that someone from OCS be present on Friday to discuss the process used for a ten in state custody and how this legislation would affect the way they would a teen pregnancy when the teen is in state custody.

Time of Adjournment: 5:02 p.m.

Subcommittee of the
House State Affairs Committee
House Bill No. 193 (STA)
March 25, 2009

Chair Seaton recognized Reps Gardner, Doogan, Gruenberg, Johnson, and Gara

Also present:
Rynnieva Moss, Legislative Aide to Rep John Coghill
Joyce Anderson, Director, Select Committee on Ethics
Dan Wayne, Legislative Legal

Rep Seaton stated that \S version is what has been adopted by the committee and there were questions on that. There was discussion on what version would be used as the changes were addressed, it was finally decided that the committee would use the \S version. Go to page 7 - on S version - Number 19 Legislative Purpose, the S version said *legislative action or constituent service* - changed to goal *of legislative action or a constituent service is a substantial goal.*

Rynnieva Moss recommended to only remove "**a**" and insert "constituent service."

Dan Wayne stated that the P version had a lot of problems because all the changes requested were not done; there just was not enough time. S version is just wrong as it does not contain changes in CS. Not sure if time is going to be very well spent. Nothing the subcommittee was expecting

Rep Seaton - go back to S version and pull out financial in S version.

Committee agrees.

Rep Gruenberg - stated he would like to make the change as an amendment.
Amendment No. 1 - \S version. Page 8 lines 2, 3 and 4, eliminate the word [financial].

Rep Seaton -no objection. Adopted.

Rep Seaton - Page 7 \S version - No. 19 - legislative purpose the committee was concerned that what we have means a

constituent service and so we are changing that to a goal of legislative action or providing constituent service.

Rep Gruenberg - suggested goal of "a legislative action" - may be more than one action remove [a] and at the end of the line remove [a] and insert the word **providing.**

Legislative Action - A goal of legislative action or providing constituent service.

Rep Gardner - in what sense is constituent service not legislative action?

Rep Gruenberg - legislative action is passing laws or budget issues and constituent service is broader term. Is there some definition some where of legislative action?

Rynnieva Moss read AS 24.60.990(a)(9) Legislative Action into the record. A constituent service could be assistance with a clerical error that does not result in legislative action - but sometimes it could result in legislative action because you find a flaw in the law and you introduce legislation to fix it.

Rep Seaton- problem was we have a series of definitions - you got into the goal or the want or desire of a constituent becomes the legislative purpose rather than the legislator providing the service.

Rep Gruenberg - **Amendment No. 2 - strike [a] page 7 line 29 before legislative action and strike [a] after the word or and insert providing constituent service.**
Legislative Purpose: Means a goal of legislative action or providing constituent service.

Dan Wayne - I think you might want to add before providing - **a goal of** [the action] - so it refers to the goal of legislative action or legislative service - to be clear.

Rynnieva - do we need the word goal? Would not a legislative purpose be a legislative action or a constituent purpose?

Dan Wayne - I made these up these definitions originally. A purpose is not a thing not a service. A service is not a purpose it has a purpose.

Rep Gruenberg - purpose and goal are very similar. Amendment to amendment to delete [a goal of]on line 29 as an amendment to the amendment.

Rep Seaton - Amendment No. 2 and amendment - reads "legislative purpose means a legislative action or providing constituent service."

Rep Gruenberg stated that as amended would read "legislative purpose means legislative action or providing constituent service."

Rep Doogan - if you are saying a legislative purpose is a legislative action, it makes no sense. Your purpose is to hit a home run your action is to swing the bad therefore your purpose is to swing the bat. You have a confusion of goals and meanings.

Rep Gruenberg - What do think we should say?

Rep Doogan - if you are talking about the purpose you are talking about the goal of the action not the action itself.

Rep Gruenberg withdrew his second amendment to the amendment.

Rynnieva stated that the definition of purpose out of Black's Law - objective, goal or end.

Rep Seaton - under legislative purpose we have to say something that this an attempt to work on legislative action or something like that in providing constituent service.

Rynnieva - purpose is used because it is used in the statute and she highlighted where it is. We want legislative purpose to include action; not only legislative purpose but also constituent service though it is not yet defined in statute - we want to do that in this bill. One defined and one not.

Rep Seaton - Dan do you think having the word goal there is legally explanatory enough or means working towards a legislative action.

Dan Wayne - I think that I had some other language to narrow it down, but this would mean constituent service is anything you would do for a constituent no matter what it is. So I said goal of legislative action is substantial - in order that it is substantial. Maybe use the word purpose.

Rep Doogan - attempting to define legislative purpose to have two parts, legislative action - already defined and constituent service - not defined in statute. So if what you want to say is legislative purpose is 2 things you legislative purpose and constituent action. Legislative purpose or goal are we trying to define. Are we saying the legislative purpose or goal we are tying to define: legislative purpose means having a goal of legislative action or providing constituent service.

Rynnieva - it is the end product. Legislative action or constituent service we have met a legislative purpose.

3:36:04 PM

Rep Gruenberg- sounds like what Mr. Doogan has said is a good idea, add to **Amendment No. 2 - just add one word - between means and a also add word "having". Just what Rep Doogan suggested. Amendment to amendment**.

No objection to Amendment to Amendment adopted

Amendment No. 2 - Legislative purpose having a goal of legislative action or constituent service.

Dan - we have to define it so we know what it is not. AS 24.60.030(a)(2) read into the record.

Rep Seaton - we are defining non-legislative purpose - Line 31 on page 7 we are defining non-legislative purpose.

Dan - if you say a person has to have a goal - "having" is not the right word.

Rep Johnson - goal in there is intent and if you talk about intention it would be difficult to define. We are defining legislative purpose and all the time is your goal and it may not be constituent related.

Rep Doogan - the definition - legislative action was read into the record again by Rynnieva.

Rep Seaton - legislative purpose means legislative action or providing constituent service. So what I would like to do is amendment 2 withdrawn.

Rep Gruenberg withdrew Amendment No. 2.

Rep Seaton - being Amendment No 3 Page 7, Line 29, delete [a goal of a] [a]removing the word and inserting the word **"providing"** at the end of the line.

Rep Seaton stated Legislative purpose means legislative action or providing constituent service; and asked if there were any objections.

No objection - Amendment No. 3 has passed.

Rynnieva - Page 7, line 24 - delete under constituent [natural].

Rep Gruenberg - Amendment No. 4 constituent - does not have to be natural can be any other form of person.

Rynnieva read the definition of person into the record.

3:42:47 PM

Rep Gardner - do we have a duty currently to represent a business trust.

Rep Gruenberg - as a legislator these things all relate to people and a business is one or more people and they set it up in a trust. A few years ago we had a bill setting up a children's trust. We have had things dealing with trusts.

Rep Seaton - if you have a business in your community or not is there a constitutional duty of representation to those entities.

Dan Wayne - constitutionally - no duty. Talks about how the legislature is set up in Art 2 - but does not spell out duties.

Rynnieva said there is a duty to the constituent. There are plenty of constitutional duties to a constituent.

Rep Gardner - duty to the people leave natural in there.

Rep Doogan - small business in my district, interest of various sorts the people who run those businesses may or may not be constituents in the sense that they vote for me or even live in my district, but they may still come to me and say I don't want this or I do want that - if we were to leave the term natural person in this document, could I talk to them, go to bat for them where it was appropriate - since their interest is not as my constituent but as the owner of a business in my district.

Rep Seaton - legislative purpose is providing constituent service, but if you were talking to ConocoPhillips, ey are not a atural person. business is not a natural person. It would not get constituent service. Not a natural person and therefore it would not be constituent service.

Rep Gardner - do we not also have obligations - every Alaskan is a constituent.

Rep Gruenberg original version limited constituent to your district. We discussed elimination of natural in full committee.

Rep Gardner - if that is the case, what is the reason to have to whom the legislator owes a duty of representation.

Dan - there is no duty of representation owed by the legislator.

Rynnieva - we believe when a legislator takes an oath he believes that he has a duty to protect the constitutional rights and that he does have a duty to protect those rights.

Dan - we are talking about a definition, there is an oath and I am not saying they don't have that responsibility but we are trying to define something - so maybe there does not need to be a definition.

Rep Seaton - if we take out natural. Who is the person that the legislator does not owe representation to that you would be working for or providing service too. Staffer in D.C. who is a resident in D.C. and not an Alaska resident anymore, and no permanent fund - could you provide constituent service to them.

Rynnieva - the answer would be if the person was being deprived of something that the person was eligible for under the constitution.

Rep Gruenberg - people in Alaska they qualify, if all the other people in the world are the second class if they are dealing with an Alaskan issue they should get our representation. I think this focuses on the people and the representation. Read this and mentioned it in committee I thought it was a creative phrase. I think this says we have a duty and right of representation as to that permissible under the constitution. Leave it at that. Keep it in. Someone that would not qualify StateWatch people in Virginia - concerned about Wrangell Islands

- does not have anything to do with Alaska, there is no duty to represent them.

3:51:24 PM

Rep Seaton - what if there is a trip to Darfur - anyway - lets request a leg legal opinion on parameters to forward on with the bill.

Rep Gruenberg - Amendment No. 4 remove [natural] Page 7, line 24.

Rep Seaton - any objection.

Rep Gardner - remove natural then could we say a constituent it could include defenders of wildlife? Then we have a duty to represent?

Dan - might fit better to take out representation and leave duty. Maybe not a duty of representation to a particular person but certainly a duty. The duty to uphold the constitution.

Rynnieva stated that would be acceptable.

Rep Seaton stated that Amendment No. 4 - deals with removing *natural* line 24 - Page 7 - any objections?

No objection - adopted.

Rep Gruenberg moved for Amendment No. 5 - delete [representation] Page 7, line 25.

Rep Gruenberg - to Dan - since you will be doing the legal opinion - you might want to substitute a phrase for representation or leave it in - if you are talking about duty. *"of representation"* - a little uncomfortable to take it out until we have a legal opinion. If we just ask for a legal opinion on that phrase.

Dan - researched it and it would say what has already been stated. Constitution would not provide any information about what duty of representation is. You are limiting the duty but there is no place to find out where that limit is.

Rep Gruenberg - only a duty of public safety or education, and this should be looked at - as a major thing that is the core of the legislature.

Rynnieva - let that word remain - and let it be discussed in Judiciary. It also could be that duty could include representation because it results in legislative action or constituent service.

Rep Gara - when you try and define the people you represent in two constrained a manner you are going to leave someone out and then you have an ethics violation. The people you are allowed to represent (constituents) that you are allowed to represent. The definition should be broad. The constituent should be who you are allowed to represent. Otherwise there will be people outside the line that you want to help but can't because of the definition and who you included in the definition.

Dan Wayne - said that is not what he said. It is the constitution that does not list any duties of representation. It does not mean you don't have a duty, it just means it is not listed. How do I tell if someone's actions are permissible when I don't know the definition of constituent? Constituent service is a service you do for someone.

Rep Seaton we need to know who a constituent is and who it is not. So we know who you can give service to.

Rep Doogan - it means the citizen of Alaska. That is about as limited as it gets. I am not here for the exercise, someone else is going to define it someone else is going to and I am not too happy with how they have done so far and some definitions have to have applicability in the real world. We want the definition to be as encompassing as possible. Don't want narrow definitions of who we can help and how we can help them. It may not be perfect but a long step to the goal I want to go. Helping people deal with the government and not have ethics come after me.

Rep Seaton - you work for all Alaska, work for people of your district, but is your duty to represent the people that elect you or everyone or the people that elect you.

Rynnieva - Rep Coghill feels it should be a very broad definition - sideboards in subparagraph 21 makes it clear. They share a class it is not helping someone to get a contract with the state. That is not constituent service, that is a crime already. But someone that has a right to be represented by their legislator.

Rep Doogan - we took a look at the oath of office and it did not say anything about House District 25 - it says the state of Alaska. Not strictly limited to the confines of my district.

Dan went over what the oath of office is. Not trying to be argumentative. But people that are not citizens have rights under our constitution. Business, corporations, have rights - and should be represented.

Rep Gara - make it as broad as possible. We don't make duty under the constitution clear. Make it any person in the state. Person in statute means business or anything. Legislative purpose if the person is here or not, and then you can represent anyone in the state. You would only help a person out of state if it is a legislative purpose, so then you would help them anyway. You can help them for a legislative purpose and then the rest you help because they are citizens of the state.

Rep Seaton - lots of state residents not living in the state. In the state is a tricky one too.

Rep Gruenberg - too narrow - if we stay within the state. Favors the broadest definition possible. Dealing with people who are Alaskan or people who are concerned about Alaskan issues. Whether it be BP or defenders of wildlife. There is a nexis between them and the state of Alaska. It should not be unethical to look at that person's interests.

Rep Seaton - who are we trying to cut out, who do we want to say a legislator can't call a constituent.

Rep Gruenberg - people who are not Alaskan's or someone trying to get us to take an issue on something that does not in any manner pertain to Alaska. Mid-East war, as most issues don't have a lot to do with Alaska.

Rynnieva - defining constituents because - if you are helping someone who is not a constituent - then it is probably a crime already. The legislature feels that they are likely to be in trouble if they are helping someone when it is their duty to help Alaskans, but it might not be a constituent because there is not a definition of constituent.

Rep Seaton - helping someone that is not in Alaska, but it has a purpose within Alaska.

Rynnieva - but that would be a legislative issue so that would not be unethical.

4:12:33 PM

Rep Doogan - broadest possible interpretation inside Alaska, not outside of Alaska. Likes the language that was under the constitution. No representation for someone out of the state. Might be doing it for some other reason under duties under legislator but not under constituent service.

Rep Gruenberg - group a - wants to take trip to Alaska, please tell us how we get information and we should be able to do that. **Going to withdraw my motion to delete "representation" from the bill.**

Rep Seaton - we are asking for a legal opinion and if there is no duty of representation under the constitution - if there is or isn't. Because if there isn't then we have no constituents.

Dan it may be duty somewhere else. But the legislature has a state-wide constituency. It would never be my conclusion that you have no constituents.

Rep Seaton - for Joyce and the committee to have a definition when they are making decision. He asked Joyce Anderson - as far as serving for the Ethics Committee can a definition help make a decision.

Joyce - needs to see if there is a specific situation.

Rep Gruenberg - to Mr. Wayne - when you look at this - look in the broadest constitutional sense. We are looking at this really from the core of the constitutional perspective. What are we here to do.

Dan - to make legislation - the other things you do are tradition and there is no authority to do this.

Rep Gruenberg continued to discuss his concept of how the legislature serves and what it does.

Rynnieva stated she has wording that the Administrative Hearing Officer suggested for an amendment.

Rep Seaton - **Amendment No. 6 - delete Page 1 line 12 through Page 2 line 16, insert new subsection i. and the rest of the page.**

Rynnieva - when you are dealing with an administrative hearing unless you are a licensed officer, you are no longer involved in that constituent service. Page 1, Section 1. Line 11, runs through page 2 line 16 the rest of the amendment protects the legislator, or staff, if a constituent fails to reveal that the case is in an administrative hearing and the call is made to labor, the legislator or staff would be liable for a violation the way the statute presently reads.

Rep Gruenberg - typo on line 15, a couple of words left out - insert **and if the** before fact and substance of the contact [is]**are**. **Make that a conceptual amendment and include it with the rest of Amendment No. 6.**
4:28:14 PM

No objections to Amendment No. 6.

Rep Seaton objected to Amendment No. 6, he thinks that it needs to be looked at further. It could be a CPA or licensed person in some function and then a legislator could go before a body and that is what we would be allowing and that is line 1 and 2. Policy call is - are we going to look at this and say is the affect on a Department Director who is sitting across from a legislator is okay in the public interest and we are going to balance that with an officer and the public perception is that the legislator is subservient to representing himself in a license.

Rynnieva - this a policy call and I am going to let you all make that policy decision. Yu have to make the call.

Rep Seaton - **Amendment No. 1 to Amendment No. 6** - deletes line 1 and 2 and would not allow them to be a for hire representation.

Rep Gruenberg objected.

Rep Seaton - lawyers and CPA's - anybody can be hired to go in and represent one side of a party in an administrative decision.
4:33:57 PM
Is public purpose of not having a legislator or legislative employee less?

Rep Doogan - there is no public purpose having them sit across the table unless you think that their job shapes the opinion of the person sitting across from them. Question is whether in a situation as part time legislators is if we can dictate how a person can make a living. Historically shied away from this, people have to eat, they go out of here and do their jobs. It is not clear to me that legislators get extra spin or (b) even if they do, you can tell someone that if they run for office a person can't make a living from what they have been doing. Pretty close call. It will be debated every step of the way.

Rep Seaton - the debate means it is questionable. It has a public perception. City council or whomever, as a legislator people react differently. Is that perception a problem.

Rep Johnson how far is the step from I am a legislator and if I represent you how far I can go because of power. It has happened and it is the step we are trying to avoid. If I decided to do it, I could make a good living representing people.

Rep Doogan - in Rep Johnson's statement, he already broke the law by getting clients because of your position. But as a living representing people, or going out and representing people because of who you are is something that could interfere with our livelihood.

Rep Gruenberg recommended that we adopt the practice that we did in the subcommittee and give it back to the full committee with the note and comments that the full committee had to make a decision.

Rep Johnson wants it in and then the committee can take it out if it wants.

Rep Gruenberg - Ms Thurbon wanted people who were representing someone would be able to respond to contacts and supply information. That would mean only people that could do it were not legislators. By taking the first two lines out you may have trouble getting information. A legislator or legislative employee may not attempt to influence the content of a hearing and that does not have anything to do with representation.

Rep Seaton if it is left in only licensed people could give the information. But language is substituting for the language we are taking out.

Rep Gruenberg reviewed again over the information and the what was happening to the bill in this section - meant that a legislator could not even speak to the issue, if not representing them.

Rep Seaton - only talks to someone with a license that is doing it for compensation. Taking out line 1 and 2 and starts on line 7.

Joyce - looked at this statue prior and it does not prevent even with what you are removing, from speaking at an administrative hearing if you are called. Just can't be initiated by the representative.

Amendment 6
Rep Johnson -yes,
Rep Gruenberg - no,
Rep Seaton - yes,

Amendment passed.

Split decision

4:49:16 PM

Rep Seaton - Non-legislative purpose Sub B - this paragraph does not prohibit information a(2)(B) -

Rynnieva - involves legislators using voter registration lists for their office and those lists used by legislators for non-legislative purposes.

Rep Seaton - mailing lists and news lists we generate since those are not available to the general public we would not be able to use those for campaign purposes. Not intended. But since it is here I would like clarification on it. Non legislative purpose.

Dan - two ways to read it. General public or non legislative purposes. It is okay to use the list if available for non legislative purposes.

Rep Seaton - The list for our mail outs are not available to the general public and if we use it- it is only legal if we make the list available to the general public.

Dan - another exception 5(B) says that a limitation does not prevent the use for non legislative purposes.

Rep Seaton - operating under the assumption we could use the list when we campaign but that is not consistent with the law.

Rynnieva - have Dan make a determination and come up with an amendment for tomorrow.

Rep Gruenberg - Page 2 sub paragraph A-5-B - you may not use.....for use in and he read it into the record.

Rep Seaton unless the mailing list was available to the general public we could not use it for a non legislative purpose. Wants a clarification.

Joyce - ethics made an advisory opinion and said if you take your constituent data base and you use it for campaign purposes it was a diminimus use of state resources and so it could be used for non legislative use. She will provide it to the committee.

Dan - look at 24.60.030 (a)(1) lawful gratuity - should say gift - under - conforming change.

Rep Seaton - prepare a conforming change.

Amendment No. 7 - to 24.60.030 - a.1 - change gratuity to gift under 24.60.075 or 24.60.080.

Without objection passed Amendment No. 7.

Rep Gruenberg - noticed that Rep Gara did have an issue and will offer it.

Rep Gara - present a problem in ethics law that deserves attention. I still do not have language. Right now we have a problem with the law. Situation with honest legislator will go to ethics staff and they get advice, but the law says you can't rely on the advice, but you can have a complaint filed against you and if the advice was wrong you get an ethics violation. And if you get a hearing and the advice was wrong you get an ethics violation. Your opponent uses it against you. So your option is to take informal advice you can't rely on or require a full hearing, unreasonable, expensive and wrong, but there is no middle ground. But if you ask in writing and give all the info they want and you get an opinion you rely on and if this is an

issue that is not that clear then hold a hearing but you are allowed to rely on the advice until the hearing is held. You have to get advice and rely on it. As for hearing it will take 60 days and you can't help constituents for 60 days. Proposal is to supply info to staff and if they decide a close issue, get a hearing, but you have some thing to have in the meantime. Right now the honest legislature can be held liable doing what they were told they could do.

Rep Seaton - a bit out of the bounds of what we were given as a subcommittee.

Rep Johnson said he would like to see this tomorrow and some examples. Deal with it tomorrow.

Rep Seaton - sounds like you are saying the ethics wants advice even though informal advice is given all the time.

5:05:19 PM
Tomorrow come when the committee gets together. Get to ethics committee tonight.

Adjourned 5:06p.m.

R

ALASKA STATE HOUSE OF REPRESENTATIVES

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Session
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State Capitol
Room 204

REPRESENTATIVE JOHN COGHILL

Date: March 24, 2009

To: Dan Wayne, Legal Counsel

From: Rynnieva Moss, Legislative Aide

Re: HB 193 LS 0656\E

A subcommittee has been formed to discuss a CS for HB 193. Rep. Seaton is the chair and Representatives Johnson and Gruenberg are the other two members.

Here is a summary of the proposed amendments and requested information:

Amendment recommended by Terry Thurbon, Chief Administrative Law Judge for the Office of Administrative Hearings:

Sec. 1.[1]

(i) Except **when representing another person as a licensed professional in the State of Alaska in the case for compensation and subject to AS 24.60.100** [FOR SUPPLYING INFORMATION REQUESTED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE, OR WHEN RESPONDING TO CONTACTS INITIATED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE,] a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing

[1] Representative Seaton has concerns this section allows a legislator or legislative aide to solicit clients for administrative hearings in this section. I explained we are trying to limit the involvement of legislators and staff with an administrative hearings. I don't know if the licensed professional will ease his concerns, so please review this and see if there is a way to make this clearer.

or the individual, board, or commission with authority to make the final decision in the case unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives **while the legislator or legislative employee is acting as a party or witness** and the contact is made a part of the record; or

(2) **in the event of an inadvertent *ex parte* contact** fact and substance of the contact is promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record.

***Sec. 8.**

OK (17) "constituent" means a [NATURAL] person whom a legislator owes a duty of representation under the Constitution of the state of Alaska

ok? (19) "legislative purpose" means a goal of a legislative action or [A] **providing a** constituent service.

good (21) "private benefit" means a [FINANCIAL] benefit to a person as a result of a legislative, administrative, or political action of which [FINANCIAL] benefit to that person in particular is a substantial goal and that is greater than the [FINANCIAL] benefit of the legislative, administrative, or political action to a substantial class of persons to which the person belongs by law, choice, legal entitlement, legal privilege, profession, occupation, industry, or region.

I am not asking for a CS at this time but would ask you be available for the subcommittee meeting tomorrow from 3 to 5 p.m. tomorrow. I believe it is being held in the Speaker's Chambers.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 193(STA)
(H) Publish Date: 3/27/09

Identifier (file name): HB193-COU-ETH-03-23-09
Title "An Act relating to representation by a legislator or legislative employee of another person in an administrative hearing;"
Sponsor Representative Coghill
Requester House State Affairs

Dept. Affected: Legislature
RDU Legislative Council
Component Select Comm on Legislative Ethics
Component Number 2321

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual	4.5	4.5	4.5	4.5	4.5	4.5	4.5
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**4.5**	**4.5**	**4.5**	**4.5**	**4.5**	**4.5**	**4.5**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	4.5	4.5	4.5	4.5	4.5	4.5	4.5
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**4.5**	**4.5**	**4.5**	**4.5**	**4.5**	**4.5**	**4.5**

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

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

HB 93 makes changes to the Legislative Ethics Act. Sec. 6. of this legislation authorizes compensation for public members of the committee in the amount of $150 a day while attending committee meetings. Currently, public members do not receive compensation but are entitled to per diem and travel expenses.

There are five public members of the Select Committe on Legislative Ethics. For purposes of this fiscal note, it is estimated that the Committee will meet six times each year and that each meeting will last one day. This will result in a $4,500 increase in the annual budget for the Select Committees on Legislative Ethics.

Prepared by: Karla Schofield, Deputy Director — Phone 465-6626
Division Legislative Affairs Agency — Date/Time 3/23/09 8:23 AM
Approved by: Pamela Varni, Executive Director — Date 3/23/2009
Legislative Affairs Agency

(Revised 9/10/2008 OMB)

Nancy Manly

From: Katie Koester
Sent: Wednesday, March 25, 2009 6:01 PM
To: Nancy Manly

Nancy,

From what I understand from the HSTA subcommittee meeting today the additional requests of legal outside of changes to the CS were:

1) A legal opinion explaining what "of representation" adds to AS 24.60.990(a)(17). Why is it in the section and what would be the change in interpretation if "of representation" was taken out?
2) A legal opinion discussing the prohibition of using mailing list for non legislative purposes, AS 24.60.030 (2)(B). Could this statute be interpreted to mean that legislators may not use a mailing or email list that they have collected as a legislator for a campaign purpose?

I also have 2 advisory opinions of my desk from Ethics, I trust that you got thoose as well and will provide them to the committee (2004-01 and 2005-01)

Katie Koester
Legislative Aide
Rep. Seaton
907.465.2028

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF ADMINISTRATION

OFFICE OF ADMINISTRATIVE HEARINGS

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March 27, 2009

The Honorable Jay Ramras
Alaska State Representative
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol, Room 120
Juneau, Alaska 99801

Re: Comments on Potential Amendment to CSHB 193

Dear Chair Ramras and Members of the House Judiciary Committee:

I have been asked to comment on an amendment to section 2 of CSHB 193 that may be offered in the House Judiciary committee meeting on April 3, 2009. Since I will not be available to testify that day due to a prior commitment, I am submitting my comments in writing.

Section 2 of CSHB 193 would amend current AS 24.60.030(i). Subsection (i) was added to the statute in 2004 as part of the legislation that created the Office of Administrative Hearings, the independent agency that hears administrative adjudications arising from decisions by many state agencies. As I understand the situation, both the sponsor and the first committee of referral proposed changes to subsection (i) meant to draw a clearer and brighter line regarding contacts between legislators or legislative employees and executive branch adjudicators about cases being adjudicated.

The original bill included an exception to the general prohibition against attempts to influence the outcome of cases for legislators and legislative employees representing case parties, but the committee substitute does not. The potential amendment I was asked to comment on would add such an exception so that legislators and legislative employees who are attorneys or other licensed professionals and want to represent case parties in administrative adjudications could do so without running afoul of the AS 24.60.030(i) contact-to-influence prohibition.

I express no opinion on whether the legislature, in furtherance of its policies on legislative ethics, should restrict its members and employees from practicing their professions before executive branch adjudicators. From the perspective of the state's chief administrative law judge, who is charged with "improv[ing] public access to the process of administrative adjudication[,]"[1] however, I support keeping the pool of capable professionals available to assist parties in administrative adjudications as large as possible. In many of the cases we hear, parties represent themselves and do so quite effectively. In others, having representation is very helpful, if not essential, to the parties trying to navigate the complexities of law. The larger the pool of potential

[1] Alaska Stat. § 44.64.020(b)(3).

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representatives remains, the greater the likelihood is that a party seeking representation will be able to find someone to help at a cost the party can afford.

If the committee members have any questions about these comments, please do not hesitate to contact me through my staff at the above number. I will respond as quickly as possible.

Sincerely,

Terry L. Thurbon
Chief Administrative Law Judge

cc: Annette Kreitzer, Commissioner
Department of Administration

Kevin Brooks, Deputy Commissioner
Department of Administration

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MEMORANDUM March 26, 2009

SUBJECT: Legislative Ethics Act changes (CSHB 193(STA), Work Order No. 26-LS0656\T)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Nancy Manly

FROM: Dan Wayne
Legislative Counsel

At the March 25, 2009, meeting of the House State Affairs subcommittee that reviewed this bill, I expressed some concerns about the definitions in the bill and the subcommittee asked that I restate them in a memo to be transmitted with the bill when it leaves your committee.

In the course of drafting or reviewing advisory opinions I have observed that certain undefined terms are very difficult to interpret and apply. Among them are the terms "constituent" and "non-legislative purpose."

The definition of constituent in this bill, "a person to whom a legislator owes a duty of representation under the Constitution of the State of Alaska," leaves the meaning of the term subject to varying interpretation. Article XII, section 5 of the state constitution, requires all public officers to take an oath of office.[1] The language reads as follows: "I do solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alaska, and that I will faithfully discharge my duties as . . . [a legislator] to the best of my ability." This suggests that a legislator has, in addition to the general duty of a public officer to support and defend the state and federal constitutions, additional duties specific to that office. However, those duties are not further described in the state constitution.

Other than the requirement that a constituent be a "person," the meaning of constituent is wide open to interpretation under the definition in this bill. Every person in Alaska, including corporations and non-citizens, has rights under the state constitution. A legislator may owe every person in the state a duty in the sense that the legislator has sworn to uphold the state and federal constitutions, but that does not necessarily mean

[1] Legislators are further required, by AS 24.05.060, to take this oath before undertaking the duties of office.

that an individual legislator owes each person in the state a duty of representation. If the intent of the bill's definition of "constituent" is that a legislator's constituent is every person who is in or of Alaska, then it might be more accurate to say:

> "constituent" means a person who resides in the state, is registered to vote in the state, or is licensed by the state to do business, or a person who is an immediate family member of a person who resides in the state or is registered to vote in the state.

A definition of the term "legislative purpose" is necessary to the bill in order to support the bill's definition of "non-legislative purpose," a term that is prominent in AS 24.60.030(a)(2). However, the definition of "legislative purpose" provided in this bill is unclear because it describes action, not purpose.

DCW:ljw
09-184.ljw

Alaska State Legislature

Select Committee on Legislative Ethics

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Mailing Address:
P.O. Box 101468
Anchorage, AK
99510-1468

April 23, 2004

ADVISORY OPINION 2004-01

Subject: Conflict of Interest – Constituent Information

RE: Use of constituent information gathered by a legislator.

You are a legislator and therefore covered by the Legislative Ethics Code. You have requested an advisory opinion concerning facts and circumstances that you have related. The committee relies on facts that you have described in answering your questions. You have waived your right to confidentiality under AS 24.60.160(b).

Statement of Facts

You have asked the following questions:

1. Can constituent information gathered by a candidate who is subsequently elected to office be used by the legislator during his or her term of office?

2. Can constituent information gathered by a legislator be used by the legislator in his or her campaign for re-election and, if so, are there any restrictions on maintaining the database using state resources?

You characterized the information referred to in the questions as:

A. Voter information obtained from the Division of Elections for a small fee.

B. Information obtained from public sources such as Permanent Fund recipients and corporation and business licenses databases which can be downloaded by anyone from public agency internet sites for free or for a small fee.

C. Information gathered about individual constituents during a legislator's term, including email addresses, phone and fax numbers, and issue information.

D. Similar constituent information as in C obtained during a candidate's campaign.

Discussion

In this document

- "constituent" means a natural person residing within a legislator's district;
- "information" means contact information including name and address as well as any other information and facts known about the contact such as issues and legislation the contact is interested in;
- "database" means an organized body of related information which is in a format read by computer database programs.

1. Can constituent information gathered by a candidate who is subsequently

elected to office be used by the legislator during his or her term of office?

This question involves a legislator using, for legislative purposes, information gathered in the course of an election campaign, described in D above. This information was obtained using private resources. There is no prohibition in the ethics code on a legislator using private resources for legislative purposes, so a legislator may use for legislative purposes information gathered during non-legislative time without the use of legislative resources.

2. Can constituent information gathered by a legislator be used by the legislator in his or her campaign for re-election and, if so, are there any restrictions on maintaining the database using state resources?

It is assumed in this answer that "information gathered by a legislator" is information collected for the legislator, described in C above, with the help of legislative staff employed to handle constituent concerns using legislative equipment. This information is being gathered for the benefit of the legislator in performing public duties. As long as the purpose is to assist the legislator in performing current legislative duties, the building and maintenance of a database containing constituent information is permitted using legislative resources. As is the case with the files maintained by a legislator's office for legislative use, a database is considered to be the confidential property of the legislator.[1]

There is a general prohibition against using legislative resources for non-legislative purposes:

> (a) A legislator or legislative employee may not . . . (2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person;

AS 24.60.030(a)(2). However there is an exemption for a de minimis use:

> [AS 24.60.030(a)(2)] does not prohibit (A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use;

We find that it is considered to be a de minimis use of public assets under AS 24.60.030(a)(2)(A) for a legislator to make a copy of a database created or maintained in the legislator's own office for personal or campaign use.[2]

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[1] When the legislator leaves office, the files and information belong to the legislator. A legislator's files, including information such as databases on a legislator's office computers are considered confidential.

[2] This opinion does not condone the unauthorized copying of copyright protected information.

In regard to voter information and other publicly available databases, the information described in A and B above, a legislator may obtain this information for legislative purposes. This information would probably be combined into the legislator's constituent database. As discussed above, a legislator can make a copy of the legislator's own database for personal or campaign purposes.

In the case of purchased databases, there may be copyright issues if a person copies a database rather than purchasing another license for separate use. If the legislator wants another copy of a commercial database, a separate license, if required, should be purchased with personal funds.

Conclusion

For the reasons stated above, the committee finds that constituent information gathered by a candidate using private resources can be used by that person if subsequently elected to serve as a legislator, and that constituent information gathered by a legislator using legislative resources such as staff time and equipment for legislative purposes may be copied and used for personal or campaign use by a legislator as a de minimis use of public assets under AS 24.60.030(a)(2)(A).

Adopted by the Select Committee on Legislative Ethics on April 23, 2004

Members present and concurring in this opinion were:

H. Connor Thomas, Chair
Representative Mary Kapsner
Representative Norman Rokeberg
Senator Kim Elton
Senator Ben Stevens
Dennis "Skip" Cook, public member
Ann Rabinowitz, public member
Marianne Stillner, public member

Member present & abstained from voting because not present for entire discussion:

Herman G. Walker, public member

BRC:mdr:lmb
04-164.mdr

Alaska State Legislature

Select Committee on Legislative Ethics

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99510-1468

November 9, 2005

ADVISORY OPINION 2005-01

Subject: Conflict of Interest – Legislative Contacts with Administrative Decision Maker

RE: AS 24.60.030(i) and legislative contacts with administrative decision makers

You are a legislator and therefore covered by the legislative ethics code. You have requested an advisory opinion concerning facts and circumstances that you have related. The committee relies on facts that you have described in answering your questions. You have waived your right to confidentiality under AS 24.60.160(b).

Statement of Facts

You have asked several specific questions in regard to AS 24.60.030(i).[1] This subsection makes it a violation of the legislative ethics code for a legislator or legislative employee to "attempt to influence the outcome of an administrative hearing by directly or indirectly

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[1] This new subsection of AS 24.60.030, "Prohibitions related to conflicts of interest and unethical conduct," became effective July 1, 2005. The office of administrative hearings, created effective July 1, 2004, began hearing administrative proceedings that began on or after July 1, 2005. Sec. 92(a), ch. 163, SLA 2004. No previous advisory opinions have discussed AS 24.60.030(i).

This new subsection provides:

> (i) Except for supplying information requested by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the
>
> (1) contact is made in the presence of all parties to the hearing or the parties' representatives and the contact is made a part of the record; or
>
> (2) fact and substance of the contact is promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record.

contacting or attempting to contact" a decision maker in an administrative adjudication. Such communication is only permitted if the communication with the decision maker is made in the presence of all parties to the adjudication, and made a part of the record; or, if the fact and substance of the communication is promptly disclosed to all parties and made part of the record.

You ask how AS 24.60.030(i) will be applied in the following situations.

1. Can a legislator[2] contact a decision maker without trying to influence the outcome of the case by asking the decision maker:

   a. if certain documents had been filed;
   b. whether a file was complete; or
   c. if there was other information that could be provided.

2. Who has the duty to disclose a contact to all parties in an adjudication under AS 24.60.030(i)(2)? What if the legislator does not know the identity or contact information of other parties?

3. If a legislator decides to advocate on behalf of a constituent, does that legislator have a duty to disclose the fact and substance of the contact to all parties to the hearing and make the contact a part of the record? Shouldn't the agency have the burden of distributing the substance of the contact with a decision maker to all parties?

Discussion

The provisions of AS 24.60.030(i) will only apply to an administrative matter that has progressed to a hearing. A legislator or legislative staff member may contact any administrative department with questions regarding a matter that is not the subject of a pending administrative adjudication.[3]

The ethical standards which prohibit ex parte contacts by legislators and legislative employees recognize that impartial fact finders and decision makers are an essential part of the due process of law.[4] Administrative decision makers are required to be impartial

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[2] All references in this opinion to a legislator also apply to legislative employees subject to AS 24.60.

[3] It may be difficult to determine from a constituent whether the matter of concern has reached the stage that this ethical prohibition applies so care should be taken to avoid contacting any person or entity that has the authority to make a final decision. It may be prudent for a legislator to make a call to the department administering a matter, to determine the appropriate person to contact for the information, in order to avoid inadvertently contacting a decision maker.

[4] Under the Alaska Constitution, a person may not "be deprived of life, liberty, or property, without due process of law." The Alaska Supreme Court has interpreted this provision as requiring an impartial fact finder. In re Robson, 575 P.2d 771 (Alaska 1978); K & L Distributors, Inc. v. Murkowski, 486 P.2d 351 (Alaska 1971). Questioning of a decision-maker while the case is pending impairs the impartiality of the judicial process. It may even invalidate the decision reached in the matter, causing the whole matter to be reheard. "To subject an administrator to a searching examination as to how

and may not engage in ex parte communications.[5] An ex parte communication is a contact or communication (personal communications or some form of evidence) with the decision maker that takes place outside the presence of all parties to the proceeding.

1. Obtaining information on behalf of a constituent in regard to an administrative adjudication.

While a legislator or legislative staff member may contact an administrative department with questions regarding a matter, once that matter is assigned to a hearing officer or other decision maker there should be no direct contact with the decision maker.

Once a matter is in a hearing process, questions to the administrative unit should be limited to procedural matters and case information. The answers to those questions can most likely be answered by a person other than the decision maker. For example, if the office of administrative hearings has jurisdiction of the matter, that office will be able to provide information about the case file without impairing the impartial role of the hearing officer.[6] If the adjudication is not within the jurisdiction of the office of administrative

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and why he reached his decision in a case still pending before him, . . . sacrifices the appearance of impartiality - the *sine qua non* [essential condition] of American *judicial* justice . . . ." Pillsbury v. F.T.C., 354 F.2d 952, 963 (5th Cir Ct. of Appeals, 1966). "Legislative intervention which occurs during a pending decisional process of an agency endangers and may undermine the integrity of the ensuing decision, and it has been held that administrative decisions which are based in whole or in part on pressures emanating from the legislature may be invalid." 73 C.J.S. Sec. 31, Public Administrative Law and Procedure.

[5] For example *see* AS 44.62.630 in the Administrative Procedure Act, also *see* AS 44.64.050(b) regarding the standard of conduct for hearing officers in the office of administrative hearings.

[6] *See* AS 44.64.030 for the jurisdiction of the office of administrative hearings. Child support services and permanent fund dividend adjudications are under the jurisdiction of the office of administrative hearings.

AS 44.64.050 provides fundamental standards of conduct required of hearing officers. The chief administrative law judge is required to adopt regulations for a code of conduct.

> . . . The following fundamental canons of conduct shall be included in the code: in carrying out official duties, an administrative law judge or hearing officer shall
>
> (1) uphold the integrity and independence of the office;
>
> (2) avoid impropriety and the appearance of impropriety;
>
> (3) perform the duties of the office impartially and diligently;
>
> (4) conduct unofficial activities in ways that minimize the risk of conflict with the obligations of the office; and

hearings, the agency holding the hearings will have procedures to insulate the decision makers from improper contacts. Legislators subject to AS 24.60 will be expected to make every effort to obtain basic procedural or case file information about a matter under administrative adjudication by means other than contacting the hearing officer. Also, in response to your questions, it would not be the proper function of any administrator in the adjudicatory process to give advice in response to your questions, but only to provide information about the case file, parties, scheduling or other routine procedural matters.[7]

> (5) refrain from inappropriate activity in seeking employment with another agency or employer or in seeking reappointment.

The proposed draft regulations at 2 AAC 64.030 provide:

> (b) The following guidelines apply to any determination on whether a hearing officer of administrative law judge has adhered to the canons [of hearing officer conduct]:
>
> (1) The requirement to uphold the integrity and independence of the office, and of the hearing function, dictates that a hearing officer or administrative law judge establish and personally observe high standards of conduct and avoid improper ex parte communications with private and agency parties on the subject of a hearing request; so that the integrity and independence of the office and hearing function will be preserved;
>
> . . .
>
> (3) The requirement to perform the duties of the office or of the hearing function impartially and diligently dictates that a hearing officer or administrative law judge . . .
>
> (B) not initiate, permit, or consider improper ex parte communications, . . .

"improper ex parte communications" are defined at 2 AAC 64.990(13) as

> a direct or indirect, oral or written communication between a decision maker and a party to a proceeding, or another person trying to influence the decision maker, which occurs outside the presence of the other parties, and without a notice and an opportunity to participate being given to the other parties.

[7] You have asked "can a legislator contact a decision maker to ask if there was other information that could be provided." This would require the decision maker or the administrator in charge of the case file to advise the legislator on how to conduct the case or influence the outcome. This would not be appropriate, as it impairs the impartiality of the hearing process.

In the rare instance that a communication with a hearing officer occurs the legislator must comply with AS 24.60.030(i)(2): the "fact and substance of the contact [must be] promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact [must be] made a part of the record." A failure by a legislator to properly make this disclosure may be held to be a violation of the legislative ethics code.

The committee is also concerned that ex parte contacts, by a legislator or legislative employee, with a decision maker creates an appearance of a violation of the ethics code. This is based on AS 24.60.010 which provides in pertinent part:

> The legislature finds that
>
> . . .
>
> (2) a fair and open government requires that legislators and legislative employees conduct the public's business in a manner that preserves the integrity of the legislative process and avoids conflicts of interest or even appearances of conflicts of interest;
>
> . . .

2. Who has the duty to disclose a contact to all parties in an adjudication under AS 24.60.030(i)(2)? What if the legislator does not know the identity or contact information of other parties?

If contact with a decision maker does occur, a legislator or legislative employee must notify all parties and make the contact a part of the record. Complying with this requirement of disclosure to all parties is the responsibility of the legislator who initiated the ex parte contact, not the adjudicator hearing the matter. Information about the other parties to the matter can be obtained as discussed in the answer to the first question.

There is no obligation to contact all parties in regarding communications with administrative departments or personnel initiated by a legislator when a matter has not yet been assigned to a hearing officer.

3. If a legislator decides to advocate on behalf of a constituent, does that legislator have a duty to disclose the fact and substance of the contact to all parties to the hearing and make the contact a part of the record? Shouldn't the agency have the burden of distributing the substance of the contact with a decision maker to all parties?

As discussed above, a legislator may advocate and communicate on an administrative matter on behalf of a constituent. AS 24.60.030(i) only applies once an administrative matter is assigned to an administrative decision maker. In the event that a legislator makes an ex parte contact with a decision maker, the requirements of AS 24.60.030(i)(2) apply. The ethics statute clearly places the responsibility for compliance with (i)(2) on the legislator making the ex parte contact, not the adjudication agency or the administrative agency who is a party to the matter.

Conclusion

For the reasons stated above, the committee finds that a legislator or legislative employee seeking information on an administrative matter that is assigned to a hearing officer, individual, board or commission should not attempt to contact the decision maker assigned to that matter.[8] Information about the procedural aspects of the matter may be sought from the office administering the hearing, but not the decision maker directly. If a legislator or legislative employee makes an ex parte communication and fails to comply with the requirements of AS 24.60.030(i)(2), it could be considered a violation of the legislative ethics code.

AS 24.60.030 does not apply to contacts in regard to administrative matters that have not been assigned to an administrative decision maker.

Adopted by the Select Committee on Legislative Ethics on November 9, 2005.

Members present and concurring in this opinion were:
Herman G. Walker, Jr. Chair
Representative Max Gruenberg
Senator Hollis French
Senator Ben Stevens
Ann Rabinowitz, public member
Marianne Stillner, public member
H. Connor Thomas, public member

Members dissenting from this opinion were:

Members absent were:
Representative Bruce Weyhrauch
Dennis "Skip" Cook, public member

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[8] The only exceptions are described in AS 24.60.030(i):

> [e]xcept for supplying information requested by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case . . .

papers relating to any matter under investigation before the committee. (§ 1 ch 36 SLA 1984; am § 11 ch 113 SLA 1986; am § 38 ch 47 SLA 2007; am § 5 ch 94 SLA 2008)

Effect of amendments. — The 2007 amendment, effective July 10, 2007, added paragraphs (3) and (4) in subsection (a).

The 2008 amendment, effective September 14, 2008, substituted "annual" for "semi-annual" in paragraph (a)(2).

Sec. 24.60.155. Legislative ethics course. A person who is a legislator, legislative employee, or public member of the committee shall complete a legislative ethics course administered by the committee under AS 24.60.150(a)(4) within 10 days of the first day of the first regular session of each legislature. However, a person who first takes office or begins employment after the 10th day of the first regular session of a legislature shall complete the course required by this section within 30 days after the person's first day of service and, thereafter, as required by this section. The committee may grant a person additional time to complete the course required by this section. (§ 39 ch 47 SLA 2007)

Effective dates. — Section 79, ch. 47, SLA 2007, makes this section effective July 10, 2007, in accordance with AS 01.10.070(c).

Editor's notes. — Under § 75(c), ch. 47, SLA 2007, the committee is required to offer only one type of ethics course in 2008.

Sec. 24.60.158. Informal advice. The committee shall authorize and train its staff to give oral advice and provide a written informal nonbinding advice letter to persons seeking guidance as to the spirit or legal requirements of this chapter, provided that the advice is given with the express stipulations that

(1) the opinions given are not necessarily those of the committee;

(2) although the advice is given in good faith, the person seeking the advice relies on it at the person's own risk; and

(3) the advice is not binding upon the committee. (§ 26 ch 127 SLA 1992)

Sec. 24.60.160. Advisory opinions. (a) On the request of the committee, the Alaska Public Offices Commission, a person to whom this chapter applies, or a person who has been newly elected to the legislature, the committee shall issue an advisory opinion within 60 days as to whether the facts and circumstances of a particular case constitute a violation of ethical standards. If it finds that it is advisable to do so, the committee may issue an opinion under this section on the request of a person who reasonably expects to become subject to this chapter within the next 45 days. The 60-day period for issuing an opinion may be extended by the committee if the person requesting the opinion consents.

(b) An opinion issued under this section is binding on the committee in any subsequent proceedings concerning the facts and circumstances of the particular case unless material facts were omitted or misstated in the request for the advisory opinion. An opinion issued under this section must be issued with sufficient deletions to prevent disclosing the identity of the person or persons involved. Advisory opinion discussions and deliberations are confidential, unless the requester and anyone else named in the request waives confidentiality. The committee's final vote on the advisory opinion is a public record. (§ 1 ch 36 SLA 1984; am § 12 ch 113 SLA 1986; am § 127 SLA 1992; am § 43 ch 74 SLA 1998; am § 40 ch 47 SLA 2007)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, rewrote this section.

The 2007 amendment, effective July 10, 2007, inserted "the committee, the Alaska Public Offices Commission" and made stylistic changes in the first sentence of subsection (a), substituted the last sentences of subsection (b) for the last sentence provided for the confidentiality of advisory opi

Sec. 24.60.165. Use of information submitted with request for advi

committee may not bring a complaint against a person based upon information tarily given to the committee by the person in connection with a good faith req advice under AS 24.60.158 or 24.60.160, and may not use that information aga

person in a proceeding from acting on a comp complaint is brought b place after the advice information or evidenc evidence was also subr

Sec. 24.60.170. Pro layed amendment no of this chapter if the al complaint is filed with against all members legislature, or against the person has termin proceedings concerning nated legislative servic an employee or a legisl

(b) A complaint may signed under oath by t that the complainant h and describe any facts shall upon request prov Upon receiving a com committee or the subjec of the proceeding as to violated this chapter. Th of a candidate for ele accordance with (o) of th conduct of a candidate campaign period in acc provide a copy of the co

(c) When the commit the complaint to a staff of the complaint and a true, constitute a violat indicate that a further i dation shall be based o supplemented by the co to by the staff member member, if any, and sh constitute a violation of proven, would not give there is insufficient cr investigation by the com the face of the complain complainant and the su the complainant to pro decision under this subs the subject of the compl obligated to provide th documents that are pa confidential as provided confidentiality as provid

Pg 1 Line 12 delete Line 12
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and insert conceptual
AMENDMENT #6

BY

(i) Except when representing another person as ~~an attorney in the case~~ for compensation and subject to AS 24.60.100 [FOR SUPPLYING INFORMATION REQUESTED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE, OR WHEN RESPONDING TO CONTACTS INITIATED BY THE HEARING OFFICER OR THE INDIVIDUAL, BOARD, OR COMMISSION WITH AUTHORITY TO MAKE THE FINAL DECISION IN THE CASE,] a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives **while the legislator or legislative employee is acting as a party or witness** and the contact is made a part of the record; or

(2) **in the event of an inadvertent *ex parte* contact** fact and substance of the contact is promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record.

(c) The committee may impose a fine on a person who files a disclosure after a deadline set by this chapter. The amount of the fine imposed under this subsection may not exceed $2 for each day to a maximum of $100 for each late filing unless the committee determines that the late filing was inadvertent or wilful. If the committee finds that a late filing was inadvertent, the maximum fine the committee may impose under this subsection is $25. If the committee determines that the late filing was wilful, the amount of the fine imposed under this subsection may be $100 for each day but may not exceed a maximum of $2,500. (§ 31 ch 127 SLA 1992; am §§ 62, 63 ch 74 SLA 1998; am § 6 ch 94 SLA 2008)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, in subsection (a) substituted ". A person who files" for ", or file" near the middle and added "has violated this chapter and may be subject to imposition of a fine as provided in (c) of this section or AS 24.60.240" at the end; and added subsection (c).

The 2008 amendment, effective September 14, 2008, substituted "late filing unless the committee determines that the late filing was inadvertent or willful" for "disclosure for a late disclosure" in the second sentence of subsection (c), deleted "However" at the beginning of the third sentence of that subsection, and added the last sentence of that subsection.

Article 5. Miscellaneous and General Provisions.

Section	Section
970. Actions by the attorney general	990. Definitions
980. Cooperation by state agencies	995. Short title

Sec. 24.60.970. Actions by the attorney general. The attorney general may independently bring civil actions relating to violations under this chapter regardless of the outcome or settlement of a charge before the committee. This section does not prohibit the attorney general from bringing an action under another civil or criminal law. (§ 30 ch 127 SLA 1992)

Revisor's notes. — Enacted as AS 24.60.178. Renumbered in 1992.

Sec. 24.60.980. Cooperation by state agencies. Each agency of the executive branch of state government shall, to the extent permitted by state or federal law, cooperate fully with the committee or a subcommittee by providing information and assistance, including disclosure of financial material and other records relating to a potential violation of this chapter. (§ 1 ch 36 SLA 1984)

Revisor's notes. — Formerly AS 24.60.180. Renumbered in 1992.

Sec. 24.60.990. Definitions. (a) In this chapter,

(1) "administrative action" means conduct related to the development, drafting, consideration, enactment, defeat, application, or interpretation of a rule, regulation, policy, or other action in a regulatory proceeding or a proceeding involving a license, permit, franchise, or entitlement for use;

(2) "anything of value," "benefit," or "thing of value" includes all matters, whether tangible or intangible, that could reasonably be considered to be a material advantage, of material worth, use, or service to the person to whom it is conferred; the terms are intended to be interpreted broadly and encompass all matters that the recipient might find sufficiently desirable to do something in exchange for; "anything of value," "benefit," or "thing of value" does not include

(A) an item listed in AS 24.60.080(a)(2)(B) or (c);

(B) campaign contributions, pledges, political endorsements, support in a political campaign, or a promise of endorsement or support;

(C) contributions to a cause or organization, including a charity, made in response to a direct solicitation from a legislator or a person acting at the legislator's direction; or

(D) grants under AS 37.05.316 to named recipients;

(3) "committee" means the Select Committee on Legislative Ethics and includes, when appropriate, the senate or house subcommittee;

(4) "compensation" means remuneration for personal services rendered, including salary, fees, commissions, bonuses, and similar payments, but does not include reimbursement for actual expenses incurred by a person;

(5) "domestic partner" means a person who is cohabiting with another person in a relationship that is like a marriage but that is not a legal marriage;

(6) "immediate family" means

(A) the spouse or domestic partner of the person; or

(B) a parent, child, including a stepchild and an adoptive child, and sibling of a person if the parent, child, or sibling resides with the person, is financially dependent on the person, or shares a substantial financial interest with the person;

(7) "income" means an asset that a person has received or expects to receive, regardless of whether it is earned or unearned; inheritances and other gifts are not income;

(8) "knowingly" has the meaning given in AS 11.81.900;

(9) "legislative action" means conduct relating to the development, drafting, consideration, sponsorship, enactment or defeat, support or opposition to or of a law, amendment, resolution, report, nomination, or other matter affected by legislative action or inaction;

(10) "legislative director" means the director of the legislative finance division, the legislative auditor, the director of the legislative research agency, the ombudsman, the victims' advocate, the executive director of the Legislative Affairs Agency, and the directors of the divisions within the Legislative Affairs Agency;

(11) "legislative employee" means a person, other than a legislator, who is compensated by the legislative branch in return for regular or substantial personal services, regardless of the person's pay level or technical status as a full-time or part-time employee, independent contractor, or consultant; it includes public members and staff of the committee; it does not include individuals who perform functions that are incidental to legislative functions, including security, messenger, maintenance, and print shop employees, and other employees designated by the committee;

(12) "lobbyist" means a person who is required to register under AS 24.45.041 and is described under AS 24.45.171, but does not include a volunteer lobbyist described in AS 24.45.161(a)(1) or a representational lobbyist as defined under regulations of the Alaska Public Offices Commission;

(13) "political action" means conduct in which public officials, including legislators or legislative employees, use their official position or political contacts to exercise influence on state and local government employees or entities; it includes but is not limited to endorsing and pledging support or actively supporting a legislative matter, a nominee, or a candidate for public office;

(14) "registered lobbyist" means a person who is required to register under AS 24.45.041;

(15) "representation" means action taken on behalf of another, whether for compensation or not, including but not limited to telephone calls and meetings and appearances at proceedings or meetings;

(16) "state office" includes the office of governor, lieutenant governor, member of the legislature, or similar state office.

(b) A person has a substantial interest in legislative, administrative, or political action if the person (1) is not a natural person and will be directly and substantially affected financially by a legislative, administrative, or political action; (2) is a natural person and will be directly and substantially affected financially by a legislative, administrative, or

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political action in a way that is greater than the effect on a substantial class of persons to which the person belongs as a member of a profession, occupation, industry, or region; (3) has or seeks contracts in excess of $10,000 annually for goods or services with the legislature or with an agency of the state; or (4) is a lobbyist. For the purpose of this subsection, the state, the federal government, and an agency, corporation, or other entity of or owned by the state or federal government do not have a substantial interest in legislative, administrative, or political action. (§ 31 ch 127 SLA 1992; am §§ 64, 65 ch 74 SLA 1998; am § 17 ch 92 SLA 2001; am §§ 32, 33, 41 ch 108 SLA 2003; am § 7 ch 115 SLA 2003; am §§ 47, 48 ch 47 SLA 2007)

Revisor's notes. — Paragraph (5) was enacted as paragraph (17) and renumbered in 2003, at which time former paragraph (15) was repealed and paragraphs (5) - (14) were renumbered as (6) - (15).

Effect of amendments. — The 1998 amendment, effective January 1, 1999, in subsection (a) rewrote paragraph (6) [formerly (5)] and added paragraph (16) and former paragraph (15).

The 2001 amendment, effective July 1, 2002, inserted "the victim's advocate," in paragraph (a)(10) [formerly (9)].

The first 2003 amendment, effective September 14, 2003, in subsection (a) substituted "domestic partner" for "spousal equivalent" in subparagraph (6)(A), repealed former paragraph (15), and added paragraph (5).

The second 2003 amendment, effective September 15, 2003, updated a section reference in paragraph (a)(12).

The 2007 amendment, effective July 10, 2007, substituted "AS 24.60.080(a)(2)(B) or (c)" for "AS 24.60.080(c)" in subparagraph (a)(2)(A); and substituted "an asset that a person has received or expects to receive, regardless of whether it is" for "assets that are received, regardless of whether they are" in paragraph (a)(7).

Sec. 24.60.995. Short title. This chapter may be cited as the Legislative Ethics Act. (§ 18 ch 12 SLA 2006)

Effective dates. — Section 43, ch. 12, SLA 2006 makes this section effective April 4, 2006.

Chapter 65. Office of Victims' Rights.

Section		Section	
10.	Office of victims' rights	130.	Powers
20.	Appointment of the victims' advocate	140.	Consultation
30.	Qualifications	150.	Procedure after investigation
40.	Term of office	160.	Publication of recommendations
50.	Removal	170.	Annual report
60.	Compensation	180.	Judicial review
70.	Staff and delegation	190.	Immunity of the victims' advocate
80.	Office facilities and administration	200.	Victims' advocate's privilege not to testify or produce documents or other evidence
90.	Procedure	210.	Penalty
100.	Jurisdiction; duties	250.	Definitions
110.	Advocacy on behalf of crime victims; records		
120.	Investigations		

Effective dates. — Section 49, ch. 92, SLA 2001 makes this chapter effective July 1, 2002.

Sec. 24.65.010. Office of victims' rights. There is created in the legislative branch of the state the office of victims' rights. The victims' advocate is the director of the office of victims' rights. (§ 19 ch 92 SLA 2001)

Sec. 24.65.020. Appointment of the victims' advocate. (a) A candidate for appointment as the victims' advocate shall be nominated by the victims' advocate selection committee composed of three members of the senate appointed by the president of the senate and three members of the house of representatives appointed by the speaker of the house. One member of a minority party caucus in each house shall be appointed to the selection committee.

(1) a former member of the legislature or to a person formerly employed by the legislative branch of government unless a provision of this chapter specifically states that it applies;

(2) a person elected to the legislature who at the time of election is not a member of the legislature.

(b) The provisions of this chapter specifically supersede the provisions of the common law relating to legislative conflict of interest that may apply to a member of the legislature or a legislative employee. This chapter does not supersede or repeal provisions of the criminal laws of the state. This chapter does not exempt a person from applicable provisions of another law unless the law is expressly superseded or incompatibly inconsistent with the specific provisions of this chapter. (§ 1 ch 36 SLA 1984; §§ 2, 3 ch 113 SLA 1986; am § 1 ch 167 SLA 1988; am § 2 ch 127 SLA 1992; am § 18 ch 47 SLA 2007)

Effect of amendments. — The 2007 amendment, effective July 10, 2007, substituted "a provision of this chapter" for "the provision" in paragraph (a)(1).

Article 2. Standards of Conduct.

Section		Section	
30.	Prohibitions related to conflicts of interest and unethical conduct	75.	Compassionate gift exemption
31.	Restrictions on fund raising	80.	Gifts
33.	Restrictions on employee candidacies	85.	Restrictions on earned income and honoraria
35.	Protection of whistle blowers	90.	Nepotism
37.	Open meetings guidelines	100.	Representation
39.	Discrimination prohibited	105.	Deadlines for filing disclosures
40.	Contracts or leases	112.	Applicability to volunteers and educational trainees
50.	State programs and loans	115.	Disclosure required of a legislator, legislative employee, or public member of the committee after final day of service
60.	Confidential information		
70.	Disclosure of close economic associations		

Sec. 24.60.030. Prohibitions related to conflicts of interest and unethical conduct. (a) A legislator or legislative employee may not

(1) solicit, agree to accept, or accept a benefit other than official compensation for the performance of public duties; this paragraph may not be construed to prohibit lawful solicitation for and acceptance of campaign contributions, solicitation or acceptance of contributions for a charity event, as defined in AS 24.60.080(a)(2)(B), or the acceptance of a lawful gratuity under AS 24.60.080;

(2) use public funds, facilities, equipment, services, or another government asset or resource for a nonlegislative purpose, for involvement in or support of or opposition to partisan political activity, or for the private benefit of either the legislator, legislative employee, or another person; this paragraph does not prohibit

(A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use;

(B) the use of mailing lists, computer data, or other information lawfully obtained from a government agency and available to the general public for nonlegislative purposes;

(C) the legislative council, notwithstanding AS 24.05.190, from designating a public facility for use by legislators and legislative employees for health or fitness purposes; when the council designates a facility to be used by legislators and legislative employees for health or fitness purposes, it shall adopt guidelines governing access to and use of the facility; the guidelines may establish times in which use of the facility is limited to specific groups;

(D) a legislator from using the legislator's private office in the capital city during a legislative session, and for the 10 days immediately before and the 10 days immediately

after a legislative session, for nonlegislative purposes if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of the space and equipment, other than utility costs and minimal wear and tear, or the legislator promptly reimburses the state for the cost; an office is considered a legislator's private office under this subparagraph if it is the primary space in the capital city reserved for use by the legislator, whether or not it is shared with others;

(E) a legislator from use of legislative employees to prepare and send out seasonal greeting cards;

(F) a legislator from using state resources to transport computers or other office equipment owned by the legislator but primarily used for a state function;

(G) use by a legislator of photographs of that legislator;

(H) reasonable use of the Internet by a legislator or a legislative employee except if the use is for election campaign purposes;

(I) a legislator or legislative employee from soliciting, accepting, or receiving a gift on behalf of a recognized, nonpolitical charitable organization in a state facility;

(J) a legislator from sending any communication in the form of a newsletter to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(K) full participation in a charity event approved in advance by the Alaska Legislative Council;

(3) knowingly seek, accept, use, allocate, grant, or award public funds for a purpose other than that approved by law, or make a false statement in connection with a claim, request, or application for compensation, reimbursement, or travel allowances from public funds;

(4) require a legislative employee to perform services for the private benefit of the legislator or employee at any time, or allow a legislative employee to perform services for the private benefit of a legislator or employee on government time; it is not a violation of this paragraph if the services were performed in an unusual or infrequent situation and the person's services were reasonably necessary to permit the legislator or legislative employee to perform official duties;

(5) use or authorize the use of state funds, facilities, equipment, services, or another government asset or resource for the purpose of political fund raising or campaigning; this paragraph does not prohibit

(A) limited use of state property and resources for personal purposes if the use does not interfere with the performance of public duties and either the cost or value related to the use is nominal or the legislator or legislative employee reimburses the state for the cost of the use;

(B) the use of mailing lists, computer data, or other information lawfully obtained from a government agency and available to the general public for nonlegislative purposes;

(C) storing or maintaining, consistent with (b) of this section, election campaign records in a legislator's office;

(D) a legislator from using the legislator's private office in the capital city during a legislative session, and for the 10 days immediately before and the 10 days immediately after a legislative session, for nonlegislative purposes if the use does not interfere with the performance of public duties and if there is no cost to the state for the use of the space and equipment, other than utility costs and minimal wear and tear, or the legislator promptly reimburses the state for the cost; an office is considered a legislator's private office under this subparagraph if it is the primary space in the capital city reserved for use by the legislator, whether or not it is shared with others; or

(E) use by a legislator of photographs of that legislator.

(b) A legislative employee may not on government time assist in political party or candidate activities, campaigning, or fund raising. A legislator may not require an employee to perform an act in violation of this subsection.

(c) Unless approved
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(c) Unless approved by the committee, during a campaign period for an election in which the legislator or legislative employee is a candidate, a legislator or legislative employee may not use or permit another to use state funds, other than funds to which the legislator is entitled under AS 24.10.110, to print or distribute a political mass mailing to individuals eligible to vote for the candidate. In this subsection,

(1) a "campaign period" is the period that

(A) begins 60 days before the date of an election to the board of an electric or telephone cooperative organized under AS 10.25, a municipal election, or a primary election, or that begins on the date of the governor's proclamation calling a special election; and

(B) ends the day after the cooperative election, municipal election, or general or special election;

(2) a mass mailing is considered to be political if it is from or about a legislator, legislative employee, or another person who is a candidate for election or reelection to the legislature or another federal, state, or municipal office or to the board of an electric or telephone cooperative.

(d) A legislator, legislative employee, or another person on behalf of the legislator or legislative employee, or a campaign committee of the legislator or legislative employee, may not distribute or post campaign literature, placards, posters, fund-raising notices, or other communications intended to influence the election of a candidate in an election in public areas in a facility ordinarily used to conduct state government business. This prohibition applies whether or not the election has been concluded. However, a legislator may post, in the legislator's private office, communications related to an election that has been concluded.

(e) A legislator may not directly, or by authorizing another to act on the legislator's behalf,

(1) agree to, threaten to, or state or imply that the legislator will take or withhold a legislative, administrative, or political action, including support or opposition to a bill, employment, nominations, and appointments, as a result of a person's decision to provide or not provide a political contribution, donate or not donate to a cause favored by the legislator, or provide or not provide a thing of value;

(2) state or imply that the legislator will perform or refrain from performing a lawful constituent service as a result of a person's decision to provide or not provide a political contribution, donate or not donate to a cause favored by the legislator, or provide or not provide a thing of value; or

(3) unless required by the Uniform Rules of the Alaska State Legislature, take or withhold official action or exert official influence that could substantially benefit or harm the financial interest of another person with whom the legislator is negotiating for employment.

(f) A legislative employee may not serve in a position that requires confirmation by the legislature. A legislator or legislative employee who serves on a board of an organization, including a governmental entity, shall disclose the board membership to the committee. A person required to make a disclosure under this subsection shall file the disclosure with the committee by the deadlines set out in AS 24.60.105 stating the name of each organization on whose board the person serves. The committee shall maintain a public record of the disclosure and forward the disclosure to the appropriate house for inclusion in the journal. This subsection does not require a legislator or legislative employee who is appointed to a board by the presiding officer to make a disclosure of the appointment to the committee if the appointment has been published in the appropriate legislative journal during the calendar year.

(g) Unless required by the Uniform Rules of the Alaska State Legislature, a legislator may not vote on a question if the legislator has an equity or ownership interest in a business, investment, real property, lease, or other enterprise if the interest is substantial and the effect on that interest of the action to be voted on is greater than the effect

on a substantial class of persons to which the legislator belongs as a member of a profession, occupation, industry, or region.

(h) An employee who engages in political campaign activities other than incidental campaign activities during the employee's work day shall take leave for the period of campaigning. Political campaign activities while on government time are permissible if the activities are part of the normal legislative duties of the employee, including answering telephone calls and handling incoming correspondence.

(i) Except for supplying information requested by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, or when responding to contacts initiated by the hearing officer or the individual, board, or commission with authority to make the final decision in the case, a legislator or legislative employee may not attempt to influence the outcome of an administrative hearing by directly or indirectly contacting or attempting to contact the hearing officer assigned to the hearing or the individual, board, or commission with authority to make the final decision in the case unless the

(1) contact is made in the presence of all parties to the hearing or the parties' representatives and the contact is made a part of the record; or

(2) fact and substance of the contact is promptly disclosed by the legislator or legislative employee to all parties to the hearing and the contact is made a part of the record. (§ 1 ch 36 SLA 1984; am § 27 ch 85 SLA 1988; am § 8 ch 167 SLA 1988; am § 3 ch 127 SLA 1992; am §§ 13 — 18 ch 74 SLA 1998; am § 8 ch 3 SLA 2002; am § 49 ch 163 SLA 2004; am § 2 ch 10 SLA 2006; am §§ 19 — 21 ch 47 SLA 2007)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, in subsection (a), in paragraph (2) rewrote the introductory language, rewrote subparagraphs (A)-(C), added subparagraphs (D) and (E), and in paragraph (5) rewrote subparagraphs (A)-(C) and added subparagraphs (D) and (E); rewrote subsections (c), (d), and (g), added the last three sentences in subsection (f), and added subsection (h).

The 2002 amendment, effective April 16, 2002, in subsection (a) substituted "10 days" for "five days" in two places in subparagraphs (2)(E) and (5)(E); added subparagraphs (F)-(K) in paragraph (2); added subparagraph (F) in paragraph (5); and made stylistic changes.

The 2004 amendment, effective July 1, 2005, added subsection (i).

The 2006 amendment, effective March 31, 2006, in subsection (a), inserted "solicitation or acceptance of contributions for a charity event, as defined in AS 24.60.080(c)(10)" in paragraph (1) and "or legislative employee" in paragraph (2)(J), and added paragraph (2)(L), making corresponding stylistic changes.

The 2007 amendment, effective July 10, 2007, substituted "AS 24.60.080(a)(2)(B)" for "AS 24.60.080(c)(10)" in paragraph (a)(1), deleted former paragraphs (a)(1)(C) and (a)(5)(C), relating to telephone or facsimile use and redesignated the following subparagraphs accordingly, substituted "60 days" for "90 days" in paragraph (c)(1)(A), rewrote the second sentence of subsection (f), and substituted "person" for "legislator or legislative employee who is" in the third sentence of subsection (f).

NOTES TO DECISIONS

No duty to disclose. — Two former members of the Alaska legislature who were charged with honest services fraud under 18 USCS §§ 1341, 1343, and 1346 could exclude evidence of their failure to disclose a conflict of interest arising from their dealings with a corporation; neither this section nor AS 24.60.010 impose a duty to disclose, and state law controls. United States v. Kott, — F. Supp. 2d — (D. Alaska Sept. 4, 2007).

Legislature did not intend to imply a duty to disclose. — Alaska legislature clearly knows how to establish a duty to disclose and has done so in several instances. Its failure to include an explicit duty to disclose in subsection (e)(3) is significant; reading AS 24.60 as a whole, it would be inappropriate to imply a duty to disclose matters within the ambit of (e)(3). United States v. Kott, — F. Supp. 2d — (D. Alaska Sept. 4, 2007).

Sec. 24.60.031. Restrictions on fund raising. (a) A legislative employee may not

(1) on a day when either house of the legislature is in regular or special session, solicit or accept a contribution or a promise or pledge to make a contribution for a campaign for state or municipal office; however, a legislative employee may, except in the capital city or in the municipality in which the legislature is convened in special session if the legislature is convened in a municipality other than the capital city, solicit or accept a contribution, promise, or pledge for a campaign for state or municipal office that occurs during the 90 days immediately preceding the election for that office; or

(2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory, or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state. (§ 1 ch 67 SLA 1983)

NOTES TO DECISIONS

Jurisdiction over divorce action. — This section does not affect the common-law rule that Alaska courts have jurisdiction over a divorce action when one of the parties is domiciled in Alaska, where "domicile" is defined as physical presence plus an intent to remain permanently. Perito v. Perito, 756 P.2d 895 (Alaska 1988).

Quoted in E.H. v. State, 23 P.3d 1186 (Alaska 2001).

Stated in State v. Andrade, 23 P.3d 58 (Alaska 2001).

Sec. 01.10.060. Definitions. (a) In the laws of the state, unless the context otherwise requires,

(1) "action" includes any matter or proceeding in a court, civil or criminal;

(2) "daytime" means the period between sunrise and sunset;

(3) "month" means a calendar month unless otherwise expressed;

(4) "municipality" means a political subdivision incorporated under the laws of the state that is a home rule or general law city, a home rule or general law borough, or a unified municipality;

(5) "nighttime" means the period between sunset and sunrise;

(6) "oath" includes affirmation or declaration;

(7) "peace officer" means

(A) an officer of the state troopers;

(B) a member of the police force of a municipality;

(C) a village public safety officer;

(D) a regional public safety officer;

(E) a United States marshal or deputy marshal; and

(F) an officer whose duty it is to enforce and preserve the public peace;

(8) "person" includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person;

(9) "personal property" includes money, goods, chattels, things in action, and evidences of debt;

(10) "property" includes real and personal property;

(11) "real property" is coextensive with land, tenements, and hereditaments;

(12) "signature" or "subscription" includes the mark of a person who cannot write, with the name of that person written near the mark by a witness who writes the witness's own name near the name of the person who cannot write; but a signature or subscription by mark can be acknowledged or can serve as a signature or subscription to a sworn statement only when two witnesses so sign their own names to the sworn statement;

(13) "state" means the State of Alaska unless applied to the different parts of the United States and in the latter case it includes the District of Columbia and the territories;

(14) "writing" includes printing.

(b) In the laws of the state, "lewd conduct," "lewd touching," "immoral conduct," "indecent conduct," and similar terms do not include the act of a woman breast-feeding a child in a public or private location where the woman and child are otherwise authorized to be. Nothing in this subsection may be construed to authorize an act that is

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 18, 2009 **FURTHER REFERRALS: Judiciary**

Date of Committee Action: 3-26-09

The STATE AFFAIRS Committee considered: **HOUSE BILL NO. 193**

"An Act relating to representation by a legislator or legislative employee of another person in an administrative hearing; relating to charity events under the Legislative Ethics Act; requiring compensation of public members of the Select Committee on Legislative Ethics; exempting certain information from disclosure requirements of the Legislative Ethics Act; relating to the selection of alternate members and the participation of members and alternate members in formal proceedings of the Select Committee on Legislative Ethics and its subcommittees; and defining 'constituent,' 'constituent service,' 'legislative purpose,' 'nonlegislative purpose,' and 'private benefit' for the purposes of the Legislative Ethics Act."

HB 193 LEGISLATIVE ETHICS ACT

Recommends it be replaced with [ ] HCS *or* [X] CS for HB 193 (STA)

For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [X] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LEG		X		

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Craig Johnson	Johnson	X			
Paul Seaton	Seaton	X			
Mark Neuenburg	Neuenburg				-
Peggy Wilson	WILSON	N			
Chair:	LYNN	X			
Chair:					

Sec. 47.14.205. State Citizen Review Panel. (a) There is established within the department a Citizen Review Panel. The panel shall be composed of volunteer members who are broadly representative of the state, including members who have expertise in the prevention and treatment of child abuse and neglect.

(b) The panel shall meet not less than once every three months. Meetings may take place telephonically. (§ 38 ch 64 SLA 2005)

Sec. 47.14.210. Citizens' Foster Care Review Board. [Repealed, § 74 ch 35 SLA 2003.]

Sec. 47.14.215. Duties of the state panel. (a) The state panel shall evaluate the extent to which the department is effectively discharging its child protection responsibilities under

(1) the state plan submitted to the United States Department of Health and Human Services under 42 U.S.C. 5106a(b);

(2) child protection standards under federal and state laws; and

(3) any other criteria that the panel considers important to ensuring the protection of children, including the level and efficiency of coordination of foster care and adoption programs in the state and a review of child fatalities and near fatalities.

(b) In carrying out the responsibilities under (a) of this section, the state panel shall examine the policies, procedures, and practices of the department, and, where appropriate, evaluate specific cases of child abuse or neglect.

(c) The commissioner shall, by regulation, establish policies and procedures necessary to carrying out the duties of the state panel under this section. (§ 39 ch 64 SLA 2005)

Sec. 47.14.220. Citizens' Foster Care Review Board. [Repealed, § 74 ch 35 SLA 2003.]

Sec. 47.14.225. Cooperation with state panel. (a) The department shall provide the panel access to information on child abuse or neglect cases that is necessary for the panel to carry out its duties under AS 47.14.215.

(b) The department shall serve as staff to the state panel as requested by the panel members. (§ 40 ch 64 SLA 2005)

Sec. 47.14.230. Citizens' Foster Care Review Board. [Repealed, § 74 ch 35 SLA 2003.]

Sec. 47.14.235. Confidentiality. (a) A person attending a meeting of the state panel or a member or staff of the state panel may not make any disclosure related to information obtained during a review by the state panel unless authorized under AS 47.10.092 or 47.10.093.

(b) Meetings of the state panel are subject to AS 44.62.310 and 44.62.312. (§ 41 ch 64 SLA 2005)

Sec. 47.14.240. Citizens' Foster Care Review Board. [Repealed, § 74 ch 35 SLA 2003.]

Sec. 47.14.245. Public outreach. The state panel shall conduct public outreach and gather public comment on current department procedures and practices involving children and family services. (§ 42 ch 64 SLA 2005)

Sec. 47.14.250. Citizens' Foster Care Review Board. [Repealed, § 74 ch 35 SLA 2003.]

Sec. 47.14.255. Report. (a) The state panel shall prepare and make available to the governor, the legislature, and the public an annual report containing a summary of the activities of the panel conducted under AS 47.14.205 — 47.14.295 and recommendations for the improvement of child protection services in the state.

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previously convicted" does
S 12.55.085 or a similar
vacated by a court. (§ 2 ch
1998; am § 9 ch 22 SLA
7; am §§ 12, 13 ch 47 SLA

endment, effective January 1,
days" for "45 days" near the
sentence of subsection (e), and
llowing "thereafter" near the
id sentence.
mendment, effective July 10,
or" following "the identification
graph (b)(7), added paragraphs
dded subsections (i) and (j).

AS 24.45.041 shall file
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influencing legislative or administrative action, and the full name and complete address of each person from whom amounts or things of value have been received and the total monetary value received from each person;

(2) the aggregate amount of disbursements or expenditures made or incurred during the period in support of or in connection with influencing legislative or administrative action by the lobbyist, or on behalf of the lobbyist by the lobbyist's employer in the following categories:

(A) food and beverages;

(B) living accommodations;

(C) travel;

(3) the date and nature of any gift exceeding $100 in value made to a public official and the full name and official position of that person;

(4) the name and official position of each public official, and the name of each member of the immediate family of any of these officials, with whom the lobbyist has engaged in an exchange of money, goods, services, or anything of more than $100 in value and the nature and date of each of these exchanges and the monetary values exchanged;

(5) the name and address of any business entity in which the lobbyist knows or has reason to know that a public official is a proprietor, partner, director, officer or manager, or has a controlling interest, and whom the lobbyist has engaged in an exchange of money, goods, services, or anything of value and the nature and date of each exchange and the monetary value exchanged if the total value of these exchanges is $100 or more in a calendar year; and

(6) a notice of termination if the lobbyist has ceased the lobbying activity that required registration under this chapter and if this report constitutes the final report of the lobbyist's activities.

(b) A lobbyist required to report to the commission under (a) of this section, who provides or pays for food or beverage for immediate consumption by a legislator or legislative employee or a spouse or domestic partner of a legislator or legislative employee shall report the date the food or beverage was provided or paid for and the recipient's name and relationship to the legislator or legislative employee, unless the food and beverage

(1) cost $15 or less; or

(2) are provided as part of an event that is open to all legislators or legislative employees. (§ 2 ch 167 SLA 1976; am § 23 ch 108 SLA 2003; am § 14 ch 47 SLA 2007)

Effect of amendments. — The 2003 amendment, effective September 14, 2003, added the third sentence in the introductory language.

The 2007 amendment, effective July 10, 2007, added subsection (b).

Sec. 24.45.060. [Repealed, § 1 ch 167 SLA 1976.]

Sec. 24.45.061. Reports by employers of lobbyists. (a) Within 15 days after employing, retaining, or contracting for the employment or retention of a lobbyist, the person who employs, retains, or who contracts for the services of a lobbyist shall file a statement with the commission authorizing or verifying that employment, retention, or contract for lobbying services.

(b) A person who employs, retains, or who contracts for the services of one or more lobbyists, whether independently or jointly with other persons, and who directly or indirectly makes payments to influence legislative or administrative action shall file a quarterly report containing

(1) the full name, complete business address and telephone number of the person making the report;

(2) information sufficient to identify the nature and interests of the person making the report;

building, the office of the lieutenant governor, the legislative reference library of the Legislative Affairs Agency, and the commission's central office.

(f) Each lobbyist shall renew the registration annually by filing a new registration statement together with a new authorization to act as a lobbyist before engaging in lobbying. The lobbyist also shall file any reports or statements the lobbyist has failed to file for a previous reporting period. The commission may not renew lobbying credentials until this provision is complied with.

(g) An application for registration as a lobbyist under (a) of this section or for renewal of a registration under (f) of this section is subject to a fee of $250. The commission may not accept an application for registration or renew a registration until the fee is paid. This subsection does not apply to a volunteer lobbyist under AS 24.45.161 or a representational lobbyist under regulations of the commission.

(h) Upon request of the commission, information required under this section shall be submitted electronically.

(i) A person may not register if the person has been previously convicted of a felony involving moral turpitude in violation of a law of this state or the law of another jurisdiction with elements similar to a felony involving moral turpitude in this state.

(j) In this section,

(1) "felony involving moral turpitude" has the meaning given in AS 15.60.010;

(2) "previously convicted" means the defendant entered a plea of guilty, no contest, or nolo contendere, or has been found guilty by a court or jury; "previously convicted" does not include a conviction that has been set aside under AS 12.55.085 or a similar procedure in another jurisdiction, or that has been reversed or vacated by a court. (§ 2 ch 167 SLA 1976; am § 39 ch 36 SLA 1990; am § 12 ch 74 SLA 1998; am § 9 ch 22 SLA 2001; am §§ 20 — 22 ch 108 SLA 2003; am § 10 ch 34 SLA 2007; am §§ 12, 13 ch 47 SLA 2007)

Effect of amendments. — The 1998 amendment, effective January 1, 1999, in subsection (b) added paragraph (7) and made minor stylistic changes.

The 2001 amendment, effective May 10, 2001, made a section reference substitution in paragraph (b)(7).

The 2003 amendment, effective September 14, 2003, substituted "domestic partner" for "spousal equivalent" in two places in paragraph (b)(7); substituted "$250" for "$100" in the first sentence in subsection (g); and added subsection (h).

The first 2007 amendment, effective January 1, 2008, substituted "15 days" for "45 days" near the beginning of the first sentence of subsection (e), and inserted a comma following "thereafter" near the beginning of the second sentence.

The second 2007 amendment, effective July 10, 2007, deleted "legislator" following "the identification of a" at the end of paragraph (b)(7), added paragraphs (b)(8) and (b)(9), and added subsections (i) and (j).

NOTES TO DECISIONS

24.45.051 (b)(1)

Stated in State v. Alaska Civil Liberties Union, 978 P.2d 597 (Alaska 1999), cert. denied, 528 U.S. 1153, 120 S. Ct. 1156, 145 L. Ed. 2d 1069 (2000).

Sec. 24.45.050. [Repealed, § 1 ch 167 SLA 1976.]

Sec. 24.45.051. Reports. (a) Each lobbyist registered under AS 24.45.041 shall file with the commission a report concerning the lobbyist's activities during each reporting period prescribed in AS 24.45.081, so long as the lobbyist continues to engage in lobbying activities. The report shall be made on a form prescribed by the commission and filed in accordance with AS 24.45.071 and 24.45.081. Upon request of the commission, information required under this section shall be submitted electronically. The report also must include any changes in the information required to be supplied under AS 24.45.041(b) and the following information for the reporting period, as applicable:

(1) the source of income, as defined in AS 39.50.200(a) and the monetary value of all payments, including but not limited to salary, fees, and reimbursement of expenses, received in consideration for or directly or indirectly in support of or in connection with

influencing legislative or
of each person from whoı
monetary value received

(2) the aggregate amoı
the period in support of
action by the lobbyist, o
following categories:

(A) food and beverages

(B) living accommodat

(C) travel;

(3) the date and nature
the full name and official

(4) the name and offici
of the immediate family c
an exchange of money, gc
nature and date of each c

(5) the name and addr
reason to know that a pul
or has a controlling inte
money, goods, services, oı
and the monetary value e
in a calendar year; and

(6) a notice of terminati
registration under this c
lobbyist's activities.

(b) A lobbyist required
provides or pays for food
legislative employee or a s
shall report the date the
name and relationship tc
beverage

(1) cost $15 or less; or

(2) are provided as pa
employees. (§ 2 ch 167 SL

Effect of amendments. — Tl
effective September 14, 2003, a
tence in the introductory langua

Sec. 24.45.060. [Repeal

Sec. 24.45.061. Repor
employing, retaining, or c
person who employs, retai
statement with the commi
contract for lobbying servi

(b) A person who emplo
lobbyists, whether indepe
indirectly makes payment
quarterly report containin

(1) the full name, comp
making the report;

(2) information sufficien
report;

HOUSE COMMITTEE REPO

(7)

Date Referred to Committee: March 27, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4/3/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 193**

"An Act relating to representation by a legislator or legislative employee of another person in an administrative hearing; relating to charity events under the Legislative Ethics Act; requiring compensation of public members of the Select Committee on Legislative Ethics; exempting certain information from disclosure requirements of the Legislative Ethics Act; relating to the selection of alternate members and the participation of members and alternate members in formal proceedings of the Select Committee on Legislative Ethics and its subcommittees; and defining 'constituent,' 'constituent service,' 'legislative purpose,' 'nonlegislative purpose,' and 'private benefit' for the purposes of the Legislative Ethics Act."

HB 193 LEGISLATIVE ETHICS ACT

Recommends it be replaced with [ ] HCS *or* [√] CS *for* HB193 (JUD)

For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR _____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LEG	1	X		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN			X	
	Greenberg	✓			
	Coghill			✓	
	Dahlstrom			X	
	Holmes			x	
	Gara			K	
Chair:	KAWASAKI			X	
Chair:					

HB

194

1943

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

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Chairman
Room, 118
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(907) 465-3743

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 9, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File for HB194

Please accept this memo as the referral file for HB194. Attached you will find the following documents:

- Sponsor Statement
- CSHB194(TRA) 26-LS0715\P
- DOT Zero Fiscal Note
- Support
- Back-up
- HJUD Committee Report

Alaska State Legislature

Representative Peggy Wilson
House District 2

SPONSOR STATEMENT
HB 194

"An Act relating to the operation of low-speed vehicles."

A demand exists in many rural Alaskan communities for short-range transportation that is both safe and convenient. Low speed vehicles (LSV's) provide an affordable alternative to standard passenger vehicles, and satisfy the growing demand for reduced-emission transportation. Significant advances have been made in LSV safety technology, such that these vehicles are now equipped with similar equipment and features to those of standard passenger vehicles. These technological developments, along with an increased awareness of vehicle emissions, have made LSV's a common fixture in rural Alaska communities.

In communities throughout Alaska, owners of LSV's are seeking access to more roads. Current law allows LSV's to operate on roads with posted speed limits of not more than 35 mph. This bill will give communities that have less than 25,000 people -and are not connected by road to Anchorage or Fairbanks- the authority to allow LSV's to travel on roads with posted speed limits of not more than 45 mph. Some of these communities, those with high traffic volume, may have safety concerns regarding LSV use; therefore this bill requires that a community pass an ordinance in order to expand LSV use on their roads.

The CS for HB 194 raises the maximum allowable population for any community to be eligible for this bill from not more than 25,000 people to not more than 35,000 people. The CS also clarifies that an LSV may make a crossing at an intersection with any highway so long as the approach highway and the highway the crossing is made to are authorized for LSV use.

By passing HB 194, certain Alaskan communities would be granted the option to increase LSV access where appropriate, thus promoting an affordable transportation solution that increases rural access and results in decreased vehicle emissions.

Contact: Reid Harris, Legislative Aide to Representative Peggy Wilson, (907)-465-3824

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 194(TRA)
(H) Publish Date: 3/27/09

Identifier (file name): HB194-DOT-SDE-3-22-09
Title: Low-Speed Motor Vehicles
Sponsor: Rep. Wilson
Requester: H. TRA

Dept. Affected: DOT&PF
RDU: Design and Construction
Component: Statewide Design and Engineering
Component Number: 2357

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

There will be no fiscal impact to the Department of Transportation and Public Facilties.

Prepared by: Mary Siroky, Legislative Liaison — Phone 465-4772
Division: Department of Transportation and Public Facilities — Date/Time 3/22/09 11:30 AM
Approved by: Nancy Slagle, Admin Director — Date 3/22/2009
Department of Transportation and Public Facilities

(Revised 9/10/2008 OMB)

Good afternoon. My name is Megan Pasternak and I have been a low-speed electric vehicle owner and driver in Sitka for more than a year. Thank you to Rep. Wilson for sponsoring this bill, to her aides for their help and thank you to the Transportation Committee for having a hearing on HB 194.

Besides the at least 19 known such vehicles in Southeast, there are also two in Kodiak and possibly more throughout the state.

This bill is not just about cheap transportation. It is another much-needed step toward helping eliminate pollution and protecting the environment. It not only will help you but will help your communities, the State of Alaska, the United States, and the world.

This bill will help allow those who must transit 45-mph zones for work or other purposes and who have had reservations about owning a low-speed vehicle because of the 35-mph limitations to make the decision to join the group of citizens who are trying to make a difference in our carbon footprints.

As a low-speed vehicle driver I am very conscious of the traffic around me and do not impede others who want to go faster than my allowed 25 mph. I do this by waiting to enter a roadway until approaching traffic is far away and by pulling over to the side whenever possible to allow others to pass. I'm sure other low-speed vehicle drivers are just as conscientious.

Many of these vehicles are in use and have been in use in Europe for quite some time.

My understanding of one of many reasons why these vehicles are safe is that they are generally very lightweight. When involved in a crash, they tend to bounce away rather than take the impact full force.

This bill has great flexibility by allowing each municipality to make the decision to allow low-speed vehicles to travel in 45 mph zones based on local conditions.

Some have noted that electric vehicle owners will not be contributing to the building and upkeep of roads and highways because they will not be purchasing fuel and paying the taxes. I, for one, am more than willing to have an electric-vehicle tax or other added fee when registering or renewing license tabs. I'm sure my 1200-pound car does far less damage to the highways than the overloaded dump trucks traversing them.

As a side note, if legislators truly want to encourage electric or other alternative fuel-vehicle usage and make it safer for them in the higher speed zones, they should consider allowing low-speed vehicles to be modified to go 35 mph. My car has the capability but the modification was required to be removed in order to get registered and licensed in Alaska.

Please feel free to contact me with any questions you may have.

Thank you.
Megan Pasternak
Box 830
Sitka, AK 99835
907-747-5943
mwpstnk@ptialaska.net

Electric Car In Sitka

[Print]

Written by Shannon Haugland, Sentinel Staff Writer
Tuesday, 26 February 2008

Walt and Megan Pasternak have a new rule at their house: the first one out the door gets the electric car.

The Sitka couple's ZENN 2.22LX arrived on the barge last Thursday, and so far they have logged 60 miles in it. Megan said that's enough to let her see its suitability for a town with less than 20 miles of highway.

"It's perfect for Sitka," she said.

The Pasternaks have two other vehicles -- a Toyota RAV4 and Ford Ranger pickup -- but their new Canadian-built ZENN has become their first choice for nearly all their driving.

They had been thinking about getting a high efficiency car for some time, and had been looking at a SmartCar, which gets 40 miles to the gallon of gas. But when they were in Seattle last November, Megan read a local magazine story about the ZENN.

ZENN stands for Zero Emissions No Noise.

They went to the Seattle dealer, M.C. Electric Vehicles, took a test drive in the battery-powered ZENN, and took to it immediately.

"It was almost a snap decision," Megan said. "But if you don't do it now, what are you waiting for? They will always come up with newer (technology) but why keep pumping crap into the air?"

The Pasternaks received a discount from the $20,000 list price for acting as "ambassadors," and answering questions from interested consumers. Megan said she and Walt learn something every day about the vehicle, often from others in Sitka who seem to have been following the product. Megan said they welcome calls from potential buyers.

"It's a learning process," she said. "I'm sitting here reading the book for the second time, because you don't know what they're talking about until you're in the car."

The ZENN gets 35 miles on a single battery charge. Top speed is 37 mph, with 35 a sustainable cruising speed. It takes four hours and five kilowatts of electricity to bring a fully depleted battery up to 80 percent charged. The draw on AC power tapers off as the battery approaches full charge.

The Pasternaks keep extension cords handy, and Megan said she is still getting into the habit of "opportunity charging" -- plugging in to the nearest available outlet when away from home. The car has electric windows, electric and manual locks and a functioning heating system but no air conditioning.

Megan said it isn't as quiet as she expected, but that's because a lack of insulation in the aluminum frame and the polycarbonite sides don't keep out road noise. The only glitch so far has been a short caused during the installation of an AM/FM stereo. But a quick bit of troubleshooting solved the problem.

The car weighs in at a featherweight 1,200 pounds, but Megan said she feels safe because she is a careful, defensive driver. She hasn't tried the ZENN on snow but the car has front-wheel drive, and can be equipped with snowtires.

Sitka Electric Utility Director Charlie Walls said he had heard about the Pasternaks' car and is interested to see how it performs in Sitka.

"At this point it's very much an emerging technology," he said. "We're watching that. It has some potential in the long run for Sitka. It's a pioneering technology. This time they have a chance of getting them established."

As the price of oil -- now at about $100 a barrel -- continues to go up, the interest in hybrids and electric cars will increase, Walls said. "The next thing to come is plug-in hybrids, then all electrical," he said. "What we're seeing is forerunners of what's to come."

Walls has made announcements in the last few weeks about the low water levels at the hydroelectric dams, and the need for such conservation measures as turning off home electric heaters when alternative heat is available.

Battery-powered cars will not be a significant draw on the electric system until there are a lot more of them in Sitka, he said.

The city is working on plans to raise the height of the Blue Lake Dam, which will increase the local hydro resources significantly, and Walls will be in a Sitka delegation heading to Washington, D.C., next month to get support for the $25 million project.

"In a few years from now, we could have the capacity to handle the addition of (electric cars)," he said. "We think it has some real potential, and it'll be real attractive to Sitkans five years from now."

There is at least one other all-electric vehicle in Sitka. The Coast Guard Air Station uses it to transport materials short distances on Japonski Island.

Megan said so far she gives the ZENN high marks, and hopes to spread the word about her car and its benefits to the environment with a new personalized license plate.

If its's not already taken, she wants it to read: "NO CO2."

Close Window

OLR RESEARCH REPORT

August 8, 2008 2008-R-0432

LOW SPEED ELECTRIC VEHICLES

By: James J. Fazzalaro, Principal Analyst

You asked for information on the states that allow low speed electrically-powered motor vehicles to be registered and operated on public roads.

SUMMARY

Federal standards were first established for low speed motor vehicles in 1998. These standards define them and establish mandatory equipment requirements for them. We were able to identify 40 states that have granted statutory authority for low speed vehicles, referred to in some of the states as "neighborhood electric vehicles" to operate on certain types of roads. In all but Rhode Island, the authority extends to all roads of a certain type anywhere in the state. Rhode Island authorizes them only for operation on Prudence Island. As you know, Connecticut law does not authorize operation of low speed vehicles on public roads.

Every state that statutorily authorizes operation of low speed vehicles requires them to be registered. In the majority of cases, the statute has an explicit requirement for registration. However, in some states, the requirement is established indirectly in that these vehicles are defined as "motor vehicles" and the state's general registration law requires motor vehicles to be registered unless exempted. None of these states exempt low speed vehicles.

Mary M. Janicki, Director
Phone (860) 240-8400
FAX (860) 240-8881
http://www.cga.ct.gov/olr

Connecticut General Assembly
Office of Legislative Research

Room 5300
Legislative Office Building
Hartford, CT 06106-1591
Olr@cga.ct.gov

Most of the states limit the operation of low speed vehicles to roads for which the speed limit is set at not more than 35 miles per hour. Idaho, West Virginia, and Rhode Island limit them to roads with speed limits of 25 miles per hour or less. New Jersey authorizes them for roads up to 25 miles per hour, but allows state and local authorities to allow them for roads of up to 35 miles per hour if they choose. Maryland limits them to roads of 30 miles per hour or less. Kansas allows them to be operated on roads of up to 40 miles per hour and Montana allows them on roads of up to 45 miles per hour. Colorado only authorizes municipalities to determine where they may operate; the law does not set a speed limit maximum as the other states do.

Of the 40 states, 30 allow low speed vehicles to cross roads with higher speed limits. Most of the states that allow such crossings do so only at intersections. Maryland, Rhode Island, and Vermont limit this authority by designating the maximum speed of roads that may be crossed. Illinois, Maryland, and Vermont further limit the authority to cross to intersections that are "controlled", that is, governed by a traffic light or a four-way stop. New Jersey requires crossing at a signalized intersection, or at a non-signalized intersection if approved by a state, county, or local authority, when the road being crossed has more than two lanes, is divided, or has a speed limit over 35 miles per hour. California permits crossing a state highway at an uncontrolled intersection only if the state highway agency approves it.

The federal standard for low speed vehicles requires them to be capable of reaching at least 20 miles per hour and not more than 25 miles per hour. The majority of states we found adopt this as the standard in their definition of a low speed vehicle. However, several establish only a maximum speed of 25 miles per hour without specifying a minimum speed. These include Arizona, Colorado, Hawaii, Utah, and Vermont. Indiana and Montana specify a maximum speed of 35 miles per hour with no minimum speed. Washington defines two classes of vehicles—"medium speed vehicles" with a minimum speed of 30 miles per hour and a maximum of 35 miles per hour and "neighborhood electric vehicles" with a minimum speed 20 miles per hour and a maximum speed of 25 miles per hour.

Michigan, unlike any of the other states, specifically requires low speed vehicles to operate as far to the right side of the road as practicable.

The laws of all of the 40 states, except for Oregon and Colorado, make explicit reference to these low speed vehicles having to comply with the federal standards. Iowa, Michigan, Missouri, Texas, and West Virginia explicitly adopt the federal definition of a low speed vehicle by reference.

More than half of the states allow state, county, or local authorities to further restrict low speed vehicle operations, or even prohibit them entirely on some or all roads if it is the interest of public safety. In Wisconsin, low speed vehicles can only be operated if a municipality adopts a permissive ordinance. Illinois has a similar requirement that allows them only if a municipality has adopted a permissive ordinance. The Illinois law requires the municipality to consider the volume, speed, and character of traffic before approving an ordinance. Colorado has a permissive law, that is, low speed vehicles are only allowed to operate when a local authority has permitted it by ordinance or resolution.

Recently, the governor of Kentucky issued an executive order requiring the state motor vehicle agency to develop procedures for registering electrically-powered vehicles for use on public roads. The order covers vehicles capable of moving up to 50 miles per hour, so they probably should not be considered low speed vehicles in the same sense as the other states have authorized. Kentucky does not authorize low speed vehicles statutorily.

FEDERAL STANDARDS FOR LOW SPEED VEHICLES

The National Highway Traffic Safety Administration (NHTSA) first adopted regulatory standards for low speed vehicles in 1998. The NHTSA regulations define a low speed vehicle (LSV) as a motor vehicle that (1) has four wheels; (2) can attain a speed in one mile on a paved, level surface of at least 20 miles per hour and not more than 25 miles per hour; and (3) has a gross vehicle weight rating of less than 3,000 pounds (49 CFR Sec. 571.3). The regulations do not limit LSVs to being electrically-powered.

The regulations require all LSVs to be equipped with: (1) headlamps, tail lamps, and stop lamps; (2) front and rear turn signals; (3) red reflex reflectors on both sides and the rear; (4) an exterior mirror on the driver's side and either an exterior mirror on the passenger side or an internal mirror; (5) a parking brake; (6) a windshield that conforms to the federal standard for glazing materials; (7) a vehicle identification number that conforms to federal standards; and (8) a seat belt meeting federal standards at each designated seating position (49 CFR § 571.500).

Most of the states that allow the operation of low speed vehicles on some roads require them to meet these federal standards. Of the 40 states we identified with low speed vehicle laws, only Oregon's and Colorado's laws appear not to explicitly refer to compliance with the federal regulations.

STATES THAT AUTHORIZE OPERATION OF LOW SPEED ELECTRIC VEHICLES

Table 1 provides information for the 40 states we fund with laws allowing low speed vehicles to be operated on some roads. The states typically refer to them as low speed vehicles (LSV) or neighborhood electric vehicles (NEV). The laws in Montana and Washington refer to them as medium speed vehicles (MSV). The table identifies (1) the maximum speed limit for roads for which their operation is authorized; (2) whether they are allowed to cross roads with higher speed limits and any limitations that apply, (3) what characteristics define these vehicles under the state's law, (4) the minimum and maximum operating speeds for these vehicles, and (5) if there is authority to regulate them at the state or local level that goes beyond the general statutory authorization for them to operate.

Table 1: States Permitting Operation of Low Speed Motor Vehicles

	Maximum Speed Limit of Roads Where Operation is Allowed	*Crossing Higher Speed Roads Permitted*	*Definition of LSV/NEV/MSV*	*Vehicle Operating Speed*		*Local Authority to Regulate or Prohibit*
				Min	*Max*	
Alaska	35	Yes, at intersection	4 wheels State weight, equipment, and safety standards must be consistent with federal standards	20	25	Local government may further restrict operations
Arizona	35	Yes at designated intersection	4 wheels Emission-free	---	25	
California	35	Yes, at intersection Only permitted at uncontrolled intersection with state highway if state agency approves	4 wheels 3,000 lbs. max.	20	25	Local authorities may restrict use. Local or state authority may prohibit use if in the best interest of safety and appropriate signs are posted

ZENN - Vehicle in Sitka

From Wikipedia, the free encyclopedia
(Redirected from Zenn)

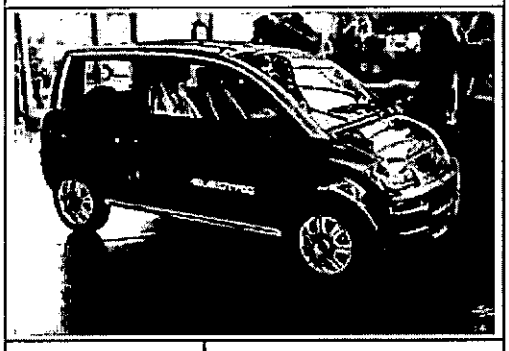
ZENN (*Zero Emission, No Noise*) is a 2-seat battery electric vehicle currently in production and built by ZENN Motor Company designed to qualify as a Neighborhood Electric Vehicle. It has a range of up to 40 miles (64 km) and does not exceed 25 mph (40 km/h). On earlier production models, there was an option of a 'Discovery Pack' which increased the ZENN's range a few miles. It now comes standard.

The vehicle is based on the Microcar (brand) MC2,in production in France since the early 2000s, and produced under license from Microcar's parent company Beneteau Group. The Microcar MC2, and the short wheelbase MC1, are sold in Europe with diesel engines.

Electric power is stored in six 12V lead-acid gel batteries, which has a recharge cycle of 8 hours. Valve regulated (low maintenance) lead-acid wet cells are available at extra cost.

Also optional are a retractable fabric sunroof, air conditioning, audio entertainment center, and AC motor, stated to be better for hill climbing. The 2008 model has a standard AC motor.

On January 16, 2007 EEStor, Inc. announced plans to ship 15 kilowatt-hour Electrical Energy Storage Units (EESU) to ZENN Motor Company by end of 2007 for use in the ZENN electric vehicles. As of Nov. 2008, this has not happened. If it were to happen, it would make the ZENN the first production vehicle to use EESU. As of April 30 2007 ZENN Motor Company owned approximately 3.8% of the equity of capacitor developer EEstor, after an investment of $2.5M US.[1]

ZENN	
	
Manufacturer:	ZENN Motor Company
Location:	Headquarters in Toronto Ontario, production in St. Jérôme, Quebec
Also known as:	Feel Good Cars
Production Years:	2006–present
Class:	NEV\LSV
Length:	3.1 m
Width:	1.6 m
Height:	1.4 m
Charging connector:	Extension cord to standard domestic 110V outlet
Charge time	80% - 4 hours, 100% - 8 hours
Curb Weight:	1,200 lb (544 kg)
GVRW:	1,705 lb (773 kg)
Battery type:	lead-acid batteries
Range:	50-80 km (30–50 miles)
Maximum speed:	40 km/h (25 mph)

Contents

- 1 Licensing agreement with EEStor
- 2 Skepticism from Experts about EEStor
- 3 City ZENN

1954.

- 4 Legalization in Canada
- 5 Awards
- 6 Gallery
  - 6.1 Competitors in light electric vehicles
- 7 Comparison with selected light electrical cars
- 8 References
- 9 External links
  - 9.1 In The News

Doors:	3-door hatchback
MSRP:	$12,000–$16,000

Licensing agreement with EEStor

EEStor was founded in 2001 by Richard D. Weir and Carl Nelson, former senior managers in disk-storage technology at IBM and Xerox. The Company maintains a low profile, but others in the automotive and CleanTech communities are calling their storage technology 'game changing'. Such a breakthrough has the potential to transform the energy sector and the automobile industry in particular.

The following is how the EESU is claimed to compare to other batteries used for electric cars[2]

	Ceramic EESU	**NiMH**	**La(Gel)**	**Lithium-ion**
Weight (kg/lbs)	**135/300**	780/1716	1660/3646	340/752
Volume (litres/cubic inches)	**74.5/4541**	293/17,881	705/43,045	93.5/5697
Discharge rate	**0.02%/30 Days**	5%/30 Days	1%/30 Days	1%/30 Days
EV Charging time (full) - 100% charge	**3-6 min**	>3.0 hr	3-15 hr	>3.0 hr
Life Reduced with deep cycle use	**none**	very high	high	very high
Hazardous Materials	**none**	yes	yes	yes
Temperature vs. effect on energy storage	**negligible**	high	very high	high

ZMC entered into an agreement with EEStor dated August 24, 2004 (with subsequent amendments dated November 26, 2004, September 30 2005, August 8, 2006 and January 22, 2007) to acquire in perpetuity the worldwide exclusive rights to use EEStor's EESU in the following markets:

All-electric 4-wheeled personal transportation uses for vehicles with a curb weight up to 1,400 kilograms (3,100 lb), net of the battery weight, and For golf carts and similar-styled utility vehicles, and The aftermarket conversion of any internal combustion passenger vehicle to electric drive

The EEStor Technology Agreement also provides ZMC with non-exclusive, worldwide use to manufacture higher power and heavier vehicles.

About half of Zenn's IPO was used to invest in EEStor.

Skepticism from Experts about EEStor

Three technology experts hired by potential investors to investigate EEStor's technology have stated "it's not possible", "extremely unlikely that it's possible", "there's extreme skepticism", "there's nothing there", "it's ridiculous thinking", "it's beyond science fiction", and "I'm surprised that Kleiner has put money into it". [3] [4] [5]

City ZENN

The **cityZENN** is planned to be a fully certified, highway capable vehicle with a top speed of 125 kilometres per hour (78 mph) and a range of 400 kilometres (250 mi). Powered by EEStor, the cityZENN will be **rechargeable in less than 5 minutes**, feature operating costs 1/10th of a typical internal combustion engine vehicle and be 100% emission-free at the point of use. The **Z**ero **E**mission, **N**o **N**oise cityZENN will be designed to meet the transportation requirements of a large percentage of drivers worldwide. [6] It is due to be launched in Fall 2009. Also according to Ian Clifford a normal household outlet with 110 volt supply can fully charge the EESTor powered CityZENN in 4 hours for a 250 miles (400 km) range and a normal household outlet with 220 volt supply can fully charge the EESTor powered CityZENN in 2 hours for a 250 miles (400 km) range. A fast charge in about 5 minutes will be possible at special charge stations. CityZENN target price is around $25000 - $30000.[7]

Legalization in Canada

Although the company is headquartered in Toronto, and the car is manufactured in St- Jérôme, the vehicle was first introduced in the United States. Federal regulations set up by Transport Canada to approve low speed vehicles (LSVs) for public road use excluded the ZENN and other NEVs from Canadian roads. ZENN's battle with Transport Canada over LSV regulations has been periodically mentioned in Canadian news.[8]

The ZENN car met all the regulatory requirements in the United States; the same regulations adopted by Transport Canada in 2000. It took 2 years of political red tape before ZENN received its National Safety Mark from the Canadian Ministry of Transport. The safety mark was granted after a report by the CBC[9] caused public outcry against the governments lack of interest in environmentally friendly alternatives to fossil fuel vehicles.

Since August 16, 2000, British Columbia has allowed LSVs on its roads, but this exception to the federal law was designed mainly for large slow-moving farm equipment. Although the ZENN was technically legal in British Columbia, the cars would have needed to be equipped with warning signs and yellow flashing lights to distinguish themselves as slow-moving. ZENN Motor Company did not see these conditions as viable to establish a retailer market. After ZENN received its National Safety Mark, the province of British Columbia vowed to improve their support for electric vehicles, and granted the right to each municipality to make LSVs legal on their roads. As of November 2008, The City of Vancouver and the township of Oak Bay, a suburb near Victoria are the only municipalities to grant LSV use.

In Ontario, LSVs can be used on roadways within provincial or municipal parks and conservation areas (when driven by an authorized park employee) or on private property.

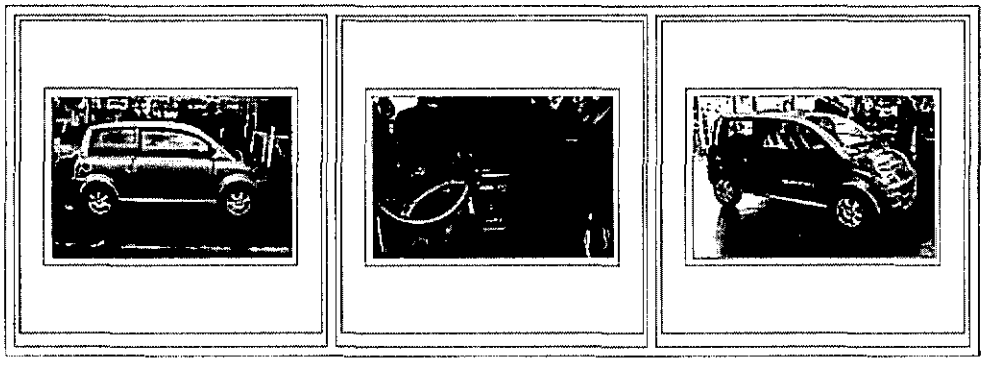
On June 17, 2008, Quebec announced a pilot project for the ZENN, which would allow residents of Quebec to drive a ZENN in Canada.[10] On October 4th, 2008 ZENN Motor Company opened up a retailer

out of its production plant in St. Jérôme with a factory direct approach to sales. This marked the first time a ZENN or any other low-speed commercial vehicle could be sold in Canada.

Awards

In the Michelin Challenge Bibendum 2006, ZENN received the highest overall rank in the Urban Car category.

Gallery



Competitors in light electric vehicles

- Aixam (neighborhood electric vehicle)
- Bolloré Blue Car
- Buddy
- Citroen Berlingo Electrique
- Dynasty IT
- G-Wiz (REVA)
- Italcar
- Mini E
- Nissan Nuvu
- Pininfarina B0
- Renault Z.E.
- Smart EV (production car)
- Subaru R1e (2009)
- The Kurrent (neighborhood electric vehicle).
- Th!nk City (production car).
- **ZENN**

Comparison with selected light electrical cars

Maker	Top speed	Range
Kewet Buddy	80 km/h	40 - 80 km

CityEl	63 km/h	80 - 90 km
Dynasty IT	40 km/h	50 km
REVA	70 km/h	80 km
The Kurrent	40 km/h	60 km
Th!nk City	100 km/h	170 km

References

1. ^ Ehrlich, David (2008-03-31). "Zenn Gearing up for EEStor-powered car". Cleantech Group. http://media.cleantech.com/2644/zenn-gearing-up-for-eestor-powered-car. Retrieved on 2008-06-24.
2. ^ "investor / EEStor". http://www.zenncars.com. Retrieved on 2008-07-09.
3. ^ http://theeestory.com/topics/27
4. ^ http://theeestory.com/topics/17
5. ^ http://www.technologyreview.com/business/18086/
6. ^ [http://www.zenncars.com/media/press_rel/03_08/ZMCAnnouncesPlans.pdf "ZENN MOTOR COMPANY DETAILS PLANS FOR HIGHWAY CAPABLE ZENN POWERED BY EESTOR"] (PDF). ZENN Motor Company Inc.. 2008-03-28. http://www.zenncars.com/media/press_rel/03_08/ZMCAnnouncesPlans.pdf. Retrieved on 2008-07-09.
7. ^ "zenncars.com - *Ian Clifford discusses the ZENN, EESTor.*. - June 02, 2008". http://www.zenncars.com/media/audio/evcast.mp3.
8. ^ "Auto makers catch whiff of new fuel sources". http://www.theglobeandmail.com/servlet/story/LAC.20080526.FUELS26/TPStory/Environment.
9. ^ "Electric car maker charges Ottawa blocking its sale in Canada". http://www.cbc.ca/canada/story/2007/10/26/electriccar-zenn.html.
10. ^ "ZENN Motor Company Evaluating Canadian Expansion". http://www.foxbusiness.com/story/markets/industries/industrials/enn-motor-company-evaluating-canadian-expansion/-1441685563.

External links

- ZENN Motor Company (http://www.ZENNcars.com/index.html)
- The Challenge Bibendum Paris 2006: wrap-up (http://www.challengebibendum.com/challenge/front/affich.jsp?codeRubrique=43&lang=EN&newsID=17927)
- Low-Speed Vehicle Pilot Test FAQ (http://www.mto.gov.on.ca/english/dandv/vehicle/emerging/lsv-faq.htm)
- Support for legislation change in Canada to allow Zenn Cars to be sold here. (http://www.iwantazenn.com)
- http://www.eestorbatteries.com - Information, News, Articles, and Discussion Board for EEstor Batteries and Zenn Motor Company.

In The News

- Battery Breakthrough? - 1/22/2007 (http://www.technologyreview.com/Biztech/18086/)
- Better Batteries Charge Up - 8/05/2008 (http://www.technologyreview.com/Energy/21171/)

Retrieved from "http://en.wikipedia.org/wiki/ZENN"
Categories: Production electric vehicles | Alternative propulsion | Automotive technologies | Battery electric vehicles | Electric vehicles | Green vehicles | Sustainable technologies | Low-speed vehicles
Hidden categories: All articles with unsourced statements | Articles with unsourced statements since February 2009

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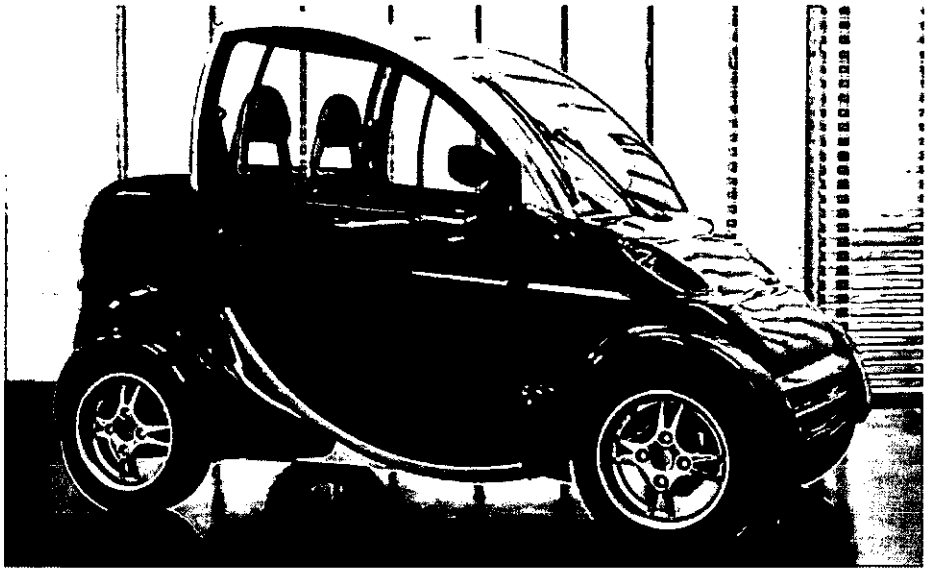


wheego
All Electric

State of Alaska Division of Motor Vehicles Standard Operating Procedures	SOP No.: R-465	Page No.: 1
	Effective: February 24, 2009	
Subject:	Supersedes: NEW	Dated:
LOW-SPEED VEHICLES (LSV)	Form No.: 812	
Statute: AS 28.90.990 (14)	Regulation: AAC	

Fees | Modifications | Plates

A low-speed vehicle (LSV) or neighborhood electric vehicle (NEV) is a passenger vehicle that meets the following criteria:

- Four wheels
- Maximum GVWR of 3,000 pounds (49 CFR 571.3)
- Manufactured to be capable of propelling itself
- Maximum speed of 25 miles an hour
- Has not been modified to have a maximum speed greater than 25 miles an hour (See "Modifications" section)

GENERAL INFORMATION

The operator of a low-speed vehicle is subject to all the traffic and other laws applicable to operators of passenger vehicles. A low-speed vehicle may not be operated on a highway that has a maximum speed of more than 35 miles an hour; however, a low-speed vehicle may cross a highway that has a maximum speed limit of more than 35 miles an hour if the crossing is made at the intersection with a highway that is authorized for low-speed vehicles.

APPLICATION REQUIREMENTS

- Application for Title & Registration (Form 812).
- MCO should state "Low-Speed Vehicle" or "Neighborhood Electric Vehicle"
- Issue month and year tabs as per normal registration procedures.

Return to Top

FEES

CLASS	VEHICLE TYPE / WEIGHT	HV	REGISTRATION		MVRT	I/M	PLATE	TRANSFER
	Commercial		Annual	Biennial				
91	0 -- 3,000 lbs.	N	$ 90	$180	Y	N	LSV	N
	Non-Commercial							
11	Passenger Vehicle	N	N/A	$100	Y	N	LSV	N

Return to Top

PLATE CONFIGURATION: LSV001 - LSV999

PLATE TYPE NUMBER: 8242000

When the plates are lost or damaged, charge a replacement plate fee per AS 28.10.441(3).

LSV license plates will only be stocked at the Anchorage Field Offices (Benson and Fairbanks Street locations). If you do not work at one of these locations:

- Issue a temporary permit (T-090).
- Contact your supervisor for a license plate number.
- Clear temporary with the plate number and take in the ORIGINAL documents.
- Issue registration and tabs.
- Advise your customer that the license plates will be mailed to them. They need to display the temporary until the plates are received. Place month and year tabs on the rear license plate.

MODIFICATIONS

When a low-speed vehicle has been modified to have a maximum speed greater than 25 miles an hour, it no longer meets the requirements of a low-speed vehicle, and cannot be registered as a low-speed vehicle. Once the vehicle has been modified, it may no longer meet Federal Highway Safety Standards to be eligible for passenger registration. The vehicle would not be eligible for registration in Alaska.

In order to be registered as a passenger vehicle, the MCO must state that the vehicle meets Federals Highway Safety Standards. If it does not, an inspection is required to assure that the vehicle has a compliance sticker stating that it meets Federal Highway Safety Standards.

Cross Reference:

App A	Addresses	T-020	Used Vehicles
R-005	Biennial Registration	T-090	Temporary Permit
R-115	Passenger Vehicles		

HISTORY:

02/24/09 ~ Added MODIFICATIONS information.

12/03/07 ~ Added plate type number.

04/11/06 ~ Criteria changed from Unladen weight of 2,500 pounds or less to maximum GVWR or 3,000 pounds.

07/01/07 ~ Changed location for plates from Nome office to Fairbanks Street office. Contact supervisor for plate number and clear temporary.

THIS IS THE LAST REGISTRATION SOP

Return to Top / Go to Index - Accounting, Boat, DL, CDL, Registration & Title

State of Alaska Division of Motor Vehicles Standard Operating Procedures	SOP No.: R-60	Page No.: 1
	Effective: December 3, 2007	
Subject:	Supersedes: R-60	Dated: 2/14/01
FARM VEHICLES	Form No.: 812, 821	
Statute: AS 28.10.181 (h); AS 28.10.421 (E) (6)	Regulation: AAC	

Vehicles owned by ranchers, farmers, dairymen as well as greenhouses and nurseries may qualify for "Farm" license plates or reduced fees provided they meet **all** of the following requirements:

1. The vehicle does not exceed 20,000 pounds unladen weight. Weight must be entered in ALVIN **AND**
2. Vehicle must be owned by a person (Per **AS 01.10.060**, "persons" include a corporation, company, or any other business entity. A business may qualify for Farm plates if the business address is at the farm, ranch, dairy, nursery or greenhouse.) deriving their primary source of livelihood from the operation of a ranch, farm, dairy, nursery or greenhouse that is used exclusively to transport:
   - the person's own ranch, farm, or dairy products, or greenhouse or nursery product, including vegetables, plants, grass seed, sod, or tree seedlings, to and from the market, **or** supplies, commodities, or equipment to be used on the person's ranch, farm, or dairy, or in the person's greenhouse or nursery.

APPLICATION REQUIREMENTS:

1. Applicant must be either the sole or joint owner of a non-commercial vehicle. Leased vehicles are not eligible for farm plates.
2. Application for Title & Registration (Form 812) or Vehicle Transaction Application (Form 821).
3. A statement in the affidavit or comments section of the application is required. It must state:
   - The person's full-time residence is on the ranch, farm, or dairy* **AND**
   - They derive their main source of income from such **AND**
   - They wish to obtain Farm plates.
4. Other requirements of registration if the vehicle is not currently registered.

***The owner of a greenhouse or nursery is not required to attest to the first statement.**

CLASS	VEHICLE TYPE	HV	BIENNIAL REGISTRATION	MVRT	I/M	PLATE / TRANSFERABLE	
61	Any (Under 20,000)	Y	$68	N	Y	Farm/Standard*	N**

*When the current supply of FARM plates have been exhausted, issue standard plates.

**If a vehicle with FARM plates is sold, the vehicle owner must meet all of the requirements and make the statements as per an original request in order to keep the FARM plates on the vehicle.

WHEN A VEHICLE WITH FARM PLATES (OR CLASS 61 WITH STANDARD PLATES) IS SOLD, AND THE PURCHASER DOES NOT MAKE THE REQUIRED STATEMENTS TO RETAIN THE FARM CLASS CODE, REGISTRATION STARTS OVER AND ALL FEES ARE REQUIRED

Plate Configuration: 4 numbers followed by FA (FARM imprinted on bottom of plate) If Standard plates were issued, 3 alpha / 3 numeric

PLATE TYPE NUMBER: 8236000

Cross Reference:

Appendix A	DMV Addresses	T-090	Temporary Permits
R-107	Heavy Vehicle Use Tax		
R-430	Emission Control Inspection Program		

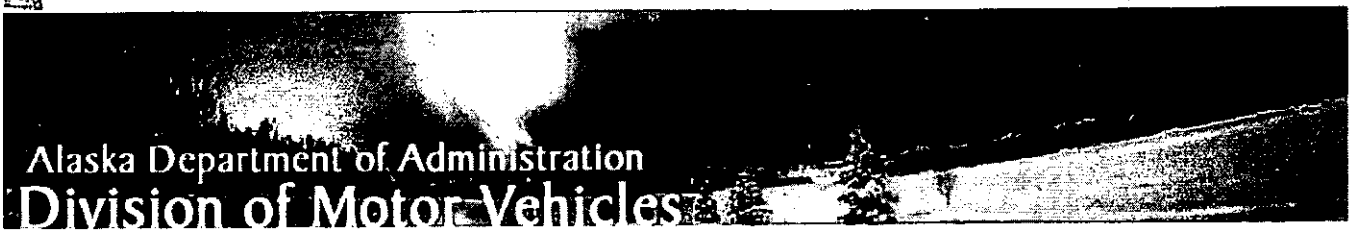
HISTORY:

12/3/07 ~ Added plate type number.

8/13/07 - Weight change from 16,000 to 20,000 (SB 130)

NEXT SOP

Return to Top / Go to Index - Accounting, Boat, DL, CDL, Registration & Title



Farm Vehicle Plates

To qualify and apply for farm plates, an applicant must make a statement in the affidavit section of the Title & Registration Application that they live on a ranch, farm or dairy, and derives their main source of income from a ranch, farm or dairy, and that the vehicle weighs under 16,000 lbs., unladen weight, and is used only for transporting ranch, farm, or dairy products to or from market or for the transportation of supplies, commodities, or equipment to be used on a ranch, farm or dairy.

If a vehicle weighs over 16,000 lbs., unladen weight, the vehicle must be registered as a commercial vehicle and does not qualify for farm plates.

If the vehicle meets the requirements for heavy vehicle use tax, they are not exempt from this requirement because of the farm plates.

The registration fee for a farm vehicle is $68.00 and is valid for two years, regardless of the body style or weight of the vehicle.

Quick Links

- DMV Web Cameras
- Online Address Change
- Online Registration Renewal
- Personalized Plates Online

Of Interest

- Forms
- General Information
- Links to Other Related Sites
- Office Locations/Hours
- Office Closures
- Regulations
- Research Materials
- Senior Citizen Information
- Statistics
- Table of Contents
- Partner Information

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: March 27, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 4/8/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 194**

"An Act relating to the operation of low-speed vehicles."

HB 194 LOW-SPEED MOTOR VEHICLES

Recommends it be replaced with [ ] HCS *or* [√] CS *for* HB194 (TRA)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
DOT	1			√

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Greenberg			√	
	Holmes			X	
	Gatto			X	
Chair:	RAMRAS	X			
Chair:					

~~WITHDRAWN~~
NOT OFFERED

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: CSHB 194(TRA)

Page 1, line 6, following "may":

Insert "**operate that vehicle**"

Page 1, line 7:

Delete "**operate that vehicle**"

Page 2, lines 3 - 8:

Delete all material and insert:

"**(2) across an intersection with** [CROSS] a highway that has a maximum speed limit **greater than is permissible** [OF MORE THAN 35 MILES AN HOUR IF THE CROSSING IS MADE AT THE INTERSECTION WITH A HIGHWAY THAT IS AUTHORIZED] for low-speed vehicles **under this subsection**."

HB

201

1971

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Carl Gatto
Room 108
(907) 465-3743

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 1, 2009

To: Representative John Coghill
Chairman, House Rules Committee

From: Representative Jay Ramras
Chairman, House Judiciary Committee

Re: Referral File for HB201

Please accept this memo as the referral file for HB201. Attached please find the following documents:

- Sponsor Statement
- CSHB201(JUD) (26-LS0683\S)
- HJUD Amendment #1
- HB201 (26-LS0683\R)
- DPS Zero Fiscal Note
- Back-up
- Letters of Support
- HJUD Committee Report

ALASKA STATE LEGISLATURE

Interim:
716 West 4th Avenue, Suite 640
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99801-1182
Phone (907) 465-4993
Fax (907) 465-3872

REPRESENTATIVE CRAIG JOHNSON
HOUSE DISTRICT 28

Sponsor Statement
Concealed Handgun Birthday Permit
HB 201

June 2003 Alaska Governor Frank Murkowski signed into law the bill allowing citizens to carry firearms concealed without getting a permit. The bill had 33 co-sponsors, from both chambers, and passed on a veto-proof vote of 28 to 12 in the House and 12 to 8 in the Senate.

The permit is still available for those who would want to travel to other states that have reciprocity with Alaska. Since the permit is not necessary in Alaska some permit holders forget the renewal date.

This bill changes the expiration date of a concealed handgun permit from five years from the date of issue to the person's birthday. The first year is a transitional year where the permit will be issued for a minimum of 4 year and how ever many months it is until the person's birthday. All permits after that will be for 5 years.

AMENDMENT #1

26-LS0683\R.1
Luckhaupt
4/1/09

AMENDMENT

COGHILL

OFFERED IN THE HOUSE BY REPRESENTATIVE [redacted]

TO: HB 201

Page 1, line 5:

Delete "**license**"

Insert "**permit**"

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 201**
() Publish Date:

Identifier (file name): **HB201-DPS-R&I-03-26-09**
Title "Concealed Handgun Permits"
Sponsor Representative Johnson
Requester House Judiciary Committee

Dept. Affected: Public Safety
RDU Statewide Support
Component Records & Identification
Component Number 1190

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This legislation amends AS 18.65.700(d) to make a concealed handgun permit expire on the person's birthday in the fifth year following issuance of the permit, rather than five years from the date the permit was issued.

Passage of this legislation will have no fiscal impact on the department.

Prepared by: David Schade, Director — Phone (907) 269-0202
Division Statewide Services — Date/Time 3/31/09 1:10 PM
Approved by: Joseph A. Masters, Commissioner — Date 3/31/2009
Department of Public Safety

(Revised 9/10/2008 OMB)

Handguns

- Permit to carry handguns? No*

*According to the National Rifle Assc., "A permit to carry a concealed handgun is not necessary in Alaska, but permits are available to those who want to carry in states that recognize Alaska permits."

Carrying

Any person 21 years of age or older may carry a handgun concealed on their person provided that, when contacted by a police officer, informs the officer of that possession and allows the police officer to secure the handgun for the duration of that contact.
Any person 21 years of age or older may carry a handgun concealed on their person provided that, when contacted by a police officer, informs the officer of that possession and allows the police officer to secure the handgun for the duration of that contact.

A permit to carry a concealed handgun is available for those individuals who desire a means to carry a concealed handgun in states that honor Alaska's permit to carry.

A person can obtain a permit to carry a concealed handgun if the person:

- Is 21 years of age or older.
- Is eligible to own or possess a firearm under state and federal law.
- Has been a resident of the state for 90 days preceding application for permit.
- Has not been convicted of two or more class A misdemeanors within the preceding six years.
- Is not currently or has not within three years been ordered by a court to complete an alcohol treatment or substance abuse program.
- Has demonstrated competence with handguns.

Permits

The Department of Public Safety shall issue a permit to a person who applies in person at an office of the Alaska State Troopers and is not prohibited from possessing a handgun.

A completed application must be submitted under an oath. The applicant must provide two complete sets of fingerprints and two frontal view color photographs taken within 30 days prior to submitting application. An applicant must not suffer a physical infirmity that prevents the safe handling of a handgun.

1976

A permit is valid for five years. Applications, permits, and renewals are not public records and can only be used for law enforcement purposes.

The Department shall either approve or reject an application within 30 days of receipt. A person shall apply in person for renewal of a permit to carry within 90 days before the expiration of the permit and shall present a complete renewal form under an oath. A permit to carry shall be immediately revoked if the permittee becomes disqualified to receive and hold a permit. A person whose permit is revoked may appeal to the commissioner. If the commissioner upholds the revocation, a person may seek judicial review. If the permit is revoked, such a person cannot apply for a permit until at least five years after it is revoked.

- A person carrying a concealed handgun may not carry it into any place prohibited by law.
- When entering the residence of another person, one must notify the resident that they are carrying a concealed handgun.
- A municipality may not restrict the carrying of a concealed handgun by permit.
- A permit holder from with a valid permit from other jurisdictions is considered an Alaska permit holder.

Source: **National Rifle Association of America, Institute for Legislative Action**

Public Safety Statewide Services

Alaska Concealed Handgun Permits

Special Fee Change Notice:

Effective October 1, 2007, the application fee for a new Alaska Concealed Handgun Permit will be reduced to $94.25. This reflects a reduction in the cost of conducting national criminal background checks. Fees for renewal and replacement applications will remain at $25.00; only the fee for new applications is affected by this change. Applications received by the Department of Public Safety after October 1, 2007 must be accompanied by the fee of $94.25.

Alaska Statute 11.61.220 allows anyone 21 or older, who may legally carry a firearm to also carry it concealed without having to obtain a special permit. The possession of a firearm at courthouses, school yards, bars and domestic violence shelters will continue to be prohibited. Alaskans may obtain a concealed carry permit if they want reciprocity with other states.

A person 21 or older may be charged with Misconduct involving Weapons in the 5th degree under AS 11.61.220 if s/he

- fails to immediately inform a peace officer that s/he is carrying a concealed handgun
- fails to allow the officer to secure the weapon or fails to secure the weapon at the direction of the peace officer, or
- carries the weapon concealed within another person's residence, unless s/he has first obtained the express permission of an adult residing there, whether or not the person has a concealed handgun permit.

Concealed Handguns Resources

- Frequently Asked Questions about Alaska Concealed Handgun Permits
- Reciprocity
- List of Approved Fingerprinters
- Alaska Statutes and Regulations concerning Alaska concealed handgun permits

Forms

- Address Change for a Concealed Handgun Permit
- Application for Permit Renewal
- Concealed Handgun Permit Application
- Replacement/Name Change of a Concealed Handgun Permit

For more information contact the Permits and Licensing Unit

Instructions

Things You'll Need:

- Application
- $94.25 fee
- One recent photograph
- One set fingerprints
- Certificate of handgun course

Step 1

You must be a resident of Alaska and lived in the state at least ninety days to obtain the permit.

A convicted felon cannot legally conceal a firearm in the State of Alaska

Alaska will honor all valid permits to carry a concealed handgun from other states.

Step 2

The application for the permit is fairly simple. You must be at least twenty one years old, submit a photo taken in the last thirty days, a complete set of finger prints taken by an approved agency, proof of completing the handgun course, a Alaska drivers license or ID, and the ninety four dollars and twenty five cent application fee.

Step 3

The handgun safety course in Alaska is twelve hours and it concentrates on Alaska laws, the legal systems, and where you can and cannot carry a firearm. It also covers a review of basic marksmanship skills, the function of the double action revolver and the semi-auto pistol, the handling and operations needed to fire the weapons, and a live fire qualification the following day.

Alaska Concealed Handgun Permits

Frequently Asked Questions

New Applications:

Q: What are the procedures to apply for an Alaska Concealed Handgun Permit?

A: You must complete a handgun training course approved by the Department of Public Safety. Within one year after completion of the training course, submit your completed application in person to any State Trooper office. Your application must include:

The completed application
One photograph taken within 30 days of the date on the application,
One set of identifiable fingerprints taken by a Department-approved technician,
Proof of successful completion of a handgun course, and
The $94.25 application fee.

Q: How much does it cost to get an Alaska concealed handgun permit?

A: The application fee is $94.25.

Q: Can I get my money back if my application is not approved?

A: No. Application fees are non-refundable. Please make sure that you qualify before you turn in your application. See Alaska Statute 18.65.705 for a list of qualifications to obtain an Alaska Concealed Handgun Permit.

Q: Can someone else bring in my new application for a Concealed Carry Permit?

A: No. The application for a new permit must be submitted in person to any Alaska State Trooper office. You will be asked to show a government issued photographic identity card (e.g., Alaska Driver's License or Alaska State Identification Card).

Q: For how long is my Alaska concealed handgun permit valid?

A: Permits are issued for 5 years.

General Qualification Questions:

Q: Are non-residents allowed to have an Alaska concealed handgun permit?

A: No. Only Alaska residents may have an Alaska concealed handgun permit. You must establish residency in the State of Alaska and may apply for a permit after you have been here at least 90 days.

Q: If I am a legal resident alien, can I get an Alaska concealed handgun permit?

A: Yes, provided you are a legal resident of Alaska and have lived in Alaska at least 90 days.

Q: If I am in the military and just transferred here, can I get an Alaska concealed handgun permit?

A: If you intend to become an Alaska resident, you may qualify to apply for an Alaska concealed handgun permit after you have been here for 90 days.

Q: I have moved out of the state. Can I still renew my Alaska concealed handgun permit?

A: No. Only Alaska residents may possess an Alaska concealed handgun permit.

Q: Does a conviction that has been 'set aside' count as a conviction as it applies to qualifications for an Alaska concealed handgun permit?

A: Yes. See 13 AAC 30.900(6) for the definition of conviction as it applies to the Alaska Concealed Handgun Program.

Q: I was convicted of a felony, but the conviction was later 'set aside'. Am I eligible to obtain an Alaska Concealed Handgun Permit?

A: No. A convicted felon who has <u>not</u> had the conviction vacated by a court as a result of motion, appellate action, petition for writ of habeas corpus, or application for post-conviction relief under Rule 35.1 of the Alaska Rules of Criminal Procedure or a similar procedure in another jurisdiction, <u>cannot be issued an ACHP</u> because they cannot legally conceal a firearm on the person except in two limited circumstances. See AS11.61.200 for these circumstances.

Permit renewal/lost/change of name or address:

Q: My permit is about to expire; what do I need to do to keep my permit valid?

A: Complete the Renewal of a Concealed Handgun Permit form (form # 12-299-84) and submit it to the ACHP office. You are not required to deliver it in person. You may apply to renew your concealed handgun permit by mail.

Renewal forms are available on-line on the ACHP Home Page. Mail your application to:

Alaska Concealed Handgun Permit Office

5700 E. Tudor Road

Anchorage, AK 99507

Renewal applications must be postmarked not more than 90 days before your concealed handgun permit expires. Include your renewal application, a recent photograph and the $25 non-refundable fee.

A permit submitted on or after the expiration is subject to an additional $25 late fee. The department will not accept a renewal for a permit submitted more than 60 days after the expiration date of the permit. (If more than 60 days have elapsed since your permit expired, you must submit an application for a new permit.)

Q: Do I have to return my old permit when I receive my renewal?

A: Yes. When you receive your renewed permit, return the old permit to the Alaska Concealed Handgun Permit Office at 5700 East Tudor Road, Anchorage, Alaska, 99507.

Q: What do I do if my permit is lost or stolen?

A: You must complete and submit an Application for Replacement of a Concealed Handgun Permit (Form 12-299-85). This form (which must include a new photograph) must be submitted in person at any Alaska State Trooper office. The replacement fee is $25.

Q: If I move, do I notify the Department of Public Safety?

A: You must notify the Department of a change of address within 30 days. Changes of Address forms (12-299-88) are available on line from the ACHP Home Page, or you may contact the Alaska Concealed Handgun Office at (907) 269-0392. This form may be mailed to:

Alaska Concealed Handgun Permit Office

5700 East Tudor Road

Anchorage, AK, 99507

There is no charge to change your address.

Q: Is my Alaska concealed handgun permit valid if I move out of Alaska?

A: Your permit is valid only as long as you are an Alaska resident. Return your permit to the Alaska Concealed Handgun Permit Office. We will place your permit in an inactive status. If you return to Alaska and re-establish your residency before your permit expires, your permit may be reactivated at that time.

Q: What do I do if my legal name changes?

A: Complete and submit an Application for Replacement (form 12-299-85) to any State Trooper office. You must provide an official court document or marriage license in support of this change, and pay the $25 fee.

Reciprocity:

Q: If I have an Alaska concealed handgun permit, can I carry my concealed handgun in another state?

A: Your Alaska concealed handgun permit does not allow you to carry a concealed handgun in another state, unless that state recognizes Alaska permits. It is important for permit holders to understand that when they are traveling in or through another state they are subject to the firearm laws of that state.

However, check the 'Reciprocity' link on the ACHP home page for a list of states that have indicated they will honor Alaska's permits. Note that this link is updated in the first quarter of every year. Some information may have changed. You should verify the requirements of the state to which you will be moving/traveling before you carry a concealed handgun in that state.

Q: Can I take firearms into Canada?

A: Contact the Canadian Firearms information Office at (800) 731-4000 for information about taking firearms into Canada.

Q: Will Alaska honor permits from other states?

A: Alaska will honor a valid permit to carry a concealed handgun from another state or subdivision of a state.

General Questions:

Q: Can I carry my handgun in the glove box of my vehicle?

A: Local ordinances vary from city to city in Alaska. Contact your city, borough, or municipal police department and ask them about their ordinances concerning firearms and concealed weapons.

Q: Will the state limit the number of handgun instructors or permit holders?

A: No.

Q: I am a retired peace officer. I retired several years ago when the concealed program provisions were not in effect. Can I be "grand-fathered" into the permit program and allowed to waive the certification training?

A: No. You must apply for a concealed handgun permit within one year of your retirement in order to qualify for the honorably retired peace officer provisions of the law.

Q: Do I have to notify the Permits and Licensing Unit when I purchase another handgun?

A: No. For additional information about purchasing and/or selling firearms, contact your local Federal Bureau of Alcohol, Tobacco, and Firearms office.

Public Safety
Statewide Services

Reciprocity

Alaska Statute 18.65.748 states that a person holding a valid permit to carry a concealed handgun from another state or a political subdivision of another state is a permittee under AS 18.65.700 (b) for purposes of AS 18.65.750 - 18.65.765.

Alaska Statute 18.65.775 requires the Department of Public Safety to enter into reciprocity agreements with other states that have the legal authority to enter into such agreements so that Alaska Concealed Handgun permittees may carry concealed handguns in those other states.

Annually, the Department of Public Safety will review legislation in other states to determine if a reciprocity agreement is required or if an existing agreement is still valid. It is important for permit holders to understand that when they are traveling in or through another state they are subject to the firearm laws of that state. You should verify the requirements of the state to which you will be moving/traveling before you carry a concealed handgun in that state.

The following states recognize valid Alaska concealed handgun permits:

1. Alabama
2. Arkansas
3. Arizona (Agreement)
4. Colorado
5. Delaware
6. Florida (Agreement)
7. Georgia
8. Idaho
9. Indiana
10. Kansas
11. Kentucky
12. Louisiana
13. Michigan
14. Minnesota
15. Mississippi
16. Missouri
17. Montana
18. Nevada
19. New Hampshire
20. New Mexico
21. North Carolina
22. North Dakota (Agreement)
23. Ohio (Agreement)
24. Oklahoma (Agreement)
25. Pennsylvania (Agreement)
26. South Carolina
27. South Dakota (Agreement)
28. Tennessee
29. Texas (Agreement)
30. Utah
31. Vermont
32. Virginia (Agreement)
33. West Virginia
34. Wyoming (Agreement)

The following states will not recognize Alaska concealed handgun permits:

1. California
2. Connecticut
3. Hawaii
4. Illinois
5. Iowa
6. Maine
7. Maryland
8. Massachusetts
9. Nebraska
10. New Jersey
11. New York
12. Oregon
13. Rhode Island
14. Washington
15. Wisconsin

Click on the state of interest to visit their web site or click on 'Agreement' to view a printable copy of the actual agreement. Please note that some states do not require a written 'agreement', but have verified in writing that they will honor Alaska Concealed Handgun Permits.

Any person traveling to a state that has agreed to honor Alaska permits is encouraged to visit that state's web site to review laws and regulations specific to that state.

MEMORANDUM OF AGREEMENT

between

The Commonwealth of Pennsylvania

and

The State of Alaska

concerning Handgun License Reciprocity for Concealed Carry

WHEREAS, the Commonwealth of Pennsylvania has the authority to issue a License to Carry a Firearm pursuant to 18 Pennsylvania Consolidated Statutes Annotated § 6109; and

WHEREAS, the State of Alaska has the authority to issue a Concealed Handgun License pursuant to AS 18.65.700; and

WHEREAS, the Commonwealth of Pennsylvania is authorized to recognize the validity of a nonresident concealed handgun license if the Pennsylvania Attorney General determines that a background check of each applicant for a license issued by the other state is conducted by state or local authorities, or agent thereof, before the license is issued to determine the applicants' eligibility to possess a firearm under the Federal Gun Control Act (18 U.S.C. § 922); and

WHEREAS, the Attorney General for the Commonwealth of Pennsylvania has made such affirmative determination with respect to the State of Alaska; and

WHEREAS, the State of Alaska is authorized, pursuant to AS 18.65.748, to recognize the validity of a permit to carry a concealed handgun issued by another state; and

WHEREAS, the Attorney General of the Commonwealth of Pennsylvania is authorized, pursuant to 18 Pennsylvania Consolidated Statutes Annotated § 6109(k), to enter into reciprocity agreements with other states providing for the mutual recognition of each state's license to carry a firearm; and

WHEREAS, the Attorney General of the Commonwealth of Pennsylvania has determined that the State of Alaska meets the requirements for reciprocity with the Commonwealth of Pennsylvania; and

WHEREAS, Handgun License reciprocity between Alaska and Pennsylvania is thus supported by the laws of both states;

NOW, THEREFORE, the parties do hereby agree as follows:

RECEIVED
AK DEPT. OF
PUBLIC SAFETY
OCT 19 2005
RI ANCHORAGE

1. The Commonwealth of Pennsylvania shall give full faith and credit to a valid Concealed Handgun License issued by the State of Alaska; and

2. The State of Alaska shall consider holders of a valid Concealed Handgun License issued by the Commonwealth of Pennsylvania to be concealed handgun permittees in Alaska as required by Alaska Stat. § 18.65.748; and

3. Persons carrying a concealed firearm pursuant to this Memorandum of Agreement shall comply with all applicable concealed carry laws, rules and regulations of the respective states, including, but not limited to, age requirements and restrictions regarding the type of firearms that may be carried; and

4. The State of Alaska and the Commonwealth of Pennsylvania will inform each other of any changes to their respective weapons statutes that may affect the eligibility of the recognition granted by each state pursuant to this Memorandum of Agreement.

This Memorandum of Agreement becomes effective on the date of the final signature and shall continue in effect unless modified by mutual written consent, or terminated by either state upon thirty (30) days' written notice. This document is not intended to limit or restrict the statutory authority or jurisdiction of either state.

WILLIAM TANDESKE
Commissioner of Public Safety

DATE 10-24-05

ROBERT A. MULLE
Chief Deputy Attorney General
for Attorney General of Pennsylvania

DATE 10/13/05

Alaska Statutes and Regulations

Concerning Alaska Concealed Handgun Permits

Alaska Concealed Handgun Permit Program

Department of Public Safety, Division of Statewide Services
5700 East Tudor Road
Anchorage, Alaska 99507
(907) 269-0392
http://www.dps.state.ak.us/PermitsLicensing/

1987

ALASKA CONCEALED HANDGUN PERMIT INFORMATION

AS 01.10.055. Residency.

(a) A person establishes residency in the state by being physically present in the state with the intent to remain in the state indefinitely and to make a home in the state.

(b) A person demonstrates the intent required under (a) of this section

(1) by maintaining a principal place of abode in the state for at least 30 days or for a longer period if a longer period is required by law or regulation; and

(2) by providing other proof of intent as may be required by law or regulation, which may include proof that the person is not claiming residency outside the state or obtaining benefits under a claim of residency outside the state.

(c) A person who establishes residency in the state remains a resident during an absence from the state unless during the absence the person establishes or claims residency in another state, territory or country, or performs other acts or is absent under circumstances that are inconsistent with the intent required under (a) of this section to remain a resident of this state. (§ 1 ch 67 SLA 1983).

Note: AS 18.65.705(3) requires that an applicant be a resident of the state and has been for the 90 days immediately preceding the application for the permit.

TITLE 18. HEALTH, SAFETY, AND HOUSING
CHAPTER 65. POLICE PROTECTION
ARTICLE 10. PERMIT TO CARRY A CONCEALED HANDGUN

Sec. 18.65.700. Permit to carry a concealed handgun.

(a) The department shall issue a permit to carry a concealed handgun to a person who
(1) applies in person at an office of the Alaska State Troopers;
(2) qualifies under AS 18.65.705 ;
(3) submits a completed application on a form provided by the department, that provides the information required under AS 18.65.705 and 18.65.710; with each application form provided by the department, the department shall provide a copy of the state laws and regulations relating to concealed handguns, which must include a concise summary of where, when, and by whom a handgun can be carried under state and federal law;
(4) submits one complete set of fingerprints on a Federal Bureau of Investigation approved fingerprint card that is of sufficient quality so that the fingerprints may be processed; the fingerprints must be taken by a person, group, or agency approved by the department; the department shall maintain a list of persons, groups, or agencies approved to take fingerprints and shall provide the list to the public upon request; the fingerprints shall be used to obtain a report of criminal justice information under AS 12.62 and a national criminal history record check under AS 12.62.400 ;
(5) submits evidence of successful completion of a handgun course as provided in AS 18.65.715 ;
(6) provides one frontal view color photograph of the person taken within the preceding 30 days that includes the head and shoulders of the person and is of a size specified by the department;
(7) shows a valid Alaska driver's license or identification card at the time of application;
(8) does not suffer a physical infirmity that prevents the safe handling of a handgun; and
(9) pays the application fee required by AS 18.65.720 .

(b) The department shall either approve or reject an application for a permit to carry a concealed handgun under (a) of this section within 30 days of receipt of the application. If the department has not received necessary fingerprint eligibility information from another agency by the end of this 30-day period, and the applicant is otherwise eligible, the department shall issue a conditional permit to the applicant subject to immediate revocation under the procedure provided in AS 18.65.740(a) - (c) if the fingerprint information subsequently discloses that the applicant is ineligible for a permit. The department shall notify the applicant in writing of the reason for a rejection.

(c) A person whose application is rejected under this section may appeal the rejection decision to the commissioner. A person may seek judicial review of the decision of the commissioner under AS 44.62.560 - 44.62.570.

(d) A permit issued under (a) of this section is valid for five years from the date of issue.

(e) The department shall issue a permit to carry a concealed handgun to an honorably retired peace officer of this state who applies for a concealed handgun permit within one year of the officer's retirement and who satisfies the requirements of this subsection. To qualify for a permit under this subsection, an honorably retired peace officer must satisfy (a)(1) - (3) and (6) - (9) of this section and, unless the honorably retired peace officer has qualified with a handgun within five years of the officer's retirement, must also satisfy (a)(5) of this section. The department may not require an honorably retired peace officer applying under this subsection to comply with (a)(4) of this section to receive a permit. The department shall issue the permit without submitting information to or receiving permit eligibility information from the Federal Bureau of Investigation. The department may adopt regulations to define an "honorably retired peace officer" and the evidence that must be submitted to establish eligibility under this subsection.

Sec. 18.65.705. Qualifications to obtain a permit.

A person is qualified to receive and hold a permit to carry a concealed handgun if the person

(1) is 21 years of age or older;
(2) is eligible to own or possess a handgun under the laws of this state and under federal law;
(3) is a resident of the state and has been for the 90 days immediately preceding the application for a permit;
(4) has not been convicted of two or more class A misdemeanors of this state or similar laws of another jurisdiction within the six years immediately preceding the application;
(5) is not now in and has not in the three years immediately preceding the application been ordered by a court to complete an alcohol or substance abuse treatment program; and
(6) has successfully completed a handgun course as provided in AS 18.65.715.

Sec. 18.65.710. Application for permit to carry a concealed handgun.

(a) The application for a permit to carry a concealed handgun must contain the following information:

(1) the applicant's name, physical residence, mailing address, place and date of birth, physical description, including height, weight, race, hair color, and eye color, Alaska driver's license or identification card number, and the city and state of each place the applicant has resided in the five years immediately preceding the application;
(2) a statement that the applicant qualifies under AS 18.65.705 ;
(3) a statement that the applicant has been furnished with a copy of the state laws and regulations relating to concealed handguns, has read those sections, and understands them;
(4) a statement that the applicant desires a permit to carry a concealed handgun for a lawful purpose, which may include self-defense;
(5) a statement by the applicant that all statements, answers, and attachments to the application are true and complete;
(6) a conspicuous warning that an applicant who supplies a false statement, answer, or document in connection with the application that the applicant does not believe to be true may be prosecuted for unsworn falsification and, if found guilty, may be punished for violation of a class A misdemeanor, and that, in such cases, the permit shall be revoked and the applicant may be barred from any further application for a permit; and
(7) a statement that the applicant understands that a permit eligibility investigation will be conducted as a part of the application process, that this may involve computerized records searches, and that the applicant authorizes the investigation.

(b) An application under (a) of this section may not inquire of an applicant about, or require the submission of, information beyond that described in that subsection. As part of an application under (a) of this section, the department may not inquire of an applicant as to any firearms owned by the applicant.

Sec. 18.65.715. Demonstration of competence with handguns.

(a) An applicant for a permit to carry a concealed handgun shall provide a certificate of successful completion of a handgun course that is approved by the department. The handgun course must have been completed within the 12 months immediately preceding the application. The department shall approve a handgun course, including the personal protection course offered by the National Rifle Association, if the course tests the applicant's

(1) knowledge of Alaska law relating to firearms and the use of deadly force;
(2) familiarity with the basic concepts of the safe and responsible use of handguns;
(3) knowledge of self-defense principles; and
(4) physical competence with a handgun.

(b) *[Repealed, Sec. 20 ch 1 SLA 1998].*

(c) The department may not require a certificate of competence submitted under this section to contain any specifically identifying information, including make, model, or serial number, of a handgun with which an applicant or permittee has demonstrated competence.

(d) The department shall maintain a list of approved courses and shall provide the list to the public upon request.

Sec. 18.65.720. Fees.

The department shall charge a nonrefundable fee for the processing of the application for and initial issuance of a permit, renewal of a permit, or replacement of a permit. The fees shall be set by regulation and must be based on the actual costs incurred by the department. However, the fee for the processing of an application and initial issuance of a permit may not exceed $99 and the fee for renewal of a permit or replacement of a permit may not exceed $30.

Sec. 18.65.725. Permit renewal.

(a) A permittee shall apply for renewal of a permit to carry a concealed handgun within 90 days before the expiration of the permit and shall present a complete renewal form provided by the department. The renewal form must include

(1) any change in the information originally submitted under AS 18.65.710;
(2) a statement that the person remains qualified to receive and hold a permit to carry a concealed handgun under AS 18.65.705 ;
(3) one frontal view photograph of the person taken within the preceding 30 days that includes the head and shoulders of the person and is of a size specified by the department;
(4) the renewal fee required under AS 18.65.720 ; and
(5) the warning listed in AS 18.65.710 (a)(6).

(b) *[Repealed, Sec. 15 ch 94 SLA 2000].*

(c) A renewal of a permit to carry a concealed handgun submitted on or after the expiration date is subject to a late fee of $25. The department may not accept a renewal for a permit that is submitted more than 60 days after the expiration date of the permit. Nothing in this subsection prohibits the holder of an expired permit from applying for a new permit.

(d) A renewal form under (a) of this section may not inquire of a permittee about, or require the submission of, information beyond that described in (a) of this section.

Sec. 18.65.730. Replacement of permit.

The department may replace a permit that the permittee certifies under oath has been lost, stolen, or destroyed, provided the permittee applies in person and

(1) provides one frontal view photograph of the permittee taken within the preceding 30 days that includes the head and shoulders and is of a size specified by the department;
(2) pays the replacement fee required under AS 18.65.720 .

Sec. 18.65.735. Suspension of permit.

(a) The department shall immediately suspend a permit to carry a concealed handgun if a permittee becomes ineligible to hold a permit under AS 18.65.705 .

(b) A person whose permit is suspended under this section shall immediately surrender the permit to the nearest peace officer. A peace officer receiving a permit under this section shall immediately forward the permit to the department.

(c) The department shall retain a permit suspended under this section until the permit is revoked or returned to the permittee.

Sec. 18.65.740. Revocation of permit; appeal.

(a) A permit to carry a concealed handgun shall be immediately revoked by the department when the permittee
(1) becomes disqualified to receive and hold a permit under AS 18.65.705;
(2) is convicted of two class A misdemeanors of this state or similar laws of another jurisdiction within a six-year period if at least one of the convictions occurs after the application;
(3) knowingly supplied a false or fraudulent answer, statement, or document, or made a material misstatement or omission, in connection with an application for a permit or renewal or replacement of a permit.

(b) A person whose permit is revoked under (a) of this section shall immediately surrender the permit to the nearest peace officer. A peace officer receiving a permit under this section shall immediately forward the permit to the department.

(c) A person whose permit is revoked under this section may appeal the revocation decision to the commissioner. A person may seek judicial review of the decision of the commissioner under AS 44.62.560 - 44.62.570.

(d) A person whose permit is revoked may not apply for a permit until at least five years after the revocation.

Sec. 18.65.745. No liability for issuance of permit or for training.

(a) The state, and its officers and employees, are not liable by virtue of having issued a permit to carry a concealed handgun for damage or harm caused by the permittee.
(b) A person who provides firearm training to a person who receives a permit under AS 18.65.700 - 18.65.790 is not liable for damage or harm caused by the permittee.

Sec. 18.65.748. Permit holders from other jurisdictions considered Alaska permit holders.

A person holding a valid permit to carry a concealed handgun from another state or a political subdivision of another state is a permittee under AS 18.65.700 (b) for purposes of AS 18.65.755 - 18.65.765.

Sec. 18.65.750. Possession and display of permit. [Repealed, Sec. 7 ch 62 SLA 2003].

Repealed or Renumbered

Sec. 18.65.755. Places where permittee may not possess a concealed handgun.

(a) A permittee may not possess a concealed handgun
(1) *[Repealed, Sec. 7 ch 62 SLA 2003].*
(2) anywhere a person is prohibited from possessing a handgun under state or federal law.

(b) *[Repealed, Sec. 20 ch 1 SLA 1998].*

(c) In addition to any other penalty provided by law, a person who violates this section is guilty of a class B misdemeanor.

Sec. 18.65.760. Misuse of a permit.

(a) The holder of a permit issued under AS 18.65.700 - 18.65.790 may not

(1) alter the permit;
(2) allow another person to use the permit;
(3) possess or display a suspended or revoked permit; or
(4) display an expired permit, unless the holder has submitted a complete, timely renewal form under AS 18.65.725 and the renewal process has been delayed due to circumstances not under the control of the applicant.

(b) A person who violates (a)(1) - (3) of this section is guilty of a class A misdemeanor.

(c) A person who violates (a)(4) of this section is guilty of a violation and upon conviction may be punished by a fine of not more than $100.

Sec. 18.65.765. Responsibilities of the permittee.

(a) The holder of a permit issued under AS 18.65.700 - 18.65.790
(1) shall notify the department of a change in the permittee's address within 30 days;
(2) shall immediately report a lost, stolen, or illegible permit to the department;
(3) shall immediately notify the department if the holder is no longer qualified to hold a permit under AS 18.65.705 .
(4) *[Repealed, Sec. 15 ch 94 SLA 2000].*

(b) A person who violates this section is guilty of a violation and upon conviction may be punished by a fine of not more than $100.

Sec. 18.65.770. Permits, applications, and other materials not public records.

Applications, permits, and renewals are not public records under AS 40.25.110 - 40.25.125 and may only be used for law enforcement purposes.

Sec. 18.65.775. Regulations; reciprocity agreements.

(a) The department shall adopt regulations to implement AS 18.65.700 - 18.65.790. This section does not delegate to the department the authority to regulate or restrict the issuing of permits beyond those provisions contained in AS 18.65.700 - 18.65.790.

(b) The department shall enter into reciprocity agreements with other states that have the legal authority to enter into such agreements so that permittees may carry concealed handguns in those other states.

Sec. 18.65.778. Municipal preemption.

A municipality may not restrict the carrying of a concealed handgun by permit under AS 18.65.700 - 18.65.790.

Sec. 18.65.780. Prohibition of possession of concealed handguns. [Repealed, Sec. 15 ch 94 SLA 2000].

Repealed or Renumbered

Sec. 18.65.785. Procedure for local option elections. [Repealed, Sec. 15 ch 94 SLA 2000].

Repealed or Renumbered

Sec. 18.65.790. Definitions.

In AS 18.65.700 - 18.65.790,
(1) "commissioner" means the commissioner of public safety;
(2) "competence" means the ability to place in a life size silhouette target
(A) seven out of 10 shots at seven yards;
(B) six out of 10 shots at 15 yards;
(3) "concealed handgun" means a firearm, that is a pistol or a revolver, and that is covered or enclosed in any manner so that an observer cannot determine that it is a handgun without removing it from that which covers or

encloses it or without opening, lifting, or removing that which covers or encloses it; however, "concealed handgun" does not include a shotgun, rifle, or a prohibited weapon as defined under AS 11.61.200 ;
(4) "department" means the Department of Public Safety;
(5) "permit" means a permit to carry a concealed handgun issued under AS 18.65.700 - 18.65.790.

RELATED STATUTORY DEFINITIONS

AS 11.81.900(b)(44) "peace officer" means a public servant vested by law with a duty to maintain public order or make arrests, whether the duty extends to all offenses or is limited to a specific class of offenses or offenders.

AS 11.56.240(1) "statement" means a representation of fact and includes a representation of opinion, belief, or other state of mind when the representation clearly relates to state of mind apart from or in addition to any facts that are the subject of the representation.

AS 18.65.290. Definitions. In AS 18.65.130 - 18.65.290,

(1) "chief administrative officer" means a chief of police or other official who is head of a police department in a political subdivision;

(2) "correctional facility" means a prison or jail owned, leased, or operated by the state that is designated by the commissioner of corrections for the custody, care, security, control, and discipline of prisoners;

(3) "correctional officer" means a person

(A) appointed by the commissioner of corrections whose primary duty under AS 33.30 is to provide custody, care, security, control, and discipline of persons charged or convicted of offenses against the state or held under authority of state law; or

(B) employed in a correctional facility in this state whose primary duty is to provide custody, care, security, control, and discipline of persons charged or convicted of offenses or held under authority of law;

(4) "council" means the Alaska Police Standards Council;

(5) "municipal correctional officer" means a person who is employed full-time in a municipal correctional facility whose primary duty is to provide custody, care, security, control, and discipline of persons charged or convicted of offenses or held under authority of law; and the municipality has adopted an ordinance under AS 18.65.285 making AS 18.65.130-18.65.290 applicable.

(6) "parole officer" means a person appointed by the commissioner of corrections or employed by a correctional facility in this state to perform the duties of supervising the parole of prisoners under AS 33.16;

(7) "police officer" means

(A) a full-time employee of the state or a municipal police department with the authority to arrest and issue citations; detain a person taken into custody until that person can be arraigned before a judge or magistrate; conduct investigations of violations of and enforce criminal laws, regulations, and traffic laws; search with or without a warrant persons, dwellings, and other forms of property for evidence of a crime; and take other action consistent with exercise of these enumerated powers when necessary to maintain the public peace;

(B) an officer or employee of the Department of Transportation and Public Facilities who is stationed at an international airport and has been designated to have the general police powers authorized under AS 02.15.230(a);

(C) a University of Alaska public safety officer with general police powers authorized under AS 14.40.043 ;

(8) "probation officer" means a person appointed by the commissioner of corrections to perform the duties of a probation officer under AS 33.05.

ALASKA ADMINISTRATIVE CODE
TITLE 13. PUBLIC SAFETY
PART 1. DIVISION OF ALASKA STATE TROOPERS
CHAPTER 30. CONCEALED HANDGUN PERMIT

13 AAC 30.010. Issuance of New Permits; Replacement of a Permit

(a) Repealed 5/8/2002.

(b) A permit issued under AS 18.65.700 - 18.65.790 authorizes the permittee to carry a concealed handgun as provided by AS 11 and AS 18.65.700 - 18.65.790.

(c) The department will replace a permit if the permittee appears in person at an office of the Alaska State Troopers to certify under oath, on a form provided by the department, that the permit has been lost, stolen, or destroyed and to provide the items required by AS 18.65.730 . Replacement of a permit under this subsection does not change the expiration date of that permit.

(d) The department will issue a permit to carry a concealed handgun to an honorably retired peace officer of this state who complies with the requirements of AS 18.65.700 (e) and

(1) repealed 5/8/2002;

(2) repealed 5/8/2002;

(3) provides the department with proof of

(A) handgun training as specified in 13 AAC 30.090(a) ; or

(B) handgun qualification as specified in 13 AAC 30.090(d) .

13 AAC 30.020. PERMIT RENEWALS.

Repealed (05/08/2002)

13 AAC 30.040. FEES.

(a) Before processing an application for a permit, certificate, or other service under this chapter, the department will collect a nonrefundable fee as follows:

(1) new permit application fee .....$40 plus the fees required for fingerprint processing under 13 AAC 68.900, if applicable;

(2) permit renewal.....$25;

(3) permit replacement.....$25;

(2) Repealed 5/8/2002

(3) New permit application fee for an honorably retired peace officer $40

(b) The department will conduct a periodic review of the cost of administering the program under this chapter and may adjust the fees set out in (a) of this section after compliance with AS 44.62 (Administrative Procedures Act).

13 AAC 30.050. PROCESSING OF APPLICATIONS; APPEALS.

(a) Repealed 5/08/2002

(b) An application for a

(1) new permit

(A) from a person who is not applying as an honorably retired peace officer under AS 18.65.700(e) is complete when the requirements of AS 18.65.700(a) and this chapter have been met.

(B) from a person who is applying as an honorably retired peace officer under AS 18.65.700 (e) is complete when the requirements of AS 18.65.700 (e), 13 AAC 30.085, and 13 AAC 30.090 have been met;

(2) replacement permit is complete when the requirements of 18.65.730 and 13 AAC 30.032 have been met.

(3) permit renewal is complete when the requirements of AS 18.65.725 have been met.

(3) Repealed 5/08/2002

(5) handgun course certificate of approval is complete when the requirements of 13 AAC 30.070 have been met.

(c) The office that received the application will promptly send it to the department's permits and licensing unit..

(d) The department's permits and licensing unit will request permit eligibility information from the Federal Bureau of Investigation, or another agency, that is necessary to make a determination concerning the application.

(e) Review of an application for a permit, certificate, or other service under this chapter will be discontinued if

(1) a fee check is returned by a financial institution as being without sufficient funds or is otherwise uncollectible;

(2) discrepancies or omissions are present in the application, or in documents submitted with the application, or the application or accompanying documents have not been completed correctly;

(3) fingerprints accompanying the application are not sufficiently readable for manual or computer use, or the information required to be submitted on fingerprint forms has not been completed correctly;

(4) the department determines that the application or a document submitted in connection with the application contains a false statement that the applicant does not believe to be true; or

(5) the department determines that the applicant is not otherwise qualified or entitled to obtain the permit, certificate, or other service requested.

(f) If review of an application is discontinued under (e) of this section, the department will mail to the applicant the department's written reasons for the discontinuance. The department will resume reviewing the application if, within 90 days after the date of he department's written notice that review has been discontinued, the applicant provides supplementary information to the department that resolves the reason for the discontinuance; and necessary supplementary information is described in 13 AAC 30.130(a) if the discontinuance is related to the criteria under AS 18.65.700 (a)(8). The department will

reject the application if that information is not provided to the department within 90 days after the date of the department's written notice to the applicant that review has been discontinued.

(g) If after review of an application, the application is denied, the department will mail to the applicant a notice of denial containing written reasons for the denial. A person whose application has been denied may appeal to the commissioner for reversal of the decision. The appeal must be received in writing within 30 days after the date of the notice of denial, and must set out the reasons for the appeal. The decision of the

commissioner or the commissioner's designee will be in writing and will be made within 45 days after receipt of the appeal.

(h) A person whose application has been rejected or denied under this section

(1) may not apply again for a period of five years if the rejection or denial was for the reason set out in (e)(4) of this section and the false statement related to a material matter;

(2) Repealed 5/08/2002

(i) The department shall issue a permit that states that the permit holder is "not nics exempt" if the permit holder's fingerprints have been rejected by the Federal Bureau of Investigation as not sufficiently readable for manual or computer use.

13 AAC 30.060. SUSPENSION AND REVOCATION OF PERMITS; APPEALS.

(a) If the department suspends a permit under AS 18.65.735, the department immediately will mail or deliver a notice of the suspension to the permittee. The permittee is required by AS 18.65.735 to immediately surrender the permit to the nearest peace officer.

(b) A suspension of a permit under (a) of this section remains in effect until the permit is revoked or the permittee provides proof satisfactory to the department that the reason for the suspension has been rectified.

(c) If the department revokes a permit under AS 18.65.740, the department immediately will mail or deliver a notice of the revocation to the permittee. The permittee is required by AS 18.65.740 to surrender the permit to the nearest peace officer.

(d) For purposes of revocation under AS 18.65.740, the date of conviction is the date sentence was imposed or imposition of sentence was suspended under AS 12.55.085 or a similar procedure in another jurisdiction.

(e) If a peace officer believes that a permit is subject to suspension or revocation under AS 18.65.735 or 18.65.740, the officer shall immediately notify the department's permits and licensing unit of the identity and location of the permittee and the grounds for suspension or revocation.

(f) A permittee who becomes subject to suspension or revocation under (a) or (c) of this section shall immediately notify the department and surrender the permit to the nearest peace officer.

(g) If, under 13 AAC 30.130(b), the department has reason to believe that a permittee suffers from a physical infirmity that may prevent the safe handling of a handgun, the department will mail or deliver to the permittee a notice that the department intends to revoke the permittee's permit because of the physical infirmity. After mailing or delivery of the notice, the following procedures apply:

(1) the permittee may submit to the department, within 30 days after the date of the notice, a written report by a physician, optometrist, or other competent medical authority, who can lawfully practice in this state, that, as determined from an examination within the six months before the date of the notice, the permittee does not suffer from the physical infirmity;

(2) if the permittee demonstrates to the department that circumstances beyond the permittee's control prevent the submission of the report within the 30 days, the department will extend the deadline for 15 days;

(3) if the necessary report is not received by the department by the deadline in (1) or (2) of this subsection, whichever is applicable, the permit is automatically revoked and the department will so notify the permittee;

(4) if the permittee submits a report by the deadline set in (1) or (2) of this subsection, but the department determines that the report does not substantiate that the permittee does not suffer from the physical infirmity, the department will mail or deliver to the permittee a notice that the permittee, within 30 days after the date of the notice under this paragraph, may submit another report to meet the requirements of (1) of this subsection;

(5) if a second report is necessary under (4) of this subsection but is not received by the department by the deadline set by that paragraph, the permit is automatically revoked and the department will so notify the permittee;

(6) if a permit is revoked under this subsection, the permittee, upon receipt of the revocation notice under (3) or (5) of this subsection, shall immediately surrender the permit to the nearest peace officer;

(7) if the department timely receives a report that meets the requirements of this subsection, the department will notify the permittee that the permit is not revoked;

(8) a permittee whose permit is revoked under this subsection may appeal the revocation under the procedures in (j) of this section.

(h) If, under 13 AAC 30.130(b), the department has reason to believe that a permittee is not able to safely or competently handle a handgun, the department will mail or deliver to the permittee a notice that the department intends to revoke the permittee's permit. After mailing or delivery of the notice, the following procedures apply:

(1) the permittee may submit to the department, within 30 days after the date of the notice, a certificate of completion from an approved handgun course verifying that the permittee has, no earlier than six months before the date of the notice, taken and successfully completed the part of the handgun course described in 13 AAC 30.070(a)(1)(A)(iv);

(2) if the permittee demonstrates to the department that circumstances beyond the permittee's control prevent the submission of the certificate of completion within the 30 days, the department will extend the deadline for 15 days;

(3) if the certificate of completion required by (1) of this subsection is not received by the department by the deadline in (1) or (2) of this subsection, whichever is applicable, the permit is automatically revoked and the department will so notify the permittee;

(4) if a permit is revoked under this subsection, the permittee, upon receipt of the revocation notice under (3) of this subsection, shall immediately surrender the permit to the nearest peace officer;

(5) if the department timely receives the certificate of completion required by (1) of this subsection, the department will notify the permittee that the permit is not revoked;

(6) a permittee whose permit is revoked under this subsection may appeal the revocation under the procedures in (j) of this section.

(i) A peace officer who receives a surrendered permit shall immediately

(1) notify the department's permits and licensing unit, identifying the permittee who surrendered the permit, and the date, time, and location the permit was surrendered; and

(2) send the surrendered permit to the department's permits and licensing unit.

(j) A person who has surrendered a permit because it has been revoked under this section may appeal to the commissioner for reversal of the revocation. The appeal must be received in writing within 30 days after the date of the notice of revocation, and must set out the reasons for the appeal. The decision of the commissioner or the commissioner's designee will be in writing and will be made within 45 calendar days after receipt of the appeal.

(k) A person whose permit is revoked

(1) under AS 85.65.740 (a)(1) or (3) may not apply for a new permit under 13 AAC 30.010 sooner than five years following the date of the notice of revocation;

(2) under AS 18.65.740 (a)(2) may not apply for a new permit under 13 AAC 30.010 until the person qualifies under AS 18.65.705 (4).

(l) A permit that is revoked under (g) or (h) of this section may be reinstated if the former permittee provides proof to the department that the reason for revocation has been rectified and complies with the requirements of 13 AAC 30.020 if the person applies for renewal no later than the 31st day after the original permit would have expired had it not been revoked. If the former permittee does not meet the deadline in this subsection for reinstatement of the permit, the former permittee may apply for a new permit under 13 AAC 30.010, and must provide proof to the department that the reason for revocation has been rectified.

13 AAC 30.070. APPROVAL OF HANDGUN COURSES.

(a) A person who or organization that wishes to provide a handgun course for the purposes of AS 18.65.715 shall apply to the department, on a form provided by the department, for approval of the course. After processing and review under 13 AAC 30.050, the department will approve the course and will issue a certificate of approval if

(1) the application contains sufficient curriculum and course information to show that

(A) the curriculum includes at least 12 hours of training in the use of handguns that instructs the student in

(i) knowledge of Alaska law relating to firearms and the use of deadly force, including instruction in statutes, administrative regulations, and case law,

(ii) the basic concepts of the safe and responsible use of handguns;

(iii) knowledge of self-defense principles; and

(iv) the physical handling, mechanics, carrying, transporting, storage, loading, and unloading of handguns, including a test of competence of a handgun.

(B) the instruction in the subjects listed in (A)(ii) - (A)(iv) of this paragraph will be provided by an instructor for whom information has been submitted to the department as provided in (3) of this subsection;

(C) the instruction in the subjects listed in (A)(i) of this paragraph will be provided by an attorney licensed to practice law in this state, or by a person with a valid certification as a police officer issued by the Alaska Police Standards Council;

(2) the application contains information sufficient to substantiate that the course will ensure that

(A) a student who has successfully completed instruction in the subjects listed in (1)(A) of this subsection will be provided with a certificate showing the course title, printed name and signature of the primary training instructor, the student's printed name, the student's Alaska driver's license or identification card number, the name of the organization conducting the instruction, the date of successful completion of the instruction, and a statement that the student has demonstrated physical competence with a handgun as required by AS 18.65.715 ; and

(B) upon request, the department will be

(i) allowed access to course facilities during times of instruction;

(ii) allowed access at reasonable times to all records related to the applicant's handgun course;

(iii) provided with documentation to confirm the attendance and completion records of a student who applies for a permit;

(iv) provided with other information needed to assess the course's qualification for purposes of AS 18.65.715;

(3) the application is accompanied by the following for each course instructor described in (1)(B) of this subsection:

(A) complete instructor information on a form provided by the department, signed by the instructor and the person signing the application under this section, and containing the information specified in (b) of this section;

(B) two sets of fingerprints, obtained as specified in 13 AAC 30.100(b) , and the fee required by 13 AAC 68.900, unless two sets of the instructor's fingerprints have been submitted to the department, for purposes of this chapter, within the 12 months preceding the date of the application; and

(C) Repealed 5/08/2002

(b) A completed instructor information form required by (a)(3) of this section must

(1) show that the subject instructor is eligible to possess a firearm under the laws of this state and under federal law;

(2) state the subject instructor's Alaska driver's license number or identification card number; and

(3) have attached to it a copy of a certificate of training showing that

(A) the subject instructor has successfully completed a handgun instructor's training course recognized by the department under (d) of this section as providing adequate handgun instructor training; and

(B) the subject instructor's signed statement that the subject instructor remains current with the standards of that handgun instructor's training course.

(c) The instructor information form provided by the department and referred to in (a) and (b) of this section will contain the statement that a person signing the form

(1) understands that an investigation may be conducted regarding the information given on the form, including a search of computer records; and

(2) the person authorizes the investigation.

(d) The department will recognize a handgun instructor's training course as providing adequate handgun instruction training if the course provides students with instruction in

(1) how to instruct in the topics set out in (a)(1)(A) of this section;

(2) preparing a curriculum and course outline for a handgun training course;

(3) organizing and conducting a handgun training course;

(4) use of visual aids and techniques in student skill development; and

(5) proper testing techniques.

(e) An application for a certificate of approval for a handgun course must be signed by a person designated as the chief operating officer of the course. In addition to the penalty provided in AS 18.65.710(a)(6), a false statement made in an application, on a form, or in other information provided to the department under this section for the purposes of this chapter and AS 18.65.700 - 18.65.790 is punishable under AS 11.56.210.

(f) A person who or organization that has been issued a certificate of approval under this section shall notify the department's permits and licensing unit in writing if the person or organization is no longer providing instruction on an annual basis.

(g) As used in this section, "instruction" or "instructs" includes testing in the subject matter of the curriculum.

13 AAC 30.080. REVOCATION OF HANDGUN COURSE CERTIFICATE OF APPROVAL.

(a) Except as provided in (b) of this section, the department will immediately revoke a handgun course certificate of approval issued under 13 AAC 30.070, and will mail to the certificate holder a notice of the revocation, if the

(1) department has reason to believe that the handgun course no longer meets the requirements of 13 AAC 30.070(a) for approval of a handgun course; or

(2) certificate holder submitted an application under 13 AAC 30.070, or a document in connection with the application, that contained a

(A) false statement that the applicant does not believe to be true; or

(B) material misstatement or omission.

(b) If the department obtains information about an instructor of an approved handgun course that would result in denial of the handgun course's application for a certificate of approval if the application was being considered by the department, the department will immediately notify the chief operating officer of the handgun course that, in order to retain the course's certificate of approval, the instructor may not be allowed to continue providing instruction for purposes of AS 18.65.715. The course of instruction being provided by that instructor at the time of notice under this subsection will not satisfy the requirements of AS 18.65.700 - 18.65.790 and 13 AAC 30.010 – 13 AAC 30.900. If the department determines that the instructor is continuing to provide instruction for purposes of AS 18.65.715, the department will immediately revoke the handgun course's certificate of approval and will mail to the certificate holder a notice of revocation.

(c) The holder of a certificate of approval that is revoked under this section may appeal the revocation to the commissioner. The appeal must be received in writing within 30 days after the date of the notice of revocation, and must set out the reasons for the appeal. The decision of the commissioner or the commissioner's designee will be in writing and will be made within 45 calendar days after receipt of the appeal.

(d) The holder of a certificate of approval that is revoked under this section shall immediately surrender the certificate by sending it to the department's permits and licensing unit.

(e) A certificate of approval that is revoked under this section may be reinstated if the person or organization operating the handgun course (1) provides proof to the department that the reason for the revocation has been rectified; and (2) resubmits an application for a certificate of approval that meets the requirements of 13 AAC 30.070. However, a certificate of approval that was revoked for the reason set out in (a)(2) of this section may not be reinstated sooner than one year following the date of the notice of revocation under this section.

13 AAC 30.085. ESTABLISHING ELIGIBILITY AS AN HONORABLY RETIRED PEACE OFFICER. In order to establish eligibility as an "honorably retired peace officer of this state" for the purposes of AS 18.65.700(e), the applicant must provide

(1) evidence satisfactory to the department to show

(A) employment as a peace officer with a law enforcement agency in this state

(i) for two or more years before terminating as a peace officer; and

(ii) within the one year before application for a permit under this chapter; and

(B) the person did not terminate employment as a peace officer in lieu of firing, suspension, or other involuntary separation or employee discipline; and

(2) Repealed 5/08/2002

13 AAC 30.090. PROOF OF HANDGUN TRAINING.

(a) Proof of handgun training for purposes of obtaining a new permit is established by providing to the department, at the time of the application, a copy of a certificate of successful completion of an approved handgun course; the certificate must contain the information required by 13 AAC 30.070(a)(2)(A) and must show that a course described in 13 AAC 30.070(a) has been completed within the 12 months immediately before submitting the application.

(b) Repealed 12/9/98.

(c) Repealed 12/9/98.

(d) An honorably retired peace officer making application under AS 18.65.700(e) desiring to satisfy the handgun qualification requirements for a permit by demonstrating that the applicant has qualified with a handgun within five years of the peace officer's termination of employment from the law enforcement agency must submit a notarized copy of the applicant's record of the handgun qualification and a copy of the law enforcement agency's handgun qualification policy along with the applicant's completed application. The record of handgun qualification must indicate that the applicant's score met or exceeded the minimum passing standard under the handgun qualification policy. For purposes of this subsection, "handgun qualification policy" means the standards by which a person qualified to carry a handgun as part of the person's official duties as a peace officer for the law enforcement agency.

13 AAC 30.100. PHOTOGRAPHS AND FINGERPRINTS.

(a) A photograph submitted under AS 18.65.700 - 18.65.790 and this chapter must be one frontal views that include the head and shoulders, must be taken within the 30 days before submission, and must be of a size, color, and condition that will allow the photographs to be processed in the department's identification production equipment. Applications and other forms provided by the department under this chapter will contain detailed specifications for photographs, necessary for processing.

(b) Fingerprints submitted under AS 18.65.700 - 18.65.790 and this chapter must be taken within the 90 days before submission on forms approved by the Federal Bureau of Investigation and in accordance with instructions on those forms. If the fingerprints submitted by an applicant are not sufficiently readable, the applicant must obtain another set at the applicant's expense. Fingerprints may be taken by (1) a law enforcement agency or state correctional facility; or (2) a person, not affiliated with a law enforcement agency or state correctional facility, who holds a current commission as a notary public in Alaska and who has received the department's written approval to take fingerprints. A list of persons or agencies approved to take fingerprints will be made available to the public.

(c) Repealed 5/08/2002.

13 AAC 30.110. NOTIFICATION OF PLACES WHERE CONCEALED HANDGUNS MAY NOT BE CARRIED.

(a) Repealed 5/08/2002

(b) Nothing in this chapter or AS 18.65.700 - 18.65.790 precludes a person from posting, to the extent allowed by law, a notice regarding the carrying of a concealed handgun.

13 AAC 30.120.FORM OF PERMITS. A permit will

(1) display a color photograph of the permittee;

(2) show the permittee's name, city and state of residence, date of birth, and physical description including height, weight, race, hair color, and eye color;

(3) show the expiration date of the permit; and

(4) repealed 5/8/2002.

13 AAC 30.130. QUALIFICATIONS REGARDING SAFE HANDLING OF A HANDGUN.

(a) The department, under 13 AAC 30.050, will discontinue review of an application for a permit, permit upgrade, or permit renewal, if the department has reason to believe that the applicant suffers from a physical infirmity that may prevent the safe handling of a handgun. The department will request from the applicant, as supplementary information under 13 AAC 30.050(f), a written report by a physician, optometrist, or other competent medical authority, who can lawfully practice in this state, that, the applicant does not currently suffer from a physical infirmity that prevents the safe handling of a handgun.

(b) The department will notify a permittee that it intends to revoke a permit under 13 AAC 30.060(g) or (h) if, after investigation of a report from a criminal justice agency, physician or other medical provider, or member of the general public relating to the handling of a handgun by, or the physical condition of, a permittee, the department has reason to believe that a permittee

(1) suffers from a physical infirmity that may prevent the safe handling of a handgun, the department will use the procedures set out in 13 AAC 30.060(g) to revoke the permit;

(2) is not able to safely or competently handle a handgun, the department will use the procedures set out in 13 AAC 30.060(h) to revoke the permit.

(c) The department will not investigate a report relating to the handling of a handgun by, or the physical condition of, a permittee unless the report

(1) is in writing;

(2) is signed; and

(3) provides specific information pertaining to the permittee's physical condition, or handling of a handgun.

13 AAC 30.140. APPLICATION FORMS.

(a) The department will provide application forms for persons to use in applying for a permit, certificate of approval, or other service under this chapter. An application form submitted under this chapter, and any document accompanying an application form, must be completed in ink.

(b) Along with an application form, the department will provide to an applicant for a permit

(1) a copy of the definitions of the following terms, as set out in 13 AAC 30.900:

(A) alcohol treatment program;

(B) convicted;

(C) felony;

(D) resident; and

(E) substance abuse treatment program.

(2) a concise summary of where, when, and by whom a handgun can be carried under state and federal law; and

(3) written notice that, for purposes of AS 18.65.705(4) and (5), the date of conviction is the date sentence was imposed or imposition of sentence was suspended under AS 12.55.085 or a similar procedure in another jurisdiction.

13 AAC 30.150. RECIPROCITY.

ALASKA CONCEALED HANDGUN PERMIT INFORMATION

The department will post, on its official Internet website, the status of reciprocity with another state or a political subdivision of another state. The department will distribute a list of those jurisdictions with reciprocity to a person who makes a request.

13 AAC 30.800.CONFIDENTIALITY.

Repealed 5/08/2002

13 AAC 30.900. DEFINITIONS.

(a) In this chapter,

(1) repealed 5/8/2002;

(2) repealed 12/9/98;

(3) "approved handgun course" means a handgun course that has a certificate of approval under 13 AAC 30.070;

(4) "competence" has the meaning given in AS 18.65.790;

(5) "commissioner" means the commissioner of the Department of Public Safety;

(6) "convicted" or "conviction" means that a person has entered a plea of guilty or no contest to, or has been found guilty by a court or jury of, a criminal offense, regardless of whether the judgment was after that set aside under AS 12.55.085 or a similar procedure in another jurisdiction, or was the subject of a pardon or other executive clemency, but does not include a judgment that has been reversed or vacated by a court as a result of motion, appellate action, petition for writ of habeas corpus, or application for post-conviction relief under Rule 35.1 of the Alaska Rules of Criminal Procedure or a similar procedure in another jurisdiction;

(7) "department" means the Department of Public Safety;

(8) repealed 12/9/98;

(9) "office of the Alaska State Troopers" means an office of

(A) the Department of Public Safety, division of Alaska state troopers;

(B) the Department of Public Safety, division of fish and wildlife protection; or

(C) a municipal police department that has submitted a written request to the commissioner to accept applications for concealed handgun permits, and has been approved in writing by the commissioner to accept applications;

(10) "permit" means a permit to carry a concealed handgun issued under this chapter;

(11) "permittee" means a person to whom a permit has been issued.

(12) "nics" means National Instant Check System administered by the Federal Bureau of Investigation.

(b) As used in AS 18.65.700 - 18.65.790,

(1) "alcohol treatment program" means counseling about the effects of the consumption of alcohol on human behavior and physiology, whether provided individually or in a group, by a public or private agency, or on an in-patient or out-patient basis;

(2) "approved handgun course" means a course of handgun instruction operated by the holder of a certificate of approval issued under 13 AAC 30.070;

(3) "convicted" has the meaning given in (a) of this section;

(4) repealed 12/9/98;

(5) "felony" means an offense punishable by more than a year of incarceration if committed by an adult, under the laws of this state or a similar law of another jurisdiction;

(6) repealed 12/9/98;

(7) "judge" means a judge, justice, magistrate, or deputy magistrate of this state or the United States, whether sitting in a regular or pro tem capacity, but does not include a special or standing master, or an administrative law judge or hearing officer;

(8) repealed 12/9/98;

(9) repealed 12/9/98;

(10) "resident" has the meaning given in AS 01.10.055;

(11) "statement" has the meaning in AS 11.56.240;

(12) "substance abuse treatment program" means counseling about the effects on human behavior and physiology, of the consumption of alcohol, illegal drugs, or other controlled substances, excluding tobacco, whether provided individually or in a group, by a public or private agency, or on an in-patient or out-patient basis;

(13) repealed 12/9/98;

(14) "honorably retired peace officer of this state" means a peace officer who establishes eligibility under 13 AAC 30.085;

(15) "peace officer" has the meaning given in AS 11.81.900.

(c) As used in AS 18.65.700 - 18.65.790 and this chapter, "identification card" means an identification card, issued by the department, that contains a photograph of the person named on the card.

ALASKA CONCEALED HANDGUN PERMIT INFORMATION

Selected Alaska Statutes regarding misconduct involving weapons.

Sec. 11.61.190. Misconduct involving weapons in the first degree.

(a) A person commits the crime of misconduct involving weapons in the first degree if the person
(1) uses or attempts to use a firearm during the commission of an offense under AS 11.71.010 - 11.71.040; or
(2) discharges a firearm from a propelled vehicle while the vehicle is being operated and under circumstances manifesting substantial and unjustifiable risk of physical injury to a person or damage to property.

(b) Misconduct involving weapons in the first degree is a class A felony.

Sec. 11.61.195. Misconduct involving weapons in the second degree.

(a) A person commits the crime of misconduct involving weapons in the second degree if the person knowingly
(1) possesses a firearm during the commission of an offense under AS 11.71.010 - 11.71.040;
(2) violates AS 11.61.200 (a)(1) and is within the grounds of or on a parking lot immediately adjacent to
(A) a public or private preschool, elementary, junior high, or secondary school without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer; or
(B) an entity, other than a private residence, licensed as a child care facility under AS 47.32 or recognized by the federal government for the care of children; or
(3) discharges a firearm at or in the direction of
(A) a building with reckless disregard for a risk of physical injury to a person; or
(B) a dwelling.

(b) Misconduct involving weapons in the second degree is a class B felony.

Sec. 11.61.200. Misconduct involving weapons in the third degree.

(a) A person commits the crime of misconduct involving weapons in the third degree if the person
(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;
(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;
(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;
(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or controlled substance into that other person's body;
(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable;
(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable;
(7) violates AS 11.46.320 and, during the violation, possesses on the person a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or controlled substance into the person's body;
(8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued or filed under AS 18.66.100 - 18.66.180 or issued under former AS 25.35.010 (b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;
(9) communicates in person with another in violation of AS 11.56.740 and, during the communication, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;
(10) resides in a dwelling knowing that there is a firearm capable of being concealed on one's person or a prohibited weapon in the dwelling if the person has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory, unless the person has written

authorization to live in a dwelling in which there is a concealable weapon described in this paragraph from a court of competent jurisdiction or from the head of the law enforcement agency of the community in which the dwelling is located;
(11) discharges a firearm from a propelled vehicle while the vehicle is being operated in circumstances other than described in AS 11.61.190(a)(2); or
(12) knowingly possesses a firearm that is concealed on the person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.

(b) It is an affirmative defense to a prosecution
(1) under (a)(1) of this section that
(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;
(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;
(2) under (a)(2) or (10) of this section that
(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;
(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the violation of (a)(2) or (10) of this section, and the prior conviction did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801-5872 (National Firearms Act).

(d) It is an affirmative defense to a prosecution under (a)(11) of this section that the person was using a firearm while hunting, trapping, or fishing in a manner not prohibited by statute or regulation.

(e) The provisions of (a)(3) and (11) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(f) For purposes of (a)(12) of this section, a firearm on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a firearm without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it. A firearm on a person is not concealed if it is unloaded and is encased in a closed container designed for transporting firearms.

(g) It is an affirmative defense to a prosecution under (a)(12) of this section that
(1) either
(A) the defendant convicted of the prior offense on which the action is based received a pardon for that conviction;
(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
(C) a period of 10 years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(12) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory; and
(2) at the time of possession, the defendant was
(A) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

(B) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(h) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb; or

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(D) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(i) Misconduct involving weapons in the third degree is a class C felony.

Sec. 11.61.210. Misconduct involving weapons in the fourth degree.

(a) A person commits the crime of misconduct involving weapons in the fourth degree if the person

(1) possesses on the person, or in the interior of a vehicle in which the person is present, a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or a controlled substance into the person's body in circumstances other than described in AS 11.61.200 (a)(7);

(2) discharges a firearm from, on, or across a highway;

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

(4) manufactures, possesses, transports, sells, or transfers metal knuckles;

(5) manufactures, sells, or transfers a switchblade or a gravity knife;

(6) knowingly sells a firearm or a defensive weapon to a person under 18 years of age;

(7) other than a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, without the permission of the chief administrative officer of the school or district or the designee of the chief administrative officer, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school, on a school bus while being transported to or from school or a school-sponsored event, or while participating in a school-sponsored event, except that a person 21 years of age or older may possess

(A) a deadly weapon, other than a loaded firearm, in the trunk of a motor vehicle or encased in a closed container in a motor vehicle;

(B) a defensive weapon;

(C) an unloaded firearm if the person is traversing school premises in a rural area for the purpose of entering public or private land that is open to hunting and the school board with jurisdiction over the school premises has elected to have this exemption apply to the school premises; in this subparagraph, "rural" means a community with a population of 5,500 or less that is not connected by road or rail to Anchorage or Fairbanks or with a population of 1,500 or less that is connected by road or rail to Anchorage or Fairbanks; or

(8) being a preschool, elementary, junior high, or secondary school student, knowingly possesses a deadly weapon or a defensive weapon, within the buildings of, on the grounds of, or on the school parking lot of a public or private preschool, elementary, junior high, or secondary school, on a school bus while being transported to or from school or a school-sponsored event, or while participating in a school-sponsored event, except that a student may possess a deadly weapon, other than a firearm as defined under 18 U.S.C. 921, or a defensive weapon if the student has obtained the prior permission of the chief administrative officer of the school or district or the designee of the chief administrative officer for the possession.

(b) *[Repealed, Sec. 4 ch 63 SLA 1990].*

(c) The provisions of (a)(7) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) Misconduct involving weapons in the fourth degree is a class A misdemeanor.

Sec. 11.61.215. Intoxication as applicable to possession of a firearm. [Repealed, Sec. 11 ch 59 SLA 1991]. Repealed or Renumbered

Sec. 11.61.220. Misconduct involving weapons in the fifth degree.

(a) A person commits the crime of misconduct involving weapons in the fifth degree if the person

(1) is 21 years of age or older and knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon,

(A) that is concealed on the person, and, when contacted by a peace officer, the person fails to

(i) immediately inform the peace officer of that possession; or

(ii) allow the peace officer to secure the deadly weapon, or fails to secure the weapon at the direction of the peace officer, during the duration of the contact;

(B) that is concealed on the person within the residence of another person unless the person has first obtained the express permission of an adult residing there to bring a concealed deadly weapon within the residence;

(2) knowingly possesses a loaded firearm on the person in any place where intoxicating liquor is sold for consumption on the premises;

(3) being an unemancipated minor under 16 years of age, possesses a firearm without the consent of a parent or guardian of the minor;

(4) knowingly possesses a firearm

(A) within the grounds of or on a parking lot immediately adjacent to an entity, other than a private residence, licensed as a child care facility under AS 47.32 or recognized by the federal government for the care of children, except that a person 21 years of age or older may possess an unloaded firearm in the trunk of a motor vehicle or encased in a closed container of a motor vehicle;

(B) within a

(i) courtroom or office of the Alaska Court System; or

(ii) courthouse that is occupied only by the Alaska Court System and other justice-related agencies; or

(C) within a domestic violence or sexual assault shelter that receives funding from the state;

(5) possesses or transports a switchblade or a gravity knife; or

(6) is less than 21 years of age and knowingly possesses a deadly weapon, other than an ordinary pocket knife or a defensive weapon, that is concealed on the person.

(b) In a prosecution under (a)(6) of this section, it is an affirmative defense that the defendant, at the time of possession, was

(1) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

(2) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(c) The provisions of (a)(2) and (4) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(d) In a prosecution under (a)(2) of this section, it is

(1) an affirmative defense that

(A) *[Repealed, Sec. 7 ch 62 SLA 2003].*
(B) the loaded firearm was a concealed handgun as defined in AS 18.65.790; and
(C) the possession occurred at a place designated as a restaurant for the purposes of AS 04.16.049 and the defendant did not consume intoxicating liquor at the place;

(2) a defense that the defendant, at the time of possession, was on business premises
(A) owned by or leased by the defendant; or
(B) in the course of the defendant's employment for the owner or lessee of those premises.

(e) For purposes of this section, a deadly weapon on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a weapon without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it; a deadly weapon on a person is not concealed if it is an unloaded firearm encased in a closed container designed for transporting firearms.

(f) For purposes of (a)(2) and (e) of this section, a firearm is loaded if the
(1) firing chamber, magazine, clip, or cylinder of the firearm contains a cartridge; and
(2) chamber, magazine, clip, or cylinder is installed in or on the firearm.

(g) Misconduct involving weapons in the fifth degree is a class B misdemeanor.

(h) The provisions of (a)(1) and (6) of this section do not apply to a
(1) peace officer of this state or a municipality of this state acting within the scope and authority of the officer's employment;
(2) peace officer employed by another state or a political subdivision of another state who, at the time of the possession, is
(A) certified as a peace officer by the other state; and
(B) acting within the scope and authority of the officer's employment; or
(3) police officer of this state or a police officer or chief administrative officer of a municipality of this state; in this paragraph, "police officer" and "chief administrative officer" have the meanings given in AS 18.65.290 .

(i) In a prosecution
(1) under (a)(4)(B) of this section, it is a defense that the defendant, at the time of possession, was authorized to possess the firearm under a rule of court;
(2) under (a)(4)(C) of this section, it is a defense that the defendant, at the time of possession, was authorized in writing by the administrator of the shelter to possess the firearm.

(j) In (a)(1) of this section, "contacted by a peace officer" means stopped, detained, questioned, or addressed in person by the peace officer for an official purpose.

Sec. 11.61.230. [Renumbered as AS 11.46.315].
Repealed or Renumbered

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

APPLICATION

for a
CONCEALED HANDGUN PERMIT

This packet contains:

- General information and instructions
- Application for a ***new*** concealed handgun permit
- Specifications and instructions for photographs and fingerprints

Direct inquiries to:
Department of Public Safety, Division of Statewide Services
Permits and Licensing Unit
5700 East Tudor Road, Anchorage, Alaska 99507
Telephone (907) 269-0392
http://www.dps.state.ak.us/PermitsLicensing/achp/

GENERAL INFORMATION - Retain for your files

1. **ALASKA CONCEALED HANDGUN PERMIT**
   By submitting an application for a concealed handgun permit, you acknowledge you have read and understand the laws and regulations relating to carrying a concealed handgun (Alaska Statutes (AS 18.65.700 – AS 18.65.790) and Administrative Regulations (13 AAC 30.010 – 13 AAC 30.900).

2. **ADDRESS, RESIDENCE, AND TELEPHONE INFORMATION**
   The permit holder must be a resident of Alaska for the 90 days immediately preceding submittal of your application. ***You are required to list a residence address on the application and fingerprint card and may not use a post office box, mail drop, or lot and block number.*** Your residence address is your street number and name, apartment number, city, and zip code. In outlying areas, provide a brief description of your physical address, e.g., Village Road, fourth house on the left next to boat ramp.
   Reminder: AS 18.65.765(a)(1) states the holder of a permit shall notify the department of a change in the permit holder's address within 30 days.

   Telephone number - If there is a correctable problem on your application, we can save processing time if you list a daytime telephone number.

3. **DEFINITION OF "CONVICTION"**
   13 AAC 30.900(6) defines "conviction" as it applies to qualifications that must be met for an individual to possess a Concealed Handgun Permit. It states:
   "(6)"convicted" or "conviction" means that a person has entered a plea of guilty or no contest to, or has been found guilty by a court or jury of, a criminal offense, **regardless of whether the judgment was after that set aside** under AS 12.55.085 or a similar procedure in another jurisdiction, or was the subject of a pardon or other executive clemency, but does not include a judgment that has been reversed or vacated by a court as a result of motion, appellate action, petition for writ of habeas corpus, or application for post-conviction relief under Rule 35.1 of the Alaska Rules of Criminal Procedure or a similar procedure in another jurisdiction."

4. **FEES**
   Submit the $94.25 ***non-refundable*** application fee with your application. You may pay the fee with a personal check, cashier's check, or money order payable to *State of Alaska*.

5. **TRAINING DOCUMENTATION**
   Submit a ***copy*** of a certificate showing successful completion of a handgun course **approved by the department and completed within the previous 12 months.** The certificate will **not** be returned. A list of approved handgun courses is available from the Permits and Licensing Unit at the address listed on the cover page.

6. **FINGERPRINTS**
   Submit one set of fingerprints of acceptable technical quality. Fingerprints submitted must be rolled by a person or agency approved by the department, or by a law enforcement agency or state correctional facility at the discretion of the agency or facility. A list of fingerprint technicians or agencies approved by the department is available on the ACHP web-site. **See the *Concealed Handgun Permit Fingerprint Card Instructions* in this packet for specific information.**

7. **PHOTOGRAPH**
   Include ***one quality color photograph*** taken within the 30 days preceding the date you apply for your permit. **See the *Photograph Instructions and Specifications* in this packet for size restrictions and specific information.**

8. **APPLICATION PROCESS**
   You must apply in person for a concealed handgun permit (AS 18.65.700(a)(1)). Review your application, fingerprint card, and photograph **before** you submit them. ***Failure to submit a properly completed application and attachments will result in a delay in processing your application.*** Take your completed application, photograph, fingerprints, copy of training certificate, and the $94.25 fee to an office of the Alaska State Troopers, Fish and Wildlife Protection, or a municipal police department authorized to accept Alaska Concealed Handgun Permit applications.

   If you want the receipt information completed on your copy, make a copy of the application **before** you submit it and take the copy with you when you submit your application.

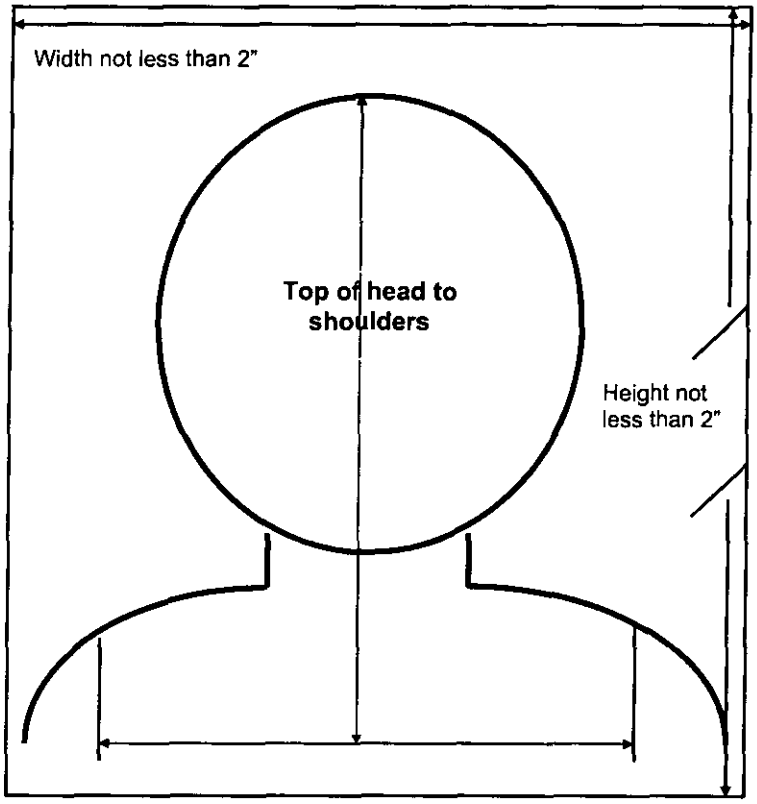
   Your application will be processed when the Permits and Licensing Unit in Anchorage receives your application, the $94.25 fee, photograph, and all required documents.

9. **TERM OF NEW PERMIT**
   New permits issued under 13 AAC 30.010 expire five years following issuance of the permit.

PHOTOGRAPH INSTRUCTIONS AND SPECIFICATIONS

INSTRUCTIONS:

1. Take photograph within 30 days of the date of the application.
2. Print applicant's name, date photographs were taken, and Alaska Driver's License or Identification Card number on the **back** of the photograph.



SPECIFICATIONS:

1. Uncut (not trimmed), rectangular, color photograph including the top of the subject's head to the shoulders (computer disc from a digital camera is acceptable – format must be .BMP, .DIB, .TGA, .TIF, .PCX, .GIF, .WPG, .JPG, .CMP, and .PCD).
2. Outer dimension of the photograph is **not less than** 2 inches wide by 2 inches high (passport photographs are acceptable).
3. Photograph of applicant is full frontal view **including head and shoulders only.**
4. Background is very light or white with no fancy backdrop or lettering behind subject.
5. Image is **sharp** and **correctly exposed**, not retouched.
6. Photograph lies flat, is not stained, cracked, or mutilated; is not pasted on a card or mounted in any way.
7. Group pictures and full-length portraits are **not** acceptable.
8. Photograph of applicant in a hat or sunglasses is **not** acceptable.

IMPORTANT NOTE: Failure to submit photograph as specified will delay processing

CONCEALED HANDGUN PERMIT FINGERPRINT CARD INSTRUCTIONS

Submit one standard 8"x 8" **FBI APPLICANT FINGERPRINT CARD** with your application. Fingerprints submitted must be taken by a person or agency approved by the department, or by a law enforcement agency or state correctional facility (at the discretion of the agency or facility). Fingerprint cards are available from department approved fingerprint technicians or agencies. A list of approved fingerprint technicians or agencies may be obtained from any office of the Alaska State Troopers. There may be a charge by fingerprint agencies or technicians for fingerprinting services.

- Complete the top of the fingerprint card ***before*** submitting the application.
- ***Do not sign the fingerprint card before your fingerprints are taken.***
- Type or clearly print all required information on the fingerprint cards using ***BLACK INK (cards submitted using any other color of ink will be rejected).***
- Wash and thoroughly dry your fingers before fingerprinting.
- **Do not fill out the blocks titled:**
  YOUR NO. OCA
  ARMED FORCES NO. MNU
  FBI NO. FBI
  REASON FINGERPRINTED (Completed by Permits and Licensing Unit personnel)
  MISCELLANEOUS NO. MNU (Completed by Permits and Licensing Unit personnel)
- **Name block**. The format is ***last*** name followed by a comma (,) ***first*** and ***middle*** name. Suffix denoting seniority, i.e., Jr., Sr., III, etc., ***follows*** the middle or first name.
- **Employer and address block.** Write the name and address of the ***fingerprint technician or agency taking the fingerprints.***
- **Aliases (AKA) block.** List other names used that are different than the name entered in the NAME block, including maiden and previous married names of females.
- **Citizenship block.** Enter "US" if a citizen of the United States; otherwise, enter correct country or country abbreviation.
- **DATE OF BIRTH DOB, PLACE OF BIRTH POB, SEX, RACE, HGT (height), WGT (weight), EYES, and HAIR blocks must be completed.**
- **Place of birth block.** List the ***city*** and ***state, territorial possession, province (Canadian), or country of birth***. Use the correct abbreviation for foreign countries or correctly spell the country name. Do **not** list a ***county*** as a place of birth.
- **Race block. Use the following codes:**
  A (Asian, Pacific Islander, Chinese, Japanese, Polynesian, Korean, Vietnamese, Philippino, Samoan)
  B (Black)
  I (American Indian, Alaska Native, Eskimo)
  W ***Do not use the letter "C"*** (White, Mexican, Latin, Puerto Rican, Cuban, Central/South American, other Spanish cultures)
- **Height block.** Use feet and inches, not total inches. ***Example: 5'7" is entered 507. Do not use fractions of an inch.***
- **Eyes/Hair blocks – *Choose only one color* to describe color of eyes and hair using the appropriate three letter code from the following list:**

EYE COLOR	CODE	***HAIR COLOR***	CODE
Black	BLK	Bald	BAL
Blue	BLU	Black	BLK
Brown	BRO	Blonde	BLN
Gray	GRY	Brown	BRO
Green	GRN	Gray	GRY
Hazel	HAZ	Red or Auburn	RED
Maroon	MAR	Sandy	SDY
Pink	PNK	White	WHI

  Use **Bald (BAL)** when a person has lost ***most*** of the hair on top of the person's head.
  Use **Gray (GRY)** when ***most*** of the person's hair is gray.
- **Social Security No. block** is for your social security number. You do not have to provide your social security number.

Do not fold or damage the fingerprint card. Fingerprint cards cannot be processed if they are folded, creased, or damaged. **Fingerprint cards that are rejected may require resubmission, and may require a reexamination fee.**

IMPORTANT NOTE: Failure to submit a fingerprint card as specified will delay processing

ALASKA DEPARTMENT OF PUBLIC SAFETY Division of Statewide Services	**APPLICATION FOR A NEW CONCEALED HANDGUN PERMIT** **Please type or print using *black* ink**	Do not write in this space

This application will not be processed unless all applicable questions are answered and the required training certificate, photograph, fingerprint card, and application fee accompany the application.

THE APPLICATION FEE IS NON-REFUNDABLE.

Section I.

ALASKA DRIVERS LICENSE OR IDENTIFICATION NUMBER	Department use only APSIN NUMBER	DATE OF BIRTH	PLACE OF BIRTH (CITY/STATE or CITY/COUNTRY)

FIRST NAME	MIDDLE NAME (NMN if no middle name or MIO if initial only)	LAST NAME	SUFFIX (Jr, Sr, II, III)

HEIGHT FT. / IN.	WEIGHT	HAIR COLOR	EYE COLOR	RACE	GENDER	DAYTIME TELEPHONE NUMBER ☐ Home ☐ Work ☐ Cell

MAILING ADDRESS	CITY	STATE	ZIP CODE

RESIDENCE ADDRESS (IF DIFFERENT THAN ABOVE)	CITY	STATE	ZIP CODE

How long have you lived at your current address? From _____ (Date) to present.

Previous residences – Complete this section if you have ***not*** lived at your current address during the five years preceding the date of this application. Attach a separate page if necessary.

CITY	STATE	DATE(S)

CITIZENSHIP (INDICATE COUNTRY) **Note: If you are not a U.S. Citizen, you must** complete Section IV of this application.

Have you ever applied for or been issued an Alaska Concealed Handgun permit? If yes, provide information and if necessary, attach a signed statement with an explanation. ☐ **Yes** ☐ **No**

Section II. ***Read each question carefully. If you make an error, cross out the incorrect choice and initial the change.*** If you answer "no" to questions 1-4, or "yes" to questions 5-14, attach court documents or a signed statement explaining your answers.

1.	Are you 21 years of age or older?	☐ Yes	☐ No
2.	Are you eligible to own or possess a firearm under the laws of this state and federal law?	☐ Yes	☐ No
3.	Are you a resident of Alaska and have you been a resident of the state for the 90 days immediately preceding this application?	☐ Yes	☐ No
4.	Have you demonstrated competence with handguns as provided in AS 18.65.715?	☐ Yes	☐ No
5.	Have you been convicted of two or more class A misdemeanors of this state or similar laws of another jurisdiction within the six years immediately preceding this application? **See *General Information and Instructions* for definition of "conviction."**	☐ Yes	☐ No
6.	Are you now in, or have you been ordered by a court within the last three years to complete an alcohol or substance abuse treatment program?	☐ Yes	☐ No
7.	Are you under indictment or information for, or have you been convicted in any court of a crime punishable by imprisonment for a term exceeding one year?	☐ Yes	☐ No
8.	Are you the subject of a domestic violence injunction under AS 18.66.100 that was issued after a hearing for which you received notice and had an opportunity to participate?	☐ Yes	☐ No
9.	Have you ever been convicted in any court of a misdemeanor crime of domestic violence?	☐ Yes	☐ No
10.	Are you a fugitive from justice?	☐ Yes	☐ No
11.	Are you an unlawful user of, or addicted to any controlled substances?	☐ Yes	☐ No
12.	Have you been adjudicated a mental defective or been committed to a mental institution?	☐ Yes	☐ No
13.	Are you an alien who is residing in the United States illegally or a former citizen of the United States who has renounced your citizenship?	☐ Yes	☐ No
14.	Have you been discharged from the armed forces under dishonorable conditions?	☐ Yes	☐ No

Section III.

WARNING: **SUPPLYING A FALSE STATEMENT, ANSWER, OR DOCUMENT THE APPLICANT DOES NOT BELIEVE TO BE TRUE MAY SUBJECT THE APPLICANT TO CRIMINAL PROSECUTION FOR UNSWORN FALSIFICATION UNDER ALASKA STATUTE 11.56.210. IF FOUND GUILTY, THE APPLICANT MAY BE PUNISHED FOR VIOLATION OF A CLASS A MISDEMEANOR, AND IN SUCH CASES THE PERMIT WILL BE REVOKED AND THE APPLICANT MAY BE BARRED FROM ANY FURTHER APPLICATION FOR A PERMIT.**

I HEREBY STATE UNDER PENALTY OF LAW THAT:

1. **I have read AS 18.65.705 and qualify to apply for a concealed handgun permit;**
2. **I have been furnished with a copy of the state laws and regulations relating to concealed handguns and have read and understand them;**
3. **I want a permit to carry a concealed handgun for lawful purposes, which may include self-defense;**
4. **The information in this application and any documents submitted with this application is true, correct, and complete to the best of my knowledge and belief; and**
5. **I understand a permit eligibility investigation will be conducted as part of the application process; this may involve computerized records searches and I authorize the investigation.**

Date	Signature of applicant
	Full name (clearly printed or typed)

Section IV. Must be completed by all non-U.S. Citizens

FIRST NAME	MIDDLE NAME (NMN if no middle name or MIO if initial only)	LAST NAME	SUFFIX (JR, SR, II, III)

HEIGHT FT.	HEIGHT IN.	WEIGHT	HAIR COLOR	EYE COLOR	RACE	GENDER	STATE OF RESIDENCE

COUNTRY OF CITIZENSHIP	ALIEN OR I-94 REGISTRATION NUMBER	ARE YOU A NON-IMMIGRANT?) ☐ Yes ☐ No

Have you been a resident for at least 90 days? ☐ Yes ☐ No (You MUST provide a copy of supporting documentation)

NON-IMMIGRANT/ALIEN EXCEPTION: ☐ Yes ☐ No Check the appropriate exception if you choose 'YES'. You MUST provide a copy of supporting documentation:

☐ Valid Hunting License/Permit ☐ Official Representative of Foreign Government ☐ Foreign Gov't Official/Distinguished Visitor

☐ Foreign Law Enforcement Officer ☐ Waiver from Prohibition ☐ Other (describe)

Instructions to applicant: ***Review the application, fingerprint card, photograph, and attachments carefully. Failure to submit a properly completed application will result in a delay in processing your application.*** Use the checklist below as a reminder that you have included all the necessary forms and documents. Mark the box to the left of an item as you place it in the envelope to take to the Alaska State Trooper office or the office of an approved police department.

Applicant Checklist		
☐ Application (page 1)	☐ Application (page 2)	☐ Photograph
☐ Fingerprint card	☐ Training certificate	☐ Attachments
☐ $94.25 fee	☐	☐

FOR DEPARTMENT USE ONLY

RECEIPT FOR FEES PAID

The Department of Public Safety acknowledges that _____ (Date), the sum of $_____ was received by:

☐ **CASH** ☐ **CHECK No.** _____ ☐ **MONEY ORDER No.** _____

Signature of employee accepting application	Printed or typed name of employee accepting application

Instructions to department employee or employee of an approved police department receiving the application. Use the checklist below to mark items in the packet before forwarding the application packet to the Permits and License Unit. The applicant turning in this document must show to you a valid Alaska Driver's License or Alaska Identification Card. **When the fee is paid, complete the *Receipt For Fees Paid.* *If the applicant provides you with a copy of this page, complete the receipt information and give the copy to the applicant.***		
Receiving Office		
☐ **Alaska OL or ID verified**	☐ **Training certificate**	☐ **Photograph**
☐ **Application (page 1)**	☐ **Application (page 2) signed and dated**	☐ **Fingerprint card completed correctly and signed**
☐ **$94.25 fee**	☐ **Attachments**	☐ **Receipt**

STATE OF ALASKA

DEPARTMENT OF PUBLIC SAFETY

RENEWAL

of a

CONCEALED HANDGUN PERMIT

This packet contains:

- General information and instructions
- Application for ***renewal*** of a concealed handgun permit
- Photograph specifications and instructions

Direct inquiries to:

Department of Public Safety, Division of Statewide Services
Permits and Licensing Unit
5700 East Tudor Road, Anchorage, Alaska 99507
Telephone (907) 269-0392
http://www.dps.state.ak.us/PermitsLicensing/achp/

Special Notice:

The Federal Bureau of Investigation (FBI) has informed the Department of Public Safety that effective June 1, 2006, they will no longer complete National Instant Check System (NICS) checks subsequent to the processing of fingerprint cards for the purposes of obtaining an Alaska Concealed Handgun Permit (ACHP).

This means that Concealed Handgun Permits issued after June 1, 2006 will contain the notation "NOT NICS EXEMPT", and a permit holder will be required to undergo a NICS background check at the time of any firearm purchase.

Permits issued prior to June 1, 2006 and indicating "NICS EXEMPT" may still be used in lieu of the permit holder undergoing a NICS check at the time of a firearm purchase, for the life of the permit.

We have requested that the FBI reconsider this decision; should they do so, we will once again be able to issue "NICS EXEMPT" Alaska Concealed Handgun Permits.

The Department of Public Safety will not accept the submission of fingerprints for ACHP renewals after June 1, 2006. However, state law still requires a fingerprint based background check prior to the issuance of a new concealed handgun permit.

GENERAL INFORMATION - Retain for your files

1. **ALASKA CONCEALED HANDGUN PERMIT RENEWAL**
   You may not apply to renew your concealed handgun permit sooner than 90 days before the expiration of your permit. By submitting a ***renewal*** application for your concealed handgun permit, you acknowledge you have read and understand the laws and regulations relating to carrying a concealed handgun (Alaska Statutes (AS 18.65.700 -- AS 18.65.790) and Alaska Administrative Regulations (13 AAC 30.010 -- 13 AAC 30.900)).

2. **ADDRESS, RESIDENCE, AND TELEPHONE INFORMATION**
   The permit holder must be a resident of Alaska. ***You are required to list a residence address on the application and may not use a post office box, mail drop, or lot and block number.*** Your residence address is your street number and name, apartment number, city, and zip code. In outlying areas, provide a brief description of your physical address, e.g., Village Road, fourth house on the left next to boat ramp. ***Reminder: AS 18.65.765(a)(1) states the holder of a permit shall notify the department of a change in the permit holder's address within 30 days.***

   Telephone number - If there is a correctable problem on your application, we can save processing time if you list a daytime telephone number.

3. **DEFINITION OF "CONVICTION"**
   13 AAC 30.900(6) defines "conviction" as it applies to qualifications that must be met for an individual to possess a Concealed Handgun Permit. It states: "(6) "convicted" or "conviction" means that a person has entered a plea of guilty or no contest to, or has been found guilty by a court or jury of, a criminal offense, **regardless of whether the judgment was after that set aside** under AS 12.55.085 or a similar procedure in another jurisdiction, or was the subject of a pardon or other executive clemency, but does not include a judgment that has been reversed or vacated by a court as a result of motion, appellate action, petition for writ of habeas corpus, or application for post-conviction relief under Rule 35.1 of the Alaska Rules of Criminal Procedure or a similar procedure in another jurisdiction."

4. **FEES**
   Submit the $25 ***non-refundable*** renewal fee with your application. A permit submitted on or after the expiration date will be assessed a $25 late fee. You may pay the fee with a personal check, cashier's check, or money order payable to *State of Alaska*. ***DO NOT SEND CASH THROUGH THE MAIL.***

5. **PERMITS EXPIRED MORE THAN 60 DAYS**
   The department will **not** accept a renewal for a permit submitted more than 60 days after the expiration date of the permit. Nothing prohibits the holder of an expired permit from applying for a new permit.

6. **RE-CERTIFICATION TRAINING is not required to renew your concealed handgun permit.**

7. **FINGERPRINTS** are **not** required to renew your concealed handgun permit.

8. **PHOTOGRAPH**
   Include ***one quality color photograph*** taken within the 30 days preceding the date you apply for renewal. **See the *Photograph Instructions and Specifications* in this packet for specific information.**

9. **RENEWAL PROCESS** - Review your application and photograph **before** you submit them. ***Failure to submit a properly completed application and attachments will result in a delay in processing your renewal.***

   Apply to renew your concealed handgun permit by mail. You are not required to apply in person.
   (a) Mail application to the Permits and Licensing Unit, 5700 East Tudor Road, Anchorage, Alaska 99507, **postmarked** not more than **90 days before** or **60 days after** your concealed handgun permit expires (renewal applications postmarked on or after the permit expiration date are subject to a $25 late fee);
   (b) If you want to receive a copy of the receipt information, make a copy of the application and include it **and** a self addressed stamped envelope; and
   (c) Include your completed renewal application, photograph, $25 renewal fee, and $25 late fee (if applicable).

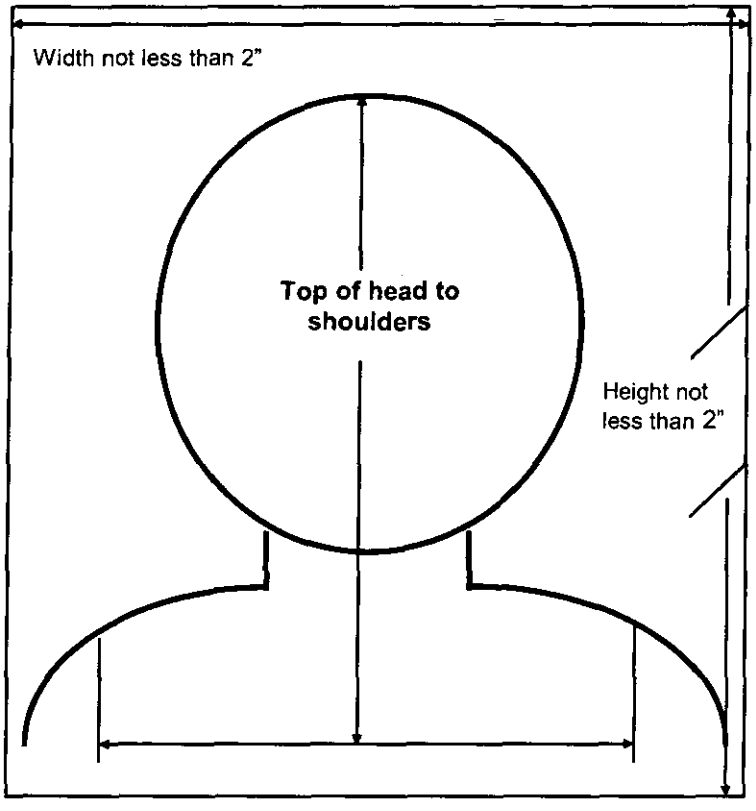
   You may apply in person only if you cannot mail your renewal application to the Permits and Licensing Unit.
   (a) If you want the receipt information completed on your copy, make a copy of the application **before** you submit it and take the copy with you; and
   (b) Take your completed renewal application, photograph, and fee(s) to an office of the Alaska State Troopers.

10. **TERM OF RENEWAL PERMIT** - Permits renewed under AS 18.65.725 are valid for five years.

PHOTOGRAPH INSTRUCTIONS AND SPECIFICATIONS

INSTRUCTIONS:

1. Take photograph within 30 days of the date of the application.
2. Print applicant's name, date photograph was taken, and Alaska Driver's License or Identification Card number on the **back** of the photograph.



SPECIFICATIONS:

1. Uncut (not trimmed), rectangular, color photograph including the top of the subject's head to the shoulders (computer disc from a digital camera is acceptable – format must be .BMP, .DIB, .TGA, .TIF, .PCX, .GIF, .WPG, .JPG, .CMP, and .PCD).
2. Outer dimension of the photograph is **not less than** 2 inches wide by 2 inches high (passport photographs are acceptable).
3. Photograph of applicant is full frontal view **including head and shoulders only.**
4. Background is very light or white with no fancy backdrop or lettering behind subject.
5. Image is **sharp** and **correctly exposed**, not retouched.
6. Photograph lies flat, is not stained, cracked, or mutilated; is not pasted on a card or mounted in any way.
7. Group pictures and full-length portraits are **not** acceptable.
8. Photograph of applicant in a hat or sunglasses is **not** acceptable.

IMPORTANT NOTE: Failure to submit photograph as specified will delay processing

ALASKA DEPARTMENT OF PUBLIC SAFETY Division of Statewide Services	***RENEWAL* OF A CONCEALED HANDGUN PERMIT** **Please type or print using *black ink***	Do not write in this space
This renewal application will not be processed unless all applicable questions are answered and the required fee(s) and photograph accompany the application. THE RENEWAL FEE IS NON-REFUNDABLE.		

Section I.

ALASKA DRIVERS LICENSE OR IDENTIFICATION NUMBER	Department use only APSIN NUMBER	DATE OF BIRTH	PERMIT EXPIRATION DATE

FIRST NAME	MIDDLE NAME (NMN if no middle name or MIO if initial only)	LAST NAME	SUFFIX (JR, SR, II, III)

HEIGHT FT. / IN.	WEIGHT	HAIR COLOR	EYE COLOR	RACE	GENDER	DAYTIME TELEPHONE NUMBER ☐ Home ☐ Work ☐ Cell

MAILING ADDRESS	CITY	STATE	ZIP CODE
RESIDENCE ADDRESS (IF DIFFERENT THAN ABOVE)	**CITY**	**STATE**	**ZIP CODE**

CITIZENSHIP (INDICATE COUNTRY) Note: If you are not an U.S. Citizen and you request a NICS check, you must complete Section V of this application.

Section II. Has there been any change in the information submitted on your original application? ☐ Yes ☐ No

If you answered "Yes" explain below and if necessary, attach a signed statement with an explanation. Include copies of judgments, charging documents, military discharge documents, or any paperwork that will allow the department to determine whether you meet the requirements of AS 18.65.705.

_____

_____

_____

Section III.

***WARNING:* SUPPLYING A FALSE STATEMENT, ANSWER, OR DOCUMENT THE APPLICANT DOES NOT BELIEVE TO BE TRUE MAY SUBJECT THE APPLICANT TO CRIMINAL PROSECUTION FOR UNSWORN FALSIFICATION UNDER ALASKA STATUTE 11.56.210. IF FOUND GUILTY, THE APPLICANT MAY BE PUNISHED FOR VIOLATION OF A CLASS A MISDEMEANOR, AND IN SUCH CASES THE PERMIT WILL BE REVOKED AND THE APPLICANT MAY BE BARRED FROM ANY FURTHER APPLICATION FOR A PERMIT.**

I HEREBY STATE UNDER PENALTY OF LAW THAT:

1. **I have read AS 18.65.705 and still qualify for a concealed handgun permit;**
2. **I want to renew my permit to carry a concealed handgun for lawful purposes, which may include self-defense;**
3. **The information in this application and any documents submitted with this application is true, correct, and complete to the best of my knowledge and belief; and**
4. **I understand a permit eligibility investigation will be conducted as part of the application process; this may involve computerized records searches and I authorize the investigation.**

_____ _____

Date **Signature of applicant**

_____

Full name (clearly printed or typed)

FOR DEPARTMENT USE ONLY

RECEIPT FOR FEES PAID

The applicant whose name appears above paid the sum of $_____ by:

☐ **CASH** ☐ **CHECK No.** _____ ☐ **MONEY ORDER No.** _____

_____ _____

Signature of employee accepting application Printed or typed name of employee accepting application

Date_____ AST office_____

Must be completed by all non-U.S. Citizens

FIRST NAME	MIDDLE NAME (NMN if no middle name or MIO if initial only)	LAST NAME	SUFFIX (JR, SR, II, III)

HEIGHT FT. IN.	WEIGHT	HAIR COLOR	EYE COLOR	RACE	GENDER	STATE OF RESIDENCE

COUNTRY OF CITIZENSHIP	ALIEN OR I-94 REGISTRATION NUMBER	ARE YOU A NON-IMMIGRANT?) ☐ Yes ☐ No

Have you been a resident for at least 90 days? ☐ Yes ☐ No (You MUST provide a copy of supporting documentation)

NON-IMMIGRANT/ALIEN EXCEPTION: ☐ Yes ☐ No Check the exception if you choose 'YES'. You MUST provide a copy of supporting documentation:

☐ Valid Hunting License/Permit ☐ Official Representative of Foreign Government ☐ Foreign Gov't Official/Distinguished Visitor

☐ Foreign Law Enforcement Officer ☐ Waiver from Prohibition ☐ Other (describe)

2023

CONCEALED CARRY PERMIT CLASSES IN ALASKA

Anchorage

Company Name	Contact	Cost	Services	Gun Provided?
Alaska Tactical and Security Inc	Steven McDaniel	$205	Photo, fingerprints	Y
Fabubba, Inc.	Alver Cohen	$150	Add $35 for photo, fingerprints	N
Gary's Bullets and Handgun Training	Gary Gibson	FREE		N
Knox Guns	Bud Knox	$65	Add $25 for Fingerprints	N

Fairbanks

Company Name	Contact	Cost	Services	Gun Provided?
Firearms Instruciton Services	Joe Nava	$100.00	Photo, fingerprints	Y
Icy Swam Instructional Services	Michael McConahy	$100	Photo, fingerprints	Y
Tanana Valley Rifle and Pistol Club	Grant Lewis	$100		Y

Homer

Company Name	Contact	Cost	Services	Gun Provided?
Paviks	Patrick Johnson	$90	Add $5-50 for photo and fingerprints	Y (Rent for $5)

Kodiak

Company Name	Contact	Cost	Services	Gun Provided?
Kodiak Island Sportsmans Association	Gary Byers	$229.25	Photo, fingerprint	Y

Petersberg

Company Name	Contact	Cost	Services	Gun Provided?
Greywolf Enterprises	James Agner	$50		Y

(\$25 if member of Petersberg Rod and Gun Club)

Jeanne Ostnes

From: Joe Nava [ffjn@ak.net]
Sent: Tuesday, March 31, 2009 3:38 PM
To: Rep. Craig Johnson
Subject: ACHP CHange

Rep. Johnson:
My name is Joe Nava. I have taught thousands of people the AK State Concealed Carry Course.
I believe the change to an expiration date that coincides with a birthday is a step in the right direction.
The bill has my support. I cannot get to the public hearing.
469 NRA Lane, Fairbanks, AK 99709

From: Randy Pitney [mailto:fnrwp@uaf.edu]
Sent: Tuesday, March 31, 2009 12:37 PM
To: Jeanne_ostnes@legis.state.ak.us
Cc: **Subject:** conceal carry bill

Jeanne,
I support the bill changing the expiration date on the conceal carry to a person's birth date, like with our driver's licenses. Unfortunately, I am not available for the call in.
Randy Pitney

MICK MANNS
BETTIES. AK 99726

AS A FORMER DEPUTY SHERIFF
FORMER POLICE OFFICER & HAVING
HAD A CONCEALED CARRY PERMIT

1 MY COMMENTS ARE THESE-
1- FINGER PRINTS NEVER CHANGES
TO DO THIS OVER MAKES NO SENSE-

2 2. TO SET THROUGH A CLASS ALL
OVER FOR SOMETHING WE'VE ALREADY
PASSED DOESN'T SEEM REASONABLE

3 WE HAVE NO OBJECTION TO
A LATE FEE OF REASONABLE

479-5704

Honorable Members

My NAME is JACK McMANUS A Retired Lawyer who moved to AK 20 Yrs Ago. I Live in Fairbanks and substantial Deeded Land at Chandalar Lake

I also write extensively on the Constitution of the U.S particularly The 2nd amendment

In Regard to the Concealed weapon Regulations may I point out in AK you do not need a permit However A concealed Carry permit Requires one to take an instructional course with diploma and Shoot For Record

We Your Supplicants have done this But Because of excusable Neglect, inadvertancy, and not Knowing of The time limit on the permit, — we Lost our permits

We ask you To Allow former permit Holders to Re-establish our permit By application and perhaps a Resonable Renewal Fee — However we have already passed the educational Requirements and have Shot For Record. Thank you.

Semper Fidelis

Jack McManus

907-479-5001

Jack McManus
PO Box 60227
Fairbanks, AK 99706-0227

HOUSE COMMITTEE REPO

(7)
Date Referred to Committee: March 23, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 4/1/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 201**

"An Act relating to the expiration date of a concealed handgun permit."

HB 201 CONCEALED HANDGUN PERMITS

Recommends it be replaced with [ ] HCS *or* [√] CS for HB201 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DPS	1			√

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Gruenberg	—			
	Coghill	√			
	Olson	X			
	Gatto	X			
Chair:	KAUKAS	X			
Chair:					

HB 213

2028

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Carl Gatto
Room 108
(907) 465-3743

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 13, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File HB213

Please accept this memo as the referral file for HB213. Attached are the following documents:

- Commissioner Bishop Letter to Representative Ramras, dated 4/8/09
- Sectional
- HB213 Bill version 26-GH1045\A
- REV Zero Fiscal Note
- Bill support
- Relevant US Code
- HJUD Committee Report

STATE OF ALASKA

Department of Labor and Workforce Development

OFFICE OF THE COMMISSIONER

SARAH PALIN, GOVERNOR

P.O. BOX 111149
JUNEAU, ALASKA 99811-1149

PHONE: (907) 465-2700
FAX: (907) 465-2784

April 8, 2009

The Honorable Jay Ramras, Chair
House Judiciary Committee
State Capitol, Room 120
Juneau, AK 99801-1182

Dear Representative Ramras:

I respectfully request a hearing by the House Judiciary Committee of House Bill 213, "An Act relating to contributions, interest, penalties, and payments under the Alaska Employment Security and providing for an effective date".

This legislation is very important as it puts the state in federal compliance with the Federal Unemployment Tax Act. Alaska law must comply with the FUTA as a condition of being certified for receiving administrative grants totaling approximately $20 million and for employers in the state to continue to receive their federal tax credit under 26 U.S. C. 3302. If Alaska was decertified, Alaska employers would lose approximately $111 million in annual federal tax credit.

Alaska is a part of a nationwide Unemployment Insurance (UI) system and our state has agreed to operate our program in conformity with the Federal Unemployment Tax Act (FUTA). AS 23.20.080 stipulates that Alaska will cooperate and comply with federal law (26 U.S.C. 3304) and regulations for the administration of the UI Program. In order to be in compliance with FUTA, we must now cover services performed by employees of tribal entities and must give federally recognized tribes the choice to become reimbursable employers for the payment of UI taxes.

Thank you for your consideration of this important matter. Please contact me or my Legislation Liaison, Paula Scavera at 465-2700 if you would like to discuss this further.

Sincerely,

Clark Bishop
Commissioner

Enclosures

2030

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Sectional Analysis
Alaska Department of Labor and Workforce Department
Federal Unemployment Tax Act-Federally Recognized Tribes
HB 213
April 1, 2009

Section 1: Provides legislative findings and intent for Alaska's compliance with the Consolidated Appropriations Act of 2001 (P.L. 106-544) and the Federal Unemployment Tax Act.

Section 2: Amends AS 23.20.277(b) to include federally recognized tribes in the way reimbursable employers are billed and how payments are made.

Section 3: Amends AS 23.20.277(e) to include federally recognized tribes in the provisions for determining liability as a reimbursing employer.

Section 4: Amends AS 23.20.277(f) to include federally recognized tribes in the provisions for determining when payments are due.

Section 5: Amends AS 23.20.277(g) to include federally recognized tribes in the provisions that prohibit reimbursing employers from making unemployment insurance deductions from employee wages.

Section 6: Amends AS 23.20.277(h) to improve the form and substance of the law. The term "organization" was changed to "employer".

Section 7: Amends AS 23.20.277(j) to include federally recognized tribes that elect the reimbursable method of payment in the bonding and security provisions provided under current law.

Section 8: Amends AS 23.20.277 (k) to provide the department with authority to terminate an employer's election to make payments in place of contributions if an employer is delinquent in making payments.

Section 9: Amends AS 23.20.277(l) to require that federally recognized tribes are liable for the full amount of regular benefits plus the full amount of extended benefits.

Section 10: Adds a new section AS 23.20.277(m) that prohibits the department from approving an election to be a reimbursable employer if, at the time of the election, the employer is delinquent in making payments.

Sections 11: Amends AS 23.20.278 to include federally recognized tribes in the way unemployment insurance benefits are financed.

Section 12: Amends AS 23.20.381(j) to include federally recognized tribes that operate an educational institution in the definition of an "educational service agency".

Section 13: Amends AS 23.20.520(10) to include federally recognized tribes in the definition of an "employing unit".

Section 14: Amends AS 23.20.520(14) to include institutions that are operated by a federally recognized tribe in the definition of an "institution of higher education".

Section 15: Adds new section AS 23.20.520(22) to provide a definition of "federally recognized tribe" that conforms with 25 U.S.C. 479a (Federally Recognized Tribe List Act of 1994) and the Federal Unemployment Tax Act.

Section 16: Amends AS 23.20.525(a)(14) to include services performed for federally recognized tribe in the definition of "employment".

Section 17: Amends AS 23.20.526(d)(3) to exclude services performed as part of an unemployment work-relief or work-training program assisted or financed by a federally recognized tribe . Adds a new section AS 23.20.526 (d)(10) to provide an exclusion for service performed by an individual in the exercise of duties as an officer of a federally recognized tribe.

Section 18: Permits the Revisor to change the title of AS 23.20.277.

Section 19: Provides an immediate effective date clause.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 213
(H) Publish Date: 4/1/09

Identifier (file name): 0045-DOLWD-UI-03-31-09
Dept. Affected: Labor and Workforce Development
Title "An Act relating to contributions, interest, penalties, and payments under the Alaska Employment Security Act..."
RDU Employment Security
Component Unemployment Insurance
Sponsor Rules Committee
Requester Governor
Component Number 2276

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							
FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost: None

POSITIONS

Full-time							
Part-time							
Temporary							

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

There is no anticipated financial impact to the department as a result of this legislation.

Prepared by: Thomas Nelson, Director
Phone 465-5933
Division Division of Employment Security
Date/Time 3/31/09 8:46 AM
Approved by: Click Bishop, Commissioner
Date 3/31/09
Agency Department of Labor and Workforce Development

(Revised 9/2008 OMB)

U.S. Department of Labor

Employment and Training Administration
Region 6 San Francisco
[illegible]

[illegible]

Mr. Clark Bishop
Commissioner
Alaska Department of Labor & Workforce Development
P.O. Box 21149
Juneau, AK 99802-1149

Dear Commissioner Bishop:

By letter dated February 12, 2008, Atkinson to Bishop, we advised you of the need for the State of Alaska to enact conforming legislation arising from the passage of the Consolidated Appropriations Act, 2001. This legislation amended the Federal Unemployment Tax Act (FUTA) to change the treatment of services performed for federally recognized "Indian tribes." We have enclosed a copy of this letter which provides a complete discussion of the issues and remedy.

On February 26, 2008, you wrote to inform us of your agency's desire to be in full compliance with Federal law and regulation, and that you would work diligently to resolve the issue. Now that Alaska's state legislature is in session, we are writing to advise this continues to be an issue and to encourage you to pursue conforming legislation.

As our earlier letter informed, failure to enact the necessary legislation could, after an opportunity for a hearing and appeal, result in the loss of the full FUTA credit (5.4%) for all employers in the state, as well as the loss of Federal UC administrative grants. Therefore it is extremely important to pass this conforming legislation as soon as possible.

Please inform us of your specific plans to obtain legislation to ensure that Alaska's law conforms to the requirements of Federal UC law. If you have any questions concerning this issue, please contact your Regional Office's UI legislation specialist, Pat O'Neal, at 415-625-7926 or oneal.pat@dol.gov.

Sincerely,

Richard C. Trigg
Regional Administrator

cc: Bill Kramer, Chief of Unemployment Insurance, via e-mail at bill.kramer@alaska.gov

Enclosure

Sarah Palin, Governor

DEPARTMENT OF LABOR AND WORKFORCE DEVELOPMENT

OFFICE OF THE COMMISSIONER

P. O. Box 111149
Juneau, AK 99811-1149

PHONE: (907) 465-2700
FAX: (907) 465-2784

February 26, 2008

Ms. Cheryl Atkinson, Administrator
Office of Workforce Security
Employment and Training Administration
200 Constitution Avenue N.W.
Washington, D.C. 20210

Dear Ms. Atkinson:

I am in receipt of your letter dated February 12, 2008 and would like to take this opportunity to thank you for bringing to my attention the matter regarding unemployment compensation services for Alaska's Native entities.

Alaska's legislative session is limited to 90 days, January 15 through April 13, 2008. Since the deadline for personal legislation for the current session has passed, the Department will be pursuing the required statutory changes during the 2009 legislative session.

I would like to point out that Alaska is currently meeting some of the federal requirements.

- Alaska has always required that services performed for tribal entities be covered for unemployment insurance purposes
- Alaska Department of Labor and Workforce Development currently reports tribal delinquencies to the Internal Revenue Service on a quarterly basis.
- Alaska has not paid any extended benefits since 2005, and will work to ensure tribal entities are billed 100 percent of any future extended benefits.

Alaska law currently does not give tribes the option of choosing the reimbursable method of payment as our law limits the option to specific non-profit and government entities. The Department suspects, as was the case in 2002, tribal entities currently reporting may actually pay less in contributions than would be billed for reimbursement. The economic incentives will likely argue powerfully for tribes to remain as taxable employers.

It is the State of Alaska's desire to be in full compliance with Federal law and regulation, and we will work diligently to resolve this issue. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

David A. Stone for:

Clark Bishop
Commissioner

cc: Pat O'Neil, Office of Systems Performance, Workforce Security
Region 6, Legislation and Appeals

U.S. Department of Labor

[illegible]
200 Constitution Avenue, NW
Washington, D.C. 20210

FEB 12 2008

Unit	Acu
RA	
BA	
DFMAS	
OSID	
OSS	
Date:	

Mr. Click Bishop
Commissioner
Alaska Department of Labor & Workforce Development
P.O. Box 21149
Juneau, AK 99802-1149

Dear Commissioner Bishop:

I am writing to remind you of the need for Alaska to amend its state unemployment compensation (UC) law to provide that services for Alaska's Native entities are covered under your state law and that these entities are offered the reimbursement option. A more detailed description of the issue follows.

The Consolidated Appropriations Act, 2001 (CAA, Public Law 106-544) amended the Federal Unemployment Tax Act (FUTA) to change the treatment of services performed for federally recognized "Indian tribes." For purposes of these amendments, "any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act . . . ." is included in the definition of "Indian Tribe." (See Section 3306(u), FUTA, as amended, which refers to the definition of "Indian tribe" in Section 4(e) of the Indian Self-Determination and Education Assistance Act.)

For purposes of your state's UC laws, these amendments mean that:

- Services performed in the employ of Alaska Native entities are, with specified exceptions, required to be covered under state UC laws; and
- Alaska Native entities must be offered the opportunity to reimburse the state unemployment fund for UC attributable under state law to such services in lieu of making contributions.

I also note that, although no change was required to state law, these amendments also resulted in states no longer being eligible for the Federal share of extended benefit payments based on services performed in the employ of Alaskan Native entities.

A complete explanation of these Federal law amendments is found in Unemployment Insurance Program Letter No. 14-01, (69 Fed. Reg. 16965, March 31, 2004.) In brief, Section 3304(a)(6)(A), FUTA, requires, as a condition for employers in a state to receive credit against the Federal unemployment tax, that state law provide that UC be payable on the basis of certain services. These services are described in Section 3309(a)(1), FUTA, which in turn references Section 3306(c)(7), FUTA, which now includes services

performed for federally recognized Indian tribes, including Alaska Native entities. Thus, UC must be payable based on these services.

Regarding reimbursements, Section 3304(a)(6)(B), FUTA, requires that state law provide for funding the benefit costs of UC based on these services through "payments (in lieu of contributions)," commonly called "reimbursements." As a result of the CAA amendments, Alaska Native entities must now be offered the reimbursement option. Please note that the reimbursement option may only be offered for services performed "in the employ of" an Alaskan Native entity. It does not apply to services performed for a private entity in native villages or for individuals or for private businesses owned by members of an Alaskan Native entity.

We had been holding these issues in abeyance as a result of Section 805 of Public Law 107-206 enacted in 2002. That section prohibited the Department from using appropriated funds to pursue the CAA amendments as they related to Alaska Native entities. Since that prohibition has expired, there is no longer a basis for holding this matter in abeyance. Failure to enact the necessary legislation could, after an opportunity for a hearing and appeal, result in the loss of the full FUTA credit (5.4%) for all employers in the state, as well as the loss of Federal UC administrative grants.

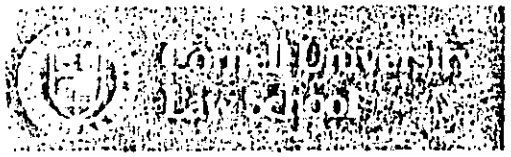
Please inform me of your plans to obtain legislation to ensure that Alaska's law conforms to the requirements of Federal UC law. Please provide a written response within thirty days of your receipt of this letter and provide a copy to your Regional Office. If you have any questions concerning this issue, please contact your Regional Office's legislative liaison, Pat O'Neal, at 415-625-7926 or oneal.pat@dol.gov.

Sincerely,

Cheryl Atkinson

Cheryl Atkinson
Administrator,
Office of Workforce Security

cc: Richard C. Trigg
Regional Administrator
San Francisco



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TITLE 26 > Subtitle C > CHAPTER 23 > § 3309

§ 3309. State law coverage of services performed for nonprofit organizations or governmental entities

(a) State law requirements

For purposes of section 3304 (a) (6)—

(1) except as otherwise provided in subsections (b) and (c), the services to which this paragraph applies are—

(A) service excluded from the term "employment" solely by reason of paragraph (8) of section 3306 (c), and

(B) service excluded from the term "employment" solely by reason of paragraph (7) of section 3306 (c); and

(2) the State law shall provide that a governmental entity, including an Indian tribe, or any other organization (or group of governmental entities or other organizations) which, but for the requirements of this paragraph, would be liable for contributions with respect to service to which paragraph (1) applies may elect, for such minimum period and at such time as may be provided by State law, to pay (in lieu of such contributions) into the State unemployment fund amounts equal to the amounts of compensation attributable under the State law to such service. The State law may provide safeguards to ensure that governmental entities or other organizations so electing will make the payments required under such elections.

(b) Section not to apply to certain service

This section shall not apply to service performed—

(1) in the employ of

(A) a church or convention or association of churches,

(B) an organization which is operated primarily for religious purposes and which is operated, supervised, controlled, or principally supported by a church or convention or association of churches, or

(C) an elementary or secondary school which is operated primarily for religious purposes, which is described in section 501 (c)(3), and which is exempt from tax under section 501 (a);

(2) by a duly ordained, commissioned, or licensed minister of a church in the exercise of his ministry or by a member of a religious order in the exercise of duties required by such order;

(3) in the employ of a governmental entity referred to in paragraph (7) of section 3306 (c), if such service is performed by an individual in the exercise of his duties—

(A) as an elected official;

(B) as a member of a legislative body, or a member of the judiciary, of a State or political subdivision thereof, or of an Indian tribe;

(C) as a member of the State National Guard or Air National Guard;

(D) as an employee serving on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(E) in a position which, under or pursuant to the State or tribal law, is designated as

(i) a major nontenured policymaking or advisory position, or

(ii) a policymaking or advisory position the performance of the duties of which ordinarily does

not require more than 8 hours per week; or

(F) as an election official or election worker if the amount of remuneration received by the individual during the calendar year for services as an election official or election worker is less than $1,000;

(4) in a facility conducted for the purpose of carrying out a program of—

(A) rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury, or

(B) providing remunerative work for individuals who because of their impaired physical or mental capacity cannot be readily absorbed in the competitive labor market,

by an individual receiving such rehabilitation or remunerative work;

(5) as part of an unemployment work-relief or work-training program assisted or financed in whole or in part by any Federal agency or an agency of a State or political subdivision thereof or of an Indian tribe, by an individual receiving such work relief or work training; and

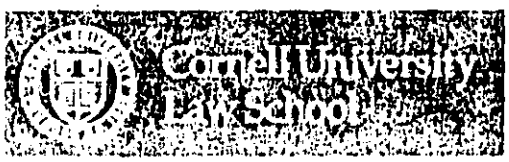
(6) by an inmate of a custodial or penal institution.

(c) Nonprofit organizations must employ 4 or more

This section shall not apply to service performed during any calendar year in the employ of any organization unless on each of some 20 days during such calendar year or the preceding calendar year, each day being in a different calendar week, the total number of individuals who were employed by such organization in employment (determined without regard to section 3306 (c)(8) and by excluding service to which this section does not apply by reason of subsection (b)) for some portion of the day (whether or not at the same moment of time) was 4 or more.

(d) Election by Indian tribe

The State law shall provide that an Indian tribe may make contributions for employment as if the employment is within the meaning of section 3306 or make payments in lieu of contributions under this section, and shall provide that an Indian tribe may make separate elections for itself and each subdivision, subsidiary, or business enterprise wholly owned by such Indian tribe. State law may require a tribe to post a payment bond or take other reasonable measures to assure the making of payments in lieu of contributions under this section. Notwithstanding the requirements of section 3306 (a)(6), if, within 90 days of having received a notice of delinquency, a tribe fails to make contributions, payments in lieu of contributions, or payment of penalties or interest (at amounts or rates comparable to those applied to all other employers covered under the State law) assessed with respect to such failure, or if the tribe fails to post a required payment bond, then service for the tribe shall not be excepted from employment under section 3306 (c)(7) until any such failure is corrected. This subsection shall apply to an Indian tribe within the meaning of section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b (e)).



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TITLE 26 > Subtitle C > CHAPTER 23 > § 3306

§ 3306. Definitions

(a) Employer

For purposes of this chapter—

(1) In general

The term "employer" means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $1,500 or more, or

(B) on each of some 20 days during the calendar year or during the preceding calendar year, each day being in a different calendar week, employed at least one individual in employment for some portion of the day.

For purposes of this paragraph, there shall not be taken into account any wages paid to, or employment of, an employee performing domestic services referred to in paragraph (3).

(2) Agricultural labor

In the case of agricultural labor, the term "employer" means, with respect to any calendar year, any person who—

(A) during any calendar quarter in the calendar year or the preceding calendar year paid wages of $20,000 or more for agricultural labor, or

(B) on each of some 20 days during the calendar year

or during the preceding calendar year, each day being in a different calendar week, employed at least 10 individuals in employment in agricultural labor for some portion of the day.

(3) Domestic service

In the case of domestic service in a private home, local college club, or local chapter of a college fraternity or sorority, the term "employer" means, with respect to any calendar year, any person who during any calendar quarter in the calendar year or the preceding calendar year paid wages in cash of $1,000 or more for such service.

(4) Special rule

A person treated as an employer under paragraph (3) shall not be treated as an employer with respect to wages paid for any service other than domestic service referred to in paragraph (3) unless such person is treated as an employer under paragraph (1) or (2) with respect to such other service.

(b) Wages

For purposes of this chapter, the term "wages" means all remuneration for employment, including the cash value of all remuneration (including benefits) paid in any medium other than cash; except that such term shall not include—

(1) that part of the remuneration which, after remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) equal to $7,000 with respect to employment has been paid to an individual by an employer during any calendar year, is paid to such individual by such employer during such calendar year. If an employer (hereinafter referred to as successor employer) during any calendar year acquires substantially all the property used in a trade or business of another employer (hereinafter referred to as a predecessor), or used in a separate unit of a trade or business of a predecessor, and immediately after the acquisition employs in his trade or business an individual who immediately prior to the acquisition was employed in the trade or business of such predecessor, then, for the purpose

of determining whether the successor employer has paid remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment equal to $7,000 to such individual during such calendar year, any remuneration (other than remuneration referred to in the succeeding paragraphs of this subsection) with respect to employment paid (or considered under this paragraph as having been paid) to such individual by such predecessor during such calendar year and prior to such acquisition shall be considered as having been paid by such successor employer;

(2) the amount of any payment (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) made to, or on behalf of, an employee or any of his dependents under a plan or system established by an employer which makes provision for his employees generally (or for his employees generally and their dependents) or for a class or classes of his employees (or for a class or classes of his employees and their dependents), on account of—

(A) sickness or accident disability (but, in the case of payments made to an employee or any of his dependents, this subparagraph shall exclude from the term "wages" only payments which are received under a workmen's compensation law), or

(B) medical or hospitalization expenses in connection with sickness or accident disability, or

(C) death;

[(3) Repealed. Pub. L. 98–21, title III, § 324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124]

(4) any payment on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability, made by an employer to, or on behalf of, an employee after the expiration of 6 calendar months following the last calendar month in which the employee worked for such employer;

(5) any payment made to, or on behalf of, an employee or his beneficiary—

(A) from or to a trust described in section 401 (a) which is exempt from tax under section 501 (a) at the time of such payment unless such payment is made to an employee of the trust as remuneration for services rendered as such employee and not as a beneficiary of the trust, or

(B) under or to an annuity plan which, at the time of such payment, is a plan described in section 403 (a),

(C) under a simplified employee pension (as defined in section 408 (k)(1)), other than any contributions described in section 408 (k)(6),

(D) under or to an annuity contract described in section 403 (b), other than a payment for the purchase of such contract which is made by reason of a salary reduction agreement (whether evidenced by a written instrument or otherwise),

(E) under or to an exempt governmental deferred compensation plan (as defined in section 3121 (v)(3)),

(F) to supplement pension benefits under a plan or trust described in any of the foregoing provisions of this paragraph to take into account some portion or all of the increase in the cost of living (as determined by the Secretary of Labor) since retirement but only if such supplemental payments are under a plan which is treated as a welfare plan under section 3(2)(B)(ii) of the Employee Retirement Income Security Act of 1974; [1]

(G) under a cafeteria plan (within the meaning of section 125) if such payment would not be treated as wages without regard to such plan and it is reasonable to believe that (if section 125 applied for purposes of this section) section 125 would not treat any wages as constructively received, or

(H) under an arrangement to which section 408 (p) applies, other than any elective contributions under paragraph (2)(A)(i) thereof,[2]

(6) the payment by an employer (without deduction from the remuneration of the employee)—

(A) of the tax imposed upon an employee under section 3101, or

(B) of any payment required from an employee under a State unemployment compensation law,

with respect to remuneration paid to an employee for domestic service in a private home of the employer or for agricultural labor;

(7) remuneration paid in any medium other than cash to an employee for service not in the course of the employer's trade or business;

[(8) Repealed. Pub. L. 98–21, title III, § 324(b)(3)(B), Apr. 20, 1983, 97 Stat. 124]

(9) remuneration paid to or on behalf of an employee if (and to the extent that) at the time of the payment of such remuneration it is reasonable to believe that a corresponding deduction is allowable under section 217 (determined without regard to section 274 (n));

(10) any payment or series of payments by an employer to an employee or any of his dependents which is paid—

(A) upon or after the termination of an employee's employment relationship because of

(i) death, or

(ii) retirement for disability, and

(B) under a plan established by the employer which makes provision for his employees generally or a class or classes of his employees (or for such employees or class or classes of employees and their dependents),

other than any such payment or series of payments which would have been paid if the employee's employment relationship had not been so terminated;

(11) remuneration for agricultural labor paid in any medium other than cash;

(12) any contribution, payment, or service, provided by an employer which may be excluded from the gross income of

an employee, his spouse, or his dependents, under the provisions of section 120 (relating to amounts received under qualified group legal services plans);

(13) any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127, 129, 134 (b)(4), or 134 (b)(5);

(14) the value of any meals or lodging furnished by or on behalf of the employer if at the time of such furnishing it is reasonable to believe that the employee will be able to exclude such items from income under section 119;

(15) any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(16) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from income under section 74 (c), 108 (f)(4), 117, or 132;

(17) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106 (b);

(18) any payment made to or for the benefit of an employee if at the time of such payment it is reasonable to believe that the employee will be able to exclude such payment from income under section 106 (d); or

(19) remuneration on account of—

(A) a transfer of a share of stock to any individual pursuant to an exercise of an incentive stock option (as defined in section 422 (b)) or under an employee stock purchase plan (as defined in section 423 (b)), or

(B) any disposition by the individual of such stock.

Except as otherwise provided in regulations prescribed by the Secretary, any third party which makes a payment included in wages solely by reason of the parenthetical matter contained in subparagraph (A) of paragraph (2) shall be

treated for purposes of this chapter and chapter 22 as the employer with respect to such wages. Nothing in the regulations prescribed for purposes of chapter 24 (relating to income tax withholding) which provides an exclusion from "wages" as used in such chapter shall be construed to require a similar exclusion from "wages" in the regulations prescribed for purposes of this chapter.

(c) Employment

For purposes of this chapter, the term "employment" means any service performed prior to 1955, which was employment for purposes of subchapter C of chapter 9 of the Internal Revenue Code of 1939 under the law applicable to the period in which such service was performed, and

(A) any service, of whatever nature, performed after 1954 by an employee for the person employing him, irrespective of the citizenship or residence of either,

(i) within the United States, or

(ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, and

(B) any service, of whatever nature, performed after 1971 outside the United States (except in a contiguous country with which the United States has an agreement relating to unemployment compensation) by a citizen of the United States as an employee of an American employer (as defined in subsection (j)(3)), except—

(1) agricultural labor (as defined in subsection (k)) unless—

(A) such labor is performed for a person who—

(i) during any calendar quarter in the calendar year or the preceding calendar year paid remuneration in cash of $20,000 or more to individuals employed in agricultural labor (including labor performed by an

alien referred to in subparagraph (B)), or

(ii) on each of some 20 days during the calendar year or the preceding calendar year, each day being in a different calendar week, employed in agricultural labor (including labor performed by an alien referred to in subparagraph (B)) for some portion of the day (whether or not at the same moment of time) 10 or more individuals; and

(B) such labor is not agricultural labor performed by an individual who is an alien admitted to the United States to perform agricultural labor pursuant to sections 214(c) and 101(a)(15)(H) of the Immigration and Nationality Act;

(2) domestic service in a private home, local college club, or local chapter of a college fraternity or sorority unless performed for a person who paid cash remuneration of $1,000 or more to individuals employed in such domestic service in any calendar quarter in the calendar year or the preceding calendar year;

(3) service not in the course of the employer's trade or business performed in any calendar quarter by an employee, unless the cash remuneration paid for such service is $50 or more and such service is performed by an individual who is regularly employed by such employer to perform such service. For purposes of this paragraph, an individual shall be deemed to be regularly employed by an employer during a calendar quarter only if—

(A) on each of some 24 days during such quarter such individual performs for such employer for some portion of the day service not in the course of the employer's trade or business, or

(B) such individual was regularly employed (as determined under subparagraph (A)) by such employer in the performance of such service during the preceding calendar quarter;

(4) service performed on or in connection with a vessel or aircraft not an American vessel or American aircraft, if the

employee is employed on and in connection with such vessel or aircraft when outside the United States;

(5) service performed by an individual in the employ of his son, daughter, or spouse, and service performed by a child under the age of 21 in the employ of his father or mother;

(6) service performed in the employ of the United States Government or of an instrumentality of the United States which is—

(A) wholly or partially owned by the United States, or

(B) exempt from the tax imposed by section 3301 by virtue of any provision of law which specifically refers to such section (or the corresponding section of prior law) in granting such exemption;

(7) service performed in the employ of a State, or any political subdivision thereof, or in the employ of an Indian tribe, or any instrumentality of any one or more of the foregoing which is wholly owned by one or more States or political subdivisions or Indian tribes; and any service performed in the employ of any instrumentality of one or more States or political subdivisions to the extent that the instrumentality is, with respect to such service, immune under the Constitution of the United States from the tax imposed by section 3301;

(8) service performed in the employ of a religious, charitable, educational, or other organization described in section 501 (c)(3) which is exempt from income tax under section 501 (a);

(9) service performed by an individual as an employee or employee representative as defined in section 1 of the Railroad Unemployment Insurance Act (45 U.S.C. 351);

(10)

(A) service performed in any calendar quarter in the employ of any organization exempt from income tax under section 501 (a) (other than an organization described in section 401 (a)) or under section 521, if the remuneration for such service is less than $50, or

(B) service performed in the employ of a school,

college, or university, if such service is performed

(i) by a student who is enrolled and is regularly attending classes at such school, college, or university, or

(ii) by the spouse of such a student, if such spouse is advised, at the time such spouse commences to perform such service, that

(I) the employment of such spouse to perform such service is provided under a program to provide financial assistance to such student by such school, college, or university, and

(II) such employment will not be covered by any program of unemployment insurance, or

(C) service performed by an individual who is enrolled at a nonprofit or public educational institution which normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on as a student in a full-time program, taken for credit at such institution, which combines academic instruction with work experience, if such service is an integral part of such program, and such institution has so certified to the employer, except that this subparagraph shall not apply to service performed in a program established for or on behalf of an employer or group of employers, or

(D) service performed in the employ of a hospital, if such service is performed by a patient of such hospital;

(11) service performed in the employ of a foreign government (including service as a consular or other officer or employee or a nondiplomatic representative);

(12) service performed in the employ of an instrumentality wholly owned by a foreign government—

(A) if the service is of a character similar to that performed in foreign countries by employees of the United States Government or of an instrumentality

thereof; and

(B) if the Secretary of State shall certify to the Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States Government and of instrumentalities thereof;

(13) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved pursuant to State law; and service performed as an intern in the employ of a hospital by an individual who has completed a 4 years' course in a medical school chartered or approved pursuant to State law;

(14) service performed by an individual for a person as an insurance agent or as an insurance solicitor, if all such service performed by such individual for such person is performed for remuneration solely by way of commission;

(15)

(A) service performed by an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(B) service performed by an individual in, and at the time of, the sale of newspapers or magazines to ultimate consumers, under an arrangement under which the newspapers or magazines are to be sold by him at a fixed price, his compensation being based on the retention of the excess of such price over the amount at which the newspapers or magazines are charged to him, whether or not he is guaranteed a minimum amount of compensation for such service, or is entitled to be credited with the unsold newspapers or magazines turned back;

(16) service performed in the employ of an international organization;

(17) service performed by an individual in (or as an officer or member of the crew of a vessel while it is engaged in) the catching, taking, harvesting, cultivating, or farming of any kind of fish, shellfish, crustacea, sponges, seaweeds, or other aquatic forms of animal and vegetable life (including service performed by any such individual as an ordinary incident to any such activity), except—

(A) service performed in connection with the catching or taking of salmon or halibut, for commercial purposes, and

(B) service performed on or in connection with a vessel of more than 10 net tons (determined in the manner provided for determining the register tonnage of merchant vessels under the laws of the United States);

(18) service described in section 3121 (b)(20);

(19) Service [3] which is performed by a nonresident alien individual for the period he is temporarily present in the United States as a nonimmigrant under subparagraph (F), (J), (M), or (Q) of section 101(a)(15) of the Immigration and Nationality Act, as amended (8 U.S.C. 1101 (a)(15)(F), (J), (M), or (Q)), and which is performed to carry out the purpose specified in subparagraph (F), (J), (M), or (Q), as the case may be;

(20) service performed by a full time student (as defined in subsection (q)) in the employ of an organized camp—

(A) if such camp—

(i) did not operate for more than 7 months in the calendar year and did not operate for more than 7 months in the preceding calendar year, or

(ii) had average gross receipts for any 6 months in the preceding calendar year which were not more than 331/3 percent of its average gross receipts for the other 6 months in the preceding calendar year; and

(B) if such full time student performed services in the employ of such camp for less than 13 calendar weeks in such calendar year; or

(21) service performed by a person committed to a penal institution.

(d) Included and excluded service

For purposes of this chapter, if the services performed during one-half or more of any pay period by an employee for the person employing him constitute employment, all the services of such employee for such period shall be deemed to be employment; but if the services performed during more than one-half of any such pay period by an employee for the person employing him do not constitute employment, then none of the services of such employee for such period shall be deemed to be employment. As used in this subsection, the term "pay period" means a period (of not more than 31 consecutive days) for which a payment of remuneration is ordinarily made to the employee by the person employing him. This subsection shall not be applicable with respect to services performed in a pay period by an employee for the person employing him, where any of such service is excepted by subsection (c)(9).

(e) State agency

For purposes of this chapter, the term "State agency" means any State officer, board, or other authority, designated under a State law to administer the unemployment fund in such State.

(f) Unemployment fund

For purposes of this chapter, the term "unemployment fund" means a special fund, established under a State law and administered by a State agency, for the payment of compensation. Any sums standing to the account of the State agency in the Unemployment Trust Fund established by section 904 of the Social Security Act, as amended (42 U.S.C. 1104), shall be deemed to be a part of the unemployment fund of the State, and no sums paid out of the Unemployment Trust Fund to such State agency shall cease to be a part of the unemployment fund of the State until expended by such State agency. An unemployment fund shall be deemed to be maintained during a taxable year only if throughout such year, or such portion of the year as the unemployment fund was in

existence, no part of the moneys of such fund was expended for any purpose other than the payment of compensation (exclusive of expenses of administration) and for refunds of sums erroneously paid into such fund and refunds paid in accordance with the provisions of section 3305 (b); except that—

(1) an amount equal to the amount of employee payments into the unemployment fund of a State may be used in the payment of cash benefits to individuals with respect to their disability, exclusive of expenses of administration;

(2) the amounts specified by section 903(c)(2) or 903(d)(4) of the Social Security Act may, subject to the conditions prescribed in such section, be used for expenses incurred by the State for administration of its unemployment compensation law and public employment offices,[4]

(3) nothing in this subsection shall be construed to prohibit deducting any amount from unemployment compensation otherwise payable to an individual and using the amount so deducted to pay for health insurance, or the withholding of Federal, State, or local individual income tax, if the individual elected to have such deduction made and such deduction was made under a program approved by the Secretary of Labor;

(4) amounts may be deducted from unemployment benefits and used to repay overpayments as provided in section 303 (g) of the Social Security Act;

(5) [5] amounts may be withdrawn for the payment of short-time compensation under a plan approved by the Secretary of Labor; and

(5) [5] amounts may be withdrawn for the payment of allowances under a self-employment assistance program (as defined in subsection (t)).

(g) Contributions

For purposes of this chapter, the term "contributions" means payments required by a State law to be made into an unemployment fund by any person on account of having individuals in his employ, to the extent that such payments are made by him without being deducted or deductible from the

remuneration of individuals in his employ.

(h) Compensation

For purposes of this chapter, the term "compensation" means cash benefits payable to individuals with respect to their unemployment.

(i) Employee

For purposes of this chapter, the term "employee" has the meaning assigned to such term by section 3121 (d), except that paragraph (4) and subparagraphs (B) and (C) of paragraph (3) shall not apply.

(j) State, United States, and American employer

For purposes of this chapter—

(1) State

The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(2) United States

The term "United States" when used in a geographical sense includes the States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(3) American employer

The term "American employer" means a person who is—

(A) an individual who is a resident of the United States,

(B) a partnership, if two-thirds or more of the partners are residents of the United States,

(C) a trust, if all of the trustees are residents of the United States, or

(D) a corporation organized under the laws of the United States or of any State.

An individual who is a citizen of the Commonwealth of Puerto Rico or the Virgin Islands (but not otherwise a citizen of the United States) shall be considered, for purposes of this

section, as a citizen of the United States.

(k) Agricultural labor

For purposes of this chapter, the term "agricultural labor" has the meaning assigned to such term by subsection (g) of section 3121, except that for purposes of this chapter subparagraph (B) of paragraph (4) of such subsection (g) shall be treated as reading:

"(B) in the employ of a group of operators of farms (or a cooperative organization of which such operators are members) in the performance of service described in subparagraph (A), but only if such operators produced more than one-half of the commodity with respect to which such service is performed;".

[(l) Repealed. Sept. 1, 1954, ch. 1212, § 4(c), 68 Stat. 1135]

(m) American vessel and aircraft

For purposes of this chapter, the term "American vessel" means any vessel documented or numbered under the laws of the United States; and includes any vessel which is neither documented or numbered under the laws of the United States nor documented under the laws of any foreign country, if its crew is employed solely by one or more citizens or residents of the United States or corporations organized under the laws of the United States or of any State; and the term "American aircraft" means an aircraft registered under the laws of the United States.

(n) Vessels operated by general agents of United States

Notwithstanding the provisions of subsection (c)(6), service performed by officers and members of the crew of a vessel which would otherwise be included as employment under subsection (c) shall not be excluded by reason of the fact that it is performed on or in connection with an American vessel—

(1) owned by or bareboat chartered to the United States and

(2) whose business is conducted by a general agent of the Secretary of Commerce.

For purposes of this chapter, each such general agent shall be considered a legal entity in his capacity as such general agent, separate and distinct from his identity as a person employing individuals on his own account, and the officers and members of the crew of such an American vessel whose business is conducted by a general agent of the Secretary of Commerce shall be deemed to be performing services for such general agent rather than the United States. Each such general agent who in his capacity as such is an employer within the meaning of subsection (a) shall be subject to all the requirements imposed upon an employer under this chapter with respect to service which constitutes employment by reason of this subsection.

(o) Special rule in case of certain agricultural workers

(1) Crew leaders who are registered or provide specialized agricultural labor

For purposes of this chapter, any individual who is a member of a crew furnished by a crew leader to perform agricultural labor for any other person shall be treated as an employee of such crew leader—

(A) if—

(i) such crew leader holds a valid certificate of registration under the Migrant and Seasonal Agricultural Worker Protection Act; or

(ii) substantially all the members of such crew operate or maintain tractors, mechanized harvesting or crop-dusting equipment, or any other mechanized equipment, which is provided by such crew leader; and

(B) if such individual is not an employee of such other person within the meaning of subsection (i).

(2) Other crew leaders

For purposes of this chapter, in the case of any individual who is furnished by a crew leader to perform agricultural labor for any other person and who is not treated as an employee of such crew leader under paragraph (1)—

(A) such other person and not the crew leader shall be

treated as the employer of such individual; and

(B) such other person shall be treated as having paid cash remuneration to such individual in an amount equal to the amount of cash remuneration paid to such individual by the crew leader (either on his behalf or on behalf of such other person) for the agricultural labor performed for such other person.

(3) Crew leader

For purposes of this subsection, the term "crew leader" means an individual who—

(A) furnishes individuals to perform agricultural labor for any other person,

(B) pays (either on his behalf or on behalf of such other person) the individuals so furnished by him for the agricultural labor performed by them, and

(C) has not entered into a written agreement with such other person under which such individual is designated as an employee of such other person.

(p) Concurrent employment by two or more employers

For purposes of sections 3301, 3302, and 3306 (b)(1), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

(q) Full time student

For purposes of subsection (c)(20), an individual shall be treated as a full time student for any period—

(1) during which the individual is enrolled as a full time student at an educational institution, or

(2) which is between academic years or terms if—

this chapter.

(C) Nonqualified deferred compensation plan

For purposes of this paragraph, the term "nonqualified deferred compensation plan" means any plan or other arrangement for deferral of compensation other than a plan described in subsection (b)(5).

(s) Tips treated as wages

For purposes of this chapter, the term "wages" includes tips which are—

(1) received while performing services which constitute employment, and

(2) included in a written statement furnished to the employer pursuant to section 6053 (a).

(t) Self-employment assistance program

For the purposes of this chapter, the term "self-employment assistance program" means a program under which—

(1) individuals who meet the requirements described in paragraph (3) are eligible to receive an allowance in lieu of regular unemployment compensation under the State law for the purpose of assisting such individuals in establishing a business and becoming self-employed;

(2) the allowance payable to individuals pursuant to paragraph (1) is payable in the same amount, at the same interval, on the same terms, and subject to the same conditions, as regular unemployment compensation under the State law, except that—

(A) State requirements relating to availability for work, active search for work, and refusal to accept work are not applicable to such individuals;

(B) State requirements relating to disqualifying income are not applicable to income earned from self-employment by such individuals; and

(C) such individuals are considered to be unemployed for the purposes of Federal and State laws applicable to

unemployment compensation,

as long as such individuals meet the requirements applicable under this subsection;

(3) individuals may receive the allowance described in paragraph (1) if such individuals—

(A) are eligible to receive regular unemployment compensation under the State law, or would be eligible to receive such compensation except for the requirements described in subparagraph (A) or (B) of paragraph (2);

(B) are identified pursuant to a State worker profiling system as individuals likely to exhaust regular unemployment compensation; and

(C) are participating in self-employment assistance activities which—

(i) include entrepreneurial training, business counseling, and technical assistance; and

(ii) are approved by the State agency; and

(D) are actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed;

(4) the aggregate number of individuals receiving the allowance under the program does not at any time exceed 5 percent of the number of individuals receiving regular unemployment compensation under the State law at such time;

(5) the program does not result in any cost to the Unemployment Trust Fund (established by section 904(a) of the Social Security Act) in excess of the cost that would be incurred by such State and charged to such Fund if the State had not participated in such program; and

(6) the program meets such other requirements as the Secretary of Labor determines to be appropriate.

(u) Indian tribe

For purposes of this chapter, the term "Indian tribe" has the meaning given to such term by section 4(e) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b (e)), and includes any subdivision, subsidiary, or business enterprise wholly owned by such an Indian tribe.

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[1] So in original. The semicolon probably should be a comma.

[2] So in original. The comma probably should be a semicolon.

[3] So in original. Probably should not be capitalized.

[4] So in original. The comma probably should be a semicolon.

[5] So in original. Two pars. (5) have been enacted.

habitat for the endangered red-cockaded woodpecker and associated wildlife species of concern. Prescribed burning and timber thinning are used to ensure that quality pine habitat is maintained for red-cockaded woodpeckers, neotropical migratory songbirds, and other native wildlife. Hardwood stands provide excellent habitat for neotropical migratory songbirds, turkeys, squirrels, and other woodland wildlife. Open fields, maintained by burning and mowing, provide feeding and nesting areas for many species of birds and mammals. Numerous clear-flowing creeks and beaver ponds provide wetlands for waterfowl and other wildlife.

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment, including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: February 8, 2008.

Cynthia K. Dohner,

Acting Regional Director.

[FR Doc. E8–7000 Filed 4–3–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Entities Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the current list of 562 tribal entities recognized and eligible for funding and services from the Bureau of Indian Affairs by virtue of their status as Indian tribes. The list is updated from the notice published on March 22, 2007 (72 FR 13648).

FOR FURTHER INFORMATION CONTACT: Daisy West, Bureau of Indian Affairs, Division of Tribal Government Services, Mail Stop 4513–MIB, 1849 C Street, NW., Washington, DC 20240. Telephone number: (202) 513–7641.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to Section 104 of the Act of November 2, 1994 (Pub. L. 103–454; 108 Stat. 4791, 4792), and in exercise of authority delegated to the Assistant Secretary—Indian Affairs under 25 U.S.C. 2 and 9 and 209 DM 8.

Published below is a list of federally acknowledged tribes in the contiguous 48 states and in Alaska.

One tribe became recognized since the last publication. The Mashpee Wampanoag Tribe was acknowledged under 25 CFR part 83. The final determination for Federal acknowledgment became effective on May 23, 2007. The list also contains several tribal name changes and corrections. To aid in identifying tribal name changes, the tribe's former name is included with the new tribal name. To aid in identifying corrections, the tribe's previously listed name is included with the tribal name. We will continue to list the tribe's former or previously listed name for several years before dropping the former or previously listed name from the list.

The listed entities are acknowledged to have the immunities and privileges available to other federally acknowledged Indian tribes by virtue of their government-to-government relationship with the United States as well as the responsibilities, powers, limitations, and obligations of such tribes. We have continued the practice of listing the Alaska Native entities separately solely for the purpose of facilitating identification of them and reference to them given the large number of complex Native names.

Dated: March 25, 2008.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

Indian Tribal Entities Within the Contiguous 48 States Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Absentee-Shawnee Tribe of Indians of Oklahoma
Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California
Ak Chin Indian Community of the Maricopa (Ak Chin) Indian Reservation, Arizona
Alabama-Coushatta Tribes of Texas
Alabama-Quassarte Tribal Town, Oklahoma
Alturas Indian Rancheria, California
Apache Tribe of Oklahoma
Arapahoe Tribe of the Wind River Reservation, Wyoming
Aroostook Band of Micmac Indians of Maine
Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana
Augustine Band of Cahuilla Indians, California (formerly the Augustine Band of Cahuilla Mission Indians of the Augustine Reservation)
Bad River Band of the Lake Superior Tribe of Chippewa Indians of the Bad River Reservation, Wisconsin
Bay Mills Indian Community, Michigan
Bear River Band of the Rohnerville Rancheria, California
Berry Creek Rancheria of Maidu Indians of California
Big Lagoon Rancheria, California
Big Pine Band of Owens Valley Paiute Shoshone Indians of the Big Pine Reservation, California
Big Sandy Rancheria of Mono Indians of California
Big Valley Band of Pomo Indians of the Big Valley Rancheria, California
Blackfeet Tribe of the Blackfeet Indian Reservation of Montana
Blue Lake Rancheria, California
Bridgeport Paiute Indian Colony of California
Buena Vista Rancheria of Me-Wuk Indians of California
Burns Paiute Tribe of the Burns Paiute Indian Colony of Oregon
Cabazon Band of Mission Indians, California
Cachil DeHe Band of Wintun Indians of the Colusa Indian Community of the Colusa Rancheria, California
Caddo Nation of Oklahoma
Cahuilla Band of Mission Indians of the Cahuilla Reservation, California
Cahto Indian Tribe of the Laytonville Rancheria, California
California Valley Miwok Tribe, California (formerly the Sheep Ranch Rancheria of Me-Wuk Indians of California)
Campo Band of Diegueno Mission Indians of the Campo Indian Reservation, California
Capitan Grande Band of Diegueno Mission Indians of California:
  Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, California
  Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, California
Catawba Indian Nation (aka Catawba Tribe of South Carolina)
Cayuga Nation of New York
Cedarville Rancheria, California
Chemehuevi Indian Tribe of the Chemehuevi Reservation, California
Cher-Ae Heights Indian Community of the Trinidad Rancheria, California
Cherokee Nation, Oklahoma
Cheyenne and Arapaho Tribes, Oklahoma (formerly the Cheyenne-Arapaho Tribes of Oklahoma)
Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota

Chickasaw Nation, Oklahoma
Chicken Ranch Rancheria of Me-Wuk Indians of California
Chippewa-Cree Indians of the Rocky Boy's Reservation, Montana
Chitimacha Tribe of Louisiana
Choctaw Nation of Oklahoma
Citizen Potawatomi Nation, Oklahoma
Cloverdale Rancheria of Pomo Indians of California
Cocopah Tribe of Arizona
Coeur D'Alene Tribe of the Coeur D'Alene Reservation, Idaho
Cold Springs Rancheria of Mono Indians of California
Colorado River Indian Tribes of the Colorado River Indian Reservation, Arizona and California
Comanche Nation, Oklahoma
Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana
Confederated Tribes of the Chehalis Reservation, Washington
Confederated Tribes of the Colville Reservation, Washington
Confederated Tribes of the Coos, Lower Umpqua and Siuslaw Indians of Oregon
Confederated Tribes of the Goshute Reservation, Nevada and Utah
Confederated Tribes of the Grand Ronde Community of Oregon
Confederated Tribes of the Siletz Reservation, Oregon
Confederated Tribes of the Umatilla Reservation, Oregon
Confederated Tribes of the Warm Springs Reservation of Oregon
Confederated Tribes and Bands of the Yakama Nation, Washington
Coquille Tribe of Oregon
Cortina Indian Rancheria of Wintun Indians of California
Coushatta Tribe of Louisiana
Cow Creek Band of Umpqua Indians of Oregon
Cowlitz Indian Tribe, Washington
Coyote Valley Band of Pomo Indians of California
Crow Tribe of Montana
Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota
Death Valley Timbi-Sha Shoshone Band of California
Delaware Nation, Oklahoma
Dry Creek Rancheria of Pomo Indians of California
Duckwater Shoshone Tribe of the Duckwater Reservation, Nevada
Eastern Band of Cherokee Indians of North Carolina
Eastern Shawnee Tribe of Oklahoma
Elem Indian Colony of Pomo Indians of the Sulphur Bank Rancheria, California
Elk Valley Rancheria, California
Ely Shoshone Tribe of Nevada
Enterprise Rancheria of Maidu Indians of California
Ewiiaapaayp Band of Kumeyaay Indians, California
Federated Indians of Graton Rancheria, California
Flandreau Santee Sioux Tribe of South Dakota
Forest County Potawatomi Community, Wisconsin
Fort Belknap Indian Community of the Fort Belknap Reservation of Montana
Fort Bidwell Indian Community of the Fort Bidwell Reservation of California
Fort Independence Indian Community of Paiute Indians of the Fort Independence Reservation, California
Fort McDermitt Paiute and Shoshone Tribes of the Fort McDermitt Indian Reservation, Nevada and Oregon
Fort McDowell Yavapai Nation, Arizona
Fort Mojave Indian Tribe of Arizona, California & Nevada
Fort Sill Apache Tribe of Oklahoma
Gila River Indian Community of the Gila River Indian Reservation, Arizona
Grand Traverse Band of Ottawa and Chippewa Indians, Michigan
Greenville Rancheria of Maidu Indians of California
Grindstone Indian Rancheria of Wintun-Wailaki Indians of California
Guidiville Rancheria of California
Habematolel Pomo of Upper Lake, California (formerly the Upper Lake Band of Pomo Indians of Upper Lake Rancheria of California)
Hannahville Indian Community, Michigan
Havasupai Tribe of the Havasupai Reservation, Arizona
Ho-Chunk Nation of Wisconsin
Hoh Indian Tribe of the Hoh Indian Reservation, Washington
Hoopa Valley Tribe, California
Hopi Tribe of Arizona
Hopland Band of Pomo Indians of the Hopland Rancheria, California
Houlton Band of Maliseet Indians of Maine
Hualapai Indian Tribe of the Hualapai Indian Reservation, Arizona
Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, California
Ione Band of Miwok Indians of California
Iowa Tribe of Kansas and Nebraska
Iowa Tribe of Oklahoma
Jackson Rancheria of Me-Wuk Indians of California
Jamestown S'Klallam Tribe of Washington
Jamul Indian Village of California
Jena Band of Choctaw Indians, Louisiana
Jicarilla Apache Nation, New Mexico
Kaibab Band of Paiute Indians of the Kaibab Indian Reservation, Arizona
Kalispel Indian Community of the Kalispel Reservation, Washington
Karuk Tribe of California
Kashia Band of Pomo Indians of the Stewarts Point Rancheria, California
Kaw Nation, Oklahoma
Keweenaw Bay Indian Community, Michigan
Kialegee Tribal Town, Oklahoma
Kickapoo Tribe of Indians of the Kickapoo Reservation in Kansas
Kickapoo Tribe of Oklahoma
Kickapoo Traditional Tribe of Texas
Kiowa Indian Tribe of Oklahoma
Klamath Tribes, Oregon (formerly the Klamath Indian Tribe of Oregon)
Kootenai Tribe of Idaho
La Jolla Band of Luiseno Mission Indians of the La Jolla Reservation, California
La Posta Band of Diegueno Mission Indians of the La Posta Indian Reservation, California
Lac Courte Oreilles Band of Lake Superior Chippewa Indians of Wisconsin
Lac du Flambeau Band of Lake Superior Chippewa Indians of the Lac du Flambeau Reservation of Wisconsin
Lac Vieux Desert Band of Lake Superior Chippewa Indians, Michigan
Las Vegas Tribe of Paiute Indians of the Las Vegas Indian Colony, Nevada
Little River Band of Ottawa Indians, Michigan
Little Traverse Bay Bands of Odawa Indians, Michigan
Lower Lake Rancheria, California
Los Coyotes Band of Cahuilla & Cupeno Indians of the Los Coyotes Reservation, California
Lovelock Paiute Tribe of the Lovelock Indian Colony, Nevada
Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota
Lower Elwha Tribal Community of the Lower Elwha Reservation, Washington
Lower Sioux Indian Community in the State of Minnesota
Lummi Tribe of the Lummi Reservation, Washington
Lytton Rancheria of California
Makah Indian Tribe of the Makah Indian Reservation, Washington
Manchester Band of Pomo Indians of the Manchester-Point Arena Rancheria, California
Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, California
Mashantucket Pequot Tribe of Connecticut
Mashpee Wampanoag Tribe, Massachusetts
Match-e-be-nash-she-wish Band of Pottawatomi Indians of Michigan
Mechoopda Indian Tribe of Chico Rancheria, California

Menominee Indian Tribe of Wisconsin
Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, California
Mescalero Apache Tribe of the Mescalero Reservation, New Mexico
Miami Tribe of Oklahoma
Miccosukee Tribe of Indians of Florida
Middletown Rancheria of Pomo Indians of California
Minnesota Chippewa Tribe, Minnesota (Six component reservations:
Bois Forte Band (Nett Lake); Fond du Lac Band; Grand Portage Band; Leech Lake Band; Mille Lacs Band; White Earth Band)
Mississippi Band of Choctaw Indians, Mississippi
Moapa Band of Paiute Indians of the Moapa River Indian Reservation, Nevada
Modoc Tribe of Oklahoma
Mohegan Indian Tribe of Connecticut
Mooretown Rancheria of Maidu Indians of California
Morongo Band of Cahuilla Mission Indians of the Morongo Reservation, California
Muckleshoot Indian Tribe of the Muckleshoot Reservation, Washington
Muscogee (Creek) Nation, Oklahoma
Narragansett Indian Tribe of Rhode Island
Navajo Nation, Arizona, New Mexico & Utah
Nez Perce Tribe, Idaho (previously listed as Nez Perce Tribe of Idaho)
Nisqually Indian Tribe of the Nisqually Reservation, Washington
Nooksack Indian Tribe of Washington
Northern Cheyenne Tribe of the Northern Cheyenne Indian Reservation, Montana
Northfork Rancheria of Mono Indians of California
Northwestern Band of Shoshoni Nation of Utah (Washakie)
Nottawaseppi Huron Band of the Potawatomi, Michigan (formerly the Huron Potawatomi, Inc.)
Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota
Ohkay Owingeh, New Mexico (formerly the Pueblo of San Juan)
Omaha Tribe of Nebraska
Oneida Nation of New York
Oneida Tribe of Indians of Wisconsin
Onondaga Nation of New York
Osage Nation, Oklahoma (formerly the Osage Tribe)
Ottawa Tribe of Oklahoma
Otoe-Missouria Tribe of Indians, Oklahoma
Paiute Indian Tribe of Utah (Cedar City Band of Paiutes, Kanosh Band of Paiutes, Koosharem Band of Paiutes, Indian Peaks Band of Paiutes, and Shivwits Band of Paiutes)
Paiute-Shoshone Indians of the Bishop Community of the Bishop Colony, California
Paiute-Shoshone Tribe of the Fallon Reservation and Colony, Nevada
Paiute-Shoshone Indians of the Lone Pine Community of the Lone Pine Reservation, California
Pala Band of Luiseno Mission Indians of the Pala Reservation, California
Pascua Yaqui Tribe of Arizona
Paskenta Band of Nomlaki Indians of California
Passamaquoddy Tribe of Maine
Pauma Band of Luiseno Mission Indians of the Pauma & Yuima Reservation, California
Pawnee Nation of Oklahoma
Pechanga Band of Luiseno Mission Indians of the Pechanga Reservation, California
Penobscot Tribe of Maine
Peoria Tribe of Indians of Oklahoma
Picayune Rancheria of Chukchansi Indians of California
Pinoleville Pomo Nation, California (formerly the Pinoleville Rancheria of Pomo Indians of California)
Pit River Tribe, California (includes XL Ranch, Big Bend, Likely, Lookout, Montgomery Creek and Roaring Creek Rancherias)
Poarch Band of Creek Indians of Alabama
Pokagon Band of Potawatomi Indians, Michigan and Indiana
Ponca Tribe of Indians of Oklahoma
Ponca Tribe of Nebraska
Port Gamble Indian Community of the Port Gamble Reservation, Washington
Potter Valley Tribe, California (formerly the Potter Valley Rancheria of Pomo Indians of California)
Prairie Band of Potawatomi Nation, Kansas
Prairie Island Indian Community in the State of Minnesota
Pueblo of Acoma, New Mexico
Pueblo of Cochiti, New Mexico
Pueblo of Jemez, New Mexico
Pueblo of Isleta, New Mexico
Pueblo of Laguna, New Mexico
Pueblo of Nambe, New Mexico
Pueblo of Picuris, New Mexico
Pueblo of Pojoaque, New Mexico
Pueblo of San Felipe, New Mexico
Pueblo of San Ildefonso, New Mexico
Pueblo of Sandia, New Mexico
Pueblo of Santa Ana, New Mexico
Pueblo of Santa Clara, New Mexico
Pueblo of Santo Domingo, New Mexico
Pueblo of Taos, New Mexico
Pueblo of Tesuque, New Mexico
Pueblo of Zia, New Mexico
Puyallup Tribe of the Puyallup Reservation, Washington
Pyramid Lake Paiute Tribe of the Pyramid Lake Reservation, Nevada
Quapaw Tribe of Indians, Oklahoma
Quartz Valley Indian Community of the Quartz Valley Reservation of California
Quechan Tribe of the Fort Yuma Indian Reservation, California & Arizona
Quileute Tribe of the Quileute Reservation, Washington
Quinault Tribe of the Quinault Reservation, Washington
Ramona Band or Village of Cahuilla Mission Indians of California
Red Cliff Band of Lake Superior Chippewa Indians of Wisconsin
Red Lake Band of Chippewa Indians, Minnesota
Redding Rancheria, California
Redwood Valley Rancheria of Pomo Indians of California
Reno-Sparks Indian Colony, Nevada
Resighini Rancheria, California
Rincon Band of Luiseno Mission Indians of the Rincon Reservation, California
Robinson Rancheria of Pomo Indians of California
Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota
Round Valley Indian Tribes of the Round Valley Reservation, California
Rumsey Indian Rancheria of Wintun Indians of California
Sac & Fox Tribe of the Mississippi in Iowa
Sac & Fox Nation of Missouri in Kansas and Nebraska
Sac & Fox Nation, Oklahoma
Saginaw Chippewa Indian Tribe of Michigan
St. Croix Chippewa Indians of Wisconsin
Saint Regis Mohawk Tribe, New York (formerly the St. Regis Band of Mohawk Indians of New York)
Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona
Samish Indian Tribe, Washington
San Carlos Apache Tribe of the San Carlos Reservation, Arizona
San Juan Southern Paiute Tribe of Arizona
San Manual Band of Serrano Mission Indians of the San Manual Reservation, California
San Pasqual Band of Diegueno Mission Indians of California
Santa Rosa Indian Community of the Santa Rosa Rancheria, California
Santa Rosa Band of Cahuilla Indians, California (formerly the Santa Rosa Band of Cahuilla Mission Indians of the Santa Rosa Reservation)
Santa Ynez Band of Chumash Mission Indians of the Santa Ynez Reservation, California
Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, California

Santee Sioux Nation, Nebraska
Sauk-Suiattle Indian Tribe of Washington
Sault Ste. Marie Tribe of Chippewa Indians of Michigan
Scotts Valley Band of Pomo Indians of California
Seminole Nation of Oklahoma
Seminole Tribe of Florida (Dania, Big Cypress, Brighton, Hollywood & Tampa Reservations)
Seneca Nation of New York
Seneca-Cayuga Tribe of Oklahoma
Shakopee Mdewakanton Sioux Community of Minnesota
Shawnee Tribe, Oklahoma
Sherwood Valley Rancheria of Pomo Indians of California
Shingle Springs Band of Miwok Indians, Shingle Springs Rancheria (Verona Tract), California
Shoalwater Bay Tribe of the Shoalwater Bay Indian Reservation, Washington
Shoshone Tribe of the Wind River Reservation, Wyoming
Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho
Shoshone-Paiute Tribes of the Duck Valley Reservation, Nevada
Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota
Skokomish Indian Tribe of the Skokomish Reservation, Washington
Skull Valley Band of Goshute Indians of Utah
Smith River Rancheria, California
Snoqualmie Tribe, Washington
Soboba Band of Luiseno Indians, California
Sokaogon Chippewa Community, Wisconsin
Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado
Spirit Lake Tribe, North Dakota
Spokane Tribe of the Spokane Reservation, Washington
Squaxin Island Tribe of the Squaxin Island Reservation, Washington
Standing Rock Sioux Tribe of North & South Dakota
Stockbridge Munsee Community, Wisconsin
Stillaguamish Tribe of Washington
Summit Lake Paiute Tribe of Nevada
Suquamish Indian Tribe of the Port Madison Reservation, Washington
Susanville Indian Rancheria, California
Swinomish Indians of the Swinomish Reservation, Washington
Sycuan Band of the Kumeyaay Nation (formerly the Sycuan Band of Dieguono Mission Indians of California)
Table Mountain Rancheria of California
Te-Moak Tribe of Western Shoshone Indians of Nevada (Four constituent bands: Battle Mountain Band; Elko Band; South Fork Band and Wells Band)
Thlopthlocco Tribal Town, Oklahoma
Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota
Tohono O'odham Nation of Arizona
Tonawanda Band of Seneca Indians of New York
Tonkawa Tribe of Indians of Oklahoma
Tonto Apache Tribe of Arizona
Torres Martinez Desert Cahuilla Indians, California (formerly the Torres-Martinez Band of Cahuilla Mission Indians of California)
Tule River Indian Tribe of the Tule River Reservation, California
Tulalip Tribes of the Tulalip Reservation, Washington
Tunica-Biloxi Indian Tribe of Louisiana
Tuolumne Band of Me-Wuk Indians of the Tuolumne Rancheria of California
Turtle Mountain Band of Chippewa Indians of North Dakota
Tuscarora Nation of New York
Twenty-Nine Palms Band of Mission Indians of California
United Auburn Indian Community of the Auburn Rancheria of California
United Keetoowah Band of Cherokee Indians in Oklahoma
Upper Sioux Community, Minnesota
Upper Skagit Indian Tribe of Washington
Ute Indian Tribe of the Uintah & Ouray Reservation, Utah
Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico & Utah
Utu Utu Gwaitu Paiute Tribe of the Benton Paiute Reservation, California
Walker River Paiute Tribe of the Walker River Reservation, Nevada
Wampanoag Tribe of Gay Head (Aquinnah) of Massachusetts
Washoe Tribe of Nevada & California (Carson Colony, Dresslerville Colony, Woodfords Community, Stewart Community, & Washoe Ranches)
White Mountain Apache Tribe of the Fort Apache Reservation, Arizona
Wichita and Affiliated Tribes (Wichita, Keechi, Waco & Tawakonie), Oklahoma
Winnebago Tribe of Nebraska
Winnemucca Indian Colony of Nevada
Wiyot Tribe, California (formerly the Table Bluff Reservation—Wiyot Tribe)
Wyandotte Nation, Oklahoma
Yankton Sioux Tribe of South Dakota
Yavapai-Apache Nation of the Camp Verde Indian Reservation, Arizona
Yavapai-Prescott Tribe of the Yavapai Reservation, Arizona
Yerington Paiute Tribe of the Yerington Colony & Campbell Ranch, Nevada
Yomba Shoshone Tribe of the Yomba Reservation, Nevada
Ysleta Del Sur Pueblo of Texas
Yurok Tribe of the Yurok Reservation, California
Zuni Tribe of the Zuni Reservation, New Mexico

Native Entities Within the State of Alaska Recognized and Eligible To Receive Services From the United States Bureau of Indian Affairs

Native Village of Afognak (formerly the Village of Afognak)
Agdaagux Tribe of King Cove
Native Village of Akhiok
Akiachak Native Community
Akiak Native Community
Native Village of Akutan
Village of Alakanuk
Alatna Village
Native Village of Aleknagik
Algaaciq Native Village (St. Mary's)
Allakaket Village
Native Village of Ambler
Village of Anaktuvuk Pass
Yupiit of Andreafski
Angoon Community Association
Village of Aniak
Anvik Village
Arctic Village (See Native Village of Venetie Tribal Government)
Asa'carsarmiut Tribe
Native Village of Atka
Village of Atmautluak
Atqasuk Village (Atkasook)
Native Village of Barrow Inupiat Traditional Government
Beaver Village
Native Village of Belkofski
Village of Bill Moore's Slough
Birch Creek Tribe
Native Village of Brevig Mission
Native Village of Buckland
Native Village of Cantwell
Native Village of Chenega (aka Chanega)
Chalkyitsik Village
Cheesh-Na Tribe (formerly the Native Village of Chistochina)
Village of Chefornak
Chevak Native Village
Chickaloon Native Village
Chignik Bay Tribal Council (formerly the Native Village of Chignik)
Native Village of Chignik Lagoon
Chignik Lake Village
Chilkat Indian Village (Klukwan)
Chilkoot Indian Association (Haines)
Chinik Eskimo Community (Golovin)
Native Village of Chitina
Native Village of Chuathbaluk (Russian Mission, Kuskokwim)
Chuloonawick Native Village
Circle Native Community
Village of Clarks Point
Native Village of Council
Craig Community Association
Village of Crooked Creek
Curyung Tribal Council

Native Village of Deering
Native Village of Diomede (aka Inalik)
Village of Dot Lake
Douglas Indian Association
Native Village of Eagle
Native Village of Eek
Egegik Village
Eklutna Native Village
Native Village of Ekuk
Ekwok Village
Native Village of Elim
Emmonak Village
Eyansville Village (aka Bettles Field)
Native Village of Eyak (Cordova)
Native Village of False Pass
Native Village of Fort Yukon
Native Village of Gakona
Galena Village (aka Louden Village)
Native Village of Gambell
Native Village of Georgetown
Native Village of Goodnews Bay
Organized Village of Grayling (aka Holikachuk)
Gulkana Village
Native Village of Hamilton
Healy Lake Village
Holy Cross Village
Hoonah Indian Association
Native Village of Hooper Bay
Hughes Village
Huslia Village
Hydaburg Cooperative Association
Igiugig Village
Village of Iliamna
Inupiat Community of the Arctic Slope
Iqurmuit Traditional Council (formerly the Native Village of Russian Mission)
Ivanoff Bay Village
Kaguyak Village
Organized Village of Kake
Kaktovik Village (aka Barter Island)
Village of Kalskag
Village of Kaltag
Native Village of Kanatak
Native Village of Karluk
Organized Village of Kasaan
Kasigluk Traditional Elders Council (formerly the Native Village of Kasigluk)
Kenaitze Indian Tribe
Ketchikan Indian Corporation
Native Village of Kiana
King Island Native Community
King Salmon Tribe
Native Village of Kipnuk
Native Village of Kivalina
Klawock Cooperative Association
Native Village of Kluti Kaah (aka Copper Center)
Knik Tribe
Native Village of Kobuk
Kokhanok Village
Native Village of Kongiganak
Village of Kotlik
Native Village of Kotzebue
Native Village of Koyuk
Koyukuk Native Village
Organized Village of Kwethluk
Native Village of Kwigillingok
Native Village of Kwinhagak (aka Quinhagak)
Native Village of Larsen Bay
Levelock Village
Lesnoi Village (aka Woody Island)
Lime Village
Village of Lower Kalskag
Manley Hot Springs Village
Manokotak Village
Native Village of Marshall (aka Fortuna Ledge)
Native Village of Mary's Igloo
McGrath Native Village
Native Village of Mekoryuk
Mentasta Traditional Council
Metlakatla Indian Community, Annette Island Reserve
Native Village of Minto
Naknek Native Village
Native Village of Nanwalek (aka English Bay)
Native Village of Napaimute
Native Village of Napakiak
Native Village of Napaskiak
Native Village of Nelson Lagoon
Nenana Native Association
New Koliganek Village Council
New Stuyahok Village
Newhalen Village
Newtok Village
Native Village of Nightmute
Nikolai Village
Native Village of Nikolski
Ninilchik Village
Native Village of Noatak
Nome Eskimo Community
Nondalton Village
Noorvik Native Community
Northway Village
Native Village of Nuiqsut (aka Nooiksut)
Nulato Village
Nunakauyarmiut Tribe (formerly the Native Village of Toksook Bay)
Native Village of Nunam Iqua (formerly the Native Village of Sheldon's Point)
Native Village of Nunapitchuk
Village of Ohogamiut
Village of Old Harbor
Orutsararmuit Native Village (aka Bethel)
Oscarville Traditional Village
Native Village of Ouzinkie
Native Village of Paimiut
Pauloff Harbor Village
Pedro Bay Village
Native Village of Perryville
Petersburg Indian Association
Native Village of Pilot Point
Pilot Station Traditional Village
Native Village of Pitka's Point
Platinum Traditional Village
Native Village of Point Hope
Native Village of Point Lay
Native Village of Port Graham
Native Village of Port Heiden
Native Village of Port Lions
Portage Creek Village (aka Ohgsenakale)
Pribilof Islands Aleut Communities of St. Paul & St. George Islands
Qagan Tayagungin Tribe of Sand Point Village
Qawalangin Tribe of Unalaska
Rampart Village
Village of Red Devil
Native Village of Ruby
Saint George Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Native Village of Saint Michael
Saint Paul Island (See Pribilof Islands Aleut Communities of St. Paul & St. George Islands)
Village of Salamatoff
Native Village of Savoonga
Organized Village of Saxman
Native Village of Scammon Bay
Native Village of Selawik
Seldovia Village Tribe
Shageluk Native Village
Native Village of Shaktoolik
Native Village of Shishmaref
Native Village of Shungnak
Sitka Tribe of Alaska
Skagway Village
Village of Sleetmute
Village of Solomon
South Naknek Village
Stebbins Community Association
Native Village of Stevens
Village of Stony River
Sun'aq Tribe of Kodiak (formerly the Shoonaq' Tribe of Kodiak)
Takotna Village
Native Village of Tanacross
Native Village of Tanana
Native Village of Tatitlek
Native Village of Tazlina
Telida Village
Native Village of Teller
Native Village of Tetlin
Central Council of the Tlingit & Haida Indian Tribes
Traditional Village of Togiak
Tuluksak Native Community
Native Village of Tuntutuliak
Native Village of Tununak
Twin Hills Village
Native Village of Tyonek
Ugashik Village
Umkumiute Native Village
Native Village of Unalakleet
Native Village of Unga
Village of Venetie (See Native Village of Venetie Tribal Government)
Native Village of Venetie Tribal Government (Arctic Village and Village of Venetie)
Village of Wainwright
Native Village of Wales
Native Village of White Mountain
Wrangell Cooperative Association
Yakutat Tlingit Tribe

[FR Doc. E8–6968 Filed 4–3–08; 8:45 am]
BILLING CODE 4310–4J–P

HOUSE COMMITTEE REPC Γ

(7)
Date Referred to Committee: April 8, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 4/13/09

The JUDICIARY Committee considered: **HOUSE BILL NO. 213**

"An Act relating to contributions, interest, penalties, and payments under the Alaska Employment Security Act; and providing for an effective date."

HB 213 UNEMPLOYMENT AMENDMENTS:TRIBES/NPO

Recommends it be replaced with [ ] HCS *or* **[ ] CS** *for* _____ (_____)
*For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
LWF	1			✓

Signing with recommendations	**Printed Last Name**	**DP**	**DNP**	**NR**	**AM**
	LYNN			X	
	Coghill	✓			
		X			
	Holmes	X			
Chair:	RAMRAS	X			
Chair:					

HB

251

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
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Alaska State Legislature

House of Representatives

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House District 10

Fax

To: Jerry Luckhaupt

Fax #: (907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson

Date: March 25, 2010

Re: CS HB 251

Please draft a final HJUD CS for HB251 (26-LS0786\E) with the following three amendments:

1. Page 2, Line 7 change "or" to "and"
   Page 2, Line 9 change "or" to "and"
2. Page 2, Line 5 after "storage charges" add ,"associated mailing fees"
3. Page 2, Line 10 "five" to "seven"

Representative_Jay_Ramras@legis.state.ak.us

2071

26-LS0786\E
Luckhaupt
3/15/10

CS FOR HOUSE BILL NO. 251( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVE RAMRAS

A BILL

FOR AN ACT ENTITLED

"An Act relating to liens on vehicles and to towing, transporting, and storage of vehicles; and providing for an effective date."

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

*** Section 1.** AS 28.10.391(a) is amended to read:

(a) The filing of the application and documents under AS 28.10.381 and the issuance of a new certificate of title are constructive notice of any liens or encumbrances against the vehicle described in the certificate to a creditor of the owner, or to a subsequent purchaser or encumbrancer. However, **a mortgage, conditional sale contract, or similar lien or encumbrance on the vehicle is subordinate to a lien under AS 28.10.502 and is subject to the procedure provided in that section. A** [A] lien or encumbrance on a vehicle for labor, material, transportation, storage, or similar activity, **other than a lien under AS 28.10.502,** whether or not dependent on possession for its validity, is subordinate only to a mortgage, conditional sale contract, or similar lien or encumbrance **on the vehicle**

properly filed on or before the time that the vehicle is subject to, or comes into possession of, the lien or encumbrance claimant for the labor, material, transportation, storage, or similar activity.

*** Sec. 2.** AS 28.10.502(b) is amended to read:

(b) A lien under this section is limited to towing ~~and~~ storage charges. **Unless a vehicle has already been reclaimed by the owner, the person possessing the vehicle under this section shall notify the registered owner or primary lienholder, if any, of the towing, transporting, or storage of the vehicle, by certified letter, return receipt requested, mailed to the registered owner or primary lienholder, if any, within five working days after the initial towing, transporting, or storage of the vehicle. The letter shall be sent to the addresses of record of the registered owner and primary lienholder, if any, on file with the department or the corresponding office in another jurisdiction in which the title to the motor vehicle and the lien on it are recorded.** Storage charges cease to be part of the lien after 60 days unless the registered owner or primary lienholder, if any, has been given actual notice of the possessory lien within that time or unless **the** [A] certified letter has been mailed within **the time required in this subsection** [THAT TIME TO THE OWNER AND PRIMARY LIENHOLDER, IF ANY, AT THEIR ADDRESSES OF RECORD WITH THE DEPARTMENT OR THE CORRESPONDING OFFICE IN ANOTHER JURISDICTION IN WHICH THE TITLE TO THE MOTOR VEHICLE AND THE LIEN ON IT ARE RECORDED].

*** Sec. 3.** This Act takes effect immediately under AS 01.10.070(c).

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Chair, Economic Development, Trade & Tourism
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Alaska State Legislature
House of Representatives

While in Session
State Capitol, Room 118
Juneau, Alaska 99801-1182
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Toll Free: (877) 465-3004

Representative Jay Ramras
District 10

Sponsor Statement
HB 251 – PRIORITY OF TOWING LIENS

Towing companies provide necessary service to Alaskans through the removal of abandoned, junked, and wrecked vehicles from public thoroughfares and private property. Alaskan towing companies follow prescribed laws in providing these towing services and in most cases are acting under the authorization or direction of public safety officers. Alaskan towing companies should be paid for providing these services to the public, but in certain situations they are not. Providing a statutory mechanism so that these small towing businesses are first in line for payment for delivered services will reduce business risk to these companies. House Bill 251 changes the priority in which payments may be made to provide for a fairer business environment to towing companies.

House Bill 251 prioritizes a possessory lien for towing services lawfully provided in conformity with AS 28.10.502. This prioritization is necessary and gives first position to towing companies to recoup costs for impound and contractual vehicular towing and storage. Without House Bill 251's clarifying language, Alaska's towing service companies could be harmed by allowing other lien holders to take possession of a vehicle in impound without paying for towing and storage services already provided. A nonpayment situation would at a minimum shift costs to other Alaskans and unfairly increase their towing charges, or in extreme cases induce business hardships and cause business failure for towing companies.

House Bill 251 corrects a current situation whereby certain lien holders may receive impound services from towing companies without paying for all or part of the charges. This is unfair to Alaska's towing companies. Reducing unfair business risk to Alaska's small companies is in the best interest of the state.

Representative_Jay_Ramras@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 251**
() Publish Date:

Identifier (file name):HB251-CED-COM-3-8-10
Dept. Affected: DCCED
Title: Priority of Towing Liens
RDU: Executive Admin and Dev
Component: Commissioner's Office
Sponsor: Rep. Ramras
Requester: House State Affairs Committee
Component Number: 1027

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill would change the priority of a lien for services of a towing company to make them subordinate only to a mortgage.

The department does not expect a fiscal impact as result of this legislation.

Prepared by: Tyson Fick, Legislative Liaison
Phone 465-2500
Division: Commissioner's Office
Date/Time 3/8/10 12:00 AM
Approved by: Emil Notti, Commissioner
Date 3/8/2010
Commerce, Community and Economic Development

(Revised 11/6/2009 OMB)

Alaska Towing Association

The Voice of Alaskan Towing Pro

RE: Alaska Towing Association supports HB 251

Members of the towing industry in Alaska have begun to catch up with our counterparts in other states over the last decade, and many Alaskan towers are now on the leading edges of towing technology and practice. Towing in Alaska presents unique challenges, but our members meet those challenges, and towing entities both large and small provide daily professional support to our emergency services and law enforcement systems.

Unfortunately, the modernization of the towing industry across the state has increased costs for towing businesses almost exponentially in recent years as Alaskan towers have upgraded equipment to meet the demands of newer vehicles, improved response times, procedures and training to enhance public safety, and satisfied an ever-growing list of license and permit requirements from Federal, State and local municipalities.

These costs are of course passed on to consumers. Vehicle mishaps and subsequent towing frequently involves great financial liability for vehicle owners, their lenders, and/or their insurance companies. Alaska Statute AS 28.10.502 offers some measure of protection to towers, providing for a Towing and Storage Lien to be automatically placed on any vehicle lawfully towed and stored to ensure payment for the towers' services. This lien is most commonly applied to abandoned or wrecked vehicles removed from public or private property, or towed from public roadways at the request of law enforcement officials, and stored in secured lots at the expense of the towing company.

However, a court decision in the 3rd Judicial Court has determined that perfected liens supercede a tower's possessory lien based on AS 28.10.391, and this decision has effectively nullified the Towing & Storage Lien. Practically speaking, this means a tower may recover, tow, and store a vehicle at real cost to himself and his company, and then be denied payment, lose possession of the collateral, and have no real recourse for financial satisfaction for his loss. HB 251 will alleviate this discrepancy by prioritizing the Towing and Storage lien.

Most other states, if not all, have long resolved the issue between possessory liens and perfected liens on towed or stored vehicles in favor of prioritizing the tower's lien. The obvious fact of services rendered, and payment due for those services creates a reasonable and lawful expectation of payment. In no way does this financial obligation for services supercede the interest in collateral of a perfected lien, rather it merely prioritizes payment for services rendered.

Alaska's statutory disparity is unfortunate, and presumably unintended, but is a very real and expensive issue for Alaska Towing Association members. Towers respond to thousands of vehicle emergencies every year, and remove wrecked vehicles from Alaska's roadways every day. This kind of towing is an integral part of most small towing business models within Alaska. Each emergency tow can easily cost a tower several hundred dollars in labor, fuel, equipment, insurance and operating costs, depending on services rendered and length of time it must be secured and stored.

If the costs of these services cannot be reasonably recouped on even one vehicle simply because a perfected lien exists prior to the tow company's possessory lien, a financial hardship condition develops.

If towing companies continue to be effectively forced to provide their services for free, the current status quo for providing these services to law enforcement agencies at no cost to the agency may change, and State and local law enforcement jurisdictions may be placed into the position of hiring their own towing contractors or otherwise purchasing towing services.

Alaska has much work to do to improve and enhance the towing industry in our state. It has been largely unregulated and unmonitored for many years. Careful evaluation of the issues within the industry is necessary, and thoughtful legislation is required for the protection of both the public and the small businessmen and women within the industry.

The members of the Alaska Towing Association consider HB 251 one step in this direction. The small change to AS 28.10.502 presented in the bill will help protect industry providers from an effective theft of services. In turn, this will help ensure that the many small towing operators across the state remain in business, and ensure a competitive industry that continues to improve itself to meet the demands of the motoring public and Alaska's law enforcement agencies.

The Alaska Towing Association supports HB 251. If it is passed into law, towers can remain willing and available to respond to that next call from their local law enforcement dispatcher in the dead of night knowing they have the protection of the law to ensure they will be compensated for the service they provide.

Shawn Ross
President, Alaska Towing Association

Alaskan Credit Unions find a Loophole in the Law

Also of interest for those towers who perform impounds, either privately or for law enforcement--There have been multiple instances, both in Anchorage and Fairbanks, where a little known paragraph in the Alaska Statutes (AS 28.10.391) has been used to reclaim liened vehicles from impound without paying the impound fees accrued.

According to a court decision in the 3rd Judicial District, a perfected lien, such as that held by a bank on an auto loan, takes precedence over a towing and storage lien. As such, the bank can claim a vehicle from impound without satisfying the towing lien against the vehicle first.

According to Fairbank's City Attorney, Herb Kuss, the 4th Judicial District Courts wouldn't necessarily come to the same conclusion, and although somebody may have to challenge one of the banks in court, he indicates Fairbanks area towers shouldn't worry about it too much.

At least one Fairbanks tower disagrees, after dealing with the law firm representing Credit Union 1. And the renowned Michael McGovern Law Firm, who has been representing towing companies throughout the US for decades, disagrees as well. McGovern suggested Alaska towers might push for a change in the law to give towing companies priority over money lenders.

To that end, two local towers, Mark Davis of Interior Towing & Salvage, and Liz Griswold of Gabe's Towing, have opened discussions with their local representative to discuss changes to AS 28.10.502. Their suggestions center on the idea that lienholders should have a reasonable but limited amount of time to reclaim their property, and that they relinquish their possessory rights after that time limit has expired.

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Jermain Dunnagan & Owens, P.C.
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MATTHEW SINGER
RAYMOND E. GOAD, JR.
MICHELLE L. BOUTIN
CHERYL MANDALA
DAVID A. NESBETT
GREGORY R. DORRINGTON

SERVING ALASKANS SINCE 1976

June 18, 2009

Elizabeth Griswold
Gabe's Towing
P.O. Box 84452
Fairbanks, AK 99708

VIA FACSIMILE: (907) 456-6768

Re: Paul Arnette

Dear Ms. Griswold:

This law firm represents Credit Union 1. It is my understanding that Gabes Towing is in possession of a 2006 Harley Davidson motorcycle, VIN: 1HDIFCW106Y610090, license 5433RS, registered to Paul Arnette. My client holds a valid perfected lien on the vehicle, as shown by the enclosed copy of the title.

In understand that you have refused to release the vehicle to my client unless my client pays all towing charges and storage fees claimed by your company. I am writing to advise you that under Alaska law, my client, as lien holder on the vehicle, is not required to pay you towing and storage charges in order to take possession of the vehicle. This issue was addressed in a lawsuit Credit Union 1 filed against Aurora Towing in 2004. In the case, the court held that a towing and storage lien is subordinate to a perfected lien such as that held by the Credit Union in this case. A copy of the court's order is enclosed.

Although my client is not required to pay any towing and storage charges in order to take possession of the vehicle, it is nevertheless willing to pay a reasonable towing charge, and for five days of storage, at $25.00 per day. If this proposal is not acceptable to you, I will recommend to Credit Union 1 that it file a lawsuit against your company, making the same claims it made in its lawsuit against Aurora Towing.

I would encourage you to discuss this matter with your attorney, and have him or her contact me as soon as possible to discuss this matter. **Also, please take notice that if you sell the vehicle over the objection of Credit Union 1, Credit Union 1 will hold you responsible for the full value of the vehicle.**

Model # Lexmark Tide Series
START TIME SENT TO PAGES
11:32A 4866768

Jermain Dunnagan & Owens, P.C.
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SERVING ALASKANS SINCE 1970

October 6, 2008

Shawn Hess
S & S Towing
PO Box 58550
Fairbanks, AK 99711

Dear Mr. Hess:

This law firm represents Credit Union 1. It is my understanding that you are in possession of a 2002 Dodge Ram, VIN 1D7HU16252J161935 owned by Jessica Heath and Trish Kelly. My client holds a valid perfected lien on the vehicle, as shown by the enclosed copy of the title to the vehicle.

I understand that you have refused to release the vehicle to my client unless my client pays all towing charges and storage fees claimed by your company. I am writing to advise you that under Alaska law, my client, as lienholder on the vehicle, is not required to pay you towing and storage charges in order to take possession of the vehicle. This issue was addressed in a lawsuit Credit Union 1 filed against Aurora Towing in 2004. In this case, the Court held that a towing and storage lien is subordinate to a perfected lien such as that held by the credit union in this case. A copy of the order is enclosed.

Although my client is not required to pay any towing and storage charges in order to take possession of the vehicle, it is nevertheless willing to pay a reasonable towing charge, and for five days of storage, at $25 per day. If this proposal is not acceptable to you, I will recommend to Credit Union 1 that it file a lawsuit against your company, making the same claims it made in its lawsuit against Aurora Towing.

I would encourage you to discuss this matter with your attorney, and have him or her contact me as soon as possible to discuss this matter. **Also, please take notice that if you sell the vehicle over the objection of Credit Union 1, Credit Union 1 will hold you responsible for the full value of the vehicle.**

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

CREDIT UNION 1, Plaintiff, v. AURORA TRANSPORTATION SERVICES, INC., d/b/a/ AURORA TOWING and ANTHONY NIXON, Defendants.	Case No. 3AN-04-3419CI Consolidated with Case No. 3AN-04-8295CI
CREDIT UNION 1, Plaintiff, v. RUSTY'S TOWING & RECOVERY, INC., Defendant.	

ORDER RE: SUMMARY JUDGMENT

The summary judgment question is whether a lien on a motor vehicle arising from AS 28.10.0371 - 0391 has priority over a towing and storage lien arising from AS 28.10.502. The parties have moved for cross-motions for summary judgment.

The facts necessary to resolve the summary judgment motions are not in dispute. Mr. Nixon purchased a 1998 GMC Sonoma, and Credit Union 1 is the lienholder. Mr. Nixon

was charged with various misdemeanors involving driving offences that resulted in the Municipality of Anchorage impounding his vehicle. The Municipality, through the Anchorage Police Department, directed Aurora Towing to tow and store the vehicle. There is a contract between the Municipality and Aurora for towing and storage services.

The contract between the Municipality and Aurora Towing provided that the registered owner of the vehicle is responsible for paying the towing fee and storage fee. Mr. Nixon failed to pay the towing and storage fee, and the total amount owed as of December 6, 2004 was over $1500.

The question before the court is the priority of the two lien interests. AS 28.10.391(a) provides that:

> The filing of the application and documents under AS 28.10.381 and the issuance of a new certificate of title are constructive notice of any liens or encumbrances against the vehicle described in the certificate to a creditor of the owner, or to a subsequent purchaser or encumbrancer. However, a lien or encumbrance on a vehicle for labor, material, transportation, storage, or similar activity, whether or not dependent on possession for its validity, is subordinate only to a mortgage, conditional sale contract, or similar lien or encumbrance properly filed on or before the time that the vehicle is subject to, or comes into possession of, the lien or encumbrance claimant for the labor, material, transportation, storage, or similar activity.

The plain language of this statute states that a transportation and storage lien is subordinate to Credit Union 1's perfected security interest.

There is a separate statute that provides for possessory liens in AS 28.10.502(a), stating that a person "who tows, transports, or stores a motor vehicle, has a possessory lien on the vehicle." In addition AS 28.10.502(d) decides how money is to be distributed from the sale or auction of the vehicle. The money shall first be applied to the payment of costs and expenses of the sale and secondly to the lawful charges of the person having a lien on the motor vehicle under 28.10.502. Next the proceeds from the sale shall be distributed to the registered and legal owner or lienholder entitled to the remaining proceeds.

Although the two statutes appear to be in conflict, they are not, and can be harmonized by a reasonable interpretation of the statutory language. In *Decker v. Aurora Motors Inc.*, 409 P.2d 603, 607 (Alaska 1966), the court found, based on very similar statutory language, that a mechanic's lien was subordinate to a prior recorded security interest.[1] In this case, this court concludes that

[1] *Decker* relies on the former AS 28.10.510, which was replaced in 1978 upon the passage of the current AS 28.10.391.

the Aurora towing and storage lien is subordinate to the Credit Union 1 lien. The express language of AS 28.10.391(a) leads the court to this conclusion. AS 28.10.502(d) is not inconsistent, because it applies to unperfected lienholders. To adopt Aurora's proposed lien priorities would negate the language in AS 28.10.391(a) by placing Credit Union 1's perfected lien in a subordinate position to Aurora's unperfected lien. The language of 28.10.391(a) clearly states that a storage or mechanic's lien is subordinate to a previously perfected lien.

Therefore, Credit Union 1's Motion for Summary Judgment is granted and Aurora Towing's Cross-Motion for Summary Judgment is denied.

DATED Sept 19/05 at Anchorage, Alaska.

Sen R. Tan
Superior Court Judge

I certify that on 9.19.05 a copy of the above was mailed to each of the following at their addresses of record:

G. Sleeper C. Bauman L. Wells

M. Lucas
Judicial Assistant

HB 253

Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Services

State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Alaska State Legislature
House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
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Representative Jay Ramras
District 10

Sponsor Statement
HB 253 – Mechanic/Materialmen Liens

Under current law, contractors, material suppliers, and service people who have not been paid by property owner for labor or goods have 90 days from the date of completion of the work, or from the date the service ceases, to file a lien on the property to secure payment of that debt. See AS 34.35.068 (a).

House Bill 253 merely extends the time within which to file a lien to 120 days. This extra time will give contractors, material suppliers, and service people an additional 30 days to work with property owners to secure payment or to negotiate a reasonable payment plan between a creditor and debtor. The need for this bill was brought to Representative Ramras' attention by small business owners who suggested that it usually takes two billing cycles to discover that a property owner may not pay his or her debt, and another billing cycle to see if a payment plan or other compromise is working as planned.

All contractors and suppliers are entitled to payment for services and goods delivered, yet recording a lien on property is a severe remedy that encumbers a property owner's interest and that can be costly for the contractor or supplier to execute. HB 253 affords more time for the parties to negotiate before this remedy is employed.

Representative_Jay_Ramras@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 253
(H) Publish Date: 3/4/10

Identifier (file name):HB253-CED-COM-2-26-10
Dept. Affected: DCCED
Title: Mechanic/ Materialmen Liens
RDU: Executive Admin and Dev
Component: Commissioner's Office
Sponsor: Rep. Ramras
Requester: House Labor and Commerce Committee
Component Number: 1027

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill changes the amount of time a mechanic or contractor my record a lien on a property from 90 days to 120 days.

The department does not expect a fiscal impact as result of this legislation.

Prepared by: Tyson Fick, Legislative Liaison — Phone 465-2500
Division: Commissioner's Office — Date/Time 2/26/10 12:00 AM
Approved by: Emil Notti, Commissioner — Date 2/26/2010
Department of Commerce, Community and Economic Development

(Revised 11/6/2009 OMB)

Stack Company, Inc.
PO Box 61237
Fairbanks, Alaska 99706
907-451-4382 Fax 907-455-7293

February 19, 2010

Representative Jay Ramras
State of Alaska
House of Representatives

RE: HB 253

Dear Jay,

I would like you to please consider extending the time lapse allowed for filing a "mechanic lien" for outstanding accounts carried by businesses in the service industry in Alaska.

Contractors and Service companies have very few options at their disposal when dealing with "theft of service "customers. This would be one more tool we could possible use to collect on delinquent accounts in this time of economic stress.

Sincerely,

Sean J. Stack
President

February 17th, 2010

House Representative Jay Ramras
House District 10
Fairbanks, Alaska

Re: House Bill #253-Extension of Mechanic's Lien

Dear Mr. Ramras,

I wish to convey my enthusiastic support for House Bill #253, the bill extending by 30 days the amount of time allowed to file a Mechanic's Lien on a customer that has not paid their mechanical repair bill.

As a small plumbing and heating service owner, we at Mountain High Plumbing and Heating, are often left unpaid due to the short window of time allowed to file a lien against the property owner. The situation can arise where; because of the timing of our service at the beginning of the month, versus our end-of-the-month billing, almost thirty days can expire before our customers see their statement. While our customers are normally required to pay at the time of servicing, often times multi-day jobs or absent owners prevent us from collecting at the time of service. Because we realize many people feel they have thirty days from receipt of their *statement* to actually pay, now we easily have a scenario in which the work was performed at the beginning of one month, the statement sent at the end of that month, and the homeowner not even considering paying us until the end of the next month: we are now 60 days out from completion of the service.

If for some reason, either due to forgetfulness, unexpected bills that month, or a myriad of other reasons the customers do not send us the payment, now it gets put back in their queue, to be paid with the rest of their bills at the end of the next month. We are now 90 days out from the original service and unable to protect ourselves from possible non-payment. It happens that fast. We hear on a daily basis from someone who either forgot to send in their payment with the rest of last month's bills, or had unexpected expenditures leaving no additional monies to pay our bill; asking if we could wait till the next month when they get paid again.

Because we are understanding and want to work with our customers, we will often acquiesce, because lets face it, who hasn't forgotten a bill at some time in the past? However, to do so puts us at great risk if in fact someone is using this as a ruse to avoid having their home or business liened. Sadly there are many people who have taken advantage of our generosity, knowing full well the laws governing this action. These people have literally accounted for tens of thousands of dollars in lost revenue by our company alone. All it takes is just one time of "forgiving" our customer, and we have

put ourselves in peril of not being able to attach their property. We, as entrepreneurs and job providers, should not be penalized for our generosity and willingness to work with our customers. I feel an additional 30 days in which to assess whether someone is sincere in their desire to pay or whether they are trying to avoid having their property attached would be a huge benefit to all mechanical repair shops. I feel the extra thirty days would allow us the small amount of extra time needed to fully assess the honest property owners, who may just be struggling that month, from out and out shysters who are using the current law to their advantage.

Realizing that a lien has a significant impact on one's credit rating, we do not take this action lightly. That is why we are often hesitant to file one on a customer who is literally begging us to not lien them, assuring us they will pay next month. Again, it is the repair shops who are now assuming the risk by allowing their customers to "slide" for just one month.

Because of the impact a lien can have on a customer's credit rating, I actually see House Bill 253 as a win-win scenario for both the mechanical service providers and their customers. The extra thirty day window will allow those honest customers the additional time needed to make good on their debt and not have their credit rating tarnished by a lien. We, the mechanical repair shops, can now allow them the extra time to make good on their debt and not be put at risk by doing so.

I strongly encourage the passage of House Bill #253.

Sincerely,

Joe Copeland

Joe Copeland
Mountain High Plumbing and Heating

Feb 19 2010 3:19PM HEAT ME, INC 455-7341 p.1

February 19th, 2010

House Representative Jay Ramras
House District 10
Fairbanks, Alaska

Re: House Bill #253-Extension of Mechanic's Lien

Dear Mr. Ramras,

I wish to convey my enthusiastic support for House Bill #253, the bill extending by 30 days the amount of time allowed to file a Mechanic's Lien on a customer that has not paid their mechanical repair bill.

If for some reason, either due to forgetfulness, unexpected bills that month, or a myriad of other reasons the customers do not send us a timely payment, now it gets put back in their queue, to be paid with the rest of their bills at the end of the next month. We are now 90 days out from the original service and unable to protect ourselves from possible non-payment. It happens that fast. We hear on a daily basis from someone who either forgot to send in their payment with the rest of last month's bills, or had unexpected expenditures leaving no additional monies to pay our bill; asking if we could wait till the next month when they get paid again. Because we are understanding and want to work with our customers, we will often acquiesce, because lets face it, who hasn't forgotten a bill at some time in the past? I feel an additional 30 days in which to assess whether someone is sincere in their desire to pay or whether they are trying to avoid having their property attached would be a huge benefit to all mechanical repair shops. I feel the extra thirty days would allow us the small amount of extra time needed to fully assess the honest customers, who may just be struggling that month, from out and out shysters who are using the current law to their advantage.

Realizing that a lien has a significant impact on one's credit rating, we do not take this action lightly. That is why we are often hesitant to file one on a customer who is literally begging us to not lien them, assuring us they will pay next month. Again, it is the repair shops who are now assuming the risk by allowing their customers to "slide" for just one month.

I actually see House Bill 253 as a win-win scenario for both the mechanical service providers and their customers. The extra thirty day window will allow those honest customers the additional time needed to make good on their debt and not have their credit rating tarnished by a lien. We, the mechanical repair shops, can now allow them the extra time to make good on their debt and not be put at risk by doing so.

I strongly encourage the passage of House Bill #253.

Sincerely,

Dan Boschert,
Ken's Fairbanks Alignment

North Pole Heating & Cooling, Inc.
P.O. BOX 58159
Fairbanks, AK 99711
PH: 488-2500 FAX: 488-0722

✓Heating
✓Plumbing
✓Drain Cleaning
✓Air-Conditioning
✓Refrigeration
✓Controls
✓Duct Cleaning
✓Steam Thawing

February 19, 2010

Jay Ramras
1292 Sadler Way, Suite 324
Fairbanks, AK 99701

Representative Ramras:

This letter is to show support for extending the time to file a mechanics' lien from ninety days to one hundred twenty days. We use mechanics' liens quite often to force payment from customers that would probably not pay otherwise. We have found mechanic's lien very helpful in collecting when small claims and garnishments have been to no avail. We have been able to collect for work done when the property is sold.

We have found ninety days to file a bit restrictive. We often miss the deadline because most commercial customers take up to ninety days, sometime as long as one hundred twenty days to pay. By the time the terms are past, it is already too late to file a lien. We have also found out that with many contractors we subcontract for, we can not get paid until the contractor has finished the job. Most of the time, we have already finished the subcontract portion more than ninety days before the contractor has finished the job.

We support a filing deadline of one hundred twenty days for filing a mechanics' lien and we encourage your support on it as well.

Sincerely,

Cindy Castoe

Cindy Castoe
Northern Lights Services

ALASKA BEST PLUMBING & HEATING, INC.
PO Box 58015
Fairbanks, Alaska 99711
Ph: (907) 455-6506 Fax: (907) 455-4871
E-Mail: akbest@alaska.com
Web Site: www.akbestph.com
Mechanical Administrators License M1041

Jay Ramas

Re: Mechanics Lien legislation

Mr. Ramas,

It has come to my attention that there will be a debate regarding legislation to extend the deadline to file a mechanics lien from 90 days to 120 days. As a mechanical contractor we have a vested interest in this legislation. I would ask you to review our point of view and take into consideration our comments during this debate.

This legislation would be beneficial to both our business and our customers in several respects.

1. Often times we are unable to meet the deadline due to billing delays and in these cases our accounts can and do become uncollectable.
2. In some cases we are forced to file a lien to protect our interest when a customer is unable to pay within 90 days. This increases the cost of doing business and reduces our job profitability as well as damages our customer's credit.
3. Filing a lien creates ill will between us and our customers, which in many instances is completely unnecessary.
4. Extending the deadline will allow us to extend credit to our customers, who in many cases need the extra time to pay their bills.

As a plumbing and heating company we often provide vital services to customers who are sometimes in financial situations that make it difficult for them to afford repairs on necessary items such as heat and running water. As a customer service oriented and community minded company we strive to do our best to assist those that need our services most. Being able to extend terms beyond 90 days would be greatly beneficial to both us and our customers. I sincerely hope that you will consider these issues when debating this legislation and seriously consider making the change for the benefit of all of those affected.

Regards,

Sandra Hembree
Vice President

HEAT-ME, INC.
dba Rocky's Heating Service
2441 Hill Road Unit C
Fairbanks, Alaska 99709

February 17th, 2010

House Representative Jay Ramras
House District 10
Fairbanks, Alaska

Re: House Bill #253-Extension of Mechanic's Lien

Dear Mr. Ramras,

I wish to convey my enthusiastic support for House Bill #253, the bill extending by 30 days the amount of time allowed to file a Mechanic's Lien on a customer that has not paid their mechanical repair bill.

As a small business owner employing 16 Fairbanks families, prompt payment is imperative in order to keep the doors of Rocky's Heating Service open. However, the situation can arise where; because of the timing of our service at the beginning of the month, versus our end-of-the-month billing, almost thirty days can expire before our customers see their statement. While our customers are normally required to pay at the time of servicing, often times multi-day jobs or absent owners prevent us from collecting at the time of service. Because we realize many people feel they have thirty days from receipt of their *statement* to actually pay, now we easily have a scenario in which the work was performed at the beginning of one month, the statement sent at the end of that month, and the homeowner not even considering paying us until the end of the next month: we are now 60 days out from completion of the service.

If for some reason, either due to forgetfulness, unexpected bills that month, or a myriad of other reasons the customers do not send us the payment, now it gets put back in their queue, to be paid with the rest of their bills at the end of the next month. We are now 90 days out from the original service and unable to protect ourselves from possible non-payment. It happens that fast. We hear on a daily basis from someone who either forgot to send in their payment with the rest of last month's bills, or had unexpected expenditures leaving no additional monies to pay our bill; asking if we could wait till the next month when they get paid again.

Because we are understanding and want to work with our customers, we will often acquiesce, because lets face it, who hasn't forgotten a bill at some time in the past? However, to do so puts us at great risk if in fact someone is using this as a ruse to avoid having their home or business liened. Sadly there are many people who have taken advantage of our generosity, knowing full well the laws governing this action. These people have literally accounted for tens of thousands of dollars in lost revenue by our

Tel: 907-456-4120
Fax: 907-455-7341

Feb 19 2010 3:03PM HEAT ME, INC 455-7341 p.2

company alone. All it takes is just one time of "forgiving" our customer, and we have put ourselves in peril of not being able to attach their property. We, as entrepreneurs and job providers, should not be penalized for our generosity and willingness to work with our customers. I feel an additional 30 days in which to assess whether someone is sincere in their desire to pay or whether they are trying to avoid having their property attached would be a huge benefit to all mechanical repair shops. I feel the extra thirty days would allow us the small amount of extra time needed to fully assess the honest property owners, who may just be struggling that month, from out and out shysters who are using the current law to their advantage.

Realizing that a lien has a significant impact on one's credit rating, we do not take this action lightly. That is why we are often hesitant to file one on a customer who is literally begging us to not lien them, assuring us they will pay next month. Again, it is the repair shops who are now assuming the risk by allowing their customers to "slide" for just one month.

Because of the impact a lien can have on a customer's credit rating, I actually see House Bill 253 as a win-win scenario for both the mechanical service providers and their customers. The extra thirty day window will allow those honest customers the additional time needed to make good on their debt and not have their credit rating tarnished by a lien. We, the mechanical repair shops, can now allow them the extra time to make good on their debt and not be put at risk by doing so.

I strongly encourage the passage of House Bill #253.

Sincerely,

Rocky Pavey, President
Rocky's Heating Service

455-7341 HEAT ME, INC Feb 19 2010 3:03PM

HB

283

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
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House District 10

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #:

Number of pages including cover:

From: Jane W. Pierson

Date: March 1, 2010

Re: Final for HB283

Jerry

Please go final on CSHB283(JUD) 26-LS1218\S. There is one conceptual amendment as follows:

P. 2, L. 14 after "valid" insert "state"

P.2, L. 17 after "the" insert "state"

P. 2 , L. 26 after "A" insert "state" after or delete "an and insert "a state"

Thank you

Representative_Jay_Ramras@legis.state.ak.us

26-LS1218\S
Luckhaupt
2/24/10

CS FOR HOUSE BILL NO. 283(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES CRAWFORD, Lynn

A BILL

FOR AN ACT ENTITLED

"An Act relating to the purchasing of and restrictions concerning alcoholic beverages."

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

*** Section 1.** AS 04.16.047(a) is amended to read:

(a) A person who is restricted from purchasing alcohol under AS 04.16.160 may not

(1) knowingly enter or remain in premises licensed under this title to obtain or consume alcohol**;**

(2) solicit another to purchase alcoholic beverages for the person;

(3) offer or present to a licensee or an agent or employee of the licensee identification that misrepresents that the person is restricted from purchasing alcoholic beverages, for the purpose of inducing the licensee or an agent or employee of the licensee to sell, give, serve, or furnish alcoholic beverages contrary to law.

*** Sec. 2.** AS 04.16.047 is amended by adding a new subsection to read:

(d) A person may not purchase alcoholic beverages for a person who is

restricted from purchasing alcoholic beverages under AS 04.16.160.

*** Sec. 3.** AS 04.16.160(a) is amended to read:

(a) Except as otherwise provided by law, a person who is 21 years of age or older may not purchase alcoholic beverages if the person has been ordered to refrain from consuming alcoholic beverages **under AS 12.55.015(a)(13) or** as part of a sentence for conviction of a crime under AS 28.35.030, 28.35.032, or a similar municipal ordinance or as a condition of probation or parole from a conviction under AS 28.35.030, 28.35.032, or a similar municipal ordinance. The restriction on purchasing alcoholic beverages applies during the period that the person is required to refrain from consuming alcoholic beverages under the sentence or condition of probation or parole.

*** Sec. 4.** AS 04.21.050(b) is amended to read:

(b) Except as provided in AS 04.16.160 **and in (d) of this section**, a valid driver's license or a valid state identification card is acceptable as proof of age or that the person is not restricted from purchasing alcoholic beverages when used for identification in the purchase of alcoholic beverages and for securing entry to and remaining on premises where alcoholic beverages are sold if the state license or identification card is made of or encased in plastic and contains a photograph of the licensee or card holder and a statement of age or date of birth. A licensee, agent, or employee may elect to not accept a passport, military identification card, or other identification as proof that the person is not restricted from purchasing alcoholic beverages and may require the person to furnish a valid driver's license or state identification card or otherwise furnish proof that the person is not a resident of this state.

*** Sec. 5.** AS 04.21.050 is amended by adding a new subsection to read:

(d) A state driver's license or an state identification card issued when a person was under 21 years of age, regardless of the person's current age, is not acceptable as proof of age under this title or proof that a person is not restricted from the purchase of alcoholic beverages under this title.

*** Sec. 6.** AS 12.55.015(a) is amended to read:

(a) Except as limited by AS 12.55.125 - 12.55.175, the court, in imposing

sentence on a defendant convicted of an offense, may singly or in combination

(1) impose a

(A) fine when authorized by law and as provided in AS 12.55.035; or

(B) [REPEALED]

(2) order the defendant to be placed on probation under conditions specified by the court that may include provision for active supervision;

(3) impose a definite term of periodic imprisonment, but only if an employment obligation of the defendant preexisted sentencing and the defendant receives a composite sentence of not more than two years to serve;

(4) impose a definite term of continuous imprisonment;

(5) order the defendant to make restitution under AS 12.55.045;

(6) order the defendant to carry out a continuous or periodic program of community work under AS 12.55.055;

(7) suspend execution of all or a portion of the sentence imposed under AS 12.55.080;

(8) suspend imposition of sentence under AS 12.55.085;

(9) order the forfeiture to the commissioner of public safety or a municipal law enforcement agency of a deadly weapon that was in the actual possession of or used by the defendant during the commission of an offense described in AS 11.41, AS 11.46, AS 11.56, or AS 11.61;

(10) order the defendant, while incarcerated, to participate in or comply with the treatment plan of a rehabilitation program that is related to the defendant's offense or to the defendant's rehabilitation if the program is made available to the defendant by the Department of Corrections;

(11) order the forfeiture to the state of a motor vehicle, weapon, electronic communication device, or money or other valuables, used in or obtained through an offense that was committed for the benefit of, at the direction of, or in association with a criminal street gang;

(12) order the defendant to have no contact, either directly or indirectly, with a victim or witness of the offense until the defendant is

unconditionally discharged**;**

(13) order the defendant to refrain from consuming alcoholic beverages for a period of time, including during the term of any sentence and as a condition of probation, suspended sentence, and suspended imposition of sentence, if

(A) the defendant was convicted of a felony and the court finds by clear and convincing evidence that the defendant's conduct constituting the offense was substantially influenced by the consumption of alcoholic beverages; or

(B) the defendant was convicted of a misdemeanor and the defendant has been previously convicted of crimes two or more times and the court finds by clear and convincing evidence that, based on the defendant's history, there is reason to believe that imposing a requirement that the defendant refrain from consuming alcoholic beverages is necessary to protect the public; in this subparagraph, "previously convicted" has the meaning given in AS 28.35.030.

*** Sec. 7.** AS 12.55.015 is amended by adding a new subsection to read:

(k) Nothing in (a)(13) of this section limits or restricts the authority of a court to order a person to refrain from the consumption of alcohol as a condition of sentence or probation.

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
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Alaska State Legislature

House of Representatives

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House District 10

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 564-2029 Number of pages including cover: 3

From: Jane W. Pierson

Date: February 24, 2010

Re: HJUD CS for HB283 "An Act relating to the purchase and restrictions concerning alcoholic beverages."

Jerry,

Please draft me a HJUD CS for HB283 (26-LS1218\E with the following amendments:

1. Incorporate Amendment E.1;
2. Incorporate Amendment E.6
3. Delete Sec. 2 AS 04.16.047(b), leaving the civil damages award at $1,000.

We have scheduled the bill to come back up in HJUD next Monday.

Thank you.

Representative_Jay_Ramras@legis.state.ak.us

26-LS1218\E.1
Luckhaupt
2/3/10

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE CRAWFORD

TO: HB 283

Page 3, line 22:

Delete "**up to the lifetime of the defendant**"

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE CRAWFORD

TO: HB 283

Page 2, following line 17:

Insert new bill sections to read:

"* **Sec. 5.** AS 04.21.050(b) is amended to read:

(b) Except as provided in AS 04.16.160 **and in (d) of this section**, a valid driver's license or a valid identification card is acceptable as proof of age or that the person is not restricted from purchasing alcoholic beverages when used for identification in the purchase of alcoholic beverages and for securing entry to and remaining on premises where alcoholic beverages are sold if the license or identification card is made of or encased in plastic and contains a photograph of the licensee or card holder and a statement of age or date of birth. A licensee, agent, or employee may elect to not accept a passport, military identification card, or other identification as proof that the person is not restricted from purchasing alcoholic beverages and may require the person to furnish a valid driver's license or state identification card or otherwise furnish proof that the person is not a resident of this state.

* **Sec. 6.** AS 04.21.050 is amended by adding a new subsection to read:

(d) A driver's license or an identification card issued when a person was under 21 years of age, regardless of the person's current age, is not acceptable as proof of age under this title or proof that a person is not restricted from the purchase of alcoholic beverages under this title."

Renumber the following bill sections accordingly.

Draft Letter of Intent:

It is the intent of the Alaska Legislature under section #2 of HB 283 amending AS 04.16.047(b) to increase the civil award from $1,000 to $2,000 to enable licensees to share half of the award with their employees and or agents . The award is to provide an incentive to those who sell alcohol to check ID's. This should aide in the effort to prevent people who are restricted from consuming alcohol from purchasing alcohol.

Alaska State Legislature
House of Representatives

Alaska State Capitol
Juneau, Alaska 99801-1182
1-907-465-3438 (phone)
1-888-478-3438 (toll free)
1-907-465-4565 (fax)

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Representative Harry T. Crawford, Jr.
East Anchorage District 21
E-mail: Representative_Harry_Crawford@legis.state.ak.us
Website www.akdemocrats.org

MEMORANDUM

To: Representative Jay Ramras, Chair
House Judiciary Committee
From: Rep. Harry Crawford
Re: HB 283
Date: 1/28/2010

Please schedule HB 283 for a hearing before the House Labor and Commerce Committee. For your review you will find a copy of the most recent version of the bill, a Sponsor Statement, a Sectional Analysis Fiscal Notes. Please have teleconference capacity available at the Anchorage LIO.

If you have any questions or need further information please feel free to contact me.

Enclosures:
Attachments:

Alaska State Legislature

House of Representatives

Alaska State Capitol
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Representative Harry Crawford
District 21

SPONSOR STATEMENT: HOUSE BILL HB 283

HB 283 amends the current law concerning people who are restricted from the purchase and consumption of alcoholic beverages. The bill adds people who commit crimes where alcohol contributed to commission of the crime.

The bill will allow a court to restrict people, who are convicted of a felony or a third misdemeanor, from consuming and purchasing alcohol. These persons will be required to have an alcohol restricted drivers license or ID. It also restricts a person from purchasing alcohol for someone who is restricted from consuming. The bill further prevents a person who has been restricted from consuming alcohol from misrepresenting themselves as being able to purchase and consume alcohol.

The bill raises the civil awards for alcohol licensees from $1000.00 to $2,000.00. This will create a greater incentive to the owners and employees of businesses from selling alcohol to people who are restricted from purchasing and consuming these products.

According to the Department of Corrections over 90% of the crimes that are committed in Alaska are either directly or indirectly related to the consumption of alcohol or drugs. This bill will help prevent the people that are committing these crimes from purchasing and consuming alcohol.

E-mail: Representative_Harry_Crawford@legis.state.ak.us

Alaska State Legislature

House of Representatives

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Representative Harry Crawford
District 21

Sectional Analysis: HOUSE BILL 283

Sec 1 amends AS 04.16.47(a) adding two more prohibitions into this subsection: A person who is restricted from purchasing may not solicit another to purchase alcoholic beverages; A person who is restricted from purchasing alcohol may not misrepresent themselves as able to purchase alcohol.

Sec 2 amends AS.04.16.047(b) by changing the award to licensees from $1000.00 to $2,000.

Sec 3 amends AS.04.16047 by adding a new subsection (d) a person may not purchase alcohol for a person who is restricted from purchasing.

Sec 4 amends AS 04.16.160(a) adds certain people that commit a crime under the influence of alcohol from consuming alcohol under AS 12.55.15(a)(13)

Sec 5 amends AS 12.55.015(a) by adding (13) to the list of potential sentencing tools: A court may order a defendant to refrain from the use of alcohol up to lifetime if the person was convicted of a felony or a third misdemeanor that was substantially influenced by the consumption of alcohol.

E-mail: Representative_Harry_Crawford@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 283**
() Publish Date:

Identifier (file name): HB283-LAW-CRIM-01-26-10
Dept. Affected: Law
Title: An Act relating to the purchasing of and restrictions concerning alcoholic beverages.
RDU: CRIMINAL
Component: Criminal Justice Litigation
Sponsor: Representative Crawford
Requester: Labor and Commerce
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill provides that a person who is restricted from purchasing alcohol may not solicit another to purchase alcoholic beverages or misrepresent the restriction to a licensee. This bill provides provisions that the court in imposing sentence on a defendant convicted of an offense may order the defendant to refrain from consuming alcoholic beverages for a period up to the lifetime of the defendant. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager — Phone 465-5427
Division: Administrative Services — Date/Time 1/26/10 12:00 AM
Approved by: Daniel S. Sullivan, Attorney General — Date 1/26/2010
Department of Law

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB283
() Publish Date:

Identifier (file name): HB283-DHSS-ASAP-1-27-2010
Dept. Affected: Health & Social Services

Title: Purchase/Consumption of Alcohol
RDU: Behavioral Health
Component: Alcohol Safety Action Program

Sponsor: Crawford

Requester: House Labor & Commerce
Component Number: 305

Expenditures/Revenue (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITU	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services	135.0		135.0	135.0	135.0	135.0	135.0
Travel							
Contractual	12.0		12.0	12.0	12.0	12.0	12.0
Supplies	3.3		3.3	3.3	3.3	3.3	3.3
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**150.3**	**0.0**	**150.3**	**150.3**	**150.3**	**150.3**	**150.3**
CAPITAL EXPENDITURE							
CHANGE IN REVENUES							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	150.3		150.3	150.3	150.3	150.3	150.3
1005 GF/Program Receipt							
1037 GF/Mental Health							
Other Interagency Receipt							
TOTAL	**150.3**	**0.0**	**150.3**	**150.3**	**150.3**	**150.3**	**150.3**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time	2.0		2	2	2	2	2
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if nece*

If passed and enforced, this bill would increase monitoring hours, urine analysis testing, and number of court appearances, which would have a significant impact on the workload of the Adult Probation Officers in the Alcohol Safety Action Program (ASAP). ASAP referrals could increase by 20% or more, requiring one additional Adult Probation Officer and one additional Criminal Justice Technician. The impact on the Therapeutic Court program would not be as significant, and could be accommodated with existing staff. The actual workload impact will depend greatly on the level of enforcement.

Currently, alcohol restrictions are a part of probation conditions for 75% of all ASAP misdemeanor clients and approximately 90% of the Therapeutic Court participants. Currently, a very small percentage of ASAP clients are charged with probation violations related to consuming alcohol while on probation.

Prepared by: Melissa W Stone
Division: Behavioral Health
Phone: 269-3410
Date/Time: 01/25/10 12:00PM

Approved by: Alison Elgee, Assistant Commissioner
DHSS Finance & Management Services
Date: 1/26/2101

ANALYSIS CONTINUATION

An aspect of the bill that could significantly increase workload is the "lifetime" ban option available to the court. However, the impact will not begin immediately and will not be fully-realized for decades. Currently, ASAP and the Therapeutic Court program cases are time-limited, with monitoring ending with probation.

Cost estimate detail:

1 FTE Criminal Justice Technician	$59.7
1 FTE Adult Probation Officer, ASAP	$75.3
Telecommunications	$1.0
Facility	$4.7
Equipment repair & maintenance	$0.6
Printing	$0.5
Mail	$2.2
Employee training	$0.4
Department support costs	$2.1
State equipment fleet	$0.5
Business supplies	$3.3

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 283
() Publish Date:

Identifier (file name): HB283-DOA-DMV-01-26-10
Title: Purchase / Consumption of Alcohol
Sponsor: Rep. Crawford
Requester: (H) L&C

Dept. Affected: Administration
RDU: Division of Motor Vehicles
Component: Motor Vehicles
Component Number: 2348

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services	80.0		80.0	80.0	80.0	80.0	80.0
Travel							
Contractual							
Supplies	60.0		60.0	60.0	60.0	60.0	60.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**140.0**	**0.0**	**140.0**	**140.0**	**140.0**	**140.0**	**140.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )	**2,000.0**	**2,000.0**	**2,000.0**	**2,000.0**	**2,000.0**	**2,000.0**	**2,000.0**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
1156 Receipt Supported Services	140.0		140.0	140.0	140.0	140.0	140.0
TOTAL	**140.0**	**0.0**	**140.0**	**140.0**	**140.0**	**140.0**	**140.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time	**2**		2	2	2	2	2
Part-time							
Temporary							

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

Using data from the Alaska Justice Statistical Analysis Center, DMV estimates it will have to enter an alcohol restriction on 40,000 additional licenses each year.

PS Costs: A Motor Vehicle Service Representative (range 10) can enter approximately 100 restrictions per work day. Implementation of this bill will require 1.5 employees to enter restrictions.

Supply Costs: It cost approximately $2.50 in supplies to produce each card (40,000 x $2.50 = $60,000).

Revenues: DMV collects $50 for each alcohol restricted license (40,000 x $50.00 = $2,000,000)

Prepared by: Whitney H. Brewster, Director — Phone 907-269-5574
Division: Motor Vehicles — Date/Time 1/26/10 3:00 PM
Approved by: Kevin Brooks, Deputy Commissioner — Date 1/26/2010
Department of Administration

(Revised 11/6/2009 OMB)

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Wrangell Chapter
Wrangell

February 2, 2010

Representative Harry Crawford
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Crawford:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 283, an act relating to the purchasing of and restrictions concerning alcoholic beverages.

The APOA State Board of Directors recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

John Lucking, Jr.
State President

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 283-DOC-OC-02-10-10
Bill Version:
() Publish Date:

Identifier (file name): "An act relating to the purchasing of and restrictions
Title: concerning alcoholic beverages."
Sponsor: Representative Crawford
Requester: Governor

Dept. Affected: DOC
RDU: Population Management
Component: Probation & Parole; Institutions
Component Number: 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time	**0.0**	0.00	0	0	0	0	0
Part-time	0.0	0	0	0	0	0	0
Temporary	0.0	0	0	0	0	0	0

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

This bill allows the court, in imposing a sentence on a defendant convicted of an offense, to impose additional orders on the convicted defendant, such as order the defendant to refrain from consuming alcoholic beverages for a period of time up to the lifetime of the defendant, including during the term of any sentence and as a condition of probation, suspended sentence, and suspended imposition of sentence. However, while this will impose additional orders, the impact on probation & parole and institutions could move forward the time a defendent ends up in an institution for violating this order, but more likely, will impact the electronic monitoring (EM) section. The impact on EM could result in increased numbers of defendents on EM, with an increase affecting the purchase of more EM collars and use of more Criminal Justice Technicians. DOC will track the impact of violating this additional order and the impact on EM and could potentially request additional funding based on actual impact.

Prepared by: Leslie Houston, Director — Phone (907) 465-3339
Division: Administration and Support — Date/Time 2/10/2010 13:10:00 PM
Approved by: Dwayne Peeples, Deputy Commissioner — Date 2/10/2010
Department of Corrections

(Revised 11/6/2009 OMB)

HB

287

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
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To: Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson

Date: March 17, 2010

Re: HJUD CS for HB287

Today, the HJUD Committee heard HB287 (26-LS1300\E) and passed the bill out of committee with no amendments.

Please go final on the HJUD CS.

Thank you

Representative_Jay_Ramras@legis.state.ak.us

Member

Standing Committees:
Judiciary
State Affairs
Transportation

Finance Subcommittees:
Transportation
Courts
Law

Alaska State Legislature

House of Representatives

Representative Max F. Gruenberg, Jr.

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House Minority Assistant Floor Leader

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Email:
Rep.Max.Gruenberg@legis.state.ak.us

EXPLANATION OF CHANGES

Changes between HB 287 and proposed CSHB 287 (26-LS1300\E):

- On page 2, lines 6 and 13 of HB 287, the word "explicitly" was removed.

- Under proposed AS 13.70.030(b)(2) (page 2, lines 14-20 of the proposed CS), the original bill allowed for a disclaimer by a "natural guardian" on behalf of a minor child. The proposed CS replaces the phrase "natural guardian" with "an individual having legal custody of a minor child" to conform to language typically used in Alaskan family law. An "individual having legal custody of a minor child" is defined on page 10, lines 25-27.

- Proposed AS 13.70.040(a)(3)(D) on page 3, line 29 through page 4, line 8, provides a default rule for the disposition of a disclaimed property interest. Under the original bill, the default rule was that the disclaimed interest would revert to the benefactor; under the proposed CS, however, the disclaimed interest would instead pass by representation to the descendants of the disclaimant. This change is made to conform to the national Uniform Act.

- Stylistic changes were made on page 7, lines 3, 7, and 28, and page 8, line 4.

- On page 9, line 1, the word "or" was added after "disclaimed;" to clarify that the provisions under subsection (c) are disjunctive.

- On page 9, line 2, "non-judicial foreclosure" was added.

- On page 10, lines 11-13, a section regarding uniformity of application and construction (proposed AS 13.70.150) was added to conform to the national Uniform Act.

- Under proposed AS 13.70.190(6) on page 11, line 6, "a limited liability partnership" was added to the definition of "person."

26-LS1300\E
Bannister
3/17/10

CS FOR HOUSE BILL NO. 287( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES RAMRAS AND GRUENBERG

A BILL

FOR AN ACT ENTITLED

"An Act relating to the adoption of the Uniform Disclaimer of Property Interests Act, and to the disclaimer of property rights under the Uniform Probate Code."

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

* **Section 1.** AS 13 is amended by adding a new chapter to read:

Chapter 70. Disclaimer of Property Interests.

Sec. 13.70.010. Scope. This chapter applies to disclaimers of any interest in or power over property, whenever created.

Sec. 13.70.020. Supplemented by other law. (a) Unless displaced by a provision of this chapter, the principles of law and equity supplement this chapter.

(b) This chapter does not limit any right of a person to waive, release, disclaim, or renounce an interest in or power over property under a law other than this chapter.

Sec. 13.70.030. Power to disclaim; general requirements; when irrevocable. (a) A person may disclaim, in whole or part, conditionally or

unconditionally, any interest in or power over property, including a power of appointment. A person may disclaim the interest or power even if its creator imposed a spendthrift provision or similar restriction on transfer or a restriction, prohibition, or limitation on the right to disclaim. A disclaimer shall be considered to be unconditional and not subject to modification or revocation unless the disclaimant provides otherwise in the disclaimer.

(b) With court approval, a fiduciary may disclaim, in whole or part, any interest in or power over property, including a power of appointment. Without court approval, a fiduciary may not disclaim, in whole or in part, any interest in or power over property, including a power of appointment, except that

(1) a fiduciary may disclaim, in whole or in part, any interest in or power over property, including a power of appointment, if and to the extent that the instrument creating the fiduciary relationship grants the fiduciary the right to disclaim;

(2) in the absence of a court-appointed guardian, notwithstanding a provision in AS 13.26 to the contrary, an individual having legal custody of a minor child may disclaim on behalf of the minor child, in whole or in part, any interest in or power over property, including a power of appointment, that the minor child is to receive solely as a result of another disclaimer, but only if the interest or power disclaimed by the individual having legal custody does not pass, as a result of the disclaimer, to or for the benefit of the individual having legal custody.

(c) To be effective, a disclaimer must be in writing, declare that the writing is a disclaimer, describe the interest or power disclaimed, be signed by the person making the disclaimer, and be delivered or filed in the manner provided in AS 13.70.100.

(d) A partial disclaimer may be expressed as a fraction, percentage, monetary amount, term of years, limitation of a power, or any other interest or estate in the property.

(e) A disclaimer becomes irrevocable when

(1) any conditions to which the disclaimant has made the disclaimer subject are satisfied; and

(2) the disclaimer is delivered or filed under AS 13.70.100, or becomes

effective as provided in AS 13.70.040 - 13.70.090, whichever occurs later.

(f) A disclaimer made under this chapter is not a transfer, assignment, or release.

Sec. 13.70.040. Disclaimer of interest in property. (a) Except for a disclaimer governed by AS 13.70.050 - 13.70.065, the following rules apply to a disclaimer of an interest in property:

(1) the disclaimer takes effect as of the time the instrument creating the interest becomes irrevocable, or, if the interest arose under the law of intestate succession, as of the time of the intestate's death;

(2) the disclaimed interest passes according to any provision in the instrument creating the interest providing for the disposition of the interest, should it be disclaimed, or of disclaimed interests in general;

(3) if the instrument does not contain a provision described in (2) of this subsection, the following rules apply:

(A) if the disclaimant is not an individual, the disclaimed interest passes as if the disclaimant did not exist;

(B) if the disclaimant is an individual, except as otherwise provided in (C) and (D) of this paragraph, the disclaimed interest passes as if the disclaimant had died immediately before the interest was created, unless under the governing instrument or other applicable law the disclaimed interest is contingent on surviving to the time of distribution, in which case the disclaimed interest passes as if the disclaimant had died immediately before the time for distribution;

(C) if by law or under the instrument, the descendants of the disclaimant would share in the disclaimed interest by any method of representation had the disclaimant died before the time of distribution, the disclaimed interest passes only to the descendants of the disclaimant who survive the time of distribution;

(D) if the disclaimed interest would pass to the disclaimant's estate had the disclaimant died before the time of distribution, the disclaimed interest instead passes by representation to the descendants of the disclaimant

who survive the time of distribution; if no descendant of the disclaimant survives the time of distribution, the disclaimed interest passes to those persons, including the state but excluding the disclaimant, and in the shares as would succeed to the transferor's intestate estate under the intestate succession law of the transferor's domicile had the transferor died at the time of distribution; however, if the transferor's surviving spouse is living but is remarried at the time of distribution, the transferor is considered to have died unmarried at the time of distribution;

(4) on the disclaimer of a preceding interest, a future interest held by a person other than the disclaimant takes effect as if the disclaimant had died or ceased to exist immediately before the time of distribution, but a future interest held by the disclaimant is not accelerated in possession or enjoyment as a result of the disclaimer.

(b) For the purposes of (a)(3) of this section, a disclaimed interest

(1) is created at

(A) the death of the benefactor; or

(B) an earlier time, if any, when the benefactor's transfer of the interest is a completed gift for federal gift tax purposes; and

(2) in a revocable trust is treated as if the interest had been created under a will.

(c) In this section,

(1) "benefactor" means the creator of the interest that is subject to a disclaimer;

(2) "future interest" means an interest that takes effect in possession or enjoyment, if at all, later than the time of its creation;

(3) "time of distribution" means the time when a disclaimed interest would have taken effect in possession or enjoyment.

Sec. 13.70.050. Disclaimer of rights of survivorship in jointly held property. (a) On the death of a holder of jointly held property, a surviving holder may disclaim, in whole or part, the greater of

(1) a fractional share of the property determined by dividing the number one by the number of joint holders alive immediately before the death of the

holder to whose death the disclaimer relates; or

(2) all of the property except that part of the value of the entire interest attributable to the contribution furnished by the disclaimant.

(b) A disclaimer under (a) of this section takes effect as of the death of the holder of jointly held property to whose death the disclaimer relates.

(c) An interest in jointly held property disclaimed by a surviving holder of the property passes as if the disclaimant predeceased the holder to whose death the disclaimer relates.

Sec. 13.70.060. Disclaimer of interest in property held as a tenancy by the entirety. (a) The survivorship interest in property that is held as a tenancy by the entirety and to which the survivor succeeds by operation of law on the death of the cotenant may be disclaimed as provided in this chapter. For the purposes of this chapter only, the deceased tenant's interest in property held as a tenancy by the entirety is considered to be an undivided one-half interest.

(b) A disclaimer under (a) of this section takes effect as of the death of the deceased tenant to whose death the disclaimer relates.

(c) The survivorship interest in property held as a tenancy by the entirety and disclaimed by the surviving tenant passes as if the disclaimant had predeceased the tenant to whose death the disclaimer relates.

Sec. 13.70.065. Disclaimer of interest by trustee. If a trustee who has the power to disclaim under a court order or under the instrument creating the fiduciary relationship disclaims an interest in property that otherwise would have become trust property, the interest does not become trust property.

Sec. 13.70.070. Disclaimer of power of appointment or other power not held in fiduciary capacity. If a holder disclaims a power of appointment or other power not held in a fiduciary capacity, the following rules apply:

(1) if the holder has not exercised the power, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable;

(2) if the holder has exercised the power and the disclaimer is of a power other than a presently exercisable general power of appointment, the disclaimer takes effect immediately after the last exercise of the power;

(3) the instrument creating the power is construed as if the power expired when the disclaimer became effective.

Sec. 13.70.080. Disclaimer by appointee, object, or taker in default of exercise of power of appointment. (a) A disclaimer of an interest in property by an appointee of a power of appointment takes effect as of the time the instrument by which the holder exercises the power becomes irrevocable.

(b) A disclaimer of an interest in property by an object or taker in default of an exercise of a power of appointment takes effect as of the time the instrument creating the power becomes irrevocable.

Sec. 13.70.090. Disclaimer of power held in fiduciary capacity. (a) If a fiduciary disclaims a power held in a fiduciary capacity that has not been exercised, the disclaimer takes effect as of the time the instrument creating the power becomes irrevocable.

(b) If a fiduciary disclaims a power held in a fiduciary capacity that has been exercised, the disclaimer takes effect immediately after the last exercise of the power.

(c) A disclaimer under this section is effective as to another fiduciary if the disclaimer so provides and the fiduciary disclaiming has the authority to bind the estate, trust, or other person for whom the fiduciary is acting.

Sec. 13.70.100. Delivery or filing. (a) Subject to (b) - (*l*) of this section, delivery of a disclaimer may be effected by personal delivery, first class mail, or any other method likely to result in its receipt. A disclaimer sent by first class mail is considered to have been delivered on the date it is postmarked. Delivery by personal delivery or any other method is effective on receipt by the person to whom the disclaimer is to be delivered under this section.

(b) In the case of an interest created under the law of intestate succession or an interest created by will, other than an interest in a testamentary trust,

(1) a disclaimer shall be delivered to the personal representative of the decedent's estate; or

(2) if a personal representative is not then serving, it shall be filed with a court having jurisdiction to appoint the personal representative.

(c) In the case of an interest in a testamentary trust,

(1) a disclaimer shall be delivered to the trustee then serving, or if a trustee is not then serving, to the personal representative of the decedent's estate; or

(2) if no personal representative is then serving, a disclaimer shall be filed with a court having jurisdiction to enforce the trust.

(d) In the case of an interest in an inter vivos trust,

(1) a disclaimer shall be delivered to the trustee then serving;

(2) if no trustee is then serving, a disclaimer shall be filed with a court having jurisdiction to enforce the trust; or

(3) if the disclaimer is made before the time the instrument creating the trust becomes irrevocable, the disclaimer shall be delivered to the settlor of a revocable trust or the transferor of the interest, or the legal representative of the settlor or transferor.

(e) In the case of an interest created by a beneficiary designation made before the time the designation becomes irrevocable, a disclaimer shall be delivered to the person making the beneficiary designation.

(f) In the case of an interest created by a beneficiary designation made after the time the designation becomes irrevocable, a disclaimer shall be delivered to the person obligated to distribute the interest.

(g) In the case of a disclaimer by a surviving holder of jointly held property, or by the surviving tenant of property held as a tenancy by the entirety, the disclaimer shall be delivered to the person to whom the disclaimed interest passes, or, if the person cannot reasonably be located by the disclaimant, the disclaimer shall be delivered as provided by (b) of this subsection.

(h) In the case of a disclaimer by an object or taker in default of exercise of a power of appointment at any time after the power was created,

(1) the disclaimer shall be delivered to the holder of the power or to the fiduciary acting under the instrument that created the power; or

(2) if no fiduciary is then serving, the disclaimer shall be filed with a court having authority to appoint the fiduciary.

(i) In the case of a disclaimer by an appointee of a nonfiduciary power of appointment,

(1) the disclaimer shall be delivered to the holder, the personal representative of the holder's estate, or to the fiduciary under the instrument that created the power; or

(2) if no fiduciary is then serving, the disclaimer shall be filed with a court having authority to appoint the fiduciary.

(j) In the case of a disclaimer by a fiduciary of a power over a trust or estate, the disclaimer shall be delivered as provided in (b) - (d) of this section, as if the power disclaimed were an interest in property.

(k) In the case of a disclaimer of a power by an agent, except a power exercisable by a fiduciary over a trust or estate, the disclaimer shall be delivered to the principal or the principal's representative.

(l) When a disclaimer of an interest in or relating to real property is recorded in the judicial district where the real property is located, there is a rebuttable presumption that the disclaimer has been delivered.

(m) In this section, "beneficiary designation" means an instrument, other than an instrument creating or amending a trust, naming the beneficiary of

(1) an annuity or insurance policy;

(2) an account with a designation for payment on death;

(3) a security registered in beneficiary form;

(4) a pension, profit-sharing, retirement, or other employment-related benefit plan; or

(5) any other nonprobate transfer at death.

Sec. 13.70.110. When disclaimer permitted, barred, or limited. (a) A disclaimer is permitted unless barred under (b) - (f) of this section. A disclaimer is permitted even though the disclaimant is insolvent.

(b) A disclaimer is barred by a written waiver of the right to disclaim.

(c) A disclaimer of an interest in property is barred if any of the following events occurs before the disclaimer becomes effective:

(1) the disclaimant accepts the interest sought to be disclaimed;

(2) the disclaimant voluntarily assigns, conveys, encumbers, pledges, or transfers the interest sought to be disclaimed or contracts to assign, convey,

encumber, pledge, or transfer the interest sought to be disclaimed; or

(3) a judicial sale or a nonjudicial foreclosure sale of the interest sought to be disclaimed occurs.

(d) A disclaimer, in whole or part, of the future exercise of a power held in a fiduciary capacity is not barred by its previous exercise.

(e) A disclaimer, in whole or part, of the future exercise of a power not held in a fiduciary capacity is not barred by its previous exercise unless the power is exercisable in favor of the disclaimant.

(f) A disclaimer of an interest in or power over property under this chapter is barred and is not effective

(1) to the extent the disclaimant is in arrears in child support payments; or

(2) if the disclaimant is involved in a pending court or administrative proceeding to establish or modify the disclaimant's child support obligation or to establish whether the disclaimant is the biological father or mother of a child.

(g) A disclaimer of a power over property that is barred by this section is ineffective. A disclaimer of an interest in property that is barred by this section takes effect as a transfer of the interest disclaimed to the persons who would have taken the interest under this chapter had the disclaimer not been barred.

Sec. 13.70.120. Tax qualified disclaimer. (a) Notwithstanding any other provision of this chapter, if, as a result of a disclaimer or transfer, the disclaimed or transferred interest is treated under the provisions of 26 U.S.C. (Internal Revenue Code) as never having been transferred to the disclaimant, then the disclaimer or transfer is effective as a disclaimer under this chapter. In this section, "26 U.S.C. (Internal Revenue Code)" includes 26 U.S.C. as amended, any successor statute to 26 U.S.C. or 26 U.S.C. as amended, and regulations adopted under 26 U.S.C., 26 U.S.C. as amended, and any successor statute to 26 U.S.C. or 26 U.S.C. as amended.

(b) A tax-qualified disclaimer under 26 U.S.C. (Internal Revenue Code) is subject to the time limits under 26 U.S.C., as amended, even though time limits are not specified under this chapter.

Sec. 13.70.130. Recording of disclaimer. If an instrument transferring an

interest in or power over property subject to a disclaimer is required or permitted by law to be filed, recorded, or registered, the disclaimer may be filed, recorded, or registered as required or permitted by law. Failure to file, record, or register the disclaimer does not affect its validity as between the disclaimant and persons to whom the property interest or power passes by reason of the disclaimer.

Sec. 13.70.140. Application to existing relationships. Except as otherwise provided in AS 13.70.110, an interest in or power over property existing on the effective date of this chapter as to which the time for delivering or filing a disclaimer under law superseded by this chapter has not expired may be disclaimed after the effective date of this chapter.

Sec. 13.70.150. Uniformity of application and construction. In applying and construing this chapter, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Sec. 13.70.190. Definitions. In this chapter,

(1) "disclaimant" means the person to whom a disclaimed interest or power would have passed had the disclaimer not been made;

(2) "disclaimed interest" means the interest that would have passed to the disclaimant had the disclaimer not been made;

(3) "disclaimer" means the refusal to accept an interest in or power over property and includes a renunciation;

(4) "fiduciary" means a personal representative, a trustee, an agent acting under a power of attorney, a guardian, an individual having legal custody of a minor child, or another person authorized to act as a fiduciary with respect to the property of another person;

(5) "individual having legal custody of a minor child" means an individual who, under the law of this state, has legal custody of a minor child as a matter of law or court decree;

(6) "jointly held property"

(A) means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property;

(B) does not include property held as a tenancy by the entirety;

(7) "person" means an individual, whether the individual is ascertained or unascertained, whether the individual is living or not living, and whatever the basis, including intestacy, for the individual's being entitled to an interest in property; a corporation; a business trust; an estate; a trust; a partnership; a limited liability company; a limited liability partnership; an association; a joint venture; a government; a governmental subdivision, agency, or instrumentality; a public corporation; or any other legal or commercial entity;

(7) "trust"

(A) means

(i) an express trust, charitable or noncharitable, with additions to the express trust, whenever and however created; and

(ii) a trust created under a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust;

(B) does not include a constructive trust or a resulting trust.

Sec. 13.70.195. Short title. This chapter may be cited as the Uniform Disclaimer of Property Interests Act.

* **Sec. 2.** AS 13.12.801 is repealed.

Alaska State Legislature

House of Representatives

Representative Max F. Gruenberg, Jr.
Representative Jay Ramras

SPONSOR STATEMENT
HB 287 – UNIFORM ACT: PROPERTY INTEREST DISCLAIMER

"An Act relating to the adoption of the Uniform Disclaimer of Property Interests Act, and to the disclaimer of property rights under the Uniform Probate Code."

HB 287 is a comprehensive collection of rules outlining the types of property interests eligible for disclaimer, the process by which property interests may be disclaimed, and the effect of a disclaimer on the interest itself.

The Uniform Disclaimer of Property Interests Act was promulgated in 1999 and has already been adopted in 16 other states. There do not appear to be any reported court cases construing this Act. There have been several law review articles discussing the pros and cons of the Uniform Act; Representative Gruenberg would be happy to provide copies of these articles to any interested parties.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM January 28, 2010

SUBJECT: Sectional summary of HB 287 relating to the adoption of the Uniform Disclaimer of Property Interests Act (Work Order No. 26-LS1300\R)

TO: Representative Max Gruenberg
Attn: Gretchen Staft

FROM: Theresa Bannister
Legislative Counsel

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

Section 1. This bill section creates a new chapter dealing with the disclaimer of property interests. This new chapter is based on the Uniform Disclaimer of Property Interests Act.

Sec. 13.70.010. States that AS 13.70 applies to the disclaimer of any interest in property. It does not matter when the disclaimer was created.

Sec. 13.70.020. States that, unless displaced by this chapter, the principles of law and equity apply. States that this chapter doesn't limit a person's right to waive, release, disclaim, or renounce an interest in or power over property under another law.

Sec. 13.70.030. States that a person may disclaim, in whole or part, conditionally or unconditionally, any interest in, or power over, property, including a power of appointment. Allows the disclaimer even if there is a spendthrift provision, a provision similar to a spendthrift provision, or a restriction, prohibition, or limitation on the right to disclaim. Provides that a disclaimer is unconditional and not subject to modification or revocation, unless the disclaimant expressly provides otherwise in the disclaimer.

Allows, if the fiduciary has court approval, a fiduciary to disclaim, in whole or part, any interest in or power over property. Indicates that, without court approval, a fiduciary may not disclaim, except under certain described circumstances, one of which involves natural guardians. Indicates how to determine who is the natural guardian.

Describes the formal requirements for a disclaimer. The disclaimer must be contained in a writing, declare that it is a disclaimer, describe the interest or power disclaimed, be

signed by the person making the disclaimer, and delivered or filed as required by AS 13.70.100. Indicates how the portion of property disclaimed by a partial disclaimer may be described (e.g., fraction, percentage, amount, term of years, etc.).

Indicates when a disclaimer becomes irrevocable. States that a disclaimer is not a transfer, assignment, or release.

Sec. 13.70.040. Establishes, except for disclaimers governed by sec. 13.70.050 - 13.70.065 (relating to jointly held property, tenancies by the entirety, and trustee disclaimers), four rules that relate to when a disclaimer becomes effective and how a disclaimer passes.

A disclaimer takes effect when the instrument creating the interest becomes irrevocable, or at the intestate's death, if related to intestate succession. The disclaimed interest passes according to a provision in the instrument that created the interest. If there is no provision, the disclaimed interest passes under one of four listed alternatives. Establishes how certain future interests take effect when there is a disclaimer of a preceding interest; clarifies that the disclaimer does not accelerate the possession and enjoyment of a future interest held by the disclaimant.

Sec. 13.70.050. Establishes rules for disclaiming interests in jointly held property. Establishes what interest one surviving holder may disclaim on the death of another holder of jointly held property. Indicates when the disclaimer takes effect. States that the disclaimed interest passes as if the disclaimant predeceased the deceased interest holder.

Sec. 13.70.060. Allows for a disclaimer of a survivorship interest in property held as a tenancy by the entirety. The deceased tenant's interest is considered to be an undivided one-half interest. Indicates when the disclaimer takes effect. States that the disclaimed interest passes as if the disclaimant predeceased the deceased cotenant.

Sec. 13.70.065. Addresses the situation of a trustee who is allowed, by court order or the fiduciary instrument, to receive property into a trust. States that if the trustee disclaims an interest that would otherwise have become trust property, the interest does not become trust property.

Sec. 13.70.070. Establishes some general rules for disclaimers of a power of appointment or other power not held in a fiduciary capacity. These rules relate to when the disclaimer takes effect, and directs that the instrument creating the power be construed as if the power expired when the disclaimer became effective.

Sec. 13.70.080. Indicates when disclaimers by persons who may or do receive an interest in property through the exercise of a power of appointment take effect.

Sec. 13.70.090. Indicates when a disclaimer takes effect if a fiduciary disclaims a power held in a fiduciary capacity. Indicates the conditions when the disclaimer may be effective as to another fiduciary.

Sec. 13.70.100. Indicates how delivery of a disclaimer may be effected in general and in listed specific situations.

Sec. 13.70.110. Indicates that a disclaimer is permitted unless barred under this section. Permits a disclaimer even if the disclaimant is not solvent. States that a disclaimer is barred by a written waiver of the right to disclaim. States that a disclaimer is barred if certain listed events occur before the disclaimer occurs.

States that a disclaimer of the future exercise of a power held in a fiduciary capacity is not barred by a previous exercise of the power. A disclaimer of the future exercise of a power not held in a fiduciary capacity is not barred by the previous exercise of the power, unless the power is exercisable in favor of the disclaimant.

A disclaimer is barred and not effective to the extent that the disclaimant is in arrears in child support payments, or if the disclaimant is involved in a child support proceeding or in a proceeding to establish paternity of maternity. Indicates that a disclaimer that is barred by this section is ineffective. States that a barred disclaimer takes effect as a transfer of the interest to the persons who would have taken the interest under this chapter if the disclaimer had not been barred.

Sec. 13.70.120. Provides that a disclaimer or transfer is effective as a disclaimer under this chapter if, as a result of the disclaimer or transfer, the disclaimed or transferred interest is treated under federal tax law as never having been transferred to the disclaimant. Provides that a tax-qualified disclaimer under 26 U.S.C. (Internal Revenue Code) is subject to the time limits under 26 U.S.C., as amended, even though time limits are not specified under this chapter.

Sec. 13.70.130. Provides for a disclaimer to be filed, recorded, or registered as required or permitted by law if a transferring instrument (for the interest in or power over property) is required or permitted by law to be filed, recorded, or registered. But a failure to do this does not affect the disclaimer's validity as between the disclaimant and the persons to whom the interest or power passes under the disclaimer.

Sec. 13.70.140. Generally provides that an existing interest or power may be disclaimed after the effective date of this chapter if the time for delivering or filing the disclaimer under law superseded by this chapter has not expired.

Sec. 13.70.190. Defines terms for the new chapter.

Sec. 13.70.195. Gives the chapter the short title of "Uniform Disclaimer of Property Interests Act."

Section 2. Repeals AS 13.12.801, which is the current statute that deals with the disclaimer of property interests.

If I may be of further assistance, please advise.

TLB:ljw
10-045.ljw

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 287**
() Publish Date:

Identifier (file name): HB287-LAW-CIV-02-26-10
Dept. Affected: Law
Title: An Act relating to the adoption of the Uniform Disclaimer of Property Interests Act, and to the disclaimer of property rights under the Uniform Probate Code.
RDU: Civil
Component: Commercial and Fair Business
Sponsor: Representative(s) Ramras, Gruenberg
Requester: Labor & Commerce
Component Number: 2717

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The bill allows beneficiaries of intestate, testamentary and nontestamentary (nonprobate) interests to execute a disclaimer of those interests. A disclaimer extinguishes the interest as if that interest had never been granted. The Uniform Disclaimer of Property Interests Act also makes it clearer that trustees and fiduciaries may use disclaimers and that powers of appointment may be disclaimed.

No fiscal impact on Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager
Phone 465-5427
Division: Administrative Services
Date/Time 2/26/10 10:00 AM
Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date 2/26/2010

(Revised 11/6/2009 OMB)

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CONFIDENTIAL
ATTORNEY-CLIENT INFORMATION

November 30, 2009

Via email to: <Rep.Max.Gruenberg@legis.state.ak.us>
Representative Max Gruenberg
House District 20—Anchorage
716 West Fourth Avenue, Suite 350
Anchorage, AK 99501-2133

Re: House Bill 201—Uniform Disclaimer of Property Interests Act

Dear Representative Gruenberg:

Thank you for your interest in sponsoring the Uniform Disclaimer of Property Interests Act. As you know, this act was initially introduced as House Bill 201 in the Twenty-Fifth Legislature by Representative LeDoux. Both Representative LeDoux and you asked our group to review the bill and provide our comments. Our group consists of an informal group of estate and trust attorneys who practice primarily in this area in Alaska. We have been working with the Legislature over the past 12 years to make recommendations that will improve Alaska's estate and trust statutes.

We have reviewed House Bill 201 and various articles which have been written suggesting certain changes to this uniform act. In addition, we have reviewed the recent changes to this uniform act enacted by the State of Florida. It should be noted that of the 12 states which have enacted this uniform act, ten states have enacted changes.

We have recommended the changes summarized below. These changes are contained in "CS For House Bill 201", designated "25-LS0615\N (Bannister) 3/17/08". These changes from the uniform act are as follows:

1. **AS 13.70.030(a)**: Allows for conditional disclaimers;

2. **AS 13.70.030(b)**: Requires court approval for a disclaimer by a fiduciary;

3. **AS 13.70.030(b)**: Allows a parent to disclaim for a minor child if the child receives an interest because the parent has disclaimed;

4. **AS 13.70.040(a)(3)(D)**: States that if the statute does not provide for an alternative disposition for an interest or power of appointment disclaimed during the benefactor's lifetime, the interest or power of appointment will revert to the benefactor;

5. **AS 13.70.040(b)(1)**: Clarifies that a disclaimed interest is created at the death of the benefactor or such earlier time, if any, that the benefactor's transfer of the interest is a completed gift for federal gift tax purposes;

6. **AS 13.70.040(b)(2)**: Treats disclaimers of interests in revocable trusts the same as disclaimers of interests in wills;

7. **AS 13.70.060**: Adds a provision covering disclaimers of property held as tenancy by the entirety;

8. **AS 13.70.110(a)**: States the majority rule that a disclaimer is permitted even though the disclaimant is insolvent;

9. **AS 13.70.110(f)**: States that a disclaimer of an interest or power over property is barred and not effective to the extent that the disclaimant is in arrears in child support payments.

10. **AS 13.70.120(b)**: Adds a notice that the Internal Revenue Code provides time limits for qualified disclaimers;

11. **AS 13.70.190**: Adds definitions; and

12. **AS 13.[ENTIRE STATUTE]**: A number of drafting clarifications are added.

Enclosed with this letter is a copy of "CS For House Bill No. 201, 25-LS0615\N" and Legal Services' sectional summary, dated March 16, 2007. In our group's opinion, this bill is now ready for reintroduction and passage. It will make a solid improvement to Alaska's estate and trust statutes.

Thank you very much for your consideration of this legislation.

Sincerely,

David G. Shaftel

Enclosure: As stated

Distributed by Rep. Greenberg

Uniform Laws Annotated Currentness
Uniform Disclaimer of Property Interests Act (1999) (Last Amended or Revised in 2006)

GENERAL NOTES

<The Uniform Disclaimer of Property Interests Act (1999), in its Prefatory Note, states that it replaces the 1978 Uniform Disclaimer of Property Interests Act, the 1978 Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act, and the 1978 Uniform Disclaimer of Transfers under Nontestamentary Instruments Act, and will be incorporated into the Uniform Probate Code to replace UPC § 2-801. Uniform Probate Code § 2-801 was replaced in 2002 by the Uniform Disclaimer of Property Interests Act (1999), which is incorporated into the UPC as Part 11 of Article 2 (§§ 2-1101 to 2-1117).>

<See, also, the Uniform Disclaimer of Property Interests Act (1978).>

TABLE OF JURISDICTIONS WHEREIN ACT HAS BEEN ADOPTED

Jurisdiction	Laws	Effective Date	Statutory Citation
Arizona	2005, c. 195	8-12-2005	A.R.S. §§ 14-10001 to 14-10018.
Arkansas	2003, c. 610	9-1-2003	A.C.A. §§ 28-2-201 to 28-2-220.
Delaware	2006, c. 302	6-27-2006	12 Del.C. §§ 601 to 617.
District of Columbia	2006, D.C. Law 16-205	3-2-2007	D.C. Official Code, 2001 Ed. §§ 19-1501 to 19-1518.
Florida	2005, c. 108	7-1-2005	F.S.A. §§ 739.101 to 739.701.
Hawaii	2000, c. 43	7-1-2000	HRS §§ 526-1 to 526-16.
Indiana	2003, c. 5	7-1-2003	West's A.I.C. 32-17.5-1-1 to 32-17.5-10-1.
Iowa	2004, c. 1015	3-29-2004 [FN*]	I.C.A. §§ 633E.1 to 633E.17.
Maryland	2004, c. 465	10-1-2004	Code, Estates and Trusts, §§ 9-201 to 9-216.
Massachusetts	2008, c. 521	7-1-2011	M.G.L.A. c. 190B, § 2-801.
Nevada	2007, c. 102	5-22-2007	N.R.S. 120.100 to 120.350.
New Mexico	2001, c. 290	7-1-2001	NMSA 1978 §§ 46-10-1 to 46-10-17.
North Dakota	2001, c. 301	8-1-2001	NDCC 30.1-10.1-01 to 30.1-10.1-12.
Oregon	2001, c. 245	1-1-2002	ORS 105.623 to 105.649.
Virginia	2003, c. 253	3-16-2003 [FN*]	Code 1950, §§ 64.1-196.1 to 64.1-196.15.
West Virginia	2002, c. 317	7-1-2002	Code, 42-6-1 to 42-6-19.

[FN*] Date of approval.

DRAFTING COMMITTEE TO REVISE UNIFORM DISCLAIMER OF PROPERTY INTERESTS ACTS

HIROSHI SAKAI, 902 City Financial Tower, 201 Merchant Street, Honolulu, HI 96813, *Chair*

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Distributed by Rep. Greenberg

Uniform Disclaimer of Property Interests

By William P. LaPiana

The National Conference of Commissioners on Uniform State Laws (NCCUSL) approved the Uniform Disclaimer of Property Interests Act (UDPIA) on July 29, 1999. The new disclaimer act replaces three uniform acts promulgated in 1978 (the Uniform Disclaimer of Property Interests Act, the Uniform Disclaimer of Transfers by Will, Intestacy or Appointment Act and the Uniform Disclaimer of Transfers under Nontestamentary Instruments Act) and will be incorporated into the Uniform Probate Code (UPC) to replace current UPC § 2-801. UDPIA is the most comprehensive disclaimer statute ever written and is designed to allow every sort of disclaimer that is useful for tax planning purposes.

Nine Month Time Limit

UDPIA does not include a specific time limit for making any disclaimer and makes no reference to the nine month limit of Code § 2518. At the beginning of the drafting process, the NCCUSL drafting committee decided that the new act would reflect the basic concept underlying all disclaimers: no one can be forced to accept a gift. The only bar to a disclaimer, therefore, should be acceptance of the offer. This decision recognizes that, in almost all jurisdictions, disclaimers can be used for more than tax planning. A proper disclaimer will often keep the disclaimed property from the disclaimant's creditors. In short, the new act is a type of enabling act that prescribes all of the rules for refusing a proffered interest in or power over property and the effect of that refusal on the power or interest. UDPIA leaves the tax consequences of the refusal to tax law.

The drafting committee also believed that the decision not to include a specific time limit—to "decouple" the disclaimer statute from the time requirement for a "qualified disclaimer" under Code § 2518—would reduce confusion. The older uniform acts and almost all the current state statutes (many of which are based on those acts) were drafted in the wake of the passage of Code § 2518 in 1976. That gift tax provision replaced the "reasonable time" requirement of prior law with a requirement that a disclaimer must be made within nine months of the creation of the interest disclaimed, if the disclaimer is to be a "qualified disclaimer"—one that is not regarded as a transfer by the disclaimant.

The statutes that were written in response to Code § 2518 reflected the nine month time limit that Code section established. Under most of these statutes (including the 1978 uniform acts and UPC § 2-801), a disclaimer must be made within nine months of the creation of a present interest. For example, a disclaimer of an outright gift under a will must be made within nine months of the decedent's death, corresponding to the requirement of Code § 2518. A future interest, however, may be disclaimed within nine months of the time that the interest vests in possession or enjoyment. For example, a remainder contingent on surviving the holder of the life income interest must be disclaimed within nine months of the death of the life income beneficiary. The time limit for disclaimers of future interests does not correspond to Code § 2518, which generally requires that a qualified disclaimer of a future interest be made within nine months of the interest's creation, no matter how contingent it may be.

The nine month time limit of the existing statutes really is a trap. Although it superficially conforms to Code § 2518, its application to the disclaimer of future interests does not. The UDPIA drafting committee hoped that, by removing all mention of time limits, the statute itself would signal that different law sets the requirements for a tax qualified disclaimer.

Relates Back

UDPIA reads differently from current disclaimer statutes because it abandons the term "relates back." Courts have interpreted that term to mean that the disclaimer takes effect as a refusal at that time, thus preventing the disclaimant from transferring the interest. UDPIA adopts this interpretation. Rather than using the term "relates back," however, UDPIA makes disclaimers effective at the time when the offer of the gift is irrevocable. For example, a disclaimer of a gift under a will is "effective" when the will becomes irrevocable at the death of the testator. In addition,

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§ 4(f) states that a disclaimer "is not a transfer, assignment, or release." Taken together, the time of effectiveness provisions and § 4(f) clearly state the meaning of a disclaimer as a refusal.

Disclaimer of Trustee Powers

UDPIA creates rules not only for the disclaimer of interests in property, but also for the disclaimer of powers over property. The act includes sections devoted to the disclaimer of powers not held in a fiduciary capacity (powers of appointment) (§ 9) and of powers held in a fiduciary capacity (§ 11). Trustees may have tax motives for surrendering powers. For example, a trust for the primary benefit of a surviving spouse will not qualify for the marital deduction if the trustee has the power to invade principal for others. If the trustee effectively disclaims the power, the trust might then qualify for the marital deduction under Code § 2056. Trustees have, in general, had difficulty disclaiming powers. The courts usually decide that the trustee must accept the trust as created or decline to be trustee. In contrast, UDPIA gives trustees the ability to make such disclaimers. Any disclaimer by a trustee must, of course, comport with the trustee's fiduciary duty.

Disclaimer of Property Added to Trust

Disclaimers of additions of property to a trust are also the subject of innovative provisions. UDPIA § 5 allows trustees to disclaim property that would otherwise be added to a trust. Such disclaimers have been hampered by the same reasoning that has held back potentially useful disclaimers of fiduciary powers. For example, a trustee might wish to disclaim an addition to a trust that would otherwise lead to the imposition of the generation-skipping transfer tax. Again, any disclaimer of a property interest by a trustee must comport with the trustee's fiduciary duty.

Disclaimer of Interest in Jointly Held Property

The most important new provision dealing with the disclaimer of interests in property is § 7, "Disclaimer of Interest in Jointly Held Property." Although existing statutes usually mention the possibility of disclaiming jointly held property, they do not provide details. Any disclaimer of joint tenancy or tenancy by the entirety property is an anomalous concept in property law terms. At the death of one joint holder, nothing really "passes" to the survivor. The traditional common law view is that the survivor has been "freed of the participation" of the other joint tenant. Nevertheless, courts have interpreted the existing disclaimer statutes as contemplating the disclaimer of at least the "accretive portion" of the joint tenancy—that part of the property that the decedent would have received had the tenancy been severed unilaterally. See *Dancy v. Comm'r*, 872 F.2d 84 (4th Cir. 1989); *McDonald v. Comm'r*, 853 F.2d 1494 (8th Cir. 1988); *Kennedy v. Comm'r*, 804 F.2d 1332 (7th Cir. 1986); *In re Estate of Lamoureux*, 412 N.W.2d 628 (Iowa 1987). Holdings such as these, of course, give little help to tenants by the entirety who cannot make a unilateral severance. IRS rulings have generally, albeit reluctantly, followed these cases, allowing the disclaimer of the severable portion. A surviving tenant by the entirety, of course, could not make a qualified disclaimer under these rulings.

The IRS ended the controversy in late 1997 when it promulgated new final regulations under Code § 2518. Treas. Reg. § 25.2518-2(c)(4)(i) allows a surviving joint tenant or tenant by the entirety to disclaim that portion of the tenancy to which he or she succeeds on the death of the first joint tenant (when there are two joint tenants), whether or not the tenancy could have been unilaterally severed under local law and regardless of the proportion of consideration that the disclaimant furnished. The regulations also create a special rule for joint tenancies between spouses created after July 14, 1988, when the spouse of the donor is not a U.S. citizen. In that case, the donee spouse may disclaim any portion of the joint tenancy includable in the donor spouse's gross estate under Code § 2040, which creates a contribution rule. Thus, the surviving non-citizen spouse may disclaim all of the joint tenancy property if the deceased spouse provided all of the consideration for the tenancy's creation.

Treas. Reg. § 25.2518-2(c)(4)(ii) also recognizes the unique features of joint bank accounts. The regulations permit the disclaimer by a survivor of that part of the account that the decedent contributed, so long as the decedent could have regained that portion during life by unilateral action. The regulations bar the disclaimer of that part of the account attributable to the survivor's contribution and explicitly extend the rule governing joint bank accounts to brokerage and other investment accounts, such as mutual fund accounts, held in joint name.

Section 7 was drafted to allow every sort of qualified disclaimer of jointly held property possible under the Treasury Regulations. Section 2(5) defines jointly held property to include joint tenancies and tenancies by the entirety as well as all other sorts of joint arrangements by stating: "Jointly held property' means property held in the name of two or more persons under an arrangement in which all holders have concurrent interests and under which the last surviving holder is entitled to the whole of the property." A surviving holder of joint property may disclaim the greater of a fractional portion of the property, determined by dividing the number one by the number of joint holders immediately before the death of the holder giving rise to the opportunity to disclaim, and that portion of the jointly held property not attributable to the contribution of the disclaimant. A surviving spouse who

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"The nine month time limit of the existing statutes really is a trap. Although it superficially conforms to Code § 2518, its application to the disclaimer of future interests does not."

contributed all the consideration for the purchase of the family home held in joint tenancy could disclaim one-half of the property. Had the surviving spouse contributed nothing, he or she could disclaim as much as all of the property, although a qualified disclaimer would be limited to one-half.

The surviving holder of a joint account who contributed nothing to the account could disclaim the entire account. The disclaimer would be a qualified disclaimer under the regulations so long as the other requirements of Code § 2518 are met. The disclaimant is deemed to have predeceased the last of the other joint holders to die. In the case of spousal joint tenants, the decedent then would be the deemed survivor. The disclaimed portion would pass through his or her estate and could help the estate take advantage of the unified credit.

The provisions of UDPIA dealing with the disclaimer of interests in property, other than disclaimers by trustees, also differ from previous statutes. Section 6 governs all such disclaimers, whether the disclaimed interest was created by will, under intestacy law or by a nontestamentary instrument. The old uniform acts, UPC § 2-801, and almost all state statutes deal separately with disclaimers of testamentary and nontestamentary interests. The separation reflects the need to select a time at which the disclaimant is deemed to have died to determine how the disclaimed interest passes, absent a direction in the instrument. For testamentary interests, the time has always been the death of the decedent. For other interests, the time is usually when the instrument creating the interest becomes irrevocable.

Effective Time of Disclaimer

Under UDPIA, unless the instrument provides for the disposition of the disclaimed interest should it be disclaimed or for the disposition of disclaimed interests in general (§ 6(b)(2)), the disclaimed interest passes as if the disclaimant had died immediately before the time of distribution of the interest under § 6(b)(3)(A). Section 6(a)(1) defines time of distribution as "the time when a disclaimed interest would have taken effect in possession or enjoyment." "Possession" and "enjoyment" are, of course, terms of art from the law of future interests and describe the time at which it is certain to whom property belongs. The terms do not mean that the person actually has the property in hand. For example, the time of distribution of present interests created by will and of all interests arising under the law of intestate succession is the date of the decedent's death. At that moment, the heir or devisee is entitled to his or her devise or share. It is irrelevant that time will pass before the will is admitted to probate and that actual receipt of the gift may not occur until the administration of the estate is complete. The time of distribution of present interests created by nontestamentary instruments generally depends on when the instrument becomes irrevocable. Because the recipient of a present interest is entitled to the property as soon as the gift is made, the time of distribution occurs when the creator of the interest can no longer take it back.

The time of distribution of a future interest is the time when it comes into possession. Previous uniform acts and UPC § 2-801 provided that a disclaimant would be treated as predeceasing the creation of the future interest (for example, the death of the decedent if the interest was in a testamentary trust). That approach leads to an ambiguity. Assume that T's will creates a testamentary trust for A, who is to receive all of the income for life. At A's death, the trust is to be distributed to T's descendants by representation. A is survived by T's son S and daughter D. S has two living children and D has one child. S decides that he would prefer his share of the trust to pass to his children and disclaims. The disclaimer must be made within nine months of T's death if it is to be a qualified disclaimer for tax purposes. Under prior acts and UPC § 2-801, the interest passes as if S had predeceased T.

A problem can arise if S is survived by children born after T's death. It is possible to argue that, had S predeceased T, the afterborn child would not exist and that D and S's two children living at the time of T's death are entitled to all of the trust property. Under § 6(b)(3)(A), however, S is deemed to have died immediately before A's death, even though under § 6(b)(1) the disclaimer is effective as of T's death. There is no doubt, therefore, that S's children living at the time of distribution, whenever born, are entitled to the share of the trust property he would have received.

In the above example, it is clear that S's children should receive exactly what S would have received had he not disclaimed. Section 6(b)(3)(A) ensures that result by requiring that the disclaimed interest pass as if the disclaimant had died. This provision in turn ensures that a disclaimer cannot alter the representational scheme of a multigenerational gift or the intestacy statute. The classic example is the disclaimer by an older generation representative whose children outnumber those of her deceased

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"The regulations permit the disclaimer by a survivor of that part of the account that the decedent contributed, so long as the decedent could have regained that portion during life by unilateral action."

sibling. For example, X dies intestate, survived by daughter D, her three children and the only child of predeceased son S. D disclaims. Were D deemed simply to have predeceased X, her children could argue that they were entitled to three-fourths of the estate because all the heirs are now in the same generation. Courts have rejected this interpretation of deemed death, taking the position that the disclaimer should only allow the passing of what the disclaimant would otherwise have taken. See, e.g., *Welder v. Hitchcock*, 617 S.W.2d 294 (Tex. Civ. App. 1981); *Estate of Fiengo*, 347 N.Y.S.2d 150 (Surr. Ct. 1973). UDPIA agrees with that position.

Preventing the use of a disclaimer to alter the shares of an intestate estate or of a multigenerational gift by limiting the effect of the disclaimer to the disclaimed interest solves one problem but creates another. In the example in the previous paragraph, if the disclaimed interest passes as if D predeceased X, S's child could claim one-fourth of the interest because, once again, all of the heirs would be in the same generation. UDPIA prevents that result by adapting language from UPC § 2-801, providing that if the disclaimant's descendants would have shared in the disclaimed interest had the disclaimant predeceased (in this example with their cousin, S's child), then the interest passes only to the disclaimant's descendants.

The concept of the disclaimer as a deemed death follows the approach that existing statutes take. Just as under those statutes, the result of a disclaimer of an interest created under a will is seldom in doubt under § 6. Even if the will does not provide for the death of the disclaimant before the testator, the doctrine of lapse and anti-lapse statutes will give a clear answer. The law of lapse as it applies to non-testamentary instruments and the interests they create is far less certain. In the absence of comprehensive lapse provisions like UPC §§ 2-603, 2-706 and 2-707, general principles may dictate the exact result of the disclaimer of an interest created in an instrument other than a will. Unfortunately, the exact application of those general principles to any particular situation may not be obvious.

Disclaimers by Corporations and Partnerships

Section 6(b)(3)(B) provides a rule for the passing of property interests disclaimed by persons other than individuals. Because § 8 applies to disclaimers by trustees of property that would otherwise pass to the trust, this paragraph principally applies to disclaimers by corporations, partnerships and the other entities listed in the definition of "person" in § 2(b). A charity, for example, might wish to disclaim property if acceptance of the property would be incompatible with its purposes.

Acceleration of Future Interests

Section 6(b)(4) continues the approach taken in prior uniform acts and UPC § 2-801 that provides for the acceleration of future interests on the making of a disclaimer. For example, Father's will creates a testamentary trust to pay income to his son S for his life, and on his death to pay the remainder to S's descendants then living, by representation. If S disclaims his life income interest in the trust, the remainder will immediately become possessory in S's descendants determined as of Father's death, just as if S really had not survived. It is immaterial that the actual situation at S's death might be different, with different descendants entitled to the remainder.

Disclaimers of Powers of Appointments

Section 9 deals with disclaimers by holders of powers of appointment and § 10 with disclaimers by appointees, permissible appointees and takers in default. A properly disclaimed power ceases to exist as of the time the disclaimer becomes effective, which in turn depends on what sort of power is involved and whether or not it has been exercised. If a holder disclaims a power before exercising it, the disclaimer takes effect at the time that the instrument creating the power became irrevocable and the disclaimer destroys the power. If the holder has exercised the power, the disclaimer takes effect immediately after the last exercise of the power. The power ceases to exist from that time forward, unless the power is a presently exercisable general power of appointment. Once exercised, such a power cannot be disclaimed. This is the only provision in UDPIA that makes a specific act sufficient to bar a subsequent disclaimer.

Section 10 makes a disclaimer by an appointee take effect as of the time that the instrument by which the holder exercises the power becomes irrevocable. Disclaimers by objects and takers in default take effect as of the time the instrument creating the power becomes irrevocable. The effect of the disclaimer is the same as that of any disclaimer of an interest of property under § 6. The disclaimed interest will pass according to the explicit provisions of the instrument exercising or creating the power or under the default rule of

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§ 6(b)(3)(A), which deems the disclaimant to have predeceased the time of distribution.

Delivery

The delivery provisions of § 12 are designed to ensure that the disclaimer reaches the person or entity having the responsibility to distribute the disclaimed interest. UDPIA does not require filing the disclaimer with a court unless there is no person or entity to whom delivery can be made. For example, a disclaimer of an interest in a decedent's estate must be filed with the court having the authority to appoint the personal representative only if no personal representative is serving at the time.

Bars to Disclaimers

Section 13 of UDPIA is captioned "When Disclaimer Barred or Limited." Like existing statutes, this section recognizes that a waiver of the right to disclaim, as well as an assignment, conveyance, encumbrance, pledge, transfer or judicial sale of the interest sought to be disclaimed, will bar a disclaimer. In addition, the past exercise of a general power of appointment bars a disclaimer of the power. The section also includes three novel provisions. First, subsection (e) states that other law can bar or limit a disclaimer. This provision recognizes situations such as the cases holding that disclaimers are transfers in the context of Medicaid qualification or issues in dealing with federal tax liens. (The Supreme Court has granted certiorari in *Drye v. U.S.*, 119 S. Ct. 1453 (1999), to resolve the tax lien question.) Second, subsection (f) provides that a disclaimer barred by § 13 takes effect as a transfer of the interest disclaimed to those who would have taken the interest had the disclaimer not been barred. This provision eliminates the ambiguity that would otherwise be caused by an ineffective refusal to accept property. Third, subsection (g) provides that any disclaimer that meets the requirements for a qualified disclaimer under Code § 2518 is a valid disclaimer under UDPIA.

Conclusion

UDPIA recognizes that disclaimers have a wide variety of uses. The act provides rules for all of those potential uses, while leaving policy questions on the effect of a proper refusal of property or rejection of a power to other law.

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Keeping Current PROBATE

Keeping Current—Probate offers a look at selected recent cases, rulings and regulations, literature and legislation. The editors of *Probate & Property* welcome suggestions and contributions from readers.

CASES

• **TAX APPORTIONMENT: Will provision prevails over statutory apportionment.** The decedent's will directed that all death taxes be paid from the residue and defined death taxes to include all estate, inheritance and succession taxes "which are assessed by reason of my death." In *Peterson v. Mayse*, 993 S.W.2d 217 (Tex. Ct. App. 1999), the court held that the apportionment clause overrode the statutory apportionment rule.

• **EQUITABLE ADOPTION: Proof must be by clear and convincing evidence.** In *Williams v. Estate of Pender*, 738 So. 2d 453 (Fla. Dist. Ct. App. 1999), the court required clear and convincing evidence of each of the five elements of equitable adoption: 1) agreement to adopt, 2) performance by the natural parents by surrender of custody, 3) performance by child by living in the home of the foster parents, 4) partial performance by the foster parents by taking the child into their home and treating the child as their own and 5) intestacy of the foster parents. For a similar holding, see *Welch v. Wilson*, 516 S.E.2d 35 (W. Va. 1999).

• **REPUBLICATION BY CODICIL: Post-marriage codicil republishes premarital will.** A testator executed his will and married his wife later that day. He subsequently adopted his wife's child. After the adoption the testator executed two codicils. His wife alleged that the will was revoked by a state statute providing that a subsequent marriage and birth or adoption of a child revokes a premarital will. The court in *In re Estate of Wells*, 983 P.2d 279 (Kan. Ct. App. 1999), held the will effective because it was republished by codicil after the marriage and adoption.

• **ATTORNEY'S FEES: Executor's undue influence precludes payment from estate.** A will was denied probate because the executor exercised undue influence over the decedent. That executor moved for payment of his lawyer's fees from the estate, but the court denied the fee application. *In re Estate of Herbert*, 979 P.2d 1133 (Haw. 1999).

• **DOMICILE: Decedent's intent outweighs physical location of property.** The decedent's estate was administered in Massachusetts. An after-death survey of the decedent's property revealed that 11% of the property, including his house, was actually located in Connecticut. The court in *Bernier v. DuPont*, 715 N.E.2d 442 (Mass. App. Ct. 1999), held that the decedent intended to reside in Massachusetts and Massachusetts courts had jurisdiction based on the decedent's domicile.

• **PRETERMITTED CHILD: Nonmarital child entitled to forced share.** A decedent's will was executed before the birth of his child. Although the child's mother was married to someone else at the time of the child's birth, the court held that the child qualified as a pretermitted child because there was clear and convincing evidence of paternity overcoming the presumption that the mother's husband was the child's father *In re Matter of Wilkins*, 691 N.Y.S.2d 878 (N.Y. Surr. Ct. 1999).

RULINGS AND REGULATIONS

• **GST TAX: Failure to allocate exemption on Schedule R excused under substantial compliance doctrine.** PLR 199937026.

• **INCOME TAX BASIS: Beneficiary not estopped from claiming a stepped up basis greater than the fair market value of the asset shown on the estate tax return.** TAM 199933001.

• **MARITAL DEDUCTION: Savings clause in deceased spouse's will sufficient to support interpretation limiting distribution to surviving spouse consistent with marital deduction rules.** TAM 199932001.

• **POWER OF APPOINTMENT: Trustee's power to amend a trust determined not to be a general power because the trustee had no beneficial interest in the trust and the grantor's intent was to benefit the trustee's children.** FSA 199830026.

• **VALUATION: Special valuation rules of Code § 2701 may apply to formation of a partnership.** TAM 199933002.

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LITERATURE

• **Asset protection trusts.** Recent articles discussing asset protection trusts include David Aronofsky, *Montana's Foreign Capital Depository Act: A Financial Pie in the Rocky Mountain Sky or a Sensible New Assets Attraction Approach?*, 32 Vand. J. Transnat'l L. 711 (1999); Eric Henzy, *Offshore and "Other" Shore Asset Protection Trusts*, 32 Vand. J. Transnat'l L. 739 (1999); Gideon Rothschild et al., *Self-Settled Spendthrift Trusts: Should a Few Bad Apples Spoil the Bunch?*, 32 Vand. J. Transnat'l L. 763 (1999); Amy Lynn Wagenfeld, *Law for Sale: Alaska and Delaware Compete for the Asset Protection Trust Market and the Wealth that Follows*, 32 Vand. J. Transnat'l L. 831 (1999).

• **Attorney-client privilege.** For a discussion of the posthumous application of the privilege, see Forrest Shea Browning, Swidler & Berlin v. United States: *A Grave Decision—When Does Attorney-Client Privilege Have a Life of its Own?*, 22 Am. J. Trial Advoc. 671 (1999).

• **Body disposition.** Jennifer E. Horan recommends a functional approach to family status for same-sex couples when disposing of remains in *"When Sleep at Last Has Come": Controlling the Disposition of Dead Bodies for Same-Sex Couples*, 2 J. Race, Gender & Just. 423 (1999).

• **Charitable trusts.** Recent articles include: Jonathan Gopman and Daniel Mielnicki, *New Perspectives in Planning with Testamentary Charitable Lead Annuity Trusts*, Tr. & Est. 46 (June 1999); Paula Kilcoyne, *Charitable Trusts - Donor Standing Under the Uniform Management of Institutional Funds Act in Light of* Carl J. Herzog Foundation, Inc. v. University of Bridgeport, 21 W. New Eng. L. Rev. 131 (1999); Conrad Teitell, *Charitable Remainder Trusts—Final Regulations*, Tr. & Est. 36 (Aug. 1999).

• **Conservation easements.** For a review of conservation easements benefits, see Brenda J. Brown's *Land Preservation Provides Estate Tax Benefits: Section 2031(c)*, 17 UCLA J. Envtl. L. & Pol'y 117 (1998).

• **Contracts to make a will.** Jason Thomas King recommends a constructive trust remedy rather than enforcing a promise to make a will in *Lifetime Remedies for Breach of a Contract to Make a Will*, 50 S.C. L. Rev. 965 (1999).

• **Defamation after death.** Raymond Iryami discusses the history and recent developments related to the departed's reputation rights in *Give the Dead Their Day in Court: Implying a Private Cause of Action for Defamation of the Dead from Criminal Libel Statutes*, 9 Fordham Intell Prop. Media & Ent. L.J. 1083 (1999).

• **Family-owned businesses.** Recent articles focusing on family-owned businesses include: Shannon E. O'Brien, *Estate Tax Treatment of Family-Owned Businesses: The Evolution of Internal Revenue Code Section 2057*, 67 UMKC L. Rev. 495 (1999); Sebastian V. Grassi Jr., *Drafting for the Family-Owned Business Deduction*, 90 J. Tax'n 358 (1999); and Neil E. Harl, *The Family-Owned Business Deduction: Still in Need of Repairs*, Drake J. Agric. L. 59 (Spring 1999).

• **Foreign trust taxation.** Donald D. Kozusko and Stephen K. Vetter question *Respect for "Form" as "Substance" in U.S. Taxation of International Trusts*, 32 Vand. J. Transnat'l L. 675 (1999). Carlyn S. McCaffrey & Elyse G. Kirschner discuss foreign trusts and the requirements they impose in *Learning to Live with the New Foreign Nongrantor Trust Rules*, 32 Vand. J. Transnat'l L. 555 (1999).

• **Limited liability companies.** For a review of limited liability companies, see Thomas W. Jacobs and Thomas J. Callahan, *What Tax Lawyers Need to Know About Single Member Limited Liability Companies*, Prac. Tax Law. 7 (Summer 1999).

• **Long-term care insurance.** Robert D. Hayes, Nancy G. Boyd and Kenneth W. Hollman stress the importance of advising elderly clients to purchase insurance packages in *What Attorneys Should Know About Long-Term Care Insurance*, 7 Elder L.J. 1 (1999).

• **Medicaid.** Omar N. Ahmad provides an overview of the Medicaid program and discusses the "income-first" rule in *Medicaid Eligibility Rules for the Elderly Long-Term Care Applicant, History and Developments, 1965-1998*, 20 J. Legal Med. 251 (1999).

• **Negligent trust situs.** A possible new tort is discussed in Michael J. Myers and Rollyn H. Samp, *South Dakota Trust Amendments and Economic Development: The Tort of "Negligent Trust Situs" at its Incipient Stage*, 44 S.D. L. Rev. 662 (1998).

• **Omitted spouse.** David E. Wagner explores South Carolina's omitted spouse statute in *The South Carolina Probate Code's Omitted Spouse Statute and* In Re Estate of Timmerman, 50 S.C. L. Rev. 979 (1999).

• **Professional athletes.** For a view of estate planning for the professional athlete, see Joseph D. Wright's *Skyrocketing Dollars and the Tax Reform Act of 1997: Estate Planning for the Professional Athlete in a New Millennium*, 6 Sports Law J. 27 (1999).

• **Professional responsibility.** The Judge Advocate General's School shares its experience in *TJAGSA Practice*

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Note: Wills and Professional Responsibility Notes, Army Law. 30 (July 1999).

• **Purpose trusts.** Adam J. Hirsch reviews the purpose trust provisions of the UPC in *Trusts for Purposes: Policy, Ambiguity, and Anomaly in the Uniform Laws*, 26 Fla. St. U. L. Rev. 913 (1999).

• **QTIP election.** June R. Kitagawa examines Code § 2056 in *QTIP Election Invalid Where the Will Allowed Reduction in the Surviving Spouse's Interests:* Estate of Rinaldi v. United States, 52 Tax Law. 617 (1999).

• **Qualified retirement plan.** Louis S. Harrison shares his methods for minimizing at-death transfers of tax-deferred assets in *Creative and Strategic Estate Planning for Transfer of Qualified Retirement Assets*, 87 Ill. B.J. 480 (1999).

• **Tax liens on inherited property.** Andrew J. Lawrence recommends strategies in *State Law Disclaimer Did Not Prevent the Attachment of Federal Tax Liens to Inherited Property:* Drye Family 1995 Trust v. United States, 52 Tax Law. 627 (1999).

• **Tax returns.** Glen A. Yale shares his instructions and checklist in *Obtaining Information to Complete the Form 706*, Prac. Tax Law. 29 (Summer 1999).

• **Trust companies.** Anne Luke Boozer, Hal Pennington and William W. Rodgers discuss the trust industry in *Case Study: A Trust Culture That Works*, Tr. & Est. 28 (Aug. 1999).

• **Trust taxation.** Robert T. Danforth offers *A Proposal for Integrating the Income and Transfer Taxation of Trusts* in 18 Va. Tax Rev. 545 (1999).

• **Trusts.** For an overview of recent developments, see Edward C. Halbach, Jr., *Significant Trends in the Trust Law of the United States*, 32 Vand. J. Transnat'l L. 531 (1999).

• **Undue influence.** Brian Alan Ross argues that a woman's testamentary choices are often overruled as punishment for her challenging traditional gender roles in *Undue Influence and Gender Inequity*, 19 Women's Rts. L. Rep. 97 (1997).

• **Uniform prudent investor** Act. Martin D. Begleiter shares the results of his study in *Does the Prudent Investor Need the Uniform Prudent Investor Act - An Empirical Study of Trust Investment Practices*, 51 Me. L. Rev. 28 (1999).

• **Valuation of lottery winnings.** Ja Lee Kao focuses on *Valuing Future Lottery Winnings for Estate Tax Purposes:* Estate of Shackleford v. United States, 52 Tax Law. 609 (1999).

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• **Will contests.** Ronald Chester examines mediation as an alternative to will contests in *Less Law, But More Justice?: Jury Trials and Mediation as Means of Resolving Will Contests*, 37 Duq. L. Rev. 173 (1999).

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• **California authorizes nonprofit charitable corporations to be appointed as trustees under specified circumstances.** 1999 Cal. Legis. Serv. ch. 424.

• **California creates statewide registry for guardians and conservators.** 1999 Cal. Legis. Serv. ch. 409.

• **California establishes presumption that transfer of community and quasi-community property to a revocable trust is an agreement that those assets retain their character.** 1999 Cal. Legis. Serv. ch. 263.

• **California revises creditor claims procedures.** 1999 Cal. Legis Serv. ch. 263.

• **Illinois prohibits discrimination of recipients of donated organs based on potential donee's disability.** 1999 Ill. Legis. Serv. P.A. 91-345.

• **Illinois requires reporting of charitable trust for the benefit of a minor or a disabled person to the person's parent or guardian.** 1999 Ill. Legis. Serv. P.A. 91-620.

• **New York revises estate tax apportionment statute relating to qualified terminable interest property.** 1999 N.Y. Legis. ch. 380.

• **North Carolina clarifies the circumstances under which an agent may make gifts under a durable power of attorney.** N.C. Laws S.L. 1999-385.

• **Ohio revises probate laws, including will revocation and bonding requirements.** 1999 Ohio Legis. file 71.

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ADR by the Bay: The Golden Gate to Collaborative Problem Solving
San Francisco, CA

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ERISA Basics
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Employee Benefits in Mergers and Acquisitions
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SECTION CALENDAR

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South Beach Miami, FL

ABA Annual Meeting
July 6-12, 2000
New York, NY

July 15-20, 2000
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Probate & Property is designed to assist lawyers practicing in the areas of real estate, wills, trusts and estates by providing articles and editorial matter written in a readable and informative style. The articles, other editorial content and advertisements are intended to give up-to-date, practical information that will aid lawyers in giving their clients accurate, prompt and efficient service.

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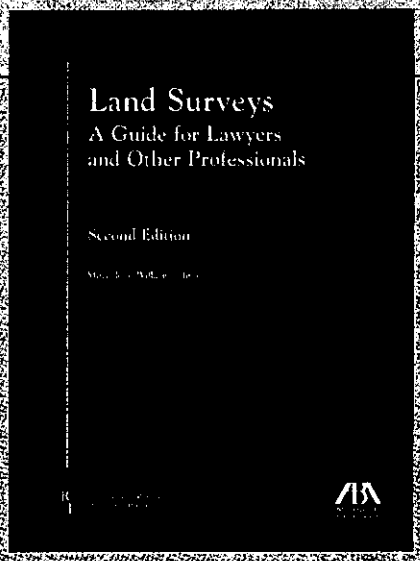

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HB 298

Representative Jay Ramras
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Chair, Economic Development, Trade & Tourism
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Military & Veteran Affairs
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House of Representatives

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House District 10

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover:

From: Jane W. Pierson

Date: February 9, 2010

Re: Amendments to HB298

Jerry,

Today, we passed HB298 out of HJUD. Please make the following amendments and go final.

Amendment #1 – A.7
Amendment #2 – A.8
Amendment #4 – A.15
Amendment #7 - A.14
Amendment #19 - A.20
Conceptual Amendment Page 8, Line 24 Change "expert" to "experts"
Amendment #12 - A.3 as amended P.1, L.12 after prosecution insert "or law enforcement
Amendment #15 - A.24 as amended P. 2, L.6 after "petition" delete "the district" and insert "any court of competent jurisdiction"
Amendment #16 - A.26

If you need any more info, please call.

Thank you!

Representative_Jay_Ramras@legis.state.ak.us

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 298

Page 1, line 1, following "**harassment,**":

Insert "**distribution and**"

Page 3, following line 19:

Insert a new bill section to read:

"*** Sec. 5** AS 11.61.125(a) is amended to read:

(a) A person commits the crime of distribution of child pornography if the person **distributes in this state or advertises, promotes, solicits, or offers to distribute in this state** [BRINGS OR CAUSES TO BE BROUGHT INTO THE STATE FOR DISTRIBUTION, OR IN THE STATE DISTRIBUTES, OR IN THE STATE POSSESSES, PREPARES, PUBLISHES, OR PRINTS WITH INTENT TO DISTRIBUTE,] any material that **is proscribed under AS 11.61.127** [VISUALLY OR AURALLY DEPICTS CONDUCT DESCRIBED IN AS 11.41.455(a), KNOWING THAT THE PRODUCTION OF THE MATERIAL INVOLVED THE USE OF A CHILD UNDER 18 YEARS OF AGE WHO ENGAGED IN THE CONDUCT]."

Renumber the following bill sections accordingly.

Page 3, lines 21 - 26:

Delete all material and insert:

"(a) A person commits the crime of possession of child pornography if the person knowingly possesses **or knowingly accesses on a computer with intent to**

view any material that visually [OR AURALLY] depicts conduct described in AS 11.41.455(a) knowing that the

(1) production of the material involved the use of a child under 18 years of age who engaged in the conduct **or a depiction of a part of an actual child under 18 years of age who, by manipulation, creation, or modification, appears to be engaged in the conduct; or**

(2) material appears to include a child under 18 years of age engaging in the conduct."

Page 4, line 4:

Delete "a new subsection"

Insert "new subsections"

Page 4, line 5:

Delete "for possession of child pornography"

Page 4, following line 11:

Insert new subsections to read:

"(f) In this section,

(1) "appears to include a child" means that the material appears to include, or conveys the impression that it includes, a person who is under 18 years of age and the material was not created using a depiction of any part of an actual child under 18 years of age, and

(A) the average individual, applying contemporary community standards, would find that the depiction, taken as a whole, appeals to the prurient interest; and

(B) a reasonable person would find that the depiction, taken as a whole, lacks serious literary, artistic, political, or scientific value;

(2) "computer" has the meaning given in AS 11.46.990.

(g) In a prosecution under (a) of this section, the prosecution is not required to prove the identity of a minor depicted or that the defendant knew the identity of a

minor depicted."

Page 9, line 3:

Delete "Sections 1-15"

Insert "Sections 1-16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

The Christian Science Monitor

Ban upheld on offering child porn

The Supreme Court allows a 2003 law dealing with 'virtual' child porn that some thought was too broad.

By Warren Richey Staff writer of The Christian Science Monitor
posted May 20, 2008 at 12:00 am EDT

Washington —
The US Supreme Court has upheld an effort by Congress to make it illegal to offer or promote child pornography – even when the photographs being offered or promoted don't really exist or involve real children.

In a 7-to-2 decision announced on Monday, the high court said the law was a constitutional effort by Congress to protect innocent children from a thriving form of abuse.

The majority justices upheld the law even though it restricted certain kinds of speech that critics said must be protected by the First Amendment.

Instead, the high court said Congress had struck the correct balance in passing the anti-child-pornography law.

"We hold that offers to provide or requests to obtain child pornography are categorically excluded from the First Amendment," writes Justice Antonin Scalia for the majority.

The PROTECT Act of 2003 is an attempt to shut down a flourishing trade in child pornography over the Internet. It seeks to do it not only by barring the exchange of pictures depicting children in sexually explicit poses, but also by outlawing any attempt to convince another person that offered pictures are of real child pornography involving real children.

In effect, the law makes it illegal to try to dupe other would-be consumers of child pornography into thinking that they are about to receive actual child pornography. The activity is illegal even if the photographs do not involve actual child pornography. In addition, such pandering is illegal even if the photographs don't exist.

The majority justices said the statute was not too broad or too vague to pass constitutional muster.

The law "punishes speech seeking to conclude illegal transactions," Justice Scalia said in a statement from the bench. "Such speech does not get First Amendment protection."

He adds, in the opinion: "Offers to give or receive what it is unlawful to possess have no social value and thus, like obscenity, enjoy no First Amendment protection."

His opinion was joined by Chief Justice John Roberts and Justices John Paul Stevens, Anthony Kennedy, Clarence Thomas, Stephen Breyer, and Samuel Alito.

Justices David Souter and Ruth Bader Ginsburg dissented. Justice Souter writes that prior Supreme Court rulings established that only pornographic photographs of actual children may be prohibited and that virtual child pornography retains First Amendment protections.

Justices Souter and Ginsburg said the 2003 PROTECT Act violates free-speech protections by allowing a new pandering prohibition aimed at suppressing otherwise protected speech. In other words, if virtual child pornography is protected by the First Amendment, how could an attempt to pander virtual child pornography be illegal?

"Just six years ago the court struck down a statute outlawing particular material merely represented to be child pornography, but not necessarily depicting actual children," Souter writes. "The court is going against the grain of pervasive First Amendment doctrine that tolerates speech restriction not on mere general tendencies of expression, or the private understandings of speakers or listeners, but only after a critical assessment of practical consequences."

The decision comes in the case of Michael Williams of Key Largo, Fla. Mr. Williams was arrested in May 2004 after an encounter with an undercover agent in an adult chat room on the Internet.

He logged into the chat room and posted a message that he had "good" photographs of his 2-year-old daughter that he wished to swap for similar photos. An undercover federal agent responded and engaged Williams in a private Web chat. The agent identified himself as a 30-year-old mother with a 10-year-old daughter.

Williams and the undercover agent swapped photos. The children depicted in the photos were clothed and were not engaged in sexually explicit activities.

According to court documents, Williams tried to get the undercover agent to provide a more sexually explicit photograph. When it did not arrive, Williams posted a warning message in the chat room that the undercover agent was a cop. The undercover agent responded in a chat room message accusing Williams of being a cop.

In response to the accusation that he was an undercover cop, Williams posted a hyperlink to seven sexually explicit photographs of children ages 5 to 15.

Four days later, federal agents executed a search warrant for Williams's trailer in Key Largo. They discovered 22 computer images of children engaged in various forms of sexual activity. They also discovered that Williams lived alone and did not have a 2-year-old daughter.

Williams was charged with possession of child pornography. But federal prosecutors also charged him with violating the federal child-pornography pandering law for his Internet encounter with the undercover agent.

Williams agreed to plead guilty to both charges, but he reserved the right to appeal the pandering conviction. His lawyers said he shouldn't be held criminally liable for false claims made in an adult chat room.

The 11th US Circuit Court of Appeals in Atlanta agreed with Williams and reversed the pandering conviction.

In overturning the appeals court, the high court said, "The Eleventh Circuit believed it a constitutional difficulty that no child pornography need exist to trigger the statute. In its view, the fact that the statute could punish a 'braggart, exaggerator, or outright liar' rendered it unconstitutional."

The decision continues: "That seems to us a strange constitutional calculus."

Scalia said the 11 Circuit's reading of the law would forbid the government from punishing fraudulent offers to provide illegal products. "We see no logic in that position; if anything, such statements are doubly excluded from the First Amendment," he writes.

Responding to Souter's dissent, Scalia says the high court's holding does not overrule a 2002 decision in a case called Ashcroft v. Free Speech Coalition.

In that case, the court ruled that Congress could not ban virtual child pornography in an attempt to stamp out actual child pornography. "According to the dissent, Congress has made an end-run around the First Amendment's protection of virtual child pornography by prohibiting proposals to transact in such images rather than prohibiting the images themselves," Scalia writes.

He says an offer to provide or a request to receive virtual child pornography is not prohibited by the PROTECT Act and continues to have First Amendment protection. "A crime is committed only when the speaker believes or intends the listener to believe that the subject of the proposed transaction depicts real children," Scalia writes.

Souter and Ginsburg say the statute must be based on more than mere belief by a speaker or the speaker's desire to foster a belief in another.

"First Amendment freedoms are most in danger when the government seeks to control thought or to justify its laws for that impermissible end," Souter writes, quoting from the court's 2002 Free Speech Coalition decision. "The right to think is the beginning of freedom, and speech must be protected from the government because speech is the beginning of thought."

In contrast, the majority said Congress struck the correct balance in the statute. "Child pornography harms and debases the most defenseless of our citizens," Scalia writes. "Both the state and federal governments have sought to suppress it for many years, only to find it proliferating through the new medium of the Internet."

He adds, "This court held unconstitutional Congress's previous attempt to meet this new threat, and Congress responded with a carefully crafted attempt to eliminate the First Amendment problems we identified. As far as the provision at issue in this case is concerned, that effort was successful."

In other action, the high court upheld a Kentucky program that provided tax exemptions for Kentucky-based municipal bonds.

Voting 7 to 2, the justices ruled that a state may decline to charge taxes on interest earned on its own bonds while taxing residents for interest earned on bonds from other states. Forty-two states offer some form of tax exemption for their bonds, while taxing out-of-state bonds.

In another case, the high court upheld a portion of the conviction of the so-called Millennium Bomber who was allegedly plotting to blow up Los Angeles International Airport. He was arrested attempting to drive into the United States from Canada. Officials found explosives in his car.

The Supreme Court ruled 8 to 1 that Ahmed Ressam was properly charged and convicted under a law prohibiting carrying explosives while committing a felony.

In Mr. Ressam's case, the underlying felony was making false statements on his US Customs form while attempting to enter the US by car in December 1999. At issue was whether the underlying felony must involve committing a crime linked to the explosives, not simply possessing the explosives while committing a felony.

A federal appeals court had thrown out a single count of Ressam's nine-count conviction.

On Monday, the Supreme Court reversed that decision. The ruling will make it easier for federal prosecutors to return lengthy prison sentences against suspected terrorists caught in possession of explosives. Oral argument was presented in the case by Attorney General Michael Mukasey, who is now batting 1.000 as an advocate before Supreme Court.

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26-GH2859\A.8
Luckhaupt
1.26/10

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: HB 298

Page 2, line 30, through page 3, line 1:

Delete all material.

Reletter the following subsections accordingly.

Page 8, following line 31:

Insert a new bill section to read:

"*** Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

LEGISLATIVE STATEMENT CONCERNING CULPABLE MENTAL STATE. In AS 11.56.840(a), as repealed and reenacted by sec. 3 of this Act, the only culpable mental state required to be proven by the prosecution is the "knowing" requirement in paragraph (2) of that subsection. No other culpable mental state needs to be proven for the other elements of that offense."

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 15 and 17"

2157

26-GH2859\A.15
Luckhaupt
1/27/10

AMENDMENT By Rep. Ramras

OFFERED IN THE HOUSE

TO: HB 298

Page 3, lines 14 - 19:

Delete all material and insert:

"(a) A person commits the crime of harassment in the first degree if

(1) the person violates AS 11.61.120(a)(5) and the offensive physical contact is contact with human or animal blood, mucus, saliva, semen, urine, vomitus, or feces**; or**

(2) under circumstances not proscribed under AS 11.41.434 - 11.41.440, the person violates AS 11.61.120(a)(5) and the offensive physical contact is contact by the person touching another person's genitals, anus, or female breast, either directly or through clothing."

26-GH2859\A.14
Luckhaupt
1/27/10

AMENDMENT

By: Rep. Ramras

OFFERED IN THE HOUSE

TO: HB 298

Page 6, lines 30 - 31:

Delete all material and insert:

"**(E) specified in AS 11.41.434 - 11.41.458 or AS 11.61.128 and the defendant was 10 or more years older than the victim;**"

2159

DOL
26-GH2859\A.20
Luckhaupt
1/28/10

AMENDMENT

By: Rep. Ramras

OFFERED IN THE HOUSE

TO: HB 298

Page 6, following line 31:

Insert a new bill section to read:

"* **Sec. 15.** AS 12.63.020 is amended by adding a new subsection to read:

(c) A person required to register under AS 12.63.010 for a conviction in another jurisdiction that is not similar to an offense in this state shall register for a period described in

(1) (a)(2) of this section if the person has been convicted of only one offense;

(2) (a)(1) of this section if the person has been convicted of two or more offenses for which the person is required to register in another jurisdiction."

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

2160

26-GH2859\A.3
Luckhaupt
1/26/10

AMENDMENT Passed as amended

OFFERED IN THE HOUSE BY REPRESENTATIVE HOLMES

TO: HB 298

Page 8, lines 3 - 31:

Delete all material and insert:

"DIRECT COURT RULE AMENDMENT. Rule 16(b), Alaska Rules of Criminal Procedure, is amended by adding a new paragraph to read:

(9) Restriction on Availability of Certain Material or Property. Notwithstanding (b)(1)(A)(iv) of this rule, the court shall deny any request by the defendant to copy, photograph, duplicate, or otherwise reproduce any property or material that may be illegal or prohibited under AS 11.41.455(a) or defined as "child pornography" under 18 U.S.C. 2256, provided the prosecution makes the property or material reasonably available to the defendant. Property or material shall be deemed to be made reasonably available to the defendant if the prosecution provides, at a prosecution or law enforcement facility, ample opportunity for inspection, viewing, and examination of the property or material by the defendant, the defendant's attorney, and any individual the defendant may seek to qualify to furnish expert testimony at trial."

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 298

Page 1, line 5, following "**kidnapper;**":

Insert "**relating to administrative subpoenas for certain records involving exploitation of children;**"

Page 7, following line 31:

Insert a new bill section to read:

"*** Sec. 16.** AS 44.23 is amended by adding a new section to read:

Sec. 44.23.080. Subpoena power of attorney general in cases involving use of an Internet service account in the exploitation of children. (a) In an investigation of an offense under AS 11.41.452, 11.41.455, or AS 11.61.125 - 11.61.128 and on reasonable cause to believe that an Internet service account has been used in the exploitation or attempted exploitation of children, the attorney general may issue in writing and cause to be served a subpoena requiring the production and testimony described in (b) of this section.

(b) A person receiving a subpoena under (a) of this section shall disclose, for the account that is the subject of the subpoena,

(1) the name of the person holding the account;

(2) the address associated with the account;

(3) local and long distance telephone connection records, including records of session times and durations for the account;

(4) length of service, including service start date, and types of service used by the account;

(5) the telephone or instrument number or other subscriber

number or identifier, including any temporarily assigned network address for the account; and

(6) the means and source of payment for the service, including a credit card or bank account number associated with the account.

(c) At any time before the return date specified on the subpoena, the subpoenaed person may petition ~~the district~~ ANY COURT OF COMPETENT JURISDICTION court for the judicial district in which the person resides or does business for an order modifying or setting aside the subpoena or for an order sealing the court record.

(d) A subpoena under this section must describe the objects required to be produced and must prescribe a return date with a reasonable period of time within which the objects must be assembled and produced.

(e) If no case or proceeding arises from the production of records or other documents under this section within a reasonable time after those records or documents are produced, the attorney general shall either destroy the records and documents or return them to the person who produced them.

(f) A subpoena issued under this section may be served as provided for service of subpoenas under Rule 45, Alaska Rules of Civil Procedure, or for service of process under Rule 4, Alaska Rules of Civil Procedure.

(g) Except as provided in this section, any information, records, or data reported or obtained under a subpoena under this section shall remain confidential and may not be disclosed unless the disclosure occurs in connection with a criminal case related to the subpoenaed materials."

Renumber the following bill sections accordingly.

Page 9, line 5:

Delete "Section 16 of this Act applies"

Insert "Sections 16 and 17 of this Act apply"

26-GH2859\A.26
Luckhaupt
2/5/10

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE HOLMES

TO: HB 298

Page 4, line 25:

Delete "and"

Insert "[AND]"

Page 4, line 26, following "(2)":

Insert "**the material is harmful to minors; and**

(3)"

Page 5, following line 6:

Insert a new bill section to read:

"*** Sec. 11.** AS 11.61.128 is amended by adding a new subsection to read:

(e) In this section, "harmful to minors" means

(1) the average individual, applying contemporary community standards, would find that the material, taken as a whole, appeals to the prurient interest in sex for persons under 16 years of age;

(2) a reasonable person would find that the material, taken as a whole, lacks serious literary, artistic, educational, political, or scientific value for persons under 16 years of age; and

(3) the material depicts actual or simulated conduct in a way that is patently offensive to the prevailing standards in the adult community as a whole with respect to what is suitable for persons under 16 years of age."

Renumber the following bill sections accordingly.

Page 9, line 3:

Delete "Sections 1 - 15"

Insert "Sections 1 - 16"

Page 9, line 5:

Delete "Section 16"

Insert "Section 17"

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

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January 19, 2010

Representative Jay Ramras
Chair, House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 298 - relating to
sexual assault and domestic violence

Dear Chairman Ramras:

I am writing to respectfully request that you schedule House Bill 298 for a hearing in the House Judiciary Committee at your earliest convenience. HB 298 is one of several bills that the Governor has introduced to confront and help reduce the alarming and discouraging rate of sex offenses and crimes involving domestic violence in our state.

The bill makes important changes to several criminal laws. For example, it clarifies that accessing child pornography with the intent to view it is a crime. A recent court decision found that our statute requires more than viewing child pornography on a computer to be a crime under the current statute. The bill also requires a person to register as a sex offender in our state if required to do so in another state. Alaska should not be a friendly destination to persons hoping to avoid sex offender registration by moving to our state.

A sectional analysis is attached that describes each provision of the bill.

Thank you for your consideration of this request.

Sincerely,

Daniel S. Sullivan
Attorney General

DSS:ADC: sf

HOUSE BILL 298
SEXUAL ASSAULT AND DOMESTIC VIOLENCE
Sectional Analysis

Sections 1 and 2 correct an error made in 2007 when the legislature enacted AS 11.56.759, that adopted a class A misdemeanor if a sex offender violates specific conditions of probation or parole. One of the requirements of the crime is that the person have served the entire period of incarceration imposed for the crime. This is effective for probationers, but not for parolees, because a person is never on parole if he or she has served the entire period of incarceration. A member of the Parole Board brought this issue to our attention, because the statute has caused problems for the board in dealing with parolees. These sections remove parolees from the statute.

Section 3 rewrites AS 11.56.840, failure to register as a sex offender in the second degree. Although the proposal is similar to current law, it removes the requirement that the state prove a culpable mental state for the conduct of not registering or otherwise filing the required notices and information. The state would still be required to prove that the person knew he or she was required to register and failed to do so. The section also adopts an affirmative defense that unforeseeable circumstances outside the control of the person prevented him or her from registering, and that the person contacted the Department of Public Safety immediately upon being able to do so.

Section 4 would raise a form of harassment in the second degree (that is, with intent to harass or annoy another person, the person subjects the other person to offensive physical contact) to harassment in first degree if the offensive physical contact is by the offender touching the other person's genitals, anus, or female breast. Harassment in the first degree is a class A misdemeanor; the second degree offense is a class B misdemeanor. There have been prosecutions recently involving offensive touchings that occurred so quickly that the court concluded that the victim did not have time to convey lack of consent to the offender. The court reduced these charges from sexual assault to harassment in the second degree. This conduct is more serious that a class B misdemeanor; the bill would raise it to a class A misdemeanor.

Sections 5, 6, and 7 address a problem with Alaska law prohibiting possession of child pornography that was raised by a recent decision of the Alaska Court of Appeals, *Worden v. State*, 213 P.3d 144 (Alaska App. 2009). *Worden* held that our current statute does not prohibit a person from viewing child pornography on a computer; rather, the statute requires that the person must also save it on the computer to be considered to possess it. In response to this decision, the bill adopts the federal approach. It prohibits possession of child pornography, and it also prohibits a person from knowingly accessing child pornography on a computer with the intent to view it.

2167

The bill also proposes an affirmative defense that is similar to federal law. The affirmative defense would address a situation where a person finds child pornography on their computer, and did not obtain it themselves. The defense requires that there are three or less depictions, and the person, without showing the material to another person except law enforcement, destroys the depictions or contacts law enforcement and turns it over to them.

Sections 8, 9, and 10 amend the crime that prohibits the electronic distribution of indecent material to minors by expanding the offense to prohibit any distribution of indecent material to minors.

Section 11 adds the crimes of human trafficking in the first and second degrees, distribution of child pornography, possession of child pornography, and distribution of indecent materials to minors to the crimes that are not eligible for a suspended imposition of sentence.

Section 11 also includes an amendment that removes "substantially" when describing a crime in another jurisdiction that may be a predicate conviction that would disallow the use of a suspended imposition of sentence for other offenses. This conforms with other statutes that require that a predicate offense in another jurisdiction be only similar to an offense in Alaska. Examples include AS 12.55.145(a) (presumptive sentencing), AS 11.41.320(a)(5) (third degree assault), and AS 11.41.110(a)(5) (murder in the second degree).

Section 12 adds to the conditions of probation that may be imposed on a person convicted of a sex offense. It gives the court discretion to order the person to submit e-mail addresses and other networking addresses to his or her probation officer, who would be required to give this information to the Troopers and to the local law enforcement agency. If the person was convicted of sexual abuse of a minor or an offense related to child pornography, it gives the court discretion to prohibit the person from using an Internet site, communicating with children under 16 years of age, or possessing or using a computer.

Section 13 amends the aggravating factor at sentencing that allows the court to increase a sentence above the sentencing range if the defendant knew that the victim was particularly vulnerable. It does this by adding the consumption of alcohol or drugs as factors that might make a victim particularly vulnerable.

Section 14 adds two new aggravating factors to the sentencing law. First, it allows the court to increase a sentence above the sentencing range for a crime against a person (AS 11.41) committed against a person that the defendant was dating or with whom the defendant has engaged in a sexual relationship. Second, it allows the court to increase the sentence if the defendant is convicted of sexual abuse of a minor in the second degree under AS 11.41.436(a)(2) (a person 16 years of age or older having sexual contact with a child under 13 years old), if the defendant is 18 years old or older.

Section 15 adds a new provision to sex offender registration law that requires a person present in Alaska, who is convicted of an offense out of state that requires registration in that jurisdiction, to register in Alaska. This requirement would apply even if Alaska does not have a criminal provision similar to the crime in the other state that requires registration there.

Section 16 amends Rule 16(b)(1)(A) by prohibiting the copying of child pornography as part of the discovery process in a criminal prosecution. It would allow defense counsel, the defendant, and defense experts to examine the material, but it must be kept in the custody and control of a law enforcement agency or the prosecuting authority. Federal law has a similar provision. 18 U.S.C.A. § 3509(m).

Sections 17 and 18 include the applicability and effective date provisions.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB298-ACS 01-22-10
() Publish Date:

Identifier (file name):
Dept. Affected:
Title: Sex Offenses; Offender Registration; Sentencing
RDU: Alaska Court System
Component: Trial Courts
Sponsor: House Rules
Requester: Governor
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*
The court system does not anticipate any fiscal impact from the passage of HB 298.

Prepared by: Doug Wooliver, Administrative Attorney
Phone 907-463-4750
Division: Alaska Court System
Date/Time 01-22-10 @ 8:30 am
Approved by: Doug Wooliver for Christine Johnson, Administrative Director
Date 1/22/2010
Alaska Court System

(Revised 10/13/2009 OMB)

2170

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version:
() Publish Date:

Identifier (file name): HB298-DPS-R&I-01-22-10
Title "An Act relating to the crimes of sexual assault..."
Sponsor Rules Committee
Requester Governor

Dept. Affected: Public Safety
RDU Statewide Support
Component Records & Identification
Component Number 1190

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services	99.2						
Travel	5.0						
Contractual	5.8						
Supplies	1.0						
Equipment	2.9						
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**113.9**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	113.9						
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**113.9**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time	**1.0**						
Part-time							
Temporary							

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

This proposed legislation would require a person who is required to register as a sex offender or child kidnapper in another jurisdiction to register in Alaska even if there is no substantive law in Alaska that is similar to the offense the person was convicted of.

For sex offender registration purposes, "jurisdiction" is defined at 13 AAC 09.900(a)(5) and includes the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Northern Mariana Islands, the U.S. Virgin Islands, and federally-recognized Indian tribes that have elected to function as a registration jurisdiction. Each jurisdiction has its own distinct laws pertaining to the registration of sex offenders, including which offenses require registration and the length of time an offender is required to register. (cont.)

Prepared by: David Schade
Division Statewide Services
Phone (907) 269-0202
Date/Time 1/22/2010

Approved by: Joe Masters
Commissioner
Date 1/22/2010

ANALYSIS CONTINUATION

For the department's Records & Identification unit to continue to accomplish a core service of providing public access to current information regarding sex offenders in Alaska, the determination that a person must register as a sex offender or child kidnapper in Alaska because of their requirement to register in another jurisdiction must be made timely and must be based on information that has been validated.

Considerable research and analysis of the criminal history background of persons with sex offense convictions outside of Alaska would be required to determine whether the offense of conviction is a registerable offense under the current laws of that jurisdiction and whether or not the person is subject to that jurisdiction's registration requirements. Coordination with the jurisdiction's sex offender central registry would need to occur to obtain source documents and other relevant information on the person.

Additionally, the department would need to continually monitor the status of registration laws and legal cases affecting sex offender registration in all jurisdictions to ensure a person required to register in Alaska under proposed AS 12.63.100(6)(D) continued to be subject to the registration requirements of the jurisdiction that their offense was committed in.

The department anticipates that these additional efforts will require one new full-time Criminal Justice Planner position. This position would be responsible to review and evaluate offender records with out-of-state sex offense convictions to determine the requirement to register under proposed AS 12.63.100(6)(D), to coordinate with other jurisdictions' sex offender central registry offices, and to monitor sex offender registration laws in other jurisdictions and any changes for possible impact to currently registered offenders.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: HB 298
(H) Publish Date: 1/19/10

Identifier (file name): "Act relating to crimes of sexual assault, possession
Title of child pornography, and distribution of indecent material to a minor...."
Sponsor Rules Committee
Requester Governor

Dept. Affected: DOC
RDU Adminstration & Support
Component Office of the Commissioner
Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services	0.0	0.0	77.1	103.0	128.9	154.8	180.7
Travel	0.0	0.0	1.5	2.0	2.5	3.0	3.5
Contractual	0.0	0.0	50.4	67.3	84.2	101.2	118.1
Supplies	0.0	0.0	7.9	10.6	13.3	15.9	18.6
Equipment	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Land & Structures	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Grants & Claims	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Miscellaneous	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL OPERATING	**0.0**	**0.0**	**136.9**	**182.9**	**228.9**	**274.9**	**320.9**
CAPITAL EXPENDITURES	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CHANGE IN REVENUES ( )	**0.0**	**0.0**	**136.9**	**182.9**	**228.9**	**274.9**	**320.9**

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1003 GF Match	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1004 GF	0.0	0.0	**136.9**	**182.9**	**228.9**	**274.9**	**320.9**
1005 GF/Program Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
1037 GF/Mental Health	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Other Interagency Receipts	0.0	0.0	0.0	0.0	0.0	0.0	0.0
TOTAL	**0.0**	**0.0**	**136.9**	**182.9**	**228.9**	**274.9**	**320.9**

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time	**0.0**	0.00	0	0	0	0	0
Part-time	0.0	0	0	0	0	0	0
Temporary	0.0	0	0	0	0	0	0

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

This bill will have the effect of increasing the number of prisoners the Department of Corrections (DOC) will have to house beginning in Fiscal Year 2012. These approximate costs are based on the average number of new convictions or remands per year and the average estimated sentences associated with each change in the draft legislation. DOC will track the impact and could potentially request additional funding based on actual impacts.

Continued on page 2

Prepared by: Leslie Houston, Director — Phone (907) 465-3339
Division Administration and Support — Date/Time 1/7/10 8:30 AM
Approved by: Dwayne Peeples, Deputy Commissioner — Date 1/7/2010
Department of Corrections

(Revised 11/6/2009 OMB)

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2173

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 298

ANALYSIS CONTINUATION

This bill specifically adds a number of new crimes, expands existing crimes, and enhances sentences for existing crimes:

- Sections 1 and 2 remove parolees from the statute. This change should have little to no fiscal impact.

- Section 3 changes the elements for failure to register as a Sex Offender or child kidnapper in the second degree. It is estimated this will generate 3 new convictions per year carrying an average 2 month sentence.

- Section 4 raises a form of harassment in the second degree to harassment in the first degree if the offensive physical contact is by the offender touching the other person's genitals, anus, or female breast. The change from a Class B misdemeanor to a Class A misdemeanor is estimated to generate 18 convictions per year that carry an average 30 day sentence.

- Sections 5, 6, and 7 address a problem with current Alaska law prohibiting possession of child pornography. This amendment prohibits possession of child pornography, and also prohibits a person from knowingly accessing child pornography on a computer with the intent to view. We anticipate a relatively low number of new convictions and a possible increase in remands. Convictions would generate an estimated average 4 year sentence. The actual impact will be closely tracked by DOC.

- Section 8, 9, and 10 changes the elements of distribution of indecent material to minors to include any distribution in addition to electronic distribution. Because most of these cases are by computer, the impact on DOC is small and is included in Sections 5-6-7.

- Section 11 prohibits the suspension of sentences for human trafficking and possession of child pornography. DOC will track the actual impact.

- Section 12 adds discretionary probation conditions for Sex Offenders providing available electronic mail addresses and prohibiting internet use, communication with children, and possession or use of a computer. DOC believes this will have minimal impact above the number of remands that occur each year for such violations, however, we will track any impact this change to the bill may have.

- Section 13 adds as a sentencing aggravator adding the incapacity of a victim by alcohol or drugs. Due to a lack of data, the DOC is unable to assess an impact. The impact will be closely tracked.

- Section 14 adds two sentencing aggravators in a sex offense: first, to increase a sentence for a crime against a person committed against a person that the defendant was dating or with whom the defendant has engaged a sexual relationship; second, the sentence is increased if the defendant is 18 or over and is convicted of sexual abuse of a minor in the second degree under AS 11.41.436(a). Due to a lack of data, the DOC is unable to assess an impact. The impact will be closely tracked.

- Section 15 expands the definition of sex offense for sex offender registration to include sex offenses committed in other states where a person must register as a Sex Offender or child kidnapper. There are too many factors involved to determine a fiscal impact. DOC will track the actual impact.

- Section 16 amends criminal discovery restriction regarding child pornography. This represents no fiscal impact for DOC.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: HB 298
(H) Publish Date: 1/19/10

Identifier (file name): 0859 -Law-Crim-12-30-09
Dept. Affected: Law
Title: An Act relating to the crimes of sexual assault, possession of child pornography and distribution of indecent material to a minor.
RDU: Criminal
Component: Criminal Justice Litigation
Sponsor: Rules
Requester: Governor
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill adopts a class A misdemeanor for offensive touching that does not arise to sexual assault in the first, second or third degree. The bill adopts a class C felony for a person who knowingly accesses child pornography on a computer. The bill extends the prohibition of distributing indecent material to a minor to all forms of distribution. The bill provides that a person convicted of human trafficking or possession or distribution of child pornography may not be given a suspended imposition of sentence, and imposes certain restrictions on defendants.

Prepared by: Eileen Donahue, Division Operations Manager
Phone (907)465-5427
Division: Administrative Services
Date/Time 12/30/09 12:00 AM
Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date 12/30/2009

(Revised 11/6/2009 OMB)

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FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 298
(H) Publish Date: 1/19/10

Identifier (file name): 0859-DOA-PDA-12-31-09
Dept. Affected: Administration
Title: An Act relating to the crimes of sexual assualt, ...
RDU: Legal and Advocacy Services
Component: Public Defender Agency
Sponsor: Rules Committee
Requester: Governor
Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

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

See attached page

Prepared by: Quinlan Steiner, Director — Phone 907 334-4414
Division: Public Defender Agency — Date/Time 12/31/2009, 4:00PM
Approved by: Rachael Petro, Deputy Commissioner — Date 12/31/2009
Department of Administration

(Revised 10/13/2009 OMB)

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FISCAL NOTE #2

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 298

ANALYSIS CONTINUATION

The bill will create a new misdemeanor crime of harassment for touching another person without consent. Additionally, the bill will eliminate the mens rea element associated with circumstances under which someone fails to register as a sex offender.

This bill will also change the procedures for defense access to evidence in child pornography cases. Under the proposed change to Criminal Rule 16, the evidence that forms the basis of such charges must remain in the custody and control of a law enforcement agency and the prosecuting attorney, and no copies can be made. This could result in additional costs associated with the logistics of reviewing and evaluating evidence.

The agency does not predict a significant fiscal impact as a result of the proposed statute. Accordingly, the agency submits a zero fiscal note.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 298
(H) Publish Date: 1/19/10

Identifier (file name): 0859-DOA-OPA-12-31-09
Dept. Affected: DOA
Title: An Act relating to the crimes of sexual assault, possession of child pornography and . . .
RDU: Legal and Advocacy Services
Component: Office of Public Advocacy
Sponsor
Requester: Governor
Component Number: 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill makes additions and changes to a number of criminal statutes and discovery procedures associated with sex offenses and child pornography prosecutions. Some of these changes could have a fiscal impact on the agency although it is not anticipated to be significant. Therefore, the agency has submitted a zero fiscal note.

Analysis continued on the second page.

Prepared by: Rachel Levitt, Director — Phone 907 269-3504
Division: Office of Public Advocacy — Date/Time 12/31/09, 4:30 p.m.
Approved by: Rachael Petro, Deputy Commissioner — Date 12/31/2009
Department of Administration

COMMITTEE COPY

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 298

ANALYSIS CONTINUATION

The bill will create a new misdemeanor crime of harassment for touching another person's genitals, anus or female breast, directly or through clothing. Additionally, the bill will eliminate the mens rea element associated with circumstances under which someone fails to register as a sex offender. These changes could increase prosecutions and litigation associated with failure to register as a sex offender and child pornography cases.

This bill will also change the procedures for defense access to evidence in child pornography cases. Under the proposed change to Criminal Rule 16, the evidence that forms the basis of such charges must remain in the custody and control of a law enforcement agency and the prosecuting attorney, and no copies can be made. This could result in additional costs associated with the logistics of the defense reviewing and testing evidence. For example, in a child pornography case any experts hired to review evidence would have to be paid for time involved with traveling and reviewing evidence where it is being held by the prosecutor or police agency, and facilities will have to be made available for evidence review and testing.

The agency does not predict a significant fiscal impact as a result of the proposed statute. Accordingly, the agency submits a zero fiscal note.

Main Office
130 Seward St #209
Juneau, Alaska 99801
Phone: (907) 586-3650
Fax: (907) 463-4493
www.andvsa.org

ANDVSA
Alaska Network on Domestic Violence & Sexual Assault

Pro Bono Office
PO Box 6631
Sitka, Alaska 99835
Phone: (907) 747-7545
Fax: (907)747-7547

Governor Sean Parnell
Alaska State Capitol Building
Third Floor
Juneau, AK 99801

Dear Governor Parnell,

On behalf of the Network's 18 member programs that provide services to victims and survivors of domestic and sexual violence, we thank you for bringing forth HB 298. HB 298 will provide for more offender accountability and will send a clear message that sexual assaults against Alaskans will not be tolerated.

This bill will close many loopholes that currently exist in Alaska law and no longer provide offenders with an escape mechanism from prosecution. For example, by making it a crime to knowingly access child pornography with the intent to view it, the cyber crimes investigators will now have the ability to bring charges against perpetrators that previously could avoid the law simply by not downloading these images or "possessing" them.

Finally, we know from our work that most sexual assaults occur between people that know each other or are engaged in a relationship. Our statutes currently proscribe harsh penalties for violating familial trust relationships and other caretaker relationships, but not for intimate partner violence, which is equally betraying. Allowing judges to enhance sentencing penalties through an aggravating factor when perpetrators betray the trust in these relationships and sexually assault their intimate partners will send a clear message that when you betray any trust relationship you will be held accountable.

The Network thanks you Governor in bringing forth this legislation which is a first step in reducing the rates of sexual assault in Alaska.

Sincerely

Peggy Brown, Executive Director

cc: Lisa Mariotti, Policy Director

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130 Seward St #209
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Comparative Statistics
Alaska and States with Similar Populations & Rural/Urban Characteristics
Source: FBI's Uniform Crime Report: 2008

State	Total Population	# of Forcible Rapes*	Rate per 100,000 inhabitants
Alaska	**686,293**	**441**	**64.3**
Wyoming	532,668	180	44.8
N. Dakota	641,481	232	36.2
Montana	967,440	294	30.4
Vermont	621,270	127	20.4

Comparative Statistics
Alaska and States with Significantly Larger Populations & Different Rural/Urban Characteristics
Source: FBI's Uniform Crime Report: 2008

State	Total Population	# of Forcible Rapes*	Rate per 100,000 inhabitants
Alaska	**686,293**	**441**	**64.3**
Texas	24,326,974	8014	32.9
California	36,756,666	8903	24.2
New York	19,490,297	2801	14.4

* **Forcible Rape** is defined as: "the carnal knowledge of a female and against her will." Source: Uniform Crime Report. Available at: http://www.fbi.gov/ucr/ucr.htm. Note: these statistics exclude statutory rape, sexual assaults against males, and sexual assaults against children. Therefore, many of Alaska's statutory crimes are not reflected in these statistics. Also of note, these are only crimes reported to law enforcement and does not include many local jurisdictions in Alaska or those individuals who choose not to report.

Standing Together Against Rape
1057 W. Fireweed Lane, Suite 230
Anchorage, AK 99503
(907) 276-7279

Fiscal Year 2009 Advocacy Review

Gender	Numbers
Males	211
Females	962
Unknown	34
Total	1,207

Age Group	Numbers
0-5	113
6-12	173
13-18	139
19-24	165
25-54	564
55-64	38
65-79	2
80-up	0
Unknown	13
Total	1,207

Race/Ethnicity	Numbers
Alaska Native	332
American Indian	15
Asian	10
African American	52
Hispanic/Latino	56
White/Caucasian	541
Pacific Islander	24
Multi Racial	113
Unknown	64
Total	1,207

- ★ STAR responded to **265** adult forensic interviews and exams as part of the Sexual Assault Response Team.
- ★ STAR responded to **100** medical center visits to support victims of sexual assault (not reporting to law enforcement.
- ★ STAR responded to **593** child sexual assault interviews and assessments.
- ★ An average of **3** emergent cases of sexual assault a day.
- ★ STAR answered **2142** crisis line calls.
- ★ STAR attended **127** court hearing and provided over 200 legal advocacy services.

Fairbanks shelter program – IAC Interior Alaska Center for non-violent Living

Clients Served (Unduplicated) – 902 (this does not include anonymous call received on our crisis line which is around 350 per year)

Female – 788
Male - 114

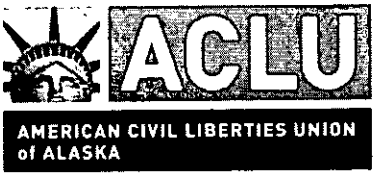
African American -	63
Alaska Native -	250
Asian	21
Hispanic or Latino -	29
Hawaiian/Pacific -	4
Caucasian	463
Unknown	72

Age	
0 – 17	209
18-24	100
25 -59	544
60 +	13

During 2009 advocacy was needed at 118 adult SART responses at the hospital and 159 child sexual assault at Stevie's Place. – In 2008 there were 81 adult SART and 144 child sexual assaults -

Our shelter nights for the last 5 years

FY09 – 19,205 (96% increase from 05)
FY08 – 14,391
FY07 – 12,736 (moved into larger shelter)
FY06 – 8,522 (this year we limited our intake and had a waiting list due to overcrowding)
FY05 – 9,756



February 1, 2010

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The Honorable Jay Ramras
Chair, House Judiciary Committee
Alaska State House of Representatives
State Capitol, Room 118
Juneau, AK 99801-1182

Re: House Bill 298
Constitutional Issues

Chair Ramras:

Thank you for the opportunity to submit written testimony regarding House Bill 298. The ACLU of Alaska represents thousands of Alaskans who are concerned with constitutional rights and civil liberties protected under the United States and Alaska Constitutions. From that perspective, we have several concerns with the proposed legislation.

Section 16 Proposed Amendments to
Rule 16 of the Rules of Criminal Procedure

Section Sixteen of the Bill proposes changes to the rules of criminal procedure that violate the state and federal constitutional rights to a fair trial and to effective representation, and would result in lengthy and costly litigation. The Section proposes that, where evidence in a criminal trial constitutes child pornography, the evidence should be revealed to defendants, defense attorneys, and defense experts only at a state facility, such as a police station or District Attorney's office. While protecting the privacy of the victims of child pornography production is an important interest, the proposed changes to the Rules of Criminal Procedure unnecessarily restrict the rights of the accused.

In some cases relating to child pornography, the use of a technological expert is invaluable. Defendants are entitled to establish that the images at issues are

not child pornography, were planted on the drive by another party, do not represent real children, or were altered in some way. The computer source files would require review at length by an expert witness. Being required to work at a local police department or District Attorney's office would make the work of these experts essentially impossible. Moreover, the analysis of hard drives and other media would likely require unique analysis programs which would require examining the images on the expert's own computers. The proposed rule amendment would effectively deprive defendants of the effective use of expert testimony, which would be a key defense resource in these cases.

Even where the use of an expert is unnecessary, the defense attorney may need to review the files at length, to determine if some of the images in fact represent adults, for instance, or whether some of them are duplicate images. Many of these cases involve hundreds or thousands of images. Requiring defense attorneys to do their work at times and places convenient to the state is unnecessarily restrictive.

A case from Washington State perfectly illustrates why the proposed rule would result in lengthy and expensive litigation which would ultimately result in the overturning of the statute. In *State v. Boyd*, the prosecution in a child pornography case sought and obtained a protective order from the court which only permitted the defense to view the evidence at a state facility. 158 P.3d 54 (Wash. 2007). The Supreme Court of Washington ruled that the Rules of Evidence, the Fifth Amendment right to a fair trial, and the Sixth Amendment right to effective representation by counsel all required that the protective order be struck down and the defendant be granted a new trial, because the defendant could not be adequately represented nor fairly tried under the order.

The important privacy of needs of victims can be protected without the measures laid out in Section 16. For example, the *Boyd* court upheld an order requiring the defense to keep "mirror image" hard drives of evidence under lock and key, to use firewall software on any computer viewing images that was connected to the internet, making the attorney personally and professionally responsible for any unauthorized release of the images, and allowing state experts to verify the complete eradication of the images after the conclusion of the case.

The power of a court to issue a protective order in a particular case already exists and needs no augmentation by the legislature. An order issued after consideration of the unique facts of an individual case is far more likely to survive appellate review than a blanket rule set down by the legislature.

Section 16 of H.B. 298 violates the state and federal constitutional rights to a fair trial and to effective representation. We recommend the Bill be revised so that the courts would be permitted to manage the disclosure of evidence on a case-by-case basis, rather than by instituting a blanket rule that would invite litigation.

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Section 15 Requirement for Registration of Sex Offenders from Other Jurisdictions

Section 15 proposes to expand the list of those required to register as sex offenders to include anyone required to register in another jurisdiction. The ACLU of Alaska has numerous objections to this amendment.

The Alaska Supreme Court ruled in *Doe v. State* that those convicted of sex offenses in Alaska before the enactment of the sex offender registry statutes in 1994 could not be required to register, as the statute would otherwise violate the *ex post facto* provision of the State Constitution. 189 P.3d 999 (Alaska 2008). In many other jurisdictions, the state courts have not declared their state sex offender statutes to offend their own *ex post facto* rules. The Alaska *ex post facto* provision may prohibit mandatory registration for those convicted of offenses in another state prior to 1994. A final determination would need to be made by the Alaska Supreme Court, likely after lengthy litigation, and potentially overturning many convictions.

The proposed amendment in Section 15 also usurps the State's own policy making decisions. In Alaska, for instance, the legislature has set the age of consent at sixteen. This amendment would nullify the legislature's judgment and require someone convicted of having sex with a 17-year-old in another state to report to the Department of Public Safety and face incarceration should he fail to report on time. Should he end up incarcerated, the people of the state of Alaska will be paying $44,000 a year to incarcerate someone as a consequence for committing an underlying act which would not even be a crime in Alaska.

The current state of the law in Alaska is that anyone convicted under appropriate Alaska statutes or similar statutes in another state, such as rape, sexual assault, etc., must register in Alaska. Section 15 would therefore expand the registry not to the most culpable and the most dangerous, but to those convicted of designated sex offenses that lie outside the most dangerous sex offenses: particularly, those convicted of having sex with 16 or 17 year olds; those convicted of prostitution offenses; and those convicted of some other minor offenses, like indecent exposure. These offenders are not particularly more likely to commit the rapes and molestations that the registry is designed to protect Alaskans from.

Generally, registries have been ineffective in preventing crime. A Rutgers University study showed that the New Jersey sex offender registry had "no demonstrable effect in reducing sexual re-offenses." The study also showed the enactment of the law had no effect on the number of victims of sex offenses, no effect on how long those convicted of sex offenses remained arrest-free, and no effect on the type of sex offenses committed. The legislature should look for proven, effective methods of preventing sex offenses. The proposed expansion of the sex offender registry in HB 298 is not a means to do this.

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Section Three – Eliminating the Mental State Requirement of the Failure to Register Statute

Subsection (b) of Section Three of the Bill eliminates any mental state requirement, or *mens rea*, for the offense of failure to register, which means that a person who accidentally or in good faith neglects to complete the registration requirement every three months could still be found guilty of the offense. Subsection (c) creates an affirmative defense that registration became impossible because of an unforeseen circumstance and that the individual orally registered with the Department of Public Safety as soon as possible.

Generally, the criminal law requires "not only the doing of some act by the person to be held liable, but also the existence of a guilty mind during the commission of the act." Speidel v. State, 460 P.2d 77, 80 (Alaska 1969). The Alaska courts have held that, for major felonies, a mental state requirement is mandatory, while some minor offenses, such as hunting or public health related offenses, may be strict liability offenses without a mental state requirement. *Speidel*, 460 P.2d 77 (holding that the statute declaring the failure to return a car to be a crime, regardless of mental state, violated due process); *see also* State v. Guest, 583 P.2d 836 (Alaska 1978); *State v. Fremgen*, 914 P.2d 1244 (Alaska 1996).

In some cases, the courts have avoided declaring a statute unconstitutional by creating a mental state requirement where a statute has no provision for mental state but no language stating that no mental state requirement exists. *Kimoktoak v. State*, 584 P.2d 25 (Alaska 1978); *Alex v. State,* 484 P.2d 677 (Alaska 1971). With an explicit statement that no mental state is required in Section Three, the courts will not be able to avoid the constitutional conflict and may rule the statute unconstitutional.

Of note, as well, are the unique conditions here in Alaska. Many registered sex offenders live off the road system and in remote villages in which mail service gets interrupted, travel and telecommunications are irregular, and weather could keep an offender from being able to comply. Placing the burden on the defendant to prove his innocence reverses our legal tradition and the traditional balance of powers between the defense and the prosecution. The elimination of the mental state requirement and the substitution of a restrictive affirmative defense makes Section Three subject to attack under the Alaska constitution.

Conclusion

We hope that the Judiciary Committee will note these constitutional infirmities in Sections Three, Fifteen, and Sixteen of House Bill 298 and consider amending them or eliminating them from the Bill to avoid these concerns.

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While the ACLU of Alaska takes very seriously the need to address the epidemic of sexual assault in Alaska, these sections are not well-crafted to vindicate the state's purposes. The sections we have identified present substantial Constitutional problems and will likely entangle the state in litigation, should H.B. 298 pass as currently written.

Thank you again for the opportunity to share our concerns. And please feel free to contact the undersigned should you require any additional information.

Sincerely,

Jeffrey Mittman
Executive Director
ACLU of Alaska

THE MEDIA COALITION INC

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[illegible]

American Booksellers Foundation for Free Expression

Association of American Publishers, Inc

Comic Book Legal Defense Fund

Entertainment Consumers Association

Entertainment Merchants Association

[illegible] Software Association

Freedom to Read Foundation

Independent Book Publishers Association

Magazine Publishers of America, Inc.

Motion Picture Association of America Inc.

National Association of Recording Merchandisers

Recording Industry Association of America Inc.

Chair
Chris Finan
American Booksellers Foundation for Free Expression

Immediate Past Chair
Sean Devlin Bersell
Entertainment Merchants Association

[illegible]

General Counsel
Michael A. Bamberger
Sonnenschein Nath & Rosenthal LLP

Memorandum in Opposition to Alaska House Bill 298

The members of Media Coalition believe that both House Bill 298 and existing Alaska statute 11.61.128(a) violates the First Amendment rights of producers and retailers and their customers. The trade associations and other organizations who comprise Media Coalition have many members throughout the country including Alaska: book and magazine publishers, booksellers and librarians as well as manufacturers and retailers of recordings, films, videos and video games and their consumers.

AS 11.61.128(a) bars the distribution by a computer of any "indecent material" by an adult to anyone under 16 years old or someone the adult believes is under 16 years old. "Indecent material" is defined to include any depiction of actual or simulated sexual penetration, lewd touching or exhibition of the genitals, anus, or female breast, masturbation, sexual masochism or sadism. H.B. 298 would expand the existing law would broaden it to apply to any type of distribution rather than merely by computer.

Speech is protected unless the Supreme Court tells us otherwise. As the Court said in *Free Speech Coalition v. Ashcroft*, "As a general principle, the First Amendment bars the government from dictating what we see or read or speak or hear. The freedom of speech has its limits; it does not embrace certain categories of speech, including defamation, incitement, obscenity and pornography produced with children." 535 U.S.234, 241 (2002). Unless speech falls into one of these limited categories or is otherwise tied to an illegal act such as luring or enticing a minor, there is no basis for the government to bar access to make such material illegal.

The restriction on "indecent materials" in the present law and in this bill, without a connection to an otherwise illegal act such as luring or enticing a minor, is almost certainly unconstitutionally overbroad. While minors do not enjoy the protection of the First Amendment to the same extent as adults, the U.S. Supreme Court has ruled that "minors are entitled to a significant measure of First Amendment protection, and only in relatively narrow and well-defined circumstances may government bar public dissemination of protected material to them." *Erznoznick v. City of Jacksonville*, 422 U.S. 212-13 (1975). Governments may restrict minors' access to some sexually explicit speech but it is a narrow range of material determined by a specific test. Merely containing sexual content is not enough to make a book, movie, magazine or sound recording illegal. In the case of *Ginsberg v. New York*, 390 U.S. 629 (1968), the U.S. Supreme Court established a three-part test for determining whether material is "harmful to

The Media Coalition is a trade association that defends the First Amendment rights of publishers, booksellers, librarians, recording, motion picture and video games producers, and recording, video, and video game retailers and consumers in the United States.

minors" and may therefore be banned for sale to minors. The material deemed illegal for minors by AS 11.61.128(a) and H.B. 298 does not include any of the three prong test from *Ginsberg* and would criminalize a far broader range of material than is allowed under the First Amendment. A recent law enacted in Illinois barred the sale of video games with sexual content but without the third prong of the *Ginsberg* test. The law was permanently enjoined by the U.S. District Court and the ruling was heartily affirmed by the Seventh Circuit Court of Appeals. *ESA v. Blagojevich*, 469 F.3d 642 (7th Cir. 2006) *aff'g* 404 F. Supp. 2d 1051 (N.D. Ill. 2005).

The existing law's application of these restrictions to Internet communication is almost certainly unconstitutional even if it was limited to material that could be restricted as "harmful to minors" under the three-prong test in *Ginsberg*. This treats material on the Internet as if there were no difference between a computer transmission and a book or magazine. But cyberspace is not like a bookstore. There is no way to know whether the person receiving the "harmful" material is a minor or an adult. As a result, the effect of banning the computer dissemination of material "harmful to minors" is to force a provider, whether a publisher or an on-line carrier, to deny access to both minors and adults, depriving adults of their First Amendment rights. The U.S. Supreme Court has already declared unconstitutional two federal laws that restrict the availability of matter inappropriate for minors on the Internet. *Reno v. ACLU*, 117 S.Ct. 2329 (1997); *Ashcroft v. ACLU*, 534 F.2d 181 (3d Cir 2008), cert. den. 129 Sup. Ct. 1032 (2009). Similar state laws banning sexual speech for minors on the Internet have been ruled unconstitutional. *See, PSINet v. Chapman*, 63 F.3d 227 (4th Cir. 2004); *ABFFE v. Dean*, 342 F.3d 96 (2nd Cir 2003); *Cyberspace Communications, Inc. v. Engler*, 238 F.3d 420 (6th Cir. 2000); *ACLU v. Johnson*, 194 F.3d 1149 (10th Cir. 1999); *Southeast Booksellers v. McMasters* 282 F. Supp 2d 1180 (D.S.C. 2003); *American Libraries Ass'n v. Pataki* 969 F. Supp. 160 (S.D. 1997); *ACLU v. Goddard*, Civ No. 00-0505 TUC AM (D. Ariz. 2002). The only exceptions to these decisions have been laws that were limited to speech illegal for minors that were intended to be communicated to a person the speaker has specific, rather than general, knowledge is a minor. However, such laws might still be unconstitutional as a violation of the Commerce Clause of the U.S. Constitution. In addition to First Amendment deficiencies, the courts have also ruled that these state laws violate the Commerce Clause, which reserves to Congress the regulation of interstate commerce and prevents a state from imposing laws extraterritorially.

Passage of this bill could prove costly. If a court declares it unconstitutional, there is a good possibility that the state will be ordered to pay the plaintiffs' attorneys' fees. In the successful challenge to the Illinois legislation, the state agreed to pay to the plaintiffs more than $500,000.

If you would like to discuss further our position on this bill, please contact David Horowitz at 212-587-4025 #11 or at horowitz@mediacoalition.org.

Again, we ask you to please protect the First Amendment rights of all the people of Alaska and reconsider the existing law and this legislation.

From DOL

Strategic Plan to End the Epidemic of Sexual Assault and Domestic Violence

PURPOSE

Within a decade, end the epidemic of sexual assault and domestic violence and make Alaska the national leader in fighting these scourges

STRATEGIC OBJECTIVES

1. Break the cycle of abuse using a comprehensive public education and prevention campaign to promote a culture of respect that does not tolerate violence against women and children.

2. Deter, segregate, and treat sex offenders so they pose no risk of harm to women and children.

3. Establish a law enforcement presence in every community that desires one to improve public safety.

4. Increase victim service so more have a safe place to go and the services they need to heal.

5. Coordinate and streamline efforts among all stakeholders to more effectively combat violence against women and children.

GUIDING PRINCIPLES

- A culture of responsibility – the answers and resources cannot come from government alone
- Community ownership over solutions
- Partnership between NGOs and state, local, federal, and tribal organizations
- Culturally tailored programs
- Youth leadership in developing and executing programs
- Support only programs with proven effectiveness
- Use metrics to measure success

SUPPORTING GOALS

- Heighten public awareness of the problem
- Make violence against women and children culturally unacceptable
- Evaluate, develop, and implement prevention programs and continue to support programs with proven effectiveness
- Enact legislation that will enhance public safety
- Increase the proportion of incidents reported and suspects arrested, prosecuted, and punished
- Lower recidivism levels
- Make law enforcement more responsive through training
- Ensure shelter beds or safe houses are available to every woman and child in need
- Link victims to medical care, legal services, and opportunities to establish independence from abusive relationships

CRIME STATISTICS

- The Alaska per capita rape rate is the worst in the nation -- two and half times the national average. *Source: Alaska Network on Domestic Violence and Sexual Assault, 2006 Annual Report: Working in Alaska Communities for Safety, Justice, Advocacy and Education (2006).*
- Rape is a greater percentage of all violent crimes reported in Alaska than it is nationally, at 12% of all violent crime in Alaska compared to 6% of violent crime in the United States. *Source: Alaska Senate Judiciary Committee's Report and Recommendations: Reducing Sexual Assault in Alaska (2009).*
- The Alaska per capita child sexual assault rate is also the worst in the nation -- almost six times the national average. *Source: Alaska Network on Domestic Violence and Sexual Assault, 2006 Annual Report: Working in Alaska Communities for Safety, Justice, Advocacy and Education (2006).*
- Outside of Anchorage, 55% of sexual assault victims are under the age of 15; 30% are between 13 and 15 years old and 25% of victims are between 6 and 12 years old. *Source: Studies by Alaska State Troopers and Anchorage Police Department, compiled by UAA Justice Center (2009).*

- Alaska has the highest rate per capita of men murdering women. *Source: Alaska Network on Domestic Violence and Sexual Assault, 2006 Annual Report: Working in Alaska Communities for Safety, Justice, Advocacy and Education (2006).*

- In nearly one-quarter of sexual assault cases the victim was incapacitated due to alcohol or drug use. *Source: Alaska Sexual Assault Nurse Examiner Study, Reprinted in Andre Rosay, Sexual Assault in Alaska: Slide Show Presentation to Alaska State Legislature Senate Judiciary Committee (August 2009), available at http://justice.uaa.alaska.edu/vaw/2009-08.jc-vaw-sexualassault.pdf.*

- Two-thirds of domestic violence victims reported that alcohol had been a factor. *Source: U.S. Department of Justice, Bureau of Justice Statistics, Crime Characteristics: Summary Findings (2009), available at http://www.ojp.usdoj.gov/bjs/cvict_c.htm.*

- Boys who witness domestic violence are twice as likely to abuse their own partners and children when they become adults. *Source: Strauss, Gelles, and Smith, Physical Violence in American Families: Risk Factors and Adaptations to Violence in 8,145 Families (1990).*

- Villages with law enforcement presence have a 40% lower rate of serious injury caused by an assault compared to villages without local law enforcement. *Source: Wood and Gruenwald, Local Alcohol Prohibition, Police Presence and Serious Injury in Isolated Alaska Native Villages (2006).*

IMPLEMENTATION

I. BREAK THE CYCLE OF ABUSE USING A COMPREHENSIVE EDUCATION AND PREVENTION CAMPAIGN TO PROMOTE A CULTURE OF RESPECT THAT DOES NOT TOLERATE VIOLENCE AGAINST WOMEN AND CHILDREN

A. Statewide Education Efforts

Rationale: All members of society must consider violence against women and children unacceptable, and all must believe it is something that can be stopped. Schools, media, and high-profile public engagements can be used to transmit the message that sexual assault and domestic violence are intolerable in our society and that every individual and group must identify its role in combating these problems.

1. Develop, coordinate, and broadcast public service announcements. For example, the Governor, DPS, LAW, and CDVSA have coordinated with the Alaska Network on Domestic Violence and Sexual Assault to launch the "Real Alaskan Men Choose Respect Campaign."

2. Cabinet members engage in public outreach to raise awareness and change attitudes about sexual assault and domestic violence. For example, the Governor held a major press event to highlight the epidemic. The Attorney General has discussed the epidemic in speeches and has been interviewed by reporters and talk show hosts. Commissioner Masters frequently speaks throughout the state about the Governor's initiative and the epidemic.

3. Develop partnerships with Native organizations to work together on prevention solutions. An excellent example is CDVSA's Tribal and State forums, which seek to devise programs and strategies to break the cycle of violence.

B. Locally-Targeted Education Efforts

Rationale: There is a growing realization that to reduce violence against women and children we need to prevent violence before it occurs rather than intervening after lives are shattered. To do this we must develop a prevention strategy seeking to bring about change in individuals, relationships, communities, and society. Cultural change is most effective from the ground up and requires a coordinated effort among local communities, nonprofits, and government.

1. Work with tribal, non-profit and religious organizations to raise awareness of the problem, especially among youth, and stigmatize violence against women and children. Under the legislature's guidance, CDVSA is in the process of developing and implementing a plan to "promote education and programs to prevent future incidents of domestic violence and sexual assault." And, as discussed in more detail below, the Governor's budget requests the creation of a DV/SA coordinator. Part of the coordinator's portfolio will be to take a leading role in these outreach efforts.

2. Cultivate youth leaders through schools and community groups and incorporate youth leaders in developing primary prevention strategies. For example, CDVSA partners with the Alaska Network on Domestic Violence and Sexual Assault on developing prevention programs for schools and youth.

II. DETER, SEGREGATE, AND TREAT OFFENDERS SO THEY POSE NO RISK OF HARM TO WOMEN AND CHILDREN

A. Enact Legislative Changes To Protect Alaskans

Rationale: Alaska needs tough laws in the nation to send a message that violence against women and children will not be tolerated and to ensure that offenders no longer pose a risk to others, either because they are behind bars or because they have been rehabilitated. Although the Alaska legislature has already enacted stringent laws, more can be done to punish offenders and protect victims.

1. Toughen penalties for crimes of sexual assault by making it an aggravating factor if the defendant sexually assaulted the victim while knowing the person was vulnerable due to use of alcohol or drugs. More specifically, the Governor has sponsored SB 222 and HB 298 to make it an aggravating factor if the defendant was convicted of any crime and the defendant knew that the victim was vulnerable due to use of alcohol or drugs.

2. Expand laws to protect children from online sexual predators. The Governor has sponsored SB 222 and HB 298, which prohibit suspended imposition of sentences for people convicted of human trafficking, possession or distribution of child pornography, and distribution of indecent materials to minors; these bills make it against the law not just to possess child pornography but also to access it on a computer with the intention of viewing it; and they empower courts to prohibit sex offenders, in cases involving children, from using a computer or communicating with children under 16 years old.

3. Enhance protection and processing of DNA and other forensic evidence to ensure the actual perpetrator is held accountable. To help accomplish this goal, the Governor has sponsored HB 317 and SB 241 would adopt standards for evidence retention and post-conviction DNA testing. The Senate Judiciary Committee Report found that proper examination of DNR evidence is critical to sexual assault prosecutions and that the backlog in getting the evidence processed is causing significant delays in prosecuting cases.

4. Close loopholes that allow convicted sex offenders from other states to escape registering in Alaska (if they are registered as sex offenders in other states, they must register here, even if the sex crime they were convicted of does not have an exact equivalent in Alaska). SB 222 and HB 298 accomplish this goal.

5. Modify the bail statutes to protect the victims of the crime and the general public. The Governor will soon introduce a Bail Bill that seeks to accomplish this goal. Under this bill, a person charged with serious crimes, like a sexual assault felony or a defendant charged with domestic violence who has been convicted of domestic violence within the five preceding years, would have burden of proof to establish that his or her release would not be dangerous to the victim or the public, and would assure the person's appearance in certain cases. Currently, the State has the burden to make this showing.

B. Improve Prosecution

Rationale: Bringing offenders to justice deters future violent acts and sends a strong message that violence against women and children is unacceptable. While most prosecutions result in guilty pleas or convictions, increasing the rates at which incidents are reported and referred for prosecution will help us hold more offenders accountable. Creating a law enforcement presence in every community will also deter violence, increase reporting rates, and improve evidence collection necessary for more and more successful prosecutions.

1. The Governor's budget requests $75 million for a new crime lab to help us process the evidence needed to win convictions in sexual assault cases and $92.8K for a forensic scientist at the crime lab

2. Department of Law has issued specific SA/DV prosecution policies and guidelines for sexual assault and domestic violence cases

3. Prosecutors are being trained in tough plea negotiations and the Governor's budget seeks an additional $75K for additional training.

4. The Department of Law has hired a cybercrimes prosecutor to prosecute child pornography.

5. DPS has reorganized its Computer and Financial Crimes Unit so that investigators can focus solely on computer crimes against children.

6. The Governor's budget requests $2.3 million in General Funds to make permanent 17 prosecutor and victim-witness paralegal positions at the Department of Law, which were previously funded on an interim basis through federal grants.

7. The Governor's budget requests $656,000 in General Funds to make permanent DPS's cold case unit, which had been funded by federal grant money.

8. To ensure forensic evidence is gathered the Governor's budget requests $12.3K for 350 pediatric sexual assault kits and $150K for SART exams. The Senate Judiciary Committee report found that when victims receive a medical forensic exam, it more than doubled the likelihood that the case was accepted for prosecution.

C. Reduce Recidivism Rates

Rationale: The majority of batterers return to their families, and the cycle of violence continues unbroken. It is in the state's interest to reduce recidivism. Otherwise, victims will continue to be harmed and offenders will continue to be arrested and imprisoned at the state's expense. Programs to reduce recidivism will help heal families and save the state money in the long run.

1. DOC is working collaboratively with DPS's VPSO program to provide effective supervision for probationers and parolees in rural communities.

2. The Criminal Justice Working Group is reviewing ways to improve DOC's prisoner re-entry programs, including after-care programs for substance abuse treatment, halfway house beds, mental health clinicians in correctional facilities, re-entry case workers, and coordination among stakeholders.

3. The Criminal Justice Working Group is reviewing reforms to the probation system to reduce recidivism rates by imposing swift punishments for probation violations. According to the Senate Judiciary Committee Report, nationally 45% of prisoners serving time for rape or sexual assault committed their crime while on probation or parole.

III. Establish a Law Enforcement Presence in Every Community that Desires One

A. Add 150 More VPSO Positions Over the Next Ten Years

Establishing a law enforcement presence in every village that desires one will prevent offenses from happening and facilitate investigation and prosecution for the offenses that do occur. UAA Justice Center studies show that in villages where a VPSO was available, rates of serious assault declined 40% and a case was over three times more likely to be prosecuted. But increasing the number of VPSO positions alone will not suffice. Local communities must collaborate by identifying qualified candidates, providing VPSO facilities, and supporting VPSOs' efforts.

1. The Governor's budget requests adding 15 VPSOs per year (at cost of $1.26 million annually) for 10 years so that every community of a certain size that desires a VPSO shall have one if the community puts forward a qualified individual. The Governor's budget also requests a merit increases (at a cost of $129.9K) for VPSOs and an increase in the VPSO COLA (at a cost of $93.9K). The Senate Judiciary Committee Report also recommends that the State hire more VPSOs because the Committee found that it will likely increase prosecution and conviction and because law enforcement presence has been shown to lower the rates of serious assault.

2. To secure housing for VPSOs, the Governor's budget requests $1 million for VPSO housing grants and loans in AHFC programs.

B. Hire Additional Investigators for Sexual Assault Investigations

Rationale: Maintaining VPSOs in rural communities will increase safety and ensure incidents of violence are investigated promptly. However, in many cases additional resources will be required to investigate, collect evidence, and prepare cases for referral to prosecutors. By hiring troopers specifically trained to investigate sexual assault and domestic violence incidents, we will maximize the number of incidents that result in convictions, ultimately deterring future offenders.

1. The Governor's budget requests three additional Trooper DV/SA investigators at a cost of $500K.

2. Use AARA (JAG stimulus) to hire 8 DV/SA investigators. Three of the investigators will be hired by municipal governments to work AST multijurisdictional task forces.

IV. Ensure Victims Have a Safe Place to Go and the Services They Need to Heal

A. Increase Availability of Civil Legal Services for Victims

Rationale: A study conducted by economists found that increased provision of legal services for victims of domestic violence contributes to the decline of domestic violence rates. Civil legal services offer victims help with practical matters – like protective orders, custody disputes, and child support – that give victims options and increase their safety over the long term.

1. The Governor's budget requests an additional CINA attorney (at a cost of $200K) to remove children from violent homes.

2. Strengthen domestic violence pro bono representation by increasing number and skill of volunteer attorneys and expand number of victim advocates. To accomplish this goal, LAW has held over a dozen meetings with legal service providers, victim advocates, and the court system to find ways to increase legal representation for victims. LAW will continue to work closely with all stakeholders to make sure victims seeking protective orders are represented.

3. Obtain commitments from leading Alaska law firms to devote a certain number of hours every month to pro bono legal work on behalf of victims of domestic violence and sexual assault. The Attorney General has begun an outreach effort to the legal community to meet this goal.

B. Increase Shelter Capacity to Meet Needs of Battered Women

Rationale: The ability to leave a dangerous situation and have a safe place to stay will reduce the number of violent incidents. Further, counseling services provided by shelters inform victims of their rights and options to escape abusive relationships. Increasing facilities and training staff will enhance shelters' ability to provide these crucial functions.

1. Provide an additional $381,000 to increase the capacity of shelters – increasing the number of beds, training, and services available to victims, so that they can escape abusive situations.

V. COORDINATE AND STREAMLINE EFFORTS AMONG STAKEHOLDERS

A. Create a Domestic Violence and Sexual Assault Coordinator To Establish Partnership Among Agencies and Federal, Tribal, and Non-Profit Stakeholders on Efforts To Combat DV/SA

Rationale: Efforts to address the problems of domestic violence and sexual assault exist, but more can be done to coordinate between government agencies, tribes, NGOs, and other stakeholders to improve and streamline these efforts. A coordinator would be the necessary link between these stakeholders, would identify and cultivate new resources, and would keep sustained focus on the issue.

1. The Governor's budget requests $200K to create a new coordinator position that will oversee this comprehensive plan to end the epidemic of DV/SA. More specifically, the coordinator will establish partnership and form work groups with NGOs, tribal entities, and federal agencies to maximize effectiveness and minimize duplication in efforts to combat domestic violence and sexual assault.

2. The coordinator will consult with stakeholders to develop and implement additional programs to carry out the Governor's initiative.

3. The coordinator will improve the state's existing programs and efforts as they relate to domestic violence and sexual assault, including prosecution, corrections, provision of services to victims, and education.

4. The coordinator will work with CDVSA, DPS, and the UAA Justice Center (or other research organizations) in establishing studies and research necessary for baseline data to measure success and fully understand the extent of victimization in Alaska. This action is consistent with the Senate Judiciary Committee's recommendation set out in its recent Report and Recommendations.

Addendum: Budget

The budget pieces of the plan at this point in time include all the efforts that were in the base budget for FY 10, i.e., funding for DPS, LAW, CDVSA, sex offender treatment in DOC and in DHSS for juveniles, etc. **PLUS** new increments of:

- $200k Child Protection Attorney in Kenai
- $2.2 million Prosecutors and staff who work primarily on sexual assault and domestic violence cases. Making these positions permanent and funding them with state dollars. We cannot afford to lose these resources.
- $200k SA / DV Coordinator
- $656.5k Cold case unit – Critical unit to solving homicides, many of which involve domestic violence and sexual assault. We cannot afford to lose these resources.
- $150k Sexual assault exam costs
- $75k SA / DV Prevention training
- $500k 3 SA / DV investigators at DPS
- $381.9k Shelters
- $651.4k Replace reduced PFD felon funds for CDVSA
- $12.3k 350 pediatric sexual assault kits
- $92.8k Forensic scientist at the crime lab
- $129.9k Merit increases for VPSO positions
- $93.9k VPSO COLA
- $1.261.5 15 new VPSO's
- $75 million Crime Lab
- $1.0 million VPSO housing loans and grants
- $86k New and improved crime lab equipment

Addendum: Recent Actions Taken To End the DV/SA Epidemic

- CDVSA has devised a strategic plan to develop prevention programs
- The Network, in collaboration with the State, has launched a PSA campaign
- To devise metrics that will measure the initiatives outcomes, cabinet members have met with the United Way and the Mental Health Trust; LAW is working on forming a committee to monitor the initiatives impact on DV and SA rates
- DPS has received ARRA funding for five investigators in ABI and three municipal investigators for multi-jurisdictional task force and is in the process of hiring
- LAW has hired a new cybercrime prosecutor
- DPS has reorganized its Computer and Financial Crimes Unit so that investigators can focus solely on computer crimes against children
- The Criminal Justice Working Group is reviewing ways to reduce recidivism through improved prisoner re-entry services and by imposing swift and consistent penalties for probation violations
- The Attorney General has discussed the DV/SA epidemic at speeches, has conducted several radio interviews, and has been interviewed by editorial boards and reporters
- CDVSA has acquired $290K in the FY10 budget for research and studies; the Governor's requested budget seeks $290K for CDVSA's operating budget to continue funding for research and studies
- The Attorney General and Commissioner Masters have met with DOJ officials to raise awareness and secure funding for programs

Addendum: Proposed Legislation

I. Changes In Crimes and Sentences Involving Sexual Assault and Domestic Violence

- This bill would make 5 important changes to our current laws:

1. Prohibit suspended imposition of sentences for people convicted of human trafficking, possession or distribution of child pornography, and distribution of indecent materials to minors.

2. Make it against the law not just to possess child pornography but also to access it on a computer with the intention of viewing it.

3. Courts could prohibit sex offenders, in cases involving children, from using a computer or communicating with children under 16 years old.

4. Sentences for sex offenses could be increased through new "aggravating factors," including the defendant's knowledge that the victim had consumed drugs or alcohol, or a previous dating relationship with the victim.

5. Anyone required to register as a sex offender in another state would have to register in Alaska.

II. A Revision of Bail Laws

- A comprehensive review of our bail statutes has not occurred since the 1960s; reorganization and updating of this law is overdue.

- Although the substantive provisions are generally similar to current law, there are some differences.

- Under this bill, a person charged with serious crimes, like a sexual assault felony or a defendant charged with domestic violence who has been convicted of domestic violence within the five preceding years, would have burden of proof to establish that his or her release would not be dangerous to the victim or the public, and would assure the person's appearance in certain cases.

- Currently, the State has the burden to make this showing

- The bill also provides that once convicted of sex-related felonies, perpetrators could not be released pending sentencing or an appeal.

III. Specific Procedures for Post-Conviction DNA Testing

- This bill is prompted by the State's victory in the *Osborne* case.
- The bill adopts new requirements for preservation of evidence and biological material in certain cases by all law enforcement agencies in the state.
- It also adopts a procedure for a person convicted of a felony against a person to apply for post-conviction DNA testing.
- More specifically, the bill requires municipal police departments, courts and state agencies to retain DNA evidence for post-conviction testing and cold case prosecution.

IV. The Alaska Scientific Crime Detection Laboratory in Anchorage

- The state would issue $75 million in certificates of participation for the lab in order to effectively conduct examinations of evidence and expedite the processing of a large backlog of evidence in criminal cases. Using certificates of participation spreads the cost out over time so that both this generation of Alaskans and the next will help pay for this important facility and reap its benefits.
- Over 50% of submitted cases to the Crime Lab are DV/SA related
- The new lab will DPS to bring in cutting edge technologies and DNA techniques

12/5/09 Anchorage Daily News (KRTBN) (AK) (Pg. Unavail. Online)
2009 WLNR 24561177

Anchorage Daily News (AK)
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December 5, 2009

EDITORIAL: Shameful epidemic
Gov. Parnell issues challenge to legislators and all Alaskans

Anchorage Daily News

Gov. Sean Parnell is right: Alaska's rate of rape and domestic violence is an epidemic that demands stronger action across multiple fronts. He's offering legislators and all Alaskans a comprehensive way of attacking this scourge. Legislators and the rest of us should all take him up on his challenge to join the fight. The governor recognizes that it will take more than just the usual promise to "get tough" on offenders by hitting them with stiffer sentences. If you are throwing a perpetrator in jail, it's too late for the victim. Gov. Parnell wants to do more to prevent this kind of violence and protect those who are at risk.

For starters, he wants to change the social attitudes that feed this epidemic. As a society, we need to say, no, it's not OK to lose control and abuse a spouse or child. No, domestic violence is not merely a private matter for families to deal with.

Just as MADD made drunk driving socially unacceptable, our society needs to make clear we won't tolerate abuse of women and children. The "Choose Respect" ad campaign is a promising way to start changing these backward attitudes.

Gov. Parnell also wants to make sure those who are at risk can get shelter and legal protection when they need it. One innovative idea in his plan is to recruit lawyers who will offer free advice on how to get and enforce restraining orders, deal with the criminal justice system and find other help in the community. More village public safety officers in the Bush will help, too. As Gov. Parnell realizes, villages without any on-site law enforcement are places where rape and domestic violence can flourish. With more VPSOs, victims are more likely to report crimes and offenders are more likely to be convicted.

The most expensive item on the governor's list is the new state crime lab, which is already designed and ready to go. The current tiny, outdated lab limits the state's ability to process evidence, especially DNA evidence that can help solve sex crimes. Whether paid for in cash or with bonds, the new lab is a sound investment in a safer Alaska.

Lower profile parts of the governor's plan will help as well. He wants to fix legal technicalities that allow some out-of-state sex offenders to avoid registering when they move here. He will make sure there are no plea bargains that let sex offenders avoid registering. He wants to hire one person whose job it is to ask, every day, what state government should be doing to help stop rape and domestic violence.

One area that probably needs more attention in the governor's plan is the role alcohol plays in rape and domestic

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violence, among both victims and perpetrators. In many cases, the most basic way victims can protect themselves is by not getting drunk. Offenders are often drunk as well, and the alcohol releases their inhibitions, so stronger efforts to end alcohol abuse will pay dividends in crime prevention.

Gov. Parnell's plan won't be cheap, but to his credit, the fiscally conservative governor is willing to put the necessary money behind it. No amount of government programs can turn Alaska into a peaceful paradise where these shameful crimes magically vanish. But we simply should not tolerate the fact that Alaska leads the nation in rape and domestic violence. If Gov. Parnell's initiative can bring Alaska's rates for these crimes down to the national average, that would be real progress.

BOTTOM LINE: Gov. Parnell has a good plan to fight this scourge in Alaska.

---- INDEX REFERENCES ---

NEWS SUBJECT: (Family Social Issues (1FA81); Social Issues (1SO05); Government (1GO80); Legislation (1LE97))

REGION: (Alaska (1AL32); North America (1NO39); Americas (1AM92); USA (1US73))

Language: EN

OTHER INDEXING: (ALASKA; MADD) (Gov; Lower; Parnell; Sean Parnell) (Alaska; Alaska; Alaska; Alaska; us; usa; na; us.ak)

KEYWORDS: (CT/ope); (NT/Editorials)

Word Count: 692
12/5/09 KRT-ANCHDN (No Page)
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Distributed by Rep. Gruenberg

services and the person damages the financial reputation of the other person. "Financial reputation" is defined to mean a person's ability to obtain a loan, open a credit or financial institution account, obtain property or services on credit, or creditworthiness in a credit report. Phillips was charged and convicted of a number of theft and related offenses including criminal impersonation of Sturm and Roberts. Sturm testified that his credit report had a number of bad marks on it due to Phillips' passing of forged bad checks on Sturm's account. The Alaska Court of Appeals found that this was sufficient to show damage to financial reputation. Roberts, though, testified that he did not know if Phillips' actions in forging and negotiating bad checks on his account (those checks had been turned over to collection agencies) had any effect on his credit report and that he had continued to bank without problem, had not attempted to take out any loans and did not know if his credit or ability to obtain credit had been adversely affected. The court found that without any evidence of damage to Roberts' financial reputation that Phillips' conviction for criminal impersonation of Roberts had to be reversed.

Phillips v. State, 211 P.3d 1148 (Alaska App. 2009).

Legislative review is recommended to determine if the definition of "financial reputation" should be amended or if damage should be presumed when certain negative effects, such as referrals to collection agencies, are suffered by the victim.

AS 11.61.127

MERE VIEWING OF CHILD PORNOGRAPHY ON THE INTERNET DOES NOT AMOUNT TO POSSESSION OF CHILD PORNOGRAPHY.

Worden was convicted of possession of child pornography when child pornography images were found in his browser cache. No evidence was introduced that Worden made any attempt to store the images or otherwise knew that his browser stored the images in a cache or that Worden's intent was anything other than to simply view the images on a computer screen while he was at a website. The Alaska Court of Appeals found that AS 11.61.127 proscribes the possession of child pornography and than the mere viewing of child pornography on a computer did not amount to possession.

Worden v. State, 213 P.3d 144 (Alaska App. 2009).

Legislative review is recommended if the legislature desires to proscribe the viewing of child pornography without a person actually undertaking any effort to possess it.

AS 11.71.060

CHALLENGE TO RECRIMINALIZATION OF SMALL AMOUNTS OF MARIJUANA NOT RIPE FOR DECISION.

"In June 2006 the Alaska Legislature amended AS 11.71.060(a) to prohibit the possession of less than one ounce of marijuana. The American Civil Liberties Union of Alaska and two anonymous individuals . . . sued for declaratory and injunctive relief. They argued that section .060 as amended conflicts with the privacy clause of the Alaska Constitution, as interpreted in *Ravin v. State* [537 P.2d 494 (Alaska 1975)], to the extent that it criminalizes possession of small amounts of marijuana in the home by adults for personal use." The trial court found that the amended AS 11.71.060 was unconstitutional under *Ravin* and the state appealed. The Alaska Supreme Court ruled that the issue was not ripe for adjudication as "it does not arise from an actual prosecution brought under the amended statute." A decision on the consitutionality of AS 11.71.060 and whether *Ravin* precludes the state from proscribing the use of small amounts of marijuana by an adult in their own home must arise from an actual criminal prosecution.

State v. American Civil Liberties Union, 204 P.3d 364 (Alaska 2009).

The viability of AS 11.71.060 as applied to the possession of marijuana by an adult in their own home remains in question as *Ravin v. State* is still the law of Alaska until overruled or reinterpreted by the Alaska Supreme Court. Under this decision, any review must wait until someone is prosecuted for a violation of AS 11.71.060 and that person challenges that prosecution on privacy grounds.

AS 12.55.025(c)

NO CREDIT FOR TIME SERVED UNDER AS 12.55.025(C) FOR RESIDENTIAL TREATMENT WHILE ON PAROLE.

Triplett was convicted of felony driving while intoxicated and sentenced to a period of incarceration. After serving a period of incarceration, Triplett was granted discretionary parole and

(1) the number of applications made under AS 12.37.010 — 12.37.130;
(2) the number of orders entered by the court;
(3) the effective period of time for which each interception was authorized;
(4) the number of, and duration of the authorized interception period specified in, any extension orders;
(5) the offenses in connection with which the communications were sought;
(6) the names and titles of the applicants;
(7) the number of indictments or other charges resulting from each application;
(8) the offenses that each indictment or other charge relates to; and
(9) the disposition of each indictment or other charge. (§ 1 ch 61 SLA 1993)

Article 2. Pen Registers and Trap Devices.

Section
200. Authorization to use pen registers and trap devices

Sec. 12.37.200. Authorization to use pen registers and trap devices. Upon application by a peace officer made in conformity with any provision of federal law authorizing such an application, a court may issue an order authorizing or concerning the use of a pen register or a trap device as permitted under federal law. (§ 1 ch 61 SLA 1993)

Article 3. Communications in Electronic Storage.

Section
300. Authorization for access to and use of communications in electronic storage

Sec. 12.37.300. Authorization for access to and use of communications in electronic storage. Upon application by a peace officer made in conformity with any provision of federal law authorizing such an application, a court may issue an order authorizing or concerning access to and disclosure or use of communications in electronic storage as permitted under federal law. (§ 1 ch 61 SLA 1993)

Article 4. Police Use of Body Wires.

Section
400. Police use of body wire

Sec. 12.37.400. Police use of body wire. (a) A peace officer may intercept an oral communication by use of an electronic, mechanical, or other eavesdropping device that is concealed on or carried on the person of the peace officer and that transmits that oral communication by means of radio to a receiving unit that is monitored by other peace officers, if
(1) the interception and monitoring occurs
(A) during the investigation of a crime or the arrest of a person for a crime; and
(B) for the purpose of ensuring the safety of the peace officer conducting the investigation or making the arrest;
(2) the peace officer intercepting the conversation is a party to the oral communication and has consented to the interception; and
(3) the communication intercepted is not recorded.
(b) A peace officer monitoring a receiving unit under (a) of this section, or any other person intercepting an oral communication transmitted under (a) of this section, is not competent to testify in a criminal proceeding involving a party to the oral communication about the contents of the oral communication that was intercepted or the fact that the communication occurred. (§ 3 ch 64 SLA 1999)

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 19, 2010 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/8/10

The JUDICIARY Committee considered: **HB 298**

HOUSE BILL NO. 298
"An Act relating to the crimes of harassment, possession of child pornography, and distribution of indecent material to a minor; relating to suspending imposition of sentence and conditions of probation or parole for certain sex offenses; relating to aggravating factors in sentencing; relating to registration as a sex offender or child kidnapper; amending Rule 16, Alaska Rules of Criminal Procedure; and providing for an effective date."

HB 298 SEX OFFENSES; OFFENDER REGIS.; SENTENCING

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB298 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
ADM	1			✓
ADM	2			✓
LAW	3			✓
DOC	4	✓		
DPS	5	✓		
CRT	6			✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Holmes				X
	Gatto	X			
	Gruenberg	✓			
	HERRON			X	
	Dahlstrom	X			
Chair:	RAMRAS	X			
Chair:					

2210

HB

307

Alaska State Legislature
House Judiciary Committee

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701

Committee Members
Representative Nancy Dahlstrom
Vice Chairman
Representative Bob Lynn
Representative Carl Gatto
Representative Bob Herron
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801-1182

To: Representative Nancy Dahlstrom, Chair
House Rules Committee

From: Representative Jay Ramras, Chair
House Judiciary Committee

Date: January 27, 2010

Re: Referral File for HB307

Attached please find the referral file for HB307

Representative Lindsey Holmes

House Bill 307 Sponsor Statement
"An Act relating to sexual assault protective orders."

AS 18.65.850 authorizes the courts to grant protective orders in cases of stalking and sexual assault. This statute has been amended twice in recent sessions. In 2001, HB 1 extended protections to victims of stalking by persons other than their domestic partner. In 2006, SB 54 added sexual assault to the statute. While the clear intent of SB 54 was to exactly duplicate the effects of HB 1, namely, to grant jurisdiction to magistrate and district court judges to issue these orders, SB 54 did not explicitly amend AS 22.15.100 to achieve this.

Consequently, certain magistrate and district court judges have read the statute to mean that they do not have jurisdiction to issue protective orders in cases of sexual assault. This mirrors the situation prior to HB 1, in which claimants brought petitions that clearly required a protective order, but judges were unable to offer assistance.

This bill would amend AS 22.15.100 to explicitly grant magistrate and district court judges jurisdiction to grant protective orders in cases of sexual assault, in addition to stalking. This change is especially important given that many rural communities in Alaska only have access to magistrate or district courts.

Please join me in repairing this small gap in the statute and ensuring that all victims of sexual assault in our state are able to gain protection from their attackers.

State Capitol, Juneau, Alaska 99801 · (907) 465-4919 · Fax: (907) 465-2137
Rep.Lindsey.Holmes@legis.state.ak.us

Representative
Lindsey Holmes

Capitol Room 405
465-4919
465-2137 fax

M E M O R A N D U M

Date: 20 January 2010

To: House Judiciary Committee members

From: Rep. Lindsey Holmes

RE: Sectional analysis of HB 307

The following is a sectional analysis of HB 307. As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1: Amends AS 20.15.100 to give magistrate and district court judges jurisdiction to issue protective orders in cases of sexual assault under AS 18.65.850.

Representative
Lindsey Holmes

Capitol Room 405
465-4919
465-2137 fax

M E M O R A N D U M

Date: 20 January 2010

To: House Judiciary Committee

From: Rep. Lindsey Holmes

RE: Supporting materials for HB 307

The following are supplemental materials associated with HB 307, specifically regarding the intent behind SB 54, the act that created sexual assault protective orders in 2006.

Bill Edwards

From: Bill Edwards
Sent: Tuesday, January 19, 2010 10:34 AM
To: 'Gayle_Keller@legis.state.ak.us'
Subject: SB 54 from 2006

Hi Gayle,

I am writing to both introduce myself and ask you guys a question. I am a new staffer for Rep. Holmes this session.

Sen. Dyson sponsored legislation in 2006 relating to protective orders, namely amending AS18.65.850 to include sexual assault as well as stalking as cause for granting a protective order.

It has come to our attention that there are some magistrate / district court judges who are reading AS 20.15.100 to mean that they have jurisdiction to grant protective orders for stalking but NOT for sexual assault. Our understanding is that this has resulted in women in rural communities having to go to a superior court judge, which is obviously quite difficult in a lot of places. We have filed a bill to amend AS 20.15.100 to explicitly roll sexual assault protective orders into magistrate / district court jurisdiction. It looks like this was just a minor oversight in the 2006 bill, but I wanted to give you guys a heads up and see if you could confirm that the intent of SB 54 was in fact to grant district courts the ability to grant these orders.

Thanks,

Bill Edwards

Bill Edwards

From: Chuck Kopp
Sent: Tuesday, January 19, 2010 9:53 PM
To: Bill Edwards
Subject: SB 54 from 2006

Hello Bill,

Welcome to the Legislature. You and I are both in the "freshman" legislative aide category. It is going to be a great experience. To the point of your inquiry – Yes, the intent of the 2006 bill was to grant district courts the jurisdiction to issue stalking and sexual assault protective orders. Thanks for taking the initiative on amending AS 20.15.100 to make this clear.

Best regards,

Chuck

Chuck Kopp
Chief of Staff
Senator Fred Dyson
(907) 694-6683 (Eagle River)
(907) 465-2199 (Juneau)

Excerpts from minutes on SB 54, 2005/2006.

Sen. Dyson Feb 17, 2005:

SENATOR FRED DYSON, prime sponsor, explained that under current law a victim may get a restraining order for domestic violence and stalking, but it doesn't mention restraining orders if you've been a victim of sexual assault. SB 54 adds sexual assault to the list that a judge or magistrate may draw from to grant a restraining order. Although some judges do grant restraining orders to victims of sexual assault it's not clear in statute and some have refused to do so. SB 54 would make it clear to judges that they have that authority.

He noted that in drafting the bill, Legislative Legal elected to replicate the language from the domestic violence restraining orders. According to the Department of Law, it would have been better to have replicated the language in existing statutes related to stalking. Because of that opinion, he asked the committee to hold the bill to provide time to draft a committee substitute (CS).

SERGEANT DAVE PARKER, special victims unit supervisor, Anchorage Police Department, said SB 54 would help the police protect victims of sexual assault. The problem has been that judges don't have clear direction. He described a case in which a neighbor raped a woman. When a detective took the victim to get a protective order the judge wouldn't issue the order because he said rape isn't a consensual sexual act.

SERGEANT PARKER emphasized no victim should be re-victimized with unwanted contact with the perpetrator and SB 54 will give sexual assault victims the same legal protection that domestic violence and stalking victims have now.

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130 Seward St #209
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www.andvsa.org

ANDVSA
Alaska Network on Domestic Violence & Sexual Assault

Pro Bono Office
PO Box 6631
Sitka, Alaska 99835
Phone: (907) 747-7545
Fax: (907)747-7547

January 26, 2010

Representative Lindsey Holmes
State Capitol, Room 405
Juneau, AK 99801

Dear Representative Holmes:

On behalf the Network's 18 member programs that provide services to victims and survivors of domestic violence and sexual assault, we thank you for sponsoring HB 307.

HB 307 will repair a gap created when protections were added for victims of sexual assault. As you know, in 2006, SB 54 added protective orders to the tools available to protect sexual assault victims. Unfortunately, by mere oversight, AS 20.15.100 was not amended to specifically grant jurisdiction to district court judges and magistrates to issue these orders.

We know from anecdotal information that in many rural Alaska communities, this has led to victims of sexual assault not receiving the full protections available to them because district court judges and magistrates in these communities do not feel that they have the jurisdiction to issue these orders. Further, the lack of protective orders in these situations often leaves victims of these crimes vulnerable to coercion by perpetrators. This gap filling bill will provide protections to victims of sexual assault, which was the intent of the legislature in passing SB 54 in 2006.

Sincerely,

Peggy Brown, Executive Director

cc: Lisa Mariotti, Policy Director

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 307**
() Publish Date:

Identifier (file name): HB307-LAW-CRIM-1-25-10
Dept. Affected: Law
Title: An Act relating to sexual assault protective orders.
RDU: CRIMINAL
Component: Criminal Justice Litigation
Sponsor: Representative(s) Holmes, Fairclough, Millett, Munoz, P. Wilson, Dahlstrom, T. Wilson, Cissna, Gardner, Herron, Buch
Requester: Representative(s) Holmes, Fairclough, Millett, Munoz, P. Wilson, Dahlstrom, T. Wilson, Cissna, Gardner, Herron, Buch
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill provides each district judge and magistrate the power to issue a protective order in applications for a sexual assault protective order involving sexual assault. This bill would have no financial impact to the Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager
Phone 465-5427
Division: Administrative Services
Date/Time 1/25/10 12:00 AM
Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date 1/25/2010

(Revised 11/6/2009 OMB)

2220

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 19, 2010 **FURTHER REFERRALS:**

Date of Committee Action: 1/27/10

The JUDICIARY Committee considered: **HB 307**

HOUSE BILL NO. 307
"An Act relating to sexual assault protective orders."

HB 307 SEXUAL ASSAULT PROTECTIVE ORDERS

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
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DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW	1			✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Gruenberg	–			
	HERRON	X			
	Dahlstrom	X			
	Holmes	X			
	Gatto	X			
Chair:	RAMKES	X			
Chair:					

HB

314

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
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Alaska State Legislature

House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
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House District 10

Fax

To: Dennis Bailey
Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: February 25, 2010

Re: Please go final on HB314 with Amendment A.3

Dennis,

Please draft a final CS for HJUD on HB314 with amendment A.3.

If you have any questions, please do not hesitate to call.

Thank you

Representative_Jay_Ramras@legis.state.ak.us

26-LS1354\A.3
Bailey
2/17/10

AMENDMENT #1

Offered by Rep. Ramras

OFFERED IN THE HOUSE

TO: HB 314

Page 1, lines 1 - 2:

Delete "**the crime of unsworn falsification**"

Insert "**civil damages**"

Page 1, lines 5 - 9:

Delete all material.

Page 1, line 10:

Delete "**Sec. 2**"

Insert "**Section 1**"

Renumber the following bill sections accordingly.

Page 2, lines 15 - 16:

Delete "**usual, customary, and reasonable**"

Page 2, lines 17 - 21:

Delete "**include the most recent Current Procedural Terminology codes for both category I and category II medical treatment or other services published by the American Medical Association; notwithstanding AS 44.62.010 - 44.62.290, the board shall update the schedule annually by order**"

Insert "**be based on statistically credible data, including charges for the most recent category I, II, and III medical services maintained by the American Medical**

Association and the Health Care Procedure Coding System for medical supplies, injections, emergency transportation, and other medically related services, and must result in a schedule that (i) reflects the cost in the geographical area where services are provided; and (ii) is at the 90th percentile"

Page 2, line 26, through page 3, line 2:

Delete all material and insert:

"* **Sec. 2.** AS 23.30.250(a) is amended to read:

(a) A person who (1) knowingly makes a false or misleading statement, representation, or submission related to a benefit under this chapter; (2) knowingly assists, abets, solicits, or conspires in making a false or misleading submission affecting the payment, coverage, or other benefit under this chapter; (3) knowingly misclassifies employees or engages in deceptive leasing practices for the purpose of evading full payment of workers' compensation insurance premiums; or (4) employs or contracts with a person or firm to coerce or encourage an individual to file a fraudulent compensation claim is **guilty of workers' compensation fraud, which may be punished under AS 11.46.120 - 11.46.150, and may also be guilty of perjury and related offenses under AS 11.56.200 - 11.56.230** [CIVILLY LIABLE TO A PERSON ADVERSELY AFFECTED BY THE CONDUCT, IS GUILTY OF THEFT BY DECEPTION AS DEFINED IN AS 11.46.180, AND MAY BE PUNISHED AS PROVIDED BY AS 11.46.120 - 11.46.150].

* **Sec. 3.** AS 23.30.250(c) is repealed and reenacted to read:

(c) In addition to criminal penalties under this section, a person who violates this chapter is liable in a civil action brought by or on behalf of a person who suffers economic damages as a result of the violation for an award of three times the amount of compensatory damages resulting from the violation, subject to adjustment under AS 09.17, and an award of reasonable attorney fees."

Renumber the following bill sections accordingly.

Page 3, line 19:

Delete all material.

Renumber the following bill section accordingly.

ALASKA STATE LEGISLATURE
HOUSE LABOR & COMMERCE COMMITTEE

REP. KURT OLSON
Chairman
State Capitol, Room 17
Juneau, AK 99801-1182
(907) 465-2693 FAX 465-3835

Rep Mark Neuman, V-Chair
Rep. Bob Lynn
Rep. Lindsey Holmes
Rep. Mike Chenault
Rep. Tammie Wilson
Rep. Bob Buch

Sponsor Statement

House Bill 314

"An Act relating to fees and charges for medical treatment or services, the crime of unsworn falsification, investigations, and penalties as they relate to workers' compensation; and providing for an effective date."

At the time of passage in 2005 of the revisions to the workers' compensation system, it was contemplated that the interested stakeholders, including the Workers' Compensation Legislative Task Force and the Medical Services Review Committee, would propose legislation acceptable to the various stakeholders before August 1, 2007. This proposal was to replace the repealed Usual, Customary and Reasonable (UCR) methodology for setting maximum fees for medical treatment and services under the Alaska Workers' Compensation Act. A replacement was not proposed and the repeal would have resulted in fees for medical treatment and services in workers' compensation matters going uncapped until such time as the law was changed to remedy the situation.

There have been two previous extensions to the workers' compensation schedule of fees for medical treatment and services in place since 2004 with adjustments made based on the Medical Component of the Consumer Price Index. The existing extension will expire on December 31, 2010. HB 314 proposes a full fee schedule again be established which would include the procedure codes that have been developed since the 2004 schedule was adopted as well as category II codes. The fee schedule would be constructed on the same basis as prior schedules using usual, customary and reasonable fees.

The bill also clarifies that false application for benefits under the Alaska Workers' Compensation Act is a crime of unsworn falsification in the first degree and is a Class C felony.

I urge your support of this bill.

ALASKA STATE LEGISLATURE
HOUSE LABOR & COMMERCE COMMITTEE

REP. KURT OLSON
Chairman
State Capitol, Room 124
Juneau, AK 99801-1182
(907) 465-2693 FAX 465-3835

Rep Mark Neuman, V-Chair
Rep. Bob Lynn
Rep. Lindsey Holmes
Rep. Mike Chenault
Rep. Tammie Wilson
Rep. Bob Buch

Sectional Analysis
House Bill 314

"An Act relating to fees and charges for medical treatment or services, the crime of unsworn falsification, investigations, and penalties as they relate to workers' compensation; and providing for an effective date."

This is a summary only. Note that this sectional analysis should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Section 1. Amends AS 11.56.205(a) to add the application for benefit under AS 23.20 (the Alaska Workers' Compensation Act) to the crime of unsworn falsification in the first degree which is a class C felony

Section 2. Amends AS 23.30.097(a) to provide that after December 31, 2010, the fee may not exceed the usual, customary and reasonable charges in a fee schedule adopted by the board and must include the most recent Current Procedural terminology codes for both category I and category II medical treatment or other services.

Section 3. Amends AS 23.30.250(a) to clarify that a crime that is a violation of the chapter is prosecuted under AS 11 (Criminal Law) and that the violation may result in civil liability with an award of three times the amount of compensatory damages

Section 4. Amends AS 23.30.280(a) to change the specific statute citation of AS 23.30.250 to "this chapter" following the amendment above of that section.

Section 5. Amends AS 23.30.280(b) to delete reference to AS 23.30.250(a) to broaden the reporting of fraudulent acts to the employer.

Section 6. Repeals AS 23.30.250(c) since this provision has been included in AS 23.30.250(a) above.

Section 7. Provides for an immediate effective date under AS 01.10.070(c)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 314**
() Publish Date:

Identifier (file name): HB314-Law-Crim-01-29-10
Title: An Act relating to workers' compensation
Sponsor: Labor & Commerce
Requester: Labor & Commerce

Dept. Affected: Law
RDU: Criminal
Component: Criminal Justice Litigation
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill amends the existing statutes to provide that a person commits the crime of unsworn falsification in the first degree if the person submits a false written or recorded statement that the person does not believe to be true in an application for worker compensation benefits. This bill provides that the fee or other charge for medical treatment or service under the Workers' Compensation Act provided on or after December 31, 2010 may not exceed fees established by the board and include recent category I and category II codes published by the American Medical Association. The department does not anticipate any significant fiscal impact.

Prepared by: Eileen Donahue, Division Operations Manager — Phone (907)465-5427
Division: Administrative Services Division — Date/Time 1/29/10 12:00 AM
Approved by: Daniel S. Sullivan, Attorney General — Date 1/29/2010
Department of Law

(Revised 10/13/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 314**
() Publish Date:

Identifier (file name): HB314-DOLWD-WC-01-28-10
Dept. Affected: Labor and Workforce Development
Title: Workers' Compensation
RDU: Workers' Compensation
Component: Workers' Compensation
Sponsor: House Labor & Commerce
Requester: House Labor & Commerce
Component Number: 344

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual	75.0		75.0	75.0	75.0	75.0	75.0
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**75.0**	**0.0**	**75.0**	**75.0**	**75.0**	**75.0**	**75.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
1157 Worker Safety Account	75.0		75.0	75.0	75.0	75.0	75.0
TOTAL	**75.0**	**0.0**	**75.0**	**75.0**	**75.0**	**75.0**	**75.0**

Estimate of any current year (FY2010) cost: None

POSITIONS

Full-time							
Part-time							
Temporary							

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

Anticipated costs are based on estimated contractual charges for a vendor to produce a workers' compensation medical fee schedule for the State of Alaska.

Prepared by: Trena Heikes, Director
Phone 465-6045
Division: Workers' Compensation
Date/Time 1/28/10 3:47 PM
Approved by: Click Bishop, Commissioner
Date 1/28/10
Agency: Department of Labor and Workforce Development

(Revised 11/6/2009 OMB)

Witness List HB 314

Konrad Jackson-Staff to Rep. Olson, Chair of House Labor & Commerce
Linda Hall – Director, Division of Insurance

RECEIVED
FEB 01 2010

NFIB
The Voice of Small Business

ALASKA

January 31, 2010

The Honorable Kurt Olson
State Capitol Building
Juneau, Alaska 99801-1182

Dear Representative Olson:

On behalf of the National Federation of Independent Business/Alaska, I wish to respectfully share our support for House bill 314 concerning the workers compensation program. The National Federation of Independent Business is the largest small-business advocacy group in Alaska.

HB 314 establishes a fee schedule for the Workers Compensation Program. We believe that this is a prudent first step toward reforming the program to reduce costs and improve the program.

As you know, the workers compensation premiums in Alaska are the highest in the nation. If we expect the program to continue to provide benefits without bankrupting employers, we must move to reduce the program costs and thus the premiums.

NFIB/AK members very much appreciate your willingness to begin addressing this critical problem.

Sincerely yours,

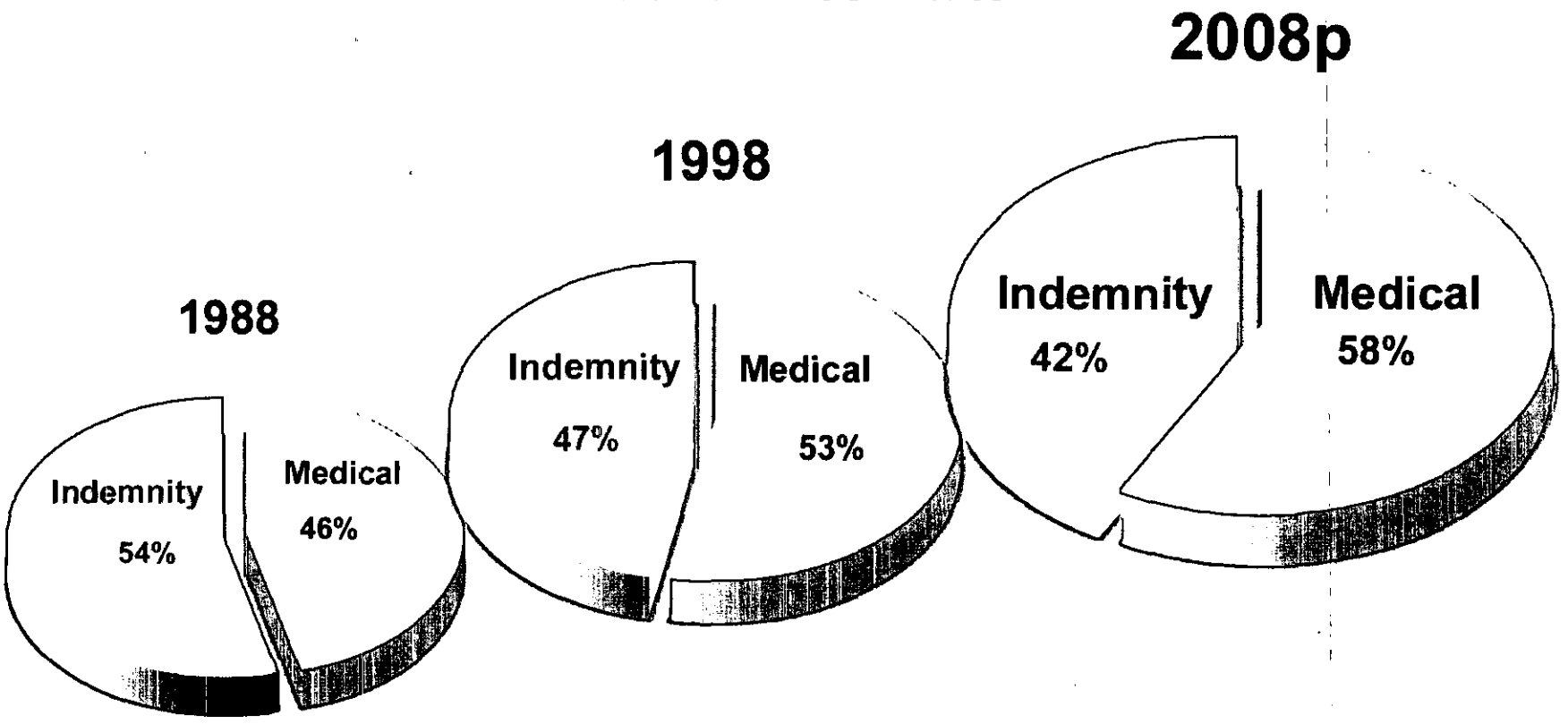
Dennis L. DeWitt
Alaska State Director

Cc: NFIB/AK Leadership Council

National Federation of Independent Business – ALASKA
P. O. Box 34761•Juneau, AK 99803-4761•907 723 6667•www.NFIB.com

Workers Compensation Medical Losses Are More Than Half of Total Losses

All Claims—NCCI States



2008p: Preliminary based on data valued as of 12/31/2008
1988, 1998: Based on data through 12/31/2007, developed to ultimate
Based on the states where NCCI provides ratemaking services, including state funds
Excludes high deductible policies

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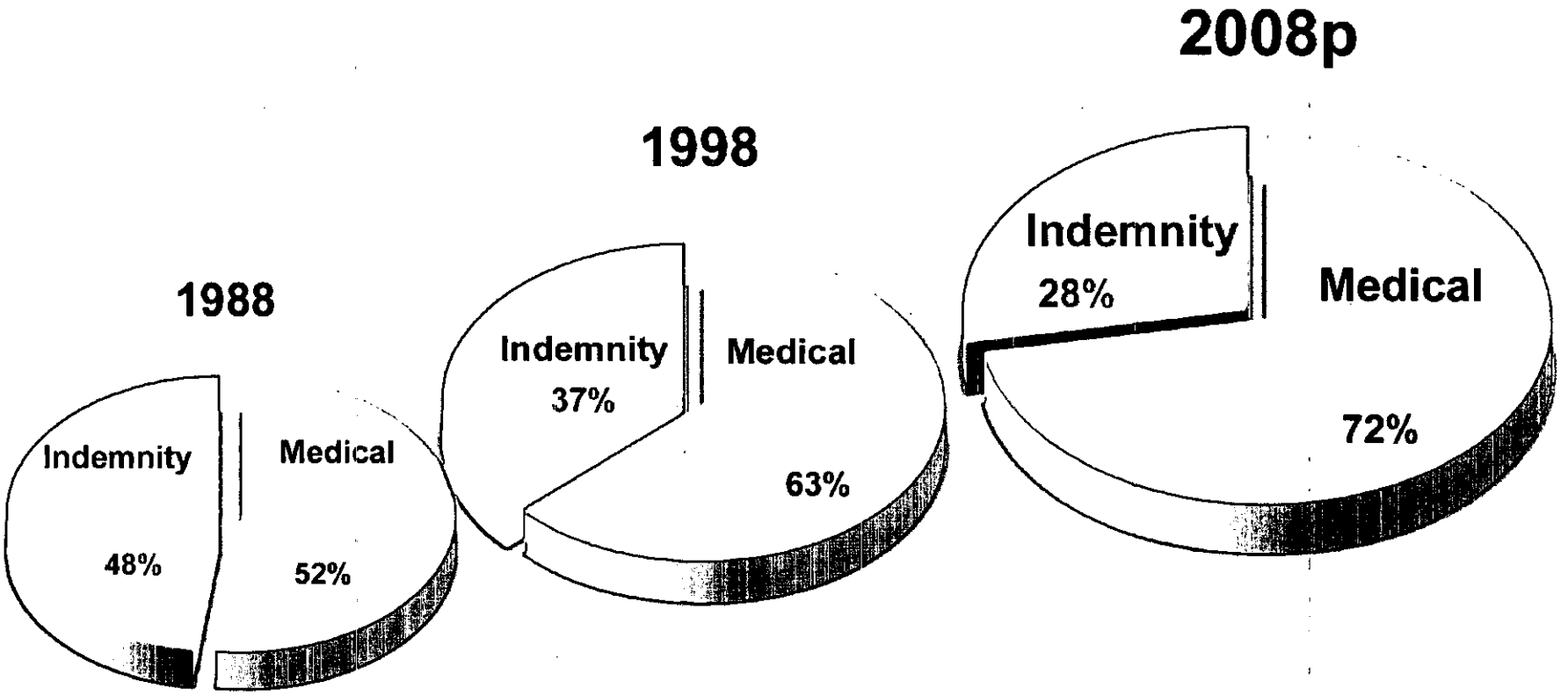
Workers Compensation Benefit Split in Alaska

All Claims—Alaska



2008p: Preliminary based on data valued as of 12/31/2008
1988, 1998: Based on data through 12/31/2007, developed to ultimate
Based on the states where NCCI provides ratemaking services, including state funds
Excludes high deductible policies

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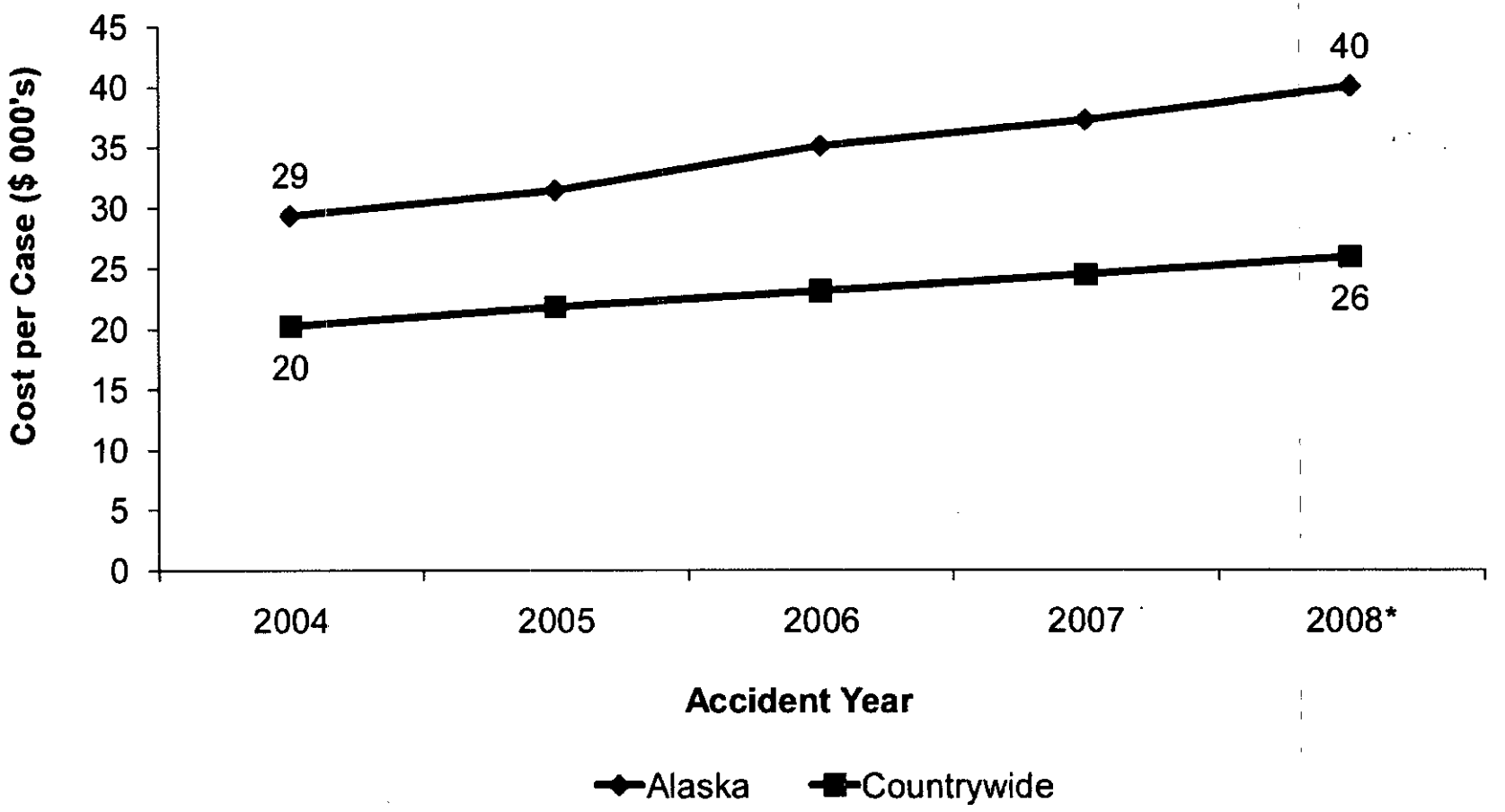
Alaska Medical Average Cost per Case vs. Countrywide



* Countrywide figure is preliminary
Source: NCCI financial data valued as of 12/31/08

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Table 1. Workers' compensation premium rate ranking

2008 ranking	2006 ranking	State	Index rate	Percent of study median	Effective date
1	1	Alaska	3.97	176%	January 1, 2008
2	5	Montana	3.50	155%	July 1, 2007
3	12	Ohio	3.32	147%	July 1, 2007
4	7	Vermont	3.14	139%	April 1, 2007
5	8	Maine	3.04	135%	January 1, 2008
7	3	Delaware	2.96	131%	December 1, 2007
7	4	Kentucky	2.96	131%	October 1, 2007
8	9	Alabama	2.90	129%	March 1, 2007
9	13	Oklahoma	2.89	128%	8/1/07 State Fund, 1/1/08 Private
10	21	Illinois	2.79	124%	January 1, 2008
11	11	Louisiana	2.76	122%	October 1, 2007
12	25	South Carolina	2.74	121%	May 7, 2007
13	2	California	2.72	121%	January 1, 2008
14	19	New Hampshire	2.70	120%	January 1, 2008
15	18	Pennsylvania	2.68	119%	April 1, 2007
16	23	New Jersey	2.66	118%	January 1, 2008
17	17	Texas	2.61	116%	January 1, 2008
18	30	Nevada	2.58	115%	March 1, 2007
19	10	New York	2.55	113%	October 1, 2007
20	14	Connecticut	2.46	109%	January 1, 2008
21	26	Tennessee	2.44	108%	July 1, 2007
22	37	North Caroiina	2.43	108%	April 1, 2007
24	21	Minnesota	2.33	103%	January 1, 2008
24	32	Mississippi	2.33	103%	March 1, 2007
25	41	Georgia	2.29	102%	August 3, 2007
26	22	Rhode Island	2.26	100%	February 1, 2007
28	6	Florida	2.20	98%	January 1, 2008
28	25	Missouri	2.20	97%	January 1, 2008
29	16	District of Columbia	2.16	96%	November 1, 2007
32	27	New Mexico	2.15	95%	January 1, 2008
32	39	Michigan	2.15	95%	January 1, 2007
32	33	Nebraska	2.15	95%	February 1, 2007
34	35	Wisconsin	2.12	94%	October 1, 2007
34	32	Idaho	2.12	94%	January 1, 2008
36	15	Hawaii	2.08	92%	January 1, 2008
36	44	South Dakota	2.08	92%	July 1, 2007
37	29	Wyoming	2.06	91%	January 1, 2008
38	37	Washington	1.98	88%	January 1, 2008
39	**42**	**OREGON**	**1.88**	**83%**	**January 1, 2008**
41	34	West Virginia	1.86	83%	July 1, 2007
41	45	Iowa	1.86	82%	January 1, 2008
42	43	Kansas	1.77	78%	January 1, 2008
43	29	Colorado	1.76	78%	January 1, 2008
44	40	Maryland	1.72	76%	January 1, 2008
45	46	Arizona	1.67	74%	January 1, 2008
46	38	Utah	1.63	72%	December 1, 2007
47	48	Arkansas	1.61	71%	January 1, 2008
48	49	Virginia	1.43	63%	April 1, 2007
49	47	Massachusetts	1.39	62%	September 1, 2007
50	50	Indiana	1.23	55%	January 1, 2008
51	51	North Dakota	1.08	48%	July 1, 2007

Source: Research and Analysis Section, Information Management Division, Oregon Department of Consumer and Business Services (10/2008)

2236

Alaska State Medical Association

4107 Laurel Street • Anchorage, Alaska 99508 • (907) 562-0304 • (907) 561-2063 (fax)

February 1, 2010

Honorable Kurt Olson
State of Alaska
House of Representatives
Chair, House Labor and Commerce Committee
State Capitol, Room 24
Juneau, AK 99801

RE: HB 314 – Workers Compensation

Dear Representative Olson:

The Alaska State Medical Association (ASMA) represents physicians statewide and is primarily concerned with the health of all Alaskans.

ASMA's members are comprised of primarily, independently practicing physicians who practice in all types of subspecialties. Some of whom treat a substantial number of patients injured on the job and many other who treat few to no injured members. Those physicians who treat the few still have a keen interest in the Workers Compensation system in their capacity as employers. Indeed, those physicians with large numbers of injured workers in their practices have a keen interest as both care giver and as an employer.

ASMA will limit its comments to Sec. 2 of HB 314 and opposes the adoption of that section as currently written. Below, is a short description of ASMA's concerns about the current language and attached is draft language which will help to alleviate those concerns.

Since 2005 a "band aid" approach has been utilized to adjust the usual, customary, and reasonable fee schedule for physician payment. The fees have been frozen at the schedule in place on 12/1/2004, or increased by the percentage change in the Consumer Price Index. The latest was a percentage change in the CPI between 2008 and 2004 applied to that same fee schedule for dates of service stating 4/1/2009 and going through 12/30/2010. Now comes HB 314 which includes Sec. 2 which establishes the physician payment methodology for dates of service beginning 12/31/2010 and on into the future.

ASMA believes the language in Sec. 2 is not as clear as it could be and that the Legislature has the opportunity to make the payment methodology more efficacious and to make the policy decisions that are in your purview. Below is an outline for the changes that ASMA recommends and attached is draft language that would accommodate those changes.

1. define the appropriate fee as the lowest of:
   a. the physician's actual charge or fee for the service or treatment;

b. the charge or fee for the service or treatment when provided to the general public;
c. the charge or fee for the service or treatment for all fees or charges submitted for the associated Category I Current Procedural Terminology code at the 90th percentile; or
d. the charge or fee for the treatment or service negotiated by the provider and the employer under AS 23.30.097(c);

Note: This eliminates the terms "usual, customary, and reasonable" fee as no definition exists anyway in AS23.30 or in 8AAC45.082(i). Also, the 90th percentile is currently found in 8AAC45.082(i)(3).

2. direct the Board to either develop or designate a source (and adopt it by promulgating a regulation) for a database of current fees or charges for each Category I Current Procedural Terminology code that:
   a. includes the charges or fees submitted by Alaska physicians;
   b. includes the most recent 12 months of submitted charges but would allow for either older data to be included in order to have a statistically credible amount of data, or to allow submitted charges to be included from outside of Alaska in order to have a statistically credible amount of data. However, those charges from outside of Alaska need to be adjusted for the cost differential by a ratio of the CPI in Alaska versus where the fees came from; and

   Note: It is assumed that the database is continually updated as Alaska submitted charges or fees are added. Therefore, no direction for an annual update, per se, is necessary. However, a review of the statistical credibility of the data probably needs to be reviewed annually and adjusted accordingly. It is recommended that setting of the percentile be a policy call made by the Legislature.

3. direct that the Board, should it determine that it wishes to change its designated source for the database, that it needs to accomplish though the promulgation of a regulation.

ASMA will not provide comments regarding the establishment of the percentile (currently the 90th percentile) other than in general terms. To provide a specific recommendation, ASMA would have to have collected fee or charge data from its member physicians. It is generally, prohibited from doing so by federal anti-trust law. ASMA expects that individual physicians will provide you comments related to that policy decision. However, ASMA recommends that the Legislature makes this policy call as it is an extremely important one. If the percentile is set too low, physicians could limit their practice as far as caring for injured workers in Alaska. This has happened regarding access to care for injured federal workers under the Federal Workers Compensation system and for Medicare beneficiaries.

Thank you for the opportunity to provide testimony on HB 314. ASMA and I stand ready to assist you in addressing this most important issue.

Sincerely,

Brion Beerle

By: Brion Beerle, MD, President
For: Alaska State Medical Association

ASMA

Draft Language
HB 314 Sec. 2.

* Sec. 2. AS23.30.097(a) is repealed and reenacted to read:

(a) All fees and other charges for medical treatment or service are subject to regulation by the board consistent with this section. A fee or other charge for medical treatment or service provided on or after December 31, 2010 may not exceed the lowest of the actual fee or charge submitted for a medical treatment or service, the fee or charge for the medical treatment or service when provided to the general public, or the fee or charge for the medical treatment or service at the 90th percentile for fees or charges submitted from the community in which care rendered for the associated Category I Current Procedural Terminology Code as published by the American Medical Association; but not, in any event, to exceed a fee or charge for the medical service or treatment negotiated by the provider and the employer under (c) of this section. The board must either develop or designate a source for a database that contains the submitted fees associated with each Category I Current Procedural Terminology code published by the American Medical Association and adopt that by regulation. The database must contain:

(1) data for each community in Alaska, but may, if statistically credible amounts of data do not exist for a community, include data from other communities in an amount sufficient to provide statistically credible data. However, the data from each community used must be adjusted by an appropriate factor that reflects the difference in the cost of rendering care in those other communities. Likewise, if statistically credible data does not exist for any Category I Current Procedural Terminology Code in Alaska, data from outside of Alaska may be included in an amount necessary to provide for statistically credible data but an adjustment must be made to that data for the difference in the Consumer Price Index for all Urban Consumers as compiled by the United States Department of Labor, Bureau of Labor Statistics for the area outside Alaska to that of Anchorage;

(2) the database for each ensuing calendar year must include those submitted fees or charges for each Category I Current Procedural Terminology Code for the most recent, previous twelve month period, and for an amount of additional months necessary to produce statistically credible data should twelve months of data not provide an amount of statistically credible data; and

(3) Category II Current Procedural Terminology Codes published by the American Medical Association must be incorporated into the database and captured for each Category I Current Procedural Terminology Code for which fees or charges are submitted for a medical treatment or service.

2/1/10

ASMA

Draft Language
HB 314 Sec. 7.

Sec. 7. This Act takes effect immediately under AS.01.10.070(c) except that payments under Sec. 2. will only apply to those medical treatments or services provided on or after December 31, 2010.

2/1/10

J. Michael James, MD ‡ · Michel L. Gevaert MD ‡ · Sean D Taylor, MD ‡ · Shawna H. Wilson, ANP-C
Larry A. Levine, MD ‡ · Shawn P Johnston, MD ‡ · Robert F. Valentz MD ‡ · Brandy Moates Atkins, DNP, FNP-C
Linda D. Holmes, ANP
James L Glenn, PA-C, ATC

alaska spine institute

The Honorable Kurt Olson
Alaska House of Representatives
House Labor & Commerce Committee
State Capitol, Room 24-A
Juneau, AK 99801-1182

February 2, 2010

Dear Chairman Olson:

The physicians at Alaska Spine Institute have concerns regarding HB 314 - **"An Act relating to fees and charges for medical treatment or services, the crime of unsworn falsification, investigations, and penalties as they relate to workers' compensation; and providing for an effective date."**

First, we are concerned with the new language in Section 2, page2, lines 14-21/ Subsection AS23.30.097 (a) (1) (D). The new subsection reads:

provided on or after December 31, 2010, not to exceed the fees or other charges as specified in a usual, customary, and referenced in regulation; the fee schedule must include the most recent Current Procedural Terminology codes for both category I and category II medical treatment or other services published by the American Medical Association; not withstanding AS 44.62.010 - 44.62.290, the board shall update the schedule annually by order;

This revised language provides "the board" with an undefined and unlimited scope of authority to make changes and establish policy with respect to the medical fee schedule.

There are no specifications re: the personnel who constitute board members or their special areas of interest. Those medical providers and practices who will be most impacted by the decisions of the "board" may not be adequately represented in this body.

In addition, there are no listed frequencies as to how often the fee schedule can be or is required to be changed or updated. Further, there is no information as to how "board" representatives are selected or replaced should this be needed.

There are no provisions for making appeals to the "board's" determinations about fee schedule decisions as the language provided gives them compete authority to make these determinations. The "board" could in one year utilize the usual, reasonable and customary fees for this area using Ingenix but could then elect to use another standard for setting the fee schedule in another year such as a Medicare based fee schedule.

This would severely limit most medical practices in their ability to forecast financial risks associated with adding new equipment and new procedures and limit their ability to provide Alaska's injured workers the most current treatment technologies allowing them to remain in the state for care v/s traveling to other locations outside of Alaska.

Although we understand the need to address the fee schedule due to rising insurance costs to employers, significant changes in the medical fee schedule that include unilateral control by the "board" may limit access to local physicians in the same fashion that Medicare, Medicaid and Federal Workers' Compensation have impacted access. There are few medical providers willing to accept a new patient with Federal Workers' Compensation as the payer and these patients must travel outside Alaska for even simple procedures such as carpal tunnel release.

Second, Alaska Spine Institute has no objections to the update of the CPT (current procedural terminology) codes as this is long overdue. The code list has not been updated for many years and many new codes have been added or new procedures have been assigned codes from the AMA (American Medical Association) that are not reflected on the Alaska Workers' Compensation Fee Schedule.

However, there is no provision outlining which of these codes, both existing ones and additionally added ones, will be considered covered and reimbursable by the States' workers' compensation carriers. Will this then fall under the "board's" scope of authority to make these decisions?

Finally, the MSRC (Medical Services Review Committee) was formed under Gov. Murkowski's administration and was tasked with taking on this complex issue to provide their recommendations to the administration.

The MSRC worked for many months to review the issues and review several options to help create their report to the administration. Many of them volunteered time during the work week and on their own time as well to review an extensive reference manual that was created for them and to perform independent research on what other states were doing with regard to Worker's Compensation. It is unfortunate that none of the committee's recommendations are included in HB 314.

We appreciate your attention to, and consideration of, the concerns we have raised regarding this measure.

Respectfully,

Michel L. Gevaert, MD

On Behalf of:

J. Michael James, MD Larry A. Levine, MD Shawn P. Johnston, MD

Konrad Jackson

From: Michael McNamara [mmcnamara@akhanddoc.com]
Sent: Wednesday, February 03, 2010 2:40 PM
To: Rep. Kurt Olson
Subject: HB 314 Workman's Comp

Honorable Kurt Olson,

Dear Representative Olson,

I am an orthopedic Surgeon in Anchorage and have been the President of the advisory board for Alaska Surgical Center for eight years. My practice consists of approximately 30-40% W/C patients. I have reviewed Dr Brion Beerle' letter to you, regarding HB 314, representing the Alaska State Medical Association. As a representative of 34 partners in the Alaska Surgical Center, I feel that the letter from Dr Beerle well represents most surgeons and physicians in our community that care for W/C patients. Please recognize that those of us that care for W/C patients expend a significant amount of extra time and energy to care for W/C patients especially regarding the excessive paperwork requirements that follow these patients. Reduction in reimbursement will only jeopardize patient's access to care. Please review the ASMA recommendations and consider them seriously.

Sincerely and respectfully,

Mike G McNamara MD
Hand, Elbow and Shoulder Surgery

February 3, 2010

State Representative Kurt Olson
State Capitol, Room 24-A
Juneau, AK 99801-1182
(907) 465-2693
(907) 465-3835

RECEIVED
FEB 04 2010

RE: House Bill 314 Amendments

Dear Chairman Olson,

It has come to my attention that there is to be a hearing this afternoon on House Bill 314. As a physical therapist in Alaska I am very concerned about the proposed addition of subsection (D) to Sec.2 AS23.30.097 (a) (1) as it is currently written in House Bill 314. My concern is specifically with the wording found on page 2, lines 14-17, where Workman's Compensation fees are, "not to exceed the fees or other charges as specified in a usual, customary, and reasonable fee schedule established by the board and adopted by reference in regulation".

The consequences of House Bill 314 would be a detrimental to Alaska's workers injured on the job and the health care professionals providing them with care. House Bill 314 would grant a great deal of power to this Board with the sovereignty to set fees without any basis other than "usual, customary, and reasonable". This wording is far too vague for such an important issue. It lacks an explanation of basis for fees, composition of board members, frequency of change for fees, or the process to appeal the fees determined by the board. At the very least, this board should have to recognize an established standard for fees, such as those from the United States Department of Labor. Failure to do so will drastically affect the care of injured workers and the providers that care for them.

Please do not allow House Bill 314 to be added into Alaska's Statutes. It has no place

Sincerely,

Paul Carlson, PT
PO Box 91451
Anchorage, AK 99509
(907) 770-3637

»8« »AAC« »45.082«. Medical treatment

(a) The employer's obligation to furnish medical treatment under AS 23.30.095 extends only to medical and dental services furnished by providers, unless otherwise ordered by the board after a hearing or consented to by the employer. The board will not order the employer to pay expenses incurred by an employee without the approval required by this subsection.

(b) In this section "provider" means any person or facility as defined in AS 47.08.140 and licensed under AS 08 to furnish medical or dental services, and includes an out-of-state person or facility that meets the requirements of this section and is otherwise qualified to be licensed under AS 08.

(c) Physicians may be changed as follows:

(1) An employee injured before July 1, 1988, may change treating physicians at any time without board approval by notifying the employer and the board of the change. Notice must be given in writing within 14 days after the change of treating physicians. If, after a hearing, the board finds that the employee's repeated changes were frivolous or unreasonable, the board will, in its discretion, refuse to order payment by the employer.

(2) Except as otherwise provided in this subsection, an employee injured on or after July 1, 1988, designates an attending physician by getting treatment, advice, an opinion, or any type of service from a physician for the injury. If an employee gets service from a physician at a clinic, all the physicians in the same clinic who provide service to the employee are considered the employee's attending physician. An employee does not designate a physician as an attending physician if the employee gets service

(A) at a hospital or an emergency care facility;

(B) from a physician

(i) whose name was given to the employee by the employer and the employee does not designate that physician as the attending physician;

(ii) whom the employer directed the employee to see and the employee does not designate that physician as the attending physician; or

(iii) whose appointment was set, scheduled, or arranged by the employer, and the employee does not designate that physician as the attending physician.

(3) For an employee injured on or after July 1, 1988, an employer's choice of physician is made by having a physician or panel of physicians selected by the employer give an oral or written opinion and advice after examining the employee, the employee's medical records, or an oral or written summary of the employee's medical records. To constitute a panel, for purposes of this paragraph, the panel must complete its examination, but not necessarily the report, within five days after the first physician sees the employee. If more than five days pass between the time the

first and last physicians see the employee, the physicians do not constitute a panel, but rather a change of physicians.

(4) Regardless of an employee's date of injury, the following is not a change of an attending physician:

(A) the employee moves a distance of 50 miles or more from the attending physician and the employee does not get services from the attending physician after moving; the first physician providing services to the employee after the employee moves is a substitution of physicians and not a change of attending physicians;

(B) the attending physician dies, moves the physician's practice 50 miles or more from the employee, or refuses to provide services to the employee; the first physician providing services to the employer thereafter is a substitution of physicians and not a change of attending physicians;

(C) the employer suggests, directs, or schedules an appointment with a physician other than the attending physician, the other physician provides services to the employee, and the employee does not designate in writing that physician as the attending physician;

(D) the employee requests in writing that the employer consent to a change of attending physicians, the employer does not give written consent or denial to the employee within 14 days after receiving the request, and thereafter the employee gets services from another physician.

(d) Medical bills for an employee's treatment are due and payable within 30 days after the date the employer received the medical provider's bill and a completed report on form 07-6102. Unless the employer controverts the prescription charges or transportation expenses, an employer shall reimburse an employee's prescription charges or transportation expenses for medical treatment within 30 days after the employer received the medical provider's completed report on form 07-6102 and an itemization of the prescription numbers or an itemization of the dates of travel, destination, and transportation expenses for each date of travel. If the employer controverts

(1) a medical bill or if the medical bill is not paid in full as billed, the employer shall notify the employee and medical provider in writing the reasons for not paying all or a part of the bill or the reason for delay in payment within 30 days after receipt of the bill and completed report on form 07-6102;

(2) a prescription or transportation expense reimbursement request in full, the employer shall notify the employee in writing the reason for not paying all or a part of the request or the reason for delay within the time allowed in this section in which to make payment; if the employer makes a partial payment, the employer shall also itemize in writing the prescription or transportation expense requests not paid.

(e) A written treatment plan under AS 23.30.095 is required for payment of services provided on an outpatient basis for an injury that occurs on or after July 1, 1988. A written treatment plan is not required before providing services while the employee is hospitalized.

(f) If an injury occurs on or after July 1, 1988, and requires continuing and multiple treatments of a similar nature, the standards for payment for frequency of outpatient treatment for the injury will be as follows. Except as provided in (h) of this section, payment for a course of treatment for the injury may not exceed more than three treatments per week for the first month, two treatments per week for the second and third months, one treatment per week for the fourth and fifth months, and one treatment per month for the sixth through twelfth months. Upon request, and in accordance with AS 23.30.095 (c), the board will, in its discretion, approve payment for more frequent treatments.

(g) The board will, in its discretion, require the employer to pay for treatments that exceed the frequency standards in (f) of this section only if the board finds that

(1) the written treatment plan was given to the employer and employee within 14 days after treatments began;

(2) the treatments improved or are likely to improve the employee's conditions; and

(3) a preponderance of the medical evidence supports a conclusion that the board's frequency standards are unreasonable considering the nature of the employee's injury.

(h) An employee or employer may choose to pay for a course of treatments that exceeds the frequency standards in (f) of this section even though payment is not required by the board or by AS 23.30.095 .

(i) Fees for medical treatment are determined as follows:

(1) The fee may not exceed the physician's actual fee or the usual, customary, and reasonable fee as determined under this subsection, whichever is lower.

(2) The board will publish annually a bulletin for the *"Workers' Compensation Manual,"* published by the department which gives the name and address of the organization whose schedule of providers' charge data must be used in determining the usual, customary, and reasonable fee for medical treatment or services for injuries that occur on or after July 1, 1988. The manual, and the organization's name and address are available upon request from the division.

(3) The usual, customary, and reasonable fee must be determined based on the 90th percentile of the range of charges for similar services reported to the organization described in (2) of this subsection. The organization charge data must be used as follows:

(A) The organization's annual publication of the schedule of usual, customary, and reasonable fees in effect at the time the employee received the treatment must be used. However, if the

organization publishes the schedule semi-annually, then the semi-annual publication for the period in which the employee received treatment must be used.

(B) If the community in which services were rendered is not included in the organization's data, or if the type of treatment the employee received is not included in the organization's data for the community in which services were rendered, the usual and customary fee must be based on the data reported for the community nearest to the community in which the services were rendered to the employee.

(C) If the type of treatment or service the employee received is not included in the organization's data and the employer has evidence that the fee exceeds the usual, customary, and reasonable fee charged in the community for the treatment or services rendered, the employer shall pay the physician based on the employer's evidence. In accordance with AS 23.30.110 and 8 AAC 45.070, the physician may request a hearing for a board determination of the usual, customary, and reasonable fee in the community for the treatment or service, and the board will determine and award the usual, customary, and reasonable fee.

History: Eff. 5/28/83, Register 86; am 12/14/86, Register 100; am 7/1/88, Register 107; am 10/28/88, Register 108; am 3/16/90, Register 113; am 7/20/97, Register 143; am 7/2/98, Register 146; am 2/3/2001, Register 157

Authority: AS 23.30.005

Witness List HB 314

Konrad Jackson-Staff to Rep. Olson, Chair of House Labor & Commerce
Linda Hall – Director, Division of Insurance

HOUSE COMMITTEE REPO

(7)
Date Referred to Committee: February 5, 2010 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/25/10

The JUDICIARY Committee considered: **HB 314**

HOUSE BILL NO. 314
"An Act relating to fees and charges for medical treatment or services, the crime of unsworn falsification, investigations, and penalties as they relate to workers' compensation; and providing for an effective date."
HB 314-WORKERS' COMPENSATION

Recommends it be replaced with [ ] HCS *or* [✓] CS for HB314 (Jud)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [✓] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1			✓
LWF	2	✓		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN			X	
	HERRON			X	
	Holmes			X	
Chair:	KAWASAKI			X	
Chair:					

2251

HB

316

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Alaska State Legislature

House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 456-3346
Toll Free: (877) 465-3004

House District 10

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 3

From: Jane W. Pierson

Date: March 3, 2010

Re: HB316

Jerry,

The House Judiciary Committee moved out HB316. The HJUD version of the bill will include the following amendments:

Amendment #2 – Amendment A.18

Amendment #3 DOL
Page 3, line 9, following "crime,"
Insert "the person is required to register as a sex offender

Amendment #4 – Amendment A.11

Amendment #5 – Amendment A.17

Amendment #7 – DOL As amended
Page 5, line 6:
Following "a"
Insert: "good faith" The amendment to this amendment is final sentence to read " The burden of proof to establish good faith shall be on the prosecution."

2253

Amendment #9 – DOL

Page 8, line 7

Insert the following:

"for purposes of this section, the entry of a guilty or nolo contender plea is not an admission or concession of guilt;"

Page 8, line 30

Following "conviction;"

Insert the following:

"for the purposes of this section, the entry of a guilty or a nolo contender plea is not an admission of guilt;"

Amendment # 10 – Amendment A.8, as amended as follows, but in proper form:

Page 9, lines 3 – 5:

Delete ", and the applicant did not waive, or the applicant's lawyer did not forgo for tactical reasons, the right to request DNA testing"

Page 9, lines 6 – 13:

Delete all material and insert:

"(B) was previously subjected to DNA testing, and the applicant is requesting DNA testing using a method or technology that is substantially more probative than the previous DNA testing; or

(C) the court determines that granting the application is in the best interest of justice."

Amendment #12 – DOL

Page 9, line 29 delete "conclusively"

Amendment #15 – DOL

Page 10, lines 18-23:

Delete all material and insert:

"three years or more after conviction; this presumption may be rebutted if the court finds good cause for filing three years or more after conviction."

Amendment #16 – A.16

Amendment #17 – DOL

Page 15, between lines 24 and 25:

Insert the following:

"(9) the public defender;

(10) a member of the Alaska Senate appointed by the President of the Senate;

(11) a member of the Alaska House of Representatives appointed by the Speaker of the House."

Amendment #18 – A.19 as amended

After amendment 17 Insert:

(12) a representative of the office of public advocacy
(13) a representative of the Alaska Native Justice Center

Amendment #19 – A.13

Amendment #20 – A.14

Amendment #21 – DOL
Page 16, lines 28 -30
Delete all materials:
Insert the following:
"(c) Notwithstanding any other provision of this Act, a person whose conviction was entered before July 1, 2010, has until July 1, 2013 to file a claim under AS 12.73, or a later date if the court finds good cause for a later filing."

Renumber the following sections accordingly.

Article 2. Preservation of Evidence

W/D **Amendment # 1, Holmes,** Currently conceptual
Sunset all of Article 2 (Page 2, line 23 through Page 6, line 5) to a date after a time that the legislature has had time to review the Task Force's report.

PASSED **Amendment #2**, Ramras, Conceptual
-- Page 3, L. 7-8
Delete "biological material contained in or found on evidence that is obtained in an investigation and relevant to the prosecution"

Insert "biological material, contained in or found on evidence relevant to an investigation and prosecution."

PASSED **Amendment #3**,DOL
Page 3, line 9, following "crime,"
Insert "the person is required to register as a sex offender,"

PASSED **Amendment # 4, Rep. GRUENBERG – A.11**
Page 3, line 31, following "storage";
Insert "unless the person does not have the ability to pay the cost"

Page 11, line 18, following "tested":
Insert "unless the applicant does not have the ability to pay the cost."

Oversight of evidence destruction

PASSED **Amendment # 5, Rep. HERRON – A.17**
Page 4, line 6,
Delete "with proof of delivery by the United States Postal Service, or"
Insert "by certified mail with proof of delivery by the United States Postal Service, or by a comparable delivery method with proof of delivery by"

W/D **Amendment # 6, Rep. Lynn – A.6**
Page 5, lines 5- 6:
Delete "However, the court may not reverse or vacate a conviction based solely on a violation of the provisions of this section."

PASSED **Amendment # 7, DOL** AS AMENDED
Page 5, line 6:
Following "a"
Insert: "good faith" Burden of proof shall be on the prosecution

Post-Conviction DNA Testing Procedures

Application

3.1.10
~~2.16.10~~/Page 1

Amendment # 8, Rep. LYNN – A.7

Page 8, line 1, following "offense"
Insert "and"

Page 8, line 4:
Delete "and"

Page 8, Lines 5-7
Delete all material.

Page 8, lines 29-30
Delete all material

Renumber the following paragraphs accordingly

Page 9, line 27
Delete "(8)"
Insert "(7)"

Page 10, line 12:
Delete "(12)"
Insert "(11)"

Amendment # 9, DOL

Page 8, line 7
Insert the following:
"for purposes of this section, the entry of a guilty or nolo contender plea is not an admission or concession of guilt;"

Page 8, line 30
Following "conviction;"
Insert the following:
"for the purposes of this section, the entry of a guilty or a nolo contender plea is not an admission of guilt;"

Findings

Amendment # 10, Rep. LYNN - A.8

Page 9, lines 3-5:
Delete ", and the applicant did not waive, or the applicant's lawyer did not forgo for tactical reasons, the right to DNA testing"

Page 9, lines 6-13
Delete all materials and insert:

"(B) was previously subjected to DNA testing, and the applicant is requesting DNA testing using a method or technology that is substantially more probative than the previous DNA testing;"

Amendment # 11, Rep. LYNN - A.9 - w/D to be worked on

Page 9, lines 19-23:

Delete all material and insert:

"(8) the applicant identifies a theory of defense that would establish the applicant's innocence;"

Renumber the following paragraphs accordingly.

Page 10, line 12:

Delete "(12)"

Insert "(11)"

PASSED

Amendment # 12, DOL – Currently conceptual

Page 9, line 29 delete "conclusively"

Timeliness

FAILED

Amendment # 13, Rep. HOLMES – Currently conceptual

Page 10, lines 11-23

Delete all material

FAILED

Amendment # 14, Rep. HERRON – A.4

Page 10, line 12, following "12.73.020(12),":

Insert "there is a presumption of timeliness if the application is filed before the term of imprisonment of the applicant for the crime for which the evidence or biological material is preserved is completed. This presumption of timeliness may be rebutted if the court finds that the application is based solely on information used in a previously denied application."

Page 10, lines 13-23:

Delete all material.

PASSED

Amendment # 15, DOL

Page 10, lines 18-23:

Delete all material and insert:

"three years or more after conviction; this presumption may be rebutted if the court finds good cause for filing three years or more after conviction."

Task Force

PASSED

Amendment # 16, Ramras for Gatto A-16

Page 15, line 13 following "PRESERVATION":

Insert "AND RETENTION"

Page 15, line 14, following "preservation"
Insert "and retention"

Page 16, line 3, following "cataloging"
Delete "and"

Page 16, line 4, following "materials"
Insert", and return of property to owners"

Page 16, line 9:
Delete the first occurrence of "and"
Following "materials"
Insert ", and return of property to owners"

PASSED

Amendment # 17, DOL

Page 15, between lines 24 and 25:
Insert the following:
"(9) the public defender;
(10) a member of the Alaska Senate appointed by the President of the Senate;
(11) a member of the Alaska House of Representatives appointed by the Speaker of the House."

PASSED

Amendment # 18, Rep. GRUENBERG – ~~A.12~~ A.19

Page 15, line 24, following AS 24.65.020":
Insert;
~~(9) the director of the Public Defender Agency;~~ ALASKA Innocence Project
(10) a representative of the ~~Alaska Innocence Project~~ Office of Public Advocacy.
(11) a representative of the Alaska Native Justice Center"

Page 15, line 25:
Delete "and (6)"
Insert "(6), (10), and (11)"

PASSED

Amendment # 19, Rep. GRUENBERG – A.13

Page 16, line 3, following "cataloging,":
Insert "retention, disposal,"

PASSED

Amendment # 20, Rep. GRUENBERG – A.14

Page 16, lines 17-20
Delete all material

PASSED

Uncodified law

Amendment # 21, DOL

Page 16, lines 28 -30
Delete all materials:
Insert the following:
"(c) Notwithstanding any other provision of this Act, a person whose conviction was entered before July 1, 2010, has until July 1, 2013 to file a claim under AS 12.73, or a later date if the court finds good cause for a later filing."

Renumber the following sections accordingly.

W/D **Amendment # 22, Rep. GRUENBERG – A.15** W/D

Page 16, lines 28-30
Delete all material

26-GH2812\A.18
Luckhaupt
3/1/10

AMENDMENT 11 2 PASSED

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: HB 316

Page 3, lines 7 - 8:

Delete "biological material contained in or found on evidence that is obtained in an investigation and relevant to the prosecution"

Insert "biological material, contained in or found on evidence, relevant to an investigation and prosecution"

2261

DOL

AMENDMENT #3 Passed

OFFERED IN THE HOUSE

TO: HB 316

Page 3, line 9:

Following "crime,"

Insert "the person is required to register as a sex offender,"

Gruenberg

26-GH2812\A.11
Luckhaupt
2/18/10

AMENDMENT #4 PASSED

OFFERED IN THE HOUSE

TO: HB 316

Page 3, line 31, following "storage":

Insert "unless the person does not have the ability to pay the costs"

Page 11, line 18, following "tested":

Insert "unless the applicant does not have the ability to pay the costs"

2263

26-GH2812\A.17
Luckhaupt
2/23/10

AMENDMENT # 5 Passed

OFFERED IN THE HOUSE BY REPRESENTATIVE HERRON

TO: HB 316

Page 4, line 6:

Delete "with proof of delivery by the United States Postal Service, or"

Insert "by certified mail with proof of delivery by the United States Postal Service, or by a comparable delivery method with proof of delivery by"

Rep. Lynn

26-GH2812\A.6
Luckhaupt
2/17/10

AMENDMENT #6 WD

OFFERED IN THE HOUSE

TO: HB 316

Page 5, lines 5 - 6:

Delete "However, the court may not reverse or vacate a conviction based solely on a violation of the provisions of this section."

2265

VOL

AMENDMENT # 7 Passed

OFFERED IN THE HOUSE

TO: HB 316

Page 5, line 6:

Following "a"

Insert: "good faith" conceptual amend to Amend # 7 PASSES
Burden of proof shall be on the prosecution

Rep. Lynn
26-GH2812\A.7
Luckhaupt
2/18/10

AMENDMENT #8 w/D

OFFERED IN THE HOUSE

TO: HB 316

Page 8, line 1, following "offense;":

Insert "and"

Page 8, line 4:

Delete "and"

Page 8, lines 5 - 7:

Delete all material.

Page 8, lines 29 - 30:

Delete all material.

Renumber the following paragraphs accordingly.

Page 9, line 27:

Delete "(8)"

Insert "(7)"

Page 10, line 12:

Delete "(12)"

Insert "(11)"

DOC

AMENDMENT # 9

OFFERED IN THE HOUSE

TO: HB 316

Page 8, line 7:

Following "offense;"

Insert the following:

"for purposes of this section, the entry of a guilty or a nolo contendere plea is not an admission or concession of guilt;"

Page 8, line 30:

Following "conviction;"

Insert the following:

"for purposes of this section, the entry of a guilty or a nolo contendere plea is not an admission or concession of guilt;"

AMENDMENT #10

OFFERED IN THE HOUSE

TO: HB 216

Page 9, lines 3 – 5:

Delete ", and the applicant did not waive, or the applicant's lawyer did not forgo for tactical reasons, the right to request DNA testing"

Page 9, lines 6-13:

Delete all material and insert:

"(B) was previously subjected to DNA testing, and the applicant is requesting DNA testing using a method or technology that is substantially more probative than the previous DNA testing; or

(C) the court determines that granting the application is in the best interest of justice."

Rep Lynn
26-GH2812\A.9
Luckhaupt
2/18/10

AMENDMENT #11 w/d

OFFERED IN THE HOUSE

TO: HB 316

Page 9, lines 19 - 23:

Delete all material and insert:

"(8) the applicant identifies a theory of defense that would establish the applicant's innocence;"

Renumber the following paragraphs accordingly.

Page 10, line 12:

Delete "(12)"

Insert "(11)"

L

2270

DOL

CONCEPTUAL AMENDMENT #12

OFFERED IN THE HOUSE

TO HB 316

Page 9, line 29 delete "conclusively"

Holmes

CONCEPTUAL AMENDMENT #13

OFFERED IN THE HOUSE

TO HB 316

Page 10, lines 11-23
Delete all material

#14

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE HERRON

TO: HB 316

Page 10, line 12, following "12.73.020(12),":

Insert "there is a presumption of timeliness if the application is filed before the term of imprisonment of the applicant for the crime for which the evidence or biological material is preserved is completed. This presumption of timeliness may be rebutted if the court finds that the application is based solely on information used in a previously denied application."

Page 10, lines 13 - 23:

Delete all material.

DOL

AMENDMENT #15

OFFERED IN THE HOUSE

TO: HB 316

Page 10, lines 18 – 23:

Delete all material and insert:

"three years or more after conviction; this presumption may be rebutted if the court finds good cause for filing three years or more after conviction."

26-GH2812\A.16
Luckhaupt
2/23/10

AMENDMENT #16

RAMRAS for GATTO

OFFERED IN THE HOUSE

TO: HB 316

Page 15, line 13, following "PRESERVATION":

Insert "AND RETENTION"

Page 15, line 14, following "Preservation":

Insert "and Retention"

Page 16, line 3, following "cataloging,":

Delete "and"

Page 16, line 4, following "materials":

Insert ", and return of property to owners"

Page 16, line 9:

Delete the first occurrence of "and"

Following "materials":

Insert ", and return of property to owners"

DOL

#17

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 316

Page 15, between lines 24 and 25:

Insert the following:

"(9) the public defender;

(10) a member of the Alaska Senate appointed by the President of the Senate;

(11) a member of the Alaska House of Representatives appointed by the Speaker of the House."

Gruenberg
26-GH2812\A.~~2~~ 19
Luckhaupt
2/18/10

#13

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 316

Page 15, line 24, following "AS 24.65.020":

Insert ";

(9) the director of the Public Defender Agency;

(10) a representative of the ~~Alaska Innocence Project~~; Office of Public Advocacy

(11) a representative of the Alaska Native Justice Center"

Page 15, line 25:

Delete "and (6)"

Insert "(6), (10), and (11)"

2277

GRUENBERG
26-GH2812\A.13
Luckhaupt
2/18/10

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 316

Page 16, line 3, following "cataloging,":

Insert "retention, disposal,"

Gruenberg

26-GH2812\A.14
Luckhaupt
2/18/10

AMENDMENT # 20

OFFERED IN THE HOUSE

TO: HB 316

Page 16, lines 17 - 20:

Delete all material.

2279

DOL

AMENDMENT #21

OFFERED IN THE HOUSE

TO: HB 316

Page 16, ~~following~~ line 28 - 30
Delete All material
Insert the following:

"~~Sec. 17.~~ (c) Notwithstanding any other provision of this Act, a person whose conviction was entered before July 1, 2010, has until July 1, 2013 to file a claim under AS 12.73, or a later date if the court finds good cause for a later filing."

Renumber the following bill sections accordingly.

Gruenberg

26-GH2812\A.15
Luckhaupt
2/18/10

AMENDMENT 22

OFFERED IN THE HOUSE

TO: HB 316

Page 16, lines 28 - 30:

Delete all material.

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

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January 28, 2010

Representative Jay Ramras
Chair, House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 316 – relating to evidence retention and post-conviction DNA testing

Dear Chairman Ramras:

I am writing to respectfully request that you schedule House Bill 316 for a hearing in the House Judiciary Committee at your earliest convenience. HB 316 is one of several bills that the Governor has introduced to confront and help reduce crime in our state, and to provide for evidence retention and post-conviction DNA testing.

The bill adopts standards for law enforcement agencies to retain evidence. This is important for later testing of the evidence for both cold case prosecution and for people who claim they were wrongfully convicted. The bill adopts standards for post-conviction DNA testing. The bill also makes drafting and other minor changes to the DNA identification system.

Attached is a sectional analysis that explains the bill in detail.

Thank you for your consideration of this request.

Sincerely,

Daniel S. Sullivan
Attorney General

DSS:ADC: sf

HOUSE BILL 316
EVIDENCE RETENTION AND
POST-CONVICTION DNA TESTING
Sectional Analysis

Sections 1 and 2 are conforming amendments to clarify that the evidence retention provisions in the bill take precedence over the provisions of AS 12.36.010 – 12.36.090 that address disposition of evidence in various circumstances, including disposal of unclaimed property.

Section 3 proposes a new statute in AS 12.36, Preservation of Evidence, that would require municipal police departments, the Department of Public Safety, the Department of Law, and the Alaska Court System to preserve both physical evidence and biological evidence for the periods described below. The highlights include:

- The retention requirements apply to an investigation and prosecution of homicide (murder, manslaughter, and criminally negligent homicide), sexual assault in the first degree, and sexual abuse in the first degree.

  Because this is a new (and unfunded) duty imposed on municipal agencies in addition to state agencies, the bill was drafted to apply to a limited number of offenses; the offenses are the most likely to include evidence with DNA as part of the investigation and prosecution.

- Requires evidence (not including biological material) to be retained until the expiration of the prosecution, including the time for completing an appeal (including time for applying for review to the United States Supreme Court) or the litigation of any post-conviction relief application.

  The bill allows agencies to preserve samples of evidence if the item itself is impractical or hazardous to preserve. It recognizes that municipal police agencies will have varying storage capacity; that is, a rural agency will have a smaller storage ability that a larger municipality. The bill requires each agency to adopt written policies addressing removal and preservation of samples.

- Requires biological material to be retained by an agency until the defendant is unconditionally discharged for the crime (including any period of probation or parole), or until the period for retention of physical evidence have expired, whichever is longer.

  Biological material is defined to include the contents of a sexual assault examination kit, all human bodily material collected in the investigation, slides, swabs, or test

tubes containing human bodily material, and swabs or cuttings from other evidence that contain human bodily material.

- The bill adopts a procedure for an agency, after notice to the parties and their attorneys, to dispose of or return evidence or biological material if no party objects to the disposal or return of the evidence or biological material. If there is an objection, it allows the agency to request the court to allow the disposal or return of evidence or biological material.

- The remedy for an agency's failure to preserve evidence and biological material is left to the court. However, a court may not reverse or otherwise vacate a conviction based solely on a violation of the new law.

- The bill prohibits a person from bringing a civil action against an agency for a good faith failure to abide by the new requirements.

Section 4 requires that a person who seeks post-conviction DNA testing to support a claim of innocence bring the application for testing under AS 12.73, proposed in the bill.

Section 5 clarifies practice in the area of post-conviction relief by putting in statute the common law rule that requires an applicant to plead a prima facie case for post-conviction relief, and the court make a finding that a prima facie case has been pled before the state responds. Then the parties may pursue discovery on the matter. *State v. Jones*, 759 P.2d 558, 565-566.

Section 6 adopts procedures for post-conviction DNA testing. These include the following:

- **Sec. 12.73.010** sets out the information that must be included in an application for post-conviction DNA testing. The applicant must file

    - An affidavit by the applicant that states

        - that the applicant did not commit the crime for which he was convicted or any lesser included offense;

        - that the applicant did not solicit another person to commit, or aid or abet another person in planning or committing, the offense or any lesser included offense;

        - that the applicant did not admit or concede guilt for the offense in any official proceeding;

- An affidavit by the applicant or the applicant's lawyer stating the results of each DNA test already performed on evidence in the prosecution of the defendant;

- An affidavit by the applicant or the applicant's lawyer describing previous efforts to obtain DNA testing;

- An affidavit by the applicants trial lawyer stating the reason the DNA testing was not requested at the trial level, or a affidavit stating the efforts taken to obtain this affidavit.

- **Sec. 12.73.020** provides the standards for when a court may order post-conviction DNA testing. These include:

  - The applicant was convicted of a felony against a person (AS 11.41);

  - Completion of the affidavits required by AS 12.73.010 have been submitted;

  - The applicant has not admitted or conceded guilt in an official proceeding;

  - The evidence was obtained as part of an investigation of the crime;

  - Either

    - The evidence has not been tested or the right to test the evidence was not waived for tactical reasons; or

    - The evidence has been previously tested, the applicant is requesting a more probative test, and the applicant did not waive for tactical reasons a similarly probative test;

  - The evidence has been retained under conditions that ensure that it has not changed in a way that would undermine the accuracy of the test;

  - The applicant proposes a defense theory not inconsistent with the defense at trial, and that would establish innocence;

  - If the defendant was convicted at trial, the identity of the perpetrator was an issue;

  - There is a reasonable probability that the testing requested will produce new evidence that would support the new defense theory and could conclusively establish innocence;

- The applicant consents to give a DNA sample and to have that sample entered into the DNA identification registration system; and

- The application is timely.

- **Sec. 12.73.030** allows for summary dismissal by the court if the application does not include the information required. If the application is not summarily dismissed the prosecuting authority has 45 days to file a response.

- **Sec. 12.73.040** adopts presumptions regarding timeliness. There is a presumption that filed an application within three years after conviction is timely. There is a presumption that an application filed later is untimely; this may be rebutted by a finding that the applicant was incompetent or for any other good reason.

- **Sec. 12.73.050** adopts procedures for collecting DNA samples. It also provides that the testing must be performed at a laboratory operated by the state or approved by the state. The cost of testing will be paid for by the state; if the applicant requests additional testing, the applicant must pay for it, and it must be performed at an accredited laboratory or one approved by the Department of Public Safety.

- **Sec. 12.73.060** clarifies that the prosecution and an applicant may stipulate to DNA testing without following the procedures in the bill.

- **Sec. 12.73.070** includes definitions for the new chapter.

Section 7 provides that an indigent applicant is entitled to representation by the Public Defender Agency in bringing an application for post-conviction DNA testing.

Sections 8 – 12 make clarifying amendments to the DNA identification registration system statutes. The bill clarifies that a minor must be 16 years of age or older at the time of offense for the minor's DNA to be entered into the database. It also requires that the Department of Public Safety remove a DNA sample entered into the database if the individual was found not guilty for the offense that was the basis of the DNA entry. The bill also makes several draft changes to improve the readability of the law.

Section 13 provides that a DNA sample from the registration system may be used in a criminal investigation if it was mistakenly in the system, if the error was made in good faith. Section 13 also clarifies that if a sample does not include sufficient material to obtain an accurate identification, another sample may be taken.

Sections 14 and 15 note the effect the bill has on Rule 35.1, Alaska Rules of Criminal Procedure.

Section 16 creates a task force to consider and recommend standards for preservation of evidence. The task force would consist of the attorney general, the commissioner of public safety, a chief of police from a community not on the state's road system, a chief of police from a municipal department, the state medical examiner, representatives from the crime laboratory and the court system, and the victims' advocate.

The task force's work would be to recommend standards for collection, storage, organization, cataloging, and retrieval of evidence; identify sources of financial help for implementing the standards; recommend minimum qualification and training of persons responsible for storing evidence. After completing its work, the task force will report its recommendations to the legislature.

Sections 17 – 19 include applicability and effective date provisions.

Analysis of HB 316

Here is the initial analysis of HB 316 and the concerns with the bill. Citations are to the pages in the printed bill and to the section or subsection within which the language appears. Their order reflects the order in which the sections appears in the bill, and not a measure of the degree of concern with the contents.

p.2 "Sec. 12.36.200(a)(1)" this section sets deadlines for destruction of evidence rather then allow the Task Force which is established at the end of the bill to study the issue and make recommendations---When SB110 was drafted one of the reasons for establishing the Task Force was to allow for informed creation of destruction deadlines.

This section also seems to allow for destruction of evidence if a challenge to the conviction is filed in federal district court. The section defining "direct review" mentions only judgment on appeal, petition for hearing and review by the United States Supreme Court.

p.3 (d) at bottom of page. See also p.11, last line. This section calls for the person who requests evidence that has been preserved to pay for its retrieval. There is not one single statute passed by any other state or the federal government that even imagines such a requirement. An irony in including this section is that it follows a section which requires the agency holding the evidence to produce an inventory of the evidence. It must be presumed that the agency will actually confirm they have each of the items on the inventory before providing it. After physically confirming they have each piece of evidence they then get to turn around and charge for going back again and collecting it. Seems a reasonable solution would be to put it in a convenient place at the time of preparing the inventory.---The concern is that an individual will be precluded from obtaining the evidence due to an inability to pay this tax on their right to DNA testing. The section is particularly offensive since evidence does not belong to one side or the other, but rather to the people, and charging a person claiming innocence to collect the evidence passes a different message.

p.7 "Sec 5 AS 12.72.030" This section requires that an individual plead a prima facie case for relief and a court must find that a prima facie case for relief exists before any discovery related to the application can be pursued. This section hobbles claims for relief since discovery is often necessary to obtain facts which will establish a prima facie claim for relief. This requirement is materially more restrictive then the current procedure which only requires an individual plead material facts to go forward. This section will often create a catch 22 making claims for relief impossible.

p. 8 (C) at the top and (3) at the bottom. This makes post-conviction testing unavailable to anyone who admits or concedes guilt in any official proceeding or whose statement of guilt was the basis for the conviction. This section flat out

denies the real world fact that 25% of the known DNA exonerations involved an innocent individual who admitted or pled guilty to the crime. This category of wrongfully convicted are largely represented by the most vulnerable in society; young people, people with mental disabilities, those most susceptible to suggestion. Rather then protecting the vulnerable this section takes advantage of them. A section such as this is a clear demonstration that form is more important than justice in this bill.

p.8(4), in the middle of the page, allows a tactical mistake by a lawyer that results in an innocent individual being convicted be a bar to a later action proving that person's innocence. An innocent person in prison means the perpetrator is still at large and means the people of the state of Alaska are paying to house an innocent person. This system allows an innocent person who was convicted by their attorney's mistake no recourse to obtain testing of exculpatory evidence.

p.9, (5) at the top of the page, prohibits an individual from seeking testing if evidence was not subjected to DNA testing at the trial level or a more probative method of DNA testing was not used, and the applicant waived the testing or the applicants lawyer did not test for tactical reasons. This section again denies the reality of the real world that bad lawyering is one of the most common causes of wrongful convictions. Since we are talking claims of actual innocence, it would be improper to deny an individual the opportunity to test scientific evidence to establish innocence because a trial lawyer made a bad decision, or couldn't afford a test. This problem is compounded by allowing the trial lawyer to cover their mistake by requiring an affidavit from the lawyer explaining their actions on p. 8. In our system of justice, innocence should not be able to be waived.

p.9, (10) calls for the court to guess at the outcome of the requested testing based on its view of other evidence. Other states and the federal government, when dealing with this part of the process, provide a standard that, assuming a result favorable to the petitioner, there would be a reasonable probability that the petitioner would not have been convicted. The later standard does not require a judge to try and guess what result the requested DNA testing would produce, but rather whether a favorable result would be significant in the outcome of the case.

p.10, "Sec. 12.73.040 Timeliness" This section basically puts a three year statute of limitations on innocence. It is significant to know that few if any of the people who have been exonerated by DNA evidence in the U.S. to date would have been released from custody or from death row under such a time requirement. This section would make post-conviction DNA testing claims in Alaska more difficult to bring then under the current process where no specific time periods are set. Establishing that an incarcerated individual is actually innocent of the crime for which they have been convicted should not be limited by arbitrary time requirements.

p. 15 "Task Force" This section establishes a task force to recommend standards and protocols regarding evidence preservation issues. Unlike a similar section in SB110, this version excludes any representative from the criminal defense bar, like the public defender or office of public advocacy, or any member from the innocence community, like from the innocence project, Or any member from the legislature. The task force established by this section is not interested in obtaining a wide range of information to produce a balanced report to provide the best information from which to make decisions, but rather to produce a document that merely puts forward a position of one part of the legal community.

This legislation is also noticeably incomplete as it does not deal at all with what procedure should be followed after testing is completed. For instance, this bill does not provide a process for what happens when testing apparently excludes the petitioner as the source of the DNA.

INNOCENCE PROJECT
Benjamin N. Cardozo School of Law, Yeshiva University

WRITTEN TESTIMONY OF REBECCA BROWN
POLICY ADVOCATE, INNOCENCE PROJECT
BEFORE THE ALASKA HOUSE JUDICIARY COMMITEE
RE: HB 316 – AN ACT RELATING TO POST-CONVICTION DNA TESTING
FEBRUARY 5, 2010

Thank you for the opportunity to speak before you today and submit written comments for your consideration of HB 316, which seeks to create statutory access to post-conviction DNA testing.

The Innocence Project assists persons in proving their innocence through post-conviction DNA testing. To date there have been 250 men and women exonerated by post-conviction DNA testing nationwide, one exonerated just yesterday. The emergence of forensic DNA technology changed the fabric of the criminal justice system. Whereas prior to the advent of forensic DNA there were few clear ways to assess prisoners' claims of wrongful conviction, DNA testing of crime scene evidence can provide the criminal justice system with significant and enduring proof of innocence or guilt, from the initial stages of an investigation to years after a conviction. With the ability to transcend fallible human judgment, DNA testing – and particularly post-conviction DNA exonerations – have proven the potential for error that exists in our criminal justice system, and that our appeals processes are not sufficient for identifying those errors.

Our policy agenda is a pro-law enforcement agenda, win-win reforms that protect the innocent and help identify the guilty. It is precisely because of the dual nature of our work – both the efforts to exonerate the innocent and the constructive efforts to strengthen the capacity of the criminal justice system to make more accurate guilt/innocence determinations – that we may be able to provide a somewhat unique and hopefully helpful perspective on the complicated issue you are addressing today.

Having worked in this field for thirty years, the co-founders of our organization often remark that perhaps the most significant lesson they have learned is that in matters of crime and justice humility is important because even the most experienced among us are often wrong. They have reviewed hundreds of cases. In most, they have pored over reams of court transcripts, scrutinized piles of police reports, dissected crime lab analyses, sifted through evidence and property logs, and studied scores of witness statements, and have strongly suspected some men's guilt, only later to discover they were wrong. No less often, someone they strongly suspect is innocent turns out to be guilty. Indeed, because every one of us is human and all of us are actors in a fact-finding mission, if just one of us makes an error, jumps to a conclusion, or acts on a false assumption, an innocent man can be condemned to a guilty man's fate.

Congress recognized DNA's potential for justice, and it was bi-partisan support that led to passage of the Innocence Protection Act contained in the Justice for All Act of 2004. Then-President George W. Bush noted in his 2005 State of the Union address: "In America we must make doubly sure no person is held to account for a crime he or she did not commit. So we are dramatically expanding the use of DNA evidence to prevent wrongful conviction."

The preservation of biological evidence and access to post-conviction DNA testing – fundamental elements of the IPA's innocence protections – are as important today as ever. The Innocence Project

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continues to unearth cases where post-conviction DNA testing proves the innocence of those convicted in both the relatively recent and distant past.

Unfortunately, when forensic DNA testing was first made available, it provided little help to the truly innocent who were facing charges like rape or murder, or who had been previously convicted. For these men and women, hope existed only later, with the potential of the performance of DNA testing on the crime scene evidence connected to their cases. For many, if not most of them, such testing represented a last chance to prove their innocence, as they had already exhausted all available state remedies, as well as federal habeas corpus relief. Yet without the benefit of state statutes providing access to post-conviction DNA testing, they faced daunting, if not unattainable, paths to such testing.

The scales of justice began to tilt when states started to pass laws allowing convicted persons access to post-conviction DNA testing. These laws not only allowed DNA testing to be performed on genetic material that was never tested at trial; it also allowed more modern, sophisticated technology to be utilized on previously tested evidence that had yielded inexact or unreliable conclusions.

Over time, newer DNA technologies have emerged, enabling us to create perpetrator DNA profiles from physical evidence that was previously useless. The amount of evidence items that are being successfully tested now, but could never have been tested successfully only a few years ago, is enormous. As DNA testing methods continue to emerge, they reveal new information about even those crimes committed in the distant past. Post-conviction DNA testing statutes have begun to contemplate these technological advances and many now include provisions that permit additional testing in cases where previous testing using older testing methods could not produce conclusive results.

The passage of post-conviction DNA testing statutes also explicitly exempted DNA testing motions and related proceedings from the procedural bars that govern other forms of post-conviction relief. Before the emergence of this discrete statutory avenue that allowed petitioners to seek post-conviction DNA testing, the innocent were forced to rely upon processes that put the burden on the petitioner to effectively solve the crime and prove that the DNA evidence promises to implicate another individual. In states without post-conviction DNA testing laws, many efforts to achieve testing were stymied, egregiously delayed or flatly denied.

Consider the following case of justice denied in the absence of a post-conviction DNA testing law. In March of 1989, New Jerseyan Larry Peterson was convicted of the sexual assault and murder of a woman in Burlington County. Although three men originally indicated to police that they were with Mr. Peterson at the time the murder took place, they later changed their accounts during interrogations and told law enforcement that Mr. Peterson confessed to them that he had indeed committed the crime. One forensic scientist testified at trial that her hair comparison analysis tied Mr. Peterson to the murder and another analyst with the New Jersey State Police testified that there was seminal fluid on the victim's jeans and sperm on her underwear. No seminal fluid or sperm was found in her rape kit. All tests on these items of evidence were inconclusive at the time of trial.

Mr. Peterson testified in his own defense at trial. Alibi witnesses supported his whereabouts during the time of the crime. Work records also showed that he did not work on the day that the victim was found – the day he supposedly confessed to the crime on his way to work. The jury convicted Mr.

Peterson of felony murder and aggravated sexual assault in March 1989. He was sentenced to life plus twenty years in prison.

Although there was no post-conviction DNA testing law in New Jersey, Mr. Peterson first sought access to DNA testing in 1994 under the state's existing post-conviction review process. When the court finally heard his motion in 1998, it denied his petition. In 2000, the Appellate Division affirmed the denial of his petition for post-conviction relief ruling that there was overwhelming evidence of guilt in his case. In March of 2001, the Supreme Court denied his Petition for Certification.

Mr. Peterson was without hope until New Jersey passed a statute granting access to post-conviction DNA testing. The law was made effective on July 7, 2002. On July 8, 2002, Larry Peterson became the first New Jerseyan to file a petition for post-conviction DNA testing under the new law and ultimately testing was granted, after an appeal of an initial denial.

In February of 2005, the Serological Research Institute (SERI) reported the results of testing: Mr. Peterson was excluded as a contributor of any and all of the biological evidence. Although the New Jersey State Police Laboratory had reported that there was no semen in the victim's rape kit, SERI identified sperm on her oral, vaginal, and anal swabs. Two different male profiles were found. One of the males was one of the victim's consensual partners, and his profile was also found on her underwear, jeans, and rape kit. The other unknown male was found on all of the swabs in her rape kit. Based on this evidence, Mr. Peterson's conviction was vacated in July 2005. On May 26, 2006, the prosecution decided to drop all charges against Mr. Peterson. Without the passage of New Jersey's post-conviction DNA testing law, Mr. Peterson would have perished in prison.

Today, 47 states have post-conviction DNA testing laws, which vary in substance and scope. In some states with laws, the "right" to DNA testing remains illusory for many categories of potentially innocent defendants. ***That said, the proposal under consideration in HB 316 more affirmatively denies post-conviction testing than any other statute we have ever seen.***

We offer this perspective based on our breadth of experience litigating claims of innocence all across the nation. We have worked closely with legislatures around the country to establish meaningful post-conviction DNA access, most recently in South Carolina, Mississippi and Nevada, which chose last year to expand its statute to additional categories of deserving applicants. We have learned that seemingly innocuous provisions can spell a dead end for justice for many deserving applicants and wish to spare Alaska such a fate. While there are many provisions that create barriers to meaningful access to post-conviction DNA testing in this proposal, in the interest of time, I will focus on the most problematic areas.

Timeliness

Perhaps the most restrictive provision in this proposal can be found in Section 12.73.040, which effectively puts a three year statute of limitations from the time of conviction on filing a post-conviction claim of innocence. As I mentioned earlier, nearly every single individual who was able to prove innocence through post-conviction DNA testing had already exhausted all available state remedies, as well as federal habeas corpus relief before seeking testing. Not one of these individuals would be eligible for testing under the framework contemplated in this proposal. ***There is not one law in the***

nation that includes such a restrictive timeliness provision. Indeed, 35 of 47 statutes possess no time limitation on the filing of a post-conviction DNA testing petition whatsoever. Perhaps more concerning, the inclusion of such a provision in a post-conviction testing law would make claims more difficult to bring than under the current post-conviction review process.

Barring Testing to Individuals Whose Attorneys Did Not Previously Seek Testing
Traditionally, a defendant seeking post-conviction DNA testing might be able to accomplish such testing under the post-conviction relief process. Unfortunately, though, that framework has proven illusory, given the fact that not a single Alaskan has achieved post-conviction DNA testing to date. If properly structured, a post-conviction DNA testing framework would correct this and allow an Alaskan access to testing under such a framework. Unfortunately, however, the framework proposed also effectively blocks access to post-conviction DNA testing.

A provision inserted into the existing post-conviction review law, located in Section 12.72.010(4), indicates that if an individual seeks post-conviction DNA testing to support his claim of innocence, the person's "exclusive method for obtaining that testing is an application under the post-conviction DNA testing statute," yet Section 12.73.020(5)(A), a provision in the proposed, new post-conviction DNA testing framework, bars an individual from seeking post-conviction DNA testing if the evidence "was not subjected to DNA testing, and the applicant did not waive, or the applicant's lawyer did not forego for tactical reasons, the right to request DNA testing." This provision is made worse by the requirement, in Section 12.73.010(4), which requires an affidavit by the applicant's lawyer stipulating to the reasons DNA testing was *not* sought before or during trial.

These sections effectively bar innocent individuals who were victimized by poor representation, a common cause of wrongful conviction, from post-conviction DNA testing. Put simply, this proposal requires an individual seeking DNA testing to abandon the post-conviction relief process for the purposes of accessing post-conviction DNA testing in favor of the newly created avenue for post-conviction DNA testing. Once the defendant seeks DNA testing under the post-conviction DNA testing framework, however, which is his "exclusive method for obtaining that testing," he is at the mercy of his trial attorney to disclose potential incompetence in order to be granted that post-conviction DNA testing. Therefore, he must rely upon his trial attorney, the same trial attorney who ineffectively represented him, to admit to his negligence or indolence to obtain access to post-conviction DNA testing under the post-conviction DNA testing framework.

It is improper to deny an individual the opportunity to test scientific evidence to establish innocence because a trial lawyer failed to explore DNA testing, made a poor decision, or could not afford a test. It is difficult to conceive that the same trial attorney who made a poor decision would be willing provide an affidavit to this effect. ***Put simply, these provisions deny the most vulnerable – those who were represented poorly or ineffectively – the ability of proving innocence through DNA testing.***

Barring Individuals Who Admitted Guilt
There are three areas of the proposal that would foreclose the possibility of post-conviction DNA testing to an individual who admitted or conceded guilt to the crime for which he was convicted. Section 12.73.010(b)(1)(C); 12.73.020(3); and 12.73.020(9). While it is counterintuitive to most, the innocent, with great regularity, plead guilty, falsely confess and otherwise provide admissions to

crimes they did not commit.

Researchers who study this phenomenon have determined that the following factors contribute to or cause such admissions or false confessions:

- Real or perceived intimidation of the suspect by law enforcement
- Use of force by law enforcement during the interrogation, or perceived threat of force
- Compromised reasoning ability of the suspect, due to exhaustion, stress, hunger, substance use, and, in some cases, mental limitations, or limited education
- Devious interrogation techniques, such as untrue statements about the presence of incriminating evidence
- Fear, on the part of the suspect, that failure to confess will yield a harsher punishment

Some populations, including youth and individuals with mental limitations, are particularly vulnerable, but we have uncovered many cases that involve individuals who do not fall into these "at risk" categories. ***Nearly 25% of the nation's wrongful convictions proven through DNA testing reveal involved an admission or confession.*** The proposal currently under consideration would have barred all of these people from seeking testing.

Requiring Courts to Anticipate the Outcome of Testing
Section 12.73.020(10) requires the court to assess whether there is a reasonable probability, in light of all available evidence, including even evidence that was not introduced at trial, that the requested DNA testing would demonstrate innocence. In essence, this provision would allow the courts to guess the outcome of testing rather than to just accomplish that requested testing. We have learned in the course of our work, that only DNA can provide definitive answers about guilt or innocence. Time and again, we have uncovered cases which contain multiple elements seemingly pointing to the defendant's guilt only to learn through DNA testing that the defendant is, in fact, innocent. As I described earlier, at our office, we have reviewed cases where we were fairly confident in a defendant's guilt only to learn later of his innocence and vice versa. Therefore, it is simply irresponsible to place such a burden on the court, and it certainly sets the stage for irreparable mistakes that any one of us, placed in that same position, would make.

Requiring the Petitioner to Pay for the Retrieval of Evidence
Section 12.36.200(d) of the proposal requires the defendant seeking biological evidence connected to his case to pay for its retrieval. ***There is no other state in the country that places this burden on the defendant.*** In light of all of the other barriers to meaningful post-conviction DNA testing contained in this proposal, this additional burden – particularly for an indigent defendant – could effectively bar deserving individuals from seeking testing.

We believe the Governor put forward this proposal in the hopes of helping the truly innocent who are languishing behind bars in the state of Alaska. Unfortunately there are many provisions in this bill

that would prevent access to post-conviction DNA testing from being meaningful. In essence, their hopes of demonstrating their innocence will be forever prohibited. Our office would appreciate the opportunity to offer our perspective to the Alaskan legislature with the goal of crafting a statute that provides meaningful access to testing in the way we believe Alaskans want.

Thank you for the opportunity to share these views with you. I hope you will contact me if there is any additional information that I can provide on the subject.

ALASKA INNOCENCE PROJECT

WRITTEN TESTIMONY IN SUPPORT OF ORAL TESTIMONY OF
WILLIAM B. OBERLY, EXECUTIVE DIRECTOR
ALASKA INNOCENCE PROJECT
BEFORE THE ALASKA HOUSE JUDICIARY COMMITTEE
HB 316 – AN ACT RELATING TO POST-CONVICTION DNA TESTING
JANUARY 5, 2010

Thank you to the House Judiciary Committee for giving me the opportunity to give oral testimony and to submit this written document in support of those comments on HB 316.

Access to post-conviction DNA testing is among the most important issues for the Alaska Innocence Project. We thank Governor Parnell for recognizing the importance of this issue by proposing a bill dealing with this subject. However, the Alaska Innocence Project cannot support HB 316 as it is currently written. The effect of HB 316 as currently written is to drastically limit access to DNA testing in Alaska. A number of modifications will need to be made before this bill is in line with the current approach to DNA testing accepted in the rest of the country.

In this letter I will try and describe the specific areas of HB 316 which serve to deny DNA testing to individuals with innocence claims in the state of Alaska. I will discuss the sections of the bill in the order of significance and impact on innocence claims. If these sections are removed from the bill, HB 316 will then provide a procedure for wrongfully convicted Alaskans to obtain post-conviction DNA testing to establish their innocence.

The first area of concern is the prohibitions on testing contained in this bill. The combined effect of these prohibitions is to deny virtually every person currently in prison who would seek DNA testing. This approach flies directly in the face of current thinking, which was described by Senator Patrick Leahy when he sponsored the federal Innocence Protection Act. "The criminal justice system should err on the side of permitting testing, in light of the low cost of DNA testing and the high cost of keeping the wrong person locked up."

The most serious prohibition on testing in HB 316 is contained on page 10, lines 11 through 23 of the bill in Sec. 12.73.040, entitled Timeliness. This section establishes a presumption of untimeliness if an application for post-conviction testing is not filed within three years. This restriction will prohibit most, if not all, innocent individuals who are currently incarcerated from obtaining the testing necessary to establish their innocence. This section would make post-conviction DNA testing claims in Alaska much more limited then under the current process of

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post-conviction claims based on newly discovered evidence. Time limitations ignore the fact that without proper preservation standards and requirements, as well as state of the art identification methods, exculpatory DNA evidence may only be located after years have elapsed. It should be remembered that, unlike other forms of evidence, DNA evidence is not less reliable as time goes by, one of the main reasons for limiting the time within which to bring new evidence motions based on other evidence. Establishing that an incarcerated individual is actually innocent of the crime for which they have been convicted should not be limited by arbitrary time limits.

Page 9 section (5) at lines 2 through13. This section prohibits an individual from seeking testing if evidence was not subjected to DNA testing at the trial level or a more probative method of DNA testing was not used, and the applicant waived the testing or the applicant's lawyer did not test for tactical reasons. This section denies the reality of the real world that bad lawyering is one of the most common causes of wrongful convictions. Since we are dealing with claims of actual innocence, it would be improper to deny an individual the opportunity to perform the most accurate tests on evidence to establish innocence because a trial lawyer made a bad decision, or couldn't afford a test. The problem is compounded in this bill by allowing the trial lawyer to cover the bad decision by requiring an affidavit from the trial lawyer explaining their actions. It is presumed under this bill that if a lawyer chooses to spend the limited resources available in a defense case on other then DNA testing, this decision will preclude post-conviction testing to establish that an individual is innocent. In our system of justice, innocence should not be able to be waived.

Page 8 subsection (C) at lines 5 through 7 and section (3) at lines 29 through 30. These sections make post-conviction DNA testing unavailable to anyone who admits or concedes guilt in any official proceeding or whose statement of guilt was the basis of the conviction. This section, again, denies hard facts we have learned from the 249 DNA exonerations nationwide, that 25% of those exonerations have involved an innocent individual who admitted their guilt or pled guilty to the crime. This category of wrongfully convicted individuals is largely represented by the most vulnerable in society; young people, people with mental disabilities, those most susceptible to suggestion. Rather then protecting the vulnerable in our society, this bill aims to take advantage of them. Form is clearly more important then justice when a law takes advantage of our most vulnerable citizens.

Page 9 section (10) at lines 24 through 29. This section of the bill calls for the court considering a post-conviction DNA testing request to guess at the outcome of the requested testing based on the court's view of other evidence. Other states and the federal government, when establishing a standard for the court to apply to the requested evidence, reasonably assume a favorable result of the testing for the petitioner, and then have the court decide if that would establish a reasonable probability that the petitioner would not have been convicted. This long established standard does not require a judge to try and guess what the result of the requested DNA testing might be. Rather, it reasonably asks a court to decide whether a favorable test result would be significant in the outcome of the case.

Page 3 section (d), lines 29 through 31. Also page 11, lines 17 through 18. This term of the bill calls for the person requesting evidence be tested pay for its retrieval. This is a concept

totally unique to the Alaska post-conviction DNA testing process. Not one statute passed by any other state or the federal government imagines such a requirement. An irony in including this section where it is in the bill is that it follows a section which requires an agency holding preserved evidence to produce an inventory of that evidence. It must be presumed that the agency will actually confirm they have each of the items on the inventory before providing it. Under this bill, after physically confirming they have each piece of evidence, the holding agency will then get to turn around and charge for going back again and collecting it. A more reasonable approach would envision the agency putting the evidence in a convenient place at the time of preparing the inventory, thus performing their work more efficiently, while doing away with the need to charge to collect evidence. A serious impact of this section will be that some individuals will be precluded from obtaining the evidence due to an inability to pay this tax on their right to DNA testing. The section is particularly offensive since evidence does not belong to one side or the other, but rather to the people. Charging a person claiming innocence to collect the evidence is inconsistent with this concept.

Page 15 section (a) at lines 16 through 24. This section establishes a task force to recommend standards and protocols regarding evidence preservation issues. Unlike a similar section in SB110, this version excludes any representative from the criminal defense bar, like the public defender or office of public advocacy, or any member from the innocence community, like from the innocence project, or any member from the legislature. The task force established by this section would not receive a wide range of information in order to produce the most balanced report based on the best information. The task force created by this bill will be limited to information from one part of the criminal justice community and will thus produce a report that is less then complete and so will be that much less effective.

Page 2 lines 25 through 31 through page 3 lines 1 through 6. This section sets deadlines for destruction of evidence obtained during the investigation of a case rather then allows the Task Force which is established at the end of the bill to study the issue and make recommendations. SB110 also established a task force with a wide ranging mandate to study evidence preservation issues, including the issue of proper retention. Reasonably, one of the issues that task force was to report back on was destruction deadlines. HB316 also establishes a task force but, without any study, also creates time limits for destruction. This does not seem to be making the best use of the task force created.

As an example of why more study might be necessary, this section also seems to allow for destruction of evidence if a challenge to the conviction is filed in federal district court. The section defining "direct review" mentions only judgment on appeal, petition for hearing and review by the United States Supreme Court. A task force studying this issue and making recommendations would most likely recommend evidence be retained during the pendency of a habeas action filed in federal district court.

The concerns listed above set out serious shortfalls in the contents of HB 316. If these sections are allowed to remain in the bill, unchanged, not only would post-conviction DNA testing be more difficult for the wrongfully convicted in Alaska to obtain then it currently is, it would be more difficult then anywhere else in the country. I urge the committee to correct these problems by removing the language of HB 316 set out above before the bill is passed

out of committee. If the sections I have identified are removed from HB 316, the bill will then actually provide innocent individuals with a procedure to obtain post-conviction DNA testing of potentially exculpatory evidence. Alaska will have a bill that works.

Thank you for allowing me to address this very important legislation. If the committee has any questions on any matters arising from HB 316 which I might help answer, please don't hesitate to contact me.

William B. Oberly
Executive Director
Alaska Innocence Project

	HB 316 Governor	SB 110 French	HB 174 Lynn
Conforming amendments	**Disposition of recovered or seized property** **Sections 1 & 2** **12.36.020 & 12.36.090** Clarifies that retention of evidence in this bill takes precedence over existing provisions that address disposition of evidence in various circumstances		
Crimes covered under the retention requirements	**Preservation of Evidence** **Section 3** **AS 12:36:200(a)(1)** Homicide; sexual assault in first and second degree	**Preservation of Evidence** **Section 1:** **AS 12:36:200(a)(1)** Same	
Retention time for evidence (other than biological material)	**Preservation of Evidence** **Section 3** **AS 12.36.200(a)(1)** **(A)** 18 months after conviction of a crime **(B)** If appealed, one year after final judgment by conclusion of direct review **(C)** If a timely application of post-conviction relief is filed under **(A)** & **(B)**, the date that a judgment dismissing or denying the application becomes final	**Preservation of Evidence** **Section 1** **AS 12:36.200(a)(1)** For the period of time that the crime remains unsolved	
Retention of biological material or evidence	**Preservation of Evidence** **Section 3** **AS 12:36:200(a)(2)** Until a person is unconditionally discharged for crime; or until the retention periods for physical evidence expires, whichever is longer	**Preservation of Evidence** **Section 1** **AS 12.36.200(a)(2)** While the person remains a prisoner in the custody of the Department of Corrections or subject to registration as a sex offender	**Preservation of Evidence** **Section 1** **AS 12.72.220(d)** For the period of time that person is incarcerated in connection with the case

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	HB 316 Governor	SB 110 French	HB 174 Lynn
Disposal of evidence that is that is of a size, bulk, quantity , or physical character that makes preservation impractical or hazardous	**Preservation of Evidence** **Section 3** **AS 12.36.200(b)** Agencies retain samples of evidence through written policies on removal and preservation of samples	**Preservation of Evidence** **Section 1** **AS 12.36.200(b)** Similar, but does not include the word, "hazardous"	
Requesting an inventory of the evidence and biological material that has been preserved	**Preservation of Evidence** **Section 3** **AS 12.36.200(c)&(d)** Upon the written request of a person convicted of a crime, an agency shall provide an inventory of evidence preserved in connection with the person's conviction. The person shall pay reasonable costs incurred in the retrieval of evidence	**Preservation of Evidence** **Section 1** **AS 12.36.200(c)&(d)** Upon the written request of a convicted prisoner or registered sex offender, an agency shall prepare an inventory of evidence preserved in connection with the person's criminal case.	
Procedure for disposal of evidence or biological material before expiration of time period for preservation	**Preservation of Evidence** **Section 3** **AS 12.36.200(e)** Allowed after notice to the parties and attorneys, if no party objects. If there is an objection, the agency can make a request to the court to allow disposal	**Preservation of Evidence** **Section 1** **AS 12.36.200(d)** Similar, but also includes notice to the Public Defender Agency	
Remedies if evidence is destroyed in violation of this section	**Preservation of Evidence** **Section 3** **AS 12.36.200(h)** The court may order the remedy it determines appropriate. However, the court may not reverse or vacate a conviction	**Preservation of Evidence** **Section 1** **AS 12.36.200(g)** The court may order the remedy it determines appropriate.	**Preservation of Evidence** **Section 1** **AS 12.72.220(a)** Applicant is not entitled to relief on an allegation that a law enforcement agency failed to preserve biological evidence

	HB 316 Governor	SB 110 French	HB 174 Lynn
Civil immunity for failure to comply with this section	**Preservation of Evidence** **Section 3** **AS 12.36.200(i)** A person may not bring civil action for damages for any good faith failure to comply	**Preservation of Evidence** **Section 1** **AS 12.36.200(h)** A person may not bring civil action for damages for any unintentional failure to comply	**Preservation of Evidence** **Section 1** **AS 12.72.220(c)** This section does not create a liability on the part of a law enforcement agency for failure to preserve evidence
Definitions	**Preservation of Evidence** **Section 3** **AS 12.36.200(k)** Definitions include: "agency" "biological material" "DNA" "unconditionally discharged"	**Preservation of Evidence** **Section 1** **AS 12.36.200(k)** Definitions include: "agency" "biological evidence" "DNA" "prisoner"	
A person convicted or sentenced for a crime seeking post-conviction relief by DNA testing	**Scope of post-conviction relief** **Section 4** **AS 12.72.010(4)** The person's exclusive method for obtaining DNA testing to support a claim of innocence is an application under AS 12.73, proposed in the bill		
Who can apply for post-conviction DNA testing of evidence	**Application for post-conviction DNA testing** **Section 6** **AS 12.73.010(a)** A person convicted of a felony under AS 11.41 who has not been unconditionally discharged		**Procedure for application for DNA testing; appointment of counsel** **Section 1** **AS 12.72.200(a)** After conviction, an incarcerated person

	HB 316 Governor	SB 110 French	HB 174 Lynn
Information that must be included in an application for post-conviction DNA testing	**Application for post-conviction DNA testing** **Section 6** **AS 12.73.010(b)** **(1)** An affidavit that states: **(A)** that the applicant did not commit the crime for which he was convicted or any less included offense **(B)** that the applicant did not solicit another person to commit, or aid or abet another person in planning or committing, the offense or any lesser included offense **(C)** that the applicant did not admit or concede guilt for the offense in any official proceeding **(2)** An affidavit by the applicant or applicant's lawyer stating the results of each DNA test already performed on evidence in the prosecution of the defendant **(3)** An affidavit by the applicant or applicant's lawyer describing previous efforts to obtain DNA testing (4)An affidavit by the applicant's lawyer stating the reason the DNA testing was not requested at the trial level, and or an affidavit stating efforts taken to obtain this affidavit		**Procedure for application for DNA testing; appointment of counsel** **Section 1** **AS 12.72.200(b)** **(1)** The results of all prior DNA tests, regardless of whether a test was performed by the defense or the prosecution **(2)** An affidavit sworn to by the applicant: **(A)** describing all prior efforts to obtain DNA testing **(B)** describing any prior application filed under this section **(C)** stating that the applicant is innocent of the crimes for which the applicant was convicted and any lesser included offense **(3)** An affidavit from trial counsel stating the reasons DNA testing, or more discriminating DNA testing, was not sought before trial, or a statement by the applicant explaining why the affidavit was not obtained
If the court determines the applicant is indigent Representation of an indigent person	**Application for post-conviction DNA testing** **Section 6** **AS 12.73.010(d)** Filing fees must be paid under the provisions of AS 09.19 and counsel shall be appointed under the provisions of AS 18.85.100 **Right to representation, services and facilities**		**Procedure for application for DNA testing; appointment of counsel** **Section 1** **AS 12.72.200(d)** The court shall appoint the public defender or the office of public advocacy

	HB 316 Governor	SB 110 French	HB 174 Lynn
	Sec 7 **AS 18.85.100(g)** An indigent applicant is entitled to representation by the Public Defender Agency in bringing an application for post-conviction DNA testing		
Findings and/or standards for when a court may order post-conviction DNA testing	**Findings required for post-conviction DNA testing orders** **Section 6** **AS 12.73.020** The court shall order post-conviction DNA testing if: **(1)** The applicant was convicted of a felony under AS 11.41 **(2)** Completion of the affidavits required by AS 12.73.010 have been submitted **(3)** The applicant has not admitted or conceded guilt in an official proceeding **(4)**the evidence was obtained as part of an investigation of the crime **(5)** Either: **(A)** The evidence has not been tested or the right to test the evidence was not waived for tactical reasons; or **(B)** the evidence has been previously tested, the applicant is requesting a more probative test, and the applicant did not waive for tactical reasons a similarly probative test **(6)** The evidence has been retained under conditions that ensure that it has not changed in a way that would undermine the accuracy of the test		**Standards for DNA testing** **Section 1** **AS 12.72.210** A court may not order DNA testing unless the applicant shows: **(1)** by clear and convincing evidence, that the results of the DNA testing could establish a reasonable doubt as to the applicant's guilt of the crime for which the applicant was convicted **(2)** that there is reason to believe that a law enforcement agency collected biological evidence pertaining to the offense and retains actual or constructive possession of the evidence that allows for DNA testing **(3)** that the applicant did not secure DNA testing before the applicant's conviction because DNA testing was not reasonably available or for reasons that constitute justifiable excuse, ineffective assistance of counsel, or excusable neglect **(4)** that the applicant consents to provide a biological sample for DNA testing

	HB 316 Governor	SB 110 French	HB 174 Lynn
	(7) The proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices **(8)** The applicant proposed a defense theory not inconsistent with the defense at trial, and that would establish innocence **(9)** If the defendant was convicted at trial, the identity of the perpetrator was an issue **(10)**There is a reasonable probability that the testing required will produce new evidence that would support the new defense theory and could conclusively establish innocence **(11)** The applicant consents to give a DNA sample and to have that sample entered into the DNA identification system **(11)** The application is timely as described in AS 12.73.040		
Summary dismissal by the court	**Summary dismissal and response** **Section 6** **AS 12.73.030** Allows for dismissal if the application does not include information required. If not dismissed, prosecuting authority has 45 days to file a response		
Timeliness of an application	**Timeliness** **Section 6** **AS 12.73.040** There is a presumption that an application filed within three years is timely. This may be rebutted by a finding that the applicant was incompetent or for any other good reason		**Results of the DNA test** **Section 1** **AS 12.72.240(a)** Notwithstanding any law or rule of procedure that bars an application for post-conviction relief as untimely, an applicant may use the results of a DNA test ordered under 12.72.200 as the grounds for filing a motion for post-

	HB 316 Governor	SB 110 French	HB 174 Lynn
			conviction review
Collection of DNA sample	**Testing procedures** **Section 6** **AS 12.73.050(a)** Samples taken from the applicant or a prisoner must be collected at a law enforcement of correctional facility.		**Testing; payment** **Section 1** **AS 12.72.230(a)** Samples shall be collected at a law enforcement or correctional facility
Testing of DNA sample	**Testing procedures** **Section 6** **AS 12.73.050(c)** DNA testing shall be performed at a laboratory operated or approved by the Department of Public Safety		**Testing; payment** **Section 1** **AS 12.72.230(a)** DNA samples shall be tested at a laboratory operated or approved by the Department of Public Safety.
Costs of DNA testing	**Testing procedures** **Section 6** **AS 12.73.050(c)** DNA testing ordered under this section shall be performed at state expense. The applicant shall pay the reasonable costs incurred in the retrieval from storage of material to be tested.		**Testing; payment** **Section 1** **AS 12.72.230(a)** The applicant shall pay the costs of the collection and testing of the sample. If indigent and represented by court-appointed counsel, with approval of counsel, the costs of testing shall be paid by the Public Defender Agency of the office of public advocacy

	HB 316 Governor	SB 110 French	HB 174 Lynn
DNA testing allowed without following the procedures in this bill	**Post-conviction testing by stipulation** **Section 6** **AS 12.73.060** The prosecution and an applicant may stipulate to DNA testing without the person filing an application under this chapter		
Definitions for post-conviction DNA testing procedures	**Definitions** **Section 6** **AS 12.73.900** Definitions include: "DNA" "innocence" or "innocent" "prisoner" "unconditionally discharged"		**Definitions** **Section 1** **AS 12.72.250** Definitions include: "actual or constructive possession" "DNA" "incarcerated"
Disposal of DNA for person not guilty	**DNA identification system** **Section 9&10** **AS 44.41.035(g)&(i)** Allows person to request disposal of DNA samples if not guilty of offense for which arrested and not convicted of another offense requiring DNA samples	**DNA identification system** **Section 2&3** **AS 44.41.035(g)&(i)** Same	
Creation and Repeal of Task Force to consider and address standards and practices for proper collection and preservation of evidence	**Uncodified Law** **Section 16&18** Starts work no later than Dec. 31, 2012 Repealed Jan. 1, 2013 **Task Force members:** Attorney general DPS commissioner State crime cab rep. Municipal police chief Municipal police chief not on state's interconnected road system State medical examiner Court system rep. Appointed victims' advocate	**Uncodified Law** **Section 5&7** Starts work not later than Dec. 31, 2011 Repealed Jan. 1, 2012 **Task Force members:** Attorney general DPS commissioner State crime cab rep. Municipal police chief Municipal police chief not on state's interconnected road system Public defender Public advocacy director Alaska Innocence Project	

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: HB 316
(H) Publish Date: 1/27/10

Identifier (file name): 0812-Law-Crim-12-31-09
Dept. Affected: Law
Title: An Act relating to post-conviction DNA
RDU: Administration and Support
Component: Office of the Attorney General
Sponsor: Rules Committee
Requester: Governor
Component Number: 2162

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel	4.0		2.0				
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**4.0**	**0.0**	**2.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	4.0		2.0				
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**4.0**	**0.0**	**2.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill relates to post-conviction DNA testing, preservation of certain evidence, and to the DNA identification system to post-conviction relief procedures.

Anticipated costs to the Department include:
Costs associated with one day quarterly meetings. The travel costs assumes that two of the positions will be reimbursed for their travel costs at approximately $1,000 per meeting.

The fiscal note anticipates the report to be delivered electronically to the governor and legislature.

Prepared by: Eileen Donahue, Division Operations Manager
Phone (907)465-5427
Division: Administrative Services Division
Date/Time 12/31/09 12:00 AM
Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date 12/31/2009

(Revised 10/13/2009 OMB)

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FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: HB 316
(H) Publish Date: 1/27/10

Identifier (file name): 0812-DPS-SCDL-12-30-09
Title "An Act relating to post-conviction DNA testing
Sponsor Rules Committee
Requester Governor

Dept. Affected: Public Safety
RDU Statewide Support
Component Scientific Crime Detection Laboratory
Component Number

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This proposed legislation would require post-conviction DNA testing for those who meet the legal requirements, allow for the preservation of certain evidence for possible future forensic testing, and requests amendments to the DNA identification registration system statute, 44.41.035, all of which would directly affect the State Crime Laboratory. The bill also contains proposals that would not affect the Crime Lab.

The State Crime Lab has hired and trained three new Forensic Technicians in the past year. With this addition in personnel the Evidence Section has been able to implement new procedures that have significantly reduced evidence turnaround time. Intensive inventory and focus on the creation of valuable space has brought that Section (cont.)

Prepared by: Orin Dym
Division Scientific Crime Detection Laboratory
Phone (907) 269-5743
Date/Time 12/31/09 8:10 AM

Approved by: Joe Masters, Commissioner
Department of Public Safety
Date 12/31/2009

(Revised 11/6/2009 OMB)

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STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 316

ANALYSIS CONTINUATION

forward in anticipation of a possible increase in evidence retention and submissions for analysis due to proposed legislation. These actions are believed to be sufficient to handle the increase in submissions should this proposed legislation become law and is believed to be able to carry the laboratory forward approximately 2-4 years before fiscal impact would become likely.

Because it is not understood just how much of an increase in evidence submissions for analysis and for retention the laboratory will ultimately see, it may be that a revised fiscal note will become necessary in the future; however, at this time the Department does not foresee a fiscal impact beyond its current needs.

The Section (s) revision to 44.41.035 speaks to the authority of the Department of Public Safety to obtain a subsequent DNA sample should the original sample not provide a profile adequate for database entry. Although the frequency of samples failing to provide sufficient information is relatively small, this is a critical concern and this addition to the statute would provide resolution. Because the number of subsequent sample requests is determined to be low, the laboratory does not anticipate fiscal impact resulting from passage of this amendment.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: HB 316
(H) Publish Date: 1/27/10

Identifier (file name): JU2009200812
Dept. Affected: DOC
Title "Act relating to post-conviction DNA testing; preservation of evidence, DNA identification registration system to post-conviction ..."
RDU Adminstration & Support
Component Office of the Commissioner
Sponsor Rules Committee
Requester Governor
Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This legislation relates to post-conviction deoxyribonucleic acid (DNA) testing, preservation of certain evidence, and to the DNA identification registrations system to post-conviction relief procedures.

Passage of this legislation should have no fiscal impact on the Department of Corrections current DNA testing process.

Prepared by: Leslie Houston, Director
Phone (907) 465-3339
Division Administration and Support
Date/Time 1/4/2010 0730 AM
Approved by: Dwayne Peeples, Deputy Commissioner
Date 1/4/2010
Department of Corrections

(Revised 11/6/2009 OMB)

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FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 316
(H) Publish Date: 1/27/10

Identifier (file name): 0812-DOA-PDA-12-15-09
Dept. Affected: Administration
Title: An Act relating to post-conviction DNA testing.....
RDU: Legal and Advocacy Services
Component: Public Defender Agency
Sponsor
Requester: Governor
Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0
Travel	0.0		0.0	0.0	0.0	0.0	0.0
Contractual	0.0		0.0	0.0	0.0	0.0	0.0
Supplies	0.0		0.0	0.0	0.0	0.0	0.0
Equipment	0.0		0.0	0.0	0.0	0.0	0.0
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	0.0		0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

See attached page

Prepared by: Quinlan Steiner, Director
Phone 907 334-4414
Division: Public Defender Agency
Date/Time 12/23/2009, 4:00 PM
Approved by: Rachael Petro, Deputy Commissioner
Department of Administration
Date 12/23/2009

(Revised 10/13/2009 OMB)

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FISCAL NOTE #2

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 316

ANALYSIS CONTINUATION

This bill creates procedures for obtaining post-conviction DNA testing, for preserving physical evidence, for destroying physical evidence, and creates a task force on standards for preservation of evidence.

It is expected that the Agency will receive new post-conviction appointments. The Innocence Project has recieved approximately 130 requests for assistance from convicted defendants asserting claims of innocence over the past 4 years. Additionally, the bill requires all petitioners whose convictions were entered before a certain date to file a petition by July 1, 2013. This is expected to increase the number of applications within the first three years of the bill.

The new appointments could increase costs due to attorney review and paralegal resources that must be applied to process the cases. It is difficult to predict how many cases or the level of review that will be required, but the Agency does not predict a significnat increase and therefore submits a zero fiscal note.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 316
(H) Publish Date: 1/27/10

Identifier (file name): 0812-DOA-OPA-12-15-09
Dept. Affected: DOA
Title: An Act relating to post-conviction DNA testing . . .
RDU: Legal and Advocacy Services
Component: Office of Public Advocacy
Sponsor
Requester: Governor
Component Number: 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill would create a procedure for DNA testing in post-conviction cases where a defendant was convicted of a crime under AS 11.41. The bill also creates a procedure for preserving and destroying physical evidence as well as a task force for standards for preservation of evidence. Because OPA handles all of the conflicts of interest from the Public Defender Agency, including any claims by clients that they received ineffective assistance of counsel from their PDA trial attorney, the agency receives a substantial portion of the post-conviction relief assignments. It is possible that cases filed under this new procedure could increase the attorney and support staff workload. Additionally, the agency must rely upon private contractors to handle a portion of these cases when the agency staff has a conflict of interest. The agency does not predict a significant fiscal impact as a resut of this statute and therefore submits a zero fiscal note.

Prepared by: Rachel Levitt, Director
Phone 907-269-3504
Division: Office of Public Advocacy
Date/Time 12/23/2009, 4:00 PM
Approved by: Rachael Petro, Deputy Commissioner
Date 12/23/2009
Department of Administration

(Revised 10/13/2009 OMB)

2315

COMMITTEE COPY

Star-Telegram

Texas to discard millions of babies' blood samples

Posted Monday, Feb. 08, 2010

WASHINGTON -- A critical safety net for babies -- that heel prick of blood taken from every newborn -- is facing an ethics attack.

After those blood spots are tested for devastating diseases, some states store them for years.

Scientists consider the leftover samples a treasure, both to improve newborn screening and to study bigger questions, such as which environmental toxins can harm a fetus' developing heart.

Seldom are parents asked to consent to such research, raising privacy concerns that are shaking up one of public health's most successful programs.

Texas is poised to throw away blood samples from more than 5 million babies to settle a lawsuit from parents angry at what they call secret DNA warehousing.

Advisers to the U.S. government hope to have national recommendations by spring on how to assure that all babies still get their newborn tests while allowing parents more say in what happens next.

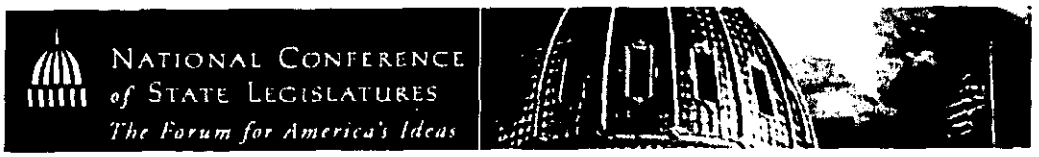
Newborn screening began in the 1960s, and today every baby is supposed to be tested for at least 29 rare genetic diseases.

Texas -- which will soon discard blood spots stored since 2002 rather than tracking down families for consent -- now seeks parental permission to store leftovers.

It has requests to destroy about 13,772 children's blood spots out of about 400,000 births since May, health department spokeswoman Carrie Williams says.

Looking for comments?

Distributed by Rep. Greenberg



Comparison of State Post Conviction DNA Laws

STATE	Who Can Apply For Testing?	Who Pays?	Preservation Required?	Fiscal Analysis of Preservation
Arizona	Convicted felons may request testing at any time	State, but court can order the petitioner to pay	Required during the pendency of the proceeding. allows court to order the state keep a sample for re-testing and requires that blood samples be preserved for 35 years	N/A
California	Incarcerated felons	State, but court can order the petitioner if able to pay	For time that offender remains incarcerated; entity has discretion to determine how to retain evidence; preservation portion of law is automatically repealed on 1/1/03	Quoted from fiscal note: "Potentially significant reimbursable local costs for evidence storage. Sheriff's offices and police departments differ in how long they store evidence, but most do not store evidence after appeals have been exhausted. By mandating storage, this bill creates annual costs that could be in the range of $1 million. For example, if Los Angeles City and County each have to purchase refrigeration units for biological evidence and rent additional storage facilities, the annual cost could exceed $200,000. Extrapolating statewide, the cost could reach $1 million since individual departments maintain their own facilities."
Connecticut	All offenders seeking a new trial based on newly discovered DNA evidence	N/A	N/A	N/A
Delaware	Anyone convicted of a crime may make motion within three years after judgement is final or, if judgment was final before 9/1/00, petitioner must file by 1/1/02	State, but court can order the petitioner if able to pay	N/A	N/A
Florida	Anyone tried and convicted of a crime may petition for testing if within two years of date of final judgment or date judgment is affirmed on appeal or by 10/1/03, whichever occurs later	State, but court can order the petitioner if able to pay	For non-capital cases, two years following date of final judgment or date judgment is affirmed on appeal; for capital cases, 60 days after execution of sentence	N/A
Idaho	Anyone convicted of a crime may request testing at any time; however, in capital cases, petition must be filed within 42 days of judgment or by 7/1/01 whichever is later	Petitioner, unless unable to pay	N/A	N/A
Illinois	Anyone convicted of a crime	N/A	At least seven years	N/A
Indiana	Certain convicted felons	Court will order payment responsibility	Retain during pendency of proceeding; court can order to keep a sample for re-testing	N/A

Louisiana	Convicted felons currently in custody may request testing by 8/30/05	Creates fund for indigent petitioners	In non-capital cases, preserve until 2005; for capital cases, preserve until execution of sentence	N/A
Maine	Anyone convicted of a crime; requires prosecutor to reopen case if test indicates innocence	N/A	N/A	N/A
Maryland	Certain felons incarcerated on or after effective date	Petitioner pays unless results are favorable to petitioner	In most cases, three years after imposition of sentence	Quoted from fiscal note: "It is expected that for most or all jurisdictions, the bill would require additional storage space, including refrigeration facilities for evidence such as DNA and blood samples. The expenses that would be incurred by law enforcement agencies for the additional storage facilities required by the bill cannot be reliably estimated, but it is expected that such expenses would be significant over time."
Michigan	Incarcerated felons convicted before the effective date may request testing by 1/1/06	Petitioner, unless unable to pay	Preserve during entire incarceration period	N/A
Minnesota	Anyone convicted of a crime	N/A	N/A	N/A
Missouri	Anyone in custody of DOC	N/A	N/A	N/A
Nebraska	Anyone in custody of DOC may request testing at any time	Petitioner unless unable to pay	Preserve during entire incarceration period	N/A
New Mexico	Anyone convicted of a crime may request testing prior to 7/1/02	Court may order petitioner to pay	N/A	N/A
New York	Anyone convicted of a crime before 1/1/96	N/A	N/A	N/A
North Carolina	Anyone convicted of a crime	Petitioner, unless unable to pay	Preserve sample of evidence for entire felony incarceration period; entity has discretion in how to store evidence; law applies to evidence in possession on or after 10/1/01	N/A
Oklahoma	Incarcerated, indigent felons can seek the assistance of the DNA Forensic Testing Program until 7/1/05	Indigent felons can take advantage of DNA Forensic Testing Program	Preserve evidence or representative sample of evidence from violent felonies for incarceration period	N/A
Oregon	Incarcerated for aggravated murder. A person not presently incarcerated for aggravated murder, murder or a sex offense must file motion within 48 months of the effective date	By petitioner if not incarcerated; if incarcerated, the petitioner pays if able	N/A	N/A
Tennessee	Anyone convicted of 1st or 2nd degree murder, aggravated rape, rape, aggravated sexual battery or at trial judge's discretion, any other offense, may petition at any time	State or the criminal injuries compensation fund on behalf of the petitioner	Preserve during pendency of proceeding	N/A

Texas	Anyone convicted of a crime	The state, unless a private lab not under contract is used	For non-capital cases, until the offender dies, completes the sentence or is released on parole; for capital cases, until the offender is executed, dies or is released on parole	Quoted from fiscal note: "The Texas Department of Criminal Justice would have costs related to staff time needed to reproduce, distribute, and store the required information. However, TDCJ estimates that this activity will not have any significant fiscal impact on agency operations."
Utah	Convicted felon may request testing at any time	Petitioner pays unless indigent, incarcerated or results are favorable to petitioner	After petition filed, agencies must cooperate to preserve evidence	N/A
Virginia	Convicted felons may motion to get testing for newly discovered evidence; incarcerated felons who plead not guilty or for any other person sentenced to death or convicted of certain felonies no matter the plea, may petition for a writ of actual innocence	N/A	In non-capital cases, offender must motion for preservation of evidence or representative sample of evidence; evidence is preserved for 15 years after conviction; in capital cases, evidence preserved until sentence is executed	N/A
Washington	Incarcerated felons may request testing by 12/3/04	N/A	Biological evidence can not be destroyed until 2005	N/A

For more information contact: Blake Harrison blake.harrison@ncsl.org at (303) 364-7700

Note: Illinois and North Carolina say that a "defendant" may motion for testing. Neither statute defines "defendant." For purposes of this chart, defendant means anyone convicted of a crime.

Return to DNA & Crime Page

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Denver Office: Tel: 303-364-7700 | Fax: 303-364-7800 | 7700 East First Place | Denver, CO 80230 | Map
Washington Office: Tel: 202-624-5400 | Fax: 202-737-1069 | 444 North Capitol Street, N.W., Suite 515 | Washington, D.C. 20001

HB 319

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Alaska State Legislature

House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 452-1146
Toll Free: (877) 465-3004

House District 10

Fax

To: Legislative Legal

Fax #: 465-2029 Number of pages including cover: 3

From: Margaret Dowling, Staff to Rep. Ramras
465-6841

Date: February 10, 2010

Re: HB 319 – Relating to Firearms

Please prepare a House Judiciary CS for HB 319 that incorporates the attached change to HB 319 at page 1, line 4.

Thank you,
Margaret

Representative_Jay_Ramras@legis.state.ak.us

HOUSE BILL NO. 319

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY REPRESENTATIVES HAWKER, Chenault, Johnson, Dahlstrom

Introduced: 1/29/10
Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

"An Act relating to firearms."

Amdt #1 Passed

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

*** Section 1.** AS 18.65.725 is amended by adding new subsections to read:

(e) The department shall ~~provide a~~ mail the permittee ~~with~~ a notice of expiration by first class mail at least 90 days before expiration of the permit.

(f) Notwithstanding AS 18.65.705(3), a permittee does not become ineligible to hold a permit, and need not return or surrender a permit, when ceasing to be a resident of the state, and the department may not require a permittee to return or surrender a permit because a permittee ceases to be a resident of the state. However, a permittee may not renew a permit if the permittee is not a resident of the state at the time of renewal.

*** Sec. 2.** AS 18.65.760(a) is amended to read:

(a) The holder of a permit issued under AS 18.65.700 - 18.65.790 may not

(1) alter the permit;

(2) allow another person to use the permit;

(3) possess or display a suspended or revoked permit; or

(4) **represent or** display an expired permit **as if the permit were valid**, unless the holder has submitted a complete, timely renewal form under AS 18.65.725 and the renewal process has been delayed due to circumstances not under the control of the applicant**; this paragraph does not require a holder to return or surrender a permit upon its expiration, nor may the department require a holder to return or surrender a permit upon its expiration**.

*** Sec. 3.** AS 18.65 is amended by adding a new section to article 11 to read:

Sec. 18.65.810. Execution of federal firearms forms. (a) The chief administrative officer of a municipal police department for a person who resides in the municipality and the head of the Alaska state troopers for a person who resides in the state but does not reside in a municipality with a police department shall execute within 30 days federal firearms forms required to be submitted by the person as a transferee of a firearm if the person is qualified under state law to possess the firearm.

(b) In this section, "chief administrative officer" has the meaning given in AS 18.65.290.

26-LS1273\E.1
Luckhaupt
2/4/10

AMENDMENT #2

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: HB 319

withdrawn

Page 2, line 8:

Delete "a new section"

Insert "new sections"

Page 2, following line 16:

Insert a new section to read:

"**Sec. 18.65.820. Checks on firearms while firearm secured by peace officer during certain contacts.** A peace officer may not conduct a check of the serial number of a firearm being legally carried by a person when the firearm has been secured by the peace officer under the authority of AS 11.61.220(a)(1)(A)(ii)."

Representative Mike Hawker
Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
907 465-4949 direct
800 478-4950 toll free
907 465-4979 fax

Interim:
716 W 4th Avenue
Anchorage, AK 99501
907 269-0244 office
907 269-0248 fax

House District 32:
Eagle River
Anchorage
Rainbow
Indian
Bird
Girdwood
Portage
Whittier
Sunrise
Hope

House Bill 319
Sponsor Statement

"An Act relating to firearms."

In Alaska, anyone who is 21 years of age or older and legally allowed to own a firearm is allowed to carry it concealed without a permit. However, there are still people who obtain Alaska Concealed Handgun Permits (ACHP) for other reasons, including reciprocity with other states. In the past few years, a few glitches in the permit system have come to light.

House Bill 319 makes the following changes to the statutes regarding an ACHP permit:

- Clarifies that a permit does not have to be surrendered when it expires or when a permit holder moves out of the state;
- clarifies that an expired permit can be displayed, as long as the permit holder is not claiming that it is a valid permit; and
- requires the Department of Public Safety to mail a notice to the permit holder at least 90 days prior to the expiration of a permit.

HB 319 also requires the chief law enforcement officer (CLEO) in Alaska jurisdictions to complete, in a timely manner, the required certification on an application to the Bureau of Alcohol Tobacco, Firearms and Explosives (BATFE) for approval to transfer a firearm registered under the National Firearms Act (NFA) of 1934 to a person who is qualified under state law to possess the firearm.

The CLEO certification is a mandatory step in the BATFE transfer process and unjustified delays in processing or refusal to cooperate compromise Second Amendment rights.

House Bill 319 makes commonsense changes to our ACHP statutes and ensures that NFA firearms transfers are not inappropriately obstructed.

Staff Contact: Juli Lucky 465-4949

2/3/2010 8:33 AM

Rep.Mike.Hawker@legis.state.ak.us • http://www.akrepublicans.org/hawker/

HB 319
Sectional Analysis
Prepared by Representative Mike Hawker's Office

Section 1: Adds two new sections to AS 18.65.725 (Alaska Concealed Handgun Permit renewal):

(e) Requires the department to send, via first class mail to the permittee, a notice that their permit is expiring. The notice must be sent at least 90 days prior to the permit expiration, which is the beginning of the renewal period.

(f) Clarifies that a person does not become ineligible to hold a permit and does not need to surrender the permit if he or she ceases to be a resident of the state. Alaska residency is still a requirement to obtain or renew a permit.

Section 2: Clarifies that a person can display an expired permit, but cannot represent it as valid, and that an expired permit does not need to be surrendered to the department.

Section 3: Requires the local law enforcement certification section of a Bureau of Alcohol, Tobacco, Firearms and Explosives firearm transfer application to be completed by the appropriate law enforcement officer within 30 days of submission by a person who is legally qualified to own the firearm.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 319**
() Publish Date:

Identifier (file name): HB319-LAW-CRIM-02-04-10
Dept. Affected: Law
Title: An Act relating to firearms
RDU: CRIMINAL
Component: Criminal Justice Litigation
Sponsor: Representative(s) Hawker, Chenault, Johnson, Dahlstrom, Neuman, Harris, Kelly, Gatto
Requester: Judiciary
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							
FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS							
Full-time							
Part-time							
Temporary							

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

This bill amends the statute relating to hand gun permits requiring Department of Public Safety to mail a notice to a permittee at least 90 days before expiration of the permit. The bill clarifies that a permittee is not required to return or surrender a permit upon expiration and a permittee may not represent an expired permit as valid unless the holder has submitted a timely renewal form. A permittee may not renew a permit if the permittee is not a resident of the state at time of renewal. This bill provides that the chief law enforcement officer in Alaska jurisdictions to execute within 30 days federal firearms forms required for the transfer of a firearm.

Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager — Phone 465-5427
Division: Administrative Services — Date/Time 2/4/10 12:00 AM
Approved by: Daniel S. Sullivan, Attorney General — Date 2/4/2010
Department of Law

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 319**
() Publish Date:

Identifier (file name): HB319-DPS-R&I-02-05-10
Title "An Act relating to firearms"
Sponsor Representative Hawker
Requester House Judiciary Committee

Dept. Affected: Public Safety
RDU Statewide Support
Component Records & Identification
Component Number 1190

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual	37.0						
Supplies	0.9		0.9	0.9	0.9	0.9	0.9
Equipment	0.9						
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**38.8**	**0.0**	**0.9**	**0.9**	**0.9**	**0.9**	**0.9**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	38.8		0.9	0.9	0.9	0.9	0.9
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**38.8**	**0.0**	**0.9**	**0.9**	**0.9**	**0.9**	**0.9**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This proposed legislation will require the Department of Public Safety (DPS) to provide written notice of expiration via first class mail to concealed handgun permit holders at least 90 days before the expiration of their permit.

A permit is not required to carry a concealed handgun in Alaska but DPS makes them available to citizens of Alaska. Because the permit is not required in Alaska, some permit holders forget to renew their permits before the expiration date resulting in higher fees for the permit holder.

A concealed handgun permit is valid for five years from the date of issue. Prior to 10/07/2009, the permit renewal date was based on the date the permit was originally issued. (cont.)

Prepared by: David Schade — Phone (907) 269-0202
Division Statewide Services — Date/Time 2/9/10 12:23 PM
Approved by: Joe Masters — Date 2/9/2010
Commissioner

(Revised 11/6/2009 OMB)

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 319

ANALYSIS CONTINUATION

During the 2009 legislative session, HB 201 was passed which provides that permits issued/renewed on or after 10/07/2009 shall expire on the permittee's birthdate in the fifth year following issuance/renewal. HB 201 was a direct effort to assist permit holders with remembering to renew their concealed handgun permit by synchronizing their permit expiration date with their birthdate. The legislation proposed under Section 1 of HB 319 furthers this effort.

Records for concealed handgun permit holders are maintained in the concealed handgun permit (CHP) database which sends information to the Alaska Public Safety Information Network (APSIN). Programming changes to both the CHP database and APSIN will be required to systematically identify those permits exipiring within 90 days and to automatically generate, print, and save notices of expiration and to update the CHP database to display the date the letter was generated. Automating the notification process will ensure all permit holders receive timely notice of expiration of their permit as this legislation proposes.

The one-time programming changes for both systems are estimated to take 370 hours of programming at $100/hr, plus the cost of one software license at $899.

Based on an average of 1,535 renewal notices per year, the cost of supplies (paper, envelopes, and postage) is estimated to be $900 per year.

HB 319
Background Information
Prepared by Representative Mike Hawker's Office

Section 3 of House Bill 319 requires the local law enforcement certification section of a Bureau of Alcohol, Tobacco, Firearms and Explosives (BATFE) firearm transfer application to be completed by the appropriate law enforcement officer within 30 days of submission by a person who is legally qualified to own the firearm. Attached is a copy of the BATFE firearm transfer application, also known as a "Form 4." Section 17 (highlighted on page 2 of the attached form) is the local law enforcement certification section that would have to be completed.

OMB No. 1140-0014 (10/31/2007)

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Application for Tax Paid Transfer and Registration of Firearm

ATF Control Number

2a. Transferee's Name and Address *(Including tradename, if any) (See instruction 2)*

2b. County

3a. Transferor's Name and Address *(Including trade name, if any) (Executors: see instruction 2k)*

3b. Transferor's Telephone Number and Area Code

3c. If Applicable: Decedent's Name, Address, and Date of Death

Submit in Duplicate to:
National Firearms Act Branch
Bureau of Alcohol, Tobacco, Firearms and Explosives, P.O. Box 73201
Chicago, Il 60673-7201

1. Type of Transfer *(Check one)*
☐ $5 ☐ $200
Submit with your application a check or money order for the appropriate amount made payable to the Bureau of Alcohol, Tobacco, Firearms and Explosives. Upon approval of this application, this office will acquire, affix and cancel the required "National Firearms Act" stamp for you. *(See instructions 2h, 2i and 3.)*

3d. Number, Street, City, State and Zip Code of Residence *(or Firearms Business Premises)* if Different from Item 3a.

The above-named and undersigned transferor hereby makes application as required by Section 5812 of the National Firearms Act to transfer and register the firearm described below to the transferee.

4. Description of Firearm *(Complete items a through h)*

a. Name and Address of Manufacturer and/or Importer of Firearm	b. Type of Firearm *(See instruction 1c)*	c. Caliber, Gauge or Size *(Specify)*	d. Model		
			Length *(Inches)*	e. Of Barrel:	f. Overall:
			g. Serial Number		

h. Additional Description or Data Appearing on Firearm *(Attach additional sheet if necessary)*

5. Transferee's Federal Firearms License *(If any)* *(Give complete 15-digit number) (See instruction 2b)*				6. Transferee's Special (Occupational) Tax Status *(If any)*	
First 6 digits	2 digits	2 digits	5 digits	a. Employer Identification Number	b. Class

7. Transferor's Federal Firearms License *(If any)* *(Give complete 15-digit number) (See instruction 2b)*				8. Transferor's Special (Occupational) Tax Status *(If any)*	
First 6 digits	2 digits	2 digits	5 digits	a. Employer Identification Number	b. Class

Under Penalties of Perjury, I Declare that I have examined this application, and to the best of my knowledge and belief it is true, correct and complete, and that the transfer of the described firearm to the transferee and receipt and possession of it by the transferee are not prohibited by the provisions of Chapter 44, Title 18, United States Code; Chapter 53, Title 26, United States Code; or Title VII of the Omnibus Crime Control and Safe Streets Act, as amended; or any provisions of State or local law.

9. Consent to Disclosure of Information to Transferee *(See instruction 8).* **I Do** or **Do Not** *(Circle one)* Authorize ATF to Provide Information Relating to this Application to the Above-Named Transferee.

10. Signature of Transferor *(or authorized official)*	11. Name and Title of Authorized Official *(Print or type)*	12. Date

The Space Below is for the use of the Bureau of Alcohol, Tobacco, Firearms and Explosives

By authority of the Director, This Application has been Examined, and the Transfer and Registration of the Firearm Described herein and the Interstate Movement of that Firearm, when Applicable, to the Transferee are:

Stamp Denomination

☐ Approved *(with the following conditions, if any)*

☐ Disapproved *(For the following reasons)*

Signature of Authorized ATF Official

Date

ATF Form 4 (5320.4)
Revised November 2004

2331

Transferee Information

The following questions must be answered by any transferee who is **not** a Federal firearms licensee or government agency. The transferee shall give full details on a separate sheet for all "YES" answers. *(See instruction 2d)*

13. Are You:	Yes	No
a. Charged by information or under indictment in any court for a crime punishable by imprisonment for a term exceeding one year?		
b. A **fugitive** from justice?		
c. An alien who is **illegally** or unlawfully in the United States?		
d. Under 21 years of age?		
e. An unlawful user of or addicted to, marijuana, or any depressant, stimulant, or narcotic drug, or any other controlled substance?		
f. Subject to a court order restraining you from harassing, stalking or threatening an intimate partner or child of such partner?		

14. Have You:	Yes	No
a. Been convicted in any court of a crime for which the judge could have imprisoned you for more than one year, even if the judge actually gave you a shorter sentence?		
b. Been discharged from the armed forces under **dishonorable** conditions?		
c. Been adjudicated mentally defective or been committed to a mental institution?		
d. Renounced your United States citizenship?		
e. Been convicted in any court of a misdemeanor crime of domestic violence? This includes any misdemeanor conviction involving the use or attempted use of physical force committed by a current or former spouse, parent, or guardian of the victim, or by a person with a similar relationship with the victim.		

15. Transferee's Certification *(See instruction 2e)*

I, _____, have a reasonable necessity to
(Name of Transferee)
possess the machinegun, short-barreled rifle, short-barreled shotgun, or destructive device described on this application for the following reason(s) _____

_____

and my possession of the device or weapon would be consistent with public safety (18 U.S.C. 922(b) (4) and 27 CFR 478.98).

UNDER PENALTIES OF PERJURY, I declare that I have examined this application and the documents submitted in support thereof, and to the best of my knowledge and belief it is true, correct and complete.

_____ _____
(Signature of Transferee) *(Date)*

16. Photograph

Affix
Recent Photograph Here
(A[illegible])

Law Enforcement Certification Section

17. Law Enforcement Certification *(See instruction 2e)*

I certify that I am the chief law enforcement officer of the organization named below having jurisdiction in the area of residence of

_____. I have no information indicating that the transferee will use the firearm or device
(Name of Transferee)
described on this application for other than lawful purposes. I have no information that the receipt or possession of the firearm or device described in item 4 would be place the transferee in violation of State or local law.

_____ _____
(Signature and Title of Chief Law Enforcement Officer) *(Date)*

_____
(Organization and Street Address)

_____
(County) *(Telephone Number)*

Important Information for Currently Registered Firearms

If this registration document evidences the current registration of the firearm described on it, please note the following information.

Estate Procedures: For procedures regarding the transfer of firearms in an estate resulting from the death of the registrant identified in item 2a, the executor should contact the NFA Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

Change of Address: Unless currently licensed under the Gun Control Act, the registrant shall notify the NFA Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226, in writing, of any change to the address in Item 2a.

Change of Description: The registrant shall notify the NFA Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226, in writing, of any change to the description of the firearm in Item 4.

Interstate Movement: If the firearm identified in item 4 is a machinegun, short-barreled rifle, short-barreled shotgun, or destructive device, the registrant may be required by 18 U.S.C. § 922(a)(4) to obtain permission from ATF prior to any transportation in interstate or foreign commerce.

Restrictions on Possession: Any restriction *(see approval block on face of form)* on the possession of the firearm identified in item 4 continues with the further transfer of the firearm.

Persons Prohibited from Possessing Firearms: If the registrant becomes prohibited by 18 U.S.C. § 922 from possessing a firearm, the registrant shall notify the NFA Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226, in writing, immediately upon becoming prohibited for guidance on the disposal of the firearm.

Proof of Registration: This approved application is the registrant's proof of registration and it shall be made available to any ATF officer upon request.

Instructions

1. **Definitions**

   a. **National Firearms Act (NFA).** Title 26, United States Code, Chapter 53. The implementing regulations are found in Title 27, Code of Federal Regulations, Part 479.

   b. **Gun Control Act (GCA).** Title 18, United States Code, Chapter 44. The implementing regulations are found in Title 27, Code of Federal Regulations, Part 478.

   c. **Firearm.** The term "firearm" means: (1) a shotgun having a barrel or barrels of less than 18 inches in length; (2) a weapon made from a shotgun if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length; (3) a rifle having a barrel or barrels of less than 16 inches in length; (4) a weapon made from a rifle if such weapon as modified has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length; (5) any other weapon as defined in 18 U.S.C. § 5845(e); (6) a machinegun; (7) a muffler or silencer for any firearm whether or not such firearm is included within this definition; and (8) a destructive device.

   d. **Person.** The term "person" means a partnership, company, association, trust, estate, or corporation, as well as a natural person.

   e. **Employer Identification Number (EIN).** Required of taxpayer filing special (occupational) tax returns under 27 CFR § 479.35.

   f. **SPECIAL (OCCUPATIONAL) TAX.** Required by the NFA to be paid by a Federal firearms licensee engaged in the business of manufacturing (Class 2), importing (Class 1), or dealing (Class 3) in NFA firearms.

   g. **Federal Firearms License.** A license issued under the provisions of the GCA to manufacture, import or deal in firearms.

   h. **ATF Officer.** An officer or employee of the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) authorized to perform any function relating to the administration of the NFA.

   i. **Transfer.** Selling, assigning, pledging, leasing, loaning, giving away, or otherwise disposing of a firearm.

   j. **Transferor.** The registered owner of a firearm who is applying to transfer it.

   k. **Transferee.** The person acquiring the firearm.

   l. **Misdemeanor Crime of Domestic Violence.** A crime that is a misdemeanor under Federal or State law and has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is co-habiting with or has cohabited with the victim as a spouse, parent, or guardian. The term includes all misdemeanors that involve the use or attempted use of physical force *(e.g., simple assault, assault and battery)*, if the offense is committed by one of the defined parties. The person is NOT considered to have been convicted of such crime unless the person was represented by a lawyer or gave up the right to a lawyer, and, if the person was entitled to a jury trial, was tried by a jury or gave up the right to a jury trial.

2. **Preparation of Application**

   a. **Authority.** As provided by 26 U.S.C. §§ 5811 and 5812, any person seeking to transfer a firearm tax paid must complete, in duplicate, an application on this form for each firearm. The transferor must furnish all the information called for on this application form.

   b. **Federal Firearms Licensees.** If the transferor or transferee is licensed under the GCA, the name, trade name *(if any)*, and address shall be identified on the ATF Form 4 as they appear on the license. If item 6 is completed, the entity identified must be the same as the entity identified in item 5. For example, **if item 5 identified a sole proprietor, item 6 cannot identify a corporation.** This also applies for the completion of items 7 and 8.

   c. **Transferee Qualifications.** If the transferee is an individual and not licensed under the GCA, the questions in items 13 and 14 must be answered.

   d. **Transferee Certification.** Item 15 must be completed by the transferee if:

      (1) the firearm to be transferred is a machinegun, short-barreled rifle, short-barreled shotgun, or destructive device;
      (2) the transferor is licensed under the GCA to deal in such device or firearm; and
      (3) the transferee is not licensed under the GCA to deal in such device or firearm.

   e. **Law Enforcement Certification.** Item 17 must be completed for an individual transferee, unless the transferee is licensed as a manufacturer, importer, or dealer under the GCA and is a special *(occupational)* taxpayer under the NFA at the time of the submission of the application for transfer. The chief law enforcement officer is considered to be the Chief of Police for the transferee's city or town of residence; the Sheriff for the transferee's county of residence; the Head of the State Police for the transferee's State of residence; a State or local district attorney or prosecutor having jurisdiction in the transferee's area of residence; or another person whose certification is acceptable to the Director, Bureau of Alcohol, Tobacco, Firearms and Explosives. If someone has specific delegated authority to sign on behalf of the Chief of Police, Sheriff, etc., this fact must be noted by printing the Chief's, Sheriff's, or other authorized official's name and title, followed by the word "by" and the full signature and title of the delegated person. The certificate must be dated no more than one year prior to the date of receipt of the application.

   f. **Photographs and Fingerprints.** An individual transferee, except if licensed as a manufacturer, importer, or dealer under the GCA, must (1) attach to Item 16, a 2 inch x 2 inch photograph of the frontal view of the transferee taken within 6 months prior to the date of the application and (2) attach two properly completed FBI Forms FD-258 *(Fingerprint Card with blue lines)* to the application. The fingerprints must be clear for accurate classification and taken by someone properly equipped to take them.

   g. **Signatures.** All signatures required on ATF Form 4 must be original in ink on both copies.

   h. **Remittance.** A check or money order, made payable to the Bureau of Alcohol, Tobacco, Firearms and Explosives, in the amount for the appropriate rate of tax *(see instruction 2i)* must be submitted with the ATF Form 4. Do not send cash.

   i. **Rate of Tax.** The tax on the transfer of any NFA firearm is $200.00, except that the tax is $5.00 on the transfer of a firearm classified as "any other weapon."

   j. **Photocopies, Computer Generated Versions, or Downloaded Version from ATF Website.** The ATF Form 4 may be photocopied, computer-generated *(as long as it is in the same format and contains all required information)*, or downloaded from the ATF website *(www.atf.gov)*. Please note the instructions on the website.

   k. **Estates.** If the firearm is being transferred from an estate, item 3a shall reflect: the executor's name, title *(executor (or executrix, administrator, administratrix)* of the estate of *(name))*, and the executor's address. Item 3c shall reflect the address of the decedent and the date of death. *(see the ATF Internet website at **www.atf.gov** for additional information about transfers from estates.)*

   l. **Submission.** All requested informtion must be entered in blue or black ink and must be legible. Send both copies of the ATF Form 4 and attachments to the address located in the upper right hand corner on the face side of the ATF Form 4. The return of the application or sending it to any other address will only delay the processing.

   m. **State or Local Permit.** If a State or local permit or license is required for the transferee prior to acquisition of the firearm, a copy of the permit must be included with the application.

3. **Approval of Application.** Upon approval of an application, the NFA Branch will affix the appropriate NFA transfer tax stamp, cancel it, and return the approved copy with the stamp affixed to the transferor for delivery with the firearm to the transferee. Since the approval of the application effectuates registration of the firearm to the transferee, the physical transfer of the firearm must be completed immediately; however, the transferor must not transfer the firearm until the application has been approved and received. If the physical transfer of the firearm cannot be completed immediately, the transferor must contact the NFA Branch with the specifics.

4. **Withdrawal of Application.** The transferor may withdraw an application prior to approval subsequent to a written request. The NFA Branch will arrange for a refund of the taxpaid.

5. **Cancellation of Approved Application.** The transferor may cancel an approved application only if the physical transfer of the firearm has not been completed. The transferor must return the approved application with the tax stamp affixed with a written request for cancellation, citing the need and that the physical transfer of the firearm did not take place. The NFA Branch will arrange for a refund of the tax paid.

6. **Disapproval of Application.** If the application is disapproved, the NFA Branch will note the reason for disapproval on the application and return one copy of the ATF Form 4 to the transferor. The NFA Branch will arrange for a refund of the tax paid.

7. **Reasons for Disapproval.** 26 U.S.C. § 5812 provides that applications shall be denied if the transfer, receipt, or possession of the firearm would place the transferee in violation of law.

   a. **State or Local Law.** If State or local law prohibits the receipt or possession of the firearm being transferred, the application will be disapproved.

   b. **Persons Prohibited from Receiving a Firearm.** The application will be disapproved if the transferee is a person prohibited from receiving a firearm by 18 U.S.C. § 922(g), which provides that it shall be unlawful for any person—

      (1) who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year;
      (2) who is a fugitive from justice;
      (3) who is an unlawful user of or addicted to any controlled substance;
      (4) who has been adjudicated as a mental defective or who has been committed to a mental institution;
      (5) who, being an alien, is illegally or unlawfully in the United States or except as provided in 18 U.S.C. 922(y)(2), has been admitted to the United States under a non-immigrant visa *(as that term is defined in 8 U.S.C. 1101(a)(26))*;
      (6) who has been discharged from the Armed Forces under dishonorable conditions;
      (7) who, having been a citizen of the United States, has renounced his citizenship;
      (8) who is subject to a court order that—

         (A) was issued after a hearing of which such person received actual notice, and at which such person had an opportunity to participate;
         (B) restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person, or engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
         (C) (I) includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child; or (II) by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury, or

      (9) who has been convicted in any court of a crime of domestic violence; to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

8. **Status Inquiries and Questions.** Information relating to the NFA and other firearms laws is available at the ATF Internet website at **www.atf.gov**. Any inquiry relating to the status of an application to transfer an NFA firearm or about procedures in general should be directed to the NFA Branch at (202) 927-8330. Please be aware that any dissemination by ATF of information relating to the application to register an NFA firearm must conform with the restrictions in 26 U.S.C. § 6103. The opportunity provided in item 8 to authorize ATF to disclose information is intended to enable ATF to respond to inquiries by the transferee regarding the application. The failure to complete item 8 will be considered a declination of authorization to release the information.

9. **Penalties.** Any person who violates or fails to comply with any of the requirements of the NFA shall, upon conviction, be fined not more than $10,000 or be imprisoned for not more than 10 years, or both. Any firearm involved in a violation of the NFA shall be subject to seizure and forfeiture. It is unlawful for any person to make or cause the making of a false entry on any application or record required by the NFA knowing such entry to be false.

10. **Compliance with the Gun Control Act.** All provisions of the GCA must also be complied with, including the recordkeeping requirements for licensees and the retention of ATF Form 4473 (5300.9) by licensees for dispositions to non-licensees.

Privacy Act Information

The following information is provided pursuant to Section 3 of the Privacy Act of 1974 (5 U.S.C. § 552(e)(3)):

1. **Authority.** Solicitation of this information is made pursuant to the National Firearms Act (26 U.S.C. § 5812). Disclosure of this information by the applicant is mandatory for transfer of an NFA firearm, unless the transfer is otherwise exempt from tax.

2. **Purpose.** To insure payment of the tax imposed by 26 U.S.C. § 5811; to insure that the transfer would not be in violation of law; and to effect registration of the firearm.

3. **Routine Uses.** The information will be used by ATF to make the determinations set forth in paragraph 2. In addition, to effect registration of the firearm, information as to the identification of the firearm, date of registration, and the identification and address of person entitled to possess the firearm will be entered into the National Firearms Registration and Transfer Record. No information obtained from an application, registration, or records required to be submitted by a natural person in order to comply with any provision of the National Firearms Act or regulations issued thereunder, shall, except in connection with prosecution or other action for furnishing false information, be used, directly or indirectly, as evidence against that person in any criminal proceeding with respect to a violation of law occurring prior to or concurrently with the filing of the application. The information from this application may only be disclosed to Federal authorities for purposes of prosecution for violation of the National Firearms Act.

4. **Effects of not Supplying Information Requested.** Failure to supply complete information will delay processing and may cause denial of the application.

Paperwork Reduction Act Notice

This information request is in accordance with the Paperwork Reduction Act of 1995. The information your provide is used in applying to transfer serviceable firearms taxpaid to persons other than special taxpayers qualified to deal in NFA firearms or government entities. Data is used to identify transferor, transferee, and firearm, and to ensure legality for transfer under Federal, State and local laws. The furnishing of this information is mandatory. *(26 U.S.C. § 5812)*

The estimated average burden associated with this collection of information is 4 hour(s) per respondent or recordkeeper, depending on individual circum-stances. Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be addressed to Reports Management Officer, Document Services Branch, Bureau of Alcohol, Tobacco, Firearms and Explosives, Washington, DC 20226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: January 29, 2010 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/10/10

The JUDICIARY Committee considered: **HB 319**

HOUSE BILL NO. 319
"An Act relating to firearms."

HB 319-FIREARMS

Recommends it be replaced with [ ] HCS *or* [✓] CS for HB319 (JUD)
For Senate Bills with new title: [ ] Technical Title /] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LAW	1			✓
DPS	2	✓		

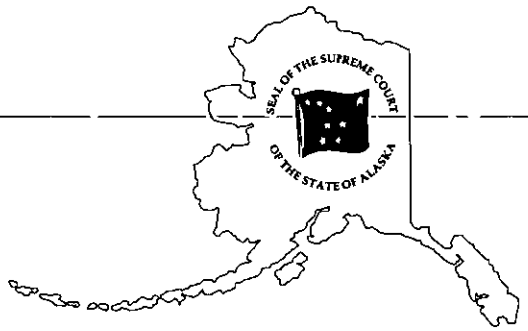
***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Eyerberg			–	
	HERRON			✓	
	DAHLSTROM	X			
		X			
Chair:	RAMRAS	X			
Chair:					

HB

323



ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
FAX (907) 264-8291

Doug Wooliver
Administrative Attorney

February 3, 2010

The Honorable Jay Ramras
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Ramras:

The Alaska Supreme Court respectfully requests that the House Judiciary Committee schedule a hearing on HB 323, which creates a new superior court judge position in Anchorage. The judge will handle civil cases.

An additional judge is needed because Anchorage superior court judges are the busiest in the state and a combination of more time being devoted to Child in Need of Aid cases and an ever-increasing number of unrepresented litigants has created a workload that is unsustainable.

Adding one new judge will not solve this problem (more judges will likely be needed in the very near future), but it will provide some relief as the court works to develop alternative ways to manage the workload.

A fiscal note and sponsor statement are attached. Thank you for considering this request.

Sincerely,

Doug Wooliver
Administrative Attorney
Alaska Court System

Sponsor Statement
HB 323

The Alaska Supreme Court is asking for a new superior court judge in Anchorage. The judge would be assigned to civil cases.

An additional judge is needed because Anchorage superior court judges have the highest caseloads in the state and a combination of devoting more time to Child in Need of Aid (CINA) cases and an ever-increasing number of unrepresented litigants has created a workload that is unsustainable.

Although judges' workloads are increasing, some of the additional work is the result of the court system doing a better job meeting the needs of those who come before it. This is particularly true with CINA cases.

Prior CINA practice was to have standing masters preside over all phases of a case with the exception of contested hearings. If a hearing was contested it would be assigned to an available superior court judge who would resolve the contested issue and then return the case to the standing master. Although that practice saved superior court time, it led to other problems.

The new practice begins the same as the old; a CINA case starts with a master until there is a contested issue. However, once that occurs, the case is permanently assigned to a superior court judge; it does not return to the master. Having a judge permanently assigned to the case is a better model in a number of ways, one of which is that it eliminates shuffling the family back and forth between a standing master and any number of superior court judges.

In addition to CINA cases, another prime driver behind the current workload is the prevalence of unrepresented litigants in domestic relations cases. Although we do not have historical statistics that track these cases, Alaska judges, like judges from across the country, have seen a significant increase over the past several years. What we know from current data is that when first filed about 37% of the cases have attorneys for both parties, 25% have an attorney for only one party and in 37% of the cases neither party has an attorney. The percentage of litigants appearing without counsel increases as the cases progress and increases significantly once litigants are filing motions after the initial decree is entered. Most of these post-judgment motions relate to child custody disputes.

Judges cite a list of time-consuming challenges that arise when counsel is absent from one side or both sides. Frequent motion practice, arguments unrelated to the relevant legal issues, delays stemming from the failure to submit needed information and judicial time spent calculating child support awards are some of those challenges. However, even though these litigants take more time, their cases are as important as those where the parties have lawyers and the judiciary is committed to ensuring that they too can meaningfully access the court.

Adding one new judge will not significantly reduce the workload of the Anchorage superior court (more judges will likely be needed in the very near future), but it will provide some relief as the court works to develop alternative ways to manage that workload. Thank you for considering this request.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB323-ACS-02-03-10
() Publish Date:

Identifier (file name):
Dept. Affected:
Title: An Act Relating to the Number of Superior Court Judges
RDU: Alaska Court System
Component: Trial Courts
Sponsor: House Rules Committee
Requester: Alaska Supreme Court
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services	440.5	440.5	440.5	440.5	440.5	440.5	440.5
Travel							
Contractual	18.8	18.8	18.8	18.8	18.8	18.8	18.8
Supplies	39.8	39.8	6.0	6.0	6.0	6.0	6.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**499.1**	**499.1**	**465.3**	**465.3**	**465.3**	**465.3**	**465.3**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	499.1	499.1	465.3	465.3	465.3	465.3	465.3
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**499.1**	**499.1**	**465.3**	**465.3**	**465.3**	**465.3**	**465.3**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time	**4.0**	**4.0**	**4.0**	**4.0**	**4.0**	**4.0**	**4.0**
Part-time							
Temporary							

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

House Bill 323 adds a new superior court judge position in the third judicial district. This fiscal note reflects the cost of that new position.

Prepared by: Doug Wooliver, Administrative Attorney — Phone 907-463-4750
Division: Alaska Court System — Date/Time 2/03/2010 @ 1:30 pm
Approved by: Doug Wooliver for Christine Johnson, Administrative Director — Date 2/3/2010
Alaska Court System

(Revised 10/13/2009 OMB)

Alaska Court System
Fiscal Note Calculations for HB 323

Personal Services

Superior Court Judge - Anchorage		257,300
In-Court Clerk - Anchorage, Range 12A		61,400
Law Clerk - Anchorage, Range 13D		60,400
Administrative Assistant - Anchorage, Range 12A		61,400
	Subtotal Personal Services	440,500
WAN Fees, Software & Licensing		18,800
Supplies (desk, computer, courtroom electronics, and chair) for four PFT positions		39,800
Fiscal Note Total		499,100
Breakdown by Expense Category:		
Personal Services Total		440,500
Contractual Total		18,800
Supplies Total		39,800
	Total	499,100

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 323
() Publish Date:

Identifier (file name): HB323-AJC-AJC-2-8-10
Title: Increasing Number of Superior Court Judges
Sponsor: Rules Committee by request
Requester: Alaska Court System

Dept. Affected: Alaska Judicial Council
RDU: Alaska Judicial Council
Component: Alaska Judicial Council
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services	0.0						
Travel	0.0						
Contractual	0.0						
Supplies	0.0						
Equipment	0.0						
Land & Structures	0.0						
Grants & Claims	0.0						
Miscellaneous	0.0						
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

Ordinarily, the Alaska Judicial Council incurs costs when a new judgeship is created. This new judgeship will coincide with another judicial vacancy on the Anchorage Superior Court. The Council intends to coordinate the solicitation and screening of applicants for these two positions. As a result, the increased cost to the Council is negligible.

Prepared by: Larry Cohn, Executive Director — Phone 279-2526
Division: Alaska Judicial Council — Date/Time 2/8/10 12:00 AM
Approved by: Larry Cohn, Executive Director — Date 2/8/2010

(Revised 11/6/2009 OMB)

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 3, 2010 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/26/10

The JUDICIARY Committee considered: **HB 323**

HOUSE BILL NO. 323
"An Act increasing the number of superior court judges designated for the third judicial district; and providing for an effective date."

HB 323-INCREASING NUMBER OF SUPERIOR CT JUDGES

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
CRT	1	✓		
AJC	2			✓

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Greenberg	✓			
	Dahlstrom	X			
	HERRON			X	
Chair:	RAMRAS	X			
Chair:					

HB

324

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HB 324
(H) Publish Date: 2/3/10

Identifier (file name): 0910-DOA-OPA-12-10-09
Dept. Affected: DOA
Title: An Act relating to the crime of failure to appear; relating to arrest for violating certain conditions of release . . . .
RDU: Legal and Advocacy Services
Component: Office of Public Advocacy
Sponsor: Rules Committee
Requester: Governor
Component Number: 43

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill makes changes and additions to the statutes applicable to bail in criminal cases , reduces the proof requirements to obtain convictions for failure to appear, expands the circumstances under which a material witness may be detained, and increases the maximum amount of time between arrest and initial appearance before a judicial officer from twenty-four to forty-eight hours.

Analysis continued on the second page.

Prepared by: Rachel Levitt, Director — Phone 907 269-3504
Division: Office of Public Advocacy — Date/Time 12/10/09, 4:30 p.m.
Approved by: Rachael Petro, Deputy Commissioner — Date 12/15/2009
Department of Administration

STATE OF ALASKA — BILL NO. HB 324

2010 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

Among the changes to the bail statutes, the bill includes a list of mandatory conditions of release for all defendants and a list of additional conditions of release that the court may impose. Under this legislation, a defendant will not be given a second bail review until the Court System provides information regarding a defendant's previous criminal charges and history of compliance with release. The bill will also codify a rebuttable presumption against release in certain categories of pretrial cases. Additionally, it will exclude certain categories of people from becoming third party custodians.

The agency does not predict a significant fiscal impact as a result of the proposed statute. Accordingly, the agency submits a zero fiscal note.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: HB 324
(H) Publish Date: 2/3/10

Identifier (file name): 0910-DOA-PDA-01-08-10
Dept. Affected: Administration
Title: An Act relating to the crime of failure to appear....
RDU: Legal and Advocacy Services
Component: Public Defender Agency
Sponsor: Rules Committee
Requester: Governor
Component Number: 1631

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

See attached.

Prepared by: Quinlan Steiner, Director — Phone 907 334-4414
Division: Public Defender Agency — Date/Time 1/8/10 4:00 PM
Approved by: Rachael Petro, Deputy Commissioner — Date 1/8/2010
Department of Administration

(Revised 10/13/2009 OMB)

2346

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 324

ANALYSIS CONTINUATION

This bill revises the procedures and standards of the bail statutes, moves the substantive crime of failure to appear from Title 12 to Title 11, and eliminates the culpable mental state for failure to appear.

The bill creates a rebuttable presumption that may be overcome by a preponderance of evidence that no release condition or combination of release conditions would reasonably assure the appearance of a person or the safety of others for certain higher level offenses. The bill also imposes stricter standards on who may act as a third-party custodian. It also provides that a person found guilty of a sexual felony, or of a class B or C felony with a prior felony conviction, may not be released pending sentence or appeal.

The bill changes current law on the time limit for bringing an arrestee before a judicial officer from 24 hours to 48 hours; changes the law that prohibits a court from allowing a person charged with a crime involving domestic violence from returning to the residence of the victim adopting standards for court to apply in deciding whether it is appropriate to allow the person to return to the home of the victim.

The agency does not predict a significant fiscal impact as a result of the proposed statute. Accordingly, the agency submits a zero fiscal note.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 3
Bill Version: HB 324
(H) Publish Date: 2/3/10

Identifier (file name): "An act relating to the crime of failure to appear;
Title relating to arrest for violating certain conditions of release...."

Dept. Affected: DOC
RDU Adminstration & Support
Component Office of the Commissioner

Sponsor Rules Committee
Requester Governor

Component Number 694

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*
SEE PAGE 2

Prepared by: Leslie Houston, Director
Division Administration and Support
Approved by: Dwayne Peeples, Deputy Commissioner
Department of Corrections

Phone (907) 465-3339
Date/Time 1/8/10 2:00 PM
Date 1/8/2010

(Revised 11/6/2009 OMB)

2348

STATE OF ALASKA BILL NO. HB 324
2010 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

This legislation relates to the crime of failure to appear, arrest for violating certain conditions of release, release before trial, before sentence, and pending appeal, material witnesses, temporary release, petition to revoke probation, first appearances, and domestive violence protective orders.

DOC projects there will be a shift of burden from the sentenced facilities to the State and Community Jails that house the unsentenced population during the adjudication process. While the total impact of the mandays of incarceration may not be significant when calculating time served for those convicted, there will be a significant increased number of mandays in the small jails. It is difficult for DOC to quantify the impact due to the multiple variables under this scenario, e.g. transportation costs from rural areas, medical costs based on need, plea bargains, dismissed cases, etc.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: HB 324
(H) Publish Date: 2/3/10

Identifier (file name): 0910-Law-Crim-01-08-10
Dept. Affected: Law
Title: An act relating to the crime of failure to appear; arrest for violating certain conditions of release and timing of release.
RDU: Criminal
Component: Criminal Justice Litigation
Sponsor: Rules
Requester: Governor
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The bill is a revision of out-of-date bail statutes. For persons who present a higher flight risk or greater danger to the community the bill requires that the offender must establish that they may be released with conditions that will reasonably assure their appearance and the safety of the community. It will change from 24 to 48 hours the deadline for bringing a person before a judicial officer after arrest. This should result in better charging decisions, more coherent bail arguments, and ultimately fewer bail hearings. It will also reduce the number of bail hearings on holidays and weekends. The fiscal impact will be positive but there is no way of quantifying this.

Prepared by: Eileen Donahue, Division Operations Manager
Phone 465-5427
Division: Administrative Services
Date/Time 1/8/10 12:00 AM
Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date 1/8/2010

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version:
() Publish Date:

Identifier (file name): HB324-DPS-AST-03-24-10
Dept. Affected: Public Safety
Title "An Act relating to failure to appear, release conditions, material witnesses, and domestic violence prohibitions."
RDU Alaska State Troopers
Component AST Detachments
Sponsor Rules by Request of the Governor
Requester House Judiciary
Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

This legislation would revise Alaska's bail law in the following ways: Changes the burden of proof in a bail hearing for persons considered a flight risk or a danger to others, moves the crime of failure to appear to Title 11 and changes the culpable mental state, for serious crimes adopts a presumption that no release condition(s) would assure the appearance of the person or safety of others, imposes a stricter standard on who may be a third party custodian, changes the deadline for bringing a person before a judicial officer from 24 to 48 hours, allows for a material witness to be arrested, changes domestic violence law to comply with current case law.

Passage of this legislation will not significantly change the daily operations of the department. This legislation will have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial
Phone 907-247-4480
Division Alaska State Troopers
Date/Time 3/24/10 10:00 AM
Approved by: Joseph Masters, Commissioner
Department of Public Safety
Date 3/24/2010

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 324
() Publish Date:

Identifier (file name):
Dept. Affected:
Title: Failure to appear; release procedures
RDU: Alaska Court System
Component: Trial Courts
Sponsor: House Rules
Requester: Governor
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services	628.1	628.1	628.1	628.1	628.1	628.1	628.1
Travel	23.9	23.9	23.9	23.9	23.9	23.9	23.9
Contractual	18.8	18.8	18.8	18.8	18.8	18.8	18.8
Supplies	39.8	39.8	6.0	6.0	6.0	6.0	6.0
Equipment							
Land & Structures	94.0	94.0					
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**804.6**	**804.6**	**676.8**	**676.8**	**676.8**	**676.8**	**676.8**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	804.6	804.6	676.8	676.8	676.8	676.8	678.8
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**804.6**	**804.6**	**676.8**	**676.8**	**676.8**	**676.8**	**678.8**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time	**4.0**	**4.0**	**4.0**	**4.0**	**4.0**	**4.0**	**4.0**
Part-time							
Temporary							

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

HB 324 makes several changes to the bail statutes. At least two of the changes will have a direct fiscal impact on the court system. The first requires court clerks to produce a criminal history report on each defendant who is seeking a second or subsequent bail review hearing. The second change impacting the court system is a provision that subjects certain defendants to a rebuttable presumption that no bail conditions will be sufficient to reasonably assure the presence of the defendant or the safety of the victim. A similar provision requires a showing by the defendant that he or she may be released on bail following a petition to revoke probation.

Prepared by: Doug Wooliver, Administrative Attorney Alaska Court System — Phone 907-463-4750
Division: Alaska Court System — Date/Time 3/22/10 @ 12:00 pm
Approved by: Doug Wooliver for Christine Johnson, Administrative Director — Date 3/22/2010
Alaska Court System

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. HB 324

ANALYSIS CONTINUATION

Criminal History Reports

Section 3 of the bill includes a provision that requires a judge to have received from a court clerk a report from court records that describes any previous criminal charges against the person and the person's history of compliance with conditions of release. Because there are many thousands of such hearings and because this is work not currently required of court clerks, this provision will have a fiscal impact on the court system. This note reflects the costs associated with the clerk time necessary to complete this task.

This note further assumes that the criminal history report contemplated by the bill is one that can be run on records the court has in its computer system, though the current version of the bill is not limited to computer records. Should the bill not be amended to clarify this point, this fiscal note will be substantially higher as many defendants have many hundreds or even thousands of pages of criminal history records that would have to be searched by hand.

Rebuttable Presumption

Section 4 establishes a rebuttable presumption that no condition or combination of bail conditions will reasonably assure the presence of the defendant or the safety of the victim for those defendants charged with certain specified offenses and those with specified criminal histories. A similar provision in section 12 of the bill states that a person appearing in court on a petition to revoke probation also has no right to be released unless the person can establish by a preponderance of the evidence that the proposed release conditions will reasonably assure the appearance of the person and the safety of the victim, other persons and the community.

It is difficult to determine how many cases this rebuttable presumption will impact. There is significant overlap between the various categories of those subject to the presumptions. For example, a person subject to the presumption because the person was charged with a felony within five years of being unconditionally released from another felony conviction, would also be subjected to the presumption if he or she was subject to a petition to revoke probation. Because many offenders subject to this presumption are likely to also be subject to a petition to revoke probation, and in order to avoid double counting, this note only counts those who are subject to a petition to revoke probation. That means that it will apply to roughly 18,000 cases a year.

The next difficult estimate to make is the number of bail hearings that will actually be impacted by the change in the law. Not all bail hearings are currently contested and, presumably, not all will be contested under the new provisions.

This note conservatively estimates that 85% of those 18,000 cases subject to the presumption will continue to be resolved in the same amount of time as under current practice. These will be the cases where there is up-front agreement between the prosecution and the defense as to the appropriate bail conditions. This note estimates that in about 10% of the cases (1,800) the hearings will last an additional 15 minutes. This is similar to the extra time currently needed when a bail provision is contested. Finally, this note assumes that 5% of the cases (900) subject to the presumption will result in evidentiary hearings where the defendant must put on evidence and witnesses in an attempt to overcome the presumption. These hearings are each estimated to last three hours.

This fiscal note reflects the judicial and clerical resources necessary for the additional time spent on bail issues.

Alaska Court System
Fiscal Note Calculations for HB 324

Personal Services

Superior Court Judge - Anchorage	257,300
In-Court Clerk - Anchorage, Range 12A	61,400
Law Clerk - Anchorage, Range 13D	60,400
Administrative Assistant - Anchorage Range 12A	61,400
Pro Tems Superior Court Judge (167days) - Various Court Locations	136,454
Clerical Staffing In-Court for pro tems (1,255 hours - Various Court Locations)	34,844
Clerical Staffing Criminal History (590 hours - Various Court Locations)	16,322
Subtotal Personal Services	628,100

Travel for Pro Tem Judges

Airfare - 19 trips @$400/trip	7,600
Per Diem - 90 Days X $60/day	5,400
Lodging - 90 nights X $110/night	9,900
Airport Parking/Ground Transportation ($50/trip)	950
Subtotal Travel for Pro Tem Judges	23,900

Supplies (desk, computer, courtroom electronics, and chair)	39,800
WAN Fees, Software & Licensing	18,800
Remodeling Costs within Nesbett Courthouse for New Judge	94,000
Fiscal Note Total	804,600

Breakdown by Expense Category:

Personal Services Total	628,100
Travel Total	23,900
Contractual Total	18,800
Supplies Total	39,800
Land & Structures Total	94,000
Total	804,600

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
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Alaska State Legislature

House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 456-3346
Toll Free: (877) 465-3004

House District 10

Fax

To: Jerry Luckhaupt

Fax #: (907) 465-2029 Number of pages including cover:

From: Jane W. Pierson

Date: March 26, 2010

Re: Final HJUD CS for Hb324 version 26-GH2910\R

Today, the House Judiciary Committee passed out the HJUD CS for HB324 (26-GH2910\R) with the following amendments:

1. 26-GH2910\R.9 as amended, change five to three.

2. 26-GH2910\R.10

3. Conceptual amendment p.12, L.4 following "residence" insert "or place of employment"

Representative_Jay_Ramras@legis.state.ak.us

HB324 - Pub. Test closed.

* ~~Amend #1~~ * FAILS

* Amend #2 - W/D

AMEND #3 - Dahl. objects - employment terms for bail. W/D

AMEND #4 W/D

AMEND #5 - FAILS

~~AMEND #6 - Conceptual~~

- AMEND #6 - FAILS

AMEND #7 - AMEND 5-3 - Passed

AMEND #8 - MATERIAL WITNESS W/D

AMEND #9 - Passed.

AMEND #10 - FAILS

AMEND #11 - FAILS

Jeff Rittman – ACLU

Page & Line

p. 2 Line 4-6 failure to appear no culp mental state. Felony w/ out mental state

p. 3 · L. 24-26 24-48 hrs.

p. 6 L. 2-4 maintain/seek employment presumed innocence.

p. 6, L. 22-26 med care/medication – appearance/threat to pub safety.

p. 7 L. 19-22 rebuttable presumption AK Const. leg history S.Ct overturn

p. 8 L. 18-22
p. 9 L. 7-12
} Warrantless search Presumption of innocence Reduction of Rts

2357

HB324 - Sue McLaurin 3/19/10

Gen purpose
- Streamline user friendly & easier to use.

Herron concurrence w/ CT SYST/DEF BAR.

Sec. 1. Failure to appear - Addresses MJ's bill
Def Bar - ? issue w/ creating new law. Admin clarify.

Sec 2 Non-cont

Sec. 3. Release procedures

Sec 4 - Release before TL.
Sim current law.
Changes cond of release re: meds.

Rebuttable Presumption -
(C) rebuttable presumption.
* federal law - challenged & affirmed
(CTS have prob.) rebuttable presumption
(preponderance of evidence)

5th AMEND evidentiary issue at trial (2)

12.30.016 - Sim to current law.

(f) new condition

(lower standard)
Reasonable suspicion vs. prob. cause

5.) 3rd Party - CT concern no
(c)(1) & (2) - SA/DV

6.) Confer

7) DV. - Williams v. State, 151 P.3 460 (2006)
DV Release Doesn't believe anyone.
Misuse of DV orders.

8.)

2360

Sec. 8 - Same

Sec 9 - Temp. release "before tr"

Sec 10 - Release before sentence; after conviction DV/SA Retribution

Sec 11 - Clarifying release of material wit.
050 * concern re: ARREST * Amend
Sec 12 - same as current law

Sec 13 - Conform

Sec 14 - Guilty upon conviction - Max Reg
Answers as to when applies //
15 - Def

16-18 - Conform

Sec 19 - inc DV petition along w/ order
— DV/SA —

20 - Rule 5 CRP. 24 to 48 hrs.
DV/SA Neces Delay does not inc 48 hrs.

23 - Conform

24 - Amend CRP 41 Bail Rev

25 - Conform

26 - Amend ApR1 603(b)

27-29 Repealers.
Uncodified
Eff date

p.10 - li. 28 — 3rd party cost
intend as alternative
not add condition

AMEND #12 – Conceptual — p. 7, L. 18-21
– ~~FAILS~~ – Delete all (B)

AMEND #13 — p. 12, L. 4
following residence add "or place of employment"
Passed

AMENDMENT #1 FAILS

OFFERED IN THE HOUSE BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

Page 2, line 4, following "(3)":

Insert "knowingly"

Page 2, lines 5 - 6:

Delete "; in this paragraph, the person's act of not appearing is conduct that does not require a culpable mental state"

26-GH2910\A.1
Luckhaupt
2/5/10

AMENDMENT #2 w/D

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: HB 324

Page 1, line 1, following "**arrest for**":

Insert "**certain crimes and for**"

Page 3, line 4:

Delete "or"

Insert "[OR]"

Page 3, line 4, following "12.30.027;":

Insert "**or**

(D) committed a misdemeanor crime against a person under AS 11.41;"

AMENDMENT #3 w/D

OFFERED IN THE HOUSE BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

Page 5, lines 28 - 31:

Delete all material.

Renumber the following paragraphs accordingly.

AMENDMENT #4 3/5

OFFERED IN THE HOUSE BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

Page 6, line 18, following "recommendations":

Insert "if the treatment recommendations are necessary to prevent the defendant from being a danger to others"

Page 6, line 20, following "authority":

Insert "if the medication is necessary to prevent the defendant from being a danger to others"

AMENDMENT #5

OFFERED IN THE HOUSE BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

Page 7, lines 9 - 29:

Delete all material.

Amended

AMENDMENT #6

OFFERED IN THE HOUSE BY REPRESENTATIVE HOLMES

WARRANTLESS SEARCHES

TO: CSHB 324(JUD), Draft Version "R"

Page 8, lines 11 - 15:

Delete all material.

Renumber the following paragraphs accordingly.

Page 8, line 31, through page 9, line 4:

Delete all material.

Renumber the following paragraphs accordingly.

AMENDMENT #7 Passed

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: CSHB 324(JUD), Draft Version "R"

Page 11, following line 10:

Insert a new paragraph to read:

"(2) the proposed custodian has been convicted in the previous three [redacted] years of a crime under AS 11.41 or a similar crime in this or another jurisdiction;"

Renumber the following paragraphs accordingly.

AMENDMENT #8 W/D

OFFERED IN THE HOUSE BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

Page 14, line 14:

Delete ", unless further detention is necessary to prevent a failure of justice"

AMENDMENT #9 Passed.

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: CSHB 324(JUD), Draft Version "R"

Page 16, line 14, following "chapter.":

Insert "**A judge may not order a peace officer to serve a petition that has been denied by the court.**"

24-48
26-GH2910\R.5
Luckhaupt
3/26/10

AMENDMENT #10 FAILED

OFFERED IN THE HOUSE BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

Page 16, lines 15 - 26:

Delete all material.

Renumber the following bill sections accordingly.

Page 20, line 31:

Delete "amendments"

Insert "amendment"

Page 20, line 31, through page 21, line 1:

Delete "secs. 20 and 21 of this Act apply"

Insert "sec. 20 of this Act applies"

Page 21, lines 2 - 3:

Delete "sec. 24"

Insert "sec. 23"

Page 21, line 5:

Delete "sec. 26"

Insert "sec. 25"

2373

AMENDMENT #11 FAILS

OFFERED IN THE HOUSE BY REPRESENTATIVE HOLMES

TO: CSHB 324(JUD), Draft Version "R"

Page 16, line 27, through page 17, line 17:
Delete all material.

Renumber the following bill sections accordingly.

Page 20, line 31:
Delete "amendments"
Insert "amendment"

Page 20, line 31, through page 21, line 1:
Delete "secs. 20 and 21 of this Act apply"
Insert "sec. 20 of this Act applies"

Page 21, lines 2 - 3:
Delete "sec. 24"
Insert "sec. 23"

Page 21, line 5:
Delete "sec. 26"
Insert "sec. 25"

26-GH2910\R
Luckhaupt
3/26/10

CS FOR HOUSE BILL NO. 324(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

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

*** Section 1.** AS 11.56 is amended by adding a new section to read:

Sec. 11.56.730. Failure to appear. (a) A person commits the crime of failure to appear if the person

(1) is released under the provisions of AS 12.30;

(2) knows that the person is required to appear before a court or judicial officer at the time and place of a scheduled hearing; and

(3) does not appear before the court or judicial officer at the time and place of the scheduled hearing; in this paragraph, the person's act of not appearing is conduct that does not require a culpable mental state.

(b) In a prosecution for failure to appear under (a) of this section, it is an affirmative defense that unforeseeable circumstances, outside the person's control, prevented the person from appearing before the court or judicial officer at the time and place of the scheduled hearing, and the person contacted the court orally and in writing immediately upon being able to make the contact.

(c) A person who commits failure to appear incurs a forfeiture of any security for any appearance of the person that was given or pledged to the court for the person's release, and is guilty of a

(1) class C felony if the person was released in connection with a charge of a felony, or while awaiting sentence or appeal after conviction of a felony;

(2) class A misdemeanor if the person was released in connection with a

(A) charge of a misdemeanor, or while awaiting sentence or appeal after conviction of a misdemeanor; or

(B) requirement to appear as a material witness in a criminal proceeding.

*** Sec. 2.** AS 12.25.030(b) is amended to read:

(b) In addition to the authority granted by (a) of this section, a peace officer

(1) shall make an arrest under the circumstances described in AS 18.65.530;

(2) without a warrant may arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer,

(A) committed a crime involving domestic violence, whether the crime is a felony or a misdemeanor; in this subparagraph, "crime involving domestic violence" has the meaning given in AS 18.66.990;

(B) committed the crime of violating a protective order in violation of AS 11.56.740; or

(C) violated a condition of release imposed under **AS 12.30.016(e)** [AS 12.30.025] or 12.30.027;

(3) without a warrant may arrest a person when the peace officer has **probable** [REASONABLE] cause for believing that the person has

(A) committed a crime under or violated conditions imposed as part of the person's release before trial on misdemeanor charges brought under AS 11.41.270;

(B) violated AS 04.16.050 or an ordinance with similar elements; however, unless there is a lawful reason for further detention, a person who is under [THE AGE OF] 18 **years of age** and who has been arrested for violating AS 04.16.050 or an ordinance with similar elements shall be cited for the offense and released to the person's parent, guardian, or legal custodian; or

(C) violated conditions imposed as part of the person's release **under the provisions of AS 12.30** [BEFORE TRIAL ON FELONY CHARGES BROUGHT UNDER AS 11.41.410 - 11.41.458].

*** Sec. 3.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.006. Release procedures. (a) At the first appearance before a judicial officer, a person charged with an offense shall be released or detained under the provisions of this chapter.

(b) At the first appearance before a judicial officer, a person who is charged with a felony may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under AS 12.30.011(a) would not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community.

(c) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any judicial

officer in the judicial district may review the conditions.

(d) If a person remains in custody after review of conditions by a judicial officer under (c) of this section, the person may request a subsequent review of conditions. Unless the prosecuting authority stipulates otherwise or the person has been incarcerated for a period equal to the maximum sentence for the most serious charge for which the person is being held, a judicial officer may not schedule a bail review hearing under this subsection unless

(1) the person provides to the court and the prosecuting authority a written statement that new information not considered at the previous review will be presented at the hearing; the statement must include a description of the information and the reason the information was not presented at a previous hearing; in this paragraph, "new information" does not include the inability to post the required bail;

(2) the prosecuting authority and any surety, if applicable, have at least 48 hours' written notice before the time set for the review requested under this subsection; the defendant shall notify the surety; and

(3) at least seven days have elapsed between the previous review and the time set for the requested review.

(e) Before a person may be released under this chapter, the person must sign and file a release agreement with the clerk of the court. The release agreement must describe the terms and conditions of the person's release and include the person's promise to abide by the terms and conditions.

(f) A judicial officer may solicit comments by the victim or a parent or guardian of a minor victim who is present at the bail review hearing and wishes to comment. The judicial officer shall consider those comments and any response by the person before making a decision concerning the release of the person.

(g) The judicial officer shall issue written or oral findings that explain the reasons the officer imposed the particular conditions of release or modifications or additions to conditions previously imposed. The judicial officer shall inform the person that a law enforcement officer may arrest the person without a warrant for violation of the court's order establishing conditions of release.

(h) Information offered or introduced at a bail hearing to determine conditions

of release need not conform to the rules governing the admissibility of evidence.

* **Sec. 4.** AS 12.30 is amended by adding new sections to read:

Sec. 12.30.011. Release before trial. (a) Except as otherwise provided in this chapter, a judicial officer shall order a person charged with an offense to be released on the person's personal recognizance or upon execution of an unsecured appearance bond, on the condition that the person

(1) obey all court orders and all federal, state, and local laws;

(2) appear in court when ordered;

(3) if represented, maintain contact with the person's lawyer; and

(4) notify the person's lawyer, who shall notify the prosecuting authority and the court, not more than 24 hours after the person changes residence.

(b) If a judicial officer determines that the release under (a) of this section will not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community, the officer shall impose the least restrictive condition or conditions that will reasonably assure the person's appearance and protect the victim, other persons, and the community. In addition to conditions under (a) of this section, the judicial officer may, singly or in combination,

(1) require the execution of an appearance bond in a specified amount of cash to be deposited into the registry of the court, in a sum not to exceed 10 percent of the amount of the bond;

(2) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash;

(3) require the execution of a performance bond in a specified amount of cash to be deposited in the registry of the court;

(4) place restrictions on the person's travel, association, or residence;

(5) order the person to refrain from possessing a deadly weapon on the person or in the person's vehicle or residence;

(6) require the person to maintain employment, or if unemployed, actively seek employment;

(7) require the person to notify the person's lawyer and the prosecuting authority within two business days after any change in employment;

(8) require the person to avoid all contact with a victim, a potential witness, or a codefendant;

(9) require the person to refrain from the consumption and possession of alcoholic beverages;

(10) require the person to refrain from the use of a controlled substance as defined by AS 11.71, unless prescribed by a licensed health care provider with prescriptive authority;

(11) require the person to be physically inside the person's residence, or in the residence of the person's third-party custodian, at time periods set by the court;

(12) require the person to keep regular contact with a law enforcement officer or agency;

(13) order the person to refrain from entering or remaining in premises licensed under AS 04;

(14) place the person in the custody of an individual who agrees to serve as a third-party custodian of the person as provided in AS 12.30.021;

(15) if the person is under the treatment of a licensed health care provider, order the person to follow the provider's treatment recommendations;

(16) order the person to take medication that has been prescribed for the person by a licensed health care provider with prescriptive authority;

(17) order the person to comply with any other condition that is reasonably necessary to assure the appearance of the person and to assure the safety of the victim, other persons, and the community.

(c) In determining the conditions of release under this chapter, the court shall consider the following:

(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the person;

(3) the nature and extent of the person's family ties and relationships;

(4) the person's employment status and history;

(5) the length and character of the person's past and present residence;

(6) the person's record of convictions;

(7) the person's record of appearance at court proceedings;

(8) assets available to the person to meet monetary conditions of release;

(9) the person's reputation, character, and mental condition;

(10) the effect of the offense on the victim, any threats made to the victim, and the danger that the person poses to the victim;

(11) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community.

(d) In making a finding regarding the release of a person under this chapter,

(1) except as otherwise provided in this chapter, the burden of proof is on the prosecuting authority that a person charged with an offense should be detained or released with conditions described in (b) of this section or AS 12.30.016;

(2) there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the victim, other persons, or the community, if the person is

(A) charged with an unclassified felony, a class A felony, or a sexual felony;

(B) charged with a felony, was previously convicted of a felony in this state or a similar offense in another jurisdiction, and less than five years have elapsed between the date of the person's unconditional discharge on the immediately preceding offense and the commission of the present offense;

(C) charged with an offense committed while the person was on release under this chapter for a charge or conviction of another offense;

(D) charged with a crime involving domestic violence, and has been convicted in the previous five years of a crime involving domestic violence in this state or a similar offense in another jurisdiction;

(E) arrested in connection with an accusation that the person committed a felony outside the state or is a fugitive from justice from another jurisdiction, and the court is considering release under AS 12.70.

Sec. 12.30.016. Release before trial in certain cases. (a) A judicial officer may impose, in addition to those required or authorized under AS 12.30.011,

conditions of release for offenses described in this section, if necessary to reasonably assure the person's appearance or the safety of the victim, other persons, or the community.

(b) In a prosecution charging a violation of AS 04.11.010, 04.11.499, AS 28.35.030, or 28.35.032, a judicial officer may order the person

(1) to refrain from

(A) consuming alcohol beverages; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, alcoholic beverages;

(2) to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of alcoholic beverages by a peace officer who has reasonable suspicion that the person is violating the conditions of the person's release by possessing alcoholic beverages;

(3) to submit to a breath test when requested by a law enforcement officer;

(4) to provide a sample for a urinalysis or blood test when requested by a law enforcement officer;

(5) to take a drug or combination of drugs intended to prevent substance abuse;

(6) to follow any treatment plan imposed by the court under AS 28.35.028.

(c) In a prosecution charging a violation of AS 11.71 or AS 11.73, a judicial officer may order the person

(1) to refrain from

(A) consuming a controlled substance; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, a controlled substance or drug paraphernalia;

(2) to submit to a search without a warrant of the person, the person's

personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of a controlled substance or drug paraphernalia by a peace officer who has reasonable suspicion that the person is violating the terms of the person's release by possessing controlled substances or drug paraphernalia;

(3) to enroll in a random drug testing program, at the person's expense, to detect the presence of a controlled substance, with testing to occur not less than once a week, and with the results being submitted to the court and the prosecuting authority;

(4) to refrain from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed;

(5) to refrain from being physically present, within a two-block area of, or within a designated area near, the location where the alleged offense occurred or at other designated places, unless the person actually resides within that area; or

(6) to refrain from the use or possession of an inhalant.

(d) In a prosecution charging misconduct involving a controlled substance under AS 11.71.020(a)(2) for the manufacture of methamphetamine, or its salts, isomers, or salts of isomers, if the person has been previously convicted in this or another jurisdiction of a crime involving the manufacturing, delivering, or possessing methamphetamine, or its salts, isomers, or salts of isomers, a judicial officer shall require the posting of a minimum of $250,000 cash bond before the person may be released. The judicial officer may reduce this requirement if the person proves to the satisfaction of the officer that the person's only role in the offense was as an aider or abettor and that the person did not stand to benefit financially from the manufacturing.

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting in any manner, including by telephone or electronic communication, the victim;

(3) engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to

aggressive behavior.

(f) In a prosecution charging a crime under AS 11.41.410 - 11.41.458, a judicial officer

(1) may order the person to have no contact with the victim except as specifically allowed by the court;

(2) may order the person to reside in a place where the person is not likely to come into contact with the victim of the offense;

(3) may order the person to have no contact with any person under 18 years of age except in the normal course of business in a public place;

(4) shall assure that the victim and the parent or guardian of a minor victim have been notified by a law enforcement agency or the prosecuting authority of a hearing where release is being considered, or that a reasonable effort at notification has been made; and

(5) shall solicit comments from the victim or a parent or guardian of the minor victim who is present and wishes to comment, and consider those comments before making a decision concerning the release of the person.

* **Sec. 5.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.021. Third-party custodians. (a) In addition to other conditions imposed under AS 12.30.011 or 12.30.016, a judicial officer may appoint a third-party custodian if the officer finds that the appointment will, singly or in combination with other conditions, reasonably assure the person's appearance and the safety of the victim, other persons, and the community.

(b) A judicial officer may appoint an individual as a third-party custodian if the proposed custodian

(1) provides information to the judicial officer about the proposed custodian's residence, occupation, ties to the community, and relationship with the person, and provides any other information requested by the judicial officer;

(2) is physically able to perform the duties of custodian of the person;

(3) either personally or by telephone, appears in court with the person and acknowledges to the judicial officer orally and in writing that the proposed custodian

(A) understands the duties of custodian and agrees to perform them; the proposed custodian must specifically agree to immediately report in accordance with the terms of the order if the person released has violated a condition of release; and

(B) understands that failure to perform those duties may result in the custodian being held criminally liable under AS 09.50.010 or AS 11.56.758.

(c) A judicial officer may not appoint a person as a third-party custodian if

(1) the proposed custodian is acting as a third-party custodian for another person;

(2) criminal charges are pending in this state or another jurisdiction against the proposed custodian;

(3) the proposed custodian is on probation in this state or another jurisdiction for an offense;

(4) the proposed custodian may be called as a witness in the prosecution of the person;

(5) the proposed custodian resides out of state; however a nonresident may serve as a custodian if the nonresident resides in the state while serving as custodian.

*** Sec. 6.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the **judicial officer** [COURT] shall consider the safety of the [ALLEGED] victim or other household member. To protect the [ALLEGED] victim, household member, **other persons,** and the **community** [PUBLIC] and to reasonably assure the person's appearance, the **judicial officer shall impose conditions required under AS 12.30.011, and** [COURT] may impose [BAIL AND] any of the conditions authorized under **AS 12.30.011** [AS 12.30.020], any of the provisions of AS 18.66.100(c)(1) - (7) and (11), and any other condition necessary to protect the [ALLEGED] victim, household member, **other persons,** and the **community** [PUBLIC], and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption

of alcohol.

*** Sec. 7.** AS 12.30.027(b) is amended to read:

(b) A **judicial officer** [COURT] may not order or permit a person released under (a) of this section to return to the residence of the [ALLEGED] victim or the residence of a petitioner who has a protective order directed to the person and issued or filed under AS 18.66.100 - 18.66.180 **unless**

(1) 20 days have elapsed following the date the person was arrested;

(2) the victim or petitioner consents to the person's return to the residence;

(3) the person does not have a prior conviction for an offense under AS 11.41 that is a crime involving domestic violence; and

(4) the court finds by clear and convincing evidence that the return to the residence does not pose a danger to the victim or petitioner.

*** Sec. 8.** AS 12.30.030 is repealed and reenacted to read:

Sec. 12.30.030. Appeal from conditions of release. (a) If a person remains in custody after a review provided for in AS 12.30.006(c) or (d), an appeal may be taken to the court having appellate jurisdiction over the court imposing the conditions. The appellate court shall affirm the order unless it finds that the lower court abused its discretion.

(b) If the appellate court finds that the lower court abused its discretion, the appellate court may modify the order, remand the matter for further proceedings, or remand the matter directing entry of the appropriate order, including release under AS 12.30.011(a). The appeal shall be determined promptly.

*** Sec. 9.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.031. Temporary release. (a) A person either before trial or after conviction who is detained under this chapter may be released temporarily if

(1) the person is being held in connection with a misdemeanor or class B or C felony;

(2) the release is requested because of the

(A) death of an immediate family member of the person;

(B) birth of the person's child if the defendant executes an affidavit of paternity before the release;

(C) person's need for a mental health or substance abuse assessment that the court finds cannot be accommodated in the facility or telephonically; or

(D) person's need for a medical or dental examination required for acceptance into a residential treatment facility; and

(3) the court solicits information from the Department of Corrections regarding the defendant's conduct while incarcerated and considers that information when making a decision under this subsection.

(b) If a court orders temporary release of a person under (a) of this section, the court shall order the person to appear in court during normal business hours at the end of the period of temporary release and before the person is returned to a correctional facility.

*** Sec. 10.** AS 12.30.040 is repealed and reenacted to read:

Sec. 12.30.040. Release before sentence; release after conviction. (a) Except as provided in (b) of this section, a person who has been convicted of an offense and is awaiting sentence or who has filed an appeal may be released under the provisions of this chapter if the person establishes, by clear and convincing evidence, that the person can be released under conditions that will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

(b) A person may not be released under (a) of this section if the person has been convicted of an offense that is

(1) an unclassified or class A felony;

(2) a sexual felony;

(3) a class B felony if the person has been convicted within the previous 10 years of a felony committed in this state or a similar offense committed in another jurisdiction; or

(4) a felony in violation of AS 11.41, and the person has been found guilty but mentally ill.

(c) A person who has been convicted of an offense and who has filed an

application for post-conviction relief may not be released under this section until the court enters an order vacating all convictions against the person. A person who has prevailed in an application for post-conviction relief may seek release before trial in accordance with the provisions of this chapter.

*** Sec. 11.** AS 12.30.050 is repealed and reenacted to read:

Sec. 12.30.050. Release of material witnesses. (a) If the prosecution or defense establishes by affidavit or other evidence that the testimony of a person is material in a criminal proceeding, and that it may be impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and consider the release or detention of the person under the provisions of AS 12.30.011.

(b) A material witness may not be detained because of inability to comply with any condition of release if the testimony of the witness can adequately be secured by deposition, unless further detention is necessary to prevent a failure of justice.

(c) Release of a material witness under (a) of this section may be delayed for a reasonable period of time for the deposition of the witness to be taken.

*** Sec. 12.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.055. Persons appearing on petition to revoke. A person who is in custody in connection with a petition to revoke probation does not have a right to be released under this chapter. A judicial officer may, however, release the person under the provisions of this chapter, if the person establishes by a preponderance of evidence that the proposed release conditions will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

*** Sec. 13.** AS 12.30.075(a) is amended to read:

(a) Cash or other security posted by a **person** [DEFENDANT] under **AS 12.30.011** [AS 12.30.020] that would otherwise be forfeited shall be held by the court in trust for the benefit of the victim if, within 30 days after an order of the court establishing a failure to appear or a violation of conditions of release, the prosecuting authority gives notice that restitution may be requested as part of the sentence if the **person** [DEFENDANT] is convicted.

*** Sec. 14.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.078. Conviction occurrence. In this chapter, a conviction occurs at the time the person is found guilty, either by plea or verdict, of the offense.

*** Sec. 15.** AS 12.30.080 is amended by adding new paragraphs to read:

(3) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(4) "knowingly" has the meaning given in AS 11.81.900;

(5) "peace officer" has the meaning given in AS 11.81.900;

(6) "sexual felony" has the meaning given in AS 12.55.185;

(7) "stalking" means a violation of AS 11.41.260 or 11.41.270.

*** Sec. 16.** AS 12.55.155(c)(12) is amended to read:

(12) the defendant was on release under **AS 12.30** [AS 12.30.020 OR 12.30.040] for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

*** Sec. 17.** AS 12.80.060(g)(2) is amended to read:

(2) "offense" means conduct subjecting a person to arrest as an adult offender, or as a juvenile charged as an adult,

(A) due to a violation of a federal or state criminal law, or municipal criminal ordinance;

(B) under AS 12.25.180;

(C) under **AS 11.56.730** [AS 12.30.060]; or

(D) under AS 12.70.

*** Sec. 18.** AS 18.65.530(a) is amended to read:

(a) Except as provided in (b) or (c) of this section, a peace officer, with or without a warrant, shall arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer, within the previous 12 hours,

(1) committed domestic violence, except an offense under AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

(2) committed the crime of violating a protective order in violation of AS 11.56.740;

(3) violated a condition of release imposed under **AS 12.30.016(e) or**

(f) or 12.30.027 [AS 12.30.025, 12.30.027, OR 12.30.029].

*** Sec. 19.** AS 18.66.160(a) is amended to read:

(a) **Unless, on the record in court, the person has already been provided a copy of the court's order, process** [PROCESS] issued under this chapter shall be promptly served and executed. If process is to be served upon a person believed to be present or residing in a municipality, as defined in AS 29.71.800, or in an unincorporated community, process shall be served by a peace officer of that municipality or unincorporated community who has jurisdiction within the area of service. If a peace officer of the municipality or unincorporated community who has jurisdiction is not available, a superior court, district court, or magistrate may designate any other peace officer to serve and execute process. A state peace officer shall serve process in any area that is not within the jurisdiction of a peace officer of a municipality or unincorporated community. A peace officer shall use every reasonable means to serve process issued under this chapter.

*** Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(1), Alaska Rules of Criminal Procedure, is amended to read:

(a) Appearance Before the Judge or Magistrate.

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested person shall be taken before the nearest available judge or magistrate without unnecessary delay. This appearance may be accomplished by the use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2. **Necessary** [UNNECESSARY] delay within the meaning of this paragraph (a) is defined as a period not to exceed **forty-eight** [TWENTY-FOUR] hours after arrest, including Sundays and holidays.

*** Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(2), Alaska Rules of Criminal Procedure, is amended to read:

(2) If

(i) The judge or magistrate commits the arrested person to jail for a purpose other than to serve a sentence, and

(ii) The jail is situated in a different community from the place where the judge or magistrate committed the arrested person to jail, and

(iii) The arrested person is not represented by counsel, and

(iv) The arrested person has not previously had a bail review, and

(v) The arrested person has no date, time and place established for his or her next court appearance, then the arrested person shall be taken before a judge or magistrate in the community where the jail is located within **forty-eight** [TWENTY-FOUR] hours of the person's detention in that jail

(aa) in order for bail to be reviewed, and

(bb) in order to determine if the person is represented by counsel, and

(cc) in order for [THE] counsel to be appointed, if appropriate.

*** Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to **AS 12.30.006 - 12.30.080** [AS 12.30.010 -12.30.080].

*** Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(b), Alaska Rules of Criminal Procedure, is amended to read:

(b) **Types of Bonds.** The court may require:

(1) the execution of an unsecured appearance bond in an amount specified, under the criteria set forth in **AS 12.30.011** [AS 12.30.010(a)];

(2) the execution of an appearance bond in a specified amount and the

deposit in the registry of the court, in cash [or other security], of a sum not to exceed 10 percent of the amount of the bond;

(3) the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(4) the execution of a performance bond in a specified amount and the deposit in the registry of the court of cash [or other security].

*** Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(c), Alaska Rules of Criminal Procedure, is amended to read:

(c) **Separate Bonds.**

(1) If a performance bond is required, it must be enforced separately from any appearance or bail bond. Appearance in court may not be a condition of a performance bond.

(2) The court may not change or add to a bond requirement that was ordered in a previous proceeding unless the surety has been notified and agrees to the change or addition.

*** Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 206(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Release Pending Appeal.** When an appeal on the merits is pending, an appeal under **AS 12.30.030** [AS 12.30.030(b)] from an order refusing bail pending appeal or imposing conditions of release pending appeal shall be in the form of a motion filed in the merit appeal. The motion must be filed with the clerk of the appellate courts within 30 days after the date of the notice of the order from which review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual information relevant to **AS 12.30.011(c)** [AS 12.30.020(c)], including but not limited to the following:

(1) The full name of the appellant; the trial court case number; the

offenses of which the appellant was convicted, if applicable; the date of sentencing; and the complete terms of the sentence;

(2) That application for release pending appeal has been made to the trial court, the reasons given by the trial court for denying the application in whole or in part, and facts and reasons demonstrating why the action of the trial court on the application was erroneous or an abuse of discretion;

(3) A concise statement of the question or questions to be raised on the appeal with a showing that the question or questions were raised in the trial court;

(4) Family: marital status; length of marriage; children, and their ages; other relatives in the area of residence;

(5) Employment and financial circumstances: name of employer at time of arrest and during pre-trial release; type of work; how long so employed; and offer or promise of employment if released pending appeal; assets of the appellant or of relatives or friends relevant to the ability to post money bail;

(6) Health: history of mental illness, alcoholism, or addiction to drugs, if any;

(7) Residence: length of residence in the city or town in which the appellant resided at the time of arrest;

(8) Criminal history: criminal convictions within ten years prior to the present arrest; if the appellant has ever forfeited bail, or had release, probation, or parole revoked, the date, the name and location of the court, and a brief description of the circumstances; whether the present offense was committed while the appellant was on bail or other release or on probation or parole; any other criminal charges pending against the appellant at the time [OF] the motion is filed.

*** Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 603(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Criminal Appeals.** If a sentence of imprisonment is imposed, **the court may admit the defendant to bail and stay the sentence as provided by law and by these rules** [ADMISSION TO BAIL WILL BE ALLOWED AND THE SENTENCE

STAYED], pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his or her assets. An order placing the defendant on probation will be stayed if an appeal is taken.

*** Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029, and 12.30.060 are repealed.

*** Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 11.56.730, enacted in sec. 1 of this Act, applies to acts committed on or after the effective date of this Act.

(b) The amendments to AS 12.25.030(b) made by sec. 2 of this Act apply to arrests for violation of conditions of release occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(c) AS 12.30.006 - 12.30.021, enacted in secs. 3 - 5 of this Act; AS 12.30.030, repealed and reenacted in sec. 8 of this Act; AS 12.30.031, enacted in sec. 9 of this Act; AS 12.30.040, repealed and reenacted in sec. 10 of this Act; AS 12.30.055, enacted in sec. 12 of this Act; and AS 12.30.078, enacted in sec. 14 of this Act apply to bail proceedings occurring on and after the effective date of this Act for offenses occurring on or after the effective date of this Act.

(d) AS 12.30.050, repealed and reenacted in sec. 11 of this Act, applies to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(e) The amendments to AS 12.30.027(a) and (b) made by secs. 6 and 7 of this Act; to AS 12.30.075 made by sec. 13 of this Act and to 12.30.080 made by sec. 15 of this Act apply to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(f) The amendments to Rule 5, Alaska Rules of Criminal Procedure, made by secs. 20

and 21 of this Act apply to offenses occurring on or after the effective date of this Act.

(g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, made by sec. 24 of this Act applies to bail proceedings occurring on or after the effective date of this Act.

(h) The amendment to Rule 603(b), Alaska Rules of Criminal Procedure, made by sec. 26 of this Act applies to convictions occurring on or after the effective date of this Act.

*** Sec. 29.** This Act takes effect July 1, 2010.

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
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Alaska State Legislature

House of Representatives

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House District 10

Fax

To: Leg. Legal
Attn: Jerry Luckhaupt

Fax #:(907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: March 24, 2010

Re: HB324

Jerry,

DOL has done up a red-line version of HB324. I have asked that they send the word document to you guys at legal for drafting. We are trying to move this bill out of HJUD on Friday. Anne Carpeneti should be contacting you.

Jane

Representative_Jay_Ramras@legis.state.ak.us

STATE OF ALASKA

SEAN PARNELL, GOVERNOR

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

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February 3, 2010

Representative Jay Ramras
Chair, House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 324 – Bail Reform

Dear Chairman Ramras:

I am writing to respectfully request that you schedule House Bill 324 for a hearing in the House Judiciary Committee at your earliest convenience. HB 324 is one of several bills that the Governor has introduced to confront and help reduce the alarming and discouraging rate of sex offenses and crimes involving domestic violence in our state. This bill specifically relates to bail including bail in sex and domestic violence offenses.

This bill makes several important changes in Alaska's law relating to bail. In 1966 the Alaska Legislature enacted the Alaska Bail Act modeled after SB 1357, 89 Congress First Session. There have been only piecemeal revisions to this nearly 50 year old law. In 1984, the Federal government revised their bail statutes. This bill requires a person charged with a serious sex offense to prove that release conditions before trial will protect the victim and the public. It adopts standards for persons who may be appointed as third party custodians for the person released on bail. The bail prohibits a person found guilty of a serious sex offense from being released before sentencing or during an appeal of a conviction. It protects victims of domestic violence by setting standards that the court must find before allowing a perpetrator of domestic violence to return to the victims' residence. Additionally, it allows more time between a defendant's arrest and first appearance in court so that the police can investigate more fully, so that the prosecutor can make informed charging decision, present of better information and bail arguments in court and more time to contact the victim so he or she can appear at the bail hearing.

A sectional analysis is attached that describes each provision of the bill.

Thank you for your consideration of this request.

Sincerely,

Daniel S. Sullivan
Attorney General

DSS:ADC: sf

RELEASE BEFORE TRIAL AND AFTER CONVICTION
Sectional Analysis of Proposed Legislation

- **Section 1** of the bill moves the crime of failure to appear at a court appearance from Title 12 to Title 11. The proposed law is similar to current law with one exception -- it provides that if a person knows that he or she is required to appear, the prosecution does not have to prove an additional culpable mental state regarding the conduct of not appearing. It also provides an affirmative defense that the defendant, due to unforeseeable circumstances outside his or her control, was prevented from appearing at the hearing, and that the defendant notified the court orally and in writing immediately upon being able to make the contact.

  The penalties are the same as under current law, except that the bill adopts a violation for failure to appear in connection with a violation.

- **Section 2** includes a conforming amendment to AS 12.25.030(b). It also changes the standard for a law enforcement officer to make an arrest without a warrant in certain cases from "reasonable cause" to "probable cause". The standard in AS 12.25.030(b) would then be the same as in subsection AS 12.25.030(a). Reasonable cause and probable cause are similar.

  Section 2 also allows a law enforcement officer to arrest a person for violation of conditions of release if the officer has probable cause to believe the person has violated conditions in connection with release under AS 12.30. Law enforcement supports this change because it avoids, for example, an officer having to get an arrest warrant for a person if the person's custodian reports that the person has violated his or her release conditions.

- **Section 3** adopts a new section that describes release procedures for a person charged with a crime. Although the procedures are similar to those provided under various sections of existing law, there are a few differences, which include:

  - Before the third and subsequent bail hearings, current law and the bill require that certain prerequisites are met – such as seven days elapsing between bail hearings unless certain other factors are present. Current law requires 48 hours notice to the prosecuting authority, and the bill requires the same notice, but it also requires 48 hours notice to any surety involved so that the surety has an opportunity to attend the hearing.

  - The bill specifically requires the person being released to sign a release agreement that describes the terms of the release and includes the person's promise to abide by the terms.

- The bill eliminates a provision in current law that allows a judicial officer to change, add to, or eliminate conditions of release at any time. The law already provides a process for asking the court to change conditions, and allowing a change at any time, without following the required procedures, has the potential of being unfair to the defendant, the prosecuting authority, or to the victim.

- **Section 4** rewrites the law addressing release before trial of a person charged with a crime. Proposed AS 12.30.011 adopts standards and conditions for release in general, and AS 12.30.016 adopts standards and conditions for release for specific crimes.

  - Proposed **AS 12.30.011** first adopts conditions that must he imposed on all persons released pending trial. They are very general – including a requirement that the person obey all laws, appear in court when ordered, and keep in contact with the person's attorney.

    1. Subsection (b) provides conditions that a court may impose on a person charged with a crime if, in the court's discretion the condition will reasonably assure the person's appearance and the safety of the victim, other persons, and the community. Many of these conditions are in current law. Others are included in federal bail law. Several were suggested by a retired judge who is doing contract work for the court system. There is also a general authorization for additional reasonable conditions.

    2. Subsection (c) describes the various circumstances that the court should consider in deciding what conditions are reasonable to impose on the person. These are similar to current law.

    3. Subsection (d) provides the evidentiary burdens that a court must apply in making a decision about the release of a person. Generally, the burden of proof is on the prosecuting authority to establish that particular conditions are reasonable to assure the defendant's appearance and the safety of the victim and others. However, the bill proposes a rebuttable presumption, that may be overcome by a preponderance of evidence, that no condition or combination of conditions will assure the defendant's appearance or the safety of the victim or others if (1) the defendant is charged with an unclassified felony, a class A felony, or a sexual felony; (2) the person is charged with a felony, has a previous conviction for felony, and less that five years have elapsed since his or her unconditional release for

the prior conviction; (3) the offense was committed while the defendant was on release for another offense; or (4) the charge is for a crime involving domestic violence, and the defendant has been convicted within the previous five years of a crime involving domestic violence.

- Proposed **AS 12.30.016** adopts conditions that may be imposed in particular cases. These conditions are in addition to the general conditions authorized under AS 12.30.011(a) and (b). Most of these additional conditions are found in current law.

  1. Subsection (b) provides additional conditions that may be imposed on persons charged with Title 04 violations such as selling alcohol without a license or bootlegging, and with drunk driving and refusal to submit to a breath test. These conditions include, for example, a judicial officer ordering a person to submit to a breath test when requested to do so by a law enforcement officer.

  2. Subsection (c) provides additional conditions that may be imposed on a person charged with violation of the drug laws, and include, for example, prohibiting the person from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed.

  3. Subsection (d) is a provision that was enacted in 2006, that adopts a mandatory requirement of $250,000 cash bond for a person charged with manufacturing methamphetamine, unless the defendant proves to the court that his or her role was only as an aider or abettor and that the defendant did not stand to gain financially from the offense.

  4. Subsection (e) adopts specific conditions for a person charged with stalking that is not a crime involving domestic violence. The conditions are similar to those in current law.

  5. Subsection (f) adopts specific conditions that a court may impose on a person charged with a sex offense. The conditions are similar to current law, except that it adds a condition that the court may order the defendant to have no contact with person under 18 years of age, except for contact made during the normal course of business in a public place. It requires the court, as does current law, to assure that the victims has been notified of the hearing or reasonable efforts to do so have been

made, and to consider the victim's comments in making a release decision.

- **Section 5** adopts standards for the appointment of a third-party custodian for a person released before trial. It requires a court to obtain information about the proposed custodian including the person's ties to the community and his or her relationship with the defendant. It also sets minimum standards for custodians such as requiring the person to be physically able to perform the duties of custodian, and requires the person to agree to report immediately if the defendant has violated conditions. The bill also prohibits a person from acting as third-party custodian under certain circumstances, such as if the person may be called as a witness in the case, or the person has recent charges or a conviction for violating the law.

- **Section 6** amends the statute addressing the general release conditions of a person charged with a crime involving domestic violence by conforming it to the language used in the newly adopted sections of the bill. It does not include a substantive change.

- **Section 7** amends the law that prohibits a court from allowing a person charged with a crime involving domestic violence from returning to the residence of the victim or to the residence of a person who has a protective order directed at the defendant. This prohibition was found to violate equal protection of the law in *Williams v. State*, 151 P.3d 460 (Alaska App. 2006). This section is in response to *Williams*, and would overturn it to the extent that it would prohibit a person from returning to the residence of the victim unless certain conditions were met. These include requiring that 20 days have elapsed since the arrest, the victim or petitioner consents to the return, the defendant does not have a prior conviction for a domestic violence crime against a person, and the defendant establish by clear and convincing evidence that the return to the residence does not pose a danger to the victim or petitioner.

- **Section 8** rewrites the provision addressing appeal from conditions of release. Current law and the bill provide specific procedures for requesting the court to change conditions of release. The bill does not reenact the provision in current law that allows the court from hearing at any time a motion to amend the release order. Rather, the bill requires the person to follow the procedures adopted for asking the court to amend conditions.

  The appeal procedure from the trial court's bail decision is similar in the bill to current law. The standard for review is the same as current law – the appellate court shall affirm the lower court unless it finds that the lower court abused its discretion. The bill allows the appellate court to modify the order, remand the

case for further proceedings, or to direct the entry of an appropriate release order. This is also similar to current law.

- **Section 9** adds a new section addressing the temporary release of a person for an emergency such as the death of a family member. It is similar to current law under AS 12.30.010(a).

- **Section 10** addresses the release of persons who have been found guilty but not yet sentenced or whose conviction is being appealed. It allows release under the general provisions of AS 12.30, but it requires the person seeking release to establish by clear and convincing evidence that the release sought will reasonably assure the person's appearance and the safety of the victim, other persons, and the community.

  Under current law certain defendants may not be released after being found guilty, including a person convicted of an unclassified or class A felony. The current statute also prohibits release of persons convicted of class B or C felonies if they have a previous conviction for certain serious felonies. This later category was found by the court of appeals to violate the constitutional guarantee of equal protection of law. *Bourdon v. State*, 28 P. 3d 319 (Alaska App. 2001). The bill would prohibit release of a person found guilty of all sexual felonies, and a person found guilty of a class B or C felony who has been convicted of a felony in the prior 10 years. It avoids the problem in *Bourdon* by applying the prohibition to all persons convicted of class B or C felonies who have a prior conviction of a felony in the previous 10 years.

- **Section 11** makes clarifying changes to the law for the retention or release of a material witness who is not expected to respond to a subpoena to appear. The bill does not change the substance of current law to a great degree. It does, however, specify that the court may order a material witness who is not expected to respond to a subpoena to be arrested and released under the bail law. As does current law, it allows a material witness to be detained for enough time to take a deposition and then released, unless justice requires the person be personally present at trial.

- **Section 12** specifies that a person who is in custody in connection with a petition to revoke probation does not have a right to release under AS 12.30. This is the same as current law. *Burt v. State*, 823 P.2d 14 (Alaska App. 1991). However, a probationer may request release under AS 12.30. The bill provides that the probationer must establish by clear and convincing evidence that conditions on his or her release will reasonably assure the appearance of the probationer and the safety of the victim, other persons, and the community.

- **Section 13** is a conforming amendment to current law.

- **Section 14** provides that for purposes of the bail statutes, a conviction occurs at the time a person is found guilty, either by verdict of by plea.

- **Section 15** adds definitions to in the bill.

- **Sections 16 – 18** are conforming amendments.

- **Section 19** provides that service of domestic violence protective orders on respondents need not by made by law enforcement officers if the respondent has already been served with the protective order on the record in court.

- **Sections 20 and 21** amend Rule 5, Alaska Rules of Criminal Procedure. Current law requires a person who has been arrested to be brought before a judicial officer within 24 hours of being arrested. The bill changes this from 24 hours to 48 hours. Although the preferred procedure is to have persons arrested be brought as soon as possible before a judicial officer, the change in the deadline will give prosecutors and the police more time to gather information to provide the court in making a release decision, and allow more time to locate and inform the victim of the right to be present at release procedures.

- **Sections 22 and 23** are conforming amendments.

- **Section 24** amends Rule 41(c), Alaska Rules of Criminal Procedure, by providing that a court may not change or add to a bond requirement without the agreement of the surety.

- **Section 25** is a conforming amendment.

- **Section 26** amends Rule 603(b), Alaska Rules of Appellate Procedure, to clarify that release of a person whose conviction is being appealed may be allowed as provided by the provisions of AS 12.30.

- **Sections 27 – 29** include the repealers, the applicability sections, and the effective date provision.

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An Act relating to the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

* **Section 1.** AS 11.56 is amended by adding a new section to read:

Sec. 11.56.730. Failure to appear. (a) A person commits the crime of failure to appear if the person

(1) is released under the provisions of AS 12.30.006 - 12.30.080;

(2) knows that the person is required to appear before a court or judicial officer at the time and place of a scheduled hearing; and

(3) does not appear before the court or judicial officer at the time and place of the scheduled hearing; in this paragraph, the person's act of not appearing is conduct that does not require a culpable mental state.

(b) In a prosecution for failure to appear under (a) of this section, it is an affirmative defense that unforeseeable circumstances, outside the person's control, prevented the person from appearing before the court or judicial officer at the time and place of the scheduled hearing, and the person contacted the court orally and in writing immediately upon being able to make the contact.

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(c) A person who commits failure to appear incurs a forfeiture of any security for the appearance of the person that was given or pledged to the court for the person's release, and is guilty of a

(1) class C felony if the person was released in connection with a

CHANGES MADE TO HB324 BY DOL

charge of a felony, or while awaiting sentence or appeal after conviction of a felony;

(2) class A misdemeanor if the person was released in connection with a

(A) charge of a misdemeanor, or while awaiting sentence or appeal after conviction of a misdemeanor; or

(B) requirement to appear as a material witness in a criminal proceeding;

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Deleted: (3) violation if the person fails to appear in connection with a charge of a violation.

* **Sec. 2.** AS 12.25.030(b) is amended to read:

(b) In addition to the authority granted by (a) of this section, a peace officer

(1) shall make an arrest under the circumstances described in AS 18.65.530;

(2) without a warrant may arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer,

(A) committed a crime involving domestic violence, whether the crime is a felony or a misdemeanor; in this subparagraph, "crime involving domestic violence" has the meaning given in AS 18.66.990;

(B) committed the crime of violating a protective order in violation of AS 11.56.740; or

(C) violated a condition of release imposed under **AS 12.30.016(e)** [AS 12.30.025] or 12.30.027;

(3) without a warrant may arrest a person when the peace officer has **probable** [REASONABLE] cause for believing that the person has

(A) committed a crime under or violated conditions imposed as part of the person's release before trial on misdemeanor charges brought under AS 11.41.270;

(B) violated AS 04.16.050 or an ordinance with similar

elements; however, unless there is a lawful reason for further detention, a person who is under [THE AGE OF] 18 **years of age** and who has been arrested for violating AS 04.16.050 or an ordinance with similar elements shall be cited for the offense and released to the person's parent, guardian, or legal custodian; or

(C) violated conditions imposed as part of the person's release **under the provisions of AS 12.30** [BEFORE TRIAL ON FELONY CHARGES BROUGHT UNDER AS 11.41.410 - 11.41.458].

*** Sec. 3.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.006. Release procedures. (a) At the first appearance before a judicial officer, a person charged with an offense shall be released or detained under the provisions of this chapter.

(b) At the first appearance before a judicial officer, a person who is charged with a felony may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under AS 12.30.011(a) would not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community.

(c) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any judicial officer in the judicial district may review the conditions.

(d) If a person remains in custody after review of conditions by a judicial officer under (c) of this section, the person may request a subsequent review of conditions. Unless the prosecuting authority stipulates otherwise or the person has been incarcerated for a period equal to the maximum sentence for the most serious charge for which the person is being held, a judicial officer may not schedule a bail review hearing under this subsection unless

(1) the person provides to the court and the prosecuting authority a

written statement that new information not considered at the previous review will be presented at the hearing; the statement must include a description of the information and the reason the information was not presented at a previous hearing; in this paragraph, "new information" does not include the inability to post the required bail;

(3) the prosecuting authority and any surety, if applicable, have at least 48 hours written notice before the time set for the review requested under this subsection; the defendant must notify the surety; and

(4) at least seven days have elapsed between the previous review and the time set for the requested review.

(e) Before a person may be released under this chapter, the person must sign and file a release agreement with the clerk of the court. The release agreement must describe the terms and conditions of the person's release and include the person's promise to abide by the terms and conditions.

(f) A judicial officer may solicit comments by the victim or a parent or guardian of a minor victim, who is present at the bail review hearing and wishes to comment. The judicial officer shall consider those comments and any response by the person before making a decision concerning the release of the person.

(g) The judicial officer shall issue written or oral findings that explain the reasons the officer imposed the particular conditions of release or modifications or additions to conditions previously imposed. The judicial officer shall inform the person that a law enforcement officer may arrest the person without a warrant for violation of the court's order establishing conditions of release.

(h) Information offered or introduced at a bail hearing to determine conditions of release need not conform to the rules governing the admissibility of evidence.

*** Sec. 4.** AS 12.30 is amended by adding new sections to read:

Sec. 12.30.011. Release before trial. (a) Except as otherwise provided in

Deleted: (2) the court obtains a report from the clerk of court that describes any previous criminal charges against the person and the person's history of compliance with conditions of release that are in the records of the court;

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this chapter, a judicial officer shall order a person charged with an offense to be released on the person's personal recognizance or upon execution of an unsecured appearance bond, on the condition that the person

(1) obey all court orders and all federal, state, and local laws;

(2) appear in court when ordered;

(3) if represented, maintain contact with the person's lawyer; and

(4) notify the person's lawyer, who shall notify the prosecuting authority and the court, no more than 24 hours after the person changes residence.

Deleted: and

(b) If a judicial officer determines that the release under (a) of this section will not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community, the officer shall impose the least restrictive condition or conditions that will reasonably assure the person's appearance and protect the victim, other persons, and the community. In addition to conditions under (a) of this section, the judicial officer may, singly or in combination,

(1) require the execution of an appearance bond in a specified amount of cash to be deposited into the registry of the court, in a sum not to exceed 10 percent of the amount of the bond;

(2) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash;

(3) require the execution of a performance bond in a specified amount of cash to be deposited in the registry of the court;

(4) place restrictions on the person's travel, association, or residence;

(5) order the person to refrain from possessing a deadly weapon on the person or in the person's vehicle or residence;

(6) require the person to maintain employment, or if unemployed, actively seek employment;

(7) require the person to notify the person's lawyer and the

prosecuting authority within two business days of any change in employment;

(8) require the person to avoid all contact with a victim, a potential witness, or a codefendant;

(9) require the person to refrain from the consumption and possession of alcoholic beverages;

(10) require the person to refrain from the use of a controlled substance as defined by AS 11.71, unless prescribed by a licensed health care provider with prescriptive authority;

(11) require the person to be physically inside the person's residence, or in the residence of the person's third-party custodian, at time periods set by the court;

(12) require the person to keep regular contact with a law enforcement officer or agency;

Deleted: an office of the Alaska State Troopers or with a village public safety

(13) order the person to refrain from entering or remaining in premises licensed under AS 04;

(14) place the person in the custody of an individual who agrees to serve as a third-party custodian of the person as provided in AS 12.30.021;

(15) if the person is under the treatment of a licensed health care provider, order the person to follow the provider's treatment recommendations;

(16) order the person to take medication that has been prescribed for the person by a licensed health care provider with prescriptive authority;

(17) order the person to comply with any other condition that is reasonably necessary to assure the appearance of the person and to assure the safety of the victim, other persons, and the community.

(c) In determining the conditions of release under this chapter, the court shall consider the following:

(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the person;

(3) the nature and extent of the person's family ties and

relationships;

(4) the person's employment status and history;

(5) the length and character of the person's past and present residence;

(6) the person's record of convictions;

(7) the person's record of appearance at court proceedings;

(8) assets available to the person to meet monetary conditions of release;

(9) the person's reputation, character, and mental condition;

(10) the effect of the offense on the victim, any threats made to the victim, and the danger that the person poses to the victim;

(11) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community.

(d) In making a finding regarding the release of a person under this chapter,

(1) except as otherwise provided in this chapter, the burden of proof is on the prosecuting authority that a person charged with an offense should be detained or released with conditions described in (b) of this section or AS 12.30.016;

(2) there is a rebuttable presumption that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the victim, other persons, or the community, if the person is

(A) charged with an unclassified felony, a class A felony, or a sexual felony;

(B) charged with a felony, was previously convicted of a felony in this state or a similar offense in another jurisdiction, and less than five years have elapsed between the date of the person's unconditional discharge on the immediately preceding offense and the commission of the present offense;

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(C) charged with an offense committed while the person was on release under this chapter for a charge or conviction of another offense;

(D) charged with a crime involving domestic violence, and has been convicted in the previous five years of a crime involving domestic violence in this state or a similar offense in another jurisdiction;

(E) arrested in connection with an accusation that the person committed a felony outside the state or is a fugitive from justice from another jurisdiction, and the court is considering release under AS 12.70.

Sec. 12.30.016. Release before trial in certain cases. (a) A judicial officer may impose, in addition to those required or authorized under AS 12.30.011, conditions of release for offenses described in this section, if necessary to reasonably assure the person's appearance or the safety of the victim, other persons, or the community.

(b) In a prosecution charging a violation of AS 04.11.010, 04.11.499, AS 28.35.030, or 28.35.032, a judicial officer may

(1) order the person to refrain from

(A) consuming alcohol beverages; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, alcoholic beverages;

(2) order the person to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of alcoholic beverages by a peace officer who has reasonable suspicion that the person is violating the conditions of the person's release by possessing alcoholic beverages;

(3) order the person to submit to a breath test when requested by a law enforcement officer;

(4) order the person to provide a sample for a urinalysis or blood test when requested by a law enforcement officer;

(5) order the person to take a drug or combination of drugs intended to prevent substance abuse;

(6) order the person to follow any treatment plan imposed by the court under AS 28.35.028.

(c) In a prosecution charging a violation of AS 11.71 or AS 11.73, a judicial officer may

(1) order the person to refrain from

(A) consuming a controlled substance; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, a controlled substance or drug paraphernalia;

(2) order the person to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of a controlled substance or drug paraphernalia by a peace officer who has reasonable suspicion that the person is violating the terms of the person's release by possessing controlled substances or drug paraphernalia;

(3) order the person to enroll in a random drug testing program, at the person's expense, to detect the presence of a controlled substance, with testing to occur not less than once a week, and with the results being submitted to the court and the prosecuting authority;

(4) order the person to refrain from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed;

(5) order the person to refrain from being physically present, within a two-block area of, or within a designated area near, the location where the alleged offense occurred or at other designated places, unless the person actually resides within that area; or

(6) order the person to refrain from the use or possession of an inhalant.

(d) In a prosecution charging misconduct involving a controlled substance under AS 11.71.020(a)(2) for the manufacture of methamphetamine, or its salts, isomers, or salts of isomers, if the person has been previously convicted in this or another jurisdiction of a crime involving the manufacturing, delivering, or possessing methamphetamine, or its salts, isomers, or salts of isomers, a judicial officer shall require the posting of a minimum of $250,000 cash bond before the person may be released. The judicial officer may reduce this requirement if the person proves to the satisfaction of the officer that the person's only role in the offense was as an aider or abettor and that the person did not stand to benefit financially from the manufacturing.

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is respondent;

(2) refrain from contacting in any manner, including by telephone or electronic communication, the victim;

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(3) engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to aggressive behavior.

(f) In a prosecution charging a crime under AS 11.41.410 - 11.41.458, a judicial officer

(1) may order the person to have no contact with the victim except as specifically allowed by the court;

(2) may order the person to reside in a place where the person is not likely to come into contact with the victim of the offense;

(3) may order the person to have no contact with any person under 18 years of age except in the normal course of business in a public place;

(4) shall assure that the victim and a minor victim's parent or guardian have been notified by a law enforcement agency or the prosecuting

authority of a hearing where release is being considered, or that a reasonable effort at notification has been made; and

(5) shall solicit comments from the victim, or a parent or guardian of the minor victim, who is present and wishes to comment, and consider those comments before making a decision concerning the release of the person.

* **Sec. 5.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.021. Third-party custodians. (a) In addition to other conditions imposed under AS 12.30.011 or 12.30.016, a judicial officer may appoint a third-party custodian if the officer finds that the appointment will, singly or in combination with other conditions, reasonably assure the person's appearance and the safety of the victim, other persons, and the community.

(b) A judicial officer may appoint an individual as a third-party custodian if the proposed custodian

(1) provides information to the judicial officer about the proposed custodian's residence, occupation, ties to the community, and relationship with the person, and provides any other information requested by the judicial officer;

(2) is physically able to perform the duties of custodian of the person;

(3) either personally or by telephone appears in court with the person and acknowledges to the judicial officer orally and in writing that the proposed custodian

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(A) understands the duties of custodian and agrees to perform them; the proposed custodian must specifically agree to immediately report in accordance with the terms of the order if the person released has violated a condition of release; and

(B) understands that failure to perform those duties may result in the custodian being held criminally liable under AS 09.50.010 or AS 11.56.758.

(c) A judicial officer may not appoint a person as a third-party custodian if

Deleted: one or more of the following apply

(1) the proposed custodian is acting as a third-party custodian for another person;

(3) criminal charges are pending in this state or another jurisdiction against the proposed custodian;

(4) the proposed custodian is on probation in this state or another jurisdiction for an offense;

(5) the proposed custodian may be called as a witness in the prosecution of the person;

(6) the proposed custodian resides out of state; however, a non-resident may serve as a custodian if the non-resident resides in the state while serving as custodian.

Deleted: (2) the proposed custodian has been convicted of a class A misdemeanor in the previous five years or a felony in the previous 10 years in this state or another jurisdiction;

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* **Sec. 6.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the **judicial officer** [COURT] shall consider the safety of the [ALLEGED] victim or other household member. To protect the [ALLEGED] victim, household member, **other persons,** and the **community** [PUBLIC] and to reasonably assure the person's appearance, the **judicial officer shall impose conditions required under AS 12.30.011, and** [COURT] may impose [BAIL AND] any of the conditions authorized under **AS 12.30.011** [AS 12.30.020], any of the provisions of AS 18.66.100(c)(1) - (7) and (11), and any other condition necessary to protect the [ALLEGED] victim, household member, **other persons,** and the **community** [PUBLIC], and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

* **Sec. 7.** AS 12.30.027(b) is amended to read:

(b) A **judicial officer** [COURT] may not order or permit a person released under (a) of this section to return to the residence of the [ALLEGED] victim or the residence of a petitioner who has a protective order directed to the person and

issued or filed under AS 18.66.100 - 18.66.180 **unless**

(1) 20 days have elapsed following the date the person was arrested;

(2) the victim or petitioner consents to the person's return to the residence;

(3) the person does not have a prior conviction for an offense under AS 11.41 that is a crime involving domestic violence; and

(4) the court finds by clear and convincing evidence that the return to the residence does not pose a danger to the victim or petitioner.

* **Sec. 8.** AS 12.30.030 is repealed and reenacted to read:

Sec. 12.30.030. Appeal from conditions of release. (a) If a person remains in custody after a review provided for in AS 12.30.006(c) or (d), an appeal may be taken to the court having appellate jurisdiction over the court imposing the conditions. The appellate court shall affirm the order unless it finds that the lower court abused its discretion.

(b) If the appellate court finds that the lower court abused its discretion, the appellate court may modify the order, remand the matter for further proceedings, or remand the matter directing entry of the appropriate order, including release under AS 12.30.011(a). The appeal shall be determined promptly.

* **Sec. 9.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.031. Temporary release. (a) A person either before trial or after conviction who is detained under this chapter may be released temporarily if

(1) the person is being held in connection with a misdemeanor or class B or C felony;

(2) the release is requested because of the

(A) death of an immediate family member of the person;

(B) birth of the person's child if the defendant executes an affidavit of paternity before the release;

(C) person's need for a mental health or substance abuse

assessment that the court finds cannot be accommodated in the facility or telephonically; or

(D) person's need for a medical or dental examination required for acceptance into a residential treatment facility; and

(3) the court solicits information from the Department of Corrections regarding the defendant's conduct while incarcerated and considers that information when making a decision under this subsection.

(b) If a court orders temporary release of a person under (a) of this section, the court shall order the person to appear in court during normal business hours at the end of the period of temporary release and before the person is returned to a correctional facility.

* **Sec. 10.** AS 12.30.040 is repealed and reenacted to read:

Sec. 12.30.040. Release before sentence; release after conviction. (a) Except as provided in (b) of this section, a person who has been convicted of an offense and is awaiting sentence or who has filed an appeal may be released under the provisions of this chapter if the person establishes, by clear and convincing evidence, that the person can be released under conditions that will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

(b) A person may not be released under (a) of this section if the person has been convicted of an offense that is

(1) an unclassified or class A felony;

(2) a sexual felony;

(3) a class B felony if the person has been convicted within the previous 10 years of a felony committed in this state or a similar offense committed in another jurisdiction; or

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(4) a felony in violation of AS 11.41, and the person has been found guilty but mentally ill.

(c) A person who has been convicted of an offense and who has filed an

application for post-conviction relief may not be released under this section until the court enters an order vacating all convictions against the person. A person who has prevailed in an application for post-conviction relief may seek release before trial in accordance with the provisions of this chapter.

*** Sec. 11.** AS 12.30.050 is repealed and reenacted to read:

Sec. 12.30.050. Release of material witnesses. (a) If the prosecution or defense establishes by affidavit or other evidence that the testimony of a person is material in a criminal proceeding, and that it may be impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and consider the release or detention of the person under the provisions of AS 12.30.011.

(b) A material witness may not be detained because of inability to comply with any condition of release if the testimony of the witness can adequately be secured by deposition, unless further detention is necessary to prevent a failure of justice.

(c) Release of a material witness under (a) of this section may be delayed for a reasonable period of time for the deposition of the witness to be taken.

*** Sec. 12.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.055. Persons appearing on petition to revoke. A person who is in custody in connection with a petition to revoke probation does not have a right to be released under this chapter. A judicial officer may, however, release the person under the provisions of this chapter, if the person establishes by a preponderance of evidence that the proposed release conditions will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

*** Sec. 13.** AS 12.30.075(a) is amended to read:

(a) Cash or other security posted by a **person** [DEFENDANT] under **AS 12.30.011** [AS 12.30.020] that would otherwise be forfeited shall be held by the court in trust for the benefit of the victim if, within 30 days after an order of

the court establishing a failure to appear or a violation of conditions of release, the prosecuting authority gives notice that restitution may be requested as part of the sentence if the **person** [DEFENDANT] is convicted.

* **Sec. 14.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.078. Conviction occurrence. In this chapter, a conviction occurs at the time the person is found guilty, either by plea or verdict, of the offense.

* **Sec. 15.** AS 12.30.080 is amended by adding new paragraphs to read:

(3) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(4) "knowingly" has the meaning given in AS 11.81.900;

(5) "peace officer" has the meaning given in AS 11.81.900;

(6) "sexual felony" has the meaning given in AS 12.55.185;

(7) "stalking" means a violation of AS 11.41.260 or 11.41.270.

* **Sec. 16.** AS 12.55.155(c)(12) is amended to read:

(12) the defendant was on release under **AS 12.30** [AS 12.30.020 OR 12.30.040] for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

* **Sec. 17.** AS 12.80.060(g)(2) is amended to read:

(2) "offense" means conduct subjecting a person to arrest as an adult offender, or as a juvenile charged as an adult,

(A) due to a violation of a federal or state criminal law, or municipal criminal ordinance;

(B) under AS 12.25.180;

(C) under **AS 11.56.730** [AS 12.30.060]; or

(D) under AS 12.70.

* **Sec. 18.** AS 18.65.530(a) is amended to read:

(a) Except as provided in (b) or (c) of this section, a peace officer, with or without a warrant, shall arrest a person if the officer has probable cause to believe

the person has, either in or outside the presence of the officer, within the previous 12 hours,

(1) committed domestic violence, except an offense under AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

(2) committed the crime of violating a protective order in violation of AS 11.56.740;

(3) violated a condition of release imposed under **AS 12.30.016(e) or (f) or 12.30.027** [AS 12.30.025, 12.30.027, OR 12.30.029].

*** Sec. 19.** AS 18.66.160(a) is amended to read:

(a) **Unless, on the record in court, the person has already been provided a copy of the court's order, process** [PROCESS] issued under this chapter shall be promptly served and executed. If process is to be served upon a person believed to be present or residing in a municipality, as defined in AS 29.71.800, or in an unincorporated community, process shall be served by a peace officer of that municipality or unincorporated community who has jurisdiction within the area of service. If a peace officer of the municipality or unincorporated community who has jurisdiction is not available, a superior court, district court, or magistrate may designate any other peace officer to serve and execute process. A state peace officer shall serve process in any area that is not within the jurisdiction of a peace officer of a municipality or unincorporated community. A peace officer shall use every reasonable means to serve process issued under this chapter.

*** Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(1), Alaska Rules of Criminal Procedure, is amended to read:

(a) Appearance Before the Judge or Magistrate.

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested

person shall be taken before the nearest available judge or magistrate without unnecessary delay. This appearance may be accomplished by the use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2. Necessary delay within the meaning of this paragraph (a) is defined as a period not to exceed **forty-eight** [TWENTY-FOUR] hours after arrest, including Sundays and holidays.

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*** Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(2), Alaska Rules of Criminal Procedure, is amended to read:

(2) If

(i) The judge or magistrate commits the arrested person to jail for a purpose other than to serve a sentence, and

(ii) The jail is situated in a different community from the place where the judge or magistrate committed the arrested person to jail, and

(iii) The arrested person is not represented by counsel, and

(iv) The arrested person has not previously had a bail review, and

(v) The arrested person has no date, time and place established for his or her next court appearance, then the arrested person shall be taken before a judge or magistrate in the community where the jail is located within **forty-eight** [TWENTY-FOUR] hours of the person's detention in that jail

(aa) in order for bail to be reviewed, and

(bb) in order to determine if the person is represented by counsel, and

(cc) in order for [THE] counsel to be appointed, if appropriate.

*** Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new

section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to **AS 12.30.006 - 12.30.080** [AS 12.30.010 - 12.30.080].

*** Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(b), Alaska Rules of Criminal Procedure, is amended to read:

(b) **Types of Bonds.** The court may require:

(1) the execution of an unsecured appearance bond in an amount specified, under the criteria set forth in **AS 12.30.011** [AS 12.30.010(a)];

(2) the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash [OR OTHER SECURITY], of a sum not to exceed 10 percent of the amount of the bond;

(3) the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(4) the execution of a performance bond in a specified amount and the deposit in the registry of the court of cash [OR OTHER SECURITY].

*** Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(c), Alaska Rules of Criminal Procedure, is amended to read:

(c) **Separate Bonds.**

(1) If a performance bond is required, it must be enforced separately from any appearance or bail bond. Appearance in court may not be a condition of a performance bond.

(2) The court may not change or add to a bond requirement

that was ordered in a previous proceeding unless the surety has been notified and agrees to the change or addition.

* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 206(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Release Pending Appeal.** When an appeal on the merits is pending, an appeal under **AS 12.30.030** [AS 12.30.030(b)] from an order refusing bail pending appeal or imposing conditions of release pending appeal shall be in the form of a motion filed in the merit appeal. The motion must be filed with the clerk of the appellate courts within 30 days after the date of the notice of the order from which review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual information relevant to **AS 12.30.011(c)** [AS 12.30.020(c)], including but not limited to the following:

(1) The full name of the appellant; the trial court case number; the offenses of which the appellant was convicted, if applicable; the date of sentencing; and the complete terms of the sentence;

(2) That application for release pending appeal has been made to the trial court, the reasons given by the trial court for denying the application in whole or in part, and facts and reasons demonstrating why the action of the trial court on the application was erroneous or an abuse of discretion;

(3) A concise statement of the question or questions to be raised on the appeal with a showing that the question or questions were raised in the trial court;

(4) Family: marital status; length of marriage; children, and their ages; other relatives in the area of residence;

(5) Employment and financial circumstances: name of employer at time of arrest and during pre-trial release; type of work; how long so employed;

and offer or promise of employment if released pending appeal; assets of the appellant or of relatives or friends relevant to the ability to post money bail;

(6) Health: history of mental illness, alcoholism, or addiction to drugs, if any;

(7) Residence: length of residence in the city or town in which the appellant resided at the time of arrest;

(8) Criminal-history: criminal convictions within ten years prior to the present arrest; if the appellant has ever forfeited bail, or had release, probation, or parole revoked, the date, the name and location of the court, and a brief description of the circumstances; whether the present offense was committed while the appellant was on bail or other release or on probation or parole; any other criminal charges pending against the appellant at the time [OF] the motion is filed.

* **Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 603(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Criminal Appeals.** If a sentence of imprisonment is imposed, **the court may admit the defendant to bail and stay the sentence as provided by law and by these rules** [ADMISSION TO BAIL WILL BE ALLOWED AND THE SENTENCE STAYED], pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his or her assets. An order placing the defendant on probation will be stayed if an appeal is taken.

* **Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029,

and 12.30.060 are repealed.

* **Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 11.56.730, enacted in sec. 1 of this Act, applies to acts committed on or after the effective date of this Act.

(b) The amendments to AS 12.25.030(b), enacted in sec. 2 of this Act, apply to arrests for violation of conditions of release occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(c) AS 12.30.006 - 12.30.021, enacted in secs. 3 - 5 of this Act; AS 12.30.030, repealed and reenacted in sec. 8 of this Act; AS 12.30.031, enacted in sec. 9 of this Act; AS 12.30.040, repealed and reenacted in sec. 10 of this Act; AS 12.30.055, enacted in sec. 12 of this Act; and AS 12.30.078, enacted in sec. 14 of this Act; apply to bail proceedings occurring on and after the effective date of this Act for offenses occurring on or after the effective date of this Act.

(d) AS 12.30.050, repealed and reenacted in sec. 11 of this Act, applies to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(e) The amendments to AS 12.30.027(a) and (b), enacted in secs. 6 and 7 of this Act; and to AS 12.30.075 and 12.30.080, enacted in secs. 13 and 15 of this Act; apply to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(f) The amendments to Rule 5, Alaska Rules of Criminal Procedure, enacted in secs. 20 and 21 of this Act, apply to offenses occurring on or after the effective date of this Act.

(g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, enacted in sec. 24 of this Act, applies to bail proceedings occurring on or after the effective date of this Act.

(h) The amendment to Rule 603(b), Alaska Rules of Criminal Procedure, enacted in sec. 26 of this Act, applies to convictions occurring on or after the effective date of this

Act.

*** Sec. 29.** This Act takes effect July 1, 2010.

STATE OF ALASKA

SEAN PARNELL,
GOVERNOR

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

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March 18, 2010

Representative Jay Ramras
Chair, House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 324 – Bail Reform

Dear Chairman Ramras:

In 1966 the Alaska Legislature enacted a revision of Alaska's bail statutes. 20 SLA 1966. From time to time there have been amendments to these statutes but no comprehensive review has occurred. On December 30, 1994, the Declaration of Rights to the Alaska Constitution was amended adding section 24 – Rights of Crime Victims. This constitutional provision (along with other rights granted to victims) deals directly with bail. The pertinent language of the constitution reads:

> Crime victims . . . shall have the following rights . . . the right to be reasonably protected from the accused through the imposition of appropriate bail or conditions of release by the court; the right to obtain information about and be present of all criminal or juvenile proceeding where the accused has a right to be present; the right to be allowed to be heard . . . at any proceeding where the accused's release from custody is considered.

HB 324 is a look at the statute as a whole and an implementation of the 1994 constitutional amendment. The draft copy of the bill which is attached to this letter highlights the parts of the bill that directly affect victims of domestic violence and victims of sexual assault and sexual abuse. The color coding highlights the provisions of the bill that specifically relates to sexual assault and domestic violence, along with setting out provisions which are helpful to all victims including these violent crimes.

Yellow highlights the provisions of the bill that directly affect cases charging sexual assault, sexual abuse, or domestic violence;

Pink highlights provisions of the bill that, while they apply to all prosecutions, would be very helpful to victims of sexual assault, sexual abuse, or domestic violence;

When this bill was being heard in the other body, there was testifying regarding section 20, which expands the time for an initial bail hearing from 24 to 48 hours. The testimony was that if this change were made, Alaska would be the only state to have more than a 24 hours time to set bail. I am attaching a chart of each of the 50 states. As you can see Alaska is one of only 3 states that uses 24 hours including weekends and holidays.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: Richard A. Svobodny
Deputy Attorney General

cc: Members of the House Judiciary Committee

MEMORANDUM

STATE OF ALASKA

Department of Law - Criminal Division

To: Senate Judiciary Committee

Date: March 1, 2010

Thru: Richard Svobodny, Deputy Attorney General
Anne Carpeneti, Assistant Attorney General

From: Susan S. McLean SSMc
Director, Criminal Division

Subject: **Other State Rules - First Appearance After Arrest**

General Considerations

The Fourth Amendment requires that a person must be released from custody after 48 hours if a court has not determined that there is probable cause for the arrest. *County of Riverside v. McLaughlin,* 500 U.S. 44, 57-59, 111 S.Ct. 1661, 1670-1671 (1991). Violation of the rule is but one factor to consider in determining whether to suppress a defendant's in-custody statements.

- Since probable cause (and the amount of bail) must be determined before an arrest warrant issues, a probable cause determination only applies to warrantless arrests.
- Since probable cause may be determined on the basis of affidavits and sworn testimony after a warrantless arrest, the defendant's presence is not required at a probable cause hearing.
- Many states require appearance before a magistrate without unnecessary delay, but most courts have not defined "without unnecessary delay" as a specific amount of time, and determine meaning on a case by case basis.

Only 3 of the 24 states which set specific time limits mandate appearance within 24 actual hours of arrest.

Summary - First Appearance Following Warrantless Arrest, By Total Number of States

3 states - 24 hours, calculated including weekends and holidays (AK, FL, MD)
1 state - 24 hours, weekends and holidays *may* be included or excluded (WA)
6 states - 24 hours, calculated *excluding* weekends and holidays (AZ, CT, DE, ID, MA, NH)

1 state - 36 hours, calculated *excluding* day of arrest, Sundays and holidays (MN)

7 states- 48 hours, including weekends and holidays (AL, AR, GA, HI, MS, NE, TX)
1 state - 48 hours, *excluding* Sunday, holiday, and days when court not in session (CA)
1 state - 48 hours, *excluding* Saturday, Sunday and holidays (ME)
1 state - 48 hours if 1st appearance is combined w/prob. cause hearing (court decision) (WI)

2 states - 72 hours, including weekends and holidays (NJ, WY)
1 state - 72 hours, *excluding* Saturday, Sunday and holidays (LA)
1 state - 72 hours is "without delay", if probable cause w/in 48 hours (court decision) (TN)
21 states - "without unnecessary delay" (CO, IL, IA, KS, KY, MI, MT, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, UT, VT, WV)

2 states - "forthwith" (SC, VA)

1 state - "promptly" (repealed a 24- hour rule in 1995) (IN)

1 state - person must be released if not "charged" within 20 hours, but no provision for first appearance (MO)

State Time Limits for Initial Appearance Before Magistrate

State	Time Limit	Authority	Statutory language/construction
Alabama	48 hours - Warrantless arrest 72 hours - Arrest w/ warrant	Ala. R. Crim. P. 4.3(a)(1)(iii) Ala. R. Crim. P. 4.3(b)(2)(i)	
Alaska	24 hours, including weekends and holidays	Alaska R. Crim. P. 5(a)(1)	
Arizona	24 hours, excluding Sat., Sun and holidays	Ariz. R. Crim. P. 4.1(b) and Ariz. R. Crim. P. 1.3	*See, State v. Watkins,* 2008 WL 3171651 * 3 (Ariz. App. Aug.5, 2008) (Sat. Sun. and legal holiday excluded from calculation of 24 hrs; citing Rules 4.1(b) and 1.3))
Arkansas	48 hours Case law suggests that exception may exist for weekends and holidays	Ark. R. Crim. P. 4.1(e)	*See, Larson v. Dorney,*__ F.Supp.__, Slip. Op. 2009WL 903392 *4 (W.D. Ark, April 1, 2009)(delay between arrest on Good Friday and appearance on Monday was "as promptly as calendar would allow")
California	48 hours, excluding Sundays and holidays. If 48 hours expires when court is not in session, then next judicial day.	CA Penal Code § 825(a)(1) CA Penal Code § 825(a)(2)	
Colorado	without unnecessary delay	CRSA. § 16-2-112 Colo. R. Crim. P. 5	
Connecticut	24 hours, excluding Sat., Sun. and holidays	CRS 54-1(g) Conn. Practice Book R. 37-1	Statutory language "promptly before the court sitting next regularly" means the next court day, excluding weekends and holidays. *State v. Pirowski,* 11 Conn. App. 238,240, 526 A.2d 562 (1996)
Delaware	24 hours, excluding Sundays and holidays	11 Del. C. § 1909	
Florida	24 hours, including weekends and holidays	Fla. R. Crim. P 3.130	
Georgia	48 hours –warrantless arrest 72 hours – arrest with warrant	Ga. Uniform St. Ct. R. 26.1 Ga. St § 17-4-62; Ga. St § 117-4-26	
Hawaii	48 hours	H.R.S. 803-9(5)	
Idaho	24 hours, excluding Sat., Sun. and holidays	I.C.R. Rule 5(b)	
Illinois	without unnecessary delay	I.L.C.S. § 109-1	*See, People v. Willis,* 831 N.E.2d, 531, 538 (Ill., 2005) Ill Court cites *McLaughlin* as requiring 48 hours, but delay is only one factor to be examined in deciding whether confession is voluntary. Court has not otherwise defined "unnecessary delay".

Indiana	" promptly" 24 hr. rule repealed, 1995 Ct. decision implies that more than 48 hours can pass before initial appearance before magistrate	Ind. Code § 35-33-7-1	*See, State v. Larson*, 776 N.W.2d, 254, 258 (Ind. 2009) – probable cause must be determined with 48 hours, but can be based on hearsay and written testimony. "Arrested person has no right to be physically present at probable cause hearing." Ind. law does not provide for a specific period of time in defining how "promptly" a person is brought before magistrate
Iowa	without unnecessary delay	I.C.A. 804.22	
Kansas	without unnecessary delay	KSA 2003 Supp. 22- 2901	*See, State v. Carrow*, 2006 WL 399251 *4 (Kan. App., Feb. 17, 2006) - cites *McLaughlin* as defining "without unreasonable delay" to mean that period of delay "cannot be longer than 48 hours, excluding weekends and holidays"
Kentucky	without unnecessary delay	Ky. R. Crim. P. 3.02(2)	
Louisiana	72 hours excluding Sat., Sun, holidays 48 hours probable cause hearing, which is not adversarial and conducted without presence of defendant	LSA – C.Cr. P. Art. 230-1(A) LSA –C. Cr. P. Art. 230.2(A)	
Maine	48 hours, excluding Sat., Sun and holidays	Me. R. Crim. P. 5(a)	
Maryland	24 hours, including weekends and holidays	Md. Rule 4-212(e) and (f)	Although statute does not specifically state "including weekends", it is clear from case law. *See, e.g., Odum v. State*, 846 A. 2d 145 (Md. App. 2004)
Massachusetts	24 hours, excluding weekends and holidays (see judicial interpretation re probable cause determination)	Mass. R. Crim. P. 7	"accused shall be brought before court then in session, and, if not at its next session". Language at the court's "next session" suggests that if an accused is arrested on Friday, the next session would be a regular court day. *See, Jenkins v. Chief Justice of Dist. Court Dept.*, 619 N.E.2d 324, 337,339 (Mass, 1993) holding that probable cause must be determined within 24 hours but that the determination may be made ex parte upon written documents.
Michigan	without unnecessary delay	M.C.L.A. § 764.13	
Minnesota	36 hours, excluding day of arrest, Sun. and holidays	49 M.S.A. R. Crim. P. 4.02(5)	

Mississippi	without unnecessary delay, within 48 hours	M.C.A. 99-3-17 Uniform Cnty and Cir R 6.03	
Missouri	None – must be charged within 20 hours, but no requirement of personal appearance	V.Ann.Mo.C. Art. 544.170	All persons who are arrested without warrant shall be released if not charged and held by warrant within 20 hours of arrest
Montana	without unnecessary delay	MCA 46-7-101	*See, St. v. Brown*, 933 P.2d 672, 675-676 (Mont. 1999) acknowledging *McLaughlin* 48 hour time limit for probable cause determination, and holding that to be one factor in deciding voluntariness of confession.
Nebraska	48 hours	Neb. Crim. Rule 5.1(b)(1)	
Nevada	without unnecessary delay -warrantless arrest	N.R.S. 171-1771	*See, Powell v. State*, 930 P.2d 1123 (Nev. 1997), acknowledging that *McLaughlin* requires probable cause hearing within 48 hours
	72 hours- arrest with warrant	N.R.S. 171-178	
New Hampshire	24 hours, excluding Sat., Sun. and holidays	N.R.S. § 594:20(a)	
New Jersey	72 hours, provided that complaint showing probable cause is filed within 12 hours of arrest	N.J. Crim. Rules 3:4-1 and 3:4-2	
New Mexico	without unnecessary delay	NMSA § 31-1-5	
New York	without unnecessary delay	McKinney's CPL § 140.20 sub1	
North Carolina	without unnecessary delay	N.C.G.S.A. § 15A-511	
North Dakota	without unnecessary delay	N.D.C.C. 2906-25 N.D. Crim. Rule 5(a)	
Ohio	without unnecessary delay	O.R.C. § 29.35.05 Ohio Crim. Rule 4(e)	
Oklahoma	without unnecessary delay	22 Okl. Stat. Ann. § 181	*See, Black v. State, 871 P.2d 35, 39 (Okl.Cr.*1994).Citing *McLaughlin*, court recognized that delay longer than 48 hours in taking defendant to probable cause hearing is unreasonable.
Oregon	without unnecessary delay		
Pennsylvania	without unnecessary delay	Pa.R.Crim.P. 519	
Rhode Island	without unnecessary delay (unless charged w/ offense under RI Gen Law. 12.13.1.1*)	Super. R. Crim. P., Rule 5 Dist. R. Crim. P., Rule 9	*Unless charged w/ offense under RI Gen Laws, 12.13.1.1 (charges carrying life sentence or firearm offenses committed by persons previously convicted of offense carrying life sentence), in which case 48 hrs., excluding Sat., Sun. and holidays
South Carolina	Shall be forthwith carried before a magistrate and a warrant of arrest procured	S.C. Code 1976§ 22-5-200	

South Dakota	without unnecessary delay	SDCL § 23A-4-1	*State v. Larson*, 776 N.W. 2d 254, 258 (S.D., 2009) persons arrested without warrant are constitutionally entitled to probable cause determination within 24 hours.
Tennessee	"without unnecessary delay" – Judicially defined –	Tenn. R. Crim. P. 5(a)	Due process is violated if probable cause is not determined within 48 hours, but a full adversarial hearing is not necessary.
	72 hours for appearance before magistrate 48 hrs for probable cause, but hearing unnecessary		If an individual is not brought before a magistrate within 72 hours there has been an unnecessary delay within the definition of Tenn. R. Crim. P. 5.1. *State v. Carter*, 16 SW 762, 766 (Tenn. 2000)
Texas	48 hours	V.Ann. Tex. C.C.P. Art 14.06	
Utah	without unnecessary delay- 48 hours probable cause, but arrestee need not be present	U.C.A. 1953 § 77-723 Utah Criminal Rule 7	
Vermont	without unnecessary delay	Vt. R. Crim. P. 3(g)	
Virginia	"forthwith"	Va. Code Ann. § 19.2-82	Accused and officer appear together "forwith" for probable cause hearing. Does not apply to arrests with warrant
Washington	(Warrantless arrest only) 24 hours, including weekends and holidays 48 hours prob. cause, but hearing not required	Wash. Cr.RLJ 3.2.1 (c) Wash. Cr.RLJ 3.2.1(a)	"must be brought before a court of limited jurisdiction as soon as practicable after the detention is commenced, but in any event before the close of business on the next court day." Sat, Sun and holidays may be considered court days
West Virginia	Without unnecessary delay	W.Va. Code Sex. 62-1-5 W.Va. R. Crim. P. 5	
Wisconsin	Within a reasonable time Judicial definition - 48 hours implicitly the reasonable time	W.S.A. § 970.01	If the initial appearance also serves as the *Riverside* probable-cause hearing it must be held within 48 hours barring extraordinary circumstances. In cases where a defendant's *Riverside (v. McLaughlin)* determination was properly made in a proceeding prior to the initial appearance, court looks at the individual circumstances of the case to determine a "reasonable time" from the defendant's arrest *State v. Evans*, 522 N.W. 2d, 554, 563 (Wis. App., 1994) (Held: 4 days over a weekend not unreasonable)
Wyoming	without unnecessary delay and in no event more than 72 hours	W. R Crim P. 5(a)	

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BILL NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

Introduced:
Referred:

A BILL

FOR AN ACT ENTITLED

"An Act relating to the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

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

* **Section 1.** AS 11.56 is amended by adding a new section to read:

Sec. 11.56.730. Failure to appear. (a) A person commits the crime of failure to appear if the person

(1) is released under the provisions of AS 12.30.006 - 12.30.080;

(2) knows that the person is required to appear before a court or judicial officer at the time and place of a scheduled hearing; and

(3) does not appear before the court or judicial officer at the time and place of the scheduled hearing; in this paragraph, the person's act of not appearing is conduct that does not require a culpable mental state.

(b) In a prosecution for failure to appear under (a) of this section, it is an affirmative defense that unforeseeable circumstances, outside the person's control, prevented the person from appearing before the court or judicial officer at the time and place of the scheduled hearing, and the person contacted the court or judicial officer orally and in writing immediately upon being able to make the contact.

(c) A person who commits failure to appear incurs a forfeiture of any security that was given or pledged to the court for the person's release, and is guilty of a

(1) class C felony if the person was released in connection with a charge of a felony, or while awaiting sentence or appeal after conviction of a felony;

(2) class A misdemeanor if the person was released in connection with a

(A) charge of a misdemeanor, or while awaiting sentence or appeal after conviction of a misdemeanor; or

(B) requirement to appear as a material witness in a criminal proceeding;

(3) violation if the person fails to appear in connection with a charge of a violation.

*** Sec. 2.** AS 12.25.030(b) is amended to read:

(b) In addition to the authority granted by (a) of this section, a peace officer

(1) shall make an arrest under the circumstances described in AS 18.65.530;

(2) without a warrant may arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer,

(A) committed a crime involving domestic violence, whether the crime is a felony or a misdemeanor; in this subparagraph, "crime involving

domestic violence" has the meaning given in AS 18.66.990;

(B) committed the crime of violating a protective order in violation of AS 11.56.740; or

(C) violated a condition of release imposed under **AS 12.30.016(e)** [AS 12.30.025] or 12.30.027;

(3) without a warrant may arrest a person when the peace officer has **probable** [REASONABLE] cause for believing that the person has

(A) committed a crime under or violated conditions imposed as part of the person's release before trial on misdemeanor charges brought under AS 11.41.270;

(B) violated AS 04.16.050 or an ordinance with similar elements; however, unless there is a lawful reason for further detention, a person who is under [THE AGE OF] 18 **years of age** and who has been arrested for violating AS 04.16.050 or an ordinance with similar elements shall be cited for the offense and released to the person's parent, guardian, or legal custodian; or

(C) violated conditions imposed as part of the person's release **under the provisions of AS 12.30** [BEFORE TRIAL ON FELONY CHARGES BROUGHT UNDER AS 11.41.410 - 11.41.458].

* **Sec. 3.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.006. Release procedures. (a) At the first appearance before a judicial officer, a person charged with an offense shall be released or detained under the provisions of this chapter.

(b) At the first appearance before a judicial officer, a person who is charged with a felony may be detained up to 48 hours for the prosecuting authority to demonstrate that release of the person under AS 12.30.011(a) would not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community.

(c) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If

the judicial officer who imposed the conditions of release is not available, any judicial officer in the judicial district may review the conditions.

(d) If a person remains in custody after review of conditions by a judicial officer under (c) of this section, the person may request a subsequent review of conditions. Unless the prosecuting authority stipulates otherwise or the person has been incarcerated for a period equal to the maximum sentence for the most serious charge for which the person is being held, a judicial officer may not schedule a bail review hearing under this subsection unless

(1) the person provides to the court and the prosecuting authority a written statement that new information not considered at the previous review will be presented at the hearing; the statement must include a description of the information and the reason the information was not presented at a previous hearing; in this paragraph, "new information" does not include the inability to post the required bail;

(2) the court obtains a report from the clerk of court that describes any previous criminal charges against the person and the person's history of compliance with conditions of release;

(3) the prosecuting authority and any surety, if applicable, have at least 48 hours written notice before the time set for the review requested under this subsection; and

(4) at least seven days have elapsed between the previous review and the time set for the requested review.

(e) Before a person may be released under this chapter, the person must sign and file a release agreement with the clerk of the court. The release agreement must describe the terms and conditions of the person's release and include the person's promise to abide by the terms and conditions.

(f) A judicial officer may solicit comments by the victim or a parent or guardian of a minor victim, who is present at the bail review hearing and wishes to comment. The judicial officer shall consider those comments before making a decision concerning the release of the person.

(g) The judicial officer shall issue written or oral findings that explain the reasons the officer imposed the particular conditions of release. The judicial officer

shall inform the person that a law enforcement officer may arrest the person without a warrant for violation of the court's order establishing conditions of release.

(h) Information offered or introduced at a bail review hearing before a judicial officer to determine conditions of release need not conform to the rules governing the admissibility of evidence in a court of law.

* **Sec. 4.** AS 12.30 is amended by adding new sections to read:

Sec. 12.30.011. Release before trial. (a) Except as otherwise provided in this chapter, a judicial officer shall order a person charged with an offense to be released on the person's personal recognizance or upon execution of an unsecured appearance bond, on the condition that the person

(1) obey all court orders and all federal, state, and local laws;

(2) appear in court when ordered;

(3) if represented, maintain contact with the person's lawyer; and

(4) notify the person's lawyer and the prosecuting authority no more than 24 hours after the person changes residence.

(b) If a judicial officer determines that the release under (a) of this section will not reasonably assure the appearance of the person or will pose a danger to the victim, other persons, or the community, the officer shall impose the least restrictive condition or conditions that will reasonably assure the person's appearance and protect the victim, other persons, and the community. In addition to conditions under (a) of this section, the judicial officer may, singly or in combination,

(1) require the execution of an appearance bond in a specified amount of cash to be deposited into the registry of the court, in a sum not to exceed 10 percent of the amount of the bond;

(2) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash;

(3) require the execution of a performance bond in a specified amount of cash to be deposited in the registry of the court;

(4) place restrictions on the person's travel, association, or residence;

(5) order the person to refrain from possessing a deadly weapon on the person or in the person's vehicle or residence;

(6) require the person to maintain employment, or if unemployed, actively seek employment;

(7) require the person to notify the prosecuting authority and the person's attorney within two business days of any change in employment;

(8) require the person to avoid all contact with a victim, a potential witness, or a codefendant;

(9) require the person to refrain from the consumption and possession of alcoholic beverages;

(10) require the person to refrain from the use of a controlled substance as defined by AS 11.71, unless prescribed by a licensed health care provider with prescriptive authority;

(11) require the person to be physically inside the person's residence, or in the residence of the person's third-party custodian, at time periods set by the court;

(12) require the person to keep regular contact with an office of the Alaska State Troopers or with a village public safety officer;

(13) order the person to refrain from entering or remaining in premises licensed under AS 04;

(14) place the person in the custody of an individual who agrees to serve as a third-party custodian of the person as provided in AS 12.30.021;

(15) if the person is under the treatment of a licensed health care provider, order the person to follow the provider's treatment recommendations;

(16) order the person to take medication that has been prescribed for the person by a licensed health care provider with prescriptive authority;

(17) order the person to comply with any other condition that is reasonably necessary to assure the appearance of the person and to assure the safety of the victim, other persons, and the community.

(c) In determining the conditions of release under this chapter, the court shall consider the following:

(1) the nature and circumstances of the offense charged;

(2) the weight of the evidence against the person;

(3) the nature and extent of the person's family ties and relationships;

(4) the person's employment status and history;

(5) the length and character of the person's past and present residence;

(6) the person's record of convictions;

(7) the person's record of appearance at court proceedings;

(8) assets available to the person to meet monetary conditions of release;

(9) the person's reputation, character, and mental condition;

(10) the effect of the offense on the victim, any threats made to the victim, and the danger that the person poses to the victim;

(11) any other facts that are relevant to the person's appearance or the person's danger to the victim, other persons, or the community.

(d) In making a finding regarding the release or detention of a person under this chapter,

(1) except as otherwise provided in this chapter, the burden of proof is on the prosecuting authority that a person charged with an offense should be detained or released with conditions described in (b) of this section or AS 12.30.016;

(2) there is a rebuttable presumption, that may be overcome by a preponderance of evidence, that no condition or combination of conditions will reasonably assure the appearance of the person or the safety of the victim, other persons, or the community, if the person is charged with

(A) an unclassified felony, a class A felony, or a sexual felony;

(B) a felony, was previously convicted of a felony in this state or a similar offense in another jurisdiction, and less than five years have elapsed between the date of the person's unconditional discharge on the immediately preceding offense and the commission of the present offense;

(C) an offense committed while the person was on release under this chapter for a charge or conviction of another offense;

(D) a crime involving domestic violence, and has been convicted in the previous five years of a crime involving domestic violence in this state or a similar offense in another jurisdiction.

Sec. 12.30.016. Release before trial in certain cases. (a) A judicial officer may impose, in addition to those required or authorized under AS 12.30.011, conditions of release for offenses described in this section, if reasonably necessary to assure the person's appearance or the safety of the victim, other persons, or the community.

(b) In a prosecution charging a violation of AS 04.11.010, 04.11.499, AS 28.35.030, or 28.35.032, a judicial officer may

(1) order the person to refrain from

(A) consuming alcohol beverages; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, alcoholic beverages;

(2) order the person to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of alcoholic beverages by a peace officer who has reasonable suspicion that the person is violating the conditions of the person's release by possessing alcoholic beverages;

(3) order the person to submit to a breath test when requested by a law enforcement officer;

(4) order the person to provide a sample for a urinalysis or blood test when requested by a law enforcement officer;

(5) order the person to take a drug or combination of drugs intended to prevent substance abuse;

(6) order the person to follow any treatment plan imposed by the court under AS 28.35.028.

(c) In a prosecution charging a violation of AS 11.71 or AS 11.73, a judicial officer may

(1) order the person to refrain from

(A) consuming a controlled substance; or

(B) possessing on the person, in the person's residence, or in any vehicle or other property over which the person has control, a controlled

substance or drug paraphernalia;

(2) order the person to submit to a search without a warrant of the person, the person's personal property, the person's residence, or any vehicle or other property over which the person has control, for the presence of a controlled substance or drug paraphernalia by a peace officer who has reasonable suspicion that the person is violating the terms of the person's release by possessing controlled substances or drug paraphernalia;

(3) order the person to enroll in a random drug testing program, at the person's expense, to detect the presence of a controlled substance, with testing to occur not less than once a week, and with the results being submitted to the court and the prosecuting authority;

(4) order the person to refrain from entering or remaining in a place where a controlled substance is being used, manufactured, grown, or distributed;

(5) order the person to refrain from being physically present, within a two-block area of, or within a designated area near, the location where the alleged offense occurred or at other designated places, unless the person actually resides within that area; or

(6) order the person to refrain from the use or possession of an inhalant.

(d) In a prosecution charging misconduct involving a controlled substance under AS 11.71.020(a)(2) for the manufacture of methamphetamine, or its salts, isomers, or salts of isomers, if the person has been previously convicted in this or another jurisdiction of a crime involving the manufacturing, delivering, or possessing methamphetamine, or its salts, isomers, or salts of isomers, a judicial officer shall require the posting of a minimum of $250,000 cash bond before the person may be released. The judicial officer may reduce this requirement if the person proves to the satisfaction of the officer that the person's only role in the offense was as an aider or abettor and that the person did not stand to benefit financially from the manufacturing.

(e) In a prosecution charging the crime of stalking that is not a crime involving domestic violence, a judicial officer may order the person to

(1) follow the provisions of any protective order to which the person is

respondent;

(2) refrain from contacting in any manner, including by telephone or electronic mail, the victim;

(3) engage in counseling; if available in the community, the judicial officer shall require that counseling ordered include counseling about alternatives to aggressive behavior.

(f) In a prosecution charging a crime under AS 11.41.410 - 11.41.458, a judicial officer

(1) may order the person to have no contact with the victim except as specifically allowed by the court;

(2) may order the person to reside in a place where the person is not likely to come into contact with the victim of the offense;

(3) may order the person to have no contact with any person under 18 years of age except in the normal course of business in a public place;

(4) shall assure that the victim and a minor victim's parent or guardian have been notified by a law enforcement agency or the prosecuting authority of a hearing where release is being considered, or that a reasonable effort at notification has been made; and

(5) shall solicit comments from the victim, or a parent or guardian of the minor victim, who is present and wishes to comment, and consider those comments before making a decision concerning the release of the person.

*** Sec. 5.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.021. Third-party custodians. (a) In addition to other conditions imposed under AS 12.30.011 or 12.30.016, a judicial officer may appoint a third-party custodian if the officer finds that the appointment will, singly or in combination with other conditions, reasonably assure the person's appearance and the safety of the victim, other persons, and the community.

(b) A judicial officer may appoint an individual as a third-party custodian if the proposed custodian

(1) provides information to the judicial officer about the proposed custodian's residence, occupation, ties to the community, and relationship with the

person, and provides any other information requested by the judicial officer;

(2) is physically able to perform the duties of custodian of the person;

(3) appears in court with the person and acknowledges to the judicial officer personally and in writing that the proposed custodian

(A) understands the duties of custodian and agrees to perform them; the proposed custodian must specifically agree to immediately report in accordance with the terms of the order if the person released has violated a condition of release; and

(B) understands that failure to perform those duties may result in the custodian being held criminally liable under AS 09.50.010 or AS 11.56.758.

(c) A judicial officer may not appoint a person as a third-party custodian if one or more of the following apply:

(1) the proposed custodian is acting as a third-party custodian for another person;

(2) the proposed custodian has been convicted of a class A misdemeanor in the previous five years or a felony in the previous 10 years in this state or another jurisdiction;

(3) criminal charges are pending in this state or another jurisdiction against the proposed custodian;

(4) the proposed custodian is on probation in this state or another jurisdiction for an offense;

(5) the proposed custodian may be called as a witness in the prosecution of the person;

(6) the proposed custodian resides out of state.

*** Sec. 6.** AS 12.30.027(a) is amended to read:

(a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the **judicial officer** [COURT] shall consider the safety of the [ALLEGED] victim or other household member. To protect the [ALLEGED] victim, household member, **other persons,** and the **community** [PUBLIC] and to reasonably assure the person's appearance, the

judicial officer shall impose conditions required under AS 12.30.011, and [COURT] may impose [BAIL AND] any of the conditions authorized under **AS 12.30.011** [AS 12.30.020], any of the provisions of AS 18.66.100(c)(1) - (7) and (11), and any other condition necessary to protect the [ALLEGED] victim, household member, **other persons,** and the **community** [PUBLIC], and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

*** Sec. 7.** AS 12.30.027(b) is amended to read:

(b) A **judicial officer** [COURT] may not order or permit a person released under (a) of this section to return to the residence of the [ALLEGED] victim or the residence of a petitioner who has a protective order directed to the person and issued or filed under AS 18.66.100 - 18.66.180 **unless**

(1) 20 days have elapsed following the date the person was arrested;

(2) the victim or petitioner consents to the person's return to the residence;

(3) the person does not have a prior conviction for an offense under AS 11.41 that is a crime involving domestic violence; and

(4) the person establishes by clear and convincing evidence that the return to the residence does not pose a danger to the victim or petitioner.

*** Sec. 8.** AS 12.30.030 is repealed and reenacted to read:

Sec. 12.30.030. Appeal from conditions of release. (a) A person who remains in custody after a review provided for in AS 12.30.006(c) or (d) may appeal the order to the court having appellate jurisdiction over the court imposing the conditions. The appellate court shall affirm the order unless it finds that the lower court abused its discretion.

(b) If the appellate court finds that the lower court abused its discretion, the appellate court may modify the order, remand the matter for further proceedings, or remand the matter directing entry of the appropriate order, including release under AS 12.30.011(a). The appeal shall be determined promptly.

*** Sec. 9.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.031. Temporary release. (a) A person either before trial or after conviction who is detained under this chapter may be released temporarily if

(1) the person is being held in connection with a misdemeanor or class B or C felony;

(2) the release is requested because of the

(A) death of an immediate family member of the person;

(B) birth of the person's child if the defendant executes an affidavit of paternity before the release;

(C) person's need for a mental health or substance abuse assessment that the court finds cannot be accommodated in the facility or telephonically; or

(D) person's need for a medical or dental examination required for acceptance into a residential treatment facility; and

(3) the court solicits information from the Department of Corrections regarding the defendant's conduct while incarcerated and considers that information when making a decision under this subsection.

(b) If a court orders temporary release of a person under (a) of this section, the court shall order the person to appear in court during normal business hours at the end of the period of temporary release and before the person is returned to a correctional facility.

* **Sec. 10.** AS 12.30.040 is repealed and reenacted to read:

Sec. 12.30.040. Release before sentence; release after conviction. (a) Except as provided in (b) of this section, a person who has been convicted of an offense and is awaiting sentence or who has filed an appeal may be released under the provisions of this chapter if the person establishes, by clear and convincing evidence, that the person can be released under conditions that will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

(b) A person may not be released under (a) of this section if the person has been convicted of an offense that is

(1) an unclassified or class A felony;

(2) a sexual felony; or

(3) a class B or C felony if the person has been convicted within the previous 10 years of a felony committed in this state or a similar offense committed in another jurisdiction.

(c) A person who has been convicted of an offense and who has filed an application for post-conviction relief may not be released under this section until the court enters an order vacating all convictions against the person. A person who has prevailed in an application for post-conviction relief may seek release before trial in accordance with the provisions of this chapter.

*** Sec. 11.** AS 12.30.050 is repealed and reenacted to read:

Sec. 12.30.050. Release of material witnesses. (a) If the prosecution or defense establishes by affidavit or other evidence that the testimony of a person is material in a criminal proceeding, and that it may be impracticable to secure the presence of the person by subpoena, a judicial officer may order the arrest of the person and consider the release or detention of the person under the provisions of AS 12.30.011.

(b) A material witness may not be detained because of inability to comply with any condition of release if the testimony of the witness can adequately be secured by deposition, unless further detention is necessary to prevent a failure of justice.

(c) Release of a material witness under (a) of this section may be delayed for a reasonable period of time for the deposition of the witness to be taken.

*** Sec. 12.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.055. Persons appearing on petition to revoke. A person who is in custody in connection with a petition to revoke probation does not have a right to be released under this chapter. A judicial officer may, however, release the person under the provisions of this chapter, if the person establishes by clear and convincing evidence that the proposed release conditions will reasonably assure the appearance of the person and the safety of the victim, other persons, and the community.

*** Sec. 13.** AS 12.30.075(a) is amended to read:

(a) Cash or other security posted by a **person** [DEFENDANT] under **AS 12.30.011** [AS 12.30.020] that would otherwise be forfeited shall be held by the court in trust for the benefit of the victim if, within 30 days after an order of the court

establishing a failure to appear or a violation of conditions of release, the prosecuting authority gives notice that restitution may be requested as part of the sentence if the **person** [DEFENDANT] is convicted.

* **Sec. 14.** AS 12.30 is amended by adding a new section to read:

Sec. 12.30.078. Conviction occurrence. In this chapter, a conviction occurs at the time the person is found guilty, either by plea or verdict, of the offense.

* **Sec. 15.** AS 12.30.080 is amended by adding new paragraphs to read:

(3) "crime involving domestic violence" has the meaning given in AS 18.66.990;

(4) "knowingly" has the meaning given in AS 11.81.900;

(5) "peace officer" has the meaning given in AS 11.81.900;

(6) "sexual felony" has the meaning given in AS 12.55.185;

(7) "stalking" means a violation of AS 11.41.260 or 11.41.270.

* **Sec. 16.** AS 12.55.155(c)(12) is amended to read:

(12) the defendant was on release under **AS 12.30** [AS 12.30.020 OR 12.30.040] for another felony charge or conviction or for a misdemeanor charge or conviction having assault as a necessary element;

* **Sec. 17.** AS 12.80.060(g)(2) is amended to read:

(2) "offense" means conduct subjecting a person to arrest as an adult offender, or as a juvenile charged as an adult,

(A) due to a violation of a federal or state criminal law, or municipal criminal ordinance;

(B) under AS 12.25.180;

(C) under **AS 11.56.730** [AS 12.30.060]; or

(D) under AS 12.70.

* **Sec. 18.** AS 18.65.530(a) is amended to read:

(a) Except as provided in (b) or (c) of this section, a peace officer, with or without a warrant, shall arrest a person if the officer has probable cause to believe the person has, either in or outside the presence of the officer, within the previous 12 hours,

(1) committed domestic violence, except an offense under

AS 11.41.100 - 11.41.130, whether the crime is a felony or a misdemeanor;

(2) committed the crime of violating a protective order in violation of AS 11.56.740;

(3) violated a condition of release imposed under **AS 12.30.016(e) or (f) or 12.30.027** [AS 12.30.025, 12.30.027, OR 12.30.029].

*** Sec. 19.** AS 18.66.160(a) is amended to read:

(a) **Unless, on the record in court, the person has already been provided a copy of the court's order, process** [PROCESS] issued under this chapter shall be promptly served and executed. If process is to be served upon a person believed to be present or residing in a municipality, as defined in AS 29.71.800, or in an unincorporated community, process shall be served by a peace officer of that municipality or unincorporated community who has jurisdiction within the area of service. If a peace officer of the municipality or unincorporated community who has jurisdiction is not available, a superior court, district court, or magistrate may designate any other peace officer to serve and execute process. A state peace officer shall serve process in any area that is not within the jurisdiction of a peace officer of a municipality or unincorporated community. A peace officer shall use every reasonable means to serve process issued under this chapter.

*** Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(1), Alaska Rules of Criminal Procedure, is amended to read:

(a) Appearance Before the Judge or Magistrate.

(1) Except when the person arrested is issued a citation for a misdemeanor or a violation and immediately thereafter released, the arrested person shall be taken before the nearest available judge or magistrate without unnecessary delay. This appearance may be accomplished by the use of telephonic or television equipment pursuant to Criminal Rules 38.1 and 38.2. Unnecessary delay within the meaning of this paragraph (a) is defined as a period not to exceed **forty-eight** [TWENTY-FOUR] hours after arrest, including Sundays and holidays.

*** Sec. 21.** The uncodified law of the State of Alaska is amended by adding a new section to

read:

DIRECT COURT RULE AMENDMENT. Rule 5(a)(2), Alaska Rules of Criminal Procedure, is amended to read:

(2) If

(i) The judge or magistrate commits the arrested person to jail for a purpose other than to serve a sentence, and

(ii) The jail is situated in a different community from the place where the judge or magistrate committed the arrested person to jail, and

(iii) The arrested person is not represented by counsel, and

(iv) The arrested person has not previously had a bail review, and

(v) The arrested person has no date, time and place established for his or her next court appearance, then the arrested person shall be taken before a judge or magistrate in the community where the jail is located within **forty-eight** [TWENTY-FOUR] hours of the person's detention in that jail

(aa) in order for bail to be reviewed, and

(bb) in order to determine if the person is represented by counsel, and

(cc) in order for [THE] counsel to be appointed, if appropriate.

*** Sec. 22.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(a), Alaska Rules of Criminal Procedure, is amended to read:

(a) **Admission to Bail.** The defendant in a criminal proceeding is entitled to be admitted to bail pursuant to **AS 12.30.006 - 12.30.080** [AS 12.30.010 -12.30.080].

*** Sec. 23.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(b), Alaska Rules of Criminal Procedure, is amended to read:

(b) **Types of Bonds.** The court may require:

(1) the execution of an unsecured appearance bond in an amount specified, under the criteria set forth in **AS 12.30.011** [AS 12.30.010(a)];

(2) the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash [OR OTHER SECURITY], of a sum not to exceed 10 percent of the amount of the bond;

(3) the execution of a bail bond with sufficient solvent sureties or the deposit of cash; or

(4) the execution of a performance bond in a specified amount and the deposit in the registry of the court of cash [OR OTHER SECURITY].

* **Sec. 24.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 41(c), Alaska Rules of Criminal Procedure, is amended to read:

(c) **Separate Bonds.**

(1) If a performance bond is required, it must be enforced separately from any appearance or bail bond. Appearance in court may not be a condition of a performance bond.

(2) The court may not change or add to a bond requirement that was ordered in a previous proceeding unless the surety agrees to the change or addition.

* **Sec. 25.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 206(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Release Pending Appeal.** When an appeal on the merits is pending, an appeal under **AS 12.30.030** [AS 12.30.030(b)] from an order refusing bail pending appeal or imposing conditions of release pending appeal shall be in the form of a motion filed in the merit appeal. The motion must be filed with the clerk of the appellate courts within 30 days after the date of the notice of the order from which review is sought. Date of notice is defined in Civil Rule 58.1(c) and Criminal Rule 32.3(c). The motion shall comply with Rule 503, and shall contain specific factual

information relevant to **AS 12.30.011(c)** [AS 12.30.020(c)], including but not limited to the following:

(1) The full name of the appellant; the trial court case number; the offenses of which the appellant was convicted, if applicable; the date of sentencing; and the complete terms of the sentence;

(2) That application for release pending appeal has been made to the trial court, the reasons given by the trial court for denying the application in whole or in part, and facts and reasons demonstrating why the action of the trial court on the application was erroneous or an abuse of discretion;

(3) A concise statement of the question or questions to be raised on the appeal with a showing that the question or questions were raised in the trial court;

(4) Family: marital status; length of marriage; children, and their ages; other relatives in the area of residence;

(5) Employment and financial circumstances: name of employer at time of arrest and during pre-trial release; type of work; how long so employed; and offer or promise of employment if released pending appeal; assets of the appellant or of relatives or friends relevant to the ability to post money bail;

(6) Health: history of mental illness, alcoholism, or addiction to drugs, if any;

(7) Residence: length of residence in the city or town in which the appellant resided at the time of arrest;

(8) Criminal history: criminal convictions within ten years prior to the present arrest; if the appellant has ever forfeited bail, or had release, probation, or parole revoked, the date, the name and location of the court, and a brief description of the circumstances; whether the present offense was committed while the appellant was on bail or other release or on probation or parole; any other criminal charges pending against the appellant at the time [OF] the motion is filed.

*** Sec. 26.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DIRECT COURT RULE AMENDMENT. Rule 603(b), Alaska Rules of Appellate Procedure, is amended to read:

(b) **Criminal Appeals.** If a sentence of imprisonment is imposed, **the court may admit the defendant to bail and stay the sentence as provided by law and by these rules** [ADMISSION TO BAIL WILL BE ALLOWED AND THE SENTENCE STAYED], pending appeal. A sentence to pay a fine or a fine and costs may be stayed, if an appeal is taken, by the district judge or magistrate or by the superior court upon such terms as the court deems proper. During appeal the court may require the defendant to deposit the whole or any part of the fine and costs in the registry of the superior court, or to give bond for the payment thereof, or to submit to an examination of assets, and it may make an appropriate order to restrain the defendant from dissipating his or her assets. An order placing the defendant on probation will be stayed if an appeal is taken.

*** Sec. 27.** AS 12.30.010, 12.30.020, 12.30.023, 12.30.025, 12.30.027(g), 12.30.029, and 12.30.060 are repealed.

*** Sec. 28.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 11.56.730, enacted in sec. 1 of this Act, applies to acts committed on or after the effective date of this Act.

(b) The amendments to AS 12.25.030(b), enacted in sec. 2 of this Act, apply to arrests for violation of conditions of release occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(c) AS 12.30.006 - 12.30.021, enacted in secs. 3 - 5 of this Act; AS 12.30.030, repealed and reenacted in sec. 8 of this Act; AS 12.30.031, enacted in sec. 9 of this Act; AS 12.30.040, repealed and reenacted in sec. 10 of this Act; AS 12.30.055, enacted in sec. 12 of this Act; and AS 12.30.078, enacted in sec. 14 of this Act; apply to bail proceedings occurring on and after the effective date of this Act for offenses occurring on or after the effective date of this Act.

(d) AS 12.30.050, repealed and reenacted in sec. 11 of this Act, applies to bail proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(e) The amendments to AS 12.30.027(a) and (b), enacted in secs. 6 and 7 of this Act; and to AS 12.30.075 and 12.30.080, enacted in secs. 13 and 15 of this Act; apply to bail

proceedings occurring on or after the effective date of this Act for offenses occurring before, on, or after the effective date of this Act.

(f) The amendments to Rule 5, Alaska Rules of Criminal Procedure, enacted in secs. 20 and 21 of this Act, apply to offenses occurring on or after the effective date of this Act.

(g) The amendment to Rule 41(c), Alaska Rules of Criminal Procedure, enacted in sec. 24 of this Act, applies to bail proceedings occurring on or after the effective date of this Act.

(h) The amendment to Rule 603(b), Alaska Rules of Criminal Procedure, enacted in sec. 26 of this Act, applies to convictions occurring on or after the effective date of this Act.

*** Sec. 29.** This Act takes effect July 1, 2010.

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March 22, 2010

The Honorable Jay Ramras
Chair, House Judiciary Committee
Alaska State House of Representatives
State Capitol, Room 118
Juneau, AK 99801-1182

Re: House Bill 324
Constitutional Issues

Chair Ramras:

Thank you for the opportunity to submit written testimony regarding House Bill 324. The American Civil Liberties Union of Alaska represents thousands of members and activists throughout the State of Alaska who seek to preserve and expand individual freedoms and civil liberties guaranteed under the United States and Alaska Constitutions. From that perspective, we have several concerns with the proposed legislation.

Section 4 Unconstitutional Restrictions on Pre-Trial Release

Section Four of the Bill proposes a new section AS 12.30.011 with a myriad of constitutional infirmities.

The Alaska Constitution states that "an accused is entitled . . . to be released on bail, except for capital offenses when the proof is evident or the presumption great." Alaska Const., Art. I, Sec. 11. Subsection (d) of Section 4 of the Bill, however, proposes that for a wide group of defendants ***the court should presume, subject to rebuttal by the defendant, that no amount of bail and no conditions of release will ensure the appearance of the defendant and protect the victim and the public***. The language used for the presumption, that "no condition or combination of conditions will reasonably assure" public safety or the defendant's appearance, is a phrase used to

describe the basis by which a judge can deny bail entirely to a defendant. *See, e.g.*, 18 U.S.C.A. § 3142(e)(1); Pa. Const. Art. 1, § 14.

While the proposed new statutory language does not specifically state that those who cannot be safely released shall be held without bail, the language leaves no clear alternative. Thus ***it proposes to impermissibly negate the dictates of the Alaska Constitution and to deny bail entirely to many defendants***, while imposing on them the burden to refute the denial of bail. The categories of defendants to whom this denial would apply includes those arrested for class A or unclassified felonies, any sexual felony, anyone previously convicted of a felony except if the complete term (including any parole or probation term) had terminated more than five years ago, anyone also under charge in another case, anyone arrested for a domestic violence charge who had previously been convicted of a domestic violence charge within the last five years, or anyone arrested "in connection with" an allegation of commission of an offense outside the state or being a fugitive from justice in another state.

The Alaska Supreme Court has clearly and unequivocally held that the outright denial of bail violates the Alaska Constitution. *Martin v. State*, 517 P.2d 1389 (Alaska 1974) (holding that the refusal of bail to a person arrested on a charge of forgery who had three outstanding cases of forgery against him violated both Alaska statutes and Article I, Section 11 of the Alaska Constitution). In fact, the *Martin* court discussed a very similar argument by the Department of Law in these terms:

> "The State urges that these amendments [to the bail statutes] permit the detention of defendants without bail when the judicial officer determines that the defendant 'will pose a danger to other persons and the community.' . . . The legislature could not, of course, infringe upon the constitutional right of bail. . . . *[A] legislative enactment expressly permitting the detention of persons without right to bail would be unconstitutional unless a constitutional amendment were adopted.*" *Martin*, 517 P.2d at 1396-97 (emphasis added).

Should the plain language of Article I, Section 11 be insufficient to inform the State that pretrial bail is a right not subject revocation by the legislature or the courts, the history of the enactment of the bail clauses to the Alaska Constitution should make clear that any and all defendants should receive a bail hearing. Victor Fischer, delegate to the Constitutional Convention, commented during the convention that the phrase "when the proof is evident and the presumption great" had been enacted in Alaska, as in other states, to show that even defendants in capital offenses should generally be eligible for bail: "The actual determination of when a person is released on bail, if charged with a capital offense, is still up to the judge." 2 Proceedings of the Alaska Constitutional Convention 1344-45 (Jan. 6, 1956) *cited in State v. Wassillie*, 606 P.2d 1279, 1282 (Alaska 1980).

If the Constitutional Convention drafted Article I, Section 11 with the intent that even those charged with capital cases should receive a bail hearing, then the Governor's bill that defendants

charged with felonies should be presumed **not** to be eligible for bail must surely violate the terms of the bail clauses of the Alaska Constitution. The proposed amendments in Section 4 of H.B. 324 do not pass constitutional review, as they contradict both the language of Article I, Section 11, which vests all defendants except those in capital cases with the right to bail, and the Supreme Court's analysis in *Martin*.

Even were a finding that "no condition or combination of conditions" support release somehow constitutional, the burden-shifting provision of the statute is inappropriate in the context of a bail hearing conducted within hours of arrest. These hearings may be conducted in the absence of counsel; even where the defendant obtains counsel within a few hours of arrest, defense counsel will not likely be capable of carrying the burden to show that the defendant is not a danger and not likely to fail to appear. *See Stack v. Boyle*, 342 U.S. 1, 11 (1951) (stating that an initial bail hearing "must be done in haste – the defendant may be taken by surprise, counsel has just been engaged, or for other reasons the bail is fixed without that full inquiry and consideration which the matter deserves," Jackson, J., concurring). Bearing that burden would require witnesses and documentation on the defense side, resources likely impossible for even a privately retained counsel.

The ACLU of Alaska requests that this Committee delete or appropriately revise these clearly unconstitutional provisions in HB 324.

Section 4 Improper Proposed Expansion of Court Authority

The primary purpose of bail is to ensure the appearance of the accused. A judge may consider public safety or the safety of individuals in setting conditions for release. However, beyond specific findings relating to an individual defendant and specific reasons for concern that he may fail to appear or endanger others, **a judge does not have more interest in supervising an arrestee, who is presumed innocent, than he does over a member of the general public**. *U.S. v. Scott*, 450 F.3d 863, 874 (9th Cir. 2006).

Thus, certain provision in Section Four, subsection (b) of H.B. 324 violate the constitutional protections regarding granting of bail. Subsection (b)(6) permitting a judge to "require the person to maintain employment, or if unemployed, actively seek employment" has no bearing on either the likelihood of the individual to appear in court nor on any danger posed to the victim or the public. Pretrial supervision is not a period of "pre-probation" when the State may broadly supervise an accused. The State's legitimate interests are limited to ensuring public safety and ensuring the appearance of the accused. These kinds of provisions infringe on the right of the defendant to be considered an innocent person. Excessive bail conditions, unjustified by traditional state interests, resemble probationary supervision and thus constitute unconstitutional punishment prior to adjudication.

While other provisions in subsection (b) could have conceivable use in specific individual cases, the long list of bail conditions set forth essentially invites judges to overuse them. Prohibitions

on the use of alcohol and entry to licensed premises, for instance, are currently imposed excessively and frequently without the individualized inquiry required in *Scott*. Overuse of alcohol-related restrictions for Alaska Native defendants has been a basis of criticism for ethnic disparities in the criminal justice system. Instead of minimizing these existing disparities, H.B. 324 would institutionalize them.

Another area of particular concern in the enumerated bail conditions are two provisions relating to health care, subsections (b)(15) and (b)(16) which purport to permit a judge to require a defendant to adhere to courses of psychiatric and medical treatment and to compel a defendant to take prescription medications. The right to bodily privacy is an integral part of the right to privacy under the Alaska Constitution. Allowing the criminal justice system to shortcut the elaborate existing framework by which a person may be committed to psychiatric care would present serious constitutional problems. For instance, in a commitment proceeding, the individual has a right to notice of what treatment specifically has been proposed and then may line up appropriate experts to contest the treatment plan. Under this statute, the defendant has no notice of such a request, no opportunity to bring appropriate experts to court, and thus no way to contest whether the proposed plan of treatment is proper or not. The bill also invites an infringement of the right to privacy in one's medical information and records, since a judge must naturally inquire into the current medical and psychiatric treatment of the accused in order to ensure that the orders are carried out. In order to make sense, the provisions relating to medical care presuppose exposure of the accused's sensitive medical information in open court.

Again, given these important constitutional interests, the ACLU recommends the Committee delete or revise Section 4, subsection (b) of HB 324.

Section One's Proposed Addition of AS Sec. 11.56.730
Offends the Due Process Clause of the Alaska Constitution

Section One of H.B. 324 proposes creation of the offense of "failure to appear," and requires the state to show no mental state other than the knowledge that one should have been in court. Thus, a person could be convicted of a serious felony for inadvertently or accidentally failing to appear.

Generally, the criminal law requires "not only the doing of some act by the person to be held liable, but also the existence of a guilty mind *during the commission of the act." Speidel v. State*, 460 P.2d 77, 80 (Alaska 1969) (emphasis added). The Alaska courts have held that, for major felonies, a mental state requirement is mandatory, while some ***minor*** offenses, such as hunting or public health related offenses may be strict liability offenses without a mental state requirement. *Speidel*, 460 P.2d 77 (holding that the statute declaring the failure to return a car to be a crime, regardless of mental state, violated due process); *see also State v. Guest*, 583 P.2d 836 (Alaska 1978); *State v. Fremgen*, 914 P.2d 1244 (Alaska 1996). In some cases, the courts have avoided declaring a statute unconstitutional by creating a mental state requirement where a statute has no provision for mental state. *Kimoktoak v. State*, 584 P.2d 25 (Alaska 1978); *Alex v. State*, 484

P.2d 677 (Alaska 1971). However, given the explicit statement that no mental state is required in Section One, the courts would not be able to avoid the constitutional conflict and must rule the statute unconstitutional.

On a policy basis, the Committee should consider the impact of H.B. 324 on the prison population of the state. The ACLU of Alaska's recent review of the prison system showed that over the past seven years the population of prisoners in custody for most types of crimes (e.g., property offenses, offenses against the person, sex offenses) has remained largely stable. The expansion of the prison population from 2002 to 2008 was due almost exclusively to the *tripling* of the number of prisoners incarcerated for two types of offenses: for violations of probation and parole and for public order and administration offenses. Public order and administration offenses include victimless offenses relating to criminal justice administration, and the largest group of these offenders consists of those serving time for failure to appear in court. The state can hardly argue in the face of a tripling of the number of offenders incarcerated on those types of offenses that the judiciary has been too lenient on those who fail to appear. Passing this bill will ensure an even greater expansion in the Alaska prison population as a result of more prosecutions and more convictions for failures to appear.

The Committee should also take note that the equivalent federal rule, as well as many state rules, requires a showing that the defendant ***"deliberately" or "willfully"*** missed court. *Hutchison v. State*, 27 P.3d 774, 777-79 (Alaska App. 2001) (noting that the federal bail statute, 18 U.S.C. § 3150, as well as Connecticut, California, and Illinois statutes, require a showing of "willful" failure to appear). Given that the federal court system and several large state court systems do not find themselves facing large numbers of non-appearing defendants, even when only "willful" failures to appear are prosecuted, the current, stricter Alaska standard of "knowing" failure to appear should adequately ensure appearance of defendants.

The Committee should also consider the potential negative effects of this policy on judicial efficiency. As the law stands now, a defendant who misses court through neglect or confusion has a strong interest in appearing in court immediately upon realizing the mistake to have his bench warrant lifted, since that response will tend to show an innocent mental state and a sincere desire to participate in the court process. Under the proposed bill, a defendant who misses court through neglect or confusion will face the same penalty for turning himself in the next day as if he disappears for the next six months. Creating a stiffer penalty and eliminating any meaningful defense will encourage those who do miss court to absent themselves from court indefinitely. No policy or penalty is ever going to prevent neglect, mistake, and confusion. A flexible, and in some cases forgiving, policy will serve judicial efficiency best.

Problematic Extension of Time for Bail Hearing

Section Three proposes to extend the window of detention prior to a bail hearing to 48 hours. Under current Alaska law, a defendant must be brought before a judicial officer within 24 hours.

Under *Gerstein v. Pugh*, a probable cause hearing must be held without unreasonable delay. 420 U.S. 103 (1975).

After a standard of 24 hours was adopted by most states and most circuits, a narrowly divided US Supreme Court stated that the initial appearance must be made only within 48 hours. *Riverside v. McLaughlin*, 500 U.S. 44 (1991). However, *Riverside* does not bind the states in their interpretation of their own constitutions. In one accounting of state responses to *Gerstein*, most states had concluded that 24 hours was the appropriate term under the case, and only seven states explicitly permitted more than 24 hours prior to an initial hearing. *Jenkins v. Chief Justice of Dist. Court Dept.*, 619 N.E.2d 324, 333-34 (Mass. 1993).

Since Alaska has guaranteed a 24-hour window for initial appearances for ***18 years*** since the *Riverside* decision, the state courts may be hard pressed to see why a 48-hour window would not likely permit "unreasonable delay." The Alaska courts have not yet had a chance to rule on the dimensions of the "speedy trial" provision of Article I, section 11 as it relates to initial appearances, since Rule 5 has long guaranteed a 24-hour window of appearance. The Supreme Court could very well decide that the state constitutional provisions relating to speedy trial and due process require a 24-hour window prior to initial appearance, just as the Massachusetts Supreme Court did in *Jenkins*.

Given that the currently existing rules of criminal procedure already provide an exception for defendants arrested far from urban centers and allow the prosecution to request a delay to gather more information where necessary for a bail hearing, the state's success over the last 18 years in providing a hearing within 24 hours strongly suggests that a delay of more than 24 hours would represent unnecessary delay, making the statute unconstitutional.

Unconstitutional Imposition of Warrantless Search

Section Four's proposed addition of A.S. Sec. 12.30.016 seeks to allow unconstitutional warrantless searches. Subsections (b)(2), (c)(2). Compared to probationers and parolees, the rights of pretrial defendants against unreasonable search and seizure are strong.

While comparatively little case law exists in Alaska courts, a recent Ninth Circuit case strongly endorsed the rights of pretrial defendants against warrantless searches. In *United States v. Scott*, the defendant had been arrested on drug charges and his release was conditioned on his "consent" to suspicionless search of his home and random drug tests. 450 F.3d 863 (9th Cir. 2006). After a positive urine test for methamphetamine, officers searched his home and found a shotgun. *Id.* at 866. The Ninth Circuit held that his consent was not valid, as he would have been placed in custody if he had declined. *Id.* at 870. Most importantly, the court said: "if a defendant is to be released subject to bail conditions that will help protect the community from the risk of crimes he might commit while on bail, the conditions must be justified by a showing that defendant poses a heightened risk of misbehaving while on bail. The government cannot, as it is

trying to do in this case, short-circuit the process by claiming that the arrest itself is sufficient to establish that the conditions are required." *Id.* at 874.

Creating a blanket rule that a court may impose bail conditions that violate rights against unreasonable search without requiring any kind of individualized finding would violate the rule enunciated in *Scott*. A provision that states that such conditions may only be imposed after a written finding of the reasons particular to the individual defendant as to why such bail conditions are necessary may render this section constitutional.

Overly Broad Imposition of Third Party Custodians

Section 5 of the Bill unconstitutionally proposes to limit a pre-trial defendant's liberty. A pretrial defendant enjoys a right to be considered innocent; he also enjoys a default right to his liberty. *Stack v. Boyle*, 342 U.S. 1. ("This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning."). No showing of proof, no adversarial proceeding is required for the filing of a complaint. As such, the court should require a showing from the prosecution to impose a condition of bail on the accused. Yet the third-party custodian provision imposes no restraint on the court's authority.

Contrast, for instance, the language from Section 5, "a judicial officer may appoint a third-party custodian if the officer finds that the appointment will, singly or in combination with other conditions, reasonably assure the person's appearance and the safety of the victim, other persons, and the community" to the language from Section 4, "the officer shall impose *the least restrictive condition* or conditions that will reasonably assure the person's appearance." The term "least restrictive," or any sense that a bail condition should be "necessary" rather than simply the court's preference, is missing from Section 5.

Arguably, the imposition of a third party custodian requirement would enhance the likelihood of *any* defendant's appearance in court. However, the courts are not free to impose any quantity of bail they like or to impose any conditions that seem like a good idea. Such conditions may be imposed only when found to be necessary.

The Committee should note that in a recent Alaska Judicial Council survey on the criminal justice system, excessive and arbitrary use of the third-party custodian requirement was one of the most frequent complaints. The original purpose of the third-party requirement – to ensure that impoverished defendants incapable of making cash bail could be released in a manner that assured community safety and court appearance – has been almost totally lost. A third-party custodian is now often imposed as a matter of course, rather than after specific findings, and in addition to, not in lieu of, cash bail. To prevent more abuse, a court should be required to make specific, written findings as to why a third-party custodian is necessary.

Conclusion

We hope that the Judiciary Committee will note these are just some of the constitutional infirmities in House Bill 324.

While the ACLU of Alaska supports appropriate revisions to the criminal justice system to address the special circumstances of our State, and its evolving needs, this Bill is not well-crafted to vindicate the state's purposes.

The sections we have identified present substantial Constitutional problems and will likely entangle the state in lengthy and costly litigation, should H.B. 324 pass as currently written.

Thank you again for the opportunity to share our concerns. And please feel free to contact the undersigned should you require any additional information.

Sincerely,

Jeffrey Mittman
Executive Director
ACLU of Alaska

cc: Representative Nancy Dahlstrom, Vice-Chair
Representative Carl Gatto
Representative Bob Herron
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes

STATE OF ALASKA

SEAN PARNELL, GOVERNOR

DEPARTMENT OF LAW
CRIMINAL DIVISION

Mailing: PO Box 110300
Juneau, AK 99811-0300
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Juneau, AK 99801
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March 10, 2010

Hon. Jay Ramras
Chair, House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 324 – Bail Reform

Dear Chairman Ramras:

I am writing first to thank you for the thoughtful and thorough hearings that you held for HB 298 (sexual assault and abuse) and HB 316 (evidence retention and post-conviction DNA testing). I am also writing to ask again that you consider scheduling House Bill 324, the bail reform bill, for a hearing in the House Judiciary Committee. I hope you will not think we are too demanding, but there are good reasons to hear the bail bill: in addition to protection of the public and other victims, victims of sexual assault and sexual abuse will greatly benefit from the passage of the bill. Although bail reform is not directly targeted at sexual assault or sexual abuse in the state, the bill would provide additional protection to victims of these crimes.

The Problems with current law:

Our bail laws date back to 1966. It is clear that when the legislature adopted these statutes, times were not as difficult as present. For example, unless a person has been convicted of an unclassified felony or a class A felony, our bail laws allow a person found guilty of any other crime, either by plea or by verdict, to be released pending imposition of sentence or during an appeal. The following scenarios are only a few of many examples of the danger that can result from the application of the current law.

> Larry Berryhill, IJU-07-992CR, was convicted of two counts of Sexual Abuse of a Minor in the Second Degree for having sexual contact with a young boy who worked for him at his lodge in Gustavus. After being found guilty, and over the state's objection, the court released him on an unsecured signature bond, in lieu of posting bail, in the amount of $25,000. Mr. Berryhill did not appear for his sentencing. Alaska State Troopers and law enforcement agents from other states

(Mr. Berryhill had committed similar crimes in other states) found that Mr. Berryhill had fled to Argentina, and was vacationing in New Zealand and Europe when he should have appeared in court for his sentencing. Mr. Berryhill died before the Troopers were able to arrest him. He did not spend a single day in jail for his sexual abuse of that young boy.

Michael Williams, 3AN-10-166CR, has been convicted of a felony five times, two of the felonies were federal armed bank robbery convictions from the late 1980s. In January, 2008, he was charged with the Robbery in the First Degree for a home invasion robbery with multiple victims. The state proceeded with the prosecution under the three strikes law – with a 99 year sentence possible if convicted. This potential sentence is higher than most people convicted of homicide would receive. Over the state's objection, bail was set at $5,000 cash appearance bond and a third party custodian was appointed. The state requested several times that his bail be increased, but were unsuccessful. Mr. Williams skipped out soon after release, and a bench warrant was issued for his arrest. He has not been found.

James Spencer, 3AN-09-2113CR, was charged with Robbery in the First Degree after confronting a Carr's employee with a handgun. Over the state's objection, his bail was set at $1,000 cash performance bond, and $5,000 cash or corporate appearance bond. Last week, Mr. Spenser was arrested and charged with a new Robbery in the First Degree for an armed robbery at the Burger King (3AN010-2471CR).

Jack Lee Espinoza, Jr., 3AN-10-2113CR, was charged with two counts of Robbery in the First Degree. He had been convicted of more than 10 crimes in the past, several of them were felonies. Over the state's objection, Mr. Espinoza had been released on bail of $2,500 cash or corporate appearance bond and ankle monitoring. Within 48 hours of his release, Mr. Espinoza had cut off his ankle monitor, and with another person committed another armed robbery at a trailer in Anchorage. The victim was shot, allegedly by the other person, during the robbery.

How HB 324 will help avoid these problems

Section 10 of HB 324 (page 13, beginning at line 26) provides that a person found guilty of a sexual felony may not be released pending imposition of sentence or appeal. The legislature has raised the maximum term of imprisonment for a person convicted of a sexual felony to 99 years; with that maximum term the danger of flight is high. Additionally, the

danger of sex offenders victimizing others is significant. Mr. Berryhill would not have been released after being found guilty of sexual abuse under HB 324.

HB 324 is similar to federal law in part because it would adopt a presumption, that is rebuttable, that no combination of conditions or monetary bail would ensure the safety of the public and the appearance of the defendant in cases where the person is either charged with an unclassified or a class A felony (similar to current law), or the defendant is a higher risk of flight or danger to the public (new in HB 324). The bill provides that other persons with higher risk include the following:

- persons charged with a felony who have a prior felony conviction and less that five years have elapsed since unconditional release for the prior felony;
- persons charged with a crime committed while the person was on release for another charge or conviction;
- persons charged with a domestic violence crime if the person has a conviction for a domestic violence crime within the previous five years;
- persons arrested in connection with a felony charge or conviction out of state and the person is fugitive from the other jurisdiction.

The individuals described in the scenarios above (except for Mr. Berryhill), would have burden of going forward under HB 324 with suggestion for release conditions. For example, Mr. Williams would have to present information and suggestions for conditions of release that would satisfy a judicial officer that he would not be a danger to the public and he would not be a flight risk. Mr. Williams still has the constitutional right to have bail set for him.

Additionally, HB 324 would adopt standards for third party custodians so that, for example, a person charged with crimes, on probation, or with recent convictions could not act as a third party custodian. HB 324 would require a judicial officer to do basic screening of a person before appointing the person as a custodian. Defendants have taken advantage of third party custodians in the past. There have been advertisements on Craig's list for third party custodians (see attached).

Misconceptions about HB 324

We have heard several comments about HB 324 that are simply not accurate. For example, the bill changes the deadline for the first appearance before a court of a person arrested from 24 to 48 hours. This change has been described as contrary to the practice of a

majority of other states. As can be seen by the attached memorandum and chart, Alaska is one of only three states who require a first appearance within 24 hours. The remaining states have later deadlines. There are many good reasons to change this deadline. It would give all parties a chance to gather information for better informed bail hearings. Even more important is that victims in Alaska have a constitutional right to appear at arraignments and bail hearings. Often we are unable to notify them of a hearing that must be held within 24 hours of arrest; other times the victim is still in the hospital at this time. The change to a 48 hour deadline will help the system make the victim's right to be present much more meaningful.

We also have heard people say that HB 324 would prohibit certain people from being released on bail. This is not correct. Defendants have a constitutional right to have bail set for their release. HB 324 simply changes certain procedures for the courts to follow in setting bail. In doing so, it would protect the public and discourage bail jumping much better than does current law.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:
Richard A. Svobodny
Deputy Attorney General

Enclosures

MEMORANDUM

STATE OF ALASKA

Department of Law - Criminal Division

To: Senate Judiciary Committee

Date: March 1, 2010

Thru: Richard Svobodny, Deputy Attorney General
Anne Carpeneti, Assistant Attorney General

From: Susan S. McLean SMc
Director, Criminal Division

Subject: **Other State Rules - First Appearance After Arrest**

General Considerations

The Fourth Amendment requires that a person must be released from custody after 48 hours if a court has not determined that there is probable cause for the arrest. *County of Riverside v. McLaughlin*, 500 U.S. 44, 57-59, 111 S.Ct. 1661, 1670-1671 (1991). Violation of the rule is but one factor to consider in determining whether to suppress a defendant's in-custody statements.

- Since probable cause (and the amount of bail) must be determined before an arrest warrant issues, a probable cause determination only applies to warrantless arrests.
- Since probable cause may be determined on the basis of affidavits and sworn testimony after a warrantless arrest, the defendant's presence is not required at a probable cause hearing.
- Many states require appearance before a magistrate without unnecessary delay, but most courts have not defined "without unnecessary delay" as a specific amount of time, and determine meaning on a case by case basis.

Only 3 of the 24 states which set specific time limits mandate appearance within 24 actual hours of arrest.

Summary - First Appearance Following Warrantless Arrest, By Total Number of States

3 states - 24 hours, calculated including weekends and holidays (AK, FL, MD)
1 state - 24 hours, weekends and holidays *may* be included or excluded (WA)
6 states - 24 hours, calculated *excluding* weekends and holidays (AZ, CT, DE, ID, MA, NH)

1 state - 36 hours, calculated *excluding* day of arrest, Sundays and holidays (MN)

7 states- 48 hours, including weekends and holidays (AL, AR, GA, HI, MS, NE, TX)
1 state - 48 hours, *excluding* Sunday, holiday, and days when court not in session (CA)
1 state - 48 hours, *excluding* Saturday, Sunday and holidays (ME)
1 state - 48 hours if 1st appearance is combined w/prob. cause hearing (court decision) (WI)

2 states - 72 hours, including weekends and holidays (NJ, WY)
1 state - 72 hours, *excluding* Saturday, Sunday and holidays (LA)
1 state - 72 hours is "without delay", if probable cause w/in 48 hours (court decision) (TN)
21 states - "without unnecessary delay" (CO, IL, IA, KS, KY, MI, MT, NV, NM, NY, NC, ND, OH, OK, OR, PA, RI, SD, UT, VT, WV)

2 states - "forthwith" (SC, VA)

1 state - "promptly" (repealed a 24- hour rule in 1995) (IN)

1 state - person must be released if not "charged" within 20 hours, but no provision for first appearance (MO)

State Time Limits for Initial Appearance Before Magistrate

State	Time Limit	Authority	Statutory language/construction
Alabama	48 hours - Warrantless arrest 72 hours - Arrest w/ warrant	Ala. R. Crim. P. 4.3(a)(1)(iii) Ala. R. Crim. P. 4.3(b)(2)(i)	
Alaska	24 hours, including weekends and holidays	Alaska R. Crim. P. 5(a)(1)	
Arizona	24 hours, excluding Sat., Sun and holidays	Ariz. R. Crim. P. 4.1(b) and Ariz. R. Crim. P. 1.3	*See, State v. Watkins,* 2008 WL 3171651 * 3 (Ariz. App. Aug.5, 2008) (Sat. Sun. and legal holiday excluded from calculation of 24 hrs; citing Rules 4.1(b) and 1.3))
Arkansas	48 hours Case law suggests that exception may exist for weekends and holidays	Ark. R. Crim. P. 4.1(e)	*See, Larson v. Dorney,*__ F.Supp.__, Slip. Op. 2009WL 903392 *4 (W.D. Ark, April 1, 2009)(delay between arrest on Good Friday and appearance on Monday was "as promptly as calendar would allow")
California	48 hours, excluding Sundays and holidays. If 48 hours expires when court is not in session, then next judicial day.	CA Penal Code § 825(a)(1) CA Penal Code § 825(a)(2)	
Colorado	without unnecessary delay	CRSA. § 16-2-112 Colo. R. Crim. P. 5	
Connecticut	24 hours, excluding Sat., Sun. and holidays	CRS 54-1(g) Conn. Practice Book R. 37-1	Statutory language "promptly before the court sitting next regularly" means the next court day, excluding weekends and holidays. *State v. Pirowski,* 11 Conn. App. 238,240, 526 A.2d 562 (1996)
Delaware	24 hours, excluding Sundays and holidays	11 Del. C. § 1909	
Florida	24 hours, including weekends and holidays	Fla. R. Crim. P 3.130	
Georgia	48 hours –warrantless arrest 72 hours – arrest with warrant	Ga. Uniform St. Ct. R. 26.1 Ga. St § 17-4-62; Ga. St § 117-4-26	
Hawaii	48 hours	H.R.S. 803-9(5)	
Idaho	24 hours, excluding Sat., Sun. and holidays	I.C.R, Rule 5(b)	
Illinois	without unnecessary delay	I.L.C.S. § 109-1	*See, People v. Willis,* 831 N.E.2d, 531, 538 (Ill., 2005) Ill Court cites *McLaughlin* as requiring 48 hours, but delay is only one factor to be examined in deciding whether confession is voluntary. Court has not otherwise defined "unnecessary delay".

Indiana	" promptly" 24 hr. rule repealed, 1995 Ct. decision implies that more than 48 hours can pass before initial appearance before magistrate	Ind. Code § 35-33-7-1	*See, State v. Larson,* 776 N.W.2d, 254, 258 (Ind. 2009) – probable cause must be determined with 48 hours, but can be based on hearsay and written testimony. "Arrested person has no right to be physically present at probable cause hearing." Ind. law does not provide for a specific period of time in defining how "promptly" a person is brought before magistrate
Iowa	without unnecessary delay	I.C.A. 804.22	
Kansas	without unnecessary delay	KSA 2003 Supp. 22- 2901	*See, State v. Carrow,* 2006 WL 399251 *4 (Kan. App., Feb. 17, 2006) - cites *McLaughlin* as defining "without unreasonable delay" to mean that period of delay "cannot be longer than 48 hours, excluding weekends and holidays"
Kentucky	without unnecessary delay	Ky. R. Crim. P. 3.02(2)	
Louisiana	72 hours excluding Sat., Sun, holidays 48 hours probable cause hearing, which is not adversarial and conducted without presence of defendant	LSA – C.Cr. P. Art. 230-1(A) LSA –C. Cr. P. Art. 230.2(A)	
Maine	48 hours, excluding Sat., Sun and holidays	Me. R. Crim. P. 5(a)	
Maryland	24 hours, including weekends and holidays	Md. Rule 4-212(e) and (f)	Although statute does not specifically state "including weekends", it is clear from case law. *See, e.g., Odum v. State,* 846 A. 2d 145 (Md. App. 2004)
Massachusetts	24 hours, excluding weekends and holidays (see judicial interpretation re probable cause determination)	Mass. R. Crim. P. 7	"accused shall be brought before court then in session, and, if not at its next session". Language at the court's "next session" suggests that if an accused is arrested on Friday, the next session would be a regular court day. *See, Jenkins v. Chief Justice of Dist. Court Dept.,* 619 N.E.2d 324, 337,339 (Mass, 1993) holding that probable cause must be determined within 24 hours but that the determination may be made ex parte upon written documents.
Michigan	without unnecessary delay	M.C.L.A. § 764.13	
Minnesota	36 hours, excluding day of arrest, Sun. and holidays	49 M.S.A. R. Crim. P. 4.02(5)	

Mississippi	without unnecessary delay, within 48 hours	M.C.A. 99-3-17 Uniform Cnty and Cir R 6.03	
Missouri	None – must be charged within 20 hours, but no requirement of personal appearance	V.Ann.Mo.C. Art. 544.170	All persons who are arrested without warrant shall be released if not charged and held by warrant within 20 hours of arrest
Montana	without unnecessary delay	MCA 46-7-101	*See, St. v. Brown*, 933 P.2d 672, 675-676 (Mont. 1999) acknowledging *McLaughlin* 48 hour time limit for probable cause determination, and holding that to be one factor in deciding voluntariness of confession.
Nebraska	48 hours	Neb. Crim. Rule 5.1(b)(1)	
Nevada	without unnecessary delay -warrantless arrest 72 hours- arrest with warrant	N.R.S. 171-1771 N.R.S. 171-178	*See, Powell v. State*, 930 P.2d 1123 (Nev. 1997), acknowledging that *McLaughlin* requires probable cause hearing within 48 hours
New Hampshire	24 hours, excluding Sat., Sun. and holidays	N.R.S. § 594:20(a)	
New Jersey	72 hours, provided that complaint showing probable cause is filed within 12 hours of arrest	N.J. Crim. Rules 3:4-1 and 3:4-2	
New Mexico	without unnecessary delay	NMSA § 31-1-5	
New York	without unnecessary delay	McKinney's CPL § 140.20 sub1	
North Carolina	without unnecessary delay	N.C.G.S.A. § 15A-511	
North Dakota	without unnecessary delay	N.D.C.C. 2906-25 N.D. Crim. Rule 5(a)	
Ohio	without unnecessary delay	O.R.C. § 29.35.05 Ohio Crim. Rule 4(e)	
Oklahoma	without unnecessary delay	22 Okl. Stat. Ann. § 181	*See, Black v. State, 871 P.2d 35, 39 (Okl.Cr.*1994).Citing *McLaughlin*, court recognized that delay longer than 48 hours in taking defendant to probable cause hearing is unreasonable.
Oregon	without unnecessary delay		
Pennsylvania	without unnecessary delay	Pa.R.Crim.P. 519	
Rhode Island	without unnecessary delay (unless charged w/ offense under RI Gen Law. 12.13.1.1*)	Super. R. Crim. P., Rule 5 Dist. R. Crim. P., Rule 9	*Unless charged w/ offense under RI Gen Laws, 12.13.1.1 (charges carrying life sentence or firearm offenses committed by persons previously convicted of offense carrying life sentence), in which case 48 hrs., excluding Sat., Sun. and holidays
South Carolina	Shall be forthwith carried before a magistrate and a warrant of arrest procured	S.C. Code 1976§ 22-5-200	

South Dakota	without unnecessary delay	SDCL § 23A-4-1	*State v. Larson*, 776 N.W. 2d 254, 258 (S.D., 2009) persons arrested without warrant are constitutionally entitled to probable cause determination within 24 hours.
Tennessee	"without unnecessary delay" – Judicially defined – 72 hours for appearance before magistrate 48 hrs for probable cause, but hearing unnecessary	Tenn. R. Crim. P. 5(a)	Due process is violated if probable cause is not determined within 48 hours, but a full adversarial hearing is not necessary. If an individual is not brought before a magistrate within 72 hours there has been an unnecessary delay within the definition of Tenn. R. Crim. P. 5.1. *State v. Carter*, 16 SW 762, 766 (Tenn. 2000)
Texas	48 hours	V.Ann. Tex. C.C.P. Art 14.06	
Utah	without unnecessary delay- 48 hours probable cause, but arrestee need not be present	U.C.A. 1953 § 77-723 Utah Criminal Rule 7	
Vermont	without unnecessary delay	Vt. R. Crim. P. 3(g)	
Virginia	"forthwith"	Va. Code Ann. § 19.2-82	Accused and officer appear together "forwith" for probable cause hearing. Does not apply to arrests with warrant
Washington	(Warrantless arrest only) 24 hours, including weekends and holidays 48 hours prob. cause, but hearing not required	Wash. Cr.RLJ 3.2.1 (c) Wash. Cr.RLJ 3.2.1(a)	"must be brought before a court of limited jurisdiction as soon as practicable after the detention is commenced, but in any event before the close of business on the next court day." Sat, Sun and holidays may be considered court days
West Virginia	Without unnecessary delay	W.Va. Code Sex. 62-1-5 W.Va. R. Crim. P. 5	
Wisconsin	Within a reasonable time Judicial definition - 48 hours implicitly the reasonable time	W.S.A. § 970.01	If the initial appearance also serves as the *Riverside* probable-cause hearing it must be held within 48 hours barring extraordinary circumstances. In cases where a defendant's *Riverside (v. McLaughlin)* determination was properly made in a proceeding prior to the initial appearance, court looks at the individual circumstances of the case to determine a "reasonable time" from the defendant's arrest *State v. Evans*, 522 N.W. 2d, 554, 563 (Wis. App., 1994) (Held: 4 days over a weekend not unreasonable)
Wyoming	without unnecessary delay and in no event more than 72 hours	W. R Crim P. 5(a)	

From: Henderson, Robert E (LAW)
Sent: Tuesday, January 19, 2010 5:09 PM
To: Carpeneti, R Anne D (LAW); Svobodny, Richard (LAW)
Cc: Novak, John J (LAW)
Subject: FW: Third Party Custodian Craigslist ad

Annie and Rick:

Laurie Eller is an LOA in our office who saw the craigslist posting asking someone to come forward as a TPC.

Robert E. Henderson
Assistant District Attorney
907.269.6300 (office)
907.269.6321 (fax)

From: Eller, Laurie A (LAW)
Sent: Tuesday, January 19, 2010 5:00 PM
To: Henderson, Robert E (LAW)
Subject: Third Party Custodian Craigslist ad

Rob, I finally remembered to look for that Craigslist ad from last summer about someone wanting to pay for a TPC. I found it and it is shown below. Let me know if I can be of further help. ☺

Date: 2009-08-24, 11:19AM AKDT
Reply to: job-k7j6y-1339990957@craigslist.org [Errors when replying to ads?]

Looking for third party in court case , court case is non violent, non-sexual,non- abusive. Its is a Misdeamoner , but requires THIRD PARTY for 30 days until next court date. Will pay handsomely$$$$$$

- Location: ANCHORAGE
- Compensation: Will Pay Handsomely$$$$$$$$$
- Principals only. Recruiters, please don't contact this job poster.
- Please, no phone calls about this job!
- Please do not contact job poster about other services, products or commercial interests.

PostingID: 1339990957

Jane Pierson

From: Cindy Smith
Sent: Thursday, March 04, 2010 8:55 AM
To: Jane Pierson
Subject: FW: Court Statiscs for Bail Bill
Attachments: cases w charges filed in fy09.pdf; ptrp actions fy09 - criminal cases.pdf

Fyi.

From: Doug Wooliver [mailto:dwooliver@courts.state.ak.us]
Sent: Wednesday, March 03, 2010 2:12 PM
To: Carpeneti, R Anne D (LAW); Svobodny, Richard (LAW); Peeples, Dwayne B (DOC); Steiner, Quinlan G (DOA); Levitt, Rachel E (DOA); Cindy Smith; McLean, Susan S (LAW)
Subject: Court Statiscs for Bail Bill

Hello all. Our tech people have gone through our CourtView courts (all courts except those in the first district; first district cases are not included in these numbers) and come up with numbers for the various categories of offenses that will be subject to the rebuttable presumption of no bail. Now I have to figure out how to make sense of all of it. We have broken down the numbers by category, but because there will be a lot of overlap (for example a person counted in the category for any of the particular offense categories may also be counted in the category of persons subject to a petition to revoke probation), we can't just add up the categories and come to a number. Once I go through all of this I will let you know how I plan to assess the impact. Please let me know if you have any questions or comments about these data. Doug

These data are arranged by statute reference in sections 4 and 12 of the bill.

AS 12.30.011(d)(2)(A): See attached. Note that there is a difference between the number of offenses and the number of cases. I think that we need to look at the number of cases because one person may be charged with more than one offense that would trigger the presumption. I think that once the presumption is triggered, the presumption attaches and other offenses don't need to be counted.

AS 12.30.011(d)(2)(B): There were 4,134 defendants charged with a felony (other than a felony from the bill's list of specific offenses) during FY09.
Of those, **1,403** had been convicted of a felony in the prior 10 years. (7/1/1998 or later) This was our measure of those who commit a felony within five years of the date of their unconditional discharge. We can't directly track by unconditional discharge date, but we can track by conviction date. This search assumed that each felony defendant served 5 years probation and thus five years following their unconditional discharge would be ten years from the date of their conviction. Some of the periods of probation will be longer than 5 years and some less, but this was the average we settled on. This number does not include those with an out-of-state conviction

AS 12.30.011(d)(2)(C): We don't have a way to track those who commit an offense while on bail from an earlier charge.

AS 12.30.011(d)(2)(D): There were 3148 defendants charged with a DV related crime during FY09. Of those, **919** were previously convicted of a DV related crime in the prior 5 years.

AS 12.30.011(d)(2)(E): In CourtView locations during FY09 there were 96 cases where the defendant was charge with the following: AS12.70.120: Arrest Prior To Requisition (Fugitive from Justice)

AS 12.30.055 (in section 12 of the bill): See attached.

Alaska Court System

Cases/Charges Filed for Specified Action Codes

CourtView Locations

FY09

Charge Description	# of Cases Charged
AS11.41.100: Murder 1	4
AS11.41.100(a)(1)(A): Murder 1-Intent To Cause Death	26
AS11.41.100(a)(2): Murder 1- Repeat Phys Injury To Child	1
AS11.41.100(att): Attempted Murder 1	10
AS11.41.110: Murder 2	1
AS11.41.110(a)(1): Murder 2-Intend Serious Injury	13
AS11.41.110(a)(2): Murder 2-Extreme Indifference	7
AS11.41.110(a)(3): Murder 2-Felony Murder	8
AS11.41.120: Manslaughter	1
AS11.41.120(a)(1): Manslaughter -Death Not Murder 1 Or 2	7
AS11.41.120(a)(1): Manslaughter	1
AS11.41.160: Manslaughter of Unborn Child	1
AS11.41.200: Assault 1	18
AS11.41.200(a)(1): Assault 1- Serious Injury, Weapon	101
AS11.41.200(a)(2): Assault 1- Serious Injury, Intent	17
AS11.41.200(a)(3): Assault 1- Serious Injury, Extreme Indif	5
AS11.41.200(a)(4): Assault 1- Serious Injury, Weap, Repeat	1
AS11.41.280(a)(2): Assault Unborn Child 1 - w/ intent	1
AS11.41.300(a): Kidnapping	10
AS11.41.300(a)(1)(B): Kidnapping- Use Victim As Shield/Hostage	1
AS11.41.300(a)(1)(C): Kidnapping- Injury Or Sexual Assault	31
AS11.41.300(a)(1)(c): Kidnapping	2
AS11.41.300(a)(1)(E): Kidnapping- To Commit Felony Or Escape	4
AS11.41.300(a)(1)(e): Kidnapping	1
AS11.41.300(a)(2)(B): Kidnapping- Risk Of Serious Injury	4
AS11.41.410: Sexual Assault 1	2
AS11.41.410(a)(1): Sex Assault 1- Penetrate w/o Consent	57
AS11.41.410(a)(2): Sex Assault 1- Att. Penetrate, Injure	1
AS11.41.420: Sexual Assault 2	3
AS11.41.420(a)(1): Sex Assault 2- Contact w/o Consent	48
AS11.41.420(a)(3): Sex Assault 2- Penetrate Incap Victim	26
AS11.41.425: Sexual Assault 3	2
AS11.41.425(a)(1)(A): Sex Assault 3- Contact w/ Ment Incapable	1
AS11.41.425(a)(1)(B): Sex Assault 3- Contact w/ Incapacitated	6
AS11.41.425(a)(1)(C): Sex Assault 3- Contact w/ Unaware Victim	2
AS11.41.434(a)(1): Sex Abuse Minor 1- Penetrate Vic Undr 13	28
AS11.41.434(a)(2): Sex Abuse Minor 1-Penetr Own Chld Undr 18	8
AS11.41.434(a)(3)(A): Sex Abuse Minor 1-Penetr Undr 16, Hshold	4
AS11.41.434(a)(3)(B): Sex Abuse Minor 1-Auth Fig Penetr Undr 16	3
AS11.41.436: Sexual Abuse Of Minor 2	4
AS11.41.436(a)(1): Sex Abuse Minor 2- Penetrate, Vic 13-15	37
AS11.41.436(a)(2): Sex Abuse Minor 2-Contact, Vict Undr 13	29
AS11.41.436(a)(3): Sex Abuse Minor 2- Contact, By Parent	8
AS11.41.436(a)(5)(A): Sex Abuse Minor 2-Contact Undr 16, Hshld	2
AS11.41.436(a)(5)(B): Sex Abuse Minor 2-Auth Fig Cntact Undr 16	1
AS11.41.436(a)(6): Sex Abuse Minor 2-Auth Fig 18 yrs+	2
AS11.41.438: Sexual Abuse of Minor 3	11
AS11.41.450(a)(1): Incest- Penetr Ancestor Or Descendant	3

Alaska Court System

Cases/Charges Filed for Specified Action Codes

CourtView Locations

FY09

Charge Description	# of Cases Charged
AS11.41.450(a)(1): Incest	2
AS11.41.450(a)(2): Incest- Penetr Brother Or Sister	4
AS11.41.450(a)(3): Incest- Penetr Uncle, Aunt, Neph Or Niece	1
AS11.41.452(d): Online Enticement of a Minor	1
AS11.41.455(a)(7): Exploit Minor-Make Porn, Sado/Masochism	1
AS11.41.455(b): Exploit Minor-Make Porn, Parent Allows	1
AS11.41.458: Indecent Exposure 1	1
AS11.41.458(a)(1): Indecent Exp 1-vic under 16, masturbate	2
AS11.41.500: Robbery 1	9
AS11.41.500(a)(1): Robbery 1- Armed w/ Deadly Weapon	70
AS11.41.500(a)(2): Robbery 1- Use Weapon	9
AS11.41.500(a)(3): Robbery 1- Cause/ Attempt Serious Injury	18
AS11.46.400: Arson 1- Danger Of Serious Injury	8
AS11.56.300: Escape 1	1
AS11.61.190(a)(1): Misc/Weapons 1- Involving Drug Crime	3
AS11.61.190(a)(2): Misc/Weapons 1- From Vehicle	10
AS11.71.010: Misconduct- Controlled Substance 1	1
AS11.71.010(a)(1): Cntrld Substc 1-Deliv 1A To Minor	2
AS11.71.010(a)(2): Cntrld Substc 1-Dliv II/IIIA To Minr, Age Diff 3+	1
AS11.71.020: Misconduct-Controlled Substance 2	20
AS11.71.020(a)(1): Cntrld Substc 2- Manuf/Deliv IA	80
AS11.71.020(a)(2): Cntrld Substc 2- Manuf Meth	1
AS11.71.020(a)(2)(A): MICS 2- Manuf Meth	2
AS11.71.020(a)(3): MICS 2- Poss Precursor, Intnd Make Meth	3
AS11.71.020(a)(4): MICS 2- Poss Chem, Intnd Make Meth	1
AS11.71.020(a)(4)(A): MICS 2- Poss Chem, Intnd Make Meth	2
AS11.71.020(a)(6)(B): Cntrld Substc 2 - Deliver Listed Chem	1

Total number of cases: **610**

Total Number of Charges: **1374**

NOTE: One case could have more then one charge but is only counted once in this total.

End of Report

rinted 3/2/2010 at 8:28 am

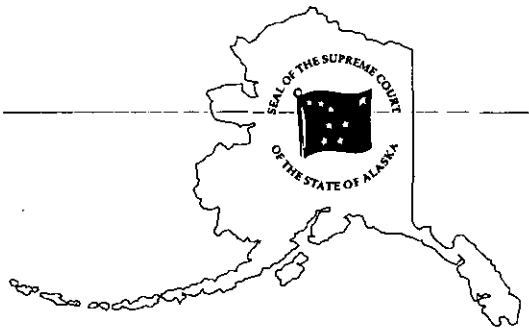
2475

Petitions to Revoke Probation - Criminal Cases

Fiscal Year: 2009

CourtView Locations

	Petition to Revoke Probation	PTRP - ASAP	PTRP - Community Work Service	PTRP - DV Interv. Program	PTRP - New Criminal Charge	PTRP - Restitution	PTRP- Volunteers of America	Total
Felony	5,579	213	85	9	91	1	2	5,980
Misdemeanor	5,262	2,251	1,947	113	541	8	819	10,941
Total	10,841	2,464	2,032	122	632	9	821	16,921



ALASKA COURT SYSTEM
State of Alaska
Office of the Administrative Director

820 West 4th Avenue
Anchorage, Alaska 99501-2005
(907) 264-8265
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Doug Wooliver
Administrative Attorney

March 24, 2010

The Honorable Jay Ramras
Chair, House Judiciary Committee
Alaska State Legislature
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Ramras:

During the House Judiciary Committee meeting on Monday, March 22nd Representative Gruenberg asked that I respond to two questions. His first question was whether a judge has the authority to appoint a guardian for a minor crime victim. The question arose in connection with a discussion of the right of a crime victim, or the parent or guardian of a minor victim, to comment during a defendant's bail hearing. The specific language is found on page 10, lines 24 and 25 of the bill. The answer to Representative Gruenberg's question is yes.

Although a minor will necessarily have either a parent or guardian, in those cases where the court must appoint a guardian for purposes of this statute (such as some cases when the defendant is the child's parent) AS 12.45.046(a) (attached) gives the court the authority to appoint a guardian ad litem for a minor under the age of 16 who is a victim of or a witness to a crime against a person.

Representative Gruenberg's second question was whether the repeal and reenactment of AS 12.30.030 (Appeal from conditions of release) (attached) under section 8 of the bill adds a new duty for the court with its provision that the "appeal shall be determined promptly." The answer to this question is no. This language is found in the existing statute and has been a requirement for many years.

I hope that this answers the questions. Please let me know if you would like any additional information.

Sincerely,

Doug Wooliver
Administrative Attorney
Alaska Court System

Citation/Title
AK ST Sec. 12.45.046, Testimony of children in criminal proceedings

***9676 AS § 12.45.046**

WEST'S ALASKA STATUTES ANNOTATED
TITLE 12. CODE OF CRIMINAL PROCEDURE
CHAPTER 45. TRIAL, EVIDENCE, COMPROMISE
ARTICLE 2. DISCOVERY, TESTIMONY, AND EVIDENCE

Current through the 2009 First Regular Session and First Special Session of the 26th Legislature

§ 12.45.046. Testimony of children in criminal proceedings

(a) In a criminal proceeding under AS 11.41 involving the prosecution of an offense committed against a child under the age of 16, or witnessed by a child under the age of 16, the court

(1) may appoint a guardian ad litem for the child;
(2) on its own motion or on the motion of the party presenting the witness or the guardian ad litem of the child, may order that the testimony of the child be taken by closed circuit television or through one-way mirrors if the court determines that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate.

(b) In making a determination under (a)(2) of this section, the court shall consider factors it considers relevant, including

(1) the child's chronological age;
(2) the child's level of development;
(3) the child's general physical health;
(4) any physical, emotional, or psychological injury experienced by the child; and
(5) the mental or emotional strain that will be caused by requiring the child to testify under normal courtroom procedures.

(c) If the court determines under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate, the court may order that the testimony of the child be taken in a room other than the courtroom and be televised by closed circuit equipment in the courtroom to be viewed by the defendant, the court, and the finder of fact in the proceeding. If the court authorizes use of closed circuit televised testimony under this subsection,

(1) each of the following may be in the room with the child when the child testifies:
(A) the prosecuting attorney;
(B) the attorney for the defendant; and
***9677** (C) operators of the closed circuit television equipment;
(2) the court may, in addition to persons specified in (1) of this subsection, admit a person whose presence, in the opinion of the court, contributes to the well-being of the child.

(d) When a child is to testify under (c) of this section, only the court and counsel may question the child. The persons operating the equipment shall do so in as unobtrusive a manner as possible. If the defendant requests, the court shall excuse the defendant from the courtroom, shall permit the defendant to attend in another location, and shall afford the defendant a means of viewing the child's testimony and of communicating with the defendant's attorney throughout the proceedings. Upon request of the

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defendant or the defendant's attorney, the court shall permit a recess to allow them to confer. The court shall provide a means of communicating with the attorneys during the questioning of the child. Objections made by the attorneys to questions of a child witness may be resolved in the courtroom if the court finds it necessary.

(e) If the court determines under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures would result in the child's inability to effectively communicate, the court may authorize the use of one-way mirrors in conjunction with the taking of the child's testimony. The attorneys may pose questions to the child and have visual contact with the child during questioning, but the mirrors shall be placed to provide a physical shield so that the child does not have visual contact with the defendant and jurors.

(f) If the court does not find under (a)(2) of this section that the testimony by the child victim or witness under normal court procedures will result in the child's inability to effectively communicate, the court may, after taking into consideration the factors specified in (b) of this section, supervise the spatial arrangements of the courtroom and the location, movement, and deportment of all persons in attendance so as to safeguard the child from emotional harm or stress. In addition to other procedures it finds appropriate, the court may

(1) allow the child to testify while sitting on the floor or on an appropriately sized chair;
(2) schedule the procedure in a room that provides adequate privacy, freedom from distractions, informality, and comfort appropriate to the child's developmental age; and
***9678** (3) order a recess when the energy, comfort, or attention span of the child warrants.

CREDIT(S)

SLA 1988, ch. 92, § 2; SLA 1994, ch. 78, § 1.

<General Materials (GM) - References, Annotations, or Tables>

REFERENCES

LAW REVIEW AND JOURNAL COMMENTARIES

Protection of child witnesses and the right of confrontation. James S. Rowe, 7 Alaska L. Rev. 223 (June 1990).

REFERENCES

LIBRARY REFERENCES

Infants ⚿20.
Witnesses ⚿228.
Westlaw Key Number Searches: 211k20; 410k228.
C.J.S. Infants §§ 125 to 137.
C.J.S. Witnesses §§ 396 to 398, 404 to 405.

REFERENCES

RESEARCH REFERENCES

Treatises and Practice Aids

Hearsay Handbook § 44:2, State Courts.

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Citation/Title
AK ST Sec. 12.30.030, Appeal from conditions of release

***9496 AS § 12.30.030**

WEST'S ALASKA STATUTES ANNOTATED
TITLE 12. CODE OF CRIMINAL PROCEDURE
CHAPTER 30. BAIL

Current through the 2009 First Regular Session and First Special Session of the 26th Legislature

§ 12.30.030. Appeal from conditions of release

(a) A person who remains in custody after a review provided for in AS 12.30.020(f) or (j) may move the court having original jurisdiction over the offense to amend the order. The motion shall be determined promptly.

(b) When a court denies a motion under (a) of this section or conditions of release have been imposed by the court having original jurisdiction over the offense, an appeal may be taken to the court having appellate jurisdiction over the court denying the motion or imposing the conditions subject to the applicable court rules. The order of the lower court shall be affirmed unless it is found that the lower court abused its discretion. If it is held that the lower court did abuse its discretion, the appellate court may modify, vacate, set aside, reverse, remand the action for further proceeding, or remand the action directing entry of the appropriate order, which may include ordering the person to be released under AS 12.30.020(a). The appeal shall be determined promptly.

CREDIT(S)

SLA 1962, ch. 34, § 3.01; SLA 1966, ch. 20, § 1; SLA 1970, ch. 69, § 12; SLA 1991, ch. 21, § 12; SLA 2005, ch. 65, § 2.

<General Materials (GM) - References, Annotations, or Tables>

HISTORICAL NOTES

HISTORICAL AND STATUTORY NOTES

SLA 2005, ch. 65, § 2, added reference to subsec. (j) of section 12.30.020.

REFERENCES

CROSS REFERENCES

Bail in civil actions, see § 09.40.120 et seq.
Bail, jurisdiction of court of appeals, see § 22.07.020.
Bail, rights of an accused, see Const. Art. 1, §§ 11 and 12.

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turned to a correctional facility. (Sec. 3.03 ch 34 SLA 1962; am § 1 ch 20 SLA 1966; am § 9 ch 63 SLA 1997; am §§ 5, 6 ch 57 SLA 2006)

Sec. 12.30.020. Release before trial. (a) A person charged with an offense shall, at that person's first appearance before a judicial officer, be ordered released pending trial on the person's personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer unless the offense is an unclassified felony or class A felony or unless the officer determines that the release of the person will not reasonably assure the appearance of the person as required or will pose a danger to the alleged victim, other persons, or the community. If the offense with which a person is charged is a felony, on motion of the prosecuting attorney, the judicial officer may allow the prosecuting attorney up to 48 hours to demonstrate that release of the person on the person's personal recognizance or upon the execution of an unsecured appearance bond will not reasonably assure the appearance of the person or will pose a danger to the alleged victim, other persons, or the community.

(b) If a judicial officer determines under (a) of this section that the release of a person will not reasonably assure the appearance of the person, or will pose a danger to the alleged victim, other persons, or the community, the judicial officer may

(1) place the person in the custody of a designated person or organization agreeing as a custodian to supervise the person; the court shall, personally and in writing, inform the custodian about the duties required of a custodian, and that failure to report immediately in accordance with the terms of the order that the person released has violated a condition of release may result in the custodian's being held criminally liable under AS 11.56.758;

(2) place restrictions on the travel, association, or place of abode of the person during the period of release;

(3) *[Repealed, § 8 ch 57 SLA 2006.]*

(4) require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security, a sum not to exceed 10 percent of the amount of the bond; the deposit to be returned upon the performance of the condition of release;

(5) require the execution of a bail bond with sufficient solvent sureties or the deposit of cash;

(6) require the execution of a performance bond in a specified amount and the deposit in the registry of the court, in cash or other security; the performance bond must be imposed and enforced separately from any appearance bond, and the deposit to be returned upon the performance of the condition of release; or

(7) impose any other condition considered reasonably necessary to assure the defendant's appearance as required and the safety of the alleged victim, other persons, or the community.

(c) In determining the conditions of release under (b) of this section, the judicial officer shall take into account

(1) the nature and circumstances of the offense charged, including the effect of the offense upon the alleged victim;

(2) the weight of the evidence against the person;

(3) the person's family ties;

(4) the person's employment;

(5) the person's financial resources;

(6) the person's character and mental condition;

(7) the length of the person's residence in the community;

(8) the person's record of convictions;

(9) the person's record of appearance at court proceedings;

(10) the flight of the accused to avoid prosecution or the person's failure to appear at court proceedings; and

(11) threats the person has made, and the danger the person poses, to the alleged victim.

(d) A judicial officer authorizing the release of a person under this section shall issue an order containing a statement of the conditions imposed.

(e) The judicial officer shall inform the person of the penalties that may be imposed for a violation of the conditions of release and advise the person that a warrant for the person's arrest will be issued immediately upon a violation or that the person may be arrested without a warrant for a violation of conditions of release as set out in AS 12.25.030(b).

(f) A person who remains in custody 48 hours after appearing before a judicial officer because of inability to meet the conditions of release shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. If the judicial officer who imposed the conditions of release is not available, any other judicial officer in the district may review the conditions. If the conditions are not amended and the person remains in custody, the judicial officer shall set out in writing the reasons for requiring the conditions imposed.

(g) A judicial officer who orders the release of a person on a condition specified in (b) of this section may at any time amend the order to impose additional or different conditions of release, or to release the person under (a) of this section.

(h) Information offered or introduced at a hearing before a judicial officer to determine the conditions of release need not conform to the rules governing the admissibility of evidence in a court of law.

(i) The court shall issue written or oral findings to demonstrate why conditions provided under (b)(1) of this section needed to be imposed.

(j) If a person remains in custody after review of conditions by a judicial officer under (f) of this section, a subsequent review of conditions may be held at the request of the person. Unless the prosecuting authority stipulates otherwise or a defendant has been incarcerated for a period equal to the maximum sentence for the most serious charge for

which the defendant is being held, a judicial officer may not schedule a bail review hearing under this subsection unless

(1) the person provides to the court and the prosecuting authority a written statement that new information not considered at the previous review will be presented; the statement must include a description of the information and the reason the information was not presented at a previous hearing; in this paragraph, "new information" does not include the inability to post the required bail;

(2) the prosecuting authority has at least 48 hours' notice before the time set for the review requested under this subsection; and

(3) at least seven days have elapsed between the previous review and the time set for the review requested under this subsection. (Sec. 3.04 ch 34 SLA 1962; am § 1 ch 20 SLA 1966; am §§ 1, 2 ch 112 SLA 1967; am §§ 1, 2 ch 39 SLA 1974; am § 16 ch 143 SLA 1982; am § 4 ch 115 SLA 1994; am §§ 10 — 12 ch 63 SLA 1997; am § 4 ch 124 SLA 2000; am §§ 18, 19 ch 124 SLA 2004; am § 1 ch 65 SLA 2005; am § 8 ch 57 SLA 2006; am § 19 ch 24 SLA 2007)

Sec. 12.30.023. Release before trial in cases involving controlled substances or alcohol. (a) In determining the conditions of release under AS 12.30.020 in cases involving a violation of AS 04.11.010, 04.11.499, AS 11.71, or AS 11.73, the court shall consider the conditions specified in AS 12.30.020 and the following conditions and impose one or more conditions it considers reasonably necessary to protect the public safety and security, including ordering the defendant

(1) to obey all laws;

(2) to submit to a search of the defendant's person, personal property, residence, vehicle, or any vehicle over which the defendant has control, for the presence of alcoholic beverages or illegal drugs and drug paraphernalia by a peace officer who has reasonable suspicion that the defendant is violating the terms of the defendant's bail release by possessing alcoholic beverages or illegal drugs and drug paraphernalia;

(3) in

(A) controlled substances offenses, to enroll in a random drug testing program, at the defendant's expense, to detect the presence of an illegal drug, with testing to occur not less than once a week, and with the results being submitted to the court and the district attorney's office;

(B) alcoholic beverage offenses, to submit to a breath test when requested by a law enforcement officer;

(4) to not have on the defendant's person, in the defendant's residence, or in any vehicle over which the defendant has control, any alcoholic beverages, controlled substances, or related paraphernalia;

(5) to not use, manufacture, possess, handle, purchase, give, or administer any controlled substance or alcoholic beverage;

(6) to not associate with persons involved in using, manufacturing, growing, or distributing controlled substances or alcoholic beverages;

(7) to not enter or remain in places where controlled substances or alcoholic beverages are being used, manufactured, grown, or distributed;

(8) to not be physically present, within a two-block area of, or within a designated area near, the location at which the offense occurred or at other designated locations, unless the defendant actually resides within that area;

(9) to not use or possess a paging device, cellular phone, or other portable communicative device on the defendant's person, in any vehicle over which the defendant has control, or in the defendant's residence;

(10) to be physically inside the defendant's residence, or in the residence of the defendant's third-party custodian, between time periods set by the court, except as otherwise required by employment, education, counseling, or treatment and as specifically authorized by the court;

(11) to not

(A) have a firearm in the defendant's possession, or control, in any vehicle over which the defendant has control, or in the defendant's residence;

(B) possess a knife, other than an ordinary pocket knife, on the defendant's person;

(12) to engage in any conduct or to refrain from any conduct that the court considers reasonably necessary to protect the public.

(b) In addition to conditions the court may impose under (a) of this section and notwithstanding other provisions in this chapter, if the defendant is charged with manufacturing methamphetamine under AS 11.71.020(a)(2), unless the defendant proves to the satisfaction of the court that the defendant's only role in the offense was as an aider or abettor and that the defendant did not stand to benefit financially from the manufacturing, the court shall require the posting of a minimum of $250,000 cash bond if the defendant has previously been convicted in this or another jurisdiction of manufacturing, delivering, or possessing methamphetamine. (§ 1 ch 37 SLA 1996; am § 13 ch 53 SLA 2006)

Sec. 12.30.025. Release before trial in cases involving stalking. (a) In determining the conditions of release under AS 12.30.020 in cases involving stalking but not domestic violence, the court shall consider the conditions specified in AS 12.30.020 and the following conditions and impose one or more conditions it considers reasonably necessary to protect the alleged victim of the stalking, including ordering the defendant

(1) not to subject the victim to further stalking;

(2) not to contact the victim other than through counsel;

(3) to engage in counseling; if the court directs the defendant to engage in personal counseling, the court shall provide in the order that the counseling

must propose alternatives to aggression if that type of counseling is available;

(4) to refrain from the consumption of alcohol or the use of drugs.

(b) As used in this section,

(1) "domestic violence" has the meaning given in AS 18.66.990;

(2) "stalking" means a violation of AS 11.41.260 or 11.41.270. (§ 35 ch 102 SLA 1980; am § 12 ch 61 SLA 1982; am § 4 ch 64 SLA 1991; am § 6 ch 40 SLA 1993; am § 2 ch 37 SLA 1996; am § 10 ch 64 SLA 1996)

Sec. 12.30.027. Release in domestic violence cases. (a) Before ordering release before or after trial, or pending appeal, of a person charged with or convicted of a crime involving domestic violence, the court shall consider the safety of the alleged victim or other household member. To protect the alleged victim, household member, and the public and to reasonably assure the person's appearance, the court may impose bail and any of the conditions authorized under AS 12.30.020, any of the provisions of AS 18.66.100(c)(1) — (7) and (11), and any other condition necessary to protect the alleged victim, household member, and the public, and to ensure the appearance of the person in court, including ordering the person to refrain from the consumption of alcohol.

(b) A court may not order or permit a person released under (a) of this section to return to the residence of the alleged victim or the residence of a petitioner who has a protective order directed to the person and issued or filed under AS 18.66.100 — 18.66.180.

(c) If the court imposes conditions of release under (a) of this section, it shall

(1) issue a written order specifying the conditions of release;

(2) provide a copy of the order to the person arrested or charged; and

(3) immediately distribute a copy of the order to the law enforcement agency that arrested the person.

(d) When a person is released from custody under (a) of this section,

(1) from a correctional facility, the correctional facility shall notify the prosecuting authority and the prosecuting authority shall make reasonable efforts to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release;

(2) from other than a correctional facility, the arresting authority shall make reasonable efforts to immediately notify the alleged victim of the release, and to furnish the alleged victim with a copy of the order setting any conditions of release.

(e) A person arrested for a crime involving domestic violence may not be released from custody until the person has appeared in person before a judicial officer or telephonically for arraignment.

(f) A person may not bring a civil action for damages for a failure to comply with the provisions of this section.

(g) In this section, "crime involving domestic violence" has the meaning given in AS 18.66.990. (§ 11 ch 64 SLA 1996)

Sec. 12.30.029. Release in sexual abuse and sexual assault cases. (a) Before ordering release before trial of a person charged with a crime under AS 11.41.410 — 11.41.438 or 11.41.450 — 11.41.458, the court shall consider the safety of the alleged victim. The court may impose bail and any of the conditions authorized under AS 12.30.020 and any other condition necessary to protect the alleged victim and the public and to assure the appearance of the person in court.

(b) The court may impose any of the following conditions on a person charged with an offense under AS 11.41.410 — 11.41.438 or 11.41.450 — 11.41.458

(1) that the person have no contact with the alleged victim except as specifically allowed by the court;

(2) that the person reside in a place where the person is not likely to come into contact with the alleged victim of the offense; and

(3) if the person is on medication, that the person take the medication as prescribed.

(c) Before a judicial officer releases a person charged with an offense under AS 11.41.410 — 11.41.438 or 11.41.450 — 11.41.458, the court shall

(1) assure that the alleged victim, or the alleged victim's parent or guardian if the alleged victim is under 18 years of age, has been notified by a law enforcement agency or the prosecuting attorney of the hearing where the release is being considered, or a reasonable effort at notification has been made;

(2) solicit comments from the victim or the victim's parent or guardian who is present and wishes to comment and consider those comments before making a decision to release the person. (§ 1 ch 95 SLA 2000)

Sec. 12.30.030. Appeal from conditions of release. (a) A person who remains in custody after a review provided for in AS 12.30.020(f) or (j) may move the court having original jurisdiction over the offense to amend the order. The motion shall be determined promptly.

(b) When a court denies a motion under (a) of this section or conditions of release have been imposed by the court having original jurisdiction over the offense, an appeal may be taken to the court having appellate jurisdiction over the court denying the motion or imposing the conditions subject to the applicable court rules. The order of the lower court shall be affirmed unless it is found that the lower court abused its discretion. If it is held that the lower court did abuse its discretion, the appellate court may modify, vacate, set aside, reverse, remand

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: February 3, 2010 **FURTHER REFERRALS: Finance**

Date of Committee Action: 3/26/10

The JUDICIARY Committee considered: **HB 324**

HOUSE BILL NO. 324

"An Act relating to the crime of failure to appear; relating to arrest for violating certain conditions of release; relating to release before trial, before sentence, and pending appeal; relating to material witnesses; relating to temporary release; relating to release on a petition to revoke probation; relating to the first appearance before a judicial officer after arrest; relating to service of process for domestic violence protective orders; making conforming amendments; amending Rules 5 and 41, Alaska Rules of Criminal Procedure, and Rules 206 and 603, Alaska Rules of Appellate Procedure; and providing for an effective date."

HB 324-FAILURE TO APPEAR; RELEASE PROCEDURES

Recommends it be replaced with [ ] HCS *or* **[✓] CS** *for* HB324 (JUD)

For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR _____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DPS	5			✓
CTS	6	✓		

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
DOA	1			✓
DOA	2			✓
DOC	3			✓
LAW	4			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	HERRON			X	
	Holmes				X
	Gatto	X			
Chair:	RAMRAS	X			
Chair:					

HB

327

26-LS1261\R.1
Luckhaupt
3/10/10

Pres #1

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 327

Page 3, line 7:

Insert a new bill section to read:

"* **Sec. 3.** AS 11.71.170(b) is amended to read:

(b) Schedule IVA includes, unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including their salts, isomers and salts of isomers whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) barbital;

(2) chloral betaine;

(3) chloral hydrate;

(4) chlordiazepoxide;

(5) clonazepam;

(6) clorazepate;

(7) diazepam;

(8) ethclorvynol;

(9) ethinamate;

(10) flurazepam;

(11) **lorazepam** [LORAZEPAN];

(12) mebutamate;

(13) meprobamate;

(14) methohexital;

(15) methylphenobarbital, also known as mephobarbital;

(16) oxazepam;
(17) paraldehyde;
(18) petrichloral;
(19) phenobarbital;
(20) prazepam;
(21) alprazolam;
(22) halazepam;
(23) temazepam;
(24) triazolam;
(25) midazolam;
(26) quazepam;
(27) flunitrazepam;
(28) [REPEALED
(29)] ketamine hydrochloride."

Renumber the following bill sections accordingly.

Page 4, following line 1:

Insert a new bill section to read:

"* **Sec. 6.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. AS 11.71.170(b)(11), as amended by sec. 3 of this Act, corrects a typographical error in the spelling of "lorazepam" that has existed since its adoption in Chapter 45, SLA 1982. AS 11.71.170(b)(11), as amended by sec. 3 of this Act, applies to crimes committed before, on, or after the effective date of this Act."

ALASKA STATE LEGISLATURE

REPRESENTATIVE KYLE JOHANSEN
MAJORITY LEADER

SPONSOR STATEMENT

HB 327 – Relating to controlled substances and the sale of products containing dextromethorphan

HB 327 updates and strengthens the state's anti-drug laws. Specifically, this legislation does three things: it adds salvia divinorum to the list of schedule IIA drugs, moves buprenorphine from schedule VA up to Schedule IIIA, and limits the purchase of products that contain dextromethorphan (DXM) to Alaskans over the age of 18.

Salvia divinorum is a powerful hallucinogenic similar to mescaline and peyote. It is a perennial herb found in the mountainous regions of Mexico where it has a history of use as a vision inducing substance by the local Mazatec Indians. It is banned in several countries and an ever-growing number of states.

Buprenorphine is a synthetic opiate used in a similar manner to methadone as a treatment to opiate dependency. And, like methadone, it's abused as a recreational drug and leads to dependence.

DXM is a common ingredient in over-the-counter cough suppressants. DXM is safe when taken in the recommended doses. However, when it is taken in large doses it has an intoxicating affect. Over-the-counter products that contain DXM often also contain other ingredients such as acetaminophen and chlorpheniramine. Large doses of acetaminophen can cause liver damage and large doses of chlorpheniramine can cause increased heart rate and seizures.

All three proposed changes in statute would make these drugs either harder for our children and loved ones to obtain or increase the penalties for their use, creating deterrents that will strengthen our drug laws.

I urge your support.

Session: State Capitol, Juneau, AK 99801-1182 • (907) 465-3424 • Fax (907) 465-3793
Interim: 50 Front Street, Suite 203, Ketchikan, AK 99901 • (907) 247-4672 • Fax (907) 225-8546
Coffman Cove • Hollis • Ketchikan • Meyers Chuck • Saxman • Thorne Bay

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 327**
() Publish Date:

Identifier (file name): HB327-LAW-CRIM-03-08-10
Dept. Affected: Law
Title: An Act relating to the scheduling and rescheduling of certain substances as controlled substances and to the sale of products containing dextromethorphan
RDU CRIMINAL
Component Criminal Justice Litigation
Sponsor Representative Johansen
Requester Judiciary
Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

HB 327 adds salvia divinorum to Schedule IIA of Alaska's drug schedules; raises buprenorphine from Schedule VA to Schedule IIIA. And HB 327 provides that a person may not sell a product with dextromethorphan (a type of cough medicine) to a person under 18 years of age unless the person has a prescription for the medicine. A person who recklessly violates this prohibition could be charged with a class B misdemeanor. Therefore, the fiscal impact to the Department of Law is indeterminate.

Prepared by: Eileen Donahue, Division Operations Manager
Phone 465-5427
Division Administrative Services
Date/Time 3/8/10 12:30 PM
Approved by: Daniel S. Sullivan, Attorney General
Date 3/8/2010
Department of Law

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 327 (JUD)**
() Publish Date:

Identifier (file name): HB327-DPS-LAB-03-08-10
Title: Controlled substances and dextromethorphan
Sponsor: Representative Johansen
Requester: House Judiciary

Dept. Affected: Public Safety
RDU: Statewide Support
Component: Laboratory Services
Component Number: **527**

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**		**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**		**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

HB 327 "An Act relating to the scheduling and rescheduling of certain substances as controlled substances and to the sale of products containing dextromethorphan" proposes the addition of Salvia divinorum and Salvinorin A (Divinorin A) as a Schedule IIIA controlled substance and may have a significant impact to the Controlled Substance and Evidence Sections of the Alaska Scientific Crime Detection Laboratory.

To what extent these additions will impact the laboratory cannot be determined at this time.

Prepared by: Orin Dym, Lab Manager — Phone (907) 269-5743
Division: Scientific Crime Detection Laboratory — Date/Time 3/8/10 10:30 AM
Approved by: Joe Masters — Date 3/8/2010
Commissioner

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 327**
() Publish Date:

Identifier (file name): HB327-LAW-CRIM-03-08-10
Dept. Affected: Law
Title: An Act relating to the scheduling and rescheduling of certain substances as controlled substances and to the sale of products containing dextromethorphan
RDU CRIMINAL
Component Criminal Justice Litigation
Sponsor Representative Johansen
Requester Judiciary
Component Number 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

HB 327 adds salvia divinorum to Schedule IIA of Alaska's drug schedules; raises buprenorphine from Schedule VA to Schedule IIIA. And HB 327 provides that a person may not sell a product with dextromethorphan (a type of cough medicine) to a person under 18 years of age unless the person has a prescription for the medicine. A person who recklessly violates this prohibition could be charged with a class B misdemeanor. Therefore, the fiscal impact to the Department of Law is indeterminate.

Prepared by: Eileen Donahue, Division Operations Manager
Phone 465-5427
Division Administrative Services
Date/Time 3/8/10 12:30 PM
Approved by: Daniel S. Sullivan, Attorney General
Date 3/8/2010
Department of Law

(Revised 11/6/2009 OMB)

Skip To Content

Emergency Department Visits Involving Dextromethorphan

The New DAWN Report: **Emergency Department Visits Involving Dextromethorphan**

- **HTML format**
- **PDF format (233 KB)**

Highlights:

- Dextromethorphan (DXM) is approved by the Food and Drug Administration and is a cough suppressant found in many over-the-counter cough and cold remedies. Dextromethorphan is generally safe when taken in recommended doses but in large amounts can cause dangerous side effects.
- According to SAMHSA's Drug Abuse Warning Network (DAWN) for 2004, an estimated 12,584 emergency department visits (0.7% of all drug related emergency department visits) involved pharmaceuticals containing dextromethorphan.
- The rate of emergency department visits resulting from nonmedical use of dextromethorphan for those aged 12 to 20 was 7.1 visits per 100,000 population compared with 2.6 visits or fewer per 100,000 for other age groups.
- Emergency department patients aged 12 to 20 accounted for almost half (48%) of all the emergency department visits resulting from nonmedical use of dextromethorphan.
- The rates of DAWN emergency department visits resulting from any type of use of dextromethorphan among those aged 12 to 20 was 10.3 per 100,000 population compared with 4.3 visits per 100,000 for the population overall.
- Alcohol was implicated in about a third (36%) of the DAWN emergency department visits involving nonmedical use of dextromethorphan for those aged 18 to 20 and in 13% of visits for those aged 12 to 17.

Other reports on dextromethorphan

Other specific drugs

Other topics

Other OAS publications and services

This Short Report, The New DAWN Report: **Emergency Department Visits Involving Dextromethorphan**, is based on the **Drug Abuse Warning Network (DAWN)**, the primary source of national data on drug related emergency department visits. DAWN is conducted by the Office of Applied Studies (OAS) in the Substance Abuse and Mental Health Services Administration (SAMHSA).

This page has been accessed **81622** times since 11/9/2006.

This page was last updated on January 10, 2008.

SAMHSA, an agency in the Department of Health and Human Services, is the Federal Government's lead agency for improving the quality and availability of substance abuse prevention, addiction treatment, and mental health services in the United States.

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New
The DAWN Report
Issue 32, 2006R
DRUG ABUSE WARNING NETWORK

Emergency Department Visits Involving Dextromethorphan

In Brief

According to the Drug Abuse Warning Network (DAWN) for 2004:

- An estimated 16,858 emergency department (ED) visits involved pharmaceuticals containing dextromethorphan (DXM). This was just under 1 percent of all drug-related ED visits.
- The rate of ED visits resulting from nonmedical use of DXM for those aged 12 to 20 was 8.0 visits per 100,000 population, compared with 2.5 visits or fewer per 100,000 for other age groups.
- ED patients aged 12 to 20 accounted for about half (51%) of the ED visits resulting from nonmedical use of DXM, compared with 33 percent of DXM-related ED visits overall.
- The rate of ED visits resulting from any type of use of DXM among those aged 12 to 20 was 14.7 per 100,000 population, compared with 5.7 visits per 100,000 for the population overall.
- Alcohol was implicated in 41 percent of ED visits involving nonmedical use of DXM for those aged 18 to 20 and in 13 percent of visits for those aged 12 to 17.

Dextromethorphan (DXM) is a cough suppressant approved by the Food and Drug Administration (FDA) that is found in many over-the-counter cough and cold remedies.[1] It is generally safe when taken at recommended doses. When taken in large amounts, though, DXM can produce hallucinations and a "high" similar to psychotropic drugs, such as phencyclidine (PCP). Dangerous side effects may include blurred vision, loss of physical coordination, abdominal pain, and rapid heartbeat. Side effects may be worsened if the ingested product also contains other pharmaceutical ingredients— such as acetaminophen, pseudoephedrine, antihistamines, or expectorants, which are commonly found in cough and cold medicines—or alcohol.[2]

In recent years DXM has become available, primarily over the Internet, in bulk powdered form, and concern has grown over the nonmedical use of DXM by teenagers. In May 2005, the FDA issued a warning about the dangers of DXM abuse involving over-the-counter products and DXM obtained from illicit sources.[3]

The Drug Abuse Warning Network (DAWN) collects data from a national sample of short-term, general, non-Federal hospitals[4] and publishes estimates of emergency department (ED) visits involving illicit drugs and nonmedical use of pharmaceuticals. This issue of *The DAWN Report* examines the characteristics of ED visits that involve DXM and products containing DXM.

The DAWN Report is published periodically by the Office of Applied Studies (OAS), Substance Abuse and Mental Health Services Administration (SAMHSA). This issue was written by Judy K. Ball, Ph.D., M.P.A., and David Skellan (SAMHSA/OAS). All material in this report is in the public domain and may be reproduced or copied without permission from SAMHSA. Citation of the source is appreciated.

Included are findings on the age of ED patients who used DXM and the reason for their visit to the ED. Also provided are the rates of DXM-related ED visits per 100,000 population for different age groups and the frequency with which DXM products are found in combination with alcohol. The ED visits considered here exclude the small number of patients who go to the ED to obtain admission to the hospital's detoxification or substance abuse treatment unit.

Overview

During 2004, there were about 106 million ED visits to short-term, general, non-Federal hospitals in the United States.[5] Of those, DAWN estimates that just over 2.5 million were drug related, with just under a half million involving nonmedical use of pharmaceuticals. Nearly 17,000, or just under 1 percent, of all drug-related ED visits in 2004 involved DXM or products containing DXM.

Reasons for ED visits

Nonmedical use of DXM products accounted for 5,962 (35%) of the estimated 16,858 DXM-related ED visits in 2004, and about half (51%) of these nonmedical visits involved patients aged 12 to 20 (Table 1).[6] The rate of ED visits resulting from nonmedical use of DXM products was 8.0 visits per 100,000 population for those aged 12 to 20, while the rate for other age groups was 2.5 or less (Table 1 and Figure 1).

Medical use of DXM included ED visits attributed to adverse reactions that occured when DXM products were used as prescribed (or according to directions for over-the-counter products). About 31 percent of all DXM-related ED visits in 2004 were a result of adverse reactions. Children aged 0 to 11 are the most likely to experience adverse reactions to DXM. Their rate of ED visits was higher than that for any other age group (3.9 per 100,000 population), and they constitute 36 percent of all ED visits involving adverse reactions to DXM.

About 16 percent of DXM-related ED visits involve accidental ingestion. As with adverse reactions, children aged 0 to 11 are also the most likely to accidentally ingest DXM or DXM-containing products. The rate of ED visits for accidental ingestion of DXM is 5.2 visits per 100,000 population, and over 95 percent of ED visits for accidental ingestion of DXM involve children in this age range.

Suicide attempts involving DXM products accounted for 17 percent of DXM-related ED visits. Patients

Table 1. ED visits involving DXM, by age and reason for visit

Age category	Estimated ED visits	Percent of visits[a]	ED visits per 100,000 population
Nonmedical use (35% of total)			
0-11	42	1%	0.1
12-20	3,016	51%	8.0
12-17	1,938	33%	7.6
18-20	1,078	18%	8.7
21-34	1,451	24%	2.5
35+	1,448	24%	1.0
Medical use (adverse reaction) (31% of total)			
0-11	1,879	36%	3.9
12-20	744	14%	2.0
12-17	701	13%	2.8
18-20	43	1%	0.4
21-34	682	13%	1.2
35+	1,890	36%	1.3
Accidental ingestion (15% of total)			
0-11	2,478	96%	5.2
12-20	—	0%	0.0
12-17	—	0%	0.0
18-20	—	0%	0.0
21-34	—	0%	0.0
35+	109	4%	0.1
Suicide attempt (17% of total)			
0-11	—	0%	0.0
12-20	1,610	55%	4.3
12-17	1,154	40%	4.5
18-20	456	16%	3.7
21-34	527	18%	0.9
35+	778	27%	0.5
Total[b]			
All ages	16,858	100%	5.7
0-11	4,399	26%	9.2
12-20	5,556	33%	14.7
12-17	3,970	24%	15.6
18-20	1,586	9%	12.8
21-34	2,662	16%	4.7
35+	4,236	25%	2.8

[a] Percentages may not sum to 100 percent due to rounding.

[b] This total includes only the four types of ED visits shown. This excludes patients who go to the ED to obtain admission to a hospital's detoxification or substance abuse treatment unit.

Note: — Estimates less than 30 are suppressed.

Source: Office of Applied Studies, SAMHSA, Drug Abuse Warning Network, 2004 (03/2006 update).

aged 12 to 20 are more likely than patients in other age groups to use DXM products in a suicide attempt. This group has a rate of 4.3 DXM-related ED visits per 100,000 population, compared with rates of 0.0 for those aged 0 to 11 and less than 1.0 for those aged 21 or older.

Alcohol involvement

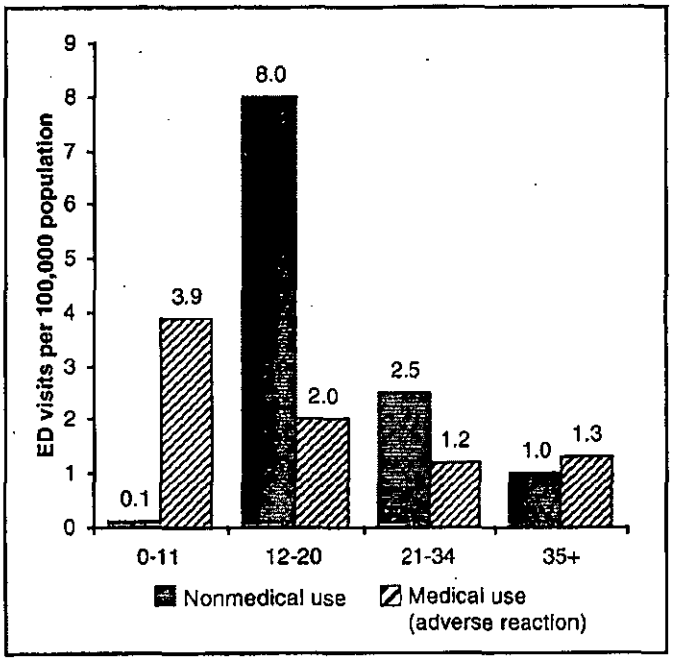
Alcohol was involved in about 13 percent of ED visits resulting from nonmedical use of DXM products for those aged 12 to 17 and in 41 percent of such visits for those aged 18 to 20 (Figure 2). Patients aged 35 to 54 had the highest involvement of alcohol (61%). For the youngest (aged 0 to 11) and oldest (aged 55 or older) patients, alcohol involvement was lower (0% and 2%, respectively).

Alcohol is also an ingredient in some cough medications. Some common products (e.g., NyQuil®) contain a mixture of DXM and up to 10 percent alcohol. In these cases, alcohol may play a role in the ED visit without being specifically documented in the ED medical record. Therefore, these findings may understate the involvement of alcohol and its contribution to the side effects leading to ED visits.

Notes

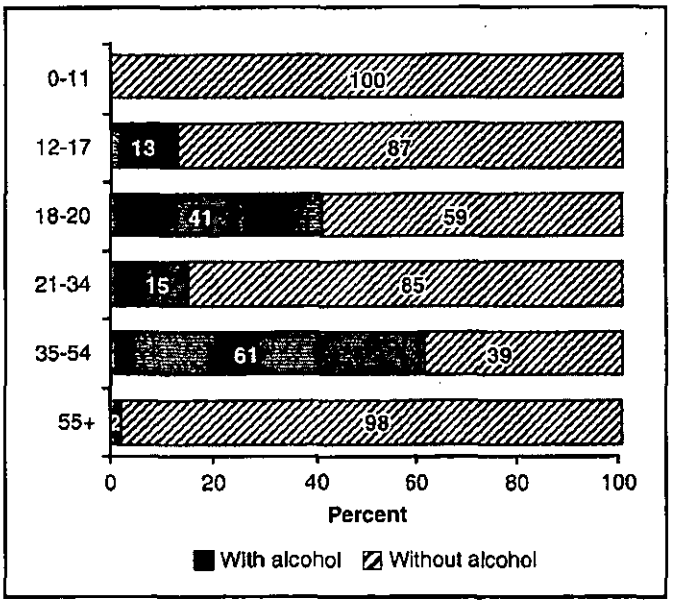
1. U.S. National Library of Medicine, National Institutes of Health. (2003, April 1). *Dextromethorphan.* Retrieved September 26, 2006, from http://www.nlm.nih.gov/medlineplus/druginfo/medmaster/a682492.html
2. National Institute on Drug Abuse. (2001, March). *Hallucinogens and dissociative drugs* (NIH Publication No. 01-4209). Retrieved September 29, 2006, from http://www.drugabuse.gov/ResearchReports/Hallucinogens/halluc4.html
3. Food and Drug Administration. (2005, May 20). *FDA warns against abuse of dextromethorphan (DXM)* (Talk Paper T05-23). Rockville, MD: National Press Office. Retrieved September 29, 2006, from http://www.fda.gov/bbs/topics/ANSWERS/2005/ANS01360.html
4. Specialty hospitals, including children's hospitals, are excluded from the DAWN sample.
5. American Hospital Association (AHA) Annual Survey Database, Fiscal Year 2003. Health Forum LLC, Copyright 2003, One North Franklin Street, Chicago, IL 60606.
6. Nonmedical use of DXM includes taking more than a prescribed or recommended dose and other forms of drug misuse or abuse.

Figure 1. Rates of ED visits for nonmedical and medical use of DXM, by age



Source: Office of Applied Studies, SAMHSA, Drug Abuse Warning Network, 2004 (03/2008 update).

Figure 2. ED visits involving nonmedical use of DXM and alcohol, by age



Source: Office of Applied Studies, SAMHSA, Drug Abuse Warning Network, 2004 (03/2008 update).

For change of address, corrections, or to be removed from this list, please e-mail: shortreports@samhsa.hhs.gov.

The DAWN Report — Emergency Department Visits Involving Dextromethorphan

In Brief

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The **Drug Abuse Warning Network (DAWN)** is a public health surveillance system that monitors drug-related morbidity and mortality. DAWN uses a probability sample of hospitals to produce estimates of drug-related emergency department (ED) visits for the United States and selected metropolitan areas annually. DAWN also produces annual profiles of drug-related deaths reviewed by medical examiners or coroners in selected metropolitan areas and States.

Any ED visit or death related to recent drug use is included in DAWN. All types of drugs—licit and illicit—are covered. Alcohol is included for adults when it occurs with another drug. Alcohol is always included for minors. DAWN's method of classifying drugs was derived from the Multum *Lexicon*, Copyright © 2008, Multum Information Services, Inc. The Multum Licensing Agreement can be found in DAWN annual publications and at http://www.multum.com/license.htm.

DAWN is one of three major surveys conducted by the Substance Abuse and Mental Health Services Administration's Office of Applied Studies (SAMHSA/OAS). For information on other OAS surveys, go to http://www.oas.samhsa.gov. SAMHSA has contracts with Westat (Rockville, MD) and RTI International (Research Triangle Park, NC) to operate the DAWN system and produce publications.

For publications and additional information about DAWN, go to http://DAWNinfo.samhsa.gov.

LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature
Division of Legal and Research Services
State Capitol, Juneau, AK 99801

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November 6, 2009

Memorandum
TO: Representative Kyle Johansen
FROM: Daniel Lesh, Legislative Analyst DDL
RE: Regulation of Over-The-Counter Medications Containing Dextromethorphan
LRS Report 10.073

You asked about state regulations limiting the sale of commonly-abused over-the-counter medications containing the chemical dextromethorphan. Specifically, you wanted to know if any such limitations have been proposed in Alaska, or in other states. You also wanted to know of any over-the-counter medical products that the state of Alaska does not allow to be sold to minors or does not allow to be sold in large quantities.

As you may know, dextromethorphan is a drug included in many common cough medications, including cough syrups and cough pills. Individuals sometime abuse these medications by consuming many times the recommended dose, with dissociative, psychedelic effects. Dextromethorphan abuse has numerous negative side effects, but is not generally considered addictive or lethal. The most serious side effects, which can include death, are caused by consuming medications with other active ingredients besides dextromethorphan, such as acetaminophen, according to information we reviewed.

Alaska

It appears that no limitations on the sale of products containing dextromethorphan have been proposed in Alaska. No bills or resolutions introduced between 1983 and 2009—years for which electronic records are available—mention the word dextromethorphan. In addition, J. Kate Burkhart, executive director, Advisory Board on Alcoholism and Drug Abuse, Department of Health and Social Services, is not familiar with any such proposals, nor is she aware of any chronic misuse of these types of products in Alaska.[1]

According to Ms. Burkhart, the only over-the-counter medications with limitations on their sale in Alaska are those containing pseudoephedrine, ephedrine, and phenylpropanolamine—three drugs that are commonly used in the manufacture of methamphetamine.[2] These limitations are the result of federal and state law. The relevant federal law, the Combat Methamphetamine Epidemic Act of 2005, requires that retail establishments limit access to products containing these drugs; verify purchaser identity; keep a log of all purchases of products containing these drugs; and enforce daily and 30-day limits on the sale of these products to any one individual, among other requirements. A state law (AS 17.30.090) passed shortly after the Combat Methamphetamine Epidemic Act of 2005 mirrors and references that federal law. No other over-the-counter medical products in Alaska are limited in their sale by volume or by age of purchaser, according to Ms. Burkhart.

[1] Ms. Burkhart can be reached at (907) 465-8920. Rather than dextromethorphan, Ms. Burkhart highlighted oxycontin abuse as one of the major concerns facing the Alaska drug abuse prevention community.

[2] An example of an over-the-counter product containing pseudoephedrine is Sudafed.

Other States

It appears that no state regulates the sale of over-the-counter medications containing dextromethorphan, though proposals to do so have been introduced in a number of states. Similarly, proposals have been introduced in Congress, but never passed. However, one state (Illinois; 720 ILCS 570/218) does regulate the sale of pure, unfinished dextromethorphan.[3] Please see Table 1 for a list of relevant state and federal legislation located via *lexis.com* and *thomas.gov* searches.

It is important to note that many major pharmacies have voluntarily installed restrictions of the type you asked about. We were unable to locate a comprehensive list of which stores in which locations have imposed which restrictions. However, a list posted on a website that appears targeted at drug users provides a description of how easy it is to buy dextromethorphan-containing medications in 23 states.[4] The list suggests that in 19 of those states, "some stores" or "large chain stores" do not allow sales of dextromethorphan-containing medications to those less than 18 years of age.[5] The list also names three states (Arkansas, Colorado, and Iowa) where no stores are allowed to sell dextromethorphan to those under 18; however, a search of those states' statutes and regulations did not reveal any such laws.

[3] Unfinished dextromethorphan is already illegal to distribute under general FDA laws regarding packaging and labeling requirements, but state and federal laws have been introduced—and passed in Illinois—to clarify that distribution of unfinished dextromethorphan is illegal.

[4] This list was found on a website called Vaults of Erowid, located at *http://www.erowid.org/chemicals/dxm/dxm_law.shtml*.

[5] Names of stores listed as requiring purchasers to be at least 18 years of age include Wal-Mart, Dillons, Target, Walgreens, Meijers, and Rite-Aid.

Table 1: State and Federal Legislation to Regulate the Sale of Products Containing Dextromethorphan, 2005-2009			
State	2005-2006	2007-2008	2009
California	S.B. 307: Requires a prescription for sale to a person under 18 years of age		
Maryland	S.B. 450: Requires a prescription for sale to a person under 18 years of age. Requires vendors to verify identity of purchasers and keep a log of all sales of products containing dextromethorphan		
Massachussetts		H.B. 3742: Prohibits sale to those under 18 years of age; Requires inventories to be kept by pharmacies and retail providers; allows retail providers to limit consumers to certain quantities	
Michigan		S.B. 1538: Prohibits sale of products containing dextromethorphan to individuals under 18 years of age	
New Jersey	A.B. 4279 and S.B. 2709: Prohibits sale of products containing dextromethorphan to minors under 18 years of age	A.B. 2695 and S.B. 2251: Prohibits sale of products containing dextromethorphan to minors under 18 years of age	A.B. 3676: Prohibits sale of products containing dextromethorphan to minors under 18 years of age; A.B. 3837: Regulates the sale of dextromethorphan *see Attachment A for bill text*
New York	A.B. 4743 and S.B. 499: Makes it unlawful to give, sell or cause to be given or sold 2 or more containers of medicine containing dextromethorphan to any person under the age of 18	A.B. 7509 and S.B. 3444: Makes it unlawful to give, sell or cause to be given or sold 2 or more containers of medicine containing dextromethorphan to any person under the age of 18	A.B. 8276 and S.B. 5606: Requires placement behind the pharmacy or only accessible through the manager of a retail establishment *see Attachment B for bill text*
Oklahoma		S.B. 1794: Requires a valid ID; prohibits minors from purchasing such products; prohibits the sale and distribution of any product containing unfinished dextromethorphan without a license; revises legislative intent to include drug abuse education	

Table 1: State and Federal Legislation to Regulate the Sale of Products Containing Dextromethorphan, 2005-2009, continued			
State	2005-2006	2007-2008	2009
Pennsylvania	H.B. 1289: Provides for the registration and reporting of certain noncontrolled substances including Dextromethorphan		H.B. 1616: Provides that the chemical dextromethorphan be subject to registration *see Attachment C for bill text*
Rhode Island	S.B. 561: Prohibit the sale, without a prescription, of any solid oral product which contains more than twenty (20) milligrams of dextromethorphan either alone or in combination with other drugs	S.B. 635: Defines prohibited acts, and penalties for trafficking in dextromethorphan	S.B. 128 and S.B. 1071: Makes possession of one gram or more of pure dextromethorphan by a person other than a medical facility, medical practice, pharmacist or licensed pharmacy illegal *see Attachment D for bill text*
Virginia	H.B. 875: Restricts access to over the counter medications containing the drug Dextromethorphan		S.B. 952: Makes the sale of over-the-counter medicines containing dextromethorphan on school property a Class 1 misdemeanor *see Attachment E for bill text*
U.S. Congress	109th Congress: H.R. 5280: Prohibits the distribution of unfinished dextromethorphan, expect to certain registered entities	110th Congress: S. 2274: Requires a prescription for sale to a person under 18 years of age. H.R. 970: Prohibits the distribution of unfinished dextromethorphan, expect to certain registered entities	111th Congress: S. 1383: Requires a prescription for sale to a person under 18 years of age. *see Attachment F for bill text* H.R. 1259: Prohibits the distribution of unfinished dextromethorphan, expect to certain registered entities *see Attachment G for bill text*
Notes: Descriptions of bills are based on summary language provided by *lexis.com*. None of these bills were adopted as law. **Source:** State bills located via a 50-state search of *Lexis.com* for the term "dextromethorphan" in State Net Bill Tracking, All States, 2005-2009. Federal bills located via a *Thomas.gov* search for "dextromethorphan."			

I hope this information is useful. Please contact our office if you have additional questions.

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INTELLIGENCE BULLETIN

DXM (Dextromethorphan)

Product No. 2004-L0424-029 OCTOBER 2004
U. S. DEPARTMENT OF JUSTICE

The abuse of DXM (dextromethorphan)—a common ingredient contained in over-the-counter cough and cold medicines—is an increasing concern for law enforcement officers in the United States. Adolescents are the primary abusers of the drug, most likely because it is inexpensive and relatively easy to obtain. Additionally, because DXM is a common ingredient in many cough and cold medicines, many adolescents do not perceive any risk in abusing the drug. Compounding the problem is that few parents know about the potential for abuse of the drug.

Background

DXM is a synthetically produced substance that is chemically related to codeine, though it is not an opiate. DXM is an ingredient in more than 140 over-the-counter cough and cold remedies and since the 1950s has gradually replaced codeine as the most widely used cough suppressant in the United States. It is available in capsule, liquid, liquid gelatin capsule, lozenge, and tablet forms. It also is available in powdered form on the Internet—typically for sale to laboratories conducting research on DXM.

When ingested at recommended dosage levels, DXM generally is a safe and highly effective cough suppressant; however, when ingested in larger amounts, DXM produces negative physiological effects. Reports of DXM abuse have resulted in monitoring by the Drug Enforcement Administration (DEA), and DXM could be added to the Controlled Substances Act if warranted. In 2003 legislation was introduced in Texas and North Dakota to prohibit the sale of DXM to minors. The proposed legislation did not pass in either state. A similar bill introduced in California this year was also defeated.

Slang terms for DXM include DM, robo, rojo, and velvet. Slang terms for DXM intoxication include robo tripping, skittling, and dexing.

Abuse

Most DXM abusers ingest the drug orally, although some snort the pure powdered form of the drug. Abusers ingest various amounts of DXM depending on their body weight and the effect or plateau that they are attempting to achieve (see text box on page 2). Some abusers ingest 250 to 1,500 milligrams in a single dosage, far more than the recommended therapeutic dose of 10 to 20 milligrams every 4 hours or 30 milligrams every 6 to 8 hours.

Over-the-counter products that contain DXM often contain other ingredients such as acetaminophen, chlorpheniramine, and guaifenesin. Large dosages of acetaminophen can cause liver damage; large dosages of chlorpheniramine can cause increased heart rate, lack of coordination, seizures, and coma; and large dosages of guaifenesin can cause vomiting. Some first-time users may not abuse DXM repeatedly if they experience negative

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side effects—such as vomiting—commonly associated with the other ingredients contained in over-the-counter DXM medications. Nonetheless, some DXM abusers "robo shake," a practice whereby they drink a large amount of cough syrup containing DXM and then force themselves to vomit so as to absorb enough DXM through the stomach lining to achieve the desired effect while expelling the other ingredients. Some more experienced abusers use a chemical procedure to extract the DXM from the other ingredients contained in cough syrups to avoid such side effects. (This procedure cannot be used on DXM products sold in nonliquid form.)

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Figure 1. Cough medications with DXM may contain other active ingredients.

Recommended dosages of DXM generally are safe but can cause nausea, gastrointestinal disturbances, slight drowsiness, and dizziness. Acute dosages (between 250 and 1,500 milligrams) can cause blurred vision, body itching, rash, sweating, fever, hypertension, shallow respiration, diarrhea, toxic psychosis, coma, and an increase in heart rate, blood pressure, and body temperature. Some abusers become violent after ingesting the drug. Little is known about the long-term effects of DXM abuse; however, anecdotal reporting and limited clinical research suggest that extensive and prolonged abuse may cause learning and memory impairment. While studies indicate that DXM is not addictive, some former DXM abusers report experiencing cravings for the drug.

DXM Plateaus

Abusers describe the DXM experience as occurring on four different plateaus. Abusers ingest increasing amounts of DXM (based on their weight) to reach each succeeding plateau. Abusers report the following effects occurring in each plateau:

First Plateau: Mild inebriation.

Second Plateau: An effect similar to alcohol intoxication and, occasionally, mild hallucinations. The abuser's speech can become slurred, and short-term memory may be temporarily impaired.

Third Plateau: An altered state of consciousness. The abuser's senses, particularly vision, can become impaired.

Fourth Plateau: Mind and body dissociation or an "out-of-body" experience. The abuser can lose some or all contact with his or her senses. The effects at this plateau are comparable to the effects caused by ketamine or PCP (phencyclidine).

Deaths caused by DXM overdoses are rare as most abusers ingest DXM products that contain other ingredients that cause vomiting, which expels the DXM from their bodies. Most DXM-related deaths are caused by ingesting the drug in combination with other drugs. DXM-related deaths also occur from impairment of the senses, which can lead to accidents. In 2003, a 14-year-old boy in Colorado who abused DXM died when he was hit by two cars as he attempted to cross a highway. State law enforcement investigators suspect that the drug affected the boy's depth perception and caused him to misjudge the distance and speed of the oncoming vehicles.

DXM abuse levels are difficult to determine. Commonly used drug toxicology screens and field

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tests do not accurately detect the presence of DXM. Therefore, more thorough laboratory testing must be performed. DEA recommends the gas chromatography/mass spectrometer (GC/MS) test, as other laboratory tests may produce false positives. National surveys conducted to estimate rates of drug abuse do not include questions regarding DXM. However, the American Association of Poison Control Centers reports that the total number of calls to centers nationwide involving DXM abuse or misuse have increased since 2000 (see Table 1). Calls involving abuse or misuse of DXM by teenagers increased approximately 100 percent from 2000 (1,623) through 2003 (3,271). Calls involving abuse by other age groups increased 21 percent from 2000 through 2002, before decreasing slightly in 2003.

Table 1. Calls Involving Abuse or Misuse of DXM to Poison Control Centers

Year	Teenagers	All Other Age Groups
2000	1,623	900
2001	2,276	1,107
2002	2,881	1,139
2003	3,271	1,111

Source: American Association of Poison Control Centers.

Availability

DXM abusers can obtain the drug at almost any pharmacy or supermarket. Most seek out products that have a high concentration of the drug. One of the most frequently abused products containing DXM is Coricidin® HBP Cough & Cold, which contains 30 milligrams of DXM per tablet. Abusers often refer to Coricidin® HBP Cough & Cold as triple C because of the three Cs imprinted on the red tablets. Other slang terms include skittles, dex, candy, and red devils. Another frequently abused product containing DXM is Robitussin® DM, a syrup that contains 2 milligrams of DXM per milliliter.

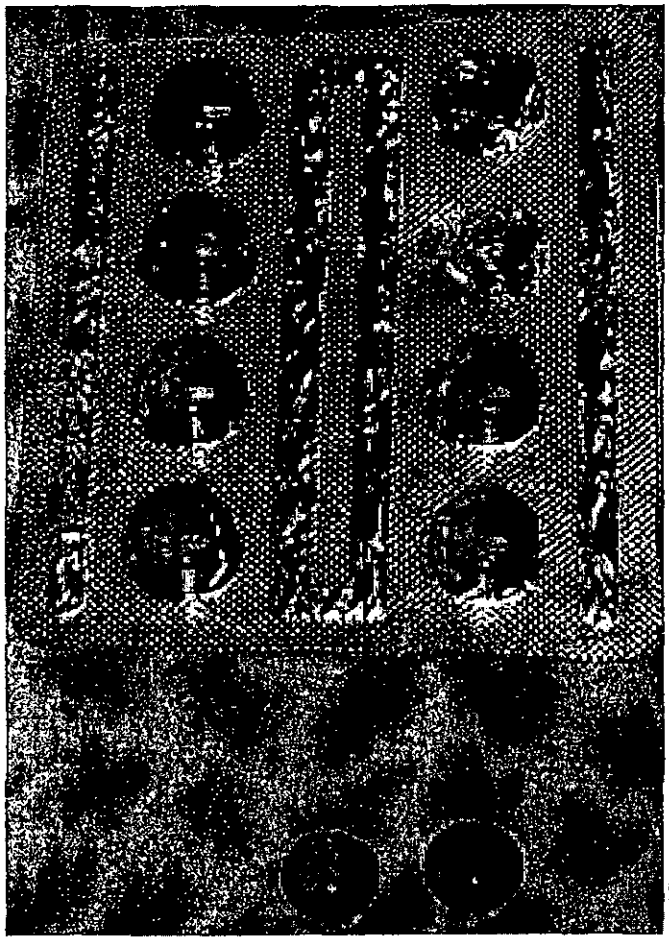

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Figure 2. Coricidin® HBP Cough & Cold tablets.

Concerns about shoplifting and abuse of products containing DXM have resulted in some stores instituting new policies and procedures regarding access and sales of such products. Specifically, some stores place such products where consumers must ask for them, and some have limited the number of packages that can be sold to each customer.

DXM frequently is available at raves and other venues where youths congregate. At such events, DXM occasionally is sold as another drug or in combination with other drugs. For example, DXM sometimes is sold in tablet form by drug dealers who claim that the tablet contains MDMA (3,4-methylenedioxymethamphetamine, also known as ecstasy). When DXM is used in combination with MDMA, the combination can increase the risk of life-threatening hyperthermia. Drug dealers also have distributed DXM to abusers who thought they were purchasing heroin or ketamine.

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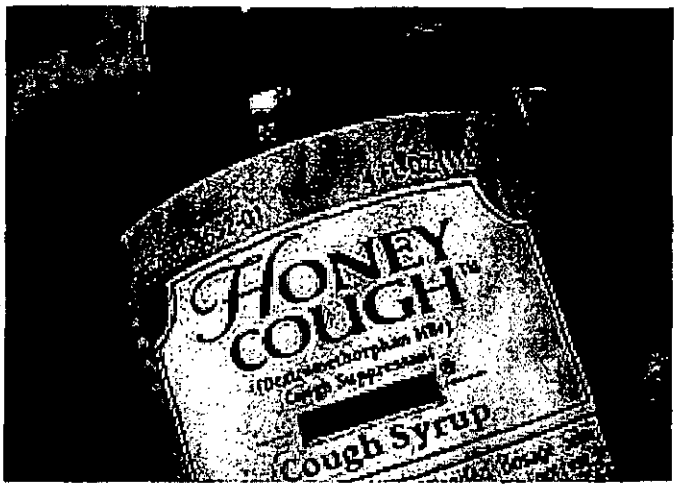

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Figure 3. Cough syrup with DXM.

Pure powdered DXM—typically intended for sale to laboratories conducting research on the drug—is available from some Internet web sites. DXM purchased from such sites contains no other ingredients, which substantially increases the risk of overdose. Two powdered DXM-related deaths occurred in Illinois—one in September 2003 and the other in February 2004. One incident was ruled a suicide; the other was an accidental overdose.

Outlook

DXM abuse among adolescents most likely will increase as the drug is relatively easy to obtain and inexpensive. Moreover, adolescents perceive the risk in abusing the drug as low. Stemming DXM abuse will require increased public awareness of the drug's potential for abuse, increased awareness of the inherent risks associated with abusing DXM, and increased diligence of parents, educators, health care providers, law enforcement personnel, and retailers who market products containing DXM.

Sources

American Association of Poison Control Centers

American Journal of Health-System Pharmacy

Associated Press

Columbia University

DrugAbuse.com

Drug Enforcement Administration

Maryland Poison Control Center

Office of National Drug Control Policy

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Gov. Doyle signs bill outlawing hallucinogenic drug salvia divinorum

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By Ashley Davis

Published: Friday, March 5, 2010
Updated: Friday, March 5, 2010

Gov. Jim Doyle signed a bill Thursday outlawing salvia divinorum, a hallucinogenic herb.
The bill was originally authored by former state Rep. Sheldon Wasserman in 2007 when he learned of salvia's potential to induce intense hallucinations when used recreationally.

"You can find out quickly, this has the potential for danger," Wasserman said.

The legislation regulating salvia has since been re-introduced and passed in the Senate last month. Wasserman worked with Rep. David Cullen, D-Milwaukee, who was previously co-author of the bill and is now the primary author, to see the bill become a law.

"We worked together on this thing to really make this happen," Wasserman said.

Danny Marchewka / The Daily Cardinal

Local shops like Amsterdam on Gilman St. will no longer be able to sell salvia divinorum after the recent legislation outlawed the substance.

The legislation prohibits manufacturing, distributing or delivering the active chemical ingredient and instates a maximum fine of $10,000 for violators. Wasserman said the legislation is directed more toward the distributor and less toward the user.

Business owners currently selling salvia maintain a different belief about the drug. The owner of Amsterdam, the store located at 447 W. Gilman Street, says the shop has not had any problems in the ten years it has been selling salvia.

She said salvia is marketed as incense and works to facilitate a deep state of meditation. It was meant to be burned like regular incense and she said she has no knowledge of its misusage.

"If people are smoking it, we don't know about it because we are not selling it as that," she said.

She also said her most loyal customers are age 40 and above and kids are not as interested in it.

Wasserman disagreed.

"[Salvia's] main use was to get high," he said. "There was never any thought that it was anything but a recreational drug."

Drug Enforcement Administration
Office of Diversion Control
Drug & Chemical Evaluation Section
Washington, D.C. 20537

SALVIA DIVINORUM AND SALVINORIN A

(Street Names: Maria Pastora, Sage of the Seers, Diviner's Sage, Salvia, Sally-D, Magic Mint)

November 2008
DEA/OD/ODE

Introduction:

Salvia divinorum is a perennial herb in the mint family native to certain areas of the Sierra Mazateca region of Oaxaca, Mexico. The plant, which can grow to over three feet in height, has large green leaves, hollow square stems and white flowers with purple calyces, can also be grown successfully outside of this region. *Salvia divinorum* has been used by the Mazatec Indians for its ritual divination and healing. The active constituent of *Salvia divinorum* has been identified as salvinorin A. Currently, neither *Salvia divinorum* nor any of its constituents, including salvinorin A, are controlled under the federal Controlled Substances Act (CSA).

Licit Uses:

Neither *Salvia divinorum* nor its active constituent salvinorin A has an approved medical use in the U.S.

Chemistry and Pharmacology:

Salvinorin A, also called Divinorin A, is believed to be the ingredient responsible for the hallucinogenic effects of *Salvia divinorum*. Chemically, it is a neoclerodane diterpene found primarily in the leaves, and to a lesser extent in the stems. Although several other substances have been isolated from the plant, none have been shown to be psychoactive.

In the U.S., plant material is typically either chewed or smoked. When chewed, the leaf mass and juice are maintained within the cheek area with absorption occurring across the lining of the oral mucosa (buccal). Effects first appear within 5 to 10 minutes. Dried leaves, as well as extract-enhanced leaves purported to be enriched with salvinorin A, are also smoked. Smoking pure salvinorin A, at a dose of 200-500 micrograms, results in effects within 30 seconds and lasts about 30 minutes.

A limited number of studies have reported the effects of using either plant material or salvinorin A. Psychic effects include perceptions of bright lights, vivid colors and shapes, as well as body movements and body or object distortions. Other effects include dysphoria, uncontrolled laughter, a sense of loss of body, overlapping realities, and hallucinations (seeing objects that are not present). Adverse physical effects may include incoordination, dizziness, and slurred speech.

Scientific studies show that salvinorin A is a potent and selective kappa opioid receptor agonist. Other drugs that act at the kappa opioid receptor also produce hallucinogenic effects and dysphoria similar to that produced by salvinorin A. Salvinorin A does not activate the serotonin 2A receptor, which mediates the effects of other schedule I hallucinogens.

Illicit Uses:

Salvinorin A and *Salvia divinorum* products are abused for their ability to evoke hallucinogenic effects, which, in general, are similar to those of other scheduled hallucinogenic substances.

User Population:

According to a National Survey on Drug Use and Health Report published by SAMHSA in February 2008, it is estimated that 1.8 million persons aged 12 or older used Salvia divinorum in their lifetime, a approximately 750,000 did so in the past year. Use was more common among young adults (18 to 25 years old) as opposed to older adults (>26 years of age). Young adults were 3 times more likely than youths aged 12 to 17 to have used *Salvia divinorum* in the past year. Use is more common in males than females.

Illicit Distribution:

Salvia divinorum is grown domestically and imported from Mexico and Central and South America. The Internet is used for the promotion and distribution of *Salvia divinorum*. It is sold as seeds, plant cuttings, whole plants, fresh and dried leaves, extract-enhanced leaves of various strengths (e.g., 5x, 10x, 20x, 30x), and liquid extracts purported to contain salvinorin A. These products are also sold at local shops (e.g., head shops and tobacco shops).

Control Status:

Salvia divinorum and salvinorin A are not currently controlled under the CSA. However, a number of states have placed controls on *Salvia divinorum* and/or salvinorin A. As of November 2008, thirteen states have enacted legislation placing regulatory controls on *Salvia divinorum* and/or salvinorin A. Delaware, Florida, Illinois, Kansas, Mississippi, Missouri, North Dakota, Oklahoma, and Virginia have placed *Salvia divinorum* and/or salvinorin A into schedule I of state law. California, Louisiana, Maine and Tennessee enacted other forms of legislation restricting the distribution of the plant. States in which legislative bills proposing regulatory controls died are Alabama, Alaska, Hawaii, Indiana, Iowa, Minnesota, Nebraska, Oregon, South Carolina, and Utah. Legislative bills proposing regulatory controls are pending in Michigan, New Jersey, New York, Ohio, Pennsylvania, Texas and Wisconsin.

Salvinorin A and/or *Salvia divinorum* have been placed under regulatory controls in Australia, Belgium, Denmark, Estonia, Finland, Italy, Japan, Spain, and Sweden.

Comments and additional information are welcomed by the Drug and Chemical Evaluation Section, FAX 202-353-1263 or telephone 202-307-7183.

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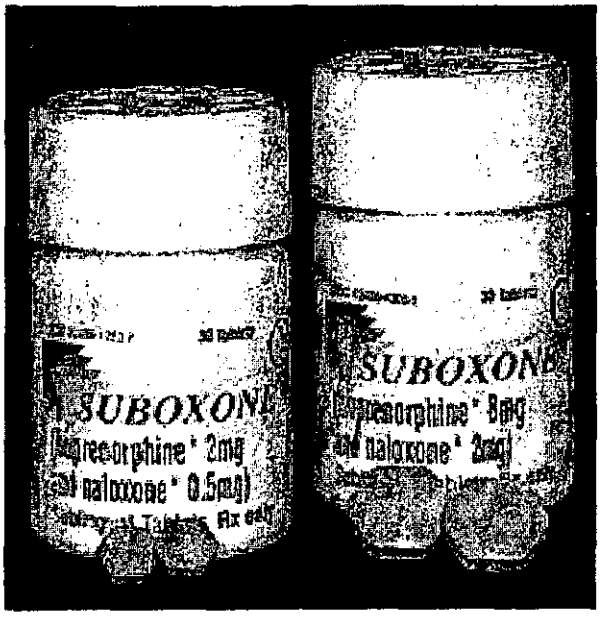
NATIONAL DRUG INTELLIGENCE CENTER

INTELLIGENCE BULLETIN

Buprenorphine: Potential for Abuse

Product No. 2004-L0424-013 SEPTEMBER 2004

U.S. DEPARTMENT OF JUSTICE



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Within the past 2 years buprenorphine—a Schedule III drug—has been made available for use in opiate addiction therapy. Two formulations of the drug are used in such therapy. Subutex, which is pure buprenorphine, is designed to be used in the initial stages of addiction treatment. Suboxone, which contains an antiabuse component, is designed to be used in the maintenance stage of treatment. Both block the effects of opiates while reducing opiate cravings and easing withdrawal symptoms. Buprenorphine is the only opiate addiction therapy drug that can be prescribed in a physician's office; others must be dispensed in a clinic. This method of distribution is advantageous to many opiate addiction therapy patients because it is more convenient and less stigmatizing than clinic-based therapy, which typically involves methadone. Like methadone, however, buprenorphine is susceptible to abuse. Despite safety measures in place to guard against diversion of the drug, illegal distribution and abuse of buprenorphine have been reported in the United States, primarily in the Northeast region.

Background

Currently, the drug most commonly used in opiate addiction therapy in the United States is methadone, a Schedule II synthetic opiate. Methadone helps addicted individuals to stop abusing opiates by reducing opiate cravings and symptoms of withdrawal; however, there are several disadvantages to methadone-based opiate addiction therapy. Methadone can be prescribed only in licensed methadone treatment clinics, and patients must deal with the stigma attached to making daily trips to a methadone clinic. Also, these clinics commonly are located in or near urban centers, so patients in rural areas must drive long distances each day to obtain methadone. Finally, methadone abuse is increasing throughout the Northeast region, where abuse of heroin and other opiates is common, and increasingly is a factor in overdose deaths.

In a move away from clinic-based therapy, the Drug Addiction Treatment Act of 2000 (DATA) passed by Congress in 2000 allows physicians who receive specialized training to treat opiate addiction in their offices with Schedule III, IV, and V medications approved by the Food and Drug Administration (FDA) specifically to treat opiate addiction. However, at the time DATA 2000 was passed, no medications had yet been approved by FDA for that purpose.

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On October 8, 2002, FDA approved buprenorphine in two formulations, Subutex and Suboxone, for use in opiate addiction therapy. Subutex (buprenorphine hydrochloride) is used in the initial stages of therapy while Suboxone (buprenorphine hydrochloride and naloxone hydrochloride) is used in the maintenance stage. Today, only these two formulations of buprenorphine meet DATA 2000 specifications; therefore, buprenorphine is the only drug that can be prescribed in a physician's office to treat opiate addiction. (A third, Buprenex, is marketed as a pain relief medication that cannot be used to treat opiate addiction.) While most commonly used to treat addiction to heroin, buprenorphine can be used to treat addiction to any type of opiate, including oxycodones such as OxyContin and Percocet.

Safeguards were put in place before buprenorphine was made available to the public because of widespread pharmaceutical diversion and increased prescription drug abuse in the nation. In fact, Suboxone was designed specifically to meet FDA requirements for a more diversion-proof drug for use in opiate addiction therapy and is available only in the United States. The naloxone contained in Suboxone guards against abuse—if an abuser crushes and injects or snorts the Suboxone tablet, the naloxone in it precipitates withdrawal symptoms. Naloxone (Narcan) reverses the effects of opiates. Further, in 2002 the Drug Enforcement Administration (DEA) reassessed the potential for abuse of, diversion of, and addiction to buprenorphine and rescheduled it from a Schedule V drug to a Schedule III drug, thus increasing the penalties for illegally obtaining, possessing, or abusing buprenorphine.

To further safeguard buprenorphine from diversion, physicians prescribing the drug in either of the formulations approved for treating opiate addiction must become certified by attending a special training course and submitting their qualifications to the Substance Abuse and Mental Health Services Administration (SAMHSA). Physicians also must agree to refer patients for drug addiction counseling. After registering with SAMHSA, physicians receive a special identification number from DEA that appears on all buprenorphine prescriptions they administer. The DEA-issued identification number assigned to each certified physician aids law enforcement and antidiversion officials in tracking any diversion of the drugs.

Physicians prescribing buprenorphine therapy must maintain a log of all patients using Subutex and Suboxone and record the medication that has been prescribed to them. The medical records of these patients are subject to periodic DEA and FDA review. FDA also has stipulated that the manufacturer of Subutex and Suboxone, Reckitt Benckiser Pharmaceuticals, must investigate any reports of diversion.

More than 1,700 physicians or group practices in the United States—over 700 located in the Northeast—are certified to prescribe buprenorphine. Physicians currently are prohibited from prescribing Subutex and Suboxone to more than 30 patients at any given time. The 30-patient limit also applies to group practices. For example, a group practice of three certified physicians may prescribe Subutex and Suboxone to only 30 patients, not 90. However, Congress is considering the Drug Addiction Treatment Expansion Act of 2003. This legislation, if passed, will amend DATA 2000 by lifting the 30-patient limit imposed on group practices and allowing each physician in a group practice to prescribe buprenorphine to 30 patients.

Effects

Buprenorphine is a derivative of thebaine, an extract of opium. The drug is an opioid (synthetic opiate) partial agonist and thus can produce the euphoria, analgesia, and sedation associated with opiates; however, while it stimulates the same brain receptors as full opiate agonists such as heroin and morphine, buprenorphine produces a lesser degree of sedation and respiratory depression than those drugs and causes no significant impairment of cognitive or motor skills. Like methadone, buprenorphine reduces cravings for heroin and other opiates and reduces withdrawal symptoms, thus helping

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addicted individuals to stop abusing opiates. Also like methadone, buprenorphine blocks the effects of heroin by binding to the same opiate receptors as heroin; consequently, opiate addicts who use buprenorphine are not able to get a high from heroin.

Buprenorphine also has a "ceiling effect" whereby increased doses of the drug do not produce increased effects after a certain point, or ceiling. In fact, high doses of the drug can actually precipitate withdrawal symptoms in opiate addicted individuals. Because of this ceiling effect, buprenorphine is less susceptible to abuse than other opiates; however, because high doses of the drug can cause withdrawal symptoms, buprenorphine is not as effective as methadone in treating severely opiate-addicted individuals who require larger doses of opiates in order to maintain treatment therapy. SAMHSA advises that the best candidates for buprenorphine therapy are those patients receiving 30 milligrams or less of methadone. Buprenorphine is estimated to be effective for approximately one-half to two-thirds of the opiate abuser population.

A New Form of Buprenorphine Administration

A new, extended-release formulation of buprenorphine, called a depot formulation, currently is being developed. This depot formulation is an injectable solution that contains tiny biodegradable capsules of buprenorphine. As the capsules disintegrate, they slowly release the drug over several weeks. This new formulation of buprenorphine is designed for administration in a physician's office once every 4 to 6 weeks and could further safeguard against diversion by eliminating the need for patients to possess buprenorphine in tablet form.

Advantages

The use of Subutex and Suboxone in opiate addiction therapy is likely to become more common because of several advantages. Buprenorphine can be prescribed by a local doctor and obtained from a local pharmacy, providing patients with convenient access to treatment. Further, if DATA 2003 is passed, the number of patients that can be treated by group practices will increase. Because patients can visit their local doctors, buprenorphine therapy is far more discreet, making it preferable for many patients who must deal with the stigma attached to making daily trips to a methadone clinic. This treatment option also is more convenient than methadone therapy for many abusers who would otherwise have to drive long distances each day to obtain methadone. Further, buprenorphine therapy can provide treatment in rural areas with inadequate access to treatment and in areas where methadone clinics have reached full capacity.

While it is possible to overdose on buprenorphine, it is safer than methadone because of its ceiling effect and decreased degree of respiratory depression. Also, because of the various safeguards in place, buprenorphine is more difficult to divert than methadone. The abuse of methadone poses a growing threat as evidenced by increasing mortality rates associated with it, whether diverted or legally prescribed. (See text box.)

Methadone Overdose Deaths

The abuse of methadone has contributed to an increase in overdose deaths, particularly in the Northeast region. For example, medical examiner data indicate that methadone is increasingly involved in overdose deaths in Maine. The number of overdose deaths in Maine where methadone was listed as the cause of death fluctuated, but increased overall from 4 in 1997 to 14 in 2001. In the first 6 months of 2002, methadone was listed as the cause of death in 18 deaths. Furthermore, methadone appeared as a factor in 33 percent of all accidental overdose deaths in Maine from 1997 through 2003, one of the two highest percentages of all drugs during that period.

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Diversion

Buprenorphine is a synthetic opiate and produces the euphoric effects sought by opiate abusers; therefore, it is susceptible to abuse in both of the forms approved for treating opiate addiction. Subutex, the form that does not contain naloxone, is more vulnerable to abuse because it can be crushed and injected or snorted without causing withdrawal symptoms in the abuser. The FDA recommends that physicians limit the use of Subutex to supervised administration sessions; however, physicians are not required to do so, creating opportunities for Subutex diversion. Subutex has been prescribed legally for years in some foreign countries, where its diversion for illicit use is common. There are lucrative black markets for diverted Subutex in Germany, New Zealand, and the United Kingdom. In France, India, and Scotland, where buprenorphine is far more common in opiate addiction therapy than methadone, many individuals are addicted to Subutex. Suboxone is not available in these countries.

Suboxone also can be diverted and abused; however, it is more likely to be abused by individuals who are addicted to low doses of opiates since it can precipitate withdrawal symptoms in high doses. The naloxone in Suboxone guards against abuse by causing withdrawal symptoms in abusers who crush and either inject or snort the drug; however, law enforcement and pharmacist reporting indicates that Suboxone is being abused successfully when snorted.

Using buprenorphine and heroin in combination does not produce increased effects, but if buprenorphine and methadone are abused together, the effects of both drugs are enhanced. Consequently, diverted buprenorphine may be attractive to patients currently using methadone for opiate addiction therapy.

Despite controls designed to make buprenorphine diversion-proof, there have been reports of buprenorphine diversion throughout the United States, primarily in the Northeast region.

- **Chittenden County, Vermont.** A pharmacist in this area reports that Suboxone is being diverted and sold for $25 per 8-milligram tablet. Abusers are grinding the tablets and snorting them.
- **Washington County, Maine.** The Washington County Sheriff's Office reports that buprenorphine is being diverted in that area and sold for $50 per tablet. The size of the tablet is unknown, and it is unclear whether Subutex or Suboxone tablets are being diverted in this case.
- **Pennsylvania.** The Pennsylvania Department of Health reports that diverted Subutex and Suboxone are being illegally distributed on the street. Specific locations have not been identified.

Outlook

It is unlikely that buprenorphine will render methadone therapy obsolete because it is not as effective in patients who require large doses of opiates in maintenance therapy. However, buprenorphine can provide opiate addiction therapy to individuals addicted to lower doses of opiates, to those in rural areas with inadequate access to treatment, and to those in areas where methadone clinics have reached full capacity. With more physicians obtaining certification to prescribe buprenorphine every day, this form of therapy has the potential to become as common as methadone therapy.

Because of its ceiling effect and ability to precipitate withdrawal symptoms if taken in high doses, buprenorphine is more susceptible to abuse by individuals who are addicted to low doses of opiates or individuals in the early stages of opiate addiction. The drug also can be abused in combination with methadone, making buprenorphine diversion more problematic in areas where heroin abuse and methadone therapy are common, such as the Northeast region. As buprenorphine therapy becomes more widespread, the potential for increased diversion of Subutex and Suboxone should be closely monitored.

2512

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Sources

State

Maine

Washington County Sheriff's Office

Pennsylvania

Department of Health

Federal

U.S. Department of Health and Human Services

Food and Drug Administration

National Institutes of Health

National Institute on Drug Abuse

Substance Abuse and Mental Health Services Administration

2513

Air Force
Print News Today
Air Force news from around the world

General Order No. 1 bans intoxicating substances

by Airman 1st Class Christopher Gross
3rd Wing Public Affairs

3/5/2010 - **ELMENDORF AIR FORCE BASE, Alaska** -- The use of any intoxicating substances other than alcohol, caffeine, tobacco or lawfully-used prescription medications has been banned here and throughout bases in the Pacific.

This ban is the result of reports of PACAF Airmen being involved with the use of Salvia and the intoxicant "spice," there have also been reports of inhaling household chemicals and other chemical inhalants along with abusing over-the-counter medications.

"The abuse of these products by military members contradicts the nature of our profession of arms, threatens our military readiness and diminishes our ability to conduct the mission entrusted to us," said Gen. Gary North, PACAF commander.

The General Order No. 1 prohibits the following actions:

· Possessing, distributing, inhaling, smoking, chewing, consuming or introducing into the body in any manner Salvia Divinorum, Salvinorin A or the intoxicant "spice" in any form.

· Inhaling household chemicals and other chemical inhalants for the purpose of becoming intoxicated, high, altering mood or function, or achieving a psychoactive effect.

· Abusing over-the-counter non-prescription medications for the purpose of becoming intoxicated, high, altering mood or function, or achieving a psychoactive effect.
This order applies to all members either assigned or attached to PACAF and also includes tenant units located on PACAF bases.

"Our Wing's four priorities are to generate, deploy and employ combat mission ready air power; maintain Elmendorf as a combat ready warfighting platform, provide world-class support to our fellow Arctic Warriors and their families; and develop professional Airmen," said Col. Thomas Bergeson, 3rd Wing commander. "Not only is it illegal to get "high" on drugs, chemicals or inhalants, that kind of behavior threatens all four of these vital missions and is incompatible with our ability to Fly, Fight and Win!"

Failure to obey these orders is a violation of Article 92 under the Uniform Code of Military Justice, and may result in criminal, administrative or other disciplinary action.

CHPA

founded 1881

March 10, 2010

CHPA Comments on House Bill 327

Members of the Alaska House Judiciary Committee:

Thank you for the opportunity to comment on House Bill 327 on behalf of the Consumer Healthcare Products Association (CHPA). CHPA is the 129 year-old trade association representing the nation's leading over-the-counter medicine (OTC) and nutritional supplement manufacturers. H.B. 327 prohibits the sale of a product containing dextromethorphan to an individual younger than 18, unless the individual has a prescription. It also requires the seller to either clearly mark the products as for sale only to persons 18 years of age or older or by prescription, or place the products behind the counter. While CHPA applauds the purpose of this legislation and supports the age-18 sales restrictions, CHPA strongly opposes language that limits consumer access to dextromethorphan products or requires special labeling.

Dextromethorphan (DXM) is a safe and effective ingredient found in over 100 OTC cough and cold products. First approved by the U.S. Food and Drug Administration in the 1950's, it is a highly effective, non-narcotic cough suppressant that works by raising the coughing threshold in the brain; it has no pain relieving properties and is not addictive. While dextromethorphan is used safely by millions of Americans each year to relieve coughs due to the common cold or flu, we know that some young people are intentionally abusing products containing dextromethorphan in an effort to get high.

The nonprescription medicine industry takes very seriously the intentional abuse of cough medicine and has been engaged in educational efforts to curb abuse for a number of years. CHPA has teamed with the Community Anti-Drug Coalitions of America (CADCA), the Partnership for a Drug-Free America (PDFA), D.A.R.E. America, and WebMD to raise awareness among parents and in communities about the dangers of OTC cough medicine abuse. In 2009, these efforts were combined into one comprehensive web site: StopMedicineAbuse.org. This web site provides access to all the industry's initiatives and interactive programs to engage parents and community leaders in the fight against teen cough medicine abuse. Highlights of our campaign including the following:

Consumer Healthcare Products Association
900 19th Street, NW, Suite 700
Washington, DC 20006
T 202.429.9260 F 202.223.6835
www.chpa-info.org

- CHPA, in conjunction with PDFA, launched the Rx and OTC Medicine Abuse Education Campaign in May 2006. This multi-year communications campaign helps parents and families understand and prevent cough medicine abuse among teenagers and young adults.
- Since 2005, CHPA and CADCA have conducted nearly 20 town hall meetings nationwide to help alert communities to the issue of teen medicine abuse.
- In 2009, CHPA launched a collaborative destination on cough medicine abuse with WebMD. The site provides parents with information about abuse and its risks, and also gives parents practical tips to recognize the signs of abuse and methods to keep teens drug-free.
- CHPA has partnered with D.A.R.E., Abbott Labs, and PhRMA to produce lessons for 5th, 7th, and 9th graders, as well as a community program.
- In May 2007, CHPA launched "Five Moms: Stopping Cough Medicine Abuse," an online grassroots campaign to help parents fight teen medicine abuse. The Five Moms' goal is to get the word out to as many parents as possible that cough medicine abuse is happening in their homes, and that the Internet is a driving force. In 2009, the Five Moms Campaign became part of CHPA's overall Stop Medicine Abuse initiatives. Through the web site, parents can sign up for the electronic newsletter, view the "viral video," or use the "tell-a-friend" tool to spread the word about this teen substance abuse behavior.

Our campaign's reach extends to communities in Alaska. CADCA has coalitions in Anchorage, Kenai, Juneau, Yakutat, and Valdez, and D.A.R.E. has trained officers in our joint Rx/OTC abuse lessons in Fort Richardson, Cordova, Kodiak, Barrow, Soldotna, Fort Greely, Kenai, Nenana, Pilot Station, North Pole, and Anchorage. With CADCA, CHPA has produced a comprehensive, informational online video that allows interested community members to host their own town halls or hold multiple town halls. CHPA and its partners will continue these efforts to raise awareness and are interested in expanding programming into additional regions of the state.

CHPA also supports an age-18 restriction on sales of dextromethorphan-containing medicines. We believe this approach supplants the need to place these products behind the counter. Moving these products behind the counter would greatly reduce the consumer's ability to self select and significantly diminish the value that OTC medicines provide the healthcare system. More importantly, if products are moved behind the counter, consumers will not

have the ability to read labels and compare ingredients when making purchasing decisions. Further restriction could also result in retailers removing these products from their stores entirely and lead to a widespread access problem, which would be of great concern especially in the more remote areas of Alaska.

Finally, adding a labeling requirement for these products could increase the cost to the consumer because manufacturers would need to produce special labels only for those products sold in Alaska. CHPA member companies have voluntarily adopted the StopMedicineAbuse educational icon, which appears on thousands of dextromethorphan-containing medicines, so there would be little added benefit from additional labeling.

As outlined above, the industry has taken an aggressive approach and invested significant resources to combat cough medicine abuse. With so many campaigns and initiatives, we have a number of assets already in place that are useful, cost-effective, and will make a great impact in Alaska, without unnecessary restrictions on consumer access. It is our sincere hope that these issues can be adequately addressed so that CHPA can lend its unequivocal support to this legislation. However, in its current form, CHPA respectfully opposes H.B. 327.

Respectfully submitted by Rend Al-Mondhiry, State Legislative Counsel

To learn more about CHPA's efforts to promote safe medicine use, please visit:

- www.StopMedicineAbuse.org

NACDS NATIONAL ASSOCIATION OF CHAIN DRUG STORES

March 5, 2010

To the Honorable Members of the Alaska State House of Representatives Judiciary Committee
Juneau, Alaska

RE: House Bill 327 – Dextromethorphan (DXM) sales restrictions

Dear Members of the House of Representatives:

On behalf of the members of the National Association of Chain Drug Stores (NACDS) operating in the State of Alaska, I am offering this letter of opposition to House Bill 327 – sales restrictions on common cold products containing Dextromethorphan. Members of NACDS operating in Alaska include: Costco, Walgreens and Wal-Mart. These three companies operate 14 of the 45 chain pharmacies operating in Alaska. Collectively community pharmacy (chain and independents) employ over 8,300 full and part-time employees and pay in excess of $8 million in state and local taxes.

Dextromethorphan is a safe and effective ingredient found in over 100 over-the-counter cough and cold products. First approved by the U.S. Food and Drug Administration in the 1950's, it is an effective, **non-narcotic** cough suppressant that works by raising the coughing threshold in the brain. It has no pain relieving properties and is **not addictive.**

With this in mind, the members of NACDS respectfully oppose the passage of House Bill 327 for the following reasons:

- **DXM is vastly different from pseudoephedrine (PSE).**
  - DXM is not addictive, and cannot be converted into an addictive substance.
  - DXM abusers usually do not commit crimes related to DXM abuse.
  - DXM is abused for a quick high that is not physically addictive.

- **Unlike PSE, there is no practical alternative to DXM available.**
  - There are no other FDA-approved over-the-counter cough suppressants available in the United States.

- **The issue of teen substance abuse must be the focus of legislators, as DXM is not unsafe.**
  - Parents must be involved in the actions of their children.
  - Legislators should focus on educating parents, teachers, coaches, and teens about the dangers of drug abuse, including DXM.
  - Teens are also known to abuse household aerosols, cleaning fluids, glue, gasoline and other products that produce a "high." Teen abuse is not limited to DXM only. The bigger picture of product abuse should be addressed.

- According to the Partnership for a Drug-Free America, children who "learn a lot about the risks of drugs" from their parents are up to half as likely to use them. Only 32% of teens "learn a lot about the risks of drugs" from their parents.
- According to the Partnership for a Drug-Free America, teens reasons for using DXM are "to get high" and "to deal with stress and depression."

❖ **DXM is an inherently safe product. To experience a hallucinogenic effect, one must take a dose *approximately 25 times* the recommended adult dose.**
- DXM has few side effects when taken in therapeutic doses.
- DXM is not addictive, even when taken in massive doses.
- DXM is used to suppress coughing in people of all ages, from infants to the elderly.
- DXM has very few contraindications. It can be taken by almost any patient suffering from almost any disease state.
- DXM interacts with very few medications; it can be taken safely by almost anyone taking almost any medication.
- Because it is non-addictive, DXM must be readily available for anyone with a cough or cold that has a problem with addiction to drugs or alcohol.

NACDS along with the Partnership for a Drug-Free America continues to work to educate parents and families as to the potential abuse of medicines containing DXM.

Please set this bill aside and assist us in promoting an educational component instead of taking away the ability to procure legitimate cold products in a timely fashion.

Sincerely,

Lis Houchen
NW Regional Director
National Association of Chain Drug Stores
130-18th Avenue SE
Olympia, WA 98501
(360) 480-6990
lhouchen@nacds.org

SALVIA DIVINORUM IS CURRENTLY NOT A CONTROLLED SUBSTANCE.

HB 327 WOULD SCHEDULE SALVIA DIVINORUM A SCHEDULE IIA CONTROLLED SUBSTANCE.

4TH DEGREE MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE

- CLASS C FELONY ($50,000 & 5 YEARS)
- POSSESSION

3rd DEGREE MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE

- CLASS B FELONY ($100,000 & 10 YEARS)
- POSSESSION WITH INTENT TO DISTRIBUTE
- POSSESSION WITH 500 FEET OF SCHOOL RECREATION OR YOUTH CENTER, OR ON A SCHOOL BUS

1ST DEGREE MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE

- UNCLASSIFIED FELONY ($500,000 & 99 YEARS)
- DELIVERS ANY AMOUNT OF SCHEDULE IIA TO PERSON UNDER 19 YEARS OF AGE

BUPRENORPHINE IS CURRENTLY A SCHEDULE VA CONTROLLED SUBSTANCE

HB 327 WOULD RESCHEDULE BUPRENORPHINE TO IIIA.

SCHEDULE VA

5TH DEGREE MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE

- CLASS A MISDEMEANOR ($10,000 & 365 DAYS)
- POSSESSION OF LESS THAN 50 TABLETS

4TH DEGREE MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE

- CLASS C FELONY ($50,000 & 5 YEARS)
- POSSESSION WITH INTENT TO DELIVER
- POSSESSION WITHIN 500 FEET OF SCHOOL YOUTH RECREATION AREA

3rd DEGREE MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE

- CLASS B FELONY ($100,000 & 10 YEARS)
- DELIVERS ANY AMOUNT OF SCHEDULE VA TO PERSON UNDER 19 YEARS OF AGE

SCHEDULE IIIA

5TH DEGREE MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE

- CLASS A MISDEMEANOR ($10,000 & 365 DAYS)
- LESS THAN 3 GRAMS OF PREPERATIONS, COMPOUNDS, OR MIXTURES

4TH DEGREE MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE

- CLASS C FELONY ($50,000 & 5 YEARS)
- POSSESS 25 OR MORE TABLETS
- POSSESSION WITHIN 500 FEET OF SCHOOL OR YOUTH RECREATION CENTER

3rd DEGREE MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE

- CLASS B FELONY ($100,000 & 10 YEARS)
- POSSESS WITH INTENT TO DELIVER

1ST DEGREE MISCONDUCT INVOLVING A CONTROLLED SUBSTANCE

- UNCLASSIFIED FELONY ($500,000 & 99 YEARS)
- DELIVERS ANY AMOUNT OF SCHEDULE VA TO PERSON UNDER 19 YEARS OF AGE

STATE OFFICE
ALASKA PEACE OFFICERS ASSOCIATION

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Thecla LaLonde, President
Wrangell Chapter
Wrangell

March 9, 2010

Representative Kyle Johansen
House of Representatives
State Capitol
Juneau AK 99801-1182

Dear Representative Johansen:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing HB 327, an act relating to the scheduling and rescheduling of certain substances as controlled substances and to the sale of products containing dextromethorphan.

The APOA Executive Board's Legislative Committee recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

John Lucking, Jr.
State President

ORIGINAL IN MAIL

LEGISLATIVE RESEARCH SERVICES

Alaska State Legislature
Division of Legal and Research Services
State Capitol, Juneau, AK 99801

(907) 465-3991 phone
(907) 465-3908 fax
research@legis.state.ak.us

March 9, 2010

Memorandum

TO: Representative Kyle Johansen
FROM: Patricia Young, Manager
RE: State Laws Regulating *Salvia Divinorum*
LRS Report 10.201

You asked for information on state regulation of *salvia divinorum*. According to a recent compilation by the National Conference of State Legislatures (NCSL), at least 17 states criminalize some aspect of the use, possession, or distribution of this substance. We include this document as Attachment A.

Attachment B is a copy of "The Legal Status of *Salvia Divinorum*," by Daniel Siebert, an independent researcher who closely follows this issue. Mr. Siebert's article, last updated on March 4, 2010, identifies 19 states with laws addressing the legality of *salvia divinorum*. This article also provides further discussion of pending bills and passed legislation in states as well as in 20 countries that prohibit some aspect of the possession, sale, or use of the substance. For your convenience, we insert a table from Mr. Siebert's article here:

US States with Laws Prohibiting Salvia	**Other Countries with Laws Prohibiting Salvia**
Illegal (Schedule I)	**Illegal to Possess or Sell**
Delaware	Australia
Florida	Belgium
Hawaii	Croatia
Illinois	Denmark
Kansas	Germany
Mississippi	Italy
Missouri	Japan
Nebraska	Latvia
North Dakota	Lithuania
Ohio	Poland
Oklahoma	Romania
South Dakota	South Korea
Virginia	Sweden
Only Legal When Not Intended for Human Consumption	**Illegal to Sell, but Legal to Possess**
Louisiana	Chile
North Carolina	Spain
Tennessee	**Illegal to Grow or Sell, but Legal to Possess**
Legal for Adults, but Illegal To Sell to Minors	Russia
California	**Treated as a Medicinal Herb that Requires a Doctor's Prescription**
Maine (possession by minors also illegal)	Estonia
Illegal to Manufacture, Deliver, or Sell Salvinorin A, but Legal to Possess	Finland
Wisconsin	Iceland
	Norway
Source: Daniel Siebert, "The Legal Status of Salvia Divinorum," updated, March 4, 2010.	

We hope this information is useful. If you have questions or need additional information, please let us know.

Attachment A

National Conference of State Legislatures, "State Laws on *Salvia Divinorum*," March 2010

State Laws on Salvia Divinorum

In recent years, the drug Salvia Divinorum, or Salvia, has gained the attention of state legislators. Since 2006, at least 17 states have passed laws regulating or controlling the drug.

Salvia is an herb related to mint that is known for its psychoactive effects. The plant is native to parts of Mexico, where historically it has been used as part of indigenous religious rituals. Common methods of ingestion include infusing leaves into a tea; smoking dried herbs; and chewing. In the United States, use of Salvia is most common among 18-25 year olds and to a much lesser extent among adolescents (see chart below).

Percentages and Standard Errors (SE) of Past Year Hallucinogen Use among Persons Aged 12 or Older, by Age Group: 2006

	12 or Older		12 to 17		18 to 25		26 or Older	
Hallucinogen	Percent	SE	Percent	SE	Percent	SE	Percent	SE
LSD	0.3%	0.02	0.4%	0.05	1.2%	0.10	0.1%	0.02
PCP	0.1%	0.02	0.2%	0.04	0.2%	0.04	0.0+%	0.02
Ecstasy	0.9%	0.04	1.2%	0.09	3.8%	0.19	0.3%	0.04
Ketamine	0.1%	0.02	0.1%	0.03	0.2%	0.04	0.1%	0.02
DMT/AMT/Foxy	0.0+%	0.01	0.1%	0.02	0.2%	0.05	0.0+%	0.01
Salvia divinorum	0.3%	0.02	0.6%	0.06	1.7%	0.12	0.0+%	0.01

Source: Substance Abuse and Mental Health Services Administration, Office of Applied Studies. (February 14, 2008). *The NSDUH Report - - Use of Specific Hallucinogens: 2006.* Rockville, MD. http://www.oas.samhsa.gov/2k8/hallucinogens/hallucinogens.htm

Effects of Salvia

Salvia originally became popular as a legal alternative to marijuana. However, the effects are markedly different. The effects of Salvia are hallucinogenic and vary based on method of ingestion. For example, smoking Salvia can lead to strong, instantaneous effects, whereas chewing or drinking tea can lead to longer lasting scenarios, but less intense. Some common effects include uncontrollable laughter, visions, dysphoria, experiencing multiple realities, and loss of physical coordination. So far, there has been limited study into the long-term effects of Salvia or its potential for addiction or abuse or its potential medicinal benefits. Initial studies have found that since Salvia increases dopamine levels in the brain, it contains potential as an addictive substance. Other studies, though, have found that Salvia could have potential as a treatment for gastrointestinal disorders.

Legal Status

No Federal statutes control or regulate distribution of Salvia. So far, at least 17 states have felt the need to act, passing laws ranging from banning possession or sale for minors to outright bans. Some states have classified Salvia as a Schedule 1 substance, modeled after the federal Controlled Substances Act, where Schedule 1 substances are considered to have a high potential for dependency and no accepted

medical use.

State Laws Regulating Salvia Divinorum (Current as of March 2010)	
California Penal Code Section 379	Every person who sells, dispenses, distributes, furnishes, administers, gives, or offers to sell, dispense, distribute, furnish, administer, or give Salvia divinorum or Salvinorin A, or any substance or material containing Salvia divinorum or Salvinorin A, to any person who is less than 18 years of age, is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars ($1,000), or by both that fine and imprisonment.
Delaware 16 Del.C. § 4714	Lists Salvia as a Schedule I controlled substance.
Florida Annotated Title XLVI, Crimes Chapter 893. Drug Abuse Prevention and Control 893.03.	Lists Salvia as a Schedule I controlled substance.
Illinois Illinois Compiled Statutes Annotated, Chapter 720. Criminal Offenses, Act 570. Illinois Controlled Substances Act, Article II. Schedules of Controlled Substances	Lists Salvia as a Schedule I controlled substance.
Kansas Statute 61-4104, Controlled Substances	Lists Salvia as a Schedule I controlled substance.
Louisiana Louisiana Revised Statutes, Title 40—Public Health and Safety. Chapter 4—Food and Drugs. Part X. §989.1	Lists Salvia as a Schedule I controlled substance.
Maine Maine Revised Statute Title 17: CRIMES. Chapter 70: Salvia Divinorum	A person may not transfer Salvia divinorum to a minor. A minor may not Purchase, possess or use Salvia divinorum
Mississippi Miss. Code Ann. § 41-29-113	Lists Salvia as a Schedule I controlled substance.
Missouri Missouri Revised Statutes, Chapter 195, Drug Regulations, Section 195.017	Lists Salvia as a Schedule I controlled substance.
North Dakota CHAPTER 19-03.1, UNIFORM CONTROLLED SUBSTANCES ACT	Lists Salvia as a Schedule I controlled substance.
Nebraska Nebraska Revised Statutes 28-405	Lists Salvia as a Schedule I controlled substance.
North Carolina North Carolina General Statutes Annotated 14-401.23	(a) It shall be unlawful for any person to knowingly or intentionally manufacture, sell or deliver, or possess with intent to manufacture, sell or deliver Salvia divinorum or Salvinorin A. (b) It shall be unlawful for any person to knowingly or intentionally possess Salvia

	divinorum or Salvinorin A.
Ohio Ohio Revised Code Title 37, Chapter 3719.41, Controlled substance schedules.	Lists Salvia as a Schedule I controlled substance.
Oklahoma Oklahoma Statutes Citationized Title 63. Public Health and Safety Chapter 2 - Uniform Controlled Dangerous Substances Act, Article 2 - Standards and Schedules, Section 2-204 - Schedule I	Lists Salvia as a Schedule I controlled substance.
South Dakota South Dakota Codified Laws 22-42-22	Possession of Salvia divinorum or salvinorin A prohibited--Felony or misdemeanor. No person may knowingly possess Salvia divinorum or salvinorin A. It is a Class 1 misdemeanor to possess two ounces or less of Salvia divinorum or salvinorin A. It is a Class 6 felony to possess more than two ounces of Salvia divinorum or salvinorin A.
Tennessee Tennessee Code Annotated 39-17-438	(a) It is an offense to knowingly produce, manufacture, distribute, possess or possess with intent to produce, manufacture, or distribute the active chemical ingredient in the hallucinogenic plant Salvia divinorum A. (b) The provisions of this section shall not apply to the possession, planting, cultivation, growing, or harvesting of the hallucinogenic plant strictly for aesthetic, landscaping, or decorative purposes. (c) The provisions of this section shall not apply to any dosage form that is legally obtainable from a retail establishment without a prescription and is recognized by the Federal Food and Drug Administration as a homeopathic drug. (d) A violation of subsection (a) is a Class A misdemeanor.
Wisconsin Wisconsin Statute 941.318	Except as provided in sub. (3), whoever manufactures, distributes, or delivers salvinorin A with intent that it be consumed by an individual may be fined not more than $10,000. (3) (a) Subsection (2) does not apply to the manufacture of any dosage form of salvinorin A that may be obtained from a retail establishment without a prescription and that is recognized by the U.S. Food and Drug Administration as a homeopathic drug. (b) Subsection (2) does not apply to the distribution or delivery to an individual who is 18 years of age or older of any dosage form of salvinorin A that may be obtained from a retail establishment without a prescription and that is recognized by the U.S. Food and Drug Administration as a homeopathic drug.

For more information, contact

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Advisory Board on Alcoholism
and Drug Abuse

abada
amhb

Alaska Mental Health Board

ALASKA MENTAL HEALTH BOARD
ADVISORY BOARD ON ALCOHOLISM AND DRUG ABUSE
431 NORTH FRANKLIN STREET, SUITE 200
JUNEAU, ALASKA 99801
(907) 465-8920

March 9, 2010

Representative Kyle Johansen
Alaska State Capitol, Room 204
Juneau, Alaska 99801

Re: HB 327 — Controlled Substances

Dear Representative Johansen,

The Advisory Board on Alcohol and Drug Abuse appreciates your recognition of the need to limit the availability of dangerous substances like *salvia divinorum* ("salvia") and dextromethorphan ("DXM"). Both pose a danger to Alaska's young people and should be regulated better.

Salvia is a hallucinogen — a drug that distorts perception of reality. It has been identified by the Substance Abuse and Mental Health Services Administration and the U.S. Department of Justice Drug Enforcement Administration as an emerging chemical or drug "of concern." According to the National Survey on Drug Use and Health (NSDUH), salvia has emerged as an "herbal high" being used by young people. The 2006 NSDUH reflects that adolescents and young adults are using salvia at a rate higher than LSD or PCP, and nearly as high as Ecstasy. More than 750,000 people age 12 years and older reported using salvia in 2005. Some researchers do site that there could be possible medical applications for salvia in the future, and have concern that regulation may slow research. However, the effects of salvia are such that regulation is appropriate.

DXM is the active ingredient in cold medicines, like Tylenol. While it has benefits as an over-the-counter medicine, it can be deadly when misused or abused. The Alaska Injury Prevention Center reports that, of the 1,223 unique cases of hospitalization due to attempted suicide reviewed for 2001-2001, 77% involved an overdose by Tylenol or prescription medication. Of completed suicides, 11% are attributed to poisoning (defined primarily as overdoses).

With this information, we see that limiting access to these substances is in the best interests of our children. Thank you for your work, and please let us know if the Advisory Board on Alcoholism and Drug Abuse can assist in the effort to pass this important legislation.

Sincerely,

James Duncan, Chair
Advisory Board on Alcoholism and Drug Abuse

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
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Alaska State Legislature

House of Representatives

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House District 10

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover:

From: Jane W. Pierson

Date: March 10, 2010

Re: CS for HB327

Jerry,

Today HJUD passed out HB327, please draft a CS to include the following amendments:

Amendment 26-LS1261\R.1

Conceptual amendment at P.3,Ll.12, after "18 years of age" insert exemption for emancipated minors, married folks, and parents of minor children.

Thank you

Representative_Jay_Ramras@legis.state.ak.us

HB

331

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
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House District 10

Fax

To: Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover:

From: Jane W. Pierson

Date: February 26, 2010

Re: Please go final on HB331

Today, HJUD passed the HB331 (26-LS1426\R) from committee with one conceptual amendment as follows:

P. 1, L. 10 after "appropriate" insert "up to"

Would you please draft this bill in final?

Thank you.

Representative_Jay_Ramras@legis.state.ak.us

Amendment # 1 to HB331

by Gruenberg

(C)

page 1 line ~~25~~ :

between "appropriate" and "25"

insert : "up to"

Pass

REPRESENTATIVE CATHY MUÑOZ

House Bill 331

Youth Court Funding

For the past twenty years the Alaska Youth Court has emerged as one of Alaska's most effective crime prevention programs. It has provided youth offenders and volunteers a better understanding of our legal system with an emphasis on accountability. Youth Courts strategically operate in Alaska communities from Ketchikan to Nome. It is the only diversion program available in District Court to enable individuals to have their cases dismissed without resulting in a criminal record. For many this brief involvement in the justice system is a turning point.

Funding for this program comprises a mix of state funds, the private sector, municipal grants, and federal funds. To help ensure continuation of Alaska's Youth Court program **HB 331** directs a source of funding from a portion of criminal fines. This bill will require the state to account separately for these fines which currently are spent on the general administration of state government. Consequently it will allow the legislature to appropriate up to 25% of criminal fines to support youth courts.

Each youth court is adapted to fit the needs of the individual community. Youth volunteers participate in various roles while youth offenders receive an alternative sanction from the formal justice system. In 2002 the Urban Institute, a non-partisan, policy research non-profit, studied teen courts in four states. The study compared recidivism outcomes for youth courts with youth handled by our regular juvenile justice systems. The results indicated only 6% of offenders in the Anchorage program were back in court within a six month period compared to 18% by the regular juvenile justice system.

Using criminal fines to pay for crime prevention makes sense for Alaska's future. **HB 331** will provide a means for the legislature to allocate funds annually and support this effective, worthwhile, and cost efficient program.

Contact: Terry Harvey, 465 5392

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REPRESENTATIVE_CATHY_MUNOZ@LEGIS.STATE.AK.US

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB331
() Publish Date:

Identifer (file name): HB331-DHSS-YC-2-22-10
Dept. Affected: Health & Social Services

Title: Youth Courts and Criminal Fines
RDU: Juvenile Justice
Component: Youth Courts

Sponsor: Munoz

Requester: H Judiciary
Component Number: 2768

Expenditures/Revenue (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITU	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURE							
CHANGE IN REVENUES							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipt							
1037 GF/Mental Health							
Other Interagency Receipt							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) c

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if nece*

HB 331 allows the legislature to appropriate 25 percent of the fines imposed under AS 12.55.035, collected and separately accounted for by the state under AS 37.05.142, to the Department of Health and Social Services for distribution to youth courts established under AS 47.12.400. The bill would provide an alternate source of funding for youth courts, which have been supported since FY2006 with a Congressional appropriation that will be exhausted by early FY2011. Youth courts are typically operated as nonprofit organizations or within municipalities. The Division of Juvenile Justice relies upon these courts as a community-based diversion response for low-risk juvenile offenders. In FY09, 13% of all delinquency referrals made to the division were referred to youth courts and other community-based diversion panels.

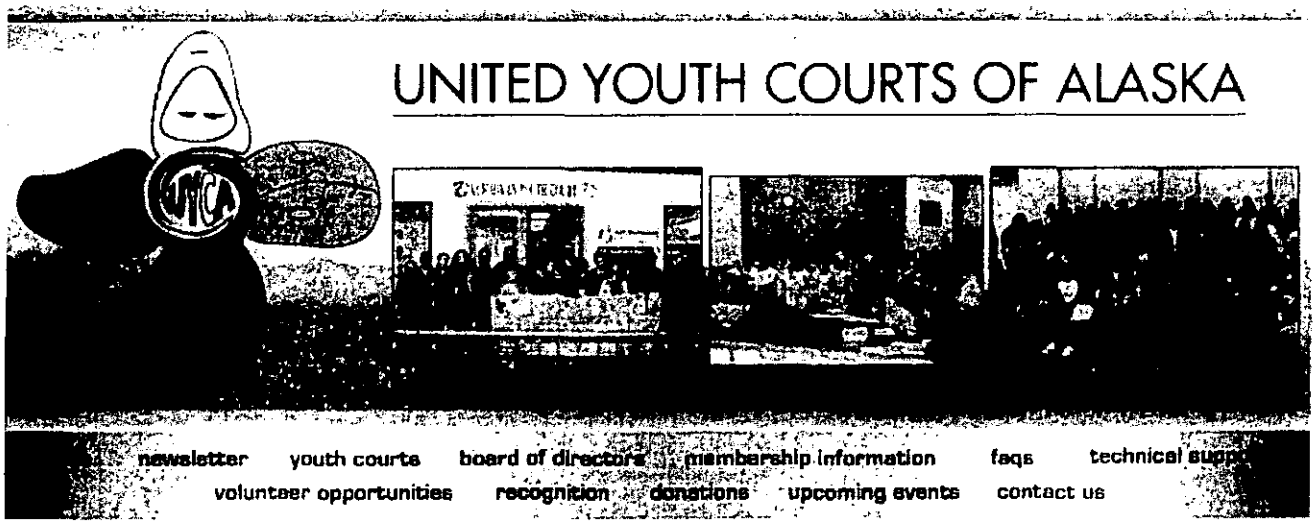
The division is submitting a zero fiscal note because no new authorization is necessarily invoked by passage of this bill.
(Continued on page 2)

Prepared by: Stephen F. McComb
Division: Juvenile Justice
Phone: (907) 261-4335
Date/Time: 2/11/10 4:24 PM

Approved by: Alison Elgee, Assistant Commissioner
DHSS Finance & Management Services
Date: 2/22/2010

ANALYSIS CONTINUATION

Should the Legislature decide to appropriate the full balance authorized through this legislation, an additional appropriation will be necessary.



FAQs: Frequently Asked Questions

1. Why do we need youth courts? Click here for the answer
2. What are youth courts? Click here for the answer
3. Why do we need a state association? Click here for the answer
4. How many youth courts are there? Click here for the answer

Email us with any additional questions you have.

1. Why do we need youth courts? It is impossible for the Department of Health and Social Services, Division of Juvenile Justice (DJJ), to respond fully to all delinquent acts committed by juveniles. Instead, incidents are prioritized and division resources are devoted to the most serious cases. Low-priority cases, such as first time shoplifting, may result either in no personal contact (a warning letter) or a referral for outside services. Youth who commit these offenses are left with the impression that their criminal actions are deemed acceptable, if there has been no consequence for the crime they committed. Studies indicate, however, that early intervention in lower-priority cases can be very effective in preventing more serious problems from developing in the future. There is an urgent need for communities to complement DJJ's services by providing responses to lower-priority cases. The community suffers each time a crime is committed. Youth courts are a method for the community to respond to delinquency. This voluntary alternative to the juvenile justice system is a form of early intervention designed to foster a sense of well being in the community. Back to the top

2. What are youth courts? Youth courts are innovative alternatives to the juvenile justice system. Youth volunteers participate in various roles (attorney, judge, bailiff, juror) while youth offenders are offered an alternative sanction from the formal juvenile justice system. Youth courts are implemented in response to the need or concerns of each community. Although the model may vary in style, substance and procedure, the recurring themes among youth court programs are:

Accountability
Youth courts ensure an offender is held accountable for their behavior, requiring them to make amends for the damage they have caused to the community. Offenders are called by peers, family, friends, school staff and/or other caring adults to answer for their crimes.

Significant Peer Influence
Youth volunteers send the message that they don't condone law-breaking behaviors. Positive peer influence!

Competency Skills
Youth court programs teach competency and leadership skills: listening, problem solving, communication, cooperation and conflict resolution. Youth courts also provide real-world career and criminal justice skills to youth volunteers who participate in the court process. Youth courts provide youth offenders and volunteers with a better understanding of the legal system, and also promote more positive attitudes towards law enforcement.

Empowering and Involving
Youth courts allow youth to assume leadership roles and address the issues of crime in their communities.

Back to the top

3. Why do we need a state association? United Youth Courts of Alaska was incorporated in 1998 as a non profit corporation based on the fundamental principal that youth courts need to have the operational flexibility to accommodate the diverse communities throughout Alaska. While engaging the community in partnership with the juvenile justice system, UYCA works with Alaskan communities to increase awareness of youth court programs and to reduce juvenile crime in Alaska. The association provides education and training materials to established and emergent youth courts throughout Alaska. Youth court members will receive technical assistance and training. UYCA reduces the need to 'reinvent the wheel' by networking to create a united voice for Alaskan youth courts. Back to the top

4. How many youth courts are there? There are currently 12 established and emerging youth courts in Alaska, and others that are developing their programs! Nationally, there are around 1,200 youth courts in 49 states and the District of Columbia. Back to the top

You can join the mailing list to receive updates about UYCA. Just fill in your name and email in the form below. Don't worry, this won't be shared with anyone.

learn more

United Youth Courts of Alaska
Fact Summary

Youth Courts in Alaska...

1. Handle an average of **900** cases per year.
2. Produce an average **recidivism rate of 8%**, compared to 23% under the regular court system.
3. **Save** the State of Alaska an estimated **$10,145 per defendant**.
4. **Generate $102,000** worth of Community Work Service work product every single year – at no cost to our communities or the State.
5. **Reduce crime rates by 11%** overall.
6. Offer a wide range of **classes and mediation services** to offenders.
7. Provide real-world career and criminal justice **training to 2,300 Alaskan youth** volunteers each year.

Did you know?

8. The juvenile population is expected to increase 27% by 2015.
9. Alaska has already entrusted youth courts with the most comprehensive legislation in the nation (AS 47.12.400, AS 4.16.050).
10. There are 12 youth courts in Alaska: Anchorage, Bethel, Juneau, Kenai, Ketchikan, Kodiak, Mat-Su, Nome, North Star/Fairbanks, Sitka, Valdez, and Wrangell.
11. Nationally, there are 1200 youth courts in 49 states and Washington, D.C.

United Youth Courts of Alaska
Fact Detail

1. 900 Cases Per Year

Based on FY2009 statistics compiled by the Division of Juvenile Justice, 12 youth courts in Alaska hear 900 real criminal cases each year. While programs throughout the state differ slightly, all of the youth courts in Alaska hear first time or non-habitual juvenile offenders for misdemeanors, violations, and infractions per State and Municipal laws.

2. 8% Recidivism Rate

Based on a study titled "The Impact of Teen Court on Young Offenders" by Jeffrey A. Butts, Janeen Buck, and Mark B. Coggeshall, the recidivism rate for juvenile offenders in the traditional court system is 23%.

Youth courts in our state consistently have an average recidivism rate of 8%, meaning that **92% of juvenile offenders served by youth court do not commit further crimes.**

Additionally, youth courts in Alaska have a lower recidivism rate compared to those in other states, which may be due to our unique court structure that allows teens to be judged—literally—by their peers, not by adults. According to the study done by the Urban Institute (Butts, et al.):

"The [Evaluation of Teen Courts] Project located seven different theoretical perspectives that could be related to questions about the impact of teen court on youth recidivism. Although they are known by various names, the ETC Project identified the seven theoretical schools as follows:

1. Peer justice,
2. Procedural justice,
3. Deterrence,
4. Labeling

5. Restorative justice and repentance,
6. Law-related education, and
7. Skill building."

3. Savings Per Defendant

In the report, "Evidenced-Based Public Policy Options to Reduce Future Prison Construction, Criminal Justice Costs and Crime Rates" by the Washington State Institute for Public Policy, October 2006, Teen Courts were identified as an "effective program." Citing five evidence based studies, the Institute found that teen courts reduced crime rates by 11.1%, **saving the state $10,145 per defendant** based on the cost of crime on victims and taxpayers. The average **cost of teen courts per defendant was $936, for a net benefit/savings of $9,208 per offender.**

4. Volunteer Work Product

Statewide, youth courts sentence Community Work Service as part of sanctions to repair the harm for the crime that has been committed. The type of work done for CWS might be cleaning up litter and debris on roadways or public parks, helping at a soup kitchen, repairing damages caused by the crime, or helping elders in a nursing home. Based on statistics from the Division of Juvenile Justice, juvenile offenders successfully completed 20,550.25 hours of CWS in FY2009. The State of Alaska values CWS at $5.00 per hour, which means that the value of **CWS completed through youth court last year was $102,751 at no cost to our communities or the State.**

The work products of other sanctions are not taken into consideration for these figures, but are also valuable contributions to the health of the community. Examples of other sanctions include: restitution to victims, essays, behavior modification classes, apology letters, alcohol or drug classes and counseling, and mediation programs (see "6. Classes and Mediation Services").

5. Reducing Crime Rates

In 2006, the Washington Institute for Public Policy completed an exhaustive study of many adult and juvenile prevention and intervention programs. In the report, youth courts were identified as an effective program. Citing five evidence-based studies, the Institute found that **youth courts reduce crime rates by 11%.**

Youth courts have been proven to reduce crime and reduce recidivism, and they do it by linking the crime to swift, efficient consequences and offering **"a continuum of community-based services"** to address the issues underlying the crime (DJJ Annual Report, FY2004).

By providing diversion services for District and Superior Court Judges as well as Juvenile Probation Officers, youth courts allow these officials to focus on the more serious offenses or repeat offenders. Because of this and other reasons, judges, clerks, attorneys and Juvenile Probation staff across the state show their support for youth court by instructing classes, volunteering time, serving on Boards of Directors, and offering legal advice on cases.

6. Classes and Mediation Services

The 3 main principles of **Restorative Justice** are **Accountability, Community Protection, and Competency Development**—principles which have long been used in the field of juvenile justice to address the root causes of juvenile crime. Across the state, youth courts offer evidence-based and creative ways for offenders to educate themselves and end the cycle of crime. Some examples of these classes and mediation services follow.

- North Star Youth Court, located in Fairbanks, offers a comprehensive and year-round **Mediation Program**; the three types of mediation offered are victim-offender, parent-teen, and peer-to-peer. Mediation is based on the philosophy of Restorative Justice, the purposes of which are to put key decisions into the hands of those most affected by crime, to reduce the likelihood of further offenses and to provide closure for all parties and a strengthened community. North Star Youth Court also offers an **Alcohol Awareness Class**, as well as a **Parent Information Class on MCAs**.
- Mat-Su Youth Court offers a **Juvenile Anti-Shoplifting class** as part of sanctions for offenses involving theft and concealment of merchandise. MSYC also provides a peer-led **Minor Consuming/Risk Factors class** for youth defendants charged with alcohol and drug crimes. The class covers risk factors youth face every day that influence their future behavior.
- Ketchikan Youth Court provides a certified **PRIME for Life® alcohol and drug prevention/intervention class** for offenses involving alcohol or controlled substances. KYC also offers a **Money Education Class** for offenses involving theft, concealment of merchandise, or destruction of property; the goal is to provide an overview of community economics and discuss how each person's actions (spending, saving, stealing, etc.) affect other people financially.

- Anchorage Youth Court utilizes a variety of classes to address different issues within their client community. AYC classes include: **Anti-Theft Class, Thinking Patterns, Victim Impact, Drug & Alcohol Assessment and Follow-up, Fire Stoppers, and Weapon Safety.**
- Sitka Youth Court offers classes on **Victim Impact** and **Anti-Theft.**
- Nome Youth Court, in partnership with the court system, offers a certified **PRIME for Life® alcohol and drug prevention/intervention class.**

7. Training 2,300 Alaskan Youth Annually

Youth volunteers who are directly involved in the youth court process receive a minimum of 10 hours of legal training before they can begin working on cases. Throughout the time they volunteer for youth court, volunteers are required to attend workshops, CLEs (continuing legal education), and other trainings to enhance their skills. Most youth courts have a Bar Association that helps to facilitate these trainings and enforce court policies.

Some courts also require juvenile offenders to take these trainings, so that they can better understand the process of justice and perhaps become a part of youth court. Those individuals are often the most effective and compassionate judges, jurors, and attorneys.

8. Juvenile Population Increase

The juvenile population in our state is expected to increase by 27% by 2015 according to the Office of Juvenile Justice and Delinquency Prevention, which is the 4th largest increase in the entire U.S. With this dramatic projected change in the juvenile population, juvenile crimes will likely also increase, and thus the sustainability of youth courts is even more critical.

9. Youth Court Legislation in Alaska

Alaska was identified in another recent national study as the one state with the most comprehensive Youth Court legislation, in that our statute **AS 47.12.400** specifically entrusts Youth Courts with adjudicatory as well as dispositional authority. (See "The Organization and Operation of Teen Courts in the United States, A Comparative Analysis of Legislation", Michele Heward, JD, Juvenile and Family Court Journal, Winter 2002.) The legislature has also entrusted Youth

Courts with the authority to handle first time minor consuming alcohol violations under **AS 4.16.050**.

In 2003 and again in 2005, youth courts from around the state mobilized to introduce a bill into the state legislature. The Alaska State Legislature considered **HB 303**, a bill to secure sustainable funding for youth courts for the first time: "An Act relating to youth courts and to the recommended use of criminal fines to fund the activities of youth courts; and relating to accounting for criminal fines." HB 303 passed through the House Judiciary Committee, and every member of that committee added their name as co-sponsors. HB 303 made it to the House Finance Committee, but the session ended before it could be heard. During the 24th Legislative Session, **HB 155, the second "Youth Court Bill"**, was approved through several committees and passed the Alaska House of Representatives in March 2005. The Senate version of that bill was handed over to the Finance Committee but never came up for a hearing.

10. Youth Courts in Alaska

There are 12 community-based youth courts in Alaska: **Anchorage, Bethel, Juneau, Kenai, Ketchikan, Kodiak, Mat-Su, Nome, North Star/Fairbanks, Sitka, Valdez, and Wrangell.** Many of these courts have been in operation over 10 years; Anchorage has the longest-standing youth court in the state, having been incorporated in 1989.

United Youth Courts of Alaska is a statewide organization which seeks to work in partnership with Alaskan communities and the formal juvenile justice system to develop and sustain innovative youth courts. All of the above named courts are members of UYCA, and use it as a platform to network and support each other's programs through conferences and technical assistance. For more information on UYCA and its members, visit www.alaskayouthcourt.org.

11. Youth Courts in the United States

There is only one state, Connecticut, that does not have youth courts due to their juvenile justice system. In 2006 more than 120,000 youths volunteered to hear more than 130,000 cases, and more than 20,000 adults volunteered to facilitate peer justice in youth court programs.

The National Association of Youth Courts (NAYC) was started with support from four federal agencies: Office of Juvenile Justice & Delinquency Prevention, U.S. Department of Education and the Corporation for National and Community Service, and the National Highway & Traffic Safety Administration. This effort was started in 2003 when OJJDP recognized the huge movement of youth court programs springing up all over the country due to studies showing their effectiveness.

NAYC became a 501(c)3 association in 2007. Some current objectives are:

- Encourage the development and expansion of youth courts and state associations of youth courts;
- Provide a forum for training youth and adult volunteers, sharing ideas, and providing 'best practices' and other critical resources for the operation of youth courts;
- Enhance connections to and relations with government agencies and community-based programs or organizations; and
- Educate public and private agencies, businesses and individuals on the benefits of youth courts.

Many youth courts choose to have membership in NAYC to stay abreast of national program trends and to attend conferences. Mat-Su Youth Court Co-Director Lisa Albert-Konecky is Alaska's representative on the NAYC Board of Trustees. Visit www.youthcourt.net for more information.

For more information, please contact us:

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Youth Courts in Alaska

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Touch N' Go Desktop In/Out Board

AS 12.55.035. Fines.

(a) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant may be sentenced to pay a fine as authorized in this section or as otherwise authorized by law.

(b) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant who is not an organization may be sentenced to pay, unless otherwise specified in the provision of law defining the offense, a fine of no more than

(1) $500,000 for murder in the first or second degree, attempted murder in the first degree, murder of an unborn child, sexual assault in the first degree, sexual abuse of a minor in the first degree, kidnapping, promoting prostitution in the first degree under AS 11.66.110 (a)(2), or misconduct involving a controlled substance in the first degree;

(2) $250,000 for a class A felony;

(3) $100,000 for a class B felony;

(4) $50,000 for a class C felony;

(5) $10,000 for a class A misdemeanor;

(6) $2,000 for a class B misdemeanor;

(7) $500 for a violation.

(c) Except as provided in AS 12.55.036 , upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of

(1) an amount that is

(A) $1,000,000 for a felony offense or for a misdemeanor offense that results in death;

(B) $200,000 for a class A misdemeanor offense that does not result in death;

(C) $25,000 for a class B misdemeanor offense that does not result in death;

(D) $10,000 for a violation;

(2) three times the pecuniary gain realized by the defendant as a result of the offense; or

(3) three times the pecuniary damage or loss caused by the defendant to another, or to the property of another, as a result of the offense.

(d) If a defendant is sentenced to pay a fine, the court may grant permission for the payment to be made within a specified period of time or in specified installments.

(e) In imposing a fine under (c) of this section, in addition to any other relevant factors, the court shall consider

(1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;

(2) measures taken by the organization to prevent a recurrence of the offense;

(3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and

(4) the extent to which the organization will pass on to consumers the expense of the fine.

(f) In imposing a fine, the court may not reduce the fine by the amount of a surcharge or otherwise consider the applicability of a surcharge to the offense.

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Note to HTML Version:

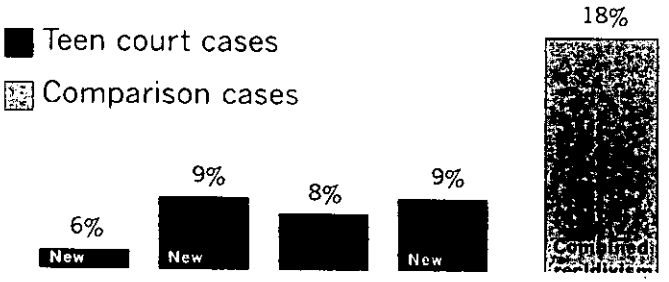
This version of the Alaska Statutes is current through December, 2007. The Alaska Statutes were automatically converted to HTML from a plain text format. Every effort has been made to ensure their accuracy, but this can not be guaranteed. *If it is critical that the precise terms of the Alaska Statutes be known, it is recommended that more formal sources be consulted.* For statutes adopted after the effective date of these statutes, see, Alaska State Legislature If any errors are found, please e-mail Touch N' Go systems at E-mail. We hope you find this information useful.

This page has been updated: 01/05/2009 15:54:16

This is the first report of findings from the Evaluation of Teen Courts (ETC) Project, which was conducted by the Urban Institute and funded by the Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, U.S. Department of Justice.

The ETC Project studied teen courts in four States: Alaska, Arizona, Maryland, and Missouri. Researchers measured pre-court attitudes and post-court recidivism among more than 500 juveniles referred to teen court for non-violent offenses, such as shoplifting and vandalism. The study compared recidivism outcomes for teen court defendants with outcomes for youth handled by the regular juvenile justice system.

What Happened to Youth Six Months Later?



Doug Wooliver

From: Rhonda McLeod
Sent: Wednesday, February 10, 2010 3:28 PM
To: 'Jesse Kiehl'
Cc: Doug Wooliver
Subject: RE: Court Fines

Hi Jesse, it looks like there were $350K in forfeitures last FY for the CourtView courts. We will not have the first district courts on CourtView until the end of calendar year 2010, but the majority of the forfeitures are likely originating from the Anchorage, Fairbanks, Palmer and Kenai courts – all of which are on CourtView.

In summary, you should use the $5.3 million as your ballpark number. Rhonda

---

From: Rhonda McLeod
Sent: Wednesday, February 10, 2010 3:01 PM
To: 'Jesse Kiehl'
Cc: Doug Wooliver
Subject: Court Fines

Hi Jesse,

Here is the revenue that was deposited into the general fund for fine *and forfeitures*. We are working to 'unbundle' the forfeitures to see how much of the forfeitures were eventually applied to a fine and how much ended up simply being forfeited. It looks like in FY09, the amount of forfeitures was about $350K, but I am having the court reports person run additional stats as this seemed high to me. A good ballpark number would be $5.3 million (you can see that our revenues from year to year are fairly consistent) if waiting for us to ferret out this answer is causing you problems. (Sorry for the delay...) Rhonda

---

From: Rhonda McLeod
Sent: Tuesday, February 09, 2010 11:05 AM
To: Doug Wooliver
Subject: FW: Bail

While we figure out the bail forfeiture piece, here is the total revenues (including fines and forfeitures) deposited into the general fund:

FY2009 - $5,688,900
FY2008 - $5,684,000
FY2007 - $5,898,400

Rhonda

From: Rhonda McLeod
Sent: Tuesday, February 09, 2010 10:55 AM
To: Julie Monsen; Brenda Axtell
Subject: RE: Bail

If this is doable, this information will be helpful to have...thanks very much...Rhonda

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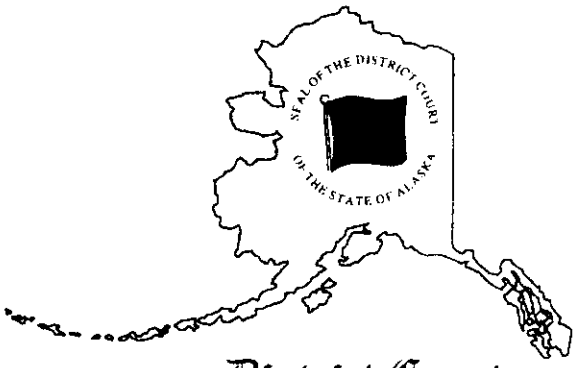


District Court

State of Alaska

FIRST JUDICIAL DISTRICT

KEITH B. LEVY
Judge

P.O. BOX 114100
JUNEAU, ALASKA 99811-4100

(907) 463-4730
FAX (907) 463-3788

Juneau Youth Court/JDHS
10014 Crazy Horse Drive
Juneau, AK 99801
Attn: Beth Leban-Coordinator

Tuesday, January 26, 2010

Dear Beth:

I am writing to express my appreciation for the work done by the Juneau Youth Court. The Youth Court is an integral sentencing option for students under the age of 18 who are charged with consuming or possessing alcohol for the first time.

As you know, students who choose the Youth Court option are given the opportunity to have their District Court case dismissed if they successfully complete the Youth Court requirements. For some, this brief involvement in the criminal justice system is a turning point. Those who choose Youth Court and succeed are far less likely to return to District Court on other criminal charges. The students benefit because they end up with no conviction on their record. And the community benefits because the Youth Court graduates are contributing to the community rather than causing harm to themselves and others.

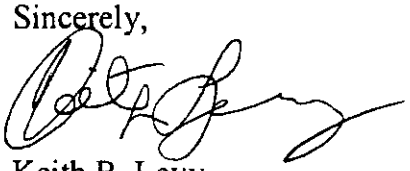
The Youth Court is the only diversion program available in District Court to enable individuals to have their cases dismissed without resulting in a criminal record. The trust the program has earned from both the District Court and the prosecution is a testament to the value and integrity of the program.

I appreciate that you or another representative of the Youth Court always attends the arraignment hearings for minor consuming. The information you provide to the students about Youth Court is invaluable and helps them understand their options in the justice system.

Finally, the Youth Court program provides an opportunity for students to be judged by their peers. I believe this is valuable because the students in the program have far more information about the defendants than is provided to me in formal sentencing proceedings. The Youth Court is able to impose consequences that are more meaningful than the limited options I have when sentencing.

Thanks again for the important service the Youth Court provides to the community.

Sincerely,



Keith B. Levy

JUNEAU SCHOOL DISTRICT
CITY AND BOROUGH OF JUNEAU

Office of the Assistant Superintendent • 10014 Crazy Horse Drive • Juneau, Alaska 99801 • (907) 523-1704

To whom it may concern:

I am writing in support of legislation that would provide sustainable funding for youth court programs in Juneau and other communities in Alaska. For over a decade Juneau Youth Court has provided a vital and important service to the City and Borough of Juneau.

Juneau Youth Court is a diversion program that removes young people who are first time offenders from the traditional juvenile justice system and handles the case in a court of peers. The program works with families to ensure that teens are held accountable for their actions and that consequences are constructive and tailored to the individual youth thereby benefiting both the young person and the community at large. Last year Juneau Youth Court ordered over 600 hours of community work service that were completed at Zach Gordon Youth Center, the American Red Cross, Meals on Wheels, the Glory Hole, the Salvation Army, and at schools throughout Juneau School District.

On average Juneau Youth Court serves 50 youth each year handling referrals from both District Court and Juvenile Justice Probation Officers. This frees up the court and probation officers to handle more serious offenders and helps to reduce their large caseloads. Youth Courts have the additional advantage of educating the youth who volunteer for the program. Youth Court advocates reap the benefits of learning about the legal system, performing meaningful community service, and gaining the opportunity to help their peers.

Juneau Youth Court operates on a very small budget of $35,000 per year with one part time paid staff person, two dozen volunteer student advocates, a community advisory board including representatives from the Police Department, the Division of Juvenile Justice, the legal community, and community partners. The program offers an important service to the community at a very low cost.

Juneau Youth Court is just one example of a successful diversion program known as youth court. Around the state Youth Courts are doing important work for Alaska by addressing juvenile crime in its earliest stage. I strongly urge you to support legislation that would provide sustainable funding to support these community-based programs.

Sincerely,

Laury Scandling

JUNEAU
YOUTH COURT
Restorative Justice

Juneau Douglas High School
10014 Crazy Horse Drive
Juneau, AK 99801

Phone: 523-1594
Fax: 523-1616

juneauyouthcourt@jsd.k12.ak.us

February 12, 2010

The Juneau Youth Court Community Advisory Board supports House Bill 331 and Senate Bill 257, *"an Act relating to funding for youth courts; and relating to accounting for criminal fines"*. This legislation would appropriate 25 percent of the court fines imposed under AS 12.55.035 to established and operating youth courts. Federal funding will not be available after this year and the future of the Alaska Youth courts depend upon state and local ownership.

A recent study shows Alaska Youth Courts to be among the most effective in the nation. According to the Urban Institute's Evaluation of Teen Courts Project, which was based on four teen court programs studied in four different states (Alaska, Maryland, Arizona, and Missouri), the six-month recidivism figures among the programs ranged from 6 percent to 9 percent. Alaska's recidivism rate was the lowest of these four states, and compared to the recidivism rate of 18 percent for the regular juvenile justice system, shows that youth who go through youth courts are significantly less inclined to re-offend within the following year.

The primary function of youth court programs is to determine a fair and restorative sentence for young offenders. Youth courts are programs in which youth sentence their peers for minor delinquent and status offenses and other problem behaviors. According to the National Youth Court Database, in 1994 there were only 78 youth court programs in operation; as of October, 2006, there were over 1127 youth court programs in operation in 49 states and the District of Columbia.

The Alaska Youth Courts is a vital form of community justice and reweaves the fabric of community by forging a partnership between local governmental entities, the private sector, and community groups to facilitate the performance by private citizens of the functions that were once performed by the extended family, neighborhood, and school.

Sincerely,

Cindy L. Cashen
President
Juneau Youth Court Community Advisory Board

STATE OF ALASKA

SARAH PALIN, GOVERNOR

DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES

DIVISION OF PROGRAM DEVELOPMENT

3132 Channel Drive, Room 200
P.O. Box 112500
JUNEAU, ALASKA 99811-2500
PHONE: (907) 465-4070
TTY/TDD: (907) 465-3652
FAX (907) 465-6984

April 7, 2009

To Whom It May Concern:

The Alaska Highway Safety Office supports the Juneau Youth Court as an alternative to the juvenile justice system and an opportunity for young people who are accused of breaking the law to be judged by their peers. The court consists of students who fill various roles from judge to juror to address juvenile crime in their community. Nationally, Youth Courts have found that sentences imposed by teen peers have a tremendous impact and effectively defer them from becoming repeat offenders.

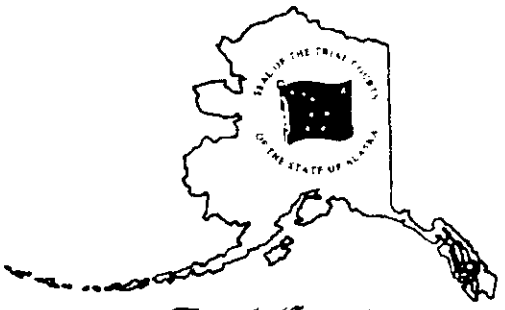
The Alaska Highway Safety Office mission is to enhance the health and well being of Alaska's people through programs aimed at saving lives and preventing injuries on Alaska's highways. Federal funding is administered to data driven projects which focus on public outreach, education, enforcement, promotion of new safety technology, and the integration of public health strategies.

Priorities of the Alaska Highway Safety Office include impaired driving and teen driving. A recent study compared Alaska's 1995-1999 minor consuming cases with 1995-2006 DUI court cases and found that 24.4 percent of youth with minor consuming arrests go on to have DUI offenses before their 31st birthday. Although teens represent approximately 12 percent of Alaska's motor vehicle drivers, they are responsible for over 20 percent of the traffic fatalities and major injuries in Alaska. Nearly half of these deaths can usually be prevented by simply buckling-up or not drinking and driving. The Alaska Highway Safety Office supports the Juneau Youth Court because it is a data-driven, peer-led program that effectively addresses minor consuming.

Sincerely,

Cindy Cashen

Cindy Cashen
Administrator



Trial Courts
State of Alaska

Box 869
Wrangell, Alaska. 99929

To Whom It May Concern: Date: January 8, 2010

Re: Wrangell Youth Court

The purpose of this letter is to express the continued support of the Wrangell Trial Courts for the Wrangell Youth Court program.

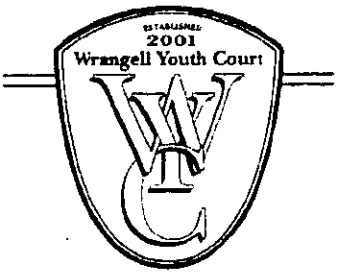
Since its inception ten years ago, the Wrangell Youth Court has been widely accepted and respected in the local community. Having youthful offenders appear before a group of their peers has had a very positive effect in this community. Most individuals appearing before the Youth Court successfully complete their requirements and never return to the court.

The youth court provides the added bonus of "hands on" knowledge of the justice system and public service opportunities for its members. They graduate with solid ethical standards and a commitment to public service and the administration of justice.

Although the success of a program is frequently measured by the number of cases or clients handled, that is not really an adequate standard in looking at a youth court program, particularly in a small town. If this court never heard another case, it would be a successful program based on the dedication and commitment of its members.

Thank you for your continued support of the Wrangell Youth Court program. We are looking forward to continuing to work with this program for the next ten years.

Chris Ellis
Magistrate



January 7, 2010

To whom it may Concern:

Wrangell Youth court is an innovative alternate traditional justice system and is empowered by the Alaska Statute 47.12.400 to make a positive difference in Alaskan communities.

Youth Court programs are rapidly advancing in goals of Restorative Justice, by developing programs that are not only cost effective but promote youth accountability by involving youth in obligations of taking an active role in their community. Youth are encouraged to connect in our community and in our State, where youth partner together, encourage and share information that enable youth with critical decisions making skills.

The purpose of the program is to decrease juvenile crime and the recidivism amongst juvenile offenders as well as to involve students in implementing restorative justice. Youth Court members learn valuable experiences in assuming the role and responsibility of a judge, prosecute or defend first-time juvenile offenders in a court of their peers.

The Wrangell Youth Court program eases the caseload of the district and superior courts, juvenile probation offices and schools district. We have found that this program is cost effective when you compare to the cost of one incarceration of a juvenile offender. Cost can be greater than $40,000 for a first time offense. If Wrangell Youth Court prevents one student from attending a youth detention facility it has paid for the entire year of the Wrangell Youth Court program.

In the year of 2000 the community of Wrangell, Alaska had a high juvenile crime rate and an even higher rate of minors consuming alcohol. In fact our community was 30% higher than another community similar in size and location. Since Wrangell Youth Court was established in 2001 the crime rate and rate of minors consuming alcohol has decreased greatly.

This program is a community base form of restorative justice that builds ties between youth, victims and other members of the community, offering youth the option to learn from their mistakes. Youth volunteers that participate, explore a variety of short and long term consequences of substance abuse, including cost to the individual and the community and its relation to other types of crime.

The Wrangell Youth Court has been nothing less than a success and has provided our youth with the opportunity to be involved and vision other career paths that they may had never seen. The training provided in the areas of legal and court procedures have offered a better opportunity to understand our Constitution and Bill of Rights and to actively give them a voice and feel valued, while at the same time engaging and bringing about social change.

Wrangell Youth Court not only mentors peers, has developed a positive relationship with the community, schools, business and other local communities.

Sincerely,

Dorthea Rooney
Wrangell Youth Court Coordinator

Patty Burley
PO Box 2715
Bethel AK 99559-2715
(907) 543-3098

January 6, 2010

Dear Representative Cathy Munoz:

I am writing to you to request your support in ensuring that Youth Courts remain a part of Alaska's legal system. They are invaluable and give so much more than initially may be seen.

Here in Bethel we have a very small youth court still struggling to get squarely off the ground. We have graduated only a handful of youth but I can tell you first-hand the impact such a small project has had on the youth in this area.

While to date we have only graduated a few students, each of those has at one point or another been enrolled at the Bethel Alternative Boarding School (BABS). Each of those youngsters has a unique learning style that makes it difficult for them to fit in or do well in mainstream schools. One of the youngsters was actually a drop-out. Despite those hurdles these teenagers came week after week to the 2 hour-long classes. They studied hard and took both a written final exam and an oral exam. These teenagers who fight so hard just to finish or stay in school actually excelled. They worked incredibly hard and it showed. Each of those teens gained confidence and a sense of accomplishment. A few were on the road to trouble with the law. They were bored, felt they had nothing to offer, and nowhere to go. Youth court changed that for them. It gave them a sense of purpose, a moral compass and a sense of belonging. These individuals will go further than they would have if youth court had not become a part of their lives.

Today I note that there appears to be a strong correlation between underage drinking and crime(s). There is also a strong correlation between underage drinking and trouble at school. Right now we do the best we can for these students via the Community Diversion Panel (CDP). While that is an amazing program that has provided a considerable amount to the community, it is only catching the tip of the iceberg. For many kids, by the time they come to the CDP their problems with alcohol have spiraled out of control. For others, alcohol comes much later in the process – they instead start with truancy and behavior problems at the school. These are the early cries for help. An active youth court would be able to intercede early enough to stem the upcoming tide. It would give minors an opportunity to start anew with the help and support of those whose input they seek the most: their peers.

There are some wonderful youth courts in other areas of Alaska which are at jeopardy as well: Anchorage, Kenai, and Fairbanks just to name a few. These programs have been around a while longer than Bethel's and have made even bigger impacts on the lives of minors. They have also reached out to lend support to those smaller youth courts still working to get established and on more solid ground. These programs are too valuable to lose.

If funding is an issue, I would urge you to consider a Bill that would add significant surcharges for Minor Consuming Alcohol (MCA) cases. The current slap on the wrist for a first MCA is so negligible that many minors view getting an MCA as a badge of honor and not something negative. The fines come from their PFD's and have little, if any, importance. Perhaps the surcharge, due much sooner, will make a bigger impact – at the very least it will generate income that will allow youth courts to continue operating.

I thank you for your consideration into this matter.

Sincerely,

Patty C. Burley
Magistrate

February 5. 2010

To Whom It May Concern:

I am writing to emphasize the importance of the Mat-Su Youth Court to the welfare of the Mat-Su community and to express my support for that organization.

In my almost 20 years on the bench, mostly as a magistrate and superior court master, recently as a district court judge, I have presided over literally thousands of cases involving teenagers. As the Mat-Su Valley population grew, the ability of the juvenile probation office (JPO) to handle all the cases involving teenagers was greatly diminished. Rightfully so, the JPO has to concentrate on the more serious crimes, such as burglaries and felony level assaults, that were committed by teenagers. As a result, many teens who committed lower level crimes, particularly shoplifting, either merely got a warning letter or their crimes were ignored all together.

Participation in lower level crimes leads to a disrespect of the law, of other people's rights in their person and their property, costs local storekeepers significant amounts of money, and often leads to greater criminal behavior if left undressed. Into this gap stepped the Mat-Su Youth Court. Many crimes that would not have been addressed because of the caseload of JPO are being handled by the Youth Court. The imposition of sanctions including restitution, community work service and letters accepting responsibility and apologizing for committing the crime all serve both the victim and the community as well as the defendant, who is more likely to grow to be a responsible citizen from the experience.

Over the years the Mat-Su Youth Court has added a program for first time offenders under the age of 18 convicted of Minor Consuming Alcohol. Not only is the program educational, but being run by a peer group, it sets the example that being clean and sober is an acceptable lifestyle that is respected by one's peers. Given that not only locally but nationally roughly 80% of adult crimes are somehow related to alcohol abuse, getting the message to an offender earlier in life may keep them from becoming part of that statistic as they grow older.

I wholeheartedly support and recommend the Mat-Su Youth Court program and urge others to do so, also.

Sincerely,

David L. Zwink
District Court Judge, Palmer, Alaska

Larry Dickerson
Chief of Police

WASILLA
POLICE
DEPARTMENT
City of Wasilla

1800 E. Parks Hwy.
Wasilla, AK 99654

907.352.5401
Fax: 907.357.7877
www.cityofwasilla.com

Vernon Rupright
Mayor

February 9, 2010

Bill Stolze,
State Representative
600 E. Railroad Av
Wasilla, AK 99654

Dear Mr. Stoltze,

I would like to express my support of HB331 and SB257 which would provide continued funding of State wide Youth Court Programs.

I fully support youth courts as statewide diversion programs that address first time juvenile offenses. These programs operate in twelve communities around the state. My current experience with youth courts is with the Mat-Su Youth Court (MSYC) program, which falls under the umbrella of the Wasilla Police Department and is funded wholly through grants. The Wasilla Police Department supports the MSYC with in-kind donations by providing office space and some supplies.

It is my firm belief that without MSYC operating in the Mat-Su Valley the police department would continue to see increased juvenile crime. Young offenders who do not suffer consequences as first time offenders will continue to commit crimes according to recent statistics.

Wasilla Police officers know that when they complete a report on a juvenile first time offender who has committed a low-level offense, that juvenile will not simply be given a letter from the State or a verbal warning from a Juvenile Probation Officer. Virtually every first time offense that is referred to the Division of Juvenile Justice office in the Mat-Su Valley gets referred to MSYC. MSYC takes action to insure the juvenile offender is made aware of what he/she did, who it affected in the community, and what to do to avoid repeating their conduct.

I support these bills to allow youth courts around the state to work on sustainability of their programs and to insure that they continue to address juvenile crime in the State of Alaska.

Greg Wood
Deputy Chief of Police

2561

February 9, 2010

Wendy Leach
North Star Youth Court
800 Cushman St., Suite 101
Fairbanks, AK 99701

Dear Wendy,

I am writing to compliment you and the rest of the North Star Youth Court on the great job you are doing with Minor Consuming and Minor Operating After Consuming cases that are referred to the Youth Court by our court. It is important for our society to have a variety of options for the administration of criminal justice in order to promote rehabilitation and public safety, and to decrease recidivism. Youth courts are one such option. As you know, our referrals to your court are good for both the offender and for the public. I have seen that the confidentiality of your program is a real benefit to young offenders. Similarly, the public benefits in many ways, including through a reduced financial cost to the court system and law enforcement, through the Youth Court's focus on service to our community, and through the high rate of successful rehabilitation for offenders who complete the youth court program. It is my experience that offenders who are referred to your court are unlikely to return to ours.

Thank you very much for the work done by the young people and the adults of the North Star Youth Court. I would be happy to continue to work with the Youth Court to provide training for your judges, so please let me know when there is a Youth Court Judge who would like to shadow a Magistrate in the Fairbanks District Court or when you would like me to speak at a Youth Court Judge's training session.

Cordially,

Bethany Harbison
Magistrate

KETCHIKAN DISTRICT COURT

TO: WHOM IT MAY CONCERN

FROM: KEVIN G. MILLER, JUDGE

SUBJECT: KETCHIKAN YOUTH COURT

DATE: 2/11/2010

CC:

Thank you for the opportunity to provide a letter supporting the Ketchikan Youth Court's efforts in Ketchikan.

I am a District Court Judge and have referred many cases to the Youth Court since its inception. The majority of the cases referred relate to minors consuming alcohol or tobacco.

Alcohol related crime and crimes committed by persons that are alcohol dependant make up the majority of criminal cases that come before the District Court in Ketchikan. Thus a coordinated approach between the Court System, treatment monitors and providers is the only practical response to assure public safety, rehabilitation and meaningful consequences for offenders.

The Ketchikan Youth Court is a vital tool in a coordinated approach to youth offenders. I am impressed with the dedication of the Youth Court members as well as the results. Youth that complete the Youth Court Program are much less likely to reoffend than those youth offenders that do not enter or complete the program.

Thank you again for the opportunity to provide this support letter, if you need any further information, please let me know.

STATE OF ALASKA

DEPARTMENT OF HEALTH AND SOCIAL SERVICES

DIVISION OF JUVENILE JUSTICE

Sarah Palin, GOVERNOR

[illegible]
[illegible]
PHONE: [illegible]
FAX (907) 463 3933

April 4, 2009

To whom it may concern:

The Juneau Youth Court is a pertinent and vital resource used by the Juneau Probation Office. The referral's that we send the youth court help free up time for Probation Officer's to deal with more serious and needy client's that frequent our large caseloads. The youth court also serves as the entry level in the continuum of services offered by probation and in many cases, helps divert juvenile's from committing further criminal acts. Client's that are non-compliant with the youth court process are showing probation that they need a more restrictive intervention and in that respect, the youth court acts as a litmus test. Please continue funding for this important piece of the juvenile justice system as it both important and necessary.

Sincerely,
Joe Adelmeyer

Joe Adelmeyer

Chief Probation Officer, Southeast Alaska
Tel. 523-6828

Mary P. Treiber
MAGISTRATE

Alaska Court System

415 Main Street
Ketchikan, AK 99901
(907) 225-3195; FAX (907) 225-7849

February 5, 2010

Margaret McCloy
Executive Director
Ketchikan Youth Court
2417 Tongass Avenue, Suite 215
Ketchikan, AK 99901

Dear Ms. McCloy:

As the Magistrate for the Ketchikan Trial Courts, I am the judicial officer who most frequently deals with school age teenagers charged by the State of Alaska and the City of Ketchikan with violations of laws or ordinances prohibiting possession or consumption of alcohol by minors, establishing curfews, and prohibiting possession or use of tobacco products by minors. The existence of and the programs offered by the Ketchikan Youth Court provide me with a meaningful sentencing alternative in dealing with these cases.

The KYC process teaches teens referred by the court to KYC about the court process itself, and provides a group of same-age and same-interests teens for these youthful defendants to work with. The resolution of cases through KYC requires engagement of both the defendant and that teen's parents, ultimately strengthening the family abilities to deal with problems a defendant is having as expressed through these quasi-criminal charges. The Court System sees fewer recidivists among those teens who are referred to and who successfully complete the KYC program.

KYC has added the Prime for Life alcohol information classes, and has agreed to make the class available to teens other than those actively participating in the full KYC program. This is a good program, and adds significantly to the resources available within Ketchikan.

I fully support Ketchikan Youth Court.

Sincerely,

Mary P. Treiber
Magistrate

City of Kodiak
KODIAK POLICE DEPARTMENT
Office of the Chief of Police

February 12, 2010

Representative Cathy Munoz
Regional Affairs, Co-Chair
State Capitol, Room 409
Juneau, AK 99801-1182

Re: Youth Court Program

Dear Representative Munoz:

Our department supports legislative funding by money obtained from court fees to support the twelve Youth Court programs in the state of Alaska. These programs offer an option for youth who have had their first experience breaking the law – by having their cases removed from the traditional juvenile justice system by referral from juvenile probation officers and district court judges and diverted to a court of their peers.

The mission of the youth court programs in Alaska is to work in partnership with Alaskan communities and the formal juvenile justice system to develop and sustain innovative youth courts programs. Services offered by the programs in which youth are sentenced by their peers for minor delinquent status offenses and other problem behaviors frees state employees in the court system and the Juvenile Justice division.

The funding of the Youth Court program will serve the needs of Alaska citizens, state agencies, and law enforcement. Thank you for your consideration of this important matter.

Sincerely,

Charles "TC" Kamai
Chief of Police

KODIAK
CHAMBER
OF COMMERCE
100 E. Marine Way, Suite 300, Kodiak Alaska 99615 • (907) 486-5557 • FAX: (907) 486-7605
www.kodiak.org • Email: chamber@kodiak.org

February 11, 2010

Representative Cathy Munoz
State Capitol Building
Room 434
Juneau, AK 99801-1182

Dear Representative Munoz,

The Kodiak Chamber of Commerce fully supports HB 331 "An Act relating to funding for youth courts; and relating to accounting for criminal fines"

The United Youth Courts of Alaska provide an extremely important function in the communities they serve. Their handling of approximately 900 cases per year reduces recidivism and crime rates in our State. In addition, savings to the State of Alaska is estimated at $10,145 per defendant. Youth courts in Alaska generate over $100,000 worth of Community Work Service product annually, at no cost to the communities or the State.

The juvenile population of our State is expected to increase by 27% by 2015. With this dramatic increase in the juvenile population, juvenile crimes will likely also increase, and thus the sustainability of youth courts is even more critical.

Thank you for the support of House Bill 331.

Sincerely,

Debora King
Executive Director

STATE OF ALASKA
DEPARTMENT OF HEALTH AND SOCIAL SERVICES
DIVISION OF JUVENILE JUSTICE

SEAN PARNELL, Governor
Kodiak District Probation
204 Mission Road, Room 131
Kodiak, Alaska 99615
(907) 486-4788

February 16, 2010

Kodiak Teen Court
Darlene Turner, Program Manager
610 Mill Bay Road
Kodiak, AK 99615

Letter in support of the Kodiak Teen Court,

I am writing to express my strong support for the Kodiak Teen Court and its ongoing efforts to enhance the court's sustainability.

As we all know, Juveniles are highly influenced by their peers. The Kodiak Teen Court takes advantage of this by having juveniles stand in judgment by their peers. Kodiak students make up the membership of the court and act as both attorneys and judges. In doing so, they learn valuable lessons about the legal process while have an opportunity to help their community. In addition, low-level, first-time offenders are given opportunity to have their case diverted from the juvenile justice system. This is a win-win situation.

Over the years, my office has referred a number of cases to the Kodiak Teen Court. The feedback I have received from the juveniles and their parents has been very positive. Few of these juveniles ever return to the system. This has allowed me to focus my attention on those juveniles who pose a more serious risk to the community.

I look forward to continuing the relationship between my office and the Kodiak Teen Court and strongly support your efforts to ensure its long-term sustainability.

Respectfully,

Paul Caldentey
Juvenile Probation Officer II

Darlene Turner February 15, 2010

Kodiak Teen Court
610 Mill Bay Road
Kodiak, Ak. 99615

Dear Darlene:

I am writing to you today to express my heartfelt thanks and continued support for Kodiak Teen Court. Since the program started in 1995, it has enjoyed tremendous success in our community, giving hundreds of youthful offenders over the years an opportunity to have their cases taken out of the traditional juvenile court system and instead dealt with in a more informal, less intimidating and more meaningful atmosphere, as the teen defendants are literally tried by their own peers serving as teen prosecutors, represented by their own peers as teen defense attorneys and sentenced by their own peers serving as teen judges. Besides being dealt with in a courtroom where everyone else is their same age (who they can relate to more than adult judges and attorneys), the teen defendants are given an opportunity to come out of Teen Court with a clean record if they comply with the sentence given them by the teen judges. It is no wonder, then, that the rate of re-offending in youth courts in Kodiak and in other parts of the State is significantly lower than with those teens who stay in regular juvenile court. Additional benefits to our community include an emphasis on restorative justice, making the victim feel "whole" again, and the imposition of a meaningful amount of community work service that many non-profits organizations in Kodiak find very helpful. Finally, I have been told by all the juvenile probation officers throughout the last 15 years, past and present, that they appreciate Teen Court because it allows them to divert less troublesome teens from the regular juvenile justice system into Teen Court, thus giving them more time to devote to the more serious teen offenders on their heavy caseload that *really* need their help in the formal, structured setting of the traditional juvenile court system.

The Kodiak Teen Court is an asset to our community in another, very big way. As the program celebrates its 15th year in existence this year, I have had the distinct pleasure over these years to work with hundreds of fine outstanding teens at Kodiak High and in our middle schools who have served as teen judges, prosecutors and defense attorneys. These students are given a unique perspective on how our justice system works, they are tremendous ambassadors of the program and great role models to teens who have gotten themselves into trouble and come into the program. Many of these former Teen Court judges and attorneys have kept in contact with me, and are already doing well in their chosen field, whether it's teaching in graduate school at Notre Dame, working as a detective in Portland, serving as a soldier in Iraq or attending good law schools and medical schools across the United States, many of whom intend to someday return to Alaska and work.

Again, I thank you for the wonderful program!

Sincerely yours,

STEVE COLE
Superior Court Judge, Kodiak

PO Box 1841
Nome, AK 99762
February 15, 2010

To Whom It May Concern:

I am writing to express my support of the Youth Court program in Alaska. I moved to Nome, Alaska from South Royalton, Vermont to work as a clerk and deputy magistrate at the Superior and District Court and had no idea I would also be involved with the Youth Court program. When I found out that I was to serve as Youth Court Legal Advisor I was ecstatic. Youth Court excited me because, as a former social studies teacher, I saw a program that raises students' knowledge of the law, legal process and their civic rights and duties and excites a new generation of responsible, active and thoughtful citizens.

Youth Court gives students many unique opportunities and learning experiences. Just the personal responsibility required by participants makes this program invaluable. Students between the ages of twelve and eighteen literally participate in the court process representing clients and handing down legally binding sentences. In doing so they acquire many social skills and thinking strategies. Students learn empathy and professionalism when dealing with clients. They learn public speaking and writing. They learn how to separate facts from belief and emotion, how to see all sides of an issue, and how to logically and carefully present these issues. Through zealous representation of clients students grow as citizens, people and community members.

Perhaps the most important part of Youth Court is the clients themselves. Youth Court is a diversionary program targeting at risk youth, who, if thrown into the court system at such an early age, hazard becoming the repeat offenders I often see at my job. Youth Court gives these young men and women a second chance. Anybody who has worked with teenagers knows how much weight is placed on the opinion of their peers. In the Youth Court process, defendants are tried and sentenced by their peers, not a mysterious adult. This reinforces lessons learned and allows defendants to feel that they have been fairly judged.

Most importantly, Youth Court is not about punishing these young offenders. Sentences are not handed out in retribution. Instead, sentencing is designed to show the defendant the error of their ways, to intervene and work with the defendant's specific personality so they may see the connection between their actions and the effects of those actions, and finally to benefit the community. As the saying goes, an ounce of prevention is worth a pound of cure. The Youth Court program is many ounces of prevention.

The Alaska Youth Court program is one of the best and most innovative programs in the entire United States. Creating future active, intelligent, informed and free-thinking citizens cannot be measured by dollars or statistics. It would be a shame to see such a program falter for lack of funding. I fully support keeping this wonderful program alive and active.

Thank you for your time and support.

Sincerely,

Jeffrey Davis, Esq.

Hi, my name is Fred Becker V, I am the loss prevention manager for the Abbott Road Fred Meyers in Anchorage, and a active board member for the
Anchorage Youth Court.

I have worked in the Loss Prevention Profession for over 26 years in the Anchorage Area. I became concerned with the consequences the youth were receiving very early on in my career as I was apprehending the same individuals over and over again. After discussing with those that I did apprehend a second and third time what had happen to them after the first and second time I found that many had not had any contact with anyone in the judicial system. Most stated they received a letter from McLaughlin Youth Center advising them to stay out of trouble, and some said then did not hear from anyone.

Since the inception of the Youth Court in Anchorage I rarely apprehend a juvenile a second time. I strongly believe that Anchorage Youth Court has provided the consequences necessary to deter individuals from re-offending, and prevented many young adults from having a adult criminal recorded. Because without the Anchorage Youth Court most juveniles would continue with their criminal behavior into their young adult life.

I believe in the successes of AYC as a highly-effective juvenile alternative justice program and that we do transform the lives of over 600 anchorage youths per year. The 300 plus youth volunteers are trained and receive extraordinary experiences in real live judicial matters. The 300-350 juvenile offenders referred to Anchorage Youth Court each year are given an opportunity to make amends to the community and are held personally accountable for their actions. This is why I am honored to be a AYC board member.

As a member of the retail industry I am happy to be part of a program that is also a benefit to our ability to continue to employ

about 300 employees per location with a total of about 3,300 employees in the state of Alaska. The Youth Courts around the state provided a restitution program that did not exist and by providing a deterrent program for juvenile offenders results in less individuals using the five finger discount at our locations. My board membership has also resulted in the financial backing of Fred Meyers to help support our community.

As a board member I feel that some times we are not afforded the opportunity to address some issues because we spend a lot of our productive time finding ways to raise funds to support the financial requirements of AYC. With a stable source of funding I feel the board could focus more of our efforts on making Anchorage Youth Court as beneficial to the community, members, and offenders as possible.

Thank you for your time and I would be happy to discuss further my personnel or business involvement with AYC to you.

Fred Becker V
Fred Meyers Loss Prevention Manager
907-365-2026
Emai: fred.becker@stores.fredmeyer.com

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 8, 2010 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/26/10

The JUDICIARY Committee considered: **HB 331**

HOUSE BILL NO. 331
"An Act relating to funding for youth courts; and relating to accounting for criminal fines."
HB 331-YOUTH COURTS AND CRIMINAL FINES

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DHS	1			✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Gruenberg	—			
	HERRON	X			
	Dahlstrom	X			
Chair:	RAMRAS	X			
Chair:					

HB

334

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Alaska State Legislature

House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 456-3346
Toll Free: (877) 465-3004

House District 10

Fax

To: Jean Mischel
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 2

From: Jane W. Pierson

Date: March 8, 2010

Re: HB334

Today, the HJUD committee considered and passed a CS for HB334 (26-LS1310\S) with the following amendments:

Page 2, line 11, following "writing":
Insert "or on the record"

Page 2, line 9
Delete "construed"
Insert "presumed"

Amendment S.6

Amendment S.5

Amendment S.3

Page 1, line 8:
Delete "schedule of a"

Amendment S.1

Representative_Jay_Ramras@legis.state.ak.us

Page 2, line 29

Delete: "domestic violence against a spouse, a child, or a domestic living partner"
Insert:"a history of perpetrating violence"

Jean, is this inconsistent with other statutory language in child custody proceedings?

Also, the committee had trouble understanding page 2, lines 6-8, might you please clarify what expedited means, subject to an additional 10 days notice?

Please go final on a CSHB334(JUD).

Should you have any questions, please do not hesitate to contact me at 465-4990.

Thank you.

Representative_Jay_Ramras@legis.state.ak.us

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 9, 2010

SUBJECT: Expedited Hearings and Violence Standard (CSHB 334(JUD))
(Work Order No. 26-LS1310\P)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Jean M. Mischel
Legislative Counsel

You have asked two distinct questions about the above referenced bill: (1) how expedited hearings work under this bill and the court rules; and (2) whether the inclusion of "any violent behavior" in the best interest standard is consistent with current custody law.

Expedited Hearings.

The bill provides for mandatory expedited hearings on a motion filed by the deployed parent and requires an additional 10 days' notice at page two, lines 10 - 12. The committee heard testimony and comment alleging that this provision is inconsistent with Civil Rule 77(g) and may work to delay a hearing on a petition by a deployed parent seeking custody or visitation of the parent's child. The civil rule requires evidence to justify expediting a hearing and decision, a response time for the motion except in rare circumstances, and judicial discretion all of which is covered by the bill provision that requires expediting when a deployed parent requests it.[1]

---

[1] Rule 77(g), Rules of Civil Procedure, provides as follows:

> (g) *Expedited Consideration.* A party may move for expedited consideration of its principal motion by filing a second motion requesting relief in less time than would normally be required for the court to issue a decision.
>
> (1) The motion must be captioned "Motion for Expedited Consideration" and must have an appropriate order on the issue of expedited consideration attached.

(2) The motion for expedited relief must comply with other provisions of this rule, including paragraph (e) concerning any request for oral argument except as the provisions of this paragraph specify otherwise.

(3) The motion for expedited consideration must include an affidavit or other evidence showing the facts which justify expedited consideration, and the date before which a decision on the principal motion is needed.

(4) If the parties are represented by counsel, the motion for expedited consideration shall include a certification of counsel that a good faith effort has been made to resolve the issues raised with opposing counsel, but that these efforts were not successful; or, in the alternative, that it was not possible to attempt to resolve the issues with opposing counsel beforehand. The certification shall include a description of what efforts were made to resolve the issues for which expedited consideration is sought, or an explanation of why no efforts were made.

(5) The motion for expedited consideration must include proof of service; and, if the motion requests a decision before the usual time for response to the motion, must include a certificate indicating when and how the opposing party was notified of the motion, or, if the opposing party was not notified, what efforts were made to notify the opposing party and why it was not practical to notify the opposing party in a manner and at a time that a response could be made.

(6) The court may not grant the motion for expedited consideration prior to allowing the opposing party a reasonable opportunity to respond, either in person, by telephone or in writing, absent compelling reasons for a prompt decision and a showing that reasonable efforts were made to notify the opposing party of the motion for expedited consideration in time to allow a reasonable opportunity to respond.

(7) The court may not grant the principal motion prior to allowing the opposing party a reasonable opportunity to respond, either in person, by telephone or in writing, unless it clearly appears from the specific facts in the motion papers or court records that immediate and irreparable injury, loss or damage would result to the moving party before any reasonable opportunity to respond could be given. In no event will a decision be rendered on the principal motion without a response until at least 24 hours after the date of service of the principal motion or the date actual notice is given, whichever is sooner. However, this limitation does not preclude a decision in less than 24 hours on an application for relief made pursuant to Civil Rule 65(b) or any other rule or statute authorizing such action.

On the other hand, the bill as currently drafted would not allow a hearing to be held in less than 10 days (during which time a response opposing the motion could be filed) while the civil rule could result in an earlier hearing date, sometimes within 24 hours of the motion being filed, but only if the evidence is sufficient to justify that level of urgency. It is my understanding that the 10 days' notice provision was intended to avoid abuse of the mandated expedited hearing schedule when a parent may be unavailable and to take into consideration the complexity and importance of the custody decision under consideration. That is a policy call.

In any event, without being expedited, a custody hearing may be delayed for months, depending upon the court calendar, the case priority, and the response time of at least ten days in addition to time to file a reply and oral argument provided for motions, if requested, filed in the case.

If you wish to clarify for the court that any perceived inconsistency with the court rule should result in the statute being applied (to avoid a shorter time for the hearing allowed by the rule, for example), the bill should be amended to include an indirect court rule change. Let me know.

Violence Standard.

The incorporation of amendment S.1 that requires a court to consider "any history of violent behavior," excluding military actions, exhibited by a parent in making a determination of the best interests of the child. While the standard does not appear in current law describing the best interest factors under AS 25.24.150(c), that statute contains a catch-all for other relevant considerations that may be employed by a court to disallow custody or visitation with a parent exhibiting violent behavior. Other express factors in AS 25.24.150(c)(7) and 25.24.150(g) limit the consideration of a parent's violent behavior to that behavior that occurs in the custodial home or against a parent, child, or domestic living partner.

The standard is very broad and requires no criminal conviction so that the evidence of the violence must be clear on the record of the custody determination, as is provided for in the written findings requirement of the amendment. Even with the findings, however, it may be that a court would disregard the standard if it finds it to be unconstitutionally vague or otherwise infringe on a constitutionally protected right.

If I may be of further assistance, please advise.

JMM:ljw
10-146.ljw

Enclosure

REPRESENTATIVE BILL THOMAS
ALASKA STATE LEGISLATURE DISTRICT 5
e-mail: Representative.Bill.Thomas@legis.state.ak.us
webpage: www.akrepublicans.org/thomas/

State Capitol
Juneau AK, 99801-1182
907-465-3732
888-461-3732
FAX 907-465-2652

Sponsor Statement HB 334

"An Act establishing child custody, modification, and visitation standards for a military parent who is deployed; and amending Rule 99, Alaska Rules of Civil Procedure."

For nearly a decade, the War on Terror has required Alaska to frequently deploy our active military, reserve, and National Guard troops. This high deployment tempo is putting even more pressure on our already strained military families. Children who are already in unusual circumstances due to their parents' military careers are being put in the situation of having to deal with a deployed parent. It is no wonder that the divorce rate for members in the military has been steadily rising for the past decade.

However, while the travesty of divorce is hard enough on all members of a family, the court system is also finding it difficult to balance the issues of deployment with child custody issues. A deploying family member now must fight a battle on two fronts, the one in the Middle East, and the one at home. HB 334 ensures that the court system has clear directive as to how it should deal with a deploying military member if they should find themselves in the midst of a child custody battle. It affords them the right to an expedited hearing so that matters can be taken care of before deployment, if necessary, and it also allows the member to delegate their visitation rights to another family member in order for the child to maintain all familial connections. Most importantly, HB 334 requires that a court ***not*** consider deployment when determining child custody. Our men and women are sacrificing enough for our country, their military service should not be a reason in itself for them to lose custody of their children.

In 2009, because of the potential for conflict with current states child custody laws, congress deemed military child custody to be the responsibility of individual states.

HB 334 includes the following items and restrictions:

- A definition of a military absence.
- Assurance that military duties cannot be considered when determining child custody.
- Allowance of expedited hearings with restrictions.
- The right to delegate visitation to another family member.
- Allowance of electronic testimony.
- Limitations on temporary custody orders.

In recognizing that the federal government should not legislate a Military Child Custody statute, that Alaska has many service-members, that the United States military currently has a high rate of deployment, and that military divorce rates continue to rise, now is a good time for the Alaska Legislature to address military child custody.

REPRESENTATIVE BILL THOMAS
ALASKA STATE LEGISLATURE DISTRICT 5
e-mail: Representative.Bill.Thomas@legis.state.ak.us
webpage: www.akrepublicans.org/thomas/

State Capitol
Juneau AK, 99801-1182
907-465-3732
888-461-3732
FAX 907-465-2652

Sectional
HB 334
"An Act establishing child custody, modification, and visitation standards for a military parent; and amending Rule 99, Alaska Rules of Civil Procedure."

Section 1: AS 25.20 adds a new section:

Sec. 25.20.095. Custody and visitation proceedings involving a military parent.
(a) Military service cannot be a factor in granting or denying a petition for custody or visitation.

(b) – (e) Upon receiving deployment orders a military parent shall receive an expedited hearing and the parent can delegate visitation rights to a family member if doing so is within a child's best interests. Any petition for custody or visitation will be given the same protections as afforded under the SCRA. Additionally, rights or protections regarding custody or visitation can only be waived in writing

(f) A court order entered under this section must require
(1) a child be made reasonably available during periods of leave
(2) the facilitation of written and electronic contact between the deployed parent and the child, preferably electronic contact with a video image
(3) the deployed parent provide timely leave information

(g) Factors in determining a child's best interests. Cross reference to AS 25.24.150(c) and AS 25.24.150(g)

(h) Definition of "deployment," "family member," and "military service"

Section 2: AS 25.20.110 is amended by adding new subsection to read:

(d) Except as provided in (e) – (h) military service cannot be a factor in finding a change of circumstances on a motion to modify child custody or visitation

(e) A court may provide for a temporary modification of a custody or visitation order to make reasonable accommodation for a deployment. The temporary order must include provisions for
(1) custody or visitation during periods of leave if doing so is within the child's best interests.
(2) termination of the temporary order within 10 days of notification of the deployed parent's ability to resume custody if doing so is within the child's best interests. The non-deployed parent shall bear the burden of proof.

(3) a hearing if a child of a deployed parent moved out of state and the non-deployed parent files a motion that alleges that resumption of the permanent custody order will result in immediate danger of irreparable harm to the child or that the presumption under AS 25.24.150(g) exists
(4) delegation of the deployed parent's visitation rights to a family member if doing so is within the child's best interests.
(5) immediate notification from the non-deployed parent of a change of address or contact information.

(f) A court shall expedite a hearing to modify custody or visitation on a motion made by a parent who is subject to deployment.

(g) Factors in determining a child's best interests. Cross reference to AS 25.24.150(c) and AS 25.24.150(g)

(h) Definition of "deployment," "family member," and "military service." Cross reference to AS 25.20.095

Section 3: AS 25.24.150 is amended by adding new subsection to read:

(l) Except as provided in AS 25.20.095 and 25.20.110 military service cannot be a factor in determining the best interest of the child under (c) of this section.

Section 4: The uncodified law of the State of Alaska is amended by adding a new section to read:

(a) Authorization for Telephonic, Video, or Internet Participation.
The court shall allow video or Internet testimony if the hearing or deposition involves the custody or visitation of a child of a parent who is deployed, as that term is defined in AS 25.20.095, at the request of the deployed parent.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **CSHB334(MLV)**
() Publish Date:

Identifier (file name): HB334CS(MLV)-LAW-CIV-03-05-10
Dept. Affected: Law
Title: An Act establishing child custody, modification and visitation standards for a military parent
RDU: Civil
Component: Child protection
Sponsor: Representative(s) THOMAS, Dahlstrom, Gatto, Wilson, Lynn, Ramras, Buch
Requester: House Military & Veterans' Affairs
Component Number: 2961

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill is an act establishing child custody, modification, and visitation standards for a military parent who is deployed; and amending Rule 99, Alaska Rules of Civil Procedure. The Department of Law, Attorney General's office, does not handle private civil custody arrangements. Therefore, there will be no fiscal impact on the Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager
Phone 465-5427
Division: Administrative Services
Date/Time 3/5/10 9:30 AM
Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date 3/5/2010

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 334(MLV)
(H) Publish Date: 2/24/10

Identifier (file name):
Title: Military Deployment and Child Custody
Sponsor: Representative Thomas
Requester:

Dept. Affected: Alaska Court System
RDU: Trial Courts
Component:
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

House Bill 334 changes some of the provisions that govern child custody in cases where a parent is a service member who is or recently has been deployed. Two provisions have the potential to impact the court system. The first is the right to a custody hearing within 10 days after a service member requests the hearing after returning from deployment. Courts already frequently set these hearings on an expedited basis and this change will probably not have a significant impact on current practices. However, should a significant number of heaings be sought soon after the return of a large number of deployed service members, this may create scheduling problems.

The second possible impact involves internet testimony when a deployed parent wishes to participate in a custody hearing. The court can currently use this technology in the courts most likely to hear these cases (Anchorage, Faribanks and Palmer). Any associated costs are likely to be minor and can be absorbed without the need for additional funding.

Prepared by: Doug Wooliver, Administrative Attorney
Division: Alaska Court System
Phone: 907-463-4750
Date/Time: 2-16-10 @ 12:00 pm

Approved by: Doug Wooliver for Christine Johnson, Administrative Director
Alaska Court System
Date: 2/16/2010

(Revised 10/13/2009 OMB)

National Association for Uniformed Services

Military Divorce Rate Continues to Climb
The divorce rate in the armed forces continues to grow, despite efforts by the military to help struggling couples.

The Pentagon recently reported there were an estimated 27,312 divorces among roughly 765,000 married members of the active-duty Army, Air Force, Navy and Marine Corps in fiscal year 2009.

That's a divorce rate of about 3.6 percent, compared with 3.4 percent a year earlier, according to figures from the Defense Manpower Data Center. Marriages among reservists failed at a rate of 2.8 percent compared to 2.7 the previous year.

The reported 3.6 percent rate is a full percentage point above the 2.6 percent reported in late 2001, when the U.S. began sending troops to Afghanistan in response to the Sept 11 terrorist attacks.

As in previous years, women in uniform suffered much higher divorce rates than their male counterparts: 7.7 percent compared to 3 percent for men in 2009.

The only comparable measure for civilian divorce rates is what the Centers for Disease Control said in 2005 that 43 percent of all first marriages end in divorce within 10 years.

Critics believe that the divorce rate reported by the Pentagon comes nowhere close to depicting the damage done to marriages and families by the two ongoing wars.

The Pentagon number doesn't count veterans, who divorce after leaving the services, let alone reflect other possible wartime consequences on families, such as increases in alcoholism or the toll on orphaned or emotionally stressed children of troops.

In an Army battlefield survey taken in Iraq in the spring, nearly 22 percent of young combat soldiers questioned said they planned to get a divorce or separation, compared to 12.4 percent in a survey conducted in 2003.

http://timesargus.com/article/20100120/NEWS01/1200341/1002/NEWS01

For deployed Vermont military, help with child custody

By **Peter Hirschfeld** Vermont Press Bureau - Published: January 20, 2010

MONTPELIER – For military parents deployed to war zones overseas, the toughest battle can often be the child-custody dispute awaiting them back home.

The call to duty, family-law experts told Vermont lawmakers on Tuesday, can be used in court against military parents who split custody of their children with a former spouse or partner. And the impacts, they said, can exacerbate the intense emotional trauma that long deployments inflict on troops and their children.

"We don't have a lot of horror stories here, but boy are they out there in the rest of the country," said Patricia Benelli, a family-law attorney from Chester. "And we're trying to avoid them here."

Lt. Col. Ellen Abbott, a judge-advocate general in the Vermont National Guard, said she had to assist a Vermont soldier who returned from a long deployment to Iraq only to find that his ex-partner had been granted full custody of their child in his absence. It took months of court proceedings and $23,000 in legal fees, Abbott said, for the man to regain custody of his child.

"It was a very difficult thing for this soldier to go through," Abbott said. "Had we had something in place to provide protections to him, it might have made things easier."

Lawmakers this session will consider a bill that supporters say would provide those protections by addressing the legal pitfalls into which at least some military parents fall. Without such reforms, Benelli said, the state risks "penalizing people in the military for serving their country."

Rep. Maxine Grad, a Waitsfield Democrat and vice-chairwoman of the House Judiciary Committee, introduced the legislation, which now has 88 co-sponsors. With more than 5,000 Vermonters serving as active members of the military, including 1,500 headed for Afghanistan next month, she said it's incumbent upon the state to protect the parental rights of servicemen and women.

When deployment orders come through, Abbott said, many military parents "are afraid to go to court because they're going to take their children away."

Indeed, legal experts said Tuesday, a military deployment can be construed by family-court judges as the "real, substantial and unanticipated change" required by Vermont statutes to amend child-custody arrangements.

Proposed legislation would prevent judges from using deployment-related separation as the sole reason for changing custody or visitation orders.

"I think this bill provides the framework to give assurances to military parents that they won't lose contact with their children either before, during or after their deployment," Abbott said.

The bill would also ensure that parents forced to cede custody or visitation during a deployment could appoint a friend or family member to assume those rights on their behalf. The measure is needed, lawyers said Tuesday, to ensure a continued bond with members of the deployed parent's family.

The legislation additionally ensures contact rights for deployed parents wishing to correspond with their children via telephone, e-mail or Web cameras. Abbott, who herself has been deployed to Iraq, said contact with children is important to sustaining soldiers' morale.

"Being over there I can tell you soldiers live for contact with their children," Abbott said. "We also have soldiers who are devastated when they get no response from their children – none whatsoever. It degrades their ability to focus on the mission and that's what we need – the ability to focus on the mission so they can come back."

The bill would also force family courts to make deployment-related custody hearings priority cases, and allow deployed soldiers to participate in those hearings via phone.

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Deployed Troops Battle for Custody

Associated Press | May 07, 2007

She had raised her daughter for six years following the divorce, handled the shuttling to soccer practice and cheerleading, made sure schoolwork was done. Hardly a day went by when the two weren't together. Then Lt. Eva Crouch was mobilized with the Kentucky National Guard, and Sara went to stay with Dad.

A year and a half later, her assignment up, Crouch pulled into her driveway with one thing in mind - bringing home the little girl who shared her smile and blue eyes. She dialed her ex and said she'd be there the next day to pick Sara up, but his response sent her reeling.

"Not without a court order you won't."

Within a month, a judge would decide that Sara should stay with her dad. It was, he said, in "the best interests of the child."

What happened? Crouch was the legal residential caretaker; this was only supposed to be temporary. What had changed? She wasn't a drug addict, or an alcoholic, or an abusive mother.

Her only misstep, it seems, was answering the call to serve her country.

Crouch and an unknown number of others among the 140,000-plus single parents in uniform fight a war on two fronts: For the nation they are sworn to defend, and for the children they are losing because of that duty.

Alert: Tell your public officials how you feel about this issue.

A federal law called the Servicemembers Civil Relief Act is meant to protect them by staying civil court actions and administrative proceedings during military activation. They can't be evicted. Creditors can't seize their property. Civilian health benefits, if suspended during deployment, must be reinstated.

Understanding Military Legal Matters

And yet servicemembers' children can be - and are being - taken from them after they are deployed.

Some family court judges say that determining what's best for a child in a custody case is simply not comparable to deciding civil property disputes and the like; they have ruled that family law trumps the federal law protecting servicemembers. And so, in many cases when a soldier deploys, the ex-spouse seeks custody, and temporary changes become

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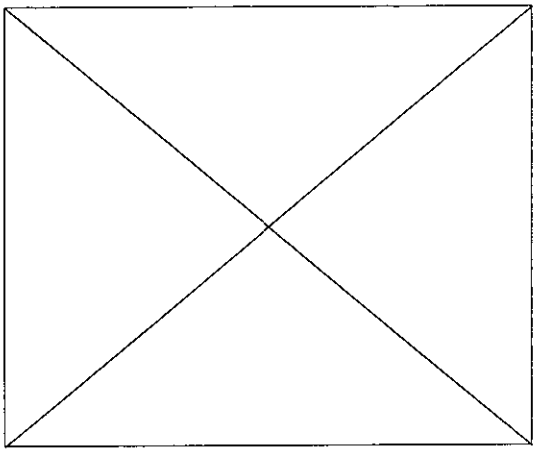

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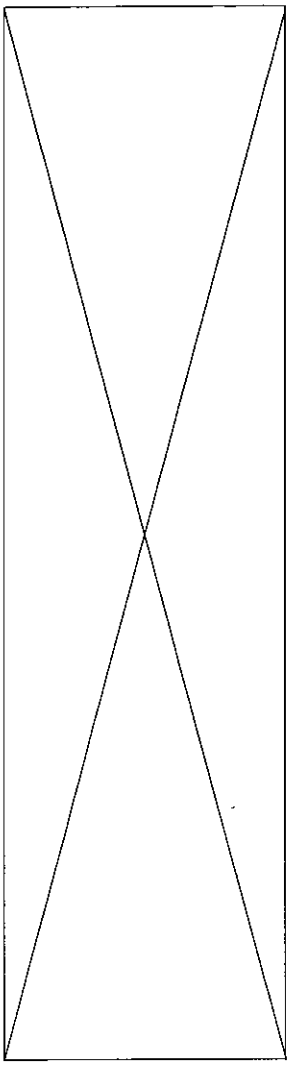

Even some supporters of the federal law say it should be changed - that soldiers should be assured that they can regain custody of children after they return.

"Now, they've got a great argument when Johnny comes marching home that the child should remain where they are, even though it was a temporary order," says Lt. Col. Steve Elliott, a judge advocate with the Oklahoma National Guard, referring to non-deployed parents.

Military mothers and fathers, meanwhile, speak of birthdays missed. Bonds, once strong, weakened. Returning from duty not to joyful reunions but to endless hearings.

They are people like Marine Cpl. Levi Bradley, helping to fight the insurgency in Fallujah, Iraq, at the same time he battles for custody of his son in a Kansas family court.

Like Sgt. Mike Grantham of the Iowa National Guard, whose two kids lived with him until he was mobilized to train troops after 9/11.

Like Army Reserve Capt. Brad Carlson, fighting for custody of his American-born children in a foreign land after his marriage crumbled while he was deployed to the Middle East and his European wife refused to return to the States.

And like Eva Crouch, who spent two years and some $25,000 pushing her case through the Kentucky courts.

"I'd have spent a million," she says. "My child was my life ... I go serve my country, and I come back and have to go through hell and high water."

In the midst of World War II, back in 1943, the U.S. Supreme Court held that the soldiers' relief law should be "liberally construed to protect those who have been obliged to drop their own affairs to take up the burdens of the nation."

Shielding soldiers, after all, would allow them "to devote their entire energy" to the nation's defense, as the law itself states.

But in child custody cases, the opposite often happens.

"The minute these guys are getting deployed, the other parent is going, `I can do whatever I want now,'" says Jean Ann Uvodich, an attorney who represented Bradley. "If you have an ex who wants to take advantage, they can and will. The obstacle is that the judge needs to respect the law."

Bradley had already joined the Marines, and his young wife, Amber, was a junior in high school when their son Tyler came along in September 2003. With Bradley in training, Amber and the baby lived with Bradley's mother, Starleen, in Ottawa, Kan.

When the marriage fell apart two years later, Bradley filed for divorce and Amber signed a parenting plan granting him sole custody of Tyler and agreeing that the boy would live with Starleen while Bradley was on duty.

In August 2005, Bradley deployed to Iraq. A month later, Amber sought to void the agreement and obtain residential custody of Tyler. She didn't fully understand what she had signed, she said later.

Bradley learned of the petition in Fallujah, after calling his mom's house one night to say hello to his son. He was infuriated.

He worked during the day as a mechanic with the 8th Communications Battalion, then headed back to the barracks and, because of the time difference, waited until midnight to call his mother to hear the latest from court.

"My mind wasn't where it was supposed to be," he says. And the distraction cost him. One day he rolled a Humvee he was test-driving. Though he wasn't injured, Bradley was reprimanded.

Uvodich sought a stay under the Servicemembers Civil Relief Act, which provides for a minimum 90-day delay in proceedings upon application by an active duty service member. She argued that Bradley had a right to be present to testify.

But the judge refused to postpone the case, saying he didn't believe it was subject to the federal law because "this Court has a continuing obligation to consider what's in the best interest of the child," court records show.

After a November 2005 hearing, the judge awarded temporary physical custody to Amber. Last summer, that order was made permanent.

Bradley, now 22, is stationed at Camp Lejeune, N.C., awaiting his second deployment to Iraq later this year. He gets to Kansas on leave for about two weeks every six months, and sees Tyler for four days at a time.

"I fought the best I could," he says. "The act states: Everything will be put on hold until I'm able to get back. It doesn't happen. I found out the hard way."

Deployment News and Resources

Oregon Circuit Court Judge Dale Koch, president of the National Council of Juvenile and Family Court Judges, said that as state court judges, those deciding custody cases are obligated to follow their family codes - and "in most states there is language that says the primary interest is the best interest of the child."

"We recognize the competing interests," he says. "You don't want to penalize a parent because they've served their country. On the other hand ... you don't want to penalize the child."

But what does "best interest" really mean? Koch mentions factors such as stability and considering who has been the child's main emotional provider, parameters that conflict directly with military service. So how do you balance those things against upholding a deployed parent's civil rights? When, too, should a temporary change mean just that?

Iowa Guardsman Mike Grantham thought he was serving the best interests of his children when he arranged for his son and daughter to stay with his mother before reporting for duty in August 2002. She lived a few blocks from the kids' school in Clarksville, Iowa, and he figured, "There wouldn't be much disruption."

He had raised Brianna and Jeremy since his 2000 divorce, when ex-wife Tammara turned physical custody over to him.

After mobilizing, Grantham was served with a custody petition from Tammara, delivered to his unit's armory. His lawyer tried twice to request a stay under the federal law. His commanding officer even wrote a letter stating that Grantham's battalion was charged with protecting U.S. facilities deemed national security interests and that his case would cause the entire command structure "to refocus away from the military mission."

The trial judge nevertheless held hearings without Grantham and

temporarily placed the children with Tammara. A year later, though Grantham had returned from duty, the judge made Tammara the primary physical custodian.

An appeals court later sided with Grantham, saying: "A soldier, who answered our Nation's call to defend, lost physical care of his children ... offending our intrinsic sense of right and wrong."

But the Iowa Supreme Court disagreed, saying Tammara was "presently the most effective parent."

Now, Grantham says, his visitation rights mirror those that his ex-wife once had: every other weekend, Wednesdays, and certain holidays - Father's Day, for example.

"There ain't nothing you can do," he says. "Being deployed, you lose your armor."

Military and family law experts don't know how big the problem is, but 5.4 percent of active duty members - more than 74,000 - are single parents, the Department of Defense reports. More than 68,000 Guard and reserve members are also single parents.

Divorce among military men and women also has risen some in recent years, with more than 23,000 enlisted members and officers divorcing in 2005.

Army reservist Brad Carlson lived in Phoenix with his wife, Bianca, and three kids when he volunteered to deploy to Kuwait in 2003. His wife and children were spending that summer with her parents in Luxembourg and expected to remain there until he returned from duty.

A year later, after his wife indicated she wanted to end the marriage and remain in Luxembourg, Carlson filed for divorce in an Arizona court, seeking custody of Dirk, Sven and Phoebe, all American citizens.

The Arizona court dismissed the custody case after Bianca's lawyer argued that jurisdiction belonged in Luxembourg because the children had resided there for at least six months.

Again citing the Servicemembers Act, Carlson's attorney argued that the time the kids spent in Luxembourg shouldn't count toward residency because it came during Carlson's deployment.

A Luxembourg court awarded custody to Bianca, and the kids remain there to this day.

They call him "Bradley" now, he says, instead of "Daddy." They converse in German in stilted long-distance phone calls that provide few precious minutes for a father to absorb missed moments - soccer games, kindergarten, birthdays. On Dirk's 9th, Carlson stood beneath a rainbow-colored birthday banner and had a friend take a digital photo of him holding a sign: "Happy 9th Birthday Dirk!"

Tears fill his eyes when it hits him: "That's how I celebrate."

"I feel really betrayed," Carlson says. "To be able to send me into harm's way ... and my own country can't protect my child custody rights. Why aren't they looking out for me, when I'm looking out for the country?"

The solution, some say, lies in amending the federal law to specify that it does apply in custody cases, and to spell out that jurisdiction should rest with the state where the child resided before a soldier deployed.

Some states aren't waiting for congressional action.

In 2005, California enacted a law saying a parent's absence due to military activation cannot be used to justify permanent changes in custody or visitation. Michigan and Kentucky followed suit, requiring that temporary changes made because of deployment revert back to the original agreement once deployment ends.

Similar legislation has been proposed in Arizona, Florida, Oklahoma, Texas and North Carolina.

"These men and women need to know that when we deploy them, they don't have to worry about being ambushed in our family law court system," says Michael Robinson, a lobbyist who helped write the California and Michigan laws. "The insurgents are doing enough ambushing over there. The only difference between what's occurring there and here is ... it's an emotional bomb."

Crouch knows that all too well.

When she was mobilized back in 2003, Crouch considered having her mother come live in her Frankfort, Ky., home to care for 9-year-old Sara. But her ex-husband, Charles, wanted Sara with him, and Crouch agreed.

"You have to promise me you won't try anything funny," Crouch told him.

He promised.

They drew up a temporary order, moved Sara's belongings 2 1/2 hours east to her dad's place near Ashland, and Crouch headed out - to Iraq, she thought, although she wound up stateside at Fort Knox, providing personnel support to units shipping out.

The fortunate assignment allowed her to visit Sara most weekends, but no one ever brought up the idea of making the temporary situation permanent until Crouch returned.

"Right up until the day I came home there was every indication that I was picking her up," she says.

Charles Crouch says that's true, and acknowledges their agreement was supposed to be temporary. But when the time came for Sara to return to her mom, Charles says his daughter expressed a desire to stay with him. She liked her school, had made new friends.

"I had no intention of trying to talk her into staying or anything," he says. "All I wanted was what was best for my daughter."

Eva Crouch helped fight for the new Kentucky law. Last year, the state Supreme Court cited it in overturning the trial judge's decision granting custody to Charles.

Last September, she got Sara back.

Crouch knows she's one of the lucky few whose cases have happy endings. She's remarried now, and expecting another baby this August. But with 18 years in the military, she knows she could be mobilized again after she gives birth. One thing is clear to her now: Serving her country isn't worth losing her daughter.

"I can't leave my child again - regardless of whether or not I know when I come home, she comes home.

"Still," she says, "I can't."

More Deployment News

SECRETARY OF DEFENSE
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The Honorable Sean Parnell
Governor of Alaska
State Capitol
P.O. Box 110001
Juneau, AK 99811-0001

Dear Governor Parnell:

I am writing to you about a matter that is of critical concern to me - the support of our Service members and their families in child custody disputes. I am deeply committed to preventing any inequitable treatment our deployed soldiers, sailors, airmen, and Marines may face in child custody disputes as a result of their service to the Nation.

I ask that you consider how your state can address the special difficulties facing military parents who must balance the demands of military service with the equally compelling demands of parenthood. These demands are often felt most acutely when military members must deploy and either lose visitation time or face challenges to existing custody orders by a parent to whom the military member is not married.

To date, thirty states have passed laws that address some aspect of the difficulties facing parents who must temporarily give up custody of their children or who must forgo visitation when called to take up the burdens of the nation. One possible legislative response could include the presumption that the prior custody agreement be restored upon the military member's return from deployment. Another legislative response could be to allow a parent with visitation rights the ability to delegate those rights to a third party during the deployment. I note that Alaska has not passed legislation to address military and visitation issues.

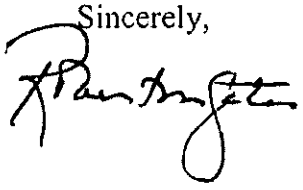
The Department recognizes the complexities of such cases and the difficulties in balancing the interests of the Service member against the best interests of the child. The Department also believes that the States are in the best position to balance the needs of both within the context of existing domestic relations laws.

Because of the potential impact this could have on the full spectrum of our

military families, I am writing you directly to let you know that we stand ready to assist you with any additional information that you may need to address this issue. Mr. Ed Kringer, my staff contact, can provide a more detailed description about how other states have approached this issue. Your staff can contact him at 703-602-4949, ext. 114, or at ed.kringer@osd.mil.

Thank you for all you do for our Service members and their families. Helping them with this extremely important family concern would provide a great service to our men and women in uniform, as well as to your State and the nation as a whole.

Sincerely,



Sean Parnell, GOVERNOR

DEPARTMENT OF MILITARY AND VETERANS AFFAIRS

OFFICE OF THE COMMISSIONER

P. O. BOX 5800
Ft Richardson, ALASKA 99505-5800
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February 26, 2010

Rep. Bill Thomas:

Members of the United States Armed Forces train very hard to meet the high standards we set as a nation for excellence. These standards are important to protect the lives of each individual member, but also to protect the fellow Soldiers, Airmen, Marines, and Seamen who go into battle together.

The members of the Armed Forces need to be focused on the mission they are about to execute and not have any distracters that could jeopardize the safety of the team or success of the mission. The number one distraction for deployed military members is family concerns. There is a loop-hole in Alaska Statute that allows child custody hearings to take place while a military member is deployed. This must be stopped.

I fully support the efforts of the Rep. Bill Thomas and the Veterans Caucus to correct this problem by sponsoring House Bill 334. Please protect the troops by allowing them to focus on the mission while deployed. Passing this bill will improve morale and allow families to deal with issues in person between deployments.

Sincerely,

Thomas H. Katkus

Brigadier General Thomas H. Katkus
Commissioner

FILED #1

AMENDMENT

By Gruenberg

Dahl N
Her N
Gat N
Lynn N
Grue Y
Holmes Y
Ramras N

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 2, line 2, following "finds":

Insert "by clear and convincing evidence"

PASSES **AMENDMENT** #2 Gruenberg

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 2, line 11, following "writing":

Insert "or on the record"

Passed

AMENDMENT #3

Gruenberg

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 2, line 9:

Delete "construed"

Insert "presumed"

26-LS1310\S.7
Mischel
3/8/10

FAILED

AMENDMENT #4

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: CSHB 334(MLV)

Page 3, line 18, following "circumstances":

Insert "that materially affects the welfare of the child if the court approves a military family care plan ~~and if the temporary duty, mobilization, or deployment is for a period that is less than six months~~"

Page 4, line 18, following "consider":

Insert "the terms of the parent's military family care plan and"

H - N
G - Not PV
L - N
G - Y
H - Y
D - N
R N

Passed

AMENDMENT #5

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: CSHB 334(MLV)

Page 1, line 6, following "(a)":

Insert "In determining the availability of a parent for custody or visitation, if a parent is deployed or in a position where the parent may be deployed, the court shall take particular care to ensure that the child has the maximum opportunity, consistent with the best interests of the child, to have contact with the parent."

FAILS **AMENDMENT** #6

Gruenberg

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 2, lines 6-8:

Delete all material

Reletter the following paragraphs accordingly.

Page 4, lines 15-16:

Delete all material

Reletter the following paragraphs accordingly.

6 - NP
L - N
G - Y
H - Y
D - N
H - N
R - N

26-LS1310\S.5
Mischel
3/8/10

Passed

AMENDMENT #7

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: CSHB 334(MLV)

Page 3, line 13, following "cause":

Insert ";

"(4) "parent" includes a legal guardian of the child"

Page 4, line 26:

Delete "and military service"

Insert ", military service, and "parent""

26-LS1310\S.3
Mischel
3/8/10

PASSED

AMENDMENT #8

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: CSHB 334(MLV)

Page 2, line 16:

Delete "the nondeployed"

Insert "each"

Page 2, line 17:

Delete "deployed parent's child and the deployed parent"

Insert "other parent and the child"

Page 2, line 19:

Delete "and"

Page 2, line 21, following "schedule":

Insert "; and

(4) each parent provide immediate notification of a change of address or contact information as provided under AS 25.20.110(e)(5)"

Page 4, line 8:

Delete "the parent who is not deployed"

Insert "each parent"

Page 4, line 9:

Delete "deployed"

Insert "other"

Page 4, line 12:

Delete "who is not deployed"

Passed

AMENDMENT #9

Gruenberg

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 1, line 8:

Delete "schedule" of a "

26-LS1310\S.1
Mischel
3/8/10

Passed

AMENDMENT #10

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: CSHB 334(MLV)

Page 2, lines 22 - 25:

Delete "In making a determination of the best interests of the child, the court shall consider the factors under AS 25.24.150(c) and apply the rebuttable presumption under AS 25.24.150(g) to visitation, delegation, and custody orders issued under this section."

Insert "In making a determination of the best interests of the child, the court shall consider (1) the factors under AS 25.24.150(c) and apply the rebuttable presumption under AS 25.24.150(g) to visitation, delegation, and custody orders issued under this section, and (2) any history of violent behavior exhibited by a parent."

Page 2, line 30, following "partner.":

Insert "The court shall make specific written findings regarding the considerations required to be considered in (1) and (2) of this subsection. In this subsection, "history of violent behavior" does not include any behavior or actions performed or undertaken in connection with military duties."

Conceptual Amendment #11

P.2, L.29 history of violence perpetrating. delete "domestic.

Passed

W/D **AMENDMENT** #12

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 4, line 2:

Delete "result in immediate danger of irreparable harm"

Insert "be detrimental"

FAILS

AMENDMENT #13

Gruenberg

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 1, lines 10-11:

Delete "(b) A parent who is deployed may petition a court of competent jurisdiction for custody or visitation. The"

Insert "(b) If a parent petitions a court of competent jurisdiction for custody or visitation, the"

L - N
G - Y
H - Y
D - N
H - N
R - N
G - NP

FAILS

AMENDMENT #14

Gruenberg.

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 2, line 1:

Delete "shall"

Insert "may"

G - Y
H - Y
D - N
H - N
G - NP
L - N
R - N

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Counties of Wake, Durham, Orange and Cumberland. AAML: President, NC Chapter, 2003; Member: ABA, Sections of Family Law and General Practice; North Carolina Bar Assn., Section of Family Law; North Carolina Academy of Trial Lawyers. Current Positions: ABA/FLS, Co-Chair-Military Comm., 1998-present. Previous Positions: ABA/GPS, Chair-Fam. Law Comm. 1996-98; NCSB, Director of Special Comm. on Legal Assistance for Military Personnel; 1982-87; NCBA, Vice Chairman, Fam. Law Sect., 1985-86; CLE Participation: Military Custody," and Advanced Separation Agreement Negotiations," U.S. Army JAG School, 1987-present; "Military Pension Division: Crossing the Minefield," 1999 Wiley Fam. Law Update: "Your Rights Under C.O.B.R.A.," Fair$hare, Vol. 20, No. 3, 3/00; "Seeing is Believing: Charts, Graphs and Presentations for the Domestic Lawyer," 22nd Annual Institute on Fam. Law, Tampa, FL 5/00; "Judge's Guide to the Soldiers' and Sailors' Civil Relief Act," The Judges Journal, (ABA) Spring 2002.

* **ARMSTRONG, MARCIA HIGH** | **P. O. Box 27** | **Smithfield, NC** | **(919) 934-1575**
Admitted: 7•24•93 | | **27577** | **FAX (919) 934-1846**
marcia@armstronglaw.biz

Practice emphasizes Traditional Client Representation and Litigation
Current Positions: Board Certified Specialist in Family Law since 1989. Member: North Carolina Bar Association, North Carolina Academy of Trial Lawyers. Member, Family Law Specialty Comm., N.C. State Board of Legal Specialization. Current Positions: Member, Family Law Section Curriculum Comm.. CLE Participation: Speaker and Course Planner for Many North Carolina Bar Assn. and Wake Forest Univ. School of Law Family Law Seminars. Previous Positions: Member, Board of Governors, North Carolina Bar Assn.; Member Law Alumni Council - Wake Forest Univ. School of Law, Chair, Family Law Section, 1995-1996. Editor, Family Forum Newsletter, 1993-1995.

* **WOODARD, STEPHEN C., JR.** | **405 E. Market St.** | **Smithfield, NC** | **(919) 934-5012**
Admitted: 5•13•95 | **P. O. Drawer 1960** | **27577-1960** | **FAX (919) 934-9536**
scw1225@aol.com

Practice emphasizes Traditional Client Representation and Litigation
Member: Family Law Section of the North Carolina Bar Association, Family Law Section. Board Certified Specialist in Family Law. Previous Positions: Member, NC State Bar Family Law Specialization Committee, 1988-96; Past President, The Johnson County Bar Assn.; Former Member, Family Law Council, NC Bar Foundation. CLE Participation: Former Speaker for Wake Forest Law School; Former Course Planner, NC Academy of Trial Lawyers Family Law Seminar. Named "Legal Elite" by Business North Carolina, 2004. Named Top 100 Super Lawyers in North Carolina by Charlotte, The City Magazine; Names Top 50 Super Lawyers in Family Law in NC by Charlotte, The City Magazine.

Dist. by Greenberg re. HB334

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 1, line 8:

Delete "schedule"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 1, lines 10-11:

Delete "(b) A parent who is deployed may petition a court of competent jurisdiction for custody or visitation. The"

Insert "(b) If a parent petitions a court of competent jurisdiction for custody or visitation, the"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 2, line 2, following "finds":

Insert "by clear and convincing evidence"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 2, line 1:

Delete "shall"

Insert "may"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 2, lines 6-8:

Delete all material

Reletter the following paragraphs accordingly.

Page 4, lines 15-16:

Delete all material

Reletter the following paragraphs accordingly.

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 2, line 9:

Delete "construed"

Insert "presumed"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 2, line 11, following "writing":

Insert "or on the record"

AMENDMENT

OFFERED IN THE HOUSE

TO: CSHB 334(MLV) (26-LS1310\S)

Page 4, line 2:

Delete "result in immediate danger of irreparable harm"

Insert "be detrimental"

Jane Pierson

From: Kaci Schroeder
Sent: Wednesday, March 03, 2010 1:37 PM
To: 'Jane_Pierson@legis.state.ak.us'
Subject: Military Child Custody

Follow Up Flag: Follow up
Flag Status: Flagged

Jane,

If you think it is appropriate, I would like to show this 3 min news clip on Military Child Custody to the committee. I've never successfully done this (tried in MVA and the technology didn't work) so I really don't know what I am doing in regards to this. However, the video was shown in the Senate. It just helps illustrate the issue with a real live person who has been affected by it. I'll go with your advice though, if you don't think it would add anything to the bill presentation I'm fine with skipping it.

http://www.cbsnews.com/video/watch/?id=5972491n&tag=contentMain;contentBody

So far I am expecting the following people to be online to testify:

Mark San Souci (Quality of Life Regional Liaison, Department of Defense)
Mark Sullivan (Practicing Attorney, Expert in the field of Military Domestic Matters)
Anndrea Wells (Husband is in the midst of a child custody battle and will be deploying this summer)
Jean Michelle (drafting attorney)
Adam Torem, JAG Atty

Kaci Schroeder Hotch
Legislative Aide to Rep. Thomas
State Capitol, Rm 501
Juneau, AK 99801
1-888-461-3732
(907) 465-3732
fax: (907) 465-2652

"In things pertaining to enthusiasm,
no man is sane who does not know how to be insane on proper occasions.
- Henry Ward Beecher

HB 348

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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MEMORANDUM March 30, 2010

SUBJECT: Membership of the State Personnel Board
CSHB 348(JUD) (Work Order No. 26-LS1360\S)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the committee substitute described above. I have one comment.

The bill provides that the governor would be required to appoint nominees from a list of at least three qualified persons submitted by the chief justice of the Alaska Supreme Court. Note that this requirement, that the governor appoint board members from a list of persons selected by the chief justice, subject to the right of the governor to request additional nominations, raises a constitutional question as to whether the legislature may so constrain the governor's ability to choose whom to appoint to an executive board.

The power to appoint members of state boards, commissions, and councils is an executive function to be exercised by the governor. In Bradner v. Hammond, 553 P.2d 1, 5 - 6 (Alaska 1976), the Alaska Supreme Court recognized that the Alaska constitution envisioned a strong executive and "that the appointment of executive officers is an executive function. . . ." The legislature may prescribe qualifications for the members of boards and commissions that are reasonably related to either the position or to the aim of the legislation and do not interfere with the governor's appointment power or with qualifications set out in the constitution. Various state courts have reached this same conclusion and have upheld legislative designations of qualifications for public offices, such as memberships on a board or commission. See, e.g., State v. Matassarin, 217 P. 930 (Kansas 1923); State v. Eischen, 76 N.W.2d 385 (Minn. 1956); Humane Society of the United States v. New Jersey Fish and Game Council, 362 A.2d 20 (1976); Hurd v. Freeland, 442 P.2d 344 (Okla. 1966); State v. Wells, 112 N.W.2d 601 (S.D. 1961); State v. Millsap, 605 S.W.2d 366 (Tex. App. 1980).

However, the Department of Law, which has generally taken a position very protective of the governor's prerogatives, has asserted that the legislature may not restrict the governor's appointment powers, such as by requiring the governor to select from a list of

names provided by particular groups. The Department of Law has repeatedly argued that such limitations on the governor's appointment power are unconstitutional infringements upon the governor's authority. Letter to Walter J. Hickel, Governor, from Charles E. Cole, Attorney General, June 11, 1991 (file no. 883-91-0071); 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; 1980 Inf. Alaska Atty. Gen. Op. (file no. J-66-164-80), September 17.

Nonetheless, at least three Alaska attorney general opinions or letters of advice have accepted that the legislature may prescribe reasonable qualifications for gubernatorial appointments to boards or commissions. 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; Memorandum to Governor Hammond from R. Pegues, August 13, 1979; 1988 Inf. Alaska Atty. Gen. Op. (file no. 883-88-0079), May 24.

In this instance, I cannot say how a court would interpret the reasonableness of a statutory requirement that the governor appoint members of the board from lists of nominees chosen by the chief justice of the Alaska Supreme Court.

If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:med
10-066.med

Enclosure

CS FOR HOUSE BILL NO. 348(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVE LYNN

A BILL

FOR AN ACT ENTITLED

"An Act relating to the membership of the state personnel board."

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

*** Section 1.** AS 39.25.060(a) is amended to read:

(a) The personnel board is composed of **five** [THREE] members appointed by the governor and confirmed by the legislature meeting in joint session. **The governor may make an appointment only from a list of at least three nominees selected by the chief justice of the Alaska Supreme Court, subject to the right of the governor to request additional nominations. In appointing members under this subsection, the governor shall ensure that the board has at least one member of the political party that had the largest number of registered voters and one member of the political party that had the second largest number of registered voters at the time of the most recent general election at which a governor was elected.** The term of office of a member is six years**; however, notwithstanding AS 39.05.080(4), the member remains in office after expiration of the term until a successor is confirmed**. A vacancy in an unexpired term shall be filled by appointment by the

governor for the remainder of the term. The appointment is **made from a list of nominees and** subject to confirmation in the same manner as a full-term appointment.

*** Sec. 2.** AS 39.25.060(b) is amended to read:

(b) Members of the board may not be employees of the state. Not more than **three** [TWO] members of the board may be members of the same political party.

*** Sec. 3.** AS 39.25 is amended to by adding a new section to read:

Sec. 39.25.064. Prohibited conduct by board members. (a) A member of the personnel board may not, during the person's term of office,

(1) hold or campaign for elective office;

(2) be an officer of a political party or political group;

(3) lobby;

(4) employ a lobbyist; or

(5) assist in lobbying.

(b) In this section,

(1) "political group" has the meaning given to "group" in AS 15.13.400;

(2) "political party" has the meaning given in AS 15.13.400.

*** Sec. 4.** AS 39.25.070 is amended to read:

Sec. 39.25.070. Powers and duties of personnel board. In addition to the other duties imposed by this chapter, the personnel board shall

(1) approve or disapprove amendments to the personnel rules in accordance with AS 39.25.140;

(2) consider and act upon recommendations for the extension of the partially exempt service and the classified service as provided in AS 39.25.130;

(3) hear and determine appeals by employees in the classified service as provided in AS 39.25.170;

(4) establish its own rules of procedure; **three** [TWO] members constitute a quorum for the transaction of business and **three** [TWO] affirmative votes are required for final action on matters acted upon by the board;

(5) elect a chair from its membership;

(6) have the power to administer oaths, subpoena witnesses, and

compel the production of books and papers pertinent to a hearing authorized by this chapter;

(7) employ staff members, who shall be in the classified service;

(8) carry out its powers and duties under AS 39.52.

*** Sec. 5.** The uncodified law of the State of Alaska is amended by adding a new section to read:

MEMBERS OF PERSONNEL BOARD; TRANSITION; STAGGERED TERMS. Notwithstanding AS 39.25.060(a), as amended by sec. 1 of this Act, a member of the personnel board serving on the effective date of this Act remains in office for the duration of the term to which appointed and confirmed. Within 60 days after the effective date of this Act, the chief justice of the Alaska Supreme Court shall submit to the governor a list of at least six nominees for the two additional seats on the personnel board. The governor shall appoint one member to a five-year term and one member to a six-year term. The governor shall specify the term of each member appointed subject to this section.

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Alaska State Legislature

House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 456-3346
Toll Free: (877) 465-3004

House District 10

Fax

To: Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 4

From: Jane W. Pierson

Date: March 29, 2010

Re: Final HJUD CS for HB348

Today, the HJUD Committee heard and passed HB348 from committee with the following three attached amendments:

Please draft a final CS

Any questions, give me a call.

Thank you

Representative_Jay_Ramras@legis.state.ak.us

26-LS1360\E.1
Bullard
3/29/10

AMENDMENT #1

OFFERED IN THE HOUSE

TO: CSHB 348(STA)

Offered by: Rep. Lynn

Page 2, line 9, following "**contractors.**":

Insert "(a)"

Page 2, line 14:

Delete ", political committee,"

Page 2, following line 18:

Insert a new subsection to read:

"(b) In this section,

(1) "political group" has the meaning given to "group" in AS 15.13.400;

(2) "political party" has the meaning given in AS 15.13.400."

Conceptual

AMENDMENT #2

By Brumley

OFFERED IN THE HOUSE

TO: CSHB 348(STA) (26-LS1360\E)

Page 1, line 10:

Delete "of the candidate for governor who received the highest number of votes"

Insert "that has had the highest number of registered voters"

Page 1, lines 11-12:

Delete "of the candidate for governor who received the second highest number of votes"

Insert "that has had the second highest number of registered voters"

#3

Conceptual Amendment to CSHB 348(STA)

by Brumley

page 2 ~~lines~~ lines 8-13

delete all material

and insert

"Sec. 39.25.064. Prohibited conduct by board members. A member of the personnel board may not, during the member's term of office,"

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" www.RepLynnBlog.com

Session:
Alaska State Capitol, #104
Juneau, AK 99801-1182

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Interim:
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Sponsor Statement for HB 348 (Version R)

"An Act relating to membership of the state personnel board."

By Representative Bob Lynn

HB 348 brings a broader representation to the Personnel Board so it can operate, or at least appear to operate, with greater independence when addressing complaints, and carrying out its other powers and duties under AS 39.52 Alaska Executive Branch Ethics Act.

The bill increases board membership from three to five members, allowing the governor to make an appointment from a list of at least three nominees selected by the Chief Justice of the Alaska Supreme Court, subject to the right of the governor to request additional nominations. It also ensures that the board has at least one member of the two parties that received the most votes in a recent election.

The Personnel Board, as currently constructed, lends itself to criticism that it's a creature of the governor rather than an independent body when it comes to investigating Executive Branch ethics complaints. As we know, perception can be the same as reality in the public eye.

HB 348 also prohibits certain conduct by board members and board employees and contractors that can lead to conflicts of interest or at least an appearance of conflict, such as campaigning for elective office; being an officer of a political party, political committee, or group; or lobbying, employing, or assisting a lobbyist.

Like other ethics-related measures, the purpose of this bill is to build a better foundation of trust between the people of Alaska and those they elect to public office.

Contact: Mike Sica, 465-4965

Revised: March 9, 2010

Alaska State Legislature

Chairman
State Affairs Committee

Member
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
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Alaska State Capitol, #104
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Sectional Analysis for HB 348 (Version R)

"An Act relating to membership of the state personnel board."

Section 1. Amends AS 39.25.060(a) to increase the membership on the Personnel Board from three to five members. The governor may make an appointment from a list of at least three nominees selected by the chief justice of the Alaska Supreme Court, subject to the right of the governor to request additional nominations. It ensures that the board has at least one member of the two parties that received the most votes in a recent election. It also requires that a member remains in office after expiration of term until a successor is confirmed.

Section 2. Amends AS 39.25.060(b) to increase the number of board members who can be of the same political party from two to three of the five-member board.

Section 3. Adds new section AS 39.25.064 that prohibits board members and board employees and contractors from certain activities that that relate to possible conflicts of interest or at least an appearance of conflict.

Section 4. Amends AS 39.25.070 to add conforming language stating that three members constitute a quorum and three affirmative votes are required for final action on matter.

Section 5. Amends the uncodified law by adding a new section stating that a member of the personnel board serving on the effective date of this Act remains in office for the duration of the term which appointed and confirmed. Within 60 days of the effective date, the chief justice of the Alaska Supreme Court shall submit to the governor a list of at last six nominees for the two additional seats on the personnel board. The governor shall appoint one member to a five-year term and one member to a six-year term.

Contact: Mike Sica, 465-4965 **Revised: March 9, 2010**

Alaska State Legislature

Chairman
State Affairs Committee

Member
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A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

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Explanation of Changes in CSHB348 (STA)

From original Version R to current Version E

Section 3: Amended the proposed section on prohibited conduct to include the word, **"political,"** after the word, **"or,"** on Page 2, line 14 in the latest Version E.

Section 3: Amended the proposed section on prohibited conduct to change and re-format Version R subsection (3) from (3) **lobby, employ, or assist a lobbyist** to now read in Version E on Page 2, lines 16-18:

(3) lobby:
(4) employ a lobbyist; or
(5) assist in lobbying.

Contact: Mike Sica, 465-4965

Revised: March 22, 2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 348**
() Publish Date:

Identifier (file name): HB348-DOA-DOPLR-03-08-10
Dept. Affected: Administration
Title: "An Act relating to the membership of the state personnel board."
RDU: Central Administrative Services
Component: Personnel
Sponsor: Representative Lynn
Requester: (H)STA
Component Number: 56

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE	(Thousands of Dollars)						
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS							
Full-time							
Part-time							
Temporary							

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

This bill will have no fiscal impact on the Division of Personnel and Labor Relations.

Prepared by: Nicki Neal, Director — Phone 465-4429
Division: Division of Personnel and Labor Relations — Date/Time 3/8/10 12:00 PM
Approved by: Kevin Brooks, Deputy Commissioner — Date 3/8/2010
Department of Administration

(Revised 11/6/2009 OMB)

2633

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MEMORANDUM March 16, 2010

SUBJECT: Reference to Political Party, Political Committee, and Political Group (CSHB 348(STA); Work Order No. 26-LS1360\E)

TO: Representative Bob Lynn
Chair of the House State Affairs Committee
Attn: Nancy Manly

FROM: Gerald P. Luckhaupt
Legislative Counsel

Enclosed is the final CS(STA) you requested. I have one comment. In sec. 3, reference is made to "political party, political committee, or political group." These terms are not defined in AS 39.25, although it appears that it might have been intended to reference similar terms that are defined in AS 15.13. In this regard, you may want to contact Alpheus Bullard to clarify this ambiguity.

GPL:ljw
10-187.ljw

Enclosure

Chapter 13: State Election Campaigns

Sec. 15.13.400. Definitions.

In this chapter,

(8) "group" means

(A) every state and regional executive committee of a political party; and

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070 , whether or not control of the group has been disclaimed by the candidate;

(15) "political party" means any group that is a political party under AS 15.60.010 and any subordinate unit of that group if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district, or precinct;

Chapter 60: General Provisions

Sec. 15.60.010. Definitions.

In this title, unless the context otherwise requires,

(23) "party district committee" means the political party committee that performs the executive function for a region representing an area larger than a precinct and smaller than the state;

(24) "political group" means a group of organized voters which represents a political program and which does not qualify as a political party;

(25) "political party" means an organized group of voters that represents a political program and

(A) that nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes cast for governor at the preceding general election;

(B) if the office of governor was not on the ballot at the preceding general election but the office of United States senator was on that ballot, that nominated a candidate for United States senator who received at least three percent of the total votes cast for United States senator at that general election or has registered voters in the state equal in number to at least three percent of the total votes cast for United States senator at that general election; or

(C) if neither the office of governor nor the office of United States senator was on the ballot at the preceding general election, that nominated a candidate for United States representative who received at least three percent of the total votes cast for United States representative at that general election or has registered voters in the state equal in number to at least three percent of the total votes cast for United States representative at that general election;

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Juneau, Alaska 99801-1182
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MEMORANDUM February 8, 2010

SUBJECT: Membership of the State Personnel Board
(Work Order No. 26-LS1360\A)

TO: Representative Bob Lynn
Attn: Mike Sica

FROM: Alpheus Bullard
Legislative Counsel

This memorandum accompanies the work order described above.

You asked for a bill that would make the appointment of Personnel Board (board) members under AS 39.25.060(a) similar to the manner in which public members are appointed to the Select Committee on Legislative Ethics under AS 24.60.130(b). You asked that the bill also include provisions addressing (1) the removal of board members, (2) the filling of vacancies and unexpired terms, (3) conflicts of interest, and (4) alternate members. I have a few comments.

Board members; increased membership and a constitutional concern relating to member appointment

The draft increases the number of board members (from three) to five,[1] making the membership of the board more difficult to "capture," and provides that the governor would be required to appoint nominees from a list of at least three qualified persons submitted by the chief justice of the Alaska Supreme Court. Note that this requirement that the governor appoint board members from a list of persons selected by the chief justice, subject to the right of the governor to request additional nominations, raises a constitutional question as to whether the legislature may so constrain the governor's ability to choose whom to appoint to an executive board.

[1] Mike Sica of your staff clarified that the intent of the legislation related to making sure that the board did not operate, or appear to operate, as a rubber stamp in investigating and addressing complaints concerning the governor. More members makes it less likely that (1) a majority of the board would be appointed by a sitting governor and (2) that the membership of the board would be of a single mind in any board proceeding. Because I increased the number of board members, I did not include a provision for alternate members.

The power to appoint members of state boards, commissions, and councils is an executive function to be exercised by the governor. In Bradner v. Hammond, 553 P.2d 1, 5 - 6 (Alaska 1976), the Alaska Supreme Court recognized that the Alaska constitution envisioned a strong executive and "that the appointment of executive officers is an executive function. . . ." The legislature may prescribe qualifications for the members of boards and commissions that are reasonably related to either the position or to the aim of the legislation and do not interfere with the governor's appointment power or with qualifications set out in the constitution. Various state courts have reached this same conclusion and have upheld legislative designations of qualifications for public offices, such as memberships on a board or commission. See, e.g., State v. Matassarin, 217 P. 930 (Kansas 1923); State v. Eischen, 76 N.W.2d 385 (Minn. 1956); Humane Society of the United States v. New Jersey Fish and Game Council, 362 A.2d 20 (1976); Hurd v. Freeland, 442 P.2d 344 (Okla. 1966); State v. Wells, 112 N.W.2d 601 (S.D. 1961); State v. Millsap, 605 S.W.2d 366 (Tex. App. 1980).

However, the Department of Law, which has generally taken a position very protective of the governor's prerogatives, has asserted that the legislature may not restrict the governor's appointment powers, such as by requiring the governor to select from a list of names provided by particular groups. The Department of Law has repeatedly argued that such limitations on the governor's appointment power are unconstitutional infringements upon the governor's authority. Letter to Walter J. Hickel, Governor, from Charles E. Cole, Attorney General, June 11, 1991 (file no. 883-91-0071); 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; 1980 Inf. Alaska Atty. Gen. Op. (file no. J-66-164-80), September 17.

Nonetheless, at least three Alaska attorney general opinions or letters of advice have accepted that the legislature may prescribe reasonable qualifications for gubernatorial appointments to boards or commissions. 1981 Inf. Alaska Atty. Gen. Op. (file no. J-66-698-81), April 23; Memorandum to Governor Hammond from R. Pegues, August 13, 1979; 1988 Inf. Alaska Atty. Gen. Op. (file no. 883-88-0079), May 24.

In this instance, I cannot say how a court would interpret the reasonableness of a statutory requirement that the governor appoint members of the board from lists of nominees chosen by the chief justice of the Alaska Supreme Court.

Quick notes
I included a provision, sec. 3 of the draft bill (prohibited conduct by board members and board employees and contractors), that relates to possible conflicts of interest and appearances of a conflict of interest. Is this what you had in mind? Please advise.

I did not prohibit a member appointed by the governor from participating in a proceeding that involved that same governor. Such a provision seemed unnecessary given that members are appointed from lists submitted by the chief justice.

I hope that this draft bill is consistent with your intent. If you have questions, or if I can be of further assistance, please do not hesitate to contact me.

TLAB:ljw
10-062.ljw

Enclosure

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Personnel board appointments get another look

By SEAN COCKERHAM
scockerham@adn.com
(03/16/10 18:11:01)

Alaska legislators are talking about changing the law so governors can no longer appoint whoever they want to the state personnel board, the panel that dismissed ethics complaints against then-Gov. Sarah Palin on "Troopergate" and many other matters.

Anchorage Republican Rep. Bob Lynn, who has been supportive of Palin, sponsored a bill that would make the governor pick from a list submitted by the chief justice of the state supreme court. Lynn said it would reassure the public.

"It helps protect and insulate the governor from what could be, and usually is, unfair criticism from the public that you have the fox watching the hen house," Lynn said Tuesday, as the bill passed its first committee.

Anchorage Democratic Rep. Les Gara, no fan of Palin's, favors Lynn's House Bill 348. Gara said he thinks some of the people filing ethics complaints against Palin went overboard. But he said the current system casts a lot of doubt about the rulings made by members of the Personnel Board, who he said could be political allies of the governor.

"I did not follow every complaint in any great detail. But you always do wonder whether a personnel board appointed by Republican governors is going to be objective when it looks at conduct by a Republican governor," Gara said.

The three members of the Personnel Board are charged in Alaska law with looking into ethics complaints made against the governor and other members of the executive branch. The current members were all appointed by Republican governors, although two of them aren't registered with a political party.

The board members have six-year terms and only one, Alaska Christian College President Keith Hamilton, was appointed by Sean Parnell, the current governor. Board member Debra English was reappointed by Palin in 2008 and Al Tamagni was appointed in 2006 by Frank Murkowski.

Lynn said he does not think there's been a problem with the Personnel Board. "But there's always the perception out there and, in politics, perception often becomes reality in the public mind," he said.

Current law says only that the board members can't be state employees and no more than two of the three of can be registered with the same political party. They are appointed by the governor and then confirmed by the Legislature.

Lynn's bill would expand the board to five members. He said that would provide more of a broad range of opinion. The panel would also need to include at least one member from each of the top two political parties in the state.

The governor would be required to pick from a list of at least three nominees from the chief justice of the Alaska Supreme Court, although the governor could reject the entire list and ask the chief justice for another.

Gara said called that a loophole and said the governor shouldn't get to keep asking for new nominees over and over if he or she doesn't like the slate presented. But Lynn described it as a way to deal with potential separation of powers issues involved in the Legislature reducing a governor's ability to make appointments .

The attorney general's office raised the separation of powers issue Tuesday. But the Parnell administration didn't object to the bill as it passed from the House State Affairs Committee. The bill next goes to the judiciary committee, chaired by Fairbanks Republican Rep. Jay Ramras. Ramras last year deemed a "whitewash" the report commissioned by the personnel board that found Palin not responsible for any wrongdoing in the so-called Troopergate affair.

Zane Henning, who had two ethics complaints against Palin dismissed, last month testified to a legislative committee that elected officials rather than a governor's appointees should oversee the complaints. His concern seemed to resonate with some legislators. "I'm just wondering is there maybe too close of a relationship there," Sen. Kevin Meyer, R-Anchorage, asked during that hearing.

Assistant Attorney General Judy Bockmon said an independent counsel investigates ethics complaints against the governor, lieutenant governor or attorney general in an effort to separate the Personnel Board from those high-level officials.

The outcome of at least one Personnel Bard case from the Palin era remains a mystery. Independent Counsel Tom Daniel on July 14 found "probable cause" that Palin's legal defense fund violated state ethics law. But the board has taken no public action and the fund's Web site still solicits donations.

Find Sean Cockerham online at adn.com/contact/scockerham or call him at 257-4344.

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Palin critics question ethics rules proposals

PALIN ERA: New regulations would address traveling on the state's dime, paying legal bills.

By LISA DEMER
ldemer@adn.com

(02/08/10 22:44:25)

JUNEAU -- A legislative committee on Monday took up ethics issues that erupted during the Palin administration, but it's not clear whether the panel intends to take any action.

Attorney General Dan Sullivan has proposed state rules establishing when it's appropriate for the state to pay for the travel of family members of the governor or lieutenant governor. Another proposal sets out when the state should pay legal bills for state officials defending against ethics complaints.

Former Gov. Sarah Palin was hit with numerous ethics complaints during her 2 1/2 years in office. She said she quit in part because of what she called frivolous ethics complaints and personal legal bills amounting to an estimated $600,000.

Most of the ethics complaints against Palin were dismissed. But she settled one by reimbursing the state more than $8,000 for her children's air travel.

Some parts of the package Sullivan is proposing go beyond the Palin-era controversies. For instance, another proposed rule change would do away with a requirement for state officials to disclose as gifts any travel for state business paid by others. But they still would have to file travel reports, which would be public.

Sullivan is trying to make the changes through new state regulations, which don't need legislative approval.

Oversight comes from the joint House-Senate Administrative Regulation Review Committee, which examines regulations to make sure they are allowed under state law.

The panel agreed to hold a public hearing on the ethics measures after being pushed by Palin critic Andree McLeod. House leaders also requested it, said state Rep. Wes Keller, R-Wasilla, who is the committee chairman.

LEGAL FEES, FAMILY TRAVEL

Under the proposed rules, the state could cover the costs of defending a public official against ethics complaints if the official were exonerated, Assistant Attorney General Judy Bockmon told the committee.

Travel would be covered if the presence of a family member is required for state business or has a public purpose. The proposal says that would include a state-sponsored event that the family of the governor or lieutenant governor usually attends, or an event in which the family member is representing the state.

State Rep. David Guttenberg, D-Fairbanks, asked Bockmon whether state law gives any guidance on paying for family travel.

It doesn't, she said.

In that case, why try to decide when it's appropriate -- maybe it shouldn't be permitted at all, Guttenberg responded.

That's up to the Legislature, Bockmon said. There might be value to the state for the family to attend. It depends on the nature of the event.

State Rep. Carl Gatto, R-Palmer, said it might just save worry and time for a governor with young children to bring them along.

CRITICS TESTIFY

McLeod, who filed a number of ethics complaints against Palin and her staff, urged the committee to reject the changes.

"Are these changes valid? Do they improve the standards of public service? Do they promote the faith and confidence of the people in this state in their public officers? I submit that they do not," McLeod told the legislative committee.

McLeod said private citizens with questions about whether a public official has crossed a legal or ethical line can't get ethics opinions the way state employees can. So the public has no recourse except filing complaints to get answers, she said.

The Executive Branch Ethics Act is important, and the attorney general shouldn't be trying to change the law, another Palin critic, Zane Henning, told the committee. The Legislature should make any needed changes, he said.

"I object to the entire process that is being pushed through here," Henning said.

The ethics law needs reform, but not in the way the attorney general wants, Henning said. Elected officials, not the governor-appointed Personnel Board, should oversee ethics complaints against state officials, he said.

Both of his complaints against Palin were dismissed. One involved an interview about the vice presidential campaign that she gave to Fox News in her state office; the other concerned the fact she collected state expense payments while living in her own home in Wasilla.

ARM'S-LENGTH INVESTIGATORS

Henning's concerns about the Personnel Board seemed to resonate with legislators.

"I'm just wondering is there maybe too close of a relationship there," state Sen. Kevin Meyer, R-Anchorage, asked during the hearing.

Bockmon told the committee an independent counsel investigates ethics complaints against the governor, lieutenant governor or attorney general in an effort to separate the Personnel Board from those high-level officials.

The committee can't halt the regulations from taking effect during the annual legislative session,

but can express disapproval and propose new laws to override any objectionable regulations.

The Department of Law has solicited public comment and held a hearing on the ethics changes, Bockmon said. The period for comment has ended and the department must now decide what to do. It could adopt the provisions as is or with minor changes, or let the matter drop with no action.

The committee hasn't yet decided how to proceed, Keller said.

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Costs of dismissed Palin ethics complaints pile up

Personnel board member says tab is "close to about a third of a million dollars."

By SEAN COCKERHAM
scockerham@adn.com
(05/27/09 21:57:12)

The Alaska Personnel Board, clearly frustrated with the pile of ethics complaints filed against Gov. Sarah Palin, wants to publicize the cost of dealing with them.

The personnel board members decided at a Wednesday meeting to work with the attorney general's office on how to make public the cost of addressing each ethics complaint, without violating the board's confidentiality rules.

"We've spent pretty close to about a third of a million dollars, and it's getting to be really expensive," said Al Tamagni, a member of the board.

Also Wednesday, the three-member board dismissed another complaint, this one involving Palin and her political action committee, and heard testimony from a woman who asserted fear of retaliation has prevented her from filing a complaint against the governor.

The governor's office said it is the 13th ethics complaint against Palin or her staff that has been resolved without finding of an executive ethics act violation. But Palin has agreed to reimburse the state in order to settle an ethics complaint over 10 state-paid trips taken by her children. A "few more" complaints are pending a decision by the personnel board, the governor's office said.

Andree McLeod, an Anchorage activist who has filed multiple ethics complaints against Palin and her staff, said after the meeting that the board is trying to squash accountability by saying it costs too much.

"The whole way to mitigate all this is for Palin to behave ethically," said McLeod, who filed the complaint that was dismissed by the board on Wednesday.

Valerie Henning told the board that fear of a backlash has prevented her from filing a complaint against the governor's practice of collecting per diem for time spent at her home in Wasilla. Henning's husband, Zane, earlier had an ethics complaint dismissed by the board. His complaint alleged Palin violated ethics law by holding national television interviews concerning her run for vice president from the governor's office.

Valerie Henning brought up to the board the statement that Palin's chief of staff, Mike Nizich, made on April 22 after the filing of an ethics complaint against Palin that was released to the press.

"I hope that the publicity-seekers will face a backlash from Alaskans who have a sense of fair play and proportion. I served six previous governors, and I've never seen anything like the attacks against governor Palin," Nizich said in a press release distributed by the governor's office.

Valerie Henning tried to get board members to suggest some alternative to making the ethics complaint, saying "I'm afraid of retaliation, basically."

Palin spokesman Bill McAllister said Nizich was simply asking that Alaskans who have a "sense of fair play and proportion" speak up about what's going on.

"I don't know what she means by retaliation, but certainly some people have been raising their voices in protest of this abuse of the ethics act," McAllister said. "People make these allegations against the governor and they keep getting dismissed and dismissed and dismissed, and some people are saying 'What's going on here?' "

Pro-Palin bloggers have assailed "ankle biter" ethics complainants in writing and KBYR talk radio host Eddie Burke has gone after McLeod on his show, saying he was going to hunt down evidence she was motivated by not getting a state job.

One of the personnel board members, Tamagni, last fall asked a state attorney if the board could charge attorney fees for Alaskans who file "a frivolous or meritless" ethics complaint. It's not clear how the state would judge a complaint frivolous, but charging for them would require changing the law.

Personnel board members spoke Wednesday about possibly pursuing changes in the law regarding their ethics complaint procedures -- such as changing the "thresholds for investigations."

Ethics complainants in the audience asked board chair Debra English for detail after the meeting, but she curtly brushed them off, saying the meeting was over and she wasn't going to say more.

English also refused to answer when a Daily News reporter asked what the board had in mind. She said the reporter should have come before the board and given public testimony in order to get any questions answered from its members.

Members of the personnel board are volunteers appointed by the governor, although all three of the current members were in place when Palin took office in 2006. Palin last year reappointed English to a six-year term but hasn't had a role yet in either of the two other positions, which have terms expiring in 2010 and 2012.

The governor also has the power to remove members of the personnel board, but only for cause.

Find Sean Cockerham online at adn.com/contact/scockerham or call him at 257-4344.

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March 8, 2010

Memorandum
TO: Representative Bob Lynn
FROM: Chuck Burnham, Legislative Analyst
RE: Background: Selection of Public Members for the Select Committee on Legislative Ethics
LRS Report 10.197

You asked about the history of the selection process for public members of the Select Committee on Legislative Ethics. Specifically, you asked why the Chief Justice of the Alaska Supreme Court, rather than the Legislature, appoints the five public members of the Committee.

As you know, pursuant to § 9 ch 113 SLA 1986, the Select Committee on Legislative Ethics (SCLE) was expanded from seven to nine members in order to increase the number of "public members" (non-legislators) from one to three.[1] Public membership was subsequently expanded pursuant to § 18 ch 127 1992 to comprise five of the nine members of the SCLE. Under the provisions of AS § 24.60.130(b)(3), public members are to be appointed by the Chief Justice of the Alaska Supreme Court, subject to confirmation by two-thirds of both chambers of the Legislature.

Changes to the ethics regime of the Legislature, and specifically to the SCLE, in the mid-1980s appear to have been prompted by concerns over a number of investigations of certain Legislators' relationships with lobbyists and businesses seeking to win contracts from the state.[2] We include, as Attachment A, copies of five articles that appeared in the *Anchorage Daily News* (*ADN*) between January and July, 1986, that variously detail individual Legislators' financial involvement with lobbyists and to a number of Legislators receiving trips, flights, and other items of significant value by at least two companies seeking state contracts of substantial value.

Our review of committee minutes and newspaper reports from the period in which the expansion of the SCLE was being considered by the Legislature indicates that the increase of public membership was prompted by constituent concerns that the composition of the Committee at that time (six Legislators and one public member) did not sufficiently ensure that ethics violations would be vigorously investigated and punished. Attachment B is an article from the May 8, 1986, edition of the *ADN* that discusses the passage of the ethics legislation in question (HB 218) by the Senate Finance Committee. In that article, the bill's sponsor, Representative Pat Pourchot, indicates that the appointment of public SCLE members by the Supreme Court was intended to "remove the possibility of charges of 'legislative bias' by providing that public members are initially selected by the head of the judicial branch of government . . . "[3]

[1] Pursuant to AS § 24.60.130(c), "no more than one public member may be a former legislator and no more than two public members of the committee may be members of the same political party."

[2] These changes also occurred on the heels of an unsuccessful attempt to impeach Governor Bill Sheffield, and the Legislature's subsequent overhaul of the ethics laws of the executive branch. It appears reasonable to conclude that those recent activities played some role in both the public's desire for additional representation on the SCLE and the Legislature's willingness to have those members appointed by the Judiciary.

[3] John Lindback, "Senate Panel OKs Ethics Bill," *Anchorage Daily News*, p. C1, May 8, 1986.

Committee minutes for HB 218 show no significant discussion of or concern over the judicial appointment of public members of the SCLE. Concern over the constitutionality of the bill was briefly discussed in a March 3, 1985, meeting of the House State Affairs Committee. Specifically, members questioned whether the bill violated Article II, Section 12, of the Alaska Constitution, which in part provides that each house of the Legislature "is the judge of the election and qualifications of its members . . ." Representative Pourchot responded that he had obtained a legal opinion on that question and was assured that the bill conformed because, regardless of the composition of the SCLE, pursuant to AS § 24.60.174, sanctions recommended by the Committee require approval of the chamber in which the accused Legislator serves.

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or require additional information.

Attachment A

John Lindback, "Senator Discloses Ties to Lobbyist," *Anchorage Daily News*, January 14,1986

John Lindback, "Trip Stirs Questions on Ethics Computer Company Hosting Lawmakers," *Anchorage Daily News,* March 22, 1986

John Lindback, "Private Jet, Free Rides: Legislators Use Enserch Plane," *Anchorage Daily News,* April 6, 1986

John Lindback, "Investigations of Pignalberi Take 2 Tracks," *Anchorage Daily News*, July 9, 1986

John Lindback, "Dischner Files Suit Over Loan Lobbyist Claims He Acted Under Duress," *Anchorage Daily News,* July 22, 1986

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SENATOR DISCLOSES TIES TO LOBBYIST

Anchorage Daily News (AK) - Tuesday, January 14, 1986

Author: *JOHN LINDBACK Daily News reporter ; Staff*

At the direction of the legislature's ethics committee, an Anchorage senator disclosed on the opening day of the legislative session his personal business ties to a lobbyist and a former municipal official.

Sen. Tim Kelly, a Republican from East Anchorage, disclosed that he holds a 2.5 percent business interest in the Old Anchorage Salmon Bake, a downtown tourist attraction serving seafood to summer visitors.

Ed Dankworth, a former state senator who now lobbies the legislature for Veco International, and Don Smith, a former Anchorage Assembly member, also own shares of the business, Kelly said. Smith owns 50 percent while Dankworth also owns a 2.5 percent share, he said.

Kelly disclosed the information after he sought a formal opinion from the ethics committee on whether he needed to make the business ties public. Information included in the opinion said Kelly purchased his share of the business last year for $5,000.

The Select Committee on Legislative Ethics is composed of three members of the Senate, three members of the House and one member of the public.

In a strongly worded opinion completed last September and released for the first time Monday, the committee said Kelly's business ties to Dankworth and Smith were sufficient to constitute a "substantial financial matter" under the state ethics code.

"I disagree with the opinion," Kelly said. He and Dankworth do not have any say in the business' management and they've never even met to talk about the business, he said.

"But I asked for the opinion,endered it and so I complied," Kelly said.

The committee ed that it is reasonable for its members to take a strict view of the ethics code requirements.

"It would be better to err on the side of requiring too much disclosure, rather than too little," according to the opinion.

The committee said his relationship with Smith, a veteran Anchorage Assembly member who lost a re-election bid last October, should be disclosed because municipal governments in Alaska can be construed as subsidiaries of the state. The ethics code requires disclosure by legislators of economic ties to officials from other branches of government.

"While municipalities may technically not be 'another branch' of government, they are in fact creatures of the state. Municipalities have no independent existence under the U.S. Constitution, as do the federal and state governments; they derive their existence and their powers solely from state government," the committee said.

The committee also argued that municipalities are dependent on the state for financial aide. "... There is frequent lobbying of legislators by municipal officials on behalf of their cities," the panel stated.

Two House members were the only other legislators to file disclosure statements on Monday -- a mostly uneventful opening day of the 1986 session.

Rep. Pat Pourchot, D-Anchorage, disclosed that he owns a partnership interest in a Juneau residence with oil company lobbyist Jim Palmer. Pourchot also said he and his wife, Alaska State Board of Education member Janie Leask, share ownership of bank accounts and property.

House Majority Leader Don Clocksin, D-Anchorage, reported that he is buying a house in Juneau from an employee of the Legislative Affairs Agency. He also mentioned that he and his wife, Alaska Women's Commission Chairman Betty Ramage, have numerous "close economic associations."

The filing of ethics code disclosure statements and showing up for opening day floor sessions in the House and Senate were

the only real deadlines faced by legislators on Monday.

Floor sessions included the ceremonial actions of notifying the governor that the two houses had officially convened. Also, House Speaker Ben Grussendorf and Senate President Don Bennett referred new bills to committees for their consideration.

The 120-day session convened in an atmosphere of calm, with some legislators predicting that election-year politics may encourage a polite session. Most incumbents are expected to run for re-election to the legislature later this year. Two senators -- Bennett and Edna DeVries of Palmer -- have announced plans to run for lieutenant governor.

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TRIP STIRS QUESTIONS ON ETHICS COMPUTER COMPANY HOSTING LAWMAKERS

Anchorage Daily News (AK) - Saturday, March 22, 1986

Author: *JOHN LINDBACK Daily News reporter ; Staff*

Transalaska Data Systems, the company that is hosting two of Alaska's most powerful legislators in San Francisco this weekend, is trying to sell computer equipment to the state that could cost $1 million to $3.5 million.

Deputy Commissioner of Administration Jim Shea said Friday that he has been studying the purchase of a so-called "intelligence network" for the state's extensive computer system and that Transalaska is one of three companies offering such equipment.

An intelligence network allows different brands of computers to communicate quickly and easily. Purchase of the equipment could speed up communications between state workers whose departments have purchased different brands of computers, Shea said.

No competitive bidding process has started yet because it needs further study and the state's revenue picture has been uncertain, he said.

How much the system costs depends on how fancy a system the state wants or can afford, according to Shea. But he estimated that it could cost from $1 million to $3.5 million.

"We're in the process of learning about it and getting a good cost- benefit analysis on it before we move," he said.

House Finance Committee Chairman Al Adams and Senate Finance Committee Co- Chair John Sackett flew to San Francisco on Friday for a demonstration of the computer equipment. Also on the plane was Ray Gillespie, Gov. Bill Sheffield's chief of staff.

Because of the jobs they hold, all three men are considered to be highly influential in the state's budget process, including the insertion of funds in the budget for major equipment purchases of any type.

Transalaska is marketing the equipment in conjunction with Tandem Computers of California.

Adams was quoted before he took the trip as saying that Transalaska lobbyist Kim Hutchinson of Juneau handled the arrangements and would be paying his expenses.

Hutchinson has declined to say whether he or his employers are paying the bills for the legislators. But he did confirm that he invited all three men to attend the computer demonstration.

Gillespie, meanwhile, said he was treating the trip as a weekend off. He took leave from his job and paid his own way, according to John Greely, Sheffield's press secretary.

No state records were available Friday that showed state funds paid for Sackett and Adams. Aides to both legislators said they didn't know who paid the bills.

The state's ethics law for legislators says a lawmaker may not accept or receive a gift of travel if it is "intended as a reward or inducement" for an official action.

It also states that "a gift of travel and hospitality within the state received by a member of the legislature in obtaining information on matters of legislative concern is not prohibited ..." The law provides no specific exemption for a gift of travel out of state.

Neither the House nor Senate chairmen of the legislature's ethics committee would comment on the matter Friday.

Senate President Don Bennett and Rep. Mike Miller, D-Juneau, said they shouldn't comment in case a complaint about the trip is filed with the Select Committee on Legislative Ethics.

"If I gave my opinion now I'd have to disqualify myself if it came before the committee," said Bennett, R-Fairbanks. Miller agreed.

Transalaska officials could not be reached Friday for comment on the Adams and Sackett trip. President Robbie Mattson and Chairman Clint Pickett were reported to be out of Anchorage until Monday.

The trip to California is only part of Transalaska's lobbying effort this session.

Rep. H.A. "Red" Boucher, chairman of the House Committee on Telecommunications, said he attended a Feb. 6 dinner for legislators in Juneau hosted by Transalaska and Tandem Computers at the Baranof Hotel. No mention was made of the computer equipment but the two companies announced to legislators that they had formed an association with one another, Boucher said.

"I wasn't that excited about it" Boucher said, arguing that the state needs to carefully study its computer needs and past purchases before making a major new equipment buy. The dinner made so little an impression on him, Boucher said, that he couldn't remember for sure which other legislators atended.

His impression at the dinner was that he was being hosted by "just another outfit from Silicon Valley hustling Alaska," Boucher said.

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PRIVATE JET, FREE RIDES : LEGISLATORS USE ENSERCH PLANE

Anchorage Daily News (AK) - Sunday, April 6, 1986

Author: *JOHN LINDBACK Daily News reporter ; Staff*

Members of the Alaska Legislature quietly ride for free on a private jet owned by Enserch Corp., a Texas-based company that is a major player in state politics.

The chief pilot of the seven-passenger jet is Enserch's registered lobbyist, Dana Pruhs.

Enserch and its subsidiaries do millions of dollars worth of business with the state and local governments. The company, its subsidiaries and officers were the fourth biggest contributor to legislative candidates in 1984, giving almost $53,000 to 38 candidates.

Both company officials and legislators who have accepted free rides on the jet defended the practice. It is unclear whether any of the trips are legally or ethically questionable.

But concern about the legal or ethical aspects of the trips is one of the reasons legislators said they do not like to talk about the trips -- even with their colleagues. They also said the free travel could suggest a conflict of interest when they vote on legislation affecting the company.

Some recent examples of lawmakers taking advantage of the Enserch jet include:

Senate President Don Bennett and Senate Finance Committee Vice-chairman John Ringstad, both Fairbanks Republicans, flew from Juneau to Whitehorse, Y.T., and back on March 15 and 16.

Sen. Bettye Fahrenkamp, D-Fairbanks, a member of the Senate Resources Committee, said she has accepted three free rides from Ensearch in the past eight years.

Sen. Joe Josephson, D-Anchorage, said he has accepted free rides two or three times between Juneau and Anchorage.

Seven members of a legislative basketball team were given free trips aboard the Enserch jet this session to play charity games in Homer and Kenai.

Lobbyist Pruhs flies the Anchorage-based Dessault-Breguet Falcon 10 to Juneau numerous times each legislative session. Legislators said vacant seats are commonly available to them for trips in either direction.

"I don't see it as an attempt to buy favoritism with any legislators. That isn't company policy," said G. Wilson Hughes, president of Enserch Alaska Services Inc. The company is a subsidiary of Dallas-based Enserch Corp.

Pruhs said in a recent interview the free rides for lawmakers are clearly legal under the legislative ethics code.

Pruhs said the plane is a business tool. "We use it to go all over the state. We use it like a car."

Chris Christensen, a lawyer who worked for the Select Committee on Legislative Ethics last year, said he couldn't comment on the legality of the trips under the ethics code. He can provide such opinions only to legislators or legislative staffers covered by the law, he said.

The legislature passed the current ethics law in 1984. According to the code, legislators may not solicit or accept a gift of travel, entertainment or hospitality if the "gift was intended as a reward or inducement for an official action" by a legislator. But it also says a gift of travel within Alaska is allowed for legislators "obtaining information on matters of legislative concern."

Legislators said they frequently accept free rides on corporate aircraft to go to oil fields and remote mining areas. They do it, they said, when necessary to gather information in the absence of commercial transportation.

Bennett said he flew with Enserch on state business. He and an aide, Sandy Nussbaum, flew to Whitehorse for a conference

between Alaska legislators and Yukon government leaders. The state paid the $160 round-trip commercial airfare of the other legislators who participated in the conference that weekend. Bennett said he saved the state money.

"I don't know of anybody in this arena whose vote would be influenced by accepting a ride," Bennett said.

Ringstad, who was aboard the same flight, said he and his girlfriend flew to Whitehorse for a weekend pleasure trip. Ringstad said they were invited by Pruhs. He and Pruhs are old friends who grew up together in Fairbanks, Ringstad said.

A free trip from Enserch wouldn't influence his vote on any matter of concern to the company, Ringstad said.

"You can try and legislate a lot of stuff but you're never going to legislate morality and honesty," he said.

Jane Barcott of the Alaska Public Offices Commission said legislators who receive free travel probably should claim it as income on their annual conflict of interest statements.

The conflict of interest forms of two legislators known to have taken rides last year -- Fahrenkamp and Josephson -- do not list the trips as income. Both said they were unaware of any requirement to report the trips.

Josephson said he rode the jet once this session and "once or twice" last year. He said the trips were "a matter of catching a ride when they're going in my direction."

Other legislators rode the plane with him, Josephson said, but he refused to identify them.

Josephson said free travel aboard the jet would not compromise his votes on matters of concern to Enserch. The company has never asked him for anything, he said.

"I once asked Dana what they were interested in," Josephson said. "He said, 'Susitna.' As you well know, I've been critical of Susitna."

A joint venture including Ebasco Services, an Ensearch subsidiary, has a $65.5 million state contract to work on the proposed Susitna hydroelectric project. The contract is likely to be drastically cut because the huge project appears dead, according to Alaska Power Authority spokeswoman Marnie Isaacs.

Ebasco has been paid about $14 million in other Alaska Power Authority contracts since 1981, according to APA records.

Fahrenkamp said she flew with Enserch on a fishing trip to Cold Bay last summer and has "bummed a ride" home to Fairbanks at other times. She said the Enserch jet recently helped her make a speedy exit from Juneau when she needed to see her dentist.

"It's so damned inconvenient to get in and out of this place," she said. In another case she took the ride because it was more convenient than the available commercial flight, she said.

"The plane was going and I took a ride on it. And I don't feel the least bit guilty," Fahrenkamp said.

Fahrenkamp, Josephson and the other legislators argued that their free trips saved the state money. A round-trip ticket between Juneau and Anchorage costs $352.

But other legislators are uneasy about accepting such trips.

Both Sens. Jan Faiks, R-Anchorage, and Vic Fischer, D-Anchorage, said they wouldn't accept the free rides. Constituents, they said, might think the trips could influence legislative actions.

"It just wouldn't look right," Faiks said.

Another legislator who was concerned about the trips was Rep. Steve Frank, R-Fairbanks. Frank was one of three legislators who flew with Enserch in early March to a basketball game in Homer. Traveling with Frank were Reps. Roger Jenkins, R-Anchorage, and Al Adams, D-Kotzebue.

Rep. Mike Navarre, D-Kenai, who organized the trip, said the game was to raise money for a community college building in Homer. He said donations from Alaska Airlines and MarkAir, as well as the use of the Enserch jet, were necessary.

Frank said he felt uncomfortable about accepting the free ride so he asked a lawyer for the legislature's ethics committee if it would be a conflict of interest.

"He said he didn't see any problem with it as long as it was for a charitable cause," Frank said.

But, he said, he wouldn't accept a ride on the jet just because a seat was available and it was going his way.

"I like to stay away from anything that would appear to be inappropriate," he said.

On March 13, the Enserch jet took Navarre, Jenkins, Rep. David Thompson, R-Kodiak, Rep. John Sund, D-Ketchikan, and Rep. Dick Shultz, R-Delta Junction, to Kenai for a benefit game against a team of Seattle Seahawks, Navarre said. The next day the plane brought them back to Juneau. The game was a benefit for a government education program for high school students, Navarre said.

He said he "considered the perception of this before I went around arranging it." Because Enserch was being asked to donate the use of its plane to a charitable cause, he decided it would be appropriate, Navarre said.

Frank didn't go to the Kenai game. Part of the reason, he said, was that he still didn't feel comfortable about riding on the Enserch jet.

Enserch Alaska President Hughes said his company and its subsidiaries have a business interest in any legislation or state spending that affects the construction and oil industries in Alaska. The company's interests include architectural, engineering and oil field service subsidiaries.

One subsidiary, Frank Moolin and Associates, designed and managed construction of the $363 million utilidor -- a sewer and water system -- in Barrow.

Enserch's generosity in providing plane rides to politicians made headlines in 1983 when newly elected Gov. Bill Sheffield accepted a free trip from Enserch to attend oil company fund-raisers in the Lower 48. After a public outcry over the trips, Sheffield reimbursed the company for the plane flight.

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NewsBank America's Newspapers

INVESTIGATIONS OF PIGNALBERI TAKE 2 TRACKS

Anchorage Daily News (AK) - Wednesday, July 9, 1986

Author: *JOHN LINDBACK Daily News reporter ; Staff*

A legislative ethics committee investigation of Rep. Marco Pignalberi's secret loan from lobbyist Lew Dischner may well be delayed until after this year's elections.

But the Alaska Public Offices Commission is scheduled Thursday to discuss whether Pignalberi made complete and timely public disclosures of other business dealings.

Pignalberi, an Anchorage Republican seeking re-election to a House seat representing East Anchorage, is one of six candidates for public office this year whose conflict-of-interest statements are still considered to be incomplete, according to commission staff member Jane Barcott.

In the most serious cases, the public offices commission could ask Lt. Gov. Stephen McAlpine to remove a candidate's name from the Aug. 26 primary election ballot, Barcott said.

At issue for the Select Committee on Legislative Ethics -- scheduled to meet in Juneau today to begin deliberations on a complaint about the Pignalberi loan -- is a provision in the legislative ethics code that holds in abeyance investigations of complaints during the 60 days preceding state primary or general elections.

The 60-day period prior to the primary election began June 27, according to Hayden Kaden, a staff aide to the Select Committee. The complaint against Pignalberi, received by the committee just a few days before June 27, was filed by Anchorage resident Joseph Brewer.

According to legislators, the 60-day provision was included in the legislative ethics code to discourage the filing of politically motivated complaints during election seasons.

Kaden and members of the committee are prohibited by state law from speaking in public about cases pending before them.

But Kaden, commenting on his interpretation of the law and not on specifics of the Pignalberi case, said an investigation could be carried out within the 60-day period if the committee initiates a complaint of its own.

But because the legislature's ethics code calls for investigations and discussions of them to be conducted in closed meetings, no public announcement would be made if the committee takes such action, he said.

The fact that the committee is scheduled to discuss Pignalberi today should, by law, be confidential. But Brewer's complaint is the first formal complaint ever filed against a legislator under the 2-year-old ethics code and the public agenda for today's meeting states the committee will consider a formal complaint.

Pignalberi on Tuesday said he has considered asking the committee to delay its investigation but he needed to talk more about it with his lawyer. He also said that he had not thought yet about asking that proceedings before the ethics committee be conducted in public, which by law he can request.

"I really haven't thought about that," he said. "I've been busy trying to gear up for a campaign."

Rep. Pat Pourchot, one of three House members on the ethics committee, said the 60-day period would be in effect again right after the primary because the general election is scheduled for Nov. 4.

"I have a question whether it is ever physically possible to act on a complaint during elections," Pourchot said.

The Daily News on June 21 reported that Pignalberi, a week before the 1984 election, paid off two federal tax liens totalling $18,000 after receiving a secret loan from Dischner, a prominent lobbyist in Juneau.

Pignalberi, completing his first two-year term, twice failed to report the Dischner loan to the ethics committee as required by

the ethics code. The code requires legislators each year to disclose for publication in House and Senate journals their financial ties to each other and to lobbyists.

In addition, Pignalberi didn't disclose the loan on conflict-of-interest statements he was required to file in 1985 and 1986 with the public offices commission. On June 20, he filed an amended financial statement with the commission after being asked about the Dischner loan by the Daily News. He listed Dischner as his creditor for those two years.

Pignalberi has declined to say under what terms he received the loan, though he said he paid it off "earlier this year."

At the same time as he filed his amendment about the Dischner loan he informed the public offices commission about his involvements in two businesses, Pacific Transporation Services and Pacific Consulting Services.

According to Barcott, the commission asked him to furnish a list of clients who did more than $100 worth of business with both his businesses. They have not received a reply and that is the reason he is on the agenda for Thursday's meeting, she said.

Tim Petumenos, Pignalberi's lawyer, said his client believes the information does not need to be filed with the commission until July 10. It will be filed by that date, Petumenos said.

Pignalberi on Tuesday said he is the primary stockholder of Pacific Consulting Services and that Pacific Transporation Services exists only on a business license.

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NewsBank America's Newspapers

DISCHNER FILES SUIT OVER LOAN LOBBYIST CLAIMS HE ACTED UNDER DURESS

Anchorage Daily News (AK) - Tuesday, July 22, 1986

Author: *JOHN LINDBACK Daily News reporter ; Staff*

Lobbyist Lewis Dischner sued the Teamsters Federal Credit Union on Monday to stop it from making him pay $240,000 to retire a 1984 loan he cosigned for Anchorage Sen. Joe Josephson.

In a Superior Court lawsuit, Dischner alleges that when credit union officials asked him to guarantee the loan, they misrepresented the repayment terms and the collateral required of Josephson.

Dischner, who served as the Teamsters' lobbyist until 1985, claims he was pressured into cosigning the promissory note. He also suggests that money for the Democratic senator's loan came from Teamster pension funds in a financial arrangement that may violate federal law.

The suit says Dischner agreed to cosign the loan because he believed he would suffer "economic duress" if he did not.

Neither the credit union's lawyer, Michael Price of Anchorage, nor Josephson returned phone calls from the Daily News on Monday to answer questions about Dischner's claims.

The credit union, which earlier this year was taken over by federal regulators because of growing concern about problem loans, on July 2 demanded that Dischner pay $240,000 to recover the full amount of the note due, plus interest.

Although informal inquiries were made to Josephson about making a payment on the 2-year-old note, no such formal demand has ever been made of him, Josephson has said.

The senator first disclosed the matter on July 9, when he told the Select Committee on Legislative Ethics that Dischner guaranteed the Oct. 30, 1984, loan without his knowledge. He sent the letter to explain why he had not disclosed his financial tie to the veteran lobbyist, as required by law, on state conflict-of-interest forms or in the Senate Journal.

In an interview on July 9, Josephson said he needed the loan to pay for more than $150,000 in debt he assumed when his law firm dissolved. The credit union responded with a loan that requires him to make no payments until a formal demand is issued, but required him to pledge his house as collateral.

So far, Dischner has not disputed Josephson's claim that he didn't know anyone had cosigned the loan. According to Dischner's lawyer, Douglas Pope, the lobbyist says he signed the promissory note sometime in November or December, as long as two months after Josephson signed it.

At that time, Dischner "relied upon the intentional, reckless, negligent and|or innocent misrepresentations and omissions of representatives and agents" of the credit union, according to the suit.

As a result, Dischner should not be obligated to make any repayment and is instead entitled to damages exceeding $500,000, the suit states.

Dischner claimed that agents of the credit union approached him in late 1984 to cosign the loan on a temporary basis.

The agents told Dischner that the loan to Josephson "was not in compliance with certain lending requirements of the credit union and the law, insofar as the loan was undercollateralized, and that plaintiff's signature was needed for a limited period of time while the credit union made final arrangements for a long-term loan to Joe Josephson that met the lending requirements on collateral," according to the suit.

Credit union officials told Dischner that a long-term loan for Josephson had already been approved and that the note he should sign would be "rescinded when the long-term loan documents were executed," the suit states.

Dischner further claims he was told that the loan was made to refinance Josephson's house, that it was secured by a deed of trust to the senator's home, and that additional collateral would be pledged by Josephson at a later time.

"Defendant credit union specifically informed plaintiff at this time that no steps would ever be taken to enforce the note against plaintiff," the suit states.

Dischner claims that he was not notified that the credit union never converted the loan into a long-term arrangement.

"In addition, no steps were ever taken by defendant to remove plaintiff as a signatory to the note executed by Joe Josephson, nor to accept the pledge or assignment of additional collateral to secure the note," the suit states.

Pope was not willing Monday to provide specific details about two of the lawsuit's most significant claims -- that Dischner was pressured into cosigning the loan and that the funds could be traced back to Teamster pension money.

"Those are two things that will have to come out during the course of litigation," Pope said.

The lawsuit states that Dischner had "sufficient information to believe, and did reasonably believe, that if he did not agree to the proposal that he affix his signature to the note that ... he would suffer significant economic loss. Accordingly, plaintiff affixed his signature to the note under compulsion and economic duress."

At the time the note was signed, Dischner had been aligned with the Teamsters for years as their chief operative in Juneau. In addition to serving as Teamsters Local 959's lobbyist, he was a member of the union, a participant in its pension plan and a member of the credit union.

Josephson was not a member of the Teamsters.

Dischner has "sufficient information to believe, and does believe, that the funds utilized by the credit union to advance the amounts reflected in the note accepted from Joe Josephson, were funds earmarked from the Alaska Teamsters-Employer Pension Trust ...," according to the suit. "Had plaintiff been aware of this at the time of the transaction, he would have refused to affix his signature to the note."

The suit suggests that a loan cosigned by Dischner that also could be tied to Teamster pension money could be viewed as violating federal laws governing the investing of union pension funds. The laws are designed to protect workers' retirement funds -- the Teamster pension trust now holds more than $400 million -- from high-risk investments and opportunistic loans to "parties in interest," such as union officials and their investment advisers.

Jerry Allen, a comptroller for the Alaska Teamster Employer Service Corporation, said Monday that the pension trust occasionally purchased certificates of indebtedness from the credit union. The certificates, which were sold at terms ranging from 30 days to a year, provided a favorable interest return for the pension fund, Allen said.

Certificates of indebtedness are similar to conventional certificates of deposit in a bank, Allen said.

"We had no discretion as to how those monies were used," Allen said.

Allen suggested that Dischner's claim is probably not valid because the loan didn't directly come from the pension fund.

According to Allen, if Dischner's claim that he is a "party in interest" because of his relationship to the union is valid, it would apply to other Teamsters who received credit union loans at about the same time the pension fund bought certificates of indebtedness from the credit union.

Dischner's lawsuit is the latest development in a long list of recent controversies for the veteran lobbyist.

He has been identified as a principle target in an ongoing federal grand jury investigation of contract fraud and bid-rigging in the North Slope Borough. And a direct loan he made to another legislator, Rep. Marco Pignalberi of Anchorage, resulted in an order to strike Pignalberi's name from the August primary ballot.

Pignalberi didn't publicly disclose the loan for two years and the Alaska Public Offices Commission recommended that his name be removed from the ballot. A judge stayed Lt. Gov. Stephen McAlpine's order removing Pignalberi's name and that issue is still pending in court.

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Attachment B

John Lindback, "Senate Panel OKs Ethics Bill," *Anchorage Daily News,* May 8, 1986

NewsBank America's Newspapers

SENATE PANEL OKS ETHICS BILL

Anchorage Daily News (AK) - Thursday, May 8, 1986

Author: *JOHN LINDBACK Daily News reporter ; Staff*

The Senate Finance Committee endorsed a House bill Wednesday that that would increase public representation on the legislative ethics committee.

The legislation, passed by the House last year, boosts the size of the committee from seven to nine members.

Currently the public is outnumbered by legislators 6-1 on the Select Committee on Legislative Ethics. Under the bill, three of the nine committee members would be public citizens and six would be legislators.

The ethics committee is charged with conducting investigations of ethics violations by legislators and their employees and providing advisory opinions on ethical matters. When the ethics code was passed in 1983 advocates argued that more public membership was necessary to boost public confidence in the committee, especially since almost all of the committee's business is carried out in closed meetings.

Rep. Pat Pourchot, D-Anchorage and prime sponsor of the bill, argued that it will "accommodate public sentiment to expand public membership." In addition, he said, it calls for the chief justice of the Alaska Supreme Court to appoint the public members.

The current law allows the ethics committee itself to appoint the lone public member.

The bill will "remove the possibility of charges of 'legislative bias' by providing that public members are initially selected by the head of the judicial branch of government," Pourchot said.

Supreme Court Chief Justice Jay Rabinowitz wrote legislators last year and said that, although he did not seek the task, he did not object to appointing the public members.

"The role of chief justice in the selection process would not impair the ability to participate in any appeals deliberations which might be generated by the work of the committee," Rabinowitz said.

In addition to the public membership change, the bill would also reduce the penalty assessed against someone who knowingly files a false ethics charge against a legislator from a felony to a misdemeanor.

"The current penalty has been criticized as extreme and acting as a deterrent to the filing of legitimate complaints of possible violations," Pourchot said. "It is also ironic that while there exists a felony penalty for 'false' accusation, there is no statutory penalty for legislators violating the ethics law."

All six members of the Senate Finance Committee present at Wednesday's meeting recommended that the bill pass the full Senate on a floor vote. They are Co-Chairman Jan Faiks, R-Anchorage; Frank Ferguson, D-Kotzebue; Dick Eliason, R-Sitka; Paul Fischer, R-Soldotna; Rick Halford, R-Chugiak and Jay Kerttula, D-Palmer. Co-Chairman John Sackett, R-Ruby, missed the vote.

The Finance Committee's "do pass" recommendations are a signal that the bill is likely to pass the Senate if it reaches the floor before Monday, the last day of the legally limited 120-day session. A quick House concurrence on minor Senate changes to the bill would send it to the governor for his signature.

In past years Senate leaders have disagreed with the House, pushing for fewer public members than the House wanted. But Senate Rules Committee Chairman Tim Kelly, R-Anchorage, said Pourchot's bill will be sent to the floor before adjournment and it is likely to pass.

"The group of Senate leaders this year thinks there ought to be more public membership on the committee. It's that simple," Kelly said.

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Sec. 39.25.060. Personnel board.

(a) The personnel board is composed of three members appointed by the governor and confirmed by the legislature meeting in joint session. The term of office of a member is six years. A vacancy in an unexpired term shall be filled by appointment by the governor for the remainder of the term. The appointment is subject to confirmation in the same manner as a full-term appointment.

(b) Members of the board may not be employees of the state. Not more than two members of the board may be members of the same political party.

(c) A board member may be removed by the governor only for cause.

(d) A member of the board may receive a per diem allowance and transportation expenses incurred in carrying out the member's duties.

Sec. 39.25.070. Powers and duties of personnel board.

In addition to the other duties imposed by this chapter, the personnel board shall

(1) approve or disapprove amendments to the personnel rules in accordance with AS 39.25.140 ;

(2) consider and act upon recommendations for the extension of the partially exempt service and the classified service as provided in AS 39.25.130;

(3) hear and determine appeals by employees in the classified service as provided in AS 39.25.170 ;

(4) establish its own rules of procedure; two members constitute a quorum for the transaction of business and two affirmative votes are required for final action on matters acted upon by the board;

(5) elect a chair from its membership;

(6) have the power to administer oaths, subpoena witnesses, and compel the production of books and papers pertinent to a hearing authorized by this chapter;

(7) employ staff members, who shall be in the classified service;

(8) carry out its powers and duties under AS 39.52.

Sec. 39.25.080. Personnel records confidential; exceptions.

(a) State personnel records, including employment applications and examination and other assessment materials, are confidential and are not open to public inspection except as provided in this section.

(b) The following information is available for public inspection, subject to reasonable regulations on the time and manner of inspection:

(1) the names and position titles of all state employees;

(2) the position held by a state employee;

(3) prior positions held by a state employee;

(4) whether a state employee is in the classified, partially exempt, or exempt service;

(5) the dates of appointment and separation of a state employee;

(6) the compensation authorized for a state employee; and

(7) whether a state employee has been dismissed or disciplined for a violation of AS 39.25.160 (l) (interference or failure to cooperate with the Legislative Budget and Audit Committee).

(c) A state employee has the right to examine the employee's own personnel files and may authorize others to examine those files.

(d) An applicant for state employment who appeals an examination score may review written examination questions relating to the examination unless the questions are to be used in future examinations.

(e) In addition to any access to state personnel records authorized under (b) of this section, state personnel records shall promptly be made available to the child support services agency created in AS 25.27.010 or the child support enforcement agency of another state. If the record is prepared or maintained in an electronic data base, it may be supplied by providing the requesting agency with access to the data base or a copy of the information in the data base and a statement certifying its contents. The agency receiving information under this subsection may use the information only for child support purposes authorized under law.

Article 04. COMPLAINTS; HEARING PROCEDURES

Sec. 39.52.310. Complaints.

(a) The attorney general may initiate a complaint, or elect to treat as a complaint, any matter disclosed under AS 39.52.210 , 39.52.220, 39.52.250, or 39.52.260. The attorney general may not, during a campaign period, initiate a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office.

(b) A person may file a complaint with the attorney general regarding the conduct of a current or former public officer. A complaint must be in writing, be signed under oath, and contain a clear statement of the details of the alleged violation.

(c) If a complaint alleges a violation of AS 39.52.110 - 39.52.190 by the governor, lieutenant governor, or the attorney general, the matter shall be referred to the personnel board. The personnel board shall return a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for election to state office as provided in (j) of this section if the complaint is initiated during a campaign period. The personnel board shall retain independent counsel who shall act in the place of the attorney general under (d) - (i) of this section, AS 39.52.320 - 39.52.350, and 39.52.360(c) and (d). Notwithstanding AS 36.30.015 (d), the personnel board may contract for or hire independent counsel under this subsection without notifying or securing the approval of the Department of Law.

(d) The attorney general shall review each complaint filed, to determine whether it is properly completed and contains allegations which, if true, would constitute conduct in violation of this chapter. The attorney general may require the complainant to provide additional information before accepting the complaint. If the attorney general determines that the allegations in the complaint do not warrant an investigation, the attorney general shall dismiss the complaint with notice to the complainant and the subject of the complaint.

(e) The attorney general may refer a complaint to the subject's designated supervisor for resolution under AS 39.52.210 or 39.52.220.

(f) If the attorney general accepts a complaint for investigation, the attorney general shall serve a copy of the complaint upon the subject of the complaint, for a response. The attorney general may require the subject to provide, within 20 days after service, full and fair disclosure in writing of all facts and circumstances pertaining to the alleged violation. Misrepresentation of a material fact in a response to the attorney general is a violation of this chapter. Failure to answer within the prescribed time, or within any additional time

period that may be granted in writing by the attorney general, may be considered an admission of the allegations in the complaint.

(g) If a complaint is accepted under (f) of this section, the attorney general shall investigate to determine whether a violation of this chapter has occurred. At any stage of an investigation or review, the attorney general may issue a subpoena under AS 39.52.380 .

(h) A violation of this chapter may be investigated within two years after discovery of the alleged violation.

(i) The unwillingness of a complainant to assist in an investigation, the withdrawal of a complaint, or restitution by the subject of the complaint may, but need not in and of itself, justify termination of an investigation or proceeding.

(j) The personnel board shall return a complaint concerning the conduct of the governor or lieutenant governor who is a candidate for state office received during a campaign period to the complainant unless the governor or lieutenant governor, as appropriate, permits the personnel board to assume jurisdiction under this subsection. If the personnel board receives a complaint concerning the conduct of the governor or lieutenant governor who is a candidate during the campaign period, the personnel board shall immediately notify the subject of the complaint of the receipt of the complaint, of the suspension of the personnel board's jurisdiction during the campaign period, and of the candidate's right to waive the suspension of jurisdiction under this subsection. The candidate may, within 11 days after the personnel board mails or otherwise sends notice of the complaint to the candidate, notify the personnel board that the candidate chooses to have the personnel board proceed with the complaint under this section. If the candidate does not act within that time or if the candidate notifies the personnel board that the candidate is not waiving the suspension of jurisdiction, the personnel board shall return the complaint to the complainant with notice of the suspension of jurisdiction under this subsection and of the right of the complainant to file the complaint after the end of the campaign period.

(k) A campaign period under this section begins on the later of 45 days before a primary election in which the governor or lieutenant governor is a candidate for state office or the day on which the individual files as a candidate for state office and ends at the close of election day for the general or special election in which the individual is a candidate or on the day that the candidate withdraws from the election, if earlier. For a candidate who loses in the primary election, the campaign period ends on the day that results of the primary election showing that another individual won the election are certified.

Sec. 39.52.320. Dismissal before formal proceedings.

If, after investigation, it appears that there is no probable cause to believe that a violation of this chapter has occurred, the attorney general shall dismiss the complaint. The attorney general shall communicate disposition of the matter promptly to the complainant under AS 39.52.335 (c) and to the subject of the complaint.

Sec. 39.52.330. Corrective or preventive action.

After determining that the conduct of the subject of a complaint does not warrant a hearing under AS 39.52.360 , the attorney general shall recommend action to correct or prevent a violation of this chapter. The attorney general shall communicate the recommended action to the complainant and the subject of the complaint. The subject of the complaint shall comply with the attorney general's recommendation.

Sec. 39.52.335. Summary of disposition of complaints and review by personnel board.

(a) When the attorney general initiates or receives a complaint under AS 39.52.310 , the attorney general shall immediately forward a copy of the complaint to the personnel board.

(b) Each month, the attorney general shall file a report with the personnel board concerning the status of each pending complaint and the resolution of complaints that have been closed since the previous report.

(c) If a complaint is dismissed under AS 39.52.320 or resolved under AS 39.52.330 , the attorney general shall promptly prepare a summary of the matter and provide a copy of the summary to the personnel board and the complainant. The summary is confidential unless the

(1) dismissal or resolution agreed to under AS 39.52.320 or 39.52.330 is public; or

(2) superior court makes the matter public under (h) of this section.

(d) Within 15 days after receipt of a summary under this section, a complainant may file comments with the personnel board regarding the disposition of the complaint.

(e) At its next regular meeting that begins more than 15 days after receipt of a summary under this section, the personnel board shall review the summary and comments, if any, filed by the complainant. The personnel board may compel the attendance of the subject of the complaint or the complainant at the meeting and may compel the production of documents. Attendance may be by teleconference. The attorney general or the attorney general's designee

shall be available to respond to questions from the personnel board concerning the disposition of the complaint.

(f) After review of the summary, the personnel board may issue a report on the disposition of the complaint. If the matter is confidential and the board determines that publication of the name of the subject is in the public interest, the report may include a recommendation that the matter be made public.

(g) If the summary is confidential under (c) of this section,

(1) comments filed by the complainant, if any, are confidential;

(2) the personnel board shall conduct the review of the summary in executive session; and

(3) the personnel board report, if any, is confidential; the personnel board shall make available to the public an expurgated copy of a confidential report with sufficient deletions and editing to prevent disclosure of the identity of the persons involved in the matter.

(h) If the disposition of a complaint is not made public and the personnel board report under (f) of this section includes a recommendation that the matter be made public, an interested party may file an action against the state in superior court requesting that the court make public the complaint, the attorney general's disposition of the complaint, and the personnel board report. The court may order the matter or portions of the matter made public if the court determines that

(1) the dismissal or resolution of the complaint was clearly contrary to the requirements of this chapter;

(2) one or more of the allegations in the information to be released is supported by substantial evidence;

(3) the matter concerns the public interest; and

(4) release of the information will not infringe on any protected rights or liberties of the subject.

Sec. 39.52.340. Confidentiality.

(a) Except as provided in AS 39.52.335 , before the initiation of formal proceedings under AS 39.52.350 , the complaint and all other documents and information regarding an investigation conducted under this chapter or obtained by the attorney general during the investigation are confidential and not subject to inspection by the public. In the case of a complaint concerning

the governor, lieutenant governor, or attorney general, all meetings of the personnel board concerning the complaint and investigation before the determination of probable cause are closed to the public. If, in the course of an investigation or probable cause determination, the attorney general finds evidence of probable criminal activity, the attorney general shall transmit a statement and factual findings limited to that activity to the appropriate law enforcement agency. If the attorney general finds evidence of a probable violation of AS 15.13, the attorney general shall transmit a statement to that effect and factual findings limited to the probable violation to the Alaska Public Offices Commission. The attorney general and all persons contacted during the course of an investigation shall maintain confidentiality regarding the existence of the investigation.

(b) It is not a violation of this section for a person to contact an attorney or to participate in a criminal investigation.

(c) The subject of the complaint may, in writing, waive the confidentiality protection of this section.

Sec. 39.52.350. Probable cause for hearing.

(a) If the attorney general determines that there is probable cause to believe that a knowing violation of this chapter or a violation that cannot be corrected under AS 39.52.330 has occurred, or that the subject of a complaint failed to comply with a recommendation for corrective or preventive action, the attorney general shall initiate formal proceedings by serving a copy of an accusation upon the subject of the accusation. The accusation shall specifically set out the alleged violation. After service, the accusation is a public document open to inspection. Except as provided in AS 39.52.370 (c), all subsequent proceedings are open to the public.

(b) The subject of the accusation shall file an answer with the attorney general within 20 days after service of the accusation, or at a later time specified by the attorney general. If the subject of the accusation fails to timely answer, the allegations are considered admitted.

(c) If the subject of the accusation denies that a violation of this chapter has occurred, the attorney general shall refer the matter to the personnel board, which shall notify the chief administrative law judge (AS 44.64.010), who shall appoint an administrative law judge to serve as a hearing officer to conduct a hearing.

(d) If the subject of the accusation admits a violation of this chapter, the attorney general shall refer the matter to the personnel board to impose penalties under AS 39.52.410 , 39.52.440, and 39.52.450, as appropriate.

Sec. 39.52.360. Hearings.

(a) The hearing officer may convene a prehearing conference to set a time and place for the hearing, and for stipulation as to matters of fact and to simplify issues, identify and schedule prehearing matters, and resolve other similar matters before the hearing.

(b) The hearing officer may administer oaths, hold hearings, and take testimony. Upon application by a party to the hearing, the hearing officer may issue subpoenas under AS 39.52.380 .

(c) The attorney general shall present the charges before the hearing officer. At a hearing, the attorney general has the burden of demonstrating by a preponderance of the evidence that the subject of the accusation has, by act or omission, violated this chapter.

(d) The parties to a hearing are the attorney general and the subject of the accusation. The subject of an accusation may be represented by counsel. Each party has an opportunity to be heard and cross-examine witnesses, who shall testify under oath.

(e) The Administrative Procedure Act does not apply to hearings under this section, except as provided in AS 39.52.380 .

(f) Technical rules of evidence do not apply, but the hearing officer's findings must be based upon reliable and relevant evidence. All testimony and other evidence taken at the hearing must be recorded and the evidence maintained. Copies of transcripts of the hearing record are available to the subject of the accusation at the subject's expense; however, upon request, a copy of the recording of the hearing must be furnished without charge to the subject of the accusation.

(g) At the conclusion of the formal hearing, the hearing officer may direct either or both parties to submit proposed findings of fact, conclusions of law, and recommendation to be filed within 10 days after the conclusion of the hearing.

(h) Within 30 days after the conclusion of a formal hearing, the hearing officer shall serve a written report on the personnel board and the parties, unless the personnel board grants an extension of time. The report must contain the officer's findings of fact, conclusions of law, and recommendation. The hearing officer shall submit the record to the personnel board.

Sec. 39.52.370. Personnel board action.

(a) Within 10 days after receipt of the hearing officer's report, either party may protest the officer's findings of fact, conclusions of law, and recommendation, and, if a protest is filed, shall serve a copy on the other party. Oral argument before the personnel board must be provided only if requested by either party. The board chair shall set the deadline for submission of requests for oral argument, and set the dates for submission of briefs and oral argument before the board, if requested.

(b) The board may issue subpoenas under AS 39.52.380, and may, for good cause shown, augment the hearing record, in whole or in part, or hold a hearing de novo.

(c) The personnel board shall review each report submitted by a hearing officer and shall either adopt or amend the findings of fact, conclusions of law, and recommendation of the officer. Deliberations of the personnel board must be conducted in sessions not open to the public.

(d) If the personnel board determines that a violation occurred, it may impose the penalties in AS 39.52.410, 39.52.440, and 39.52.450, as appropriate. If the board determines that no violation occurred, the board shall issue a written order of dismissal.

(e) The personnel board secretary shall promptly notify the parties and the public officer's designated supervisor of the board's action.

(f) The subject of the accusation may appeal the personnel board's decision by filing an appeal in the superior court as provided in the Alaska Rules of Appellate Procedure.

Sec. 39.52.380. Subpoenas.

(a) As provided in AS 39.52.310 (g), 39.52.360(b), and 39.52.370(b), the attorney general, independent counsel retained under AS 39.52.310 (c), a hearing officer, the subject of an accusation, and the personnel board may summon witnesses and require the production of records, books, and papers by the issuance of subpoenas.

(b) Subpoenas must be served in the manner prescribed by AS 44.62.430 and Rule 45 of the Alaska Rules of Civil Procedure. Failure or refusal to obey a subpoena issued under this chapter is punishable as contempt in the manner provided by law and court rule. The superior court may compel obedience to the subpoena in the same manner as prescribed for obedience to a subpoena issued by the court.

Sec. 39.52.390. Service.

Service of an accusation must be accomplished in accordance with Rule 4 of the Alaska Rules of Civil Procedure. Service of any other pleading, motion, or other document must be accomplished in accordance with Rule 5 of the Alaska Rules of Civil Procedure.

Article 05. ENFORCEMENT; REMEDIES

Sec. 39.52.410. Violations; penalties for misconduct.

(a) If the personnel board determines that a public employee has violated this chapter, it

(1) shall order the employee to stop engaging in any official action related to the violation;

(2) may order divestiture, establishment of a blind trust, restitution, or forfeiture; and

(3) may recommend that the employee's agency take disciplinary action, including dismissal.

(b) If the personnel board determines that a nonsalaried member of a board or commission has violated this chapter, it (1) shall order the member to refrain from voting, deliberating, or participating in the matter; (2) may order restitution; and (3) may recommend to the appropriate appointing authority that the member be removed from the board or commission. A violation of this chapter is grounds for removal of a board or commission member for cause. If the personnel board recommends that a board or commission member be removed from office, the appointing authority shall immediately act to remove the member from office.

(c) If the personnel board determines that a former public officer has violated this chapter, it shall

(1) issue a public statement of its findings, conclusions, and recommendation; and

(2) request the attorney general to exercise all legal and equitable remedies available to the state to seek whatever relief is appropriate.

(d) If the personnel board finds a violation of this chapter by a public officer removable from office only by impeachment, it shall file a report with the president of the Senate, with its finding. The report must contain a statement of the facts alleged to constitute the violation.

Sec. 39.52.420. Disciplinary action for violation.

(a) In addition to any other cause an agency may have to discipline a public employee, an agency may reprimand, demote, suspend, discharge, or otherwise subject an employee to agency disciplinary action commensurate with the violations of this chapter. This section does not prohibit the review of a disciplinary action in the manner prescribed by an applicable collective bargaining agreement or personnel statute or rule.

(b) An agency may initiate appropriate disciplinary action in the absence of an accusation under this chapter or during the pendency of a hearing or personnel board action.

Sec. 39.52.430. Actions voidable.

(a) In addition to any other penalty provided by law, a state grant, contract, or lease entered into in violation of this chapter is voidable by the state. In a determination under this section of whether to void a grant, contract, or lease, the interests of third parties who could be damaged may be taken into account. The attorney general shall give notice of intent to void a state grant, contract, or lease under this section no later than 30 days after the personnel board's determination of a violation under this chapter.

(b) In addition to any other penalty provided for by law, the state may require a state loan received in violation of this chapter to become immediately payable.

(c) Any state action taken in violation of this chapter is voidable, except that the interests of third parties and the nature of the violation may be taken into account. The attorney general may pursue any other available legal and equitable remedies.

(d) The attorney general may recover any fee, compensation, gift, or benefit received by a person as a result of a violation of this chapter by a current or former public officer. Action to recover under this subsection must be brought within two years after discovery of the violation.

Sec. 39.52.440. Civil penalties.

The personnel board may impose on a current or former public officer civil penalties not to exceed $5,000 for a violation of this chapter. A penalty imposed under this section is in addition to and not instead of any other penalty that may be imposed according to law.

Sec. 39.52.450. Payment of twice the financial benefit.

The personnel board may, in addition to the civil penalties described in this chapter, require a current or former public officer who has financially benefited

a person in violation of this chapter to pay to the state up to twice the amount that the person realized from the violation.

Sec. 39.52.460. Criminal sanctions additional.

To the extent that violations under this chapter are punishable in a criminal action, that sanction is in addition to the civil remedies set out in this chapter.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: March 17, 2010 **FURTHER REFERRALS:**

Date of Committee Action: 3/29/10

The JUDICIARY Committee considered: **HOUSE BILL NO. 348**

"An Act relating to the membership of the state personnel board."

HB 348-PERSONNEL BOARD MEMBERSHIP

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB348 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR _____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Gruenberg	–			
	HERRON			X	
	Gatto	X			
	Holmes	X			
Chair:	KAMKAR			X	
Chair:					

HB 355

26-LS1385\E.1
Luckhaupt
3/9/10

Passed

AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: HB 355

Page 1, line 7:

Delete "$1,000,000"

Insert "~~**$2,000,000**~~ [$1,000,000]"

2,500,000

Page 1, line 9:

Delete "$200,000"

Insert "~~**$400,000**~~ [$200,000]"

$500,000

Page 1, line 11:

Delete "$25,000"

Insert "~~**$50,000**~~ [$25,000]"

$75,000

Page 1, line 13:

Delete "$10,000"

Insert "~~**$20,000**~~ [$10,000]"

$25,000

Member

Standing Committees:
Judiciary
State Affairs
Transportation

Finance Subcommittees:
Transportation
Courts
Law

Alaska State Legislature

House of Representatives

Representative Max F. Gruenberg, Jr.
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SPONSOR STATEMENT AND BILL ANALYSIS
HB 355 – CRIMINAL FINES FOR ORGANIZATIONS

"An Act relating to criminal fines for organizations."

HB 355 closes a loophole. An organization may not be imprisoned for its criminal acts; only a fine may be levied as punishment. Under current law, the court may impose the greater of (1) the maximum fines set out in the schedule under AS 12.55.035(c)(1), (2) three times the pecuniary gain realized by the defendant, or (3) three times the pecuniary damage or loss caused by the defendant to another. Under the particular factual situations of some crimes, the treble penalties are not applicable. One instance would be if a corporation bribes legislators to stop a piece of legislation (such as tax legislation), but the legislation passes anyway. In this case, there is neither a loss to the government nor a gain to the corporation. HB 355 would allow the court to issue fines in the amount of three times the pecuniary gain *sought* by the defendant or three times the pecuniary damage or loss to another *sought* by the defendant. These would provide alternatives to statutorily set fines.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 355**
() Publish Date:

Identifier (file name): HB355-LAW-CRIM-03-08-10
Title: An Act relating to criminal fines for organizations.
Sponsor: Representative(s) Gruenberg, Crawford
Requester: Judiciary

Dept. Affected: Law
RDU: CRIMINAL
Component: Criminal Justice Litigation
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							
FUND SOURCE		(Thousands of Dollars)					
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS							
Full-time							
Part-time							
Temporary							

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

HB 355 raises the potential fine for conviction of a crime by an organization. It does so by providing that the fine may be three times the pecuniary gain that was sought by the defendant or others by the crime, or three times the potential loss that the defendant sought by the commission of the offense. There is no anticipated fiscal impact to Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager
Division: Administrative Services
Phone 465-5427
Date/Time 3/8/10 12:00 PM

Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date 3/8/2010

(Revised 11/6/2009 OMB)

Alaska Law Review
December, 2008

Article

*175 POLICING THE CORPORATE CITIZEN: ARGUMENTS FOR PROSECUTING ORGANIZATIONS

Daniel L. Cheyette[FNa1]

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Abstract

Alaska's corporate criminal liability statute exposes organizations to criminal liability for the actions of their agents, as long as agents intended the organization to benefit from their actions. Organizations cannot disclaim liability through codes of conduct or corporate policies, and their liability extends beyond any merger, consolidation, or dissolution. This Article argues that criminally prosecuting an organization is advantageous because it allows greater criminal fines and carries collateral consequences. In addition, criminally prosecuting an organization may be easier than criminally prosecuting an individual because Fifth Amendment privileges and hearsay obstacles do not apply. Corporations accrue the knowledge of their agents, so proving specific intent may also be less difficult. Finally, this Article describes considerations that should be weighed when deciding whether to prosecute a particular organization. The author argues that Alaska's corporate criminal liability statute is a powerful tool that, where appropriate, should be used more often.

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Introduction

When charging cases, Alaska prosecutors too often overlook crucial potential defendants: the organizations [FN1]--corporations, companies, partnerships, and other entities--on whose behalf individual wrongdoers act. Alaska law casts a wide net for liability by making organizations liable for the criminal conduct of their agents, [FN2] and by authorizing larger criminal fines against convicted organizations than ***177** against convicted individuals. [FN3] These considerations beg the obvious question: why are organizations not investigated and prosecuted more frequently? The most likely explanation is that few prosecutors are aware of how far-reaching an organization's criminal liability extends. In addition, correctly or incorrectly, some prosecutors likely view the prosecution of an organization as an unwanted hassle--the prosecution would be different than their typical cases and may well involve high-paid corporate counsel unfamiliar with criminal practice. [FN4] Finally, some prosecutors might mistakenly believe that organizational prosecutions punish innocent shareholders rather than actual wrongdoers. [FN5] Thus, it has not been common practice in state prosecutor offices to charge organizations. [FN6]

The Author hopes this Article will change these views and encourage prosecutors to examine their caseloads for potential organizational defendants. There are significant benefits to be gained by charging organizations rather than individuals: courts will likely impose larger fines against organizations, prosecution of an organization may effect change within the organization, and negative publicity and other collateral consequences will pressure the organization to settle. Furthermore, should the case go to trial, the defense will not be able to protect organizations' records or utilize certain other evidentiary tools to hamstring the prosecution's presentation of evidence.

The aftermath of the 1989 Exxon Valdez oil spill provides a good illustration of why prosecuting an organization is often superior to prosecuting an individual wrongdoer. The 1989 grounding of the tanker Exxon Valdez spilled approximately eleven million gallons of crude oil into Prince William Sound. [FN7] Following the grounding, the State of Alaska prosecuted Joseph Hazelwood, the captain of the ill-fated vessel. [FN8] Hazelwood was convicted by a jury of negligent discharge of oil [FN9] but ***178** received only a conditionally suspended sentence. [FN10] Conversely, the United States prosecuted Exxon, ultimately resulting in a negotiated plea agreement and a combined criminal fine of one hundred million dollars. [FN11] The latter was a better use of prosecutorial resources and obtained a better result. [FN12]

It is particularly common for organizations to be defendants in several niche areas of Alaska criminal law. For example, Title 4 criminalizes various aspects of alcohol-related behavior. [FN13] Bush pilots who knowingly or negligently allow passengers to carry alcohol aboard their flights can expose their air carrier to criminal liability. [FN14] Titles 8 and 16 criminalize violations of the state's hunting and fishing laws and regulations. [FN15] Fishing guides who assist their clients by knowingly or negligently violating state fishing regulations expose their employers, such as lodges or guiding outfits, to criminal liability. [FN16]

These principles also apply to the more "traditional" crimes defined in Title 11 of the Alaska Criminal Code. One well-publicized example of such a prosecution was that of Whitewater Engineering Corporation. [FN17] Gary Stone, a Whitewater employee, was killed in an ***179** avalanche at a Whitewater jobsite near Cordova. [FN18] Prosecutors charged the corporation and its president, Thom A. Fischer, with manslaughter because key employees failed to heed avalanche warnings and failed to observe necessary safety precautions. [FN19] Although charges against Fischer were ultimately dismissed, the company pled no contest to a charge of criminally negligent homicide. [FN20]

This Article examines criminal liability of organizations under Alaska law. Part I begins with the historical development of organizational criminal liability in the United States and Alaska. Part II covers the current contours of organizational criminal liability, as codified in the Alaska Statutes and interpreted by Alaska courts. Part III discusses the various consequences typically flowing from a conviction. Additionally, Part IV explores practical considerations for prosecutors, and Part V explores

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charging considerations for prosecutors who decide to file charges against an organization. Within these sections and in the Conclusion, this Article explains why it is advantageous to prosecute organizations as opposed to solely prosecuting the individual wrongdoers.

I. Historical Underpinnings

Courts were the first to recognize corporations as legal entities capable of suing and being sued. [FN21] Early decisions established that corporations could be sued in tort. In Philadelphia, Wilmington and Baltimore R.R. Co. v. Quigley, [FN22] the United States Supreme Court explained in detail the policy considerations that mandated this result. [FN23] Quigley sued the railroad for libel due to the conduct of one of its ***180** employees. The company argued that a corporation could only act within the limits of its charter and therefore could not be held liable for any acts of its agents that exceeded those limits. The Court rejected this argument because it would allow corporations to do business and interact with the public while escaping liability when corporate agents, conducting corporate business, injure members of the public. [FN24] By the latter part of the nineteenth century, corporate tort liability was no longer in dispute and lawsuits against corporations were commonplace. [FN25] The law imputed tortious intent from the agent to the corporation, making the corporation liable for actual damages. The courts would not, however, impute the intent necessary to award punitive damages for any injuries absent a showing of wrongdoing by the corporation itself. [FN26]

Corporate criminal liability grew from these civil liability roots. Courts slowly acknowledged that corporations could be criminally liable for the conduct of their agents. For example, in Commonwealth v. Proprietors of New Bedford Bridge, [FN27] the Massachusetts Supreme Court upheld the indictment of a corporation for a public nuisance. [FN28] In 1899, the same court affirmed that corporations could be guilty of criminal contempt in Telegram Newspaper Co. v. Commonwealth. [FN29] Regarding corporate criminal liability, the court stated:

> ***181** We think that a corporation may be liable criminally for certain offenses, of which specific intent may be a necessary element. There is no more difficulty in imputing to a corporation specific intent in criminal proceedings than in civil. A corporation cannot be arrested and imprisoned in either civil or criminal proceedings; but its property may be taken, either as compensation for a private wrong or as punishment for a public wrong. [FN30]

The United States Supreme Court affirmed the general principle of corporate criminal liability in New York Central & Hudson River Railroad Co. v. United States, [FN31] in which it upheld convictions of the railroad corporation for paying illegal rebates. [FN32] The Court applied the principles governing civil liability and held that the acts of agents are imputed to their employers, who may be penalized when the employees act within the scope of their employment. [FN33] Without expressly mentioning the legal concept of respondeat superior, the Court was using it to impute criminal liability to the corporation from the acts of its agents. Numerous Ninth Circuit cases have endorsed this principle. [FN34]

Courts in Alaska slowly recognized organizational criminal liability. The Alaska federal district court first addressed corporate criminal liability in United States v. Alaska Packers' Ass'n. [FN35] There, the court considered the defendant corporation's indictment for fishing violations. The corporation took the position that it could not be indicted for a felony because corporations cannot be imprisoned, a punishment for a felony. [FN36] The court disagreed, pointing out that a corporation may be fined just like an individual, [FN37] that such a penalty may be levied for ***182** acts which would result in imprisonment for individuals, [FN38] and that there was no reason a corporation should escape such punishment. [FN39] Essentially, the district court came to the same conclusion that the Massachusetts Supreme Court reached fifty years earlier in Proprietors of New Bedford Bridge [FN40]-- criminal conduct and criminal intent can be imputed to an organization from its agents. [FN41]

The Alaska legislature codified organizational criminal liability in 1978 when it revised the state criminal code according to the recommendations of the Alaska Criminal Code Revision Commission. [FN42] The first version of section 11.16.130 of the Alaska Statutes proposed by the Commission was very limited. [FN43] The Commission extended criminal liability only to corporations and only in instances when the alleged offense was a violation, a misdemeanor, or otherwise defined so as to clearly indicate a legislative intent to impose criminal liability on a corporation. [FN44] The statute also applied to a company if the conduct was "engaged in, authorized, solicited, requested, commanded or knowingly tolerated by" the corporation's board of directors or a "high managerial agent." [FN45]

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The Commission greatly expanded the scope of the preliminary draft in the course of its deliberations. Significantly, the Commission extended criminal liability to "organizations," [FN46] and the definition of the ***183** term was nearly identical to the current definition of the term. [FN47] The Commission also changed the requirements for imposing liability under the first subparagraph to the disjunctive, thus imposing liability if the act was committed by the employee in the scope of his employment or to benefit the organization. [FN48] The legislature ultimately rejected this construction, however, and required that the act be committed both in the scope of the employment and to benefit the organization. The version of the statute ultimately passed by the legislature mirrors the current version of the statute. [FN49]

II. Current Contours of Organizational Liability

An organization, once constituted, has a legal identity distinct from its owners, officers and directors. [FN50] It is, by statute, an artificial, legal "person." [FN51] As such, an organization may commit crimes and may be charged as a defendant in criminal cases. [FN52] The criminal liability of organizations is defined in section 11.16.130 of the Alaska Statutes:

> (a) Except as otherwise expressly provided, an organization is legally accountable for conduct constituting an offense if the conduct
>
> (1) is the conduct of its agent, and
>
> (A) within the scope of the agent's employment and in behalf of the organization; or
>
> (B) is solicited, subsequently ratified, or subsequently adopted by the organization; or
>
> (2) consists of an omission to discharge a specific duty of affirmative performance imposed on organizations by law.
>
> ***184** (b) In this section "agent" means a director, officer, or employee of an organization or any other person who is authorized to act in behalf of the organization.

The Alaska Court of Appeals described the essence of this liability in State v. ABC Towing. [FN53] The decision contrasts the theories of organizational criminal liability, set forth in section 11.16.130 of the Alaska Statutes, with the better known theories of accomplice criminal liability, set forth in section 11.16.110 of the Alaska Statutes. [FN54] In drawing this comparison, the court of appeals noted organizations face broader criminal liability than individuals because organizations are liable for conduct of their agents that owners, members, officers or directors do not know about until after the fact. [FN55]

The kinds of entities subject to such liability are also defined by statute: "'[O]rganization' means a legal entity, including a corporation, company, association, firm, partnership, joint stock company, foundation, institution, government, society, union, club, church, or any other group of persons organized for any purpose." [FN56] As such, organizations are broadly exposed to criminal liability for the acts of their agents. This poses an obvious problem for organizations, whose main purpose is to pool resources, maximize profit potential, and limit the liability of those individuals involved. [FN57] At cross purposes with this last principle, Alaska law imposes criminal liability in cases where individual conduct, when appropriately construed as corporate conduct, runs afoul of state criminal law.

Many critics question whether organizations should be prosecuted at all and argue that such prosecutions punish innocent shareholders rather than the actual wrongdoer. The Ninth Circuit provided a succinct rebuttal to that suggestion in United States v. Hilton Hotels Corp:

> Legal commentators have argued forcefully that it is inappropriate and ineffective to impose criminal liability upon ***185** a corporation, as distinguished from the human agents who actually perform the unlawful acts . . . particularly if the acts of the agents are unauthorized. . . . But it is the legislative judgment that controls, and "the great mass of legislation calling for corporate criminal liability suggests a widespread belief on the part of legislators that such liability is necessary to effectuate a regulatory policy." [FN58]

The crux of the argument is that organizational criminal liability prompts organizations to more rigorously police their agents. Regardless of whether this is true, the existence of corporate and, more generally, organizational criminal liability is beyond debate. [FN59]

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A. Alaska Jurisprudence

Most examples of organizational criminal liability in Alaska occur under section 11.16.130(a)(1)(A) of the Alaska Statutes--conduct of an agent that is done in the scope of the agent's employment and on behalf of the organization. [FN60]

The Alaska appellate courts have discussed the substance of organizational criminal liability only twice. [FN61] In State v. ABC Towing, [FN62] the court of appeals was called on to determine whether a towing company, formed as a sole proprietorship, could be prosecuted for violating a state pollution law, based on an employee's illegal discharge of gasoline. The issue for the court was whether a sole proprietorship is an "organization" as defined in section 11.81.900 of the Alaska Statutes. [FN63] The court held that it was not, because a sole proprietorship is the mere alter ego of the sole proprietor. [FN64] In other words, there is no legal ***186** distinction between the sole proprietor and the proprietorship; to prosecute the proprietorship, the state must charge the proprietor. [FN65]

The court of appeals provided more recent guidance in State v. Greenpeace, Inc. [FN66] The State prosecuted and convicted Greenpeace, Inc. for bringing a Greenpeace ship, the ~~M/V Arctic Sunrise, into~~ state waters without a state-approved oil spill contingency plan or a certificate of financial responsibility. [FN67] Following the jury's guilty verdicts against the corporation, the district court granted a defense motion for acquittal and set the convictions aside. [FN68] The court of appeals affirmed the district court based on findings that Greenpeace, Inc., a United States corporation, was not in charge of the ship and did not control its operators. [FN69] According to the court, the prosecution charged the wrong parties. [FN70] The case involved Stichting Phoenix, [FN71] a Dutch foundation that owned the Arctic Sunrise, and Stichting Marine Services (SMS), a second Dutch foundation that operated it. [FN72] SMS chartered the ship to Greenpeace International, a third Dutch entity, that owns the name "Greenpeace." [FN73] Greenpeace International licenses this name to independent environmental organizations around the world including Greenpeace, Inc. in the United States. [FN74] In 2004, Greenpeace International agreed to let Greenpeace, Inc. use the Arctic Sunrise for an anti-logging campaign. [FN75] SMS supplied the crew and was also responsible for making sure the ship complied with all local regulatory requirements. [FN76] The prosecution argued that SMS and the Arctic Sunrise ***187** captain were agents of Greenpeace, Inc. and, therefore, Greenpeace, Inc. was liable for the criminal conduct. [FN77] The court of appeals disagreed:

> A person or organization does not qualify as the authorized agent of a principal unless the principal controls or has the right to control the purported agent. The State offered no evidence that Greenpeace, Inc., controlled how (or if) SMS or [the captain] operated the Arctic Sunrise or complied with Alaska's requirements for nontank vessels. [FN78]

The prosecution also argued that Greenpeace, Inc. ratified or adopted the criminal conduct of SMS and the Arctic Sunrise and was therefore liable for their conduct. [FN79] Again, the court of appeals disagreed. The court held that adoption or ratification requires the principal's "awareness of the misconduct and some action to ratify or adopt the misconduct." [FN80] It found that the prosecution had not produced any evidence Greenpeace, Inc. knew of the illegal conduct or took any actions to ratify or adopt that conduct. [FN81]

Though the court does not explicitly say, its decision suggests that SMS, or arguably Greenpeace International, was the proper defendant. [FN82] This holding nevertheless begs the question of whether Alaska could effectively prosecute either of these foreign entities in state court. Service of process on these entities would be problematic, [FN83] and even if service were achieved, the entities would likely argue that the Alaska state ***188** courts lack personal jurisdiction over them. [FN84] Finally, it is difficult to imagine how the state could effectively enforce any sentence ultimately imposed by its courts.

Collectively, ABC Towing and Greenpeace, Inc. confirm the existence of organizational criminal liability under state law. These decisions do little, however, to define the contours and limitations of that liability and, in fact, highlight problems with the existing laws. ABC Towing carves out an exemption for sole proprietorships. [FN85] Greenpeace is also problematic in that it illustrates the ease with which organizations might compartmentalize their operations or duplicate themselves and thereby thwart criminal prosecution. [FN86] These are shortcomings legislators need to address if the prosecution of organizations is to be effectively and consistently utilized.

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Given the paucity of pertinent Alaska jurisprudence regarding organizational criminal liability, Alaska courts would likely rely on relevant federal authority. [FN87] Federal cases frequently acknowledge that a ***189** corporation can act only through its officers, agents, and employees. [FN88] Courts therefore hold that a corporation may be liable for the acts of its officers, employees, and other agents even though the questioned act may be illegal, contrary to specific company policy, or not expressly authorized beforehand by the corporation. [FN89]

B. Existence of Organization Policies Prohibiting the Criminal Conduct and the Requisite Quantum of Benefit

Federal cases hold that an organization may be found guilty of a criminal offense as long as the employee was motivated, at least in part, to benefit the organization. [FN90] It follows that organizations often attempt to absolve themselves of liability by relying on corporate policies that preclude criminal conduct. These attempts have generally been unsuccessful. The Ninth Circuit addressed such an effort in the context of Sherman Act prosecutions. [FN91] In Hilton Hotels Corp., [FN92] charges were premised on proof that the hotel's purchasing agent threatened a supplier with the loss of the hotel's business unless the supplier paid an assessment to a trade association of which the hotel was a member. [FN93] Hotel personnel testified that company policy required purchasing ***190** supplies solely on the basis of price, quality, and service, and they had specifically instructed the purchasing agent not to boycott suppliers. [FN94] The Ninth Circuit held that the hotel could not insulate itself from criminal liability by adopting general instructions not to participate in a boycott if it did not take sufficient actions to enforce those instructions. [FN95] The fact remained that the hotel authorized a purchasing agent to act on its behalf and the agent exercised complete authority as to those responsibilities and, pursuant to that authority, added the hotel's buying power to the force of the boycott. [FN96] Other circuits have taken a similar position when employees act contrary to company policy. [FN97]

An important corollary is that courts generally permit defendants to admit evidence of corporate policies or instructions that forbid the conduct at issue to support an argument that an agent was acting outside the scope of employment or to the principal's detriment. The Ninth Circuit summarized this view:

> [A] corporation may be liable for acts of its employees done contrary to express instructions and policies, but that the ***191** existence of such instructions and policies may be considered in determining whether the employee in fact acted to benefit the corporation. Merely stating or publishing such instructions and policies without diligently enforcing them is not enough to place the acts of an employee who violates them outside the scope of his employment. It is a question of fact whether measures taken to enforce corporate policy in this area will adequately insulate the corporation against such acts . . . [FN98]

Other courts have reached similar rulings. [FN99]

It is not necessary that the organization actually accrue a benefit from the agent's actions for criminal liability to attach. In Beusch, [FN100] the Ninth Circuit rejected a corporation's argument that it could not be liable if the criminal conduct did not in fact benefit the corporation. [FN101] The Fourth Circuit's decision in United States v. Automated Medical Laboratories, Inc. [FN102] is frequently cited on this point--the court affirmed a jury's conviction of American Medical Laboratories for falsifying logbooks and records required to be maintained by the Federal Drug Administration. [FN103] In Automated Medical Laboratories, the court held that benefit was an evidential fact, stating:

> [W]hether the agent's actions ultimately redounded to the benefit of the corporation is less significant than whether the agent acted with the intent to benefit the corporation. The basic purpose of requiring that an agent have acted with the intent to benefit the corporation, however, is to insulate the corporation from criminal liability for actions of its agents which be inimical to the interests of the corporation or which may have been undertaken solely to advance the interests of that agent or of a party other than the corporation. [FN104]***192** These cases collectively illustrate that whether the agent's conduct benefits the organization is a question of fact for the jury. The cases also demonstrate that appellate courts will let convictions stand so long as there is some evidence that the organization gained some benefit. In comparison, criminal conduct by an agent falling outside the scope of employment will not be imputed to the organization

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where the conduct solely benefits the agent. Such was the case in Standard Oil Co. of Texas v. United States, [FN105] in which the Fifth Circuit reversed convictions against two corporate defendants because the criminal acts by the employees, while benefiting themselves, actually injured the corporation. [FN106]

Alaska cases contemplating the application of respondeat superior liability in the context of tort claims have echoed the holding of Standard Oil. Notable among these are Taranto v. North Slope Borough, [FN107] Northern Fabrication Co., Inc. v. Arco, Inc., [FN108] and Ondrusek v. Murphy. [FN109] All three cases apply the Restatement (Second) of Agency section 228 criteria to determine whether an agent acted in the scope of his employment. Pursuant to section 228, conduct is only in the scope of employment if--among other requirements--it is done at least in part to serve the employer. Thus, in Northern Fabrication Co., Inc., the Alaska Supreme Court reversed the trial court's grant of summary judgment in favor of the defendant corporations and held that the corporations could only negate the plaintiff's claim of vicarious liability for the theft of equipment by the defendants' employees if the corporations could prove they did not control the employees' actions and the employees acted solely in furtherance of their own personal motives. [FN110]

These cases demonstrate that an organization cannot insulate itself from liability with general policies or guidance that forbid the conduct at issue. However, an organization can use policies or guidance in an effort to convince a jury that the organization took sufficient action to prevent the wrongful conduct and should not be liable for the actions of an agent. Moreover, the organization will not be liable for conduct that an agent takes solely for his or her own benefit, or that is inimical to the organization's interests.

*193 C. Collective Corporate Knowledge

For a time, specific intent crimes that require proof of knowing or intentional conduct were difficult to apply against large or diverse organizations. Organizations tend to compartmentalize their operations and decision-making between different units or divisions. Therefore the requisite mens rea or conduct is often not present in any one individual, making imputing mens rea to the organization difficult. Many courts have resolved this problem through the collective corporate knowledge theory best described by the First Circuit in United States v. Bank of New England. [FN111]

> The acts of a corporation are, after all, simply the acts of all of its employees operating within the scope of their employment. The law on corporate criminal liability reflects this. . . . Similarly, the knowledge obtained by corporate employees acting within the scope of their employment is imputed to the corporation. Corporations compartmentalize knowledge, subdividing the elements of specific duties and operations into smaller components. The aggregate of those components constitutes the corporation's knowledge of a particular operation. It is irrelevant whether employees administering one component of an operation know the specific activities of employees administering another aspect of the operation . . . [FN112]

This line of reasoning enables prosecutors to impute the summed knowledge of various employees to the organization as a whole. [FN113]

*194 D. Effect of Merger, Consolidation, and Dissolution

Any liability imputed to an organization will generally survive the organization's merger, consolidation, or dissolution. The common law analogized the dissolution of an organization (either directly, or by merger or consolidation) to the death of a natural person, [FN114] meaning that dissolved, merged, or consolidated organizations could not be prosecuted. [FN115]

State statutes that continue the legal existence of these entities have eroded this common law principle. It is now generally true that organizations can be prosecuted (or sued civilly) following their dissolution, merger or consolidation. In Melrose Distillers, Inc. v. United States, [FN116] the United States Supreme Court discussed this abrogation of the common law. Prosecutors indicted three related corporations for violations of the Sherman Act. [FN117] While the indictments were pending, the corporations dissolved and became new divisions in a single, separate corporation. [FN118] The district court and court of appeals held that the dissolution of the original corporations did not abate the indictments. [FN119] The Supreme Court affirmed, looking to both Maryland and Delaware law and finding that the states had statutes "saving" claims against dissolved

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corporations. [FN120] The Court interpreted these statutes to include criminal charges under the Sherman Act. [FN121] Other courts have come to the same conclusion respecting corporations and partnerships organized under the laws of other states. [FN122]

***195** There is no analogous holding in Alaska case law. The closest case on point, Gossman v. Greatland Directional Drilling, Inc., [FN123] discusses the viability of civil claims brought against a dissolved corporation for negligent conduct during the corporation's existence. [FN124] Greatland dissolved in 1993 following the purchase of its assets by Anadrill, a distinct corporation. [FN125] In 1995, plaintiff Gossman was injured while working for Anadrill at one of the facilities Anadrill purchased from Greatland. [FN126] The injury was caused by a piece of equipment that had been negligently modified by a Greatland employee years before the corporation's dissolution. [FN127] In 1996, Gossman filed negligence claims against Greatland. [FN128] The Alaska Supreme Court looked to section 10.06.678 of the Alaska Statutes--a survival statute for claims against corporations--to determine whether any provision abrogated the common law abatement theory. [FN129] At the time (and currently), section 10.06.678, in pertinent part, provided:

> (a) A corporation that is dissolved voluntarily or involuntarily continues to exist for the purpose of winding up its affairs, defending actions against it, and enabling it to collect and discharge obligations, dispose of and convey its property, and collect and divide its assets. A dissolved corporation does not continue to exist for the purpose of continuing business except so far as necessary for winding up the business.
>
> (b) An action or proceeding to which a corporation is a party does not abate by the dissolution of the corporation or by reason of proceedings for winding up and dissolution of the ***196** corporation. A corporation that is dissolved voluntarily or involuntarily may not commence a court action, except for a court action under [section] 10.06.675. [FN130]

The court reviewed the legislative history of section 10.06.678 and examined treatment of similar statutes in other jurisdictions before deciding claims do not abate against a dissolved corporation. [FN131]

Gossman does not address criminal prosecutions. However, the court's analysis in this civil case mirrors the analysis the Supreme Court used in Melrose Distillers in a criminal context. [FN132] There is no reason to believe an Alaska court would analyze the issue any differently in the context of a criminal case. Moreover, Alaska courts routinely rely on federal authorities when interpreting Alaska law that has no case precedent and is similar to federal laws. [FN133] A number of jurisdictions have adopted Melrose Distillers, [FN134] and Alaska courts have cited Melrose Distillers for other propositions. [FN135]

Further, as is discussed above, the Alaska Supreme Court in Gossman interpreted section 10.06.678 of the Alaska Statutes liberally to include claims that accrued after the dissolution of the corporation. [FN136] This suggests that the court would likewise liberally interpret the statute if faced with the question of whether the statute is inclusive of criminal charges. In short, dissolution, merger, and consolidation of a corporation should not foreclose the State's ability to prosecute the corporation, although it might make it more difficult to collect fines that are ultimately imposed. [FN137]

***197** Alaska has similar survival statutes that are applicable to other organizations. However, some of the survival statutes--such as those that apply to non-profit corporations [FN138] or limited liability companies [FN139]--carry time limitations which may affect potential claims or charges.

III. Prosecutorial Consequences

A. Penalty Provisions

Organizations are not subject to the same penalties as individual defendants. While organizations can only act through their agents, organizations cannot be punished in the same way as their agents. [FN140]

Special penalty provisions exist for organizations based on the severity of the underlying crime. [FN141] In assessing a fine under these provisions the sentencing court considers:

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(1) measures taken by the organization to discipline an officer, director, employee, or agent of the organization;

(2) measures taken by the organization to prevent a recurrence of the offense;

(3) the organization's obligation to make restitution to a victim of the offense, and the extent to which imposition of a fine will impair the ability of the organization to make restitution; and

(4) the extent to which the organization will pass on to consumers the expense of the fine. [FN142]***198** These considerations are in addition to statutory and common law factors Alaska courts consider in deciding any criminal sentence. [FN143] Generally, it is not difficult to frame these factors in a way to justify substantial fines under any of the penalty matrices available for use against organizations. If the organization is large, a substantial fine would be justified so that it has an appreciable penalty or deterrent impact on the organization's operations. The fine would likewise need to be large to cause other similarly situated organizations to take notice and action to ensure they do not commit similar errors.

Consider two examples. First, if a fishing lodge allows its clients to commit hunting and fishing violations to ensure they catch a lot of fish and have a good time, a small fine would not act as a sufficient deterrent. Because these lodges often have significant revenues, fines at the top of the penalty range set forth in section 12.55.035(c) of the Alaska Statutes would be necessary and justified. These are common sense arguments that are likely to have traction with the sentencing court. Second, imagine a service station operating as an LLC that knowingly functions with leaking underground fuel tanks. The situation comes to light when diesel range organics are discovered in a nearby creek. Investigation traces the fuel back to the service station and additional investigation produces evidence that the manager had been aware of the leak for several months. The Alaska Department of Environmental Conservation (DEC) hires a private environmental services firm to design and implement a clean-up and remediation plan for the polluted land and water and to monitor the water quality of the creek for five years. The total cost for these services exceeds a million dollars. Under section 12.55.035(c)(3) of the Alaska Statutes, the potential fine against the LLC could exceed three million dollars. This fine could be in addition to the restitution owed to the state for the cost of the clean-up and remediation work itself. Admittedly, the sentencing court, in imposing the fine, would have to consider how section 12.55.035(e)(3) of the Alaska Statutes would affect the company's ability to pay restitution to the DEC. However, if the company is large enough, it is easy to picture the court imposing the full fine. Penalties of this magnitude can ***199** provide a strong incentive for organizations to resolve potential criminal liability quickly. [FN144]

Because criminal conduct exposes the organization to potentially substantial criminal penalties and negative publicity, an organization will often terminate or discipline the responsible employees, cooperate with investigating agencies, and may hire consultants for the design of new protocols to avoid similar mistakes in the future. These are all constructive steps moving forward from the misconduct and are factors a sentencing court is to consider in assessing a fine against an organization pursuant to section 12.55.035(e) of the Alaska Statutes.

B. Collateral Consequences

Collateral consequences triggered by a conviction will also be a powerful force shaping the course of many prosecutions. Organizations are generally required to report all pending liabilities in their annual financial statements. This typically includes pending criminal cases as well as any completed cases for which the organization is on probation. [FN145] Disclosure of a pending criminal case or conviction can be damaging to an organization's public image or reputation. The publicity from prosecution would likely tarnish the image of a company and undo any marketing efforts that the company previously undertook. Further, the prosecution would likely damage the company's image amongst stockholders, creditors and Wall Street analysts, causing significant financial repercussions.

Debarment is another significant collateral consequence. Both federal and state law allows the respective sovereigns to refuse to do business with organizations that have been convicted of or otherwise suspected of crimes or dishonest business practices. [FN146] At the federal level, the Environmental Protection Agency (EPA) is particularly vigilant in debarring organizations that are convicted or suspected of ***200** environmental crimes. [FN147] Debarment is damaging because a large percentage of Alaska companies are the recipients of federal or state contracts. [FN148] The loss of these contracts can be financially crippling to companies. The State of Alaska also has legislative authority to debar companies but, unfortunately, rarely uses that power. [FN149]

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By way of an example, consider a small bush air service that transports mail year round and a steady number of government biologists as passengers during the summer. If the company knowingly allows passengers to transport alcohol to local option dry communities [FN150] on its flights, it could be prosecuted for violations of Alaska's alcohol importation laws. [FN151] A conviction could potentially trigger federal or state debarment and thereby jeopardize the air service's ability to retain the mail or biologist travel contracts. This could constitute another financial blow to the company in addition to the fines or consequences that flow from the prosecution. [FN152]

*201 IV. Practical Considerations for Prosecutors

A. No Fifth Amendment Privilege

Prosecutors gain several practical advantages by filing charges against organizations as opposed to individuals. The first, and perhaps most significant, is that an organization does not have a Fifth Amendment right against self-incrimination. A prosecutor can use organizational agents as witnesses to testify about corporate practices or records. [FN153] In Amato v. United States, [FN154] the First Circuit, relying largely on the Supreme Court's decision in Braswell v. United States, [FN155] explained why the Fifth Amendment's protection against self-incrimination does not protect corporate records. [FN156]

The Alaska Supreme Court subscribed to the collective-entity doctrine in Pratt v. Kirkpatrick. [FN157] Citing many of the same cases relied upon in Amato, the court held that a records custodian for the financial records of a limited partnership could not rely upon the Fifth Amendment or Article I, section 9 of the Alaska Constitution to resist a subpoena for the partnership's financial records. [FN158] Importantly, the court found the self-incrimination protections provided by the Alaska Constitution were no broader than protections provided by the Fifth Amendment to the United States Constitution. [FN159]

Because of these principles, defense attorneys will be hard-pressed to successfully preclude the production of an organization's documents sought pursuant to a subpoena or search warrant. Organizations are prolific producers of documents, reports, memoranda, and email that evidence their decisions and actions. In the event of criminal conduct, *202 any such documents would be invaluable to the prosecution, as they may demonstrate the organization's knowledge or intent. At the very least, the documents can confirm the individual agent's intent or knowledge.

B. Avoiding Hearsay

Common hearsay problems can also be avoided if an organization rather than an individual is charged. Employee or agent statements regarding the conduct of the organization will be admissible against the organization should the declarant invoke a personal Fifth Amendment right not to testify or otherwise make him or herself unavailable for trial. The admissions of these agents are not hearsay if offered against the organization because the law imputes them to the organization itself; under Alaska Rule of Evidence 801(d)(2), the admissions are considered admissions of the party opponent. [FN160] This subsection excludes as non-hearsay statements that are made by an agent or servant concerning matters within the scope of that individual's agency or employment and made during the existence of the agency or employment relationship. This is a broadly interpreted exclusion [FN161] that encompasses a wide range of employee statements regarding employer practices, work conditions, and decision-making that frequently provide invaluable evidence for the prosecution.

C. Corporations Can Be Tried In Absentia

Corporations cannot ignore a summons to appear for arraignment. Pursuant to Rule 4(a)(3) of the Alaska Rules of Criminal Procedure, corporations that fail to appear may be tried in absentia. [FN162] The trial of an absent corporation would be a slam-dunk for the state. The prosecutor could admit evidence to the jury without objection. The *203 prosecutor could then ask the jury to convict a business which was perfectly happy to injure Alaska or Alaskans in some way but was unwilling to show up when invited to an Alaskan courtroom for its own trial. Assuming the prosecutor has presented sufficient evidence of the charged offenses, it is likely juries will feel little compunction in returning guilty verdicts. Upon conviction, the prosecutor could ask the judge to issue a judgment against the corporation and that judgment could be sent to the Attorney General's

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Collection Section for collection.

D. Organizations Engender Less Sympathy

The criminal jury instructions commonly employed in Alaska state courts invariably include an instruction that directs the jury to disregard any sympathy for the defendant during its deliberations. [FN163] Nevertheless, any prosecutor will tell you that jurors rarely dispatch their obligations without sympathizing to some degree with the defendant. If an employee engages in improper conduct to primarily benefit his or her employer (as opposed to directly benefiting him or herself) or if the employee engages in conduct at the behest of his or her employer, jurors may be loathe to find the individual guilty of the offense. This problem is largely eliminated if the company is tried. Regardless of the factual scenario involved, juries are far less prone to feel sympathy for an organization. [FN164] Most often, the organization is a for-profit company, and juries realize their decision, like the organization's decision to engage in the criminal conduct, is a decision about money. Juries seem to struggle far less with the question of whether an organization should pay a fine than the question of whether an individual should go to jail.

*204 V. Charging Considerations

A. Factors to Weigh

The foregoing discussion is meant to illustrate that organizational criminal liability is very broad and has potential application to many situations. Nevertheless, these prosecutions can be complex and time intensive, and the outcome of any such prosecution is seldom, if ever, certain. It follows that a prosecution may not be warranted or be the best use of limited resources in every instance. A number of practical considerations should inform any decision to prosecute or not prosecute an organization.

Assuming the prosecutor believes he or she can prove all the elements of the potential charges, the foremost consideration is the prosecution's objective in pursuing the criminal charges against this organization. Key to this concern is the question of punishment. Is the goal to punish the organization? Is the goal to achieve restitution? Or is the goal to ensure future compliance by this organization or similarly-situated organizations? Most often the answer is a mixture of all three, but that is not always the case. If the organization is one that has few assets or no longer exists, the prosecution may yield a conviction and a fine or restitution order that cannot be collected. Alternatively, if the organization continues to operate and the conduct at issue could reoccur, or involves an activity that has not been monitored or heavily regulated in the past, a better result may be achieved through less adversarial means. Instead of a criminal prosecution, perhaps there is an administrative or civil remedy. [FN165]

In answering these questions, the prosecutor should consider the following factors. [FN166] The first and foremost consideration is whether the prosecution is deserved. Multiple factors will weigh on this determination, including whether the injury was caused by egregious or intentional conduct or a rogue employee, and the degree to which management was complicit in causing the injury. It will also be important to determine whether the conduct was an isolated violation or part of a series of violations, and if the organization knew the conduct was prohibited.

*205 These factors beg the question: is a prosecution warranted? A corollary to this question is the recognition that a criminal prosecution carries a significant stigma and is not warranted or necessary in every circumstance. With respect to considerations of practicality, the following factors should be evaluated and go to the central question of what can and will be achieved by prosecuting the organization:

First, will prosecution deter this organization? Answering this question will require analyzing the likelihood of significant penalties such as fines or probation. It will also mean determining if any illegal gains will be returned, and if the conduct gave the organization an advantage over its competitors. [FN167]

Second, will prosecution deter other similarly-situated organizations? Determining this means researching whether similarly-situated organizations exist and if the potential penalties would deter them. The penalties may also impact the industry as

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a whole.

Third, will prosecution promote future compliance? Prosecutors must consider whether including a compliance program in the penalty would address the conduct at issue.

Fourth, is restitution owed to a broad range of entities or individuals? Considerations will include the necessity of prosecution to obtain restitution, the effectiveness of individual claims, and the ability of the organization to pay damages.

Finally, will a prosecution play well in the public's view? Prosecutors should determine whether the public will support legal action, an enforcement program more generally, and participate in such a program by reporting violations.

Depending on the answers to these questions, a prosecutor may determine that prosecution is not the best alternative. The best practice is to make this determination early and not to pursue prosecutions in situations not warranting the effort or resources.

To illustrate these points, consider as an example the potential prosecution of a bartender for selling alcohol to an underage patron. Faced with an underage "furnishing" crime, police officers will typically ***206** cite the individual bartender for a Title 4 "furnishing" offense. [FN168] If convicted, and if a first-time offender, the bartender will likely receive a suspended imposition of sentence, a year's probation, and a small fine, assuming the prosecutor can convince a jury not to nullify the verdict. On the other hand, if there is a good reason to charge the bartender's employer--perhaps a large bar or restaurant--with the same Title 4 violation, that employer will face a much larger potential fine. If the employer has committed similar offenses through other employees, each of those incidents may be brought to the sentencing judge's attention and would powerfully bolster the prosecutor's sentencing case. Fines could be conditioned on the employer ensuring that its employees commit no further violations. The employer could also be affirmatively required to notify law enforcement officers of any and all future violations. [FN169] In addition, the court may require the employer to provide enhanced training for employees at their own expense. Prosecuting the employer is a better use of prosecutorial resources. Importantly, the prosecution of the employer provides a mechanism to prevent future, similar infractions by other employees. The employer will likely be more proactive in policing its employees and will be under an affirmative duty to report all future violations. Further, it is likely that other similar establishments or employers will take notice of the sentence and will likewise do a better job of policing their operations and employees. These would all be positive outcomes.

B. Case Study: Strategica Import-Export Financial Group, LLC

A four-defendant case recently prosecuted by the Office of Special Prosecutions, State v. Jeremy Oliver, [FN170] further illustrates why prosecutors should consider charging organizations and how they can use those prosecutions to achieve better case outcomes.

The case arose from a failed salmon processing facility in Ekuk, Alaska in 2004. [FN171] The failure was an economic disaster for the local economy. [FN172] None of the fishermen who had delivered fish to the facility ***207** were paid for their catches and none of the workers who had worked at the facility were paid for their labor. [FN173] Jeremy Oliver, a young man with limited fishing and processing experience, had formed Wild Alaskan Seafood Company, LLC ("Wild Alaskan Seafood Company") for the purpose of the Ekuk processing venture. [FN174] Oliver was able to lease and open the Ekuk facility using financing brokered by Jay Enis, a Florida merchant banker. [FN175] Enis formed Strategica Import-Export Financial Group, LLC ("Strategica") for the purpose of financing the Ekuk salmon processing venture. [FN176] Oliver and Wild Alaskan Seafood Company hired dozens of workers to run the facility and accepted more than a million pounds of fish from the fishermen. [FN177] The venture failed before the fish could be processed, and very little of the fish was ever delivered to a purchaser. [FN178] The vast majority of the fish spoiled and ultimately had to be destroyed. [FN179] As a result, the fishermen and Ekuk processors were never paid. [FN180]

Alaska statutes criminalize the processing of adulterated seafood. [FN181] The offense is a class A misdemeanor. [FN182]

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The state prosecuted all four defendants--Oliver, Wild Alaska Seafood Company, Enis, and Strategica--for this offense, as well as several additional, related offenses. [FN183] Ultimately, Oliver, Wild Alaskan Seafood Company and Strategica each pled guilty to a charge. [FN184] The court sentenced Oliver to serve 180 days in jail (with 140 days suspended) and to pay, along with Wild Alaskan Seafood Company, more than $56,000 in restitution to the fishermen and workers. [FN185] Because Oliver and Wild Alaskan Seafood ***208** Company have few assets, [FN186] it is unlikely that much of this restitution will ever be paid. Oliver and Wild Alaskan Seafood Company were prosecuted to punish them for their misdeeds rather than to make the injured fishermen and workers whole. [FN187] The court ordered Strategica to pay more than $180,000 in restitution. [FN188] The state agreed to dismiss the charges against Enis in exchange for Strategica's plea and payment. [FN189] The case against Strategica was meant to prosecute that company for its misconduct, as well as to provide at least some restitution to the fishermen and workers.

Oliver was clearly the primary culprit of this scheme. Oliver came up with the plan to operate the Ekuk facility and was in charge when it failed. Nevertheless, once the scheme failed, Oliver and Wild Alaskan Seafood Company lacked assets and would never be able to pay much in restitution. Enis and Strategica had assets but were not as directly involved in the management and operation of the Ekuk facility. Thus, the question for the Office of Special Prosecutions was whether it could prove Enis and Strategica were criminally liable for the Ekuk failure and, if so, whether they warranted criminal prosecution. The answer to both questions was "yes." [FN190]

Strategica's conduct was egregious. Enis and Strategica had no experience in the Alaska seafood industry. Nevertheless, with little due diligence and equally little oversight, Strategica provided Wild Alaskan ***209** Seafood Company with $650,000 in financing for a risky venture [FN191] that would operate in a remote locale more than five thousand miles from Strategica's location in Miami. [FN192] Strategica enabled Oliver and Wild Alaskan Seafood Company by providing the financial means for them to launch the Ekuk facility. Thereafter, Strategica did little to oversee their operations or to ensure their success. This conduct was careless, it was intentional, and it had a devastating impact on the Ekuk fishery and the local economy.

Practical considerations also supported the decision to prosecute Strategica. Most importantly, the State believed prosecution would be the most effective way to collect restitution for the fishermen and workers. More than a hundred, perhaps more than two hundred, people were financially injured due to the Ekuk failure. [FN193] While some of these people filed civil actions against the defendants, those suits made little progress and, even if successful, stood to benefit a small number of individuals. In contrast, a criminal prosecution could recover restitution for all those who did not get paid. Of the potential defendants, only Enis and Strategica had any real financial resources. [FN194] Therefore, it was important that Strategica be prosecuted.

Additionally, the prosecution of Strategica would play well in the realm of public opinion. Strategica was a company that recklessly entered the state fishing industry to make a profit for out-of-state investors and ended up causing significant financial injuries to many Alaskans. In addition to the direct financial losses inflicted on the Ekuk fishermen and workers, Strategica's actions could have inflicted significant harm to the reputation of Alaskan salmon. The Alaska seafood industry relies on the high reputation of "wild Alaskan salmon" to market its product and has spent years and millions of public relations dollars to build up that reputation. [FN195] If some of the damaged Ekuk salmon had actually made it into the marketplace and sickened unsuspecting consumers, the reputation and marketability of Alaskan salmon would have been dealt a significant blow. Considering the ***210** reckless manner in which Strategica acted to enable and finance Oliver and Wild Alaskan Seafood Company, the State believed the Alaskans would overwhelmingly support Strategica's prosecution and the Department of Environmental Conservation's continued efforts to regulate seafood processing facilities.

Finally, the State believed prosecuting Strategica would serve as a deterrent to future reckless investment in the Alaska seafood industry by outside entities. The prosecution resulted in significant financial penalties-- the restitution payment--and would receive significant publicity. This result would certainly deter Strategica from future similar conduct and, it is hoped, would deter other similarly situated entities from doing anything similar.

Conclusion

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The ability to file criminal charges against an organization in addition to, or in lieu of, charges against individual agents is a powerful tool available to prosecutors. The prosecution of organizations must be considered, whenever feasible, to deter future wrongdoing. Furthermore, it is far more efficient to prosecute the organization that controls a large number of agents engaging in prohibited conduct rather than prosecuting each agent individually.

Prosecuting the organization makes sense for a variety of additional reasons. First, significant criminal fines can be imposed against organizations. Second, organizations--rational entities with a bottom line and a strong preference against negative publicity--tend to be prosecution averse. This fact is good news for the prosecution because it means a trial can be avoided and constructive changes can be implemented as part of any resolution. [FN196] Third, organizations enjoy fewer constitutional protections than do individual defendants and, as such, can make use of fewer evidentiary rules to limit the prosecution's evidence. Lastly, the prosecution of an organization as well as individual defendants could strengthen the prosecution's hand during plea negotiations. The organization may be persuaded to accept a plea in ***211** return for dismissal against certain individual officers, or vice-versa. By charging both, the prosecution increases its options for a successful and beneficial resolution.

Several potential explanations for why Alaska prosecutors rarely charge organizations for the criminal conduct of their agents are proffered in the introduction. None satisfactorily explain this phenomenon. Yes, such prosecutions will likely differ in some respects from the prosecution of individual defendants. Yes, organizational defendants may hire experienced defense counsel. And yes, such prosecutions might, in some cases, penalize stockholders who did not know about the wrongdoing. But these drawbacks, to the extent they are legitimate at all, are insignificant compared to the potential benefits that such prosecutions can realize. Quite simply, prosecutors should file charges against organizations more frequently. Such change may not happen quickly; nonetheless, it is time to adjust course and to start looking more closely at organizational targets. Successful criminal prosecutions of organizations can be a significant deterrent that causes organizations to take significant steps to better monitor the behavior of their agents and to prevent criminal conduct in the course of their operations.

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Any opinions that are expressed in this article are those of the author. This article is not an expression of the policy of the Criminal Division of the State of Alaska, Department of Law.

[FN1]. The term "organization" is used throughout this article because, under Alaska criminal law, "organization" encompasses multiple entity types. Alaska Stat. § 11.81.900(b)(43) (2006). Nevertheless, much of the case law and academic work on this topic is couched in terms of "corporations." For the purposes of this article, there is no distinction between these terms and they are used interchangeably.

[FN2]. See Alaska Stat. § 11.16.130 (2006).

[FN3]. See Alaska Stat. § 12.55.035 (2006).

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[FN4]. The court of appeal's recent decision in State v. Greenpeace, Inc., 187 P.3d 499 (Alaska Ct. App. 2008), which is discussed infra Part II.A, will do little to dispel such trepidation.

[FN5]. See Spencer R. Fisher, Corporate Criminal Liability, 41 Am. Crim. L. Rev. 367, 368 (2004) (citations omitted).

[FN6]. The author is not aware of any statistics kept by the Department of Law that quantify how often organizations are charged with crimes. However, the department is small and, anecdotally, it is evident that prosecutors bring charges against organizations infrequently.

[FN7]. State v. Hazelwood, 836 P.2d 943, 944 (Alaska Ct. App. 1992), aff'd in part, rev'd in part, 866 P.2d 827 (Alaska 1993).

[FN8]. See id.

[FN9]. See id. at 945. The negligent discharge of oil is a misdemeanor. Id. at 944.

[FN10]. Id. The court imposed ninety days of suspended jail time and a one thousand dollar suspended fine. Hazelwood was required to serve a one-year period of probation and complete one thousand hours of community work service. Id.

[FN11]. Press Release, Envtl. Prot. Agency, Exxon to Pay Record One Billion Dollars in Criminal Fines and Civil Damages in Connection with Alaskan Oil Spill (Mar. 13, 1991) (on file with author). The U.S. Department of Justice prosecuted both Exxon Corporation and Exxon Shipping Corporation. The plea agreements reached with these companies required Exxon Corporation to plead guilty to a misdemeanor violation of the Migratory Bird Treaty Act and Exxon Shipping Company to plead guilty to misdemeanor violations of the Clean Water Act, Refuse Act, and Migratory Bird Treaty Act. Id.

[FN12]. The author does not mean to criticize the choices made by either state or federal prosecutors in the Exxon Valdez matter. The author was not a party to those decisions but is confident those involved thoroughly and adequately debated the matter.

[FN13]. See Alaska Stat. §§ 4.11.501, 16.205 (2006) (importation of alcohol to dry bush communities); Alaska Stat. § 4.16.030 (2006) (sale of alcohol to already-intoxicated individuals); Alaska Stat. §§ 4.16.051-.052 (2006) (sale of alcohol to people less than twenty-one years of age).

[FN14]. See Alaska Stat. §§ 4.11.501, 4.16.205 (2006) (importation of alcohol to dry bush communities).

[FN15]. See Alaska Stat. §§ 8.54.720, 16.40.290, 16.43.970 (2006).

[FN16]. See Alaska Stat. §§ 16.40.290, 43.970 (2006).

[FN17]. See State v. Whitewater Eng'g Corp., No. 3AN-S00-5235CR (Alaska Super. Ct. indicted July 21, 2000); State v. Thom Fischer, No. 3AN-S00-6147CR (Alaska Super. Ct. indicted July 21, 2000).

[FN18]. Ashby Jones, Pardons Received in Whitewater (No, Not That Whitewater), Wall St. J., January 26, 2008, http://blogs.wsj.com/law/2007/01/26/pardons-received-in-whitewater-no-not-that-whitewater.

[FN19]. Id.

[FN20]. See State v. Whitewater Eng'g Corp., No. 3AN-S00-5235CR (Alaska Super. Ct. entered judgment Nov. 14, 2001). The

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Whitewater case was in the news again at the end of Governor Frank Murkowski's term in office. Governor Murkowski granted the corporation a pardon. See Megan Holland, Company Off Hook Thanks to Pardon; Family Stunned: Man was killed in an avalanche near Cordova in 1999, Anchorage Daily News, Dec. 24, 2007, at A1.

[FN21]. Cf. Bank of the United States v. Deveaux, 9 U.S. (5 Cranch) 61 (1809); Louisville, Cincinnati, and Charleston R.R. Co. v. Leston, 43 U.S. (2 How.) 497 (1844) (recognizing that corporations can sue and be sued but holding that the court would look to the citizenship of the individuals who comprise the corporation to determine jurisdiction); N.Y. Cent. & Hudson River R.R. Co. v. United States, 212 U.S. 481 (1909) (providing a detailed discussion of the development of corporate liability, including criminal liability).

[FN22]. 62 U.S. 202 (1958).

[FN23]. Id. at 210.

[FN24]. Id. at 209-10 ("There is scarcely an object of general interest for which some association has not been formed .... The powers of the corporation are placed in the hands of a governing body selected by members, who manage its affairs, and who appoint agents that exercise its faculties for the accomplishment of the object of its being. But these agents may infringe the rights of persons who are unconnected with the corporation, or who are brought into relations of business or intercourse with it. As a necessary correlative to the principle of the exercise of corporate powers and faculties by legal representatives, is the recognition of a corporate responsibility for the acts of those representatives.").

[FN25]. See Reed v. Home Sav. Bank, 130 Mass. 443, 445 (Mass. 1881) ("The books of reports for a quarter of a century show that a very large proportion of actions of this nature, both for nonfeasance and for misfeasance, are against corporations.")

[FN26]. See Quigley, 62 U.S. at 213-14; Lakeshore & Michigan Ry. Co. v. Prentice, 147 U.S. 101, 116-17 (1893).

[FN27]. 68 Mass. (2 Gray) 339 (Mass. 1854).

[FN28]. Id. at 353 (upholding the indictment for constructing and maintaining a bridge obstructing navigation on the Acushnet River).

[FN29]. 52 N.E. 445, 446 (Mass. 1899). The contempt arose from a newspaper story about an ongoing civil case. Silas Loring had sued the town of Holden seeking compensation for a piece of land taken by the town during a railroad modification project. Id. The offending story included details about how much the town had offered Loring before the filing of the suit and how much money Loring demanded. Neither fact was admissible in the ongoing trial. Id. at 447. When the presiding judge learned of the story, he, on his own initiative, instituted the contempt proceeding, issued subpoenas for the corporations to appear, and held the corporations in contempt when they appeared. Id. at 445-46.

[FN30]. Id. at 446. ("That a corporation may be indicted for a misfeasance as well as for a nonfeasance had been decided in this commonwealth.").

[FN31]. 212 U.S. 481 (1909).

[FN32]. Id. at 494. The corporations had paid illegal rebates to parties that had shipped sugar on the corporation's railway. Id. at 489-91.

[FN33]. Id. at 494.

[FN34]. See United States v. Hilton Hotels Corp., 467 F.2d 1000, 1004-07 (9th Cir. 1972), and cases cited therein. See also

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United States v. Miller, 676 F.2d 359, 362 (9th Cir. 1982) (holding knowledge and acts of company agents could be imputed to company and were sufficient to sustain criminal convictions against company); United States v. Beusch, 596 F.2d 871, 877 (9th Cir. 1979) (holding company liable for criminal acts of agent committed in scope of agent's employment).

[FN35]. 1 Alaska 217 (D. Alaska 1901).

[FN36]. Id. at 219.

[FN37]. Id.

[FN38]. Id. at 222-23.

[FN39]. Id. at 223.

[FN40]. 68 Mass. (2 Gray) 339, 345-46 (1854) (holding that a corporation could be prosecuted for misfeasance and nonfeasance crimes committed by its agents if committed in the scope of the agent's employment and to benefit the corporation).

[FN41]. Interestingly, a Ninth Circuit court hearing an appeal on an Alaska case expressed some reservations about applying the theory of respondeat superior to impute criminal intent to a corporation. In Empire Printing Co. v. Roden, 247 F.2d 8 (9th Cir. 1957), a case concerning libel claims brought by the former territorial governor, treasurer and highway engineer against a Juneau newspaper, the court provided dicta on point. The court of appeals stated that the doctrine of respondeat superior does not generally apply to impose criminal liability because the requisite mens rea cannot be inferred through agency relationships. Id. at 17.

[FN42]. Alaska Crim. Code Rev. Introduction at 11-14 (Preliminary Report 1976). The Commission was made up of legislators, lawyers, judges, law enforcement officers, and correctional agency personnel. Id. at 11.

[FN43]. See id. at 115-16. The original version of the statute considered by the Criminal Code Revision Commission was based on Or. Rev. Stat. § 161.170 (1971) and was similar to N.Y. Penal Law § 20.20 (1965) and Model Penal Code § 2.07 (1962). Id., Commentary at 1116 (Preliminary Report 1976).

[FN44]. See id.

[FN45]. See id.

[FN46]. Alaska Crim. Code Rev., Part 2 at 27-28 (Tentative Draft 1977). The Commentary explains this change: "[T]he considerations which support holding corporations liable for crimes apply equally to organizations which happen to be unincorporated. This conclusion is embodied in the Proposed Federal Criminal Code § 402 and the Revised Arkansas Criminal Code § 41-402." Id. at 37.

[FN47]. Id. at 36. The definition did not include "government" in the list of included entities; the legislature added that term in 1982. H.C.S. C.S.S.B. 535, 12th Leg., 2d Sess. (Alaska 1982).

[FN48]. See id. (emphasis in original) (explaining the Commission's intent in making this change was to "expand the principle of respondeat superior on an organization" under either scenario).

[FN49]. S.C.S. C.S.H.B. 661, 10th Leg., 2d Sess. (Alaska 1978).

[FN50]. See State v. ABC Towing, 954 P.2d 575, 577 (Alaska Ct. App. 1998).

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[FN51]. Alaska Stat. §01.10.060(a)(8) (2006) ("'[P]erson' includes a corporation, company, partnership, firm, association, organization, business trust, or society, as well as a natural person.").

[FN52]. Alaska Stat. § 11.16.130 (2006).

[FN53]. 954 P.2d 575 (Alaska Ct. App. 1998).

[FN54]. See id. at 576-77.

[FN55]. See id.

[FN56]. Alaska Stat. § 11.81.900(b)(43) (2006). The definition does not include "sole proprietorship." The court of appeals interprets this omission to mean the legislature did not intend to expose such entities to criminal liability in their own right. To the contrary, a sole proprietorship is the alter ego of the sole proprietor and therefore any charges must be alleged against the sole proprietor in his or her individual capacity. ABC Towing, 954 P.2d at 577-78.

[FN57]. 1 William Mead Fletcher et al., Fletcher Cyclopedia of the Law of Private Corporations §§ 1-5 (rev. vol. 2006). The common law fostered this purpose; it did not expose organizations to criminal liability. N.Y. Cent. & Hudson River R.R. Co. v. United States, 212 U.S. 481, 492-93 (1909).

[FN58]. 467 F.2d 1000, 1006 (9th Cir. 1972) (internal citations omitted), cert. denied, 409 U.S. 1125 (1973). The court continued: "Moreover, the strenuous efforts of corporate defendants to avoid conviction, particularly under the Sherman Act, strongly suggests that Congress is justified in its judgment that exposure of the corporate entity to potential conviction may provide a substantial spur to corporate action to prevent violations by employees." Id.

[FN59]. See Steere Tank Lines, Inc. v. United States, 330 F.2d 719, 721 (5th Cir. 1963) ("It is now beyond doubt that a corporation may be held criminally liable.").

[FN60]. That this is the most typical mode of organizational criminal liability is not surprising. Most organizations, do not typically solicit, ratify, adopt criminal conduct, or fail to do something required by law. Alaska Stat. § 11.16.130(a)(1)(B)-(a)(2) (2006).

[FN61]. It was briefly commented on in a third case, Stock v. State, 526 P.2d 3 (Alaska 1974).

[FN62]. 954 P.2d 575 (Alaska Ct. App. 1998).

[FN63]. Id. at 579.

[FN64]. Id. at 577-78.

[FN65]. Further discussion regarding this holding is beyond the scope of this article. However, the author takes issue with the court's reasoning because it needlessly insulates sole proprietorships from criminal liability where one of its agents commits a wrong in furtherance of a business enterprise. The legislature should fix this omission by amending the "organization" definition to specifically include sole proprietorships. See supra note 60 and accompanying text.

[FN66]. 187 P.3d 499 (Alaska Ct. App. 2008).

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[FN67]. Id. at 500.

[FN68]. Id.

[FN69]. Id. at 503-11. The district court also granted a motion for acquittal propounded by the captain of the Arctic Sunrise who had also been convicted. Id. The court of appeals affirmed as to the first count but reversed as to the second. Id.

[FN70]. Id. at 505.

[FN71]. "Stichting" is the Dutch word for "foundation." Id. at 500.

[FN72]. Id. at 501.

[FN73]. Id. at 504.

[FN74]. Id.

[FN75]. Id.

[FN76]. Id. at 505.

[FN77]. See id. at 504. The State further argued that Greenpeace, Inc., Greenpeace International, and SMS were all the same organization but were constructed as separate entities as part of a "shell game" to avoid liability. The court disagreed with this argument as well. Id.

[FN78]. Id. at 505.

[FN79]. See id. at 505-06; see also Alaska Stat. § 11.16.130(a)(1)(B) (2006).

[FN80]. Id. at 506.

[FN81]. Id. This was a somewhat curious conclusion considering the fact that Greenpeace, Inc.'s chief financial officer was on board the Arctic Sunrise at the time of the infractions.

[FN82]. See id. ("It was SMS, not Greenpeace, Inc., that hired and paid for the ship's agent in Portland.... [I]t was SMS's obligation to comply with regulatory requirements for the vessel.").

[FN83]. See Alaska Crim. R. 4(c)(2) (making service difficult by limiting the service of a summons to places "within the jurisdiction of the State of Alaska"); see also Alaska Stat. § 10.06.763 (2006) (service on foreign corporations); Alaska Stat. §10.20.046 (2006) (service on not-for-profit corporations); Alaska Stat. §10.40.130 (2006) (service on religious corporations); and Alaska Stat. §10.50.065 (2006) (service on limited liability companies). But see Alaska Stat. §§10.06.175(b), 06.765 (2006) (allowing the Alaska Commissioner of Commerce, Community and Economic Development to be served if a corporation fails to appoint or maintain a registered agent in the state).

[FN84]. In fact, Alaska's jurisdiction is quite broad. Under section 44.03.010 of the Alaska Statutes, state territorial jurisdiction extends to waters offshore and encompasses the "high seas" to the extent the United States exercises its jurisdiction. The Alaska Supreme Court has interpreted this provision broadly to include all ocean waters seaward of the Alaska coast. See State v. Jack, 125 P.3d 311, 315-16 (Alaska 2005) (allowing defendant to be prosecuted in Alaska for sexual assault that took place onboard

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an Alaska Marine Highway ferry while in Canadian waters during a voyage between Alaska and Washington). Arguably, both entities would have sufficient contacts with the State of Alaska, based on the sailing and operation of the Arctic Sunrise in Alaska waters, to make them subject to the personal jurisdiction of a state court. See Int'l Shoe Co. v. Wash., 326 U.S. 310, 317-19 (1945) (holding contacts exist when the in-state activities of the corporation give rise to the liabilities at issue, or the corporation fails to satisfy obligations that exist due to its in-state activities); Kuk v. Nalley, 166 P.3d 47, 51 (Alaska 2007) (explaining that International Shoe and its progeny significantly broadened the understanding of personal jurisdiction).

[FN85]. See 954 P.2d 575, 577-79 (Alaska Ct. App. 1998). The ABC Towing decision is unsatisfying. Id. The court of appeals favorably compared sole proprietorships and partnerships--both are the alter egos of the proprietor or partners, both exist solely to carry out the business purpose for which they were created, and both are not common law "legal entities." Id. Nevertheless, the court interprets the definition of "organization" in a way that treats the two entities differently, i.e., partnerships can be prosecuted, sole proprietorships cannot. Id. The ruling is defensible from a statutory construction standpoint, but it is unsatisfactory from a public policy standpoint. The same policy arguments that support the prosecution of partnerships for criminal offenses apply to sole proprietorships. See id. There is no reason these entities should be treated differently.

[FN86]. See supra notes 63-81 and accompanying text.

[FN87]. See State v. Lee, 999 P.2d 755, 761 (Alaska 2000) (noting Alaska courts use federal Sherman Act cases to construe Alaska antitrust law); State v. Abbott, 498 P.2d 712, 717 (Alaska 1972) (holding where no Alaska cases are on point, court may rely on federal cases that discuss a similarly worded federal statute); Langfeldt-Haaland v. Saupe Enter., Inc., 768 P.2d 1144, 1147 (Alaska 1989) (Moore, J., dissenting) (noting Alaska courts rely on interpretations of federal rules when interpreting a similarly worded Alaska rule).

[FN88]. See, e.g., Braswell v. United States, 487 U.S. 99, 110 (1988) (citing Bellis v. United States, 417 U.S. 85, 90 (1974)).

[FN89]. Meyer v. Holley, 537 U.S. 280, 285 (2003); Burlington Indus., Inc. v. Ellerth, 524 U.S. 742, 756 (1998); see also N.Y. Cent. & Hudson R.R. v. United States, 212 U.S. 481, 494 (1909) ("[A] corporation is held responsible for acts not within the agent's corporate powers strictly construed, but which the agent has assumed to perform for the corporation when employing the corporate powers actually authorized, and in such cases there need be no written authority under seal or vote of the corporation in order to constitute the agency or to authorize the act.").

[FN90]. United States v. Philip Morris USA, Inc., 449 F. Supp. 2d 1, 892-93 (D.D.C. 2006) ("[I]f a corporate agent exercises the authority conferred upon him and performs an act within the course of his employment, the corporation is liable--even if the act was unlawful or was done contrary to instructions or policies, as long as the agent acted with an intent to benefit the corporation."); United States v. Cincotta, 689 F.2d 238, 241-42 (1st Cir. 1982) ('[C]riminal liability may be imposed on the corporation only where the agent is acting within the scope of his employment. That, in turn, requires that the agent be performing acts of the kind which he is authorized to perform, and those acts must be motivated--at least in part--by an intent to benefit the corporation.').

[FN91]. United States v. Hilton Hotels Corp., 467 F.2d 1000 (9th Cir. 1972); see also Bank of U.S. v. Deveaux, 9 U.S. (5 Cranch) 61 (1809); Louisville, Cincinnati & Charleston R.R. Co. v. Leston, 43 U.S. (2 How.) 497 (1844).

[FN92]. 467 F.2d 1000 (9th Cir. 1972).

[FN93]. Id. at 1002.

[FN94]. Id. at 1005.

[FN95]. Id. at 1007 (affirming trial court's ruling excluding a jury instruction that precluded criminal liability where the employee's acts were unauthorized by the corporation).

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[FN96]. Id. ("The purchasing agent was authorized to buy all of appellant's supplies. Purchases were made on the basis of specifications, but the purchasing agent exercised complete authority as to the source. He was in a unique position to add the corporation's buying power to the force of the boycott. Appellant could not gain exculpation by issuing general instructions without undertaking to enforce those instructions by means commensurate with the obvious risks.").

[FN97]. In United States v. Potter, 463 F.3d 9 (1st Cir. 2006), the First Circuit squarely rejected an argument that a corporation might fend off liability by adopting abstract rules that no agent can make an unlawful price-fixing contract or that no driver may exceed the speed limit. Id. at 25-26 (citing United States v. Automated Med. Labs., Inc., 770 F.2d 399, 406 & n. 5 (4th Cir. 1985)). Thus, a corporation may be charged and convicted, even if there is a specific company directive forbidding the questioned acts. The court explained that this is simply an extension of familiar agency law principles: the principal is held liable for acts done on its account by an agent which are customarily actions the agent is authorized to perform. Potter, 463 F.3d at 26 (citing H. Reuschlein & Gregory, The Law of Agency and Partnership 167 (1990) (footnote omitted)).

The Fourth Circuit adopted very similar reasoning in United States v. Basic Constr. Co., wherein it rejected a corporation's attempt to insulate itself from liability using evidence that the corporation had expressly forbidden the conduct at issue. 711 F.2d 570, 573 (4th Cir. 1983), cert. denied, 464 U.S. 956 (1983).

The Restatement (Second) of Agency explains the general rule these decisions expound by way of an illustration: P directs the salesman in selling guns, never to insert a cartridge while exhibiting a gun. A, a salesman, does so, and negligently harms a bystander. Notwithstanding P's instructions otherwise, the salesman's act is within the scope of employment. Restatement (Second) of Agency § 230, illus. 1 (1958) (forbidden acts).

[FN98]. United States v. Beusch, 596 F.2d 871, 878 (9th Cir. 1979).

[FN99]. See, e.g., Basic Constr. Co., 711 F.2d at 572-73 (allowing a jury to consider a company's antitrust compliance policy in the prosecution of the company for Sherman Act antitrust violations by its employees who rigged bidding on state road paving contracts); Potter, 463 F.3d at 26 (allowing a jury to consider a company president's specific instructions to a subordinate not to make illegal payments in considering fraud charges against company who bribed a state representative).

[FN100]. 596 F.2d at 877.

[FN101]. Id.; see also Liu v. Republic of China, 892 F.2d 1419, 1428-29 (9th Cir. 1989) (having purpose to benefit the principal is required, rather than actual benefit, if agent's actions are to be imputed to the principal).

[FN102]. 770 F.2d 399 (4th Cir. 1985).

[FN103]. Id. at 407-08.

[FN104]. Id. at 407 (emphasis in original; internal citations omitted).

[FN105]. 307 F.2d 120 (5th Cir. 1962).

[FN106]. Id. at 129. The employees falsified documents related to shipments of oil through a pipeline. The employees personally profited by this deceit, but their employer, the owner of the oil, lost money. Id.

[FN107]. 909 P.2d 354 (Alaska 1996).

[FN108]. No. S-8368, 1999 WL 33958767 (Alaska Jan. 27, 1999).

[FN109]. 120 P.3d 1053 (Alaska 2005).

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[FN110]. 1999 WL 33958767, at *2 (citing Los Ranchitos v. Tierra Grande, Inc., 861 P.2d 263 (N.M. App. 1993)).

[FN111]. 821 F.2d 844 (1st Cir. 1987).

[FN112]. Id. at 856 (internal citations omitted) (quoting United States v. T.I.M.E.-D.C., Inc., 381 F.Supp. 730, 738 (W.D. W. Va. 1974) ("[A] corporation cannot plead innocence by asserting that the information obtained by several employees was not acquired by any one individual who then would have comprehended its full import. Rather the corporation is considered to have acquired the collective knowledge of its employees and is held responsible for their failure to act accordingly.")).

[FN113]. See Riss & Co. v. United States, 262 F.2d 245, 250 (8th Cir. 1958); Inland Freight Lines v. United States, 191 F.2d 313, 315 (10th Cir. 1951); Camacho v. Bowling, 562 F. Supp. 1012, 1025 (N.D. Ill. 1983); United States v. T.I.M.E.-D.C., Inc., 381 F. Supp. 730, 738-39 (W.D. W. Va. 1974); United States v. Sawyer Transp., Inc., 337 F. Supp. 29 (D. Minn. 1971), aff'd, 463 F.2d 175 (8th Cir. 1972); People v. Am. Med. Ctrs. of Mich., Ltd., 324 N.W.2d 782, 793 (Mich. Ct. App. 1982); State v. Zeta Chi Fraternity, 696 A.2d 530, 535 (N.H. 1997). The author is unaware of any similar Alaska or Ninth Circuit cases.

[FN114]. H. Lowell Brown, Successor Corporate Criminal Liability: The Emerging Federal Common Law, 49 Ark. L. Rev. 469, 471 (1996) (citing Okla. Natural Gas Co. v. Okla., 273 U.S. 257, 259 (1927)).

[FN115]. Id.

[FN116]. 359 U.S. 271 (1959).

[FN117]. Id. at 271.

[FN118]. Id. at 272-73.

[FN119]. Id. at 272.

[FN120]. See id. at 272-74. The applicable Maryland statute provided that dissolution did not "'abate any pending suit or proceeding by or against the corporation.'" Id. at 273 (citing Flack's Md. Code Ann., art. 23, § 78(a) (1951)). The applicable Delaware statute provided that "any 'proceeding' begun by or against a corporation before or within three years after dissolution shall continue 'until any judgments, orders, or decrees therein shall be fully executed.'" Id. (citing Del. Code Ann. tit. 8, § 278 (1953)).

[FN121]. Id. at 273-74.

[FN122]. See, e.g., United States v. Mobile Materials, Inc., 776 F.2d 1476, 1479-80 (10th Cir. 1985) (holding Sherman Act and mail fraud prosecutions of Oklahoma corporation and partnership, both of which dissolved prior to their indictments, did not abate under Oklahoma statutory law); United States v. Polizzi, 500 F.2d 856, 906-09 (9th Cir. 1974) (Duniway, J., concurring) (noting that criminal charges against surviving corporation of a merger, formed when a former New York company merged into its New York parent corporation, that arose from the criminal conduct of the former subsidiary, did not abate under New York corporation law which contains a saving statute preserving claims against merged or consolidated corporations); United States v. San Diego Grocers Ass'n, Inc., 177 F. Supp. 352, 354-55 (C.D. Cal. 1959) (holding that Sherman Act prosecution against California corporations that dissolved before indictments were filed did not abate under California Code where Code contains section extending life of dissolved corporations for the purpose of defending actions against it); Commonwealth v. Lavelle, 555 A.2d 218, 230 (Pa. Super. Ct. 1989) (holding that state corruption prosecution against successor corporation did not abate under Pennsylvania law where there was a de facto merger or fraudulent transaction).

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[FN123]. 973 P.2d 93 (Alaska 1999).

[FN124]. Id. at 94-95.

[FN125]. Id. at 94.

[FN126]. Id.

[FN127]. Id.

[FN128]. Id.

[FN129]. See id. at 95 n.4. (citing Hood Bros. Partners, L.P. v. USCO Distrib. Servs. Inc., 140 F.3d 1386, 1387-88 (11th Cir. 1998) (finding that a survival statute extended the life of a corporation for litigation purposes)).

[FN130]. Alaska Stat. § 10.06.678(a)-(b) (2006).

[FN131]. Gossman, 973 P.2d at 95-99. If Gossman were to obtain a judgment against Greatland, he could seek to recover the damages from Anadrill because Anadrill purchased all of Greatland's liabilities. Id. at 99.

[FN132]. 359 U.S. 271 (1959).

[FN133]. See Odom v. Lee, 999 P.2d 755, 761 (Alaska 2000) (Alaska courts use federal Sherman Act cases to construe Alaska antitrust law); see also State v. Abbott, 498 P.2d 712, 717 (Alaska 1972) (where no Alaska cases on point, court may rely on federal cases discussing similarly worded federal statute).

[FN134]. See United States v. Polizzi, 500 F.2d 856, 908 (9th Cir. 1974) (Duniway, J. concurring); People v. Boyce, 509 N.E.2d 776, 778 (Ill. App. 2d Dist. 1987); People v. Pymm Thermometer Corp., 591 N.Y.S.2d 459, 460 (N.Y. App. Div. 1992).

[FN135]. See Univ. of Alaska v. Thomas Architectural Products, Inc., 907 P.2d 448, 450 (Alaska 1995) (recognizing that Washington survival statutes supplant the common law rule of abatement and prolong the life of a corporation so that it can be sued); Hartwell v. State, 423 P.2d 282, 283 (Alaska 1967).

[FN136]. Gossman, 973 P.2d 95-99.

[FN137]. See id. Under Alaska law, corporations, prior to dissolution, must provide for their outstanding liabilities by purchasing liability insurance, setting aside assets, or having a successor assume its liabilities. Id. at 99 (citing §§Alaska Stat. 10.06.620(2), 06.668(1)). Anadrill had assumed all of Greatland's liabilities and this would include any judgment plaintiff Gossman obtained from his lawsuit. Id. The State would face a similar situation if it successfully prosecuted a dissolved corporation. Depending on how the corporation provided for its post-dissolution liabilities, the State may try to collect the penalties imposed against an insurance policy, against a successor corporation, or against a finite pool of assets set aside prior to the corporation's dissolution. In that final scenario, the assets might be insufficient, particularly if the corporation left numerous creditors, and the State could get stuck with a judgment it cannot collect (or not easily collect without some veil-piercing litigation).

[FN138]. Alaska Stat. §10.20.450 (2006).

[FN139]. Alaska Stat. §10.50.440 (2006).

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[FN140]. Melrose Distillers, Inc. v. United States, 359 U.S. 271, 274 (1959) (holding that corporations cannot be sent to jail, they can only be fined).

[FN141]. Under section 12.55.035(c)(1) of the Alaska Statutes, an organization can be fined up to a million dollars for felony offenses or misdemeanor offenses that result in death, up to two hundred thousand dollars for Class A misdemeanor offenses, up to twenty five thousand dollars for Class B misdemeanor offenses, and up to ten thousand dollars for violations. Alternatively, greater fines can be imposed under sections 12.55.035(c)(2) or (3) of the Alaska Statutes, which allow for fines up to three times the pecuniary gain realized, or three times the damages caused by the offense.

[FN142]. Alaska Stat. §12.55.035(e) (2006).

[FN143]. The court considers a defendant's prospects for rehabilitation, the need to confine or isolate the defendant to prevent further public harm, the extent to which the sentence to be imposed will deter the defendant as well as other members of the community from future criminal conduct, and the extent to which the sentence will reaffirm societal norms or the community's condemnation of the conduct. See Alaska Stat. § 12.55.005; State v. Chaney, 477 P.2d 441, 443 (Alaska 1970).

[FN144]. Defense attorneys commonly argue that the State should not seek the full measure of fines authorized by section 12.35.055 of Alaska Statutes because doing so would preclude the organization from devoting resources to correct the problem that led to the violation, or to pay restitution. This is a fair argument in many instances.

[FN145]. Probation is imposed by the sentencing court and can be up to ten years. Alaska Stat. § 12.55.090(c) (2006).

[FN146]. In response to Congressional oversight hearings regarding the mismanagement of federal contracts, the Office of Management and Budget developed a government-wide debarment and suspension system in the early 1980s. See Brief History of EPA's Debarment Program, http:// www.epa.gov/ogdunix1/sdd/history.htm (last visited Oct. 9, 2008).

[FN147]. The EPA is statutorily required to debar companies convicted of violations of section 508 of the Clean Water Act or section 306 of the Clean Air Act. The EPA also has the discretionary authority to suspend or debar companies based on indictments, information or adequate evidence involving environmental crimes, contract fraud, embezzlement, theft, forgery, bribery, poor performance, non-performance, or false statements. See Suspension and Debarment Program, http://www.epa.gov/ogdunix1/sdd/debarment.htm (last visited Oct. 10, 2008.) Other executive branch agencies also have the authority to suspend and debar.

[FN148]. Based on the Author's anecdotal observations that the federal government is very active in Alaska and therefore contracts with many Alaskan companies for services and products.

[FN149]. While the state has legislative authority to debar entities, it rarely does so. State debarment is controlled by sections 36.30.635-36.30.685 of the Alaska Statutes. The grounds for debarment are set out in section 36.30.640 of the Alaska Statutes and include a broad range of unethical or fraudulent conduct. Nevertheless, these consequences are rarely, if ever, invoked. In response to an inquiry to the Alaska Department of Law, the Department told the Author of only one state suspension or debarment matter. In the Author's view, the State, by failing to more proactively utilize its debarment authority, forgoes a powerful deterrence tool.

[FN150]. Communities can elect to ban the sale or possession of alcohol. Alaska Stat. § 4.11.491 (2006).

[FN151]. The Alaska Statutes criminalize such conduct. Alaska Stat. §§ 4.11.499, 16.200(e) (2006).

[FN152]. Significantly, the plane used to illegally transport the alcohol could be subject to forfeiture. Alaska Stat. §

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4.16.220(a)(3) (2006).

[FN153]. This presumes the agent does not have a personal Fifth Amendment right to assert.

[FN154]. 450 F.3d 46 (1st Cir. 2006).

[FN155]. 487 U.S. 99 (1988).

[FN156]. 450 F.3d at 49-50 (holding that the Fifth Amendment privilege is a personal privilege enjoyed only by individuals). The Fifth Amendment's privilege "'is designed to prevent the use of legal process to force from the lips of the accused individual the evidence necessary to convict him or to force him to produce and authenticate any personal documents or effects that might incriminate him.'" Id. (quoting United States v. White, 322 U.S. 694, 698 (1944)). This is true even if the records incriminate the custodian personally. Id. (citing Bellis v. United States, 417 U.S. 85, 88 (1974)).

[FN157]. 718 P.2d 962, 967-68 (Alaska 1986).

[FN158]. See id. at 968.

[FN159]. Id. ("While we are not limited by the federal courts in interpreting our own constitution, in this instance we are not persuaded by [the appellant's] arguments to interpret the Alaska self-incrimination provision more broadly than the federal courts have construed the fifth amendment.").

[FN160]. See also United States v. Petraia Mar., Ltd., 489 F. Supp. 2d 90, 94-99 (D. Me. 2007) (discussing the analogous provision under the federal rules).

[FN161]. See Klawock Heenya Corp. v. Dawson Constr., 778 P.2d 219, 220 (Alaska 1989) (the exclusion covers statements that "merely 'concern' the employee's duties" (citations omitted)).

[FN162]. The rule provides, "[i]f a defendant corporation fails to appear after being duly summoned, a plea of not guilty shall be entered by the court if the court is empowered to try the offense for which the summons was issued and the court may proceed to trial and judgment without further process." Alaska R. Crim. Proc. 4(a)(3). The rule does not define "corporation" and the author is not aware of any case that interprets this rule. Admittedly, a court could interpret "corporation" to be narrower than the term "organization" as it is used in section 11.16.130 (2006) of the Alaska Statutes. It is therefore unclear whether other types of organizations could be tried in absentia.

[FN163]. Alaska Pattern Jury Instruction 1.07, "Evaluation of Evidence," is one such example. It instructs jurors "not be influenced by sentiment, prejudice, passion or public opinion" in evaluating the evidence. Criminal Pattern Jury Instruction Committee, Pattern Jury Instruction 1.07, available at http://www.state.ak.us/courts/ins/1.07.doc.

[FN164]. This is true notwithstanding Alaska Pattern Jury Instruction 1.48, "Corporate Defendant," which instructs juries not to treat a corporate defendant any differently than it would an individual defendant. Criminal Pattern Jury Instruction Committee, Pattern Jury Instruction 1.48, available at http://www.state.ak.us/courts/ins/1.48.doc.

[FN165]. To be sure, if such options exist, defense counsel will suggest it to the prosecution.

[FN166]. This list is not exhaustive or universally applicable. Depending on the circumstances, other factors not listed may be relevant and some listed factors may be irrelevant.

[FN167]. A sentencing court may suspend criminal fines for the period of probation. Alaska Stat. §§12.55.080, 12.55.090

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(2006). Such "suspended fines" are used as a "hammer" to force a defendant to comply with the conditions of probation the court imposes. If, during the probation period, the defendant does not comply with these conditions, the prosecution can petition the sentencing court to revisit the sentence and impose all or a portion of the sentence that was suspended. Those determinations are made by the trial judge pursuant to a preponderance of the evidence standard. See Wallace v. State, 829 P.2d 1208, 1210 (Alaska Ct. App. 1992); Andrew v. State, 835 P.2d 1251, 1254 (Alaska Ct. App. 1992).

[FN168]. Alaska Stat. §4.16.051 (2006).

[FN169]. As explained supra Part IV.A, organizations do not have Fifth Amendment protection and may be compelled to make statements against their interest.

[FN170]. These defendants were prosecuted as codefendants under case numbers 3DI-07-016CR, 3DI-07-017CR, 3DI-07-018CR, 3DI-07-019CR, respectively (Alaska Dist. Ct. information filed Jan. 5, 2007).

[FN171]. Information at 7, State v. Strategica Imp.-Exp. Fin. Group, LLC, 3DI-07-018CR (Nov. 26, 2007).

[FN172]. Id. at 18.

[FN173]. Id.

[FN174]. Id. at 4, 7-8.

[FN175]. Id. at 7-10 .

[FN176]. Id.

[FN177]. Id. at 15.

[FN178]. Id. at 17.

[FN179]. Id.

[FN180]. Id. at 18.

[FN181]. See Alaska Admin. Code tit. 18, § 34.030 (2006); Alaska Stat. § 17.20.305 (2006).

[FN182]. See Alaska Stat. § 17.20.305 (2006).

[FN183]. Information at 1-2, State v. Strategica Imp.-Exp. Fin. Group, LLC, 3DI-07-018CR (Nov. 26, 2007).

[FN184]. State v. Jeremy Oliver, 3DI-07-015CR (Alaska Dist. Ct. judgment entered Nov. 26, 2007); State v. Wild Alaska Seafood, LLC, 3DI-07-016CR (Alaska Dist. Ct. judgment entered Nov. 26, 2007); State v. Strategica Imp.-Exp. Fin. Group, 3DI-07-017CR (Alaska Dist. Ct. judgment entered Nov. 26, 2007).

[FN185]. State v. Oliver, 3DI-07-015CR (Alaska Dist. Ct. judgment entered Nov. 26, 2007); State v. Wild Alaskan Seafood Co., LLC, 3DI-07-016CR (Alaska Dist. Ct. judgment entered Nov. 26, 2007).

[FN186]. Information at 8-11, State v. Strategica Imp.-Exp. Fin. Group, LLC, 3DI-07-018CR (Nov. 26, 2007).

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[FN187]. Though Oliver had few assets, there was a financial interest that the Author suspects prompted Oliver to plea the case on his behalf and on behalf of Wild Alaskan Seafood Company. When Oliver formed that company, he included his father Michael, a real estate agent in California, as a member. Information at 7, State v. Strategica Imp.-Exp. Fin. Group, LLC, 3DI-07-018CR (Nov. 26, 2007). Oliver's father had assets and was troubled about his potential financial exposure for the company's liabilities. The father signed off on the plea agreement for Wild Alaskan Seafood Company on the understanding that he would not be a prosecution target and would most likely not have to personally satisfy the restitution judgment entered against Wild Alaskan Seafood Company. Michael Oliver Aff., State v. Wild Alaska Seafood, LLC, 3DI-07-016CR.

[FN188]. State v. Strategica Imp.-Exp. Fin. Group, LLC, 3DI-07-018CR (Alaska Dist. Ct. judgment entered Nov. 26, 2007). Strategica's restitution was paid up-front. The plea agreement required Strategica to pay the total restitution amount prior to the company's change of plea and sentencing. Id.

[FN189]. State v. Enis, 3DI-07-019CR (Alaska Dist. Ct. dismissal signed Nov. 23, 2007).

[FN190]. Both Enis and Strategica warranted prosecution for the same reasons. The discussion herein is limited to Strategica because of the focus of this article on organizational criminal liability.

[FN191]. Salmon processing is by its very nature a risky undertaking. Catches, and the market, vary from year to year and can always be impacted by factors--fish counts, weather events, economic uncertainties--that are beyond anyone's control.

[FN192]. Information at 6-8, 11, State v. Strategica Imp.-Exp. Fin. Group, LLC, 3DI-07-018CR (Nov. 26, 2007).

[FN193]. Id. at 18.

[FN194]. Id. at 8.

[FN195]. See, e.g., Press Release, Sarah Palin, Governor, State of Alaska, Palin Asks for Changes to Fish Farm Proposal (Apr. 4, 2007), available at http://gov.state.ak.us/archive-51004.html.

[FN196]. For example, in pollution cases, resolutions often require defendant companies to implement environmental compliance management systems-- detailed plans that dictate the specific procedures and safety measures the company is required to implement for a period of time. These compliance agreements are typically more stringent than any planning or contingency plan requirements imposed by statute or regulation. In other words, to resolve the criminal charges, organizations will agree to be far more proactive in guarding against future infractions. Such agreements are not only helpful, but also provide good publicity for both the organization and the prosecution.

25 Alaska L. Rev. 175

END OF DOCUMENT

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March 15, 2010

Memorandum

TO: Representative Max Gruenberg
FROM: Patricia Young, Manager
RE: Fines for Organizations Convicted of Criminal Offenses
LRS Report 10.204

You asked about fines for organizations convicted of criminal offenses. You were particularly interested in knowing such fines at the federal level and in a few other states.

The table on the following page presents maximum fines for organizations convicted of generalized levels of criminal offenses. As you will see, Delaware and Alaska appear to have the highest fines among states in this small sample. Unlike Alaska, however, neither Delaware nor Maine cap a fine for an offense resulting in death.

We attach the federal guidelines for sentencing of organization. As you will note, the sentencing scheme for organizations other than those deemed to exist for criminal purposes is far more complex than that in the states we identified. As such, we were unable to place federal fines within our matrix. We note, however, that the base for determining fines for organizations runs from the greatest of (1) $5,000 to $72,500,000 in fines, or (2) the amount of the pecuniary gain to the organization, or (3) the amount of the pecuniary loss caused by the organization, to the extent the loss was caused intentionally, knowingly, or recklessly.[1]

We hope this information is helpful. Please let us know if you have questions or need additional information.

[1] USSG, § 8C2.4, 18 U.S.C.A. Determining the Fine—Other Organizations; Base Fine.

Fines for Organizations Convicted of Criminal Offenses, Sample State Provisions

state	Citation	Most Serious Felony	2nd Level Felony	Most Serious Misdemeanor (not resulting in death)	2nd Level Misdemeanor	Violation		Alternatives / Additions		
Alaska	AS 12.55.035 (c)	$ 1,000,000 (for death) (felony or misdemeanor)		$ 200,000	$ 25,000	$ 10,000	or	3x pecuniary gain	or	3x pecuniary damage or loss
Arkansas	ACA § 5-4-201	$ 30,000		$ 5,000	$ 2,000	$ 200	or	2x pecuniary gain		
Delaware	11 Del. C. § 4208	court discretion (for death)	$ 500,000	$ 250,000	$ 75,000	$ 10,000	or	3x pecuniary gain	or	3x pecuniary damage or loss
Maine	17-A M.R.S.A. § 1301 (3)	any amount (for death)	$ 100,000	$ 40,000	$ 20,000	$ 10,000	or	2x pecuniary gain		
Mississippi	Miss. Code Ann. § 97-11-53	$ 5,000					and	barred from doing business with the state or other public entity for 5 years		
North Dakota	ND ST § 12/1-32-01.1	$ 50,000	$ 35,000	$ 15,000	$ 10,000		and	required to disclose conviction to victims by mail or by advertising in designated area		
Ohio	ORC § 2929.31	$ 100,000	$ 25,000	$ 5,000	$ 4,000	$ 1,000				

Notes : States' criminal statutory schemes vary widely in format. As such, our classification of crimes represent maximum amounts for generalized levels of crimes.
Information for Mississippi are specific to offenses involving public officials.
Sources: State Statutes available through Westlaw.

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March 15, 2010

Memorandum

TO: Representative Max F. Gruenberg
FROM: Roger Withington, Legislative Analyst
RE: Adjusting the Fines for Organizations Provisions of Alaska Statute 12.55.035(c)(1)(A through D) for Inflation
LRS Report 10.206

You asked about the fines delineated in Alaska Statute 12.55.035(c)(1)(A through D). Specifically, you asked for us for a brief history of these provisions. You also asked us to adjust the fines for inflation from the date the fines became law. We summarize these amendments and adjustments in Table 1.

Alaska Statute 12.55.035(c) first became law by Section 12 Chapter 166 SLA 1978 and read as follows:

> (c) Upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of
>
> (1) $100,000; or
>
> (2) an amount which is three times the pecuniary gain realized by the defendant as a result of the offense.

Using Consumer Price Index Information (CPI) from the Alaska Department of Labor and Workforce Development, the fine stated in AS 12.55.035(c)(1), adjusted for inflation from 1978 through 2009, would be approximately $273,140.

Section 1 Chapter 142 SLA 1990 amended Alaska Statute 12.55.035(c)(1) and created subsections A through D. This Session Law stated the following:

> (c) Upon conviction of an offense, a defendant that is an organization may be sentenced to pay a fine not exceeding the greater of
>
> (1) an amount that is
>
> (A) $500,000 for a felony offense or for a misdemeanor offense that results in death;
>
> (B) $200,000 for a class A misdemeanor offense that does not result in death;
>
> (C) $25,000 for a class B misdemeanor offense that does not result in death;
>
> (D) $10,000 for a violation;

Again, adjusting these amounts from 1990 using Alaska Department of Labor and Workforce Development CIP information, today subsection A would be approximately $808,364; subsection B $323,346; subsection C $40,418; and subsection D $16,167.28.

Alaska Statute 12.55.035(c)(1) was amended again by Section 2 Chapter 131 SLA 2002. This Session Law amended AS 12.55.035(c)(1)(A) to read:

> (A) $1,000,000 for a felony offense or for a misdemeanor offense that results in death;

Adjusting this amount from 2002, using Alaska Department of Labor and Workforce Development CIP information, subsection A would be approximately $1,212,035 today.

Table 1: Fines for Organizations Provisions of Alaska Statute 12.55.035(c)(1)(A through D), and Adjustments to These Fines to Account for Inflation

Section 12 Chapter 166 SLA 1978			Section 1 Chapter 142 SLA 1990			Section 2 Chapter 131 SLA 2002		
Subsection	Initial Amount	Adjusted Amount	Subsection	Initial Amount	Adjusted Amount	Subsection	Initial Amount	Adjusted Amount
Section 1	$100,000	$273,139.6	A	$500,000	$808,364.25	A	$1,000,000	$1,212,035
			B	$200,000	$323,345.70			
			C	$25,000	$40,418.21			
			D	$10,000	$16,167.28			

Source: Consumer Price Index Information (CPI) is from the Alaska Department of Labor and Workforce Development, *http://laborstats.alaska.gov/?PAGEID=67&SUBID=285.*

I hope you find this information to be useful. Please do not hesitate to contact us if you have questions or need additional information.

Distributed by Rep Gruenberg

Greenpeace – 2BA-S00-440

Charge: AS 11.46.330 – Criminal Trespass II

- Fine $10,000 w/ $8,000 Suspended
- Probation 1 yr

Ambler Air – 4FA-08-1829

Charge: AS 04.11.499 (Misd) – Liquor Importation – Local Options

- Fine $85,000 w/ $65,000 Suspended
- Probation 4 yrs

Strategica Import Expert Fina – 3DI-07-15

Charge: AR18AAC34 – Animal Health

- Fine $100,000 w/ $100,000 Suspended
- Restitution $180,689 paid in advance. $6,920 Cost Recovery to ADEC. $10,000 Contribution to BBEDC "Salmon Camp"

HB

366

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
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House District 10

Fax

To: Terry Bannister

Fax #: (907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson

Date: March 19, 2010

Re: HB366

Today the HJUD Committee heard HB366 (26-LS1434\E) and passed the bill out of committee with amendment E.2. Please amend the bill accordingly and draft a final CS for HJUD.

Thank you!

Representative_Jay_Ramras@legis.state.ak.us

26-LS1434\E.2
Bannister
3/18/10

AMENDMENT #1

OFFERED IN THE HOUSE

TO: CSHB 366(TRA)

offered by: Rep Gruenberg.

Page 2, following line 2:

Insert a new subsection to read:

"(c) This section does not apply to the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or to another agreement that provides for the interchange, use, or possession of intermodal chassis, intermodal containers, or other intermodal equipment."

Reletter the following subsection accordingly.

ALASKA STATE LEGISLATURE

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REPRESENTATIVE CRAIG JOHNSON
HOUSE DISTRICT 28

HB 366

The purpose of this legislation is to promote safety in the carriage of goods by motor carrier.

A motor carrier must generally comply with the Federal Motor Carrier Safety Regulations while it is transporting goods, and is also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers to provide transportation under contracts in which the motor carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities.

The effect of these indemnification clauses is to eliminate the incentive for the shipper to meet its responsibilities and duties in a prudent and reasonable manner. In essence, such a clause makes the motor carrier the shipper's insurer. Such a shifting of liability through contract completely contradicts sound public policy. One of the primary reasons for assigning legal liability is to persuade the offending party to regulate its behavior. However, where the shipper is at fault but is nevertheless indemnified by the motor carrier, there is nothing the motor carrier can do to change its own behavior to make things safer. That ability lies solely with the shipper.

A similar problem with respect to public construction contracts has already been addressed by the legislature in AS 45.45.900.

This legislation voids contractual provisions in motor carrier transportation contracts that indemnify a shipper for the shipper's own negligent or intentional acts or omissions which lead to claims. It maintains the incentive for a shipper that is a party to a motor carrier transportation contract to perform its legal obligations and duties in a prudent and reasonably safe manner.

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MEMORANDUM March 1, 2010

SUBJECT: Sectional summary for HB 366 relating to indemnification agreements that relate to motor carrier transportation contracts (Work Order No. 26-LS1434\R)

TO: Representative Craig Johnson
Attn: Jeanne Ostnes

FROM: Theresa Bannister
Legislative Counsel

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

Section 1. Adds a new provision that prohibits indemnification by motor carriers.

Sec. 45.45.905(a) prohibits a motor carrier and a shipping person from entering into an indemnification agreement related to a transportation services contract. Covers the indemnification of the shipping person, the defense of the shipping person, and the holding of the shipping person harmless from liability for the shipping person's negligence, intentional acts, or intentional omissions.

Sec. 45.45.905(b) states that an agreement that violates (a) is void and unenforceable.

Sec. 45.45.905(c) defines terms used in the section. Defines "motor carrier," "motor vehicle," "shipping person," and "transportation services."

Section 2. States that this Act won't apply to an indemnification agreement unless the agreement is entered into on or after the bill's effective date.

If I may be of further assistance, please advise.

TLB:ljw
10-131.ljw

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHB 366(TRA)
(H) Publish Date: 3/12/10

Identifier (file name): HB366-DOT-CO-03-09-10
Dept. Affected: DOT&PF
Title: Motor Carrier Indemnification Agreements
RDU: Administration and Support
Component: Commissioner's Office
Sponsor: Rep. Johnson
Requester: H TRA
Component Number: 530

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

There is no fiscal impact to the department.

Prepared by: Mary Siroky, Legislative Liaison — Phone 465-4772
Division: Department of Transportation and Public Facilities — Date/Time 3/9/10 6:15 PM
Approved by: Frank Richards, Deputy Commissioner — Date 3/9/2010
Department of Transportation and Public Facilities

(Revised 11/6/2009 OMB)

Jeanne Ostnes

From: Steve Day [DayS@americanfast.com]
Sent: Tuesday, March 02, 2010 7:23 AM
To: Rep. Craig Johnson
Subject: HB 366 An Act relating to indemnification agreements

Dear Representative Craig Johnson,
Alaska State House of Representatives
State Capitol
Juneau, Alaska

Subject: HB 366 An Act relating to indemnification agreements

Dear Representative Johnson,

As a motor carrier, we must comply with the Federal Motor Carrier Safety Regulations as well as while transporting goods, and we are also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers and other transportation providers to perform transportation services under contracts in which the carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities. In essence, such a clause makes the motor carrier the shipper's insurer. Such a shifting of liability through contract completely contradicts sound public policy.

HB 366 provides statutory language that voids contractual provisions in motor carrier transportation contracts that indemnify a shipper for the shipper's own negligent or intentional acts or omissions which lead to claims. HB 366 does not void contractual provisions in which a motor carrier indemnifies a shipper for the motor carrier's own negligent or intentional acts or omissions. Further, HB366 does not establish any new duties or responsibilities for any party and It does not limit the parties' freedom to contract – except to improve safety.

We support HB 366 and request that the bill be heard in committee at the earliest opportunity.

We would like you to consider expanding the bill to cover other transportation providers performing services as a carrier, such as domestic freight forwarders.

Thank you.

Sincerely,

Stephen L. Day
President
American Fast Freight
http://www.american fast.com
450 Shattuck Avenue S., Suite 401
Renton, WA 98055
Phone (253) 926-5000 Fax (206) 624-8334

ANCHORAGE • KENAI • FAIRBANKS

www.wbialaska.com

March 2, 2010

Representative Craig Johnson
Alaska State House of Representatives
State Capitol Room 126
Juneau AK, 99801

Subject: HB 366 – An Act Relating to Indemnification Agreement

Dear Representative Johnson:

As a motor carrier, we must generally comply with the Federal Motor Carrier Safety Regulations as well as while transporting goods, and we are also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers to provide transportation under contracts in which the motor carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities. In essence, such a clause makes the motor carrier the shipper's insurer. Such a shifting of liability through contract completely contradicts sound public policy.

HB 366 provides statutory language that voids contractual provisions in motor carrier transportation contracts that indemnify a shipper for the shipper's own negligent or intentional acts or omissions which lead to claims. HB 366 does not void contractual provisions in which a motor carrier indemnifies a shipper for the motor carrier's own negligent or intentional acts or omissions. Further, HB366 does not establish any new duties or responsibilities for any party and it does not limit the parties' freedom to contract – except to improve safety.

We support HB 366 and request that the bill be heard in committee at the earliest opportunity.

Thank you.

Sincerely,
Weaver Bros., Inc.

James C. Doyle
Vice-President

Cc: WBI – James H. Doyle, President; ATA – Aves Thomson, Executive Director

ANCHORAGE
2230 Spar Ave
Anchorage, AK 99501
(907) 278-4526

KENAI
P.O. Box 2229
Kenai, AK 99611
(907) 283-7057

FAIRBANKS
P.O. Box 60981
Fairbanks, AK 99706
(907) 456-7704

UNITED FREIGHT & TRANSPORT, INC.
1701 E. FIRST AVENUE
ANCHORAGE ALASKA 99501
907-272-5700 FAX 907-272-4324

Dear Representative Craig Johnson,
Alaska State House of Representatives
State Capitol
Juneau, Alaska

Subject: HB 366 An Act relating to indemnification agreements...

March 2, 2010

Dear Representative Johnson,

As a motor carrier, we must generally comply with the Federal Motor Carrier Safety Regulations as well as while transporting goods, and we are also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers to provide transportation under contracts in which the motor carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities. In essence, such a clause makes the motor carrier the shipper's insurer. Such a shifting of liability through contract completely contradicts sound public policy.

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We support HB 366 and request that the bill be heard in committee at the earliest opportunity.

Thank you.

Sincerely

Frank Monfrey

Alaska West Express, Inc.
1048 Whitney Road
Anchorage, AK 99501
(907) 279-9515
(800) 478-2855
Fax: (907) 272-8152

March 3, 2010

Representative Craig Johnson
716 West 4th Avenue
Anchorage, Alaska 99501

Dear Representative Johnson,

I have read both HB 366 and the comments by Aves Thompson regarding it and want to commend you for what I believe is a very good piece of legislation. In our previous discussions I have mentioned how some of the bigger carriers and contractors in the business have the ability to challenge and push back and end up with contracts that are fair to both parties while smaller ones do not have that same ability. Ideally you end up with a true Knock for Knock document with each party responsible for their own actions.

We have been very successful in getting that type of result over the last few years but there are still major companies operating with the goal of transferring all liability to the carrier regardless of who creates the situation. I am currently in negotiations with a major US based drilling contractor who operates internationally and is trying to do that very thing. Basically indemnify themselves for any and all actions even if caused by their personnel and make the carrier responsible.

I wish you well in your efforts and certainly hope for a successful outcome. If I can be of assistance in any way please don't hesitate to contact me directly at 907-339-5101 or e-mail at deanmc@awe.lynden.com.

Alaska West Express Inc.

Best Regards,

Dean C. McKenzie
President

Copy: Aves Thompson
Executive Director ATA

PAF
Pacific Alaska Freightways

2812 70th Ave East
Fife, WA 98424
Tel (253) 926-3292 Fax (253) 926-3161

Dear Representative Craig Johnson,
Alaska State House of Representatives
State Capitol
Juneau, Alaska

Subject: HB 366 An Act relating to indemnification agreements...

Dear Representative Johnson,

As a motor carrier, we must generally comply with the Federal Motor Carrier Safety Regulations as well as while transporting goods, and we are also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers to provide transportation under contracts in which the motor carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities. In essence, such a clause makes the motor carrier the shipper's insurer. Such a shifting of liability through contract completely contradicts sound public policy.

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We support HB 366 and request that the bill be heard in committee at the earliest opportunity.

Thank you.

Sincerely,

Wes Renfrew
Alaska Operations Manager
Pacific Alaska Freightways

Midnight Sun
TRANSPORTATION SERVICES, INC.
2040 E 79TH
Anchorage, AK 99507

Dear Representative Craig Johnson,
Alaska State House of Representatives
State Capitol
Juneau, Alaska

Subject: HB 366
An Act relating to
indemnification agreements...

Dear Representative Johnson,

As a motor carrier, we must generally comply with the Federal Motor Carrier Safety Regulations as well as while transporting goods, and we are also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers to provide transportation under contracts in which the motor carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities. In essence, such a clause makes the motor carrier the shipper's insurer. Such a shifting of liability through contract completely contradicts sound public policy.

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We support HB 366 and request that the bill be heard in committee at the earliest opportunity.

Thank you.

Sincerely,

R C Onstott
General Manager

Wrightway Auto Carriers, Inc.
101 West Whitney Road
Anchorage, Alaska 99501
(907) 277-4549 Fax (907) 272-7570

MARCH 2, 2010

Representative Craig Johnson
Alaska state house of Representatives
State Capitol
Juneau, Alaska

Subject: HB 366
An Act relating to indemnification agreements

Dear Representative Johnson:

As a motor carrier, we must generally comply with the Federal Motor Carrier Safety Regulations as well as while transporting goods, and we are also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers to provide transportation under contracts in which the motor carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities. In essence, such a clause makes the motor carrier the shipper's insurer. Such a shifting of liability through contract completely contradicts sound public policy.

HB 366 provides statutory language that voids contractual provisions in motor carrier transportation contracts that indemnify a shipper for the shipper's own negligent or intentional acts or omissions which lead to claims. HB 366 does not void contractual provisions in which a motor carrier indemnifies a shipper for the motor carrier's own negligent or intentional acts or omissions. Further, HB 366 does not establish any new duties or responsibilities for any party and it does not limit the parties' freedom to contract-except to improve safety.

We support HB366 and request that the bill be heard in committee at the earliest opportunity.

Sincerely,

William F. Wright

Quality Service Since 1950

2726

BIG STATE LOGISTICS, INC.

Big State Logistics, Inc.
P.O. Box 71540
Fairbanks, AK. 99707-1540
Telephone (907) 452-8600
1-800-478-8660
Fax (907) 452-8651

Big State Logistics, Inc.
P.O. Box 63007
Valdez, AK. 99686-3007
Telephone (907) 835-5600
1-800-478-5602
Fax (907) 835-5651

Dear Representative Craig Johnson,
Alaska State House of Representatives
State Capitol
Juneau, Alaska

Subject: HB 366
An Act relating to indemnification agreements.....

Dear Representative Johnson,

As a motor carrier, we must comply with the Federal Motor Carrier Safety Regulations while transporting goods, we are also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers to provide transportation under contracts in which the motor carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities. In essence, such a clause makes the motor carrier the shipper's insurer. Such a shifting of liability through contract completely contradicts sound public policy.

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We support HB 366 and request that the bill be heard in committee at the earliest opportunity.

Thank you.

Sincerely,

Mervin Gilbertson
President
Big State Logistics, Inc.

Alaska Trucking Association, Inc.
3443 Minnesota Drive · Anchorage, Alaska 99503 · Phone (907) 276-1149 · Fax (907) 274-1946
www.aktrucks.org
The authoritative voice of the trucking industry in Alaska

HB 366
Indemnification Agreements in Motor Carrier Contracts
House Transportation Committee Hearing
1:00 pm, March11, 2010
Aves D. Thompson, Executive Director
Alaska Trucking Association

Thank you. Madame Chair and members of the committee, I am Aves Thompson, Executive Director of the Alaska Trucking Association. The Alaska Trucking Association is a state wide organization representing the interests of our nearly 200 member companies from Barrow to Ketchikan. Freight movement represents a large chunk of our economy and impacts all of us each and every day. The simple truth is that "if you got it, a truck brought it."

One of the priorities of the Alaska Trucking Association is to achieve tort reform in the area of indemnification agreements in motor carrier transportation contracts.

Background: A motor carrier must generally comply with the Federal Motor Carrier Safety Regulations while it is transporting goods, and is also subject to additional common law or statutory duties or responsibilities. Likewise, shippers or other parties frequently have legal duties and responsibilities to fulfill when they provide goods for transportation. More and more frequently, however, shippers are pressuring motor carriers to provide transportation under contracts in which the motor carrier

contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities.

The Committee Substitute for HB 366 provides statutory language that voids contractual provisions in motor carrier transportation contracts that indemnify either a shipper or the motor carrier for either the shipper's or the motor carrier's own negligent or intentional acts or omissions which lead to claims. We believe that this approach sets a level playing field where each party is responsible for their own actions. HB366 does not establish any new duties or responsibilities for any party and it does not limit the parties' freedom to contract – except to improve safety. This language allows each party to control their own employees or agents to improve any unsafe practices.

A similar problem with respect to public construction contracts has already been addressed by the legislature in AS 45.45.900.

What the legislation does:

- It voids contractual provisions in motor carrier transportation contracts that indemnify a shipper or a motor carrier for negligent or intentional acts or omissions of the other party which lead to claims.
- It maintains the incentive for a shipper and a motor carrier that is a party to a motor carrier transportation contract to perform its legal obligations and duties in a prudent and reasonably safe manner.

Alaska Trucking Association, Inc.
3443 Minnesota Drive · Anchorage, Alaska 99503 · Phone (907) 276-1149 · Fax (907) 274-1946
www.aktrucks.org
The authoritative voice of the trucking industry in Alaska

What the legislation does not do:

- It does not void contractual provisions in which a shipper or motor carrier indemnifies the other party to the contract for their own negligent or intentional acts or omissions.
- It does not establish any new duties or responsibilities for any party.
- It does not limit the parties' freedom to contract – except to improve safety.

We have worked with industry groups and in particular, BP, who agree that the committee substitute constitutes an equitable condition where both parties to the motor carrier transportation contract are responsible for their own negligent actions or inactions that lead to claims.

The Alaska Trucking Association supports this bill.

Aves Thompson
Executive Director
March 11, 2010

If you got it, a truck brought it...

OCEMA

Ocean Carrier Equipment Management Association

c/o 1850 M Street, N.W., Suite 900, Washington, D.C. 20036

March 15, 2010

VIA E-MAIL

The Honorable Jay Ramras
State Capitol Room 120
Juneau, AK 99801

Re: URGENT – Alaska HB 366

Dear Chairman Ramras:

Please accept these comments regarding House Bill 366 which is now pending before the Judiciary Committee and is set to be considered on March 19, 2010. I am writing on behalf of the Ocean Carrier Equipment Management Association (OCEMA), an organization of 20 ocean-going common carriers that provide intermodal transportation of cargoes in the foreign commerce of the United States. OCEMA's members serve Alaska manufacturers, distribution centers, and retailers by way of rail and motor carriage of international intermodal shipping containers. Many thousands of OCEMA members' containers and chassis are interchanged to truckers annually for over-the-road transport to and from localities in Alaska.

We are concerned that HB 366, as written, could void the indemnity provisions in intermodal equipment interchange agreements and other intermodal transportation contracts which would severely disrupt transportation arrangements to and from Alaska businesses by jeopardizing insurance coverage. This would significantly impact intermodal transportation through and within Alaska. The insurance market for intermodal activity is very limited and coverage is often contingent upon effective risk management arrangements such as the indemnity provisions contained in interchange agreements.

The interchange of intermodal equipment between those who provide the equipment, notably ocean carriers or railroads, and motor carriers is typically achieved by way of private interchange agreements that have been negotiated by representatives of all the modes of transportation, as well as other interested parties such as terminal operators and equipment leasing companies. Currently, the majority, but not all, intermodal interchanges are conducted under the Uniform Intermodal Interchange and Facilities Access Agreement (UIIA) administered by the Intermodal Association of North America (IANA). The UIIA is a standard industry contract that was developed with the participation of ocean, motor, and rail carriers in order to achieve efficiencies and streamline the interchange process. This type of arrangement is essential to the free flow of US export and import containerized goods.

The UIIA covers liability and other issues related to the interchange of intermodal equipment (i.e. containers, chassis, etc.) between the parties. It drastically reduces the paperwork burden for all parties involved by eliminating having to sign individual interchange contracts with each equipment provider that is participating in this agreement. It eliminates repeating these arrangements for each of millions of shipments. It also reduces the number of insurance filings for the motor carrier to provide proof of insurance. Only one certificate must be issued to the UIIA and this information is then disseminated to the individual Equipment Providers by IANA.

While there are over 5000 members of the UIIA, including motor carriers, water carriers, and railroads, not all ocean carriers and not all motor carriers use this agreement. Consequently, there are other interchange agreements in use, similar to the UIIA, which would likewise not be exempted from the scope of the bill. Moreover, should the UIIA be terminated or replaced, there would be no available alternative for intermodal transportation. While we applaud your efforts to improve public policy regarding indemnification agreements, we do not believe this is the intent of HB 366.

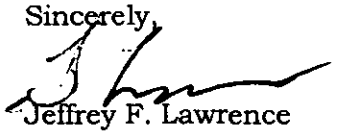
We support your efforts in Alaska as we have in other states. Most recently, we have supported similar legislation in Virginia, Maryland, Kansas, Colorado, Connecticut, Missouri, and Tennessee. By working with legislators in those states we were able to ensure that public policy in this area correctly protects all parties.

Accordingly, we would respectfully ask that you include an exception for intermodal transportation in HB 366 such as the following:

> This section shall not apply to the Uniform Intermodal Interchange and Facilities Access Agreement administered by the Intermodal Association of North America or other agreements providing for the interchange, use or possession of intermodal chassis, containers or other intermodal equipment."

We believe this is consistent with the objectives and purposes of the bill. Thank you for your consideration of this matter. If there is any way we can be of help in this effort, please do not hesitate to contact the undersigned or Mr. Rob Freeman at (202) 463-2515.

Sincerely,



Jeffrey F. Lawrence
Executive Director
Ocean Carrier Equipment Management Association

March 19, 2010

Representative Jay Ramras
Chair
House Judiciary Committee
State Capitol Room 120
Juneau, Alaska 99801

Chair Ramras and Members of the Judiciary Committee,

The Alaska State Chamber of Commerce has a long history of supporting tort reform legislation; therefore, we offer our support for CSHB 366, an Act relating to indemnification agreements that relate to motor carrier transportation contracts. The State Chamber firmly believes that CSHB 366 constitutes an equitable condition, where both parties of a motor carrier transportation contract, are held responsible for their own action or inaction regarding negligence.

CSHB 366 voids contractual provisions in motor carrier transportation contracts that indemnify a shipper or a motor carrier for negligent or intentional acts or omissions of the other party, which all too often lead to liability claims or court action. Additionally, the bill maintains the incentive for a shipper and a motor carrier to perform their legal obligations and duties in a prudent and safe manner.

More and more frequently, shippers are pressuring motor carriers to provide transportation under contracts in which the motor carrier contractually agrees to indemnify and hold harmless the shipper for the shipper's own failure to meet its legal duties and responsibilities. CSHB 366 attempts to accomplish this for all shippers and all motor carriers. CSHB366 does not establish any new duties or responsibilities for any party and it does not limit the parties' freedom to contract – except to improve safety. This language allows each party to control their own employees or agents to improve any unsafe practices.

Your support and passage from committee of CSHB 366 is appreciated.

Yours in economic prosperity,

Wayne A. Stevens
President/CEO

ALASKA STATE
CHAMBER
OF COMMERCE

Headquarters
217 2nd Stree
Suite 20
Juneau
Alaska 9980
(907) 586-232
FAX 463-551

Regional Office
601 W. 5th Ave
Suite 70
Anchorage
Alaska 9950
(907) 278-272
FAX 278-664

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*** This document is current through the 2009 First Called Session ***
*** Federal case annotations: Sept. 30, 2009 postings on Lexis.com ***
*** State case annotations: Dec. 15, 2009 postings on Lexis.com ***

TRANSPORTATION CODE
TITLE 7. VEHICLES AND TRAFFIC
SUBTITLE E. VEHICLE SIZE AND WEIGHT
CHAPTER 623. PERMITS FOR OVERSIZE OR OVERWEIGHT VEHICLES
SUBCHAPTER B. GENERAL PERMITS

Tex. Transp. Code § **623.0155**

§ **623.0155.** Indemnification From Motor Carrier Prohibited

(a) A person may not require indemnification from a motor carrier as a condition to:

(1) the transportation of property for compensation or hire by the carrier;

(2) entrance on property by the carrier for the purpose of loading, unloading, or transporting property for compensation or hire; or

(3) a service incidental to an activity described by Subdivision (1) or (2), including storage of property.

(b) Subsection (a) does not apply to:

(1) a claim arising from damage or loss from a wrongful or negligent act or omission of the carrier; or

(2) services or goods other than those described by Subsection (a).

(c) In this section, "motor carrier" means a common carrier, specialized carrier, or contract carrier that transports property for hire. The term does not include a person who transports property as an incidental activity of a nontransportation business activity regardless of whether the person imposes a separate charge for the transportation.

(d) A provision that is contrary to Subsection (a) is not enforceable.

History:

Acts 1997, 75th Leg., ch. 1061, effective September 1, 1997.

*285 S.W.3d 9, *; 2009 Tex. App. LEXIS 1662, ***

CMA-CGM (AMERICA) INC., Appellant v. EMPIRE TRUCK LINES INC., Appellee

NO. 01-07-00187-CV

COURT OF APPEALS OF TEXAS, FIRST DISTRICT, HOUSTON

285 S.W.3d 9; 2009 Tex. App. LEXIS 1662

March 5, 2009, Opinion Issued

SUBSEQUENT HISTORY: Released for Publication June 23, 2009.

PRIOR HISTORY: [1]**
On Appeal from the 280th District Court, Harris County, Texas. Trial Court Cause No. 2005-22806.
CMA-CGM (Am.), Inc. v. Empire Truck Lines Inc., 2009 Tex. App. LEXIS 1316 (Tex. App. Houston 1st Dist., Feb. 26, 2009)

COUNSEL: For APPELLANT: F.E. Billings, Billings & Solomon, P.L.L.C., Houston, TX.

For APPELLEE: Brian K. Tully, Kenneth R. Breitbeil, McFall, Breitbeil & Schults, P.C., Houston, TX.

JUDGES: Panel consists of Justices Taft, Keyes, and Alcala.

OPINION BY: Elsa Alcala

OPINION

[*18] SUPPLEMENTAL OPINION ON MOTION FOR REHEARING

This Court issued a supplemental opinion in this case on February 26, 2009. We withdraw that opinion and issue this one in its place.

Appellee, Empire Truck Lines Inc., filed a motion for rehearing asserting for the first time that section 623.0155 of the Texas Transportation Code renders the indemnification provision of the Uniform Intermodal Interchange and Facilities Access Agreement unenforceable. *See* TEX. TRANSP. CODE ANN. § 623.0155 (Vernon 1999). In its motion for rehearing, Empire acknowledges that section 623.0155 "was not raised by either parties's brief to this Court, or in the summary judgment papers below." As a general rule, we do not address new arguments presented in a rehearing. *See Tex. Mut. Ins. Co. v. Ruttiger*, 265 S.W.3d 651, 658 n.8 (Tex. App.--Houston [1st Dist.] 2008, pet. filed).

In our opinion and judgment issued December 4, 2008, we reversed the trial court's order and remanded the cause for further proceedings consistent with this opinion. We determined that, **[**2]** under the terms of the Agreement, the Agreement provided that Maryland law shall govern the validity, construction, enforcement, and interpretation of the Agreement. We also held that the Agreement is enforceable under Maryland law. Other than the instruction that the trial court must conduct proceedings that are consistent with our opinion, we have not limited the issues that may be presented upon remand to the trial court. The implications, if any, of section 623.0155 have never been addressed by us or the trial court, and, upon proper presentation, may be addressed by the trial court upon remand. We therefore do not address the new argument concerning section 623.0155. *See Port Neches-Groves Indep. Sch. Dist. v. Pyramid Constructors, L.L.P.*, 201 S.W.3d 679, 681 (Tex. 2006) (declining to review issue that was not presented to trial court because parties can **[*19]** develop record as they deem necessary upon remand to trial court).

We deny Empire Truck Lines Inc.'s motion for rehearing.

Elsa Alcala

Justice

Panel consists of Justices Taft, Keyes, and Alcala.

CMA-CGM (AMERICA) INC., Appellant v. EMPIRE TRUCK LINES INC., Appellee

NO. 01-07-00187-CV

COURT OF APPEALS OF TEXAS, FIRST DISTRICT, HOUSTON

285 S.W.3d 9; 2008 Tex. App. LEXIS 9032

December 4, 2008, Opinion Issued

SUBSEQUENT HISTORY: Rehearing denied by CMA-CGM (Am.), Inc. v. Empire Truck Lines Inc., 2009 Tex. App. LEXIS 1316 (Tex. App. Houston 1st Dist., Feb. 26, 2009)

PRIOR HISTORY: [1]**
On Appeal from the 113th District Court, Harris County, Texas. Trial Court Cause No. 2005-22806.

CASE SUMMARY
PROCEDURAL POSTURE: Appellant trucking company challenged an order of the 113th District Court, Harris County, Texas, which dismissed its crossclaim for **indemnification** against appellee equipment provider in a case concerning the terms of the parties' Uniform Intermodal Interchange and Facilities Access Agreement that provided that the laws of Maryland would govern over the interpretation of the agreement.

OVERVIEW: An independent contractor for the trucking company was sent to transport cargo in a storage container leased by the equipment provider. The cargo was to be transported on an adjustable-length chassis, but the chassis broke apart while its length was being adjusted, causing the contractor to be injured. The court held that the agreement was enforceable under Maryland law, which was the law to be applied under the terms of the agreement. Applying Maryland law to the dispute did not violate the public policy of Texas because both Maryland and Texas allowed **indemnification** for a party's own negligence. The court concluded that the agreement was enforceable as an insurance contract. The terms of the agreement expressly provided that the trucking company would indemnify the equipment provider against any and all claims arising out of or related to the trucking company's use or maintenance of the equipment. The agreement was effectively an insurance contract, which was the exception to the general rule that contracts would not be construed to indemnify a person against his own negligence unless an intention to do so was expressed in those very words or in other unequivocal terms.

OUTCOME: The court reversed the trial court's order dismissing the equipment provider's crossclaim and remanded the cause to the trial court for further proceedings consistent with the court's opinion.

CORE TERMS: indemnification, indemnify, provider, indemnity, insured, interchange, enforceable, summary judgment, unequivocal, spoliation, chassis, general rule, own negligence, insurance contract, public policy, addendum, insurance policy, insurance

coverages, performing, asterisk, cargo, hirer, cross-claim, asserting, own acts, matter of law, legal liability, liability insurance, liability policy, indemnity agreement

LEXISNEXIS® HEADNOTES - Hide

Civil Procedure > Federal & State Interrelationships > Choice of Law > General Overview

Contracts Law > Contract Conditions & Provisions > Indemnity

HN1 Under Texas procedural law, parties may express in their agreement their choice that the law of a specified jurisdiction will apply to their contract. When the parties reside or expect to perform their respective obligations in different jurisdictions, they may be uncertain about which jurisdiction's law will govern the construction and enforcement of the contract. In an attempt to avoid this uncertainty, they may express in their agreement their choice that the law of a specified jurisdiction will apply to their contract. Judicial respect for their choice promotes the policy of protecting their expectations. Texas procedural law allows parties to choose the law to be applied in interpreting the substantive terms of an indemnity agreement. More Like This Headnote

Contracts Law > Contract Conditions & Provisions > Indemnity

HN2 In Texas, a party may be indemnified for its own negligence if the **indemnification** agreement meets the "express negligence" test. More Like This Headnote

Contracts Law > Contract Conditions & Provisions > Indemnity

Contracts Law > Contract Interpretation > General Overview

Insurance Law > Claims & Contracts > Policy Interpretation > General Overview

HN3 In Maryland, the general rule is that contracts will not be construed to indemnify a person against his own negligence unless an intention to do so is expressed in those very words or in other unequivocal terms. However, the general rule does not apply to an insurance contract. More Like This Headnote | *Shepardize:* Restrict By Headnote

Civil Procedure > Appeals > Reviewability > Preservation for Review

HN4 A party must obtain a ruling on a motion to preserve error. More Like This Headnote

COUNSEL: For APPELLANT: F. E. Billings, Billings & Solomon, P.L.L.C., Houston, TX.

For APPELLEE: Keith M. Remels ✓, Dow, Golub, Berg & Beverly, LLP, Kenneth R. Breitbeil ✓, McFall, Breitbeil & Shults, P.C., Houston, TX.

JUDGES: Panel consists of Justices Taft, Keyes, and Alcala.

OPINION BY: Elsa Alcala

OPINION

[*11] This appeal concerns the terms of an Uniform Intermodal Interchange and Facilities Access Agreement ("the Agreement") that provides that the laws of Maryland shall govern over the interpretation of the agreement. Appellant, CMA-CGM (America), Inc., appeals the trial court's dismissal of its claims for **indemnification** against appellee, Empire Truck Lines Inc. In three issues, CMA contends that the trial court erred by (1) applying Texas law to the Agreement; (2) ruling that the Agreement was not enforceable; and (3) finding that CMA spoliated evidence by losing the chassis made the subject of this suit. We conclude the Agreement is enforceable under Maryland law, which is the law to be applied under the terms of the Agreement. We also conclude that the issue concerning spoliation instruction is not preserved for appeal because **[**2]** the sanctions order was in favor of a person who is not a party to this appeal and the trial court did not rule on the motion for summary judgment pertaining to the spoliation instruction. We reverse and remand.

Background

Hector Aguirre was an independent contractor truck driver for Empire. Empire sent Aguirre to transport cargo from Longview, Texas to the Port of Houston. The cargo was in a storage container leased by CMA. The cargo was to be transported on an adjustable-length chassis, but the chassis broke apart while its length was being adjusted, causing Aguirre to be injured. Aguirre sued Empire and CMA, as well as other defendants, alleging various causes of action.

CMA filed a cross-claim against Empire asserting the Agreement required Empire **[*12]** to insure, defend, and indemnify CMA for CMA's own legal fault.

The Agreement contains the following definitions:
4. Equipment: Equipment . . . includ[es] . . . chassis . . . .

5. Equipment Owner: The holder of beneficial title to the Equipment, regardless of the form of the title.

. . . .

8. Indemnitees: Provider, Equipment Owner and/or Facility Owner, as their interest may appear.

. . . .

11. **Motor Carrier:** The Party being granted access to the **[**3]** Provider's facilities and/or having physical possession of the Equipment for the purpose of road transport or its designated agent or contractor.

. . . .

14. Provider: the Party authorizing delivery and/or receipt of physical possession of Equipment with a **Motor Carrier.**

Applying the definitions in the Agreement, Empire is the "**Motor Carrier**" and CMA is the "Equipment Provider," as well as an "Indemnitee."

Inserting the names of the companies in place of the general terms, Section F.4, "Liability, Indemnity, and Insurance," of the Agreement states,
4. Indemnity: **[EMPIRE] AGREES TO DEFEND, HOLD HARMLESS AND FULLY INDEMNIFY [CMA], AGAINST ANY AND ALL CLAIMS, SUITS, LOSS, DAMAGE OR LIABILITY, FOR BODILY INJURY, DEATH, AND/OR PROPERTY DAMAGE . . . ARISING OUT OF OR RELATED TO [EMPIRE'S] USE OR MAINTENANCE OF THE EQUIPMENT DURING AN INTERCHANGE PERIOD; THE PERFORMANCE OF THIS AGREEMENT; AND/OR PRESENCE ON THE FACILITY OPERATOR'S PREMISES.**

. . . .

6. Insurance: to the extent permitted by law, [Empire] shall provide the following insurance coverages in fulfillment of its legal liability and obligations contained in this Agreement:
a. A commercial automobile liability policy with a combined single **[**4]** limit of $ 1,000,000 or greater, insuring all Equipment involved in Interchange including vehicles of its agent or contractors; said insurance policy shall name [CMA] as additional insured.

b. A commercial general liability policy with a combined single limit of $ 1,000,000 or greater[.]

c. [Empire] shall have in effect, and attached to its commercial automobile policy, a Truckers Uniform Intermodal Interchange Endorsement (UIIE-1), which includes the coverages specified in Section F.4. . . . .
The Agreement also expressly states, "If it is determined that, at the time of the interchange, [Empire] was not insured in accordance with Section F.6. of this Agreement, [Empire] shall have been in material breach of this Agreement . . . ." The Agreement also provides, "This Agreement, including its Addendum, but only to the extent that its terms do not conflict with this Agreement, contain[s] the entire Agreement of the Parties hereto." Finally, the Agreement states, "Governing Law: The laws of the state of Maryland, the location at the principal place of business of the Intermodal Association of North America shall govern the validity, construction, enforcement and interpretation **[*13]** of this Agreement **[**5]** without regard to conflicts of law principles."

Before Aguirre settled his claims with Empire and CMA, he obtained an order from the trial court granting his motion for sanctions due to CMA's failure to produce the chassis and chassis documentation. The order was entitled, "Order on Plaintiff, Hector Aguirre's Motion for Sanctions Against CMA . . . ." The order provided that CMA would be prohibited from entering evidence of maintenance or repairs done to the chassis, other than as reflected in documents that were produced. The order further decreed that at the time of trial the jury would be given an instruction to presume that CMA "intentionally or negligently destroyed evidence that is harmful to their case and that the jury should presume that the missing evidence would have been harmful" to CMA's case.

When Aguirre settled with Empire and CMA, the only remaining controversy was CMA's cross-claim for **indemnification** from Empire. Empire filed a motion for summary judgment, asserting "[CMA] cannot maintain a claim against Empire." Empire also filed a supplemental motion for summary judgment asserting that, as a matter of public policy, it could not be liable for **indemnification** to CMA **[**6]** for evidence spoliated by CMA. CMA filed a cross-motion for summary judgment asserting that it established all elements of its breach of contract action against Empire as a matter of law. At the hearing on the motions

for summary judgment, the trial court stated that it was not ruling on the motions for summary judgment, but only construing the Agreement as a matter of law. The trial court did not expressly state that it was applying Maryland law, but, immediately before making its ruling, it referred to a case where Maryland law was applied. The trial court announced its decision by stating, "I agree with Empire. I do not think that the contract requires them to indemnify CMA for their own liability." After the hearing, the trial court entered an order stating,

On the 6th day of November, 2006, came on to be heard the motion of [Empire] to dismiss the cross-claim of [CMA] for indemnity because the indemnity agreement . . . was not enforceable, . . . the court being of the opinion that said indemnity agreement is not enforceable, it is

ORDERED that the claims of defendant/cross-plaintiff [CMA], against defendant/cross-defendant [Empire], are dismissed with prejudice to the re-filing **[**7]** of same.

Choice of Law

In its second issue, CMA contends that Maryland law should be applied to interpret the terms of this Agreement. CMA's second issue is premised on the assumption that the trial court applied Texas substantive law to the Agreement. The trial court did not specify whether it was applying Texas or Maryland law to the Agreement, although it appears from the trial court's comments that it was considering Maryland law. Empire responds that indemnity is a procedural issue that should be controlled by the law of the state of Texas, rather than a substantive issue to which the terms of the contract would apply. Empire also responds that applying Maryland law would violate the public policy of Texas because the public policy of the state of Texas limits the rights of parties to contract for indemnity.

HN1 ↑Under Texas procedural law, parties "may express in their agreement their choice that the law of a specified jurisdiction will apply to their contract." *Nexen, Inc. v. Gulf Interstate Eng'g Co.*, 224 S.W.3d 412, 419 (Tex. App.--Houston [1st Dist.] 2006, no pet.) (quoting *Chase Manhattan* **[*14]** *Bank, N.A. v. Greenbriar N. Section II*, 835 S.W.2d 720, 723 (Tex. App.--Houston [1st Dist.] 1992, no writ)). **[**8]** When, as here, "the parties reside or expect to perform their respective obligations in different jurisdictions, they may be uncertain about which jurisdiction's law will govern the construction and enforcement of the contract." *Id.* (citing *Chase Manhattan*, 835 S.W.2d at 723). "In an attempt to avoid this uncertainty, they may express in their agreement their choice that the law of a specified jurisdiction will apply to their contract." *Id.* (citing *Chase Manhattan*, 835 S.W.2d at 723). "Judicial respect for their choice promotes the policy of protecting their expectations." *Id.* (citing *Chase Manhattan*, 835 S.W.2d at 723) (internal citations omitted). Texas procedural law allows parties to choose the law to be applied in interpreting the substantive terms of an indemnity agreement. *See id.* at 419-20.

Although parties may express in their agreement their choice that the law of a specified jurisdiction will apply to their contract, they may not "thwart or offend the public policy of the state whose law would otherwise apply." *Id.* (citing *Chase Manhattan*, 835 S.W.2d at 723). The Texas Supreme Court has noted that "application of the law of another state is not contrary to the fundamental **[**9]** policy of the forum merely because it leads to a different result than would obtain under the forum's law." *DeSantis v. Wackenhut Corp.*, 793 S.W.2d 670, 680 (Tex. 1990). "Moreover, the fact that the law of another state is materially different from the law of this state does not itself establish that application of the other state's law would offend the fundamental policy of Texas." *Id.*

Applying Maryland law to this dispute does not violate the public policy of Texas because both Maryland and Texas allow **indemnification** for a party's own negligence. HN2 In Texas, a party may be indemnified for its own negligence if the **indemnification** agreement meets the "express negligence" test. *See* Storage & Processors, Inc. v. Reyes, 134 S.W.3d 190, 192 (Tex. 2004) (citing Ethyl Corp. v. Daniel Constr. Co., 725 S.W.2d 705, 707 (Tex. 1987)). Maryland also allows such provisions to be enforced if they are "clear and unequivocal." *See* Mass Transit Admin. v. CSX Transp., Inc., 349 Md. 299, 708 A.2d 298, 308 (Md. 1998) (citing Heat & Power Corp. v. Air Prods. & Chems., Inc., 578 A.2d 1202, 1206-07, 320 Md. 584 (Md. 1990)). Here, neither party disputes that if the Agreement meets the appropriate test ("express negligence" in Texas **[**10]** or "clear and unequivocal" in Maryland), then the indemnity provision of the Agreement is enforceable. Texas and Maryland have the same general rule, but the states differ in that Maryland recognizes an exception to the general rule, as explained more fully below. Although Maryland law is not identical to Texas law, the application of Maryland law would not "thwart or offend the public policy of" Texas because Texas and Maryland have the general policy to allow **indemnification** for one's own negligence. *See* Nexen, 224 S.W.3d at 419.

Because parties "may express in their agreement their choice that the law of a specified jurisdiction will apply to their contract," we hold that, in accordance with the terms of the Agreement entered into by the parties, Maryland law shall govern the validity, construction, enforcement and interpretation of this Agreement. *See id.* [1]

FOOTNOTES

1 We also note that parties may not "require that their contract be governed by the law of a jurisdiction which has no relation whatsoever to them or their agreement," but no one here challenges this Agreement on that ground. *See* Nexen Inc. v. Gulf Interstate Engineering Co., 224 S.W.3d 412, 419 (Tex. App.--Houston [1st Dist.] 2006, no pet.) **[**11]** (quoting Chase Manhattan Bank, N.A. v. Greenbriar N. Section II, 835 S.W.2d 720, 723 (Tex. App.--Houston [1st Dist.] 1992, no writ)) .

We sustain CMA's second issue.

[*15] Enforceability of the Indemnity Provision Under Maryland Law

In its first issue, CMA contends the trial court erred by dismissing the suit on the grounds that the Agreement was not enforceable. We conclude that this Agreement is enforceable as an insurance contract.

HN3 In Maryland, the general rule is that "contracts will not be construed to indemnify a person against his own negligence unless an intention to do so is expressed in those very words or in other unequivocal terms." Mass Transit, 708 A.2d at 308 (quoting Heat & Power, 578 A.2d at 1206-07). However, the general rule does not apply to an insurance contract. *Id.* (citing Heat & Power, 578 A.2d at 1208).

In *Mass Transit*, the Maryland Supreme Court upheld an indemnity provision by concluding that the Mass Transit Administration (MTA) provided **indemnification** for the liability of

CSXT for CSXT's own acts and omissions in "unequivocal terms." Id. at 304. The contractual language in the contract between MTA and CSXT stated,
(b) **Indemnification** by [MTA]

(1) [MTA] agrees to indemnify, **[**12]** save harmless, and defend CSXT from any and all casualty losses, claims, suits, damages or liability of every kind arising out of the Contract Service under this Agreement, up to a maximum amount of One Hundred Fifty Million Dollars ($ 150,000,000), per occurrence, during the term of this Agreement, as excepted or limited by the terms of subsections (a), (c), (d), and (e), infra. This maximum **indemnification** amount shall include any expenses for outside manpower, for legal representation and for other extraordinary expenses of handling individual claims for [MTA].
. . .
Id. at 300. MTA agreed "to self-insure Five Million Dollars ($ 5,000,000) per occurrence of any casualty claim or loss for which it is responsible" under the contract. *Id.* MTA agreed, at its cost and expense, to procure and maintain "excess liability insurance coverage commonly provided by Railroad operations liability insurance" in the amount of $ 145 million in excess of the $ 5 million "self-insured retention." *Id.* The contract further provided: "This insurance shall cover liability assumed by [MTA] under this [contract] . . . and shall name the State of Maryland and [MTA] as insured. Such insurance policies shall **[**13]** name CSXT as an additional insured for CSXT's operation of the Contract Service . . . ." *Id.*

The terms of the Agreement here are similar to the terms in the contract in *Mass Transit* by stating "[Empire] agrees to defend, hold harmless and fully indemnify [CMA], against any and all claims, suits, loss, damage or liability, for bodily injury, death, and/or property damage . . . arising out of or related to [Empire's] use or maintenance of the equipment . . . ." *See id.* We conclude that the terms of the Agreement expressly provide that Empire will indemnify CMA against any and all claims arising out of or related to Empire's use or maintenance of the equipment. *See id.*

[*16] We also determine, based on an examination of the purpose of the Agreement, that the Agreement here is similar to the contract in *Mass Transit*. *See id.* In *Mass Transit*, the court examined whether the party giving the **indemnification** was the hirer or the party performing the service. Id. at 303-04. The court noted that the party performing the service would more likely indemnify the party that hired it to perform the service to protect the hirer from vicarious liability. *Id.* The court explained,
Heat & Power involved a promise **[**14]** by one who was hired to perform a service to indemnify the person for whom the service was to be performed. In that relationship the person for whom the service is to be performed incurs a risk that the conduct of the person providing the service will create vicarious liability on the part of the hirer, or that the conduct may involve a non-delegable duty. Consequently, we require that there be no ambiguity and that the **indemnification**, if intended to embrace the sole negligence of the indemnitee, be unequivocal. The **indemnification** provision in the instant matter, however, reverses the direction of the **indemnification** from that more commonly encountered. Here, the hirer of the service gives the indemnity, and the party performing the service is indemnified.
Id. (citations omitted). As in *Mass Transit*, this Agreement provides that Empire, the party performing the service and using the equipment, is to indemnify CMA, the party who is providing the equipment, in order to cover the risk of vicarious liability to CMA stemming from Empire's use of the equipment. *See id.*

In *Mass Transit*, the court also noted that the terms of the contract required self-insurance and excess liability insurance **[**15]** to cover any claim or loss for which MTA was responsible under the contract. *See* id. at 300. Like the contract in Mass Transit, this

Agreement requires Empire to provide "insurance coverages in fulfillment of its legal liability and obligations contained in this Agreement."

Our decision is in line with the courts that have analyzed *Mass Transit* to determine that the terms used in the Uniform Intermodal Interchange and Facilities Access Agreement provide for **indemnification** for the equipment provider's own acts or omissions. *See* Garcia v. Maersk, Inc., No. 03-CV-5697 FB RML, 2005 U.S. Dist. LEXIS 12357, 2005 WL 1492380, at *4 (E.D.N.Y. June 24, 2005); *Lopez v. Louro*, No. 01 CIV 2490(JSM), 2002 U.S. Dist. LEXIS 1020, 2002 WL 91273, at *1 (S.D.N.Y. Jan. 23, 2002). Moreover, another federal court interpreting an agreement with language identical to the Agreement in this case determined that the agreement was one of insurance, stating,

> First, although the Interchange Agreement is not an insurance contract or policy, *per se*, it is an agreement pursuant to which [**Motor Carrier**] agreed to indemnify [Equipment Provider], defend [Equipment Provider] and procure insurance which would include [Equipment Provider] as an additional insured for claims, suits, **[**16]** losses, damages or liabilities for bodily injury or death arising out of [**Motor Carrier**]'s use of the chassis or container owned by [Equipment Provider]. These obligations and the terms of art invoked therein are typically part of an insurance contract with an insurance company. Accordingly, the scope of the various obligations has been examined and interpreted by courts and agencies as a part of a body of "insurance law". Therefore, reference to decisions involving these same obligations as they arise in insurance policies is appropriate, as the clear intent of Section F of **[*17]** the Interchange Agreement is to sort through the insurance related obligations of the signatories. Indeed, Section F is titled "Liability, Indemnity and Insurance" and as provider of the indemnity, short of passing that obligation off to an insurance company, [**Motor Carrier**] is for all practical purposes an insurer and [Equipment Provider] the insured.

NYK Line v. P. B. Industries, Inc., No. TH02-0074-C-T/H, 2004 U.S. Dist. LEXIS 13956, 2004 WL 1629613, at *4 (S.D. Ind. Apr. 20, 2004) (footnote omitted). This Agreement is effectively an insurance contract, which is the exception to the *Mass Transit* general rule that "contracts will not be construed **[**17]** to indemnify a person against his own negligence unless an intention to do so is expressed in those very words or in other unequivocal terms." *See* *Mass Transit*, 708 A.2d at 303 (quoting *Heat & Power*, 578 A.2d at 1206-07).

Empire nevertheless contends *Mass Transit* is distinguishable and that the New York Federal District Court cases are in error because the agreement in the *Mass Transit* case "includ[ed] the requirement that MTA insure CSXT and a specific requirement that MTA add CSXT as an insured under MTA's insurance policy." *See* *id.* at 301. Empire contends the Agreement here did not require Empire to provide insurance for CMA. To support this contention, Empire refers to the addendum to the Agreement, a "Certificate of Liability Insurance" that includes an "Equipment Provider List." On this list, certain equipment providers have either a single or double asterisk next to their names. The addendum provides, "The **[**18]** companies above indicated with a single asterisk require that you make them additional insured on your General Liability Policy. The companies above indicated with a double asterisk require that you make them additional insured on your Cargo and/or Trailer Interchange coverages." Empire asserts that because CGA does not have an asterisk by its name, it did not have to be named an additional insured and that *Mass Transit* therefore does not apply. As noted above, the Agreement provides that the addendum is part of the Agreement, "but only to the extent that its terms do not conflict with this Agreement." The plain language of the Agreement requires Empire to provide "insurance coverages in fulfillment of its legal liability and obligations contained in this Agreement." Under the *Mass Transit* analysis, this indicates a clear and unequivocal intention to indemnify CMA for its own acts or omissions. To the extent that the addendum conflicts with that clear and unequivocal intent, the

Agreement provides that it is not binding upon the parties.

We hold that the Agreement is enforceable under Maryland law and that the trial court erred by dismissing the suit on the grounds that the Agreement **[**19]** was not enforceable.

We sustain CMA's first issue.

Spoliation

In its third issue, CMA challenges the trial court's order imposing a spoliation instruction as a discovery sanction. CMA contends that the trial court erred by deciding that at the time of the trial of Aguirre's claims, it would prohibit CMA from entering certain evidence and instruct the jury that the missing evidence should be presumed to be harmful to CMA's case. However, Aguirre and CMA settled the case without a jury trial, and they asked the trial court to accept the settlement. To the extent that CMA is challenging the spoliation order granted in favor of Aguirre, CMA has waived any complaint because the case settled without **[*18]** a jury trial. *See* Baker v. Fed. Exp. Corp., 224 S.W.3d 390, 394 (Tex. App.--Houston [1st Dist.] 2006, no pet.) (finding party waived complaint concerning spoliation instruction where trial court did not instruct jury and parties asked court to accept settlement agreement); *see also* Psych. Inst. of Am., Inc. v. O'Neill, 819 S.W.2d 805, 806 (Tex. 1991) (orig. proceeding) (holding mandamus concerning discovery dispute was rendered moot by settlement of underlying case).

In this appeal, CMA also asserts **[**20]** that the spoliation ruling affects whether we should apply Texas law or Maryland law. That argument was raised in Empire's motion for summary judgment. However, the trial court expressly stated, and the parties agreed, that the trial court was only construing the Agreement as a matter of law and the court was not ruling on any of the issues raised in the motions for summary judgment. Because the trial court never ruled on the matter of whether the spoliation of evidence would affect which law should be applied, nothing is preserved for our review. *See* TEX. R. APP. P. 33.1(a)(2)(A); De Mino v. Sheridan, 176 S.W.3d 359, 373 (Tex. App.--Houston [1st Dist.] 2004, no pet.) (holding HN4 party must obtain ruling on motion to preserve error). Finding nothing preserved for our review, we overrule CMA's third issue.

Conclusion

We reverse the trial court's order dismissing CMA-CGM (America) Inc.'s cross-claim and remand this cause to the trial court for further proceedings consistent with this opinion.

Elsa Alcala

Justice

Jeanne Ostnes

From: Robert Freeman [rfreeman@sherblackwell.com]
Sent: Thursday, March 18, 2010 11:56 AM
To: Jeanne Ostnes
Cc: Aves Thompson
Subject: RE: List of state with laws and pending bills

Jeanne,

E.2

The first one works best from our point of view as it is the same as what has been included in other states. This in our view will lead to less confusion down the road and insure consistency in maintaining insurance coverage as equipment moves from state to state. However, either amendment will work as both make clear that the new section does not apply to an agreement that provides for the interchange, use or possession of intermodal chassis, intermodal containers, or other intermodal equipment.

Again, thanks you your assistance on this and please let me know if you have additional questions.

Regards.

Rob Freeman
Director Government Relations
Sher & Blackwell LLP
(202) 463-2515

Visit us at http://www.sherblackwell.com

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[redacted]OUSE COMMITTEE REPOR[redacted]

(7)
Date Referred to Committee: March 12, 2010 **FURTHER REFERRALS:**

Date of Committee Action: 3/19/10

The JUDICIARY Committee considered: **HOUSE BILL NO. 366**

"An Act relating to indemnification agreements that relate to motor carrier transportation contracts."
HB 366-MOTOR CARRIER INDEMNIFICATION AGREEMENTS

Recommends it be replaced with [ ] HCS *or* [√] CS *for* HB366 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
DOT	1			√

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Gruenberg	✓			
	Herron	X			
	Dahlstrom	X			
	Holmes	X			
	Gatto	X			
Chair:	RAMRAS	X			
Chair:					

HB

381

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
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House District 10

Fax

To: Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: March 29, 2010

Re: Final HJUD CS for HB381

Today, the HJUD Committee heard and passed HB381 from committee with a title change amendment, the new title shall read:

"An Act relating to self defense in any place where the person has a right to be."

Please draft a final CS

Any questions, give me a call.

Thank you

Representative_Jay_Ramras@legis.state.ak.us

26-LS1534\E
Luckhaupt
3/23/10

CS FOR HOUSE BILL NO. 381( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): REPRESENTATIVES NEUMAN, Stoltze, Peggy Wilson, Keller, Ramras, Tammie Wilson, Olson, Kelly

A BILL

FOR AN ACT ENTITLED

"An Act relating to self defense."

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

*** Section 1.** AS 11.81.335(b) is amended to read:

(b) A person may not use deadly force under this section if the person knows that, with complete personal safety and with complete safety as to others being defended, the person can avoid the necessity of using deadly force by leaving the area of the encounter, except there is no duty to leave the area if the person is

(1) on premises

(A) that the person owns or leases;

(B) where the person resides, temporarily or permanently; or

(C) as a guest or express or implied agent of the owner, lessor, or resident;

(2) a peace officer acting within the scope and authority of the officer's employment or a person assisting a peace officer under AS 11.81.380;

(3) in a building where the person works in the ordinary course of the

person's employment; [OR]

(4) protecting a child or a member of the person's household**; or**

(5) in any place where the person has a right to be.

ALASKA STATE LEGISLATURE

Co-Chair:
House Committee on Natural Resources

Vice Chair
House Committee on Labor and Commerce

Member:
House Committee on Rules, House Special Committee on Economic Development, Trade, and Tourism, and Legislative Budget & Audit Committee

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REPRESENTATIVE MARK NEUMAN

Rep.Mark.Neuman@legis.state.ak.us

March 11, 2010

Representative Jay Ramras, Chairman
House Judiciary Committee

Dear Representative Ramras,

Subject: HB 381: SELF DEFENSE

Attached is a committee package for House Bill 381, "SELF DEFENSE" I would appreciate it if you could schedule this legislation to be heard at your earliest convenience.

Included are the following:

- Current version of the bill.
- Sponsor statement.
- Sectional analysis.
- Background information and documentation.

Please feel free to contact me, or my aide Jim Ellis (465-3820), with any questions.

Thank you for your consideration.

Sincerely,

Representative Mark Neuman

ALASKA STATE LEGISLATURE

Co-Chair:
House Committee on Natural Resources

Vice Chair
House Committee on Labor and Commerce

Member:
House Committee on Rules, House Special Committee on Economic Development, Trade, and Tourism, and Legislative Budget & Audit Committee

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REPRESENTATIVE MARK NEUMAN
Rep.Mark.Neuman@legis.state.ak.us

Sponsor Statement

CS for HB 381
SELF DEFENSE

The CS for HB 381 recognizes that Alaskan residents have right to use deadly force to protect their families, persons and property whether they are at home, work, or in any place they have a right to be present. It does this by expanding your right to stand your ground to where they have a right to be.

By expanding the rights of Alaskans to stand their ground to any place they are legally present we tell our residents that their decision to use deadly force to defend themselves and their families will not be second judged, and makes it clear that it is ***criminals*** who have a duty to retreat.

I believe that HB 381 strengthens the legal recognition of the basic human right of self defense and ask for your support.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 26, 2010

SUBJECT: Sectional Summary - HB 381 (Work Order No. 26-LS1534\R)

TO: Representative Mark Neuman
Attn: Jim Ellis

FROM: Gerald P. Luckhaupt
Legislative Counsel

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

Section 1 of the bill amends AS 11.81.335(b) by adding to the places or locations where a person can use deadly force in self-defense without having to first leave the area.

Section 2 of the bill amends AS 11.81 by adding a new section that establishes that certain situations constitute prima facie evidence that a person's belief that the use of deadly force was reasonable; and requires law enforcement to make a probable cause determination that the force used by a person was unlawful before the person may be arrested.

GPL:plm
10-111.plm

Sec. 11.81.335. Justification: Use of deadly force in defense of self.

(a) Except as provided in (b) of this section, a person who is justified in using nondeadly force in self-defense under AS 11.81.330 may use deadly force in self-defense upon another person when and to the extent the person reasonably believes the use of deadly force is necessary for self-defense against

(1) death;

(2) serious physical injury;

(3) kidnapping, except for what is described as custodial interference in the first degree in AS 11.41.320 ;

(4) sexual assault in the first degree;

(5) sexual assault in the second degree;

(6) sexual abuse of a minor in the first degree; or

(7) robbery in any degree.

(b) A person may not use deadly force under this section if the person knows that, with complete personal safety and with complete safety as to others being defended, the person can avoid the necessity of using deadly force by leaving the area of the encounter, except there is no duty to leave the area if the person is

(1) on premises

(A) that the person owns or leases;

(B) where the person resides, temporarily or permanently; or

(C) as a guest or express or implied agent of the owner, lessor, or resident;

(2) a peace officer acting within the scope and authority of the officer's employment or a person assisting a peace officer under AS 11.81.380;

(3) in a building where the person works in the ordinary course of the person's employment; or

(4) protecting a child or a member of the person's household.

Sec. 11.81.340. Justification: Use of force in defense of a third person.

A person is justified in using force upon another when and to the extent the person reasonably believes it is necessary to defend a third person when, under the circumstances as the person claiming defense of another reasonably believes them to be, the third person would be justified under AS 11.81.330 or 11.81.335 in using that degree of force for self-defense.

Sec. 11.81.350. Justification: Use of force in defense of property and premises.

(a) A person may use nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of an unlawful taking or damaging of property or services.

(b) A person may use deadly force upon another when and to the extent the person reasonably believes it necessary to terminate what the person reasonably believes to be the commission or attempted commission of arson upon a dwelling or occupied building.

(c) A person in possession or control of any premises, or a guest or an express or implied agent of that person, may use

(1) nondeadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the commission or attempted commission by the other of criminal trespass in any degree upon the premises;

(2) deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be a burglary in any degree occurring in an occupied dwelling or building.

(d) *[Repealed, Sec. 7 ch 68 SLA 2006].*

(e) A person

(1) in a vehicle, or forcibly removed from a vehicle, may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be a carjacking of that vehicle at or about the time the vehicle is carjacked;

(2) outside of a vehicle may use deadly force upon another when and to the extent the person reasonably believes it is necessary to terminate what the person reasonably believes to be the theft of that vehicle when another person, other than the perceived offender, is inside of the vehicle; this paragraph does not apply to a person outside of a vehicle who is involved in a dispute with a person inside of the vehicle who is a household member of that person; in this paragraph, "household member" has the meaning given in AS 18.66.990 .

(f) A person justified in using force under this section does not have a duty to leave or attempt to leave the area of the encounter before using force.

(g) In (e) of this section,

(1) "carjacking" means a robbery involving the taking or attempted taking of a vehicle from a person in possession of the vehicle;

(2) "vehicle" means a "motor vehicle" as defined in AS 28.40.100 , an aircraft, or a watercraft.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 381**
() Publish Date:

Identifier (file name): HB381-LAW-CRIM-03-13-10
Title: An Act relating to self defense.
Sponsor: Representative(s) Neuman, Stoltze, Wilson, Keller, Ramras
Requester: Judiciary

Dept. Affected: Law
RDU: CRIMINAL
Component: Criminal Justice Litigation
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services	339.0		339.0	339.0	339.0	339.0	339.0
Travel	1.8		1.8	1.8	1.8	1.8	1.8
Contractual	49.5		49.5	49.5	49.5	49.5	49.5
Supplies	7.8		7.8	7.8	7.8	7.8	7.8
Equipment	1.9		1.9	1.9	1.9	1.9	1.9
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**400.0**	**0.0**	**400.0**	**400.0**	**400.0**	**400.0**	**400.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	400.0		400.0	400.0	400.0	400.0	400.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**400.0**	**0.0**	**400.0**	**400.0**	**400.0**	**400.0**	**400.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time	2		2	2	2	2	2
Part-time							
Temporary							

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

Prepared by: Eileen Donahue, Division Operations Manager — Phone 465-5427
Division: Administrative Services — Date/Time 3/13/10 1:00 PM
Approved by: Daniel S. Sullivan, Attorney General — Date 3/13/2010
Department of Law

(Revised 11/6/2009 OMB)

ANALYSIS CONTINUATION

House Bill 381 expands the places from which a person need not retreat before using deadly force in self-defense to any place the person has a right to be. Thus, even though a person knows that with complete safety to oneself and others the person can leave the area of the encounter, the person is justified in using deadly force if the person is in a place the person has a right to be. There is no time limit when a person could use deadly force and be presumed to be acting in self defense.

HB 381 also adopts evidentiary presumptions that the use of deadly force is reasonable. The prosecution already is required to disprove self-defense beyond a reasonable doubt, and this will make that burden even higher.

This bill will make prosecution of homicide cases more difficult for the prosecution, and it will probably result in more jury trials. The Criminal Division anticipates it would need 2 new FTE attorney positions to handle the increased cases, to both screen referrals and prosecute those that are accepted.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version:
() Publish Date:

Identifier (file name): HB381-DPS-AST-03-12-10
Dept. Affected: Public Safety
Title "An act relating to self defense."
RDU Alaska State Troopers
Component AST Detachments
Sponsor Representative Neuman
Requester House Judiciary
Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill amends AS 11.81.335 (justification for the use of deadly force) by adding areas (exceptions) a person is not required to leave prior to the application of deadly force. This bill also adds a new section that provides prima facie evidence for the justification for the use of deadly force. Finally, this bill prohibits a law enforcement agency from arresting a person for using force permitted under AS 11.81.355.

Passage of this legislation will have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial
Phone 907-247-4480
Division Alaska State Troopers
Date/Time 3/12/10 10:30 AM
Approved by: Joseph Masters, Commissioner
Department of Public Safety
Date 3/12/2010

(Revised 11/6/2009 OMB)

2760

STATE OF ALASKA

DEPARTMENT OF LAW
CRIMINAL DIVISION CENTRAL OFFICE

SEAN PARNELL, GOVERNOR

Mailing: 310 K Street, Suite 308
Anchorage, Alaska 99501
Phone: (907) 269-6250
Fax: (907) 269-7939

March 15, 2010

Hon. Jay Ramras
Chair, House Judiciary Committee
Alaska State Capitol, Room 118
Juneau, Alaska 99801

Re: House Bill 381

Dear Chairman Ramras:

I am writing to express my serious concern over the current language in House Bill 381. Every experienced prosecutor with whom I have spoken about this bill uniformly agrees that it would promote violence and be a bad idea for our state. We believe that as drafted this bill will ***encourage*** unnecessary violence in our state. Whatever source one thinks our laws should be drawn from – the ten commandments which say "thou shall not kill," simple morality, utilitarianism principles of the greater good, or simply the concept that life is sacred –this bill would encourage the needless taking of human life.

AS 11.81.335(b) as currently written sets forth the duty to retreat before resorting to deadly force. It requires that if "with complete personal safety and with complete safety to others being defended, the person can avoid the necessity of using deadly force by leaving the area" then the person must do so. This avoids the ***unnecessary*** loss of life and encourages our citizens to seek ways other than violence to resolve disputes. The addition of subsections 5 and 6 to this statute eradicates the duty to retreat - in fact should they be enacted, there would no longer be a duty to retreat in Alaska. That is to say if person A could avoid killing person B by walking away, he/she would no longer be required to do so, but instead would be authorized ***by law*** to kill person B. This does not promote the protection of our citizens or suggest that Alaska as a state places a high value on life itself. While this is highly unlikely to have been the goal of the bill's sponsors, it is nevertheless the result of what has been proposed. This is best explained by closely examing the language of the proposed changes and additions.

Section 1 of the bill proposes amending AS 11.81.335(b) by adding a subsection (5) that would say there would be no duty to retreat when the person is "in a vehicle" owned, leased, used, or even just occupied with the owner's consent. Here are but just three examples of how this would encourage violence:

First example:

A person picks up a hitchhiker, or offers a ride to someone, and, for whatever reason, a confrontation arises while in the vehicle such that deadly force could be used, but for the duty to retreat. Under the current law the hitchhiker must leave your vehicle if he knows he can do so safely. Under the proposed amendment, that hitchhiker would be authorized to kill the driver instead -- even if he could have simply walked away. These facts are similar of a recent murder trial in Anchorage, but they are close. The defendant was convicted of and sentenced for second-degree murder. The case is now on appeal. Why would we want to say killing another person is okay when it could be avoided? Why would we want to authorize the taking of a life when one could walk away in complete safety?

Second Example:

Joe Smith drives to a party. At the party he gets into an altercation and is thrown out of the party. He goes to his car and gets inside to leave. Before leaving, Mr. Smith sees the person with whom he got into the altercation. Though Mr. Smith is in his car, behind the wheel and ready to leave, he fears the other guy may come after him. Instead of driving off – which he could do with complete personal safety, he gets out of his car and grabs a shotgun from the trunk and kills the other man. Again, these are facts similar to a recent murder trial in Anchorage. The defendant was convicted of and sentenced for manslaughter. The case is now on appeal. This is yet another situation in which our current law requires our citizens to walk away if they can do so with safety, but this proposed change in the law would authorize killing another human being instead.

Third Example:

An occupant in car A points a gun at the occupant in car B. If the occupant in car B can drive away with complete safety, then under the current law he must do so. Under the proposed change, the driver in car B would be authorized by this bill to open fire instead of driving away. The law of self-defense in Alaska requires the state to prove beyond a reasonable doubt a defendant's claim of self-defense is not true. It is difficult to prove a negative. If the state cannot prove the negative beyond a reasonable doubt, then at least the state can try to prove that the driver of car B had a duty to retreat and could have done so. This law would eliminate that duty. That is a recipe for inviting gang violence on our streets. These facts are in fact very similar to another case prosecuted by our department. In 2006 there was a shooting at Reka and Bragaw in Anchorage. Two vehicles with young men exchanging gunfire. One young man was killed and the two men in the other vehicle were convicted of murder. One of those cases is on appeal. This loss of life occurred for one of the participants. What about the innocent bystander? For example, there was the election day shooting in Anchorage when a campaign worker for former Gov. Murkowski was hit by a stray bullet at campaign HQ in Anchorage across from the Sears mall. That case involved two vehicles with young men – not in gangs, but still rivals – who opened fire on one another. While we did prosecute the shooters in that case, do so would have been impossible under this law.

This bill would unintentionally encourage such conduct by making it legal or at least offering a defense – which even if not true – could not be disproved. In each of the four examples the defendants were convicted, but this proposed change would make such prosecutions much harder, if even possible.

The proposed subsection (6) in AS 11.81.330(b) would almost completely eliminate the duty to retreat. That subsection says there is no such duty when a person is "in any place where the person has a right to be." That means in the Diamond Mall, Sears Mall, McDonalds, or any other public location a person is no longer required to walk away from a confrontation, but instead may kill another citizen even if they could have walked away with complete safety. This does not express a value for human life. This does not encourage finding a resolution for disputes other than violence. The only time there would be a duty to retreat is if the person is some place they have no right to be – they must be trespassing, or committing a burglary in order to have such a duty. With this change you might as well simply eliminate the duty to retreat completely from our statutes.

The bill also proposes adding a new section that whittles away some of the other protections put in place to prevent unnecessary taking of human life. Our current self- defense law is set up with both a subjective and objective test to determine when deadly force is authorized. The subjective test means the person using the force believes he/she needs to do so. The objective tests means the "reasonable person" would have concluded the same thing. The added section proposes to eliminate the objective test in several circumstances: burglary, carjacking, and kidnapping. That is it takes away from the jury the question of whether a reasonable person would view a particular event as unlawful force against a person that required a response of deadly force. At first blush this seems reasonable. However, when you examine what is proposed more closely, it becomes very disturbing. To understand why, you must first understand each of the three crimes it references.

Burglary is found in AS 11.46 and not AS 11.41 because it is a crime against property, not a person. Burglary requires a person to enter a building with the intent to commit a crime – theft, vandalism, and assault are all examples. What must be noted though is that no person needs to be in the building in order for this to be a crime. If a person breaks into a home or business to steal something, this is a burglary. If a student breaks into a school to vandalize it, this is a burglary. If a person breaks into a home to assault another person – even if no one is home, this is still a burglary because burglary only addresses the entry of premises with the intent to commit a crime (called a target crime) whether that (target) crime is committed or not. This is why burglary is classified as a crime against property and not against a person.

Under current law ***non***-deadly force may be used to protect property, and deadly force is ***only*** authorized when terminating an arson or attempted arson on a dwelling or occupied building (*See* AS 11.81.350(b)), or when terminating a burglary upon an occupied building or dwelling if the person using the force is in possession or control of that premises, or is a guest. *See* AS 11.81.350(c)).

The current bill would now authorize deadly force against a person who burgles a dwelling whether anyone was home or not. Thus deadly force may be used even when no human life is at risk.

The proposed bill would also authorize ***any*** person to use deadly force as compared to only a person who is in possession or control of or is an invited guest in the dwelling. This means the guy driving down the street may kill a person he thinks is breaking into a home. The state must disprove defense of property, so the state must disprove that a victim was committing burglary. While this new section is fraught with the potential for misunderstandings to lead to the unnecessary loss of human life, there is another more serious problem with this section. This new section authorizes deadly force against a person who is currently committing or ***had committed*** a burglary. This language authorizes vigilantism. It authorizes deadly force against any person whom the person using the force "had reason to believe" ***had*** – past tense – had committed a burglary. This new section says such force ***is*** reasonable. The only question left is if the person using the force also thought it was "reasonable."

The section on carjacking does the same thing. It authorizes the use of deadly force against someone who ***had*** -- past tense -- taken a car by force. Even if no human life was at risk in the taking, this law would say it is okay to kill to keep your car from being taken from you or afterwards. That sounds like retaliation and vigilantism, not like a legislature enacting laws to protect our citizens and improve our lives.

The kidnapping subsection has the same issue with past tense. In each and every section this bill would legalize and authorize vigilantism.

Finally the bill also says no arrest may be made "unless the agency" determines that there is probable cause that the force that used was unlawful. This puts the police in a difficult position especially when confronting gang related violence. It is also unclear to whom "the agency" refers. This could potentially require magistrates and grand juries to start deciding if self-defense has been disproven. This in turn would require the state to act as defense counsel for the defendant to present such a defense only to have to then disprove it. This may sound confusing, and that is because this bill could cause serious problems in the criminal justice system with regard to self-defense law.

Thank you for your consideration of this letter.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By:
John Skidmore
Assistant Attorney General

DSS:JS: sf

cc: House Judiciary Committee Members

Utah Code
Title 76 Utah Criminal Code
Chapter 2 Principles of Criminal Responsibility
Section 402 Force in defense of person -- Forcible felony defined.

76-2-402. Force in defense of person -- Forcible felony defined.

(1) A person is justified in threatening or using force against another when and to the extent that he or she reasonably believes that force is necessary to defend himself or a third person against such other's imminent use of unlawful force. However, that person is justified in using force intended or likely to cause death or serious bodily injury only if he or she reasonably believes that force is necessary to prevent death or serious bodily injury to himself or a third person as a result of the other's imminent use of unlawful force, or to prevent the commission of a forcible felony.

(2) A person is not justified in using force under the circumstances specified in Subsection (1) if he or she:

(a) initially provokes the use of force against himself with the intent to use force as an excuse to inflict bodily harm upon the assailant;

(b) is attempting to commit, committing, or fleeing after the commission or attempted commission of a felony; or

(c) (i) was the aggressor or was engaged in a combat by agreement, unless he withdraws from the encounter and effectively communicates to the other person his intent to do so and, notwithstanding, the other person continues or threatens to continue the use of unlawful force; and

(ii) for purposes of Subsection (i) the following do not, by themselves, constitute "combat by agreement":

(A) voluntarily entering into or remaining in an ongoing relationship; or

(B) entering or remaining in a place where one has a legal right to be.

(3) A person does not have a duty to retreat from the force or threatened force described in Subsection (1) in a place where that person has lawfully entered or remained, except as provided in Subsection (2)(c).

(4) For purposes of this section, a forcible felony includes aggravated assault, mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping, rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76, Chapter 5, and arson, robbery, and burglary as defined in Title 76, Chapter 6. Any other felony offense which involves the use of force or violence against a person so as to create a substantial danger of death or serious bodily injury also constitutes a forcible felony. Burglary of a vehicle, defined in Section **76-6-204**, does not constitute a forcible felony except when the vehicle is occupied at the time unlawful entry is made or attempted.

(5) In determining imminence or reasonableness under Subsection (1), the trier of fact may consider, but is not limited to, any of the following factors:

(a) the nature of the danger;

(b) the immediacy of the danger;

(c) the probability that the unlawful force would result in death or serious bodily injury;

(d) the other's prior violent acts or violent propensities; and

(e) any patterns of abuse or violence in the parties' relationship.

Title XLVI CRIMES

Chapter 776 JUSTIFIABLE USE OF FORCE

776.031 Use of force in defense of others.--A person is justified in the use of force, except deadly force, against another when and to the extent that the person reasonably believes that such conduct is necessary to prevent or terminate the other's trespass on, or other tortious or criminal interference with, either real property other than a dwelling or personal property, lawfully in his or her possession or in the possession of another who is a member of his or her immediate family or household or of a person whose property he or she has a legal duty to protect. However, the person is justified in the use of deadly force only if he or she reasonably believes that such force is necessary to prevent the imminent commission of a forcible felony. A person does not have a duty to retreat if the person is in a place where he or she has a right to be.

History.--s. 13, ch. 74-383; s. 1189, ch. 97-102; s. 3, ch. 2005-27.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 23, 2010 **FURTHER REFERRALS: Finance**

Date of Committee Action: 3/29/10

The JUDICIARY Committee considered: **HOUSE BILL NO. 381**

"An Act relating to self defense."

HB 381-SELF DEFENSE

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* HB381 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [✓] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
DPS	1			✓
LAW	2	✓		

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Greenberg			-	
	HERRON			X	
	Holmes		X		
	Gatto	X			
Chair:	RAMOS	X			
Chair:					

HB

386

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
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Alaska State Legislature

House of Representatives

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1292 Sadler Way, Suite 324
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Toll Free: (877) 465-3004

House District 10

Fax

To: Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 3

From: Jane W. Pierson

Date: March 17, 2010

Re: HJUD CS for HB386 v. A

Today, the HJUD Committee heard HB386 (26-LS1525\A) and passed the bill out of committee with two amendments:

1. Conceptual amendment #1 is attached

2. Page 5, Line 30 Delete "may" and insert "shall

Representative_Jay_Ramras@legis.state.ak.us

Conceptual #1

AMENDMENT

OFFERED IN THE HOUSE

TO: HB 386

Page 2, lines 14, following "section.":

DELETE "The citation is considered a summons for a failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant."

Page 2 line 29, through page 3, line 2: DELETE ALL MATERIAL AND INSERT:

"* **Sec. 6.** AS 04.21.065(j) is repealed and reenacted to read:

(j) A person cited under this section is guilty of failure to obey a citation under AS 12.25.230 if the person fails to pay the bail amount established under (g) of this section or to appear in court as required."

Page 10, following line 13

INSERT a new bill section to read:

"* **Sec. 32.** AS 16.05.165 (a) is amended to read:

(a) When a peace officer stops or contacts a person concerning a violation of this title except AS 16.51 and AS 16.52 or of a regulation adopted under this title except AS 16.51 and AS 16.52 that is a misdemeanor, the peace officer may, in the officer's discretion, issue a citation to the person as provided in **AS 12.25.175 – 12.25.230** [AS 12.25.180] .

RENUMBER following sections accordingly

Page 10, line 26 following "required."

DELETE "The citation is considered a summons for failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant."

Page 11, line 14 following "required."

DELETE "The citation is considered a summons for failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant."

Page 12, line 30 following "required."

DELETE "The citation is considered a summons for failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant."

Page 15, line 6 following "required."

DELETE "The citation is considered a summons for failure to obey a citation under AS 12.25.230 (b), and the court may issue a bench warrant."

Page 15, following line 18

INSERT a new bill section to read:

"* Sec. 57. AS 46.06.080(f) is repealed and reenacted to read:

(f) A person cited under this section is guilty of failure to obey a citation under AS 12.25.230 if the person fails to pay the fine or to appear in court as required."

HB 386

Page & Line where citations need to be in writing

Check Repealer section - 8 & 24
PART of BOATING Safety Act.

* P. 5, line 30 - "may" to "shall" -

"Reasonably believes" - p. 6, L. 10.
= HERROW -

PASSES

AMENDMENT # 2 p. 5, L. 30
Delete "May" & insert "shall"

CONCEPTUAL

AMENDMENT #1 PASSED

OFFERED IN THE HOUSE

TO: HB 386

Page 2, lines 14, following "section.":

DELETE "The citation is considered a summons for a failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant."

Page 2 line 29, through page 3, line 2: DELETE ALL MATERIAL AND INSERT:

"* **Sec. 6.** AS 04.21.065(j) is repealed and reenacted to read:

(j) A person cited under this section is guilty of failure to obey a citation under AS 12.25.230 if the person fails to pay the bail amount established under (g) of this section or to appear in court as required."

Page 10, following line 13

INSERT a new bill section to read:

"* **Sec. 32.** AS 16.05.165 (a) is amended to read:

(a) When a peace officer stops or contacts a person concerning a violation of this title except AS 16.51 and AS 16.52 or of a regulation adopted under this title except AS 16.51 and AS 16.52 that is a misdemeanor, the peace officer may, in the officer's discretion, issue a citation to the person as provided in **AS 12.25.175 – 12.25.230** [AS 12.25.180] .

RENUMBER following sections accordingly

Page 10, line 26 following "required."

DELETE "The citation is considered a summons for failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant."

Page 11, line 14 following "required."

DELETE "The citation is considered a summons for failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant."

Page 12, line 30 following "required."

DELETE "The citation is considered a summons for failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant."

Page 15, line 6 following "required."

DELETE "The citation is considered a summons for failure to obey a citation under AS 12.25.230 (b), and the court may issue a bench warrant."

Page 15, following line 18

INSERT a new bill section to read:

"* Sec. 57. AS 46.06.080(f) is repealed and reenacted to read:

(f) A person cited under this section is guilty of failure to obey a citation under AS 12.25.230 if the person fails to pay the fine or to appear in court as required."

Representative Mike Hawker
Alaska State Legislature

Session:
State Capitol
Juneau, AK 99801
907 465-4949 direct
800 478-4950 toll free
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Interim:
716 W 4th Avenue
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House District 32:
Eagle River
Anchorage
Rainbow
Indian
Bird
Girdwood
Portage
Whittier
Sunrise
Hope

House Bill 386
Sponsor Statement

"An Act establishing a uniform format and procedure for citations for certain violations of state law; relating to the form, issuance, and disposition of citations for certain violations; relating to certain crimes and penalties for noncompliance with citations; and providing for an effective date."

House Bill 386 gives the Department of Public Safety necessary authority to prescribe a uniform citation format and process. Standardizing the citation process will improve efficiency and interdepartmental communications, facilitating electronic sharing of citation data between law enforcement, prosecution, courts and state and municipal collection departments.

By standardizing deadlines for payments, responses and paperwork filing by the citation issuer, HB 386 will also reduce confusion for citizens receiving citations and allow more fines to be paid through the courts' online e-payment system. A standard process is also an integral step in preparing for a statewide database and digital interoperability.

Staff Contact: Juli Lucky 465-4949

3/15/2010

Rep.Mike.Hawker@legis.state.ak.us • http://www.akrepublicans.org/hawker/

HB 386
Uniform Citations - Overview
Prepared by Representative Mike Hawker's Office

HB 386 establishes and requires the use of a uniform format, process and standard deadlines for citations issued in the state. The process is contained in sections 21 – 31 of the bill. The rest of the bill adopts the standard process for various citations.

Uniform Citation Process and Format contained in AS 12.25.175 – 12.25.230:

- 12.25.175 (new section of law) sets out requirements for the standard citation format, requires the commissioner of the Department of Public Safety to provide or prescribe the standard citation formats, and enables the commissioner to adopt regulations. Uniform citations must adhere to a statewide numbering system and contain specific information described in AS 12.25.200 (b). The citation issuer is also required to make an oath or affirmation, if authorized to do so, or make a statement under penalty of perjury that the citation was true and personally served on the person charged.

- 12.25.180 (existing law) clarifies when an officer can issue a citation instead of making an arrest. Most of the changes reword existing law for clarity and have no substantive effect.
  - In (a)(2), the requirement that the officer have "reasonable and probable cause to believe" that a person is a danger to self or others is replaced with "reasonably believes." Probable cause indicates there are certain elements that must be met, whereas a reasonable belief can be articulated more easily. Because it is within the officer's discretion to arrest or issue a citation, that determination should be based on a reasonable belief, rather than probable cause.
  - In (b)(2), the requirement that the person receiving the citation provide a written promise to appear in court is removed to facilitate electronic transmission of the citation. The required issuer's oath or statement that a copy of the citation was correctly served (required by AS 12.25.175) satisfies the intent of this statute.

- 12.25.190 (existing law) clarifies when a person shall be given a five-day notice to appear in court. Most of the changes are language repeals to accommodate the standard process adopted in this legislation and rewording for clarity.
  - The provision allowing a person to request a hearing earlier than five days after the citation is issued is repealed. Officers in the field cannot always forward a citation to the court for a hearing in fewer than five days.

- 12.25.195 (existing law) outlines the disposition of "scheduled offenses" – violations that have an established bail or fine amount. If a person doesn't contest the citation, there is a standard 30 day deadline for paying the bail or fine, regardless of the type of citation.

- 12.25.200 (existing law) specifies a format for citations. The changes to this section expand its applicability to all citations, instead of just those issued by law enforcement.

- 12.25.210 (existing law) outlines recordkeeping requirements for citation issuers. The changes to this section expand its applicability to all citations, instead of just those issued by law enforcement. This section also sets a 10 working day deadline for citations to be filed with the court and clarifies that missing the filing deadline does not negate the citation.

- 12.25.230 (existing law) outlines the penalties for failure to pay a fine or appear in court, as required by a citation. The current language is confusing. While having two sections implies

that that each offense should have a different penalty, because the type of misdemeanor is not defined, they can be interpreted to apply the same penalty to both types of citation. Under HB 386, there would be a bright line between offenses that require a court appearance and "scheduled offenses" which carry a particular fine and can be paid by mail.

- 12.25.230 (a) states that the penalty for failing to appear to answer a citation that requires a court appearance would be a class A misdemeanor (see penalties above).
- 12.25.230 (b) states that the penalty for failing to appear or pay the bail or fine for a citation for a "scheduled offense" is a class B misdemeanor, which is punishable by up to a $2,000 fine and/or imprisonment of up to 90 days.

Statutory changes to implement the Uniform Citation Process and Format for various violations:

- Sections 1, 4, 7, 9, 14, 17, 34, 37, 38, 39, 40, 44, 45, 49, 56 and 57 are statutory references changed or added to reference the standard citation process and format:

- Sections 2, 5, 32, 35, 41, 54, and 56 reflect the standard deadline of 30 days for payment for a "scheduled offense" citation (see AS 12.25.195). These sections also add language specifying that this deadline is for violators who plead "no contest," since a person contesting the citation wouldn't be sending in a payment.

- Sections 3, 6, 33, 36, 42, 53, and 55 are individual penalty sections that are amended or repealed and reenacted to adopt the uniform penalties in AS 12.25.230.

- Sections 10, 14, 18, 45 and 49 remove the condition that a citation be "in writing" (see notes for AS 12.25.180 (b)(2)).

- Sections 11, 15, 19, 46, and 50 reflect the five day notice and repeal language allowing a person to request an earlier hearing (see notes for AS 12.25.190).

- Sections 12 and 51 reflect the 10 day deadline for a citation to be filed with the court by the citation issuer (see AS 12.25.210).

- Sections 13, 16, 20, 47, and 52 repeal language specifying what needs to be in particular citations and instead state that a citation that complies with the uniform format is considered to be a lawful complaint for the purposes of prosecution.

Miscellaneous Sections:

- Sections 8 and 24 ensure that the law is consistent after other previously enacted bills sunset. The language mirrors language found in sections 7 and 23, respectively.

- Section 43 allows citations to be given for violations in the Knik River Public Use Area.

- Section 48 allows DPS to establish regulations to implement standardized citations.

- Section 58 repeals statutes regarding citation formats that are made moot by adoption of the standardized format in this bill.

- Sections 59-63 provide applicability instructions, transitional provisions and effective dates.

Amendments to HB 386 (26-LS1525\A)

Add new sections:

- **Sec. 16.05.165. Form and issuance of citation.**
  (a) When a peace officer stops or contacts a person concerning a violation of this title except AS 16.51 and AS 16.52 or of a regulation adopted under this title except AS 16.51 and AS 16.52 that is a misdemeanor, the peace officer may, in the officer's discretion, issue a citation to the person as provided in **AS 12.25.175 – 12.25.230** [AS 12.25.180].

- **AS 46.06.080(f) is repealed and reenacted to read:**
  (f) A person cited under this section is guilty of failure to obey a citation under AS 12.25.230 if the person fails to pay the fine or to appear in court as required.

Amend Existing Sections as follows:

- Page 2 line 29, through page 3, line 2: DELETE ALL MATERIAL AND INSERT:
  * **Sec. 6.** AS 04.21.065(j) is repealed and reenacted to read:
  (j) A person cited under this section is guilty of failure to obey a citation under AS 12.25.230 if the person fails to pay the bail amount established under (g) of this section or to appear in court as required.

- Please delete the sentence ""The citation is considered a summons for a failure to obey a citation under AS 12.25.230, and the court may issue a bench warrant." where it appears in the bill. Hopefully this is a comprehensive list:
  - Page 2, lines 14-16: AS 04.16.205 (f)
  - Page 10, lines 26-28: AS 16.05.165 (e)
  - Page 11, lines 14-16: AS 18.35.341
  - Page 12, line 30 – Page 13, line 1: AS 41.21.960(e)
  - Page 15, lines 6-8: AS 45.75.133(d)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HB 386
() Publish Date:

Identifier (file name): HB386-LAW-CRIM-03-12-10
Title: An Act establishing a uniform format and procedure for citations for certain violations of state law
Sponsor: Representative Hawker
Requester: Judiciary

Dept. Affected: Law
RDU: CRIMINAL
Component: Criminal Justice Litigation
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill provides for statutory amendments and would require all citations issued in Alaska to be in the form designated by the Department of Public Safety. According to the new section, AS 12.25.175(b), DPS will either "provide or prescribe citation forms for use by...persons who are authorized by law to issue citations." The Department of Law does not anticipate a fiscal impact from this bill.

Prepared by: Eileen Donahue, Division Operations Manager
Division: Administrative Services
Phone: 465-5427
Date/Time: 3/12/10 12:00 PM

Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date: 3/12/2010

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 386**
() Publish Date:

Identifier (file name): HB386-CED-CBPL-3-16-10
Title: Citations
Sponsor: Representative Hawker
Requester: House Judiciary

Dept. Affected: DCCED
RDU: Corp, Bus, & Prof Licensing (117)
Component: Corp, Bus, & Prof Licensing
Component Number: 2360

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES (1156)							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other: (1156) RSS							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill would establish a uniform format and procedure for citations of certain violations of state law and adjusts penalties for noncompliance with citations.

The department does not expect a fiscal impact as a result of this legislation.

Prepared by: Jennifer Strickler, Division Operations Manager
Division: Corporations, Business & Professional Licensing
Phone (907) 465-2144
Date/Time 3/16/2010 9:20AM

Approved by: Emil Notti, Commissioner
Commerce, Community, and Economic Development
Date 3/16/2010

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version:
() Publish Date:

Identifier (file name): HB386-DPS-AST-03-16-10
Title "An act relating to uniform citations."
Sponsor Representative Hawker
Requester House Judiciary

Dept. Affected: Public Safety
RDU Alaska State Troopers
Component AST Detachments
Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill would set a uniform standard for citations used by law enforcement agencies and facilitate the electronic transfer of information. This legislation will help eliminate the need for duplicative data entry and reduce data entry errors.

This legislation will have no fiscal cost and is expected to increase the productivity of the department in the long term.

Prepared by: Lt. Rodney Dial
Division Alaska State Troopers
Approved by: Joseph Masters, Commissioner
Department of Public Safety

Phone 907-247-4480
Date/Time 3/16/2010 430:00 PM
Date 3/16/2010

(Revised 11/6/2009 OMB)

HB 408

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
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Alaska State Legislature

House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
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House District 10

Fax

To: Jerry Luckhaupt

Fax #: (907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson

Date: March 25, 2010

Re: CS HB 408

Please draft a final HJUD CS for HB408 (26-LS1459\K) with no amendments.

Representative_Jay_Ramras@legis.state.ak.us

26-LS1459\K
Luckhaupt
3/24/10

CS FOR HOUSE BILL NO. 408( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE JUDICIARY COMMITTEE

A BILL

FOR AN ACT ENTITLED

"An Act relating to misconduct involving weapons."

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

*** Section 1.** AS 11.61.200(b) is amended to read:

(b) **The provisions of** [IT IS AN AFFIRMATIVE DEFENSE TO A PROSECUTION]

(1) [UNDER] (a)(1) of this section **do not apply to a person if** [THAT]

(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and

the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;

(2) [UNDER] (a)(2) or (10) of this section **do not apply to a person if** [THAT]

(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the violation of (a)(2) or (10) of this section, and the prior conviction did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory.

*** Sec. 2.** AS 11.61.200(a)(12), 11.61.200(f), and 11.61.200(g) are repealed.

Alaska State Legislature
House Judiciary Committee

Representative Jay Ramras
Chairman
(907) 465-3004
Fax: (907) 465-2070
Representative_Ramras@legis.state.ak.us

1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701

Committee Members
Representative Nancy Dahlstrom
Vice Chairman
Representative Bob Lynn
Representative Carl Gatto
Representative Bob Herron
Representative Max Gruenberg
Representative Lindsey Holmes

Sponsor Statement
HB408 "An Act relating to misconduct involving weapons"

Under Alaska law, an individual who has been convicted of a felony can carry hand guns and have their right to bear arms restored by any of three occurrences: (1) a pardon, (2) the underlying conviction having been set aside under AS 12.55.085, or (3) by the passage of ten years time from an unconditional discharge.

However, the U.S. Supreme Court in the case of *Caron v. U.S.*, 524 U.S. 308 (1988), ruled that if a person who has been previously convicted of a felony is prohibited from possessing firearms, in any way, under state law, then they are prohibited from possessing firearms under federal law. While under state law a previously convicted ex-felon's right to possession of firearms is fully restored, there are still limitations on carrying concealed weapons. Ex-felons can carry concealed on their own property, while engaged in lawful hunting, fishing, or trapping, or when engaged in another lawful activity that necessarily involves the carrying of a weapon for personal protection.

However, the ATF and the FBI are interpreting this Alaska statute to be a restriction upon possession. Because of this interpretation, Alaskans who under state law are allowed to possess firearms are being threatened with prosecution for serious Federal offenses.

This bill addresses the language in AS 11.61.200, Misconduct Involving Weapons in the Third Degree. AS 11.61.200(a)(12) bars all people convicted of felonies from caring concealed weapons, while AS 11.61.200(g) sets out exemptions to (a)(12)'s blanket ban.

The Alaska State Legislature has made its own policy decision about how to handle the gun rights of ex-felons; however the Federal Government has stripped Alaska of the right to make its own judgments, excepting an all-or-nothing decision on gun rights for ex-felons. HB408 is one of many bills that have been drafted in this legislation session to bring this issue back before the Alaska State Legislature for consideration.

We appreciate your input and assistance in determining the direction of this important policy decision.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 408**
() Publish Date:

Identifier (file name): HB408-LAW-CRIM-03-08-10
Title: An Act relating to misconduct involving weapons.
Sponsor: Judiciary
Requester: Judiciary

Dept. Affected: Law
RDU: CRIMINAL
Component: Criminal Justice Litigation
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE	(Thousands of Dollars)						
1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS							
Full-time							
Part-time							
Temporary							

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

HB 408 proposes amendments to the law relating to misconduct involving weapons in the third degree. It changes the affirmative defense, for example, to the crime of a felon in possession of a concealable weapon. Under current law it is an affirmative defense to this charge if the person had received a pardon, the conviction was set aside, or 10 years had elapsed from the felony conviction and the felony conviction was not a crime against a person. The bill would provide that the crime of felon in possession of a concealable weapon would not apply to these persons, rather than that the circumstances give rise to an affirmative defense. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager — Phone 465-5427
Division: Administrative Services — Date/Time 3/8/10 12:20 PM
Approved by: Daniel S. Sullivan, Attorney General — Date 3/8/2010
Department of Law

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version:
() Publish Date:

Identifier (file name): HB408-DPS-AST-03-12-10
Dept. Affected: Public Safety
Title "An act relating to misconduct involving weapons."
RDU Alaska State Troopers
Component AST Detachments
Sponsor House Judiciary
Requester House Judiciary
Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

This legislation would amend AS 11.61.200(b) and repeal (f) and (g), (misconduct involving weapons in the third degree). This bill changes language from one that currently provides an affirmative defense to prosecution, to one that states this statue "does not apply" if certain qualifiers exist.

Passage of this legislation will have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial
Phone 907-247-4480
Division Alaska State Troopers
Date/Time 3/12/10 10:50 AM
Approved by: Joseph Masters, Commissioner
Department of Public Safety
Date 3/12/2010

(Revised 11/6/2009 OMB)

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
555 CAPITOL MALL, SUITE 625
SACRAMENTO, CALIFORNIA 95814
916/446-2455 PHONE 916/448-7469 FAX

STATE & LOCAL AFFAIRS DIVISION
BRIAN JUDY, ALASKA STATE LIAISON

March 11, 2010

Background Information
House Bill 408
Restoration of Firearm Rights in Alaska

• Under Alaska State law, a person who has been convicted of a felony is NOT prohibited from possessing a rifle or shotgun. In effect, the person's right to possess such a firearm is restored by operation of law upon the person's release from incarceration.

• Under Alaska State law, a person who has been convicted of a felony IS prohibited from possessing a firearm *capable of being concealed* on one's person (Alaska Stat. § 11.61.200(a)(1)) and, separately, IS prohibited from possessing a firearm that *is actually concealed* on the person (Alaska Stat. § 11.61.200(a)(12)).

• Alaska State law also provides, however, for an "affirmative defense" to a prosecution under either the felon-in-possession-of-a-*concealable*-firearm statute or the felon-in-possession-of-a-*concealed*-firearm statute if the person's civil rights have been restored as follows:

(1) For possession of firearms *capable of being concealed*, if the person has received a pardon or if the conviction has been set aside or if a period of ten years or more has elapsed since the date of the person's unconditional discharge (Alaska Stat. § 11.61.200(b)); and

(2) For possession of firearms that *are actually concealed*, if the person has received a pardon or if the conviction has been set aside or if a period of ten years or more has elapsed since the date of the person's unconditional discharge. The restoration of the right to possess a *concealed* firearm is further limited, however, to the following circumstances: in the person's dwelling, on land owned or leased by the person appurtenant to the dwelling or while the person is actually engaged in lawful hunting, fishing, trapping or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection (Alaska Stat. § 11.61.200(g)).

• Further, it is important to note that under Alaska State law, restoration, by operation of law after the passage of time, of the right to possess either a firearm that is *capable of being concealed* or a firearm that *actually is concealed* is limited to persons who were NOT convicted of an offense against the person (Alaska Stat § 11.41).

• It is also important to note that under Alaska State law, the rights to vote (and, as a qualified voter, to hold public office) and to serve on a jury are lost upon conviction of a felony but automatically restored, by operation of law, immediately upon the person's unconditional discharge (Alaska Stat. §§ 09.20.020; 15.05.030(a); 33.30.241).

• Under Federal law, a person who has been convicted of a "crime punishable by imprisonment for a term exceeding one year" may not possess a firearm (18 USC § 922(g)).

• Federal law also provides, however, that "any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction...*UNLESS* such pardon, expungement, or restoration of civil rights expressly provides that the person may not...possess firearms" (18 USC § 921(a)(20)).

• In the case of Caron v. United States (524 U.S. 308 (1998)), the Supreme Court of the United States:

(1) Found that "nothing in the text of §921(a)(20) requires a case-by-case decision to restore civil rights" so restoration of such rights by operation of law is sufficient; and

(2) Interpreted the aforementioned "unless clause" found in 18 USC § 921 (a)(20). The Court held that an "all-or-nothing" test must be applied and that "a state weapons 'limitation' activates the uniform ban on possessing any firearm at all." In other words, a state must completely restore "all" of a person's rights and treat the person whose rights have been restored in the same manner that other law-abiding citizens are treated. If a person does not have "all" rights restored by the state then, for the purpose of federal law, the person has no rights. Subsequent cases have held that complete restoration of "all" rights includes, not only ALL firearm rights, but also the rights to vote, hold public office and serve on a jury.

• Alaska State law contains two "limitations" on persons who have had their right to possess firearms otherwise restored that are not imposed on persons who have never lost their rights and which, therefore, activate the federal ban on possessing any firearm at all:

(1) A person whose right to possess firearms has been otherwise restored can not possess a firearm concealed outside their dwelling, property or while engaged in a lawful outdoor activity (Alaska Stat. § 11.61.200(g)(2); and

(2) A person whose right to possess firearms has been otherwise restored would be in the position of having to raise an affirmative defense to a charge of either possessing a concealable firearm (Alaska Stat. § 11.61.200(b)) or carrying a firearm concealed (Alaska Stat. § 11.61.200(g)), while a person who never lost his or her rights cannot be charged with such a crime whatsoever.

• Unless the Alaska State Legislature amends existing law to modify these two limitations, the existing policy of the State of Alaska to allow for the restoration of firearm rights cannot be implemented without impacted persons being subject to felony prosecution under Federal law.

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Supreme Court

CARON v. UNITED STATES (97-6270)
Affirmed.

Syllabus	Opinion [Kennedy]	Dissent [Thomas]
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Opinion of the Court

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

SUPREME COURT OF THE UNITED STATES

No. 97—6270

GERALD R. CARON, PETITIONER *v.* UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

[June 22, 1998]

Justice Kennedy delivered the opinion of the Court.

Under federal law, a person convicted of a crime punishable by more than one year in prison may not possess any firearm. 18 U.S.C. § 922(g)(1). If he has three violent felony convictions and violates the statute, he must receive an enhanced sentence. §924(e). A previous conviction is a predicate for neither the substantive offense nor the sentence enhancement if the offender has had his civil rights restored, "unless such ... restoration of civil rights expressly provides that the person may not ... possess ... firearms." §921(a)(20). This is the so-called "unless clause" we now must interpret. As the ellipses suggest, the statute is more complex, but the phrase as quoted presents the issue for our decision.

The parties, reflecting a similar division among various Courts of Appeals, disagree over the interpretation of the unless clause in the following circumstance. What if the State restoring the offender's rights forbids possession of some firearms, say pistols, but not others, say

rifles? In one sense, he "may not ... possess ... firearms" under the unless clause because the ban on specified weapons is a ban on "firearms." In another sense, he can possess firearms under the unless clause because the state ban is not absolute. Compare, *e.g.*, *United States* v. *Estrella*, 104 F.3d 3, 8 (CA1) (adopting former reading), cert. denied, 521 U.S. ___ (1997) and *United States* v. *Driscoll*, 970 F.2d 1472, 1480–1481 (CA6 1992) (same), cert. denied, 506 U S. 1083 (1993), with *United States* v. *Qualls*, ___ F.3d ___, No. 95–50378, 1998 WL 149393, *2 (CA9, Apr. 2, 1998) (en banc) (intermediate position), and *United States* v. *Shoemaker*, 2 F.3d 53, 55–56 (CA4 1993) (same), cert. denied, 510 U.S. 1047 (1994).

The Government contends the class of criminals who "may not ... possess ... firearms" includes those forbidden to have some guns but not others. On this reading, the restoration of rights is of no effect here, the previous offenses are chargeable, and petitioner's sentence must be enhanced. On appeal, the Government's position prevailed in the Court of Appeals for the First Circuit, and we now affirm its judgment.

I

Petitioner Gerald Caron has an extensive criminal record, including felonies. In Massachusetts state court, he was convicted in 1958 of attempted breaking and entering at night and, in 1959 and 1963, of breaking and entering at night. In California state court, he was convicted in 1970 of assault with intent to commit murder and attempted murder.

In July 1993, petitioner walked into the home of Walter Miller, carrying a semiautomatic rifle. He threatened Miller, brandished the rifle in his face, and pointed it at his wife, his daughters, and his 3-year-old grandson. Police officers disarmed and arrested petitioner.

In September 1993, a federal agent called on petitioner at home to determine if he had other unlawful firearms. Petitioner said he had only flintlock or other antique weapons (not forbidden by law) and owned no conventional firearms. Federal law, the agent told him, forbade his possession of firearms and was not superseded by state law. In December 1993, agents executed a search warrant at petitioner's house, seizing six rifles and shotguns and 6,823 rounds of ammunition.

A federal jury convicted petitioner of four counts of possessing a firearm or ammunition after having been convicted of a serious offense. See 18 U.S.C. § 922(g)(1). The District Court enhanced his sentence because he was at least a three-time violent felon, based on his one California and three Massachusetts convictions. See §924(e). Petitioner claimed the Court should not have counted his Massachusetts convictions because his civil rights had been restored by operation of Massachusetts law. Massachusetts law allowed petitioner to possess rifles or shotguns, as he had the necessary firearm permit and his felony convictions were more than five years old. Mass. Gen. Laws §§140:123, 140:129B, 140:129C (1996). The law forbade him to possess handguns outside his home or business. See §§140:121, 140:131, 269:10.

At first, the District Court rejected the claim that Massachusetts had restored petitioner's civil rights. It held civil rights had to be restored by an offender-specific action rather than by operation of law. The First Circuit disagreed, vacating the sentence and remanding the case. *United States* v. *Caron*, 77 F.3d 1, 2, 6 (1996) (en banc). We denied certiorari. 518 U.S. 1027 (1996). On remand, the District Court, interpreting the unless clause of the federal statute, disregarded the Massachusetts convictions. It ruled Massachusetts law did not forbid petitioner's possession of firearms because he could possess rifles. 941 F. Supp. 238, 251–254 (Mass. 1996). Though Massachusetts restricted petitioner's right to carry a handgun, the District Court considered the restriction irrelevant because his case involved rifles and shotguns. See *ibid.* The First Circuit reversed, counting the convictions because petitioner remained subject to significant firearms restrictions. We granted certiorari. 522 U.S. ___ (1998).

II

A federal statute forbids possession of firearms by those convicted of serious offenses. An abbreviated version of the statute is as follows:

"It shall be unlawful for any person-

"(1) who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year;

. . . . .

"to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce." 18 U.S.C. § 922(g).

Three-time violent felons who violate §922(g) face enhanced sentences of at least 15 years' imprisonment. §924(e)(1). "Violent felony" is defined to include burglary and other crimes creating a serious risk of physical injury. §924(e)(2)(B)(ii). This term includes petitioner's previous offenses discussed above.

Not all violent felony convictions, however, count for purposes of §922(g) or §924(e). Until 1986, federal law alone determined whether a state conviction counted, regardless of whether the State had expunged the conviction. *Dickerson* v. *New Banner Institute, Inc.*, 460 U.S. 103, 119–122 (1983). Congress modified this aspect of *Dickerson* by adopting the following language:

"What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." §921(a)(20).

The first sentence and the first clause of the second sentence define convictions, pardons, expungements, and restorations of civil rights by reference to the law of the convicting jurisdiction. See *Beecham* v. *United States*, 511 U.S. 368, 371 (1994).

Aside from the unless clause, the parties agree Massachusetts law has restored petitioner's civil rights. As for the unless clause, state law permits him to possess rifles and shotguns but forbids him to possess handguns outside his home or business. The question presented is whether the handgun restriction activates the unless clause, making the convictions count under federal law.

We note these preliminary points. First, Massachusetts restored petitioner's civil rights by operation of law rather than by pardon or the like. This fact makes no difference. Nothing in the text of §921(a)(20) requires a case-by-case decision to restore civil rights to this particular offender. While the term "pardon" connotes a case-by-case determination, "restoration of civil rights" does not. Massachusetts has chosen a broad rule to govern this situation, and federal law gives effect to its rule. All Courts of Appeals to address the point agree. See *Caron*, 77 F.3d, at 2; *McGrath* v. *United States*, 60 F.3d 1005, 1008 (CA2 1995), cert. denied, 516 U.S. 1121 (1996); *United States* v. *Hall*, 20 F.3d 1066, 1068–1069 (CA10 1994); *United States* v. *Glaser*, 14 F.3d 1213, 1218 (CA7 1994); *United States* v. *Thomas*, 991 F.2d 206, 212–213 (CA5), cert. denied, 510 U.S. 1014 (1993); *United States* v. *Dahms*, 938 F.2d 131, 133–134 (CA9 1991); *United States* v. *Essick*, 935 F.2d 28, 30–31 (CA4 1991); *United States* v. *Cassidy*, 899 F.2d 543, 550, and n. 14 (CA6 1990).

Second, the District Court ruled, and petitioner urges here, that the unless clause allows an offender to possess what state law permits him to possess, and nothing more. Here, petitioner's shotguns and rifles were permitted by state law, so, under their theory, the weapons would not be covered by the unless clause. While we do not dispute the common sense of this approach, the words of the statute do not permit it. The unless clause is activated if a restoration of civil rights "expressly provides that the person may not ... possess ... firearms." 18 U.S.C. § 921(a)(20). Either the restorations forbade possession of "firearms" and the convictions count for all purposes, or they did not and the convictions count not at all. The unless clause looks to the terms of the past restorations alone and does

not refer to the weapons at issue in the present case. So if the Massachusetts convictions count for some purposes, they count for all and bar possession of all guns.

III

The phrase "may not ... possess ... firearms," then, must be interpreted under either of what the parties call the two "all-or-nothing" approaches. Either it applies when the State forbids one or more types of firearms, as the Government contends; or it does not apply if state law permits one or more types of firearms, regardless of the one possessed in the particular case.

Under the Government's approach, a state weapons limitation on an offender activates the uniform federal ban on possessing any firearms at all. This is so even if the guns the offender possessed were ones the State permitted him to have. The State has singled out the offender as more dangerous than law-abiding citizens, and federal law uses this determination to impose its own broader stricture.

Although either reading creates incongruities, petitioner's approach yields results contrary to a likely, and rational, congressional policy. If permission to possess one firearm entailed permission to possess all, then state permission to have a pistol would allow possession of an assault weapon as well. Under this view, if petitioner, in violation of state law, had possessed a handgun, the unless clause would still not apply because he could have possessed a rifle. Not only would this strange result be inconsistent with any conceivable federal policy, but it also would arise often enough to impair the working of the federal statute. Massachusetts, in this case, and some 15 other States choose to restore civil rights while restricting firearm rights in part. The permissive reading would make these partial restrictions a nullity under federal law, indeed in the egregious cases with the most dangerous weapons. Congress cannot have intended this bizarre result.

Under petitioner's all-or-nothing argument, federal law would forbid only a subset of activities already criminal under state law. This limitation would contradict the intent of Congress. In Congress' view, existing state laws "provide less than positive assurance that the person in question no longer poses an unacceptable risk of dangerousness." *Dickerson*, 460 U.S., at 120. Congress meant to keep guns away from all offenders who, the Federal Government feared, might cause harm, even if those persons were not deemed dangerous by States. See *id.*, at 119. If federal law is to provide the missing "positive assurance," it must reach primary conduct not covered by state law. The need for this caution is borne out by petitioner's rifle attack on the Miller family, in which petitioner used a gun permitted by state law. Any other result would reduce federal law to a sentence enhancement for some state-law violations, a result inconsistent with the congressional intent we recognized in *Dickerson*. Permission to possess one gun cannot mean permission to possess all.

Congress responded to our ruling in *Dickerson* by providing that the law of the State of conviction, not federal law, determines the restoration of civil rights as a rule. While state law is the source of law for restorations of other civil rights, however, it does not follow that state law also controls the unless clause. Under the Government's approach, with which we agree, the federal policy still governs the interpretation of the unless clause. We see nothing contradictory in this analysis. Restoration of the right to vote, the right to hold office, and the right to sit on a jury turns on so many complexities and nuances that state law is the most convenient source for definition. As to the possession of weapons, however, the Federal Government has an interest in a single, national, protective policy, broader than required by state law. Petitioner's approach would undermine this protective purpose.

As a final matter, petitioner says his reading is required by the rule of lenity, but his argument is unavailing. The rule of lenity is not invoked by a grammatical possibility. It does not apply if the ambiguous reading relied on is an implausible reading of the congressional purpose. See *United States* v. *Shabani*, 513 U.S. 10, 17 (1994) (requiring use of traditional tools of statutory construction to resolve ambiguities before resorting to the rule of lenity). For the reasons we have explained, petitioner's reading is not plausible enough to satisfy this condition.

In sum, Massachusetts treats petitioner as too dangerous to trust with handguns, though it accords this right to law-abiding citizens. Federal law uses this state finding of dangerousness in forbidding petitioner to have any guns. The judgment of the Court of Appeals is

Westlaw.

158 P.3d 813
158 P.3d 813
(Cite as: 158 P.3d 813)

C

Supreme Court of Alaska.
Joseph R. **GABRIELLE**, Appellant,
v.
STATE of Alaska, DEPARTMENT OF PUBLIC SAFETY, Appellee.
No. S-11490.

May 18, 2007.

Background: Applicant sought judicial review of decision by Department of Public Safety to revoke permit to carry concealed handgun and to deny application to renew permit. The Superior Court, Third Judicial District, Anchorage, Sharon L. Gleason, J., affirmed, and applicant appealed.

Holdings: The Supreme Court held that:
(1) applicant was not eligible for permit to carry concealed weapon under state law, and
(2) federal statute prohibiting possession of firearm by convicted felon did not render applicant whose prior felony conviction was pardoned ineligible for permit to carry concealed weapon.

Affirmed.

West Headnotes

[1] **Statutes 361** 219(1)

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k219 Executive Construction
361k219(1) k. In General. Most Cited Cases
When state and federal statutes do not involve substantial expertise by an administrative agency, in construing these statutes on an administrative appeal, the court will apply its independent judgment in determining their meaning, adopting the rule that is most persuasive in light of precedent, reason, and policy.

[2] **Weapons 406** 12

406 Weapons
406k5 Carrying Weapons
406k12 k. Licenses or Permits. Most Cited Cases
Applicant whose prior felony conviction was pardoned by governor would not have affirmative defense to unlawful possession of firearm by convicted felon, and thus, applicant was not eligible for permit to carry concealed weapon under state law, in that he would be subject to criminal liability if he carried concealed handgun in any place outside his dwelling or land appurtenant to dwelling or carried handgun while not engaged in lawful hunting, fishing or trapping, or other lawful activity. AS 11.61.200(a)(12), (g)(2)(A, B).

[3] **Weapons 406** 12

406 Weapons
406k5 Carrying Weapons
406k12 k. Licenses or Permits. Most Cited Cases
Federal statute prohibiting possession of firearm by convicted felon did not render applicant whose prior felony conviction was pardoned by governor ineligible for permit to carry concealed weapon, in that pardon did not expressly state that applicant could not ship, transport, possess or receive firearms. 18 U.S.C.A. §§ 921, 922(g)(1).

*813 Wayne Anthony Ross, Ross & Miner, P.C., Anchorage, for Appellant.
Timothy W. Terrell, Assistant Attorney General,

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Office of Special Prosecutions and Appeals, Anchorage, and Gregg D. Renkes, Attorney General, Juneau, for Appellee.

Before: BRYNER, Chief Justice, MATTHEWS, EASTAUGH, FABE, and CARPENETI, Justices.

OPINION

PER CURIAM.

Joseph R. Gabrielle appeals the Alaska Department of Public Safety's refusal to renew his permit to carry a concealed handgun as well as the department's decision to revoke his existing permit. The department concluded that Gabrielle was ineligible for a permit because he was convicted of a felony in 1983 and Alaska law forbids a felon to carry a concealed handgun. Gabrielle, who received a gubernatorial pardon in 1993, argues that he is entitled to a permit because the plain language of the licensing statute does not prohibit a felon from obtaining a permit, and because he has an affirmative defense to criminal liability. Because the legislature intended to bar felons from obtaining concealed handgun permits, and because it would be futile to issue Gabrielle a permit to carry a concealed handgun that would not give him the right to carry a concealed handgun beyond that which is available to all citizens, we affirm the department's decision.

*814 We have considered each of appellant's arguments and points on appeal. The record fully supports the Memorandum Decision on Appeal entered by Superior Court Judge Sharon L. Gleason, which we adopt as the opinion of this court. It is set forth below.[FN1]

FN1. We have edited the superior court's decision to conform to our technical rules.

APPENDIX

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

JOSEPH R. GABRIELLE, Appellant.

vs.

STATE OF ALASKA, DEPARTMENT OF PUBLIC SAFETY, Appellee.

Case No. 3AN-03-07244 CI

MEMORANDUM DECISION ON APPEAL

This is an appeal from a decision of the Department of Public Safety (DPS), which revoked Mr. Gabrielle's concealed handgun permit and refused to renew it. For the reasons set forth below, the decision of the Department is AFFIRMED.

Facts and Proceedings

In January 2003, the Alaska State Troopers Division of DPS revoked Mr. Gabrielle's concealed handgun permit and refused to renew the permit because Mr. Gabrielle had been convicted of two felonies in the early 1980's. The State Troopers took this action even though Mr. Gabrielle had received a pardon from Governor Hickel for the felony convictions in October 1993. Mr. Gabrielle appealed the Troopers' decision to the Commissioner of the Department of Public Safety in February 2003. On March 7, 2003, the Commissioner issued a letter denying that administrative appeal, and indicated that based on DPS's interpretation of the applicable statutes, specifically AS 11.61.200(a)(12) and (g), pardoned felons were precluded from obtaining handgun permits. The Commissioner's letter indicated that it "is a final administrative decision" and that Mr. Gabrielle could "seek judicial review of this decision under AS 44.62.560-44.62.570 within 30 days of receipt of this letter." The record reflects that Mr. Gabrielle received the letter on March 12, 2003.

On March 22, 2003, Mr. Gabrielle submitted a request for reconsideration to the Commissioner of DPS. On April 29, 2003, the Deputy Commissioner summarily denied the request, indicating that "there is no process for administrative 'reconsideration' of denial of an appeal."

On May 5, 2003, Mr. Gabrielle filed this appeal.

1. Is Mr. Gabrielle "eligible to own or possess a handgun under the laws of this state"?

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Alaska Statute 18.65.705 lists several requirements for a person to be qualified to receive and hold a permit to carry a concealed handgun. The parties dispute whether Mr. Gabrielle meets one of those requirements-whether he "is eligible to own or possess a handgun under the laws of this state and under federal law." [FN2] The State argues that Mr. Gabrielle is not eligible under either state or federal law to possess a handgun, and this statutory subsection therefore precludes the issuance of the permit to Mr. Gabrielle.

FN2. AS 18.65.705(2).

[1] The state and federal statutes regulating possession and ownership of handguns do not involve substantial agency expertise. Accordingly, in construing these statutes in this administrative appeal, this court will apply its independent judgment in determining their meaning, adopting the rule that is most persuasive in light of precedent, reason, and policy.[FN3]

FN3. *Alyeska Pipeline Serv. Co. v. DeShong*, 77 P.3d 1227, 1231 (Alaska 2003) (citation omitted).

[2] Turning first to state law, the State argues that pursuant to AS 11.61.200(a)(12), Mr. Gabrielle is precluded from possessing a handgun. This statute provides that a person*815 commits the crime of misconduct involving weapons in the third degree if the person "knowingly possesses a firearm that is concealed on the person after having been convicted of a felony...."

The parties dispute whether AS 11.61.200(g), which establishes an affirmative defense to this statutory provision, operates to allow Mr. Gabrielle to possess a handgun. AS 11.61.200(g) provides:

> It is an affirmative defense to a prosecution under (a)(12) of this section that
>
> (1) either
>
> (A) the defendant convicted of the prior offense on which the action is based received a pardon for that conviction;
>
> (B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
>
> (C) a period of ten years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense ... and the date of the violation of (a)(12) of this section, and the prior conviction ... did not result from a violation of AS 11.41...; *and*
>
> (2) at the time of possession, the defendant was
>
> (A) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or
>
> (B) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(Emphasis added).

Mr. Gabrielle asserts that as a result of his pardon, he has an affirmative defense to a prosecution under (a)(12), and is thus eligible to possess a concealed handgun under state law. The State argues that the affirmative defense in subsection (g) requires not only that Mr. Gabrielle receive a pardon or qualify under either of the other two components of subsection (g)(1), but that he must also meet the requirements of subsection (g)(2), which limits the places where the concealed handgun may be possessed as a precondition to this affirmative defense. In response to this argument, Mr. Gabrielle asserts that subsection (2) of the statute only modifies subsection (1)(C), and is not an additional requirement for a person who has been pardoned who falls within subsection (1)(A).

The State's reading is consistent with fundamental principles of statutory construction. To be entitled to the affirmative defense under AS 11.61.200(g), a criminal defendant would need to establish at least one of the components of subsection (1) *and* one of the components of subsection (2).

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>
> (C) a period of ten years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense ... and the date of the violation of (a)(12) of this section, and the prior conviction ... did not result from a violation of AS 11.41...; *and*
>
> (2) at the time of possession, the defendant was
>
> (A) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or
>
> (B) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(Emphasis added).

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The State's reading is consistent with fundamental principles of statutory construction. To be entitled to the affirmative defense under AS 11.61.200(g), a criminal defendant would need to establish at least one of the components of subsection (1) *and* one of the components of subsection (2).

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The State then notes that AS 11.61.220(b)(1) and (2) permits all citizens to carry a concealed weapon in the same two circumstances specified in AS 11.61.200(g)(2).[FN4] Therefore, as the State correctly notes, "the net result of the statutory scheme is that a pardoned felon can only carry a concealed handgun in those situations where an ordinary citizen would be able to carry a concealed handgun without a permit."

FN4. [This reference is to a prior version of AS 11.61.220. Following both the department's revocation and the superior court's decision, the statute was amended in ways not relevant here.]

Under the statutory scheme, a pardoned felon could be prosecuted under AS 11.61.200(a)(12) for misconduct involving weapons in the third degree if the individual possessed a concealed firearm at any place other than the two statutory exceptions set out in AS 11.61.200(g)(2)(A) and (B). And, unlike a prosecution under AS 11.61.220(a)(1) for fifth degree misconduct, it would not be a valid affirmative defense to a prosecution for violation of AS 11.61.200(a)(12) that the individual was the holder of a valid permit to carry a concealed handgun.[FN5]

FN5. *See* former AS 11.61.220(b)(3).

And yet, as a pardoned felon, Mr. Gabrielle *is* eligible to own or possess a concealed handgun in at least some locations within the state-within his dwelling and while hunting and undertaking other specified outdoor activities. Moreover, as a pardoned felon, he cannot be prosecuted for violation of *816AS 11.61.200(a)(1) for "knowingly possessing a firearm capable of being concealed."[FN6]

FN6. *See*AS 11.61.200(b)(1)(A).

Harmonizing these different statutory provisions is a somewhat tortured process from any perspective. But resolution of these provisions is best determined, in this court's view, by assessing the consequences of issuing a concealed handgun permit to Mr. Gabrielle. Under the statutory scheme, possession of such a permit would constitute an affirmative defense to one of the bases for misconduct involving weapons in the fifth degree. Under AS 11.61.220(a)(1), a person commits the crime of misconduct involving weapons in the fifth degree if the person "knowingly possesses a deadly weapon ... that is concealed on the person." Under AS 11.61.220(b)(3), it is an affirmative defense to the prosecution for that crime that the person was "the holder of a valid permit to carry a concealed handgun." However, possession of the permit would *not* constitute a valid affirmative defense to a prosecution for misconduct involving weapons in the third degree based on a pardoned felon's knowing possession of a concealed firearm under AS 11.61.200(a)(12). And, as the State correctly notes, a pardoned felon has the same affirmative defenses as any other citizen to prosecution for weapons violations if, at the time of possession, the defendant was at his dwelling or actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involved the carrying of a weapon for personal protection. In effect, the fifth degree misconduct weapons charge is a lesser-included offense to the third degree charge for pardoned felons, but the affirmative defense of a permit is not available to pardoned felons in a prosecution under the third degree charge.

Accordingly, issuance of a concealed handgun permit to Mr. Gabrielle would serve no lawful purpose since such a permit could not serve as an affirmative defense to a prosecution under AS 11.61.200(a)(12). Therefore, the court finds that Mr. Gabrielle should not be considered "eligible to own or possess a handgun under the laws of this state."[FN7] Since such eligibility is one of the necessary qualifications for issuance of a concealed handgun permit,[FN8] DPS's revocation of the permit and denial of the permit renewal was appropriate. Moreover, such a result is consistent with the legislative history regarding the concealed handgun permitting laws.[FN9]

FN7. AS 18.65.705(2).

FN8. *See*AS 18.65.705.

FN9. See Sen. Green, Sponsor Statement for Senate Bill 141, 20th Leg., 1st Sess. (April 23, 1997) (noting the bill was intended to "make clear that no felon, even a non-violent felon, would ever be able to apply for a concealed carry permit").

2. Mr. Gabrielle is not precluded from owning and

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possessing a handgun under federal law.

[3] The State also asserts that Mr. Gabrielle cannot be issued a concealed carry permit because he is ineligible to own and possess a handgun under federal law. 18 U.S.C. § 922(g)(1) provides in pertinent part:

> It shall be unlawful for any person ... who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year ... to ship or transport in interstate or foreign commerce, or possess in or affecting commerce, any firearm or ammunition; or to receive any firearm or ammunition which has been shipped or transported in interstate or foreign commerce.

However, 18 U.S.C. § 921 provides in pertinent part:

> Any conviction which has been expunged, or set aside or for which a person *has been pardoned* or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(Emphasis added.) Mr. Gabrielle's pardon did not expressly provide that he could not possess firearms. Therefore, federal law is not a bar to Mr. Gabrielle's permit eligibility.

The State asserts that two federal cases have held that this exception does not permit *817 the carrying of handguns if state law forbids it.[FN10] But neither Brown nor Caron were pardoned. Mr. Gabrielle references *United States v. Laskie*,[FN11] which held that Mr. Laskie's prior conviction could not be used as a predicated conviction under 18 U.S.C. § 922(g)(1) because Mr. Laskie had been honorably discharged and that discharge did not include a prohibition of firearm possession. Further, in *United States v. Gallaher*,[FN12] the Ninth Circuit held:

> FN10. *See* *Caron v. United States*, 524 U.S. 308, 118 S.Ct. 2007, 141 L.Ed.2d 303 (1998); *United States v. Brown*, 69 F.Supp.2d 925 (E.D.Mich.1999).
>
> FN11. 258 F.3d 1047, 1052-53 (9th Cir.2001).
>
> FN12. 275 F.3d 784, 792 (9th Cir.2001).

> Under our decisions in *Laskie* and [*United States v.*] *Herron*[45 F.3d 340 (9th Cir. 1995)], a criminal defendant cannot be charged with a federal crime after receiving a certificate restoring his civil rights that contains no express warning that he cannot possess firearms in spite of the restoration of his civil rights or that his state conviction may constitute an element of a crime if he is found in possession of a weapon.

Following this case law, Mr. Gabrielle is not subject to the prohibition under 18 U.S.C. § 922(g)(1) since he received a pardon for his convictions and his pardon did not contain an express warning that he cannot possess firearms.

3. Conclusion

Because this court concludes that Mr. Gabrielle was not "eligible to own or possess a handgun under the laws of this state," the decision of the Department of Public Safety is AFFIRMED.

/s/ Sharon L. Gleason

SHARON L. GLEASON

Superior Court Judge

Alaska,2007.
Gabrielle v. State, Dept. of Public Safety
158 P.3d 813

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MEMORANDUM February 16, 2010

SUBJECT: Misconduct Involving Weapons and Felons
(Work Order No. 26-LS1459\A)

TO: Representative Bill Stoltze
Attn: Ben Mulligan

FROM: Gerald P. Luckhaupt
Legislative Counsel

Enclosed is the bill draft you requested. As I have previously informed Ben, I have a few comments.

1. History of AS 11.61.200

AS 11.61.200(a)(1) does not completely include all conduct prohibited under AS 11.61.200(a)(12).

AS 11.61.200(a)(1) and (12) provide:

> (a) A person commits the crime of misconduct involving weapons in the third degree if the person
> (1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;
> . . .
> (12) knowingly possesses a firearm that is concealed on the person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.

AS 11.61.200(a)(1) prohibits a felon from possessing a firearm capable of being concealed on the person.[1] An affirmative defense is provided to AS 11.61.200(a)(1) in (b)(1) of that section.

> (b) It is an affirmative defense to a prosecution
> (1) under (a)(1) of this section that
> (A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;
> (B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
> (C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory . . . .

This affirmative defense allows the felon to possess a handgun if one of these requirements is met but does not necessarily allow the felon to carry the handgun concealed. The felon is prohibited from carrying the handgun concealed by AS 11.51.200(a)(12). An affirmative defense is provided to AS 11.61.200(a)(12) in (g) of that section.

> (g) It is an affirmative defense to a prosecution under (a)(12) of this section that
> (1) either
> (A) the defendant convicted of the prior offense on which the action is based received a pardon for that conviction;
> (B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or
> (C) a period of 10 years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(12) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory; and
> (2) at the time of possession, the defendant was
> (A) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

[1] For ease of discussion in this memorandum I will refer to "a firearm capable of being concealed on the person" as a handgun even though other firearms are capable of being concealed on the person.

> (B) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

This provision allows the felon to only carry a handgun concealed if the felon meets the requirements for possessing a handgun in the affirmative defense to (a)(1) and the felon is either in or on the felon's own property or otherwise engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity.

These provisions are different because one allows the handgun to be openly carried and the other sets a higher bar for the felon to carry the handgun concealed.

AS 11.61.220(a)(12) was enacted in 1998 as part of amendments to the concealed handgun permit laws. HCS CSSB 141(FIN) am H, by Senator Lyda Green, made substantial changes to the eligibility requirements to receive a concealed handgun permit and repealed almost all the restrictions on where a permittee could carry a concealed handgun. The rationale provided by Senator Lyda Green's staff was that anyone eligible to possess a handgun under state or federal law should be eligible to receive a concealed handgun permit and a person who has received a permit should be able to carry a concealed handgun anywhere not otherwise prohibited under state or federal law. To this end certain misdemeanor offenses that previously barred a person from receiving a permit were eliminated. In addition provisions relating to carrying a concealed firearm without a permit were strengthened and clarified while restrictions on where firearms could be possessed were mostly eliminated except for a few limited circumstances where those restrictions were applied generally to everyone (where previously the restrictions only had applied to persons holding permits to carry concealed weapons). As a part of this clarification AS 11.61.200(a)(12)[2] was enacted so that felons who possessed a handgun that was concealed were punished at a greater level than regular members of the public who carried a concealed handgun without a permit. And so a felon who might be permitted to possess a handgun due to the affirmative defense provided in AS 11.61.200(b)(1), would still be subject to a felony penalty if they carried that handgun concealed unless they (1) met the requirements to possess a handgun and (2) were in or on their own property or engaged in certain lawful outdoor activities.

In 2003 the Alaska Legislature enacted CSHB 102(STA) which removed restrictions on members of the public from carrying concealed deadly weapons, including firearms. CSHB 102(STA) made the concealed handgun permit system permissive; no longer would a permit be necessary to carry a handgun concealed.[3] Presumably at this time the legislature could have repealed AS 11.61.200(a)(12) and (g) as Alaska no longer

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[2] As well as the affirmative defense of AS 11.61.200(g).

[3] Although a permit could still be obtained if a person wanted to avail themselves of reciprocity provisions of other states and carry concealed in those states.

distinguished between open or concealed possession of firearms. But the legislature did not. I cannot say that the legislature merely overlooked those provisions as I remember some concern by at least some members about extending the right to carry concealed to those that had committed felonies.

2. Do you want to allow all felons convicted of crimes outside of AS 11.41 to be able to carry concealed handguns?

To build on my comment #1 above, the changes in this bill draft would allow felons convicted of crimes outside of AS 11.41 to carry concealed handguns, if they have received a pardon, a set aside, or 10 years have elapsed from the felon's unconditional discharge for the offense. Felonies outside of AS 11.41 include unclassified felonies and class A through C felonies, such as arson, misconduct involving controlled substances (including engaging in a continuing criminal enterprise, delivering drugs to children and methamphetamine manufacture and delivery), burglary of a dwelling or while armed with a firearm, promoting prostitution, and distribution and possession of child pornography. Clearly, felons who have received a pardon should be treated differently and a change in current law is clearly warranted in this regard. To a lesser extent persons who have received a set aside under AS 12.55.085(e) are probably deserving of a change in current law. The question becomes whether felons who have not had someone pass upon their character, whether that be the governor in issuing a pardon or a judge when issuing a set aside, should be able to possess concealed handguns merely because of the passage of time.. If so, should this apply to all felonies, even felonies that are considered more egregious or comparable to crimes against a person under AS 11.41?

3. Changing affirmative defense to nonapplicability provision.

The bill draft changes the affirmative defense provided in AS 11.61.200(b) to a nonapplicability provision. This change may have an extreme impact upon the ability of the state to prosecute felons possessing concealable firearms. Currently an affirmative defense is provided for felons to show that they have received a pardon, a set aside, or 10 years have elapsed from their conviction for a felony other than a crime against a person. The reason this is an affirmative defense is because the information necessary to establish the defense is within the knowledge and control of the felon and may not be available to the prosecution. A felon knows if they have received a pardon, a set aside, or 10 years have elapsed while the prosecution does not always have access to this information.[4] By making this a nonapplicability section, the prosecution may be required to disprove the existence of a pardon or set aside, or prove that 10 years have not elapsed, prior to the case proceeding. In many cases this may not be possible.

GPL:plm
10-076.plm

[4] Indeed, there is no organized way of searching for this information in most states.

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Edward L. Miner
Tamara Huffman, paralegal

6 January 2009

[redacted]
State Capitol
Juneau, AK 99801

Dear [redacted]

Several weeks ago, I furnished you some prosed draft legislation involving possession problems under Alaska law for persons who were pardoned or received suspended imposition of sentences for felony charges I have since run our proposed changes by the NRA attorneys and they have some improvements. As a result, I am resending this to you with what we originally sent along with the suggested improvements. This, then, is an updated version of what was sent previously. Please note the highlighted portions of the last paragraph.

The laws regarding possession of firearms in Alaska—laws which were contemplated and enacted by our own state legislature—are being attacked, gutted and rewritten by bureaucrats at the ATF and FBI. Attempts to correct these errors at the federal level have been ignored. It is now incumbent upon the Alaska legislature to take action to defend the rights of Alaskans. In this letter I will explain the source of the problem, illustrate particular grievances against the federal agencies involved, and offer the proper solution—a recrafting of Alaska Statute 11.61.200(g)(2).

Under Alaska law, an individual who has been convicted of a felony can have their right to bear arms restored by any of three occurrences: a pardon, a suspended imposition of sentence, or by the passage of ten years from unconditional discharge. The Alaska legislature, recognizing both the distinctions of life in Alaska and also the profound respect that the majority of Alaskans

have for the right to bear arms, has made the decision to establish a means by which individuals who have previously been convicted of a felony may regain their right to bear arms. The bureaucrats at the ATF and FBI have subverted the goals of the Alaska legislature through the tortured and twisted application of limited U.S. Supreme Court cases to Alaska law. In doing so, these agencies have wrongfully deprived Alaskans of their rights.

In Caron v. U.S., the U.S. Supreme Court held that if a person who has previously been convicted of a felony is prohibited from possessing any type of firearm under state law, then they are prohibited from possessing all firearms under federal law.[1] Prior to this ruling, several states allowed previously convicted felons to regain the right to possess rifles and shotguns but prohibited them from possessing handguns.[2] Alaska law draws no distinctions among the types of firearms which a previously convicted felon may posses.[3] Alaska law allows an individual whose rights have been restored to possess rifles, shotguns and handguns. The only limit contained in our state law is upon the carrying of a concealed firearm by a person whose rights have been restored.[4] While the right of possession is fully restored, an individual who has previously been convicted of a felony may only carry a firearm concealed under limited circumstances - either while he is upon his own land or while he is engaged in outdoor activities that would "necessarily involve the carrying of a weapon for personal protection."[5]

An accurate reading of the Alaska statutes reveals that our state law should not be impacted by the Court's holding in Caron. Alaska law does not limit the "type" of firearms which a previously convicted felon may possess. Furthermore, the single limitation in place for previously convicted felons proscribes only their ability to carry a firearm in a concealed manner, and does not limit their right of possession in any way. The ATF and FBI are, however, interpreting the Alaska statute as a restriction upon possession. Because of this interpretation, Alaskans who have led productive lives, but who have convictions sometimes decades in their past, are being denied their right to own guns, and even being threatened with prosecution for serious Federal offenses.

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[1] Caron v. U.S., 524 U.S. 308, 314 (1988).
[2] See U.S. v. Tomlinson, 67 F.3d 508 (4th Cir. 1995); see also U.S. v. Dahms, 938 F.2d 131 (9th Cir. 1991).
[3] See AS 11.61.200(a) and (b).
[4] AS 11.61.200(a)(12) and (g)(2).
[5] Id. The Alaska appellate courts have not established an objective test or enumerated specific criteria to consider when determining which activities Anecessarily involve the carrying of a weapon for personal protection.@

To better understand the plight of the individuals being affected by this law, I will offer some specific examples. In 1970, at the tender age of 19, R.S. made the mistake of getting caught up in recreational drug use. He was arrested for the possession of hallucinogens and convicted of a felony. As a first-time youthful offender, he was granted a suspended imposition of sentence, and given the opportunity to mend his ways. He is now a happily married 56-year-old father. He has worked, hunted and fished his entire life. He only learned recently, when he applied for the purchase of a new firearm, that he is now suddenly prohibited from owning firearms, despite having been granted a suspended imposition of sentence more than 30 years ago.

R.P. was convicted of a felony in 1992. After paying for his crime, he went straight to work helping the public. He became the director of the search and rescue organization for an Alaskan borough. Governor Murkowski granted him a full pardon, expressly for the purpose of allowing him to possess a firearm to help him fulfill his duties. He recently became aware of the fact that—despite the Governor's pardon—federal law prohibits him from possessing firearms.

The Federal law has stripped Alaska of the right to make its own decision on restoring gun rights to ex-felons. The overreaching actions of the bureaucrats at the ATF and FBI have left Alaska with a single option - to amend AS 11.61.200 to remove the disability on carrying a concealed weapon by a person convicted of a felony who has had their rights restored. By removing this disability in Alaska's law, the ATF and FBI will have no basis whatsoever to challenge Alaska's laws, and we can allow ex-felons who have proven their rehabilitation to participate in the full rights that all Alaskans enjoy.

I have included the text of two sample bills that would amend AS 11.61.200, and restore Alaska's policy of allowing rehabilitated ex-felons to own firearms. **I had the proposed legislation reviewed by the NRA and the NRA still sees problems with our proposed solutions. I've enclosed a copy of the memo I received from the NRA outlining such problems and the NRA's suggested proposal. We would urge the Legislature to adopt these changes, as suggested by the NRA,** to assure the continued support of the right of Alaskans to bear arms for the defense of themselves and others.

Sincerely,

Wayne Anthony Ross
Attorney at Law
Director, NRA

cc Brian Judy, NRA

Memorandum

Re: Proposed legislation
File: 11.61.220 Project
Date: 9 September 2008

Several of our clients have experienced problems in either being denied an Alaska Concealed Handgun Permit (CHP) or denied permission to purchase firearms during a "National Instant Criminal Background Check System" (NICS) check.

These problems stem from the language of AS 11.61.200, the Alaska Statute for Misconduct Involving Weapons in the Third Degree. AS 11.61.200(a)(12) bars all people convicted of felonies from carrying a concealed weapon, while AS 11.61.200(g) sets out the exceptions to (a)(12)'s blanket ban.

Because of the limited nature of subsection (g)'s exceptions, the Alaska Department of Public Safety takes the position, upheld by the Alaska Supreme Court in *Gabrielle v. State of Alaska*, that anyone with a felony conviction is ineligible for an Alaska CHP. Additionally, the FBI has taken the position that the limit on a felon's ability to carry a concealed weapon under AS 11.61.200(a)(12) & (g) activate the federal ban on the possession of any firearm under 18 USC §922(g), as intepreted in *Caron v. U.S.*

I shall attempt to describe how the particular provisions of Alaska and Federal law have created these twin problems, and what we can do to attempt to fix them by changing Alaska's law.

The Alaska CHP Issue

The Alaska Department of Public Safety has taken the position that anyone with a prior felony conviction, regardless of the time since the conviction or whether the conviction was set aside or pardoned, does not qualify for an Alaska CHP. They have based this determination on the limited scope of the exceptions in AS 11.61.200(g) to the total ban in 11.61.200(a)(12) of any felon carrying a concealed firearm.

AS 11.61.200(g) only allows a convicted felon to carry a concealed firearm if; (1) the conviction has been pardoned, (2) the conviction has been set aside, or (3) 10 years have elapsed since the conviction, and either (a) the person was in their home or on land immediately adjacent to their home, or (b) was engaged in an outdoor activity that necessitated carrying the weapon for personal protection. Thus, without both some evidence of rehabilitation in (1)-(3), and observing the limited conditions for carrying in (a)-(b), a person convicted of a felony is guilty of

Misconduct Involving Weapons in the Third Degree if they carry a concealed weapon.

The Alaska Department of Public Safety's interpretation of AS 11.61.200 was upheld in *Gabrielle v. State of Alaska*.[1] There, the Supreme Court of Alaska held that a person with a felony record of any description, though not prohibited from applying for an Alaska CHP under the statutes and regulations governing eligibility for the permit, nevertheless was not entitled to an Alaska CHP because of the restrictions found in AS 11.61.200. Because this issue has been appealed to the highest court capable of deciding the issue, the only way to change this outcome is through legislation.

The NICS Check / 18 USC §922(g)(1) Issue

The FBI's National Instant Criminal Background Check System implements a federal requirement that all federally licensed firearms dealers conduct a background check on all prospective firearms purchasers. The background check screens those that have been disqualified from purchasing firearms through operation of federal law. Information is entered into the NICS system by multiple state and federal agencies, but the FBI determines whether the information provided disqualifies an individual from purchasing firearms.

Many of the federal restrictions on possession of firearms are found at 18 U.S.C. §922(g). §922(g)(1) prohibits anyone who has been convicted of a felony from possessing a firearm, however §921(a)(20) contains an exception for those felons who have had their civil rights restored (through operation of law, a pardon, or any similar means). The exception in §921(a)(20) has its own exception, however, prohibiting those convicted of a felony whose civil rights have been restored from possessing a firearm if state law prohibits them from possessing a weapon of any type.

The exception to the exception found in §921(a)(20) was interpreted by the U.S. Supreme Court in *Caron v U.S.*[2] There, the Court faced a person whose civil rights had been restored under Massachusetts law, including the right to possess long guns and handguns. However, he was not allowed to carry handguns outside his home or business, though this right was afforded to non-felons. The Supreme Court found that this restriction, though not strictly a prohibition against of possession of handguns, was enough of a restriction to activate the exception to the exception found in §921(a)(20).

Applying *Caron* to Alaska law, the FBI has taken the position that the restrictions on ex-felons carrying concealed weapons found in AS 11.61.200(a)(12) & (g) are sufficient to activate the exception to the exception found in 18 U.S.C. §921(a)(20). Because of this interpretation, ex-

[1] 158 P.3d 813 (Alaska 2007).

[2] 524 U.S. 308 (1998).

felons in Alaska, even those who have had convictions set aside or pardoned, are barred from possessing any firearm by §922(g)(1).

The FBI's interpretation of the effect of AS 11.61.200 on the application of 18 U.S.C. §922(g)(1) is contrary to the Alaska Supreme Court's interpretation in *Gabrielle* (which was not binding on the FBI), and has been questioned in other federal cases such as the unpublished *U.S. v Flores*.[3] However, given the similarity between Alaska law and the Massachusetts law at question in *Caron* (both allowed possession of all types of weapons, but restricted where and how handguns could be carried), the FBI's interpretation of the law is not clearly incorrect. It would be possible to challenge the FBI in court, but it is far from certain that we could obtain a favorable result.

The Common Factor

The common factor in both of these issues is AS 11.61.200, and the restriction on ex-felons carrying concealed weapons in Alaska, except under certain narrow exceptions. While Alaska has several statutes covering the crime of "Misconduct Involving Weapons," enumerating different degrees of the offense, no other iteration of the statute implicates the carrying or possession of weapons by ex-felons, and so would not impact either eligibility for an Alaska CHP or eligibility under the FBI's NICS system.

Likewise, Alaska's statutes and regulations governing Alaska's CHP program (AS 18.65.700-790, 13 AAC 30.010-900) set out eligibility requirements, including disqualifications if an applicant has had multiple recent misdemeanor offenses or has been ordered by a court to attend a drug- or alcohol-rehabilitation clinic. However, none of the requirements for a CHP touch on the status of the applicant as an ex-felon; pardoned, conviction set aside, or otherwise. Thus, none of these statutes or regulations need to be revised in addressing either the CHP or NICS issue.

Therefore, a legislative fix to this issue need only modify the restrictions on ex-felons carrying or possessing weapons that are found in AS 11.61.200.

The Possible Solutions

Alaska is unusually *laissez-faire* in its approach to gun rights (being one of two states that allows concealed carry of firearms without a permit). However, Alaska also tends towards a tougher stance on crime issues than other states. In attempting to change the policy embodied in AS 11.61.200 towards the gun rights of ex-felons, we will be working in the cross-currents of these two conflicting political priorities.

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[3] 118 Fed. Appx. 49 (C.A.6 (Mich.)).

From a strictly political perspective, we could attempt to counter some of the turbulence of a legislative proposal by noting that it is federal law that has forced us to seek a modification of our state law, in order to allow us to pursue our own policy of granting forgiveness to, and restoring the rights of, ex-felons. Federal law has stripped Alaska of its right to make its own determination of how ex-felons are to exercise their gun rights, and leaves us only a simplistic all-or-nothing choice as to whether ex-felons should regain their gun rights.

There are several different methods we could pursue to change AS 11.61.200 so as to allow for ex-felons to apply for an Alaska CHP and to bypass the federal ban on possession found in 18 U.S.C. §922(g)(1). The principal question in changing the restrictions found in AS 11.61.200, however, is how far to expand the re-enfranchisement of gun rights to ex-felons.

First, in order to permit ex-felons to apply for an Alaska CHP, or to possess a weapon under 18 U.S.C. §922(g)(1) and *Caron*, we must remove the restrictions on where an ex-felon may carry a concealed weapon found in AS 11.61.200(g)(2) (I have attached two sample proposed bills with this memo for you to review). This would allow an ex-felon to carry a concealed weapon under the same circumstances that any other citizen would be able to. This would broaden the rights of ex-felons, as it allows them to carry concealed weapons where previously they were not allowed to. However, this is the only means of restoring their right to own weapons at all, given the FBI's interpretation of 18 U.S.C. §922(g)(1).

As for how far to extend re-enfranchisement, currently AS 11.61.200(g) identifies three groups of ex-felons that it restores gun rights to; ex-felons who (1) received a pardon, (2) had their conviction set aside, or (3) had more than 10 years elapse since they finished serving their sentence and who had not committed a violent felony. There is a strong argument that all three groups should be granted full re-enfranchisement, as all three demonstrate some individualized showing of rehabilitation, rather than automatically granting an ex-felon gun rights as soon as they get out of jail.

Conclusion

Alaska has made its own policy decision about how to handle the gun rights of ex-felons, however the Federal Government has stripped Alaska of the right to make our own judgments except for an all-or-nothing decision on the gun rights of ex-felons. That message of Federal interference with Alaska's laws is the message we should emphasize in attempting to amend AS 11.61.200, in order to restore the gun rights of those denied them under the federal government's ban.

State of Alaska
Department of
Public Safety

Sarah Palin, Governor
Walt Monegan, Commissioner

May 13, 2008

[redacted]

By certified mail with return receipt

Dear Mr. [redacted]

I received your e-mail dated April 6, 2008 appealing the denial of your application to obtain an Alaska Concealed Handgun Permit, and have given careful consideration to your appeal. Your appeal is denied. An explanation of the reason for this denial is as follows.

In stating your case, you provide abundant evidence of your good character and legal standing, as well as expressing frustration with an action by this department which you feel unwarranted in your circumstances.

The original decision to deny your application was based upon your convictions for 2nd degree burglary. Sentencing for your convictions was suspended and eventually your convictions were set aside. Burglary in the second degree is a felony. A felony conviction disqualifies an applicant from obtaining an Alaska Concealed Handgun Permit. A felony conviction that has been set aside is still a disqualifier for the issuance of an Alaska Concealed Handgun Permit. State law (13 AAC 30.900(6)) defines a conviction as meaning "...that a person has entered a plea of guilty or no contest to, or has been found guilty by a court or jury of, a criminal offense, **regardless of whether the judgment was after that set aside under AS 12.55.086** or a similar procedure in another jurisdiction, or was the subject of a pardon or other executive clemency..." (emphasis added) Consequently, because of your set aside felony convictions, we are prohibited, by law, from issuing you an Alaska Concealed Handgun Permit.

Office of the Commissioner
5700 E. Tudor Road – Anchorage, AK 99507 – Voice (907) 269-5086 – Fax (907) 269-4543
Juneau Office – Voice (907) 465-4322 – Fax (907) 465-4362

Your message also indicates that you have not been denied a firearm transfer when presenting yourself for a NICS check. Although it is logical to assume that you are eligible to possess a firearm under federal law, an Alaska Concealed handgun permit may only be granted to those who are eligible to possess a handgun under both federal and state law. Alaska law (AS 11.61.200(a)(12)) prohibits you from carrying a concealable firearm. There is no unrestricted right to carry a concealed handgun for a convicted felon under Alaska law.

As a final administrative decision, the appeal to this action is denied.

You are reminded of your right to seek judicial review of this decision under Alaska Statute 44.62.560-570 within 30 days of receipt of this letter.

Sincerely,

John D. Glass
Deputy Commissioner

To whom it my Concern,

My name is [redacted] and I'm writing this letter in regards to the denial of a concealed carry permit that I applied for in the beginning of [redacted] of 2008.I have taken the concealed carry course and paid a considerable amount of money for that course to try and be a law abiding gun owner and carrier, even though in the state of Alaska it is not necessary to do so.

I'm a 36 year old father of [redacted] and a devoted husband,and I'm currently a superintendent for a multi-million dollar [redacted] and work year round at that job.I'm a tax payer,a voter and a yearly supporter of our Alaska Peace Officers and Public Safety Employee Association and a Member of the N.R.A. I'm a law abiding citizen that does not drink or do drugs and haven't even had a traffic violation in over ten years.

I was 17 years old when I found myself on the wrong side of the law for the first and only time in my life.
I was young and dumb as we've all been, and made a bad choice in my young life, I was involved in a non-violent crime in which a felony was charged.I plead no contest because I knew what I did was wrong and there was no sense in fighting it andwaisting the courts time.I did a short jail term and was ordered to payrestitution and do 3 years probation.And because I was so young and payed my restitution in full and did my probation with no problems or violations. I was given a S.I.S (Suspended Imposition of Sentencing) my conviction was Dropped, Dismissed by a federal judge.(I'm not concidreda felon.)So why put me in that category.

I was given a second chance and have made a great life with that second chance, I'm allowed to vote,buy and posses firearms and I"m a avid hunter and sportsman.(Because I'm not concidered a felon that is all possible.)

In the State of Alaska I'm allowed to carry a concealed weapon without a permit,but yet I can't get a concealed carry permit if I want one.It doesn't make sense, why you would not want me on paper to show law enforcement that I would carry a concealed weapon.I have court documents,F.B.I and N.I.C.S background checks to prove my eligibility to own a handgun. I have talked to people at the permits and licensing unit that agree and don't understand it either.

I ask of you to grant me the right and please allow me to get my concealed carry permit and to go on paper as a permit holder and to be able to give law enforcement officers the ability to know that I have a weapon on my person and to be a law abiding and safety trained citizen.

Sincerely,

[redacted]

State of Alaska
Department of Public Safety
Division of

Statewide Services

Sarah Palin, Governor
Walt Monegan, Commissioner

June 9, 2008

CERTIFIED RETURN RECEIPT

[redacted]

RE: Alaska Concealed Handgun Permit

Dear Mr. [redacted]

This is to notify you that your application for renewal of your Alaska Concealed Handgun permit is denied. Enclosed please find your cash in the amount of $25.00.

Upon receiving an application for renewal, we are obliged to review the eligibility status of the applicant. In your case we have determined that you are not eligible to hold a concealed handgun permit and that the original issue was done in error.

Effective immediately, your concealed handgun permit is revoked. You must surrender the permit to the nearest peace officer. We recommend that you surrender the permit at the nearest State Trooper office or police department.

We apologize for any inconvenience this may cause you but the law does not allow any other course of action.

Alaska statute 18.65.705 states that, in order to be eligible for a permit, an applicant "must be eligible to own or possess a handgun under the laws of this state and under federal law." We understand that your right to possess a firearm has been returned to you under federal law but Alaska law continues to bar you from unrestricted possession of a firearm. As a result, you may not be issued an Alaska concealed handgun permit.

Presidential Pardon!

Under Alaska statute 11.61.200, misconduct involving weapons in the third degree, it is a class C felony for a person to knowingly possess a firearm capable of being concealed on

one's person or to knowingly possess a firearm that is concealed on the person after having been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory.

The same statute does provide for two affirmative defenses to a prosecution for these offenses but does not make it legal conduct for a convicted felon. In your case, your felony convictions will forever bar you from unrestricted possession of a firearm in Alaska even in light of the fact that the federal government has apparently restored your federal rights.

Presidential pardon!

The person who initially reviewed your eligibility status mistakenly interpreted the restoration of your federal rights to possess a firearm as restoring your state right as well. It does not. Pardons do not create an exception. Set asides, whether court ordered or statutory, do not create an exception.

Please surrender your permit immediately to insure compliance with Alaska law.

Alaska statute 18.64.740 provides that you may appeal this revocation decision to the commissioner of the Department of Public Safety. The appeal must be received in writing within 30 days after the date of the notice of revocation, and must set out the reasons for the appeal.

Sincerely,

Terrie Satterfield
Permits and Licensing Unit

Terrie,

Here is what I had this e-mailed to me on the Pardon. Here is what I was told:

I meet the requirements of AS 18.65.705
There was "no change" on the renewal application
I meet all Federal and State laws to own and posses a handgun
Pardon granted by President not Governor of State of Alaska
Per AS a "Pardon" is the only way to restore rights lost and remove disabilities under Alaska Law
The ACHP Rules .doc was an information paper created by someone in DPS, not the State Attorney's Office

I have no idea of all the all the AS that apply and have been told that several contradict one another. In several AS it states that when a Pardon is issued it is as though the conviction never occurred. I have had CCW permits in several states (including Alaska).

If this does not clear it up to everyones satisfaction, please forward me the appeal procedures so I may address this to the Commissioner of Public Safety.

Thank you for your patience with me! I really do appreciate all your help!

Respectfully,

[redacted]

back to him. He objected. A replevin petition was filed in the Circuit Court of Phelps County on June 1[illegible] 2005, seeking return of his revolver. On October 2[illegible], 2005, the Attorney General filed his answer. The state's position was that Mr. Troyer needs a permit to acquire a pistol prior to obtaining custody of the revolver. The court held a hearing on August 21, 2006. The parties subsequently signed on October 5, 2006, a stipulation for dismissal. Mr. Troyer agreed to drop his lawsuit and the police agreed to return the revolver to Mr. Troyer without requiring that he obtain a pistol acquisition permit. The revolver was returned.

MONTANA

Van der Hule, Frank (Montana). The issue is whether Montana's restoration of rights satisfies the requirements of 18 U.S. Code section 921(a)(20), or is it insufficient based on the holding in Caron v. United States, 118 S.Ct. 2007 (1998), which held a person cannot be convicted under federal law of being a felon in possession of a firearm stemming from a state felony conviction if the state law that removed the disability allows the person to possess all firearms (rifle, shotgun, pistol). On the other hand, a person may be convicted under federal law of being a felon in possession of a firearm stemming from a state felony conviction if state law allows such a person to possess only certain firearms, e.g., rifles and shotguns, but not pistols. In this case, Mr. Van de hule was denied permission to purchase a hunting rifle following a background check. A lawsuit was filed. Plaintiff subsequently filed a motion for summary judgment. The government likewise filed a motion for summary judgment. Mr. Van der hule filed his reply on November 6, 2006. Oral argument occurred on March 23, 2007. The court held on September 21, 2007, that Montana's refusal to grant a license to carry a pistol to a person whose civil rights have been restored meant that under Caron he could not possess any firearm under federal law. However, there is a possibility that Montana law grants a licensing official discretion to grant the carrying license to such a person. Therefore, the court certified the question to the Montana Supreme Court.

NEW HAMPSHIRE

Lone Pine Hunter's Club, Inc. (New Hampshire). This is an effort to shut down a shooting range. New Hampshire has a range protection statute. The club has been operating a shooting range on the property since 1966. The case resulted in two reported decisions. Lone Pine Hunters' Club v. Town of Hollis, 149 N.H. 668, 826 A.2d 582 (2003), held that evidence was sufficient to uphold finding that the zoning board of adjustment's finding that, 34 years earlier, it merely decided that hunt club did not need a variance to build a proposed addition, rather than deciding that the club did not need a variance to use the property as a fish and game club. Consequently, under the 1999 zoning ordinance the club's use of the property could be approved as special exception. The club would have to cease and desist unless the club applied for a special exception and presented a site plan to the planning board depicting the nature of the club's entire operation. Residents Defending Their Homes v. Lone Pine Hunters' Club, Inc., 924 A.2d 366 (N.H. 2007), held that the range protection statute only protected a shooting range that was in lawful operation at its inception. The court held the club was not operating lawfully from its inception in 1966. Accordingly, the club must obtain approval from the town, in compliance with the zoning provisions allowing for a special exception as a shooting range.

Wayne Anthony Ross

From: Frazer, John [John.Frazer@nrahq.org]
Sent: Thursday, December 04, 2008 11:16 AM
To: Ross, Col. Wayne Anthony
Cc: Judy, Brian; Conte, Christopher
Subject: FW: Gun Rights for Ex-Felons

Dear Mr. Ross:

Chris Conte, Brian Judy and I have reviewed your memo and draft legislation.

It appears to us that we will need to go a little farther than your drafts to fix the problem entirely.

Draft #2 completely repeals the limitation under which an ex-felon can only possess a gun on his own property, or while engaged in hunting, fishing, etc. This is the exception the Alaska Supreme Court relied on in *Gabrielle*, pointing out that under Alaska law at the time, "a pardoned felon [could] only carry a concealed handgun in those situations where an ordinary citizen would be able to carry a concealed handgun without a permit." 158 P.3d at 815. The flip side is that a pardoned felon couldn't carry a handgun anywhere else. This is similar to *Caron*, where (as Justice Thomas pointed out in his dissent) the ex-felon was only prohibited "from possessing only certain firearms (handguns) in only certain places (outside his home or office)." Getting rid of this limitation for all ex-felons would largely solve the *Caron* problem.

Draft #1 would reorganize AS 11.61.200(g) so that the property and hunting limitations only apply to persons whose rights are restored by operation of law after 10 years. This would help solve the problem for those whose rights are restored by a more particularized method (i.e., a pardon or set aside). Because there would be no limitations on gun possession by those people (and no problem with eligibility for carry permits), they would no longer be prohibited from possessing guns at the federal or state level. However, because the property and hunting limitations would still apply to those whose rights are restored by the passage of time, they would still be federally prohibited under *Caron*.

However, there is a potential problem with both drafts. AS 11.61.200(g) only creates an affirmative defense to prosecution under AS 11.61.200(a)(12). It is not a total exception, and therefore BATFE could argue that all pardons, set-asides, and 10-year restorations still limit ex-felons' right to possess firearms because they create a situation where the ex-felon can be arrested and put on trial before successfully raising his affirmative defense. BATFE would argue that if the Alaska legislature wanted to create a total exception, it knew how to do that; see, e.g., AS 11.61.200(e) (bans on possessing prohibited weapons and on discharging weapons from motor vehicles "do not apply to a peace officer acting within the scope and authority of the officer's employment.)" If any limit exists on gun possession by ex-felons, those felons would still be prohibited from possessing firearms under federal law, and therefore from getting an Alaska carry permit. To avoid this problem, it would be necessary to change the affirmative defense to a full-scale exception.

As an aside on the federal interpretation of these provisions, I would not rely on the Alaska Supreme Court's holding that Gabrielle wasn't prohibited from possessing a gun under federal law because he was pardoned, rather than receiving a restoration of rights. The language in the federal statute is parallel for pardons and restorations, and I think a federal court would likely take a different view than the Alaska Supreme Court did.

Fortunately, drafting a bill that will solve these problems is not difficult. All it needs to do is change the affirmative defense in AS 11.61.200(g) to an exception, and get rid of the property and hunting/fishing limitations. See attached, and please let us know if you have any questions.

Sincerely,

John Frazer

P.S. I am attaching a copy of the Gabrielle case for Brian's reference.

-----Original Message-----
From: Conte, Christopher
Sent: Tuesday, December 02, 2008 1:41 PM
To: Frazer, John
Subject: FW: Gun Rights for Ex-Felons

Here it is.

Christopher A. Conte
Legislative Counsel, NRA/ILA
(703) 267-1166

The information contained in this message and any attachments hereto, if any, should be presumed to be confidential. In addition, attorney/client and/or attorney/consulting privileges may attach. The information is intended only for the use of the addressee. If you are not the intended recipient or authorized agent, employee or counsel for the addressee, you are hereby notified that any use, dissemination, distribution or copying of this communication, in whole or in part is strictly prohibited. Have a nice day.

-----Original Message-----
From: Judy, Brian
Sent: Tuesday, December 02, 2008 12:35 AM
To: Conte, Christopher
Subject: Fw: Gun Rights for Ex-Felons

FYI.

---- Original Message -----
From: Ross & Miner Paralegal
To: bjudy@nrahq.org
Sent: Monday, December 01, 2008 3:29 PM
Subject: Gun Rights for Ex-Felons

Mr. Judy,

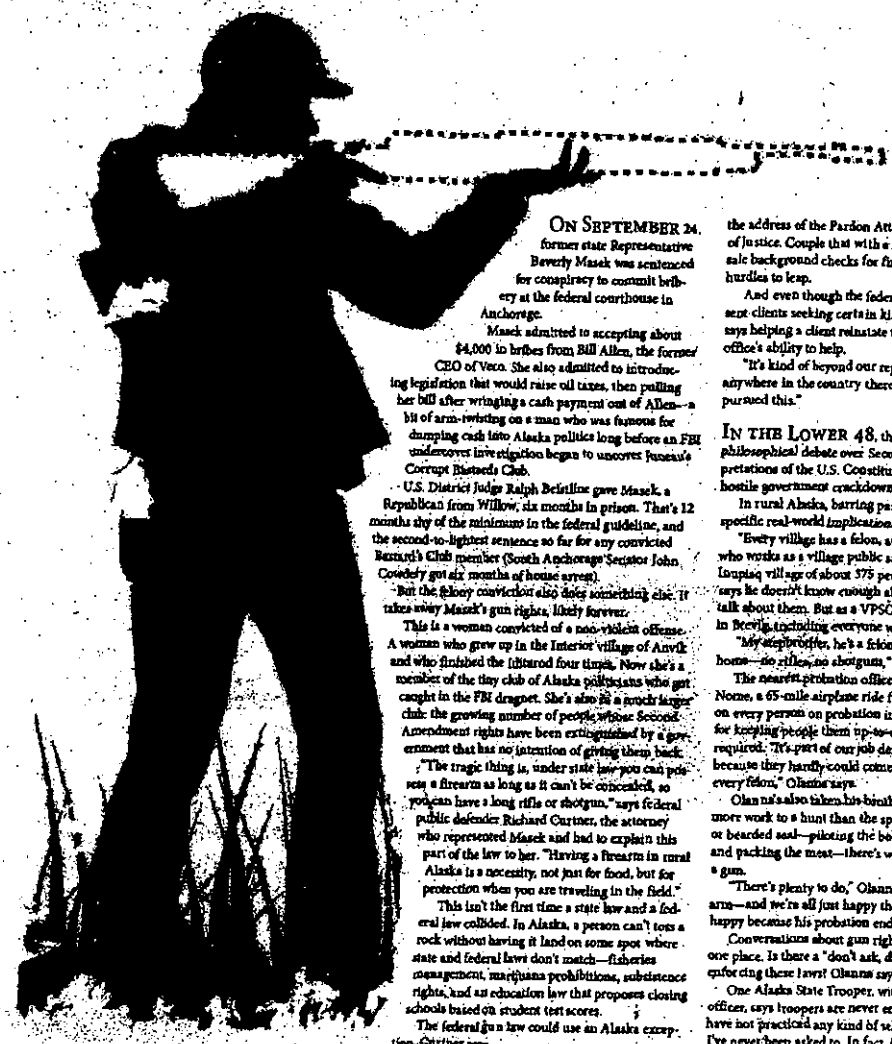
Wayne has asked me to forward the attached documents to you. I made the assumption that you do not have WordPerfect and converted the files into Word, which means they may look a bit different from the documents you have. Please let me know if there is anything else I can do.

Sincerely,

Hidden punishment

In rural Alaska, where gun rights matter most, there's no way for reformed felons—even non-violent ones—to get them back.

Story and photos by Scott Christianse



On September 24, former state Representative Beverly Masek was sentenced for conspiracy to commit bribery at the federal courthouse in Anchorage.

Masek admitted to accepting about $4,000 in bribes from Bill Allen, the former CEO of Veco. She also admitted to introducing legislation that would raise oil taxes, then pulling her bill after wringing a cash payment out of Allen—a bit of arm-twisting on a man who was famous for dumping cash into Alaska politics long before an FBI undercover investigation began to uncover Juneau's Corrupt Bastards Club.

U.S. District Judge Ralph Beistline gave Masek, a Republican from Willow, six months in prison. That's 12 months shy of the minimum in the federal guideline, and the second-to-lightest sentence so far for any convicted Bastard's Club member (Scotch Anchorage Senator John Cowdery got six months of house arrest).

But the felony conviction also does something else. It takes away Masek's gun rights, likely forever.

This is a woman convicted of a non-violent offense. A woman who grew up in the Interior village of Anvik and who finished the Iditarod four times. Now she's a member of the tiny club of Alaska politicians who got caught in the FBI dragnet. She's also in a much larger club: the growing number of people whose Second Amendment rights have been extinguished by a government that has no intention of giving them back.

"The tragic thing is, under state law you can possess a firearm as long as it can't be concealed, so you can have a long rifle or shotgun," says federal public defender Richard Curtner, the attorney who represented Masek and had to explain this part of the law to her. "Having a firearm in rural Alaska is a necessity, not just for food, but for protection when you are traveling in the field."

This isn't the first time a state law and a federal law collided. In Alaska, a person can't toss a rock without having it land on some spot where state and federal laws don't match—fisheries management, marijuana prohibitions, subsistence rights, and an education law that proposes closing schools based on student test scores.

The federal gun law could use an Alaska exception, Curtner says.

"But people convicted of crimes don't have any lobby. There are all kinds of exceptions written into law for banks and for corporations, but when you've done something wrong in your past, there's no lobbyist for that," he says.

The federal government has a process for reinstating civil rights. In the case of gun rights, a felon who has paid their debt to society or been exonerated by a presidential pardon, can file an application for reinstatement of rights with the Bureau of Alcohol Tobacco Firearms and Explosives. The bureau's agents process the application, performing a background check to make certain the applicant qualifies.

But ATF agents don't do those background checks anymore, and haven't for the last 17 years. That's according to a form letter ATF sends in response to anyone who inquires about reinstatement of rights. The letter calls Second Amendment rights "federal firearms privileges" and says that ever since 1992, Congress has used the bureau's annual budget appropriation to prohibit the ATF from spending money to "investigate or act upon" any restoration of rights application. The letter also says the convict may seek a presidential pardon, and gives the address of the Pardon Attorney's Office at the U.S. Department of Justice. Couple that with a federal law that created strict point-of-sale background checks for firearms, and you have some tall legal hurdles to leap.

And even though the federal public defenders occasionally represent clients seeking certain kinds of post-conviction relief, Curtner says helping a client reinstate their gun rights would be outside his office's ability to help.

"It's kind of beyond our representation, and I don't know that anywhere in the country there is a case where (a public defender) has pursued this."

In the Lower 48, this issue might stand out as a mostly philosophical debate over Second Amendment rights, modern interpretations of the U.S. Constitution, or the hypothetical threat of a hostile government crackdown.

In rural Alaska, barring past felons from possessing a gun has specific real-world implications, ones that aren't just theoretical.

"Every village has a felon, at least one," says Winfred Olanna, who works as a village public safety officer in Brevig Mission, an Inupiaq village of about 375 people on the Seward Peninsula. Olanna says he doesn't know enough about federal firearms prohibitions to talk about them. But as a VPSO, he's tasked with knowing everyone in Brevig, including everyone who returns from prison.

"My stepbrother, he's a felon, so he can't have any firearms in his home—no rifles, no shotguns," Olanna says.

The nearest probation officer to Brevig Mission is based in Nome, a 65-mile airplane ride from the village. Olanna checks in on every person on probation in the village. He's even responsible for keeping people them up-to-date with drug testing, when it's required. "It's part of our job description to work with the P.O.s, because they hardly could come to every village twice a month for every felon," Olanna says.

Olanna's also taken his brother-in-law hunting. After all, there's more work to a hunt than the split-second it takes to shoot a caribou or bearded seal—piloting the boat, spotting animals, field dressing and packing the meat—there's work a hunter can do without holding a gun.

"There's plenty to do," Olanna says. "He just can't carry a firearm—and we're all just happy that he is following his probation. He's happy because his probation ends next year."

Conversations about gun rights in rural Alaska inevitably lead one place. Is there a "don't ask, don't tell" policy when it comes to enforcing these laws? Olanna says there isn't in Brevig Mission.

One Alaska State Trooper, with experience as a VPSO oversight officer, says troopers are never encouraged to let anyone slide. "I have not practiced any kind of selective enforcement like that, and I've never been asked to. In fact, just the opposite," says Trooper Terrence Shanigan.

Shanigan, who is 38, grew up in rural Alaska, in the Bristol Bay villages of Pilot Point and Ugashik. He remembers being one of the excited village kids who would run, not walk, to the airstrip when state trooper landed at Ugashik.

"I only knew him as 'trooper' but it was always exciting when he came to town," he says, adding troopers were plied with coffee and akutaq. He says a successful state trooper or VPSO must inser themselves into the community, making a point to attend potlatch and community events such as planning meetings.

Troopers are charged with enforcing state laws, and that's wher their focus is. Shanigan current patrols the Parks Highway from Talkeetna north to Cantwell. When he worked as a VPSO oversigh officer, he was sometimes assigned to villages with only on-and-off VPSO coverage, where he made frequent visits even though he couldn't be there every day. He's trained in wildlife enforcement, s he knows how to prosecute hunting and fishing violations.

Shanigan says it's possible that a trooper might come into conta with a felon on probation—someone the state law doesn't allow to

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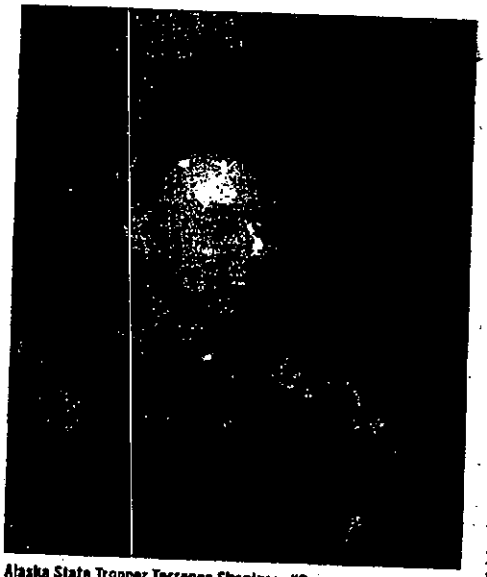

Alaska State Trooper Terrence Shanigan: "Someone with that knowledge might say, 'Hey, that trooper let somebody go'—but that's not really what they saw," he says.

armed—without the information on-hand to charge that person with a probation violation.

"When you go down to the river, well, everybody is packing firearms," Shanigan says, but the trooper may not know who on the river has had their rights revoked until he is back at the office, running names through databases. "Now someone with that knowledge might say, 'Hey, that trooper let somebody go'—but that's not really what they saw," he says.

Cops can be suspicious for all kinds of reasons, Shanigan says, but they have to be careful to not trounce on anyone's rights. "You have to make decisions based on what you know to be true," he says.

ALL OF THE COMPETING STATE and federal regulations are further complicated by something called the National Instant Criminal background Check System. NICS, as it's informally known, is the background check licensed gun dealers use to see if federal gun control laws allow a particular customer to purchase a gun. And the NICS system has flagged people who have their rights restored in their home state.

Anchorage attorney and gun rights activist Wayne Anthony Ross has represented people attempting to earn their gun rights back. Ross says the reason NICS flags all Alaska felons is fallout from a U.S. Supreme Court ruling called Caron v. U.S. The case was decided in 1993, and requires that a person have all gun rights restored before the federal government recognizes any of their gun rights. The FBI applies this "all-or-nothing" approach to managing NICS.

Alaska law allows for restoration of most, but not all, of a felon's gun rights. A state felon cannot have a concealed weapon, Ross says, unless the felon wears the weapon on private property. (His interpretation differs slightly from that of Curtner, who tells clients they can't own a "concealable" weapon.)

A state felon is also prohibited from receiving Alaska's concealed weapons permit. The permit itself is an odd-duck. It's no longer required in order to carry a concealed weapon in Alaska. Yet the state continues to offer them because gun rights activists want the right to carry in other states where Alaska has reciprocal agreements.

"The problem is that this Supreme Court case that says if there is any state prohibition on having firearms, no mater how minimal, then you can't own a firearm at all," Ross says. "So a guy who feeds his family through subsistence, and has paid his debt to society, isn't able to do that."

Ross believes changing state law can solve the NICS problem for some felons. He's even drafted model legislation, but it hasn't been introduced despite his efforts to recruit a legislator to sponsor it. "I've got clients who have received pardons. There is one guy who has received a presidential pardon and others are people who have completed their probation. So we have multiple classes of people who are affected by this," he says.

In a letter to state Senator Charlie Huggins, Ross identified two clients by their initials and related their stories. One was convicted in 1970, becoming a felon at age 19 after being caught with hallucinogenic drugs, Ross wrote. "He has worked, hunted and fished his entire life. He only learned recently, when he applied for purchase of a new firearm, tat he is now suddenly prohibited form owning firearms, despite having been granted a suspended imposition of sentence more than 30 years ago."

Ross's second example was a man convicted of felony assault in 1992 and granted a full pardon by Governor Frank Murkowski in 2006. The man was a search and rescue pilot who wanted to carry a weapon while performing his job.

FEDERAL GUN LAWS ARE STRONGEST when applied to felons in possession of weapons, or people accused of using a gun while committing a felony crime. A drug dealer or repeat violent offender can have up to five years added to their sentence if they have a gun in their home. Newsrooms often get press releases from the U.S. Attorneys office touting new indictments and sentences related to such charges.

"We use our discretion when applying the law," Assistant U.S. Attorney Frank Russo says. "Usually we are applying the law at the request of the local community."

The implication is there won't be hordes of FBI or ATF agents flying around Alaska and rappelling into hunting camps to check IDs and round up gun owners. But defense attorneys aren't really satisfied with that.

"A client might know that it's very unlikely that they would be charged (for being a felon in possession)," Curtner says. "But I can't tell my people that, to trust the government not to charge you. I can only advise the client on the law, and the law in this case says you can't own a weapon."

So that's what Curtner told Beverly Masek, and every other nonviolent offender he's represented who was found guilty. "We talked about it, and it's one of those things that's 'what are you going to do?'" Curtner says. "There is just no getting around it." ◆

scott@anchoragepress.com

Brevig Mission VPSO Winfred Olanna: "Every village has a felon, at least one."

NATIONAL RIFLE ASSOCIATION OF AMERICA
INSTITUTE FOR LEGISLATIVE ACTION
555 CAPITOL MALL, SUITE 625
SACRAMENTO, CALIFORNIA 95814
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STATE & LOCAL AFFAIRS DIVISION
BRIAN JUDY, ALASKA STATE LIAISON

March 11, 2010

TO: Representative Bill Stoltze
CC: Members of the House Judiciary Committee
FROM: Brian Judy, NRA-ILA Alaska State Liaison
RE: House Bill 408 – **SUPPORT**

I am writing on behalf of the National Rifle Association – Institute for Legislative Action to express **support for House Bill 408.** HB 408 would facilitate the implementation of the current Alaska state law that allows persons who have long-past felony convictions but whose rights have been restored to possess firearms in the state. Although the legislative fix necessary to solve this problem is simple, the reason it is necessary is quite a technical and complicated interaction between state law, federal law and a U.S. Supreme Court decision (attached is a detailed summary of the various issues at conflict).

While many advocates for the restoration of voting rights for persons with past felony convictions talk about dignity, with respect to the restoration of firearm rights there is not only the issue of dignity but of life and death. The nature of life in Alaska, especially in the rural areas, makes possession of firearms a necessity not only for food but for protection in the field.

Current Alaska State law provides for the restoration of roughly 95% of firearms rights to those former offenders who qualify. They can possess rifles and shotguns, they can possess handguns, they can carry handguns openly and they can carry handguns concealed in their home, on their property and while engaged in lawful outdoor activities out in public. The only thing they cannot do under state law is put on a coat and cover a handgun when they are somewhere other than those places previously listed.

The problem is that, based on the Court decision discussed in my attachment, because the State of Alaska does not restore 100% of an affected person's firearm rights, under federal law the person is considered to have NO rights whatsoever! In a Legal Services Memorandum dated April 1, 2009, Legislative Counsel Gerald Luckhaupt described the Court's conclusion as "obviously incorrect." While the NRA would completely agree with Mr. Luckhaupt, only three Supreme Court Justices shared such a view and the decision was 6-3 in this case.

As discussed in my attachment, there are two changes that must be made to State law: first, the restriction on concealed carry must be repealed and second, two affirmative defenses found in AS § 11.61.200 must be changed to exceptions. With these two changes, Alaska State law would treat persons who have had their rights restored exactly the same as those who have never lost their rights and the problem would be solved.

It is the hope of the National Rifle Association that legislators can get beyond the perceived stigma of "giving firearms to felons" and realize the legitimacy of allowing persons, who have long ago paid their debt to society, to attain the restoration of their rights already provided by the State of Alaska but extinguished by an "obviously incorrect" U.S. Supreme Court decision.

Please support House Bill 408.

West's Alaska Statutes Annotated Currentness
Title 11. Criminal Law
Chapter 61. Offenses Against Public Order
Article 2. Weapons and Explosives

§ 11.61.200. Misconduct involving weapons in the third degree

(a) A person commits the crime of misconduct involving weapons in the third degree if the person

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or controlled substance into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable;

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable;

(7) violates AS 11.46.320 and, during the violation, possesses on the person a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or controlled substance into the person's body;

(8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued or filed under AS 18.66.100-18.66.180 or issued under former AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(9) communicates in person with another in violation of AS 11.56.740 and, during the communication, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(10) resides in a dwelling knowing that there is a firearm capable of being concealed on one's person or a prohibited weapon in the dwelling if the person has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory, unless the person has written authorization to live in a dwelling in which there is a concealable weapon described in this paragraph from a court of competent jurisdiction or from the head of the law enforcement agency of the community in which the dwelling is located;

(11) discharges a firearm from a propelled vehicle while the vehicle is being operated in circumstances other than described in AS 11.61.190(a)(2); or

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(12) knowingly possesses a firearm that is concealed on the person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.

(b) It is an affirmative defense to a prosecution

(1) under (a)(1) of this section that

(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;

(2) under (a)(2) or (10) of this section that

(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the violation of (a)(2) or (10) of this section, and the prior conviction did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801 - 5872 (National Firearms Act).

(d) It is an affirmative defense to a prosecution under (a)(11) of this section that the person was using a firearm while hunting, trapping, or fishing in a manner not prohibited by statute or regulation.

(e) The provisions of (a)(3) and (11) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(f) For purposes of (a)(12) of this section, a firearm on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a firearm without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it. A firearm on a person is not concealed if it is unloaded and is encased in a closed container designed for transporting firearms.

(g) It is an affirmative defense to a prosecution under (a)(12) of this section that

(1) either

(A) the defendant convicted of the prior offense on which the action is based received a pardon for that convic-

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tion;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(12) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory; and

(2) at the time of possession, the defendant was

(A) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

(B) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(h) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb; or

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(D) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(i) Misconduct involving weapons in the third degree is a class C felony.

CREDIT(S)

SLA 1978, ch. 166, § 7; SLA 1990, ch. 63, § 1; SLA 1990, ch. 189, § 1; SLA 1991, ch. 59, §§ 4--6; SLA 1991, ch. 64, § 3; SLA 1992, ch. 79, §§ 11--14; SLA 1994, ch. 113, §§ 2, 3; SLA 1996, ch. 60, § 4; SLA 1996, ch. 64, § 7; SLA

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1998, ch. 1, §§ 1, 2.

CROSS REFERENCES

Attempt, classification of offenses, see § 11.31.100.
Classification of offenses, see § 11.81.250.
Felonies, sentence of imprisonment, see § 12.55.125.
Fines, see § 12.55.035.
Legal accountability based upon the conduct of another, see §§ 11.16.110 and 11.16.120.
Offenses defined by statute, see § 11.81.220.
Prior convictions, effect on sentencing, see § 12.55.145.
Restitution and compensation, see § 12.55.045.
Victims of crimes, rights, see § 12.61.010 et seq.

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Drive by shooting, federal crimes and offenses, see 18 U.S.C.A. § 36.

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UNITED STATES SUPREME COURT

Weapons offenses,

Possession of firearm by convicted felons, misdemeanor crime of domestic violence, domestic relationship as element of predicate offense, see U.S. v. Hayes, 2009, 129 S.Ct. 1079, 172 L.Ed.2d 816.

Use of firearm, firearm traded for drugs, see Watson v. U.S., 2007, 128 S.Ct. 579, 552 U.S. 74, 169 L.Ed.2d 472.

NOTES OF DECISIONS

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1/2. Validity

Statute that prohibited a convicted felon from possessing a concealable firearm did not violate Alaska Constitution's provision guaranteeing an individual's right to keep and bear arms. Wilson v. State, 2009, 2009 WL 1424468. Weapons 3

1. Validity of prior laws

Term "gravity knife," which is included as prohibited weapon under statute making it a felony to possess such weapon, is not unconstitutionally vague; "gravity knife" is commonly understood as knife in which blade opens, falls into place, or is ejected into position by force of gravity or by centrifugal force, and "gravity knife" is included in statute in conjunction with switchblade knife, thus providing ordinary person with notice that "gravity knife" must be similar to switchblade in operating automatically or semiautomatically. AS 11.61.200(e)(1)(D). State v. Weaver, 1987, 736 P.2d 781. Weapons 3

2. In general

Legislature has considerable discretion in creating classifications denoting which former felons can possess firearm and classifications need not be perfect. AS 11.61.200(b); Const. Art. 1, § 6. McCracken v. State, 1987, 743 P.2d 382, dismissal of habeas corpus reversed 985 F.2d 573. Weapons 2

3. Equal protection

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Statute defining misconduct involving weapons in the first degree, requiring passage of five years from unconditional discharge on prior felony offense before a person can possess firearm, did not violate equal protection clause of State Constitution, even though statute provided that receipt of pardon for prior conviction or having conviction set aside was affirmative defense. AS 11.61.200(b); Const. Art. 1, § 6. McCracken v. State, 1987, 743 P.2d 382, dismissal of habeas corpus reversed 985 F.2d 573. Constitutional Law 3234; Weapons 3

4. Due process

State did not deny defendant due process under Alaska Constitution by convicting him on a felon in possession charge even though his underlying conviction was reversed on constitutional grounds. AS 11.61.200(a)(1). Clark v. State, 1987, 739 P.2d 777. Constitutional Law 4509(25)

In prosecution of an ex-convict for possessing a concealable weapon, State was not required, as a matter of due process, to establish defendant's awareness of statute prohibiting such conduct. U.S.C.A. Const.Amend. 14. Afcan v. State, 1986, 711 P.2d 1198. Constitutional Law 4694

5. Double jeopardy

Conviction in the Court of the Municipal Magistrate of Anchorage, Alaska, of the crime of carrying a concealed weapon, in violation of an ordinance of that city did not bar prosecution on the same facts under Alaska statute forbidding persons convicted of a felony involving assault and like crimes from carrying firearms capable of being concealed upon the person. Act March 3, 1899, §§ 107, 143, 146, 147, 30 Stat. 1296, 1301; U.S.C.A.Const. Amend. 5; Laws Alaska 1947, c. 70. U.S. v. Farwell, 1948, 11 Alaska 507, 76 F.Supp. 35. Double Jeopardy 187

6. Right of association

Statute prohibiting felon from residing in dwelling with knowledge that concealable firearm was kept there, unless permission had been given by court or local law enforcement, did not infringe upon felon's First Amendment right of association by prohibiting felon from living with his family, absent assertion that stepson who owned gun was unwilling to keep gun elsewhere or that felon had ever applied to court or law enforcement for permission to reside in dwelling with gun. U.S.C.A. Const.Amend. 1; AS 11.61.200(a)(10). Morgan v. State (1997) Alaska App., 943 P.2d 1208, denial of habeas corpus affirmed 242 F.3d 382. Constitutional Law 1443; Weapons 3

7. Right to keep and bear arms

Statute prohibiting felon from residing in dwelling with knowledge that concealable firearm was kept there, unless permission had been given by court or local law enforcement, does not violate right to keep and bear arms, guaranteed by state constitution. Const. Art. 1, § 19; AS 11.61.200(a)(10). Morgan v. State (1997) Alaska App., 943 P.2d 1208, denial of habeas corpus affirmed 242 F.3d 382. Weapons 3

8. Right to privacy

Statute which makes possession of "gravity knife" in one's home a felony does not violate right to privacy under State Constitution; legislature may properly prohibit possession of object which interferes in serious manner with health, safety, rights, and privileges of others, or with public welfare. AS 11.61.200(a)(3); Const. Art. 1, § 22. State v. Weaver, 1987, 736 P.2d 781. Constitutional Law 1225; Weapons 3

9. Nature and elements of offense

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The state forbidding persons convicted of a felony involving assault and like crimes from carrying firearms capable of being concealed upon the person did not forbid consideration of felony committed in Oregon seven years earlier, the statute being otherwise valid. Laws Alaska 1947, c. 70. U.S. v. Farwell, 1948, 11 Alaska 507, 76 F.Supp. 35. Weapons 6

A .45 caliber Colt Automatic pistol was a "firearm capable of being concealed upon the person" within statute forbidding persons convicted of felony involving assault and like crimes from carrying a "firearm capable of being concealed upon the person." Laws Alaska 1947, c. 70. U.S. v. Farwell, 1948, 11 Alaska 507, 76 F.Supp. 35. Weapons 8

Defendants who either have entered guilty plea or have been found guilty of felony at trial are "convicted of a felony" for purposes of the felon in possession of a firearm statute. AS 11.61.200(a)(1). Brant v. State (1999) Alaska App., 992 P.2d 590. Weapons 4

Felon can be convicted of violating statute prohibiting felon from residing in dwelling with knowledge that concealable firearm is kept there unless permission has been given by court or local law enforcement, even if felon was unaware of statute; it is widely known that felons are subject to variety of legal disabilities and restrictions, which thus makes it reasonable to hold felons to duty of inquiry concerning such restrictions. AS 11.61.200(a)(10), 11.81.620(a). Morgan v. State (1997) Alaska App., 943 P.2d 1208, denial of habeas corpus affirmed 242 F.3d 382. Weapons 4

Belated set aside of conviction, following completion of probation on suspended imposition of sentence, related back to date defendant was discharged from probation and, thus, previous conviction could not be used as basis for subsequent conviction of possessing weapon after having been previously convicted of felony. AS 11.61.200, 12.55.085; Rules Crim.Proc., Rules 11(h)(2), 35.2. Hansen v. State, 1992, 824 P.2d 1384. Weapons 4

Butterfly knife is not "switchblade or gravity knife" and therefore does not qualify as prohibited weapon. AS 11.61.200(a)(3), (e)(1)(D). Jacobson v. State, 1990, 786 P.2d 388. Weapons 4

"Butterfly" or "balisong knife" was not "switchblade" or "gravity knife" for purposes of statute making it felony to possess prohibited weapon which is defined to include switchblade or gravity knife. AS 11.61.200(a)(3), (e)(1)(D). State v. Strange, 1990, 785 P.2d 563. Weapons 4

Convicted felon's possession of partner's handgun for less than one-half hour for purpose of pawning it constituted "possession" within meaning of felon-in-possession statute. AS 11.61.200(a)(1). Baker v. State, 1989, 781 P.2d 1368. Weapons 4

Prosecution was not required to prove that defendant had notice or knowledge that his conduct in possessing firearm constituted crime in order to convict defendant of misconduct involving weapons in the first degree. AS 11.61.200(a)(1). McCracken v. State, 1987, 743 P.2d 382, dismissal of habeas corpus reversed 985 F.2d 573. Weapons 4

Defendant violated felon in possession law by possessing a concealable firearm while underlying conviction was on appeal, notwithstanding that underlying conviction was later reversed. AS 11.61.200(a)(1). Clark v. State, 1987, 739 P.2d 777. Weapons 4

In prosecution of an exconvict for possessing a concealable weapon, State was not required to establish defendant's awareness of statute prohibiting such conduct. AS 11.81.620(a). Afcan v. State, 1986, 711 P.2d 1198. Weapons 4

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Defendant could be convicted of being a felon in possession of a concealable firearm while predicate conviction was on appeal and sentence stayed. AS 11.61.200(a)(1). Berg v. State, 1985, 711 P.2d 553. Weapons 4

Guilt of possession of gun by felon does not require actual possession and custody or control is sufficient, but knowledge is prerequisite to possession, control or custody. AS 11.55.030. Davis v. State, 1972, 499 P.2d 1025, certiorari granted 93 S.Ct. 1392, 410 U.S. 925, 35 L.Ed.2d 586, reversed 94 S.Ct. 1105, 415 U.S. 308, 39 L.Ed.2d 347. Weapons 4

Weapon is "concealed" if it is hidden from ordinary observation, and need not be absolutely invisible to other persons. AS 11.55.030. McKee v. State, 1971, 488 P.2d 1039. Weapons 10

10. Defenses

Applicant whose prior felony conviction was pardoned by governor would not have affirmative defense to unlawful possession of firearm by convicted felon, and thus, applicant was not eligible for permit to carry concealed weapon under state law, in that he would be subject to criminal liability if he carried concealed handgun in any place outside his dwelling or land appurtenant to dwelling or carried handgun while not engaged in lawful hunting, fishing or trapping, or other lawful activity. Gabrielle v. State, Dept. of Public Safety (2007) Alaska, 158 P.3d 813. Weapons 12

Defendant's alleged reliance on fact that probation officer failed to inform him of statute prohibiting felon from residing in home in which concealable firearm was kept did not present sufficient basis to assert statutory mistake-of-law defense to prosecution for violation of weapons statute. AS 11.61.200(a)(10), 11.81.420(a), (b)(1). Morgan v. State (1997) Alaska App., 943 P.2d 1208, denial of habeas corpus affirmed 242 F.3d 382. Criminal Law 32

Defendant's personal belief that he was not convicted for purposes of the felon in possession statute during the pendency of the appeal of the underlying conviction was not sufficient to establish the defense of mistake of law. AS 11.61.200(b)(1-3). Clark v. State, 1987, 739 P.2d 777. Criminal Law 32

Affirmative defenses provided under felon in possession statute arise only when the actions described therein occurred before the felon in possession offense was committed. AS 11.61.200(b)(1-3). Clark v. State, 1987, 739 P.2d 777. Weapons 4

11. Attorney discipline

Federal crime of aiding and abetting a convicted felon and mental defective in receiving ammunition is a "serious crime" within meaning of bar rule, which provides that an attorney convicted of a serious crime shall be suspended from practice pending final disposition of a disciplinary proceeding and which defines a "serious crime," in part, as including any crime that would be a felony in state, though state does not specifically prohibit furnishing ammunition to a convicted felon. State Bar Rules, rules 12, 16(c), 23, 23(d); 18 U.S.C.A. §§ 2, 922(h); AS 11.55.030, 12.15.010. Matter of Robson, 1978, 575 P.2d 771. Attorney And Client 39

12. Arrest

Police officer had probable cause for warrantless seizure and search of contents of plastic box containing crack cocaine, which was found on defendant's person during search incident to arrest for possessing firearm while intoxicated; officer's knowledge that type of glass pipe found on defendant was commonly used to smoke cocaine and that people who smoke cocaine and possess pipe usually carry cocaine, furnished probable cause for arrest of defendant for un-

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lawful possession of drugs as well as probable cause for search of contents of plastic box for cocaine, and officer's observations of defendant's erratic behavior while possessing firearm, provided probable cause for officer to believe that defendant was high and thus to search defendant's person for cocaine. AS 11.61.200(a)(1), 11.71.040(a)(3)(A). Snider v. State (1998) Alaska App., 958 P.2d 1114. Arrest 71.1(6)

Where officer knew that hand guns and ammunition had been taken in recent burglary committed near where defendant was walking, he knew defendant had a criminal record, the hour was late, protrusions in defendant's coat were unusual and the position of his hand suggested that he was carrying a hand gun, officer was justified in stopping defendant and, when defendant kept his hand positioned so as to suggest that he was carrying unholstered gun, a search of defendant was also proper and gun uncovered by search should not be suppressed. AS 11.20.100, 11.55.010, 11.55.03 (Repealed); Const. Art. 1, § 14. Ozenna v. State, 1980, 619 P.2d 477. Arrest 63.5(5); Arrest 63.5(8)

13. Joint or separate trial

Trial judge did not abuse his discretion in denying defendant's motion for severance filed on morning of trial on ground that it was not timely where misconduct involving weapons in first degree was properly joined to kidnapping and other charges since all the charges were based on the same act or transaction, severance of the misconduct involving weapons charged would have resulted in essentially the same evidence being presented twice to two different juries, defendant made no showing that his failure to move for a severance was in any way related to State's misconduct in making late discovery, there was no claim that counsel obtained any new information which would justify failure to move for severance at earlier time and where it appeared that there could have been strategic reasons for the fact that defendant did not make his motion to sever at an earlier time. Rules Crim.Proc., Rules 8(a), 12(b, c, e), 16(f)(3); AS 11.41.200(a)(1, 3), 11.61.200(a). Wortham v. State, 1984, 689 P.2d 1133. Criminal Law 620(7)

Joint trial of defendant for not only crimes of burglary and larceny but also the crime of possession, by a person convicted of felony, of a firearm capable of being concealed on person was not so prejudicial as to require reversal of judgment and ordering of separate trials where jury was not told nature of prior conviction involved possession of firearm count and there was nothing inflammatory about way fact of prior conviction was presented to jury. Mead v. State, 1968, 445 P.2d 229, certiorari denied 90 S.Ct. 117, 396 U.S. 855, 24 L.Ed.2d 104. Criminal Law 1166(6)

14. Pleas

Refusing to let defendant withdraw guilty plea to charge of possessing weapon after having been convicted of felony was error given that defendant was entitled to set aside of previous conviction after completing probation on suspended imposition of sentence, and defendant was misinformed by his attorney when defendant entered his plea. AS 11.61.200; Rules Crim.Proc., Rules 11(h)(2), 35.2. Hansen v. State, 1992, 824 P.2d 1384. Criminal Law 274(4); Criminal Law 274(8)

15. Admissibility of evidence

Trial judge acted within his discretion, during prosecution for possession of altered firearm, in permitting police officer to testify as to why serial number would be removed from firearm; officer's testimony was not speculative, but was instead based on her experience and training with handguns. AS 11.61.200(a)(6). Collins v. State (1999) Alaska App., 977 P.2d 741. Criminal Law 474.5; Criminal Law 476.1

Evidence of defendant's prior conviction was admissible in prosecution for misconduct involving weapon, even though defendant had conceded existence of prior felony conviction and that his prior conviction precluded him from possessing concealable firearm, as jury had legitimate right to be informed of all elements of crime charged and of proof bearing on those elements so that jurors would not be misled to think that they were being asked to convict

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defendant for mere possession of firearm. AS 11.61.200(a)(1); Rules of Evid., Rule 404(b)(1). State v. McLaughlin, 1993, 860 P.2d 1270. Criminal Law 661

Any error in trial court's failure to withhold from jury evidence of defendant's prior convictions in light of his proffered stipulation, for purposes of charge of misconduct involving weapons in first degree, that he had prior felony conviction, was harmless, given strength of state's case against defendant on robbery, murder, assault, and attempted murder charges; defendant conceded that he was guilty of robbery, was in possession of handgun, and had previously been convicted of felony, defendant was arrested at scene, his identity was not in doubt, and evidence of intent in shooting at police officers was overwhelming. Rules of Evid., Rule 403; Rules Crim.Proc., Rule 47(a); AS 11.61.200(a)(1). Weitz v. State, 1990, 794 P.2d 952. Criminal Law 1168(2)

Admission of prior felony charge in prosecution of defendant for kidnapping and misconduct involving weapons in first degree did not result in such unfair prejudice to defendant that he was entitled to new trial in spite of fact that his motion to sever was untimely, where defendant stipulated to existence of prior felony, jury was not informed of nature of conviction, evidence of prior conviction came in with minimum emphasis, and there was no emphasis on existence of prior conviction during remainder of trial, notwithstanding that court failed to give limiting instruction that prior felony was admissible only for purpose of proving misconduct involving weapons charge. AS 11.41.200(a)(1, 3), 11.61.200(a). Wortham v. State, 1984, 689 P.2d 1133. Criminal Law 1169.11

In prosecution of defendant for kidnapping, assault, robbery and misconduct involving weapons, trial judge did not abuse his discretion in refusing to admit testimony of defendant's proffered witness which was offered on narrow ground that pimp would not go to police if he had dispute with someone like defendant but that pimp and defendant would try to work things out, where defendant was able to introduce evidence through another witness' testimony that victim was a pimp, jurors could reason that pimp would prefer not to contact police and proffered witness' testimony would not have assisted jury in understanding defendant's case that victim was pimp who had disagreement with defendant and would be biased against him. AS 11.41.200(a)(1, 3), 11.41.300(a)(1), (a)(1)(E), 11.61.200(a); Rules of Evid., Rules 403, 702. Wortham v. State, 1984, 689 P.2d 1133. Witnesses 374(1)

Eyewitness' testimony, in prosecution for being a convict in possession of a prohibited weapon, that defendant took knife from his pocket, described how he had stabbed and raped his sister-in-law, mentioned he was on parole, and kissed witness was admissible to explain why defendant would be the kind of person who would carry a concealed weapon in a public building and exhibit it to a virtual stranger. McKee v. State, 1971, 488 P.2d 1039. Weapons 17(3)

16. Instructions

Ambiguity of definition of constructive possession in defendant's trial for weapons offenses after the police recovered a pistol from under the passenger seat of the vehicle in which he was riding, was harmless; the defense was that defendant did not know the pistol was under the seat, but the alleged flaw in the instruction would make a difference only if defendant conceded he was aware of the pistol; moreover, defendant was also convicted of possession of firearm in furtherance of a drug felony, so jury necessarily found that defendant knowingly possessed the pistol in aid or in furtherance of his drug offense. AS 11.61.200(a)(1). Alex v. State (2006) Alaska App., 127 P.3d 847, rehearing denied, dismissal of post-conviction relief vacated 210 P.3d 1225. Criminal Law 1172.1(3)

Defendant was not entitled to instruction on defense of necessity in trial for misconduct involving weapons in the first degree, despite defendant's testimony that he received threats from relatives of victim of defendant's former felony offense, absent showing that defendant had taken reasonable steps, other than illegally purchasing concealable firearm, in order to defend himself. AS 11.61.200(a)(1), 11.81.320. McCracken v. State, 1987, 743 P.2d 382, dismissal of habeas corpus reversed 985 F.2d 573. Weapons 17(6)

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In prosecution of defendant for kidnapping and misconduct involving weapons in first degree, trial court's failure to give limiting instruction that prior felony was admissible only for purpose of proving the misconduct involving the weapons charge was not plain error where defendant never requested limiting instruction, although defendant was entitled to limiting instruction if he had requested one and better practice would have been for trial judge to have offered to give limiting instruction. AS 11.41.200(a)(1, 3), 11.61.200(a). Wortham v. State, 1984, 689 P.2d 1133. Criminal Law 1038.2

In prosecution of defendant for kidnapping, assault, robbery, and misconduct involving weapons, trial court did not err in refusing to give defendant's proposed instruction which summarized his theory of the case that victim voluntarily accompanied defendant, that victim had possessed the firearm involved and that victim was wounded as a result of his own actions in a struggle over the weapon, where instructions informed jury of elements of the crimes, law of self-defense and necessity, burden of proof, witness credibility and bias, defendant's theory of defense was adequately covered in the instructions which were given and defendant's attorney was able to argue the defense theory in closing argument. AS 11.41.200(a)(1, 3), 11.41.300(a)(1), (a)(1)(E), 11.61.200(a). Wortham v. State, 1984, 689 P.2d 1133. Criminal Law 829(4)

Where possession of concealable firearm by defendant, a convicted felon, was the only crime charged, where idea of obtaining firearm originated with defendant while he was in prison, where defendant retained exclusive control over firearm until it was later found by prison officials, and where defendant's cell mate shared no dominion and control over the gun, there was no basis from which jury could have reasonably inferred that cell mate was an accomplice, and thus trial judge did not err in refusing to give accomplice instruction to jury. AS 11.55.030; Rules of Criminal Procedure, rule 30(b)(2). Gordon v. State, 1975, 533 P.2d 25. Criminal Law 780(1)

Defendant charged with being a convict in possession of a prohibited concealed weapon was entitled to an instruction defining the term "concealed." AS 11.55.030. McKee v. State, 1971, 488 P.2d 1039. Criminal Law 800(2)

17. Sufficiency of evidence

Evidence that accused had been convicted of assault with intent to rob under the laws of Oregon and that at time of his subsequent arrest he had in his possession a .45 caliber Colt Automatic pistol justified conviction under Alaska statute forbidding persons convicted of a felony involving assault and like crimes from carrying a firearm capable of being concealed upon the person. Laws Alaska 1947, c. 70. U.S. v. Farwell, 1948, 11 Alaska 507, 76 F.Supp. 35. Weapons 17(4)

There was sufficient evidence that defendant possessed firearm knowing that its serial number had been altered with intent of rendering firearm untraceable to support his conviction for possession of altered firearm; defendant admitted that he purchased two handguns, including the altered handgun, on street from person he did not know for $50, the loaded handguns were found under mattress of bed in bedroom where defendant was found, and police officers testified that removal of serial number from weapon exhibited intent to render that firearm untraceable. AS 11.61.200(a)(6). Collins v. State (1999) Alaska App., 977 P.2d 741. Weapons 17(4)

In prosecution of an ex-convict for possessing a concealable weapon, State fully satisfied its burden of establishing defendant's culpable mental state by showing: that defendant knew he had been convicted of a felony; that he knew he had been discharged from probation for the felony within the past five years; and that he knew he was in possession of a concealable firearm. AS 11.61.200(a)(1), 11.81.610(b)(2). Afcan v. State, 1986, 711 P.2d 1198. Weapons 17(4)

Evidence sustained conviction for possession of pistol by felon, despite claim that exclusive possession was not established and although pistol did not have clip. AS 11.55.030. Davis v. State, 1972, 499 P.2d 1025, certiorari granted 93 S.Ct. 1392, 410 U.S. 925, 35 L.Ed.2d 586, reversed 94 S.Ct. 1105, 415 U.S. 308, 39 L.Ed.2d 347. Weapons 17(4)

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18. Sentence and punishment--In general

Imposition of maximum sentence upon conviction for misconduct involving weapons in first degree was not clearly mistaken where state proved that defendant's prior criminal history included repeated instances of assaultive behavior and that defendant had three or more prior felony convictions. AS 11.61.200(a)(1), 12.55.125(e)(2), 12.55.155(c)(8, 15). Simmons v. State, 1995, 899 P.2d 931. Weapons ⚷17(8)

Sentence of 11 years in prison for combination of crimes consisting of first-degree burglary, second-degree theft, first-degree weapons misconduct, and forgery was not excessive, where trial court found that defendant was third felony offender who could not be deterred or easily rehabilitated, and maximum term for defendant's single most serious offense was ten years. AS 11.46.130(b), 11.46.300(b), 11.61.200(f); AS 12.55.185(9) (1990). Wesolic v. State, 1992, 837 P.2d 130. Burglary ⚷49; Forgery ⚷51; Larceny ⚷88; Weapons ⚷17(8)

Defendant's abuse of his landlord's trust by burglarizing locked bedrooms and garage of home while landlord was absent was proper factor to consider when judging seriousness of burglary for purposes of sentencing. AS 11.46.130(b), 11.46.300(b), 11.61.200(f), 12.55.155(c)(15, 20, 21), (d)(9); AS 12.55.185(9) (1990). Wesolic v. State, 1992, 837 P.2d 130. Burglary ⚷49

Defendant's prior sentences in Oregon for unauthorized use of motor vehicle and in Fairbanks for first-degree burglary and driving while intoxicated were sufficiently significant to support finding that defendant was danger to community, as basis for making defendant's sentence for misconduct involving weapons consecutive to defendant's sentences for first-degree burglary counts. AS 11.46.300(a)(2)(A), 11.61.200(a)(1), 12.55.125(d)(1), (e)(1), 12.55.155(c)(20). Ecklund v. State, 1986, 730 P.2d 161. Sentencing And Punishment ⚷602

Trial court should, prior to imposing sentence, inquire of defendant and his counsel and resolve any factual questions in dispute regarding defendant's credit for time served based on conditions of presentence release, and should expressly identify those periods of time for which credit is to be allowed. AS 11.41.220(a)(2), 11.61.200(a)(1), 12.55.125(e)(1). Ackermann v. State, 1986, 716 P.2d 5. Sentencing And Punishment ⚷354

In sentencing defendant on convictions of assault in the first degree, kidnapping, robbery in the first degree, and misconduct involving weapons in the first degree, trial judge was authorized to impose consecutive sentences and was also free to give little weight to mitigating factor that, except for misconduct involving weapons charge, defendant's former charges consisting of five prior felony offenses were less serious offenses that his current charges. AS 11.41.200(a)(1, 3), 11.41.300(a)(1), (a)(1)(E), 11.61.200(a); AS 12.55.155(d)(8)(Repealed). Wortham v. State, 1984, 689 P.2d 1133. Sentencing And Punishment ⚷94; Sentencing And Punishment ⚷590

Three-judge panel could legitimately conclude that conduct of defendant, who was convicted of first-degree misconduct involving weapons on basis of his possession of a handgun, was not the least serious included in the definition of the offense; furthermore, review of defendant's entire criminal record supported finding by three-judge panel and by original sentencing judge that defendant's conduct exhibited contempt for the law and law enforcement warranting a substantial sanction. AS 11.61.200(a), 12.55.155(d)(9, 13). Shaw v. State, 1983, 673 P.2d 781, modified on rehearing 677 P.2d 259, appeal after new sentencing hearing 1985 WL 1078167. Weapons ⚷17(8)

Three-judge panel was not clearly mistaken in determining that presumptive sentence for misconduct involving weapons in the first degree was not manifestly unjust. AS 11.61.200(a)(1), (f). Shaw v. State, 1983, 673 P.2d 781, modified on rehearing 677 P.2d 259, appeal after new sentencing hearing 1985 WL 1078167. Sentencing And Punishment ⚷77

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Defendant convicted of misconduct involving weapons in the first degree, with prior convictions for assault with dangerous weapon and felon in possession of weapon, could properly be sentenced as third offender, even though a prior conviction was necessary element of both the present charge of misconduct involving weapons and the prior conviction of felon in possession of a weapon; same conviction could be used to prove element of misconduct involving weapons as well as to trigger application of presumptive sentencing. AS 11.61.200(a)(1), 12.55.125(e)(2), 12.55.155(c). Gilbreath v. State, 1983, 668 P.2d 1354. Sentencing And Punishment ⚷1349

Even though defendant's prior felony conviction was a necessary element of the offense involving violation of statute prohibiting felons from possessing any concealable firearm, such conviction could form basis for applying presumptive sentence applicable to second felony offender. AS 11.61.200(a)(1), 12.55.125, 12.55.155, 12.55.185(7). Fry v. State, 1983, 655 P.2d 789. Sentencing And Punishment ⚷94

In prosecution for assault in third degree and misconduct involving weapons in first degree, trial court erred in imposing sentence in excess of presumptive sentence absent finding of aggravating factors, even if excess term was suspended. AS 11.41.220, 11.61.200(a)(1), 12.55.155-12.55.175. McManners v. State, 1982, 650 P.2d 414. Assault And Battery ⚷100; Weapons ⚷17(8)

Fact that, with regard to process of determining sentence to be imposed for offense of being a felon in possession of a prohibited weapon, accused's prior "police contacts" not leading to convictions were discussed in ascertaining length of time he had served on a prior conviction and other matters did not prejudice accused, in view of indication that such police contacts were not a significant factor in trial court's decision to impose four-year sentence. AS 11.55.030, 11.55.040. Deveroux v. State, 1976, 548 P.2d 1296. Criminal Law ⚷1177.3(2)

Where plea bargain entered into by accused, who pled guilty to being a felon in possession of a prohibited weapon, entailed his admitting, for purposes of sentencing, a charge of larceny in a building, such charge could be considered for sentencing purposes, though the charge was dropped. AS 11.55.030, 11.55.040. Deveroux v. State, 1976, 548 P.2d 1296. Sentencing And Punishment ⚷98

Though some of accused's prior convictions of 11 criminal offenses and 13 traffic offenses were petty in nature, the number of such convictions warranted their consideration in determining sentence to be imposed for accused's offense of being a felon in possession of a prohibited weapon. AS 11.55.030, 11.55.040. Deveroux v. State, 1976, 548 P.2d 1296. Sentencing And Punishment ⚷95

Trial court, in stating that "there is no question in my mind that * * * [defendant] is a danger to society" and in indicating that court had considered and rejected the possibility of rehabilitation "at least * * * unless there is a complete change of attitude by the defendant," sufficiently articulated court's reasons for and purpose to be served by imposition of four-year sentence against defendant for offense of being a felon in possession of a prohibited weapon. AS 11.55.030, 11.55.040. Deveroux v. State, 1976, 548 P.2d 1296. Sentencing And Punishment ⚷373

19. ---- Aggravation and mitigation, sentence and punishment

Defendant's actions which formed the basis of his third-degree weapons misconduct conviction were not among the least serious forms of conduct encompassed by the crime of weapons misconduct, and thus was not a mitigating factor for sentencing purposes; court found that defendant was legally intoxicated and had concealed his loaded weapon under his clothing. AS 11.61.200(a)(1), 12.55.155(d)(9). Brockway v. State (2001) Alaska App., 37 P.3d 427. Sentencing And Punishment ⚷66

Fact that defendant waited until owner of home was absent before burglarizing home was not mitigating factor with respect to sentencing for first-degree burglary conviction. AS 11.46.130(b), 11.46.300(b), 11.61.200(f),

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12.55.155(c)(15, 20, 21), (d)(9); AS 12.55.185(9) (1990). Wesolic v. State, 1992, 837 P.2d 130. Burglary 49

Mitigating factor for cases where defendant's conduct is among least serious conduct within definition of offense may be applied to offense of felon in possession of concealable firearm. AS 11.61.200(a)(1), 12.55.155(d)(9). State v. LaPorte, 1983, 672 P.2d 466. Weapons 17(8)

Though offense of misconduct involving weapons in the first degree is defined in terms merely of knowing possession of a firearm, aggravating factor of directing the "conduct constituting the offense" at a law enforcement officer was shown by evidence that gun was pointing directly at officer when defendant first turned, that defendant refused at least three times to drop the weapon, and that defendant knew that person confronting him was a police officer. AS 11.61.200(a)(1), 12.55.155(c)(13). Gilbreath v. State, 1983, 668 P.2d 1354. Sentencing And Punishment 124

Aggravating factor of directing "conduct constituting the offense" at a law enforcement officer was applicable, despite defendant's contention that offense of misconduct involving weapons in the first degree was "complete" when police officer first saw him with the gun, before defendant was even aware of officer's presence. AS 11.61.200(a)(1), 12.55.155(c)(13). Gilbreath v. State, 1983, 668 P.2d 1354. Sentencing And Punishment 124

"Most serious conduct" aggravating factor with respect to offense of misconduct involving weapons in the first degree was shown by possession of concealable weapon by defendant, who was a felon, under circumstances indicating possible intent to use the weapon against a police officer or another. AS 11.61.200(a)(1), 12.55.155(c)(10). Gilbreath v. State, 1983, 668 P.2d 1354. Sentencing And Punishment 79

Finding of mitigating factor that harm caused by defendant's conduct was "consistently minor and inconsistent with the imposition of a substantial period of imprisonment" was not warranted, given circumstances of instant offense of misconduct involving weapon in the first degree and nature of defendant's original felony, an assault with a dangerous weapon in which victim was clearly placed in substantial fear. AS 11.61.200(a)(1), 12.55.155(d)(13). Gilbreath v. State, 1983, 668 P.2d 1354. Sentencing And Punishment 84

20. ---- Probation and related dispositions, sentence and punishment

Conviction in which person receives probation and suspended imposition of sentence is to be set aside at time defendant is discharged from probation, unless State can meet its burden of showing good cause why conviction should not be set aside. AS 11.61.200. Hansen v. State, 1992, 824 P.2d 1384. Sentencing And Punishment 1953

21. ---- Sufficiency, sentence and punishment

Composite sentence of 20 years for 12 offenses in six separate criminal cases was not excessive; defendant could have been sentenced to a term of 20 years imprisonment alone for class A felony burglary, the most serious of the crimes committed by defendant, trial judge found that defendant had not responded to five years worth of prior rehabilitative efforts and that it would be fruitless to place defendant on probation, defendant conceded to two aggravating factors during sentencing, and defendant had been under State supervision since he was 12-years-old. Smith v. State (2008) Alaska App., 187 P.3d 511. Sentencing And Punishment 645

Sentencing defendant, for convictions of two counts of first-degree burglary and one count of first-degree misconduct involving weapons, to concurrent six-year terms with two years suspended for two burglaries and consecutive two-year term for weapons misconduct, was not clearly mistaken. AS 11.46.300(a)(2)(A), 11.61.200(a)(1), 12.55.125(d)(1), (e)(1), 12.55.155(c)(20). Ecklund v. State, 1986, 730 P.2d 161. Burglary 49; Weapons 17(8)

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Defendant's sentence totaling 53 years of imprisonment for convictions of assault in the first degree, misconduct involving weapons in the first degree, kidnapping, and robbery in the first degree was not excessive where trial judge could have properly given great weight to jury's finding that defendant kidnapped victim, intending to injure him and that defendant intentionally shot victim and then robbed him, defendant had record of five prior felony convictions, defendant had served sentences of greater than one year and had not been deterred by these former sentences, and defendant was on parole at time of the offenses and had just completed lengthy sentence four months before. AS 11.41.200(a)(1, 3), 11.41.300(a)(1), (a)(1)(E), 11.61.200(a). Wortham v. State, 1984, 689 P.2d 1133. Sentencing And Punishment 645

Sentence on charge of misconduct involving weapons in the first degree was illegal, since sentencing judge gave less than presumptive sentence of two years without finding any mitigating factors, and sentence therefore had to be vacated. AS 11.61.200(a)(1), 12.55.125(e)(1), (g), 12.55.165. State v. LaPorte, 1983, 672 P.2d 466. Sentencing And Punishment 995

Sentence of five years with 18 months suspended, imposed on conviction of defendant for misconduct involving weapon in the first degree, with two aggravating factors, was not excessive. AS 11.61.200(a)(1), 12.55.155(c)(10, 13), (d)(13). Gilbreath v. State, 1983, 668 P.2d 1354. Weapons 17(8)

Imposition of four-year sentence for offense of being a felon in possession of a prohibited weapon was not clearly erroneous with regard to accused who had prior convictions for 13 traffic offenses and 11 criminal offenses including burglary, and who had recently committed a larceny in a building. AS 11.55.030, 11.55.040. Deveroux v. State, 1976, 548 P.2d 1296. Weapons 17(8)

22. Review

In determining meaning of terms "switchblade" and "gravity knife" that are included in definition of prohibited weapons which it is felony to possess, Court of Appeals had to look to general usage for meaning of terms, where neither of the terms was defined in statutes. AS 01.10.040, 11.61.200(a)(3), (e)(1)(D). State v. Strange, 1990, 785 P.2d 563. Weapons 4

Trial court's failure to make factual finding as to whether knife seized from defendant was "gravity knife" within meaning of statute making possession of such weapon a felony required remand for further proceedings. AS 11.61.200(a)(3). State v. Weaver, 1987, 736 P.2d 781. Criminal Law 1181.5(3.1)

AS § 11.61.200, AK ST § 11.61.200

Current through the 2009 First Regular Session and First Special Session of the 26th Legislature

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STATE OF ALASKA

DEPARTMENT OF CORRECTIONS

SEAN PARNELL, GOVERNOR
Division of Probation & Parole
Region 2, Fairbanks Office
455 3rd Avenue, Suite 130
Fairbanks, Alaska 99701
(907) 458-6830

Date: March [redacted] 2010

[redacted]

Address: [redacted]

Re: Probation/Parole Supervision

[redacted]

This letter is to serve as official notification that your probation/parole supervision has expired and contact with the Fairbanks Probation Office is no longer required.

Pursuant to AS 15.05.030, please be advised that you should re-register with the Division of Elections (P.O. Box 110017, Juneau, AK 99811-0017), now that you have been discharged from probation supervision. Also, please be advised that your right to vote (after contacting Division of Elections), your right to be a member of a jury, and your right to hold elected office are automatically restored.

Although your above rights have been restored [rights to vote, jury service, and to hold elected office], you should be aware that your right to possess firearms (all shotguns, rifles, as well as handguns) and ammunition remains restricted. Possession of any rifle, shotgun, rifle and/or ammunition could subject you to prosecution for a felony criminal offense under state or federal law. Even if you received a suspended imposition of sentence and an order has been issued setting aside the conviction, your right to possess firearms and ammunition has not been restored. You should contact your attorney if you have questions.

Thank you for your cooperation during your probation/parole supervision and best of luck to you in the future. If you have any questions concerning this subject or any other matter, please contact me.

Sincerely,

Sheri A. White

Criminal Justice Technician II

CC: Director, Division of Elections
File

20-808.08

RECEIVED JUN 23 2009

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

STATE OF ALASKA,)
)
Plaintiff(s),)
vs.)
)
)
ALLEN WILSON,)
)
Defendant(s).)
)

Case No. 4FA-S99-3528 CR

ORDER RE: DEFENDANT'S MOTION FOR ORDER ALLOWING HIM TO POSSESS FIREARM

In December 1999, Allen Wilson was charged with one count of theft in the second degree (AS 11.46.130(a)), a Class C felony and 24 counts of unsworn falsification (AS 11.56.210(a)), a Class A misdemeanor in connection with false claims for unemployment compensation. A jury found him guilty on all counts. On December 8, 2000, this court sentenced Mr. Wilson to pay restitution to the Alaska Department of Labor in the amount of $7552, which Mr. Wilson paid in full the same day. In 2001, Mr. Wilson attempted to get his convictions set aside in order to get his permit to carry a concealed weapon reinstated. This court denied his request.

On January 18, 2005, Mr. Wilson wrote a letter to the court requesting that his right to possess a gun for hunting be restored so that he can hunt for subsistence purposes. This court has considered the letter and motion.

Discussion:

I. Can Allen Wilson Legally Possess a Firearm for Hunting at This Time?

Under AS 11.61.200, Mr. Wilson is prohibited from possessing a firearm, which is either concealed or is capable of being concealed on his person, for ten years after the date of unconditional discharge from the felony offense. The statute applies to all felony convictions, regardless of whether violence was involved in the offense. See AS 11.61.200. Therefore, the restriction applies to Mr. Wilson even though he was convicted of theft in a completely non-violent situation.

The term "unconditional discharge" requires "completion of any sentence of imprisonment, discharge from parole or probation, and release from any other restriction directly imposed as part of the judgment of conviction." Singleton v. State, 921 P.2d 636, 638 (Alaska App. 1996); AS 12.55.185(16); AS 11.61.200(h)(2). Mr. Wilson paid the restitution on the same day he was sentenced. No other restrictions were imposed by the judgment of conviction. Thus, Mr. Wilson was unconditionally discharged on December 8, 2000, and will be eligible to possess a firearm capable of being concealed on his person in December 2010.

Rifles or shotguns manufactured for hunting are generally too large to be considered "capable of concealment on one's person" under AS 11.61.200(a). Therefore, state law appears to permit Mr. Wilson to possess a firearm like a hunting rifle, so long as it is not covered or concealed.

Several other states along with Alaska have statutes that prohibit a convicted felon from possessing handguns or other concealable firearms while permitting them to possess rifles and

shotguns. E.g., United States v. Qualls, 172 F.3d 1136, 1138-39 (9th Cir. 1999); New York v. Adams, 747 N.Y.S.2d 909, 912-15 (Sup. Ct. 2002).

Under federal law, a felon may be charged under 18 U.S.C. § 922(g)(1) and 18 U.S.C. § 921(a)(20) for possessing any firearm, including those permitted under state law. Caron v. United State, 524 U.S. 308, 313-317, 118 S. Ct. 2007, 2011-2012, 141 L. Ed. 2d 303 (1998); Adams, 747 N.Y.S.2d at 915; Qualls, 172 F.3d at 1138-39. The United States Supreme Court has interpreted the language in 18 U.S.C. § 921(a)(20) to prohibit convicted felons from possessing *all* firearms of *any* type for as long as *any* state restriction on possession of *any* type of firearm due to the felony conviction remains. Caron v. United State, 524 U.S. 308, 313-317, 118 S. Ct. 2007, 2011-2012, 141 L. Ed. 2d 303 (1998).[1]

Conclusion:

State law prohibits Mr. Wilson from possessing a firearm concealed or capable of being concealed until December 8, 2010. Federal law prohibits Mr. Wilson from possessing any firearm until December 8, 2010. This court is without jurisdiction to grant Mr. Wilson permission to possess a firearm. The Motion is DENIED.

Dated this 25 day of May, 2005, at Fairbanks, Alaska.

Niesje J. Steinkruger
Superior Court Judge

[1] Although the Court did not use a preemption analysis, the opinion observed that "the Federal Government has an interest in a single, national, protective policy, broader than required by state law." Caron, 524 U.S. at 316, 118 S. Ct. at 2012.

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LAW OFFICES
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August 26, 2009

Richard Svodony
Assistant Attorney General
PO Box 110300
Juneau, AK 99811

Dear Richard:

This letter is a follow-up to our recent conversation regarding the Lauterbach Amendment and your interpretation of the law.

Specifically, as indicated to you, the primary concern that I have is that the Department of Probation and Parole has apparently been advising individuals who have retained an SIS that they no longer have weapons rights. I believe that this is incorrect advice. I furthermore suggest that your office's interpretation of Judge Steinkruger's opinion is incorrect, as well. My analysis will follow shortly.

Recognizing that you indicated to me that the assistant attorney general for the state was essentially interpreting federal law, might I suggest that the state take an alternate position? Specifically, why cannot the state simply advise individuals that federal law may or may not impact their ability to own weapons, and that they should be aware that federal law may restrict the right to own weapons, but that the state law does not do so? This may solve the problem.

As indicated to you, the analysis of Judge Steinkruger in the case you referenced, I believe, contradicts your position as set forth to me on the phone. Specifically, I have reviewed a copy of the email communication between Assistant Attorney General John J. Novak and Assistant Attorney General John K. Bodick from April 3, 2009. In the email communication Mr. Novak opines that certain language regarding the right to keep and bear arms that is included in the restoration of rights letter typically distributed to offenders that successfully complete probation or parole is inaccurate. Respectfully, Mr. Novak's analysis is wrong for the following reasons:

First, Mr. Novak states that a felony conviction is a felony conviction even though the court grants an SIS that is later set aside. This is inaccurate. An SIS that is set aside is, by very definition, not a felony conviction, because in order to be a felony conviction a person must be found guilty and sentenced. A person who receives an SIS that is set aside is never sentenced, and is therefore never convicted. Moreover, 18 USC § 921(a)(20), provides that "any conviction which has been...set aside...shall not be considered a conviction for purposes of [lawful firearms

possession]." Thus, an SIS that is later set aside is not a felony conviction under either state or federal law. Mr. Novak's assertion to the contrary is wrong.

Mr. Novak then states that a person commits the crime of misconduct involving a weapon in the third degree, in violation of AS 11.61.200(a)(12), by knowingly possessing a firearm concealed on one's person after having been convicted of a felony offense *even when the court granted an SIS for the prior offense that was later set aside.* Again, Mr. Novak's analysis is dead wrong, as he fails to mention AS 11.61.200(g)(1)(B) which states that "it is an affirmative defense to a prosecution under (a)(12) of this section that the underlying conviction upon which the action is based has been set aside under AS 12.55.085. Thus, AS 11.61.200 clearly states that it is **not** a crime to knowingly possess a concealed firearm if a person has been granted an SIS.

I submit that, Mr. Novak is also incorrect when he states that a person commits the federal offense of felony possession in violation of 18 USC 922(g)(1) by possessing a firearm or ammunition after having been convicted of a felony with the only exception being those cases where an Alaska Court granted an SIS between May 19, 1986, and April 14, 1998. It is truly baffling where this opinion comes from. As stated above, 18 USC § 921(a)(20) clearly states that a person who was granted an SIS is not a convicted felon for purposes of the felon in possession of a firearm statute. The date of the SIS is irrelevant, as 921 (a)(20) is not limited by date, and is currently valid federal law.

Perhaps, Mr. Novak's confusion is a misunderstanding of the interplay between federal and state law. As previously explained, once a felony conviction is set aside, there are no longer any restrictions under federal or state law for firearms possession. It is, however, true that, under federal law, once a person is released from probation or parole from a felony conviction (not an SIS) he may not possess any firearms whatsoever until 10 years has passed from the date of unconditional discharge, which is generally the date the person is released from probation and/or parole. Under state law, however, a person is still allowed to possess long guns, i.e., rifles and shotguns, upon being released from probation and parole since there is no state law prohibiting such. Under the Carone v. US decision, mentioned by Mr. Novak in his email, it is accurate that such possession, although not prohibited by state law, would still be a violation of federal law until the 10 year period has passed. Once the 10 year period has passed, even a convicted felon who did not receive an SIS can possess any firearm they choose in Alaska, concealable or not, under both state and federal law.

Thank you once again for your kind consideration of this matter.

Sincerely,

William R. Satterberg, Jr.

Cc: Dan Sullivan, Attorney General

WRS:alm

July 27, 2009

Daniel S. Sullivan
Attorney General
P.O. Box 110300
Juneau, AK 99811-0300

Dear Dan:

I enjoyed visiting with you briefly on July 26, 2009, when you were in Fairbanks. Unfortunately, time did not allow us to discuss a matter which I think is of rather serious concern.

Specifically, for many years, SIS sentences have been given out to felony offenders. Upon successful completion of the SIS, the offender has then been able to have their civil rights restored which, parenthetically, has included the right to commence hunting once again and owning firearms.

In April of this year, a decision was issued out of Anchorage as an Attorney General's opinion by Assistant Attorney General John Novak, copy attached, which essentially indicated that people who had an SIS record were still precluded from owning firearms because they "had been convicted" of a felony, even though the conviction had been set aside.

Needless to say, I disagree strongly with that decision, but the unfortunate byproduct is that the Department of Corrections is now taking the position based upon that letter of opinion that anybody who has an SIS conviction is still legally precluded from ever owning a firearm. I believe that this is incorrect, and I am also concerned that criminal charges may eventually be filed by somebody who has received advice either by defense counsel, or even the court, as well as from prior probation officers, that they are able to own a firearm once their rights have been restored, upon successful completion of the SIS.

Finally, it should be noted that one of the incentives for many individuals to plead guilty to a charge and obtain an SIS has been the understanding that they will be able to own a firearm at some future date, recognizing how important hunting is in Alaska. This latest decision, which may simply be further advocacy of gun control, is going to have a most chilling effect upon those decisions as well.

If possible, might you please consider having the decision reevaluated, and, if the decision is made to reverse your predecessor's position, taking appropriate steps? One of the important factors to this is that I am trying to avoid litigation which could be filed as a declaratory judgment action, to address the issue as well. If the Attorney General changes his position on the matter, however, the issue will be resolved.

Sincerely,

William R. Satterberg, Jr.

Encl.

WRS:alm

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Subject: FW: Firearm Possession Following Completion of Felony Probation/Parole
From: "Mercer, Delila D (DOC)" <delila.mercer@alaska.gov>
Date: Mon, Jun 15, 2009 4:54 pm
To: office@satterberg.net

6

Mr. Satterberg,

Sorry it's taken this long to get back to you regarding SIS and firearm rights. Here's what I have regarding that decision. The first email at the bottom is from John Novak, Assistant Attorney General. He explains his interpretation.

Delila Mercer
Criminal Justice Technician II

Department of Corrections
Division of Probation & Parole
Region 2, Fairbanks Office
455 Third Avenue, Suite 130
Fairbanks, AK 99701
Ph: 907-458-6830, Fx: 907-458-6831

From: Bacon, Glenn H (DOC)
Sent: Friday, April 17, 2009 2:26 PM
To: DOC - All FAIPO
Subject: Firearm Possession Following Completion of Felony Probation/Parole
Importance: High

Please read the text below. It clarifies an important point for which we apparently have been providing misinformation for years. According to the Department of Law, those offenders with an SIS also lose their firearms rights, even if the conviction is later set aside. Make sure this is covered in the orientation. For those POs who supervise someone with an SIS, please cover this information with them and enter a chrono that you did so. Thanks.

-- Glenn

From: Correa, Martie J (DOC)
Sent: Friday, April 17, 2009 1:06 PM
To: Bacon, Glenn H (DOC); Herning, Jennifer L (DOC)
Subject: FW: Firearm Possession Following Completion of Felony Probation/Parole

Hi,

This is the reason for the change in the language in the new case closing form that was sent out. Thanks.

Martie

From: Novak, John J (LAW)
Sent: Friday, April 03, 2009 3:10 PM
To: Bodick, John K (LAW)
Cc: McLean, Susan S (LAW); Gaffney, Eric L (DPS)
Subject: Firearm Possession Following Completion of Felony Probation/Parole

John,

I recently spent a considerable amount of time researching and determining the law concerning the legality of possessing firearms in Alaska following a conviction for a felony offense. In my efforts, probation/parole officer Cris Sanders provided me a restoration of rights sample letter for an offender that successfully completed probation/parole. That letter contained the following text:

"Although your above rights have been restored [rights to vote, jury service, and to hold elected office], you should be aware that your right to keep and bear arms is automatically restored only if you received a suspended imposition of sentence and your record has been set aside. If you did not receive a SIS, your rights to keep and bear arms are subject to applicable state laws. Contact your attorney if you have questions."

This above quoted language is wrong. It is my suggestion that DOC restoration letters not include this erroneous language. I will attempt to briefly explain the law and why the above language is wrong.

First, a felony conviction - whether by plea or jury verdict - is a felony conviction, even when the court grants an SIS that is later set aside.

Second, a person commits the crime of misconduct involving a weapon in the third degree (a class C felony) in violation of AS 11.61.200(a)(12), by knowingly possessing on or after April 14, 1998 (the effective date of the statute section) a firearm concealed on the person after having been convicted of any felony offense even when the court granted a SIS for the prior offense that later was set aside.

And third, a person commits the federal offense of felon in possession in violation of 18 USC 922(g)(1) in Alaska by knowingly possessing any firearm or ammunition (including all handguns, shotguns and rifles as well as all types of ammunition) after having been convicted of any felony, with the only exception being those cases where the Alaska court granted a SIS and where a set aside order was issued between the dates of May 19, 1986 and April 14, 1998. *See*, *Caron v. United States*, 524 US 308 (1998); *United States v. Brown*, 69 F Supp 2d 925 (E.D. Mich. 1999); and effective date of federal Firearms Owners Protection Act of 1988.

The bottom line is that in the vast majority of cases a person will commit a felony offense (whether under state or federal law) by possessing any firearm or any ammunition after having been convicted of a felony, regardless if a SIS was granted and a court later issued a set aside order.

I suggest the following language be included in "restoration letters":

"Although your above rights have been restored [rights to vote, jury service, and to hold elected office], you should be aware that your right to possess firearms (all shotguns, rifles, as well as handguns) and ammunition remains restricted. Possession of any rifle, shotgun, rifle and/or ammunition likely will subject you to prosecution for felony criminal offense under state or federal law even if you received a suspended imposition of sentence and an order setting aside the conviction has been issued. You should contact your attorney if you have questions."

I will leave it to you to pass this information on to the appropriate folks at DOC. If desired, I am happy to further discus this matter.

John Novak
Assistant Attorney General
Counsel for the Department of Public Safety
269-6330

03-24-10

Dear Honorable House Judiciary Committee,

I Richard Patterson of Barrow, Alaska submit this in support HB408

I regret I am not able to testify today. I am piloting a rescue helicopter in remote austere conditions where help is days away if trouble arises. I am on a search for an overdue individual 60 NM south of Kaktovik on the Arctic Slope. Not far from where we shot and killed a 3 year old grizzly that mauled and consumed two persons a few years ago. Last night I assisted Pt. Hope whalers on floating sea ice pans that broke loose from shorefast in high winds.

Article 3, subpart 21 of the Alaska Constitution gives the power of clemency exclusively to the executive branch. The clemency process is long, difficult, thorough and exhausting. It is rarely granted and requires extraordinary circumstances. It also requires exemplary efforts at rehabilitation. I assure you the chances of criminal recidivism after earning a pardon are zero.

Below are some definitions and laws. It is clear that both Congress and the Alaska Legislature intended to provide restorative avenues for ex offenders regarding firearm possession. Needless to say today I do not have the survival tools I need to protect myself, family or those I serve. Even after earning a full unconditional pardon I am still being punished in the worst way. Inability to protect my own life. I pray you will rectify the law to allow its intended design ring true. Allow those that earn pardons have all punishment removed. Thank you for defending the Alaska Constitution and the unique lifestyles we live.

Federal law on firearms disability:

18 U.S.C. §921(a)(20) provides:

What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction for purposes of this chapter, unless such pardon, expungement, or restoration of civil rights expressly [or implicitly as a matter of state law] provides that the person may not ship, transport, possess, or receive firearms.

Note: It is clear Congress intended for a restorative legal option. It also does not mention conceal has a limitation. This was added by the US Supreme court Caron split decision. (All or nothing)

Excerpt from the current State of Alaska Clemency handbook:

<u>Pardons</u>
A pardon is a form of Executive Clemency, which if full and unconditional, relieves an offender from further punishment and disabilities imposed by reason of a criminal offense. It is an act of grace which represents forgiveness for a particular crime.

***Definition of a pardon from Black's Law Dictionary*:**

In contrast to a reprieve or a commutation, a "pardon" releases the offender from the entire punishment prescribed for the offense. BLACK'S LAW DICTIONARY, 1113 (6th ed. 1990).
See also, 1985 N.D. Op. Att'y Gen. 158 and 1988 N.D. Op. Att'y Gen. 65.
A pardon is usually an action that mitigates or sets aside punishment for a crime after a conviction. Black's Law Dictionary defines it as an 'act or an instance of officially nullifying punishment or other legal consequences of a crime' (ibid., at 1137).

Respectfully yours,

Capt. Richard M. "Pat" Patterson
P.O. Box 1362
Barrow, AK 99723
Home:
907-852-2061 V
907-852-2062 F
Mobile:
907-602-0738
pat@barrow.com

Jane Pierson

From: Richard M. "Pat" Patterson [pat@barrow.com]
Sent: Thursday, March 25, 2010 5:58 AM
To: Jane Pierson
Subject: HB408 unable to call n
Attachments: patterson testimony.docx

Dear Honorable House Judiciary Committee,

I regret I am not able to testify today. I am piloting a rescue helicopter in remote austere conditions where help is days away if trouble arises. I am on a search for a overdue individual 60 NM south of Kaktovik on the Arctic Slope. Not far from where we shot and killed a 3 year old grizzly that mauled and consumed two persons a few years ago. Last night I assisted Pt. Hope whalers on floating sea ice pans that broke loose from shorefast in high winds.

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2856

cumstances manifesting substantial and unjustifiable risk of physical injury to a person or damage to property.

(b) Misconduct involving weapons in the first degree is a class A felony. (§ 10 ch 79 SLA 1992; am § 3 ch 60 SLA 1996)

Sec. 11.61.195. Misconduct involving weapons in the second degree. (a) A person commits the crime of misconduct involving weapons in the second degree if the person knowingly

(1) possesses a firearm during the commission of an offense under AS 11.71.010 — 11.71.040;

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

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

(B) an entity, other than a private residence, licensed as a child care facility under AS 47.32 or recognized by the federal government for the care of children; or

(3) discharges a firearm at or in the direction of

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

(B) a dwelling.

(b) Misconduct involving weapons in the second degree is a class B felony. (§ 10 ch 79 SLA 1992; am § 1 ch 124 SLA 1994; am § 2 ch 130 SLA 1994; am § 1 ch 89 SLA 1997; am § 3 ch 58 SLA 1999; am § 3 ch 99 SLA 2004; am § 4 ch 57 SLA 2005)

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(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or controlled substance into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable;

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable;

(7) violates AS 11.46.320 and, during the violation, possesses on the person a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or controlled substance into the person's body;

(8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued or filed under AS 18.66.100 — 18.66.180 or issued under former AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(9) communicates in person with another in violation of AS 11.56.740 and, during the communication, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(10) resides in a dwelling knowing that there is a firearm capable of being concealed on one's person or a prohibited weapon in the dwelling if the person has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory, unless the person has written authorization to live in a dwelling in which there is a concealable weapon described in this paragraph from a court of competent jurisdiction or from the head of the law enforcement agency of the community in which the dwelling is located;

(11) discharges a firearm from a propelled vehicle while the vehicle is being operated in circumstances other than described in AS 11.61.190(a)(2); or

(12) knowingly possesses a firearm that is concealed on the person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.

(b) It is an affirmative defense to a prosecution

(1) under (a)(1) of this section that

(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;

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(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the violation of (a)(2) or (10) of this section, and the prior conviction did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801-5872 (National Firearms Act).

(d) It is an affirmative defense to a prosecution under (a)(11) of this section that the person was using a firearm while hunting, trapping, or fishing in a manner not prohibited by statute or regulation.

(e) The provisions of (a)(3) and (11) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(f) For purposes of (a)(12) of this section, a firearm on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a firearm without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it. A firearm on a person is not concealed if it is unloaded and is encased in a closed container designed for transporting firearms.

(g) It is an affirmative defense to a prosecution under (a)(12) of this section that

(1) either

(A) the defendant convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(12) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory; and

(2) at the time of possession, the defendant was

(A) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

(B) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(h) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb; or

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(D) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(i) Misconduct involving weapons in the third degree is a class C felony. (§ 7 ch 166 SLA 1978; am § 1 ch 63 SLA 1990; am § 1 ch 189 SLA 1990; am §§ 4 — 6 ch 59 SLA 1991; am § 3 ch 64 SLA 1991; am §§ 11 — 14 ch 79 SLA 1992; am §§ 2, 3 ch 113 SLA 1994; am § 4 ch 60 SLA 1996; am § 7 ch 64 SLA 1996; am §§ 1, 2 ch 1 SLA 1998)

COMMENTARY

From Senate Journal Supp. No. 47, at 100-02 (June 12, 1978):

> Misconduct involving weapons in the first degree is the most serious weapons offense in the Code and is classified as a class C felony.
>
> Subsection (a)(1) prohibits felons from possessing firearms capable of being concealed on their person.
>
> Subsection (a)(2) expands existing law by covering the person who sells or transfers a firearm capable of being concealed on the person knowing that the transferee has been convicted of a felony. The transferor who acts with such knowledge is viewed as equally culpable and deserving of identical punishment as the transferee.
>
> Subsection (b) provides an affirmative defense to subsections (a)(1) and (2) that the felon has received a pardon, that the prior conviction has been set aside, or if a period of five years has elapsed from the date of the defendant's unconditional discharge on the prior felony and the date of the possession, sale or transfer of the firearm. "Unconditional discharge" is defined in AS 12.55.185(8) in a manner to insure that the five year period does not begin to run until the defendant has completed any probationary period or time on parole.
>
> Subsection (a)(3) is new to existing law and is patterned after the prohibitions found in the National Firearms Act, 26 U.S.C §§ 5801-5872. Key

cumstances manifesting substantial and unjustifiable risk of physical injury to a person or damage to property.

(b) Misconduct involving weapons in the first degree is a class A felony. (§ 10 ch 79 SLA 1992; am § 3 ch 60 SLA 1996)

Sec. 11.61.195. Misconduct involving weapons in the second degree. (a) A person commits the crime of misconduct involving weapons in the second degree if the person knowingly

(1) possesses a firearm during the commission of an offense under AS 11.71.010 — 11.71.040;

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

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

(B) an entity, other than a private residence, licensed as a child care facility under AS 47.32 or recognized by the federal government for the care of children; or

(3) discharges a firearm at or in the direction of

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

(B) a dwelling.

(b) Misconduct involving weapons in the second degree is a class B felony. (§ 10 ch 79 SLA 1992; am § 1 ch 124 SLA 1994; am § 2 ch 130 SLA 1994; am § 1 ch 89 SLA 1997; am § 3 ch 58 SLA 1999; am § 3 ch 99 SLA 2004; am § 4 ch 57 SLA 2005)

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(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or controlled substance into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable;

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable;

(7) violates AS 11.46.320 and, during the violation, possesses on the person a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or controlled substance into the person's body;

(8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued or filed under AS 18.66.100 — 18.66.180 or issued under former AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(9) communicates in person with another in violation of AS 11.56.740 and, during the communication, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(10) resides in a dwelling knowing that there is a firearm capable of being concealed on one's person or a prohibited weapon in the dwelling if the person has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory, unless the person has written authorization to live in a dwelling in which there is a concealable weapon described in this paragraph from a court of competent jurisdiction or from the head of the law enforcement agency of the community in which the dwelling is located;

(11) discharges a firearm from a propelled vehicle while the vehicle is being operated in circumstances other than described in AS 11.61.190(a)(2); or

(12) knowingly possesses a firearm that is concealed on the person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.

(b) It is an affirmative defense to a prosecution

(1) under (a)(1) of this section that

(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;

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(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801-5872 (National Firearms Act).

(d) It is an affirmative defense to a prosecution under (a)(11) of this section that the person was using a firearm while hunting, trapping, or fishing in a manner not prohibited by statute or regulation.

(e) The provisions of (a)(3) and (11) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(f) For purposes of (a)(12) of this section, a firearm on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a firearm without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it. A firearm on a person is not concealed if it is unloaded and is encased in a closed container designed for transporting firearms.

(g) It is an affirmative defense to a prosecution under (a)(12) of this section that

(1) either

(A) the defendant convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(12) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory; and

(2) at the time of possession, the defendant was

(A) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

(B) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(h) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb; or

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(B) device designed, made, or adapted to muffle the report of a firearm;

(C) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(D) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(i) Misconduct involving weapons in the third degree is a class C felony. (§ 7 ch 166 SLA 1978; am § 1 ch 63 SLA 1990; am § 1 ch 189 SLA 1990; am §§ 4 — 6 ch 59 SLA 1991; am § 3 ch 64 SLA 1991; am §§ 11 — 14 ch 79 SLA 1992; am §§ 2, 3 ch 113 SLA 1994; am § 4 ch 60 SLA 1996; am § 7 ch 64 SLA 1996; am §§ 1, 2 ch 1 SLA 1998)

COMMENTARY

From Senate Journal Supp. No. 47, at 100-02 (June 12, 1978):

> Misconduct involving weapons in the first degree is the most serious weapons offense in the Code and is classified as a class C felony.
>
> Subsection (a)(1) prohibits felons from possessing firearms capable of being concealed on their person.
>
> Subsection (a)(2) expands existing law by covering the person who sells or transfers a firearm capable of being concealed on the person knowing that the transferee has been convicted of a felony. The transferor who acts with such knowledge is viewed as equally culpable and deserving of identical punishment as the transferee.
>
> Subsection (b) provides an affirmative defense to subsections (a)(1) and (2) that the felon has received a pardon, that the prior conviction has been set aside, or if a period of five years has elapsed from the date of the defendant's unconditional discharge on the prior felony and the date of the possession, sale or transfer of the firearm. "Unconditional discharge" is defined in AS 12.55.185(8) in a manner to insure that the five year period does not begin to run until the defendant has completed any probationary period or time on parole.
>
> Subsection (a)(3) is new to existing law and is patterned after the prohibitions found in the National Firearms Act, 26 U.S.C §§ 5801-5872. Key

cumstances manifesting substantial and unjustifiable risk of physical injury to a person or damage to property.

(b) Misconduct involving weapons in the first degree is a class A felony. (§ 10 ch 79 SLA 1992; am § 3 ch 60 SLA 1996)

Sec. 11.61.195. Misconduct involving weapons in the second degree. (a) A person commits the crime of misconduct involving weapons in the second degree if the person knowingly

(1) possesses a firearm during the commission of an offense under AS 11.71.010 — 11.71.040;

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

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

(B) an entity, other than a private residence, licensed as a child care facility under AS 47.32 or recognized by the federal government for the care of children; or

(3) discharges a firearm at or in the direction of

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

(B) a dwelling.

(b) Misconduct involving weapons in the second degree is a class B felony. (§ 10 ch 79 SLA 1992; am § 1 ch 124 SLA 1994; am § 2 ch 130 SLA 1994; am § 1 ch 89 SLA 1997; am § 3 ch 58 SLA 1999; am § 3 ch 99 SLA 2004; am § 4 ch 57 SLA 2005)

Sec. 11.61.200. Misconduct involving weapons in the third degree. (a) A person commits the crime of misconduct involving weapons in the third degree if the person

(1) knowingly possesses a firearm capable of being concealed on one's person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory;

(2) knowingly sells or transfers a firearm capable of being concealed on one's person to a person who has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory;

(3) manufactures, possesses, transports, sells, or transfers a prohibited weapon;

(4) knowingly sells or transfers a firearm to another whose physical or mental condition is substantially impaired as a result of the introduction of an intoxicating liquor or controlled substance into that other person's body;

(5) removes, covers, alters, or destroys the manufacturer's serial number on a firearm with intent to render the firearm untraceable;

(6) possesses a firearm on which the manufacturer's serial number has been removed, covered, altered, or destroyed, knowing that the serial number has been removed, covered, altered, or destroyed with the intent of rendering the firearm untraceable;

(7) violates AS 11.46.320 and, during the violation, possesses on the person a firearm when the person's physical or mental condition is impaired as a result of the introduction of an intoxicating liquor or controlled substance into the person's body;

(8) violates AS 11.46.320 or 11.46.330 by entering or remaining unlawfully on premises or in a propelled vehicle in violation of a provision of an order issued or filed under AS 18.66.100 — 18.66.180 or issued under former AS 25.35.010(b) or 25.35.020 and, during the violation, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(9) communicates in person with another in violation of AS 11.56.740 and, during the communication, possesses on the person a defensive weapon or a deadly weapon, other than an ordinary pocketknife;

(10) resides in a dwelling knowing that there is a firearm capable of being concealed on one's person or a prohibited weapon in the dwelling if the person has been convicted of a felony by a court of this state, a court of the United States, or a court of another state or territory, unless the person has written authorization to live in a dwelling in which there is a concealable weapon described in this paragraph from a court of competent jurisdiction or from the head of the law enforcement agency of the community in which the dwelling is located;

(11) discharges a firearm from a propelled vehicle while the vehicle is being operated in circumstances other than described in AS 11.61.190(a)(2); or

(12) knowingly possesses a firearm that is concealed on the person after having been convicted of a felony or adjudicated a delinquent minor for conduct that would constitute a felony if committed by an adult by a court of this state, a court of the United States, or a court of another state or territory.

(b) It is an affirmative defense to a prosecution

(1) under (a)(1) of this section that

(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(1) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory;

(2) under (a)(2) or (10

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state or territory.

(c) It is an affirmative
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tion under 26 U.S.C. 580
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(d) It is an affirmative
under (a)(11) of this sec
using a firearm while hu
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(e) The provisions of (a
do not apply to a peace offi
and authority of the offic

(f) For purposes of (a)(1
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that it is a firearm with
which covers or enclose
lifting, or removing that v
A firearm on a person
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(g) It is an affirmative
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(2) under (a)(2) or (10) of this section that

(A) the person convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the person's unconditional discharge on the prior offense and the date of the violation of (a)(2) or (10) of this section, and the prior conviction did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory.

(c) It is an affirmative defense to a prosecution under (a)(3) of this section that the manufacture, possession, transportation, sale, or transfer of the prohibited weapon was in accordance with registration under 26 U.S.C. 5801-5872 (National Firearms Act).

(d) It is an affirmative defense to a prosecution under (a)(11) of this section that the person was using a firearm while hunting, trapping, or fishing in a manner not prohibited by statute or regulation.

(e) The provisions of (a)(3) and (11) of this section do not apply to a peace officer acting within the scope and authority of the officer's employment.

(f) For purposes of (a)(12) of this section, a firearm on a person is concealed if it is covered or enclosed in any manner so that an observer cannot determine that it is a firearm without removing it from that which covers or encloses it or without opening, lifting, or removing that which covers or encloses it. A firearm on a person is not concealed if it is unloaded and is encased in a closed container designed for transporting firearms.

(g) It is an affirmative defense to a prosecution under (a)(12) of this section that

(1) either

(A) the defendant convicted of the prior offense on which the action is based received a pardon for that conviction;

(B) the underlying conviction upon which the action is based has been set aside under AS 12.55.085 or as a result of post-conviction proceedings; or

(C) a period of 10 years or more has elapsed between the date of the defendant's unconditional discharge on the prior offense or adjudication of juvenile delinquency and the date of the violation of (a)(12) of this section, and the prior conviction or adjudication of juvenile delinquency did not result from a violation of AS 11.41 or of a similar law of the United States or of another state or territory; and

(2) at the time of possession, the defendant was

(A) in the defendant's dwelling or on land owned or leased by the defendant appurtenant to the dwelling; or

(B) actually engaged in lawful hunting, fishing, trapping, or other lawful outdoor activity that necessarily involves the carrying of a weapon for personal protection.

(h) As used in this section,

(1) "prohibited weapon" means any

(A) explosive, incendiary, or noxious gas

(i) mine or device that is designed, made, or adapted for the purpose of inflicting serious physical injury or death;

(ii) rocket, other than an emergency flare, having a propellant charge of more than four ounces;

(iii) bomb; or

(iv) grenade;

(B) device designed, made, or adapted to muffle the report of a firearm;

(C) firearm that is capable of shooting more than one shot automatically, without manual reloading, by a single function of the trigger; or

(D) rifle with a barrel length of less than 16 inches, shotgun with a barrel length of less than 18 inches, or firearm made from a rifle or shotgun which, as modified, has an overall length of less than 26 inches;

(2) "unconditional discharge" has the meaning ascribed to it in AS 12.55.185.

(i) Misconduct involving weapons in the third degree is a class C felony. (§ 7 ch 166 SLA 1978; am § 1 ch 63 SLA 1990; am § 1 ch 189 SLA 1990; am §§ 4 — 6 ch 59 SLA 1991; am § 3 ch 64 SLA 1991; am §§ 11 — 14 ch 79 SLA 1992; am §§ 2, 3 ch 113 SLA 1994; am § 4 ch 60 SLA 1996; am § 7 ch 64 SLA 1996; am §§ 1, 2 ch 1 SLA 1998)

COMMENTARY

From Senate Journal Supp. No. 47, at 100-02 (June 12, 1978):

> Misconduct involving weapons in the first degree is the most serious weapons offense in the Code and is classified as a class C felony.
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> Subsection (a)(1) prohibits felons from possessing firearms capable of being concealed on their person.
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> Subsection (a)(2) expands existing law by covering the person who sells or transfers a firearm capable of being concealed on the person knowing that the transferee has been convicted of a felony. The transferor who acts with such knowledge is viewed as equally culpable and deserving of identical punishment as the transferee.
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> Subsection (b) provides an affirmative defense to subsections (a)(1) and (2) that the felon has received a pardon, that the prior conviction has been set aside, or if a period of five years has elapsed from the date of the defendant's unconditional discharge on the prior felony and the date of the possession, sale or transfer of the firearm. "Unconditional discharge" is defined in AS 12.55.185(8) in a manner to insure that the five year period does not begin to run until the defendant has completed any probationary period or time on parole.
>
> Subsection (a)(3) is new to existing law and is patterned after the prohibitions found in the National Firearms Act, 26 U.S.C §§ 5801-5872. Key

HB

423

Alaska State Legislature

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Representative Carl Gatto

Sponsor Statement HB 423

March 29, 2010

For over a year, this nation has been locked in a battle over health care. Roughly 55% of the public, and the entirety of Congressional Republicans, opposed the passage of so-called "health reform" *and* would like to see the recently-passed health care legislation overturned.[1] Opponents of the health care initiative point to the bill's hidden costs, special exemptions for certain states, and the nineteen point gap between those who strongly support the plan and the larger group that strongly opposes it. Accordingly, I am proposing the *Alaska Health Freedom Act*. The bill is modeled after Idaho HB 391 (and a similar package of legislation in Virginia), which became the first statute enacted by a state legislature to directly challenge the provisions of federal health care "reform."

The ***Alaska Health Freedom Act*** would:

- Argue that the power to regulate or require a person's health care delivery choices is not found in the U.S. Constitution and is therefore reserved to the people and the States by the 9th and 10th Amendments, respectively

- Establish that every Alaskan "has the right and is free to choose or decline any mode of securing health care services."

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[1] Rasmussen, Scott. "Health Care Reform." *Politics*. Rasmussen Reports, 21 Mar. 2010. <http://www.rasmussenreports.com/public_content/politics/current_events/healthcare/september_2009/health_care_reform>

Rasmussen, Scott. "55% Favor Repeal of Health Care Bill." *Politics*. Rasmussen Reports, 05 Mar. 2010. <http://www.rasmussenreports.com/public_content/politics/current_events/healthcare/march_2010/55_favor_repeal_of_health_care_bill>

- Require the Attorney General to actively protect the aforementioned right to choose a mode of health care services

- Bar public employees and officials from enforcing, imposing, implementing, or collecting any penalty for resisting government-run healthcare.

The four main tactics being employed among states that oppose the federal government's health care overreach are[2]:

- **Legislative Discontent Model**: under this plan, states would pass a resolution discouraging the federal government from implementing nationalized medicine; the recent passage of the federal *Patient Protection and Affordable Care Act* makes mere statements of the Alaska Legislature's disapproval fairly moot.

- **Constitutional Amendment Model**: following this model, state legislatures would offer a constitutional amendment to the voters that would enshrine the right of individuals to make their own health care determinations in the state's constitution; the constitutional amendment model, pursued through Alaska HJR 35, has not garnered sufficient support in the legislature, particularly given the time-sensitive nature of this issue.

- **Statutory Model**: in the statutory model, states enact statutes through the regular legislative process that either establish the freedom to make one's own health care decisions as a right or discount the so-called "right of universal healthcare;" these bills also prohibit state officials and agencies from enforcing, collecting, or implementing fees imposed under the new federal health care plan and direct the state's Attorney General to actively defend the provisions of the bill in court

- **Nullification Model:** finally, states following the nullification model to oppose nationalized health care would enact legislation declaring the *Patient Protection and Affordable Care Act* unconstitutional and null and void within the state's jurisdiction.

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[2] "Health Care Freedom Act." *Legislative Tracking*. The Tenth Amendment Center. 29 Mar. 2010. <http://www.tenthamendmentcenter.com/nullification/health-care/>.

The problems with the *legislative discontent model* now that Congress has actually passed health care "reform" are readily apparent. In addition to the issues mentioned above, the *constitutional amendment model* is problematic because of the Supreme Court's general hesitation to hear conflicts between the federal and state constitutions (i.e. gay marriage in MA, CA). The *nullification model* is the most popular alternative, but seems inherently flawed. There is little-to-no chance the federal courts would rule that states can pass legislation with a simple majority and overturn duly enacted federal law. Unlike the nullification model, the *statutory model* challenges the constitutionality of the new federal health care statute without limiting our attorney general to a nullification argument. The Alaska Health Freedom Act does not presume to overturn federal legislation, but instead adopts a distinct public policy for Alaska under the reasoning that the *Patient Protection and Affordable Care Act* misinterprets the Constitution. If universal health care is a "right," shouldn't the freedom to make one's own health care decisions be protected from government intrusion? Also, is there no limit on Congress' power under the Commerce and General Welfare clauses? If Congress can mandate the purchase of any private commodity it so chooses, then what control does an individual really have over their own "pursuit of happiness?"

I hope that this sponsor statement effectively communicates the urgency and practicality of the *Alaska Health Freedom Act*. Questions or concerns can be directed to my staffer, Thomas Reiker, at 465-3163 or Thomas.Reiker@legis.state.ak.us. I thank you for your time and respectfully request a hearing for HB 423.

Sincerely,

Representative Carl Gatto
Alaska House of Representatives
District 13

AMENDMENT #2 W/D

TO: CS HB 423(HSS) (26-LS1623\E) BY REPRESENTATIVE GATTO

Page 1, line 8, after (a), insert:

Pursuant to the Ninth and Tenth Amendments of the U.S. Constitution,

AMENDMENT #1 W/D

TO: CS HB 423(HSS) BY REPRESENTATIVE GATTO

Page 1, line 9:
Delete "and may choose or"

Page 1, line 13:
Delete "provided or"

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **CSHB 423(HSS)**
() Publish Date:

Identifier (file name): HB423CS(HSS)-LAW-CIV-04-10-10
Title: An Act relating to a policy for securing health care services
Sponsor: House Judiciary
Requester: House Health and Social Services

Dept. Affected: Law
RDU: Civil
Component: Opinions, Appeals and Ethics
Component Number: 2716

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	***	***	***	***	***	***	***
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	***	***	***	***	***	***	***

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

Prepared by: Eileen Donahue, Division Operations Manager
Division: Administrative Services
Phone: 465-5427
Date/Time: 4/10/10 9:15 PM

Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date: 4/10/2010

(Revised 11/6/2009 OMB)

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. CSHB 423(HSS)

ANALYSIS CONTINUATION

CSHB 423 (HSS), entitled the "Alaska Health Freedom Act," provides that the state's policy, is "that a person has the right to and may choose or decline any mode of obtaining health care services without penalty or threat of penalty." The bill is apparently designed to counter the individual health insurance requirements of recently enacted federal legislation. The bill includes definitions of "mode of obtaining," "health care services," and "penalty."

The bill provides that this policy "does not apply to health care services provided or required by the state, a political subdivision of the state, or a court of the state" and that the policy "may not impair a contract right that provides health care services."

Thus the fiscal impact to Department of Law is indeterminate.

Alaska State Legislature

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Representative Carl Gatto

April 10, 2010

From: Representative Carl Gatto

To: Alaska House of Representatives
Judiciary Committee

EXPLANATION OF CHANGES BETWEEN HB 423 VERSION R AND CSHB 423(HSS) VERSION E

The House Health and Social Services Committee asked several questions during HB 423's first hearing that required additional research. In meetings with the Departments of Law and Health and Social Services, more concerns were raised. We worked with both departments and members of the committee to address those concerns.

- **Representative Cissna, in consultation with Legal Services, raised concerns about provisions in the original bill that compelled action by the Attorney General, given that he is an officer of the Executive Branch.**

  We trust the Attorney General to actively, adequately defend Alaska law. Accordingly, Section 2 and Section 3 (d) of the original bill—which explicitly required the AG to defend HB 423—were deleted. This also required a title change, since the R version of HB 423 included language referencing the Attorney General in the title.

  In addition, "public officials, employees, and agents" are always expected to follow state law, so Section 3 (c) of the R version, which instructed them not to contradict the bill's provisions, was removed.

2871

- **Upon consulting Legal Services and the Department of Law, the HHSS Committee determined that the phrase "consistent with the right of liberty" was not in keeping with the language that is typically used in drafting bills.**

  So, "consistent with the right of liberty" was removed from the HHSS CS.

- **The House Health and Social Services Committee worried that the language in Section 3 of the original bill might allow people to demand government services, even if they do not qualify.**

  As such, the language in Section 2, page 1, line 14 was changed from "is free to" to "may."

  The phrase "mode of securing health care services" was changed to "mode of obtaining health care services."

  Section 2 (b) (1) of the CS was added to protect existing state laws and policies.

- **It was not the sponsor's intention to challenge current state laws relating to health care.**

  The CS clarifies that Alaskans have the right to decline a mode of obtaining health care services "without penalty or threat of penalty" and defines penalty as specifically "a fine, tax, surcharge, fee, or other monetary charge."

  Other consequences, such as inability to enroll in public schools or involuntary commitment for mental illness, would still be allowed.

  The language of the CS also assures that current law—including requirements imposed on state employees, UAA students, and parents in certain custody battles—is *not* changed.

Syllabus of Relevant Supreme Court Precedent

Standing to Bring a Suit

City of Los Angeles v. Lyons 461 U.S. 95 (1983)

Snapp & Son, Inc. v. Puerto Rico 458 U.S. 592 (1982)

Georgia v. Pennsylvania Railroad Company 324 U.S. 439 (1945)

Limits on the Commerce Clause

National Labor Relations Board v. Jones & Laughlin Steel Corporation 301 U.S. 1 (1937)

U.S. v. Lopez 514 U.S. 549 (1995)

U.S. v. Morrison 529 U.S. 598 (2000)

Doe v. Bolton 410 U.S. 179 (1973)

Griswold v. Connecticut 381 U.S. 479 (1965)

Alaska's Tenth Amendment Rights

New York v. United States 505 U.S. 144 (1992)

Gonzales v. Oregon 546 U.S. ___ (2006)

Hodel v. Virginia Mining 452 U.S. 264 (1981)

Horne v. Flores 557 U.S. ___ (2009)

House Passes Historic Health Care Bill

by ALAN GREENBLATT

Enlarge Charles Dharapak/AP

Speaker of the House Nancy Pelosi quoted the late Sen. Ted Kennedy after the House passed the health care bills late Sunday. "Passing health care is the great unfinished business of our country," she said. "That is, until today."

March 21, 2010

text size A A A

Capping a year of legislative activity and ending decades of Democratic frustration, the House on Sunday passed a bill that would extend health care coverage to more than 30 million Americans.

Quoting a letter from the late Sen. Ted Kennedy (D-MA) to President Obama, House Speaker Nancy Pelosi said, "Passing health care is the great unfinished business of our country." She added, "That is, until today."

As the GOP promised, not a single Republican voted for either health care measure before the chamber. "This is truly a remarkable moment in the life of this nation. Some say we're making history. I say we're breaking history, breaking with our best traditions," said Mike Pence (R-IN), who chairs the House GOP Conference. "Only in Washington, D.C., can you spend a trillion dollars and say that you're saving the taxpayers money."

'A Victory For The American People'

Obama's Remarks On The Bill's Passage

With a vote count of 219 to 212, the House gave its approval to a measure initially passed by the Senate on Christmas Eve. Thirty-four Democrats joined 178 Republicans in voting no. That bill now goes to President Obama for signing.

The House also passed a so-called reconciliation measure on a 220 to 211 vote that makes significant changes to the main health care bill. Thirty-three Democrats voted against the bill, along with 178 Republicans. That measure heads to the Senate, which is expected to begin debate within days.

Obama watched the votes in the White House's Roosevelt Room with Vice President Joe Biden and about 40 staff aides. When the long sought 216th vote came in on the reconciliation bill — the magic number needed for passage — the room burst into applause and hugs. An exultant president exchanged a high-five with his chief of staff, Rahm Emanuel.

The Legislation

NEXT STEP: Senate Slog
March 21, 2010

Immediate Effects Of Health Bill
March 21, 2010

Consumer's Guide To Health Overhaul
March 26, 2010

"We proved that we are still a people capable of doing big things," the president said a short while later in televised remarks. "We proved that this government — a government of the people and by the people — still works for the people."

A Democratic Victory Lap

Nine Major Changes In The Democrats' Health Bill
March 19, 2010

Read The Reconciliation Bill

Read The CBO Reconciliation Bill Estimate

Senate action on the reconciliation bill will be marked by extensive parliamentary maneuvering. But Democrats are optimistic about their chances in that chamber.

And, for now, they are giddy about passing landmark legislation to provide insurance to 32 million Americans.

"We have come to a defining moment in our nation's history," said James Clyburn (D-SC), the House Democratic whip. "This is the civil rights act of the 21st century."

At their victory news conference following the vote, Democratic leaders gave a place of honor to John Dingell (D-MI), the House's longest-serving member. Dingell followed his father into a Detroit-area House seat in 1955 and like his father has introduced universal health legislation throughout his career.

Enlarge J. Scott Applewhite/AP

President Barack Obama, joined by Vice President Joe Biden, makes a statement to the nation Sunday night following the final vote in the House of Representatives for a comprehensive overhaul of the health care system.

"We finally did it," Dingell said. "This is an extraordinary bill. If you're looking at me, you're seeing a great big Polish smile."

Dingell was credited with keeping at his protege Rep. Bart Stupak (D-MI) at the negotiating table over the weekend to work out an agreement on abortion restrictions that secured the Democrats' legislative victory.

"Mr. Dingell had a piece of me yesterday for quite some time," Stupak told reporters Sunday.

A Fundamental Transformation

Democratic presidents — as well as occasional Republicans including Richard M. Nixon — have long sought to enact universal health care legislation. President Bill Clinton's failed effort in 1993-94 had taken the issue off the table for over a decade.

President Obama has received considerable criticism for having "over-learned" the lessons of Clinton's experience. In contrast to Clinton's strategy of crafting a highly-detailed proposal, Obama let Congress work its will.

That looked like it might have been a mistake as legislation bogged down at various points — especially when it appeared to have been nearly derailed by the special election of Republican Sen. Scott Brown of Massachusetts in January, costing Democrats their 60-vote, filibuster-proof majority in the Senate.

We have come to a defining moment in our nation's history. This is the civil rights act of the 21st century.

But Democrats have now successfully jumped through most of the procedural hoops. Passage of the bill

represents the biggest change in domestic policy since the enactment of Medicare and Medicaid in 1965, says Sara Rosenbaum, who chairs the department of health policy at George Washington University.

- Rep. James Clyburn, D-SC

"We have now fundamentally transformed American society," she says. "We have gone from assuming many people will not have insurance to expecting that people will have insurance."

Highlights Of The Bill

The $940 billion bill seeks to extend health coverage to most Americans. Medicaid, the federal-state program that provides health insurance to the poor and disabled, will be expanded to cover all adults earning less than 133 percent of the federal poverty level.

Private health insurance will be made available to individuals and small companies through exchanges that will be run by the states. Individuals who do not buy insurance face fines, as do most employers who do not offer coverage to workers.

Bill sponsors predict that all but about 5 percent of non-elderly Americans will ultimately be covered. Half of those currently uninsured will receive coverage through the expansion of Medicaid and half through private insurance through the exchanges — often with subsidies that make up the bulk of the legislation's projected costs.

"There will be a broad public education effort, so that people understand what's in the legislation," says Ron Pollack, executive director of Families USA, a consumer group that lobbied for the bill. "As a result, I think there's going to be growing and substantial support for the reform."

Nicholas Kamm/AFP/Getty Images

Rep. Bart Stupak (D-MI) says an agreement reached with President Obama on Sunday banning use of federal funds for abortions cleared the way for the Democrats to have enough votes to pass the House health care bill.

Savings In The Future

The Congressional Budget Office has estimated that the legislation will reduce the federal deficit by $143 billion over the next 10 years and by some $1.2 trillion over the following decade.

"It's the biggest deficit reduction we will be able to vote on in this Congress, and other Congresses as well," said Steny Hoyer (D-MD), the House majority leader.

Critics of the bill say such savings are a fiction, as they are dependent on future Congresses sticking to plans to impose major cuts in Medicare and unpopular new taxes on health plans. "We are creating a massive new entitlement," Rep. Lincoln Diaz-Balart (R-FL) said during floor debate Sunday.

Pledging To Repeal

Republicans who are unanimous in their opposition to the legislation will continue their efforts to stymie it in the Senate. They have also vowed to make the issue the centerpiece of their campaign to regain control of Congress come November.

"This debate is not about the uninsured, it is about socialized medicine," said Rep. Devin Nunes (R-CA). Alluding to the ghosts of totalitarianism in the Soviet Union, he said, "With passage of this bill, they will haunt Americans for generations."

Two hundred Republican candidates and members of Congress have signed a pledge, promulgated by the Club for Growth, an anti-tax group, to repeal the legislation upon the party's return to power.

"If this bill passes, we will have an effort to repeal the bill," House GOP Leader John Boehner (R-OH), said on NBC's *Meet the Press* Sunday. "I'd have a bill on the floor the first thing out."

But even if Republicans do regain control of one or both chambers, they still would have to contend with Obama's potential veto of any major changes to the law, at least for two more years. And getting such changes to the president's desk might be just as problematic as passing the health bills in the first place.

"What are they going to be able to repeal without 60 votes?" says Robert L. Laszewski, president of Health Policy and Strategy Associates. "The 60-vote rule suddenly works to their disadvantage."

Constitutional Challenges

The legislation will face legal challenges as well. On Wednesday, Butch Otter (R-ID) became the first governor to sign a law requiring the state attorney general to sue the federal government if it forces individuals to buy health insurance – a central tenet of the legislation. Other states are likely to pass similar measures, including Arizona, where the question will be put directly to voters.

Challenges on states' rights grounds are not likely to succeed. But because of the novelty of the requirement that individuals buy insurance, other constitutional challenges are certain.

Two attorneys for the Congressional Research Service determined last summer that Congress is on shaky ground relying on its authority to regulate interstate commerce to create the so-called individual mandate.

"Whether such a requirement would be constitutional under the Commerce clause is perhaps the most challenging question posed by such a proposal," they wrote, "as it is a novel issue whether Congress may use this clause to require an individual to purchase a good or a service."

— With reporting from the Associated Press

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Bonnie Gruening

From: Jen [jen@conservativepatriotsgroup.org]
Sent: Monday, March 29, 2010 8:14 PM
To: Rep. Carl Gatto
Subject: CPG Health Care Repeal Petition
Attachments: Petition1.pdf

There are 700 names and more are coming. For your information. Jen

2878

PETITION DEMANDING ALASKA JOIN IN LEGAL ACTION TO REPEAL HEALTH CARE BILL

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By signing this petition you are demanding the Governor and Attorney General join in the legal action to repeal the Health Care Bill.

	Print Name	Signature	Address	Phone No.	email
1	DAN SENTZ	Dan Sentz	901 McAdoo Way	376 4574	Lake7@Rapashsa.com
2	Mary Spaulding	Mary Spaulding	POBox 1129 Chickaloon AK	746-2216	—
3	VERNE RUERIGHT	Verne Ruright	866 W-Spruce Ave, Wasilla, AK	373-3923	-
4	KATHY RICCI	Kathy Ricci	912 S. PINNACLE MTN DR, PALMER	746-0309	
5	Billy Strassell	Billy Strassell	6026 200th A NE Arlington	360-435-6206	
6	Maureen McCready	Maureen McCready	4306 Silver Fox Ln Wasilla WA	376-2951	
7	JON CRESS	Jon Cress	50374 Spooner Hill St-Kenai	776-3776	
8	Tom TURASEK		5377 BIDEFORD PALMER		
9	CATHERINE BIRCH	Cathy Birch	700 Maury Wasilla	357-7250	
10	Steve Bowman	Steve Bowman	7410 E. Edna Wasilla	864-4087	
11	Dylan Knight	Dylan Knight	1835 Caribou Loop Wasilla	357-1895	
12	Scott Work	Scott Work	1605 Pioneer Dr	982-5070	scottlwork@yahoo.com
13	Bradley Pietila	Brad Pietila	1991 S Badenburg Ln Palmer	745-1194	
14	Trisha Pietila	Trisha Pietila	1991 S. Badenburg Palmer	745-1194	
15	Jim MILLER	Jim Miller	2501 E NAOMI AVE WASILLA	252-6773	
16	John A Morris	John A Morris	P.O. Box 521742 Big Lake AK	907-315-1797	johnbiglake@hotmail.com
17	GEORGE BURKE	George Burke	P.O. Box 3766 PALMER, AK 99645	746-2849	
18	Kyle Chester	Kyle Chester	P.O. Box 3766 Palmer, AK 99645	746-2849	
19	JuLeann Nevels	JuLeann Nevels	19426 Kellum Dr, Chugiak, AK 99567	441-8819	
20	James C. Norris	James C Norris	P.O. Box 521742, Big Lake, AK 99654	575-8786	Hawki_1@juno.com

Return to: Conservative Patriots Group, Inc. 1830 E. Parks Hwy. A-113 #535, Wasilla, AK 99654 PH: 907-354-8360

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	Print Name	Signature	Address	Phone No.	email
1	Grace Jordan		P.O. Box 100331 Anchorage 99510	907-240-8084	
2	Rick Lindsay		7362 W Parks Hwy PMB625 Wasilla AK 99654	907 357-3090	
3	FREDERICKS HANSEN		5536 E RAVICH CIR PALMER AK	907-357-343	
4	Travis Oaks		17915 Snowpoint Circle ER, AK 99577	907 694-1095	
5	Don Harris		5227 Diben Rd 99504	907 310-1894	
6	ISAAC HEDLEY		4250 E SNIDER D WASILLA AK	907 7156930	
7	Mike Hervey		2840 Alma Dr Wasilla AK	907-841-8224	
8	Josh Moss		13451 E Nyman Palmer AK	907 746-5022	
9	CLAY Dann		1721 Driftwood Cir Palmer AK	907 357-1880	
10	Michele LeCOURS		4020 N. Talkeetna View Dr Wasilla 99654	907602-3930	mlecours@alive.com
11	Mona Connors		4950 E Aspen Wasilla 99654	907-376-0079	
12	TERRY E. Buxbaum		1101 Tina Lane Palmer 99645	907-746-2238	
13	Bonnie Buxbaum		1101 Tina Lane Palmer 99645	907-746-2238	
14	Dixie Banner		400 Creekwood Ave, Wasilla 99654	907-250-6321	
15	Dave WARSH	1120 HUFFMAN #331	1120 HUFFMAN #331 ANCH AK 99515	907 349-6670	
16	MIKE PENNINGTON		P.O. Box 875503 WASILLA 99687	907 715-6155	
17	Julie Hays		PO Box 875503 Wasilla 99687	9077156159	
18	Kristin Hunt		5421 E. 131st Ave. Anchorage 99516	907-830-6881	
19	Jon Hunt		5421 E. 131st Ave Anchorage 99516	907-301-5155	
20	Emily Frye		4231 E. Highline In Wasilla 99654	907 229 7588	

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	Print Name	Signature	Address	Phone No.	email
1	Thomas B. Russell	Thomas B. Russell	HC34-Box 2057 Wasilla 99654	373-1958	TRBARussell@GCI.NET
2	BARBARA RUSSELL	Barbara Russell	HC 34- Box 2051 WASILLA 99654	373-1956	Sana
3	Sina Sena		2712 Strawberry Rd Anchorage 99502	248-7848	sinasena78@yahoo.com
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5	Jerry Delaney	Jerry Delaney			Mintgirl@dogloser.com
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9	Jason Johnson		6030 Seneca Dr Wasilla, AK	357-4422	jkjohnson@gci.net
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12	Brian Funkerson		PO BOX 57362 NORTH POLE AK 99705	590-2416	funkerson@alaska.net
13	Rachel Courtney	Rachel Courtney	PO Box 873212 Wasilla 99687	376-7100	
14	Nathan Courtney		PO Box 873212 Wasilla 99687	376-7100	
15	Elizabeth Towner	Elizabeth Towner	PO Box 2461 Palmer 99645	715-0008	
16	Kenneth Fedelio		PO Box 873671, Wasilla AK 99687	715-8163	
17	Joann Judkins	Joann Judkins	PO Box 874124 Wasilla AK	373-3579	—
18	Joshua Wood		8935 Birch Park Cir Eagle River	522-4826	
19	Gary Gudz		560 N. Pine Ridge Loop. Wasilla AK	373-5271	ggudz@MTACINE.NET
20	Sean Ridlon		5913 N. Solitude Wasilla, AK	232-5922	elderstroth855@yahoo.com

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1	Hal Frye		4231 E. Highline Lu Wasilla AK	907-274-4416	
2	James Densel		350 N. Bonanza Palmer, AK	775-0379	
3	Robert Doyle		1900 E. Porcupine Trail Wasilla AK	373-3147	
4	Karen Doyle		1900 E Porcupine Trail, Wasilla, AK	373-3147	
5	Gale Carlson		11315 E. Equestrian ST	746-1335	
6	Valerie J Lindeman		3465 E Naomi Ave Wasilla AK	907 376 9057	
7	Christopher C Horacek		1150 S. Colony Way STE 3 PMB 136 Palmer AK 99645	907-746-3582	
8	Rick Kinmon		1711 Cartwright Dr Wasilla AK 99654	907-355-8253	
9	Jim LINDEMAN		3465 Naomi Ave. WASILLA 99654	907-376-9057	
10	Piper Marsh		2923 S Avalon Cir #3 Wasilla 99654	907-373-3133	
11	Jessica Ringus		5270 E Karen Ct. Wasilla AK	907 225 8185	
12	Jeff Whitten		7121 Wellington Dr WASILLA AK	907 324 8924	
13	Carmen Gunderson		6571 Reiner Cir Wasilla AK	(907) 357-1291	
14	Rick C. Ellis		341 S. EASTMAN CT. WASILLA AK 99654	(907) 376-6763	
15	Gaylene Ellis		341 S. Eastman Ct Wasilla AK 99654	907 376 6703	
16	Shelly S Lund		3862 N. Charley Dr.	907 376 1908	
17	Cristina McAnulty		2925 W. Bayridge Circle, Wasilla 99654	357-3501	
18	Michael C McAnulty		2925 W Bayridge Cir Wasilla, AK 99654	357-3501	
19	Glen Verplancke		501 E Heather Way Wasilla AK 99654	357-4480	
20	Robert Hall		Box 871906 Wasilla AK 99687	373 6555	

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3	Carrie J. Whitford		4882 E. Alder Rd Wasilla	99654	quilter4l@gmail.com
4	CAROL WERNER		3100 N Palmer Fishhook Palmer	745 3532	Carolw@mtaonline
5	Jason Werner		643 S Gulkana St	745 0176	Ja-we-@yahoo.com
6	Marvin Baker		2611 N. Glenn Hwy	746-6531	pinnaclepeak@mtaonline.net
7	James Jewett		1961 W Rivulet Ave Wasilla, AK 99654	355 5355	ak4me4y@gmail.com
8	Laurie Scholberg		3991 Tambert Wasilla AK 99654	373 3946	
9	Robert L. Bathery Sr		16905 E Leonora ST Eagle River	907/694-4278	
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12	DAN DOWNING		POB 967, Willow, AK 99688	907 495 2871	ddd@mtaonline.net
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14	Ronald Smith		1089 Oak Crest ct N.P. AK 99709	907 488 3281	Ronald.Smith6@navy.af.mil
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20	Ashley Lauer		Box 671987 Chugiak AK 99567	688-1321	desaad@gmail.com

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	Print Name	Signature	Address	Phone No.	email
1	Diane Pankowski	Diane Pankowski	POBox 520675 Big Lake AK 99652	907 892 7443	
2	Jim Carlyle	Jim Carlyle	PO Box 3957 Palmer, AK 99645	376-3[illegible]	
3	Rex Hunter		P.O. Box 873472 Wasilla 99687	376-7427	
4	Portia Babcock		11404 Discovery Park Dr. Anch. 99515	250-9972	portia@alaska.com
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6	JP Coleman		7740 E Timberlay Palmer	746-0897	
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10	Kittina Butt		7320 No Esther Dr Palmer, Ak	746-6362	kittina5@yahoo.com
11	William Bassett		P.O. Box 870509 - Anch Grace AK 99687	351-2579	
12	Donald W. Vranna	Donald W. Vranna	PO Box 553 Sutton AK 99674	745-2003	
13	Olivia Jones	Olivia B. Jones	4000 Marquis Way 99502	907-29[illegible]-2132	OBJ@alaskaexpress.com
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16	Ramona J. Norman	Ramona J. Norman	2300 N Skwentna Bay Wasilla AK 99654	357-8425	mrnorman-ak@gci.net
17	Glen Rouse	Glen M Rouse	551 E Parma Loop Wasilla	357-8857	
18	Ryan Friesen		801 W. Nelson Ave Wasilla	376-7076	
19	Jamie Friesen	Jamie Friesen	801 West Nelson Ave Wasilla	376-7076	Jamie-friesen@yahoo.com
20	Robert Anthony	Robert Anthony	3725 S. Eagle Bay Dr. Wasilla	373-3227	

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	Print Name	Signature	Address	Phone No.	email
1	Gilbert LaValley		PO Box 871291 Wasilla Ak	357-5561	
2	Debra S. Davis		PO Box 870123 Wasilla AK	315-6107	
3	Tyler Vaughan		4050 N. Charley Dr Wasilla AK	373-2651	
4	Mike Hales		4630 W Rangeview Dr	315-1019	
5	Kelly McManus		PO Box 871905 Wasilla AK	376-8488	
6	Matt Nagy		160 W 68th Street Anch AK	715-7404	
7	Ron Miller II	Ronald Wayne Miller II	P.O. Box 877610 Wasilla AK 99687	376-8702	
8	Kim Weiner		643 S. Gulkana Palmer AK 99645	745-0176	
9	Ray J. Lawrence		474 W. Heritage Dr 99654	373-8520	
10	Christopher S. Dotur		3060 E. Lakeview Rd. Wasilla, AK 99654	373-3744	
11	Eric Church		851 W. Selden #1 Wasilla AK 99654	376-3959	
12	Barbara Bruegseborn	Barbara Anne Bruegseborn	PO Box 203 Willow, AK 99688	495-3246	
13	PHIL KOWALSKI		PO Box 520349 Big Lake, AK 99652	892-6411	
14	Doug Scholbers		3991 Trapper Dr Wasilla AK	3733946	
15	Carey Wells		5930 E. Alder Cir. Wasilla AK	232-4966	
16	Bobby W King		6020 N Talkeetna View Dr Wasilla 99654	373-2785	
17	MARILYN D. FELLER-KING		6290 N. TALKEETNA VIEW DR. 99654	373-8885	
18	Albert Edwards		13627 Vasili Dr. Eagle River, Ak	726-1283	
19	AL DONLEY		700 E Glenwood Wasilla AK	376-5540	
20	Brandon Allred		1261 Bardi Dr. Wasilla, AK 99654	907 841 1709	

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1	PRISCILLA REEVES	Priscilla Reeves	3608 LOCARNO Anch	561 3553	pris@ak.net
2	Josh Drury		2775 W Stoneridge Ct Wasilla	907-322-7367	the_1_bachelor@yahoo.com
3	KEVIN MAXWELL		3756 N. INSPIRATION LP W/A	907-373-9157	KEVIN.MAXWELL@GMAIL.COM
4	Ryan Geagel		Box 877141 Wasilla, AK 99687	907-376-9052	ropeagel@gmail.com
5	Scott Luerse		1335 Old Towne Palmer AK 99645	907-301-2584	heisenberg@Live.com
6	Jessica Gunderson		PO Box 975402 Wasilla AK 99687	373 5453	jessicachristine@yahoo.com
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8	TERRY Foreman	Terry Foreman	PO Box Glacier Vista Chugiak AK 99567	688-3807	tnforeman@gci.net
9	Craig Lance	Craig Lance	PO Box 672390, Chugiak 99567	688-4404	lances@gci.net
10	Heidi Cline	Heidi Cline	PO Box 1075 Seward AK 99664	907-3621290	
11	David Cossette	D. C.	P.O. Box 875542 Wasilla AK	907-232-8739	
12	MARGARET SHARPE	Margaret Sharpe	10357 E Wisconsin Cir. Palmer	907-223-8837	
13	Ellen Godfrey	Ellen Godfrey	1200 S. Badger Palmer, AK 99645	907-746-6626	godfrey@mtaonline.net
14	Charlotte Cookingham	Charlotte Cookingham	17268 Hideaway Ridge Dr E.R	907-947-4706	dccookingham@gmail.com
15	MARTIN L. GOFF	Martin L Goff	PO Box 873492 Wasilla Ak	376-1162	gmartin73@hotmail
16	Stefani Nordlund	Stefani Nordlund	749 He W Schulz Dr Wasilla	892055	kimes-stefani@hotmail.com
17	DANIEL BUTZEN	Daniel Butzen	POB 870931 Wasilla	841-4195	
18	VICTORIA L. WHITE	Victoria L White	POB 2482, Palmer 99645	745-6587	LVWHite@RogersHSA.com
19	Mark Chryson	Mark Chryson	2140 E Wolverine Cir	376-8285	Markcw@mtaonline.com
20	Tim Dietz		5913 Redit Wasilla AK	864 0762	timdietz@mtaonline.net

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	Print Name	Signature	Address	Phone No.	email
1	George Jobe	George Jobe	872354 Wasilla AK 99687	357-6779	
2	William Ryder	William Ryder	524 Kimberly Wasilla AK 99654	357-3560	m.dnjtsen@alaska.net
3	L.sa Wholet	Lisa L. Wholet	PO Box 2403 Palmer, AK 99645	982-2998	
4	CHRISTOPHER F. LUCE	Christ F. Luce	1715 PIPESTONE DR WASILLA AK 99654	376-6251	
5	Michael J DeSpain	Michael J DeSpain	2241 Belmont Dr. ANC	306-0992	despain64@hotmail.com
6	Mary Patrick	Mary Patrick	2241 Belmont Dr 99517.	306-0991	ariana029@hotmail.com
7	PAUL D. HOUSER	Paul D Houser	29698 E. KNIK RIV. RD. PALMER 99645	745-1745	
8	EVA STREET	Eva Street	4620 Reka Dr. Anch 99516	222-0833	
9	David Schmidt	David Schmidt	4330 Tor st Wasilla AK 99654	357-4330	dave@hecustoms.com
10	David Merwin	David Merwin	PO Box 671624 Chugiak AK 99567	688-3046	d-merwin@msn.com
11	Deborah Kessler	Deborah Kessler	2381 S Paddock Dr. 99654	631-3920	
12	THOMAS GEORGE	Thomas George	P.O.BOX 671589 CHUGIAK AK	688-5015	
13	Roger ERDMANN	Roger Erdmann	PO Box 874690 WASILLA 99654	631 2542	
14	Norman Wakeman	Norman Wakeman	PO Box 797, Willow, AK	495-9267	
15	JASON RYAN	Jason Ryan	PO Box 875161 WASILLA AK 99687	373-1624	GALLEATHER@HOTMAIL.COM
16	Carol R Russell	Carol R Russell	PO Box 4259 Palmer AK	745-1470	
17	Richard H Russell	Richard H Russell	PO Box 4259 Palmer	745-1470	chrussell76@Yahoo.com
18	Shawn Graffman	Shawn Graffman	P.O Box 875724 Wasilla 99687	907 357-1249	Shabang-1@hotmail.com
19	Beth Bayer	Beth Bayer	PO Box 875724 Wasilla 99687	907-354-0169	l.l.bayer49@yahoo.com
20	PHIL DOWNING	Phil Downing	9561 N PALMER FISHHOOK PALMER AK 99645	907-745-6662	

Return to: Conservative Patriots Group, Inc. 1830 E. Parks Hwy. A-113 #535, Wasilla, AK 99654 PH: 907-354-8360

PETITION DEMANDING ALASKA JOIN IN LEGAL ACTION TO REPEAL HEALTH CARE BILL

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	Print Name	Signature	Address	Phone No.	email
1	PATRICK HEADLEY		BX 871301 WASILLA AK 99627	746-7077	
2	WILLIAM FORSTER		850 E. McAdoo Way, Wasilla	376-9336	
3	Don Ridge		PO Box 875605 AK 99687	7457110	
4	SCOTT ANDREWS		1000 EISENHOWER, WASILLA AK 99654	982-6932	
5	Valerie Andrews	Valerie Andrews	23505 NE 229th St. Battle Ground, WA	(360)687-3371	
6	ELLEN BAKER	Ellen Baker	PO BOX 520485 Big Lake AK	892-7780	ellen@mtaonline.net
7	FLOYD E SENA JR		2712 STRAWBERRY RD Anch AK	350-6221	floydsena@yahoo.
8	Wade E. Bailey	Wade Bailey	6861 E. Iris Palmer AK	354-2767	
9	Marjorie Sullivan	M Sullivan	" " " "	775-3161	
10	Elizabeth Pavek	Elizabeth Pavek	3431 W. Wren Rd Wasilla 99654	357-1119	liz pavek@mtaonline.net
11	George Taft	George Taft	PO Box 875485 Wasilla AK 99687	357 4213	gtaft@msn.com
12	LONI HIPPLER	Loni Hippler	PO Box 873991, Wasilla 99687	376-9231	
13	Terry Baker	Terry Baker	10312 Thaja Circle Anchorage AK 99515	344-5341	
14	Jason Childers		1325 W Bluffview Dr.	376-1325	homer@gci.net
15	ROBERT C. NASH	Robert C. Nash	HC 34 BOX 2224 WASILLA, AK 99654	892-6830	RCNASH122@GMAIL.COM
16	JOHN RIGGS	John H. Riggs	13TE ARCTIC AV, PALMER AK 99645	745-6180	ane@mtaonline.net
17	RICK SALYER	Rick B. Baker	6065 N. Little Rock Cir WASILLA AK 99654	864-0094	AKBulldog78@yahoo.com
18	KIRK BROWN		461 E Barrett Lp Wasilla	376-6165	
19	Matthew Telford		PO Box 773672 Eagle River AK 99577	250-7193	
20	Boyton Spencer	Boyton Spencer	3951 S Cook Inlet Cir Wasilla AK 99654	376-0074	bspencer99@hotmail.com

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	Print Name	Signature	Address	Phone No.	email
1	James Wolfe		4405 E Echo Wasilla Ak	352-9298	Scarfe@gci.net
2	JOHN CHAPMAN	John E Chapman	3150 N EVES DR. Palmer 99645 AK	355-7939	
3	MERLE FRANK	Merle R Frank	1780 W Lake Lucille DR Wasilla	373-5867	
4	DOROTHY FRANK	Dorothy A. Frank	1780 W. LAKE LUCILLE DR. 99654	373-5867	
5	Jeremy Goff		9 Mile Daniels Lake Drive PO Box 2603, Nikiski, Ak. 99635	252-0527	
6	James Savage		1051 N Rainbow Dr	775-0234	
7	Larry E. White Jr		PO Box 2452 Palmer AK. 99645	745-6567	
8	Heather Kovarik		PO Box 879440 Wasilla 99687	355-1065	
9	Bryan Wuellet		PO Box 2108 Palmer 99645	232-0861	
10	B. WEDEKIND		Ed Edwards Wasilla Ak	907 373 65	
11	Johnny Bonnegres		PO Box 872875 Wasilla AK	7752457	
12	Melissa Mawhinney		Box 76114 Chugiak AK 99654	6883046	
13	Steven E. Kessler		2381 S. Paddock Drive Wasilla AK	907-631-3126	stevekessler@hotmail.com
14	Tami M. George		PO Box 671589 Chugiak, AK 99567	907-688-5013	
15	Brad Porter		7362 W PARKS Hwy #680 Wasilla	232-6731	
16	Marianne DeHart		PO Box 873094 Wasilla	315-3593	
17	Fred DeHart		PO Box 873094 Wasilla	315-3892	
18	Gail Just-Cornelius		PO Box 1124, Willow, AK	355-4063	
19	Christopher Russell		831 N. Colonial Dr. Wasilla AK	229-0124	
20	Dolores Forster		850 E McHenry Way, Wasilla, AK 99654	376-9994	

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	Print Name	Signature	Address	Phone No.	email
1	Nancy E. Dockter	Nancy E. Dockter	2243 W. Ridgewood Dr	223-4612	Stridngal@mta.
2	Barbara Carter	Barbara Carter	701 A Lucille	982-7361	bc_listings@yahoo.com
3	Steven M Johnson	Steven M Johnson	PO Box 875526	748-5345	
4	Susan M Johnson	Susan M Johnson	PO Box 875526	748-5346	AKmom1@mtaonline.net
5	Gerald Killion	Gerald Killion	3133 Naomi dr	354-4613	Killion@gci.net
6	Keith Schlegel	Keith Schlegel	7362 W Parks Hwy #716 Wasilla	715 9476	
7	Donald A. Grimes	Donald A. Grimes	HC 38 Box 2667 Wasilla AK	841-0907	arcticdon@hotmail.com
8	Vicki J Grimes	Vicki J Grimes	HC 38 Box 2667 Wasilla AK	892-0907	VICKINALASKA@hotmail.com
9	Zac Bonnette	Zac Bonnette	3703 N Copperspike St Wasilla AK	357-8850	
10	Levi McAuliff	Levi McAuliff	860 N. Win Circle Wasilla AK	841-4417	
11	Clifford Chapter	Clifford Chapter	2243 W Ridgewood Dr Wasilla AK	382-1865	
12	Rodney Van Sciver	Rodney Van Sciver	PO Box 773464 Eagle River AK	3733123	AAKRVS@WISN.com
13	Steven DeHart	Steven DeHart	3200 E. Naomi, Wasilla	357-3528	
14	Arley Delaney	Arley Delaney	P.O Box 870922 Wasilla	892-7755	
15	Connie DeHart	Connie DeHart	3200 Naomi Dr. Wasilla	357-3528	
16	John Christian	John C. Christian	4850 W Stratford Ct. Wasilla	841-4760	skydiver_YY628@yahoo.com
17	Connie Schwarzer	Connie Schwarzer	4857 W Stratford Ct Wasilla	841-5077	Connieschwarzer@yahoo.com
18	Ron Haynes	Ron Haynes	2501 Jade Dr. Wasilla AK	357-5790	akbulldog@yahoo.com
19	James Jones	James Jones	1760 South Dot St. Wasilla AK	357-7751	James.Jones@pangea.mil
20	Jana Zerr	Jana Zerr	3505 S. Rebecca Lk Palmer AK	745-7167	Krazyaz@Hotmail

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	Print Name	Signature	Address	Phone No.	email
1	GERALD M. ETHERTON JR		PO Box 872491	907.357.6868	g_ethe@yahoo.com
2	DIANA PINARD		P.O. BOX 871347	907-232-1347	pinard@mtaonline.net
3	PAUL PINARD			907-232-1347	paulpinard@hotmail.com
4	ALYSSIA JONES		1760 S. Cat St Wasilla AK	907-357-7750	alyssia.jones@yahoo.com
5	ALLISON VERBOS		P.O. Box 871852 WASILLA	357-3473	
6	Connie Woolard		BOX 936, Willow, AK	232-3127	
7	Stephen Hill		18206 Clear Falls Circle, Eagle River AK	696-5957	
8	Kyl Van Buskirk		PO Box 757 Sutton AK	224 5536	
9	Wade Thomas		7262 W. Parks Hwy Box 242 Wasilla 99654	232 9631	
10	Bryanna Pearce		7561 N Birch Harbor Rd.	907 892 8844	
11	Heidi Phillips		7362 W. Parks Hwy #271	307-231-2074	
12	Tyler V		44241 E Marcia dr	227-2230	
13	Kurt Koerschel		9712 S. Pine	696-2671	
14	Mark Fish		2750 N Tamar Cir	376-8662	markfish@hotmail.com
15	Megan Fish		2750 N Tamar Cir Wasilla AK 99654	376-8662	elgreeneyes@gci.net
16	Lisa Perkins		1830 E Parks Hwy PMB 278 Wasilla AK	376-6123	
17	RICK HARRINGTON		15055 E. KENT ST.	745-2588	rickharrington@mtaonline.net
18	CASSANDRA PAUL		7362 W. PARK Hwy #683 WAS #465	357-5210	
19	GEORGE PARK		7362 W. PARKS Hwy #476 WAS #465	892-7733	
20	ANTHONY BURRELL		725 N. Acacia Palmer WASILLA	376-0319	PARRELL76@EARTHLINK.NET

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	Print Name	Signature	Address	Phone No.	email
1	John Reed		PO Box 239867, Wasilla, AK	(907) 376-4289	
2	Jim Land		1805 W. Whirlpool Cir Wasilla AK	(907) 631-4990	
3	James Hibpshman		P.O. Box 299 / Soldotna AK	907-394-4507	
4	Steve Colligan		Po Box 874854 WASILLA AK	230-3422	Steve@Campcolligan.com
5	Michael Hopshman		P.O. Box 1024 Palmer, AK	907-306-3188	MIK24C@hotmail.com
6	Russell Collins		3531 Lunar Dr. Anch. AK	907 333-4179	RACollins@GCI.net
7	Ben Young		550 E Burlwood Dr. Wasilla AK	357-3529	
8	Walt Dezi		1100 Iron Horse Dr. Wasilla, AK 99654	414-6250	Waltd907@yahoo.com
9	Tom LeCorn		2715 Cotton Creek Dr Wasilla	841-8031	Four-Seasons-Property@live.com
10	Tom Lenfesty		4450 N. Talkeetna View	373-3605	
11	Antheia C. D. Nelson		P.O. Box 873675 Wasilla, AK	373-7498	antheiaNelson@yahoo.com
12	Deanna L Anderson		P.O. Box 032717 Chugiak 99567	907 775-4665	
13	James B Hammock		22634 Judd Dr Chugiak AK 99567	907 688 6407	
14	Sherry Hammock		22634 Judd Dr Chugiak, AK 99567	907-688-6407	
15	Scott Anderson		20325 Leprechaun Chugiak, AK	907-688-6833	
16	Becky Anderson		20325 Leprechaun Chugiak AK	907-688-6833	
17	Keith Akers		P.O Box 874854 Wasilla AK	99687 907 373 4775	
18	Rudolph Ferdinand		1151 N Freedom Ln Wasilla AK	357-4530	ferddy@mtaonline.net
19	Lawrence R. Oliver		10662 Briarstone Circle Anch. 99515	223-9234	ROliver6747@MC.com
20	James Parkinson		PO Box 520675 Big Lake AK 99652	892-3835	

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	Print Name	Signature	Address	Phone No.	email
1	Amber Bertorello	Amber D Bertorello	P.O. Box 875910 PMB 165	631-4956	Amber.Bertorello@gmail.com
2	Michael D. Sain	Michael D. Sain	2500 N Alma Dr Wasilla AK	376-8085	
3	Tom Hubble	Tom Hubble	8910 Kak Island, ER. AK	242-2083	
4	Bailey Turner	Bailey	11911 Regency DR, ER, AK	622-6041	
5	Bryce Ojalehto	Bryce Ojalehto	3320 Pintail Cr. Wasilla	252-5833	
6	Debra Bates	Debra Bates	PO Box 875094 Wasilla AK	376-2253	
7	Mike Burge	Mike Burge	7475 N. Grouse Loop Wasilla AK	376-9368	mburge@gmail.com
8	Ernest W Jones	Ernest W Jones	10822 Splendor Loop, ER AK	726-3613	
9	Jean Calkins	Jean Calkins	2701 W Stonebridge Dr Wasilla	357-2223	
10	Margaret E Lovejoy	Margaret E Lovejoy	7362 W. Parks Hwy # 734, Wasilla	376-6927	
11	JERALD CONN	Jerald Conn	5890 E Canborne DR Palmer	378-5960	
12	SANDRA COONS	Sandra Coons	Po Box 4229 Palmer 99645	745-6779	
13	Robert Garcia	Robert Garcia	Po Box 875643 Wasilla, AK.	306-2594	
14	[illegible]	[illegible]	Po Box 84651, Fbks, Ak		
15	Marty Raju	Marty Raju	2501 N Brewers Way, Wasilla AK	631-5046	
16	Karen Alder	Karen Alder	9431 W Cascade Wasilla	354-8908	
17	Jeff Kreyer	Jeff Kreyer	4875 East Birch, Wasilla AK	357-8345	
18	John Lewellyn	John Lewellyn	22232 woodcliff ct Chugiak, AK	688-4524	
19	Cheryl Cline	Cheryl A Cline	2083 N. Saddle Horse Wasilla Ak	357 7237	
20	Cindy Truby	Cindy Truby	4000 N Grey Wolf Dr. Wasilla AK 99654	841-2206	Cindy.truby@gmail.com

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1	DEATHER A TAYLOR		7223 E 6TH AVE ANCH AK 99504	907-264-4451	
2	TIM L. Galloway		1893 N. Citation Cir. Palmer AK	9077495196	
3	Doug Thiessen		189 E Nelson Ave Z 24 Wasilla	9078543999	
4	Steve Shultz		11095 Equestrian St. Palmer	9099462507	
5	Cindy Beal		1100 Iroquois Dr Wasilla	907-982-9086	
6	Carson Bales		P.O Box 875094 Wasilla	9073762253	
7	Kim LeGray		2715 Cotton Creek Cr. Wasilla	907-357-3443	
8	Dianna henfestey		16150 N. Talgauh Vista Way Mat	907 373 3265	
9	Lee Koss		10000 Golden Hills Dr, Palmer AK	907-746-6057	
10	HENRIETTA L. PROVOST		PO BOX 4445 HOUSTON AK 99694	907-892-7963	
11	JAMES R. CALKINS		2201 W. STONEBRIDGE DR. WASILLA AK 99654	907-357-2223	JCALKINS@MTAONLINE.NET
12	Rebecca Tucker		PO Box 672317 Chugiak AK 99567	907 376 0956	
13	WALTER LOVEJOY		7360 W Parks Hwy #724 Wasilla 99654	907-376-6927	
14	Michael Cook		PO Box 4225 Palmer AK 99645	907 745 6379	
15	Michelle L Reimann-Roth		3265 S Dawson Dr Wasilla 99654	907 373 4496	
16	ROBERT BURLAN		3100 WARD PLACE #24, ANC, AK	(907) 444-2880	AK-ROB@LIVE.COM
17	Steve Burgan		1341 W. 78th Ave Anch AK 99518	(907) 344-1322	
18	PAUL Meyer		PO Box 875002, Wasilla 99687	907-350-1361	meyerpj@juno.com
19	Jacqueline meyer		PO Box 875002, Wasilla, 99654	907 07 58	" "
20	RICHARD CLINE		2003 N. Saddle Horse Dr Wasilla 99654	907 357 7237	rc-cline@me.com

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1	Douglas Dunlap		PO Box 873612 Wasilla AK 99687	907-841-7198	KLOTS@hotmail.com
2	Jeff Pedersen		P.O Box 39275 Ninilchik, AK 99639	907-252-1233	stowaway_@hotmail.com
3	Shannon Connelly		PO Box 172 Palmer, AK 99645	745-2046	skconn@mtaonline.net
4	Joseph Baltz		P.O. Box 1784 Palmer AK 99645	746 5064	Jeff246@mtaonline.net
5	Helen Baltz	Helen Baltz	P.O BOX 1784 Palmer AK 99645	746-5064	
6	Annette Hampster	Annette Hampster	PO Box 2846 Palmer AK 99645	746-1740	
7	James A. Hampster	James A. Hampster	P.O. Box 2846 Palmer AK 99645	746-1740	
8	Steve A Cook		# 205 E Eagle Vista Cr Wasilla	373-6968	pecook@mtaonline.net
9	Carol Rice	Carol M Rice	3751 Cottonwood Way Wasilla	350-2669	
10	George Rice		3751 Cottonwood Way Wasilla	350-2444	
11	Kevin Ortihen		1051 E Bogard Rd #9	373 2566	park@mtaonline.net
12	Cheryl Land	Cheryl Land	1851 E Whirlpool Cir, Wasilla	631-4990	
13	Sherry Hill		6585 E Arctic Cir Palmer	357-2431	
14	Ron Arvin		1897 E Nelson #136 Wasilla AK 99654	373-6682	Rone Ronarvin.com
15	Sandra Kottke		PO box 871170 Wasilla 99687	376 8537	
16	Edmund MacLeod		9116 E Alpine Meadows Cir Palmer AK 99645	907-230-5998	emacleod@mtaonline.net
17	Kambriea Hipshman		PO box 1084 Palmer, AK, 99645	(907)306-3888	mlk246@hotmail.com
18	Julee K Sain	Julee K Sain	2800 N Alaska	376-8095	
19	Jay L. Johnson	Jay L Johnson	735 W Fern Ave Palmer AK 99645	315-4861	
20	Don Bo	Don Bo	3104 Eastwood Cir Wasilla 99654	631-4556	

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1	Steve Runyan		PoBox 1223, Willow, AK 99688	907)495-2697	steverunyan@yahoo.com
2	Paula Runyan		PO Box 1223, Willow, AK 99688	907-495-2697	Paula-JoAnne@juno.com
3	SUSAN ORR		7701 Hillbrook Ct. Anchorage, AK 99504	907-332-4492	—
4	BILL COLLINS		PoB 940027 Houston AK 99694	907-841-2455	
5	Kyle Christiansen		1680 CATALINA DR WASILLA AK 99654	907-841-6764	KYLEAK@HOTMAIL.COM
6	Travis Young		2751 E Fallbrook crt Wasilla AK 99654	907-232-1912	Tyoung3232@Yahoo.Com
7	Darwin Aho		PO Box 875910-233	907-376-3468	darwin@intoolinc.net
8	DENNIS SPURRIER		P.O. Box 284 Skagway, AK 99840	907-983-2576	—
9	Chris Alan Houghton		3400 S. Darwin Dr, Wasilla, AK 99654	907 357-4721	oshaxray@gmail.com
10	BRIAN BUHLER		905 W. FUREAKER DR WASILLA, AK 99654	907 376 0929	
11	Chris Gooch.		7330 E. Aspen Ridge Rd.	—	—
12	David Petty		7362 W. Park, Hwy #706	—	—
13	Mark Bradshaw		7145 E. Springwood DR Wasilla 99654	746-4770	
14	SHAWN J. CONNOLLY		11427 E CIENA AVE. PALMER, AK 99645		
15	JATHAN MAXI		4300 E. MARIA AV WASILLA AK	(907)841-6651	
16	Travis Peterson		PoBox 875005 Wasilla, AK 99687	—	—
17	Lorraine Hibpshman		Po Box 2991 Soldotna, AK 99669	(907)953 2011	
18	TIMOTHY POTTER		Po Box 877670 WASILLA	376-8597	
19	MARGARET MACLEOD		9116 E. ALPINE MEADOW DR PALMER	745-5870	
20	Douglas C Sanchez		1532 A Petersburg Rd Wasilla, AK	373-0250	

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	Print Name	Signature	Address	Phone No.	email
1	Paula J. Miller	Paula J. Miller	4515 N. McKean Dr. Palmer AK	(907) 745-0226	5
2	Tina Walter	Tina Walter	650 Iceberg Circle Wasilla AK	907) 357-5620	
3	BRETT WALTER	Brett Walter	650 Iceberg Circle Wasilla AK	907) 357-5620	
4	Willy Rambo	Willy Rambo	7040 W Wellington Wasilla AK	(907) 631-0840	
5	JAMES R. [illegible]	[illegible]	707 West Rockridge Road, Wasilla AK	907-244-7631	
6	Mark E. Clyde	Mark E. Clyde	5883 E. Morning Mist Drive Palmer AK	373-6291	
7	BONNIE BARRETT	Bonnie Barrett	71805 Territorial Wasilla	373-3442	
8	Larry Hart	Larry Hart	17152 Charity Circle	907-696-4110	hart2has1@gci.net
9	Debra Lighthart	Debra Lighthart	HC 32 Box 6538 Wasilla	907-746-1884	
10	Susan Barnes	Susan Barnes	950 S Joanne Dr Palmer AK	745-8911	
11	David Barnes		950 S Joanne Dr Palmer Ak	745-8911	
12	Craig Sandefur	Craig Sandefur	5975 S. Hanson Lp Wasilla AK	373-0703	
13	Sherri Sandefur	Sherri Sandefur	5975 S. Hanson Lp Wasilla AK	373-0703	
14	Tony E. Thacker	Tony E. Thacker	231 E. Wasilla Ave 99654	631-5216	
15	Linda E Houston	Linda E Houston	8841 Hunter Creek Circle Eagle River	696-6620	
16	Paula Aho	PAULA AHO	PO Box 875510-2331 WASILLA	376-3468	
17	Gilbert L Grow II	Gilbert L Grow II	3601 N Trunkair Dr. Wasilla AK	376-3728	
18	Dale Dorner	Dale Dorner	PO Box 870077 Wasilla AK	376 9428	
19	BILL LUND	Bill O. Lund	PO 298214 WASILLA AK 99629	3766533	
20	Darci Dean	Darci Dean	4261 N. Quebec St Wasilla, AK 99654	631-4930	

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	Print Name	Signature	Address	Phone No.	email
1	Chad M Schoenthaler		20550 Mountainside Dr Eagle River AK 99577	907 229 0609	Chad_Schoenthaler@hotmail.com
2	Kenneth Heaton	Kenneth D. Heaton	Box 874377 Wasilla AK	907-357 1934	Kdjoyce@JUNO.com
3	Lloyd B. Rudd	Lloyd B. Rudd	P.O.B 2986 Wasilla AK 99629	907-376-3648	
4	Joyce D. MARKS	Joyce D Marks	P.O. Box 871328 Wasilla, AK 99687	376-0692	dilligas@mtaonline.net
5	Gary Mitton		630 S. Lower Rd, Palmer, AK 99645	223-4819	
6	Jay Barker	Jay A. Barker	P.O Box 940045, Houston, AK 99694	892-2226	jaybarker@mtaonline.net
7	Don Smith		Po Box 298461 Wasilla Ak 996	892-6078	dsmith@mtaonline.net
8	Kevin Quinn	Kevin Quinn	P.O Box 940361 Houston, AK 99694	357-8684	
9	Kyle Maxwell		2048 N Tuhasco Ct, Palmer AK 99645	982-4333	Kyle@KMMG
10	Michael Sawyer	Michael Sawyer	P.O. Box 671151 Chugiak, AK 99654	(907) 357-4955	
11	Diane Sunderlin	Diane Sunderlin	1532 N Pittman Rd Wasilla 99654	373-0250	dsunderlin@yahoo.com
12	GEORGE KOVAL	George Koval	1632 TRAIL CIRCLE WASILLA, AK 99654	907-357-2253	PGEORGEKOVAL@GCI.NET
13	Harkleroad, Daniel		315 E. Dolphin Ave Palmer AK 99645	907 746 1922	
14	Art Fenn				WFenn@Hotmail.com
15	Brandon Barnett		17096 E Plunkey RD. Palmer AK 99645	907-841-8018	
16	Steven Sandberg		P.O. Box 670092 Chugiak AK 99567	907-688-2147	Janie@mtaonline.net
17	Bobby A Lucas	Bobby A Lucas	PO Box 871229 Wasilla AK 99687	357-6100	
18	Richard Birch		4466 W Spruewood Dr Wasilla AK 99654	357-8192	Richard@birch.com
19	ANDY STANTON		1150 S. COLONY WAY 3-206, PALMER 99645	746 0380	
20	Linda B. McCombs-Rowe	Linda B McCombs-Rowe	P.O. Box 874652 Wasilla, AK	373-2630	lmrowe@mtaonline.net

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	Print Name	Signature	Address	Phone No.	email
1	Harry F. Beninati		7051 Clairmont Cir. Anchorage AK 99507	907 337 4079	HBeninati@AK.com
2	JOEL LAUTRUP		5794 MORNOK MESA DR PALMER 99645	907 841 3231	JOEL 7576 @ YAHOO.COM
3	Don Olstad		P.O. Box 873912 Wasilla Ak 99687	907 232-7705	
4	DON PICKETT		BOX 874793 WAS 9968	~~344-3451~~	892-2010
5	Jacie Kopy		2435 Ravensflight WAS 99654		
6	DONNA Childress		POBox 1438 Palmer AK	746-5212	
7	Catherine Hicks		1029A Tomahawk Dr PALM	[illegible]	
8	Marcus T. Rowan		2602 E. Kalee Dr. Wasilla AK 99654	354-7365	marcus.rowan@gmail.com
9	PAUL ZITKO		PO Box 940171 Houston AK 99694	PRIVATE	PRIVATE
10	Daniel Carter		PO BOX 298653 Wasilla AK 99629	907-354-1984	Pcarter@mtaonline.net
11	Ruth M. Graham		6910 Dickerson Dr. Anchorage 99504	907 929-6040	
12	Tabor Nathan		20331 Granite Park Cir Eagle River 99577	907-622-8620.	
13	Samuel Brown		17741 E Castle Rock Ln Palmer 99645	907 745 0785	samb@gci.net
14	Sharon K Watson		2043 Cannoneer Cr Anch 99507	907-644-8563	skw@gci.net
15	Tom Sweek		~~4285 ELDER~~ 4185 ELDER CIRCLE		timsweek@Hotmail.com
16	Dennis Wallin		4250 E Palmdale	232-4252	
17	Joseph T. Hawkins		791 Hasselton DR. Wasilla AK	376-4104	
18	Frances G. Wilson		1830 Driftwood Circle Palmer	376-0284	
19	JARRETT FINLEY		2625 PTARMIGAN PL WASILLA AK	357-5685	FINLEY375@YAHOO.COM
20	Robert Wink		16249 Turnstone Dr. Eagle River AK	440-1621	

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	Print Name	Signature	Address	Phone No.	email
1	Charles Spaulding		P.O. Box 1129 CHICKALOON 99674	907-746-2216	chuck@novalaska.com
2	Larry Hawkins		2099 S. Siverado Pic St. Wasilla 99654	907-277-8846	alaskhawk@aol.com
3	Nathan Mitchell		7708 E Breckenridge Dr Wasilla 99654	907-764-8120	
4	Erika Mitchell		7708 E. Breckenridge Dr Wasilla 99654	907 775-531	
5	GARY D RAAB		11474 Discovery Vista Dr.	Anch AK	907 344-9407
6	LYNDA PARKER		POB 342, PALMER 99645		907-745-3858
7	Eleanor Hoverott		P.O. Bx 302 Talkeetna		KLixT@Hotmail.com
8	Elizabeth Tuohy		P.O. Box 1673 Valdez AK 99686	907-461-3642	
9	William Wise		1045 North Sun Shroud Loop Wasilla AK 99654	907-376-8833	WISEW1992@aol.com
10	Rhea Carlson		P.O. Box 871631 Wasilla AK	373-0880	
11	Dale Carlson		"	"	
12	Mike Alexander		PO Box 521171 Big Lake AK	907-892-4845	
13	Robert Hallock		17546 Rachel Cir Eagle River, AK	907-301-8535	wallockr@gci.net
14	Taylor Crocker		1011 N Amber Dr Wasilla, AK 99654	907-841-6381	duckie44@hotmail.com
15	WILLIAM BURKE		1135 N. KSIM CR PALMER AK 99645	907 745 4451	riverrat@ak.net
16	JON R. DENARDI		4945 Hovey Dr. WASILLA AK 99654	907-376-4680	ta25th@mtaonline.net
17	PATRICIA A DENARDI		4945 Hovey Dr WASILLA AK 99654	907 376 4680	ta25th@mtaonline.net
18	Joyce E. Heaton		PO Box 874379 Wasilla AK 99687	907-557-1934	Kdjoyce@juno.com
19	STAN MURDOCK		PO Box 2476 PALMER AK 99676	9022574368	
20	Jaime Keene		8035 W Tia Terrace 99654	907-373-5654	keenes@mtaonline.net

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1	Eugene W. Yockey	Eugene W. Yockey	21931 Rebecca Cir Chugiak AK 99567	688-1527	geneyockey@gci.net
2	Stephen K Smethers	Stephen K Smethers	PO Box 870584 Wasilla AK 99687	357-3533	
3	Cole Justice		PO Box 877568 Wasilla AK 99687	907-661-5075	jcjustice@gmail.com
4	Seemick Walters		PO Box 231666 Anch AK 99523	414-4274	
5	Christopher Evans	Christopher Evans	7672 E. Aspen Ridge Rd Wasilla AK 99654	382-8129	
6	Judy A. Hill	Judy A. Hill	980 S. Beethan Way Wasilla 99654		
7	John M. Tuohy		4301 Richardson Hwy, Valdez, AK 99686	831-1805	
8	Christopher M Tuohy		300 W Spruce Ave Apt 4 Wasilla AK 99654	907 841-8479	
9	Alexander A Bronzoff		11400 East Smith Rd Palmer AK 99645	907-746-2205	
10	David Schuetter		3505 Bergmann Rd Palmer 99645	746-4133	
11	ELLIOT NIEMI		9465 Huland Rd. Eagle River, AK	980-5719	NORTH OF 60 IN 49 FOR
12	Amber Shea		230 E. Spruce Ave B Wasilla 99654	841-4673	
13	Brian Shea		" " "	841-1739	
14	JACK SISSON		PO Box 873522 Wasilla AK 99687	357-2195	jsisson@gci.net
15	Michele Entwistle		7411 W. Indigo Dr. Wasilla AK 99654	376-6054	
16	J.m Roach		2409 N. Saddle Horse Cir Wasilla AK 99654	373-0665 460-6702	jmacroach@gmail.com
17	Thomas B. Vessey		P.O. Box 873655 Wasilla AK	907-357-2020	—
18	Fidelia K. Matranga	Fidelia K Matranga	11132 Placer Cir, Eagle River, AK	907-696-1872	—
19	Richard B Davis	Richard B Davis	11132 " "		
20	Todd Wessels		3220 E. Mack Rd, Wasilla, AK	907-841-2440	

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1	Irene Taylor	Irene Taylor	1002 Rosehip, Wasilla	373-0816	
2	Gilbert GORMAN		1010 Dessie Lane Palmer AK	746-2994	
3	David George		16922 Kiyona Cir. ER AK	862-4065	
4	SHANE MCKEE		13840 E WAYWAGON WY PALMER AK	2148845636	
5	Gordon A Heddell		200 W 34th Ave #291 Anch AK 99503	907-278-2493	
6	MARILYNN N HEDDELL	Marilynn Heddell	200 W 34th Ave #291 Anch AK 99503	907-278-2493	
7	O. George Richardson		3132 E. Tamarack Wasilla AK 99654	357-0243	
8	Judith White	Judith M. White	1844 E 26th, Anch. AK 99508	3677-5939	
9	Diane Crockett	Diane Crockett	16446 E. Tik-Al Dr. Wasilla, AK 99654	(907)441-3640	flyoninn@yahoo.com
10	Dae Poteet	Dae Poteet	20369 W Oeneki Drive 99687	775 3859	
11	Gabriela Olide	Gabriela Olide	PO BOX 870584 wasilla AK	841-3808	
12	Richard Lovaas	Richard Lovaas	18085 E. Walling Rd Palmer AK 99645	746-0495	
13	Forrest Fanning		4245 Chess Dr	444-4276	
14	Thomas W. Obrien		4350 Foxtrot WASILLA AK	232-6782	blackbeltmom@live.com
15	Ron Palmer	Ron Palmer	1600 W Melanie ave.	376-2518	
16	RICK THOMY		2000 N. Grey WAFOR WASILLA	232 6550	rickzee@gmail.com
17	Charles DeFreest	Charles DeFreest	20450 Lils Way Chickaloon	745-1022	Lillian@MTAonline.NET
18	Kevin Wellington		16555 E Bohman Rd Palmer	745-8885	Wellington@gci.net
19	Renee Wellington	Renee Wellington	"	"	"
20	Charity Koland	Charity Koland	3261 N Cranberry St Wasilla	982-6888	

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1	Brock Nelson	Brock Nelson	900 Enterprise drive	907-232-5552	gkhondrider@hotmail.com
2	Kathryn Eckmann	Kathryn A Eckmann	7801 Schuss Ct. Anch 99507	907-345-6333	
3	Herbert Eckmann	Herbert Eckmann	— — — —	— —	
4	Ricky Roberts	Ricky Roberts	3635 N. Fortune Cir Wasilla 99654	907 357 4867	
5	KEN NIKISKI	Ken Nikiski	12125 HAZEL ST	907-357-5701	KenNaynikiski@hotmail
6	Richard Burns	Richard Burns	1600 Lucy Loop	232-1307	
7	Daryl Smith	Daryl Smith	10339 Stewart Dr, Eagle River, AK	6967646	
8	Steven Kelly	Steven Kelly	5429 N. Sandalwood Ln	746-0662	
9	Rhonda Weinrich	Rhonda Weinrich	3400 E Neem Dr Was 99654	376-3400	Rhondacharrun@aol.com
10	Lonnie Wood	Lonnie Wood	5670 N Wildwood Dr, Was 99654	357-1853	
11	Lynn Slusher	Lynn Slusher	3941 E. Tamberet Wasilla 99654	376 7835	
12	OWEN WESTON	Owen Weston	P.O. BOX 874246 WASILLA 99687	351 7745	owenston32@AOL.COM
13	Sandra J Guzman	Sandra J Guzman	1010 Josselin Ln Palmer	746 2994	guzmanmom6@yahoo
14	Robert J Gaothier	Robert J Gaothier	2880 S. Dawson Wasilla, AK 99654	631-0644	
15	Mary Jane E		5811 Lonne Ln Wasilla 99654	357-9490	cjspoon@mtaonline.net
16	Dick McRee	Dick McRee	13840 E Hwy Unit B Palmer AK	9520532	surftex@hotmail.com
17	Tyler Sutcliffe	Tyler Sutcliffe	2055 Cranberry Ct, Wasilla AK	907 351 1327	Tylerbrianssutcliffe@Hotmail.com
18	JUDITH C. RICHARDSON	Judith C. Richardson	3132 E Teeland Acres Wasilla AK	907-357-0243	
19	Ray Hafen	Ray Hafen	3361 Tungsten Dr Wasilla AK 99654	907-441-9811	
20	DAVID CROCKETT		6946 E TEX-AL DR WASILLA, AK 99654	907242-5571	

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1	Jen S Bettine	Jen S Bettine	7363 W Parks Hwy 343	892-6971	jen@conservativepolitics.org
2	Lynn Gatto	Lynn Gatto	1650 N. Shoreline Dr		
3	KENNETH BARBIER	Kenneth Barbier	17367E Mulin Rd Palmer 99645	745-4446	
4	Jonathan Foster		3011 N Bald Eagle Dr 99654	557-6795	
5	Patti Barber	Patti Barber	17367 E Mulin Rd Palmer 99645	746-4446	pkbarber@gci.net
6	BILL IVERSON	Bill	36708 MORGANS LOOP Palmer AK 99645	260-5723	Tuchonline.atassalaska.net
7	Sherry Jackson	Sherry Jack	7001 E Inverness Dr. Wasilla Ak 99654	373-6227	jackson5@ak.net
8	JAMES HASTINGS		200 N. Plymouth Ct. Wasilla, AK 99654	557-1043	jhastings3@mtaonline.net
9	Dan McDowell		5501 Yaeton Dr Wasilla 99654	252-8051	Dan@LastFrontier.com
10	Mike Hudson		9700 S. Seward 99654	373-5484	
11	Phillip Ward	Phillip Ward	PO Box 879635 Wasilla AK 99687 99654	841-1504	
12	MAX SAGER	Max Sager	3781 Ruth Dr Wasilla AK	373-0520	MSAGER@gci.net
13	Greg Busch		HC 38 Box 423 Wasilla, AK 99654	892-7593	
14	LaVonne Boyd		6820 Leekwold Wasilla AK	841-6951	
15	John Ace		6991 W. Wellington Wasilla AK	907-357-0091	jrace91@yahoo.com
16	Trail & Walk		P.O Box 872385 Wasilla 99687 AK	357-0024	
17	Julie Gillette	Julie A Gillette	4301 S. Well Site Rd Wasilla AK 99654	376-5455	huntjulie@mtaonline.net
18	FRANCISCO CAMPBELL		3061 SKATTAN Drive WASILLA 99654		
19	Amy Campbell		3061 S. Rattan Dr. Wasilla, AK 99654		
20	Sue Hartmann	Sue Hartmann	14300 E. Norman Ave. 99645	746 5880	hartmanndge@hotmail.com

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1	Robert Mann		7362 W Parks Hwy #63 Wasilla	373 2121	
2	Webb Garrison		801 Sulatna Bay Wasilla	373-2098	
3	Will C. Mallott		4721 S Treasure Cove Dr.	373-1252	
4	Bolso Trimmer		P.O. Box 873112 Wasilla, AK 99687	841-8632	
5	Terry M. Willman		3555 N Snow Goose Drive Wasilla AK 99654	357-1211	
6	Sue Willman		3555 N. Snow Goose DR Wasilla AK 99654	357-1211	
7	Mark Farrar	Mark Farrar	1830 E. Parks Hwy #A113-572 Wasilla, AK 99654	357-6955	
8	Nancy Laabs		4175 W Clark Wolverine Rd Palmer AK 99645	746-4666	
9	JOHN PULLING		P.O. Box 1745 KENAI, AK 99611	776-8770	
10	JD Biggs		Po Box 521206 Big Lake AK 99652	892-4452	
11	ANDY KENDRO		P.O. BOX 1269 PALMER, AK 99645	907-982-9038	cikendro@hotmail.com
12	ROLLAND KIATOA	R.J. Kiatoa	P.O. Box 82111 WASILLA AK 99687	907-376-3657	
13	Patricia Bromley		2100 S Aylon Circle Wasilla AK 99654	907 376 7642	
14	Charles Miller		550 Barra Loop Wasilla AK 99654	907-376-9531	
15	Huron Pflock		P.O. Box 4938 Palmer, AK 99645	841-9848	
16	Tom L Huffer		18207 San Tiburon Dr. Eagle River AK 99577	907 694-2326	
17	DAN TAYLOR	Daniel K. Taylor	1000 S. Rosehip Pl. AK 99654	907-373-0816	
18	Christina Guzman		135 N Jessica Ln Palmer AK Wasilla AK 99654	907 355 3604	—
19	Karen Gauthier		2880 S. Dorcas Dr.	9026318374	Kgauthier@Yahoo.com
20	Heidi Sutcliffe		2055 N. Cranberry Ct Wasilla 99654	357-0904	yoonoo1994@yahoo.com

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	Print Name	Signature	Address	Phone No.	email
1	Carburn Shew		1058 Frank Smith Way Wasilla 99654	907 357-4006	
2	Susan Colds		11551 Tanglewood Lakes Circle	907 345 3650	
3	David Hecker		189 E. Nelson Ave #117	907-352-4749	
4	Charles Templeton		2970 S Aimees Cir Wasilla	373-0134	
5	Twila Templeton		2970 S Aimees Cir Wasilla	373-0134	
6	Bruce Walden		3850 Tustin Dr Palmer AK	707-1035	
7	Sonya Walden		3850 S Tustin Dr Palmer, AK	707-1035	
8	JASON C GREEN		P.O. Box 876647 WASILLA AK 99687	354-3873	
9	Amy Thomas		915 Colonial Drive Lexington	AK 99654	
10	Jim BREUN		4175N. CLARK WOLVERINE PALMER	99645	
11	Betty Pulling		P.O. Box 770742 Eagle River AK	99577	
12	Christopher Fizzl		4778 GREY LP UNIT D	5038941774	
13	Alicia Taal		4778 Gray Loop Unit D 99506	503-894-1779	
14	Jackie Carpenter		900 enterprise DR 99654	907-355-8112	
15	JOHN W. SCHAN		3635 N. FARMER CIR 99654	" 357-4587	
16	Cheryl KIRTON		PO BOX 877711 Wasilla AK 99687	376-3657	
17	Roz NELSON		12125 Hmes St Wsla 99654	3575901	
18	Audrey Brantley		2100 Pylon Circle Wasilla, AK 99654	376-3642	
19	DERRELL JENSEN		4601 S CANYER CIR, WASILLA 99654	376-2604	
20	DIANE J HENDERSON		PO Box 873546 WASILLA AK 99687	907-357-4264	

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	Print Name	Signature	Address	Phone No.	email
1	WILLARD H WAMSGANZ		1524 RAVEN DR WASILLA 99654	907 357 2820	
2	PAUL McROBERTS		P.O. Box 521282 Big Lake 99652	907-892-7039	
3	WILLIAM B CHILDRESS		POBOX 1438 PALMER	907 3784019	
4	John Kolehmainen		1251 N. Calero DR. Palmer 99645	907 7545646	
5	Peggy LaFe		2345 Lynx Cir Wasilla 99654	907-3734186	
6	Robert D Graham		69C Dickerson Dr. Anchorage 99504	907-929-6040	
7	CARA BROWN		17714 E. Castle Rock Ln Palmer		CHANCHORAGE@Hotmail.com
8	MILES HAISTEN		4101 S. EDER CIRCLE WASILLA	907 376 6814	
9	Nancy Koval		1632 Trail Cir. Wasilla 99654	907-357-2253	
10	Maxine Isbill		401 W Dover Cir Wasilla AK 99654	907-590 0292	mississ@hotmail.com
11	Curt Birch		3001 Whispering Woods Dr. Wasilla AK 99654	907-373-8778	
12	Janet L. Stanton		1152 S. Colony Way #306 Palmer	907-746-0880	janlys@aol.com
13	Walter L Miller		41515 N McKean Dr, Palmer AK 99645	907-745-0263	millerwgs@gmail.com
14	Debbie Rumbo		PO Box 877452 Wasilla AK 99687	520-744-5244	debrumbo46@yahoo.com
15	Nancy Hendrickson		PO BX 877301 Wasilla, AK 99687	907-373 7544	tiggercomtaonline.net
16	John D. Smith		2440 E. Tudor Rd #1117 Anch. AK 99507	907-947-5303	
17	EDITH SCHUITEN		11574 E. Connie Jo.	907-745-2235	
18	Ronald C Hills		980 S. Bettina Way Wasilla 99654	(907)376 7665	
19	William G. Burke		2234 E. Village Loop	907 376 7268	
20	T-C_OAR		7701 Wildbrook Court	907 332-4482	

PETITION DEMANDING ALASKA JOIN IN LEGAL ACTION TO REPEAL HEALTH CARE BILL

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	Print Name	Signature	Address	Phone No.	email
1	Jamie Lu Smith		HC34 Box 2131M Wasilla, AK 99654	376-7863	tigsun@mtaonline.net
2	Cindy Schmelz		631 Creatwood Ave Wasilla AK 99654	373-3435	schmelz-01@hotmail.com
3	John Quakkelaar		5949 A Goodwin Ave EAFB 99506	830-3165	jjquak03@gci.net
4	Gary Morgan		17305 N. Juanita LP. Eagle River 99577	310-6343	GARYMENAK@live.com
5	Joshua A. Ross		2221 Muldoon Rd. #515	744-6664	Jack of All @yahoo
6	Isaac		64223 S Parks Hwy, Willow, AK		
7	James Johansen		P.O. Box 871791 Wasilla, AK 99687	892-7424	fmf_3dy@yahoo.com
8	Michael DAIL		5341 Highland Dr Cir Palmer AK	745-5557	
9	Ron Kirn		7410 Silverberry Dr, Anch AK 99502	243-3123	
10	Madonna S. Southcott		PO Box 4993 Palmer, AK	746-3925	msouth@mtaonline.net
11	Gina Whitecavage		10535 Creftview Ln ER	6749335	16Savage@mtaonline.NET
12	Gordon Britt		7320 Wesley Dr Palmer AK 99645	3540633	gordonb7320@gmail.com
13	Suzanne LaValley		PO Box 875291, Wasilla, AK	357-5561	suzannelavalley@gci.net
14	Ned Eddy		4043 N. Alvins Alley, Wasilla 99654	373-5477	nededdy@mtaonline.net
15	Eric Yould		P.O. Box 345 Palmer, AK 99645	745-8367	eyould@hotmail.com
16	Patricia Yould		"	"	—
17	Elizabeth L Lawrence		474 W. Heritage Drive Wasilla	301-8525	re2LSE@MTAONLINE.NET
18	Kevin Byman		950 N Shenandoah Wasilla AK 99654	357-2090	
19	Josh Bolinder		155 S. Valley Way Palmer AK 99645	232-2858	bolinderjosh@yahoo.com
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	Print Name	Signature	Address	Phone No.	email
1	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
2	Diana R Brown	Diana R Brown	39073 Nunilchik AK	567 3545	—
3	David Ewings	[illegible]	18732 Price Island dr ER, AK	250 3297	
4	Janet Ewings	Janet Ewings	18732 Rice Island Cir ER AK	250-3297	
5	Tim Brown	Tim Brown	Po box 874331 wasilla AK 99687	376-9489	
6	Shayne Coisman	[illegible]	1000 Serrano Dr Wasilla 99654	373-3345	
7	Lew Betts	Lew Betts	3090 N. Bald Eagle Dr, Wasilla 99654	373-5413	KL7LB@yahoo.com *
8	RALPH SAMUELS	[illegible]	8220 FRANK ST. ANC 99518	440-7253	
9	DALE BUNNIS	Dale J Bunnis	1200 N. CACHE AVE. WASILLA	376-8508	
10	John Pennell	[illegible]	2705 Garnet Lowe, Wasilla, AK	357-1618	
11	Donald Maupin	Donald Maupin	910 Edinborough Palmer, AK	746-0788	maupin@gci.net
12	DONALD COLEMAN	[illegible]	2221 Kellum rd #404 Anch AK	240-1649	
13	Brian Agee	[illegible]	2001 W That Rd Wasilla	357-3755	
14	LISA M Johansen	Lisa M Johansen	PO Box 871791 Wasilla AK 99687	8927420	alcojo94@yahoo.com
15	Tim & Holiver	[illegible]	3150 S Phenix Wasilla AK	376-2121	
16	MARK W NORMAN	[illegible]	2300 N SKWENTNA BAY WASILLA, AK	357-8425	MWNORMAN-AK@GCI.NET
17	ROGER D. JONES	Roger D Jones	4000 MARQUIS WAY ANC AK 99502	245-2132	Roger.Jones@GCI.NET
18	BUDDY F KIRN	[illegible]	7180 Borgen Dr	373-5107	kirnbe@bp.com
19	Heather Jones	[illegible]	20875 S. Birchwood Lp	350-3689	hmj9alaska@yahoo.com
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	Print Name	Signature	Address	Phone No.	email
1	DARIN BERTOLINI	Darin Bertolini	375 N BEAVER LODGE RD	907-745-5038	DARIN.S.BERTOLINI@
2	Rick C. Ellis	Rick C. Ellis	341 S. GASTMAN CT. WASILLA	376-6703	[illegible]
3	Kevin Vance	Kevin Vance	477 N. Chugach St	745-8118	
4	PHIL KNIGHT	Phil Knight	2036 W Chugach Ridge, Wasilla	795-8908	pKnight5@[illegible]
5	KAREN HOY	Karen Hoy	PO BX 870797, WASILLA AK 99687	357-6273	[illegible]
6	Larry Wood	Larry Wood	4750 Chadwick Dr Anchorage AK 99516	746-4581	[illegible]
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Return to: Conservative Patriots Group, Inc. 1830 E. Parks Hwy. A-113 #535, Wasilla, AK 99654 PH: 907-354-8360

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	Print Name	Signature	Address	Phone No.	email
1	Wayne Foust		1830 E Parks Hwy Box #665 Suite A-113	1-907-373-9961	Gross@mtaonline.net
2	Jason Wood		P.O.B. 111769 Anch. AK. 99511	242-9612	
3	CHAD RUSSELL		P O Box 231921 Anch AK 99523	440-9275	
4	Margaret Brawley		PO Box 998217 Wasilla 99629	373-7420	herbpassion@gci.net
5	Charlene Brawley		POB 998217 Wasilla 99629	373-7420	[illegible]
6	Rominske Keith A.		H.C. 32, 6525 T Wasilla 99654	746-7209	
7	Amanda St. Peters		1425 N. Tanana dr Wasilla, AK 373-1152		
8	Kyle St. Peters		1425 N. Tanana dr. Wasilla AK 373 1152		
9	John CARR		3900 STEVEN dr Wasilla	355-0752	Rickcarr@mtaonline.net
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	Print Name	Signature	Address	Phone No.	email
1	Ray Kreig		3818 Clay Products Rd (99577)	276 2025	ray@kreig.com
2	JOHN A. GIMARC		11155 BLUFF CREEK CIRCLE 99515	345 0629	ajimarc@ak.net
3	Glen M. Biegel		5951 Barry Ave 99507	346-6444	gbiegel@ak.net
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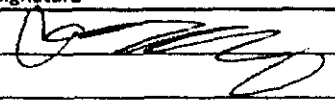
	Print Name	Signature	Address	Phone No.	email
1	Carolyn Kuckertz		9204 Commons Place Anchorage AK 99516	748-7714	ckuckertz@gci.net
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IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
Pensacola Division

STATE OF FLORIDA, by and through BILL McCOLLUM, ATTORNEY GENERAL OF THE STATE OF FLORIDA;

STATE OF SOUTH CAROLINA, by and through HENRY McMASTER, ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA;

STATE OF NEBRASKA, by and through JON BRUNING, ATTORNEY GENERAL OF THE STATE OF NEBRASKA;

STATE OF TEXAS, by and through GREG ABBOTT, ATTORNEY GENERAL OF THE STATE OF TEXAS;

STATE OF UTAH, by and through MARK L. SHURTLEFF, ATTORNEY GENERAL OF THE STATE OF UTAH;

STATE OF LOUISIANA, by and through JAMES D. "BUDDY" CALDWELL, ATTORNEY GENERAL OF THE STATE OF LOUISIANA;

STATE OF ALABAMA, by and through TROY KING, ATTORNEY GENERAL OF THE STATE OF ALABAMA;

STATE OF MICHIGAN, by and through MICHAEL A. COX, ATTORNEY GENERAL OF THE STATE OF MICHIGAN;

STATE OF COLORADO, by and through JOHN W. SUTHERS, ATTORNEY GENERAL OF THE STATE OF COLORADO;

COMMONWEALTH OF PENNSYLVANIA, by and through THOMAS W. CORBETT, Jr., ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA;

STATE OF WASHINGTON, by and through ROBERT M. McKENNA, ATTORNEY GENERAL OF THE STATE OF WASHINGTON;

STATE OF IDAHO, by and through LAWRENCE G. WASDEN, ATTORNEY GENERAL OF THE STATE OF IDAHO; and

STATE OF SOUTH DAKOTA, by and through MARTY J. JACKLEY, ATTORNEY GENERAL OF THE STATE OF SOUTH DAKOTA;

Plaintiffs,

v. **Case No. 3:10-cv-91**

UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES; KATHLEEN SEBELIUS, in her official capacity as the Secretary of the United States Department of Health and Human Services; UNITED STATES DEPARTMENT OF THE TREASURY; TIMOTHY F. GEITHNER, in his official capacity as the Secretary of the United States Department of the Treasury; UNITED STATES DEPARTMENT OF LABOR; and HILDA L. SOLIS, in her official capacity as Secretary of the United States Department of Labor,

Defendants.

_____/

COMPLAINT

Plaintiffs, STATE OF FLORIDA, by and through BILL McCOLLUM, ATTORNEY GENERAL OF THE STATE OF FLORIDA; STATE OF SOUTH CAROLINA, by and through HENRY McMASTER, ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA; STATE OF NEBRASKA, by and through JON

BRUNING, ATTORNEY GENERAL OF THE STATE OF NEBRASKA; STATE OF TEXAS, by and through GREG ABBOTT, ATTORNEY GENERAL OF THE STATE OF TEXAS; STATE OF UTAH, by and through MARK L. SHURTLEFF, ATTORNEY GENERAL OF THE STATE OF UTAH; STATE OF LOUISIANA, by and through JAMES D. "BUDDY" CALDWELL, ATTORNEY GENERAL OF THE STATE OF LOUISIANA; STATE OF ALABAMA, by and through TROY KING, ATTORNEY GENERAL OF THE STATE OF ALABAMA; STATE OF MICHIGAN, by and through MICHAEL A. COX, ATTORNEY GENERAL OF THE STATE OF MICHIGAN; STATE OF COLORADO, by and through JOHN W. SUTHERS, ATTORNEY GENERAL OF THE STATE OF COLORADO; COMMONWEALTH OF PENNSYLVANIA, by and through THOMAS W. CORBETT, Jr., ATTORNEY GENERAL OF THE COMMONWEALTH OF PENNSYLVANIA; STATE OF WASHINGTON, by and through ROBERT M. McKENNA, ATTORNEY GENERAL OF THE STATE OF WASHINGTON; STATE OF IDAHO, by and through LAWRENCE G. WASDEN, ATTORNEY GENERAL OF THE STATE OF IDAHO; and STATE OF SOUTH DAKOTA, by and through MARTY J. JACKLEY, ATTORNEY GENERAL OF THE STATE OF SOUTH DAKOTA, file this action against Defendants, UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS); KATHLEEN SEBELIUS, in her official capacity as the Secretary of HHS; UNITED STATES DEPARTMENT OF THE TREASURY (Treasury); TIMOTHY F. GEITHNER, in his official capacity as the Secretary of the Treasury; UNITED

STATES DEPARTMENT OF LABOR (DOL); and HILDA L. SOLIS, in her official capacity as the Secretary of DOL, and state:

NATURE OF THE ACTION

1. On March 23, 2010, a new universal healthcare regime, titled the "Patient Protection and Affordable Care Act," H.R. 3590 (the Act), was signed into law by the President. The Act, which exceeds 2,400 pages, is available at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=111_cong_bills&docid=f:h3590pp.txt.pdf (accessed March 23, 2010).

2. The Act represents an unprecedented encroachment on the liberty of individuals living in the Plaintiffs' respective states, by mandating that all citizens and legal residents of the United States have qualifying healthcare coverage or pay a tax penalty. The Constitution nowhere authorizes the United States to mandate, either directly or under threat of penalty, that all citizens and legal residents have qualifying healthcare coverage. By imposing such a mandate, the Act exceeds the powers of the United States under Article I of the Constitution and violates the Tenth Amendment to the Constitution.

3. In addition, the tax penalty required under the Act, which must be paid by uninsured citizens and residents, constitutes an unlawful capitation or direct tax, in violation of Article I, sections 2 and 9 of the Constitution of the United States.

4. The Act also represents an unprecedented encroachment on the sovereignty of the states. For example, it requires that Florida vastly broaden its Medicaid eligibility standards to accommodate upwards of 50 percent more enrollees,

many of whom must enroll or face a tax penalty under the Act, and imposes onerous new operating rules that Florida must follow. The Act requires Florida to spend billions of additional dollars, and shifts substantial administrative costs to Florida for, *inter alia*, hiring and training new employees, as well as requiring that new and existing employees devote a considerable portion of their time to implementing the Act. This onerous encroachment occurs at a time when Florida faces having to make severe budget cuts to offset shortfalls in its already-strained budget, which the state constitution requires to be balanced each fiscal year (unlike the federal budget), and at a time when Florida's Medicaid program already consumes more than a quarter of the State's financial outlays. Plaintiffs cannot effectively withdraw from participating in Medicaid, because Medicaid has, over the more than four decades of its existence, become customary and necessary for citizens throughout the United States, including the Plaintiffs' respective states; and because individual enrollment in Plaintiffs' respective Medicaid programs, which presently cover tens of millions of residents, can only be accomplished by their continued participation in Medicaid.

5. Further, the Act converts what had been a voluntary federal-state partnership into a compulsory top-down federal program in which the discretion of the Plaintiffs and their sister states is removed, in derogation of the core constitutional principle of federalism upon which this Nation was founded. In so doing, the Act exceeds the powers of the United States and violates the Tenth Amendment to the Constitution.

6. The Act contains several unfunded mandates that will cost state governments significantly.

7. For example, no Florida government entity or infrastructure exists to discharge sufficiently all of the responsibilities that will be necessary to implement the Act, to meet requirements related to increases in Medicaid enrollment under the Act, and to operate healthcare insurance exchanges required by the Act.

8. By making federal funds potentially available at the discretion of federal agencies, the Act acknowledges the immediate burden on Plaintiffs to invest and implement the Act, but provides no guarantee that they will receive such funds or that the Act's implementation costs will be met.

9. Plaintiffs seek declaratory and injunctive relief against the Act's operation to preserve their respective sovereignty and solvency, and to protect the individual freedom, public health, and welfare of their citizens and residents.

JURISDICTION AND VENUE

10. The Court has subject-matter jurisdiction pursuant to 28 U.S.C. § 1331 because this action arises under the Constitution and laws of the United States.

11. Venue is proper in this district pursuant to 28 U.S.C. § 1391(e)(3) because no real property is involved, the district is situated in Florida, and the defendants are agencies of the United States or officers thereof acting in their official capacity.

PARTIES

12. The State of Florida is a sovereign state and protector of the individual freedom, public health, and welfare of its citizens and residents. Bill McCollum,

Attorney General of Florida, has been directly elected by the people of Florida to serve as their chief legal officer and exercises broad statutory and common law authority to protect the rights of the State of Florida and its people; Fla. Const. art. IV, § 4(b). The State, by and through the Attorney General, has standing to assert the unconstitutionality of the Act. He is authorized to appear in and attend all suits in which the state is interested. § 16.02(4) & (5), Fla. Stat.

13. The State of South Carolina, by and through Henry McMaster, Attorney General of South Carolina, is a sovereign state in the United States of America.

14. The State of Nebraska, by and through Jon Bruning, Attorney General of Nebraska, is a sovereign state in the United States of America.

15. The State of Texas, by and through Greg Abbott, Attorney General of Texas, is a sovereign state in the United States of America.

16. The State of Utah, by and through Mark L. Shurtleff, Attorney General of Utah, is a sovereign state in the United States of America.

17. The State of Alabama, by and through Troy King, Attorney General of Alabama, is a sovereign state in the United States of America.

18. The State of Louisiana, by and through James D. "Buddy" Caldwell, Attorney General of Louisiana, is a sovereign state in the United States of America.

19. The State of Michigan, by and through Michael A. Cox, Attorney General of Michigan, is a sovereign state in the United States of America.

20. The State of Colorado, by and through John W. Suthers, Attorney General of Colorado, is a sovereign state in the United States of America.

21. The Commonwealth of Pennsylvania, by and through Thomas W. Corbett, Jr., Attorney General of Pennsylvania, is a sovereign state in the United States of America.

22. The State of Washington, by and through Robert A. McKenna, Attorney General of Washington, is a sovereign state in the United States of America.

23. The State of Idaho, by and through Lawrence G. Wasden, Attorney General of Idaho, is a sovereign state in the United States of America.

24. The State of South Dakota, by and through Marty J. Jackley, Attorney General of South Dakota, is a sovereign state in the United States of America

25. HHS is an agency of the United States, and is responsible for administration and enforcement of the Act, through its center for Medicare and Medicaid Services.

26. Kathleen Sebelius is Secretary of HHS, and is named as a party in her official capacity.

27. Treasury is an agency of the United States, and is responsible for administration and enforcement of the Act.

28. Timothy F. Geithner is Secretary of the Treasury, and is named as a party in his official capacity.

29. DOL is an agency of the United States, and is responsible for administration and enforcement of the Act.

30. Hilda L. Solis is Secretary of DOL, and is named as a party in her official capacity.

BACKGROUND

The Medicaid Program Prior to the Act

31. Medicaid was established by Title XIX of the Social Security Act of 1965, 42 U.S.C. §§ 1396 *et seq.*, as the nation's major healthcare initiative for low-income persons. Each participating state's Medicaid program has been funded jointly by the state and the federal government.

32. From the beginning of Medicaid until passage of the Act, the states were given considerable discretion to implement and operate their respective optional Medicaid programs in accordance with state-specific designs regarding eligibility, enrollment, and administration, so long as the programs met broad federal requirements.

33. The states were free to opt out of Medicaid and set up their own state health or welfare plans, or to provide no such benefits at all. States, including Plaintiffs, agreed to participate in Medicaid with the understanding that their continuing participation was voluntary, as a matter of both law and fact.

34. None of the Plaintiffs agreed to become a Medicaid partner of the federal government with an expectation that the terms of its participation would be altered significantly by the federal government so as to make it financially infeasible for that state either to remain in or to withdraw from the Medicaid program.

35. None of the Plaintiffs agreed to become a Medicaid partner of the federal government with an expectation that the federal government would increase significantly its control and reduce significantly that state's discretion with respect to the Medicaid program.

36. None of the Plaintiffs agreed to become a Medicaid partner of the federal government with an expectation that, after the Medicaid program became entrenched in the state, the federal government would alter the program's requirements to expand eligibility for enrollment beyond the state's ability to fund its participation.

37. None of the Plaintiffs agreed to become a Medicaid partner of the federal government with an expectation that the federal government would exploit its control over Medicaid terms and eligibility as part of a coercive scheme to force all citizens and residents to have healthcare coverage.

The Patient Protection and Affordable Care Act

38. The Act mandates that all United States citizens and legal residents have qualifying healthcare coverage. If a person fails to do so, the federal government will force that person to pay a penalty, the amount of which will be increased gradually through 2016, reaching $750 per year up to a maximum of three times that amount ($2,250) per family, or 2 percent of household income, whichever is greater. After 2016, the penalty will increase annually based on a cost-of-living adjustment. Exemptions to the tax penalty only apply for individuals with certain religious objections, American Indians, those persons without coverage for less than three months, undocumented immigrants, incarcerated individuals, or some individuals with financial hardships.

39. The Act greatly alters the federal-state relationship, to the detriment of the states, with respect to Medicaid programs specifically and healthcare coverage generally.

40. The Act requires states to expand massively their Medicaid programs and to create exchanges through which individuals can purchase healthcare insurance

coverage. The federal government is to provide partial funding for the exchanges, but will cease doing so after 2015. Should a state not wish to participate in the exchanges, it can opt out only if it provides coverage for uninsured individuals with incomes between 133 percent and 200 percent of the federal poverty level, a higher income level than that which would be applied for participating states under the Act. The only other way for a state to avoid the Act's requirements is to drop out of the Medicaid program, leaving millions of persons uninsured.

41. Those states left with no practical alternative but to participate in the Act will have to expand their Medicaid coverage to include all individuals under age 65 with incomes up to 133 percent of the federal poverty level. The states' coverage burdens will increase significantly after 2016, both in actual dollars and in proportion to the contributions of the federal government.

42. The federal government will not provide necessary funding or resources to the states to administer the Act. Nevertheless, states will be required to provide oversight of the newly-created insurance markets, including, *inter alia*, instituting regulations, consumer protections, rate reviews, solvency and reserve fund requirements, and premium taxes. States also must enroll all of the newly-eligible Medicaid beneficiaries (many of whom will be subject to a penalty if they fail to enroll), coordinate enrollment with the new exchanges, and implement other specified changes. The Act further requires states to establish an office of health insurance consumer assistance or an ombudsman program to advocate for people in the new programs.

The Act's Impact on Florida's Medicaid Program, as an Example

43. The Act will have an impact on all Plaintiffs and in a manner similar to its impact on Florida, as described herein by way of example.

44. Florida is the Nation's fourth largest state in population. Based on United States Census Bureau statistics from 2008, Florida has 3,641,933 uninsured persons living in the state. Of those persons, 1,259,378 are below 133 percent of the federal poverty line, and therefore must be added to Florida's Medicaid rolls under the Act.

45. Even before passage of the Act, the Medicaid program imposed an overwhelming cost on Florida, consuming 26 percent of its annual budget. For fiscal year 2009-2010 alone, Florida will spend more than $18 billion on Medicaid, servicing more than 2.7 million persons. Florida's Medicaid contributions and burdens, from the implementation of its Medicaid program in 1970 to the present, have gradually increased to the point where it would be infeasible for Florida to cease its participation in Medicaid.

46. Although the federal government currently contributes 67.64 percent of every dollar Florida spends on Medicaid, that percentage is artificially and temporarily raised because of federal stimulus outlays. After this year, the percentage of Florida's Medicaid program expenses covered by the federal government will decline, and by 2011 will reach 55.45 percent, a level that is closer to the recent average. The federal government's contribution will not compensate for the dramatic increase to Florida's Medicaid rolls and the correspondingly soaring costs to be borne by Florida under the Act.

47. Florida's Agency for Health Care Administration (AHCA) estimates that at least 80 percent of persons who have some form of health insurance but fall below 133 percent of the federal poverty level will drop their current plans and enroll in Medicaid, because they are newly eligible under the Act. The federal government does not offer any funding for these persons, because they qualified for insurance other than Medicaid prior to passage of the Act. These persons represent a significant additional cost to Florida under the Act.

48. The Act also makes a large new class of persons eligible for Medicaid in Florida. Prior to passage of the Act, only certain specified low-income individuals and families qualified for Medicaid. Moreover, the qualifying income level set by Florida was much lower than the level of 133 percent of the federal poverty line set by the federal government under the Act. Now, Florida also must add to its Medicaid rolls all childless adults whose income falls below 133 percent of the federal poverty line.

49. Prior to passage of the Act, AHCA was Florida's designated state Medicaid agency tasked with developing and carrying out policies related to the Medicaid program. The Act will strip away much of AHCA's authority to set policies, transferring that authority to the federal government, which will dictate those policies to Florida. AHCA and the other Florida agencies will be rendered arms of the federal government, and AHCA employees will be conscripted and forced to administer what now is essentially a federal Medicaid program for which Florida must bear a substantial cost.

50. AHCA has prepared limited projections for the fiscal impact of the Act. The new additional costs to the state are as follows: $149,001,478 for 2014; $431,307,547 for 2015; $484,803,557 for 2016; $938,807,336 for 2017; $993,836,882 for 2018, and $1,048,866,307 for 2019. Beyond this time frame, the costs to Florida will continue to grow. These projections understate the Act's adverse impact on Florida. They do not include estimated costs to be borne by Florida to administer the Act or to prepare for the Act's implementation. Such costs will include hiring and training new staff, creating new information technology infrastructures, developing an adequate provider base, creating a scheme for accountability and quality assurance, and many other expenses.

51. The Act effectively requires that Florida immediately begin to devote funds and resources to implement the Act's sweeping reforms across multiple agencies of government. Such implementation burdens include, but are not limited to: enforcing the Act's immediately-effective terms, including new mandates regarding healthcare insurance coverage; determining gaps between current resources in state government and the Act's requirements; evaluating infrastructure to consider how new programs and substantial expansion of existing programs will be implemented (e.g., new agencies, offices, etc.); developing a strategic plan and coordinating common issues across state agencies; initiating legislative and regulatory processes, while at the same time monitoring and engaging the substantial federal regulatory processes to ensure that Florida's interests are protected; and developing a communications structure and plan to disseminate new information regarding changes brought about by the Act to the many

affected persons and entities (legislators, state agencies, insurers, hospitals, doctors, community clinics, major employers, small businesses, advocacy groups, insurance brokers, legislators, the uninsured, and Floridians generally), and to achieve such dissemination in sufficient time for them to understand and adapt to the changes in accordance with federal timetables, without interruption or confusion in the provision of healthcare services.

52. In sum, while the Act infringes on Florida's constitutional status as a sovereign, entitled to cooperate with but not to be controlled by the federal government under the Medicaid program, the Act also will force Florida to cover more than one million additional persons and, in so doing, to spend billions of additional dollars, a price it simply cannot afford to pay.

53. At the same time, like the other Plaintiffs, Florida cannot avoid the Act's requirements by ending its longstanding participation in the Medicaid program, thereby leaving millions of current Medicaid recipients stranded without coverage. In effect, the Plaintiffs' participation under the Act cannot be avoided, despite its devastating effects.

CAUSES OF ACTION

COUNT ONE

UNCONSTITUTIONAL EXERCISE OF FEDERAL POWER AND VIOLATION OF THE TENTH AMENDMENT (Const. art. I & amend. X)

54. Plaintiffs reallege, adopt, and incorporate by reference paragraphs 1 through 53 above as though fully set forth herein.

55. Plaintiffs cannot afford the exorbitant and unfunded costs of participating under the Act, but have no choice other than to participate.

56. The Act exceeds Congress's powers under Article I of the Constitution of the United States, and cannot be upheld under the Commerce Clause, Const. art. I, §8; the Taxing and Spending Clause, id.; or any other provision of the Constitution.

57. By effectively co-opting the Plaintiffs' control over their budgetary processes and legislative agendas through compelling them to assume costs they cannot afford, and by requiring them to establish health insurance exchanges, the Act deprives them of their sovereignty and their right to a republican form of government, in violation of Article IV, section 4 of the Constitution of the United States.

58. The Act violates the Tenth Amendment of the Constitution of the United States, and runs afoul of the Constitution's principle of federalism, by commandeering the Plaintiffs and their employees as agents of the federal government's regulatory scheme at the states' own cost.

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare the Patient Protection and Affordable Care Act to be in violation of Article I of and the Tenth Amendment to the Constitution of the United States;

B. Declare Defendants to have violated the Plaintiffs' rights as sovereigns and protectors of the freedom, public health, and welfare of their citizens and residents, as aforesaid;

C. Enjoin Defendants and any other agency or employee acting on behalf of the United States from enforcing the Act against the Plaintiffs, their citizens and

residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; and

D. Award Plaintiffs their reasonable attorney's fees and costs, and grant such other relief as the Court may deem just and proper.

COUNT TWO

VIOLATION OF CONSTITUTIONAL PROHIBITION OF UNAPPORTIONED CAPITATION OR DIRECT TAX (Const. art. I, §§ 2, 9)

59. Plaintiffs reallege, adopt, and incorporate by reference paragraphs 1 through 53 above as though fully set forth herein.

60. The tax penalty on uninsured persons under the Act constitutes a capitation and a direct tax that is not apportioned among the states according to census data, thereby injuring the sovereign interests of Plaintiffs.

61. Said tax penalty applies without regard to property, profession, or any other circumstance, and is unrelated to any taxable event or activity. It is to be levied upon persons for their failure or refusal to do anything other than to exist and reside in the United States.

62. Said tax penalty violates article I, sections 2 and 9 of the Constitution of the United States. By its imposition of the penalty tax, and by the resulting coercion of many persons to enroll in Medicaid at a substantial cost to the Plaintiffs, the Act injures their interests as sovereigns vested with exclusive authority, except to the extent permitted to the federal government by the Constitution, to make all taxing decisions

affecting their citizens and to confer a right upon persons in their states to make healthcare decisions without government interference. The tax penalty is unconstitutional on its face and cannot be applied constitutionally.

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare the Patient Protection and Affordable Care Act to be in violation of Article I, sections 2 and 9 of the Constitution of the United States;

B. Declare Defendants to have violated the Plaintiffs' rights as sovereigns and protectors of the freedom, public health, and welfare of their citizens and residents, as aforesaid;

C. Enjoin Defendants and any other agency or employee acting on behalf of the United States from enforcing the Act against the Plaintiffs, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; and

D. Award Plaintiffs their reasonable attorney's fees and costs, and grant such other relief as the Court may deem just and proper.

COUNT THREE

UNCONSTITUTIONAL MANDATE THAT ALL INDIVIDUALS HAVE HEALTH INSURANCE COVERAGE OR PAY TAX PENALTY
(Const. art. I & amend. X)

63. Plaintiffs reallege, adopt, and incorporate by reference paragraphs 1 through 53 above as though fully set forth herein.

64. The Act forces citizens and residents to have healthcare coverage or pay a tax penalty. In effect, the Act compels said persons to have healthcare coverage, whether or not they wish to do so, or be subject to sanction. The Act thus compels persons to perform an affirmative act or incur a penalty, simply on the basis that they exist and reside in the United States.

65. The Act is directed to a lack of or failure to engage in activity that is driven by the choices of individual Americans. Such inactivity by its nature cannot be deemed to be in commerce or to have any substantial effect on commerce, whether interstate or otherwise. As a result, the Act cannot be upheld under the Commerce Clause, Const. art. I, § 8. The Act infringes upon Plaintiffs' interests in protecting the freedom, public health, and welfare of their citizens and their state fiscs, by coercing many persons to enroll in Medicaid at a substantial cost to Plaintiffs; and denies Plaintiffs their sovereign ability to confer rights upon their citizens and residents to make healthcare decisions without government interference, including the decision not to participate in any healthcare insurance program or scheme, in violation of the Tenth Amendment to the Constitution of the United States.

66. The tax penalty on uninsured persons under the Act unlawfully coerces persons to obtain healthcare coverage, thereby injuring the Plaintiffs' fiscs, because many persons will be compelled to enroll in Medicaid at a substantial cost to Plaintiffs. As a result, the Act cannot be upheld under the Taxing and Spending Clause, Const. art. I, § 8.

67. In so coercing citizens and residents to have healthcare coverage, the Act exceeds Congress's powers under Article I of the Constitution of the United States, and cannot be upheld under any provision of the Constitution.

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare the Patient Protection and Affordable Care Act to be in violation of Article I, section 8 of and the Tenth Amendment to the Constitution of the United States;

B. Declare Defendants to have violated the Plaintiffs' rights as sovereigns and protectors of the freedom, health, and welfare of their citizens and residents, as aforesaid;

C. Enjoin Defendants and any other agency or employee acting on behalf of the United States from enforcing the Act against the Plaintiffs, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; and

D. Award Plaintiffs their reasonable attorney's fees and costs, and grant such other relief as the Court may deem just and proper.

COUNT FOUR

DECLARATORY JUDGMENT
(28 U.S.C. § 2201)

68. Plaintiffs reallege, adopt, and incorporate by reference paragraphs 1 through 53 above as though fully set forth herein.

69. There is an actual controversy of sufficient immediacy and concreteness relating to the legal rights and duties of the Plaintiffs and their legal relations with the Defendants to warrant relief under 28 U.S.C. § 2201.

70. The harm to the Plaintiffs as a direct result of the Act is sufficiently real and imminent to warrant the issuance of a conclusive declaratory judgment clarifying the legal relations of the parties.

WHEREFORE, Plaintiffs respectfully request that the Court:

A. Declare the Patient Protection and Affordable Care Act to be in violation of Article I of and the Tenth Amendment to the Constitution of the United States;

B. Declare Defendants to have violated the Plaintiffs' rights as sovereigns and protectors of the freedom, health, and welfare of their citizens and residents, as aforesaid;

C. Enjoin Defendants and any other agency or employee acting on behalf of the United States from enforcing the Act against the Plaintiffs, their citizens and residents, and any of their agencies or officials or employees, and to take such actions as are necessary and proper to remedy their violations deriving from any such actual or attempted enforcement; and

D. Award Plaintiffs their reasonable attorney's fees and costs, and grant such other relief as the Court may deem just and proper.

Respectfully submitted,

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ATTORNEY GENERAL OF FLORIDA

HENRY McMASTER
ATTORNEY GENERAL OF SOUTH CAROLINA;

JON BRUNING
ATTORNEY GENERAL OF NEBRASKA;

GREG ABBOTT
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GOLDWATER
INSTITUTE

The Health Care Freedom Act:
Questions & Answers

by Clint Bolick, Litigation Director, Goldwater Institute

The Health Care Freedom Act will appear as a proposed constitutional amendment on Arizona's 2010 election ballot, and similar measures are under consideration in more than 30 other states. With the possibility that Congress will enact some sort of national health insurance legislation, questions are being raised about the scope of the Health Care Freedom Act and its effect should a federal bill become law. In the following pages, Clint Bolick, who helped to author the Health Care Freedom Act, answers frequently asked questions.

Q: What is the Health Care Freedom Act?

A: The Health Care Freedom Act is a proposed amendment to the Arizona Constitution that would preserve certain existing rights that individuals have regarding health care. It was initially proposed by two Arizona physicians, Dr. Eric Novack and Dr. Jeffrey Singer, with drafting assistance from the Goldwater Institute. The measure qualified as a voter initiative on the 2008 ballot, and despite a well-financed opposition campaign, it was defeated by less than one-half of 1 percent of the vote. Changes were made to address concerns raised by the opponents, and the Arizona Legislature voted to refer the revised version to the 2010 ballot.

The American Legislative Exchange Council adopted model legislation based on the Arizona measure, and activists and legislators in at least 35 additional states are pursuing constitutional amendments or statutes based on the Arizona model.

Q: What are the key provisions?

A: Although the precise language varies from state to state, the Health Care Freedom Act seeks to protect two essential rights. First, it protects a person's right to participate or not in any health care system, and prohibits the government from imposing fines or penalties on that person's decision. Second, it protects the right of individuals to purchase—and the right of doctors to provide—lawful medical services without government fine or penalty. The Health Care Freedom Act would place these essential rights in the state constitution (or, in some states, it would protect them by statute).

Q: What motivated the Health Care Freedom Act?

A: No one questions the need for serious health care reform. However, the proponents of the Health Care Freedom Act believe that regardless of how such reform is fashioned, either at the state or federal level, the essential rights protected by the Health Care Freedom Act should be preserved. Many advocates of a larger government role in regulating or providing health insurance support a mandate that would compel individuals to join a government-approved health insurance plan, whether or not they can afford it and whether or not the system best fits their needs. In some countries in which government plays a large role in providing health insurance, medical services are rationed and individuals are prevented or discouraged from obtaining otherwise lawful medical services. Supporters of the Health Care Freedom Act have a variety of perspectives on the form that health care reform should take. But they agree that no matter what legislation is passed, it should not take from Americans their precious right to control their own medical affairs.

Q: By what authority can states pass the Health Care Freedom Act?

A: It is well-established that the U.S. Constitution provides a baseline for the protection of individual rights, and that state constitutions may provide additional protections—and all of them do. For instance, some states provide greater protections of freedom of speech or due process rights. Because the Health Care Freedom Act offers greater protection than the federal constitution, states are allowed to enact it.

Q: Does it matter whether the Health Care Freedom Act is passed as a statute or as a constitutional amendment?

A: A state constitution is the organic law of the state, reflecting the most fundamental values shared by the citizens of the state. Moreover, a state constitutional amendment will ensure the state legislature can never infringe upon the protected rights. So a constitutional amendment is preferable, especially to protect against legislative tinkering. However, for purposes of a federalism defense against excessive federal legislation, it should not matter whether the people of the state have acted through their constitution or by statute.

Q: Does the Health Care Freedom Act attempt to "nullify" federal health insurance legislation?

A: Absolutely not. If federal legislation is enacted, individuals would still have the option to participate in federal health insurance programs. This act simply protects a person's right not to participate.

Q: To the extent that the Health Care Freedom Act conflicts with provisions of federal legislation, isn't the state law automatically preempted by the Supremacy Clause of the U.S. Constitution?

A: No. In any clash between state and federal provisions, at least four federal constitutional provisions are relevant. The Supremacy Clause establishes the Constitution as the supreme law of the land and provides that federal laws prevail over conflicting state laws where Congress has the legitimate authority to enact the legislation and where it does not impermissibly tread upon state sovereignty. The federal government will have to demonstrate that its legislation legitimately is derived from congressional authority to regulate interstate commerce. It will also have to show the legislation does not violate the 10th Amendment, which reserves to the states all government power not expressly delegated to the national government; and the 11th Amendment, which protects states from being used as mere instrumentalities of the national government. This constitutional construct is known as federalism.

Q: Are certain provisions of proposed federal health care legislation vulnerable to constitutional challenge even without the Health Care Freedom Act?

A: Yes, in at least three ways. First, to the extent that the legislation purports to regulate transactions that do not directly affect interstate commerce, such as mandating insurance for individuals, Congress may lack authority to do so under the Commerce Clause. Several relatively recent decisions by the U.S. Supreme Court have invalidated federal legislation on this basis. In *U.S. v. Lopez* (1995), the Court struck down federal laws that restricted guns in school zones; and in *U.S. v. Morrison*, it struck down a federal statute involving violence against women. In both cases, the Court found the subject matter of the federal laws did not "substantially affect" interstate commerce, so Congress had no power to regulate it under the circumstances presented.

Second, to the extent the legislation interferes with the individual's right to choose health insurance providers, doctors, or lawful medical services, it may violate the right to medical self-determination recognized under the U.S. Constitution. As the Court declared in *Griswold v. Connecticut* (1965), "We have recognized that the special relationship between patient and physician will often be encompassed within the domain of private life protected by the Due Process Clause." Several of the early abortion cases involved what Justice William O. Douglas, concurring in *Doe v. Bolton* (1973), described as the "right to seek advice on one's health and the right to place reliance on the physician of one's choice." Whether or not one agrees with those abortion rulings, they establish a strong basis for challenging certain federal and state intrusions.

Third, several recent decisions have invalidated federal laws that "commandeer" state governments to do their bidding. In *New York v. United States* (1992), for instance, the Court struck down federal rules requiring states to take ownership of certain radioactive waste and to expose themselves to liability. Speaking for the Court, Justice Sandra Day O'Connor ruled that

"no matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate." Tellingly, she added "the Constitution protects us from our own best intentions: It divides power among sovereigns . . . precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day." To the extent that federal health insurance legislation forces states to implement its provisions, it could be subject to robust constitutional challenge.

Q: Could the Health Care Freedom Act provide additional protection against federal health insurance legislation that violates protected rights?

A: Yes. Although the federal government usually prevails in federalism clashes, the current U.S. Supreme Court is the most pro-federalism Court in decades. There are no cases precisely on point, but the Court under Chief Justice John Roberts has sided with the states in at least three major recent federalism clashes. In the case most closely on point, *Gonzales v. Oregon* (2006), the Court upheld the state's "right-to-die" law, which was enacted by Oregon voters, over the objections of the U.S. Attorney General, who argued that federal law pre-empted the state law. Applying "the structure and limitations of federalism," the Court observed that states have great latitude in regulating health and safety, including medical standards, which are primarily and historically a matter of local concern. Holding that the attorney general's reading of the federal statute would mark "a radical shift of authority from the States to the Federal Government to define general standards of medical practice in every locality," the Court interpreted the statute to allow Oregon to protect the rights of its citizens.

Horne v. Flores (2009) considered a measure adopted by Arizona voters to require English immersion as the state's educational policy for students for whom English is a second language. Lower federal courts had imposed an injunction based on a finding that Arizona was failing to comply with federal bilingual education requirements. The Supreme Court held that injunctions affecting "areas of core state responsibility, such as public education," should be lifted as quickly as circumstances warrant. It observed that "federalism concerns are heightened when . . . a federal court decree has the effect of dictating state or local budget priorities." The Court remanded the case to lower courts to reconsider the injunction.

In *Northwest Austin Municipal Utility District No. 1 v. Holder* (2009), the Court examined a challenge to section 5 of the Voting Rights Act, which places certain states and localities in a penalty box, requiring them to obtain "pre-clearance" by the U.S. Department of Justice for any changes that impact voting. The Court was sharply critical of the "federalism costs" imposed upon the covered jurisdictions. It avoided the constitutional question by applying the federal law in a way that allowed the utility district to "bail out" from pre-clearance requirements under section 5.

In each of these cases, the Court sided with states in federalism disputes with the federal government.

Q: Will the Health Care Freedom Act affect future state legislation regarding health insurance?

A: Yes. If it is passed as a constitutional amendment, it would prevent any future legislation that infringes upon the rights protected by the amendment.

Q: Won't this be really expensive for the states to defend in court?

A: The Goldwater Institute has offered to defend the constitutionality of the Health Care Freedom Act at no cost to any state. Because legal challenges would involve purely constitutional issues and would not require expensive trials, to the extent that states become involved in litigation, they should be able to do so within existing Attorney General litigation budgets. Moreover, depending on the details of national health insurance legislation, the cost of federal mandates is likely to far exceed the cost of litigation.

Q: Even if the states and individuals did not prevail in a challenge to intrusive federal health insurance legislation, would there be reasons to support the Health Care Freedom Act?

A: Yes. First, if these rights are given additional protection under state constitutions, they will create an absolute barrier to future state legislation that violates those rights. Moreover, efforts to enact the Health Care Freedom Act send a powerful message to our nation's capitol that people at the grassroots take these rights very seriously and intend to protect them.

Q: Does the Health Care Freedom Act impair drug laws?

A: Absolutely not. It protects the right to purchase or provide "lawful" medical services. It does not limit the power of any government to determine what constitutes lawful medical services.

Q: Does the Health Care Freedom Act affect the issue of abortion?

A: No. Again, to the extent that states may regulate abortion under applicable constitutional doctrine and state or federal law, this measure would not alter that power in any way. The Health Care Freedom Act does, however, prevent the government from forcing individuals into health care systems against their will, and matters of conscience may influence such individual decisions.

Q: Does the Health Care Freedom Act affect Veterans' Administration programs, workers' compensation, Medicare, Medicaid, or state health-care systems?

A: Generally, no. The Health Care Freedom Act leaves intact any rules and regulations that were in place as of January 1, 2009. The only way such programs could be affected is if they are changed in the future in ways that violate the freedom of choice protected by the Health Care Freedom Act.

Q: Will this restrict the government from limiting the choice of providers or imposing other limits for the people who do opt-in to a government health care system?

A: No and yes, respectively. If a person voluntarily joins a government health care system, the government may set the terms and conditions, including choice of providers. However, the government cannot prevent a person from purchasing, or a health care professional from providing, lawful medical services outside that system.

Q: Is the Health Care Freedom Act supported financially by insurance companies?

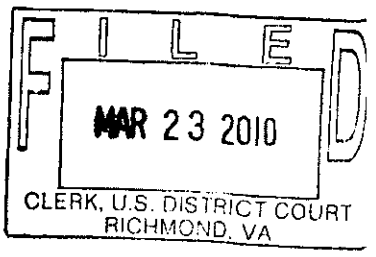
A: No. Many insurance companies support an individual mandate (requiring individuals to buy health insurance or face government fines), which the Health Care Freedom Act would prohibit. An individual mandate guarantees a customer base to the insurance industry. It is present in some legislative proposals as a means to subsidize health insurance for others. If insurance companies play a role in the battle over the Health Care Freedom Act, we expect they will oppose it, possibly with significant resources.

Q: Are there other ways in which freedom advocates can use state constitutions to protect their liberties?

A: Absolutely. State constitutions are full of provisions unknown to the U.S. Constitution that are designed to protect individual liberty and limit the power of government, such as the line-item veto, anti-monopoly provisions, prohibitions against corporate subsidies ("gift clauses"), constraints against earmarks ("special law clauses"), and the like. Citizens and legislatures can amend their state constitutions to add additional protections; and taxpayers can enforce their state constitutional rights in state courts. State constitutions were intended to be the first line of defense in protecting the freedoms of the people. As the power of government grows at every level, we need to use whatever tools are available to us to safeguard our rights. For more on how state constitutions can protect liberty, see the recent Goldwater Institute report, **"50 Bright Stars: An Assessment of Each State's Constitutional Commitment to Limited Government."**

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

RICHMOND DIVISION



COMMONWEALTH OF VIRGINIA EX REL. KENNETH T. CUCCINELLI, II, in his official capacity as Attorney General of Virginia, Plaintiff, v. KATHLEEN SEBELIUS, Secretary of the Department of Health and Human Services, in her official capacity, Defendant.	)	Civil Action No. 3:10CV188

COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF

Plaintiff states the following for its Complaint:

Introduction

1. Section 1501 of the Patient Protection and Affordable Care Act ("PPACA") contains an individual mandate which will require a majority of Virginians after December 31, 2013 to purchase health insurance for themselves and their dependants subject to a civil penalty.

2. At the 2010 Regular Session of the Virginia General Assembly, Virginia Code § 38.2-3430.1:1 was enacted with the assent of the Governor.

3. That statute provides:

> No resident of this Commonwealth, regardless of whether he has or is eligible for health insurance coverage under any policy or program provided by or through his employer, or a plan sponsored by the Commonwealth or the federal government, shall be required to obtain or maintain a policy of individual insurance coverage except as required by a court or the Department of Social Services where an individual is named a party in a judicial or administrative proceeding. No provision of this title shall render a resident of this Commonwealth liable for any penalty, assessment, fee, or fine as a result of his failure to procure or obtain health insurance coverage. This section shall not apply to individuals voluntarily applying for coverage under a state-administered program pursuant to Title XIX or Title XXI of the Social Security Act. This section shall not apply to students being required by an institution of higher education to obtain and maintain health insurance as a condition of enrollment. Nothing herein shall impair the rights of persons to privately contract for health insurance for family members or former family members.

4. Although the federal mandate does not take effect for several years, PPACA imposes immediate and continuing burdens on Virginia and its citizens. The collision between the state and federal schemes also creates an immediate, actual controversy involving antagonistic assertions of right.

5. The individual mandate is an essential element of the act without which it would not have been passed and without which the statutory scheme cannot function.

6. The Federal act contains no severability provision.

Parties

7. The Commonwealth of Virginia has an interest in asserting the validity of its anti-mandate enactment. The Virginia enactment is valid despite the Supremacy Clause of the United States Constitution because, as demonstrated below, the individual mandate and PPACA as a whole are unconstitutional.

8. Kathleen Sebelius in her official capacity is principally responsible for administering PPACA.

Jurisdiction and Venue

9. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and is authorized to enter Declaratory Judgment pursuant to 28 U.S.C. § 2001 et seq.

10. Venue is proper under 28 U.S.C. § 1391(e)(2).

Facts

11. Congress in the past has used its taxing and spending powers to establish social welfare programs such as Social Security and Medicare.

12. Congress lacks the political will to fund comprehensive health care in this way because taxes above those already provided in PPACA would produce too much opposition.

13. The alternative, which was also a centerpiece of the failed Clinton administration health care proposal, is to fund universal health care in part by making healthy young adults and other rationally uninsured individuals cross-subsidize older and less healthy citizens.

14. The mandate also relates to disincentives created by PPACA under which it would make no economic sense for the uninsured to pay premiums before becoming ill unless compelled to do so by law.

15. Before passing the act, the Senate evinced doubt that it had the power to adopt the individual mandate under the Commerce Clause, Article I, Section 8 of the Constitution. As a consequence of these concerns, the Senate Finance Committee asked the Congressional Research Service to opine on the constitutionality of the individual mandate. The Service replied: "Whether such a requirement would be constitutional under the Commerce Clause is perhaps the most challenging question posed by such a proposal, as it is a novel issue whether Congress may use this Clause to require an individual to purchase a good or a service." Cong. Research Serv. Requiring Individuals to Obtain Health Insurance: A Constitutional Analysis 3 (2009).

16. In *United States v. Lopez,* 514 U.S. 549 (1995), and *United States v. Morrison,* 529 U.S. 598 (2000), the Supreme Court struck down attempts to regulate non-commercial activities based upon their predicted effects on interstate commerce because those attempts went beyond the outer limits of the Commerce Clause. *Gonzales v. Raich,* 545 U.S. 1, 25 (2005) ("Despite congressional findings that such crimes had an adverse impact on interstate commerce, we held the statute [in *Morrison*] unconstitutional because, like the statute in *Lopez*, it did not regulate economic activity.").

Count One
Commerce Clause

17. The status of being a citizen or resident of the Commonwealth of Virginia is not a channel of interstate commerce; nor a person or thing in interstate commerce; nor is it an activity arising out of or connected with a commercial transaction. Instead, the status arises from an absence of commerce, not from some sort of economic endeavor, and is not even a non-economic activity affecting interstate commerce. It is entirely passive.

18. While the United States Supreme Court has not adopted a categorical rule against aggregating the effects of any non-economic activity in order to find Commerce Clause authority, thus far in our history, it has never been held that the Commerce Clause, even when aided by the Necessary and Proper Clause, can be used to require citizens to buy goods or services. To depart from that history to permit the national government to require the purchase of goods or services would deprive the Commerce Clause of any effective limits contrary to *Lopez* and *Morrison* and would create powers indistinguishable from a general police power in total derogation of our constitutional scheme of enumerated powers.

19. Regulation of non-economic activity under the Commerce Clause is possible only through the Necessary and Proper Clause. *Gonzales v. Raich*, 545 U.S. 1, 39 (2005) (Scalia concurring in the judgment). The Necessary and Proper Clause confers supplemental authority only when the means adopted to accomplish an enumerated power are "'appropriate,'" are "'plainly adapted' to

that end," and are "'consistent with the letter and spirit of the constitution.'" *Id.* (citing *McCulloch v. Maryland,* 17 U.S. 316, 421 (1819)). Requiring citizen-to-citizen subsidy or redistribution is contrary to the foundational assumptions of the constitutional compact.

20. As Justice Chase wrote, almost at the moment of the founding of the country, in the Supreme Court's first substantive opinion, *Calder v. Bull,* 3 U.S. 386, 388 (1798):

> An ACT of the Legislature (for I cannot call it a law) contrary to the great first principles of the social compact, cannot be considered a rightful exercise of legislative authority. The obligation of a law in governments established on express compact, and on republican principles, must be determined by the nature of the power, on which it was founded. A few instances will suffice to explain what I mean. A . . . law that takes property from A and gives it to B: It is against all reason and justice, for a people to entrust a Legislature with SUCH powers; and therefore it cannot be presumed that they have done it.

This analysis applies equally to citizen-to-citizen subsidy and subsidy of insurance companies by an individual mandate.

WHEREFORE, the Commonwealth of Virginia prays this Court to declare that § 1501 of PPACA is unconstitutional because the individual mandate exceeds the enumerated powers conferred upon Congress. Because the individual mandate is an essential, non-severable provision, the entire act is likewise invalid. As a consequence, this Court should also declare that § 38.2-3430.1:1 is a valid exercise of state power. The Commonwealth additionally prays the Court to grant such

further and additional relief as the ends of justice may require including an injunction against the enforcement of § 1501 in particular and PPACA as a whole.

Respectfully submitted,

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March 23, 2010

by Brion McClanahan

When Idaho Governor C.L. "Butch" Otter signed HO391 into law on 17 March 2010, the "national" news media circled the wagons and began another assault on State sovereignty. The bill required the Idaho attorney general to sue the federal government over insurance mandates in the event national healthcare legislation passed. The lead AP reporter on the story, John Miller, quoted constitutional "scholar" David Freeman Engstrom of Stanford Law School as stating that the Idaho law would be irrelevant because of the "supremacy clause" of the United States Constitution.

In his words, "That language is clear that federal law is supreme over state law, so it really doesn't matter what a state legislature says on this." Now that Barack Obama has signed healthcare legislation into law, almost a dozen States have filed suit against the federal government, with Idaho in the lead. Battle lines have been drawn. Unfortunately, the question of State sovereignty and the true meaning of the "supremacy clause" may be swallowed up in the ensuing debate.

Engstrom's opinion is held by a majority of constitutional law "scholars," but he is far from correct, and Idaho and the thirty seven other States considering similar legislation have a strong case based on the original intent of the powers of the federal government vis-à-vis the States.

The so-called "supremacy clause" of the Constitution, found in Article 6, states, "This Constitution, and the Laws of the United States *which shall be made in Pursuance thereof;* and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding [emphasis added]."

The key, of course, is the italicized phrase. All laws made in pursuance of the Constitution, or those clearly enumerated in the document, were supreme, State laws notwithstanding. In other words, the federal government was supreme in all items clearly listed in the document.

A quick reading of the Constitution illustrates that national healthcare is not one of the enumerated powers of the federal government, so obviously Engstrom's blanket and simplistic statement is blatantly incorrect, but his distortion of the supremacy clause goes further.

The inclusion of such a clause in the Constitution was first debated at the Constitutional Convention on 31 May 1787. In Edmund Randolph's initial proposal, called the Virginia Plan, the "national" legislature had the ability to "legislate in all cases to which the separate states are incompetent..." and "to negative all laws passed by the several states contravening, in the opinion of the national legislature, the Articles of Union...." John Rutledge, Pierce Butler, and Charles Pinckney of South Carolina challenged the word "incompetent" and demanded that Randolph define the term. Butler thought that the delegates "were running into an extreme, in taking away the powers of the states..." through such language.

Randolph replied that he "disclaimed any intention *to give indefinite powers to the national legislature*, declaring that he was entirely opposed to such an inroad on the state jurisdictions, and that he did not think any considerations whatever could ever change his determination [emphasis added]." James Madison, the author of the Virginia Plan, was not as forthcoming as to his sentiment. Ultimately, Madison preferred a negative over State law and wished the national legislature to be supreme in call cases. But he was not in the majority.

The Convention again broached a federal negative on State law on 8 June 1787. Charles Pinckney, who presented a draft of a constitution shortly after Randolph offered the Virginia Plan, believed a national negative necessary to the security of the Union, and Madison, using imagery from the solar system and equating the sun to the national government, argued that without a national negative, the States "will continually fly out of their proper orbits, and destroy the order and harmony of the political system." Such symbolism made for a beautiful picture, but it belied reality.

To most of the assembled delegates, the national government was not the center of the political universe and the States retained their sovereignty. Hugh Williamson of North Carolina emphatically stated he "was against giving a power that might restrain the states from regulating their internal police."

Elbridge Gerry of Massachusetts was against an unlimited negative, and Gunning Bedford of Delaware believed a national negative was simply intended "to strip the small states of their equal right of suffrage." He asked, "Will not these large states crush the small ones, whenever they stand in the way of their ambitious or interested views?"

When the negative power was put to a vote, seven States voted against it and three for it, with Delaware divided (and Virginia only in the affirmative by one vote). Roger Sherman of Connecticut summarized the sentiment of the majority when he stated he "thought the cases in which the negative ought to be exercised might be defined." Since the negative did not pass, such a definition was unnecessary.

Thus, the federal government was supreme only in its enumerated powers and it did not have a negative over State law. Supremacy had limits.

By the time the Constitution was debated in the several State ratifying conventions in 1787 and 1788, the "supremacy clause" galvanized opponents of the document. The Constitution, they said, would destroy the States and render them impotent in their internal affairs. The response from *proponents* of ratification illuminates the true intent of the clause. William Davie, a delegate to the Constitutional Convention from North Carolina and proponent of the Constitution, responded to attacks levied on the "supremacy clause" by stating that:

> This Constitution, *as to the powers therein granted*, is constantly to be the supreme law of the land. Every power ceded by it must be executed without being counteracted by the laws or constitutions of the individual states. *Gentlemen should distinguish that it is not the supreme law in the exercise of power not granted. It can be supreme only in cases consistent with the powers specially granted, and not in usurpations* [emphasis added].

Davie wasn't alone in this opinion. Future Supreme Court justice James Iredell of North Carolina argued that, "This clause [the supremacy clause] is supposed to give too much power, when, in fact, it only provides for the execution of those powers which *are already given in the foregoing articles*....If Congress, under pretence of executing one power, should, in fact, usurp another, they will violate the Constitution [emphasis added]."

Furthermore, in a foreshadowing of nullification, Iredell argued that, "It appears to me merely a general clause, the amount of which is that, when they [Congress] pass an act, if it be in the execution of a power given by the Constitution, it shall be binding on the people, *otherwise not* [emphasis added]. Other ratifying conventions had similar debates, and proponents of the Constitution continually reassured wavering supporters that the Constitution would only be supreme within its delegated authority.

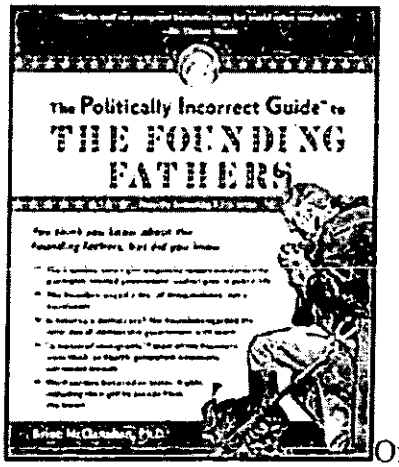
Most bought their assurances, though to staunch opponents, the Constitution still vested too much power in the central authority. The States would lose their sovereignty, they argued, and as a result, these men demanded an amendment to the Constitution that expressly maintained the sovereignty of the States and placed limits on federal power. Even several moderate supporters of the Constitution embraced this idea.

Ultimately, the three most powerful States in the Union, New York, Massachusetts, and Virginia, demanded that a bill of rights be immediately added to the Constitution; near the top of those recommended amendments on every list, a State sovereignty resolution. These ultimately became the Tenth Amendment to the Constitution, which reads, "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Clearly the intent of this amendment was to mitigate any design the federal government had on enlarging its powers through the "supremacy clause." If the power was not enumerated in the Constitution and the States were not prohibited by the Constitution from exercising said power, then that power was reserved to the States.

Several other constitutional "scholars" have weighed in on the debate in the last week, and each has invoked the "supremacy clause" to defend their opposition to State action against healthcare. Duke Law Professor Neil Siegel went so far as to suggest that the States are not reading the Tenth Amendment correctly. In perhaps the most outlandish statement of the debate, he also said, "Any talk of nullification bothers me because it's talk of lawlessness."

I guess Mr. Siegel has failed to consider that Idaho bill HO391 was passed by a legitimate legislative body elected by the people of the State. That would make it lawful.



Of course, this debate ultimately boils down to loose interpretation verses strict construction. Thomas Jefferson had the best line on this issue. When asked to read between the lines to "find" implied powers, Jefferson responded that he had done that, and he "found only blank space."

The original intent of both the "supremacy clause" and the Tenth Amendment indicate that Idaho and the other States challenging Obamacare are justified and correct and that the legal profession is either in the tank for the federal government or has not read either the debates of the Constitutional Convention and/or the State ratifying debates. This should make people like Engstrom and Siegel, rather than legitimate State law directed at unconstitutional authority, irrelevant.

Brion McClanahan holds a Ph.D in American history from the University of South Carolina and is the author of ***The Politically Incorrect Guide to the Founding Fathers*** *(Regnery, 2009).*

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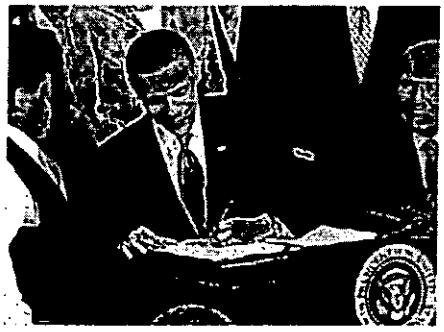
States Launch Legal Challenge to Health Care Law

At Least 14 States File Suit Challenging Constitutionality of Health Care Law


President Obama signs the Affordable Health Care for America Act during a ceremony with fellow... ▼
(Win McNamee/Getty Images)

State Legislatures to Challenge Health Care Law

In addition to constitutional challenges to the law, legislators in at least 36 states are attempting to limit, alter or oppose some of its provisions through state constitutional amendments or laws, according to the National Conference of State Legislatures.

Many of the proposals seek to keep health insurance coverage optional for individuals and exempt employers from penalties if they don't offer coverage for workers.

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Earlier this month, Virginia and Idaho became the first states to enact laws specifically stating that health insurance coverage is not required.

Still, many legal experts say these legislative efforts will ultimately be trumped by the so-called supremacy clause in the U.S. Constitution, which says federal laws "shall be the supreme law of the land."

"State law cannot nullify federal law," Timothy Stoltzfus Jost, a health law expert at Washington and Lee University School of Law, writes in the New England Journal of Medicine. "This principle is simply beyond debate, and state legislators, many of them lawyers, know that. The purpose of these laws, therefore, is not legal but rather political

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Indiana joins 13 states to challenge health reform

13 other states raise constitutional questions about the new legislation

By Bill Ruthhart

Posted: March 30, 2010

Indiana became the 14th state Monday to challenge the constitutionality of the federal health-care legislation, but legal e xperts warned the lawsuit faces an uphill climb against previous court rulings.

After reviewing the sweeping health-care reforms, Indiana Attorney General Greg Zoeller announced he would join a lawsuit already filed jointly by 13 other attorneys general in a Florida federal court.

At the core of Zoeller's decision to join the suit is the charge that Congress does not have the power to force Americans to buy health insurance coverage or require them to pay a fine if they fail to do so.

"It's really critical that we have these questions asked and answered," he said, "so that the Supreme Court's final word as to whether the new reach of the federal government in this statute meets constitutional muster."

Zoeller also argued that the new reforms impinge on states' sovereignty by requiring states to set up health insurance exchanges for their residents to purchase coverage.

Democrats immediately accused Zoeller of playing politics. Of the 13 other attorneys general who have joined the lawsuit, 12 are Republicans.

"This is purely politics, nothing but," said Indiana Democratic Party Chairman Dan Parker. "The legal argument is weak, the political argument is weak. It's all based on false information, and the opponents of this couldn't stop it, so they're grasping at straws and this is the final straw to grasp."

Zoeller's announcement came after Gov. Mitch Daniels said Friday he had encouraged Zoeller to join the suit, even though Daniels said he was skeptical of

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its chances for success. The attorney general said Monday he made the decision based on the case's merits and independent from any political input.

"It's unfortunate that the entire subject matter has been politicized," Zoeller said, "but that was done in Washington before we ever joined (the lawsuit)."

Parker declared the suit a waste of taxpayer dollars.

Zoeller said he could not give an estimate of how much the lawsuit would cost but said he has no plans to hire outside counsel. He said the state's initial cost would be its undetermined share of a contract capped at $50,000 with a Washington, D.C., law firm hired to handle the case.

Indiana Republican Party Chairman Murray Clark said the lawsuit has merit.

"I think it's the right decision," he said. "Clearly, there's some constitutional questions that need to be asked and answered in light of one of the largest federal government overreaches we've seen in a long time."

The key question the lawsuit raises is whether the new law's requirement that all Americans carry health insurance coverage or be forced to pay a penalty should serve as a new test to the Constitution's commerce clause, which gives Congress the power to regulate business.

Over the past several decades -- starting in the 1930s -- constitutional law experts say, the courts and lawmakers have broadly interpreted that clause, giving Congress wide-ranging regulatory power.

Most legal scholars think those precedents would make it difficult for the Supreme Court, or any other, to rule that Congress does not have the power to add the new insurance regulations, said Carl Tobias, a constitutional law expert at the University of Richmond in Virginia.

Furthermore, he said, backers of the bill will defend the prospective fine for those who don't buy insurance under the taxing power that the Constitution gives Congress.

"The precedents all favor constitutionality," Tobias said. "There's nothing exactly the same as this challenge, but the relevant precedents, if

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you analogize from them, lead you to the conclusion that this challenge won't succeed."

But that's not to say the lawsuit isn't a worthy one, he said.

"I think it might have merit, but I just don't think it's going to win," Tobias said. "I think the best argument is about the individual mandates, but I think a fair number of constitutional scholars, and I agree, think that it's probably going to withstand the challenge."

Charles Rice, a constitutional law expert at the University of Notre Dame, said the case certainly is worth litigating.

"I think it's a legitimate thing to do. The outcome is not certain," Rice said. "It's really interesting, because it brings in precedents from a lot of the cases involving the Social Security Act and things like that, and it could provide the opportunity, if it gets to the Supreme Court, for the case to go either way."

Key to its outcome could be how the American public views the new law in the future, said Gerard Magliocca, a constitutional law professor at Indiana University School of Law-Indianapolis.

"This likely wouldn't be decided for two years, and a lot will depend on what people think of the health-care bill," Magliocca said. "If it's very unpopular, the courts are more likely to find a reason to declare it unconstitutional than if it turns out to be popular."

Parker, the state Democratic Party chairman, said Zoeller's decision would cost the attorney general in his next election in 2012, when he will have to explain why he fought against a bill that reformed the insurance industry to the benefit of so many Hoosiers. "Greg Zoeller is going to be on the wrong side of history on this one," Parker said.

Zoeller countered that almost everyone agrees the new law has raised fresh constitutional issues that the courts need to resolve.

"There aren't many people who say there isn't a new question here, because this is the first time the federal government has required people to purchase a commercial good, a commercial product," he said. "This is an insurance product that everyone, as a condition of being a citizen of the United States, will be required to purchase under the threat of penalty."

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In the end, Magliocca said, he gives the lawsuit a 25 percent chance of success.

"There is a plausible argument for saying this is unprecedented," he said. "It has a chance, but I think most everybody, most legal scholars, think it's unlikely this suit will succeed."

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Ideas Changing the World

Daily Policy Digest

Health Issues

March 24, 2010

HEALTH CARE REFORM: WHO WINS AND WHO LOSES

While the health care bill is not as sweeping as many had once hoped (or others had feared), make no mistake: The new legislation will dramatically change the nation's health care system.

So who wins and who loses? "The people who gain the most are low-income people who do not get health insurance from an employer," says John Goodman, president, CEO and the Kellye Wright Fellow of the National Center for Policy Analysis. "Just about everybody else loses."

Groups that will especially bear the burden include:

- Generation Y: Most of the 19 million uninsured Americans between the ages of 18 and 34 will be forced to buy coverage -- coverage likely more expensive than they might have otherwise chosen.
- Anyone who earns more than $200,000: Workers earning more than $200,000 a year or couples with a combined income over $250,000 will pay an additional 0.9 percent in federal income tax to help fund Medicaid expansion starting in 2013, and will likely pay a new 3.8 percent Medicare tax on all investment income.
- Individuals with so-called Cadillac health insurance: A 40 percent tax will be levied on plans with premiums of $10,200 or more per person.

Goodman also notes that "as many as 8.5 million seniors could lose their Medicare Advantage coverage altogether" under government plans to reduce benefits offered under the program.

Advocates of the legislation argue that winners include anyone with a preexisting condition, recent college graduates who can now get coverage through their parents, small businesses who will have access to insurance pools and doctors who will get paid for seeing uninsured patients they were treating for free.

In addition, individuals aged 60 to 64 - the oldest age demographic not eligible for Medicare - will pay no more than three times the cost of the premium paid by a healthy 20-something. But as Goodman notes, "People who are 60 to 64 are going to pay lower premiums than they otherwise would because people who are 20 to 24 are going to pay higher premiums."

Source: Catherine Holahan, "Health Care Reform: Who Wins and Who Loses," CBS MoneyWatch, March 22, 2010.

Link to text:

http://moneywatch.bnet.com/economic-news/article/health-care-reform-summary-who-wins-and-who-loses/406279/

For more on Health Issues:

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Daily Policy Digest

Health Issues

March 24, 2010

8 WAYS THAT HEALTH REFORM WILL AFFECT YOU

The health care legislation could "have an effect on almost every citizen," according to Kaiser Health News. So what should you expect?

Within six months after the bill is signed into law:

- Health insurers will no longer be allowed to impose lifetime caps on coverage.
- Parents who have insurance through their employers will be allowed to continue coverage for their unmarried dependents up to age 26.
- Health insurers will be required to cover certain preventive services like osteoporosis screening for women over 65, smoking cessation counseling and interventions, and screenings for diabetes and sexually transmitted diseases.
- And later this year, people with serious health conditions that have prevented them from obtaining coverage will be eligible to purchase a policy from a high-risk pool in a government-subsidized exchange at a cost similar to healthy individuals' premiums.

Individuals will also be required to obtain health insurance or face a fine. Government subsidies will be available on a sliding scale for people making up to $43,000 per year (or nearly $90,000 per year for a family of four), but those who don't qualify for government subsidies should expect to pay about $5,000 a year for a policy on the exchange, while families should expect to pay about $15,000, says John Goodman, president, CEO and Kellye Wright Fellow of the National Center for Policy Analysis.

The penalty starts in 2014 at $95 or up to 1 percent of income for individuals, whichever is greater, and rises to $695 by 2016 or 2.5 percent of income, whichever is greater. Families pay heftier fines - $2,085 or 2.5 percent of income by 2016

Other changes:

- Insurers won't be able to deny coverage based on preexisting conditions.
- Maternity support will be increased for women in the workplace.
- Additional, less expensive insurance options will be available when you lose or quit your job.

Increasing the number of insured individuals, however, will also mean longer waits to see a new doctor. In Massachusetts, for example, where health insurance is universal, Boston residents have to wait about twice as long to see a doctor as people in any other U.S. city, says Goodman.

Source: Deborah Kotz, "8 Ways Health Reform Will Affect You," U.S. News and World Report, March 22, 2010

For text:

http://www.usnews.com/health/managing-your-healthcare/insurance/articles/2010/03/22/8-ways-health-reform-will-affect-you.html

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March 24, 2010

20 WAYS OBAMACARE WILL TAKE AWAY OUR FREEDOMS

It is worthwhile to take a comprehensive look at the freedoms we will lose under ObamaCare, says blogger David Hogberg. Among them:

- You are young and don't want health insurance? You are starting up a small business and need to minimize expenses, and one way to do that is to forgo health insurance? Tough. You have to pay $750 annually for the "privilege." (Section 1501).
- You are young and healthy and want to pay for insurance that reflects that status? Tough. You'll have to pay for premiums that cover not only you, but also the guy who smokes three packs a day, drinks a gallon of whiskey and eats chicken fat off the floor. That's because insurance companies will no longer be able to underwrite on the basis of a person's health status. (Section 2701).
- You're a single guy without children? Tough, your policy must cover pediatric services. You're a woman who can't have children? Tough, your policy must cover maternity services. You're a teetotaler? Tough, your policy must cover substance abuse treatment. (Add your own violation of personal freedom here.) (Section 1302).
- You are an employer in the small-group insurance market and you'd like to offer policies with deductibles higher than $2,000 for individuals and $4,000 for families? Tough. (Section 1302 (c) (2) (A)).
- If you are a physician and you don't want the government looking over your shoulder? Tough. The Secretary of Health and Human Services is authorized to use your claims data to issue reports that measure the resources you use, provide information on the quality of care you provide, and compare the resources you use to those used by other physicians. Of course, this will all be just for informational purposes. It's not like the government will ever use it to intervene in your practice and patients' care. Of course not. (Section 3003 (i)).
- You will have to pay an additional 0.5 percent payroll tax on any dollar you make over $250,000 if you file a joint return and $200,000 if you file an individual return. What? You think you know how to spend the money you earned better than the government? Tough. (Section 9015). That amount will rise to a 3.8 percent tax in 2013 and will also apply to investment income, estates, and trusts. You think you know how to spend the money you earned better than the government? Like you need to ask. (Section 1402).

Source: David Hogberg, "20 Ways ObamaCare Will Take Away our Freedoms," Investors Business Daily, March 22, 2010.

For text:

http://blogs.investors.com/capitalhill/index.php/home/35-politicsinvesting/1583-20-ways-obamacare-will-take-away-our-freedoms

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PETER KINDER
Lieutenant Governor

Contact: Gary McElyea
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News Release

FOR IMMEDIATE RELEASE March 23, 2010

Lt. Governor Kinder Announces Action Against Federal Health Care Bill

JEFFERSON CITY – Lt. Governor Peter Kinder today spoke out against the recently signed federal health care bill and announced his intent to join officials from 13 other states in legal action against the legislation.

Below are the Lt. Governor's remarks, as prepared for delivery:

"Good afternoon.

"This morning, President Obama signed into law a federal healthcare mandate that was thrust upon us despite overwhelming opposition from Americans. Over the past few weeks, Missourians have made their voices loud and clear. But, with complete disregard for their constituents, Democrats in congress forced President Obama, Nancy Pelosi and Harry Reid's legislation into law.

"This healthcare directive will pose a huge financial burden for our state. Tennessee's Governor, a democrat, even called this bill "the mother of all unfunded mandates." The true cost to Missouri taxpayers remains to be seen.

"On December 9, 2009, I wrote a letter urging Senator Claire McCaskill to oppose this government intervention in the private healthcare sector. On December 30, 2009, I asked Governor Nixon to join us in opposition to this healthcare bill. Once again, on January 20, 2010 during my State of the State response, I once again asked the governor to speak out against this infringement on the rights of Missourians. And on January 6, 2010, I asked Attorney General Koster to conduct a thorough legal review of this legislation to determine what provisions might violate the Constitution of the United State or the State of Missouri.

-MORE-

"Each one of those letters went unanswered.

"Today, Missourians should know that their voices have been heard.

"Today, I am here to announce that by my standing as a constitutional officer of the State of Missouri and by my statutory authority as Missouri's Official Senior Advocate, I intend to join with officials of 13 other states to challenge the legality of this federal healthcare bill and any unconstitutional provision in which may be contained.

"Our fight is two part: to protect the sovereignty of our states, and freedoms of our citizens. This law represents an unprecedented encroachment on the sovereignty of our state in the form of millions of dollars in unfunded mandates. Second, this bill infringes of the rights of private citizens. At no other time in the history of our nation has a mandate forced citizens to purchase a product or face penalties, even imprisonment, for not doing so.

"At a time when our state is dealing with vast budget deficits, we cannot afford to have the federal government throw this huge financial burden in our lap.

"Right now, Republicans and Democrats in the Missouri House and Senate are also working on a bipartisan measure to pass the Health Care Freedom Act, a joint resolution to be voted on by the people of Missouri to protect their ability to make their own health care decisions.

"Although many of their elected officials remain silent, Missourians should rest assured: their voices have been heard and our fight is just beginning.

"Thank you."

# # #

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MEMORANDUM April 9, 2010

SUBJECT: Public policy allowing a person to choose mode of obtaining health care services, constitutional issues (CSHB 423(HSS))
(Work Order No. 26-LS1623\E)

TO: Representative Lindsey Holmes
Attn: Bill Edwards

FROM: Dennis C. Bailey
Legislative Counsel

You have asked for an opinion concerning the constitutional issues raised by CSHB 423(HSS).

The bill raises the issue of whether Congress has the power to regulate health insurance. If Congress does have that power, federal preemption under the supremacy clause of the U.S. Constitution, Art. VI, cl. 2, will be found only if there is clear evidence of a congressional intent to preempt state law or if the federal and state statutes cannot coexist. *United States v. Rhode Island Insurers' Insolvency Fund*, 80 F.3d 616, 619 (1st Cir. 1996).

Prior to 1944, lawyers and insurance professionals thought that the issuance of an insurance policy was not a transaction of commerce that would give the federal government jurisdiction over insurance transactions. However, in *U.S. v. South-Eastern Underwriters Assn.*, 322 U.S. 533, 88 L.Ed. 1440, 64 S.Ct. 1162 (1944) (*superseded by statute*), the U.S. Supreme Court dispelled this view and found that the federal Sherman Act (antitrust), which related only to activities in or affecting interstate commerce, applied to insurance transactions. The ruling meant that generally phrased federal statutes might also apply to the issuance of insurance policies, thereby interfering with the state regulation of insurance in unanticipated ways. *Barnett Bank of Marion County v. Nelson*, 517 U.S. 25, 40, 116 S.Ct. 1103, 134 L.Ed.2d 237 (1996).

In response to the holding in *South-Eastern Underwriters*, Congress enacted the McCarran-Ferguson Act, 15 U.S.C. 1011 - 1015, to "restore the supremacy of the States in the realm of insurance regulation." *Id.* The U.S. Supreme Court, however, noted that the McCarran-Ferguson Act does not apply when the conflicting federal statute "specifically relates to the business of insurance." (emphasis added) Further, the court stated that the McCarran-Ferguson Act

> did not require avoiding federal pre-emption by future federal statutes that indicate through their "specific relat[ion]" to industry, and therefore, in all

> likelihood, consciously intended to exert upon the insurance industry whatever pre-emptive force accompanied its law.

Id. See also, United States v. Rhode Island Insurers' Insolvency Fund, 80 F.3d 616 (1st Cir. 1996).

Based on these decisions, to the extent that the recently signed Patient Protection and Affordable Care Act (P.L. 111-148) specifically regulates state insurance by requiring everyone to obtain health care insurance, the federal law would likely be found to preempt state law on the subject.

A similar conclusion follows an analysis under the Tenth Amendment to the U.S. Constitution. The Tenth Amendment to the United States Constitution states:

> **Powers reserved to states or people.** The powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people.

The Tenth Amendment protects the sovereignty of the states from intrusion of the federal government into matters of the states that are outside of the constitutional powers of the federal government and into matters that are expressly reserved to the states by the Constitution. Conversely, if a power is delegated to Congress by the Constitution, the Tenth Amendment does not protect the states from the exercise of that federal power. The federal Constitution gives Congress the power to control commerce. In light of the ruling in *U.S. v. South-Eastern Underwriters Assn., supra*, that the business of insurance is part of interstate commerce, it is reasonable to conclude that the power to regulate commerce and thus regulate insurance has been delegated to the United States Congress by the Constitution. Therefore, it seems unlikely that a court would hold that the Tenth Amendment would prevent the federal government from implementing a bill specifically regulating insurance.

If I may be of further assistance, please advise.

DCB:ljw
10-260.ljw

HJR

2

Please accept this email as the referral file for HJR2. Attached are the following documents:

- Sponsor Statement
- Bill version R
- GOV fiscal note
- Backup
- HJUD Committee Report

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Representative Carl Gatto

Chair, House Military and Veteran Affairs Committee
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SPONSOR STATEMENT HJR 2

"Proposing amendments to the Constitution of the State of Alaska to avoid the use of personal pronouns and similar references that denote masculine or feminine gender in that document."

HJR-2 recognizes a significant moment in history for Alaskans, the celebration of our 50th anniversary of statehood and a celebration of our constitution.

Was it a perfect document? It has been called a model for others to follow. Is this a good time to offer changes? If so, what changes? Some say no changes should be made because of customs, culture, and religion. Our constitution refers to men but excludes references to women. Six of the fifty four signers of the original constitution were women and they did much of the work in formulating its content. There was one additional male who did not sign because he did not agree with the wording. Perhaps customs, culture, and tradition are the best reason we know to discriminate against even mentioning that women may be part of the history and culture of Alaska? Would the signers have preferred that the female gender not be mentioned or was it simply that no women occupied positions of authority and thus the female gender was omitted by accident rather than by design. If the signers were to meet today, in this building, in this very room, today at this meeting, would they still prefer to omit constitutional references to women?

Consider the following changes incorporated into our language.
When appropriate we refer to our chairman as madam chair.
We call our public safety heroes firefighters, not firemen, our policemen are referred to as police officers, and we fly with flight attendants, not stewardesses.

We have a female governor, twelve female legislators, several female commissioners, and many female judges not to mention our female chief justice Dana Fabe, all busy doing the work of the people yet in our state constitution, they are referred to as he and him.

The Constitution of the State of Alaska should be gender blind not gender specific.
By allowing the citizens to vote for these simple changes we join six other states that have amended their constitutions for this same reason.

This amendment does not alter the rights, powers, or privileges enumerated in the constitution. It merely replaces the masculine terms such as him or his with gender neutral terms. In place of such words as he, him, and himself we change the term to oneself, Governor, executive, justice or judge, voter, person's, auditor, and even accused.

It is time to recognize that women are active in our government by amending our constitution to reflect that they serve as an equal partner in our government affairs. Hawaii, our youngest state, and New York, one of our oldest, have already made the changes requested for Alaska.

The administration fully supports this effort.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HJR2
() Publish Date:

Identifier (file name): HJR002-OOG-DOE-3-18-09
Dept. Affected: OOG

Title: Constitutional amendment relating to avoiding the use of personal pronouns and similar references....
RDU: Elections
Component: Elections

Sponsor: Representatives Gatto and Gruenberg
Requester: House State Affairs
Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual			1.5				
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF			1.5				
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The passage of this resolution would require the constitutional amendment to appear on the 2010 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58 is $1.5. Should the addition of this question require printing an 8-1/2 by 18 inch ballot, the cost will increase to $22.0.

Prepared by: Gail Fenumiai, Director — Phone 465-4611
Division: Division of Elections — Date/Time 3/18/09, 2:29pm
Approved by: Linda Perez, Director — Date 3/18/2009
Division of Administrative Services

(Revised 9/10/2008 OMB)

2970

WBASNY
WOMEN'S BAR ASSOCIATION
of the STATE OF NEW YORK

WBASNY urges support of "gender-neutral" constitutional amendment on the November 6 ballot.

Archived Other Briefs

Posted by Administrator WBASNY on 05/05/2002

WBASNY URGES SUPPORT OF □GENDER-NEUTRAL□ CONSTITUTIONAL AMENDMENT ON THE NOVEMBER 6 BALLOT

On March 10, 2001, the WBASNY Board voted to support legislation to place on the ballot a referendum to amend the New York Constitution to make it gender-neutral. The bill was sponsored by Assemblywoman Sandra Galef (Democrat) and by State Senator Patricia McGee (Republican). It passed both houses of the Legislature for the second consecutive year, as required, by unanimous vote, and the referendum will be on the ballot on November 6, 2001. WBASNY strongly supports passage of this proposed amendment to the New York State Constitution. If the amendment passes, New York will become the seventh state with a gender-neutral Constitution. Eight other states are considering similar amendments, and two other states have gender-neutral sections in their Constitutions.

At the request of Assemblywoman Galef and Victoria Lutz, Executive Director of the Pace Women□s Justice Center, Westchester Women□s Bar Association President Kathy N. Rosenthal and the Co-Chairs of the WWBA Legislative Committee (Jeanne M. Frey, Susan W. Kaufman and Loriann Vita) met with Assemblywoman Galef, Ms. Lutz and others to discuss how to inform voters that the referendum is to be on the ballot and is worthy of strong support. Assemblywoman Galef is seeking the active support of WBASNY and its chapters in this effort.

The proposal would change the approximately 170 references to males in the New York State Constitution either to add a female reference (i.e., □his□ becomes □his or hers□) or to use gender-neutral language (e.g., □fireman□ becomes □firefighter□). If the changes are approved, references in the New York Constitution to offices currently held by women (such as that of Lieutenant Governor, held by Mary O. Donohue; that of Chief Justice, held by Judith Kaye; and state legislative offices, 46 of which are currently held by women) would henceforth be described in gender-neutral terms.

WBASNY believes that there is great symbolic benefit to be gained by passage of the referendum. By including female references in the State Constitution, we eliminate the exclusionary symbolism of the document. We pay tribute to the substantial contributions of women such as Susan B. Anthony to the history of New York State. The change in the State Constitution would reflect the presence of women in both government and public life today, a reality that is far removed from the times in which the Constitution was written.

The possible objections to passage of the referendum are easily dismissed. Some argue that the amendment alters an historic document, ignoring the fact that there have been over 57 amendments to our state Constitution since 1938. Opponents of the proposal also criticize it as a waste of effort and tax dollars, but this is simply wrong. The ballot proposal will cost nothing. Furthermore, each year 5000 copies of the State Constitution are printed, and there would be no extra cost in time or money to include the gender-neutral changes, which are already on a computer file. The argument that the amendment is unnecessary because women have de facto equality in New York is misguided in two respects. First, the referendum is not an equal rights amendment. The amendment would not alter the rights, duties, powers or privileges enumerated in the Constitution. Second, the visible under-representation of women in political life is one indication of the continued resistance in some quarters to women□s complete equality, and the proposed amendment will help to create an atmosphere of inclusion.

It is important that WBASNY join other non-partisan professional women□s organizations to take an active role in publicizing and promoting passage of the amendment. Accordingly, WBASNY urges all members not only to look for the referendum on the ballot on November 6 and to vote in its favor, but also to write to your local newspaper editors and in other ways to communicate the importance of this matter to all voters and to other professional and women's groups statewide.

Susan W. Kaufman
WWBA State Director to WBASNY

Archived Other Briefs

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LAW & HUMAN RIGHTS

The 1999 constitution and the woman question (2)

By Joy Ngozi Ezeilo
Posted to the Web: Friday, March 10, 2006

We need to engender the language of the preamble and substitute the word 'we' with 'men' and 'women'. This will not only be gender specific but also accord with universal human rights norms that have unequivocally entrenched the principle of equality and non-Discrimination.

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Chapter II on Fundamental Objectives and Directive Principles of State Policy deals with this important aspects of the Constitution outlining the political, economic, social, educational, foreign policy, environmental objectives of the Nigerian Nation. It contains also obligation of the mass media, directive on Nigerian culture, National ethics and duties of the citizen. According to section 13: It shall be the duty and responsibility of all organs of government and of all authorities and persons, exercising legislative, executive or judicial powers, to conform to, observe and apply the provisions of this Chapter of this constitution.

Section 14(1) states the fact that the Federal Republic of Nigeria shall be a state based on the principles of democracy and justice; and also recognize the fact that sovereignty belongs to the people, whereas section 14(3) entrenches what is now known as federal character.

A careful perusal of all the sections of this chapter reveals total gender blindness. Most of these provisions presented an ideal opportunity to be gender specific adopting men and women or genderless/gender neutral terms like "Everyone" "all persons" etc.

For example section 14(2) (b) which stipulates that "the security and welfare of the people shall be the primary purpose of government" should have used a gendered language that would read:

" the security and welfare of men and women shall be....

Further, the principle of federal character entrenched in the Nigerian Constitution is in effect an affirmative action provision and therefore ought to have extended its application based on gender. The most disappointing is the fact that the lofty ideals contained in this part are non-justiciable.

The Judicial Powers vested in accordance with the foregoing provisions of this Section (c) shall not, except as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter 11 of this Constitution".

The rights recognized under this Chapter of the constitution are basically socio-economic rights considered to be of paramount importance to women. Therefore, making these important provisions unenforceable has enormous implications for women's human rights.

The resource argument is the most advanced for making the ECOSOC rights non justiciable. I submit that these arguments no longer hold true. What it cost Nigeria to democratize (including all the aborted transitions) would have been enough to eradicate poverty in all its forms in Nigeria. Further, the indivisibility, interdependence and interrelatedness of these rights - Civil and Political and Economic, Social and Cultural rights have now crystallized.

For example, right to education falls within civil and political as well as socio-economic rights. What lack of education means for women is early marriage, harmful traditional practices, lack of self-determination all leading to socio-economic underdevelopment of women and girls. The trend in most recent constitutions is to recognize these ESC rights and make them justiciable.

Further, there is need to expand the content of substantive rights in Chapter II to include pre-natal and post natal medical care for women, right to work, right to social security amongst others.

Citizenship

The 1999 Constitution has failed to solve the problems associated with citizenship in a democratic Nigeria. The 1999 constitution recognizes only one class of nationals namely citizens of Nigeria of whom there are three categories: (i) Citizens by birth: The following persons are citizens of Nigeria by birth: Every person born in Nigeria before the date of Independence, either of whose parents or any of whose grandparents belongs or belonged to a community indigenous to Nigeria:

Every person born in Nigeria after the date of Independence either of whose parents or any of whose grandparents is a citizen of Nigeria; and Every person born outside Nigeria either of whose parents is a citizen of Nigeria.

As Professor Nwabueze noted, citizenship by birth is used in the constitution not in its generally accepted sense of citizenship derived from the circumstances of birth in a country (jus soli) but rather in a special sense of citizenship acquired automatically at birth. Birth in Nigeria by itself alone confers no citizenship; unlike in the United States and elsewhere where anybody born in the country is a citizen whether or not the parents are themselves citizens. Therefore, descent

from Nigeria parents carry greater importance than birth within a country.

A parent or grand-parent of a person is deemed to be a citizen of Nigeria if at the time of the birth of that person such parent or grandparent would have possessed that status by birth if he had been alive on Octoberl, 1960. (ii) Citizenship by registration:

This second category of citizenship is provided for under section 26 and subject to the provisions of section 28. According to the provision a person may be registered as a citizen of Nigeria, if the President is satisfied that - he is a person of good characterhe has shown a clear intention of his desire to be domiciled in Nigeria and he has taken the oath of allegiance prescribed in the seventh schedule to this constitution.Importantly, it is stated in sub section (2) that the provisions of this section shall apply to - any woman who is or has been married to a citizen of Nigeria; or every person of full age and capacity born outside Nigeria any of whose grandparents is a citizen of Nigeria. The provisions of section 26 (2)(a) clearly do not apply to husbands of female Nigerian citizens. This is blatant sex discrimination that cannot be justified in any democratic society like ours. It contradicts even the constitutional provision in section 42 which prohibits sex discrimination. This provision ought to be expunged from our constitution so that Nigerian men and women can confer full residency rights to their foreign spouses.

iii. The third category is citizenship by naturalization covered by Section 27 and made subject to section 28 on dual citizenship. This need not detain us except to say that the conditions precedents for grant of citizenship by naturalization are too stringent and need to be liberalized. The required compulsory period of residence need to be reduced from 15 years to 10 years. Additionally further reduction for a period not exceeding 5 years should be allowed for foreign spouses of female Nigerians. As naturalization is now the only option for them to becoming citizens of Nigeria

Furthermore, section 28 on dual citizenship should be amended so that persons who acquired Nigerian citizenship by birth should not be required to forfeit their original nationality. Since citizenship by naturalization is also conditional upon good behaviour and could be revoked by the President, it appears incongruous to ask the person on naturalization to forfeit its original citizenship.

The most obnoxious part of this constitution dealing with citizenship is Section 29 that made provisions concerning renunciation of citizenship. Section 29(4) stipulates that for purposes of denunciation full age" means the age of eighteen years and above"any woman who is married shall be deemed to be of full age. One wonders how this very obnoxious and discriminatory provision found its way into the new constitution. It is the first time such a provision appeared in a Nigerian Constitution.

It is highly retrogressive, incompatible with modern sociology and a legalization of child marriage with its attendant consequences. This provision should be expunged forthwith from the 1999 constitution.

Finally on citizenship, I would like to suggest that we should use gender specific words. Using prepositions 'he' or 'she' to ensure that

its provisions apply equally to all without distinctions on grounds of sex or gender.

Again the issue of indigeneity - an identified problem especially for women must be clarified in the constitution. Specific provisions should be entrenched outlining conditions and circumstances when a person not originally from a particular state should become or be regarded as an indigene of the place. This could be based on grounds of residence and/or marriage. Also state citizenship/indigeneity could be based on cite of labour of individual - place of work. We should also address the issue of federal centralism, which disempowers the citizens and exacerbates the indigeneity problem. The constitution needs to explicitly define state of origin and empower women disadvantaged by indigeneity policies to be an indigene of two states simultaneously. That is their state of origin at birth and their husband's state in cases where wife's state is different from that of the husband.

Fundamental Rights
This part of the constitution also called bill of rights contain classical provisions on civil and political rights the so-called first generation of rights only. Sections 33 -44 deals with substantive rights namely: -

Right to life - s. 33
Right of dignity of human person - s.34
Right to personal liberty - s.35
Right of fair hearing - s. 36
Right to private and family life - s. 37
Right to freedom of thought, conscience and religion - s. 38
Right to freedom of expression and the press - s. 39
Right to peaceful assembly and association - s. 40
Right to freedom of movement - s. 41
Right to freedom from discrimination
Right to acquire and own immovable properly anywhere in Nigeria - s. 43
Payment of compensation in case of compulsory acquisition of property - s. 44

Section 45 deals with restriction and derogation from fundamental rights and freedoms, while section 46 made provisions for its enforcement and granting of financial or legal aid to indigent citizens whose rights recognized under this Chapter have been violated.

Section 42 of the 1999 constitution seems to be the most relevant provision through which women can fight against discrimination. Although, it is not a right that can be exercised on its own alone it must be linked to violation of other substantive rights recognized in the bill of rights.

Even though section 42 may prove very useful to women, it is still not adequate. Commenting on similar provision under the 1979 (section 39) constitution, I concluded that the provisions are inadequate as it preserves equal status for women and men only in relation to laws and as far as practices, customs or other actions are concerned, there is no protection from discrimination.

In fact, item 61 on the exclusive list reinforces that thought as it excludes the federal government from making laws relating to the

formation, annulment and dissolution of marriages under Islamic law. Of course, this area poses the greatest challenge to realization of women's human rights. Nigeria should adopt the trend in modern constitutions of enacting an equal opportunity clause or provision that clearly embody the equality and non-discrimination principles. Mentioning specifically men and women and not just lumping 'sex' as one of the prohibited grounds for discrimination. The language of the constitution that is supposed to advocate for equality and non-discrimination is far from being gender sensitive. The word "he" was used and given the content of that right it is arguable whether "he" here could be said to mean "she".

There is a need to enlarge the content of Chapter IV, which unlike Chapter II is enforceable. Some of the provisions in the fundamental objectives and directive principles of state policy should be transferred to this Chapter. Economic and social rights including the right to work, free choice of employment, just and favourable remuneration and trade union rights; rights to rest and leisure, right to a standard of living adequate for health and well being including right to food and shelter should part of fundamental rights and freedoms contained in chapter IV. Sexual and Reproductive health rights of women should be specifically recognized. Also, right of women and girls to inherit and succeed to their husbands or fathers property should be recognized. The 1992 Ghana Constitution recognizes this right and other specific rights for women and children.

Furthermore, we need to expand the definition of those who can bring an action to enforce the fundamental rights provision. As it stands, it may be difficult based on the application of Locus standi for persons other than those directly affected to seek redress.

IMPLEMENTATION OF TREATIES
Section 12(1) provides for implementation of treaties ratified by Nigeria. In particular, the domestic enforcement of treaties entered into by Nigeria.
According to the section 12:

(1) No treaty between the Federation and any other country shall have the force of law except to the extent to which any such treaty has been enacted by the National Assembly.
(2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the Exclusive Legislative List for the purpose of implementing a treaty.
(3) A bill for an Act of the National Assembly passed pursuant to the provisions of this subsection (2) of this section shall not be presented to the president for assent, and shall not be enacted unless it is ratified by majority of all the Houses of Assembly in the Federation.

As I have argued elsewhere ratified human rights treaties will be of little importance to individual's subjects of rights thereon if not applied by national judges and administrators. Nigeria adheres to the common law legal system, which adopts a dualistic approach with regard to treaty interpretations and applications. Thus, an additional Act of Parliament is required to incorporate the treaty and make it a domestic law. The process outlined in section 12(3) for incorporation of treaties are rigorous and it may be extremely difficult to domesticate human rights treaties particularly dealing with contentious issues like women's rights and children's rights.

The provisions of 1979 Constitution are relatively easier and should be readopted.

I purposely left out consideration of sections dealing with powers of the three arms of government: Executive, Legislative and Judiciary. Also Resource allocation and Federalism, not because they do not have implications for women's rights as over centralization of wealth at the center without any visible trickle down effect to women and children at the bottom of the ladder impacts on their socio-economic and legal rights. I have left them out primarily because almost all interest groups in Nigeria have over flogged the issue without a moments consideration of the gender implications of the constitution of the Federal Republic of Nigeria 1999 on women. The pertinent question is how can we as women hold ourselves bound by these laws that we have no voice and representation in the making?

CAUSES OF CONSTITUTIONAL EXCLUSION OF WOMEN IN NIGERIA

I want to go back to the question I raised earlier on: Why is the female gender excluded from the constitution and constitution making processes in Nigeria? Why was it impossible for us to get specific provisions for women in the constitution despite seemingly gender consciousness of Nigerian Society, work of women's rights organizations and numerical strength of women? What really went wrong?

Feminists, women's rights activists and groups have not before now participated actively in debates about a Nigerian Constitution. It is only now that we are organizing and demanding inclusion and representation in the constitution making. But as the Igbos' will say: "tabugbo" meaning that today is still early if we can begin to make the desired impact. Females who were involved in the nationalist movement were more concerned with survival of Nigerian nation than getting specific rights for women. Although, they would not have predicated that an independent Nigeria would abandon its women and adopt a very retrogressive approach to women's human rights.

The conceptualized dichotomy of public and private sphere distinctions also made it very difficult for women to feature in the political space where constitutions are debated and negotiated. The experiences of women that have made an incursion into the so-called men's space served to discourage others from making similar attempt.

Related to this is the fact that women are not in power or in decision-making positions where they can influence the political process and change the laws and policies. Women's political powerlessness means that they always have to beg, shout, fight and even cry to be included. Lack of concerted action by women's groups have also made it impossible for women to speak with one voice in lobbying and agitating for their rights particularly the right to participate in determination of issues concerning them.

Customs, culture, religion and tradition are constantly used to deny women equal status in law and practice. The same constitution that prohibits sex discrimination accords recognition to customs and tradition that discriminate against women by reason of their sex and gender. The 1999 constitution and other legal standards in Nigeria are heavily weighted against women.

RECOMMENDATIONS

From my discussion there are twelve critical issues of concern to women with regard to the 1999 constitution and Gender and Constitution Reform Network (GECORN) have articulated these as part of women's demand in the on- going constitutional review. The following recommendations outlined here focuses on those twelve critical issues:

1. THE LANGUAGE OF THE CONSTITUTION

The 1999 Constitution should be re-drafted so that the language becomes user and gender friendly. The word "he or him" should be replaced with he/she and him/her and replacing person with men and women or any person or everyone.

2. CITIZENSHIP

Section 26 (2) should be amended to confer citizenship by registration to a foreign spouse of a woman just like her male counterpart. This section should be abrogated. There is no justification for allowing an under aged woman to have a rights to revoke or renounce her citizenship if it is not expected of her male counterpart. The other implication of this is that this section could become a mischief in a country where child marriage is prevalent.

3. INDIGENESHIP
It is recommended that a Nigerian citizen that has resided in any state of the federation for a period of more than 5 years shall be entitled to all right and privileges of the state.
A Nigeria woman shall have a right to enjoy the indigeneship of both her place of origin and that of her husband.

4. DISCRIMINATION
Section 42(3), 1999 constitution is restrictive, nullifies and impairs women's rights and the rights of others and thus should be abrogated. The provision of Section 42(1) should be expanded to clearly enshrine the principle of gender equality and non- discrimination.

5. RIGHT TO DIGNITY OF WOMANHOOD

The scope of Section 34 1999 Constitution should be expanded to include protection against harmful cultural and traditional practices affecting the health and rights of women and girls and other protection from other gender based violence such as widowhood practices, female genital mutilation, forced marriage and others which have constituted a continuing threat to the lives of women in Nigeria.

6. POLITICAL RIGHTS

Political Parties structures must reflect gender balance and we therefore recommend that in line with the international commitments of the government that at least 30% affirmative measure for women in both elective and political appointive position must be guaranteed through constitutional provisions.

Independent candidacy must be encouraged to facilitate women's participation where first past the post test often place women at great

disadvantage in seeking elective position.

7. REPRODUCTIVE HEALTH AND RIGHTS

Reproductive health rights has emerged as a development and Human right issue and thus should be clearly spelt out in the constitution of Nigeria to protect women and girls.

Free and qualitative ante natal and post natal care to reduce the high mortality rate and guarantee women right to safe motherhood.

Access to information and education relating to reproductive health and rights and encouraging proper understanding of maternity as a social function and the protection of motherhood and childhood.

8. ENFORCEABILITY OF SOCIO-ECONOMIC RIGHTS

Section 6 (6) (c) of the constitution should be amended to ensure accountability of government and its institutions to implementation of Chapter II of the constitution. To this end any amendment to the constitution must remove all restrictions and make it possible for all Nigerians to be able to enjoy these rights.
State Social Order: Section 19 (d) should be strengthened to include not only respect for international laws/conventions signed and agreed to, but also implementation and incorporation into National laws and adequate representation of women and men on equal basis at the international levels. The socio-economic rights enshrined in the constitution should be made enforceable.

Specific Social and Economic Rights such as right to education, health, work and adequate housing should be moved to Chapter IV containing the bill of rights

9. FEDERAL CHARACTER COMMISSION OR ESTABLISHMENT OF EQUAL OPPORTUNITY COMMISSION?

We proposed that the Federal Character principle in Section 14 (3) be amended to include gender as one of indices for composition and conduct of affairs of government. This will ensure gender balance in political appointment as well as gender balance in composition of such body.

Establishment of Equal Opportunity Commission to replace the Federal Character Commission. The trend world wide is to have such body to monitor observance and implementation of policies and programmes to reflect gender equity and ensure social justice to all irrespective of sex, religion, ethnic group among other grounds for which discrimination is prohibited.

10. RIGHT TO INHERITANCE

It is recommended that there should be a provision guaranteeing the rights of widows and widowers to inheritance of properties jointly acquired in the absence of a will.
Female and male children should have explicitly stated rights to inheritance.

11. LAND USE ACT
The Land Use Act according to the yearnings of Nigerians should be repealed or at least amended to guarantee equal access to land and adequate compensation to men, women and the poor.

12. WOMEN WITH DISABILITIES
We recommend that the provision of Chapter IV of the constitution should specifically address the rights of people with disabilities especially the needs of women within that category.

CONCLUSION
That law is gender blind and of course gender bias is truly reflected in previous constitutions of Nigeria, in particular the 1999 constitution. These constitutions have shown virtually no recognition that sex or gender can be a significant dimension in defining the substantive contents of individual rights or that it can affect the choice of methods that must be adopted by states to ensure that all individuals within their jurisdiction enjoy these rights equally.

Maintenance of distinctions and categorization of rights in the 1999 constitution are major set back to women's rights in Nigeria. The most important rights -if we are to prioritize are made non-justiciable. Yet poverty and violence of all sorts are the most pervasive violations of women's rights.

Civilized sociology requires that in a democratic society where democratic values holds sway; we should recognize gender issues which has assumed same importance as ethnicity and religion and would therefore play a major role and impact whether negatively or positively on the democratization process.
However, the woman or gender questions if addressed will play an important role in peace and unity of this country. As a Nigerian woman for example, I have multiple identities - an Igbo, a woman, Christian and a southerner. But my gender identity is of more important consideration to me than my ethnic identity. The reason is that no ethnic group has been found to be most benevolent to women - according them rights and privileges deserved.

Therefore, that a woman (very gender sensitive) becomes president of Nigeria holds a better prospect for me as a woman and I think majority of women will support such candidature irrespective of whether she is - Hausa, Tiv, Ijaw, Yoruba, Efik, Urhobo, Ogoni, Igala or an Igbo woman. I see women not because we belong to the same gender as the only groups that can come together across party, ethnic, and religious divide because they are able to see a commonality of purpose that transcends their differences.
For sustainability of our nascent democracy, a peaceful Nigeria, we need to take into account gender matters. Modern constitutions of other African countries namely: - South Africa, Ghana, Uganda, Eritrea, Malawi to mention but a few have specific provisions on women and children. This simply recognized the fact that motherhood and childhood deserve special protection. The important fact is that colonialism, imperialism, debt crisis, food crisis, water crisis; environmental issues impact especially and differently on women and their children.

Nigeria is very much part of the globalized world and cannot afford to be going backward when sister countries are forward looking. Its

constitution needs to reflect the international obligations it has undertaken, particularly, to eliminate all forms of discrimination against women. A consultative process to broaden and deepen the contributions of the Nigerian women to constitutional reform/making should be initiated and sustained by all those concerned with promotion and protection of women. The civil society organizations should take the lead in creating awareness, educating and mobilizing support for women's participation in constitution making, general governance and development initiatives taking place in the Country.

In conclusion, I wish to posit that the 1999 constitution should be amended to reflect the gender composition of Nigeria protecting women as full citizens with rights also applicable to their male counterparts. The review has presented an ideal opportunity to give visibility to women's concerns for both participation and adequate protection in proposed constitutional amendments. Nigerians should work towards giving themselves a new grundnorm with full participation of women and all stakeholders to make a constitution that will come into force before the next general election in 2007.

Gender democracy, evidenced by the balanced participation of women and men, is considered a cornerstone of democratic development. The empowerment and autonomy of women and the improvement of women's social, economic, and political status is essential for the achievement of both transparent and accountable government as well as sustainable constitutional democracy and development in all areas of life. Although Nigeria has finally transited from military rule to civil rule, it has to take steps to ensure participation of all stakeholders especially women who will in collaboration with men work towards a sustainable democracy fore grounded on constitutionalism.

Joy Ngozi Ezeilo

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In the States

Six State Constitutions Use Gender-Neutral Wording

Run Date: 12/09/01

By Darryl McGrath
WEnews correspondent

Six states adopted gender-neutral language in their constitutions; eight others are considering the change. Advocates say gender-neutral language is a subtle but important way to promote equality; critics call it empty, feel-good, demeaning to women.

Sandy Galef

ALBANY, N.Y. (WOMENSENEWS)--A recent New York state referendum that will change the state constitution wording to gender-neutral language is part of a growing awareness of the power of language and the role it plays in promoting equality.

Advocates of gender-neutral language say that it is a subtle and often overlooked aspect of equality, but so pervasive that it affects everyday thinking in the workplace, home and government. Critics say the push for gender-neutral language is an unnecessary and even frivolous effort that distracts attention and drains resources from more pressing issues.

Still, a heightened awareness of gender-neutral language is evident in universities, institutional training programs and everyday conversation.

"I can't think of a more important time for this issue than right now," said Judith Barlow, a professor of English and acting chair of the women's studies department at the State University of New York in Albany. "There are going to be great changes in Afghanistan, that for several years has barely acknowledged women." Using language that erases women by only mentioning men absolutely sends the wrong message, she added.

The change in the New York State Constitution takes place immediately and will appear as soon as new copies are printed, an annual process. In most cases, the words "he" and "him" will be replaced with "he or she" and "him or her," but other changes will also be made. All references to the governor as "he" will become "the governor" and references to a "fireman" in a section dealing with civil service employees will become "firefighter."

That change reflects the decades-long efforts by women's scholars and others to change usage from gender-specific terms to gender-neutral terms, or terms that don't denote marital status. Examples from the 1970s and 1980s include police officer instead of policeman; chair instead of chairman; flight attendant instead of stewardess; and Ms. as an alternative to Mrs. or Miss. Advocates say that other, more recent terms, such as "humankind" instead of "mankind" are gradually gaining acceptance into modern terminology.

Six States Have Changed Wording: Eight Considering Changes

New York follows the example of several other states that have either changed their state constitutions to gender-neutral language or are considering doing so. Some states are also considering applying gender-neutral requirements to the wording of new legislation and the revision of current law.

Or, in Rhode Island's case, returning to old language. A research project undertaken by the state's Commission on Women recently brought to light the 1663 charter to the Rhode Island colony granted by King Charles II of England. The document is noteworthy for using many gender-neutral phrases instead of the male-oriented phrases that would be expected, said Jane Anthony, chair of the commission. The most prominent example cited by Anthony: a phrase that states "no person within the said colony, at any time hereafter shall be any wise molested, punished, disquieted, or called in question."

"It seems somewhat ironic," Anthony said, "that you find your first official document had nonspecific language, which was quite unusual at that time, and then centuries later, you had people making a conscious choice not to use nonspecific gender language."

New York voters approved the change in the language of the state constitution in last month's general election. The campaign for the referendum unfolded with little public debate, and 56 percent of the voters approved the measure.

The change in New York started four years ago with a bill introduced by state Assembly member Sandy Galef, a Democrat from the town of Ossining, about an hour's drive north of New York City.

N.Y. Lawmaker: Language Change Shows Others Women Are Valued

"You could say it's symbolic, but I think words are very important," Galef said. "What we say, how we say it, sends a message. We changed the term 'stewardess' to 'flight attendant' and that changed the image. I think symbolically it's important for us to show other countries that we value women."

The bill eventually gained bipartisan support, unanimously passing both the Republican-controlled state Senate and the Democratic-controlled Assembly. With legislative support secured, the change was ready for the referendum. Since the constitution is reprinted annually and distributed by the Secretary of State's office, there will be no significant or special cost to taxpayers, Galef said.

She touched on Barlow's theme of international perceptions in describing why she pushed for gender-neutral language in the state constitution, which dates to 1777 and had 170 references to the male gender and no references to the female gender. Her staff's research revealed that six other states--California, Hawaii, Maine, Rhode Island, Vermont and Florida--have changed their constitutions to gender-neutral language, and eight are considering such a change: Delaware, Illinois, Iowa, Minnesota, Nevada, Nebraska, New Hampshire and Wyoming.

The Conservative Party of New York was one of the most vocal opponents of the referendum, issuing a written statement of opposition and speaking out through its leadership against the effort, specifically in New York and in society in general.

"We were opposed to it before Sept. 11, but Sept. 11 highlighted that with all the things that have to be done in the state of New York, here the legislature spent time on something that did absolutely nothing for anyone," said Michael Long, the Conservative Party state chair. "It's just another example of what I guess one could consider 'feel good' legislation. Male and female legislators could not pass a budget on time, yet they could this. Shame on them."

Conservatives: Women Losers When Language Obscures Femininity

Long said women will lose more than they gain by pressing for language that obscures their femininity, in a world where women are often treated poorly.

"I do believe women sometimes have to be treated a little special," he said. "They haven't always been treated correctly, but I hope they would always be treated special."

Those working to change the thinking about male-dominant language agree that it can be difficult for people of either gender to push for such changes.

Sherryl Kleinman, a sociology professor at the University of North Carolina in Chapel Hill, has gained recognition for her campaign to eliminate the expression "you guys" from spoken language when the phrase describes a mixed-gender group. She knows she has an uphill battle when she hears a student in her gender class tell the group of 35 women and five men, "You guys, I have an announcement."

A year ago, Kleinman published a commentary entitled, "Good-bye 'You Guys'" in New York Newsday. In it, she mused about the origin of the expression and suggested that it came into common usage about the same time feminists started pushing for changes in official language.

In Popular Speech, 'You Guys' Refers to Both Women and Men

"So when did you 'you guys' sneak by and then sneak in?" Kleinman wrote. "I suspect it entered the scene around the time that official titles like 'chairman' were being challenged. You can push the provost to change freshman to first-year student or complain to publishers about their use of congressman in text books. But you can't go to court to make your friends stop using 'you guys.'"

Sherryl Kleinman

Kleinman and two former students have designed a card that publicizes the effort to eliminate "you guys" from spoken language, which can be handed out to explain the campaign "in a way that doesn't scold people," she wrote in her Newsday article.

The wallet-sized card has an illustration in the form of a mathematical equation, showing three women being added with one man and forming "you guys." The text sets up the illustration, reading in part, "Imagine someone walking up to a group of guys and saying, 'Hey, girls, how're ya doing?' We doubt they'd be amused! So isn't it weird that women are supposed to accept--even like--being called 'one of the guys'?"

Kleinman said the struggle for women to assert gender-neutral language can be likened to the efforts of African Americans to reject "Negro" and claim "black" in the 1960s, or the acceptance of "gay" in print and broadcast media instead of "homosexual."

"The struggle is harder when it comes to sexist language because, unlike blacks, for example, in relation to whites, most women seek intimate relationships with men, for emotional and economic reasons," Kleinman said. "This intimacy can be threatened when women make issues out of language habits that so many people take for granted."

Women, Men Pressured Not to Raise Issue of Gender-Neutral Language

Women's studies professor Barlow recalled a recent faculty meeting about the search for a new dean of the college of arts and sciences. A male department chair made repeated use of male gender terms, saying of the as-yet-

unidentified candidate for the dean's post that "he should know how to do this," and "he should have this experience."

"It was very glaring; it was certainly noted by people around me," Barlow recalled. But no one spoke up, she added.

"I think men and women have different reasons for being silent in this situation," said Jackson Katz, a nationally known expert on the prevention of gender-based violence, who has lectured and conducted training sessions at universities and military bases domestically and abroad.

For many women, Katz said, "they don't want to be creating conflict; they want to be creating cohesion. I think a lot of women just shuffle papers uneasily but go on. But the silence comes at a cost. The cost is frustration and loss of self-respect."

Jackson Katz

For men who want to speak up but are reluctant to do so, "there are very few models of men doing that kind of thing in public, much less private," Katz said. "You're not a team player--'What are you, one of those sensitive New Age guys?'"

Katz sees a dangerous flip side to gender-specific language, when sexual violence or teen pregnancy are almost always described in terms of the female gender. Rape statistics are usually presented in terms of how many thousands of women a year are raped, but rarely in terms of how many thousands of men a year commit rape. Teen pregnancies are couched in terms of how many teens become pregnant each year, but rarely in terms of how many boys or men a year impregnate teen-agers.

Advocates of gender-neutral language say they have a long way to go before gaining full acceptance in the culture of the United States, but many are persisting in their efforts to educate people.

Matt Ezzell is the coordinator of community education at the Orange County Rape Crisis Center in Chapel Hill, N.C. He stresses the use of gender-neutral language in training sessions.

"The first time we say something about it in our training group, they're surprised, they don't want to discuss it," Ezzell said. He persists, because he went through a similar awakening a few years ago and knows that most people will be receptive to the change once they think about it.

"It was like a lightbulb," said Ezzell, who majored in women's studies at the University of North Carolina at Chapel Hill, describing the time in college that he first heard someone else talk about language that constantly refers to the dominant male gender. "And it took me about a year to purge it from my language, that's how pervasive it was."

Darryl McGrath is a journalist in Albany, N.Y., who writes often on politics and child welfare issues.

For more information:

You All:
http://www.youall.freeservers.com/home.html

Jackson Katz:
http://www.jacksonkatz.com/

"Gender Neutrality in the New York State Constitution," by New York state Assemblywoman Sandra Galef:
http://assembly.state.ny.us/member_files/090/20010730/index.htm
http://assembly.state.ny.us/mem/?ad=090

Rhode Island Royal Charter:
http://www.sec.state.ri.us/rihist/richart.htm

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MEMORANDUM March 23, 2009

SUBJECT: Draft CSHJR 2(JUD), combining HJR 2 (substitution of gender neutral material for personal pronouns in the state constitution) and HJR 13 (correcting obsolete references to the office of secretary of state) (Work Order No. 26-LS0065\E)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee

FROM: Jack Chenoweth
Assistant Revisor

I would be remiss if I did not caution you that combining HJR 13 and HJR 2 into a single vehicle for proposing constitutional changes is not without risk.

The Alaska Supreme Court has decided that each proposal for constitutional amendments must be confined to a single subject. *Bess v. Ulmer*, 985 P.2d 979 (Alaska 1999). Through fifty years of Statehood, the court has upheld very broad subjects in cases construing the single-subject requirement that applies to bills changing statutes; however, there have been no other cases, apart from *Bess*, that shed light on the scope of a single subject for the purposes of proposed constitutional amendments. While there is, in the view of some in this office, a reasonably good chance that the court, if confronted with a challenge questioning a constitutional amendment proposal that combines HJR 2 and HJR 13, would conclude that the proposal is encompassed in the single subject of technical, nonsubstantive amendments, there are some of us who believe otherwise.

For those of us who are skeptics, we view as potentially persuasive that the existing constitutional authority by which the legislature may "sidestep" the "single subject" rule for statutes and combine unrelated material into, for example, one revisor's bill is an exception that is expressed in terms of "revising" laws. The applicable constitutional provision, the single subject rule of article II, section 13, reads in relevant part:

> **Form of Bills.** Every bill shall be confined to one subject ***unless it is*** an appropriation bill or ***one*** codifying, ***revising***, or rearranging ***existing laws***. . . . .

Moreover, the constitution itself elsewhere draws a line between "amendment" and "revision". Under article XIII, section 1,[1] amendments, but not revisions, are properly a matter for the legislature, while revisions, under article XIII, section 4, are to be considered by a constitutional convention.[2]

If, in a challenge, the court should decide that "revising" in the context of statutory amendments (its article II, section 13 meaning that supports the revisor's bill and similar recodification efforts) carries the same connotation as "revise" in the context of constitutional change (under article XIII's provisions), then it could readily conclude that constitutional "revisions" -- multiple changes within the body of the document that are an exception to the single subject rule -- are properly the prerogative only of a constitutional convention and may not be adopted and presented as "amendments" by the legislature.

In summary, the safer course would be for HJR 2 and HJR 13 to be submitted to the people to consider as separate proposals.

JBC:plm
09-211.plm

Enclosure

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[1] The text of the section reads:

> **Amendments.** Amendments to this constitution may be proposed by a two-thirds vote of each house of the legislature. The lieutenant governor shall prepare a ballot title and proposition summarizing each proposed amendment, and shall place them on the ballot for the next general election. If a majority of the votes cast on the proposition favor the amendment, it shall be adopted. Unless otherwise provided in the amendment, it becomes effective thirty days after the certification of the election returns by the lieutenant governor.

[2] The text of this section reads:

> **Powers.** Constitutional conventions shall have plenary power to amend or revise the constitution, subject only to ratification by the people. No call for a constitutional convention shall limit these powers of the convention.

HOUSE COMMITTEE REPORT

(7)

Date Referred to Committee: March 19, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4/3/09

The JUDICIARY Committee considered: **HOUSE JOINT RESOLUTION NO. 2**

Proposing amendments to the Constitution of the State of Alaska to avoid the use of personal pronouns and similar references that denote masculine or feminine gender in that document.

HJR 2 CONST AM: GENDER-NEUTRAL REFERENCES

Recommends it be replaced with [ ] HCS *or* **[ ] CS** *for* _____ (_____)
*For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

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PREVIOUS **FISCAL NOTES**

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Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
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	Gruenberg	✓			
	Coghill			✓	
	DAVIS			X	
	Holmes			X	
	Gatto	X			
Chair:	KELLY/STOLTZE		AK	X	
Chair:					

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 2, 2009

FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 3-19-09

The STATE AFFAIRS Committee considered:

HOUSE JOINT RESOLUTION NO. 13

Proposing amendments to the Constitution of the State of Alaska to correct obsolete references to the office of secretary of state by substituting references to the office of lieutenant governor.

HJR 13 CONST AM: SEC. OF STATE REFERENCES

Recommends it be replaced with [ ] HCS *or* **[ ] CS** *for* _____ (_____)
For Senate Bills with new title: *[ ] Technical Title [ ] New Title: HCR*_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

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OOG		X		

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List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Craig Johnson	JOHNSON			X	
Gatto	GATTO				
Paul Seaton	SEATON	X			
Gruenberg	GRUENBERG				
Wilson	WILSON				
Peterson	PETERSEN	X			
Chair:	LYNN	X			
Chair:					

2990

HJR

3

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Representative Harry Crawford
District 21

SPONSOR STATEMENT: HOUSE JOINT RESOLUTION 3

While some Alaskans may consider gambling to be a harmless pastime, many underestimate the costs in dollars and human suffering associated with it. House Joint Resolution 3 would amend Alaska's Constitution to require an affirmative vote of the people before any form of gambling for profit may be authorized in Alaska.

Studies show that about 2.5 million Americans are pathological gamblers, and another 3 million are problem gamblers. These compulsive gamblers have high rates of suicide, depression, mania, alcohol and drug abuse, and arrest rates. According to the American Insurance Institute, gambling is the main cause of white collar crime, and is the third leading cause of individual bankruptcy in America.

Though the human suffering caused by compulsive gambling may be borne by a minority of the population, the overall economic and social costs are shared by all. Before expanding gambling in our state, it is imperative that the voice of Alaskans be heard. I respectfully ask for your support of HJR 3

E-mail: Representative_Harry_Crawford@legis.state.ak.us

Alaska State Legislature

House of Representatives

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Representative Harry Crawford
District 21

Sectional Analysis: House Joint Resolution 3

Section # 1 Amends the Alaska Constitution requiring a vote of the people before any for profit gaming or gambling may be authorized in Alaska. The amendment does not prohibit or restrict nonprofit gaming currently permitted by law.

Section # 2 Require the proposed amendment to be placed before the voters at the next general election.

E-mail: Representative_Harry_Crawford@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HJR 3**
() Publish Date:

HJR3 02-11-09
Title: Const.Amend: No Gaming Without Voter Approval
Sponsor: Representative Crawford and Dahlstrom
Requester: House State Affairs Committee

Dept. Affected:
RDU
Component
Component Number

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

Prepared by: Nancy Manly, Committee Aide — Phone 465-2794
Division: House State Affairs Committee — Date/Time
Approved by: Representative Bob Lynn, Chair — Date 2/11/2009

(Revised 9/10/2008 OMB)

2994

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HJR3**
() Publish Date:

Identifier (file name): HJR003-OOG-DOE-2-5-09
Dept. Affected: OOG

Title: Const. amend. requiring affirmative vote of the people before any form of gambling for profit may be authorized in Alaska
RDU: Elections
Component: Elections

Sponsor: Representatives Crawford, Dahlstrom, et al
Requester: House State Affairs Committee
Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual			1.5				
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF			1.5				
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The passage of this resolution would require the constitutional amendment to appear on the 2010 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58 is $1.5. Should the addition of this question require printing an 8-1/2 by 18 inch ballot, the cost will increase to $22.0.

Prepared by: Gail Fenumiai, Director — Phone 465-4611
Division: Division of Elections — Date/Time 2/5/09 12:00 AM
Approved by: Linda Perez, Director — Date 2/6/2009
Division of Administrative Services

(Revised 9/10/2008 OMB)

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MEMORANDUM February 12, 2009

SUBJECT: Effect of HJR 3 on Cruise Ship Gaming
(Work Order No. 26-LS0128\R)

TO: Representative Harry Crawford

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked if HJR 3 would have any effect on gaming currently conducted aboard cruise ships in Alaska. It is my opinion that HJR 3 would not have an effect on gaming currently conducted aboard cruise ships. Cruise ship gaming is conducted pursuant to federal law and not state law.[1] The federal law was enacted in response to public statements made in the early 1990's by the administration of former Governor Wally Hickel questioning the authority of cruise ships to conduct gambling activities while in Alaska waters and asserting that the state would no longer allow those activities to occur. The legislature considered a bill to allow cruise ships to conduct gambling activities in Alaska and allowed a temporary exception for cruise ships for one season.[2]

GPL:med
09-003.med

[1] See 15 U.S.C. § 1175(c)(2).

[2] Chapter 31, SLA 1995.

HOUSE JOINT RESOLUTION NO. 2

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVES CRAWFORD AND DAHLSTROM, Lynn

Introduced: 1/16/07
Referred: State Affairs, Judiciary, Finance

A RESOLUTION

Proposing an amendment to the Constitution of the State of Alaska requiring an affirmative vote of the people before any form of gambling for profit may be authorized in Alaska.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** Article XII, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 15. For-Profit Gambling. Any form of gaming or gambling for profit is prohibited in the State unless that form of gaming or gambling has been authorized by law and ratified by a sixty percent majority vote of the qualified voters of the State who vote on the question. This section does not restrict the authorization of charitable gaming conducted by charitable organizations if all profits of that gaming inure to the charitable organization and those profits are only expended for charitable purposes.

* **Sec. 2.** The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

CS FOR HOUSE JOINT RESOLUTION NO. 2(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 5/12/07
Referred: Finance

Sponsor(s): REPRESENTATIVES CRAWFORD AND DAHLSTROM, Lynn

A RESOLUTION

Proposing an amendment to the Constitution of the State of Alaska requiring an affirmative vote of the people before any form of gambling for profit may be authorized in Alaska and setting other requirements.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** Article XII, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 15. For-Profit Gambling. Any form of gaming or gambling for profit is prohibited in the State unless that form of gaming or gambling has been authorized by law, ratified by a majority vote of the qualified voters of the State who vote on the question at the next general election, and approved by the municipality where the gaming or gambling may occur. This section does not restrict the authorization of charitable gaming conducted by charitable organizations if all profits of that gaming inure to the charitable organization and those profits are expended for charitable purposes.

* **Sec. 2.** The amendment proposed by this resolution shall be placed before the voters of the

state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

CS FOR HOUSE JOINT RESOLUTION NO. 2(FIN)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-FIFTH LEGISLATURE - SECOND SESSION

BY THE HOUSE FINANCE COMMITTEE

Offered: 2/21/08
Referred: Rules

Sponsor(s): REPRESENTATIVES CRAWFORD AND DAHLSTROM, Lynn, Gardner, Guttenberg

A RESOLUTION

Proposing an amendment to the Constitution of the State of Alaska requiring an affirmative vote of the people before any form of gambling for profit may be authorized in Alaska and setting other requirements.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

* **Section 1.** Article XII, Constitution of the State of Alaska, is amended by adding a new section to read:

Section 15. For-Profit Gambling. (a) Any form of gaming or gambling for profit is prohibited in the State unless that form of gaming or gambling has been authorized by law, ratified by a majority vote of the qualified voters of the State who vote on the question at the next general election, and approved at an election in the organized borough or city where the gaming or gambling may occur by a majority of qualified voters who vote on the question. If the gaming or gambling will occur in an unincorporated community in the unorganized borough, then the gaming must be approved by a majority of qualified voters who vote on the question in the unincorporated community, as defined by law.

(b) This section does not prohibit or restrict any form of gaming lawfully conducted under Alaska law on the date of the ratification of this section by the people of Alaska, nor does this section affect the authority of the legislature to authorize or regulate nonprofit gaming by organized boroughs and cities or by nonprofit organizations.

* **Sec. 2.** The amendment proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

THE SALVATION ARMY

DOING THE MOST GOOD™

Office of the Divisional Commander

January 29, 2007

The Honorable Nancy Dahlstrom
The Honorable Harry Crawford
Alaska House of Representatives
State Capitol, Juneau, AK 99801-1182

RE: Proposed Gambling Constitutional Amendment

I recently learned of your intent to sponsor a constitutional amendment this legislative session to prohibit for-profit gambling in Alaska and wanted to express my appreciation for your leadership in addressing this important issue.

In other areas of the country where legalized gambling is welcomed, The Salvation Army has seen firsthand the impact and destruction caused in the lives of many who chase after the promise of riches and end up caught in the snare of addictive lifestyles. In Las Vegas, for instance, The Salvation Army recently expanded its Adult Rehabilitation Program for substance abusing adults to treat individuals with gambling addictions. In the short time the program has been open, they have documented that close to fifty percent of those who experience alcohol/drug addictions are also addicted to (or at significantly higher risk) for co-addictive behaviors, including gambling.

In Alaska, where we have some of the highest rates of substance abuse per capita in the nation, it is encouraging to know we have legislators like yourselves, ready to step forward and tackle these tough issues.

Thank you again, for your leadership. Know that I continue to pray God's blessing upon you as you serve the people of Alaska.

God bless you.

Sincerely,

Douglas Tollerud, Major
Divisional Commander
Alaska Division

Testimony for HJR3
By Pamela Samash
HC 66 Box 29715
Nenana, AK 99760
907-832-1850

Dear Representatives,

Thank you for taking the time to read my testimony today.

This letter is in regards to gambling and my family's experience.

My mother became addicted to gambling. She had always been against gambling before and had no addictions to anything but smoking. She worked for what she had, believed in God, raised us kids as best as she knew how.

What opened the door for her she shared with me was she became depressed because her mother passed away. She was also feeling rejected by people who were near and dear to her. My step dad took her to a casino to "lift her spirits" and get her mind off her troubles.

At first it was all for fun and in control. It took a few years to become addicted for her, but it happened none the less. Addiction to gambling is

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very real and this is why it's so dangerous to bring to Alaska.

Once she was addicted, she had to gamble and get the money anyway she could. I asked her, "what made it so addicting?"

She replied, "it was always bright and friendly, good food, free drinks, great service, driven to get back the money lost from the last gambling experience, and to basically get away from the world."

My mom and step dad exhausted the payday loan stores, wrote bad checks and eventually towards the end, stole from their job.

I was visiting my sister when we got the call from my mom. Her boss found out about the theft, my mom was terminated and evicted from where she was living. She was also facing possible jail time. Everyone including us who love my parents had to scramble to raise money to quickly pay her boss to keep her out of jail. We had to get her stuff and get her out that day from where she lived. It was horrible. Here my mom at 48 yrs. old was losing everything she had worked for because of a gambling addiction. That was just the beginning. They had to pay back the payday loan stores, the banks, the casinos and all the people that loaned them money. The total bill was $27,000. They couldn't find work so they had to settle for odd jobs and sometimes working in

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dangerous conditions or areas. They stayed at weekly motels and lived on McDonald's dollar meals. Every day was a complete struggle. Every minute of every day to rebuild their life. They finally filed bankruptcy, but they have to pay that back as well.

All this took place about 3 yrs. ago and they are still rebuilding from it all. The good news is that my mom is totally free from gambling addiction. She wanted me to write this to you because she didn't want anyone else to got through what she's been through.

During her gambling experiences she met many other people who also were addicted to gambling and so my mom shared with me some of the effects and tragedies of their lives. Here is a list of what she saw:

1. Children pay the highest price. Many times people divorce because of gambling or they leave for days at a time leaving the children to fend for themselves or with a caretaker who is not very responsible. The children are vulnerable to molesting, rape, abuse, poor eating habits, poor school grades or no attendance at all, kidnapping and sometimes even death. The parents simply aren't there to protect and take care of them.
2. Divorce is really common with gamblers. If a spouse becomes addicted, they may and many times do drain the savings account, and also

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sometimes bounce checks or they're late on paying bills, mortgage or rent. It's very stressful on marriage to say the least.

3. My mom met people who were stealing to gamble occasionally. But what's really sad is when she met a small business owner who had to close up his business because of addicted gamblers who stole thousands from him.
4. Bankruptcy increases and that's hard on the public as a whole.

Final Statement

I have done my own research regarding gambling and it's a known fact that anyone who already has an addiction problem or has relatives with addictions is more likely to become addicted to gambling. In my love for Alaska I feel compelled to mention that Alaska has one of the highest drinking and drug addiction problems in the U.S. from what I've heard and read. Which, if this is true, means if gambling were introduced to Alaska, it could be devastating. If you also include long, dark, winters and the depression problems, I can't even imagine what would happen 10-20 yrs. down the road. If a casino were to open please consider the following:

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1. Increase funding to Child Protective Services programs and foster homes because the children will need you to help them.
2. Provide marriage counseling and addiction counseling programs for free to the public.

Again I thank you so much for your time. May God bless you with His wisdom.
Pamela Samash

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Chris Birdsall

From: Guy & Peg Warren [jnuwarrens@gci.net]
Sent: Wednesday, February 06, 2008 10:58 AM
To: Chris Birdsall
Subject: Presbytery of Alaska on HJR 2 -- For Profit Gambling Amendment

I am sorry but due to other obligations I am unavaliable to attend the hearing on HJR 2 this afternoon.

However, on behalf of the Presbytery of Alaska I would note that we have always opposed increased gambling within Alaska, and would support any effort to ensure that such increases do not occur.

We particularly appreciate that this proposal, if approved by the legislature and adopted by the people, would permit the entire state to be a direct party to the decision making process of enhanced gambling.
We understand that some communities may believe that permitting gambling within their bounds may provide benefit to them, but we believe that even if that is the case, that doing this will provide greater costs, both financial and social to the state as a whole. It is only just and proper therefore to allow the whole state to have a voice in that decision.

I thank the Committee for their consideration of this matter, and thank the sponsors for bringing this bill forward.

Guy Warren
Stated Clerk
Presbytery of Alaska

Facts about Gambling and Addiction

- **Yes, it is addictive.**

"Gambling is an addictive behavior, make no mistake about it . . . Gambling has all the properties of a psychoactive substance, and again, the reason is that it changes the neurochemistry of the brain." [1]

The National Gambling Impact Commission found that following a decade of expansion in the 1990's, the national lifetime compulsive gambling population had grown by at least 50%, to no less than 1.2% based on the most conservative of its source studies. [2] It also discovered a significant trend indicating **addiction had doubled in many populations within 50 miles of casinos.** [3]

Probable pathological gambling in Nevada in 2000 measured 3.5% and the prevalence of problem gambling added 2.9% for a total of 6.4%. Other cited states ranged from 2.1% in North Dakota in 2000 to 4.9% in Mississippi in 1996. [4]

The American Psychiatric Association notes the diversity of pathological gambling rates in its diagnostic manual. "Community studies estimate the lifetime prevalence of pathological gambling to range from 0.4% to 3.4% in adults, although prevalence rates in some areas (e.g., Puerto Rico, Australia) have been reported to be as high as 7%. Higher prevalence rates, ranging from 2.8% to 8% have been reported in adolescents and college students." [5] Those differences illustrate the effects of demographics, proximity and diversity of gambling opportunities.

- **Proximity matters. So do culture, disadvantage and demographics.**

Researchers at the National Opinion Research Center combined data from a national telephone survey with data from a casino patron survey and found that **adults living within 50 miles of a casino had double the probability of pathological or problem gambling**. [6]

Poverty, lower education level and other social and economic factors can effect gambling addiction, and they can be accelerated by the proximity of gambling outlets. "Neighborhood disadvantage shows . . . a strong positive effect on frequency of gambling and pathological or problem gambling. For every increase of one standard deviation in neighborhood disadvantage the odds of being a pathological or problem gambler increase by 69%. . . . **A casino within 10 miles of home is associated with a 90% increase in the odds of being a pathological or problem gambler."** [7]

In short, the presence of gambling opportunities is likely to double the prevalence of problem and pathological gamblers, and the addition of other contributing factors may increase the addiction rate exponentially.

For example, 93% of a group of Southeast Asian refugees in a Connecticut study had gambled in the previous two months, and more than half were said to be pathological gamblers. [8]

Clear across the nation, casinos find 60% to 70% of table game customers and 20% to 25%

Tide of gambling yields backwash of addiction

by Carl G. Bechtold

for the National Coalition Against Legalized Gambling
Rev. 08/21/04

3010

The risk of gambling is not so much in losing ones money, but rather the danger of losing control of ones life. Like other substances and activities which become addictive, games of chance too often turn on their players and transform frivolity into a nightmare. Collectively, the pattern is predictable, as each tide of gambling expansion leaves a backwash of addiction, pulling under an ever-growing wave of Americans.

In ways and in individuals that few would suspect, gambling can and does become addictive. Gambling addiction is listed among the psychological disorders recognized by the American Psychiatric Association. In 1995, Howard J. Shaffer, PhD., of the Harvard Medical School Division on Addictions reported, "Gambling is an addictive behavior, make no mistake about it . . . Gambling has all the properties of a psychoactive substance, and again, the reason is that it changes the neurochemistry of the brain." [1]

Gambling causes excitement, often leading the participant to forget about outside problems and the stresses of everyday life. Electronic gambling devices in particular offer a seemingly non-competitive diversion from reality. Gambling establishments usually serve and often encourage the use of alcoholic beverages, which further loosens players' inhibitions. The games themselves are made to satisfy the demands of excitement; and the ensuing "loss of control" is part of the "enjoyable" experience of gambling.[2]

Gambling environments, specifically within casinos, are scientifically and socially designed to transport players beyond the realm of rational decisions. Presentations by one prominent international researcher concluded, ". . . strong emotional/physiological responses during a session of play is a natural human experience. The expectation that the player will be able to continue to make controlled, informed, rational decisions during such a session of continuous gambling is ill-founded."[3]

Even the best intentioned gamblers, the majority of whom say they set limits of how much they intend to lose, often find themselves "out of control." "When regular players are recruited in gaming venues (no other selection criteria) 43% "sometimes", "often" or "always" experience an irresistible urge to continue a session of play once they

[1] Shaffer, Howard, quoted by Kindt in *Managerial and Decision Economics*, 22: 17-63 (2001)
[2] Dickerson, Mark, "What if There Were No Problem Gambler" p.3.
[3] Ibid.

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have started," the study concludes.

Though most gamblers are not "hooked," some begin to gamble well beyond reason or their financial ability. These players fit the classic definition of addiction, which is, "The compulsive use of a substance or activity resulting in physical, psychological, or social harm to the user; (and) the user continues in this pattern of behavior despite the harms that result."[4]

Much has been made of the "co-morbidity" of addictions, or the apparent tendency of victims to have multiple addictions or emotional and mental problems. The gambling industry has repeatedly attempted to dismiss gambling addiction as just another symptom of broader psychological problems among victims. That argument is specious and largely irrelevant, since harm would not befall victims if gambling were not available, in much the same way that lung cancer would occur far less if tobacco were not available. The fact is, gambling is addictive to a significant number of Americans, and that addiction afflicts an increasing number of victims as technology changes and the prevalence and proximity of gambling increase.

HISTORY provides some background for consideration of gambling addiction. The United States is in its third historic wave of gambling. The first two occurred in the Revolutionary and Civil War eras. Gambling was sanctioned and often sponsored by government to pay for war costs and civic improvements, and has historically intensified during times of economic stress. Both earlier eras ended when corruption and social costs persuaded the states to criminalize gambling.

In 1900, there was virtually no legalized gambling in the United States. After several decades of "abstinence," America first ventured back into gambling with its legalization in Nevada in 1931. Government first sponsored gambling in the modern era as New Hampshire initiated a state-run lottery in 1963. In 1976 New Jersey opened Atlantic City to gambling. In 1988, Congress passed the Indian Gaming Regulatory Act, providing gambling financiers a means of using tribes to penetrate states where gambling had been illegal. As the 1990's began, the floodgates opened.

[4] http://www.hms.harvard.edu/doa/research_education.htm#institute

In 1994, Congress realized gambling was growing out of control and authorized the National Gambling Impact Study Commission (NGISC), which published its findings in 1999.

Among the commission's findings was a number which could be reasonably used as a "background" level for compulsive gambling. The commission cited reports of between 0.6 and 0.9% of Americans were present or "past year" compulsive gamblers.[5]

In 1976, when only Nevada and a few scattered pari-mutuel tracks offered legal gambling, a widely quoted study by the University of Michigan showed just 0.77% of Americans, were then or had been pathological gamblers in their lifetimes.[6]

The commission found that following a decade of expansion in the 1990's, the national lifetime compulsive gambling population had grown by at least 50%, to no less than 1.2% based on the most conservative of its source studies.[7] The gambling industry's own addiction study organization admits to a 1.1% current pathology level in the U.S. and Canada.[8]

The NGISC also discovered a significant trend indicating addiction had doubled in many populations within 50 miles of casinos.[9]

The commission unanimously recommended the nation "pause" the expansion of legalized gambling until the social and economic impacts could be better understood. Their findings were almost universally ignored.[10]

At this writing, there are gambling opportunities in all states except Utah and Hawaii with 443 commercial casinos operating in 11 states, plus racetrack casinos in six states.[11] Indian casinos comprise the fastest growing segment with 354 casinos in 28

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[5] National Gambling Impact Study Commission, "Final Report" Sec. 4, p..5.
[6] University of Michigan study, 1976, cited in NGISC Final Report, Part 4, p.6.
[7] NGISC, Part 4, p. 4
[8] National Center for Responsible Gambling http://www.ncrg.org/index.cfm 08/20/04
[9] Ibid.
[10] "The (NIGC) commission's study included more than a dozen recommendations to combat gambling addiction, ranging from refusing service to any customer exhibiting signs of problem gambling to posting hot line numbers in casinos. More than four years after the study's release, the gambling industry has disregarded most of the guidelines, Whyte said. Social, problem and pathological gamblers differ in their ability to control themselves." Keith Whyte, executive director of the National Council on Problem Gambling. http://www.thenipesonline.com/articles/2003/09/01/news/top_news/ccb0d9117d1039786259d93b9b507ab0.txt
[11] American Gaming Association "State of the States survey, 2004" p. 4

states.[12] With government sanction and sponsorship of gambling, the vice has been gaining in prevalence and acceptability.[13]

Gaining, too, are the number of addicts and their associated social costs.

MATURE MARKETS provide a reasonable reference for what all of America could become if the trend were to continue. Australia has saturated its market with Electronic Gambling Machines, (EGM's) which they call "pokies," and parts of Canada have also had extensive experience with gambling. In the United States, Nevada and the cities of Las Vegas and Atlantic City provide some frame of reference.

Probable pathological gambling in Nevada in 2000 measured 3.5% and the prevalence of problem gambling added 2.9% for a total of 6.4%. Other cited states ranged from 2.1% in North Dakota in 2000 to 4.9% in Mississippi in 1996. [14]

The American Psychiatric Association notes the diversity of pathological gambling rates in its diagnostic manual. "Community studies estimate the lifetime prevalence of pathological gambling to range from 0.4% to 3.4% in adults, although prevalence rates in some areas (e.g., Puerto Rico, Australia) have been reported to be as high as 7%. Higher prevalence rates, ranging from 2.8% to 8% have been reported in adolescents and college students."[15] Those differences illustrate the effects of demographics, proximity and diversity of gambling opportunities.

Researchers at the National Opinion Research Center combined data from a national telephone survey with data from a casino patron survey and found that adults living within 50 miles of a casino had double the probability of pathological or problem gambling.[16]

Poverty, lower education level and other social and economic factors can affect gambling addiction, and they can be accelerated by the proximity of gambling outlets.

"Neighborhood disadvantage shows . . . a strong positive effect on frequency of gambling and pathological or problem gambling. For every increase of one standard

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[12] http://www.indiangaming.org/library/index.html#facts

[13] "American Gaming Association State of the States survey, 2003" p. 3

[14] Volberg, Rachel A., PhD "Gambling and Problem Gambling in Nevada: Report to the Nevada Department of Human Resources," p. iii.

[15] DSM-IV, American Psychiatric Association, P.673.

[16] Welte, John W.; Wieczorek, William F.; Barnes, Grace M.; Hoffman, Joseph H. Reference cited in "The Relationship of Ecological and Geographic Factors to Gambling Behavior and Pathology" p. 7.

deviation in neighborhood disadvantage the odds of being a pathological or problem gambler increase by 69%. . . . A casino within 10 miles of home is associated with a 90% increase in the odds of being a pathological or problem gambler."[17]

It is clear that establishing casinos in areas already troubled with alcohol and poverty will have a devastating effect on an already struggling population.

In short, the presence of gambling opportunities is likely to double the prevalence of problem and pathological gamblers, and the addition of other contributing factors may increase the addiction rate exponentially.

For example, 93% of a group of Southeast Asian refugees in a Connecticut study had gambled in the previous two months, and more than half were said to be pathological gamblers.[18] Clear across the nation, casinos find 60% to 70% of table game customers and 20% to 25% of their slot players are Asians, despite the fact they comprise only 9% of the population.[19]

TECHNOLOGY is also driving addiction rates as gambling venues compete to attract customers. The most "enjoyable" games may be the most addictive.

In recent years, casinos and lotteries have turned from table games and ticket sales to slot machines and Video Lottery Terminals (another form of EMG's). Space and labor-intensive table games used to comprise 60% of casino revenue, but slots have taken over, producing about 70% of gaming revenue.[20]

Women appear to be generally more attracted to machines than to table games and addiction rates among women are increasing accordingly. Gamblers who participate with electronic machines are becoming addicted much more quickly. One of the most recent studies show EGM gamblers arrive at the pathological level in 1.08 years vs. 3.58 years with more "conventional" forms of table and racetrack gambling. Thus, electronic gambling devices have been often labeled as the "crack cocaine" of the industry. [21]

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[17] Welte, et al; P15

[18] http://www.newhartambherald.com/site/news.cfm?newsid=19057018&BRD=1641&PAG=461&dept_id=191198&rfi=6

[19] http://www.sacbee.com/content/news/story/7287160p-8231825c.html

[20] Christiansen Capital Advisors, http://www.cca-i.com/Primary%20Navigation Online%20Data%20Store Free%20Research 2002%20Revenue%20by%20Industry.pdf

[21] Breen, Robert B. and Zimmerman, Mark; "Rapid Onset of Pathological Gambling in Machine Gamblers" p.2

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The effects of gambling addiction on individuals and society have been repeatedly calculated and demonstrated.

The percentage of those afflicted should not be considered "small." Even at the minimalist "background" level of under one percent, gambling addiction, not including problem gamblers, would still be twice as prevalent as cancer among Americans. [22] In mature gambling markets, more than 5% of the population will develop some problem with gambling, a prevalence rate about five times that of schizophrenia and more than twice that of cocaine addiction. [23]

Gambling exploded in Canada during the 1990's as it did in the United States, but Canada has funded more extensive research. A massive study recently completed there shows problem and addicted gamblers comprise 2.8% of the entire Canadian Population over 15 years of age! Three fourths of Canadians gambled during the year, and 6% of those are considered "at risk" or "problem" gamblers!

The study also confirms an accelerated level of addictions for those using gambling machines, and affirms the devices have become the "crack cocaine" of gambling for Canadian citizens.

Problem gamblers in Nova Scotia comprise 16% of all those who play the machines on a regular basis, which translates to approximately 0.92% of all adults in the province. This group of gamblers contributes just over half of the net revenue for video lottery gambling and, at any given time, and will comprise almost half of all those sitting in front of video lottery terminals in Nova Scotia.[24]

Percentages from problem gamblers appear to vary with market saturation, technology, gambling genre and demographics.

Dr. Henry Lesieur, president of the Institute for Problem Gambling compiled existing surveys from seven states and provinces. His study concluded that 30.4 percent of gambling revenues in those markets came from problem and pathological gamblers.

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[22] American Cancer Society: Most recent year's prevalence rates are just under 0.5%
http://www.cancer.org/docroot/STT/stt_0.asp

[23] Petry, Nancy, Ph.D., University of Conn.
http://www.uche.edu/oconn/features_stories/stories03/feature_gambling2.html

[24] Nova Scotia Department of Health Nova Scotia "Video Lottery Players' Survey 1997/98 Highlights" p. 3

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Those surveys included data from lotteries, casinos, pari-mutuel wagering and sports betting.[25]

These and other studies[26] illustrate that problem and pathological gamblers will contribute 30 to 50% of gambling losses in a mature gambling market.

Particularly troubling are problem and addictive gambling rates among America's youth and military. A study of America's 11- to 18-year-olds showed a 4 to 7% prevalence rate of problem gambling behaviors.[27]

The Worldwide Survey of Substance Abuse and Health Behaviors Among Military Personnel[28] is a large-scale study that screened for gambling-related problems among America's military personnel. The survey reported that in 1992 and 1998, 7.1% and 8.1%, respectively, of all Department of Defense personnel had at least one gambling-related problem, and 2% exhibited behaviors suggestive of pathologic gambling.

HEALTH ISSUES associated with problem and compulsive gambling are serious and complex. A recent Canadian study found, "Half of all problem gamblers reported that their gambling caused difficulties in relationships with family or friends. Four in 10 obsessive gamblers (42%) reported a high level of stress in their life, compared with 23% of gamblers who reported no problems.

"About 18% of problem gamblers reported that they had contemplated suicide in the year prior to the survey, six times the proportion (3%) of non-problem gamblers.

"The insidiousness of excess gambling is revealed by the 27% of moderate-risk gamblers and 64% of problem gamblers who wanted to stop gambling in the year prior to

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[25] Lesieur, Henry R., "Measuring the Costs of Pathological Gambling," Revision of the presentation to the Tenth International Conference on Gambling and Risk Taking," Montreal, Quebec, June 1997.

[26] Also see E. L. Grinols, E.L. and Omorov J. D., "Development or Dreamfield Delusions?: Assessing Casino Gambling's Costs and Benefits," *The Journal of law and Commerce*, University of Pittsburgh School of Law, Fall 1996, pp.58-60, which calculates 52% of revenues from problem and pathological gamblers. Also, University of Minnesota researchers calculated that 2% of gamblers account for 63 percent of all the money legally wagered in Minnesota. Tice, D. J. "Big Spenders," *Saint Paul Pioneer Press* (Special Reprint Section), February 1993.

[27] Proimos J, DuRant RH, Pierce JD, Goodman E. "Gambling and other risk behaviors among 8th- to 12th-grade students." *Pediatrics* 1998;102:e23. as cited in *American Family Physician*, Feb. 1, 2000.

[28] Bray RM, Kroutil LA, Luckey JW, Wheeless SC, Iannacchione VG, et al. "1992 worldwide survey of substance abuse and health behaviors among military personnel." Research Triangle Park, N.C.: Research Triangle Institute, 1992. as cited in *American Family Physician*, Feb. 1, 2000.

the survey, but believed they could not. About 56% of problem gamblers had tried to quit, but could not.[29]

The Canadian study validates findings in the United States. Suicide, for example, is a link almost universally denied by the gambling industry, but a Nevada study of addicted gamblers revealed, "Between 20% and 30% of the respondents made actual suicide attempts (we could not assess how many were successful). No other addictive population has had as high a prevalence for attempts."[30]

The national publication of American family physicians said problem gambling victims may present "various gastrointestinal symptoms, low back pain, chest pain, impotence, headaches and vague illnesses. When patients are in the desperation phase of the addiction, they may present with symptoms of anxiety or depression. Pathologic gambling can have devastating effects on patients and their families, and may be the root of marital, family, sexual and financial problems. Some preliminary studies are starting to look at chemical markers for problem gambling, but the clinical use of such markers is limited. Studies have implicated the central noradrenergic system, the serotonin system and platelet monoamine oxidase activity in the pathophysiology of this condition."[31]

Gambling addiction appears to be very difficult to overcome. A study cited by the Harvard addiction scholars in their monthly publication noted, "Of the 80 participants followed for 12 months, 92% experienced relapse. Optimism about winning was the most frequently reported precipitant of relapse for both genders."[32]

In another review, the group reported, "Recent research reports that disordered gambling treatment providers experience patient drop-out rates between 40% and 80%"[33]

Financial and other stresses related to problem gambling take a toll on families. Government Accounting Office analyses prepared for the NGISC found 53.5% of

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[29] 2002 Canadian Community Health Survey, Cycle 1.2 on Mental Health and Well-being http://www.statcan.ca/Daily/English/031212/d031212c.htm

[30] Schwer, R. Keith; Thompson, William N.; Nakamuro, Daryl; "Beyond the Limits of Recreation: Social Costs of Gambling in Southern Nevada." p. 4

[31] Pasternak, Andrew V., IV, MD, "Pathologic Gambling: America's Newest Addiction?" *American Family Physician*, V. 56, No. 5, 1997.

[32] Hodgins, D., & el-Guebaly, N. (2004). "Retrospective and Prospective Reports of Precipitants to Relapse in Pathological Gambling." *Journal of Consulting & Clinical Psychology*, 72(1), 72-80. quoted in The WAGER Volume 9 Number 13 - March 31, 2004 "In the Mood for a Relapse?" www.thewager.org

[33] *The Wager*, Volume 9 Number 24 - June 16, 2004 http://www.thewager.org/index.htm

pathological gamblers reported having been divorced, while only 18.2 percent of non-gamblers were divorced.[34]

INCREASING crime is a well-documented companion of legalized gambling. Crime predictably rises three to four years following the opening of a casino as problem and pathological gamblers begin to deplete their resources.[35] Gamblers who have "bottomed out" their own resources frequently begin borrowing money from family, friends and business relationships. This "borrowing" frequently takes the form of theft. Gamblers often feel they are only borrowing other people's money until they can win it back.

Crime may drop slightly in communities with new casinos for the first few months or years, but Atlantic City is typical of the longer view. Three years after the introduction of casinos, there was a tripling of total crimes. Per capita crime in Atlantic City jumped from 50th in the nation to first.[36] Comparing Crime rates for murder, rape, robbery, aggravated assault, burglary and motor vehicle theft reveals Nevada is the most dangerous place to live in the United States.[37]

According to a 1990 Maryland Department of Health and Mental Hygiene survey, 62% of problem gamblers in treatment had committed illegal acts as a result of their gambling, 80% had committed civil offenses, and 23% were charged with criminal offenses. A similar study of nearly 400 members of Gamblers Anonymous showed that 57% admitted stealing to finance their gambling. On average they stole $135,000 each, for a total of more than $30 million.

The National Gambling Impact Study Commission's final report noted that among those who did not gamble, only 7% had ever been incarcerated. In contrast, more than three times this number, 21.4%, of individuals who had been pathological gamblers

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[34] GAO stats prepared for NGISC, cited in Grinols, Earl L. *Gambling in America, Costs and Benefits*, p.145.
[35] Grinols, Earl L., *Cutting the Cards and Craps: Right Thinking About Gambling Economics*, p.11
[36] Widgery, Robin, President of Social Systems. "Warning: Legal Gambling is a Costly Game." May 23, 1994 edition.
[37] Morgan Quitno Press, "Determining the Safest and Most Dangerous State Rankings" http://www.governmentguide.com/community_and_home/where_i_live/factors.adp

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at any point during their lifetime had been incarcerated.[38] That's TRIPLE the incarceration rate of a non-gambling community.

Oregon corrections officials have determined gambling is a significant motivator in criminal activity among the state's women. To help rehabilitate female convicts, the state penal system is launching pilot addiction treatment programs. The correctional system there finds 20-30% of female convicts have histories of gambling problems.[39]

BANKRUPTCY is another significant devastation in the wake of gambling expansion. Again, this phenomenon trails a few years behind casino openings because it takes gamblers some time to deplete their resources. In the most recent nationwide survey of every county in the nation, Creighton University researchers found personal bankruptcies rates are 100% higher in counties with casinos than in counties without casinos.[40]

Hired by the banking industry to help understand America's increasing bankruptcy rates, SMR Research Corporation determined in the late 1990's that legalized gambling was not only the fastest growing cause, but also the third leading cause of individual bankruptcies in the United States. [41]

More recently, SMR sites Dr. Nancy Petry's research, "UConn Health Center found that about one-third of all people in Connecticut who seek treatment for problem gambling have already filed for bankruptcy or are in the process of filing. On average, problem gamblers spend more than $2,000 per month gambling. Some have legal problems stemming from credit card fraud or bounced checks. And their troubles spill over to their families. Each problem gambler may affect the lives of eight to 10 other people."[42]

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[38] Grinols, Earl L., "Cutting the Cards and Craps, right thinking about gambling economics." 2001, quoting Lesieur, Henry, "Costs and treatment of pathological gambling," *The Annals of the American Academy of Political and Social Science* (Gambling: Socioeconomic Impacts and Public Policy, Frey JH, special editor) 556: 153-171.

[39] www.kgw.com/sharedcontent/APStories/stories/D837H1M01.html

[40] Gross, Ernie and Morse, Edward. "The Impact of Casio Gambling on Bankruptcy Rates: A County Level Analysis.) p. 1

[41] Kindt, John Warren and Palchak, John K.I, "Legalized Gambling's Destabilization of U.S. Financial Institutions and the Banking Industry: Issues in Bankruptcy," Credit and Social Norm Production, *Bankruptcy Developments Journal* V. 19, No. 1, P.29.

[42] Petry

Besides losing everything they own, including homes, vehicles, retirement funds and children's' college education accounts, addictive gamblers are likely to mass significant debts leading into bankruptcy. Families who could have funded their own futures begin to stress social, medical and welfare programs in states where they reside.

These costs clearly encumber the greater society, including the members who do not gamble at all. Based on extensive studies of original research, social costs for problem and pathological gamblers average between $14,006 and $22,077 (depending whether one uses the lowest or highest estimated costs.) [43]

Thus, the costs for gambling addiction are born by the entire community, including the one-third of Americans who do not gamble at all.[44]

Though many Americans consider gambling to be acceptable behavior, it is unlikely that the general population understands the costs in either dollars or human suffering associated with the activity. Though the suffering may be born by a minority, the overall economic costs are shared by all.

For individuals and the society alike, when the hook is set, the fun of games is over.

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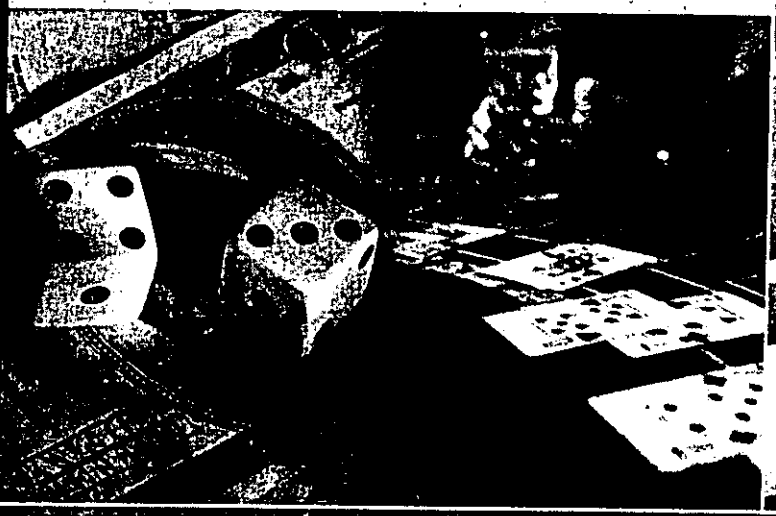
[43] Grinols, p. 14.

[44] March 24, 2004 Gallup Polls, March 24, 2004 "Gambling a Common Activity for Americans" http://www.gallup.com/content/Default.aspx?ci=11098

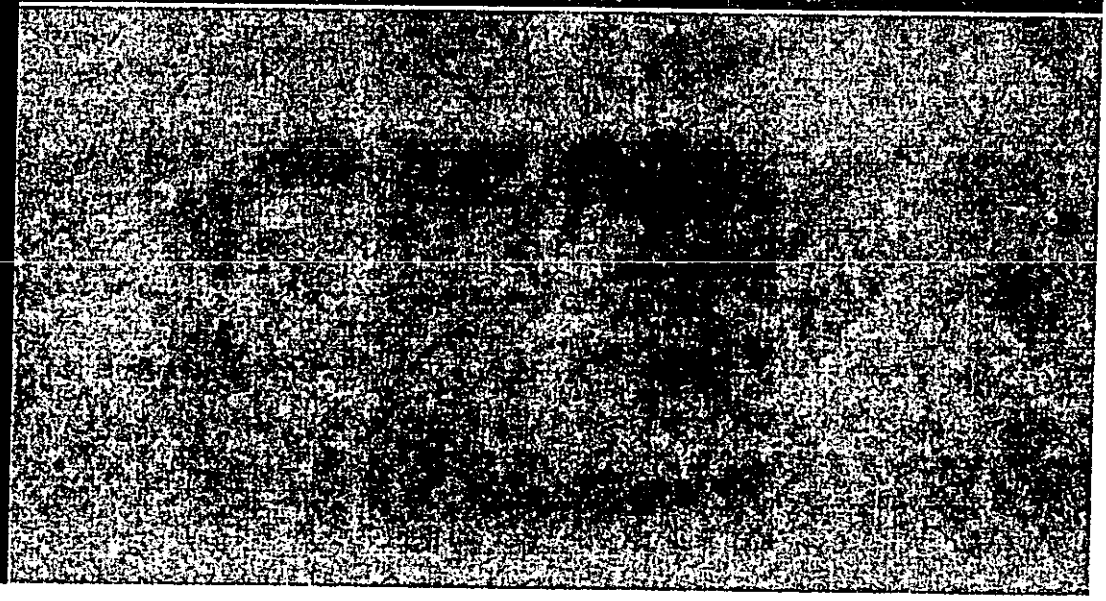
JULY 04

NIJ

Research for Practice



Gambling and Crime Among Arrestees: Exploring the Link



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JULY 04

Gambling and Crime Among Arrestees: Exploring the Link

This Research for Practice is based on a final report submitted to the National Institute of Justice, *Pathological Gambling in Arrestee Populations* (NCJ 196677) by Richard C. McCorkle. The final report is available electronically from the National Criminal Justice Reference Service Web site, at http://www.ncjrs.org/pdffiles1/nij/grants/196677.pdf

Findings and conclusions of the research reported here are those of the author and do not reflect the official position or policies of the U.S. Department of Justice.

This research was supported by National Institute of Justice grant number 99-IJ-CX-K011 awarded to the University of Nevada, Las Vegas.

NCJ 203197

ABOUT THIS REPORT

Is there a connection between problem gambling and crime? Do compulsive or pathological gamblers resort to criminal activity to pay their debts and finance their bets? To examine the link between problem gambling and crime, researchers interviewed arrestees in Las Vegas and Des Moines to probe their gambling behavior and its relationship to their crimes.

What did the researchers find?

Using the Arrestee Drug Abuse Monitoring (ADAM) Program as a survey vehicle, researchers found significantly more problem gambling among arrestees than in the general population. The arrestees who were interviewed had high levels of criminal activity related to pathological gambling.

- The percentage of problem or pathological gamblers among the arrestees was three to five times higher than in the general population.
- Nearly one-third of arrestees identified as pathological gamblers admitted having committed robbery in the previous year. Approximately 13 percent had assaulted someone for money. Pathological gamblers were much more likely to have sold drugs than other arrestees.

Limitations of the study

The study was conducted among arrestees in only two U.S. cities—Las Vegas and Des Moines. Las Vegas likely has the highest level of residents and visitors who gamble of any major U.S. city. Des Moines was chosen to represent a midsize U.S. city that had more typical levels of gambling.

Who should read this study?

Corrections administrators, drug and gambling treatment providers, State-level government policymakers.

Richard C. McCorkle

Gambling and Crime Among Arrestees: Exploring the Link

The spread of legalized gambling in the United States over the past 15 years has sparked considerable political controversy, public debate, and research (see "How Big Is Gambling?"). Many policymakers are concerned that widespread gambling, especially what social scientists call compulsive or pathological gambling, will lead to increased crime, drug and alcohol use, and other social or psychological problems. They worry that gambling and its consequences will destroy individual lives, wreck families, and weaken societal institutions. Another concern is that many compulsive or pathological gamblers will turn to drug sales or other crimes to finance their habit and pay their debts.

Unfortunately, what little we know about the social and psychological effects of gambling is derived from studies of treatment populations or the general public. To understand the relationship between gambling and crime, more needs to be known about the gambling habits of people who have been arrested and jailed or sentenced to prison. Their gambling and criminal problems may well be more chronic and severe than those of other subpopulations. And we know little about the nature and consequences of their gambling activities, or the extent to which their gambling is related to the crimes for which they have been jailed.

About the Author

Dr. Richard C. McCorkle is associate professor at the University of Nevada, Las Vegas, and chair of the criminal justice department. He was the director of the Las Vegas Arrestee Drug Abuse Monitoring (ADAM) Program.

Exploring the connection

To better understand and deal with the relationship between gambling and criminal activity, researchers sought to answer several questions about the arrestee subpopulation:

- How many arrestees are compulsive or pathological gamblers and how many pathological gamblers are arrested for felony and misdemeanor offenses?
- Do compulsive or pathological gamblers fit any age, gender, marital status, or other profile?

- How does the criminal activity of compulsive or pathological gamblers compare with that of less serious gamblers or nongamblers?
- What proportion of crimes committed by compulsive or pathological gamblers is linked to their gambling activities?
- What proportion of compulsive or pathological gamblers uses alcohol, illegal drugs, or other substances to excess? How does that affect the nature and extent of their gambling, as well as their criminal activity?

This Research for Practice is based on a study that addressed those questions. Researchers interviewed arrestees in jail in two U.S. cities—Las Vegas, Nevada, and Des Moines, Iowa. They initially contacted 3,332 arrestees. Completed interviews and urine samples were provided by 2,307 (69 percent) of those contacted. Ninety percent of those who were interviewed and provided urine samples also answered questions that probed their gambling behavior and its relationship to their crimes. The interviews for this study were conducted between fall 1999 and winter 2001.

Las Vegas was chosen because it probably has more residents and visitors who gamble than any other major metropolitan area in the United States. If a relationship exists between gambling and crime and/or drug and alcohol use, it should be clearly recognizable in Las Vegas. Des Moines, on the other hand, represents a more typical midsize U.S. city. Both Las Vegas and Des Moines participate in the Arrestee Drug Abuse Monitoring (ADAM) Program, which was operating in 35 U.S. cities when the research was conducted. ADAM collects data that allow researchers to develop national and local profiles of drug use among people who have been arrested and jailed for whatever reason.

Classifying gambling types

For the purpose of this study, the arrestees who were interviewed were divided into five types based on their answers to a series of questions designed to determine the nature and extent of

their gambling: nongamblers and low-risk, at-risk, problem, and compulsive or pathological gamblers. Gamblers are classified by types based on a set of 10 criteria developed by the American Psychiatric Association (APA) and published in APA's *Diagnostic and Statistical Manual (DSM–IV)*. These criteria are preoccupation (e.g., reliving past gambling experiences or planning future ventures), tolerance (needing to wager more money to generate the same "buzz"), lying, withdrawal (restless or irritable when attempting to cut down or stop gambling), escape, chasing (returning to get even for a previous day's losses), loss of control, illegal acts, risked relationships, and bailout (relying on others to provide money to relieve a desperate financial situation caused by gambling). Gamblers must meet at least five of these criteria to be classified as pathological.

The overwhelming majority of Americans fall into the nongambler or low-risk groups. Most either do not gamble at all or do not gamble seriously enough to have social, legal, or economic problems as a result of their gambling. In general, low-risk gamblers are those who meet few if any of APA's criteria. They tend to gamble for social or recreational purposes, usually betting such small amounts that they rarely suffer significant losses. Thus, they have little or no reason to turn to crime to finance their gambling.

Defining problem gambling. Compulsive or pathological gamblers, the subject of this study, are those who sooner or later suffer heavy losses (often $100 or more at a

How Big Is Gambling?

There is no doubt about gambling's reach today. What once appeared to be largely confined to casinos, the quiet off-track bookie, bingo halls, and the occasional Friday night poker game has become a national pastime. By 1993, more than half of all Americans reported having gambled in a casino at least once. By 1996, Americans were wagering $47.6 billion a year—more money than movies, sporting events, theme parks, cruise ships, and the recording business generated combined. By 1997, nearly 500 gambling sites were on the Internet.

The number of States with legalized gambling has mushroomed. In 1978, only two States—Nevada and New Jersey—had casinos. That number grew to 27 by 1998. Twenty-three States now have Indian-owned casinos on tribal reservations within their boundaries. Seven States now permit betting on riverboat casinos. Additionally, State-run lotteries operate in 37 States and the District of Columbia. In fact, only Hawaii and Utah have no form of legalized gambling. As States and localities seek solutions to burgeoning budget deficits, legalized gambling may become even more pervasive.

time), borrow or steal money or write bad checks to pay gambling debts, avoid or cannot pay their nongambling bills, and lie to their families, friends, and therapists about the extent of their gambling. Not only do they lie, but compulsive or pathological gamblers often rely on others to bail them out of their gambling debts. They have risked and sometimes lost friendships, marriages, jobs, and careers because of gambling. They may have tried to curtail or stop their gambling, but failed. Although the numbers have differed over the years as research methodologies and definitions have changed, the most recent studies show that about 2.5 million Americans are pathological gamblers. Another 3 million Americans are problem gamblers. The lifetime prevalence rate for pathological and problem gambling is estimated as 1.2 percent and 1.5 percent, respectively.

Challenging stereotypes. Compulsive gamblers are often perceived by the public as largely middle-class men whose gambling habits lead them to steal from their families, friends, and/or employers to finance their activities. They are seen as unfortunate individuals who commit such white-collar crimes as larceny, theft, embezzlement, and fraud when their gambling losses become too great to pay through their regular sources of income. Although many compulsive or pathological gamblers fit this image, surveys of the general population paint a somewhat different picture. In fact, general surveys show that pathological gamblers are most likely to be nonwhite males, who are young, less well educated, and unmarried.

Again, although many arrestees who are compulsive or pathological gamblers fit the two images described above, the study found some differences. Unlike the general population, women arrestees are as likely to have gambling problems as men. Marital status and educational attainment also seem to make little or no difference. Arrestees start gambling at a later age than pathological gamblers in the general population, especially men. Male pathological gamblers typically begin gambling as teenagers and then slowly, often over a decade or more, develop a serious gambling habit. Women who become

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compulsive or pathological gamblers generally begin gambling later than men, usually in their 20s. Once they become serious gamblers, however, women develop a dependency quickly, typically within 5 years. Both men and women arrestees who are compulsive or pathological gamblers tend to be from lower social and economic classes than those identified in general surveys, more often exhibit sociopathic traits, and frequently start as criminals and only later become gamblers.

Odds are there's a link

As noted earlier, compulsive or pathological gamblers represent only a small percentage of the general population. Yet those who meet APA's definition for pathological gambling accounted for slightly more than 1 in 10 arrestees surveyed in Las Vegas and about 1 in 25 in Des Moines. Together, 14.5 percent of arrestees in Las Vegas and 9.2 percent of those in Des Moines were either problem or pathological gamblers—three to five times the percentage in the general population.

Perhaps more telling, more than one-third of the compulsive or pathological gamblers arrested (34.6 percent in Las Vegas and 37.5 percent in Des Moines) had been arrested on at least one felony count. Surprisingly, though, pathological gamblers were no more likely to be arrested for property or other white-collar crimes (larceny, theft, embezzlement, and fraud) than nongamblers and low-risk and at-risk gamblers. Nor were they more likely to be arrested on drug charges, including selling illegal drugs. Rather, they were most likely to be arrested for such offenses as probation or parole violations, liquor law violations, trespassing, and other public order offenses.

Link to robbery, assault. Still, more than 30 percent of pathological gamblers who had been arrested in Las Vegas and Des Moines reported having committed a robbery within the past year, nearly double the percentage for low-risk gamblers. Nearly one-third admitted that they had committed the robbery to pay for gambling or to pay gambling debts. In addition, about 13 percent said they had assaulted someone

to get money; one in four assaults reported by pathological gamblers was directly or indirectly related to gambling. By comparison, low-risk, at-risk, or problem gamblers reported committing gambling-related robberies infrequently.

Drug dealing. Although they were no more likely to have been arrested on drug charges, compulsive or pathological gamblers were significantly more likely to have sold drugs than arrestees who fit the other gambling types. More than one-third of pathological gamblers said they had sold drugs, compared to 19.2 percent of problem gamblers, 20.2 percent of at-risk gamblers, and 16.1 percent of low-risk gamblers. The differences in those numbers were even greater among gamblers who reported having sold drugs specifically to fund their gambling or pay gambling debts. One in five pathological gamblers who had been arrested admitted having sold drugs to finance their gambling, compared to 4 percent among problem gamblers and less than 2 percent among at-risk gamblers.

Using speed. Not surprisingly, a significant proportion of compulsive or pathological gamblers tested positive for one or more illegal drugs. Arrestees' urine samples were screened for hallucinogens such as marijuana, opiates such as heroin, cocaine, and methamphetamine ("speed"). Overall, 60 percent of arrestees interviewed in Las Vegas and 56 percent of those in Des Moines had at least one illegal drug in their urine samples. But pathological gamblers were no likelier to test positive for drugs than were other gambler types. Nor were there any significant differences in which drugs were found, with one exception. Pathological gamblers were more likely to test positive for methamphetamine, a drug taken as an "upper" to keep users alert and awake during hours- or even days-long gambling binges. Beyond drugs, nearly two-thirds of the pathological gamblers reported that they drank alcohol to the point of dependence. In fact, only 3.3 percent of all arrestees interviewed for this study who were pathological gamblers reported no drug or alcohol problems.

Again, not surprisingly, the study found a relationship between pathological gambling and crime and/or drug

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and alcohol use. More than 43 percent of those interviewed who acknowledged pathological gambling and substance use also said they had committed an assault during the previous year. Nearly 40 percent had committed more than one theft in the past year, four times the number of arrestees without either a gambling or a substance use problem. Approximately 38 percent of arrestees with both gambling and substance use problems reported having sold drugs, nearly eight times the number of those with no gambling or substance use problem.

Pathological gamblers reported that, on average, they committed their first crime around age 21, developed an alcohol problem by about 23 or 24, and began to have gambling problems in their mid- to late 20s. Gambling began after the onset of criminal and substance problems, not before. Nonpathological gamblers who said they had similar substance use problems and criminal activity reported a similar average age of onset for each of those problems. Men who were pathological gamblers were more likely to have committed a serious crime at an earlier age than women who were pathological gamblers. Also, only 13 percent of pathological gamblers who admitted having a gambling problem said they sought treatment. And only 10 percent said they attended Gamblers Anonymous or similar meetings.

Policy implications

A number of conclusions and policy recommendations can be drawn from the study findings. Arrestees who report that they are or can be defined by their responses to interviews or questionnaires as compulsive or pathological gamblers are drawn disproportionately from the social and economic fringes of society. As legalized gambling spreads to States and localities that do not now permit gambling or have it only on a small scale, these jurisdictions must prepare to deal with the social ills engendered by problem gambling.

Criminals and those who use alcohol and illegal drugs to excess appear to be at greater risk for becoming compulsive or pathological gamblers. Few are likely to receive or seek treatment for

their addictions. Gambling, especially when accompanied by substance use, is a prime motivation for many but not all of their crimes.

States and localities may identify individuals with a gambling problem by using existing psychological tests (or abbreviated versions of such tests suitable to intake interviews) to screen arrestees. Today, however, few States or localities have screening programs in detention centers, jails, or prisons. Arrestees are often booked and released shortly thereafter. If at least some arrestees with a real or potential gambling problem can be identified, they can be offered treatment. Early treatment might help reduce the number who become repeat offenders.

States and localities also may want to develop treatment programs in detention centers, jails, and/or prisons. Such programs might include group therapy sessions similar to those offered by Gamblers Anonymous. Such sessions could be incorporated into existing programs for illegal drug or alcohol use. To reduce the chances of relapses once prisoners are released, States and localities may develop referral systems that offer former arrestees and inmates the names of agencies and programs that offer continued treatment and support.

Finally, being behind bars is likely to worsen the gambling habits of many compulsive or pathological gamblers. Although it is officially banned, gambling is difficult to control in prisons and jails. It is a diversion from the monotony of jail. As a result, jailed arrestees and prison inmates may accrue significant gambling debts behind bars that can only be paid off by committing further crimes after their release. Authorities could provide increased attention to gambling behaviors in detention centers, jails, and prisons.

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The National Institute of Justice is the research, development, and evaluation agency of the U.S. Department of Justice. NIJ provides objective, independent, evidence-based knowledge and tools to enhance the administration of justice and public safety.

NIJ is a component of the Office of Justice Programs, which also includes the Bureau of Justice Assistance, the Bureau of Justice Statistics, the Office of Juvenile Justice and Delinquency Prevention, and the Office for Victims of Crime.

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of their slot players are Asians, despite the fact they comprise only 9% of the population. [9]

- **Electronic Gambling Machines may be the most addictive.**
  Gamblers who participate with electronic machines are becoming addicted much more quickly. One of the most recent studies show EGM gamblers arrive at the pathological level in 1.08 years vs. 3.58 years with more "conventional" forms of table and racetrack gambling. Thus, electronic gambling devices have been often labeled as the "crack cocaine" of the industry. [10]

- **It is neither a small number nor a small problem**
  The percentage of those afflicted by compulsive gambling should not be considered "small." Even at the minimalist "background" level of under one percent, gambling addiction, not including problem gamblers, would still be twice as prevalent as cancer among Americans. [11] In mature gambling markets, more than 5% of the population will develop some problem with gambling, a prevalence rate about five times that of schizophrenia and more than twice that of cocaine addiction. [12]

- **Problem gamblers are biggest victims**
  Problem and pathological gamblers comprise a sharply disproportionate share of gambling losses, contributing 30 to 50% of all gambling losses. They also often comprise HALF the gamblers participating at any given time.

  Problem gamblers in Nova Scotia comprise 16% of all those who play the machines on a regular basis, which translates to approximately 0.92% of all adults in the province. This group of gamblers contributes **just over half of the net revenue** for video lottery gambling and, at any given time, and will comprise **almost half of all those sitting in front of video lottery terminals** in Nova Scotia. [13]

  Dr. Henry Lesieur, president of the Institute for Problem Gambling compiled existing surveys from seven states and provinces. His study concluded that **30.4 percent of gambling revenues in those markets came from problem and pathological gamblers**. Those surveys included data from lotteries, casinos, pari-mutuel wagering and sports betting. [14]

- **Youth are more troubled and addicted than adults.**
  The "acceptance" of gambling by government and the society's adults have led to a devastating increase in problem gambling among minors. Many studies have confirmed the problem, including study of America's **11- to 18-year-olds which showed a 4 to 7% prevalence rate of problem gambling** behaviors. [15]

- **America's military in danger.**
  The Worldwide Survey of Substance Abuse and Health Behaviors Among Military Personnel [16] is a large-scale study that screened for gambling-related problems among America's military personnel. The survey reported that in 1992 and 1998, 7.1% and 8.1%, respectively, of all Department of Defense personnel had at least one gambling-related problem, and 2%

exhibited behaviors suggestive of pathologic gambling.

- **Gambling problems become health and family problems**

A recent Canadian study found, "Half of all problem gamblers reported that their gambling caused difficulties in relationships with family or friends. Four in 10 obsessive gamblers (42%) reported a high level of stress in their life, compared with 23% of gamblers who reported no problems. [17]

Financial and other stresses related to problem gambling take a toll on families. Government Accounting Office analyses prepared for the NGISC found **53.5% of pathological gamblers reported having been divorced,** while only 18.2 percent of non-gamblers were divorced. [18]

- **Suicide rates dramatic among problem gamblers**

"About 18% of problem gamblers reported that they had contemplated suicide in the year prior to the survey, six times the proportion (3%) of non-problem gamblers.

"The insidiousness of excess gambling is revealed by the 27% of moderate-risk gamblers and 64% of problem gamblers who wanted to stop gambling in the year prior to the survey, but believed they could not. About 56% of problem gamblers had tried to quit, but could not. The Canadian study validates findings in the United States. Suicide, for example, is a link almost universally denied by the gambling industry, but a Nevada study of addicted gamblers revealed, "Between 20% and 30% of the respondents made actual suicide attempts (we could not assess how many were successful). No other addictive population has had as high a prevalence for attempts." [19]

- **Gambling addiction is extremely hard to overcome.**

A typical study cited by the Harvard addiction scholars in their monthly publication noted, "Of the 80 participants followed for 12 months, 92% experienced relapse. Optimism about winning was the most frequently reported precipitant of relapse for both genders." [20]

In another review, the group reported, "Recent research reports that disordered gambling treatment providers experience patient drop-out rates between 40% and 80%" [21]

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The Wager, Volume 9 Number 24 - June 16, 2004 http://www.thewager.org/index.htm

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: March 18, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 3/25/09

The JUDICIARY Committee considered: **HOUSE JOINT RESOLUTION NO. 3**

Proposing an amendment to the Constitution of the State of Alaska requiring an affirmative vote of the people before any form of gambling for profit may be authorized in Alaska and setting other requirements.

HJR 3 CONST.AM:NO GAMING WITHOUT VOTER APPROVAL

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
006	2	✓		

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LEG				✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Coghill	X			
	Gattheny			–	
	Dyson	X			
Chair:	KAUKUTS	X			
Chair:					

HOUSE COMMITTEE REPC T

(7)
Date Referred to Committee: January 20, 2009

FURTHER REFERRALS: Judiciary
Finance

Date of Committee Action: 3-17-09

The STATE AFFAIRS Committee considered:

HOUSE JOINT RESOLUTION NO. 3

Proposing an amendment to the Constitution of the State of Alaska requiring an affirmative vote of the people before any form of gambling for profit may be authorized in Alaska and setting other requirements.

HJR 3 CONST.AM:NO GAMING WITHOUT VOTER APPROVAL

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
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NEW FISCAL NOTES
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
Legis				↘

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Gatto	✓			
Pam K Seaton	SEATON	X			
	LYNN	X			
Mike Gruenberg	Gruenberg	ABSENT		✓	
Peggy Wilson	WILSON	↘			
Bill Peterson	PETERSEN	✓			
Craig Johnson	JOHNSON	✓			
Chair: Bill Thomas	Lynn	X			
Chair:					

3039

HJR

8

Alaska State Legislature

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Member
House Finance Committee

Representative Mike Kelly

House District 7

HJR 8

"An Act proposing amendments to the Constitution of the State of Alaska limiting appropriations from certain mineral revenue, relating to the balanced budget account, and relating to an appropriation limit."

The largest contributor to our state's unrestricted revenue is also the most volatile component. 85-90 percent of unrestricted revenues for FY '07 through FY'10 will come from oil. Since 1988 Alaska North Slope crude oil production has declined by 64% - from over 2 million barrels per day to under 720 thousand barrels per day. During that same period of time the market price of oil has increased sixfold. We have gone from a significant deficit in FY '03, a $500 million draw on the CBR, to a significant surplus in FY '06 of over $1 billion, back to a projected deficit in FY '09. This makes rational budgeting nearly impossible. HJR 8 provides an appropriation smoothing and limiting mechanism applicable to the wildly fluctuating portion of the budget that is oil revenue.

In recognition of the difficulty in building and balancing our budget in a responsible manner when the price of oil fluctuates, HJR 8 forces the legislature to incorporate its oil revenues into the budget in any given fiscal year on a five-year rolling average, (4 years back and 1 year forward). This averaging would act as a "dampener" to prevent spending sprees when oil prices are high and crashes when oil prices are low.

HJR 8 also establishes a "Balanced Budget Account" in the State Treasury. Any oil and other mineral revenue received by the state in excess of the 5-year average amount referenced above would be deposited into the Balanced Budget Account. This account would not be subject to the Constitutional Budget Reserve sweep, but would be limited to a maximum amount that is equal to the oil and other mineral revenue appropriations for the current fiscal year, plus the immediate preceding fiscal year. Any excess amount would be transferred to the Constitutional Budget Reserve.

This resolution would also provide for transfer of funds from the Balanced Budget Account into appropriations during years when actual revenue from oil and other minerals falls below the 5-year average. In lean years, the legislature may with a majority vote transfer funds from the Balanced Budget Account necessary to fill the "gap" between the revenue available and the 5-year average. If the legislature requires appropriations above what the 5-year average permits, it may choose to live within its means or seek funds from other sources of revenue including the CBR.

HJR 8 could end the constant search by the legislature for rat holes in which to stash excess revenues so they can access those funds to balance the budget in the following years, without having to buy the ¾ vote to get funds from the Constitutional Budget Reserve. The resolution also avoids "sacred cows" by having no effect on the permanent fund corpus or the earnings of the Permanent Fund, the Amerada Hess Account or the Permanent Fund Dividend.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HJR8**
() Publish Date:

Identifier (file name): HJR008OOG-DOE-2-3-10
Dept. Affected: OOG

Title: Constitutional amendment limiting appropriations from certain mineral revenue, relating to balanced budget....
RDU: Elections
Component: Elections

Sponsor: Representatives Kelly, Lynn, Johnson
Requester: House State Affairs Committee
Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual		1.5					
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF		1.5					
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The passage of this resolution would require the constitutional amendment to appear on the 2010 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58 is $1.5. Should the addition of this question require printing an 8-1/2 by 18 inch ballot, the cost will increase to $22.0.

Prepared by: Gail Fenumiai, Director — Phone 465-4611
Division: Division of Elections — Date/Time 2/3/10, 9:22am
Approved by: Linda Perez, Director — Date 2/3/2010
Division of Administrative Services

(Revised 10/13/2009 OMB)

3043

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Member
House Finance Committee

Representative Mike Kelly

House District 7

Questions & Answers for HJR 8 in House State Affairs Committee

Tuesday, April 7, 2009

Question: Where did the definition of "mineral revenue" come from on page 1, lines 8-10 of the resolution?

Answer: Article 9, Section 15 of the Alaska Constitution, which says: "At least twenty-five per cent of all **mineral lease rentals, royalties, royalty sale proceeds, federal mineral revenue sharing payments and bonuses** received by the State shall be placed in a permanent fund, etc..."

Mineral production refers to the State's production tax (ACES) on oil. Mineral Transportation refers to the State's tariff on transporting oil through the Trans-Alaska Pipeline System. This section would apply to a potential gasline as well.

Question: Has the Constitutional Budget Reserve been repaid?

Answer: According to the Comprehensive Annual Financial Report of the State of Alaska, the remaining indebtedness to the CBR is $150 million and change. In FY08 the legislature appropriated $3 billion from the general fund to the CBR. Additionally, at the end of FY08 over $2 billion was swept from a variety of GF sub-funds and accounts, and transferred to the CBR.

Question: Can we include fish receipts and tourism in the 5-year appropriation limit?

Answer: Yes we can, but the state receives minimal revenue from these sources when compared to mineral revenue. For example, total unrestricted income from Fish Taxes was $22.4 and $22.6 million in FY07 and FY08. If these receipts were included in HJR 8, they would represent ½ a percent of total revenue in FY07 and even less in FY08. The Fall 2008 Revenue Sources book includes other restricted revenue from fish receipts, but because they are restricted they should not be included in the HJR 8 model.

Total unrestricted income from tourism includes: $9 million from the Car Rental Tax, $12.3 million from the Cruise Corporate Income Tax, $3.5 million from the Tourism Corporate Income Tax, and $6.7 million from the Cruise Gaming Tax. Total unrestricted revenue from tourism in FY08 was $31.5 million. These funds represent a 1/3 of a percent of total revenue for FY08. The Fall 2008 Revenue Sources book includes other restricted revenue from tourism, but because they are restricted they should not be included in the HJR 8 model.

Question: Can we calculate a 3-year Average, deleting the high extreme and the low extreme?
Answer: Yes. (See Attached)

FOR IMMEDIATE RELEASE **PRESS RELEASE**

KELLY'S FISCAL PLAN CONST. AMEN. MOVES FROM COMMITTEE

HJR 8 will base State spending on 5-year oil revenue average

Tuesday, April 07, 2009, Juneau, Alaska – The House State Affairs Committee moved House Joint Resolution (HJR) 8 out of committee today. The resolution, sponsored by Rep. Mike Kelly, R-Fairbanks, would place before voters a constitutional amendment limiting State spending appropriations. The resolution bases State spending on a 5-year rolling average of oil revenue. According to the State Dept. of Revenue, 90% of the total unrestricted revenue in fiscal year 2009 is attributable to oil production.

"I appreciate the House State Affairs Committee's recognition that this resolution should be moved forward and the level of discussion regarding State spending should be dialed up," Kelly said. "We've gone from a significant deficit in FY '03 to a significant surplus in FY '06, and now back to a projected deficit in FY '10. State spending chases this oil price roller coaster, making rational budgeting extremely difficult and living within our means politically unachievable."

"This resolution looks to the future, through the past," said Rep. Craig Johnson, R-Anchorage, who co-sponsored the bill. "This is the first time I've ever heard a discussion of how we allocate our dollars in a finite world. Instead, the discussion has always been 'well, we'll just go get more from someplace else then.' This bill has brought more discussion on financial decisions than I have heard on any finance committee, sub-committee or anywhere else."

"This resolution takes money off the table in high revenue years and saves it for years when revenue is low," said House State Affairs Committee Chair Bob Lynn, R-Anchorage, who also co-sponsored the bill. "This is an appropriate discussion for the legislature to have in light of the doubling in State spending over the past 5 years. I support moving this bill along and encouraging my colleagues to consider how we allocate our resources."

HJR 8 now moves to the Judiciary Committee and Finance Committee.

# # #

To contact Rep. Kelly, please call 1-907-465-6978.

Rep. Mike Kelly introduces state finance plan

Published Thursday, January 29, 2009

JUNEAU — Rep. Mike Kelly has introduced a plan to stabilize the state's finances by evening out the steep peaks and valleys of the "oil price roller coaster."

The Fairbanks Republican this week introduced House Joint Resolution 8, which, if approved by the Legislature, would ask voters to amend the Alaska constitution to require the state to base spending on a five-year average of oil and other minerals revenue.

That, Kelly said, would limit state spending and restore some financial stability.

"This government seems to have a ratchet, but it's only in the up direction," he said. "We have got to live within our means, and we've got to control the seemingly endless growth in state government."

He charged that state spending has doubled since 2005, when he entered the Legislature, and roughly tripled since 2000.

"If the people had to pay for that, they would be screaming bloody murder," he said.

About 90 percent of unrestricted state revenue in fiscal year 2009 came from oil production.

Kelly's plan calls for calculating state revenues on an average of the last four years and the current year and wouldn't affect the Permanent Fund. The proposal also would create a Balanced Budget Account, a short-term holding fund that could be drawn on to balance the budget at the end of each fiscal year. Any surpluses would flow into the Constitutional Budget Reserve.

The new, short-term account could help save money by eliminating steep spending in flush years and dramatic cuts in lean years, he said.

Lawmakers have to round up a three-fourths majority to tap into the CBR. That's generally done by promising money for special projects to legislators who will vote yes, Kelly said.

"If you want a billion, you're going to pay a lot more than that to get it out," he said.

His proposal would average revenues from all oil, natural gas and other mineral sources. At the same time, Rep. Mike Hawker, R-Anchorage, has filed a resolution for a constitutional amendment that would establish an endowment fund with natural gas revenue. Kelly said he and Hawker will discuss how the two plans could dovetail.

Sen. Joe Thomas, D-Fairbanks, agreed the state needs a long-term fiscal plan, but he has some initial concerns about Kelly's proposal. He sits on the Senate Finance Committee.

He would like a look at scenarios of how a five-year average would have affected revenue and spending during the last several years.

An average could still pack some wallops when years with major movement, such as 2008 with $140 per barrel oil, factor in. He cautioned against the possibility of "economic whiplash."

And, Thomas noted, while a five-year average could smooth some ups and downs, less revenue could lead to cuts to some state services that are as essential in lean times as in boom years.

Kelly's resolution was referred to the House state affairs, judicial and finance committees.

If the resolution passes the Legislature, he doesn't expect too much trouble convincing voters to make the amendment.

"I think this is something that the public understands clearly the need for," he said. "It's about responsible budgeting."

Rep. Mike Kelly shows some common sense: His plan has no chance.

Posted on ***29 January 2009***

By Dan Fagan

Like it or not, here in Alaska we live in a boom or bust economy. Alaska is known for its extremes and our economy is no different. The fluctuation in the price of oil has never been more dramatic than it was in 2008. So what's a state to do when it comes to a budget?

Republican Rep. Mike Kelly of Fairbanks has an idea. House Joint Resolution 8 sponsored by Kelly is designed to even out the up and down nature of state revenue.

The measure calls for changing the Alaska constitution requiring our big spending legislators to base budgets on a five-year of oil and other mineral revenues. It would take into account the past fours years and the current year of state revenue when putting together a budget.

This plan would prevent what happened last year when the state was flush with cash and blew much of it including a massive giveaway of free cash. Rep. Kelly hopes the plan would limit state spending in boom years.

"This government seems to have a ratchet, but it's only in the up direction," Kelly told the Fairbanks News Minor. "We have got to live within our means, and we've got to control the seemingly endless growth in state government."

Kelly is on the right track. Something has to be done. In the past three years, state spending has doubled. There's no justification for that kind

of irresponsible growth. Kelly says that type of growth is only possible because Alaskans, for the most part, don't directly have to pay for state government.

"If the people had to pay for that, they would be screaming bloody murder," Kelly said.

Nine out of every ten dollars the state collects comes from the oil industry.

Rep. Kelly's plan also creates a Balanced Budget Account. Lawmakers would draw on it to balance the budget at the end of each fiscal year. Any surplus would flow into the Constitutional Budget Reserve.

Kelly hopes the new, short-term account could help save money by eliminating steep spending in flush years and dramatic cuts in lean years, he said. The truth is we do spend like drunken sailors in boom years and yet during lean years we still spend too much. Kelly's plan would at least restrict legislators from going crazy when the price of oil is high.

Does Kelly's plan have a shot? Three quarters of legislators would have to be on board so it faces an uphill battle. Democrats typically oppose any legislation that would limit government spending. And the D's seem to have firm control in the Senate with the newly formed coalition.

HJR 8

Balanced Budget Resolution
House State Affairs Committee
April 2, 2009

Representative Mike Kelly
26th Legislature

Control Spending

In 1982, voters approved an amendment to the Alaska Constitution to control state spending.

The amendment established an annual appropriation limit of $2.5 billion plus adjustments for changes in population and inflation.

Today's Dollars

For FY 08, the Office of Management and Budget estimated the limit to be approximately:

$7.9 billion

(Source: State of Alaska Comprehensive Financial Report Fiscal Year Ended June 30, 2008, page 57)

FY 08 budget

The unsustainable FY 08 budget passed by the legislature after vetoes was $5.5 billion (unrestricted General Fund revenue), or $2.4 billion less than the 1982 constitutional spending limit.

Translation: The 1982 spending limit passed by voters is ineffective; or, we're doing a great job of controlling government growth.

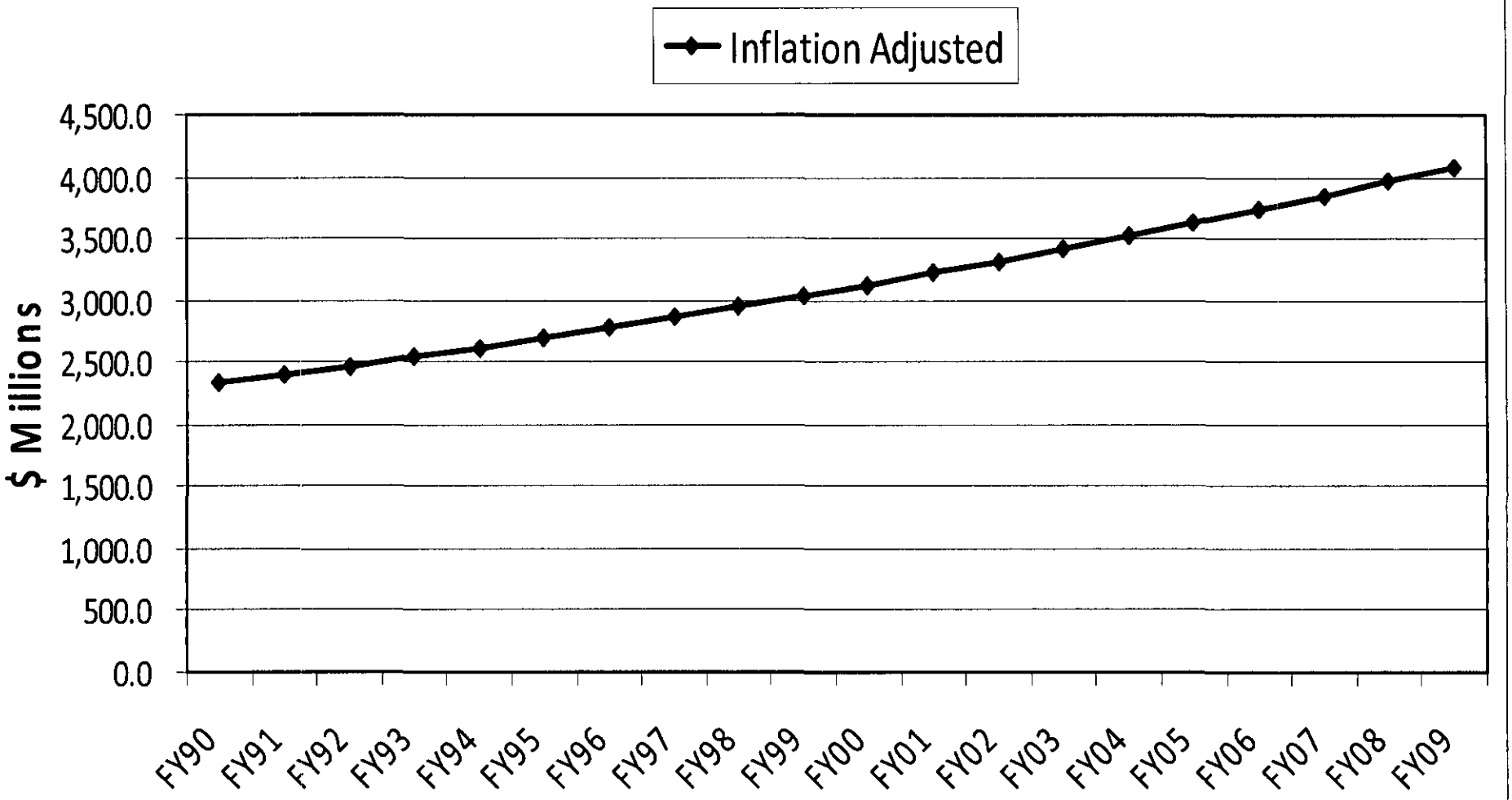
Constitutional Budget Reserve Fund (CBRF)

In 1990, another attempt was made by voters to impose budget stability. Voters approved a Constitutional Amendment creating the Constitutional Budget Reserve Fund (CBRF).

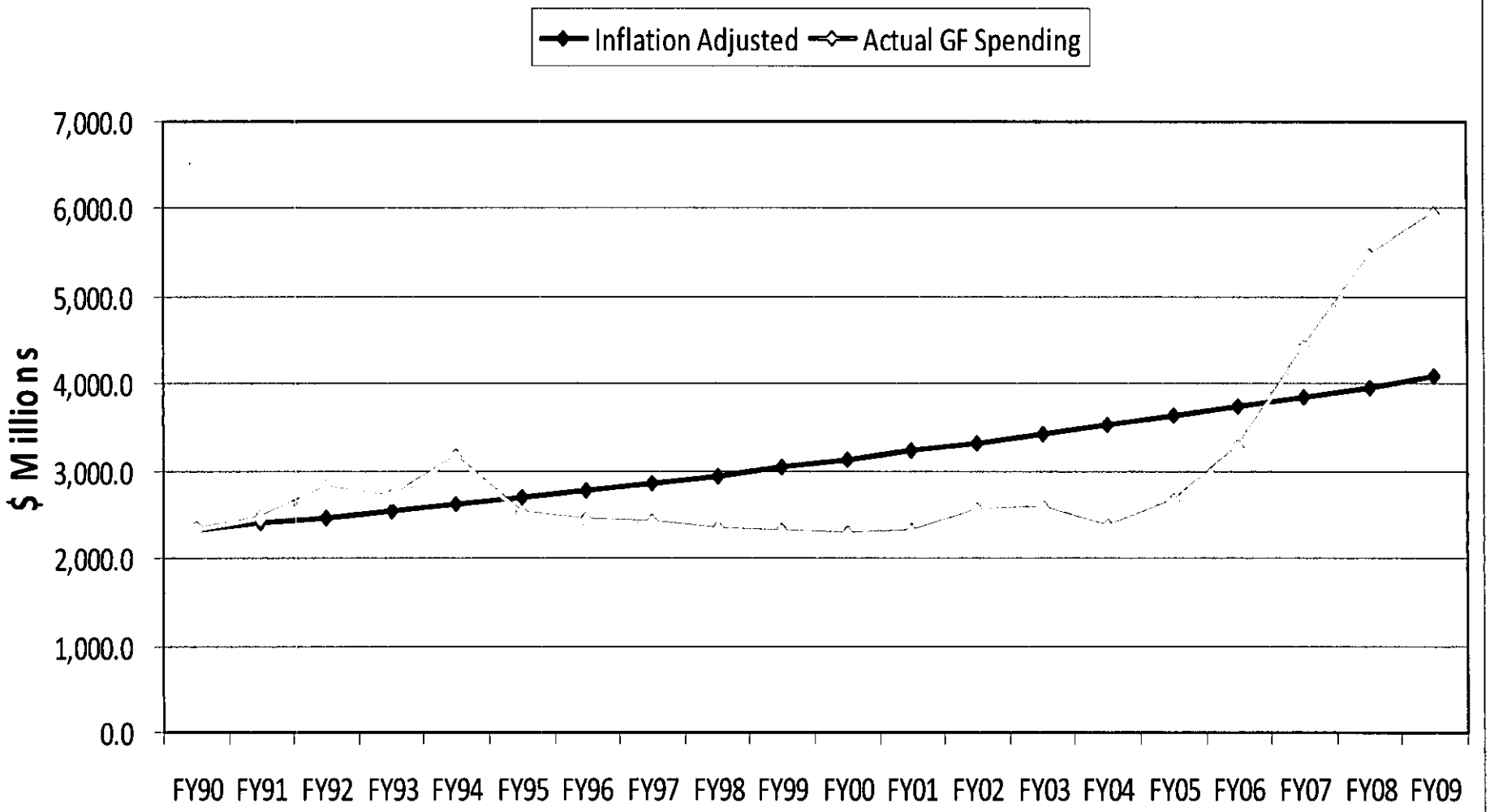
CBRF

The CBRF was created to receive and protect excess revenues generated in high revenue years rather than leaving excess funds in the General Fund (where they could be easily spent). Taking money from the CBRF requires a supermajority ¾ vote, making it more difficult to tap and therefore arguably a spending controller.

State of Alaska General Fund Spending FY90 - FY09

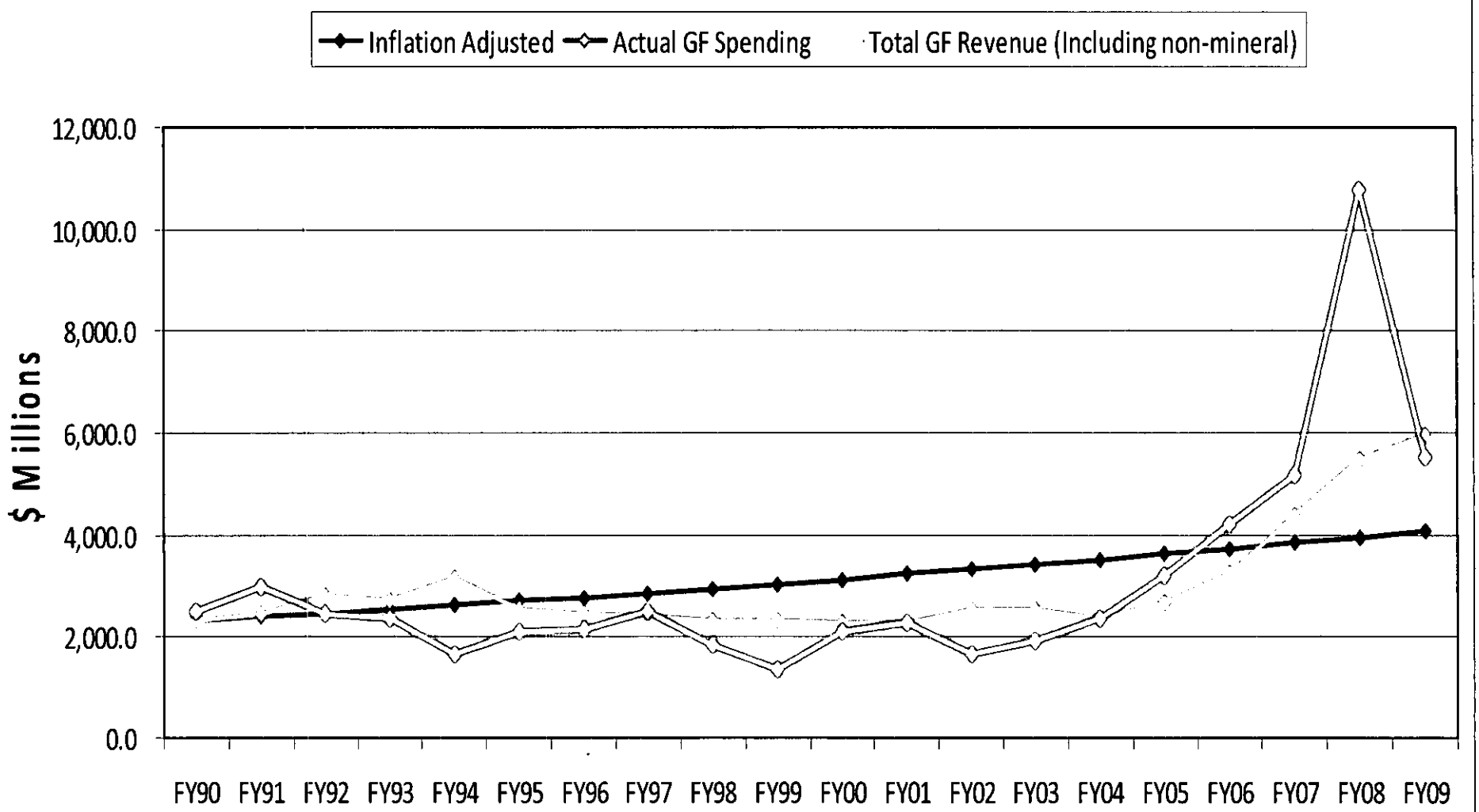


State of Alaska General Fund Spending FY90 - FY09



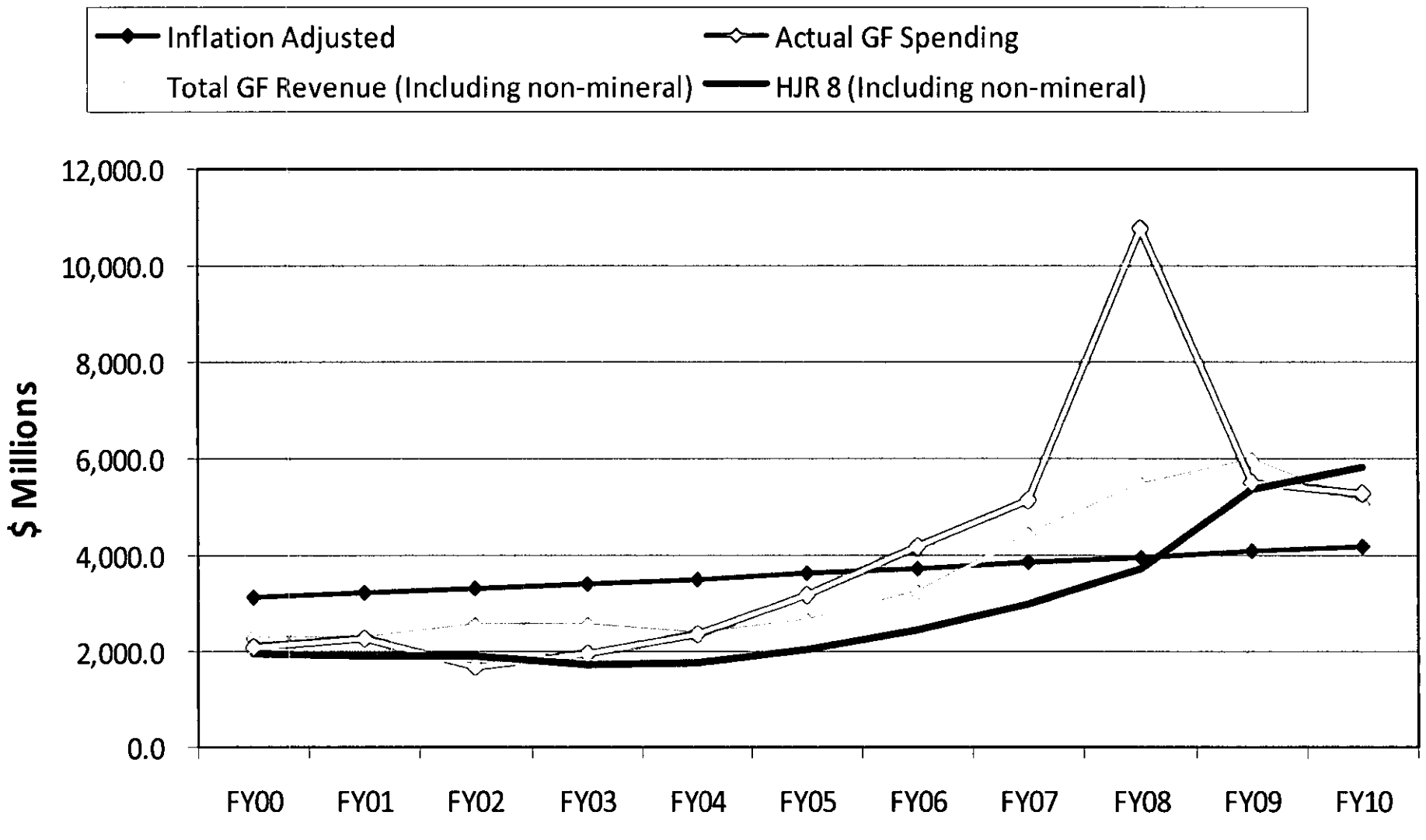
Source: Legislative Finance Division

State of Alaska General Fund Spending FY90 - FY09



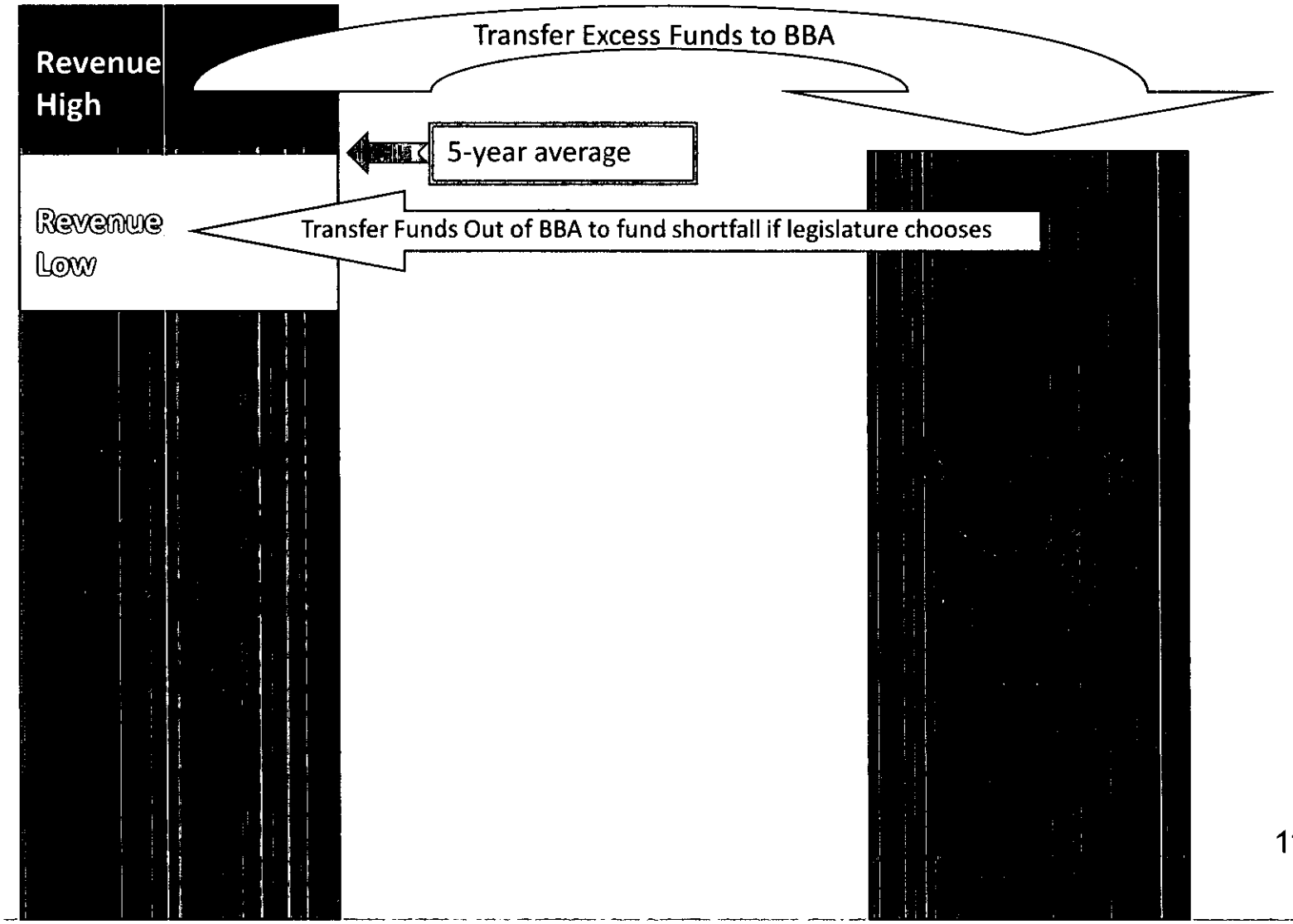
Source: Legislative Finance Division & Fall 2008 Revenue Sources Book

State of Alaska General Fund Spending FY00 - FY10



Source: Legislative Finance Division & Fall 2008 Revenue Sources Book

Basic Concept of Balanced Budget Resolution



Sacred Cows

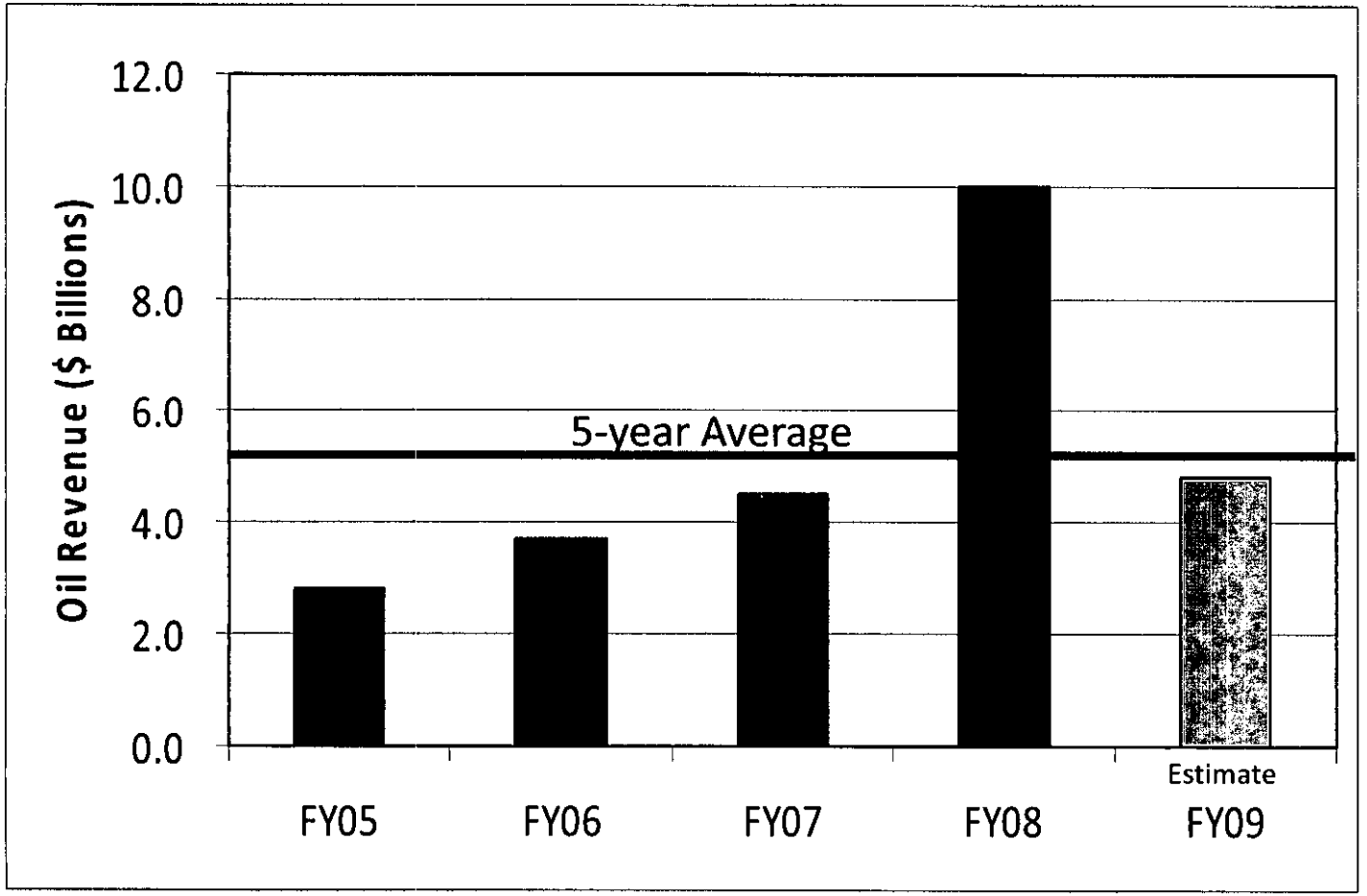
<u>HJR 8 Does NOT touch:</u>

- Permanent Fund Dividend
- Permanent Fund Corpus
- Permanent Fund Earnings
- Amerada Hess

CBR Sweep

The Balanced Budget Account is NOT subject to the Constitutional Budget Reserve sweep.

HJR 8

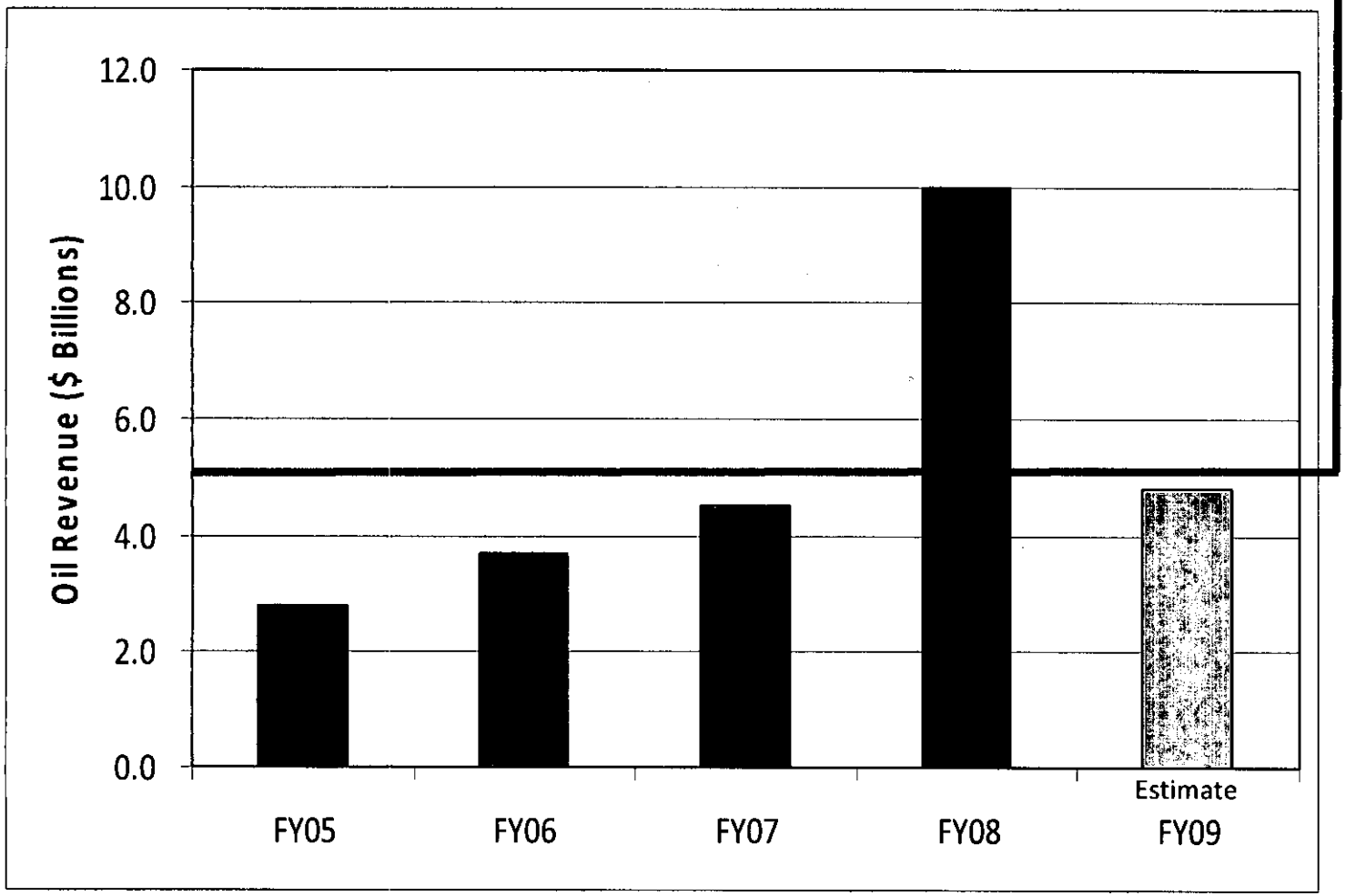


Balanced Budget Account (BBA)

- HJR 8 transfers funds into the BBA when oil prices are high and, with a simple majority vote, transfers funds out of the BBA to fill the gap when oil prices are low. When the balance of BBA exceeds 2 years of appropriations, excess will be transferred into the CBR.

Source: Fall 2008 Revenue Sources Book & Dept. of Revenue's revised 2009 Estimate (Feb. 5, 2009)

5-year Average



$ 5.2

5-year Average Calculation:

(For '10 Budget)

Take the Petroleum Revenue for the past 4 years, plus the Dept. of Revenue's current fiscal year projection and divide by 5.

Example:

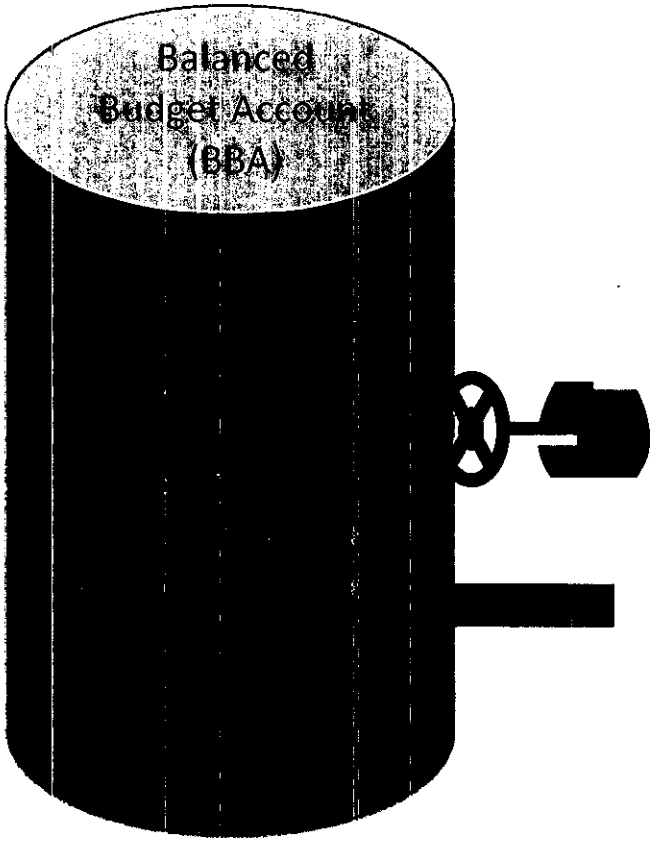
	$ (Billions)
'05	$ 2.8
'06	$ 3.7
'07	$ 4.5
'08	$ 10.0
'09	$ 4.8
Total	$25.8

Divided by 5 =

$ 5.2

Source: Fall 2008 Revenue Sources Book & Dept. of Revenue's revised 2009 Estimate (Feb. 5, 2009)

The BBA and CBR



Constitutional Budget Reserve (CBR)

HJR 8 transfers funds into the CBR when the BBA exceeds its 2 year limit. The legislature would still need a ¾ vote to access the CBR.

3067

Fiscal Responsibility

- Encourages a better budgeting system than "when you have it, spend it – when you don't, cut."
- Provides a simple but effective mechanism to help save budget surpluses and avoid deficits while encouraging government to live within its means.
- Eliminates need for complicated "rat holing" and "parking" of excess funds to avoid ¾ vote.

3068

Why a Constitutional Amendment?

- The legislature can easily overpower, ignore or change statutory appropriation constraints.

- Let the people speak concerning this simple fiscal framework. It may be the only fiscal plan they will endorse at this time.

3069

HJR 8 & POMV

"If the people of Alaska choose a Percent of Market Value approach to funding government using the Permanent Fund Earnings, HJR 8 would accommodate that approach."

- *Excerpts from Bradners' Alaska Legislative Digest No. 29/07 Dec. 19, 2007:*

- **Fiscal policy is more than savings and sound bites; it requires long-haul skilled political crafting.**

- Long term fiscal policy has been elusive in Alaska, especially since the beginning [of] the pipeline flow and the flow of easy money. The citizen taxpayer close scrutiny faltered and was replaced by all of us with our hands out. There are reasons why we have failed, and continue to do so.

- **We play the budget game from the seat of our pants.**

- Lawmakers are besieged with demands to spend, especially when there is the perception or the reality as is the current case, that there is money on the table. Fiscal restraint then becomes someone else's business, or the business of tomorrow, although tomorrow brings the same appetites.

- **The same people who demand that they see a critical need in their community, or in relation to their institution or industry, will still say the Legislature "spends too much."**

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 7, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 2/8/10

The JUDICIARY Committee considered: **HOUSE JOINT RESOLUTION NO. 8**

Proposing amendments to the Constitution of the State of Alaska limiting appropriations from certain mineral revenue, relating to the balanced budget account, and relating to an appropriation limit.

HJR 8 CONST. AM: APPROP. LIMIT/MINERAL REVENUE

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

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NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
GOV	1	✓		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Gruenberg			–	
	Dahlstrom			X	
	Holmes			X	
Chair:	RAMRAS	X			
Chair:					

HJR

13

Alaska State Legislature

Chairman
State Affairs Committee

...aber
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" www.RepLynnBlog.com

Session:
Alaska State Capitol, #104
Juneau, AK 99801-1182

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Phone: (907) 269-0205
Fax: (907) 269-0207

SPONSOR STATEMENT
HJR 13

TITLE: "Proposing amendments to the Constitution of the State of Alaska to correct obsolete references to the office of secretary of state by substituting references to the office of lieutenant governor."

In 1970 Alaska voters approved amendments to the state constitution changing the name of "Secretary of State" to "Lieutenant Governor." At that time, however, the drafting attorneys did not catch all of the references to "Secretary of State". HJR13 corrects the two remaining references to "Secretary of State" in the state constitution. The proposed amendments, if approved by the legislature, would be placed before the voters in the next general election.

Alaska State Legislature

Chairman
State Affairs Committee

...iber
Judiciary Committee
Labor & Commerce Committee
Health & Social Services Committee
Military & Veterans Affairs Committee

Finance Subcommittees
Labor and Workforce Development
Military and Veterans' Affairs
Public Safety

A Communication From
REPRESENTATIVE BOB LYNN
District 31 Anchorage

E-Mail: Representative_Bob_Lynn@legis.state.ak.us
"Bob Lynn's Alaska Blog" www.RepLynnBlog.com

Session:
Alaska State Capitol, #104
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Phone: (907) 465-4931
Fax: (907) 465-4316
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Interim:
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Sectional Analysis for HJR 13

Section 1. Amends Article II, sec. 5, Constitution of the State of Alaska

Adds: **lieutenant governor**
Removes: [SECRETARY OF STATE]

Section 2. Amends Article II, sec. 25 Constitution of the State of Alaska

Adds: **lieutenant governor**
Removes: [SECRETARY OF STATE]

These sections update by correcting the only two outdated references to "secretary of state" to "lieutenant governor" following the 1970 constitutional amendment that changed the name of that office.

Section 3. This section states that the constitutional amendments will be placed on the ballot at the next general election as required by Art. XIII, Sec. 1 of the Alaska Constitution. Two thirds of each House must approve the proposed amendments and a majority of the electorate voting must ratify it.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: HJR13
() Publish Date:

Identifier (file name): HJR003-OOG-DOE-2-5-09
Dept. Affected: OOG
Title: Constitutional amendment to correct obsolete references to office of secretary of state
RDU: Elections
Component: Elections
Sponsor: House State Affairs Committee
Requester: House State Affairs Committee
Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual			1.5				
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF			1.5				
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The passage of this resolution would require the constitutional amendment to appear on the 2010 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58 is $1.5. Should the addition of this question require printing an 8-1/2 by 18 inch ballot, the cost will increase to $22.0.

Prepared by: Gail Fenumiai, Director — Phone 465-4611
Division: Division of Elections — Date/Time 2/13/09, 8:26am
Approved by: Linda Perez, Director — Date 2/13/2009
Division of Administrative Services

(Revised 9/10/2008 OMB)

3075

re: HJR13

States Pursue Title of Lieutenant Governor

The last states without lieutenant governors may soon jump on the bandwagon. Two states, Tennessee and Arizona, are pursuing in this legislation session the creation of the lieutenant governor position as a statewide elected office. Rhode Island lawmakers are considering expanding powers of the lieutenant governor. Only five states do not have lieutenant governors.

In each case, lieutenant governor supporters say the position allows for gubernatorial succession that's clear to voters, while protecting the continuity of government.

However, in Arizona, Oregon and Wyoming, states without the lieutenant governor position, the secretary of state is first in line for gubernatorial succession.

"People who are voting for secretary of state should note they are also electing the person next in line for governor," Arizona Sen. Chuck Gray told the Cronkite News Service.

An East Valley Tribune editorial agreed: "Arizonans always should keep in mind that the official who oversees the state election system suddenly could have power to veto legislation and control a large portion of state government, if the governor became unable to do the job."

Gubernatorial succession has happened five times in Arizona's 95-year history, most recently in 1997 when then-Secretary of State Jane Hull replaced Fife Symington. Voters may not realize that the secretary of state is next in line if the current governor dies or resigns since nearly all other states have a lieutenant governor, according to the East Valley Tribune editorial.

Four states place the senate president first in line to replace the governor, but Tennessee and West Virginia give the title lieutenant governor to this officer in recognition of the vital succession duty. Yet, Tennessee this year is considering creating an office of lieutenant governor, which would be elected statewide.

"An elected lieutenant governor is a companion piece to any sort of sensible line of succession," Gov. Phil Bredesen told The Tennessean. Only three officials are elected statewide in Tennessee, the governor and two U.S. senators.

New Hampshire and Maine are the other states where the senate president is first in line of succession and with no use of the lieutenant governor title. Voters in New Jersey approved creation of a statewide elected office of lieutenant governor in 2005; the first will be elected next year in 2009.

States Lengthen School Days

In an effort to raise achievement in schools, some states are looking to lengthen the school day. A handful of states and cities, along with many charter schools, are seeking to add more hours, days and weeks to their school calendar, according to *The Washington Post*.

Massachusetts is spending $13 million this year as part of a program to lengthen school days, according to Heidi Guarino, spokeswoman for the Massachusetts Department of Education. Ten schools made sch[illegible]'ays longer for the 2006-2007 school year and this school year, the number of schools increased to 19, Guarino said.

An additional 33 schools in 16 districts are in the pipeline and hope to convert to longer days in the future, according to *The Boston Globe*.

In most cases, the school days are expanded from six-hour days to eight- or nine-hour days.

The Commonwealth Readiness Project—the cornerstone of Gov. Deval Patrick's education priorities—issued an update in January 2008 that continued the recommendation of expanded teaching and learning time in Massachusettes.

"Expanded teaching and learning time, whether through full-day kindergarten, longer school days, summer learning programs or high-quality out-of-school or after-school programs, can provide increased opportunities that impact academic achievement, address out-of-school factors, such as health and nutrition and enhance support services including in-home resources and parenting skills," the report stated.

The Massachusetts report also said schools with longer days narrowed the achievement gap at a faster rate than the state and increased the number of students at or above the proficiency level by 10.8 percent compared to the state rate of only 3.5 percent.

Sen. Edward M. Kennedy, chairman of the U.S. Senate's Health, Education, Labor and Pensions Committee, joined with Boston Mayor Thomas M. Menino, to celebrate expanded school day programs in Massachusetts at the Clarence R. Edwards Middle School in Charlestown in January. The middle school implemented the state's expanded learning time initiative in 2006.

"It gives students the time not only to master the basics, but also to expand their horizons through art, music, physical education and other activities. It gives teachers additional time for collaboration and planning to improve instruction," Kennedy said in a press release.

New York tacked on minutes a day for schools in 28 different school systems, *The Washington Post* reports. New Mexico is also spending slightly more than $7 million to add 25 extra days at 29 schools where students need the most help, according to the *Post*.

from: 5 | State News at 9 (March 2008)
distributed by Rwanda

3076

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 20, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4/3/09

The JUDICIARY Committee considered: **HOUSE JOINT RESOLUTION NO. 13**

Proposing amendments to the Constitution of the State of Alaska to correct obsolete references to the office of secretary of state by substituting references to the office of lieutenant governor.

HJR 13 CONST AM: SEC. OF STATE REFERENCES

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
GOV	1	✓		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	+			
	Gruenberg	–			
	Coghill	+			
		X			
	Holmes			X	
		X			
Chair:					
Chair:					

HJR

17

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Carl Gatto
Room 108
(907) 465-3743

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: February 16, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File for HJR 17, OPPOSE H.R. 45 IN CONGRESS

Attached please find the following documents, which represent the referral file for HJR17:

- Sponsor Statement HJR 17
- CSHJR17(JUD) (26-LS0555\R)
- Amendment #1 (26-LS0555\A.1)
- HJR 17 26-LS0555\A
- HJUD Zero Fiscal Note
- H.R. 45 Summary and Bill
- HJUD Committee Report

ALASKA STATE LEGISLATURE

Sponsor Statement

HJR 17

Urging Congress to Reject H.R. 45, the Blair Holt's Firearm Licensing and record of Sale Act of 2009

House Joint Resolution 17 asks the United States Congress to oppose and defeat House Resolution 45, a measure that has been introduced in Congress that would significantly diminish Alaskans' right to keep and bear arms.

Among other things, HR 45 would require Americans to go through onerous federal licensure in order to possesses a firearm; it would make it a felony to transfer a firearm to someone who does not have a license; it would make it a felony to fail to timely report such a transfer or to fail to report the loss or theft of a firearm within 72 hours to the U.S. Attorney General; and, it requires the attorney general to establish and maintain a data base of firearm transfers.

It is very important that Congress receive a message from the Alaska Legislature as soon as possible that Second Amendment rights to keep and bear arms shall not be infringed.

CS FOR HOUSE JOINT RESOLUTION NO. 17(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): REPRESENTATIVES HARRIS, Stoltze, Chenault, Coghill, Foster, Johnson, Lynn, Neuman, Kawasaki, Keller, Ramras, Millett, Wilson, Kelly

A RESOLUTION

Urging the United States Congress to reject H.R. 45, the Blair Holt's Firearm Licensing and Record of Sale Act of 2009.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

WHEREAS the Second Amendment to the United States Constitution enunciates a citizen's right to keep and bear arms, stating that that right shall not be infringed; and

WHEREAS art. I, sec. 19, Constitution of the State of Alaska, provides that the right of the people to keep and bear arms shall not be infringed and further states that the individual right to keep and bear arms shall not be denied or infringed; and

WHEREAS H.R. 45 has been introduced in the United States Congress to require licensure of firearm owners and extensive recordkeeping of transactions that result in the transfer of certain firearms, including handguns and semiautomatic rifles; and

WHEREAS H.R. 45, referred to as the Blair Holt's Firearm Licensing and Record of Sale Act of 2009, would make it a federal felony to possess a firearm without a license; and

WHEREAS H.R. 45 would also make it a federal felony to transfer a firearm to another person who is not licensed; and

WHEREAS H.R. 45 directs the Attorney General of the United States to establish and

maintain a federal system documenting the sale and transfer of firearms; and

WHEREAS H.R. 45 would make it a federal felony to fail to report the loss or theft of a firearm to the attorney general within 72 hours; and

WHEREAS, under H.R. 45, a firearm owner could be charged with a federal felony based on the actions of a juvenile who might gain access to the firearm; and

WHEREAS H.R. 45 directs the attorney general to establish and maintain a firearm injury information clearinghouse, to conduct studies of firearm-related deaths and injuries, and to collect and maintain production and sales data from licensed firearm manufactures; and

WHEREAS the provisions of H.R. 45 cumulatively constitute a gun registration system and an assault on the Second Amendment rights of United States citizens; and

WHEREAS the private ownership of firearms has always been a key component of our national defense and constitutes a constructive notice to our enemies that Americans are a free people and a people free to defend themselves; and

WHEREAS H.R. 45 would diminish this traditional component of our national defense; and

WHEREAS there are other methods of addressing the problem of gun violence and gun-related deaths, such as increased education on the proper handling and use of firearms, that would be more effective and less intrusive into the private lives of American citizens and would not diminish a constitutionally guaranteed right;

BE IT RESOLVED that the Alaska State Legislature opposes the Blair Holt's Firearm Licensing and Record of Sale Act of 2009, urges the United States Congress to reject H.R. 45, and further urges the members of the Alaska Congressional delegation to oppose and defeat H.R. 45; and be it

FURTHER RESOLVED that members of the Alaska Congressional delegation are urged to support and expand federal funding of firearm education programs.

COPIES of this resolution shall be sent to the Honorable Joseph R. Biden, Jr., Vice-President of the United States and President of the U.S. Senate; the Honorable Harry Reid, Majority Leader of the U.S. Senate; the Honorable Mitch McConnell, Minority Leader of the U.S. Senate; the Honorable Nancy Pelosi, Speaker of the U.S. House of Representatives; the Honorable John Boehner, Minority Leader of the U.S. House of Representatives; and the Honorable Lisa Murkowski and the Honorable Mark Begich, U.S. Senators, and the

Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress.

ADOPTED

26-LS0555\A.1
Luckhaupt
2/16/09

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE COGHILL

TO: HJR 17

Page 1, following line 5:

Insert new material to read:

"**WHEREAS** art. I, sec. 19, Constitution of the State of Alaska, provides that the right of the people to keep and bear arms shall not be infringed and further states that the individual right to keep and bear arms shall not be denied or infringed; and"

3084

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: 26-LS0555\R
() Publish Date:

Identifier (file name):
Title: Oppose H.R. 45 in Congress
Sponsor: Representative Harris
Requester:

Dept. Affected: None
RDU
Component
Component Number

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

HJR17 asks the United States Congress to oppose and defeat House Resolution 45, a measure that has been introduced in Congress that would significantly diminsh Alaskans' right to keep and bear arms. Accordingly, this legislation will not have any fiscal impact on any division of the State of Alaska.

Prepared by: House Judiciary Committee — Phone 465-4990
Division: Legislative — Date/Time 2/16/09 at 4:59 p.m.
Approved by: House Judiciary Committee Chairman Representative Jay Ramras — Date 2/16/2009

(Revised 9/10/2008 OMB)

H.R.45
Title: To provide for the implementation of a system of licensing for purchasers of certain firearms and for a record of sale system for those firearms, and for other purposes.
Sponsor: Rep Rush, Bobby L. [IL-1] (introduced 1/6/2009) Cosponsors (None)
Latest Major Action: 2/9/2009 Referred to House subcommittee. Status: Referred to the Subcommittee on Crime, Terrorism, and Homeland Security.

SUMMARY AS OF:
1/6/2009--Introduced.

Blair Holt's Firearm Licensing and Record of Sale Act of 2009 - Amends the Brady Handgun Violence Prevention Act to prohibit a person from possessing a firearm unless that person has been issued a firearm license under this Act or a state system certified under this Act and such license has not been invalidated or revoked. Prescribes license application, issuance, and renewal requirements.

Prohibits transferring or receiving a qualifying firearm unless the recipient presents a valid firearms license, the license is verified, and the dealer records a tracking authorization number. Prescribes firearms transfer reporting and record keeping requirements. Directs the Attorney General to establish and maintain a federal record of sale system.

Prohibits: (1) transferring a firearm to any person other than a licensee, unless the transfer is processed through a licensed dealer in accordance with national instant criminal background check system requirements, with exceptions; (2) a licensed manufacturer or dealer from failing to comply with reporting and record keeping requirements of this Act; (3) failing to report the loss or theft of the firearm to the Attorney General within 72 hours; (4) failing to report to the Attorney General an address change within 60 days; or (5) keeping a loaded firearm, or an unloaded firearm and ammunition for the firearm, knowingly or recklessly disregarding the risk that a child is capable of gaining access, if a child uses the firearm and causes death or serious bodily injury.

Prescribes criminal penalties for violations of firearms provisions covered by this Act.

Directs the Attorney General to: (1) establish and maintain a firearm injury information clearinghouse; (2) conduct continuing studies and investigations of firearm-related deaths and injuries; and (3) collect and maintain current production and sales figures of each licensed manufacturer.

Authorizes the Attorney General to certify state firearm licensing or record of sale systems.

[+] FEEDBACK

HR 45 IH

111th CONGRESS

1st Session

H. R. 45

To provide for the implementation of a system of licensing for purchasers of certain firearms, and for a record of sale system for those firearms, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

January 6, 2009

Mr. RUSH introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To provide for the implementation of a system of licensing for purchasers of certain firearms and for a record of sale system for those firearms, and for other purposes.

[+] FEEDBACK

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as `Blair Holt's Firearm Licensing and Record of Sale Act of 2009'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

Sec. 3. Definitions.

TITLE I--LICENSING

Sec. 101. Licensing requirement.

Sec. 102. Application requirements.

Sec. 103. Issuance of license.

Sec. 104. Renewal of license.

Sec. 105. Revocation of license.

TITLE II--RECORD OF SALE OR TRANSFER

Sec. 201. Sale or transfer requirements for qualifying firearms.

Sec. 202. Firearm records.

TITLE III--ADDITIONAL PROHIBITIONS

Sec. 301. Universal background check requirement.

Sec. 302. Failure to maintain or permit inspection of records.

Sec. 303. Failure to report loss or theft of firearm.

Sec. 304. Failure to provide notice of change of address.

Sec. 305. Child access prevention.

TITLE IV--ENFORCEMENT

Sec. 401. Criminal penalties.

Sec. 402. Regulations.

Sec. 403. Inspections.

Sec. 404. Orders.

Sec. 405. Injunctive enforcement.

TITLE V--FIREARM INJURY INFORMATION AND RESEARCH

Sec. 501. Duties of the Attorney General.

TITLE VI--EFFECT ON STATE LAW

Sec. 601. Effect on State law.

Sec. 602. Certification of State firearm licensing systems and State firearm record of sale systems.

TITLE VII--RELATIONSHIP TO OTHER LAW

Sec. 701. Subordination to Arms Export Control Act.

TITLE VIII--INAPPLICABILITY

Sec. 801. Inapplicability to governmental authorities.

TITLE IX--EFFECTIVE DATE

Sec. 901. Effective date of amendments.

SEC. 2. FINDINGS AND PURPOSES.

(a) Findings- Congress finds that--

(1) the manufacture, distribution, and importation of firearms is inherently commercial in nature;

(2) firearms regularly move in interstate commerce;

(3) to the extent that firearms trafficking is intrastate in nature, it arises out of and is substantially connected with a commercial transaction, which, when viewed in the aggregate, substantially affects interstate commerce;

(4) because the intrastate and interstate trafficking of firearms are so commingled, full regulation of interstate commerce requires the incidental regulation of intrastate commerce;

(5) gun violence in the United States is associated with the majority of homicides, over half the suicides, and two-thirds of non-fatal violent injuries; and

(6) on the afternoon of May 10, 2007, Blair Holt, a junior at Julian High School in Chicago, was killed on a public bus riding home from school when he used his body to shield a girl who was in the line of fire after a young man boarded the bus and started shooting.

(b) Sense of the Congress- It is the sense of the Congress that--

(1) firearms trafficking is prevalent and widespread in and among the States, and it is usually impossible to distinguish between intrastate trafficking and interstate trafficking; and

(2) it is in the national interest and within the role of the Federal Government to ensure that the regulation of firearms is uniform among the States, that law enforcement can quickly and effectively trace firearms used in crime, and that firearms owners know how to use and safely store their firearms.

(c) Purposes- The purposes of this Act and the amendments made by this Act are--

(1) to protect the public against the unreasonable risk of injury and death associated with the unrecorded sale or transfer of qualifying firearms to criminals and youth;

(2) to ensure that owners of qualifying firearms are knowledgeable in the safe use, handling, and storage of those firearms;

(3) to restrict the availability of qualifying firearms to criminals, youth, and other persons prohibited by Federal law from receiving firearms; and

(4) to facilitate the tracing of qualifying firearms used in crime by Federal and State law enforcement agencies.

SEC. 3. DEFINITIONS.

(a) In General- In this Act:

(1) FIREARM; LICENSED DEALER; LICENSED MANUFACTURER; STATE- The terms `firearm', `licensed dealer', `licensed manufacturer', and `State' have the meanings given those terms in section 921(a) of title 18, United States Code.

(2) QUALIFYING FIREARM- The term `qualifying firearm' has the meaning given the term in section 921(a) of title 18, United States Code, as amended by subsection (b) of this section.

(b) Amendment to Title 18, United States Code- Section 921(a) of title 18, United States Code, is amended by adding at the end the following:

`(36) The term `qualifying firearm'--

`(A) means--

`(i) any handgun; or

`(ii) any semiautomatic firearm that can accept any detachable ammunition feeding device; and

`(B) does not include any antique.'.

TITLE I--LICENSING

SEC. 101. LICENSING REQUIREMENT.

Section 922 of title 18, United States Code, is amended by adding at the end the following:

`(aa) Firearm Licensing Requirement-

`(1) IN GENERAL- It shall be unlawful for any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to possess a qualifying firearm on or after the applicable date, unless that person has been issued a firearm license--

`(A) under title I of Blair Holt's Firearm Licensing and Record of Sale Act of 2009, which license has not been invalidated or revoked under that title; or

`(B) pursuant to a State firearm licensing and record of sale system certified under section 602 of Blair Holt's Firearm Licensing and Record of Sale Act of 2009, which license has not been invalidated or revoked under State law.

`(2) APPLICABLE DATE- In this subsection, the term `applicable date' means--

`(A) with respect to a qualifying firearm that is acquired by the person before the date of the enactment of Blair Holt's Firearm Licensing and Record of Sale Act of 2009, 2 years after such date of enactment; and

`(B) with respect to a qualifying firearm that is acquired by the person on or after the date of the enactment of Blair Holt's Firearm Licensing and Record of Sale Act of 2009, 1 year after such date of enactment.'.

SEC. 102. APPLICATION REQUIREMENTS.

(a) In General- In order to be issued a firearm license under this title, an individual shall submit to the Attorney General (in accordance with the regulations promulgated under subsection (b)) an application, which shall include--

(1) a current, passport-sized photograph of the applicant that provides a clear, accurate likeness of the applicant;

(2) the name, address, and date and place of birth of the applicant;

(3) any other name that the applicant has ever used or by which the applicant has ever been known;

(4) a clear thumb print of the applicant, which shall be made when, and in the presence of the entity to whom, the application is submitted;

(5) with respect to each category of person prohibited by Federal law, or by the law of the State of residence of the applicant, from obtaining a firearm, a statement that the individual is not a person prohibited from obtaining a firearm;

(6) a certification by the applicant that the applicant will keep any firearm owned by the applicant safely stored and out of the possession of persons who have not attained 18 years of age;

(7) a certificate attesting to the completion at the time of application of a written firearms examination, which shall test the knowledge and ability of the applicant regarding--

(A) the safe storage of firearms, particularly in the vicinity of persons who have not attained 18 years of age;

(B) the safe handling of firearms;

(C) the use of firearms in the home and the risks associated with such use;

(D) the legal responsibilities of firearms owners, including Federal, State, and local laws relating to requirements for the possession and storage of firearms, and relating to reporting requirements with respect to firearms; and

(E) any other subjects, as the Attorney General determines to be appropriate;

(8) an authorization by the applicant to release to the Attorney General or an authorized representative of the Attorney General any mental health records pertaining to the applicant;

(9) the date on which the application was submitted; and

(10) the signature of the applicant.

(b) Regulations Governing Submission- The Attorney General shall promulgate regulations specifying procedures for the submission of applications to the Attorney General under this section, which regulations shall--

(1) provide for submission of the application through a licensed dealer or an office or agency of the Federal Government designated by the Attorney General;

(2) require the applicant to provide a valid identification document (as defined in section 1028(d)(2) of title 18, United States Code) of the applicant, containing a photograph of the applicant, to the licensed dealer or to the office or agency of the Federal Government, as applicable, at the time of submission of the application to that dealer, office, or agency; and

(3) require that a completed application be forwarded to the Attorney General not later than 48 hours after the application is submitted to the licensed dealer or office or agency of the Federal Government, as applicable.

(c) Fees-

(1) IN GENERAL- The Attorney General shall charge and collect from each applicant for a license under this title a fee in an amount determined in accordance with paragraph (2).

(2) FEE AMOUNT- The amount of the fee collected under this subsection shall be not less than the amount determined by the Attorney General to be necessary to ensure that the total amount of all fees collected under this subsection during a fiscal year is sufficient to cover the costs of carrying out this title during that fiscal year, except that such amount shall not exceed $25.

SEC. 103. ISSUANCE OF LICENSE.

(a) In General- The Attorney General shall issue a firearm license to an applicant who has submitted an application that meets the requirements of section 102 of this Act, if the Attorney General ascertains that the individual is not prohibited by subsection (g) or (n) of section 922 of title 18, United States Code, from receiving a firearm.

(b) Effect of Issuance to Prohibited Person- A firearm license issued under this section shall be null and void if issued to a person who is prohibited by subsection (g) or (n) of section 922 of title 18, United States Code, from receiving a firearm.

(c) Form of License- A firearm license issued under this section shall be in the form of a tamper-resistant card, and shall include--

(1) the photograph of the licensed individual submitted with the application;

(2) the address of the licensed individual;

(3) the date of birth of the licensed individual;

(4) a license number, unique to each licensed individual;

(5) the expiration date of the license, which shall be the date that is 5 years after the initial anniversary of the date of birth of the licensed individual following the date on which the license is issued (or in the case of a license renewal, following the date on which the license is renewed under section 104);

(6) the signature of the licensed individual provided on the application, or a

facsimile of the application; and

(7) centered at the top of the license, capitalized, and in boldface type, the following:

`FIREARM LICENSE--NOT VALID FOR ANY OTHER PURPOSE'.

SEC. 104. RENEWAL OF LICENSE.

(a) Application for Renewal-

(1) IN GENERAL- In order to renew a firearm license issued under this title, not later than 30 days before the expiration date of the license, the licensed individual shall submit to the Attorney General (in accordance with the regulations promulgated under paragraph (3)), in a form approved by the Attorney General, an application for renewal of the license.

(2) CONTENTS- An application submitted under paragraph (1) shall include--

(A) a current, passport-sized photograph of the applicant that provides a clear, accurate likeness of the applicant;

(B) current proof of identity of the licensed individual; and

(C) the address of the licensed individual.

(3) REGULATIONS GOVERNING SUBMISSION- The Attorney General shall promulgate regulations specifying procedures for the submission of applications under this subsection.

(b) Issuance of Renewed License- Upon approval of an application submitted under subsection (a) of this section, the Attorney General shall issue a renewed license, which shall meet the requirements of section 103(c), except that the license shall include the current photograph and address of the licensed individual, as provided in the application submitted under this section, and the expiration date of the renewed license, as provided in section 103(c)(5).

SEC. 105. REVOCATION OF LICENSE.

(a) In General- If an individual to whom a license has been issued under this title subsequently becomes a person who is prohibited by subsection (g) or (n) of section 922 of title 18, United States Code, from receiving a firearm--

(1) the license is revoked; and

(2) the individual shall promptly return the license to the Attorney General.

(b) Administrative Action- Upon receipt by the Attorney General of notice that an individual to whom a license has been issued under this title has become a person described in subsection (a), the Attorney General shall ensure that the individual promptly returns the license to the Attorney General.

TITLE II--RECORD OF SALE OR TRANSFER

SEC. 201. SALE OR TRANSFER REQUIREMENTS FOR QUALIFYING FIREARMS.

Section 922 of title 18, United States Code, as amended by section 101 of this Act, is amended by adding at the end the following:

`(bb) Unauthorized Sale or Transfer of a Qualifying Firearm- It shall be unlawful for any person to sell, deliver, or otherwise transfer a qualifying firearm to, or for, any person who is not a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, or to receive a qualifying firearm from a person who is not a licensed importer, licensed manufacturer, licensed dealer, or licensed collector, unless, at the time and place of the transfer or receipt--

`(1) the transferee presents to a licensed dealer a valid firearm license issued to the transferee--

`(A) under title I of Blair Holt's Firearm Licensing and Record of Sale Act of 2009; or

`(B) pursuant to a State firearm licensing and record of sale system certified under section 602 of Blair Holt's Firearm Licensing and Record of Sale Act of 2009 established by the State in which the transfer or receipt occurs;

`(2) the licensed dealer contacts the Attorney General or the head of the State agency that administers the certified system described in paragraph (1)(B), as applicable, and receives notice that the transferee has been issued a firearm license described in paragraph (1) and that the license remains valid; and

`(3) the licensed dealer records on a document (which, in the case of a sale, shall be the sales receipt) a tracking authorization number provided by the Attorney General or the head of the State agency, as applicable, as evidence that the licensed dealer has verified the validity of the license.'.

SEC. 202. FIREARM RECORDS.

(a) Submission of Sale or Transfer Reports- Not later than 14 days after the date on which the transfer of qualifying firearm is processed by a licensed dealer under section 922(bb) of title 18, United States Code (as added by section 201 of this Act), the licensed dealer shall submit to the Attorney General (or, in the case of a licensed dealer located in a State that has a State firearm licensing and record of sale system certified under section 602 of this Act, to the head of the State agency that administers that system) a report of that transfer, which shall include information relating to--

(1) the manufacturer of the firearm;

(2) the model name or number of the firearm;

(3) the serial number of the firearm;

(4) the date on which the firearm was received by the transferee;

(5) the number of a valid firearm license issued to the transferee under title I of this Act; and

(6) the name and address of the individual who transferred the firearm to the transferee.

(b) Federal Record of Sale System- Not later than 9 months after the date of the enactment of this Act, the Attorney General shall establish and maintain a Federal record of sale system, which shall include the information included in each report submitted to the Attorney General under subsection (a).

(c) Elimination of Prohibition on Establishment of System of Registration- Section 926(a) of title 18, United States Code, is amended by striking the second sentence.

TITLE III--ADDITIONAL PROHIBITIONS

SEC. 301. UNIVERSAL BACKGROUND CHECK REQUIREMENT.

Section 922 of title 18, United States Code, as amended by sections 101 and 201 of this Act, is amended by adding at the end the following:

`(cc) Universal Background Check Requirement-

`(1) REQUIREMENT- Except as provided in paragraph (2), it shall be unlawful for any person other than a licensed importer, licensed manufacturer, licensed dealer, or licensed collector to sell, deliver, or otherwise transfer a firearm to any person other than such a licensee, unless the transfer is processed through a licensed dealer in accordance with subsection (t).

`(2) EXCEPTION- Paragraph (1) shall not apply to the infrequent transfer of a firearm by gift, bequest, intestate succession or other means by an individual to a parent, child, grandparent, or grandchild of the individual, or to any loan of a firearm for any lawful purpose for not more than 30 days between persons who are personally known to each other.'.

SEC. 302. FAILURE TO MAINTAIN OR PERMIT INSPECTION OF RECORDS.

Section 922 of title 18, United States Code, as amended by sections 101, 201, and 301 of this Act, is amended by adding at the end the following:

`(dd) Failure To Maintain or Permit Inspection of Records- It shall be unlawful for a licensed manufacturer or a licensed dealer to fail to comply with section 202 of Blair Holt's Handgun Licensing and Record of Sale Act of 2009, or to maintain such records or supply such information as the Attorney General may require in order to ascertain compliance with such Act and the regulations and orders issued under such Act.'.

SEC. 303. FAILURE TO REPORT LOSS OR THEFT OF FIREARM.

Section 922 of title 18, United States Code, as amended by sections 101, 201, 301, and 302 of this Act, is amended by adding at the end the following:

`(ee) Failure To Report Loss or Theft of Firearm- It shall be unlawful for any person who owns a qualifying firearm to fail to report the loss or theft of the firearm to the Attorney General within 72 hours after the loss or theft is discovered.'.

SEC. 304. FAILURE TO PROVIDE NOTICE OF CHANGE OF ADDRESS.

Section 922 of title 18, United States Code, as amended by sections 101, 201, 301, 302, and 303 of this Act, is amended by adding at the end the following:

`(ff) Failure To Provide Notice of Change of Address- It shall be unlawful for any individual to whom a firearm license has been issued under title I of Blair Holt's Firearm Licensing and Record of Sale Act of 2009 to fail to report to the Attorney General a change in the address of that individual within 60 days of that change of address.'.

SEC. 305. CHILD ACCESS PREVENTION.

Section 922 of title 18, United States Code, as amended by sections 101, 201, 301, 302, 303, and 304 of this Act, is amended by adding at the end the following:

`(gg) Child Access Prevention-

`(1) DEFINITION OF CHILD- In this subsection, the term `child' means an individual who has not attained the age of 18 years.

`(2) PROHIBITION AND PENALTIES- Except as provided in paragraph (3), it shall be unlawful for any person to keep a loaded firearm, or an unloaded firearm and ammunition for the firearm, any 1 of which has been shipped or transported in interstate or foreign commerce, within any premises that is under the custody or control of that person, if--

`(A) that person--

`(i) knows, or recklessly disregards the risk, that a child is capable of gaining access to the firearm; and

`(ii) either--

`(I) knows, or recklessly disregards the risk, that a child will use the firearm to cause the death of, or serious bodily injury (as defined in section 1365 of this title) to, the child or any other person; or

`(II) knows, or reasonably should know, that possession of the firearm by a child is unlawful under Federal or State law; and

`(B) a child uses the firearm and the use of that firearm causes the death of, or serious bodily injury to, the child or any other person.

`(3) EXCEPTIONS- Paragraph (2) shall not apply if--

`(A) at the time the child obtained access, the firearm was secured with a secure gun storage or safety device;

`(B) the person is a peace officer, a member of the Armed Forces, or a member of the National Guard, and the child obtains the firearm during, or incidental to, the performance of the official duties of the person in that capacity;

`(C) the child uses the firearm in a lawful act of self-defense or defense of 1 or more other persons; or

`(D) the person has no reasonable expectation, based on objective facts and circumstances, that a child is likely to be present on the premises on which the firearm is kept.'.

TITLE IV--ENFORCEMENT

SEC. 401. CRIMINAL PENALTIES.

(a) Failure To Possess Firearm License; Failure To Comply With Qualifying Firearm Sale or Transfer Requirements; Failure To Maintain or Permit Inspection of Records- Section 924(a) of title 18, United States Code, is amended by adding at the end the following:

`(8) Whoever knowingly violates subsection (aa), (bb), or (dd) of section 922 shall be fined under this title, imprisoned not more than 2 years, or both.'.

(b) Failure To Comply With Universal Background Checks; Failure To Timely Report Loss or Theft of a Qualifying Firearm; Failure To Provide Notice of Change of Address- Section 924(a)(5) of such title is amended by striking `(s) or (t)' and inserting `(t), (cc), (ee), or (ff)'.

(c) Child Access Prevention- Section 924(a) of such title, as amended by subsection (a) of this section, is amended by adding at the end the following:

`(9) Whoever violates section 105(a)(2) of Blair Holt's Handgun Licensing and Record of Sale Act of 2009, knowingly or having reason to believe that the person is prohibited by subsection (g) or (n) of section 922 of title 18, United States Code, from receiving a firearm, shall be fined under this title, imprisoned not more than 10 years, or both.

`(10) Whoever violates section 922(gg) shall be fined under this title, imprisoned not more than 5 years, or both.'.

SEC. 402. REGULATIONS.

(a) In General- The Attorney General shall issue regulations governing the licensing of possessors of qualifying firearms and the recorded sale of qualifying firearms, consistent with this Act and the amendments made by this Act, as the Attorney General determines to be reasonably necessary to reduce or prevent deaths or injuries resulting from qualifying firearms, and to assist law enforcement in the apprehension of owners or users of qualifying firearms used in criminal activity.

(b) Maximum Interval Between Issuance of Proposed and Final Regulation- Not later than 120 days after the date on which the Attorney General issues a proposed regulation under subsection (a) with respect to a matter, the Attorney General shall issue a final regulation with respect to the matter.

SEC. 403. INSPECTIONS.

In order to ascertain compliance with this Act, the amendments made by this Act, and the regulations and orders issued under this Act, the Attorney General may, during regular business hours, enter any place in which firearms or firearm products are manufactured, stored, or held, for distribution in commerce, and inspect those areas where the products are so manufactured, stored, or held.

SEC. 404. ORDERS.

The Attorney General may issue an order prohibiting the sale or transfer of any firearm that the Attorney General finds has been transferred or distributed in violation of this Act, an amendment made by this Act, or a regulation issued under this Act.

SEC. 405. INJUNCTIVE ENFORCEMENT.

The Attorney General may bring an action to restrain any violation of this Act or an amendment made by this Act in the district court of the United States for any district in which the violation has occurred, or in which the defendant is found or transacts business.

TITLE V--FIREARM INJURY INFORMATION AND RESEARCH

SEC. 501. DUTIES OF THE ATTORNEY GENERAL.

(a) In General- The Attorney General shall--

(1) establish and maintain a firearm injury information clearinghouse to collect, investigate, analyze, and disseminate data and information relating to the causes and prevention of death and injury associated with firearms;

(2) conduct continuing studies and investigations of firearm-related deaths and injuries; and

(3) collect and maintain current production and sales figures for each licensed manufacturer.

(b) Availability of Information- Periodically, but not less frequently than annually, the Attorney General shall report to the Congress and make available to the public a report on the activities of the Attorney General under subsection (a).

TITLE VI--EFFECT ON STATE LAW

SEC. 601. EFFECT ON STATE LAW.

(a) In General- This Act and the amendments made by this Act may not be construed to preempt any provision of the law of any State or political subdivision of that State, or prevent a State or political subdivision of that State from enacting any provision of law regulating or prohibiting conduct with respect to firearms, except to the extent that the provision of law is inconsistent with any provision of this Act or an amendment made by this Act, and then only to the extent of the inconsistency.

(b) Rule of Interpretation- A provision of State law is not inconsistent with this Act or an amendment made by this Act if the provision imposes a regulation or prohibition of greater scope or a penalty of greater severity than a corresponding prohibition or penalty imposed by this Act or an amendment made by this Act.

SEC. 602. CERTIFICATION OF STATE FIREARM LICENSING SYSTEMS AND STATE FIREARM RECORD OF SALE SYSTEMS.

Upon a written request of the chief executive officer of a State, the Attorney General may certify--

(1) a firearm licensing system established by a State, if State law requires the system to satisfy the requirements applicable to the Federal firearm licensing system established under title I; or

(2) a firearm record of sale system established by a State, if State law requires the head of the State agency that administers the system to submit to the Federal firearm record of sale system established under section 202(b) a copy of each report submitted to the head of the agency under section 202(a), within 7 days after receipt of the report.

TITLE VII--RELATIONSHIP TO OTHER LAW

SEC. 701. SUBORDINATION TO ARMS EXPORT CONTROL ACT.

In the event of any conflict between any provision of this Act or an amendment made by this Act, and any provision of the Arms Export Control Act (22 U.S.C. 2751), the provision of the Arms Export Control Act shall control.

TITLE VIII--INAPPLICABILITY

SEC. 801. INAPPLICABILITY TO GOVERNMENTAL AUTHORITIES.

This Act and the amendments made by this Act shall not apply to any department or agency of the United States, of a State, or of a political subdivision of a State, or to any official conduct of any officer or employee of such a department or agency.

TITLE IX--EFFECTIVE DATE

SEC. 901. EFFECTIVE DATE OF AMENDMENTS.

The amendments made by this Act shall take effect 1 year after the date of the enactment of this Act.

END

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HOUSE COMMITTEE REPC Γ

(7)
Date Referred to Committee: February 11, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 2/16/09

The JUDICIARY Committee considered: **HOUSE JOINT RESOLUTION NO. 17**

Urging the United States Congress to reject H.R. 45, the Blair Holt's Firearm Licensing and Record of Sale Act of 2009.
HJR 17 OPPOSE H.R. 45 IN CONGRESS

Recommends it be replaced with [ ] HCS *or* **[√] CS** *for* HJR17 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LEG				✓

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	Groenteg	—			
	LYNN	X			
	Coghill	✓			
	Holmes	X			
	Gatto	✓			
Chair:	KAWASAKI	✓			
Chair:					

3100

HJR

30

HOUSE JUDICIARY COMMITTEE

STATE CAPITOL, ROOM 120
(907) 465-4990

COMMITTEE MEMBERS

Rep. Jay Ramras
Chairman
Room, 118
(907) 465-3004

Rep. Nancy Dahlstrom
Vice-Chairman
Room 409
(907) 465-3783

Rep. John Coghill
Room 214
(907) 465-3719

Rep. Bob Lynn
Room 104
(907) 465-4931

Rep. Carl Gatto
Room 108
(907) 465-3743

Rep. Max Gruenberg
Room 110
(907) 465-4940

Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 8, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File for HJR30

Please accept this memo as the referral file for HJR30. Attached are the following documents:

- HJR30 26-LS0789\R
- LEG Zero Fiscal Note
- HJUD Committee Report

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **26-LS0789\R**
() Publish Date:

Identifier (file name): HJR30
Dept. Affected: LEG
Title: DEATH PENALTY FOR JUSHUA WADE
RDU
Component
Sponsor: Representative Bill Stoltze
Requester: House Judiciary Committee
Component Number

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

No Departments will be affected by this resolution.

Prepared by: Jane W. Pierson, House Judiciary Committee Aide
Phone (907) 465-4990
Division
Date/Time April 8, 2009 at 5:00 p.m.
Approved by: Representative Jay Ramras
Chairman House Judiciary Committee
Date 4/8/2009

(Revised 9/10/2008 OMB)

HOUSE COMMITTEE REPO[illegible]

(7)
Date Referred to Committee: April 1, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 4/8/09

The JUDICIARY Committee considered: **HOUSE JOINT RESOLUTION NO. 30**

Relating to the case of the United States v. Wade and to the decision of the Attorney General of the United States with respect to that case.
HJR 30 DEATH PENALTY FOR JOSHUA WADE

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____ Committee
[ ] Letter of Intent_____ Committee

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MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero
LEG	1			✓

PREVIOUS FISCAL NOTES				
List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN		X		
	Gallego			–	
	Coleman			✓	
	Dahlstrom			X	
	Holmes		X		
	Gattis	X			
Chair:					
Chair:	RAMSAY	R			

HJR

35

Alaska State Legislature

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Member
House Finance Committee

Representative Mike Kelly

House District 7

SPONSOR STATEMENT

HJR 35 – HEALTHCARE FREEDOM ACT

"Proposing amendments to the Constitution of the State of Alaska prohibiting passage of laws that interfere with direct payments for health care services and the right to purchase health care insurance from a privately owned company, and that compel a person to participate in a health care system."

HJR 35 would give Alaskans the opportunity to vote on a Constitutional Amendment prohibiting the passage of laws that would force any person or employer to participate in a particular health care system or plan. Similar measures are under consideration in 35 states.

The Health Care Freedom Act seeks to protect two essential rights. First, it would protect a person's right to participate or not in any health care system, and it would prohibit the government from imposing fines or penalties because of that person's decision. Second, it would protect the right of an individual to purchase – and the right of doctors to provide – lawful medical services without government fines or penalties. HJR 35 would place these essential rights in the state constitution.

Few Alaskans question the need for effective health care reform to improve access, quality and affordability while ensuring that personal health care is patient-driven. Advocates of a larger government role in regulating and providing health insurance and care support forcing individuals to join a government-approved health insurance plan, whether or not they want it, can afford it, or it best meets their personal needs. But the overwhelming majority of Alaskans oppose this mandate.

If the federal government adopts nationalized health care and a significant block of states change their constitutions to protect their citizens, a legal clash may well be winnable for the states. This United States Supreme Court may just be in the mood to protect individual liberty and state sovereignty in such a private matter as personal health care.

Alaska State Legislature

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Member
House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: **February 8, 2010**

TO: **Representative Kelly**

FROM: **Derek Miller**

RE: **Sectional Analysis for HJR 35 (26-LS1063\R)**

A sectional summary of a bill should not be considered an authoritative interpretation of the bill. The bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1.
Proposes to amend Article 1, Section 15 of the State of Alaska Constitution by inserting **(a)** before the clause.

Section 2.
Proposes to amend Article 1, Section 15 of the State of Alaska Constitution by inserting a new section that would prohibit the passage of laws that prohibit a person or penalize a person for making direct payments to a health care provider for tendering health care services or prohibit or penalize the purchase of health care insurance from a privately owned health care insurance company. The section also prohibits the passage of laws that compel a person, employer, or health care provider to participate in a health care system or that penalizes a person, employer, or health care provider for declining to participate in a health care system. The section exempts a health care system that provides indemnity and medical benefits to injured workers.

Section 3.

Places the amendments proposed by this resolution before the voters of the state at the next general election in conformity with Article 13, Section 1 of the Constitution of the State of Alaska and the election laws of the state.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HJR35**
() Publish Date:

Identifier (file name): HJR-035-OOG-DOE-2-9-10
Dept. Affected: OOG
Title: Constitutional amendment prohibiting passage of laws that interfere with direct payments for health care services....
RDU: Elections
Component: Elections
Sponsor: Reps. Kelly, Keller, P. Wilson, Gatto, Ramras, T. Wilson
Requester: House Health & Social Services
Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual		1.5					
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF		1.5					
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The passage of this resolution would require the constitutional amendment to appear on the 2010 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58 is $1.5. Should the addition of this question require printing an 8-1/2 by 18 inch ballot, the cost will increase to $22.0.

Prepared by: Gail Fenumiai, Director — Phone 465-4611
Division: Division of Elections — Date/Time 2/9/10, 8:53am
Approved by: Linda Perez, Director — Date 2/9/2010
Division of Administrative Services

(Revised 10/13/2009 OMB)

3109

NFIB

The Voice of Small Business•

ALASKA

January 19, 2010

The Honorable Mike Kelly
Room 513
State Capitol
Juneau, Alaska 99801-1182

Dear Representative Kelly

RE: HJR 35

On behalf of the National Federation of Independent Business/Alaska, I wish to express our support for House Joint Resolution 35. The National Federation of Independent Business/Alaska is the largest small-business advocacy group in our state.

HJR 35 provides for placing an amendment to Alaska's Constitution before voters during the next general election making explicit the individual right to health care free choice. The constitutional amendment would prohibit passage of laws that compel any person or employer to participate in a particular health care system. The proposed constitutional change will also permit the purchase of private insurance and allow Alaskans to pay their own health care provider directly.

NFIB/AK is critically concerned about the cost and access to health care for Alaskans. The current versions of health care reform that have passed the U.S. House and U.S. will not address those issues. The mandates they include clearly impose unreasonable burdens on Alaskans and Alaskan businesses. These mandates cannot address the needs of Alaskans.

This proposal will protect Alaskans from the unconstitutional federal mandates to purchase health insurance that may not meet their needs. It will protect small businesses from being taxed for not providing health insurance designed by the federal government that may not meet the needs of their employees.

Sincerely yours,

Dennis L. DeWitt
Alaska State Director

Cc: NFIB/AK Leadership Council

Alaska State Legislature

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Member
House Finance Committee

Representative Mike Kelly

House District 7

MEMORANDUM

DATE: **February 15, 2010**

TO: **Representative Mike Kelly**

FROM: **Derek Miller**

RE: **Answers to Questions @ 2/9/10 HESS Hearing**

---

1) **Does HJR 35 prevent the State of Alaska from initiating a new tier to the state retirement system? How would this constitutional amendment impact future changes to the current State of Alaska retirement system?**
This resolution does NOT prevent the State from initiating a new tier to the state retirement system. Changes can be made to the retirement system as long as those changes aren't a mandate on individuals or employers to purchase insurance. The state would also be prohibited from passing laws that penalize or fine individuals or employers from choosing not to purchase coverage.

2) **Does this resolution prevent the federal government from making changes to Medicare, Tricare, Indian Health Services, etc...?**
This resolution does NOT preclude the federal government from doing anything. Individuals would still have the option to participate in the federal health insurance program. This act simply protects a person's right not to participate.

3) **How does this legislation address the problems the HESS committee has looked at? Example: Access, quality, affordability? Are there any fixes in the bill?**
HJR 35 prevents a one-size-fits-all universal coverage system. Alaska legislators must work on a targeted set of policy solutions to cover the uninsured and there are reforms that will advance this goal, along with HJR 35.

4) **Does this bind future legislatures from adopting the program the federal government comes up with?**
Yes, if that program includes mandating individuals and employers to purchase insurance or penalizes individuals for choosing not to purchase insurance. Individuals however, would still have the option to participate in the program.

5) **Does this amendment prevent the state from implementing a plan if it penalized employees and employers for not purchasing health insurance?**
Yes.

Source:

Christie Herrera
Director, Health and Human Services Task Force
American Legislative Exchange Council
1101 Vermont Avenue, N.W., 11th Floor
Washington, D.C. 20005
Direct: 202-742-8505

AMERICAN LEGISLATIVE EXCHANGE COUNCIL

Questions and Answers: ALEC's *Freedom of Choice in Health Care Act*

For more information, contact Christie Herrera, director of ALEC's Health and Human Services Task Force, at (202) 742-8505 or christie@alec.org.

Why does my state need the *Freedom of Choice in Health Care Act*?
Efforts in our state capitol, and in Washington, are gaining steam to put complete control over your health care in the hands of government bureaucrats and appointed "experts." Government control means you will have less freedom to make the health care choices that are best for you and your family. The *Freedom of Choice in Health Care Act* will protect your health care freedom from these threats.

What does the *Freedom of Choice in Health Care Act do*?
The *Freedom of Choice in Health Care Act* will preserve and protect your right to make your own health care and health insurance choices. Specifically, it would protect your right to pay directly for medical care, and it would prohibit any individual or employer from being penalized for not purchasing government-defined health insurance.

Why should my state's constitution protect the right of patients to pay directly for medical care?
Single-payer systems, like in Canada, make it illegal for citizens to go outside of the government's health care plan and contract for their own medical services. The *Freedom of Choice in Health Care Act* would make this fundamental provision of Canadian-style, single-payer health care unconstitutional.

Patients should have the right to pay directly for medical services with their own money. When consumers control the dollars, they make the treatment decisions. When the government controls the dollars, they make treatment decisions based on what's best for the government, not what's best for the patient.

The consequences of government making medical decisions are often dire, and sometimes deadly. In New Zealand, breast cancer patients were blocked from accessing the lifesaving drug Herceptin because it cost too much. In Sweden the wait for heart surgery can be as long as 25 weeks. In Canada more than 800,000 patients are currently on waiting lists for medical procedures.

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The *Freedom of Choice in Health Care Act* will ensure that patients, not government bureaucrats, decide which doctor to see or what medical treatments to get.

More information about the consequences of single-payer health care can be found in:

* Michael Tanner, "The Grass Is Not Always Greener: A Look at National Health Systems Around the World," Cato Institute Policy Analysis No. 613, March 18, 2008: http://www.cato.org/pubs/pas/pa-613.pdf.

* John C. Goodman, Linda Gorman, Devon Herrick, and Robert M. Sade, *Health Care Reform: Do Other Countries Have the Answers?*, National Center for Policy Analysis, March 10, 2009: http://www.ncpa.org/pdfs/sp_Do_Other_Countries_Have_the_Answers.pdf.

* http://BigGovHealth.org: A website with "single-payer horror stories" and fact sheets on the U.S. and worldwide infant mortality/life expectancy statistics; whether the U.S. Veterans Administration is a model for health reform; and much more.

Why should my state's constitution block penalties for individuals or employers who don't purchase health insurance?

It is important for people to have health insurance coverage, but a government requirement to purchase health insurance is ineffective, bureaucratic, and costly. The *Freedom of Choice in Health Care Act* would strike at heart of individual and employer mandates—implemented in Massachusetts, Hawaii, and elsewhere—that just don't work.

In Massachusetts—a state that imposed an individual mandate and an employer mandate in 2006—more than 1/3 of their uninsured still don't have coverage; health insurance is 40% more expensive than in the rest of the country; it's getting harder to see a doctor since before "reform" was enacted; and legislators expect a $2-$4 billion shortfall over the next decade.

The Massachusetts mandate didn't just affect the uninsured. The Massachusetts government actually told 20% of its already-insured citizens to buy more health insurance, because their existing coverage wasn't "good enough." When the government enforces a requirement for people to buy health insurance, they need to define what "insurance" is. The Cato Institute estimates that a federal individual mandate will force 100 million Americans to drop their existing plans and buy more expensive health insurance that is "good enough" for bureaucrats.

Employer mandates don't yield universal coverage and are harmful for consumers and workers. Hawaii has had a "pay or play" employer mandate for 35 years, and yet the number of uninsured has remained the same because employers shifted jobs to (exempt) part-time employees. And when the government forces businesses to buy health insurance for their

workers, it really means higher taxes and fewer jobs. When businesses face cost increases, they'll pass on those costs in the form of increased prices, job cuts, or wage freezes.

An individual mandate would harm patients, and an employer mandate would threaten our fragile economy. The *Freedom of Choice in Health Care Act* would protect our citizens from these threats.

More information about the consequences of individual and employer mandates can be found in:

* Michael Tanner, "Massachusetts Miracle or Massachusetts Miserable: What the Failure of the 'Massachusetts Model' Tells Us About Health Reform," Cato Institute Briefing Paper No. 112, June 9, 2009: http://www.cato.org/pubs/bp/bp112.pdf.

* Michael F. Cannon, "All the President's Mandates: Compulsory Health Insurance *Is* A Government Takeover," Cato Institute Briefing Paper No. 114, September 23, 2009: http://www.cato.org/pubs/bp/bp114.pdf.

* James Sherk and Robert A. Book, "Employer Health Care Mandates: Taxing Low-Income Workers to Pay for Health Care," Heritage Foundation WebMemo No. 2552, July 21, 2009: http://www.heritage.org/Research/HealthCare/upload/wm_2552.pdf.

Does supporting the *Freedom of Choice in Health Care Act* mean that I favor "free riders" who choose to not purchase health insurance and then show up in the emergency room?
Free riders do present a cost-shifting problem as uncompensated care costs are borne by the already-insured—although researchers estimate uncompensated care to be just 2-3% of overall health costs. The Massachusetts data reveal that at best, an individual mandate didn't affect ER visits at all—and at worst, an individual mandate actually increased ER usage by 17%.

The Massachusetts example shows that an individual mandate alone will not decrease ER usage. One Massachusetts survey reported that although the newly-insured had "insurance coverage" on paper, 90% of them did not have access to care from a non-ER provider. Other reports indicate that average wait times to get appointments with doctors in Boston ranged from 21 days for cardiologists to 70 days for obstetrician-gynecologists. And the Massachusetts Medical Society reports that the average wait to see a primary care doctor is 36 days.

Lawmakers cannot artificially create a growing demand for care without other policies (encouraging "minute clinics," enacting medical liability reform to encourage more doctors to practice, loosening scope of practice laws, etc.) to encourage healthcare supply. And those reforms can be achieved without a bureaucratic, ineffective, and costly requirement to

purchase health coverage.

More information about the why an individual mandate won't solve the "free rider" problem can be found in:

* Minna Jung, "What Massachusetts Teaches Us About Emergency Departments and Reform," Robert Wood Johnson Foundation's User's Guide to the Health Reform Galaxy Blog, October 5, 2009: http://rwjfblogs.typepad.com/healthreform/2009/10/what-massachusetts-teaches-us-about-emergency-departments-and-reform.html.

* Liz Kowalczyk, "ER Visits, Costs in Massachusetts Climb," *Boston Globe*, April 24, 2009: http://www.boston.com/news/local/massachusetts/articles/2009/04/24/er_visits_costs_in_mass_climb/.

Does the *Freedom of Choice in Health Care Act* only benefit insurance companies?
The *Freedom of Choice in Health Care Act* prohibits the forced purchase of private health insurance plans. This benefits patients, not insurance companies.

How will the *Freedom of Choice in Health Care Act* affect Medicaid, SCHIP, or Medicare?
The *Freedom of Choice in Health Care Act* will not in any way impact the funding of, or functioning of Medicaid, SCHIP, or Medicare. The language "This section does not affect laws or rules in effect as of January 1, 2009" clarifies this matter. Citizens will be free to participate in any safety net program (Medicaid, Medicare, SCHIP) to which they are entitled, as well as participate in any proposed programs (the public option or the national health insurance exchange) as they do today. The *Freedom of Choice in Health Care Act* simply ensures that citizens are not forced into these programs.

Does the *Freedom of Choice in Health Care Act* enable my state to block any kind of federal health reform?
No. The *Freedom of Choice in Health Care Act* would not attempt to block implementation of any federal law as long as the federal law does not require an individual/employer mandate, or forbid patients from paying directly for medical services.

Congress is still debating health reform. Doesn't this solve a problem that doesn't yet exist?
Two hundred and twenty years ago, some founders questioned the need for the Bill of Rights to be included in the U.S. Constitution. Eventually, they realized that the Bill of Rights was essential in protecting the people from a powerful central government. Today, the First through Tenth Amendments preserve our freedoms—and the *Freedom of Choice in Health Care Act* will protect our right to health care freedom in the same way.

But this is more than an issue of federal encroachment. Threats of single-payer health care, or of an individual/employer mandate, also exist at the state level. In 2009, 14 states introduced legislation to enact state-based, single-payer health care. Countless other states have proposed requirements for individuals or employers to purchase health coverage or else pay a fine to the state. The *Freedom of Choice in Health Care Act* would make these state-based assaults on patients' rights unconstitutional.

Does supporting the *Freedom of Choice in Health Care Act* mean that I am against health reform? Doesn't this tie our hands with future reforms?

No. The *Freedom of Choice in Health Care Act* simply states that the cornerstone of any future health care reform must be the preservation and protection of patients' rights.

# # #

GOLDWATER
INSTITUTE
in defense of liberty

The Health Care Freedom Act:
Questions & Answers

by Clint Bolick, Litigation Director, Goldwater Institute

The Health Care Freedom Act will appear as a proposed constitutional amendment on Arizona's 2010 election ballot, and similar measures are under consideration in more than 30 other states. With the possibility that Congress will enact some sort of national health insurance legislation, questions are being raised about the scope of the Health Care Freedom Act and its effect should a federal bill become law. In the following pages, Clint Bolick, who helped to author the Health Care Freedom Act, answers frequently asked questions.

Q: What is the Health Care Freedom Act?

A: The Health Care Freedom Act is a proposed amendment to the Arizona Constitution that would preserve certain existing rights that individuals have regarding health care. It was initially proposed by two Arizona physicians, Dr. Eric Novack and Dr. Jeffrey Singer, with drafting assistance from the Goldwater Institute. The measure qualified as a voter initiative on the 2008 ballot, and despite a well-financed opposition campaign, it was defeated by less than one-half of 1 percent of the vote. Changes were made to address concerns raised by the opponents, and the Arizona Legislature voted to refer the revised version to the 2010 ballot.

The American Legislative Exchange Council adopted model legislation based on the Arizona measure, and activists and legislators in at least 35 additional states are pursuing constitutional amendments or statutes based on the Arizona model.

Q: What are the key provisions?

A: Although the precise language varies from state to state, the Health Care Freedom Act seeks to protect two essential rights. First, it protects a person's right to participate or not in any health care system, and prohibits the government from imposing fines or penalties on that person's decision. Second, it protects the right of individuals to purchase—and the right of doctors to provide—lawful medical services without government fine or penalty. The Health Care Freedom Act would place these essential rights in the state constitution (or, in some states, it would protect them by statute).

Q: What motivated the Health Care Freedom Act?

A: No one questions the need for serious health care reform. However, the proponents of the Health Care Freedom Act believe that regardless of how such reform is fashioned, either at the state or federal level, the essential rights protected by the Health Care Freedom Act should be preserved. Many advocates of a larger government role in regulating or providing health insurance support a mandate that would compel individuals to join a government-approved health insurance plan, whether or not they can afford it and whether or not the system best fits their needs. In some countries in which government plays a large role in providing health insurance, medical services are rationed and individuals are prevented or discouraged from obtaining otherwise lawful medical services. Supporters of the Health Care Freedom Act have a variety of perspectives on the form that health care reform should take. But they agree that no matter what legislation is passed, it should not take from Americans their precious right to control their own medical affairs.

Q: By what authority can states pass the Health Care Freedom Act?

A: It is well-established that the U.S. Constitution provides a baseline for the protection of individual rights, and that state constitutions may provide additional protections—and all of them do. For instance, some states provide greater protections of freedom of speech or due process rights. Because the Health Care Freedom Act offers greater protection than the federal constitution, states are allowed to enact it.

Q: Does it matter whether the Health Care Freedom Act is passed as a statute or as a constitutional amendment?

A: A state constitution is the organic law of the state, reflecting the most fundamental values shared by the citizens of the state. Moreover, a state constitutional amendment will ensure the state legislature can never infringe upon the protected rights. So a constitutional amendment is preferable, especially to protect against legislative tinkering. However, for purposes of a federalism defense against excessive federal legislation, it should not matter whether the people of the state have acted through their constitution or by statute.

Q: Does the Health Care Freedom Act attempt to "nullify" federal health insurance legislation?

A: Absolutely not. If federal legislation is enacted, individuals would still have the option to participate in federal health insurance programs. This act simply protects a person's right not to participate.

Q: To the extent that the Health Care Freedom Act conflicts with provisions of federal legislation, isn't the state law automatically preempted by the Supremacy Clause of the U.S. Constitution?

A: No. In any clash between state and federal provisions, at least four federal constitutional provisions are relevant. The Supremacy Clause establishes the Constitution as the supreme law of the land and provides that federal laws prevail over conflicting state laws where Congress has the legitimate authority to enact the legislation and where it does not impermissibly tread upon state sovereignty. The federal government will have to demonstrate that its legislation legitimately is derived from congressional authority to regulate interstate commerce. It will also have to show the legislation does not violate the 10th Amendment, which reserves to the states all government power not expressly delegated to the national government; and the 11th Amendment, which protects states from being used as mere instrumentalities of the national government. This constitutional construct is known as federalism.

Q: Are certain provisions of proposed federal health care legislation vulnerable to constitutional challenge even without the Health Care Freedom Act?

A: Yes, in at least three ways. First, to the extent that the legislation purports to regulate transactions that do not directly affect interstate commerce, such as mandating insurance for individuals, Congress may lack authority to do so under the Commerce Clause. Several relatively recent decisions by the U.S. Supreme Court have invalidated federal legislation on this basis. In *U.S. v. Lopez* (1995), the Court struck down federal laws that restricted guns in school zones; and in *U.S. v. Morrison*, it struck down a federal statute involving violence against women. In both cases, the Court found the subject matter of the federal laws did not "substantially affect" interstate commerce, so Congress had no power to regulate it under the circumstances presented.

Second, to the extent the legislation interferes with the individual's right to choose health insurance providers, doctors, or lawful medical services, it may violate the right to medical self-determination recognized under the U.S. Constitution. As the Court declared in *Griswold v. Connecticut* (1965), "We have recognized that the special relationship between patient and physician will often be encompassed within the domain of private life protected by the Due Process Clause." Several of the early abortion cases involved what Justice William O. Douglas, concurring in *Doe v. Bolton* (1973), described as the "right to seek advice on one's health and the right to place reliance on the physician of one's choice." Whether or not one agrees with those abortion rulings, they establish a strong basis for challenging certain federal and state intrusions.

Third, several recent decisions have invalidated federal laws that "commandeer" state governments to do their bidding. In *New York v. United States* (1992), for instance, the Court struck down federal rules requiring states to take ownership of certain radioactive waste and to expose themselves to liability. Speaking for the Court, Justice Sandra Day O'Connor ruled that

"no matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate." Tellingly, she added "the Constitution protects us from our own best intentions: It divides power among sovereigns . . . precisely so that we may resist the temptation to concentrate power in one location as an expedient solution to the crisis of the day." To the extent that federal health insurance legislation forces states to implement its provisions, it could be subject to robust constitutional challenge.

Q: Could the Health Care Freedom Act provide additional protection against federal health insurance legislation that violates protected rights?

A: Yes. Although the federal government usually prevails in federalism clashes, the current U.S. Supreme Court is the most pro-federalism Court in decades. There are no cases precisely on point, but the Court under Chief Justice John Roberts has sided with the states in at least three major recent federalism clashes. In the case most closely on point, *Gonzales v. Oregon* (2006), the Court upheld the state's "right-to-die" law, which was enacted by Oregon voters, over the objections of the U.S. Attorney General, who argued that federal law pre-empted the state law. Applying "the structure and limitations of federalism," the Court observed that states have great latitude in regulating health and safety, including medical standards, which are primarily and historically a matter of local concern. Holding that the attorney general's reading of the federal statute would mark "a radical shift of authority from the States to the Federal Government to define general standards of medical practice in every locality," the Court interpreted the statute to allow Oregon to protect the rights of its citizens.

Horne v. Flores (2009) considered a measure adopted by Arizona voters to require English immersion as the state's educational policy for students for whom English is a second language. Lower federal courts had imposed an injunction based on a finding that Arizona was failing to comply with federal bilingual education requirements. The Supreme Court held that injunctions affecting "areas of core state responsibility, such as public education," should be lifted as quickly as circumstances warrant. It observed that "federalism concerns are heightened when . . . a federal court decree has the effect of dictating state or local budget priorities." The Court remanded the case to lower courts to reconsider the injunction.

In *Northwest Austin Municipal Utility District No. 1 v. Holder* (2009), the Court examined a challenge to section 5 of the Voting Rights Act, which places certain states and localities in a penalty box, requiring them to obtain "pre-clearance" by the U.S. Department of Justice for any changes that impact voting. The Court was sharply critical of the "federalism costs" imposed upon the covered jurisdictions. It avoided the constitutional question by applying the federal law in a way that allowed the utility district to "bail out" from pre-clearance requirements under section 5.

In each of these cases, the Court sided with states in federalism disputes with the federal government.

Q: Will the Health Care Freedom Act affect future state legislation regarding health insurance?

A: Yes. If it is passed as a constitutional amendment, it would prevent any future legislation that infringes upon the rights protected by the amendment.

Q: Won't this be really expensive for the states to defend in court?

A: The Goldwater Institute has offered to defend the constitutionality of the Health Care Freedom Act at no cost to any state. Because legal challenges would involve purely constitutional issues and would not require expensive trials, to the extent that states become involved in litigation, they should be able to do so within existing Attorney General litigation budgets. Moreover, depending on the details of national health insurance legislation, the cost of federal mandates is likely to far exceed the cost of litigation.

Q: Even if the states and individuals did not prevail in a challenge to intrusive federal health insurance legislation, would there be reasons to support the Health Care Freedom Act?

A: Yes. First, if these rights are given additional protection under state constitutions, they will create an absolute barrier to future state legislation that violates those rights. Moreover, efforts to enact the Health Care Freedom Act send a powerful message to our nation's capitol that people at the grassroots take these rights very seriously and intend to protect them.

Q: Does the Health Care Freedom Act impair drug laws?

A: Absolutely not. It protects the right to purchase or provide "lawful" medical services. It does not limit the power of any government to determine what constitutes lawful medical services.

Q: Does the Health Care Freedom Act affect the issue of abortion?

A: No. Again, to the extent that states may regulate abortion under applicable constitutional doctrine and state or federal law, this measure would not alter that power in any way. The Health Care Freedom Act does, however, prevent the government from forcing individuals into health care systems against their will, and matters of conscience may influence such individual decisions.

Q: Does the Health Care Freedom Act affect Veterans' Administration programs, workers' compensation, Medicare, Medicaid, or state health-care systems?

A: Generally, no. The Health Care Freedom Act leaves intact any rules and regulations that were in place as of January 1, 2009. The only way such programs could be affected is if they are changed in the future in ways that violate the freedom of choice protected by the Health Care Freedom Act.

Q: Will this restrict the government from limiting the choice of providers or imposing other limits for the people who do opt-in to a government health care system?

A: No and yes, respectively. If a person voluntarily joins a government health care system, the government may set the terms and conditions, including choice of providers. However, the government cannot prevent a person from purchasing, or a health care professional from providing, lawful medical services outside that system.

Q: Is the Health Care Freedom Act supported financially by insurance companies?

A: No. Many insurance companies support an individual mandate (requiring individuals to buy health insurance or face government fines), which the Health Care Freedom Act would prohibit. An individual mandate guarantees a customer base to the insurance industry. It is present in some legislative proposals as a means to subsidize health insurance for others. If insurance companies play a role in the battle over the Health Care Freedom Act, we expect they will oppose it, possibly with significant resources.

Q: Are there other ways in which freedom advocates can use state constitutions to protect their liberties?

A: Absolutely. State constitutions are full of provisions unknown to the U.S. Constitution that are designed to protect individual liberty and limit the power of government, such as the line-item veto, anti-monopoly provisions, prohibitions against corporate subsidies ("gift clauses"), constraints against earmarks ("special law clauses"), and the like. Citizens and legislatures can amend their state constitutions to add additional protections; and taxpayers can enforce their state constitutional rights in state courts. State constitutions were intended to be the first line of defense in protecting the freedoms of the people. As the power of government grows at every level, we need to use whatever tools are available to us to safeguard our rights. For more on how state constitutions can protect liberty, see the recent Goldwater Institute report, **"50 Bright Stars: An Assessment of Each State's Constitutional Commitment to Limited Government."**

January 13, 2010

The Honorable Harry M. Reid
Majority Leader
United States Senate
Washington, D.C. 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, D.C. 20510

The Honorable Nancy Pelosi
Speaker
U.S. House of Representatives
Washington, D.C. 20515

The Honorable John Boehner
Minority Leader
U.S. House of Representatives
Washington, D.C. 20515

Dear Senator Reid, Senator McConnell, Speaker Pelosi, and Representative Boehner:

As governors, we believe the reform of the health care system can be very beneficial to our nation's economic future and the well-being of our citizens; however, the current health care bills are a lost opportunity to improve the lives of Americans, create a sustainable system of health care and help stabilize both our state and national economies.

Health care reform should be about fixing our broken Medicaid and Medicare systems; instead, the current health care bills entitle 15-20 million more people to Medicaid. While providing health care to low income individuals is important, the net result of this entitlement expansion will be a significant cost shift to those privately insured around the country. According to the Congressional Budget Office (CBO), the unfunded mandate to states and territories is $25 billion; although many states disagree with that figure. For example, Texas costs are estimated to be $21 billion over ten years.

The National Association of State Budget Directors (NASBO) has demonstrated states/territories are in no position to comply with the maintenance of effort provisions found in the bills or to accept any increased costs or additional administrative burdens to expand Medicaid. State general fund expenditures have dropped for the second year in a row. The December 2009 survey shows that the budget situation faced by states truly is unprecedented. Many states cannot afford their current share of the Medicaid program, and they will also have to face a funding cliff whenever the stimulus-enhanced FMAP dollars are exhausted. States have already been forced to cut vital services with 30 states cutting education, 29 states cutting Corrections, and 28 states already cutting Medicaid.

Current federal proposals would strip the states of our ability to negotiate Medicaid provider rates, and we believe that states and territories should be allowed to negotiate Medicaid provider rates as found in current law. The pending bills cause states and territories to lose money through the bills' treatment of the prescription drug rebate provisions. States and territories also should not be asked to forego a share of the savings from any new Medicaid rebates collected for the dual eligible population receiving prescription drugs through the Medicare Part D program.

These bills also impose a one-size-fits all federally-designed health insurance exchange and the insurance rating rules tie states' and territories' hands. Health insurance exchanges desired by any state should be state-based and state-designed to ensure maximum state flexibility to design and operate exchange mechanisms that facilitate the purchase of insurance. Utah should not be forced to replicate Massachusetts' exchange, and vice versa. In the same vein, the health insurance rating rules should account for the existing variation in state and territory statutes and the state and territory should retain the authority to provide oversight and adopt tighter rating bands if necessary.

In order to pay for the bills, the legislation cuts Medicare $571 billion in the House bill and $466.7 billion in the Senate bill. Also included are far-reaching massive tax increases which will impact American individuals and families at all income levels. From employer mandates and taxes on high-value insurance plans to taxes on both branded and generic drugs and medical devices, these bills are funded, and thereby the bills' costs are lowered, by taking more from taxpayers and reforming the health care system less. In particular, the Senate's $6.7 billion insurance premium tax will be passed directly to consumers and will impose new costs on Americans who already have coverage. The unfunded mandates to states likely will require many states to necessarily raise taxes, too.

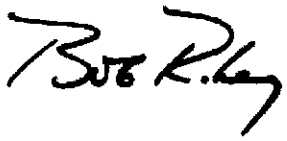
Although CBO has scored the Senate bill at $842 billion and the House bill at $1.3 trillion both bills are full of budget gimmicks. The bills delay spending until the fourth year and exclude the costly "Doc Fix" which ignores the over $200 billion price tag associated with stopping the unavoidable cuts to physicians under the Medicare program.

Governors agree we should work to enhance the quality of health care while making it more affordable and efficient. Unfortunately, the opportunity to truly lower the cost of care has been lost in the rush to try to finish health reform. Both CBO and the Chief Actuary of the Centers for Medicare and Medicaid Services have warned the current legislation will increase the overall costs of health care. The federal government and the states should refocus efforts to lowering the cost of care which will in turn increase coverage, but simply increasing the number of individuals on the public plans without a plan to improve the public programs for participants is irresponsible.

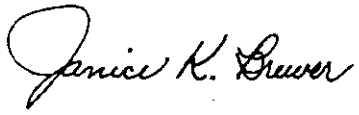
At this juncture, small businesses, seniors, states and territories, and taxpayers have anxiety about Congress' pending health care legislation and rightfully so-- one-sixth of our GDP is at stake. As Republican Governors, we believe in a system which eliminates red tape, empowers consumers to engage in making good health care decisions in the private market, and guarantees affordable coverage for patients with preexisting conditions. Missing from this important legislation is real medical liability reform and provisions which protect seniors' Medicare benefits and access to care. Several states have already implemented medical liability reform with good results; no real medical reform can be accomplished without tort reform. Instead, premiums are increased and small businesses are faced with onerous mandates rather than given the power to pool together and offer health care at lower prices, just as corporations and labor unions do.

Along with the majority of Americans and as leaders of 20 states and territories, we are disappointed with the lack of transparency. We urge you not to circumvent the normal committee process and to conduct an open, fully-bipartisan negotiation. It is time to slow down and pass meaningful health care reform, not hastily prepared partisan legislation which omits reform and saddles American taxpayers for generations to come.

Sincerely,

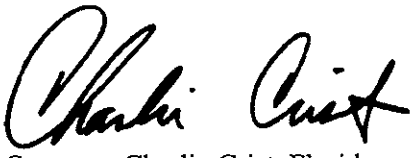


Governor Bob Riley, Alabama



Governor Jan Brewer, Arizona

Governor Sean Parnell, Alaska

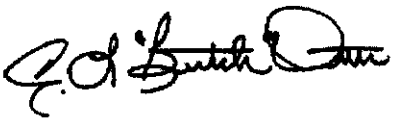


Governor Charlie Crist, Florida

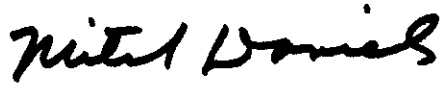
Governor Sonny Perdue, Georgia

Governor Felix Camacho, Guam

Governor Linda Lingle, Hawaii



Governor C.L. "Butch" Otter, Idaho

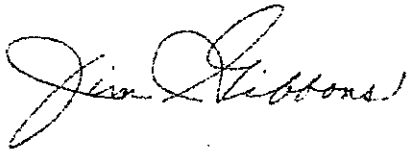


Governor Mitch Daniels, Indiana

Governor Bobby Jindal, Louisiana

Governor Tim Pawlenty, Minnesota

Governor Haley Barbour, Mississippi

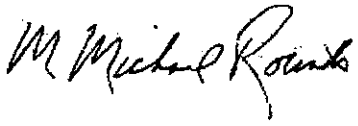


Governor Jim Gibbons, Nevada

Governor John Hoeven, North Dakota

Governor Don Carcieri, Rhode Island

Governor Mark Sanford, South Carolina



Governor Mike Rounds, South Dakota

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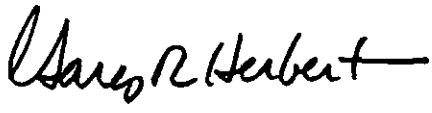
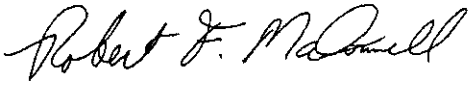


Governor Gary Herbert, Utah



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Governor Sean Parnell
STATE OF ALASKA

January 13, 2010

The Honorable Lisa Murkowski
United States Senate
709 Hart Senate Office Building
Washington, DC 20510

The Honorable Mark Begich
United States Senate
144 Russell Senate Office Building
Washington, DC 20510

The Honorable Don Young
United States Congress
2111 Rayburn House Office Building
Washington, DC 20515

Dear Senators Murkowski and Begich and Congressman Young,

As Congress contemplates final passage of the proposed health care reform legislation, I ask that you consider the concerns raised by my administration on behalf of Alaska's residents. As I have previously communicated to you, both publicly, and through my staff, the current federal proposal does little to address the main health care issues facing Alaskans – cost and access.

The current health care reform legislation before Congress is troubling on several levels. For the many Alaskans currently unable to afford insurance, the proposal, as outlined by Congress, will do nothing but mandate they purchase it, while increasing the insurance premiums. I am particularly concerned with the increase in costs by the pending legislation for Alaska's seniors, families, small businesses, and physicians. Beyond this burden, which is placed squarely on the shoulders of Alaskans, the legislation will put a significant strain on the State of Alaska's General Fund budget.

In addition to the enormous cost Alaskans would face, the proposal does little to address Alaska's health care workforce shortage; requiring individuals to purchase health insurance does not guarantee that people will have access to health care.

Beyond the practical concerns about the benefits of this legislation that I have raised, I am concerned about the constitutionality of forcing Americans to purchase health insurance. As you know, I have directed Alaska's Attorney General to conduct a review of the reform legislation, including this requirement.

So that you are fully aware of the State of Alaska's concerns, I am including two supplementary documents provided to you over the course of the health care reform debate. The first document updates a previously submitted policy review of the healthcare legislation passed by the Senate. The second document provides Alaska's perspective on the so-called "Nebraska Compromise" whereby the cost of

Medicaid expansion in Nebraska will be indefinitely supported by the federal government. As you will note, this expansion will cost Alaskans $700 million over the first 20-year window of implementation while Nebraskans will not be responsible for paying anything.

Finally, I ask that you consider securing a 100-percent federal Medical Assistance Percentage for services rendered to Native Americans and Alaska Natives outside of Tribal facilities. Such a provision would be advantageous to Alaska and other states with large Native populations. Supporting documents outlining this request have previously been submitted to you.

Thank you for your serious consideration of my concerns regarding the proposed legislation. I look forward to continue to work with you to ensure that Alaskans are treated fairly, and that the health care needs of the citizens of this great state are adequately met.

Sincerely,

Sean Parnell
Governor

Enclosures

State of Alaska
Patient Protection and Affordable Care Act Comments
January 11, 2010

Policy Considerations

Insurance Market Reforms

Guaranteed issue and guaranteed renewal rules would be imposed on all individual and small group plans, and exclusions for preexisting conditions and annual or life time caps would be prohibited. Rating rules would limit variations in premiums to geographic area, tobacco use, age, and family composition.

Guaranteed issue and renewal, modified community rating rules, and preexisting exclusions could be very problematic and potentially drive the cost of insurance premiums up significantly unless there is sufficient participation in the individual and small group markets to spread the risk. It could be anticipated that some employers and low risk individuals may chose to face tax penalties rather than enroll in insurance plans, leading to adverse selection.

Any insurance market rating reforms must provide adequate time to transition to new federal minimum standards and preserve state regulatory authority to ensure consumer protections.

Health Insurance Exchange Sec 1311

By 2014 states would be required to establish, using federal grant funds, an insurance exchange for individual and small group markets. Large employers may participate beginning in 2017. Insurers operating in the state, or multistate plans operating under this proposal, would be required to participate in the exchange. The exchange would develop standardized enrollment forms and formats for comparing plans. Individuals could only receive tax credits if they purchase coverage through the exchange. Exchanges must be fiscally self sustaining beginning Jan. 2015.

A health insurance exchange could assist individuals and groups to comparison shop for insurance and potentially enhance competition in the insurance market. This proposal envisions exchanges as tools for aggregating the risk of individual and small group coverage resulting in premium reductions. Should an exchange be required by law, an Alaska-based and administered exchange, or a state option to join with other states in a multi-state exchange, would be preferred over a national model.

The administrative and regulatory challenges will be very complex particularly considering that the legislation is overly prescriptive of operational requirements. There also appears to be potential for confusion between the role and authority of the Secretary of HHS and state insurance regulatory responsibilities. Becoming fiscally self sustaining can be a significant issue in a state such as Alaska where there is a very limited pool of insurers and the Exchange fees, whether on the plans or individuals, adds additional cost to already high insurance premiums.

The language should be modified to ensure maximum state flexibility to design and operate exchange mechanisms that facilitate the purchase of insurance.

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Individual and Employer Mandates

The bill would require individuals to purchase at minimum a basic plan (that would cover 65% of health care expenses) beginning 2013, and would impose a tax penalty (graduated based on income) on those who do not enroll. Employers with more than 50 employees would be required to pay a tax for each employee who receives a tax credit through a state exchange.

Individual Alaskans and Alaska's business community are likely to oppose such mandates, which essentially translate into a new tax on families and individuals who currently do not have health insurance. Also, because the state's workforce includes a high level of seasonal and part-time employees, mandates would be difficult to track and enforce.

Medicaid Expansion Sec 2001

Beginning Jan. 2014 the bill expands Medicaid coverage for all legal residents up to 133% FPL, including childless adults. Income disregards would be prohibited and eligibility would be determined based on adjusted gross income through the annual IRS income tax reporting. The bills impose maintenance of effort requirements on eligibility, which means that eligibility standards and categories of eligibility cannot be reduced or made more stringent. The proposals also mandate new eligibility groups and additional benefits, again creating an additional cost to the state.

While the bill proposes significant increases in FMAP rates (91% in the House bill and about 82% in the Senate bill) to cover increased program costs to states for the expansion, the full cost of expansion is not assumed by the federal government, and there is no guarantee the higher FMAP levels would be maintained. The State of Alaska opposes new unfunded federal mandates. Requiring additional matching state funds is not viable in the current economic recession, the expected states' budget shortfalls anticipated over the next several years, and the competing state General Funds needs for education, corrections, public safety, etc.

New programmatic mandates, as outlined in the bill, will further exasperate this concern.

It is important to note that state participation in Medicaid is voluntary, but if a state chooses to participate then all of the federal requirements must be met. It may be that a state or some states are facing such severe economic difficulty in 2016 when significant state costs begin that opting out of Medicaid participation may become the only viable option in order to maintain other state programs.

Additionally, a huge increase in administrative burden and costs would be assumed by states to manage the expansion without an enhanced FMAP. This burden will be compounded by the proposed new eligibility processes which are very different from the current process, resulting in significantly increased costs to states to implement the change, while maintaining the current eligibility process for other programs, such as food stamps and TANF. In particular, an enhanced FMAP is needed to accommodate costs of enrollment for the currently eligible but not enrolled population.

Any Medicaid expansion should not increase costs to the state or include new unfunded mandates. Congress should include a 100% federal share for expansion.

Medicaid Quality Subtitle I
Establishes Medicaid Quality Measurement Program. Prohibits payments for health care acquired conditions. Establishes a bundled payment demonstration project.

Non-payment for services related to health care acquired conditions should serve as an effective incentive for health care providers and facilities to reduce infection and medical error rates. A demonstration project that comprehensively tests payment bundling to determine viability and effectiveness of this methodology may be a first step toward payment reform. Development of a quality measurement program will support Alaska's vision of moving toward performance-based purchasing for Medicaid.

CHIP(DKC) Sec 2101
The House version ends CHIP in 2014 and children then obtain coverage through the Exchange or Medicaid. The Senate continues CHIP to 2019 and provides a 23% FMAP boost the last three years.

CHIP programs have been well supported throughout the states and considered quite successful in insuring children. It is likely Congress will have significant difficulty ending CHIP as a distinct program and merging it with Medicaid or Exchange coverage. Continuation as proposed by the Senate will save some GF the last three years, however it is unlikely Congress will end the program.

Should these provisions remain intact, the state requires maximum flexibility to transition children into Exchange plans.

Definition of Medical Assistance
Redefines "medical assistance" in the Medicaid program to include both the means of payment of part or all of the cost of medical care and the services and care themselves.

Based on past Ninth Circuit Court of Appeals decisions, this proposed change would increase lawsuits against states. As a result, states will lose much of their ability to control programs and expenditures.

This new definition should be deleted.

Maternal and Child Health Sec 2951
Establishes new federal grant program or optional Medicaid service expansion for early childhood home visitation programs

Alaska (DHSS) would seriously consider developing this program if federal resources become available and operational control is minimized at the federal level. Research-based home visitation models have demonstrated good return on investment and positive outcomes for families, including improved maternal and newborn health, child development and early identification of problems, school readiness, juvenile delinquency and family self sufficiency.

Promoting Disease Prevention and Wellness Title II

Authorizes incentives for Medicare and Medicaid enrollees who complete healthy lifestyles programs. Creates new Medicaid state plan option for "health homes" providing care coordination/management and health promotion (among many other services) through integrated care teams for enrollees with multiple chronic conditions. Incentivizes states to cover preventive services and immunizations under Medicaid. Appropriates funding for Childhood Obesity Demonstration Project.

Improving health and wellness behaviors of Medicaid recipients is important for their long term health, though educating recipients and providers about the proposed incentives and also tracking recipient compliance might prove to be a challenge. Also, financial incentives alone for completing a healthy lifestyle program cannot be expected to automatically translate into improved behaviors, but should be accompanied by programs (such as the proposed Childhood Obesity Demonstration Project) that address the barriers individuals face to engaging in healthy behaviors.

Alaska could benefit from a Medicaid option that would provide a mechanism to reimburse for the services of integrated health care teams serving as the medical "health" home for Medicaid recipients with multiple chronic conditions.

Payment Reform Sec 2705

Establishes CMS Innovation Center to test new provider payment models, and pilot program to encourage improved coordination of care between hospitals, physicians, and post-acute providers through payment bundling.

Alaska's private medical sector is behind most states in development of integrated care systems, and there are no health maintenance organizations in our state. Encouraging service integration through new payment mechanisms could help improve the efficiency of Alaska's health care delivery system.

Workforce Title V

Provides 10% Medicare bonus for primary care providers and general surgeons practicing in HPSAs, redistributes unused graduate medical education training slots and encourages residencies in outpatient settings, and proposes a number of committees, studies and pilot projects related to health workforce development. The senate version appropriates significant funds for the National Health Service Corp and various other sections of this expansive provision, including loan repayment and retention funding.

The proposal does not go far enough in supporting the development of the health care workforce. Ensuring an adequate supply and distribution of health care workers is as essential (if not more so) to increasing access to health care as expanding access to health insurance. To support health workforce development, additional resources above and beyond the provisions in these bills need to be provided for training and for recruitment.

It does not appear that the significant reimbursement changes needed to encourage and support primary care practitioners are present in the legislation.

Title V – Fraud, Waste, and Abuse

Proposed strategies for reducing fraud, waste and abuse in Medicare and Medicaid include a new provider enrollment process, data sharing across federal programs, increased penalties, and requirement for providers to implement a compliance program.

Though fraud and abuse are significant concerns, these proposals, in addition to current requirements, will increase costs and increase procedural requirements imposed on providers. These proposals may serve as a deterrent to provider participation in Medicare and Medicaid, further decreasing access to care and services for Alaskan enrollees.

Congress has created fraud and abuse detection and compliance programs in addition to other such programs. It appears that there is minimal coordination or collaborative effort to determine what works and is cost effective. Federal auditors and contractors overlap and overlay with state and other federal fraud and abuse efforts. While this is all well intended, it appears to be duplicative and ineffective. Congress and the administration should examine all of the current programs and proposed programs to find cost effective methods to better combat fraud and abuse across all private and public programs.

Revenue Items

Proposal increases revenue to partially cover cost of service expansion through taxes on insurers, drug companies, medical device makers, laboratories, and high cost insurance plans.

The proposed new taxes on the health care sector is likely to increase costs to the consumers and government health care programs, potentially off-setting the income generated by these new fees.

"Cadillac Plan" taxation in the Senate version would affect AlaskaCare plan members, and raises questions about who or what entity would be liable for the tax, and if the State plans are considered "insurance companies." If the tax is levied on insurance companies, can the Federal Government tax the State? Are retiree health trusts similarly "insurance companies" subject to tax?

Community Living Assistance Services and Supports Sec 8001

Both bills propose a national voluntary long term care insurance financed by wage based premiums. The senate bill requires a long term actuarially sound benefit of at least $50/day.

This may be of some benefit to individuals permit them to remain in their own homes longer. However, a benefit of at least $50/day will not cover the significant cost of assisted living. It will only supplement other payers or perhaps briefly delay eligibility for public programs. To the degree that it delays eligibility for Medicaid or offsets Medicaid payments this will benefit states, but likely not to a significant extent.

Indian Health Care Reauthorization Act Sec 10221

Both bills have differing versions of reauthorization. This is important to Alaska as this act has not been reauthorized for many years and new provisions should strengthen the tribal health care organizations, which benefits the state.

For the first time federal law will recognize that tribal services are no longer linked to provision in a facility, but can be provided in the community. This clearly allows tribal organizations to

expand into providing long term care services for their beneficiaries, which several in Alaska wish to do. This is important in securing 100% FMAP for these Medicaid services. (*See discussion paper on tribal 100% FMAP).* In addition there are programs to increase Indian health care workforce, new models of behavioral health delivery and disease prevention and youth suicide prevention, all items that could benefit Alaska.

Medicaid Pharmacy Changes Sec 2503

Beginning January 2010, both the House and Senate bills increase the federal Medicaid drug rebate minimum level for brand and generic products.

While these proposals will increase the federal rebate dollars, the net effect will be to decrease the state drug rebate collection. Currently Alaska and many other states collect supplemental drug rebates above the federally mandated amount. Increasing the federally mandated base rebate lessens or eliminates the supplemental rebate states have been collecting. In addition, the savings attributable to the new rebate bands accrue only to the federal government. These savings should be shared between the state and federal government as under current law.

Increase Funding for Federally Qualified Health Clinic Sec 5601

The House bill increases funding by $12 billion over 5 years and the Senate bill provides $33 billion over 6 years.

New funding can be used to expand current public capacity as well as build new capacity. This will be critical in creating access for Medicare, Medicaid and tribal beneficiaries as the other provisions in these bills do not significantly address workforce and private reimbursement issues.

Considering Alaskans' reliance on FQHCs, it is imperative that the state receive a large allocation.

Medicare Subtitle B

The bills phase in payment reductions to Medicare Advantage plans, develop quality measures and payment models, begins to reduce the 'doughnut hole' for Medicare pharmacy and other extensive changes.

The changes to Medicare Advantage plan reimbursement will likely have minimal impact upon Alaskans. It appears that the few plans operating in Alaska were recently pulled. Closing the "doughnut hole", while apparently phased in slowly, will eventually provide significant out of pocket cost savings for Medicare eligible Alaskans that have significant drug usage. Individual savings will be determined by the rate at which the "doughnut" hole is closed. This has yet to be resolved by the legislation.

These bills do not address the physician payment reductions that result from the Sustainable Growth Formula. Until resolved, it is likely to dampen provider willingness to serve Medicare eligible patients.

State as Employer Considerations

1. *Excise tax on insurers for employer-sponsored health plans: a 40% tax on value above $8,000/individual and $21,000/family for 2013 and indexed on CPI beginning 2014. The threshold amounts will be increased for retirees and employees engaged in high risk professions by $750/individual and $2000/family.*
    - Value is defined broadly as the aggregate value of all employer-sponsored health insurance coverage, including coverage in the form of reimbursement under a Health flexible spending/reimbursement arrangement, dental and vision coverage and other supplementary coverage. First, it is not clear that state governmental plans are included; clarification is necessary. Second, if the state is subject to this bill and provision, it would be taxed to some degree.

2. *New fees on segments of health care sector including annual fee on health insurance sector.*
    - Unclear whether state's self-insured healthcare programs would be included as insurance sector.

3. *Plans report proportion of premium dollars spent on administrative expenses.*
    - Self-insured plans use a per capita fund accumulation and are not-for-profit, unclear if this will affect the state.

4. *Large employers prohibited from annual and lifetime limits.*
    - State plans have annual limits for some coverage, lifetime unlimited for Actives, $2mm for Retirees.

5. *Preventive care must be covered 100% or value based design.*
    - Will require changes to state's plans. "Preventive Care" is ill-defined; costs unknown. "Value-based" also poorly defined, but may result in lower payments on behalf of members who do not follow protocols. Impact unknown.

6. *Maximum out-of-pocket limit.*
    - Will require changes to state's plans. Impact unknown.

7. *Plan applicability uncertain – Retiree Plans.*
    - Uncertain if applicable to retiree plans. Alaska is a rare pre-funder of retiree health obligations. Uncertain if SB125 contributions and/or investment returns will be considered in measuring excise tax triggers. Plan design changes may violate Alaska Constitution if perceived as "diminishment."

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Health Care Reform Medicaid Cost Gap Analysis

Applying the "Nebraska Compromise" to Alaska

Health care reform, as passed in the Senate, contained the so-called "Nebraska Compromise." This provision states that new Medicaid spending in Nebraska would be funded at 100% by the federal government. The Alaska Medicaid Budget Group performed an analysis to determine the amount of funding that the state would receive for the newly eligible Medicaid population should Alaska benefit from a similar provision. Over the 20-year period from 2017 to 2036, the cost of covering this newly eligible Medicaid population will amount to over $700 million in state general funds. In this scenario, additional annual state general fund spending will increase from $17 million in 2017 to approximately $60 million in 2036.

These figures were determined by using the most recent 3-year average of uninsured adults; estimated population growth among adults; estimated health care inflation (3.4%); and an estimated increase in utilization of Medicaid services (2.1%/year).

Children at or below 133% of the Federal Poverty Level are currently eligible for Medicaid and are not included in the newly eligible group. In determining these figures, the Alaska Medicaid Budget Group assumed that only 75% of newly eligible non-Natives adults and 50% of newly eligible Native adults would enroll.

Care provided at Indian Health Service (IHS) facilities for current and newly eligible Alaska Native adults would be covered at a 100% Federal Medical Assistance Percentage (FMAP). The above calculation assumes that two-thirds of all care for newly enrolled Alaska Natives would be provided at IHS facilities and one-third of care would be provided at non-IHS facilities. Care provided at non-IHS facilities would be reimbursed at the FMAP set for the newly eligible non-Native population.

Finally, it is difficult to assume the final cost to the state per new Medicaid enrollee. In response, the Alaska Medicaid Budget Group assumed that new enrollee cost would amount to $3540 per person in 2009. This amount equates to the average costs for the Family Medicaid and Transitional Medicaid groups. Given the data currently available, this is the most reasonable cost estimate available; actual costs may be much higher.

Health Care Policy and Constitutional Rights:

The Health Care Freedom Amendment

Testimony Presented Before the Alaska House Judiciary Committee

March 11, 2010

by Dave Roland

Chairperson Ramras, Vice-Chairperson Dahlstrom, and members of the committee, I thank you for the opportunity to offer this testimony. My name is Dave Roland, and I am a policy analyst for the Show-Me Institute, a non-profit, non-partisan, Missouri-based think tank that supports free-market solutions to the state's social challenges. Prior to joining the Show-Me Institute, I spent several years in Washington, D.C., gaining expertise in constitutional law as a litigator with the Institute for Justice, a public-interest law firm that specializes in the protection of Americans' liberties. The ideas I will offer today are my own, and should not be taken as necessarily representative of the organizations with which I am affiliated.

Among the elements of the health care reform bill being considered by Congress is a requirement that almost every adult would either have to purchase a health insurance policy or face punitive fines to be collected by the Internal Revenue Service.[1] There has been widespread debate in legal circles about whether the courts would uphold such a requirement, but lawmakers in at least 33 states are trying to do what they can to insulate their citizens from such a requirement. In Alaska, members of this legislature are considering HJR 35, which very closely resembles the legislation known in other states as "Health Care Freedom" amendments. HJR 35, if passed by this legislature, would offer citizens the opportunity to modify the Alaska Constitution to formally recognize their right to decide for themselves whether they will participate in any private health care system. Under this amendment, the government would not be permitted to prevent citizens from offering or accepting direct payment for health care services, and neither could it substantially limit the purchase or sale of health insurance in private health care systems.[2]

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[1] The proposed bill makes exceptions for members of religious groups whose beliefs forbid the acceptance of modern medical treatments.

[2] It appears from the current text of the Health Care Freedom Amendment that the Legislature would retain the ability to pass a comprehensive, tax-based, single-payer public health insurance system, so long as in doing so it did not either outlaw the sale or purchase of private insurance policies or restrict citizens' abilities to offer or accept direct payment for health care services.

My testimony today is not intended as an endorsement of any bill, but rather to explain the policies implicated by the state and federal bills just mentioned. I will particularly address the constitutional issues raised by one element of the federal health care reform bill, the way that courts would likely resolve those constitutional issues, and the likely impact of the Health Care Freedom Amendment on the courts' resolution.

Should Everyone Have Health Insurance?

The linchpin of the current federal health care reform bill is a requirement that almost every adult in the nation must obtain a health insurance policy that would meet certain requirements imposed by Congress. In addition to the fact that many Americans currently carry health insurance policies that would *not* fit the requirements Congress is considering, there are also many who have reasons for choosing to remain uninsured. A brief look at the basic mechanics of the health insurance industry will help illustrate why some people make these choices.

Insurance is gambling, both for the insurers and the insured. The insurer looks at your profile and makes a careful statistical determination of how much your health care is likely to cost them over a given period of time. They then charge you a premium that - if their calculations are correct - would allow them not only to cover your expenses, but also to pay their employees and to make a profit on top of that. Their risk lies in the possibility that you might incur costs greater than they expect and/or sooner rather than later. But the odds are heavily stacked in their favor. These companies are very good at making their guesses, and the large pool of resources that results from their customer base means that, just like a casino, they almost always come out ahead.

For the insured, there is also a gamble involved. If, in fact, the insurance companies are correct (as they usually are), the insured will end up paying far more for their health care than they would have if they had remained uninsured. This is the risk they assume in order to gain peace of mind that, should a catastrophic injury or illness occur sooner rather than later, they will be taken care of. But, financially speaking, the great majority of people would be better off putting 85% of what their insurance premium would have been into a savings account earmarked

for health care expenses.[3] Then, whenever health care costs emerge, the money is ready to be used - and, importantly, it can be used for any procedure and any health care provider the insured prefers.[4]

So the health insurance trade off is, the insured sacrifices extra money and a significant range of choice as to providers and procedures for the assurance that they will have their expenses covered if they should need treatment sooner than they would otherwise be able to pay for it. It is not a necessity, and a large majority of people would ultimately be better off if they simply saved their money instead of giving it to insurance companies. That is why it very easily could make economic sense to forgo health insurance.

While some people may not carry health insurance because it is unaffordable, many Americans *choose* not to purchase health insurance. Some people's religions may not permit the use of modern medicine, while others may not believe it to be effective. Still others are simply confident enough in their propensity for health that they are willing to risk the costs of illness or injury in order to direct their money to concerns that they believe to be more pressing for themselves and their families. And there are some who, recognizing that most people pay far more to insurance companies than they are ever likely to need for their own treatment costs, would prefer to self-insure by creating their own health fund. For each of these people, a congressional directive to purchase a health insurance policy would mean giving up a huge amount of money — as well as a significant amount of autonomy and privacy — committing themselves to a contract for goods and services that they do not want, and in some cases may be prohibited from using.

The Federal Constitution

As we all remember from high school, congressional authority is limited to those powers explicitly granted by the Constitution.[5] In this case, the question would be whether the

[3] Even the best of health insurance companies usually only apply about 85% of the premiums they receive on their clients' health care costs.

[4] Most health insurance companies place limits on the doctors from whom a policy holder can receive treatment as well as on the types of treatment that are covered.

[5] These eighteen powers are enumerated in Article I, section 8, of the U.S. Constitution: 1) To tax and spend for "the common defense and general welfare of the United States"; 2) To borrow money; 3) To regulate commerce with foreign nations and among the several states; 4) To establish rules governing naturalization of citizens and bankruptcies; 5) To coin money and regulate its value; 6) To punish counterfeiting; 7) To establish a postal service

Constitution gives Congress the authority to punish citizens for refusing to purchase health insurance.

Those backing the bill suggest that this authority is part of part of Congress' power "to regulate commerce ... among the several states[.]"[6] It is true that since 1937 courts have generally interpreted this power very broadly,[7] resulting in a U.S. Supreme Court decision that a farmer named Filburn was bound by agricultural regulations regardless of whether he took his grain to market.[8] More recently, the Supreme Court also held that Angel Raich was subject to federal drug laws even though her medical marijuana was homegrown and neither bought nor sold.[9]

But courts have also recognized that congressional authority under the Commerce Clause is not infinite. In *U.S. v. Lopez*, the Supreme Court held that the Commerce Clause did not permit Congress to create a federal law banning possession of firearms in a school zone.[10] In *U.S. v. Morrison*, the court struck down a law that addressed the subject of gender-based violent crime.[11] The primary reason that the court struck down the laws in *Lopez* and *Morrison* was that the subjects Congress sought to regulate lacked a clear nexus with commerce among the states.

Even though much of the health insurance industry is handled within the bounds of individual states,[12] courts will likely find that health insurance as a whole is an issue with a sufficient connection to interstate commerce to permit congressional regulation. But if Congress passes a bill mandating that individuals must either buy health insurance or face financial

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and post roads; 8) To establish copyright laws; 9) To constitute a federal court system inferior to the Supreme Court; 10) To punish piracies on the high seas and offenses against the law of nations; 11) To declare war and make rules concerning captures on land and water; 12) to raise and support armies; 13) To provide a navy; 14) To make rules to govern the army and navy; 15) To provide for the use of militia to enforce laws, suppress insurrections, and repel invasions; 16) To provide for organizing, arming, and disciplining the militia; 17) To govern the District of Columbia; and 18) to make laws "necessary and proper for carrying into execution the foregoing powers".

[6] U.S. Const. Art. I, § 8.

[7] Prior to 1937, the power of the federal government was regularly held in check by the Supreme Court. A number of factors, including President Franklin Roosevelt's threat to pack the court with his own appointments in order to ram through New Deal legislation, led to what has been termed a "constitutional revolution". For the past 73 years, the general rule has been for courts to presume that the Commerce Clause grants Congress nearly unlimited authority to regulate the behavior of citizens—particularly as pertains to their ability to obtain, keep, and use property.

[8] *Wickard v. Filburn*, 317 U.S. 111 (1942).

[9] *Gonzalez v. Raich*, 545 U.S. 1 (2005).

[10] *U.S. v. Lopez*, 514 U.S. 549 (1995) (finding no clear connection between mere possession of a firearm in some proximity to a school and the stream of interstate commerce).

[11] *U.S. v. Morrison*, 529 U.S. 598 (2000).

[12] In part as a result of federal law, it is very unusual for individuals to be able to purchase insurance from companies outside the state in which they are currently domiciled.

sanctions, courts will still have to answer a very specific question: Does the power to regulate interstate commerce give Congress the authority to penalize citizens *who do not wish to engage in commerce*?

As Prof. Randy Barnett pointed out at a recent Heritage Foundation debate,[13] the Supreme Court has never faced such a question, so we cannot be certain of its answer. I tend to agree with Barnett that the Court's response will likely hinge on the solicitor general's ability to explain which aspects of citizens' lives (if any) would remain beyond the reach of congressional regulation if the Court permitted these mandates to be enforced. If the Solicitor General offers a reasonable response that acknowledges clear limits to the powers available under the Commerce Clause, the Court may sustain the individual health insurance mandate. If not, I believe that the majority of justices will strike the mandate as unconstitutional.

Some professors have argued that even without relying on the Commerce Clause, authority for the health insurance mandate could be found in Congress' power "to lay and collect taxes ... [to] provide for the ... general welfare of the United States",[14] or even in the Sixteenth Amendment's authorization of an income tax.[15] I disagree. While taxation power *might* permit the creation of a tax-based public health insurance system like Medicare that all workers pay into,[16] this is not what is anticipated in the insurance mandate under consideration; it is neither tax-based, nor part of a public health insurance system, nor would the alleged "tax" be collected from all workers. Furthermore, even if the fees for failing to purchase health insurance were classified as a tax authorized by Article I, section 8, Congress is specifically denied the authority to impose capitation taxes "unless in proportion to the census," a requirement that the current proposal does not seem to meet.[17]

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[13] Video available at http://volokh.com/2009/12/09/video-of-heritage-session-on-constitutionality-of-health-care-mandate/.

[14] U.S. Const. Art. I, § 8.

[15] U.S. Const. Amendment XVI.

[16] This might be possible, though politically impractical. First, they could not apply such a tax against everyone. It would have to take the form of some kind of an income tax or else it would violate the constitutional prohibition on "capitation" or "direct" taxes. See Article I, section 9. So, in order to mirror the effect of the current proposal while relying on the taxing power, they'd have to jack up the income tax rates by 2% across the board, then offer a 2% tax credit for anyone who obtains a qualifying health insurance policy. That would likely pass muster, constitutionally, but it would almost guarantee an enormous political backlash because people hate having their taxes raised - even if many would have a relatively easy way to get out from under it. This approach, by the way, would also make it much harder to exempt people with religious reasons for not obtaining health insurance, which would be another major knock against such a plan.

[17] It might be argued that the penalties for failing to obtain health insurance could be considered an "income tax" of the sort that is exempted from the limitations of Article I, section 9. I think that such a penalty could not be

The next question courts would have to answer is whether the issue should be reserved to the states under the Tenth Amendment.[18] This is shakier ground for a constitutional defense than one would really like to have. While the original intent of the Tenth Amendment was clearly to keep the federal government in its proper, limited sphere, the test of the amendment states that it applies only where courts have determined that a specific power has not been delegated to Congress. If a court has already located congressional authority in either the Commerce Clause or the taxing power, it is a near certainty that it will also determine that the Tenth is simply inapplicable as a barrier against the federal statute.

After considering the question of whether Congress generally has the authority to create an individual health insurance mandate, the question will then become whether such a mandate violates liberties preserved under the first nine amendments to the U.S. Constitution. The relevant provisions are contained in the First, Fifth, and Ninth Amendments.[19] The Supreme Court has previously recognized that the Constitution protects citizens' rights to associate with others of their choosing,[20] to enter into contracts, to make their own decisions regarding health care, and, of course, their right to privacy.[21] A violation of any one of these rights could be sufficient to invalidate the health insurance mandate.

Unfortunately, merely establishing an infringement of constitutional rights does not usually end the analysis. In fact, the Supreme Court has long permitted infringement of these kinds of liberty, as long as the government could advance an interest in doing so that a majority of the justices considered to be sufficiently important. In the case of the individual health insurance mandate, the government's interest is to make insurance premiums more affordable and, thus, to increase the number of people with access to health care. The courts will have to balance this interest against the liberty and privacy interests violated when citizens are forced to purchase coverage that they do not want and may have no intention of using. My opinion is that, particularly given the extremely high value that several current justices place on protecting the

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considered an "income tax" because it would be selectively applied and collected separately from the general income tax authorized in the Sixteenth Amendment.

[18] U.S. Const. Amendment X.

[19] While the U.S. Supreme Court has rarely discussed the Ninth Amendment as a substantive source of individual liberties, its text—"The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people"—suggests that it should be seen as such. See Justice Arthur Goldberg's concurring opinion in *Griswold v. Connecticut*, 381 U.S. 479 (1965).

[20] U.S. Const. Amendment I.

[21] U.S. Const. Amendments V and XIV (Due Process Clause).

privacy rights of individuals, it will be difficult for the Solicitor General to convince a majority that the *potential* for lower health insurance premiums (because, in fact, there is no guarantee that the plan will work in the way Congress intends) can justify forcing someone to disclose private information about themselves and their health care.

The Health Care Freedom Amendment

If everything I've discussed above fails to persuade the courts to strike down the individual health insurance mandate, then the arguments will come down to state constitutional protections. This is one reason (but only *one* reason) why Alaskans should take the Health Care Freedom Amendment seriously.

The Bill of Rights in the U.S. Constitution does not demarcate the outer limits of individual freedoms to which citizens are entitled. Rather, it merely establishes a baseline of liberty that cannot be violated by any level of government. The states, however, each have their own constitutions, and those documents can—and frequently do—provide an even higher level of protection for liberty than is afforded by the U.S. Constitution. Generally speaking, these additional protections are only applied against the actions of state and local governments, but if Congress tried to enforce a law that directly violated the terms of the Health Care Freedom Amendment (or some other freedom guaranteed under a state constitution), the courts would have to decide whether a state's guarantee of liberty to its citizens can protect them from actions of the federal government that would violate that liberty.

This is currently an open question. There are cases in which federal courts have noted that the application of a federal statute could result in a violation of certain freedoms secured under state constitutions. In several of these cases, the courts required the government to come up with a sort of alternative structure that would respect the state constitutions – but in each of those cases there were also usually indications from Congress that they wanted to avoid violating state constitutional freedoms. In the case of the individual health insurance mandate, it would seem clear that Congress is not concerned with respecting state constitutional protections. This would set up a battle under the U.S. Constitution's Supremacy Clause.

The Supremacy Clause, found in Article VI, reads as follows:

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."

Of course, the central question here will be just how the courts will apply this language. The answer may not be as simple as it seems. Despite the text's indication that state laws and constitutions are subject to federal laws and treaties, a look into history shows that several important Founders rejected the idea that Congress could always enforce laws deemed unconstitutional by the states. When in 1798 Congress passed the Alien and Sedition Laws, which made it a criminal offense to publicly criticize certain government officials, James Madison—widely known as the Father of the Constitution—and Thomas Jefferson—author of the Declaration of Independence and the sitting Vice-President—drafted the Kentucky and Virginia Resolutions, in which those states rejected the constitutionality of the acts.[22] The U.S. Supreme Court was not called upon to resolve the question of whether states could legitimately deny congressional authority in this way, but up until the Civil War different states repeatedly adopted similar measures.[23]

Without any directly applicable judicial precedent, some legal scholars have attempted to guess at how the justices might be inclined to resolve such a conflict between state constitutional liberties and federal laws. One of my colleagues, Clint Bolick, a co-founder of the Institute for Justice and the current leader of a constitutional litigation center at the Goldwater Institute in Arizona, has noted a recent judicial trend in which the Supreme Court has shied away from allowing federal laws to trump state constitutional requirements.[24] This might well signal that

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[22] Madison later said that, in his opinion, these resolutions were primarily useful as tools through which the power of Congress could be called into question—though not necessarily nullified. He believed that similar resolutions would signal to other states the potential necessity of modifying the current system of government to eliminate further abuses.

[23] Indeed, South Carolina's attempted nullification of a tariff passed by Congress in 1832 nearly sparked secession and armed conflict.

[24] Instead, the Supreme Court has generally tried to avoid finding a direct conflict between federal laws and state constitutional provisions. For example, in *Wheeler v. Barrera*, 417 U.S. 402 (1974), Congress had passed Title I, which required public educational funds to be distributed to disadvantaged children regardless of the schools they attended. This conflicted with Missouri's constitutional prohibitions against public dollars being sent to religious schools. Rather than address this apparent conflict, the Supreme Court noted that the legislative history of Title I suggested that Congress was sensitive to the presence of such state constitutional provisions and that they did not intend to require violation of those provisions. To get around the problem, the Court decided that a separate public

the justices are inclined to protect freedoms enshrined in state constitutions, but the only way we will be sure is if the U.S. Supreme Court is presented with a direct conflict. The Health Care Freedom Amendment, if adopted by the people of this state, could provide just such a conflict.

Summing Up

Should Congress ultimately pass a health care reform bill along the lines of the one currently being debated, I think it will take 2-3 years for a case evaluating the constitutionality of the individual health insurance mandate to reach the U.S. Supreme Court. The likely scenario is that a whole host of lawsuits will be filed in every federal circuit. The federal district courts are likely to deal with the issues quickly, render a decision, and kick the cases up to the circuit courts. Once the circuit courts have weighed in on the constitutional issues, the Supreme Court will choose the set of facts on which it will base its consideration of the law. Keep in mind that it doesn't have to take the *first* case to get resolved by a circuit court, although it only takes four justices agreeing in order to get a case in front of the Supreme Court.

When the issue gets in front of the Court, I believe that proponents of the mandate (in other words, the Solicitor General) will have to satisfactorily answer at least two vitally important questions if they are to win a majority: 1) If the Commerce Clause permits Congress to force individuals to purchase goods and services that they do not want, where is the limit of that power - if, indeed, a limit can be articulated?, and 2) Is Congress's interest in (potentially) lowering the cost of health insurance premiums sufficiently compelling as to justify forcing individual citizens against their will to associate with others and to divulge to them all sorts of private information about one's health?

I believe, based on the current composition of the Supreme Court, that the individual health insurance mandate would probably be found unconstitutional, either as a violation of the Commerce Clause or the individual right to privacy. I cannot see any of the four conservative-leaning justices (Roberts, Alito, Scalia, or Thomas) approving such a mandate as an exercise of the Commerce Clause, nor can I see any of the four liberal-leaning justices (Stevens, Ginsburg, Breyer, and Sotomayor) disapproving the mandate. The deciding factor, then, will be whether

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fund – which would not be part of the state treasury – would be established as the conduit for Title I funds to the assistance of needy children in religious schools.

Justice Kennedy will go for or against it, and I believe that will largely depend on how the Solicitor General articulates what limits might remain on congressional authority if the mandate is approved.

A more interesting question is how the justices might vote on the question of whether the right to privacy precludes the imposition of an individual health insurance mandate. Justices Thomas and Scalia have both rejected the notion that there *is* any such right to be found in the constitution, making it unlikely that they would rely on this right to strike down legislation as unconstitutional. On the other hand, several of the more liberal justices have previously written passionately about the importance of the right to privacy. It is possible that the privacy question might result in a majority of justices voting to strike down the mandate, but with Scalia and Thomas dissenting on this point.

Either way, it is my opinion that the Supreme Court is likely to find that an individual health insurance mandate violates the provisions of the U.S. Constitution. While the Supreme Court is thus unlikely to reach the question of whether the Health Care Freedom Amendment would be seen as an additional bulwark for liberty, the adoption of this amendment (and others like it in our sister states) would at a minimum offer the potential for a case that would test the boundaries of state sovereignty under our current constitutional system.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 17, 2010 **FURTHER REFERRALS: Finance**

Date of Committee Action: 3/11/10

The JUDICIARY Committee considered: **HOUSE JOINT RESOLUTION NO. 35**

Proposing amendments to the Constitution of the State of Alaska prohibiting passage of laws that interfere with direct payments for health care services and the right to purchase health care insurance from a privately owned company, and that compel a person to participate in a health care system.

HJR 35-CONST AM: HEALTH CARE

Recommends it be replaced with [ ] HCS *or* **[ ] CS** *for* _____ (_____)
*For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR*_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
GOV	1	1.5		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Gruenberg		✓		
	HERRON			X	
	Dahlstrom			X	
	Holmes		X		
	Gatto	X			
Chair:	KAWASAKI	X			
Chair:					

HJR

38

ALASKA STATE LEGISLATURE

Interim:
P.O. Box 109
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Session:
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REPRESENTATIVE PEGGY WILSON
HOUSE DISTRICT 2

SPONSOR STATEMENT
House Joint Resolution 38

"Proposing amendments to the Constitution of the State of Alaska relating to and increasing the number of members of the House of Representatives to 44 and the number of members of the Senate to 22."

" ....Each house district shall be formed of contiguous and compact territory containing as nearly as practicable a relatively integrated socio-economic area...." Alaska Constitution Article VI, Section 6, titled Legislative Apportionment.

HJR 38 will put a constitutional amendment before the voters in the 2010 general election that would increase the size of the legislature to 44 representatives and 22 senators. Upon voter approval, the measure would apply to the 2012 determination of new boundary's for the election district.

In the first 50 years of statehood, Alaska has not changed the 20 senator, 40 representative size of its legislative body, the smallest bicameral legislature in the nation. In this time span, the population of the state has more than tripled. Most significantly, the population increase is disproportionate, strongly favoring large urban areas over rural and small community areas. The task then of applying the proscriptions of Article VI, above, has correspondingly become more difficult and contentious. Except for the 1960 reapportionment, all subsequent reapportionments have faced successful legal challenges, requiring boundary adjustments and on several occasions, a court constructed plan.

Federal protections of the U.S. Voter Rights Act of 1965 for large minority concentrations further complicate Alaska's reapportionment process. Indeed, they can act to counter the Section 6 requirements. Rural election district distortions are evident in the current plan. There is a probability that the new population distribution of the 2010 census cannot reconcile Section 6 and the Voter Rights Act without increasing the size of the legislature.

Between 1960 and 2006, twenty nine states have changed the size of their legislative body. For the nine states with small populations similar to Alaska (509,000 to 1,429,000), the average size of their legislative bodies is 134 members.

Another measure of the effect of the state's growth and complexity on the work of the legislature is its budget responsibilities. Legislative expenditures for government programs and projects has risen from a figure of $104 million in FY 61 to somewhere in the neighborhood of $7 billion currently. This is an increase from $2700 per capita in 1961 nominal dollars to $10,000 per capita today.

For these reasons, putting a proposal to increase the size of the legislature before the voters is timely and merited.

26-LS1323\R

3150

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **CSHJR38(STA)**
() Publish Date:

Identifier (file name): CSHJR38(STA)-LEG-COU-2-18-10
Dept. Affected: Legislature
Title "Proposing amendments to the Constitution of the State of Alaska relating to and increasing the number of members..."
RDU All
Component Various
Sponsor Representative Peggy Wilson
Requester House State Affairs
Component Number Various

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services				1,904.0	1,904.0	1,904.0	1,904.0
Travel				178.0	178.0	178.0	178.0
Contractual				260.0	260.0	260.0	260.0
Supplies				90.0			
Equipment				1,500.0			
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**3,932.0**	**2,342.0**	**2,342.0**	**2,342.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF				3,932.0	2,342.0	2,342.0	2,342.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**3,932.0**	**2,342.0**	**2,342.0**	**2,342.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time				18	18	18	18
Part-time				7	7	7	7
Temporary							

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

CSHJR38(STA) proposes amending the Constitution of the State of Alaska by ballot proposition in the next general election which would increase the membership of the Alaska Senate by two Senators and the Alaska House of Representatives by four Representatives. If this resolution passes, the ballot proposition would be voted on in the November 2010 general election. If the ballot proposition passes, the Redistricting Board would create their redistricting plan using the new number of districts. For purposes of this fiscal note, it is assumed that the number of Legislators elected to office for the 28th Legislature would total 66. Please note the figure included for capital outlay is for the remodeling cost to accommodate the increased number of Legislators in the Capitol. The figure 1,500.0 is used for remodeling costs. Depending on which design was adopted, costs could vary. If a decision were made to create an addition to the Capitol or to construct a new building the figure would be much higher and would likely be included in a capital appropriation.

Prepared by: Karla Schofield, Deputy Director
Phone 465-6626
Division Legislative Affairs Agency
Date/Time 2/18/2010
Approved by: Pamela Varni, Executive Director
Date 2/18/2010
Legislative Affairs Agency

STATE OF ALASKA
2010 LEGISLATIVE SESSION

BILL NO. CSHJR38(STA)

ANALYSIS CONTINUATION

Personal Services - 6 Additional Legislators - 482.0
Assume for staff allocation 1/2 Legislators are in the majority and 1/2 are in minority.
17 full-time staff and 4 part-time staff to Legislators; LAA support staff include full time - 1 attorney; Session only - 2 LIO Officers,1 Enroller or Help Desk Technician - 1,422.0 Total increase in Personal Services - 1,904.0.

Travel - Cost to move 6 Legislators and families - 30.0; Costs to relocate an additional 17 full-time and 3 part-time staff to Legislators - 15.0; Cost of increased session per diem - 103.0; Icrease in Legislature's travel budget related to 6 new Legislators - 30.0; Total increase in Travel - 178.0.

Contractual - Allowance Accounts for 2 Senators at 10.0 and 4 Representatives at 8.0 = $52.0;
Connectivity for computers, phones, faxes, and printers - 33.0. Increase in office space for either expanding existing Legislative Information Offices or establishing new offices - 175.0. Total increase in contractual - 260.0.

Supplies - Cost to equip two offices per Legislator and their staff, one office in the district and one office in the Capitol. Items include desktop computers, one laptop per office, printers , hardware, software, which will be shipped to and from the Capital City each year, and one set of furniture for a district office and one set for the Capitol. Furniture items include desks, chairs, phones, file cabinets, fax machines - Total cost to equip offices - 90.0.

Capital Outlay - Costs to remodel the existing chambers in the Capitol and reconfigure space in the Capitol Complex to accommodate new offices would likely, at a minimum, be at least 1,000.0. For purposes of this fiscal note 1,500.0 is used for remodeling costs. Depending on which design was adopted, costs could vary. The cost could be much higher if the Legislature decided to build an addition to the Capitol or construct a new building.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSHJR 38(STA)
(H) Publish Date: 2/19/10

Identifier (file name): HJR-038-OOG-DOE-2-1-10
Dept. Affected: OOG
Title: Constitutional amendment relating to and increasing the number of members of the house of representatives to....
RDU: Elections
Component: Elections
Sponsor: Representative Peggy Wilson
Requester: House State Affairs
Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual		1.5					
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF		1.5					
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

The passage of this resolution would require the constitutional amendment to appear on the 2010 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58 is $1.5. Should the addition of this question require printing an 8-1/2 by 18 inch ballot, the cost will increase to $22.0.

Prepared by: Gail Fenumiai, Director
Phone 465-4611
Division: Division of Elections
Date/Time 2/9/10, 8:59am
Approved by: Linda Perez, Director
Date 2/9/2010
Division of Administrative Services

(Revised 10/13/2009 OMB)

3153

FISCAL NOTE #2

STATE OF ALASKA **BILL NO.** CSHJR 38(STA)
2010 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

Personal Services - 6 Additional Legislators - 482.0
Assume for staff allocation 1/2 Legislators are in the majority and 1/2 are in minority.
17 full-time staff and 4 part-time staff to Legislators; LAA support staff include full time - 1 attorney; Session only - 2 LIO Officers,1 Enroller or Help Desk Technician - 1,422.0 Total increase in Personal Services - 1,904.0.

Travel - Cost to move 6 Legislators and families - 30.0; Costs to relocate an additional 17 full-time and 3 part-time staff to Legislators - 15.0; Cost of increased session per diem - 103.0; Icrease in Legislature's travel budget related to 6 new Legislators - 30.0; Total increase in Travel - 178.0.

Contractual - Allowance Accounts for 2 Senators at 10.0 and 4 Representatives at 8.0 = $52.0;
Connectivity for computers, phones, faxes, and printers - 33.0. Increase in office space for either expanding existing Legislative Information Offices or establishing new offices - 175.0. Total increase in contractual - 260.0.

Supplies - Cost to equip two offices per Legislator and their staff, one office in the district and one office in the Capitol. Items include desktop computers, one laptop per office, printers , hardware, software, which will be shipped to and from the Capital City each year, and one set of furniture for a district office and one set for the Capitol. Furniture items include desks, chairs, phones, file cabinets, fax machines - Total cost to equip offices - 90.0.

Capital Outlay - Costs to remodel the existing chambers in the Capitol and reconfigure space in the Capitol Complex to accommodate new offices would likely, at a minimum, be at least 1,000.0. For purposes of this fiscal note 1,500.0 is used for remodeling costs. Depending on which design was adopted, costs could vary. The cost could be much higher if the Legislature decided to build an addition to the Capitol or construct a new building.

Two legislative redistrictings - one in 2012 and perhaps another in 2014

Alaska could go through two legislative reapportionments after the 2010 census. The first would be the result of our own state districting process. Inclusive within this process will be contentious litigation that always results. And in Alaska, it has not been infrequent that the Court has taken control and redrawn the plan by appointed court masters.

Now comes the test! Any Alaska plan, or even election laws must be pre-cleared by the U.S. Justice Department civil rights division to ensure it complies with the requirements of the federal U.S. Voters Rights Act of 1965, and subsequent revisions. Alaska is in a special category with nine others states (*all in the Old South*). There were a number of reasons why we earned inclusion, but one was an "English language" test for voting in our state constitution. This was never implemented, and subsequently repealed. **Note:** In fact, Alaska did not even implement voter registration until the election of 1968.

Nevertheless, getting tangled up with U.S. Justice preclearance on the state 2012 plan could cause delay preventing resolution and implementation prior to the 2012 elections. The result of delay would be some kind of interim plan for 2012, i.e. use of the existing plan, the state proposed plan, or temporary court imposed plan.

The problem been with us since before statehood, and is built into the small size of our House and Senate

Alaska's increasingly skewered districting map is a natural result of a very small but fixed number of our 20 member Senate and 40 member House (*smallest in the nation*). The size of the House and Senate is fixed. However, the state's population has grown much faster in the urban areas, along the railbelt, and in coastal cities like Juneau, than in the smaller communities scattered along the extensive Alaska coastline and in the vast rural Interior of the state. This means districts in urban centers become more numerous and compact, but rural districts become fewer and must become huge and ungainly to gather sufficient population for a district, taking in regions completely unrelated and separated from each other.

For example, Sen. Johnny Ellis, D-Anchorage, can walk his downtown Anchorage district North and South, East and West, in just a few hours. Sen. Al Kookesh, D-Angoon, must catch a plane to Juneau (or ferry), catch Alaska Airlines to Anchorage, and then fly to Aniak of the Lower Kuskokwim or Holy Cross on the Lower Yukon. This district is half the size of Alaska.

- *Continued on next page*

We started with an enlarged hour of 40 districts that fit the Alaska socio-economic map perfectly

· *Continued from previous page*

At statehood our first district plan for the House fit the "constitutional socio-economics criteria" almost perfectly. We wonder whether constitutional crafters of this first plan (*done at the 1955 Constitutional Convention*) knew that an increase in the House from 24 members to 40 members would fit the existing socio-political map so well, making most happy. Nevertheless, it did just that "political job. It kept everyone happy, and that may have been especially important during the time of Congressional review and creation of the Statehood Act (*as well as our own Alaska local vote on statehood*).

> **Note:** *The constitutional committee charged with drafting the scheme was not without its bit of controversy and regional politics, i.e. Anchorage against everyone else, the latter reportedly wanting a plan, at least partially, radiating out from turban centers.*
>
> *So, to avoid the "others," meaning Anchorage delegates, reportedly Fairbanks Delegate George Cooper and Nenana/Yukon Delegate Jack Coghill, put together a little mid-night caucus in Delegate George Cooper's basement. Meanwhile, one of their faith kept the Anchorage delegation busy at the Fairbanks Second Avenue Mecca Bar.*
>
> **Note: As most states did at this time Alaska had a Senate based on regional geography.**

This 1955 plan by "population count' was out-of-date by statehood, but another census was just around the corner. Further, everyone probably understood this, because the 1960 reapportionment plan had to do some serious revising, and yet produced little acrimony. *It was the only plan that has escaped court review and litigation.*

The point is that the first statehood districts fit the socio-economic map perfectly. However, from that day on every decennial redistricting forced the outlying and coastal districts into contortions, struggling to fit constitutional criteria and then the mandates of the ethnic criteria imposed by the 1965 U.S. Voters Right Act and subsequent revisions. Further, almost simultaneously the U.S. Supreme Court Tennessee case brought down the traditional regional Senates across the country. This was a political shock in itself

With a 20 member Senate and 40-member House, and a landmass that imposes huge barriers, we are now about out-of-gas in being able to meet the mandates of the U.S. Voters Rights Act. The issue is! Might the U.S. Justice Department question the size of our legislative bodies, and due to their small fixed size, our ability to provide ethnic representation required under the U.S. Voters Rights Act.

- Ongoing series of back grounders

Population trend for Election Districts in 2010

Election District	Pop. 2000	DOL 2008 Est.	2010 Extrapolation	Diff. From Average	HB 38 w/ 46 Eds Diff. From Average
1 Ket.	15,031	13,832	13,532	-3,777	-1,519
2 Sit-Wran-Pet	14,991	14,104	13,882	-3,427	-1,169
3-Jun	15,203	15,207	15,208	-2,101	157
4-Jun	15,508	15,220	15,148	-2,161	97
5 SE islands	15,048	13,368	12,948	-4,361	-2,103
6 Interior Bush	14,906	14,564	14,479	-2,830	-573
7 Fbks	15,494	16,725	17,033	-276	1,982
8 Fbks	15,552	16,597	16,858	-451	1,807
9 Fbks	15,723	17,323	17,723	414	2,672
10 Fbks	15,599	17,017	17,372	63	2,321
11.N. Pole	15,904	17,129	17,435	126	2,384
12 Valdez-Hwys	16,303	17,465	17,756	447	2,705
13 Mat-Su	16,231	22,529	24,104	6,795	9,053
14 Mat-Su	16,119	22,384	23,950	6,641	8,899
15 Mat-Su	16,137	22,477	24,062	6,753	9,011
16 Mat-Su	16,104	20,015	20,993	3,684	5,942
17 Anch	15,819	17,171	17,509	200	2,458
18 Anch	15,639	17,032	17,380	71	2,329
19 Anch	15,841	17,394	17,782	473	2,731
20 Anch	15,837	17,330	17,703	394	2,652
21 Anch	15,850	17,321	17,689	380	2,638
22 Anch	15,831	17,353	17,734	425	2,683
23 Anch	15,847	17,671	18,127	818	3,076
24 Anch	15,812	17,415	17,816	507	2,765
25 Anch	15,836	17,464	17,871	562	2,820
26 Anch	15,823	17,443	17,848	539	2,797
27 Anch	15,820	17,261	17,621	312	2,570
28 Anch	15,839	17,279	17,639	330	2,588
29 Anch	15,846	17,322	17,691	382	2,640

30 Anch	15,839	17,229	17,577	268	2,526
31 Anch	15,811	17,216	17,567	258	2,516
32 Anch	15,839	16,717	16,937	-372	1,886
33 Kenai	16,466	17,488	17,744	435	2,693
34 Kenai	16,409	17,477	17,744	435	2,693
35 Kenai	16,436	17,613	17,907	598	2,856
36 Kodiak	14,928	14,240	14,068	-3,241	-983
37 Bristol B- Chain	15,150	13,623	13,241	-4,068	-1,810
38 Bethel-YK	14,921	15,793	16,011	-1,298	960
39 Nome	14,966	15,862	16,086	-1,223	1,035
40 Kotz-Barrow	15,155	14,693	14,578	-2,731	-474
TOTAL	627,413	679,363	692,351		
Average Population	15,673	16,993	17,309		15,051

By Sen. Olson Office

Southeast Conference

March 8, 2010

Dear Alaska Legislator;

As our state continues to grow and the population increasingly concentrates itself into relatively few urban areas, reapportionment will lead to even larger legislative majorities who call the Anchorage basin their home. Conversely, corresponding legislative districts will cover wider and wider swaths of sparsely populated areas having relatively little in common. Already senate districts C, S and T are each larger that most states in the Union. In order to assure that we continue to hear the voices from every corner of the state, not just the urban centers, we believe it is time to increase the size of the Alaska legislature.

Southeast Conference is a private membership organization that works to advance the collective interests of the people, communities, and businesses of Southeast Alaska. It is the Alaska Regional Development Organization (ARDOR), Federal Economic Development District (EDD), and USDA Resource Conservation and Development (RC&D) Council for the region. The Conference's Mission is to help develop strong economies, healthy communities, and a quality environment in Southeast Alaska. In keeping with that mission we feel it is of upmost importance we are all heard with an equal voice.

Southeast Conference respectfully asks for your support for HJR38 and SJR21.

Sincerely,

Shelly Wright

Shelly Wright
Executive Director

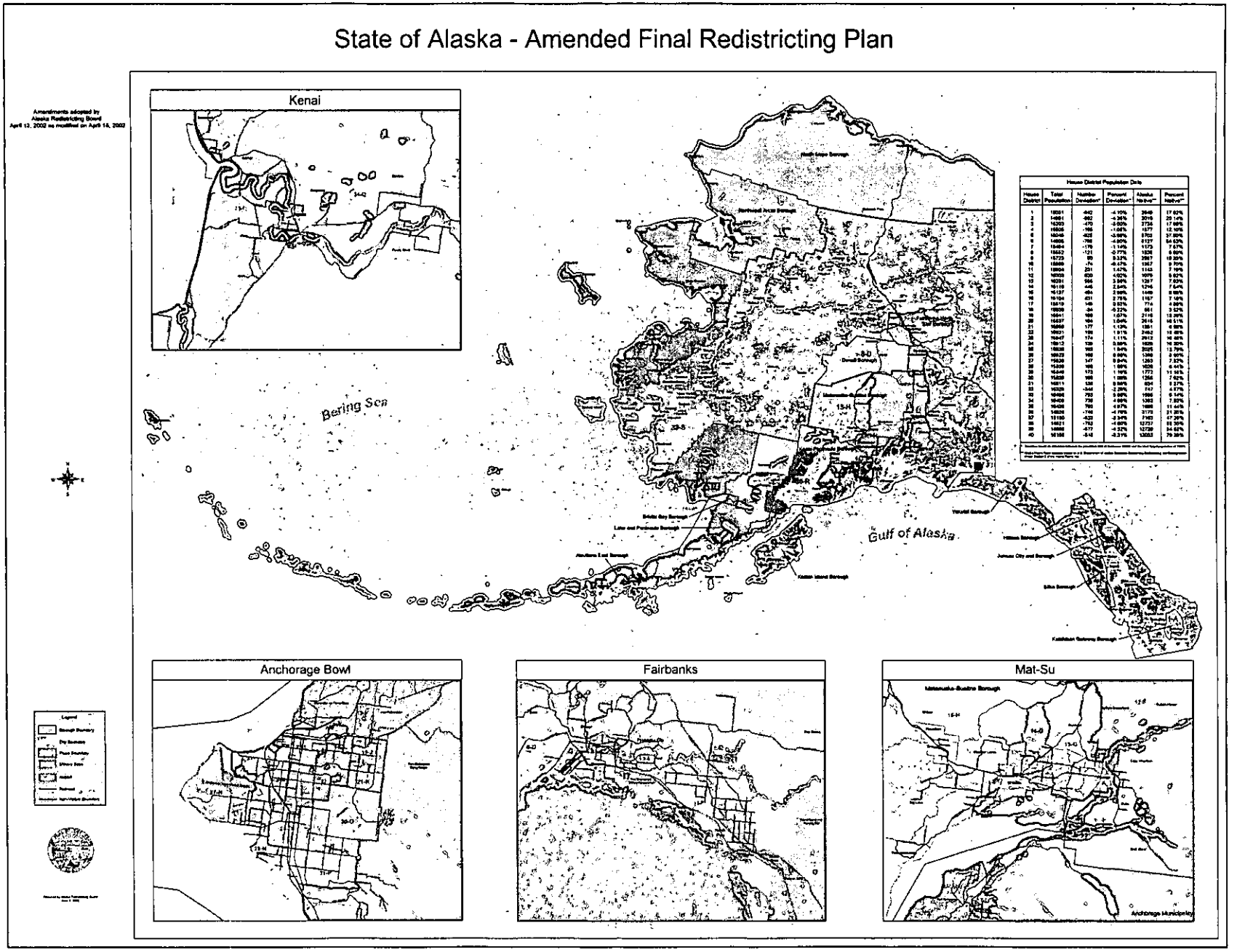
P.O. Box 21989 612 W. Willoughby Avenue, Suite B, Juneau Alaska 99802

(907) 523-4350 (907) 463-5670 Fax info@seconference.org

www.seconference.org

3159

State of Alaska - Amended Final Redistricting Plan



HJR

42

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Alaska State Legislature

House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 456-3346
Toll Free: (877) 465-3004

House District 10

Fax

To: Brian Kane
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson

Date: March 1, 2010

Re: Final for HJR42

Brian,

Today HJUD passed HJR42 from committee. Please go final on the work draft for CSHJR42 (26-LS1411\S) with amendment S.3 included.

Thank you

Representative_Jay_Ramras@legis.state.ak.us

PASSED

26-LS1411\S.3
Kane
2/25/10

#1

AMENDMENT

JAY RAMRAS for

OFFERED IN THE HOUSE BY REPRESENTATIVE PEGGY WILSON

TO: CSHJR 42( ), Draft Version "S"

Page 2, line 5, following "law":

Insert "and for costs related to motor vehicle licensing and registration that are designated by law"

3163

#2 w/15

26-LS1411\S.1
Kane
2/22/10

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE GRUENBERG

TO: CSHJR 42( ), Draft Version "S"

Page 2, line 4, following "capital":

Insert "and preservation"

26-LS1411\S
Kane
2/17/10

CS FOR HOUSE JOINT RESOLUTION NO. 42( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): HOUSE TRANSPORTATION COMMITTEE

A RESOLUTION

Proposing amendments to the Constitution of the State of Alaska creating a transportation infrastructure fund.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

*** Section 1.** Article IX, sec. 7, Constitution of the State of Alaska, is amended to read:

Section 7. Dedicated Funds. The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in **Sections 15 and 18** [SECTION 15] of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing **on April 24, 1956** [UPON THE DATE OF RATIFICATION OF THIS SECTION BY THE PEOPLE OF ALASKA].

*** Sec. 2.** Article IX, Constitution of the State of Alaska, is amended by adding a new section to read:

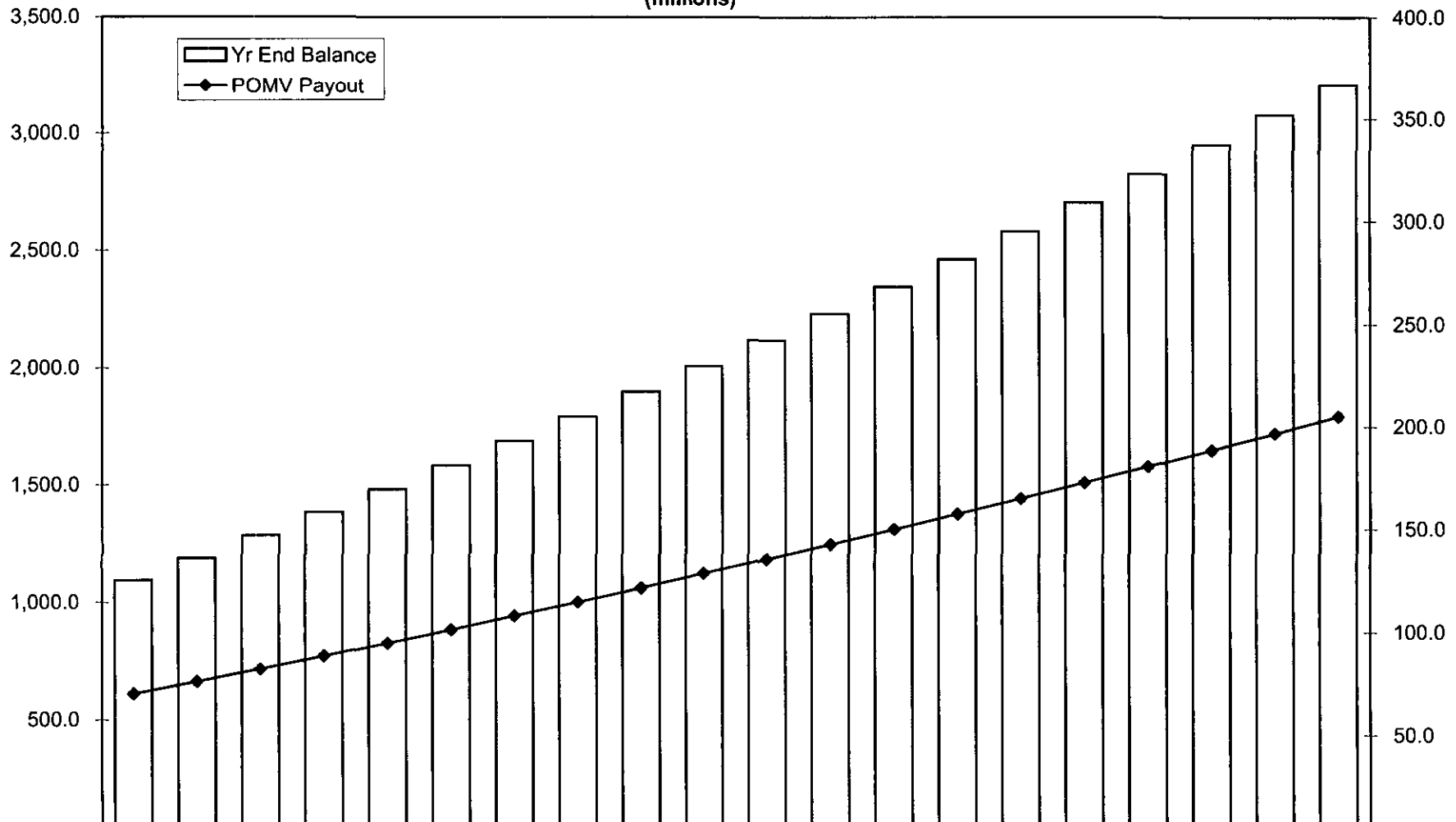
Section 18. Transportation Infrastructure Fund. (a) The revenue received after July 1, 2011, from any state tax on fuel used for the propulsion of motor vehicles, aircraft, and watercraft, less refunds, credits, and collection costs as provided by law, and from a registration fee levied for a motor vehicle that is not a special registration

fee provided by law shall be placed in a transportation infrastructure fund. The legislature may appropriate additional amounts to the fund. The fund shall be managed as an endowment. Each year, the legislature may appropriate a percentage of the average market value of the fund as established by law for capital projects for transportation and related facilities that are designated by law.

(b) The legislature shall provide by law for the management and investment of the fund balance. The income earned from the fund shall be deposited into the fund.

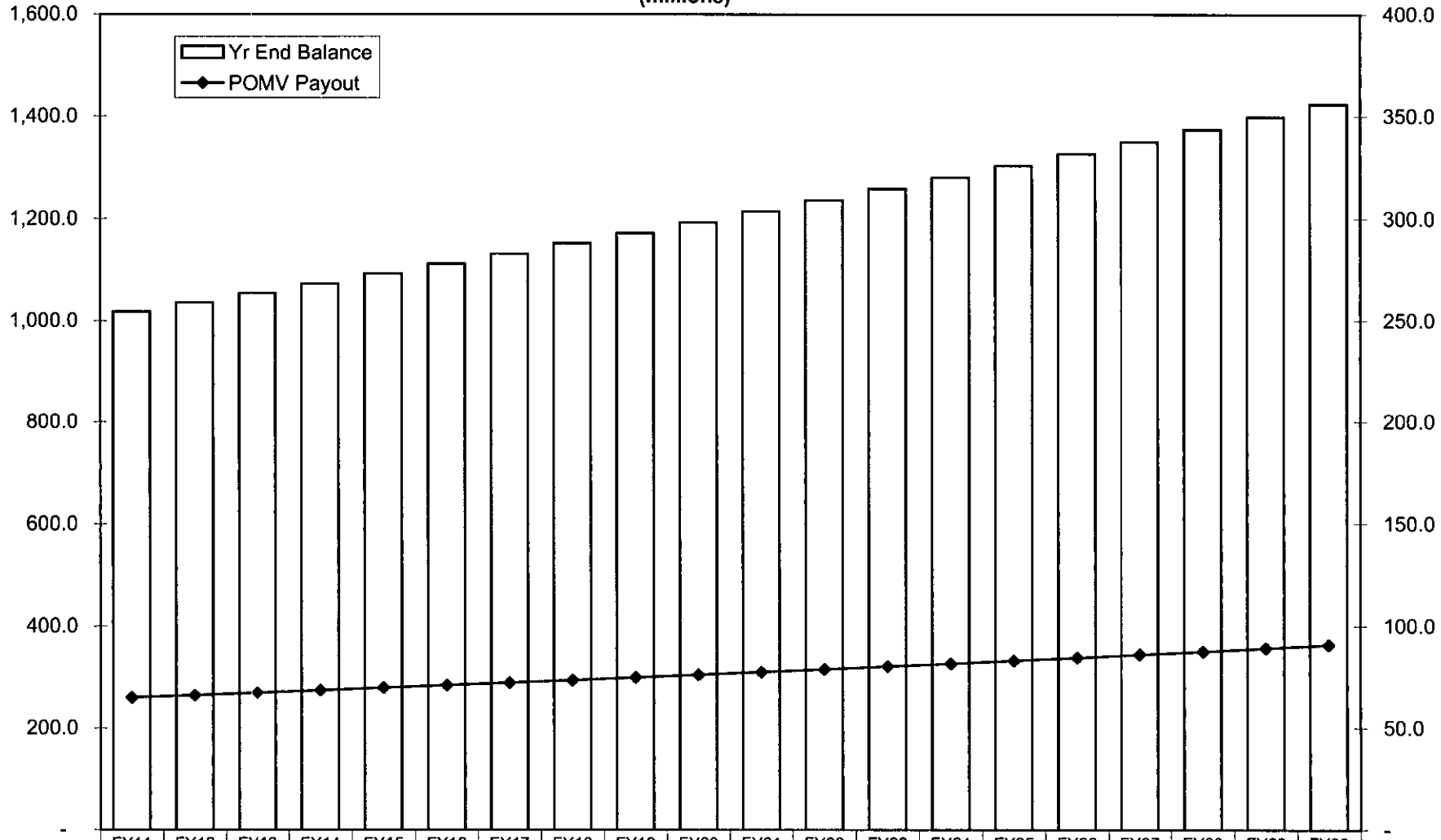
*** Sec. 3.** The amendments proposed by this resolution shall be placed before the voters of the state at the next general election in conformity with art. XIII, sec. 1, Constitution of the State of Alaska, and the election laws of the state.

Transportation Fund
Scenario - 8.28% IR; 6% POMV, $80/yr new revenue to fund
(millions)



	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28	FY29	FY30
Yr End Balance	1,093.0	1,187.7	1,284.1	1,382.2	1,482.0	1,583.7	1,687.1	1,792.4	1,899.6	2,008.6	2,119.7	2,232.7	2,347.7	2,464.7	2,583.9	2,705.2	2,828.6	2,954.2	3,082.1	3,212.3
POMV Payout	69.8	75.8	82.0	88.2	94.6	101.1	107.7	114.4	121.2	128.2	135.3	142.5	149.9	157.3	164.9	172.7	180.5	188.6	196.7	205.0

Transportation Fund
Scenario - 8.28% IR; 6% POMV
(millions)



	FY11	FY12	FY13	FY14	FY15	FY16	FY17	FY18	FY19	FY20	FY21	FY22	FY23	FY24	FY25	FY26	FY27	FY28	FY29	FY30
Yr End Balance	1,017.8	1,036.0	1,054.5	1,073.3	1,092.4	1,111.9	1,131.7	1,151.9	1,172.4	1,193.3	1,214.6	1,236.3	1,258.3	1,280.8	1,303.6	1,326.8	1,350.5	1,374.6	1,399.1	1,424.0
POMV Payout	65.0	66.1	67.3	68.5	69.7	71.0	72.2	73.5	74.8	76.2	77.5	78.9	80.3	81.8	83.2	84.7	86.2	87.7	89.3	90.9

AOPA
AIRCRAFT OWNERS AND PILOTS ASSOCIATION

February 16, 2010

Representative Peggy Wilson, Chair
House Transportation Committee
State Capitol, Room 406
Juneau, AK 99801

Dear Representative Wilson:

The Aircraft Owners and Pilots Association (AOPA) is a membership organization consisting of over 415,000 pilots and aircraft owners. Over 4,400 of our members reside in Alaska. AOPA is committed to the health and viability of aviation and airports in Alaska, and across the nation. Thank you for taking up the issue of creating a state funded transportation program for Alaska.

AOPA supports HJR 42, allowing the citizens to vote on an amendment to the Alaska Constitution to establish a transportation infrastructure endowment fund. The endowment is to be dedicated to funding projects that maintain and improve our public infrastructure, including airports, roads and marine facilities. We can speak to the tremendous needs within the airport system that benefits all the citizens of the state, and is absolutely essential for communities that are not on the road system, and rely solely on aviation for year-around access.

Thank you again for undertaking this legislation. I look forward to working with you and your committee on this initiative to address the needs of the state's transportation system.

Sincerely,

Tom George
Alaska Regional Representative

TOM GEORGE
ALASKA REGIONAL REPRESENTATIVE
PERSONAL ADDRESS: P.O. BOX 83750 FAIRBANKS, AK 99708
907-388-9955 E-MAIL: tom.george@aopa.org

Alaska State Legislature

SESSION ADDRESS:
Alaska State Capitol
Juneau, Alaska 99801
Phone: (907) 465-3743
1-800-565-3743
Fax: (907) 465-2381

INTERIM ADDRESS:
600 E Railroad Avenue
Wasilla, AK 99654
Phone : 907-376-3725
Fax: (907) 376-4768

Representative Carl Gatto

To: Representative Jay Ramras
Chair, House Judiciary Committee

Fr: Representative Carl Gatto

Date: March 1, 2010

Re: removal of objection to HJR 42

I respectfully withdraw my objection to moving Representative Wilson's HJR 42 out of the House Judiciary Committee. Representative Wilson's office has coordinated with my staff to ensure that my concerns regarding the funding source for the proposed infrastructure fund were addressed. I have also concluded, upon further guidance from legal services, that there are no significant constitutional issues with HJR 42.

Sincerely,

Representative Carl Gatto
District 13

Alaska State Legislature

Representative Peggy Wilson
House District 2

MEMORANDUM

Date: February 10, 2010

To: Representative Jay Ramras, Chair
House Judiciary Committee

From: Representative Peggy Wilson PW

Re: HJR 42 - Constitutional Amendment:Transportation Fund

I would like to request the House Judiciary Committee schedule a hearing on HJR42.

HJR 42 will put a constitutional amendment before voters to change the Alaska constitution to allow a dedicated fund for Capital Transportation Projects.

Alaska is geographically the largest state in the country, and the future of the economic and social well being of its citizens is critically dependent on a reliable transportation system. This change to the State Constitution, allowing a dedicated transportation fund, is needed to create and maintain a modern, reliable transportation system for Alaska.

Thank you for your consideration.

ALASKA STATE LEGISLATURE

Interim:
P.O. Box 109
Wrangell, AK 99929
Phone: (907) 874-3088
Fax: (907) 874-3055

Session:
State Capitol, Room 406
Juneau, AK 99801-1182
Phone: (907) 465-3824
1-800-686-3824
Fax: (907) 465-3175

REPRESENTATIVE PEGGY WILSON
HOUSE DISTRICT 2

SPONSOR STATEMENT
House Joint Resolution 42

"Proposing amendments to the constitution of the State of Alaska creating a transportation infrastructure fund"

HJR 42 will put a constitutional amendment before voters to change the Alaska constitution to allow a dedicated fund for Capital Transportation Projects.

In FY10 87% of our transportation budget came from the federal government. The current federal reauthorization legislation has expired and is being extended month to month until new legislation can be passed. The new federal reauthorization bill is unfavorable for states with small populations by emphasizing mass transit and green transportation. It favors toll roads, bridges, and other transportation that are self-funding. Alaska's small population makes these self pay options prohibitive. There aren't enough cars on the road, people on the ferries or residents landing at our airports to generate the scale of economy that is needed.

The roads, bridges, airports, ferries and other transit systems that make up our state's transportation system are essential to mobility, commerce and economic development. These systems increase safety, enhance economic competitiveness, and lead to a better quality of life. To ensure Alaska has the infrastructure necessary to develop our resources as well as improve the living conditions for our citizens we must commit to funding transportation. Having an amount that is guaranteed from year to year will allow Alaska to manage current congestion, safety and maintenance projects as well as develop access to needed resources and energy.

Alaska is geographically the largest state in the country, and the future of the economic and social well being of its citizens is critically dependent on a reliable transportation system. This change to the State Constitution, allowing a dedicated transportation fund, is needed to create and maintain a modern, reliable transportation system for Alaska.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: HJR 42
(H) Publish Date: 2/10/10

Identifier (file name): HJR-042-OOG-DOE-2-9-10
Dept. Affected: OOG
Title: Constitutional amendment creating a transportation infrastructure fund
RDU: Elections
Component: Elections
Sponsor: House Transportation Committee
Requester: House Transportation Committee
Component Number: 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual		1.5					
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF		1.5					
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**1.5**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

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

The passage of this resolution would require the constitutional amendment to appear on the 2010 general election ballot. The cost of providing information about the constitutional amendment in the Official Election Pamphlet, as required by AS 15.58 is $1.5. Should the addition of this question require printing an 8-1/2 by 18 inch ballot, the cost will increase to $22.0.

Prepared by: Gail Fenumiai, Director — Phone 465-4611
Division: Division of Elections — Date/Time 2/9/10, 3:49pm
Approved by: Linda Perez, Director — Date 2/9/2010
Division of Administrative Services

(Revised 10/13/2009 OMB)

3173

CAMBRIDGE SYSTEMATICS

Alaska Transportation Finance Study

final report

prepared for

Alaska Municipal League

prepared by

Cambridge Systematics, Inc.

January 2009

www.camsys.com

Executive Summary

The Alaska Municipal League (AML) commissioned Cambridge Systematics, Inc. to conduct an objective assessment of the current finance trends, challenges, and possible options to meet Alaska's transportation funding needs. This work involved a significant amount of analysis and produced multiple layers of findings that have been documented in this report, the Transportation Finance Study. Nevertheless, the work may be summarized into the following three categories of findings.

UNDER INVESTMENT IN THE STATE'S TRANSPORTATION INFRASTRUCTURE

Almost every state and the Federal Government have been chronically under investing in their transportation infrastructure and Alaska is not an exception. Over the last several years, studies at the national and state levels have painted a dire picture of transportation funding over the long term: the average funding gap for the Federal shortfall is almost $60 billion annually through 2017 (10-year average) to maintain the current condition and performance of the nation's surface transportation system.

- Underinvestment in Alaska may have more severe consequences than for almost any other state because the Alaska's economy is highly dependent on resource extraction industries. These industries are highly transportation-intensive; their growth is the most likely offset to declining oil production and may be the State's best opportunity to diversity, but will require investment. In addition, the State's far-flung communities, harsher environment and less mature roadway network amplify the effects of under investment.
- In its 2030 Transportation Plan, the Alaska Department of Transportation and Public Facilities (ADOT&PF) estimated its annual highway and bridge needs at approximately $1.1 billion per year of which about $530 million is unfunded on state-owned facilities alone (excluding local roads and street needs), with Federal and state funding covering about half of the needs.
- In Alaska, routine highway maintenance remains underfunded and the backlog in life-cycle needs is over three times the level of spending in annual highway maintenance activities at the state level. Adding the AMHS unfunded needs, and Alaska's transportation funding gap increases to $720 million. These figures still do not include needs of transit, and locally funded roads, both in urban and rural areas of the State, or aviation. Furthermore, it does not include any transportation capacity needs to meet travel demand growth in the future.

- Alaska's transportation capital spending (from state and local revenue sources) as a percentage of the Gross State Product (GSP) for 2006 is the fourth lowest compared to other states. If Federal funding is included, the transportation spending as a percentage of GSP increases placing Alaska in the top 10 states, clearly indicating the State's reliance on Federal funding to meet its transportation needs.

CURRENT FEDERAL FUNDING AT RISK

Alaska has historically received on average roughly 75 percent of its total transportation funding needs from Federal sources. This dependence is quite likely to put Alaska in a very vulnerable position when the Federal transportation funding is reauthorized next year for the following reasons:

- Federal Highway Trust Fund went broke this past year and Congress provided only one year of stop-gap funding. Longer-term fixes, however, may include lower levels of funding, which would increase state competition for Federal allocations.
- The current negotiations over reauthorization are further reducing the difference between donor states (which have increased in the previous reauthorization from 90 percent of their contribution to 92 percent) and donee states, of which Alaska is one of the highest.
- Reauthorization funding policies appear to place far more emphasis on tolling or other user fees and metropolitan transit/transportation networks, rather than highway funding or legislative earmarking. Some proposals would push greater responsibility to states or cities for financing their transportation improvements.
- Federal support for Alaska's transportation needs is being challenged by other states because of the perception that Alaska's financial capacity is substantially better off than other states. The lower 48 and the Federal government see the Alaska Permanent Fund currently has almost $28 billion and Alaska is the only State that collects neither income taxes nor state sales taxes, and its 8 cents-per-gallon (cpg) gas tax is the lowest rate in the country.

OPTIONS FOR CLOSING THE GAP

In order for Alaska to close some of the gap in underinvestment and improve its competitive position for the next reauthorization of Federal transportation legislation, we propose some options for increasing state revenues with a mix of six sources that include increases to user fees such as the fuel tax and vehicle registrations fees, new sales tax on vehicles and the wider use of local sales taxes, reinstitution of the Local Service Roads and Trails (LSR&T) fund, and establishment of an Alaska Transportation Fund (ATF) or comparable fund.

Option One would generate roughly $151 million annually, or about 28 percent of the $535 million annual gap. It has the following six components:

- Increase fuel taxes from 8 cents per gallon (cpg) to 18 cpg (national average) and index the rate to inflation, generating about $38 million annually.
- Increase vehicle registration fees by 50 percent from $100 to $50 biannual fee, generating slightly less than $23 million annually.
- Impose a vehicle sales tax of 0.5 percent, yielding about $10 million annually
- Encourage local jurisdictions to impose a 0.5 percent sales tax, which if enacted throughout the State would earn about $30 million annually
- Capitalize the Alaska Transportation Fund (ATF) with $1 billion, which with a 8 percent return should earn about $50 million annually.

Option Two would generate roughly $291 million annually, or about 55 percent of the $535 million annual gap. It has the following six components:

- Increase fuel taxes from 8 to 28 cpg and index the rate to inflation, generating about $76 million annually.
- Double vehicle registration fees from $100 to $200 biannual fee, generating over $45 million annually.
- Impose a vehicle sales tax of 1.5 percent, yielding over $31 million annually
- Encourage local jurisdictions to impose a 1.5 percent sales tax, which would earn about $89 million annually
- Capitalize the Alaska Transportation Fund (ATF) with $1 billion, which with a 8 percent return should earn about $50 million annually.

Option Three also would generate $291 million annually (55 percent of the $535 million annual gap), but it would reduce the two sales taxes and instead reinstitutes the Local Service Roads and Trails (LSR&T) fund:

- Same increase in fuel taxes (8 cpg to 28 cpg and index the rate to inflation), generating about $76 million annually.
- Same doubling of vehicle registration fees from $100 to $200 biannual fee, generating over $45 million annually.
- Impose a state vehicle sales tax of 1.25 percent and a 1.25 percent local sales tax, which would earn over $26 million and $74 million annually, respectively
- Capitalize the Alaska Transportation Fund (ATF) with $1 billion, which with a 8 percent return should earn about $50 million annually.
- Assume the State reinstitutes the LSR&T program at about $20 million annually.

SWAMC
Southwest Alaska Municipal Conference
3300 Arctic Boulevard, Suite 203 Anchorage, AK 99503 p: 907.562.7380 f: 907.562.0438 www.swamc.org
Alaska Peninsula
Aleutian Chain
Bristol Bay
Kodiak Island
Pribilof Islands

SWAMC RESOLUTION 09-02

A RESOLUTION OF THE SOUTHWEST ALASKA MUNICIPAL CONFERENCE URGING THE GOVERNOR AND THE ALASKA LEGISLATURE TO CAPITALIZE STABLE LONG-TERM TRANSPORTATION FUNDING FOR ALASKA

WHEREAS, Alaska's transportation system has fallen far behind the needs of Alaska for cost effective transportation which allows economic growth and the safe cost effective movement of people, goods, and services; and

WHEREAS, the Alaska Highway System, the Alaska Marine Highway System, Alaska Airports, Alaska ports and harbors, and Alaska's local roads all need several years of significant funding for infrastructure improvement, upgrade and expansion; and

WHEREAS, the general appropriation process has resulted in significant underfunding of transportation infrastructure; and

WHEREAS, the Federal Highway Trust Fund is experiencing significant shortfalls, further contributing to a decrease in transportation funding for Alaska; and

WHEREAS, the economic future of Alaska is highly dependent upon a quality, cost effective transportation system; and

WHEREAS, the development of Alaska transportation infrastructure is dependent upon a steady and reliable stream of revenue; and

WHEREAS, the development of an energy policy that works for Alaska requires a quality transportation system in order to be successful; and

WHEREAS, estimates of annual funding needs for transportation infrastructure improvements, upgrades, and expansions exceed $300 million per year; and

WHEREAS, the State of Alaska is in a position to proactively develop a long-term transportation financing program.

-MORE-

NOW, THEREFORE BE IT RESOLVED that the Southwest Alaska Municipal Conference urges the Governor and the Alaska Legislature to establish a Transportation Trust Fund for Alaska or other suitable and sustainable funding mechanisms that generate at least $300 million annually to accomplish the following purposes:

- Generate investment earnings to develop transportation infrastructure in Alaska.
- Improve, upgrade and expand State of Alaska roads and highways.
- Improve, upgrade and expand the Alaska Marine Highway System.
- Improve, upgrade and expand the airports in Alaska.
- Improve and expand Alaska's ports and harbors.
- Provide regular funding to Alaska's communities to improve, upgrade and expand local roads built to local road standards.

AND, BE IT FURTHER RESOLVED that not less than 15-percent of the total funding will be allocated to each of the five programs each year (roads and highways; Alaska Marine Highway System; airports; ports and harbors; public transit and local roads).

PASSED AND ADOPTED by a duly constituted quorum of the Southwest Alaska Municipal Conference Membership this Thirtieth day of January, 2009.

Signed:

Tom Abell
President

Attest:

Michael Catsi
Executive Director

3180

Surface Transportation Authorization

Briefing for the Alaska
House Transportation Committee
By the
National Conference
of State Legislatures
October 1, 2009

Presentation Overview

- Overview of SAFETEA-LU
- Current Congressional Activity
  - The New Authorization (House)
  - Where it stands
- What does it mean for Alaska
- State Revenue Issues

SAFETEA-LU – Funding Levels

- $286.4 billion over 6 years
  - $244 Billion 2005-2009
    - $189.5 Billion Highways
    - $ 45.3 Billion Public Transportation
    - $ 5.6 Billion Highway/Motor Carrier Safety
    - $ 3.6 Billion Exempt from Obligation Limits
      - Emergency relief
      - A specified amount of the Equity Bonus Program
      - Certain projects funded before 1998

SAFETEA-LU Innovative Financing

State Infrastructure Bank

- Expands the program to all 50 states, allows capitalization with federal funds
- Allows 2 or more states to establish a multi-state bank

Transportation Infrastructure Finance and Innovation Act

- Lowers to $50M (from $100M) the minimum cost of eligible project
- Lowers to $15M the minimum cost for eligible ITS project

Private Activity Bonds

- Expanded bonding authority for private activity bonds

Provided States Increased Flexibility to Use Tolling *(congestion management tool as well)*

- Creates a number of pilot/demonstration programs.

SAFETEA-LU Traffic Safety

Created a new core Highway Safety Improvement Program

Contained a number of targeted grants and incentive programs

- Occupant protection
- Safety belt
- Impaired driving
- Child safety and booster seat use

Maintained existing driving sanctions

- Open Container
- .08 BAC
- Zero tolerance

- National minimum drinking age
- Repeat offender

SAFETEA-LU- Environment

Expanded environmental considerations in Metropolitan and Statewide Transportation Planning

- Consultation
- Mitigation

Congressional Activity: The New Authorization (Current House proposal: Oberstar)

$450 billion* over 6 years (plus an additional $50 billion for high speed rail)

- $337 billion – Highway construction, including at least $100 billion for Capital Asset Investment
- $12.6 billion in highway and motor carrier safety
- $87.6 billion from the Mass Transit Account (of the Highway Trust Fund)
- $12.2 billion form the General Fund for public transit investment

**The $450 billion includes $50 billion for Metropolitan Mobility and Access and $25 billion for Projects of National Significance*

Challenge: There is no legislative text on how to pay for it. There are also a number of places in the bill where it states "to be supplied."

Congressional Activity: The New Authorization (Current House proposal)

Consolidates or terminates more than 75 programs

- Proposes 4 core highway categories
- Proposes 4 core transit categories

Establishes new initiatives to address congestion relief

- New discretionary program for direct funding to MPOs.

Large focus on Livability and Environment, Sustainability of Communities

- **Creates an Office of Livability with FHWA**

Congressional Activity: The New Authorization (Current House proposal)

Eliminates certain existing incentive/grant programs and replaces them with mandates/sanctions. Establishes other mandates/sanctions

- Primary seat belt laws
- Ignition interlock
- Revocation/suspension of license for individuals convicted to drug offenses

Eliminates tolling pilots, establishes new guidelines/requirements for tolling

Expands U.S DoT's role in PPPs

National Infrastructure Bank

- Proposal by the Administration and members of Congress
- Would target large capacity-building projects not adequately served by current funding mechanisms
- Independent government entity
- Would make loans, insure bonds, provide preconstruction phase assistance
- $60 billion in bonding authority over 10 years
- Revenue stream needed to repay debt
- Several bills in this Congress and previous sessions

Congressional Activity: Where we Stand

- The Senate and the Administration want an 18 month extension.
- House has passed a 3 month extension- challenge the Senate in conference
- Stay tuned!

What does it Mean for Alaska

- A lot of uncertainty at this point in time.
- Most likely less dedicated funding – SAFETEA-LU contained over $1 billion in highway and transit set asides.

Average Annual State Sources of Transportation Revenue by % Compared to Alaska %

- State motor fuels taxes—28% / 5%
- Federal funding—27% / 54%
- Motor vehicle/truck fees and taxes—16% / 5%
- Bonding, borrowing—12% /3.5%
- Tolls—5% / 3.2%
- State general fund—4% / 19.5%
- Misc. and other—6% /4.3%
- Local gov't contribution—2% / 5.7%

- NCSL Report, page 59

State Responses to Revenue Gap

1. More reliance on general sales tax and general fund.
2. Growing funding of transportation by local entities.
3. Greater efficiency and accountability in delivering transportation projects.
4. Greater borrowing
5. Increasing use of public private partnerships
6. Greater use of tolling as funding option
7. Program cuts
8. Study of alternatives

Rural Transportation Challenges

- Public transportation is important for the Transportation Disadvantaged--elderly, disabled, low-income, jobless. Better coordination of existing funding for human service transportation.
- Multi-modal approach needed to improve mobility and regional connectivity--better rail, air service issues (Essential Air Service).
- Traffic fatalities--60% of total occur in rural areas.

Conclusion: Additional Transportation Funding Needed

- Unmet needs--$225 billion needed nationwide annually for the next 50 years
- Poor infrastructure is a threat to safety, security, economic prosperity, international competitiveness and quality of life.
- Need to catch up on deferred maintenance, especially for bridges
- Hard Choices- Extensive documentation of need and recommended action completed in most states but little new legislation

NCSL Contact Information

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For more information on the Surface Transportation Authorization:
Search GO 17889, on NCSL Homepage

> such finding is arbitrary and without any reasonable basis in fact *(DeArmond v. Alaska State Development Corporation,* 376 P.2d 717, 1962).

The Alaska Supreme Court has yet to find a legislative determination of public purpose arbitrary and without any basis in fact. It has upheld the use of revenue bonds by a public corporation and general obligation bonds of a municipality for industrial development purposes *(DeArmond;* and *Wright v. City of Palmer,* 468 P.2d 326, 1970). It has upheld the use of revenue bonds by a public corporation to purchase home mortgages *(Walker v. Alaska State Mortgage Association,* 416 P.2d 245, 1966). It has upheld state grants to homeowners to pay off the mortgages of property lost in the 1964 earthquake *(Suber v. Alaska State Bond Committee,* 414 P.2d 546, 1966). In *Suber* the court said: "It is not essential that the entire community or any particular number of persons should benefit from remedial legislation in order that a public purpose be served. The purpose of the Program is no less public because its benefits may be limited by circumstances to a comparatively small part of the public." The court found no violation of this section by the Anchorage municipal telephone utility competing with private vendors of telephone equipment *(Comtec, Incorporated v. Municipality of Anchorage,* 710 P.2d 1004, 1985).

A complex issue related to the public purpose safeguard of this section of the constitution concerns the activities of incumbent elected public officials in their quest for reelection. A governor running for reelection, for example, is vulnerable to the allegation that official travel and public appearances are campaign-related and not *bona fide* public business. The courts in Alaska have not been confronted with such a suit, and court decisions elsewhere give little encouragement to those contemplating one.

Section 7. Dedicated Funds

> **The proceeds of any state tax or license shall not be dedicated to any special purpose, except as provided in Section 15 of this article or when required by the federal government for state participation in federal programs. This provision shall not prohibit the continuance of any dedication for special purposes existing upon the date of ratification of this section by the people of Alaska.**

Convention delegates prohibited the dedication, or "earmarking," of funds for specific purposes so that the legislature would not tie its own hands in providing for the public needs of the day. The commentary on this section by the constitutional convention committee that drafted it included this observation:

> Even those persons or interests who seek the dedication of revenues for their own projects will admit that the earmarking of taxes or fees for other interests is a fiscal evil. But if allocation is permitted for one interest the denial of it to another is

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> difficult, and the more special funds are set up the more difficult it becomes to deny other requests until the point is reached where neither the governor nor the legislature has any real control over the finances of the state.

The phrase "as provided in Section 15 of this article" in the second sentence was added by an amendment in 1976 to allow creation of the Alaska Permanent Fund (see Section 15). Two exceptions to the prohibition against earmarking were allowed by the convention delegates. One exception is a dedicated fund that was already in existence, such as the school fund of AS 43.50.140, which receives proceeds from the tobacco tax for use of school repair and construction. The other exception allows new earmarking when it is required by federal law to participate in a federal program. This is the case with the Fish and Game Fund of AS 16.05.100, to which sport hunting and fishing license fees are dedicated.

A statutory dedication of revenue may not seem too serious because future legislatures are not bound by it. But a statutory dedication is likely to be self-perpetuating. A governor's veto might block a future legislature's effort to repeal the dedication. The flow of money into and out of the fund may be "off-budget" and shielded from annual review by the finance committees. And the dedication fosters the development of a constituency that benefits from the dedication and resists changes to it.

How comprehensive did the convention delegates mean to be with this prohibition against dedicated funds when they adopted the phrase "proceeds of any state tax or license" in the first sentence? Did they mean all state revenue, or did they want to exclude from the prohibition against dedication those state revenues that are not derived from a tax or license? The question became important when Alaska began to receive substantial income from oil lease bonuses and royalties, which are not proceeds from a tax or license. An opinion of the attorney general of an early administration said that oil lease royalty income was outside the prohibition against earmarking in this section. A later opinion reversed this interpretation and held that the historical record of the convention made it clear that the delegates intended to bar the dedication of all state revenues, whether or not they derive strictly from a tax or license (1975 Opinion Attorney General No. 9, May 2). Consequently, a constitutional amendment was required to create the Alaska Permanent Fund.

The courts have not ruled on the matter, but it is generally understood that the authors of the constitution intended certain exceptions to the prohibition against dedicated revenues, such as pension contributions, proceeds from bond issues, revolving fund receipts and sinking fund receipts (1982 Informal Opinion Attorney General, November 30). Indeed, beyond these practical exceptions to the prohibition on the dedication of revenue, it must be noted that such dedications have a legitimate role in state financial management, despite the public policy problems that caused them to be prohibited in the Alaska Constitution. Dedication allows the benefits of a public program to be directly linked to those who pay for them. Revenues are dedicated in Alaska today in a manner that makes the practice constitutionally acceptable, namely that the pertinent statutes say that the legislature "may" appropriate the money for its designated purpose. It is understood that the legislature will do so, and

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failure to do so will abrogate a political agreement. An example of this practice is the fisheries enhancement tax levied under AS 43.76.010. This is a tax on salmon fishermen intended to support salmon hatcheries. The tax receipts are deposited to the general fund, and "the legislature may make appropriations to the Department of Community and Economic Development for the purpose of providing financing to qualified [regional aquaculture] associations" (AS 43.76.025).

Enterprise funds are also examples of de facto dedication of revenues, such as the Marine Highway System Fund, which directs receipts from the sale of tickets on the ferry system to the support of that system. The constitutionality of this fund was challenged in court and upheld because the language of its authorizing statutes is permissive and does not restrict the authority of the legislature to appropriate money from the fund (although parts of the act creating this fund that restricted the authority of the executive branch to request appropriations from the fund were found to violate the prohibition of this section; see *Sonneman v. Hickel*, 836 P.2d 936, 1992).

Section 8. State Debt

> **No state debt shall be contracted unless authorized by law for capital improvements or unless authorized by law for housing loans for veterans, and ratified by a majority of the qualified voters of the State who vote on the question. The State may, as provided by law and without ratification, contract debt for the purpose of repelling invasion, suppressing insurrection, defending the State in war, meeting natural disasters, or redeeming indebtedness outstanding at the time this constitution becomes effective.**

Limitations on the ability of states to incur debt are a common feature of fiscal articles of state constitutions. They are the consequence of well-publicized defaults by some of the older states on bonds issued for overly ambitious public works projects and of scandals arising from corrupt public construction and financing schemes. Some constitutional limitations restrict general debt to specific purposes (only road construction, for example); some limit the amount of debt that may be issued by establishing a ceiling on total allowable annual debt payments (usually expressed as maximum percentage of general fund revenue); some require a supermajority vote of the legislature to contract debt; and others require a referendum for the electorate to approve state indebtedness. The Territorial Organic Act of 1912 originally prohibited the territory of Alaska and its municipalities from acquiring any kind of debt without congressional approval, but this stricture was removed in 1935.

In 1982 a constitutional amendment was ratified that inserted "or unless authorized by law for housing loans for veterans." This allowed the state to incur tax-exempt general obligation debt for veterans' housing loans. The amendment was a response to a 1980 federal law that prevented states or public corporations such as the Alaska Housing Finance Corporation from selling housing bonds in the tax-exempt market, but allowed an exception for general obligation bonds for veterans' housing.

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Jane Pierson

From: mdmiller@gci.net on behalf of Michael Miller [mdmiller@gci.net]
Sent: Sunday, February 21, 2010 7:46 PM
To: Rep. Jay Ramras
Subject: Support HJR 42

Alaska has become masters of spending someone else's money, particularly from the federal government's Highway Trust Fund.
Now the Highway Trust Fund is broke. Congress has had to pump dollars into the fund to fulfill last year's obligations and will again this year.

With Alaska having no state income tax, no state sales tax, the lowest fuel tax in the nation, a +/- $35 billion savings account and annual entitlement (PFD) to every citizen, we are going to have huge shortfalls in funding our transportation infrastructure.

The establishment of a constitutional dedicated fund for transportation is the smart thing to do.

Again, please support HJR42. We can't afford not to.

Mike

Michael D. Miller
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3200

HR

7

HOUSE JUDICIARY COMMITTEE

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Rep. Lindsey Holmes
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MEMORANDUM

Date: March 18, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File for HR7

Attached please find the following documents, which represent the referral file for HR7:

- Sponsor Statement
- HR7 version \S
- H.R. 99 Fair and Simple Tax Act of 2009
- HR7 2008 Sponsor Statement
- HR7 2008 Press Release
- HR7 2008 Resolution
- HR7 2008 Bill History
- H.R. 8 Death Tax Elimination Tax vote map
- Revenue Collection detail
- HJUD Committee Report

Alaska State Legislature

Representative Anna Fairclough – House District 17

House Resolution 7

"Requesting the United States Congress to permanently repeal the federal unified gift and estate tax."

House Resolution 7 urges Congress to permanently repeal the federal gift and estate tax. Two things I fundamentally believe in are fewer taxes and smaller government. This legislation takes a step toward both of those goals.

Many people believe that the Estate Tax, or Death Tax, has already been repealed in Alaska. This is not the case. Our Death Tax is linked to the Federal Estate Tax which was changed as a result of the Economic Growth and Tax Relief Reconciliation Act of 2001. This legislation phased in a number of tax reductions over a nine-year period. Among those reductions was the change from a state estate tax credit (which our tax is based upon) to a deduction for state estate taxes.

The change from a tax credit to a deduction was phased in over a period of time, gradually reducing the amount of money that the State of Alaska collected in Death Taxes.

Like the rest of the tax reductions included in the 2001 law, the estate tax provisions will sunset in 2010, unless Congress acts to extend them. Given the current climate in Washington, DC, this is unlikely.

This Resolution is Alaska's opportunity to declare that as a state, we are intrinsically against the death tax. Alaskans are hardworking people who deserve to leave behind whatever wealth they are able to accumulate. Families shouldn't be forced to pay taxes on the estates of Alaska's decedents.

I urge your support on the passage of this Resolution.

Session: Alaska State Capitol • Juneau, AK 99801 • 907-465-3777 • Fax 907-465-2819
Interim: 10928 Eagle River Road, Suite 238 • Eagle River, AK 99577 • 907-694-8944 • Fax 907-694-8945
Representative_Anna_Fairclough@legis.state.ak.us

H.R.99

Fair and Simple Tax Act of 2009 (Introduced in House)

SEC. 3. REPEAL OF ESTATE AND GIFT TAXES.

(a) In General- Subtitle B is hereby repealed.

(b) Effective Date- The repeal made by subsection (a) shall apply to the estates of decedents dying, and gifts and generation-skipping transfers made, after December 31, 2008.

SEC. 4. ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNTS INDEXED FOR INFLATION.

(a) In General- Subsection (d) of section 55 (relating to exemption amount) is amended by adding at the end the following new paragraph:

`(4) INFLATION ADJUSTMENT-

`(A) IN GENERAL- In the case of any taxable year beginning in a calendar year after 2008, the dollar amounts contained in paragraphs (1), (2), and (3) shall be increased by an amount equal to--

`(i) such dollar amount, multiplied by

`(ii) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year begins, determined by substituting `calendar year 2006' for `calendar year 1992' in subparagraph (B) thereof.

`(B) ROUNDING- Any increase determined under subparagraph (A) shall be rounded to the nearest multiple of $100.'.

(b) Prior Increase Made Permanent- Paragraph (1) of section 55(d) is amended--

(1) by striking `$45,000 ($69,950 in the case of taxable years beginning in 2007)' and inserting `$69,950',

(2) by striking `$33,750 ($46,200 in the case of taxable years beginning in 2007)' and inserting `$46,200', and

(3) by striking `paragraph (1)(A)' and inserting `subparagraph (A)'.

(c) Effective Date- The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 5. MAXIMUM CORPORATE INCOME TAX RATE REDUCED TO 25 PERCENT.

(a) In General- Paragraph (1) of section 11(b) (relating to amount of tax on corporations) is amended to read as follows:

`(1) IN GENERAL- The amount of the tax imposed by subsection (a) shall be the sum of--

`(A) 15 percent of so much of the taxable income as does not exceed $50,000, and

`(B) 25 percent of so much of the taxable income as exceeds $50,000.'.

(b) Personal Service Corporations- Paragraph (2) of section 11(b) is amended by striking `35 percent' and inserting `25 percent'.

(c) Conforming Amendments- Paragraphs (1) and (2) of section 1445(e) are each amended by striking `35 percent' and inserting `25 percent'.

(d) Effective Date- The amendments made by this section shall apply to taxable years beginning after December 31, 2008; except that the amendments made by subsection (c) shall take effect on January 1, 2009.

SEC. 6. 15 PERCENT RATE ON DIVIDENDS AND CAPITAL GAINS OF INDIVIDUALS REDUCED TO 10 PERCENT.

(a) In General- Subparagraph (C) of section 1(h)(1) (relating to maximum capital gains rate) is amended by striking `15 percent' and inserting `10 percent'.

(b) Effective Date- The amendment made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 7. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

(a) In General- Part II of subchapter O of chapter 1 (relating to basis rules of general application) is amended by redesignating section 1023 as section 1024 and

Journal Text for HR7 in the 25th Legislature

Full Journal

HR 7

The following was read the second time:

HOUSE RESOLUTION NO. 7
Urging the United States Congress to support, work to pass, and vote for the immediate and permanent repeal of the federal estate tax.

Representative Gruenberg declared a conflict of interest.

The question being: "Shall HR 7 pass the House?" The roll was taken with the following result:

HR 7
Second Reading
Final Passage

YEAS: 23 NAYS: 8 EXCUSED: 7 ABSENT: 2

Yeas: Coghill, Dahlstrom, Edgmon, Fairclough, Gatto, Gruenberg, Harris, Hawker, Johansen, Johnson, Joule, Keller, Kelly, Lynn, Meyer, Neuman, Olson, Ramras, Roses, Salmon, Samuels, Stoltze, Thomas

Nays: Buch, Cissna, Crawford, Doll, Doogan, Gara, Guttenberg, Kerttula

Excused: Foster, Holmes, Kawasaki, LeDoux, Nelson, Seaton, Wilson

Absent: Chenault, Gardner

And so, HR 7 passed the House and was referred to the Chief Clerk for engrossment and enrollment.

by inserting after section 1022 the following new section:

`SEC. 1023. INDEXING OF CERTAIN ASSETS FOR PURPOSES OF DETERMINING GAIN OR LOSS.

`(a) General Rule-

`(1) INDEXED BASIS SUBSTITUTED FOR ADJUSTED BASIS- Solely for purposes of determining gain or loss on the sale or other disposition by a taxpayer (other than a corporation) of an indexed asset which has been held for more than 3 years, the indexed basis of the asset shall be substituted for its adjusted basis.

`(2) EXCEPTION FOR DEPRECIATION, ETC- The deductions for depreciation, depletion, and amortization shall be determined without regard to the application of paragraph (1) to the taxpayer or any other person.

`(b) Indexed Asset-

`(1) IN GENERAL- For purposes of this section, the term `indexed asset' means--

`(A) common stock in a C corporation (other than a foreign corporation), and

`(B) tangible property,

which is a capital asset or property used in the trade or business (as defined in section 1231(b)).

`(2) STOCK IN CERTAIN FOREIGN CORPORATIONS INCLUDED- For purposes of this section--

`(A) IN GENERAL- The term `indexed asset' includes common stock in a foreign corporation which is regularly traded on an established securities market.

`(B) EXCEPTION- Subparagraph (A) shall not apply to--

`(i) stock in a passive foreign investment company (as defined in section 1296), and

`(ii) stock in a foreign corporation held by a United States person who meets the requirements of section 1248(a)(2).

`(C) TREATMENT OF AMERICAN DEPOSITORY RECEIPTS- An American depository receipt for common stock in a foreign corporation shall be treated as common stock in such corporation.

`(c) Indexed Basis- For purposes of this section--

`(1) IN GENERAL- The indexed basis for any asset is--

`(A) the adjusted basis of the asset, increased by

`(B) the applicable inflation adjustment.

`(2) APPLICABLE INFLATION ADJUSTMENT- The applicable inflation adjustment for any asset is an amount equal to--

`(A) the adjusted basis of the asset, multiplied by

`(B) the percentage (if any) by which--

`(i) the gross domestic product deflator for the last calendar quarter ending before the asset is disposed of, exceeds

`(ii) the gross domestic product deflator for the last calendar quarter ending before the asset was acquired by the taxpayer (or, if later, the calendar quarter ending on December 31, 2007).

The percentage under subparagraph (B) shall be rounded to the nearest 1/10 of 1 percentage point.

`(3) GROSS DOMESTIC PRODUCT DEFLATOR- The gross domestic product deflator for any calendar quarter is the implicit price deflator for the gross domestic product for such quarter (as shown in the last revision thereof released by the Secretary of Commerce before the close of the following calendar quarter).

`(d) Suspension of Holding Period Where Diminished Risk of Loss; Treatment of Short Sales-

`(1) IN GENERAL- If the taxpayer (or a related person) enters into any transaction which substantially reduces the risk of loss from holding any asset, such asset shall not be treated as an indexed asset for the period of such reduced risk.

`(2) SHORT SALES-

`(A) IN GENERAL- In the case of a short sale of an indexed asset with a short sale period in excess of 3 years, for purposes of this title, the amount realized shall be an amount equal to the amount realized (determined without regard to this paragraph) increased by the applicable inflation adjustment. In applying subsection (c)(2) for purposes of the preceding sentence, the date on which the property is sold short shall be treated as the date of acquisition and the closing date for the sale shall be treated as the date of disposition.

`(B) SHORT SALE PERIOD- For purposes of subparagraph (A), the short sale period begins on the day that the property is sold and ends on the

closing date for the sale.

`(e) Treatment of Regulated Investment Companies and Real Estate Investment Trusts-

`(1) ADJUSTMENTS AT ENTITY LEVEL-

`(A) IN GENERAL- Except as otherwise provided in this paragraph, the adjustment under subsection (a) shall be allowed to any qualified investment entity (including for purposes of determining the earnings and profits of such entity).

`(B) EXCEPTION FOR CORPORATE SHAREHOLDERS- Under regulations--

`(i) in the case of a distribution by a qualified investment entity (directly or indirectly) to a corporation--

`(I) the determination of whether such distribution is a dividend shall be made without regard to this section, and

`(II) the amount treated as gain by reason of the receipt of any capital gain dividend shall be increased by the percentage by which the entity's net capital gain for the taxable year (determined without regard to this section) exceeds the entity's net capital gain for such year determined with regard to this section, and

`(ii) there shall be other appropriate adjustments (including deemed distributions) so as to ensure that the benefits of this section are not allowed (directly or indirectly) to corporate shareholders of qualified investment entities.

For purposes of the preceding sentence, any amount includible in gross income under section 852(b)(3)(D) shall be treated as a capital gain dividend and an S corporation shall not be treated as a corporation.

`(C) EXCEPTION FOR QUALIFICATION PURPOSES- This section shall not apply for purposes of sections 851(b) and 856(c).

`(D) EXCEPTION FOR CERTAIN TAXES IMPOSED AT ENTITY LEVEL-

`(i) TAX ON FAILURE TO DISTRIBUTE ENTIRE GAIN- If any amount is subject to tax under section 852(b)(3)(A) for any taxable year, the amount on which tax is imposed under such section shall be increased by the percentage determined under subparagraph (B)(i)(II). A similar rule shall apply in the case of any amount subject to tax under paragraph (2) or (3) of section 857(b) to the extent attributable to the excess of the net capital gain over the deduction for dividends paid determined with reference to capital gain dividends only. The first sentence of this clause shall not apply to so much of the amount subject to tax under section 852(b)(3)(A)

as is designated by the company under section 852(b)(3)(D).

`(ii) OTHER TAXES- This section shall not apply for purposes of determining the amount of any tax imposed by paragraph (4), (5), or (6) of section 857(b).

`(2) ADJUSTMENTS TO INTERESTS HELD IN ENTITY-

`(A) REGULATED INVESTMENT COMPANIES- Stock in a regulated investment company (within the meaning of section 851) shall be an indexed asset for any calendar quarter in the same ratio as--

`(i) the average of the fair market values of the indexed assets held by such company at the close of each month during such quarter, bears to

`(ii) the average of the fair market values of all assets held by such company at the close of each such month.

`(B) REAL ESTATE INVESTMENT TRUSTS- Stock in a real estate investment trust (within the meaning of section 856) shall be an indexed asset for any calendar quarter in the same ratio as--

`(i) the fair market value of the indexed assets held by such trust at the close of such quarter, bears to

`(ii) the fair market value of all assets held by such trust at the close of such quarter.

`(C) RATIO OF 80 PERCENT OR MORE- If the ratio for any calendar quarter determined under subparagraph (A) or (B) would (but for this subparagraph) be 80 percent or more, such ratio for such quarter shall be 100 percent.

`(D) RATIO OF 20 PERCENT OR LESS- If the ratio for any calendar quarter determined under subparagraph (A) or (B) would (but for this subparagraph) be 20 percent or less, such ratio for such quarter shall be zero.

`(E) LOOK-THRU OF PARTNERSHIPS- For purposes of this paragraph, a qualified investment entity which holds a partnership interest shall be treated (in lieu of holding a partnership interest) as holding its proportionate share of the assets held by the partnership.

`(3) TREATMENT OF RETURN OF CAPITAL DISTRIBUTIONS- Except as otherwise provided by the Secretary, a distribution with respect to stock in a qualified investment entity which is not a dividend and which results in a reduction in the adjusted basis of such stock shall be treated as allocable to stock acquired by the taxpayer in the order in which such stock was acquired.

`(4) QUALIFIED INVESTMENT ENTITY- For purposes of this subsection, the term `qualified investment entity' means--

`(A) a regulated investment company (within the meaning of section 851), and

`(B) a real estate investment trust (within the meaning of section 856).

`(f) Other Pass-Thru Entities-

`(1) PARTNERSHIPS-

`(A) IN GENERAL- In the case of a partnership, the adjustment made under subsection (a) at the partnership level shall be passed through to the partners.

`(B) SPECIAL RULE IN THE CASE OF SECTION 754 ELECTIONS- In the case of a transfer of an interest in a partnership with respect to which the election provided in section 754 is in effect--

`(i) the adjustment under section 743(b)(1) shall, with respect to the transferor partner, be treated as a sale of the partnership assets for purposes of applying this section, and

`(ii) with respect to the transferee partner, the partnership's holding period for purposes of this section in such assets shall be treated as beginning on the date of such adjustment.

`(2) S CORPORATIONS- In the case of an S corporation, the adjustment made under subsection (a) at the corporate level shall be passed through to the shareholders. This section shall not apply for purposes of determining the amount of any tax imposed by section 1374 or 1375.

`(3) COMMON TRUST FUNDS- In the case of a common trust fund, the adjustment made under subsection (a) at the trust level shall be passed through to the participants.

`(4) INDEXING ADJUSTMENT DISREGARDED IN DETERMINING LOSS ON SALE OF INTEREST IN ENTITY- Notwithstanding the preceding provisions of this subsection, for purposes of determining the amount of any loss on a sale or exchange of an interest in a partnership, S corporation, or common trust fund, the adjustment made under subsection (a) shall not be taken into account in determining the adjusted basis of such interest.

`(g) Dispositions Between Related Persons-

`(1) IN GENERAL- This section shall not apply to any sale or other disposition of property between related persons except to the extent that the basis of such property in the hands of the transferee is a substituted basis.

`(2) RELATED PERSONS DEFINED- For purposes of this section, the term `related persons' means--

`(A) persons bearing a relationship set forth in section 267(b), and

`(B) persons treated as single employer under subsection (b) or (c) of section 414.

`(h) Transfers To Increase Indexing Adjustment- If any person transfers cash, debt, or any other property to another person and the principal purpose of such transfer is to secure or increase an adjustment under subsection (a), the Secretary may disallow part or all of such adjustment or increase.

`(i) Special Rules- For purposes of this section--

`(1) TREATMENT OF IMPROVEMENTS, ETC- If there is an addition to the adjusted basis of any tangible property or of any stock in a corporation during the taxable year by reason of an improvement to such property or a contribution to capital of such corporation--

`(A) such addition shall never be taken into account under subsection (c)(1)(A) if the aggregate amount thereof during the taxable year with respect to such property or stock is less than $1,000, and

`(B) such addition shall be treated as a separate asset acquired at the close of such taxable year if the aggregate amount thereof during the taxable year with respect to such property or stock is $1,000 or more.

A rule similar to the rule of the preceding sentence shall apply to any other portion of an asset to the extent that separate treatment of such portion is appropriate to carry out the purposes of this section.

`(2) ASSETS WHICH ARE NOT INDEXED ASSETS THROUGHOUT HOLDING PERIOD- The applicable inflation adjustment shall be appropriately reduced for periods during which the asset was not an indexed asset.

`(3) TREATMENT OF CERTAIN DISTRIBUTIONS- A distribution with respect to stock in a corporation which is not a dividend shall be treated as a disposition.

`(4) SECTION CANNOT INCREASE ORDINARY LOSS- To the extent that (but for this paragraph) this section would create or increase a net ordinary loss to which section 1231(a)(2) applies or an ordinary loss to which any other provision of this title applies, such provision shall not apply. The taxpayer shall be treated as having a long-term capital loss in an amount equal to the amount of the ordinary loss to which the preceding sentence applies.

`(5) ACQUISITION DATE WHERE THERE HAS BEEN PRIOR APPLICATION OF SUBSECTION (A)(1) WITH RESPECT TO THE TAXPAYER- If there has been a prior application of subsection (a)(1) to an asset while such asset was held by the taxpayer, the date of acquisition of such asset by the taxpayer shall be treated as not earlier than the date of the most recent such prior application.

`(j) Regulations- The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section.'.

(b) Clerical Amendment- The table of sections for part II of subchapter O of chapter 1 is amended by striking the item relating to section 1023 and inserting after the item relating to section 1022 the following new items:

`Sec. 1023. Indexing of certain assets for purposes of determining gain or loss.

`Sec. 1024. Cross references.'.

(c) Effective Date- The amendments made by this section shall apply to dispositions after December 31, 2008, in taxable years ending after such date.

SEC. 8. RETIREMENT SAVINGS ACCOUNTS.

(a) In General- Subpart A of part I of subchapter D of chapter 1 (relating to pension, profit-sharing, stock bonus plans, etc.) is amended by inserting after section 408A the following new section:

`SEC. 408B. RETIREMENT SAVINGS ACCOUNTS.

`(a) General Rule- Except as provided in this section, a Retirement Savings Account shall be treated for purposes of this title in the same manner as an individual retirement plan.

`(b) Retirement Savings Account- For purposes of this title, the term `Retirement Savings Account' means an individual retirement plan (as defined in section 7701 (a)(37) which is designated at the time of establishment of the plan as a Retirement Savings Account).

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LEGISLATIVE BUDGET & AUDIT COMMITTEE

Representative Ralph Samuels, Chairman

Sponsor Statement

HR 7 Repeal Federal Estate Tax

"Urging the United States Congress to support, work to pass, and vote for the immediate and permanent repeal of the federal estate tax"

The Economic Growth and Tax Relief Reconciliation Act of 2001 made significant changes to the U. S. Internal Revenue Code, including federal estate taxes.

As a result of this act, federal estate tax rates and exemption amounts have been gradually reduced between 2002 and 2009. In 2010, the federal estate tax is fully repealed.

EGTRRA is subject to a "sunset" provision, however, which results in an automatic reinstatement for the federal estate tax in 2011 unless Congress acts to permanently repeal the tax before then.

The federal estate tax, often referred to as a "death tax" has been described as one of the most inefficient taxes in America. It is very difficult for the government to administer and enforce and has resulted in creating a large estate-planning and avoidance industry.

This tax is an unfair burden placed upon America's small businesses and families during a time of grieving and pain. We should not penalize people for accumulating assets with income that has already been taxed and then expect their survivors to pay taxes on those assets once again through and estate taxes.

HR 7 urges the United States Congress to *permanently* repeal the federal estate tax.

ALASKA STATE LEGISLATURE

LEGISLATIVE BUDGET & AUDIT

REPRESENTATIVE
Ralph Samuels
Chair
(907) 465-2095
Fax: (907) 465-3810

State Capitol, Juneau, Alaska 99801-1182

FOR IMMEDIATE RELEASE: March 20, 2008 **CONTACT: Rep. Ralph Samuels, (907) 465-2095**

Resolution Urging Federal Estate Tax Repeal Headed to Congress

Juneau – The Alaska House of Representatives today passed House Resolution (HR) 7, urging the federal government to permanently repeal the federal estate tax. The resolution, sponsored by the House Rules Committee by request of the Joint Legislative Budget & Audit Committee, asks the U.S. Congress to permanently repeal the "death tax" before its scheduled reinstatement in 2011. Under the Economic Growth & Tax Relief Reconciliation Act of 2001 the estate tax rate gradually declined and the exemption amount increased from 2002 to 2009. In 2010, the tax is to be completely eliminated. However, in 2011, unless Congress has acted to make the repeal permanent, the tax will be reinstated at rates ranging from 41 percent to 60 percent on net assets of more than $1 million.

"It is grossly unfair to tax a person's income and assets after their death, especially after the government has been collecting taxes year after year on that same income and those same assets while they were alive," said Representative Ralph Samuels, R-Anchorage, and the LB&A Chairman. "We in the House are urging the federal government to permanently repeal this death tax."

"This policy debate really highlights the difference in political philosophy on this issue," said Representative Craig Johnson, R-Anchorage. "Repealing the tax can and should lead to getting the money out of the hands of the government and into the economy where it can be of better use. If people invest the money, that's a good thing. That leads to jobs, people going to work, more investment, and keeps the money circulating."

The resolution states that "there is a fundamental problem of double taxation when a decedent's survivors are forced to pay an inheritance tax on assets acquired by the decedent with after-tax dollars... we need a tax system that encourages lifelong saving, investment, and business activity, and not one that can result in heirs liquidating or selling family businesses that are often asset rich but cash poor, thereby destroying those ongoing job-producing businesses simply to fund increased government consumption."

Copies of HR 7 will be prepared and submitted to President George W. Bush, Vice President Dick Cheney, U.S. Senate Majority Leader Harry Reid, Senate Minority Leader Mitch McConnell, Speaker of the U.S. House Nancy Pelosi, House Minority Leader John Boehner, the members of Alaska's congressional delegation and all other members of the 110th U.S. Congress.

###

STATE OF ALASKA
HOUSE OF REPRESENTATIVES

2008

Source
HR 7

House Resolve No.
7

Urging the United States Congress to support, work to pass, and vote for the immediate and permanent repeal of the federal estate tax.

BE IT RESOLVED BY THE HOUSE OF REPRESENTATIVES:

WHEREAS the Economic Growth and Tax Relief Reconciliation Act of 2001 temporarily phased out but did not permanently eliminate the federal estate tax; and

WHEREAS our form of government is premised on the right to enjoy the fruit of one's labor, to own one's own possessions, and to pass on one's bounty to one's heirs; and

WHEREAS, when a person works for a lifetime to build assets, saving and investing money, building a business, or buying and developing land, that person has a moral right to pass those assets on to the person's family without being penalized with inheritance taxes; and

WHEREAS there is a fundamental problem of double taxation when a decedent's survivors are forced to pay an inheritance tax on assets acquired by the decedent with after-tax dollars; and

WHEREAS we need a tax system that encourages lifelong saving, investment, and business activity, and not one that can result in heirs liquidating or selling family businesses that are often asset rich but cash poor, thereby destroying those ongoing job-producing

businesses simply to fund increased government consumption; and

WHEREAS the persistent uncertainty created by sec. 901 of the Economic Growth and Tax Relief Reconciliation Act of 2001, which provides for the reinstatement of federal estate tax law for decedents dying after December 31, 2010, prevents families and small businesses from fully benefitting from the temporary repeal;

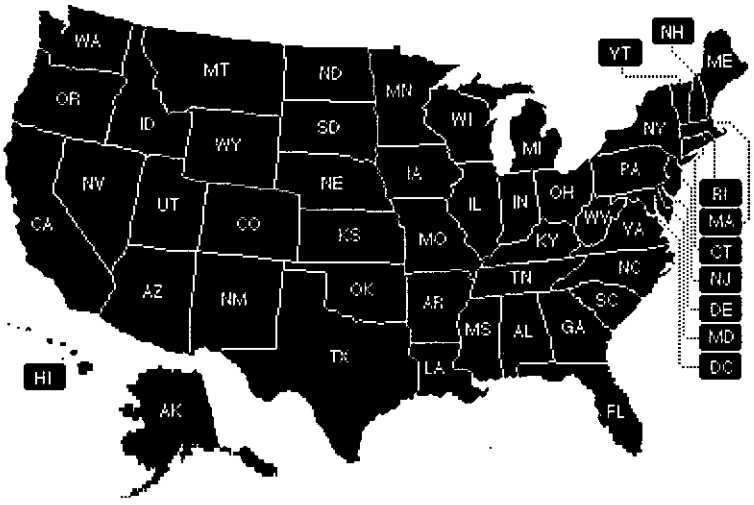
BE IT RESOLVED that the House of Representatives strongly urges the United States Congress to support, work to pass, and vote for the immediate and permanent repeal of the federal estate tax.

COPIES of this resolution shall be sent to the Honorable George W. Bush, President of the United States; the Honorable Richard B. Cheney, Vice-President of the United States and President of the U.S. Senate; the Honorable Harry Reid, Majority Leader of the U.S. Senate; the Honorable Mitch McConnell, Minority Leader of the U.S. Senate; the Honorable Nancy Pelosi, Speaker of the U.S. House of Representatives; the Honorable John Boehner, Minority Leader of the U.S. House of Representatives; and the Honorable Ted Stevens and the Honorable Lisa Murkowski, U.S. Senators, and the Honorable Don Young, U.S. Representative, members of the Alaska delegation in Congress; and all other members of the 110th United States Congress.

Vote Map: Senate Roll Call No. 197

H.R. 8, the Death Tax Elimination Act

Votes For :	59	
Votes Against :	39	
Not Voting :	2	



= majority of state's delegation voted AGAINST this legislation.
= majority of state's delegation voted FOR this legislation.
= split delegation (equal number voted FOR and AGAINST or NO VOTE).

The estate tax is an inheritance tax. The current estate tax triggers should be increased, but eliminating the estate tax entirely would have a huge budgetary impact in outlying years and preclude other important tax relief.

Opponents claim the estate tax is actually a "death" tax and prevents families from passing on farms and businesses to their children. In actuality, the estate tax affects less than 2% of the population and has exceptions for farms and businesses. This bill would cost approximately $105 billion as it is phased in over the next 10 years. Beginning in 2011, when the estate tax is completely eliminated, this bill will cost $50 billion a year, or $500 billion between 2011-2020. Some of the wealthiest Americans, including Warren Buffet, have decried the elimination of the estate tax as a regressive effort and one that would negatively effect entrepreneurial spirit.

On July 14, the Senate approved H.R. 8, the Death Tax Elimination Act, by a vote of 59 to 39. NO is the pro-taxpayer vote. (Roll Call #197)

Figure 3 - Revenue Collections Detail

Listed in order of total amount of revenue collected

TAX TYPE	FY 2008	FY 2007	FY 2006
TIRE FEE			
Non-Studded	$1,089,972	$1,075,505	$1,146,502
Studded	404,564	409,979	446,771
Penalties and Interest	3,680	26,433	25,414
Total Receipts	**$1,498,216**	**$1,511,917**	**$1,618,687**
SEAFOOD DEVELOPMENT			
Tax by Development Region			
Bristol Bay	$1,032,860	$978,504	Not Applicable
Prince William Sound	352,686	285,984	152,465
Penalties and Interest	736	1,845	0
Total Receipts	**$1,386,282**	**$1,266,333**	**$152,465**
DIVE FISHERY MANAGEMENT ASSESSMENT			
Total Receipts *	**$373,120**	**$426,006**	**$273,521**
* All receipts are derived from Southeast Alaska Management area A			
ESTATE			
Total Receipts	**$0**	**$133,081**	**$576,261**

Estate Tax
AS 43.31

The Estate tax was phased out by federal law – it no longer applies to estates of decedents whose date of death is January 1, 2005 or later.

Description
Alaska levies an estate tax on the transfer of an estate upon death.

Rate
The Alaska estate tax is the amount of state credit allowed on the estate's federal tax return.

Returns
State returns are required only for estates of decedents whose date of death was before January 1, 2005, and the estate has a federal filing requirement. Estates of decedents whose date of death is January 1, 2005 or later are not required to file a report.

Estate returns and tax payments are due 15 months from the decedent's date of death.

The tax payment due date may be extended in one-year increments, not to exceed 5 years. Interest accrues on the amount of tax due during the extension period. The return filing due date may be extended for up to 15 years.

Exemptions
Estates under $1.5 million were generally exempt from paying estate taxes prior to 2005, taking into consideration the estate tax credit (formerly the unified credit) allowed under the Internal Revenue Code.

Disposition of Revenue
The division deposits all revenue derived from estate taxes into the General Fund.

History
1919 - The territorial legislature adopted a tax on inheritances and transfers of property from estates. Tax rates varied from 1 percent to 17.5 percent of the property's value.

1970 - The Alaska legislature enacted the current estate tax statutes. Estate tax statutes tie to the state credit allowed under Internal Revenue Code estate tax laws.

1991 - Interest on delinquent tax subject to compound interest under AS 43.05.225. Beginning FY 2003, the state estate tax will phase out as a consequence of changes in federal law.

2001 – The federal Economic Growth and Tax Relief Reconciliation Act enacted. As a consequence of the federal act, the state tax credit was phased out gradually over a four-year period. The state tax credit no longer applies to estates of decedents whose date of death is January 1, 2005 or later. However, the division may continue to collect tax from estates for years prior to January 1, 2005, as a result of returns filed, audits, or other enforcement activities.

Figure 4 - Revenue Collections Detail

Listed in order of total amount of revenue collected

TAX TYPE	FY 2007	FY 2006	FY 2005
ELECTRIC COOPERATIVE			
Total Receipts	**$2,029,554**	**$1,971,690**	**$1,939,598**
Taxes shared	(1,953,262)	(1,893,770)	(1,868,400)
Amount Retained by state	**$76,292**	**$77,920**	**$71,198**
TIRE FEE			
Non-Studded	$1,075,505	$1,146,502	$1,136,589
Studded	409,979	446,771	436,440
Penalties and Interest	26,433	25,414	5,856
Total Receipts	**$1,511,917**	**$1,618,687**	**$1,578,885**
ESTATE			
Total Receipts	**$133,081**	**$576,261**	**$1,538,592**
DIVE FISHERY MANAGEMENT ASSESSMENT			
Southeast Alaska - Management Area A	$426,006	$273,521	$411,267
Total Receipts	**$426,006**	**$273,521**	**$411,267**
SEAFOOD DEVELOPMENT			
Tax by Development Region			
Bristol Bay	$978,504	Not Applicable	
Prince William Sound	285,984	152,465	Not Applicable
Penalties and Interest	1,845	0	
Total Receipts	**$1,266,333**	**$152,465**	
SALMON MARKETING			
Tax	$20,487	$44,676	$2,442,826
Penalties and Interest	494	4,119	12,430
Total Receipts	**$20,981**	**$48,795**	**$2,455,256**

Note: The salmon marketing tax was repealed effective January 1, 2005. FY 2006 and FY 2007 receipts reflect amounts collected from amended and late filed returns.

The Estate tax was phased out by federal law – it no longer applies to estates of decedents whose date of death is January 1, 2005 or later.

Estate Tax
AS 43.31

Description
Alaska levies an estate tax on the transfer of an estate upon death.

Rate
The Alaska estate tax is the amount of state credit allowed on the estate's federal tax return.

Returns
State returns are required only for estates of decedents whose date of death was before January 1, 2005, and the estate has a federal filing requirement. Estates of decedents whose date of death is January 1, 2005 or later are not required to file a report.

Estate returns and tax payments are due 15 months from the decedent's date of death.

The tax payment due date may be extended in one-year increments, not to exceed 5 years. Interest accrues on the amount of tax due during the extension period. The return filing due date may be extended for up to 15 years.

Exemptions
Estates under $1.5 million were generally exempt from paying estate taxes prior to 2005, taking into consideration the estate tax credit (formerly the unified credit) allowed under the Internal Revenue Code.

Disposition of Revenue
The division deposits all revenue derived from estate taxes into the General Fund.

History
1919 - The territorial legislature adopted a tax on inheritances and transfers of property from estates. Tax rates varied from 1 percent to 17.5 percent of the property's value.

1970 - The Alaska legislature enacted the current estate tax statutes. Estate tax statutes tie to the state credit allowed under Internal Revenue Code estate tax laws.

1991 - Interest on delinquent tax subject to compound interest under AS 43.05.225. Beginning FY 2003, the state estate tax will phase out as a consequence of changes in federal law.

2001 – The federal Economic Growth and Tax Relief Reconciliation Act enacted. As a consequence of the federal act, the state tax credit was phased out gradually over a four-year period. The state tax credit no longer applies to estates of decedents whose date of death is January 1, 2005 or later. However, the division may continue to collect tax from estates for years prior to January 1, 2005, as a result of returns filed, audits, or other enforcement activities.

FY 2007 Statistics

Tax Collections	$133,081
Number of Returns	3
Number of Taxpayers	3
Program Cost	$7,682
Staffing (full time equivalent)	0.1

Figure 4 - Revenue Collections Detail

Listed in order of total amount of revenue collected.

TAX TYPE	FY 2006	FY 2005	FY 2004
TELEPHONE COOPERATIVE			
Total Receipts	**$1,905,896**	**$2,029,808**	**$2,101,198**
Taxes shared	(1,804,506)	(1,926,187)	(1,981,543)
Amount Retained by state	**$101,390**	**$103,621**	**$119,655**
TIRE FEE			
Non-Studded	$1,146,502	$1,136,589	$826,651
Studded	446,771	436,440	0
Penalties and Interest	25,414	5,856	23
Total Receipts	**$1,618,687**	**$1,578,885**	**$826,674**
ESTATE			
Total Receipts	**$576,261**	**$1,538,592**	**$2,250,662**
DIVE FISHERY MANAGEMENT ASSESSMENT			
Southeast Alaska - Management Area A	$273,521	$411,267	$253,503
Total Receipts	**$273,521**	**$411,267**	**$253,503**
SEAFOOD DEVELOPMENT			
Tax by Development Region			
Prince William Sound	$152,465	N/A	N/A
Total Receipts	**$152,465**	**N/A**	**N/A**
SALMON MARKETING			
Tax	$44,676	$2,442,826	$1,907,811
Penalties and Interest	4,119	12,430	55,968
Total Receipts	**$48,795**	**$2,455,256**	**$1,963,779**

Note: The salmon marketing tax was repealed effective January 1, 2005.

The Estate tax was phased out by federal law – it no longer applies to estates of decedents whose date of death is January 1, 2005 or later.

Estate Tax
AS 43.31

Description
Alaska levies an estate tax on the transfer of an estate upon death.

Rate
The Alaska estate tax is the amount of state credit allowed on the estate's federal tax return.

Returns
State returns are required only for estates of decedents whose date of death was before January 1, 2005, and the estate has a federal filing requirement. Estates of decedents whose date of death is January 1, 2005 or later are not required to file a report.

Estate returns and tax payments are due 15 months from the decedent's date of death.

The tax payment due date may be extended in one-year increments, not to exceed 5 years. Interest accrues on the amount of tax due during the extension period. The return filing due date may be extended for up to 15 years.

Exemptions
Estates under $1.5 million were generally exempt from paying estate taxes prior to 2005, taking into consideration the estate tax credit (formerly the unified credit) allowed under the Internal Revenue Code.

Disposition of Revenue
The division deposits all revenue derived from estate taxes into the General Fund.

History
The estate tax dates back to 1919 when the territorial legislature adopted a tax on inheritances and transfers of property from estates. Tax rates varied from 1 percent to 17.5 percent of the property's value.

1970 - The Alaska legislature enacted the current estate tax statutes. Estate tax statutes tie to the state credit allowed under Internal Revenue Code estate tax laws.

1991 - Interest on delinquent tax subject to compound interest under AS 43.05.225. Beginning FY 2003, the state estate tax will phase out as a consequence of changes in federal law.

2001 – The federal Economic Growth and Tax Relief Reconciliation Act enacted. As a consequence of the federal act, the state tax credit was phased out gradually over a four-year period. The state tax credit no longer applies to estates of decedents whose date of death is January 1, 2005 or later. However, the division may continue to collect tax from estates for years prior to January 1, 2005, as a result of returns filed, audits, or other enforcement activities.

FY 2006 Statistics

Tax Collections	$576,261
Number of Returns	17
Number of Taxpayers	17
Program Cost	14,074
Staffing (full time equivalent)	0.3

Table 2 - Revenue Collections Detail

Listed in order of total amount of revenue collected.

TAX TYPE	FY 05	FY 04	FY 03
TIRE FEE			
Non-Studded	$ 1,136,589	$ 826,651	
Studded	436,440	0	
Penalties and Interest	5,856	23	
Total Receipts	**$ 1,578,885**	**$ 826,674**	**N/A**
ESTATE			
Total Receipts	**$ 1,538,592**	**$ 2,250,662**	**$ 1,221,757**
DIVE FISHERY MANAGEMENT ASSESSMENT			
Southeast Alaska - Management Area A	$ 411,267	$ 253,503	$ 204,738
Total Receipts	**$ 411,267**	**$ 253,503**	**$ 204,738**

3225

ESTATE TAX
AS 43.31

Description
Alaska currently levies the estate tax on the transfer of an estate upon death.

Rate
The Alaska estate tax is the amount of state credit allowed on the estate's federal tax return.

Returns
Estates file returns and pay taxes within 15 months from the decedent's date of death.

The *tax payment* due date may be extended in one-year increments, not to exceed 5 years. Interest accrues on the amount of tax due during the extension period. The return *filing* due date may be extended for up to 15 years.

Generally state returns will be filed only for estates of decedents whose date of death was before January 1, 2005, and the estate has a federal filing requirement, or needs a tax clearance certificate for probate court. Estates of decedents whose date of death is January 1, 2005 or later do not need to file a report unless the estate needs a tax clearance certificate.

Exemptions
Estates under $1.5 million were generally exempt from paying estate taxes in 2005 taking into consideration the estate tax credit (formerly the unified credit) allowed under the Internal Revenue Code.

Disposition of Revenue
The Division deposits all revenue derived from estate taxes into the General Fund.

History
The estate tax dates back to 1919 when the territorial legislature adopted a tax on inheritances and transfers of property from estates. Tax rates varied from 1% to 17.5% of the property's value.

1970 - The Alaska legislature enacted the current estate tax statutes. Estate tax statutes tie to the state credit allowed under Internal Revenue Code estate tax laws.

2001 – The federal Economic Growth and Tax Relief Reconciliation Act enacted. As a consequence of the federal act, the state tax credit was phased out gradually over a four-year period. The state tax credit no longer applies to estates of decedents whose date of death is January 1, 2005 or later. However, the Division may continue to collect tax from estates for years prior to January 1, 2005, as a result of returns filed, audits, or other enforcement activities.

FY 2005 Statistics

Tax Collections	$1,538,592
Number of Returns	49
Number of Taxpayers	46
Number of Death Certificates Issued	775
Program Cost	$35,166
Staffing *(full time equivalent)*	0.6

3226

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: February 23, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 3/18/09

The JUDICIARY Committee considered: **HOUSE RESOLUTION NO. 7**

Requesting the United States Congress to permanently repeal the federal unified gift and estate tax.
HR 7 URGE REPEAL OF FEDERAL ESTATE/GIFT TAX

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Guenther				
	Dahl	X			
	Gatto			✓	
Chair:					
Chair:	RAMIREZ	X			

SB

43

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
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House District 10

Fax

To: Alpheus Bullard
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson

Date: April 9, 2010

Re: SB43

Today, the HJUD Committee passed the HCSSB43 (26-LS0259\P). Please go final.

Thank you for all your help!

Representative_Jay_Ramras@legis.state.ak.us

26-LS0259\P
Bullard
4/6/10

HOUSE CS FOR SENATE BILL NO. 43(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS MENARD, Egan, Hoffman, Paskvan, McGuire, Meyer, Stedman, Olson, Davis, Dyson, Coghill, Wagoner, Kookesh, Stevens

REPRESENTATIVES Kerttula, Muñoz

A BILL

FOR AN ACT ENTITLED

"An Act adding a second verse to the official Alaska state song."

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

*** Section 1.** AS 44.09.040 is amended to read:

Sec. 44.09.040. State song. The song "Alaska's Flag," with music composed by Elinor Dusenbury and words **to the first verse** by Marie Drake **and words to the second verse by Carol Beery Davis**, is the official song of the state. The words of the official song are as follows:

Alaska's Flag

Eight stars of gold on a field of blue -
Alaska's flag. May it mean to you
The blue of the sea, the evening sky,
The mountain lakes, and the flow'rs nearby;
The gold of the early sourdough's dreams,
The precious gold of the hills and streams;
The brilliant stars in the northern sky,
The "Bear" - the "Dipper" - and, shining high,

The great North Star with its steady light,
Over land and sea a beacon bright.
Alaska's flag - to Alaskans dear,
The simple flag of a last frontier.

A native lad chose our Dipper's stars
for Alaska's flag that there be no bars
among our cultures. Be it known
through years our natives' past has grown
to share our treasures, hand in hand,
to keep Alaska our Great Land.
We love the northern midnight sky,
our mountains, lakes and the streams nearby;
Our Great North Star with its steady light
will guide our cultures clear and bright
with Nature's flag to Alaskans dear -
The simple flag of a last Frontier.

*** Sec. 2.** AS 44.09.040 is amended by adding a new subsection to read:

(b) A copy of "Alaska's Flag" produced for public use must have the following attribution and notice: "copyright University of Alaska Foundation, nonprofit use permitted, all other rights reserved."

26-LS0259\P
Bullard
4/6/10

HOUSE CS FOR SENATE BILL NO. 43(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS MENARD, Egan, Hoffman, Paskvan, McGuire, Meyer, Stedman, Olson, Davis, Dyson, Coghill, Wagoner, Kookesh, Stevens

REPRESENTATIVES Kerttula, Muñoz

A BILL

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Alaska's Flag

Eight stars of gold on a field of blue -
Alaska's flag. May it mean to you
The blue of the sea, the evening sky,
The mountain lakes, and the flow'rs nearby;
The gold of the early sourdough's dreams,
The precious gold of the hills and streams;
The brilliant stars in the northern sky,
The "Bear" - the "Dipper" - and, shining high,

New Text Underlined *[DELETED TEXT BRACKETED]*

L
3232

The great North Star with its steady light,
Over land and sea a beacon bright.
Alaska's flag - to Alaskans dear,
The simple flag of a last frontier.

A native lad chose our Dipper's stars
for Alaska's flag that there be no bars
among our cultures. Be it known
through years our natives' past has grown
to share our treasures, hand in hand,
to keep Alaska our Great Land.
We love the northern midnight sky,
our mountains, lakes and the streams nearby;
Our Great North Star with its steady light
will guide our cultures clear and bright
with Nature's flag to Alaskans dear -
The simple flag of a last Frontier.

* **Sec. 2.** AS 44.09.040 is amended by adding a new subsection to read:

(b) A copy of "Alaska's Flag" produced for public use must have the following attribution and notice: "copyright University of Alaska Foundation, nonprofit use permitted, all other rights reserved."

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Alaska State Legislature

House of Representatives

Interim:
1292 Sadler Way, Suite 324
Fairbanks, Alaska 99701
Phone: (907) 452-1088
Fax: (907) 456-3346
Toll Free: (877) 465-3004

House District 10

Fax

To: Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 2

From: Jane W. Pierson

Date: April 2, 2010

Re: SB43 (26-LS0259\E)

Please draft a HJUD CS for the above-referenced version of HCSSB43(STA) to include delete the words of the second verse as currently drafted, and insert the official copyrighted (see attached).

Representative_Jay_Ramras@legis.state.ak.us

I

THE ALASKA FLAG (Second Verse)

A native lad chose our Dipper's stars
for Alaska's flag that there be no bars
among our cultures. Be it known
through years our natives' past has grown
to share our treasures, hand in hand,
to keep Alaska our Great Land.
We love the northern midnight sky,
our mountains, lakes and the streams nearby;
Our Great North Star with its steady light
will guide our cultures clear and bright
with Nature's flag to Alaskans dear -
The simple flag of a Last Frontier.

Carol Beery Davis 1986

3235

The great North Star with its steady light,
Over land and sea a beacon bright.
Alaska's flag - to Alaskans dear,
The simple flag of a last frontier.

A Native lad chose the Dipper's stars
For Alaska's flag that there be no bars
Among our culture. Let it be known
Through years the Native's past has grown
To share life's treasures, hand in hand,
To keep Alaska our Great-Land;
We love the northern midnight sky,
The mountains, lakes and streams nearby.
The great North Star with its steady light
Will guide all cultures, clear and bright,
With nature's flag to Alaskans dear,
The simple flag of the last frontier.

"Alaska's Flag"

Written by Marie Drake
Composed by Elinor Dusenbury

Adopted on February 23 1955.

Sheet Music | MIDI Tune | Realaudio Song

1st Verse of Alaska's Flag Song

Eight stars of gold on a field of blue,
Alaska's flag, may it mean to you,
The blue of the sea, the evening sky,
The mountain lakes and the flowers nearby,
The gold of the early sourdough's dreams,
The precious gold of the hills and streams,
The brilliant stars in the northern sky,
The "Bear," the "Dipper," and shining high,
The great North Star with its steady light,
O'er land and sea a beacon bright,
Alaska's flag to Alaskans dear,
The simple flag of a last frontier.

2nd Verse of Alaska's Flag Song -- Words by Carol Beery Davis

A Native lad chose the Dipper's stars
For Alaska's flag that there be no bars
Among our culture. Let it be known
Through years the Native's past has grown
To share life's treasures, hand in hand,
To keep Alaska our Great-Land;
We love the northern midnight sky,
The mountains, lakes and streams nearby.
The great North Star with its steady light
Will guide all cultures, clear and bright,
With nature's flag to Alaskans dear,
The simple flag of the last frontier.

- *Source* : *Alaska Blue Book 1993-94*, 11th ed., Juneau, Department of Education, Division of State Libraries, Archives & Museums.
- Copyright for *Alaska's Flag* is held by the University of Alaska. For further

Origin of Song:

The words to the song Alaska's Flag were written by Marie Drake, The Territorial Legislature adopted Alaska's Flag as Alaska's official song in 1955.

"Alaska's Flag" written by Marie Drake a long-time employee of the Alaska Department of Education, and set to music composed by Elinor Dusenbury, who husband was commander of Chilkoot Barracks at Haines from 1933 to 1936 was adopted as the official state song in 1955, and was gifted to the University of Alaska in April 1960. Carol Beery Davis wrote the second verse to "Alaska's Flag" and gifted the words (protected by copyright) to the University of Alaska Foundation in February 1987.

Carol Beery Davis, an Alaskan pioneer and poet laureate, as the maker of the second verse. While the official Alaska state song recognizes and describes Alaska's flag, the words of Davis in the second verse of "Alaska's Flag", "A Native lad chose the Dipper's stars, For Alaska's flag that there be no bars", provides recognition of Bennie Benson who designed Alaska's official flag in 1927. Benny Benson described his design of the flag:

"The blue field is for the Alaska Sky and the forget-me-not, an Alaskan flower. The North Star is for the future of Alaska, the most northerly in the union. The Dipper is for the Great Bear - symbolizing strength."

Marie Drake:

Marie Drake, author of the words to *Alaska's Flag*, the state song, was born Feburary 11, 1888. In 1907 she married James Drake in Van Wert, Ohio, where she was engaged in social work with the Y.W.C.A. and the Red Cross. They came to Alaska when her husband was assigned to work with the Bureau of Public Roads. In 1917, Lester Henderson was appointed first commissioner of education, and he hired Marie Drake as his secretary. She remained with the Department for 28 years,

information contact the University Archivist at the Rasmuson Library, University of Alaska Fairbanks, Fairbanks, Alaska 99775-6808.

- Verse 2 by Carol Beery Davis. 1986.

retiring July 1, 1945.

Marie Drake assumed the post of assistant commissioner of education in 1934. She edited and wrote most of the material for the department's *School Bulletin*, that was circulated throughout the territorial school system. The poem that later provided the words for the official state song first appeared on the cover of the October 1935 *School Bulletin*. In recognition of her devotion to the young people of Alaska, Marie Drake received an honorary Doctor of Letters degree from the University of Alaska in 1958. She died March 5, 1963.

- *Source : Alaska Blue Book 1993-94, 11th ed., Juneau, Department of Education, Division of State Libraries, Archives & Museums*

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 2, 2010

SUBJECT: Alaska's Flag song, copyright issues (HCS SB 43(JUD))
(Work Order No. 26-LS0259\S)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Alpheus Bullard TLAB
Legislative Counsel

This memorandum accompanies the committee substitute described above. I have one comment.

Mary Rutherford of the University of Alaska Foundation, the copyright holder for the music and both verses of the song, has stated that the copyright holder had no objection to the addition of the song's second verse in statute if there is no alteration to the copyrighted text and if all copies of the text are accompanied by the attribution "copyright University of Alaska Foundation, non-profit use permitted, all other rights reserved."

This committee substitute changes the text of the second verse to conform with the text of the second verse as Carol Beery Davis registered it with the U.S. Copyright office; registration number TXu-258-946. However, the committee substitute does not contain the attribution requested by the copyright holder. This may be interpreted to create a legal issue, as the second verse of the song "Alaska's Flag" will not, to my understanding, pass into the public domain until 2060.[1]

If you have questions, please do not hesitate to contact me.

TLAB:med
10-070.med

Enclosure

---

[1] United States Copyright Law grants the copyright owner exclusive rights to their creative work for a specific period of time or term. For works published after 1977 the term is equal to the length of the life of the author/creator plus 70 years.[1] By law, the copyright owner is the only one who has the right to reproduce their work. If any other party wants to reproduce the material in any manner, permission must be obtained from the copyright owner. It is my understanding that Carol Beery Davis wrote the second verse in 1986 and died in 1990. Consequently, the second verse of the song "Alaska's Flag" will enter the public domain in 2060.

UNIVERSITY of ALASKA
FOUNDATION

April 7, 2010

House Judiciary Committee
House of Representatives
Alaska State Legislature
Juneau, Alaska

Dear Members of the House Judiciary Committee,

I have been asked to provide some background information on the copyright of the Alaska State Song and the unofficial verse by Carol Beery Davis held by the University of Alaska Foundation. I am pleased to do so. This information has also been shared with the office of Senator Menard.

The University of Alaska Foundation holds in trust, for the benefit of the university and the public, the copyright to the music and first verse of the Alaska Flag Song. The music and first verse were authored and generously donated to the university by Elinor Dusenbury and Marie C. Drake, and are presently recognized as the Alaska State Song.

The Foundation similarly holds in trust the copyright to the second verse of the Alaska Flag Song. That verse was authored and generously donated to the university by Carol Beery Davis, and is presently being considered by the Legislature for recognition as a second verse of the Alaska State Song.

The University and Foundation have been honored to protect these works for public, non-profit use as the state song, and as trust properties for the benefit of the university. The Foundation is unaware of any effect on copyright ownership resulting from recognition of a work as the state song with the permission of the copyright holder, and likewise is unaware of any legal impediment to appending a verse to a work with the permission of the affected copyright holder. Thus the Foundation has no objection to recognition of the Carol Beery Davis verse as the second verse of the Alaska State Song, should the Legislature choose to do so.

In order to protect the copyrights, the Foundation asks that there be no alteration to the original texts, and that a notation appear on all copies of the state song produced for public use stating: copyright University of Alaska Foundation, non-profit use permitted, all other rights reserved." We believe this puts issues of copyright protection squarely in the hands of the University of Alaska Foundation, thereby freeing the State of Alaska from any legal obligation resulting from such issues. Said statement also makes clear the verses are not in the public domain, a very important aspect of copyright protection.

Please contact me if you have any questions or concerns. 907-786-1373 or david.woodley@alask.edu.

Best Regard,

David Woodley, Executive Director of
Advancement Services

910 Yukon Dr., Suite 206, PO Box 755080 • Fairbanks, AK 99775 • Phone: (907) 450-8030 • Fax: (907) 450-8031

Senate Bill 43---2nd verse of the Alaska flag song

Written Comment

As a private citizen and a member of a historical society, Pioneer's of Alaska and a resident of Alaska for over half a century, I am supportive of the inclusion of the 2nd verse of the Alaska Flag Song. I am not speaking on behalf of any group.

The 2nd verse is presently gifted by Carol Beery Davis to the University of Alaska Foundation. This gift has the ability to promote the University of Alaska. The UA Foundation website quotes "The Board of Regents of the University of Alaska has recognized the University of Alaska Foundation as the entity of manage private gifts made to support all campuses of the University of Alaska system." This gift has the potential to bring recognition to the University system by placing the notation "copyright University of Alaska Foundation, non-profit use permitted, all other rights reserved".

It appears this gift is historically important or the University would not have accepted the gift. Furthermore, Ms. Davis also established the Poetry Society of Alaska which acclaimed her Poet Laureate 1967-69 according to the Alaska State Library.

Historically speaking, the second verse would not only promote the University of Alaska but it would recognize Benny Benson, the "lad" who designed the Alaska State Flag and recognize the contributions of the Alaska Native people.

Sharon L. Benson

Senator Linda Menard

Session
State Capitol, Room 9
Juneau, Alaska 99801
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600 E. Railroad Ave.
Wasilla, Alaska 99654
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Alaska State Legislature

Senate Bill 43 Sponsor Statement

Senate Bill 43 will add a second verse to the Alaska Flag Song, finally giving recognition to the history of the state flag and the contributions of the wonderful Native community.

Written by the late Carol Beery Davis, the second verse of Alaska's Flag Song adds 12 lines and pays tribute to not only the aforementioned subjects but, indirectly, to the young lad who designed the flag: Benny Benson. Benson, of course, came up with the eventual design of Alaska's flag, the Big Dipper and North Star against a dark blue background.

After Davis wrote the second verse she gifted the words to the University of Alaska Foundation in 1987. The foundation has graciously said they have no objection to the state recognizing the second verse officially in statute.

Already, Fran Ulmer, the chancellor of the University of Alaska, has endorsed Senate Bill 43. Ulmer, who introduced a similar bill when she was in the Legislature, summed up a major intent of my legislation: the first verse of the song did not recognize the contributions Alaska Native people have made to the state. The bill sailed through the House of Representatives, but stalled in the Senate.

The Senate had the chance to hear the Flag Song performed with both versus as we gaveled in on the first day of session this year. I think we can all agree the second verse not only added a special touch, but highlighted music teachers' desire to have a second verse to teach their choirs.

Please join me in supporting a long overdue addition of a second verse to Alaska's Flag Song.

Senator_Linda_Menard@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 43
(S) Publish Date: 1/29/10

Identifier (file name): SB043-GOV-OMB-1-26-10
Dept. Affected: All
Title: Adding a second verse to the official Alaska state song
RDU
Component
Sponsor: Sen. Menard
Requester: Sen. Community & Regional Affairs Committee
Component Number

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This legislation will not have a significant fiscal impact on any State agency.

Prepared by: Jack Kreinheder, Senior Analyst — Phone 465-4676
Division: Office of Management and Budget — Date/Time 1/26/09 9:35 AM
Approved by: Karen Rehfeld, Director — Date 1/26/2009
Office of Management and Budget

(Revised 11/6/2009 OMB)

3243

Michael Rovito

From: Mary Rutherford [mary.rutherford@alaska.edu]
Sent: Thursday, February 18, 2010 2:37 PM
To: Michael Rovito
Subject: FW: AK Flag Song

Mike,

To follow up on our phone conversation:

The University of Alaska Foundation holds in trust, for the benefit of the university and the public, the copyright to the music and first verse of the Alaska Flag Song. The music and first verse were authored and generously donated to the university by Elinor Dusenbury and Marie C. Drake, and are presently recognized as the Alaska State Song.

The Foundation similarly holds in trust the copyright to the second verse of the Alaska Flag Song. That verse was authored and generously donated to the university by Carol Beery Davis, and is presently being considered by the Legislature for recognition as a second verse of the Alaska State Song.

The University and Foundation have been honored to protect these works for public, non-profit use as the state song, and as trust properties for the benefit of the university. The Foundation is unaware of any effect on copyright ownership resulting from recognition of a work as the state song with the permission of the copyright holder, and likewise is unaware of any legal impediment to appending a verse to a work with the permission of the affected copyright holder. Thus the Foundation has no objection to recognition of the Carol Beery Davis verse as the second verse of the Alaska State Song, should the Legislature choose to do so.

In order to protect the copyrights, the Foundation asks that there be no alteration to the original texts, and that a notation appear on all copies of the state song produced for public use stating: "copyright University of Alaska Foundation, non-profit use permitted, all other rights reserved."

I hope this is helpful. Please let me know if I can be of any further assistance.

Mary

Sen. Linda Menard

From: CHANCELLOR'S OFFICE [aychanc@uaa.alaska.edu]
Sent: Friday, January 22, 2010 4:06 PM
To: Sen. Linda Menard
Subject: Alaska State Song

Dear Senator Menard,
I am delighted that you are proposing the second verse of the Alaska Flag song be adopted by the state as part of the official state song. I introduced that legislation many years ago; it passed the House but stalled in the Senate. I have long felt it important that both verses be sung on all occasions. Alaska Poet Laureate Carol Berry Davis wrote the second verse because she felt that the first verse did not recognize the contributions that Alaska Native people have made to our state. She asked me to introduce the bill, which I did and there were many people who supported it.

Years ago Carol Berry Davis gave the second verse to the University. I am not sure what rules might apply to the copyright. I am happy to have my staff look into this and help you with whatever contacts or permission is necessary in order to pursue this legislation.

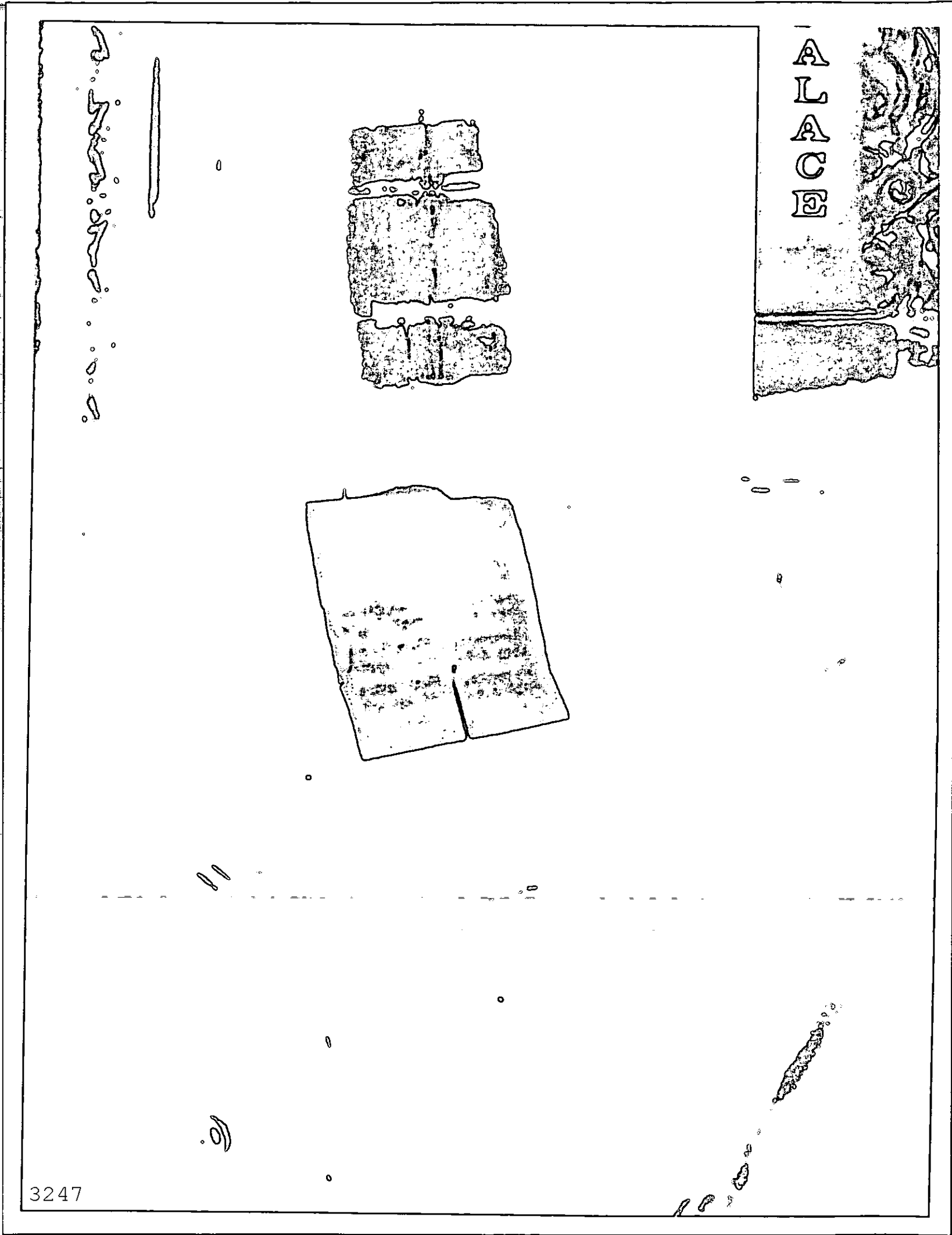
Thank you so much for your work promoting the adoption of the second verse of the Alaska Flag song.

Best regards,
Fran Ulmer
Chancellor

Benny Benson chose the background color of the flag to represent both the blue sky and the forget-me-not. The Legislature later named the forget-me-not as the official State flower. This provides another symbolic link, one between the official State flag, the official song and the official flower.

Carol Beery Davis, a longtime Juneau resident and musician, wrote a second verse to the Alaska Flag song and gifted the words (protected by copyright) to the University of Alaska Foundation in February 1987. It has been unsuccessfully proposed as an addition to the official lyrics twice. The last time, in 2002, House Bill 285 sought to officially incorporate Davis' second verse into the Alaska state song. The bill passed the Alaska House, but it died in the Senate. Because of the copyright restrictions, it is not shown here. Instead, a link to it and more detailed information is provided at the bottom of the page

Source: Wikipedia


ALACE

Raymond J. Watson, Chairperson
Myron P. Naneng, President
Phone (907) 543-7300
Fax (907) 543-3369

AVCP

Association of Village Council Presidents
Office of Administration
Pouch 219, Bethel, AK 99559

Akiachak
Akiak
Alakanuk
Andreafsky
Aniak
Atmautluak
Bethel
Bill Moore's Sl.
Chefornak
Chevak
Chuathbaluk
Chuloonawick
Crooked Creek
Eek
Emmonak
Georgetown
Goodnews Bay
Hamilton
Hooper Bay
Lower Kalskag
Upper Kalskag
Kasigluk
Kipnuk
Kongiganak
Kotlik
Kwethluk
Kwigillingok
Lime Village
Marshall
Mekoryuk
Mtn. Village
Napaimiut
Napakiak
Napaskiak
Newtok
Nightmute
Nunapitchuk
Ohogamiut
Oscarville
Paimiut
Pilot Station
Pitka's Point
Platinum
Quinhagak
Red Devil
Russian Mission
Scammon Bay
Nunam Iqua
Sleetmute
St. Mary's
Stony River
Nunakauyak
Tuluksak
Tuntutuliak
Tununak
Umkumiut

April 9, 2010

Representative Bob Herron
State Capitol, Room 411
Juneau, AK 99801-1182
Phone: 907-465-4942
Fax: 907-465-4589

Sub: SB 43-Second Verse of Alaska's State Song

Dear Representative Herron;

Please pass on to the House Judiciary Committee that the Association of Village Council Presidents does not support the passing of SB 43 as it stands. Instead, we would rather support a competition open to the youth of Alaska for any new verses to the Alaska State Song. A competition open to youth would inspire all those to participate in creating an wonderful way to celebrate and honor the State of Alaska through song.

We support the goal of including Alaska Natives in the proposed new verse, but feel that the words in the verse itself may be constructed in a more appropriate manner. Therefore, please consider our recommendation for a competition.

Sincerely,

Myron P. Naneng Sr., President

File

Attachment: House CS For Senate Bill No. 43 (STA)

SB 48

SENATOR
GENE THERRIAULT
Mailing Address:
1292 Sadler Way, Suite 308
Fairbanks, Alaska 99701
(907) 488-0857
Fax: (907) 488-4271

Alaska State Legislature

Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884
SENATE DISTRICT F

Memorandum

To: The Honorable Representative Jay Ramras
Chair, House Judiciary Committee

From: Senator Gene Therriault

Date: April 14, 2009

Re: CSSB 48 (JUD) House Judiciary Hearing Request

CSSB 48 (JUD) amends AS 44.62.310(d) by adding a new section to exempt municipal boards, commissions, and other similar bodies from Alaska's Open Meetings Act when meeting solely to conduct administrative and managerial business. The legislation also clarifies an abnormality in state statute regarding the definition of a "meeting." Meeting requirements for advisory bodies are currently more stringent than those for policy setting bodies. CSSB 48 (JUD) places the same open meetings requirements on advisory bodies as are on government agencies authorized to establish public policy.

AS 44.62.310-312 prevents municipal government bodies from conducting administrative duties such as responding to unforeseen road conditions without first triggering the open meetings act. Unless a public meeting is first scheduled and held, board members may not discuss and act upon time sensitive issues. CSSB 48 (JUD) will grant service area boards and commissions the necessary legal authority to more efficiently implement their duties and responsibilities and respond quickly to unforeseen local events like heavy snowfall or flooding.

CSSB 48 (JUD) also resolves an unintended consequence caused by the definition of "meeting." Under the current language, meeting requirements for advisory bodies are more stringent than those for policy setting bodies. The committee substitute places the same open meetings requirements on advisory bodies as are on government agencies authorized to establish public policy.

I respectfully request you schedule CSSB 48 (JUD) for a House Judiciary Committee hearing on Wednesday, April 15, 2009.

Email: Senator_Gene_Therriault@legis.state.ak.us

Committee Substitute for Senate Bill 48 (JUD) Sectional Analysis

Page 2, lines 12-14
AS 44.62.310(d):

(8) "...meetings by municipal service area boards, committees, commissions, or other similar bodies when meeting solely to act on matters that are administrative or managerial in nature."

Explanation: CSSB 48 (JUD) expands SB 48's original road conditions exemption to now include administrative and managerial duties which fall within a municipality's purview.

Page 2, lines 30-31
AS 44.62.310(h)(2):

(B) "...more than three members or a majority of the members, whichever is less, are present,..."

Explanation: AS 44.62.310(2) defines the constitution of an "open public meeting" between members of a governmental body. AS 44.62.310(2)(A) mandates that "...more than three members or a majority of the members, whichever is less..." constitutes a meeting for governmental bodies responsible for formulating and establishing public policy. However, AS 44.62.310(2)(B) does not require this same prerequisite for advisory-only bodies; the meeting needs only to be pre-arranged. Consequentially, meeting requirements for advisory bodies (e.g.: local service district) are more stringent than those for policy making bodies (e.g.: borough assembly). CSSB 48 (JUD) establishes a uniform public meetings requirement by placing the same open meetings requirements on advisory bodies as are on government agencies authorized to establish public policy.

SENATOR
GENE THERRIAULT
Mailing Address:
1292 Sadler Way, Suite 308
Fairbanks, Alaska 99701
(907) 488-0857
Fax: (907) 488-4271

Alaska State Legislature

Senate

While in session
State Capitol
Juneau, Alaska
99801-1182
(907) 465-4797
Fax: (907) 465-3884
SENATE DISTRICT F

Short Title: Meetings of Road Service Area Boards

Summary:

- CSSB 48 (JUD) expands SB 48's original exemption of road service areas from the Alaska's open meetings act (AS 44.62.310-312) to now include all municipal boards, committees, commissions, and other similar bodies meeting solely for the purpose to conduct administrative or managerial business.
- Establishes a uniform definition of "meeting" under AS 44.62.310(h)(2) for both policy setting and advisory government bodies.

Benefits:

- Grants municipal bodies the legal authority to efficiently carry out in a timely manner administrative duties such as responding quickly to unforeseen road conditions that may cause damage to a road system and subsequent danger.
- Preserves the spirit of an informed and involved citizenry when formulating local public policy. Municipal bodies will still be required to schedule and hold public meetings when discussing policy issues such as contract negotiations and local tax rates.

Background:

- Established under Article X Section 5 of the Alaska State Constitution and AS 29.35.450-490, municipal service areas districts provide essential road maintenance, fire protection, and park and recreation services. In keeping with America's federalist foundations, service districts promote local governance through residents joining together and taking responsibility for providing basic community services.
- AS 44.62.310-312 limits a road service area's ability to efficiently respond to road conditions caused by adverse weather. Unless a public meeting is first scheduled and held, board members cannot discuss and act upon time sensitive issues.
- Under AS 44.62.310(h)(2), meeting requirements for advisory bodies are more stringent than those for policy setting bodies. CSSB 48 (JUD) places the same open meetings requirements on advisory bodies as are on government agencies authorized to establish public policy.

Email: Senator_Gene_Therriault@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 48(CRA)
(S) Publish Date: 2/11/09

Identifier (file name):SB48-CED-CRA-02-09-09
Dept. Affected: DCCED
Title: Meetings of Road Service Area Boards
RDU: Community & Regional Affairs
Component: Community & Regional Affairs
Sponsor: Senator Therriault
Requester: Senate Community & Regional Affairs
Component Number: 405

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
1036 Com Fish							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Part-time							
Temporary							

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

This bill grants service area boards the legal authority to respond quickly to hazardous road conditions affected by harsh weather by bypassing the open public meeting requirements.

The Department of Commerce, Community & Economic Development foresees zero fiscal impact with passage of this legislation.

Prepared by: Tara Jollie, Division Director
Phone 465-2510
Division: DCCED - Community & Regional Affairs
Date/Time 2/6/09 3:35pm
Approved by: Emil Notti,Commissioner, DCCED
Date 2/9/2009

(Revised 9/10/2008 OMB)

3253

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 15, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 4/15/09

The JUDICIARY Committee considered: **CS FOR SENATE BILL NO. 48(JUD)**

"An Act exempting municipal service area boards from the requirements of conducting meetings open to the public when a meeting is administrative or managerial in nature; and amending the definition of 'meeting' as it relates to public governmental meetings."

SB 48 PUBLIC MEETINGS/ MUNI SERVICE AREA BDS

Recommends it be replaced with [ ] HCS *or* [✓] CS *for* SB48 (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR _____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____ Committee
[ ] Letter of Intent _____ Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
LEG	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	Greenberg	–			
	Dahlstrom	X			
	Holmes			X	
Chair:	RAUKAS	X			
Chair:					

SB 60

ALASKA STATE LEGISLATURE

Session
State Capitol Building, Room 125
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
Anchorage, Alaska 99501
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Co-Chair
Senate Resources Committee

Chair
Senate Special Committee on Energy
Senate Special Committee on World Trade, Technology & Innovation

Member
Senate Judiciary Committee
Joint Armed Services Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT

SB 60: Uniform Probate Code; Trusts, Wills

Inevitably, every family in Alaska must deal with handling the affairs of a deceased family member's estate or trust. The Uniform Probate Code (UPC) is the legal model Alaska has relied upon to handle these matters since it was first adopted back in 1969.

The Uniform Probate Code (UPC) is a uniform act drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) governing inheritance and the decedents' estates in the USA. The primary purpose of the act is to streamline the probate process and to standardize and modernize the various state laws governing wills, trusts, and intestacy.

SB 60 updates and clarifies Alaska statutes relating to the UPC with the aim of improving the ease of administration of estates and trusts for Alaska residents. SB 60 provides the following amendments to the Uniform Probate Code:

- Allows the settlor of a trust to designate a representative who can represent or bind an incapacitated person in future proceedings relating to the trust administration.

- Establishes that an augmented estate does not include property transferred to an irrevocable trust if the settlor is a discretionary beneficiary of the trust and if the transfer was made more than 30 days before marriage, or with the consent of the decedent's spouse.

- Creates a procedure for the establishment of will and trust validity before death. Situations arise where there is a question concerning a person's capacity to execute a will or trust, or whether the document was executed as the result of undue influence, duress, fraud, or mistake. The new procedure will allow these issues to be brought before the court while the testator or settlor is alive and when evidence is fresh.

- Provides for venue of a probate proceeding if the decedent was not domiciled in Alaska but significant assets are located within the state.

The State of Alaska has directly received millions of dollars of insurance premium tax dollars and many jobs have been created in the trust, banking, insurance, and legal professions thanks to the business attracted by our competitive and contemporary trust laws.

SB 60 is one of three bills introduced (SB 60, SB 62, and SB 63) that aim to update and clarify Alaska trust laws to make Alaska a better place for investors and families – both Alaskan and from other states – to invest their money in the competitive arena of trust management.

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SENATOR LESIL MCGUIRE

SECTIONAL ANALYSIS

SB 60: Uniform Probate Code; Trusts, Wills

Section 1. Amends AS 13.06.120(2), which lists the situations when persons are bound by orders binding others in proceedings under the Uniform Probate Code. Allows a person designated by a trust instrument to represent and bind a born or unborn trust beneficiary. Allows the settlor to designate the person in the trust in various ways. Generally does not allow a designated person serving as a trustee to represent and bind the beneficiaries. Generally does not allow the designated person to represent and bind a beneficiary if the designated person is also a beneficiary.

Also provides that certain persons who represent other persons under AS 13.06.120(2)(A)-(F) are not liable for good faith acts and omissions to the beneficiaries whose interests are represented or to persons claiming through those beneficiaries.

Section 2. Amends AS 13.12.201(b)(9). Makes grammatical and conforming amendments to the definition of "transfer" for certain provisions of the Uniform Probate Code that relates to the elective share of a surviving spouse.

Section 3. Amends AS 13.12.205, which relates to a decedent's nonprobate transfers to other persons. Deletes an irrevocable transfer in trust with a transfer restriction from the property that is included in the augmented estate.

Section 4. Adds AS 13.12.205(b). Provides that the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction if two conditions relating to the trust's settlor and the transfer's timing are met.

Section 5. Makes a conforming amendment for bill section 4 to a cross-reference in AS 13.12.206(3).

Section 6. Makes a conforming amendment for bill section 4 to a cross-reference in AS 13.12.207(b).

Section 7. Makes a conforming amendment for bill section 4 to a cross-reference in AS 13.12.209(b).

Section 8. Adds a new set of sections that provide for establishing the validity of wills and trusts before the testator's death.

Sec. 13.12.530. Allows certain persons to petition the court to determine the validity of a will before the testator's death.

Sec. 13.12.535. Allows certain persons to petition the court to determine the validity of a will before the testator's death.

Sec. 13.12.540. Establishes the venue for a petition to determine will or trust validity.

Sec. 13.12.545. Identifies what a petition for will validity must contain.

Sec. 13.12.550. Identifies what a petition for will validity must contain.

Sec. 13.12.555. Authorizes a court to declare a will or trust to be valid. Declares that the will has full legal effect and must be admitted to probate on request of the testator's death, unless modified or revoked after the court's declaration.

Sec. 13.12.560. Makes the court's validity declaration binding on other persons.

Sec. 13.12.565. Directs the court to hold a hearing after a petition is filed. Requires the petitioner to notify the spouse, children, and heirs of the testator or settlor. For a will, also requires the petitioner to notify the testator, the personal representatives nominated in the will, and the devisees under the will. For a trust, also requires the petitioner to notify the settlor and parties in interest.

Sec. 13.12.570. Establishes the burden of proof for the petitions.

Sec. 13.12.575. Allows a testator to modify or revoke the will after the court's declaration.

Sec. 13.12.580. Allows a trust to be modified, terminated, revoked, or reformed after the court's declaration.

Sec. 13.12.585. Establishes which records related to a petition are public, which are available only to certain persons, and which are confidential. Allows the court to order confidential records to be made available to other persons when good cause is shown.

Sec. 131.12.590. Defines terms used in the new article.

Section 9. Amends AS 13.16.410. Allows personal representatives to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

Section 10. Amends AS 13.36.109. Allows trustees to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

Section 11. Indicates how certain provisions in the bill amends court rules.

Section 12. States that those sections that amend the court rules only take effect if the bill section 11 is approved by a two-thirds vote.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 60(L&C)
(S) Publish Date: 2/10/10

Identifier (file name): SB060-LAW-CIV-02-05-10
Dept. Affected: Law
Title: An Act relating to the Uniform Probate Code.
RDU: Civil
Component: Com. And Fair Business
Sponsor: Senator McGuire
Requester: Senate Judiciary
Component Number: 2717

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill provides conformity between Alaska's elective share and testamentary proof provisions in Alaska's Uniform Probate Code with those adopted in the 2009 amendments to the official Uniform Probate Code. It ensures that irrevocable trusts with transfer restrictions are excluded from the augmented estate. Finally, it allows petitioners to determine the validity of wills and trusts prior to the death of the settler and establishes the procedures to be followed in accomplishing this. No anticipated fiscal impact to Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager
Phone 465-5427
Division: Administrative Services
Date/Time 2/5/10 12:00 AM
Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date 2/5/2010

(Revised 11/6/2009 OMB)

Moved out (H) JUD 01/29/10

26-LS0634\A

HOUSE BILL NO. 144

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE RAMRAS

Introduced: 2/23/09
Referred: Labor and Commerce, Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate transfers, augmented estates, personal representatives, and trustees; and amending Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate Procedure, and Rule 37.5, Alaska Rules of Administration."

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

*** Section 1.** AS 13.06.120 is amended to read:

Sec. 13.06.120. Pleadings; when parties bound by orders; notice. In any proceedings involving trusts, nonprobate assets, or estates of decedents, minors, protected persons, or incapacitated persons brought under AS 13.06 - AS 13.36 or AS 13.38, including any judicially supervised settlements and any nonjudicial proceedings and settlements, the following apply:

(1) interests to be affected shall be described in pleadings that give reasonable information to owners by name or class, by reference to the instrument creating the interests, or in other appropriate manner;

(2) persons are bound by orders binding others in the following cases:

(A) orders binding the sole holder or all co-holders of a power of revocation or a general or nongeneral power of appointment, including one in the form of a power of amendment, bind other persons to the extent their interests (as objects, takers in default, or otherwise) are subject to the power;

(B) to the extent there is no conflict of interest between them or among persons represented, orders binding a conservator bind the person whose estate the conservator controls; orders binding a guardian bind the ward if no conservator of the estate has been appointed; orders binding a trustee bind beneficiaries of the trust in proceedings to probate a will establishing or adding to a trust, to review the acts or accounts of a prior fiduciary and in proceedings involving creditors or other third parties; orders binding a personal representative bind persons interested in the undistributed assets of a decedent's estate in actions or proceedings by or against the estate; and orders binding an agent having authority to act with respect to the particular questions or dispute bind the principal; if there is no conflict of interest and no conservator or guardian has been appointed, a parent may represent the minor child;

(C) an unborn person, a minor, an incapacitated person, or a person whose identity or location is unknown or not reasonably ascertainable who is not otherwise represented is bound by an order to the extent the interest is adequately represented by another party having a substantially identical interest in the proceeding;

(D) with regard to interests given upon the happening of a certain event to persons who comprise a certain class, orders binding the living persons who would constitute the class, if the event had happened immediately before the commencement of the proceeding, bind all members of the class;

(E) with regard to an interest given to a living person when the same interest or a share of the interest is to pass to the surviving spouse or to persons who are or might be the distributees, devisees, heirs, or issue of the living person upon the happening of a future event, orders binding the living

person bind the surviving spouse, distributees, devisees, heirs, or issue of the living person;

(F) with regard to interests given to a person or a class of persons, or to both, upon the happening of a future event, if the same interest or a share of the interest is to pass to another person or class of persons, or to both, upon the happening of an additional future event, orders binding the living person or class of persons who would take the interest upon the happening of the first event bind the persons and classes of persons who might take on the happening of the additional future event;

(G) if a person is designated by a trust instrument to represent and bind a born or unborn beneficiary of the trust and receive a notice, information, accounting, or report for the beneficiary, then the beneficiary is bound by an order binding the designated person; in this subparagraph,

(i) the settlor may make the designation in the trust instrument, in a separate document, or by a trust protector authorized in the trust instrument to make the designation;

(ii) except as otherwise provided in this subparagraph, a person designated under (i) of this subparagraph may not represent and bind a beneficiary while the designated person is serving as trustee;

(iii) except as otherwise provided in this subparagraph, a person designated under (i) of this subparagraph may not represent and bind another beneficiary if the designated person also is a beneficiary, unless the designated person was named by the settlor, is the beneficiary's spouse, or is a grandparent or descendant of a grandparent of the beneficiary or the beneficiary's spouse; in this sub-subparagraph, "spouse" means the individual to whom the beneficiary is married and with whom the beneficiary is living, and a physical separation primarily for education, business, health, and similar reasons does not

prevent the individual from being considered to be living with the beneficiary;

(3) **a person representing another person under (2)(A) - (F) of this section and a person designated under (2)(G)(i) of this section are not liable to the beneficiary whose interests are represented, or to a person claiming through that beneficiary, for an action or omission to act made in good faith;**

(4) notice is required as follows:

(A) notice as prescribed by AS 13.06.110 shall be given to every interested person or to one person who can bind an interested person as described in (2)(A), (B), or **(D) - (G)** [(D) - (F)] of this section; notice may be given both to a person and to another person who may bind the person;

(B) notice is given to unborn persons, a minor, an incapacitated person, or a person whose identity or location is unknown or not reasonably ascertainable, and persons who are not represented under **2(A), (B), or (D) - (G)** [(2)(A) OR (B)] of this section, by giving notice to all known persons whose interests in the proceedings are substantially identical to those of the unborn persons, the minor, the incapacitated person, or the person whose identity or location is unknown or not reasonably ascertainable;

(5) [(4)] at any point in a proceeding, a court may appoint a guardian ad litem to represent the interest of an unborn person, a minor, an incapacitated person, or a person whose identity or address is unknown or not reasonably ascertainable, if the court determines that representation of the interest otherwise would be inadequate; if not precluded by conflict of interests, a guardian ad litem may be appointed to represent several persons or interests; the court shall set out its reasons for appointing a guardian ad litem as a part of the record of the proceeding.

*** Sec. 2.** AS 13.12.201(b)(9) is amended to read:

(9) "transfer," as it relates to a transfer by or of the decedent, includes

(A) an exercise or release of a presently exercisable general power of appointment held by the decedent;

(B) a lapse at death of a presently exercisable general power of appointment held by the decedent; and

(C) an exercise, release, or lapse of

(i) a general power of appointment that the decedent created in **the decedent** [SELF]; and

(ii) a power described in **AS 13.12.205(a)(2)(B)** [AS 13.12.205(2)(B)] that the decedent conferred on a nonadverse party.

*** Sec. 3.** AS 13.12.205 is amended to read:

Sec. 13.12.205. Decedent's nonprobate transfers to others. The value of the augmented estate includes the value of the decedent's nonprobate transfers to others, not included under AS 13.12.204, of any of the following types, in the amount provided respectively for each type of transfer:

(1) property owned or owned in substance by the decedent immediately before death that passed outside probate at the decedent's death; property included under this category consists of

(A) property over which the decedent alone, immediately before death, held a presently exercisable general power of appointment; the amount included is the value of the property subject to the power, to the extent the property passed at the decedent's death, by exercise, release, lapse, default, or otherwise, to or for the benefit of a person other than the decedent's estate or surviving spouse;

(B) the decedent's fractional interest in property held by the decedent in joint tenancy with the right of survivorship; the amount included is the value of the decedent's fractional interest, to the extent that the fractional interest passed by right of survivorship at the decedent's death to a surviving joint tenant other than the decedent's surviving spouse;

(C) the decedent's ownership interest in property or accounts held in pay on death, transfer on death, or co-ownership registration with the right of survivorship; the amount included is the value of the decedent's ownership interest, to the extent the decedent's ownership interest passed at the decedent's death to or for the benefit of a person other than the decedent's estate or surviving spouse;

(D) proceeds of insurance, including accidental death benefits, on the life of the decedent, if the decedent owned the insurance policy immediately before death or if and to the extent the decedent alone and immediately before death held a presently exercisable general power of appointment over the policy or its proceeds; the amount included is the value of the proceeds, to the extent the proceeds were payable at the decedent's death to or for the benefit of a person other than the decedent's estate or surviving spouse;

(2) property transferred in any of the following forms by the decedent during marriage:

(A) an irrevocable transfer [, INCLUDING AN IRREVOCABLE TRANSFER IN TRUST WITH A TRANSFER RESTRICTION UNDER AS 34.40.110(a),] in which the decedent retained the right to the possession or enjoyment of, or to the income from, the property, if and to the extent the decedent's right terminated at or continued beyond the decedent's death; the amount included is the value of the fraction of the property to which the decedent's right related, to the extent the fraction of the property passed outside probate to or for the benefit of a person other than the decedent's estate or surviving spouse;

(B) a transfer in which the decedent created a power over the income or property, exercisable by the decedent alone or in conjunction with another person, or exercisable by a nonadverse party, to or for the benefit of the decedent, the decedent's creditors, the decedent's estate, or creditors of the decedent's estate; the amount included with respect to a power over property is the value of the property subject to the power, and the amount included with respect to a power over income is the value of the property that produces or produced the income, to the extent the power in either case was exercisable at the decedent's death to or for the benefit of a person other than the decedent's surviving spouse or to the extent the property passed at the decedent's death, by exercise, release, lapse, default, or otherwise, to or for the benefit of a person other than the decedent's estate or surviving spouse; if the power is a power

over both income and property and the preceding provision defining the amount included produces different amounts, the amount included is the greater amount; and

(3) property that passed during marriage and during the two-year period next preceding the decedent's death as a result of a transfer by the decedent if the transfer was of any of the following types:

(A) property that passed as a result of the termination of a right or interest in, or power over, property that would have been included in the augmented estate under (1)(A), (B), or (C) or (2) of this section, if the right, interest, or power had not terminated until the decedent's death; the amount included is the value of the property that would have been included under (1)(A), (B), or (C) or (2) of this section, if the property were valued at the time the right, interest, or power terminated, and is included only to the extent the property passed upon termination to or for the benefit of a person other than the decedent or the decedent's estate, spouse, or surviving spouse; as used in this subparagraph, termination, with respect to a right or interest in property, occurs when the right or interest terminated by the terms of the governing instrument or the decedent transferred or relinquished the right or interest, and, with respect to a power over property, occurs when the power terminated by exercise, release, lapse, default, or otherwise, but, with respect to a power described in (1)(A) of this section, termination occurs when the power terminated by exercise or release, but not otherwise;

(B) a transfer of or relating to an insurance policy on the life of the decedent if the proceeds would have been included in the augmented estate under (1)(D) of this section had the transfer not occurred; the amount included is the value of the insurance proceeds to the extent the proceeds were payable at the decedent's death to or for the benefit of a person other than the decedent's estate or surviving spouse;

(C) a transfer of property, to the extent not otherwise included in the augmented estate, made to or for the benefit of a person other than the decedent's surviving spouse; the amount included is the value of the property

transferred to a person to the extent that the aggregate transfers to that person in either of the two years exceeded $10,000.

* **Sec. 4.** AS 13.12.205 is amended by adding a new subsection to read:

(b) Notwithstanding the other provisions of this section, the augmented estate does not include property transferred to an irrevocable trust with a transfer restriction under AS 34.40.110(a) if

(1) the settlor is a discretionary beneficiary of the trust; and

(2) the transfer was made more than 30 days before the marriage, or the decedent's spouse consented to the transfer under AS 13.12.208(a)(2).

* **Sec. 5.** AS 13.12.206(3) is amended to read:

(3) all other property that would have been included in the augmented estate under **AS 13.12.205(a)(1) or (2)** [AS 13.12.205(1) OR (2)] had it passed to or for the benefit of a person other than the decedent's spouse, the decedent's surviving spouse, the decedent, or the decedent's creditors, estate, or estate creditors.

* **Sec. 6.** AS 13.12.207(b) is amended to read:

(b) Property included under this section is valued at the decedent's death, taking the fact that the decedent predeceased the spouse into account, but, for purposes of (a)(1)(A) and (B) of this section, the values of the spouse's fractional and ownership interests are determined immediately before the decedent's death if the decedent was then a joint tenant or a co-owner of the property or accounts. For purposes of (a)(2) of this section, proceeds of insurance that would have been included in the spouse's nonprobate transfers to others under **AS 13.12.205(a)(1)(D)** [AS 13.12.205(1)(D)] are not valued as if the spouse were deceased.

* **Sec. 7.** AS 13.12.209(b) is amended to read:

(b) If, after the application of (a) of this section, the elective share amount is not fully satisfied or the surviving spouse is entitled to a supplemental elective share amount, amounts included in the decedent's probate estate and in the decedent's nonprobate transfers to others, other than amounts included under **AS 13.12.205(a)(3)(A) or (C)** [AS 13.12.205(3)(A) OR (C),] are applied first to satisfy the unsatisfied balance of the elective share amount or the supplemental elective share amount. The decedent's probate estate and that portion of the decedent's

nonprobate transfers to others shall be applied so that liability for the unsatisfied balance of the elective share amount or for the supplemental elective share amount is equitably apportioned among the recipients of the decedent's probate estate and of that portion of the decedent's nonprobate transfers to others in proportion to the value of the recipients' interests in the decedent's probate estate and that portion of the decedent's nonprobate transfers to others.

*** Sec. 8.** AS 13.12 is amended by adding new sections to read:

Article 5A. Establishment of Will and Trust Validity before Death.

Sec. 13.12.530. Establishment of will validity before death. A testator, a person who is nominated in a will to serve as a personal representative, or, with the testator's consent, an interested party may petition the court to determine before the testator's death that the will is a valid will subject only to subsequent revocation or modification.

Sec. 13.12.535. Establishment of trust validity before death. If at least one of the trustees of a trust is a qualified person, the settlor or a trustee of the trust may petition the court to determine before the settlor's death that the trust is valid and enforceable under its terms, subject only to a subsequent revocation or modification of the trust.

Sec. 13.12.540. Venue. (a) The venue for a petition under AS 13.12.530 is

(1) the judicial district of this state where the testator is domiciled; or

(2) if the person who executed the will is not domiciled in this state, any judicial district of this state.

(b) The venue for a petition under AS 13.12.535 is the judicial district where the trust is registered. The venue for proceedings involving a trust that is not registered in this state is

(1) any place in this state where the trust could have been properly registered; or

(2) the location established by the rules of court.

Sec. 13.12.545. Contents of petition for will validity. A petition under AS 13.12.530 must contain

(1) a statement that a copy of the will has been filed with the court;

(2) a statement that the will is in writing;

(3) a statement that the will was signed by the testator, or was signed in the testator's name by another person in the testator's conscious presence and at the testator's direction;

(4) in the case of a witnessed will, a statement that the will was signed by at least two individuals, each of whom signed within a reasonable time after witnessing the signing of the will or the testator's acknowledgment of the signature on the will;

(5) in the case of a holographic will, a statement that the signature and material portions of the will are in the testator's handwriting;

(6) a statement that the will was executed with testamentary intent;

(7) a statement that the testator had testamentary capacity;

(8) a statement that the testator was free from undue influence and duress and executed the will in the exercise of the testator's free will;

(9) a statement that the execution of the will was not the result of fraud or mistake;

(10) the names and addresses of the testator, the testator's spouse, the testator's children, the testator's heirs, the personal representatives nominated in the will, and the devisees under the will;

(11) if minors, the ages of the testator's children, the testator's heirs, and the devisees under the will, as far as known or ascertainable with reasonable diligence by the petitioner;

(12) a statement that the will has not been revoked or modified; and

(13) a statement that the testator is familiar with the contents of the will.

Sec. 13.12.550. Contents of petition for trust validity. A petition for trust validity under AS 12.16.535 must contain

(1) a statement that a copy of the trust has been filed with the court;

(2) a statement that the trust is in writing and was signed by the settlor;

(3) a statement that the trust was executed with the intent that it be enforceable in accordance with its terms;

(4) a statement that the settlor had the legal capacity to enter into and establish the trust;

(5) a statement that the settlor was free from undue influence and duress and executed the trust in the exercise of free will;

(6) a statement that execution of the trust was not the result of fraud or mistake;

(7) the names and addresses of the settlor, the settlor's spouse, the settlor's children, the settlor's heirs, and the parties in interest as defined in AS 13.36.390;

(8) the ages of the settlor's children, the settlor's heirs, and the parties in interest as defined in AS 13.36.390 who are minors so far as known or ascertainable with reasonable diligence by the petitioner;

(9) a statement that the trust has not been revoked or modified; and

(10) a statement that the settlor is familiar with the contents of the trust.

Sec. 13.12.555. Declaration by court. The court may declare a will or trust to be valid and make other findings of fact and conclusions of law that are appropriate under the circumstances. After the testator's death, unless the will is modified or revoked after the declaration, the will has full legal effect as the instrument of the disposition of the testator's estate and shall be admitted to probate upon request.

Sec. 13.12.560. Binding effect of declaration. A person, whether the person is known, unknown, born, or not born at the time of a proceeding under AS 13.12.530 - 13.12.590, including a person who is represented by another person under AS 13.06.120, is bound by the declaration under AS 13.12.555 even if by the time of the testator's death the representing person has died or would no longer be able to represent the person represented in the proceeding under AS 13.12.530 - 13.12.590.

Sec. 13.12.565. Hearing and notice. (a) After the petition under AS 13.12.530 or 13.12.535 is filed, the court shall fix a time and place for a hearing. The petitioner shall notify the spouse, the children, and the heirs of the testator or settlor in the manner established by AS 13.06.110.

(b) In addition to the notice required by (a) of this section, in proceedings

involving a petition under AS 13.12.530, the petitioner shall notify the testator, the personal representatives nominated in the will, and the devisees under the will in the manner established by AS 13.06.110.

(c) In addition to the notice required by (a) of this section, in proceedings involving a petition under AS 13.12.535, the petitioner shall notify the settlor and the parties in interest in the manner established by AS 13.06.110. Notice may be given to other persons. In this subsection, "party in interest" has the meaning given in AS 13.36.390.

Sec. 13.12.570. Burden of proof. A petitioner under AS 13.12.530 or 13.12.535 has the burden of establishing prima facie proof of the execution of the will or trust. A person who opposes the petition has the burden of establishing the lack of testamentary intent, lack of capacity, undue influence, fraud, duress, mistake, or revocation. A party to the proceeding has the ultimate burden of persuasion as to the matters for which they have the initial burden of proof.

Sec. 13.12.575. Change to will after declaration. After a declaration of the validity of a will under AS 13.12.555, a testator may modify a will by a later will or codicil executed according to the laws of this state or another state, and the will may be revoked or modified under AS 13.12.507, 13.12.508, or another applicable law.

Sec. 13.12.580. Change to trust after declaration. After a declaration of validity under AS 13.12.555, a trust may be modified, terminated, revoked, or reformed under AS 13.36.340 - 13.36.365, or another applicable law.

Sec. 13.12.585. Confidentiality. (a) A notice of the filing of a petition under AS 13.12.530 - 13.12.580, a summary of all formal proceedings under AS 13.12.530 - 13.12.580, and a dispositional order or a modification or termination of a dispositional order relating to a proceeding under AS 13.12.530 - 13.12.580 shall be available for public inspection. Except as provided in (b) and (c) of this section, all other information contained in the court records relating to a proceeding under AS 13.12.530 - 13.12.580 is confidential.

(b) The records that are confidential under (a) of this section may be made available to

(1) the petitioner and the petitioner's attorney;

(2) interested persons who have appeared in the proceedings, interested persons who have otherwise submitted to the jurisdiction of the court, and the attorneys, guardians, and conservators of the interested persons;

(3) the judge hearing or reviewing the matter; and

(4) a member of the clerical or administrative staff of the court if access is essential for authorized internal administrative purposes.

(c) For good cause shown, the court may order the records that are confidential under (a) of this section to be made available to a person who is not listed in (b) of this section.

Sec. 13.12.590. Definitions. In AS 13.12.530 - 13.12.590,

(1) "qualified person" has the meaning given in AS 13.36.390;

(2) "testator" means a person who executes a will as a testator;

(3) "trust" means a revocable or irrevocable trust.

*** Sec. 9.** AS 13.16.055(a) is amended to read:

(a) Venue for the first informal or formal testacy or appointment proceedings after a decedent's death is

(1) in the judicial district where the decedent was domiciled at the time of death; or

(2) if the decedent was not domiciled in this state, in any judicial district where

(A) property of the decedent was located at the time of death; **or**

(B) a fiduciary who is subject to the laws of this state and who comes into the control of property owned by the decedent at the time of death resides or has its principal place of business.

*** Sec. 10.** AS 13.16.410 is amended by adding a new paragraph to read:

(28) consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

*** Sec. 11.** AS 13.36.109 is amended by adding a new paragraph to read:

(29) to consider discretionary distributions to a beneficiary as being made from capital gains realized during the year.

*** Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENTS. (a) AS 13.16.055(a), as amended by sec. 9 of this Act, has the effect of amending Rule 3, Alaska Rules of Civil Procedure, by establishing a special venue rule for the first informal or formal testacy or appointment proceedings after a decedent's death when the decedent was not domiciled in this state.

(b) AS 13.16.540, enacted by sec. 8 of this Act, has the effect of amending Rule 3, Alaska Rules of Civil Procedure, by establishing special venue rules for a petition under AS 13.12.530 or 13.12.535, enacted by sec. 8 of this Act.

(c) AS 13.12.545 and 13.12.550, enacted by sec. 8 of this Act, have the effect of amending Rule 8, Alaska Rules of Civil Procedure, by establishing special requirements for the contents of petitions under AS 13.12.530 and 13.12.535, enacted by sec. 8 of this Act.

(d) AS 13.12.550, enacted by sec. 8 of this Act, has the effect of amending Rule 1, Alaska Rules of Probate Procedure, by establishing special hearing and notice requirements for a hearing to determine the validity of a will or a trust under AS 13.12.530 and 13.12.535, enacted by sec. 8 of this Act.

(e) AS 13.12.585, enacted by sec. 8 of this Act, has the effect of amending Rule 37.5, Alaska Rules of Administration, by requiring that certain information contained in court records related to a petition under AS 13.12.530 or 13.12.535, enacted by sec. 8 of this Act, be kept confidential and only released as indicated in AS 13.12.585.

*** Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Section 9 of this Act and AS 13.12.540, 13.12.545, 13.12.550, and 13.12.585, enacted by sec. 8 of this Act, take effect only if sec. 12 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

[redacted] OUSE COMMITTEE REPO[redacted]

(7)
Date Referred to Committee: March 17, 2010

FURTHER REFERRALS:

Date of Committee Action: 3/25/10

The JUDICIARY Committee considered:

CS FOR SENATE BILL NO. 60(L&C)

"An Act relating to the Uniform Probate Code, including wills, trusts, nonprobate transfers, augmented estates, personal representatives, and trustees; and amending Rules 3 and 8, Alaska Rules of Civil Procedure, Rule 1, Alaska Rules of Probate Procedure, and Rule 37.5, Alaska Rules of Administration."

SB 60-UNIFORM PROBATE CODE; TRUSTS, WILLS

Recommends it be replaced with [ ] HCS *or* [ ] CS for _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ [ ] Same Title [ ] New Title

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW FISCAL NOTES *Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS FISCAL NOTES

List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1			X

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	HERRON	X			
	Gatto	X			
Chair:	K DAVIES	X			
Chair:					

3274

SB

63

ALASKA STATE LEGISLATURE

Session
State Capitol Building, Room 125
Juneau, Alaska 99801-1182
Phone (907) 465-2995
Fax (907) 465-6592

Interim
716 West Fourth Avenue, Suite 430
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Senate Special Committee on Energy
Senate Committee on World Trade, Technology and Innovations

Co-Chair
Senate Resources Committee

Member
Senate Judiciary Committee

SENATOR LESIL MCGUIRE

SPONSOR STATEMENT
CS for SENATE BILL NO. 63(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA
TWENTY-SIXTH LEGISLATURE—SECOND SESSION

This bill amends and improves Alaska's trust provisions which permit a settlor to form an irrevocable trust, be a discretionary beneficiary of the trust and, if the trust has a spendthrift clause, protect the trust assets from the settlor's creditors. Alaska was the first state to enact this type of trust law. Since enactment in 1997, numerous other states have enacted similar statutes. At present, twelve states allow this type of trust.

This bill improves Alaska's trust provisions so that Alaska's statute remains competitive with those of other states. As a result, both residents, and nonresidents of Alaska who choose to form this type of trust in Alaska, will benefit from these improved provisions.

The bill upgrades Alaska's statute by adopting the following provisions which have been adopted in other states:

- A creditor must establish by clear and convincing evidence that a transfer was made with an intent to defraud a creditor. (This standard has been adopted by nine of the other twelve states);
- Distributions can be made under the discretion of a trustee pursuant to a standard, as well as with absolute discretion;
- The settlor may be reimbursed for income taxes attributable to the trust;
- The settlor can retain the power to replace a trustee/advisor with a non-related, non-subordinate party.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 23, 2010

SUBJECT: Sectional summary of CSSB 63( ), a bill relating to transfer restrictions on trust interests (Work Order No. 26-LS0317\P)

TO: Senator Lesil McGuire
Attn: Esther Cha

FROM: Theresa Bannister
Legislative Counsel

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

Section 1. Amends the subsection that establishes four situations when a creditor can satisfy a claim out of a beneficiary's interest in a trust when the trust contains a transfer restriction. In the first situation, this bill requires that the creditor establish the intent to defraud by clear and convincing evidence. In the second situation, which is based on the settlor's (the creator of the trust) right to revoke or terminate the trust, deletes a current exclusion from the meaning of "revoke or terminate" because the exclusion does not fit within the concept of revocation or termination.

Section 2. Adds a new provision to the section that allows a person who creates a trust (settlor) to restrict the transfer of a beneficiary's interest before payment to the beneficiary. States that the transfer restriction is allowed even if the settlor has any of the three listed rights: (1) to appoint a trustee, a trust protector, or an advisor for the trust; (2) to remove a trustee or trust protector and appoint certain replacements; or (3) remove an advisor and appoint a replacement.

Section 3. Adds a new provision to the section that allows a person who creates a trust (settlor) to prohibit the transfer of a beneficiary's interest before payment to the beneficiary (the beneficiary can be the settlor). States that the transfer restriction operates even if two situations exist: (1) the beneficiary has the right to receive a distribution made in a person's discretion; or (2) the settlor, under specific conditions, potentially will receive or actually receives income or principal to pay income taxes due on the income of the trust.

If I may be of further assistance, please advise.

TLB:ljw
10-208.ljw

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 63(STA)
(S) Publish Date: 3/12/10

Identifier (file name): SB063-LAW-CIV-1-29-10
Title: An Act relating to transfer restrictions on trust interests
Sponsor: Senator McGuire
Requester: State Affairs

Dept. Affected: Law
RDU: Civil
Component: Com. And Fair Business
Component Number: 2717

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill proposes amendments to statutes relating to transfer restrictions on trust interests including provisions to receive a distribution of trust's income or principal. Enactment of the bill is not anticipated to fiscally impact the Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager — Phone 465-5427
Division: Administrative Services — Date/Time 1/29/10 12:00 AM
Approved by: Daniel S. Sullivan, Attorney General — Date 1/29/2010
Department of Law

(Revised 11/6/2009 OMB)

ALASKA STATE LEGISLATURE

Session
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Member
Senate Judiciary Committee

SENATOR LESIL MCGUIRE

Summary of Changes
Between CS SB 63(JUD) and CS HB 146(JUD)

This document is an identification of the changes between W.O. 26-LS0317\C and 26-LS0633\R.

Section 1 deletes language involving discretionary distributions on page 2, lines 5-7 in CS HB 146 because it conflicts with the concept of that section which involves a settlor's right to revoke or terminate all or part of the trust. This discretionary language has been placed in subsection (n)(1) established in Section 3 of CS SB 63.

Section 1 also removes subsections (3)(E) and (3)(F) on page 3, lines 1-14 and makes conforming changes to page 2, line 8 in CS HB 146.

The language in (b)(3)(E) allowing a settlor to receive certain discretionary distributions made by a trustee conflicts with the concept of subsection (b)(3) regarding mandatory distributions of income or principal. Therefore, the discretionary language has been moved and established as a new subsection (n)(1) in Section 3 of CS SB 63.

Language in subsection (b)(3)(F) involves discretionary distributions for the payment of taxes again conflicting with the concepts in (b)(3) involving mandatory distributions of income or principal. This discretionary authority for the payment of taxes has been moved to new subsection (n)(2) in Section 3 of CS SB 63.

Section 2 No change

ALASKA STATE LEGISLATURE

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Senate Judiciary Committee

SENATOR LESIL MCGUIRE

What is a Trust?

A Trust is a legal arrangement (basically a contract) where one person (called a trustee) holds property for the benefit of other persons (called beneficiaries). There are many different types of trusts.

The personal trust is the most common form of trust, created for non-business reasons for the benefit and protection of individuals. The trustee in a personal trust acts in accordance with the law and the instructions set forth in the governing instrument by the person who created the trust (called Grantor or Settlor). The primary responsibilities of the trustee are to manage and protect the assets in the trust for the best interest of the beneficiaries. The management and protection responsibilities include proper investment of assets, collection of income, maintenance of accurate books and records, filing of tax returns and other reports, and the payment of income and trust property to the beneficiaries in accordance with the terms of the trust.

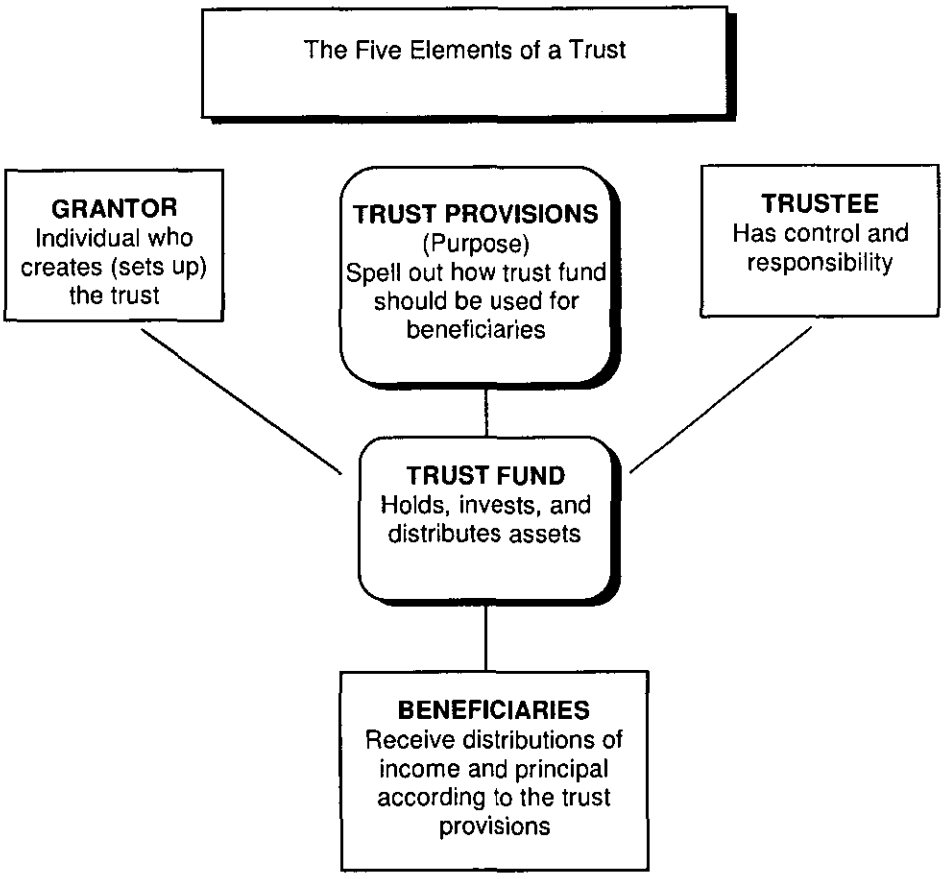
Trusts are used throughout the United States to accomplish many different objectives such as;

- Protecting interest of minors
- Preserve assets for the family
- Accomplish the desires of the family
- Improve quality of life by allowing use of trust assets by beneficiaries
- Provide asset protection
- Reduce and in some cases eliminate gift, estate and income taxes

A self-settled trust is a trust where the grantor is also a beneficiary with other family members. This allows the assets in the trust to appreciate in value and the trust assets will not be in the Grantors taxable estate for federal estate tax purposes. The IRS has recently issued a private letter ruling acknowledging that these trusts can accomplish this objective.

From the information we have received from Alaska estate planning attorneys over ten thousand Alaskans have taken advantage of Alaska's favorable trust laws, non-residents of Alaska have also used Alaska's trust laws to accomplish their family financial goals.

What is a Trust?



HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 13, 2010 **FURTHER REFERRALS:**

Date of Committee Action: 4/14/10

The JUDICIARY Committee considered: **CS FOR SENATE BILL NO. 63(JUD)**

"An Act relating to transfer restrictions on trust interests."

SB 63-TRANSFER RESTRICTIONS ON TRUSTS

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
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EED
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GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	HERRON	X			
	LYNN	X			
		X			
				–	
Chair:	RAMRAS	X			
Chair:					

SB 96

4/10

Alaska State Legislature

Interim: (May - Dec.)
716 W. 4th Ave
Anchorage, AK 99501
Phone: (907) 269-0144
Fax: (907) 269-0148

Session: (Jan. - May)
State Capitol, Suite 30
Juneau, AK 99801-1182
Phone: (907) 465-3822
Fax: (907) 465-3756
Toll free: (800) 770-3822

Senator_Bettye_Davis@legis.state.ak.us
http://www.akdemocrats.org

SB 96

TITLE: "An Act relating to nonpayment of child support: relating to certain judicial and administrative orders for medical support of a child;."

SPONSOR STATEMENT (c)

SB 96 brings the state into compliance with the federal Uniform Interstate Family Services Act (UIFSA) that require states to have guidelines addressing how either or both parents will provide for a child's healthcare needs and to include an "Indian tribe" in the definition of state. Both amendments to Alaska's child support state plan are conforming amendments which will result in procedural changes in Alaska for enforcement and modification of child support orders from other jurisdictions.

If a parent is ordered to pay for healthcare including cash medical support, the Child Support Services Division must enforce the ongoing medical support obligation as well as collect any cash medical support arrears. Including an "Indian tribe" in the definition of state does not expand or restrict tribal jurisdiction.

Failure to satisfy these mandated requirements jeopardizes 85 million dollars in federal funding for both Alaska's Child support program and Temporary Assistance To Needy Families (TANF).

AMENDMENT

LS04585/C SB 96 BY COGHILL

Page 2, lin2 5:

Insert new subsection:

(b) The proposed changes made in AS 25.25.101(19) under sec. 3 of this Act are conforming amendments that will result in procedural changes in Alaska for enforcement and modification of child support orders from other jurisdictions. UIFSA does not determine the authority of an Indian tribe to enter, modify, or enforce a child support order. In Alaska, the scope of tribal authority to enter, modify, or enforce a child support order is an unsettled legal question. In adopting UIFSA conforming amendments, the legislature does not intend to grant or restrict tribal jurisdiction to enter, modify, or enforce child support orders, and the amendments are not intended, either directly or impliedly, to acknowledge, expand, or restrict tribal jurisdiction.

Amt #1 to Amt #1 passed

4/10

1. This bill adds an "Indian tribe" and "United States Virgin Islands" to the definition of state.

2. This bill adds to existing law the authority for a tribunal to order either or both parents to pay cash medical support, if warranted.

3. In addition, the bill directs Child Support Services Division (CSSD) to review child support orders for modification on a federally mandated three-year cycle.

4. The bill adds cash medical support to the definition of arrearage and the definition of support order thereby enabling CSSD to use its existing enforcement tools to collect a cash medical support obligation on behalf of the child.

5. Finally, the bill removes the language limiting who may request the correction of a clerical mistake in an administrative order or request the vacation of an administrative order based upon a default income.

SB 96 puts Alaska in compliance with the federal requirements which assure that Alaska's children receive the medical support to which they are entitled.

In addition, adoption of SB 96 assures 85 million in federal dollars to Alaska for the Child Support Enforcement and Temporary Assistance for Needy Families (TANF) programs.

I appreciate your support of this important bill.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 27, 2009

SUBJECT: Sectional Summary (CSSB 96( ); (Work Order No. 26-LS0485\E))

TO: Senator Betty Davis
Attn: Lynda Zaugg

FROM: Jean M. Mischel
Legislative Counsel

You have requested a sectional summary of the above-described bill.

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Adds reference to cash medical support to the crime of aiding the nonpayment of child support in the second degree.

Section 2. Adds the Virgin Islands and Indian Tribes to the definition of "state."

Section 3. Amends order of support provision to include both parents, medical support, and insurance.

Section 4. Adds medical support to provision authorizing the initiation of administrative action to establish a duty of support.

Section 5. Amends periodic reviews of support orders to require a three year cycle of review.

Section 6. Deletes motion requirement for correcting an administrative mistake in a support order.

Section 7. Deletes motion requirement for vacating a support order that is based on a default amount.

Section 8. Redefines "arrearage" for child support purposes.

Section 9. Amends the definition of "support order" to include cash medical support.

Section 10. Amends garnishment provision to include insurance and cash medical support.

Section 11. Amends the Alaska Native family assistance program to include obligations for cash medical support.

Section 12. Provides for an indirect court rule amendment to Rule 90.3, Alaska Rules of Civil Procedure for changes made in the bill.

Section 13. Makes bill changes applicable to child support actions filed on or after the bill's effective date.

Section 14. Authorizes the Department of Revenue to proceed to adopt regulations needed under the bill.

Section 15. Provides for a conditional effect for the court rule amendment in sec. 12 only for two-thirds majority vote.

Section 16. Makes sec. 14 effective immediately.

Section 17. Provides for a July 1, 2009, effective date for all other bill sections.

JMM:ljw
09-125.ljw

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: 773-09-0026
() Publish Date:

Identifier (file name): CSSB96(HSS)-DOR-CSS-03-02-09
Title: Cash Medical Support for Minor Children
Sponsor
Requester: Governor

Dept. Affected: Revenue
RDU: Child Support Services Division
Component: Child Suppor Services Division
Component Number: 111

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

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

This legislation does not require any additional funding.

Prepared by: John Maginge — Phone: 269-6801
Division: Child Support Services Division — Date/Time: 12.12.2008 5:30pm
Approved by: Jerry Burnett — Date: 12.15.2008
Department of Revenue

State of Alaska

Department of Revenue

Administrative Services Division

SARAH PALIN, GOVERNOR
333 Willoughby Avenue, 11th Floor
P.O. Box 110400
Juneau, Alaska 99811-0405
Phone: (907) 465-2300
Fax: (907) 465-2394

April 11, 2009

The Honorable Jay Ramras
Chair, Judiciary Committee
Alaska House of Representatives
Alaska State Capitol, Room 120
Juneau, AK 99801

Dear Representative Ramras;

There is only one difference between the Senate CS for SB 96 and the House CS for HB 192. On page 2 of both bills, Sec 1 included paragraph (a) of intent language but the Senate CS inadvertently left out paragraph (b) which is in CSHB 192 as follows:

"(b) The proposed changes made in AS 25.25.101(19) under sec. 3 of this Act are conforming amendments that will result in procedural changes in Alaska for enforcement and modification of child support orders from other jurisdictions. UIFSA does not determine the authority of an Indian tribe to enter, modify, or enforce a child support order. In Alaska, the scope of tribal authority to enter, modify, or enforce a child support order is an unsettled legal question, due in part to the lack of Indian country in most of the state. In adopting UIFSA conforming amendments, the legislature does not intend to grant or restrict tribal jurisdiction to enter, modify, or enforce child support orders, and the amendments are not intended to either directly or impliedly, to acknowledge, expand, or restrict tribal jurisdiction."

The Department supports including this intent language in CSSB 96 if that bill is to pass (H)JUD and move to (H)FIN for further consideration

Thank you for working with us on this issue.

Sincerely,

Ginger Blaisdell
Director

3290

Legislative Testimony

Jessie M. Archibald
Staff Attorney, Tribal Child Support Unit
Central Council Tlingit & Haida Indian Tribes of Alaska
320 West Willoughby Ave., Suite 300
Juneau, Alaska 99801
HEARING: (H) JUD Apr 13 8:00 AM CAPITOL 120 TELECONFERENCE

My name is Jessie Archibald. I represent the Central Council Tlingit and Haida Indian Tribes of Alaska Tribal child support program. I would like to request that my written testimony be entered into the record. The purpose of my testimony is to explain the Tribe's objection to the Section 1. (b) language regarding the Definition of "State"; Legislative Intent, contained in CS for House Bill 192 (HHS), and respectfully request that section (b) language be deleted.

Reasons for Objections:

1. Section (b) language is not necessary because UIFSA has built in procedures for the non-registrant to raise objections about the issuing tribunal's subject matter jurisdiction, personal jurisdiction, and other matters that may make a specific order not entitled to recognition and enforcement in Alaska's tribunals.

2. The language specifically segregates out tribal child support orders for particular scrutiny, and carries a not-very-thinly-veiled implication that that scrutiny should be hostile, and even suggests that the legislature is pre-judging the validity of an objection based on a lack of Indian country, essentially endorsing the principal that a child support obligor should able to duck a child support obligation by objecting on that basis. The legislature should leave those issues to the individual litigants and the courts.

3. Child support is hard enough without the legislature of the State of Alaska putting into the statutes language that allows deadbeat parents to use legislative intent language to try to get out from under from having to pay support.

As an alternative, the Tribe would like to propose the following legislative intent language:

Section 1. The uncodified law of the State of Alaska is amended by adding a new section to read:

DEFINITION OF "STATE": LEGISLATIVE INTENT. (a) ....

(b) The legislature recognizes that child support enforcement programs are administered by Federal, State and Tribal entities that address the establishment of paternity and enforcement of

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support orders with the intent of promoting the general economic welfare and the best interest of dependent children. UIFSA provides a vehicle for the non-registrant to raise objections about the issuing tribunal's subject matter jurisdiction, personal jurisdiction, and other matters that may make a specific order not entitled to recognition and enforcement in Alaska's tribunals. The intent of the legislature is that tribal child support orders should be subject to the same types of objections, and to the same extent, as child support orders from tribunals of other jurisdictions. It is the intent of the legislature is to provide a procedural vehicle for Tribal child support orders for such orders to be registered in Alaska state tribunals in the same manner child support orders from other tribunals are registered. This legislation is not intended to prejudge the validity of any specific order or the validity of any objections to a specific order.

Short Description of Central Council Tribe's Child Support Program

1. Initially, federal funding was only provided to States that operate federally funded and approved child support programs.

2. More recently, with the adoption of the Final Rule on Child Support Enforcement Programs at 45 CFR 309, federally recognized Indian Tribes became eligible to receive federal funding to operate their own child support programs.

3. With the adoption of the Final Rule, the enforcement of child support has now become a Federal-State-Tribal partnership.

4. To receive federal funding for child support, the Tribe is required to adopt a plan that meets the requirements outlined in 45 CFR 309 which is the Final Rule on Child Support Enforcement Programs.

5. Central Council received federal funding and approval to operate a Tribal Child Support Program in March of 2007.

6. When Alaska initially was required to adopt UIFSA, it did not include the definition of "State" to include an Indian Tribe.

7. Now that Alaska Tribes are beginning to receive federal funding to operate child support programs, it is necessary for Alaska to amend the State UIFSA in order to come into compliance with the rest of the nation.

8. Alaska stands alone as the only state that has not adopted the federal uniform guidelines that define "state" to include an Indian Tribe, probably because when Alaska first adopted the

federal version of UIFSA, it was not considered that Tribes would be receiving federal grants to operate child support programs.

9. The Tribal Child support program is located within the Tribe's Employment and Training Department. Our program is referred to as the "Tribal Child Support Unit."

10. The Tribe's goal is to ensure that Tlingit and Haida children receive the financial and emotional support of both their parents. The program strives to support and affirm the traditions of the Tribe and families. We believe that child support should be a reliable source of income for families. TCSU focuses its efforts on the needs of children, and in doing so, we empower parents to ensure their children's needs are met. Our program has a cooperative approach to establishing and enforcing support obligations.

11. Here are some statements we want to hear our children shout out:

- I'm playing football this year, thanks Dad!
- I made the basketball team, thanks Mom!
- Thanks Dad, I'm getting good grades in school!
- I'm playing soccer this year...thank you Mom!
- I'm going to camp this summer, thank you Dad!
- Even though you're not with me, I know you care! Thanks Mom!

End

Article
4. Establishment of Support Order (§ 25.25.401)
5. Direct Enforcement of Order of Another State Without Registration (§§ 25.25.501 — 25.25.507)
6. Enforcement and Modification of Support Order After Registration (§§ 25.25.601 — 25.25.614)
7. Determination of Parentage (§ 25.25.701)
8. Interstate Rendition (§§ 25.25.801, 25.25.802)
9. Miscellaneous Provisions (§§ 25.25.901 — 25.25.903)

Cross references. — For enforcement of support obligations determined in other states, see AS 25.27.022.

Legislative history reports. — For governor's transmittal letter for ch. 57, SLA 1995 (CSSB 115(FIN)am), which enacted the Uniform Interstate Family Support Act, see 1995 Senate Journal 517. For legislative letter of intent on the same legislation, see 1995 Senate Journal 1405 and 1494 and 1995 House Journal 1996.

NOTES TO DECISIONS

Public advocacy. — Proceedings under the Uniform Reciprocal Enforcement of Support Act were not specifically among the classes of cases mentioned in AS 44.21.410, concerning the powers and duties of the office of public advocacy. State v. Superior Court, 718 P.2d 466 (Alaska 1986).

Collateral references. — 23 Am. Jur. 2d, Desertion and Nonsupport, § 73; 59 Am. Jur. 2d, Parent and Child, § 47; 73 Am. Jur. 2d, Support of Persons, § 25 et seq.

Construction and application of state statutes providing for reciprocal enforcement of duty to support dependents, 42 ALR2d 768.

Determination of paternity of child as within scope of proceeding under Uniform Reciprocal Enforcement of Support Act, 81 ALR3d 1175.

Secs. 25.25.010 — 25.25.100. [Repealed, § 21 ch 57 SLA 1995.]

Article 1. General Provisions.

Section
101. Definitions
102. Tribunals of this state
103. Remedies cumulative

Sec. 25.25.101. Definitions. In this chapter,

(1) "child" means an individual, whether over or under the age of majority, who is or is alleged to be owed a duty of support by the individual's parent or who is or is alleged to be the beneficiary of a support order directed to the parent;

(2) "child support order" means a support order for a child, including a child who has attained the age of majority under the law of the issuing state;

(3) "duty of support" means an obligation imposed or imposable by law to provide support for a child, spouse, or former spouse, including an unsatisfied obligation to provide support;

(4) "home state" means the state in which a child lived with a parent or a person acting as a parent for at least six consecutive months immediately preceding the time of filing of a complaint or comparable pleading for support and, if a child is less than six months old, the state in which the child lived from birth with a parent or person acting as a parent; a period of temporary absence of a parent or person acting as a parent is counted as part of the six-month or other period;

(5) "income" includes earnings or other periodic entitlements to money from any source and any other property subject to withholding for support under the law of this state;

(6) "income withholding order" means an order or other legal process directed to an obligor, an obligor's employer, an obligor's future employer, or another person, political

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similar to the Uniform
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(9) "issuing state" m
renders a judgment det
(10) "issuing tribuna
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(11) "law" includes d
force of law;
(12) "obligee" means
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a support order has beer
(B) a state or politic
support order have bee
assistance provided to
(C) an individual see
(13) "obligor" means
(A) owes or is alleged
(B) is alleged but has
(C) is liable under a
(14) "register" means
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determining parentage
(16) "responding stat
proceeding is forwarded
procedure substantially
similar to the Uniform
Reciprocal Enforcement
(17) "responding trib
(18) "spousal support
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(19) "state" means
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(20) "support enforce
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(C) determination of
(D) the location of ob
(21) "support order"
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(§§ 25.25.501 — 25.25.507)
(§§ 25.25.601 — 25.25.614)

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legal process directed to an , or another person, political

subdivision, or department of the state, under AS 25.27 to withhold support from the income of the obligor under AS 25.27;

(7) "initiating state" means a state from which a proceeding is forwarded or in which a proceeding is filed for forwarding to a responding state under this chapter or a law or procedure substantially similar to this chapter, or under a law or procedure substantially similar to the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act;

(8) "initiating tribunal" means the authorized tribunal in an initiating state;

(9) "issuing state" means the state in which a tribunal issues a support order or renders a judgment determining parentage;

(10) "issuing tribunal" means the tribunal that issues a support order or renders a judgment determining parentage;

(11) "law" includes decisional and statutory law and rules and regulations having the force of law;

(12) "obligee" means

(A) an individual to whom a duty of support is or is alleged to be owed or in whose favor a support order has been issued or a judgment determining parentage has been rendered;

(B) a state or political subdivision to which the rights under a duty of support or support order have been assigned or that has independent claims based on financial assistance provided to an individual obligee; or

(C) an individual seeking a judgment determining parentage of the individual's child;

(13) "obligor" means an individual or the estate of a decedent who

(A) owes or is alleged to owe a duty of support;

(B) is alleged but has not been adjudicated to be a parent of a child; or

(C) is liable under a support order;

(14) "register" means to file a support order or judgment determining parentage with a registering tribunal;

(15) "registering tribunal" means the tribunal in which a support order or judgment determining parentage is registered;

(16) "responding state" means a state in which a proceeding is filed or to which a proceeding is forwarded for filing from an initiating state under this chapter or a law or procedure substantially similar to this chapter, or under a law or procedure substantially similar to the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act;

(17) "responding tribunal" means the authorized tribunal in a responding state;

(18) "spousal support order" means a support order for a spouse or former spouse of the obligor;

(19) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States; the term "state" includes a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter or under the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act;

(20) "support enforcement agency" means a public official or agency authorized to seek

(A) enforcement of support orders or laws relating to the duty of support;

(B) establishment or modification of child support orders;

(C) determination of parentage; or

(D) the location of obligors or their assets;

(21) "support order" means a judgment, decree, or order, whether temporary, final, or subject to modification, for the benefit of a child, a spouse, or a former spouse, that provides for monetary support, health care, arrearages, or reimbursement, and may include related costs and fees, interest, income withholding, attorney fees, and other relief;

(22) "tribunal" means a court, administrative agency, or quasi-judicial entity authorized to establish, enforce, or modify support orders or to determine parentage. (§ 4 ch 57 SLA 1995; am §§ 48 — 50 ch 87 SLA 1997)

NOTES TO DECISIONS

Application for child support by custodian. — See Saask v. Yandell, 702 P.2d 1327 (Alaska 1985) (decided under former law).

Arrearages. — Under Alaska law, arrearages were recoverable in actions under the Uniform Reciprocal Enforcement of Support Act. Bailey v. Haas, 655 P.2d 764 (Alaska 1982) (decided under former law).

There was no requirement that a request for arrearages had to be reduced to judgment by the petitioning state. Bailey v. Haas, 655 P.2d 764 (Alaska 1982) (decided under former law).

Cited in McCaffery v. Green, 931 P.2d 407 (Alaska 1997); Fowler v. State, 168 P.3d 870 (Alaska 2007).

Collateral references. — Construction and application of Uniform Interstate Family Support Act, 90 ALR5th 1.

Sec. 25.25.102. Tribunals of this state. The superior court and the child support services agency are the tribunals of this state. (§ 4 ch 57 SLA 1995)

Revisor's notes. — In 2004, "child support enforcement agency" was changed to "child support services agency" in this section in accordance with § 12(a), ch. 107, SLA 2004.

NOTES TO DECISIONS

Collateral estoppel. — Father affirmatively and explicitly waived his argument that the superior court did not give proper legal effect to the administrative decision concerning child support when he appeared and asked the superior court to proceed to decide support obligations for all years. McDonald v. Trihub, 173 P.3d 416 (Alaska 2007).

Sec. 25.25.103. Remedies cumulative. Remedies provided by this chapter are cumulative and do not affect the availability of remedies under other law. (§ 4 ch 57 SLA 1995)

Secs. 25.25.110 — 25.25.200. [Repealed, § 21 ch 57 SLA 1995.]

Article 2. Jurisdiction.

Section
201. Bases for jurisdiction over nonresident
202. Procedure when exercising jurisdiction over nonresident
203. Initiating and responding tribunal of this state
204. Simultaneous proceedings in another state
205. Continuing, exclusive jurisdiction
206. Enforcement and modification of support order by tribunal having continuing jurisdiction
207. Recognition of controlling child support order
208. Multiple child support orders for two or more obligees
209. Credit for payments

Sec. 25.25.201. Bases for jurisdiction over nonresident. In a proceeding to establish, enforce, or modify a support order or to determine parentage, a tribunal of this state may exercise personal jurisdiction over a nonresident individual or the individual's guardian or conservator if

(1) the individual is personally served with a citation, summons, or notice within this state;

(2) the individual submits to the jurisdiction of this state by consent, by entering a general appearance, or by filing a responsive document having the effect of waiving any contest to personal jurisdiction;

(3) the individual resided with the child in this state;

(4) the individual re
the child;

(5) the child resides

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Vital Statistics under A

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Jurisdiction found. — C
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Sec. 25.25.202. Pro
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Sec. 25.25.204. Sim
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Sec. 25.25.205. Con
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jurisdiction over a child

(1) as long as this sta
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(4) the individual resided in this state and provided prenatal expenses or support for the child;

(5) the child resides in this state as a result of the acts or directives of the individual;

(6) the individual engaged in sexual intercourse in this state and the child may have been conceived by that act of intercourse;

(7) the individual acknowledged parentage in a writing deposited with the Bureau of Vital Statistics under AS 25.20.050; or

(8) there is another basis consistent with the constitutions of this state and the United States for the exercise of personal jurisdiction. (§ 5 ch 57 SLA 1995)

NOTES TO DECISIONS

Jurisdiction found. — Contrary to the husband's contention in his challenge to the child support modification order, the trial court had personal jurisdiction over the husband pursuant to AS 25.25.201 after he moved to Missouri as the husband participated in support proceedings in Alaska for several years, he had lived in Alaska with one of the children, agreed to pay for the wife's expenses relating to her pregnancy with the parties' other child and his birth, and presumably conceived the children in Alaska. Teseniar v. Teseniar, 74 P.3d 910 (Alaska 2003).

Sec. 25.25.202. Procedure when exercising jurisdiction over nonresident. A tribunal of this state exercising personal jurisdiction over a nonresident under AS 25.25.201 may apply AS 25.25.316 to receive evidence from another state and AS 25.25.318 to obtain discovery through a tribunal of another state. In all other respects, AS 25.25.301 — 25.25.701 do not apply and the tribunal shall apply the procedural and substantive law of this state, including the rules on choice of law other than those established by this chapter. (§ 5 ch 57 SLA 1995)

Sec. 25.25.203. Initiating and responding tribunal of this state. Under this chapter, a tribunal of this state may serve as an initiating tribunal to forward proceedings to another state and as a responding tribunal for proceedings initiated in another state. (§ 5 ch 57 SLA 1995)

Sec. 25.25.204. Simultaneous proceedings in another state. (a) A tribunal of this state may exercise jurisdiction to establish a support order if the complaint or comparable pleading is filed after a complaint or comparable pleading is filed in another state only if

(1) the complaint or comparable pleading in this state is filed before the expiration of the time allowed in the other state for filing a responsive pleading challenging the exercise of jurisdiction by the other state;

(2) the contesting party timely challenges the exercise of jurisdiction in the other state; and

(3) if relevant, this state is the home state of the child.

(b) A tribunal of this state may not exercise jurisdiction to establish a support order if the complaint or comparable pleading is filed before a complaint or comparable pleading is filed in another state if

(1) the complaint or comparable pleading in the other state is filed before the expiration of the time allowed in this state for filing a responsive pleading challenging the exercise of jurisdiction by this state;

(2) the contesting party timely challenges the exercise of jurisdiction in this state; and

(3) if relevant, the other state is the home state of the child. (§ 5 ch 57 SLA 1995)

Sec. 25.25.205. Continuing, exclusive jurisdiction. (a) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a child support order

(1) as long as this state remains the residence of the obligor, the individual obligee, or the child for whose benefit the support order is issued; or

(2) until each individual party has filed written consent with the tribunal of this state for a tribunal of another state to modify the order and assume continuing, exclusive jurisdiction.

(b) A tribunal of this state issuing a child support order consistent with the law of this state may not exercise its continuing jurisdiction to modify the order if the order has been modified by a tribunal of another state under a law substantially similar to this chapter.

(c) If a child support order of this state is modified by a tribunal of another state under a law substantially similar to this chapter, a tribunal of this state loses its continuing, exclusive jurisdiction with regard to prospective enforcement of the order issued in this state and may only

(1) enforce the order that was modified as to amounts accruing before the modification;

(2) enforce nonmodifiable aspects of that order; and

(3) provide other appropriate relief for violations of that order that occurred before the effective date of the modification.

(d) A tribunal of this state shall recognize the continuing, exclusive jurisdiction of a tribunal of another state that has issued a child support order under a law substantially similar to this chapter.

(e) A temporary support order issued ex parte or pending resolution of a jurisdictional conflict does not create continuing, exclusive jurisdiction in the issuing tribunal.

(f) A tribunal of this state issuing a support order consistent with the law of this state has continuing, exclusive jurisdiction over a spousal support order throughout the existence of the support obligation. A tribunal of this state may not modify a spousal support order issued by a tribunal of another state having continuing, exclusive jurisdiction over that order under the law of that state. (§ 5 ch 57 SLA 1995)

NOTES TO DECISIONS

Order not entitled to full faith and credit. — A support order entered by a responding court pursuant to a Uniform Reciprocal Enforcement of Support Act petition, which did not specifically modify an order entered in the initiating state, had no effect on the validity of the earlier order and was not entitled to full faith and credit by courts of the initiating state. State, Dep't of Revenue ex rel. Valdez v. Valdez, 941 P.2d 144 (Alaska 1997) (decided under former law).

Order properly entered on waiver by parties of administrative decision. — Father affirmatively and explicitly waived his argument that the superior court did not give proper legal effect to the administrative decision concerning child support when he appeared and asked the superior court to proceed to decide support obligations for all years. McDonald v. Trihub, 173 P.3d 416 (Alaska 2007).

Interest on support arrearage. — Under the Uniform Interstate Family Support Act, where the child resided in Alaska, the issuing state, Washington could not modify the original support order, and the Child Support Enforcement Division (now the Child Support Services Agency) was entitled to collect interest on father's support arrearage. State, Dep't of Revenue, Child Support Enforcement Div., ex rel. Walklace v. Delaney, 962 P.2d 187 (Alaska 1998).

Jurisdiction found. — Contrary to the husband's contention in his challenge to the child support modification order, the trial court had continuing, exclusive jurisdiction over the support order pursuant to AS 25.25.205(a)(1)-(2) after he moved to Missouri as the wife and the children still resided in Alaska and the parties filed no written consent for Missouri to modify the order. Teseniar v. Teseniar, 74 P.3d 910 (Alaska 2003).

Sec. 25.25.206. Enforcement and modification of support order by tribunal having continuing jurisdiction. (a) A tribunal of this state may serve as an initiating tribunal to request a tribunal of another state to enforce or modify a support order issued in that state.

(b) A tribunal of this state having continuing, exclusive jurisdiction over a support order may act as a responding tribunal to enforce or modify the order. If a party subject to the continuing, exclusive jurisdiction of the tribunal no longer resides in the issuing state, in subsequent proceedings the tribunal may apply AS 25.25.316 to receive evidence from another state and AS 25.25.318 to obtain discovery through a tribunal of another state.

(c) A tribunal of this state
support order may not serve
of another state. (§ 5 ch 57

Sec. 25.25.207. Recogni
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(d) The tribunal that issue
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(e) A tribunal of this state
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(f) Within 30 days after
controlling order, the party
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Sec. 25.25.208. Multiple
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Secs. 25.25.210 — 25.25.2

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.25.316 to receive evidence
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(c) A tribunal of this state that lacks continuing, exclusive jurisdiction over a spousal support order may not serve as a responding tribunal to modify a spousal support order of another state. (§ 5 ch 57 SLA 1995)

Sec. 25.25.207. Recognition of controlling child support order. (a) If a proceeding is brought under this chapter and only one tribunal has issued a child support order, the order of that tribunal is controlling and shall be recognized.

(b) If a proceeding is brought under this chapter and two or more child support orders have been issued by tribunals of this state or another state with regard to the same obligor and child, a tribunal of this state shall apply the following rules in determining which order to recognize for purposes of continuing, exclusive jurisdiction:

(1) if only one of the tribunals would have continuing, exclusive jurisdiction under this chapter, the order of that tribunal is controlling and shall be recognized;

(2) if more than one of the tribunals would have continuing, exclusive jurisdiction under this chapter, an order issued by a tribunal in the current home state of the child shall be recognized, but, if an order has not been issued in the current home state of the child, the order most recently issued is controlling and shall be recognized;

(3) if none of the tribunals would have continuing, exclusive jurisdiction under this chapter, the tribunal of this state having jurisdiction over the parties shall issue a child support order, which is controlling and shall be recognized.

(c) If two or more child support orders have been issued for the same obligor and child and if the obligor or the individual obligee resides in this state, a party may request a tribunal of this state to determine which order controls and shall be recognized under (b) of this section. The request shall be accompanied by a certified copy of every support order in effect. Every party whose rights may be affected by a determination of the controlling order shall be given notice of the request for that determination.

(d) The tribunal that issued the order that shall be recognized as controlling under (a), (b), or (c) of this section is the tribunal that has continuing, exclusive jurisdiction in accordance with AS 25.25.205.

(e) A tribunal of this state that determines by order the identity of the controlling child support order under (b)(1) or (2) of this section, or that issues a new controlling child support order under (b)(3) of this section, shall include in that order the basis upon which the tribunal made its determination.

(f) Within 30 days after issuance of the order determining the identity of the controlling order, the party obtaining that order shall file a certified copy of that order with each tribunal that had issued or registered an earlier order of child support. Failure of the party obtaining the order to file a certified copy as required under this subsection subjects that party to appropriate sanctions by a tribunal in which the issue of failure to file arises, but that failure has no effect on the validity or enforceability of the controlling order. (§ 5 ch 57 SLA 1995; am § 51 ch 87 SLA 1997)

Sec. 25.25.208. Multiple child support orders for two or more obligees. In responding to multiple registrations or complaints for enforcement of two or more child support orders in effect at the same time with regard to the same obligor and different individual obligees, when at least one of the orders was issued by a tribunal of another state, a tribunal of this state shall enforce those orders in the same manner as if the multiple orders had been issued by a tribunal of this state. (§ 5 ch 57 SLA 1995)

Sec. 25.25.209. Credit for payments. Amounts collected and credited for a particular period under a support order issued by a tribunal of another state shall be credited against the amounts accruing or accrued for the same period under a support order issued by the tribunal of this state. (§ 5 ch 57 SLA 1995)

Secs. 25.25.210 — 25.25.270. [Repealed, § 21 ch 57 SLA 1995.]

Article 3. Civil Provisions of General Application.

Section
301. Proceedings under this chapter
302. Action by minor parent
303. Application of law of this state
304. Duties of initiating tribunal
305. Duties and powers of responding tribunal
306. Inappropriate tribunal
307. Duties of child support services agency
309. Private counsel
310. Duties of state information and locator agency
311. Pleadings and accompanying documents
312. Nondisclosure of information in exceptional circumstances
313. Costs and fees
314. Limited immunity of petitioner
315. Nonparentage as defense
316. Special rules of evidence and procedure
317. Communications between tribunals
318. Assistance with discovery
319. Receipt and disbursement of payments

Sec. 25.25.301. Proceedings under this chapter. (a) Except as otherwise provided in this chapter, AS 25.25.301 — 25.25.319 apply to all proceedings under this chapter.

(b) This chapter provides for the following proceedings:

(1) establishment of an order for child support or spousal support under AS 25.25.401;

(2) enforcement of a support order and income withholding order of another state without registration under AS 25.25.501 — 25.25.507;

(3) registration of an order for child support or spousal support of another state for enforcement under AS 25.25.601 — 25.25.614;

(4) modification of an order for child support or spousal support issued by a tribunal of this state under AS 25.25.203 — 25.25.206;

(5) registration of an order for child support of another state for modification under AS 25.25.601 — 25.25.614;

(6) determination of parentage under AS 25.25.701; and

(7) assertion of jurisdiction over nonresidents under AS 25.25.201 — 25.25.202.

(c) An individual or a support enforcement agency may commence a proceeding authorized under this chapter by filing a complaint or a comparable pleading in an initiating tribunal for forwarding to a responding tribunal or by filing a complaint or a comparable pleading directly in a tribunal of another state that has or can obtain personal jurisdiction over the respondent. (§ 6 ch 57 SLA 1995; am § 52 ch 87 SLA 1997)

Sec. 25.25.302. Action by minor parent. A minor parent, or a guardian or other legal representative of a minor parent, may maintain a proceeding on behalf of or for the benefit of the minor's child. (§ 6 ch 57 SLA 1995)

Sec. 25.25.303. Application of law of this state. Except as otherwise provided by this chapter, a responding tribunal of this state shall

(1) apply the procedural and substantive law, including the rules on choice of law, generally applicable to similar proceedings originating in this state and may exercise all powers and provide all remedies available in those proceedings; and

(2) determine the duty of support and the amount payable under the law and support guidelines of this state. (§ 6 ch 57 SLA 1995)

NOTES TO DECISIONS

Role of Child Support Enforcement Division (now Child Support Services Agency). — Where the state's Child Support Enforcement Division (now the Child Support Services Agency) acted as a responding tribunal, the court appropriately applied state law to modification of a child support order originally issued in another state. State v. Bromley, 987 P.2d 183 (Alaska 1999).

Construction with other provisions. — Because AS 25.25.604 defines when a state may diverge from local law, and because this section provides that local law applies except "as otherwise provided," the sections, when read together, imply that forum law applies in all circumstances not expressly identified by the Uniform Interstate Family Support Act. State v. Bromley, 987 P.2d 183 (Alaska 1999).

Sec. 25.25.304. Duties of initiating tribunal. (a) Upon the filing of a complaint or

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(1) to the responding
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(2) if the identity of th
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(b) If a responding stat
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Sec. 25.25.305. Dutie
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(9) issue a bench warr
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(10) order the obligor

(11) award reasonable

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(c) A responding tribu
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he filing of a complaint or

comparable pleading authorized by this chapter, an initiating tribunal of this state shall forward three copies of the complaint or comparable pleading and its accompanying documents

(1) to the responding tribunal or appropriate support enforcement agency in the responding state; or

(2) if the identity of the responding tribunal is unknown, to the state information agency of the responding state with a request that they be forwarded to the appropriate tribunal and that receipt be acknowledged.

(b) If a responding state has not enacted a law or procedure substantially similar to this chapter, a tribunal of this state may issue a certificate or other documents and make findings required by the law of the responding state. If the responding state is a foreign jurisdiction, the tribunal may specify the amount of support sought and provide other documents necessary to satisfy the requirements of the responding state. (§ 6 ch 57 SLA 1995; am § 53 ch 87 SLA 1997)

Sec. 25.25.305. Duties and powers of responding tribunal. (a) When a responding tribunal of this state receives a complaint or comparable pleading from an initiating tribunal or directly under AS 25.25.301(c), it shall cause the complaint or pleading to be filed and notify the petitioner where and when it was filed.

(b) A responding tribunal of this state, to the extent otherwise specifically authorized by law, may do one or more of the following:

(1) issue or enforce a support order, modify a child support order, or render a judgment to determine parentage;

(2) order an obligor to comply with a support order, specifying the amount and the manner of compliance;

(3) order income withholding;

(4) determine the amount of any arrearages, and specify a method of payment;

(5) enforce orders by civil or criminal contempt, or both;

(6) set aside property for satisfaction of the support order;

(7) place liens and order execution on the obligor's property;

(8) order an obligor to keep the tribunal informed of the obligor's current residential address, telephone number, employer, address of employment, and telephone number at the place of employment;

(9) issue a bench warrant for an obligor who has failed after proper notice to appear at a hearing ordered by the tribunal and enter the bench warrant in any local and state computer systems for criminal warrants;

(10) order the obligor to seek appropriate employment by specified methods;

(11) award reasonable attorney fees and other fees and costs; and

(12) grant any other available remedy.

(c) A responding tribunal of this state shall include in a support order issued under this chapter, or in the documents accompanying the order, the calculations on which the support order is based.

(d) A responding tribunal of this state may not condition the payment of a support order issued under this chapter upon compliance by a party with provisions for visitation.

(e) If a responding tribunal of this state issues an order under this chapter, the tribunal shall send a copy of the order to the petitioner and the respondent and to the initiating tribunal, if any. (§ 6 ch 57 SLA 1995; am §§ 54, 55 ch 87 SLA 1997)

NOTES TO DECISIONS

Arrearages. — Under Alaska law, arrearages were recoverable in actions under the Uniform Reciprocal Enforcement of Support Act. Bailey v. Haas, 655 P.2d 764 (Alaska 1982) (decided under former law).

There was no requirement that a request for arrearages must be reduced to judgment by the petitioning state. Bailey v. Haas, 655 P.2d 764 (Alaska 1982) (decided under former law).

The petition's failure to include a prayer for arrearages did not justify dismissal of the claim since the function of a pleading is to give notice of the type of claim asserted, the body of the petition stated that defendant had contributed nothing toward the support for his daughter, and, the motion for an order of support specifically requested arrearages; therefore, defendant had notice of the claim for arrearages at the very latest by the date when the motion was filed. Bailey v. Haas, 655 P.2d 764 (Alaska 1982) (decided under former law).

Enforcement of support obligation for nonvisitation. — In the appeal of an action to enforce an Oregon judgment for accrued and unpaid child support, a provision in the judgment requiring the father to pay the mother $25.00 for each weekend without visitation for child care expenses unless the mother requested no visitation was interpreted according to the rule of contract interpretation that conditions are disfavored. The payments were treated as an absolute obligation that was part of the child support obligation without conditions concerning geographical limitation, impracticality, lack of information about the mother's whereabouts, reimbursement for actual child care expenses or credit for nonweekend visitation. Logghe v. Jasmer, 686 P.2d 694 (Alaska 1984) (decided under former law).

Sec. 25.25.306. Inappropriate tribunal. If a complaint or comparable pleading is received by an inappropriate tribunal of this state, it shall forward the complaint or pleading, and accompanying documents, to an appropriate tribunal in this state or another state and notify the petitioner where and when the complaint or pleading was sent. (§ 6 ch 57 SLA 1995; am § 56 ch 87 SLA 1997)

Sec. 25.25.307. Duties of child support services agency. (a) The child support services agency of this state, upon request, shall provide services to a petitioner in a proceeding under this chapter.

(b) In providing services under this chapter to the petitioner, the child support services agency shall, as appropriate,

(1) take all steps necessary to enable an appropriate tribunal in this state or another state to obtain jurisdiction over the respondent;

(2) request an appropriate tribunal to set a date, time, and place for a hearing;

(3) make a reasonable effort to obtain all relevant information, including information as to income and property of the parties;

(4) send written notice from an initiating, responding, or registering tribunal to the petitioner within two days of receipt, exclusive of Saturdays, Sundays, and legal holidays;

(5) send a copy of a written communication from the respondent or the respondent's attorney to the petitioner within two days of receipt, exclusive of Saturdays, Sundays, and legal holidays; and

(6) notify the petitioner if jurisdiction over the respondent cannot be obtained.

(c) This chapter does not create or negate a relationship of attorney and client or other fiduciary relationship between the child support services agency or the attorney for the agency and the individual being assisted by the agency. (§ 6 ch 57 SLA 1995; am § 57 ch 87 SLA 1997)

Revisor's notes. — In 2004, "child support enforcement agency" was changed to "child support services agency" in this section in accordance with § 12(a), ch. 107, SLA 2004.

Sec. 25.25.309. Private counsel. An individual may employ private counsel to represent the individual in proceedings authorized by this chapter. (§ 6 ch 57 SLA 1995)

Sec. 25.25.310. Duties of state information and locator agency. The child support services agency is the state information agency under this chapter, and it shall

(1) compile and maintain a current list, including addresses, of the tribunals in this state that have jurisdiction under this chapter and the appropriate agency offices in this state and transmit a copy to the state information agency of every other state;

(2) maintain a register of tribunals and support enforcement agencies received from other states;

(3) forward to the appropriate tribunal in this state all documents concerning a proceeding under this chapter received from an initiating tribunal or the state information agency of the initiating state; and

(4) obtain information cc
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(4) obtain information concerning the location of the obligor and the obligor's property within this state that is not exempt from execution by postal verification and federal or state locator services, examination of telephone directories, requests for the obligor's address from employers, and examination of governmental records, including, to the extent not prohibited by other law, those relating to real property, vital statistics, law enforcement, taxation, motor vehicles, driver's licenses, and social security. (§ 6 ch 57 SLA 1995; am § 58 ch 87 SLA 1997)

Revisor's notes. — In 2004, "child support enforcement agency" was changed to "child support services agency" in this section in accordance with § 12(a), ch. 107, SLA 2004.

Sec. 25.25.311. Pleadings and accompanying documents. (a) A petitioner seeking to establish or modify a support order or to determine parentage in a proceeding under this chapter shall verify the complaint or comparable pleading. Unless otherwise ordered under AS 25.25.312, or otherwise prohibited by law, the complaint or comparable pleading or accompanying documents must provide, so far as known, the name, residential address, and social security numbers of the obligor and the obligee, and the name, sex, residential address, social security number, and date of birth of each child for whom support is sought. The complaint or comparable pleading must be accompanied by a certified copy of any support order in effect. The complaint or comparable pleading may include other information that may assist in locating or identifying the respondent.

(b) The complaint or comparable pleading must specify the relief sought. The complaint or comparable pleading and accompanying documents must conform substantially with the requirements imposed by the forms mandated by federal law for use in cases filed by a support enforcement agency. (§ 6 ch 57 SLA 1995)

Sec. 25.25.312. Nondisclosure of information in exceptional circumstances. Upon a finding, which may be made ex parte, that the health, safety, or liberty of a party or child would be unreasonably put at risk by the disclosure of identifying information, or if an existing order so provides, a tribunal shall order that the address of the child or party or other identifying information not be disclosed in a pleading or other document filed in a proceeding under this chapter. (§ 6 ch 57 SLA 1995; am § 59 ch 87 SLA 1997)

Sec. 25.25.313. Costs and fees. (a) Notwithstanding any other provision of law, including a rule of the Alaska Supreme Court, at the time a complaint or comparable pleading is filed under this chapter, a tribunal may not require the petitioner to pay a filing fee or other costs.

(b) If an obligee prevails, a responding tribunal may assess against an obligor filing fees, including fees that were waived under (a) of this section, reasonable attorney fees, other costs, necessary travel expenses, and other reasonable expenses incurred by the obligee and the obligee's witnesses. The tribunal may not assess fees, costs, or expenses against the obligee or the support enforcement agency of either the initiating or the responding state except as required by other law or court rule. Attorney fees may be taxed as costs, and may be ordered paid directly to the attorney, who may enforce the order in the attorney's own name. Payment of support owed to the obligee has priority over fees, costs, and expenses assessed under this subsection.

(c) The tribunal shall order the payment of costs and reasonable attorney fees, including filing fees that were waived under (a) of this section, by a party who requests a hearing under this chapter if it determines that the hearing was requested primarily for delay. In a proceeding under AS 25.25.601 — 25.25.612, a hearing is presumed to have been requested primarily for delay if a registered support order is confirmed or enforced without change; however, the party who requested the hearing may present evidence to rebut this presumption. (§ 6 ch 57 SLA 1995)

Cross references. — For effect of this section on Alaska Rules of Civil Procedure 79 and 82, see § 22, ch. 57, SLA 1995 in the Temporary and Special Acts.

Sec. 25.25.314. Limited immunity of petitioner. (a) Participation by a petitioner in a proceeding before a responding tribunal, whether in person, by private attorney, or through services provided by the support enforcement agency, does not confer personal jurisdiction over the petitioner in another proceeding.

(b) A petitioner is not amenable to service of civil process while physically present in this state to participate in a proceeding under this chapter.

(c) The immunity granted by this section does not extend to civil litigation based on acts unrelated to a proceeding under this chapter committed by a party while present in this state to participate in the proceeding. (§ 6 ch 57 SLA 1995)

Sec. 25.25.315. Nonparentage as defense. A party whose parentage of a child has been previously determined under law may not plead nonparentage as a defense to a proceeding under this chapter. (§ 6 ch 57 SLA 1995)

Sec. 25.25.316. Special rules of evidence and procedure. (a) The physical presence of the petitioner in a responding tribunal of this state is not required for the establishment, enforcement, or modification of a support order or the rendition of a judgment determining parentage.

(b) A verified complaint or comparable pleading, affidavit, document substantially complying with federally mandated forms, and a document incorporated by reference in any of them, not excluded under the hearsay rule if given in person, is admissible in evidence if given under oath by a party or witness residing in another state.

(c) A copy of the record of child support payments certified as a true copy of the original by the custodian of the record may be forwarded to a responding tribunal. The copy is evidence of facts asserted in it and is admissible to show whether payments were made.

(d) Copies of bills for testing for parentage, and for prenatal and postnatal health care of the mother and child, furnished to the adverse party at least 10 days before trial or other proceeding, are admissible in evidence to prove the amount of the charges billed and that the charges were reasonable, necessary, and customary.

(e) Documentary evidence transmitted from another state to a tribunal of this state by telephone, telecopier, or other means that do not provide an original writing may not be excluded from evidence on an objection based on the means of transmission.

(f) In a proceeding under this chapter, a tribunal of this state may permit a party or witness residing in another state to be deposed or to testify by telephone, audiovisual means, or other electronic means at a designated tribunal or other location in that state. A tribunal of this state shall cooperate with tribunals of other states in designating an appropriate location for the deposition or testimony.

(g) If a party called to testify at a civil hearing refuses to answer on the ground that the testimony may be self-incriminating, the trier of fact may draw an adverse inference from the refusal.

(h) A privilege against disclosure of communications between spouses does not apply in a proceeding under this chapter.

(i) The defense of immunity based on the relationship of husband and wife or parent and child does not apply in a proceeding under this chapter. (§ 6 ch 57 SLA 1995)

NOTES TO DECISIONS

Cited in Teseniar v. Teseniar, 74 P.3d 910 (Alaska 2003).

Sec. 25.25.317. Communications between tribunals. A tribunal of this state may

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Sec. 25.25.318. Assist
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Sec. 25.25.319. Recei
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Section
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A tribunal of this state may

communicate with a tribunal of another state in writing, or by telephone or other means, to obtain information concerning the laws of that state, the legal effect of a judgment, decree, or order of that tribunal, and the status of a proceeding in the other state. A tribunal of this state may furnish similar information by similar means to a tribunal of another state. (§ 6 ch 57 SLA 1995)

Sec. 25.25.318. Assistance with discovery. A tribunal of this state may
(1) request a tribunal of another state to assist in obtaining discovery; and
(2) upon request, compel a person over whom it has jurisdiction to respond to a discovery order issued by a tribunal of another state. (§ 6 ch 57 SLA 1995)

NOTES TO DECISIONS

Cited in Teseniar v. Teseniar, 74 P.3d 910 (Alaska 2003).

Sec. 25.25.319. Receipt and disbursement of payments. The child support services agency of this state shall disburse promptly any amounts received under a support order, as directed by the order. The agency shall furnish to a requesting party or tribunal of another state a certified statement by the custodian of the record of the amounts and dates of all payments received. (§ 6 ch 57 SLA 1995)

Revisor's notes. — In 2004, "child support enforcement agency" was changed to "child support services agency" in this section in accordance with § 12(a), ch. 107, SLA 2004.

Article 4. Establishment of Support Order.

Section
401. Complaint to establish support order

Sec. 25.25.401. Complaint to establish support order. (a) If a child support order entitled to recognition under this chapter has not been issued, a responding tribunal of this state may issue a child support order if
(1) the individual seeking the order resides in another state; or
(2) the support enforcement agency seeking the order is located in another state.
(b) The tribunal may issue a temporary child support order if
(1) the respondent has signed a verified statement acknowledging parentage;
(2) the respondent has been determined under law to be the parent; or
(3) there is other clear and convincing evidence that the respondent is the child's parent.
(c) If a spousal support order entitled to recognition under this chapter has not been issued, a responding superior court of this state may issue a spousal support order if
(1) the individual seeking the order resides in another state; or
(2) the support enforcement agency seeking the order is located in another state.
(d) If, after providing an obligor with notice and opportunity to be heard, an appropriate tribunal finds that the obligor owes a duty of support, the tribunal shall issue a support order directed to the obligor and may issue other orders under AS 25.25.305.
(e) Before issuing an order under (b) of this section, the child support services agency shall adopt regulations for issuing such an order. (§ 6 ch 57 SLA 1995)

Revisor's notes. — In 2004, "child support enforcement agency" was changed to "child support services agency" in (e) of this section in accordance with § 12(a), ch. 107, SLA 2004.

Article 5. Direct Enforcement of Order of Another State Without Registration.

Section
501. Employer's receipt of income withholding order of another state
502. Employer's compliance with income withholding order of another state
503. Compliance with multiple income withholding orders
504. Immunity from civil liability
505. Penalties for noncompliance
506. Contest by obligor
507. Administrative enforcement of orders

Sec. 25.25.501. Employer's receipt of income withholding order of another state. An income withholding order issued in another state may be sent to the person or entity defined as the obligor's employer under AS 25.27 without first filing a complaint or comparable pleading or registering the order with a tribunal of this state. (§ 6 ch 57 SLA 1995; am § 60 ch 87 SLA 1997)

NOTES TO DECISIONS

Personal jurisdiction required for foreign judgment enforcement. — Although personal jurisdiction was not required to register a foreign support judgment under the Uniform Reciprocal Enforcement of Support Act, such jurisdiction was required for enforcement of the foreign judgment. Lagerwey v. Lagerwey, 681 P.2d 309 (Alaska 1984).

Post-judgment dismissal of underlying paternity suit. — The effect of a post-judgment dismissal of the underlying California paternity suit on a final Alaska judgment was determined according to Alaska law. Rubalcava v. Hall, 674 P.2d 767 (Alaska 1983).

Arrears on a pendente lite child support order were due despite the dismissal of the underlying paternity suit. Rubalcava v. Hall, 674 P.2d 767 (Alaska 1983).

Waiver of objection to judgment. — Defendant waived any objection that he could have asserted to an arrears judgment by voluntarily dismissing his appeal from the judgment after the California superior court had dismissed the paternity action pursuant to which the original California pendente lite order had been issued. Rubalcava v. Hall, 674 P.2d 767 (Alaska 1983).

Sec. 25.25.502. Employer's compliance with income withholding order of another state. (a) Upon receipt of an order under AS 25.25.501, the obligor's employer shall immediately provide a copy of the order to the obligor.

(b) The employer shall treat an income withholding order issued in another state that appears regular on its face as if it were issued by a tribunal of this state.

(c) Except as provided by (d) of this section and AS 25.25.503, the employer shall withhold and distribute the funds as directed in the withholding order by complying with the terms of the order, as applicable, that specify

(1) the duration and the amount of periodic payments of current child support, stated as a sum certain;

(2) the person or agency designated to receive payments and the address to which the payments are to be forwarded;

(3) medical support, whether in the form of periodic cash payment, stated as a sum certain, or an order to the obligor to provide health insurance coverage for the child under a policy available through the obligor's employment;

(4) the amount of periodic payments of fees and costs for a support enforcement agency, the issuing tribunal, and the obligee's attorney, stated as sums certain; and

(5) the amount of periodic payments of arrearages and interest on arrearages, stated as sums certain.

(d) The employer shall comply with the law of the state of the obligor's principal place of employment for withholding from income with respect to

(1) the employer's fee for processing an income withholding order;

(2) the maximum amount permitted to be withheld from the obligor's income; and

(3) the time periods within which the employer must implement the withholding order and forward the child support payment. (§ 6 ch 57 SLA 1995; am § 61 ch 87 SLA 1997)

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Article 6. Enforcemer

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601. Registration of order for enforc
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Sec. 25.25.503. Compliance with multiple income withholding orders. If an obligor's employer receives multiple orders to withhold support from the earnings of the same obligor, the employer shall be considered to have satisfied the terms of the multiple orders if the employer complies with the law of the state of the obligor's principal place of employment to establish the priorities for withholding and allocating income withheld for multiple child support orders. (§ 62 ch 87 SLA 1997)

Sec. 25.25.504. Immunity from civil liability. An employer who complies with an income withholding order issued in another state in accordance with AS 25.25.501 — 25.25.505 is not subject to civil liability to an individual or agency with regard to the employer's withholding of child support from the obligor's income. (§ 62 ch 87 SLA 1997)

Sec. 25.25.505. Penalties for noncompliance. An employer who wilfully fails to comply with an income withholding order issued by another state and received for enforcement is subject to the same penalties that may be imposed for noncompliance with an order issued by a tribunal of this state. (§ 62 ch 87 SLA 1997)

Sec. 25.25.506. Contest by obligor. (a) An obligor may contest the validity or enforcement of an income withholding order issued in another state and received directly by an employer in this state in the same manner as if the order were issued by a tribunal of this state. The provisions of AS 25.25.604 apply to the contest.

(b) The obligor shall give notice of the contest to

(1) a support enforcement agency providing services to the obligee;

(2) each employer that has directly received an income withholding order; and

(3) if

(A) a person or an agency is designated to receive payments in the income withholding order, to that person or agency; or

(B) no person or agency is designated to receive payments in the income withholding order, to the obligee. (§ 62 ch 87 SLA 1997)

Sec. 25.25.507. Administrative enforcement of orders. (a) A party seeking to enforce a support order or an income withholding order, or both, issued by a tribunal of another state may send the documents required for registering the order to the child support services agency of this state.

(b) Upon receipt of the documents, the child support services agency, without initially seeking to register the order, shall consider and, if appropriate, use any administrative procedure authorized by the law of this state to enforce a support order or an income withholding order, or both. If the obligor does not contest administrative enforcement, the order need not be registered. If the obligor contests the validity or administrative enforcement of the order, the child support services agency shall register the order under this chapter. (§ 62 ch 87 SLA 1997)

Revisor's notes. — In 2004, "child support enforcement agency" was changed to "child support services agency" in this section in accordance with § 12(a), ch. 107, SLA 2004.

Article 6. Enforcement and Modification of Support Order After Registration.

Section
601. Registration of order for enforcement
602. Procedure to register order for enforcement
603. Effect of registration for enforcement
604. Choice of law
605. Notice of registration of order
606. Procedure to contest validity or enforcement of registered order
607. Contest of registration or enforcement
608. Confirmed order
609. Procedure to register child support order of another state for modification
610. Effect of registration for modification
611. Modification of child support order of another state

Section
612. Recognition of order modified in another state
613. Jurisdiction to modify support order of another state when individual parties reside in this state
614. Notice to issuing tribunal of modification

Sec. 25.25.601. Registration of order for enforcement. A support order or an income withholding order issued by a tribunal of another state may be registered in this state for enforcement. (§ 6 ch 57 SLA 1995)

Sec. 25.25.602. Procedure to register order for enforcement. (a) A support order or income withholding order of another state may be registered in this state by sending the following documents and information to a tribunal of this state:

(1) a letter of transmittal to the tribunal requesting registration and enforcement;

(2) two copies, including one certified copy, of all orders to be registered, including any modification of an order;

(3) a sworn statement by the party seeking registration or a certified statement by the custodian of the records showing the amount of any arrearage;

(4) the name of the obligor and, if known,

(A) the obligor's address and social security number;

(B) the name and address of the obligor's employer and any other source of income of the obligor; and

(C) a description and the location of property in this state of the obligor not exempt from execution; and

(5) the name and address of the obligee and, if applicable, the agency or person to whom support payments are to be remitted.

(b) On receipt of a request for registration, the registering tribunal shall file the order as a foreign judgment, together with one copy of the documents and information, regardless of their form.

(c) A complaint or comparable pleading seeking a remedy that must be affirmatively sought under other law of this state may be filed at the same time as the request for registration or later. The pleading must specify the grounds for the remedy sought. (§ 6 ch 57 SLA 1995; am § 63 ch 87 SLA 1997; am § 19 ch 132 SLA 1998)

Cross references. — For purpose and findings provisions related to the 1998 amendments affecting this section, see § 1, ch. 132, SLA 1998 in the 1998 Temporary and Special Acts.

Sec. 25.25.603. Effect of registration for enforcement. (a) A support order or income withholding order issued in another state is registered when the order is filed in the registering tribunal of this state.

(b) A registered order issued in another state is enforceable in the same manner and is subject to the same procedures as an order issued by a tribunal of this state.

(c) Except as otherwise provided in AS 25.25.601 — 25.25.612, a tribunal of this state shall recognize and enforce, but may not modify, a registered order if the issuing tribunal had jurisdiction. (§ 6 ch 57 SLA 1995)

NOTES TO DECISIONS

Collateral estoppel held inapplicable. — While it was proper for the Arizona court to consider a father's contention that he was improperly served, that court's determination that a father was not properly served with a 1993 Alaska child support order should not have had preclusive effect so as to invalidate the Alaska order. Bartlett v. State ex rel. Bartlett, 125 P.3d 328 (Alaska 2005).

Sec. 25.25.604. Choice of law. (a) The law of the issuing state governs the nature, extent, amount, and duration of current payments and other obligations of support and the payment of arrearages under the order.

(b) In a proceeding for a
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Interest on support arrear

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Sec. 25.25.606. Procedu
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Sec. 25.25.607. Contest o
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(b) In a proceeding for arrearages, the statute of limitation under the laws of this state or of the issuing state, whichever is longer, applies. (§ 6 ch 57 SLA 1995)

NOTES TO DECISIONS

Construction with other provisions. — Because this section defines when a state may diverge from local law, and because AS 25.25.303 provides that local law applies except "as otherwise provided," the sections, when read together, imply that forum law applies in all circumstances not expressly identified by the Uniform Interstate Family Support Act. State v. Bromley, 987 P.2d 183 (Alaska 1999).

Interest on support arrearage. — Under the Uniform Interstate Family Support Act, where the child resided in Alaska, the issuing state, Washington could not modify the original support order, and the Child Support Enforcement Division (now the Child Support Services Agency) was entitled to collect interest on father's support arrearage. State, Dep't of Revenue, Child Support Enforcement Div., ex rel. Walklace v. Delaney, 962 P.2d 187 (Alaska 1998).

Sec. 25.25.605. Notice of registration of order. (a) When a support order or income withholding order issued in another state is registered, the registering tribunal shall notify the nonregistering party. The notice must be accompanied by a copy of the registered order and the documents and relevant information accompanying the order.

(b) The notice must inform the nonregistering party

(1) that a registered order is enforceable as of the date of registration in the same manner as an order issued by a tribunal of this state;

(2) that a hearing to contest the validity or enforcement of the registered order must be requested within 20 days after notice;

(3) that failure to contest the validity or enforcement of the registered order in a timely manner will result in confirmation of the order and enforcement of the order and the alleged arrearages and precludes further contest of that order with respect to any matter that could have been asserted; and

(4) of the amount of alleged arrearages.

(c) Upon registration of an income withholding order for enforcement, the registering tribunal shall notify the obligor's employer under AS 25.27. (§ 6 ch 57 SLA 1995; am §§ 64, 65 ch 87 SLA 1997)

Sec. 25.25.606. Procedure to contest validity or enforcement of registered order. (a) A nonregistering party seeking to contest the validity or enforcement of a registered order in this state shall request a hearing within 20 days after the notice of the registration. The nonregistering party may seek to vacate the registration, to assert a defense to an allegation of noncompliance with the registered order, or to contest the remedies being sought or the amount of alleged arrearages under AS 25.25.607.

(b) If the nonregistering party fails to contest the validity or enforcement of the registered order in a timely manner, the order is confirmed by operation of law.

(c) If a nonregistering party requests a hearing to contest the validity or enforcement of the registered order, the registering tribunal shall schedule the matter for hearing and give notice to the parties of the date, time, and place of the hearing. (§ 6 ch 57 SLA 1995; am §§ 66, 67 ch 87 SLA 1997)

Sec. 25.25.607. Contest of registration or enforcement. (a) A party contesting the validity or enforcement of a registered order or seeking to vacate the registration has the burden of proving one or more of the following defenses:

(1) the issuing tribunal lacked personal jurisdiction over the contesting party;

(2) the order was obtained by fraud;

(3) the order has been vacated, suspended, or modified by a later order;

(4) the issuing tribunal has stayed the order pending appeal;

(5) there is a defense under the law of this state to the remedy sought;

(6) full or partial payment has been made; or

(7) the statute of limitation under AS 25.25.604 precludes enforcement of some or all of the arrearages.

(b) If a party presents evidence establishing a full or partial defense under (a) of this section, the tribunal may stay enforcement of the registered order, continue the proceeding to permit production of additional relevant evidence, and issue other appropriate orders. An uncontested portion of the registered order may be enforced by all remedies available under the law of this state.

(c) If the contesting party does not establish a defense under (a) of this section to the validity or enforcement of the order, the registering tribunal shall issue an order confirming the order. (§ 6 ch 57 SLA 1995)

NOTES TO DECISIONS

Collateral estoppel held inapplicable. — While it was proper for an Arizona court to consider father's contention that he was improperly served, that court's determination that a father was not properly served with a 1993 Alaska child support order should not have had a preclusive effect so as to invalidate the Alaska order. Bartlett v. State ex rel. Bartlett, 125 P.3d 328 (Alaska 2005).

Sec. 25.25.608. Confirmed order. Confirmation of a registered order, whether by operation of law or after notice and hearing, precludes further contest of the order with respect to a matter that could have been asserted at the time of registration. (§ 6 ch 57 SLA 1995)

Sec. 25.25.609. Procedure to register child support order of another state for modification. If a party or the child support services agency seeks to modify, or to modify and enforce, a child support order issued in another state but not registered in this state, the party or agency shall register that order in this state in the same manner provided in AS 25.25.601 — 25.25.608. A complaint for modification may be filed at the same time as a request for registration, or later. The pleading must specify the grounds for modification. (§ 6 ch 57 SLA 1995; am § 68 ch 87 SLA 1997)

Revisor's notes. — In 2004, "child support enforcement agency" was changed to "child support services agency" in this section in accordance with § 12(a), ch. 107, SLA 2004.

Sec. 25.25.610. Effect of registration for modification. A tribunal of this state may enforce a child support order of another state registered for purposes of modification in the same manner as if the order had been issued by a tribunal of this state, but the registered order may be modified only if the requirements of AS 25.25.611 have been met. (§ 6 ch 57 SLA 1995)

Sec. 25.25.611. Modification of child support order of another state. (a) After a child support order issued in another state has been registered in this state, unless the provisions of AS 25.25.613 apply, the responding tribunal of this state may modify that order only if, after notice and an opportunity for hearing, it finds that

(1) the following requirements are met:

(A) the child, the individual obligee, and the obligor do not reside in the issuing state;

(B) a petitioner who is not a resident of this state seeks modification; and

(C) the respondent is subject to the personal jurisdiction of the tribunal of this state; or

(2) the child, or a party who is an individual, is subject to the personal jurisdiction of the tribunal and all of the parties who are individuals have filed a written consent in the issuing tribunal providing that a tribunal of this state may modify the support order and assume continuing, exclusive jurisdiction over the order; however, if the issuing state is a foreign jurisdiction that has not enacted a law or procedure substantially similar to this chapter, the written consent of an individual residing in this state is not required for the tribunal to assume jurisdiction to modify the child support order.

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(b) Modification of a registered child support order is subject to the same requirements, procedures, and defenses that apply to the modification of an order issued by a tribunal of this state and the order may be enforced and satisfied in the same manner.

(c) A tribunal of this state may not modify any aspect of a child support order that may not be modified under the law of the issuing state. If two or more tribunals have issued child support orders for the same obligor and child, the order that is controlling and must be recognized under the provisions of AS 25.25.207 establishes the nonmodifiable aspects of the support order.

(d) On issuance of an order modifying a child support order issued in another state, a tribunal of this state becomes the tribunal of continuing, exclusive jurisdiction.

(e) *[Repealed, § 148 ch 87 SLA 1997.]* (§ 6 ch 57 SLA 1995; am §§ 69, 70, 148 ch 87 SLA 1997; am § 20 ch 132 SLA 1998)

Cross references. — For purpose and findings provisions related to the 1998 amendments affecting this section, see § 1, ch. 132, SLA 1998 in the 1998 Temporary and Special Acts.

NOTES TO DECISIONS

Construction. — The use of the term "requirements" in this section means that Alaska substantive law applies when the state assumes exclusive jurisdiction to modify a child support order. State v. Bromley, 987 P.2d 183 (Alaska 1999).

Assumption of jurisdiction. — Where parents and child no longer resided in the state in which a child support order had been issued, where the out-of-state mother sought modification through the state child support enforcement agency (now the child support services agency), and where the father was subject to that agency's personal jurisdiction, the Alaska court could modify the original order and assume continuing jurisdiction. State v. Bromley, 987 P.2d 183 (Alaska 1999).

Interest on support arrearage. — Under the Uniform Interstate Family Support Act, where the child resided in Alaska, the issuing state, Washington could not modify the original support order, and the Child Support Enforcement Division (now the Child Support Services Agency) was entitled to collect interest on father's support arrearage. State, Dep't of Revenue, Child Support Enforcement Div., ex rel. Walklace v. Delaney, 962 P.2d 187 (Alaska 1998).

Jurisdiction found. — Contrary to the husband's contention in his challenge to the child support modification order, the trial court had continuing, exclusive jurisdiction over the support order after the husband moved to Missouri as none of the exceptions in AS 25.25.202 applied, the issuing state was Alaska, the wife and the children lived in Alaska, and the parties filed no written consent for Missouri to modify the order. Teseniar v. Teseniar, 74 P.3d 910 (Alaska 2003).

Sec. 25.25.612. Recognition of order modified in another state. A tribunal of this state shall recognize a modification of its earlier child support order by a tribunal of another state that assumed jurisdiction under this chapter or a law or procedure substantially similar to this chapter and, upon request, except as otherwise provided in this chapter, shall

(1) enforce the order that was modified only as to amounts accruing before the modification;

(2) enforce only nonmodifiable aspects of that order;

(3) provide other appropriate relief only for violations of that order that occurred before the effective date of the modification; and

(4) recognize the modifying order of the other state, upon registration, for the purpose of enforcement. (§ 6 ch 57 SLA 1995; am § 71 ch 87 SLA 1997)

Sec. 25.25.613. Jurisdiction to modify support order of another state when individual parties reside in this state. (a) If all of the individual parties reside in this state and the child does not reside in the issuing state, a tribunal of this state has jurisdiction to enforce and to modify the issuing state's child support order in a proceeding to register that order.

(b) A tribunal of this state exercising jurisdiction as provided in this section shall apply the provisions of AS 25.25.101 — 25.25.209 and 25.25.601 — 25.25.614 to the enforcement or modification proceeding. AS 25.25.301 — 25.25.507, 25.25.701, 25.25.801, and 25.25.802 do not apply, and the tribunal shall apply the procedural and substantive law of this state. (§ 72 ch 87 SLA 1997)

Sec. 25.25.614. Notice to issuing tribunal of modification. Within 30 days after issuance of a modified child support order, the party obtaining the modification shall file a certified copy of the order with the issuing tribunal that had continuing, exclusive jurisdiction over the earlier order and with each tribunal in which the party knows that an earlier order has been registered. Failure of the party obtaining the order to file a certified copy as required subjects that party to appropriate sanctions by a tribunal in which the issue of failure to file arises, but that failure has no effect on the validity or enforceability of the modified order of the new tribunal of continuing, exclusive jurisdiction. (§ 72 ch 87 SLA 1997)

Article 7. Determination of Parentage.

Section
701. Proceeding to determine parentage

Sec. 25.25.701. Proceeding to determine parentage. (a) A tribunal of this state may serve as an initiating or responding tribunal in a proceeding brought under this chapter or a law or procedure substantially similar to this chapter, a law or procedure substantially similar to the former provisions of this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act to determine whether the petitioner is a parent of a particular child or to determine whether a respondent is a parent of that child.

(b) In a proceeding to determine parentage, a responding tribunal of this state shall apply the procedural and substantive law of this state and the rules of this state on choice of law. (§ 6 ch 57 SLA 1995; am § 73 ch 87 SLA 1997)

Collateral references. — Determination of paternity of child as within scope of proceeding under Uniform Reciprocal Enforcement of Support Act, 81 ALR3d 1175.

Article 8. Interstate Rendition.

Section
801. Grounds for rendition
802. Conditions of rendition

Collateral references. — Extradition under state statutes providing for reciprocal enforcement of duty to support dependents, 42 ALR2d 768.

Sec. 25.25.801. Grounds for rendition. (a) The governor or a designee of the governor may

(1) demand that the governor of another state surrender an individual found in the other state who is charged criminally in this state with having failed to provide for the support of an obligee; or

(2) on the demand by the governor of another state, surrender an individual found in this state who is charged criminally in the other state with having failed to provide for the support of an obligee.

(b) A provision for extradition of individuals not inconsistent with this chapter applies to the demand even if the individual whose surrender is demanded was not in the demanding state when the crime was allegedly committed and has not fled from that state. (§ 6 ch 57 SLA 1995)

Sec. 25.25.802. Conditions of rendition. (a) Before making demand that the governor of another state surrender an individual charged criminally in this state with

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902. Severability clause

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Chapter 27.

Section
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22. Establishment and enforcen
other states
25. Rate of interest
30. Establishment of fund
40. Determination of paternity
45. Determination of support obl
50. Legal assistance
60. Order of support
61. Payment of support to 18-yea

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having failed to provide for the support of an obligee, the governor of this state or the designee of the governor may require a prosecutor of this state to demonstrate that the obligee had initiated proceedings for support under this chapter at least 60 days previously or that the proceeding would be of no avail.

(b) If, under this chapter or a law substantially similar to this chapter, the former provisions of this chapter, the Uniform Reciprocal Enforcement of Support Act, or the Revised Uniform Reciprocal Enforcement of Support Act, the governor of another state makes a demand that the governor of this state surrender an individual charged criminally in that state with having failed to provide for the support of a child or other individual to whom a duty of support is owed, the governor or a designee of the governor may require a prosecutor to investigate the demand and report whether a proceeding for support has been initiated or would be effective. If it appears that a proceeding would be effective but has not been initiated, the governor or designee may delay honoring the demand for a reasonable time to permit the initiation of a proceeding.

(c) If a proceeding for support has been initiated and the individual whose rendition is demanded prevails, the governor or the designee of the governor may decline to honor the demand. If the petitioner prevails and the individual whose rendition is demanded is subject to a support order, the governor or designee may decline to honor the demand if the individual is complying with the support order. (§ 6 ch 57 SLA 1995)

NOTES TO DECISIONS

Post-judgment dismissal of underlying paternity suit. — The effect of a post-judgment dismissal of the underlying California paternity suit on a final Alaska judgment was determined according to Alaska law. Rubalcava v. Hall, 674 P.2d 767 (Alaska 1983) (decided under former law).

Article 9. Miscellaneous Provisions.

Section
901. Uniformity of application and construction
902. Severability clause
903. Short title

Sec. 25.25.901. Uniformity of application and construction. This chapter shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. (§ 6 ch 57 SLA 1995)

Sec. 25.25.902. Severability clause. Under AS 01.10.030, if a provision of this chapter or its application to a person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application. (§ 6 ch 57 SLA 1995)

Sec. 25.25.903. Short title. This chapter may be cited as the Uniform Interstate Family Support Act. (§ 6 ch 57 SLA 1995)

Chapter 27. Child Support Services Agency.

Section
10. Creation of child support services agency
20. Duties and responsibilities of the agency
22. Establishment and enforcement requests from other states
25. Rate of interest
30. Establishment of fund
40. Determination of paternity
45. Determination of support obligation
50. Legal assistance
60. Order of support
61. Payment of support to 18-year-olds
62. Income withholding order for support
63. Medical support order
65. Waiver of child support
70. Order to assign wages for support
75. Employment information
80. Enforcement of support orders
85. Subpoenas
86. Subpoenas issued by agency of another state
95. Agency exempt from execution
100. All persons may use agency
103. Payments to agency

HOUSE COMMITTEE REPC Γ

(7)
Date Referred to Committee: April 10, 2009 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4/13/09

The JUDICIARY Committee considered: **CS FOR SENATE BILL NO. 96(FIN)**

"An Act relating to nonpayment of child support, to the definition of the term "state" for the purposes of the Uniform Interstate Family Support Act, to certain judicial and administrative orders for medical support of a child, to periodic review and adjustment of child support orders, to relief from administrative child support orders, to child support arrearages, and to medical support of a child and the Alaska Native family assistance program; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."

SB 96 CHILD SUPPORT/ CASH MEDICAL SUPPORT

Recommends it be replaced with [√] HCS *or* **[ ] CS** *for* CSSB (JUD)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
KEV	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN			X	
	Gruenberg				✓
	Gogni	✓			
	Dahlstrom			X	
	Gatto			X	
	Holmes				X
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ALASKA STATE LEGISLATURE
HOUSE RULES COMMITTEE
REPRESENTATIVE JOHN COGHILL, CHAIRMAN
State Capitol Juneau, AK 99801-1182 (907) 465-3719
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Sponsor Statement

HB192 – Child Support Enforcement Amendments

House Bill 192 amends existing statute to conform to the new medical support regulations set by the federal government in July 2008. Three issues required by federal law are addressed in this piece of legislation.

Cash medical support orders are added to sections of the law that apply to child support orders, child support, and health insurance AND the requirement can be the responsibility of either parent or both parents. This makes both parents responsible for the health care needs of the children regardless of who has the custodial order.

Sec. 2. Adds cash medical support to the crime of aiding the nonpayment of child support in the second degree.

Sec. 4. Adds cash medical support to Order of Support administered by Child Support Services Agency.

Sec. 5. Adds cash medical support for either or both parents and adds cash medical support to required notice provisions.

Sec. 9. Adds cash medical support to the definition of "arrearages".

Sec. 10. Adds cash medial support to the definition of "support order.

Section 11. Adds cash medical support and insurance to garnishment provisions for medical support orders.

Sec. 12. Adds cash medical support to parents liable for medical support under the Alaska Native family grant assistance grants.

Section 3 of the bill redefines the word "state" to include "the United States Virgin Islands" and "an Indian tribe. This gives a tribunal the authority to order either or both parents to pay cash medical support.

Sections 5, 7 & 8 now require the Child Support Services Agency to review support orders not less than every three years and removes language limiting who may request a clerical mistake correction on an administrative order or vacating an administrative order based upon a default income. The practices of the agency already comply with the requirement but HB 192 replaces the word "periodic" with "a three-year cycle" as direction for future agency directors.

CS FOR HOUSE BILL NO. 192(HSS)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY THE HOUSE HEALTH AND SOCIAL SERVICES COMMITTEE

Offered: 4/1/09
Referred: Judiciary

Sponsor(s): REPRESENTATIVES COGHILL, Muñoz

A BILL

FOR AN ACT ENTITLED

"An Act relating to nonpayment of child support; relating to certain judicial and administrative orders for medical support of a child; relating to periodic review and adjustment of child support orders; relating to relief from administrative child support orders; relating to child support arrearages; relating to medical support of a child and the Alaska Native family assistance program; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."

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

*** Section 1.** The uncodified law of the State of Alaska is amended by adding a new section to read:

DEFINITION OF "STATE"; LEGISLATIVE INTENT. (a) It is the intent of the legislature that in order to bring Alaska into conformity with the nationwide Uniform Interstate Family Support Act (UIFSA), as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially

adopted as of that date by the National Conference of Commissioners on Uniform State Laws, it is necessary to amend AS 25.25.101 to include "an Indian tribe" and "the United States Virgin Islands" in the definition of "state."

(b) The proposed changes made in AS 25.25.101(19) under sec. 3 of this Act are conforming amendments that will result in procedural changes in Alaska for enforcement and modification of child support orders from other jurisdictions. UIFSA does not determine the authority of an Indian tribe to enter, modify, or enforce a child support order. In Alaska, the scope of tribal authority to enter, modify, or enforce a child support order is an unsettled legal question, due in part to the lack of Indian country in most of the state. In adopting UIFSA conforming amendments, the legislature does not intend to grant or restrict tribal jurisdiction to enter, modify, or enforce child support orders, and the amendments are not intended, either directly or impliedly, to acknowledge, expand, or restrict tribal jurisdiction.

*** Sec. 2.** AS 11.51.122(a) is amended to read:

(a) A person commits the crime of aiding the nonpayment of child support in the second degree if the person knows that an obligor has a duty under an administrative or judicial order for periodic payment of child support**, for cash medical support,** or for the provision of health care coverage for a child under a medical support order **or a cash medical support order, or both** and

(1) being a person with a statutory duty to disclose information to a child support enforcement agency intentionally withholds the information when it is requested by a child support enforcement agency;

(2) being an employer of the obligor, intentionally withholds information about the residence or employment of the obligor, the eligibility of the obligor's children for coverage under the employer's health insurance plan, or the cost of the coverage of the children under the plan, when that information is requested by a child support enforcement agency or when the employer is required by state or federal law to report the information without a request by a child support enforcement agency; or

(3) intentionally participates in a commercial, business, employment, or other arrangement with the obligor, knowing at the time that the arrangement is made that it will allow the obligor to avoid paying all or some of the support when it is

due or to avoid having a lien placed on assets for the payment of delinquent support; receipt of a substantial asset for less than fair market value from an obligor after the obligor's support order has been established constitutes a rebuttable presumption that the person receiving the asset knew that the transfer would allow the obligor to avoid paying all or some of the support or to avoid having a lien placed on the asset.

*** Sec. 3.** AS 25.25.101(19) is amended to read:

(19) "state" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, **the United States Virgin Islands,** or any territory or insular possession subject to the jurisdiction of the United States; the term "state" includes **an Indian tribe and** a foreign jurisdiction that has enacted a law or established procedures for issuance and enforcement of support orders that are substantially similar to the procedures under this chapter or under the Uniform Reciprocal Enforcement of Support Act or the Revised Uniform Reciprocal Enforcement of Support Act;

*** Sec. 4.** AS 25.27.060(c) is amended to read:

(c) In a court or administrative proceeding where the support of a minor child is at issue, the court or agency, as applicable, may order either **parent** or both parents to pay the amount necessary for support, maintenance, nurture, and education of the child. Regardless of whether a support order for periodic payments is issued, the court or agency shall issue a medical support order**, a cash medical support order, or both**. The medical support order shall require health care insurance coverage for the child if health care insurance coverage is available to either parent **or both parents** for the child at a reasonable cost. The court or agency shall consider whether the child is eligible for services through the Indian Health Service or other insurance coverage before ordering either parent **or both parents** to provide health care coverage through insurance**, cash medical support,** or other means **or a combination of insurance, cash medical support, or other means**. The court or agency shall allocate equally the cost of health care insurance for the child between the parents unless there is good cause to allocate the costs unequally. If the obligor has the duty to make periodic payments for non-medical child support, the obligor's periodic payments shall be decreased by the amount of the other parent's portion of payments for health insurance

ordered by the court or agency and actually paid by the obligor. If the obligor has a duty to make periodic payments for non-medical child support, the periodic payments shall be increased by the obligor's portion of payments for health insurance if the other parent is ordered to and actually does obtain and pay for insurance. The court or agency shall allocate equally between the parents the cost of reasonable health care expenses not covered by private insurance unless there is good cause to allocate the costs unequally. One parent shall reimburse the other parent for the first parent's share of the uncovered expenses paid by the parent within 30 days after receipt by the first parent of the bill for the health care, payment verification, and, if applicable, a health insurance statement indicating what portion of the cost is uncovered. The medical support order must meet the requirements of AS 25.27.063. Upon a showing of good cause, the court may order the parents required to pay support to give reasonable security for payments.

* **Sec. 5.** AS 25.27.160(c) is amended to read:

(c) If the agency is establishing only [A] medical support [ORDER], the notice and finding of financial responsibility must state

(1) that health care insurance shall be provided for the child to whom the duty of support is owed if health care insurance is available to the alleged obligor at a reasonable cost and that the alleged obligor and the other parent shall share equally the cost of the health care insurance and the costs of reasonable health care expenses not covered by insurance;

(2) **the sum of periodic payments of cash medical support for which either parent or both parents are found to be responsible under this chapter;**

(3) the name of the alleged obligee and the obligee's custodian;

(4) [(3)] that the alleged obligor may appear and show cause in a hearing held by the agency why the finding is incorrect, should not be finally ordered, and should be modified or rescinded, because

(A) no duty of support is owed;

(B) health care insurance for the child is not available to the alleged obligor at a reasonable cost;

(C) adequate health care is available to the child through the Indian Health Service or other insurance coverage; or

(D) there is good cause to allocate the costs of health insurance, **cash medical support,** or uninsured health care expenses unequally between the parents;

(5) [(4)] that, if the person served with the notice under this subsection does not request a hearing within 30 days, a copy of the medical support order will be sent to the person's employer under AS 25.27.063(b) without further notice or hearing for inclusion of the child in family health coverage if it is available through the person's employer.

*** Sec. 6.** AS 25.27.193 is amended to read:

Sec. 25.27.193. Periodic review or adjustment of support orders. As necessary to comply with 42 U.S.C. 666, the agency, by regulation, shall provide procedures and standards for the modification, through **a three-year cycle of** [PERIODIC] review or adjustment, of a support order. Regulations adopted under this section must include procedures for periodic notice of the right to request review, procedures for hearings, and standards for adjustments regarding future periodic support payments. A modification under this section may be made without a showing of a material change in circumstances.

*** Sec. 7.** AS 25.27.195(a) is amended to read:

(a) A clerical mistake in an administrative order issued by the agency or an error arising from an oversight or omission by the agency may be corrected by the agency at any time [ON THE MOTION OF AN OBLIGOR].

*** Sec. 8.** AS 25.27.195(b) is amended to read:

(b) **The** [UPON THE MOTION OF AN OBLIGOR, THE] agency may, at any time, vacate an administrative support order issued by the agency under AS 25.27.160 that was based on a default amount rather than on the obligor's actual ability to pay.

*** Sec. 9.** AS 25.27.900(2) is repealed and reenacted to read:

(2) "arrearage" means a debt that is past due and equal to at least one monthly obligation under the support order for one or more of the following:

(A) monetary support;

(B) cash medical support;

(C) payment of health care costs or maintenance of health insurance;

(D) reimbursement of related costs;

(E) payment of attorney fees and legal costs and other fees;

(F) penalty, interest, and other relief as required by a support order;

* **Sec. 10.** AS 25.27.900(12) is amended to read:

(12) "support order" means any judgment, decree, or order that is issued by a tribunal for the support and maintenance of a child or of a parent with whom the child is living; "support order" includes a judgment, decree, or order

(A) on behalf of a child who has reached the age of majority if the judgment, decree, or order was lawfully issued; and

(B) for any or all of the following:

(i) monetary support, including arrearages;

(ii) payment of health care costs or maintenance of health insurance;

(iii) payment of cash medical support;

(iv) [(iii)] reimbursement of related costs;

(v) [(iv)] payment of attorney fees and legal costs and other fees; or

(vi) [(v)] penalty, interest, and other relief as required by a tribunal;

* **Sec. 11.** AS 47.07.025(b) is amended to read:

(b) Through the child support services agency or on its own behalf, the department may garnish the wages, salary, or other employment income of a person who

(1) is required by a medical support order**, cash medical support order, or both,** under AS 25.27.060(c) to provide **insurance or cash** coverage of the costs of medical care to a child who is eligible for medical assistance under this chapter;

(2) has received payment from a third party for the costs of the services; and

(3) has not used the payments to reimburse, as appropriate, the other parent or custodian of the child, the provider of the services, or the department.

*** Sec. 12.** AS 47.27.200(o) is amended to read:

(o) The applicability of AS 25.27 in the case of a recipient under an Alaska Native family assistance program includes the following:

(1) an obligor is liable to the Alaska Native family assistance program in the amount of the family assistance provided by the program to a child to whom the obligor owes a duty of support except that, if a support order has been entered, the liability of the obligor for assistance provided by an Alaska Native family assistance program may not exceed the amount of support provided for in the support order, and, if a medical **support order, cash medical support order, or both,** [ORDER OF SUPPORT] has been entered, the liability of the obligor for assistance granted under AS 47.07 may not exceed the amount of support provided for in the medical **support order, cash medical support order, or both,** [ORDER OF SUPPORT]; the child support services agency shall send notice of accruing liability under this paragraph in the same manner as required under AS 25.27.120(c), and, if the agency fails to comply with the notice requirement of this paragraph, interest does not accrue on the liability to the Alaska Native family assistance program unless a support order or medical support order**, or cash medical support order**, as applicable, has been entered;

(2) the child support services agency may appear in an action authorized under AS 25.27.045 at the agency's own discretion if an obligor under AS 25.27 is liable to the Alaska Native family assistance program under (1) of this subsection;

(3) an Alaska Native family assistance program to which the child support services agency erroneously disburses an overpayment of child support under an income withholding order is liable to the state for the amount disbursed, plus interest at the rate imposed under AS 25.27.062(*l*)(1);

(4) when the right to receive child support has been assigned to an Alaska Native family assistance program, an agreement under AS 25.27.065(a) that

has not been adopted as an administrative order of the child support services agency is not effective during a period when the obligee is receiving assistance under an Alaska Native family assistance program;

(5) the child support services agency, on behalf of an Alaska Native family assistance program, shall take all necessary action permitted by law to enforce child support orders entered under AS 25.27, including petitioning the court for orders to aid in the enforcement of child support;

(6) if an obligor under AS 25.27 is liable to an Alaska Native family assistance program under (1) of this subsection, the state is subrogated to the rights of the obligee to take actions authorized under AS 25.27.130(a);

(7) notwithstanding AS 25.27.130(c), the recovery of an amount for which an obligor under AS 25.27 is liable that exceeds the total assistance granted under AS 47.07 and this chapter shall be paid to the obligee;

(8) except as provided in AS 25.27.130(f), if an obligee under AS 25.27 is not receiving assistance under AS 47.07 or this chapter at the time the state recovers money in an action under AS 25.27.130(d) or (1) of this subsection, the recovery of any amount for which the obligor is liable shall be distributed to the obligee for support payments, including medical support payments, that had become due and unpaid since the termination of assistance under AS 47.07 or this chapter under a support order in favor of the obligee;

(9) after payment to the obligee under (8) of this subsection, the state may retain an amount not to exceed the total unreimbursed assistance paid on behalf of the obligee under AS 47.07 or this chapter;

(10) if an alleged obligor is liable to an Alaska Native family assistance program under (1) of this subsection, and a support order has not been entered, the child support services agency may, at its own discretion, undertake an action to establish paternity and a duty of support using the procedures prescribed in AS 25.27 and may enforce a duty of support using the procedures prescribed in AS 25.27; the agency may also institute administrative proceedings to determine the paternity of a child born out of wedlock upon application of an Alaska Native family assistance program; the agency may not recover costs of genetic tests required under

this paragraph from a person who is a recipient of assistance under an Alaska Native family assistance program;

(11) when a hearing officer makes a determination under AS 25.27.170(d), the hearing officer shall, in addition to the factors described in AS 25.27.170(e), consider the amount of the alleged obligor's liability to an Alaska Native family assistance program under (1) of this subsection;

(12) notwithstanding AS 25.27.255(a), the child support services agency may not pay to an obligee any money that has been assigned to an Alaska Native family assistance program.

*** Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. AS 25.27.060(c), amended by sec. 4 of this Act, has the effect of changing Rule 90.3, Alaska Rules of Civil Procedure, by changing standards for issuance of medical and other support orders by the court.

*** Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to actions filed on or after the effective date of this section and to motions filed on or after the effective date in proceedings filed before, on, or after the effective date of this section.

*** Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Revenue may proceed to adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2009.

*** Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

NO CONDITIONAL EFFECT. Because Rule 90.3, Alaska Rules of Civil Procedure, is a substantive rule, sec. 4 of this Act takes effect even if sec. 13 of this Act fails to receives a two-thirds majority vote of each house.

*** Sec. 17.** Section 15 of this Act takes effect immediately under AS 01.10.070(c).

*** Sec. 18.** Except as provided in sec. 17 of this Act, this Act takes effect July 1, 2009.

STATE OF ALASKA

DEPARTMENT OF REVENUE

CHILD SUPPORT SERVICES DIVISION

SARAH PALIN, GOVERNOR

Please Reply To:

CSSD, MS DIR
550 WEST 7th AVE., SUITE 310
ANCHORAGE, AK 99501-6699

March 26, 2009

Rynnieva Moss
Representative John Coghill's Office
Juneau AK 99801

RE: HB 192

Dear Ms. Moss:

As per your request, following is a sectional analysis of HB 192:

Section 1. Adds reference to cash medical support to the crime of aiding the nonpayment of child support in the second degree.

Section 2. Amends order of support provision to include both parents, medical support, and insurance.

Section 3. Adds medical support to provision authorizing the initiation of administrative action to establish a duty of support.

Section 4. Amends periodic reviews of support orders to require a three year cycle of review.

Section 5. Deletes motion requirement for correcting an administrative mistake in a support order.

Section 6. Deletes motion requirement for vacating a support order that is based on a default amount.

Section 7. Redefines "arrearage" for child support purposes.

Section 8. Amends the definition of "support order" to include cash medical support.

Section 9. Amends garnishment provision to include insurance and cash medical support.

Section 10. Amends the Alaska Native family assistance program to include obligations for cash medical support.

Section 11. Provides for an indirect court rule amendment to Rule 90.3, Alaska Rules of Civil Procedure for changes made in the bill.

Section 12. Makes bill changes applicable to child support actions filed on or after the bill's effective date.

Section 13. Authorizes the Department of Revenue to proceed to adopt regulations needed under the bill.

Section 14. Provides for a conditional effect for the court rule amendment in sec. 11 only for two-thirds majority vote.

Section 15. Makes sec. 13 effective immediately.

Section 16. Provides for a July 1, 2009 effective date for all other bill sections.

Let me know if you have any questions concerning this analysis.

Thank you,

Sincerely,

John Mallonee
Director

LAT/JM

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TDD machine only: (907) 269-6894 / TDD machine only, toll free (In-state, outside Anchorage): (800) 370-6894

HOUSE BILL NO. 192

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE COGHILL

Introduced: 3/18/09
Referred: Health and Social Services, Judiciary

A BILL

FOR AN ACT ENTITLED

"An Act relating to nonpayment of child support; relating to certain judicial and administrative orders for medical support of a child; relating to periodic review and adjustment of child support orders; relating to relief from administrative child support orders; relating to child support arrearages; relating to medical support of a child and the Alaska Native family assistance program; amending Rule 90.3, Alaska Rules of Civil Procedure; and providing for an effective date."

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

*** Section 1.** AS 11.51.122(a) is amended to read:

(a) A person commits the crime of aiding the nonpayment of child support in the second degree if the person knows that an obligor has a duty under an administrative or judicial order for periodic payment of child support, **for cash medical support,** or for the provision of health care coverage for a child under a medical support order **or a cash medical support order, or both** and

(1) being a person with a statutory duty to disclose information to a child support enforcement agency intentionally withholds the information when it is requested by a child support enforcement agency;

(2) being an employer of the obligor, intentionally withholds information about the residence or employment of the obligor, the eligibility of the obligor's children for coverage under the employer's health insurance plan, or the cost of the coverage of the children under the plan, when that information is requested by a child support enforcement agency or when the employer is required by state or federal law to report the information without a request by a child support enforcement agency; or

(3) intentionally participates in a commercial, business, employment, or other arrangement with the obligor, knowing at the time that the arrangement is made that it will allow the obligor to avoid paying all or some of the support when it is due or to avoid having a lien placed on assets for the payment of delinquent support; receipt of a substantial asset for less than fair market value from an obligor after the obligor's support order has been established constitutes a rebuttable presumption that the person receiving the asset knew that the transfer would allow the obligor to avoid paying all or some of the support or to avoid having a lien placed on the asset.

*** Sec. 2.** AS 25.27.060(c) is amended to read:

(c) In a court or administrative proceeding where the support of a minor child is at issue, the court or agency, as applicable, may order either **parent** or both parents to pay the amount necessary for support, maintenance, nurture, and education of the child. Regardless of whether a support order for periodic payments is issued, the court or agency shall issue a medical support order**, a cash medical support order, or both**. The medical support order shall require health care insurance coverage for the child if health care insurance coverage is available to either parent **or both parents** for the child at a reasonable cost. The court or agency shall consider whether the child is eligible for services through the Indian Health Service or other insurance coverage before ordering either parent **or both parents** to provide health care coverage through insurance**, cash medical support,** or other means **or a combination of insurance, cash medical support, or other means**. The court or agency shall allocate equally the

cost of health care insurance for the child between the parents unless there is good cause to allocate the costs unequally. If the obligor has the duty to make periodic payments for non-medical child support, the obligor's periodic payments shall be decreased by the amount of the other parent's portion of payments for health insurance ordered by the court or agency and actually paid by the obligor. If the obligor has a duty to make periodic payments for non-medical child support, the periodic payments shall be increased by the obligor's portion of payments for health insurance if the other parent is ordered to and actually does obtain and pay for insurance. The court or agency shall allocate equally between the parents the cost of reasonable health care expenses not covered by private insurance unless there is good cause to allocate the costs unequally. One parent shall reimburse the other parent for the first parent's share of the uncovered expenses paid by the parent within 30 days after receipt by the first parent of the bill for the health care, payment verification, and, if applicable, a health insurance statement indicating what portion of the cost is uncovered. The medical support order must meet the requirements of AS 25.27.063. Upon a showing of good cause, the court may order the parents required to pay support to give reasonable security for payments.

* **Sec. 3.** AS 25.27.160(c) is amended to read:

(c) If the agency is establishing only [A] medical support [ORDER], the notice and finding of financial responsibility must state

(1) that health care insurance shall be provided for the child to whom the duty of support is owed if health care insurance is available to the alleged obligor at a reasonable cost and that the alleged obligor and the other parent shall share equally the cost of the health care insurance and the costs of reasonable health care expenses not covered by insurance;

(2) **the sum of periodic payments of cash medical support for which either parent or both parents are found to be responsible under this chapter;**

(3) the name of the alleged obligee and the obligee's custodian;

(4) [(3)] that the alleged obligor may appear and show cause in a hearing held by the agency why the finding is incorrect, should not be finally ordered,

and should be modified or rescinded, because

(A) no duty of support is owed;

(B) health care insurance for the child is not available to the alleged obligor at a reasonable cost;

(C) adequate health care is available to the child through the Indian Health Service or other insurance coverage; or

(D) there is good cause to allocate the costs of health insurance, **cash medical support,** or uninsured health care expenses unequally between the parents;

(5) [(4)] that, if the person served with the notice under this subsection does not request a hearing within 30 days, a copy of the medical support order will be sent to the person's employer under AS 25.27.063(b) without further notice or hearing for inclusion of the child in family health coverage if it is available through the person's employer.

* **Sec. 4.** AS 25.27.193 is amended to read:

Sec. 25.27.193. Periodic review or adjustment of support orders. As necessary to comply with 42 U.S.C. 666, the agency, by regulation, shall provide procedures and standards for the modification, through **a three-year cycle of** [PERIODIC] review or adjustment, of a support order. Regulations adopted under this section must include procedures for periodic notice of the right to request review, procedures for hearings, and standards for adjustments regarding future periodic support payments. A modification under this section may be made without a showing of a material change in circumstances.

* **Sec. 5.** AS 25.27.195(a) is amended to read:

(a) A clerical mistake in an administrative order issued by the agency or an error arising from an oversight or omission by the agency may be corrected by the agency at any time [ON THE MOTION OF AN OBLIGOR].

* **Sec. 6.** AS 25.27.195(b) is amended to read:

(b) **The** [UPON THE MOTION OF AN OBLIGOR, THE] agency may, at any time, vacate an administrative support order issued by the agency under AS 25.27.160 that was based on a default amount rather than on the obligor's actual ability to pay.

* **Sec. 7.** AS 25.27.900(2) is repealed and reenacted to read:

(2) "arrearage" means a debt that is past due and equal to at least one monthly obligation under the support order for one or more of the following:

(A) monetary support;

(B) cash medical support;

(C) payment of health care costs or maintenance of health insurance;

(D) reimbursement of related costs;

(E) payment of attorney fees and legal costs and other fees;

(F) penalty, interest, and other relief as required by a support order;

* **Sec. 8.** AS 25.27.900(12) is amended to read:

(12) "support order" means any judgment, decree, or order that is issued by a tribunal for the support and maintenance of a child or of a parent with whom the child is living; "support order" includes a judgment, decree, or order

(A) on behalf of a child who has reached the age of majority if the judgment, decree, or order was lawfully issued; and

(B) for any or all of the following:

(i) monetary support, including arrearages;

(ii) payment of health care costs or maintenance of health insurance;

(iii) payment of cash medical support;

(iv) [(iii)] reimbursement of related costs;

(v) [(iv)] payment of attorney fees and legal costs and other fees; or

(vi) [(v)] penalty, interest, and other relief as required by a tribunal;

* **Sec. 9.** AS 47.07.025(b) is amended to read:

(b) Through the child support services agency or on its own behalf, the department may garnish the wages, salary, or other employment income of a person who

(1) is required by a medical support order**, cash medical support order, or both,** under AS 25.27.060(c) to provide **insurance or cash** coverage of the costs of medical care to a child who is eligible for medical assistance under this chapter;

(2) has received payment from a third party for the costs of the services; and

(3) has not used the payments to reimburse, as appropriate, the other parent or custodian of the child, the provider of the services, or the department.

*** Sec. 10.** AS 47.27.200(o) is amended to read:

(o) The applicability of AS 25.27 in the case of a recipient under an Alaska Native family assistance program includes the following:

(1) an obligor is liable to the Alaska Native family assistance program in the amount of the family assistance provided by the program to a child to whom the obligor owes a duty of support except that, if a support order has been entered, the liability of the obligor for assistance provided by an Alaska Native family assistance program may not exceed the amount of support provided for in the support order, and, if a medical **support order, cash medical support order, or both,** [ORDER OF SUPPORT] has been entered, the liability of the obligor for assistance granted under AS 47.07 may not exceed the amount of support provided for in the medical **support order, cash medical support order, or both,** [ORDER OF SUPPORT]; the child support services agency shall send notice of accruing liability under this paragraph in the same manner as required under AS 25.27.120(c), and, if the agency fails to comply with the notice requirement of this paragraph, interest does not accrue on the liability to the Alaska Native family assistance program unless a support order or medical support order**, or cash medical support order**, as applicable, has been entered;

(2) the child support services agency may appear in an action authorized under AS 25.27.045 at the agency's own discretion if an obligor under AS 25.27 is liable to the Alaska Native family assistance program under (1) of this subsection;

(3) an Alaska Native family assistance program to which the child support services agency erroneously disburses an overpayment of child support under

an income withholding order is liable to the state for the amount disbursed, plus interest at the rate imposed under AS 25.27.062(*l*)(1);

(4) when the right to receive child support has been assigned to an Alaska Native family assistance program, an agreement under AS 25.27.065(a) that has not been adopted as an administrative order of the child support services agency is not effective during a period when the obligee is receiving assistance under an Alaska Native family assistance program;

(5) the child support services agency, on behalf of an Alaska Native family assistance program, shall take all necessary action permitted by law to enforce child support orders entered under AS 25.27, including petitioning the court for orders to aid in the enforcement of child support;

(6) if an obligor under AS 25.27 is liable to an Alaska Native family assistance program under (1) of this subsection, the state is subrogated to the rights of the obligee to take actions authorized under AS 25.27.130(a);

(7) notwithstanding AS 25.27.130(c), the recovery of an amount for which an obligor under AS 25.27 is liable that exceeds the total assistance granted under AS 47.07 and this chapter shall be paid to the obligee;

(8) except as provided in AS 25.27.130(f), if an obligee under AS 25.27 is not receiving assistance under AS 47.07 or this chapter at the time the state recovers money in an action under AS 25.27.130(d) or (1) of this subsection, the recovery of any amount for which the obligor is liable shall be distributed to the obligee for support payments, including medical support payments, that had become due and unpaid since the termination of assistance under AS 47.07 or this chapter under a support order in favor of the obligee;

(9) after payment to the obligee under (8) of this subsection, the state may retain an amount not to exceed the total unreimbursed assistance paid on behalf of the obligee under AS 47.07 or this chapter;

(10) if an alleged obligor is liable to an Alaska Native family assistance program under (1) of this subsection, and a support order has not been entered, the child support services agency may, at its own discretion, undertake an action to establish paternity and a duty of support using the procedures prescribed in

AS 25.27 and may enforce a duty of support using the procedures prescribed in AS 25.27; the agency may also institute administrative proceedings to determine the paternity of a child born out of wedlock upon application of an Alaska Native family assistance program; the agency may not recover costs of genetic tests required under this paragraph from a person who is a recipient of assistance under an Alaska Native family assistance program;

(11) when a hearing officer makes a determination under AS 25.27.170(d), the hearing officer shall, in addition to the factors described in AS 25.27.170(e), consider the amount of the alleged obligor's liability to an Alaska Native family assistance program under (1) of this subsection;

(12) notwithstanding AS 25.27.255(a), the child support services agency may not pay to an obligee any money that has been assigned to an Alaska Native family assistance program.

* **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE AMENDMENT. AS 25.27.060(c), amended by sec. 2 of this Act, has the effect of changing Rule 90.3, Alaska Rules of Civil Procedure, by changing standards for issuance of medical and other support orders by the court.

* **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. This Act applies to actions filed on or after the effective date of this section and to motions filed on or after the effective date in proceedings filed before, on, or after the effective date of this section.

* **Sec. 13.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TRANSITION: REGULATIONS. The Department of Revenue may proceed to adopt regulations necessary to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure Act), but not before July 1, 2009.

* **Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. Section 2 of this Act takes effect only if sec. 11 of this Act

receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

*** Sec. 15.** Section 13 of this Act takes effect immediately under AS 01.10.070(c).

*** Sec. 16.** Except as provided in sec. 15 of this Act, this Act takes effect July 1, 2009.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number:
Bill Version: **HB 192**
() Publish Date:

Identifier (file name): HB192-DOR-CSS-03-30-09
Title: Cash Medical Support for Minor Children
Sponsor: Representative Coghill
Requester:

Dept. Affected: Revenue
RDU: Child Support Services Division
Component: Child Support Services Division
Component Number: 111

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Debt Service							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1092 MHTAAR							
Bond Proceeds							
TOTAL	0.0	0.0	0.0	0.0	0.0	0.0	0.0

Estimate of any current year (FY2009) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

This legislation does not require any additional funding.

Prepared by: John Mallonee — Phone 269-6801
Division: Child Support Services Division — Date/Time 3/30/2009 at 12:00 PM
Approved by: Ginger Blaisdell, Director — Date 3/30/2009
Administrative Services Division

(Revised 9/10/2008 OMB)

DEPARTMENT OF HEALTH & HUMAN SERVICES

Administration for
Children and Families

2201 Sixth Avenue, RX-70
Seattle, WA 98121

MAR 27 2009

Mr. John Mallonee, Director
Child Support Services Division
550 West 7th Avenue, Suite 310
Anchorage, AK 99501

Dear Mr. Mallonee:

This is in response to your request for clarification of the potential Federal consequences if a State fails to enact laws to meet the State plan requirements with section 466(f) of the Social Security Act (the Act). The Act mandates that on and after January 1, 1998, each State must have in effect the Uniform Interstate Family Support Act (UIFSA), as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996, including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform States Laws. Specifically, Alaska State's UIFSA does not include Indian tribes in the definition of 'State'.

In order for a State to receive Federal funding for the operation of its child support enforcement program, it must have an approved State IV-D plan which meets the requirements of section 454 of the Social Security Act (the Act). One of those requirements, specified at section 454(20)(A), is that the State must have in effect all of the laws required by section 466.

When a State fails to comply with any statutory requirement, its plan is subject to disapproval by the Office of Child Support Enforcement (OCSE). In accordance with sections 452(a)(3) and 455(a)(1)(A) of the Act, there would then be no authority to expend Federal funds under Title IV-D to operate the State's child support enforcement program.

Therefore, a determination that a State IV-D plan is disapproved may result in immediate suspension of all Federal payments for the State's child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. This suspension includes the Federal share of administrative expenditures as well as any performance based incentive payments to the State.

In addition, in order to be eligible for a block grant for Temporary Assistance to Needy Families (TANF), section 402(a)(2) of the Act requires a State to certify that it will operate a child support enforcement program under the State plan approved under part D. Therefore, Alaska should be aware that TANF funds may also be at risk if the State does not enact conforming child support legislation.

In Federal Fiscal Year (FFY) 2008, the Federal share of Alaska's IV-D expenditures was $14,657,800 and the State's TANF award amount was $46,732,590. In addition, Alaska received $1,794,516 in child support incentives for FFY 2007 (the latest year with available data).

We trust this statement of requirements and penalties clarifies our position. We are attaching our Action Transmittal 97-05 issued April 28, 1997 which outlines our procedures for determining that a State IV-D Plan is disapproved. Due to the gravity of the consequences that may result, we urge you to take all necessary steps to have the required UIFSA legislation enacted and implemented as soon as possible.

If you have any questions, please contact John Cheng at (206) 615-2566.

Sincerely,

Linda Gillett
Regional Program Manager, Region 10
Office of Child Support Enforcement

Enclosure: Action Transmittal 97-05

cc: Ms. Donna Bonar, Acting Commissioner, OCSE

PROGRAM INSTRUCTION

ACTION TRANSMITTAL

OCSE-AT-97-05

April 28, 1997

TO:STATE AGENCIES ADMINISTERING CHILD SUPPORT ENFORCEMENT PLANS APPROVED UNDER TITLE IV-D OF THE SOCIAL SECURITY ACT AND OTHER INTERESTED INDIVIDUALS

SUBJECT:Procedures for Determining That a State IV-D Plan is Disapproved

BACKGROUND:Title III of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), P.L. 104-193, made a number of amendments to sections 454 and 466 of the Social Security Act (the Act), requiring States to either establish new, or modify existing, procedures effective either October 1, 1996, March 1, 1997 or October 1, 1997. For States which require legislation in order to conform their State IV-D plans to the revised statute, section 395(b)(2) of PRWORA provides a grace period until not later than the 1st day of the 1st calendar quarter beginning after the close of the 1st regular session of the State legislature that begins after the date of enactment of PRWORA (August 22, 1996). In cases which require that the State constitution be amended, section 395(c) of PRWORA provides a grace period until one year after the effective date of the State constitutional amendment, but no later than five years after the date of enactment of PRWORA.

CSE is tracking the progress of each of the States in enacting the new State plan requirements and mandatory laws, and is noting the date when each State's 1997 legislative session ends in order to ascertain when these laws are required to be in effect and when the State must submit new or amended State plan material for approval by OCSE in order to operate a Child Support Enforcement program according to the requirements of title IV-D of the Act. If a State fails to submit the necessary State plan amendments, OCSE will have to determine that the State does not have an approvable State plan. A determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State=s child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE.

STATUTORY

AUTHORITY:Section 455(a)(1)(A) of the Act specifies that funds appropriated under title IV-D shall be paid to States with approved State IV-D plans. There is no authority to expend Federal funds under title IV-D of the Act for the operation of a Child Support Enforcement program unless such State has an approved State IV-D plan.

Section 466 of the Act requires that all States, as a condition for approval of their State IV-D plan, must have in effect laws requiring the use of mandatory procedures to increase the effectiveness of their Child Support Enforcement programs. As a condition for State plan approval, section 454(20) of the Act provides that, to the extent required by section 466, States must have laws in effect and implement the procedures prescribed in or pursuant to such laws.

Section 454 of the Act sets the statutory requisites for the State IV-D plan. In addition, regulations at 45 CFR 301.10 define the State IV-D plan as a comprehensive statement submitted by the IV-D agency describing the nature and scope of its program. The State IV-D plan contains all the information necessary for the Office of Child Support Enforcement (OCSE) to determine whether the plan can be approved, as a basis for Federal financial participation in the State IV-D program.

Section 452(a)(3) of the Act requires that OCSE review and approve State plans for Child Support Enforcement programs under title IV-D of the Act. The authority to approve State plans is delegated to the Regional Office, but OCSE retains authority for determining that a State IV-D plan is not approvable.

As stated above, a determination that a State IV-D plan is disapproved will result in immediate suspension of all Federal payments for the State=s child support enforcement program, and such payments will continue to be withheld until the State IV-D plan can be approved by OCSE. If a State is dissatisfied with OCSE=s decision, reconsideration may be requested pursuant to 45 CFR 301.14. Withholding of Federal payments cannot be stayed pending reconsideration.

Section 402(a)(2) of the Act (as amended by PRWORA) provides that the chief executive officer of a State must certify that it will operate a child support enforcement program under an approved IV-D plan as a

condition of eligibility for a TANF block grant under title IV-A of the Act. Therefore, States should be aware that TANF funds may also be at risk.

Although it is not required under Title IV-D of the Act, OCSE will give States an advance notice of "Intent to Disapprove" a previously approved State IV-D plan. The State will then be permitted the opportunity to waive reconsideration of the OCSE=s final decision and to exercise, prior to the State plan approval/disapproval decision, the right to a hearing under the procedures set forth a 45 CFR Part 213. If the State elects to pursue its hearing rights prior to issuance of OCSE's decision, no further administrative appeal will be allowed.

ATTACHMENT: Instructions for State Plan Disapproval

Timetable of Effective Dates

1997 Legislative Calendar

SUPERSEDED

MATERIAL: OCSE-AT-86-21

INQUIRIES: ACF Regional Administrators

/ S /

Anne F. Donovan

Acting Deputy Director

Office of Child Support Enforcement

Instructions for State Plan Disapproval

I. Notice of Intent to Disapprove

OCSE will issue a Notice of Intent to Disapprove a State Plan to the State umbrella agency head when it has been determined that either of the following situations exist:

Pursuant to the requirements at 45 CFR 301.13(d) the State IV-D plan no longer meets the requirements for an approved State plan based on relevant Federal statutes and guidelines.

Pursuant to the requirements at 45 CFR 301.13(e) or (f) the State IV-D plan or amendment submitted for approval does not meet the requirements under title IV-D of

the Act and regulations issued pursuant to the Act.

II. Notice Of Opportunity For Hearing

The Notice of Intent to Disapprove will provide opportunity for the State to request a hearing prior to the issuance of the final decision if the State waives its right to a reconsideration of OCSE's decision under 45 CFR 301.14. The State must request a hearing within 60 days of the date of the Notice of Intent to Disapprove. If the State does not request a hearing, OCSE shall proceed according to the procedures set forth under Determination to Withhold outlined below.

Upon request of the State for a hearing, OCSE will issue a Notice of Hearing which will state the time and place of the hearing, the issues which will be considered, and shall be published in the Federal Register. The hearing procedures contained in regulations at 45 CFR Part 213 shall apply to these proceedings.

III. Negotiations

As provided in regulations at 45 CFR 213.1(b) the hearing process does not preclude or limit negotiations between OCSE and the State, whether before, during or after the hearing to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of the issues are not part of the hearing, and are not governed by the hearing procedures, except as expressly provided for in such procedures.

IV. Determination to Withhold

If OCSE concludes that the State does not have an approved State IV-D plan under section I of these instructions, it will notify the State that further Federal payments under title IV-D of the Act will not be made to the State until a State IV-D plan is submitted and approved. Until a State IV-D plan is approved, no further Federal payments under title IV-D will be made to the State for any child support enforcement activities. Pursuant to 45 CFR 213.33, the effective date for the withholding of Federal funds shall not be earlier than the date of OCSE=s decision and shall not the later than the first day of the next calendar quarter following such decision.

V. Reconsideration

Any State which has not waived its right to reconsideration and is dissatisfied with OCSE=s decision that the State does not have an approvable State plan may request reconsideration of the decision pursuant to regulations at 45 CFR 301.14. Funding, however, will be suspended and may not be restored unless OCSE subsequently determines that the original decision to withhold Federal IV-D funding was incorrect.

CHILD SUPPORT LEGISLATION IN 104TH CONGRESS

TIMETABLE OF EFFECTIVE DATES FOR STATE REQUIREMENTS

Based on Dates in Text of Title III of PL 104-193

Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Section 395 states that, except as specifically provided in the legislation, the effective date for provisions of PL 104-193 is 10/1/96 for provisions under "454 & 466 of the Act. Section 395 allows a grace period for State law changes and State constitutional amendments. For State law changes, the grace period is until the effective date of the State implementing provisions, but no later than the first day of the first quarter after the close of the first regular legislative session that begins after enactment of PL 104-193. For State constitutional amendments, the grace period is until one year after the effective date of the State constitutional amendment, but no later than five years after enactment of PL 104-193.

Requirements Effective 10/1/96

Income withholding ['314] -- '466(a)(1) and (b)

Locator networks; access to motor vehicle and law enforcement data ['315] -- '466(a)(12)

SSNs on applications for professional, commercial drivers, occupational and marriage licenses; on records of divorce decrees, support orders, and paternity determinations; and death records & certificates ['317] -- '466(a)(13)

Administrative enforcement in interstate cases ['323] -- '466(a)(14)

State laws providing expedited procedures, including:

Ordering genetic testing for paternity establishment; Issuing subpoenas for information and impose penalties for failure to respond; Requiring all entities in a State to promptly respond to inquiries by State agency and sanction failure to respond; Obtaining access to records of other State and local government agencies and records held by private entities including public utilities and financial institutions; Changing payee in cases subject to an assignment; Ordering income withholding; Securing assets to satisfy arrearages by intercepting or seizing periodic or lump-sum payments from a State or local agency and judgments, settlements, and lotteries; attach assets held by financial institutions; attach retirement funds; and impose liens; Increasing the amount of monthly support payments to include amounts for arrearages; Filing of information on location/identity of parties in State case registry upon entry of order; Statewide jurisdiction over orders and transfer of cases between local jurisdictions without additional filing; and Using of automated system to maximum extent feasible to implement expedited administrative procedures ['325] -- "466(c) & 454A(h)

State laws concerning paternity establishment, including:

Establish paternity before age 21 (retroactive to 8/16/84); Genetic tests in contested cases upon request w/sworn affidavits; Payment for genetic testing; Provide for a simple civil process for voluntarily acknowledging paternity with prior explanation/written notice to parents; Birth record agency must offer voluntary paternity establishment services, and other may; Name of father included on birth record only if both mother and father have signed an acknowledgment, or court or administrative authority has adjudicated paternity; Development of affidavit for voluntary acknowledgment of paternity which must be given full faith and credit in any other State; Procedures where voluntary acknowledgments and adjudication of paternity are filed with the State registry of birth records for comparison with State case registry; Admissibility of test results if performed by accredited laboratory; Rescission timeframe of 60 Days for signed voluntary paternity acknowledgments; elimination of judicial/administrative ratification proceedings on unchallenged paternity acknowledgments; Default orders; No right to jury trial in paternity cases; Issuance of temporary support orders in paternity cases; Evidentiary treatment of birth expenses/bills; and Opportunity for putative fathers to initiate paternity proceedings ['331(a)] -- '466(a)(5)

State plan requirements for paternity outreach activities ['332] -- '454(23)

Cooperation/good cause ['333] -- '454(29)

State use of definitions for collecting & reporting data ['343(b)] -- '454(30)

Simplified review & adjustment process ['351] -- '466(a)(10)

Voiding of fraudulent transfers ['364] -- '466(g)

Work requirement for persons owing child support ['365] -- '466(a)(15)

Reporting arrearages to credit bureaus ['367] -- '466(a)(7)

Liens on real/personal property by operation of law; full faith and credit to liens without registration of order ['368] -- '466(a)(4)

State law authorizing the suspension of licenses ['369] -- '466(a)(16)

International CSE -- State treatment of international requests ['371(b)] -- '454(32)

Financial institution data matches ['372] -- '466(a)(17)

Enforcing orders against grandparents in cases of minors ['373] -- '466(a)(18)

State cooperative agreements with Indian Tribes ['375(a)] -- '454(33)

Enforcement of orders for health care coverage ['382] -- '466(a)(19)

Explicit statutory requirement that Title IV-D services be provided to nonresident applicants; enforce child support & support due on behalf of child's custodian ['301(a)] -- "454(4)&(6)

Continuation of IV-D services for former recipients of IV-A assistance [301(b)] -- '454(25)

Requirements Effective 3/1/97

Use of forms by States in interstate cases ['324(b)] -- '454(9)(E)

Requirements Effective 10/1/97

Annual State self-reviews & reports ['342(a)] -- '454(15)

Data submitted on compliance with Federal performance requirements ['342(a)] --'454(15)

State privacy safeguards ['303(a)] -- '454(26)

State procedures-notices & copies of orders ['304(b)] -- 454(12)

State directory of new hires ['313] -- 454 (28)

ADP systems meeting all IV-D requirements enacted on or before Family Support Act ['344] -- '454(24)

Denial/restriction/revocation of passport if arrears greater than $5000 ['370] -- "452(k) & 454(31)

Requirements Effective 1/1/98

Adoption of UIFSA (with modifications) ['321] -- '466(f)

Requirements Effective 10/1/98

All support orders established or modified on or after 10/1/98 included in State central registry, which must be in place by 10/1/2000 ['311 and '344(a)(2)] -- '454A

Centralized automated unit for collections and disbursements ['312] -- '454(27)

Collection through State centralized collection unit of orders under wage withholding['312] -- '454B

State new hire reporting systems in existence prior to P.L. 104-193 must meet rest of new requirements ['313] -- '454(28)

Requirements Effective 10/1/99

End of optional exception period for local court collection of child support in lieu of State centralized collection unit ['312] -- '454B

Requirements Effective 10/1/2000

ADP systems must meet all IV-D requirements enacted on or before this law (with additional time tied to regulation issuance) ['344(A)(4)] -- '454(24)

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This is a Historical Document.

State of Alaska

Department of Revenue

Administrative Services Division

SARAH PALIN, GOVERNOR
333 Willoughby Avenue, 11th Floor
P.O. Box 110400
Juneau, Alaska 99811-0405
Phone: (907) 465-2300
Fax: (907) 465-2394

March 27, 2009

The Honorable John Coghill
Rules Chair, House of Representatives
Alaska State Capitol, Room 214
Juneau, AK 99801

Dear Representative Coghill;

A separate letter should be entered on the record to clarify a sentence in the March 16, 2009 letter to Senator Hollis French. This sentence has been used on correspondence to your office as well. The letter is posted on-line in Basis under "Documents" for SB96. The clarification letter should include the following:

"This letter clarifies that the proposed Uniform Interstate Family Support Act (UIFSA) amendment to SB 96 does not grant authority to Indian tribes either to issue or serve an income withholding order on an employer in the State of Alaska. UIFSA defines the employer's responsibility when the employer receives an income withholding order. Employers in the State of Alaska will be required to comply with income withholding orders issued by an Indian tribe as provided in AS 25.25.501-07."

The same sentence is also found in the March 20, 2009 letter to Representative Coghill.

Thank you for working with us on this issue.

Sincerely,

VBlaisdell

Ginger Blaisdell
Director

State of Alaska

Department of Revenue

Administrative Services Division

SARAH PALIN, GOVERNOR
333 Willoughby Avenue, 11th Floor
P.O. Box 110400
Juneau, Alaska 99811-0405
Phone: (907) 465-2300
Fax: (907) 465-2394

March 27, 2009

The Honorable John Coghill
Rules Chair, House of Representatives
Alaska State Capitol, Room 214
Juneau, AK 99801

Dear Representative Coghill;

In consideration of a letter of intent for HB 192 Child Support / Cash Medical, I am offering the following language that would clarify the changes to AS 25 and conform to Uniform Code.

> It is the intent of the legislature that in order to bring Alaska into conformity with the nationwide Uniform Interstate Family Support Act (UIFSA) as approved by the American Bar Association on February 9, 1993, and as in effect on August 22, 1996 including any amendments officially adopted as of such date by the National Conference of Commissioners on Uniform State Laws, it is necessary to amend AS 25.25.101 to include "an Indian tribe" and "the United States Virgin Islands" in the definition of "state."
>
> The proposed UIFSA amendments are conforming amendments which will result in procedural changes in Alaska for enforcement and modification of child support orders from other jurisdictions. UIFSA does not determine the authority of an Indian tribe to enter, modify or enforce a child support order. In Alaska, the scope of tribal authority to enter, modify or enforce child support orders is an unsettled legal question, due in part to the lack of Indian country in most of the state. In adopting UIFSA conforming amendments, the legislature does not intend either to grant or restrict tribal jurisdiction, if any, which may exist to enter, modify, or enforce child support orders, and the amendments are not intended either directly or impliedly to acknowledge, expand or restrict tribal jurisdiction.

Thank you for working with us on this issue.

Sincerely,

VBlaisdell

Ginger Blaisdell
Director

State of Alaska

Department of Revenue

Administrative Services Division

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March 20, 2009

The Honorable John Coghill
Chair, House Rules Committee
Alaska State Legislature
State Capitol, Room 214
Juneau, AK 99801

Dear Representative Coghill;

The Department of Revenue, with support of the Governor asked you to introduce legislation regarding Child Support Services needs for legislative change to their statutes. Thank you for sponsoring this legislation and introducing HB 192 last week. This letter outlines the need for the legislation to pass during this legislative session both for content of the bill and fiscal impact to the citizens of the state.

The Alaska Child Support Services Division (CSSD) needs to amend state law on three issues.

1. The requirement for cash medical support
2. The three year review cycle
3. The change of the definition of state in UIFSA

The first two amendments are less controversial and only require that child support orders include a provision for obligors to pay cash medical assistance to the custodial parent to help with health costs when insurance is not provided for that child, and that the division performs regular reviews of its cases.

The third amendment could be considered more sensitive. The Uniform Interstate Family Support Act (UIFSA) contains a definition of "state." Under federal law, all states must adopt the uniform act's definition of "state" that includes "the United States Virgin Islands" and "an Indian tribe." For Alaska, the impact of adopting a definition that would include Indian tribes, means Indian tribes can issue and serve income-withholding orders on employers. The obligor would be entitled to contest the jurisdiction of the tribe to issue the order and the usual rights to contest the validity or enforcement of an order by an obligor would still apply. The change would also affect the process for state recognition of tribal orders. A tribal child support order would be registered in the Alaska state courts under the UIFSA procedures instead of a comity process. These changes are consistent with the purpose of UIFSA. The purpose of UIFSA is to unify state laws relating to child support orders, to provide efficient procedures for collecting child support in interstate cases, and to eliminate multiple support orders that were permitted under prior child support laws.

One question raised by the changes required by UIFSA is whether the tribal amendment would result in an expansion of tribal authority. The Department of Law has examined this question and came to the

following conclusion:

> "UIFSA's underlying purpose is not to define jurisdiction. Nor does the state have the ability to define tribal jurisdiction. The overall purpose of UIFSA is simply to unify state laws relating to child support orders, to provide efficient procedures for collecting child support in interstate cases, and to eliminate multiple support orders that were permitted under prior child support laws. These purposes do not trigger broader jurisdictional concerns."

Intent language could be included in the introduced child support legislation (SB 96) to ease concerns of legislators who are not comfortable with issues related to Indian tribes. Or a letter of intent could be attached as a separate letter to the bill. I might suggest the following as an amendment:

LEGISLATIVE FINDINGS AND INTENT. (a) The legislature finds that

(1) failure to bring AS 25.25.101 into compliance with the federal Social Security Act Title IV-D could result in the loss of approximately $17,000,000 in administrative funding;

(2) of the 33 states that have federally recognized tribes, Alaska is the only state that has not yet passed conforming legislation; and

(3) to bring Alaska into conformity with UIFSA, the legislature finds that it is necessary to amend AS 25.25.101 to include "an Indian tribe" and "the United States Virgin Islands" in the definition of "state."

(b) It is the intent of the legislature that this Act not alter or expand in any way the governmental relationship between federally recognized tribes and the state.

A zero fiscal note accompanies the legislation because passage of the bill would result in no additional impact to the Department of Revenue, Child Support Services Division. The fiscal impact to non-passage of SB96, or another like bill, could be detrimental to 62,000 Alaska's children under age 19. If the state remains out of compliance after this legislative session, CSSD could lose nearly the entire operating budget required to operate the child support activities mandated by state and federal law and could jeopardize the entire TANF block grant received by the Department of Health and Social Services, Division of Public Assistance. (The division currently has a budget of $174,000 General Funds.)

$11,000,000	Federal receipts paid through Title IV-D of the Social Security Act for child support services.
$12,708,403	Each year CSSD collects funds from families who also receive state benefits through the State's TANF (Temporary Assistance for Needy Families) program. The collections received on behalf of the children receiving funding through TANF are retained by CSSD and used as match to obtain additional federal funding for child support, $6,070,137 state match, and $6,638,266 to be used as part of the total federal receipts to be paid to CSSD for its services. *FY08 totals

ALASKA STATE LEGISLATURE
HOUSE JUDICIARY COMMITTEE

Representative Jay Ramras
Chairman
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Committee Members:
Representative Nancy Dahlstrom,
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Representative John Coghill
Representative Bob Lynn
Representative Carl Gatto
Representative Max Gruenberg
Representative Lindsey Holmes

State Capitol, Room 120
Juneau, Alaska 99801

Fax

To: Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 2

From: Jane W. Pierson

Date: April 13, 2009

Re: SB96 – An Act relating to nonpayment of child support: relating to certain judicial and administrative orders for medical support of a child."

Today the HJUD Committee passed out SB96 version 26-LS0485\C with the following amendment as amended:

Delete the sentence on lines 6 & 7 beginning with "In Alaska," and ending with "unsettled legal question."

AMENDMENT #1

V.C

LS04585/C SB 96 BY COGHILL

Page 2, lin2 5:

Insert new subsection:

(b) The proposed changes made in AS 25.25.101(19) under sec. 3 of this Act are conforming amendments that will result in procedural changes in Alaska for enforcement and modification of child support orders from other jurisdictions. ~~expand or restrict~~ ~~State of Alaska~~ UIFSA does not determine the authority of an Indian tribe to enter, modify, or enforce a child support order. In Alaska, the scope of tribal authority to enter, modify, or enforce a child support order is an unsettled legal question. In adopting UIFSA conforming amendments, the legislature does not intend to grant or restrict tribal jurisdiction to enter, modify, or enforce child support orders, and the amendments are not intended, either directly or impliedly, to acknowledge, expand, or restrict tribal jurisdiction.

- Holmes Amend #1 to Amend # 1.

~~expands or restricts~~

Amend #1 to Amend #1 - Passed

Amendment #1 -

Y - Coghill, Gatto, Lynn, Dahl, Ram — (5)

N - Green, Holmes (2)

SB 110

Alaska State Legislature

Senator Hollis French

Sponsor Statement
Senate Bill 110 Preservation of Evidence

The American system of justice is founded on balancing the twin protections of the rights of those harmed by crimes, and the rights of the accused. Criminal convictions are guided by evidence of innocence or guilt, and no one in the criminal justice system wants innocent people to be convicted of crimes they did not commit. The availability and use of physical evidence at trials and during appeals is a critical piece of a meaningful justice system.

Modern DNA technology, coupled with today's comprehensive information and communications technologies, has exponentially increased the power of preserved evidence. Preserved evidence can solve cold cases and prove or disprove claims of innocence in ways unimaginable just a few years ago. The problem is, however, that evidence collection and preservation policies have not always kept pace with these new technologies.

Senate Bill 110 begins to address this issue by requiring that biological evidence in murder and sexual assault cases is properly retained while cases are unsolved and during the period after conviction that an offender is imprisoned or required to register as a sex offender. The bill still provides for police departments to return or dispose of evidence too large to keep after portions of the material likely to contain biological evidence have been removed and preserved. The bill provides for a notice process in cases where evidence will be destroyed, and it establishes a temporary task force to look at other issues involved in this emerging field of technology and make recommendations on standards and practices in cataloging and handling evidence.

Recently in Denver, Colorado a young man who had been convicted of murder at the age of 15 and who served over a decade in prison was released and his conviction was vacated as a result of DNA evidence that proved his innocence. And in cases closer to home, DNA was used after 13 years to identify a suspect in the murder of Bonnie Craig, a UAA student. The preservation of evidence is a vital and effective way to ensure the criminal justice system meets its goal of protecting the innocent and convicting the guilty. Join me in supporting this important bill.

HOUSE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced:
Referred:

A RESOLUTION

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning Senate Bill No. 110, relating to the preservation of evidence and to the DNA identification system.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding changes to the title of a bill, are suspended in consideration of Senate Bill No. 110, relating to the preservation of evidence and to the DNA identification system.

Representative Jay Ramras
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House District 10

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 456-2029

Number of pages including cover:

From: Jane W. Pierson

Date: April 7, 2010

Re: HCSCSSB110(JUD) 26-LS0560\M

Jerry,

Today the HJUD Committee passed out SB110 with the following three conceptual amendments:

1. P. 14, Line 27. After evidence add "return of property to owners"

2. P.3, Line 27 "agency" delete "mails a certified delivery notice of" and insert "sends by certified mail with proof of delivery"

3. P. 7 Line 31 through Page 8 line 3 Delete all material and insert "the applicant did not admit or concede guilt under oath in an official proceeding for the offense that was the basis of the conviction or a lesser included offense except that the court in the interest of justice may waive this requirement; for the purposes of this purposes of this subparagraph, the entry of a guilty or nolo contendere plea is not an admission or concession of guilt"

Please make these amendments and let's go final.

Any questions give me a call.

Thx.

Representative_Jay_Ramras@legis.state.ak.us

26-LS1644\A
Luckhaupt
4/6/10

HOUSE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced:
Referred:

A RESOLUTION

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning Senate Bill No. 110, relating to the preservation of evidence and to the DNA identification system.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding changes to the title of a bill, are suspended in consideration of Senate Bill No. 110, relating to the preservation of evidence and to the DNA identification system.

26-LS0560\M
Luckhaupt
4/7/10

HOUSE CS FOR CS FOR SENATE BILL NO. 110(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATORS FRENCH, Wagoner, Dyson, Ellis, Paskvan, Menard, Wielechowski, Egan, Meyer, McGuire, Huggins, Stedman, Thomas, Stevens

A BILL

FOR AN ACT ENTITLED

"An Act relating to post-conviction DNA testing, to the preservation of certain evidence, and to the DNA identification registration system; relating to post-conviction relief procedures; relating to representation by the public defender; amending Rule 35.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

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

*** Section 1.** AS 12.36.020(a) is amended to read:

(a) A law enforcement agency may

(1) not return property in its custody to the owner or the agent of the owner**, except as provided in AS 12.36.200,** if

(A) the property is in custody in connection with a children's court proceeding, a criminal proceeding, or an official investigation of a crime; or

(B) the property in custody is subject to forfeiture under the laws of the

(i) state; or

(ii) United States, and the United States has commenced forfeiture proceedings against the property or has requested the transfer of the property for the commencement of forfeiture proceedings; and

(2) with the approval of the court, transfer the property to another state or federal law enforcement agency for forfeiture proceedings by that agency; the court having jurisdiction shall grant the approval under this paragraph if the property

(A) will be retained within the jurisdiction of the court by the agency to which the property is being transferred; or

(B) is

(i) not needed as evidence; or

(ii) needed as evidence, and the property is fungible or the property's evidentiary value can otherwise be preserved without retaining the property within the jurisdiction of the court.

*** Sec. 2.** AS 12.36.090 is amended to read:

Sec. 12.36.090. Definitions. In **AS 12.36.010 - 12.36.090** [THIS CHAPTER],

(1) "final disposition of a case" means the time when all appeals have been exhausted or the time when all appeals that could have been taken has expired;

(2) "law enforcement agency" means a public agency that performs as one of its principal functions an activity relating to crime prevention, control, or reduction or relating to the enforcement of the criminal law; "law enforcement agency" does not include a court.

*** Sec. 3.** AS 12.36 is amended by adding a new section to read:

Article 2. Preservation of Evidence.

Sec. 12.36.200. Preservation of evidence. (a) Notwithstanding AS 12.36.010 - 12.36.090, the Department of Law, the Department of Public Safety, the Alaska Court System, or a municipal law enforcement agency shall preserve

(1) all evidence that is obtained in relation to an investigation or prosecution of a crime under AS 11.41.100 - 11.41.130, 11.41.410, or 11.41.434 for the period of time that the crime remains unsolved or 50 years whichever ends first;

(2) biological evidence in an amount and manner that is sufficient to

develop a DNA profile from any material contained in or included on the evidence that was obtained in relation to the prosecution of a person convicted of, or adjudicated a delinquent for, a crime under AS 11.41.100 - 11.41.130, a person convicted of a crime after being indicted under AS 11.41.410 or 11.41.434 while the person remains a prisoner in the custody of the Department of Corrections or subject to registration as a sex offender, or a person adjudicated a delinquent for a crime after the filing of a petition alleging a violation of AS 11.41.410 or 11.41.434 while the person remains committed to a juvenile facility or subject to registration as a sex offender.

(b) Under (a) of this section, an agency is not required to preserve physical evidence of a crime that is of a size, bulk, quantity, or physical character that renders preservation impracticable. When preservation of evidence of a crime is impracticable, the agency shall, before returning or disposing of the evidence, remove and preserve portions of the material likely to contain relevant evidence related to the crime in a quantity sufficient to permit future DNA testing. In making decisions under this section, an agency shall follow written policies on evidence retention.

(c) Upon written request of a person convicted of a crime and a prisoner, adjudicated delinquent for a crime and committed, or subject to registration as a sex offender, an agency shall prepare or provide an inventory of biological evidence that has been preserved under (a)(2) of this section in connection with the person's criminal case.

(d) An agency required to preserve biological evidence under (a) of this section may destroy biological evidence before the expiration of the time period in (a)(2) of this section if

(1) the agency is not required to maintain the evidence under another provision of state or federal law;

(2) the agency mails a certified delivery of notice of intent to destroy evidence to

(A) each person who remains a prisoner or committed or subject to registration as a sex offender for the crime for which the evidence was preserved under (a)(2) of this section;

(B) the attorneys of record, if known, for each person listed in (A) of this paragraph;

(C) the Public Defender Agency;

(D) the district attorney responsible for prosecuting the crime; and

(3) no person who is notified under (2) of this subsection, within 120 days after receiving the notice,

(A) files a motion for testing of the evidence; or

(B) submits a written request for continued preservation of the evidence.

(e) Upon receipt of a request for continued preservation of biological evidence under (d)(3)(B) of this section, an agency may petition the court for permission to destroy the evidence. The court may grant the petition if the court finds that the request is without merit or that the evidence has no significant value for biological material.

(f) When an agency is required to produce biological evidence required to be preserved under this section and the agency is unable to locate the evidence, the chief evidence custodian of that agency shall submit an affidavit, executed under penalty of perjury, describing the evidence that could not be located and detailing the efforts taken to locate the evidence.

(g) If a court finds that evidence was destroyed in violation of the provisions of this section, the court may order remedies the court determines to be appropriate.

(h) A person may not bring a civil action for damages against the state or political subdivision of the state, their officers, agents, or employees, or a law enforcement agency, its officers, or employees for any unintentional failure to comply with the provisions of this section.

(i) In this section,

(1) "agency" means the Department of Law, the Department of Public Safety, the Alaska Court System, or a municipal law enforcement agency;

(2) "biological evidence" means

(A) the contents of a sexual assault forensic examination kit;

(B) semen, blood, hair, saliva, skin tissue, fingernail scrapings, bone, bodily fluids, or other identifiable human bodily material, collected as part of a criminal investigation;

(C) a slide, swab, or test tube containing material described in (B) of this paragraph; and

(D) swabs or cuttings from items that contain material described in (B) of this section;

(3) "DNA" means deoxyribonucleic acid;

(4) "prisoner" has the meaning given in AS 33.30.901.

* **Sec. 4.** AS 12.72.010 is amended to read:

Sec. 12.72.010. Scope of post-conviction relief. A person who has been convicted of, or sentenced for, a crime may institute a proceeding for post-conviction relief if the person claims

(1) that the conviction or the sentence was in violation of the Constitution of the United States or the constitution or laws of this state;

(2) that the court was without jurisdiction to impose sentence;

(3) that a prior conviction has been set aside and the prior conviction was used as a statutorily required enhancement of the sentence imposed;

(4) that there exists evidence of material facts, not previously presented and heard by the court, that requires vacation of the conviction or sentence in the interest of justice; **if the person seeks post-conviction DNA testing to support a claim under this paragraph, the person's exclusive method for obtaining that testing is an application under AS 12.73;**

(5) that the person's sentence has expired, or the person's probation, parole, or conditional release has been unlawfully revoked, or the person is otherwise unlawfully held in custody or other restraint;

(6) that the conviction or sentence is otherwise subject to collateral attack upon any ground or alleged error previously available under the common law, statutory law, or other writ, motion, petition, proceeding, or remedy;

(7) that

(A) there has been a significant change in law, whether

substantive or procedural, applied in the process leading to the person's conviction or sentence;

(B) the change in the law was not reasonably foreseeable by a judge or a competent attorney;

(C) it is appropriate to retroactively apply the change in law because the change requires observance of procedures without which the likelihood of an accurate conviction is seriously diminished; and

(D) the failure to retroactively apply the change in law would result in a fundamental miscarriage of justice, which is established by demonstrating that, had the changed law been in effect at the time of the applicant's trial, a reasonable trier of fact would have a reasonable doubt as to the guilt of the applicant;

(8) that, after the imposition of sentence, the applicant seeks to withdraw a plea of guilty or nolo contendere in order to correct manifest injustice under the Alaska Rules of Criminal Procedure; or

(9) that the applicant was not afforded effective assistance of counsel at trial or on direct appeal.

*** Sec. 5.** AS 12.72.030 is amended by adding a new subsection to read:

(b) A person who files an application for post-conviction relief under this chapter or the Alaska Rules of Criminal Procedure may not pursue discovery related to the application unless the applicant first pleads a prima facie case for relief and the court finds that a prima facie case for relief has been established under this chapter or the Alaska Rules of Criminal Procedure.

*** Sec. 6.** AS 12 is amended by adding a new chapter to read:

Chapter 73. Post-Conviction DNA Testing Procedures.

Sec. 12.73.010. Application for post-conviction DNA testing. (a) A person convicted of a felony against a person under AS 11.41 who has not been unconditionally discharged may apply to the superior court for an order for DNA testing of evidence. The application must be filed in the court that entered the judgment of conviction, and a copy shall be served on the prosecuting authority responsible for obtaining the conviction.

(b) An application filed under (a) of this section must specifically identify the evidence sought to be tested and must include facts from which the court can make the findings required under AS 12.73.020. The application must also include

(1) an affidavit by the applicant that attests to the following:

(A) the applicant did not commit the offense for which the applicant was convicted or a lesser included offense;

(B) the applicant did not solicit another person to commit, or aid or abet another person in planning or committing, that offense or a lesser included offense; and

(C) the applicant did not admit or concede guilt under oath in an official proceeding for the offense that was the basis of the conviction or a lesser included offense except that the court in the interest of justice may waive this requirement; for the purposes of this subparagraph, the entry of a guilty or nolo contendere plea is not an admission or concession of guilt;

(2) an affidavit by the applicant or the applicant's attorney stating the results of each DNA test performed on the evidence in the prosecution that resulted in the applicant's conviction;

(3) an affidavit by the applicant or the applicant's attorney describing all previous efforts to obtain DNA testing and any previous application filed under AS 12.72 of this section.

(c) An attorney who represents an applicant under this section shall investigate and, if possible, confirm the accuracy of information provided by the applicant under (b)(2) and (3) of this section.

(d) If an applicant is indigent, filing fees must be paid under AS 09.19, and counsel shall be appointed under AS 18.85.100 to represent the applicant.

Sec. 12.73.020. Findings required for post-conviction DNA testing orders. The court shall order post-conviction DNA testing of specific evidence if

(1) the applicant was convicted of a felony under AS 11.41;

(2) the applicant and, if represented, the applicant's attorney, have submitted the affidavits required by AS 12.73.010(b);

(3) the applicant has not, in an official proceeding, admitted or

conceded guilt for the crime that was the basis for the conviction unless the court in the interest of justice waives this requirement; for the purposes of this paragraph the entry of a guilty or nolo contendere plea is not an admission or concession of guilt;

(4) the evidence either

(A) was not subjected to DNA testing; or

(B) was previously subjected to DNA testing, and

(i) the applicant is requesting DNA testing using a method or technology that is substantially more probative than the previous DNA testing; or

(ii) the court determines that granting the application is in the best interest of justice;

(5) the evidence to be tested has been subject to a chain of custody and retained under conditions that ensure that the evidence has not been substituted, contaminated, or altered in any manner material to the proposed DNA testing;

(6) the proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices;

(7) the applicant identifies a theory of defense that

(A) is not inconsistent with a defense presented at trial; and

(B) would establish the applicant's innocence;

(8) the applicant was convicted after a trial and the identity of the perpetrator was a disputed issue in the trial;

(9) the proposed DNA testing of the specific evidence may produce new material evidence that would

(A) support the theory of defense described in (7) of this section; and

(B) raise a reasonable probability that the applicant did not commit the offense;

(10) the applicant consents to provide a DNA sample for purposes of comparison and to entry of the results into the DNA identification registration system under AS 44.41.035 and into any other law enforcement database; and

(11) the application is timely as described in AS 12.73.040.

Sec. 12.73.030. Summary dismissal and response. (a) If an application under AS 12.73.010(a) does not set out the specific facts necessary for the court to make the findings required under AS 12.73.020 or does not comply with AS 12.73.010(b), the court shall deny the application without further proceedings.

(b) If an application filed under AS 12.73.010(a) is not denied under (a) of this section, the prosecuting authority shall file a response within 45 days after service of the application. The court shall conduct an evidentiary hearing to resolve any disputed facts.

Sec. 12.73.040. Timeliness. In determining whether an application is timely under AS 12.73.020(11), there is a presumption of

(1) timeliness if the application is filed before three years after the date of conviction; this presumption may be rebutted if the court finds that the application is based solely upon information used in a previously denied application; and

(2) untimeliness if the application is filed three years or more after conviction; this presumption may be rebutted if the court finds good cause for filing three years or more after conviction.

Sec. 12.73.050. Testing procedures. (a) If the court grants the application and DNA samples for comparison purposes are required, samples taken from the applicant or a prisoner must be collected at a law enforcement or correctional facility. If the DNA sample is being collected from a person other than the applicant or a prisoner, the sample must be taken by a law enforcement officer or other authorized person at a location that is convenient for the person from whom the sample is being collected and the person collecting the sample.

(b) The court may not order that a person other than the applicant provide a DNA sample for comparison purposes unless that person is first afforded notice and an opportunity to be heard by the court. The results of DNA testing of a sample provided by a person other than the applicant may not be made available to the DNA identification registration system under AS 44.41.035 or to any other law enforcement database unless specifically ordered by the court.

(c) DNA testing ordered under this section shall be performed at the state's expense and at a laboratory operated or approved by the Department of Public Safety.

If, after completion of the testing ordered under this section, an applicant requests additional testing, any additional testing ordered by the court at the applicant's request must be at the applicant's expense. If the court orders additional testing by another laboratory at the request of the applicant, the laboratory operated or approved by the Department of Public Safety shall preserve a portion of the evidence for later testing. A laboratory selected by the applicant to perform testing under this section must comply with the quality assurance standards for DNA adopted by the United States Department of Justice and be accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board or the accepted as equivalent by the Department of Public Safety.

(d) Except as provided in (b) of this section, the results of testing ordered under this section shall be entered into the DNA identification registration system under AS 44.41.035 and into any other law enforcement database available to the Department of Public Safety.

Sec. 12.73.060. Post-conviction testing by stipulation. The provisions of this chapter do not prohibit an applicant and the prosecuting authority from agreeing to conduct post-conviction DNA testing without the person's filing an application under this chapter. The parties may also stipulate to the payment of costs for the DNA testing and other costs associated with the terms of the agreement.

Sec. 12.73.090. Definitions. In this chapter, unless the context requires otherwise,

(1) "DNA" means deoxyribonucleic acid;

(2) "innocence" or "innocent" means that the applicant was not a perpetrator of or an accomplice to the offense or lesser included offense for which the applicant was convicted;

(3) "prisoner" has the meaning given in AS 33.30.901;

(4) "unconditionally discharged" means that a defendant is released from all disability arising under a sentence, including probation and parole.

*** Sec. 7.** AS 18.85.100 is amended by adding a new subsection to read:

(g) An indigent person is entitled to representation under (a) and (b) of this section for purposes of bringing an application for post-conviction DNA testing under

AS 12.73.

*** Sec. 8.** AS 44.41.035(b) is amended to read:

(b) The Department of Public Safety shall collect for inclusion into the DNA identification registration system a blood sample, oral sample, or both, from (1) a person convicted in this state of a crime against a person or a felony under AS 11 or AS 28.35 or a law or ordinance with elements similar to a crime against a person or a felony under AS 11 or AS 28.35, (2) a minor [16 YEARS OF AGE OR OLDER,] adjudicated as a delinquent in this state for an act **committed when the minor was 16 years of age or older,** that would be a crime against a person or a felony under AS 11 or AS 28.35 if committed by an adult or for an act that would violate a law or ordinance with elements similar to a crime against a person or a felony under AS 11 or AS 28.35 if committed by an adult, (3) a voluntary donor, (4) an anonymous DNA donor for use in forensic validation, forensic protocol development, quality control, or population or statistical data bases, (5) a person required to register as a sex offender or child kidnapper under AS 12.63, and (6) a person arrested for a crime against a person or a felony under AS 11 or AS 28.35, or a law or ordinance with elements similar to a crime against a person or a felony under AS 11 or AS 28.35. The department also may collect for inclusion into the DNA identification registration system a blood sample, oral sample, or tissue sample from crime scene evidence or from unidentified human remains. The DNA identification registration system consists of the blood, oral, or tissue samples drawn under this section, any DNA or other blood grouping tests done on those samples, and the identification data related to the samples or tests. Blood samples, oral samples, and tissue samples not subject to testing under this section, and test or identification data related to those samples, may not be entered into, or made a part of, the DNA identification registration system.

*** Sec. 9.** AS 44.41.035(g) is amended to read:

(g) A person **or minor** from whom a sample has been collected under this section

(1) may inspect and obtain a copy of the identification data regarding the person **or minor** contained within the DNA identification registration system**; and**

(2) may request the Department of Public Safety to destroy the

material in the system regarding the person or minor under the provisions described in (i) of this section.

*** Sec. 10.** AS 44.41.035(i) is amended to read:

(i) The Department of Public Safety shall [, UPON RECEIPT OF A COURT ORDER,] destroy the material in the system relating to a person **or minor on the written request of the person or minor, if the request is accompanied by a certified copy of a court order making the written findings required by this subsection**. The court shall issue **an** [THE] order **under this subsection** if the person's or minor's DNA was included in the system under

(1) (b)(1) or (2) of this section, and the court **order establishes** [DETERMINES] that

(A) the conviction or adjudication that subjected the person to having a sample taken under this section **was** [IS] reversed; and

(B) the person

(i) **was** [IS] not retried, readjudicated, or convicted or adjudicated for another crime that requires having a sample taken under this section; or

(ii) after retrial, **was** [IS] acquitted of the crime or, after readjudication for the crime, **was** [IS] not found to be a delinquent, and **was** [IS] not convicted or adjudicated for another crime that requires a sample under this section;

(2) (b)(6) of this section, and the court **order establishes** [DETERMINES] that

(A) the person arrested was released without being charged; [OR]

(B) the criminal complaint, indictment, presentment, or information for the offense for which the person was arrested was dismissed, and a criminal complaint, indictment, presentment, or information for an offense requiring submission of a DNA sample **was** [IS] not refiled**; or**

(C) the person was found by the trier of fact to be not guilty of the offense for which the person was arrested and was not convicted of

another offense requiring submission of a DNA sample under (b)(1) or (2) of this section.

*** Sec. 11.** AS 44.41.035(k) is amended to read:

(k) The provisions of this section apply to a person **or a minor** from another state that this state has accepted under any interstate corrections or probation agreement or compact, regardless of whether the person **or minor** is confined or released, if the person was convicted of **or the minor was adjudicated for** an offense that is similar to an offense described in (b) of this section.

*** Sec. 12.** AS 44.41.035(o) is amended to read:

(o) A person **or minor** may not bring a civil action against the state or a municipality, or their employees or agents, for actions arising out of DNA collection in conformity with this section.

*** Sec. 13.** AS 44.41.035 is amended by adding subsections to read:

(r) A DNA sample collected or placed in the DNA identification registration system that was taken or retained in good faith may be used as provided by law in a criminal investigation. Evidence obtained from a match from a data collection system may be used in a criminal prosecution or juvenile adjudication if the DNA sample was taken or retained in good faith, even if the DNA sample is later removed from the DNA identification registration system.

(s) If a sample collected under (b) of this section does not contain sufficient material necessary to obtain an accurate DNA identification authorized under this section, the Department of Public Safety or other agency authorized by the Department of Public Safety may collect another sample.

*** Sec. 14.** The uncodified law of the State of Alaska is amended by adding a new section to read:

INDIRECT COURT RULE CHANGE. AS 12.73, added by sec. 6 of this Act, has the effect of amending Rule 35.1, Alaska Rules of Criminal Procedure, relating to post-conviction relief procedure.

*** Sec. 15.** The uncodified law of the State of Alaska is amended by adding a new section to read:

TASK FORCE ON STANDARDS AND TRAINING OF EVIDENCE

TECHNICIANS. (a) The Task Force on Standards and Training of Evidence Technicians is created in the Department of Law. The task force consists of the following persons appointed by the governor:

(1) the attorney general;

(2) the public defender;

(3) the director of the office of public advocacy;

(4) a chief of a municipal police department not on the state's interconnected road system;

(5) the commissioner of public safety;

(6) a chief of a municipal police department;

(7) a representative of the Alaska Innocence Project;

(8) a representative of the Alaska Native Justice Center; and

(9) a representative of the state crime lab.

(b) There shall be three ex officio members of the task force as follows:

(1) a member of the House Judiciary Committee selected by the speaker of the house of representatives;

(2) a member of the Senate Judiciary Committee selected by the president of the senate; and

(3) the victims' advocate.

(c) Persons appointed under (a) of this section or identified under (b) of this section may select a designee from the same agency or organization to act on the person's behalf as a member of the task force.

(d) Not later than December 31, 2012, the task force shall

(1) devise standards regarding the proper collection, retention, and cataloging of evidence, for ongoing investigations and prosecutions;

(2) recommend practices, protocols, models, and resources for the cataloging and accessibility of preserved evidence.

*** Sec. 16.** The uncodified law of the State of Alaska is amended by adding a new section to read:

APPLICABILITY. (a) AS 12.36.200, enacted by sec. 3 of this Act, applies to all evidence in the possession of an agency, as defined in AS 12.36.200(i), on or after January 1,

2011, for evidence collected before, on, or after the effective date of this Act.

(b) AS 12.73, enacted by sec. 6 of this Act, applies to offenses committed before, on, or after the effective date of this Act.

(c) Notwithstanding any other provision of law, a person whose conviction was entered before July 1, 2010, has until July 1, 2020, to file a claim under AS 12.73, enacted by sec. 6 of this Act, or a later date if the court finds good cause for a later filing.

*** Sec. 17.** The uncodified law of the State of Alaska is amended by adding a new section to read:

CONDITIONAL EFFECT. AS 12.73, added by sec. 6 of this Act, takes effect only if sec. 14 of this Act receives the two-thirds majority vote of each house required by art. IV, sec. 15, Constitution of the State of Alaska.

*** Sec. 18.** Section 15 of this Act is repealed January 1, 2013.

*** Sec. 19.** This Act takes effect July 1, 2010.

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
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Alaska State Legislature

House of Representatives

Interim:
1292 Sadler Way, Suite 324
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Phone: (907) 452-1088
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House District 10

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: April 6, 2010

Re: HJUD CS for SB110 (26-LS0560\C) and HB316(26-GH2812\R) HB316

Jerry, As discussed, here are the last three amendments for SB110:

P. 1, L 10 SB 110 after "unsolved" insert an outward time limit of **50** (sorry, I told you 30 before) years, whichever comes first.

HB316

P. 8, L. 7 after "guilt" insert "under oath"
P.8, L. 9 after "offense" insert something to the effect "except that the court in the interest of justice can waive this requirement"

P. 8, L. 17-21 Delete all material

We are good to go w/ the CS!

Representative_Jay_Ramras@legis.state.ak.us

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
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House District 10

Fax

To: Jerry Luckhaupt
Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 2

From: Jane W. Pierson

Date: April 6, 2010

Re: HJUD CS for SB110 (26-LS0560\C) and HB316(26-GH2812)

Jerry, As discussed, we are going to do a CS for SB110, blending SB110 and HB316. The new bill will be SB110. However, that being said, it is easier to use HB316 as the working document.

Section 3, Delete Article 2 _ PRESERVATION OF EVIDENCE and insert - Article 2. PRESERVATION OF EVIDENCE from SB110, with two small changes:

P. 1, L 10 after "unsolved" insert an outward time limit of 50 years, whichever comes first. P.1, L.30

P. 6, After L. 3, Add a representative of the Alaska Native Justice Center to the task force. P.14. Line 2

Next changes are to HB316.

P.9, L. 5-6 remove all materials – (4) Findings - evidence sometimes obtained in part Removed

~~P. 9, L. 23 after "(9)" insert "if"~~ – would be "if"

P. 9, L25 – 27 Delete all material
Insert

Cost for testing
Cost for retrieval.

Representative_Jay_Ramras@legis.state.ak.us

(10) The proposed DNA testing of the specific evidence may produce new material evidence that would;

(A) support the theory of defense referenced in paragraph (8); and

(B) raise a reasonable probability that the applicant did not commit the offense.

We need to drop all assignment of costs references for retrieval of evidence.

P. 16, L 25 Delete "2013" and insert "2020"

Issues still in the works:

P.8, L. 7-10 and P.9, L. 1-4 – Admission of guilt in an official proceeding

P. 8, L 11-13 - Affidavit of Attorney

Representative_Jay_Ramras@legis.state.ak.us

Senator Hollis French

SB110 Preservation of Evidence
Sectional Analysis

Section 1.

Section 1 creates new provisions in the criminal code for the preservation of evidence that require state agencies and municipal law enforcement agencies to preserve all evidence that relate to unsolved cases of murder and 1st degree sexual assault and 1st degree sexual abuse of a minor.

The section further requires that biological evidence in these crimes be retained while a person remains a prisoner in the custody of the Department of Corrections or subject to registration as a sex offender.

The section then provides that evidence that is impracticable due to size or other characteristics to retain may be destroyed after removal and preservation of portions likely to contain relevant evidence, and that evidence can be destroyed before the expiration of the time period by following a notice procedure outlined in the bill.

The section provides for the court to order remedies if evidence is destroyed in violation of this section, and protects agencies from civil immunity for unintentional failure to comply with the provisions of the section.

Finally, section one provides definitions of terms.

Sections 2, 3 and 4, make amendments to the disposal of DNA for persons who are not guilty of offences for which they were arrested.

Section 5 establishes a task force to address standards and practices for the proper collection and preservation of preserved evidence.

Section 6 establishes the applicability of section 1.

Section 7 provides a repeal of the task force established in Section 5.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 4
Bill Version: CSSB 110(FIN)
(S) Publish Date: 3/15/10

Identifier (file name): CSSB 110(JUD)
Dept. Affected: Public Safety
Title: Preservation of Evidence
RDU: Statewide Support
Component: Laboratory Services
Sponsor: Senator French
Requester: Senate Finance Committee
Component Number:

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

Prepared by: Darwin Peterson
Phone 465-3873/465-4453
Senate Finance Committee
Date/Time 3/12/10 8:30 AM
Approved by: Co-Chair Bert Stedman/Co-Chair Lyman Hoffman
Date

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 5
Bill Version: CSSB 110(FIN)
(S) Publish Date: 3/15/10

Identifier (file name): CSSB110-DPS-AST-03-10-10
Dept. Affected: Public Safety
Title "An Act relating to the preservation of evidence."
RDU Alaska State Troopers
Component AST Detachments
Sponsor Senator French
Requester Senate Finance
Component Number 2325

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill amends AS 12.36.010 by adding a new section which requires the preservation of evidence in crimes listed under AS 11.41.100 - 11.41.130. This legislation will result in additional evidence being stored for a longer period of time. It is expected that the requirements of this bill will be manageable and have no fiscal impact on the department.

Prepared by: Lt. Rodney Dial
Phone 907-247-4480
Division Alaska State Troopers
Date/Time 03-10-10 / 4:00
Approved by: Joseph Masters, Commissioner
Department of Public Safety
Date 3/10/2010

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 6
Bill Version: CSSB 110(FIN)
(S) Publish Date: 3/15/10

Identifier (file name): SB110CS(JUD)-LAW-CRIM-03-09-10
Dept. Affected: Law
Title: An Act relating to the preservation of evidence and to the DNA identification system.
RDU: Criminal
Component: Criminal Justice Litigation
Sponsor: Senator French
Requester: Judiciary
Component Number: 2203

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services	0.0		0.0	0.0	0.0	0.0	0.0
Travel	2.5		0.0	0.0	0.0	0.0	0.0
Contractual	2.0		0.0	0.0	0.0	0.0	0.0
Supplies	0.5		0.0	0.0	0.0	0.0	0.0
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**5.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	5.0		0.0	0.0	0.0	0.0	0.0
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**5.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

Prepared by: Eileen Donahue, Division Operations Manager
Phone 465-5427
Division: Administrative Services Division
Date/Time 3/9/10 4:30 PM
Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date 3/9/2010

(Revised 11/6/2009 OMB)

STATE OF ALASKA **BILL NO.** CSSB 110(FIN)
2010 LEGISLATIVE SESSION

ANALYSIS CONTINUATION

CSSB110(JUD) would establish requirements for the preservation or retention of certain types of evidentiary material. Since Law only maintains temporary custody and returns such material to the investigating agency there will be no fiscal impact on Law from this portion of the bill.

The bill also adopts a procedure for a person whose DNA is collected at the time the person is arrested for a felony offense but who is later acquitted of the charge to request that his or her DNA be removed from the system. It also provides that DNA included in the DNA identification registration system in good faith, even if it is later removed, may be used a provided by law in a criminal investigation.

Section 5 of the bill establishes a "Task Force on Standards and Training of Evidence Technicians" under the Department of Law and directs the Task Force to complete its work by 12/31/2011. In contemplating the creation and assignment of the Task Force to Law it is clear there will be a period of considerable staff work involved (for which Law is not seeking additional monetary support). In addition, the potential also exists for some significant out-of-pocket costs. With eleven members on the task force including the Attorney General, the Chief Justice, and members of the Legislature it seems reasonable to conclude some face-to-face meetings would be necessary. Law will minimize such costs by carrying out the extensive and detailed interagency staff work largely (if not entirely) via teleconference, videoconference, etc. Presuming all participating agencies would assume their own costs, Law would anticipate incurring travel and other associated Task Force related expenses not to exceed $5,000.00 in FY11.

NB: This unofficial compilation of the U.S. Code is current as of Jan. 8, 2008 (see http://www.law.cornell.edu/uscode/uscprint.html).

TITLE 18 - CRIMES AND CRIMINAL PROCEDURE
PART II - CRIMINAL PROCEDURE
CHAPTER 228A - POST-CONVICTION DNA TESTING

§ 3600. DNA testing

(a) **In General.**— Upon a written motion by an individual under a sentence of imprisonment or death pursuant to a conviction for a Federal offense (referred to in this section as the "applicant"), the court that entered the judgment of conviction shall order DNA testing of specific evidence if the court finds that all of the following apply:

(1) The applicant asserts, under penalty of perjury, that the applicant is actually innocent of—

(A) the Federal offense for which the applicant is under a sentence of imprisonment or death; or

(B) another Federal or State offense, if—

(i) evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or new sentencing hearing; and

(ii) in the case of a State offense—

(I) the applicant demonstrates that there is no adequate remedy under State law to permit DNA testing of the specified evidence relating to the State offense; and

(II) to the extent available, the applicant has exhausted all remedies available under State law for requesting DNA testing of specified evidence relating to the State offense.

(2) The specific evidence to be tested was secured in relation to the investigation or prosecution of the Federal or State offense referenced in the applicant's assertion under paragraph (1).

(3) The specific evidence to be tested—

(A) was not previously subjected to DNA testing and the applicant did not—

(i) knowingly and voluntarily waive the right to request DNA testing of that evidence in a court proceeding after the date of enactment of the Innocence Protection Act of 2004; or

(ii) knowingly fail to request DNA testing of that evidence in a prior motion for postconviction DNA testing; or

(B) was previously subjected to DNA testing and the applicant is requesting DNA testing using a new method or technology that is substantially more probative than the prior DNA testing.

(4) The specific evidence to be tested is in the possession of the Government and has been subject to a chain of custody and retained under conditions sufficient to ensure that such evidence has not been substituted, contaminated, tampered with, replaced, or altered in any respect material to the proposed DNA testing.

(5) The proposed DNA testing is reasonable in scope, uses scientifically sound methods, and is consistent with accepted forensic practices.

(6) The applicant identifies a theory of defense that—

(A) is not inconsistent with an affirmative defense presented at trial; and

(B) would establish the actual innocence of the applicant of the Federal or State offense referenced in the applicant's assertion under paragraph (1).

(7) If the applicant was convicted following a trial, the identity of the perpetrator was at issue in the trial.

Add (8)

(8) The proposed DNA testing of the specific evidence may produce new material evidence that would—

(A) support the theory of defense referenced in paragraph (6); and

(B) raise a reasonable probability that the applicant did not commit the offense.

(9) The applicant certifies that the applicant will provide a DNA sample for purposes of comparison.

(10) The motion is made in a timely fashion, subject to the following conditions:

(A) There shall be a rebuttable presumption of timeliness if the motion is made within 60 months of enactment of the Justice For All Act of 2004 or within 36 months of conviction, whichever comes later. Such presumption may be rebutted upon a showing—

(i) that the applicant's motion for a DNA test is based solely upon information used in a previously denied motion; or

(ii) of clear and convincing evidence that the applicant's filing is done solely to cause delay or harass.

(B) There shall be a rebuttable presumption against timeliness for any motion not satisfying subparagraph (A) above. Such presumption may be rebutted upon the court's finding—

(i) that the applicant was or is incompetent and such incompetence substantially contributed to the delay in the applicant's motion for a DNA test;

(ii) the evidence to be tested is newly discovered DNA evidence;

(iii) that the applicant's motion is not based solely upon the applicant's own assertion of innocence and, after considering all relevant facts and circumstances surrounding the motion, a denial would result in a manifest injustice; or

(iv) upon good cause shown.

(C) For purposes of this paragraph—

(i) the term "incompetence" has the meaning as defined in section 4241 of title 18, United States Code;

(ii) the term "manifest" means that which is unmistakable, clear, plain, or indisputable and requires that the opposite conclusion be clearly evident.

(b) **Notice to the Government; Preservation Order; Appointment of Counsel.—**

(1) **Notice.—** Upon the receipt of a motion filed under subsection (a), the court shall—

(A) notify the Government; and

(B) allow the Government a reasonable time period to respond to the motion.

(2) **Preservation order.—** To the extent necessary to carry out proceedings under this section, the court shall direct the Government to preserve the specific evidence relating to a motion under subsection (a).

(3) **Appointment of counsel.—** The court may appoint counsel for an indigent applicant under this section in the same manner as in a proceeding under section 3006A (a)(2)(B).

(c) **Testing Procedures.—**

(1) **In general.—** The court shall direct that any DNA testing ordered under this section be carried out by the Federal Bureau of Investigation.

(2) **Exception.—** Notwithstanding paragraph (1), the court may order DNA testing by another qualified laboratory if the court makes all necessary orders to ensure the integrity of the specific evidence and the reliability of the testing process and test results.

(3) **Costs.—** The costs of any DNA testing ordered under this section shall be paid—

(A) by the applicant; or

(B) in the case of an applicant who is indigent, by the Government.

(d) **Time Limitation in Capital Cases.—** In any case in which the applicant is sentenced to death—

(1) any DNA testing ordered under this section shall be completed not later than 60 days after the date on which the Government responds to the motion filed under subsection (a); and

(2) not later than 120 days after the date on which the DNA testing ordered under this section is completed, the court shall order any post-testing procedures under subsection (f) or (g), as appropriate.

(e) Reporting of Test Results.—

(1) In general.— The results of any DNA testing ordered under this section shall be simultaneously disclosed to the court, the applicant, and the Government.

(2) NDIS.— The Government shall submit any test results relating to the DNA of the applicant to the National DNA Index System (referred to in this subsection as "NDIS").

(3) Retention of dna sample.—

(A) Entry into ndis.— If the DNA test results obtained under this section are inconclusive or show that the applicant was the source of the DNA evidence, the DNA sample of the applicant may be retained in NDIS.

(B) Match with other offense.— If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant results in a match between the DNA sample of the applicant and another offense, the Attorney General shall notify the appropriate agency and preserve the DNA sample of the applicant.

(C) No match.— If the DNA test results obtained under this section exclude the applicant as the source of the DNA evidence, and a comparison of the DNA sample of the applicant does not result in a match between the DNA sample of the applicant and another offense, the Attorney General shall destroy the DNA sample of the applicant and ensure that such information is not retained in NDIS if there is no other legal authority to retain the DNA sample of the applicant in NDIS.

(f) Post-Testing Procedures; Inconclusive and Inculpatory Results.—

(1) Inconclusive results.— If DNA test results obtained under this section are inconclusive, the court may order further testing, if appropriate, or may deny the applicant relief.

(2) Inculpatory results.— If DNA test results obtained under this section show that the applicant was the source of the DNA evidence, the court shall—

(A) deny the applicant relief; and

(B) on motion of the Government—

(i) make a determination whether the applicant's assertion of actual innocence was false, and, if the court makes such a finding, the court may hold the applicant in contempt;

(ii) assess against the applicant the cost of any DNA testing carried out under this section;

(iii) forward the finding to the Director of the Bureau of Prisons, who, upon receipt of such a finding, may deny, wholly or in part, the good conduct credit authorized under section 3632 on the basis of that finding;

(iv) if the applicant is subject to the jurisdiction of the United States Parole Commission, forward the finding to the Commission so that the Commission may deny parole on the basis of that finding; and

(v) if the DNA test results relate to a State offense, forward the finding to any appropriate State official.

(3) Sentence.— In any prosecution of an applicant under chapter 79 for false assertions or other conduct in proceedings under this section, the court, upon conviction of the applicant, shall sentence the applicant to a term of imprisonment of not less than 3 years, which shall run consecutively to any other term of imprisonment the applicant is serving.

(g) Post-Testing Procedures; Motion for New Trial or Resentencing.—

(1) In general.— Notwithstanding any law that would bar a motion under this paragraph as untimely, if DNA test results obtained under this section exclude the applicant as the source of

the DNA evidence, the applicant may file a motion for a new trial or resentencing, as appropriate. The court shall establish a reasonable schedule for the applicant to file such a motion and for the Government to respond to the motion.

(2) Standard for granting motion for new trial or resentencing.— The court shall grant the motion of the applicant for a new trial or resentencing, as appropriate, if the DNA test results, when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by compelling evidence that a new trial would result in an acquittal of—

(A) in the case of a motion for a new trial, the Federal offense for which the applicant is under a sentence of imprisonment or death; and

(B) in the case of a motion for resentencing, another Federal or State offense, if evidence of such offense was admitted during a Federal death sentencing hearing and exoneration of such offense would entitle the applicant to a reduced sentence or a new sentencing proceeding.

(h) Other Laws Unaffected.—

(1) Post-conviction relief.— Nothing in this section shall affect the circumstances under which a person may obtain DNA testing or post-conviction relief under any other law.

(2) Habeas corpus.— Nothing in this section shall provide a basis for relief in any Federal habeas corpus proceeding.

(3) Not a motion under section 2255.— A motion under this section shall not be considered to be a motion under section 2255 for purposes of determining whether the motion or any other motion is a second or successive motion under section 2255.

(Added Pub. L. 108–405, title IV, § 411(a)(1), Oct. 30, 2004, 118 Stat. 2279.)

References in Text

The date of enactment of the Innocence Protection Act of 2004, referred to in subsec. (a)(3)(A)(i), is the date of enactment of Pub. L. 108–405, which was approved Oct. 30, 2004.

Enactment of the Justice For All Act of 2004, referred to in subsec. (a)(10)(A), is the enactment of Pub. L. 108–405, which was approved Oct. 30, 2004.

Effective Date

Pub. L. 108–405, title IV, § 411(c), Oct. 30, 2004, 118 Stat. 2284, provided that: "*This* section [*enacting* this *chapter* and provisions set out as a note under this section] and the amendments made by this section shall take effect on the date of enactment of this Act [Oct. 30, 2004] and shall apply with respect to any offense committed, and to any judgment of conviction entered, before, on, or after that date of enactment."

Short Title of 2004 Amendment

Pub. L. 108–405, title IV, § 401, Oct. 30, 2004, 118 Stat. 2278, provided that: "This title [enacting this chapter and sections 14136e and 14163 to 14163e of Title 42, The Public Health and Welfare, amending section 2513 of Title 28, Judiciary and Judicial Procedure, and enacting provisions set out as notes under this section and section 14136 of Title 42] may be cited as the 'Innocence Protection Act of 2004'."

System for Reporting Motions

Pub. L. 108–405, title IV, § 411(b), Oct. 30, 2004, 118 Stat. 2284, provided that:

"(1) Establishment.—The Attorney General shall establish a system for reporting and tracking motions filed in accordance with section 3600 of title 18, United States Code.

"(2) Operation.—In operating the system established under paragraph (1), the Federal courts shall provide to the Attorney General any requested assistance in operating such a system and in ensuring the accuracy and completeness of information included in that system.

"(3) Report.—Not later than 2 years after the date of enactment of this Act [Oct. 30, 2004], the Attorney General shall submit a report to Congress that contains—

"(A) a list of motions filed under section 3600 of title 18, United States Code, as added by this title;

NB: This unofficial compilation of the U.S. Code is current as of Jan. 8, 2008 (see http://www.law.cornell.edu/uscode/uscprint.html).

"(B) whether DNA testing was ordered pursuant to such a motion;

"(C) whether the applicant obtained relief on the basis of DNA test results; and

"(D) whether further proceedings occurred following a granting of relief and the outcome of such proceedings.

"(4) Additional information.—The report required to be submitted under paragraph (3) may include any other information the Attorney General determines to be relevant in assessing the operation, utility, or costs of section 3600 of title 18, United States Code, as added by this title, and any recommendations the Attorney General may have relating to future legislative action concerning that section."

COMPARISON OF FEDERAL INNOCENCE PROTECTION ACT TO SB 241, SEC. 6

If the evidence to be tested was not previously subjected to DNA testing, the IPA requires that the applicant did not knowingly or voluntarily waive the right to request testing after the enactment date of the IPA or knowingly fail to request DNA testing of that evidence in a prior motion for postconviction DNA testing. § 3600(a)(3)(A).	If the evidence to be tested was not previously subjected to DNA testing, HB 241 would require that the applicant did not waive or that his lawyer did not forgo for tactical reasons the right to request DNA testing. AS 12.73.020(5)(A).
If the evidence was previously subjected to DNA testing, the IPA requires that the testing currently sought be based on a new technology that is substantially more probative than the prior DNA testing. § 3600(a)(3)(B).	If the evidence was previously subjected to DNA testing, HB 241 would require that the testing currently sought be based on a method or technology that is substantially more probative than the prior DNA testing and that the applicant did not waive or that his lawyer did not forgo for tactical reasons the right to request DNA testing whose probative value was similar to the method to be used in the requested testing. AS 12.73.020(5)(B).
The IPA requires that the evidence to be tested must be in the government's possession, has been subject to a chain of custody, and retained under conditions that ensure the integrity of the evidence. § 3600(a)(4).	HB 241 would impose the same requirements of chain of custody and retention. AS 12.73.020(6). (HB 241 does not expressly require that the evidence be in the government's possession, but that requirement is implied by AS 12.73.020(4), which requires that the evidence to be tested must have been obtained as part of the investigation or prosecution of an offense.)
The IPA requires that the proposed testing be reasonable in scope and involves scientifically sound methods consistent with forensic practices. § 3600(a)(5).	HB 241 has an identical requirement. AS 12.73.020(7).

Innocence Protection Act – 18 U.S.C. § 3600	*HB 241, sec. 6 – AS 12.73*
The IPA requires the applicant to identify a theory of defense that is not inconsistent with an affirmative defense presented at trial and that would establish the applicant's actual innocence of the offense for which he seeks exoneration. § 3600(a)(6).	HB 241 has an identical requirement. AS 12.73.020(8).
If the applicant was convicted after a trial, the IPA requires that the identity of the perpetrator must have been an issue at the applicant's trial. § 3600(a)(7).	HB 241 would require that the identity of the perpetrator must have been a disputed issue at the applicant's trial. AS 12.73.020(9).
The IPA requires that the requested DNA testing of the evidence "may produce new material evidence" that would support the theory of defense identified by the applicant and would "raise a reasonable probability that the applicant did not commit the offense." § 3600(a)(8).	HB 241 would require that the requested DNA testing of the evidence "will produce new material evidence" that would support the theory of defense identified by the applicant and "could conclusively establish that the applicant is innocent." AS 12.73.020(10).
The IPA requires that the applicant consent to provide a DNA sample for comparison purposes. § 3600(a)(9). The IPA also requires that any results of testing relating to the applicant's DNA be submitted to the National DNA Index System (NDIS). § 3600(e)(2).	HB 241 would impose a similar requirement. HB 241 would require the defendant to consent to entering the results into the DNA identification registration system (AS 44.41.035) and any other law enforcement database. AS 12.73.020(11).

Innocence Protection Act – 18 U.S.C. § 3600	*HB 241, sec. 6 – AS 12.73*
The IPA requires that the request for testing be timely. § 3600(a)(10). Timeliness is determined by two rebuttable presumptions:	HB 241 would require that the request for testing be timely. AS 12.73.020(12). Timeliness would be determined by two rebuttable presumptions:
(1) a motion made within the later of 5 years after enactment of the IPA or 3 years after conviction is presumed to be timely; this presumption may be rebutted by showing (a) the motion is based solely on information used in a previously denied motion or (b) by clear and convincing evidence that the motion is solely for the purpose of delay or harassment;	(1) an application filed within 3 years after the date of conviction would be presumed to be timely; this presumption may be rebutted by showing that the application is based solely on information used in a previously denied application;
(2) a motion filed after the above deadlines is presumed to be untimely; this presumption may be rebutted by showing (a) that the applicant is incompetent and that incompetence substantially contributed to the delay in filing, (b) the evidence to be tested is newly discovered evidence, (c) the motion is not based solely on the applicant's own assertion of innocence and, based on all relevant facts and circumstances surrounding the motion, denial of the motion would be manifestly unjust, or (d) "upon good cause shown." § 3600(a)(10).	(2) an application filed after the above deadline would be presumed to be untimely; this presumption may be rebutted by showing (a) that the applicant is incompetent and that incompetence substantially contributed to the delay in filing, or (b) "other good cause" for the delay. AS 12.73.040.
When an applicant files a motion under the IPA, the court must notify the government, direct the government to preserve the specific evidence referred to in the motion, and may appoint a lawyer for the applicant. § 3600(b).	HB 241 would require an applicant to serve the application on "the prosecuting authority responsible for obtaining the conviction." AS 12.73.010(a).

Innocence Protection Act – 18 U.S.C. § 3600	*HB 241, sec. 6 – AS 12.73*
The IPA requires that any DNA testing ordered by carried out by the FBI, but the court may allow testing by another qualified laboratory so long as integrity of the evidence and reliability of the testing is ensured. The cost of testing shall be borne by the applicant, but if the applicant is indigent, the government will bear the cost. § 3600(c).	HB 241 would require that testing by performed at a laboratory operated or approved by the Department of Public Safety and at the state's expense. A court could order additional testing at the applicant's request, but that would be at the applicant's expense. In addition, the laboratory selected by the applicant would have to satisfy national quality-assurance standards. The applicant would also have to pay any reasonable costs for retrieving the evidence from storage before testing. AS 12.73.050(c).
Under the IPA, if the results of the new DNA testing are inconclusive or show that the applicant was the source of the evidence, then the applicant's sample may be retained in the NDIS. § 3600(e)(3)(A). If the results of the new DNA testing exclude the applicant as the source, but the applicant's DNA matches evidence of another offense, then the Attorney General must notify the appropriate agency and preserve the applicant's sample. § 3600(e)(3)(B). If the results of the new DNA testing exclude the applicant as the source and there exists no match with evidence of another offense, then the applicant's sample shall be destroyed and no information may be retained in the NDIS absent some other basis for retention. § 3600(e)(3)(C).	HB 241 would require that results of any testing of the applicant's DNA be entered in the DNA identification registration system under AS 44.41.035. While HB 241 makes no provision for destruction of samples or retention of information, AS 44.41.035(*i*) authorizes a court to order destruction of DNA material included in the system.

Innocence Protection Act – 18 U.S.C. § 3600 *HB 241, sec. 6 – AS 12.73*

Notwithstanding any other limitations that may exist, the IPA authorizes an applicant to file a motion for new trial if the new DNA testing excluded the applicant as the source of the evidence. § 3600(g)(1). The court must grant the motion if the DNA test results, "when considered with all other evidence in the case (regardless of whether such evidence was introduced at trial), establish by compelling evidence that a new trial would result in an acquittal of the offense for which the applicant is imprisoned. § 3600(g)(2)(A).

HB 241 does not address what would happen if new DNA testing were to exclude the applicant as the source of the evidence. However, a favorable test result would form the basis for an application for postconviction relief based on the existence of new, material facts "that requires vacation of the conviction . . . in the interest of justice," AS 12.72.010(4).

Section 6 of SB 241 includes provisions that find no analogue in the IPA. Both the IPA and section 6 authorize postconviction DNA testing only when a court makes the specific findings set forth in the statutes. *See* § 3600(a); AS 12.73.020. Those findings implicitly establish the factual allegations an applicant must make in the motion under the IPA or the application under section 6. Section 6 goes a step further and requires an applicant to submit affidavits from (1) the applicant, attesting that he did not admit or concede guilt in any official proceeding for the offense that was the basis of the conviction or any lesser included offense, AS 12.73.010(b)(1)(C) (CSHB 316 (Jud) amended this provision by defining admission or concession of guilt to exclude the entry of a guilty or no contest plea); (2) the applicant or his lawyer, describing (a) the results of any DNA testing performed on evidence used in the prosecution and conviction of the applicant and (b) all previous efforts to obtain DNA testing and any previous application filed under AS 12.72 or AS 12.73, AS 12.73.010(b)(2), (3); and (3) the lawyer who represented the applicant in the criminal trial resulting in conviction, describing why DNA testing was not sought before or during the trial, AS 12.73.010(b)(4).

adn.com
Anchorage Daily News

Prison inmate charged in Bonnie Craig killing

DNA Database connects man held Outside to 1994 slaying of Anchorage teen.

By MEGAN HOLLAND
Anchorage Daily News
(05/01/07 05:39:00)

A grand jury has charged a former Anchorage man with murder in the slaying of Bonnie Craig, an 18-year-old college student who was raped and savagely beaten before she toppled over a cliff into a creek in 1994.

Kenneth Dion, now 37 and in prison in New Hampshire for a series of armed robberies, has also been charged with rape in one of the most highly publicized and emotional slayings in Anchorage in recent decades.

DNA evidence that prosecutors say links Dion to the slaying was central to the solution, according to cold-case investigators.

"It's a major step in a case that was of significance to Anchorage and a burden to the family for years," prosecutor Pat Gullufsen said.

Dion was on probation on an Anchorage robbery conviction and had been out of prison for only a few months when Bonnie was killed.

"Just to know he's already in jail and there's no way he can hurt anyone else is a relief," said Bonnie's mother, Karen Foster, reached Monday morning. She said she had been told in January that charges could be coming in the slaying of her daughter, who had been a high school wrestler and had taught swimming to junior high kids.

Troopers were able to match semen found on Bonnie with Dion through a national computer database of DNA profiles. Dion was never known to troopers and wasn't a suspect in the case until the DNA match came back in November.

"There is no doubt about this one," trooper cold-case investigator Jim Stogsdill said of the match. "There's no confusion."

Dion likely did not know Bonnie, Stogsdill said, but apparently picked her up as she walked to a bus stop on Lake Otis Parkway on the way to an early-morning class on Sept. 28, 1994, at the University of Alaska Anchorage. Her body was found that afternoon by a hiker at McHugh Creek.

FORT RICHARDSON

Dion, originally from New Hampshire, came to Alaska as a soldier and was stationed at Fort Richardson, then stayed for a couple of years after he left the military. He did not have a job at the time of Bonnie's slaying and was in and out of jail on robbery and assault charges. He was 25 years old when Bonnie was killed.

He was in jail in Alaska at the end of July 1994, two months before Bonnie's death. And he

returned to jail on a probation violation about two months after the slaying.

Troopers say Bonnie was beaten and raped before she fell off a cliff near the Seward Highway. Her body was found floating in McHugh Creek near Mile 112.

Troopers have said she died of a head injury and hypothermia.

As to how Bonnie got to McHugh Creek, 10 miles from her home, or where she was raped, or whether she was struck in the head by her killer or she injured her head in the fall off the 30-foot cliff, "we can only surmise," Stogsdill said.

The hunt for her killer mesmerized Anchorage. Family and friends posted photocopies of the doe-eyed teenager who graduated from Service High School, asking for anyone with information about her killer to call troopers. She was not the kind of young woman to get in trouble. She lived with her parents and played the violin. She didn't drink.

Clues, though, were few and far between. And as the years passed, the crime remained unsolved and a reminder to young women walking alone that a brutal rapist had not been found.

As authorities kept looking, technology advanced to better match DNA, and more people were put into a national database.

DNA from Bonnie's case was put in the national database in 2000. New Hampshire authorities entered Dion's information in November 2006. Immediately, when workers with the Alaska state crime lab were conducting their weekly routine check of the database on Nov. 9, they had a hit.

Tammy Gregory, who was married to Dion at the time Bonnie was killed, broke down crying when reached Monday afternoon in Kenai. She said Dion was in and out of jail, on drugs, and generally abusive during those years. She hasn't seen or spoken to him in a decade. She doesn't want to remember that time in her life.

But still, she said, "I would never have thought he was capable of that. I would never have thought I was associated with someone like that."

NEW HAMPSHIRE RECORD

Dion, who left Alaska around 1996, made it back to New Hampshire, where he committed a series of robberies beginning in May 2002, according to authorities there and in Alaska. One robbery was of a pharmacy. He didn't have a weapon but, using his finger, pretended to, said Tom Velardi, deputy county attorney for Strafford County, N.H.

Dion ordered the pharmacy workers to give him OxyContin, a prescription painkiller similar to heroin that has become a popular street drug. "He had very serious addiction to it," Velardi said.

After the initial DNA match in November, authorities collected new DNA from Dion, which was taken back to Anchorage and matched again, Stogsdill said.

The grand jury in Anchorage indicted Dion on one count of first-degree murder, two counts of second-degree murder and one count of first-degree sexual assault. The two counts of second-degree murder are because it could have been a situation in which Dion didn't intend to kill Bonnie, Stogsdill said.

According to the New Hampshire Department of Corrections, Dion was sentenced to 15 years in

prison in February 2003 for five robberies that occurred from spring 2002 until he was incarcerated. Dion was living in Rochester, N.H., before he went to prison. According to the department's Web site, he is eligible for parole in August 2008.

Alaska troopers and New Hampshire authorities interviewed Dion recently, but Stogsdill said he revealed little information.

"This is a long-overdue resolution to the Bonnie Craig case," Stogsdill said.

Bonnie's mother said the news of the charges is a relief, but it also opens old wounds and memories of what happened to her little girl. She said she doesn't want a trial to deepen those wounds. She hopes Dion will admit to the crime and make a deal with prosecutors. That would be easier, she said.

Alaska authorities will try to have him extradited here to face the new charges, Gullufsen said. And, if he is convicted, he will likely finish out his sentence in New Hampshire, then transfer to an Alaska prison.

Daily News reporter Megan Holland can be reached at mrholland@adn.com.

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Masters released from jail

By Howard Pankratz
The Denver Post
Posted: 01/22/2008 01:02:20 PM MST

Tim Masters leaves the Larimer County courtroom where he was released after serving nearly a decade of a life term in prison for the murder of Peggy Hettrick in 1987. (THE DENVER POST | CRAIG F. WALKER)

FORT COLLINS — Special prosecutors today said that DNA testing of murder victim Peggy Hettrick's clothing revealed the partial profiles of three men but that the profiles excluded Tim Masters as the source of the DNA.

Minutes after the prosecutors handed their findings to Judge Joe Weatherby, Weatherby vacated the judgment of conviction and sentence against Masters, who was immediately released from custody on a $200,000 personal recognizance bond.

Masters' next court date is Feb. 5, after the Larimer County district attorney assesses the status of the case.

A short time after Masters' release, longtime Colorado defense attorney David Wymore — who led the effort to free Masters for a crime Masters maintained he didn't commit — praised former employees of the Colorado Bureau of Investigation, the FBI and Fort Collins Police Department for their help in freeing Masters.

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FAIRBANKS
Daily News - Miner

Man gets four years in rape of woman in Fairbanks

By Chris Freiberg

Published Tuesday, March 10, 2009

FAIRBANKS — Late in the summer of 2000, a woman who describes herself as a proud Inupiaq Eskimo was getting a ride home from a cab driver on the Steese Highway. The driver, afraid she was going to vomit in the back of the cab, made her get out of car a few blocks from her home and walk the rest of the way.

As she approached the Steese Highway bridge over the Chena River, a man attacked her, knocking her unconscious. When she awoke a few minutes later, she was in a nearby wooded area and he was on top of her, raping her. He took her shirt and covered her face with her jacket so she couldn't see him. He tried to take her jacket too, and she had to beg to get it back so she could have something to cover herself for the walk home.

After a few minutes, the attack was over. The man — or as she called him Monday, "the thing under the bridge" — left the area. She went home and reported the crime, afraid that she could run into her unknown assailant again at anytime.

"From that day on, living in this town, at anytime, I could possibly run into my rapist," she said in court Monday, holding back tears. The News-Miner does not usually identify the victims of sexual assaults.

For more than half a decade, she waited for Fairbanks police to identify her attacker. After collecting DNA evidence from an unrelated case in 2007, they found a match. Her attacker was identified as John F. Roberts, a 26-year-old who has been in and out of jail on a variety of petty charges since he was 14 years old. Prosecutors described his juvenile record as "horrific" and said he had zero chance of rehabilitation.

On Monday, after striking a plea agreement with prosecutors, he was sentenced to serve four years in prison for raping the woman on that late August night in 2000. He also will be on probation for five years and will have to register as a sex offender. The sentence would have

been more severe, but sexual assault carried a lesser penalty in 2000 than it does today.

Roberts went to trial last year on the sexual assault charges, but a mistrial was declared after three days because of mishandled evidence.

"After the mistrial, I was advised to accept the plea agreement, which I am unhappy with to the say the least," the woman said. "I did it because I have to save my sanity."

"Too soon, a rapist will be walking the streets where you have the right to be safe with your children, your mothers, your aunts, your grandmothers," she added.

Superior Court Judge Randy Olsen empathized with the woman, agreeing that the laws do not provide for adequate punishment in a case like this.

"In other cultures or in earlier times, there would be castration or (he would be) drawn and quartered, and even then people wouldn't be satisfied," he said.

Roberts showed no emotion as the woman, her husband and her best friend each took the stand and told the court how their lives had been affected by the rape nearly nine years ago. Roberts' attorney offered no defense, only wishes that Roberts will turn his life around while behind bars.

Roberts apologized to the woman and her husband and said that he's realized he has done little with his life. He said he has found religion in jail and hopes to do something to improve his circumstances when he's released.

"Nothing I can say to you can change what I did, and for that, I'm sorry," he said.

LEGAL SERVICES

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MEMORANDUM April 7, 2010

SUBJECT: Differences between CSSB 284(FIN) and CSHB 409(STA)
(Work Order Nos. 26-LS1448\P and 26-LS1495\S)

TO: [redacted]

FROM: Alpheus Bullard TGB
Legislative Counsel

As a preliminary matter, please note that each bill is, itself, the best statement of its contents. This memorandum provides only an outline[1] of the substantive differences between CSSB 284(FIN) (26-LS1448\P) and CSHB 409(STA) (26-LS1495\S). This memorandum does not identify constitutional, legal, or drafting issues raised by the provisions of either bill.

15.13.030
The House bill requires the Alaska Public Offices Commission ("APOC") to make information contained in an independent expenditure report filed under AS 15.13.040(e) available to the public within 24 hours after the report has been filed with the commission. The Senate bill does not contain this requirement.

15.13.040(d)
The Senate bill contains language clarifying that every person making an independent expenditure shall make a full report of expenditures made and contributions received. The House bill is without this language.

AS 15.13.040(e)
The House bill requires an independent expenditure report filed by a person that is not an individual under AS 15.13.040(e) to be certified as correct by the treasurer or fiscal officer of the person. The House bill requires that the independent expenditure report include the nationality of each officer and director of the person (making the expenditure) and the nationality of each officer and director of a contributor (of over $100 in the

[1] *The boldfaced heading for each of the differences described in this memorandum is the* bill section in which an identified difference between the bills exists. If a heading section number or subsection letter appears in "quotes," the section or subsection is not an existing section or subsection amended by the bill, but a new section or subsection proposed to be added by the bill or bills.

aggregate in a year) to the person (making the expenditure). The Senate bill is without these requirements.

15.13.040("q")
The Senate bill contains definitions for "director" and "officer" for the purposes of AS 15.13.040(e). The House bill does not define these terms.

"15.13.052"
The Senate bill requires persons making independent expenditures in state elections to establish a political activities account, from which all funds used by the person to make independent expenditures must be drawn. No such requirement is present in the House bill.

"15.13.068"
The Senate bill contains a more complete definition of "foreign national" than that of the House bill. The Senate bill provides that the Act's provision prohibiting a foreign national from making a contribution or expenditure in connection with a state election operates only to the extent (1) that federal law prohibits a foreign national from making a contribution or expenditure in connection with a state election and (2) permitted by federal law. The House bill provides only that the provision applies to the extent permitted by federal law.

AS 15.13.084
The House bill prohibits all anonymous expenditures.

AS 15.13.090 (and added subsections)
Both the House and Senate bills amend AS 15.13.090 to require a larger quantity of information be disclaimed in communications. The requirements of each bill are different. The House bill requires a person other than a candidate, an individual, or a political party to (1) identify the person's principal officer and the officer's title, (2) include a statement from that officer approving the communication, (3) provide the person's principal place of business, and (4) identify the name and city and state of residence or principal place of business, as applicable, of each of the person's three largest contributors, if any, during the 12-month period before the date of the communication.

The Senate bill requires all persons to identify the person's place of business, if applicable, and requires a person other than an individual or candidate to (1) identify the person's principal officer and the officer's title, (2) include a statement from that officer approving the communication, and (3) identify the name and city and state of residence or principal place of business, as applicable, of each of the person's five largest contributors, if any, during the 12-month period before the date of the communication.

The House bill additionally provides that "[a] person other than a candidate, individual, or political party may not make a communication . . . unless the person's principal officer

has certified to the commission in writing that the officer has reviewed the communication, and, based on the officer's knowledge, the communication is not defamatory and does not contain any defamatory statements." This provision is absent from the Senate bill.

The Senate bill contains different requirements for communication transmitted through radio or other audio media or in the audio component of another communication than what the House bill permits. The Senate bill does not require that the audio component of a communication include the address or principal of business of the person paying for the communication or of the person's largest contributors. The House bill requires this information. However, the House bill permits a person, other than an individual, paying for a communication to be named in the audio component of the communication using the person's common name.

The House bill contains a requirement that communications from a person in which a foreign government holds more than a 10 percent ownership stake identify the foreign government as a partial owner of the person. The Senate bill does not contain such a requirement.

AS 15.13.110("g")
The House bill requires independent expenditure reports to be filed with APOC within 24 hours after the expenditure has been made. The Senate bill requires that independent expenditure reports be filed within 10 days, except independent expenditures that exceed $250 and that are made within nine days of an election must be reported within 24 hours.

15.56.014(a)
The Senate bill amends AS 15.56.014 to provide that any person, not just a "candidate, group, or individual," who knowingly prints or publishes a communication intended to influence the outcome of an election without the words "paid for by" has committed campaign misconduct in the second degree (this change could be described as a conforming change). This section is not present in the House bill.

If you have any questions, please do not hesitate to contact me.

TLAB:ljw
10-243.ljw

26-LS1644\A
Luckhaupt
4/6/10

HOUSE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced:
Referred:

A RESOLUTION

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning Senate Bill No. 110, relating to the preservation of evidence and to the DNA identification system.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding changes to the title of a bill, are suspended in consideration of Senate Bill No. 110, relating to the preservation of evidence and to the DNA identification system.

Distributed by Rep. Gruenberg

26-GH2812\R

CS FOR HOUSE BILL NO. 316(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered: 3/10/10
Referred: Finance

Sponsor(s): HOUSE RULES COMMITTEE BY REQUEST OF THE GOVERNOR

A BILL

FOR AN ACT ENTITLED

"An Act relating to post-conviction DNA testing, to the preservation of certain evidence, and to the DNA identification registration system; relating to post-conviction relief procedures; relating to representation by the public defender; amending Rule 35.1, Alaska Rules of Criminal Procedure; and providing for an effective date."

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

*** Section 1.** AS 12.36.020(a) is amended to read:

(a) A law enforcement agency may

(1) not return property in its custody to the owner or the agent of the owner**, except as provided in AS 12.36.200,** if

(A) the property is in custody in connection with a children's court proceeding, a criminal proceeding, or an official investigation of a crime; or

(B) the property in custody is subject to forfeiture under the laws of the

(i) state; or

(ii) United States, and the United States has commenced forfeiture proceedings against the property or has requested the transfer of the property for the commencement of forfeiture proceedings; and

(2) with the approval of the court, transfer the property to another state or federal law enforcement agency for forfeiture proceedings by that agency; the court having jurisdiction shall grant the approval under this paragraph if the property

(A) will be retained within the jurisdiction of the court by the agency to which the property is being transferred; or

(B) is

(i) not needed as evidence; or

(ii) needed as evidence, and the property is fungible or the property's evidentiary value can otherwise be preserved without retaining the property within the jurisdiction of the court.

*** Sec. 2.** AS 12.36.090 is amended to read:

Sec. 12.36.090. Definitions. In **AS 12.36.010 - 12.36.090** [THIS CHAPTER],

(1) "final disposition of a case" means the time when all appeals have been exhausted or the time when all appeals that could have been taken has expired;

(2) "law enforcement agency" means a public agency that performs as one of its principal functions an activity relating to crime prevention, control, or reduction or relating to the enforcement of the criminal law; "law enforcement agency" does not include a court.

*** Sec. 3.** AS 12.36 is amended by adding a new section to read:

Article 2. Preservation of Evidence.

Sec. 12.36.200. Preservation of evidence. (a) Except as otherwise provided in this section and notwithstanding AS 12.36.010 - 12.36.090, an agency shall preserve

(1) evidence that is obtained in relation to an investigation and relevant to the prosecution of a crime under AS 11.41.100 - 11.41.130, 11.41.410, or 11.41.434 for the following periods:

(A) 18 months after the entry of a judgment of conviction of the crime;

(B) if the conviction for the crime is appealed, one year after the judgment becomes final by the conclusion of direct review; or

(C) if a timely application for post-conviction relief is filed within the periods stated in (A) and (B) of this paragraph, the date that a judgment dismissing or denying the application for post-conviction review becomes final;

(2) biological material, contained in or found on evidence, relevant to an investigation and prosecution of a person convicted of a felony under AS 11.41, until the person is unconditionally discharged for the crime, until the person is no longer required to register as a sex offender, or until the periods of time provided in (1) of this subsection have expired, whichever is longest; biological material must be preserved in an amount and manner that is sufficient to develop a DNA profile under technology available at the time that the biological material is preserved.

(b) An agency is not required under (a) of this section to preserve physical evidence that is of a size, bulk, quantity, or physical character that makes preservation impractical or hazardous. If preservation of evidence is impractical or hazardous, the agency shall, before returning or disposing of the evidence, remove and preserve portions of the evidence likely to contain relevant evidence related to the crime in an amount and manner sufficient to retain its evidentiary value and, if appropriate, to permit DNA testing under technology available at the time that the biological material is preserved. An agency shall develop written policies concerning the removal and preservation of samples of evidence for retention under this section. The development of written policies as described in this subsection is not subject to the adoption of regulation provisions of AS 44.62 (Administrative Procedure Act).

(c) On the written request of a person convicted of a crime described in (a) of this section, an agency shall provide an inventory of the evidence that has been preserved under (a)(1) of this section and of the biological material that has been preserved under (a)(2) of this section in connection with the person's conviction.

(d) The person who requests evidence that has been preserved under this section shall pay reasonable costs incurred in the retrieval of the evidence from storage unless the person does not have the ability to pay the costs.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: March 19, 2010 **FURTHER REFERRALS: Finance**

Date of Committee Action: 4/7/10

The JUDICIARY Committee considered: **CS FOR SENATE BILL NO. 110(FIN)**

"An Act relating to the preservation of evidence and to the DNA identification system."
SB 110-PRESERVATION OF EVIDENCE/DNA I.D. SYSTEM

Recommends it be replaced with [✓] HCS *or* [ ] CS for CSSB110 (JUD)
For Senate Bills with new title: [ ] Technical Title [✓] New Title: HCR _____ **[ ] Same Title [✓] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
DPS	4			✓
DPS	5			✓
LAW	6	✓		

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
Bob Lynn	LYNN	X			
Mary Gruenberg	Gruenberg	✓			
Rebecca J. Herron	HERRON	X			
James Holmes	Holmes	X			
Carl Gatto	Gatto	✓			
Chair:	RAUKAS	X			
Chair:					

SB 148

ALASKA STATE LEGISLATURE
Senator Albert M. Kookesh

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Arctic Village
Beaver
Beluga
Bettles
Big Delta
Birch Creek
Boundary
Cape Pole
Central
Chalkyitsik
Chandalar Lake
Chenega Bay
Chicken
Chisana
Chistochina
Chitina
Chuathbaluk
Circle
Coffman Cove
Cordova
Cube Cove
Coldfoot
Copper Center
Craig
Crooked Creek
Delta Junction
Deltana
Dot Lake
Dry Creek
Eagle
Eagle Village
Edna Bay
Ellamar
Ernestine
Excursion Inlet
Eureka
Evansville
Eyak
Flat
Fort Greely
Fort Yukon
Fortuna Ledge
Funter Bay
Gakona
Galena
Grayling
Gulkana
Gustavus
Haines
Healy Lake
Hogatza
Hobart Bay
Holy Cross
Hoonah
Hughes
Huslia
Hydaburg

Hyder
Kake
Kaltag
Kasaan
Katalla
Kennicott
Kenny Lake
Klawock
Klukwan
Koyukuk
Labouchere Bay
Lake Minchumina
Lime Village
Livengood
Long Island
Mankomen Lake
Manley Hot Springs
Marshall
McCarthy
McGrath
Medfra
Metlakatla
Mentasta
Minto
Nabesna
Naukati Bay
Nenana
Nikolai
Northway
Nulato
Ophir
Point Baker
Polk Inlet
Port Alice
Port Protection
Rampart
Red Devil
Ruby
Russian Mission
Shageluk
Skagway
Slana
Sleetmute
Stevens Village
Stony River
Strelna
Takotna
Tanacross
Tanana
Tatitlek
Tazlina
Telida
Tenakee Springs
Tetlin Junction
Tok
Tonsina
Tyonek
Utopia Creek
Venetie
View Cove
Waterfall
Whale Pass
Wiseman
Yakutat

April 13, 2009

Representative Jay Ramras, Chair
House Judiciary Committee
State Capitol Building, Rm 118
Juneau, AK 99801

Dear Representative Ramras,

Thank you for hearing SB 148 "An act relating to limitation of state liability on certain federal highway programs" in House Judiciary on Wednesday, April 15, 2009. As time is of the essence for tribes to use stimulus funds and get projects ready for our short construction season. This bill will lessen inter-governmental disputes or disagreements about liability concerns and will enable the tribes and state to focus on transportation projects.

Thank you again for hearing this bill.

Sincerely,

Albert Kookesh

Senator Albert Kookesh

Enc: Bill
Sponsor Statement
Letters/Resolution of Support
Indian reservation Roads (IRR) synopsis by Alaska DOT&PF
2 lists of Tribes and 2008 allocations with road inventory and population

SENATOR ALBERT M. KOOKESH
ALASKA STATE LEGISLATURE SENATE DISTRICT C

State Capitol, Room 11
Juneau AK, 99801-1182
907-465-3473
888-288-3473
FAX 907-465-2827

Sponsor Statement

SB 148

SB 148 will resolve the issue of liability to the state or employees of the state when partnering with federally recognized tribes under the Indian Reservations Roads Program. With the decline in state and federal highway funds it's imperative we collaborate and work together. This bill will assist the partnering process, and ultimately benefit all Alaskans by leading to long-term improvements in the state's overall transportation infrastructure.

To take advantage of all available federal transportation dollars on state highways, Alaska DOT&PF and Indian Tribes may enter a series of inter-governmental agreements outlining respective obligations. The process of drafting such inter-governmental agreements can be time consuming and costly. Negotiations will often center on liability concerns, and sometimes months may elapse while trying to resolve the issues. This bill will lessen inter-governmental disputes or disagreements about liability concerns and will enable the tribe and the state to focus instead on the core transportation project(s).

Tribes have both the legal authority and financial capacity to assist with the improvements to the state transportation infrastructure. Congress made significant transportation dollars available under the Indian Reservation Roads (IRR) program. These IRR funds were made available upon the passage of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A legacy for users (SAFETEA-LU), Pub.L.No. 109-59 (2005). In FY **2008 the Alaska share of IRR funds is over $45 million** and the recent **stimulus package supplemented those funds by approximately $40 million**.

This bill has the benefit of advancing state-tribal relations, advancing the state-tribal interest in improving state transportation infrastructure (including access to Alaska native villages) and minimizing nuisance litigation which can cost the state significant moneys to defend and settle.

This bill has the support of DOT& PF and I would appreciate your prompt and favorable action on this measure.

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: **SB 148**
(S) Publish Date: 3/25/09

Identifier (file name): SB148-DOT-CO-3-23-09
Title: Limitation of Liability on Certain State Highways
Sponsor: S. TRA
Requester: S. TRA

Dept. Affected: DOT&PF
RDU: Administration & Support
Component: Commissioner's Office
Component Number: 530

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill will have no fiscal impact on the Department.

Prepared by: Mary Siroky, Legislative Liaison
Division: Department of Transportation and Public Facilities
Phone 465-4772
Date/Time 3/23/09 8:30AM

Approved by: Nancy Slagle, Admin Director
Department of Transportation and Public Facilities
Date 3/23/2009

(Revised 9/10/2008 OMB)

STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES
OFFICE OF THE COMMISSIONER

SARAH PALIN, GOVERNOR

3132 CHANNEL DRIVE
PO Box 112500
JUNEAU, ALASKA 99811-2500
FAX: (907) 586-8365
PHONE: (907) 465-3900

March 23, 2009

The Honorable Albert Kookesh
Alaska State Legislature
State Capitol, Room 11
Juneau AK 99801-1182

Dear Senator Kookesh:

Thank you for sponsoring SB 148. This important piece of legislation will facilitate the partnering between Alaska's tribe and the Department of Transportation and Public Facilities (DOT&PF).

One of the most confusing issues during negotiations is liability. Eliminating or limiting the need to discuss liability issues during agreement negotiations means, time and energy will focus on the core transportation issues and ultimately the construction of transportation infrastructure that will benefit communities.

Sincerely,

Leo von Scheben, P.E., L.S., M.B.A.
Commissioner

cc: Mary Siroky, Legislative Liaison, DOT&PF

RUBY TRIBAL COUNCIL

AGNES M. WRIGHT BLDG.
P.O. BOX 68210
RUBY, ALASKA 99768

TELEPHONE: 907-468-4479
FAX: 907-468-4474

VIA Electronic Mail

Sen. Albert Kookesh
Alaska State Capital Building
Capital Room 11
Juneau, Alaska 99801

Re: Letter of Support for SB -148

Dear Senator Kookesh,

I am writing this letter on behalf of the Ruby Tribal Council and all its Tribal Members to fully support SB -148 a bill you sponsored and introduced during the Senate Transportation Committee hearing this past week. This bill will complete the circle of federal funds that comes to Alaska to build and maintain Alaska's entire public infrastructure, especially in rural Alaska where the absence of funding for infrastructure improvements is felt the most.

This bill, SB – 148 will be a first step in bridging Tribal and State funding strategies for years to come when it concerns public community streets, highways, bridges, trails, and ferry systems.

Thank you for all the work you do for the State of Alaska, and our tribal communities.

Sincerely,

Patrick McCarty, 1st Chief

Cc: IRR FILE

Allison Laffen

From: Cindy Smith
Sent: Saturday, April 11, 2009 9:01 AM
To: Allison Laffen
Subject: RE: SB 148: State Liability on Federal Hwy Programs

Yes, they worked everything out. At Hollis' request, Doug Johnson with the trial lawyers met with Peter Putzier and they also consulted with Kay Maasen Gowens from Sachse Miller and Munson -- all the lawyers representing he various points of view were happy with the end product. No problems at all! It's a good bill.

Cindy

From: Allison Laffen
Sent: Friday, April 10, 2009 6:23 PM
To: 'Cindy_Smith@legis.state.ak.us'
Subject: SB 148: State Liability on Federal Hwy Programs

Hi Cindy:

House Transportation is hearing SB 148 on Tuesday - we met with DOT this week and they assured us that any concerns your office had had were taken care of and that the Plaintiff's Bar was okay with the current language. Can you verify that for me? Or are there any lingering problems that you think we should be looking at?

Thanks Cindy - have a great weekend!

Allison Laffen
Legislative Aide
Rep. Max Gruenberg - D20
(907) 465-2840

Manley Village Council - P.O. Box 105 - Manley Hot Springs, Alaska 99756
Voice: (907) 672-3177 Fax: (907) 672-3200

VIA Electronic Mail

Sen. Albert Kookesh
Alaska State Capital Building
Capital Room 11
Juneau, Alaska 99801

Re: Letter of Support for SB -148

Dear Senator Kookesh,

I am writing this letter on behalf of the Manley Village Council and all its Tribal Members to fully support SB -148 a bill you sponsored and introduced during the Senate Transportation Committee hearing this past week. This bill will complete the circle of federal funds that comes to Alaska to build and maintain Alaska's entire public infrastructure, especially in rural Alaska where the absence of funding for infrastructure improvements is felt the most.

This bill, SB – 148 will be a first step in bridging Tribal and State funding strategies for years to come when it concerns public community streets, highways, bridges, trails, and ferry systems. Thank you for all the work you do for the State of Alaska, and our tribal communities.

Sincerely,

Jack Wright, 1st Chief

Cc: IRR file

Manley Village Council - P.O. Box 105 - Manley Hot Springs, Alaska 99756
Voice: (907) 672-3176 Fax: (907) 672-3200 Email: mvcirr@gmail.com

Resolution No. 2009 - 07

Resolution Supporting Senate Bill – 148 that Would Limit the State of Alaska's Liability & Shield the State from lawsuits arising from IRR and other Federal/Tribal Transportation Projects in Alaska

WHEREAS; the Manley Village Council is a federally recognized tribe; and

WHEREAS; the Manley Village Council is the governing body of the Tribe; and

WHEREAS; to preserve our Alaska Native cultural and tribal values, and otherwise promote the economic health and welfare of tribal members, residents of the surrounding area, and the traveling public; and

WHEREAS; the Manley Village Council has the authorities and duty to provide for a safe and healthy environment for all our tribal members, residents of the surrounding area, and the traveling public; and

WHEREAS; the Manley Village Council fully supports **SB-148** and Alaska's Department of Transportation & Public Facilities sponsorship of **SB-148**; and

WHEREAS; the Manley Village Council is currently under contract the Bureau of Indian Affairs to plan, design, construct, and maintain the routes currently identified as Official listed in the National Indian Reservation Roads (IRR) Inventory and are part of the Tribes' 20 year Long Range Transportation Plan (LRTP) 2009 update; and

NOW THEREFORE, BE IT RESOLVED; NOW THEREFORE, BE IT RESOLVED; that the Manley Village Council fully supports Senator Kookesh's **SB – 148** and urged the legislature to vote to enact this important legislation as soon as possible.

CERTIFICATION

The foregoing resolution **2009 – 07** was adopted at a regular monthly meeting of the Manley Village Council held on **March 31st, 2009**, at which a quorum was present and certified by a vote of;

5 IN FAVOR, __ AGAINST, __ ABSTAIN, __ ABSENT

Signed:

Jack Wright, 1st Chief

Attest:

William Bredeman-Woods, Secretary-Treasurer

Indian Reservation Road (IRR) Program Within Alaska
Synopsis by Alaska DOT&PF
February, 2009

Overview

IRR program established in federal law in 1982. Though initially managed primarily by the Bureau of Indian Affairs, this has evolved to a joint management structure between tribal governments and two federal agencies (BIA and FHWA). Participation by Alaska tribes in this program was limited prior to 2005 by two factors: First, the BIA held most decision and performance authority, and second, the funding allocated to Alaska was relatively small, resulting in very little road work being accomplished.

Under SAFETEA-LU (2005 surface transportation authorization) the statutory foundation for the program changed significantly. First, the amount of nationwide funding increased each year (starting at $300 Million per year in 2005 and rising to $450 Million per year in 2009). Second, each tribe was allotted funding annually based on a formula established through regulations. The formula is complex, but apart from population, the most important variable to each tribe is the number of road miles in their tribe's inventory.

Road Inventory and Funding

This identification of road miles takes place between each tribe and BIA and can include roads owned by other entities (such as Alaska DOT&PF, USFS and local governments). Since 2005 there has been a very active effort by tribes in Alaska to add as many road miles as possible to their individual inventories. While there was at one point (in 2007) a legal complication between the tribes and the State of Alaska over the inventory process (because BIA was requiring that road owners such as the state must "consent" to their roads being added to an inventory), this has been favorably resolved and the state is no longer involved in the inventory process.

The inventory process for Alaska tribes is different than most other tribes, which have reservations and thus clear boundaries. The tribal inventory of reservation-based tribes was largely based on the roads within their reservation boundary. In Alaska, with only one reservation-based tribe, essentially all but one of Alaska's 228 or so tribes must rely on road miles in and around each tribe's geographic location. Because some tribes are located in areas with a substantial number of roads, their tribal inventories are large. Other Alaska tribes, in areas with limited road mileage, have much smaller inventories and thus garner far less funding each year under the federal formula.

Another factor is the national split of funds between tribes. As Alaska's tribes have increased their inventory of IRR road miles since 2005, this has led to a smaller share of funding to other tribes in the United States. In response, these tribes have sought to expand their own inventory of miles, by expanding to include roads that lead to the reservation but are not within the reservation. Since Alaska, taken as a whole, has relatively few miles of total road in the state, this effort by non-Alaska tribes is likely to shift the balance of miles under IRR inventory back to these other non-Alaskan tribes as their inventories expand.

There are also some other categories of funding that are allocated on a discretionary (competitive) basis, such as $14 million per year for bridge projects across all tribes in the U.S.

Examples of IRR Funding to Alaska Tribes

In 2008 Alaska tribes received about $40 Million in funding based on the Relative Need" formula used by BIA. This formula uses several factors, including population, amount of vehicle travel, the total number of road miles and a "cost to construct factor" (which is designed to normalize funds across different construction cost circumstances). This is somewhat less than an average of $175,000 per Alaska tribe per year. However, the distribution of funds varies widely from this average. Some tribes garner nearly $2 million per year, while others earn less than $5,000. In general, the tribes in Southeast Alaska do the best under the formula, in part because of their population, and also because there are relatively high number of road miles in this region due to USFS logging road construction. (See attached table from BIA)

Use of IRR Funding by Tribes

The rules governing the use of IRR funding gives substantial latitude to each tribe as to how they use their funds. Some examples of what they can perform with their funding includes:

- Maintenance: 25% of each year's funding is eligible for routine road and bridge maintenance
- Match to other federal: IRR road funds can be used to match other federal funds, including FHWA highway funds and/or Denali Commission funds
- Design and Construction: IRR funds can be used for the tasks required to plan and engineer roads, as well as the actual construction. Construction can occur under force-account rules, unlike most other federal fund sources, which require competitive bids.
- Projects types include:
    - Transportation facility planning, research, engineering, construction and reconstruction
    - Tourism enhancement and recreational development
    - Vehicular parking area improvements and additions
    - Interpretive signage installation
    - Scenic easement and scenic or historic site acquisition
    - Pedestrian and bicycle on-and-off road system improvements, including modification of public walkways to comply with the Americans with Disabilities Act (ADA)
    - Construction and reconstruction of roadside rest areas, including sanitary and water facilities
    - Provision of transit facilities and services within public lands, national parks and Indian reservations
    - Other appropriate facilities such as visitor centers

In order to use their funds, each tribe must prepare a Transportation Improvement Program or TIP (much like the state STIP) which identifies the project scope, cost and location of each project and activity to be funded.

Successful Examples of DOT&PF-Tribal Cooperation

Several groups of tribes within Alaska have established mutual organizations to better manage the program and take advantage of a pooled approach. For example, twenty tribes in the Bering Strait area operate a transportation organization called the Kawerak Transportation Program, which has professional road engineers, planners and accountants to internally identify and manage projects. By pooling their IRR funds and taking turns at project construction within their several communities, they are able to accomplish one or more projects each year, in order to improve employment opportunities and the road system in their communities. Several of these multi-tribe transportation organizations, sometimes called compacts, have been established in the state.

There have also been examples of tribes wishing to help fund work on state roads. For example, in Petersburg, the Petersburg Indian Association has helped to fund two state projects, including intending to perform the work on one project the tribe funded. This work is planned to be accomplished in cooperation with Alaska DOT&PF. Other examples of state-tribal partnerships include:

- Cordova: Native Village of Cordova (Eyak) is performing highway work on the state-owned Copper River Highway and intends to perform bridge work in the future.
- Sitka: Sitka Tribe of Alaska is operating a community-wide transit system and has received state managed transit funds.
- Mat-Su Borough: Chickaloon Native Village is evaluating the possibility of a transit system that might run from Glenallen to Anchorage on a daily or several times per week basis. This latter project received a transit grant from the Federal Transit Administration. DOT&PF transit planners have assisted the planning for this effort.
- Gambell: A federal highway earmark for road work in Gambell is being performed by Kawerak, under a transfer of funds from Alaska DOT&PF.

Impact of Stimulus Funds to Alaska Tribes

The American Recovery and Reinvestment Act contains $310 M nationally for funding to tribes for stimulus purposes. This is about 75% increase to regular 2009 funding to all tribes, including Alaska tribes or about $35 Million. The law's language requires that priority be given to projects that can be completed in 2 years or less, and after one year, BIA may be redistribute funds among the tribes. The allocation of IRR stimulus funds, and any redistribution of funds, is determined by the two federal agencies involved: BIA and FHWA.

Role of DOT&PF in the IRR Program

DOT&PF has been active in working with tribes in order to better achieve transportation improvements for all Alaskans. We have recently agreed to participate in a task force between the state and tribes to find workable solutions, including standard legal formats, in order to accelerate projects. That work is underway this year. We have also entered into several agreements, or otherwise assisted tribes in their use of IRR funds. Perhaps one key factor, as we prepare the next STIP, is that for the first time tribes can bring both matching funds, and maintenance funds to the table. Both factors will permit tribes' nominated projects to score higher, and thus improve the chances of garnering funds.

Tribal Code	Tribe/Village	Alloc %	Approx. Alloc.
E01002	AFOGNAK	0.000233152	$ 65,329
E01004	AKHIOK	0.000198866	$ 55,722
E01007	AKUTAN	0.000218151	$ 61,126
E01011	ALEKNAGIK	0.000175729	$ 49,239
E01027	ATKA	0.000660474	$ 185,065
E01041	BELKOFSKI	9.57506E-06	$ 2,683
E01065	CANTWELL	9.57506E-06	$ 2,683
E01081	CHICKALOON	0.00207013	$ 580,051
E01083	CHIGNIK BAY	0.000290969	$ 81,529
E01084	CHIGNIK LAGOON	0.000255934	$ 71,713
E01085	CHIGNIK LAKE	0.00016138	$ 45,219
E01087	CHEESH-NA (CHISTOCHINA)	8.38246E-05	$ 23,488
E01088	CHITINA	2.26866E-05	$ 6,357
E01096	CLARKS POINT	4.36678E-05	$ 12,236
E01102	KLUTI KAAH (COPPER CENTER)	3.61871E-05	$ 10,140
E01121	CURYUNG (DILLINGHAM)	0.000623763	$ 174,778
E01133	EGEGIK	0.000476694	$ 133,570
E01135	EKLUTNA	0.000151737	$ 42,517
E01136	EKUK	0.000185869	$ 52,081
E01137	EKWOK	4.35034E-05	$ 12,190
E01142	NANWALEK (ENGLISH BAY)	0.000847514	$ 237,473
E01148	EYAK (CORDOVA)	0.001172167	$ 328,441
E01149	FALSE PASS	2.11834E-05	$ 5,936
E01165	GAKONA	9.28783E-05	$ 26,024
E01185	GULKANA	6.16666E-05	$ 17,279
E01214	IGIUGIG	0.000444181	$ 124,459
E01216	ILIAMNA	0.000559303	$ 156,717
E01222	IVANOFF BAY	1.21538E-05	$ 3,405
E01237	KARLUK	0.000440235	$ 123,354
E01246	KENAITZE INDIAN TRIBE	0.000402272	$ 112,716
E01252	AGDAAGUX TRIBE (KING COVE)	0.00037297	$ 104,506
E01254	KING SALMON TRIBE	4.09893E-05	$ 11,485
E01260	KNIK TRIBE	0.000283909	$ 79,551
E01264	KOKHANOK	0.000203144	$ 56,921
E01266	NEW KOLIGANEK (KOLIGANEK)	0.000131406	$ 36,820

E01279	LARSEN BAY	1.80799E-05	$	5,066
E01283	LEVELOCK	0.0010243	$	287,009
E01295	MANOKOTAK	0.000253994	$	71,169
E01309	MENTASTA	2.72634E-05	$	7,639
E01324	PAULOFF HARBOR	0.00017393	$	48,735
E01330	NAKNEK	0.001855871	$	520,015
E01336	NELSON LAGOON	0.000114157	$	31,987
E01339	NEW STUYAHOK	0.000132432	$	37,107
E01340	NEWHALEN	0.002782963	$	779,786
E01346	NIKOLSKI	2.07679E-05	$	5,819
E01348	NINILCHIK	0.000471152	$	132,017
E01353	NONDALTON	6.39638E-05	$	17,923
E01367	OLD HARBOR	4.28449E-05	$	12,005
E01370	OUZINKIE	0.000262691	$	73,606
E01376	PEDRO BAY	0.000208515	$	58,426
E01378	PERRYVILLE	0.000157744	$	44,200
E01383	PILOT POINT	0.000348278	$	97,587
E01396	PORT GRAHAM	0.000173799	$	48,699
E01397	PORT HEIDEN	0.000465471	$	130,425
E01398	PORT LIONS	0.000341681	$	95,739
E01402	PORTAGE CREEK	4.80145E-05	$	13,454
E01419	SALAMATOFF	0.00041533	$	116,375
E01424	QAGAN TAYAGUNGIN (SAND POINT)	0.000271481	$	76,069
E01431	SELDOVIA	0.000384164	$	107,643
E01450	SOUTH NAKNEK	0.000267407	$	74,927
E01455	SAINT GEORGE	0.000412542	$	115,594
E01458	SAINT PAUL	0.000474003	$	132,816
E01477	TATITLEK	9.36216E-05	$	26,233
E01478	TAZLINA	0.000102185	$	28,632
E01487	TOGIAK	0.000590746	$	165,527
E01503	TWIN HILLS	0.000254801	$	71,395
E01505	TYONEK	0.000375801	$	105,299
E01506	UGASHIK	0.000386458	$	108,286
E01510	QAWALANGIN (UNALASKA)	0.00031642	$	88,661
E01511	UNGA	0.000309438	$	86,704
E01531	LESNOI (WOODY ISLAND)	8.80288E-06	$	2,467
E01578	CHENEGA (CHANEGA)	0.000820165	$	229,810

E01586	KAGUYAK	4.6331E-07	$	130
E01623	KANATAK	8.80288E-06	$	2,467
E01804	SUN'AQ TRIBE (KODIAK)	0	$	-
E01850	SUN'AQ TRIBE (KODIAK) (POP)	0.000229362	$	64,267
E02005	AKIACHAK	0.000467675	$	131,042
E02006	AKIAK	9.40498E-05	$	26,353
E02008	ALAKANUK	0.000353685	$	99,102
E02019	YUPIIT (ANDREAFSKI)	0.000231501	$	64,867
E02021	ANIAK	0.000111517	$	31,247
E02029	ATMAUTLUAK	0.000183679	$	51,467
E02043	ORUTSARAMUIT (BETHEL)	0.000527704	$	147,863
E02047	BILL MOORE'S SLOUGH	0.000621648	$	174,186
E02077	CHEFORNAK	6.84154E-05	$	19,170
E02080	CHEVAK	0.000223468	$	62,616
E02092	CHULOONAWICK	7.56739E-06	$	2,120
E02109	CROOKED CREEK	0.001763482	$	494,128
E02132	EEK	0.00013771	$	38,586
E02141	EMMONAK	0.000260013	$	72,856
E02170	GEORGETOWN	0.00036578	$	102,491
E02189	HAMILTON	3.86091E-06	$	1,082
E02199	HOOPER BAY	0.00017266	$	48,379
E02232	KALSKAG	3.69103E-05	$	10,342
E02241	KASIGLUK	9.42591E-05	$	26,411
E02255	KIPNUK	0.000128287	$	35,946
E02267	KONGIGANAK	0.000298045	$	83,512
E02268	KOTLIK	0.000151138	$	42,349
E02275	KWETHLUK	0.000190269	$	53,313
E02276	KWIGILLINGOK	5.86859E-05	$	16,444
E02288	LIME VILLAGE	0.00010261	$	28,751
E02291	LOWER KALSKAG	5.43935E-05	$	15,241
E02297	MARSHALL (FORTUNA LEDGE)	0.000503771	$	141,157
E02307	MEKORYUK	0.000169488	$	47,491
E02323	ASA'CARSARMIUT	0.000159698	$	44,747
E02325	GOODNEWS BAY	0.000102407	$	28,694
E02332	NAPAIMUTE	1.15827E-05	$	3,245
E02333	NAPAKIAK	0.000196848	$	55,157
E02334	NAPASKIAK	0.000193489	$	54,216

E02341	NEWTOK	0.001162596	$	325,760
E02343	NIGHTMUTE	0.00036304	$	101,724
E02361	NUNAPITCHUK	8.03066E-05	$	22,502
E02366	OHOGAMIUT	1.25094E-05	$	3,505
E02369	OSCARVILLE	1.08106E-05	$	3,029
E02371	PAIMIUT	1.01928E-05	$	2,856
E02384	PILOT STATION	0.000114705	$	32,140
E02385	PITKAS POINT	2.61512E-05	$	7,328
E02388	PLATINUM	6.7952E-06	$	1,904
E02407	KWINHAGAK (QUINHAGAK)	0.000187433	$	52,519
E02411	RED DEVIL	6.17936E-05	$	17,315
E02418	IQURMUIT (RUSSIAN MISSION)	0.000450209	$	126,148
E02428	SCAMMON BAY	0.00021422	$	60,025
E02436	NUNAM IQUA (SHELDON'S POINT)	2.73353E-05	$	7,659
E02446	SLEETMUTE	3.27425E-05	$	9,174
E02456	ALGAACIQ (ST. MARY'S)	5.74504E-05	$	16,098
E02464	STONY RIVER	0.000204835	$	57,395
E02490	NUNAKAUYARMIUT (TOKSOOK BAY)	0.000126532	$	35,454
E02497	TULUKSAK	0.000121326	$	33,995
E02499	TUNTUTULIAK	0.000113756	$	31,875
E02500	TUNUNAK	9.66292E-05	$	27,076
E02508	UMKUMIUTE	2.16211E-06	$	606
E02841	CHUATHBALUK (RUSSIAN MISSION)	0.000210273	$	58,919
E03010	ALATNA	5.40528E-06	$	1,515
E03013	ALLAKAKET	0.000159164	$	44,598
E03016	ANAKTUVUK PASS	0.000145615	$	40,801
E03022	ANVIK	2.6414E-05	$	7,401
E03025	ARTIC VILLAGE(VENETIE)	0.000537883	$	150,715
E03028	ATQASUK VILLAGE (ATKASOOK)	0.00010439	$	29,250
E03033	BARROW INUPIAT	0.001400071	$	392,300
E03038	BEAVER	7.4365E-05	$	20,837
E03049	BIRCH CREEK TRIBE	0.000106643	$	29,881
E03072	CHALKYITSIK	0.000177107	$	49,625
E03093	CIRCLE	5.28041E-05	$	14,796
E03127	DOT LAKE	8.17887E-05	$	22,917
E03130	EAGLE	4.81887E-05	$	13,502
E03146	EVANSVILLE	0.000175431	$	49,156

E03162	FORT YUKON	0.00053164	$	148,966
E03166	GALENA (LOUDEN VILLAGE)	0.000102979	$	28,855
E03195	HOLY CROSS	0.000733543	$	205,539
E03205	HUGHES	0.000200634	$	56,218
E03210	HUSLIA	0.000392228	$	109,902
E03230	KAKTOVIK (BARTER ISLAND)	0.000302508	$	84,763
E03233	KALTAG	0.000164646	$	46,134
E03271	KOYUKUK	4.75324E-05	$	13,319
E03294	MANLEY HOT SPRINGS	0.000190645	$	53,419
E03303	MCGRATH	0.000559825	$	156,863
E03314	MINTO	8.36019E-05	$	23,425
E03337	NENANA	0.000158136	$	44,310
E03345	NIKOLAI	0.000397715	$	111,440
E03354	NUIQSUT (NOOIKSUT)	0.000971049	$	272,088
E03358	NORTHWAY	8.77483E-05	$	24,587
E03359	NULATO	0.000318201	$	89,160
E03389	POINT HOPE	0.001055683	$	295,802
E03390	POINT LAY	0.00018705	$	52,412
E03410	RAMPART	0.000413387	$	115,831
E03416	RUBY	0.000156708	$	43,910
E03434	SHAGELUK	6.64438E-05	$	18,618
E03463	STEVENS	0.000819964	$	229,754
E03472	TAKOTNA	3.50281E-05	$	9,815
E03474	TANACROSS	4.88519E-05	$	13,688
E03475	TANANA	0.00025781	$	72,238
E03479	TELIDA	9.52838E-06	$	2,670
E03483	TETLIN	0.000290328	$	81,350
E03518	VENETIE	0.001908435	$	534,743
E03519	WAINWRIGHT	0.000373051	$	104,529
E03634	HEALY LAKE	0.000702448	$	196,826
E03672	GRAYLING	0.000121694	$	34,099
E03842	INUPIAT (ARCTIC SLOPE	0	$	-
E04014	AMBLER	0.000179062	$	50,173
E04056	BREVIG MISSION	0.002234208	$	626,025
E04059	BUCKLAND	0.000196699	$	55,115
E04107	COUNCIL	0.000645823	$	180,960
E04117	DEERING	0.000304929	$	85,441

E04139	ELIM	0.003003718	$	841,642
E04167	GAMBELL	0.000802277	$	224,798
E04177	CHINIK (GOLOVIN)	0.002476734	$	693,981
E04219	DIOMEDE (INALIK)	0.000871644	$	244,235
E04249	KIANA	0.000195189	$	54,692
E04253	KING ISLAND	0.001959187	$	548,964
E04256	KIVALINA	0.000497913	$	139,515
E04261	KOBUK	0.000419178	$	117,454
E04269	KOTZEBUE	0.001277088	$	357,840
E04270	KOYUK	0.00400364	$	1,121,820
E04299	MARY'S IGLOO	0.002848064	$	798,027
E04350	NOATAK	0.000268066	$	75,112
E04352	NOME	0.000693125	$	194,214
E04355	NOORVIK	0.001667867	$	467,336
E04425	SAVOONGA	0.003275815	$	917,883
E04429	SELAWIK	0.00033264	$	93,206
E04435	SHAKTOOLIK	0.002637548	$	739,041
E04438	SHISHMAREF	0.001510506	$	423,244
E04440	SHUNGNAK	0.000527017	$	147,670
E04447	SOLOMON	0.001445523	$	405,036
E04457	SAINT MICHAEL	0.001628392	$	456,275
E04460	STEBBINS	0.001026155	$	287,529
E04480	TELLER	0.001117104	$	313,013
E04509	UNALAKLEET	0.000998426	$	279,759
E04521	WALES	0.001487735	$	416,863
E04525	WHITE MOUNTAIN	0.002138295	$	599,150
E09020	ANGOON	0.000748292	$	209,671
E09108	CRAIG	0.003172434	$	888,916
E09128	DOUGLAS	0.000432239	$	121,113
E09186	CHILKOOT (HAINES)	0.00070501	$	197,544
E09198	HOONAH	0.000879626	$	246,471
E09211	HYDABURG	0.006521119	$	1,827,217
E09229	KAKE	0.002654215	$	743,711
E09238	KASAAN	0.005074374	$	1,421,839
E09248	KETCHIKAN	0.002287486	$	640,954
E09257	KLAWOCK	0.004286807	$	1,201,163
E09259	CHILKAT (KLUKWAN)	0.001069984	$	299,810

E09380	PETERSBURG	0.003387362	$	949,139
E09427	SAXMAN	0.000137306	$	38,473
E09442	SITKA TRIBE	0.000676279	$	189,493
E09443	SKAGWAY	5.59855E-05	$	15,687
E09532	WRANGELL	0.000909776	$	254,919
E09533	YAKUTAT TLINGIT TRIBE	0.000693867	$	194,421
E09801	TLINGIT & HAIDA TRIBES	0.00208879	$	585,279
			$	36,628,493

Based on $280,200,000

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AK Vlgs

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B07814 - TONKAWA TRIBE		0.003283			0.000826	552	0.000426	595,680	14,838	0.00197455846
TONKAWA TRIBE OF INDIANS	138,673	0.003283	289.6	14,840	0.000826	552	0.000426	595,680	14,838	0.00197455846
B06804 - WICHITA TRIBES		0.000723			0.001031	1,101	0.000850	253,678	6,319	0.00084089092
WICHITA AND AFFILIATED TRIBES (WICHIT	30,541	0.000723	118.4	18,521	0.001031	1,101	0.000850	253,678	6,319	0.00084089092
Region-- 24 Tribes 24 Reserv	1,080,402	0.025577	3,439.8	563,099	0.031351	72,591	0.056053	10,077,385	251,016	0.03340451077
C - Rocky Mtn										
C58280 - WIND RIVER		0.016403			0.016925	7,563	0.005840	4,358,360	108,562	0.01444708864
ARAPAHOE & SHOSHONE TRIBES-WIND RI\	692,902	0.016403	1,580.7	303,983	0.016925	7,563	0.005840	4,358,360	108,562	0.01444708864
C56206 - FORT PECK		0.028621			0.008544	7,289	0.005628	5,430,034	135,256	0.01799947386
ASSINIBOINE & SIOUX TRIBES-FORT PECK	1,208,982	0.028621	2,322.6	153,468	0.008544	7,289	0.005628	5,430,034	135,256	0.01799947386
C51201 - BLACKFEET		0.007328			0.010860	9,503	0.007338	2,530,937	63,043	0.00838954911
BLACKFEET TRIBE	309,539	0.007328	865.3	195,057	0.010860	9,503	0.007338	2,530,937	63,043	0.00838954911
C59205 - ROCKY BOYS		0.005938			0.006569	3,305	0.002552	1,644,256	40,957	0.00545037815
CHIPPEWA CREE INDIANS - ROCKY BOY'S	250,847	0.005938	533.1	117,989	0.006569	3,305	0.002552	1,644,256	40,957	0.00545037815
C52202 - CROW TRIBE		0.020674			0.014317	5,910	0.004564	4,689,431	116,808	0.01554452263
CROW TRIBE OF MONTANA	873,275	0.020674	1,507.0	257,145	0.014317	5,910	0.004564	4,689,431	116,808	0.01554452263
C55204 - FORT BELKNAP		0.008636			0.008319	2,976	0.002298	2,194,186	54,655	0.00727328775
FORT BELKNAP INDIAN COMMUNITY	364,800	0.008636	673.8	149,414	0.008319	2,976	0.002298	2,194,186	54,655	0.00727328775
C57207 - NORTHERN CHEYENNE		0.007792			0.005819	4,715	0.003641	1,921,632	47,866	0.00636982620
NORTHERN CHEYENNE TRIBE	329,147	0.007792	678.5	104,510	0.005819	4,715	0.003641	1,921,632	47,866	0.00636982620
Region-- 7 Tribes 7 Reserv	4,029,493	0.095392	8,161.0	1,281,565	0.071353	41,261	0.031861	22,768,836	567,146	0.07547412633
E - Alaska										
BRISTOL BAY NATIVE ASSOCIATION										
E01136 - EKUK		0.000341			0.000051	2	0.000002	56,073	1,397	0.00018586928
EKUK, NATIVE VILLAGE OF	14,389	0.000341	18.3	913	0.000051	2	0.000002	56,073	1,397	0.00018586928
E01137 - EKWOK		0.000042			0.000007	133	0.000103	13,124	327	0.00004350339
EKWOK VILLAGE	1,773	0.000042	2.0	118	0.000007	133	0.000103	13,124	327	0.00004350339
E01383 - PILOT POINT		0.000604			0.000095	117	0.000090	105,067	2,617	0.00034827754

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	Amount ($1000)	Share	Length (mi)	Amount (v-mi/d)	Share	Count	Share	($)	($)	
PILOT POINT, NATIVE VILLAGE OF	25,498	0.000604	46.9	1,700	0.000095	117	0.000090	105,067	2,617	0.00034827754
E01402 - PORTAGE CREEK		0.000082			0.000006	34	0.000026	14,485	361	0.00004801450
PORTAGE CREEK VILLAGE (OHGSENAKLE	3,458	0.000082	2.2	110	0.000006	34	0.000026	14,485	361	0.00004801450
E01503 - TWIN HILLS		0.000446			0.000069	71	0.000055	76,868	1,915	0.00025480118
TWIN HILLS VILLAGE	18,857	0.000446	24.8	1,235	0.000069	71	0.000055	76,868	1,915	0.00025480118
5 Tribes 5 Reserv	63,975	0.001515	94.2	4,076	0.000227	357	0.000276	265,617	6,616	0.00088046588
KAWERAK, INC.										
E04056 - BREVIG MISSION		0.004043			0.000565	281	0.000217	674,010	16,789	0.00223420751
BREVIG MISSION, NATIVE VILLAGE OF	170,766	0.004043	203.9	10,148	0.000565	281	0.000217	674,010	16,789	0.00223420751
E04177 - CHINIK (GOLOVIN)		0.004535			0.000622	147	0.000114	747,175	18,611	0.00247673388
CHINIK ESKIMO COMMUNITY (GOLOVIN)	191,554	0.004535	225.4	11,175	0.000622	147	0.000114	747,175	18,611	0.00247673388
E04107 - COUNCIL		0.001166			0.000155	105	0.000081	194,830	4,853	0.00064582287
COUNCIL, NATIVE VILLAGE OF	49,265	0.001166	71.9	2,782	0.000155	105	0.000081	194,830	4,853	0.00064582287
E04219 - DIOMEDE (INALIK)		0.001557			0.000233	152	0.000117	262,955	6,550	0.00087164406
DIOMEDE (INALIK), NATIVE VILLAGE OF	65,750	0.001557	84.6	4,185	0.000233	152	0.000117	262,955	6,550	0.00087164406
E04139 - ELIM		0.005457			0.000788	250	0.000193	906,154	22,571	0.00300371824
ELIM, NATIVE VILLAGE OF	230,525	0.005457	281.9	14,156	0.000788	250	0.000193	906,154	22,571	0.00300371824
E04167 - GAMBELL		0.001197			0.000325	689	0.000532	242,029	6,029	0.00080227677
GAMBELL, NATIVE VILLAGE OF	50,548	0.001197	75.6	5,840	0.000325	689	0.000532	242,029	6,029	0.00080227677
E04253 - KING ISLAND		0.003436			0.000601	394	0.000304	591,042	14,722	0.00195918671
KING ISLAND NATIVE COMMUNITY	145,138	0.003436	207.7	10,799	0.000601	394	0.000304	591,042	14,722	0.00195918671
E04270 - KOYUK		0.007276			0.001059	310	0.000239	1,207,808	30,085	0.00400364021
KOYUK, NATIVE VILLAGE OF	307,365	0.007276	366.2	19,013	0.001059	310	0.000239	1,207,808	30,085	0.00400364021
E04299 - MARY'S IGLOO		0.005214			0.000750	106	0.000082	859,196	21,402	0.00284806355
MARY'S IGLOO, NATIVE VILLAGE OF	220,228	0.005214	270.4	13,465	0.000750	106	0.000082	859,196	21,402	0.00284806355
E04352 - NOME		0.000647			0.000191	2,022	0.001561	209,100	5,208	0.00069312506
NOME ESKIMO COMMUNITY	27,336	0.000647	260.2	3,430	0.000191	2,022	0.001561	209,100	5,208	0.00069312506

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E04457 - SAINT MICHAEL		0.002876			0.000440	380	0.000293	491,249	12,236	0.00162839203
SAINT MICHAEL, NATIVE VILLAGE OF	121,466	0.002876	138.2	7,900	0.000440	380	0.000293	491,249	12,236	0.00162839203
E04435 - SHAKTOOLIK		0.004766			0.000723	242	0.000187	795,689	19,820	0.00263754784
SHAKTOOLIK, NATIVE VILLAGE OF	201,339	0.004766	249.2	12,990	0.000723	242	0.000187	795,689	19,820	0.00263754784
E04438 - SHISHMAREF		0.002625			0.000358	588	0.000454	455,686	11,351	0.00151050628
SHISHMAREF, NATIVE VILLAGE OF	110,877	0.002625	132.1	6,422	0.000358	588	0.000454	455,686	11,351	0.00151050628
E04447 - SOLOMON		0.002658			0.000388	3	0.000002	436,082	10,862	0.00144552329
SOLOMON, VILLAGE OF	112,259	0.002658	165.6	6,961	0.000388	3	0.000002	436,082	10,862	0.00144552329
E04460 - STEBBINS		0.001724			0.000252	574	0.000443	309,568	7,711	0.00102615541
STEBBINS COMMUNITY ASSOCIATION	72,806	0.001724	89.8	4,534	0.000252	574	0.000443	309,568	7,711	0.00102615541
E04480 - TELLER		0.001986			0.000273	275	0.000212	337,005	8,394	0.00111710446
TELLER, NATIVE VILLAGE OF	83,874	0.001986	99.7	4,900	0.000273	275	0.000212	337,005	8,394	0.00111710446
E04509 - UNALAKLEET		0.001577			0.000325	726	0.000561	301,203	7,503	0.00099842646
UNALAKLEET, NATIVE VILLAGE OF	66,628	0.001577	84.3	5,846	0.000325	726	0.000561	301,203	7,503	0.00099842646
E04521 - WALES		0.002700			0.000381	152	0.000117	448,816	11,179	0.00148773456
WALES, NATIVE VILLAGE OF	114,046	0.002700	138.5	6,845	0.000381	152	0.000117	448,816	11,179	0.00148773456
E04525 - WHITE MOUNTAIN		0.003882			0.000557	194	0.000150	645,075	16,068	0.00213829454
WHITE MOUNTAIN, NATIVE VILLAGE OF	163,989	0.003882	194.6	10,012	0.000557	194	0.000150	645,075	16,068	0.00213829454
19 Tribes 19 Reserv	2,505,761	0.059320	3,339.8	161,400	0.008986	7,590	0.005861	10,114,670	251,945	0.03352810376
MANILAQ ASSOCIATION										
E04355 - NOORVIK		0.002882			0.000408	677	0.000523	503,158	12,533	0.00166786656
NOORVIK NATIVE COMMUNITY	121,741	0.002882	148.0	7,322	0.000408	677	0.000523	503,158	12,533	0.00166786656
E04440 - SHUNGNAK		0.000904			0.000110	272	0.000210	158,989	3,960	0.00052701727
SHUNGNAK, NATIVE VILLAGE OF	38,192	0.000904	41.5	1,973	0.000110	272	0.000210	158,989	3,960	0.00052701727
2 Tribes 2 Reserv	159,933	0.003786	189.5	9,294	0.000517	949	0.000733	662,147	16,493	0.00219488383
SOUTHEAST TDOT										
E09801 - TLINGIT & HAIDA TRIBES		0.000907			0.002568	5,598	0.004323	630,141	15,696	0.00208879000
CENTRAL COUNCIL TLINGIT & HAIDA INDIA	38,333	0.000907	45.7	46,131	0.002568	5,598	0.004323	630,141	15,696	0.00208879000

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E09128 - DOUGLAS		0.000562			0.000351	298	0.000230	130,397	3,248	0.00043223899
DOUGLAS INDIAN ASSOCIATION	23,740	0.000562	61.7	6,299	0.000351	298	0.000230	130,397	3,248	0.00043223899
E09198 - HOONAH		0.001427			0.000237	616	0.000476	265,363	6,610	0.00087962600
HOONAH INDIAN ASSOCIATION	60,272	0.001427	91.8	4,255	0.000237	616	0.000476	265,363	6,610	0.00087962600
E09427 - SAXMAN		0.000168			0.000009	328	0.000253	41,422	1,032	0.00013730599
SAXMAN, ORGANIZED VILLAGE OF	7,088	0.000168	6.6	165	0.000009	328	0.000253	41,422	1,032	0.00013730599
E09532 - WRANGELL		0.001421			0.000349	611	0.000472	274,459	6,836	0.00090977612
WRANGELL COOPERATIVE ASSOCIATION	60,034	0.001421	108.1	6,275	0.000349	611	0.000472	274,459	6,836	0.00090977612
5 Tribes 5 Reserv	189,466	0.004485	313.9	63,125	0.003515	7,451	0.005754	1,341,782	33,422	0.00444773710
E01002 - AFOGNAK		0.000243			0.000033	660	0.000510	70,337	1,752	0.00023315188
AFOGNAK, NATIVE VILLAGE OF	10,261	0.000243	11.7	585	0.000033	660	0.000510	70,337	1,752	0.00023315188
E01252 - AGDAAGUX TRIBE (KING COVE)		0.000560			0.000103	400	0.000309	112,517	2,803	0.00037296982
AGDAAGUX TRIBE OF KING COVE	23,669	0.000560	17.7	1,858	0.000103	400	0.000309	112,517	2,803	0.00037296982
E01004 - AKHIOK		0.000354			0.000030	83	0.000064	59,993	1,494	0.00019886598
AKHIOK, NATIVE VILLAGE OF	14,949	0.000354	11.2	545	0.000030	83	0.000064	59,993	1,494	0.00019886598
E02005 - AKIACHAK		0.000655			0.000133	648	0.000500	141,087	3,514	0.00046767452
AKIACHAK NATIVE COMMUNITY	27,680	0.000655	82.2	2,393	0.000133	648	0.000500	141,087	3,514	0.00046767452
E02006 - AKIAK		0.000082			0.000003	338	0.000261	28,373	707	0.00009404980
AKIAK NATIVE COMMUNITY	3,462	0.000082	2.1	53	0.000003	338	0.000261	28,373	707	0.00009404980
E01007 - AKUTAN		0.000370			0.000048	123	0.000095	65,811	1,639	0.00021815083
AKUTAN, NATIVE VILLAGE OF	15,619	0.000370	17.5	855	0.000048	123	0.000095	65,811	1,639	0.00021815083
E02008 - ALAKANUK		0.000470			0.000017	735	0.000568	106,699	2,658	0.00035368473
ALAKANUK, VILLAGE OF	19,860	0.000470	12.2	305	0.000017	735	0.000568	106,699	2,658	0.00035368473
E03010 - ALATNA		0.000000			0.000000	35	0.000027	1,631	41	0.00000540528
ALATNA VILLAGE		0.000000			0.000000	35	0.000027	1,631	41	0.00000540528
E01011 - ALEKNAGIK		0.000251			0.000062	204	0.000158	53,013	1,321	0.00017572851
ALEKNAGIK, NATIVE VILLAGE OF	10,600	0.000251	15.4	1,123	0.000062	204	0.000158	53,013	1,321	0.00017572851

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E02456 - ALGAACIQ (ST. MARY'S)		0.000000			0.000000	372	0.000287	17,331	432	0.00005745036
ALGAACIQ NATIVE VILLAGE (ST. MARY'S)		0.000000			0.000000	372	0.000287	17,331	432	0.00005745036
E03013 - ALLAKAKET		0.000264			0.000022	133	0.000103	48,016	1,196	0.00015916429
ALLAKAKET VILLAGE	11,147	0.000264	10.0	400	0.000022	133	0.000103	48,016	1,196	0.00015916429
E04014 - AMBLER		0.000255			0.000017	301	0.000232	54,019	1,346	0.00017906240
AMBLER, NATIVE VILLAGE OF	10,777	0.000255	5.0	300	0.000017	301	0.000232	54,019	1,346	0.00017906240
E03016 - ANAKTUVUK PASS		0.000198			0.000014	276	0.000213	43,929	1,094	0.00014561455
ANAKTUKVUK PASS, VILLAGE OF	8,359	0.000198	5.8	243	0.000014	276	0.000213	43,929	1,094	0.00014561455
E09020 - ANGOON		0.001217			0.000204	510	0.000394	225,743	5,623	0.00074829185
ANGOON COMMUNITY ASSOCIATION	51,388	0.001217	40.0	3,668	0.000204	510	0.000394	225,743	5,623	0.00074829185
E02021 - ANIAK		0.000060			0.000024	481	0.000371	33,642	838	0.00011151723
ANIAK, VILLAGE OF	2,525	0.000060	5.0	440	0.000024	481	0.000371	33,642	838	0.00011151723
E03022 - ANVIK		0.000019			0.000003	105	0.000081	7,969	198	0.00002641404
ANVIK VILLAGE	798	0.000019	0.9	45	0.000003	105	0.000081	7,969	198	0.00002641404
E03025 - ARTIC VILLAGE(VENETIE)		0.000973			0.000097	145	0.000112	162,267	4,042	0.00053788339
ARCTIC VILLAGE	41,102	0.000973	39.4	1,735	0.000097	145	0.000112	162,267	4,042	0.00053788339
E02323 - ASA'CARSARMIUT		0.000060			0.000013	813	0.000628	48,177	1,200	0.00015969841
ASA'CARSARMIUT TRIBE	2,554	0.000060	2.3	234	0.000013	813	0.000628	48,177	1,200	0.00015969841
E01027 - ATKA		0.001212			0.000137	87	0.000067	199,250	4,963	0.00066047447
ATKA, NATIVE VILLAGE OF	51,184	0.001212	35.3	2,466	0.000137	87	0.000067	199,250	4,963	0.00066047447
E02029 - ATMAUTLUAK		0.000229			0.000063	324	0.000250	55,412	1,380	0.00018367941
ATMAUTLUAK, VILLAGE OF	9,689	0.000229	35.2	1,135	0.000063	324	0.000250	55,412	1,380	0.00018367941
E03028 - ATQASUK VILLAGE (ATKASOOK)		0.000125			0.000016	239	0.000185	31,492	784	0.00010438967
ATQASUK VILLAGE (ATKASOOK)	5,284	0.000125	6.8	295	0.000016	239	0.000185	31,492	784	0.00010438967
E03033 - BARROW INUPIAT		0.001212			0.000970	3,257	0.002515	422,370	10,521	0.00140007091
BARROW INUPIAT TRADITIONAL GOV., NAT	51,197	0.001212	487.4	17,426	0.000970	3,257	0.002515	422,370	10,521	0.00140007091

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E03038 - BEAVER		0.000116			0.000011	83	0.000064	22,434	559	0.00007436495
BEAVER VILLAGE	4,914	0.000116	5.1	203	0.000011	83	0.000064	22,434	559	0.00007436495
E01041 - BELKOFSKI		0.000000			0.000000	62	0.000048	2,889	72	0.00000957506
BELKOFSKI, NATIVE VILLAGE OF		0.000000			0.000000	62	0.000048	2,889	72	0.00000957506
E02047 - BILL MOORE'S SLOUGH		0.001114			0.000164	102	0.000079	187,537	4,671	0.00062164781
BILL MOORE'S SLOUGH, VILLAGE OF	47,038	0.001114	60.0	2,941	0.000164	102	0.000079	187,537	4,671	0.00062164781
E03049 - BIRCH CREEK TRIBE		0.000192			0.000020	29	0.000022	32,172	801	0.00010664338
BIRCH CREEK TRIBE	8,127	0.000192	8.3	358	0.000020	29	0.000022	32,172	801	0.00010664338
E04059 - BUCKLAND		0.000244			0.000022	442	0.000341	59,340	1,478	0.00019669896
BUCKLAND, NATIVE VILLAGE OF	10,290	0.000244	10.4	398	0.000022	442	0.000341	59,340	1,478	0.00019669896
E01065 - CANTWELL		0.000000			0.000000	62	0.000048	2,889	72	0.00000957506
CANTWELL, NATIVE VILLAGE OF		0.000000			0.000000	62	0.000048	2,889	72	0.00000957506
E03072 - CHALKYITSIK		0.000302			0.000043	84	0.000065	53,429	1,331	0.00017710677
CHALKYITSIK VILLAGE	12,769	0.000302	15.9	778	0.000043	84	0.000065	53,429	1,331	0.00017710677
E01578 - CHENEGA (CHANEGA)		0.001462			0.000259	74	0.000057	247,425	6,163	0.00082016462
CHANEGA (CHENEGA), NATIVE VILLAGE OF	61,752	0.001462	106.4	4,657	0.000259	74	0.000057	247,425	6,163	0.00082016462
E01087 - CHEESH-NA (CHISTOCHINA)		0.000138			0.000018	63	0.000049	25,288	630	0.00008382463
CHEESH-NA TRIBE (CHISTOCHINA)	5,808	0.000138	7.1	320	0.000018	63	0.000049	25,288	630	0.00008382463
E02077 - CHEFORNAK		0.000000			0.000000	443	0.000342	20,639	514	0.00006841535
CHEFORNAK, VILLAGE OF		0.000000			0.000000	443	0.000342	20,639	514	0.00006841535
E02080 - CHEVAK		0.000171			0.000025	845	0.000652	67,415	1,679	0.00022346783
CHEVAK NATIVE VILLAGE	7,212	0.000171	9.1	455	0.000025	845	0.000652	67,415	1,679	0.00022346783
E01081 - CHICKALOON		0.003707			0.000460	508	0.000392	624,511	15,556	0.00207013030
CHICKALOON NATIVE VILLAGE	156,607	0.003707	237.8	8,259	0.000460	508	0.000392	624,511	15,556	0.00207013030
E01083 - CHIGNIK BAY		0.000521			0.000078	46	0.000036	87,779	2,186	0.00029096887
CHIGNIK BAY TRIBAL COUNCIL	22,014	0.000521	35.7	1,395	0.000078	46	0.000036	87,779	2,186	0.00029096887

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	Amount ($1000)	Share	Length (mi)	Amount (v-mi/d)	Share	Count	Share	($)	($)	
E01084 - CHIGNIK LAGOON		0.000449			0.000063	82	0.000063	77,209	1,923	0.00025593354
CHIGNIK LAGOON, NATIVE VILLAGE OF	18,965	0.000449	20.5	1,125	0.000063	82	0.000063	77,209	1,923	0.00025593354
E01085 - CHIGNIK LAKE		0.000261			0.000041	122	0.000094	48,685	1,213	0.00016137971
CHIGNIK LAKE VILLAGE	11,011	0.000261	13.1	730	0.000041	122	0.000094	48,685	1,213	0.00016137971
E09259 - CHILKAT (KLUKWAN)		0.001972			0.000215	127	0.000098	322,790	8,040	0.00106998416
CHILKAT INDIAN VILLAGE (KLUKWAN)	83,296	0.001972	108.0	3,857	0.000215	127	0.000098	322,790	8,040	0.00106998416
E09186 - CHILKOOT (HAINES)		0.001107			0.000304	392	0.000303	212,686	5,298	0.00070501009
CHILKOOT INDIAN ASSOCIATION (HAINES)	46,745	0.001107	61.2	5,458	0.000304	392	0.000303	212,686	5,298	0.00070501009
E01088 - CHITINA		0.000023			0.000004	65	0.000050	6,844	170	0.00002268658
CHITINA, NATIVE VILLAGE OF	975	0.000023	1.1	66	0.000004	65	0.000050	6,844	170	0.00002268658
E02841 - CHUATHBALUK (RUSSIAN MISSION)		0.000319			0.000102	129	0.000100	63,435	1,580	0.00021027304
CHUATHBALUK (RUSSION MISSION,KUSKO	13,490	0.000319	26.7	1,837	0.000102	129	0.000100	63,435	1,580	0.00021027304
E02092 - CHULOONAWICK		0.000000			0.000000	49	0.000038	2,283	57	0.00000756739
CHULOONAWIK NATIVE VILLAGE		0.000000			0.000000	49	0.000038	2,283	57	0.00000756739
E03093 - CIRCLE		0.000072			0.000011	88	0.000068	15,930	397	0.00005280407
CIRCLE NATIVE COMMUNITY	3,042	0.000072	4.2	192	0.000011	88	0.000068	15,930	397	0.00005280407
E01096 - CLARKS POINT		0.000054			0.000016	75	0.000058	13,174	328	0.00004366781
CLARKS POINT, VILLAGE OF	2,301	0.000054	3.1	291	0.000016	75	0.000058	13,174	328	0.00004366781
E09108 - CRAIG		0.005516			0.001106	535	0.000413	957,052	23,839	0.00317243393
CRAIG COMMUNITY ASSOCIATION	232,994	0.005516	314.2	19,872	0.001106	535	0.000413	957,052	23,839	0.00317243393
E02109 - CROOKED CREEK		0.003219			0.000437	147	0.000114	532,003	13,252	0.00176348189
CROOKED CREEK, VILLAGE OF	135,990	0.003219	161.4	7,849	0.000437	147	0.000114	532,003	13,252	0.00176348189
E01121 - CURYUNG (DILLINGHAM)		0.000541			0.000334	1,638	0.001265	188,175	4,687	0.00062376337
CURYUNG TRIBAL COUNCIL	22,849	0.000541	38.0	6,007	0.000334	1,638	0.001265	188,175	4,687	0.00062376337
E04117 - DEERING		0.000520			0.000076	144	0.000111	91,990	2,291	0.00030492917
DEERING, NATIVE VILLAGE OF	21,948	0.000520	50.3	1,370	0.000076	144	0.000111	91,990	2,291	0.00030492917

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E03127 - DOT LAKE		0.000150			0.000007	31	0.000024	24,674	615	0.00008178870
DOT LAKE, VILLAGE OF	6,336	0.000150	4.8	120	0.000007	31	0.000024	24,674	615	0.00008178870
E03130 - EAGLE		0.000084			0.000004	33	0.000025	14,537	362	0.00004818872
EAGLE, NATIVE VILLAGE OF	3,538	0.000084	2.9	73	0.000004	33	0.000025	14,537	362	0.00004818872
E02132 - EEK		0.000118			0.000102	311	0.000240	41,544	1,035	0.00013770980
EEK, NATIVE VILLAGE OF	4,981	0.000118	91.0	1,840	0.000102	311	0.000240	41,544	1,035	0.00013770980
E01133 - EGEGIK		0.000852			0.000124	86	0.000066	143,808	3,582	0.00047669358
EGEGIK VILLAGE	35,999	0.000852	44.1	2,233	0.000124	86	0.000066	143,808	3,582	0.00047669358
E01135 - EKLUTNA		0.000277			0.000013	60	0.000046	45,776	1,140	0.00015173748
EKLUTNA NATIVE VILLAGE	11,719	0.000277	7.6	225	0.000013	60	0.000046	45,776	1,140	0.00015173748
E02141 - EMMONAK		0.000253			0.000019	829	0.000640	78,440	1,954	0.00026001298
EMMONAK VILLAGE	10,674	0.000253	10.0	338	0.000019	829	0.000640	78,440	1,954	0.00026001298
E03146 - EVANSVILLE		0.000317			0.000042	26	0.000020	52,924	1,318	0.00017543086
EVANSVILLE VILLAGE (BETTLES FIELD)	13,409	0.000317	16.8	760	0.000042	26	0.000020	52,924	1,318	0.00017543086
E01148 - EYAK (CORDOVA)		0.001979			0.000376	454	0.000351	353,616	8,808	0.00117216690
EYAK (CORDOVA), NATIVE VILLAGE OF	83,583	0.001979	338.0	6,747	0.000376	454	0.000351	353,616	8,808	0.00117216690
E01149 - FALSE PASS		0.000028			0.000002	44	0.000034	6,391	159	0.00002118339
FALSE PASS, NATIVE VILLAGE OF	1,166	0.000028	0.7	35	0.000002	44	0.000034	6,391	159	0.00002118339
E03162 - FORT YUKON		0.000849			0.000076	546	0.000422	160,384	3,995	0.00053164027
FORT YUKON, NATIVE VILLAGE OF	35,862	0.000849	37.5	1,367	0.000076	546	0.000422	160,384	3,995	0.00053164027
E01165 - GAKONA		0.000164			0.000026	19	0.000015	28,019	698	0.00009287829
GAKONA, NATIVE VILLAGE OF	6,938	0.000164	12.0	469	0.000026	19	0.000015	28,019	698	0.00009287829
E03166 - GALENA (LOUDEN VILLAGE)		0.000053			0.000012	471	0.000364	31,066	774	0.00010297852
GALENA VILLAGE (LOUDEN VILLAGE)	2,248	0.000053	8.7	218	0.000012	471	0.000364	31,066	774	0.00010297852
E02170 - GEORGETOWN		0.000709			0.000037	3	0.000002	110,347	2,749	0.00036577969
GEORGETOWN, NATIVE VILLAGE OF	29,935	0.000709	25.0	658	0.000037	3	0.000002	110,347	2,749	0.00036577969

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E02325 - GOODNEWS BAY		0.000121			0.000012	248	0.000192	30,894	770	0.00010240661
GOODNEWS BAY, NATIVE VILLAGE OF	5,105	0.000121	5.4	220	0.000012	248	0.000192	30,894	770	0.00010240661
E03672 - GRAYLING		0.000176			0.000018	184	0.000142	36,712	914	0.00012169383
GRAYLING (HOLIKACHUK), ORGANIZED VIL	7,422	0.000176	7.6	325	0.000018	184	0.000142	36,712	914	0.00012169383
E01185 - GULKANA		0.000090			0.000013	84	0.000065	18,603	463	0.00006166658
GULKANA VILLAGE	3,781	0.000090	4.5	236	0.000013	84	0.000065	18,603	463	0.00006166658
E02189 - HAMILTON		0.000000			0.000000	25	0.000019	1,165	29	0.00000386091
HAMILTON, NATIVE VILLAGE OF		0.000000			0.000000	25	0.000019	1,165	29	0.00000386091
E03634 - HEALY LAKE		0.001250			0.000243	29	0.000022	211,913	5,278	0.00070244762
HEALY LAKE VILLAGE	52,815	0.001250	207.4	4,359	0.000243	29	0.000022	211,913	5,278	0.00070244762
E03195 - HOLY CROSS		0.001271			0.000210	227	0.000175	221,293	5,512	0.00073354346
HOLY CROSS VILLAGE	53,687	0.001271	67.7	3,772	0.000210	227	0.000175	221,293	5,512	0.00073354346
E02199 - HOOPER BAY		0.000000			0.000000	1,118	0.000863	52,088	1,297	0.00017265996
HOOPER BAY, NATIVE VILLAGE OF	0	0.000000	3.9	0	0.000000	1,118	0.000863	52,088	1,297	0.00017265996
E03205 - HUGHES		0.000357			0.000041	64	0.000049	60,527	1,508	0.00020063433
HUGHES VILLAGE	15,067	0.000357	15.7	743	0.000041	64	0.000049	60,527	1,508	0.00020063433
E03210 - HUSLIA		0.000635			0.000100	289	0.000223	118,326	2,947	0.00039222795
HUSLIA VILLAGE	26,836	0.000635	36.0	1,793	0.000100	289	0.000223	118,326	2,947	0.00039222795
E09211 - HYDABURG		0.012322			0.001011	366	0.000283	1,967,274	49,003	0.00652111864
HYDABURG COOPERATIVE ASSOCIATION	520,514	0.012322	344.3	18,164	0.001011	366	0.000283	1,967,274	49,003	0.00652111864
E01214 - IGIUGIG		0.000802			0.000123	42	0.000032	133,999	3,338	0.00044418052
IGIUGIG VILLAGE	33,860	0.000802	59.1	2,209	0.000123	42	0.000032	133,999	3,338	0.00044418052
E01216 - ILIAMNA		0.000942			0.000265	57	0.000044	168,729	4,203	0.00055930296
ILIAMNA, VILLAGE OF	39,781	0.000942	72.3	4,767	0.000265	57	0.000044	168,729	4,203	0.00055930296
E03842 - INUPIAT (ARCTIC SLOPE)		0.000000			0.000000		0.000000			0.00000000000
INUPIAT COMMUNITY OF THE ARTIC SLOPI		0.000000			0.000000		0.000000			0.00000000000

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E02418 - IQURMUIT (RUSSIAN MISSION)		0.000744			0.000096	320	0.000247	135,818	3,383	0.00045020871
IQURMUIT TRADITIONAL COUNCIL (RUSSIA	31,416	0.000744	34.8	1,732	0.000096	320	0.000247	135,818	3,383	0.00045020871
E01222 - IVANOFF BAY		0.000017			0.000002	20	0.000015	3,667	91	0.00001215380
IVANOFF BAY VILLAGE	709	0.000017	0.8	40	0.000002	20	0.000015	3,667	91	0.00001215380
E01586 - KAGUYAK		0.000000			0.000000	3	0.000002	140	3	0.00000046331
KAGUYAK VILLAGE		0.000000			0.000000	3	0.000002	140	3	0.00000046331
E09229 - KAKE		0.004543			0.000915	701	0.000541	800,716	19,945	0.00265421453
KAKE, ORGANIZED VILLAGE OF	191,904	0.004543	320.1	16,430	0.000915	701	0.000541	800,716	19,945	0.00265421453
E03230 - KAKTOVIK (BARTER ISLAND)		0.000405			0.000194	273	0.000211	91,260	2,273	0.00030250764
KAKTOVIK VILLAGE (AKA BARTER ISLAND	17,088	0.000405	118.3	3,478	0.000194	273	0.000211	91,260	2,273	0.00030250764
E02232 - KALSKAG		0.000000			0.000000	239	0.000185	11,135	277	0.00003691031
KALSKAG, VILLAGE OF		0.000000			0.000000	239	0.000185	11,135	277	0.00003691031
E03233 - KALTAG		0.000231			0.000058	207	0.000160	49,670	1,237	0.00016464649
KALTAG, VILLAGE OF	9,737	0.000231	16.1	1,043	0.000058	207	0.000160	49,670	1,237	0.00016464649
E01623 - KANATAK		0.000000			0.000000	57	0.000044	2,656	66	0.00000880288
KANATAK, NATIVE VILLAGE OF		0.000000			0.000000	57	0.000044	2,656	66	0.00000880288
E01237 - KARLUK		0.000836			0.000059	29	0.000022	132,809	3,308	0.00044023517
KARLUK, NATIVE VILLAGE OF	35,318	0.000836	21.2	1,060	0.000059	29	0.000022	132,809	3,308	0.00044023517
E09238 - KASAAN		0.009134			0.001680	20	0.000015	1,530,824	38,131	0.00507437359
KASAAN, ORGANIZED VILLAGE OF	385,846	0.009134	592.5	30,182	0.001680	20	0.000015	1,530,824	38,131	0.00507437359
E02241 - KASIGLUK		0.000001			0.000002	603	0.000466	28,436	708	0.00009425914
KASIGLUK TRADITIONAL ELDERS COUNCII	45	0.000001	1.8	36	0.000002	603	0.000466	28,436	708	0.00009425914
E01246 - KENAITZE INDIAN TRIBE		0.000037			0.000043	2,400	0.001853	121,356	3,023	0.00040227151
KENAITZE INDIAN TRIBE	1,583	0.000037	5.5	771	0.000043	2,400	0.001853	121,356	3,023	0.00040227151
E09248 - KETCHIKAN		0.003029			0.001244	2,589	0.001999	690,083	17,189	0.00228748597
KETCHIKAN INDIAN CORPORATION	127,947	0.003029	203.8	22,342	0.001244	2,589	0.001999	690,083	17,189	0.00228748597

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E04249 - KIANA		0.000251			0.000024	405	0.000313	58,884	1,467	0.00019518904
KIANA, NATIVE VILLAGE OF	10,603	0.000251	10.7	428	0.000024	405	0.000313	58,884	1,467	0.00019518904
E01254 - KING SALMON TRIBE		0.000063			0.000005	53	0.000041	12,366	308	0.00004098928
KING SALMON TRIBE	2,651	0.000063	3.4	85	0.000005	53	0.000041	12,366	308	0.00004098928
E02255 - KIPNUK		0.000032			0.000002	725	0.000560	38,701	964	0.00012828738
KIPNUK, NATIVE VILLAGE OF	1,334	0.000032	1.4	32	0.000002	725	0.000560	38,701	964	0.00012828738
E04256 - KIVALINA		0.000842			0.000046	409	0.000316	150,209	3,742	0.00049791272
KIVALINA, NATIVE VILLAGE OF	35,564	0.000842	16.5	825	0.000046	409	0.000316	150,209	3,742	0.00049791272
E09257 - KLAWOCK		0.007581			0.001381	531	0.000410	1,293,233	32,213	0.00428680697
KLAWOCK COOPERATIVE ASSOCIATION	320,228	0.007581	495.7	24,807	0.001381	531	0.000410	1,293,233	32,213	0.00428680697
E01102 - KLUTI KAAH (COPPER CENTER)		0.000002			0.000004	218	0.000168	10,917	272	0.00003618705
KLUTI-KAAH (COPPER CENTER), NATIVE VI	100	0.000002	4.0	80	0.000004	218	0.000168	10,917	272	0.00003618705
E01260 - KNIK TRIBE		0.000045			0.000009	1,674	0.001293	85,649	2,133	0.00028390888
KNIK TRIBE	1,919	0.000045	1.9	160	0.000009	1,674	0.001293	85,649	2,133	0.00028390888
E04261 - KOBUK		0.000699			0.000173	115	0.000089	126,457	3,150	0.00041917804
KOBUK, NATIVE VILLAGE OF	29,523	0.000699	95.1	3,111	0.000173	115	0.000089	126,457	3,150	0.00041917804
E01264 - KOKHANOK		0.000299			0.000100	152	0.000117	61,284	1,527	0.00020314434
KOKHANOK VILLAGE	12,640	0.000299	73.1	1,800	0.000100	152	0.000117	61,284	1,527	0.00020314434
E02267 - KONGIGANAK		0.000432			0.000067	401	0.000310	89,913	2,240	0.00029804473
KONGIGANAK, NATIVE VILLAGE OF	18,240	0.000432	46.8	1,210	0.000067	401	0.000310	89,913	2,240	0.00029804473
E02268 - KOTLIK		0.000098			0.000004	654	0.000505	45,595	1,136	0.00015113819
KOTLIK, VILLAGE OF	4,133	0.000098	3.0	73	0.000004	654	0.000505	45,595	1,136	0.00015113819
E04269 - KOTZEBUE		0.001429			0.000507	2,658	0.002052	385,269	9,597	0.00127708804
KOTZEBUE, NATIVE VILLAGE OF	60,354	0.001429	116.8	9,113	0.000507	2,658	0.002052	385,269	9,597	0.00127708804
E03271 - KOYUKUK		0.000061			0.000008	95	0.000073	14,339	357	0.00004753236
KOYUKUK NATIVE VILLAGE	2,572	0.000061	2.9	145	0.000008	95	0.000073	14,339	357	0.00004753236

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E02275 - KWETHLUK		0.000124			0.000028	777	0.000600	57,400	1,430	0.00019026850
KWETHLUK, ORGANIZED VILLAGE OF	5,235	0.000124	7.6	497	0.000028	777	0.000600	57,400	1,430	0.00019026850
E02276 - KWIGILLINGOK		0.000000			0.000000	380	0.000293	17,704	441	0.00005868585
KWIGILLINGOK, NATIVE VILLAGE OF		0.000000			0.000000	380	0.000293	17,704	441	0.00005868585
E02407 - KWINHAGAK (QUINHAGAK)		0.000169			0.000024	620	0.000479	56,544	1,408	0.00018743338
KWINHAGAK (QUINHAGAK), NATIVE VILLAG	7,128	0.000169	128.2	438	0.000024	620	0.000479	56,544	1,408	0.00018743338
E01279 - LARSEN BAY		0.000004			0.000001	101	0.000078	5,454	136	0.00001807991
LARSEN BAY, NATIVE VILLAGE OF	189	0.000004	0.3	15	0.000001	101	0.000078	5,454	136	0.00001807991
E01531 - LESNOI (WOODY ISLAND)		0.000000			0.000000	57	0.000044	2,656	66	0.00000880288
LESNOI VILLAGE (WOODY ISLAND)		0.000000			0.000000	57	0.000044	2,656	66	0.00000880288
E01283 - LEVELOCK		0.001860			0.000257	112	0.000086	309,008	7,697	0.00102430021
LEVELOCK VILLAGE	78,573	0.001860	91.2	4,608	0.000257	112	0.000086	309,008	7,697	0.00102430021
E02288 - LIME VILLAGE		0.000183			0.000018	37	0.000029	30,955	771	0.00010260955
LIME VILLAGE	7,738	0.000183	7.7	318	0.000018	37	0.000029	30,955	771	0.00010260955
E02291 - LOWER KALSKAG		0.000016			0.000003	293	0.000226	16,409	409	0.00005439347
LOWER KALSKAG, VILLAGE OF	691	0.000016	4.6	58	0.000003	293	0.000226	16,409	409	0.00005439347
E03294 - MANLEY HOT SPRINGS		0.000360			0.000026	18	0.000014	57,513	1,433	0.00019064481
MANLEY HOT SPRINGS VILLAGE	15,202	0.000360	190.4	474	0.000026	18	0.000014	57,513	1,433	0.00019064481
E01295 - MANOKOTAK		0.000353			0.000047	412	0.000318	76,624	1,909	0.00025399440
MANOKOTAK VILLAGE	14,897	0.000353	16.8	840	0.000047	412	0.000318	76,624	1,909	0.00025399440
E02297 - MARSHALL (FORTUNA LEDGE)		0.000821			0.000108	393	0.000303	151,976	3,786	0.00050377130
MARSHALL (FORTUNA LEDGE), NATIVE VIL	34,698	0.000821	39.0	1,938	0.000108	393	0.000303	151,976	3,786	0.00050377130
E03303 - MCGRATH		0.000967			0.000137	227	0.000175	168,887	4,207	0.00055982539
MCGRATH NATIVE VILLAGE	40,866	0.000967	50.4	2,458	0.000137	227	0.000175	168,887	4,207	0.00055982539
E02307 - MEKORYUK		0.000245			0.000037	233	0.000180	51,131	1,274	0.00016948825
MEKORYUK, NATIVE VILLAGE OF	10,347	0.000245	13.2	660	0.000037	233	0.000180	51,131	1,274	0.00016948825

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E01309 - MENTASTA		0.000020			0.000001	109	0.000084	8,225	205	0.00002726338
MENTASTA TRADITIONAL COUNCIL	858	0.000020	7.2	16	0.000001	109	0.000084	8,225	205	0.00002726338
E03314 - MINTO		0.000083			0.000013	246	0.000190	25,221	628	0.00008360186
MINTO, NATIVE VILLAGE OF	3,525	0.000083	5.3	233	0.000013	246	0.000190	25,221	628	0.00008360186
E01330 - NAKNEK		0.003259			0.000583	333	0.000257	559,874	13,946	0.00185587060
NAKNEK NATIVE VILLAGE	137,675	0.003259	159.7	10,467	0.000583	333	0.000257	559,874	13,946	0.00185587060
E01142 - NANWALEK (ENGLISH BAY)		0.001544			0.000160	179	0.000138	255,676	6,369	0.00084751415
NANWALEK (ENGLISH BAY), NATIVE VILLA(	65,204	0.001544	58.3	2,878	0.000160	179	0.000138	255,676	6,369	0.00084751415
E02332 - NAPAIMUTE		0.000000			0.000000	75	0.000058	3,494	87	0.00001158273
NAPAIMUTE, NATIVE VILLAGE OF		0.000000			0.000000	75	0.000058	3,494	87	0.00001158273
E02333 - NAPAKIAK		0.000230			0.000072	392	0.000303	59,384	1,479	0.00019684755
NAPAKIAK, NATIVE VILLAGE OF	9,697	0.000230	23.5	1,289	0.000072	392	0.000303	59,384	1,479	0.00019684755
E02334 - NAPASKIAK		0.000245			0.000010	440	0.000340	58,371	1,454	0.00019348894
NAPASKIAK, NATIVE VILLAGE OF	10,362	0.000245	5.7	173	0.000010	440	0.000340	58,371	1,454	0.00019348894
E01336 - NELSON LAGOON		0.000189			0.000029	72	0.000056	34,439	858	0.00011415742
NELSON LAGOON, NATIVE VILLAGE OF	7,981	0.000189	11.8	513	0.000029	72	0.000056	34,439	858	0.00011415742
E03337 - NENANA		0.000239			0.000028	197	0.000152	47,706	1,188	0.00015813558
NENANA NATIVE ASSOCIATION	10,084	0.000239	14.1	500	0.000028	197	0.000152	47,706	1,188	0.00015813558
E01266 - NEW KOLIGANEK (KOLIGANEK)		0.000186			0.000039	173	0.000134	39,642	987	0.00013140640
NEW KOLIGANEK VILLAGE COUNCIL	7,860	0.000186	10.8	698	0.000039	173	0.000134	39,642	987	0.00013140640
E01339 - NEW STUYAHOK		0.000099			0.000022	493	0.000381	39,952	995	0.00013243180
NEW STUYAHOK VILLAGE	4,199	0.000099	6.8	395	0.000022	493	0.000381	39,952	995	0.00013243180
E01340 - NEWHALEN		0.005067			0.000759	140	0.000108	839,557	20,912	0.00278296315
NEWHALEN VILLAGE	214,038	0.005067	266.8	13,640	0.000759	140	0.000108	839,557	20,912	0.00278296315
E02341 - NEWTOK		0.002004			0.000351	357	0.000276	350,729	8,736	0.00116259642
NEWTOK VILLAGE	84,661	0.002004	127.6	6,308	0.000351	357	0.000276	350,729	8,736	0.00116259642

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	Amount ($1000)	Share	Length (mi)	Amount (v-mi/d)	Share	Count	Share	($)	($)	
E02343 - NIGHTMUTE		0.000611			0.000076	226	0.000175	109,521	2,728	0.00036303971
NIGHTMUTE, NATIVE VILLAGE OF	25,794	0.000611	28.8	1,367	0.000076	226	0.000175	109,521	2,728	0.00036303971
E03345 - NIKOLAI		0.000726			0.000073	84	0.000065	119,981	2,989	0.00039771450
NIKOLAI VILLAGE	30,646	0.000726	31.1	1,317	0.000073	84	0.000065	119,981	2,989	0.00039771450
E01346 - NIKOLSKI		0.000032			0.000002	28	0.000022	6,265	156	0.00002076786
NIKOLSKI, NATIVE VILLAGE OF	1,333	0.000032	0.8	40	0.000002	28	0.000022	6,265	156	0.00002076786
E01348 - NINILCHIK		0.000602			0.000080	945	0.000730	142,136	3,540	0.00047115203
NINILCHIK VILLAGE	25,450	0.000602	28.7	1,435	0.000080	945	0.000730	142,136	3,540	0.00047115203
E04350 - NOATAK		0.000320			0.000122	462	0.000357	80,870	2,014	0.00026806623
NOATAK, NATIVE VILLAGE OF	13,536	0.000320	25.3	2,185	0.000122	462	0.000357	80,870	2,014	0.00026806623
E01353 - NONDALTON		0.000067			0.000003	191	0.000147	19,296	481	0.00006396376
NONDALTON VILLAGE	2,831	0.000067	2.2	58	0.000003	191	0.000147	19,296	481	0.00006396376
E03358 - NORTHWAY		0.000063			0.000003	358	0.000276	26,472	659	0.00008774829
NORTHWAY VILLAGE	2,654	0.000063	2.2	63	0.000003	358	0.000276	26,472	659	0.00008774829
E03354 - NUIQSUT (NOOIKSUT)		0.001528			0.000469	429	0.000331	292,943	7,297	0.00097104894
NUIQSUT (NOOIKSUT), NATIVE VILLAGE OF	64,556	0.001528	265.1	8,422	0.000469	429	0.000331	292,943	7,297	0.00097104894
E03359 - NULATO		0.000496			0.000066	327	0.000253	95,994	2,391	0.00031820142
NULATO VILLAGE	20,944	0.000496	23.7	1,185	0.000066	327	0.000253	95,994	2,391	0.00031820142
E02490 - NUNAKAUYARMIUT (TOKSOOK BAY)		0.000065			0.000006	596	0.000460	38,172	951	0.00012653234
NUNAKAUYARMIUT TRIBE (TOKSOOK BAY	2,762	0.000065	2.8	108	0.000006	596	0.000460	38,172	951	0.00012653234
E02436 - NUNAM IQUA (SHELDON'S POINT)		0.000000			0.000000	177	0.000137	8,246	205	0.00002733525
NUNAM IQUA (SHELDON'S POINT), NATIVE		0.000000			0.000000	177	0.000137	8,246	205	0.00002733525
E02361 - NUNAPITCHUK		0.000002			0.000001	513	0.000396	24,227	603	0.00008030661
NUNAPITCHUK, NATIVE VILLAGE OF	67	0.000002	0.3	17	0.000001	513	0.000396	24,227	603	0.00008030661
E02366 - OHOGAMIUT		0.000000			0.000000	81	0.000063	3,774	94	0.00001250935
OHOGAMIUT, VILLAGE OF		0.000000			0.000000	81	0.000063	3,774	94	0.00001250935

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E01367 - OLD HARBOR		0.000016			0.000001	225	0.000174	12,925	322	0.00004284485
OLD HARBOR, VILLAGE OF	663	0.000016	0.4	15	0.000001	225	0.000174	12,925	322	0.00004284485
E02043 - ORUTSARAMUIT (BETHEL)		0.000046			0.000016	3,236	0.002499	159,196	3,965	0.00052770406
ORUTSARARMUIT NATIVE VILLAGE (BETHI	1,949	0.000046	1.7	292	0.000016	3,236	0.002499	159,196	3,965	0.00052770406
E02369 - OSCARVILLE		0.000000			0.000000	70	0.000054	3,261	81	0.00001081055
OSCARVILLE TRADITIONAL VILLAGE		0.000000			0.000000	70	0.000054	3,261	81	0.00001081055
E01370 - OUZINKIE		0.000438			0.000033	218	0.000168	79,248	1,974	0.00026269093
OUZINKIE, NATIVE VILLAGE OF	18,507	0.000438	12.4	597	0.000033	218	0.000168	79,248	1,974	0.00026269093
E02371 - PAIMIUT		0.000000			0.000000	66	0.000051	3,075	77	0.00001019281
PAIMIUT, NATIVE VILLAGE OF		0.000000			0.000000	66	0.000051	3,075	77	0.00001019281
E01324 - PAULOFF HARBOR		0.000312			0.000047	26	0.000020	52,471	1,307	0.00017393024
PAULOFF HARBOR VILLAGE	13,170	0.000312	16.8	840	0.000047	26	0.000020	52,471	1,307	0.00017393024
E01376 - PEDRO BAY		0.000358			0.000083	31	0.000024	62,904	1,567	0.00020851472
PEDRO BAY VILLAGE	15,112	0.000358	62.1	1,488	0.000083	31	0.000024	62,904	1,567	0.00020851472
E01378 - PERRYVILLE		0.000251			0.000056	101	0.000078	47,588	1,185	0.00015774372
PERRYVILLE, NATIVE VILLAGE OF	10,584	0.000251	47.1	1,010	0.000056	101	0.000078	47,588	1,185	0.00015774372
E09380 - PETERSBURG		0.004667			0.003254	502	0.000388	1,021,890	25,454	0.00338736177
PETERSBURG INDIAN ASSOCIATION	197,160	0.004667	497.0	58,439	0.003254	502	0.000388	1,021,890	25,454	0.00338736177
E02384 - PILOT STATION		0.000036			0.000005	618	0.000477	34,604	862	0.00011470502
PILOT STATION TRADITIONAL VILLAGE	1,507	0.000036	1.7	85	0.000005	618	0.000477	34,604	862	0.00011470502
E02385 - PITKAS POINT		0.000009			0.000002	135	0.000104	7,889	197	0.00002615119
PITKA'S POINT, NATIVE VILLAGE OF	400	0.000009	2.2	34	0.000002	135	0.000104	7,889	197	0.00002615119
E02388 - PLATINUM		0.000000			0.000000	44	0.000034	2,050	51	0.00000679520
PLATINUM TRADITIONAL VILLAGE		0.000000			0.000000	44	0.000034	2,050	51	0.00000679520
E03389 - POINT HOPE		0.001817			0.000099	762	0.000588	318,476	7,933	0.00105568279
POINT HOPE, NATIVE VILLAGE OF	76,733	0.001817	35.6	1,780	0.000099	762	0.000588	318,476	7,933	0.00105568279

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	Amount ($1000)	Share	Length (mi)	Amount (v-mi/d)	Share	Count	Share	($)	($)	
E03390 - POINT LAY		0.000200			0.000166	242	0.000187	56,429	1,406	0.00018705044
POINT LAY, NATIVE VILLAGE OF	8,436	0.000200	136.9	2,983	0.000166	242	0.000187	56,429	1,406	0.00018705044
E01396 - PORT GRAHAM		0.000284			0.000022	164	0.000127	52,431	1,306	0.00017379915
PORT GRAHAM, NATIVE VILLAGE OF	11,986	0.000284	7.2	395	0.000022	164	0.000127	52,431	1,306	0.00017379915
E01397 - PORT HEIDEN		0.000878			0.000042	89	0.000069	140,422	3,498	0.00046547115
PORT HEIDEN, NATIVE VILLAGE OF	37,091	0.000878	30.4	760	0.000042	89	0.000069	140,422	3,498	0.00046547115
E01398 - PORT LIONS		0.000606			0.000037	181	0.000140	103,077	2,568	0.00034168102
PORT LIONS, NATIVE VILLAGE OF	25,578	0.000606	19.4	657	0.000037	181	0.000140	103,077	2,568	0.00034168102
E01424 - QAGAN TAYAGUNGIN (SAND POINT)		0.000386			0.000033	444	0.000343	81,900	2,040	0.00027148081
QAGAN TOYAGUNGIN TRIBE OF SAND POI	16,310	0.000386	13.5	590	0.000033	444	0.000343	81,900	2,040	0.00027148081
E01510 - QAWALANGIN (UNALASKA)		0.000468			0.000063	411	0.000317	95,457	2,378	0.00031642016
QAWALANGIN TRIBE OF UNALASKA	19,779	0.000468	29.8	1,127	0.000063	411	0.000317	95,457	2,378	0.00031642016
E03410 - RAMPART		0.000788			0.000043	42	0.000032	124,710	3,106	0.00041338722
RAMPART VILLAGE	33,274	0.000788	16.5	781	0.000043	42	0.000032	124,710	3,106	0.00041338722
E02411 - RED DEVIL		0.000108			0.000011	29	0.000022	18,642	464	0.00006179359
RED DEVIL, VILLAGE OF	4,568	0.000108	4.4	194	0.000011	29	0.000022	18,642	464	0.00006179359
E03416 - RUBY		0.000254			0.000012	168	0.000130	47,275	1,178	0.00015670820
RUBY, NATIVE VILLAGE OF	10,737	0.000254	8.8	220	0.000012	168	0.000130	47,275	1,178	0.00015670820
E01455 - SAINT GEORGE		0.000710			0.000118	145	0.000112	124,454	3,100	0.00041254153
SAINT GEORGE ISLAND	29,972	0.000710	40.2	2,118	0.000118	145	0.000112	124,454	3,100	0.00041254153
E01458 - SAINT PAUL		0.000704			0.000101	593	0.000458	142,996	3,562	0.00047400315
SAINT PAUL ISLAND	29,758	0.000704	39.6	1,807	0.000101	593	0.000458	142,996	3,562	0.00047400315
E01419 - SALAMATOFF		0.000697			0.000103	231	0.000178	125,296	3,121	0.00041532953
SALAMATOFF, VILLAGE OF	29,457	0.000697	37.1	1,855	0.000103	231	0.000178	125,296	3,121	0.00041532953
E04425 - SAVOONGA		0.005846			0.000826	680	0.000525	988,239	24,616	0.00327581465
SAVOONGA, NATIVE VILLAGE OF	246,951	0.005846	295.2	14,830	0.000826	680	0.000525	988,239	24,616	0.00327581465

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E02428 - SCAMMON BAY		0.000256			0.000018	522	0.000403	64,625	1,610	0.00021422042
SCAMMON BAY, NATIVE VILLAGE OF	10,829	0.000256	6.5	325	0.000018	522	0.000403	64,625	1,610	0.00021422042
E04429 - SELAWIK		0.000367			0.000072	827	0.000639	100,350	2,500	0.00033263964
SELAWIK, NATIVE VILLAGE OF	15,486	0.000367	20.8	1,294	0.000072	827	0.000639	100,350	2,500	0.00033263964
E01431 - SELDOVIA		0.000659			0.000113	135	0.000104	115,893	2,887	0.00038416361
SELDOVIA VILLAGE TRIBE	27,841	0.000659	24.4	2,022	0.000113	135	0.000104	115,893	2,887	0.00038416361
E03434 - SHAGELUK		0.000091			0.000004	129	0.000100	20,045	499	0.00006644384
SHAGELUK NATIVE VILLAGE	3,828	0.000091	2.9	73	0.000004	129	0.000100	20,045	499	0.00006644384
E09442 - SITKA TRIBE		0.000261			0.000049	3,438	0.002655	204,018	5,082	0.00067627855
SITKA TRIBE OF ALASKA	11,034	0.000261	38.3	881	0.000049	3,438	0.002655	204,018	5,082	0.00067627855
E09443 - SKAGWAY		0.000081			0.000025	52	0.000040	16,890	421	0.00005598554
SKAGWAY VILLAGE	3,430	0.000081	26.4	440	0.000025	52	0.000040	16,890	421	0.00005598554
E02446 - SLEETMUTE		0.000031			0.000004	102	0.000079	9,878	246	0.00003274252
SLEETMUTE, VILLAGE OF	1,323	0.000031	2.0	80	0.000004	102	0.000079	9,878	246	0.00003274252
E01450 - SOUTH NAKNEK		0.000452			0.000076	120	0.000093	80,671	2,009	0.00026740702
SOUTH NAKNEK VILLAGE	19,110	0.000452	25.4	1,358	0.000076	120	0.000093	80,671	2,009	0.00026740702
E03463 - STEVENS		0.001481			0.000220	86	0.000066	247,365	6,162	0.00081996440
STEVENS, NATIVE VILLAGE OF	62,570	0.001481	79.9	3,955	0.000220	86	0.000066	247,365	6,162	0.00081996440
E02464 - STONY RIVER		0.000367			0.000040	60	0.000046	61,794	1,539	0.00020483468
STONY RIVER, VILLAGE OF	15,510	0.000367	16.5	718	0.000040	60	0.000046	61,794	1,539	0.00020483468
E01804 - SUN'AQ TRIBE (KODIAK)		0.000000			0.000000		0.000000			0.00000000000
E01850 - SUN'AQ TRIBE (KODIAK) (POP)		0.000052			0.000232	867	0.000669	69,193	1,724	0.00022936242
SUN'AQ TRIBE OF KODIAK	2,179	0.000052	38.5	4,172	0.000232	867	0.000669	69,193	1,724	0.00022936242
E03472 - TAKOTNA		0.000057			0.000010	22	0.000017	10,567	263	0.00003502813
TAKOTNA VILLAGE	2,407	0.000057	25.5	188	0.000010	22	0.000017	10,567	263	0.00003502813
E03474 - TANACROSS		0.000050			0.000009	138	0.000107	14,738	367	0.00004885191
TANACROSS, NATIVE VILLAGE OF	2,110	0.000050	5.1	153	0.000009	138	0.000107	14,738	367	0.00004885191

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E03475 - TANANA		0.000400			0.000060	260	0.000201	77,775	1,937	0.00025781004
TANANA, NATIVE VILLAGE OF	16,878	0.000400	21.4	1,070	0.000060	260	0.000201	77,775	1,937	0.00025781004
E01477 - TATITLEK		0.000148			0.000013	100	0.000077	28,244	704	0.00009362161
TATITLEK, NATIVE VILLAGE OF	6,266	0.000148	4.2	240	0.000013	100	0.000077	28,244	704	0.00009362161
E01478 - TAZLINA		0.000168			0.000010	96	0.000074	30,827	768	0.00010218547
TAZLINA, NATIVE VILLAGE OF	7,116	0.000168	6.0	188	0.000010	96	0.000074	30,827	768	0.00010218547
E03479 - TELIDA		0.000017			0.000002	3	0.000002	2,874	72	0.00000952838
TELIDA VILLAGE	709	0.000017	0.8	40	0.000002	3	0.000002	2,874	72	0.00000952838
E03483 - TETLIN		0.000502			0.000067	126	0.000097	87,585	2,182	0.00029032823
TETLIN VILLAGE	21,193	0.000502	23.9	1,198	0.000067	126	0.000097	87,585	2,182	0.00029032823
E01487 - TOGIAK		0.000764			0.000276	817	0.000631	178,215	4,439	0.00059074616
TOGIAK, TRADITIONAL VILLAGE OF	32,255	0.000764	56.6	4,956	0.000276	817	0.000631	178,215	4,439	0.00059074616
E02497 - TULUKSAK		0.000098			0.000003	463	0.000358	36,601	912	0.00012132583
TULUKSAK NATIVE COMMUNITY	4,121	0.000098	2.5	63	0.000003	463	0.000358	36,601	912	0.00012132583
E02499 - TUNTUTULIAK		0.000096			0.000003	420	0.000324	34,318	855	0.00011375644
TUNTUTULIAK, NATIVE VILLAGE OF	4,046	0.000096	2.4	60	0.000003	420	0.000324	34,318	855	0.00011375644
E02500 - TUNUNAK		0.000076			0.000009	362	0.000280	29,151	726	0.00009662920
TUNUNAK, NATIVE VILLAGE OF	3,215	0.000076	32.4	160	0.000009	362	0.000280	29,151	726	0.00009662920
E01505 - TYONEK		0.000621			0.000115	200	0.000154	113,371	2,824	0.00037580105
TYONEK, NATIVE VILLAGE OF	26,222	0.000621	32.4	2,068	0.000115	200	0.000154	113,371	2,824	0.00037580105
E01506 - UGASHIK		0.000592			0.000298	9	0.000007	116,586	2,904	0.00038645806
UGASHIK VILLAGE	24,989	0.000592	95.1	5,345	0.000298	9	0.000007	116,586	2,904	0.00038645806
E02508 - UMKUMIUTE		0.000000			0.000000	14	0.000011	652	16	0.00000216211
UMKUMIUTE NATIVE VILLAGE		0.000000			0.000000	14	0.000011	652	16	0.00000216211
E01511 - UNGA		0.000564			0.000068	45	0.000035	93,350	2,325	0.00030943788
UNGA, NATIVE VILLAGE OF	23,833	0.000564	24.4	1,220	0.000068	45	0.000035	93,350	2,325	0.00030943788

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E03518 - VENETIE		0.003395			0.000530	336	0.000259	575,732	14,341	0.00190843504
VENETIE TRIBAL GOVERNMENT, NATIVE V	143,419	0.003395	190.3	9,515	0.000530	336	0.000259	575,732	14,341	0.00190843504
E03519 - WAINWRIGHT		0.000329			0.000405	564	0.000436	112,541	2,803	0.00037305132
WAINWRIGHT, VILLAGE OF	13,897	0.000329	356.8	7,271	0.000405	564	0.000436	112,541	2,803	0.00037305132
E09533 - YAKUTAT TLINGIT TRIBE		0.001160			0.000187	375	0.000290	209,324	5,214	0.00069386660
YAKUTAT TLINGIT TRIBE	48,992	0.001160	87.4	3,355	0.000187	375	0.000290	209,324	5,214	0.00069386660
E02019 - YUPIIT (ANDREAFSKI)		0.000247			0.000292	132	0.000102	69,839	1,740	0.00023150131
YUPIIT OF ANDREAFSKY	10,427	0.000247	251.1	5,250	0.000292	132	0.000102	69,839	1,740	0.00023150131
Region– 226 Tribes 227 Reserv	8,895,280	0.210583	14,201.2	729,213	0.040600	85,805	0.066257	39,436,073	982,308	0.13072267390
F - Midwest										
F55430 - BAD RIVER		0.003258			0.000651	2,212	0.001708	653,412	16,276	0.00216593004
BAD RIVER BAND OF THE LAKE SUPERIOR	137,633	0.003258	311.3	11,686	0.000651	2,212	0.001708	653,412	16,276	0.00216593004
F60470 - BAY MILLS		0.000829			0.000206	1,031	0.000796	191,754	4,776	0.00063562712
BAY MILLS INDIAN COMMUNITY	35,023	0.000829	99.6	3,702	0.000206	1,031	0.000796	191,754	4,776	0.00063562712
F55434 - FOREST CNTY POTAWATOMI		0.001722			0.000717	964	0.000744	369,521	9,204	0.00122488864
FOREST COUNTY POTAWATOMI COMMUN	72,738	0.001722	298.8	12,874	0.000717	964	0.000744	369,521	9,204	0.00122488864
F60474 - GRAND TRAVERSE		0.004742			0.029554	4,996	0.003858	3,622,792	90,240	0.01200882839
GRAND TRAVERSE BAND OF OTTAWA AND	200,317	0.004742	551.9	530,818	0.029554	4,996	0.003858	3,622,792	90,240	0.01200882839
F60471 - HANNAHVILLE INDIAN COMM		0.004270			0.002448	403	0.000311	884,406	22,030	0.00293162946
HANNAHVILLE INDIAN COMMUNITY	180,378	0.004270	455.6	43,962	0.002448	403	0.000311	884,406	22,030	0.00293162946
F55439 - HO-CHUNK NATION		0.006551			0.044590	13,056	0.010082	5,631,898	140,284	0.01866861102
HO-CHUNK NATION OF WISCONSIN	276,711	0.006551	2,435.8	800,878	0.044590	13,056	0.010082	5,631,898	140,284	0.01866861102
F60478 - HURON POTAWATOMI, INC.		0.001410			0.000278	1,342	0.001036	300,404	7,483	0.00099578063
HURON POTAWATOMI, INC.	59,564	0.001410	143.4	4,998	0.000278	1,342	0.001036	300,404	7,483	0.00099578063
F60475 - KEWEENAW BAY		0.004466			0.004483	1,705	0.001317	1,158,784	28,864	0.00384113794
KEWEENAW BAY INDIAN COMMUNITY	188,639	0.004466	418.5	80,522	0.004483	1,705	0.001317	1,158,784	28,864	0.00384113794
F55431 - LAC COURTE OREILLES		0.003808			0.000996	2,968	0.002292	802,752	19,996	0.00266096195

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 15, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 4/15/09

The JUDICIARY Committee considered: **CS FOR SENATE BILL NO. 148(JUD)**

"An Act relating to limitation of state liability on certain federal highway programs; and providing for an effective date."
SB 148 LIABILITY FOR TRIBAL ROAD CONSTRUCTION

Recommends it be replaced with [✓] HCS *or* **[ ] CS** *for* CS SB148 (TRA)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	***FN#**	**Fiscal**	**Indet.**	**Zero**

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	**FN#**	**Fiscal**	**Indet.**	**Zero**
DOT	1			✓

Signing with recommendations	**Printed Last Name**	**DP**	**DNP**	**NR**	**AM**
	LYNN			X	
	Groseclose	–			
	Coghill			✓	
	Dahlstrom			X	
	Holmes			X	
Chair:	KAUKAS	✓			
Chair:					

SB 194

HOUSE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced:
Referred:

A RESOLUTION

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning Senate Bill No. 194, relating to penalties and civil damages for certain alcohol violations.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding changes to the title of a bill, are suspended in consideration of Senate Bill No. 194, relating to penalties and civil damages for certain alcohol violations.

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
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Alaska State Legislature

House of Representatives

Interim:
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Toll Free: (877) 465-3004

House District 10

Fax

To: Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson

Date: March 24, 2010

Re: SB194

Today the HJUD Committee heard and passed out the HCS for SCSSB194 (26-LS0895\C) and the accompanying HRC Title Change Resolution. Please draft up a final HJUD CS.

If you have any questions, please do not hesitate to call.

Thank you

Representative_Jay_Ramras@legis.state.ak.us

26-LS0895\C
Luckhaupt
3/23/10

HOUSE CS FOR CS FOR SENATE BILL NO. 194(JUD)

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Offered:
Referred:

Sponsor(s): SENATOR MEYER

A BILL

FOR AN ACT ENTITLED

"An Act relating to penalties and civil damages for certain alcohol violations relating to minors and persons under 21 years of age."

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

*** Section 1.** AS 04.16.049(e) is amended to read:

(e) A licensee may bring a civil action against a person who violates this section if the violation occurs on the premises of that licensee. If judgment is entered in favor of the licensee, the court shall award civil damages in the amount of **$1,500** [$1,000] and award reasonable costs and reasonable attorney fees allowed under the Alaska Rules of Civil Procedure.

*** Sec. 2.** AS 04.16.065(a) is amended to read:

(a) A person who has attained 18 years of age, or an emancipated minor, who violates AS 04.16.060 is, in addition to any criminal penalty provided by law, liable in a civil action to the licensee for a penalty of **$1,500** [$1,000] plus costs and reasonable attorney fees.

*** Sec. 3.** AS 04.16.180 is amended by adding a new subsection to read:

(e) In addition to other penalties provided in this chapter, the court may require a person convicted of an offense under this chapter who was less than 21 years of age at the time the person committed the offense to pay for and enroll in a juvenile alcohol safety action program if one is available.

*** Sec. 4.** AS 04.21.080 is amended by adding a new paragraph to read:

(18) "juvenile alcohol safety action program" means

(A) a juvenile alcohol safety action program developed and implemented or approved by the Department of Health and Social Services under AS 47.37;

(B) any other alcohol education or treatment program approved by the Department of Health and Social Services under AS 47.37 if a program described in (A) of this paragraph is not available in the community in which the person resides; or

(C) a program or counseling approved by the court if a program or treatment described in (A) of this paragraph is not available in the community where the person resides.

*** Sec. 5.** AS 28.15.183(g) is amended to read:

(g) Except as provided under (h) of this section, the department may not issue a new license or reissue a license to a person whose driver's license, permit, or privilege to drive has been revoked under this section unless the person, if required to participate in a juvenile alcohol safety action program, as defined in **AS 04.21.080** [AS 04.16.050], has successfully completed any education or treatment recommended.

*** Sec. 6.** AS 28.15.211(g) is amended to read:

(g) Except as provided under AS 28.15.183(h), the department may not issue a new license or reissue a license to a person whose driver's license has been revoked under AS 04.16.050, AS 28.15.183, or 28.15.185 unless the person, if required to participate in a juvenile alcohol safety action program, has successfully completed any education or treatment recommended. In this subsection, "juvenile alcohol safety action program" has the meaning given in **AS 04.21.080** [AS 04.16.050].

*** Sec. 7.** AS 04.16.050(*l*)(2) is repealed.

26-LS1624\A
Luckhaupt
3/22/10

HOUSE CONCURRENT RESOLUTION NO.

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY THE HOUSE JUDICIARY COMMITTEE

Introduced:
Referred:

A RESOLUTION

Suspending Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, concerning Senate Bill No. 194, relating to penalties and civil damages for certain alcohol violations.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

That under Rule 54, Uniform Rules of the Alaska State Legislature, the provisions of Rules 24(c), 35, 41(b), and 42(e), Uniform Rules of the Alaska State Legislature, regarding changes to the title of a bill, are suspended in consideration of Senate Bill No. 194, relating to penalties and civil damages for certain alcohol violations.

ALASKA STATE LEGISLATURE

Interim:
716 West 4th Avenue
Anchorage, Alaska 99501-2133
Phone: (907) 269-0199
Fax (907) 269-0197
Senator_Kevin_Meyer@legis.state.ak.us

Session:
Alaska State Capitol
Juneau, Alaska 99801-1182
Phone: (907) 465-4945
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SENATOR KEVIN MEYER
SENATE DISTRICT O

SPONSOR STATEMENT FOR CSSB 194

"An Act relating to penalties and civil damages for certain alcohol violations."

CSSB 194 increases civil damages from $1,000 to $1,500 for three alcohol violations.

1) Minors who knowingly enter or remain in premises licensed to sell alcohol.

2) People who purchase or deliver alcohol to persons under the age of 21.

3) Persons with restrictions on purchasing alcohol who knowingly enter or remain on premises licensed to sell alcohol.

Additionally, CSSB 194 may also require a person who is under 21 years of age and convicted of the aforementioned offenses to pay for and enroll in a juvenile alcohol safety action program or similar education or treatment program if one is available.

Underage drinking is a problem in Alaska. According to the State of Alaska's Plan to Reduce & Prevent Underage Drinking (October 2009), 11 percent of all treatment admissions for alcohol abuse in the state were youth aged 12-20. There are currently 2,133 alcohol restricted licenses issued in the state.

An increase in civil damages would reinforce the message to youth that underage drinking will not be tolerated. The increased civil penalty would also be a financial deterrent for those who purchase alcohol for minors as well as adults holding a restricted license who are tempted to purchase alcohol.

Passing CSSB 194 will encourage licensees to continue their enforcement of underage and restricted license drinking laws. This bill will also serve as a deterrent to underage and restricted consumers of alcohol.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 194(STA)
(S) Publish Date: 1/29/10

Identifier (file name): SB194-LAW-CRIM-1-25-10
Dept. Affected: Law
Title: An Act relating to civil damages for certain alcohol violations
RDU: CRIMINAL
Component: Criminal Justice Litigation
Sponsor: Senator Meyer
Requester: Senator Meyer
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill raises the possible civil penalty a licensee can get from a minor who tries to buy alcohol on the licensee's premises from $1,000 to $1,500. The department does not anticipate any significant fiscal impact

Prepared by: Eileen Donahue, Division Operations Manager
Phone 465-5427
Division: Administrative Services
Date/Time 1/25/10 12:00 AM
Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date 1/25/2010

(Revised 11/6/2009 OMB)

Alaska State Legislature

Interim:
716 West 4th Ave.
Anchorage, Alaska 99501
(907) 269-0199

Session:
State Capitol Building
Juneau, Alaska 99801-1182
(907) 465-4945

Senator Kevin Meyer
Senate District O

TO: Senator Kevin Meyer
FROM: Christine R. Marasigan, Legislative Aide
DATE: February 18, 2010
RE: Explanation of changes to SB 194

SB 194 underwent two substantive changes in the Senate since introduction

Senate State Affairs Committee added three new sections to the original bill.

Over the 2009 interim, Anchorage CHARR had expressed the need to mandate some kind of alcohol education course for the minors licensees were bringing civil actions against. After consulting with Legislative Legal, it was determined that because a civil action is between two independent parties, a court couldn't really mandate an alcohol education course. As a result, a compromise was made by making the sentencing of a Juvenile Alcohol Safety Action program or similar program, optional at the discretion of the civil court.

The second substantive change to the bill was in the Senate Judiciary Committee.

The first change was a housekeeping issue, which corrected two cross references to AS 04.16.050 to AS 04.16.050(1)(2). The second change increased the civil damages from $1,000 to $1,500 on persons with restrictions on purchasing alcohol who knowingly enter or remain on premises licensed to sell alcohol.

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM February 22, 2010

SUBJECT: Cross-References to Repealed Subsection (CSSB 194(JUD))
(Work Order No. 26-LS0895\P)

TO: Senator Kevin Meyer

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have asked me to explain the impact of secs. 6 and 7 of the CS(JUD). Sections 6 and 7 do not have any substantive impact but merely fix cross-references to the definition of "juvenile alcohol safety action program," which is being moved from AS 04.16.050 (see repeal in sec. 8) to AS 04.21.080 (see sec. 5). The definition is being moved so that a judge may require a minor to participate in such a program for any alcohol violation of AS 04.

GPL:ljw
10-122.ljw

LEGAL SERVICES

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MEMORANDUM October 20, 2009

SUBJECT: Requiring Alcohol Education and Assessment for Minors in Civil Actions Brought by Licensees (Work Order No. 26-LS0895\R)

TO: Senator Kevin Meyer
Attn: Christine Marasigan

FROM: Gerald P. Luckhaupt
Legislative Counsel

You have requested that mandatory alcohol education be required for persons subject to civil suits by licensees under AS 04.16.049(e) and 04.16.065(a). These civil suits are brought by licensees against persons under the age of 21 who attempt to use fake ids or otherwise access premises or purchase alcohol when they are underage. These civil suits are lawsuits between two private parties and do not involve the state or other prosecuting authority and criminal and other penalties may not be imposed. Imposition of criminal sanctions including attendance at alcohol education[1] is inappropriate and unavailable to civil litigants. I do not see how one civil litigant can be authorized to impose a potential criminal sanction on the other civil litigant.

What I did do is provide that a court may require a person under the age of 21 to participate in a juvenile alcohol action safety program whenever the person is convicted of an offense under AS 04.16. Currently we only require this for minor in possession under AS 04.16.050. While this does not directly satisfy your request it does allow alcohol education programs to be required of minors when they are prosecuted and convicted of offenses under AS 04.16.049 and 04.16.065 and other offenses under AS 04.16.

GPL:ljw
09-354.ljw

Enclosure

[1] I assume by this you mean a juvenile alcohol safety action program as is currently required for minor in possession convictions under AS 04.16.050.

STATE OF ALASKA
Plan to Reduce & Prevent Underage Drinking
October 2009, pages 5-7 (28 pages total)
http://www.hss.state.ak.us/DBH/prevention/docs/2009_underagedrinkplan.pdf

Executive Summary

Childhood and underage drinking has been shown to be a causal factor in homicide, suicide, traumatic injury, traffic fatalities, drowning, burns, violent and property crime, high risk sex, fetal alcohol syndrome, alcohol poisoning and the need for treatment for alcohol abuse and dependence.[i] The research shows that early onset alcohol use is strongly associated with adult alcohol dependence.[iii] While there are no significant differences between national and Alaskan trends for heavy drinking[a], the prevalence of binge drinking[b] among Alaska's adults is consistently higher than the national average.[c iv]

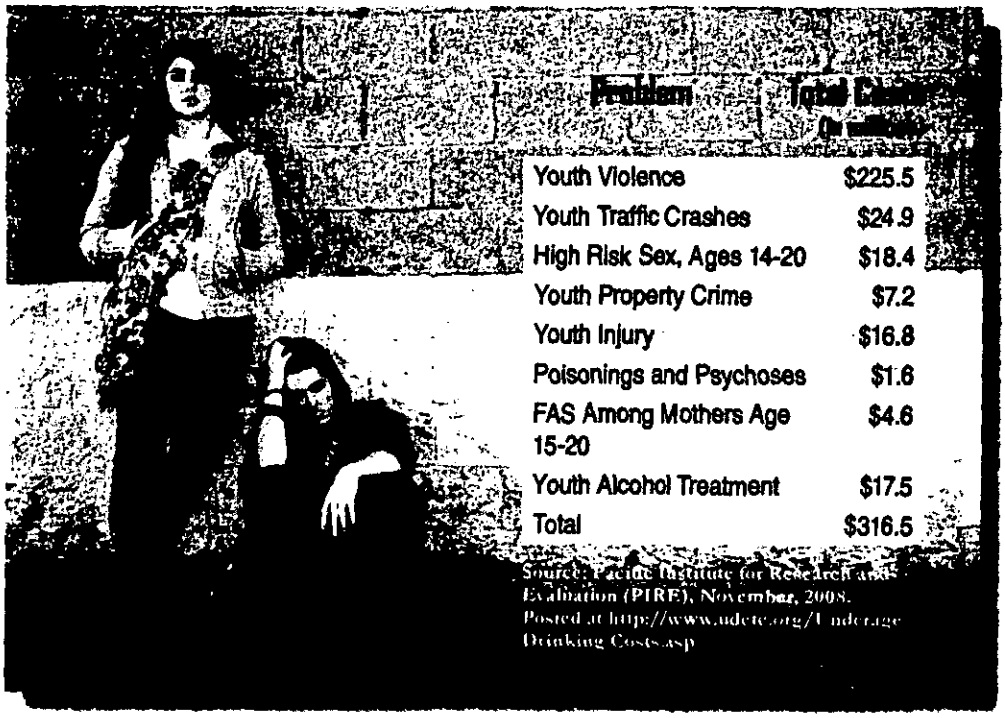
Further, excessive alcohol use by youth causes damage to the developing brain.[v] There exists a perception that adolescents can easily recover from drinking because their bodies are more resilient; however, the opposite is true. According to the American Medical Association, alcohol can seriously damage long and short term growth processes of the brain during adolescence. Frontal lobe development and the refinement of pathways and connections continue until the age of 16, and a high rate of energy is used as the brain matures until the age of 23. Damage from alcohol prior to age 23 can be long-term and irreversible. Furthermore, even moderate drinking impairs learning and memory in youth.[vi]

A myriad of catastrophic health, social and economic problems resultant from underage drinking has impacted Alaska's youth. In 2000, the Alaska Department of Health and Social Services, Division of Juvenile Justice sponsored an assessment of underage drinking in Alaska. Investigators examined statewide efforts and data and conducted more detailed inquiries by interviewing 203 key informants from 17 rural and urban sample communities. The consequences of underage drinking in Alaska are reflected in an increase in the number of alcohol-related accidents among youth requiring hospitalization of 66.3 percent between 1991 and 1998. Over this period, Alaska averaged 30 suicide attempts annually among youth where alcohol was a factor.[vii]

The cost of underage drinking to the citizens of Alaska was $317 million in 2005, inclusive of medical care, work loss, and pain and suffering.[viii] This is equivalent to $3,944 per year for each youth in the State. Based on these figures, per capita, Alaska is second among the fifty states for the cost of underage drinking.

As demonstrated in the table below, the largest costs to the State of Alaska can be attributed to youth violence and traffic crashes by underage youth under the influence of alcohol. Furthermore, a multitude of other problems contribute significantly to the overall cost. For example, among teen mothers, fetal alcohol syndrome (FAS) costs Alaska $4.6 million. Young people who begin drinking before age 15 are four times more likely to develop alcohol dependence and are two and a half times more likely to become abusers of alcohol than those who begin drinking at age 21.[ix] In 2003, 366 youth 12-20 years old were admitted for alcohol treatment in Alaska, accounting for 11 percent of all treatment admissions for alcohol abuse in the State.[x]

Costs of Underage Drinking by Problem, Alaska 2005



Problem	Total Cost (in millions)
Youth Violence	$225.5
Youth Traffic Crashes	$24.9
High Risk Sex, Ages 14-20	$18.4
Youth Property Crime	$7.2
Youth Injury	$16.8
Poisonings and Psychoses	$1.6
FAS Among Mothers Age 15-20	$4.6
Youth Alcohol Treatment	$17.5
Total	$316.5

Source: Pacific Institute for Research and Evaluation (PIRE), November, 2008. Posted at http://www.udetc.org/UnderageDrinkingCosts.asp

The Alaska Departments of Education and Early Development and Health and Social Services conduct a biannual statewide student survey on health behavior. Alaska uses the Alaska Youth Risk Behavior Survey (YRBS), based upon the U.S. Centers for Disease Control and Prevention's (CDC) epidemiological surveillance system.[xi] This survey was established to monitor the prevalence of behaviors that not only influence adolescent health, but also put youth at risk for the most significant health and social problems. Participating school

[a] Defined as 2 drinks per day for men and 1 drink for women.
[b] Defined as 5 or more drinks on one occasion.
[c] Thirty-nine percent higher for women and 14 percent higher for men.

Executive Summary

districts may receive a full report of their local data, which can be the centerpiece of their own local needs assessments, adding other data such as the Alaska School Boards' School Climate and Connectedness survey and local law enforcement data.

In 2007, 43 high schools were scientifically selected to be included in the survey. Thirty-eight (88 percent) schools participated and 1,318 (68 percent) students (from a total of 1, 952 selected) completed the survey resulting in an overall response rate of 60 percent (P. Owen, personal communication, October 27, 2008).

According to self-reports by Alaskan students in grades 9-12:[xiii]

- 74% had at least one drink of alcohol on one or more days during their life.
- 20% had their first drink of alcohol, other than a few sips, before age 13.
- 40% had at least one drink of alcohol on one or more occasion in the past 30 days.
- 26% had five or more drinks of alcohol in a row (i.e. binge drinking) in the past 30 days.

The 2007 YRBS also shows that 10 percent of Alaska youth self-reported drinking and driving within the past 30 days. According to the Alaska Highway Safety Office 2006 Annual Report, a third of alcohol impaired drivers and 47 percent of speeding drivers were under the age of 26.[xiii] Additionally, in 2006 there were 102 traffic accidents with alcohol impaired youth drivers ages 11-20.[xiv]

The state-wide YRBS demonstrates that underage drinking is widespread in Alaska, but it does not include all age appropriate youth. There are more youth at risk than are represented. Alaska state law requires that students have active consent[d] from parents to participate in school surveys, which excludes students who do not return a signed permission slip. In addition, alternative high school students were excluded from the state-wide YRBS report and students who have dropped out of school were not represented. Studies have shown that alternative high school students are at significantly higher risk for engaging in risky behaviors[xv] and substance use is correlated with school dropout.[xvi] As such, the risk behaviors of youth are likely underrepresented with the Alaska state-wide YRBS.

However, in 2007, with support from community partners, the Anchorage School District was able to administer the YRBS in alternative schools.[xvii] While they were not able to obtain the 60 percent response rate needed to generalize the findings to all alternative high school students,[e] the findings are important to consider as we plan prevention measures. The table below compares the responses from the Anchorage traditional high schools that were included with the state-wide YRBS and those Anchorage students who participated in the alternative school YRBS.[f]

Comparison of Traditional vs Alternative High Schools in Anchorage 2007

	Traditional High Schools	Alternative High Schools	McLaughlin High School
Percentage of students who had their first drink of alcohol other than a few sips before age 13	20.6%	30.8%	41.3%
Percentage of students who had at least one drink of alcohol on one or more of the past 30 days	40.8%	54%	76.4%
Percentage of students who had 5 or more drinks of alcohol in a row within a couple hours on one or more of the past 30 days	26.2%	37.3%	63.8%

Executive Summary

The alternative high schools participating in the 2007 Anchorage Youth Risk Behavior Survey included the following:

- *McLaughlin Secondary School* serves students who have been incarcerated at the McLaughlin Youth Center, a state detention center for juveniles.
- *AVAIL* (Anchorage Vocational Academic Institute of Learning) is an alternative high school program devoted to students who have dropped out of traditional schools.
- *Benson/Search* is an alternative school serving the educational needs of students who have been deemed "at risk."
- *COHO* (Creating Optimal High School Opportunities) offers students in the Chugiak and Eagle River area an alternative to the traditional high school classroom.
- *Continuation Program* is a self-directed alternative education program for students who are expelled, on a long-term suspension, or are in need of a transitional education placement.
- *Crossroads* is the Anchorage School District's school for pregnant and parenting teens.
- *SAVE* is an accredited comprehensive alternative high school that provides the opportunity for credit recovery, and is designed to meet the requirements for high school graduation.

These findings both highlight the need for further evaluation of alternative school students' risk behaviors in an effort to better plan prevention measures for these students and illustrate the strong likelihood that current reports of underage drinking in Alaska are under representative of the actual trend.

Despite the toll that underage drinking brings to bear on all citizens of Alaska — be it physical, mental, social, or economic — social norms remain static leaving the overall impression that underage drinking in Alaska "isn't a problem". Alaska has made great strides in the prevention of underage tobacco use and the parallels between the two drugs, alcohol and tobacco, are remarkable. That being said, enforcement efforts within the Departments of Health and Social Services and Public Safety have been coordinated for both tobacco and alcohol. As a result, an interesting pattern has emerged, which clearly demonstrates exactly where social attitudes lie. For example, in FY 2007, 9.2 percent of all retailers investigated sold tobacco to underage buyers whereas 22 percent of all retailers investigated sold alcohol to underage buyers.

Holding youth solely responsible for underage drinking is unreasonable. As the national report concluded, "Youth drink within the context of a society in which alcohol use is normative behavior and images about alcohol are pervasive." Efforts to reduce and prevent underage drinking, therefore, need to focus on a variety of environmental strategies that engage adults, youth, and the society at large. Alaska's plan employs a variety of strategies, including, but not limited to: public awareness; alcohol advertising; education; limiting access; collaboration; governmental assistance; and research and evaluation.

The problem of underage drinking in Alaska is significant but not insurmountable. It will, however, require determination and commitment to a long-term effort on the part of our citizens, state and community leaders to get involved and to take the action necessary to make a difference.

The national and Alaska-specific information and recommendations contained herein provide a blueprint for a range of science-based state and community actions that are necessary in order to successfully reduce underage drinking in Alaska. These recommendations are based on the IOM/NAS Report: *Reducing Underage Drinking: A Collective Responsibility.* **Each recommendation is categorized as national (N), state (S), or local (L).** The national recommendations are numbered based on the location within the IOM/NAS report. The numbering of the state and local recommendations is specific to this plan.

[d] Parents must sign a permission slip (versus passive consent in which the parent can exclude the student from participating with a written request).

[e] There were 230 respondents from Anchorage alternative schools and 75 respondents from McLaughlin High School.

[f] The Anchorage alternative school YRBS is only representative of those students who participated in the survey as the response rate was not high enough to generalize it to all alternative school students.

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Juvenile Alcohol Safety Action Program (ASAP)

In cooperation with other state or local agencies, a juvenile alcohol safety action program provides substance abuse screening, referral, and monitoring of persons under 18 years of age who have been referred to it by the court, Division of Juvenile Justice, and/or Department of Motor Vehicles (DMV). The typical cases that are ordered to juvenile ASAP are minor consuming, minor in possessions and tobacco violations.

The benefits of screening, referral and monitoring include:

- Increased accountability of offenders;
- Reduced recidivism resulting from successful completion of required education or treatment;
- Significant reductions in the amount of resources spent by prosecutors, law enforcement officers, judges, attorneys and corrections officers enforcing court-ordered conditions; and
- Increased safety for victims and the larger community because offenders are more likely to be receiving treatment, making court appearances, and complying with other probation conditions.

On July 1, 2001, the juvenile ASAP program was formally established in 4 communities throughout the state: Fairbanks, Juneau, Kotzebue and Ketchikan through the passage of HB 179 - Underage Drinking and Drug Offenses. Since the passage of the legislation, the program has expanded into several other communities in the state - Anchorage, Kodiak, Kenai and Mat-Su.

A list of the current juvenile ASAP locations and FY '06 case totals for are below.

	Minor Consuming/ Minor in Possession	Tobacco Violations	Other	Total Cases
Anchorage	1223	0	0	1223
Fairbanks	243	0	0	243
Juneau	145	68	4	217
Kenai	5	2	12	19
Ketchikan	97	0	0	97
Kodiak	143	0	0	143
Kotzebue	48	0	0	48
Mat-Su	186	0	11	197
TOTAL				2187

Alaska Cabaret, Hotel,
Restaurant & Retailers Association

1503 W. 31st Ave., Suite 202 • Anchorage, Alaska 99503
(907) 274-8133 • Fax: (907) 274-8640
Toll Free In Alaska (800) 478-2427

The Honorable Kevin Meyer
State Senate
Alaska State Capitol
Juneau, AK 99801-1182

February 12, 2010

Dear Senator Meyer,

I am writing to you regarding Senate Bill 194, an act relating to civil damages for certain alcohol violations.

As you may know, one of Alaska CHARR's top legislative priorities is fighting underage drinking. We appreciate your efforts to increase the civil penalty for underage persons attempting to purchase alcohol to $1,500.00. We believe this will encourage licensees to pursue the civil liability penalty making the penalty a stronger deterrent and sending a stronger message to underage persons that their criminal actions will not be taken lightly.

Alaska CHARR fully supports SB194, and would like to thank you for helping the hospitality industry send a stronger message to kids that attempting to buy alcohol is a serious offense.

Please let me know if I can be of additional assistance.

Dale G. Fox, CAE
President & CEO, Alaska CHARR

ANCHORAGE CHARR
CABARET, HOTEL, RESTAURANT & RETAILERS ASSOCIATION

January 26, 2010

Senator Kevin Meyer
Alaska State Capitol
Juneau, AK 99801

Re: SB 194

Dear Senator Meyer:

Underage drinking in Alaska has long been a concern in our communities and for this reason we support legislation to increase penalties for underage drinking through the civil penalties process.

As responsible owners and operators, we do not want to contribute to the problem of underage drinking. When a licensee is caught serving or selling alcoholic beverages to a minor the consequences and penalties are severe. We believe the minor should be held primarily responsible for his/her actions; the current $1,000 civil penalty is not enough. There should be steps for offenses to include increasing the $1,000 to $1,500, required or mandatory education and prevention and delaying access to the driver license at the age of 21.

In 2006, the Alaska Federation of Natives (AFN) with funding from the Office of Juvenile Justice and Delinquency Prevention (OJJDP) report highlights the current status of underage drinking throughout rural and urban Alaska from a youth's perspective. The problem of underage drinking is statewide and impacts families, communities, social, health, medical, justice, law enforcement, education and economic bodies.

Anchorage CHARR assists members by processing civil penalty cases against minors on behalf of the licensee and providing information about minor civil penalty law. We compile information from our member about the civil case against the minor, prepare all required legal documents and coordinate third party notification for court appearance.

Currently our office has processed 42 minor cases with 15 pending court filing.

We urge you to please consider supporting SB 194.

Sincerely,

Silvia Villamides,
Executive Director

ABL Drink Responsibly. Drive Responsibly.

P.O. Box 242023
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907.646.4628
anchoragecharr@gci.net

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES

OFFICE OF THE COMMISSIONER
FINANCE AND MANAGEMENT SERVICES

SEAN PARNELL, GOVERNOR

P.O. Box 110601
Juneau, AK 99811-0601
Phone: (907) 465-1630
Fax: (907) 465-2499

February 3, 2010

The Honorable Donald C. Olson, Chair
Senate Finance Subcommittee
State Capitol, Room 508
Juneau, AK 99801-1182

Dear Senator Olson:

In response to a question from Representative Meyer's Office on Wednesday, January 27th, regarding Juvenile alcohol safety action programs, please see our response below:

- ***I would like to know how much the Juvenile alcohol safety action program developed by DHSS under AS 47.37 costs and how active they are throughout the state. Just need a quick, one sentence answer.***

In FY09 the Division of Behavioral Health (DBH) awarded a total of $534,527 to 11 Juvenile alcohol safety action programs (JSAPs) in the following communities: Mat-Su, Homer, Kotzebue, Fairbanks, Juneau, Kenai, Kodiak, Ketchikan, Dillingham, Seward, and Anchorage. An additional $200,000 was available in FY09 for programs to use to assist juveniles with service access. Total JSAP client new cases for FY09 were 1,917. During FY09 a total of 1,290 cases were completed and closed (this number includes cases that were opened in FY08 and closed in FY09).

In FY10, an additional $87,607 was awarded to two new JSAPs; Bethel ($46,000) and Nome ($41,607), and an additional $30,000 was available in juvenile treatment dollars. The JSAPs are very successful, with juveniles entering these programs completing their assigned service of alcohol and drug information school (using the Prime for Life Curriculum) or substance use treatment services in a timely manner, with few repeat clients.

If you have additional questions regarding this issue, please contact me at 465-1630.

Sincerely,

Alison Elgee
Assistant Commissioner

cc: Senator Bettye Davis, Capitol Building, Room 30
Senator Lesil McGuire, Capitol Building, Room 125
Senator Kevin Meyer, Capitol Building, Room 101
Senator Bill Wielechowski, Capital Building, Room 115
William Hogan, Commissioner
Patrick Hefley, Deputy Commissioner
William J. Streur, Deputy Commissioner
Ward Hurlburt, MD, Chief Medical Officer
Wilda Laughlin, Legislative Liaison
Betsy Jensvold, Budget Manager
Clay Butcher, Public Affairs Officer
Kelly White, Budget Analyst, Office of Management and Budget
Gary Zepp, Fiscal Analyst, Legislative Finance
Melissa Stone, Director

Log 6/2010

Volunteers of America
ALASKA
Communities Mobilizing for Change on Alcohol

1675 C Street Suite 201
Anchorage, AK 99501
Phone: 907-279-9634
Fax: 907-276-5489

March 21, 2010

Dear Representative Jay Ramras,

I am writing today about SB 194. I am the Director for Communities Mobilizing for Change on Alcohol (CMCA). Our program's goal is to reduce access of alcohol to minors. We are a grassroots coalition made up of community members. Our member range in age from 12 – 65. SB 194 was discussed at our coalition meeting in February and it was agreed upon by the younger members that we should support this bill as it will send a strong and clear message to youth who attempt to purchase alcohol as minors. Reduction of access of alcohol to minors will decrease the cost Alaska spends on alcohol related incidents.

There is also a whole new generation of minors who need to get the message that we do not tolerate underage drinking and if they get caught, their parents will be notified, and it will cost them money. Our hope is that this will help stop underage people from attempting to buy alcohol.

Thank-you for your time in reviewing our support of SB 194.

Sincerely,

Charlie Daniels

Cheryl "Charlie" Daniels
Volunteers of America, Alaska
Communities Mobilizing for Change on Alcohol, Director
1675 C St. Suite 201
Anchorage Alaska 99501
907-279-9602

Cc: Representative Nancy Dahlstrom, Christina Marasigan

[redacted]OUSE COMMITTEE REPO[redacted]

(7)
Date Referred to Committee: March 17, 2010

FURTHER REFERRALS:

Date of Committee Action: 3/24/10

The JUDICIARY Committee considered:

CS FOR SENATE BILL NO. 194(JUD)

"An Act relating to penalties and civil damages for certain alcohol violations."
SB 194-ALCOHOL VIOLATIONS: PENALTY/CIVIL DAMAGES

Recommends it be replaced with [√] HCS *or* **[ ] CS for** CSSB 194 (JUD)
For Senate Bills with new title: [ ] Technical Title [√] New Title: HCR _____ **[ ] Same Title [√] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

NEW **FISCAL NOTES** *Assigned by Chief Clerk's Office				
List by Dept(s):	*FN#	Fiscal	Indet.	Zero

PREVIOUS **FISCAL NOTES**				
List by Dept(s):	FN#	Fiscal	Indet.	Zero
LAW	1			X

Signing with recommendations	**Printed Last Name**	**DP**	**DNP**	**NR**	**AM**
	LYNN	X			
	GRUENBERG	-			
	HERRON	X			
	HOLMES	X			
Chair:	RAMRAS	X			
Chair:					

SB 239

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
Fax: (907) 465-2070
Toll Free: (877) 465-3004

Alaska State Legislature

House of Representatives

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1292 Sadler Way, Suite 324
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House District 10

Fax

To: Leg. Legal

Fax #: (907) 465-2029 Number of pages including cover: 1

From: Jane W. Pierson

Date: April 12, 2010

Re: SB239 version 26-LS1210\C

Jerry,

Today the House Judiciary Committee moved the above-referenced bill from committee with one conceptual amendment as follows:

P.4, L. 29 after "device" insert 'for an alcohol related offense"

P.6, L. 7 after "device" insert for an alcohol related offense"

Please make the attached changes and go final on the bill.

Call if you have any questions and thank you!

Representative_Jay_Ramras@legis.state.ak.us

ALASKA STATE LEGISLATURE

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SENATOR KEVIN MEYER
SENATE DISTRICT O

SPONSOR STATEMENT FOR SB 239

"An Act relating to ignition interlock devices, to refusal to submit to a chemical test, and to driving while under the influence."

SB 239 would clarify the sentencing statutes regarding the use of ignition interlock device (IID).

Effective in 2009, legislation was passed mandating an IID as part of the sentencing for driving while under the influence of an alcoholic beverage, inhalant, or controlled substance.

In 2009, there were 3,513 court orders requiring IID, 193 limited licenses for an IID were issued, and over 1,245 IIDs were installed in vehicles. There have been some reports of the IID being suspended in sentencing and of people with more violations having less time with an IID.

SB 239 would seek to remedy these loopholes by 1) requiring a period of time an IID to be installed stair stepped with each offense and 2) listing an IID as a condition of sentencing that cannot be suspended.

According to the National Conference of State Legislatures January 2010 Legisbrief, research shows that installation of an IID reduces can reduce recidivism up to 90 percent.

26-LS1210\C
Luckhaupt
4/7/10

HOUSE CS FOR CS FOR SENATE BILL NO. 239( )

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SIXTH LEGISLATURE - SECOND SESSION

BY

Offered:
Referred:

Sponsor(s): SENATORS MEYER, Wielechowski, Thomas, French, McGuire, Menard, Ellis, Egan

A BILL

FOR AN ACT ENTITLED

"An Act relating to ignition interlock devices, to refusal to submit to a chemical test, and to driving while under the influence."

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

*** Section 1.** AS 11.76.140(a) is amended to read:

(a) A person commits the crime of avoidance of ignition interlock device if the person knowingly

(1) circumvents or tampers with an ignition interlock device in a manner intended to allow a person on probation under AS 12.55.102, with a condition of sentence under AS 12.55.102 **or another section**, or who has an ignition interlock limited license to avoid using the device;

(2) rents a motor vehicle to a person and with criminal negligence disregards the fact that the person is on probation under AS 12.55.102, has a condition of sentence under AS 12.55.102 **or another section**, or has an ignition interlock limited license, unless the vehicle is equipped with an ignition interlock device

described in AS 12.55.102; or

(3) loans a motor vehicle to a person and knowingly disregards the fact that the person is on probation under AS 12.55.102, has a condition of sentence under AS 12.55.102 **or another section**, or has an ignition interlock limited license, unless the vehicle is equipped with an ignition interlock device described in AS 12.55.102.

*** Sec. 2.** AS 28.15.291(b) is amended to read:

(b) Upon conviction under (a) of this section, the court

(1) shall impose a minimum sentence of imprisonment

(A) if the person has not been previously convicted, of not less than 10 days with 10 days suspended, including a mandatory condition of probation that the defendant complete not less than 80 hours of community work service;

(B) if the person has been previously convicted, of not less than 10 days;

(C) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoked under circumstances described in AS 28.15.181(c)(1), [OR] if the person was driving in violation of a limited license issued under AS 28.15.201(d) following that revocation, **or if the person was driving in violation of an ignition interlock device requirement following that revocation,** of not less than 20 days with 10 days suspended, and a fine of not less than $500, including a mandatory condition of probation that the defendant complete not less than 80 hours of community work service;

(D) if the person's driver's license, privilege to drive, or privilege to obtain a license was revoked under circumstances described in AS 28.15.181(c)(2), (3), or (4), [OR] if the person was driving in violation of a limited license issued under AS 28.15.201(d) following that revocation, **or if the person was driving in violation of an ignition interlock device requirement following that revocation,** of not less than 30 days and a fine of not less than $1,000;

(2) may impose additional conditions of probation;

(3) may not

(A) suspend execution of sentence or grant probation except on condition that the person serve a minimum term of imprisonment and perform required community work service as provided in (1) of this subsection;

(B) suspend imposition of sentence;

(4) shall revoke the person's license, privilege to drive, or privilege to obtain a license, and the person may not be issued a new license or a limited license nor may the privilege to drive or obtain a license be restored for an additional period of not less than 90 days after the date that the person would have been entitled to restoration of driving privileges; and

(5) may order that the motor vehicle that was used in commission of the offense be forfeited under AS 28.35.036.

*** Sec. 3.** AS 28.35.030(b) is amended to read:

(b) Except as provided under (n) of this section, driving while under the influence of an alcoholic beverage, inhalant, or controlled substance is a class A misdemeanor. Upon conviction,

(1) the court shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of **six** [12] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than $1,500 if the person has not been previously convicted;

(B) not less than 20 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of **12** [24] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than $3,000 if the person has been previously convicted once;

(C) not less than 60 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle for a minimum of **18** [36] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than $4,000 if the person has been previously convicted twice and is not

subject to punishment under (n) of this section;

(D) not less than 120 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle **for a minimum of 24 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $5,000 if the person has been previously convicted three times and is not subject to punishment under (n) of this section;

(E) not less than 240 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle **for a minimum of 30 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $6,000 if the person has been previously convicted four times and is not subject to punishment under (n) of this section;

(F) not less than 360 days, require the person to use an ignition interlock device after the person regains the privilege, including any limited privilege, to operate a motor vehicle **for a minimum of 36 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $7,000 if the person has been previously convicted more than four times and is not subject to punishment under (n) of this section;

(2) the court may not

(A) suspend execution of sentence or grant probation except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection;

(B) suspend imposition of sentence; **or**

(C) suspend the requirement for an ignition interlock device;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the

motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036; and

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law.

*** Sec. 4.** AS 28.35.030(g) is amended to read:

(g) Notwithstanding (b) of this section, [IF THE COURT IMPOSES PROBATION UNDER AS 12.55.102] the court may reduce the fine required to be imposed under (b) of this section by the cost of the ignition interlock device.

*** Sec. 5.** AS 28.35.030(n) is amended to read:

(n) A person is guilty of a class C felony if the person is convicted under (a) of this section and either has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense, or punishment under this subsection or under AS 28.35.032(p) was previously imposed within the last 10 years. For purposes of determining minimum sentences based on previous convictions, the provisions of (u)(4) of this section apply. Upon conviction, the court

(1) shall impose a fine of not less than $10,000, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 60 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times;

(C) 360 days if the person has been previously convicted four or more times;

(2) may not

(A) suspend execution of sentence or grant probation except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection; [OR]

(B) suspend imposition of sentence; **or**

(C) suspend the requirement for an ignition interlock device;

(3) shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration of the license under (o) of this section;

(4) may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs, intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law;

(5) shall order forfeiture under AS 28.35.036 of the vehicle, watercraft, or aircraft used in the commission of the offense, subject to remission under AS 28.35.037; and

(6) shall order the department to revoke the registration for any vehicle registered by the department in the name of the person convicted under this subsection; if a person convicted under this subsection is a registered co-owner of a vehicle or is registered as a co-owner under a business name, the department shall reissue the vehicle registration and omit the name of the person convicted under this subsection.

*** Sec. 6.** AS 28.35.030(t) is amended to read:

(t) Notwithstanding (b) **or** [,] (n) [, OR (r)] of this section, the court shall waive the requirement of the use of an ignition interlock device when a person operates a motor vehicle in a community included on the list published by the department under AS 28.22.011(b).

*** Sec. 7.** AS 28.35.032(g) is amended to read:

(g) Upon conviction under this section,

(1) the court shall impose a minimum sentence of imprisonment of

(A) not less than 72 consecutive hours, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of **six** [12] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than $1,500 if the person has not been previously convicted;

(B) not less than 20 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of **12** [24] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than $3,000 if the person has been previously convicted once;

(C) not less than 60 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle for a minimum of **18** [36] months [DURING THE PERIOD OF PROBATION], and impose a fine of not less than $4,000 if the person has been previously convicted twice and is not subject to punishment under (p) of this section;

(D) not less than 120 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 24 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $5,000 if the person has been previously convicted three times and is not subject to punishment under (p) of this section;

(E) not less than 240 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 30 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $6,000 if the person has been previously convicted four times and is not subject to punishment under (p) of this section;

(F) not less than 360 days, require the person to use an ignition interlock device after the person regains the privilege to operate a motor

vehicle **for a minimum of 36 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a fine of not less than $7,000 if the person has been previously convicted more than four times and is not subject to punishment under (p) of this section;

(2) the court may not

(A) suspend execution of the sentence required by (1) of this subsection or grant probation, except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection; [OR]

(B) suspend imposition of sentence; **or**

(C) suspend the requirement for an ignition interlock device;

(3) the court shall revoke the person's driver's license, privilege to drive, or privilege to obtain a license under AS 28.15.181, and may order that the motor vehicle, aircraft, or watercraft that was used in commission of the offense be forfeited under AS 28.35.036;

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug or combination of drugs intended to prevent the consumption of an alcoholic beverage; a condition of probation or parole imposed under this paragraph is in addition to any other condition authorized under another provision of law; and

(5) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person.

* **Sec. 8.** AS 28.35.032(k) is amended to read:

(k) Notwithstanding (g) of this section, [IF THE COURT IMPOSES PROBATION UNDER AS 12.55.102] the court may reduce the fine required to be imposed under (g) of this section by the cost of the ignition interlock device.

* **Sec. 9.** AS 28.35.032(p) is amended to read:

(p) A person is guilty of a class C felony if the person is convicted under this

section and either has been previously convicted two or more times since January 1, 1996, and within the 10 years preceding the date of the present offense, or punishment under this subsection or under AS 28.35.030(n) was previously imposed within the last 10 years. For purposes of determining minimum sentences based on previous convictions, the provisions of AS 28.35.030(u)(4) apply. Upon conviction,

(1) the court shall impose a fine of not less than $10,000, require the person to use an ignition interlock device after the person regains the privilege to operate a motor vehicle **for a minimum of 60 months** [THROUGHOUT THE PERIOD OF PROBATION], and impose a minimum sentence of imprisonment of not less than

(A) 120 days if the person has been previously convicted twice;

(B) 240 days if the person has been previously convicted three times;

(C) 360 days if the person has been previously convicted four or more times;

(2) the court may not

(A) suspend execution of the sentence required by (1) of this subsection or grant probation, except on condition that the person

(i) serve the minimum imprisonment under (1) of this subsection; [AND]

(ii) pay the minimum fine required under (1) of this subsection; [OR]

(B) suspend imposition of sentence; **or**

(C) suspend the requirements for an ignition interlock device;

(3) the court shall permanently revoke the person's driver's license, privilege to drive, or privilege to obtain a license subject to restoration under (q) of this section;

(4) the court may order that the person, while incarcerated or as a condition of probation or parole, take a drug, or combination of drugs, intended to prevent consumption of an alcoholic beverage; a condition of probation or parole

imposed under this paragraph is in addition to any other condition authorized under another provision of law;

(5) the sentence imposed by the court under this subsection shall run consecutively with any other sentence of imprisonment imposed on the person;

(6) the court shall order forfeiture under AS 28.35.036, of the motor vehicle, aircraft, or watercraft used in the commission of the offense, subject to remission under AS 28.35.037; and

(7) the court shall order the department to revoke the registration for any vehicle registered by the department in the name of the person convicted under this subsection; if a person convicted under this subsection is a registered co-owner of a vehicle, the department shall reissue the vehicle registration and omit the name of the person convicted under this subsection.

*** Sec. 10.** AS 33.05.020(c) is amended to read:

(c) The commissioner shall by regulation

(1) establish standards for calibration, certification, maintenance, and monitoring of ignition interlock devices required as a condition of probation **or as part of a sentence** under AS 12.55.102 **or another statute**; and

(2) establish a fee to be paid by the manufacturer for the cost of certifying an ignition interlock device.

*** Sec. 11.** AS 33.05.020(e) is amended to read:

(e) The commissioner shall notify the manufacturer of the ignition interlock device when the device is certified. The commissioner may not certify an ignition interlock device unless the device prominently displays a label warning that a person circumventing or tampering with the device **violates** [IN VIOLATION OF] AS 11.76.140 **and** may be imprisoned [UP TO 30 DAYS] and fined [UP TO $500].

*** Sec. 12.** AS 12.55.102(e)(2) and AS 28.35.030(r) are repealed.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: CSSB 239(JUD)
(S) Publish Date: 3/23/10

Identifier (file name): SB239-LAW-CRIM-02-19-10
Dept. Affected: Law
Title: An Act relating to ignition interlock devices, to refusal to submit to a chemical test and to driving while under the influence.
RDU: CRIMINAL
Component: Criminal Justice Litigation
Sponsor: Senator Meyer
Requester: Senate Judiciary
Component Number: 2202

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill proposes amendments to the statutes related to ignition interlock devices. The Department of Law does not anticipate any fiscal impact from passage of this legislation.

Prepared by: Eileen Donahue, Division Operations Manager
Phone 465-5427
Division: Administrative Services
Date/Time 2/19/10 5:00 PM
Approved by: Daniel S. Sullivan, Attorney General
Department of Law
Date 2/19/2010

(Revised 11/6/2009 OMB)

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: CSSB 239(JUD)
(S) Publish Date: 3/23/10

Identifier (file name): SB239-DOA-DMV-02-22-10
Title "An Act relating to ignition interlock devices, to refusal to submit to a chemical test..."
Sponsor Senator Meyer
Requester (S)JUD

Dept. Affected: Administration
RDU Division of Motor Vehicles
Component Motor Vehicles
Component Number 2348

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
1156 Receipt Supported Services							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: _____

POSITIONS

Full-time							
Part-time							
Temporary							

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

This bill does not fiscally impact the Division of Motor Vehicles (DMV).

Prepared by: Whitney H. Brewster, Director — Phone 907-269-5574
Division Motor Vehicles — Date/Time 2/22/10 11:30 AM
Approved by: Kevin Brooks, Deputy Commissioner — Date 2/22/2010
Department of Administration

(Revised 11/6/2009 OMB)

LEGAL SERVICES

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LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM March 12, 2010

SUBJECT: Sectional Summary - CSSB 239( ), "S" Version
(Work Order No. 26-LS1210\S)

TO: Senator Kevin Meyer
Attn: Christine Marasigan

FROM: Gerald P. Luckhaupt
Legislative Counsel

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

Section 1 amends AS 11.76.140(a) to provide criminal liability in relation to ignition interlock devices regardless of whether the requirement to use the ignition interlock devices arises under AS 12.55.102 or another statute.

Section 2 amends AS 28.35.030(b), misdemeanor drunk driving, to provide that the requirement for an ignition interlock device for drunk drivers applies regardless of whether the offender receives probation; starts at a minimum of six months for a first offender and increases by six months for each offense (this is a minimum period for use of an interlock the court may impose a greater period); and provides that the ignition interlock requirement may not be suspended by the court.

Section 3 amends AS 28.35.030(g) to conform to sec. 2, as ignition interlock is no longer tied to probation.

Section 4 amends AS 28.35.030(n), the felony drunk driving statute, in a manner similar to sec. 2, by no longer tying imposition of ignition interlock to probation. In addition, this section requires the use of an ignition interlock device for a minimum of five years for anyone convicted of felony drunk driving and provides that the ignition interlock requirement may not be suspended.

Section 5 makes a technical change to correspond to the repeal of AS 28.35.030(r) in sec. 9 of the bill.

Section 6 amends AS 28.35.032(g), misdemeanor refusal to submit to a chemical test, by making the same changes that are made in sec. 2 of the bill for misdemeanor drunk driving.

Section 7 amends AS 28.35.032(k) to conform to sec. 6, as ignition interlock is no longer tied to probation.

Section 8 amends AS 28.35.032, felony refusal to consent, by making the same changes that are made in sec. 4, felony drunk driving.

Section 9 repeals AS 12.55.102(e)(2) and AS 28.35.030(r).

GPL:ljw
10-166.ljw

National Conference of State Legislatures

LEGISBRIEF

BRIEFING PAPERS ON THE IMPORTANT ISSUES OF THE DAY

JANUARY 2010 VOL. 18, NO. 3

Ignition Interlock Devices: Starting Your Engine Sober

By Anne Teigen

Ignition interlocks can help decrease the number of drunken drivers.

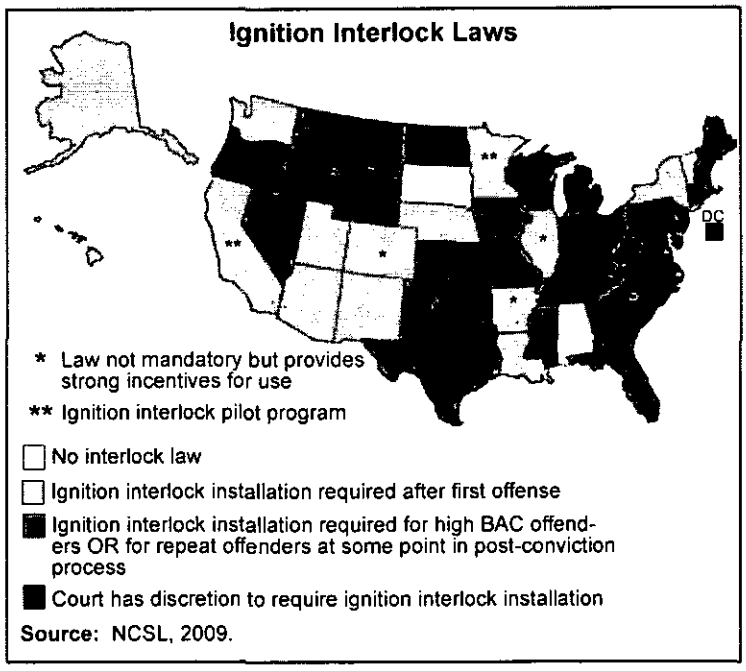
Alcohol-impaired driving fatalities still account for 32 percent of all U.S. traffic deaths. An estimated 11,700 people were killed in alcohol-impaired crashes in 2008, an approximate average of one fatality every 45 minutes. Impaired driving remains a significant public safety issue, and legislators are considering such tools as ignition interlock technology to decrease the number of drunken drivers.

Devices are more accurate and less susceptible to tampering.

Ignition interlock devices are installed in motor vehicles to prevent them from being started if alcohol is detected on the driver's breath. Most devices require periodic retesting while the car is running to ensure that the driver is not drinking once the car is started. Technological advances have made ignition interlock devices smaller, more accurate and less susceptible to tampering. Many courts include the use of devices when sentencing DUI offenders. During sentencing, an offender whose driver's license has been suspended or revoked may be granted limited driving privileges if an ignition interlock device is installed. About 146,000 ignition interlock devices currently are in use in the United States.

State ignition interlock laws vary.

State Action State ignition interlock laws vary greatly. Currently, 47 states and the District of Columbia have some type of law. Twenty-five states require installation of an interlock device after some repeat offenders or high BAC offenders are convicted. In some states, the license revocation period may be shortened if an interlock device is installed. Eight states and the District of Columbia allow judicial discretion in sentencing offenders. Alabama, South Dakota and Vermont have no ignition interlock law.



In 2005, New Mexico became the first state to require ignition interlock devices for all convicted drunken drivers, including first-time offenders. As of December

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2009, Alaska, Arizona, Hawaii, Louisiana, Nebraska, New Mexico, New York, Utah and Washington had passed legislation to require ignition interlock devices for all convicted drunken driving offenders. New York's law takes effect in August 2010, and Hawaii's law is effective in January 2011.

New laws in nine states require devices for all DUI offenders.

Three states address interlocks for first-time offenders with certain qualifications. Colorado's ignition interlock law is not mandatory for first-time offenders. The law provides strong incentives to use ignition interlocks by allowing first-time offenders' license suspension to be reduced from nine months to one month if an interlock is installed. Illinois requires first-time offenders to have interlocks installed unless an offender chooses in writing not to do so. Arkansas allows discretion to issue an ignition interlock license to a first-time offender.

In 2009, two states authorized ignition interlock pilot programs.

In 2009, 32 states considered some sort of ignition interlock legislation, and two passed pilot programs. Minnesota's program—available to all DUI offenders—is administered by the Minnesota Department of Public Safety, Driver and Vehicle Services. The program allows first-time and repeat DUI offenders to regain driving privileges if they participate in the pilot program. First-time offenders must use an ignition interlock device for one year, after a 15-day license suspension. Second- or third-time offenders must use the device for a year and six months after a 30-day license suspension. The pilot project began July 1, 2009, and will end June 30, 2011. The commissioner must submit a final report to the Legislature by Sept. 30, 2011, evaluating the pilot project, including information on participation rates, and recommending whether to continue an ignition interlock program. California's pilot program requires interlocks for all DUI offenders in four counties. The DMV must report to the Legislature on the pilot program's effectiveness in reducing the number of first-time DUI violations and repeat offenses.

Virginia modified its ignition interlock law in 2009, making it a Class 1 misdemeanor for anyone required to have an interlock installed to operate a vehicle without the device. Convicted drivers also are subject to license revocation. Many other states are revising their laws to provide penalties for offenders who violate ignition interlock laws.

Effects of state laws. Research shows that installation of these devices reduces recidivism by between 50 percent and 90 percent. A Maryland study of repeat offenders showed that interlock program participation reduced the risk of committing an alcohol traffic violation within the first year by 65 percent. A 2002 Illinois study found offenders who used ignition interlock devices were 20 percent less likely to be re-arrested for a DUI during the first year, compared to offenders who did not install the device. The installation rate of ignition interlocks is key in determining a law's effectiveness. Approximately 1.4 million drunken driving offenders are arrested and convicted each year, yet only 10 percent of convicted DWI drivers ordered to install an interlock device on their vehicle have done so.

Federal Action In preparing to reauthorize the surface transportation program (SAFETEA-LU), Congress is considering provisions that would require states to enact and enforce ignition interlock laws. In the provisions under debate, states would have to enact mandatory ignition interlock laws for all those convicted of driving while intoxicated and require the device to be installed for at least six months for the first offense. States would lose a percentage of highway maintenance funds for failing to pass such laws. The bill was introduced in December 2009.

Contacts for More Information

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Thecla LaLonde, President
Wrangell Chapter
Wrangell

February 2, 2010

Senator Kevin Meyer
Alaska State Senate
State Capitol
Juneau AK 99801-1182

Dear Senator Meyer:

On behalf of the Alaska Peace Officers Association (APOA), I would like to thank you for introducing Senate Bill 239, an act relating to ignition interlock devices, to refusal to submit to a chemical test, and to driving while under the influence.

The APOA State Board of Directors recently reviewed this proposed legislation and decided to unanimously support this bill.

We thank you for addressing this issue. Please contact the APOA office in Anchorage at 277-0515, if there is anything our organization can do to assist in the passage of this bill.

Sincerely,

John Lucking, Jr.
State President

From: "Schubert, Stacy" <SchubertS@ci.anchorage.ak.us>
Subject: **RE: Ignition Interlock**
Date: March 31, 2010 1:09:01 PM GMT-08:00
To: "Wheeler, Dennis A." <WheelerDA@ci.anchorage.ak.us>
Cc: "Messick, Jennifer" <MessickJ@ci.anchorage.ak.us>, "Theno, Seneca A." <ThenoSA@ci.anchorage.ak.us>, "Patterson, Al D." <PattersonAD@ci.anchorage.ak.us>, "'wendyc@gci.net'" <wendyc@gci.net>

Thanks all!

This is a fantastic analysis. I have spoken with Christine in Senator Meyer's office about your concerns and she very much appreciates your approach to resolving them. It is her feeling that the bill may be facing some hurdles in the Senate and to achieve expedited passage she'd prefer to see amendments go in on the House side. For your information, the bill has been referred to Senate Finance; however, it has yet to be scheduled (that's not unusual as the committee is still working on the capital budget and other issues that have been identified as "key"). Upon passage through Finance, it will go to the Senate Floor and then onto the House. I believe we have any ally with Rep. Mike Hawker as he was working on a similar bill earlier in the session.

I'll continue to monitor progress and will notify you as it occurs. Again, I appreciate the team effort.

-Stacy

From: Wheeler, Dennis A.
Sent: Tuesday, March 30, 2010 5:30 PM
To: Schubert, Stacy
Cc: Messick, Jennifer; Theno, Seneca A.; Patterson, Al D.
Subject: Ignition Interlock
Importance: High

Stacy - here are the comments on the CS for SB 239 (version P). Big thanks to Seneca and Jennifer in Prosecution for looking this over and providing the comments on short notice, with a few minor edits of my own. These comments, in order to get them to Juneau ASAP, are not known to or endorsed\opposed by the Mayor. We are generally supportive of the fixes as they relate to mandatory requirements for use of IID, but note the following for consideration.

Issue:

The bill ties the IID to regaining the privilege to drive. This is problematic because doing so creates an incentive for people to NOT get their license and it also basically allows them to drive without an IID without incurring any greater penalty than a regular Driving While License Revoked (DWLR) person.

Suggestions: either change the IID language or change the DWLR statute

1) Not just tying the IID to when they 'regain the privilege to drive' but requiring it *whenever they drive*, or a hybrid of both

WHY: A lot of DUI offenders won't ever regain their privilege to drive (either because they don't comply with ASAP or because they don't get the IID) and then when they drive (without the IID) they are simply DWLR without committing any greater crime

for not having the IID. They are simply DWLR in the same way the guy who didn't pay child support is (although child support guy is less of a public safety concern)

The way this draft is written and under the current penalty scheme a person who gets their IID and gets their OL (after their 90 day revocation) and gets caught driving their friend's car without an IID would have a mandatory 30 days of jail and $1000 fine and 80 hours of community work service, but the guy who never bothered to the get the IID and never bothered to get the OL gets caught driving without an IID and he only gets mandatory 80 hours work service. This doesn't make sense, is inequitable and actually provides an incentive NOT to get the IID or your OL.

If you simply require it *whenever they drive up until they get their OL back* ***and then*** *for an additional 6-12 months after reinstating their OL. (Dennis's comment: this latter part - 6-12 months- may be cost prohibitive for many offenders)* It would be a step toward achieving the goal. However, if we leave this draft as is, then we suggest changing the penalty scheme for DWLR:

OR

2) Change the DWLR statute

In order for the IID measure to be effective and have the teeth it needs to accomplish the goal, it must work in conjunction with other laws and penalty schemes, like the DWLR.

As we understand it there are currently two subsections (but numerous different ways) to be DWLR:

. A) Driving when your OL is suspended, revoked or cancelled This encompasses three basic scenarios:

a. driving during an active court-ordered (DUI, Reckless etc) revocation
b. driving during an administrative revocation
c. driving after a period of revocation but the person never got their OL reinstated

B) Driving in violation of a limitation. This encompasses two main scenarios

a. Getting your OL back during the 90 period, but for work purposes only, and driving for a purpose other than work
b. Getting your OL back, having the IID requirement, and driving a vehicle that does not have an IID.

The penalties vary depending on why your OL was revoked, when you were driving and whether there was a limitation. The main difference is that in 1 the person does not have a valid OL, they never bothered, or they aren't eligible. In 2 they got it, they jumped through hall the hoops but drive a vehicle without the IID, or outside work purposes etc. but we slap their hands much harder than the people who just thumbed their noses at the system. This should be fixed in order to make the IID scheme work.

3) Also, current law does not have an exception from the interlock device for

.000 DUIs (no alcohol). Is there a policy objective met in requiring an IID on someone who hasn't exhibited an alcohol problem in connection with their driving? Perhaps they were using prescription drugs or illegal drugs, in which cases the IID serves no purpose.

SB 244

ALASKA STATE LEGISLATURE

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SENATOR BERT K. STEDMAN

SPONSOR STATEMENT

SB 244 – GOVERNOR'S DUTY STATION

SB 244 will clarify state law regarding the governor's duty station and travel allowance. Currently in statute, there are no provisions that require the governor to reside in the capital city and occupy the governor's mansion during his or her term of office. The bill specifies that the governor's duty station, defined as the location where the governor spends the major portion of time assigned to fulfill the duties of office, is considered to be Juneau.

The proposed law does not prohibit the governor from maintaining a personal residence in another part of the state, but if he chooses to reside there and not in the governor's mansion, he will not be entitled to a travel allowance when away from the capital.

26-LS1322\C.1
Chenoweth
4/8/10

AMENDMENT

#1 W/D.

OFFERED IN THE HOUSE BY REPRESENTATIVE LYNN

TO: HCS SB 244(STA)

Page 1, lines 1 - 3:

Delete all material and insert:

""An Act providing that, during the term of office, the duty station of the governor and of the lieutenant governor is the state capital, and prohibiting payment of certain travel allowances to those officers for use of the personal residences of the governor and lieutenant governor.""

Page 1, line 8:

Delete "**to the governor**"

Page 2, lines 1 - 10:

Delete all material and insert:

"*** Sec. 2.** AS 39.20.060 is amended by adding a new subsection to read:

"(b) For purposes of calculation and payment of travel allowances due the governor during the governor's term of office and the lieutenant governor during the lieutenant governor's term of office,

(1) notwithstanding the residence of each of these public officers in another location, the governor's duty station, defined as the location where the governor spends the major portion of time assigned to fulfill the duties of the office, and the lieutenant governor's duty station, defined as the location where the lieutenant governor spends the major portion of time assigned to fulfill the duties of the office, is considered to be the state capital; and

(2) the governor is not entitled to, and may not claim as a travel

3491

allowance, a lodging allowance, when staying in the governor's personal residence while in travel status away from the governor's designated duty station, and the lieutenant governor is not entitled to, and may not claim as a travel allowance, a lodging allowance, when staying in the lieutenant governor's personal residence while in travel status away from the lieutenant governor's designated duty station."

Page 2, line 16, following "governor":

Insert "and the lieutenant governor"

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 244
(S) Publish Date: 2/12/10

Identifier (file name): SB244-GOV-EO-02-09-10
Dept. Affected: OOG
Title "An Act providing..... duty station of the governor is Juneau .... and prohibiting payment of certain travel allowances..."
RDU Executive Operations
Component Executive Office
Sponsor Senators Stedman, Egan
Requester (S) State Affairs
Component Number 6

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost: 0.0

POSITIONS

Full-time							
Part-time							
Temporary							

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

SB 244 establishing Juneau as the governor's duty station, and prohibiting the payment of a lodging allowance when a governor stays in their personal residence at another location, has no fiscal impact on the Office of the Governor. Travel allowances paid to a governor are based on allowable payments set out in the Administration Manual. The Administration Manual provides for payment of "actual lodging expenses", and a miscellaneous meal and expense allowance. As there are no lodging costs when staying in a personal residence, there is no lodging allowance paid.

Prepared by: Linda Perez, Director
Phone 465-3876
Division Administrative Services
Date/Time 2/9/10 5:00 PM
Approved by: Linda Perez, Administrative Director
Date 2/9/2010
Office of the Governor

(Revised 11/6/2009 OMB)

ALASKA STATE LEGISLATURE

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SENATOR BERT K. STEDMAN

SECTIONAL ANALYSIS

SB 244

"An Act providing that, during the governor's term of office, the duty station of the governor is Juneau, and prohibiting payment of certain travel allowances for use of the governor's personal residence."

Sec. 1 Amends AS 39.20.060 by removing the exemption in state law enjoyed by the governor and lt. governor with respect to the calculation and payment of travel allowances.

Sec. 2 Adds a new subsection to AS 39.20.060 declaring Juneau to be the governor's designated duty station and makes conforming amendments to the calculation and payment of travel allowances that apply to the governor.

Sec. 3 Satisfies AS 39.20.070 which requires modifications to AS 39.20.050 or AS 39.20.060 be done so expressly.

AAM 60. TRAVEL

60.010	Introduction to Travel	07/05
60.020	Travel Definitions	01/10
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60.040	Travel Approvals	10/09
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60.070	Travel Advances	10/09
60.080	Interruption or Deviation of Travel for Traveler Convenience	01/10
60.090	Unused Transportation and Accommodations	01/10
60.100	Airline Delays, Rescheduling, and Overheading	01/07
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60.120	Rental Cars	01/10
60.130	Airport Shuttle, Courtesy Van, and Taxi Service	01/07
60.140	Privately Owned Vehicles	04/09
60.150	Privately Owned Aircraft	10/07
60.160	Charters and Group Transportation	01/10
60.170	Alternatives to Travel	04/05
60.180	Boards and Commissions	01/07
60.190	Health and Safety of Travelers	01/10
60.200	Travel Related to Contracts	10/08
60.210	Completion of the Travel Authorization	01/10
60.220	Travel Expenses - Required Receipts and Documentation	07/09
60.230	Third Party Reimbursements	01/07
60.240	Lodging Types and Rates	04/07
60.250	Meal and Incidental Expense Allowances	01/10
60.260	Contracting for Subsistence	07/05

AAM 60.010 Introduction to Travel (07-05)

The travel policies of the State of Alaska are adopted by the Commissioner of the Department of Administration in accordance with AS 39.20.160. State agencies and travelers are required to comply with these policies whenever traveling on state business. Department heads may approve policy exceptions on a trip-by-trip basis for subordinate personnel within their departments based on documented circumstances or unique business requirements. Policy exceptions for department heads must be approved by the Commissioner of the Department of Administration.

The purpose of the travel policies is to provide approval to travel on state business, and to provide reimbursement for actual and necessary expenses incurred by travelers while traveling on state business. The policies apply uniformly to all travelers unless otherwise provided for by a collective bargaining agreement. When there is a conflict between these policies and a collective bargaining agreement, the relevant provisions of the collective bargaining agreement supersede.

The travel policies of the state are generally intended to be in compliance with current IRS regulations as an accountable plan. See AAM 320 for tax implications related to state travel reimbursement policies.

AAM 60.020 Travel Definitions (01-10)

Commercial Lodging Facility

A commercial lodging facility is a licensed entity that is in the business of selling lodging to the general public and includes hotels, inns, motels, apartments, and campgrounds.

Department Travel Administrator

Travel administrators are department personnel responsible for maintaining the travel profiles for their department. They may or may not also be the department's travel coordinator.

Department Travel Coordinator

Employee designated within a department to oversee the travel function. Department travel coordinators assist and train travel planners, monitor travel operations, and make recommendations on statewide travel policy.

Duty Station

The duty station of a traveler includes the city, town, or village within 50 miles of where the traveler spends the major portion of their working time, or the place to which the traveler returns to duty on completion of special assignments. On a case-by-case basis, commissioners may identify a radius or commuting area that is broader than 50 miles within which per diem will not be allowed for travel within one calendar day.

Emergency

An emergency is defined as an unforeseen set of circumstances that calls for immediate action. Emergencies include those that are the result of business-related occurrences, as well as personal situations. Personal emergencies generally do not affect travel status, except in the following cases:

- Traveler suffers a serious health condition (as defined by AS 39.20.550(5) while in travel status
- Death of an immediate family member [as defined by 2 AAC 08.999 (c)] occurs while traveler is in travel status
- Other situations deemed by department management as severe enough to affect travel status

E-Travel

Managed travel program for the State of Alaska Executive Branch.

E-Travel Management Team (ETMT)

The ETMT is comprised of the State Travel Manager and Assistant, as well as others from the Division of Finance that support this program.

E-Travel Office

The E-Travel Office is a section within the Division of Finance that manages the travel function for the Executive Branch. Staffed by the State Travel Manager and Assistant, this office serves as the liaison between state agencies and the contracted travel agency.

E-Travel Online

The online booking tool for travel arrangements, provided by the contracted travel agency and powered by RESX.

Lodging Allowance

Lodging allowance is the portion of per diem that covers lodging, generally the actual cost of the traveler's hotel room unless otherwise stated in individual bargaining unit agreements.

M&IE

Meals and incidental expense allowance. The portion of per diem that reimburses travelers for the cost of meals and incidental expenses including discretionary tips, laundry expenses, and other personal costs of travel.

Note: Any incidental expenses charged to a State credit card will be deducted from M&IE paid to the traveler.

MCAAK Credits

Cash equivalent credit received for purchases of MCAAK airfares from the contract travel agency. These credits are no longer accrued, but remaining balances may be used as a form of payment for airfare.

Non-Commercial Lodging Facility

A non-commercial lodging facility may include, but is not limited to, a public facility in a rural setting such as a community building or school, motor home, or private home.

Per Diem

Per diem allowance is a daily payment instead of reimbursement for actual expenses for lodging, meals, and incidental expenses. It is separate from transportation expenses and other miscellaneous expenses.

Residence

The residence of a traveler is the location, or within 50 miles thereof, where the traveler maintains the primary dwelling.

If a traveler maintains multiple residences, the commissioner of the department shall designate the residence that bears the most logical relationship to the traveler's duty station as the traveler's primary residence. Factors to be considered in determining the primary residence include: the time ordinarily spent performing duties at each location; the degree of business activity at each location; the relative amount of state wages earned at each location. Agencies may also contact the Division of Finance for assistance.

Tourist Class

The least costly class of accommodations on a regularly scheduled airplane, ship, or train.

Travel Planners

Individuals within each department that support travelers by making travel arrangements, explaining policies, ensuring travel is approved prior to purchase, and ensuring reimbursement occurs timely after travel is complete.

Traveler

Throughout these policies, traveler usually means a state official or a person employed by a state agency. At times, an agency may require board or commission members, volunteers, wards of the state, or other nonemployees to travel on state business. The agency must generally apply the same travel policies for nonemployees, except when travel reimbursement terms under a professional service contract differ as discussed in AAM 60.200.

Travel Expenses

- Transportation expenses consist of commercial carrier fares, vehicle mileage allowances, taxi fares, bus fares, and other essential transportation expenses while on official state business.
- The per diem consists of two parts, meals and incidental expenses, and lodging.
- Other expenses consist of charges for business telephone calls, internet, parking fees, emergency purchases of supplies, and other charges necessary to conduct official business.

Travel Status

Travelers shall be considered in travel status from the time an authorized trip begins until it ends. An "authorized trip" is a trip approved in accordance with administrative manual guidelines and where a traveler travels outside the boundaries of the duty station. An authorized trip begins when a traveler is leaving the duty station and:

- A traveler leaves the normal work location during normal work hours; or
- A traveler leaves the residence outside normal work hours.

An authorized trip ends when:

- A traveler returns to the normal work location during normal work hours; or

- A traveler returns to the residence if the trip ends outside normal work hours; or
- A traveler accepts voluntary denied boarding compensation. Refer to AAM 60.080 Interruption or Deviation of Travel for Traveler Convenience.

Refer to:

http://dop.state.ak.us/docpool/pdf/sop/Ch08TravelasTimeWorked/traveltimeworkSOPrev1.pdf for policies on compensation for travel as time worked.

Travel status is either short-term or long-term and per diem allowances vary according to status. The determination of short-term or long-term is based upon the duration and type of lodging facility provided to the employee. See AAM 60.240 for further guidance. A brief return of the employee to their duty station for business or personal convenience does not disrupt the long-term status of the trip.

A traveler is not in travel status for local travel or day trips. The following are some examples of travelers who would not be considered in travel status under the local travel or day trip provision:

- A state trooper while on patrol in his/her assigned territory.
- A safety inspector whose normal duties include driving from his/her normal duty station to a construction site for purposes of conducting an inspection.
- A health inspector whose normal duties include driving from his/her normal duty station to various communities to inspect facilities.

A mileage reimbursement form may be used to reimburse transportation costs when the criteria for travel status are not met.

AAM 60.030 E-Travel (01-10)

The Department of Administration has established E-Travel as the managed travel program serving the State of Alaska Executive Branch, including employees, members of boards and commissions, inmates, witnesses, and other individuals that travel on official State business.

E-Travel is comprised of:

- Travel policies contained in AAM 60
- E-Travel Online, which is the online booking tool RESX configured for State of Alaska travel policies
- Travel management contractor

- Other contracts with vendors in the travel industry including airlines, hotels, and rental car agencies
- E-Travel Management Team (ETMT)
- Travel coordinators, travel administrators, and travel planners within each department
- Employees and others traveling on official State business

Travel Management Contract

The State's travel management contract contains performance measures that affect the fees charged by the contractor. Measurements are performed quarterly and the fees are adjusted +/- 20% from a base amount.

Service standards for performance under the contract are available on the Division of Finance travel web site.

All contracted travel personnel are required to sign and adhere to a confidentiality agreement. The confidentiality agreement prohibits contracted personnel from discussing state travel arrangements with anyone that does not have a valid State of Alaska-related business need to know. The agreement includes a liquidated damage clause for breach of confidentiality.

Traveler Profile

An electronic traveler profile is required for booking travel. The state information in these profiles is maintained by department travel administrators. Optional information such as mileage number or seat preference may be entered by the traveler. Traveler profile instructions are available on the Division of Finance travel web site.

Department Travel Policies

Within the confines of this section, agencies may establish more specific travel policies.

Travel Purchase Process

Travel may be purchased using the E-Travel Online booking tool or by calling the contracted travel agency.

Travel planners should confirm the details of the itinerary before purchasing. After purchase, the agency is responsible for the carrier's change fee and any additional service fees to cancel and reissue the ticket. The traveler is personally responsible for the change fee when the change is for personal convenience.

Travel purchases must include the name of the approving official authorizing the purchase.

Fare Increases

Fares may increase before purchase. The state agency pays the increased fare unless it is due to a contractor delay, in which case the contractor will absorb the fare increase.

24-Hour Hold

A reservation should only be placed on a 24-hour hold when it is **certain** it will be purchased within that time frame. If the held reservations can not be purchased within 24 hours, the reservation **must** be cancelled.

Multiple or duplicate 24-hour held reservations are not allowed and run the risk of the ticketed reservation being cancelled by the airlines as a duplicate or debit memos from the airlines that are the responsibility of the state agency.

Refunds

Departments may request a refund for a refundable ticket at any time by replying to the final itinerary asking the contractor to refund the ticket. Any unused refundable ticket will be refunded 60 days after the return date on the ticket by the contractor and the state agency will be notified.

AAM 60.040 Travel Approvals (10-09)

All travel shall be approved in advance. The request for approval shall be in writing and must document essentials of the travel including purpose, destination, dates and times, a total not-to-exceed amount, any related leave requests, and whether an advance is authorized. The approval required depends on the location of the travel:

Travel within Alaska

Prior approval is required within the department and shall at a minimum have the approval of the traveler's immediate supervisor or designee.

Travel to the Contiguous United States, Hawaii, British Columbia, and Yukon Territory

Prior approval is required by the department and by the department's commissioner or designee.

Travel Outside the United States

Prior approval is required by the department, the department's commissioner and the Governor's Office.

Travel Completion Approvals

Following completion of travel, all travel related expenses and any deviation from the originally approved travel arrangements must be documented in the travel authorization. If the total cost of travel exceeds the amount approved in advance by more than 10%, the same level of approval must re-approve the travel, before the traveler reimbursement is approved by the appropriate agency authority.

General Travel Approval Policies

- All state travel shall be work-related and essential for state business.
- Agencies may document pre-approval for certain types of travel that does not fit the specific trip-by-trip approval process.
- Personal travel plans of the traveler shall not influence the approval of state-funded travel. Refer to AAM 60.080 Interruption or Deviation of Travel for Traveler Convenience.
- Travel status should be confined to the minimum amount of time required to conduct the business of the state. As a general rule, a traveler may travel the day prior if the only available flights depart prior to 7:00 a.m. and a traveler may stay an extra night if the only available flights make scheduled home arrival occur after 10:00 p.m. Supervisors may approve exceptions to these travel times when circumstances justify.
- When the required travel period exceeds 15 consecutive days, division directors may authorize employees to return home on days off at state expense. Such trips shall not curtail productive work time, and shall be limited to no more than one per month. Authorized costs for such trips are limited to the amount of avoided per diem.
- Whenever a traveler and the state opt to share the cost of business travel, the agreement will be documented in advance, including the duration of state business within the travel period. For bargaining unit members, such agreements require the concurrence of the union and must be authorized by the Division of Labor Relations.

AAM 60.050 Travel Purchase Policies (01-10)

Alaska Statute 39.20.140(b) requires that the state pay no more than "the lowest tourist class fare for the most direct route" unless specific exemptions are met:

- tourist class accommodation is not available;
- waiting for tourist class accommodation would cause a delay harmful to the state; or
- the Department of Administration finds that travel by tourist class accommodation is not in the best interest of the state, and authorizes other accommodation.

First or business class is allowed if it is offered to the traveler on a complimentary basis because of frequent flyer status and upgraded by the airline involved.

The statutes require purchasing the best fare for the most direct route that meets the state's business needs. This requirement also applies to contractors traveling on behalf of the state, regardless of whether the state is paying the travel expenses directly or reimbursing the contractor. The best fare does not require the purchase of nonrefundable tickets; agencies should make this business decision based on the nature of the travel.

Travelers and approvers are required to document reasons for declining savings where the lowest available airfare is not purchased. Variances from State of Alaska travel policy may be reported to the departments for analysis.

Electronic ticketing is the method preferred by the state. Paper tickets will be issued only when necessary.

Travel planners must confirm the name on the traveler's government-issued ID card before an airline ticket is issued using a generic profile. The airline ticket must be issued in the name on the driver's license or government-issued ID card.

Alaska Airlines EasyBiz miles will be tracked by the travel management contractor for each agency. State agencies will direct the contractor on use of EasyBiz miles that will ensure maximum value upon redemption.

All air and ferry travel must be ticketed using E-Travel except as noted in the service standards.

Travelers are generally required to use State of Alaska contracted / preferred travel providers. The Department of Administration, Division of General Services has negotiated travel contracts as listed in the Contract Award Manual. Use of these providers ensures travelers receive the best

fares, rates, and insurance coverage. Exceptions to required use of contracted / preferred providers are limited to:

- Contracted / preferred provider is not available.
- Contracted / preferred provider does not meet a specific business need (requires pre-trip department approval).
- Space or scheduled flights are not available from the contracted / preferred provider to accomplish the purpose of the travel.
- Use of the available contract / preferred provider service would require the traveler to incur unnecessary costs which would increase the total cost of the trip.
- A traveler is inconvenienced more than three hours by using the contracted / preferred airline provider.

State contract airfares are not available for travel by consultants and contractors, even if their travel is reimbursed by the state.

If an airline lowers a fare and a state-purchased ticket is reissued to a lower fare, the difference in fare belongs to the state. Airlines sometimes issue a nonrefundable electronic discount code credit (e-certificate) in lieu of refunding the form of payment used to purchase the original ticket. This e-certificate belongs to the state. State travelers are not allowed to use these e-certificates for personal travel, even if deposited in their personal account by the airline. The e-certificate number must be given to the traveler's department to be used for future state travel.

Excess costs, circuitous routes, delays, or luxury accommodations unnecessary or unjustified in the performance of official state business travel are not acceptable. The traveler will not be reimbursed for any additional costs that result from unauthorized travel arrangements.

AAM 60.060 Payment Methods for Transportation and Expenses (01-10)

The State of Alaska uses two primary methods to purchase transportation for individuals traveling on official state business:

1. One Card Alaska Corporate Credit Card (Card) – Agencies shall issue corporate credit cards to employees who travel. Employees with Cards are required to use them for purchases when the state pays actual costs, as in the case of transportation and actual lodging expenses. These purchases are expenditures from the state to vendors and are generally tax-exempt under local Alaska tax ordinances when purchased with the Card or other means of direct payment by the state.

2. Central Travel System (CTS) Accounts - The State of Alaska has established CTSs, which are used to purchase airfares and pay for

rental cars for travelers without Cards. CTSs are ghost accounts for which plastic cards are not issued.

There may be occasions when neither the Card nor the CTS can be used to purchase transportation. In these cases, it should be purchased using EDI or a state warrant.

Additional charges, such as taxes, resulting from purchasing with the traveler's personal resources are the responsibility of the traveler unless none of these payment methods were available to the traveler.

Mileage and MCAAK Credit

Agencies no longer accrue mileage or MCAAK credits for airfare purchases. Agencies accrued MCAAK credits from the contracted travel agency when purchasing MCAAK fares, for which no mileage was available from the airline. Accumulated mileage and MCAAK credits are tracked for the purchasing department, and may be used in lieu of money to purchase airfare.

Mileage may be used to reduce travel costs with Alaska Airlines. Miles are worth slightly less than $0.02 each, which should be a standard for deciding whether to use miles to purchase tickets. For example, 25,000 miles should be considered when the value of the ticket purchased is at least $500.

MCAAK credits can be used to pay for any airline tickets purchased using E-Travel.

Both mileage and MCAAK credits remain available to the purchasing agency for one year after they are earned. At that point, they revert to a statewide pool for use by agencies that have used their mileage and MCAAK credits.

Alaska Marine Highway

Transportation on state ferries may be authorized when in the best interest of the state. All ferry transportation will be paid by the employee using their Card, or by the department through use of the CTS or an interdepartmental billing. Staterooms may be paid in advance utilizing the Card only if the appropriate authorization has been obtained in advance. Meals are to be paid directly by the traveler. The traveler may be eligible for reimbursement of lodging expenses and/or M&IE in accordance with AAM 60.240 and AAM 60.250.

Lodging

Hotel charges paid directly by the state are generally exempt from local taxes within Alaska. Frequent travelers should use their Card to pay for

lodging. When the Card is not available, departments may choose to use direct billing as the method of payment. When taxes are charged on direct payments, state agencies should contact the vendor for refunds as appropriate and reflect this action on the travel authorization.

This policy does not apply to lodging purchased by employees who are reimbursed a per diem allowance for lodging per the terms of their labor contract. This lodging is a purchase of the employee, not a direct state purchase, and is therefore subject to hotel and sales tax under local ordinances.

Meals and Incidental Expenses

For meals and other out-of-pocket expenses, the traveler receives a meals and incidental expense allowance as described in AAM 60.250. These actual costs are purchases of the traveler, and are therefore taxable transactions under local tax ordinances. The Card should not be used for such purchases to avoid improper tax exemption. Personal expenses for meals, phone calls, and entertainment should not be commingled with purchases for lodging expenses on the state Card.

AAM 60.070 Travel Advances (10-09)

An advance of the estimated per diem allowance may be made to a traveler before the traveler enters travel status. Departments may choose to pay travel advances using EDI, or through use of the Card at an ATM.

All travel advances require employee notification that any monies owed the State of Alaska by the traveler may be deducted from the employee's paycheck. The Travel Advance Authorization form, available on the Division of Finance web site, needs to be signed only once by a traveler for recovering all subsequent advances through payroll deductions. These forms should be kept on file by travel planners.

A traveler shall not receive an additional travel advance until the previous travel advance and trip has been reconciled and closed out.

Agencies may make exceptions to policies in this section when circumstances justify.

AAM 60.080 Interruption or Deviation of Travel for Traveler Convenience (01-10)

Any interruption or deviation from the most direct and efficient means of travel for traveler convenience requires prior approval at the agency level by the appropriate supervisor or designee. Any additional time or expense

resulting from an interruption or deviation for traveler convenience shall be borne solely by the traveler. See AAM 60.140 for clarification on travel involving privately owned vehicles.

When a traveler interrupts business travel for personal reasons, the following apply:

1. Per diem, travel allowances, and reimbursements may not exceed such charges as would have been incurred if traveling by the most direct and efficient means.

2. Per diem, travel allowances, and reimbursements stop the hour a traveler interrupts business travel for personal reasons and resumes the hour the traveler returns to duty or resumes route of travel required by state business. For example, a traveler (Anchorage duty station) is traveling on state business (in Seattle) and the business is concluded at noon on Wednesday. For personal reasons the traveler will not return to the duty station until the following Monday. In this example, the traveler's entitlement to per diem, mileage, and other travel expenses reimbursements end at noon on Wednesday and would start two hours before flight time from Seattle to return to the duty station, subject to the limitations in 1 above.

3. Any additional time away from the traveler's duty station that may be required for such indirect travel will be charged to annual leave, personal leave, or leave without pay. In the example 2 above, the employee's leave status would begin at noon when business travel was interrupted for personal reasons. Leave in conjunction with business travel must be documented in prior approval and copies of leave slips shall be submitted upon completion of the trip.

4. Per diem is allowed when a traveler is granted leave due to illness. However, the per diem allowance shall not be authorized for a period of illness exceeding three calendar days in any one period of absence. Per diem is not authorized if the traveler is hospitalized or otherwise has no actual and necessary business expenses requiring reimbursement.

5. Rental cars obtained for official state business must be returned.

6. State exemption for hotel taxes does not extend to lodging.

7. Personal travel segments cannot be purchased at state contracted rates.

8. A traveler on official state business requesting approved personal air travel deviation for an alternate routing, personal discount coupons to purchase companion travel, or travel that increases airfare, will make their own travel arrangements. These arrangements will be purchased

by the traveler using a personal form of payment instead of a state form of payment. A state-authorized fare quote must be obtained for a price comparison to determine traveler reimbursement. Once travel is completed the traveler must present a copy of the ticket receipt or itinerary showing payment and the state-authorized fare quote to obtain reimbursement. The fare quote may be obtained and saved in E-Travel Online with the research option (no fee), or by calling the contracted travel agency (fee applies). After travel is complete, the state will reimburse the lesser amount of either the ticket or the state-authorized fare quote obtained prior to travel. If the only deviation is an extension of dates on either end of the state-authorized dates, departments may opt to pay for the combined airfare when purchased if the personal portion can be recovered from the traveler's reimbursement after travel is complete.

9. Agencies must ensure that employees combining business and personal travel are well-informed and cautioned that airfares may result in a liability to the employee, should the reason for the business travel be cancelled. Employees leaving on vacation in conjunction with the business event will become responsible for all costs should the business event be cancelled. Employees opting not to travel if the business event is cancelled will be responsible for the cost of travel that the state cannot recover that was attributable to the personal portion of the airfare. The employee may be reimbursed, at the department's option, for the business portion of unused tickets. The business portion of unused tickets paid to employees must be monitored by the department as state assets until they are used or expire. Employees leaving the department prior to the expiration of such a ticket are required to return the state payment for any business portion that is still available for use by the employee.

10. Voluntary denied boarding compensation where the traveler voluntarily vacates his/her seat and takes a later flight may be retained by a traveler (viewed as an insignificant personal travel credit under ethics rules). A traveler cannot volunteer for denied boarding on an outbound flight unless the traveler has previously approved personal travel for the beginning of the travel period. Nor may a traveler volunteer for denied boarding if it may cause a delay in return to work. By accepting a voluntary bump on the return portion, the traveler puts himself on personal travel rather than state business. Travel status ends, no further per diem is allowed, and all state insurance coverage ceases for the duration of the trip. The traveler is responsible for any additional travel expenses caused by the voluntary action.

AAM 60.090 Unused Transportation and Accommodations (01-10)

When travelers' plans change, travelers shall release air, car, and hotel reservations within the required time limits. Travelers may contact vendors directly or contact the travel management contractor to cancel reservations. The state shall not reimburse travelers for charges incurred as a result of failure to release reservations.

Travelers shall submit any unused portion of air or ferry tickets with the travel authorization to their travel planner. Travel planners may forward unused tickets to the travel management contractor to process refunds or the department may retain them for reissuing later.

AAM 60.100 Airline Delays, Rescheduling, and Overheading (01-07)

When an airline assumes the cost of a traveler's lodging and/or meals due to airline delays or overheading, the traveler shall be paid a per diem allowance up to the originally scheduled arrival time. When the airline does not assume the cost of a traveler's lodging and/or meals, the traveler shall be paid the per diem allowance that applies for the actual trip.

Involuntary denied boarding compensation is payable to the state, not to the individual employee. If a traveler is performing official travel and a carrier denies a confirmed reserved seat on a plane, the traveler must submit to the department any payment received for liquidated damages. The traveler must ensure the carrier shows the "State of Alaska" as payee on the compensation. Any such compensation must be submitted with the travel authorization.

AAM 60.110 Excess Baggage (04-05)

The state will only pay for excess personal and state baggage necessary to carry out official state business. Such baggage shall be transported by the most economical method (checked as excess baggage, shipped via airfreight, etc.).

AAM 60.120 Rental Cars (01-10)

When necessary, the rental of a car may be authorized for travelers in travel status. The estimated cost for the rental car must be included in the prior approval process required under AAM 60.040 Travel Approvals. The cost and intended use of the car must be considered in determining the size and type of car to rent. The State of Alaska supports a mid-size or less car rental. Rental of a car larger than mid-size may be allowed when several

travelers are traveling together or circumstances require the use of a larger car. Such situations must also be documented on the completed travel authorization.

- All car rentals must be reserved using E-Travel.
- Travelers cannot upgrade their rental cars at the airport.
- Travelers are responsible for refueling rental cars prior to returning them to the rental car companies. If the rental car company refuels the vehicle, a justifiable business purpose must be provided for incurring the additional cost.

All insurance offered by car rental companies must be declined by state travelers. By most state laws, auto liability insurance (covering third party damage or injury claims) is provided by the car-rental company as owner of the vehicle. Excess auto liability coverage is provided through Risk Management for authorized business travel.

Collision or Physical Damage Waiver for any damage to the rental car (collision, comprehensive coverage, and related loss of use claims) is often offered by the car-rental company at the counter at the time of hire and should be refused by the State of Alaska employee on business travel status. Risk Management will respond and resolve any physical damage claims to rental cars while used on state business related travel.

Rental cars may be driven on state business only, and Risk Management self-insurance coverage applies only where the car is used on state business. State business includes usual travel related activity (restaurants, hotels, etc.), but does not extend to any personal deviations for individual traveler convenience. Refer to AAM 60.080 Interruption or Deviation of Travel for Traveler Convenience.

If there is damage to any rental car:

- Travelers are cautioned to never accept responsibility or admit liability.
- If the lessor requests information or payment, advise the lessor to contact the Department of Administration, Division of Risk Management.
- If there is personal injury or an accident, telephone the Division of Risk Management as soon as possible.

See AAM 60.350 for use of rental cars connected with an employee move.

AAM 60.130 Airport Shuttle, Courtesy Van, and Taxi Service (01-07)

When a traveler in travel status requires transportation either to or from an airport or ferry terminal, an airport shuttle, courtesy van, taxi or limousine service is allowed. When departing on state travel, if a traveler uses a

privately owned vehicle for transportation to or from an airport or ferry terminal, the amount of reimbursement for mileage, parking, and other costs is limited to the equivalent cost of a taxi.

AAM 60.140 Privately Owned Vehicles (04-09)

A traveler may use a privately owned vehicle, such as auto, snowmobile, motorcycle, or boat when it is in the best interest of the state. The approving official shall be responsible for substantiating that use of a privately owned vehicle is in the state's best interest. The traveler shall receive a mileage reimbursement equal to the established rates published on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/resource/POV_Rate_Table.pdf.

When a traveler uses a privately owned vehicle, the amount of reimbursement shall be limited to what the lowest available commercial alternative would have cost. Per diem, actual hotel expenses and meal allowances, or other travel reimbursements shall not exceed the amounts that would have been incurred had the traveler used common carrier transportation. Only mileage incurred while engaged in official state business is reimbursable.

Mileage incurred for commuting between an employee's residence and normal work location is not reimbursable. Mileage incurred for commuting to/from a temporary worksite is reimbursable to the extent that it exceeds the distance from the employee's residence to the normal work location.

Any additional regularly scheduled work time away from the duty station required as a result of using a privately owned vehicle for personal convenience will be charged to annual leave, personal leave, or leave without pay.

When two or more state travelers are traveling in the same direction, and it is possible to share a privately owned vehicle or airplane, the state will reimburse the total mileage only once (AS 39.20.130).

AAM 60.150 Privately Owned Aircraft (10-07)

When a state employee, who is a qualified pilot, rents an aircraft or uses a privately owned aircraft for state business, the following items must be filed with the Department of Administration or the agency administrative officer before using the aircraft:

- A copy of a valid pilot's license.
- A copy of current medical certification.

- Proof of aircraft liability insurance with limits not less than $1,000,000 combined single limit for bodily injury and property damage per occurrence/annual aggregate.

It is the responsibility of each agency to ensure these documents are on file before authorizing, or reimbursing a traveler for the use of a privately owned aircraft. No passengers are permitted to accompany a pilot except other state employees who are also traveling on state business to the same destination.

For state travelers who do not have the required $1,000,000 aircraft liability insurance coverage, the Division of Risk Management has an insurance policy to provide the required coverage for travelers who meet certain minimum pilot qualifications. This coverage is a separate aircraft liability policy for $1,000,000 combined single limit liability, for bodily injury and property and may be purchased on a per-flight basis with individual coupons. In the event the aircraft owner has liability insurance, the state policy applies as excess insurance over any other valid and collectible policies.

To obtain individual trip coupons for this per-flight, aircraft liability insurance, contact Risk Management at:

Division of Risk Management
Department of Administration
P.O. Box 110218
Juneau, AK 99811-0218
Phone (907) 465-2180
Fax (907) 465-3690

The cost is $30 per aircraft per round trip flight. The first order for coupons must be accompanied by a copy of the Pilot Qualification Certification (note minimum flight hour requirements on this form), a copy of the pilot's license, and current medical certification. The coupons may be purchased by the traveler pilot or through a request to transfer the funds via an interdepartmental billing (Journal Entry).

The original completed coupon shall be attached to the travel authorization. A copy of the coupon must be returned to Risk Management to comply with insurance policy requirements.

The reimbursement rate for privately owned aircraft is the lesser of the state-published rate on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/resource/POV_Rate_Table.pdf or the common carrier rate to the same destination. Bargaining unit agreements may supersede this rate.

AAM 60.160 Charters and Group Transportation (01-10)

When it is necessary to hire a boat, aircraft, or other special conveyance, an explanation stating the facts constituting the necessity must be included with the travel authorization. When two or more travelers travel as a group or with a group, the names and business relationship of each member of the group shall be included with the travel authorization of each traveler.

All charters must be handled in compliance with the policies and provisions of AS 36.30, purchasing regulations 2 AAC 12, and the agency's delegation of purchasing authority. E-Travel may be used for chartering transportation.

AAM 60.170 Alternatives to Travel (04-05)

Agencies are to develop and implement alternatives to travel, as well as less expensive means of travel. These methods should include, but are not limited to:

- Teleconferencing and video conferencing.
- Video recordings and published reports.
- Reduced frequency of regularly scheduled out of town meetings.
- Restrictions on the number of staff traveling to the same destination.
- Coordinating between agencies for joint travel arrangements when more than one agency is involved.

If an agency determines that a seminar, workshop, or training program is essential to staff development for five or more employees, the agency will investigate the option of bringing the trainer on-site instead of authorizing employees to travel to an off-site location. The agency will document the comparative cost of an on-site session and retain such documentation on file with the agency's travel records. The agency must also explore the practicality of fulfilling the desired staff development goals through use of video teleconferencing or web-based conferencing where these options may be more cost-effective.

AAM 60.180 Boards and Commissions (01-07)

Except for those board and commission members specifically covered in statute, each state board and commission member is entitled to the same reimbursement for lodging and M&IE allowances as provided to state officials and employees in this section of the administrative manual.

When the meeting or other business takes place in the vicinity of the member's residences (see definition at AAM 60.020), members are not in

travel status and are not entitled to reimbursement or a per diem for lodging. However, the commissioner of the department with oversight authority of the board may authorize reimbursement of such lodging expenses when deemed necessary and in the best interests of the state. For example, it might be authorized if the travel home would present a hardship due to the age and health of the board member. When such payments are authorized, approval must be noted on the travel authorization.

A board or commission member, who is not a state employee, attending a board or commission meeting is entitled to a prorated M&IE if meals are not provided. To be eligible for each meal period allowance requires the member to be in attendance for at least three consecutive hours within that meal period as defined in AAM 60.250. See AAM 320 for when this allowance may be taxable to board and commission members.

State employees serving as board or commission members as part of their official duties are not entitled to an M&IE allowance or reimbursement for lodging expenses when the board or commission meeting is in the vicinity of their residence and/or duty station. (AS 39.20.180, AS 39.20.185)

AAM 60.190 Health and Safety of Travelers (01-10)

The health and safety of travelers is a top priority in the conduct of state travel related activities. It is advantageous to the state for agencies to establish and alter travel plans and itineraries with consideration of hazardous weather and other situations that could threaten the health and safety of state personnel. When this occurs, travelers should note the reason for any additional expense on the travel authorization.

Travelers with Physical and Medical Conditions

The impact of the medical conditions of travelers on state travel should be considered on a case-by-case basis. For travelers weighing over 300 pounds, the state can pay for two seats in coach class or one first class ticket, whichever costs less. Similar accommodations can be made for travelers weighing less than 300 pounds if the airline requires the purchase of a second seat.

Compliance with the Americans with Disabilities Act (ADA) is mandatory. Each department has the authority to provide reasonable accommodations during state travel for travelers with disabilities. Decisions regarding specific situations not addressed by policy shall be made and documented by the department, conferring with the Division of Personnel and Labor Relations as necessary.

All state personnel are to be afforded equal opportunity to perform travel for official state business even if the travel costs for disabled travelers will exceed what would normally be most economical to the state. For example:

- When a traveler uses a wheelchair and it is necessary to pay more for an airline ticket so the traveler can fly on a larger airplane that can accommodate the wheelchair.
- When a traveler has hearing or vision impairments and there is a cost of providing auxiliary aids and services to enable the traveler to successfully accomplish the purpose of the travel.

All special needs of travelers should be documented in their travel profile.

The extra travel costs required to comply with the ADA shall be documented and reviewed by the Division of Personnel and Labor Relations. ADA supporting documentation should remain confidential with no details on the travel authorization beyond a statement added indicating the agency file location.

AAM 60.200 Travel Related to Contracts (10-08)

Agencies are encouraged to require the policies of AAM 60 in the terms of their professional service contracts which include travel. When the state reimburses a contractor for travel under these policies, the travel account codes in AKSAS may be used because the travel reimbursements are excludable under the rules governing IRS accountable plans.

When contract terms for travel reimbursement differ from the policies of AAM 60, or the contractor does not account to the state for travel costs, the services account codes must be used to ensure that travel reimbursements are reported as taxable income to the contractor.

AAM 60.210 Completion of the Travel Authorization (01-10)

Each agency will prepare their employees' travel authorizations, and bill other agencies via adjusting journal entry when appropriate. Exceptions to this policy may be agreed to between agencies.

All travel expenses incurred by State of Alaska employees will be reimbursed based upon bargaining unit contracts, Alaska Statutes, and this section of the Alaska Administrative Manual. Lack of adherence to State of Alaska travel policies may result in non-reimbursement.

Within five business days after travel is complete, the traveler, or someone acting for the traveler, is required to complete a travel authorization in a

form approved by the Department of Administration. The travel authorization summarizes the trip details, including actual costs, and calculates reimbursement due. Required receipts and evidence of pre-approval must be included.

If the traveler is due an additional amount, final payment shall be made within ten business days of the receipt of a properly completed travel authorization. However, if the final amount to be reimbursed is $.49 or less, no reimbursement will be processed. If the final amount to be reimbursed is $.50 or more, the amount to be paid will be rounded up to $1.00.

Reimbursements to the traveler will be deposited directly into the traveler's bank account unless the traveler chooses non-electronic payment. Any monies owed the State of Alaska by the traveler may be deducted from employee paychecks. When money is owed the State of Alaska and no payroll deduction is done, a personal check or money order must accompany the travel authorization.

If, in an emergency situation, it is necessary for an employee to book travel outside of the E-Travel Office, written documentation will be necessary to explain the circumstances in the travel authorization. This documentation is required for reimbursement.

AAM 60.220 Travel Expenses – Required Receipts and Documentation (07-09)

The following shall be attached to the travel authorization when submitted for final payment:

- A copy of the final itinerary
- Itemized commercial lodging facility receipts (short-term per diem)
- Receipts for expenses exceeding $25
- ATM receipt for any cash advances on state credit cards
- A copy of the rental car agreement
- Leave slips, if the trip includes leave

Though receipts for expenses of $25 or less are not required, total reimbursement for which receipts are not available shall not exceed a cumulative total of $30 per trip.

Receipts are strongly encouraged. All expenses claimed are subject to review. Reimbursement of unsupported expenses may be disallowed. Fraudulent claims may be subject to disciplinary action.

The following travel-related expenses are not reimbursable:

- Lost or stolen articles
- Alcoholic beverages
- Damage to personal cars, clothing, or other items
- Services to gain entry to a locked car
- Movies charged to hotel bills
- All expenses related to the personal negligence of the traveler, such as fines, parking tickets and traffic citations
- Entertainment expenses
- Tips and gratuities
- Towing charges
- Expenses for children, spouses, and companions while in travel status
- Personal phone calls or faxes

The above list is not all-inclusive.

AAM 60.230 Third Party Reimbursements (01-07)

Occasionally a third party (outside entity) may agree to pay all or a part of a traveler's travel expenses. In such cases, the travel authorization will indicate the third party's involvement in the trip. The traveler is only entitled to reimbursement for travel expenses, per diem or other expense allowances, etc., in accordance with state policies and is to be paid by the state agency for which they are traveling and/or employed. Travelers may not accept honorariums as long as they are traveling for and representing the state.

The third party should be instructed to reimburse the state directly for the travel expenses to reduce potential tax consequences to the traveler. When this is not possible, any third party reimbursement made directly to the traveler for travel expenses, per diem, and/or meal allowances shall be turned over to the traveler's state agency for deposit into the state treasury.

Payments by a third party for state agency travel expenses must be recorded appropriately in the state accounting system. If the travel is material to the agency's travel budget and is part of the agency's regular duties or is connected with carrying out the purpose of the agency, the costs must be recorded as an expenditure with an offset recorded as a revenue. If the state incurs the expenditure and is reimbursed by the third party, the reimbursement is to be recorded as revenue.

However, if the travel is not directly related to the state agency's program, is not a recurring event, or is immaterial to the agency's travel budget, this transaction does not need to be recorded as an expenditure and a revenue of the state agency. If the state incurs the expenditure and is reimbursed by the third party, the reimbursement may be recorded as an abatement. If the third party pays directly for state expenses, such as purchasing the airline

ticket for the state traveler, these expenses do not need to be recorded. However, any receipts obtained by the traveler showing the cost of the airline ticket or lodging must be attached to the travel authorization.

Any time a third party is paying for a state traveler's travel expenses, the state agency must avoid the appearance of or the fact of any conflict of interest. The agency should also ensure the transaction does not violate the code of ethics and if there is any question, the Department of Law should be consulted on the matter.

AAM 60.240 Lodging Types and Rates (04-07)

Travelers are permitted actual costs or an allowance for lodging and an allowance for meal and incidental expenses (M&IE). Refer to AAM 60.250 for policies on M&IE. The combined costs for lodging and M&IE are referred to as the per diem allowance. Where applicable, travel provisions of collective bargaining agreements supercede AAM per diem allowance policies and rates.

A traveler is not entitled to a lodging allowance when provided lodging by the state or a third party with whom the state is conducting business. Travelers are not entitled to a lodging allowance when staying in their own residence(s).

The term of a stay (short- or long-term), type of lodging facility, and location of overnight lodging determine applicable lodging types and rates. Agencies should take into consideration the length of stay in one location in determining the type of lodging accommodations.

For current lodging rates, refer to the State of Alaska Per Diem Rates published on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/index.jsp#trav_acct.

In- and Out-of-State, Short-Term Lodging (Actuals or Allowance)

Travelers on short-term travel status in or outside of Alaska are eligible for reimbursement of actual lodging expenses. Actual costs for short-term lodging are authorized for moderately priced commercial lodging. Each agency must ensure that lodging costs are reasonable and necessary and that government or other discount rates are used. Travelers must submit original itemized commercial lodging receipts with their travel authorizations.

Actual lodging expenses that exceed $300 room rate per night must be approved in advance by the director of the Division of Finance, or, the commissioner of the Department of Administration may delegate this approval to department commissioners. All requests shall include justification that clearly demonstrates the lodging is a government rate and

cannot be acquired for less than $300 per night. Quotes from at least three moderately priced hotels in the same vicinity should be included with the justification.

Travelers on short-term travel status in Alaska are eligible for a daily noncommercial allowance when the travelers are required to stay in a community or location where commercial lodging facilities and state- or vendor-provided facilities are not available.

In-State, Long-Term Lodging (Allowance)

Agencies should provide in-state long-term lodging accommodations when the assignment is expected to be longer than 30 days at any one location.

- The long-term commercial lodging allowance rate is authorized when a traveler stays in commercial lodging facilities.
- The long-term noncommercial lodging allowance rate is authorized when a traveler is required to stay in a community or location where commercial lodging facilities and state- or vendor-provided facilities are not available.

These rates apply beginning the first day of travel status. Brief interruptions for business or personal convenience do not change the status from long-term.

Out-of-State, Long-Term Lodging (55% of Federal Lodging Allowance)

The long-term lodging rate outside Alaska is 55 percent of the federal lodging allowance. A link to the federal per diem rates is located on the Division of Finance web site at:
http://fin.admin.state.ak.us/dof/travel/index.jsp#trav_acct.

Required Approvals for Short- and Long-Term Travel Assignments

The short-term lodging allowance rate may not be used after a traveler's 30th consecutive day in one location unless a continuation has been approved in advance by the director of the Division of Finance, Department of Administration.

When travel status is expected to extend beyond six consecutive months in one location, the traveler's agency must receive advanced approvals for the assignment and for use of the long-term lodging rate from the department's administrative services division and the director of the Division of Finance. The approvals are requested on the Long-Term Travel Assignment form. Refer to the form for specific information required for the approvals. Page 2 of this form is used to request continued travel status that extends beyond a year and requires the requestor(s) to justify why it is in the state's best interest to pay per diem rather than

move the traveler to the project location. This form is published on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/resource/longterm.pdf.

See AAM 320 for a summary of tax implications related to state travel reimbursement policies.

AAM 60.250 Meals and Incidental Expense Allowances (01-10)

Meal and incidental expense (M&IE) allowances and prorated M&IE allowances are provided to the state traveler to cover the cost of meals and incidental expenses such as discretionary tips, laundry expenses, etc. Where applicable, M&IE provisions of collective bargaining agreements supercede AAM M&IE allowance policies and rates.

There are two types of M&IE allowances, short-term and long-term/noncommercial. The appropriate M&IE allowance rate for a day is the rate established for the community in which the traveler is required to obtain overnight lodging. On the day of return, a traveler is entitled to the M&IE allowance rate applicable for the preceding day. When travel involves crossing the International Date Line, the M&IE allowance shall be calculated based on the total number of hours in flight.

For current M&IE allowances, refer to the State of Alaska Per Diem Rates published on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/index.jsp#trav_acct.

In-state M&IE rates are reviewed annually and adjusted as appropriate.

A link to the federal per diem rates is located on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/index.jsp#trav_acct.

Short-Term M&IE (Allowance)

Travelers on short-term travel status in Alaska are eligible for a daily M&IE allowance.

Travelers on short-term travel status outside of Alaska, including travel to Hawaii and foreign destinations, are eligible for the federal M&IE rate for the location.

A traveler is eligible for the short-term M&IE allowance rate in two circumstances: when a traveler in short-term travel status is expected to incur expenses from dining at commercial establishments; and when a traveler in long-term travel status will incur expenses from dining at commercial establishments because the traveler is required to stay in a lodging facility that does not provide cooking facilities to its guests.

Long-Term/Noncommercial M&IE (Allowance)

Travelers on long-term travel status in Alaska are eligible for a daily M&IE allowance.

Travelers on long-term travel status outside of Alaska, including travel to Hawaii and foreign destinations, are eligible for 55% of the federal M&IE rate for the location.

A traveler is eligible for a long-term/noncommercial M&IE allowance in two circumstances: when a traveler in long-term travel status, is expected to prepare meals; and when a traveler is in short-term travel status in a location where there are no commercial dining establishments.

M&IE Rules for Specific Situations

Whenever a traveler is in travel status and is entitled to reimbursement for lodging under both the short-term and long-term/noncommercial per diem rules, the traveler is entitled to only the M&IE allowance that applies to the location where the traveler is staying.

If a traveler maintains a dwelling at their destination and it is available to them, they will be entitled to only an M&IE allowance for normal workdays. An M&IE allowance for other than normal workdays is not allowed.

If a traveler is temporarily returned to the traveler's duty station while on a long-term assignment and is continuing to receive a long-term lodging per diem, the traveler is not entitled to any M&IE allowance while at the duty station.

Prorated M&IE Allowances

The normal meal periods are published on the Division of Finance web site at: http://fin.admin.state.ak.us/dof/travel/resource/rates.pdf, and a table of the prorated short- and long-term M&IE rates for Alaska and out-of-state travel are published at: http://fin.admin.state.ak.us/dof/travel/resource/M&IE_AK_&_CONUS_Rates.pdf.

A traveler must be in travel status at least three consecutive hours during a meal period to be entitled to the M&IE for that meal.

On the days of departure and return, the traveler receives a prorated M&IE based upon scheduled flight (or other common carrier) departure and actual return times as follows:

Departure Time	Before 9:01 AM	Before 2:01 PM	Before 11:01 PM
M&IE	Full day	Lunch & Dinner	Dinner
Return Time	12:00 PM (Noon)	Before 5:00 PM	After 4:59 PM
M&IE	Breakfast	Breakfast & Lunch	Full day

This table factors in a two-hour check-in period for departures and one hour for luggage retrieval upon arrival. In circumstances where the traveler is required by the carrier to report to the terminal more than two hours prior to departure (such as for international flights), the traveler is to note in the travel authorization the additional time required by the airline and the traveler's actual check in time. In the above table, this additional time (beyond two hours) is added to the departure time to determine the allowable prorated M&IE. For example, if required check in time is three hours before flight time, "Before 9:01 AM" departure time would be adjusted to "Before 10:01 AM."

When travelers drive to a destination, on the days of departure and return, the travelers are entitled to prorate M&IE when they are in travel status at least three consecutive hours during a normal meal period.

Travel Status Less Than 24 Hours, More Than 12 Hours

Travelers who are in travel status less than 24 hours but more than 12 hours and who return to their residence and/or duty station rather than obtaining overnight lodging at their travel destination, may be entitled to an M&IE allowance. For air travel, the M&IE allowance is calculated using the departure and return times presented in the prorated M&IE table above. If the scheduled flight (or other common carrier) departure is before 9:00 a.m., the travelers are entitled to the breakfast M&IE. Travelers may be entitled to the M&IE for lunch and dinner if they are in travel status for at least three consecutive hours during these meal periods.

A traveler, who travels by means other than common carrier, must be in travel status at least three consecutive hours during a meal period to be entitled to the M&IE for that meal.

Travelers who are normally scheduled to work more than ten hours per day must be in travel status at least two hours more than their regular scheduled workday to be eligible for the M&IE allowance. See AAM 320 for details on taxability of such an allowance.

Meals Provided to Travelers

Occasionally, a traveler is provided a meal while at a conference, training, seminar, etc., or as part of a lodging package such as at bed and breakfast inns (where the state is paying for actual lodging costs). When a traveler is provided a meal in these or similar circumstances, the traveler is not

eligible for the related M&IE allowance unless sufficient justification is provided by the traveler and approved to obtain the M&IE allowance.

AAM 60.260 Contracting for Subsistence (07-05)

The state may enter into agreements with restaurants, hotels, and lodging houses to furnish subsistence to a traveler or groups of travelers when in the best interest of the state (AS 36.30). A contract for subsistence must comply with appropriate procurement regulations. Such agreements require the vendor to provide itemized invoices for services.

HOUSE COMMITTEE REPORT

(7)
Date Referred to Committee: April 9, 2010 **FURTHER REFERRALS:**

Date of Committee Action: 4/14/10

The JUDICIARY Committee considered: **SENATE BILL NO. 244**

"An Act providing that, during the governor's term of office, the duty station of the governor is Juneau, and prohibiting payment of certain travel allowances for use of the governor's personal residence."

SB 244-GOVERNOR'S DUTY STATION/TRAVEL ALLOWANCES

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ (_____)
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
GOV	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	LYNN	X			
	HERRON			X	
	Gatto			X	
Chair:	RAMRAS	X			
Chair:					

SB 265

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 25, 2010

SUBJECT: HCS CSSB 265(JUD), 2010 Revisor's Bill
(Work Order No. 26-LS1220\C)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Kathryn L. Kurtz KLK
Assistant Revisor

Enclosed is the committee substitute HCS CSSB 265(JUD). I will send a sectional summary of the bill to the rules committee.

If you could carry this bill on the floor, I would be grateful. I will be in the gallery in case there are any questions about the bill.

Thanks for your help.

KLK:ljw
10-216.ljw

Enclosure

Representative Jay Ramras
Chair, Judiciary
Chair, Economic Development, Trade & Tourism
Energy
Military & Veteran Affairs
Joint Armed Service
State Capitol, Room 118
Juneau, Alaska 99801-1182
Phone: (907) 465-3004
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Alaska State Legislature

House of Representatives

Interim:
1292 Sadler Way, Suite 324
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Toll Free: (877) 465-3004

House District 10

Fax

To: Leg. Legal

Fax #: (907) 465-2029

Number of pages including cover: 1

From: Jane W. Pierson

Date: March 24, 2010

Re: SB265

Today the HJUD Committee heard and passed out the CS for SB265 (26-LS1220\P) with amendment P.1. Please draft up a final HJUD CS.

If you have any questions, please do not hesitate to call.

Thank you

Representative_Jay_Ramras@legis.state.ak.us

LEGAL SERVICES

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MEMORANDUM March 11, 2010

SUBJECT: Sectional Summary of the 2010 Revisor's Bill
(CSSB 265(JUD); Work Order No. 26-LS1220\P)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee

FROM: Kathryn L. Kurtz KK
Assistant Revisor

This is a sectional summary of the 2010 revisor's bill. The bill is prepared under AS 01.05.036, which provides, in part, that the Legislative Affairs Agency, working in cooperation with the Revisor of Statutes

> . . . shall make recommendations to the legislative council concerning deficiencies, conflicts, or obsolete provisions in and the need for reorganization or revision of the statutes, and, at the direction of the legislative council, shall prepare for submission to the legislature legislation for the correction or removal of the deficiencies, conflicts, or obsolete provisions, or to otherwise improve the form or substance of any portion of the statute law of this state. . . .

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents.

Sections that delete, repeal, or update obsolete provisions: 12, 21, 22

Sections that correct errors or oversights: 1, 4, 5, 10, 11, 16, 17, 27

Sections that improve the form or substance of the law: 2, 3, 6 - 9, 13 - 15, 18 - 20, 23 - 26, 28

Bill section 1. Amends the definition of "public aircraft" in AS 02.15.260(15). This definition was originally adopted in sec. 1, ch. 123, SLA 1949, prior to statehood. In the session laws, the definition read:

> "Public Aircraft" means an aircraft used exclusively in the governmental service with reference to the United States, and the Territorial Government.

However, in the first revised statutes published in 1962, the definition, then AS 02.15.270(12), read as it does now:

> (15) "public aircraft" means an aircraft used exclusively in the governmental service of the United States and the state government;

The changes in the definition, necessitated by the transition to statehood, presumably occurred in the course of the bulk formal revision of the statutes, adopted as the law of Alaska in 1963. *See* AS 01.05.006.

In its original form, the definition referred to both the government of the United States and the territorial government. The "with reference to" phrasing would have included an aircraft used in the service of either governmental entity. The wording of the revised version retains the "and" used in the original, but does not include the "with reference to" phrasing, suggesting that a particular aircraft would need to be used in both federal and state governmental service to fall within the definition. This seems inconsistent with the original definition, which appeared to be disjunctive. Also, the disjunctive form is more consistent with the definition of "civil aircraft" in AS 02.15.260(8), which reads

> (8) "civil aircraft" means any aircraft other than a public aircraft;

Together, it seems clear that these definitions were intended to cover all aircraft. To include an aircraft used only in the service of the state government and not the federal government in the definition of "civil aircraft" would require a strained reading of that definition. For these reasons, the conjunction "and" is replaced with "or" in this section.

Bill section 2. Amends the spanned reference to the Alaska Public Records Act in AS 06.55.407(a) to include the new short title section (added in 2008).

Bill section 3. This section amends a reference to unsworn falsification in AS 06.60.580 to specify unsworn falsification *in the second degree.*

From the revision of the criminal code in 1978 until 2006, the crime of unsworn falsification, a class A misdemeanor, was codified at AS 11.56.210. In 2006, the legislature enacted AS 11.56.205, making unsworn falsification on a permanent fund dividend application a class C felony. Unsworn falsification in other contexts, still

punishable under AS 11.56.210, became unsworn falsification in the second degree. In the 2006 bill, most statutory references to "unsworn falsification" were amended to read "unsworn falsification in the second degree."

AS 06.60.580 was enacted in 2007 with a reference to "unsworn falsification" that did not specify degree. Because the section relates to claims from the originator surety fund, AS 11.56.205 has no relevance here. The amendment adds the words "in the second degree" to correct an oversight.

Bill section 4. This section deletes the phrase "the supervision required by AS 08.04.023" in AS 08.04.450. This phrase is a non sequitur because AS 08.04.023 does not contain any supervision requirement; it is extraneous and without legal effect. Inclusion of the phrase was a drafting error made by the legal services division.

Bill section 5. Changes "planning" to "planing" in AS 08.32.110(a). Although an Internet search reveals references to both "root planning" and "root planing," it appears that "root planing" is the more common usage for the therapy for periodontal disease performed by dental hygienists, and the word "planing" does some more accurately descriptive of the procedure, which involves smoothing the surface of a tooth's root. Also, the term "root planing" is used by the Alaska Department of Health and Social Services[1] and the American Dental Association.[2]

Bill section 6. Amends the definition of "limited liability partnership" in AS 08.48.341(10), the definition for statutes relating to the professional registration of architects, engineers, and land surveyors.

In 2000, the legislature passed an act adding limited liability companies and limited liability partnerships to the organizations that may practice architecture, engineering, and surveying. It included a new section defining the term "limited liability partnership" with reference to AS 32.05.415 and 32.05.990. That Act, ch. 38, SLA 2000, took effect August 9, 2000. During the same session, the legislature also passed an act repealing AS 32.05, the Uniform Partnership Act, and replacing it with a new version of that Act. The new provisions in that Act, ch. 115, SLA 2000, took effect January 1, 2001. The repeal of AS 32.05 took effect January 1, 2004.

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[1] BJ Whistler, Alaska Oral Health Plan: 2008 - 2012, Section of Women's Children's and Family Health, Division of Public Health, Alaska Department of Health and Social Services, 2007, at http://www.hss.state.ak.us/dph/wcfh/Oralhealth/docs/Oral-Health-Plan.pdf, accessed January 8, 2010, at p. 13.

[2] "Treating Periodontal Disease. Scaling and Root Planing. Journal of the American Dental Association, vol. 134, February 2003 at 259, at http://www.ada.org/prof/resources/pubs/jada/patient/patient_23.pdf, accessed January 8, 2010.

Chapter 115, the Act enacting the new Uniform Partnership Act, did not make conforming changes to AS 08, as amended by chapter 38. As a result, since the repeal of AS 32.05 in 2004, the definition in AS 08.48.341(10) has pointed to two statutes that no longer exist. The changes made in this section direct the reader to the definitions in the new Uniform Partnership Act, which, under sec. 10, ch. 115, SLA 2000, has applied to all limited liability partnerships since January 1, 2004.

Bill section 7. Inserts the word "has" at the beginning of AS 08.65.140(d)(14) to improve the readability of the paragraph, and for consistency with the remainder of the subsection.

Bill section 8. Amends AS 12.55.035(c) by deleting "greater" (the comparative form of the adjective) and inserting "greatest" (the superlative form). This change is suggested because the comparative is generally used for comparing two things and the superlative is used for comparing three or more things. Since the rest of the sentence asks the reader to choose among three options, the superlative form is preferable here.

Bill section 9. Amends the spanned reference to the Alaska Public Records Act in AS 12.65.140(b) to include the new short title section (added in 2008).

Bill section 10. Amends AS 13.26.344(j) to add a missing part of the verb. This change makes the provision parallel to other subsections of AS 13.26.344.

Bill section 11. Changes a reference to a federal regulation in AS 13.27.030, part of the Uniform Adult Guardianship and Protective Proceedings Act enacted in 2008. The statute now refers to "protected health information as defined in 45 CFR 164.504." However, that section of the CFR does not include a definition of the term "protected health information." The term is defined for purposes of 45 CFR 164.504 and the rest of subchapter C, subtitle A, title 45 in 45 CFR 160.103.

Alaska's statute used the reference included in the model act. Through the attorney general's office, we have received confirmation from the National Conference of Commissioners on Uniform State Laws that the cite in section 105 of the model act was erroneous, and that the correct cite is 45 CFR 160.103. This corrects the error.

Bill section 12. Amends AS 14.43.930(e)(2) to reflect the current name of the Northwest Association of Accredited Schools, which was formerly the Northwest Association of Schools and Colleges. The Association changed its name in 2004.

Bill section 13. Amends the spanned reference to the Alaska Public Records Act in AS 17.37.010(a) to include the new short title section (added in 2008).

Bill section 14. Amends the spanned reference to the Alaska Public Records Act in AS 18.65.087(e) to include the new short title section (added in 2008).

Bill section 15. Codifies at AS 26.23.240 a short title for AS 26.23.010 - 26.23.240 and 26.23.900 -- the "Alaska Disaster Act." This term has frequently been used by the Attorney General as a shorthand reference to AS 26.23 (see Op. Atty Gen. file nos. 883-03-0070 (June 2, 2003), 663-93-0425 (July 8, 1993), and 663-92-0494 (January 13, 1993) for example). The term was employed by the Alaska Supreme Court in *City of Seward v. Afognak Logging*, 31 P.3d 780, 785 (Alaska 2001).

The phrase "Alaska Disaster Act" was used as a chapter heading when AS 26.23 was originally enacted, in sec. 3, ch. 104, SLA 1977. In 1990, two sections were added to the chapter: AS 26.23.300, creating a disaster relief fund, and AS 26.23.400, creating a fuel emergency fund. Each of these was created as a new article, and the definitions section, formerly AS 26.23.230, was renumbered as AS 26.23.900. In 2002, the Emergency Management Assistance Compact was enacted (AS 26.23.135 - AS 26.23.136), replacing the former Interstate Civil Defense and Disaster Compact, which was repealed. "Alaska Disaster Act" has been retained as the article title for Article 1 of AS 26.23.

In codifying the short title, the question arises whether it should apply only to the sections enacted in 1977, or to the 1990 additions as well. The drafting manual advises that a short title "should be used only with a bill that contains a cohesive body of proposed law dealing comprehensively with a particular subject." Manual at 23. For the sake of consistency with the existing article heading and usage by the Alaska Supreme Court and the Attorney General, the revisor's bill applies the short title only to Article 1 of AS 26.23 and the definitions section, AS 26.23.900, which was part of the original material designated as the Alaska Disaster Act in the 1977 legislation.

Bill section 16. Amends AS 29.65.050(b) to conform the usage to the term defined in AS 29.65.130(10) -- "vacant, unappropriated, unreserved land." Since the subsection in which the phrase "land that was vacant, unappropriated, or unreserved" was adopted in the same 1985 revision of the municipal code as the definition in AS 29.65.130(10), it is assumed that the inconsistency is a drafting error or oversight.

Bill section 17. Amends AS 29.65.060(a). Currently, the statute reads "vacant, unappropriated, *or* unreserved land as defined in this chapter" (emphasis added). The "or" is deleted to conform the usage with the phrase that is actually defined in the chapter.

Bill section 18. Amends AS 34.45.320(b) to specify unsworn falsification in the second degree (under AS 11.56.210), which is generally applicable, as opposed to unsworn falsification in the first degree (under AS 11.56.205), which relates only to permanent fund dividend applications.

AS 34.45.280(b) specifies that reports of abandoned personal property are to be made on a form which gives notice that statements on the form are made under penalty of unsworn falsification. Since this section relates to reports of unclaimed property rather than permanent fund dividend applications, unsworn falsification in the second degree under AS 11.56.210 is clearly the applicable statute. This section predates the 2006 changes to

the law of unsworn falsification, and it is not clear why the reference was not changed in the 2006 bill. Although the general reference may suffice -- "under penalty of unsworn falsification" is not wrong, it is merely imprecise -- a reference that includes "in the second degree" is more accurate here. For further explanation, see the discussion in bill sec. 3, above.

Bill section 19. Amends AS 34.45.380(a) to specify unsworn falsification in the second degree (under AS 11.56.210), which is generally applicable, as opposed to unsworn falsification in the first degree (under AS 11.56.205), which relates only to permanent fund dividend applications. See bill sec. 18, above; the only difference is that AS 34.45.380(a) relates to abandoned property claim forms (rather than report forms).

Bill section 20. Amends the spanned reference to the Alaska Public Records Act in AS 40.25.220 to include the new short title section (added in 2008).

Bill section 21. Amends AS 41.21.506(b)(2) to remove an exception added in sec. 2, ch. 61, SLA 2009 relating to AS 16.40.260 and 16.40.270 on the date that those two sections are repealed. The repeal will take effect January 1, 2011, under sec. 8, ch. 70, SLA 2004 as amended by sec. 3, ch. 61, SLA 2009, unless that section is further amended.

Bill section 22. Corrects a reference to the United States Code in AS 42.40.430. In 2002, 40 U.S.C. 471 was renumbered as 40 U.S.C. 401 in a general revision of federal laws relating to public property. According to the statement of purpose for the revision Act, P.L. 107-217, sec 5(b)(1), "[t]his Act makes no substantive change in existing law and may not be construed as making a substantive change in existing law."

Bill section 23. Amends the spanned reference to the Alaska Public Records Act in AS 43.05.455(d) to include the new short title section (added in 2008).

Bill section 24. Amends the spanned reference to the Alaska Public Records Act in AS 43.05.475(b) to include the new short title section (added in 2008).

Bill section 25. Adds a short title at AS 44.62.319 for AS 44.62.310 - 44.62.312, which is commonly referred to as "the open meetings act." *See for example Abood v. League of Women Voters*, 743 P.2d 833 (Alaska 1987), *Hickel v. Southeast Conference*, 846 P.2d 38 (Alaska 1992), *Griswold v. City of Homer*, 55 P.3d 64 (Alaska 2002), and 1995 Op. (Inf.) Atty Gen. Alas. 317, file no. 663-95-0524 (August 21, 1995).

Bill section 26. In AS 46.14.500(c), changes a parenthetical reference to the Clean Air Act to make the form similar to that used for other United States Code citations cited in the Alaska Statutes.

Bill section 27. Moves the phrase "the facility may" in AS 47.30.695 from the introductory text into the text of paragraph (1). This is necessary because the phrase "the

facility may" cannot be applied to paragraph (2), since paragraphs (1) and (2) are disjunctive ("or" is the conjunction), and (2) has a different verb phrase ("the treating physician may").

Bill section 28. Instructs the revisor to conform references to the Open Meetings Act to reflect the short title codified in sec. 25 of the bill.

Bill section 29. Makes the effective date for sec. 21 of the Act conditional; this section should only take effect if the sections referred to are actually repealed.

Bill section 30. Provides an effective date for sec. 21, if sec. 21 takes effect under sec. 29.

Bill section 31. Provides an effective date for the remaining sections of the bill.

KLK:med
10-037.med

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 265
(S) Publish Date: 2/17/10

Identifier (file name): SB265-LAW-CIV-02-12-10
Dept. Affected: Law
Title: An Act making corrective amendments to the Alaska Statutes as recommended by the revisor of statutes
RDU: Civil
Component: Legislation/Regulations
Sponsor: Rules by request of Legislative Council
Requester: State Affairs
Component Number: 2209

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

SB 265 is the 2010 revisor of statute's bill. It makes important technical improvements to Alaska statutes. It has no fiscal impact on the Department of Law.

Prepared by: Eileen Donahue, Division Operations Manager
Phone 465-5427
Division: Administrative Services
Date/Time 2/12/10 1:30 PM
Approved by: Daniel S. Sullivan, Attorney General
Date 2/12/2010
Department of Law

(Revised 11/6/2009 OMB)

3536

LEGAL SERVICES

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MEMORANDUM March 16, 2010

SUBJECT: Amendment reversing change made in 2009 revisor's bill (CSSB 265(JUD), Work Order No. 26-LS1220\P, Am. P.1)

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Kathryn L. Kurtz KK
Assistant Revisor

Enclosed is an amendment to the 2010 revisors' bill.

This amendment would reverse a change made in last year's revisor's bill. That bill changed the phrase "newsboys' services" in AS 23.20.526(a)(2) to "services performed by an individual under 18 years of age."[1] The change was made to avoid the use of a gender specific term. However, we have been informed by Mr. John McKay (an Anchorage attorney) that this change has been interpreted by the Department of Labor and Workforce Development as having a substantive effect. Apparently the term "newsboys" has been interpreted to include individuals both over and under age 18. To correct this situation, the enclosed amendment would change AS 23.20.526(a)(2) back to the way it was, using the phrase "newsboys' services." The change would be retroactive.

KLK:lmb
10-006.lmb

Enclosure

---

[1] AS 23.20.526(a)(2) now provides, in part:

> (a) In this chapter, unless the context otherwise requires, "employment" does not include
>
> . . .
>
> (2) service performed by an individual under 18 years of age in selling or distributing newspapers on the street or from house to house;
>
> . . .

AMENDMENT

offered by:
Rep. RAMRAS

OFFERED IN THE HOUSE
TO: CSSB 265(JUD)

Page 9, following line 13:

Insert a new bill section to read:

"* **Sec. 15.** AS 23.20.526(a) is amended to read:

(a) In this chapter, unless the context otherwise requires, "employment" does not include

(1) domestic service in a private home, except as provided in AS 23.20.525(a)(13);

(2) **newsboys' services** [SERVICE PERFORMED BY AN INDIVIDUAL UNDER 18 YEARS OF AGE] in selling or distributing newspapers on the street or from house to house;

(3) service not in the course of the employing unit's trade or business performed in a calendar quarter by an individual, unless the cash remuneration paid for the service is $50 or more and the service is performed by an individual who is regularly employed by the employing unit to perform the service; an individual is here considered to be regularly employed to perform service not in the course of an employing unit's trade or business during a calendar quarter only if the individual performs the service for some portion of the day on each of 24 days during the quarter or during the preceding calendar quarter;

(4) service performed by an individual in the employ of the individual's

(A) son, daughter, or spouse;

(B) parent or legal guardian if the individual was under the age of 21 years and a full-time student during eight of the last 12 months and

intends to resume full-time student status within the next four months; and

(C) mother or father if the service is performed by a child under the age of 18;

(5) service with respect to which unemployment insurance is payable under an unemployment insurance program established by an Act of Congress;

(6) service performed in the employ of a foreign government including service as a consular or other officer or employee or a nondiplomatic representative;

(7) service performed in the employ of an instrumentality wholly owned by a foreign government if

(A) the service is of a character similar to that performed in foreign countries by employees of the United States government or its instrumentalities; and

(B) the department finds that the United States Secretary of State has certified to the United States Secretary of the Treasury that the foreign government, with respect to whose instrumentality exemption is claimed, grants an equivalent exemption with respect to similar service performed in the foreign country by employees of the United States government and its instrumentalities;

(8) service performed by an insurance agent, insurance solicitor, real estate broker, real estate salesperson, or securities salesperson to the extent the person is compensated by commission, unless the service is required to be covered under the Federal Unemployment Tax Act, as amended;

(9) notwithstanding AS 23.20.525(a)(9), service performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters inside or inside and outside the United States are ordinarily and regularly supervised, managed, directed, and controlled, is outside this state;

(10) service performed on or in connection with a vessel not an American vessel by an individual if the individual performed service on and in connection with the vessel when outside the United States;

(11) service performed in the employ of the United States government

or an instrumentality of the United States exempt under the Constitution of the United States from the contributions imposed by this chapter, except that to the extent that the Congress of the United States permits states to require an instrumentality of the United States to make payments into an unemployment fund under a state employment security law, all of the provisions of this chapter apply to the instrumentalities, and to service performed for the instrumentalities in the same manner, to the same extent, and on the same terms as to all other employers, employing units, individuals, and service; however, if this state is not certified for any year by the United States Secretary of Labor under 26 U.S.C. 3304(c) (Federal Unemployment Tax Act, Internal Revenue Code), the payments required of the instrumentalities with respect to the year shall be refunded by the department from the fund in the same manner and within the same period as is provided in AS 23.20.225 with respect to contributions erroneously collected;

(12) service performed in the employ of another state, or political subdivision of another state, or an instrumentality of another state or political subdivision that is wholly owned by another state or its political subdivision, or a service performed in the employ of an instrumentality of another state or its political subdivisions to the extent that the instrumentality is, with respect to the service, exempt under the Constitution of the United States from the tax imposed by 26 U.S.C. 3301 (Federal Unemployment Tax Act, Internal Revenue Code);

(13) service performed in the employ of an international organization;

(14) service covered by an election approved by the agency charged with the administration of any other state or federal employment security law, in accordance with an arrangement under AS 23.20.090(a) during the effective period of the election;

(15) service performed by an individual in agricultural labor, except as provided in AS 23.20.525(a)(14); the term "agricultural labor" means remunerated service

(A) on a farm, in the employ of any person in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for,

training, and management of livestock, bees, poultry, and fur-bearing animals and wildlife;

(B) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a hurricane, if the major part of the service is performed on a farm;

(C) in connection with the production or harvesting of any commodity defined as an agricultural commodity in 12 U.S.C. 1141j (Sec. 15(g), Agricultural Marketing Act), as amended, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(D) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one-half of the commodity with respect to which the service is performed except as stated in (b) of this section;

(E) in the employ of a group of operators of farms, or a cooperative organization of which the operators are members, in the performance of service described in (D) of this paragraph, but only if the operators produced more than one-half of the commodity with respect to which the service is performed;

(F) on a farm operated for profit if the service is not in the course of the employer's trade or business;

(16) service performed as a student nurse in the employ of a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered or approved in accordance with the laws of this state, and service performed as an intern in the employ of a hospital by an individual who has completed a four-year course in a medical school chartered or

approved in accordance with the laws of this state, unless the service is required to be covered under the Federal Unemployment Tax Act;

(17) service performed by an individual on a boat engaged in catching fish or other forms of aquatic animal life under an arrangement with the owner or operator of that boat under which

(A) that individual does not receive any cash remuneration except as provided in (B) of this paragraph;

(B) that individual receives a share of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life or a share of the proceeds from the sale of that catch; and

(C) the amount of that individual's share depends on the amount of the boat's, or the boats' in the case of a fishing operation involving more than one boat, catch of fish or other forms of aquatic animal life; but only if the operating crew of that boat, or each boat from which the individual receives a share in the case of a fishing operation involving more than one boat, is normally made up of fewer than 10 individuals;

(18) service performed as a prospective or impaneled juror in a court;

(19) service performed for a corporation by an employee of the corporation if

(A) the corporation is incorporated under AS 10.06;

(B) the corporation is not a government corporation; and

(C) the employee is an executive officer of the corporation;

(20) service performed by an individual who drives a taxicab whose compensation and written contractual arrangements are as described in AS 23.10.055(a)(13);

(21) service of an individual who

(A) directly sells or solicits the sale of consumer products, for resale or otherwise, personally to a prospective consumer in the home or otherwise than in a permanent retail establishment; a sale or solicitation by telephone, mail, other telecommunications method, or other nonpersonal

method does not satisfy the requirement of this subparagraph;

(B) is compensated solely by

(i) commissions on sales or other remuneration directly related to sales or sales performance; or

(ii) a profit represented by the difference between the wholesale cost of the product to the seller and the final sale price to the consumer; and

(C) performs under a written contract with the person for whom the service is performed that provides, notwithstanding AS 23.20.395(a), that the individual is not an employee for purposes of this chapter or for federal or state tax purposes;

(22) temporary services related to emergency oil spill training and response activities by an individual described in (17) of this subsection; in this paragraph, "temporary" means a period of less than seven continuous days."

Renumber the following bill sections accordingly.

Page 15, lines 1 - 2:

Delete "sec. 25"

Insert "sec. 26"

Page 15, line 16:

Insert a new bill section to read:

"*** Sec. 30.** The uncodified law of the State of Alaska is amended by adding a new section to read:

RETROACTIVITY. Section 15 of this Act is retroactive to June 21, 2009."

Renumber the following bill sections accordingly.

Page 15, line 19:

Delete "Section 21"

Insert "Section 22"

Page 15, line 22:

Delete "sec. 21"

Insert "sec. 22"

Page 15, line 24:

Delete "sec. 30"

Insert "sec. 32"

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

SEAN PARNELL, GOVERNOR

P.O. BOX 110300
JUNEAU, ALASKA 99811-0300
PHONE: (907) 465-3600
FAX: (907) 465-2075

March 12, 2010

Representative Jay Ramras, Chair
House Judiciary Committee
Alaska State Legislature
State Capitol, Room 118
Juneau, Alaska 99801-1182

Re: CSSB 265 (JUD) - 2010 Revisor's Bill

Dear Representative Ramras:

The Department of Law has reviewed CSSB 265 (JUD), the 2010 revisor's bill.

The bill presents no legal issues and makes important technical improvements to the law.

Sincerely,

DANIEL S. SULLIVAN
ATTORNEY GENERAL

By: Deborah E. Behr
Deborah E. Behr
Chief Assistant Attorney General

DEB:tjd

cc: Kathryn Kurtz, Assistant Revisor of Statutes
Jerry Gallagher, Legislative Director, Office of the Governor
Mike Ford, Assistant Attorney General

SB 284

PASSES

26-LS1448\P.19
Bullard
4/9/10

AMENDMENT #1

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: CSSB 284(FIN)

Page 5, line 25, following ";":

Insert "or"

Page 5, line 28:

Delete "; or"

Insert "."

Page 5, line 29, through page 6, line 2:

Delete all material.

26-LS1448\P.18
Bullard
4/9/10

AMENDMENT # 2

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: CSSB 284(FIN)

Page 8, line 4, following "transmitted":

Insert "solely"

Page 8, lines 4 - 5:

Delete "and in the communication that includes an audio component"

Passed ✓

26-LS1448\P.9
Bullard
4/5/10

AMENDMENT # 3

OFFERED IN THE HOUSE

TO: CSSB 284(FIN)

Offered by: Rep. Ramras

Page 7, line 10:

Delete "**five**"

Insert "**three**"

PASSED

26-LS1448\P.11
Bullard
4/6/10

AMENDMENT

4

OFFERED IN THE HOUSE

TO: CSSB 284(FIN)

offered by: Bob Lynn

Page 8, following line 11:

Insert a new subsection to read:

"(e) The provisions of this subsection apply to a person who makes an independent expenditure for a communication described in (a) of this section. If the person paying for the communication is not a natural person, the provisions also apply to the responsible officer or officers of the corporation, company, partnership, firm, association, organization, labor organization, business trust, or society who approves the independent expenditure for the communication. A person who makes a communication under this subsection may not, with actual malice, include within or as a part of the communication a false statement of material fact about a candidate for election to public office that constitutes defamation of the candidate. For purposes of this subsection, a statement constitutes defamation of the candidate if the statement

(1) exposes the candidate to strong disapproval, contempt, ridicule, or reproach; or

(2) tends to deprive the candidate of the benefit of public confidence."

3550

FAILED

26-LS1448\P.10
Bullard
4/5/10

AMENDMENT #5

LYNN

OFFERED IN THE HOUSE

TO: CSSB 284(FIN)

Page 8, lines 14 - 16:

Delete "10 days after an independent expenditure has been made. However, an independent expenditure that exceeds $250 and that is made within nine days of an election shall be reported to the commission not later than"

Changes 24 to 48

3551

26-LS1448\P.20
Bullard
4/10/10

AMENDMENT #6

OFFERED IN THE HOUSE

TO: CSSB 284(FIN)

Page 3, line 18:

Delete "**to the person that exceed $100 in the aggregate in a year**"

Page 3, line 21, following "**name**":

Insert "**and address of the contributor and, for contributions in excess of $50 in the aggregate during a calendar year, the name**"

3552

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 10, 2010

SUBJECT: Equal protection concern
(Amendment 26-LS1448\P.20 for CSSB 284(FIN))

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Alpheus Bullard 743
Legislative Counsel

This memorandum accompanies the amendment referenced above. I have one comment.

This amendment requires a person, making an independent expenditure supporting or opposing a candidate or ballot proposition or question in a state election, to disclose to the Alaska Public Offices Commission the names and addresses of all contributors who have made contributions to the person for the purpose of influencing the outcome of an election, and for contributors who contribute in excess of $50 in the aggregate during a calendar year, the name, address, principal occupation, and employer of the contributor. This is the same disclosure standard as that required of candidates in state elections under AS 15.13.040(a).

Under AS 15.13.040(b), a group making expenditures in coordination with a candidate's campaign is only required to report the date and amount of each contribution, name, address, principal occupation, and the employer of the group's contributors of in excess of $100 in the aggregate during a calendar year.

Establishing a less stringent disclosure regime for groups making expenditures than for persons making independent expenditures may give rise to a legal challenge based on equal protection grounds. "The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to equal treatment."[1] In order for a classification to be valid under the state's equal protection test, it must be reasonable, not arbitrary, and must bear a fair and substantial relation to a legitimate governmental objective. Wilson v. Municipality of Anchorage, 669 P.2d 569, 572 (Alaska 1983). Alaska evaluates equal protection claims

[1] Anderson v. State, 78 P.3d 710, 718 (Alaska 2003).

using a sliding scale.[2] There are several steps involved. First, the court determines the importance of the interest impaired by the challenged statute. Then the court looks at the purposes served by the statute. Finally, the court looks at how well the statutory means fits the purpose.

If a court were to conclude that a group making expenditures in a state election and a person making independent expenditures were similarly situated, i.e. entities attempting to influence a state election through expenditures, a court would examine the purpose served by the two different disclosure standards. In State v. Alaska Civil Liberties Union, 978 P.2d 597 (1999), the Alaska Supreme Court observed that existing campaign finance jurisprudence was based on the threat of corruption. Id. at 606 - 607. Independent expenditures, by definition, do not give rise to the same threats of quid pro quo corruption. The Supreme Court has recently concluded that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. ___, Slip op. at 42 (January, 2010).

When a group makes expenditures in coordination with a candidate's campaign, the potential for quid pro quo corruption, or its appearance, is present, yet under this amendment, that group would have to reveal less about its contributors of under $100 in the aggregate during a year than would a person making independent expenditures to influence the outcome of the same election. The court could conclude that this presents an equal protection issue. If there are reasons to require greater disclosure of contributor information from persons making independent expenditures than from groups making contributions and expenditures, these should be articulated in testimony in support of the disclosure standard proposed by the amendment.

If you have any questions, do not hesitate to contact me.

TLAB:plm
10-218.plm

Enclosure

[2] Matanuska-Susitna Borough School v. State, 931 P.2d 391, 396 (Alaska 1997).

RAS

26-LS1448\P.21
Bullard
4/10/10

#7

AMENDMENT

OFFERED IN THE HOUSE BY REPRESENTATIVE RAMRAS

TO: CSSB 284(FIN)

Page 8, following line 11:

Insert a new subsection to read:

"(e) Contributors required to be identified under (a)(2)(C) of this section must be listed in order of the amount of their contributions. If more than three of the largest contributors to a person paying for a communication contribute equal amounts, the person may select which of the contributors of equal amounts to identify under (a)(2)(C) of this section. In no case shall a person be required to identify more than three contributors under (a)(2)(C) of this section."

3555

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State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM April 10, 2010

SUBJECT: Note (Amendment 26-LS1448\P.21 for CSSB 284(FIN))

TO: Representative Jay Ramras
Chair of the House Judiciary Committee
Attn: Jane Pierson

FROM: Alpheus Bullard TLAB
Legislative Counsel

This note accompanies the amendment described above.

Please note this amendment to CSSB 284(FIN) is drafted to address what may happen if more than a person's three largest contributors contribute equal amounts in the 12-month period before the date of a communication. This is consistent with the committee's adoption of amendment P.9 earlier today. Amendment P.9 requires that a person, other than an individual or candidate, identify only the person's three largest contributors (instead of five as required by CSSB 284(FIN)).

If you have questions, please do not hesitate to contact me.

TLAB:plm
10-219.plm

PASS

26-LS1448\P.22
Bullard
4/10/10

AMENDMENT #8

By: Rep. Herron

OFFERED IN THE SENATE

TO: CSSB 284(FIN)

Page 5, line 9:

Delete "a new section"

Insert "new sections"

Page 6, following line 7:

Insert a new section to read:

"**Sec. 15.13.069. Certain expenditures that comply with charitable gaming provisions permitted.** Notwithstanding another provision of this title, a charitable gaming permittee that is a qualified organization under AS 05.15.690 may use the net proceeds of a raffle or lottery to make expenditures for the purposes permitted under AS 05.15.150(a)(3)."

3557

Passes

AMENDMENT # 9

TO: HB 284(FIN) (26-LS1448\P) BY REPRESENTATIVE HOLMES

Page 8, line 4, following "transmitted":

Delete "solely"

Page 8, lines 4-5, following "audio media:

Insert "and in the communication that includes an audio component"

Page 8, lines 7-11:

Delete all material

Insert "This communication was paid for by (person's name), whose top contributors are (the name of the largest contributors to the person under AS 15.13.090(a)(2)(C))."

Alaska State Legislature

Senator Hollis French, Chair
State Capitol, Room 417
Juneau, Alaska 99801
Phone: (907) 465-3892
Fax: (907) 465-6595

Committee Members:
Senator Bill Wielechowski
Senator Dennis Egan
Senator Lesil McGuire
Senator John Coghill

Senate Judiciary Committee

Sponsor Statement: Senate Bill 284 Campaign Expenditures

In the wake of the recent U.S. Supreme Court ruling, *Citizens United v. Federal Election Commission*, the Senate Judiciary Committee has worked to determine the changes to Alaska's elections laws that will be needed. Corporations and labor unions have been banned from participating in Alaska's elections prior to this ruling. This means many of Alaska's laws regarding disclosure and disclaimers simply do not apply to corporations and labor unions making independent expenditures to support or oppose specific candidates in elections.

Testimony from Legislative Legal Services attorneys and from the Alaska Department of Law indicated that changes would be needed to Alaska's campaign laws, and this bill was subsequently drafted to address the concerns raised by the attorneys and by committee members.

Senate Bill 284 amends state election laws to clarify that corporations and labor unions are covered by all applicable reporting requirements. It expands communication identification requirements to ensure accurate reporting of top contributors, to require the approval of the content by the principal officer of the corporation or union, and to require statements in each communication that its content has not been authorized or approved by the candidate. It also speeds reporting requirements for communications expenditures in the last nine days of the election so that expenditures over $250 must be reported within 24 hours.

Recent opinion surveys show broad disapproval by Americans across party lines for the decision reached by the U.S. Supreme Court. In order to retain Alaskans' trust in our system it is vital that legislation be passed this year to ensure that corporations and labor unions spending money to influence elections are at least required to disclose it in a timely fashion. I urge you to support Senate Bill 284.

LEGAL SERVICES

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State Capitol
Juneau, Alaska 99801-1182
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MEMORANDUM April 2, 2010

SUBJECT: Sectional summary of CSSB 284(FIN)
(Work Order No. 26-LS1448\P)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard TLB
Legislative Counsel

You have requested a sectional summary of the above-described bill.[1]

As a preliminary matter, note that a sectional summary of a bill should not be considered an authoritative interpretation of the bill and the bill itself is the best statement of its contents. If you would like an interpretation of the bill as it may apply to a particular set of circumstances, please advise.

Section 1. Amends language relating to the applicability of AS 15.13 (state election campaigns) to clarify that the chapter applies to all contributions, expenditures, and communications made for the purpose of influencing the outcome of an election covered by the chapter.

Section 2. Amends language relating to the duties of the Alaska Public Offices Commission (APOC) to clarify that the commission will assist all persons to comply with the requirements of AS 15.13.

Section 3. Amends AS 15.13.040(d) to clarify that every person making an independent expenditure must make a full report of expenditures and contributions received to the commission unless the person is exempted from reporting by another provision of the chapter.

Section 4. Adds new requirements to the expenditure report required under AS 15.13.040(d) and specifies that the report must be filed in accordance with AS 15.13.110(g).

---

[1] Please note that only sec. 10 of the bill is modified from the version of the bill passed out by the Senate Judiciary Committee.

Section 5. Amends language in AS 15.13.040(h) to clarify that the reporting requirements of AS 15.13.040(d) do not apply to an expenditure made by certain individuals acting independently of any other person.

Section 6. Amends AS 15.13.040(p) to clarify that a person who is required to disclose contributions received by that person in an expenditure report under AS 15.13.040(d) must report the true source of the contributions as the "contributor."

Section 7. Defines "director" and "officer" for the purposes of AS 15.13.040(e), as that subsection is amended by the bill.

Section 8. Requires each person other than an individual, candidate, or nongroup entity with an annual operating budget of $250 or less, to establish an account from which all funds, used by the person to make independent expenditures, must be drawn. Requires the person to (1) make records relating to the account available to APOC and (2) preserve all records relating to the account for a period of six years.

Section 9. Amends AS 15.13.067 to clarify who may make an expenditure that is not an independent expenditure, in a state election for public office.

Section 10. Prohibits a foreign national from making a contribution or expenditure or an express or implied promise to make a contribution or expenditure in connection with a state election. Provides that the prohibition will be enforced only to the extent that federal law prohibits a foreign national from making a contribution or expenditure, and only to the extent permitted by federal law.

Section 11. Provides that no person, other an individual exempt from reporting under AS 15.13.040(h), may make an expenditure unless the source of the expenditure has been disclosed.

Section 12. Amends language in AS 15.13.084 to clarify that a person may not make an expenditure anonymously unless it is made (1) for certain communications, (2) in connection with a ballot proposition as that term is defined by AS 15.13.065(c), and (3) by an individual acting independently of any other person.

Section 13. Expands the communication identification requirements of AS 15.13.090 to apply to communications made by all persons, and additionally requires a person other than a candidate, individual, or a political party to (1) identify the person's principal officer, (2) include a statement from that officer approving the communication, (3) provide the address of the person's principal place of business, and (4) identify the person's five largest contributors.

Section 14. Provides how the communication identification requirements of AS 15.13.090(a), as amended by the bill, must be met in print, video, and audio components of a communication.

Section 15. Requires expenditure reports filed under AS 15.13.040(e) to be filed within 10 days of the expenditure being made, except for an expenditure that exceeds $250 and that is made within nine days of an election must be reported to APOC within 24 hours of the expenditure being made.

Section 16. Amends the language of AS 15.13.111(a) to require all persons who are required to report under AS 15.13 to preserve certain records for a period of six years.

Section 17. Removes language from AS 15.13.135 that permitted only individuals, groups, or nongroup entities to make independent expenditures in support or in opposition to a candidate for public office. Adds language requiring all persons making certain independent expenditures to comply with AS 15.13.090.

Section 18. Amends language in AS 15.56.014(a) to clarify that any person who knowingly prints, publishes, or leases a communication without the "paid for language" required by AS 15.13.090 has committed campaign misconduct in the second degree, a class B misdemeanor.

Section 19. Repeals AS 15.13.140(a), a provision that provided that AS 15.13 should not be interpreted to prohibit a person from making independent expenditures in support or in opposition to a ballot proposition or question. As the chapter now reads, there is no ambiguity as to whether the chapter prohibits persons from making independent expenditures relating to a ballot proposition or question.

Section 20. Gives the Act an immediate effective date.

TLAB:ljw
10-235.ljw

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 284
(S) Publish Date: 3/2/10

Identifier (file name): SB284-OOG-DOE-2-26-10
Dept. Affected: OOG
Title "An Act relating to state election campaigns, the duties of the Alaska Public Offices Commission, the reporting...."
RDU Elections
Component Elections
Sponsor Senate Judiciary Committee
Requester Senate State Affairs Committee
Component Number 21

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual		0.0					
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF		0.0					
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

ANALYSIS: *(Attach a separate page if necessary)*
This legislation has no fiscal impact on the division.

Prepared by: Gail Fenumiai, Director
Phone 465-4611
Division Division of Elections
Date/Time 2/26/10, 10:39am
Approved by: Linda Perez, Director
Date 2/26/2010
Division of Administrative Services

(Revised 10/13/2009 OMB)

3563

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 2
Bill Version: SB 284
(S) Publish Date: 3/2/10

Identifier (file name) SB284-DOA-APOC-02-24-10
Title "An Act relating to state election campaigns ..."
Dept. Affected: Administration
RDU AK Public Offices Commission
Component AK Public Offices Commission
Sponsor (S) JUD
Requester (S) STA
Component Number 70

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services	78.7		78.7	78.7	78.7	78.7	78.7
Travel							
Contractual	50.0						
Supplies							
Equipment	2.5						
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**131.2**	**0.0**	**78.7**	**78.7**	**78.7**	**78.7**	**78.7**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF	131.2		78.7	78.7	78.7	78.7	78.7
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**131.2**	**0.0**	**78.7**	**78.7**	**78.7**	**78.7**	**78.7**

Estimate of any current year (FY2010) cost:

POSITIONS

Full-time	1		1	1	1	1	1
Part-time							
Temporary							

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

This bill would impact the Alaska Public Offices Commission (APOC) through changes to regulations and changes to the electronic filing program, currently in development. As the bill requires more reporting, it will require additional staff time in assisting the filers; preparing manuals, performing training; and tracking and auditing reports. Changes to regulations will require an amendment to an existing contract estimated at $25.0 and $25.0 is included to analyze programming changes and capital funds necessary or the electronic filing program to accomodate the new reports. This increment includes 1 FT employee (range 16, Paralegal II) with computer and furniture.

Prepared by: Holly Hill, Director
Phone (907) 334-1726
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Date/Time 02/24/10 12:00pm
Approved by: Rachael Petro, Deputy Commissioner
Date 2/24/2010
Department of Administration

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LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
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MEMORANDUM April 7, 2010

SUBJECT: Differences between CSSB 284(FIN) and CSHB 409(STA)
(Work Order Nos. 26-LS1448\P and 26-LS1495\S)

TO: [redacted]

FROM: Alpheus Bullard TGB
Legislative Counsel

As a preliminary matter, please note that each bill is, itself, the best statement of its contents. This memorandum provides only an outline[1] of the substantive differences between CSSB 284(FIN) (26-LS1448\P) and CSHB 409(STA) (26-LS1495\S). This memorandum does not identify constitutional, legal, or drafting issues raised by the provisions of either bill.

15.13.030
The House bill requires the Alaska Public Offices Commission ("APOC") to make information contained in an independent expenditure report filed under AS 15.13.040(e) available to the public within 24 hours after the report has been filed with the commission. The Senate bill does not contain this requirement.

15.13.040(d)
The Senate bill contains language clarifying that every person making an independent expenditure shall make a full report of expenditures made and contributions received. The House bill is without this language.

AS 15.13.040(e)
The House bill requires an independent expenditure report filed by a person that is not an individual under AS 15.13.040(e) to be certified as correct by the treasurer or fiscal officer of the person. The House bill requires that the independent expenditure report include the nationality of each officer and director of the person (making the expenditure) and the nationality of each officer and director of a contributor (of over $100 in the

[1] The boldfaced heading for each of the differences described in this memorandum is the bill section in which an identified difference between the bills exists. If a heading section number or subsection letter appears in "quotes," the section or subsection is not an existing section or subsection amended by the bill, but a new section or subsection proposed to be added by the bill or bills.

aggregate in a year) to the person (making the expenditure). The Senate bill is without these requirements.

15.13.040("q")
The Senate bill contains definitions for "director" and "officer" for the purposes of AS 15.13.040(e). The House bill does not define these terms.

"15.13.052"
The Senate bill requires persons making independent expenditures in state elections to establish a political activities account, from which all funds used by the person to make independent expenditures must be drawn. No such requirement is present in the House bill.

"15.13.068"
The Senate bill contains a more complete definition of "foreign national" than that of the House bill. The Senate bill provides that the Act's provision prohibiting a foreign national from making a contribution or expenditure in connection with a state election operates only to the extent (1) that federal law prohibits a foreign national from making a contribution or expenditure in connection with a state election and (2) permitted by federal law. The House bill provides only that the provision applies to the extent permitted by federal law.

AS 15.13.084
The House bill prohibits all anonymous expenditures.

AS 15.13.090 (and added subsections)
Both the House and Senate bills amend AS 15.13.090 to require a larger quantity of information be disclaimed in communications. The requirements of each bill are different. The House bill requires a person other than a candidate, an individual, or a political party to (1) identify the person's principal officer and the officer's title, (2) include a statement from that officer approving the communication, (3) provide the person's principal place of business, and (4) identify the name and city and state of residence or principal place of business, as applicable, of each of the person's three largest contributors, if any, during the 12-month period before the date of the communication.

The Senate bill requires all persons to identify the person's place of business, if applicable, and requires a person other than an individual or candidate to (1) identify the person's principal officer and the officer's title, (2) include a statement from that officer approving the communication, and (3) identify the name and city and state of residence or principal place of business, as applicable, of each of the person's five largest contributors, if any, during the 12-month period before the date of the communication.

The House bill additionally provides that "[a] person other than a candidate, individual, or political party may not make a communication . . . unless the person's principal officer

has certified to the commission in writing that the officer has reviewed the communication, and, based on the officer's knowledge, the communication is not defamatory and does not contain any defamatory statements." This provision is absent from the Senate bill.

The Senate bill contains different requirements for communication transmitted through radio or other audio media or in the audio component of another communication than what the House bill permits. The Senate bill does not require that the audio component of a communication include the address or principal of business of the person paying for the communication or of the person's largest contributors. The House bill requires this information. However, the House bill permits a person, other than an individual, paying for a communication to be named in the audio component of the communication using the person's common name.

The House bill contains a requirement that communications from a person in which a foreign government holds more than a 10 percent ownership stake identify the foreign government as a partial owner of the person. The Senate bill does not contain such a requirement.

AS 15.13.110("g")
The House bill requires independent expenditure reports to be filed with APOC within 24 hours after the expenditure has been made. The Senate bill requires that independent expenditure reports be filed within 10 days, except independent expenditures that exceed $250 and that are made within nine days of an election must be reported within 24 hours.

15.56.014(a)
The Senate bill amends AS 15.56.014 to provide that any person, not just a "candidate, group, or individual," who knowingly prints or publishes a communication intended to influence the outcome of an election without the words "paid for by" has committed campaign misconduct in the second degree (this change could be described as a conforming change). This section is not present in the House bill.

If you have any questions, please do not hesitate to contact me.

TLAB:ljw
10-243.ljw

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MEMORANDUM March 17, 2010

SUBJECT: Committee questions of March 15, 2010 (CSSB 284(JUD))
(Work order No. 26-LS1448\E)

TO: Senator Hollis French
Chair of the Senate Judiciary Committee
Attn: Cindy Smith

FROM: Alpheus Bullard
Legislative Counsel

As part of a legislative response to the United States Supreme Court's ruling in Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. ___ (January 21, 2010), you requested a legal opinion as to whether the state could prohibit independent expenditures made in connection with a state election, by (1) foreign nationals, (2) American subsidiaries of foreign nationals, (3) domestic corporations owned in part by foreign nationals, and (4) domestic corporations or entities not domiciled in Alaska.

Any statute prohibiting a person from making an independent expenditure in connection with a state election is likely to be challenged on First Amendment grounds. A state prohibition against independent expenditures made by foreign nationals, who are already prohibited from making contributions or expenditures in connection with federal, state, or local elections under federal law, raises federal preemption issues. Prohibiting independent expenditures by domestic subsidiaries of foreign corporations, domestic corporations owned in part by foreign nationals, and domestic corporations or entities not domiciled in Alaska raise additional constitutional issues.

First Amendment

The First Amendment of the Constitution of the United States protects freedom of speech and freedom of association.[1] Independent expenditures made in connection with state elections are protected speech under the First Amendment. See Randall v. Sorrell, 548 U.S. 230 (2006), and Buckley v. Valeo, 424 U.S. 1 (1976).

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[1] Note that the freedom of speech provision in article I, section 5 of the Constitution of the State of Alaska is more protective of speech than the United States Constitution's First Amendment. Mickens v. City of Kodiak, 640 P.2d 818, 820 (Alaska 1982); Messerli v. State, 626 P.2d 81, 83 (Alaska 1980).

An attempt to prohibit independent expenditures by any class or category of persons is likely to encounter constitutional problems associated with First Amendment protections of the rights of association and expression.

> The concept that government may restrict the speech of some elements of our society in order to enhance the relative voice of others is wholly foreign to the First Amendment, which was designed "to secure the widest possible dissemination of information from diverse and antagonistic sources," and "to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people."

Buckley, 424 U.S. at 48 - 49 (quoting New York Times Co. v. Sullivan, 376 U.S. 254, 266, 269 (1964) (citations omitted)). In State v. Alaska Civil Liberties Union, 978 P.2d 597 (1999), the Alaska Supreme Court observed that existing campaign finance jurisprudence was based on the threat of corruption. Id. at 606 - 607. The Supreme Court has recently concluded that "independent expenditures, including those made by corporations, do not give rise to corruption or the appearance of corruption." Citizens United v. Federal Election Commission, No. 08-205, 558 U.S. ___, Slip op. at 42 (January 21, 2010).

Given that independent expenditures have not been found to present a risk of corruption or the appearance of corruption, a state effort to prohibit independent expenditures from any source may face significant First Amendment hurdles.

The state's interest in prohibiting independent expenditures made by nonresidents or persons domiciled outside the state

I am not aware of any applicable judicial decision holding that protecting state residents from nonresident domination or enhancing voter participation is a compelling state interest. See Alaska Civil Liberties Union, 978 P.2d at 615. Instructive, however, is VanNatta v. Keisling, 151 F.3d 1215 (9th Cir. 1998), in which the Ninth Circuit invalidated a geographically based restriction on political contributions enacted by initiative in Oregon. The court found:

> Measure 6 bans all out-of-district donations, regardless of size or any other factor that would tend to indicate corruption. Appellants are unable to point to any evidence which demonstrates that all out-of-district contributions lead to the sort of corruption discussed in Buckley. . . . Measure 6 is not closely drawn to advance the goal of preventing corruption and under this analysis fails to pass muster under the First Amendment.

Id. at 1221. The proponents of the initiated law in VanNatta also offered an alternate justification for the measure, apart from the corruption rationale. They argued that the measure protected the state's interest in the integrity of republican government by, in the

court's words, "assuring that representatives are truly selected by their own constituents." Id. However, the court rejected this justification, observing that "[t]he right to a republican form of government has never been recognized as a sufficiently important state interest." Id., citing Whitmore v. Federal Election Comm'n, 68 F.3d 1212 (9th Cir.1995) (rejecting the same argument as a justification for a ban on out-of-state contributions in Alaska). A state law prohibiting independent expenditures made by persons who are citizens of, or who are domiciled in, other states would be similarly evaluated by a court, and absent some evidence showing the corrupting influence of non-resident expenditures, would be struck down by a court.

Privileges and immunities

Prohibiting independent expenditures from non-residents would also be subject to challenge under the privileges and immunities clause. The federal privileges and immunities clause restricts the state's ability to interfere with the fundamental rights of non-residents. See Robison v. Francis, 713 P.2d 259, 263 (Alaska 1986). The Alaska Supreme Court has summarized the effect of the privileges and immunities clause as follows:

> Article IV, section 2 prohibits discrimination against nonresidents "where there is no substantial reason for the discrimination beyond the mere fact that they are citizens of other states." No "substantial reason" will be found absent some showing that nonresidents are "a peculiar source of the evil" which the state's action is meant to remedy. In addition, the discrimination worked upon nonresidents must "bear a substantial relationship to the particular 'evil' they are said to present." Only if the challenged discriminatory action surmounts both of these hurdles will it survive privileges and immunities clause scrutiny.

Noll v. Alaska Bar Association, 649 P.2d 241, 244 (Alaska 1982) (quoting Toomer v. Witsell, 334 U.S. 385, 396 (1948), and Hicklin v. Orbeck, 437 L.Ed.2d 397, 404 (1978); citations omitted). So, in addition to having to provide a "compelling justification" for the measure to satisfy the First Amendment, you would also need to show a "substantial reason" why a prohibition against independent expenditures should apply only to non-residents in order to withstand a privileges and immunities clause challenge.

Equal protection

If the state were to prohibit domestic subsidiaries of foreign corporations, domestic corporations owned in part by foreign nationals, or domestic corporations or other organizations not domiciled in the state from making independent expenditures in connection with a state election, the prohibition would likely also face an equal protection challenge. "The common question in addressing equal protection cases is whether two groups of people who are treated differently are similarly situated and thus entitled to

equal treatment."[2] In order for a classification to be valid under the state's equal protection test, it must be reasonable, not arbitrary, and must bear a fair and substantial relation to a legitimate governmental objective. Wilson v. Municipality of Anchorage, 669 P.2d 569, 572 (Alaska 1983). Alaska evaluates equal protection claims using a sliding scale.[3] There are several steps involved. First, the court determines the importance of the interest impaired by the challenged statute. Then the court looks at the purposes served by the statute. Finally, the court looks at how well the statutory means fits the purpose.

Because federal law prohibits foreign nations from making contributions or expenditures, directly or indirectly, in connection with a state election, it is not clear to me what state purpose any of these possible prohibitions would serve. Consequently, I do not know how a court would evaluate the state's interest in prohibiting domestic subsidiaries of foreign corporations, domestic corporations owned in part by foreign nationals, or domestic corporations or other organizations not domiciled in the state from exercising their First Amendment right recognized in Citizens United to make independent expenditures.

Preemption

In Citizens United, the Supreme Court neither considered nor overruled the existing federal law that prohibits a "foreign national" from making a direct or indirect expenditure in connection with a federal, state, or local election. The Federal Election Campaign Act (FECA) prohibits any foreign national from contributing, donating, or spending funds in connection with any federal, state, or local election in the United States, either directly or indirectly.[4] Because 2 U.S.C. § 441e already clearly prohibits foreign nationals from making campaign contributions, expenditures, and independent expenditures in federal, state, and local elections, a state effort to legislate in this area may face a preemption challenge.

The Supremacy Clause, Art. VI, cl. 2 of the Constitution of the United States, provides:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

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[2] Anderson v. State, 78 P.3d 710, 718 (Alaska 2003).

[3] Matanuska-Susitna Borough School v. State, 931 P.2d 391, 396 (Alaska 1997).

[4] See 2 U.S.C. § 441e, 22 U.S.C. § 611(b), and 11 C.F.R. 110.4.

The Alaska Supreme Court has noted that "[u]nder the Supremacy Clause of the federal constitution, state laws that interfere with federal laws are invalid." Allen v. State, 203 P.3d 1155, 1161, n. 12 (Alaska 2009), quoting State v. Dupier, 118 P.3d 1039, 1049 (Alaska 2005). The court recently summarized federal preemption law as follows:

> There is a presumption against federal preemption of state law, and preemption doctrine "enjoin[s] seeking out conflicts between state and federal regulation where none clearly exists." Additionally, "[w]here co-ordinate state and federal efforts exist within a complementary administrative framework, and in the pursuit of common purposes," . . . "the case for federal pre-emption becomes a less persuasive one." But where state law comes into conflict with federal law, the Supremacy Clause of the United States Constitution dictates that state law must always yield.
>
> There are three major types of federal preemption of state law: "express," "field," and "conflict" preemption. Express preemption occurs when Congress explicitly declares an intent to preempt state law in a particular area. . . .
>
> Field preemption is the term used when the federal law governing a particular area is so comprehensive and so complete that Congress is said to have completely occupied a field, leaving no room for state law. We "will not infer an intent to occupy the field where Congress has left some room for state involvement." . . .
>
> Conflict preemption occurs when a state law and a federal law are in conflict, either because compliance with both state and federal law is impossible or because the state law "stands as an obstacle to accomplishment and execution of the full purposes and objectives of Congress." . . .

Allen v. State, 203 P.3d 1155, 1160 - 1161 (Alaska 2009) (citations and footnotes omitted).

The state clearly does not have authority to regulate contributions and expenditures in campaigns for federal office; that has been expressly preempted by federal law. 2 U.S.C. § 453 (specifying that the provisions of the federal election campaigns act "supersede and preempt any provision of state law with respect to election to federal office"); 11 C.F.R. 108.7(b)(3) (federal law "supersedes state law concerning the . . . [l]imitation on contributions and expenditures regarding Federal candidates and political committees.").

Whether the state may prohibit independent expenditures from foreign nationals in campaigns for state office is less clear. I am not aware of any federal statute or regulation which expressly preempts state regulation of foreign expenditures in campaigns for state

office. However, field preemption may come into play here. To the extent a court found that the federal law governing contributions and expenditures by foreign nationals is so comprehensive and complete as to "occupy the field," it could invalidate state law attempting to cover the same ground. To the extent that the state and federal laws conflict, conflict preemption is also a possibility.

If you have further questions, please do not hesitate to contact me.

TLAB:ljw:plm
10-191.ljw

MEMORANDUM

STATE OF ALASKA
DEPARTMENT OF LAW

TO: Mike Nizich
Chief of Staff
Office of the Governor

DATE: February 19, 2010

FROM: Daniel S. Sullivan
Attorney General

SUBJECT: Analysis of *Citizens United v. Federal Election Commission* and its Impact on Alaska Campaign Finance Laws

The following is our response to your request for an analysis of the United States Supreme Court's decision in *Citizens United v. Federal Election Commission* 558 U.S. ___, --- S.Ct. ---- (2010) and how that decision impacts Alaska's campaign finance laws. The ruling affects the balance between a government's interest in ensuring transparent and fair elections and the First Amendment rights of organizations, such as corporations and labor unions, to engage in political speech. In this memorandum we will describe the holding of the case as well as its direct and indirect effects on Alaska law.

I. Summary

Our analysis addresses two main points. First, under *Citizens United*, Alaska may not prohibit political speech by corporations and labor unions altogether.[1] As a result, our laws prohibiting independent expenditures by corporations and labor unions in a candidate election are likely unconstitutional.

Second, Alaska's laws regarding contributions to candidates, coordinated expenditures, disclaimers, and disclosures are not directly affected by *Citizens United.* Alaska's laws continue to regulate corporate and labor union political speech through disclaimer and disclosure requirements. However, some disclaimer and disclosure laws that provide specific standards for reporting and identification of expenditures do not currently apply to corporations and labor unions.

II. *Citizens United v. Federal Election Commission*

On January 21, 2010, the United States Supreme Court issued its opinion in *Citizens United v. Federal Election Commission.*[2] The Court's main holding was that

[1] *See* 558 U.S. ___, at 2, --- S.Ct. ---- (2010).

[2] 558 U.S. ___, --- S.Ct. ---- (2010).

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"the Government may regulate corporate political speech through disclaimer and disclosure requirements, but it may not suppress that speech altogether."[3] The particular federal law reviewed by the Court, part of the Bipartisan Campaign Reform Act of 2002,[4] prohibited corporations and unions from using their general treasury funds to make independent expenditures for speech that is an electioneering communication or for speech that expressly advocates the election or defeat of a candidate.[5] The Court held that this prohibition on corporate and labor union speech violated the First Amendment to the United States Constitution. Because the First Amendment applies to states as well as the federal government, the ruling not only strikes down the federal requirement, it also calls into question similar provisions enacted by the State of Alaska.[6]

The Court further ruled that the disclosure and disclaimer laws under the Bipartisan Campaign Reform Act are justified to provide the electorate with information about the sources of election-related spending and that disclosure assists citizens in making informed choices in the marketplace of political ideas.[7]

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[3] *Id.* at 1-2.

[4] 2 U.S.C. § 441b (2000).

[5] 2 U.S.C. § 441b(b)(2) prohibited corporations and labor unions from using general treasury funds to make expenditures on electioneering communications, which include broadcast, cable, or satellite communications that refer to a clearly identified candidate for federal office and are made within 30 days of a primary or 60 days of a general election. 2 U.S.C. § 434(f)(3)(A); 11 CFR § 100.29(a)(2)(2009).

[6] *See Gitlow v. New York*, 268 U.S. 652, 666, 45 S.Ct. 625, 630 (1925) (freedom of speech protected by the First Amendment from abridgment by Congress is among the fundamental personal rights protected by the due process clause of the Fourteenth Amendment from impairment by the States); *see also Near v. Minnesota*, 283 U.S. 697, 51 S.Ct. 625 (1931); *DeJonge v. Oregon,* 299 U.S. 353, 57 S.Ct. 255 (1937).

[7] 558 U.S. ___ , at 51-2 (citing *Buckley v. Valeo*, 424 U.S. 1, 66, 96 S.Ct. 612, 657 (1976) (*per curiam*)). Under federal law, televised electioneering communications funded by anyone other than a candidate must include a disclaimer describing the entity responsible for the content of the ad. The required statement must be made in a clearly spoken manner and displayed on the screen in a clearly readable manner for at least four seconds. It must state that the communication is not authorized by any candidate or candidate's committee and it must display the name and address of the person or group that funded the advertisement. *Id.* (citing 2 U.S.C. § 441d(a)(2)).

III. The Direct and Indirect Impacts of *Citizens United* on Alaska Laws

A. Overview

Alaska campaign finance laws regulate a majority of state elections, the ballot proposition process, lobbying, and the judicial retention process.[8] These laws regulate the conduct of candidates, political parties, individuals, lobbyists, corporations, labor unions, groups, and other entities. Both state and federal campaign finance laws make several important distinctions with respect to the application of such laws. For instance, Alaska campaign finance laws distinguish "contributions" from "expenditures." A contribution is basically a purchase, payment, or deposit rendered directly to a candidate or political party.[9] An expenditure is defined broadly to include several activities which are not direct contributions to candidates. Expenditures include direct payments for services but also include various communications.[10] An "independent expenditure" is a type of expenditure but is more limited in that it is made without any coordination with a candidate.[11]

Another important distinction is between disclosures and disclaimers. Certain campaign finance laws mandate public reporting of expenditures made. In campaign finance jurisprudence, these laws are referred to as disclosure laws. When a campaign finance law requires an identification to be placed on a communication, courts and campaign finance law commentators broadly refer to this as a disclaimer law. The Alaska Public Offices Commission enforces the legality of contributions and expenditures and also ensures that individuals and entities are properly disclosing and disclaiming their conduct as it relates to an election.[12]

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[8] *See* AS 15.13.010(a)(1)-(2)(describing scope of AS 15.13, entitled State Election Campaigns).

[9] *See* AS 15.13.400(4)(A).

[10] An expenditure is defined, in relevant part, as "a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of...influencing...[the outcome of an election]." Expenditures also include "express communications" and "electioneering communications." AS 15.13.400(6).

[11] An independent expenditure "means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate." AS 15.13.400(10).

[12] *See generally* AS 15.13.010(b); AS 15.13.400(1); AS 15.13.400(8), (11), (13)-(15); AS 15.13.030.

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Citizens United directly implicates one key aspect of Alaska's campaign finance laws: Alaska's prohibition on independent expenditures by corporations or labor unions in candidate elections.[13] The decision does not directly call into question the constitutionality of any other contribution, expenditure, disclaimer or disclosure law. For example, Alaska's prohibition on direct contributions to candidates by corporations and labor unions is unaffected.[14] Candidates and their agents are still prohibited from accepting contributions from corporations and labor unions.[15] A corporation or labor union still may not directly or indirectly consult or cooperate with candidates or their agents when making an expenditure.[16] Individuals are still limited to contributing $500 per year to a candidate, and $5,000 per year to a political party,[17] and corporations and labor unions must continue to follow disclosure laws whenever applicable.[18] The current statutes and regulations that require that an independent expenditure in a candidate election be reported within 10 days will be applicable to a corporation or labor union that makes such an expenditure.[19] There must be some identification of corporations or labor

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[13] *See* AS 15.13.067; AS 15.13.135(a).

[14] *See* AS 15.13.065(a); AS 15.13.074(a).

[15] AS 15.13.072(a)(1).

[16] AS 15.13.400(10). 2 AAC 50.270 provides guidance as to what constitutes an independent expenditure. Where an expenditure is based on information provided by the candidate or an agent of a group or nongroup entity, it is not an independent expenditure. An expenditure is not an independent expenditure if it is made based on data from a candidate's, group's, or nongroup entity's pollster or campaign consultant or any other person who receives compensation or reimbursement from the campaign. Solicitations to a candidate, group, or nongroup entity, or an expenditure made to finance distribution of campaign material provided by the candidate or his agents are not independent expenditures.

[17] AS 15.13.070(b)(1)-(2).

[18] *See* AS 15.13.400(14); AS 01.10.060. Because the relevant statutes define "person" to include a corporation or labor union, statutes and regulations that cover a "person" apply to any corporation or union making an independent expenditure in a candidate election.

[19] AS 15.13.040(d) states that "every individual, person, nongroup entity, or group making an expenditure shall make a full report of expenditures, upon a form prescribed by the commission, unless exempt from reporting." AS 15.13.040(e) states that "the report required under (d) must contain the name, address, principal occupation, and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission no later than 10 days after the expenditure is made." The reporting requirement of AS 15.13.040(d) and (e) applies to all "persons"

unions making an independent expenditure as they are subject to the requirement that such independent expenditures may not be made anonymously.[20]

B. Alaska's Prohibition on Expenditures – AS 15.13.067 and AS 15.13.135(a)

Citizens United likely invalidates AS 15.13.067 and AS 15.13.135(a) in their current form. Under AS 15.13.067, expenditures in candidate elections may only be made by candidates, individuals, groups, and nongroup entities. Under AS 15.13.135(a), "independent expenditures" in candidate elections may only be made by individuals, groups and nongroup entities. Because labor unions and corporations do not fall within the definitions of individual, group, or non-group entity,[21] AS 15.13.067 and AS 15.13.135(a) prohibit corporations and labor unions from making any expenditures in candidate elections. Alaska law defines expenditure broadly to include activities which are political speech.[22] After *Citizens United*, these specific prohibitions will not likely pass constitutional muster.

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who make an expenditure. A person is defined to include corporations and unions. AS 15.13.400(14); AS 01.10.060.

Alaska regulations likewise require reporting of all independent expenditures. 2 AAC 50.270(c) provides that "a person making an independent expenditure must disclose the following on an independent expenditure report under AS 15.13.040 (d) and (e): (1) the date of the expenditure; (2) the amount of the expenditure; (3) the check number, if the expenditure is paid by check; (4) the name and address of the payee; (5) a description of items or services purchased; (6) identification of the candidate or ballot proposition the expenditure was intended to influence; (7) a statement as to whether the expenditure was intended to support or oppose the candidate or ballot proposition."

[20] AS 15.13.084 states that "a person may not make an expenditure anonymously," unless the expenditure is made by an individual acting independently and the expenditure is made for a billboard or sign, or printed material other than an advertisement in a newspaper or other periodical.

[21] AS 15.13.400(8), (11), (13).

[22] Specifically, Alaska law prohibits corporations and labor unions from making express communications, electioneering communications, and any payment made to influence the outcome of a candidate election. AS 15.13.400(6)(A)(i);(C); *see also* AS 15.13.400(5), (7). Other parts of the expenditure definition do not implicate political speech. For example, expenditures include purchases made for the purpose of a political party or direct payment of personal services rendered to a candidate or political party. *See, e.g.*, AS 15.13.400(6)(A)(ii)-(iii).

Accordingly, we recommend that these two statutes be amended to conform to the holding of *Citizens United* in order to clarify the extent to which corporations and labor unions may make independent expenditures.

C. Disclosure of Expenditures – AS 15.13.040(d) and (e)

The Supreme Court in *Citizens United* specifically upheld laws requiring the disclosure of independent expenditures. The Court found that the disclosure laws assisted the electorate in making informed choices in the marketplace of political ideas.[23] Accordingly, *Citizens United* does not suggest that Alaska's disclosure laws are in any way unconstitutional. Alaska Statute 15.13.040(d) and (e) is a disclosure law that broadly applies to corporations and labor unions making independent expenditures in a candidate election. It provides that any person making any expenditure must report the expenditure within 10 days. Because corporations and unions are deemed to be "persons" under Alaska law, this requirement applies to them as well.[24] Thus, the requirement to disclose is written broadly enough to require disclosure of expenditures made by corporations and labor unions.

D. Disclaimers For Communications – AS 15.13.084; AS 15.13.090; and AS 15.13.135(b)(2)

Citizens United upheld federal disclaimer laws.[25] Thus, the decision does not suggest that Alaska's disclaimer laws suffer from any constitutional infirmity. Alaska Statute 15.13.090 is a disclaimer law requiring certain communications to be identified by the words "paid for by" followed by the name of the candidate, group or nongroup entity paying for the communication. Alaska Statute 15.13.135(b)(2) is a disclaimer law which requires that certain independent expenditures contain a disclaimer that they are not authorized or paid for by a candidate. However, because corporations and labor unions were not permitted to make any expenditures in a candidate election, these specific statutes were not written to apply to them, and only refer to individuals, groups, and nongroup entities.

Corporations and labor unions are nevertheless subject to AS 15.13.084 which prohibits independent expenditures in a candidate election from being made

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[23] 558 U.S. at 51-2 (citing *Buckley*, 424 U.S. at 66, 96 S.Ct. at 657).

[24] *See supra* note 18. *Cf* 2 AAC 50.270(c) (reporting of independent expenditures applies to "persons," and thus to corporations and labor unions). Additionally, "persons," including corporations and labor unions, are required to preserve their expenditure records for up to 6 years after the expenditure is made. AS 15.13.111.

[25] 558 U.S. at 51-2 (citing *Buckley v. Valeo*, 424 U.S. at 66, 96 S.Ct. at 657).

anonymously; thus some identification is required.[26] This prohibition is very general and it is unclear how a corporation or labor union must identify itself when making the expenditure. This may create uncertainty among corporations and labor unions about how to proceed with speech protected under *Citizens United*. Therefore, consideration should be given to amending AS 15.13.084 to clarify how corporations or labor unions must identify themselves when exercising their right to make independent expenditures in an election. As discussed above, it would be constitutional to extend the requirements of AS 15.13.090 and AS 15.13.135(b)(2) to corporations and labor unions.

E. Other Reporting and Disclosure Issues – AS 15.13.110 and AS 15.13.086(2)

As stated above, *Citizens United* did not invalidate disclosure or disclaimer laws,[27] and Alaska statutes currently require all persons making independent expenditures to report those expenditures to The Alaska Public Offices Commission within 10 days.[28] However, policy makers should consider whether other forms of disclosure for corporations and labor unions making independent expenditures in candidate elections are appropriate. For example, under AS 15.13.110, groups, nongroup entities, and candidates must file reports for election-related activity 30 days before an election, seven days before an election, and at year's end. The reporting requirements under AS 15.13.110 do not apply to "persons" and thus corporations and labor unions, like individuals, are exempt. Because corporations and labor unions were not allowed to make independent expenditures when this statutory scheme was created, we do not believe the drafters had corporations and unions in mind when this requirement was imposed only on candidates, groups and nongroup entities.

In addition to reporting expenditures, AS 15.13.110 requires groups,[29] nongroup entities,[30] and candidates[31] to include information regarding the source of all contributions in these reports. Under current Alaska law, corporations and labor unions would be required to report only their expenditures.[32] But as there is currently no Alaska

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[26] AS 15.13.084, prohibits all "persons" from making anonymous expenditures and expenditures using a fictitious name or the name of another. As explained above, corporations and labor unions are persons under the law.

[27] 558 U.S. at 51-2.

[28] AS 15.13.040(d)-(e).

[29] AS 15.13.400(8).

[30] AS 15.13.400(13).

[31] AS 15.13.400(1).

[32] AS 15.13.040(d)-(e).

law that requires a corporation or labor union to report the source of funds used to make expenditures, corporations and labor unions could receive funds for the purpose of making an independent expenditure in a candidate election. This situation was not contemplated at the time these reporting statutes were enacted due to the prohibition on expenditures by corporations or labor unions in candidate elections.

Additionally, while candidate contributions exceeding $250 made within nine days of the election must be reported to The Alaska Public Offices Commission within 24 hours of receipt by the candidate,[33] under current law, an independent expenditure made within 10 days of a candidate election does not have to be reported until after the election.[34] The latter timeline now likely applies to corporations and labor unions making independent expenditures in candidate elections after *Citizens United.*

F. Independent Expenditures by Foreign Corporations

Federal law currently prohibits expenditures made by foreign nationals and foreign corporations in state elections.[35] *Citizens United* did not invalidate this law, nor did it decide whether the federal government has a compelling interest in preventing foreign individuals or associations from influencing our nation's political process.[36] Alaska law does not have a corresponding prohibition on expenditures made by foreign nationals or foreign corporations in our elections.[37]

IV. Conclusion

Citizens United has had both direct and indirect impacts on Alaska campaign financing laws. We recommend that those laws directly impacted by the ruling, the prohibition on expenditures by corporations and labor unions, be amended to provide more clarity to Alaskans. We also identify, for your consideration, other areas of law regulating expenditures that were indirectly impacted by this decision.

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[33] AS 15.13.110(b).

[34] *See* AS 15.13.040(d)-(e).

[35] 2 U.S.C. § 441e prohibits any foreign national, including any foreign associations such as foreign corporations, from spending funds in connection with any state or local election in the United States.

[36] 558 U.S. ___ , at 47 *citing* 2 U.S.C. § 441(e).

[37] Because Alaska law currently restricts all expenditures, Alaska statutes do not differentiate between foreign and domestic corporations. AS 15.13.400(14); AS 01.10.060.

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MEMORANDUM

State of Alaska
Department of Law

TO: Chris Ellingson, APOC

DATE: May 29, 2008

SUBJECT: *Wilkson's letter re raffle and lotteries.*

FROM: Thomas A. Dosik
Assistant Attorney General

TEL. NO.: 269-5156

ATTORNEY CLIENT PRIVILEGED INFORMATION

I. BACKGROUND

Mr. Jim Wilkson, an attorney representing an unnamed client,[1] wrote to the Brooke Miles, Executive Director of the Alaska Public Offices Commission, claiming that certain APOC regulations prevented his client from complying with Department of Revenue regulations regarding the use of raffles and lotteries to raise money for political candidates and causes. Mr. Wilkson's client wants to use a raffle or lottery to raise money for its affiliated political action committee. He claims that such a raffle or lottery is specifically allowed under the gaming laws, but prohibited by the campaign finance regulations.

As Mr. Wilkson sees it, the gaming laws allow organizations with gaming permits to dedicate the proceeds from raffles and lotteries to political candidates and causes. However, the campaign finance regulations bar those same organizations from transferring raffle and lottery proceeds to political candidates and causes. Mr. Wilkson cites APOC's interpretation of the word "contribute" in 2 AAC 50.250 as the problem here. Because, he claims, his client is prohibited by AS 15.13.074(f) from making a "contribution" to a political cause, the client is unable to hold a raffle as envisioned by the gaming statutes and regulations.

[1] The head of the Department of Revenue's gaming unit suspects that the Alaska Cabaret, Hotel, Restaurant and Retailers Association is the unnamed client. He refused to grant a gaming permit to a PAC they formed, and issued one to CHARR instead.

II. RELEVANT LEGAL AUTHORITIES.

A. Statutes:

AS 05.15.100(a): The department may issue permit to a municipality or qualified organization....

AS 05.15.690(38): "Qualified organization" means a bona fide civic or service organization or a bona fide religious, charitable, fraternal, veterans, labor, political, or educational organization ... that operates without profits to its members and that has been in existence continually for a period of three years immediately before applying for the license or permit; the organization may be a firm, corporation, company association or partnership.

AS 05.15.690(36): "political organization" means an organization or club organized under or formally affiliated with a political party as defined in AS 15.60.010.

AS 05.15.150: (a) The authority to conduct the activity authorized by this chapter is contingent upon the dedication of the net proceeds of the charitable gaming activity to the awarding of prizes to contestants or participants and to political, educational, civic, public, charitable, patriotic, or religious uses in the state. "Political, educational, civic, public, charitable, patriotic, or religious uses" means ... aiding candidates for public office or groups that support candidates for public office ... but does not include ...

> (3) the direct or indirect payment of any portion of the net proceeds of a charitable gaming activity, ***except the proceeds of a raffle and lottery***,
>
> > (A) to aid candidates for public office or groups that support or oppose candidates for public office;
> > (B) to a political party or to an organization affiliated with a political party; or
> > (C) to a group, as that term is defined in AS 15.13.400, or a political group, as that term is defined in AS 15.60, that seeks to influence the outcome of an election.

(emphasis added)

AS 05.15.130: The department may supplement the definitions of qualified organizations and activities by regulations adopted under this chapter adding to the definitions additional requirements that the department considers necessary for the best interests of the public or for the proper administration of this chapter.

AS 15.13.074(f): A corporation, company, partnership, firm, association, entity recognized as tax-exempt under 26 U.S.C. § 501(c)(3)(Internal Revenue Code), organization, business trust or surety, labor union, or publicly funded entity that does not satisfy the definition of group or nongroup entity in AS 15.13.400 may not make a contribution to a candidate, group or nongroup entity.

AS 15.13.400(4): "Contribution" (A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, ***deposit or gift of money***, goods, or services for which charge is ordinarily made and that is made for the purpose of influencing the nomination or election of a candidate, and in AS 15.13.010(b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that are rendered to the candidate or political party.
(B) does not include
(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;....
(emphasis added)

B. Regulations:

2 AAC 50.250: a) In AS 15.13 and this chapter, except as otherwise provided in this section, "contribution"

(1) has the meaning given in AS 15.13.400 ;

(2) includes a

(A) subscription, advance, ***transfer***, forgiveness of all or part of a debt, relaxation of credit, or anything of value made or provided by a person, group, or nongroup entity for the purpose of influencing an election for state or municipal office or influencing the passage or defeat of a ballot proposition or question; ....
(emphasis added)

15 AAC 160.810(f): "a permittee that dedicates or otherwise transfers net proceeds to another organization must take steps to ensure that the net proceeds are spent in accordance with AS 05.15.150.

C. Prior Advisory Opinions and AG Opinions.

AO97-19-CD (June 3, 1997): APOC determined that the Fairbanks Central Labor Council may not conduct a raffle on behalf of PAC or group, because campaign disclosure laws prohibit unions from making political contributions.

December 2, 1982 Attorney General Opinion No.14 (1982 WL 43795): This opinion addressed three issues: 1) Whether an organization can conduct a raffle on behalf of a political campaign, and transfer more than $1000 to that campaign; 2) Whether there was a limit on the amount of raffle proceeds which could be donated to the campaigns of Libertarian Party candidates, considering the fact that the Libertarian Party was not considered a "political party" under then AS 15.60.010(20) until after the election; and 3) Can a raffle permit be issued to a political organization not in existence for at least five years before it applies for the permit.

The short answers to these questions were that a raffle permit could not be loaned, nor could raffle proceeds in excess of $1000 be given to another campaign. Because the Libertarians were not a recognized political party under AS 15.60.010(2) as it read at the time, there was a limit of $1000 that could be donated to the campaigns of the various Libertarian candidates.

The opinion noted that although there may be grounds for challenging the five year limit as an unconstitutional discrimination against new entrants into the political arena, the statute clearly precluded less than five year old organizations from receiving raffle permits.

1997 Alaska Op. Atty. Gen. 77 (March 16, 1997) 1997 WL 556998: The Department of Revenue had interpreted AS 05.15.150 to mean that political entities could receive permits to conduct any game allowed under AS 05.15 other than raffles or lotteries, but their use of the monies raised through activities other than raffles or lotteries was limited. For example a political entity could get a pull tab permit as long as the proceeds were donated to some other cause. APOC had come to the opposite conclusion, and read the statute to require a denial of a permit—other than for a raffle or lottery—to a political entity. The opinion concluded that the Department of Revenue's interpretation was not unreasonable. The opinion did not address the conflict between APOC and the Department of Revenue.

D. Additional Information:

According to Dan Branch, the AAG who represents the Department of Revenue in matters related to charitable gaming, the Department of Revenue will deny a gaming permit application submitted by a PACs, even if the PAC meets the longevity and number of members requirements. The Department takes the position that PACs are not political organizations for purposes of AS 05.15.690 because PACS are not organized under or affiliated with one of the recognized political parties.

III. ANALYSIS

There does appear to be some tension between the gaming statutes and the campaign finance statutes with regard to the use of raffles and lotteries as fundraisers for political purposes. On the one hand, the gaming statutes allow raffles and lotteries as fundraisers for political candidates, parties and groups. On the other, the campaign finance statutes prohibit nearly every organization which could obtain a gaming permit from making a contribution to a political candidate, party or group. However, because there are certain organizations, namely political parties, that may obtain a gaming permit, and may also make contributions to political candidates and causes, the most plausible reading of the statutes is that raffle and lottery provision was meant only to apply to them. Mr. Wilkson's client simply is not in the limited pool of organizations that may hold a raffle and contribute the proceeds to a political cause, and his focus on the regulation is misplaced.

The Department of Revenue may grant a gaming permit to a "qualified organization." AS 05.15.100(a). The authority to conduct a game under AS 05.15 is contingent upon the dedication of the net proceeds to "political, educational, civic, public, charitable, patriotic or religious uses in the state." AS 05.15.150(a). These "political, educational, etc. uses" do not include the payment of any portion of the net proceeds of any charitable game, except a raffle or lottery[2] to a political candidate, party or group.[3] AS 05.15.150(a). The fact that the statute has a specific prohibition on gaming proceeds going to political purposes, and a specific exception for raffle and lottery proceeds from that prohibition, clearly indicates that the legislature did intend that raffles and lotteries could be used to raise funds for political purposes.

However, AS 15.13.074(f), prohibits a "corporation, company, partnership, firm, association, entity recognized as tax-exempt under 26 U.S.C. § 501(c)(3)(Internal Revenue Code), organization, business trust or surety, labor union, or publicly funded entity that does not satisfy the definition of group or nongroup entity" from making a contribution to any candidate, group or nongroup entity. This statute encompasses most of the entities who may be allowed to receive gaming permits under AS 05.15.100(a), including, presumably, Mr. Wilkson's client. Mr. Wilkson argues that it is APOC's definition of contribution in 2 AAC 50.250 to include a "transfer" that causes the conflict here, and that the regulations should be amended to allow a non-profit to dedicate raffle and lottery proceeds to its affiliated PAC.

Mr. Wilkson is incorrect. APOC's regulation is entirely valid, and moreover, the simple fact that his client is prohibited from making a contribution to a political cause, does not mean that there is a problem here. The most plausible reading of the statutes is that the legislature intended it to apply only to a small subset of organizations which may obtain a gaming permit, and which may also make contributions to political causes—namely political parties.

A. APOC's Regulation is Valid.

Mr. Wilkson cites APOC's interpretation of "contribution" in 2 AAC 50.250(a)(2) as the cause of the problem vexing his client. Specifically, he claims that the inclusion of the word "transfer" in the regulation, but not in the statute, makes the regulation too broad. He is incorrect. The statutory definition of "contribution", AS 15.13.400(4) is quite broad, and includes any "deposit or gift of money." It is difficult to imagine how a transfer of money would not also be a "deposit."

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[2] As opposed to bingo, pull-tab games, ice classics, race classics, rain classics, goose classics, mercury classics, deep freeze classics, canned salmon classics, salmon classics, king salmon classics, dog mushers' contests, snow machine classics, fish derbies, animal classics, crane classics, Calcutta pools and contests of skill. AS 05.15.100(a).

[3] AS 05.15.150(a) details the specific uses which are not prohibited for raffle and lottery proceeds. For ease of reference in this memorandum, the uses allowed under AS 05.15.150(a)(3)(A)-(C) will be referred to as "political purposes."

2 AAC 50.250 is perfectly valid and in accordance with the law. The Alaska Supreme Court has given the following guidelines for determining the validity of an agency regulation:

> There is a three part analysis which courts apply to the validity of regulations: first whether the legislature delegated the rule making authority to the agency; second whether the regulation is consistent with and reasonably necessary to implement the authorizing statute and whether it is reasonable and not arbitrary, and third court considers whether the regulation conflicts with any other state statute or constitutional provisions.

O'Callaghan v. Rue, 966 P.2d 88 (Alaska 2000).[4] Under this standard, there is nothing improper about 2 AAC 50.250. Under AS 15.13.030(9) APOC has the express authority to adopt regulations necessary to implement the campaign finance statutes. The regulation is consistent with the authorizing statutes, it does not overturn or change the statutory definition of a contribution. The regulation only clarifies and refines the statutory definition, filling in gaps left unaddressed by the legislature.[5] Nor does the regulation appear, on its face, to be unreasonable or arbitrary (and there is no allegation here that is arbitrary).

Slightly more problematic is the third part of the test: Whether the regulation conflicts with any other state statute or constitutional provision. As Mr. Wilkson points out, most organizations that are allowed to obtain a charitable gaming permit are prohibited from making a "contribution" to a political cause. However, the tension between the gaming statutes and the campaign finance statutes is inherent in the statutes

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[4] This *O'Callaghan* analysis is based primarily on AS 44.62.030, which states:

> If, by express or implied terms of a statute, a state agency has authority to adopt regulations to implement, interpret, make specific or otherwise carry out the provisions of the statute, a regulation adopted is not valid or effective unless consistent with the statute and reasonably necessary to carry out the purpose of the statute.

[5] One might quibble over the regulation's necessity, but the courts don't seem to take the "reasonably necessary" part of the test all that seriously:

> If we find the proper nexus between the challenged regulation and the statutory purpose (i.e., the regulation is consistent with the statutory purpose), we do not generally require a separate showing of reasonable *necessity*. Strictly applied, inquiry into whether a regulation is *necessary* as a means to a legislative end would mire this court in questions of public policy and the advisability of possible alternatives. Such a searching inquiry is beyond our authority and expertise. It is a rare case where a regulation, although not inconsistent with the purpose of the statute, is wholly superfluous to the achievement of that purpose.

State, Department of Revenue, Permanent Fund Dividend Division v. Cosio, 858 P.2d 621, 624 n. 1 (Alaska 1993)

themselves, it is not the result of APOC's definition of contribution. Mr. Wilkson claims the addition of the word "transfer" in the administrative definition impermissibly contradicts the gaming statutes. Mr. Wilkson also suggests that APOC "exempt from its administrative definition of 'contribution' moneys generated by a raffle or lottery, deposited into a non-profit corporation permittee's gaming account, and then dedicated to the non-profit corporation's affiliated political action committee."

However, it is not the regulation that prevents a non-profit from dedicating raffle and lottery proceeds to its affiliated PAC, it is the statutory definition of "contribution" itself. AS 15.13.400(4) gives a broad meaning to "contribution," and defines a contribution to include a "a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money...." It is difficult to comprehend how the transfer of funds from a non-profit to a political action committee would not be either a payment, deposit, or gift of money from one entity to another. The inclusion of the word "transfer" by APOC does not materially broaden the definition of contribution in this case.

B. The Statutes are not in Conflict.

As stated above, the potential conflict is inherent in the gaming and campaign finance statutes, not in APOC's definition of contribution. When confronted with two such potentially conflicting statutes the courts will interpret them "with a view toward reconciling conflict and producing a harmonious whole." *Allen v. Oil and Gas Conservation Commission*, 143 P.3d 664 (Alaska 2006) quoting *Progressive Insurance Co. v. Simmons*, 953 P.2d 510, 516 (Alaska 1998). And, generally, "if two statutes conflict, then the later in time controls over the earlier, and the specific controls over the general." *Id.* At every step, however, the legislative intent is the key. *Id.* The Alaska Supreme Court has also stated that:

> When construing statutory provisions for the presence or absence of conflict, we do not mechanically adhere to their literal meaning in disregard of legislative intent. Instead of the "plain meaning" rule, Alaska follows a sliding scale approach best summed up as, "the plainer the meaning of the language of the statute, the more convincing any contrary legislative history must be." This approach calls for application of the rules of statutory construction and inquiry into legislative history, even when statutory language appears clear in the abstract.

Progressive Insurance Co. v. Simmons, 953 P.2d 510, 516 (Alaska 1998)(internal citations omitted).

Unfortunately the legislative history of the gaming statutes and campaign finance statutes is not particularly helpful in clarifying this situation. Nothing in the legislative history shines any light on the legislative intent behind the particular provisions at issue here. The rule that statute later in time controls the earlier is similarly unenlightening. The amendment to AS 05.15.150(a) that provided for raffles and lotteries was part of the

same bill (§ 11 ch 48 SLA 1996) that enacted 15.13.074(f) which prohibited contributions from corporations, non-profits, unions and other organizations. And, the maxim that the specific controls over the general does not provide any guidance, as both statutes seem quite specific in their dictates.

However, just because Mr. Wilkson's client is unable to dedicate raffle or lottery proceeds to political causes, this does not mean that the statutes are necessarily in conflict. The most plausible reading of the statutes is that legislature intended that only political parties and their formal affiliates could hold a raffle or lottery and use the proceeds as described in 05.15.150(a)(3)(A)-(C). A political party is the only type of organization that meets the requirements for a "qualified organization" under the gaming statutes, and also retains the ability to make contributions to political causes under the campaign finance statutes.

AS 05.15.690(38) defines a "qualified organization" to include a "political organization." AS 05.15.690(36) defines a political organization as "an organization or club organized under or formally affiliated with a political party as defined in AS 15.60.010."[6] So, under the gaming statutes, a political party and its affiliates may obtain a permit to run a raffle or lottery. Turning to the campaign finance statutes, a political party is **not** one of the organizations prohibited from making a contribution to a candidate, group or nongroup entity under AS 15.13.074(f). Moreover, the campaign statutes specifically allow political parties to make contributions in certain amounts to candidates for state and local offices. AS 15.13.070.

This reading of the statutes also makes the most sense when viewed in the light of the general purposes behind the campaign finance laws. Mr. Wilkson's suggestion that the regulations be amended to allow a non-profit to contribute raffle and lottery proceeds to an affiliated PAC would create a massive loophole in the campaign finance laws. There would be nothing to prevent an organization from holding a raffle to benefit a particular candidate, with tickets priced at $10,000 and two dollar stuffed toy as the prize. However, the amount a political party may contribute to a campaign is limited under AS 15.13.070. A raffle or lottery may give a political party a new and different fundraising

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[6] AS 15.60.010 defines a political party as:
[A]n organized group of voters that represents a political program and
(A) that nominated a candidate for governor who received at least three percent of the total votes cast for governor at the preceding general election or has registered voters in the state equal in number to at least three percent of the total votes case for governor at the preceding general election;
(B) if the office of governor was not on the ballot at the preceding general election but the office of United States senator was on that ballot, that nominated a candidate for United States senator who received at least three percent of the total votes cast for United States senator at that general election or has registered votes in the state equal in number to at least three percent of the total votes cast for United States senator at that general election; or
(C) if neither the office of governor nor the office of United States senator was on the ballot at the preceding general election, that nominated a candidate for United States representative who received at least three percent of the total votes case for United States representative at that general election or has registered voters in the stat equal in number to at least three percent of the total votes cast for United States representative at that general election.

tool, but it will not affect the total amount that may be contributed to various political causes.

Therefore, I recommend that the APOC maintain its current position, as expressed in the June 3, 1997 advisory opinion.

Number: AO97-19-CD

Requested by: John S. Brown, President

On Behalf of: Fairbanks Central Labor Council

Prepared by: Jenifer Kohout, Assistant Director

Date issued: June 3, 1997

Subject: Use of Gaming Permits

On November 6, 1997, the Alaska Public Offices Commission approved the following advisory opinion by a vote of 5-0.

This is in response to your August 22, 1997 letter requesting an advisory opinion regarding whether the Fairbanks Central Labor Council ("the Council") may allow a political action group to use the Council's gaming permit to conduct a raffle.

Summary

The Council may not conduct a raffle on behalf of a group formed for the purpose of political action. The campaign disclosure law prohibits unions from making political contributions.

The Law

AS 15.13.074(f) A corporation, company, partnership, firm, association, organization, business trust or surety, labor union, or publicly funded entity that does not satisfy the definition of group in AS 15.13.4000 may not make a contribution to a candidate or group.

2 AAC 50.313. Definition of a "Contribution." (a) In 2 AAC 50.310 - 2 AAC 50.405, except as otherwise provided in this section, "contribution" includes a payment, gift, subscription, loan, advance, transfer deposit of money, services, or anything of value made by a person or group for the purpose of influencing an election for state or municipal office or influencing the passage or defeat of a ballot proposition or question; and includes a personal contribution as described in 2 AAC 50.316.

In this section "anything of value" includes facilities, equipment, polling information, supplies, advertising services, membership lists, mailing lists, any item of real or personal property, and personal services of any kind, the cost or consideration for which is paid by a person other than the candidate or group for whom the services are rendered.

Facts

You indicate that the Council has possessed a State of Alaska Gaming Permit for some years. A group formed for the purpose of political action has recently requested the use of the Council's gaming permit to conduct a raffle. The proceeds of the raffle would be donated to political candidates.

When we spoke on the phone, you indicated that the Council's gaming permit allows the Council to run raffles for other nonprofit organizations. In the past, the Council has allowed other organizations to use the Council's permit. The organization using the permit orders the raffle tickets, picks them up and distributes them. As the permit holder, the Council handles the money for the actual raffle. After raffle costs are paid, you send a check for the remaining raffle proceeds to the organization using the permit. You state that as the "member in charge" you personally do the accounting. You also add that your services to the Council are volunteer.

The Manager of the Gaming Unit in the Department of Revenue, further clarified to staff that gaming permit holders may not transfer use of their gaming permits to another organization. Instead, an organization who holds a permit may conduct a raffle on behalf of a nonprofit organization. The permit holder accounts for all proceeds and then donates the money to the nonprofit organization.

Analysis

Under the campaign disclosure law, unions are now prohibited from making political contributions. This prohibition applies to the donation of money derived from the use of a union's gaming permit.

According to the head of the Gaming Unit in the Division of Income and Excise of the Department of Revenue, an organization who holds a gaming permit may not transfer its permit to another organization. Instead, a permit holder may conduct a raffle in the name of another organization and then donate the proceeds to that organization.

This arrangement is consistent with the mechanics you had described. Although the political action group you reference would buy and distribute the raffle tickets, the Council would collect all the money, pay the raffle costs, then issue a check to the political action committee for the raffle proceeds. This arrangement results in a contribution from the Council to the political action group. As a result, it is prohibited.

Conclusion

The Council may not use its gaming permit to conduct a raffle on behalf of a group formed for the purpose of political action.

Sec. ⏩15.13.010⏪. Applicability.

(a) This chapter applies

(1) in every election for governor, lieutenant governor, a member of the state legislature, a delegate to a constitutional convention, or judge seeking judicial retention;

(2) to every candidate for election to a municipal office in a municipality with a population of more than 1,000 inhabitants according to the latest United States census figures or estimates of population certified as correct for administrative purposes by the Department of Commerce, Community, and Economic Development unless the municipality has exempted itself from the provisions of this chapter; a municipality may exempt its elected municipal officers from the requirements of this chapter if a majority of the voters voting on the question at a regular election, as defined by AS 29.71.800 (20), or a special municipality-wide election called for that purpose, votes to exempt its elected municipal officers from the requirements of this chapter; the question of exemption from the requirements of this chapter may be submitted by the governing body by ordinance or by initiative election.

(b) Except as otherwise provided, this chapter applies to contributions, expenditures and communications made by a candidate, group, nongroup entity, municipality or individual for the purpose of influencing the outcome of a ballot proposition or question as well as those made to influence the nomination or election of a candidate.

(c) This chapter does not prohibit a municipality from regulating by ordinance election campaign contributions and expenditures in municipal elections, or from regulating those campaign contributions and expenditures more strictly than provided in this chapter.

(d) This chapter does not limit the authority of a person to make contributions to influence the outcome of a voter proposition submitted to the public for a vote at a municipal election. In this subsection, in addition to its meaning under AS 15.13.065 (c), "proposition" means a municipal reclassification, proposal to adopt or amend a home rule charter, a unification proposal, a boundary change proposal, or the approval of an ordinance when approval by public vote is a requirement for the ordinance.

Sec. 15.13.030. Duties of the commission.

The commission shall

(1) develop and provide all forms for the reports and statements required to be made under this chapter, AS 24.45, and AS 39.50;

(2) prepare and publish a manual setting out uniform methods of bookkeeping and reporting for use by persons required to make reports and statements under this chapter and otherwise assist candidates, groups, and individuals in complying with the requirements of this chapter;

(3) receive and hold open for public inspection reports and statements required to be made under this chapter and, upon request, furnish copies at cost to interested persons;

(4) compile and maintain a current list of all filed reports and statements;

(5) prepare a summary of each report filed under AS 15.13.110 and make copies of this summary available to interested persons at their actual cost;

(6) notify, by registered or certified mail, all persons who are delinquent in filing reports and statements required to be made under this chapter;

(7) examine, investigate, and compare all reports, statements, and actions required by this chapter, AS 24.45, and AS 39.50;

(8) prepare and publish a biennial report concerning the activities of the commission, the effectiveness of this chapter, its enforcement by the attorney general's office, and recommendations and proposals for change; the commission shall notify the legislature that the report is available;

(9) adopt regulations necessary to implement and clarify the provisions of AS 24.45, AS 39.50, and this chapter, subject to the provisions of AS 44.62 (Administrative Procedure Act); and

(10) consider a written request for an advisory opinion concerning the application of this chapter, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50.

Sec. 15.13.040. Contributions, expenditures, and supplying of services to be reported.

(a) Except as provided in (g) and (l) of this section, each candidate shall make a full report, upon a form prescribed by the commission,

(1) listing

(A) the date and amount of all expenditures made by the candidate;

(B) the total amount of all contributions, including all funds contributed by the candidate;

(C) the name, address, date, and amount contributed by each contributor; and

(D) for contributions in excess of $50 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(2) filed in accordance with AS 15.13.110 and certified correct by the candidate or campaign treasurer.

(b) Each group shall make a full report upon a form prescribed by the commission, listing

(1) the name and address of each officer and director;

(2) the aggregate amount of all contributions made to it; and, for all contributions in excess of $100 in the aggregate a year, the name, address, principal occupation, and employer of the contributor, and the date and amount contributed by each contributor; for purposes of this paragraph, "contributor" means the true source of the funds, property, or services being contributed; and

(3) the date and amount of all contributions made by it and all expenditures made, incurred, or authorized by it.

(c) The report required under (b) of this section shall be filed in accordance with AS 15.13.110 and shall be certified as correct by the group's treasurer.

(d) Every individual, person, nongroup entity, or group making an expenditure shall make a full report of expenditures, upon a form prescribed by the commission, unless exempt from reporting.

(e) The report required under (d) of this section must contain the name, address, principal occupation, and employer of the individual filing the report, and an itemized list of expenditures. The report shall be filed with the commission no later than 10 days after the expenditure is made.

(f) During each year in which an election occurs, all businesses, persons, or groups that furnish any of the following services, facilities, or supplies to a candidate or group shall maintain a record of each transaction: newspapers, radio, television, advertising, advertising agency services, accounting, billboards, printing, secretarial, public opinion polls, or research and professional campaign consultation or management, media production or preparation, or computer services. Records of provision of services, facilities, or supplies shall be available for inspection by the commission.

(g) The provisions of (a) and (l) of this section do not apply to a delegate to a constitutional convention, a judge seeking judicial retention, or a candidate for election to a municipal office under AS ⏩15.13.010 ⏪, if that delegate, judge, or candidate

(1) indicates, on a form prescribed by the commission, an intent not to raise and not to expend more than $5,000 in seeking election to office, including both the primary and general elections;

(2) accepts contributions totaling not more than $5,000 in seeking election to office, including both the primary and general elections; and

(3) makes expenditures totaling not more than $5,000 in seeking election to office, including both the primary and general elections.

(h) The provisions of (d) of this section do not apply to one or more expenditures made by an individual acting independently of any group or nongroup entity and independently of any other individual if the expenditures

(1) cumulatively do not exceed $500 during a calendar year; and

(2) are made only for billboards, signs, or printed material concerning a ballot proposition as that term is defined by AS 15.13.065(c).

(i) The permission of the owner of real or personal property to post political signs, including bumper stickers, or to use space for an event or to store campaign-related materials is not considered to be a contribution to a candidate under this chapter unless the owner customarily charges a fee or receives payment for that activity. The fact that the owner customarily charges a fee or receives payment for posting signs that are not political signs is not determinative of whether the owner customarily does so for political signs.

(j) Except as provided in (l) of this section, each nongroup entity shall make a full report in accordance with AS 15.13.110 upon a form prescribed by the commission and certified by the nongroup entity's treasurer, listing

(1) the name and address of each officer and director of the nongroup entity;

(2) the aggregate amount of all contributions made to the nongroup entity for the purpose of influencing the outcome of an election;

(3) for all contributions described in (2) of this subsection, the name, address, date, and amount contributed by each contributor and, for all contributions described in (2) of this subsection in excess of $250 in the aggregate during a calendar year, the principal occupation and employer of the contributor; and

(4) the date and amount of all contributions made by the nongroup entity, and, except as provided for certain independent expenditures in AS 15.13.135 (a), all expenditures made, incurred, or authorized by the nongroup entity, for the purpose of influencing the outcome of an election; a nongroup entity shall report contributions made to a different nongroup entity for the purpose of influencing the outcome of an election and expenditures made on behalf of a different nongroup entity for the purpose of influencing the outcome of an election as soon as the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election reach $500 in a year and for all subsequent contributions and expenditures to that nongroup entity in a year whenever the total contributions and expenditures to that nongroup entity for the purpose of influencing the outcome of an election that have not been reported under this paragraph reach $500.

(k) Every individual, person, nongroup entity, or group contributing a total of $500 or more to a group organized for the principal purpose of influencing the outcome of a proposition shall report the contribution or contributions on a form prescribed by the commission not later than 30 days after the contribution that requires the contributor to report under this subsection is made. The report must include the name, address, principal occupation, and employer of the individual filing the report and the amount of the contribution, as well as the total amount of contributions made to that group by that individual, person, nongroup entity, or group during the calendar year.

(l) Notwithstanding (a), (b), and (j) of this section, for any fund-raising activity in which contributions are in amounts or values that do not exceed $50 a person, the candidate, group, or nongroup entity shall report contributions and expenditures and supplying of services under this subsection as follows:

(1) a report under this subsection must

(A) describe the fund-raising activity;

(B) include the number of persons making contributions and the total proceeds from the activity;

(C) report all contributions made for the fund-raising activity that do not exceed $50 a person in amount or value; if a contribution for the fund-raising activity exceeds $50, the contribution shall be reported under (a), (b), and (j) of this section;

(2) for purposes of this subsection,

(A) "contribution" means a cash donation, a purchase such as the purchase of a ticket, the purchase of goods or services offered for sale at a fund-raising activity, or a donation of goods or services for the fund-raising activity;

(B) "fund-raising activity" means an activity, event, or sale of goods undertaken by a candidate, group, or nongroup entity in which contributions are $50 a person or less in amount or value.

(m) Information required under this chapter shall be submitted to the commission electronically, except that the following information may be submitted in clear and legible black typeface or hand-printed in dark ink on paper in a format approved by the commission or on forms provided by the commission:

(1) information submitted by

(A) a candidate for election to a borough or city office of mayor, membership on a borough assembly, city council, or school board, or any state office, who meets the requirements of (g)(1) - (3) of this section; or

(B) a candidate for municipal office for a municipality with a population of less than 15,000; in this subparagraph, "municipal office" means the office of an elected borough or city

(i) mayor; or

(ii) assembly, council, or school board member;

(2) any information if the commission determines that circumstances warrant an exception to the electronic submission requirement.

(n) The commission shall print the forms to be provided under this chapter so that the front and back of each page have the same orientation when the page is rotated on the vertical axis of the page.

(o) Information required by this chapter that is submitted to the commission on paper and not electronically shall be electronically scanned and published on the Internet by the commission, in a format accessible to the general public, within two working days after the commission receives the information.

(p) For purposes of (b) and (j) of this section, "contributor" means the true source of the funds, property, or services being contributed.

Sec. 15.13.067. Who may make expenditures.

Only the following may make an expenditure in an election for candidates for elective office:

(1) the candidate;

(2) an individual;

(3) a group that has registered under AS 15.13.050 ; and

(4) a nongroup entity that has registered under AS 15.13.050 .

Sec. 15.13.082. Limitations on expenditures.

(a) A candidate or group may not make an expenditure in cash that exceeds $100 unless the candidate, or the campaign treasurer or deputy campaign treasurer, obtains a written receipt from the person to whom the expenditure is made.

(b) A candidate, group, or nongroup entity may not make an expenditure unless the source of the expenditure has been disclosed as required by this chapter.

(c) If a candidate receives a contribution in the form of cash, check, money order, or other negotiable instrument and is subject to being reported to the commission under this chapter, the candidate may neither expend the contribution nor, in the case of a negotiable instrument, convert it to cash unless the candidate, campaign treasurer, or deputy campaign treasurer first records the following information for disclosure to the commission:

(1) the name, address, principal occupation, and employer of the contributor; and

(2) the date and amount of the contribution.

Sec. 15.13.084. Prohibited expenditures.

A person may not make an expenditure

(1) anonymously, unless the expenditure is

(A) paid for by an individual acting independently of any group or nongroup entity and independently of any other individual;

(B) made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065 (c); and

(C) made for

(i) a billboard or sign; or

(ii) printed material, other than an advertisement made in a newspaper or other periodical;

(2) using a fictitious name or using the name of another.

Sec. 15.13.086. Authorized makers of expenditures.

An expenditure

(1) authorized by or in behalf of a candidate may be made only by

(A) the candidate; or

(B) the candidate's campaign treasurer or a deputy campaign treasurer;

(2) authorized by AS 15.13.067 (3) by or in behalf of a group may be made only by the group's campaign treasurer.

Sec. 15.13.090. Identification of communication.

(a) All communications shall be clearly identified by the words "paid for by" followed by the name and address of the candidate, group, nongroup entity, or individual paying for the communication. In addition, candidates and groups may identify the name of their campaign chairperson.

(b) The provisions of (a) of this section do not apply when the communication

(1) is paid for by an individual acting independently of any group or nongroup entity and independently of any other individual;

(2) is made to influence the outcome of a ballot proposition as that term is defined by AS 15.13.065 (c); and

(3) is made for

(A) a billboard or sign; or

(B) printed material other than an advertisement made in a newspaper or other periodical.

Sec. 15.13.110. Filing of reports.

(a) Each candidate, group, and nongroup entity shall make a full report in accordance with AS 15.13.040 for the period ending three days before the due date of the report and beginning on the last day covered by the most recent previous report. If the report is a first report, it must cover the period from the beginning of the campaign to the date three days before the due date of the report. If the report is a report due February 15, it must cover the period beginning on the last day covered by the most recent previous report or on the day that the campaign started, whichever is later, and ending on February 1 of that year. The report shall be filed

(1) 30 days before the election; however, this report is not required if the deadline for filing a nominating petition or declaration of candidacy is within 30 days of the election;

(2) one week before the election;

(3) 105 days after a special election; and

(4) February 15 for expenditures made and contributions received that were not reported previously, including, if applicable, all amounts expended from a public office expense term account established under AS 15.13.116(a)(8) and all amounts expended from a municipal office account under AS 15.13.116 (a)(9), or when expenditures were not made or contributions were not received during the previous year.

(b) Each contribution that exceeds $250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the candidate, group, campaign treasurer, or deputy campaign treasurer. Each contribution to a nongroup entity for the purpose of influencing the outcome of an election that exceeds $250 and that is made within nine days of the election shall be reported to the commission by date, amount, and contributor within 24 hours of receipt by the nongroup entity.

(c) All reports required by this chapter shall be filed with the commission's central office and shall be kept open to public inspection. Within 30 days after each election, the commission shall prepare a summary of each report which shall be made available to the public at cost upon request. Each summary shall use uniform categories of reporting.

(d) *[Repealed, Sec. 35 ch 126 SLA 1994].*

(e) A group formed to sponsor an initiative, a referendum or a recall shall report 30 days after its first filing with the lieutenant governor. Thereafter each group shall report within 10 days after the end of each calendar quarter on the contributions received and expenditures made during the preceding calendar quarter until reports are due under (a) of this section.

(f) During the year in which the election is scheduled, each of the following shall file the campaign disclosure reports in the manner and at the times required by this section:

(1) a person who, under the regulations adopted by the commission to implement AS 15.13.100, indicates an intention to become a candidate for elective state executive or legislative office;

(2) a person who has filed a nominating petition under AS 15.25.140 - 15.25.200 to become a candidate at the general election for elective state executive or legislative office;

(3) a person who campaigns as a write-in candidate for elective state executive or legislative office at the general election; and

(4) a group or nongroup entity that receives contributions or makes expenditures on behalf of or in opposition to a person described in (1) - (3) of this subsection, except as provided for certain independent expenditures by nongroup entities in AS 15.13.135 (a).

Sec. 15.13.111. Preservation of records.

(a) Each candidate, group, nongroup entity, or person required to report under this chapter shall preserve all records necessary to substantiate information required to be reported under this chapter for a period of six years from the date of the election for which the information was required to be reported, unless the records have been submitted to the commission under (c) of this section.

(b) Information preserved under (a) of this section must be made available for inspection by the commission.

(c) A candidate for state elected office who was not elected or a person who has left state elected office may submit the records required to be preserved under (a) of this section to the commission electronically. Records submitted under this subsection shall be preserved by the commission for a period of six years from the date of the election for which the information was required to be reported.

Sec. 15.13.135. Independent expenditures for or against candidates.

(a) Only an individual, group, or nongroup entity may make an independent expenditure supporting or opposing a candidate for election to public office. An independent expenditure supporting or opposing a candidate for election to public office, except an independent expenditure made by a nongroup entity with an annual operating budget of $250 or less, shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter.

(b) An individual, group, or nongroup entity who makes independent expenditures for a mass mailing, for distribution of campaign literature of any sort, for a television, radio, newspaper, or magazine advertisement, or any other communication that supports or opposes a candidate for election to public office

(1) shall comply with AS 15.13.090 ; and

(2) shall place the following statement in the mailing, literature, advertisement, or other communication so that it is readily and easily discernible:

This NOTICE TO VOTERS is required by Alaska law. (I/we) certify that this (mailing/literature/advertisement) is not authorized, paid for, or approved by the candidate.

Sec. 15.13.140. Independent expenditures for or against ballot proposition or question.

(a) This chapter does not prohibit a person from making independent expenditures in support of or in opposition to a ballot proposition or question.

(b) An independent expenditure for or against a ballot proposition or question

(1) shall be reported in accordance with AS 15.13.040 and 15.13.100 - 15.13.110 and other requirements of this chapter; and

(2) may not be made if the expenditure is prohibited by AS 15.13.145 .

Sec.15.13.400. Definitions

In this chapter,

(1) "candidate"

(A) means an individual who files for election to the state legislature, for governor, for lieutenant governor, for municipal office, for retention in judicial office, or for constitutional convention delegate, or who campaigns as a write-in candidate for any of these offices; and

(B) when used in a provision of this chapter that limits or prohibits the donation, solicitation, or acceptance of campaign contributions, or limits or prohibits an expenditure, includes

(i) a candidate's campaign treasurer and a deputy campaign treasurer;

(ii) a member of the candidate's immediate family;

(iii) a person acting as agent for the candidate;

(iv) the candidate's campaign committee; and

(v) a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of the candidate;

(2) "commission" means the Alaska Public Offices Commission;

(3) "communication" means an announcement or advertisement disseminated through print or broadcast media, including radio, television, cable, and satellite, the Internet, or through a mass mailing, excluding those placed by an individual or nongroup entity and costing $500 or less and those that do not directly or indirectly identify a candidate or proposition, as that term is defined in AS 15.13.065(c);

(4) "contribution"

(A) means a purchase, payment, promise or obligation to pay, loan or loan guarantee, deposit or gift of money, goods, or services for which charge is ordinarily made and that is made for the purpose of influencing the nomination or election of a candidate, and in AS ⏩15.13.010⏪ (b) for the purpose of influencing a ballot proposition or question, including the payment by a person other than a candidate or political party, or compensation for the personal services of another person, that are rendered to the candidate or political party;

(B) does not include

(i) services provided without compensation by individuals volunteering a portion or all of their time on behalf of a political party, candidate, or ballot proposition or question;

(ii) ordinary hospitality in a home;

(iii) two or fewer mass mailings before each election by each political party describing the party's slate of candidates for election, which may include photographs, biographies, and information about the party's candidates;

(iv) the results of a poll limited to issues and not mentioning any candidate, unless the poll was requested by or designed primarily to benefit the candidate;

(v) any communication in the form of a newsletter from a legislator to the legislator's constituents, except a communication expressly advocating the election or defeat of a candidate or a newsletter or material in a newsletter that is clearly only for the private benefit of a legislator or a legislative employee; or

(vi) a fundraising list provided without compensation by one candidate or political party to a candidate or political party;

(5) "electioneering communication" means a communication that

(A) directly or indirectly identifies a candidate;

(B) addresses an issue of national, state, or local political importance and attributes a position on that issue to the candidate identified; and

(C) occurs within the 30 days preceding a general or municipal election;

(6) "expenditure"

(A) means a purchase or a transfer of money or anything of value, or promise or agreement to purchase or transfer money or anything of value, incurred or made for the purpose of

(i) influencing the nomination or election of a candidate or of any individual who files for nomination at a later date and becomes a candidate;

(ii) use by a political party;

(iii) the payment by a person other than a candidate or political party of compensation for the personal services of another person that are rendered to a candidate or political party; or

(iv) influencing the outcome of a ballot proposition or question;

(B) does not include a candidate's filing fee or the cost of preparing reports and statements required by this chapter;

(C) includes an express communication and an electioneering communication, but does not include an issues communication;

(7) "express communication" means a communication that, when read as a whole and with limited reference to outside events, is susceptible of no other reasonable interpretation but as an exhortation to vote for or against a specific candidate;

(8) "group" means

(A) every state and regional executive committee of a political party; and

(B) any combination of two or more individuals acting jointly who organize for the principal purpose of influencing the outcome of one or more elections and who take action the major purpose of which is to influence the outcome of an election; a group that makes expenditures or receives contributions with the authorization or consent, express or implied, or under the control, direct or indirect, of a candidate shall be considered to be controlled by that candidate; a group whose major purpose is to further the nomination, election, or candidacy of only one individual, or intends to expend more than 50 percent of its money on a single candidate, shall be considered to be controlled by that candidate and its actions done with the candidate's knowledge and consent unless, within 10 days from the date the candidate learns of the existence of the group the candidate files with the commission, on a form provided by the commission, an affidavit that the group is operating without the candidate's control; a group organized for more than one year preceding an election and endorsing candidates for more than one office or more than one political party is presumed not to be controlled by a candidate; however, a group that contributes more than 50 percent of its money to or on behalf of one candidate shall be considered to support only one candidate for purposes of AS 15.13.070 , whether or not control of the group has been disclaimed by the candidate;

(9) "immediate family" means the spouse, parents, children, including a stepchild and an adoptive child, and siblings of an individual;

(10) "independent expenditure" means an expenditure that is made without the direct or indirect consultation or cooperation with, or at the suggestion or the request of, or with the prior consent of, a candidate, a candidate's campaign treasurer or deputy campaign treasurer, or another person acting as a principal or agent of the candidate;

(11) "individual" means a natural person;

(12) "issues communication" means a communication that

(A) directly or indirectly identifies a candidate; and

(B) addresses an issue of national, state, or local political importance and does not support or oppose a candidate for election to public office.

(13) "nongroup entity" means a person, other than an individual, that takes action the major purpose of which is to influence the outcome of an election, and that

(A) cannot participate in business activities;

(B) does not have shareholders who have a claim on corporate earnings; and

(C) is independent from the influence of business corporations.

(14) "person" has the meaning given in AS 01.10.060 , and includes a labor union, nongroup entity, and a group;

(15) "political party" means any group that is a political party under AS 15.60.010 and any subordinate unit of that group if, consistent with the rules or bylaws of the political party, the unit conducts or supports campaign operations in a municipality, neighborhood, house district, or precinct;

(16) "publicly funded entity" means a person, other than an individual, that receives half or more of the money on which it operates during a calendar year from government, including a public corporation.

Chapter 15.15. ELECTIONS AND BALLOTS

April 9, 2010

Dear Chairman Ramras and Members of the House Judiciary Committee,

I am writing to share concerns my organization, the Center for Competitive Politics (CCP), has regarding Senate Bill 284, a bill that seriously restricts Alaskans' right to free speech.

CCP is a nonpartisan, nonprofit organization focused on promoting and protecting the First Amendment political rights of speech, assembly, and petition. It was founded in 2005 by Bradley A. Smith, a former member and chairman of the Federal Election Commission.

This bill restricts the right to free speech by requiring extensive disclaimer statements on political advertisements. Such requirements infringe on the amount of time a candidate or political committee can spend conveying their message, effectively establishing limits on the amount of speech that can take place.

The Supreme Court held in *Buckley v. Valeo* that independent expenditures are a protected form of speech and have significant protections from burdensome government regulation.[1] Passage of this bill would likely set the stage for an unsuccessful and costly legal battle for the state of Alaska.

In *Buckley*, the Supreme Court struck down limits on independent expenditures. The Court issued a per curium decision, stating:

> While the independent expenditure ceiling thus fails to serve any substantial governmental interest in stemming [424 U.S. 1, 48] the reality or appearance of corruption in the electoral process, it heavily burdens core First Amendment expression. For the First Amendment right to ""speak one's mind . . . on all public institutions"" includes the right to engage in ""vigorous advocacy' no less than `abstract discussion.""[2]

The Court recently reaffirmed in *Citizens United v. Federal Election Commission* that raising barriers to speech constitutes a violation of the First Amendment, and mandating the content of a speaker's advertisement in the way proposed in the bill would certainly impose such a burden.[3]

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[1] *Buckley v. Valeo*, 424 U.S. 1 (1976).
[2] *Buckley v. Valeo*, 424 U.S. 1 (1976) quoting *New York Times Co. v. Sullivan*, 376 U.S., at 269 , quoting *Bridges v. California*, 314 U.S. 252, 270 (1941), and *NAACP v. Button*, 371 U.S., at 429.
[3] *Citizens United v. Federal Election Commission*, 558 U.S. 50 (2010).

Moreover, the nonpartisan Congressional Research Service published a recent report that warned disclaimers could be proposed that would be too onerous to survive legal challenge:

> If a disclaimer requirement was so burdensome that it impeded the ability of a corporation to speak–for example, a requirement that a disclaimer compromise an unreasonable amount of time–a court might conclude that it is a violation of a corporation's free speech rights under *Citizens United*.[4]

SB 284 also conflicts with the Supreme Court's jurisprudence on disclosure. While disclosure requirements were upheld in the recent Citizens United decision, the measures proposed here go further than what was addressed by requiring a disclaimer to include the names of the top five donors to a group running political ads. The top five donors, however, did not necessarily aid in furthering that ad, and for that reason there is no reason to disclose their identities.

To punish members of a group by compelling their disclosure is to offend the rights of association and speech engendered in the First Amendment. In *NAACP v. Alabama*, the Court recognized that compelled disclosure laws that effectively make these rights mutually exclusive are constitutionally invalid.

The Supreme Court ruled in *Buckley* that the regulation of political speech and association is justifiable only when its purpose is to "provide the electorate with information...to aid the voters in evaluating those who seek federal office" and to "deter actual corruption and [its] appearance...by exposing large contributions and expenditures to the light of publicity."[5]

SB 284 fails to satisfy any of these interests by requiring superfluous information in disclaimers that serve no useful purpose and will ultimately diminish the amount of political speech rather than enlighten the average citizen. I hope you find this information valuable as you consider SB 284. Should you have any further questions regarding this bill or other campaign finance proposals, please do not hesitate to contact me at (703) 894-6822 or by email at lrenz@campaignfreedom.org.

Sincerely,

Laura Renz

Laura Renz
Research and Government Relations Director

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[4] Congressional Research Service, "Legislative Options After *Citizens United v. FEC*: Constitutional and Legal issues." March 2010.
[5] *Buckley v. Valeo*, 424 U.S. 1 (1976).

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April 7, 2010

The Honorable Jay Ramras, Chair
House Judiciary Committee
Alaska Capitol, Room 118
Juneau, AK 99801-1182

RE: SB 284 (Senate Judiciary Committee)--Support

Dear Chair Ramras:

On behalf of the members of AARP in Alaska, we encourage you and your colleagues on the House Judiciary Committee to support SB 284, sponsored by the Senate Judiciary Committee.

AARP believes transparency is critical to government integrity and civic engagement. Openness is a fundamental feature of democracies and governmental operations, including elections, should operate in public view.

The ability of government to respond to the concerns of citizens, promote the public interest, and retain public confidence in its fairness, competence, and relevance is dependent in large measure on adhering to policies that promote and sustain integrity.

Unfortunately, trust in government is extremely low. Whether true or not, government officials and processes are often viewed as more responsive to the concerns of moneyed special interests than those of the general public.

SB 284 will not solve the entire credibility problem. However, SB 284 will get us closer to restoring confidence in government and transparency in elections and campaigns.

SB 284 will help ensure clarity and honesty in election advertising, including requiring meaningful descriptions of who has paid for an ad.

AARP requests an "AYE" vote on SB 284.

Should you have any questions about our position, please feel free to contact me (586-3637) or Patrick Luby, AARP Advocacy Director (907-762-3314).

Thank you for your consideration.

Sincerely,

Marie Darlin

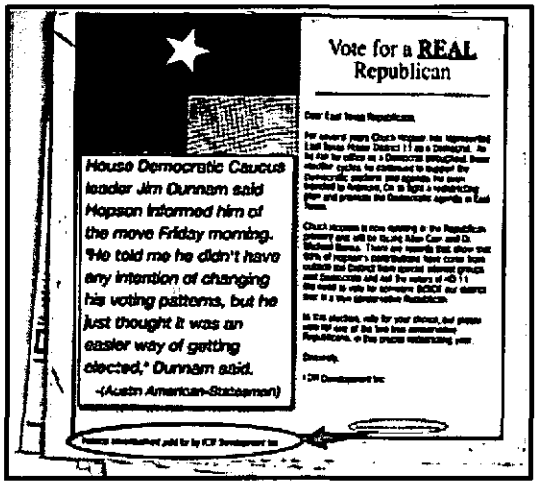
Marie Darlin, Coordinator
AARP Capital City Task Force
415 Willoughby Avenue, Apt. 506
Juneau, AK 99801
586-3637 (voice)
463-3580 (fax)

CC: Vice-Chair Nancy Dahlstrom
Representative Bob Herron
Representative Carl Gatto
Representative Bob Lynn
Representative Max Gruenberg
Representative Lindsey Holmes
Senator Hollis French

THE TEXAS TRIBUNE

The First Corporate Ad

by Ross Ramsey
March 22, 2010



The KDR Development Inc. advertisement that ran in the Panola Watchman

The first political ads bought by a corporation in Texas appeared in East Texas newspapers just weeks after the U.S. Supreme Court effectively ended the state's ban on that kind of spending.

The ads appear to mark the first instance of a corporation directly playing in a Texas election since the nation's highest court lifted a century-old ban on political spending by corporations and labor unions. That January ruling — in *Citizens United v. Federal Election Commission* — doesn't affect contributions to candidates, which remain restricted. But it does mean corporations and unions can spend money as they wish on politics and run all the ads they want, so long as they don't coordinate their efforts, messages and plans with the campaigns they're promoting or with other third-party groups that have similar political interests.

The ads in the *Jacksonville Daily Progress*, the *Tyler Morning Telegram* and the *Panola Watchman* took issue with the Republican bona fides of state Rep. Chuck Hopson of Jacksonville, a Democratic incumbent who jumped to the GOP in November and ran in a three-way race in the Republican primary this month. He got 61 percent of the vote, easily besting Michael Banks and Allan Cain.

The newspaper ads ran in Jacksonville and Tyler on the Sunday before the election and a week earlier in Panola, and they urged voters to choose anyone but Hopson. They were paid for by KDR Development Inc., a real estate company whose president, Republican Larry Durrett, lost to Hopson in 2006, when Hopson was still a Democrat. Durrett is also the president of Southern Multifoods, a Jacksonville-based company with dozens of franchised Taco Bell, KFC, Pizza Hut, A&W and Long John Silvers restaurants. The two companies are closely related, sharing addresses, officers and directors.

"I think we're on solid legal ground," Durrett said in an interview. "We checked it out every way from Sunday."

At least one paper — the *Longview News-Journal* — had reservations. "The disclaimer wasn't complete, and then we saw that it was a corporate ad," said Alan Todd, the paper's advertising director. "When we questioned it, [the buyer] pulled the ad."

Durrett wanted to run ads against Hopson and had been reading and hearing about the Supreme Court ruling on corporate politicking. He checked with a lawyer in Tyler, who sent him to a specialist in Austin, did "a significant amount of discussion about this," and then went to the papers with the ads. "My businesses do better under conservative people and not under people who aren't," he said. "There are an awful lot of folks on the Republican side of the House who aren't all that conservative, and that's an irritant." He felt the other two candidates were more conservative than Hopson.

He used corporate money for a simple reason. "You take the money out of the pocket that's got some money in there," he said.

Durrett doesn't consider Hopson's win a complete loss for his side: "If you continue to point out that people aren't as conservative as you are, it moves them to the right."

The ad has a quote on one side, and the copy on the other is standard fare for a House race, written in the form of a letter.

The quote, from the *Austin American-Statesman*: "House Democratic Caucus leader Jim Dunnam said Hopson informed him of the move Friday morning. 'He told me he didn't have any intention of changing his voting patterns, but he just thought it was an easier way of getting elected,' Dunnam said."

The letter:

> Dear East Texas Republicans,
>
> For several years Chuck Hopson has represented East Texas House District 11 as a Democrat. As he ran for office as a Democrat throughout these election cycles, he continued to support the Democratic platform and agenda. He even traveled to Ardmore, OK to fight a redistricting plan and promote the Democratic agenda in East Texas.
>
> Chuck Hopson is now running in the Republican primary and will be facing Allan Cain and Dr. Michael Banks. There are records that show that 90% of Hopson's contributions have come from outside the District from special interest groups and Democrats and not the voters of HD 11. We need to vote for someone INSIDE our district that is a true conservative Republican.
>
> In this election, vote for your choice, but please vote for one of the two true conservative Republicans, in this crucial redistricting year.
>
> Sincerely,
>
> KDR Development Inc

Before the Supreme Court ruling, that would have been an illegal ad in Texas, purely based on the corporate funding. So long as KDR didn't work with the campaigns or with anyone else on the copy, it now appears to be the sort of direct corporate expenditure the Supremes are protecting.

"It raised some issues with us, and I asked some people in the organization to look at it," said Amy Miller, publisher of the *Daily Progress*. In the end, the paper decided to accept the ad: "It's a pre-paid political ad, and I didn't see anything wrong with it."

The ad does bear some similarities to printed mailers sent by others. Cain, for instance, used that same quote from Dunnam in a mailer that also carried the "Hopson is not conservative" theme. Former state Sen. Drew Nixon, R-Carthage, paid for ads in the race, too, using that Dunnam quote again and a chart very similar to that used in Cain's flyer. Signed by three of the four GOP county chairs in the district, it was more direct in its hit on the party-switcher: "Make no mistake, Chuck Hopson is a Democrat."

But as long as the corporation wasn't in league with anyone else, they appear to be the first example of what might be possible under the court's ruling. The Texas Ethics Commission, which regulates these things, is still working on a full opinion of this new world of campaign finance. The agency posted its first impression online right after the court issued its ruling:

> "... We believe the Texas Legislature intended laws under our jurisdiction to prohibit political expenditures by corporations to the full extent allowed by the Constitution, as interpreted by the United States Supreme Court. In light of the recently issued United States Supreme Court ruling in Citizens United v. Federal Election Commission, it is our position that corporations are allowed to make all types of direct campaign expenditures ... It is also our position that corporations are still prohibited from making political contributions unless specifically allowed..."

TEC now has a draft opinion in circulation — not yet voted out by its board — that goes further: "For the reasons stated in Citizens United, we cannot ... prohibit a corporation or labor organization from making a direct campaign expenditure or ... prohibit an individual or other association from making a direct campaign expenditure."

They can still block corporations and labor organizations from making contributions to candidates, but they can't do anything if those outfits want to spend money for or against the candidates without the candidates' knowledge.

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CONSERVATIVE PATRIOTS GROUP

Conservative Patriots Group, Inc.
1830 E. Parks Hwy. A-113 #535 *3705 Arctic Blvd. #2503*
Wasilla, AK 99654(Hdq) *Anchorage, AK 99503*
email: cpg@conservativepatriotsgroup.org
www.conservativepatriotsgroup.org

Date: April 1, 2010

To: All Alaska State Senators

From: Frank Bettine, In-House Counsel

I urge you to vote against SB284 unless it is modified substantially. SB284 needs to be completely rewritten. The Supreme Court in Citizens United v. FEC made it clear that it did not want corporations subject to the same reporting requirements as a PAC otherwise it would have simply held that corporations could speak through a PAC. Yet, the legislation as written imposed more reporting requirements on a corporation than it does a PAC. A PAC is a creature of the APOC. A corporation is not. It comes into existence without any approval of the APOC.

Sec. 4. AS 15.13.040(e):

Paragraphs (3) – delete in its entirety. A corporation should not be required to submit this information. Who or what the corporation opposes or supports will be evident in its advocacy ads.

Paragraphs (4) – delete in its entirety. This information is available online at State of Alaska, Corporations division.

Paragraphs (5) – This paragraph is an insult to every Alaskan. Alaskan should not be required to give up their right to privacy for making a small donation to support a candidate or ballot initiative. The right of an individual to participate in the political process is a fundamental right. We zealously guard our right to cast a ballot in secret for the candidate or ballot initiative of our choice. Alaska Constitution provides a heightened right to privacy. Why should an individual be required to give up that right for contributing a mere $100, which is less than the cost of filling up your favorite pickup truck with gas. This number must be much greater than $100, something more like a $1000.

Also this paragraph must be modified to allow an individual to contribute to multiple candidates or initiatives without invoking the reporting requirements. For example, if a corporation is running ads to support two candidates an individual should be able to contribute up to $1000 per candidate before triggering reporting requirements. Otherwise a corporation would be treated differently than a PAC. For example if a PAC existed for each candidate, an individual could contribute to both PACs up to the amount that triggered reporting requirements, without having to report the contributions.

Also this limit must be per race. For example if I contribute $1000 to candidate X in the primary election, I should be allowed to contribute another $1000 to candidate X in the general election without triggering reporting requirements.

Sec. 13. AS 15.13.090 – working on an amendment

Paragraph (2)(a)&(b) – delete in its entirety. This paragraph imposes more requirements on a corporation than on a PAC. PACs are not required to report this information and in fact are not even required to report the name of the campaign person.

Paragraph (2)(c) – delete any requirement that this information be provided on ads and instead require that the corporations, PAC, etc. maintain a website that provides this information and only require that the website address be given. The same for any other sections of the legislation that require this information to be included. Otherwise just the mandatory disclosure/disclosure requirement on an ad placed on the radio by CPG might look like this:

AD . . .

This advertisement is paid for by Conservative Patriots Group, Inc. (address), (city) and approved by its President (name); Contributors Mr. M (address) (city), Mr. N (address) (city), Mr. O (address) (city), Mr. P (address) (city), Mr. Q (address) (city). This NOTICE TO VOTERS is required by Alaska law. I certify that this advertisement is not authorized, paid for, or approved by the candidate.

This is a bit much for a disclosure/disclosure statement, considering most radio/tv ads run 30 to 60 seconds.

I suggest the disclaimer be reduced to the following:

AD . . .

This advertisement is paid for by Conservative Patriots Group, Inc. (address), (city). This advertisement is not authorized, paid for, or approved by the candidate. Visit www.conservativepatriotsgroup.org for additional mandatory disclosure information.

Sincerely,

Frank Bettine

Frank Bettine

The examples below are for illustration purposes only and should NOT be construed as any type of instruction or approval of activity for any entity. ***These are for discussion purposes only with respect to Section 14, page 8, lines 7-11.***

Section 14, page 8 (d) of the bill requires the following elements be read when using audio media for independent expenditures:

This communication was paid for by (person's name). I am (name and, if applicable, title of the principal officer of the person) and I approve this message. The top contributors of (person's name) are (the name of the largest contributors to the person under AS 15.13.090(a)(2)(C).

Scenario 1: **Oil Company A** makes an independent expenditure for a ballot initiative from its political activities account that comes from its general treasury. The company's disclaimer for this would be: This communication was paid for by **Oil Company A**. I am **John Doe, President of Oil Company A** and I approve this message. The top contributors of **Oil Company A** are: ***this would not be necessary since the expenditure comes from the general treasury and is not a result of a specific solicitation or contribution for the ballot initiative.***

Scenario 2: **Alumni Association B** makes independent expenditures in support of a ballot initiative from its political activities account that comes from its general treasury, which is comprised of general contributions from its membership. The Association's disclaimer for this would be: This communication was paid for by **Alumni Association B**. I am **Mary Smith, President of Alumni Association B** and I approve this message. The top contributors of **Alumni Association B** are: ***this would not be necessary since the expenditure comes from the general treasury and is not a result of a specific solicitation or contribution for the ballot initiative.***

Scenario 3: **Alumni Association B** makes independent expenditures in support of a ballot initiative from its political activities account with funds it has solicited via a mass mailing to its members asking for contributions to support the initiative. Funds for the expenditures are also generated from a place on the Association's web site asking for contributions to support the initiative. The Association's disclaimer for any expenditure paid for by these contributions would be: This communication was paid for by **Alumni Association B**. I am **Mary Smith, President of Alumni Association B** and I approve this message. The top contributors of **Alumni Association B** are Shirley Smith, Carey Doe, Daniel Makey, Karen Larson, Tom Jones.

Scenario 4: **Labor Union Y** makes independent expenditures opposing a candidate in an election from its political activities account with funds from its general treasury, which is comprised of general contributions from its membership. The labor union's disclaimer for these independent campaign expenditures paid for by general member contributions would be: This communication was paid for by **Labor Union Y**. I am **Carl Jones, President of Labor Union Y** and I approve this message. The top contributors of Labor Union Y are: ***this would not be necessary since the expenditure comes from the general treasury and is not a result of a specific solicitation or contribution for the ballot initiative.***

Scenario 5: **Cruise Ship Company Z** makes independent expenditures supporting a candidate in an election from its political activities account with funds it has solicited via a request for contributions seeking to support the candidate in a speech made at an industry meeting. The company also receives contributions for this independent expenditure from a number of donors who make it clear both on their checks and in an accompanying letter that the money is being donated for use in ads supporting the candidate. The Cruise ship's disclaimer for any expenditure paid for by these contributions would be: This communication was paid for by **Cruise Ship Company Z**. I am **John Smith, CEO of Cruise Ship Company Z** and I approve this message. The top contributors of Cruise **Ship Company Z** are Shirley Smith, Carey Doe, Daniel Makey, Karen Larson, Tom Jones.

SB 303

Senator Joe Paskvan

Alaska State Senate • District E • Fairbanks • Ft Wainwright

Sponsor Statement
Senate Bill 303
Workers' Compensation and Contractors

From statehood and for decades afterward, Alaska's workers' compensation statutes promoted safety in the workplace by providing for actions by injured employees against those on the jobsite, other than their own employer, whose fault caused the employee's injury.

Most Alaskans are shocked, then, to learn that the exclusive liability provisions of AS 23.30.055, established in 2004, protect a project owner or general contractor from any liability when a subcontractor's employee is injured or killed, even when the project owner or general contractor acts with criminal negligence, when that criminal negligence is defined, in part, as, "the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

Senate Bill 303 seeks to return to the previous system which allowed for accountability and responsibility for wrongful conduct.

A fundamental principle when speaking to the concept of personal responsibility is: If you break it, you pay for it. This fundamental principle is thought of as a guiding standard and it is advanced as a family value worthy of passing from parent to child. We expect that if others do something wrong to us that the wrongdoer will be responsible and, correspondingly, if we do something wrong to another that we will be responsible.

In the common application of this fundamental principle to driving a vehicle, we expect that if we fail to stop for a red light and hurt someone that we will be responsible and that if someone else runs a red light that they will be responsible to us for the harm caused to a son, daughter, family member, or other loved one.

Just like responsible operators of motor vehicles know that they must follow the rules of the road (e.g., stopping for red lights), employers know that they must generally comply with state and federal codes, regulations, and laws relating to workplace safety, and are also subject to additional common law or statutory duties and responsibilities. Likewise, project owners, contractors and other entities have legal duties and responsibilities relating to the safety of workers.

Alaska has a system whereby the fault is apportioned so there can never be the worry that anyone will ever be responsible for more than their just share of the fault. However, where the project owner and/or contractor is at fault, but is nevertheless indemnified by the employer or granted immunity through legislation, the employer is left bearing the burden of the conduct of the project owner and/or contractor, and the project owner and/or contractor is not required to take any personal responsibility for its own actions.

In Juneau:
State Capitol, Juneau, AK 99801
(907) 465-3709 Office • (907) 465-4714 Fax

senator_joe_paskvan@legis.state.ak.us

In Fairbanks:
1292 Sadler Way, Ste. 308 Fairbanks, AK 99701
(907) 451-4347 Office • (907) 451-4348 Fax

Workers compensation has always been a system under which harm is only partially compensated. For example, if an unmarried worker without children is killed, the compensation benefits are modest funeral expenses only.

A common argument against the system prior to 2004 relates to the objection to "double dipping." However, prior to 2004, the monies recovered by the injured employee reimbursed the employer's compensation carrier for the benefits paid to the injured employee under the workers' compensation system; therefore, eliminating any notion of "double dipping."

I urge your support of this legislation.

FISCAL NOTE

STATE OF ALASKA
2010 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: SB 303
(S) Publish Date: 4/2/10

Identifier (file name): SB303-DOLWD-WC-03-22-10
Title: Workers' Compensation and Contractors
Sponsor: (S) L&C
Requester: (S) L&C

Dept. Affected: Labor and Workforce Development
RDU: Workers' Compensation
Component: Workers' Compensation
Component Number: 344

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2011**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**	**FY 2016**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	0.0	0.0	0.0	0.0	0.0	0.0	0.0
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

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

Estimate of any current year (FY2010) cost: None

POSITIONS

Full-time							
Part-time							
Temporary							

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

There is no anticipated fiscal impact to the department as a result of this legislation.

Prepared by: Trena Heikes, Director — Phone 465-6059
Division: Workers' Compensation — Date/Time 3/22/10 8:44 AM
Approved by: Click Bishop, Commissioner — Date 3/22/10
Agency: Department of Labor and Workforce Development

(Revised 11/6/2009 OMB)

3622

LEGAL SERVICES

DIVISION OF LEGAL AND RESEARCH SERVICES
LEGISLATIVE AFFAIRS AGENCY
STATE OF ALASKA

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

State Capitol
Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 25, 2010

SUBJECT: Workers' compensation; exclusive liability for project owners and contractors (SB 303, Work Order No. 26-LS1089\R)

TO: Senator Joe Paskvan
Chair of the Senate Labor and Commerce Committee
Attn: Jeff Stepp

FROM: Dennis C. Bailey
Legislative Counsel

This memorandum is in response to your request for a memo that provides short answers to the questions posed in the memorandum to your office dated March 23, 2010, and an additional question related to whether the exclusive remedy provisions of AS 23.30.055 apply when the actions of an owner or contractor constitute criminal negligence.[1]

1. May an owner or general contractor assert the exclusive remedy of the Alaska Workers Compensation Act, based on the last sentence of AS 23.30.055, to avoid liability for an injury to an employee of a subcontractor that occurs during employment?

The short answer is yes, based on the analysis in my prior memorandum.

2. Are the "intentional injury" and "illegally employed minor" exceptions the only recognized exception to the workers' compensation exclusive remedy statute?

The short answer is yes.[2]

3. Do the exclusive remedy provisions of AS 23.30.055 protect a project owner or general contractor from liability for the injuries to a subcontractor's employee if the owner or general contractor acts with criminal negligence?[3]

---

[1] My conclusions are based on existing law, not addressing the changes to AS 23.30.055 proposed in SB 303.

[2] My research of the Alaska case law did not reveal an additional exception to AS 23.30.055.

[3] The material provided describes criminal negligence as follows: "the risk must be of such a nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation."

The short answer is yes.[4]

4. Do the exclusive remedy provisions of AS 23.30.055 protect an employer who intentionally injures an employee, or who violates child labor law?

The short answer is no, based on the analysis in my previous memo.

If I may be of further assistance, please advise.

DCB:med
10-057.med

---

[4] I am unable to locate caselaw, an administrative opinion, or an attorney general opinion in Alaska that addressed criminally negligent conduct in the context of a workers compensation claim. Absent intentional conduct, it is unlikely that a court would find criminally negligent conduct on the part of an employer to be the kind of conduct that should be outside of the operation of workers' compensation statutes. See 6-103 *Larson's Workers' Compensation Law*, sec. 103.03

LEGAL SERVICES

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Juneau, Alaska 99801-1182
Deliveries to: 129 6th St., Rm. 329

MEMORANDUM March 23, 2010

SUBJECT: Questions regarding workers' compensation exclusive remedy provisions (SB 303, Work Order No. 26-LS1089\R)

TO: Senator Joe Paskvan
Chair of the Senate Labor and Commerce Committee
Attn: Jeff Stepp

FROM: Dennis C. Bailey
Legislative Counsel

This memorandum responds to your questions concerning the exclusive liability provisions of the existing Alaska Workers' Compensation Act.

May an owner or a general contractor assert the exclusive remedy provisions of the Alaska Workers' Compensation Act to avoid liability for an injury to an employee of a subcontractor that occurs during employment?[1]

AS 23.30.055 sets out the exclusive liability provisions in the Alaska Workers' Compensation Act; the section reads:

> **Sec. 23.30.055. Exclusiveness of liability.**
> The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022. However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action, the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence

[1] Workers' compensation is "payable irrespective of fault as cause for the injury." AS 23.30.045(b).

> of the employee. In this section, "employer" includes, in addition to the meaning given in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially liable for securing payment of compensation.

Under AS 23.30.055, an employer's liability to secure workers' compensation under AS 23.30.045[2] is the exclusive liability of an employer for an injury to the employee. The last sentence of AS 23.30.055 adds to the definition of an "employer" a person who is potentially liable for securing workers' compensation payment. Under AS 23.30.045(a), a subcontractor, a contractor, or a project owner are each potentially liable for securing workers' compensation payments; therefore, any of them may assert the exclusive liability provisions of AS 23.30.055 as a defense.

Do the exclusive remedy provisions of AS 23.30.055 protect an employer who intentionally injures an employee or who violates child labor laws?

The Alaska Supreme Court has recognized an intentional injury exception to the exclusive remedy provisions in AS 23.30.055. The Alaska Supreme court has

> held that [the] exclusive remedy provision does not apply where an employee commits an intentional tort against a fellow worker. We found that the "socially beneficial purpose of the work[ers'] compensation law

---

[2] AS 23.30.045 provides:

> **Sec. 23.30.045. Employer's liability for compensation.**
>
> (a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. If the employer is a subcontractor and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of the compensation to employees of the contractor and employees of a subcontractor, as applicable.
>
> . . .
>
> (f) In this section,
>
> (1) "contractor" means a person who undertakes by contract performance of certain work for another but does not include a vendor whose primary business is the sale or leasing of tools, equipment, other goods, or property;
>
> (2) "project owner" means a person who, in the course of the person's business, engages the services of a contractor and who enjoys the beneficial use of the work;
>
> (3) "subcontractor" means a person to whom a contractor sublets all or part of the initial undertaking.

> would not be furthered by allowing a person who commits an intentional tort to use the compensation law as a shield against liability." We have permitted recovery for intentional torts "on the theory that the harm is not accidental and therefore not covered by the act."

Fenner v. Municipality of Anchorage, 53 P.3d 573, 575 (Alaska 2002) (internal cites omitted). The exception is limited to those cases where an employer has a specific intent to injure an employee. *Id.* at 577. *See also Williams v. Mammoth of Alaska*, 890 P.2d 581 (Alaska 1995) (exclusive remedy bars employee's common law tort claim against partner where partner's negligence arises within partnership business); *Elliott v. Brown*, 569 P.2d 1323 (Alaska 1977) (where employer hit and shoved employees, actions were intentional enough to take case outside workers' compensation system); *Van Bien v. ERA Helicopters, Inc.*, 779 P.2d 315 (Alaska 1979) (aviation firm dispatching pilots without adequate sleep was gross negligence or wilful and knowing violation of FAA regulations, but not the type of intentional tort actionable outside of the workers' compensation system).

With regard to your question concerning the application of child labor laws to the exclusive liability provisions of the Alaska Workers' Compensation Act, if an employer violates child labor laws, AS 23.30.055 does not bar a common law action for damages brought against an employer by a person who was employed in violation of child labor laws at the time of the injury. *Whitney-Fidalgo Seafoods, Inc. v. Beukers*, 554 P.2d 250 (Alaska 1976).

In the *Beukers* case, the Alaska Supreme Court found that the Alaska Workers' Compensation Act does not specifically address the question which remedies are available to illegally employed minors injured in the course of their employment. *Id.* at 252. However, the court held, as a matter of public policy, that

> where an employer has knowingly entered into an illegal contract of employment with a child, in express violation of a statute, the employer will not be permitted to insist that a child is an "employee" within the terms of the workmen's compensation act, so that the child can no longer assert its common law rights against the employer.

Id. at 253.

If I may be of further assistance, please advise.

DCB:ljw
10-207.ljw

Patrick A. Thompson
3814 Spring Coulee Rd
Bellingham, WA 98226
(360) 933-1210
patthompson58@yahoo.com

Re: Senate Bill 303

Dear Senator Paskvan:

First let me thank you for your efforts in trying to correct an unfair provision in the worker's compensation law, passed during the corrupt reign of Bill Allen, which provides immunity to project owners or general contractors from fairly compensating a worker injured by the direct negligence of a project owner or general contractor.

My name is Pat Thompson, age 52, and I am an example of how this law you are trying to change can destroy a working man's life.

I worked in the oil fields in Alaska my entire adult life and was proud to do so and was treated well.

On October 4 of 2006 I worked for PEAK Oilfield Services. On that day I was assigned a fire truck to help clean a Vac truck at the Beluga waste disposal facility which is owned and operated by Conoco Phillips. During the cleaning, I suffered a devastating electrical shock when I touched the Vac truck. These trucks are supposed to be grounded to protect against static electricity. Conoco failed to provide any kind of ground. If the ground had been provided, I would have used it.

I now live with a brain injury. My partner, Tory Sandoz, has helped me compose this letter as I am unable to do this on my own. I am unable to provide a living for myself due to inability to organize, recall recent information, and physically move about for more than an hour or two without rest. I must take medicine to manage depression, nerve pain, stabilize mood. My relationships are suffering as they are weary of my constant pain. I feel like I am an 80 year old man.

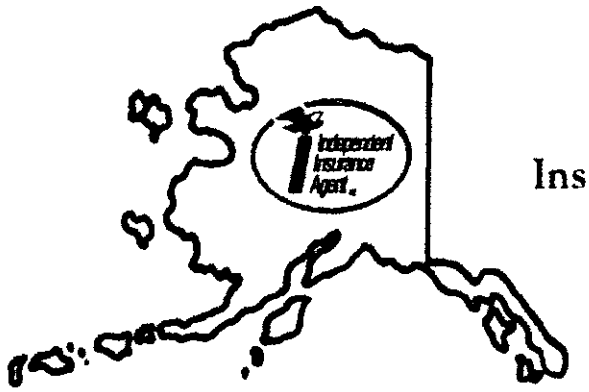
As you know, the worker's comp system is pretty bad. I paid over $20,000 from my life savings to get a proper diagnosis and treatment from specialists in Chicago. The work comp matter grinds on with no help in sight. I have no income and must tap into my very rapidly dwindling retirement account.

God bless you and the other compassionate legislators for trying to undo this horrible legislative mistake.

Very truly yours,

Patrick A. Thompson

RECEIVED
APR 14 2010



Alaska Independent
Insurance Agents & Brokers, Inc.

April 14th, 2010

To Whom It May Concern:

Re: SB 303

To Whom It May Concern:

Please be advised that the Alaska Independent Agents and Brokers do not support SB 303 as the supreme court decision on Joseph Schiel Vs: Union Oil (November 20, 2009) upheld the very same opinion that the 2004 Legislative fix moved to correct. That is to say that the ability of an uninsured employee of a subcontractor to sue the general and the owner that had existed was not legitimate and current law serves the purpose it was intended to accomplish.

SB 303 wants to allow the opportunity to file claims against general contractors under third party action. This bill will repeal the exclusive remedy protection for building owner and general contractor that is provided by statute through workers compensation.

This is a similar bill that we opposed in 2008 SB 147.

Sincerely yours,

John Grummett

National Director Alaska Independent Agents and Brokers

P.O. Box 112908 • Anchorage, Alaska 99511-2908 • Tel: (907) 349-2500 • Fax: (907) 349-1300

Alaska Timber Insurance Exchange

2417 Tongass Avenue, Suite 214
Ketchikan, Alaska 99901
FAX (907) 225-9454
(907) 225-9451

March 22, 2010

The Honorable Senator Paskvan
State Capitol Room 7
Juneau AK, 99801

Re: Senate Bill 303

Dear Senator Paskvan:

This letter is to express concerns that the Alaska Timber Insurance Exchange has about Senate Bill 303.

Senate Bill 303 would weaken the exclusive remedy provision in the Alaska workers' compensation statutes. The exclusive remedy provisions currently in place prevent, in most instances, an employee of a subcontractor or a contractor from bringing a third party action against either a project owner or contractor that their employer is working for.

An entity that qualifies as a project owner under the Alaska workers' compensation statutes is considered an employer for exclusive remedy purposes for the employees of either a contractor or subcontractor working for them. This also applies to a contractor in relation to a subcontractor.

Senate Bill 303 would take away these exclusive remedy protections from project owners or contractors even if they were liable for the workers' compensation benefits of an injured employee of a contractor or subcontractor. Currently, a project owner or contractor can become liable for the workers' compensation benefits of a contractor or subcontractor's employees if the contractor or subcontractor does not have workers' compensation insurance.

Prior to the passage of Senate Bill 323 in 2004, project owners and contractors were not treated as employers for exclusive remedy purposes, i.e. an injured employee of a contractor or subcontractor could bring a third party action against a project owner that hired the contractor and subcontractor. Likewise, an injured

employee of a subcontractor could bring a third party action against the contractor that hired their employer.

The Alaska Timber Insurance Exchange feels that the existing workers' compensation laws in Alaska provide fair benefits for injured workers without exposing employers, contractors or project owners to excessive liabilities. The proposed changes contained in Senate Bill 303 would add uncertainty and possible expense for those entities that hire contractors or subcontractors to do work for them.

Sincerely,

Martin R. Pihl

Martin Pihl
Chairman, Alaska Timber Insurance Exchange Board of Governors

cc: Alaska Timber Insurance Exchange Board of Governors
Alaska Timber Exchange Management Corporation Board of Directors

ALASKA STATE SENATE

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(907) 465-2327
(907) 465-5241 Fax

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119 N. Cushman, Suite 201
Fairbanks, Alaska 99701
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Senator_Ralph_Seekins@legis.state.ak.us

Senator Ralph Seekins
District D

Senate Bill 323 Sponsor Statement

"An Act relating to a project's liability for worker's compensation and the exclusiveness of liability for worker's compensation."

Senate Bill 323 revises the Worker's Compensation Act as it applies to contractors and subcontractors. The two principal modifications are as follows:

1. Responsibility for payment of workers' compensation is extended up the chain of contracts to include project owners; and,
2. Injured parties in receipt of benefits under the Worker's Compensation Act would be barred from "double dipping" via a tort liability claim.

Under AS 23.30.045(a), an injured employee only has recourse for workers' compensation benefits against his immediate employer and if the employer is a subcontractor, against the contractor who retained the subcontractor. The proposed legislation allows recourse for the payment of compensation benefits against *project owners*, as well as contractors and subcontractors.

This extension of the rights of injured employees is sensible inasmuch as the project owner is the beneficial user of the work performed by the injured employee. It should be noted that a project owner does not include individuals who have engaged the services of contractors to build or renovate a residential home.

Finally, the proposed legislation extends the exclusivity protection set forth in AS 23.30.055 to all parties in the contracting chain relating to a project. This includes the employer of the injured employee, and those parties, which are upstream in the chain of contracts from the employer of the injured employee.

In other words, if an injured employee works for a subcontractor, then the subcontractor, the contractor and the project owner would be free of tort liability so long as the injured employee receives the benefits set forth in the Alaska Workers' Compensation Act.

Senate Bill 323 will encourage all parties participating in a project to identify and enforce strict safety standards for the benefit of all workers rather than deflecting responsibility through the use of indemnity agreements as is common practice currently. At the same time, it ensures that injured workers will receive all benefits available under the Alaska Workers' Compensation Act.

SEEKINS BILL

23-LS1498\SA.A

CS FOR SENATE BILL NO. 323(JUD) am H

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-THIRD LEGISLATURE - SECOND SESSION

BY THE SENATE JUDICIARY COMMITTEE

Amended: 5/5/04
Offered: 4/16/04

Sponsor(s): SENATOR SEEKINS

A BILL

FOR AN ACT ENTITLED

"An Act relating to a subcontractor's, contractor's, and project owner's liability for workers' compensation, to sole proprietors and partnerships without employees, and managers or managing members of limited liability companies, and to the exclusiveness of liability for workers' compensation."

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

*** Section 1.** AS 23.30.045(a) is amended to read:

(a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 - 23.30.215. If the employer is a subcontractor **and fails to secure the payment of compensation to its employees**, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor**. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of the compensation to employees of the contractor**

and employees of a subcontractor, as applicable [UNLESS THE SUBCONTRACTOR SECURES THE PAYMENT].

*** Sec. 2.** AS 23.30.045(f)(1) is amended to read:

(1) "contractor" means a person who undertakes by contract performance of certain work for another **but does not include a vendor whose primary business is the sale or leasing of tools, equipment, other goods, or property**; and

*** Sec. 3.** AS 23.30.045(f) is amended by adding a new paragraph to read:

(3) "project owner" means a person who, in the course of the person's business, engages the services of a contractor and who enjoys the beneficial use of the work.

*** Sec. 4.** AS 23.30.055 is amended to read:

Sec. 23.30.055. Exclusiveness of liability. The liability of an employer prescribed in AS 23.30.045 is exclusive and in place of all other liability of the employer and any fellow employee to the employee, the employee's legal representative, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from the employer or fellow employee at law or in admiralty on account of the injury or death. The liability of the employer is exclusive even if the employee's claim is barred under AS 23.30.022. However, if an employer fails to secure payment of compensation as required by this chapter, an injured employee or the employee's legal representative in case death results from the injury may elect to claim compensation under this chapter, or to maintain an action against the employer at law or in admiralty for damages on account of the injury or death. In that action the defendant may not plead as a defense that the injury was caused by the negligence of a fellow servant, or that the employee assumed the risk of the employment, or that the injury was due to the contributory negligence of the employee. **In this section, "employer" includes, in addition to the meaning given in AS 23.30.395, a person who, under AS 23.30.045(a), is liable for or potentially liable for securing payment of compensation.**

March 25, 2010

Senator Joe Paskvan, Chair
Senate Labor & Commerce Committee
State Capitol
Juneau, AK 99802

RE: SB 303

Chair Paskvan and Members of the Senate Labor & Commerce Committee,

The Alaska State Chamber in accordance with our legislative position opposes Senate Bill 303 regarding exclusive liability. This position was adopted at the annual legislative fly-in this past fall. This position supports the change regarding exclusive liability made by the legislature in 2004. For your review, please find attached our legislative position on the issue.

Current law obligates the immediate employer and other project participants to pay an injured employee's workers' compensation benefits regardless of fault. In the unfortunate circumstance of an injury, a worker has clear understanding about remedies being provided under the workers' compensation system. Prior to 2004, many subcontractors employed by a larger company (project owner) or employer, were not required to carry worker's compensation insurance. Under current law, which passed in 2004, all employees including subcontractors now carry worker's compensation insurance. This requirement now insures all workers working on the job regardless of who may be their direct employer. Correspondingly, workers' compensation benefits-the employers associated with the project-is the exclusive remedy for potentially liability

Prior to 2004, project owners, contractors and their subs were expending tremendous resources in segregating project and safety programs to defend against potential tort liability. Alaska courts have adopted of what is referred to as the retained control doctrine. Prior to the 2004 reform, parties other than an employee's immediate employer were liable in tort for any injury to an employee of an independent contractor if the party retains any amount of control over the work, including the right to review the contractor's safety practices. See for example, Moloso v. State, 644 P.2d 205 (Alaska 1982). In essence, injured employees used the retained control doctrine to support tort claims against the project owners and other parties that had done nothing more than try to enforce reasonable safety practices during the performance of a contractor's work.

ALASKA STATE CHAMBER OF COMMERCE

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In practice, project owners and contractors attempted to avoid tort liability by limiting their involvement with each other's safety programs and work performance. In other words, prior to 2004 the law actually discouraged project owners and other project participants from implementing and enforcing coordinated safe work practices.

Under current law, project participants can take an integrated approach to completion of a project and can integrate safety programs. That is, project owners, contractors and subcontractors work closely together to ensure that project specifications and safety standards are met and that all work is completed in a successful and safe manner.

Second, the Alaska Workers' Compensation Act is intended to provide injured workers with reasonable compensation for their work related injuries without regard to fault or the cause of the injury. Some may claim that without the risk of exposure to tort damages, the project owners and other project participants have had little incentive to implement and enforce safe work practices. As previously stated, the new law has allowed for increased safety awareness and coordinated safety programs interconnecting subcontractors and project owners together. The Alaska State Chamber of Commerce has been steadfast advocates of reducing workers' compensation (wc) expenses particularly wc insurance; however, continued improvement on insurance rates mean continued improvement on workplace safety.

The tort system is not the only available means to punish companies that violate safety practices. The Department of Labor, the Oil and Gas Commission and other State agencies have authority to fine companies that violate State safety standards. Those agencies also have the authority to shut down projects that pose a safety hazard to employees. When project owners, their contractors and subcontractors work in an integrated manner, all companies involved in the contracting chain are subject to the fines and other remedies of state agencies. This is a much more efficient, credible and cost effective means of policing job safety.

At this time and in accordance with our legislative position adopted this past fall, we cannot support SB 303.

Best Regards,

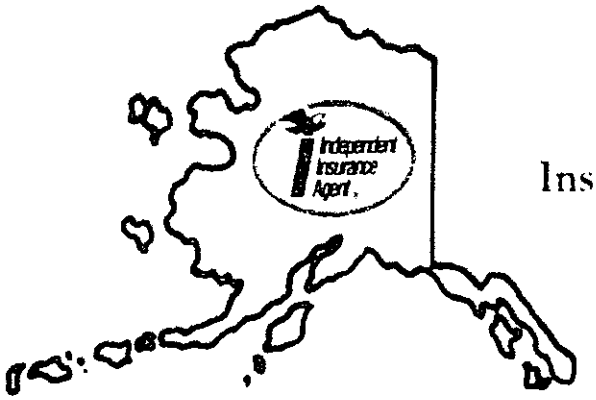
Wayne A. Stevens

Wayne A. Stevens
President/CEO

Alaska State Chamber of Commerce
2010 Position

Support Workers' Compensation Exclusive Liability Statute

The Chamber supports current Alaska law making compensation benefits an injured worker's exclusive remedy for on-the-job injuries. The State Chamber will oppose any legislation introduced to remove the exclusive liability language described above.



Alaska Independent
Insurance Agents & Brokers, Inc.

April 8th, 2010

To Whom It May Concern:

Re: SB 303

To Whom It May Concern:

Please be advised that the Alaska Independent Agents and Brokers do not support SB 303 as the supreme court decision on Joseph Schiel Vs: Union Oil (November 20, 2009) upheld the very same opinion that the 2004 Legislative fix moved to correct. That is to say that the ability of an uninsured employee of a subcontractor to sue the general and the owner that had existed was not legitimate and current law serves the purpose it was intended to accomplish.

SB 303 wants to allow the opportunity to file claims against general contractors under third party action. This bill will repeal the exclusive remedy protection for building owner and general contractor.

This is a similar bill that we opposed in 2008 SB 147.

Sincerely yours,

John Grummett

National Director Alaska Independent Agents and Brokers

P.O. Box 112908 • Anchorage, Alaska 99511-2908 • Tel: (907) 349-2500 • Fax: (907) 349-1300

April 16, 2010

Representative Jay Ramras, Chair
House Judiciary Committee
State Capitol
Juneau, AK 99802

RE: SB 303

Chair Ramras and Members of the House Judiciary Committee,

The Alaska State Chamber in accordance with our legislative position opposes Senate Bill 303 regarding exclusive liability. This position was adopted at the annual legislative fly-in this past fall. This position supports the change regarding exclusive liability made by the legislature in 2004. For your review, please find attached our legislative position on the issue.

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Prior to 2004, project owners, contractors and their subs were expending tremendous resources in segregating project and safety programs to defend against potential tort liability. Alaska courts have adopted of what is referred to as the retained control doctrine. Prior to the 2004 reform, parties other than an employee's immediate employer were liable in tort for any injury to an employee of an independent contractor if the party retains any amount of control over the work, including the right to review the contractor's safety practices. See for example, Moloso v. State, 644 P.2d 205 (Alaska 1982). In essence, injured employees used the retained control doctrine to support tort claims against the project owners and other parties that had done nothing more than try to enforce reasonable safety practices during the performance of a contractor's work.

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3639

In practice, project owners and contractors attempted to avoid tort liability by limiting their involvement with each other's safety programs and work performance. In other words, prior to 2004 the law actually discouraged project owners and other project participants from implementing and enforcing coordinated safe work practices.

Under current law, project participants can take an integrated approach to completion of a project and can integrate safety programs. That is, project owners, contractors and subcontractors work closely together to ensure that project specifications and safety standards are met and that all work is completed in a successful and safe manner.

Second, the Alaska Workers' Compensation Act is intended to provide injured workers with reasonable compensation for their work related injuries without regard to fault or the cause of the injury. Some may claim that without the risk of exposure to tort damages, the project owners and other project participants have had little incentive to implement and enforce safe work practices. As previously stated, the new law has allowed for increased safety awareness and coordinated safety programs interconnecting subcontractors and project owners together. The Alaska State Chamber of Commerce has been steadfast advocates of reducing workers' compensation (wc) expenses particularly wc insurance; however, continued improvement on insurance rates mean continued improvement on workplace safety.

The tort system is not the only available means to punish companies that violate safety practices. The Department of Labor, the Oil and Gas Commission and other State agencies have authority to fine companies that violate State safety standards. Those agencies also have the authority to shut down projects that pose a safety hazard to employees. When project owners, their contractors and subcontractors work in an integrated manner, all companies involved in the contracting chain are subject to the fines and other remedies of state agencies. This is a much more efficient, credible and cost effective means of policing job safety.

At this time and in accordance with our legislative position adopted this past fall, we cannot support SB 303.

Best Regards,

Wayne A. Stevens
President/CEO

Workers' compensation inequity against general contractors fixed

By Robert J. Dickson

The Alaska Supreme Court has recently approved the Legislature's 2004 fix of an inequality toward general contractors under the workers' compensation statutes. By way of background, the basic premise of the workers' compensation statutes is that in place of a worker's right to sue his employer for negligently caused injuries to the employee, the employee is given a statutory right to payment for medical care and a partial replacement of lost earned wages in all cases, not just those where the employer is negligent.

Thus, while the worker is deprived of his ability to recover big damages when the employer is negligent, in place of that right, he is given a reduced recovery in all cases regardless of whether the employer was negligent. At the same time, part of the quid pro quo, is the statute immunizes the employer from any and all tort claims by the injured employee and his family and representatives. The employer and its insurance carrier are liable for workers' compensation benefits, but not for tort damages.

All workers' compensation statutes provided that in the case of a general construction contractor with subcontractors, the general contractor were responsible for all benefits required by the workers' compensation law to the subcontractor's injured employees if the subcontractor failed to provide workers' compensation insurance for the sub's employees. Consequently, when a sub went without workers' compensation insurance and its employee was injured, the injured employee could recover workers' compensation benefits from the general contractor. While the statutes required the general contractor to carry workers' compensation both for its employees and potentially for uninsured subcontractors' employees, the statutes, including Alaska's, was silent on whether the general contractor was also immunized from tort liability to the sub's employees in the same way as an employer with workers' compensation insurance was immune.

In 1981, the Alaska Supreme Court ruled that even though a general contractor would have to pay workers' compensation benefits if the sub failed to do so, the general contractor was NOT immunized from tort liability. Consequently the injured subcontractor's employee had the ability to obtain workers' compensation benefits from the general contractor if there was no negligence involved, or sue the general contractor in tort if the general was allegedly negligent. Thus the general contractor had the worst of both sides of the original concept – liability for workers' compensation benefits of employees not its own, as well as exposure to tort liability to those same workers.

Prior to 2004, any company working on a project site, other than the subcontractor whose employee was injured, was fully exposed to a claim by the subcontractor's employee for tort negligence. This meant even though the general contractor was potentially liable for the sub's employees if the sub had been uninsured, the general was also always a potential target for a liability suit when a subcontractor's employee was injured. The project owner was also a prime target for such liability suits.

But all owner-general contractor contracts provided that the contractor would indemnify the project owner for any claims against the owner by the general's or sub's employees. The subcontracts also provided same protection for the general with respect to the sub's employees. As a result, a subcontractor who provided workers' compensation insurance would have to pay (through its insurer) workers' compensation benefits to an injured employee; and then when the employee sued the general contractor, the sub would also have to pay whatever tort recoveries or settlements were recovered against the general.

The same mechanism operated between general contractors and project owners. Consequently, through contracts working together with the statutes, responsible general contractors or subcontractors often paid twice. That result was in addition to responsible general contractors being faced with exposure to both workers' compensation benefits to an uninsured subcontractor's employees and exposure to tort liability to the same workers.

But in 2004, the Alaska Legislature moved to correct that inequity; the ability of a subcontractor's injured employee to sue the general contractor and the project owner was eliminated. The Legislature expanded the potential liability for workers' compensation benefits to not only the general contractor but also to the project owner. The Legislature provided that if a general contractor failed to obtain worker's compensation insurance for its employees or the employees of a subcontractor, the project owner was liable for workers' compensation benefits for the general's employees and even for the subcontractor's employees if the subcontractor was uninsured. At the same time, however, the Legislature also immunized the project owner from tort liability. Further, the

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Legislature corrected the gap created back in 1981 by also immunizing the general contractor from tort liability to uninsured subcontractor's employees.

In the case recently decided, an employee of a general contractor operating a drill platform for one of the oil companies was injured on the platform. The general contractor had provided workers' compensation insurance and thus the platform owner was not going to be liable for any workers' compensation benefits to the employee. Predictably, the employee sued the project owner any way, claiming the 2004 statute unconstitutionally deprived him of valid causes of action. In a November 2009 decision, the Alaska Supreme Court upheld the constitutionality of the new legislative scheme.

The case represents one of those situations where the Alaska Supreme Court accepted the public policy judgment of the Alaska State Legislature.

Robert J. (Bob) Dickson is a partner of the Anchorage law firm Atkinson, Conway and Gagnon Inc.

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April 15, 2010

To Whom It May Concern:

My brother, Derek Sather, tragically died on March 20, 2008 while working on a construction project in Skagway, Alaska. He was crushed by the weight of a front loader that rolled backward down a steep road, pinning his body to the front of a cement truck. The front loader was not operated by his employer, but rather the general contractor.

Derek was deeply loved and relied upon by his extended family, including his mother, two brothers, sister, nieces and nephews, and fiancé. Derek cannot be replaced. The current state of Alaska Law would limit benefits available to my family in the amount of $5,000 for funeral expenses. This is unacceptable and unjust.

General contractors who negligently cause harm to workers in Alaska should not be immune from liability. They need to be held accountable for their acts, which will create a safer work place for all individuals working in Alaska. It will also provide for reasonable compensation for families who have suffered greatly from these negligent acts.

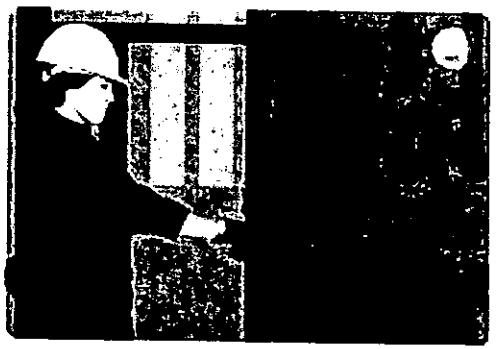
Yours truly,

Jared Sather

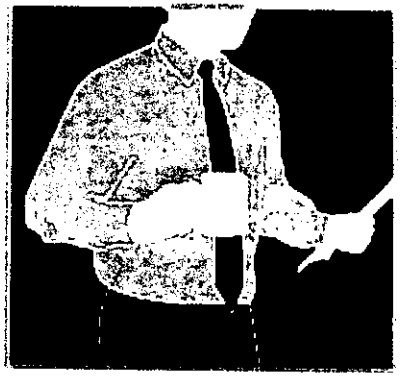
Before 2004

- Project owner employee
- WC policy in place

- Project Contractor
- WC policy in place



- Project Subcontractor
- WC policy in place



- Visitor
- WC policy in place

If injured simultaneously on project, and <u>PROJECT OWNER</u> is at fault, remedies available:

- WC

- WC
- tort claim

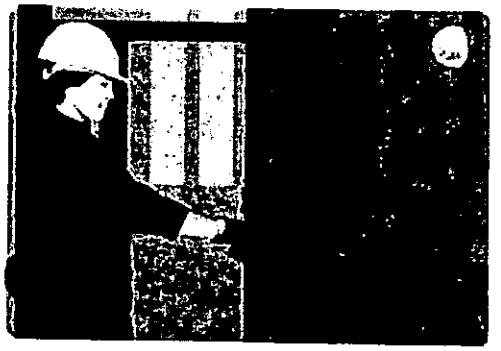
- WC
- tort claim

- WC
- tort claim

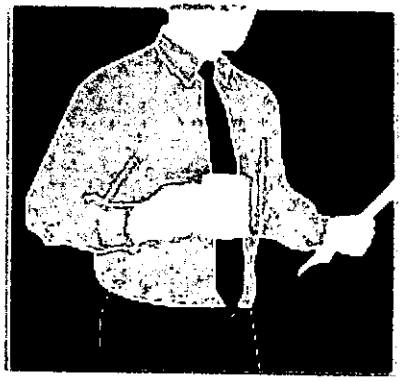
Today

- Project owner employee
- WC policy in place

- Project Contractor
- WC policy in place



- Project Subcontractor
- WC policy in place



- Visitor
- WC policy in place

If injured simultaneously on project, and <u>PROJECT OWNER</u> is at fault, remedies available:

- WC

- WC

- WC

- WC
- tort claim

THE ALLIANCE

...for responsible development of Alaska's Oil, Gas & Mineral Resources

646 West Fourth Ave., Suite 200 * Anchorage, AK 99501 * Phone (907) 563-2226 * Fax (907) 561-8870

HOUSE JUDICIARY TESTIMONY
on SB 303
April 16, 2010

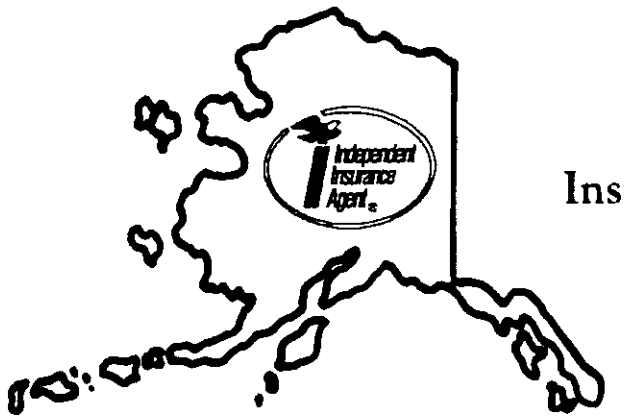
Chairman Ramras, members of the House Judiciary Committee, I'm Paul Laird, general manager & testifying on behalf of the Alaska Support Industry Alliance against Senate Bill 303.

Our 500 member organizations provide more than 40,000 Alaskan jobs as contractors and suppliers to the Alaska's oil, gas & mining industries. Many would be directly & adversely affected by SB 303, which would subject them to increased costs & risks. They would face the double jeopardy of workers' comp liability and liability lawsuits - a boon to trial lawyers, a bane to business.

Reforms adopted in 2004 have worked. All employees now carry workers' compensation insurance and are eligible for benefits regardless of fault. Project owners, contractors and subcontractors now coordinate safety programs, resulting in better safety performance.

Alaska's oil & gas industry has lost 1,500 jobs in the past year. Investment is down, oil & gas contractors are losing business, and margins are squeezed on what business remains. SB 303 would be one more threat to their futures.

We strongly oppose Senate Bill 303. Thank you.



Alaska Independent
Insurance Agents & Brokers, Inc.

April 14th, 2010

To Whom It May Concern:

Re: SB 303

To Whom It May Concern:

Please be advised that the Alaska Independent Agents and Brokers do not support SB 303 as the supreme court decision on Joseph Schiel Vs: Union Oil (November 20, 2009) upheld the very same opinion that the 2004 Legislative fix moved to correct. That is to say that the ability of an uninsured employee of a subcontractor to sue the general and the owner that had existed was not legitimate and current law serves the purpose it was intended to accomplish.

SB 303 wants to allow the opportunity to file claims against general contractors under third party action. This bill will repeal the exclusive remedy protection for building owner and general contractor that is provided by statute through workers compensation.

This is a similar bill that we opposed in 2008 SB 147.

Sincerely yours,

John Grummett

National Director Alaska Independent Agents and Brokers

P.O. Box 112908 • Anchorage, Alaska 99511-2908 • Tel: (907) 349-2500 • Fax: (907) 349-1300

Sec. 23.30.045. Employer's liability for compensation. (a) An employer is liable for and shall secure the payment to employees of the compensation payable under AS 23.30.041, 23.30.050, 23.30.095, 23.30.145, and 23.30.180 — 23.30.215. If the employer is a subcontractor and fails to secure the payment of compensation to its employees, the contractor is liable for and shall secure the payment of the compensation to employees of the subcontractor. If the employer is a contractor and fails to secure the payment of compensation to its employees or the employees of a subcontractor, the project owner is liable for and shall secure the payment of the compensation to employees of the contractor and employees of a subcontractor, as applicable.

(b) Compensation is payable irrespective of fault as a cause for the injury.

(c) For a person eligible for vocational rehabilitation service under this chapter or AS 23.15.080 who is placed with an employer for service at the request of the rehabilitation administrator or division of vocational rehabilitation to provide on the job training, work readiness, work therapy experience, or work sampling, the liability set out in (a) of this section applies to the state rather than to the employer. However, an employer may elect to assume the liabilities in (a) of this section.

(d) A contract may not be awarded by the state or a home rule or other political subdivision of the state unless the person to whom the contract is to be awarded has submitted to the contracting agency proof, furnished by the insurance carrier, of current coverage by workers' compensation insurance from an insurance company or association authorized to transact the business of workers' compensation insurance in this state or proof, furnished by the board, of a current certificate of self-insurance from the board. The person to whom the contract is awarded shall keep the workers' compensation insurance policy in effect during the life of the contract with the state or political subdivision. If the state or the political subdivision of the state fails to obtain proof of coverage or self-insurance or to protect itself under (e) of this section, and an employee of the contractor is injured during the term of the contract, the state or the political subdivision is liable for workers' compensation to the employee if the employee is unable to recover from the employer because of the employer's lack of financial assets. The state or the political subdivision is not liable, however, to the employee for workers' compensation if the employee can recover from the employer under (a) and (b) of this section.

(e) When a contracting agency of the state or a political subdivision receives notice that the workers' compensation insurance policy of an employer to whom the agency has awarded a contract has been cancelled due to nonpayment of a premium, without being replaced by a comparable policy, the agency may either terminate the contract with the employer or continue the premium payments on behalf of the employer in order to keep the policy in force during the life of the agency's contract. If the agency chooses to keep the policy in force, it may deduct its payments from the contract price or bring an action against the employer to recover the amount of the payments. When the contracting agency receives notice that the board has revoked a certificate of self-insurance held by a person to whom a contract has been awarded, the agency may terminate the contract. This subsection does not limit the causes of action or remedies that the state or political subdivision may have against the employer.

(f) In this section,

(1) "contractor" means a person who undertakes by contract performance of certain work for another but does not include a vendor whose primary business is the sale or leasing of tools, equipment, other goods, or property;

(2) "project owner" means a person who, in the course of the person's business, engages the services of a contractor and who enjoys the beneficial use of the work;

(3) "subcontractor" means a person to whom a contractor sublets all or part of the initial undertaking. (§ 3 ch 193 SLA 1959; am § 1 ch 46 SLA 1967; am § 3 ch 166 SLA 1972; am §§ 4, 5 ch 93 SLA 1982; am §§ 1 — 3 ch 80 SLA 2004)

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SJR

10

HOUSE JUDICIARY COMMITTEE

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Vice-Chairman
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Room 108
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Rep. Max Gruenberg
Room 110
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Rep. Lindsey Holmes
Room 405
(907) 465-4919

MEMORANDUM

Date: April 13, 2009

To: Representative John Coghill
Chairman House Rules Committee

From: Representative Jay Ramras
Chairman House Judiciary Committee

Re: Referral File SJR10

Please accept this memo as the referral file for SJR10. Attached are the following documents:

- Sponsor Statement
- SJR10 26-LS0675\A
- LEG Zero Fiscal Note
- HJUD Committee Report

ALASKA STATE LEGISLATURE

SENATOR JOE THOMAS

SJR 10 - Urging the United States Congress to adopt S. 371, the Respecting States Rights and Concealed Carry Reciprocity Act of 2009

Sponsor Statement

The right to keep and bear arms is one of the rights most cherished by Alaskans. Our history and culture is tightly bound to our outdoor and sporting heritage. Residents of Alaska and Vermont enjoy some of the greatest freedoms in the country with regards to concealed carry. Senate Joint Resolution 10 supports federal legislation that recognizes and protects our unique situation.

The Respecting States Rights and Concealed Carry Reciprocity Act was introduced by U.S. Senators David Vitter (LA) and John Thune (SD). A House companion bill, H.R. 197, has been introduced by Representatives Cliff Stearns' (R-Fla.) and Rick Boucher (D-Va.) The bill would allow those American citizens who are licensed or otherwise authorized by their state government to carry a concealed firearm to lawfully carry concealed firearms in other states, in accordance with local laws. Provisions in the law ensure that residents of states like Alaska and Vermont, which have unique concealed carry laws, are not prohibited from enjoying the same rights as those residents from states with more common "conceal and carry" laws.

This piece of federal legislation respects state laws by requiring carriers of concealed firearms to follow all applicable state statutes governing concealed firearms. Currently, many states offer reciprocity agreements to other states with similar concealed carry laws. However, these agreements can change or lapse. For instance, North Dakota recently phased out the training requirement from the concealed carry-licensing process. This resulted in the lapse of several reciprocity agreements between North Dakota and other states. Such shifting agreements can make it difficult for a bearer of a concealed firearm to keep track of which states offer reciprocity.

Federal passage of the Respecting States Rights and Concealed Carry Reciprocity Act would establish a nationwide reciprocity agreement, and place the duty to comply with local and state concealed carry laws squarely on the shoulders of the citizen. Individuals must follow the laws of the host state, including laws concerning specific locations where firearms may not be carried. Additionally, any individual prohibited by federal law from carrying a firearm will continue to be prohibited under the bill.

January – May: State Capitol – Juneau, Alaska 99801 – (907) 465-2327 – 1 (800) 336-7383 – Fax (907) 465-5241
June – December: 1292 Sadler Way Ste 203 – Fairbanks, Alaska 99701 – (907) 456-8161 – Fax (907) 456-8163
Senator.Joe.Thomas@legis.state.ak.us

FISCAL NOTE

STATE OF ALASKA
2009 LEGISLATIVE SESSION

Fiscal Note Number: 1
Bill Version: **SJR 10**
(S) Publish Date: 3/18/09

Identifier (file name):
Title: Adopt S. 371 in Congress
Sponsor: Senator Thomas
Requester: Senate Judiciary Committee

Dept. Affected: None
RDU
Component
Component Number

Expenditures/Revenues (Thousands of Dollars)

Note: Amounts do not include inflation unless otherwise noted below.

	Appropriation Required	Information					
OPERATING EXPENDITURES	**FY 2010**	**FY 2010**	**FY 2011**	**FY 2012**	**FY 2013**	**FY 2014**	**FY 2015**
Personal Services							
Travel							
Contractual							
Supplies							
Equipment							
Land & Structures							
Grants & Claims							
Miscellaneous							
TOTAL OPERATING	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**
CAPITAL EXPENDITURES							
CHANGE IN REVENUES ( )							

FUND SOURCE (Thousands of Dollars)

1002 Federal Receipts							
1003 GF Match							
1004 GF							
1005 GF/Program Receipts							
1037 GF/Mental Health							
Other Interagency Receipts							
TOTAL	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**	**0.0**

Estimate of any current year (FY2009) cost:

POSITIONS

Full-time							
Part-time							
Temporary							

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

Prepared by: Senate Judiciary Committee — Phone 465-3892
Division: Legislative — Date/Time
Approved by: Senate Judicary Chairman Senator Hollis French — Date 3/16/2009

(Revised 9/10/2008 OMB)

3654

.IOUSE COMMITTEE REPOI

(7)
Date Referred to Committee: March 30, 2009 **FURTHER REFERRALS:**

Date of Committee Action: 4/13/09

The JUDICIARY Committee considered: **SENATE JOINT RESOLUTION NO. 10**

Urging the United States Congress to adopt S. 371, the Respecting States Rights and Concealed Carry Reciprocity Act of 2009.
SJR 10 ADOPT S. 371 IN CONGRESS

Recommends it be replaced with [ ] HCS *or* [ ] CS *for* _____ ( )
For Senate Bills with new title: [ ] Technical Title [ ] New Title: HCR_____ **[ ] Same Title [ ] New Title**

[ ] attach amendments
[ ] add new referral to _____Committee
[ ] Letter of Intent_____Committee

List of Abbrev for Depts.:
ADM
CED
COR
CRT
EED
DEC
DFG
GOV
DHS
LWF
LAW
LEG
MVA
DNR
DPS
REV
DOT
UA

***NEW* FISCAL NOTES**
*Assigned by Chief Clerk's Office

List by Dept(s):	*FN#	Fiscal	Indet.	Zero

***PREVIOUS* FISCAL NOTES**

List by Dept(s):	FN#	Fiscal	Indet.	Zero
LEG	1			✓

Signing with recommendations	Printed Last Name	DP	DNP	NR	AM
	SYNN	X			
	Coghill	✓			
	Dahlstrom	X			
	Holmes	X			
Chair:	[illegible]	✓			
Chair:					